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# Razor-Wired. Stranded Migrants in Macedonia

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European Regional Master's Programme in Democracy  
and Human Rights in South East Europe



EIUC gracefully  
acknowledges the  
contribution of the European  
Commission which made  
this publication possible.

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ABSTRACT

*This thesis builds a theoretical pyramid of the border strategies employed by European and – consequently, Macedonian officials in the context of the migrant crisis of 2015-2016. At the base of this pyramid lay (1) the building of Fortress Europe along the external borders of the Union and (2) the simultaneous thickening of those borders towards territories outside the continent. I argue that in this configuration the Balkans are turned into borderlands where a state of exception allows for easier deviation of the common norms. Macedonia's strategy of 'bordering, ordering and othering' of the migrants, stays at the top of the pyramid of exclusive border policies. Their result I expose through the detail research on the human rights violations endured by the stranded migrants in the Balkan state. Unable to regulate their stay in Macedonia, they are, in practice, denied the Arendtian Right to have rights.*

KEY WORDS

*Border Politics, Macedonia, Stranded Migrants, European migrant crisis, the Balkan Route*

ACKNOWLEDGEMENTS

*Dear Alina, thank you!*

*I honestly feel privileged for having the opportunity to travel through the academic world with such an intelligent, inspiring and supportive partner. The affection that you cherish for this challenging universe is contagious and helped me discover, for the first time, some of its small wonders. I very much hope that the academic journey would continue, for both of us.*

*I would like to thank Prof. Anna Krasteva, for her unconditional support throughout this whole ambitious endeavor. I am grateful for the guidance, high-level comments and the advice, which were always delivered so kindly and gracefully.*

*This work would have been impossible without my colleagues in IOM Macedonia, whose profound expertise and knowledge were generously shared with me. I am particularly thankful to Vanja Mirkovski and Tanja Kjaeva for their willingness to find answers to my endless questions. It was an honor to work along Atanas Trajkov who makes the 'Vinojug' camp a little more welcoming place for its inhabitants.*

*Last, I would like to thank all the Syrian, Iraqi and Afghani people in the camp, who readily participated in my research, never turned down any of my requests, and shared my enthusiasm for this thesis until the end. Their silent dignity is inspiring.*

LIST OF ABBREVIATIONS

ALDE	Alliance of Liberals and Democrats for Europe
CEAS	Common European Asylum System
CoE	Council of Europe
CJEU	Court of Justice of the European Union
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard
EBCGA	European Border and Coast Guard Agency
EURODAC	European Dactyloscopy (European fingerprint database for identifying asylum seekers and irregular border crossers)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
ESTA	Electronic System for Travel Authorization, USA
GUE/NGL	European United Left/Nordic Green Left
IOM	International Organization for Migration
LATP	Law on Asylum and Temporary Protection, Macedonia
MIM	Ministry of Interior of Macedonia
MYLA	Macedonian Young Lawyers Association
RCCM	Regional Centre for Crisis Management, Gevgelija
SMF	Stranded Migrant Facility of IOM
UKIP	United Kingdom Independence Party
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees



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## INTRODUCTION

Europe has a history of being terrified of the other, the stranger, the enemy within or without. Seven decades ago that fear took the form of yellow badges, ghettos, railways with dead ends. Their toxic legacy inspired European statesmen to create a peaceful continent, ‘united in diversity’, a safe haven where ethical catastrophes were never to be repeated. The migrant crisis that has engulfed Europe in the last two years, suddenly, resuscitated the ghost of this familiar fear of the stranger. Today it marches proudly with Neo-Nazis through the centers of the big cities; it kills immigrant workers in the UK, and forcefully undresses Muslim women in France. It has brought to power the extreme right in Central Europe; it has inspired enviably wealthy countries like Denmark to seize assets from refugees. This same fear has erected razor-wire fences.

After months of chaotic scenes at its Greek shores and countless fruitless summits, the European Union chose to back down to public horror and close its borders to refugees and other ‘irregular’ migrants. The deal with Turkey which saw the return of everyone crossing from its territory into EU after 20 March 2016 was fortified by a decision to seal all frontiers along the Balkan route. What Brussels intentionally or not ignored, though, was the fate of the people trapped between the cascades of closing borders in the region. Thousands of migrants found themselves stranded in Greece, Macedonia, Serbia, Bulgaria, in squalid conditions, with unclear legal status and numerous rights restricted.<sup>1</sup>

This thesis is a multidisciplinary research on the plight of the people

<sup>1</sup> According to IOM data their numbers as of 6 October 2016 are: 60,067 in Greece, 4,992 in Serbia, 7070 in Bulgaria, and 183 in Macedonia. Migration Flows Europe, IOM Database, available at: <http://migration.iom.int/europe/>.

blocked while transiting through Macedonia. Their stay in the country is not covered by any law: the 72-hour residence permits, which they received when entering the country, expired months ago, there is still no procedure for claiming asylum underway. Without valid documents, the migrants who escaped the wars in Syria, Iraq and Afghanistan are bound to spend months in closed camps, with no rights of free movement, without access to work and education, and without any clarity on their future. The limited economic, social and physical freedom and the passive dependence on humanitarian aid is a source of great suffering for the community whose problems the authorities in Skopje stubbornly and continuously refuse to address.

#### RESEARCH QUESTIONS, AIMS, AND FRAMEWORK

Situated between a set of academic fields, including philosophy, international relations, sociology, and political science, this study tries to answer several questions. First, what is the process of border thickening and why does it take place in Europe today? Second, how does the border thickening process in Europe, driven by EU migration strategies, shape migration policies in Macedonia? Third, why do migrants become stranded in Macedonia? Fourth, why do stranded migrants not have access to basic human rights?

I analyze and answer these questions through the philosophic and political lens of border studies. In this thesis I come to identify in the actions of the Macedonian authorities the crucial theoretical principles of exclusive border politics, insightfully synthesized by Henk van Houtum and Tor van Naerssen as '*bordering, ordering and othering*'. The sealed frontier with Greece, the razor fence and the numerous police patrols along it are a clear manifestation of Skopje's '*bordering*' ambition: to prove it can secure and govern its own economic welfare and identity. The border space is firmly 'Macedonianized', thus underlying the differentiation between the locals and the newcomers. Migrants are *othered*, projected as security threats, associated with the traumatic refugee crisis in 1999 and the Kosovar Albanians, and thus: locked in border camps and separated from the rest. *Order* is restored: those inside Macedonia stay static; those who try to enter illegally are pushed-back.

This paper does focus primarily on the Macedonian case, which is,

indeed, exemplary of exclusive border politics in action. Yet, I have tried to go one step further, and position Skopje's actions within the broader puzzle of the Balkans and the European Union. Macedonia is just one of the Balkan countries that woke up with large communities of stranded migrants after 20 March 2016. Greece, Serbia and even Bulgaria were also destined to become 'cemeteries of souls'.<sup>2</sup> I argue that this development became possible due to the century-long European understanding of the whole Balkans as borderlands. As Giorgio Agamben claims, borderlands are zones of indistinction where exceptional rules and activities – like in our case group expulsions, closed camps and de facto stateless people – are allowed and possible.<sup>3</sup>

Furthermore, I present this 'borderization' of the Balkans as being a direct result from the whole EU strategy for coping with the migrant crisis. Relying again on the border studies, I see this step as a continuation of the thickening and de-territorialization of European borders, a process manifested in the deal with Turkey, which practically off-shored the refugee problem and its solutions (but also its control). The thesis identifies also other elements of contemporary border politics in Brussels' behavior in terms of the migrants: the creation of new omnipresent biometric borders, securitization, and last, but not least, the transformation of border politics into *scenes of theater*, performance for the European voters.

This academic endeavor primarily tries to 'engulf' the myriad of events, emotions and responses that the migrant crisis produced in Europe, to reassess them and frame them within the already extensive theoretical framework of border politics. Such 'decomposition' and 'reorganization' of the processes turns the numerous events, emotions and responses into a far more useful trio: drivers, elements and outcomes. The deeper understanding of the latter is crucial, as migrants would continue coming into the EU, and the EU would continue struggling in providing sustainable solutions. An analytic and theoretical approach to the migrant crisis is also important as a counterpoint to the countless either populist right-wing, or extreme humanitarian calls – both of which do not address the issue in its essence.

<sup>2</sup> A expression used in January 2016 by the Greek deputy minister for migration, Ioannis Mouzalas, when commenting a possible closure of the Balkan route. Quoted by: Financial Times, EU Threatens to Reimpose Greek Border Controls, 27 January 2016, available at <https://www.ft.com/content/674647a6-c4f9-11e5-808f-8231cd71622e>.

<sup>3</sup> Agamben, G. *Means Without End: Notes on Politics*, trans. V Binetti and C. Casarino, Minneapolis: University of Minesota Press, 2000: p. 139.

This research objective is also to contribute to the relatively narrow academic field of Balkan border politics. The region is one of the biggest ‘producers’ of borders, yet their local dimensions remain academically neglected. Furthermore, the detailed examination of the problems faced by the community in ‘Vinojug’ camp (which remain surprisingly underreported, and thus concealed) could be useful for the identification of particular vulnerabilities experienced by stranded migrant groups all around the globe. The initiation of a dialog on the violations of their human rights in the Balkans may finally lead to an improvement of their situation.

The ambitious goals outlined above are pursued in the three following chapters. The paper starts with a theoretical overview in the field of border studies. It illustrates the re-conceptualization of borders from simple demarcation lines into a more complex set of practices and discourses that stretch far from the border areas: ideas developed by authors like Balibar, Foucault, Vaughan-Williams. The chapter puts a stress on the already-mentioned ‘bordering, ordering, othering’ principles of border politics and makes a short cartography of the modern characteristics of the field: frontiers’ thickening and de-territorization, new technological borders, their transformation into scenes of performance, but also zones of indistinction. The second chapter focuses on the actual migrant crisis, the factors which ignited it, the challenges that Europe faced in handling it, and the responses the continent was able to deliver. This part is based mainly on primary sources like asylum and border legislation, and on secondary sources like political strategies and statements. It gradually turns towards the Balkans and their role, first as a transit route, later as a buffer zone between the West and the crisis. The last chapter is exclusively dedicated to the Macedonian case and is based on field research carried out mainly in the biggest facility for migrants in the country, the ‘Vinojug’ Transit center in the town of Gevgelija on the Macedonian-Greek border.

#### METHODOLOGY: RESEARCH METHODS, CONSTRAINTS

The study on the stranded migrants in Macedonia was conducted over the course of 45 days between 15 June and 31 July 2016 and includes a mixed-methodological approach. A number of secondary resources were consulted, but due to the absence of almost any publications on the topic, the majority of data was gathered in the field.

I spent 45 days in the ‘Vinojug’ camp in Gevgelija, Macedonia as part of the team of the International Organization for Migration (IOM). Within this period I conducted 35 semi-structured interviews with migrants who live in the camp: two of these interviews were conducted with families and three with groups of between two and five people. Their countries of origin: Syria, Iraq and Afghanistan – mirror the policies of Macedonia which since November 2015 does not allow other nationals to transit through its territory.<sup>4</sup> 21 interviews were carried out with men and 14 with women, reflecting in part the gender imbalance in the camp, but also the reluctance of some women to talk. A further six interviews were conducted with migrants from Morocco and Tunisia, immediately after they were apprehended by the Macedonian border police while trying to cross the fence from Greece to Macedonia (and afterwards directly sent back to Greece). All of them were men. All respondents were fully informed about the research topic and provided oral consent. Clearly, I have taken into consideration the will of those who preferred their names to remain anonymous.

I collected information about the border management systems in Macedonia through interviewing representatives from the Ministry of Interior of Macedonia (MIM), the Regional Centre for Crisis Management (RCCM), as well as foreign police officers who participate in the patrols along the border fence. I spoke with the former head of the Croatian Border Police who now is a security expert in IOM and fills an advisory role for the local security forces. I also interviewed a former high-ranking MIM official who now runs an IOM-sponsored educational course for local policemen on international standards for the treatment of asylum seekers at the border. To better grasp the legal and social challenges that the migrants face, I relied on the professional support of employees in international structures like the Red Cross and UNICEF, as well as local non-governmental organizations like Macedonian Young Lawyers Association (MYLA) and Legis, all of which operate in the ‘Vinojug’ camp.

Finally, I had the chance to participate in the daily routines of the IOM team: these included collecting data and profiling of the migrants apprehended by the border police and counseling and provision of information for the people in the camp. With the support of IOM I also

<sup>4</sup> It restricted the access also of Afghans in February 2016.

made a field visit in the other transit camp in Macedonia – ‘Tabanovce’ at the northern border with Serbia. The short stay and the conversations with the people there highlighted identical problems to those of the migrants in ‘Vinojug’. I relied extensively also on statistical data, provided by IOM headquarters in Skopje where I spent the first week of August 2016.

There were a number of challenges while researching a vulnerable community locked in a closed camp: the most difficult was connected to my position as a member of the IOM staff. Many respondents saw in the interview with an employee of a powerful foreign organization a chance to receive help, or at least – information. The first two interviews were interrupted by repeated pleas from the side of the migrants: to tell them ‘the truth’ – when the borders would open, what the authorities plan to do with them. People expected that by sharing their stories, they would be finally heard, and the IOM would somehow facilitate their onward journey to the West. As unfortunately, this was not the case, I temporarily suspended interviewing people until the community became more familiar with me. Even then, I tried to underline in each of those conversations with migrants that they were helping me, and not vice versa. This position as of an independent researcher proved to be quite challenging for me.

Of course, the timeframe of only 45 days was a major limitation. It prevented me from implementing my initial goal: to analyze the problems of the migrants stranded not only in Macedonia, but also in Serbia and Bulgaria. Being on the ground though, I realized that a rush towards vulnerable groups in other countries would ‘confine’ my work within a more descriptive and less analytical discourse. With no solution envisaged in the near future for those stranded communities in the Balkans, such an ambitious comparative study would prove to be highly relevant.

Finally, a clarification on the language: I use the term migrants to refer to all people on the move who have or have not initiated or completed the legal process of claiming asylum. This group includes people fleeing war-torn countries such as Syria, as well as those who are seeking jobs and better lives, labeled by governments as ‘economic migrants’. Although all the people in Gevgelija reside, in practice, illegally in Macedonia, as their status is out of the legal framework, I intentionally avoided the term ‘illegal migrant’. According to François Crépeau, UN Special Rapporteur on the Human Rights of Migrants,

depicting individuals as ‘illegal’ contributes to the negative discourses on migration; and further reinforces negative stereotypes of irregular migrants as criminals.<sup>5</sup> On the contrary, I decided to use questionable entitlements like ‘migrant crisis’ and ‘flow of migrants’. I am aware of the probably well-founded fears of activists that such categorizations bring a sense of drama, chaos and lack of control. I prefer to step aside from these theoretical dilemmas and use the terms without any further background thoughts: they are already part of the common narrative on the migration issues in Europe, refer to specific familiar realities and are endorsed by organizations such as UNHCR and IOM.

<sup>5</sup> Report of the Special Rapporteur on the human rights of migrants, François Crépeau, A/HRC/23/46, 24 April 2013, p. 10.



1.

BORDER POLITICS

A political compass, a demarcation line of sovereign power, a modern geopolitical imaginary, a theatre scene of power demonstration, or simply a hostile barbed wire: the state border has diverse appearances both in the academic field, and in the life of common people who cross it. This multitude of dimensions results from the fact that borders are ubiquitous in political life. Despite globalization, they continue to shape domestic and international legal and political systems and serve as familiar spatial and temporal compartmentalization of global politics. Borders are inherent to key notions like power, sovereignty, security, questions of identity and difference, inclusion and exclusion. This decisive role does not allow for borders to remain static phenomena: borders are historically contingent, politically charged, dynamic institutions and processes which influence the everyday life of people.

This chapter provides a *tour d'horizon* of the study of borders and aims to accumulate different insights and perspectives from a range of writings in the fields of international relations, critical geopolitics, and post-structuralism.

Furthermore, the critical interrogation of the concept of border would enable an insightful understanding of border politics and its main goals, famously synthesized as 'bordering, ordering, othering' by Henk van Houtum and Ton van Naerssen.

1.1. BETWEEN 'DE-BORDIZATION' AND 'RE-BORDIZATION': A  
RECONFIGURATION OF THE BORDER CONCEPT

Political borders have become salient objects of research in the last 15

years.<sup>6</sup> The mushrooming of academic works is not a mere coincidence. It is closely related to the fast-paced changes on the global political scale which ‘trap’ the borders into a paradoxical dilemma: are they a cry from the past destined to lose importance, or totally to the contrary: are they here to stay and flourish as a symbol of national sovereignty? This sub-chapter will try to go one step further from this dichotomy by analyzing the huge spatial and temporal shift that the concept of border is undergoing.

The end of the Cold War and the erasure of old separation lines unlocked an unseen process of globalization – whether related to economics, culture, or consciousness. Many authors pointed to the economic change and the vigorous technical development as the main reasons for new patterns of governance, in which the role of the territorially border state had diminished. The ultimate example of this development turned to be the European Union, with its self-portrayal as a ‘borderless area of freedom, security and justice’.<sup>7</sup> The erosion of state borders inspired authors like Strange to proclaim that there is an existential threat to the very idea of the Westphalian territorially-defined international state system.<sup>8</sup>

On the contrary, the other discourse still puts the state as a primary political entity in world politics.<sup>9</sup> On this view, the attacks on 11 September 2001 and more recently – the wave of terrorist acts in Europe, have challenged the concept of ‘borderlessness’ and the globalization perspective. The American military operations that started during the presidency of George W. Bush, the unprecedented migrant crisis and the various reassertions of territorial sovereignty it has prompted produced new fears, new images of friends and enemies, dividing lines between ‘us’ and ‘them’, and insides and outsides. All that proved to be a good reason for some scholars to argue that the state borders are more important than ever.<sup>10</sup>

<sup>6</sup> Paasi, A., *A Border Theory: An Unattainable Dream or Realistic Goal for Border Scholars*. In ‘The Ashgate Research Companion to Border Studies’, London: Ashgate, 2011, p. 1.

<sup>7</sup> Article 3(2) TEU reads as follows: ‘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.’ European Union, *Consolidated version of the Treaty on European Union*, 13 December 2007, 2008/C 115/01, available at: <http://www.refworld.org/docid/4b179f222.html> [accessed 7 October 2016].

<sup>8</sup> Strange, S., *The Westfailure System*, *Review of International Studies*, 25(3), 1999, pp. 345-54.

<sup>9</sup> Carlson, B., J. Warner and K. Wang, *Foreword*, in ‘The SAIS Review of International Affairs’, Special Issue on ‘Borders’, 26(1), Winter-Spring 2006, pp. 1-2.

<sup>10</sup> Starr, H., *International Borders: What They Are, What They Mean, and Why We Should*

The impasse of the described debate illustrates best why an alternative approach to state borders is needed. As Nick Vaughan-Williams observes, this paradox ‘excludes the possibility that the concept of the border has undergone transformation’ and remains blind to the dynamics in political practices within which claims about ‘presence’ or ‘absence’ do not make any sense at all.<sup>11</sup>

Vaughan-Williams is not alone in his call for generating different ways of conceptualizing borders. Commenting on the borders in Europe, the French philosopher Étienne Balibar formulates a pithy, paradoxical claim, which imaginatively summarizes the quantum leap in the understanding of the concept: ‘*Borders [...] are no longer at the border*’.<sup>12</sup> Balibar steps beyond the idea of a border as an institutionalized site that could be materialized on the ground and inscribed on the map, where one sovereignty ends and another begins. Both the nature and the location of the borders have changed: ‘We are living in a conjecture of the vacillation of borders – both of their layout and function – that is at the same time a vacillation of the very notion of the border, which has become particularly equivocal [...]. Borders are being ‘multiplied and reduced in their localization, [...] thinned out and doubled, [...] no longer the shores of politics but [...] the space of the political itself’.<sup>13</sup>

Balibar’s formulation thus sidesteps the debate about the presence/absence of borders and becomes symptomatic for the giant political transformation of the border conceptions. This transition in the understanding of the borders raises the need to frame the difficult questions about related issues more imaginatively: citizenship, identity, security, etc. It also demonstrates the ambition of the academia to prove that the borders have lost their geographical and political solidity and have become a struggle arena for power and ideology.

The outlined position of Balibar represents one of the two alternative paths, a positivist and a post-positivist (or post-structural) one, for conceptualizing borders that exist in recent debates. The first challenges

Care, in ‘The SAIS Review of International Affairs’, Special Issue on ‘Borders’, 26(1), Winter-Spring 2006, pp. 3-10.

<sup>11</sup> Vaughan-Williams, N. (2009) *Border politics: The Limits of Sovereign Power*. Edinburgh: Edinburgh University Press, p. 5.

<sup>12</sup> Balibar, E., *The Borders of Europe*, trans. J. Swenson, in P. Cheah and B. Robbins (eds), in ‘Cosmopolitics: Thinking and Feeling Beyond the Nation’, London and Minneapolis: University of Minnesota Press, 1998, p. 217.

<sup>13</sup> *Ibidem*.

the existence and dominance of borders by often looking at them as lines of separation that exist between social entities, leaning on traditional views on borders. It analyzes the borders as a specific empirical phenomenon, focuses more on objective markers, and considers each border unique and a matter for separate research. The argument behind such a standing is synthesized by P. Hassner, who claims that each union that does not encompass the whole world needs differentiation from the other environment, its system and organization being characterized by its borders.<sup>14</sup>

The second, headed by Balibar and his compatriot Michel Foucault, and increasingly gaining more ground, strives to make the current complex roles of borders visible by expanding the understanding of what borders mean and where they are actually located. It conceptualizes them as practices and discourses that are sedimented all around the society and not merely in border areas. The gradual transition of the academic field towards this complex understanding will be briefly sketched in the next part which opens up the way for pointing out the characteristics of border politics today.

### 1.1.1. *Cartography of the Border Studies*

The recent alternative approaches to border studies developed on top of decades of initially purely empirical works. According to Vladimir Kolossov, the first attempts in this direction were developed in the late 19<sup>th</sup> century.<sup>15</sup> Scholars like Jacques Ancel, Richard Hartshorn and Ewald Banse focused on case studies and were interested in the history and characteristics of specific land borders. Later, in the early 20<sup>th</sup> century, Lord Curzon, Charles Fawcett and Thomas Holdich sought to create border typologies and classifications for geopolitical strategy.<sup>16</sup> By the 1960s border studies scholars, such as J. R. V. Prescott, Julian Minghi and Gerald Blake, included flows of people, services and goods in their analysis as well as the relationship between natural and

<sup>14</sup> Hassner, P. *Fixed Borders or Moving Borderlands? A New Type of Borders for a New Type of Entity*. In Zielonka, Jan (ed.): *Europe Unbound – Enlarging and Reshaping the Boundaries of the European Union*, London/New York, pp. 38-50.

<sup>15</sup> Kolossov, V., *Border Studies: Changing Perspectives and Theoretical Approaches*, in 'Geopolitics', 10(4), Winter 2005, pp. 155-79.

<sup>16</sup> *Ibidem*.

social landscapes.<sup>17</sup> All those early attempts though, focused on the boundary as a concrete empirical phenomenon, a line that delimits state jurisdiction and territory: ‘the only function of the boundary is to mark the limits of sovereignty’.<sup>18</sup>

The gradual shift towards a more complex understanding of the borders came in the 1970s, with the emergence of political geography and writers such as Ted Gurr and Harvey Starr who began examining the social construction of borders and their relationship to international conflict.<sup>19</sup> A decade later the geopolitical approaches, associated with David Newman, Anssi Paasi and others, focused on territorial identities, the impact of globalization and integration on borders, and the impact of debates about culture and security.<sup>20</sup> Nevertheless, it was the 1990s that witnessed the rise of post-positivist, social constructivist and post-structural perspectives, pioneered by writers such as Henk van Houtum and Olivier Kramsch. They drew the attention to the symbolic value of border, its significance in various social, political and economic discourses, and the dangers of territorially determined state-centric spatial logics.<sup>21</sup> As Van Houtum summarized it, the border studies decisively shifted from the evolution and changes of the territorial line to how border is socially constructed and (re)produced in terms of ‘symbols, signs, identifications, representations, performances and stories’.<sup>22</sup>

The academic turn was mirrored in Malcolm Anderson’s *Frontiers: Territory and State Formation in the Modern World* (1996), one of the most significant monographs in the field. For Anderson, frontiers are both an ‘institution and a process [...] established by political decisions and regulated by legal texts’ and are central to global politics: ‘no rule-bound economic social or political life in complex societies could be organized without them’. He attributes four dimensions of borders: as instruments of state policy; as constraints on governments’ control; as markers of a nation’s identity; and as a term of discourse ‘constantly

<sup>17</sup> Ibidem.

