

REFUGEES FROM SYRIA IN EUROPE
How Effective are the European Responses?

by

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Summary

The armed conflict in Syria has resulted in a massive influx of refugees and displaced persons in the Middle East region. Not only has it affected the initial Syrian population but also the communities that lived in the Syrian territory such as the vulnerable community of Palestinians. My dissertation addresses the question whether the European Union (EU) and its Member States have responded effectively to the major refugee crisis of the 21st century. Immigration and asylum have become topical subjects in the *sui generis* entity. The Common European Asylum System (CEAS) is the most powerful regional instrument on asylum but in a context of increasing euroscepticism, I argue that the EU response did not take the protection of refugees from Syria at stake. My dissertation expands on the notion of border and freedom of movement within the EU. Most of the Member States have not opened their door in proportion with the number of Syrians asylum seekers. I analyze the range of responses and focus on the practices of some Member States towards Syrians and Palestinian refugees. Despite a clear need of international protection, the responses towards the refugees from Syria differ greatly. I conclude with recommendations to adopt in order to improve such gaps between EU MS and enhance the cohesion of the EU in asylum matters.

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List of abbreviation

APD Asylum Procedures Directive
RCD Reception Conditions Directive
CEAS Common European Asylum System
CESEDA Code de l'entrée et du séjour des étrangers et du droit d'asile (Code of Entry and Residence of Foreigners and of the Right to Asylum)
CFREU Charter of Fundamental Rights of the European Union
CNCDH Commission Nationale Consultative des Droits de l'Homme (National Consultative Commission for Human Rights)
EASO European Asylum Support Office
ECRE European Council on Refugees and Exiles
ECHR Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR European Court of Human Rights
ECRE European Council on Refugees and Exiles
ECSR European Committee of Social Rights
ELENA European Legal Network on Asylum
ESC European Social Charter
EU European Union
EUROSUR European Border Surveillance System
FRONTEX European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAPAR General Authority for Palestine Arab Refugees
GPP Gateway Protection Program (United Kingdom)
HAP Humanitarian Admission Program
ICCPR International Covenant on Civil and Political Rights
IDPs Internally Displaced Persons
IOM International Organization for Migration
IRL International refugee law
MENA Middle East and North Africa
MS Member States
MRS Mandate Refugee Scheme (United Kingdom)
MWB Migration without borders

PR Palestinian Refugee

RPP Regional Protection Program

SAR Search and Rescue

TP Temporary Protection

TPD Temporary Protection Directive

UNHCR United Nations High Commissioner for Refugees

UNRWA United Nations Relief and Works Agency for Palestine Refugees in the Near East

VPR Scheme Vulnerable Persons Relocation Scheme (United Kingdom)

Glossary

Airport transit visa (ATV) Document that may be required by a government ‘to enter its territory merely for the purpose of travelling through an airport on route to another country’.¹

Applicants Individuals who apply for asylum protection either refugee status or subsidiary protection.

Asylum Procedures Directive One of the components of the Common European Asylum System. It sets out procedures in the EU for determining applications for international protection. The initial 2005 Directive applied until July 2015 and is replaced by recast directive is Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. It will come into force on 21 July 2015. The recast directive has a different content.

Asylum seeker Person seeking protection (refugee status or subsidiary protection) waiting for a decision from a government or official body.

Common European Asylum System (CEAS) Body of legislative rule at an EU level which were introduced to bring in common and minimum standards to the consideration and determination of claims for international protection. The main directives are the Asylum Procedures Directive, the Qualification Directive, Reception Conditions Directive and the Dublin III Regulation .

Complementary protection Protection against return to a country where a risk of torture or inhuman or degrading treatment exists for a person who does not qualify for refugee status, on the basis of an international convention such as the Convention against Torture or the European Convention on Human Rights.²

Dublin System A component of the Common European Asylum System. Originally the Dublin Convention 1990, it establishes responsibility for determination of an application for international protection. The Convention was replaced by the Dublin II Regulation and, from 1 January 2014, this has now been replaced by the recast Dublin III Regulation No. 604/2013 of the European Parliament and of the European Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

¹ Amnesty International, The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe’s Borders, July 2014 p.20

² R. Mandal, ‘Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)’ (UNHCR PPLA/2005/02, June 2005) <http://www.unhcr.org/435df0aa2.html> [accessed 28 June 2015].

Emigrate: leave one's own country in order to settle permanently in another.³

Europe: unless specified, Europe designs here the EU 28 Member States and includes two other countries: Norway and Switzerland.

European: it designs the EU, unless specified.

Humanitarian admission Granting to persons (usually in groups) who have fled their home country and who are in need of international protection the right to enter and reside in a third country, on a temporary basis (usually renewable, depending on the circumstances), often granted in emergency situations with expedited procedures.

Humanitarian protection Status granted to people in the UK who do not qualify for refugee status, but who are eligible to remain in the country because they are at risk of torture or other serious abuse in their home country. In the UK, those deemed eligible are usually granted HP for three years, renewable, with rights to work, education, healthcare, and other benefits.

Humanitarian visa Document granting permission to enter a country due to the difficult circumstances of the applicant, such as risk of harm due to an armed conflict, serious medical concerns, being a minor or other vulnerable person without resources or support etc.⁷

Immigrate: come to live permanently in a foreign country.⁴

International Protection Protection provided by a country to a non-national individual due to the lack of protection in its country of origin. There are two such systems in existence in the EU. The first and main one is under the Refugee Convention and the second is under the Qualification Directive.

Migrant 'person who moves from one place to another in order to find work or better living conditions'⁵, whose motivations are to be found on an economical ground.

Mohafazat Administrative local governorate in Syria.

Nakba Synonymous of catastrophe in Arabic, it is used to describe the massive exodus of Palestinians in 1948.

Palestine/ Palestinian refugees Any person whose 'normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of

³ 'Emigrate' in *Oxford dictionary of English* [online] available at:
http://www.oxfordreference.com.abc.cardiff.ac.uk/view/10.1093/acref/9780199571123.001.0001/m_en_gb0262950?rskey=5KiM2H&result=27752 [accessed 5 July 2015]

⁴ 'Immigrate' in *Oxford Dictionary of English* (online) available at:
http://www.oxfordreference.com.abc.cardiff.ac.uk/view/10.1093/acref/9780199571123.001.0001/m_en_gb0401400?rskey=9pTUnO&result=43038 [accessed 5 July 2015]

⁵ 'Migrant' in *Oxford Dictionary of English* (online) available at:
http://www.oxfordreference.com.abc.cardiff.ac.uk/view/10.1093/acref/9780199571123.001.0001/m_en_gb0519570?rskey=ln2d0x&result=55143

livelihood as a result of the 1948 conflict' as well as descendants of fathers fulfilling the definition,⁶ and is thus eligible for UNRWA registration. They are three groups of Palestinian refugees but only two fall within the scope of Article 1D of the 1951 Convention.⁷

Person of concern any individual with comparable protection needs as a refugee, including asylum-seekers, internally displaced persons, stateless persons, and returnees.

Push-backs Forced return of irregular migrants and refugees from a border or territorial boundary at sea to a country or territory where a person is not at risk of persecution, torture, or inhuman or degrading treatment but often present risk for life. Push backs occur when people are trying to reach a country with in some cases into the high seas, without an opportunity to challenge their forced return).

Collective expulsion Deportation of a group of people without looking at each case individually, which is prohibited under international law

Qualification Directive Major component of the CEAS. It establishes common grounds to grant international protection and therefore refers to both refugee status and subsidiary protection. The original directive of 2004 was transposed into domestic law by 2006 and it continues to apply in the UK and the Republic of Ireland. It was recast and replaced in 2011 and the new directive is in force from 21 December 2013 in those countries to which it applies including Estonia.

Recast Directive/Regulation A directive or regulation which has been revised in the light of experience and replaces the original directive except for the Member States which opted out for the recast directive.

Reception Conditions Directive A component of the CEAS which establishes common standards for the living conditions of asylum seekers. The full title is the COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. It has now been replaced by the 2011 recast directive but the 2003 directive will continue to apply until 21 July 2015.

Refoulement Return by any method, including rejection at a border or interception at sea, of a person to a country where s/he is at risk of persecution, torture, or inhuman or degrading treatment or punishment.

Refugees Persons who have fled their home country and who meet the criteria for refugee status under the 1951 Refugee Convention or other applicable asylum law, whether or not their status has been recognised by any official body.⁸

Refugee Law: it includes both the law under the Refugee Convention of 1951 and its 1967 and other forms of protection under international human rights treaties and legal instruments.

⁶ UNRWA, 'Frequently Asked Questions' <http://www.unrwa.org/who-we-are/frequently-asked-questions> [accessed 10 June 2015].

⁷ See Appendix 10.

⁸ UNCHR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (December 2011, HCR/1P/4/ENG/REV.3) <http://www.refworld.org/docid/4f33c8d92.html> [accessed 20 February 2015]

Resettlement One of the durable solutions proposed by the UNHCR. It consists in granting persons at risk of persecution who have fled their country of origin the right to refugee status in a third country, sometimes with immediate permanent resident status and sometimes with an intermediary status which leads to permanent status.⁹

Refugee status Official acknowledgement granted most of the time by a government or the UNHCR a person is a refugee under the 1951 Convention criteria.

Relocation Distribution among Member States of persons in clear need of international protection. It aims to relieve the burden posed by refugees in states with external borders.

Safe country A procedural mechanism for shuttling asylum seekers to other States said to have primary responsibility for them, thereby avoiding the necessity to make a decision on the merits because another country is deemed or imagined to be secure.¹⁰

Subsidiary protection Status granted under the Qualification Directive to people who do not qualify for refugee status, but who are at risk of “serious harm” in their country of origin. the host country because they are at risk of torture or other serious abuse in their home country, often related to ongoing armed conflict. (In the UK this is termed ‘humanitarian

Temporary protection Temporary protection refers to ‘a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons . . . immediate and temporary protection’ (art. 2(a), Council Directive 2001/55/EC on temporary protection).¹¹ It grants the right to enter or remain in a country for a limited time due to risk of serious harm in a person’s home country.

Transfer The movement of an asylum applicant from one European country to another under the Dublin System, which assigns responsibility for processing asylum applications.

⁹ UNHCR, *Resettlement Handbook and Country Chapters* (July 2011) <<http://www.unhcr.org/4a2ccf4c6.html>> [accessed 5 February 2015], Chapter 1.

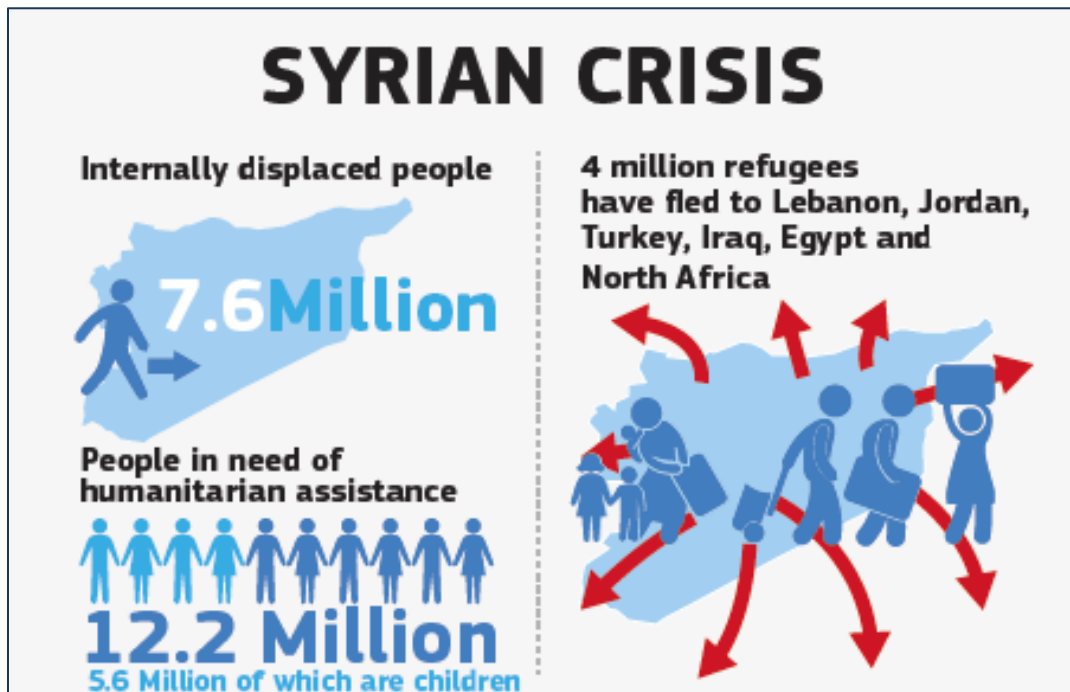
¹⁰ G. S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. OUP 2007) p.392

¹¹ See generally Jane McAdam, *Complementary Protection in International Refugee Law* (Oxford: Oxford University Press, 2007).

Key figures: the Syrian refugee crisis as of July 2015

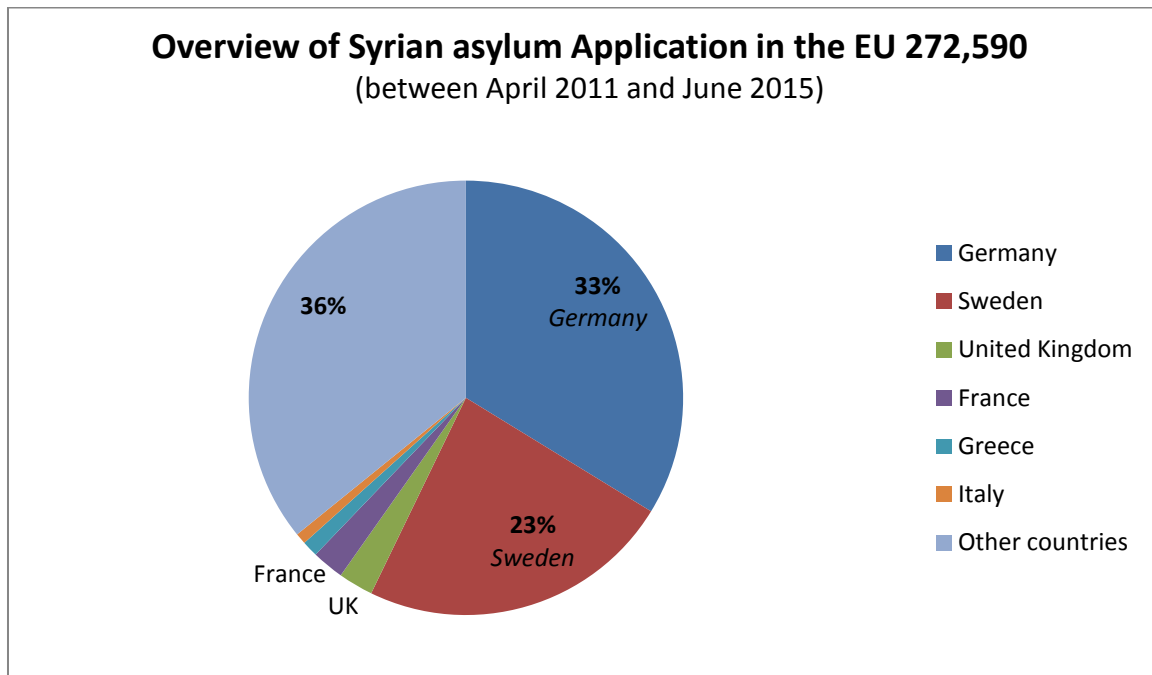
❖ *Syrian nationals*

1) Syria and neighboring countries¹



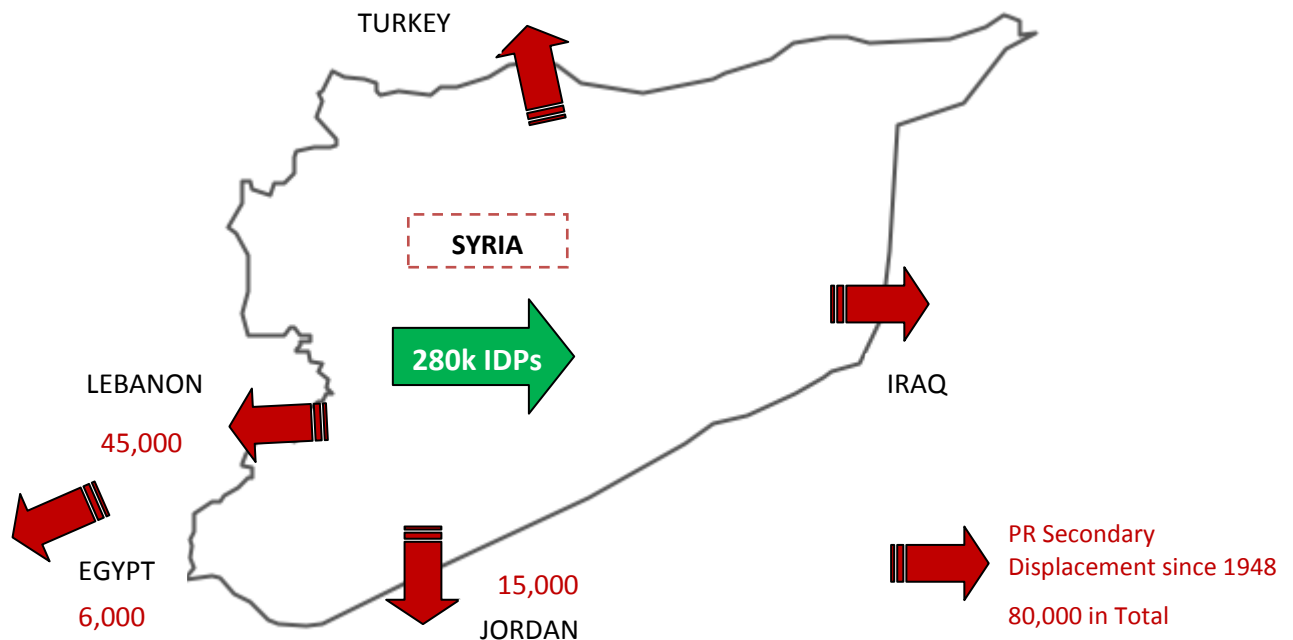
¹ European Commission, 'Syria' *Humanitarian Aid and Civil Protection*
http://ec.europa.eu/echo/files/infographics/infographic_syriancrisis_en.pdf#view=fit [accessed 9 July 2015]

2) Syrian Asylum Applications in the EU²



❖ *Palestine refugees*

The PR situation in Syria and neighbouring countries³



² EU = EU28 + Norway and Switzerland (UNHCR, *Europe: Syrian Asylum Applications from April 2011 to June 2015* <http://data.unhcr.org/syrianrefugees/asylum.php> [10 June 2015]).

³ Out of the 560,000 PR registered in Syria, 480,000 remained in Syria. For more details see ACAPS, *Regional Analysis Syria* (28 March 2013) available at: <http://reliefweb.int/sites/reliefweb.int/files/resources/Regional%20Analysis%20Syria%20-%20Part%20II%20Host%20Countries.pdf>, despite the fact that it has been issued in 2013.

1. Introduction

Since 1951, refugee law⁴ has taken on increasing importance and especially since the uprising crisis in the Syrian Arab Republic in 2011. The crisis in Syria has not only affected the country itself but also the region as over than 4 million of refugees from Syria are registered in Lebanon, Turkey, Jordan, Iraq and Egypt.⁵ Syria is the main country of origin of asylum-seekers in Europe.⁶ According to Antonio Guterres⁷, 'Syria has become the great tragedy of this century'. After four years, the Syrian crisis 'shows no sign of abating'.⁸ Not only it has led to the exodus of millions Syrian refugees since the beginning but it has also affected the vulnerable community of Palestinian refugees⁹ who were living in the Syrian Arab Republic since 1948.¹⁰ Although the number of refugees from Syrian that are seeking international protection in Europe is increasing¹¹, it remains relatively low comparing to the number of Syrian and Palestinian refugees in the neighbouring countries. Since the beginning of Syrian crisis in 2011, only 272, 590

⁴ See Glossary.

⁵ The crisis in Syria has affected almost 12 million Syrians (11.6 exactly). Out of them, 7.6 million are internally displaced and over 4 million refugees. See UNHCR, 'Middle East and Africa', *Global Appeal 2015 Update*, p.119. UNHCR, *Syria Regional Refugee Response*, available at: <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 15 July 2015]; European Commission, 'Syria' *Humanitarian Aid and Civil Protection* http://ec.europa.eu/echo/files/infographics/infographic_syriancrisis_en.pdf#view=fit [accessed 9 July 2015]

⁶ UNHCR, *UNHCR Asylum Trends 2014: Levels and Trends in Industrialized Countries*, 26 March 2015, p.3. With a 109 % increase in applications for international protection, Syria became the main country of origin of asylum seekers in the EU28 in 2013 (European Asylum Support Office (EASO), 'Annual Report Situation of Asylum in the European Union 2013' (July 2014) <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>).

⁷ Antonio Guterres was elected by the UN General Assembly to become the 10th United Nations High Commissioner for Refugees in June 2005 (UNHCR, *The High Commissioner* <http://www.unhcr.org/pages/49c3646c8.html> [accessed 12 April 2015])

⁸ UNHCR, *Global Appeal 2015 Update: Middle East and Africa*, available at: <http://www.unhcr.org/5461e5f6b.html> [accessed 25 April 2015], p.119

⁹ According to the UNRWA, 'all 12 Palestine refugee camps and all 560,000 registered Palestine refugees in the country have been affected', UNRWA, *The Syria Crisis*, <http://www.unrwa.org/syria-crisis#Syria-Crisis-and-Palestine-refugees> [accessed 12 April 2015].

¹⁰ 'As a result of the 1948 Arab-Israeli War, approximately 90,000 Palestinians from the Galilee region of present-day Israel fled to Syria for refuge' (N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 598).

¹¹ UNHCR, *Europe: Syrian Asylum Applications from April 2011 to June 2015* <http://data.unhcr.org/syrianrefugees/asylum.php> [10 June 2015]. In 2014 only, asylum claims amounted to 125, 735.

Syrians requested international protection in Europe.¹² The number of asylum-seekers from Syria in Europe is an important issue to consider, as it is an on-going reality without any durable solution in sight¹³.

With more than 218, 000 refugees and migrants, including a significant number of refugees from Syria crossing the Mediterranean Sea in 2014¹⁴, Europe has witnessed a high record comparing to 2011 where only 70, 000 people reached Europe by sea¹⁵. The situation is even more worrying as one person drowns every four hours in the Mediterranean Sea.¹⁶ Europe appears to be a fortress by restricting the entry of persons in need of international protection and leaving dead bodies at its gates.

‘Asylum has become one of the central global issues of the 21st century’.¹⁷ The European Union (EU) has understood this by adopting disparate but progressive European asylum instruments aiming to provide a Common European Asylum System (CEAS). The dissertation comes at a particular difficult time for the EU¹⁸ and for the refugee world where entire populations are fleeing from armed conflicts and risking their lives to reach Europe. In a context where the EU is weakened due to its financial crisis,

¹² Around 6.8 % of Syrians who have fled the conflict have sought safety in Europe.

¹³ As the Syrian refugee crisis is still on-going and the EU still responding at the time of writing, the resources used in this dissertation shall interrupt as of 20 July 2015.

¹⁴ UN High Commissioner for Refugees (UNHCR), *UNHCR Asylum Trends 2014: Levels and Trends in Industrialized Countries*, 26 March 2015, available at: http://www.unhcr.de/fileadmin/user_upload/dokumente/07_presse/pressemittelungen/Asylum_Trends_2014.pdf [accessed 25 April 2015], p.11

¹⁵ UNHCR, *Global Report 2014*, available at: <http://www.unhcr.org/5575a78416.html> [accessed 14 July 2015] p.15

¹⁶ Euro-Mid Observer for Human Rights, ‘One migrants drowns every 4 hours in the Mediterranean sea’ (19 March 2015) <http://www.euromid.org/en/article/748/One-Migrant-drowns-every-4-hours-in-the-Mediterranean#sthash.XW2GA7sl.Je1l2eCq.dpbs> [accessed 15 April 2015]: *[S]ince the beginning of 2015, a significant increase has been noted in the number of immigrants attempting to reach Europe by crossing the Mediterranean Sea, as well as an increase in the numbers of drowned victims among them.* UNHCR has received information of more than 3,500 women, men and children reported dead or missing in the Mediterranean Sea in 2014.

¹⁷ F. Ippolito & S. Velluti, ‘The Recast Process of the EU Asylum System: A Balancing Act Between Efficiency and Fairness’, *Refugee Survey Quarterly*, 2011, Vol. 30, No.3, p.60.

¹⁸ Since the financial crisis in 2006, some countries such as Greece has struggle to re-establish sustainable macro-economic stability. See the Greece debt crisis beginning of July. Plummer R., ‘Greece debt crisis: What’s the deal?’ *BBC News* (13 July 2015) <http://www.bbc.com/news/business-33505555> [accessed 15 July 2015]

the debates on asylum-seekers and refugees have never been greater, being topical subjects. Given these issues, the crucial question to ask, is whether the response provided by the EU and its Member States to the Syrian refugee crisis has been effective with regard to the scale of disasters that occurred in this region.

To date, few studies have concentrated on the situation of refugees from Syria in Europe, including Palestinian refugees. All the more so since little information is available on Palestinian refugees from Syria in Europe. In addition as Tiltne righty observes, little has been written either in Arabic or English about the lives and living conditions of Palestinian refugees in Syria in contrast to other Arab countries such as Lebanon.¹⁹ It is important to respond to the fact that less international attention focuses on the vulnerable Palestinian community in Syria than on the general Syrian refugee population, while both have been equally affected by the deadly conflict.

The dissertation analyses the European response to the refugees from Syria including the Palestinian refugees, who have endured a protracted situation since 1948.

It is important to consider how EU Member States in practice implement their international duties regarding refugee protection and how the EU contributes to this protection. Although the European legal framework in the field of immigration and asylum was initially intergovernmental, it would be wrong to entirely focus on Member States policy, which should be seen in the light of international refugee and human right law. It should be noted that all EU Member States are part of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees. The CEAS is not just a policy of the EU regarding refugees and asylum-seekers. It expands in a broader way to the concept of freedom of movements of persons, which is one of the cornerstones of the

¹⁹ Åge A. Tiltne (ed.), 'Palestinian Refugees in Syria: Human Capital, Economic Resources and Living Conditions', *FAFO-report 514*, 2006.

European integration and spirit. It is a legal reflection, which despite its strong links with politics, should be a human one²⁰.

The dissertation does not intend to compare all the Member States but intends to provide a general overview of the European response as well as summaries of the responses of selected countries namely Sweden, France and the UK. The countries were selected in order to reflect the situation of asylum in Europe and the current controversial notion of 'burden sharing' within the EU.²¹ The reactions of these countries should provide a comparative approach and a better understanding of the Common European Asylum System. The dissertation does not intend to give a full and precise case study about a Member State but instead an accurate picture of a country's practices on the grounds.

The dissertation also aims to provide a satisfactory explanation about the difficulties encountered by refugees from Syria, which could apply to any refugee crisis in the world, even though 'at the time of writing, no one could say how it will develop'.²² Accordingly, explaining this should provide the reasons why a lot of refugees are seeking protection in Western States such as Europe.

First, it presents a historical but necessary background of refugee and asylum law within the EU. The CEAS plays an important part in refugee law and asylum after the 1951 Refugee Convention. According to Lambert, 'Europe has the most advanced

²⁰ 'Everyone has the right to seek and to enjoy in other countries asylum from persecution' (UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), art 14).

²¹ Germany and Sweden are the top recipient of Syrian asylum claims (altogether 56%), UK and France manifested less generosity, Greece and Italy due to the large amount of refugees coming and to the lack of effective asylum system relatively little claim.

²² C. Fandrich and P. Fargues, 'Migration after the Arab Spring', MPC Research Report, No. 2012/09, p.4

regional protection regime in the word'.²³ However, while free movement is allowed to certain individuals, the EU raises its ramparts like a 'fortress' for others. Second, it presents the facts: a historical review of Syria before and after the uprising in 2011. It also focuses also on the vulnerable community of Palestine refugees (PR), forced to move a second time as the result of the deadly conflict. This is followed by an overview of the responses of neighbouring countries such Lebanon and Egypt to the Syrian crisis. It is important to consider this, as it constitutes one of the main reasons why both Syrians and Palestinian refugees are seeking asylum in Europe. One of the main issues remains the sea routes, which are sadly deadly. Expanding on this, the European responses of both EU and its Member States to the Syrian crisis are assessed. It is argued that the EU and MS are more preoccupied with securing EU borders rather than providing asylum protection for those who are need. In addition, Member States' practices tend to omit their international and humanitarian duties. The response of some MS is analysed more precisely. Finally, the dissertation concludes with recommendation for addressing the Syrian refugee crisis.

²³ H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.1. European countries have implicitly accepted to respond humanely by providing protection to refugees within their territories.

2. The development of refugee and asylum law in the European Union

Among the international texts that have defined the term ‘refugee’, the 1951 Convention¹ and its 1967 Protocol² are the key instruments under which the refugee status is based. All EU Member States are part of this two main international refugee law instruments.³ Historically, the Refugee Convention and the UN High Commissioner for Refugees (UNHCR) were created in order to address the European refugee problem. Europe was at that time the ‘continent of refugees’,⁴ and among the nineteen first signatories, fourteen were European countries.⁵ Many European States have elaborated over the years national asylum practices that go ‘beyond the strict requirements of the 1951 Convention/ 1967 Protocol’.⁶

¹ Full name: Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention or 1951 Convention).

² The 1967 Protocol amended the Convention; it ‘*removed geographical and temporal restrictions*’ (UNHCR, ‘The 1951 Refugee Convention’ <http://www.unhcr.org/pages/49da0e466.html> [accessed 12 April 2015]).

³ Even though “There are some indications that Europe is losing sight of its duty to protect refugees under international law, as set out in the 1951 Convention.” *U.N. Secretary-General Kofi Annan* (Refugees Magazine celebrating the 50th anniversary of the 1951 Convention (2001) p. 31)

⁴ Portuguese MEP, GUE-NGL (European United Left-Nordic Green Left is a left wing European political group) 23 March 2011, quoted in A. Krasriqi & B. Suter, ‘Refugee Resettlement to Europe 1950-2014’ *MIM Working Paper Series*, 15:1, 2015, p.22-23. See the full quote Appendix 1 (the page number is referred in the contents page).

⁵ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) 224.

⁶ G. S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. Oxford University Press 2007) p.39. Northern Country States such as Denmark and Sweden have developed complementary protections (see Feijen L., ‘Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries’, *International Journal of Refugee Law*, 2014, Vol.26, No.2, 173-197).

❖ *From soft law to hard law: the 'Common European Asylum System' (CEAS).*

EU asylum law and governance, which was initially soft law (namely, resolutions and conclusions) has become hard law (namely, treaty, charter, regulations and directives).⁷ The CEAS is now enshrined in the Treaty of Lisbon.⁸

The adoption of the Amsterdam Treaty in 1997⁹ was a 'major milestone' in the creation of asylum law.¹⁰ The Amsterdam Treaty introduces a European Community (EC) competence in asylum and immigration matters within the new 'title' of freedom, security and justice.¹¹ The Tampere European Council Conclusions in October 1999 was another major pillar. It was the first commitment to be made on 'freedom based on human rights, democratic institutions and the rule of law'¹² rather than on the Internal Market.¹³ It developed a new human rights perspective within a primarily economic

⁷ H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.11

⁸ Treaty on the Functioning of the European Union [2007] OJ C115/01 (TFEU), art 78(2) (appendix 2). The TFEU, as amended by the Treaty of Lisbon, which entered into force on 1 December 2009 ([2010] OJ C83/47). The Treaty of Lisbon has enhanced 'the democratic input into EU Justice and Home Affairs (JHA) legislation' (S. Peers, 'Mission accomplished? EU Justice and Home Affairs Law after the Treaty of Lisbon' (2011) 48 CML Rev, 692)

⁹ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340/01.

¹⁰ H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.9; G. S. Goodwin-Gill and J. McAdam, *The refugee in international law The refugee in international law* (3rd edn. OUP, 2007) 39.

¹¹ Now Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/01 (TEU), art 3(2): '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'.

See E. M. Uçar, "The Area of Freedom, Security and Justice", in Cini, M. and N. Pérez-Solórzano Borragán *European Union Politics* (3rd edn. Oxford University Press, 2013) 281-295

¹² Council of the European Union, Presidency Conclusions, Tampere European Council, 15-16 October 1999, 16 October 1999, point 1.

¹³ H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.10.

entity. It sought to codify a common regional system of asylum with the aim to provide a single asylum procedure and a uniform protection status.¹⁴

The establishment of the CEAS is described as a two-phased process.

1) The Tampere Programme

The Tampere Programme ran from 1999 to 2005.¹⁵ This first phase initiated a common minimum legislative framework including six key legislative instruments: the Asylum Procedures Directive (APD)¹⁶, the Qualification Directive (QD)¹⁷, the Dublin Regulation (Dublin II)¹⁸, the Reception of Asylum Seekers Directive¹⁹, the Eurodac Regulation²⁰ and the Temporary Protection Directive (TPD).²¹ It was necessary to have a

¹⁴ H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.1. The Tampere Summit was also at the origin of the Charter of Fundamental Rights of the EU (CFREU) where the right to asylum is guaranteed (European Union, Charter of Fundamental Rights of the European Union (CFREU) [2000] OJ C364/01, art 18). The CFREU was approved in 2000 at the Nice summit; it became binding law following the entry into force of the Lisbon Treaty in 2009 ([2010] OJ C83/47). H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.10; 'It is not a coincidence that the Tampere summit also instituted the body that was going to draft the EU Charter of Fundamental Rights' (Boccardi, *Europe and Refugees: Towards an EU Asylum Policy* (Alphen aan den Rijn, the Netherlands: Kluwer Law International, 2002) 174).

¹⁵ European Commission, 'Common European Asylum System', *DG Migration and Home Affairs* http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm [accessed 5 June 2015]

¹⁶ Directive 2005/85/EC on minimum standards on procedures in member states for granting and withdrawing refugee status [2005] OJ L 326/13.

¹⁷ Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L 304/12-304/23 (the 2004 QD).

¹⁸ Regulation 2003/343/EC establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national [2003] OJ 2003 L 50/1.

¹⁹ Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers [2003] OJ L31/18.

²⁰ Regulation 2000/2725/EC concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention [2000] OJ L316/1. Eurodac assist since 2003 the Dublin Regulation which determines the responsible Member State for examining an asylum application (European Commission, 'Identification of applicants (EURODAC)', *DG Migration and Home Affairs* http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index_en.htm [accessed 5 June 2015])

²¹ Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof [2001] OJ L212/12 (The 2001 Temporary Directive).

common understanding about the beneficiary of international protection and the content of protection, two central aspects of a sustainable CEAS.²²

The QD 2004 is undoubtedly the instrument within the CEAS that ‘relates most closely to the Refugee Convention’²³ and the ‘most ambitious attempt to combine refugee law and human rights law... to date’.²⁴ It seeks to interpret the Refugee Convention ‘for the sake of a harmonized application within the EU’ with concepts of ‘asylum’ and ‘international protection’ that go beyond the Refugee Convention.²⁵ Not only it is the first binding supranational legal text in the EU that covers ‘those in need of international protection but who fall outside the provisions of the 1951 Refugee Convention and its 1967 Protocol’, but also the premier binding legal tool ‘that deals with refugee protection and subsidiary protection under the one umbrella’.²⁶ Subsidiary protection²⁷ is directly inspired from article 3 of the European Convention on Human Rights (ECHR) and must be interpreted, hence, in the light of the Strasbourg case law. The Court of Justice of the European Union (CJEU) has importantly issued preliminary rulings on the interpretation of subsidiary protection.²⁸ *Elgafaji*²⁹ was the first judgment to be given by the CJEU on the

²² ECRE Information Note on the Qualification Directive (recast), 7 October 2013, available at: <http://ecre.org/component/downloads/downloads/805.html> [accessed 28 March 2015]

²³ J.-F. Durieux, ‘The vanishing refugee: how EU asylum law blurs the specificity of refugee protection’ in H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.246. The 2004 QD can certainly be seen as the most important instrument in the European asylum regime.

²⁴ H. Lambert, ‘The EU Asylum Qualification Directive, its Impact on the Jurisprudence of the UK and International Law’, 55 ICLQ 161, (2006), p.162; . S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. Oxford University Press, 2007), p.41.

²⁵ J.-F. Durieux, ‘The vanishing refugee: how EU asylum law blurs the specificity of refugee protection’ in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.247

²⁶ H. Storey ‘EU Refugee Qualification Directive: a Brave New World?’ *International Journal of Refugee Law* (2008) Vol. 20 (1) p.5.

²⁷ The 2004 QD, art 15.

²⁸ See B. Zalar ‘Comments on the Court of Justice of the EU’s Developing Case Law on Asylum’ (2013) *International Journal of Refugee Law* Vol. 25 (2) 377 -381 for the impact of CJEU on national judges. The role of the CJEU is further amplified due to the fact that while the International Court of Justice is competent, no State has ever requested its involvement and it is unlikely to ever be used in this way.

²⁹ Case C-465/07, *Elgafaji v. Staatssecretaris van Justitie* [2009] ECR I-921, para. 28.

interpretation of article 15 (c) QD.³⁰ The CJEU³¹ held that the applicant does not need to demonstrate that s/he is individually or ‘specifically’ targeted in order to enjoy the protection of article 15(c),³² which is in harmony with the case law of the ECtHR.³³ It applies only to person who does not qualify as a refugee.³⁴ It should be considered neither as a ‘remedy against erroneous decisions on refugee status’ nor a ‘substitute for refugee protection’.³⁵

The 2001 TPD is inspired from the European response to massive movements of refugees from former Yugoslavia³⁶ during the 1990s.³⁷ The conflict generated at that time over two million refugees in Europe. Most of European countries at that time granted temporary protection rather refugee status although the refugees from former Yugoslavia met the criteria under the Refugee Convention.³⁸ Nevertheless, no consensus on TP measures existed at that time, hence TP regimes varied greatly among European States.³⁹

Another important piece of asylum legislation and one of the most controversial is the Dublin II, which allows a Member State to transfer an asylum seeker and its application to the Member State which the asylum seeker first entered or to another

³⁰ See Appendix 3.

³¹ Which was then called the ECJ.

³² H. Lambert, J. McAdam and M. Fullerton, *The Global Reach of European Refugee Law* (Cambridge University Press, 2013) p.20. It echoes the views of the UNHCR, which recommended that the EU legislator should delete the term ‘individual’ in article 15(c) QD. UNHCR, *UNHCR public statement in relation to Elgafaji v. Staatssecretaris van Justitie before the Court of Justice of the European Union, January 2008*, available at: <http://www.refworld.org/docid/479df7472.html> [accessed 8 February 2015].

³³ Subsidiary protection is made effective by interpreting article 15(c) as offering something more than article 15(b) (or 3 ECHR) and international protection is to be granted where a risk of harm to human rights is likely to arise without requiring that an individual be personally targeted.

