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Is there any relationship between immigration and terrorism?

Critical analysis from Human Rights perspective.

Europe: security for or against the displaced?

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Abstract

Since the end of the Second World War, there has never been such a large and dramatic humanitarian crisis as the result of the uncontrolled flow of refugees, asylum seekers and economic migrants that worsened during the year 2015.

According to official UNHCR figures collected in its 2018 statistical year book, the number of refugees in the world increases every year to exceed the figure of 68 million. Of this number, 1.1 million arrived in Europe during the recent years with the hope of rebuilding a truncated life. 5000 could not even touch land and drowned in the Mediterranean in 2015.

The situation for the "lucky ones", those who reached the continent, however, has revealed the lack of political will, and has shown how much this crisis scares certain sectors of public opinion and how it has generated only clashes over the possible linkage of said immigrants with terrorist groups due to their origin (mainly Syria, Iraq or Afghanistan).

Additionally, the recent terrorist attacks in Europe have not left society indifferent, creating a sense of terror that has had, as a consequence, effects on European policies adopted and, consequently, on their implementation by the Member States.

In short, the result has shown the picture of a clumsy and completely fractionated continent by the quotas imposed under a "feeling of border permeability" that provokes insecurity and questions the idea of sovereignty.

The purpose of this paper is to investigate if there is a true relationship between immigration and terrorism, framed in the European context, and to observe which have been the political and legal measures carried out by the European Union (as a body), and

more in particular, by Belgium, France, Spain and Germany due to the relevant role they have played within the migratory crisis, while assuming counter terrorist measures.

Key words: migration, terrorism, jihadism, securitization, human rights, European Union.

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List of Acronyms

EU	European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
IS	Islamic State
HR	Human rights
HRW	Human Rights Watch
IOM	International Organisation for Migration
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
FRONTEX	The European Border and Coast Guard Agency
EUROPOL	The European Union Agency for Law Enforcement Cooperation
MS	Member state

Introduction- Migration Crisis and Jihadism, the current challenges of Europe

1.1 Introduction and context

Europe has faced two major crises in the recent years that have threatened the continent and tested its political and social landscape. Both of them overlapped in time which resulted in a presumed linkage that this research will try to clarify.

I.MIGRATION CRISIS

DEFINITION - The first one refers to the unprecedented humanitarian crisis which had its peak in 2015. Millions of people fled to Europe in order to escape from conflicts, fear and persecution in their own countries[1].

CONTEXT- According to UNHCR data more than 1,1 million people arrived in southern Europe through boats. The 84% of them were coming from the 10 countries that nowadays produce the most number of refugees, including Afghanistan, Iraq and Syria. Children accounted for 31% of all arrivals (many of them did it alone), while around 5000 people died or were reported as lost in the Mediterranean Sea[2].

Given this scenario, the measures adopted by Europe to face this situation were reproached by many international organizations and institutions due to its questionable compliance with human rights standards.

During that year the European Union launched an agreement to welcome a total of 160.000 refugees from Italy and Greece[3]. All member states were committed to relocate migrants through a system of quotas[4].

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1 UNHCR, 2015.
2 Ibid.
3 EU-Turkey Statement, 18th March, 2016.
4 Dearden, l (2017): *"EU plan to relocate 160,000 refugees from Italy and Greece by September failing despite record deaths at sea".* The Independent.

All Member States, including those who showed clear opposition (Hungary, Czech Republic, Slovakia and Romania) were entrusted to redistribute the asylees that came from territories with higher numbers of arrivals (Italy and Greece) within two years; a decision that until the last moment tried to be adopted unanimously[5].

In this way, Jean-Claude Juncker urged Europe to show solidarity in order to face the biggest migratory challenge after the Second World War, through a legal document that "disguised the mandatory quotas as voluntary figures"[6].

Three years later we know that the result of this agreement has barely reached the 30%[7]of compliance revealing the shortcomings of the Union's asylum system. However, not all countries reacted in the same way.

In order to give a brief overview of this landscape we can point out that Germany, despite the fact that has not complied with quotas, is the country that has received more refugees and at the same time, is the most requested one because of its social benefits and the guarantees that the Constitution offers[8].

Only Nordic countries offered similar integration conditions to those in Germany throughout Europe. In total Germany and Sweden concentrate the 55% of the grants of asylum within the EU[9].

On the contrary, Spain has only met the 13% of what was promised[10], while Malta, despite its small size, has complied with the 113%[11].

In March 2016, the European Union and Ankara reached another agreement to return to Turkey all irregular migrants that arrived to the Greek islands from this country. The

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5 Ibid.
6 European Commission, (2016) International Conference: "*Understanding and tackling the migration challenge*".
7 Eurostat (2017):*"Asylum Statistics"*. European Commission.
8 Ibid.
9 Eurostat (2016) *"EU Member States granted protection to more than 330 000 asylum seekers in 2015"*.
10 Eurostat (2017):*"Asylum Statistics"*. European Commission.
11 Ibid.

UN considered it completely inhuman and illegal according to the European and humanitarian law. From Amnesty International critics were related to the lack of guarantees that a country like Turkey offered for these immigrants, leaving them completely unprotected[12].

In the present study it will be assessed how the uncontrolled migratory flux that came from countries in conflict, made alarms jumped in some sectors of the public opinion.

RESULTS- The impact of immigration on security, along with the question of whether the economic benefits of immigration exceed it costs, has been at the core of the public debate. In particular, the relationship between immigration and terrorist attacks.

The focus of this study has been widely discussed among policymakers and public institutions, leading to for and against arguments. Some reports written by the International Organization for Migration[13] for example, highlight a number of areas where migration policies and national security intersect, suggesting that more migration into a country is very likely to induce security risks; but these reports also warn against drawing too close links between migration and insecurity[14].

In turn, the perceived link between immigration and terrorism frequently has and continues to legitimize the implementation and enforcement of stricter migration laws, regulations, and controls[15].

II. RELIGIOUSLY ISLAMIC TERRORISM

CONTEXT- In this line, referring to the second crisis, terrorism has become a universal problem to combat. From some intelligence services has been noted that Europe is facing

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12 Amnesty International (2017).
13 IOM (2003, 2010)
14 Bove. V, Böhmelt, T ,(2016) *Does Immigration Induce Terrorism*? Journal of Politics.
15 Rudolph, 2003; Givens, Freeman and Leal, 2008; Epifanio, 2011; Neumayer, Plumper and Epifanio, 2014; Bandyopadhyay and Sandler, 2014 Bove. V, Böhmelt, T ,(2016) *Does Immigration Induce Terrorism*? Journal of Politics.

nowadays the biggest terrorist wave in history and, some experts for its part, point to a new era of terrorism, "the fifth wave"[16.]

Agreeing or not with this last argument, what it seems clear, is the fact that during the summer of 2014, the leaders of the so-called Islamic State decided to articulate within Western Europe, mainly in Belgium and France, but not only, at least one operational network to carry out attacks in those and other countries. Attacks with the final purpose of producing fear in order to affect the behavior of European citizens, and at the same time, to condition the decisions of their rulers, deepening the fracture between Muslims and the rest of the population, for the benefit of the IS and its objectives[17.]

In 2004, five terrorist attacks were committed, but in the following years the tendency was declining until 2015. At that moment the trend was reversed, becoming, by far, the worst year in terms of attacks.[18]

The European Union experienced in 2015 a spike in terror attacks across its member countries. Terrorist who belonged to an operative network of IS caused 163 victims and 350 injuries related to terror attacks. 211 terror plots were failed, foiled, or completed and 1,077 individuals were arrested on terrorism-related offenses.[19]

To be more precise, fourteen of these attacks occurred in France. While the other two took place in Copenhagen[20].

DEFINITION- Terrorism is an old phenomenon. This research will focus on analyzing the central terrorism of the globalization, the one of the 21st century that defends the ideology of Islamic fundamentalism, and whose aim is to force a political change through an asymmetric armed confrontation.[21]

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16 Sanchez Rojas E. (2016) *Are we facing the fifth wave of terrorism?,* IEE.
17 Reinares. F, (2016):*"Diez cosas que importa saber sobre la amenaza del terrorismo yihadista en Europa Occidental"*, Real Instituto Elcano
18 Ruiz del Pozo, P. (2017): *"El mapa del terror: la Europa atacada por los yihadistas".* ABC internacional.
19 EUROPOL TESAT (2016).
20 Ibid..
21 Dunayevich. E: *"El terrorismo en la globalización".*

First of all, in order to introduce the concept of terrorism, one of the generalist definitions in which the majority of authors agree is the one that presents it as the movement that aims to cause terror, helplessness, and insecurity within society. Violent actions and instruments are used for this purpose. However, the lack of consensus when defining this concept has been a burden that has prevented from signing various plans to combat it.[22]

The threat of jihadist terrorism, (the one whose practice is justified by a fundamentalist and bellicose view of the Islamic creed, known as jihadist Salafism), exists in Western Europe since the beginning of the 1990s, however it seems that in the last years it became more remarkable in our continent through the so-called Islamic State[23].

RESULTS-The truth is that this situation has challenged the leaders of the different Member States and it has become a key issue on the security agenda of many countries[24].

III. COUNTER-TERRORISM ACTIONS WITHIN EU´S HUMAN RIGHTS FRAMEWORK

CONTEXT- At the international stage, institutions and organizations have adopted measures as well, in order to prevent and create a common plan to fight against terrorism within the legal framework. However, some of them have been controversial as it will be analyzed deeper throughout this research.

MEASURES- In 2005, the EU Counter-Terrorism Strategy was approved, in which all member states agreed on common forms of action against terrorism, focusing on four pillars: prevent, protect, pursue and respond, with a caveat that must go through the fight against terrorism: the protection of human rights[25].

FULFILLING HUMAN RIGHTS- The Strategy states that it is fundamental to defend human rights and the full enforcement of laws against terrorism, as complementary objectives. However, the existence since 2000, of international practices that highlight the systematic

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22 Instituto Internacional de Estudios en Seguridad Global (2017): *"Concepto de terrorismo.*
23 Borrego. J : *"La evolución del movimiento salafista yihadista internacional"* UCM.
24 Rudolph (2003).
25 EU Counter-Terrorism Strategy (2005).

violations of rights by the States in the fight against terrorism show that, they might be not as complementary as presented.

The first resolutions of the General Assembly related specifically to "Human Rights and Terrorism", showed the violation of rights by terrorists and urged states to fight them, but after the year 2000, they began to reflect in more problematic issues, urging, and manifesting concern for events that have occurred to the states not to forget that, in the fight against terrorism, they must respect international provisions on rights.

Along the present study, the main instruments that the European Union is committed to respect according to human rights standards (ECHR mainly, and The Charter of Fundamental Rights of the EU in addition), will be the basis of reference in order to analyze if the measures adopted by the EU and its members states have been fulfilled in a proper and effective way.

1.2 Method and Structure: central guiding

1.2.1 Research questions

This thesis will revolve around two main interrogations: (1) is there a real connection between immigration and terrorism? When looking at the context of crisis that Europe has faced specially from 2014 to 2017 with a clear peak in 2015, one can wonder if this boom of "new terrorism" has a link with those migratory flows that have arrived to the continent, especially when observing the response of the Institutions. A corollary question (2) will be precisely which have been the counter-terrorists measures adopted by the European Union as a body, and more specifically the ones taken by some Member States within the human rights framework in order to assess whether or not there have been migrant´s rights violations at the moment of their implementation.

In this case I will focus on Spain, Belgium, Germany and France considering the special relevance of these countries in this connection to terrorism and migration.

1.2.2 Sub-sections

In order to assess the first chapter based on the legal framework of Human Rights within the EU, some sections will be taken into account. First of all the main instruments that Europe has ratified: The European Convention on Human Rights, and Charter of Fundamental Rights of the EU, as well as some dilemmas that poses the relationship between those rights and policies with regard to both migration and counter-terrorism. The final purpose is to analyze if migrants are protected under this scope.

The second chapter will study the effective relationship between immigration and terrorism and to do so, three key points will guide this section: theories and approaches to this issue; data about the nationality of the perpetrators; and finally, possible causes of radicalization.

Additionally, the third chapter will firstly delve around some controversial measures or actions taken by the EU in relation to these issues, by analyzing first of all: the concept of securitization; and later on, the Return Directive 2008, the EU-Turkey Statement and lastly the creation of the EU Border Agency.

Secondly, some particular cases will be studied such as the so-called "hot returns" and the ethnic profiling in Spain; the State of Emergency in France; the reinforcement of the law in Germany; and the deportation of foreigners in Belgium; within the context of human rights, in order to show if migrants and their human rights are being protected while counter-terrorism measures are being implemented.