<sup>18</sup> Prescott, J. R. V., *Political Frontiers and Boundaries*, London: Allen and Unwin, 1987, p. 80.

<sup>19</sup> Kolosov, V., *Border Studies: Changing Perspectives and Theoretical Approaches*, in ‘Geopolitics’, 10(4), Winter 2005, pp. 155-79.

<sup>20</sup> Ibidem.

<sup>21</sup> Van Houtum, H. *The Geopolitics of Borders and Boundaries*, in ‘Geopolitics’, 10(4), Winter 2005, p. 672.

<sup>22</sup> Ibidem.

reconstituted by those human beings who are regulated, influenced and limited by them'.<sup>23</sup> This understanding of borders as social constructions prevents them from being seen as static and part of an immutable natural order. On the contrary, they are understood to be historically contingent and changing throughout the centuries. According to Anderson, after the Middle Ages which was a period of overlapping loyalties when landlords could owe allegiance to more than one ruler, came a time of strengthening royal authorities and simplified territorial organization. Thus, the purpose of the frontier was to ensure that the sovereign could exercise exclusive legal, administrative and social control over its population in a given territory.<sup>24</sup>

In his book *The Global Covenant: Human Conduct in a World of States* (2000), Robert Jackson asserts Anderson's vision that borders between states are artificial social constructs designed to mark the furthest extent of the territorial jurisdictions of sovereign states.<sup>25</sup> He builds up the idea of state borders as institutions seeing them as 'building blocks' in international life. On this view, borders not only delimit the spheres of national interests and security but also define sovereign rights and duties, such as those relating to non-intervention. Jackson also introduces the idea that borders are crucial in terms of distinguishing what he calls 'insider groups and outsider groups in international relations', meaning states with internationally recognized territory, members of the UN, on one hand, and 'residential groups which enjoy no legal existence as independent states', on the other.<sup>26</sup> This role of state borders is possible as they represent a generally accepted point of reference in international relations.<sup>27</sup>

The 'ubiquitous and embedded position" of borders on the world scene is underlined as well by John Williams in his book *The Ethics of Territorial Borders: Drawing Lines in the Shifting Sand* (2006). He explains that with people's natural necessity of an identity: 'The durability and depth of sedimentation of territorial borders as fences suggest that division, and division on a territorial basis, speaks to a deep-

<sup>23</sup> Anderson, M., *Frontiers: Territory and State Formation in the Modern World*. Cambridge: Polity Press, 1996, p. 5.

<sup>24</sup> *Ibidem*, p. 1.

<sup>25</sup> Jackson, R., *The Global Covenant: Human Conduct in a World of States*. Oxford: Oxford University Press, 2000, p. 312.

<sup>26</sup> *Ibidem*, 322.

<sup>27</sup> *Ibidem*, 333.

seated need of human identity and also in human ethics.<sup>28</sup> According to Williams, borders perform a decisive role by acting as ‘fences between neighbors’ in such a way that ‘tolerates diversity’ rather than stifling difference.<sup>29</sup> Borders allow individuals to build, through their plurality, a distinctive political community.<sup>30</sup> The author passionately defends borders in contemporary political life as ways in which ‘human beings confer meaning on their lives’.<sup>31</sup> Hence, he argues, the removal, or even reconceptualization would mean the end of international relations and is practically unimaginable.<sup>32</sup>

Another influential book *Identities, Borders, Orders: Re-Thinking International Relations Theory* (2001), co-edited by Mathias Albert, David Jacobson, and Yosef Lapid, attempts precisely such a reconceptualization. It criticizes the ‘territorialist epistemology’ developed by international relations scholars who come to treat territoriality as a fixed, ahistorical parameter’.<sup>33</sup> To rework it, Lapid develops what he calls an ‘analytical triad formed by the concepts of identities, borders, orders (IBO)’ which are ‘mutually self-constituting’. This triad, he argues, opens a uniquely well-situated analytical window to observe issues of mobility, fluidity, and change in contemporary world politics.<sup>34</sup> The IBO analysis could be promising because identities, borders, orders signify three vital nodes of arrestation, where the ‘moving sands of international relations come to be variably and temporarily stabilized’. In Lapid’s view, this may liberate the IR theory from the Westphalian territorialist epistemology, allowing it to be a model that can potentially monitor reconfigurations between identities and borders, identities and orders, and borders and orders.

Throughout the last two decades, the Canadian professor R. B. J. Walker has produced probably the most sustained engagement with borders, putting into their center the highly significant, but

<sup>28</sup> Williams, J., *The Ethics of Territorial Borders: Drawing Lines in the Shifting Sand*. Basingstoke and New York: Palgrave Macmillan, 2006, p. 6.

<sup>29</sup> Williams, J., *Territorial Borders, International Ethics, and Geography: Do Good Fences Still Make Good Neighbours?*, ‘Geopolitics’, 8(2), Summer 2003, p. 39.

<sup>30</sup> *Ibidem*.

<sup>31</sup> Williams, J., *The Ethics of Territorial Borders: Drawing Lines in the Shifting Sand*. Basingstoke and New York: Palgrave Macmillan, 2006, pp. 118-119.

<sup>32</sup> Williams, J., *Territorial Borders, International Ethics, and Geography: Do Good Fences Still Make Good Neighbours?*, ‘Geopolitics’, 8(2), Summer 2003, p. 27.

<sup>33</sup> Albert, M., D. Jacobson and Y. Lapid (eds), *Identities, Borders, Orders: ReThinking International Relations Theory*. London and Minneapolis: University of Minnesota Press, 2001, p. 8.

<sup>34</sup> *Ibidem*, p. 9.

problematic concept of state sovereignty. In his book *Inside/Outside: International Relations as Political Theory* (1993), Walker emphasizes that the principle of sovereignty is widely used and taken for granted in international relations, but is actually not a straightforward achieved condition and did not appear ‘out of thin air’. Although it was developed to serve as fundamental principle, ‘a supporting structure, a base on which society rests, a fund of authority’, it remains unstable and tentative.<sup>35</sup> Walker sees in sovereignty an attempt to answer questions about the nature and location of political community, a spatial and a temporal frame of what political community can be.<sup>36</sup> It provides a resolution to the problem of universality and particularity as it permits cultural particularity (‘citizenship’) within a broader framework of universal norms of interaction (‘common human identity’). It fixes a ‘clear demarcation between life inside and outside a centered political community’.<sup>37</sup> It permits notions of here and there, us and them. The inside of a sovereign state is a space which allows for human aims of reason, justice, democracy, etc. – quite opposite to the space outside of it, in the sphere of the international, which is trapped in perpetual warfare and barbarism. Temporally, these demarcations provide the condition of possibility for notions of ‘progress’ and ‘development’ inside states as defined against what happens outside them.<sup>38</sup>

Yet, once global space is reconsidered as ambiguous, contested and unstable, the function of artificially imposed borders becomes highly dubious and they prove to be a ‘site of struggle’.<sup>39</sup> Walker challenges this inside/outside model conditioned by the concept of border as not ‘adequate’ to contemporary conditions:

Neither the spatial boundaries of the territorial state nor the geographic points of the compass [...] provide much help in understanding how patterns of stratification, inclusion and exclusion are being transformed on a global basis. [...] It is unlikely that the historical experience of sharp territorial borders at the

<sup>35</sup> Walker, R. B. J., *Inside/Outside: International Relations as Political Theory*. Cambridge: Cambridge University Press, 1993, p. 159.

<sup>36</sup> *Ibidem*.

<sup>37</sup> Ashley, R. K. and R. B. J. Walker, *Reading Dissidence/Writing the Discipline: Crisis and the Question of Sovereignty in International Studies*, In *International Studies Quarterly*, 34, 1990, p. 382.

<sup>38</sup> *Ibidem*.

<sup>39</sup> Walker, R. B. J., *After the Future: Enclosures, Connections, Politics*, in R. Falk, L. Ruiz and R. B. J. Walker (eds), in ‘Reframing the International: Law, Culture, Politics’, New York and London: Routledge, 2002, p. 22.



edge of states would do much to help us understand the complexity, the constant mutation or the productive/destructive capacities of such boundaries.<sup>40</sup>

The French post-structuralist philosopher Michel Foucault complicates further and extends the concept of borders by questioning the power that creates it. For Foucault, power in global politics is not something that can be approached as if 'it' were a possession 'divided between those who have it and hold it exclusively and those who do not have it and are subject to it'.<sup>41</sup> Instead he argues that 'power is never anything more than a relationship that can, and must, be studied only by looking at the interplay between the terms of the relationship'.<sup>42</sup> An analysis of power should not begin with a central source such as the sovereign, but rather its 'infinitesimal mechanisms, which have their own history, their own trajectory, their own techniques and tactics, and then look at how these mechanisms of power [...] have been and are invested, colonized, used, inflected, transformed, displaced, extended, and so on by increasingly general mechanisms and forms of overall domination.'<sup>43</sup>

On this basis, Foucault claims that today power relies on a 'closely meshed grid of material coercions' involving almost constant surveillance.<sup>44</sup> Such a power is therefore not a sovereign power as such but a form of 'disciplinary power' in the sense that it attempts to render visible the spatial distribution of bodies for control over them. Disciplinary power structures space by enclosing and hierarchically arranging elements within it: 'the first action of discipline is in fact to circumscribe a space in which its power and the mechanisms of its power will function fully and without limit'.<sup>45</sup> With the development of society this disciplinary power was 'joined' by biopower - in which the biological features of the human species became the target for political

<sup>40</sup> Walker, R. B. J., *Sovereignty, Identity, Community: Reflections on the Horizons of Contemporary Political Practice*, in R. B. J. Walker and S. Mendlowitz (eds), *Contending Sovereignties: Redefining Political Community*, Boulder and London: Lynne Rienner Publishers, 1990, p. 180.

<sup>41</sup> Foucault, M., *Society Must Be Defended: Lectures at the Collège de France, 1975-76*, London: Penguin, 2003, pp. 42-43.

<sup>42</sup> *Ibidem*, 42.

<sup>43</sup> *Ibidem*, 245.

<sup>44</sup> Foucault, M., *Power/knowledge*, ed. C. Gordon, trans. C. Gordon, L. Marshall, J. Mepham and K. Soper, Padstow: Harvester Press, 1980, p. 39.

<sup>45</sup> Foucault, M., *Security, Territory, Population: Lectures at the Collège de France, 1977-78*, ed. M. Senellart, Basingstoke and New York: Palgrave Macmillan, 2007, p. 45.

strategy.<sup>46</sup> Whereas disciplinary power isolates, concentrates and is essentially protectionist, by contrast biopower is said to be centrifugally oriented in favor of expansion, circulation and movement and thus the goals change:

‘We see the emergence of a completely different problem that is no longer that of fixing and demarcating the territory, but allowing circulations to take place, of controlling them, sifting the good and the bad, ensuring that things are always in movement, constantly moving around, continually going from one point to another, but in such a way that the inherent dangers of this circulation are canceled out.’<sup>47</sup>

Foucault’s reconfigured treatment of power is not in terms of something that can be ‘possessed’, or kept in a container such as the modern sovereign territorially bordered state, but rather as something that circulates through networks, capillaries, bodies, actions, attitudes, discourses, learning processes and everyday lives.<sup>48</sup> Thus, in an interview in 1976, Foucault points to the ways in which relations of power always ‘necessarily extend beyond the limits of the state’.<sup>49</sup> In other words, while the territory of the juridical–political order of the state undoubtedly constitutes space within which power relations may be identified and analysed, such power relations always exceed the space/territory that state borders are said to delimit according to the conventional inside/outside model.<sup>50</sup>

### 1.1.2. *Bordering, Ordering, Othering*

One of the most insightful formulations of the main principles of border politics today belongs to the Dutch authors Henk van Houtum and Ton van Naerssen, who nailed it in 2002 with an article called ‘Bordering, Ordering, Othering’.<sup>51</sup> Bordering becomes an exclusionary practice of securing and governing of the ‘own’ economic welfare and

<sup>46</sup> Ibidem, p. 1.

<sup>47</sup> Ibidem, p. 65.

<sup>48</sup> Foucault, M., *Power/knowledge*, ed. C. Gordon, trans. C. Gordon, L. Marshall, J. Mepham and K. Soper, Padstow: Harvester Press, 1980, p. 39.

<sup>49</sup> Ibidem, p. 122.

<sup>50</sup> Ibidem.

<sup>51</sup> Houtum, H. van and Ton van Naerssen *Bordering, ordering and othering*.- Tijdschrift voor economische en sociale geografie, vol. 93, issue 2, 2002, pp. 125-136.

identity – by thickening, de-territorialization and biometrics. Turning borders into a space for a continuous construction and re-construction of identities and alterities (backed by theatrical performance) relates to othering, the discursive differentiation between us and them. This happens through a strict process of ordering, which allows some ‘others’ in, but other ‘others’ not.<sup>52</sup>

In Houtum and Van Naerssen’s view, the post-modern rejection of sameness and the acknowledgement of differences have not lead to a reduction of claims on space and spatial fixations.<sup>53</sup> On the contrary, they have invoked a further special securing of one’s wealth, identity and safety, and the adverse selection of access. Higher mobility of information, capital and people paradoxically has led to a commercial re-strengthening of the claiming of space. All spatial units claim to own unique qualities and assets and those who lack cultural or historical legacies creatively invent them.<sup>54</sup> Bordering serves as a buffer zone between them and others. Making others through the territorial fixing of order is intrinsically connected to our present image of borders. Others are both necessary, constitutive for the formation of borders, as well as the implication of the process of forming these borders. Others are constantly produced and reproduced to maintain the cohesion in formatted order of a territorially demarcated society.

At the same time, bringing us closer to the migration issue, the ordering process – the need of non-stop monitoring of control of access and of close examination of those entering – has to guarantee the utopian dream of an ordered, consistent and stabilized unity. According to the authors, in present day capitalist societies the speed, flexibility and frictionless movement of money sharply contrast with the movement of people without meaningful economic resources:

Complete closure and complete openness of the borders are generally seen as extremes on an imagined border continuum, of which the degree of openness dominates liberal economic debates and the degree of closure dominates the debate on the immigration of refugees.<sup>55</sup>

<sup>52</sup> Ibidem.

<sup>53</sup> Ibidem.

<sup>54</sup> Ibidem.

<sup>55</sup> Ibidem.

### 1.1.3. *Contemporary Characteristics of Border Politics*

The above-presented swift journey through the theoretical field provides an insight on the sophisticated conceptualizations of both the nature and location of borders and bordering practices. It is a vital stepping stone towards a more empirical focus on some of the main features attributed to contemporary border realities which bring it closer to securitization. Acknowledging that the undertaking is quite ambitious, the text strives to point out the most illustrative characteristics of the borders, telling both for the post-constructivist theory outlined before, but also relative for the migration issue which would be central to this work.

#### *Thickening and de-territorialization of borders*

The relativity of space underlined by theorists finds a perfect example in the ongoing, yet undisputed process of ‘border thickening’. The term is coined to represent the ever more expanding patterns of offshoring border controls, on one hand, and pre-emptive border practices on the other. A good example for such is work of UK border authorities or the European border agency Frontex (officially transformed into European Border and Coast Guard Agency since 7 July 2016). In fact, in 2007, echoing the post-structuralist reconceptualization of borders, the UK Home Office clearly states in its new border doctrine that the traditional understanding of borders as ‘a single, staffed physical frontier, where travellers show paper-based identity documents to pass through [...] will not deal effectively with the step change in mobility that globalization has brought to our country.’<sup>56</sup>

The thickening of UK borders was presented by the acting prime-minister Gordon Brown as three-folded line of defense: the first located overseas ‘so that terrorist suspects can be identified and stopped before they board planes, trains and boats’; the second to be found at the ‘main points of entry’ where biometrics are already in place and a new unified border force will be in operation; and third ‘within our borders [...] to help prevent people already in the country using multiple identities for terrorist, criminal or other purposes’.<sup>57</sup> According to the doctrine,

<sup>56</sup> Home Office, *Securing the UK Border: Our vision and strategy for the future*, London: HMSO, March 2007, p. 3.

<sup>57</sup> Brown, G., *Statement on Security*, 2007, available at <http://www.number-10.gov.uk/>

the transformation from static frontier to thick border is achieved by three innovations: off-shoring, identity capture and pre-emption. The text clearly states: ‘We want to extend the concept of exporting our borders around the world.’<sup>58</sup> This ‘export’ is pursued by ‘juxtaposed controls’ whereby the UK monitors mobility in other states and vice versa (like in the French city of Calais, for example) and by cooperation with foreign intelligence and law-enforcement agencies to ‘detect and deter inadequately documented passengers’.<sup>59</sup> Those offshore practices lead to a broader principle of pre-emption that also underpins the UK’s new border doctrine. Pre-emption involves gathering information and identifying risk before travel begins: ‘the earlier that risk is identified and can be acted upon, the greater the chance of it being successfully resolved, and the less it usually costs to do so.’<sup>60</sup>

Similarly, the recent work by Frontex challenges what and where the borders of the European Union are. In 2006, after thousands of migrants tried to reach the continent from the Canary Islands, the EU agency mobilized patrol boats off the West African coast near Mauritania, Senegal, and Cape Verde. It brought together technical border surveillance equipment from several member states with the expressed aim of preventing ‘migrants from leaving the shores on the long sea journey’.<sup>61</sup> Surveillance planes from Finland and Italy were flown along the coast and deeper into African territory in an attempt to deter would-be migrants to the European Union. Although these missions were carried out at hundreds of miles away from member states’ territory and the geographical outer edge of the Union, it is perhaps more accurate to see them as European border performances.

An even more radical tactic was applied during the current migrants crisis when within the operation Sophia, warships were sent into the Mediterranean Sea whose primary goal was to disrupt smuggling routes. Despite the objections of the Libyan authorities, the mission was due to perform coercive actions against the smugglers – including on Libyan soil. (The migrant policies of the EU would be fully examined in Chapter 2).

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<sup>58</sup> Ibidem.

<sup>59</sup> Cabinet Office, *Security in a Global Hub: Establishing the UK’s New Border Arrangements*, London: HMSO, November 2007, p. 38.

<sup>60</sup> Ibidem, p. 48.

<sup>61</sup> Ibidem.

The two examples considered demonstrate that a commonsensical picture of the concept of the border of the state as something fixed territorially at the geographical outer edge of the sovereign state is somewhat chimerical. The practices across domestic and international terrains imply a ‘thickness’ to borders that thin lines on maps do not otherwise represent. They also illustrate divergence between the limits of security, law, and authority on the one hand, and the territorial limits of the sovereign state on the other hand.

### *Technology and New Borders*

De-territorialization follows another path as well – namely, the emergence of new, virtual borders, ‘constructed’ by technology. Schengen borders, those of UK and US, as well as many others rely on a complex set of technological innovations put in place for risk assessment: they transform border security into a risk-based identity capture and management. Whereas paper-based passports and visas allowed for identity fraud and the use of false aliases, it is argued that new forms of biometrics – fingerprinting, features of iris, shared databases, etc. ‘lock applicants into an identity at the earliest possible point in their journey, allowing authorities to track more easily their previous and future dealings’.<sup>62</sup>

L. Amoore captures these developments, which involve a turn to digital technologies and the involvement of private enterprise which produces them, with the concept of the ‘biometric border’. It refers to the encoding of the bodies of travelers before they move, to enable the fixing of identities, classification according to perceived levels of risk, and filtration into legitimate/illegitimate flows of traffic. Thus, according to him the management of the border stops being a matter of simple policing and disciplining of the movement of bodies across mapped space. Rather, ‘it is [...] a matter of biopolitics, as a mobile regulatory site through which people’s everyday lives can be made amenable to intervention and management.’<sup>63</sup> This intervention is not geographically constraint, but as mobile as the subjectivities it attempts to govern:

The biometric border is the portable border par excellence, carried

<sup>62</sup> Ibidem, pp. 32-33.

<sup>63</sup> Williams, J., *The Ethics of Territorial Borders: Drawing Lines in the Shifting Sand*. Basingstoke and New York: Palgrave Macmillan, 2006, p. 6.

by mobile bodies at the very same time as it is deployed to divide bodies at international boundaries, airports, railway stations, or subways or city streets, in the office or the neighborhood.<sup>64</sup>

What is characteristic for a biometrically controlled automated border entry system is its double function: it is put in place to both to hinder and to facilitate movement according to decisions about the legitimacy of the subject in transit.

*Zones of Indistinction. Securitization*

The subjectivity in those processes, however, inspires the Italian philosopher Giorgio Agamben, the author of the notion of generalized biopolitical border, to evoke Carl Schmitt's theory of state of exception. According to the Italian's definition, the state of exception is a 'zone of indistinction, between inside and outside where there is no difference between law and force, wherein individuals are subject to the law but not subjects in the law'.<sup>65</sup> Since the sovereign power to decide is itself prior to and outside of the law, Agamben is anxious about the expansion of executive powers (especially since the inauguration of Bush wars). He sees the borders as part of those areas which, especially after 11 September, are being turned into 'zones of indistinction', where exceptional activities are the rule.<sup>66</sup>

The border is one of those spaces of sovereign decisions: who counts as a human and who does not. This demonstration of sovereign power is achieved by bans: the primary function of the border. The border is a permanent state of exception, because the decision to admit an individual into the community or exile that individual from the protection of the sovereign is at the root a political decision.<sup>67</sup> Characteristics usually associated with the edges, margins, or outer-lying areas of sovereign

<sup>64</sup> Amoore, L., *Biometric Borders: Governing Mobilities in the War on Terror*, in *Political Geography*, 25, 2006, p. 338.

<sup>65</sup> Agamben, G., *Homo Sacer: Sovereign Power and Bare Life*, Stanford: Stanford University Press, 1998, p. 181.

<sup>66</sup> For example, in *Homo Sacer* Agamben refers to the zones d'attentes at the French airports, where foreigner seeking refugee status are detained, as an 'apparently innocuous space I which the normal order is de facto suspended and in which whether or not atrocities are committed depends not on law but the civility and ethical sense of the police who temporarily act as sovereign'. See at Agamben, G., *Homo Sacer: Sovereign Power and Bare Life*, Stanford: Stanford University Press, 1998, p. 174.

<sup>67</sup> Salter, M. *When the exception becomes the rule: borders, sovereignty, and citizenship*, In 'Citizenship Studies', 12:4, 365-380, 2008, p. 365.

space gradually blur with what is conventionally taken to be the 'normality' of that space. 'The state of exception, which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such nevertheless remains outside the normal order. [...] Living in the state of exception [...] has now become the rule.'<sup>68</sup>

### *Scenes of Performance*

One of the features of borders which became highly salient in the context of the current migrant crisis, is their inward-orientation. As Paasi notes, they are closely related to the ideological state apparatus, ideological practices such as nationalism (and related national identity narratives) and the material basis of such practices, which manifests itself in territoriality.<sup>69</sup> Numerous scholars focusing on nationalism and nationhood explicitly recognize the historical importance of territory and boundaries in the practice of state territoriality and in the making of a homeland.<sup>70</sup>

Furthermore, borders as expressions of territoriality are normally crucial to what can be called the discursive landscape of social power. This is a construct that has become institutionalized in a society in the long term and manifests itself in material landscapes, military commemorations, ideologies and nationalist performances all over that society's territory.<sup>71</sup> The key *location* of a national(ist) border, as argued by Paasi, does not lie at the concrete line but in the manifestations of the perpetual nation-building process and nationalist practices. Still, as symbolic places of territoriality, with their imaginary potential, borders become scenes of performance.<sup>72</sup> Direct manifestations of this idea are the mushrooming fences and walls along the European borders aimed at stopping migrants. The phenomenon reflects the earlier observations of Nicolas De Genova who in 2005 pointed out how migration policy becomes symbolic politics, a 'public spectacle' where actual enforcement

<sup>68</sup> Agamben, G. *Means Without End: Notes on Politics*, trans. V Binetti and C. Casarino, Minneapolis: University of Minnesota Press, 2000, p. 139.