³⁴ The 2004 QD, art 2 (f).

³⁵ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.253.

³⁶ Bosnia and Herzegovina and Kosovo today.

³⁷ G.S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. Oxford University Press, 2007) p.40.

³⁸ M. Kjaerum ‘Refugee Protection Between State Interests and Human Rights: Where is Europe Heading?’ (2002) 24 *Human Rights Quarterly*, p.521.

³⁹ M. Kjaerum, ‘Temporary Protection in Europe in the 1990s’ (1994) 6 *IJRL* 444, 450. See also Humanitarian Issues Working Group, *Survey on the Implementation of Temporary Protection* (8 March 1995) p. 447-448 <http://www.refworld.org/docid/3ae6b3300.html> [accessed 12 June 2015].

Member State if the asylum seeker has family members lawfully staying in that State.⁴⁰

The Dublin II Regulation aimed to ensure that 'one Member State is responsible for examining the asylum application of an asylum seeker and to avoid multiple asylum claims and secondary movement'.⁴¹

Following the Tampere programme, a public consultation was launched on the existing asylum instruments, the results of which formed the basis of the 2008 European Commission Policy Plan on Asylum.⁴²

2) The Hague and the Stockholm programmes

As a result of the disappointing results of the first phase⁴³, a second phase was launched. It comprised two programmes: the Hague phase (2005-2010)⁴⁴ and the Stockholm phase (2010-2014).⁴⁵ This phase seeks greater harmonization in the EU, increased cooperation between EU States on managing their external borders, and

⁴⁰ Regulation 2003/343/EC of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national [2003] OJ L 50/1, Chapter III (Dublin II).

⁴¹ European Council on Refugees and Exiles (ECRE), *"Dublin II Regulation: Lives on hold" - European Comparative Report*, February 2013, p.7.

The EU has developed sophisticated control systems such as Eurodac, which enables the sharing of information about asylum seekers and irregular immigrants in the EU. It works in tandem with the Dublin Regulation by collecting and storing fingerprints of asylum seekers or other irregular migrants (C., Costello and E., Hancox 'The UK, EU Citizenship and Free Movement of Persons', *Migration Observatory policy*, COMPAS, University of Oxford, UK, May 2014, p.5).

⁴² The Commission's plan has three pillars: 1) bringing more harmonisation to standards of protection by further aligning Member states' asylum legislation; 2) Effective and well-supported practical cooperation; 3) Increased solidarity and sense of responsibility among EU States and between the EU and non-EU countries.

⁴³ In the 2010 evaluation report, the Commission noted that differences between asylum legislation and practice remained (European Commission, *Report to the European Parliament and the Council on the application of Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee* 8 September 2010, COM (2010) 465 final). The polemic about the 'Dublin Regulation' began to grow as the European Commission published an evaluation about the system (European Commission, *Report on the evaluation of the Dublin system* (Brussels, 6 June 2007) MEMO/07/227). 'The result of the first phase of harmonization has been disappointing... the level of protection granted to asylum seekers and refugees in the EU asylum acquis is generally low' (ECRE Memorandum on the occasion of the Belgian Presidency of the EU (*July 2010-December 2010*), 7 July 2010, p. 1)

⁴⁴ European Commission, *Communication from the Commission to the Council and the European Parliament on The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice*, 10 May 2005, COM(2005) 184 final, OJ 2005 No. C236.

⁴⁵ European Council, *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, OJ 2010 No. C 115/1.

increased standards of protection in some of the adopted common legislation through recast policies. In 2010, the European Asylum Support Office (EASO) was established with a 'mandate to coordinate practical operation on asylum among Member States'.⁴⁶

The adoption of the recast of the QD⁴⁷ was a determining step in order to create a uniform status for refugees⁴⁸ and for persons eligible for subsidiary protection as required by article 78 TFEU.⁴⁹ The recast QD applies to all EU Member States with the exception of Denmark, Ireland and UK.⁵⁰

The most interesting amendment⁵¹ of the recast QD 2011 is the entitlement of family members of subsidiary protection beneficiaries to have the same content of rights as the family member of refugees.⁵² This 'removes an important incentive for States' to grant subsidiary protection instead of the refugee status.⁵³

⁴⁶ M. Garlick, 'Strengthening refugee protection and meeting challenges: The European Union's next steps on asylum', *MPI Europe Policy Brief*, Issue No. 5, June 2014.

⁴⁷ Directive (recast) 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted [2011] OJ L337/9. Member states were required to comply with the Directive by 21 December 2013.

⁴⁸ ECRE Information Note on the Qualification Directive (recast), 7 October 2013, available at: <http://ecre.org/component/downloads/downloads/805.html> [accessed 28 March 2015]

⁴⁹ See Appendix 2.

⁵⁰ As previously explained Denmark is not part of the CEAS as it initially developed in its own legislation a status very similar to what it is proposed by the 2004 QD. Both UK and Ireland are still bound by the QD 2004/83/EC.

⁵¹ The main amendments in are: the clarification of actors of protection as well as the effectiveness and the non-temporary nature of protection (Article 7), the alignment of internal protection concept with Strasbourg court case law (Article 8), the approximation of rights of recognized rights and beneficiaries of subsidiary protection with exception of the duration of residence permits and access to social welfare Chapter VII, the deletion of Articles 20(6) and 20(7) in Directive 2004/83/EC, which is a prohibition against Member States to reduce the content of rights granted to international protection beneficiaries on the grounds that such status was obtained due to activities engaged in for the sole or main purpose of creating the necessary conditions for being recognized as a person eligible for refugee status or subsidiary protection and finally strengthening the provision on access to procedures for recognition of qualifications (Article 28).

⁵² Directive (recast) 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted [2011] OJ L337/9, art 23(2).

⁵³ J.-F. Durieux, 'The vanishing refugee: how EU asylum law blurs the specificity of refugee protection' in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.249

The recast of APD⁵⁴, the recast RCD⁵⁵, the recast Dublin Regulation (Dublin III)⁵⁶ and the recast EUODAC Regulation⁵⁷ also formed the second phase of harmonization of asylum law in the EU Member States.⁵⁸ They enhance the fundamental rights of asylum seekers,⁵⁹ the Dublin III addresses the issue of Dublin transfers violating article 3 ECHR.⁶⁰ It leaves nevertheless considerable leeway to Member States.⁶¹ It is thus difficult to ensure common standards across the EU.⁶² In addition, there is a 'residual risk that the specificity of refugee protection may be lost' as EU MS tend to impute greater significance to *non-refoulement* duties rather than to fully apply the 1951 Refugee Convention.⁶³

⁵⁴ Directive (recast) 2013/32/EU on common procedures for granting and withdrawing international protection [2013] OJ L180/60.

⁵⁵ Directive (recast) 2013/33/EU laying down standard for the reception of applicants for international protection [2013] OJ L180/96.

⁵⁶ Regulation (recast) 604/2013/EU establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L 180/31.

⁵⁷ Regulation (recast) 603/2013/EU on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [2013] OJ L 180/1.

⁵⁸ ECRE, Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), December 2014, available at: <http://www.ecre.org/component/downloads/downloads/971.html> [accessed 28 March 2015]

⁵⁹ See table appendix 4.

⁶⁰ The Strasbourg Court has found violation of article 3 ECHR in cases involving the Dublin system: *Tarakhel v Switzerland* (2012) App No 29217/12; *MSS v Belgium and Greece* (2011) 53 EHRR 2. See G. Clayton G, 'Asylum Seekers in Europe: M.S.S. v Belgium and Greece' (2011) Human Rights Law Review Vol. 11 (4), 758 -773.

⁶¹ While accelerated asylum procedures remain the exception; they have become an increasing practice in other MS. See for instance the UK and France (Appendix 5).

⁶² H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.14

⁶³ J.-F. Durieux, 'The vanishing refugee: how EU asylum law blurs the specificity of refugee protection' in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.254

The CEAS needs to be read in the light of the CFREU and CJEU case law, but most importantly, in the light of the 1951 Convention and the ECHR.⁶⁴

❖ *Influence of international and supranational instruments*

The fact that all EU MS are part of the Council of Europe, and thus, bound by the ECHR⁶⁵, greatly explains the development of EU asylum law.⁶⁶ The ECHR does not actually deal with asylum as the so-called asylum provisions of the ECHR were not drafted with the plight of refugees in mind.⁶⁷ The ECHR has taken part in the development of ‘asylum law’ through the human rights’ element of the *non-refoulement* principle of the Refugee Convention.⁶⁸ Article 3 ECHR as interpreted by the ECtHR is a ‘true complement to refugee protection’ as it provides protection from *refoulement* to individuals that are not Convention refugees.⁶⁹ In contrast to the Refugee Convention, which is a qualified instrument, article 3 ECHR is absolute.⁷⁰ It is also subsidiary to

⁶⁴ Under TFEU, art 78: the CEAS must be developed ‘in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees’. It is funny to note though that the Aznar Protocol ensures that no citizen of a Member States would have access to an asylum procedure anywhere within the territory of the EU (discrimination based on nationality); TFEU art 6(3) (Appendix 6). There are also other relevant treaties: the Convention against Torture (CAT), the International Convention on the Rights of the Child (CAT), International Covenant on Civil and Political Rights (ICCPR) and so forth. The CEAS was ‘conceived in a context making it possible to assume that all the participating States...observe fundamental rights, including the rights based on the Geneva Convention ... and on the ECHR, and that the MS can have confidence in each other in that regard’ (CJEU Joined cases C-411/10 NS and C-493/10 ME [2011] ECR I-0000, para. 78).

⁶⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, in force 3 September 1953 (213 UNTS 221).

⁶⁶ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.244

The EU is inevitably influenced by the ECHR although they do form two separate legal orders.

⁶⁷ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.247

⁶⁸ The 1951 Refugee Convention, art 33(1). See Appendix 7.

⁶⁹ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.248

⁷⁰ It cannot also be balanced against the public interest or any other matter, see *Saadi v United Kingdom* (2007) 44 EHRR 50. See *Hirsi and Others v. Italy* App No 27765/09 (ECtHR, 23 February 2012).

Convention refugees as it ‘provides a safety net for individuals’ who are excluded from refugee status as well as ‘for those to whom the exception in article 33(2) applies’.⁷¹

The ECHR has influenced an important aspect of the EU asylum law too: the concept of mutual trust.⁷² The notion of ‘mutual trust’ is a cornerstone in EU governance and plays a different role within the EU in comparison to its role in international law.⁷³ Mutual trust finds its application in one of the main elements of the CEAS: the ‘allocation of Member State responsibility for processing a claim to international protection’, under which the Dublin system is based.⁷⁴ Any asylum application made within the Dublin area must be examined by one and only one Member State.⁷⁵ On the one hand, it implies a mutual recognition of asylum decisions, which is affected by a strange asymmetry in the EU: while the rejection of an individual asylum application by one MS is valid for all the MS⁷⁶, the recognition of refugee status, although respected by all other MS, ‘does not entail a right to free movement or establishment beyond that first country’.⁷⁷ On the other hand, it consists of the allocation of responsibilities among

⁷¹ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.249.

⁷² J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.245

⁷³ In international law mutual trust is related to State sovereignty.

⁷⁴ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.232

⁷⁵ Actually, it extends beyond the EU as Norway, Iceland and Switzerland are also part of the system.

⁷⁶ E. Guild ‘Europeanisation of Europe’s Asylum Policy’ (2006) 18 *International Journal of Refugee Law*, p.636

⁷⁷ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.242. Nevertheless it should be noted that the establishment of a refugee status that could be valid throughout the EU is one of the ambitions of the CEAS. See European Commission, *Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum*, COM (2000) 755 final and the UNHCR, *UNHCR Observations on the European Commission Communication “Towards a common asylum procedure and uniform status, valid throughout the European Union, for persons granted asylum” (COM (2000) 755 final)*, November 2001, available at: <http://www.refworld.org/docid/3c727f7d4.html> [accessed 6 July 2015].

States.⁷⁸ As Durieux rightly reveals the allocation of responsibility ‘concerns asylum applications and the locus of their *processing*, rather than asylum seekers or refugees and the locus of their *protection*’.⁷⁹ Hence, the ‘EU concept of asylum induces a phenomenon of a “vanishing refugee” where the asylum seeker disappear behind his/her application.’⁸⁰

It is important to understand that EU asylum law and policies have been developed in a genuine entity: the EU.

❖ *The EU: free internal borders v. controlled external borders*

Migration and asylum have become main topics in the EU.⁸¹ The political discourse goes in two different directions: ‘Europe without borders’ on the one hand and ‘Fortress Europe’ on the other. These two metaphors are not contradictory but refer to the internal dimension and the external one.⁸² While the former relates to the opportunities created for EU citizens to ‘move without restrictions from one Member

⁷⁸ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.234: while ‘States should not be allowed to blindly trust each other’s compliance with refugee protection norms’, some element of trust should be implicit such in the ‘community of obligations’ where all Contracting parties are bound by the Refugee Convention.

The Executive committee recommend that the country responsible for examining an asylum claim should be as soon as possible in order to ‘avoid possible disagreement between States’. UNHCR, Conclusion Refugees Without an Asylum Country, 16 October 1979, No.15 (XXX)-1979, paras. (h)(i),(ii).

It was the objective of the Dublin system to achieve the goal identified by the UNHCR. Nevertheless, there is a considerable difference between the UNHCR’s approach and the one taken by the EU. While the former is taking the interest of the refugee as a primary consideration, the Dublin system, in contrast focus, on the asylum process rather than on the refugee.

⁷⁹ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.235

⁸⁰ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.228.

⁸¹ At every election, the political discourse raises the issue of controlling immigration.

⁸² J. Kunz and M. Lejnonen, ‘Europe without borders: rhetoric, reality or Utopia?’ In A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, p.137

State to another and to enjoy the multicultural complexity of Europe', the later alludes to the 'closing and monitoring' of EU external borders'.⁸³

Although the academic literature⁸⁴ mainly mentions the Tampere Council as one of the major pillars in the creation of European asylum law, the story actually begins with the Single European Act (SEA) in 1987.⁸⁵ Looking back at the historical construction of the EU, human rights were not part of the original project. The core of the 'European project' was the establishment of the so-called 'four freedoms': freedom of movement of capital, goods, services and people.⁸⁶ Since 1987, the EU's elemental purpose has been to 'create an internal market characterized by the abolition between Member States of obstacles to the free movement of goods, persons, services and capital'.⁸⁷ As Durieux rightly states 'the topic of "asylum" had no raison d'être within the EU integration project until it imposed itself as a concern' that would confront 'EU's ambition to establish an internal market'.⁸⁸

⁸³ J. Kunz and M. Lejnonen, 'Europe without borders: rhetoric, reality or Utopia?' In A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, p.138

⁸⁴ E. Collett, 'Future EU policy development on immigration and asylum: Understanding the challenge', *Migration Policy Institute*, EPBS, Issue no.4, May 2014, p.1; M. Garlick, 'Strengthening refugee protection and meeting challenges: The European Union's next steps on asylum', *MPI Europe Policy Brief*, Issue No. 5, June 2014 p.3; Moreno-Lax V, 'Dismantling the Dublin System: MSS v. Belgium and Greece' (2012) 14 Eur. J. Migration & L, 3; D. Toshkov & L. de Haan, 'The Europeanization of asylum policy: an assessment of the EU impact on asylum applications and recognitions rates' (2013) *Journal of European Public Policy*, 20:5, 663; F. Ippolito and S. Velluti, 'The recast process of the EU asylum system: a balancing act between efficiency and fairness' (2011) *Refugee Survey Quarterly*, Vol.30, No.3, 28; S. Gallagher, 'Towards a Common European Asylum System-Fortress Europe' 57 Int'l J. 375-394.

⁸⁵ Single European Act, 17 February 1986, 1987 O.J. (L 169) 1, 25 I.L.M. 506 (SEA), art 13.

⁸⁶ A. Geddes, *Immigration and European integration: beyond fortress Europe* (2nd edn. Manchester University Press, 2008) 43. The provisions for free movement for capital, goods, services and people were found in the Treaty of Rome. See D. Chalmers, G. Davies and G. Monti *European Union law: text and materials* (Cambridge University Press, 2014) Chapters 11 'EU citizenship' and Chapter 12 'nationals and non nationals'.

⁸⁷ J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.237. SEA, art 8A(2) (now TFEU, art 26(2)) defines the internal market as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty'.

⁸⁸ Asylum and immigration issues de facto came along the discussion, J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in Lambert H., McAdam J. and Fullerton M., *The*

In order to achieve the common market, controls at inter-States borders have been gradually removed.⁸⁹ Twenty six have agreed to abolish border controls at their common borders.⁹⁰ Not only has free internal borders become a key concept in the constitution of the EU but free movement for MS nationals has become a determining characteristic of “EU citizenship.”⁹¹ The free movement was not conceived to apply to refugees lawfully residing within the EU.⁹² Hence, since the beginning of the European integration project, refugees have been regarded as ‘third-class residents...far from...the EU demos’.⁹³

Needless to say, that the removal of the borders is not a ‘manifestation of a laissez-faire’. As a result of the free borders, the reinforcement of EU external border controls and the harmonization of the reception, qualification and treatment of asylum seekers were seen as necessary.⁹⁴ Two conventions were adopted by the Ad Hoc Immigration Group⁹⁵ in 1990: the Convention determining the state responsible for examining the applications for asylum lodged in one of the Member States of the EC (Dublin Convention),⁹⁶ and the Convention on the gradual abolition of internal borders

Global Reach of European Refugee Law (CUP, 2013) p.237-238; H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.8-9.

⁸⁹ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.237. Contrary to what it is believed, the abolition of national frontiers has not increased refugee presence within Europe excessively (see appendix 8).

⁹⁰ All EU member states except UK, Ireland, Bulgaria, Romania, Croatia and Cyprus are in the Schengen area. Norway, Iceland and Switzerland are also in the Schengen area.

⁹¹ A. Geddes, *Immigration and European integration: beyond fortress Europe* (2nd edn. Manchester University Press, 2008) p.48

The EU is the only region, which has ‘achieved free movement for EU citizens at an unprecedented scale’.

⁹² As Guild correctly states:

‘By leaving this part of the population out of the free movement equation, the EU became a hostage to its own failure towards refugees as these became the people on the basis of whom the creation of substantial coercive flanking measures to compensate for the loss of control at the intra-Member-State borders was based’ (E. Guild ‘Europeanisation of Europe’s Asylum Policy’ (2006) 18 *International Journal of Refugee Law* p.634).

⁹³ J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (2013, Cambridge University Press) p.242.

⁹⁴ Including those evading external border controls

⁹⁵ A special group of senior civil servants.

⁹⁶ Convention determining the state responsible for examining applications for asylum lodged in one of the member states of the European Communities (Dublin Convention, OJ 1997 No. C254/1).

(Schengen Convention).⁹⁷ Free movement of people has indirectly heavily influenced EU asylum law and policy.⁹⁸

Controlling external borders implies vesting a special responsibility to control immigration: in other words block entry into the EU, in particular in MS bordering the external frontiers of the EU.⁹⁹ Guild argues that the determination of refugee status by the first country of entry conforms to the logic of the internal market.¹⁰⁰

The movement of asylum-seekers is limited and ruled by an allocation system that make them disappear behind their applications. Even if asylum seekers are recognised refugee status, they do not ‘acquire a right to move elsewhere in the EU for many years’.¹⁰¹ It should be pointed out that ‘refugees have much to say about the values that the EU claims as an essential part of its identity’.¹⁰² By raising this, it challenges the concept of ‘border’.

⁹⁷ The Schengen acquis- Convention implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ 2000 No. L239/19)

⁹⁸ See E. Guild ‘Europeanisation of Europe’s Asylum Policy’ (2006) 18 *International Journal of Refugee Law* 630–51; A. Geddes, *Immigration and European integration: beyond fortress Europe* (2nd edn. Manchester University Press, 2008).

The link between free movement and European asylum law and policies was rightly describes by Carlier: The common migration policy is not only the result of the free internal movement but is also a condition for its achievement. This inherent link explains fully the development of a common asylum policy within the EU. EU’s approach is driven by the management and the containment of migration rather than the safeguarding of fundamental rights, even though the law instruments were crafted and cite profusely the Geneva Convention. (Translated from French J.-Y. Carlier, *Droit d’asile et des réfugiés : de la protection aux droits* (Leiden and Boston :Martinus Nijhoff, 2008), pp.52-3).

⁹⁹ In practice most of the Dublin transfers are based on the ‘unauthorized entry of stay’ (See Appendix 26) and the vast majority of transfers are made to one of the States ‘guarding’ the external border of the EU mainly Greece or Italy.

¹⁰⁰ E. Guild ‘Europeanisation of Europe’s Asylum Policy’ (2006) 18 *International Journal of Refugee Law* p.635 Although her analysis of the 1990 Schengen and Dublin conventions dates back to 2006, it still holds good: [R]esponsibility for determining asylum applications and responsibility for the body that goes with the application is treated . . . as a burden and a punishment for the Member State which permitted the individual to arrive in the Union. E. Guild ‘Europeanisation of Europe’s Asylum Policy’ (2006) 18 *International Journal of Refugee Law* p.637

¹⁰¹ C., Costello and E., Hancox ‘The UK, EU Citizenship and Free Movement of Persons’, *Migration Observatory policy*, COMPAS, University of Oxford, UK, May 2014, p.5

¹⁰² J.-F. Durieux, “The vanishing refugee: how EU asylum law blurs the specificity of refugee protection” in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.256.



Since 2001, 'security concerns have further reinforced the apparent need to control borders'.¹⁰³ Although States still search for new technologies in order to perfect border controls, it is technically impossible for States to control borders to the last millimeter. Pécoud and de Guchteneire explain that border controls are 'more a matter of symbols than of actual results': they play a 'psychological role in the formation of national identity'.¹⁰⁴

The Universal Declaration of Human Rights contains a right to leave 'any country, including his own',¹⁰⁵ but not a right to enter.¹⁰⁶ After all, people naturally decide where they wish to live¹⁰⁷: it is even truer in our globalized world.¹⁰⁸ Mobility is 'unevenly distributed among human beings'¹⁰⁹: it is an exclusive privilege attributed to citizens from developed countries.¹¹⁰

¹⁰³ A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, p.4: '[o]n both sides of the Atlantic, such concerns have prompted the introduction of new biometric technologies'.

¹⁰⁴ A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, p.5. Under the philosophy of human rights, human beings 'are protected on the basis of personhood, not of nationality or citizenship'

¹⁰⁵ UN General Assembly, *Universal Declaration of Human Rights* (10 December 1948) 217 A (III) (Universal Declaration), art 13-2.

¹⁰⁶ Partialism (prevailing the citizenship) and impartialism (prevailing the humanity side) are the 'two different ethical approaches deal with the responsibilities of states to foreigners in entrance' (M. Gibney, *The Ethics and Politics & Asylum* (Cambridge University Press, 2005) p.82).

¹⁰⁷ A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, Foreward.

¹⁰⁸ Catherine Wihtol de Wenden argues the paradox of the globalized world: while everything moves freely including information, money, music, ideas, pictures goods and so forth, the right to move is not self evident (Wihtol de Wenden C. *Le droit d'émigrer*, CRNS Editions, coll. « Débats », 2013, p.8).

¹⁰⁹ See 'The most powerful passports in the world', *The Independent* (London, 22 April 2015) <http://www.independent.co.uk/travel/the-most-powerful-passports-in-the-world-10194423.html> [accessed 23 April 2015].

¹¹⁰ They have the opportunity to 'travel and settle down almost anywhere in the world, while their fellow human beings from less-developed countries depend upon the uncertain issuance of visas and residence permits to migrate' (A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, p.9).

This is why the right to mobility or migration without borders (MWB) has been envisaged by some authors.¹¹¹ They argue that migration contributes greatly to the world economy as it is part of both economy and society of most States.¹¹² Migration is also useful for labour market reasons.¹¹³ The CNCDH¹¹⁴ considers that human mobility is an essential aspect of human development¹¹⁵: it ‘redistributes wealth at the world level and plays a central role in development and poverty reduction’.¹¹⁶

The MWB proposes a new vision that challenges border control: States should not try to control migration flows, which is most of the time inefficient but ‘rather support them and recognize the opportunities they offer’.¹¹⁷ However MWB is often described by politics as unrealistic.¹¹⁸ Borders are often presented as porous by European

¹¹¹ Why not imagining ‘a world without borders’ where people would have the ‘right to move freely from one country to another, to settle down, live and work wherever they wished’? A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, Foreword. This book is written by several authors who address the ‘migration without borders’ (MWB) scenario and investigates the ethical, human rights, economic and social implications of the free movement of people.

¹¹² Antoine Pécoud. and Paul de Guchteneire ‘Introduction: the migration without borders scenario’ in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007) p.5

Sending countries benefit increasingly from remittance payments and the return of skilled migrants, receiving countries benefit from younger workforces, and migrants themselves find new opportunities through their move to a new country.

¹¹³ See Geddes, A. *Immigration and European integration: beyond fortress Europe*, 2e. Manchester: Manchester University Press, 2008.

¹¹⁴ See List of abbreviations.

¹¹⁵ CNCDH 23 juin 2011, *Avis sur les mouvements migratoires liés aux « printemps arabes »*, en ligne sur : www.cncdh.fr. Documented researches show that immigration is instead richness for France and not a brake for its economy.

¹¹⁶ A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007), Foreword.

¹¹⁷ Antoine Pécoud. and Paul de Guchteneire ‘Introduction: the migration without borders scenario’ in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007) p.2.

¹¹⁸ One often hears, for example, that it would provoke huge migration flows, although few empirical investigations support this claim. See Dearden L., ‘Angela Merkel makes Palestinian girl facing deportation from Germany cry on TV’ (17 July 2015) *The Independent* <http://www.independent.co.uk/news/world/europe/angela-merkel-makes-palestinian-girl-facing-deportation-from-germany-cry-on-television-10393719.html> [accessed 17 July 2015]

governments.¹¹⁹ Contrary to what is often believed, the North is not the only Eldorado in the world: the South attracts migrants too.¹²⁰

From a human vantage point, the possibility to migrate freely is morally acceptable.¹²¹ Free movement is of course difficult to predict¹²², yet it is important to remember that 'open borders' were a reality in the pre-1962 Commonwealth.¹²³ The most fortified and sophisticated borders are found between Western countries and less-rich countries such as the one between Europe and North Africa or Turkey. Asylum seekers/refugees are distinct from the other kinds of migrants and even if most of EU MS have established distinguished procedures to address their situations, empirical evidence show that the 'boundaries between the two are often porous'.¹²⁴ As Pécoud and de Guchteneire argue the distinction between asylum seekers/refugees and migrants would

¹¹⁹ Antoine Pécoud. and Paul de Guchteneire 'Introduction: the migration without borders scenario' in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007) p.2

¹²⁰ Catherine Wihtol de Wenden evaluates that in 2011 for a total of 240 million international migrants, 97 million were migrating South to North, 74 millions South to South, 37 million North to North and 40 million North South (C. Wihtol de Wenden *Le droit d'émigrer*, CNRS éditions, coll. « Débats », 2013 p.32); Eiko Thielmann p.23. The CNCDH argues that immigration issue should be put into its perspective: international migrants are only 3 per cent of today world's population. CNCDH, *Avis sur la réforme du droit des étrangers* (21 mai 2015) §2.

¹²¹ Antoine Pécoud. and Paul de Guchteneire 'Introduction: the migration without borders scenario' in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007) p.2

¹²² 'If one had told a French or a German citizen in, say, 1950, that free movement would be a reality in the European Union a few decades later, he or she may have been difficult to convince. Even in the 1980s it would have been difficult to predict that the free movement of people between Eastern and Western Europe would become normal some three decades later.' (Antoine Pécoud. and Paul de Guchteneire 'Introduction: the migration without borders scenario' in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007) p.2)

¹²³ 'Citizens from the former British Empire had the right to move freely: people from South Asia or the Caribbean could for example move without restrictions to the United Kingdom' (Antoine Pécoud. and Paul de Guchteneire 'Introduction: the migration without borders scenario' in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007) p.2).

¹²⁴ Antoine Pécoud. and Paul de Guchteneire 'Introduction: the migration without borders scenario' in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007) p.23.

become insignificant under the MWB scenario.¹²⁵ It would be so much easier for asylum seekers to claim asylum in the country of their choice.

The EU's approach has unjustly combined refugee protection and immigration control, with the effect that immigration control is taking priority over refugee policy.¹²⁶ Refugees and asylum-seekers are accordingly hardly distinguishable in the EU landscape.¹²⁷ The refugee, main protagonist of the Refugee Convention, is 'absent from the original demos of the EU, and admitted with suspicion once recognised'.¹²⁸ The EU's approach on integration has in addition presented 'asylum seeker as an alien and an intruder, and asylum as a 'guarded narrow gate regime' that is 'more forbidding than inviting',¹²⁹.

The CEAS embraces a number of positive rules such as the recognition of the right to asylum in the EU, which goes beyond protection from *refoulement*¹³⁰ and the codification of subsidiary and temporary protection.¹³¹ Nevertheless, the CEAS includes 'exceptions, derogations and ambiguities, which are partly responsible for the existing

¹²⁵ Antoine Pécoud. and Paul de Guchteneire 'Introduction: the migration without borders scenario' in A Pécoud and P de Guchteneire (eds), *Migration without Borders: Essays on the Free Movement of People* (UNESCO & Berghahn Books, 2007), p.23.

¹²⁶ H. Lambert, J. McAdam and M. Fullerton, *The Global Reach of European Refugee Law* (Cambridge University Press, 2013) p.14

¹²⁷ Durieux argues that the principal focus of the 'European asylum law' is not the refugee but the asylum seeker, which will disappear behind the asylum application.

¹²⁸ J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.243

¹²⁹ J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.243

¹³⁰ Art. 18, Charter of Fundamental Rights of the European Union (OJ 2000 No. C 364/1) and Recast Qualification Directive 2011/95/EU, Recital 16. See Maria-Teresa Gil-Bazo, 'The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union's Law' (2008) 27 Refugee Survey Quarterly 33–52; UNHCR' written observations in CJEU Joined Cases C-411/10 and C-493/10, para. 31.

¹³¹ H. Lambert, J. McAdam and M. Fullerton, *The Global Reach of European Refugee Law* (Cambridge University Press, 2013) p.13, Eiko Thiellmann p.29-30 she argues that the QD and the RD have improved significantly the

divergence in recognition rate and quality of asylum decision between EU MS'.¹³² Significant gaps and shortcomings such as safe third country, first country of asylum of the Dublin system, the increased securitization through detention and the tendency, in some countries, to grant subsidiary protection rather than refugee status (while the former provides fewer rights than the latter).¹³³

As Collett rightly argues, the 'idea of a CEAS is far clearer in theory than in practice'.¹³⁴ The Syrian refugee crisis gives us the opportunity to understand the European asylum system.

¹³² See UNHCR. both UNHCR and ECRE are critical of the administrative detention of asylum seekers, which is less regulated than the detention of accused and convicted criminals.

¹³³ This is the case, for instance in Italy and Sweden (see appendix 9 for Italy and appendix 31 for Sweden).

¹³⁴ E. Collett, 'Future EU policy development on immigration and asylum: Understanding the challenge', *Migration Policy Institute*, EPBS, Issue no.4, May 2014, p.2

3. Factual context of the Syrian conflict

❖ *Syria before the uprising*

1) A country of emigration

Syria has a long story of politically motivated (often forced) emigration.¹ As a result of the political instability after the Syrian independence in 1946², large fragment of the bourgeoisie population left the country, mainly towards Lebanon, in the early 1950s.³ The massacre of thousands of people in Hamas did not help the situation.⁴ In sum, more than 400, 000 Syrians were estimated to be living abroad on the eve of the Syrian uprising.⁵

Yet, it would be untrue to say that Syria is not a 'destination for massive waves of refugees'.⁶ According to the UNHCR, more than 1 million persons of concern were living in Syria in 2010.⁷

¹ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.2

² Syria was under French protectorate (J.-P. CALLOT, P. DROZ-VINCENT, P. RONDOT, C. SIFFERT, « SYRIE », *Encyclopædia Universalis* [online] <http://www.universalis-edu.com/encyclopedia/syrie/> [accessed 5 August 2015]).

³ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' *Migration Policy Centre* (MPC) Research Report 2012/14, p.2

⁴ The Syrian government deprived also 100,000 Kurds from their Syrian nationality leading to their emigration because of their statelessness.

⁵ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14.p.3: including 120,000 in the Gulf States; 112,000 in the EU; and 80,000 in North America and Australia.

⁶ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.3

⁷ UNHCR Statistical Yearbook 2010, available at: <http://www.unhcr.org/4ef9c7269.html> [accessed 5 May 2015]: there were 1,307,918 persons of concern including 1,005,472 refugees, 2,446 asylum seekers and 300,000 stateless persons. See P. Fargues, 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01.p.3

situation in Iraq with the rise of Islamic State has led to the influx of Iraqi refugees into north-eastern Syria in 2014. Syria is hosting more than 33,000 asylum-seekers and refugees mainly from Iraq. In August 2014, approximately 95,000 people displaced by violence in Iraq entered the northeastern Hassakeh governorate, although the majority proceeded onwards to the Kurdistan region to seek safety (UNHCR, *Syrian Arab Republic: Country operations profile* (Overview) 2015 <http://www.unhcr.org/pages/49e486a76.html> [accessed 14 July 2015])

2) A recipient country: the case of Palestinian refugees⁸

Syria is one of the main hosting countries of the Palestinian exodus during the 1948 Arab-Israel War.⁹ The presence of Palestinians in Syria also resulted from the 'following Israeli attacks on the Palestinian Occupied Territories in the years 1967, 1970 and 1982 in Lebanon'.¹⁰ More recently in 2006, Palestinian refugees (PR) from Iraq made their way to Syria as a result of the US army attack and the political instability.¹¹ According to the United Nations Relief and Works Agency for Palestine Refugees (UNRWA), 560, 000 PR 'were' registered in Syria before the conflict.¹²

- *Palestine refugees: a vulnerable community within international refugee law*

While the 1951 Refugee Convention defines refugee¹³, it also gives the situations in which the status of refugee may be terminated or refused.¹⁴ One of the four

⁸ Palestinian refugees are not the only category of refugees. See P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.3: Syria is also the main recipient since 2005 'of Iraqi refugees fleeing their country under US occupation' whereas 'Jordan closed its doors in response to bombings perpetrated by Iraqis in Amman in November 2005'. Also "Syria welcomed many Lebanese fleeing war back in 2006" Karim El Mufti, "Official response to the Syrian refugee crisis in Lebanon: the disastrous policy of no-policy", *Civil Society Knowledge Center, Lebanon Support*, 10 January 2014. [online] <http://cskc.daleel-madani.org/paper/official-response-syrian-refugee-crisis-lebanon-disastrous-policy-no-policy> [accessed 5 June 2015]

⁹ The 1948 mass-flight is also called *nakba* (see glossary). 90,000 PR out of 750,000 fled to Syria (G.S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. Oxford University Press 2007) p.436).

¹⁰ Euromid Observer, 'Death Boats: The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.3

¹¹ N., Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 593

¹² UNRWA, 'Where we work' available at: <http://www.unrwa.org/where-we-work/syria> [accessed 10 April 2015]. 'These Palestinian refugees are not included in UNHCR's statistics. However, the Palestinian refugees living outside the UNRWA areas of operation fall under the responsibility of UNHCR and are thus included in UNHCR statistics'. (UNHCR, *UNHCR Statistical Online Population Database: General Notes* (UNHCR Statistics 2013) <http://www.unhcr.org/4a01417d6.html> [accessed 10 February 2015]).

It should be noted that UNRWA is not very clear on the number, on this webpage <http://www.unrwa.org/syria-crisis> it is written 560,000 while on another <http://www.unrwa.org/where-we-work/syria> it is written 526,744 registered in Syria.

¹³ The Refugee Convention, art 1A(2).

¹⁴ G.S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. Oxford University Press 2007) p.135.

circumstances¹⁵ in which the refugee status may be ended or negated refers to the protection or assistance received 'from organs or agencies of the United Nations other than the United Nations High Commission for Refugee'.¹⁶ Palestinians fall exclusively within this circumstance and are therefore excluded from the refugee protection provided by the UNHCR Statute and the 1951 Convention.¹⁷ The drafters chose to deny refugee status in return of 'something less than the protection of a state'.¹⁸ Article 1 D was construed for a solely reason: 'the exclusion of the Palestinians who became refugees upon the establishment of Israel'.¹⁹

Following the 1947 UN General Assembly vote in favour of a plan to partition Palestine²⁰ into two separate States (one Arab and one Jewish)²¹, the UN General Assembly created the Conciliation Commission for Palestine (UNCCP) on 11 December 1948.²² The UNCCP aimed to facilitate durable solutions on the behalf of the PR.²³ However, the UNCCP fell into disuse two years later due to the insufficiency of political

¹⁵ 1951 Convention, art. 1 C, 1D, 1E and 1F.

¹⁶ The Refugee Convention, art 1D; UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V) (UNHCR Statute), para. 7(c).

¹⁷ G.S. Goodwin-Gill and J. McAdam, *The Refugee in International Law* (3rd edn, OUP, 2007) Chapter 4, p.151; J. Allain *International Law in the Middle East : Closer to power than justice* (Ashgate, 2004) Chapter 4 p. 115 (See Appendix 10).

¹⁸ J. Hathaway and M. Foster, *The Law of refugee Status* (2nd edn, CUP, 2014) p.509.

The motive for differentiating Palestinian refugees from others was held strongly by Arab States (see the statements of Lebanon and Egypt, Appendix 11).

Western delegates supported also the idea of denying Palestinians from granted refugee status. The French representative, for example, 'considered that the problems in their case were completely different from those of the refugees in Europe, and could not see how Contracting States could bind themselves by a text under the terms of which their obligations would be extended to include a new, large group of refugees' Statement of Mr. Rochefort of France, UN Doc. A/CONF.2/SR.19 (Jul. 13, 1951), at 11.

¹⁹ J. Hathaway and M. Foster, *The Law of refugee Status* (2nd edn, CUP, 2014) p.510

²⁰ The territory of Palestine was historically under the British Mandate. UNHCR, *The United Nations and Palestinian Refugees*, January 2007, available at: <http://www.refworld.org/docid/48da0e692.html> [accessed 12 February 2015] p.2

²¹ UNGA res. 181 (II) A, 29 Nov. 1947, adopted with thirty-three votes in favour, thirteen against (including Iraq, Lebanon, Saudi Arabia, Syria and Yemen) and ten abstention.

²² UNGA res 194, UN doc A/RES/194 (III), 11 Dec 1948

²³ UNGA res 194 above note 15, point 11 'facilitate the repatriation, resettlement, and economic and social rehabilitation of the refugees'.

assistance.²⁴ Since then, PR have been the subjects of a ‘protection gap’ as durable solutions for PR were never sought again.²⁵ As an alternative, the UNGA resolution 302(IV) of 8 December 1949²⁶ established the UNRWA,²⁷ which began its actions in May 1950 and have been unchanged since.²⁸ Its mandate is geographically restricted to five areas including Syria.²⁹ UNRWA is not part of the UN assessed contribution system but the UN does finance all UNRWA’s core international staff posts from its regular budget.³⁰

Despite the fact that UNHCR has a world-wide mandate to protect, assist, and seek durable solutions for refugees and other people in need of international protection, its mandate does not apply to PR.³¹ However the UNHCR’s mandate can cover Palestinian refugees who are outside UNRWA’s area of operations and who are refugees within the meaning of Article 1A (2) of the 1951 Convention.³² Unlike the UNHCR

²⁴ N. Erakat, ‘Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement’, *International Journal of Refugee Law*, 2014, Vol.26, No.4, p. 583.