1.2.3 Timeline

This thesis will analyse both crises from 2014 to 2017, taking special consideration of the year 2015 which dramatically became the peak of the migratory crisis and as well of terrorist attacks. In accordance to the strategies adopted by the European Union, I will mainly focus on the ones adopted from 2015 on, but due to the relevance of the Directive 2008/115 and its connection with the issues developed, it will be as well taken into

account. Regarding the measures adopted by the member states, the same period will be used in order to analyze its implementation. For feasibility reasons, the timeframe of this study will stop at the end of 2017 due to the fact that sources considered are annual, and so the latest reports published in relation to terrorism refer to the year 2017. Developments taking place after this date will not be taken into consideration in this work.

1.2.4 Limits

It is important to highlight that this research focuses on two crises that are currently ongoing. At the same time, measures that are being adopted by the Member States are still, some of them, at the first level of implementation which will allow this research to analyse them from a limited scope.

Additionally, both migration and terrorism are extremely broad topics, it must be noted that all aspects revolving around those matters cannot be assessed in this study.

In order to clarify their limits, it has to be mentioned that when referring to *terrorism* this study will only look into the Islamic fundamentalist movement that favors the pursuit of jihads in defense of the Islamic faith, and more particularly in the Salafist jihadism, which is the current that defends the return to genuine Islam and, at the same time, rejects any form of democracy. Ultimately, Salafist jihadism promotes actions to liberate Muslim countries from any foreign influence[26].

Secondly, in relation to migration, it is important to define the term. IOM defines a migrant as any person who is moving or has moved to an international border or within a State away from his or her usual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is[27].

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26 Def ABC (2018): https://www.definicionabc.com/religion/yihadismo.php
27 Def IOM (2018): https://www.iom.int/who-is-a-migrant

Thus, within this category we can differentiate between economic immigrants; refugees (those who acquire this legal regime for fleeing conflicts); and asylum seekers, those who once they have this status, have the right to apply for shelter in another country.

The present research will use the term ***immigration***, generic, although it will refer especially to those people who moved during the so-called refugee crisis or migratory crisis, (from 2014-2017). In sum, to the migratory flows coming especially from (Syria, Afghanistan and Iraq to a greater extent) through the Mediterranean, as a result of terror and persecution in their own countries[28].

1.2.5 Structure

The purpose of this study is to understand if there is an effective relationship between immigration and terrorism, placing us in the context of the refugee crisis and the rise of jihadist terrorism in Europe, which had its peak in 2015, and to analyze the European responses to this situation in the framework of human rights and their possible violation.

Research in this field is still scarce, there are some studies that address the perspective of securitization in response to the migration threat, and the construction of the concept of immigrant as a potential terrorist, and on the other hand, studies that based on data, only demonstrate the illogical nature of this argument showing that in recent years most of the attacks have been committed by national perpetrators originally from member states and not immigrants infiltrated in Europe during the migratory crisis.

The present thesis will be divided in four main parts. The first one will include a general introduction to place both concepts within the European framework on Human Rights. This section will gather the main guiding instruments that the EU has compromised to fulfill satisfactorily (ECHR and Charter of Fundamental Rights), as well as some dilemmas, such as human rights and migratory policies or counter-terrorist measures, that

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28 European Parliament (2017) "*The migratory crisis within Europe*".

will be inherently the basis and reference at the time of analyzing the measures carried out by both the EU and the Member States individually.

The second chapter, once the study is already contextualized, will fully evolve around the theory, development, and approach of the different proposed topics. This means the possible relationship between immigration and terrorism, trying to address both perspectives and to find the possible causes of such radicalization of nationals, who are at the same time, mainly second or third generation migrants.

The third one, for its part will intend to delve into the response of Europe to both crises, and it will analyze the measures that have been carried out from the EU as a body and more in particular from Belgium, Spain, France and Germany. Member States that have had a key role in this context. The purpose is to observe if those ones have respected the established parameters within the human rights framework.

Although the research will focus mainly on the countries above mentioned, the study would like to give a general and brief overview of the worrying political landscape that other countries are facing at the present moment compromising as well some of the EU migration decisions, such as Hungary, Poland or Austria.

Lastly, chapter four will conclude with the results of the research.

To do so, a theoretical perspective will be proposed, for which empirical support: articles, reports, researches, resolutions, and agreements will be used.

As said before, in particular, the main instrument of reference will be the European Convention on Human Rights, which is considered the most relevant document within the European Union in this matter, but taking as well in consideration other important ones.

Chapter 1: Europe: Assessing human rights standards in both crises

The migratory crisis that Europe has suffered in the recent years has had as a result, radicalization, extremism and xenophobia increasingly present in a large part of European countries, and as a consequence has influenced institutions through its legislation and policies.

Immigration has been seen as a threat to the system, placing the individual who comes to Europe as a potential danger linked to terrorism which has resulted in protectionist measures, that in some cases exceed the permitted standards, questioning human rights, not only in countries with questionable democratic values.

Nowadays, the common feeling is clear. Community policies have turned their backs on foreigners who arrived to Europe fleeing from the conflicts.

The French philosopher and sociologist Samir Naïr, points out that the main problem lies in "the lack of values of Europe and its absence of common policies". Carlos Ugarte, responsible for external relations at Médicos Sin Fronteras, for his part, notes that shielding the borders only ensures that migratory flows are diverted to the sea, allowing it to be "the screener", and as a consequence, letting NGOs the role of assuming the tasks that correspond to political institutions[29].

The political analyst and professor of Political Sciences and International Relations of the University Autónoma of Madrid Itziar Ruiz-Gimenez, for its part, states that the refugee crisis is not only humanitarian but it compromises the basic human and fundamental rights[30].

The scope of this chapter is to provide a general overview of the human rights framework in relation to both issues. Firstly introducing the main basis and instruments within the

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29 Foro Público, CEAR y Diario Público (2016) *Debate: "Europa ante la inmigración",* Madrid.
30 Ibid.

European context, and secondly relying on the main obligations that the EU has to fulfill according to immigrant´s fundamental rights.

Additionally this chapter aims to raise dilemmas such as the one posed between human rights and counter terrorism.

1.1. What are human rights and its main instruments within the EU.

Human rights are essential to guarantee human dignity and to make possible for people to live in an environment of freedom, justice and peace. They speak of the principle of equality, the right to life and not to suffer torture, the right of asylum, freedom expression and conscience, but also of education, housing and access to health and culture[31].

Human rights encompass rights and obligations inherent in all human beings that no one, not even the most powerful of governments, has the authority to deny us.
These rights do not distinguish between sex, nationality, place of residence, ethnic origin, color, religion, language, age, political party or social, cultural or economic condition. They are universal, indivisible and interdependent.[32]

In order to make these rights effective the European Union has ratified several legal texts and conventions. Hereafter two of the most important ones, that will be the basis of this research, will be explained.

1.1.1 *European Convention on Human Rights*

In 1950 the European Union adopted the so called European Convention on Human Rights (ECHR), formally the Convention for the Protection of Human Rights and Fundamental Freedoms, which is the main international treaty to protect human rights and political freedoms within Europe. The convention entered into force on the 3rd of

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31 Amnesty International: "*¿Qué son los derechos humanos?*".
32 Ibid.

September in 1953. All of the Council of Europe member states are part of the Convention[33].

It includes, in addition to the main articles that guarantee fundamental rights, 6 protocols that complement and develop more these rights.

1.1.2 *Charter of Fundamental Rights of the European Union*

As well, the European Union drafted in 2000, although it was not binding until 2009, the Charter of Fundamental Rights with the purpose of protecting, above all, these rights through its institutions, and to promote the cooperation of all Member States for their guarantee[34].

The content of this letter is structured in two parts: an introductory Preamble, and seven Titles that include the fifty-four articles that make up the Charter. These are fundamental rights such as dignity, freedom, equality, solidarity, citizenship and justice.

1.2 Human rights and migration within the EU: *Are human rights of migrants protected in our continent? Assessing the legal framework.*

It is a well-known fact that although migrants are not inherently vulnerable, they can be vulnerable to human rights violations and to a lack of guarantees at international borders and the countries to which they migrate. "Migrants in an irregular situation tend to be disproportionately vulnerable to discrimination, exploitation and marginalization, often living and working in the shadows, afraid to complain, and denied their human rights and fundamental freedoms" points out the Office of the High Commissioner of United Nations[35].

"Human rights violations against migrants can include a denial of civil and political rights such as arbitrary detention, torture, or a lack of due process, as well as economic, social

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33 ECHR (1950).
34 Charter of Fundamental Rights of the European Union (2000).
35 OHCHR: *"Migration and Human Rights".*

and cultural rights such as the rights to health, housing or education. The denial of migrants' rights is often closely linked to discriminatory laws and to deep-seated attitudes of prejudice or xenophobia", they conclude.[36]

In order to avoid this situation, the European Union has included some articles in its main instruments to protect them and their rights.

It is true that the ECHR does not recognized expressly the right to asylum, however all basic human rights included in it, article 1- right to life; article 5- right to liberty and security; or even article 13- right to a fair trial, are set to protect as well, migrants. In addition, Article 4 of Protocol n°4 of the Convention provides that "collective expulsion of aliens is prohibited".[37]

The European Charter of Fundamental Rights, for its part, includes some guarantees. In particular, Articles 18 and 19 take special consideration of the refugee protection, in case of removal, expulsion or extradition[38.] While the first one states that "the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union", the second promulgates the principle of non-refoulement, asserting that collective expulsions are expressly prohibited within the EU framework: "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment".[39]

However, despite the legal framework, the recent migration crisis has revealed the shortcomings of the EU to protect and ensure effectively their rights. UN and many

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36 Ibid.
37 ECHR (1950).
38 The European Charter of Fundamental Rights (2000).
39 Ibid.

NGO´s such as Amnesty International[40], Human Rights Watch[41] or Open Society Foundation[42] have denounced the lack of willingness of the continent to face this situation.

1.3 Human rights and terrorism within the EU: *Are human rights taken into account while implementing counter-terrorism measures? Assessing the legal framework.*

Although it exists a wide and current regulation to which European member states have compromised themselves to fulfill, there are issues that threaten the system of protection and guarantees.

Terrorism is one of them. "It aims at the very destruction of human rights, and the rule of law. It attacks the values that lie at the democratic states and its main instruments of protection: respect for human rights; the rule of law; rules governing armed conflicts and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity", it was pointed out from the OHCHR[43]. "Terrorist acts can destabilize governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights"[44] they added.

The fight against the global threat posed by terrorism raises the old dichotomy between security and freedom values. Dichotomy on which Hobbes already lectured in his work *Leviathan.* To what extent should liberal and democratic societies take out parcels of freedom in order to increase, for example, security levels?[45]

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40 Amnesty International (2017): *"EU refugee crisis: Human rights violations and migrants deaths are being ignored".*
41 Human Rights Watch (2018): *"Europe´s Migration Crisis".*
42 Open Society Foundation (2018): *"Migration & Asylum".*
43 OHCHR (2008): *Human Rights, Terrorism and Counter-terrorism,* Fact Sheet No. 32.
44 Ibid.
45 Michaelson,C. (2006) *"Balancing Civil Liberties Against National Security? A Critique of Counterterrorism Rhetoric"* University of New South Wales Law, Journal 1.

International and regional human rights law make clear that States have both a right and a duty to protect individuals under their jurisdiction from any kind of terrorist attack. This stems from the general duty of States to protect individuals under their jurisdiction, without interfering in the enjoyment of human rights. More specifically, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security. In order to fulfill their obligations to protect their citizens under human rights law, States have to adopt counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those ones that are responsible for carrying out such acts. However, this fact, the countering of terrorism, poses serious challenges to the protection and promotion of human rights[46].

The professor of International Law at the University of Málaga, Magdalena Martín, believes that the linkage between terrorism and human rights can be constitutive of a couple of balanced legal concepts[47].

In first place, due to the conceptual difficulties posed by the notions of terrorism and human rights in order to define and use both terms, and secondly, in regard to the displacement of the conceptual axis of both terms from legality to international legitimacy. This means that in order to confront terrorism, States enter into a bellicose dynamic, or a military strategy, in which serious violations of human rights are also found under the cover of a legitimate defense towards the "enemy combatant"[48].

Following this logic, both terrorism and human rights occupy a privileged place on the agenda of the European Union, the Council of Europe and practically in the totality of the 27 Member States.

In 1995, terrorism was considered a threat to democracy, to the free exercise of human rights and to the economic and social development of the Union. However the impulse of a clear legislation did not arrive until the 11th of September, date in which the Council of

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46 OHCHR (2008): *Human Rights, Terrorism and Counter-terrorism,* Fact Sheet No. 32.
47 MARTÍN. M (2009) *"Terrorismo y derechos humanos en la Unión Europea y en el Consejo de Europa. ¿Marcos de Referencia Mundial?"*.
48 Ibid.