<sup>69</sup> Paasi, A. *A Border Theory: An Unattainable Dream or Realistic Goal for Border Scholars*. In 'The Ashagte Research Companion to Border Studies', London: Ashgate, 2011, p. 8.

<sup>70</sup> For example: Anderson (1988), Schulze (1994), Guibernau (2007).

<sup>71</sup> Paasi, A. *A Border Theory: An Unattainable Dream or Realistic Goal for Border Scholars*. In 'The Ashagte Research Companion to Border Studies', London: Ashgate, 2011, p. 23.

<sup>72</sup> *Ibidem*.



becomes a highly visible display of authoritarian maneuvers by uniformed personnel.<sup>73</sup> This spectacle gives the impression that the state is indeed in control of the border.<sup>74</sup>

## 1.2. BORDERS AND THE BALKANS

In the last 25 years the Balkans have been among the most active producers of borders. The borders are both numerous – with seven new states, but also various: formal and informal; between states and regions; economic, social and political; firm and permeable, even contested.<sup>75</sup> Throughout the recent post-communist trajectory of the Balkan states, primary emphasis has been placed on the re-definition of borders.<sup>76</sup> As R. Gropas explains, this is the natural path of any process of state-building and the attempt to define and secure geographic delimitations and to establish sovereign authority within these has been the primordial aim of the nation state.<sup>77</sup> In this context, borders function in an inclusion-exclusion mechanism whose ultimate aim is to form exclusive enclaves: a strive that manifested itself in the course of the dissolution of former Yugoslavia and the subsequent tensions.<sup>78</sup>

On one hand, the borders in Southeast Europe are firm and strong. Here they do matter – which differs them from those in Western Europe and the Schengen space.<sup>79</sup> They are more exclusive than inclusive, and are perceived as central to state-building. They are fortified by opposing political discourses. Their function is less important on an international level, and more on subnational and local one.<sup>80</sup>

On the other hand, Southeast Europe is constituted of countries whose borders are contested, or whose borders remain unclear: there

<sup>73</sup> De Genova, N. *Working the Boundaries: Race, Space, and „Illegality“ in Mexican Chicago*, 2<sup>nd</sup> edn. Durham: Duke University Press, 2005.

<sup>74</sup> Ibidem.

<sup>75</sup> Gropas, R. *Functional Borders, Sustainable Security and EU-Balkan Relations*, in ‘Southeastern European and Black Sea Studies’, vol. 4, N1, 2004, p. 49.

<sup>76</sup> Ibidem.

<sup>77</sup> Ibidem.

<sup>78</sup> Ibidem.

<sup>79</sup> Andreev S. *The Border in Southeast Europe – Democratic Legitimacy and Security Issues in an Enlarging European Union*, In ‘Southeast European and Black Sea Studies’, vol. 4, N 3, 2004, pp. 379-398.

<sup>80</sup> Ibidem, p. 390.

are states or state-like entities whose legality is still unresolved.<sup>81</sup> That challenges the status of certain borders in the region, which from internal regional boundaries may develop into new international borders. The list ranges from Kosovo to Bosnia-Herzegovina, to the future development of the institutional arrangement between Serbia and Montenegro, and potentially even to Vojvodina, Sandzak and the western province of Macedonia.<sup>82</sup> This also means that in many cases these states or state-like entities are still vulnerable to internal or cross-border rivalries. At the same time, they may equally be a threat to another minority or a neighbor, or a source of tension and persisting regional instability because of excessive nationalistic zeal or the need to assert and protect their identity.

On top of those two opposing, yet self-complimenting features of the Balkan boundaries – their contestability and physical and political ‘strength’ – is the failure of the countries in dealing with the challenges associated with their formal and informal borders.<sup>83</sup> Typical cross-border issues that remain problematic include: the development of negative social capital; non-compliance with laws, regulations and administrative norms when providing goods and services that are legal; an ever-growing illegal or outright criminal sector; and immigration pressures.

What is crucial for this research, however, is not only the parceled landscape of the region and the overproduction of symbolically and politically firm boundaries, yet in many cases contested. More, it is the century-long perception of the Balkans, as a whole, as borderlands themselves.<sup>84</sup> Such a portrayal of the region is so deeply rooted in Western European societies that it can be identified in many works that are not directly connected with borders. In his book *‘British Literature and the Balkans’*, Hammond claims that one of the most durable notions in the symbolic geography of Europe is that in the East there is another Europe, radically different.<sup>85</sup> Balkans have been described as the ‘other’ Europe.<sup>86</sup> The Balkans are closer geographically, yet distant politically,

<sup>81</sup> Gropas, R. *Functional Borders, Sustainable Security and EU-Balkan Relations*, in ‘Southeastern European and Black Sea Studies’, vol. 4, N1, 2004, p. 51.

<sup>82</sup> *Ibidem*.

<sup>83</sup> *Ibidem*.

<sup>84</sup> Hammond A. *British Literature and the Balkans. Themes and Contexts*. Amsterdam – New York: Editions Rodopi B.V, 2010.

<sup>85</sup> *Ibidem*.

<sup>86</sup> Todorova, M. *Imagining the Balkans*, New York: Oxford University Press, 1997, p. 3.

socially, economically.<sup>87</sup> The Balkans represent what Europe could be if non-Europeans were present. The Balkans had become a synonym for a reversion to the tribal, the backward, the primitive, the barbarian. What has been emphasized about the Balkans is that its inhabitants do not care to conform to the standards of behavior devised as normative by and for the civilized world. Balkanization becomes a synonym of marginalization – in the periphery they ‘provincialize Europe’.<sup>88</sup>

Another central characteristic of the Balkans is their transitional status between the West and the East.<sup>89</sup> As Todorova underlines, the West and the East are usually presented as incompatible entities, anti-worlds, but completed antiworlds. The Balkans, on the other hand, have always evoked the image of a bridge or a crossroads.<sup>90</sup>

Those conceptions of the region can be interpreted in the current context of the migrant crisis. Such a perspective on processes that the influx of people coming from the ‘East triggered, will be developed in the second chapter.

### 1.3. BORDERS AND REFUGEES

Forced migration and refugees are closely intertwined, and indeed incomprehensible – both in historical and contemporary contexts – without a reference to the nation-state borders. Borders are basic to the construction and creation of refugee movements. On one hand, historically the emergence of nation states has a strong contingent relationship with the (often violent) generation of large-scale refugee movements. As Weinberg puts it, in the process of the nation state building the norm was to match, through expulsion and murder, people to borders and not vice versa.<sup>91</sup> On the other hand, if the drawing of

<sup>87</sup> Andreev S. *The Border in Southeast Europe – Democratic Legitimacy and Security Issues in an Enlarging European Union*, In ‘Southeast European and Black Sea Studies’, vol. 4, N 3, 2004, pp. 379-398.

<sup>88</sup> Todorova, M. *Imagining the Balkans*, New York: Oxford University Press, 1997, p. 3.

<sup>89</sup> *Ibidem*, p. 15.

<sup>90</sup> *Ibidem*.

<sup>91</sup> The pattern of displacement and dispossession that underpins the constitution of nation states is much broader than the most prominent one – the creation of the state of Israel through expulsion of 750 000 Palestinian Arabs. It is also true for the founding of the American republic, accompanied by mass murder and transfer of large number Native Americans, or for the Turkish Republic from the ashes of the Ottoman Empire following the expulsion of 1.5 million Armenians, of whom some 750,000 died. See in: Weinberg, G. *A World at Arms: A*

borders was bound up with the production of refugee movements, today asylum seekers and refugees are ‘created’ through their interaction with borders. The 1951 Geneva Convention Related to the Status of Refugees defines a refugee as one with a well-founded fear of persecution who is ‘outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of protection of that country’.<sup>92</sup> Thus, the process of seeking asylum is initiated through crossing at least one border and reaching another.<sup>93</sup> The state’s obligations to asylum seekers as stated by the Convention – of *non-refoulement*<sup>94</sup> and the processing of the asylum claim<sup>95</sup> – are triggered when the asylum seeker reaches the borders and claims asylum.<sup>96</sup>

The ultimate goals of such a procedure are residence permit and citizenship. Echoing Hannah Arendt’s idea that the rights of a man function only as citizen rights<sup>97</sup>, those reaching the outside of the border strive to enter the inside and enjoy all rights a citizen is accorded by the nation state – civil, social, economic, and political. They strive for the right to have rights and the right to belong to some kind of organized community.<sup>98</sup> The lack of ‘the tremendous equalizing of differences which comes from being citizens of some commonwealth’ means the rightless ‘are no longer allowed to partake in the human artifice, they begin to belong to the human race in much the same way as animals belong to a specific animal species.’ Without citizenship they become ‘human beings in general’ also without a profession, without an opinion, without a deed

*Global History of World War II*. Cambridge: Cambridge University Press, 2005, p. 895.

<sup>92</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Art. 1, available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 7 October 2016].

<sup>93</sup> Long, K. *In Search of Sanctuary: Border Closures, ‘Safe’ Zones and Refugee Protection*, in *Journal of Refugee Studies* 26(3), 2013, pp. 458-76.

<sup>94</sup> According to Art. 33 of the Geneva Convention, ‘No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The principle of non-refoulement is a key facet of refugee law.

<sup>95</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Art. 33 available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 7 October 2016].

<sup>96</sup> Loescher, G., and Milner, J. *UNHCR and the Global Governance of Refugees*. Pp. 189-209 in A. Betts (ed.), *Global Governance Migration*. Oxford: Oxford University Press, 2011.

<sup>97</sup> Arendt, H. *The origins of Totalitarianism*. San Diego: Harcourt Brace Jovanovich, 1976, p. 297.

<sup>98</sup> *Ibidem*, p. 302.

by which to identify and specify themselves.<sup>99</sup> Yet, as a horizontal status, citizenship requires limits. It is, as Rogers Brubaker famously noted, ‘internally inclusive’ and ‘externally exclusive’.<sup>100</sup> For most people and in most cases, the limits of the borders are the limits of citizenship.<sup>101</sup>

According to Randal Hansen, the contemporary asylum system challenges the very state system on which it depends for three reasons: first, because it is one of the few areas in which sovereignty is meaningfully restricted; second, because most Convention signatory states or their courts have articulated complex and lengthy legal procedures that make full asylum processing and subsequent appeals time consuming and expensive; and third, because deportation is extremely difficult.<sup>102</sup> An asylum application at the border means that an asylum hearing must be arranged; lawyers must be appointed; a case and possibly an appeal must be heard; and, if unsuccessful, return procedures have to be initiated. Within the European Union, states are legally obligated to provide asylum seekers with minimum levels of housing and subsistence while their case is being determined (though that support varies in practice greatly across the Union) which before the current migrant crisis lasted on average about six months.<sup>103</sup> At the end, only a handful of asylum seekers receive some kind of protection or refugee status. Tracking down and deporting the others – who often disappear in the large cities – is expensive, and states simply could not find the majority of them.<sup>104</sup>

These challenges led nation states to erect a wide variety of institutional and legal barriers designed to keep asylum seekers away from their borders: visa requirements, safe country of origin and safe third country rules, carrier sanctions, interdiction at sea, and the declaration of airport international zones. All those measures have one, already familiar goal: thickening of the border and removing the burden of securing it from those guarding the juridical line as this is the point where international obligations of states are triggered.<sup>105</sup> Migrants acquire their Convention

<sup>99</sup> Ibidem.

<sup>100</sup> Brubaker, R. *Citizenship and Nationhood in France and Germany*. Cambridge, MA: Harvard University Press, 1992, p. 21.

<sup>101</sup> Ibidem.

<sup>102</sup> Hansen, R. *State Controls: Borders, Refugees, and Citizenship*, in Fiddian-Qasmiyeh, E., Loescher, G. and Long, K. (eds.) *The Oxford handbook of refugee and forced migration studies*, Oxford, United Kingdom: Oxford University Press, 2014, p. 255.

<sup>103</sup> Ibidem, p. 262.

<sup>104</sup> Ibidem.

<sup>105</sup> Hansen, R. and Papademetriou, D. *Managing Borders in an Increasingly Borderless*

rights of *non-refoulement* and processing of the claim as soon as they reach the shores of a signatory state.

Besides the practical problems that the asylum procedure brings for states, the motivation for restricting forced migrants' access to borders is in the political field, as suggested by most of migration scholars.<sup>106</sup> Some authors suggest that governments construe asylum as a problem and treat it as a security instead of human rights issue. This results in the generation of public hostility to asylum seekers whom they would otherwise welcome or at least not notice, and then use this generated opposition as an excuse to implement restrictions. Nevertheless, the claim of Randall Hansen seems more fair, who says that governing politicians do not try to generate the immigration crisis, but usually react to it. Rather, it is instigated by those who profit from the government's discomfort: opposition politicians, (often conservative) journalists, local officials, far-right parties, and, of course, avowed racist extremists.<sup>107</sup>

No matter the reason though, these restrictions, particularly those that 'thicken' the border, inevitably prevent genuine refugees from reaching the borders of 1951 Convention signatory states. This means, equally inevitably, that states' defense of their borders risks undermining, and perhaps has in large measure already done so, the international refugee system.

#### 1.4. STRANDED MIGRANTS

As already mentioned, all the measures against forced migration pictured in the previous part are aimed at restricting the number of asylum seekers through thickening borders. Yet, in the most extreme cases, states wishing to prevent refugee movements completely stop access to their territory by closing down the borders. 'Border closures in the face of mass refugee influx,' observes Katy Long, 'are a visible demonstration of a state's refusal to accept the obligations of refugee protection as established under the existing refugee protection

*World*. Washington, DC: Brookings Institution Press, 2013, pp. 3-22.

<sup>106</sup> For example, Hassan (2000); Warner (2005-6); Nickels (2007).

<sup>107</sup> Hansen, R. *State Controls: Borders, Refugees, and Citizenship*, in Fiddian-Qasmiyeh, E., Loescher, G. and Long, K. (eds.) *The Oxford handbook of refugee and forced migration studies*, Oxford, United Kingdom: Oxford University Press, 2014, p. 262.

framework'.<sup>108</sup> Highly tightened controls or the complete closure of borders are unanimously pointed by scholars as the main reason for the creation of an extremely vulnerable group of migrants, usually defined as 'stranded' – or trapped in transit. This subchapter aims to examine the phenomenon (while intentionally stopping short of giving a definition of those migrants), the reasons for the special vulnerabilities of the group, and finally of course, the direct connection of its situation with border politics.

#### 1.4.1. *Definition and Concept*

There is no generally accepted definition of stranded migrants. The term brings no legal status and remains somewhat descriptive.<sup>109</sup> Some scholars describe it as 'one of these new 'fashionable categories' which is no rigid scientific category but 'an emotionally connoted expression.'<sup>110</sup> Others similarly believe that the word 'stranded' merely describes a situation, not status of people. Some have commented that no rights are attached to the title 'stranded migrant', so there is little point in arriving at a concrete definition.<sup>111</sup> According to Vincent Chetail, professor of international law and director of the Global Migration Centre, the term can apply to 'nearly every group of displaced persons, with the only commonality being that they cannot move out of the situation in which they find themselves'.<sup>112</sup> They, he argues, might be part of irregular or regular movements, be documented or undocumented and stranded because of objective and/or subjective reasons.<sup>113</sup>

The earliest reference to stranded migrants was found in a 1981 review of a book about illegal aliens in the western hemisphere and was used for a group of migrants who made it from Mexico to the rural Middle West, but who remained isolated there and unable or unwilling to move on within the US or to go back to Mexico.<sup>114</sup> Later on in the

<sup>108</sup> Long, K. *In Search of Sanctuary: Border Closures, 'Safe' Zones and Refugee Protection*, in *Journal of Refugee Studies* 26(3), 2013, pp. 464-67.

<sup>109</sup> Chetail, V. *Stranded Migrants: Giving Structure to a Multifaced Notion*, Global Migration Research Paper, 2013, p. 21.

<sup>110</sup> *Ibidem*, p. 46.

<sup>111</sup> *Ibidem*, p. 45.

<sup>112</sup> *Ibidem*, p. 14.

<sup>113</sup> *Ibidem*.

<sup>114</sup> Dowd, R. *Trapped in Transit: The Plight and Human Rights of Stranded Migrants*, UNHCR Research Paper 156, June 2008, p. 2.

1990s, the term was actively used in the context of the collapse of the USSR when a lot of people turned out to be residing in a ‘foreign’ state without a clear legal status.<sup>115</sup>

In recent years, the term ‘stranded migrants’ has been used predominantly by IOM in relation to its voluntary return assistance programs and Stranded Migrant Facility (SMF). In 2007, IOM published a chapter entitled ‘*The Legal Protection of Stranded Migrants*’, which is considered to be the first publication to specifically address this phenomenon. Its focus is on migrants who ‘find themselves legally stranded, because they are unable to remain lawfully in the country in which they are physically present, or move to another country, or return to their home country.’<sup>116</sup> Although the term ‘stranded migrant’ is now an integral part of the institutional discourse, there are almost as many definitions as actors. It arguably reflects the differences in the mandates and interests of the various actors involved in this issue.

IOM, which has run a special funding mechanism – SMF - since 2005 demonstrated an evolution in its understanding of the concept. In its note on the establishment of the SMF, IOM stated that the organization aims to provide humanitarian assistance to migrants ‘stranded in transit or at destination who have no means of returning home or continuing their journey, and who are not eligible for assistance under any known program’.<sup>117</sup> In 2008 IOM stated that ‘[t]he term ‘stranded migrant’ refers to individuals who have entered a country of transit or destination but have not been granted a right to stay, while at the same time being unable to return to their home countries. Their predicament may stem from an inability or unwillingness to prove their nationality, combined with a refusal by States to admit or readmit them’.<sup>118</sup> This definition linked the limited individual resources to travel onwards with a de facto statelessness based on a government decision. The wording appears though to be very narrow and does not refer to many groups such as illegal migrants.

<sup>115</sup> IOM. *Constitution of The International Organization For Migration*, 5 December 1951.

<sup>116</sup> Grant, S. *The Legal Protection of Stranded Migrants*, in ‘International Migration Law: Developing Paradigms and Key Challenges’, R. Cholewinski, R. Perruchoud and E. MacDonald (eds), 2007, p. 29.

<sup>117</sup> IOM. *Constitution of The International Organization For Migration*, 5 December 1951.

<sup>118</sup> IOM, *Challenges of Irregular Migration: Addressing Mixed Migration Flows*, Discussion Note, para. 20, 7 November 2008, MC/INF/294.



In the light of the current crisis due to the war in Syria and the Arab Spring, in 2012 an IOM background paper generally defined ‘situations in which a migrant is unable to stay in the country of destination/transit, unable to return to the home country, and unable to move to a third country, and typically subject to severe vulnerability and distress. Crises and emergencies represent one scenario among many others which can lead to stranding’.<sup>119</sup> This recent definition widens the previous one by including the vague term ‘unable’ to describe the reason for being stranded, thus opening the space for all possibilities for a person to move. Yet still, as Chetail argues, it excludes rejected asylum-seekers and victims of human trafficking or forced labor.<sup>120</sup>

UNHCR also changed its understanding of the terminology in time, without coming to a definition that encompasses all the possible scenarios. Initially in 1994, the organization called stranded persons ‘those termed ‘refugees in orbit’ and transit migrants who have been prevented from entering their chosen country of destination and who do not wish to return to their country of origin’.<sup>121</sup> UNHCR thus envisioned persons on the move, unsuccessfully attempting to reach their country of destination. It also left out the group of those who are unable to return not due to subjective reasons (lack of will), but are prevented by objective circumstances. This definition excluded as well ‘stranded persons’ in destination countries or those stranded in third countries. In 2010 stranded migrants were defined as ‘[p]ersons who are not in need of international protection and who cannot remain lawfully in the territory of a host State, move lawfully to another country, or return to their country of origin’.<sup>122</sup> This notion portrays the stranded migrants as being not vulnerable and protected under some other framework and appears to ignore that being ‘stranded’ in a humanitarian crisis and left unprotected from human rights violations is a valid case for needing international protection.

Attempts to define the term have also been made by the Global

<sup>119</sup> IOM/IPI, *Migrants in Time of Crisis: An Emerging Protection Challenge* (2012), Background Paper for a Workshop to be held at the International Peace Institute, p. 3, fn. 8, New York, 09 Oct. 2012.

<sup>120</sup> Chetail, V. *Stranded Migrants: Giving Structure to a Multifaced Notion*, Global Migration Research Paper, 2013, p. 16.

<sup>121</sup> Böhning, *Aid in Place of Migration?: Selected Contributions to an ILO-UNHCR Meeting*, International Labour Office Publication, 1994, p. 76.

<sup>122</sup> *Ibidem*, 94.

Migration Group, UNESCO, Amnesty International and other influential NGOs. The approach of all of them, it can be argued, is to match the group with their all mandates, and hence, reflects a self-referential logic.<sup>123</sup> Furthermore, academic literature is scanty, and to the knowledge of the author, a comprehensive study of the issue has still not been produced. To date, there are only two books dedicated entirely on the phenomenon – S. Grant’s *The Legal Protection of Stranded Migrants*’ (2007) and R. Dowd *Trapped in Transit: the Plight and Human Rights of Stranded Migrants*’ (2008). Grant also links the inability to move to a de facto statelessness<sup>124</sup>, while Dowd sees in the group migrants who have left their country of origin due to reasons unrelated to refugee status, but become stranded and vulnerable to human rights abuses in the course of their journey.<sup>125</sup>

In a nutshell, existing definitions are usually too narrow and cover just one or some of the aspects belonging to the widespread phenomenon. On the other hand, though, a definition which would be based on all the existing realities on the ground appears to be fairly impossible as it would need to cover every movement and displacement, as long as individuals can get stuck. Or as Chetail puts it, the historical usage of the term and the various groups covered leaves the impression that in fact any migrant can become stranded.<sup>126</sup> The above presented observations have motivated most of the experts to leave the terminology open, and simply acknowledge that being stranded is a condition which causes need for international protection. Rather than defining the concept, most of the recent work on the phenomenon is focused on the specific vulnerabilities linked to it. While accepting the usefulness of such an open attitude towards terminology, this paper would consider as stranded all those migrants who left their own country on the way to Western Europe within the current crisis, but got stuck in the course of their journey along the Balkan route – after the Balkan countries closed their borders. With some possible exceptions, they are unable or

<sup>123</sup> Chetail, V. *Stranded Migrants: Giving Structure to a Multifaced Notion*, Global Migration Research Paper, 2013, p. 16.

<sup>124</sup> Dowd, R. *Trapped in Transit: The Plight and Human Rights of Stranded Migrants*, UNHCR Research Paper 156, June 2008.

<sup>125</sup> Grant, S. *The Legal Protection of Stranded Migrants*, in ‘International Migration Law: Developing Paradigms and Key Challenges’, R. Cholewinski, R. Perruchoud and E. MacDonald (eds), 2007.

<sup>126</sup> Chetail, V. *Stranded Migrants: Giving Structure to a Multifaced Notion*, Global Migration Research Paper, 2013, p. 24.

unwilling to return to their country of origin, are unable to regularize their status in the country where they are to be found, and do not have access to legal migration opportunities that would enable them to move on to another state.

#### 1.4.2. *Reasons for Becoming Stranded: Border Politics and Beyond*

People's inability to move could be associated with a wide spectrum of reasons. Yet, experts agree, that in the predominant case it is specific border politics and tight controls which confine migrants within a space in which regularization of stay turns impossible.<sup>127</sup> The increasingly strict border controls implemented by the destination countries, particularly those in the Global North, often cause the diversion of migration routes, reliance on smugglers and thus, high costs and risks for migrants.<sup>128</sup> Especially vulnerable are those travelling great distances through transit countries as they often end up trapped in transit and in border areas if the final border of destination turns out to be closed for them (as is the case with the migrants travelling West along the Balkan route).<sup>129</sup>

Strategies to deter migrants through border controls vary: increase use of visa, fines for those carriers transporting irregular migrants, extra-territorial processing of asylum claims. Strong and rich countries have a range of policy options which have been employed to effectively close their borders to asylum seekers, even while they remain theoretically open to receiving refugees. Yet, as the current crisis proves, in extreme cases – not only poor and weak states resort to formal, physical border closures.