²⁵ A durable solution would be to enforce their right to return but for the moment the possibility has been completely forgotten due to the on-going political conflict..

²⁶ UNGA res 302, UN doc A/RES/302 (IV), 8 Dec 1949.

²⁷ See J. Allain, *International Law in the Middle East: Closer to power than justice* (2004, Ashgate) 108: ‘the only United Nations established to provide assistance to a specific group of refugees’.

²⁸ J. Allain, *International Law in the Middle East: Closer to power than justice* (2004, Ashgate) 108: ‘In the absence of a solution to the Palestine refugee problem, the General Assembly has repeatedly renewed UNRWA’s mandate, most recently extending it until 30 June 2017’ (UNRWA, ‘Where we work: Syria’ available at: <http://www.unrwa.org/where-we-work/syria> [accessed 16 May 2015]).

²⁹ The other areas are Jordan, Lebanon and the occupied Palestinian territory namely West Bank and Gaza Strip. Palestinians who are refugees in Arab States are *de facto* stateless. Although stateless persons are considered fall within the scope of the 1951 Convention, the rights of stateless persons who are not refugees or excluded from the refugee status are governed by the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (S. M. Akram, ‘Temporary Protection and its Applicability to the Palestinian Refugee Case’, *BADIL, Information & Discussion Brief*, Issue No 4, June 2000, 16).

³⁰ UNRWA, ‘Frequently Asked Questions’ <http://www.unrwa.org/who-we-are/frequently-asked-questions> [accessed 10 June 2015]

³¹ UNHCR Statute, para. 7 (c). Although the UNGA entrusted the UNHCR with the mandate to protect and assist stateless persons as required by article 11 of the 1961 Convention, it has never exercised this mandate (S. M. Akram, ‘Temporary Protection and its Applicability to the Palestinian Refugee Case’, *BADIL, Information & Discussion Brief*, Issue No 4, June 2000, 17). Accordingly, PR do not receive the benefit from such mandate.

³² UNHCR, *The United Nations and Palestinian Refugees*, January 2007, available at: <http://www.refworld.org/docid/48da0e692.html> [accessed 12 February 2015] p.3

which has a strong international protection mandate,³³ UNRWA's mandate remains to 'assist' PR being a subsidiary organ of the UN. Indeed, reveals that UNRWA has no 'explicit mandate to provide Palestinian refugees with legal protection'.³⁴ In theory, the competence of the High Commissioner could apply to all Palestinian refugees and thus provide them with international protection³⁵. However, due to political reasons both UNHCR and UNRWA mandates have been respectively limited.³⁶

Contrary to what was foreseen, Palestinian refugees have been trapped 'in a long-standing and intractable state of limbo',³⁷ as they have been this situation for more than 67 years now.³⁸

- *The life in Syria before the conflict: one the best living conditions among the other Arabic countries*

Palestinians have been described as the 'world's largest and longest-standing refugee population'.³⁹ Restrictions on refugee movement and employment possibilities,

³³ It is considered to be the 'cornerstone of its work' (N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.587); see, e.g. UNGA res 428, 14 Dec 1950: 'The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing *international protection*, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute ...'.

³⁴ J. Suleiman, 'Marginalised Community: The Case of Palestinian Refugees in Lebanon' (2006) Migration, Globalisation & Poverty, RR, 9 http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf [accessed 6 February 2015]

³⁵ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 587; J. Allain *International Law in the Middle East : Closer to power than justice* (Ashgate, 2004) 124: 'The unwillingness of the UN General Assembly to vest UNHCR with a mandate to protect Palestinian Refugees is not based on legal encumbrances; such limitations could be swept aside quite easily'.

³⁶ The political issues surrounding the Palestinian problem have been seen as incompatible with the non-political character of UNHCR's mandate, see UN doc.E/AC.7/SR.172.

³⁷ UNHCR, *Protracted Refugee Situations, Standing Committee to the Executive Committee of the High Commissioner's Programme*, 30th meeting, EC/54/SC/CRP.14, 10 June 2004, §3.

³⁸ 'The first wave of Palestinian exodus resulted from the passing of the United Nation's Partition Plan- General Assembly Resolution 181-of 29 November 1947' (J. Allain, *International Law in the Middle East: Closer to power than justice* (2004, Ashgate) 102). Palestinian first flight from Palestine was not a singular process. It was expanded between December 1947 and June 1948 (see Ten years of research into the 1947-49 war: the expulsion of the Palestinians re-examined, Dominique Vidal, *Le Monde diplomatique*, December 1997 <http://mondediplo.com/1997/12/palestine> [accessed 21 February 2015].

³⁹ P. Fargues, 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01, 3.

and confinement to camps are typically the results of a protracted refugee situation.⁴⁰ However, in Syria the situation of PR was brighter than in other Arab States.⁴¹

The Syrian armed conflict has changed everything.⁴²

❖ *Syrian crisis: from unrest to civil war*

The roots of the deadly crisis in Syria began in March 2011, where people marched against the violence committed on children in Der'aa.⁴³ What happened next has been fully publicised: hundreds of thousands took to the streets in towns and cities across the country, the country descended into civil war, hundreds of thousands of Syrians were killed and injured⁴⁴, half of the country's population fled their homes, becoming refugees or internally displaced persons.⁴⁵ The disturbance in the Syrian Arab Republic has changed from a simple agitation in March 2011 into the emergence of a non-international armed conflict by February 2012.⁴⁶ In the report of 5 February 2015,

⁴⁰ The lives of protracted refugees "may not be at risk, but their basic rights and essential economic, social and psychological needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance" (UNHCR, *Protracted Refugee Situations, Standing Committee to the Executive Committee of the High Commissioner's Programme*, 30th meeting, EC/54/SC/CRP.14, 10 June 2004). In Lebanon, Palestinian refugees are under a specific administrative apparatus in Lebanon (J. Suleiman, 'Marginalised Community: The Case of Palestinian Refugees in Lebanon' (2006) *Migration, Globalisation & Poverty*, RR http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf [accessed 6 February 2015]).

⁴¹ See Appendix 12.

⁴² 'We lived well there, but in the last two years everything changed', Ahmed Iamets, a Palestine refugee who fled Syria and is currently in Lebanon with his family. They spent eight years building their house in Syria, which is now destroyed (ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013) p.3.

⁴³ 'The conflict has its roots in protests that erupted in March 2011 in the southern city of Deraa after the arrest and torture of some teenagers who painted revolutionary slogans on a school wall' (BBC News. Syria: The story of the conflict, 12 March 2015 <http://www.bbc.co.uk/news/world-middle-east-26116868> [Accessed 24 May 2015]).

⁴⁴ 'The number of persons killed as a result of the conflict has reportedly surpassed 191,000 by April 2014' (UNHCR, *International Protection: Considerations with regard to people fleeing the Syrian Arab Republic*, Update III (October 2014) §4).

⁴⁵ The Office for Coordination of Humanitarian Affairs evaluated by mid-2014 that 10.8 million of Syria's 22 million population was affected by the conflict and is currently in need of humanitarian protection (UNHCR, 'Syria Regional Refugee Response. Inter-agency Information Sharing Portal' http://data.unhcr.org/syrianrefugees/regional.php#_ga=1.9720113.507971355.1428845798 [accessed 12 April 2015]).

⁴⁶ UN, *9th Report of Commission of Inquiry on Syria*, 5 February 2015 (published on 20 February 2015), available at <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx> [accessed 5 July 2015].

the UN stressed the complete lack of adherence to the norms of international law in the Syrian conflict as civilians are the greatest victims.⁴⁷ The UNHCR has created an inter-agency called the Syrian Humanitarian Assistance Response Plan (SHARP) in order to improve access to the affected populations.⁴⁸

PR have been strongly affected by the Syrian conflict too.⁴⁹ UNRWA estimates that 95 per cent of the remaining PR in Syria require emergency assistance and humanitarian aid.⁵⁰ Yarmouk camp has become 'the worst place in Syria'.⁵¹ Erakat explains that the relationship between the Syrian regime and UNRWA went from

⁴⁷ 'A UN commission of inquiry has been investigating all alleged violations of international human rights law since March 2011 (UN, 9th Report of Commission of Inquiry on Syria - A/HRC/28/69 5 February 2015 (published on 20 February 2015), available at <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx> [accessed 5 July 2015]); Arbitrary arrests, enforced disappearances, torture, deaths in custody by Government forces (Human Rights Watch, 'World Report 2015: Syria, events of 2014' (*Human Rights Watch*, 2015) <https://www.hrw.org/world-report/2015/country-chapters/syria> [accessed 10 June 2015]).

The main cause of civilian casualties, mass displacement, and destruction is the deliberate targeting of civilians, indiscriminate and disproportionate attacks, attacks on civilian and protected objects, and the punitive imposition of sieges and blockades. See UN, Oral Update of the Independent International Commission of Inquiry on the Syrian Arab Republic 23 June 2015 Speech (E, A) and Presentation (A/HRC/29/CRP.3)

⁴⁸ UN Security Council resolutions 2139 (2014) and 2165 (2014).

⁴⁹ The evolution of the Syrian armed conflict alongside the situation of Palestinians will be further examined in a section. See Appendix 13 for the details of the escalating violence between Palestine camps and Assad's government.

All PR registered in Syria have been affected by the ongoing conflict Out of the 480,000 PR that remain in Syria, 280, 000 are internally displaced (UNRWA, 'The Syria Crisis' <http://www.unrwa.org/syria-crisis#Syria-Crisis-and-Palestine-refugees> [accessed 12 April 2015]; N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.607).

⁵⁰ UNRWA, 'The Syria Crisis' <http://www.unrwa.org/syria-crisis#Syria-Crisis-and-Palestine-refugees> [accessed 12 April 2015]; Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity' (Euro-Mid Observer for Human Rights, November 2013) http://www.euromid.org/report/death_boats_english.pdf [accessed 28 March 2015]

⁵¹ 85% of PR living in Yarmouk camp have fled. ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013) p.1. 18 000 Palestine refugees remain trapped in the Yarmouk Camp due to the siege imposed by the Syrian government since December 2013 and in violation of Security Council resolution 2139 (UNRWA, #SaveYarmouk <http://www.unrwa.org/crisis-in-yarmouk>, [accessed 6 June 2015]). Jonathan Steele, 'How Yarmouk refugee camp became the worst place in Syria' *The Guardian* (London, 5 March 2015) <http://www.theguardian.com/news/2015/mar/05/how-yarmouk-refugee-camp-became-worst-place-syria> [accessed 8 June 2015]; 'Yarmouk Palestinian refugee camp in Damascus in 'beyond inhumane' situation' (7 April 2015) *Syrian Observatory of Human Rights* <http://www.syriahr.com/en/2015/04/yarmouk-palestinian-refugee-camp-in-damascus-in-beyond-inhumane-situation/> [accessed 15 July 2015]; 'Declaration by the High Representative on behalf of the European Union on the situation in the Yarmouk Palestinian refugee camp in Syria' (19 April 2015) *Syrian Observatory of Human Rights* <http://www.syriahr.com/en/2015/04/declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-situation-in-the-yarmouk-palestinian-refugee-camp-in-syria/> [accessed 15 July 2015].

'sterling to horrible'.⁵² UNRWA has moreover 'endured a budgetary shortfall since the start of the conflict' which limits greatly its ability to provide food and shelter and pay its employees.⁵³ In addition to the on-going deadly conflict, one third of its facilities in Syria have been rendered inoperable due to the damages and the escalating violence.⁵⁴

The growing involvement of extremist and foreign non-state actors in the fighting in Syria has impacted not only the country's stability itself, but also the stability in the region and beyond, which may undermine or overturn fragile States in the Middle East.⁵⁵

Any improvement of the situation is very unlikely to happen 'as both sides still have significant capacity to resist and inflict damage'.⁵⁶ The only thing which is certain is the increasing number of people affected by the conflict.⁵⁷

❖ *Main consequence: refuge in the neighboring countries*⁵⁸

Around 20% of Syrian population has fled the deplorable circumstances in Syria to find protection in the neighbouring Arab countries.⁵⁹ As Syrian nationals, the

⁵² N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.599. The tension made the former Director of UNRWA (Stephane Hearn) long-term position in Syria untenable. See Appendix 13.

⁵³ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.607. UNRWA requires US\$ 415.4 million to meet minimum needs of Palestine refugees affected by the Syria crisis in the region in 2015. Up to now, there is a gap of \$282,974,000 (UNRWA, 'The Syria Crisis' <http://www.unrwa.org/syria-crisis#Syria-Crisis-and-Palestine-refugees> [accessed 12 April 2015]).

⁵⁴ UNRWA, 'The Syria Crisis' <http://www.unrwa.org/syria-crisis#Syria-Crisis-and-Palestine-refugees> [accessed 12 April 2015]. Among the 46,385 UNRWA students, an estimated 10 000 of them are not currently at school and an estimated 10 000 Palestinian refugees from Syria are attending UNRWA schools in Lebanon and Jordan. The on-going violence has left only 42 schools as of March 2014. Nine of the original 23 primary health centres are inoperable too.

⁵⁵ European Commission, *General Guidelines for Operational Priorities on Humanitarian Aid in 2015*, 4 December 2014, SWD (2014) 345 final, p.24; P. Fargues, *Europe Must Take on its Share of the Syrian Refugee Burden, but How?* MPC PB No. 2014/01, 3; UN, Oral Update of the Independent International Commission of Inquiry on the Syrian Arab Republic 23 June 2015 Speech (E, A) and Presentation (A/HRC/29/CRP.3).

⁵⁶ European Commission, *General Guidelines for Operational Priorities on Humanitarian Aid in 2015*, 4 December 2014, SWD (2014) 345 final, p.24; UNHCR, *Syrian Arab Republic: Country operations profile (Overview)* 2015 <http://www.unhcr.org/pages/49e486a76.html> [accessed 14 July 2015].

⁵⁷ See appendix 14.

⁵⁸ UNHCR, 'Middle East and Africa', *Global Appeal 2015 Update*, p.119; UNHCR, *Syria Regional Refugee Response*, available at: <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 15 July 2015]: 4,015,065 people are registered as refugees (last update 15 July 2015). The figures includes 2.2 million Syrian refugees registered by the UNHCR in Egypt, Iraq, Jordan and Lebanon, 1.7 million Syrians refugees in Turkey registered by the Government of Turkey, as well as 24,055 Syrian refugees registered in North Africa (Libya).

unprotected group of PR have escaped the country, forcing them to a secondary displacement.⁶⁰ All the countries around Syria⁶¹, which share co-ethnic and co-religious ties with Syria⁶², have since the beginning of the conflict borne the bulk of the refugee burden.

Over 4 million Syrian refugees⁶³ are hosted in Turkey (1,8 million), Lebanon (1,17 million)⁶⁴, Jordan (629,128) Iraq (251,499) and Egypt (132,375) as of 9 July 2015.⁶⁵ More than half of registered Syrian refugees are under 17 (51.1%).⁶⁶

The number of PR is much more uncertain as neither UNHRCR nor UNRWA 'has been able to monitor' them in some regions⁶⁷ but it is estimated that 80,000 PR from Syria have fled including 44 000 in Lebanon⁶⁸ and 15,000 in Jordan.⁶⁹

⁵⁹ See appendix 15.

⁶⁰ The crisis has forced them to flee to unknown places where their future is uncertain. Their plight echoes the forced exile from Palestine that they, their parents or grandparents endured decades before (ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013, p.1.)

⁶¹ Except Israel.

⁶² The people fleeing from Syria who may be 'Sunni Arabs, Shia Arabs, Christian Arabs, Muslim Kurds or Syrian Palestinians' sought refuge naturally 'within their community on the other side of the border.' (Fargues P., 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01, 3).

⁶³ It should be noted that 'UN statistics do not include individuals and families who settled in these countries without being registered as refugees or asylum seekers because they were either able to take care by themselves of their establishment, or accommodated by relatives or friends'. P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.4.

⁶⁴ The UNHCR indicates that Lebanon, as of 6 May 2015, has temporarily suspended new registration as per Government of Lebanon's instructions. Accordingly, individuals awaiting to be registered are no longer include (UNHCR, *Syria Regional Refugee Response*, available at: <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 15 July 2015]).

⁶⁵ UNHCR, *Syria Regional Refugee Response*, available at: <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 15 July 2015]

⁶⁶ UNHCR, *Syria Regional Refugee Response*, available at: <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 15 July 2015].

⁶⁷ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.618.

⁶⁸ UNRWA, 'What We Do: Emergency response' available at: <http://www.unrwa.org/what-we-do/emergency-response> [accessed 15 June 2015].

⁶⁹ See UNRWA, 'Palestinian Refugee from Syria in Jordan' available at: <http://www.unrwa.org/prs-jordan> [accessed 15 June 2015] the number is estimated to be 17,000 by the end of 2015.

Unlike their Syrian counterparts, PR, who lack the Syrian citizenship and carry a 'Syrian Travel Document for Palestinian Refugees'⁷⁰, are refused refugee status in Jordan, Lebanon, Egypt, facing thus discrimination.⁷¹

Among the five neighbouring countries, three are not part of the Refugee Convention of 1951 namely Iraq, Jordan and Lebanon: no proper refugee status is granted to those fleeing the Syrian conflict.⁷² Instead of offering them international protection, they are considered "as guests".⁷³ Only two countries, Turkey and Egypt, are part of the Refugee Convention. In both countries Syrian nationals are able to register themselves under the UNHCR but only in Turkey, PR are granted a temporary protection regime (TPR).⁷⁴

The problem is that no sustainable durable solutions such as durable settlement for new refugees are in place, with Turkey being the exception.⁷⁵ Unlike what European countries believe 'co-ethnic and co-religious relations with the host population do not

⁷⁰ Many Palestine refugees from Syria do not have legal status and are unable to access civil registration procedures and basic social services. Their movement is limited and they live in constant fear of arrest and forced return to Syria (UNRWA, 'The Syria Crisis' <http://www.unrwa.org/syria-crisis#Syria-Crisis-and-Palestine-refugees> [accessed 12 April 2015]).

⁷¹ "I get healthcare and food because I have a Syrian passport, but they do not give food or healthcare to my husband and my children because they are not Syrians! Do they expect me to eat while my children are hungry? I never thought of my husband and children as non-Syrians until this discriminatory treatment of my family took place in Egypt" said Um Mohammad, a Syrian national who fled war-torn Syria to Egypt with her husband, her five children and her mother-in-law (Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.7).

⁷² P. Fargues, 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01, p.3.

⁷³ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.1.

⁷⁴ In principle, PR who seek to enter Turkey from Syria are allowed to enter the country without a visa. The Turkish government admits PR within the scope of the UNHCR as they are outside UNRWA's areas operation. The TP regime specifically ensures that Palestinians from Syria are granted the same protection envisaged for Syrian nationals. (UNHCR, Frequently Asked Questions Syrian Refugees in Turkey (October 2013) available at: <http://www.unhcr.org.tr/uploads/root/faqenglish.pdf> [accessed 10 June 2015]; UNHCR, Frequently Asked Questions Syrian Refugees in Turkey (October 2013) available at: <http://www.unhcr.org.tr/uploads/root/faqenglish.pdf> [accessed 10 June 2015]).

⁷⁵ Countries in the Middle East and North Africa (MENA) are generally countries of emigration and not of migrant settlement. This trend has deeply changed since the Syrian refugee crisis (K. P. Norman, 'Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees' in *Re-conceptualizing Refugees and Forced Migration in the 21st Century*, *Refugee Review*, Vol. II, Number 1, June 2015, 77).

always benefit migrants'.⁷⁶ The mere presence of refugees from Syria has increased the tension in the Arab States. For instance, due to the fact that the Lebanese form of government is a balance between its Christian and Muslim communities, the crucial number of Syrian and PR have triggered "fanning dormant tensions".⁷⁷ Social tensions between refugees and host communities are felt as a result of the competition for jobs, land, housing and water and are likely to increase in the near future.⁷⁸

The Euromid Observer⁷⁹ 2013 report on Death Boats provides a useful overview of what refugees from Syria have endured in the neighbouring countries.⁸⁰ Their harsh condition of life explains greatly why many attempt to reach Europe.⁸¹

Accordingly, the number of Syrians refugees attempting to reach Europe has increased exponentially.⁸² While 'the bulk of the burden was supported by neighbouring

⁷⁶ K. P. Norman, 'Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees' in *Re-conceptualizing Refugees and Forced Migration in the 21st Century*, Refugee Review, Vol. II, Number 1, June 2015, 89.

⁷⁷ P. Fargues, 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01, p.3.

⁷⁸ Moreover, as if that were not enough, camps and informal settlements are often easier to become the shelter of terrorist organizations.⁷⁸ It is important to remember too that the Syrian refugee crisis comes just after the Iraqi refugee crisis of 2006-2009, which had displaced around two million Iraqi citizens towards the very same countries: Jordan, Lebanon, Turkey and Egypt. P. Fargues, 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01, p.3; N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.593.

⁷⁹ Euro-Mediterranean is an independent, nonprofit organization for the protection of human rights established in November 2011 and registered in Switzerland (CH-660.0.748.015-1). It is headquartered in Geneva, Switzerland, to allow it easy access to the European institutions of governance and law are its primary targets and audience. Regional offices are located in the Occupied Palestinian Territories, including the West Bank and Gaza City, and in Tunisia, in addition to representatives in the United Kingdom, Germany, Netherlands, Yemen, Egypt, Libya, Jordan, United Arab Emirates, Lebanon, and Syria. Euro-mid Observer for Human Rights 'About' <http://www.euromedmonitor.org/en/About> [accessed 15 June 2015].

⁸⁰ Euro-Mid Observer for Human Rights has interviewed dozens of Syrian and Palestinian refugees in Lebanon and Egypt for a period of 10 months (see Appendix 16).

⁸¹ 'With no home, no food, and in most cases, a host country trying to send them back –refoulement- to Syria, the Palestinian and Syrian refugees have begun to seek for life-endangering alternatives, such as the death boats, in order to reach the European coast' (Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.5).

⁸² Amnesty International. 2013. "We Cannot Live Here Anymore: Refugees from Syria in Egypt." Amnesty International [on-line] October 16, 2013. Available at: <http://www.amnestyusa.org/research/reports/we-cannot-live-here-anymore-refugees-from-syria-in-egypt?page=2> [Accessed 12 July 2015].

Arab States and Turkey',⁸³ Europe has not yet taken a significant move towards to this major refugee crisis.⁸⁴

⁸³ Not only they have in 2003 absorbed refugees fleeing from Iraq as well as other refugees from countries due to the Arab uprisings,

⁸⁴ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/09 (executive summary).

4. European responses to the Syrian refugee crisis: measures taken by Member States (MS) and the EU

The Syrian refugee crisis is not the first crisis that has occurred in the EU's environs: other massive population displacement such as the one during the Lebanese civil war of 1975-1990 or in the Balkans¹ during the 1990s occurred too.² External events such as the Syrian crisis had 'expected spillover effects within the EU'.³ It exposes in broad day light the 'weaknesses in the ability of the EU to respond effectively to a crisis in its own immediate neighborhood'.⁴

The EU's approach to the Syrian refugee crisis is both external and internal. Externally, the EU has responded by providing humanitarian aid with the aim to contain the Syrian crisis within its regional limits. Internally, the EU has established a two level response: on the one hand, it reinforces the external borders, while on the other hand, Syrians are the first nationality to be granted asylum protection in the EU.⁵ With regard to PRS, little data is provided on their situation in Europe, nevertheless it is assumed that the vast majority of them are granted refugee protection.

¹ Slovenia, Croatia, Bosnia and Kosovo. UNHCR has drawn the parallel between the Balkan crisis and the Syrian crisis: '[i]n the 1990s, the Balkan wars created hundreds of thousands of refugees and asylum-seekers. Many of them found refuge in industrialized countries. Today, the surge in armed conflicts around the world presents us with similar challenges. Our response has to be just as generous now as it was then – providing access to asylum, resettlement opportunities and other forms of protection for the people fleeing these terrible conflicts', António Guterres.

² In Algeria in the 1990s; in Iraq during three decades from the early 1980s to the late 2000s; and in Libya in spring and summer 2011.

³ E. Collett, 'Future EU policy development on immigration and asylum: Understanding the challenge', *Migration Policy Institute*, EPBS, Issue no.4, May 2014, p.4; A. Kachee, « La crise en Syrie, un défi majeur pour la France et l'Europe. Un conflit interne aux répercussions régionales », in : *Forum réfugiés – Così, L'asile en France et en Europe, Etat des lieux 2014*, juin 2014, pp. 24-30.

⁴ E. Collett, 'Future EU policy development on immigration and asylum: Understanding the challenge', *Migration Policy Institute*, EPBS, Issue no.4, May 2014, p.4

⁵ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' *Migration Policy Centre (MPC) Research Report 2012/14*, p.9

On the one hand, the EU responds by providing humanitarian aid. The 'traditional' migrant-receiving states like Europe⁶ have found a new way to fortify their borders: helping the countries that migrants and refugees have passed through *en route* to Europe to become destination countries.⁷ On the other hand, the EU has actively worked 'to bring about a political transformation in Syria' without anticipating the consequences of such political commitment.⁸

1) Humanitarian aid

Since January 2012, the total EU (EU and Member States) funding for Humanitarian Aid amounts to €3.7 billion.⁹ The EU is the largest contributor in the world to humanitarian aid in response to the Syrian conflict.¹⁰ The EU's aid, which amounts to €817 million, provides 'food, water, shelter, and medical assistance' inside and outside Syria.¹¹ EU MS have been also actively involved into humanitarian aid.¹²

⁶ Although Catherine Wihtol de Wenden argues that the point that Europe is not the only receiving-migrants region: migration South to North and North to South are almost identical (see above p.33).

⁷ K. P. Norman, 'Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees' in *Re-conceptualizing Refugees and Forced Migration in the 21st Century*, Refugee Review, Vol. II, Number 1, June 2015, p.77.

⁸ i.e. the removal of Assad and the transition from authoritarianism to pluralistic and representative democracy. P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.9.

⁹ European Commission, 'Syrian Crisis' Humanitarian Aid and Civil Protection (9 July 2015) available at: http://ec.europa.eu/echo/files/infographics/infographic_syriancrisis_en.pdf#view=fit [accessed 15 July 2015]. Most of EU aid is sent through the United Nations and through the Red Cross/Red Crescent and non-governmental organizations but access to the Syrian territory has been restricted.

¹⁰ EU Aid & Asylum Map 31 May 2015 http://syrianrefugees.eu/?page_id=199 [accessed 10 July 2015]. EU has given 2.9 billion since the beginning.

¹¹ European Commission, 'Syrian Crisis' Humanitarian Aid and Civil Protection (9 July 2015) available at: http://ec.europa.eu/echo/files/infographics/infographic_syriancrisis_en.pdf#view=fit [accessed 15 July 2015]; P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.10

¹² The UK gave over 644 M EUROS, Germany 437 M EUROS, Sweden 75 M EUROS, Italy 50 M EUROS and France 47 M EUROS ('EU Aid & Asylum Map' (31 May 2015) available at: http://syrianrefugees.eu/?page_id=199 [accessed 10 July 2015]).

The EU also acknowledges the fact that it is not only Syrians are affected but also the PR.¹³

2) Political transition

In the EU, MS ‘viewed the monumental changes taking place in the Arab world as a unique political opportunity, not only for the Arab peoples, but also for the Mediterranean region and for Europe’s multifaceted links with these countries’.¹⁴ The EU approach regarding the funding of the non-EU Southern Mediterranean countries is based on “more-for-more”: ‘[t]he more a country democratically reforms, the more support they receive’.¹⁵ The European response was focused on ‘democracy promotion within the region’¹⁶, which is in line with EU traditional policies on migration: controlling the external borders of Europe.

In a statement on 11 September 2012, Catherine Ashton¹⁷ affirmed the EU’s approach toward Al-Assad’s government: ‘we have to do everything we possibly can to find ways to promote a political transition’.¹⁸

The EU has been actively involved in the political transition.¹⁹ For instance, seventeen rounds of EU restrictive measures were implemented throughout 2011 and

¹³ As the EU recognises that Syria hosts Palestinian and Iraqi refugees, it approved a €10 million Special Measure and increased the humanitarian budget for the Syrian crisis by €2 million. See: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/820&format=HTML&aged=0&language=EN&guiLanguage=en> Part of the 7 September 2012 increase in humanitarian funds (of €50 million) will also be allocated for these populations.

¹⁴ P. Fargues and C. Fandrich, ‘The European Response to the Syrian Refugee Crisis What Next?’ Migration Policy Centre (MPC) Research Report 2012/09 (executive summary).

¹⁵ P. Fargues and C. Fandrich, ‘The European Response to the Syrian Refugee Crisis What Next?’ Migration Policy Centre (MPC) Research Report 2012/09 (executive summary).

¹⁶ P. Fargues and C. Fandrich, ‘The European Response to the Syrian Refugee Crisis What Next?’ Migration Policy Centre (MPC) Research Report 2012/09 (executive summary).

¹⁷ EU High Representative for Foreign Affairs and Security since 2009 (EEAS, The High Representative of the Union for Foreign Affairs and Security Policy http://eeas.europa.eu/archives/ashton/index_en.htm [accessed 5 May 2015]

¹⁸ European Commission, *Statement by high representative/vice president Catherine Ashton on the situation in Syria* (2012, September 11), available at: http://europa.eu/rapid/press-release_SPEECH-12-599_en.htm?locale=fr [11 February 2015]

2012.²⁰ The EU has withdrawn for example bilateral cooperation programmes such the agreements under Euro- Mediterranean partnership (MEDA). While, several EU Member States such as France²¹ and UK²², have actively and openly supported the opposition movements in Syria in order to ‘prepare the country for Assad’s transition’, others such as Greece and Italy remain neutral.²³

Without knowing it, the EU and its Member States by helping the political transition in Syria, may have contributed to the destabilization of the whole region, including neighbouring countries. The conflict has worsened and there is no real political solution at sight. Crossing the Mediterranean Sea has become the desperate but only solution for most of the refugees from Syria.²⁴

¹⁹ The European Union has pressured the Syrian state to end the violence and start transition to democracy, see European Commission, ‘The EU’s relations with Syria’ available at: <http://eeas.europa.eu/syria/> [accessed 5 June]

²⁰ In 2011, the EU imposed sanctions and suspended EU bilateral cooperation programmes: bilateral under MEDA (Euro- Mediterranean partnership) and ENPI (Neighbourhood policy), regional cooperation, EIB loans and technical assistance.

²¹ Working with opposition for a transition plan and providing direct aid/money to rebel-controlled areas (revolutionary councils) of Syria. Since August 31, France has mobilized almost €1.5 million for 15 civilian committees (France Diplomatie, *Syria - meeting in support of the civilian revolutionary councils - speech by Laurent Fabius* (2012, October 17) available at: <http://www.diplomatie.gouv.fr/en/country-files/syria/> [accessed 18 May 2015]).

²² See for example the joint for Assad to stand down made by France, UK and Germany (Foreign and Commonwealth Office, *UK, Germany and France call for President Assad to stand down* (2012, August 18) available at: <http://www.fco.gov.uk/en/news/latestnews/?view=Press&id=645689682> [accessed 18 May 2015]). France/UK Foreign Ministers called on Syrian officials to defect as soon as possible from Assad regime and reaffirm Assad and his “clan” should be held accountable for their crimes at ICC (United Nations Press Conference, *Press conference by foreign ministers of France, United Kingdom on Syria* (2012, August 30) available at: http://www.un.org/News/briefings/docs/2012/120830_Syria.doc.htm [accessed 18 May 2015]).

²³ P. Fargues and C. Fandrich, ‘The European Response to the Syrian Refugee Crisis What Next?’ *Migration Policy Centre* (MPC) RR, 2012/14, 10. The numbers of those who die at sea have steadily increased since the early 2000s. According to UNHCR, which already in 2011 had described the Mediterranean as “the most deadly stretch of water for refugees and migrants”, in 2011 there were around 1,500 deaths; in 2012, around 500; in 2013, over 600; and as of 15 September 2014, 2,500.

²⁴ Syrians are by far the first to be smuggled at sea (see Appendix 17).

Europe's primary response to the Syrian refugee crisis has been 'to contain the crisis in the countries neighbouring Syria and reinforce Europe's borders'.²⁵ Nevertheless, when it comes to host refugees, 'Europe has been much less generous and often negligent in abiding by its human right obligations'²⁶: Syrian asylum seekers have met increasing obstacles on their way to the EU.

1) **The reinforcement of EU's external borders**

The EU has been criticized for its policy, which aims to secure EU borders by preventing asylum seekers from entering into the EU rather than to rescue lives.²⁷ EU external borders policies apply on the borders of the Schengen States where the expanse includes for example the sea borders of Spain, Italy and Greece, including their islands.²⁸ The agency²⁹ responsible applying such policies is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, better known as Frontex. Frontex, which was established in

²⁵ A. Miller and C. Orchard, supervised by Pr Dawn Chatty, 'Protection in Europe for refugees from Syria', Refugee Studies Centre, University of Oxford, September 2014, p.77

²⁶ European Council, 'Syrian refugees: a neglected human rights crisis in Europe, Commissioner for Human Rights' (20 December 2013) <http://www.coe.int/en/web/commissioner/-/syrian-refugees-a-neglected-human-rights-crisis-in-euro-2> [20 February 2015]; P. Fargues, 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01, p.2

²⁷ UNHCR, Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity (11 July 2014) <http://www.refworld.org/docid/53b69f574.html> [accessed 5 June 2015]; European Council, 'Syrian refugees: a neglected human rights crisis in Europe, Commissioner for Human Rights' (20 December 2013) <http://www.coe.int/en/web/commissioner/-/syrian-refugees-a-neglected-human-rights-crisis-in-euro-2> [20 February 2015]; Amnesty International, 'EU immigration policy puts lives and rights at risk' (online article) 9 July 2014, available at: <https://www.amnesty.org/en/press-releases/2014/07/eu-migration-policies-put-lives-and-rights-risk/> [accessed 2 March 2015]; Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity' (Euro-Mid Observer for Human Rights, November 2013) http://www.euromid.org/report/death_boats_english.pdf [accessed 28 March 2015].

²⁸ The expanse of land and sea includes the Spanish enclaves of Ceuta and Melilla in Morocco, the Polish-Ukrainian land border, and the sea borders of Spain (including the Canary Islands). However, it explicitly excludes Gibraltar, due to the on-going disagreement between Spain and the UK on its frontiers.

²⁹ The EU has created a lot of agencies: over 40 different categories of agencies within the EU. European Union, 'Agencies and other EU bodies' available at: <http://europa.eu/about-eu/agencies/> [accessed 11 January 2015]. They have a general regulatory role but also support decision-making process. European agencies have the capacity to deal with expertise data.

October 2004 and began its operation in 2005, has an important role within the EU.³⁰ It plans, coordinates and implements joint operations across the EU's air, land and sea borders, provides rapid response capabilities through European Border Guard Team and assists Member States in the return of foreign nationals.³¹

Amnesty International outlines the fact that Frontex is allocated a massive budget³² compared to the one allocated for the EASO³³, which 'support member states' asylum-related programmes'.³⁴ For the period 2007-2013, the DG for Home Affairs was allocated almost €4 billion under the Solidarity and Management of Migration Flows Programme (SOLID) in order to support Member States' activities on asylum, integration, return of third country nationals and border control.³⁵ Only, 17 per cent was allocated to support asylum.³⁶

³⁰ Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union [2004] OJ L349/25. Frontex is based in Warsaw (Poland).

³¹ C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', *Migration Observatory Policy*, COMPAS, University of Oxford, UK, May 2014 p.3 ; Frontex, 'Mission and Tasks' available at: <http://frontex.europa.eu/about-frontex/mission-and-tasks/> [accessed 6 June 2015]; Frontex, Frontex Risk Analysis Network Quarterly Report (Fran), January-March 2015, available at: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q1_2015.pdf [accessed 17 July 2015].

³² e.g. €114 million for 2015 (Frontex, *Frontex Budget 2015*, available at: http://frontex.europa.eu/assets/About_Frontex/Governance_documents/Budget/Budget_2015.pdf [accessed 12 May 2015]).

³³ €15.6 million for 2015 (Statement of revenue and expenditure of the European Asylum Support Office (EASO) for the financial year 2014 amending Budget No 1 (17 December 2014) OJ C 454/64–67, available at: <https://easo.europa.eu/wp-content/uploads/EASO-Budget-2015.pdf> [accessed 12 May 2015]).

³⁴ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.16

³⁵ In April 2014, two new funds were established and replaced the SOLID Programme: the Asylum, Migration and Integration Fund (AMIF) with a budget of €3,137 million (Regulation 516/2014) and the Internal Security Fund (borders and visa) (ISF) with a budget of €2,760 million (Regulation 515/2014). The AMIF which began in 2014 and will continue until 2020 focus on people flows and the integrated management of migration. It supports actions addressing all aspects of migration, including asylum, legal migration, integration and returning irregularly staying non-EU nationals.

³⁶ It represents 17%. See European Commission, 'Directorate General for Home Affairs' at: http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/index_en.htm [accessed 14 July 2015].

Border controls have been reinforced due to the 'renewed influx of irregular migrants by sea'.³⁷ A number of Frontex Operations at Sea such as Operation Poseidon Sea³⁸, Operation Hermes³⁹ and Operation Aenas⁴⁰ have been held. New surveillance technologies⁴¹ are being used by national surveillance systems through Frontex.⁴² Southern Mediterranean countries, such as Greece, have feared since the beginning of the Syrian armed conflict, the potential influx of refugees from Syria.⁴³ In Greece, the measures include for example the building of detention centres for Syrian refugees and the deployment of additional 18,000 border guards. In Italy the 'number of reception places for asylum seekers and set up temporary structures' have been extended.⁴⁴ Frontex has been criticised for its lack of transparency⁴⁵, unclear responsibility and accountability, and a lack of democratic scrutiny, particularly of agreements with third countries.⁴⁶ In 2011, Frontex Regulation was amended as to explicitly require the compliance with

³⁷ C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', *Migration Observatory policy*, COMPAS, University of Oxford, UK, May 2014, p.3

³⁸ Targeting irregular migration by sea from Turkey to Greece.

³⁹ Targeting irregular migration in the Central Mediterranean area towards Italy.

⁴⁰ Focusing on illegal migrants from Turkey, Albania and Egypt to the South East coast of Italy.

⁴¹ Such as drones and high-resolution cameras.

⁴² C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', *Migration Observatory policy*, COMPAS, University of Oxford, UK, May 2014, p.4.

