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EUROPE AT A CROSSROADS
The EU migration crisis, a governance test for the future of the Union

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Abstract

In the context of the world's largest refugee crisis since World War II, the European Union has to cope with unprecedented numbers of arrivals at its external borders. In light of the weekly shipwrecks and drownings in the Mediterranean, European states decided to develop a common approach to the crisis, as they realised the upcoming months and years would be characterised by massive migration flows to the continent.

This thesis investigates the EU's response to the migration crisis focusing on migration as a policy area, especially with regards to border management and control. After critically assessing the human rights impact of the policies implemented since 2016, this research will explore the concerns this crisis has raised regarding European unity and ability to answer to external threats in a common and cooperative manner. It will argue that this crisis is a governance test for a European Union that finds itself facing historically unprecedented challenges, sixty years after its creation. This thesis will claim that the current EU approach reflects a rift between member states towards security and human rights standards, a sign of a deeply rooted political and ideological divide regarding transfer of sovereignty in the field of migration control.

To overcome the crisis, this research will assert that the EU needs to find a balance between its moral and legal obligations and its duty to ensure the safety of its citizens and the securing of its external borders. It will provide recommendations regarding the need for a genuine holistic approach, one that bridges security and human rights concerns.

Keywords: European Union, migration governance, border control, human rights, sovereignty, Mediterranean.

Table of contents

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List of Acronyms

CoE	Council of Europe
EBCG	European Border and Coast Guard
UNODC	United Nations Office on Drugs and Crime
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
EUNAVFOR Med	European Union Naval Force Mediterranean
FIDH	Worldwide Movement for Human Rights
GNA	Government of National Accord
HRVP	High Representative of the Union for Foreign Affairs and Security Policy
HRW	Human Rights Watch
IOM	International Organisation for Migration
LIBE	Committee on Civil Liberties, Justice and Home Affairs
LNA	Libyan National Army
MEP	Member of the European Parliament
MOAS	Migrant Offshore Aid Station
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
PKK	Kurdistan Workers' Party
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNESCO	United Nations Educational Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNSMIL	United Nations Support Mission in Libya

Chapter 1: General Introduction – The EU migration crisis, a state of play

> *"No one leaves home unless,*
> *home is the mouth of a shark.*
> *[...]*
> *No one puts their children on a boat,*
> *unless the water is safer than the land."*
>
> *Home* - Warsan Shire (British Somali poet)

1. Problem diagnosis

In the words of Dimitri Avramopoulos, European Commissioner for Migration, Home Affairs and Citizenship, "*the world finds itself facing the worst refugee crisis since the Second World War*"[1]. In recent years, an unprecedented level of human mobility was recorded across the globe. The United Nations High Commissioner for Refugees (UNHCR) asserts that 65.6 million persons were displaced worldwide at the end of 2016, a staggering 22.5 million of them were refugees[2]. Although the Global South continues to receive the largest share of them – with around 84% of the world's refugees hosted in developing countries[3] – migration flows to the European Union (EU) have dramatically increased in recent years, with unprecedented numbers of arrivals at the European external borders. According to Eurostat, the statistical data office of the Union, over 1.26 million asylum requests were registered in 2015[4] amounting to the highest level ever recorded. At the time of writing, figures for the year 2016 reached over 1.20 million first-time applicants[5] and are expected to remain high in the upcoming months. Regarding the number of arrivals at the European borders, the most up-to-date count from the International Organisation for Migration (IOM) indicates that, since early January 2017, land routes have

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[1] Dimitri Avramopoulos, Speech "*A European Response to Migration: showing solidarity and sharing responsibility*", 16 August 2015 http://europa.eu/rapid/press-release_SPEECH-15-5498_fr.htm (consulted on 12 March 2017).
[2] United Nations High Commissioner for Refugees, Report "*Global Trends - Forced displacement in 2016*", 19 June 2017, p.2.
[3] Ibid, p.2.
[4] Eurostat, "*Record number of over 1.2 million first time asylum seekers registered in 2015*", 4 March 2016 http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/ (consulted on 29 April 2017).
[5] Eurostat, "*Asylum in the EU Member States, 1.2 million first time asylum seekers registered in 2016*", 16 March 2017 http://ec.europa.eu/eurostat/documents/2995521/7921609/3-16032017-BP-EN.pdf/e5fa98bb-5d9d-4297-9168-d07c67d1c9e1 (consulted on 4 May 2017).

seen 1,177 migrants whilst 83,928 arrived by sea, the vast majority of whom – namely 71,978 – landed on Italian shores[6].

Consequently, the Mediterranean has become the most dangerous sea route[7] for refugees and migrants, 2016 being the deadliest year so far with more than 5,098 drownings at sea estimated[8]. In the absence of legal and safe pathways to Europe for people seeking international protection; and in light of increased borders restrictions throughout the EU with several Schengen states having temporarily reintroduced internal border checks[9], *"many saw no alternative to undertaking dangerous journeys"*[10] details the UNHCR Bureau for Europe. As expressed by the current UN High Commissioner for Refugees Filippo Grandi, *"for so many deaths to have occurred just in a matter of days and months is shocking and shows just how truly perilous these journeys are"*[11]. Images of three-year-old Aylan Kurdi's body washed up on the Turkish beach of Bodrum on 2 September 2015[12] caused an emotional international media storm. However, the storm was brief, and the continued appearance of photographs of bodies drowned at sea and washed ashore only illustrates the ongoing plight of migrants and refugees in the international media.

Growing public pressure and media attention after the series of deadly shipwrecks of April 2015, near the Italian island of Lampedusa, constituted a wakeup call for the EU member states as they realised that the coming months and years will be characterised by coping with a massive influx of arrivals.

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[6] IOM, "*Mediterranean Update – Migration flows Europe: arrivals and* fatalities", 21 June 2017.
[7] The IOM Missing Migrants project, which tracks disappearances of migrants along the different migratory routes around the globe, recorded a total of 7,763 migrants' estimated deaths worldwide in 2016. IOM, Data briefing "*Migrant deaths and disappearances worldwide: 2016 analysis*", 8 March 2017, p.2.
[8] IOM, *Missing migrants Project* https://missingmigrants.iom.int/mediterranean (consulted on 11 March 2017).
[9] The Schengen area, established in 1985, is an internal area of 26 European states where border control is abolished and the free circulation of persons and goods is guaranteed. In accordance with article 29 of the Schengen Borders Code (that allows for the reintroduction of temporary control in cases of serious threats to the internal security), Germany, Austria, Denmark, Norway and Sweden have reintroduced some internal border checks in the fall of 2015. European Commission, "*Temporary reintroduction of border control*" https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en (consulted on 15 March 2017).
[10] UNHCR, Report "*Desperate journeys*", February 2017 http://www.unhcr.org/58b449f54.pdf (consulted on 9 March 2017).
[11] UNHCR, News "*Mediterranean death toll soars in first 5 months of 2016*", 31 May 2016 http://www.unhcr.org/news/latest/2016/5/574db9d94/mediterranean-death-toll-soars-first-5-months-2016.html (consulted on 9 March 2017).
[12] Helena Smith, "*Shocking images of drowned Syrian boy show tragic plight of refugees*", The Guardian, 2 September 2015 https://www.theguardian.com/world/2015/sep/02/shocking-image-of-drowned-syrian-boy-shows-tragic-plight-of-refugees (consulted on 19 June 2017).

In the meantime, the several terrorist attacks carried out on European soil since January 2015 – principally in France, Belgium, Germany and the United Kingdom – resulted in increasing concerns regarding security at the national and EU levels. As clearly stated in the President Juncker's Political Guidelines[13] and the European Commission Agenda on Security[14], the fight against terrorism lies at the top of the European Union's priorities. In this context, migration has been increasingly framed as a transnational security threat and a generator of risk at the EU level. Indeed, since the beginning of the migration crisis, several European politicians have raised their voices to express concern about the migration-terrorism nexus, arguing that uncontrolled movements of people, combined with porous borders, pose a threat to their national security. This claim – that terrorists used migratory routes to enter Europe – was prominently discussed after the 2015 Paris attacks when a fake Syrian passport, that had been used to cross Greece and the Balkans, was discovered close to the body of one of the suicide bombers[15].

Although Ben Emmerson, UN Special Rapporteur on Counter-terrorism and Human Rights, found little evidence of links between migration and increased terrorist threats in his 2016 report to the UN General Assembly[16], nationalist and populist movements on the rise throughout the continent continue to exploit the crisis using such fears. The Hungarian Prime Minister Victor Orbán, who recently qualified migration as being *"the Trojan horse of terrorism"*[17], is one of many examples.

In its response to the crisis, the EU has developed several strategies articulated around two central objectives: securing and managing its external borders while saving lives and guaranteeing the human rights of migrants. These two main goals could appear to be contradictory at first sight. However, as claimed by Omar Grech and Monika Wohlfeld *"effective migration management and border management policies would address national*

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[13] Jean-Claude Juncker, "*A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission*", Strasbourg, 15 July 2014, p.10.
[14] European Commission, Communication "*A European Agenda on Security*", 28 April 2015.
[15] Marcus Walker and Noemie Bisserbe, "*Paris stadium attacker got to Europe using fake Syrian passport*", Wall Street Journal, 16 November 2015 https://www.wsj.com/articles/paris-stadium-attacker-entered-europe-via-greece-1447698583 (consulted on 1 May 2017).
[16] UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/71/384, 13 September 2016, p.4.
[17] Jim Brunsden, "*Europe refugee policy is 'Trojan horse of terrorism', says Orban*", Financial Times, 30 March 2017 https://www.ft.com/content/538b2a0a-154e-11e7-80f4-13e067d5072c?mhq5j=e1 (consulted on 1 May 2017).

security problems while enhancing the human security of migrants"[18]. In their article *Managing Migration in the Mediterranean: Is the EU Failing to Balance State Security, Human Security, and Human Rights*, they emphasise that "*this is arguably a rather complex task, and one at which Europe seems to be failing*"[19].

It shall be stressed that border control is a shared competence between the EU and its member states[20], but states have the primary responsibility for the management and protection of their external borders. Additionally, in accordance with the principle of state sovereignty, every individual member state has the right to decide on the conditions of entry and stay on its own territory for third-state nationals. However, to safeguard the existence of Schengen as an area abolishing internal border controls and ensuring the free movements of persons, external border management[21] must be effectively coordinated at the European level.

When adopting the European Agenda on Migration[22] in May 2015, EU countries recognised the need to develop a common European approach in order to tackle the migration crisis (debates around the use of the term "crisis" will be explored later in this chapter). As outlined in this core strategic document, no single European state has the capacity to face and tackle the migratory challenges on its own. This why the Commission strongly advised member states to work towards finding solutions to the migratory pressure at the European level[23].

2. <u>Relevance of the work and research goals</u>

The tension between the human rights of migrants and the securing of the European external borders has been closely monitored and scrutinised by human rights activists and academics

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[18] Omar Grech and Monika Wohlfeld "Managing Migration in the Mediterranean: Is the EU Failing to Balance State Security, Human Security, and Human Rights?" *in OSCE Yearbook 2015*, Nomos, 2016, p.317.
[19] Ibid., p.317.
[20] European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, article 4(2).
[21] The IOM defines border management as followed: "*facilitation of authorised flows of persons, including business people, tourists, migrants and refugees, across a border and the detection and prevention of irregular entry of non-nationals into a given country. Measures to manage borders include the imposition by States of visa requirements, carrier sanctions against transportation companies bringing irregular migrants to the territory, and interdiction at sea. International standards require a balancing between facilitating the entry of legitimate travellers and preventing that of travellers entering for inappropriate reasons or with invalid documentation*".
IOM, "*Key Migration Terms*" https://www.iom.int/key-migration-terms (consulted on 22 April 2017).
[22] European Commission, Communication "*A European Agenda on Migration*", 23 May 2015.
[23] Ibid., p.2.

since the very beginning of the crisis. This research will explore the EU's response to the migration crisis focusing on migration as a policy area, more precisely with regards to the management and control of the European external borders.

After critically assessing the human rights impact of the current EU policies and strategies in the field of border control, this research will aim at exploring the concerns this crisis has raised regarding European unity and the ability to answer to external threats in a common and cooperative manner. It will argue that this crisis is a governance test for a European Union that finds itself facing historically unprecedented challenges (Brexit, the Greek situation, region-wide terrorism, the Euro crisis, the rise of populism and increasing Euroscepticism), sixty years after the adoption of the Rome Treaties that laid the foundations of the Union.

The current EU answer shows the unwillingness of some member states to cooperate in an area – border control – that remains at the core of state sovereignty. Indeed, when it comes to the operationalisation of agreed EU strategies, the effective implementation falls to the individual member states. Lack of compliance and consistency undermines the legitimacy and the effectiveness of European migration management policies.

To overcome the migration crisis, it will be argued that the European Union needs to find a balance between its moral and legal obligations and its duty to ensure the safety of its citizens and the security of its borders. Although providing security is primarily the responsibility of Member States, recent developments have shown that no country can act alone to answer to transnational threats.

3. Central guiding questions, hypotheses

3.1. Research questions

This thesis will revolve around two main interrogations: (1) when looking at the response brought forth by the EU, one can wonder in what ways, if any, does the European Union's approach to the migration crisis reflect a rift between Member States towards security and human rights standards? (2) A corollary question will be how are the EU policies and actions affected by disagreement between Member states over the best way to tackle and answer to the migration crisis?

3.2. Sub-questions

The sub-questions are the following: (1) firstly, are European policies in the field of migration and border control consistent with the EU's fundamental values and international legal obligations? (2) Secondly, do Member States have compatible goals and interests in addressing the crisis and which aspects of the EU's strategies reveal a disagreement between Member States? (3) Finally, has the European Union been able to strike a balance between national security concerns and its human rights obligations in the strategies adopted and implemented since March 2016?

3.3. Hypotheses

The main hypothesis that will be advanced in this thesis is that European Member States are deeply divided when it comes to the transfer of sovereignty to the EU in the field of migration control – a dilemma at the heart of the European project – despite the EU principles of solidarity, protection of human rights and burden-sharing. The second hypothesis is that the debate regarding migration in the Mediterranean is a tell-tale sign of a deeply rooted political and ideological divide over the role of the European Union in border management. The third and final hypothesis advanced in this research is that a discrepancy between agreed strategies at the EU level and their effective implementation by member states exists.

This thesis will aim to provide recommendations regarding the need for a holistic approach to the migration crisis, one that bridges both security and human rights concerns. Extending the understanding of national security with human security approaches could help develop more comprehensive and effective migration management policies.

3.4. Timeline

This thesis will analyse the evolution of the policies and strategies adopted by the European Union to tackle the migration crisis since April 2015, when irregular migration flows to Europe dramatically increased, marking a clean break with the prior period. It will focus more specifically on developments that have taken place since March 2016 with the adoption and implementation of the EU-Turkey statement, the creation of the Border and Coast Guards

Agency and the discussions around a potential partnership between the European Union and Libya. For feasibility reasons, the timeframe of this study will stop in early July 2017. Developments taking place after this date will not be taken into consideration in this work.

3.5. Limits

It is important to underline that this research focuses on a crisis that is currently ongoing. Therefore, internal political developments or events taking place in several EU Member States or neighbouring countries could have an impact – whether positive or negative – on the EU's strategies and actions. With such uncertainties, there could be a small risk that what was agreed at the European level comes to an end overnight. As a matter of example, one can mention the threats around the survival of the EU-Turkey deal following the positive results of the Turkish referendum on 16 April 2017 and due to the growing tensions between Recep Tayyip Erdoğan and several EU leaders.

Another challenge this research might face is the difficulty to evaluate policies and strategies whose implementation is currently underway, as it is notably the case for the European Border and Coast Guard Agency. The absence of long-term perspective over the policies enacted since 2016 could be one of the limits of this analysis.

Additionally, migration being an extremely broad topic, it must be noted that all aspects revolving around this matter cannot be studied in this research work. Thus, concerns and challenges around the common asylum system, integration of migrants and conditions of reception in destination countries – while significant – are topics beyond the scope of this research. Much has also been written on the use of new surveillance techniques and biometric technologies at the EU's external borders; this analysis will be also be excluded from the present thesis. Our chosen focus on border control policies does not imply that the European Union is inactive when it comes to other aspects of migration management.

4. <u>Method of inquiry and structure of the work</u>

4.1. Methodology

The methodology applied to answer the two research questions is based on qualitative research. The desk research focused on an analysis of EU policy and legislative documents, press releases, official speeches, statements or communications from different EU institutions and agencies (Commission, Parliament, European External Action Service in particular). Academic literature specialised on the field of migration and security was investigated. Quantitative data were also used to smaller extent (gathered by Frontex, non-governmental organisations, IOM Missing Migrants Project, UNHCR, Eurobarometer). Due to time constraints, only one semi-structured interview was conducted in the frame of this research, with Ms. Judith Sargentini, Dutch member of the European Parliament, on 21 June 2017. Alongside, another method to gather information from relevant stakeholders and experts was the participation to two conferences: the 20th European Police Congress, organised in Berlin on 21-22 February 2017 and the High-level conference on migration management, held at the European Parliament in Brussels on 21 June 2017.