Europe approved a "Plan of Action" with a political dimension and with the final purpose of strengthening police and the judicial cooperation. The awareness that the EU territory is simultaneously the target and headquarters of old and new terrorist groups led to the approval of a set of normative instruments related to the terrorism-and human rights[49].

As a previous basis there was the already mentioned Fundamental Rights Charter signed the 7th of 2000, which had the same legal value as the rest of treaties granted by the Lisbon Treaty.

During the year 2002 and 2008, two framework decisions were created within Europe:

The first one was the 2002/475/JAI, which brought a unified definition about the concept of terrorism and the establishment of the main basis related to it. At the same time it allowed the distinction of crimes committed by "terrorist groups" or "linked to other types of terrorist activities"[50].

The typification contained in it differs from others that have been outlined in most of the international treaties due basically to the fact that in addition to the two classical elements, objective element (description of behaviors); and subjective (encouragement or intentionality of the same), a third part is added, consisting on the aptitude of the conduct that seriously injure a country or an International Organization[51].

However, the codifying effort is based on the respect for fundamental rights "as guaranteed by the European Convention on Human Rights, and as the result of the constitutional commons traditions of the Member States" which leads to two important related statements: First of all that none of the provisions "may be interpreted as an attempt to reduce or hinder fundamental rights or freedoms", and secondly, "the framework directives shall not be applied during armed conflict periods". To this it must

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49 Ibid.
50 Ibid.
51 Ibid.

be added the concern, inherited from the Council of Europe, for the protection and assistance to the victims[52].

The second framework directive is 2008/919/JAI. The main innovation is that it brought new criminal conducts as the public induction of terrorism offenses or the recruitment and training of terrorists[53].

In this way it can be claimed that the EU is trying to build a normative consensus among the 27 Member States by harmonizing progressively the typification of the terrorist conducts, taking into account the elements extracted from the thirteen international conventions. It reiterates the commitment to the principles enunciated in the Charter of Fundamental Rights of the EU[54].

In addition, at the operational level, both *Europol* and *Eurojust* created specialized teams in order to exchange information, and make the relationship between European intelligence services, police and judicial more cooperative, coordinated and effective, as well to evaluate anti-terrorist programs within the Human Rights framework, and always respecting the fundamental rights and freedoms[55].

As well, it is necessary to point out that together with the effort in the definition of the correct use of both concepts; the EU is implementing a complete political-juridical strategy.

In first place, the adoption by the European Council in 2003 of the "European Security Strategy", which does not contain an express reference to respect for human rights in the fight against terrorism, but recognizes that the terrorist phenomenon has complex roots, and cannot be tackled only militarily[56].

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52 Ibid.
53 Ibid.
54 Ibid.
55 Ibid.
56 Ibid.

Secondly, the Council of the Union approved in 2005 a detailed "Action Plan on the Fight against Terrorism" in line with the provisions of the Hague Program, that has as axes: the prevention, protection, persecution, response against terrorism and improvement of the police and judicial cooperation always respecting human and fundamental rights.[57]

1.4. Dilemmas between the effective fulfillment of Human Rights while adopting Counter- terrorism measures within Europe.

To prevent terrorism, States may adopt exceptional measures that in some way, restrict certain freedoms and rights, such as the freedom of expression, association, or private life.

All citizens have the right to full enjoyment of those rights, however in some situations such as the terrorist threat, counter-terrorist measures are implemented allowing for example, the use of special methods of surveillance in order to collect information for the prevention of terrorist attacks, or to arrest and prosecute alleged perpetrators, in the interest of national security and for the defense of a democratic society; as well as to grant more powers to the police, under the special antiterrorist legislation; or to stop and register people without reasonable reason of suspicion of committing a crime.

These actions are sometimes contradictory with the protection of human rights for being excessive, and inevitably lead us to ask ourselves: Should some rights prevail over others? There comes the dilemma.

One example of this is set out in the Security Council Anti-terrorist resolution of 2001 in relation to the freedom of movement: "States are required to prevent the movement of terrorists by implementing effective border controls", and "to criminalize travelling for the purpose of terrorism". However some concerns arise from the last article of the Additional Protocol to the European Convention on the Prevention of Terrorism about how the offence would impact the right to freedom of movement, including the freedom

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57 Ibid.

to leave any country and including one's own, which under international human rights law, is subjected only to limitations that are strictly necessary and proportionate[58].

The language undermines the principle of legality because it fails to ensure that any preparatory act which is to be criminalized must have a direct and sufficiently close connection to the commission of the principal offence (a terrorism-related act), with a real and foreseeable risk that such a criminal act would in fact take place[59.]

Article 4 of the Protocol thus, requires states to criminalize any principal offence that may take place, which implies a certain risk. It fails to clarify that, in keeping with the principle of presumption of innocence, the burden of proof lies solely with the prosecution.

This is crucial in respect of offences where real and not just presumed intentions are central yet difficult to prove. The prosecution must establish beyond reasonable doubt not only that an accused had definitely decided to travel abroad, but also that the purpose of this travel was the commission of an actual criminal offence. "The defendant should never bear the burden of proof in establishing that their travel would be for a legitimate purpose"[60].

In the same line, the European Commission's Proposed Draft Combating Terrorism Directive, of 19th February, 2016 in its article 9, criminalizes a wider range of conduct than the equivalent offence under the Additional Protocol, as it would also criminalize acts in preparation to travel for the purposes of "participation in the activities of a terrorist group"[61].

This element of the offence has a particularly unclear scope, given the uncertainty of the meaning. "This article 4 envisages that relatively minor involvement, such as supplying

58 OHCHR (2008): "*Human Rights, Terrorism and Counter-terrorism", Fact Sheet No. 32.*
59 Amnesty International, the International Commission of Jurists, and the Open Society Justice Initiative and the Open Society European Policy Institute (2016): "*European Commission's proposal for a Directive of the European Parliament and of the Council on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA on Combating Terrorism*".
60 Amnesty International (2017): *"Dangerously disproportionate the ever-expanding national security state in Europe"*
61 Ibid.

information or resources, involves participation, and that it does not require that such participation be willful or voluntary. Taken together with the wide definition of terrorism, this is likely to mean, among other things, that anyone travelling to a zone controlled by a party to an armed conflict for any purpose, where provision of some information, funds or services to the group may be unavoidable, would be at high risk of facing criminal sanctions"[62].

States should take into account their responsibility in order to protect their citizens from terrorism but without forgetting their obligations to accomplish with human rights standards, which clearly is a difficult dilemma to tackle.

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62 Ibid.

Chapter 2: Is there any relationship between immigration and terrorism?

After the previous introductory chapter to place the study in the context of human rights, to know the obligations and plans adopted by the EU, and once having analyzed the dilemmas that arise between its effective implementation and the adoption of national security measures, we enter fully into the heart of this research. Is there a real relationship between immigration and terrorism that makes necessary the implementation of such restrictive immigration and therefore anti-terrorist measures?

2.1 Theory: Approaching the no relationship between *terrorism* and *immigration*.

Since al Qaeda attacks of September 11th in 2001 on the United States, immigration has been increasingly linked to terrorism in the press, policy community and the public imagination.

However, throughout this chapter the aim is to give a view that gathers the opinion of the majority of experts on this subject, which contrary to what many parties with heavy weight hold in the political panorama both at the national and community level to justify measures such as the "closing borders", do not see a logical relationship between these two phenomena.

One example of it is Ben Emmerson, the Special Rapporteur on the promotion of counter-terrorism and human rights and fundamental freedoms, found "little evidence" in the arguments which support that IS and other terror groups use refugee flows to access to Europe or hide behind asylum seekers[63].

Delivering a report to the UN General Assembly in New York, he said: "While there is no evidence that migration leads to increased terrorist activity, migration policies that are restrictive or that violate human rights may in fact create conditions conducive to

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63 UN General Assembly (2016): *"Promotion and protection of human rights and fundamental freedoms while countering terrorism"*.

terrorism. "Overly-restrictive migration policies introduced because of terrorism concerns are not justified and may in fact be damaging to state security.[64]"

"There is no concrete evidence to date that terrorist travelers systematically use the flow of refugees to enter Europe unnoticed. However, it is true that some incidents have been identified involving terrorists who have made use of migratory flows to enter the EU. During the investigations of the 13th of November Paris attacks, it was found that two of the attackers had entered the EU through Greece as part of the large influx of refugees from Syria. A number of other suspected cases, including terrorist use of fraudulent travelling documents, have been identified since that moment. What seems real and risky is the potential elements of the (Sunni Muslim) Syrian refugee diaspora to become vulnerable to radicalization once in Europe, and to be specifically targeted by Islamist extremist recruiters", noted as well the EU Terrorism Situation and Trend Report 2016 from Europol, the main agency of the European Union in matters related to police and security[65].

FERNANDO REINARES, professor of Political Science and Security Studies in Madrid, as well as the main investigator and director of different programs in terrorism, in turn points out that the radicalization and, consequently, the attacks, are produced in the vast majority by second, or third-generation immigrant's individuals, which in fact, means nationals from the EU Member States. Therefore, at this point the debate should be focused not on the arrivals of potential threats to our security, but on the issues that take place inside our borders[66].

Meanwhile, "this jihadist mobilization, that is, the set of radicalization and recruitment processes inherent in it, is not impacting equally in all countries of Western Europe, nor all segments of the Muslim population that lives along the region. It is a jihadist mobilization that affects in a very special way vulnerable adolescents or young people of Islamic culture or family descent, who are descendants of immigrants from countries with

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64 OHCHR (2016): "*Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*".
65 Ibid.
66 Reinares.F (2016): *"Diez cosas que importa saber sobre la amenaza del terrorismo yihadista en Europa Occidental",* Real Instituto Elcano.

predominant Muslim societies. Hence, the European countries in which this mobilization is most pronounced are precisely those in which second generations prevail among their respective Muslim populations"[67], added the expert.

Thus, the jihadist propaganda through the Internet and the so-called social networks explains only in part the levels and demarcations of this jihadist mobilization. Radicalization and recruitment are usually processes that involve face-to-face interaction in contexts of Salafist influence, as it will be explained more in depth down below[68].

REINARES highlights in addition that what central al-Qaeda and its territorial extensions currently offer to young Muslims radicalized or vulnerable to radicalization, in countries with predominantly Muslim populations or between Muslims who inhabit other societies, is to belong to a jihadist organization that, although degraded in its core, it maintains non-negligible operational capacities in certain areas of the Islamic world and, despite the adversities it faces, it continues to pursue the restoration of the caliphate. But what the IS offers to those same individuals is something else. It offers them nothing less than being part of a new jihadist-based society, of a caliphate with limited territory but whose architects manage to show signs of maintenance and expansion, of a social and political order in which to restart their lives, even emigrating in family, with a new sense and a new collective identity in which to recognize themselves and be recognized by others.[69]

In this line, IGNACIO CEMBRERO, journalist specialized as well in the terrorist phenomena states in his book *"La España de Ala",* that the jihadist propaganda is particularly persuasive for young people who are suffering an identity crisis, "The radicalization starts from a discontent, an anger towards society because in your own country, which is European, you do not feel valued," insists Mounir Benjelloun, president of the Spanish Federation of Islamic Religious Entities (FEERI)[70.]

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67 Ibid.
68 Ibid.
69 Reinares. F (2015) *"Yihadismo global y amenaza terrorista: de al-Qaeda al Estado Islámico"* Real Instituto Elcano.
70 Cembrero. I (2016) "*La España de Alá: Cinco siglos después de la Reconquista*" La esfera de los libros.

Other scholars such as PEDRO ALBERTO GARCÍA[71], professor of political sociology at the Rey Juan Carlos University of Madrid, or JAVIER FERNÁNDEZ ARRIBAS[72], journalist from the same country, corroborates this assertion, denying that the focus of the issue should be on immigrants, but on the reasons for the radicalization of nationals within the member states.

The co-founder of the European Strategic Intelligence and Security Center, Claude Moniquet, also highlighted the fact that IS does not need to export fighters to Europe because it imports them from there. "There are five thousand or six thousand Europeans who are, or have been, in Syria, and others dating all the time. So it's hard to see the benefits for Islamic State of exporting Syrians or Iraqis, Arabic-speaking people, that they need in their countries" he added. In the same line, he concluded pointing out that "the fact of coming back is as well a complex issue for them. There have only been a few cases. We have to take into consideration that here is no lack of lone wolves, as we have observed in the recent years most of the attacks have been committed by residents of the member states"[73].

2.2 Figures of the recent terrorist attacks in Europe. *Nationals or immigrants?*

Before proceeding to analyze what these causes may be, it is useful to bring data that will shed some light on this matter and will allow us to confirm whether or not the authors of the recent jihadists attacks in Europe between 2014 and 2017 (peak of terrorism) are nationals of the Member State or if on the contrary, they come from other countries and have been infiltrated in Europe through migratory flows.