⁴³ 'Greece fears new syrian migration wave' *Middle East Online* (17 September 2012) available at <http://www.middle-east-online.com/english/?id=54413> [accessed 22 May 2015]; P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, Appendix 3 "Greece".

⁴⁴ ECRE, 'Over 100,000 refugees and migrants have reached Italy by sea in 2014 – Many moved forward to other European countries' (9 September 2014) available at: http://www.asylumineurope.org/sites/default/files/resources/one-pager_it_0.pdf [8 July 2015].

⁴⁵ 'There is also no requirement at present to publicize information on how allegations of human rights violations have been dealt with and what decisions or actions were taken, which prevents public scrutiny' Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.16

⁴⁶ Parliamentary Assembly of the Council of Europe, 'Frontex: human rights responsibilities.' Report by Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly of the Council of Europe, Doc. 131618, 2013. These are the typical critics applied to the relationship between scientific expertise and decision-making. Cordina reveals that regulating about technical issues lead to weakness EU political accountability due to the lack of transparency of this complex policy-making (Cordina, C. 'Legitimacy: a growing necessity for the future of Europe' Autumn 2003, Bank Of Valletta Review, No.28:60).

EUCFR.⁴⁷ Nevertheless, the lack of human rights protection still persists as nor clear 'mechanism for investigating reports of human rights abuses' neither the possibility to lodge individual complaints are given.⁴⁸

In 2013, the European Commission created an 'information-exchange framework designed to improve the management of Europe's external borders', better known as Eurosur.⁴⁹ The objectives of Eurosur are to support MS and to prevent loss of migrant lives at set but as Crépeau argues the new system of Eurosur, in the alignment of EU's external policy, is preventing arrivals rather than protecting lives.⁵⁰

In addition to being costly, EU external border controls 'have only limited effects' as over 225,000 refugees and migrants have arrived by the Mediterranean Sea as of July 2015, which amounts to a 'staggering 750 per cent increase on the same period in 2014'.⁵¹ Most of them are refugees from Syria⁵² and many of them are not men but families with children.⁵³

⁴⁷ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 22 November 2011, OJ L 304/1-304/7.

⁴⁸ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.16; C., Costello and E., Hancox 'The UK, EU Citizenship and Free Movement of Persons', *Migration Observatory policy*, COMPAS, University of Oxford, UK, May 2014, p.4

⁴⁹ Frontex, 'Eurosur' <http://frontex.europa.eu/intelligence/eurosur/> [accessed 10 May 2015]. The cost estimates for EUROSUR amount to €244 million for 2014-2020, see European Commission, *New tools to save migrants' lives at sea and fight cross-border crime*, 19 June 2013, MEMO/13/580. Its operation began as from 2 December 2013.

⁵⁰ Crépeau F. "Regional Thematic Study: Management of the External Borders of the EU and its Impact on the Human Rights of Migrants." Report of the UN Special Rapporteur on the Human Rights of Migrants, document number A/ HRC/23/46, 2013.

⁵¹ UNHCR, 'Number of refugees and migrants arriving in Greece soars 750 per cent over 2014' (7 August 2015) <http://www.unhcr.org/55c4d1fc2.html> [accessed 7 August 2015]

⁵² 63% per cent of all arrivals since the beginning of 2015 (UNHCR, 'Number of refugees and migrants arriving in Greece soars 750 per cent over 2014' (7 August 2015) <http://www.unhcr.org/55c4d1fc2.html> [accessed 7 August 2015])

⁵³ See Appendix 18.

- Reaching Europe: Syrians and Palestinians in the same boat

Reaching Europe is often the only 'viable' solution left. People fleeing the conflict in Syria have the possibility to take “circuitous routes through several countries” in order to reach the European Union.⁵⁴ Refugees from Syria often take either the land route or sea route. However, only the sea route across the Mediterranean is examined under this section as it is the most controversial regarding EU MS duties to rescue and protect lives. The main maritime routes lead to Greece and Italy.⁵⁵ Due to the absence of safe and regular routes to Europe, many refugees pay and risk their lives in order to access asylum: ‘hundreds of migrants die in sea journeys to Europe each year, and many more are exploited by smugglers’.⁵⁶ As of July 2015, 2,100 refugees and migrant died while crossing the Mediterranean.⁵⁷ The exact number of people who have died in the Mediterranean Sea is unknown as many bodies are never found. Nevertheless, it is estimated that since 2000 29,000 people at least have lost their lives while reaching Europe.⁵⁸

⁵⁴ P. Fargues and C. Fandrich, ‘The European Response to the Syrian Refugee Crisis What Next?’ *Migration Policy Centre (MPC) RR*, 2012/14, 5; H.S. Legomsky, ‘Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection’, *International Journal of Refugee Law*, Vol.15 No.4, p.568. See Appendix 19.

⁵⁵ There are also Cyprus and Malta (and possibly France and Spain but no data has shown any arrival of Syrians and Palestine refugees). Sea routes are often for Syrians and Palestine refugees who are stuck in neighbouring countries such as Lebanon or Egypt (and maybe Libya).

⁵⁶ Miller and Orchard p.35. In known incidents from 1998 to August 2011, 17,738 people died while attempting to reach Europe.

Europe; and in 2013 alone, approximately 600 migrants died at sea. UNHCR ‘Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity’ (11 July 2014) <<http://www.refworld.org/docid/53b69f574.html>> accessed 11 July 2014, 7-8, 10;

⁵⁷ UNHCR, ‘Number of refugees and migrants arriving in Greece soars 750 per cent over 2014’ (7 August 2015) <http://www.unhcr.org/55c4d1fc2.html> [accessed 7 August 2015]. In 2014, for the same period 2,500 lost their lives.

⁵⁸ This is an estimate number which is calculated through data compiled by journalists as part of the project “The Migrants Files,” see <http://www.detective.io/detective/the-migrants-files> (accessed 14 July 2015). This number is not exclusive of the number of died at sea, it includes other died.

In addition to being very risky, sea routes are expensive too. Smugglers use without scruple the distress of Syrians and PR in order to earn a lot of money.⁵⁹ The price of this deadly transport ticket varies between \$3,000 and \$5, 000 for one adult.⁶⁰ Accordingly, unaccompanied minors are often taking sea routes as it less expensive (\$ 1,500). Their family put all of their hope in them as it is an "all or nothing" journey.

Human costs at the external borders of Europe raise the issue of burden-sharing and cooperation as well as the compliance with international law.⁶¹ According to Amnesty International, the death toll will only diminish 'if safe and regular routes into the EU are opened'.⁶² Meanwhile, MS and the EU have a duty to 'protect the lives of those at sea and to ensure access to asylum for the many among them who need it'.⁶³

The search and rescue (SAR) regime in the central Mediterranean is under pressure and has become weaker due to the high number of refugees crossing the Mediterranean. Under international maritime law, States must establish search and rescue regions and ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of the person or the circumstances in which that person is found.⁶⁴

⁵⁹ "The Egyptian smugglers were nasty and humiliating us all the time", said Mrs. (S.Y.), a refugee who arrived in 2013 in Italy (Eurmo-Mid death p.17).

⁶⁰ Euro-Mid Observer for Human Rights, Investigation and Recommendations: Smuggler Exploitation and Murder of Refugees (21 September 2014) available at: <http://www.euromedmonitor.org/en/article/612/Investigation-and-Recommendations:-Smuggler-Exploitation-and-Murder-of-Refugees> [accessed 8 May 2015]

⁶¹ A. Klug, 'Strengthening the Protection of Migrants and Refugees in Distress at Sea through International Cooperation and Burden-Sharing' *International Journal of Refugee Law*, 2014, Vol. 26, No. 1, 48–64; A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books.

⁶² Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 Septembre 2014, EUR 05/007/2014, p.5.

⁶³ Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 Septembre 2014, EUR 05/007/2014, p.5. The obligation to protect life at sea is enshrined in international maritime law, international human rights law as well as in the national laws of both Italy and Malta

⁶⁴ International Convention on Maritime Search and Rescue (adopted 27 April 1979) 1403 UNTS (the 1979 SAR Convention), art 2.1.10; Convention on the Law of the Sea (adopted 10 December 1982) 1833 UNTS 3 (the 1982 UNCLOS), art 98. Under article 98 of the 1982 UNCLOS, to which all Mediterranean coastal states are signatories, 'every state must require the master of a ship flying its flag to render assistance and to rescue

It is important to present concrete examples that have happened in the Mediterranean Sea as it reveals the shortcomings and lack of effective safe measures at the EU level.

- *Shipwreck Tragedies*⁶⁵

On 11 October 2013, a boat sank in Mediterranean Sea while carrying over 400 Syrians and PR⁶⁶ from Libya to Italy. The cause of the shipwreck is imputed to shots coming from the Libyan Coast guard as reported by survivors. Nearly half of the refugees present on the boat have died.⁶⁷ Some attribute this high death toll, although it cannot be verified, to the late arrival of the Italian and Maltese authorities.⁶⁸

On 15 September 2014, dishonest smugglers who promised a safe passage in exchange of expansive fees, let the boat, carrying more than 400 asylum seekers mainly Syrians and Palestine refugees from Syria and Gaza Strip, drown in international waters on their way of Italy.⁶⁹ Only 11 individuals have survived including 8 PR and two Syrians.⁷⁰

persons in distress at sea, in as much as he or she can do so without serious danger to his or her ship, crew or passengers'.

⁶⁵ Only two examples of shipwreck are examined because they relate the most to what refugees from Syria endure at sea. Sadly they are so many The most famous shipwreck relayed by the media was the Lampedusa one where at least 350 refugees were killed on October 3rd, 2013, most of which were Eritreans and Somalis, after a fire broke out inside their boat which was carrying about 500 immigrants.

⁶⁶ Coming from the Yarmouk and Homs refugee Camps, Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity' (Euro-Mid Observer for Human Rights, November 2013) 23.

⁶⁷ This tragedy resulted in the death of at least 36 victims, while over 200 Syrians went missing. Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity' (Euro-Mid Observer for Human Rights, November 2013) 23 : "I have lost 9 members of my family, and they are all missing. I do not know anything about them and they are not among the 36 bodies, so where are they? Most probably still in the boat, which is now in the depth of the sea" said S.D. a Palestine refugee from Syria.

⁶⁸ Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity' (Euro-Mid Observer for Human Rights, November 2013) 20. 'I thought it won't take much long before they save us. But it took so much longer before real rescue arrived', said M.S who was on the boat. According to prolonged interviews with thirteen survivors, the Italian and the Maltese authorities were reluctant in answering the call for help. The rescue operation came at least 2 hours after the first call for help.

⁶⁹ Aljarjawi A., 'Details on the drowning of Arab migrants in the Mediterranean Sea' (November 2014) *Al Jazeera (Arabic)* <http://www.aljazeera.net/news/reportsandinterviews/2014/9/21/مهاجرين-إغراق-فأصدى>

The situation is tragic: one person drowns every four hours in the Mediterranean Sea.⁷¹ The right to life, which is ensured by various instruments,⁷² is clearly violated.⁷³ That said, it would be untrue to say no measures have been taken.

➤ Italian's response: Operation Mare Nostrum

Owing to the tragic shipwreck of 3 October 2013 near Lampedusa⁷⁴, the Italian authorities in the Channel of Sicily launched the Operation '*Mare Nostrum*' (OMN).⁷⁵ Italy was the only EU MS to take 'concrete steps to avoid further deaths at sea'.⁷⁶ It had deployed part of its Navy in order to rescue refugees. The operation began officially on 18 October 2013 and ended on the 31 December 2014.

The operation was successful as the death toll was considerably reduced: it saved the lives of over 140,000 individuals between November 2013 and October 2014. Still, 2,000 people lost their lives or were reported missing in 2014.⁷⁷ The Italian Council for

بحر-عرب [accessed 16 May 2015]; Euro-Mid Observer for Human Rights, Investigation and Recommendations: Smuggler Exploitation and Murder of Refugees (21 September 2014) available at: <http://www.euromedmonitor.org/en/article/612/Investigation-and-Recommendations:-Smuggler-Exploitation-and-Murder-of-Refugees> [accessed 8 May 2015]

⁷⁰ 'I cannot look into the sea, I lost my friend Yahea, maybe I lost my soul and my mind in the sea. I hate the sea, I can't look at it.' Mohammed Kazkji, 22, a Syria student of electrical engineering.

Euro-Mid Observer for Human Rights, Investigation and Recommendations: Smuggler Exploitation and Murder of Refugees (21 September 2014) available at: <http://www.euromedmonitor.org/en/article/612/Investigation-and-Recommendations:-Smuggler-Exploitation-and-Murder-of-Refugees> [accessed 8 May 2015]

⁷¹ See Appendix 20 for testimonies of a boat journey and a shipwreck tragedy.

⁷² UDHR Article 3, ECHR Article 2, the Charter Article 2, ICCPR Article 6 Right to liberty and security of the person (prohibition on arbitrary detention) ECHR Article 5, the Charter Article 6, UDHR Article 9, ICCPR Article 9

⁷³ Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity' (Euro-Mid Observer for Human Rights, November 2013) 27.

⁷⁴ 368 persons had died. Only 26 bodies were recovered. UNHCR, 'On a high seas rescue mission with the Italian Navy' (21 March 2014) http://www.unhcr.org/532c4cbb6.html#_ga=1.129539020.111928326.1438330774 [accessed 20 March 2015]; Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 September 2014, EUR 05/007/2014, p.12

⁷⁵ Donato (de) M. 'National Country Report: Italy' (*Italian Council for Refugees & ECRE*, January 2015) p.11 available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_italy_third_update_final.pdf [accessed 8 July 2015]

⁷⁶ Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 September 2014, EUR 05/007/2014, p.4

⁷⁷ As of October 2014, it saved more than 140, 000 people (ECRE, 'Mare Nostrum to end- New Frontex operation will not ensure rescue of migrants in international waters' available at: <http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html> [accessed 10

Refugees pointed out that ‘rescue at sea in the channel of Sicily should be considered as a European responsibility’ and the ‘efforts under the OMN should be supported by other MS and the European Commission’.

The issue of burden-sharing⁷⁸ between MS that are exposed geographically to irregular entries more than others has become a sensitive political matter. Burden-sharing is a wide concept that expands on solidarity with the countries of first asylum.⁷⁹ It is an essential concept on which the CEAS is built. Burden sharing is constantly being challenged, especially by MS that are on the frontiers of Europe due to the extreme strain and pressure they face as a result of the massive influx of refugee coming from the Middle East region.⁸⁰ At each refugee crisis, the point is that it is always the same: the concept of burden-sharing is not sufficiently improved and ‘its results will come too late to address a refugee crisis’.⁸¹

It was proposed that *Mare Nostrum* would be supplanted by Frontex Plus but it was finally replaced by the Frontex Operation Triton.⁸² Contrary to what it is believed by some persons, the OMN was not a factor nor a cause for the increasing number of

May 2015]; UNHCR, *Update on UNHCR's operations in Europe*, 17 September 2014, available at: <http://www.refworld.org/docid/55d32f1b4.html> [accessed 18 August 2015]).

⁷⁸ Also called ‘responsibility-sharing’.

⁷⁹ European Commission, *Communication towards more accessible, equitable and managed asylum systems* COM (2003) 315, 13.

⁸⁰ Some 124,000 refugees and migrants had arrived in Greece by sea at the end of July this year – a staggering 750 per cent increase on the same period in 2014, the UN refugee agency detailed on Friday. UNHCR said that in July alone 50,000 new arrivals were reported, 20,000 more than the previous month -- an increase of almost 70 per cent -- mainly to the islands of Lesbos, Chios, Kos, Samos and Leros.

UNHCR, ‘Number of refugees and migrants arriving in Greece soars 750 per cent over 2014’ (7 August 2015) <http://www.unhcr.org/55c4d1fc2.html> [accessed 7 August 2015]. See Appendix 21.

⁸¹ P. Fargues, ‘Europe Must Take on its Share of the Syrian Refugee Burden, but How?’ Migration Policy Centre, Policy Brief, February 2014/01, 3.

⁸² ECRE, ‘Mare Nostrum to end- New Frontex operation will not ensure rescue of migrants in international waters’ available at: <http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html> [accessed 10 May 2015]. Triton operation began on 1 November 2014 (European Commission, Frontex Joint Operation ‘Triton’ – Concerted Efforts for managing migrator flows in the Central Mediterranean, MEMO(2014)609, 31 October 2014).

disembarkations.⁸³ There is ample evidence that the number of arrivals by sea has increased exponentially even after the cessation of the OMN.

➤ *EU's response: Triton Operation*

On the 1st November 2014, the joint Frontex operation Triton was launched. Triton does not substitute Mare Nostrum: its mandate does not principally embrace SAR activities in the sea. Nevertheless, UNHCR and many NGOS⁸⁴ expressed their concern about the joint Frontex operation Triton. Limited to patrol the Mediterranean Sea borders, there are serious concerns regarding the effectiveness of Triton 'to prevent tragedies at sea'.⁸⁵

While the later operated also in international waters⁸⁶, the former is only active within 30 miles off the Italian coast, which is likely to lead to the death of more migrants and refugees in their attempt to reach Europe.⁸⁷ Moreover, the costs amounted to 9 million euro per month in Mare Nostrum, the budget of Triton is only 3 million per month.⁸⁸ Frontex's operations are subordinated on EU and MS' contribution as it does not own planes or ships.⁸⁹

⁸³ Donato (de) M. 'National Country Report: Italy' (*Italian Council for Refugees & ECRE*, January 2015) 49.

⁸⁴ Such as Amnesty International and Euro-Mid Observer.

⁸⁵ Donato (de) M. 'National Country Report: Italy' (*Italian Council for Refugees & ECRE*, January 2015) p.11

⁸⁶ It covered 175 miles off the Italian coast.

⁸⁷ ECRE, 'Mare Nostrum to end- New Frontex operation will not ensure rescue of migrants in international waters' available at: <http://ecre.org/component/content/article/70-weekly-bulletin-articles/855-operation-mare-nostrum-to-end-frontex-triton-operation-will-not-ensure-rescue-at-sea-of-migrants-in-international-waters.html> [accessed 10 May 2015]. "If the EU is serious about preventing future tragedies, it needs to give Triton the mandate and resources to rescue boats throughout the Mediterranean", said Judith Sunderland, Senior Europe Researcher at Human Rights Watch (Amnesty International & Human Rights Watch, EU Justice & Home Affairs Council: Europe must act to save lives at sea, Joint Presse Release, 9 October 2014, <http://www.amnesty.eu/en/news/press-releases/all/eu-justice-home-affairs-council-europe-must-act-to-save-lives-at-sea-0789/> [accessed 9 June 2015].

⁸⁸ According to Frontex, 'while saving lives is an absolute priority in in all maritime operations coordinated by Frontex, the focus of Joint Operation Triton will be primarily border management' (Frontex, Frontex launches call for participation of the EU Member States in Joint Operation Triton (26 September 2014) <http://frontex.europa.eu/news/frontex-launches-call-for-participation-of-the-eu-member-states-in-joint-operation-triton-b9nupQ> [accessed 8 June 2015]).

⁸⁹ 18 Schengen Member States (Austria, Belgium, Estonia, Finland, France, Germany, Iceland, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Switzerland, Slovenia, Spain, United Kingdom) as well as

During summer 2015, Triton has deployed 3 airplanes, 6 Offshore Patrol Vessels, 12 patrol boats, 2 helicopters, 9 debriefing and 6 screening teams.⁹⁰ The operational area has been extended to 138 NM south of Sicily.⁹¹

Syrians and PR who arrive are considered as irregular migrants until they lodge an 'asylum claim and join the category of asylum seekers'.⁹²

2) Refugees from Syria in Europe

- Detention: penalization of the entry

The responsibility of States to provide effective protection for refugees within their borders includes a set of principles. States have a duty to not restrain the individual's right to seek asylum.⁹³ States must implement any treaty obligations, including the 1951 Convention, in 'good faith'.⁹⁴ It is the case when States ensure refugees 'the widest possible exercise of... fundamental rights and freedoms'.⁹⁵ Under Article 31 of the

other Union agencies and bodies and international organizations (EASO, EFCA, EMSA, EUROPOL, FRA, UNHCR, IOM and EEAS/CSDP Mission "EUBAM LYB") participate in the operation. A total of 26 European countries are taking part in Triton by deploying experts and technical equipment. These are: Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

⁹⁰ Frontex. 'Frontex expands its Joint Operation Triton' (26 May 2015) available at: <http://frontex.europa.eu/news/frontex-expands-its-joint-operation-triton-udpbHP> [accessed 5 June 2015]; Amnesty International, Europe et migrations: L'esprit "Forteresse" enfin ébranlé ? (15 May 2015) <http://www.amnesty.fr/Nos-campagnes/SOS-Europe/Actualites/Premiers-coups-de-boutoir-contre-la-Forteresse-Europe-15149> [accessed 13 July 2015]

⁹¹ 'We have dramatically increased the deployment levels in the Central Mediterranean to support the Italian authorities in controlling its sea borders and in saving lives, too many of which have already been tragically lost this year' Fabrice Leggeri, Frontex's Executive Director, said. The other considerable development is 'the establishment of a regional base in Sicily from which Frontex will coordinate the operation and work closely with liaison officers from Europol, Eurojust and EASO in support of the Italian authorities' Frontex. 'Frontex expands its Joint Operation Triton' (26 May 2015) available at: <http://frontex.europa.eu/news/frontex-expands-its-joint-operation-triton-udpbHP> [accessed 5 June 2015]

⁹² P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis What Next?' Migration Policy Centre (MPC) Research Report 2012/14, p.5.

⁹³ The Universal Declaration of Human Rights, article 14(1) states that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution".

⁹⁴ Vienna Convention on the Law of Treaties (adopted 23 May 1969), 1155 UNTS 331, arts.26,31. The 'good faith' test consists in looking at 'the practical effect of State action' rather its intentions (G. S. Goodwin-Gill and J. McAdam 'The refugee in international law' (3rd edn., OUP, 2007) 389).

⁹⁵ Preamble of the 1951 Refugee Convention.

Convention, States must not punish refugee for irregular entry on their territories.⁹⁶ The detention of asylum seeker, which often occurs, should only be under exceptional circumstances.⁹⁷ Refugees often do not possess proper documentation when seeking asylum in a State due to some compelling reasons.⁹⁸ Although practices concerning detention varies greatly among EU MS⁹⁹, unlawful detention, detention in poor conditions and serious abuse of Syrians have been alleged particularly in the south-eastern border countries.¹⁰⁰ Between 2011 and 2014, Greek police and authorities have arrested 16,211 Syrian refugees arrived by sea routes while attempting reach another European destination.¹⁰¹ Euro-Mid has also reported human rights violations such ill-treatment and abuse by the Italian Authorities on Syrian and PR.

- Syrian asylum claims in Europe

Prior to the Syrian crisis, ‘there had always been a regular flow of Syrians seeking asylum in Europe’.¹⁰² Syrians in the EU fall within three groups: asylum seekers, ordinary travellers and irregular migrants. Only asylum claims by Syrian are examined as

⁹⁶ According to Clayton, the ‘entry to seek asylum is not illegal but also authorized (G. Clayton, *Textbook on Immigration and Asylum Law* (6th edn. OUP, 2014) 365). See *R v Naillies* [1993] AC 674 HL: it was held that ‘arriving in the UK and requesting asylum without attempting to deceive did not make the defendants illegal entrants’ and *R v SSHD ex p Saadi* [2002] UKHL 42: the detention of asylum claimants was lawful ‘to prevent unauthorized entry’.

⁹⁷ Detention measures should not be applied ‘unlawfully nor arbitrarily’ but only, if there is a necessity such as the protection of national security (E. Feller, V. Turk and F. Nicholson *Refugee Protection in International Law: UNHCR’s Global consultations on International Protection* (CUP, 2003) p.15; UNHCR, Detention of Refugees and Asylum-Seekers, 13 October 1986. No. 44 (XXXVII) – 1986, available at: <http://www.unhcr.org/refworld/docid/3ae68c43c0.html> [accessed 30 April 2015]; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> [accessed 30 April 2015]).

⁹⁸ Asylum-seekers may have lost their passport while traveling or they could be just travelling on false documents. Conversely, most asylum-seekers are likely to be denied visas through official migration channels due to the restrictive immigration policies. Palestinian refugees are those least like to have access to visas as a result of their protracted refugee situation.

⁹⁹ The RCD does not contain an upper limit on the length of detention. The duration for detention varies considerably among the States. For example while the maximum period of detention in France is 45 days, it is 18 months, in Greece other countries such the United Kingdom have no such limit.

¹⁰⁰ P. Fargues and C. Fandrich, ‘The European Response to the Syrian Refugee Crisis: What Next?’ Fargues P and Fandrich C, ‘The European Response to the Syrian Refugee Crisis-What Next?’ *MPC RR*, No. 2012/14, 39.

¹⁰¹ P. Fargues, Europe Must Take on its Share of the Syrian Refugee Burden, but How?’ *MPC PB* No. 2014/01, 3.

¹⁰² P. Fargues, Europe Must Take on its Share of the Syrian Refugee Burden, but How?’ *MPC PB* No. 2014/01, 2.

it is the only group covered by the EU statistics and most importantly asylum applications are a direct consequence of the on-going Syria crisis.

In 2014, Syrian nationals are the first recipient of asylum protection in the EU.¹⁰³ According to the UNHCR, the cumulative number of Syrian Applications as of June 2015 is 272,590.¹⁰⁴ EU MS 'have responded to the refugee crisis in an uneven fashion'.¹⁰⁵ The top five countries of asylum applications are Germany with 89,647; Sweden 62,222; Austria 16,234, Bulgaria 14,520 and Netherlands 14,127. Sweden and Germany alone took 56 per cent of the total asylum claims in the EU¹⁰⁶ while the other countries have received 44 per cent.

Although Syrian asylum applications have increased significantly since the beginning of the armed civil conflict, the number remains small compared to the total number of refugees in the Syrian region. One of the reasons why Europe has been reluctant to admit refugees from Syria is due to 'the deepest economic crisis since World War II' across Europe: all EU MS are constrained to cut their own budget.¹⁰⁷ With income plummeting and unemployment soaring, extreme politics and public opinion in some MS, including those who are the main recipients of asylum seekers¹⁰⁸, have become more sceptical toward immigration and asylum.¹⁰⁹

¹⁰³ This has slightly changed in 2015, where Kosovans are the first.

¹⁰⁴ UNHCR, *Europe: Syrian Asylum Applications from April 2011 to June 2015* <http://data.unhcr.org/syrianrefugees/asylum.php> [10 June 2015]. There is a slight decrease in 2015 comparing to 2014 (Appendix 22).

¹⁰⁵ P. Fargues, *Europe Must Take on its Share of the Syrian Refugee Burden, but How?* MPC PB No. 2014/01, 2.

¹⁰⁶ See the key figure p.12.

¹⁰⁷ Fargue 2014 p.4; E. Collett, 'Future EU policy development on immigration and asylum: Understanding the challenge', *Migration Policy Institute*, EPBS, Issue no.4, May 2014, p.4; Clayton 2011 p.761

¹⁰⁸ B. Mills, 'Continental Drift: Realigning the Humanitarian Purpose and Practical Reality of International Refugee Law in Western States' in *Refugee Review: Re-conceptualizing Refugees and Forced Migration in the 21st Century* (2015) Vol. II, No.1, p.42. Mills argues that while Germany is the first country to host Syrian refugees, widespread xenophobia is sadly characteristic of German society.

¹⁰⁹ P. Fargues, *Europe Must Take on its Share of the Syrian Refugee Burden, but How?* MPC PB No. 2014/01, 4; E. Collett, 'Future EU policy development on immigration and asylum: Understanding the challenge', *Migration Policy Institute*, EPBS, Issue no.4, May 2014, p.5. Xenophobic parties are sweeping the EU: in the UK, UKIP, in

The European Commission chose to support MS coming under pressure due to the increased number of Syrian applications.¹¹⁰ An emergency funding from the European Refugee Fund (ERF)¹¹¹ was provided to Bulgaria, Germany, Greece, Italy, Malta, Cyprus, France, Hungary and the Netherlands.¹¹²

States should ensure the access to fair procedures for the determination of refugee status. Most EU MS ‘do not prioritize Syrian asylum applications’.¹¹³ Germany is one of the few EU MS that prioritized asylum applications from Syria.¹¹⁴

Although UNHCR recognizes that the vast majority of Syrians meet the criteria for refugee status and thus qualify for international protection¹¹⁵, the assessment of Syrian asylum claims and the type of protection granted vary among EU MS. In 2013, while Syrians were mainly granted refugee status in the UK, Denmark, France, Austria and

France Front National; in Greece Golden Dawn; in Germany Pegida; in Sweden Sweden Democrats and many others.

¹¹⁰ EASO Annual Report 2013, § 2.8.1

¹¹¹ The ERF has, since its creation until 2013, been a crucial instrument used by MS to address deficiencies in their asylum systems, carry out pilot projects and research, share knowledge and best practices through bilateral and multilateral projects and improve the implementation of the European asylum *acquis* in various areas.

¹¹² This emergency funding amounted to 36 million Euros, which is the highest level since the creation of the fund.

¹¹³ Miller A. and Orchard C., supervised by Pr Dawn Chatty, ‘Protection in Europe for refugees from Syria’, Refugee Studies Centre, University of Oxford, September 2014, p.38.

¹¹⁴ In October 2013, Germany created a special decision-making group for Syria. It would process applications from Syria using a prioritized procedure (Kaltmann M, ‘National Country Report: Germany’ (*Informationsverbund Asyl und Migration & ECRE*, January 2015) 19, available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_germany_third_update_final.pdf [accessed 8 July 2015]; Federal Government of Germany. *Response to information request by the parliamentary group of “The Left” party/Die Linke*, 5th March 2014, No. 18/705, p. 37. Since November 2014, procedures without an interview have taken place for Syrian nationals. Kaltmann M, ‘National Country Report: Germany’ (third update, January 2015) p.23 http://www.asylumineurope.org/sites/default/files/report-download/aida_germany_third_update_final.pdf Accelerated procedures are also applied to Syrian nationals, who likely are granted refugee status. Kaltmann M, ‘National Country Report: Germany’ (third update, January 2015) p.38 http://www.asylumineurope.org/sites/default/files/report-download/aida_germany_third_update_final.pdf

¹¹⁵ UNHCR, *International Protection: Considerations with regard to people fleeing the Syrian Arab Republic*, Update III (October 2014).

Hungary, they were granted subsidiary protection in Sweden, Germany, Bulgaria, Belgium, Romania, Malta, Cyprus, Finland, Spain and the Czech Republic.¹¹⁶

Overall in the EU, applications for asylum from Syrians have the highest recognition rates of all asylum seekers, with 91% resulting in positive decisions.¹¹⁷ Around 185, 000 of Syrian were granted protection namely refugee status, subsidiary protection and humanitarian reasons in EU MS in 2014. This trend is confirmed in 2015 where the first instances decisions positively recognized refugee protection including refugee status and subsidiary protection in 94% of total asylum applications.¹¹⁸

While the EU has shown a sign of closure due the high number of refugees from Syria reaching the Europe by sea, there is a clear sign of openness as most of Syrian asylum seekers who are able to lodge a claim in the EU are granted refugee status or temporary protection. Nevertheless, the UNHCR and ECRE have reported some issues on the situation of Syrian applicants for international protection such as the over-use of detention and the lack of reception conditions for families.¹¹⁹

- *Palestinian refugees from Syria in Europe*

Palestinian diaspora in Europe date back to the 1980's.¹²⁰ The exact number of PR in Europe before the Syrian conflict is unknown as little information is provided due to the absence of statistics. It is however estimated that their number was between 100,000

¹¹⁶ EASO Annual Report 2013.

¹¹⁷ UNHCR welcomes the increased granting of refugee status to asylum-seekers from Syria by EU Member States in 2014, in comparison to 2013, when most EU Member States predominantly granted subsidiary protection to Syrians. UNHCR, Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity, 11 July 2014, <http://www.refworld.org/docid/53b69f574.html> [accessed 5 June 2015] p.16

¹¹⁸ See Appendix 23.

¹¹⁹ EASO Annual Report 2013 § 2.8.1; ECRE/ELENA, Information Note on Syrian Asylum Seekers and Refugees in Europe (November 2013) <http://www.ecre.org/component/downloads/downloads/824.html> [accessed 6 May 2015]

¹²⁰ M. K. Doraï, 'Les refugies palestiniens en Europe. Complexité des parcours et des espaces migratoires', *Revue européenne des migrations internationales*, 2004, Vol.20, No.2, 169.

and 200,000 in 2000.¹²¹ EU MS have not implemented any special policies for PR from Syria. Their asylum claims are not reported uniformly throughout Europe but it is possible to assume that they are designed under the label of ‘stateless individuals’ as they are stateless *de facto*.¹²² In 2013, the number of applicants registered as ‘stateless’ has increased significantly in the EU.¹²³ In 2015, the recognition rate for stateless claims was 90 per cent.¹²⁴

PR face serious protection gap, which has been filled by the EU QD and the CJEU case law. Under article 12(1) (a) ¹²⁵, PR whose assistance from UNRWA has ceased ‘for any reason’ should *ipso facto* be entitled to seek refugee protection including refugee status and subsidiary protection.¹²⁶

In the *Bolbol* case¹²⁷, the CJEU found that Article 12(1)(a) applies in the present and therefore could not apply only to those Palestinians who became refugees as a result of the 1948 conflict and who were receiving protection or assistance from UNRWA at the time when the Refugee Convention was concluded in 1951.¹²⁸ The interpretation of ‘any reason’ article 12(a)¹²⁹ was clarified in a further judgment CJEU case *El Kott*.¹³⁰ The

¹²¹ S. M. Akram, ‘Temporary Protection and its Applicability to the Palestinian Refugee Case’, BADIL, *Information & Discussion Brief*, Issue No 4, June 2000, p.31; Dorai M. K., ‘Les réfugiés palestiniens en Europe. Complexité des parcours et des espaces migratoires’, *Revue européenne des migrations internationales*, 2004, Vol.20, No.2, 169. In Ramallah bureau statistics 2010, the number of PR in foreign countries including the EU is estimate 626,824. See www.pcbs.gov/site/lang_en/785/default.aspx.

¹²² Susan M. Akram, ‘Temporary Protection and its Applicability to the Palestinian Refugee Case’, BADIL, *Information & Discussion Brief*, Issue No 4, June 2000, p.31.

¹²³ In 2013, the increase was +6 075; +173 % comparing to 2014 (EASO Annual Report 2013).

¹²⁴ Of which 73% of refugee status and 22% of subsidiary protection (European Commission, Eurostat News release (18 June 2015) 112/2015 <http://ec.europa.eu/eurostat/documents/2995521/6887997/3-18062015-CP-EN.pdf/4457b050-26f9-4cf1-bf27-9ffb73ff8c7b> [accessed 31 July 2015]) See appendix 23-1.

¹²⁵ See appendix 24 for the full text of article 12 (1) (a) of the 2011 QD.

¹²⁶ Provided that they are not subject to an exclusion or cessation clause.

¹²⁷ Case C-31-09 *Bolbol v Bevándorlási és Állampolgársági Hivatal* [2010] ECR-I5539 (*Bolbol*).

¹²⁸ It disapproved the UK *El-Ali* judgment Court of Appeal in the case of *El-Ali v Secretary of State for the Home Department* [2002] EWCA Civ 1103 where the court of appeal required Palestine refugee to show that he left UNRWA’s under ‘exceptional circumstance’ in order to fall within the scope of UNHCR.

¹²⁹ ‘When such protection or assistance has ceased for any reason...’ the 2004 QD, art 12(1)(a).

¹³⁰ Case C-364/11 *Mostafa Abed El Karem El Kott and others v Bevándorlási és Állampolgársági Hivatal* [2012] EU:C:2012:826 (*El Kott*).

CJEU decided that cessation of UNRWA protection or assistance for any reason ‘should not only refer to the cessation of UNRWA itself but should include the situation in which a person ceased to receive assistance for a reason beyond his control and independent of his volition’.¹³¹ It would be for the MS responsible for examining the asylum application to ascertain whether that person had been forced to leave the UNRWA area of operations.¹³² The PR from Syria that they ‘have been forced to leave UNRWA’s area of operation’ where their ‘personal safety is at serious risk’ and that the UNRWA is clearly unable to meet with their needs.¹³³ UNCHR notes MS are free to adopt interpretations which are more favorable to refugees than the minimum standards set out in the Directive.¹³⁴ In practice, it means that Palestinian asylum claims are dealt in the same way as any other asylum claim.¹³⁵

In case of the cessation of UN protection and assistance before ‘a definitive resolution is achieved’, PR will be entitled automatically ‘to receive protection in line with the requirements of the Refugee Convention’ in any MS.¹³⁶

¹³¹ Those individuals previously assisted by UNRWA must show that the assistance or protection is no longer being received for reasons beyond his control and independent of his volition.

¹³² The CJEU went on to decide that where the condition relating to the cessation of the protection or assistance provided by UNRWA was satisfied, the applicant must be recognised as a refugee within the meaning of Article 2(c) of the Directive („ipso facto entitled to the benefits”), provided always that he was not excluded by virtue of Article 12(1) (b) or (2) and (3) of the Directive (equivalent to Articles 1E and 1F of the Convention)

¹³³ El Kott, paras 65, 82(1). The UNHCR agrees with the CJEU’s interpretation in El Kott, and also notes that practical, legal, and safety barriers may prevent Palestinians from living in areas in which UNRWA operates and should also be included in the interpretation of ‘for any reason’ (UNHCR, *Note on UNHCR’s Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection*, May 2013, available at: <http://www.refworld.org/docid/518cb8c84.html> [accessed 10 June 2015]).

¹³⁴ UNHCR, *Note on UNHCR’s Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection*, May 2013, available at: <http://www.refworld.org/docid/518cb8c84.html> [accessed 10 June 2015]

¹³⁵ The CJEU determined that even those who have claimed UN agency protection or assistance will not be excluded if their protection needs are not being met in fact: *El Kott* (CJEU, 2012), at [56]–[65].

¹³⁶ J. Hathaway and M. Foster, *The Law of refugee Status* (2nd edn, CUP, 2014) p.522. As it was explained all EU MS are part of the Refugee Convention.

- Compliance with non-refoulement

States should ensure the respect for the cornerstone principle of *non-refoulement*.¹³⁷

Accordingly, most of the EU MS have postponed returns to Syria.¹³⁸ Effective returns to third countries of Syrians are also few comparing to the number of Syrian asylum seekers: 644 returns in the first quarter of 2015 comparing to 28,987 asylum seekers.¹³⁹ Under article 3 (3) of the Dublin II, 'any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention'.¹⁴⁰ The concept of 'safe third country'¹⁴¹ raises the issue of whether 'effective protection' is available.¹⁴² From the vantage point of MS, the 'safety' of a third country leads to the rejection of the asylum procedure. From the viewpoint of Refugee Convention, the transfer to a safe third country is inappropriate, especially with the fact that the 'determination of safety' is entirely unilateral. Over time, the concept of 'safe third country' has lost its power as more and more non-EU MS refuse the transfer of the asylum-seeker.¹⁴³

However, it has been reported by the AIDA¹⁴⁴ and Amnesty International¹⁴⁵ that Syrians were unlawfully pushed back to Turkey by Greece.