4.2. Structure

Following this introductory chapter, this thesis will be articulated around four additional chapters. The second chapter will outline the EU's approach to the migration crisis, looking first at the legal framework and the different EU human rights obligations before providing an overview of the EU's institutional response, presenting the key policies and strategies adopted since the spring 2015. Then, the third chapter will address the discrepancies between the EU stated principles and their translation into practice through the presentation of three initiatives in place since March 2016: the EU-Turkey statement, the creation of the European Border and Coast Guard Agency and discussions around a deal with Libya; telling examples of the EU's perception of the migration crisis through a security lens. The fourth chapter will analyse the competing views with regards to the EU's role on migration issues, touching upon the positions of some member states (principally the presidents of the Council of the EU, the Visegrad

countries[24] and the frontline states[25]) and those of the EU institutions (notably the Commission and the European Parliament). Finally, drawing on these findings, the last chapter will summarise the results, answer the questions, test the hypothesis and provide possible policy recommendations on how the European Union could move ahead to deal with this crisis.

5. **Definitions and Theories**

First and foremost, before presenting an overview of the different theories that will be explored in this research, one must clarify the analytical framework by defining the key terms used in this paper.

5.1. Migration crisis

Using the qualification of 'migration crisis' is debated amongst human rights scholars and advocates – preferring the use of 'refugee crisis'[26], 'crisis of solidarity'[27] or 'crisis of reception'[28]. They argue that framing the phenomenon as such puts the emphasis on the danger posed by influx of people and neglects the vulnerabilities and personal experiences of migrants. Behind the notion of 'crisis' is indeed the idea that one must cope with a phenomenon of exceptional dimension with potential damaging and harmful effects. Anna Lindley elaborates on the linkages between migration and crisis in the political and social discourses, stating that "*despite the relatively recent emergence of more nuanced and even celebratory accounts of mobility, the tendency to link migration with crisis in a strongly negative fashion remains deeply entrenched and vigorously persistent*"[29]. People on the move have different and sometimes

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[24] The Visegrad group is an informal gathering of four central European countries: the Czech Republic, Hungary, Poland and Slovakia. Created in February 1991 with the aim of facilitating their integration to the EU, the Visegrad countries have been very vocal on the migration issue since 2015, opposing in particular the adoption of a permanent relocation mechanism in the EU.

[25] EU Frontline states are the countries located at the southern Mediterranean border that constitute the main entry points into Europe. In this research, the term will be used with regards to Italy and Greece.

[26] Amnesty International, Report "*Tackling the global refugee crisis: from shirking to sharing responsibility*", 18 October 2016.

[27] Statement made by Ban Ki-moon, former UN Secretary General.
United Nations, Press release "*Refugee crisis about solidarity, not just numbers, Secretary General says at even on global displacement challenge*", 15 April 2016.

[28] Statement made by António Guterres, former UN High Commissioner for Refugees and current UN Secretary General.
UNHCR, Press release "*Statement by UN High Commissioner for Refugees, António Guterres on refugee crisis in Europe*", 4 September 2015.

[29] Anna Lindley, *Crisis and migration - Critical Perspectives*, Routledge, 2014, p.1.

mixed motives: be it fleeing a conflict area, escaping persecution, searching for new economic prospects and better life opportunities; or due to the impact of climate change and natural disasters. Though a large number of people who arrived in Europe since 2015[30] are entitled to refugee status or subsidiary protection under the criteria set forth in the 1951 Refugees Convention, migration flows are mixed and economic migrants continue to make their way to Europe.

Therefore, in this research paper, the term migration will be based on the IOM's definition that one can consider as being the broadest and the most encompassing: "*the movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification*"[31]. More precisely, this paper will focus on irregular migration – migrants whose entry is not authorised by destination countries – which is perceived by European governments as a threat for European security. The term 'irregular' would be preferred over 'illegal' since crossing border as an unauthorised migrant does not constitute a crime but rather an administrative offense[32]. Irregular migrants are therefore "*foreign nationals whose migration status does not comply with the requirements of domestic immigration legislation and rules*"[33].

5.2. Securitisation

Securitisation, a concept elaborated by the Copenhagen School of Security Studies, can be defined as the process by which a particular issue is socially constructed as a threat and transformed into a security concern, which most of the time allows for the use of extraordinary measures to deal with it. As argued by theorists from the Copenhagen School, "*the special nature of security threats justifies the use of extraordinary measures to handle them. The invocation of security has been the key to legitimising the use of force, but more generally it*

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[30] "*Syrians account for half of the million migrants arriving on the Greek and Italian coasts in 2015 [..] Syrians were joined by other refugees, mainly Afghans and to a lesser extent Iraqis, Eritreans and Somalis. Of the one million migrants arriving in Greece and Italy in 2015, almost 80% come from one of these five countries*" (author's translation from French).
Thibaut Jaulin "*Migrations en Méditerranée: la crise de l'asile*" Politique étrangère 4 (2016), p.31.

[31] IOM, "*Key Migration Terms*" https://www.iom.int/key-migration-terms (consulted on 22 April 2017).

[32] Grech and Wohlfed, p.312.

[33] Amnesty International, Report "*A perfect storm – The failure of European policies in the Central Mediterranean*", 6 July 2017, p.4.

has opened the way for the state to mobilize, or to take special powers, to handle existing threats[34]. This way, issues which were initially apprehended as political, environmental, economic or human rights concerns can be securitised, which means that some actors will define them as threats to security to legitimise extraordinary measures.

Securitisation of migration in the European Union is not a new phenomenon. The widening of the security agenda since the 1980s and the reconfiguration of the international order at the end of the Cold War led to the emergence of new security threats. Indeed, the international community's understanding of security moved from a state-centric approach focusing on traditional military threats to a more human-focused approach encompassing a wide range of security threats (linked with the notion of human security). Authors such as Barry Buzan, Ole Waever or Jef Huysmans argued that migration became a policy issue penetrated by security discourses which has had an impact on the type of response developed by the EU. As stated by Huysmans "*the development of security discourses and policies in the area of migration is often presented as an inevitable policy response*"[35]. Khalid Koser explains that "*labelling any issues a security threat has implications in terms of the laws, norms, policies and procedures that become justified in response. In the migration context […] the label has been used to justify greater surveillance, detention, deportation and more restrictive policies*"[36]. As for Didier Bigo, securitisation of migration is linked with the issue of politicisation[37]. Articulating and constructing migration, first and foremost, as a problem with security implications is a way for politicians to mobilise certain means to manage and answer to the threats, which enable them to then justify their own authority: "*the framing of the state as body endangered by migrants is a political narrative activated for the purpose of political game*"[38].

5.3. National security vs. human security paradigm

Linked with the concept of securitisation are the notions of national security and human security. The concept of national security finds its origin back in the seventeenth century with the signature of the Treaties of Westphalia in 1648 that conceptualised the notion of state

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[34] Barry Buzan, Ole Waever, Jaap De Wilde, *Security, a new framework for analysis*, Lynne Rienner Publishers 1998, p.21.
[35] Jef Huysmans "*The European Union and the issue of Migration*", JCMS: Journal of Common Market Studies 38.5, 2000, p.757.
[36] Khalid Koser, "*When is Migration a security issue?*" Brookings, 31 March 2011.
[37] Dider Bigo "*Security and Immigration: toward a critique of the governmentality of unease*", Alternatives n°27, 2002, p.65
[38] Ibid, p.68.

sovereignty. In this approach, the object of analysis is the security of the nation state that exercises control of its own territory: security is therefore understood in narrow military terms and designates the protection of the sovereignty and territorial integrity of states from external military threats.

In the case of the EU's perception of migration as a security threat, "*the public debate on the migration-security nexus tends to focus on a number of issues relating to national security, understood as the protection and promotion of the well-being of the citizens and legal residents of a state and its territory*"[39]. Several observers have argued that security considerations trumped over human rights related concerns in the way the Union has developed its answer to the crisis. Even before the outbreak of the EU migration crisis, Caryl Thompson declared that researchers "*have adopted a state-centric position to the issue of migration and security [...] but acknowledge that non-state actors, in this case migrants or at least certain categories of migrants can pose threat to the autonomy, sovereignty and territorial integrity of the state with the potential ability to cause disputes or even conflicts between countries*"[40].

Human security designates a human-centred approach to security that gained great prominence in the 1990s when the concept was introduced in the 1994 United Nations Development Programme (UNDP) Human Development Report[41]. Christina Churruca Muguruza defines the concept as followed "*human security is commonly understood as prioritising the security of people, especially their welfare, safety and well-being, instead of that of states*"[42]. It stresses the importance of a rights-based approach to security concerns because of the interrelatedness of new transnational threats. When it comes to migration flows, if one adopts a human-security perspective in migration management and border control "*the main imperative is not to curb migration by all possible means but rather to prevent the loss of life in the Mediterranean, protect the migrants against the human smugglers and ensure the rights of genuine refugees*"[43]. The 2003 report from the Commission on Human Security 'Human Security Now' postulates that "*human security means creating political, social, environmental, economic, military and*

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[39] Grech and Wohlfed, p.314.
[40] Caryl Thompson, "*Frontiers and threats, Should transnational migration be considered a security issue?*" Global Policy, 20 November 2013.
[41] United Nations Development Programme, *Human Development Report 1994*, 1995, p.22.
[42] Christina Churruca Muguruza "*Human security as a policy framework. Criticism and challenges*", Yearbook of Humanitarian Action and Human Rights (4), 2007, p.15.
[43] Dereck Lutterbeck "*Policing migration in the Mediterranean*" Mediterranean Politics, 2006, p.64.

cultural systems that together give people the building blocks of survival, livelihood and dignity"[44].

5.4. Security governance/migration governance

Security governance has been defined by Hans-Georg Ehrhart as the "*collective furnishing of security by a variety of state and non-state actors, being in a non-hierarchical relationship with one another and using different means, instruments and methods to reach a common goal on the basis of common norms, values and/or interests*"[45]. Behind this concept of governance is the idea of a need for common or compatible and of a shared understanding of the problem that will trigger or not cooperation.

Furthermore, in his book *Global Migration Governance*, Alexander Betts defines global governance as "*a range of norms, rules, principles, decision-making procedures that exist over and above the level of a single-nation state*"[46]. By analogy, migration governance designates the extent to which states – in this specific case, the EU member states – will be predisposed and ready to act in cooperation in the field of migration.

Finally in the particular field of border control and management, governance measures designate "*legislation policies, plans, strategies, actions plans and activities related to the entry into and exit of persons from the territory of the State, including detection, rescue, interception, screening, interviewing, identification, reception, detention, removal or return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States*"[47] as for the Office of the High Commissioner for Human Rights (OHCHR) in the 'Recommended Principles and Guidelines on Human Rights at International borders'.

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[44] Commission on Human Security, Report "*Human Security Now*" 2003, p.4.
[45] Hans-Georg Ehrhart, "Security Governance as a Framework and Basis for multi-stakeholder partnerships" in Michael Brzoska, Hans-Georg Ehrhart and Jens Narten *Multi-stakeholder security partnerships. A critical assessment wish case studies from Afghanistan, DR Congo and Kosovo*, 2011, p.37-58.
[46] Alexander Betts, *Global Migration Governance*, Oxford University Press, 2011, p.266.
[47] Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International borders,* October 2014, p.5.

Chapter 2: Assessing the EU's approach to the migration crisis: the legal and institutional framework

> "*Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity*".
>
> Robert Schuman, 9 May 1950

Providing a full picture of all relevant policies, directives and legislations governing the field of migration and border control in the European Union is beyond the scope of this thesis. Nonetheless, this second chapter will elaborate on the EU's approach to the migration crisis, looking firstly at the legal framework and the EU's human rights obligations, before giving a succinct overview of the EU's institutional response, presenting the key policies and strategies adopted and enacted since the outbreak of the crisis in 2015.

1. The legal framework – The EU human rights obligations

1.1. International level

This first section outlines the different international human rights obligations the European Union and its member states have to respect when adopting and implementing policies related to migrants and refugees.

1.1.1. Human rights of migrants and refugees

In the New York Declaration for Refugees and Migrants[48] – political document adopted during the UN high-level summit to address large movement of refugees and migrants, held in New York in September 2016 under the auspices of the 71st UN General Assembly - world leaders reaffirmed that refugees and migrants are right-holders and therefore, entitled to the same universal human rights and fundamental freedoms as all other individuals, regardless of their

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[48] UN General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1, 3 October 2016.

legal status[49]. As stated in the article 1 of the 1948 Universal Declaration of Human Rights (hereafter UDHR): "*all human beings are born free and equal in dignity and rights*"[50]. The concept of human dignity is the very foundation of all other human rights and can never be taken away. Subsequent articles of the UDHR recognise two key principles of international human rights law that are the right to equality and the prohibition of discrimination of any kind[51] as well as "*the right to life, liberty and security of person*"[52]. Additionally, article 13.2 of the UDHR proclaims the human right to freedom of movement: "*everyone has the right to leave any country, including his own, and to return to his country*". Thus, all the provisions set forth in the Universal Declaration of Human Rights apply to migrants, refugees and asylum-seekers.

Rights recognised in other international human rights instruments – such as the 1966 International Covenant on Civil and Political Rights (especially its article 7 relating to the prohibition of torture and article 12 on freedom of movement), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, or the 1989 Convention on the Rights of the Child – apply to migrants and refugees.

As declared by Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights, "*international human rights law provides that all migrants, regardless of their legal status, how they arrive at the border, where they come from or what they look like, are entitled to enjoy their human rights*"[53].

1.1.2. Refugee protection

International law provides dual protection to refugees and asylum-seekers, considered to be in a position of vulnerability: if all migrants benefit from the general protection of universal human rights treaties, persons who qualify as refugees are entitled to extra protection measures that are recognised in several international instruments. The right to asylum was first

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[49] Ibid, operative paragraphs 5 and 6.
[50] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, Article 1.
[51] UDHR, Article 2.
[52] UDHR, Article 3.
[53] Office of the High Commissioner for Human Rights, "*Recommended principles and guidelines on human rights at international borders*", October 2014, p.ii.

proclaimed in the article 14 of the UDHR: "*everyone has the right to seek and to enjoy in other countries asylum from persecution*"[54].

The 1951 Geneva Convention relating to the Status of Refugees – often referred as the 1951 Refugee Convention – is the cornerstone of the international refugee protection regime. Elaborated as a response to the atrocities of World War II, it aimed to address the massive movements of population in Europe in the aftermath of the conflict. The treaty defines the term refugee as a person who "*owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of its nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*"[55]. It also details the rights which are attached to the status of refugee, as well as the obligations of the States parties to the Convention.

The Protocol relating to the Status of Refugees was adopted in 1967[56] and expanded the geographical scope of the treaty to the protection of all refugees, without territorial limitation. All European member states have ratified the 1951 Refugee Convention and the 1967 Protocol.

The principle of *non-refoulement*, laid out in the article 33, is the core principle of the Refugee Convention. It prohibits the turn of refugees to places where there is a reasonable ground to think that they would face danger or persecution: "*where his [or her] life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion*"[57]. This *non-refoulement* provision conjointly applies to asylum-seekers who have not yet received a final decision regarding their refugee application. Reservations to article 33 are not permitted by the treaty[58], therefore States parties cannot derogate from this *non-refoulement* obligation. This obligation of non-refoulement applies not only to countries of origin – direct refoulement – but also to situations of indirect refoulement "*countries where individuals would be exposed to a serious risk of onward removal to such a country*"[59].

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[54] UDHR, Article 14.1.
[55] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, Article 1(A)(2) Convention relating to the Status of Refugees as modified by the 1967 Protocol.
[56] UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967.
[57] Convention Relating to the Status of Refugees, Article 33.1
[58] Ibid, Article 42.
[59] European Union Agency for Fundamental Rights, *Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries*, December 2016, p.2.

1.1.3. Border management

Several international conventions guide the conduct of states in the field of border control, especially when it comes to saving lives at sea. International borders will here be understood as "*the politically defined boundaries separating territory or maritime zones between political entities and (...) the areas where political entities exercise border governance measures on their territory or extraterritorially*"[60].

Not only a moral duty, rescuing people in distress at sea is a legal obligation under article 98 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) that provides that the shipmaster has a duty "*to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him*"[61]. The UNCLOS has been ratified by all EU member states and by the Union itself.

The 1974 International Convention for the Safety of Life at Sea[62] and the 1979 Convention on Maritime Search and Rescue[63] also requires assistance to be provided to any person in distress at sea regardless of the nationality or status of such person or the circumstances in which that person is found. Additionally, with due regard to the principle of non-refoulement, migrants rescued at sea must be disembarked to a place of safety[64].

1.2. European level

After a presentation of the international legal framework, this section will elaborate on the EU's standards in the field of human rights, migration and border control.

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[60] Office of the High Commissioner for Human Rights, "*Recommended principles and guidelines on human rights at international borders*", October 2014, p.4.
[61] UN General Assembly, Convention on the Law of the Sea, 10 December 1982, Article 98.
[62] International Maritime Organisation, International Convention for the Safety of Life At Sea, 1 November 1974.
[63] International Maritime Organisation, International Convention on Maritime Search and Rescue, 27 April 1979.
[64] Maria Chiara Locchi "The Mediterranean sea as a European Border: trans-Mediterranean migration, forced return and violation of fundamental rights" in Elisabeth Vallet *Borders, Fences and Walls: State of Insecurity?,* Ashgate Publishing Limited, 2014, p.17.

1.2.1. The European Convention for the Protection of Human Rights and Fundamental Freedoms

Entered into force in 1953, the European Convention for the Protection of Human Rights and Fundamental Freedoms[65] (hereafter ECHR) is the first regional treaty for the protection of human rights in Europe. Drafted by the Council of Europe (CoE), it is not per se an EU document − although negotiations regarding the European Union accession to the ECHR are underway. However, since every EU member state is part of the CoE and therefore, contracting party to the ECHR, its provisions are applicable in all EU countries. Furthermore, the 2009 Lisbon treaty established the fundamental rights recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms were "*general principles of the Union's law*"[66].