This part of the research will focus on sources of information such as studies, reports and contrasted articles, and a chronological summary of the recent attacks will be made based on them. It is important to mention that only those attacks recognized by IS and completed would be included in this study.

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71 Garcia.P (2017*): "No hay relación causa-efecto entre el terrorismo y la inmigración"* actualidad.rt
72 Videoanálisis: *"Terrorismo e inmigración"* ABC.internacional, :https://www.abc.es/internacional/abci-inmigracion-terrorismo-5633894472001-20171103063000_video.html
73 Trevelyan. M (2015): *"¿Por qué los analistas no creen que los yihadistas se infiltren entre los inmigrantes?"* ABC. Internacional.

<u>2014</u>

During this year 4 people were killed according to Europol data, as a result of 2 completed terrorist attacks[74].

The first one was committed on May 24th, in 2014, 4 people were killed in the Jewish Museum in Brussels by an intruder armed with a Kalashnikov. The attacker was an ex-combatant of French nationality, originally from Algeria linked to the Islamic State in Syria[75].

The second religiously Islamic terrorist attack took place in France on the 20th of December, when a man entered a police station in Joue-les-Tours and stabbed a police several times. He was a French citizen, originally from Burundi[76].

<u>2015</u>

In 2015, 17 attacks were committed leaving 150 deaths. Here below those completed will be explained[77].

In January 7th, 2015, peak of these years in terms of terrorist attacks, there was an armed assault in the offices of the Charlie Hebdo satirical magazine, in Paris, which ended the lives of twelve people. Al Qaeda of the Islamic Maghreb attributed itself the responsibility for the attack, arguing that it was in revenge for the depictions of the Prophet Muhammad in Charlie Hebdo. The three identified, two brothers of 34 and 32 years respectively, with Algerian family, and the third one of 18 years, were french individuals[78].

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74 EUROPOL TESAT (2015).
75 Ibid.
76 Ibid; Le parisien (2014): *"Joué-lès-Tours : l'agresseur et son frère étaient surveillés par le Burundi"*.
77 EUROPOL TESAT (2016).

During the next two days the same French attacker killed a police officer while she attended a routine traffic incident and four more people at a Jewish supermarket, both in Paris. The perpetrator was an associated of the Charlie Hebdo attackers[79].

One month later, on the 3rd of February, a man assaults three soldiers guarding a Jewish community center in Nice[80]. He was a French citizen[81].

And on the 14th of February, an individual attacked a conference of the Swedish cartoonist Lars Vilks, in Copenhagen and some hours later opened fire outside a synagogue[82]. Two people were killed in total, by the Danish perpetrator[83].

The 17th of September, an Iraqi individual resident in Germany attacked a police officer with a knife on a Berlin street, seriously injuring her[84].

In November 13th of the same year, 2015, there was a wave of attacks in Paris that cost the lives of 130 people, most of them were in the Bataclan concert hall[85]. Of the dozen individuals identified it is known that ten of them had European nationality (Belgian or French) and only two were carrying false Syrian passports. These last ones accessed Europe through the Greek island of Lesbos as they were identified in a control of a refugee camp[86].

On December 6th, a 30 years old individual, who was born in Somalia[87], but resident in London for more than 17 years, injured two people, one of them seriously, at the entrance of the subway in East London[88].

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79 Ibid.
80 Ibid
81 Ibid
82 The Guardian (2015): *"French soldiers attacked in Nice while guarding Jewish community centre"*.
83 Ibid; La Vanguardia (2015): *"El terrorista de Copenhague era danés y con historial delictivo"*.
84 Ibid.
85 Ibid.
86 Radio Televisión Española (2015) *:"Los terroristas de los atentados de París uno a uno"*: *http://www.rtve.es/noticias/20151209/terroristas-atentados-paris-uno-uno/1255586.shtml*
87 The telegraph (2015): *"Leytonstone terror attack: Hero victim tells of how he 'went back to have another go"*.
88 EUROPOL TESAT (2016).

<u>2016</u>

The year 2016 ended with 135 lives[89].

On March 22nd, two men immolated themselves at the Zaventem International Airport and a third one on the Maalbeek metro station[90]. As a result of it, 25 people were killed, all of them were Belgian and it is known that they both were radicalized during its twenties and that they grew up in a comfortable economic context.[91]

On 13 June a French police commander and his wife were stabbed to death by a former convict of terrorism-related offences. The attacker was French.[92]

In July 14th of 2016, there was a slaughter in Nice while tens of thousands people celebrated the National Festival on the seafront promenade. 87 people died. The two terrorists were Franco-Tunisian, one of them originally born in Nice[93].

Some days later, on 24 July a Syrian man killed himself and injured 12 people by detonating a backpack bomb in Ansbach, although the Music Festival was the final purpose[94].

On 26 July two attackers armed with knives entered the church of Saint Etienne-du-Rouvray (near Rouen) during morning prayers and murdered an 86-year-old priest[95]. Both of them were French. One was born in the same village and the other one originally from Algeria[96].

And finnally on 19 th of December in Berlin, Germany, a truck was driven into a Christmas market in the city centre, killing 12 people. The attacker was a 24-year-old

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89 EUROPOL TESAT (2017).
90 Ibid.
91 Suances.P (2016): *"Los terroristas de Bruselas: Europeos y fichados",* El Mundo.
92 EUROPOL TESAT (2017).
93 Ibid.
94 Ibid.
95 Ibid.
96 BBC (2016): *"French church attack: 'Priest killer' was being monitored".*

Tunisian national, with a criminal record in Tunisia and Italy, had arrived in Europe 5 years earlier on the Italian island of Lampedusa and later travelled to Germany where he applied for political asylum, as stated by Europol[97].

2017

Last year, there was a stage of bombings in the United Kingdom during the spring. On March 22th, a driver ran over and killed 4 passers-by on the Westminster Bridge (London), the perpetrator was British ; on May 22th, two months later, an explosion at Manchester Arena killed another 22 people, the author of the crime was British as well with family of Libyan origin; and finally, on June 3rd, eight people were murdered again in London when three occupants of a vehicle embedded the car against a bar very close to the Borough Market and stabbed the civilians who were in their way, the terrorist was from Wales[98].

On 20th of April a 39-year-old male, with French nationality[99] opened fire on a police vehicle parked on the Champs Elysées in Paris (France) killing one police officer. Two other police officers and a tourist were seriously wounded[100].

On the 7th of April, a 39-year-old Uzbek individual[101] ended the lives of four people in Stockholm by driving them with a heavy truck[102].

In August of the same year, there were two attacks as well in Barcelona and Cambrilis. The first of them on the 17th, in Las Ramblas, Barcelona, where there was a massive run over with a van that left 15 dead and more than 130 injured[103].

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97 Ibid.
98 EUROPOL TESAT (2018).
99 Europa Press (2017): "*Un policía muerto en un atentado en París reivindicado por Estado Islámico*".
100 EUROPOL TESAT (2018).
101 Dearden. L (2017): *"Stockholm attack: Terror suspect known to intelligence services, Swedish police reveal"* Independent
102 EUROPOL TESAT (2018).
103 Ibid.

A few hours later, the same author, from Morocco, murdered another individual[104].

That same night, another attack occurred in Cambrils. The five terrorists ran over 6 people and wounded two more while skipping a police control. The youngest perpetrator was born in Ripoll, Catalonia, while the other 4 were from Morocco, but they resided in Ripoll[105].

According to police sources, the first of the attacks was related to an explosion that caused the collapse of a house in Alcanar, some days before. The explosives produced a setback that provoked the need to change the strategy by terrorist who decided to commit the crimes with a van. Inside the building was the radicalizing agent, imam of Ripoll, who died. His nationality was Moroccan as well[106].

On the 25th of August one soldier was lightly wounded, after a machete-wielding man from Somalia[107], attacked him in Brussels (Belgium)[108].

And finally on 15 September, an improvised explosive device was detonated on a tube train at Parsons Green station in south-west London (UK) during the morning rush hour. The nationality of the perpetrator was Iraqi[109].

The 1st of October two women, aged 17 and 20, were stabbed to death at Marseille's main station[110]. The perpetrator was Tunisian[111].

104 Ibid.
105 Ibid.
106 Radio Televisión Española (2017): *"Los terroristas de a célula de Alcanar"*: http://www.rtve.es/noticias/20170824/12-presuntos-terroristas-celula-alcanar/1600260.shtml
107 The Telegraph (2017): *"Islamic State claims Brussels knife attack on soldiers".*
108 EUROPOL TESAT (2018)
109 Ibid.
110 EUROPOL TESAT (2018).
111 El Pais (2017): *"La ola de ataques que ha sacudido Francia desde el atentado contra Charlie Hebdo".*

Conclusions

Before analyzing the results, it is convenient to mention that data and figures sometimes are poor and vary from one source to another. In the present study only those attacks carried out have been taken into account, and the main source of reference has been Europol, as well as some others based on its figures.

Hereafter it can be noted that the number of national perpetrators originally from Member States, which means actually born in Europe reach 25 individuals, most of them were second or third generation migrants. Those nationals that have acquired the nationality without being born in Europe make a total of 5, which means that the overall number of nationals perpetrators from 2014 until 2017 sum 30 people. 13 is the number of foreigners that have attacked in the continent, but is relevant to mention that most of them were actually residents of the member states. And finally, only 3 can be confirmed to have crossed through migratory flows during the crisis. This shows that the number of immigrants that have used these currents is minimal compared to the number of national perpetrators.

From Europol, it was highlighted that the attacks, according to the TESAT report of 2017, were driven mostly during the last years by individuals integrated into well-organized, coordinated and trained cells as well as by self-radicalized individuals who acted following ideological principles but without direct support from a terrorist group. In both cases, the individuals who carried out these actions, almost in their entirety, were born and resided in Europe[112].

In this way, we can affirm that there is no a real link in terms of data to create a social alarm against migrants as a possible vector of terrorism. As the previous analysis has shown, most of the perpetrators had European nationality, and were radicalized inside our continent.

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112 EUROPOL TESAT (2017).

TESAT 2017 also noted terrorist use of the migrant flow, but not deemed systematic. Investigations in Greece and Italy did not support the suggestion that terrorists were systematically using the migrant flow, but they could not rule out the possibility that these flows and/or posing as refugees might be used as a method in the future to enter Europe[113.]

The key point then, should be focus on what is failing inside European borders to be the cradle of the radicalization for those second-generation migrants or nationals of Europe. The same TESAT report, but of 2018, the most recent one, concludes that jihadists are often found to be lone actors or preparing themselves guided by friends or relatives. It points out as well, networking via social media as an essential mean, and highlights that recent jihadist attacks have been committed primarily by home-grown terrorists, radicalized without having travelled to join a terrorist group abroad. Among the highly diverse range of attackers, some were known to police, but not for terrorist activities, and most had no direct links to any jihadist organization[114.]

2.3 Changing the focus: *From immigration to radicalization within EU borders*

Although there is no consensus on the meaning of radicalisation, the majority of the scholars agree that this term implies a tendency towards extremism[115.]

In the case we are considering, jihadist radicalization, most of the opinions point out several factors and causes for falling into these networks: from problems of identity, to frustration or precariousness.

JOSEBA ACHOTEGUI, psychiatrist and professor at the universities of Barcelona and Berkeley who has been dealing with immigrants for thirty years, explains why some are radicalised and others not, due to a set of risk factors that create a "breeding ground, from which sometimes a crop comes out". In his words, first of all, "these people face a more complex identity as they live between two cultures that do not always coexist, Muslim

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113 Ibid.
114 EUROPOL TESAT (2018).
115 IEE (2018) *"Yihadismo para llevar: procesos de radicalización en Occidente"*.

and Western. To this situation is added precariousness and latent racism. These immigrants have lower self-esteem than the rest and can be subjected to manipulation"[116].

DAVID GARRIGA, criminologist and president of CISEG (Community of Intelligence and Global Security), insists that "all terrorists have a characteristic profile, however, of course not all young second or third generation migrants fit into it". Usually these terrorists are people with a lack of identity that seek a meaning to life. If they do not have a leader, they look for a reference in their indoctrinator. Inside the group they feel more protected, they have an identity, security and someone who defends them[117].

The aggravating factor, he notes, is that they think they are excluded from certain scopes of life because of their family origin. And on the other hand, they are young people who seek recognition and easy success: "they want to be someone as soon as possible" which encourages radicalization[118].