¹³⁷ The principle of *non-refoulement* is contained in various texts mainly: the 1951 Refugee Convention, art 33; CFREU, art 19(2); art 3. The UNHCR's executive committee has recognized *non-refoulement* as 'a principle of customary international law' (UNHCR, Conclusion General Conclusion on International Protection, 20 October 1982, No. 25 (XXXIII)-1982, para. b.).

¹³⁸ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis: What Next?' *MPC RR*, No. 2012/14, 15.

¹³⁹ See Appendix 25.

¹⁴⁰ Article 3(3) Dublin Regulation.

¹⁴¹ H.S Legomsky, 'Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection', *International Journal of Refugee Law*, Vol.15 No.4. 571.

¹⁴² UNHCR, *Note on Cessation Clauses*, 30 May 1997, EC/47/SC/CRP.30, para.7.

¹⁴³ J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.240.

¹⁴⁴ Asylum Information Database. The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK). Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

- Push-back practice

Massive “push-backs”¹⁴⁶ at the Greek frontiers (both sea and land borders) have occurred since September 2012.¹⁴⁷ Such practices may lead to the breach the principle of non-*refoulement*, cornerstone of international refugee protection.¹⁴⁸ The right to seek asylum is also denied, victims of push-backs are not given the ‘opportunity to request international protection or to challenge their illegal removal’.¹⁴⁹ They are furthermore denied access to an effective asylum procedure: no official registration by the competent authorities and no proper interview.¹⁵⁰ Push-backs also clearly violate the prohibition of collective expulsion.¹⁵¹

Sadly, Syrian refugees are the main victims of push-backs as they attempt to ‘enter Europe in order to seek international protection or to reunite with their families who live

¹⁴⁵ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe’s Borders* 9 July 2014, EUR 05/001/2014, available at:

<https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015]

¹⁴⁶ Practice of informal forced returns. Push-backs take place from Greek territorial waters, the Greek islands and from the land border.

¹⁴⁷ UNHCR, *Denied entry and pushed back: Syrian refugees trying to reach the EU* (Briefing Note, 15 November 2013) available at: <http://www.unhcr.org/528618159.html> [accessed 28 June 2015]; Koulocheris S, ‘National Country Report: Greece’ (*Greek Refugee Council & ECRE*, April 2015) 29; Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe’s Borders* 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015], p.20.

¹⁴⁸ In *Hirsi and Others v. Italy* the Strasbourg court confirmed that non-*refoulement* principle applied at sea.

¹⁴⁹ Koulocheris S, ‘National Country Report: Greece’ (*Greek Refugee Council & ECRE*, April 2015) 29.

Furthermore, in the case of the shipwreck outside the island of Farmakonisi on 20 January 2014, resulting in the death of 8 children and 3 women, all 16 survivors have testified that their boat had been towed back to Turkey by the Hellenic Coastguard. After a preliminary investigation led by the Prosecutor of the Piraeus’ Marine Court, the case was considered to be “manifestly unfounded in substance” with regard to the Greek Penal Code, and on that ground the file was closed.⁶⁴ On 6 February 2015, the Criminal Appeals Court of Dodecanese convicted a Syrian national as the sole perpetrator of the shipwreck resulting in the loss of 11 lives. L. Giannarou, ‘145 έτη φυλάκισης σε Σύρο για το Φαρμακονήσι (“145 years imprisonment of a Syrian for Farmakonisi”)(2015) *Kathimerini* 7 February 2015. Meanwhile, survivors of the tragedy are bringing their case before the ECtHR. ECRE, ‘With their case shelved in Greece, survivors of the Farmakonisi tragedy seek justice at the ECtHR’ (22 January 2015) available at: <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/947-with-their-case-shelved-in-greece-survivors-of-the-farmakonisi-tragedy-seek-justice-at-the-ecthr.html> [accessed 15 June 2015].

¹⁵⁰ They are not asked for any personal details apart from their nationality (Koulocheris S, ‘National Country Report: Greece’ (*Greek Refugee Council & ECRE*, April 2015) 29).

¹⁵¹ ECHR, Protocol 4 art 4; CFREU, art 19(1).

in Germany, Sweden and various other European countries'.¹⁵² Syrian men, women, children, babies and people suffering from severe illness, who are *prima facie* in need of international protection, have been affected by such practice.¹⁵³ The UNHCR noted down in its December 2014 Report the push-backs at the Greek-Turkish land and sea borders.¹⁵⁴

AIDA states in the report on Greece that over 2,000 persons were pushed as of April 2015.¹⁵⁵ Push-backs are often accompanied by violence and sometimes put people at risk.¹⁵⁶ They had been pushed back to Turkey twice in October 2013 by the Greek police. The Greek authorities put them in plastic boats and ferried them back across the Evros river.

Refugees are reportedly abandoned by the special units of the Greek coastguard in Turkish territorial waters regardless of their safety.¹⁵⁷ Most of the interviewees denounced their ill-treated conditions.¹⁵⁸

¹⁵² Koulocheris S, 'National Country Report: Greece' (*Greek Refugee Council & ECRE*, April 2015) 29.

¹⁵³ Afghans, Somalis and Eritreans have been affected too. See ProAsyl, Pushed Back: Systematic Human Rights Violations against Refugees in the Aegean Sea and at the Greek-Turkish Land Border (7 November 2013) available at:

http://www.proasyl.de/fileadmin/fmdam/I_EU_Fluechtlingspolitik/proasyl_pushed_back_24.01.14_a4.pdf.

¹⁵⁴ UNHCR received calls and witnessed cases of persons likely to be in need of international protection, mainly Syrians, who had reached the gates of the FRC in Fylakio, not having yet been apprehended by police, asking to be registered as they feared that, failing registration, they could be summarily returned to Turkey. See UNHCR, *UNHCR observations on the current asylum system in Greece* (December 2014), 9. The Greek Council for Refugees (GCR) has received in 2014, 27 calls regarding a group of 265 individuals coming from Syria, 'asking for help after having entered the Greek territory' Koulocheris S, 'National Country Report: Greece' (*Greek Refugee Council & ECRE*, April 2015) 30.

¹⁵⁵ Koulocheris S, 'National Country Report: Greece' (*Greek Refugee Council & ECRE*, April 2015) 29. The data collected by interviewees' eye-witness accounts.

¹⁵⁶ "they took us in small boats over to the Turkish side with nothing but our clothes left on us" told the two sisters who had fled for Aleppo to Amnesty International (Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders* 9 July 2014, EUR 05/001/2014, p.20).

¹⁵⁷ Recently a video on a video sharing website shows Greek coastguards who deliberately sank a Syrian refugee boat in Turkish waters. See 'VIDEO: Turkish fishermen rescue migrants whose boat was deflated by Greek coast guard' *Daily Sabah* (Istanbul, 13 August 2015) <http://www.dailysabah.com/nation/2015/08/13/video-turkish-fishermen-rescue-migrants-whose-boat-was-deflated-by-greek-coast-guard> [accessed 13 August 2015]

- Dublin system

With regard to the ECHR provisions, MS should justify the Dublin system of responsibility allocation both in 'its mutual recognition dimension and in its proclaimed harmlessness to asylum seekers'.¹⁵⁹ However, instead of allowing a better allocation of responsibility between MS, the system is a system where Northern European countries push the issue to Southern European countries where asylum conditions are poor. The Dublin system fails to provide asylum seekers with access to fair and efficient asylum procedures in Europe. The unfairness of the Dublin system is highlighted with major refugee crisis such as the Syrian one.¹⁶⁰

Generally, the Dublin Regulation applies in the same way to Syrian asylum-seekers as to any other asylum-seekers.¹⁶¹ Most countries have stopped Dublin transfers to Greece because of the risk of human rights violations, further to the ECtHR's findings

¹⁵⁸ In many cases refugees were arbitrarily detained for some hours, without access to the open air and without any food or water. UNHCR, UNHCR seeks clarifications on the fate of Syrian Refugees in Evros (11 November 2013) available at: <http://www.unhcr.gr/nea/artikel/2768a7a2ced20c6daca7326788699f09/unhcr-seeks-clarifications-on-the-fa.html> [accessed 5 June 2015].

"We begged, we are refugees... we saw four policemen beating a man who was resisting. They kicked him and punched him... They used a weapon with electricity". The two sisters from Aleppo (Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders* 9 July 2014, EUR 05/001/2014, p.20).

¹⁵⁹ J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in Lambert H., McAdam J. and Fullerton M., *The Global Reach of European Refugee Law* (CUP, 2013) p.246. As Clayton explains the Dublin System is 'predicated on shared minimum standards throughout the EU'. G., Clayton "Asylum Seekers in Europe: M.S.S. v Belgium and Greece" (2011) Human Rights Law Review Vol 11 (4), 760.

¹⁶⁰ C., Costello and E., Hancox 'The UK, EU Citizenship and Free Movement of Persons', *Migration Observatory policy*, COMPAS, University of Oxford, UK, May 2014, p.5; Protection interrupted The Dublin Regulation's Impact on Asylum Seekers' Protection (The DIASP project) The DIASP project was coordinated by JRS Europe in partnership with June 2013 p.12

"If I go back to Hungary, then I will be deported to Syria, where I risk to be imprisoned for one year. I have no money, no social help; there is no democracy, there are political problems. I keep on being sent back to Hungary, where I have a negative decision for asylum. They will deport me. I don't have any chance." 37- year-old Syrian man interviewed in Belgium (Protection interrupted The Dublin Regulation's Impact on Asylum Seekers' Protection (The DIASP project) The DIASP project was coordinated by JRS Europe in partnership with June 2013 p.8).

¹⁶¹ ECRE/ELENA, 'Information Note on Syrian Asylum Seekers and Refugees in Europe' (November 2013) <http://www.ecre.org/component/downloads/downloads/824.html> [accessed 6 May 2015]. Most of the Dublin transfers in 2013 were take back requests (81% of all Dublin transfers). See Appendix 26.

in *MSS v Belgium*. The *M.S.S. v. Belgium*¹⁶² decision helpfully shows that '[n]either the uneven distribution of migration burdens, nor a minimalist reading of the Dublin Regulation absolves MS of their human rights responsibilities'.¹⁶³ The evidence in *M.S.S.* discloses the 'uneven bargain struck between EU Member States regarding responsibility for asylum applications'.¹⁶⁴ Both the *MSS* judgment and *NS* judgment of the CJEU¹⁶⁵ interrupt the Dublin system transfers by requiring the sending states not to absolve from their responsibility assuming that asylum seeker will be safe from *refoulement* in the receiving state.¹⁶⁶ In addition, UNHCR recommended a suspension of transfers to Bulgaria from January to April 2014 and currently cautions against transfers of particularly vulnerable asylum-seekers to Bulgaria.¹⁶⁷ Transfers to Italy are also viewed as problematic. In *Tarakhel v. Switzerland*¹⁶⁸, the CJEU held that there would be a violation of Article 3 of the ECHR if the Swiss authorities were to send the applicants back to Italy under the Dublin Regulation without having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together. Indeed, the Italian reception asylum system fails to sufficiently provide for those who 'have been already

¹⁶² *MSS v. Belgium and Greece* (ECtHR, App. NO. 30696/09, 21 January 2011). See the facts in appendix 27.

¹⁶³ V. Moreno-Lax, 'Dismantling the Dublin System: *MSS v. Belgium and Greece*' *European Journal of Migration and Law* (2012) p.29; this marks a significant change from the earlier position taken by a Chamber of the ECtHR in *K.R.S. v United Kingdom* (ECtHR, App. No. 32733/08, 2 December 2008). The position in *M.S.S.* was confirmed in *Tarakhel v. Switzerland* (Application no. 29217/12), 4 November 2014.

¹⁶⁴ G. Clayton, *Textbook on Immigration and Asylum Law* (6th edn. OUP, 2014) 760.

¹⁶⁵ Joined Cases C-411/10 and C-493/10, *NS v. Secretary of State for the Home Department and ME, ASM, MT, KP and EH v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform* (CJEU, Grand Chamber, 21 December 2011).

¹⁶⁶ G. Clayton, *Textbook on Immigration and Asylum Law* (6th edn. OUP, 2014) 761. The Strasbourg court 'has pushed in the direction of a "collectivisation" of responsibility' (E. Guild, 'Europeanisation of Europe's Asylum Policy' (2006) 18 *IJRL* 630).

¹⁶⁷ UNHCR, 'Who We Help' <http://www.unhcr.org/pages/49c3646c11c.html> [accessed 28 June 2015]

¹⁶⁸ *Tarakhel v. Switzerland* Application no. 29217/12, 4 November 2014.

granted a protection status'.¹⁶⁹ As a consequence, many 'try to reach other EU countries in search of better living conditions and integration prospects'.¹⁷⁰

Amnesty International argues the Dublin Regulation is 'effectively deterring coastal states from accepting people rescued at sea'.¹⁷¹ Under Dublin III MS have a duty to register asylum seekers among those smuggled at sea.¹⁷² Yet, it has been shown that 'Italian civil servants used to facilitate migrants' attempts to cross Italy from south to north, without leaving administrative traces, so they can lodge their applications in other European countries, where migrants think they will receive better treatment'.¹⁷³

Although over 100,000 refugees and migrants have reached Italy and Greece Sea in 2014.¹⁷⁴ From January to August 2014, only 36,000 asylum applications were filed. It constitutes a noteworthy low number given the number of persons who have arrived.¹⁷⁵ On the grounds, many people did not apply for asylum because they 'refused to provide

¹⁶⁹ ECRE, 'Over 100,000 refugees and migrants have reached Italy by sea in 2014 – Many moved forward to other European countries' (9 September 2014) available at:

http://www.asylumineurope.org/sites/default/files/resources/one-pager_it_0.pdf [8 July 2015]. People who have newly arrived are not so much affected by the deficiencies of the Italian system regarding asylum.

¹⁷⁰ ECRE, 'Over 100,000 refugees and migrants have reached Italy by sea in 2014 – Many moved forward to other European countries' (9 September 2014) available at:

http://www.asylumineurope.org/sites/default/files/resources/one-pager_it_0.pdf [8 July 2015]

¹⁷¹ Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 September 2014, EUR 05/007/2014, p.5.

¹⁷² "Where it is established, [...], that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place." Regulation (EU) No 604/2013 of 26 June 2013, Article 13.

¹⁷³ Bonfanti S. and Fargues P. (2014) 'When the best option is a leaky boat: why migrants risk their lives crossing the Mediterranean and what Europe is doing about it', Issue no.4, May 2014, *Migration Policy Centre* (MPC), October 2014/05, p.13

¹⁷⁴ ECRE, 'Over 100,000 refugees and migrants have reached Italy by sea in 2014 – Many moved forward to other European countries' (9 September 2014) available at: http://www.asylumineurope.org/sites/default/files/resources/one-pager_it_0.pdf [8 July 2015]; UNHCR, 'Number of refugees and migrants arriving in Greece soars 750 per cent over 2014' (7 August 2015) <http://www.unhcr.org/55c4d1fc2.html> [accessed 7 August 2015]. Greece is considered to have a poor asylum system, while 35,520 were detected to cross irregularly the Greek territory in 2014, only 786 asylum applications were made with a refugee recognition rate of 50% (appendix 28)

¹⁷⁵ ECRE, 'Over 100,000 refugees and migrants have reached Italy by sea in 2014 – Many moved forward to other European countries' (9 September 2014) available at: http://www.asylumineurope.org/sites/default/files/resources/one-pager_it_0.pdf [8 July 2015]. Only 695 Syrian asylum claims in Italy (see Appendix appendix 29).

fingerprints' so that they cannot be identified and returned to Italy or Greece under the Dublin Regulation.¹⁷⁶ Christopher Hein¹⁷⁷ notes that '[m]any refugees, particularly from Syria ... wish to reach other EU destinations, such as Germany, The Netherlands or Sweden where they can count on the support of friends or relatives, more job opportunities and more protective welfare systems'.¹⁷⁸ PR from Syria refuse also to mention their full names in public, in case such records are taken as proof against them and prevent them from seeking asylum in a European country. They do not want to seek refuge in Italy, but in Germany or Sweden.¹⁷⁹

Consequently, Greece and Italy have become gateways and not destinations for asylum seekers.

- *Resettlement and other forms of admission of Syrian refugees*

Resettlement is one of three durable solutions¹⁸⁰ proposed by the UNHCR. A durable solution is defined as 'a solution that ends the cycle of displacement by resolving their plight so that they can lead normal lives'.¹⁸¹ Resettlement involves the transfer of refugees from the country in which they have sought asylum to a third State that has agreed to admit them as refugees and the grant of permanent settlement as well as the

¹⁷⁶ ECRE, 'Over 100,000 refugees and migrants have reached Italy by sea in 2014 – Many moved forward to other European countries' (9 September 2014) available at:

http://www.asylumineurope.org/sites/default/files/resources/one-pager_it_0.pdf [8 July 2015].

¹⁷⁷ Director of the Italian Council for Refugees.

¹⁷⁸ ECRE, 'Over 100,000 refugees and migrants have reached Italy by sea in 2014 – Many moved forward to other European countries' (9 September 2014) available at:

http://www.asylumineurope.org/sites/default/files/resources/one-pager_it_0.pdf [8 July 2015].

Daniel, a Syrian asylum seeker, 'hopes to find work in Sweden and to make a good life for himself here. But if things improve in Syria, he would like to return, he says'. 'Sweden: Stories from Stockholm' Refugees: A Snapshot of the Crisis in the Middle East and in Europe', MPC http://syrianrefugees.eu/?page_id=622 [accessed 15 May 2015]

¹⁷⁹ Such migrant routes to Northern countries are often deadly too. See 'Migrant crisis: Grim find of bodies in Austria lorry' (27 August 2015) *BBC News* <http://www.bbc.com/news/world-europe-34073534> [27 August 2015].

¹⁸⁰ The two other are voluntary repatriation and local integration (UNHCR, *Resettlement Handbook*, first released in 1997, fully revised in July 2011, available at: <http://www.unhcr.org/4a2ccf4c6.html> [accessed 17 February 2015]).

¹⁸¹ UNHCR, *Resettlement Handbook*, first released in 1997, fully revised in July 2011, available at: <http://www.unhcr.org/4a2ccf4c6.html> [accessed 17 February 2015] Chapter 1, p.28.

opportunity for eventual citizenship.¹⁸² Resettlement only applies to refugee that fall under the 1951 Convention definition¹⁸³ or UNHCR's Statute.¹⁸⁴ PRS cannot thus be resettled. It should also be considered as the only solution left. In the case of Syrians nationals, the prospects of voluntary repatriation are pretty slim as the Syrian conflict continues and peace will not come tomorrow. Resettlement is not obligatory and relies upon the will of the receiving State, which has a discretionary power to accept it or not.¹⁸⁵

The number of Syrian refugees resettled in the EU is regrettably low compared to the number of refugees in the Middle East region. EU MS are reluctant to establish voluntary national quotas for refugees. Since 2013, the EU has resettled and admitted 54,555 refugees from Syria.¹⁸⁶ The European Parliament (EP) issued a Resolution on 9 October 2013 in order to encourage the MS to implement and expand resettlement and other forms of admission such as humanitarian admission, private sponsorship, scholarships for students and humanitarian visas.¹⁸⁷ The EU has even approved a RPP in 2012 but the European response on resettlement and admission programmes is not

¹⁸² UNHCR Statute, para. 8(e): 'endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement'; UNHCR, *Resettlement Handbook*, first released in 1997, fully revised in July 2011, available at: <http://www.unhcr.org/4a2ccf4c6.html> [accessed 17 February 2015]

¹⁸³ The Refugee Convention, art 1A (2).

¹⁸⁴ UNHCR Statute, para 6.

¹⁸⁵ *ST & ET v. Secretary of State for the Home Department; Secretary of the state for the home department v C1 and C2* [2014] EWCA Civ 188 §43 (appendix 30).

States have no duty to grant a durable solution for refugees by any international law or treaty. This is why UNHCR is primary responsible for seeking durable solutions for refugees. G . S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. OUP 2007), p.489

¹⁸⁶ The total places made available for resettlement and other forms of admission are 102,489 places, which is still low.

¹⁸⁷ European Parliament Resolution of 9 October 2013 on EU and Member State Measures to Tackle the Flow of Refugees as a Result of the Conflict in Syria (2013/2837(RSP)). There are also opportunities for family reunification, medical evacuation and labour migration schemes (see UNHCR, Europe: Resettlement and Other Forms of Admission of Syrian Refugees (9 February 2015) data.unhcr.org/syrianrefugees/download.php?id=8314 [accessed 28 March 2015]).

cohesive: Germany has admitted a high number of Syrian nationals (35, 000¹⁸⁸) compared to the average of 1,893 Syrian nationals admitted in Europe.¹⁸⁹

In 2012, the EU initiated a relocation programme in order to respond to the increasing number of refugees from Syria.¹⁹⁰ It is a good way to improve responsibility sharing between MS. Although resettlement and relocation are important, relocation should not supplant resettlement. The latter implicates granting international protection while the former involves transfers within the EU. The UNHCR proposed a one-year pilot program to relocate Syrian refugees from the Southern Europe in Northern Europe richer countries, which is a radical changing in EU asylum policy based on the first country asylum (Dublin system), but unlikely to be implemented.¹⁹¹

The Commission has proposed a plan to resettle 20, 000 refugees outside the EU, relocate 40,000 asylum-seekers from Greece and Italy and a binding refugee quota system prompted by the EP.¹⁹² It is a strong denunciatory message to EU MS in order to make stronger efforts regarding solidarity and fair sharing of responsibility towards MS, which receive highest number of refugees.¹⁹³ The EU leaders has agreed to relocate

¹⁸⁸ 20,000 under humanitarian admission and 15, 000 under individual sponsorship (UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees (18 August 2015) <http://www.unhcr.org/52b2febafc5.pdf> [accessed 18 August 2015]).

¹⁸⁹ UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees (18 August 2015) <http://www.unhcr.org/52b2febafc5.pdf> [accessed 18 August 2015].

¹⁹⁰ Seven countries accepting to relocate 911 refugees from Malta under EUREMA II. EUREMA is a pilot program that was initiated by the EU in 2010 to relocate refugees in Malta. Miller p.24

¹⁹¹ H. Grant 'UN plan to relocate Syrian refugees in Northern Europe' *The Guardian* (11 March 2015) <http://www.theguardian.com/world/2015/mar/11/unhcr-eu-new-approach-syrian-refugee-europe> [accessed 12 May 2015]

¹⁹² 'Mediterranean migrant crisis: EU refugee quotas to be proposed', *BBC News* (11 May 2015) <http://www.bbc.co.uk/news/world-europe-32685942> [accessed 13 May 2015]; European Parliament Draft Report on the proposal for a Council decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece (COM (2015) 0286); K. Surana, 'Data show how manageable Europe's refugee crisis could be' *Quartz* (9 July 2015). <http://qz.com/448228/data-show-how-manageable-europes-refugee-crisis-could-be/> [accessed 10 July 2015].

¹⁹³ According to Eurostat, 30 505 Syrians were found to be irregularly present in Greece in 2014 compared to 8 220 in 2013 (the EP Draft Report on the proposal for a Council decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece (COM (2015) 0286) p.7).

40,000 asylum-seekers from Greece and Italy¹⁹⁴ but rejected the idea of imposing binding quotas for each country.¹⁹⁵

Other forms of admissions such as the TP could overcome the uneven distribution of Syrian refugees among EU MS but are rarely used. Refugees from Syria would fall under the definition of ‘mass influx’¹⁹⁶ of the 2001 TPD.¹⁹⁷ States could facilitate eligible persons’ entry into their territory by issuing visas free of charge.¹⁹⁸

¹⁹⁴ "It's still a drop in the sea in light of the extraordinary challenge of the Syrian crisis," says the representative for UNHCR in France, Philippe Leclerc. "If it was up to us, we'd ask for at least 130,000 places, for Syrians only." (C. Broadhurst 'EU leaders agree on relocation scheme for migrants' Rfi English (26 June 2015) <http://www.english.rfi.fr/europe/20150626-eu-leaders-agree-relocation-scheme-migrants> [accessed 4 July 2015].

¹⁹⁵ The French Prime Minister Valls is against the idea of binding quotas see 'Valls opposé aux quotas migratoires dans l'Union européenne', *Le Monde* (Paris, 16 May 2015) http://www.lemonde.fr/europe/article/2015/05/16/valls-s-oppose-a-l-instauration-de-quotas-migratoires-dans-l-union-europeenne_4634750_3214.html# [accessed 17 May 2015]; 'Répartition des réfugiés : l'UE abandonne l'idée de quotas obligatoires' *Le Monde* (26 June 2015) http://www.lemonde.fr/europe/article/2015/06/26/repartition-des-migrants-en-europe-le-coup-de-colere-de-matteo-renzi_4662243_3214.html [accessed 1 July 2015].

¹⁹⁶ 'mass influx' designs a large number of displaced persons (whether spontaneous or aided through an evacuation programme), who come from a specific country or geographical area. (Art 2(d)

¹⁹⁷ See Susan M. Akram, 'Temporary Protection and its Applicability to the Palestinian Refugee Case', BADIL, *Information & Discussion Brief*, Issue No 4, June 2000 <http://www.badil.org/en/documents/category/51-bulletins-briefs?download=555%3Abrief-no.4-temporary-protection-and-its-applicability-to-the-palestinian-refugee-case&start=50> accessed 24 June 2014.

Miller A. and C. Orchard, supervised by Pr Dawn Chatty, 'Protection in Europe for refugees from Syria', Refugee Studies Centre, University of Oxford, September 2014, 30. It is 'complementary to the international refugee protection regime, being used at times to fill gaps in that regime as well as in national response systems and capacity, especially in non-Convention States' (UNHCR 'Guidelines on Temporary Protection or Stay Arrangements' (February 2014) §3 <http://www.refworld.org/pdfid/52fba2404.pdf> [accessed 2 June 2015])

¹⁹⁸ The 2001 Temporary Directive, art 8(3).

5. Selected Member States' practices with regard to the Syrian refugee crisis¹

The volume of Syrian asylum-seekers has increased significantly in nearly all MS since 2013², but the response to the Syrian refugee crisis varies greatly among EU MS. While some MS has opened their door to refugees from Syria, others have treated them dreadfully, often leading to the breach of international obligations and the CEAS. Analyzing MS' practices with regard to the Syria refugee crisis reveals the weaknesses of the CEAS. Three countries shall be analysed: Sweden, France and the UK. These countries reflect a disparate asylum policy for nationals of the same country.

❖ *Sweden*³

Sweden is one of the main destinations of asylum seekers in the EU.⁴ Sweden is a privileged destination for refugees from Syria.⁵ After Germany, which is 'by far the leader in granting admission to Syrian refugees', Sweden receives the second highest number of asylum-seekers from Syria with the respective number of 62,222 asylum applications

¹ The purpose of this section is to provide 3 example of EU Member States policy with regard to Syrian refugee crisis and not describe the asylum system. Useful details such as comparative tables of the three countries are provided in appendix materials (appendix 31).

² With a 109 % increase in applications for international protection, Syria became the main country of origin of asylum seekers in the EU28 in 2013 (EASO Annual Report 2013 § 2.8.1).

³ P. Kingsley 'The Journey' *The Guardian* (9 June 2015) <http://www.theguardian.com/world/ng-interactive/2015/jun/09/a-migrants-journey-from-syria-to-sweden-interactive> [4 July 2015]

⁴ G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 9 http://www.asylumineurope.org/sites/default/files/report-download/aida_sweden_second_update_final.pdf [16 May 2015]

⁵ "If you Google 'I want asylum' in Arabic, then 'Sweden' automatically comes up." Alan, 24 years old from Al-hasakah, Syria (Alan did not want to give his real name) 'Sweden: Stories from Stockholm' Refugees: A Snapshot of the Crisis in the Middle East and in Europe', *MPC* http://syrianrefugees.eu/?page_id=622 [accessed 15 May 2015]

⁶ Miller A. and Orchard C., supervised by Pr Dawn Chatty, 'Protection in Europe for refugees from Syria', Refugee Studies Centre, University of Oxford, September 2014, p.77

between April 2011 and June 2015.⁷ It is also a main destination for PR,⁸ who fall under the category of stateless persons.⁹

The Swedish administrative system differs from the rest of Europe as all government decisions are collective and all public agencies such as SMA¹⁰, are independent from the government.¹¹ Unlike in other countries, Swedish Secretaries of State have limited discretion to take independent decisions. Asylum cases can either be dealt with under the accelerated procedure cases or the regular procedure.¹² Since the reform of the Aliens Act in 2006, Sweden has an asylum procedure where first instance decisions are taken in an administrative procedure by the Migration Agency, and appeals are dealt with on an adversarial basis at two levels in the administrative courts.¹³

While the EU introduced subsidiary protection with the 2004 QD, Sweden has retained at the same time the existing forms of complementary status.¹⁴ However, as Feijen argues, assessing complementary protection is 'often seen as an assessment of

⁷ UNHCR, *Europe: Syrian Asylum Applications from April 2011 to June 2015*
<http://data.unhcr.org/syrianrefugees/asylum.php> [10 June 2015]

⁸ It was already the case before the conflict. In 2000, the estimated number of PR in Sweden is between 10,000 and 15,000. The number cannot be known as Palestinian are not registered separately but within the statelessness category.

⁹ In 2014, 7,863 stateless claims were made, which represents the third citizenship to apply in Sweden (appendix 22-4).

¹⁰ According to the Swedish Constitution, the Migration Agency is according fully independent from the Government.

¹¹ G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 12.

¹² See Appendix 31. Asylum applicants under both regular and accelerated procedures have similar rights to accommodation, financial allowances and health care.

Asylum applicants under both regular and accelerated procedures have similar rights to accommodation, financial allowances and health care.

¹³ There are currently 4 Migration Courts, which are special divisions of the County Administrative Courts (Förvaltningsrätten) in Stockholm, Gothenburg, Luleå and Malmö. There is a further possibility to appeal before the Migration Court of Appeal (Migrationsöverdomstolen), to which leave to appeal has to be requested. The Migration Court of Appeal is a section of the Administrative Court of Appeal in Stockholm (Kammarrätten i Stockholm). For other administrative cases, the highest court of appeal is the Supreme Administrative Court (Högsta förvaltningsdomstolen) which, however, does not deal with asylum claims.

¹⁴ L. Feijen, 'Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries', *International Journal of Refugee Law*, 2014, Vol.26, No.2, 174.

'returnability' and not of 'eligibility', that is, the emphasis of the assessment is on whether there are obstacles to return rather than if the criteria are fulfilled to obtain a status'.¹⁵

The Swedish Migration Board (SMB), at the end of 2011, classified Syria current situation as a 'severe conflict'.¹⁶ In June 2012, the situation was requalified as an 'internal armed conflict'.¹⁷ It allowed Syrian applications to 'receive a three-year residence permit'.¹⁸ Directives preventing return to Syria were issued and even for people who did not 'fulfil the individual criteria for protection'.¹⁹ Since September 2012, permanent residence permits are issued as no end of the conflict seem to be in sight.²⁰

In September 2013, the SMB, which is now called Swedish Migration Agency (SMA)²¹, revised its policy on Syrian applicants to ensure that applicants given subsidiary protection status were generally awarded permanent residence permits. As a consequence Syrian asylum applications has increased in Sweden.

Following ECtHR *Tarakhel v Switzerland* judgment in December 2014, the SMA held that 'the obligation of the sending state to seek individual guarantees from the receiving state does not apply in respect of applicants who do not belong to families with children or other vulnerable groups'.²² It also considers that 'guarantees of reception

¹⁵ L. Feijen, 'Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries', *International Journal of Refugee Law*, 2014, Vol.26, No.2, 197.

¹⁶ Swedish Migration Board, RCI 32/2011.

¹⁷ Swedish Migration Board, RCI 14/2012, RCI 14/2013

¹⁸ L. Feijen, 'Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries', *International Journal of Refugee Law*, 2014, Vol.26, No.2, 196

¹⁹ L. Feijen, 'Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries', *International Journal of Refugee Law*, 2014, Vol.26, No.2, 196

²⁰ Swedish Migration Board, RCI 14/2012, RCI 14/2013.

²¹ The Migration Agency, previously known as "Migration Board", is the central administrative authority in the area of asylum and subordinate to the Government as a whole. The SMA is responsible for the division of tasks between the divisions of Asylum, Managed Migration and Citizenship.

²² G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 9.

conditions need not be requested until there is a legally enforceable decision and transfer is being planned'.²³

Sweden has mainly granted subsidiary protection to Syrian asylum seekers.²⁴ It is one of the main criticisms of the Swedish asylum system as granting subsidiary protection to avoid the assessment of the refugee criteria.²⁵ However, the majority of Syrian asylum cases under accelerated procedures lead to a positive decision.²⁶ Only 7.2% of Syrian applicants in 2014 have been rejected.

Dublin transfers in Sweden can be suspended depending on the individual circumstances of the case.²⁷ In 2013, the Migration Court ruled against the Dublin transfer²⁸ of Syrian nationals to France on the ground that the SMB had not considered whether the asylum seekers would face a risk of return to Syria once transferred to France.²⁹ Asylum seekers under Dublin system are provided the same conditions as any other asylum seekers namely accommodation, daily allowance and health care.³⁰ Vulnerable persons, including unaccompanied minors, are given special consideration.

Although all asylum decisions are in Swedish, the SMA has a duty to inform asylum seekers under the 1994 Ordinance on the Reception of Asylum Seekers.³¹ In the reception centres for asylum seekers, leaflets are made available in 12 languages such as

²³ G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 9.

²⁴ 82.6% comparing to 9.9% of refugee status (appendix 32).

²⁵ J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) 249-250.

²⁶ G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 15.

²⁷ 92.8% of positive decision in the first instance in 2014 G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 23.

²⁸ Under the Dublin II Regulation.

²⁹ Migration Court, UM 2739-13, 17 April 2013.

³⁰ Jesuit Refugee Service. "Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection." The DIASP Project, June 2013, 68.

³¹ G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 26

Arabic.³² If an asylum seeker cannot understand any of these languages, an interpreter is provided.³³ Sweden has moreover resettled 2,700 Syrian refugees as of June 2015.³⁴

"Sweden has a reputation for respecting human rights and for offering protection for asylum seekers".³⁵

❖ *France*

Asylum policies and reception procedures are under prefectural supervision.³⁶ In 2014, 59,025 first asylum applications were lodged in France: OFPRA and CNDA³⁷ took 14,564 decisions, which granted international protection comprising 3,502 findings of subsidiary protection. The quality control³⁸ of 2014 shows that 'no complementary questions were asked by OFPRA protection officers when the arguments of the asylum seeker were considered to be insufficiently consistent or credible' and that the legal analysis of OFPRA protection officers was not precised enough.³⁹ Article 31 of the rectified Finance Law for 2014 allows asylum seekers to benefit from a Temporary

³² J G. Joseph, 'National Country Report: Sweden' (*Caritas Sweden & ECRE*, April 2015) 26 ; Jesuit Refugee Service. "Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection." The DIASP Project, June 2013, p.58

³³ Jesuit Refugee Service. "Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection." The DIASP Project, June 2013, p.58

³⁴ UNHCR, *Resettlement and Other Forms of Admission for Syrian Refugees* (18 August 2015) <http://www.unhcr.org/52b2febafc5.pdf> [accessed 18 August 2015]

³⁵ Said a Syrian in the Märstra arrival who was granted refugee protection ('Sweden: Stories from Stockholm' Refugees: A Snapshot of the Crisis in the Middle East and in Europe', *MPC* http://syrianrefugees.eu/?page_id=622 [accessed 15 May 2015]).

In Stockholm, the Märstra arrival central is the first port of call for Syrian refugees in Sweden. Syrian asylum seekers receive bed sheets, are allocated a dorm room. Their finger prints are taken and are given a time slot for their asylum interview. Syrian asylum seekers are meant to spend a night or two here (See appendix 33).

³⁶ C. Salignat, 'National Country Report: France' (*Forum Réfugiés-Cosi & ECRE*, January 2015) http://www.asylumineurope.org/sites/default/files/report-download/aida_france_third_update_final.pdf. While, Aida's report on France is based on practice observations in the *départements* of Rhône, Allier and Alpes-Maritimes, the conclusions presented in this report on the concrete implementation of asylum policies have been cross-checked and triangulated with observations of these practices in other regions (in Paris for instance) and are supported by findings presented in other reports – be they official or drafted by civil society organizations.

The DIAP project points out that the 'level of completeness of the information provided varies from one prefecture to another'. Jesuit Refugee Service. "Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection." The DIASP Project, June 2013, p.58.

³⁷ Cour nationale du droit d'Asile (National Court for Asylum Right).

³⁸ Agreement signed between OFPRA and UNHCR

³⁹ Proofs (such as certificates, judgments issued by foreign courts...) were insufficiently taken into account.

financial allowance (ATA)⁴⁰, which ends the litigation brought before the Council of State and the CJEU with regard to the entitlement of asylum seekers channeled under the accelerated procedure and under the Dublin procedure to benefit from such reception conditions.⁴¹

The CNCDH has criticized France's attitude toward the Syrian refugee crisis for not being very welcoming and exemplary.⁴² Although there is an important Syrian community in France⁴³, only 6,353 Syrians have sought asylum.⁴⁴

The French government has required a specific transit airport visa (VTA)⁴⁵ to be applied to Syrians. In a decision of 18 June 2014⁴⁶, the Council of State⁴⁷ seized by two French NGOs⁴⁸, confirmed the obligation for Syrians, to possess a VTA in order to transit through French airports. The VTA aims to stop the abuse of transit for the sole purpose of entering France.⁴⁹ Although some NGOs outline argue that the VTA would undermine the right of Syrian refugees⁵⁰, the Council of State considered that this obligation applied to Syrians "did not constitute in itself a breach of the right of asylum"⁵¹

⁴⁰ The ATA is €11.45 per day. Service-Public. *Étranger en France : allocation temporaire d'attente (Ata)* (1 January 2015) <http://vosdroits.service-public.fr/particuliers/F16118.xhtml> [accessed 5 July 2015]

⁴¹ C. Salignat, 'National Country Report: France' (*Forum Réfugiés-Cosi & ECRE*, January 2015) 11.

⁴² CNCDH 23 juin 2011, *Avis sur les mouvements migratoires liés aux « printemps arabes »*, en ligne sur : www.cncdh.fr. See French NGOs (La Cimade, Le Secours Catholique-Caritas France, Le Secours Islamique France, Amnesty International, le CCDF-Terre Solidaire, Emmaüs France et Médecins du Monde) who appeal to the President to receive Syrian refugees.

⁴³ This is due to the fact that Syria was under French mandate during from 1923 to 1946. J.-P. CALLOT, P. DROZ-VINCENT, P. RONDOT, C. SIFFERT, « SYRIE », *Encyclopædia Universalis* [online] <http://www.universalis-edu.com/encyclopedie/syrie/> [accessed 5 August 2015]

⁴⁴ UNHCR, 'EUROPE: Syrian Asylum Applications' (From Apr 2011 to June 2015) <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 16 May 2015]

⁴⁵ In French, *visa de transit aéroportuaire*

⁴⁶ CE, 2e et 7e SSR, 18 juin 2014, Anafé et Gisti, Req n° 366307.