The right to asylum is not recognised as such in the ECHR but the Convention ensures the protection of basic human rights such as the right to life (article 2), prohibition of torture (article 3), right to liberty and security (article 5), right to a fair trial (article 6) or right to an effective remedy (article 13), provisions that apply to all individuals under its jurisdiction, including refugees and migrants. Additionally, article 4 of Protocol n°4 to the ECHR provides that "*collective expulsion of aliens is prohibited*"[67].

1.2.2. The Charter of Fundamental Rights of the European Union

No reference to human rights can be found in the original EU Treaties that essentially focused on economic cooperation. As first document to consecrate the fundamental rights and freedoms protected in the EU level, the Charter of Fundamental Rights of the European Union[68] was proclaimed in Nice on December 2000 and became legally binding with the entry into force of the Lisbon treaty in 2009. Its provisions apply to all EU institutions, bodies and agencies and to its member states when they act within the scope of EU law[69].

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[65] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950.
[66] European Union, Consolidated version of the Treaty on European Union, 13 December 2007, Article 6.3.
[67] Council of Europe, Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto, 16 September 1963, Article 4.
[68] European Union, Charter of Fundamental Rights of the European Union, 18 December 2000.
[69] European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, Article 521.

Its articles 18 and 19 are of particular interest when it comes to refugee protection as they relate to the right to asylum and protection in the event of removal, expulsion or extradition. Article 18 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*"[70]. The following article promulgate the principle of *non-refoulement*, that has been referred to already, asserting that collective expulsions are prohibited in the EU and that "*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*"[71].

1.2.3. EU law

a) EU law and human rights

Human rights are a key component of the EU policies. The 2012 'EU Strategic Framework on Human Rights and Democracy' affirmed that "*the European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin all aspect of the internal and external policies of the European Union*"[72].

This commitment can be traced back into the EU treaties with article 2 of the Treaty on European Union (TEU) claiming that "*the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail*"[73].

Created as a community of values, the European Union has a moral responsibility to uphold the principles upon which its very existence is based. When acting in the scope of its competences,

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[70] Charter of Fundamental Rights of the European Union, Article 18.
[71] Charter of Fundamental Rights of the European Union, Article 19.
[72] European Union, *EU Strategic Framework on Human Rights and Democracy*, June 2012, p.3.
[73] TEU, Article 2.

the Union must respect its international legal obligations with regards to refugees and migrants, especially those recognised in the ECHR and the Charter of Fundamental Rights of the European Union, as established in article 6 TEU[74].

Moreover, the EU's action on the international scene is driven by the principles "*which have inspired its own creation*", and shall seek "*to advance democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law*"[75] as it set forth in article 21 TEU. The latter article underlines that when developing cooperation with third countries, the Union must respect the above-mentioned principles.

b) EU law and migration

Migration was institutionalised as an EU policy area in the 1990s, giving the Union increased competences across this field of action. From 1992, the Maastricht Treaty integrated the common migration policy under the third pillar 'Justice and Home affairs', which led to greater cooperation between the EU and its member states. The 1999 Amsterdam Treaty is often considered as a turning point in the Europeanisation of border management and control, since migration and asylum policies - as well as the 1985 Schengen agreement – were officially incorporated into the EU legal framework. With the establishment of the common area of freedom, security and justice, member states agreed to expand the EU competences towards an integrated border management[76].

In 2009, the Lisbon treaty abolished the pillar system and extended further the scope of the EU migration and asylum policies. Title V of the Treaty on the Functioning of the European Union (TFEU) – constituted of articles 67 to 89 – regulates the area of freedom, security and justice. Article 67 states that "*the Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member*

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[74] TEU, Article 6.
[75] TEU, Article 21.
[76] "*The concept of integrated border management promotes a four-tier access control model, including: measures in third countries, cooperation with neighbouring countries, measures at the external border itself, measures within the territory including return*".
European Union Agency for Fundamental Right, *Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries*, 2016, p.2.

States"[77] and "*shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals*"[78].

Provisions devoted to migration policies are contained in articles 79 and 80. Article 79 grants that among the aims of the common immigration policy are "*the efficient management of migration flows*" as well as the combatting of "*illegal immigration and trafficking in human beings*". The concept of solidarity and burden-sharing, as the core principle of the EU migration policy, is underscored in article 80 TFEU that stipulates that the EU migration and asylum policies "*shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States*"[79].

Finally, the principle of non-refoulement is also enshrined in EU law, in article 78.1 TFEU. Moreover, case law from the European Court of Human Rights considered that pushbacks practises[80] are not in line with the EU legal obligations. In its landmark ruling from 23 February 2012 in the case *Hirsi Jamaa and Others v. Italy*[81], the Strasbourg Court considered that collective expulsions from the high seas were not allowed in the Mediterranean and that Italy had violated its international obligations when its border guards returned migrants and refugees to Libya where there were insufficient guarantees they would not face persecution[82]. As then reported by Amnesty International, "*the Court's judgement establishes that even when individuals are intercepted in international waters, government authorise are obliged to abide by international human rights law. [...] The Court found such removals operated outside national territory constituted collective expulsion*"[83].

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[77] TFEU, Article 67.1.
[78] TFEU, Article 67.2.
[79] TFEU, Article 80.
[80] There is no legal definition of the term 'pushback'. In a report from 2014, Amnesty International qualifies pushback operations as situations in which "*people are pushed back to the country they are trying to leave – or in some cases into the high seas – shortly after they cross the border, without an opportunity to challenge their forced return*".
Amnesty International, Report "*The human cost of Fortress Europe – Human rights violations against migrants and refugees at Europe's borders*", 9 July 2014, p.20.
[81] European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, 23 February 2012.
[82] European Agency for Fundamental Rights, *Handbook on European law relating to asylum, borders and immigration*, June 2014, p.38-39.
[83] Amnesty International "*Italy: 'Historic' European Court judgement upholds migrants' rights*", 23 February 2012. https://www.amnesty.org/en/latest/news/2012/02/italy-historic-european-court-judgment-upholds-migrants-rights/ (consulted on 22 June 2017).

c) *EU law and border management*

The Schengen area and the principle of free movement are defined in article 3.2 TEU: "*the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime*"[84].

Article 77 TFEU regulates the EU border management policy providing that "*the EU shall develop a policy with a view to ensuring that controls on persons, whatever their nationality, when crossing internal borders within the Union, shall be abolished, develop an efficient monitoring of the crossing of external borders, and the gradual introduction of an integrated management system for external borders*"[85].

The Schengen Borders Code, established in 2006 with the aim of governing the movement of persons across EU borders, stipulates in its preamble that "*border checks should be carried out in such a way as to fully respect human dignity*"[86] and stressed it once more in article 7[87]. Commitment to fundamental rights and respect of the principle of *non-refoulement* are also referred to in paragraph 20.

Finally, the creation of Frontex in 2004 goes hand in hand with this process of consolidating EU rules related to border management. Established by European Council Regulation n°2007/2004 as the European border protection agency, its role was to assist member states in managing the external borders of the EU[88] and, as for Maria Chiara Locchi, to facilitate and render more effective "*the application of EU measures related to the management of external borders*"[89]. As it will be further developed in Chapter 3, the agency's mandate was widened in 2016, due to the shortfalls and challenges it faced to effectively tackle the migration crisis.

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[84] TEU, Article 3.2
[85] TFEU, Article 77.
[86] European Union, *Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, 9 March 2016, preambular paragraph 7.
[87] Ibid, article 7.
[88] Council of the European Union, *Council Regulation (EC) No 2007/2004: Establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, 26 October 2004.
[89] Locchi, p.14.

2. The EU's institutional framework: key policies and strategies

After having elaborated on the legal framework, this second section concentrates on policies adopted at the EU level in the last two years to cope with the increasing numbers of arrivals at the European external borders. It focuses more specifically on strategies elaborated by the European Commission, executive body of the Union.

2.1. President Juncker's Political Guidelines

Lead candidate of the European People's Party, elected by the EU Parliament in July 2014, Jean-Claude Junker took office as president of the European Commission in November of the same, just a few months before the onset of the EU migration. In its programme of work '*A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*'[90] – defining the Commission's policy orientations until 2019 – migration is highlighted as an area requiring renewed attention and investment on part of the EU. The eight priority '*Towards a New Policy on Migration*'[91] highlights the so-called humanitarian imperative European states must respect, protect and fulfil; that is to say their obligation to provide humanitarian assistance wherever needed. The Commission Juncker calls upon member states to act "*in a spirit of solidarity*"[92] so to develop a comprehensive approach tackling simultaneously challenges linked with asylum policy, legal and irregular migration, border control and human trafficking. A strong emphasis is put on securing the European borders, with Juncker requesting for the allowance of greater financial and material resources to Frontex. Cooperating with third countries to hamper irregular migration is already a goal set forth in this document. It must be noted that the term human rights is absent from the language used in the text but that reference is made to the European shared values.

In his latest State of the Union "*Towards a better Europe – A Europe that protects, empowers and defends*"[93], annual address to the European Parliament delivered on 14 September 2016, President Juncker recalled the Commission's priorities in the field of migration and highlighted

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[90] European Commission, President Juncker's Political Guidelines, "*A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*", 15 July 2014.
[91] Ibid., p.10-11.
[92] Ibid., p.10.
[93] European Commission, *State of the Union Address 2016 "Towards a better Europe – a Europe that protects, empowers and defends"*, 14 September 2016.

the need for more Europe in the Union because of the "*existential crisis*"[94] and "*unresolved problems*"[95] the EU currently faces.

2.2. The European Agenda on Migration

On 23 April 2015, a special meeting of the European Council was conveyed after a series of capsizing led to 1,800 lives lost in the Mediterranean waters[96]. Qualifying the situation as "*a tragedy*"[97], EU heads of states and governments committed to urgently take up the matter by elaborating swift and concrete measures to answer to migratory pressures.

Elaborated by the Commission, the European Agenda on Migration[98] is the translation into practice of Junker's political guidelines. Published on 13 May 2015, it became since then the cornerstone of the EU's institutional framework in the field of migration and border control. As the key document summarising the EU policy, it sets out standards and priorities regarding migration management at the regional level. Emphasis is put on the need and urgency to develop a European comprehensive approach, combining both internal and external policies. Particular importance is given to the development of a multi-stakeholder and collective response that involves a wide range of actors: "*member states, EU institutions, international organisations, civil society, local authorities and third countries*" to mention but a few[99].

Meant to be a holistic document curbing migration challenges faced by the Union not only on the short term – with immediate measures being undertaken – but also on the long run, the Agenda is articulated around four pillars: reducing incentives for irregular migration; border management: saving lives at sea and securing external borders; a strong common asylum policy and a new policy on legal migration.

When it comes to the second pillar that is the one of interest for this thesis, the Commission's priorities consist in the reinforcement of Frontex's mandate and capacities with the

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[94] Ibid., p.6.
[95] Ibid., p.7.
[96] European Council, Press release "*Special meeting of the European Council, 23 April 2015 – statement*", 23 April 2015 http://www.consilium.europa.eu/en/press/press-releases/2015/04/23-special-euco-statement/ (consulted on 26 June 2017).
[97] Ibid.
[98] European Commission, Communication "*A European Agenda on Migration*", 13 May 2015.
[99] Ibid., p.2.

establishment of a European system of border guards, the development of stronger standards for border management with the so-called 'smart borders' and investments in surveillance systems, plus the setting-up of partnership with third-countries to manage their borders, especially in North Africa.

The importance for the EU to better foresee future crises, using for instance early warning mechanisms, is expressed in the document "*every crisis will be different, but the EU needs to heed the lesson and be prepared to act in anticipation of a crisis, not just in reaction*"[100]. The lack planning on part of the EU's institutions, which did not pay sufficient attention to the signs indicating that a crisis was about to spark, made it far more difficult to react and answer to the migration challenges in a timely and appropriate fashion

Regarding its content, Grech and Wohlfeld argue that some language used in the Agenda "*demonstrate a willingness to engage with migration from a human security perspective*"[101]. Indeed, the introductory chapter outlines "*the duty to protect this in need*"[102], mentions the importance of avoiding further loss of lives and of fighting migrants' smuggling. However, when looking at the rest of document, one can find very few references to human security or human rights of the migrants, but rather a strong focus on state security. Apart from saving lives of migrants in distress at sea, the second pillar of the Agenda does not make any allusion to the respect of human rights at the borders, when it is a core aspect of the EU legal framework in the field of migration and border control. Grech and Wohlefd's analysis concludes that "*on the whole, in terms of the human aspects of migration, the EU Agenda on Migration is disappointing*"[103] and that "*state-centric approach [of security] remains at the centre of EU migration policy*"[104].

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[100] European Commission, Communication "*A European Agenda on Migration*", 13 May 2015, p.11.
[101] Omar Grech and Monika Wohlfeld *"Managing Migration in the Mediterranean: Is the EU Failing to Balance State Security, Human Security, and Human Rights?" in OSCE Yearbook 2015*, Nomos, 2016, p.322.
[102] European Commission, Communication "*A European Agenda on Migration*", 13 May 2015, p.11
[103] Grech and Wohlfeld, p.323.
[104] Ibid., p.324.

2.3. *Joint Communication Migration on the Central Mediterranean route, managing flows, saving lives*

Last policy document to be presented in this chapter, the communication '*Migration on the Central Mediterranean route, managing flows, saving lives*'[105] was published on 25 January 2017 by the EU Commission and the High-Representative of the Union for Foreign Affairs and Security Policy (HRVP), Federica Mogherini. In this document, the two EU institutions propose additional actions on how to better manage migration through the Central Mediterranean route. Indeed, since the signing of the EU-Turkey statement in March 2016 – to which a large part of chapter 3 will be devoted – migration flows to the European borders have shifted towards the Central Mediterranean that is "*once again the dominant route for migrants and refugees to reach Europe as it used to be before the surging in arrivals through the Eastern Mediterranean in late 2015 and early 2016*"[106]. Cooperation with Libya plays a central part in this strategy since it is the point of departure of 9 in 10 migrants trying to make their way to Europe.

The communication mainly focuses on short and middle term goals, due to the volatile political and security situation in Libya which stability remains an objective for the EU foreign policy. When it comes to border management, the goals set up in this strategy are: reducing the number of crossings and saving lives at sea by stepping up support to the Libyan Coast Guard via the funding of training programmes or the delivery of patrolling assets; fighting migrants' smugglers and human traffickers by increasing exchange of information with North African countries, EU Member States and the different EU institutions and agencies.

A further issue outlined in the strategy is the protection of migrants, especially with regards to the conditions in Libyan migrants' centres through increased cooperation with the Libyan authorities. This point is extremely important with regards to the human rights of migrants, but it not without shortfalls. Indeed, as it will be developed at a later stage, UN representatives present on the ground alerted the EU officials that Libya could not be considered as a safe third

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[105] European Commission, Joint Communication "*Migration on the Central Mediterranean route, managing flows, saving lives*", 25 January 2017.
[106] Ibid., p.2.

country at the moment, due to security constraints and little access given to humanitarian organisations[107].

The strategic orientations contained in this communication were agreed to by EU Member States on 3 February 2017 and this substance of this proposal was incorporated into the Malta Summit conclusions. The content of the cooperation with Libya will be further elaborated in the following chapter.

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[107] UNHCR "*Joint UNHCR and IOM statement on addressing migration and refugee movements along the Central Mediterranean route*", 2 February 2017 http://www.unhcr.org/afr/news/press/2017/2/58931ffb4/joint-unhcr-iom-statement-addressing-migration-refugee-movements-along.html (consulted on 1 July 2017).

Chapter 3: "Tackling security threats whilst upholding European values" – Principles vs. Realities

> "*It's the duty of every human being, if you are human, to help these people*"[108].
>
> Pietro Bartolo, doctor in Lampedusa,
> *Fuocoammare* (Fire at Sea)

> "*I believe that, as Europeans, we have finally started to play our part. We are starting to see some results. I mentioned the tens of thousands of lives saves but even if there was only one person dying at sea or in the desert, and whether we saw it or not, this is a responsibility and a problem that we are ready to try to solve*"[109].
>
> Federica Mogherini, 1 February 2017

After presenting the EU legal and institutional framework in the field of migration and border control, this third chapter will focus on the implementation of these commitments; analysing three specific instruments introduced by the EU since March 2016 with the aim of reducing the migratory pressure at its external borders. It will be argued that there are discrepancies between the EU principles and their translation into practice: indeed, despite the Union's stated goal of developing and implementing a comprehensive migration policy addressing both security and human rights, recent developments relating with border management – the reintroduction of some internal Schengen Borders, cooperation with countries that hold dire human rights record, increased militarised presence in the Mediterranean to name but a few – show that security measures remain central in the way Member States have decided to address the situation and that the EU's response continue to be very much focused on strengthening border controls rather than acting in a solidarity manner to protected the human rights and human security of migrants.

2016 can be considered as a turning point in the EU's response to the migration crisis: limiting numbers of arrivals was a priority for the EU and policies of externalisation of migration control

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[108] Gianfranco Rosi, Movie *Fuocoammare*, released on 13 February 2016.
[109] European External Action Service, "*Opening remarks by the HRVP Federica Mogherini at the debate on managing migration along the Central Mediterranean route*", 1 February 2017.

accelerated, with third countries being handed greater control. For Bill Frelick, director of the Refugee Rights Programme for HRW, externalisation of migration can be defined as the "*extraterritorial State actions to prevent migrants, including asylum-seekers, from entering the legal jurisdictions or territories of destination countries or regions or of making them legally inadmissible without individually considering the merits of their protection claims*"[110]. Keegan Williams and Alison Mountz explains that externalisation policies have various forms: they can consist in interception migrants, developing detention facilities in transit regions, developing bilateral arrangements for policing and repatriation amongst others[111]. These externalisation trends were already described in 2013 by the Special Rapport on the human rights of migrants who declared that "*through a range of sophisticated policies and programmes, European Union policy increasingly operates to ensure that border control no longer takes place at the physical borders of the European Union*"[112].