The legal principle most obviously limiting states' ability to close their borders so as to prevent a refugee entering territory is the norm of *non-refoulement* guaranteed by Article 33 of the 1951 Convention. It is one of only two articles to which contracting states are not permitted to make any reservations and which UNHCR has considered for decades a rule of international customary law. However, the drafting records of the Convention show that some states were concerned about the prospect

<sup>127</sup> Dowd, R. *Trapped in Transit: The Plight and Human Rights of Stranded Migrants*, UNHCR Research Paper 156, June 2008, p. 12.

<sup>128</sup> Migrant Forum in Asia. *Stranded Migrants*, Responding to Emerging and Critical Issues, Policy Brief 5, p. 2.

<sup>129</sup> Dowd, R. *Trapped in Transit: The Plight and Human Rights of Stranded Migrants*, UNHCR Research Paper 156, June 2008, p. 18.

of ‘extraordinary influx’, and voiced their belief that the provisions of Article 33 should be restricted to exclude any large groups of refugees.<sup>130</sup>

While these views on record should not be taken to represent an ‘official’ interpretation of the application of Article 33 to mass influxes, this exchange is certainly proof of states’ anxiety and fear that large influxes post a particular threat to a state’s stability. A mass influx into a poor state is likely to present a significant challenge. This is particularly so in the case of multi-ethnic national states, where an influx is likely to challenge the balance between the constituent parts of society.<sup>131</sup> Thus, international principles turn to collide with politics. Some legal scholars such as Hathaway claim that there is a legal basis for restricting *non-refoulement* if a state’s basic national survival is threatened by a mass influx.<sup>132</sup> She states that just as a refugee has a right to seek asylum, but no state has the obligation to grant it, a host state has the legal obligation to protect all members of a mass influx from *refoulement*. Most experts in international law disagree with such claims.<sup>133</sup> Instead, there is a presumption that in this case – in order to balance the rights of the refugees against the state’s security – the burden should be shared between states. Yet this is just a presumption which lacks legal obligation: which opens space for exceptional situations and migrants unable to reach destination borders.

Clearly, tight border politics is not the only impediment to the free movement of migrants. One of the other most commonly cited reasons is the lack of documentation.<sup>134</sup> It may be stolen or lost, destroyed by traffickers or the migrants themselves, through fear of deportation. This situation is linked to a de facto statelessness as it leaves the people unable to establish their identity and nationality status. Their situation becomes especially hard when they cannot avail themselves of the protection and assistance of their national authorities due to absence or unwillingness of embassy staff to provide help.

<sup>130</sup> UNHCR, *No Entry! A Review on UNHCR’s Response to Border Closures in Situations of Mass Refugee Influx*, PDES/2010/7, p. 11.

<sup>131</sup> *Ibidem*, p. 12.

<sup>132</sup> Hathaway, J. *The Rights of Refugees in International Law*. Cambridge University Press, 2005, p. 367.

<sup>133</sup> UNHCR, *No Entry! A Review on UNHCR’s Response to Border Closures in Situations of Mass Refugee Influx*, PDES/2010/7, p. 13.

<sup>134</sup> Dowd, R. *Trapped in Transit: The Plight and Human Rights of Stranded Migrants*, UNHCR Research Paper 156, June 2008, p. 13.

Another significant reason as to why migrants become stranded is a lack of financial resources to move on to a third country or return home. Most have engaged the services of smugglers, many of whom steal their money, force them to pay more than they agreed or abandon them with no choice but to pay other smugglers to continue their journey. Some migrants, especially those who pay different smugglers in stages, underestimate the cost of their journey and have exhausted their resources by the time they reach transit countries. Additionally, many migrants have debts to pay back home, which places a further burden on their finances.

Border controls, lack of documentation and resources are by far the main reasons for migrants being stuck. Of course, there are plenty other sources trapping people along their way – both objective – due to rejected asylum application or ineffective procedures, imprisonment, abandonment of traffickers, outbreak of hostilities in the transit or destination countries; or subjective – unwillingness to return due to debts, pride, health issues, etc.

#### 1.4.3. *Vulnerabilities*

The vulnerabilities faced by stranded migrants were synthesized by UNHCR as following: ‘Migrants who become stranded are commonly subject to a wide range of abuses and human rights violations, committed by a range of different actors, including smugglers, traffickers and transport agents, border guards and immigration officials, the police and security services, as well as members of local society. Those violations include (but are not limited to) physical abuse and harassment; extortion and exploitation; lack of due process; arbitrary detention in inhumane conditions; deprivation of access to basic services, xenophobia, racial and ethnic discrimination; interception and abandonment at sea, as well as forced return or transfer to remote and dangerous locations’.<sup>135</sup>

These wide range of perils result from the inability of migrants to move from a place where they cannot regularize their stay. The chance to change their location freely is a fundamental condition to escape abusive situations and its absence increases the level of exposure to

<sup>135</sup> Global Migration Group, *Building partnerships for identifying, protecting, assisting and resolving the situation of stranded and vulnerable migrants*, Global Migration Group Practitioners Symposium, Background Paper, Geneva, 27-28 May 2010, p. 129.

perils and human rights violations.<sup>136</sup> According to Chetail, numerous studies on the stranded communities around the globe – Mexico, Russia, Saudi Arabia, Kuwait, UAE, Jordan, Lebanon, Morocco, Tunisia, etc. – prove that this criterion seems to be even more decisive than the one, often named as most crucial: the legal status which turns migrants into documented and undocumented.<sup>137</sup> He claims that once stranded, legal status does not appear to make a decisive difference regarding vulnerabilities, even though in some situations documented migrants becoming stranded may be in a better situation to claim protection than undocumented migrants who become stranded.<sup>138</sup>

Chetail identifies two secondary factors which increase the vulnerabilities of stranded migrants. First, people seem to be more exposed to abuse if stranded in transit, than in final destination countries.<sup>139</sup> This factor can be even more burdensome if migrants are forced to leave the planned migration route and get stranded in third countries not part of their original journey. Second, humanitarian crises – like armed conflicts or interstate war – also increase the risks for stranded people who cannot claim protection.<sup>140</sup> On the basis of those primary and secondary factors, Chetail creates a ‘pyramid of vulnerabilities’. In it, the least exposed to perils appear to be documented migrants in destination. The level of vulnerability increases and the spectrum of dangers widens as following: undocumented migrants in destination, documented migrants in country of transit, undocumented migrants in country of transit, documented stranded migrants in destination, undocumented stranded migrants in destination, undocumented stranded migrants in country of transit, and finally – the most vulnerable: documented and undocumented stranded migrants in third countries to which they were forced to flee.<sup>141</sup>

How those primary and secondary factors combine in the present migrant crisis, and more specifically, in the case of the stranded people in Macedonia, as well as what specific vulnerabilities they suffer due

<sup>136</sup> Chetail, V. *Stranded Migrants: Giving Structure to a Multifaced Notion*, Global Migration Research Paper, 2013, p. 30.

<sup>137</sup> *Ibidem*, p. 33.

<sup>138</sup> *Ibidem*.

<sup>139</sup> Much transit migration is irregular which exposes the people to numerous dangers on route: natural obstacles, traffickers and smugglers, robbers, threats arising from the practices of state agents.

<sup>140</sup> *Ibidem*, p. 38.

<sup>141</sup> *Ibidem*, p. 44.

those factors, are central questions for this thesis. Their precise answer goes first through a broader European perspective on the crisis. Its dimensions will be examined in the second chapter.

#### CONCLUSION

Border studies step beyond the traditional understanding of boundaries as a simple demarcation line between sovereign states, and explore the concept on a broader scale: as a struggle arena for power and ideology. Both the positivist and post-positivist scientists, despite their different methods for addressing the issue, analyses borders as ‘vaccinating’ practices and discourses. Thanks to that theoretical lens, academia has identified and formulated some of the main principles that characterize the contemporary border politics of states: thickening, securitization, de-territorialization, the transformation of border areas into scenes of performance and state of exception. Those practices allow for ‘bordering, ordering, and othering’ behavior the exclusive results of which, in the current migrant crisis, will be developed in the subsequent sections.

## 2.

ASYLUM POLICIES AND EUROPEAN RESPONSES  
TO THE MIGRANT CRISIS

‘Exodus of biblical proportions’<sup>142</sup>, the ‘crisis of our generation’<sup>143</sup> or ‘manifestation of our moral bankruptcy’<sup>144</sup>: this is how officials from different political specters have described the arrival, through irregular channels, of more than 1,5 million people in Europe since the end of 2014. Although the migration surge is not unique in either its causes or its drivers, it has become a highly sensitive political issue, generating intense political and public debate and exacerbating pre-existing weaknesses in immigration systems across Europe. The lack of an adequate response by EU governments has left hundreds of thousands of refugees and other migrants increasingly vulnerable and prompted harsh criticism of European leadership for its ‘ethical catastrophe’<sup>145</sup> and ‘abdication of responsibility’.<sup>146</sup>

This chapter outlines the key facts relating to the current surge in irregular migration. It proceeds with the challenges which the EU has faced and the strategies its leadership has developed to reframe old

<sup>142</sup> A quote from the ex-leader of UK’s rightwing party UKIP, Nigel Farage, in his interview for BBC Radio 4’s Today programme, 1 September 2015. Parts of the interview are quoted in: Telegraph. *Nigel Farage: EU Has Opened Doors to Migration Exodus of Biblical Proportions*, 1 September 2015, available at: <http://www.telegraph.co.uk/news/politics/nigel-farage/11836131/Nigel-Farage-EU-has-opened-doors-to-migration-exodus-of-biblical-proportions.html>.

<sup>143</sup> A quote from Georg Diez, in an article for the German magazine Der Spiegel. *Der Flüchtling ist jeder*, 24 April 2016, available at: <http://www.spiegel.de/kultur/gesellschaft/georg-diez-zur-fluechtlingsfrage-und-gesellschaftlichen-werten-a-1088837.html>.

<sup>144</sup> A quote by Zoe Williams, in an article for Guardian. *The Economics of the Refugee Crisis Lay Bare Our Moral Bankruptcy*, 17 January 2016, available at <https://www.theguardian.com/commentisfree/2016/jan/17/economics-refugee-crisis-moral-bankruptcy-taxes>.

<sup>145</sup> Kingsley, P. *Europe’s Failure on Refugees Echoes the Moral Collapse of the 1930s*, Guardian, 26 April 2016, available at <https://www.theguardian.com/world/commentisfree/2016/apr/26/europe-stance-refugees-ethical-failure-historic-proportions>.

<sup>146</sup> Ibidem.



approaches in asylum politics in order to deliver a more effective and appropriate response to the crisis. A link between those responses and contemporary border politics, as discussed in the previous chapter, will be made. Finally, attention will be dedicated to the Balkan route countries, their role in the crisis and their transformation into borderlands. Thus, the *first two layers of the pyramid of exclusive border politics* used in the current migrant crisis will be thoroughly presented: the first one, the European level – of border thickening and securitization; and the second one, on a Balkan level – turning the region into periphery zones where rules do not apply fully. The top of my pyramid will be discussed in the third chapter.

### 2.1. ‘EXODUS OF BIBLICAL PROPORTIONS’: NUMBERS, DRIVERS AND CHALLENGES OF THE CRISIS

IOM estimates that in 2015 more than 1,011,700 migrants arrived in Europe by sea and another 34,900 by land<sup>147</sup>: almost three times more than the combined number for 2014, put at 280,000.<sup>148</sup> Another 302,486 migrants entered the continent in 2016.<sup>149</sup> The migratory routes chosen by the people are highly dynamic, often shifting quickly in response to new restrictions at borders or security concerns in transit countries, and yet there are two main ones: Eastern Mediterranean (from Turkey to Greece), and Central Mediterranean (from North Africa to Italy). The Western Mediterranean (from North Africa to Spain), the one through the Black Sea, as well as the land routes, are far less preferred. In 2015 the Eastern Mediterranean route brought 853,650 persons to Europe, while in 2016, after the closure of the Balkan route, the number fell to 166,610.<sup>150</sup> The Central Mediterranean was used by 153,142 people in

<sup>147</sup> IOM Press Release, IOM Counts 3771 Migrant Fatalities in 2015, 5 January 2016, available at: <http://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015>.

<sup>148</sup> The numbers should be considered approximate, as the data of the various agencies does not coincide. For example, according to Frontex 1 800 000 migrants arrived in Europe in 2015.

<sup>149</sup> The data is between 1 January and 28 September 2016 for people travelling by sea. UNHCR, 300000 Refugees Cross the Mediterranean So Far, 28 September 2016. See at: <http://www.unhcr.org/news/latest/2016/9/57e12c564/300000-refugees-migrants-cross-med-far-2016.html>.

<sup>150</sup> Ibidem.

2015<sup>151</sup>, and 115,068 in the first half of 2016.<sup>152</sup> According to Eurostat, 1,29 million people sought asylum in EU in 2015, with 29% being from Syria, 14% from Afghanistan, 10% from Iraq.<sup>153</sup> UNHCR confirms that 80% of asylum seekers in 2015 were from the world's top ten refugee-producing countries.<sup>154</sup>

### *Drivers of the Crisis*

Those overwhelming numbers can be attributed to a confluence of intersecting push and pull factors, some of which have been simmering for years (and have simply been exacerbated by the passage of time and/or recent triggering events), others of which are new. Of course, the primary push reason can be identified in the ongoing violent conflicts, especially the one in Syria, that claim thousands of lives, ruin any chances for decent existence, and render possible returns impossible. The fifth year of Syrian conflict saw the almost complete destruction of Eastern Aleppo, bombardments of hospitals and humanitarian convoys, further use of chemical weapons, tighter sieges and almost a dozen ceasefires, all drowned in violence. The bloodbath has produced 4,806,762 Syrian registered refugees as of 26 September 2016.<sup>155</sup> The upsurge in violence still engulfs Iraqi north-western territories, where despite the current gains of the national army, the population still lives under the merciless dictate of 'Islamic State'. Similarly, Afghanistan's people became increasingly endangered by new insurgence of the Taliban who gained control over 36 of the country's 407 districts, more than at any time since 2001 when they were ousted. Protracted conflicts in Somalia, South Sudan, Central African Republic, Mali, Nigeria, and Eritrea have also pushed thousands toward the unsecure path of seeking asylum in Europe. As other push factors for the crisis experts identify the deterioration of conditions in countries of first asylum which has

<sup>151</sup> UNHCR, Monthly Sea Arrivals to Italy and Malta, 22 March 2016, available at: <https://data.unhcr.org/mediterranean/documents.php?page=1&view=grid&Country%5B%5D=105&Type%5B%5D=3>.

<sup>152</sup> UNHCR, Nationality of Arrivals to Greece, Italy and Spain – Monthly –January to August 2016, 28 September 2016, available at: [file:///C:/Users/S/Downloads/20160928\\_Monthly\\_Arrivals\\_to\\_Greece\\_Italy\\_Spain\\_Jan\\_Aug\\_2016%20\(1\).pdf](file:///C:/Users/S/Downloads/20160928_Monthly_Arrivals_to_Greece_Italy_Spain_Jan_Aug_2016%20(1).pdf).

<sup>153</sup> Eurostat database, Asylum Statistics, 2 March 2016, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics).

<sup>154</sup> Metcalfe-Hough, V. *The Migration Crisis? Facts, Challenges and Possible Solutions*. Overseas Development Institute. London:2015, p. 2, available at: <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9913.pdf>.

<sup>155</sup> UNHCR data, available at: <http://data.unhcr.org/syrianrefugees/regional.php>.

led some, including Jordan and Lebanon, to tighten their borders, limiting access to nearby safe havens for the displaced; the continued lack of opportunities to work or enroll in school for most refugees in those countries, which is a major driver of onward movements; and geopolitical changes that have closed off alternative destinations, such as Libya and Egypt.<sup>156</sup>

Simultaneously, migrants were encouraged by pull factors – including the announcements by some European politicians, and the creative news of social media. Many people felt emboldened by ‘success stories’ of their compatriots who were granted status in Germany and Sweden. Online tips on how to navigate the journey and access critical services upon arrival probably have also contributed to the movements. Finally, classic patterns of chain migration may also be responsible for some of the new flows, as settled migrants reunite with family and friends.<sup>157</sup>

### *How the crisis evolved*

All those factors combined to produce the biggest wave of migration towards Europe since the Second World War. The origins of the crisis can be traced back as early as 2014 when boats leaving Libya and Egypt brought 170,000 migrants to Italy, mainly Syrians, Eritreans and sub-Saharan Africans, nearly triple the previous record.<sup>158</sup> In 2015 they continued to leave Libya at almost the same record rate, yet the game-changer came in June when Greece overtook Italy as the most popular gateway to Europe.<sup>159</sup> Scared by the war in Libya, along with émigrés from Afghanistan and Iraq, they began to leave en masse from Turkey to the tiny Greek islands, which in the words of Patrick Kingsley turned overnight from ‘sleepy holiday hideaways on the fringes of the Aegean sea’ into ‘ground zero of the Middle Eastern refugee crisis’.<sup>160</sup>

<sup>156</sup> Libya in particular was a regional hub for migrant labor before the Arab Spring. Estimates put the migrant worker population in the country in 2011 at close to 2.5 million, including many sub-Saharan nationals. Many migrants who returned to work in the country since the overthrow of the Gadhafi regime have become stranded in an increasingly unstable Libya and chosen to cross to Europe in an effort to escape the growing conflict.

<sup>157</sup> <http://www.migrationpolicy.org/article/europe-migration-crisis-context-why-now-and-what-next>.

<sup>158</sup> UNHCR, Arrivals to Italy 2010-2014, 2015, available at: <http://unhcr.it/risorse/statistiche/sea-arrivals-to-italy>.

<sup>159</sup> Changing visa restrictions for Syrian refugees meant they could no longer reach North Africa, and the war in Libya also prevented them from choosing that dangerous way.

<sup>160</sup> Kingsley, P. *The New Odyssey. The Story of Europe's Refugee Crisis*. Guardian Books, London:2016, p. 5.

Already into deep economic meltdown, Greece was utterly unprepared and turned the problem from a western European one into an eastern European one too. More than 850 000 people marched through the Balkans, all in the hope of reaching safety and stability in Western Europe. The first one to react was Hungary, which had to deal daily with hundreds time the number of people who it had seen crossing its southern borders on a yearly basis before the crisis.<sup>161</sup> Victor Orban's government erected fence along its southern flank, and when people re-routed into Croatia – a second barrier along the Croatian border.

Italy and Greece saw no reason why they should cope with such a huge wave of immigrants themselves, and tried various ways to persuade the rest of Europe to share the burden. Throughout months of endless and fruitless conferences and summits, the two countries did not receive any substantial help from their western partners, and fool-heartedly let people continue their journey. As the year went on, more and more countries erected fences along their borders to direct the flow of refugees, and a few threatened to seal their borders entirely, thus endangering one of the values central to the EU's soul – the concept of free movement between mainland European countries: a principle that had first been enshrined with great fanfare by the Schengen agreement in 1985 and which is still considered one of the greatest achievements of the European project. The end of the 'hot' crisis came in March 2016 when the Balkan route towards the West was declared shut on the eve of a deal between the EU and Turkey, which envisaged the Middle Eastern country stopping irregular migration towards Europe. The responses – to be discussed here, though, had several deficiencies: they did not succeed in stopping the migrants from coming to Europe, but just diminished the possibilities for them to do it legally; they did not manage to guarantee a decent existence for those in the so-called safe third countries; some of them proved to be questionable under the international humanitarian law; and last, but not least they left thousands of people vulnerable and stranded along the Balkan route. These failures were a result of genuine challenges – in policy and practical terms – that EU member states faced in instituting a more effective reaction.

<sup>161</sup> Western Balkan Route, Frontex, <http://frontex.europa.eu/trends-and-routes/western-balkan-route/>.

*Challenges faced by EU*

The surge in the spring and summer of 2015 brought the struggling Common European Asylum System (CEAS) to its knees. On one hand, the crisis response was burdened by *global deficiencies in the international protection regime* built around the 1951 Refugee Convention. Those include the inability of the whole international community to develop sustainable solutions for long-term displaced populations and the failure in providing meaningful burden-sharing to host countries. Europe bears its own responsibility for those protection limitations, yet today it is also their victim: simultaneously, they have, albeit partially, contributed to the surging of people leaving their first asylum destinations, and left the continent with little outside support or solidarity.<sup>162</sup>

Furthermore, the European migration crisis exposed probably most clearly, *the ever more blurring boundaries between forced and voluntary international migration*, and the deficiency in the legal definitions of refugees. Identifying those who were in real need and those who were not, proved to be practically and ideologically difficult. The migration towards Europe was driven by an array of factors relating to chronic poverty, inequality, environmental degradation and the effects of climate change, not clearly covered by international protection system. As Zetter underlines, the complex nature of contemporary global migration patterns and drivers mercilessly challenges the existing international, regional and national legal and policy frameworks.<sup>163</sup> The simplistic categories of ‘forced’ and ‘voluntary’ migration lead to the creation of a two-tiered system of protection and assistance in which the rights and needs of those not qualifying as ‘refugees’ under the legal definition are effectively disregarded.<sup>164</sup>

More specifically, Europe was challenged by *the sheer scale of the crisis*: the volume of people arriving, the diversity of their profiles, countries of origin and vulnerabilities and the dynamic nature of their routes entry and clandestine means they often used presented an incredibly complex situation. The volume and the speed of the surge

<sup>162</sup> Banulescu-Bogdan, N. *Europe's Migration Crisis in Context : Why Now and What Next*, in *Migration Policy*, 24 September 2015, available at: <http://www.migrationpolicy.org/article/europe-migration-crisis-context-why-now-and-what-next>.

<sup>163</sup> Zetter, R. *Protection in Crisis: Forced Migration and Protection in a Global Era*, Washington, DC: Migration Policy Institute, 2015.

<sup>164</sup> Carling, J. *Refugees Are also Migrants and All Migrants Matter*. Blog. University of Oxford, 2015.

has simply overwhelmed the asylum systems of the countries on the frontline – Italy, Greece, as well as non-EU members like Macedonia and Serbia – at a time when their economies are particularly weak.

Precisely the *immediate strain on welfare systems* and the need for extraordinary relocation of large sums, in a time of a slow economy recovery, can be considered as another challenge for European governments. In a continent where in the years 2011-2014 the GDP shrank between -4,5 and -2,9, a new financial burden, without clear vision – for how long the crisis would continue - was a difficult political decision to make. Furthermore, public opinion on migration proved to be highly divided, affecting both government policies and integration prospects for refugees and other migrants. Media images conveying the terrible risks refugees from Syria are taking to get to Europe have been clashing for more than a year with ever more vocal right-wing messages.

*Obtaining a coherent approach from all 28 EU members* proved to be extraordinarily difficult. The calls for the need for an EU-wide response were deafened by unilateral security decisions. The migrant crisis came in a moment of soul-searching for the Union and exposed its underlying political and economic divisions. Along with the simultaneous fallout from the Greek economic meltdown, the migration crisis had become one of the biggest threats to the cohesion of the EU in the organization's history. Thus, effective and fast decision-making was obstructed.

## 2.2. A SYSTEM ON ITS KNEES: EUROPEAN REFUGEE FRAMEWORK

The European legal and policy landscape on dealing with forced migration is characterized by a basic divide between those countries which are part of the EU and therefore take part in the shaping of the CEAS under the EU's supranational framework, and those which are not, even though they may participate in the intergovernmental cooperation endeavors at the Council of Europe (CoE). The CoE, with its broad membership and mechanisms governed by the principles of intergovernmental cooperation and international law, provides the framework for binding norms of international human rights law as well as a forum for standard setting through soft-law instruments. The EU has created norms which are binding under European law and have the full force flowing from the supranational framework. There is an important reciprocal influence between the systems of the EU and CoE.