⁴⁷ The Council of State (Conseil d'Etat) is the supreme administrative court in France.

⁴⁸ Gisti & Anafé.

⁴⁹ Applied since 1995 on the basis of Arrêté du 10 avril 1984 relatif aux conditions d'entrée des étrangers sur le territoire métropolitain et dans les départements d'outre-mer français, JORF du 19 avril 1984, pp. 3647-3648.

⁵⁰ Amnesty International, 'La France entrave la fuite des Syriens en leur imposant un visa supplémentaire' (4 February 2015) <http://www.amnesty.fr/Nos-campagnes/Refugies-et-migrants/Actualites/Des-visas-pour-dissuader-arrivee-de-Syriens-en-France-7712> [accessed 10 May 2015]

⁵¹ Asylum is considered to be fundamental right in France (see CE, réf, 12 janvier 2001, Hyacinthe, req n° 229039, AJDA 2001. 589, note J. Morri et S. Slama).

nor a breach of the right to life or of the protection against inhuman or degrading treatment”.⁵²

Since 2012, France has nevertheless provided 1,880 asylum visas for Syrians, which enable them to travel to France for the purpose of applying for asylum⁵³

France does not treat Syrian asylum seekers specifically except under a limited resettlement program.⁵⁴ As of June 2015, France has admitted 2,400 Syrian nationals including 1000 under resettlement and 1,400 under humanitarian admission.⁵⁵ Syrian asylum seekers benefit currently from a very high recognition rate. In 2013, OFPRA granted protection to Syrian asylum seekers in 835 instances: recognition rate of 94.8% compared to the average recognition rate of 12.8% for all OFPRA decisions.⁵⁶ In both instance the recognition is of 95% of positive decisions: 55% of refugee status and 40% of subsidiary protection.⁵⁷ Syrian nationals 'have by far the highest recognition rate among all nationalities'.⁵⁸ On average, the examination of asylum applications from Syrian nationals was, at the end of 2013, 138 days against 204 for the other nationalities.

⁵² CE, 2e et 7e SSR, 18 juin 2014, Anafe et Gisti, Req n° 366307, recital 6 : ‘Considérant que l'obligation de disposer d'un visa de transit aéroportuaire, qui ne peut être imposée par les Etats membres, en vertu du règlement du 13 juillet 2009, qu'en cas d'urgence due à un afflux massif de migrants clandestins et qui répond ainsi à des nécessités d'ordre public tenant à éviter, à l'occasion d'une escale ou d'un changement d'avion, le détournement du transit aux seules fins d'entrée en France, ne porte par elle-même aucune atteinte au droit d'asile, ni au droit à la vie ou à la protection contre les traitements inhumains ou dégradants’.

See C. Lantero, « De la validation du VTA par le Conseil d'Etat à la condamnation du refus de visa par le TA de Nantes », La Revue des droits de l'homme [En ligne], Actualités Droits-Libertés, mis en ligne le 02 octobre 2014, consulté le 1er juillet 2015 <<http://revdh.revues.org/886>>

⁵³ UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees (18 August 2015)

<http://www.unhcr.org/52b2febafc5.pdf> [accessed 19 August 2015]. It has been held recently that a refusing a visa could seriously and obviously undermine the right of asylum TA Nantes (ord.) 16 sept. 2014, Mme K. et autres, Req. n° 1407765.

⁵⁴ In 2014, 500 Syrian refugees under ‘extreme vulnerability coming from neighbouring countries of Syria had benefitted from a special resettlement programme’ (Salignat C., ‘National Country Report: France’, *Asylum Information Database* (third update, January 2015) p.54)

⁵⁵ UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees (18 August 2015)

<http://www.unhcr.org/52b2febafc5.pdf> [accessed 18 August 2015]

⁵⁶ 56.8% of Syrian nationals who were granted protection benefitted from refugee status under the Geneva Convention while 43.2% of them obtained subsidiary protection.

⁵⁷ See Appendix 34.

⁵⁸ Salignat C., ‘National Country Report: France’, *Asylum Information Database* (third update, January 2015) p.53. Iraqis rank second with a 67.4% rate. See OFPRA, 2013 Activity report, 28 April 2014.

For Syrian claimants whose asylum claims are rejected, no special status has been created by the French authorities. While no returns to Syria has been undertaken by France,⁵⁹ returns to Italy under either Dublin II Regulation or readmission procedures have occurred which may lead to violation of *non-refoulement* principle if risk for ill-treatment is not being assessed.⁶⁰

At the time of writing, France is currently reforming immigration law.⁶¹ At the request of the French Minister of Interior⁶², the CNCDH⁶³ published its opinion about the new legislation.⁶⁴ The CNCDH raises the concern that public authorities harden migration influx controls coming from the South.⁶⁵ The French migratory balance is since 2008 the same as the one of the 80's, with the exception of some peaks between 2003 and 2006.⁶⁶ The draft legislation made some improvement⁶⁷ but the CNCDH is concerned about the increasing complexity of the French Code for Entry and Residence of Foreigners (CESEDA).⁶⁸ The law is extremely complex and not accessible for the

⁵⁹ There is no official position regarding this matter.

⁶⁰ *MSS v Belgium and Greece* (2011) 53 EHRR 2; *Tarakhel v Switzerland* (2012) App No 29217/12.

⁶¹ It is a draft legislation proposed by the executive and adopted on 23 July 2014 by the Council of Minister. The Government undertook the so-called accelerated procedure. The legislation was adopted by the National Assembly on 23 July 2015, it is currently on the first reading in the Senate. See Sénat. Projet de loi relatif au droit des étrangers en France :procédure accélérée engagée par le Gouvernement le 19 juin 2015 <http://www.senat.fr/dossier-legislatif/pjl14-655.html> [accessed 4 July 2015].

⁶² Bernard Cazeneuve.

⁶³ Commission nationale consultative des droits de l'homme (National Consultative Commission for Human Rights)

⁶⁴ CNCDH Avis sur la réforme du droit des étrangers <http://www.cncdh.fr/fr/actualite/avis-sur-la-reforme-du-droit-des-etrangers> [accessed 6 June 2015]

⁶⁵ Voir C. Wihtol de Wenden, *La question migratoire au XXIème siècle. Migrants, réfugiés et relations internationales*, Les presses de SciencesPo. 2013, pp. 149-163, qui relève que depuis les années 80-90, les réfugiés sont entrés de plain-pied dans la problématique des migrations et des relations internationales. Les pays occidentaux cherchent, par tous moyens, à endiguer les flux de réfugiés issus des régions les plus déshéritées de la planète et à s'affranchir au maximum des obligations de la Convention de Genève.

⁶⁶ CNCDH Avis sur la réforme du droit des étrangers §2. Some demographers are opposed to the popular belief of « massive intrusion ».

⁶⁷ Such as the enshrinement of the principle of pluri-annual residency permit or the statement of the subsidiary nature of administrative detention. 'Immigration : les trois mesures phares du projet de loi "droit des étrangers"' (20 July 2015) France TV Info http://www.francetvinfo.fr/politique/immigration-les-trois-mesures-phares-du-projet-de-loi-droit-des-etrangers_1006923.html [accessed 20 July 2015].

⁶⁸ CNCDH Avis sur la réforme du droit des étrangers § 6

intended users.⁶⁹ CNCDH recalls that fundamental rights and freedoms should be ‘practical and effective’ and not ‘theoretical or illusory’.⁷⁰

❖ *The United Kingdom*⁷¹

The UK is a historic country of immigration.⁷² Although the UK ‘has long been committed to an internal market, it did not become a member of the Schengen system for the abolition of internal border controls on intra-EU movement’.⁷³ Although selectively, the UK does participate in the EU policy on asylum and immigration⁷⁴: regardless of the internal market, it ‘maintains its right to keep border controls on movement from within the EU’.⁷⁵

The British participation was characterised by Tony Blair as ‘the best of both worlds’. While the UK is not compelled to comply with EU requirements in asylum and immigration field, it had the possibility to opt in some measures as to ‘make sure that there are proper restrictions on some of the European borders that end up affecting our

⁶⁹ Only a few persons including specialists can deal with it.

⁷⁰ *Airey v Irlande* [1979] 2 E.H.R.R. 305, § 24.

⁷¹ For an overall view see B. Smith and M. Gower, *Syrian refugees and the UK*, Briefing Paper Number 06805 (House of Common Library, 18 June 2015) available at: <http://researchbriefings.files.parliament.uk/documents/SN06805/SN06805.pdf> [accessed 5 July 2015]

⁷² Asylum Aid, *Providing Protection - Access to early legal advice for asylum seekers*, 1 August 2014, available at: <http://www.refworld.org/docid/53f2fbde4.html> [accessed 30 June 2015] p.12: in particular from the Republic of Ireland and from the former colonies and territories of the British Empire such as India, Bangladesh, Pakistan, some islands of the Caribbean, South Africa, Kenya, Nigeria and Hong Kong.

⁷³ C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', Migration Observatory policy primer, COMPAS, University of Oxford, UK, May 2014, p.2. See Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis, OJ L 131, 1.6.2000, p. 43.

⁷⁴ C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', Migration Observatory policy primer, COMPAS, University of Oxford, UK, May 2014, p.6.
C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', Migration Observatory policy primer, COMPAS, University of Oxford, UK, May 2014, p.2. The UK consistently asserts that maintenance of its own border controls is required (Government's Response to the House of Lords EU Committee's 8th Report of Session 2012-2013).

country'.⁷⁶ It has been commonly observed that Britain tends to participate in coercive measures that prevent migrants from entering and opt out in the protective measures such as family reunion.⁷⁷ This is why the UK opted out to 'several CEAS recasts enhancing the position of asylum seekers'.⁷⁸ This selective participation presents some drawbacks: the UK can be excluded from EU policies that it wish to engage such as Frontex rulings⁷⁹ and most importantly rights and migrants and refugees are diminished in the UK.⁸⁰ It has also created some tension, in particular with the French borders.⁸¹

The asylum process is intricate and long due to the intervention of different administrative bodies.⁸² The Secretary of State for the Home Office (HO)⁸³ is responsible for processing the asylum process: asylum decision-making is allocated to a department called UK Visas and Immigration (UKVI).⁸⁴

The HO issues detailed practical guidance for asylum decision-making covering a wide range of issues such as how to conduct interviews, how to apply some legal rules, country of origin information, and detailed procedural and administrative matters.⁸⁵ Guidance is not directly binding, but should be followed, and failure to do so can be

⁷⁶ Tony Blair 25 October 2004, quoted in Geddes A. "Getting the Best of Both Worlds? Britain, the EU and Migration Policy." *International Affairs* 81, no. 4 (2005).

⁷⁷ C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', Migration Observatory policy primer, COMPAS, University of Oxford, UK, May 2014, p.7.

⁷⁸ C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', Migration Observatory policy primer, COMPAS, University of Oxford, UK, May 2014, p.7.

⁷⁹ UK only has observer status on the Frontex Management Board. Nevertheless in practice, the UK has cooperated in several Frontex missions.

⁸⁰ C. Costello and E. Hancox, 'The UK, EU Citizenship and Free Movement of Persons', Migration Observatory policy primer, COMPAS, University of Oxford, UK, May 2014, p.7.

⁸¹ Calais crisis. 'Why is there a crisis in Calais' (30 July 2015) *BBC News* <http://www.bbc.com/news/uk-29074736> [accessed 1 August 2015]

⁸² See Appendix 31.

⁸³ The Home Office is a government minister.

⁸⁴ The Home Office is responsible for all aspects of immigration and asylum: entry, in-country applications for leave to remain, monitoring compliance with immigration conditions, and enforcement including detention and removal.

⁸⁵ C. Nash, 'National Country Report: United Kingdom' (*Asylum Aid & ECRE*, January 2015) p.13 http://www.asylumineurope.org/sites/default/files/report-download/aida_-_uk_thirdupdate_final.pdf [16 May 2015]

grounds for an application for judicial review.⁸⁶ The Upper Tribunal Immigration and Asylum Chamber have the power to make findings of fact which constitute binding 'country guidance' for other cases.⁸⁷

Most asylum seekers in the UK came from Iran, Pakistan and Sri Lanka.⁸⁸ In the case of Syrians, only 6891 asylum applications were made since 2011.⁸⁹ There is an 'immigration concession for Syrians who have immigration leave to be in the UK'.⁹⁰ They can under this concession extend their leave for a further temporary period in specified ways.⁹¹ However, this does not allow them to claim asylum. The Syrian refugee crisis is managed through 'temporary immigration rather than through inviting asylum claims'⁹², which is critical as it is providing them with poor protection in return of money.⁹³ With regards to the high levels of repression in Syria, the country guidance case states that 'any forced returnee from the UK including refused asylum seekers would face a real risk of arrest and detention and of serious mistreatment during that detention'.⁹⁴

⁸⁶ The immigration rules and guidance are available on the government website, www.gov.uk, including information about countries of origin used in asylum decision-making.

⁸⁷ See United Kingdom: Home Office, *Country Information and Guidance - Syria: Security and humanitarian situation*, December 2014, available at: <http://www.refworld.org/docid/5492925f4.html> [accessed 8 March 2015]

⁸⁸ Asylum Aid, *Providing Protection - Access to early legal advice for asylum seekers*, 1 August 2014, available at: <http://www.refworld.org/docid/53f2fbde4.html> [accessed 30 June 2015] p.12

In 2000, seeking asylum was the highest with 84,130 applications, which has reduced importantly over the years. In 2010, only 17,990 people applied for asylum in the UK. In the early 2000s the number of individuals.

⁸⁹ UNHCR, *Europe: Syrian Asylum Applications from April 2011 to June 2015* <http://data.unhcr.org/syrianrefugees/asylum.php> [10 June 2015].

⁹⁰ C. Nash, 'National Country Report: United Kingdom' (*Asylum Aid & ECRE*, January 2015) 50.

⁹¹ *Renewal of Immigration Concession for Syrian Nationals: Written statement* (13 February 2014, HCWS310), <http://www.parliament.uk/written-questions-answers-statements/written-statement/Commons/2015-02-26/HCWS310> [accessed 5 June 2015]

⁹² C. Nash, 'National Country Report: United Kingdom', *Asylum Information Database* (third update, January 2015) p.50

⁹³ United Kingdom: Guidance on the concessions to the immigration rules for Syrian nationals, February 2015, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408230/Guidance_on_the_concessions_for_Syrian_nationals_February_2015.pdf [accessed 5 June 2015]

⁹⁴ See KB Syria CG [2012] UKUT 426 (IAC) (20 December 2012). This does not result in a proactive grant of status from the asylum authorities but can be relied on by asylum seekers and refused asylum seekers in making representations to the Home Office.

In the processing of asylum application from Syria, the HO ‘is not postponing or freezing decisions’⁹⁵: some refugee status have been granted very quickly, although it is not a consistent practice. In 2013, there were 1,440 grants of refugee status to Syrians, and the overall rate of rejection was 14%.⁹⁶ Refused refugee status has a right of appeal but will not be given any special form of humanitarian status once all available remedies have been exhausted. Recognised refugees receive a ‘residence permit for five years, enjoy the right to family reunification for immediate family members living with the refugee before they departed from Syria, and be granted access to the labour market’.⁹⁷ On 29 January 2014, it was announced that the UK would establish a program to offer resettlement to some of the most vulnerable Syrian refugees⁹⁸: the “vulnerable person relocation (VPR) scheme.”⁹⁹ The Home Secretary said that it would prioritize cases involving victims of sexual violence, the elderly, victims of torture, and the disabled. Those resettled are granted five years Humanitarian Protection and have access to public funds and the labour market without any quota.¹⁰⁰ It aims to resettle 500 Syrians by 2017.¹⁰¹ As of June 2015, only 187 Syrians have been resettled.¹⁰²

⁹⁵ Nash C., ‘National Country Report: United Kingdom’, *Asylum Information Database* (third update, January 2015) p.51

⁹⁶ C. Nash, ‘National Country Report: United Kingdom’, *Asylum Information Database* (third update, January 2015) p.51. In the first three quarters of 2014 the respective figures were 781 and 10%. The subsidiary protection is rarely used in the UK (in 2013 70 individuals were granted subsidiary protection, see appendix 35). In the UK subsidiary protection is called humanitarian protection with 5 years limited leave to remain (Immigration rules, paras 339C-N). Persons excluded from humanitarian protection may be eligible for a six-month period of discretionary leave. The initial grant of 3 years discretionary leave has been reduced to 30 months. See G. Clayton, *Textbook on Immigration and Asylum Law* (6th edn. OUP, 2014) § 11.6.2.

⁹⁷ C. Nash, ‘National Country Report: United Kingdom’, *Asylum Information Database* (third update, January 2015) p.51.

⁹⁸ Vulnerable persons relocation scheme for Syrian nationals: Written statement (25 March 2014) <https://www.gov.uk/government/speeches/vulnerable-persons-relocation-scheme-for-syrian-nationals> [accessed 5 June 2015]

⁹⁹ The UK has an extensive partnership with UNHCR for two specific schemes: the Gateway Protection Programme (GPP) and the Mandate Refugee Scheme (MRS). Neither scheme is open to emergency applications for resettlement, resulting in neither scheme being particularly adaptable or suitable for accommodating a large-scale refugee crisis. A detailed overview of the GPP and MRS resettlement policies is provided by the UNHCR in its *Resettlement Handbook*

¹⁰⁰ United Kingdom, House of Commons Standard Note (2014) In Brief: Syrian refugees and the UK, Standard Note: SNIA/6805, 30 July 2014, Ben Smith and Melanie Gower, International Affairs and Defence Section and Home Affairs Section, available at: www.parliament.uk/business/publications/research/briefing-

To sum up, despite the CEAS, the asylum policies in the EU ranged from very opened to very closed. For the same Syrian refugees, the UK and France have shown a clear reluctance to admit them while Sweden has opened its doors.

papers/SN06805.... - See more at: http://www.asylumineurope.org/reports/country/united-kingdom/asylum-procedure/treatment-specific-nationalities#footnote4_kw4f1yf

¹⁰¹ <http://ecre.org/component/content/article/70-weekly-bulletin-articles/1111-uk-announces-modest-expansion-to-syrian-resettlement-scheme.html>

¹⁰² UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees (18 August 2015) <http://www.unhcr.org/52b2febafc5.pdf> [accessed 18 August 2015]

6. Recommendations

It is important to highlights some solutions that could improve the European response regarding the Syrian crisis.

❖ *Alleviate the tensions in Syria neighbouring countries*

The support burden for the affected Syrian and Palestine population should be shared through various ways as the 'patience and resources of neighbouring host countries are running thin'.¹

EU MS could support the countries neighbouring Syria by implementing a Comprehensive Plan of Action, including expanded resettlement, the activation of a regional TPR, and the development of other legal routes of entry into EU MS.

1) **Expanding resettlement**

The EU could expand resettlement programmes and offer permanent residence outside the countries neighbouring Syria but it would only benefit a handful of refugee due to the fact that it is very unlikely that MS agree to expand resettlement on a mass scale.² Thus, resettlement should be only for those who are the most in need but the question arises as to what criteria should be established.³

¹ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis: What Next?' *MPC RR*, No. 2012/14,14.

'The Syria crisis morphed from a humanitarian emergency to a multidimensional acute and protracted crisis directly affecting several countries in the region ... whose social, economic and structural capacity to deal with the ever growing influx of refugees has been stretched to the limits.'(European Commission, *General Guidelines for Operational Priorities on Humanitarian Aid in 2015*, 4 December 2014, SWD (2014) 345 final, 24).

² Miller A. and C. Orchard, supervised by Pr Dawn Chatty, 'Protection in Europe for refugees from Syria', Refugee Studies Centre, University of Oxford, September 2014, p.8.Megan Bradley, 'Is Resettlement a Solution for Syria's Refugee Crisis?' (Brooking Institute Up Front, 13 Nov 2013) <<http://www.brookings.edu/blogs/up-front/posts/2013/11/13-syria-refugee-crisis-bradley>> accessed 15 Nov 2013 (86,000 of the 15.4 million refugees were resettled in 2012)

³ P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis: What Next?' *MPC RR*, No. 2012/14, 14.

2) Temporary protection regime

Although TP does not provide secure protection for refugees such as resettlement, it is an easy solution to implement. It would provide a place of safety for Syrian refugees and ensure solidarity and responsibility-sharing between EU MS. The beneficiaries of TP should have the right to claim asylum and the protection should last until the country of origin is safe (unlikely to happen soon in Syria).⁴ They should have the right to family reunification too.⁵ TP would helpfully solve PR protection gap but it would not be a durable solutions to their protracted refugee situation.

3) Other legal routes

Humanitarian admission places for refugees, family reunification and other special visas should be provided as to allow refugees from Syria to enter Europe.⁶ The example of Germany could be followed with 20,000 Syrian refugees admitted under humanitarian admission.⁷ Asylum or humanitarian visas could be delivered in European embassies in the region to avoid obstacles set up at the EU's external border. Other legal routes of admission such as student scholarships, academic fellowships, employment, training programmes and sponsorships should be provided.⁸ In addition to refugee protection, 'refugees benefit by

⁴ The 2001 Temporary Protection Directive, art 4: the TPD should be for one year but 'may be extended automatically by six monthly periods for a maximum of one year'.

⁵ A. Miller and C. Orchard, supervised by Pr Dawn Chatty, 'Protection in Europe for refugees from Syria', Refugee Studies Centre, University of Oxford, September 2014, p.9.

⁶ A. Miller and C. Orchard, supervised by Pr Dawn Chatty, 'Protection in Europe for refugees from Syria', Refugee Studies Centre, University of Oxford, September 2014, p.9; Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 September 2014, EUR 05/007/2014, p.5. Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at:

<https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.34; P. Fargues and C. Fandrich, 'The European Response to the Syrian Refugee Crisis: What Next?' *MPC RR*, No. 2012/14, 14.

⁷ UNHCR, Europe: Resettlement and Other Forms of Admission of Syrian Refugees (9 February 2015) data.unhcr.org/syrianrefugees/download.php?id=8314 [accessed 28 March 2015]; UNHCR, Resettlement and Other Forms of Admission for Syrian Refugees (18 August 2015) <http://www.unhcr.org/52b2febafc5.pdf> [accessed 18 August 2015]

⁸ A person has even proposed to host all refugees in an island, which seems to be a superficial vision of refugees (see L., Ridley, 'Millionaire Jason Buzi Wants To Create A New Country To House All The World's Refugees' (27 July 2015) *The Huffington Post* http://www.huffingtonpost.co.uk/2015/07/27/refugee-nation-country-for-refugees-jason-buzi_n_7877662.html [accessed 27 July 2015]; the German's model of private sponsorship could be an exemplar to follow: 10,000 Syrian nationals were admitted under private sponsorship (UNHCR, Resettlement and

doing something of value to themselves and potentially to their home country or host country'.⁹

❖ *Burden sharing among EU Member States*

Except for Germany and Sweden, the response in the other MS was to contain and reinforce Europe's borders. The EU should take account of the considerable efforts made by these two countries and the increasing pressure faced by Southern MS. It should urge other EU MS with regard to their financial situation. In Greece, the response is desperately worrying as there is no a proper asylum system partly because of the economic crisis. This is why other MS such as France the UK, less touched by the economic crisis, should be more involved in addressing solutions, especially they have been actively involved in the political transition.

Refugees who arrive at EU's external borders should have access to asylum procedures in the same way as for the one that can be found in Northern countries. Asylum 'must not be a lottery', every EU MS need to 'share responsibility to welcome asylum seeker in a dignified manner' and fair process.¹⁰

Other Forms of Admission for Syrian Refugees (18 August 2015) <http://www.unhcr.org/52b2febafc5.pdf> [accessed 1 July 2015]).

⁹ A. Miller and C. Orchard, supervised by Pr Dawn Chatty, 'Protection in Europe for refugees from Syria', Refugee Studies Centre, University of Oxford, September 2014, p.9; Jesuit Refugee Service. "Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection." The DIASP Project, June 2013, available at: <http://www.refworld.org/docid/51d152174.html> [accessed 28 March 2015] p.219: A middle-aged Syrian man with a background as an engineer in the petrochemical industry wanted to make use of his qualifications and working experience in the oil industry of Norway: "*I have fled from Syria, but I am a qualified professional. I can be of great use in the oil industry.*"

¹⁰ European Commission, 'Common European Asylum System', *DG Migration and Home Affairs* http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm [accessed 5 June 2015]. The EU should ensure these asylum seekers have access to a 'speedy, full, and fair examination of asylum claims, regardless of the first EU country of entry' (Euromid Observer, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.33).

The European Commission and the MS should ensure that national legislation/regulations/operational guidelines respect the principle of *non refoulement* and that human rights are at stake.

Border management policies must be reviewed as to ensure that human rights-based approach is at the centre of border-related measures.¹¹ MS must respect the principle of *non-refoulement* and not transfer anyone to place where they may face persecution or other serious human rights violations.¹²

EU external borders should open their doors to more refugees and expand safe and legal routes of entry into Europe. The EU and its MS should propose safe and regular routes to refugees from Syria who seek protection.¹³ Eurosur system should be used in the sense of saving the life of persons fleeing from deadly conflicts rather than border controls. The human rights impact should be assessed when proposing, preparing and evaluating operations by reinforcing mechanism for reporting fundamental rights violations.¹⁴ In order

¹¹ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.32.

¹² G. S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. OUP 2007) p.389 ; Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.33; European Council, *Syrian refugees: a neglected human rights crisis in Europe*, Commissioner for Human Rights (20 December 2013) <http://www.coe.int/en/web/commissioner/-/syrian-refugees-a-neglected-human-rights-crisis-in-euro-2> [20 February 2015]

¹³ Amnesty International, *Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 September 2014, EUR 05/006/2014, available at: <http://www.amnesty.ch/de/themen/asyl-migration/europa/dok/2014/verantwortung-fuer-fluechtlinge-in-seenot/bericht-lives-adrift-refugees-and-migrants-in-peril-in-the-central-mediterranean--september-2014.-88-seiten> [12 July 2015] p.16; Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.34.

¹⁴ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.32. Frontex, Consultative Forum on Fundamental Rights (Second Annual Report 2014) 52 <http://frontex.europa.eu/news/second-annual-report-of-frontex-consultative-forum-published-4wLUS4> [accessed 15 July 2015]. There is still a need to ensure that standards and procedures effectively ensure proper protection of human rights of those arriving at the European Union's external borders because substantiated allegations

to respond to human rights violations and push-backs achieved by Greek authorities effectively, Frontex should ensure that they are properly investigated by a common EU authority. The CEAS should ensure that crossing borders irregularly in order to seek international protection should not be penalized,¹⁵ contrary to the practices such as detention.

The EU and each individual MS must ensure that its funding for any migration or border control programmes in third countries does not encourage or contribute to human rights violations.¹⁶ The principle of *non-refoulement* should be respected in neighbouring countries when tensions can be sensed.¹⁷ They should protect all refugees without distinction.¹⁸ Egyptian authorities for example should cease immediately unlawful detention and returns to Syria.¹⁹

❖ *Dublin regulation review*

The EP should be more active on the Dublin system but also the other instruments of the CEAS. The Syrian crisis should be properly taken in account.²⁰ The European

continue to be made about refoulement incidents and other human rights violations in the operational areas of Frontex coordinated joint operations, including failures to conduct proper search and rescue leading to people's deaths.

¹⁵ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.33.

¹⁶ Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.30

¹⁷ United Nations, UN 9th Report of Commission of Inquiry on Syria (A/HRC/28/69, 5 February 2015) 21 available at: <http://www.ohchr.org/EN/HRBodies/HRC/ICISyria/Pages/IndependentInternationalCommission.aspx> [accessed 5 July 2015]

¹⁸ Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.6.

¹⁹ Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.6.

²⁰ Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 5 June 2013, available at: <http://www.refworld.org/docid/51d152174.html> [accessed 28 March 2015] p.16.

Commission should assist MS with the development of alternatives to detention in the Dublin System.²¹

The reception conditions should be appropriate: decent housing in the community, a daily subsistence allowance, access to educational activities, and medical care for acute and chronic illnesses and basic services to assist asylum seekers with meeting day-to-day needs.²²

Asylum seekers should be informed of the Dublin decisions well in advance of the actual date and time of its implementation²³ as well as explaining the available remedies and how decisions are to be implemented. Bad practices such as informing the Dublin decisions on the day of leaving should be prohibited.²⁴

The Dublin System should be reviewed as it should consistently ensure family reunification throughout the EU and allow the possibility to travel to other EU MS beyond the first country of entry.²⁵ Syrian families should be kept together during the Dublin procedures and the best interests of the child should be maintained.

The European Commission should monitor national practices on the reception and detention of asylum seekers in the Dublin procedure with the support of EASO and sources from UNHCR and NGOs.²⁶ The Council of Europe Commissioner for Human Rights

²¹ Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 5 June 2013, available at: <http://www.refworld.org/docid/51d152174.html> [accessed 28 March 2015] p.15

²² Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 5 June 2013, available at: <http://www.refworld.org/docid/51d152174.html> [accessed 28 March 2015] p.15.

Access to lawyers and legal aid should be facilitated.

²³ Applicants in the Dublin procedure should be informed for example of their transfer decision within a reasonable period in advance of removal. European Council on Refugees and Exiles (ECRE), *"Dublin II Regulation: Lives on hold" - European Comparative Report*, February 2013, p.10

²⁴ European Council on Refugees and Exiles (ECRE), *"Dublin II Regulation: Lives on hold" - European Comparative Report*, February 2013, p.11.

²⁵ Amnesty International, *Lives Adrift: Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 September 2014, EUR 05/006/2014, available at: <http://www.amnesty.ch/de/themen/asyl-migration/europa/dok/2014/verantwortung-fuer-fluechtlinge-in-seenot/bericht-lives-adrift-refugees-and-migrants-in-peril-in-the-central-mediterranean--september-2014.-88-seiten> [12 July 2015] p. 17

²⁶ European Council on Refugees and Exiles (ECRE), *"Dublin II Regulation: Lives on hold" - European Comparative Report*, February 2013, p.10

should continue its observation of the impact of the Dublin system and ‘press MS to apply the Dublin Regulation in a manner which is consistent with their ECHR obligations’.²⁷

❖ *Rectifying bad media practices*

An important recommendation is to rectify media representation of refugees and asylum seekers in Europe. This recommendation does not only apply for the case of Syrian refugees but to any refugee. In Europe, there is a huge discrepancy between what is believed by the European governments and the media (‘the myths’)²⁸ on the one hand, and the reality on the ground on the other hand (‘the facts’).²⁹

One of the most aggravating issues is the constant confusion between the word migrant, refugees and asylum-seekers which contributes to the hostile and xenophobic climate.³⁰ There is a real problem nowadays as to the accurate words to use when dealing about asylum and immigration policy.³¹ Often refugees are designed behind the ‘pejorative’ words of ‘economic migrants’ and ‘massive invasion’.³² Although it is the media’s task to inform people and avoid misunderstandings, NGOs should promote a correct legal definition with clear explanations of their meaning and the context in which they should be used. Reportage on asylum seekers and refugees should be placed in its historical context

²⁷ European Council on Refugees and Exiles (ECRE), *"Dublin II Regulation: Lives on hold" - European Comparative Report*, February 2013, p.10

Member States must ensure that Dublin Regulation is applied in a manner consistent with the jurisprudence of the European Court of Human Rights (ECtHR) and CJEU.

²⁸ Most of EU Member States and media support severe migrations policy with the mythical argument that “Europe is having to cope with more than its fair share of refugees and migrants” and maintaining that a great number of irregular migrants “entering Europe are economic migrants” (Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe’s Borders*, 9 July 2014, EUR 05/001/2014, available at: <https://www.amnesty.org/en/documents/eur05/001/2014/en/> [12 July 2015] p.5).

²⁹ The facts are that most of the refugees around the world stay in the areas surrounding their countries or origin. According to the UNHCR in *Global Trends 2013*, the top 5 countries hosting the largest numbers of refugees were: Pakistan, Iran, Lebanon, Jordan, and Turkey. The first Western country (the USA) was at position 10.

³⁰ See in Germany (Pegida), in France (FN), in the UK (Ukip).

³¹ Report by Article 19 (with Cardiff School of Journalism) “What’s the Story? Results from research into media coverage of refugees and asylum seekers in the UK”, Aug 2003, 10 available at: www.article19.org/.../pdfs/publications/refugees-what-s-the-story-.pdf [accessed 16 January 2015]

³² The terms immigrant and asylum seeker are used as synonyms rather than as distinct terms to accurately convey the specific status and situation of individuals. The CNCDH has formally condemned the increasing discourse about the false rhetoric of invasions. Many hosting States treat asylum seekers as ‘disguised economic migrants’. A. Pécoud and P. de Guchteneire, *Migration without Borders: Essays on the Free Movement of People*, 2007, UNESCO & Berghahn Books, p.23.

and not presented as a generic issue.³³ Asylum seekers and refugees testimonies should be taken into account. The media should reflect the reality by portraying them in a less stereotypical manner, such as including more women or children.³⁴

❖ *Addressing the gap protection suffered by Palestinians refugees*

The Syrian conflict has revealed for the umpteenth time the vulnerability of the PR community. Filling the protection gap that affects PR requires a 'long-term solution' that should be considered beyond this immediate crisis and should be approached internationally rather than nationally.³⁵

Although the initial purpose of the 1951 Convention and the UNHCR's Statute was not to exclude PR from refugee status but to alleviate overlapping protection regimes³⁶, history indicates just the opposite. It is now time to clarify UNHCR's mandate with regard to their protracted refugee situation. Although, UNHCR's mandate includes Palestinians who are outside UNRWA's areas of operation, not all countries adhere to this policy.³⁷ Hence, the UNHCR must 'establish an explicit understanding with parties of the 1951 Convention in regard to the scope of Article 1(D)'.³⁸ It should also expand the protection of PR in both inside and outside of UNRWA's areas of operation.³⁹ PR from Syria should be submitted to the same treatment as Syrians for durable solutions.

³³ Report by Article 19 (with Cardiff School of Journalism) "What's the Story? Results from research into media coverage of refugees and asylum seekers in the UK", Aug 2003, 10. The media should find opportunities to present refugees as individuals whose stories are worth telling.

³⁴ News and feature articles on asylum rely heavily on politicians, official figures and the police as sources of information and explanation. Individual asylum seekers and refugees are only quoted when they themselves are the subject of a report and rarely contribute directly to the policy debate.

³⁵ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 617.

³⁶ UNHCR's Note, 'Interpretation of Article 1D of the 1951 Convention relating to the Status of Refugees and Article 12(1)(a) of the EU Qualification Directive in the context of Palestinian refugees seeking international protection' (May 2013) <http://www.refworld.org/pdfid/518cb8c84.pdf> p.2

³⁷ While Turkey has allowed PR to register with UNHCR, the Egyptian has refused doing so, which caused great discrimination to PR from Syria who has moved to Egypt.

³⁸ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 614.

³⁹ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 614.

The UNHCR should suggest an active cooperation with UNRWA as to increase protection and assistance for PR in time of war and time of peace.⁴⁰ The cooperation would not diminish the function of the UNRWA but put greater stress on 'the indistinguishable humanitarian needs of PR from other refugees during armed conflict or a similar crisis'.⁴¹

Behind the reception of the PR, there is a political commitment.⁴² Accordingly, the UNHCR should be even more involved towards Palestinian refugees regarding 'their lack of access to durable solutions'.⁴³ UNHCR should thus include Palestine refugees in the durable solutions proposed to Syrian refugees. A minimal burden sharing of PR should be imposed on UNHCR as they constitute around 80,000 refugees from Syria.

❖ *Future of the CEAS*

The CEAS will never work properly as long as the differences across MS with regard to protection rates, refugee definition, asylum procedures and reception conditions continue to persist.⁴⁴ The EP should urge the Commission to make proposals with a view of a further and real harmonization of protection in the EU. It is important to understand that the 'EU would certainly have adopted a radically different and more positive approach to refugees

⁴⁰ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 615.

⁴¹ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 615. The collaboration between these two UN agencies should 'shape how the two agencies run meetings, fund-raise, monitor border crossings, and engage in emergency response'. They should speak in one voice 'so that they represent the interests of all refugees, rather than set PR apart'.

⁴² As Erakat rightly states 'taking responsibility for Palestinian refugees is never a temporary commitment' (N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 616).

⁴³ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 616.

⁴⁴ Jesuit Refugee Service, *Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project)*, 5 June 2013, available at: <http://www.refworld.org/docid/51d152174.html> [accessed 28 March 2015] p.16.

and asylum seekers had it been conceived of as a region of immigration, and asylum as a mechanism for admission rather than border control'.⁴⁵

In addition to the usual recipients⁴⁶, municipalities and local administrations are ideally placed to bridge the gap between refugees and their hosts, they should be asked with helping the daily lives of people. Not only, would it implement EU asylum policies better, it would also reduce the xenophobic climate as local populations would be involved in the process.

An adequate funding policy is important but in a context of increasing euroscepticism and anti-migrant policies, Collett rightly reveals that 'any policies put forward need to demonstrate added value'.⁴⁷

⁴⁵ J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013) p.244

⁴⁶ international organizations, NGOs and governments.

⁴⁷ E. Collett, 'Future EU policy development on immigration and asylum: Understanding the challenge', *Migration Policy Institute*, EPBS, Issue no.4, May 2014, p.9; "[u]nlike the toppled regimes of the Arab Spring, however, the Syrian regime has remained at the helm overseeing a conflict that has shifted from limited protest to all-out political struggle marked with the risks of ethno-sectarian civil war ». F and F report 2012/14 p.1

7. Conclusion

The burden of refugees and asylum seekers from Syria is unevenly distributed. While the number of non-EU asylum seekers has doubled from 300,000 to 600,000 between 2011 and 2014 mainly due to the Syrian crisis¹, the EU did not open the door to refugees in proportion to their flight from Syria'.² Instead, EU external border controls have been reinforced. Not only is access to protection for those in need being denied, but the deterioration of reception standards and the strengthening of policies about detention are denying asylum seekers from their basic rights.

The EU response to the Syrian refugee crisis is moreover incoherent: while some EU MS have encouraged a political transition without considering the possible impact within the region, others have remained neutral and have provided international protection for those fleeing the deadly conflict. The EU has failed to 'provide safe routes for refugees fleeing from the bloody conflict in Syria'³ leading to terrible incidents on the borders of the Schengen area⁴, which adds to the deadly burden of "Fortress Europe".⁵

¹ C. Costello and E. Hancox 'The UK, EU Citizenship and Free Movement of Persons', *Migration Observatory policy*, COMPAS, University of Oxford, UK, May 2014, p.4.

² P. Fargues, 'Europe Must Take on its Share of the Syrian Refugee Burden, but How?' Migration Policy Centre, Policy Brief, February 2014/01, 2.