Behind this strategy of externalisation is a logic of deterrence and the idea that migration flows can be prevented. If the EU advances humanitarian arguments to justify these policies – saying such agreements are a way to drastically reduce the number of deaths at sea and a useful tool to deter smuggling networks – this tendency of outsourcing border management outside of the EU remains of great concern when it comes to the impact of such strategy on the human rights of migrants. Indeed, externalisation policies may increase the likelihood of human rights violations: by delegating its authority to other countries or stakeholders, the EU loses part of its ability to ensure that the human rights of migrants and refugees are effectively protected.

"*If chaos characterised the response of the EU and its member States in 2015, wrong-headed and rights abusing policies have defined 2016*"[113]. This fierce criticism from Human Rights Watch outlines a paradox: while 2015 constituted the absolute record year in terms of arrivals, 2016 saw significantly less people coming to Europe but more deaths, despite the different measures undertaken by the EU. This morbid count of 5,098 people is only a mere estimation

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[110] Bill Frelick, "*The impact of externalisation of migration controls on the rights of asylum seeks and other migrants*", Journal on Migration and Human Security, 5 December 2016.
[111] Keegan Williams and Alison Mountz, "Rising tide – analysing the relationship between externalisation and migrant deaths and boat losses" in Ruben Zaiotti *Externalising Migration Management: Europe, North America and the Spread of 'remote control' practices*, Routledge, 2016, p.32.
[112] UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants*, A/HRC/23/46, 24 April 2013, paragraph 55.
[113] HRW, "*EU Policies put Refugees at risk – An agenda to restore protection*", 23 November 2016 https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk (consulted on 10 June 2017).

based on the dead bodies fished out of the Mediterranean. It does not include those who drowned and whose bodies could not be found, which numbers underestimated. As for him, Matteo de Bellis, Amnesty International's migration researcher, argues that "*no matter how much money European governments invest in international aid projects purportedly intended to address the root causes of displacement, the reality is that EU leaders have so far largely favoured projects which create barriers for migration, and used international aid as leverage to get African governments to cooperate in their implementation*"[114].

This chapter will examine, in a chronological order, the EU-Turkey deal (officially called the EU-Turkey statement), the European Border and Coast Guard (EBCG) agency and the possible deal or partnership with Libya.

1. **The EU-Turkey statement**

As early as 2015, to respond to the pressure at the EU external borders, especially in the aim of assisting frontline States, Italy and Greece, which were facing increasing numbers of arrivals, the European Commission developed a new 'hotspot approach' in the European Agenda on Migration. Hotspots were defined as followed: "*located at key arrival points in frontline Member States, hotspots are designed to inject great order into migration management by ensuring that all those arriving are identified, registered and properly processed*"[115]. This hotspot approach has been subject to vehement criticisms from NGOs. A research from Amnesty International published in November 2016 concluded that its implementation did not alleviate pressure on frontline States and even led to violations of refugees and migrants' rights[116], highlighting cases of ill-treatment and arbitrary detention in Italy. In April 2017, the EU Commission also alerted member states to the situation of children in migration[117], especially unaccompanied minors, who are particularly vulnerable when they arrive in the hotspots.

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[114] Amnesty International "*A radical change is need to failing EU migration policy*", 22 June 2017 https://www.amnesty.org/en/latest/news/2017/06/a-radical-change-is-needed-to-failing-eu-migration-policy/ (consulted on 26 June 2017).
[115] European Parliament Study "*On the frontline, the hotspot approach to managing migration*", May 2016, p.8.
[116] Amnesty International Report "*Hotspot Italy - How EU's flagship approach leads to violations of refugee and migrant rights*", 3 November 2016.
[117] European Commission, Communication "*The protection of children in migration*", 12 April 2017.

Nonetheless, member states decided to increase their political and financial engagement with Turkey. Logical follow-up of the hotspot approach, the EU-Turkey statement[118] was signed on 18 March 2016 between the European Heads of States and their Turkish counterpart to put an end to irregular migration flows departing from Turkey to Europe. It was presented by the European Commission as an effective way to prevent migrants from putting their lives at risk and to organise safe and legal pathways to Europe. Presenting externalisation policies as a way of protecting migrants, and not only as border control management tool, is a classic argument in favour of a security imperative.

As expressed in the text of the deal, key features of the agreement were that all new irregular migrants crossing from Turkey into Greek islands, as from 20 March 2016, would be returned to Turkey; migrants arriving would be duly registered and any application for asylum would be processed individually by the Greek authorities, in cooperation with the UNHCR; for every Syrian being returned to Turkey from Greek islands, another Syrian would be resettled from Turkey to the EU (1:1 mechanism), taking into account the UN vulnerability criteria. Finally, Turkey would take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU. In exchange its efforts to accept the return of irregular migrants, Turkey would receive 6 billion euros from the European Union, along with promises to facilitate visa liberalisation and reenergise discussions around EU accession.

Signing a deal with Turkey was controversial from the get-go. It raises the question of how to conclude partnerships with third countries, a strategy at the heart of the EU's externalisation approach. The Union argues that to build up a comprehensive response all stakeholders in the crisis must be involved, not only the different member states, institutions and agencies but also third countries. If this argument is deemed valid, there are questions which arise from it. How can it be ascertained that states involved will respect human rights? Is the EU not relieving itself of some of its legal and moral obligations by focusing solely on stemming flows of migrants and preventing them from reaching its territory?

Numerous issues have arisen in response to these questions, especially regarding the principle of non-refoulement and the prohibition of collective expulsions. One of the main concerns for NGOs was whether Turkey could be considered as a safe third country for migrants and

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[118] Council of the European Union, *EU-Turkey statement*, 18 March 2016.

refugees. Being the largest host country in the world with around 2,9 million refugees[119], Turkey has to cope with a great number of challenges, especially regarding access to lawful employment and education for refugees. It is important to note that Turkey has not ratified the 1967 Optional Protocol relating to the Status of Refugees, therefore non-Europeans are excluded from qualifying for refugee status in the country. Because of this geographical reservation, refugees from other countries than Syria, for instance those originating from Iraq or Afghanistan, cannot benefit from the same level of protection under the EU-Turkey deal, although their personal situation could make them benefit from such status under international law.

Furthermore, Turkish forces were also accused of deporting refugees back to Syria in violation of international law the same month the deal was signed with the EU[120]. The country also closed its border with Syria in April 2016, while the Syrian camps were shelled by the regime, leaving thousands of people trapped[121].

The dire human rights record of Erdogan's presidency also remains an issue of concern. The attempted coup on 15 July 2016, terrorist attacks and ongoing armed clashes between the PKK (the Kurdistan Workers' Party) and government forces in the southeast show the situation in the country is unstable. 2016 has been characterised by a serious crackdown on human rights targeting especially human rights defenders and civil society activists such as journalists, academics, judges, or members of the police who were dismissed through the course of the year[122]. Additionally, the future of the deal remains very fragile due to growing tensions between Recep Tayyip Erdogan and several EU leaders, especially Germany and the Netherlands[123]. The positive results of the Turkish referendum on 16 April 2017 could potentially threaten the deal's existence. Indeed, there is a risk that President Erdogan uses the

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[119] UNHCR, "*Figures at a glance*", 19 June 2017 http://www.unhcr.org/figures-at-a-glance.html (consulted on 26 June 2017).
[120] Amnesty International, "*Turkey : illegal mass returns of Syrian refugees expose fatal flaws in EU-Turkey deal*", 1 April 2016, https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/ (consulted on 1 May 2017).
[121] HRW, "*Turkey: Open Border to Displaced Syrians Shelled by Government No Escape for Thousands Fleeing Attacks on Border Camps*", 20 April 2016 https://www.hrw.org/news/2016/04/20/turkey-open-border-displaced-syrians-shelled-government (consulted on 1 May 2017).
[122] Amnesty International, Annual Report "*Turkey 2016/2017*", https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/ (consulted on 1 May 2017).
[123] Gordon Darroch, "*Netherlands 'will pay the price' for blocking Turkish visit – Erdoğan*", The Guardian, 12 March 2017 https://www.theguardian.com/world/2017/mar/12/netherlands-will-pay-the-price-for-blocking-turkish-visit-erdogan (consulted on 1 May 2017).

refugee deal as a bargaining chip or a political lever: if European Union members would denounce the authoritarian drift of his regime, he could call the agreement into question and threaten to open his country's gates to let migrants pass.

When it comes to the evaluation of the deal one year after its adoption, the European Union qualifies it as a "*game changer*"[124]. In the 'Fifth Report on the Progress made in the implementation of the EU-Turkey Statement'[125] from March 2017, the Commission argues it "*is producing tangible results, despite the challenging circumstances. The number of crossing since the Statement continues to be substantially reduced and loss of life has been stemmed*"[126]. UNHCR figures show that "*after March, the numbers crossing the sea to Greece from Turkey dropped drastically with arrivals in October 2016 almost 99% lower than in October 2015*"[127]: from an average of 6,828 arrivals a day in October 2015, numbers reached 43 a day in February 2017. In terms of quantitative results, the deal uncontestably had a deterrent effect on the number of arrivals via the Eastern Mediterranean route and can be deemed to be efficient if one focuses only on the drop in numbers. The implementation of the EU-Turkey deal went along with the closure of the Western Balkans route, Eastern European countries having reintroduced fences and tighter border controls measures, making it harder for refugees to reach the Schengen's external borders. For the Commission, the fact that arrivals have decreased shows "*clearly that the business model of smugglers exploiting migrants and refugees can be broken*"[128]. However, situation on the ground is bit more complex.

No longer able to reach Europe through the Balkans, refugees find themselves trapped in Greek camps. There is little improvement with the registration rates at hotpots being of 100% against 8% in October 2015[129] and increased support from the EU institutors and Member States in order alleviate the situation on the Greek islands, but much remains to be done. The humanitarian situation in the Greek islands is deeply concerning with reception facilities being overcrowded, inadequate living conditions in the hotspots (lack of access to food, water,

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[124] European Commission, Factsheet "EU Turkey-statement, one year on", 17 March 2017. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/eu_turkey_statement_17032017_en.pdf (consulted on 1 May 2017).
[125] European Commission "*Fifth Report on the Progress made in the implementation of the EU- Turkey Statement*", 2 March 2017.
[126] Ibid., p.2.
[127] UNHCR Report "*Desperate journeys*", February 2017 http://www.unhcr.org/58b449f54.pdf (consulted on 9 March 2017).
[128] European Commission "*Fifth Report on the Progress made in the implementation of the EU- Turkey Statement*", 2 March 2017, p.2.
[129] Ibid., p.3.

sanitation services, adequate clothing, shelter)[130]. More legal officers also need to be deployed in the different hotspots to avoid delays in processing the asylum claims and asylum seekers being stranded in Greece in the meantime.

Thus, one year after its implementation, the deal remains very much criticised by NGOs. The International Rescue Committee, the Norwegian Refugee Council and Oxfam jointly denounced the fact that "*Greece has become a testing ground for policies that erode protection for refugees*"[131]. Several observers argue the situation has worsened with a displacement of the route towards the Central Mediterranean, which is far more dangerous. For Human Rights Watch (HRW), the main message sent by this deal is that "*protection for refugees could be commodified, outsourced and blocked*"[132].

Despite this, the Commission argues that "*one year on, the EU-Turkey is delivering on its main objectives of reducing the number of persons arriving irregularly to the EU and the loss of life in the Aegean whilst providing safe and legal routes to the EU for those in need*"[133]. It is perceived by Brussels as a core piece of the EU's comprehensive approach on migration and a model for future cooperation deals.

2. The European Border and Coast Guard Agency

Another example of the EU's tendency towards focusing on border security is the creation of the European Border and Coast Guard Agency, officially launched on 6 October 2016 at the Bulgarian external border with Turkey. According to Commissioner Avramopoulos, "*the European Border and Coast Guard is a symbol for the European Union. A symbol of a Europe that is able to deliver, united. We are now better equipped than before to face the migration and security challenges*"[134]. The main mission of the new EBCG Agency is to ensure the border

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[130] Amnesty International, "*The EU-Turkey deal: Europe's year of shame*", 20 March 2017 https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/ (consulted on 10 June 2017).
[131] International Rescue Committee, Norwegian Refugee Council and Oxfam International, Joint Briefing Note "*The reality of the EU-Turkey statement*", 17 March 2017, p.1.
[132] HRW, "*EU Policies put Refugees at risk – An agenda to restore protection*", 23 November 2016 https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk (consulted on 10 June 2017).
[133] Factsheet "EU Turkey-statement, one year on".
[134] European Commission, Press release "*Remarks by Commissioner Avramopoulos at the launch of the European Border and Coast Guard Agency*", 6 October 2016 http://europa.eu/rapid/press-release_SPEECH-16-3334_en.htm (consulted on 1 May 2017).

control of the Schengen area, along with the coordination of national border and coasguards of Member States. The idea behind it was that "*the Schengen area without internal borders is only sustainable if the external borders are effectively secured and protected*"[135].

On 15 December 2015, the EU Commission proposed, to better respond to the migration crisis, to extend and strengthen the mandate of the previous Frontex agency, feeling there was a growing need to improve the security at the external borders of the Union in order to cope with massive influx of migrants and refugees. Weaknesses of the old agency were its unclear and limited mandate (its role was only to support Member States' efforts), its insufficient budget, its lack of operational staff and equipment (it was relying on voluntary contributions from Member States). The need for a prior request of a Member State before the old agency could undertake any action was seen as ineffective and as a lack of authority to effectively meet and address new challenges posed by the migration crisis.

Therefore, responsibilities for border control are from now on shared between Frontex and the Member States: the day-to-day management of the external borders remains the responsibility of Member States while the EBCG agency is in charge of supporting and coordinating controls at land, air and sea borders. It is also tasked with carrying out wider operational duties: processing personal data, return operations (notably in assisting Member States in the return of migrants ineligible to stay in the EU), migration management, fighting against cross-border crimes, search and rescue operations and training of coastguards from EU and non-EU countries. Frontex is now able to deploy its forces more rapidly and to step up in urgent situations when Member States are overwhelmed or do not react, thanks to the rapid reaction pool of at least 1,500 border guards. Additionally, its permanent staff will be doubled by 2020 and the agency is henceforth able to buy its own equipment. Operationalisation is currently underway: as of June 2017, 944 European Border and Coast Guard officers had been deployed in Greece, 402 in Italy, 121 in the Western Balkans and 166 in Bulgaria[136]. Important gaps remain in terms of human resources and equipment and the Commission called on the European

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[135] Frontex, "*European Border and Coast Guard Agency Launches Today*", 6 October 2016 http://frontex.europa.eu/news/european-border-and-coast-guard-agency-launches-today-CHIYAp (consulted on 1 May 2017).
[136] European Commission, Factsheet "*Securing Europe's external borders – A European Border and Coast Guard*", 13 June 2017. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20170613_ebcg_en.pdf (consulted on 1 May 2017).

state to quickly deliver on their commitments[137] so the agency is fully effective in the upcoming months.

Respect for fundamental rights is supposed to be at the heart of the activities of the new Frontex. A written complaint mechanism has been created for any person who has been victim of human rights violations committed while the agency was carrying its activities. The development of a fundamental rights strategy with a strong focus on child and unaccompanied minors should be effected by November 2017[138]. However, the overall ECBG approach concentrates very much on the training of border guards, investments in surveillance technology, the establishment of joint patrols and the increasing the use of military assets[139].

A growing and permanent presence at sea to prevent further losses of the lives of migrants was one of the objectives set forward in the Juncker's Political Guidelines and the European Agenda on Migration. If the Frontex-trained border guards have to save lives at sea, the aim of this increased militarised border presence in the Mediterranean seems to be first and foremost to deter migration. These recent developments show that priority is given to controlling and stopping migration flows, focusing once again on migration as a threat.

Yet Demetrios Papademetriou, president of the Migration Policy Institute, claims that: "*people feeling circumstances they consider intolerable will enter the [irregular] migration stream and test various receiving states' defences repeatedly. They will in fact do so regardless of whether they must risk their own lives, pay exorbitant fees, or subvert the asylum system or any other available means of entry*"[140]. This argument is supported by François Gemenne, researcher specialist of international migrations, who argued in an interview to the French radio broadcast "*Un jour dans le Monde*"[141] that the very reason why people are forced to come to Europe by boats instead of by plane, is because the border is sealed and very well watched over.

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[137] European Commission, *Report on the Operationalisation of the European Border and Coast Guard*, 25 January 2017.
[138] Factsheet "*Securing Europe's external borders – A European Border and Coast Guard*".
[139] Frontex, Report "*Risk analysis for 2017*", 15 February 2017.
[140] Demetrios Papademetriou "*The global struggle with illegal migration: no end in sight*", Migration Policy Institute, 1 September 2005.
[141] France Inter, Un jour dans le monde, "*Crise migratoire: l'Europe menacée de dislocation*", 27 December 2016 (author's translation from French).

3. **Towards a future deal with Libya?**

The last example that will be examined in this chapter are the concerns raised by the possibility of a deal between the EU and Libya to cope with the situation in the Central Mediterranean.