REINARES, for its part, explained that despite the existence of social integration there can be radicalization, which means that it is not the fact that the individual "does not reach educational levels or socio-economic comfort levels like the rest" but "it is a problem that has a lot to do with socio-cultural assimilation".[119]

In addition, this author notes that "vulnerable people" either because of "problems derived from the environment in which they live, or because they have experienced discrimination, xenophobia, because of their own life trajectories, or their own existential crises, may end up becoming radicalized"[120]. This process of radicalization is often accomplished through two different ways. On the one hand, the method face to face, which implies the previous existence of affective links based on friendship, kinship, in the neighborhood, as the case of the Ripoll cell that attempted in Barcelona[121].

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116 Tarín. S (2017): *"Así se produce la radicalización"* La Vanguardia.
117 Ibid.
118 Ibid.
119 Brussels Conference (2017): *"Radicalization and Terrorism".*
120 Ibid.
121 Reinares.F, García-Calvo and Vicente.A (2017): *"Dos factores que explican la radicalización yihadista en España"* Elcano.

These links, he explained, are those that generate certain proximity that allows radicalization agents to take advantage of their position in order to convince the potential terrorist of the fact that their "problems" have to do with an aggression towards their specific religion, Islam[122.]

The relationship between Salafism and Jihadism is relevant at this point as REINARES has also stressed: "Normally individuals who are inclined towards jihadist activities, contrary to what is said, have passed or have been in contact with Salafist entities before assuming the specific postulates of jihadism[123]" he explained.

It is convenient to clarify that Salafism is the Islamic reformist movement emerged in the nineteenth century that defends a purist return to the ideas of the Koran and the Sunna[124].

The author has warned of the "particularly harmful" effects of the Salafist current for the West. "Being a citizen of a democratic country of the European Union and being a person with a Muslim identity are incompatible,[125]" he explained.

In addition, he has emphasized the "permanent effort" of the Salafist communities to "self-segregate, exclude themselves and marginalize their own members, especially young people, to prevent them from interacting on a daily basis with people of the same age and condition that they consider "pollute "their beliefs"[126].

These situations of uncertainty and unresolved crises, sometimes even more acute in the family or peer groups, make certain individuals especially vulnerable to an eventual exposure to ideas that offer a new frame of reference in order to justify terrorism, in this case the jihadist ".[127]

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122 Ibid.
123 Reinares. F (2018): *"Advertencias sobre el salafismo"* Elcano.
124 Villamarín. L (2015): *"Primavera Árabe: Radiografía política de medioambiente"*, Colección: geopolítica, ISBN: 9781507534649.
125 Reinares. F (2018): *"Advertencias sobre el salafismo"* Elcano.
126 Ibid.
127 Ibid.

The European Commission has been working on the problem of radicalization for several years, especially through its Network for Sensitization against Radicalization (RAN: Radicalisation Awareness Network), created by DG Home in 2011. RAN is a network that links people who work in the prevention of radicalization and violent extremism throughout Europe. Its main objective is to exchange ideas, knowledge and experiences to confront radicalization and violent extremism[128].

However, precisely in May 2018, The European Court of Auditors said through a report that the actions of the EU against radicalization respond to the needs of the Member States, but criticized that the costs and achievements of the measures against radicalization financed by the member states are not been analyzed[129].

The auditors showed in the document that "the European Commission (EC) cannot demonstrate the degree of real efficiency of measures against radicalization. The EC has coordinated the support between the different services and has developed a series of synergies, however there is still too much to do for improvement"[130].

The main critics refer to the lack of use of the Network for Awareness of Radicalization and at the same time to the European Network of Strategic Communications that works to counteract violent extremism[131].

At the same time, some deficiencies has been identified in the management of Europol regarding the notification of Internet contents, as the statistics do not show the impact of the measures on the permanence of terrorist propaganda on the internet, and in it has been pointed out at the same time the need to find a quick solution since the impact in the first hours is of greater risk[132].

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128 European Commission (2018) :*"Radicalisation Awareness Network"* Migration and Home Affairs.
129 EFE (2018): *"Tribunal de Cuentas UE critica falta de control medidas contra radicalización"*, La Vanguardia.
130 Ibid.
131 Ibid.
132 Ibid.

To achieve successful objectives it is necessary to improve the coordination of the measures and at the same time the evaluation of the results, but they are not the only ones, education, dialogue and the empowerment of young people is fundamental to tackle the process of radicalization[133].

In this respect, once some of the causes that lead these second and third generation immigrants to radicalization have been analyzed, and observing the previous figures that show the nationality of the perpetrators, we can conclude that perhaps the search to link immigrants with terrorists is simply a way to divert the focus of attention from its starting point, as the threat is not out of our borders, but mainly inside.

133UNESCO: *"Preventive violent extremism"* [online] Available at: https://en.unesco.org/preventing-violent-extremism"

Chapter 3: Security to or against the displaced?

3.1 (In) Securitization

In an era of globalization such as the one we are living in, the opinion of the majority of experts and social actors specialized in migration issues is that nowadays international migration has become a key point in the security agenda of the developed countries, both at an internal scope, national, and the international one.

The concept of securitization or (in) securitization, refers to the situation where migration is understood as a threat to a certain country, or numbers of countries, and consequently, which implies the need to establish security tools once this problem has been included in the international agenda[134].

WEAVER, for his part, defines this term as the process of social construction that drives an ordinary sector of politics into the sphere of security issues, through rhetoric of preordained danger to justify the adoption of special measures that exceed the legal framework and the ordinary procedures of political decisions[135].

Migration, therefore, has gone from being a merely economic problem to become a security issue. The immigrant is classified alternative or successively as a workforce and / or potential threat to the identity and cohesion of society. In this way, the protection of identity and social cohesion, through the configuration of migration (especially in the case of irregular migration), supposes "a specific form of belonging that constructs the antagonistic identities of friend and enemy" and it affects the issue of exclusion and social inclusion[136].

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134 González.A: *"Estudios críticos de Seguridad, Migraciones Internacionales y Ayuda al Desarrollo"*, Universidad Autónoma de Madrid.
135 Ibid.
136 Ibid.

DIDIER BIGO, points out the fact that "the popularity of this security prism is not an expression of traditional responses to a rise of insecurity, crime, terrorism, and the negative effects of globalization; it is the result of the creation of a continuum of threats and general unease in which many different actors exchange their fears and beliefs in the process of making a risky and dangerous society. The professionals in charge of the management of risk and fear especially transfer the legitimacy they gain from struggles against terrorists, criminals, spies, and counterfeiters toward other targets, most notably transnational political activists, people crossing borders, or people born in the country but with foreign parents.[137]

In short, all social evils and fears are deposited in certain actors of society and they are held responsible for altering the order and security of the nation. In this context, the threat moves through state borders via these subjects and becomes visible in the policies that states carry out affecting the protection and guarantee of human rights[138].

As a result of this conception, the immigration law has been as well tightened and used as a tool of counterterrorism[139], which derives from the assumption that foreign nationals pose a greater terrorist threat, "letting the border to become the front line in the fight against terrorism".[140]

From this point on, my purpose is to analyse the European framework on migration and security to identify the narratives and actors that in this point connect migration as a possible vector of terrorism.

Before starting with the measures adopted from the EU as a body, and the Member States previously mentioned, I consider relevant to include in this section certain influential sectors of the public opinion that have supported this co-relation.

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137 Bigo, D (2002), "*Security and Immigration: Toward a Critique of the Governmentality of Unease*", Alternatives, 27, 63-92.
138 González.A: *"Estudios críticos de Seguridad, Migraciones Internacionales y Ayuda al Desarrollo",* Universidad Autónoma de Madrid.
139 Asworth. A and Zedner.L (2014) *Preventive Justice*, Oxford ISBN-13:9780198712527.
140 Ibid.

At the institutional level of the EU, the judicial cooperation agency in the European Union (Eurojust) firmly assured in 2015 that members of the Islamic State were traveling to Europe infiltrated within irregular immigration flows.

The president and maximum responsible in charge of the antiterrorism team in the agency, Michèle Coninsx, indicated that we were facing an alarming situation "we see obviously that these traffickers sometimes finance terrorism, these traffickers are being used to have and guarantee the exfiltration and infiltration of members of the Islamic State, we have to tackle it seriously and quickly. Immigration is being used by people to come to the European Union as 'sleepers', like lone wolves, to attack people" she said.[141]

In addition, she pointed out that they still did not have figures, but she noted as well that the problem was serious, and common throughout the European Union, and mentioned that these individuals did not refer only to the number of displaced people but also to third parties who incite and train others: "We argue that terrorism travels across national borders, that the connection between countries as spatial units goes beyond issues of (geographical) contiguity, and that migration plays a critical role in this context" She added[142].

Unfortunately, the xenophobic discourses within Europe which place the migrant as a threat for the country are increasingly common.

Due to the relevance of the policies adopted in Belgium, France, Spain and Germany in relation to the migratory crisis and the terrorist context that those are suffering I will focus especially in these countries. However, it is important to mention some current cases of the political panorama within our continent that are showing how anti-immigrant parties are gaining more and more weight, maintaining the discourse that link them to terrorists, and worrying the main organisms responsible for the defense of human rights.

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141 El Mundo (2015): *"Eurojust confirma la infiltración de miembros del IS en Europa a través de la inmigración irregular".*
142 Ibid.

As it was exposed at the beginning of the study, countries like Austria and Hungary remain on the same line and together they praise the anti-immigration policies of the other, as it happened at the beginning of January of this year. The two leaders again rejected the EU's efforts to relocate refugees within the bloc, emphasizing rather the need to help the development of the countries of origin and pointed out that the EU's migration policy was not working, and that it had failed spectacularly.[143]

In response, the UN High Commissioner for Human Rights, ZEID R´AAD AL HUSEIN aware of this situation, alerted about the rise of racist, xenophobic and incitement to hatred in Europe, pointing out that it "dominates" nowadays the political scenario in several countries of the European Union. "More than two thirds of national parliaments in EU countries now include political parties with extreme positions against immigrants and, in some cases, against Muslims and other minority communities," ZEID said in the presentation of his annual report to the Council of Human Rights of the UN[144].

In Hungary, he noted "there are 1,064 men and 260 women from Africa, 10,559 from Asia and only a few from the Middle East, but even so Orbán puts them as an existential threat to the Hungarian culture".[145]

In Austria in turn, ZEID recalled, the new government includes an openly anti-immigrant party and "has announced strict surveillance and financial restrictions or the closure of associations, Muslim schools and places of worship, a broad criminalization of undocumented immigrants with the intention to expel them automatically from the country, and the adoption of an extremely restrictive language on integration and citizenship "[146].

In sum, ZEID considered that the EU countries focus themselves too much on preventing the arrival of immigrants in Europe and on deporting "the more the better", instead of

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143 Gorondi. P (2018): *"Hungría y Polonia alaban sus políticas de antiinmigración",* Chicago Tribune.
144 Céline Aemisegger (2018): *"La ONU suena voz de alarma ante la expansión de racismo y xenofobia en Europa",* elPeriodico.com.
145 Ibid.
146 Ibid.

seeking legal ways to regulate and integrate immigration, which only leads to feed the hatred[147].

Similar direction follows the Law and Justice Party in Poland, whose anti-immigrant policies are supported by a great part of the society as demonstrations have soared this year. "Poland for Poles, Poles for Poland" is the main slogan. In addition, Golden Dawn in Greece, the largest extreme right-wing party in Europe has no problems in calling itself racist, ultra-xenophobic party and praise the Nazi regime.[148]

For its part, United Kingdom Independence Party, in the same row, did not hesitate to say that the United Kingdom should imitate Trump's anti-immigration policies[149].

Nigel Farage, the leader at that moment, added that "It would serve to prevent potential jihadists from entering the country", and he did not hesitate to criticize Angela Merkel, stating that" The chancellor has virtually let everyone in, and that has brought us the situation we all know".[150]

Under these circumstances, the International Center for Counter-Terrorism from The Hague alerted that the creation of an artificial link between the immigrants and terrorism causes anxiety and rage in the immigrant societies increasing the hostile feelings against the state. The risk of "these hostile situations against immigrants rises along with the possibility of clashes between societal groups" [151], they added.

Creating a balance between the human rights and security is not an easy task for the countries which seek more security. Immigrants usually have a disadvantaged position in their countries and terrorist groups can abuse this situation or the boundary policies of the countries.[152]

147Ibid.
148 Martinez, A (2017): *"Populistas, ultraconservadores y neonazis: radiografía de la extrema derecha en Europa",* El confidencial.
149 Fresneda.C (2017) : *"Farage asegura que el Reino Unido debería copiar las medidas anti-inmigración de Trump".*
150 Ibid.
151 Schmid. A (2016): *" Links between Terrorism and Migration: An exploration".*
152 Ibid.