Whereas CoE member states outside the EU look at the EU with a view to the interpretation of international refugee law and standard setting, the EU sphere of asylum policies is also heavily influenced by the CoE, in particular regarding the interpretation of the obligations flowing from the ECHR as per the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), in particular when applying the EU Charter of Fundamental Rights.<sup>165</sup>

EU asylum policies are determined by a supranational framework providing a significant level of guarantees for asylum seekers and refugees who have reached the EU. CEAS, initiated in 1999, reformed once between 2011-2014 and currently being again recast, builds common minimum standards for the treatment of all asylum seekers and applications.<sup>166</sup> It consists of a legal framework covering all aspects of the asylum process and a support agency - the European Asylum Support Office. The process is regulated by five legislative regulations: asylum procedures directive (establishes common standards of safeguards and guarantees to access a fair and efficient asylum procedure); reception conditions directive (establishes minimum common standards of living conditions for asylum applicants and ensures that applicants have access to housing, food, employment and health care); qualification directive (establishes common grounds for granting international protection and foresees a series of rights for its beneficiaries including residence permits, travel documents, access to employment and education, social welfare and healthcare); Dublin III regulations (determine which member state is responsible for examining a given asylum application) and EURODAC regulations (establish an EU asylum fingerprint database: when someone applies for asylum, no matter where in EU, their fingerprints are transmitted to the EURODAC central system).<sup>167</sup>

At the core of CEAS is the right to asylum and the prohibition of *refoulement*, as guaranteed by the Charter of Fundamental Rights and the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol. Both instruments bind EU Members, who must also

<sup>165</sup> Costello, C. *Courting Access to Asylum in Europe: Recent Supranational Jurisprudence Explored*. In 'Human Rights Law Review' 12(2), 2012, pp. 287-339.

<sup>166</sup> European Agenda for Migration, Factsheet. *The Common European Asylum System*, p. 1, Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factsheet\\_the\\_common\\_european\\_asylum\\_system\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factsheet_the_common_european_asylum_system_en.pdf).

<sup>167</sup> *Ibidem*, pp. 1-2.

comply with the case law of the CJEU and the ECHR. The asylum application must be examined by a single Member State, usually, the one through which the asylum seeker first entered the EU.<sup>168</sup> Applicants have a right to legal information, effective remedy, freedom of movement within the country they have submitted their claim, material reception and healthcare. They can receive a refugee status, subsidiary or temporary protection. All migrants who are illegally present in the EU and who are not in the process of obtaining an authorization to stay must be deported. Under the Returns Directive, EU Members are obliged to regularize illegal migrants who meet the requirements or to issue a ‘return decision’.

However, in practice, as the Commission itself has recognized, the current system is still characterized by differing treatment of asylum seekers and varying recognition rates amongst EU Member States.<sup>169</sup> This divergence is what encourages secondary movements and is partly due to the fact that the current rules grant Member States a lot of discretion in how they apply the common EU rules.

### 2.3. EUROPEAN RESPONSES TO THE CRISIS

The large-scale, uncontrolled arrival of migrants and asylum seekers since early 2015 forced Brussels to put on the table a series of initiatives and tools to better manage migration flows in the medium and long term. The official overall objective of the proposals, as stated by the European Commission, was to ‘move from a system which, by design or poor implementation, encourages uncontrolled or irregular migratory flows to one which provides orderly and safe pathways to the EU for third country nationals.’<sup>170</sup> In fact, all the Commission proposals could be seen as elements of an exclusive border politics, which not only did not achieve the goal as stated above – to provide safe passage for refugees, but resulted in just the opposite. The closure of the Balkan route prompted a shift towards the more dangerous sea journey to Italy which turned 2016 into the deadliest year for migrants coming

<sup>168</sup> Except in cases when applicants have family or visa/residence permit in another Member state.

<sup>169</sup> *Ibidem*, p. 2.

<sup>170</sup> *Ibidem*.



to Europe. The number of deaths in 2016 reached 3502 by the end of September, compared with 2926 for the whole of 2015.<sup>171</sup>

EU strategy had several elements. First, the deal, sealed between EU and Turkey – saw the actual off-shoring of the crisis – thus, turning to the *de-territorialization and thickening* of EU borders, as depicted in the first chapter. Similarly, into the same outsourcing strategy fitted the extended list of safe third countries, where migrants could be deported legally. This process was facilitated by an Action Plan on more effective and time-consuming procedures on return of migrants. Second, the creation of a new coastal guard agency with broader prerogatives, power and budget turned the EU borders into zones of securitization where extraordinary measures are allowed – recalling the Agamben's *zones of indistinction*. Sophisticated technology tools: like the EUROSUR and the EURODAC systems allowed for massive surveillance and data gathering at the frontiers, but also within the EU territory, thus building *new borders* for the newcomers anywhere around the continent. All those measures combined, had a symbolic importance – to prove that EU is capable of managing its external borders, that its leadership can use the sovereign power to protect the European peoples. Thus border politics became a *theatrical performance*, whose message was turned inwards, and far less outwards towards the migrants it directly concerned.

### 2.3.1. *The Deal with Turkey: a Border Off-Shored – a Crisis Out-Sourced*

On 18 March 2016 the European Union and Turkey made a deal to end the irregular migration from Turkey to the EU. According to what was agreed, all 'irregular migrants' crossing from Turkey to the Greek islands after 20 March 2016 had to be returned to Turkey.<sup>172</sup> For every Syrian being returned to Turkey from the Greek islands, another Syrian from Turkey had to be resettled in the EU. Turkey pledged to take any necessary measures to prevent new sea or land routes for irregular migration opening from its territory to the EU. In return, Brussels promised the lifting of visa requirements for Turkish citizens,

<sup>171</sup> IOM, Mediterranean Migrant Arrivals Reach 302 486, Deaths at Sea: 3502. 30 September 2016, available at: <https://www.iom.int/news/mediterranean-migrant-arrivals-reach-302486-deaths-sea-3502>.

<sup>172</sup> European Commission. *EU-Turkey Agreement: Questions and Answers*, 16 March 2016, available at: [http://europa.eu/rapid/press-release\\_MEMO-16-963\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-963_en.htm).

the mobilization of €6 billion support for the refugees in Turkey, and the opening of new chapters of Turkey's EU accession process.<sup>173</sup>

The deal theoretically had to create legal ways for migrants to reach EU lands: through the scheme one in, one out. Even on a theoretical basis, it excluded from the relocation scheme all other nationals apart from Syrians – like Afghanis or Iraqis, who were not eligible for resettlement under the quota system.<sup>174</sup> Yet, it was the practice that completely compromised the official goal as mentioned above: with the Balkan route closed, and the relocation slow and contested, Europe practically sealed the way migrants could reach its territory and thus, off-shored the crisis to Turkey. European borders moved from the Greek islands – to the Turkish coast, where under the deal Ankara had to prevent migrant boats and dinghies from leaving. This border relocation and off-shoring – despite being just several kilometers – has had immense legal consequences. By preventing migrants from actually stepping on European borders, Brussels insightfully escaped the responsibilities prescribed in international law and invoked immediately when an asylum seeker reaches the border of a state signatory to the Geneva Convention – the right of *non-refoulement* and the processing of the claim for protection. Such a strategy conveniently saved Europe from complex, lengthy and expensive legal procedures for asylum processing and appeals – which also proved to be politically sensitive. As explained in the previous chapter, such practices of off-shoring borders have been a milestone in Europe's border politics for at least a decade, especially in the Mediterranean where European border guards have patrolled hundreds of miles away of the outer edge of the Union since 2006.<sup>175</sup>

The deal with Turkey also meant collective deportation of all those who, despite the restrictions, manage to cross the 'thick European border' and step on EU territory. It prompted the UNHCR itself to remind the European leadership that 'the collective expulsion of foreigners is prohibited under the European Convention on Human Rights'.<sup>176</sup> The UN high commissioner for refugees Filippo Grandi said

<sup>173</sup> Ibidem.

<sup>174</sup> There were also high concerns for the Syrian and Iraqi Kurds who would be forcibly returned to a hostile Turkey where they could possibly face persecution.

<sup>175</sup> Cabinet Office, *Security in a Global Hub: Establishing the UK's New Border Arrangements*, London: HMSO, November 2007, p. 38.

<sup>176</sup> Spindler, W. *UNHCR Expresses Concern Over EU-Turkey Plan*, UNHCR, 11 March 2016, available at <http://www.unhcr.org/news/latest/2016/3/56dec1546/unhcr-expresses->

he was ‘deeply concerned about any arrangement that would involve the blanket return of anyone from one country to another, without spelling out the refugee protection safeguards under international law’.<sup>177</sup> Later on, a Greek court ruled that sending back migrants to Turkey violated fundamental principles contained in the 1951 Refugee Convention because that country cannot be considered safe.<sup>178</sup> The considerations behind rejecting such status to Ankara were legally based on the fact that Turkey has not fully adopted the Geneva Convention.<sup>179</sup> Furthermore, numerous reports blamed Ankara for shooting dead migrants trying to cross its border with Syria into safety<sup>180</sup> and mass deportations of large groups of Syrians back to their land in an attempt to reduce the refugee burden.<sup>181</sup> All those border acts, some of which may amount to crimes – well documented by media and human rights organizations – can be seen as a chain reaction, or indeed a result of European border politics. As Guardian’s Patrick Kingsley notices, ‘we shouldn’t have expected any other outcome. [...] A surge in border abuses is the logical result of a recent deal that sees the world’s richest continent (population 500 million) corral a single Middle Eastern country (population 80 million) into caring for more Syrian refugees than the rest of the world combined’.<sup>182</sup>

The thickening of the EU borders lead as well to the further overburdening of Turkey, already a host to 2.7 million Syrians, which complicated the provision of basic human rights – beyond the simple right of life: the ones to work, healthcare and education. Until January

concern-eu-turkey-plan.html.

<sup>177</sup> <https://www.theguardian.com/world/2016/mar/08/un-refugee-agency-criticises-quick-fix-eu-turkey-deal>.

<sup>178</sup> BBC. *Migrant Crisis: Greek Judges Tell Syrian Refugee Turkey is ‘Unsafe’*, 21 May 2016, available at <http://www.bbc.com/news/world-europe-36345990>.

<sup>179</sup> Turkey retains a geographic limitation to its ratification of the 1951 U.N. Convention, with only those fleeing as a consequence of ‘events occurring in Europe’ being eligible to qualify for refugee status.

<sup>180</sup> The killings were first disclosed by the Syrian Observatory for Human Rights, a frequently cited London-based watchdog. Then it was developed by HRW. See at: HRW, *Turkey Border Guards Kill and Injure Asylum Seekers*, 10 May 2016, available at: <https://www.hrw.org/news/2016/05/10/turkey-border-guards-kill-and-injure-asylum-seekers>.

<sup>181</sup> Amnesty International. *Turkey Illegal Mass Returns of Syrian Refugees Expose Fatal Flaws in EU-Turkey Deal*, 1 April 2016, available at <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>.

<sup>182</sup> Kingsley, P. *Turkey is No Safe Haven for Refugees – It Shoots Them at the Border*, Guardian, 1 April 2016, available at <https://www.theguardian.com/commentisfree/2016/apr/01/turkey-safe-haven-refugees-shoots-border-illegal-deportations-syrians>.

2016, refugees in Turkey were forbidden to work, but even the law that gave them legal access to employment has not improved the real situation: very few employers would give Syrians official contracts – a prerequisite for a working permit, since the reason Syrians are hired is precisely their illegality which allows for them to be paid less than the minimum wage, and work longer than the legal limit.<sup>183</sup>

Last, the relief for the EU asylum system that the thick borders facilitated came at a high political cost. Turkey is ferociously criticized for its human rights record with brutal clampdowns on the free press, political opponents, Kurds, especially after the failed coup against the regime.<sup>184</sup> The concessions that EU leaders made: financing, accelerated talks and visa-free waiver – instead of insistence on guarantees for civil liberties – gave the Turkish president Recep Tayyip Erdogan a domestic political victory. Or as the leader of ALDE Guy Verhofstadt noticed, EU chose to ‘drink from Erdogan’s poisoned chalice’, but that could hardly be the solution.<sup>185</sup>

### 2.3.2. *Building ‘Fortress Europe’: Thick Borders & Securitization*

The thickening of the EU borders had not only territorial expression. Once the deportation deal saw the symbolic extension of the EU borders to the Turkish territory, the actual European borders needed to be fortified: a process called by Amnesty ‘securing Fortress Europe’.<sup>186</sup> Its ‘construction’ was identified by the European leadership as a way to guarantee the free movement within the EU territory and the Schengen area. The necessity of such measures was confirmed by Commission First Vice-President Frans Timmermans, who after the endorsement of the new EU border agency by the European Parliament on 6 July 2016 commented: ‘If we want to manage migration better and preserve our Schengen area of free movement, we need to strengthen the common

<sup>183</sup> Ibidem.

<sup>184</sup> Amnesty International. *Turkey: Human Rights in Great Danger Following Coup Attempt and Subsequent Crackdown*, 18 July 2016, available at <https://www.amnesty.org/en/latest/news/2016/07/turkey-human-rights-in-grave-danger-following-coup-attempt-and-subsequent-crackdown/>.

<sup>185</sup> Verhofstadt, G. *This Turkish Deal is Illegal and Betrays Europe’s Values* at Guardian, 10 March, 2016, available at <https://www.theguardian.com/commentisfree/2016/mar/10/refugee-crisis-turkey-deal-europe-values>.

<sup>186</sup> Amnesty International. *The Human Cost of Fortress Europe*, 2014, p. 6.

management of the EU's external borders.<sup>187</sup> The Commission president, Jean-Claude Juncker, in his state of the union speech on 14 September 2016, noticed that 'tolerance cannot come at the price of our security. We need to know who is crossing our borders. [...] We will defend our borders with strict controls on everyone crossing them'.<sup>188</sup> This realization came after the refugee crisis and the 13 November 2015 Paris attacks exposed the weaknesses of the Schengen agreement, criticized by nationalists and Eurosceptics as an open door for criminals. The influx of more than a million migrants prompted the EU states, one after another to re-impose temporary border controls in 2015, a measure allowed under the Schengen rules.<sup>189</sup> In December 2015 the Commission made a proposal for a major amendment to Schengen law which introduced the check of details of EU-citizens against police databases at the EU's external borders.<sup>190</sup>

The building of Fortress Europe came through two main steps: the creation of new powerful border agency, and further development of sophisticated technology for border security.

On 15 December 2015, the European Commission adopted a proposal, endorsed by Parliament on 7 July 2016, for a Regulation to Establish a European Border and Coast Guard (EBCG), designed to ensure shared European management of the external borders of the European Union.<sup>191</sup>

<sup>187</sup> As cited by Eur-Activ. Super-Frontex Approved, Acclaimed and Decried, 13 October 2016, available at <https://www.euractiv.com/section/global-europe/news/super-frontex-approved-acclaimed-and-decided/>.

<sup>188</sup> European Commission. *State of the Union 2016: Commission Targets Stronger External Borders*, 14 September 2016, available at [http://europa.eu/rapid/press-release\\_IP-16-3003\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3003_en.htm).

<sup>189</sup> Under the Schengen rules, signatories may reinstate internal border controls for 10 days, if this has to be done immediately for "public policy or national security" reasons. If the problem continues, the controls can be maintained for "renewable periods" of up to 20 days and for a maximum of two months. The period is longer in cases where the threat is considered "foreseeable". The controls can be maintained for renewable periods of up to 30 days, and for a maximum of six months. An extension of two years maximum is allowed under Article 26 of the Schengen Borders Code, in "exceptional circumstances". See at: Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1414687415278&uri=CELEX:02006R0562-20131126>.

<sup>190</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/20160406/regulation\\_proposal\\_entryexit\\_system\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/20160406/regulation_proposal_entryexit_system_en.pdf).

<sup>191</sup> European Commission. Proposal for a Regulation of the European Parliament and Council Amending Regulation (EU) 2016/399 as regards the use of Entry/Exit System, Brussels 4 April 2016, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/20160406/regulation\\_proposal\\_entryexit\\_system\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/securing-eu-borders/legal-documents/docs/20160406/regulation_proposal_entryexit_system_en.pdf).

The proposal established a European Border and Coast Guard Agency (EBCGA), which replaced Frontex and has increased powers. The EBCGA shares functions with national authorities responsible for border management; the EBCGA and the national border authorities together constitute the EBCG.<sup>192</sup> The EBCGA's enhanced features include several elements, the most important of which is *the right to intervene*. It has a rapid reaction pool of 1500 border guards at the disposal of any member state facing a crisis. Member States are able to request joint operations, rapid border interventions, and deployment of the EBCG Teams to support national authorities when a Member State experiences an influx of migrants that endangers the Schengen area. When a Member State's action is not sufficient to handle the crisis, the Commission would have the authority to unilaterally adopt an implementing decision on whether a situation at an external border requires urgent action at EU level. Thus, the EBCGA would be able to intervene and deploy EBCG Teams even without clear consent from the host state.<sup>193</sup> Simultaneously, a Monitoring and Risk Analysis Center within EBCGA is authorized to carry out mandatory vulnerability assessments concerning the capacities of the Member States to face current or upcoming challenges at their external borders. Last, a European Return Office is established within EBCGA, which enables the deployment of European Return Intervention Teams composed of escorts, monitors, and return specialists to return illegally present third-country nationals. A step in the same direction was made through the reinforcement of Europol within the structure where in 2016 the European Migrants Smuggling Centre was created.<sup>194</sup>

The extended powers of EBCGA – especially the right to intervene unilaterally – prompted concerns among experts and human rights activists. ‘Instead of being guided by the principle of refugee protection, this new scheme would penalize EU member states that let in too many refugees or deport too few persons who have no right to stay in the EU. They could be forced to accept border operations against their will under the threat of expulsion from Schengen. That undermines the very essence of what the EU is about’, commented Ska Keller, a German

<sup>192</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC.

<sup>193</sup> Ibidem.

<sup>194</sup> Europol. *Europol Launches the Migrant Smuggling Centre*, 22 February 2016, available at: [https://www.europol.europa.eu/content/EMSC\\_launch](https://www.europol.europa.eu/content/EMSC_launch).

politician and MEP for the '90/The Greens.<sup>195</sup> Another European party – the United European Left, or GUE/NGL, labeled the new agency as a 'deportation machine' and a 'huge step in the wrong direction'.<sup>196</sup>

The strategies for securitization and fortification of EU borders rely heavily also on technology. In December 2013 an integrated European Border Surveillance System (EUROSUR) became operational. It includes information exchange technology that is used by national authorities of member states and Schengen participating states to strengthen border control cooperation. The system uses modern surveillance technology, such as unmanned aerial vehicles (drones). It is estimated that the cost of EUROSUR for the period 2011 to 2020 will be €338 million. The Regulation that established EUROSUR obliges EU member states, as well as Schengen participating states, to reinforce surveillance at their borders that are widely used for irregular migration. It also contains a number of safeguards for fundamental rights, but as Amnesty has underlined 'crucially gives no indication as to how they will be monitored or enforced'.<sup>197</sup>

It is expected that by the end of 2016 a proposal for EU Entry-Exit system will be adopted which will collect data including identity, travel documents and biometrics as well as registering entry and exit records at the point of crossing of all non-EU citizens, admitted into the Schengen area. Furthermore, the Commission plans the establishment of European Travel Information and Authorization System, designed along the US ESTA. It would determine the eligibility of all visa-exempt third country nationals to travel to the Schengen Area, and whether such travel poses a security or migration risk. Information on travellers would be gathered prior to their trip. Furthermore, the Commission encouraged Member States to facilitate some form of information exchange hub to create a platform where authorities obtaining information related to serious cross border security threats would share it with law enforcement authorities.

The EU Entry-Exit, the Travel Information and Authorization

<sup>195</sup> As Cited by The Greens/European Free Alliance in the European Parliament. *EU Border and Coastal Guard. Frontex Transformed into Returning Agency*, 6 July 2016, available at <http://www.greens-efa.eu/eu-border-and-coastal-guard-15796.html>.

<sup>196</sup> As cited by Eur-Activ. *Super-Frontex Approved, Acclaimed and Decried*, 13 October 2016, available at <https://www.euractiv.com/section/global-europe/news/super-frontex-approved-acclaimed-and-decied/>.

<sup>197</sup> Amnesty International. *The Human Cost of Fortress Europe*, 2014, p. 18.

System, the enhanced role of Europol, the EURODAC and EUROSUR systems all aim to transform border security into a risk-based identity capture and management. Their goal is to enable the authorities to fix identities, classify them according to perceived levels of risk, and filter them into legitimate/illegitimate flows of traffic.

### 2.3.3. *The Quota System: A Drop in the Ocean, A Dust in the Eyes*

The objective overview of EU responses to the migration crisis, of course, demands the mentioning also of solidarity measures. A plan for the relocation of 160,000 people from the frontline states to the rest of the continent was agreed in September 2015.<sup>198</sup> The mandatory distribution scheme is based on four criteria: size of population, GDP, past acceptance of asylum applications and unemployment rate. The creation of a permanent relocation mechanism for all EU Member States is also currently being developed. It would apply in emergency situations, and would be based on two criteria: the number of asylum applications any Member state has received during the last six months and the number of irregular crossings into its territory during the same period.

Yet, the relocation of migrants, as agreed, is deemed on many levels. First, it saw the violent opposition of four Member states: Hungary, Slovakia, Czech Republic and Romania. The first two filed court proceedings against the quota in CJEU; Hungary even organized a referendum on it, later proclaimed void.<sup>199</sup>

Furthermore, even those who agreed to take refugees are doing it at a very slow rate. The Commission itself noted that implementation of relocation moves very slowly. As of 4 March 2016, the EU collective efforts to find new homes for migrants landed at its southern shores has seen exactly 660 relocated – or 0.4% of the promised total.<sup>200</sup> As of 12 October – their number is 6013, or 3.4%.<sup>201</sup> States have cited numerous

<sup>198</sup> European Commission. *Statement Following the Decision at the Extraordinary Justice and Home Affairs Council to Relocate 120 000 Refugees*, 22 September 2015, available at [http://europa.eu/rapid/press-release\\_STATEMENT-15-5697\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-15-5697_en.htm).

<sup>199</sup> Al Jazeera. *Hungary: Overwhelming Migration Vote Declared Void*. 3 October 2016, available at <http://www.aljazeera.com/news/2016/10/hungary-overwhelming-anti-migration-vote-declared-null-161002200904151.html>.

<sup>200</sup> European Commission. *State of the Play. Relocation*. 4 March 2016.

<sup>201</sup> European Commission. *State of the Play. Relocation*. 12 October 2016, available at <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/>



reasons for their slow reaction: from lack of housing facilities – to difficulties in organizing charter flights.<sup>202</sup> Many of them like France, Belgium and Sweden stepped up security checks before asylum seekers were accepted. ‘The Guardian’ reported that some countries chose who to accept on basis of professions and race.<sup>203</sup>

The most important weakness of the plan, though, is the fact that its mere scale is negligible. 160,000 people amount to one ninth of the total number of migrants that reached Italy and Greece in 2015 alone. ‘Even if the plan was fully signed up to and operational, it is plainly too small given the scale of what Europe is experiencing,’ said Steve Symonds, Amnesty International’s refugee and migrant rights program director.<sup>204</sup>

The quota system represents the understanding that solidarity and burden-sharing between member states is the only way for control of the crisis. Its advocates, led by the German government, stressed the fact that 1 million people may sound like a lot, and in turn of historic migration to Europe, it probably is, however, the number hardly represents 0.2% of Europe’s population of roughly 500 million, an influx that the world’s richest continent can feasibly absorb, if and only if, it acts in unity. The strong opposition of several countries and its very slow implementation, the ‘delivery deficit’<sup>205</sup> questioned the existence of such unity. Yet, it is the scale of the plan, that ‘drop in the ocean’<sup>206</sup> – presented by Brussels as ‘a decisive plan’ to deal with the crisis<sup>207</sup> - which allows us to judge Europe’s ambition to actually provide a true and sustainable scheme for migrants’ integration. Consequently, it would not be an overstatement to claim that the measure proved to be more of a performative one: well-faced migration policies had to cover up for the hard border ones.

press-material/docs/state\_of\_play\_-\_relocation\_en.pdf.

<sup>202</sup> Guardian, *EU Refugee Relocation Scheme is Inadequate and Would Continue to Fail*, 4 March 2016, available at <https://www.theguardian.com/world/2016/mar/04/eu-refugee-relocation-scheme-inadequate-will-continue-to-fail>.

<sup>203</sup> Ibidem.

<sup>204</sup> Ibidem.

<sup>205</sup> A quote by the President of the European Council Donald Tusk, as cited by Politico. *Why Refugee Relocation Policy Has Been a Flop*, 1 June 2016, available at <http://www.politico.eu/article/why-eu-refugee-relocation-policy-has-been-a-flop-frontex-easo-med/>.