As previously mentioned, the EU-Turkey deal led to a displacement of the main migratory route towards the Central Mediterranean. UNHCR figures shows that fewer people are using the Eastern Mediterranean Route while arrivals from North Africa to Italy have dramatically increased: from April 2016 onwards, Libya has become the main entry point to the European Union. According to the UNHRC Bureau for Europe *"of the 181,436 refugees and migrants who reached Italy in 2016, 90% department from Libya with most boats departing from the west of the country"*[142]. The death toll along this route – longer and more dangerous due to violent tidal streams – raises to one death for every 40 crossings, so over 4581 dead or gone missing for the whole year 2016, according to the IOM's Missing Migrants Project[143].

During the spring 2015, the series of shipwrecks triggered the need to step up and institutionalise EU naval operations in the Mediterranean waters. Although the Italian Navy had launched the humanitarian rescue operation Mare Nostrum in October 2013 – in reaction to the first Lampedusa sinking that caused the death of 368 migrants - it was phased out a year later, due to criticism accusing it of being a pull factor encouraging migrants to come to Europe. Mare Nostrum was replaced by the Frontex-led expanded Operation Triton which now operates in the territorial waters of Italy and some parts of the search and rescue zones of Italy and Malta. It supports Italian navy with border control, surveillance and search and rescue tasks in the Central Mediterranean. Operation Poseidon provides Greece with the same kind of assistance.

A new surveillance operation was also introduced after the outbreak of the crisis: operation EUNAVFOR Med – interestingly renamed Operation Sophia after the name of the first baby born on board, as to show the operation is positively aimed at assisting people, not only monitoring the European waters – was launched on 22 June 2015[144]. Operating outside the

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[142] UNHCR Report "*Desperate journeys*" February 2017 http://www.unhcr.org/58b449f54.pdf (consulted on 9 March 2017), p6.

[143] IOM, Missing migrants Project https://missingmigrants.iom.int/mediterranean (consulted on 11 March 2017).

[144] European Council, Press release "*Council launches EU naval operation to disrupt human smugglers and traffickers in the* Mediterranean", 22 June 2015 http://www.consilium.europa.eu/en/press/press-releases/2015/06/22-fac-naval-operation/ (consulted on 5 May 2017).

Libyan territorial waters, its mission is to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers. Along with this main mandate, Operation Sophia has two supporting tasks: training the Libyan coastguards and navy to enhance their capabilities and contributing to the implementation of the UN arms embargo on the High Seas off the coast of Libya.

Although Operation Sophia indubitably contributed to save lives at sea – over 33,296, along with the arrest of 101 traffickers[145] - it is important to stress that search and rescue activities are not its primary purpose and that its operational mandate does not provide it access to the Libyan territorial waters, where most of the incidents at sea take place: "*consequently, [its]assets were and continue to be deployed as required by [...] principal objective*"[146].

The absence of "*assets patrolling the area of sea close to Libyan waters on a dedicated humanitarian mission*"[147] is one of the reasons why an increasing number of NGOs stepped up to fill in the gaps left by states when it comes to rescue activities. The following non-governmental organisations are currently carrying out search and rescue operations at the limits of the Libyan territorial waters[148]: Médecins Sans Frontières, Sea Watch, Migrant Offshore Aid Station (MOAS), SOS Mediterranée, Pro-Activa, Sea-Eye, Jugend Rettet, Refugee Boat Foundation and Save the Children being the main players[149]. Their presence is somewhat controversial, the Frontex director, Fabrice Leggeri, accused them of encouraging the business of human traffickers and criminal networks[150] while other key stakeholders praised for their contribution in saving lives[151]. According to the European Commission, these NGOs were responsible for 22% of the rescues in 2016[152].

[145] Euroactiv, "*Operation Sofia has saved 33,296 migrants in the Mediterranean*", 17 February 2017 https://www.euractiv.com/section/global-europe/news/operation-sofia-has-saved-33296-migrants-in-mediterranean/ (consulted on 4 July 2017).

[146] Amnesty International, Report "*A perfect storm – The failure of European policies in the Central Mediterranean*", 6 July 2017, p.15.

[147] Ibid., p.14.

[148] Patrick Wintour "*Italian plan to curb Mediterranean rescue boat charities 'threatens lives'*", The Guardian, 3 July 2017 https://www.theguardian.com/world/2017/jul/03/anger-at-rules-plan-for-migrant-charities-in-mediterranean (consulted on 4 July 2017).

[149] European Commission, EPSC Strategic Note "*Irregular migration via the Central Mediterranean*", 2 February 2017, p.2.

[150] Patrick Wintour, "*NGO rescues off Libya encourage traffickers, says EU borders chief*", The Guardian, 27 February 2017 https://www.theguardian.com/world/2017/feb/27/ngo-rescues-off-libya-encourage-traffickers-eu-borders-chief (consulted on 5 May 2017).

[151] Report "*A perfect storm – The failure of European policies in the Central Mediterranean*", p.17.

[152] EPSC Strategic Note "*Irregular migration via the Central Mediterranean*", p.4.

Regardless of this debate, what is certain is that the shifting of the route toward the Central Mediterranean and the increased naval presence in the European waters also induced a change in the *modus operandis* of smugglers, human trafficking having become a very lucrative business in the region. Amnesty International, in its latest report on the situation in the Central Mediterranean, considers that increased surveillance of the European waters and enhanced borders controls led to the deterioration of conditions for crossing, which for the NGO constitute "*the immediate cause for the rising of the death toll*"[153]. Nowadays, traffickers take even greater risks: since the journey between Libya and Italy requires more time (around three days as opposed to a few hours between Turkey and the Greek Islands), they want to make more profit and therefore put larger numbers of people on unseaworthy boats, without enough safety equipment[154] and sometimes just enough fuel to reach international waters[155]. To avoid detection from search and rescue vessels patrolling the Mediterranean, smugglers also started to use inflatable dinghies in place of wooden boats, which can fit up to 140 people but are also more subjected to capsizing.

Fighting against these criminal networks is one of EU's main goals as demonstrated by the Commission which states that "*controlling and reducing irregular flows is a political priority. The EU and Member States must demonstrate the ability to effectively protect their external borders against ruthless networks exploiting the aspiration and despair of irregular migrants and refugees*"[156]. If this shift of techniques used for migrants' smuggling can potentially be seen as a success of the EU policies over traffickers, its impact on the human rights and security of migrants is extremely harmful. Amnesty International reports that departures increasingly occur during the night or under uncertain weather conditions, that most of the boats are no longer equipped with satellite phones which makes it harder to contact these vessels once they are in distress at sea, to determine their location in the Mediterranean and to evaluate the number of persons on board. Furthermore, smugglers tend to make several boats leave at the same time which lead to rescue operations potentially taking place simultaneously[157] creating further complications. This has had dramatic consequences, making rescues attempts significantly more difficult and hazardous.

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[153] Amnesty International, Report "*A perfect storm – The failure of European policies in the Central Mediterranean*", 6 July 2017, p.5.
[154] Ibid., p.10.
[155] HRW, "*Letting people drown is not an EU Value*", 11 April 2017.
[156] European Commission, EPSC Strategic Note "*Irregular migration via the Central Mediterranean*", 2 February 2017, p.1.
[157] Report "*A perfect storm – The failure of European policies in the Central Mediterranean*", p.11-12.

Before elaborating further on the cooperation between the EU and Libya, it is important to note that the country has remains in the grip of political instability, since the 2011 revolution that led to the fall of Colonel Gaddafi who had ruled the country since the end of the sixties. The security environment has deteriorated in recent years with the second Libyan civil war. The country is still divided between two governments, the Government of National Accord (GNA), backed by the European Union and the UN, and the Libyan National Army (LNA) that controls a big part of the territory. Fighting is ongoing, state institutions are seriously hampered and terrorist groups have developed throughout the country. The situation is far from being stabilised[158].

Last February however, based on recommendations from the Commission, the EU heads of states and governments decided to increase cooperation with Libya to stem flows of migrants coming though this route. In the 'Malta Declaration on the external aspects of migration: addressing the Central Mediterranean route'[159] adopted on 3 February 2017, member states affirm that "*a key element of a sustainable migration policy is to ensure effective control of our external border and stem illegal flows into the EU*"[160]. In the same document, they expressed their will to "*reduce migratory flows along the Central Mediterranean route and break the business model of smugglers*"[161]. If once again enhancing partnership with a third country can be a legitimate part of the EU's comprehensive strategy, establishing such cooperation is not without concern, especially after leaders from the Visegrad group said the European Union should establish a "*giant refugee city*"[162] in Libya to process requests from African asylum seekers last September, while the United Nations recalled on several occasions in the last two years that the country was not a safe place.

Firstly, throughout the Malta declaration, there is no mention of the human rights of migrants, except from a very vague introductory statement "*we reaffirm our determination to act in full*

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[158] BBC, "*Why is Libya so lawless?*", 25 May 2017 http://www.bbc.com/news/world-africa-24472322 (consulted on 3 July 2017).
[159] Council of the European Union, *Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route*, 3 February 2017.
[160] Ibid., paragraph 2.
[161] *Malta Declaration*, paragraph 3.
[162] BBC, "*Hungary PM suggests giant migrant city in Libya*" 24 September 2016, http://www.bbc.com/news/world-europe-37463386 (consulted on 30 April 2017).

respect of human rights, international law and European values"[163]. Priorities defined in the cooperation between the EU and Libya concern the training and equipment of the Libyan coastguards and efforts to disrupt the business model of smugglers. Little is said about ensuring reception capacities and conditions for migrants in Libya, although these aspects were included in the Commission communication 'Migration in the Central Mediterranean route, managing flows, saving lives'. The only reference is the paragraph 6.d) of the Malta declaration stating that in cooperating with Libya, the EU will, as a matter of priority, seek to *"ensure adequate reception capacities and conditions in Libya for migrants together with the UNHCR and IOM*"[164]. However, beforehand, the UNHCR and the IOM had warned member states that the UN being granted access to detention centres and being able to provide humanitarian aid was extremely limited due to *"security constraints*"[165]. They stressed their concern over this planned cooperation between the EU and Libya.

Secondly, in a joint report from December 2016 "*'Detained and dehumanised'- Report on human rights abuses against migrants in Libya*"[166], the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights highlighted the tremendous human rights violations migrants suffer in the country. Arbitrary detention, torture, ill-treatment, sexual violence, forced labour, religious persecutions are some of the many abuses monitored by the international community envoys. Situations in migrants' detention centres – both official and unofficial – are particularly dramatic and fall well short of international standards. The UNSMIL's report describes detention conditions that are inhumane and amounting to torture[167]. The report also describes several cases of violations – including unlawful use of force – committed by alleged members of the Libyan coastguard forces when they intercepted migrants at sea. It shall be noted that some militia groups – not controlled by the GNA – have been accused of exercising coastguard functions in some parts of the Libyan waters. Such claim is supported by the report of the UN Panel of Experts on Libya to the Security Council from June 2017, which details violations committed against migrants and refugees by Libyan coastguards but also outlines allegations of their collaboration with

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[163] Council of the European Union, *Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route*, 3 February 2017, paragraph 1.
[164] Ibid., paragraph 6.d.
[165] IOM, *"Joint UNHCR and IOM statement on addressing migration and refugee movements along the Central Mediterranean route"*, 2 February 2017 http://www.unhcr.org/afr/news/press/2017/2/58931ffb4/joint-unhcr-iom-statement-addressing-migration-refugee-movements-along.html (consulted on 4 July 2017).
[166] OHCHR Report *"Detained and dehumanised'- Report on human rights abuses against migrants in Libya"*, 13 December 2016.
[167] Ibid.

smugglers[168]. Several incidents involving the Libyan Coast Guard – including attacks against migrants and against NGOs rescue boats – have been described by Amnesty International which claims that "*the intervention of Libyan coastguards units in the past year has repeatedly put in danger the safety and lives of both NGOs' crews engaged in rescue operations in international waters and also of refugees and migrants, both because they have resorted to firearms and violence, but also because of their operating at sea in plain disregard of basic security protocols and standards*"[169]. So far, most of the perpetrators remain unpunished, due to the collapse of the Libyan justice system[170].

Such findings are supported by evidences gathered in several reports from non-governmental organisations working in Libya or in the hotspots. At the end of February 2017, the Worldwide Movement for Human Rights (FIDH), alongside with twenty-seven other NGOs, warned the EU Member States that "*the decision to transfer the responsibility for managing migratory movements along the central Mediterranean route to Libya will significantly increase harm and suffering*"[171] and would have little to no effect on ending migrant smuggling, traffickers shifting their activities to other routes. In fact, consequences of such deal are likely to lead to greater numbers of arrests and detentions, that will therefore increase the likelihood of human rights violations, trapping migrants in a country torn by conflict and insecurity. In an open letter from May 2017 addressed to the Austrian Foreign Minister, Sebastian Kurz – who during a visit to Libya said that "*migrants who are saved in the Mediterranean should not be guaranteed a ticket to Central Europe*"[172] and praised the Australian model of offshore processing, practices notwithstanding denounced by the United Nations in 2016[173] – the HRW Libya researcher

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[168] Security Council, *Final report of the Panel of Experts on Libya established pursuant to resolution 1973(2011)*, S/2017/466, 29 June 2017.

[169] Amnesty International, Report "*A perfect storm – The failure of European policies in the Central Mediterranean*", 6 July 2017, p.26.

[170] Ibid., p.19-21.

[171] FIDH "*EU - Libya cooperation : serious risks of migrants' rights violations*", 22 February 2017, https://www.fidh.org/en/issues/migrants-rights/eu-libya-cooperation-serious-risks-of-migrants-rights-violations (consulted on 4 July 2017).

[172] Wieland Schneider "*Brauchen EU-Hilfe gegen Schlepper*" Die Presse, 1 May 2017 http://diepresse.com/home/ausland/aussenpolitik/5209903/Kurz-in-Libyen_Brauchen-EUHilfe-gegen-Schlepper (consulted on 26 June 2017).

[173] United Nations, "*Australia and Nauru must end offshore detention; investigate claims of abuse – UN rights office*", 12 August 2016 http://www.un.org/apps/news/story.asp?NewsID=54669#.WWdidrZLfcs (consulted on 26 June 2017).

qualified detention facilities as places where *"authorities are holding detainees in abyssal, overcrowded conditions"*[174].

Fostering cooperation with Libyan border guards is presented as a capacity-building measure by the EU. Improving their capacities and providing them with better equipment so they can save lives at sea is indeed an important long-term goal but it cannot be used as a way for the European Union to clear itself of responsibility. Indeed, while the EU law and principles forbid sending back people in a third country where they could face persecution or torture, if migrants and refugees in distress at sea are rescued by Libyan border guards next to the Libyan coast, then the principle of *non-refoulement* is not applicable anymore. As argued by HRW, *"people rescued in Libyan waters by Libyan authorities or intercepted and prevented from leaving those waters do not trigger an EU state responsibility and therefore no non-refoulement obligations"*[175]. If this deemed acceptable from a legal point of view, it remains problematic when it comes to the human security of migrants who will be disembarked in Libyan shores, although it remains an unsafe place for returns.

Moreover, transferring responsibility to the Libyan authorities is also problematic because there is no legal protection regime in place in Libya: the country is not party to the 1951 Refugee Convention and has no effective migration governance framework in place at the national level according to the United Nations[176]. Ahead of the Malta Summit last February, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, warned EU Heads of States *"against supporting a system in which migrants are pushed back to places where they may be at risk of torture, and cruel, inhuman or degrading treatment"*[177] in application of the principle of non-refoulement. He recalled them that *"any engagement with third countries needs to be in line with international human rights standards"*[178]. When cooperating with third countries, the EU should encourage its partners to ratify and implement international human rights instruments, such as the Refugees Convention, in accordance with the article 21 TEU. Regarding the

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[174] HRW, *"Open Letter to Austrian Foreign Minister Sebastian Kurz on Libya"* , 3 May 2017
https://www.hrw.org/news/2017/05/03/open-letter-austrian-foreign-minister-sebastian-kurz-libya (consulted on 26 June 2017).
[175] HRW, *"EU Policies put Refugees at risk – An agenda to restore protection"*, 23 November 2016
https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk (consulted on 10 June 2017).
[176] OHCHR Report, p.11.
[177] OHCHR, Press release *"Malta Summit: Is Libya the right disembarking point for migrants?"*, February 2017
http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21140&LangID=E#sthash.XUEuwy5C.dpuf (consulted on 1 May 2017).
[178] Ibid.

training activities undertaken by Frontex, effective vetting procedures must be put in place to ensure that border guards have not committed human rights abuses while carrying out their activities.

Thus, as things stand, engagement with Libya remains at this stage clearly problematic. The European Union is well-aware of the tremendous violations migrants face in the country, nonetheless, its leaders decided to focus on keeping arrivals through the Central Mediterranean down, by making sure that border control is strengthened directly in the Libyan waters. However, the increase of 14% of departures from Libya in the first six months of 2017[179] shows that the logic of deterrence has so far proven to be ineffective and this focus on border security does not prevent the people from attempting to make their way to Europe.

Overall, if living conditions and security of migrants and refugees in Libya do improve, it will not stop people from undertaking desperate journeys. If it must be acknowledged that the EU is taking concrete steps towards the stabilisation of the country, it is a political and diplomatic process that will require several years. For Matteo de Bellis, the "*current policy undermines any claim by the EU to be a standard bearer for human rights*"[180]. Indeed the current migration cooperation with Libya does not reflect the values upon which the European Union was founded, nor does it effectively protect the human rights of migrants and refugees who continue to greater risk their lives at sea.