³ Euro-Mid Observer for Human Rights, 'New waves of Syrian and Palestinian refugees to Europe' (19 February 2014) <http://www.euromid.org/en/article/499/New-waves-of-Syrian-and-Palestinian-refugees-to-Europe#sthash.81qAAh6T.dpbs> [accessed 12 April 2015]

⁴ See Amnesty International, *Forteresse Europe. Facts and figures*, 9 July 2014, EUR 05/003/2014, available at : <https://www.amnesty.org/fr/documents/EUR05/003/2014/fr/> [accessed 10 June 2015]

FIDH – Migreurop – REMDH, Frontex. *Entre Grèce et Turquie : la frontière du déni*, mai 2014 available at : <http://www.migreurop.org/article2512.html> [accessed 20 May 2015]

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⁵ See C. Rodier, *Xénophobie business. A quoi servent les contrôles migratoires ?*, La découverte 2012, p. 189, qui évalue à 16 250 le nombre de personnes décédées entre 1993 et 2012, lors d'une tentative de passage clandestin des frontières de l'espace Schengen. Pour sa part, La Cimade évalue le nombre de morts aux frontières de l'Europe à 19 500 depuis 1988 (*Migrations : état des lieux 2014*, mai 2014, p. 134).

The CEAS is supposed to provide asylum seekers with access 'to the same conditions and procedures regardless of whichever EU country they are in'.⁶ The reality on the ground is slightly different: while in one country an asylum seeker may enjoy state accommodation and a decent subsistence allowance, he may live on streets and face destitution in another.⁷ The EU and MS 'have made significant progress since 1999 towards a CEAS..., but more remains to be done to ensure that asylum system in the EU deliver protection effectively to those who need it'.⁸ The EU should grasp the Syrian refugee crisis as 'an opportunity to show its responsibility to burden sharing and to its commitment of mutually improving the lives of peoples on both shores of the Mediterranean'.⁹

Although the great divergence regarding wealth and economic stability affects the ability to respond to the Syrian refugee crisis among EU MS, it does not mean that Europe must not open its door wider to Syrian refugees.¹⁰ Various tools exist to address the situation such as resettlement, humanitarian visas or exempting Syrian citizens from visa requirements while the conflict is active but there are hardly used.

While both Syrian and Palestine refugees have been equally affected by the deadly conflict, less international attention focused on the vulnerable Palestinian community. It

⁶ Protection interrupted The Dublin Regulation's Impact on Asylum Seekers' Protection (The DIASP project) The DIASP project was coordinated by JRS Europe in partnership with June 2013 p.5

⁷ Protection interrupted The Dublin Regulation's Impact on Asylum Seekers' Protection (The DIASP project) The DIASP project was coordinated by JRS Europe in partnership with June 2013 p.5

⁸ M. Garlick, 'Strengthening refugee protection and meeting challenges: The European Union's next steps on asylum', *MPI Europe Policy Brief*, Issue No. 5, June 2014, 8; E. Guild 'Europeanisation of Europe's Asylum Policy' (2006) 18 *International Journal of Refugee Law*: she describes the protection of refugees in the EU as a process of 'deterritorialisation of protection obligations' for refugees already in, or seeking to enter, the EU; J.-F. Durieux, "The vanishing refugee: how EU asylum law blurs the specificity of refugee protection" in H. Lambert, J. McAdam and M. Fullerton, *The Goal reach of European Refugee Law* (Cambridge University Press, 2013).

⁹ P. Fargues and C. Fandrich, The European Response to the Syrian Refugee Crisis-What Next?' MPC RR 2012/14, p.2.

¹⁰ As a result of the dangers faced by Syrians in transit countries, the UNHCR urges countries, including European, to keep borders open (UNHCR, 'UNHCR highlights dangers facing Syrians in transit, urges countries to keep borders open' (18 October 2013) <http://www.unhcr.org/526114299.html> [accessed 15 January 2015])

is a shame that PR are most of the time excluded from the durable solutions and little information is available.¹¹

The law is not simply a body of legal rules that aim to guide behaviours; it is also a discourse that influences collective representations.¹² Accordingly, the CEAS is a reflection of the refugee's image in the EU.



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¹¹ As the famous poet Mahmoud Darwish states 'Palestinians are the only nation in the world that feels with certainty that today is better than what the days ahead will hold'.

¹² CNCDH, *Avis sur la réforme du droit des étrangers* (21 mai 2015) § 102.

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Appendix materials

Appendix 1 Portuguese MEP, GUE-NGL, 23 March 2011¹

Sometimes we have to remind ourselves where we came from. If we look at the history of international law on refugees, we see that founding the UNHCR in 1949 signing the Geneva Convention Refugees in 1951 and the first great effort to resettle refugees (...) were targeted all of them at European refugees. At that time, Europe was the continent of refugees. We Europeans often forget that was the case today when we see refugees arriving from the rest of the world.

Appendix 2 Article 78 TFEU

- 1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.*
- 2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:*
 - (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;*
 - (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;*
 - (c) a common system of temporary protection for displaced persons in the event of a massive inflow;*
 - (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;*
 - (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;*
 - (f) standards concerning the conditions for the reception of applicants for*

¹ Quoted in A. Krasriqi & B. Suter, 'Refugee Resettlement to Europe 1950-2014' MIM Working Paper Series, 15:1, 2015, p.22-23

asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Appendix 3 Article 15 of the Qualification Directive 2004/83/EC (Qualification for subsidiary protection)

Serious harm

Serious harm consists of:

(a) death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Appendix 4 EU recast instruments²

Revised instrument	Original instrument	Three main changes relating to fundamental rights	Geographical applicability
Dublin Regulation (EU) No. 604/2013 (recast)	Dublin Regulation (EC) No. 343/2003	<ul style="list-style-type: none">· Prohibits transfer of asylum seekers to Member States whose asylum system are facing systemic deficiencies;· offers children stronger safeguards;· requires personal interview before transfer decisions taken· provides new cooperation measures between MS in case of crisis-prevention,· limits the number of asylum seekers in detention and 'prevents transfer of a person	All EU Member States and Schengen Associated Countries (SAC)

² Table 1.1 from the European Union: European Agency for Fundamental Rights, Fundamental rights: challenges and achievements in 2013, June 2014, ISBN 978-92-9239-456-1, available at: <http://www.refworld.org/docid/539957ac4.html> [accessed 21 August 2015]

		where there is a real risk of violating a fundamental right	
Eurodac Regulation (EU) No. 603/2013 (recast)	Eurodac Regulation (EC) No. 2725/2000	<ul style="list-style-type: none"> · Gives police and Europol access to Eurodac as of 2015 to prevent, detect or investigate serious crimes; · strengthens language on the duty to inform data subjects of the purpose of personal data processing; · European Commission's Eurodac evaluation must also address whether law enforcement's Eurodac access has led to indirect discrimination against applicants for international protection 	All EU Member States except Ireland, which is not bound by the recast version; all SAC, but further negotiations required with them regarding police access to Eurodac
Reception Conditions Directive 2013/33/EU (recast)	Reception Conditions Directive 2003/9/EC	<ul style="list-style-type: none"> · Regulates detention of asylum seekers, introducing safeguards, but allowing detention of children under certain circumstances; · requires that asylum seekers be given effective access to the labour market no later than nine months from the date of their application; · introduces new safeguards for vulnerable applicants, including a duty to put in place a system to identify vulnerable persons 	All EU Member States, except Denmark. Ireland and the United Kingdom are not bound by the recast version
Asylum Procedures Directive 2013/32/EU (recast)	Asylum Procedures Directive 2005/85/EC	<ul style="list-style-type: none"> · Enhances the quality of first-instance asylum procedures, makes new provisions on staff training, gender-sensitive procedures, personal interview and special procedural guarantees for applicants with specific needs; · limits application of accelerated asylum procedures; · strengthens the right to an effective remedy against a negative asylum decision, requiring that removal be suspended automatically or, in limited exceptions, upon request personal interview and the right to an effective remedy 	All EU Member States, except Denmark. Ireland and the United Kingdom are not bound by the recast version

Appendix 5 *Applications processed under an accelerated procedure*
In the UK (2012)³

Table 4: Applications processed under an accelerated procedure in 2012

	Number	Percentage
Total number of applicants	28,260	
Number of applications treated under an accelerated procedure at first instance	2,482 in detained fast track. 2,278 in non suspensive appeal procedure Total: 4,760 ³	17%

Source: UK Home Office

In France (2013)⁴

Table 4: Applications processed under an accelerated procedure in 2013

	Number	Percentage
Total number of applicants	51488	
Number of applications treated under an accelerated procedure at first instance	13254	25.74%

Source: OFPRA Activity Report 2013 (Annex 13)

Appendix 6 *Article 6(3) of the TFEU.*

Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

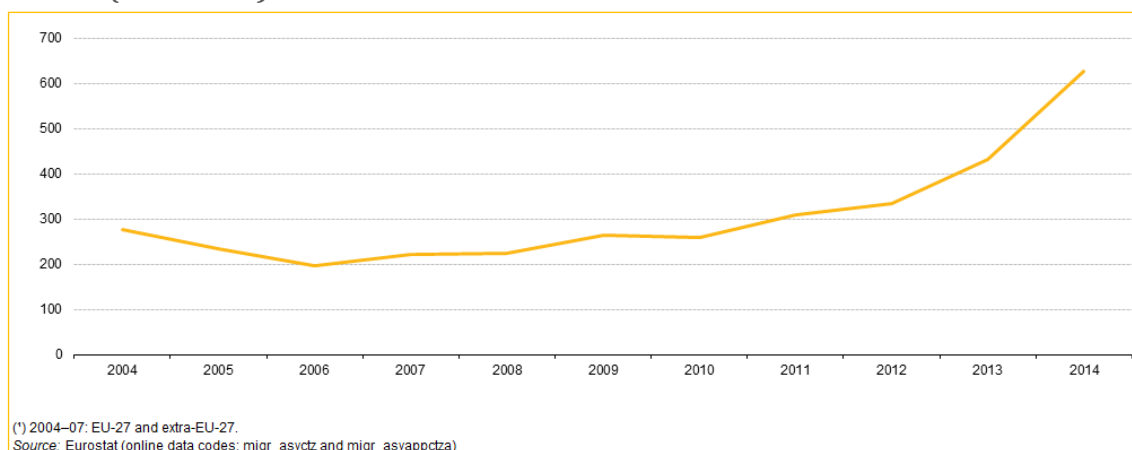
Appendix 7 *Article 33(1) of the Refugee Convention*

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.

³ Table 4 in Nash C., 'National Country Report: United Kingdom', *Asylum Information Database* (third update, January 2015) http://www.asylumineurope.org/sites/default/files/report-download/aida_-_uk_thirdupdate_final.pdf.

⁴ Table 4 in

Appendix 8 Asylum applications (non-EU) in the EU-28 Member States, 2004–14 (thousands)



Appendix 9 Italy asylum rate protection in 2014⁵

	Total applicants 2014	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)
Total numbers	64 686	3 649	8 121	10 091	13 327
Nigeria	10 138				
Mali	9 771				
Gambia	8 556				
Pakistan	7 191				
Senegal	4 678				
Bangladesh	4 582				
Afghanistan	3 180				
Ghana	2 178				
Ukraine	2 149				
Côte d'Ivoire	1 511				
Guinea	935				
Somalia	812				
Iraq	802				
Egypt	671				
Syria	505				
Tunisia	484				
Eritrea	480				
Guinea-Bissau	415				
Turkey	413				
Iran	394				
Other	5 041				

⁵ Donato (de) M. 'National Country Report: Italy' (Italian Council for Refugees & ECRE, January 2015) p.6, available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_italy_third_update_final.pdf [accessed 8 July 2015]

Appendix 10 Categories of Palestinian refugees

- Palestinians who are “Palestine refugees” within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948, who were displaced from that part of Palestine which became Israel, and who have been unable to return there.
- Palestinians who are “displaced persons” within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 June 1967, who have been unable to return to the Palestinian territories occupied by Israel since 1967.⁶
- Palestinian who are neither “Palestine refugees” nor “displaced persons” but who, owing to a well-founded fear of being persecuted for one or more of the 1951 Convention grounds, are outside the Palestinian territories occupied by Israel since 1967 and are unable or, owing to such fear, unwilling to return there.

Appendix 11 Statements of some Arab States delegates

Statement of Mr. Azkoul of Lebanon, 5 UNGAOR 358 (Nov. 27, 1950).

[T]he Palestine refugees . . . differed from all other refugees. In all other cases, persons had become refugees as a result of action taken contrary to the principles of the United Nations, and the obligation of the Organization toward them was a moral one only. The existence of the Palestine refugees, on the other hand, was the direct result of a decision taken by the United Nations itself with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility.

Accord Statement of Mr. Azmi Bey of Egypt, 5 UNGAOR 358 (Nov. 27, 1950).

The Arab States desired that those refugees should be aided pending their repatriation, repatriation being the only real solution of their problem. To accept a general definition . . . would be to renounce insistence on repatriation.

Appendix 12 Palestine community in Syria

The Palestine community constituted between 2.8 to 3 per cent of Syria's population and 10.5 per cent of the Palestinian refugees falling under UNRWA's

⁶ The third category of Palestinian refugees refers to individuals who are neither “Palestine refugees” nor “displaced persons” but who, owing to a well-founded fear of being persecuted for one or more of the 1951 Convention grounds, are outside the Palestinian territories occupied by Israel since 1967 and are unable or, owing to such fear, unwilling to return there.

mandate.⁷ In addition to the protection provided to PR, it is with great pride that Syria led the Palestinian cause itself.⁸ The relation of Palestinian refugees and UNRWA to the Syrian regime was accordingly more peaceful than in other Arab countries such as Lebanon.⁹

The majority of Palestinians were concentrated in the greater Damascus area.¹⁰ The other 25 per cent of the Palestinian population lived in Latakia, Homs, Aleppo, and Der'a mohafazat.¹¹ The Palestinian population lived in 12 camps: 9 official and 3 unofficial.¹² Yarmouk, although unofficial, was the biggest camp of Syria and was commercially active in the capital Damascus, which was also the political hub for Palestinian refugees in Syria.¹³

Syria was generally seen as providing the best conditions for Palestinian refugees comparing to other Arab States¹⁴ such as in Lebanon where they are deeply marginalized.¹⁵ Although Palestinian refugees had not been granted full Syrian

⁷ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.598.

⁸ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.598. Syria has refused to enter into negotiations with Israel until it withdraws from Arab and Palestinian lands.

⁹ The dubious place of Palestinians in Lebanon is associated to the Lebanese form of government where a balance between its Christian and Muslim communities has always been a bottom line (J. Allain *International Law in the Middle East : Closer to power than justice* (Ashgate, 2004) Chapter 4, p.111),

¹⁰ Åge A. Tiltne (ed.), 'Palestinian Refugees in Syria: Human Capital, Economic Resources and Living Conditions' FAO-report 514, 2006, p.7

¹¹ Mohafazat see Glossary. N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, 581-621; Nabil Mahmoud as-Sahly, 'Profiles: Palestinian Refugees in Syria' Al-Majdal BADIL (1999).

¹² N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.598. It should be noted that UNRWA provide nearly the same thing.

¹³ Åge A. Tiltne (ed.), 'Palestinian Refugees in Syria: Human Capital, Economic Resources and Living Conditions' FAO-report 514, 2006, p.8.

¹⁴ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.598: '[T]ogether with Jordan, Syria affords the greatest amount of civil, economic, social, and cultural rights to their Palestinian refugee population'.

¹⁵ Åge A. Tiltne (ed.), 'Palestinian Refugees in Syria: Human Capital, Economic Resources and Living Conditions' FAO-report 514, 2006, p.207: 'Poverty in the Palestinian camp and gathering population in Syria is less extensive and less severe than among the camp population in Jordan or the camp and gathering population in Lebanon when measured by income adjusted by international purchasing power estimates'.

citizenship, they were generally treated like Syrian Arab citizens. In 1956, Law 260 granted Palestinians nearly the same rights as Syrian nationals, with the exception of the voting rights.¹⁶ In 1963, Law 1311 granted Palestinian refugees travel documents so they could change or obtain new travel documents from any Syrian representative office abroad.¹⁷ Palestinians had the right to work and own businesses, and were granted universal access to education and health care.¹⁸ Access to these sectors contributed to the stability and prosperity of Palestinians in Syria.¹⁹ In addition, the Syrian government established a General Authority for Palestine Arab Refugees (GAPAR), within the Syrian Social Affairs and Labour Ministry, in order to administer the affairs of Palestinian refugees. The UNRWA used to work closely with GAPAR in managing the refugee camps.²⁰

N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.598. For further details on the discrimination of Palestine refugees in Lebanon see J. J. Suleiman, 'Marginalised Community: The Case of Palestinian Refugees in Lebanon' (2006) Migration, Globalisation & Poverty, RR http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf [accessed 6 February 2015], 'Marginalised Community: The Case of Palestinian Refugees in Lebanon', Development Research Centre on Migration, Globalisation, and Poverty' (Apr 2006) http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf>

¹⁶ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.598: 'Palestinian cannot vote or participate in elections for the Syrian National Council or the Presidency'.

¹⁷ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.598. Unlike Egypt, Palestinians did not need a re-entry permit to return to Syria and like their Syrian counterparts, 18 ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013) <http://www.anera.org/wp-content/uploads/2013/04/PalestinianRefugeesFromSyriainLebanon.pdf> [accessed 12 April 2015]; Åge A. Tiltnes (ed.), 'Palestinian Refugees in Syria: Human Capital, Economic Resources and Living Conditions' FAO-report 514, 2006, p.77.

More than 110 UNRWA schools were opened in Syria and all of them « were running on double shifts to provide around 67,300 students with primary and secondary education, following the Syrian curriculum » (UNRWA, 'Education in Syria' <http://www.unrwa.org/activity/education-syria> [accessed 8 June 2015])

¹⁹ S. Shafie, 'FMO Research Guide: Palestinian Refugees in Syria,' *Forced Migration Online*, <http://www.forcedmigration.org/guides/fmo017/fmo017.pdf> [accessed 20 May 2015]. A high percentage of them had the financial means to move out of refugee camps and reside elsewhere in the country.

²⁰ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.599: 'The Syrian regime views UNRWA as necessary but also as a threat and monitors its work closely'.

Appendix 13 Tensions between Palestine refugees and Assad's regime

Tensions between Palestinian refugees and Assad's regime had awakened in May 2011²¹ where Palestinians organized a global walk toward the borders of Israel in order to affirm their right to return.²² Unfortunately Israeli soldiers killed some of the Palestinian and Arab participants.²³ Palestinian refugees in Syria assigned responsibility for the deaths to the Popular Front for the Liberation of Palestine- General Command (PFLP-GC).²⁴ As Erakat explains the PFLP-GC is seen as "being close to Syria's security service and secret police".²⁵ Following this hundred thousand of Palestinians took their procession to the PFLP-GC headquarters and threw stones at the building before setting it on fire. The PFLP-GC guards shot directly at the crowd and killed twelve of the protestors. The attack on the PFLP-GC office, while letting Hamas's office untouched²⁶, arguably signaled that the Palestinian refugee population did not want to be drawn into the Syrian national conflict. In February 2011, Hamas abandoned its neutrality however, and left Syria for Qatar and Egypt leading to a disavowal of the Assad government.²⁷ Notwithstanding, both Palestinians, and official Palestinian leadership have asserted on remaining neutral in the conflict²⁸ but in July 2011 the PFLP-GC Secretary-General, Ahmed Jibreel, in contravention of his party's political decisions, threw his support

²¹ Erakat 2014 p. ??

²² 'Palestinians killed in 'Nakba' clashes' (15 May 2011) *Al Jazeera*

<http://www.aljazeera.com/news/middleeast/2011/05/2011515649440342.html> [accessed 6 January 2014]

²³ Including twenty-two persons in the Israeli occupied Golan Heights.

²⁴ The PFLP-GC is one of ten Palestinian political organizations that exist in Syria. They took part in organizing the march.

²⁵ Erakat 2014 p.?. Many Palestinian refugees believed that the Syrian government had facilitated the protest upon the Golan Heights, which it has not made accessible to protestors since its occupation in 1967, in order to divert attention away from its own internal unrest.

²⁶ 'Hamas has remained independent while the PFLP has openly sided with the Syrian government'

²⁷ Ismail Haniyeh, the head of the Hamas government in Gaza, declared his support for the opposition forces in Syria declaring them, heroic people ... striving for freedom, democracy, and reform'. The move was an affront to the regime, which provided Hamas with refuge and aid after their expulsion from Jordan.

²⁸ Filippo Grandi, then Commissioner General of UNRWA, publicly appealed to Palestinian refugees in Syria to remain neutral and called upon all parties to respect their neutrality

behind the Syrian regime in the conflict.²⁹ Accordingly, the Palestinian neutrality undermined. To complicate matters and despite their insistence on neutrality, Palestinian refugees have helped support the protestors with medical supplies and food.³⁰ In August 2011, Bashar Al-Assad's forces attacked the port city of Latakia, home to 10,000 Palestinians. In December 2012, Syrian jet bombed a mosque and a school inside the Yarmouk refugee camp.

Life in Yarmouk camp (Damascus, Syria)



Testimonies from Yarmouk³¹:

- *"To know what it is like in Yarmouk, turn off your electricity, water, heating, eat once a day, live in the dark, live by burning wood" – Anas, Yarmouk resident.*

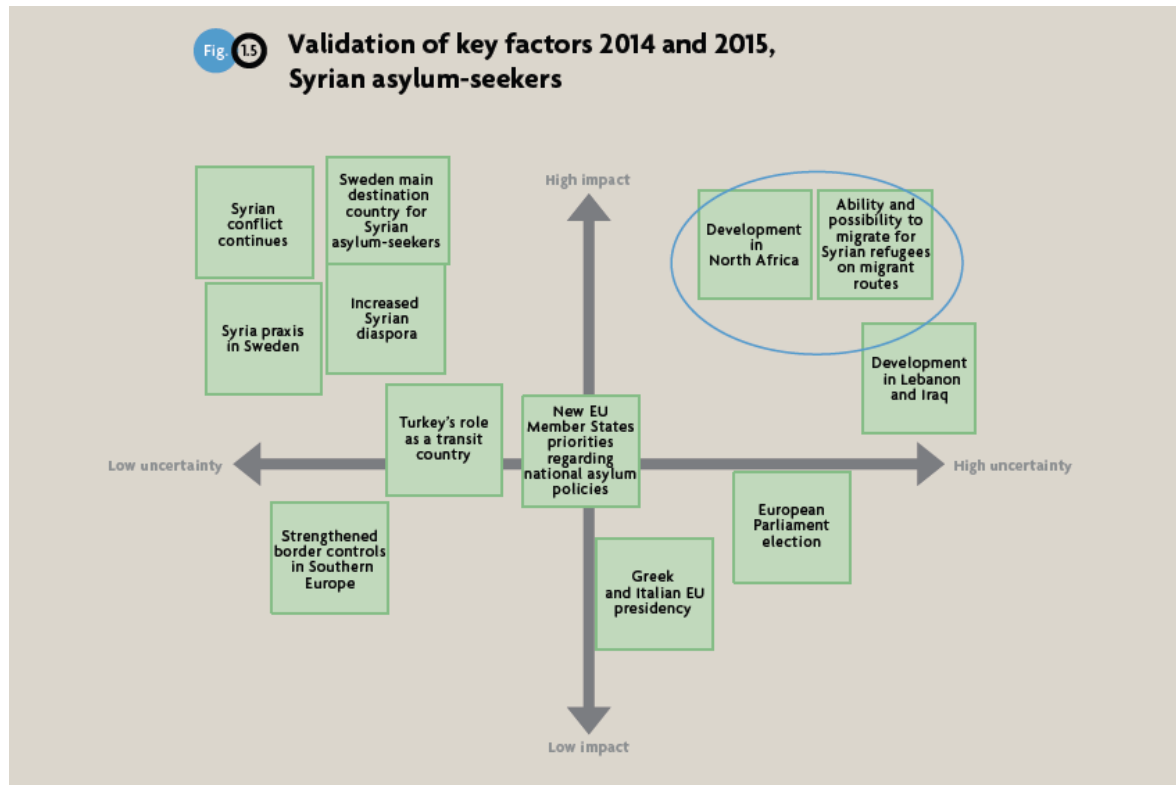
²⁹ He has allegedly recruited hundreds of Palestinian gunmen to defend Palestinian refugee camps against rebel fighters. Erakat 2014 and <http://www.theguardian.com/news/2015/mar/05/how-yarmouk-refugee-camp-became-worst-place-syria>

³⁰ To complicate matters, Free Syrian Army forces have also taken refuge in Yarmouk refugee camp.

³¹ UNRWA, #SaveYarmouk <http://www.unrwa.org/crisis-in-yarmouk>, [accessed 6 June 2015].

- "The most difficult thing is when my kids get up in the morning and ask for milk and bread and it is not available and I have to give them a radish or some vegetable, and sometimes that is not available." – Mahd.

Appendix 14 Key factors 2014 and 2015³²



Appendix 15 Photos of Syrian refugees in neighboring countries³³



³² From UNHCR, *UNHCR Asylum Trends 2014: Levels and Trends in Industrialized Countries*, 26 March 2015, available at:

http://www.unhcr.de/fileadmin/user_upload/dokumente/07_presse/pressemitteilungen/Asylum_Trends_2014.pdf [accessed 25 April 2015].

³³ The first photo was taken from Amnesty International, *The Human Cost of Fortress Europe: Human Rights Violations against migrants and refugees at Europe's Borders*, 9 July 2014, EUR 05/001/2014, p.9.



Appendix 16 *The situation of refugees from Syria in Arab States*

- *Lebanon*

Over one million Syrian refugees and around 44,000 PR from Syria have found refuge on the Lebanese territory.³⁴ The Syrian crisis has deeply impacted Lebanese economy, demography and political instability.³⁵ Lebanon is under significant pressure as it is a relatively small country³⁶ and it hosts already 449,957 Palestinian refugees who fled the Arab-Israeli war in 1948.³⁷ While the borders remain open for Syrian citizens³⁸, the government has placed 'arbitrary restrictions on Palestinian movement' since August 2013.³⁹ Since May 2014, PR from Syria cannot enter Lebanon anymore.⁴⁰

³⁴ UNRWA, 'Where we work: Lebanon at glance' <http://www.unrwa.org/where-we-work/lebanon> [accessed 15 February 2015]

³⁵ <http://www.unhcr.org/pages/49e486676.html>

³⁶ The total area (sq km) of Lebanon is 10, 452 (S.G. Khalaf, 'Lebanon' in Encyclopaedia Britannica (last update 21 August 2014) [online] available at: <http://global.britannica.com/place/Lebanon>

³⁷ In fact, Lebanon has more than 1.5 M of Syrian and Palestine refugees.

³⁸ The Lebanese government has required Syrians a visa to enter since January 2015 'Pour la première fois, le Liban impose des visas aux Syriens' (3 January 2015) *Le Point* http://www.lepoint.fr/monde/pour-la-premiere-fois-le-liban-impose-des-visas-aux-syriens-03-01-2015-1893777_24.php [accessed 10 May 2015]

³⁹ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.605.

⁴⁰ Amnesty International, Families ripped apart as Palestinian refugees from Syria denied entry to Lebanon (1 July 2014) <https://www.amnesty.org/en/articles/news/2014/07/families-ripped-apart-palestinian-refugees-syria-denied-entry-lebanon/> [16 February 2015]

While the Lebanese government has affirmed repeatedly to not deport any Syrian to Syria, Human Rights Watch has reported the disappearance of two Syrians, fearing a return to Syria.⁴¹ Human Rights Watch has also reported the consistent Lebanese practice of returning PR to Syria without any motif.⁴²

Lebanon is the only hosting country who has no formal policy for Syrian refugees.⁴³ The Lebanese has adopted a no-camp policy in order to avoid the Palestine experience.⁴⁴ Nevertheless, 'unofficial camps' for Syrians such as in Bekaa have flourished.



⁴¹ Human Rights Watch, *Lebanon: 2 Syrians Disappear, Feared Deported* (17 February 2015) <http://www.hrw.org/news/2015/02/17/lebanon-2-syrians-disappear-feared-deported> [accessed 6 March 2015]

⁴² Human Rights Watch, *Lebanon: 2 Syrians Disappear, Feared Deported* (17 February 2015) <http://www.hrw.org/news/2015/02/17/lebanon-2-syrians-disappear-feared-deported> [accessed 6 March 2015]

⁴³ K. El Mufti, "Official response to the Syrian refugee crisis in Lebanon: the disastrous policy of no-policy", *Civil Society Knowledge Center, Lebanon Support*, 10 January 2014. [online] <http://cskc.daleel-madani.org/paper/official-response-syrian-refugee-crisis-lebanon-disastrous-policy-no-policy> [accessed 5 June 2015]; V. Rainey, 'Lebanon: No formal refugee camps for Syrians' (11 March 2015) <http://www.aljazeera.com/news/2015/03/lebanon-formal-refugee-camps-syrians-150310073219002.html> [accessed 5 June 2015]

⁴⁴ K. El Mufti, "Official response to the Syrian refugee crisis in Lebanon: the disastrous policy of no-policy", *Civil Society Knowledge Center, Lebanon Support*, 10 January 2014. [online] <http://cskc.daleel-madani.org/paper/official-response-syrian-refugee-crisis-lebanon-disastrous-policy-no-policy> [accessed 5 June 2015]; V. Rainey, 'Lebanon: No formal refugee camps for Syrians' (11 March 2015) <http://www.aljazeera.com/news/2015/03/lebanon-formal-refugee-camps-syrians-150310073219002.html> [accessed 5 June 2015]

In the same way, PR from Syria have joined the ranks of Lebanon's PR, who are designed as the "forgotten people."⁴⁵ It has affected strongly the housing, financial, and psychological capacities of the Palestine camps, where resources were already strained.⁴⁶ Due to UNRWA's inability to support PR within the Syrian crisis⁴⁷, the UNHCR included for the first time about 20,000 PR in the Lebanese section of the fourth Syria Regional Response Plan (RRP).⁴⁸

Both Syrians and PR are struggling with their money as cost of living in Lebanon is much higher than Syria. Two-thirds of PRS families are not able to provide three meals a day.⁴⁹ More than 90% of the refugee families from Syria lack an income.⁵⁰ Unlike Syrian nationals, PR find very few legal protections and employment possibilities.⁵¹ PRS

⁴⁵ ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013) p.1. Palestine refugees from Syria are living in the crowded and impoverished Palestinian camps in Lebanon. Bellot M. 'Nouveaux arrivants à Bourj el-Barajneh, le camp palestinien le plus peuplé du Liban' (19 December 2012) *Secours Catholique Caritas France* <http://www.secours-catholique.org/actualite-dossiers/la-souffrance-des-syriens-refugies-au-liban/nouveaux-arrivants-a-bourj-el-barajneh-le-camp-palestinien,11425.html> [accessed 10 March 2015]

⁴⁶ ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013) p.5: ANERA's January 2013 survey shows that 74% of households interviewed are crowded with more than 10 people. Living sometimes 20 or more people to a room, the newly arrived refugees worry most about paying rent and providing meals for their families. Large numbers of people share toilets and many have to leave their shelters to use facilities, raising the likelihood of illness.

⁴⁷ 'This was partly attributed to the fact that donors were largely unaware of the distinction between UNRWA and UNHCR, and 'when they think of the Syrian crisis they will tend to support the UNHCR, not necessarily UNRWA' (N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.607).

⁴⁸ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.606. It was not the case for the previous four versions of the RRP.

⁴⁹ "For \$10 in Syria, I could feed my family of eight for the whole day. In Lebanon it is barely enough for one meal" said a Palestine refugee in Nahr El Bared camp in ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013) p.2.

⁵⁰ Although not widely reported, child labor exists and families may resort to it as a means of survival in light of prolonged displacement and exhaustion of their financial sources. Hunger is a major issue for these families.

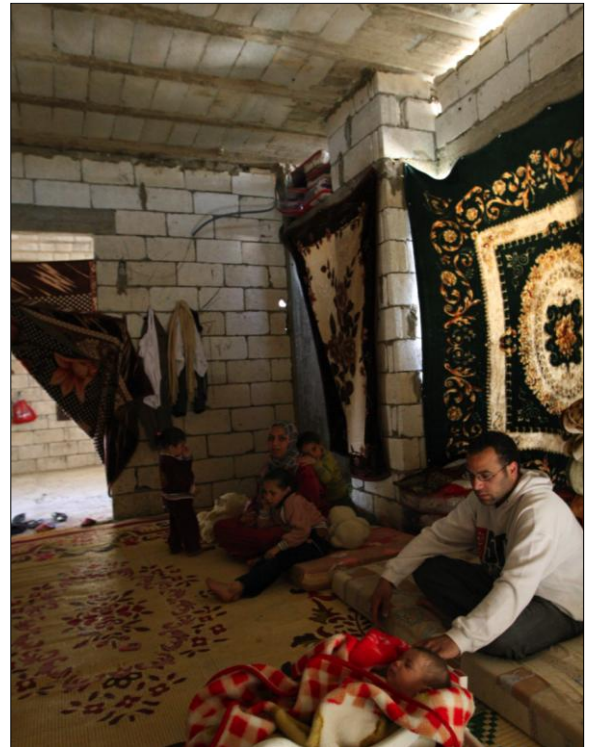
⁵¹ ANERA, 'Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon' (Volume 4, April 2013) p.3: unemployment is widespread among Palestinian families from Syria, regardless of age, gender, educational level, or previous employment status.

do not have the right to employment in Lebanon⁵² as Syrian citizens do, due to the old experience of Syrian citizens being migrant laborers in Lebanon.⁵³

Bourj-El-Barajneh Palestine Refugee Camp (Beyrouth)



Palestine refugees from Syria in Lebanon



Palestinian Badawi Camp near Tripoli

Testimonies of Palestine refugees from Syria in Lebanon⁵⁴

Meet the Kheir family

“We left with the clothes on our backs,” Ahmed says, repeating the most common refrain heard among the Syrian refugees. The family left Syria on January 14, only

⁵² Palestine refugees who are Lebanon in 1948 are restricted employment too (article 17 of Decree No. 17561 of 18 September 1962).

⁵³ Syrian workers do not need work permits in Lebanon (J. J. Suleiman, ‘Marginalised Community: The Case of Palestinian Refugees in Lebanon’ (2006) Migration, Globalisation & Poverty, RR http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf [accessed 6 February 2015], ‘Marginalised Community: The Case of Palestinian Refugees in Lebanon’, Development Research Centre on Migration, Globalisation, and Poverty’ (Apr 2006) http://www.migrationdrc.org/publications/research_reports/JaberEdited.pdf> p.16)

⁵⁴ ANERA, ‘Reports on the ground in the Middle East: Palestinian Refugees from Syria in Lebanon’ (Volume 4, April 2013) p.3-4.

days after his wife Dima gave birth through a C-section. "I went to the hospital three times before that and I didn't have the baby. I was so anxious from the shelling," Dima says.

Baby Moataz is their only son, but Ahmed feels no optimism for him.

Meet the Oneissi family

Mohammad and Alaa are living with their three young children in the Burj El Shemali camp in southern Lebanon. They fled from the Yarmouk camp in Syria in February. Mohammad's mother was sick when they arrived and died in Lebanon. Her hospital bills came to \$4,700, They still owe \$1,700, but they have no more money and have no electricity, running water or gas for cooking.

Mohammad spends his days searching for work, patching up holes and worrying that the snakes and insects infesting their shelter will bite his baby girl.

- Egypt

Egypt had initially offered refuge to 300,000 Syrian refugees, more than those who are registered with UNHCR⁵⁵, which was a relatively warm reception.⁵⁶ Under the government of former President Mohamed Morsi, Syrian were allowed to enter Egypt without a visa and were 'eligible for a renewable three-month residency'.⁵⁷

⁵⁵ 132,375 Syrian refugees are registered with the UNHCR as of July 2015 (UNHCR, Syria Regional Refugee Response, available at: <http://data.unhcr.org/syrianrefugees/asylum.php> [accessed 15 July 2015])

⁵⁶ K. P. Norman, 'Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees' in Re-conceptualizing Refugees and Forced Migration in the 21st Century, Refugee Review, Vol. II, Number 1, June 2015, p.87. Morsi's assistance towards Syrian's refugees was logical as he supported the oppositional forces and cut the diplomatic ties with the Syrian Bashar al-Assad government 'Egypt's Morsi Severs Ties with Syria, Warns of "Counter-Revolution Violence"' (15 June 2013) *Al-Ahram* [on-line] Available at: <http://english.ahram.org.eg/News/74082.aspx> [Accessed July 11, 2015]; Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.6.

⁵⁷ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p. 618; Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.7

Former President Mohamed Morsi even announced in September 2012 'that all Syrian migrant children residing in Egypt would be granted enrolment in public schools regardless of UNHCR status and that Syrian families could access Egyptian public hospitals free of charge'. P. Norman, 'Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees' in Re-conceptualizing Refugees and Forced Migration in the 21st Century, Refugee Review, Vol. II, Number 1, June 2015, p.87

It was another story for PR who faced significant issues in finding refuge in Egypt.⁵⁸ Although, PR should fall within the scope of UNHCR's mandate as they are not anymore in UNRWA's areas of operation and as Egypt is part of the 1951 Convention, the Egyptian government has not considered Palestinians as eligible for UNHCR's protection.⁵⁹

Since the Egyptian military coup in July 2013, the situation of both Syrian and PR has deeply worsened. Syrians in Egypt became the subject of a government-organized media campaign that referred to the group as 'terrorists allied with the Muslim Brotherhood and former President Mohamed Morsi's supporters'.⁶⁰ The coup d'état the treatment⁶¹ enjoyed by the Syrian refugees has changed *de facto*. The Egyptian policy changed and imposed, for example, a mandatory visa for Syrian refugees.⁶² Consequently, the number of Syrian refugee has dropped significantly as only 134,000 are registered with UNHCR as of June 2015.

Several humanitarian agencies, including Human Rights Watch and Euro-Mid Observer for Human rights, have reported the arbitrary arrests, xenophobia, unlawful

⁵⁸ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p. 608. As of late October 2013, there are 6,000 Palestinian refugees in Egypt.

⁵⁹ N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p. 606
Moreover, PR are required to arrive directly from Damascus in order to be granted entry. For the PR who tried to enter through Lebanese and Turkish airports, they are often detained at Cairo airport or forced to return to Syria. N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p. 606

⁶⁰ K. P. Norman, 'Co-Ethnicity, Security and Host Government Engagement: Egypt as a Non-Traditional Receiver of Migrants and Refugees' in *Re-conceptualizing Refugees and Forced Migration in the 21st Century*, *Refugee Review*, Vol. II, Number 1, June 2015, p.88.

⁶¹ It was a nice treatment with healthcare and access to primary education.

⁶² Another example is the inability for Syrians who required medical treatment to visit Egyptian public hospitals due to harassment or fear of arrest following the military coup (Keyseley Norman p.88)

detention and deportation faced by the Syrian and PR in Egypt.⁶³ Over 1,500 refugees from Syria, including 250 children and 400 PR, were detained between July and December 2013 in Egypt.⁶⁴



We can see clearly the presence of a child detained with other man in this overcrowded room.