<sup>206</sup> A quote by Greek Prime Minister Alexis Tsipras as cited by Reuters, *Greece Carries Out First Refugees to Luxembourg*, 4 November 2016, available at <http://www.reuters.com/article/us-europe-migrants-greece-idUSKCN0ST0GP20151104>.

<sup>207</sup> A quote by Jean-Claude Juncker, President of the European Commission, as cited by Guardian, *Refugee Crisis: Juncker Unveils EU Quota Plan*, 9 September 2015, available at <https://www.theguardian.com/world/live/2015/sep/09/refugee-crisis-junker-unveils-eu-quota-plan-live-updates>.

### 2.3.4. *The Balkans: European Borderlands?*

Between June 2015 and March 2016, the Balkans became Europe's front door for the migrants. Tucked between the violence-ridden Middle East and Western Europe the Balkan route – from Turkey to Greece, and then north through a cluster of countries once part of Yugoslavia: Macedonia, Serbia, Croatia (the latter became part of the journey after Hungary built a wall along its border with Serbia), Slovenia –brought to the West more than a million people. Though formally outside the EU, the Western Balkans became central to deliberations in Brussels and member states' capitals about how to address the crisis. Yet, throughout the crisis and especially in its aftermath, Balkan governments were left to deal with the influx of people with scarce resources and almost complete lack of EU support.

In the 'hot' phase of the crisis between the beginning of 2015 and March 2016 the internal splits in EU made it hard for the institution to work with the accession countries further south. The Western Balkan countries had to adjust to the changing tides: first to the German Chancellor Angela Merkel's decision to open Europe's doors, and then to the Central Europeans' fierce resistance to the *Willkommenskultur* and the pushback of migrants. The practical help which the region received was predominantly focused on security needs. This prompted the Serbian Prime Minister Aleksandar Vučić to criticize the 'egotism' underlying EU members' resistance to the quota system proposed by the European Commission.

The deal with Turkey – for all its flaws, was the first step towards a common European approach on the Balkans. The countries welcomed the closure of the Balkan route. To their and human rights organizations' surprise, however, the people in transit in those communities were completely ignored in this deal. Consequently, the Balkan states, among the poorest in Europe, now face the burden of processing the refugees on their own, without EU support and in the face of denunciations from Brussels for alleged 'democracy deficits'. As my terrain research proves, this resulted in huge irregularities for the trapped communities: they had little incentive to stay in poor transit countries, which themselves escaped any procedures which might encourage the people to do so. Brussels' ignorance thus became a catalyst of state-sponsored human rights violations.

On one hand, Greece, fenced to the north and with almost a decade

of huge economic crisis, was left to deal with huge community of 60000 stranded migrants. They live in about 50 squalid camps around the country. Theoretically, a relocation scheme is in place: but as explained in the previous part, in practice, it is completely dysfunctional. Migrants are forced to stay in the country despite the recommendations of UNHCR, which considers Greece not safe due to chronic lack of institutional support and facilities. Many analysts see the transformation of Greece into a giant holding pen for refugees a replica of the controversial Australian anti-migrant system in the Pacific. Greece became Europe's Nauru.<sup>208</sup>

On the other hand, the stranded communities in the countries outside the EU – like Macedonia and Serbia, remain completely out of the focus of Brussels, and cannot even theoretically hope for relocation. The political mood in Europe inspires a tacit approval on what is happening on the ground. Macedonia has locked hundreds of stranded migrants in two border camps for months without any procedure ongoing for legalizing their stay, as will be outlined in the next part. Furthermore, its police forces expel collectively everyone who tries to enter its territory

Serbia has to deal with an incessant flow of migrants which continue to illegally cross through the Balkan route. In fact, UNHCR estimates that since the declaration of the route as closed in March until the end of August 24,790 people have passed through Serbia – a key waypoint on the two major routes in the Balkans – from Macedonia and Bulgaria.<sup>209</sup> In practice, that means that all those people passed illegally, most often with the help of smugglers.

It could be argued that the irregularities that appear in all those Balkan countries – strikingly resemble the zones of indistinction, as depicted by Giorgio Agamben. The exceptional situation – with the flow of millions of newcomers – demands exceptional measures: the closed camps of Macedonia and the lack of proper documentation for the people; the ‘sacrifice’ of Greece, left alone on the forefront of the crisis; the neglect of Serbia’s imminent needs with a crisis that is far

<sup>208</sup> When asylum seekers reach Australia by boat, they are not held in Australia while their claims are processed. Instead, they are sent to an offshore processing centre. Currently Australia has one such centre on the Pacific island nation of Nauru and another on Manus Island in Papua New Guinea.

<sup>209</sup> Guardian, *Tens of Thousands Migrate Through Balkans Since Route Declared Shut*, 30 August 2016, available at <https://www.theguardian.com/world/2016/aug/30/tens-of-thousands-migrate-through-balkans-since-route-declared-shut>.

from over. Thus, the whole region is turned into a zone of indistinction, a borderland of Europe: a concept, as theorized in the previous chapter, that has been central for decades.

The notion that the Balkan countries are radically different and marginalized, that they are a buffer zone where rules unacceptable for the EU standards could be applied – is resurrected to ‘excuse’ Europe’s indifference in the fate of the stranded migrants in that ‘provincial’ part of the continent. The results of such an approach are blatant in the case of Macedonia.

#### CONCLUSION

This chapter explored in-depth the responses that the European Union delivered after facing the biggest migrant flow since the Second World War. Its strategy to cope with the challenge became an exemplary demonstration of exclusive border politics: through the deal with Turkey Europe’s border was thickened, and the migrants were prevented from reaching European shores and claiming their rights as prescribed by the Geneva Convention. Once the crisis was ‘off-shored’ to Turkey, the actual EU external borders were fortified through the creation of EBCGA, the development of sophisticated databases for sharing information, the enhanced functions of Europol. The Balkan region, despite being at the forefront of the crisis, remained isolated in these extensive processes – and thus, became a grey zone and a trap for the stranded communities of migrants.

3.

MACEDONIA'S CASE: A COUNTRY TRAPPED,  
A MIGRANT TRAP

*My feet are torn  
And homelessness has worn me out  
Benches have left their marks  
on my ribs.*

“Longing” by Palestinian writer Tawfiq Sayigh (1923-1971)

The independent state of Macedonia was born from the ashes of a crumbling federation whose end was no less barbaric than that of today's Syria. Also back then, colonies of homeless people were marching through the Balkans: an ugly mishmash of old-fashioned backpacks, muddy shoes, empty food cans with the UNHCR logo.<sup>210</sup> Even though Macedonia managed to escape the bloodbath in which its past compatriots engaged, from the very first days of its existence the country became a safe house for refugees. After hosting about 40,000 people running from the atrocities in Croatia and Bosnia between 1991 and 1995, Macedonia opened its borders for 360,000 uprooted inhabitants of Kosovo.<sup>211</sup>

The majority of these have since returned, and according to UNHCR data the 812 individuals who remain belong mainly to the Roma, Ashkali and Egyptian ethnic groups from Kosovo.<sup>212</sup> Only 19 of them have a refugee status, 553 enjoy subsidiary protection. The stay of the

<sup>210</sup> Citation from a personal interview with Zoran Lazarevski, official from the Regional Centre for Crisis Management, the institution responsible for the running of 'Vinojug' Transit Centre in Gevgelija.

<sup>211</sup> United States Committee for Refugees and Immigrants, U.S. Committee for Refugees World Refugee Survey 2001 - Macedonia, 20 June 2001, available at: <http://www.refworld.org/docid/3b31e166c.html> [accessed 28 September 2016].

<sup>212</sup> UNHCR Observations: *The Former Yugoslav Republic of Macedonia as a Country of Asylum*, August 2005, p. 5.

other 240 Kosovars is tolerated by the country despite the fact that their claim for asylum is rejected or their temporary protection has expired.<sup>213</sup> As will be developed further, this ‘veil of ignorance’ turns out to be a preferred strategy even today, with the new wave of migrants from the Middle East and Asia.

Until 2010, the majority of persons entering the territory of Macedonia with intention to search asylum were from the former Yugoslavia, Albania and Turkey. The trend has changed since then, with an increasing number of migrants coming primarily from Afghanistan, Pakistan, Somalia, and in the last two years Syria and Iraq. The data shows that even before the huge wave of 2015-2016, over 90% of those who applied for asylum considered Macedonia as a transit country on their way to EU member states and left its territory before the authorities proceeded with interviews and first instance decisions.<sup>214</sup> For example, out of 1353 asylum applications in 2013, only one interview was held – and a decision to grant subsidiary protection was taken. Similarly, in 2014, out of 1289 applications lodged, only 16 decisions on asylum claims were made (12 Syrians received refugee status, and one was given subsidiary protection). The majority of the cases in 2013 and 2014 were dismissed due to ‘withdrawal’ of asylum requests.

This chapter will provide an elaboration of how the migrant crisis ‘engulfed’ Macedonia: a non-EU country, trapped between the Western lack of vision and unity on the issue, on one hand, and its own inability to effectively develop asylum system and guarantee international protection to those who need it, on the other. The thesis would proceed with the results of a research mission in Macedonia’s biggest Transit center ‘Vinojug’ in Gevgelija conducted between 15 June and 31 July 2016. It portrays in detail what the decision by Skopje to close its border meant for the people stranded in the country and provides an insight into the ongoing questionable procedures of immediate expulsions for those arrested while illegally crossing the southern border of Macedonia. I argue that once turned into part of marginal border territory by the European states, Macedonia engaged into exclusive border politics, which involved serious human rights violations. The sense of impunity, tacitly nurtured

<sup>213</sup> Ibidem.

<sup>214</sup> Macedonia received 175 asylum requests in 2010, 744 – in 2011, 638 – in 2012. See at UNHCR Observations: *The Former Yugoslav Republic of Macedonia as a Country of Asylum*, August 2005, p. 5.

by Europe’s lack of interest in the fate of the community trapped, untied the hands of Skopje’s leadership and it engaged in an ‘othering the migrants’ endeavor. The people – locked in camps and unable to regulate their residence – were physically, institutionally and legally ‘bordered’. Their status and future remain completely dependent on the orders of the sovereign power and out of their own control.

Thus, my pyramid of exclusive border politics would reach its top. The human violations faced by the stranded community in Macedonia, consequently, are presented as three layers of exclusion – on continental, regional and national level. Each next step is a product of the previous, and simultaneously, adds more restrictions and exposes the stranded people to ever more numerous vulnerabilities. The final result is their complete illegality with a de facto refused right to have rights. When approached on such a multi-layered perspective, those vulnerabilities of the stranded migrants stop being just a singular precedent due to negligence, but receive a thorough explanation: they are a result of a chain reaction of securitization border practices.

This understanding could be graphically presented in the following four-layered pyramid of Exclusive Border Politics:

*Pyramid of Exclusive Border Politics*



As elaborated in detail in the introduction, the research is based on interviews with 35 migrants who have lived in ‘Vinojug’ camp since March 2016, as well as six interviews conducted immediately after migrants were apprehended by the Macedonian border police while trying to cross the fence from Greece to Macedonia (and afterward directly sent back). The text is based on semi-structured interviews with employees of international humanitarian organizations, local NGOs, and representatives of Macedonian authorities.

### 3.1. THE MIGRANT CRISIS: FROM ANARCHY TO BORDER CLOSURE

Macedonia, like all the other countries along the Balkan route, was caught unprepared by the influx of migrants that started at the beginning of 2015. The authorities struggled in first defining strategies to react and then implementing them. Here is an overview of their response.

#### 3.1.1. *Violations under the Veil of Ignorance*

*The initial phase of the migrant influx – during the first six months of 2015 – was marked by the Macedonian authorities’ reluctance to engage in the enfolding crisis. The lack of adequate legislation forced migrants into dangerous illicit journeys which resulted in several deaths. During this period Amnesty International registered push-backs at the Greek border, ill-treatment by the border police and arbitrary detentions, all due to the state’s lack of preparation for dealing with the crisis.*

The first six months of 2015 witnessed the gradual shift of migration from the Central to the Eastern Mediterranean route. According to official data, 74,564 migrants arrived in Greece between 1 January and 31 June<sup>215</sup>, with the month of June being the first in which the number of people travelling through Greece exceeded those choosing Italy. Macedonian authorities started registering data for those entering the country from 19 June 2015 onwards, but it is easy to guess that most of the migrants landing in Greece even before that went on towards

<sup>215</sup> UNHCR, Europe Refugees & Migrants Emergency Response, Nationality of Arrivals to Greece, Italy and Spain, January – December 2015, p. 1, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/MonthlyTrendsofNationalities-ArrivalstoGreeceItalyandSpain-31December2015.pdf>.



its northern neighbor. The registering process began one day after the government finally announced substantial amendments of the Law on Asylum and Temporary Protection (LAPT) on 18 June 2015 in a direct reaction to the unfolding crisis.<sup>216 217</sup>

Before the amendments of 18 June 2015, migrants were exposed to a risk of arbitrary detention and push-backs at the border due to the restrictive regulations for applying for asylum. Under Article 16 of LAPT they were obliged to apply for the right of asylum directly at the border crossing point or at the nearest police station. They were supposed to be taken to the Section of Asylum and then to ‘Gazi Baba’ center for asylum seekers in Skopje.<sup>218</sup> As the majority of them were just transiting through Macedonian territory, they were trying to escape this procedure and the police forces, thus turning into illegal migrants punishable under the Penal Code.<sup>219</sup> According to NGOs and UNHCR reports, as a result many of them put themselves into the hands of traffickers whose networks rapidly grew.<sup>220</sup>

The attempts to escape the police made people stay away from public transportation. Instead of boarding the trains which connect the southern town of Gevgelija on the Macedonian-Greek border with

<sup>216</sup> The Former Yugoslav Republic of Macedonia, Amendment of Law on asylum and temporary protection, 18 April 2015, available at: <http://www.pravdiko.mk/wp-content/uploads/2013/11/Zakon-za-izmenuvane-i-dopolnuvane-18-06-2015.pdf>.

<sup>217</sup> LAPT has been adopted in 2003, and amended several times before the new migration wave. UNHCR oversaw the drafting process of the last change in 2012 (which came into force in 2013). According to the UN agency, the law ‘incorporated many key provisions of the 1951 Convention’ and its provisions on subsidiary protection are ‘in conformity with relevant EU standards’. Nevertheless, some key articles were not in line with international standards. For example, in the *Law on Asylum and Temporary Protection*, the reasons for exclusion currently go beyond the scope of Art. 1F of the 1951 Convention and should contain the same wording as the 1951 Convention. The law also make reference to international organizations as potential “actors of protection”, however non-state actors should in principle not be considered as actors of protection as they do not have the same attributes as the state and do not have the same obligations under international law. See at: The former Yugoslav Republic of Macedonia: Law No. 10-567/2 of 2013, Law on asylum and temporary protection (revised text) [The former Yugoslav Republic of Macedonia ], 12 April 2013, available at: <http://www.refworld.org/docid/53072d144.html> [accessed 28 September 2016]; UNHCR Observations: The former Yugoslav Republic of Macedonia as a Country of Asylum, August 2005, p. 5.

<sup>218</sup> The deplorable conditions in the centre were described in a special report by Human Rights Watch. See ‘As Though We are not Humans’, HRW, 21 September 2015, available at <https://www.hrw.org/report/2015/09/21/though-we-are-not-human-beings/police-brutality-against-migrants-and-asylum>.

<sup>219</sup> Penal Code, Article 402, p. 147, enacted on 23 July 1996, available at <http://www.wipo.int/edocs/lexdocs/laws/en/mk/mk018en.pdf>.

<sup>220</sup> UNHCR Observations: The former Yugoslav Republic of Macedonia as a Country of Asylum, August 2005, p. 4.

Tabanovce, on the Macedonian-Serbian border, people were mostly using bicycles or walking on foot. This risky travelling which lasted for about 10 days resulted in the death of up to 30 people who were hit by trains.<sup>221</sup> The worst incident happened on 24 April 2015 when 14 migrants, in their 20s and 30s, coming from Afghanistan and Somalia were struck by a passenger train north of Veles, in central Macedonia.<sup>222</sup>

The slaughter, which was extensively reported around Europe, pressure from UNHCR, the Red Cross and some local NGOs such as Legis, as well as the ever growing numbers of people arriving at the southern border of the country and the overcrowding of Gazi Baba center, finally led to a change in LAMP. The new amendments were designed following the asylum procedures in Serbia and entered into force immediately after the parliament confirmed them on 18 June 2015. They introduced a procedure for *registration of the intention* to submit an asylum application that would allow migrants to enter and be in the country legally for 72 hours.<sup>223</sup> Within this short timeframe they were supposed to either officially claim asylum, or leave the country. For those 72 hours they could also use public transportation.<sup>224</sup>

### 3.1.2. *Towards a State of Emergency*

*The second phase – between 18 June and 18 November when Macedonia closed its borders for all but Syrian, Iraqi and Afghani nationals, saw chaos at the Greek border, announcement of states of emergency in the border regions and deployment of the army and special forces. The registration process could hardly cover all the people passing during the entire period.*

The registration process of *asylum intention* happened directly upon entering the Macedonian territory. In the first two months it took place in the police station, close to the railway station in Gevgelija where the

<sup>221</sup> The exact number is not officially disclosed by the authorities. The figure here is provided by Mersiha Smajlovikj from the NGO Legis in an interview for OsservatorioBalcantiCaucaso from 23 September 2015, available at <http://www.balcanicaucaso.org/eng/Areas/Macedonia/Macedonia-the-Refugee-Emergency-164182>.

<sup>222</sup> In most cases it happened in tunnels or on bridges where the victims, even if they saw the train arriving, had no room to get away. These were also tremendous traumas for the train drivers, some of whom never went back to work. See at <https://www.theguardian.com/world/2015/apr/24/several-migrants-hit-by-train-killed-central-macedonia>.

<sup>223</sup> The former Yugoslav Republic of Macedonia, Amendment of Law on asylum and temporary protection, 18 April 2015, available at: <http://www.pravdiko.mk/wp-content/uploads/2013/11/Zakon-za-izmenuvane-i-dopolnuvane-18-06-2015.pdf>.

<sup>224</sup> Ibidem.

train from Thessaloniki arrived. On 24 August 2015 the authorities, with the financial support of UNHCR and IOM, opened a Temporary Transit Centre named 'Vinojug', meters away from the border with Greece, in a district called Suva Reka (Dry river), just outside of the town.<sup>225</sup> Initially all people who crossed the border, regardless of whether they had documents or not from the Greek authorities, were allowed to continue on their journey – but only one-third were registered. Those who were, had to write down their name and surname, date of birth, nationality and country of departure.<sup>226</sup> This in the words of the people employed to do the registration was 'a bit tricky' as 'who knows if that info was correct'.<sup>227</sup> Gradually, the collection of information became stricter, all people who crossed the border were registered (since December 2015)<sup>228</sup>, and those without documents issued by the Greek authorities could not continue their journey and were returned back to Greece. After the Paris attacks on 13 November 2015, the authorities started gathering information also about ID or passport numbers and final destination.<sup>229</sup> Between 16 February 2016 and 9 March 2016, the date when the border closed, valid IDs were necessary for the people to enter into Macedonian territory.<sup>230</sup>

Migrants boarded trains in Gevgelija directly to the border with Serbia and had no right to leave the coaches during the four-hour ride. Police secured the passage along the whole route between the southern and northern border. The train tickets cost 25 Euros per person and were free for children under 10.

Despite the simplified procedure, the Macedonian authorities found it difficult to register about 2000 people per day – the average daily number of people entering in July and August 2015 - which resulted in thousands being stuck in no man's land between Greece and Macedonia. Chaotic scenes at Gevgelija station where thousands of people were trying to board the trains for Serbia motivated Skopje to

<sup>225</sup> The Mayor Ivan Frangov (VMRO-DPMNE) did not allow for the camp to be built inside the town.

<sup>226</sup> Information from a personal interview with Atanas Trajkov, field officer of IOM, 23 July 2016.

<sup>227</sup> Personal interview with an IOM employee.

<sup>228</sup> ACAPS, *The Balkan Migrant Crisis*, January 2016, p. 5, available at file:///C:/Users/S/Downloads/AnintroductiontotheBalkanmigrantcrisis%20(2).pdf.

<sup>229</sup> Information from a personal interview with Atanas Trajkov, field officer of IOM, 23 July 2016.

<sup>230</sup> Ibidem.

declare a state of emergency on 19 August 2015 in two border areas: the Gevgelija municipality and Kumanovo municipality on the border with Serbia. The extraordinary measure was planned to remain in force until the end of that year, but was extended twice and is still acting. If not prolonged once again, it would regulate the situation on the ground until 31 December 2016.<sup>231</sup>

The state of emergency allowed for the authorities to send riot police and the army to the border. According to Reuters, on 20 August 2015 a column of riot police armed with tear gas and armored vehicles shut off the passage for several thousand people coming from Greece.<sup>232</sup> Amnesty International called the deployment a ‘kind of paramilitary response’ and blamed the anti-terrorism police units – the Rapid Reaction Unit – for using beatings and shooting live ammunitions in the air in order to prevent migrants from crossing.<sup>233</sup> At this point, reports of illegal push-backs from the border were already well documented by human rights organizations.<sup>234</sup>

The continuous tense situation as well as the terrorist acts in Paris on 13 November 2015 prompted a joint decision of the Macedonian, Serbian and Croatian governments as of 18 November 2015 to restrict entry to their countries only to migrants from ‘war-affected zones’.<sup>235</sup> This included only people from Syria, Iraq and Afghanistan. From that moment on all other migrants – from countries like Iran, Pakistan, Morocco, Algeria, Libya, Somalia, Congo, Sudan etc. were labeled as ‘economic migrants’ and not allowed to cross the Greek-Macedonian border. 6000 thousand people became stranded in dire conditions in Greece along the crossing.<sup>236</sup>

<sup>231</sup> Republika, *Macedonia Extends State of Emergency on Southern and Northern Border*, 28 March 2016, available at <http://english.republika.mk/macedonia-extends-state-of-emergency-on-southern-and-northern-border/>.

<sup>232</sup> Bytyci, Fatos. *Macedonia Declares Emergency, Deploys Army over Refugee Crisis*, Reuters, 20 August 2015, available at <http://uk.reuters.com/article/uk-europe-migrants-macedonia-idUKKCN0QP0UA20150820>.

<sup>233</sup> Statement by Gauri van Gulik, Amnesty’s deputy director for Europe, quoted by New York Times, Article by Alexander Dimishkovski, *Macedonian Police Clash with Migrants on Border with Greece*, 21 August 2015, available at [http://www.nytimes.com/2015/08/22/world/europe/macedonia-police-migrants-crackdown.html?\\_r=0](http://www.nytimes.com/2015/08/22/world/europe/macedonia-police-migrants-crackdown.html?_r=0).

<sup>234</sup> Amnesty International, *Europe’s Borderlands. Violations against Refugees and Migrants in Macedonia, Serbia and Hungary*, 2015, pp. 16-18.

<sup>235</sup> Kantouris, C. *Migrants Clash with Macedonian Police on Greece Border*, Associated Press, 28 November 2015, available at <http://bigstory.ap.org/article/babcfa8e41074c189ae9d765845bd6c/migrants-clash-macedonian-police-greek-border>.

<sup>236</sup> ECRE, *Western Balkans: Refugees Stranded at Borders Face Discrimination with No*

The ‘flagrantly discriminatory practice’<sup>237</sup> ignited harsh criticism by relief organizations. In a joint statement UNHCR, IOM and UNICEF stressed that ‘no nation [...] can be excluded from international protection (and) each case should be screened individually’. The three UN bodies expressed serious concerns, as profiling asylum seekers on the basis of their nationality is ‘increasingly untenable from every point of view – humanitarian, legal, and also safety related, not least in light of falling temperatures and the risks for children and others with specific needs.’<sup>238</sup> Amnesty International reported illegal ‘collective expulsions’.<sup>239</sup> The decision resulted in violent protests at the border. Pictures of six Iran men who sewed their lips in protest circled international media outlets.