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[179] Amnesty International, Report "*A perfect storm – The failure of European policies in the Central Mediterranean",* 6 July 2017, p.5.
[180] Amnesty International, Press release "*A radical change is needed to failing EU migration policy*", 22 June 2017.

Chapter 4: Behind the disagreement – Competing views on the EU's role on migration and border control issues

> *"Solidarity is the glue that keeps our Union together. When it comes to managing the refugee crisis, we have started to see solidarity. I am convinced much more solidarity is needed. But I also know that solidarity must be given voluntarily. It must come from the heart. It cannot be forced"*[181].
>
> Jean-Claude Juncker, State of the Union 2016.

This fourth chapter will provide an analysis of the divergent views regarding the European Union's role on migration and border issues. The positions of specific categories of member states and different EU institutions will be touched upon, with the aim of explaining the impact such competing views have on the overall EU's response.

It will be argued that the way the EU has been tackling the migration crisis so far is a tell-tale sign of a deeply rooted political and ideological divide over the role of the European Union in border and migration management. There is a lack of consensus among member states over the Union's means to face this challenge. As expressed by several members of the European Parliament in the very first months of the crisis, "*the real divide revealed by today's migration challenges to the EU is between 'pros' who want to use the EU to solve these challenges, and 'antis' who want to use them to dissolve the EU*"[182]. Europe faces a crucial time when it comes to further integration, with leaders strongly divided on this question. It is sometimes argued that the absence of cooperation could lead to the dislocation of the European ideals. Be that as it may, the EU migration governance is seriously questioned by the fact that some stakeholders are not predisposed or willing to fully cooperate in this field, which makes any collective and comprehensive solution difficult to be found.

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[181] European Commission, *State of the Union Address 2016 "Towards a better Europe – a Europe that protects, empowers and defends"*, 14 September 2016.
[182] European Parliament, Press release "*Migration debate, the real divide*", 27 October 2015
http://www.europarl.europa.eu/news/en/press-room/20151022IPR98824/migration-debate-the-real-divide
(consulted on 15 June 2015).

Angela's Merkel notorious declaration "*Wir schaffen das!*"[183] from 31 August 2015 – illustration of the open-door policy towards refugees, the '*Willkommenskultur*', embraced by the German chancellor – was heavily criticised at the European level. Some leaders saw the German's stance – taken unilaterally without official support from Brussels – as a way of jeopardising the EU policies. One year later, after the arrival of more than 1.1 million refugees and the Cologne New Year's attacks that deeply shaken the German public opinion, Merkel renounced to use this motto, stating that it had become a "*hollow formula*"[184].

Last September, President Jean-Claude Juncker expressed his deepest concerns over the overall political situation in Europe: "*I have witnessed several decades of EU integration. There were many strong moments. Of course, there were many difficult times too, and times of crisis. But never before have I seen such little common ground between our Member States. So few areas where they agree to work together*"[185].

Even in cases when member states manage to come to a compromise at the highest political level, there are little mechanisms in place to cope with the lack of implementation of agreed policies once they are adopted, which remains a problem to effectively tackle the crisis. The enforcement of EU legislations and policies agreed upon by the different institutions lies in the hands of its agencies and its member states and their effective implementation is sometimes far from being granted. The unwillingness of some countries to deliver on their pledges can be noticed via unmatched financial commitments and refusal to fully participate in some EU-wide programmes.

This failure by member states to keep their promises alive makes it more difficult for the Union to cope with the migration crisis in a coherent manner. The lack of political commitment results in a genuine test of leadership for the EU migration governance system.

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[183] This expression can be translated as "*we can do this*" in English.
[184] Emmet Livingstone, "*Angela Merkel drops the we can do it slogan*", Politico, 17 September 2016 http://www.politico.eu/article/angela-merkel-drops-the-we-can-do-it-slogan-catchphrase-migration-refugees/ (consulted on 6 July 2017)
[185] European Commission, *State of the Union Address 2016 "Towards a better Europe – a Europe that protects, empowers and defends"*, 14 September 2016.

1. **Diverging views between Member States**

The position of every single EU member state regarding the migration crisis will not be elaborated in detail in this research. This is the reason why this part focuses on three main categories of member states, which positions are deemed influential in the way the Union has reacted and continues to respond to the crisis: the countries who have been holding the presidency of the Council of the EU in the last year and a half, the members of the Visegrad group and the frontline states.

1.1. The Council of the EU presidencies' priorities

Since the breaking out of the crisis, migration issues form an integral part of the priorities of the succeeding rotating presidencies of the Council of the European Union. Every six months, in January and July, this presidency of the Council – body representing the different EU governments and in charge of coordinating EU policies, negotiating and adopting legislation in its quality of co-legislator – rotates between one of the 28 EU Member States. The designated country is in charge of setting the agenda, managing and driving forward the Council's work. Each presidency is based on the principle of the triple shared presidency[186], meaning the members of the trio identify the main priority areas for the 18-month ahead and work together to address and implement these priorities. Such an approach aims at ensuring consistency and continuity of actions under the different presidencies. Between January 2016 and June 2017, timeframe of focus of this research, the trio presidency was composed by the Netherlands, Slovakia and Malta.

The Netherlands were the country in charge of the presidency in the first half of 2016. A comprehensive approach to migration and international security was their first priority as president. In their view, the migration crisis "*has revealed various shortcomings in the European area of freedom, security and justice that require action*"[187]. The accent was put on three elements: controlling the external borders, improving the reception of refugees in Europe and increase burden-sharing between Member States. To develop a comprehensive response,

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[186] Council of the European Union "*The presidency of the Council of the EU*"
http://www.consilium.europa.eu/en/council-eu/presidency-council-eu/ (consulted on 1 July 2017).
[187] Dutch Ministry of Foreign Affairs, "*Programme of the Netherlands Presidency of the Council of the European Union*", 2016 http://www.eunec.eu/sites/www.eunec.eu/files/attachment/files/nationaal-programma-engels.pdf (consulted on 1 July 2017).

the Netherlands called for greater junction between internal and external policies and stressed the need to tackle the root causes of migration and to fight against migrants' smuggling. They recognised that conflicts and human rights violations were some of the main drivers for migration[188]. Developing partnerships with third countries was also set out as a priority[189].

When it comes to Justice and Home affairs, finding a European solution to the migration issue was key for the Netherlands. Committed to implement the 2015 European Agenda on Migration, the presidency announced that it would "*take steps resulting in a fair distribution of the first asylum seekers to arrive and the processing of applications for asylum, and the further improvement of the security of Europe's external borders*"[190]. In its agenda, the Dutch government expressed its will to "*include the successful implementation of the recent decisions on the relocation of 160,00 asylum seekers, the effective functioning of the hotspots and steps to foster cooperation between member states*"[191].

Then, Slovakia, member of the Visegrad group, held the presidency between 1 July and 31 December 2016. The development of a sustainable migration and asylum policy was one of its four priority areas, as formulated into its programme of work: "*the presidency intends to encourage sustainable EU migration and asylum policies, which will be based on the protection of external borders, restoration of the Schengen area, cooperation with third countries and solidarity*"[192]. Calling for a move away from crisis management to go towards more sustainable and longer-term solutions, emphasis was put on three different aspects: the restoration of a well-functioning Schengen area – qualified as "*one of the greatest benefits of European integration for EU citizens*"[193] – via a regained control of the EU external borders that constitute "*the only way to manage migration more effectively, improve the internal security of the European Union and preserve the free movements of persons*"[194]. In this regard, the establishment of the European Border Guard agency under their presidency was a key priority. The second aspect was to increase the resort to information technology systems at the external borders, to move

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[188] Ibid., p.13.
[189] Ibid., p.16.
[190] Ibid., p.16.
[191] Ibid., p.16.
[192] Slovak Ministry of Foreign and European Affairs, "*Programme of the Slovak Presidency of the Council of the European Union*", 2016, p.9.
[193] Ibid., p.9.
[194] Ibid., p.9.

towards the so-called Smart borders package[195], proposed by the European Commission in February 2013. Such smart borders will "*contribute to the fight against irregular migration and strengthen the internal security of the European Union, enabling it to better deal with the current threats*"[196]. Thirdly, the final aspect was integrating cooperation with third countries as part of the EU comprehensive approach to migration with a focus on addressing the roots of migration flows in order to "*eliminate causes of migration*"[197]. Slovakia praised the example of the EU-Turkey deal which "*led to a significant drop in migration flows in the Aegean and the stabilisation of the situation on the Western Balkans migration route*"[198]. Interestingly, terrorism and the issue of radicalisation were discussed under this policy area, although no mention was clearly made about the interlinkages between migration and terrorism in the text.

No concrete proposal was made regarding the European asylum system nor regarding integration in hosting societies. The language used in the paragraph devoted to the joint European asylum system remains quite blur: "*the Slovak presidency feels a strong responsibility for further developments in this debate, and wishes it to move forward in those areas where there is agreement among the Member States.*"[199]. Further along, when the presidency elaborates on the Justice and Home Affairs Council configuration, its task regarding asylum is described as followed: "*a significant part of the Slovak Presidency's tasks will be the work on a new generation of European law on asylum. Building on the work of the Dutch president, we will pursue the ongoing negotiations on individual legislative proposals to over the division in the Council on certain points and to achieve as much process as possible*"[200]. On several occasions, Slovakia stresses the importance of consensus building, so the "*EU can move away from crisis management*"[201] and of "*restoring the general trust in the EU's capability to handle this challenge*"[202]. As it be explained at a later stage, according to the members of the Visegrad group, consensus should be the basis for any EU-wide decision on migration issues.

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[195] European Commission, Factsheet "*Smart Borders packages, questions and answers*", 6 April 2016 http://europa.eu/rapid/press-release_MEMO-16-1249_fr.htm (consulted on 5 July 2017).
[196] Slovak Ministry of Foreign and European Affairs, p.9.
[197] Ibid., p.9.
[198] Ibid., p.9.
[199] Slovak Ministry of Foreign and European Affairs, p.10.
[200] Ibid., p.21.
[201] Ibid., p.10
[202] Ibid., p.14.

Finally, Malta took the presidency of the Council of the European Union during the first semester of 2017, our last period of focus for this thesis. Migration was the first area outlined in its programme and the Maltese priorities were twofold: *"push for the swift implementation of measures have already been agreed upon [and] ensure that the issue remains on the top of the agenda"*[203]. The country recalled that European citizens expect actions on part of the Union on this topic: *"we cannot afford to have a complacent EU that does not treat this subject with the urgency and importance it deserves*[204]". Some of the concrete proposals contained in the Malta programme were: the strengthening and streamlining of the Common European Asylum System to distribute the migration load among member States more fairly, the revision of the Dublin regulation as a key priority, the better implementation of the agreed promised relocation of 160,000 refugees and asylum seekers, the need to push for a holistic approach to migration in which internal and external aspects are included[205]. In their programme, security priorities are detailed under a different chapter.

1.2. The position of the Visegrad countries

The four Visegrad countries have been under the spotlight due to their vocal anti-migrants' stance since the upsurge of arrivals to Europe. Hungary especially made the headlines for its hostile attitude towards migrants and refugees. A new border regime was put in place in the summer 2015 with Budapest building razor wire fence at its border with Serbia and Croatia[206]. The country has been accused of push-backs practices committed by states authorities[207]: legislation from July 2016 allows for the forced return of irregular migrants and refugees apprehended within 8 kilometres of the Serbian border. A recently passed law permits the blanket detention of asylum seekers in container facilities *"where they would be detained without a detention order, and with no time limit"*[208]. Its prime minister Victor Orbán regularly expresses his unwillingness to receive migrants in his country, saying they are not needed in

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[203] Maltese Ministry for European Affairs and Equality, "*2017 Maltese Presidency of the Council of the European Union priorities*", 2017, p.2.
[204] Ibid., p.2.
[205] Ibid., p.2.
[206] Daniel Nolan, "*Desperate migrants find holes in Hungary's razor-wire fence strategy*", The Guardian, 26 August 2015 https://www.theguardian.com/world/2015/aug/26/hungary-migrants-razor-wire-fence-roszke (consulted on 6 July 2017).
[207] UNHCR, Press release "*UNHCR concerned Hungary pushing asylum seekers back to Serbia*", 15 July 2016 http://www.unhcr.org/news/latest/2016/7/5788c85a4/unhcr-concerned-hungary-pushing-asylum-seekers-serbia.html (consulted on 6 July 2017).
[208] HRW, "*Lost opportunity in Hungary, EU's Commission's silence undermining the rights of migrants*", 4 April 2017.

the Hungarian society: "*for us migration is not a solution but a problem… not a medicine but a poison, we don't need it and won't swallow it*"[209]. The Polish government defends a similar approach, the leader of the ruling party Law and Justice (PiS) recently declared that: "*we have not opened Europe for refugees – Ms Merkel has. And it is Ms Merkel and Germany that have to bear the consequences, not Poland*"[210].

In recent years, central European countries have been affected by the rise of right-wing populist movements defending the return to nationalism and closed borders, stating that European is facing an identity crisis and that it is the role of the Visegrad countries to ensure the defence of the Christian roots of Europe, threatened by the arrivals of migrants mostly originating from Muslim countries. This anti-migrants' populist surge has had effects on policies adopted at the national level. Furthermore, they rejected what they called 'the diktat from Brussels' and blocked their participation in the EU quota system as it will be demonstrated later.

Two main documents summarise the Visegrad common position on the matter of migration. In the Joint Statement on Migration[211] from 15 February 2016, the Visegrad Group outlines its view on how the EU should face and answer to migration challenges. While they reiterate their support for decisions favouring the strengthening of the external borders and cooperation with third countries, they recalled their opposition to the existence of any EU permanent and compulsory relocation mechanism. According to them "*a swift implementation of measures agreed at the European Union level to strengthen external border protection must remain the top priority if we are to prevent the 2015 scenario from repeating*"[212]. If border security is not prioritised, they fear the situation will quickly become "*out of control*"[213] and that stability in the Balkan region would be seriously altered. These countries expressed their support for a reform of Frontex and the creation of the European Border and Coast Guard agency. They were also in support of increased cooperation with Turkey, whose role "*in stemming the migratory flows and combating human trafficking is crucial*"[214]. The importance of finding a balance between states' sovereignty and the EU powers is highlighted throughout the statement.

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[209]Agence France Presse, "*Migration is 'poison' for Europe, says Hungary PM*, 26 July 2016 https://www.afp.com/en/news/205/migration-poison-europe-says-hungary-pm (consulted on 23 June).
[210] Reuters, "*Poland's Kaczynski blames Merkel for EU's migration issues*", 20 May 2017 http://www.reuters.com/article/us-europe-migrants-poland-idUSKCN18G0RC (consulted on 6 July 2017).
[211] Visegrad Group, "*Joint Statement on Migration*", 15 February 2016.
[212] Ibid.
[213] Ibid.
[214] Ibid.

However, border control measures are presented as the cornerstone of any European solution: "*the strategic objective is now to preserve Schengen, which can only be achieved by regaining control over the European Union's external borders*"[215].

This view was strengthened a few months later, in a joint declaration of the Visegrad Prime Ministers[216] after a summit in Prague on 8 June 2016. In this statement, the Visegrad group denounces "*signs of erosion of mutual trust and emergence of new dividing lines*"[217] in Europe as compared to the situation in the 1990s. Their position is that European integration will only be successful if member states are able to recognise the existence of potential disagreements and divides between themselves and manage to tackle them through constructive dialogue.

They play the card of Euroscepticism: "*trust in the European Union and in its institutions depends to a large degree on the ability of the European Union to tackle the migration challenge in an effective manner*"[218]. In addressing migration challenges, two aspects are essential for them, namely the fact that any solutions agreed to at the European level must rest upon consensus and feasibility. They reemphasise "*their continued support for a thorough protection of the European Union external borders, proper border management, fully functioning hotspots, effective return policies, treating the root causes of migration right at their source and full implementation of the EU-Turkey deal*"[219]. Interestingly, later on, they express their solidarity with frontline states and say they stand ready to provide them with further support, while they continue to refuse any agreement over "*a mandatory system of redistribution of asylum seekers*"[220], judging it will constitute a pull factor for migrants and will create disagreement within and between member states. The last suggestion made by the Visegrad group is to establish hotspots outside the Union's territory.

Anna Lindley explores how some political actors construct migration as a crisis phenomenon that threatens "*the integrity of the nation state and bounded identities*"[221]. She explains that portraying a situation as a threat is a mean for political leaders to relay the discontentment from their population and to reinforce their political power in the sense that "*it serves to justify or*

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[215] Ibid.

[216] Visegrad Group, "*Joint Declaration of the Visegrad Group Prime Ministers*", 8 June 2016.

[217] Ibid.

[218] Visegrad Group, "*Joint Declaration of the Visegrad Group Prime Ministers*", 8 June 2016.

[219] Ibid.

[220] Ibid.

[221] Anna Lindley, *Crisis and migration - Critical Perspectives*, Routledge 2014, p.1.

reorient the dominant policy agenda in what they deem desirable"[222]. Their position and their unwillingness to cooperate further on some aspects of the European migration policies reveal a broader disagreement over the transfer of sovereignty powers to the Union.