The strict policies and practices adopted within the framework of combating international terrorism might cause a gradual decrease of positive contributions of migration to the receiving societies. "Targeting specifically certain categories of immigrants and foreigners for the sake of prevention of terrorism can be reconciled neither with the theories of liberal democracy that the West has been defending for many years nor with the preached approach"[153].

3.2 Controversial measures implemented within the European Union in relation to *immigration* and its "link" to *terrorism.*

At this point I will firstly analyze which have been the main measures taken by the European Union as a body in relation to immigration, and in the context of securitization that might be violating human rights. Consecutively this research will focus on four member states that have been terrorist targets during the last years and whose position have been as well deemed relevant within the refugee crisis, to analyze their response to the crisis in relation to these two phenomena.

3.2.1 Adopted by the European Union as a body

The aim of this section is to analyze the actions carried out by the European Union in relation to the two crises previously mentioned. The period that is going to be taken into account would be from 2014 to the present moment. However, I consider relevant to include as well the directive 2008/115 although it was not approved in the recent years, due to the pertinence of its content according to the study.

This part of the research will show how the European Union has reinforced securitization measures through several actions, in order to prove whether or not the rights of migrants have been compromised during the crisis due to their potential linkage to terrorism.

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153 Ibid.

Return Directive, Or _2008/115 Directive_.

Previously to the actions carried out as a consequence of the crisis peak in 2015, one of the most controversial measures adopted was the Directive approved by the European Union, called the _Return Directive_, Or _2008/115 Directive_.[154]

Criticisms to the Directive were important from the beginning, especially during the parliamentary debate and after the approval. In addition, numerous articles of opinion were published as well criticizing its content. All of them agreed that there is a punitive drift in the treatment of foreigners that can mark very dangerous legislative and social trends[155].

As both the European Convention for the Protection of Human Rights and the Charter of Fundamental Rights of the European Union reflect, the European policy in terms of return must be respectful with human rights and fundamental freedoms.

Despite this fact, the EU opted for the expulsion of irregular immigrants. In the initial phase with the "return decision" (communication to the immigrant of the obligation to leave the EU territory), secondly with the execution of such decision through "voluntary departure" or "expulsion" (the laying in progress of the first phase) and finally, with the "prohibition of entry" into the community territory for a specific period of time (the sanction for irregular stay of the immigrant). Therefore, the general rule, legalized (recognized as mandatory and community) by the EU in its Return Directive, is the compulsory (sometimes forced) return of the immigrant to his or her country.

Throughout this debate, the document issued by the Criminal Policy Studies Group on the European immigration policy states that "the current drift of the European criminal policy on immigration sits in criteria and objectives that reflect its xenophobic root and it opens contradiction with the principles of democratic penal systems "and denounces the simplifying and partial reading of the migratory phenomenon that ends up identifying the

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154 _Directive 2008/115/EC of The European Parliament and the Council of 16 December 2008._
155 Amnesty International (2008): _"Reacción a la votación sobre la Directiva de Retorno"._

concepts of immigrant and delinquent. It legitimizes policies of exclusion that finally end in violence, ignoring the origins, nature and effects of migratory phenomenon. In this context, the approval of the Directive is another step in the policy of criminalizing migrations, "it is a scenario where criminal political models of emergency are in expansion, starting from Schengen"[156] , says the document.

Irene Khan, Amnesty International´s secretary general, launched an appeal to the Member States to vote against it. "The proposed directive is unacceptable as an EU standard. Detention should only be used in very exceptional cases, always for the shortest possible time and must not be prolonged or indefinite. Standards for returns are needed, but we do not need them at all costs. The directive must include safeguards that ensure that the return of irregular migrants is carried out in a way that respects their fundamental rights". She said[157].

Critics were built in the basis that the option of criminalize immigration and the consideration of these individuals as infra-subjects (subjects without rights) who live in a society parallel to "other citizens" (holders of rights) is not sustainable and does not respect minimum parameters of democracy. The persecution, the expulsion, the deprivation of the guarantees and the confinement of those who come to the European Union in search of a more dignified life is already a violent way of trying to intervene in migrations[158].

This is a clear example of how fear seizes the Institutions and again points to the immigrant as a potential threat because of its possible link to terrorism.

In the field of criminal doctrine this is called "criminal law of the enemy" and it is founded as we mentioned earlier, in the consideration of "non-persons" to immigrants. While those ones who are considered as "real people" are entrusted to protect themselves from the previous ones and to ensure their safety against the "danger." Günther Jacobs (main criminal diffuser of this theory) considers that" the enemy" in criminal law is a criminal

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156 Criminal Policy Studies Group, Universidad de Alicante: https://web.ua.es/en/politica-criminal/
157 Gonzalo. A (2008): *"Derechos de los pueblos indígenas"* Amnistía Internacional.
158 Nieto. L (2008): *"Derechos humanos e inmigración. Europa y la directiva de retorno"*.

of those who we can suppose that are permanently dangerous ", is not the concept of Carl Schmitt that refers to the stranger, the foreigner, the" other"[159].

Turkey- European Union Agreement

On March 20th, 2016, the agreement between the European Union and Turkey entered into force[160]. It established that any person who arrived irregularly to the Greek islands would be deported back to Turkey in exchange for an economic compensation of 6,000 million. The so-called "agreement of shame" as indicated by many NGO´s[161] aimed to stop the migratory flows of refugees that reached our continent in the midst of this crisis.

From Amnesty International, the irresponsibility of considering Turkey as a safe place with guarantees for asylum seekers was highlighted, assuring that these immigrants were being exposed to even more miserable conditions than in the Greek islands. In addition, in the document entitled "A Blueprint for Despair", Amnesty also noted illegal returns of asylum seekers to Turkey, in flagrant violation of the rights that protect these people under international law[162].

In the words of Sherine, Syrian refugee in Port of Piraeus, "We fought against terrorists. And we naively thought that Europe alone would welcome us with open arms. When we arrived I realized that people think that we are terrorists. I'm just a mother who wants her children to go to school and live safe"[163].

Since the adoption of the agreement, more than 2,000 people have been deported, according to data from the Greek Ministry of Civil Protection. More than 13,000 refugees are still trapped in precarious conditions on the islands of the Aegean Sea. Approximately 8,500 vulnerable people are waiting to be transferred to the mainland of Greece. And at

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159 Ibid.
160 EU-Turkey statement, 18 March 2016.
161 Gogou. K (2017) : *"The EU-Turkey deal: Europe´s a year of shame"* Amnesty International.
162 Amnesty International (2017): *"UE: El coste en derechos humanos del acuerdo con Turquía sobre refugiados, demasiado alto para copiarlo".*
163 Reliefweb*: "Timeline on Eu-Turkey deal"* Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/Timeline-on-EU-Turkey-deal.pdf

least 2,000 unaccompanied minors are waiting for a safe home, according to the Spanish Commission for Refugee Aid (CEAR)[164].

The proposed objective has been met through FRONTEX, the EU Border Agency, which states that it has been an 80% less in the number of migrants and refugees who have arrived to Greek territory from Turkey in comparison to the previous year[165].

EU Border Agency

At the beginning FRONTEX was not created originally to operate as a police force but as a body to coordinate border controls in Europe, at all stages (land, air and water) and to support Members States in large-scale operations, such as the return of irregular immigrants[166].

However with the migratory crisis, in September 2015 the authorities of the Member States increased the functions of the Agency giving more operational powers to it, and consequently, making the external borders intensively policed[167].

The so-called FRONTEX started to be known as the European Border and Coast Guard Agency in 2015, with an increasing mandate, in order to reinforce the "securitization" of the member states through the strengthening of their borders against immigrants[168].

It is important to mention that the Agency has the duty to fulfill and respect fundamental rights gathered by the European Convention on Human Rights as well as the EU Charter of Fundamental Rights, and of course various regimes of international law such as the Geneva Convention[169].

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164 Serrano.S (2018): *"Dos años del acuerdo UE-Turquía: 13.000 refugiados atrapados en las islas y 2.000 personas deportadas"*, eldiario.es.
165 Ibid.
166 Europa.eu: *Agencia Europea de la Guardia de Fronteras y Costas (Frontex).*
167 European Parliament (2016): *" El Parlamento respalda la creación de la guardia europea de fronteras".*
168 Ibid.
169 Sanchez. A: *"Immigration and Human Rights in the EU. Analysis of the Directive 2008/115/CE".*

However, many human rights organizations criticised its actions for violating human rights with its "push-back" operations, and accused the Member States for protecting their borders more than the refugees with this type of measures. Skeptics see in the purchasing power a risk more than a solution[170].

Conclusions

After analyzing these three concrete measures of the European Union, a conclusion could be that fear has dominated the continent. In order to avoid a Europe full of immigrants coming mostly from countries in conflict, with high levels of terrorism, and without exhaustive control of their current situation (since most of them were irregular), the result has been the adoption of protectionist actions that have highlighted the securitization previously mentioned, through the closing of borders, the collective expulsion of immigrants and the creation and strengthening of institutions, to grant them more powers.

Ultimately, procedures that have questioned human rights, violating certain precepts noted, and which have had as a consequence only harmed and vulnerable human beings treated as potential terrorists, and who have been considered once again, as the danger from which protect our western societies.

3.2.2 Adopted by Member States

In this line, the aim of the research is to delve into the questionable or controversial measures taken by some member states in order to analyze if they have compromised the respect of immigrant´s human rights and their basic guarantees, considering them as the focus of danger due to their alleged link to terrorism. Those countries will be Spain, France, Germany and Belgium, due to the relevant roll they have played in this context. France and Belgium have been two of the most affected countries by terrorism and this has had a significant influence on their migratory policy. Both are two of the European countries with the greatest multiculturalism, and Muslim population, so the impact has been significant. Spain, for its part, has also been hit by terrorism and at the same time

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170 Ibid.

has accomplished with one of the lowest quotas established for the distribution of refugees. Germany despite its clearly pro-refugees position, did not even reach the 50% of compliance with the agreement and has also been affected by terrorism in the last years[171].

In order to do so, and after giving an overview of the actions taken by the European Union as a body, the present study will now focus on the countries above mentioned.

Spain: *Hot returns and Ethnic Profiling*

Spain has been one of the countries that has received fewer refugees within the European Union. Precisely the NGO Oxfam Intermón denounced the past September before the European Commission to the government of this country for having complied only with the 13.7% of the mandatory quota, this means 17,337 refugees, of which 9,323 were mandatory for immigrants that came from Italy and Greece[172].

The general director of Oxfam in Spain, JOSE MARÍA VERA, highlighted the fact that the average compliance of the EU countries, regarding the mandatory quota, is around 50% and 60%, compared to 13.7% in Spain[173].

In particular, this country has relocated 1,279 refugees from Greece and Italy.
The rest of the refugees (17,337) that Spain agreed to bring were voluntary or non-binding. However, of that total, only 1,953 have arrived from Greece, Italy, Turkey and Lebanon[174].

Despite this context, the low figure has not been the only questionable issue in relation to the actions taken by this state towards immigrants.

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171 Belmonte. B (2017): *"El mapa del incumplimiento europeo en la acogida de refugiados"* El Mundo- based on European Commission.
172 Oxfam Intermón (2017*): Denuncia contra el gobierno español por incumplimiento de la cuota: https://www.oxfamintermon.org/es/sala-de-prensa/nota-de-prensa/presentamos-una-denuncia-contra- gobierno-espanol-por-incumlir-cuota-refugiados.*
173 Ibid.
174 Ibid.

Hot returns and collective expulsions

The government introduced in 2015 the figure of "rejection on the border" through the Immigration Law in order to make possible the so-called "hot returns" of immigrants[175.]

This term refers to the situation where the State returns or expel foreigners without respecting the rights and guarantees that both the Spanish Constitution, and the International Law, recognize for all foreigners, such as the prohibition of inhuman and degrading treatment as well as an effective judicial protection[176.]

Many organizations pointed to the illegality of these practices. ESTEBAN BELTRÁN, director of Amnesty International in Spain stated that "collective and hot expulsions are an illegal practice that consists in summarily compelling a group of immigrants to cross the border back without complying with the procedures established in the current national law and different international standards, such as the European Convention on Human Rights"[177].

At the Community level the so-called hot returns are not in accordance with the main instruments for the protection of human rights in Europe, neither with the Directive 2008/115 / EC of the European Parliament and of the Council, of December 16th, 2008, on common rules and procedures within the Member States for the return of nationals from third countries in an irregular situation. This directive marks a series of guarantees, such as respect for the principle of non-refoulement, the obligation to issue a written return order, the right to legal assistance and, where appropriate, the right to an interpreter, or the right to file appeals against the return order.