### 3.1.3. *A Present from Orban – the Fence*

*The deployment of the army was followed by erection of initially one fence, later fortified by a second one. The facility (received by the Macedonia government from the Hungarian one<sup>240</sup>) officially was supposed to regulate and organize the legal passage of the people. Having fulfilled that practical mission, it proved, though, to be also a first step towards the complete closure of the border.*

The bloodiest clashes erupted on 28 November 2015 – when the Macedonian army surprisingly started building a fence along the border with Greece. Aleksandar Gjorgjiev, a spokesman for Macedonia’s government, described the border work as ‘technical operations for channeling the migrant flow to official checkpoints, in order to ensure humane treatment and to register the migrants’.<sup>241</sup> Reports from the

*Access to Asylum*, 27 November 2015, available at <http://www.ecre.org/western-balkans-refugees-stranded-at-borders-face-discrimination-with-no-access-to-asylum/>

<sup>237</sup> The phrase is used by Sian Jones, senior Balkan researcher of ‘Amnesty International’, in its report from Gevgelija and Idomeni, *Lockdown at the Macedonian Border – Illegal Pushbacks of Refugees to Greece*, 17 December 2015, available at <https://www.amnesty.org/en/latest/news/2015/12/lockdown-at-the-macedonian-border/>

<sup>238</sup> ECRE, *Western Balkans: Refugees Stranded at Borders Face Discrimination with No Access to Asylum*, 27 November 2015, available at <http://www.ecre.org/western-balkans-refugees-stranded-at-borders-face-discrimination-with-no-access-to-asylum/>

<sup>239</sup> Amnesty International, *Refugee Crisis: Balkans Border Blocks Leave Thousands Stranded*, 20 November 2015, available at <https://www.amnesty.org/en/latest/news/2015/11/refugee-crisis-balkans-border-blocks-leave-thousands-segregated-and-stranded-in-greece/>

<sup>240</sup> Information from a Personal interview

<sup>241</sup> Quoted by Associated Press, *Macedonia: 18 Officers Injured in Migrant Clash*, 28 November 2015, available at <http://www.dailymail.co.uk/wires/ap/article-3337303/>

field suggested that Macedonian police briefly entered Greek territory and fired stun grenades on the rioters who threw stones at the soldiers. The violence resulted in more than 40 people being injured, 18 of whom were Macedonian army and police personal.<sup>242</sup>

The data for 2015 unquestionably confirmed the status of Macedonia as a transit country. According to the Ministry of Interior, between 19 June (when the registration process started) and 31 December, 388,233 persons have registered *intention for asylum* application.<sup>243</sup> Due to the difficulties experienced by the authorities at the beginning of the registration process, the numbers provided by UNHCR are almost double: 687,047 (since 1 July).<sup>244</sup> Considering the fact that the number of people who reached Greece from Turkey is put by UNHCR to be 851,319 for 2015, it could be assumed that it is similar for Macedonia – the next step on the way to the final destinations in Western Europe. From all those migrants, only 83 officially applied for asylum in Macedonia in 2015.

On 8 February 2016 Skopje's army began erecting a second razor-wire 3-meter high fence along the Greek border – five meters away and parallel to the one erected in November. Despite the lack of clear information on its length, it is believed to be about 32 km long<sup>245</sup>, stretching from the village of Moin in municipality of Gevgelija, east to the Dojran Lake. The aim of the double fence was to 'send a message to migrants [...] to give up crossing illegally'.<sup>246</sup> Simultaneously with the new fence, border control was reinforced with police forces from other countries. Based on direct bilateral agreements, teams from Croatia, Austria, Hungary, Serbia, Slovenia, Poland arrived in the region of Gevgelija. The special units were sent with their own vehicles and equipment. The cost for the operation which continues until today, is mainly covered by EU.

Macedonians-reinforce-fence-alongside-Greek-border.html.

<sup>242</sup> BBC. *Stranded Migrants Battle Police on Greece-Macedonia Border*, 28 November 2015, available at <http://www.bbc.com/news/world-europe-34954127>.

<sup>243</sup> Daily Bulletin for 31.12.2015 by Ministry of Interior, available at <http://moi.gov.mk/vest/1195>.

<sup>244</sup> UNHCR, Operational Update, 18-31 December 2015, p. 1, available at file:///C:/Users/S/Downloads/fYRMacedoniaInter-AgencyOperationalUpdate31December2015.pdf.

<sup>245</sup> According to the information of Personal interview with Zoran Lazarevski, official from RCCM, 25 June 2016.

<sup>246</sup> A quote by a senior army official, in Daily Mail, *Macedonia Builds Another Wall*, 8 February 2016, available at <http://www.dailymail.co.uk/news/article-3437717/A-second-wall-razor-wire-stem-human-tide-Macedonia-builds-fence-border-Greece-send-message-migrants-attempts-cross-illegally.html>.

### 3.1.4. *A Border Sealed*

*On the eve of the deal between Turkey and EU, the Balkan route was shut. Macedonia sealed the border with Greece despite the fierce objection of the latter.*

Through those extraordinary measures – fence, army and foreign police units - the government in Skopje, backed by its European partners, turned the border with Greece into a tiny bottleneck which slowed down the journey of the numerous refugees landing on the Greek islands. A further step with a similar goal was taken on 22 February 2016 when Afghani nationals were also excluded from the groups allowed to cross the Macedonian border, restricting the flow to only Syrian and Iraqi citizens.<sup>247</sup> Their numbers were also severely reduced as the border authorities demanded that all asylum seekers present valid national documents.

The imminent prospect of border closure was publicly stated for the first time by the Macedonian foreign minister Nikola Poposki in an interview for WSJ. Published on 31 January 2016, it quoted the minister saying that ‘We aren’t three months away, but weeks from cutting off Greece’.<sup>248</sup> The international media reported fear and anxiety among the migrants of the upcoming extreme measure as early as the beginning of February.<sup>249</sup> The inevitable happened on 9 March 2016 when, on the eve of the EU-Turkey agreement, the whole Balkan trail was closed despite the fierce opposition from UNHCR. Macedonia fully sealed the border with Greece after Slovenia, Croatia and Serbia announced tight new limitations on migrant entry. ‘Macedonia has to defend Europe from the EU itself’, proclaimed the president George Ivanov, blaming Greece for failing to control the crisis.<sup>250</sup>

According to the Ministry of Interior’s statistics 477,856 people

<sup>247</sup> Associated Press, *Greece: Macedonia has Closed its Borders to Afghan Migrants*, 21 February 2016.

<sup>248</sup> WSJ, *Europe Chokes Flow of Migrants to Buy Time for a Solution*, 31 January 2016, available at <http://www.wsj.com/articles/europe-chokes-flow-of-migrants-to-buy-time-for-a-solution-1454232247>.

<sup>249</sup> The Economist, *At the Macedonian Border, Migrants Know Time is Running Out*, 9 February 2016, available at <http://www.economist.com/news/europe/21690250-syrian-refugees-fear-border-will-close-north-africans-it-already-has-macedonian>.

<sup>250</sup> The quote is from an article by Ivanov for the British ‘Daily Telegraph’, titled ‘*Macedonia is Defending Europe from Itself*’, 6 March 2016, available at <http://www.telegraph.co.uk/news/worldnews/europe/macedonia/12185464/Macedonia-is-defending-Europe-from-itself.html>.

passed an *intention for asylum* since the whole registration started on 19 April 2015.<sup>251</sup> UNHCR data puts the number at 778,768.<sup>252</sup> From 1 January 2015 to 31 March 2016, 2,215 asylum applications were submitted out of which only 2 persons were recognized as refugees in 2015-2016, both unaccompanied children, one from Iraq and one from Syria.<sup>253</sup>

The lockdown and the restrictive measures that were applied in the last weeks of the route had resulted in the build up of thousands of migrants on the Greek side of the border. In the following weeks, more than 10,000 would pile up in the village of Idomeni, living in dire conditions, enduring freezing cold, and lack of any medical and social care.<sup>254</sup> At the same time 1223 persons in the camps of Gevgelija and Tabanovce in Macedonia found themselves unable to leave the country.

### 3.2. BORDER POLITICS IN ACTION

The act of 9 March 2016 put Macedonia in a completely new situation and confronted the authorities with unfamiliar challenges that, as this paper argues, remain unresolved eight months later. The complete closure of the border was a result of a complicated accumulation of factors. I argue that the whole border strategy of the Macedonian government was directed westward. First, it was a direct result of pressure from the Visegrad Four, and ultimately of the whole EU, to stop the migration through the Balkans. Second, its imminent goal was to escape a scenario in which Macedonia gets trapped with a big community of stranded migrants, which Skopje considered as an

<sup>251</sup> UNHCR, Operational Update, 4-31 March 2016, p. 1 available at file:///C:/Users/S/Downloads/1462526512.pdf.

<sup>252</sup> Ibidem.

<sup>253</sup> Ibidem.

<sup>254</sup> A report in Guardian graphically depicts the camp: 'Its tents, clinics and cabins lie on mud-soaked land. Its fields, once fertile, are toxic dumps. Its air is acrid and damp. Children dart this way and that, exhausted, hungry, unwashed. Waterlogged tents surround them – women sitting inside, men sitting in front, attempting vainly to stoke fires on rain-sodden wood. Everywhere there are lines: of bedraggled refugees queuing for food, of scowling teenage boys waiting for medics, of teenage girls holding babies, of older men and women staring into the distance in disbelief. And everywhere there are piles: of sodden clothes, soaked blankets, muddy shoes, tents, wood, rubbish – the detritus of despair but also desperation of people who never thought that this was where they would end up.' See at: <https://www.theguardian.com/world/2016/mar/17/migration-crisis-idomeni-camp-greece-macedonia-is-an-insult-to-eu-values>.



economic burden and security threat. Third, similarly to Turkey, to use a securitized border strategy as a leverage tool for other political goals: to silence EU criticism of its long-term internal crisis and to shorten its way towards full European integration. Those three considerations of Skopje when dealing with the crisis – all directed at Brussels – ignored the interests of the migrants themselves, or even – as my research tries to prove – entered into a direct clash with those interests. As one might expect, the ultimate result were large-scale violations of human rights .

The achievement of those three goals – as presented above - meant firm securitization of the migration issue. A closer look on how that was achieved would allow us to recognize a strategy well-documented by theorists: thick *bordering* of those who try to cross into Macedonia's territory (manifested in collective and immediate expulsions and push-backs); subjective assessment of the handful number of people allowed in – or *ordering* through a demonstration of sovereign power, and *othering* – institutionally, legally and psychologically, of the stranded community already in the country.

This chapter will first elaborate on the presented goals of Macedonia's border politics – to continue with the ways those strategies were achieved. A profound understanding of those processes would give an insight why the violations, that I have established and detailed in the next part, became possible.

### 3.2.1. *Goals of Skopje's Border Politics*

#### *Answer to the Imminent Pressure of the West*

The decision the Balkan route to be cut off was not an independent Macedonian undertaking. As explained in the previous chapter, it was a coordinated action which was preceded by an extraordinary meeting in Vienna of representatives of all the countries along the trail, except Greece. There is little doubt that the incentive for the sealing of borders in the Balkans was not simply a local one, but came from the final destination countries and mainly from the Visegrad Four. Despite the outspoken discontent of the German chancellor Angela Merkel, the permanent closure of the route was announced just days before the finalization of the EU-Turkey deal and can be easily perceived as a stepping stone towards its actual implementation. The plan – to send migrants from Greece back to Turkey – was hammered out in a summit in Brussels on 7 March 2016 – two days before the Balkan

countries practically blocked thousands of people in the Mediterranean country. In fact, international media reported that the route would be announced closed at the summit itself, but eventually the particular sentence was removed from the final statement.<sup>255</sup> Yet, Brussels' blessing of the measure became apparent in the words of the president of the European council, Donald Tusk, who – hours after the borders closed, triumphantly announced that 'irregular flows of migrants along the western Balkan route have come to an end'.<sup>256</sup>

With all that said, it becomes clear that even if the authorities of Macedonia preferred to leave the borders open, the international context would have left them small space for leverage. The statements of numerous Macedonian officials reveal, though, that Skopje actually passionately supported the measure. The considerations behind such a position are complicated, but are driven mainly by one factor, underlined by all experts: fear that Macedonia can be turned into a 'collection center for refugees'.<sup>257</sup>

### *Escape the Burden of Hosting Stranded Communities*

According to Vanja Mirkovski, deputy director of IOM-Macedonia, the unease in Skopje of such a scenario was due mainly to 'the incoherent EU approach' to the crisis.<sup>258</sup> The European countries 'proved to be highly inefficient' in their answer to the developments on the ground. 'The splits and the apparent lack of solidarity within the EU made all the countries along the Balkan route highly suspicious and nervous'.<sup>259</sup> The anxiousness of the Macedonian officials caused by the unpredictability of the future European strategy is obvious in their statements: 'Macedonia is unable to deal with problems that the European Union itself is not capable of solving', said Foreign Minister Nikola Poposki.<sup>260</sup>

On one hand, Skopje suffered from the chronic lack of trust that

<sup>255</sup> Barigazzi, J. *Balkan Route Closed, EU to Declare*, Politico, 3 March 2016, available at <http://www.politico.eu/article/balkan-route-closed-eu-to-declare/>.

<sup>256</sup> A Quote from the Twitter account of Donald Tusk, 9 March 2016, available at <https://twitter.com/eucopresident/status/707543984890060800>.

<sup>257</sup> The phrase was actually used in an official statement of Serbia's Interior Ministry. The northern neighbour of Macedonia had similar considerations.

<sup>258</sup> Personal interview with Vanja Mirkovski, IOM-Skopje, 3 August 2016.

<sup>259</sup> Ibidem.

<sup>260</sup> Quoted as saying in Jerusalem, on 11 March 2016. See at Jerusalem Post. *Macedonia Can't Solve Problems of Migration Crisis for EU, FM Says*. Available at <http://www.jpost.com/Middle-East/Macedonia-cant-solve-problems-of-migration-crisis-for-EU-FM-says-447582>.

characterized its relations with Athens. The migrant crisis exacerbated the tensions between the two states that for decades were darkened by the lingering ‘name-dispute’. Both countries traded insults and accusations, yet it was Macedonia who was dependent on the border politics of its southern neighbor.<sup>261</sup> On many occasions, the local authorities in Gevgelija blamed its colleagues for the lack of precise information on the coming influx, improper documentation of the migrants and the insufficient support from the Greek police forces.<sup>262</sup>

In the same time, Skopje was also worried about ‘the absorption capacity’<sup>263</sup> of the destination countries. ‘Today we have X days left until we realize that the system can no longer function’, noted Poposki on 24 February 2016 in Vienna. The minister underlined on many occasions that entry into Macedonia would be allowed to as many people as the states in the West were ready to welcome.

Thus, ‘landlocked’ between uncertainty both in the South and the North, Macedonia’s approach to the crisis was openly not to end up as a holding pen for unwanted migrants. Yet, the passionate backing by the Skopje government for the sealing of the border with Greece and its severe securitization, as demanded by the EU, should be considered in a broader political sense and had broader political considerations.

### *Positioning as a Stable EU Partner*

It would not be far-fetched to approach the matter from a realism perspective: Macedonian officials skillfully used border politics and the critical role of the country along the migrant route as a leverage tool – firstly, in the internal crisis where the EU is involved as main mediator, and secondly, on the path of the country’s EU integration. Considering the first, the journalist Edit Herczog put it straightforwardly, ‘the ruling government is opportunistically using its position to deflect criticism

<sup>261</sup> Greek Prime Minister Alexis Tsipras said Macedonia had “shamed” Europe by closing its borders while President Prokopis Pavlopoulos went a step further, arguing such “incomprehensible” behaviour showed Macedonia had “no place” in the EU or NATO. Macedonian President Gjorge Ivanov shot back that it was Greece’s job to prevent migrant incursions on its soil, a task he said Athens has repeatedly failed to live up to.

<sup>262</sup> For example, see Boitard, C., *Tensions as Greece, Macedonia Trade Blame for Tear Gas Incident*, AFP, 11 April 2016, available at <https://www.yahoo.com/news/greece-blasts-macedonia-using-excessive-force-migrants-092032756.html>.

<sup>263</sup> A term used by Nikola Poposki after a meeting with his Austrian counterpart Sebastian Kurz on 22 February 2016. See: <http://vlada.mk/node/11874?language=en-gb>.

from Brussels on its internal political turmoil'.<sup>264</sup> When such criticism was still coming from EU, the leadership engaged in open and harsh blaming rhetoric towards the western countries in front of the local audience, thus undermining EU authority. Yet, in most of the cases the EU indeed refrained from open support of the mass anti-regime demonstrations that engulfed Skopje in April 2016. As protestors took to the streets, prompted by a presidential pardon of politicians implicated in a corruption scandal, commentators in the West argued against the 'colored revolution' threatening to undermine a key ally in dealing with the refugee crisis.<sup>265</sup>

At the same time, with its hard-line approach to the border Skopje aimed, arguably also successfully, to win new supporters in a still-born bid to join the EU. 'We made it clear in a nice way that Greece needs to be persuaded to lift its objections to our membership', said a Macedonian diplomat on the eve of one of the EU migration summits.<sup>266</sup> Macedonia's leadership tried to project itself – and to an extent to really be – a severe guardian of the EU, just on the contrary of its southern neighbor. 'Macedonia has to defend Europe from the EU itself', proclaimed the president George Ivanov blaming Greece for failing to control the crisis.<sup>267</sup>

Calls for acceleration of EU integration of Macedonia were made after weekly conferences with other Balkan route countries, after talks with visiting EU dignitaries, including the president of the European Council Donald Tusk. That pressure bore its fruits when on 10 March 2016 the European Parliament passed a non-binding resolution that said Macedonia had acted "as a responsible partner" in coping with the migration crisis. It urged the EU to back its speedy integration into the EU, completely neglecting the political crisis within the country and the last progress report in which the European Commission noted

<sup>264</sup> Politico, *Europe Can't Afford to Be Blackmailed by Macedonia*, 31 March 2016, available at <http://www.politico.eu/article/europe-blackmailed-macedonia-refugee-crisis-balkan-route-greece/>.

<sup>265</sup> Cohen, A. *Avoiding Balkan Black Swans*, Huffington Post, 20 April 2016. <http://www.huffingtonpost.com>.

<sup>266</sup> Politico, *Macedonia Seeks Date for EU Membership Talks*, 17 March 2016, available at <http://www.politico.eu/article/macedonias-eu-membership-nightmare-refugees-migrants-border-nato/>.

<sup>267</sup> The quote is from an article by Ivanov for the British 'Daily Telegraph', titled 'Macedonia is Defending Europe from Itself', 6 March 2016, available at <http://www.telegraph.co.uk/news/worldnews/europe/macedonia/12185464/Macedonia-is-defending-Europe-from-itself.html>.

‘backsliding in the areas of democracy, rule of law, media freedom, electoral reforms and financial discipline’.

### 3.2.2. *Border Strategies*

As mentioned earlier, all the goals that Macedonia pursued went through securitization of its southern border and of its migration policy as a whole. This line – to a great extent, mirrored the course imposed by the EU. Happy to presents itself as a guardian to the Union, Macedonia engaged in achieving the much-needed securitization through bordering, ordering and othering of the migrants.

#### 3.2.2.1. *Bordering through Push-Backs*

The sealing of the border between Macedonia and Greece, solidified by barb-wired fencing, posed huge challenges for migrants who remained south of it. The practice of the security forces towards those people is open and very clear: every migrant caught crossing the closed border illegally is returned within hours back to Greece. The rule applies not only in cases when people are intercepted at the fence itself, but well within the territory of Macedonia. All six migrants, interviewed for this report just after their apprehension by the police, stated that they were not offered the opportunity to claim asylum in Macedonia or to challenge their deportation. In three of the interviews the people testified that they had been pushed back on several occasions.

In the absence of a bilateral Readmission Agreement, due to the continuing name dispute between Macedonia and Greece, deportations can be carried out under a general Readmission Agreement with the EU. Article 6(3) of the Readmission agreement does provide for the accelerated return within two days of persons found to be illegally on Macedonian territory within 30 km of the border.<sup>268</sup> Yet, the procedure requires the Border police to make a formal application for their return to Greece. Rather than fulfilling this administrative requirement, the security forces routinely push people back over the border without any safeguards. A possibility to apply for asylum is not provided. According to IOM data, during the research period 398 persons were returned to

<sup>268</sup> Statistical Data, provided by field mission of IOM in Gevgelija.

Greece.<sup>269</sup> The detentions and the subsequent deportations are carried out by Macedonian, as well as foreign police forces. The official mission of their work is to crash trafficker and smuggler networks and detain people involved in this illegal business.<sup>270</sup> Yet, every time migrants are intercepted, they are questioned – especially if caught with smugglers – and then repatriated immediately. According to Nikola Milina, the former head of the Croatian border agency now working for IOM-Skopje, such expulsions are not illegal as the police simply ‘encourage’ people to go back to Greece and brings them to the border following the provisions of the Readmission agreement of EU.

Yet, it will be up to the European Court of Human Rights to decide that after eight migrants from Syria, Iraq and Afghanistan submitted a complaint against Macedonia due to what they claim is unlawful push-back on 14 September 2016. The claimants assert that on 14 March 2016, alongside 1500 other people, they crossed the Greek-Macedonian border, got apprehended and forced back to Greece through improvised holes in the newly constructed border fence. They were offered no possibility to ask for asylum or to take legal action against their summary deportation – which according to them, violates Article 4 Protocol 4 (prohibition of collective expulsion) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

It is out of the scope of this thesis to discuss the morality and practicality of the border fence. Yet, cases like the one that is presented to the European court imply that the facility plays a key role in Macedonia border politics. It is conspicuous and physical demonstration of the determination of Macedonian leadership to control its territory and sovereignty. The razor-wire fence is the ultimate representation of what has been described in the first chapter of this paper as one of the main characteristic of today’s border politics: the turning of the border area into a scene of performance. The 30 kilometers of fencing are the ultimate manifestation of what De Genova called a border spectacle - spectacle of enforcement at ‘the’ border, whereby migrant ‘illegality’

<sup>269</sup> The data includes only those migrants who, after apprehension by the police, are taken for brief examination in ‘Vinojug’ camp before their expulsion back to Greece. Statistical Data, provided by field mission of IOM in Gevgelija.

<sup>270</sup> 2007/817/EC: Council Decision of 8 November 2007 on the conclusion of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation - Exchange of letters; OJ L334 of 19/12/2007, p. 1.

is rendered spectacularly visible.<sup>271</sup> The spectacle was organized for domestic and western audience. On the one hand, it was aimed at pleasing the Macedonian society as, according to a survey conducted in October 2015, 66.2% supported the erection of a fence, and 25.4% were opposed.<sup>272</sup> On the other, it was a nod towards the ever growing ‘club’ of hard-line anti-migrant governments in Europe.

This ‘spectacle’ however, results in questionable procedures and legal contradictions. It is true that the fence did help the better management and registration process during the most critical months. Once it was built, the people crossed through an official check-point and received both the chance to legalize their status (even temporarily) in Macedonia, and to get food, medical or legal help. Yet, the razor-wired fence was the first step in restricting people’s movement – that later on was completely blocked. This ‘theater of security’<sup>273</sup> stranded 133 people in Gevgelija, pushed back thousands in Greece and put unknown numbers into the hands of traffickers. The flourishing of the smugglers’ networks since the erection of the fence and especially after the border closure was confirmed without hesitation by all experts interviewed for this thesis.

### 3.2.2.2. *Ordering Through Subjective Assessment on Possible Entries*

Only six individuals were allowed to stay in ‘Vinojug’ camp in the research period. The first case included a pregnant woman from Afghanistan with her two children – a girl (11) and a boy (8). Due to complications in her pregnancy, the woman was sent to Skopje for further examination. Two unaccompanied minors – 13 and 8 years old – apprehended by the police while being smuggled through the border fence were allowed to stay until the location of their third brother was established. Yet in many cases, the deliberations of the police officers who had to decide if the people could stay or should return to Greece turned into heated discussions. The final decision lies with RCCM. ‘Borders are closed. No one can enter without legal documents. Yet, there are some cases when expulsion is impossible. It is a matter of humanity’,

<sup>271</sup> De Genova, N. *Spectacles of Migrant Illegality: the Scene of Exclusion, the Obscene of Exclusion*, in ‘Ethnic and Racial Studies’, 2013, available at <http://dx.doi.org/10.1080/01419870.2013.783710>.

<sup>272</sup> IPRS, 2015, *The perceptions on the migrant crisis*, unpublished public opinion poll, November 2015. Institute for Political Research-Skopje (IPRS).