1.3. The view of Frontline states

François Crépeau, appointed UN Special Rapporteur on the human rights of migrants in June 2011, dedicated his first regional study to the management of the external borders of the European Union and its impact on the human rights of migrants[223]. In his report published in 2013, he paid special attention to the situation in Italy and Greece, countries located at the southern shores of Europe, explaining that "*those member states geographically situated at the external border of the European Union free movement area, find themselves not only responsible for the management of their national borders, but also custodians of the external border of the entire European Union*"[224]. The frontline states are supported in this task by EU agencies such as Frontex, but they mostly remain the ones carrying out border management activities on behalf of all EU countries. In his conclusions, the Special Rapporteur already called for more solidarity and responsibility-sharing among member states in the area of border management, asylum and migration[225]. Insufficient sharing of responsibilities with external borders states was already an issue of concern two years before the start of the crisis.

If Greece was the major point of entry for migrants and refugees reaching Europe in the first months of the crisis, since the progressive close of the Eastern Mediterranean route, Italy has become again the main gateway to Europe, receiving the largest number of irregular migrants in 2016. Being some of the European countries which economies have been the most seriously hit by the 2008 financial crisis, this situation led to serious tensions at the national level. Indeed, Italy and Greece face serious socio-economic challenges when it comes to managing the massive influx of migrants. Receptions centres in both countries are overcrowded and the unprecedented numbers of requests led to a saturation of their national asylum systems. In

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[222] Lindley, p.6.
[223] UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants*, 24 April 2013, A/HRC/23/46.
[224] Ibid., paragraph 24.
[225] Ibid., paragraph 86.

accordance with the 2013 Dublin III regulation[226], asylum requests must be lodged in the countries of first arrival to the EU, in charge of processing these asylum claims.

Matteo Renzi, former Italian Prime minister, had warned its counterparts about this de facto unfair situation. In an opinion piece titled '*The Mediterranean migrant emergency is not Italy's. It is Europe's*' published in the British newspaper The Guardian, Renzi asked for a better distribution of asylum-seekers throughout Europe stating that "*whoever has the right to asylum must be welcome in Europe, not just in Italy, despite the EU's Dublin regime. But it is inconceivable that one country should tackle the entirety of this problem on its own. Responsibility and solidarity are concepts that go hand in hand*"[227]. In 2016, the Italian government even threatened to veto the EU budget if no further significant steps were taken by the other states. The Greek national authorities made similar demands, requesting Europe official assistance via the EU Civil protection mechanism[228] at the end of 2015.

Proposals to alleviate the burden born by these countries of first entry were made by the EU institutions as soon as the crisis broke out, in accordance with article 80 TFEU. Discussions around a much-needed reform of the Dublin system having so far led nowhere, the Union decided to adopt temporary mechanisms.

The adoption of an emergency relocation[229] scheme by the Council of the EU was a crucial aspect in this approach. The promise made on 22 September 2015 by the EU Home Affairs ministers to relocate 160,000 asylum-seekers from Italy and Greece to other member states by September 2017 has not been effectively implemented so far. In early June 2017, figures from

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[226] Council of the European Union, *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast),* 29 June 2013.

[227] Matteo Renzi, "*The Mediterranean migrant emergency is not Italy's. It is Europe's*", The Guardian, 23 June 2015 https://www.theguardian.com/commentisfree/2015/jun/23/mediterranean-migrant-crisis-not-italy-but-europe (consulted on 23 April 2017).

[228] Mechanism designed to assist member states in crisis situations, providing them with governmental aid such "*modules (teams and equipment), shelter, medical supplies and other non-food items such as expertise*". European Commission, Press release "*Refugee crisis, Greece activate EU civil protection mechanism, agrees Frontex operation at border with former Yugoslav Republic of Macedonia and triggers RABIT mechanism*", 3 December 2015 http://europa.eu/rapid/press-release_IP-15-6249_en.htm (consulted on 7 July 2017).

[229] By relocation, the EU designates the "*distribution among member states of persons in clear need for international protection*". Criteria reflecting capacities of member states to integrate refugees will be taken into account when deciding on the number of refugees they should relocate such as the size of the population, the total GDP, the average number of asylum applications and efforts made in the past as well the unemployment rate. European Commission, Communication "*A European Agenda on Migration*", 13 May 2015, Annex European schemes for relocation and resettlement, p.19.

the Commission showed that 20.869 people had been relocated under this scheme, 6,896 from Italy and 13,973 from Greece[230] which constitutes only 13% of promised refugees' relocations. Although the Commission expressed its satisfaction over increased efforts from member state, the state of play shows that the pace of relocation must accelerate if the EU wants to meet its targets by next September. Detailed data demonstrate that some countries opposed the relocation scheme with Hungary and Poland refusing to take any refugees, and Czech Republic and Slovakia having respectively relocated 12 and 16 people from Greece (in comparison, Germany accepted the relocation of 5,658 people)[231]. Austria has not welcomed any refugees yet but pledged to accept 50 people in May 2017.

In the twelfth progress report on the EU's emergency relocation and resettlement scheme, the Commission argues that "*relocation works if there is the will to abide by what was agreed together in a spirit of sincere cooperation*"[232]. The Commission had also proposed the set-up of a permanent relocation system but as previously mentioned, its plan met strong opposition from several member states.

Although slight improvement regarding the relocation scheme seems to be underway and could help easing the burden on the EU frontline states, Italy seems overwhelmed and unable to deal with the situation on its own, with the ever-growing numbers of arrivals. In the last week of June alone, more than 11,000 migrants and refugees reached its ports[233] and summer is likely to become the 2017 peak season due to better navigation conditions. On 28 June 2017, the Italian government said the border pressure is no longer sustainable, the country having reached a saturation point, and threatened to block access to its ports to the humanitarian vessels rescuing migrants in the Mediterranean, unless the EU accepts to share the burden more equitably[234].

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[230] European Commission, Factsheet "*Managing the refugee crisis – Update on Relocation and resettlement*", 13 June 2017.
[231] Ibid.
[232] European Commission, Press release "*Relocation and Resettlement. Commission calls on all Member States to deliver and meet obligations*", 16 May 2017.
[233] Patrick Wintour, "*Italy considers closing its ports to boats carrying migrants*", The Guardian, 28 June 2017 https://www.theguardian.com/world/2017/jun/28/italy-considers-closing-its-ports-to-ships-from-libya (consulted on 7 July 2017).
[234] Lizzie Dearden, "*Italy threatens to close ports to humanitarian refugee rescue ships as it reaches 'saturation point'*", The Independent, 29 June 2017 http://www.independent.co.uk/news/world/europe/italy-close-ports-humanitarian-refugee-ships-saturation-point-migrant-boats-rafts-mediterranean-a7814121.html (consulted on 7 July 2017).

2. <u>A limited leeway for the EU institutions</u>

The preceding section highlighted the different views of member states and demonstrated the crucial role they play in prioritising specific areas of focus for the EU answer. The following section will now give an overview of the actions undertaken by the Commission and the Parliament. If, as argued in chapter 3, some of the EU initiatives to address the migration and border control challenges can legitimately be criticised for not taking enough into account the human rights and security of migrants, it cannot however be argued that these two institutions stayed still and did not try to push for collective solutions to be agreed upon and carried out by member states.

2.1. Impetus from the European Commission

The role and influence of the Commission is undermined by the attitude of the European Council and the inability of its members to follow a coherent plan. For François Gemenne, "*the EU Commission has made proposals. Member States are the ones who systematically block proposals from the Commission to establish a common EU project for asylum and migration because they fear to give up a little bit of sovereignty*"[235]. In an interview conducted on 21 June 2017 in Brussels, the Dutch Green MEP Judith Sargentini argued that the EU Commission would have more leverage on its own but that its influence and its room for manoeuvre are diminished by the weight of the European Council[236].

One of the deficiencies of the Commission in addressing this crisis is that fact that it tends to act more as a policy coordinator, following the European Council recommendations, rather than as a truly policy initiator, as it is yet its mandate according to the EU treaties. As asserted by Cécile Kyenge, Italian MEP, member of the Socialists and Democrats group and former Italian Minister of Integration, several concrete proposals for progress were made by the Parliament and the Commission in 2016 "*that was not the case for the Council, which normally would be expected to enact these proposals on the short, medium and long-term*"[237]. In her view, what is missing is not proposals, it is political will.

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[235] France Inter, Un jour dans le monde, "*Crise migratoire : l'Europe menacée de dislocation*", 27 December 2016 (author's translation from French).
[236] Interview conducted by the author at the European Parliament, in Brussels, on 21 June 2017.
[237] France Inter, Le téléphone sonne "*Crise migratoire: que peut l'Europe ?*", 4 July 2017 (author's translation from French).

François Crépeau maintains that "*the complex interplay between European Union and national competencies in the field of migration is often exploited […] member states advocate for opaque policies at the regional level, and the use those standards to enable the implementation of more restrictive domestic policies with regards to migration, and then subsequently seek to attribute this to the regional system*"[1]. Efforts from the Commission are impeded by the lack of consensus and the inability of member states to act as a single voice.

If member states do not manage to create momentum in the direction, the Commission has little power to make sure decisions are enforced. Regularly since the adoption of the European Agenda on Migration, leaders of the EU institutions repeatedly called upon member states to deliver on their pledges, stressing the urgency of the problem and the necessity to gather support from politicians: for Jean-Claude Juncker, "*we need more Europe in our asylum policy, we need more Union in our refugee policy. It's a question of shared solidarity*"[238].

The following statements from Commissioner Avramopolous are indicative of the Commission position: in March 2107, he argued that "*responsibility cannot be fairly shared without solidarity. All our measures are interlinked and member states cannot cherry-pick them what they deliver on*"[239]. Later in May he "*[called] on those member states who have systematically failed to deliver on their obligations to start doing so at once*"[240] and in a speech from 13 June 2017, he declared that "*it is entirely feasible to show solidarity to both the people in need as well as countries under pressure, who are hosting them […] what it takes is political will and a spirit of commitment to our European obligations*"[241].

Beyond blaming heads of state and governments for their inaction or slowness, the Commission also has the power to launch infringement proceedings against countries who fail to comply with EU law. After several warnings, Brussels decided to launch infringement procedures against Poland, Hungary and the Czech Republic on 13 June 2017 for their refusal to participate

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[238] European Commission, Video "*A European agenda on Migration, two years on*", 8 November 2016 http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I127496
[239] European Commission, Press release "*Commission calls for renewed efforts in implementing solidarity measures under the European Agenda on Migration*", 2 March 2017.
[240] European Commission, Press release "*Relocation and Resettlement: Commission calls on all Member States to deliver and meet obligations*", 16 May 2017.
[241] European Commission, Speech "*Progress under the European Agenda on Migration: Press conference by Commissioner Avramopoulos*", 13 June 2017.

in the EU temporary relocation scheme, which constitutes a breach of their legal obligations under EU law[242]. For observers, this choice of going forward with legal proceedings is the sign of "*a sharp escalation in the disagreement over how to handle migration which was sparked by the 2015 migration crisis*"[243].

On 1 March 2017, a few weeks ahead of the 60th anniversary of the signing of the Treaties of Rome, the EU Commission published a 'White Paper on the Future of Europe'[244] exploring five possible scenarios about how the Union will look like by 2025. Considering that Europe is at a crossroads, the Commission strives to detail how a multi-speed Europe, a Union only focusing on the single market or a more integrated EU would look like. In the words of President Juncker: "*blaming 'Brussels' for problems while taking credit for success at home, the lack of ownership of joint decisions and the habit of finger-pointing at others have already proven damaging. European are not immune to these stark images of disunity*"[245]. This inability to curb irregular migration and effectively manage border pressures whilst protecting human rights of migrants and refugees poses questions about Europe's very own future and the EU calls on its member states together decide how they want to move ahead.

2.2. The rising voice of the EU Parliament

The migration crisis has been taken up seriously by the European Parliament. Despite the fact it is composed by political streams with extremely diverging views on migration management and control – with MEPs promoting "*automatic and obligatory pushbacks at internal borders*"[246] and others qualifying the EU-Turkey deal of a "*moral failure*"[247] – the Parliament took the lead on this question and showed genuine interest in debating over the best way to

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[242] European Commission, Press release "*Relocation: Commission launches infringement procedures against the Czech Republic, Hungary and Poland*", 14 June 2017.
[243] Peter Foster and Matthew Day, "*EU migration showdown: divide deepens after Brussels launches legal action against Hungary, Poland and the Czech Republic*", The Telegraph, 13 June 2017.
http://www.telegraph.co.uk/news/2017/06/13/eu-migration-showdown-divide-deepens-brussels-launches-legal /
(consulted on 6 July 2017).
[244] European Commission, *White paper on the future of Europe – Reflections and scenarios for the EU27 by 2025*, 1 March 2017.
[245] Ibid., p.12.
[246] Statement by Jussi Halla-aho, Finish MEP, member of the European Conservatives and Reformist Group during the legal seminar "*Improved migration policy and border control*" held at the EU Parliament on 8 March 2017 (post-seminar briefing notes accessed by the author).
[247] European Parliament, *Intervention from Philippe Lamberts* (Belgian Green MEP), 9 March 2016.
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20160309+ITEM-007+DOC+XML+V0//EN&language=en&query=INTERV&detail=3-025-000

tackle the migration challenges. It turns out that it is the most proactive institution when it comes to defending and promoting human rights of migrants, adopting documents with strong content and organising regular events on the migration crisis.

Between March 2016 and June 2017, the migration crisis has been on the agenda of the Parliament on several occasions and different resolutions related to the EU answer were adopted in the plenary sessions in Strasbourg. Although EU parliament resolutions are non-binding instruments, they have a valuable political weight since they reflect the official position of the Parliament on this specific issue. Of interest are the following resolutions: '*The situation in the Mediterranean and the need for a holistic EU approach to migration*' from 12 April 2016, '*Addressing refugee and migrant movements: the role of the EU external action*' from 5 April 2017, and '*Making relocation happen*' from 18 May 2017.

The first resolution stresses the need for a holistic approach to the EU migration crisis touches upon a wide-range of challenges implied by the crisis[248]. In this document, MEPs recalls that solidarity and fair-sharing of responsibility are at the core of European system and that all EU actions should match these principles. Adopting a position dissenting from the one of other institutions, MEPs support the view that private shipmasters and NGOs boats assisting people in distress "*should not risk punishment for providing such assistance*"[249]. They claim that current migration management system in place "*does not take into sufficient consideration the particular pressure faced by member states situated at the Union's external borders*"[250]. The Parliament calls from more action on part of other member states to ease the burden for the frontlines states that would also lead to an improvement of the situation for migrants. Regarding border management, the resolution postulates that for the Schengen area – qualified as "*one of the major achievements of the European integration*"[251] – to remain effective, member states must implement any decision agreed upon at the EU level[252]. Finally, when it comes to cooperation with third countries, the Parliament stresses that the importance of developing a win-win approach "*beneficial to the Union, to the third country in question and to the refugees and migrants in that third country*"[253].

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[248] European Parliament, Resolution "*The situation in the Mediterranean and the need for a holistic EU approach to migration*", 12 April 2016.
[249] Ibid., paragraph 8.
[250] Ibid., paragraph 33.
[251] Ibid., paragraph 80.
[252] Ibid., paragraph 78.
[253] Ibid., paragraph 96.

The resolution on the role of the EU external action in addressing refugee and migrant movement[254] from April 2017 is interesting in many respects. It recognises that large-scale flows to Europe are made of mixed migrants, with movements composed by refugees, asylum-seekers and economic migrants. Emphasis is put on human dignity *"that must be at the centre of all European policies concerning such matters"*[255]. In this text, MEPs recognise that the EU response has up until now essential focused on short-term solutions aimed at *"reducing or stopping movements, whereas this short-term approach addresses neither the causes of forced displacement and migration, nor the humanitarian needs of migrants"*[256]. This focus on security measures by the EU is also illustrated by the fact that most of the migration spending was dedicated to security and border protection, as shown by the European Court of Auditors[257]. In this text, the Parliament calls on the other EU institutions to not only focus, in their own words, on *"security-based approaches"*[258] but also on policies enhancing the human rights of migrants and refugees. In the section dedicated to migration management, they recommend increased cooperation between all concerned stakeholders in the EU migration crisis but they recall that instead of *"leaving the responsibility primarily to the frontline states or countries neighbouring conflict zones, EU member states should implement as a matter of urgency a coordinated and sustainable response that ensures fair and accessible procedures for people in need of international protection to be granted asylum in the EU"*.[259] Human issues revolving around the improvement of life conditions in the refugee camps, violations perpetrated during the journey to Europe, challenges concerning some particular vulnerable groups such as women or unaccompanied minors are referred to.

Finally, the resolution calls for more proactive and forward-looking responses[260], for the establishing of *"a genuine, human rights-based common European migration policy based on the principle of solidarity among Member states"*[261], stresses the importance of putting in place cooperation mechanisms with third countries to fight smuggling but that *"measures taken against human trafficking should not adversely affect the rights of victims of trafficking,*

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[254] European Parliament, Resolution *"Addressing refugee and migrant movements: the role of the EU external action"*, 5 April 2017.
[255] Ibid., preambular paragraph H.
[256] Ibid., preambular paragraph L.
[257] Ibid., preambular paragraph M.
[258] Ibid., paragraph 1.
[259] Ibid., paragraph 22.
[260] Ibid., paragraph 34
[261] Ibid., paragraph 40.

migrants, refugees and persons in need for international protection"[262]. MEPs consider that the establishment of the European Border and Coast Guard agency is a positive step for a better protection of the EU's external borders but deplore the lack of oversight from the Parliament over its activities[263].