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175 Sagarra.E (2015): *"La discutible constitucionalidad de la regulación delas devoluciones en caliente"* Abogacía Española.
176 Instituto Europeo Campus Stellae: *"¿Qué es una devolución en caliente?"* https://internacional-iecs.blogspot.be/2014/05/que-es-una-devolucion-en-caliente.html
177 Amnesty International (2014): *"Cambiar la Ley de Extranjería para facilitar expulsiones "en caliente" viola el Convenio Europeo de Derechos Humanos".*

In the same vein, the article nº4 of the European Convention of Human Rights Protocol nº4, expressly states the "prohibition of collective expulsion of aliens"[178.]

However, Spain did not stop these procedures and last year the European Court of Human Rights condemned the Government to compensate 5,000 euro to two claimants of sub-Saharan origin who were automatically returned in 2014. The rulement states that the "hot returns" violate the European Convention on Human Rights in particular, the previous mentioned article 4 of Protocol 4 of the European Convention on Human Rights[179].

It also made clear that Spain failed as well to comply with Article 13, which recognizes the right to an effective remedy to any person "whose rights and freedoms have been violated."[180] In the text, the magistrates have proven that on August 13th of 2014, even before the "rejection at the border" came into force, the immigrants who sued Spain, after hours perched on the fence, were handcuffed and handed over to the Moroccans authorities "against their will" and "without any prior administrative or judicial action"[181].

"There is a clear link between the collective expulsion and the fact that they were prevented from accessing an appeal that would have allowed them to present their complaint to a competent authority and to obtain a thorough review of their requests before their return," the text said[182].

This situation proves how securitization is very present. Through the closure of borders, states avoid the arrival of immigrants considered as potential threats, or danger spots, which leads to breach their effective guarantees and human rights protection.

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178 ECHR (1950).
179 Ibid.
180 Ibid.
181 ECHR Judgment (2017) : ASUNTO N.D. Y N.T. c. ESPAÑA.
182 Ibid.

Ethnic Profiling

In addition to this issue, Human Rights Watch pointed out towards a "perennial problem in the country" refereeing to the police use of ethnic profiling and public officials warned against Islamophobia in the wake of the attack and reported anti-Muslim incidents[183].

The concept of ethnic profiling refers to the use of racial, ethnic, national, or religious characteristics as a way of singling out people for identity or security checks. It refers to law enforcement and security officers making decisions about who is suspicious based on race, ethnicity, or ethnic identity rather than reasonable suspicion[184].

Open Society Foundations shows several cases in relation to these actions that have arrived to the European Court of Human Rights (Zeshan Muhammad v. Spain, 2018)[185].

In addition, one of the most polemical measures in this context has been the website and telephone number that the government launched in December 2015 within the Strategic National Plan to Counter Violent Radicalization framework in order to facilitate people the communication of any accident or incident in relation to a possible extremist or radicalized conduct. The problem arises when the language of the website is only available in Spanish and in Arabic, and the process can be made anonymously. The claim is that this kind of measures can have a disproportionate impact on Muslim and Arab communities, which could lead to ethnic profiling, discrimination and stigmatization of these communities[186].

France: *State of Emergency limits and Ethnic Profiling*

At the beginning of the crisis, France was one of the countries who received the most number of refugees, and figures corroborated this fact at the end of 2016. However, the

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183 Human Rights Watch (2017) : *"European Union, events of 2017"*.
184 Open Society Foundation (2013): *"Ethnic Profiling: What It Is and Why It Must End"*.
185 Open Society Foundation (2018): *"Zeshan Muhammad v. Spain"*.
186 ECRI (2017) : *"Ethnic profiling in Spain: a generalized and unresolved police practice"*.

situation changed at the end of last year and the country finally met only with the 23% of compliance of what was agreed[187].

Prime minister at that time, Manuel Valls stated "We would not accept additional numbers. We won´t take more". While he expressed admiration for Germany's readiness to take on more refugees, he clarified: "France never said come to France"[188].

In addition, according to the permanent quota mechanism proposed, Valls clearly expressed its opposition "France rejects this, we have already received 80,000 asylum applications last year and the country is struggling with youth radicalization and high unemployment"[189].

A relevant role in this issue has had Marine Le Penn, the leader of the National Front party took pride of being the only candidate who was speaking clearly about Islamic fundamentalism, pointing to the cowardice of the rest of leaders to address this matter. She ensured that the way to end terrorism was ending imperatively immigration and communitarianism first: France for the French[190].

Le Pen, has focused her hate speeches basically on immigration and mosques, especially during the last years after each terrorist attack in Europe.

However, it seems that there is something she does not take into account: the fact that the vast majority of attacks perpetrated in France have been committed by citizens born in France, not immigrants. The terrorists have been mostly French radicalized in French prisons, not in mosques, as it was previously mentioned.

During the campaign before the elections, Le Pen called for the immediate expulsion of foreigners on the list called "Ficha S", which link them to Islamism. This matter was

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187 InfoLibre (2016): *"La UE solo ha acogido a 1.145 refugiados de los 160.000 comprometidos.*
188 Rinke; Jancarikova.T: *"French PM rejects permanent quota system for refugees"*, Reuters.
189 Ibid.
190 Valderrama.M (2017) : "Marine Le Pen: Soy la única candidata que habla claro sobre fundamentalismo islámico", El Mundo.

another harsh response based on security that does not really address the issues that make those people end up on that list in the first place[191].

Two years of State of Emergency during the refugee crisis

Since the attacks of November 13th in 2015, the French nation was in a state of emergency, period of time that overlapped with the middle of the refugee crisis.

Given the proximity of the expiration of this measure, the President Emmanuel Macron decided on November 1st of last year to replace the state of emergency with an anti-terrorist law that gives broad powers for prefects, police and security forces, without the need for judicial authorization, to carry out house searches, practice house arrest and close places of worship. The measure also authorizes the police to carry out identity checks at the French borders[192].

In this way, the law basically makes permanent many of the exceptional measures that were previously applied only during a state of emergency.

During the act of signing Macron said that the agreed measure achieves a balance between security and respect for civil liberties. The most critical vision however points out that the new law is not tough enough, while human rights organizations complain that it will place France in a state of permanent emergency[193].

In order to assess this issue it is important to highlight which are the main points that this law "*Loi renforçant la sécurité intérieure et la lutte contre le terrorisme*" touches. It consists in seven main items; however this study will only take into consideration those ones which show relation with migrants and terrorism[194].

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191 Amrani. I (2017) *:"Macron y Le Pen no quieren ver que los terroristas que atacan Francia son principalmente franceses",* eldiario.es.
192 Kern.S (2017) : "*France: New Anti-Terrorism Law Takes Effect",*Gatestone Institute.

193 Made for Minds website: https://www.dw.com/en/french-president-emmanuel-macron-signs-controversial-anti-terror-law/a-41178081
194 Kern.S (2017) : "*France: New Anti-Terrorism Law Takes Effect",*Gatestone Institute.

One of the most relevant is the closure of places of worship. Manuel Valls firmly defended that it was necessary to close all those mosques and associations that attack the values of the Republic, in order to end Islamic fundamentalism[195].

The law authorizes as well prefects to order the closure of mosques or other places of worship for a period of up to six months if it is considered that preachers express "ideas or theories" that "incite violence, hatred or discrimination, if it provokes the commission of terrorist acts or extol such acts ". Infractions are punishable by six months in jail and the fine of 7,500 euro. Detractors of the law maintain that those "ideas" and "theories" are subjective and therefore that the law gives rise to abuse[196].

Gauri van Gulik, deputy director of Amnesty International Program for Europe and Central Asia noted that "there is truly and real risk that the rights of the general population will be trapped in a network theoretically aimed at identifying only those who really represent a threat. Many actions are being implemented against many people only because of their religious practices or because of imprecise suspicions"[197].

In addition the law refers to house arrests. It authorizes as well the Interior Minister to confine suspected Islamists, even if they are not accused of a specific crime, to the town or city of their domicile. Any individual who has "serious reasons to believe that his conduct constitutes a particularly serious threat to public safety and order" could be subject to house arrest, without prior judicial authorization, for a period of three months that could be extended to one year. Individuals in this situation are required to report to local police stations once a day, and alternatively, these people can be subjected to mobile electronic surveillance[198].

The Minister of the Interior may also prohibit individuals from establishing direct or indirect contact with certain persons, identified by their names, who are believed to pose

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195 Ibid.
196 Ibid.
197 Amnesty International (2015): *"Francia: Nueva ley amenaza con convertir en norma las medidas de excepción"*.
198 Kern.S (2017) : "*France: New Anti-Terrorism Law Takes Effect",*Gatestone Institute.

a threat to public safety. The violation of these measures is punishable by three years in prison and a fine of 45,000 euros. This might be a risk for immigrants as they are treated as "suspected individuals" and even if they are not accused of an specific crime just because their origin, or religion[199].

Human Rights Watch has noted another controversial point: the registration and confiscation. "The law authorizes as well a prefect to ask the judge for an order to search the home of any suspect that poses a threat to public safety. The individual to whom the search is made can be detained for up to four hours if it represents "a threat of particular seriousness to public safety and order" and has "habitual contact with persons or organizations for terrorist purposes" or supports or adheres to ideas that incite such acts. The law also authorizes the police to confiscate any document, object or electronic data while the registration"[200].

The situation in Calais is probably one of the most outstanding in this context. The 40-page report, "*'Like Living in Hell': Police Abuses Against Child and Adult Migrants in Calais*" of Human Rights Watch denounces "routinely abuses" from French police to migrants in Calais. This document shows how 60 migrants and human rights workers complain about the daily identity checks, confiscation and inhuman treatment by the officers that treat them as delinquents without evidences[201].

However the law sets that an official working in the fields of national security or defense may be transferred and even dismissed from the public service if he or she is considered to have beliefs that are "incompatible with the exercise of his duties". Soldiers can also be licensed for similar reasons[202].

Another key point in this new law are border controls. It authorizes the police to carry out identity checks without prior authorization in more than 118 border areas and 373 airports, ports and railway stations, also in adjoining areas up to a radius of 20 kilometers.

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199 Ibid.
200 HRW (2017): *"France: Police Attacking Migrants in Calais".*
201 HRW (2017): *"Like leaving in hell".*
202 Ibid.

This covers 28.6% of the French territory and 67% of the urban population, according to Le Monde[203].

Main critics in this sense alleged that this includes many immigrant suburbs and could result in harassment against ethnic minorities.

The last point refers to electronic surveillance and data collection. The law authorizes the Minister of the Interior, the Minister of Defense and the Minister of Transport to collect telephone communications or emails of suspects "to prevent, detect, investigate and prosecute terrorist crimes and other serious crimes." The law also allows security services to access travel information, including that of travel agencies, about passengers traveling by plane and boat. The data collection "should exclude all personal data that may reveal the racial or ethnic origin of a person, religious or philosophical beliefs, political opinions, union membership, or data related to the health or sexual life of the concerned person"[204].

Ethnic Profiling

"Ethnic profiling is very present in France. As it was previously mention it takes place in law enforcement actions such as identity checks; stop and searches; raids; border and customs checks; vehicle inspections; home searches; mass identity checks; selection of targets for surveillance; data mining; and other police-initiated actions. Such actions may be in the context of domestic policing, immigration control, counter-terrorism operations, or any other law enforcement or security activities" alerted Open Society Foundation[205].

However this NGO is not the only one. Other civil liberties groups have warned of the targeting of Muslims based on flimsy evidence as Abdelmalek case in 2015[206].

In this regard, the Commissioner has stated that profiling of Muslims or people appearing to be of Middle Eastern decent in the combat against terrorism is "unacceptable" and a

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203 Kern.S (2017): "*France: New Anti-Terrorism Law Takes Effect"*,Gatestone Institute.
204 Ibid.
205 Open Society Foundation (2013): *"International Standards on Ethnic Profiling: Standards and Decisions from the European Systems".*
206 The Washington Post (2016) : "Racial profiling seems to be a weapon in Europe´s war on terrorism".

potential violation of Article 14 of the European Convention of Human Rights, referring to non discrimination:

> *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status"[207.]*

It is dangerous, he added, to assume a prototype of terrorist that inevitably leads to harass innocent people[208].

After the approval, for its part, the president insisted in the capability to fight against terrorism "without abandoning French values or principles" and its potential to consecrate. "He also promised to revise the law after two years and to make any changes deemed necessary[209.]

The new law has met with little resistance from public opinion. According to a poll conducted by Le Figaro in September revealed that 57% of respondents said they were in favor of the new law; 62% of the respondents said that the measure would infringe civil liberties; and 85% said it would improve their security[210].

In this last direction, the extremist Marine Le Pen, criticized the law for being too weak: "This law is a scam, an emergency substate, we will not vote in favor of this harmful text. It will be less effective even than the state of emergency, because it is less applicable. This text does not address the specifically Islamic dimension of terrorism or the Islamist ideology that has declared war on us" she stated[211].

At the opposite end of the scale, Human Rights organizations complained about what they described as the "normalization of emergency powers"[212].