<sup>273</sup> A phrase used by the Italian journalist Marchello di Cintio in his book ‘Walls’, Bulgarian edition, Vakon:2015.

explained K. Lazarevski from RCCM.<sup>274</sup> Unofficially, representatives of the Centre confessed that ‘it depends on whose shift it is’. No official procedure is prescribed.

The practice resembles fully what Houtum and Naerssen call ‘a strict process of ordering, which allows some ‘others’ in, but other ‘others’ not. It also echoes Agamben’s criticism of the subjectivity of border practices which turn them into a permanent state of exception space: it is so ‘because the decision to admit an individual into the community or exile that individual from the protection of the sovereign is at root a political decision.’ Who counts as a human and who does not is a sovereign decision and this demonstration of sovereign power is achieved by bans: in this case complete ban on entry.

### 3.2.2.3. *Otherring the Stranded Migrants*

It is the fate of the stranded migrants though that is most thoroughly and continuously affected by the exclusive border politics of Macedonia. What this research established, is that they are ‘othered’ on all possible levels: institutionally and legally – by not having a chance to regularize their residence in Macedonia; figuratively – through their association with the Kosovar refugees in 1999; and even physically – through their confinement in the camp.

The othering of the migrants stepped first on the referral to the security issues that arose due to the arrival of 360 000 refugees from Kosovo in 1999. ‘It is a common discourse in Macedonia: that the flood of Kosovar Albanians brought our country to the brink of ethnic-based civil war. The new migrant crisis – in which most of the people entering the country were again Muslims, made the population – especially the Orthodox Macedonians – feel threatened’, says Tanya Kyaeva, regional head of IOM Gevgelija.<sup>275</sup> The feeling that as in the first crisis Europe would turn its back on Macedonia again was massively spread: ‘It is not the first time that Macedonia has been abandoned by the EU when in trouble, we’ve seen that! When we accepted 360,000 refugees during the Kosovo war, nobody helped us back then’, said the president Ivanov.<sup>276</sup>

<sup>274</sup> Personal interview with Zoran Lazarevski, official from RCCM, 25 June 2016.

<sup>275</sup> Personal Interview with Tanja Kjaeva, , head of IOM mission in Gevgelija, 15 July 2016.

<sup>276</sup> Sputnik. *We pay for EU Mistakes. Macedonia Accuses EU of Careless Attitude*, 11 March 2016, available at <https://m.sputniknews.com/europe/20160311/1036151271/macedonia-accuses-eu.html>.



The discomfort of the society was provoked also by the active work of Islamic foundations or NGOs with Muslim donors who provided help to the refugees. For example, the activists of Legis whose donors were mainly from the Middle East, supposedly from Qatar, were regarded with great suspicion in the Gevgelija camp.<sup>277</sup> Of course, the security threats were exacerbated by the initial lack of any information on the profile of people entering the country, and the news for terror acts in the West. The supposed involvement of refugees in some of those crimes was, as elsewhere, largely covered by the media.

Between 15 June 2016 and 31 July 2016, when this research was made, the transitional center ‘Vinojug’ hosted 133 migrants: 88 from Syria, 41 from Iraq and 4 from Afghanistan. Of them 43 were male, 29 female and 61 children (under the age of 18). All of the people in the camp had entered Macedonia in March – days, or some – even hours, before the borders up north were sealed. When that happened, they ended up trapped in the camp. Both ‘Vinojug’ in Gevgelija and the one in Tabanovce<sup>278</sup> are closed-type facilities: the migrants are not allowed to go in and out. This research proved that people living in the two centers are in a legal limbo that directly results from the sealing of their way forward.

When entering Macedonia, all the migrants registered their *intention to apply* for asylum as the procedure required. Thus, within 72 hours they had to either leave the country, or officially submit official asylum application. The first option became practically impossible with the closure of the borders. Yet, none of the migrants expressed the will for the second - to start an asylum procedure. Similarly, the authorities avoided encouraging the people to do so. As an IOM employee working in ‘Vinojug’ put it, ‘we and they were suddenly trapped together: like a marriage organized by relatives abroad. Yet both we and they did not want to sign the marriage documents’.<sup>279</sup> With migrants’ 72-hour permit for legal residence having expired months ago, and no initiated procedure for asylum, people’s stay in Macedonia is practically outside

<sup>277</sup> The head of the organization Jasmin Redzepi was forbidden to enter the camp as of 25 September 2016 after he caused mass panic among the migrants by claiming they were ‘prisoners’ who would be ‘deported back to Greece in 3 months’.

<sup>278</sup> Tabanovce camp hosted more than 1000 people when the borders closed. Gradually the numbers were severely reduced as migrants run away (often with the silent approval of the guards) in Serbian territory. In the end of July there were 73 people in the camp.

<sup>279</sup> Personal interview with Atanas Trajkov, field officer of IOM, 23 July 2016.

any legislative framework. ‘Their residence in Macedonia is irregular. The law is totally blind for them’, confirmed Bosko Sofianov, a lawyer from MYLA.<sup>280</sup> No actions were taken by the authorities to address this paradox during the research period, four months after the closure of the borders. To my knowledge, the situation remains unchanged at the time of writing (October 2016).

All the respondents within the migrant community in the camp shared a huge frustration on this ongoing uncertainty. ‘Every day we get up with the hope that the borders will be opened’, says F.H. (30) from Syria.<sup>281</sup> ‘All days are the same, we are locked in those 200 square meters for months and we do not know what will happen to us the next day. Sometimes I just pray some terrorists will come and kill us all, so that this endless waiting is over’,<sup>282</sup> explains her husband T.M. ‘We are like prisoners here. What really brings me down is the realization that I am powerless, helpless, that my life and the lives of my closest creatures is decided elsewhere, that I am not the master of my own fate’, he adds.<sup>283</sup>

Macedonian authorities stress the fact that the people remain irregular as they themselves refuse to apply for asylum. ‘No one stops them from submitting an asylum application. Furthermore, there are lawyers in the camp who provide legal advice and assistance. They can start the procedure on the field – we have representatives from the Ministry of Labor and Social Policy every day there. But they prefer to wait and to go to Germany’, explains Zoran Lazarevski, from RCCM.

It would be fair to say however, that such an understanding is simplistic and ignores many of the problems migrants face in the event of applying for asylum. Despite the claims by the authorities, 20 of the 35 interviewees in ‘Vinojug’ claimed they did not know what steps they could take to get out of the vicious circle. They were briefly informed about asylum procedures on their arrival months ago, but not about other possible solutions – like family reunification, repatriation, etc. Many of the migrants shared that after the initial consultations when people were normally under stress – no further advice was provided.

The main reason that migrants point to for not applying for asylum is that they already have relatives in other western countries. 14 out of

<sup>280</sup> Personal Interview with Bosko Sofianov, lawyer from MYLA, 29 June 2016.

<sup>281</sup> Personal Interview.

<sup>282</sup> Personal Interview.

<sup>283</sup> Ibidem.

35 respondents shared such considerations. According to the Red Cross – at least half of the migrants in the camp have shared information that they hope to reunite with other family members: husbands, wives, or children. 94 people since March have asked for family reunification, 21 cases were closed as successful.<sup>284</sup> The reunification process takes unspecified time and the decision is taken by the receiving states. The procedure requires the family members who are already legally residing in the receiving state (asylum claim even if not yet approved is also a legitimate resident document) to submit their wish for family unification. Thus, the migrants who are in ‘Vinojug’ can only wait, with no clear idea of how long the process could take. According to the Red Cross, which facilitates reunification through its internal international network, in recent months the western countries tend to accept increasingly fewer applications for family unification. During the research period no positive decisions were taken whatsoever.

Family reunification is the reason why Yusuf and Hasna Saleh from Daraa, Syria are not applying for asylum in Macedonia. The couple – aged 61 and 54 respectively – arrived in Gevgelija in March. ‘We were with our six children – travelling from Syria for two months. We crossed into Turkey on foot. There we paid 900 Euros per person to a smuggler to take us to Germany. We reached Greece by boat without any problems. But while trying to cross through the fence between Greece and Macedonia, Hasna fell and broke her leg’, Yusuf explained.<sup>285</sup> They were forced to search for help and were transferred to Gevgelija camp. Their eldest son Mahran stayed with them while the other children went on the journey with the smuggler before finally being apprehended by the police in Austria. When Yusuf and Hasna were interviewed for this paper – four months after their arrival in ‘Vinojug’, they were desperate for information on how to apply for reunification, and had no idea of the procedure. It took two more weeks until the Red Cross employees finally identified their children in a camp in Austria and instructed them how to start the process. At the moment of the writing, the Austrian authorities have not issued a decision.

10 out of 35 migrants shared another reason that prevents them from applying for asylum: the slow procedure and the vivid prospect

<sup>284</sup> Official data, provided for this thesis by Red Cross Macedonia.

<sup>285</sup> Personal interview with Hasna and Yusuf Saleh, migrants, 17 June 2016.

of the claim being rejected. Inadequacies in the implementation of Macedonia's asylum laws make it nearly impossible for asylum-seekers to access protection in practice. Discouraged by the authorities' slow progress in registering their claims and conducting refugee status determination interviews within the time set out by law, most do not even try. For years, the Macedonian authorities have been heavily criticized by UNHCR for the lack of implementation of its asylum procedures.<sup>286</sup> These were improved after the law amendment in 2012, but still the number of refugees granted international protection remains pitifully small: 1 in 2013 (subsidiary protection), 14 (12 subsidiary protection) in 2014. This grim statistics prevented people from risking to claim asylum as a possible rejection would directly mean that they had to leave the camp and the country and return to Greece.

Such was the unfortunate destiny of the only Afghan family in 'Vinojug': Farid (33) and Hamida (30) Husaaini and their two daughters, Zahra (8) and Sanaa (3). The family also arrived in Macedonia in March, but was arrested while trying to cross into Serbia. 'There were 21 of us in the woods for three days,; 19 of us and two smugglers. We were resting during the day, and walking during the night. When the police found us in the dark, everyone started running in all directions. It was a hill, so we were falling one over the other. I lost my daughters. My husband was hours behind as he had injured his leg the night before. I was hearing the screams of Sanaa. It took me half an hour to find my daughters', explains Hamida.<sup>287</sup> She spent the night at Tabanovce camp and was sent back to Gevgelija the next day. Her husband was found and relocated a day later. 'In the beginning we hoped that the borders would open which is why we decided to wait with claiming asylum in Macedonia. But as time passed we got worried. Our elder daughter should have already been going to school. Both the children and us, we suffer as none of the other migrants speaks our language (Farsi), or English. So one day we decided: let's give up on Germany and make Macedonia our new homeland', says Farid.<sup>288</sup> The couple submitted their application on 25 July 2016. In the meanwhile, they remained in the closed camp despite the fact that they were not anymore considered

<sup>286</sup> UNHCR Observations: *The former Yugoslav Republic of Macedonia as a Country of Asylum*, August 2005.

<sup>287</sup> Personal interview with Hamida Husaaini, migrant, 2 July 2016.

<sup>288</sup> Personal interview with Farid Husaaini, migrant, 4 July 2016.

illegally residing in Macedonia, and hypothetically they should have been sent to ‘Gazi Baba’ center for asylum seekers. On 12 August 2016 their claim was rejected. If the appeal does not change the decision, they would have to leave the camp within hours.

Another motive behind the reluctance of the people to apply to stay in Macedonia is the absence of social integration strategies. Even when granted with asylum or subsidiary protection, refugees could hardly rely on support of the authorities for housing, language courses, education or job opportunities.

### 3.3. HUMAN RIGHTS VIOLATIONS AS A PRODUCT OF BORDER POLITICS

The paradox of not possessing a legitimate legal status – an extraordinary situation created by the border closures – has large implications for refugee livelihoods. To use Amnesty International’s language, when the ‘veil of invisibility’ that has kept stranded migrants from the public eye is lifted, we discover a group of particularly vulnerable migrants with a range of protection and assistance needs.<sup>289</sup> They find themselves caught in both a physical gap between their country of origin and country of desired destination, and also in a protection gap due to a political decision for sealing borders which did not envisage a solution for the population along the route.

The one hundred and thirty three people in ‘Vinojug’ face a hard reality: being confined within a camp, where they are counted, their movements monitored and mapped, and their daily routines disciplined and routinized by the institutional machinery of refugee relief agencies. The irregularity of their status has left them far from loved ones, without access to work and education, and without any clarity on their future. The camp, being considered a temporary solution – visible from its official label as ‘Transit center’ – hardly provides a livelihood in dignity. Instead it restricts people’s economic, social and even physical freedom. In the following paragraphs the particular vulnerabilities will be examined.

The irregular status is the official reason for the restriction of migrants’

<sup>289</sup> Amnesty International. *Living in the Shadows. A Primer on the Human Rights of Migrants*, September 2006, p. 60, available at file:///C:/Users/S/Downloads/pol330062006en%20(1).pdf.

free movement. As mentioned before, the people in ‘Vinojug’ camp (as well as those in Tabanovce) do not have the right to go out. If any attempt is intercepted, people are directly sent back to Greece. While this research was conducted three such cases were registered. ‘These people are illegally residing in our country. How do you want me to let them walk freely’, explains Zoran Lazarevski, from the RCCM – the government agency responsible for the running of the camp. His words describe fully the vicious circle the people are in: they cannot go out of the facility as they are illegal, yet they are illegal as the authorities do not attempt to regularize their status. The reasoning Lazarevski provides in favor of his decision is that it serves to ‘contain the security problems introduced by refugees, reduce conflict between host and migrant communities, and restrict the access of traffickers to the people’.<sup>290</sup> ‘In Afghanistan it was unsafe to walk to the end of the street. Here it is even not allowed’, shares Farid Hussaini.<sup>291</sup>

The lack of documentation and the subsequent restriction on movement impedes people from searching for better accommodation. Objectivity demands the acknowledgement that ‘Vinojug’ is one of the best supplied and furnished camps along the Balkan route. Despite being hastily set up, it is planned for about 1000-1500 people, so the current 133 inhabitants enjoy relatively spacious conditions. Each family has its own container (some have air-conditioning). Food is provided three times per day and the menu takes into considerations the traditions and restrictions of Muslim cuisine. The common showers and toilets are regularly cleaned. It is important to note that all those utilities are not provided by the Macedonian government, but by international NGOs, mainly IOM. Yet, despite the efforts of charities and independent volunteers who make the life in the camp tolerable, the accommodation is of course, modest. The containers are small, those who lack air-conditioning are completely unsuitable for living during the summer heat with temperatures of up to 45 degrees. The camp is an arid facility, with no trees to provide shade. The white gravel paths reflect the sun, as do the pale-hued accommodation containers, giving the place a bleached-out, desolate feel. Some of the people do have resources for renting a small flat in the village. ‘It is not a place to raise children. I can afford to rent a flat for my kids. But they do not let me’, says A. N. (43).

<sup>290</sup> Personal interview with Zoran Lazarevski, official from RCCM, 25 June 2016.

<sup>291</sup> Personal interview with Farid Husaaini, migrant, 4 July 2016.

Naturally, the lack of legal residence permit prevents migrants not only from finding normal housing, but also from job opportunities. The daily basic needs of the migrants – like food, are met. Yet, 11 of the respondents shared they have debts to repay in their countries – for the journey and the smugglers. 29 of the interviewees are worried that even if the borders open, they do not have a way to fund their onward travelling. ‘The most difficult is for the men. They are not used to the fact that they cannot provide for their families’, says Gabriela Andreevska from Legis.<sup>292</sup> ‘It’s insulting,’ confirms Abdel Ibrahim Khalaf.<sup>293</sup> ‘But then everything here is insulting – the fence, the containers, the common showers’. As numerous studies by UNHCR have proved without doubt, the long idle existence contributes to loss of professional skills and makes migrants to ‘become skilled manipulators of the international welfare system’.<sup>294</sup>

The children who form more than 50% of the camp inhabitants stay out of the educational system. There are 23 children who are supposed to go to school (between 6 and 18 years old), yet none of them able to do so. UNICEF and ‘La Strada’ provide some lessons in mathematics and English language, but they could hardly meet the standards of a regular school system. The children do not receive teaching in their own language and are unable to write in Arabic, Kurdish or Farsi. Furthermore, the complete isolation from the local population creates an inability for the children to learn Macedonian language. The monotony of the daily life instigates aggressiveness among the children, especially those coming from different countries.

The long-term detention combined with the uncertainty about what the future will bring is a reason for mass depression, anxiety and even fights within the migrant community. Red Cross data shows that as many as half of the full-aged migrants have requested psychological support. There are two suicide attempts registered by the medical staff. ‘Sometimes I feel so helpless that I cannot breathe,’ says O. A.<sup>295</sup> ‘I have family in Syria, and when I talk to my wife on the phone, she asks if we would ever meet again. I’m stuck here in this jail’, shares Araz who

<sup>292</sup> Personal interview with Gabriela Andreevska, employee at Legis, 22 July 2016.

<sup>293</sup> Personal interview with Abdel Ibrahim Khalaf, migrant, 13 July 2016.

<sup>294</sup> For example, see: Dowd, R. *Trapped in Transit: The Plight and Human Rights of Stranded Migrants*, UNHCR Research Paper 156, June 2008.

<sup>295</sup> Personal interview.

alone in the camp. 'I do not want food, I do not want shower. I want my children', cries Hasnaa Dweier, whose kids are in Austria.

#### CONCLUSION

The parameters of control, the restrictions on movement and socio-economic freedoms, the passive dependency on aid, the lack of education for the children are all results of the created 'illegality' of the migrants. The refusal of the Macedonian state to engage in the issue and find a solution, in practice, means not only a denial of papers, but a denial of any recognition that a stranded community does live in the country. This legal black hole 'devours' any human rights this community could claim. The Syrian, Iraqi and Afghani people are refused any status and therefore – any acknowledgement by the state that they do have human rights. No status means no human rights to be violated, no human rights standards to be applied; no obligations to be met. The Macedonian stranded community has turned into, what Hannah Arendt calls 'human beings in general' – 'without a profession, without citizenship, without an opinion, without a deed by which to identify himself – and different in general, representing nothing but their own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance.'<sup>296</sup>

<sup>296</sup> Arendt, H. *The Origins of Totalitarianism*, p. 302.



## CONCLUSION

‘Borders are the worst invention ever made by politicians’, Jean-Claude Juncker, the president of European Commission, said in August 2016.<sup>297</sup> His throwaway line sparked fury among Europe’s nationalists who rushed to call his suggestion of borders’ artificiality - a ‘parody’ and ‘madness’.<sup>298</sup>

It fact, the argument presented by the most senior European official is an old one, associated with the constructivist approach on nation building: the creation of state borders follows the creation of the imagined community of Anderson, the construction of the nations of Gellner and Hobsbawm. Border researchers – cited in this thesis – like Robert Jackson – clearly see state borders as artificial constructs designed to mark the furthest extent of the territorial jurisdictions of sovereign states.<sup>299</sup>

A theoretical clash on border’s authenticity, however, becomes irrelevant at the point when borders do start influencing, and as seen in this thesis, shaping people’s existence and basic human rights. The phrase of Juncker – shared during a rigorous elaboration on the need of further EU integration – curiously summarizes the EU border politics

<sup>297</sup> As cited by Independent. *National Borders are the Worst Invention Ever*, Says EC Chief Jean-Claude Juncker, 22 August 2016, available at <http://www.independent.co.uk/news/world/europe/national-borders-are-the-worst-invention-ever-says-ec-chief-jean-claude-juncker-a7204006.html>.

<sup>298</sup> Daily Express, *EU Boss Sparks Border Outrage*, 23 August 2016, available at As cited by Independent. *National Borders are the Worst Invention Ever*, Says EC Chief Jean-Claude Juncker, 22 August 2016, available at <http://www.independent.co.uk/news/world/europe/national-borders-are-the-worst-invention-ever-says-ec-chief-jean-claude-juncker-a7204006.html>.

<sup>299</sup> Jackson, R., *The Global Covenant: Human Conduct in a World of States*. Oxford: Oxford University Press, 2000, p. 312.

towards the migrants. If the adjective used by Juncker - ‘the worst’ is subjective, the ‘invention’, as I tried to prove, is present: in the last two years, EU has created new thick borders, new technologic borders, and lastly new borderlands where the state of exception is possible.

The pyramid of exclusive border politics: initiated at the highest level in the offices of the European Commission – and duplicated as a chain reaction along the Balkan capitals – resulted, in practice in the razor-wired closed camps like the one in the Macedonian town of Gevgelija.

At the bottom of this pyramid, was the EU, which chose to completely seal its Eastern Mediterranean route – the most preferred by the migrants between June 2015 and its closure in March 2016. The subsequent deal with Turkey practically off-shored the borders of the Union east to the Turkish coast, where the local security forces have to stop migrants’ dinghies in return for tempting political and financial gains for Ankara leadership. This prevented the migrants from reaching European territory, and thus from their rights prescribed by international law: mainly the right to claim asylum.

This process – which I called thickening of EU borders – was not only spatial, but also technological. Once the imaginative EU borders were thickened, the actual external ones were severely fortified. The creation of the powerful ENCGA which has the prerogative to unilaterally intervene in a Member state territory without its consent came together with heavy technological and biometrical innovations for stricter control and surveillance.

The Balkans fell prey of this securitization configuration and were quickly transformed into a buffer zone between the new thick borders and the core of the Union, recalling former imaginaries of the region as a marginal periphery. I argue that the Balkans thus formed a second layer of exclusiveness, as they turned into Agambens’ zones of indistinction, into borderlands where state of exception is in power and thus, allows for rules, unacceptable for the EU standards.

On the top of this bigger framework of border securitization, the Macedonian leadership, pursuing its own political interests, ‘enthusiastically’ engaged in its own exclusive policies. Accepting to play the role of Europe’s guardian, it erected a fence along its Greek border and initiated a number of questionable practices, summarized here under the theoretical cap of bordering, ordering, othering.

My 45-days field research established group expulsions on a large scale and denial of the possibility to claim asylum. First, 398 people were

immediately deported to Greece within the research period without individual treatment of each of the cases: a norm, established by the Geneva Convention. The ECtHR will soon deliver its judgment on the legality of those actions. Second, no existing procedure on the ground established who could be accepted in – and who would be returned: a decision which often depended on the responsible officer personal assessment.

Third, the stranded migrants in Macedonia – a community of one hundred thirty-three people in the research period in ‘Vinojug’ camp and seventy-eight in ‘Tabanovce’, are denied the possibility of regularizing their stay in the country. The refusal of the state of Macedonia to grant them any status and the subsequent legal blindness for their existence mean a refusal of the Arendtian Right to Have Rights. In practice, this denial has taken a form of continuous detention (which is still in place at the moment of writing, October 2016), including detention of children; an eight-month isolation in a vacuum space where no law exists and no rights can be claimed. The people who live in this vacuum, thus live with heavily restricted economic, social and physical freedom.

My thesis intentionally stops short of proposing solutions for the stranded communities in Macedonia. During my research and in informal conversations several possibilities were discussed, among them the issuing of temporary documents which would allow the migrants to move freely within Macedonia’s territory. Such a step could pave the way for a further integration of the community in the host society. Another option of course, is the migrants to be allowed to reach their countries of destinations, for which the 200 people would hardly be such a big burden. Those possible ways out of current impasse, of course, depend on the political will of the responsible governments – which, for the moment, look totally reluctant to engage. Giving policy recommendations, thus, appears unnecessary and, indeed, futile.

My aim was to position this ultimate denial of rights that the stranded migrants face in Macedonia, at the top of a number of exclusive governmental decisions. The proposed pyramid of exclusive border politics – from European – to regional and national level, gives a thorough explanation why the community got trapped in this deadlock and why it cannot find its way out.

Furthermore, such broader understanding of the issue, based on the theoretical elaborations provided by academia, could prove useful: the proposed pyramid may be a framework for the deconstruction of other

processes, unlocked by the European responses to the migrant crisis. The stranded communities in other Balkan countries, the people stuck in ghettos in Turkey, those who continue to die in the Mediterranean Sea, and those who continue to cross the closed Balkan route are all trapped in Europe's thick-securitized border strategy and its regional implications. Further research – especially in the Balkans – would provide a better insight on border considerations of governments. Hopefully, it could also lay ground for a debate how to incorporate into those border strategies the migrants' need as well.

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