When it comes to training activities in border management, they request that these activities have a strong focus on fundamental rights and recall the EU legal obligations regarding returns of migrants[264]. They consider that partnership with third countries "*must not become the only pillar of EU action on migration*"[265] and they regret that such agreements lack parliamentary scrutiny. Their position on the EU-Turkey statement is quite contrasted: while they recognise the quantitative success of the deal, they express concern about the human rights situation in Turkey and about the possibility to replicate such agreement in other countries, stressing the importance of taking into consideration the particularity of each situation, via individual country assessments.

Finally, in '*Making relocation happen*'[266], MEPs recalled that relocation pledges made by member states are significantly higher than the number of relocations that have been carried out and expressed their concern about the high numbers of asylum seekers still present in the Greek and Italian territories. They recognised improvements but expressed "*[their] disappointment regarding the unfulfilled commitments of member states to solidarity and responsibility sharing*"[267]. At the time of the adoption of this resolution, only two countries, Finland and Malta, had fully met their relocation obligations[268].

Moreover, on 21 June 2017, in the wake of World Refugee Day and ahead of a European Council meeting, the Parliament conveyed a high-level conference on migration management. This event was set up as a platform for exchange aiming to discuss different views over the best way to tackle the crisis but also as to increase the pressure on member states and to send a call

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[262] European Parliament, Resolution "*Addressing refugee and migrant movements: the role of the EU external action*", 5 April 2017, paragraph 42.
[263] Ibid., paragraph 46.
[264] Ibid. paragraphs 52 and 53.
[265] Ibid., paragraph 48.
[266] European Parliament, Resolution "*Making relocation happen*", 18 May 2017.
[267] Ibid., paragraph 1.
[268] European Commission, Press release "*Relocation and Resettlement: Steady progress made but more efforts needed to meet targets*" 12 April 2017 http://europa.eu/rapid/press-release_IP-17-908_en.htm (consulted on 4 July 2017).

for a strong and ambitious leadership. In his opening speech[269], the president of the Parliament, Antonio Tajani, underlines that its main role is to ensure that the voice of the EU Parliament is heard in the migration debate. As for him, migration management as a priority should be better reflected in the EU budget and the resources allocated must match the challenges: "*it is time for a paradigm shift, first we must set the political objectives with a view to addressing the concerns of our citizens, and on that basis allocate the resources required*"[270]. In 2015 and 2016, the EU budget mobilised to address the refugee crisis amounted to 15 billion euros[271]. President Tajani elaborates on the failure of the system of burden-sharing between member states, arguing its Committee on Civil Liberties, Justice and Home Affairs (LIBE) is working on a reform of the Dublin system in which "*the sole criterion of geographical location as the basis for burden sharing*"[272] would not be the premise (but gave no clear indication on what this premise would be). Regarding border management, he requests member states to provide the EBCG with the adequate resources, to invest more in surveillance technologies and to share the burden of arrivals with a larger number of countries.

During the high-level conference, the importance of implementing a genuine holistic migration and border management policy was raised by parliamentarians belonging to all sides of the political spectrum. Despite their substantive difference of opinions, most of the speakers expressed the need for renewed solidarity on part of the EU institutions and member states. For Ska Keller, Green MEP from Germany, "*the problem does not lie in Brussels, the problem is that member states are not acting up to their commitments due to lack of political will*"[273]. Malin Björk, Swedish MEP from the European United Left called for the creation of a "*collation of the willing*"[274] saying that human rights and dignity are not achieved, as long as the EU focuses on keeping people out. Laura Ferrara from the Eurosceptic Europe of Freedom and Direct Democracy Group said that what the Council has done so far only "*represents selfish national approaches*"[275]. The Italian MEP Elly Schlein from the Progressive Alliance of Socialists and Democrats requested the Commission "*not to follow the Council on its securitisation*

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[269] European Parliament, Speech "*Opening Speech at the high-level conference on managing migration*", 21 June 2017 http://www.europarl.europa.eu/the-president/en/newsroom/opening-speech-at-the-high-level-conference-on-managing-migration-27 (consulted on 4 July 2017).
[270] Ibid.
[271] European Commission, Video "*A European agenda on Migration, two years on*", 8 November 2016 http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I127496
[272] Speech "*Opening Speech at the high-level conference on managing migration*".
[273] This quote and the followings are extracted from the author's personal notes taken during the EU Parliament High-level conference on managing migration on 21 June 2017.
[274] Ibid.
[275] Ibid.

obsession"[276]. The Maltese MEP Roberta Metsola from the Christian Democrats Group stressed the fact that there is no inalienable right to migration but declared "*we are a union of shared values; we have to become a union of shared responsibility*"[277]

Thus, this fourth chapter demonstrates that there are indeed diverging positions between member states over the best way to tackle and answer to the migration crisis. This disagreement is exacerbated by the weight of the Council in the EU politics, which influence reduced the leeway of the other EU institutions. For Philip Stephens, chief political commentator for the Financial Times: "*the problem during the crisis has been the absence rather than the presence of the EU [...] As for the response, it has been driven entirely by national governments rather than the institutions of the EU. These divisions are between those who want to show generosity towards refugees and those who want to shut their borders, those comfortable with multi-ethnic societies and those with much narrower definitions of nationhood, between the west and east of the continent, and between the north and south*"[278].

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[276] This quote and the followings are extracted from the author's personal notes taken during the EU Parliament High-level conference on managing migration on 21 June 2017.
[277] Ibid.
[278] Financial Times, "*How has the EU mismanaged the migrant crisis*", 12 March 2016 https://www.ft.com/content/a3d7f394-e6dd-11e5-a09b-1f8b0d268c39?mhq5j=e2 (consulted on 10 July 2017).

Chapter 5: Conclusions and policy recommendations

> *"If Europe fails on the question of refugees, then it won't be the Europe we wished for"[279].*
> *Angela Merkel, German Chancellor, 31 August 2015.*

> *"If selfishness and fear prevail, we risk losing the noble idea underpinning the European project"[280].*
> *Matteo Renzi, former Italian Prime Minister, 23 June 2015.*

After having presented the legal framework and the EU's institutional response to the migration crisis in chapter 2, given an overview of three distinct instruments put in place by the European Union in the field of border management and control since March 2016 in chapter 3 and analysed the competing views and motives of the stakeholders, explaining their different approach to crisis in chapter 4, this final chapter will conclude this thesis by summarising of the results of this research, answering the research questions and providing possible policy recommendations for the way forward.

In terms of research limits, beyond the ones already mentioned in the introduction chapter, it must be underlined that the position of all stakeholders involved in the EU migration governance could not be studied in this thesis. In choosing to only focus on very specific categories of member states and institutions, this research could not provide a fully comprehensive picture of the political situation at the European level, which might constitute a bias. Furthermore, throughout the analysis, it was demonstrated that talking about migration control is a politically and emotionally charged topic, which does not go without difficulties. Distancing oneself from personal opinions and views on the topic, by only focusing on facts, was one of the challenges of this research. Additionally, in choosing to concentrate on one singular aspect of the EU migration policies – border management – this research did not aim

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[279] BBC, 31 August 2015 "*Migrant crisis: Merkel warns of EU 'failure'*" http://www.bbc.com/news/world-europe-34108224 (consulted on 3 July 2017).
[280] Matteo Renzi, "*The Mediterranean migrant emergency is not Italy's. It is Europe's*", The Guardian, 23 June 2015 https://www.theguardian.com/commentisfree/2015/jun/23/mediterranean-migrant-crisis-not-italy-but-europe (consulted on 23 April 2017).

to argue that the Union was only centred on border control related issues when tackling the migration crisis, but that this focus remains an essential part, if not the cornerstone, of the current EU's approach.

This thesis aimed at answering two questions: does the European Union's approach to the migration crisis reflect a rift between member states towards security and human rights standards, and are the EU policies actions affected by the disagreement between its member states over the best way to tackle and answer to the crisis? To argue so, this work explored if the European policies in the field of migration and border control were consistent with the EU's fundamental values and international legal obligations, if its member states and institutions had compatible goals and interests in addressing the crisis and if the EU had managed to strike a balance between national security concerns and its human rights obligations in the strategies adopted and implemented since March 2016.

The main hypotheses advanced in this research were that, firstly, European member states were deeply divided over the transfer of sovereignty to the EU in the field of migration control. Secondly, it was suggested that the debate regarding migration in the Mediterranean was the sign a deeply rooted political and ideological divide over the role of the European in border management. Finally, the last hypothesis postulated the existence of a discrepancy between agreed strategies at the EU level and their effective implementation by member states.

In terms of results, the study of the legal framework in place at the European level shows that human rights standards are effectively protected by international and European law. Respect for human rights of migrants, the existence of special protection regimes for persons with refugee status and the importance of respecting human rights when carrying out border management activities are recognised in the different legal instruments analysed in chapter 2. Therefore, these legal obligations and moral commitments shall be respected by the European Union and its member states and translated into the different strategies and policies relating to migration and border control.

When it comes to the EU's institutional framework in place since 2015, evaluation is more contrasted. The European Agenda on Migration, key document summarising the EU's migration policy, claims to be a holistic document aimed at curbing migration challenges faced by the Union on the short and long term. It sets out standards and priorities for the EU migration

management and aims at developing a comprehensive approach to the migration crisis via a multi-stakeholder response. However, the analysis shows the document contains very few references to human security or human rights of the migrants, apart from the introduction chapter. The section dedicated to border management and control mainly focuses on the intensification of security measures. It also must be noted that, subsequent strategies or declarations – such as the EU-Turkey statement or the Malta Declaration on addressing the Central Mediterranean route – contain references to human rights obligations ("*in full accordance with EU and international law*"[281] or "*in full respect of human rights, international law and European values*"[282]) but not much detail is given about how these human rights obligations will translated into practice during the implementation stage. As we saw, the insufficient human guarantees contained in these strategies were an issue of concern for human rights advocates. Yet, all these documents put a strong emphasis on the security of the European external borders and on the need for Member States to act together and respond to the crisis in a united and collective manner.

As assumed in one of the hypotheses, the main problem resides in the translation into practice of the EU legal and moral commitments. One of the results of this research is the finding that when implementing border management strategies, the human rights and human security of migrants and refugees are not taken enough into consideration by the EU. Migration continues to be mostly apprehended as a threat to the security of Europe and its member states by a wide range of actors involved in the EU migration governance.

The period of study was characterised by an increased surveillance and control of the Mediterranean waters and the adoption of several measures aimed at restricting access to Europe. Developments studied in chapter 3 show that in the field of border control, the main goal of the EU's migration policy remains the reduction of the migratory pressure at its borders by keeping the number of crossings and arrivals to its shores to the lowest level possible.

It can be argued that securitisation tendencies, illustrated by the increased externalisation of border control and outsourcing responsibilities to third-countries, impact upon the human rights of migrants: one can maintain that the measures adopted by the EU since 2016 did not have a

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[281] European Union: Council of the European Union, *EU-Turkey statement,* 18 March 2016.
[282] European Union: Council of the European Union, *Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route*, 3 February 2017.

positive repercussion on migrants and refugees that find themselves trapped in countries where they might face grace violations of their human rights (with the exception of Syrian refugees who benefit from special protection in Turkey since the implementation of the EU-Turkey deal) and where their personal security is often at risk. Reports from NGOs and the international community outline cases of automatic detention, forced expulsions or grave abuses of their most fundamental human rights, such as the right to life or freedom from torture. This combination of factors, along with the research of better life prospects, encourages them to take greater risks to reach the southern shores of Europe.

It was advanced that one of the problems in the current EU's response was the existence of disagreements between the different EU member states over the transfer of sovereignty to the Union in the field of migration control. The analysis of the views of some categories of member states in chapter 4 stressed that the loss of sovereignty was indeed a concern for some countries who refuse to give up on this prerogative. The lack of consensus and the unwillingness of some countries to cooperate, together with disagreement over the best way to tackle this crisis, have seriously hampered the effectiveness of the EU migration governance. Since governance measures are based on the sharing of common norms, values and interests, it is crucial that member states find ways to reach an agreement. If member states do not manage to find compatible goals and interests in addressing the crisis, the unfair burden sharing currently born by some countries is likely to continue and this could potentially damage the unity of the European Union as a whole.

The crisis also revealed the gaps existing between the different EU institutions: indeed, in the current functioning of the EU, the position of member states tends to prevail over those of other institutions. The fact that the Commission and the Parliament faced strong opposition from the European Council and the Council in the EU when trying to push for common solutions, made it more difficult to adopt or implement some of their proposals at the EU level, especially those related to solidarity and burden-sharing such as the emergency relocation scheme or the reform of Dublin III. Then, the appeared focus of the EU's response on border security can explained by the fact that it is a policy area on which the different EU member states manage to come to an agreement, which makes it easier to adopt and implement EU-wide policies. If some member states decide to obstruct decisions, there are very few mechanisms in place – except from the infringement procedures – to compel them to cope with their commitments and to deliver on

their pledges. This makes cooperation on sensitive issues related to sovereign powers difficult at the EU level and impacts the efficiency and the flow of the EU migration governance.

The magnitude of the crisis shows the situation remains first and foremost a humanitarian issue. In spite of increased border controls and cooperation agreements with third countries, the number of departures and deaths at sea continues to be on the rise at the European external borders. Urgent action needs to be taken and EU leaders must to demonstrate leadership and commit to dedicate more resources to the instruments put in place in recent months, such as the ECBG agency, and to increase responsibility-sharing especially when it comes to relocation. As declared by Commissioner Avramopoulos on 21 June 2017: *"in a true spirit of solidarity, it is up to all of us to turn migration into a European success story"*[283].

The main policy recommendation, advanced by different non-governmental organisations, international organisations and several EU politicians, is the opening of legal and safe pathways to Europe, the only effective way to prevent migrants and refugees from being victims of traffickers and undertaking perilous journeys across the Mediterranean. The main problem is the lack of political consensus between Member States over this issue. As a first step, EU countries could provide greater numbers of humanitarian visas to people eligible for refugee protection but currently unable to get access to the European borders. More student visas or work permits could also be agreed upon.

A second recommendation addressed to the different EU institutions is the creation of information campaigns aimed at challenging and countering the negative perceptions of migrants and refugees in the different European countries. These campaigns could be based on the model of the UN Together campaign[284] launched on September 2016, which outlines the positive contribution of migrants in hosting societies. As expressed by the European Parliament: *"the successful implementation of a human rights-based migration policy requires challenging negative perceptions of migration and the development of positive narratives to depict migration as an opportunity for host countries, in order to counter extremism and populism"*[285].

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[283] European Commission, Speech "*Remarks by Commissioner Avramopoulos at the High-level conference on Migration management – Round table: managing asylum and migration*" 21 June 2017.
[284] United Nations, "*Together campaign*" https://together.un.org (consulted on 12 July 2017).
[285] European Parliament, Resolution "*Addressing refugee and migrant movements: the role of the EU external action*", 5 April 2017.

Thirdly, another recommendation addressed to the EU Member States is to ensure that NGOs rescuing migrants in the Mediterranean are not criminalised for their activities, in accordance with the UN guidelines on human rights at international borders[286]. The European Union member states should dedicate resources to the establishment of operations having search and rescue activities as their core mandate close to the Libyan waters, on the model of the former Mare Nostrum operation, to avoid that naval operations aimed at securing the EU borders find themselves responsible for the rescue of people drowning in the Mediterranean Sea.

The last and main recommendation is finally to put human security approaches at the centre of the EU's response to the crisis. In the 2016 New York Declaration for Refugees and Migrants, world leaders committed themselves to "*ensure a people-centred, sensitive, humane, dignified, gender-responsive and prompt reception for all persons arriving in our countries*"[287]. The issue of human rights of migrants continues to be too often ignored in the strategies adopted and implemented at the EU level, although they should remain at the centre of EU's action, human dignity being the cornerstone of all human rights. As argued by Guiseppina Nicolini, former mayor of Lampedusa, recipient of the UNESCO Félix Houphouët-Boigny alongside with SOS Méditerranée for their contribution to saves lives in the Mediterranean[288] : "*the thing with human rights is you cannot make exceptions [...] We Europeans cannot expect to have ours respected until we acknowledge theirs*"[289]. Efforts to develop long-term solutions to respond to border control challenges need to be scaled up and in-depth fundamental rights assessments regarding the treatment and life conditions of migrants and refugees should be mandatory before engaging in cooperation with third countries.

As a conclusion, the very existence of the Union rests upon the principle of solidarity between its Member States. This migration crisis shows that while trying to respond to transnational threats as one, the EU is not immune to national security thinking. However, if Member States

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[286] Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International borders,* October 2014, p.5.
[287] UN General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1, 3 October 2016, operative paragraph 22.
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want to ensure burden-sharing and better protection to those arriving at European shores, they must overcome the political and ideological divide over the role of the Union in border management. This will not happen overnight and there is certainly no easy solution to the very complex political situation Europe has found itself upon. One certainty is that this issue must be dealt with collectively if deemed to have long-term and sustainable effects. The ambition of this thesis was not to provide a straightforward answer to a crisis the European Union has been struggling with for more than two years but to contribute to the debate by highlighting that a genuine holistic approach to migration and border management must bridge security and human rights concerns. To adequately answer to the plight of migrants, the European Union must strike a balance between its moral and legal obligations and its duty to ensure safety of its citizens and the security of its borders. Otherwise, the legitimacy and the efficiency of the EU's action in the field of migration management will be deeply undermined.

In 2012, the European Union was awarded the Nobel Peace Prize for its role in "*advancing the causes of peace, reconciliation, democracy and human rights in Europe*"[290]. Five years later, it is time the EU truly implements holistic and comprehensive migration policies based on solidarity and human rights, revoking 'the Fortress Europe' thinking and giving real life and meaning to its motto '*in varietate concordia*': unity in diversity.

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