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207 ECHR (1950)
208 The Washington Post (2016) : *"Racial profiling seems to be a weapon in Europe´s war on terrorism"*.
209 Serhan. Y (2017): *"Will France´s State of Emergency become permanent?"* The Atlantic.
210 Kern.S (2017): *"France: New Anti-Terrorism Law Takes Effect"*,Gatestone Institute.
211 Ibid.
212 Raj. Kartij (2017): *" Welcome France to the: New Normal" ,*HRW.

Human Rights Watch noted: "The law takes elements from emergency practices-intrusive registration powers, restrictions on people bordering on house arrest, closure of places of worship that have been used abusively since November 2015, in sum, makes criminal practices as normal actions. All this is done in a way that weakens the control of the judges and the control of abuses".[213]

In the same line, Amnesty International expressed similar concerns: "Instead of marking the beginning of a period of restoration of liberties and civil rights, this type of laws do the opposite by incorporating a series of repressive measures to the ordinary law"[214].

From the Institutions the same discourse was maintained. Example of this is the Council of Europe, from which the Commissioner for Human Rights also published a letter on July 2017, before the approval of the law, in which he called on the French senators to improve the bill strengthening internal security and anti-terrorism measures but according to the basic human rights principles[215].

In the document, the Commissioner expressed his concern about some provisions which he believed were controversial. Especially in relation to those that give power to certain officers without judicial authorization[216].

According to the closure of worship places, he showed his worry about the lack of detailed criteria and legal guarantees for it, and in the same lime, he criticized the way how house arrests or electronic surveillance was being implemented[217].

"Terrorism poses a serious threat to human rights and democracy and states have a duty to take measures to prevent and punish terrorist activities effectively. However, any

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213 Ibid.
214 Kern.S (2017): "*France: New Anti-Terrorism Law Takes Effect"*, Gatestone Institute
215 Council of Europe (2017): "*France: the anti-terrorism bill must be in line with the case-law of the European Court of Human Rights".*
216 Ibid.
217 Ibid.

restriction on individual freedoms must be strictly necessary to protect the public and proportionate to the legitimate aim pursued",[218] he wrote.

Germany: *Reinforcing the law*

Germany was from the beginning one of the countries most committed to the migratory crisis, showing its collaboration with their open doors policies to refugees. In spite of this, in September 2017, according to European Commission's data, Germany relocated 7852 people from Italy and Greece, which in relation to the quota agreement established was only a 28.5%. However in comparison to the rest of Europe it was one of the most satisfactory percentages[219].

Although the für Deutschland (Alternative for Germany) which is the Eurosceptic and deeply nationalist party of the country, firmly maintained the discourse of seeing the immigrant as a threat and it did not hesitate to mobilize tens of thousands of people in demonstrations against the "Islamization of the West", Angela Merkel defended herself against those who questioned her attitude in favor of the *welcome refugees*, saying that she was doing the right thing from a humanitarian point of view[220].

However, since 2016 the laws have been increasingly hardened making more difficult the arrival of refugees to the country.

Reinforcing the law

In April 2016, the federal Parliament approved a reform that expanded the powers of control of the Federal Criminal Investigation Police to impose on "potential attackers" administrative measures such as residence assignment and telecommunication surveillance. The "potential attackers" were defined broadly as "people who would be able to participate in the commission of crimes related to terrorism in the future".

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218 Ibid.
219 European Commission (2017).
220 Müller.E : *"Merkel no se arrepiente de abrir sus fronteras: "Decidí lo correcto desde un punto de vista humanitario",* El País.

Amnesty International warned of this situation in its 2017/18 report of the country, expressing its concern[221].

Refugee organisation Pro Asyl criticised these measures, pointing out that they robbed refugees of their right to privacy, as they are the main affected by these actions. "The agreed package of measures for tougher deportation policies is a programme that will deprive asylum-seekers of hope for protection in Germany and is aimed at discouraging them," the organisation added[222].

In May, the federal Parliament passed a law that facilitated the arrest of people who represented a "significant threat to the security" of society, waiting to be expelled from the country. The law also empowered the Federal Office for Migration and Refugees to confiscate the electronic devices of asylum seekers who did not possess identity documents[223].

One of the most relevant cases has been the state of Bavaria, which adopted some measures such as the increase of the detention period from fourteen days to a maximum of three months without charges for the "potential attackers"[224].

These administrative laws worry NGO´s due to the lack of precision and clarity while detaining individuals only for their "potential" to commit an attack.

For historical reasons, the German government has had one of the most restrictive surveillance laws in the European context and its government has to protect and respect the personal privacy of its nationals with special care.

The situation has changed with the recent terrorist attacks and the increased terror that those have provoked.

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221 Amnesty International Report (2017).
222 Al Jazeera (2017): *"Germany approves deportation of asylum seekers law.*
223 Amnesty International: *"Germany 2017/18.*
224 Ibid

In addition, another controversial matter refers to detentions without charge. Except Bavaria, in Germany, every state can detain suspects without charge for a maximum of 14 days.

However, in 2017 the regional government of Bavaria sought to keep suspected assailants indefinitely detained without charge. The state's ruling party, the Christian Social Union, was accused by a number of opposition lawmakers and the press of seeking to undermine the rule of law[225].

This kind of detentions go expressly against article 5 of the European Convention which highlights the conditions required to detain a person, Right to liberty and security:

> *"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
> *2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
> *3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

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225 Amnesty International: "*Germany 2017/18*".

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Federal states are able to further tighten their own police stop and search powers".

As many other countries the border´s control has been an important response to the migration crisis. Although since 2015 Germany has offered asylum to 1,3 million of seekers, in the last year the approval of counter-terrorist measures have reduced the number of arrivals considerably[226].

One of these measures is the number of checks in the border. While Germany is a member of the Schengen area, which allows free movement of goods and people across EU borders, some officials infringed this regulation. The result was a rule of the European Court of Justice to prohibit border checks within Schengen zone on the basis of free travel.

Article 2 of the Protocol nº4 of the European Convention of Human Rights establishes the freedom of movement:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society".

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226 Casadevall. G (2017): *"Elecciones en Alemania 2017"* rtve.es.

Belgium: *Deportation of foreign residents*

According to data collected at the beginning of this year, Belgium, despite being one of the countries with the greatest multicultural identity of Europe, also failed to fulfill its commitment to accept the number of refugees established by the Union in the distribution of quotas, it only accomplished with the 22.5%[227].

Apart from that, there have been in addition, polemical measures that have compromised the rights of the immigrants as a result of the fear posed by the terrorist attacks that the country suffered during the last years.

It is important to highlight that Belgium is a country composed of small groups and growing populations of religious and ethnic minorities. Only Muslims account for the 6% of the populations[228]. Most of them live in districts, communes as in Brussels where they comprise almost one-fourth of the population. However, due to the recent attacks in Brussels and Paris, alarms jumped and different HR organizations have warned of the high rates of intolerance to ethnic and religious minorities, not only from the citizens but from the institutional level.

Belgium's Parliament has "quietly passed legislation giving the government extraordinary powers to deport legal residents on the mere suspicion of engagement in terrorist activities, or for "presenting a risk" to public order or national security, without a criminal conviction or the involvement of a judge" stated the New York Times[229].

It is important to mention that this law applies only to foreign residents, not to Belgian nationals or refugees, which has begun to worry human rights organizations as well as citizens concerned by the extreme securitization path that the country is following, and

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227 European Commission data migration (2017)

228 BBC (2015) : "*¿Por qué Bélgica es el país con mayor proporción de yihadistas de Europa Occidental?"*

229 Schreurer.M (2017): "*Belgium's New Deportation Law Raises Red Flag With Civil Rights Groups",* The New York Times.

in consequence, about the threat to civil liberties. They alleged that fear to terrorism cannot justify anti-immigrant policies[230].

In the same line, Human Rights Watch was very critical with one concrete measure in its 2015 report. It refers to the permission in order to revoke Belgian citizenship from dual nationals convicted of terrorism by the authorities. The NGO explained that this action would only lead to "create perceptions of a tier of "second class" citizens based on their ethnicity and religion"[231].

One of the biggest problems, and main critics in this context is the way how the legislation is being redacted, allowing the authorities to interpret the law in a very broad way which always let them justify their actions. In this line, Human Rights Watch noted as well that police operations have been abusive in many cases, resulting in a "excessive use of force".[232]

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230 Ibid
231 Ibid
232 Ibid

Chapter 4: Conclusions

After the introduction and having presented the legal framework on human rights within the EU and the main instruments that it gathers as well as the most relevant dilemmas that its accomplishment poses in the first chapter; once covered the relationship between migration and terrorism, the different approaches, and given the data to support arguments in favor and against in chapter 2; after analyzing the measures implemented by the EU as a body and the member states that might be controversial in relation to an "excess of securitization" considering migration as a possible threat in chapter 3; this final chapter will show some conclusions resulted of the study in order to answer to the research questions.

First of all, the first thing that should be highlighted is the sensitivity of the topic. In first place, the recent migratory crisis and especially the high number of victims who have lost their lives in the Mediterranean, as well as those who are still in lamentable conditions without the minimum guarantees, are facts that make the issue especially complex.

Terrorism for its part, is not a less noticeable matter. Since 2014, jihadism has killed more than 300 people in Europe, impacting the entire continent

However, I would like to include a brief reflection at this point. This research has tried to show the existence of a possible link between immigration and terrorism, and at the same time how certain European States and the Union as a whole, have reacted to two crises that directly affected their integrity and identity at various levels.

The engine of these actions implemented by Europe to restrict immigration has been none other than fear, and has resulted, as a consequence, in a "securitization" that as it has been shown throughout this research, it has in some cases, exceeded the limits within the framework of human rights.

From this investigation it can be concluded that the proliferation of restrictive or repressive measures, the hardening of an anguished and insecure public opinion, and the

return to the discourse of the "real politik", have weakened the progress in human rights, debilitated their arguments and marginalized its actions[233].

However, it must be taken into account that the protection of human rights within the fight against terrorism is not only a legal requirement, but must be the reaffirmation of those fundamental values that terrorism seeks to destroy, in order to combat it.

The research question that this work sought to answer has been addressed thanks to the opinion of many experts in the field, official studies and ultimately, proven facts.

In terms of results, and consequently, in response to the research question: Is there a relationship between immigration and terrorism?, It must be answered that, according to all above mentioned, it cannot be said that one is the cause of the other.

As already mention in chapter 2, the big majority of the attackers were nationals of member states, raised in Europe, mostly coming from second or third generation immigrants, and as a consequence, cases of perpetrators infiltrated in Europe through migratory flows, are minimal.

What this situation produces is a confrontation of cultures between the country where the individual grow up and the family one, which often generates an identity crisis that makes these individuals more vulnerable and as a consequence, easier to indoctrinate. Radicalization therefore occurs within our borders, either through direct contact or via technology.

The focus then, should be changed from the criminalization of migrants to the consciousness of what is going on inside our western societies.

From this follows that in order to achieve successful objectives it is necessary to improve the coordination of the measures and at the same time the evaluation of the results by the Member States, through integration actions, and at the same time, through the

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233 HRW (2017): *"European Union, events of 2017"*.

strengthening of education, dialogue and the empowerment of young people to tackle the process of radicalization.

However, reactions of States and the Union as a whole, have been more focused on putting the threat on the immigrant, and this has become evident through the adoption of procedures that in numerous countries have been questioned for violating and compromising the effective compliance of migrant's human rights that have arrived to the continent when being treated as criminals, and more specifically, as potential terrorists.

International organizations have denounced countries for passing laws that allow and extend the existing powers of the executive, and its capability to request administrative controls, to restrict the movement and association of individuals considered a threat to national security. The strengthening of the immigration law has been used as a tool of counterterrorism, allowing the law to criminalize foreigners, while considering them as terrorists. Ultimately as CHACÓN observed, "the border has become the front line in the fight against terrorism".[234]

These measures lead to a worrying situation of discrimination for certain communities due to their origin or religion.

In order to conclude I would like to highlight what Human Rights Watch has pointed out in its 2018 report about the actions and obligations of the EU, as well as some recommendations: "A balance must be found to take full account of the security interests of States and host communities while protecting the rights of persons who, unlike other categories of foreigners, no longer enjoy the protection of their country of origin. States have the responsibility to take measures to prevent terrorist activities and to criminalize various forms of terrorist actions, as well as measures that assist and promote cooperation among countries including signing up to international counter-terrorism instruments, in order to protect and ensure the rights of all citizens, especially those who are escaping from conflict, instead of closing borders and consider these individuals as dangerous"[235].

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234 Asworth. A and Zedner.L (2014) *Preventive Justice*, (p.242-249) Oxford ISBN-13:9780198712527.
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