A Group of men from Syria held at Abu Qir police station in Alexandria in September © 2013

Hundreds of cases of *refoulement* to Syria were reported as well:⁶⁵ while Syrian refugees are allowed to leave Egypt and seek refuge elsewhere, Palestine refugees are forced to chose between two deadly options: 'go on the boat and risk our lives for dignity or return to Syria to die', reveals a Palestinian father who had set sail with his 3-year-old son.⁶⁶ The Egyptian policy toward PR is clearly violating international refugee law as

⁶³ Amnesty International. 2013. "We Cannot Live Here Anymore: Refugees from Syria in Egypt." Amnesty International [on-line] October 16, 2013. Available at: <http://www.amnestyusa.org/research/reports/we-cannot-live-here-anymore-refugees-from-syria-in-egypt?page=2> [Accessed 12 July 2015].

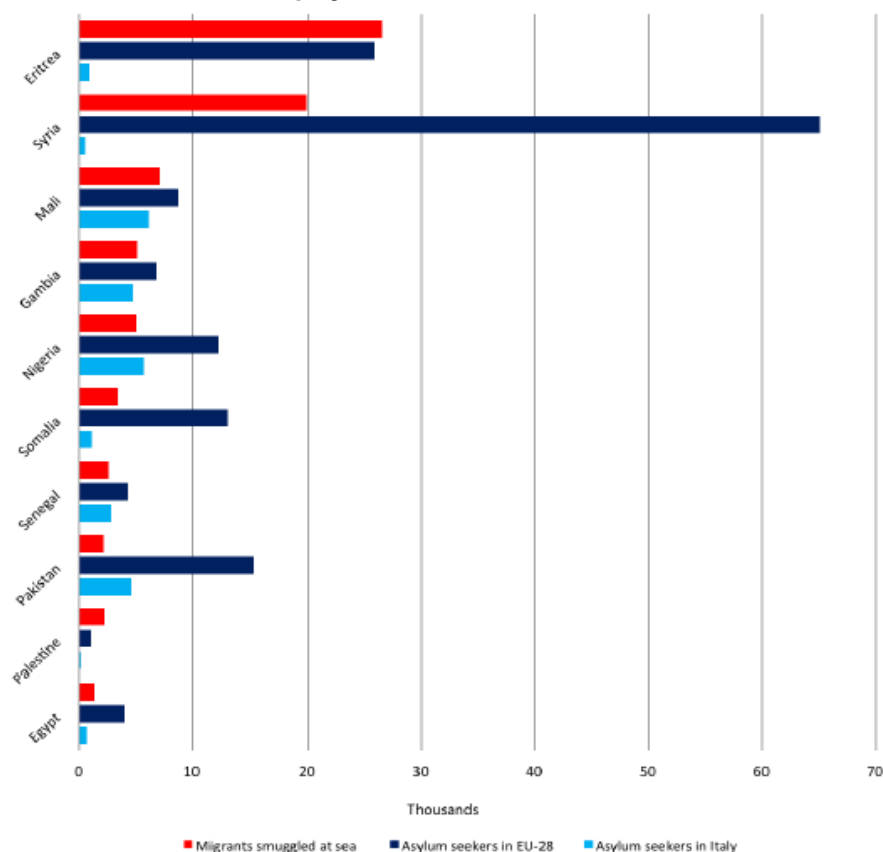
⁶⁴ As of 4 November 2013, 300 refugees, including 211 Palestinians, remain in Egyptian custody.

⁶⁵ Human Rights Watch 2013. "Egypt: Syria Refugees Detained: Coerced to Return." Human Rights Watch [on-line], November 11, 2013. Available at: <http://www.hrw.org/news/2013/11/10/egypt-syria-refugees-detained-coerced-return> [Accessed 10 July 2015]

⁶⁶ Human Rights Watch 2013. "Egypt: Syria Refugees Detained: Coerced to Return." Human Rights Watch [on-line], November 11, 2013. Available at: <http://www.hrw.org/news/2013/11/10/egypt-syria-refugees-detained-coerced-return> [Accessed 10 July 2015].

they are forcibly returned to a place where they fear persecution.⁶⁷ All this has pushed which push Syrian and PR alike to look for life-endangering alternatives, such as the death boats, in order to flee Egypt.⁶⁸ Yet, even in this option the Egyptian navy is violating human rights. On 17 September 2013, it opened fire on a boat headed towards Italy carrying 150 Syrian and PR. The navy killed two of the refugees, injured two others, and detained the survivors.⁶⁹

Appendix 17 *Top ten nationalities of migrants smuggled at sea to Italy from October 2013 to July 2014⁷⁰*



⁶⁷ G. S. Goodwin-Gill and J. McAdam, *The refugee in international law* (3rd edn. OUP 2007)p.389.

⁶⁸ Euro-Mid Observer for Human Rights, 'Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity', November 2013, p.5

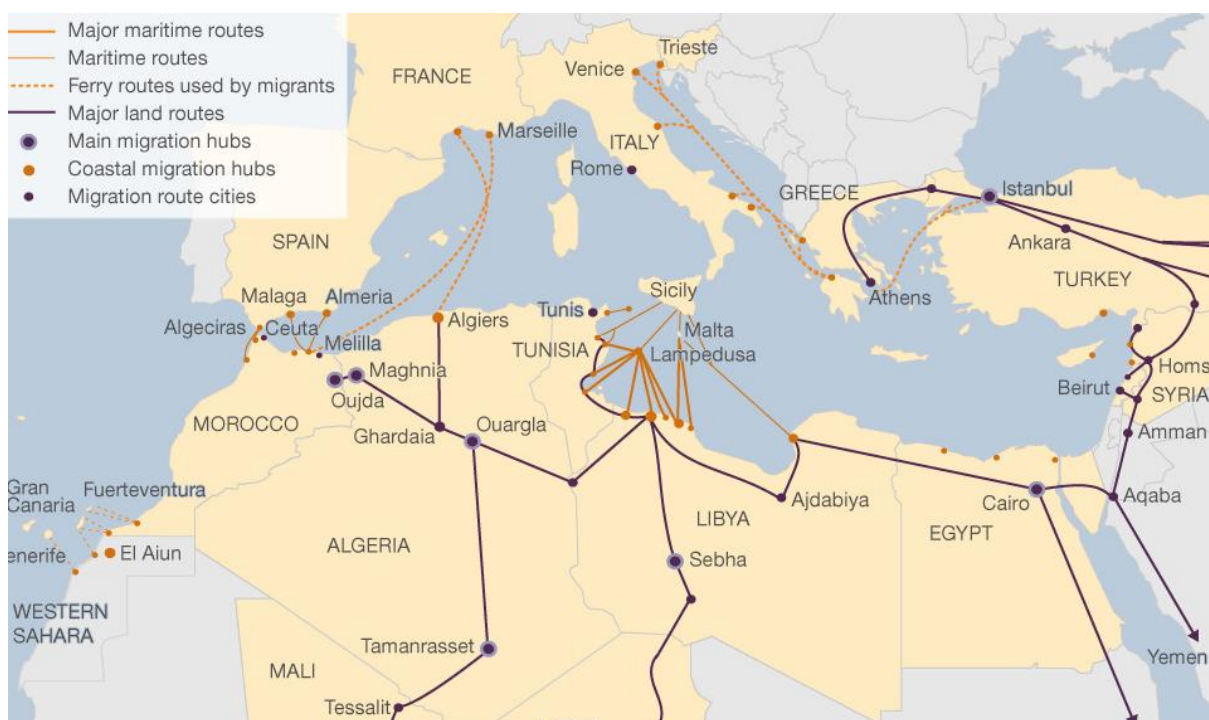
⁶⁹ On October 2013, a boat carrying 150 refugees 'sank off the coast of Egypt killing twelve refugees and leaving several others missing; Egypt detained the survivors' (N. Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement', *International Journal of Refugee Law*, 2014, Vol.26, No.4, p.609).

⁷⁰ Bonfanti S. and Fargues P. (2014) 'When the best option is a leaky boat: why migrants risk their lives crossing the Mediterranean and what Europe is doing about it', Issue no.4, May 2014, Migration Policy Centre (MPC), October 2014/05, p.14

Appendix 18 *Syrian refugee boat arrivals at the Greek Islands*



Appendix 19 Main routes to reach Europe⁷¹



Appendix 20 Testimonies of a boat journey and a shipwreck tragedy

Abdel, a 37-year-old marble worker, father of six, fled Aleppo, Syria, for Libya in 2012. In 2014, Abdel became worried for the safety of his family in Libya and decided to leave. “The smuggler organized for my family and me to be picked up and taken to Zuwara beach. There were approximately 300 Syrians in the group and around 500 Africans from various nationalities. Libyan men involved in the operation would come to the beach every day with guns and would terrorize us. I saw some Africans get beaten and some were even beaten to death with wooden and iron pieces. The Africans had it the worst because they treated them as if they weren’t human beings.”⁷²

Eventually, armed men ushered everybody closer to the shore where inflatable boats were waiting. “When my family and I were taken onto the larger boat, we expected it to be bigger because there were so many of us. We immediately felt uneasy about the journey. There were too many people on the boat. The captain was one of the African passengers on the boat and not a real captain. We left

⁷¹ Euro-Mid Observer for Human Rights, ‘Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity’, November 2013, p.16

⁷² Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 Septembre 2014, EUR 05/007/2014.

thinking that it would take about six or seven hours to arrive, but by noon on Sunday, we still had not arrived. We were lost.”⁷³

Testimonies from the shipwreck of 15 September 2014

(M.S.) recalls: “When the boat capsized, its weight dragged me into the sea. I had no idea what was going on, but the pressure of the water was heavy, I couldn’t breathe and I swallowed so much better. I was struggling, trying to swim. But my clothes were so heavy; I was wearing 2 pants and a heavy jacket. The water was so cold, and it was so dark all of a sudden. I was panicking. I realized that I only have a few seconds left. With all my strength, I pushed back and tried to swim upwards. As I reached the surface, I saw a life jacket and I grabbed it directly and put it around my arm. As I looked around me, the boat had completely disappeared and I saw people screaming and crying. Husbands calling for their wives. I saw bodies floating and people fighting for lifejackets. I was desperately trying to survive. The waves were so high; the current was dragging me away. It took a while before rescue came. I think half an hour later I saw a helicopter flying in circles. I thought it won’t take much long before they save us. But it took so much longer before real rescue arrived. Many died from the freezing water, and others drowned. They could have saved so many lives, if they had just gotten here right away”.⁷⁴

“When the boat sank, I could not find my friends. I was asking: where are they? Then I found Omar, but another friend was nowhere to be found. I tried to help others, but could not. Omar and I helped each other, but it was difficult to swim for hours. In the water, everyone was looking for family and friends.”⁷⁵

Boat's route in the 15 September 2014 tragedy



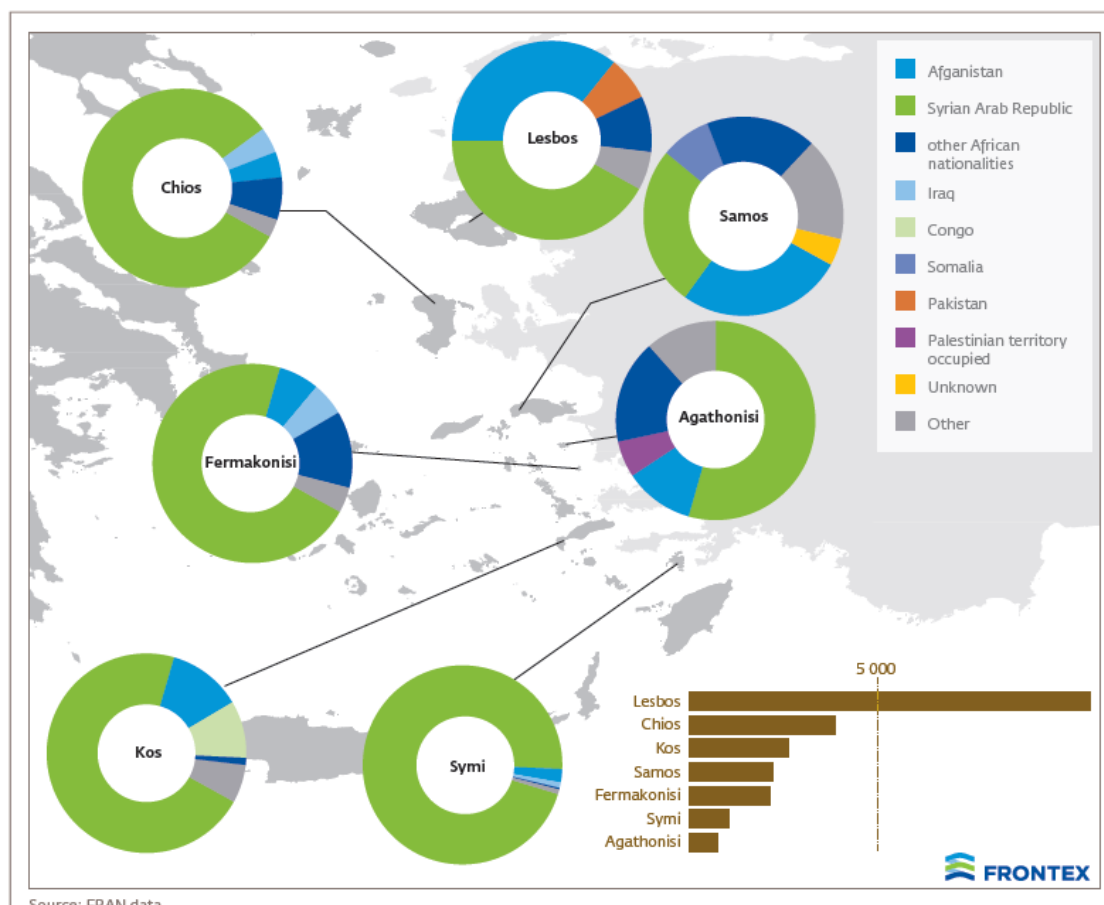
⁷³ Amnesty International, *Lives Adrift Refugees and Migrants in Peril in the Central Mediterranean* (Summary) 30 September 2014, EUR 05/007/2014.

⁷⁴ Euro-Mid Observer for Human Rights, ‘Death Boats. The Journey of Refugee from Syria to Europe in search of their Dignity’, November 2013, p.28 and p.30.

⁷⁵ Mohammed, 21, a Syrian refugee, describing Amnesty International in May 2014 the dramatic experience he endured on 11 October 2013, when the boat he was on with some 400 other people, sank 70 miles off Lampedusa, an Italian island in the Mediterranean.

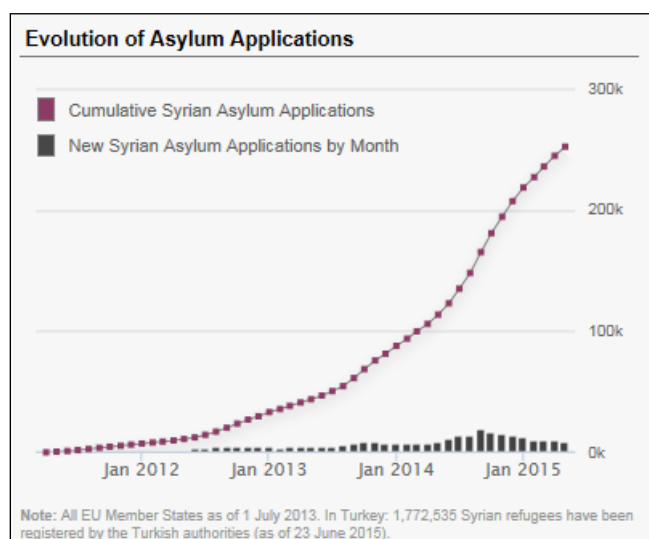
Appendix 21 Increasing tensions in Greek Islands

Figure 3. Islands in the Eastern Aegean Sea most targeted by irregular migrants coming from Turkey



Appendix 22 Syrian asylum applications in Europe

1-UNHCR, Europe: Syrian Asylum Applications From Apr 2011 to June 2015

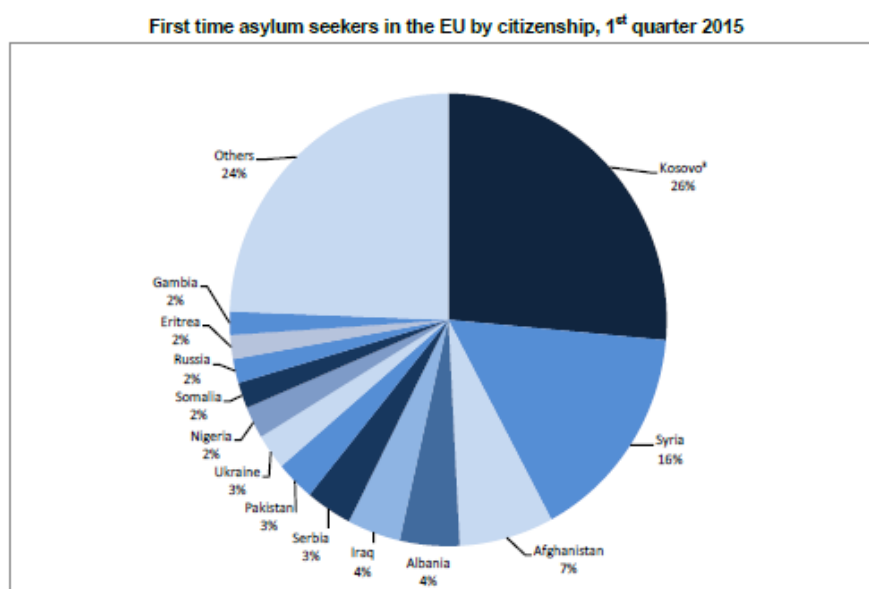


2-Countries of origin of (non-EU) asylum seekers in the EU-28 Member States, 2013 and 2014⁷⁶

	Total (number)		Share in total (%)		Change 2013 to 2014		Ranking		
	2013	2014	2013	2014	Absolute (number)	Relative (%)	2013	2014	Change
Non-EU-28 total	431 090	625 920	100.0	100.0	194 830	45.2	-	-	-
Syria	49 980	122 115	11.6	19.5	72 135	144.3	1	1	0
Afghanistan	26 215	41 370	6.1	6.6	15 155	57.8	3	2	1
Kosovo (UNSCR 1244/99)	20 225	37 895	4.7	6.1	17 670	87.4	6	3	3
Eritrea	14 485	36 925	3.4	5.9	22 440	154.9	8	4	4
Serbia	22 360	30 840	5.2	4.9	8 480	37.9	4	5	-1
Pakistan	20 850	22 125	4.8	3.5	1 275	6.1	5	6	-1
Iraq	10 740	21 310	2.5	3.4	10 570	98.4	13	7	6
Nigeria	11 670	19 970	2.7	3.2	8 300	71.1	10	8	2
Russia	41 470	19 815	9.6	3.2	-21 655	-52.2	2	9	-7
Albania	11 065	16 825	2.6	2.7	5 760	52.1	11	10	1
Somalia	16 510	16 470	3.8	2.6	-40	-0.2	7	11	-4
Stateless	9 670	15 605	2.2	2.5	5 935	61.4	14	12	2
Ukraine	1 055	14 050	0.2	2.2	12 995	1 231.8	47	13	34
Mali	6 630	12 945	1.5	2.1	6 315	95.2	20	14	6
Bangladesh	9 140	11 680	2.1	1.9	2 540	27.8	15	15	0
Gambia, The	3 545	11 515	0.8	1.8	7 970	224.8	29	16	13
Iran	12 680	10 860	2.9	1.7	-1 820	-14.4	9	17	-8
Bosnia and Herzegovina	7 065	10 705	1.6	1.7	3 640	51.5	19	18	1
FYR of Macedonia	11 035	10 330	2.6	1.7	-705	-6.4	12	19	-7
Unknown	4 025	9 600	0.9	1.5	5 575	138.5	28	20	8
Georgia	9 090	8 560	2.1	1.4	-530	-5.8	16	21	-5
Dem. Rep. of Congo	8 390	7 340	1.9	1.2	-1 050	-12.5	17	22	-5
Algeria	7 080	6 700	1.6	1.1	-380	-5.4	18	23	-5
Senegal	2 965	6 435	0.7	1.0	3 470	117.0	32	24	8
Guinea	6 490	6 375	1.5	1.0	-115	-1.8	22	25	-3
Sudan	3 235	6 230	0.8	1.0	2 995	92.6	31	26	5
Armenia	5 235	5 700	1.2	0.9	465	8.9	26	27	-1
Sri Lanka	6 550	5 480	1.5	0.9	-1 070	-16.3	21	28	-7
China (including Hong Kong)	5 280	5 170	1.2	0.8	-110	-2.1	25	29	-4
Turkey	5 635	5 160	1.3	0.8	-475	-8.4	23	30	-7
Other non-EU-28	60 725	69 820	14.1	11.2	9 095	15.0	-	-	-

Source: Eurostat (online data code: migr_asyappctza)

3-Comparing to 2014, Syria is not the first nationality to apply for asylum in the first 2015⁷⁷



⁷⁶ Table 1.1 in European Commission, EUROSTAT: Asylum and Managed Migration available at: <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/statistics-illustrated> [accessed 5 July 2015]

⁷⁷ European Commission, Eurostat News release (18 June 2015) 112/2015 <http://ec.europa.eu/eurostat/documents/2995521/6887997/3-18062015-CP-EN.pdf/4457b050-26f9-4cf1-bf27-9ffb73ff8c7b> [accessed 31 July 2015]

4-Asylum applicants by citizenship in the Europe⁷⁸

Asylum applicants by citizenship, 2014										
	Applicants	Three main citizenships of asylum applicants								
	#	First citizenship	#	%	Second citizenship	#	%	Third citizenship	#	%
EU	626 065	Syria	122 790	20	Afghanistan	41 305	7	Kosovo ⁴	37 875	6
Belgium	22 710	Syria	2 705	12	Afghanistan	2 330	10	Russia	1 850	8
Bulgaria	11 080	Syria	6 245	56	Afghanistan	2 965	27	Iraq	610	6
Czech Republic	1 145	Ukraine	515	45	Syria	110	9	Vietnam	65	6
Denmark	14 680	Syria	7 210	49	Eritrea	2 275	16	Stateless	1 140	8
Germany	202 645	Syria	41 100	20	Serbia	27 145	13	Eritrea	13 255	7
Estonia	155	Ukraine	60	37	Sudan	20	14	Russia	20	12
Ireland	1 450	Pakistan	290	20	Nigeria	140	10	Albania	100	7
Greece	9 430	Afghanistan	1 710	18	Pakistan	1 620	17	Syria	785	8
Spain	5 615	Syria	1 510	27	Ukraine	895	16	Mali	595	11
France	62 735	Dem. Rep. of the Congo	5 210	8	Russia	4 050	6	Bangladesh	3 775	6
Croatia	450	Algeria	75	17	Syria	65	14	Pakistan	25	5
Italy	64 625	Nigeria	10 135	16	Mali	9 790	15	Gambia	8 575	13
Cyprus	1 745	Syria	995	57	Ukraine	95	5	Egypt	85	5
Latvia	375	Georgia	175	46	Ukraine	75	20	Syria	35	9
Lithuania	440	Georgia	115	27	Afghanistan	85	19	Ukraine	70	16
Luxembourg	1 150	Bosnia and Herzegovina	170	15	Montenegro	145	13	Kosovo ⁴	140	12
Hungary	42 775	Kosovo ⁴	21 455	50	Afghanistan	8 795	21	Syria	6 855	16
Malta	1 350	Libya	420	31	Syria	305	23	Somalia	130	9
Netherlands	26 210	Syria	9 485	36	Eritrea	3 985	15	Stateless	2 790	11
Austria	28 035	Syria	7 730	28	Afghanistan	5 075	18	Russia	1 995	7
Poland	8 020	Russia	4 000	50	Ukraine	2 275	28	Georgia	720	9
Portugal	440	Ukraine	155	36	Pakistan	25	6	Morocco	25	6
Romania	1 545	Syria	615	40	Afghanistan	280	18	Iraq	210	14
Slovenia	385	Syria	90	24	Afghanistan	75	20	Pakistan	25	6
Slovakia	330	Afghanistan	95	28	Syria	40	12	Vietnam	25	8
Finland	3 620	Iraq	820	23	Somalia	410	11	Ukraine	300	8
Sweden	81 180	Syria	30 750	38	Eritrea	11 530	14	Stateless	7 820	10
United Kingdom	31 745	Pakistan	3 990	13	Eritrea	3 280	10	Iran	2 500	8
Iceland	170	Albania	20	11	Ukraine	15	9	Russia	15	8
Liechtenstein	65	Serbia	10	19	Somalia	10	16	Albania	5	11
Norway	13 205	Eritrea	3 295	25	Syria	2 085	16	Somalia	1 775	13
Switzerland	23 555	Eritrea	6 920	29	Syria	3 820	16	Sri Lanka	1 275	5

Data are rounded to the nearest 5.

⁷⁸ Europe (EU28 + Switzerland and Norway) in European Commission, EUROSTAT News release (20 March 2015) 53/2015.

Appendix 23 Syrians, first beneficiaries of refugee protection in the EU.

1-First instance decisions in EU 28 (Q1 2015)⁷⁹

	Total decisions	Of which					Rate of recognition, %	
		Positive	of which			Rejected	Total	of which Refugee and subsidiary protection status
			Refugee status	Subsidiary protection	Humanitarian reasons			
Non-EU	121 575	55 985	41 055	10 735	4 200	65 585	46	43
Syria - (SY)	27 940	26 260	20 595	5 575	90	1 680	94	94
Kosovo - (XK)	12 780	175	100	45	25	12 605	1	1
Serbia - (RS)	8 440	85	55	20	15	8 350	1	1
Iraq - (IQ)	5 585	4 900	4 390	385	130	680	88	86
Eritrea - (ER)	4 750	4 265	3 850	385	30	485	90	89
Pakistan - (PK)	4 675	1 245	625	355	265	3 435	27	21
Afghanistan - (AF)	3 850	2 555	1 120	1 045	385	1 295	66	56
Nigeria - (NG)	3 060	835	125	260	450	2 225	27	13
Albania - (AL)	2 880	305	60	105	140	2 575	11	6
Russia - (RU)	2 830	640	490	60	90	2 190	23	19
Stateless	2 825	2 555	1 880	565	110	275	90	86
BA - (BA)	2 455	70	30	*	40	2 385	3	1
MK - (MK)	2 430	20	15	*	5	2 410	1	1
Iran - (IR)	2 210	1 445	1 360	35	50	765	65	63
Bangladesh - (BD)	2 185	315	150	35	130	1 870	14	9
CD - (CD)	2 030	445	380	50	15	1 585	22	21
Mali - (ML)	1 940	550	80	85	385	1 390	28	8
Sri Lanka - (LK)	1 920	470	430	25	15	1 450	25	24
Somalia - (SO)	1 845	1 105	485	560	60	745	60	56
China - (CN)	1 480	315	295	5	10	1 165	21	21
Gambia - (GM)	1 470	555	100	35	420	910	38	9
Ukraine - (UA)	1 465	365	60	185	125	1 095	25	17
Sudan - (SD)	1 375	730	635	85	5	650	53	52
Guinea - (GN)	1 370	480	350	45	85	890	35	29
Georgia - (GE)	1 305	75	45	15	15	1 230	6	5
Turkey - (TR)	940	220	145	25	45	725	23	18
Algeria - (DZ)	860	55	40	10	5	805	6	6
Senegal - (SN)	840	305	45	40	220	535	36	10
Armenia - (AM)	820	80	40	10	30	740	10	6
Ivory Coast - (CI)	755	270	75	85	110	485	36	21
Other non-EU	12 275	4 305	3 005	600	700	7 970	54	51

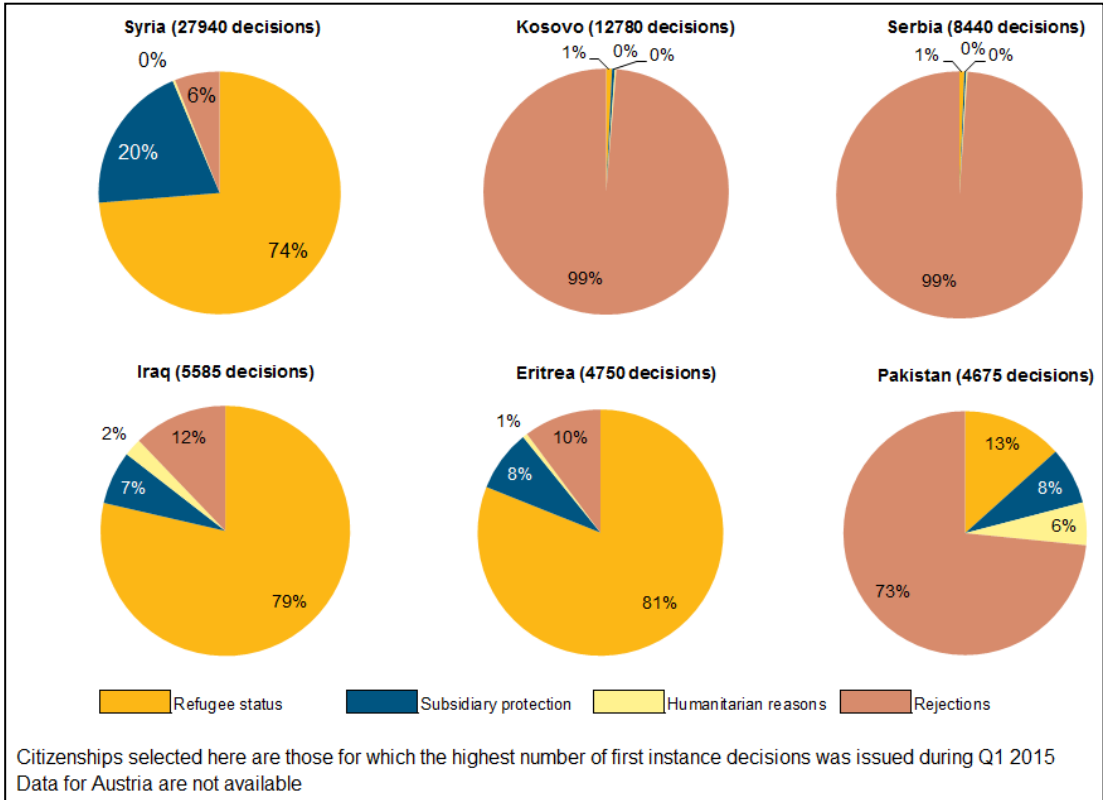
Data for AT are not available

Citizenships selected here are those for which the highest number of first instance decisions was issued during Q1 2015.

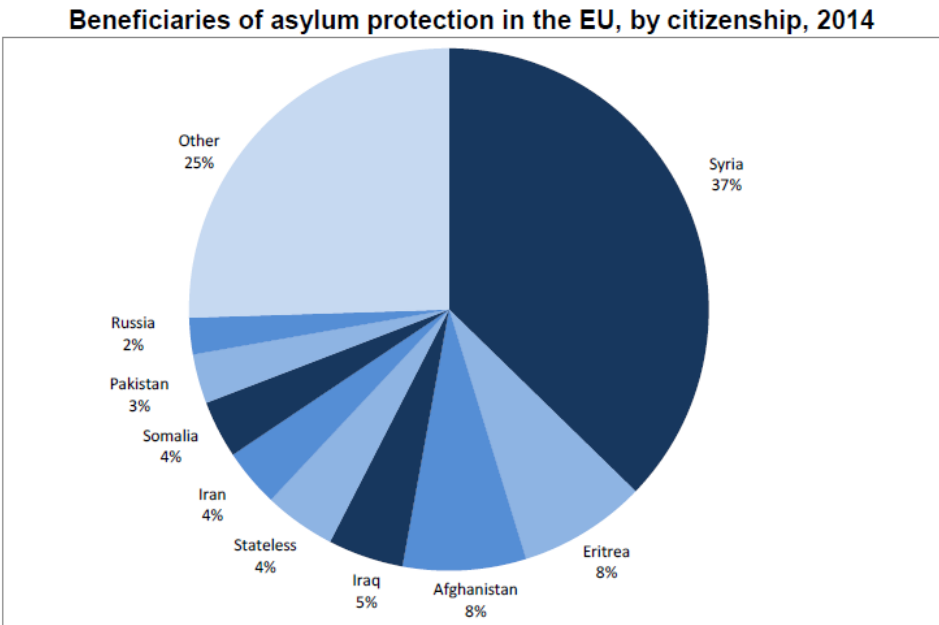
Rate of recognition is the share of (first instance) positive decisions in the total number of decisions at first instance. In this calculation, the exact number of decisions has been used instead of the rounded numbers presented in this table. Rates of recognition for humanitarian status are not shown in this table, but are part of the total recognition rate.

⁷⁹ European Commission, Eurostat News release (18 June 2015) 112/2015
<http://ec.europa.eu/eurostat/documents/2995521/6887997/3-18062015-CP-EN.pdf/4457b050-26f9-4cf1-bf27-9ffb73ff8c7b> [accessed 31 July 2015]

2-Beneficiaries of asylum protection in the EU during Q1 2015



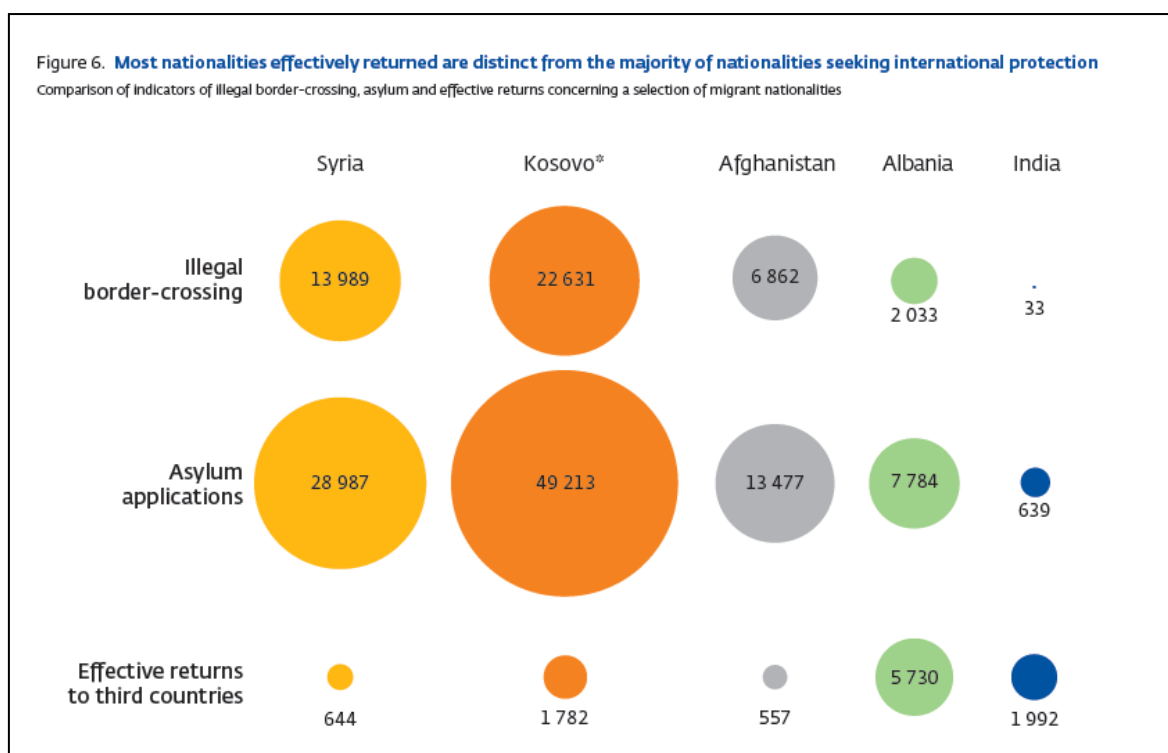
3-Recipients of first instance positive decisions in 2014



Appendix 24 Qualification Directive (2011/95/EC) art 12(1)(a)

A third-country national or a stateless person is excluded from being a refugee if: (a) he or she falls within the scope of Article 1(D) of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. **When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall ipso facto be entitled to the benefits of this Directive**

Appendix 25 Returns to third countries in the Q1 2015⁸⁰



⁸⁰ Frontex, Frontex Risk Analysis Network Quarterly Report (Fran), January-March 2015, available at: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q1_2015.pdf [accessed 17 July 2015]

Appendix 26 Dublin transfers in 2013⁸¹

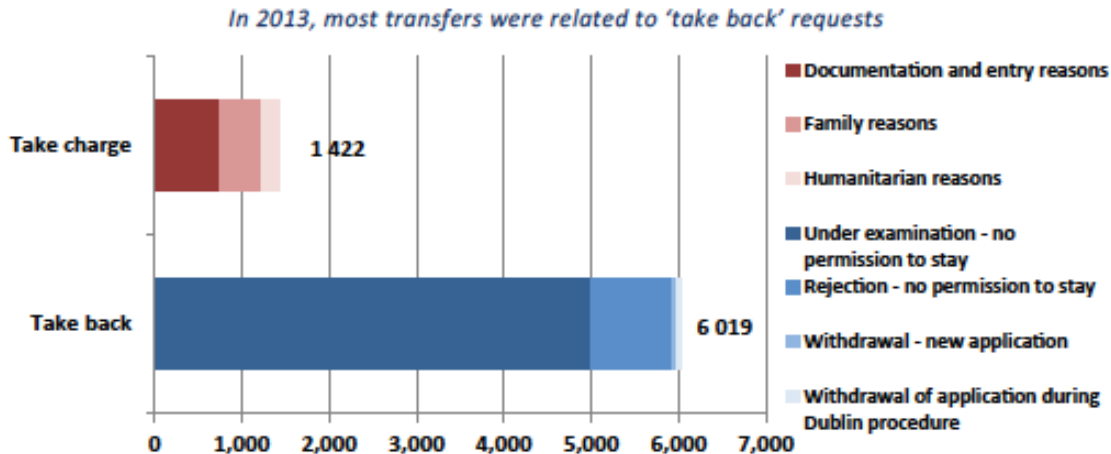


Figure 21: Dublin outgoing transfers in EU by type of request, 2013

Appendix 27 *MSS v. Belgium: Facts*⁸²

MSS was an interpreter who had fled Afghanistan in early 2008 after, as he claimed, an attempt was made on his life by the Taliban. His first entry to Europe was through Greece, where he was fingerprinted on arrival but did not claim asylum. He travelled through France and made his asylum claim in Belgium in February 2009, where his fingerprints, registered on the Eurodac system, showed that he had passed through Greece. Pursuant to Council Regulation EC 343/2003 ('the Dublin Regulation'),² an order was made in Belgium that he be returned to Greece. MSS lodged challenges to this decision with the Belgian Aliens Appeals Board but his applications were rejected for procedural reasons, and their merits were not considered. In parallel, in June 2009 he applied to the ECtHR to have his transfer suspended under Rule 39 (which enables the Court to make a provisional measures order). The Court refused to apply Rule 39, but informed the Greek Government that its decision was based on confidence that Greece would honour its obligations under the European Convention on Human Rights (ECHR) and comply with European Union (EU) legislation on asylum.³

Accordingly, in June 2009 MSS was removed to Greece. On arrival he was detained in a building next to the airport. He was held in a small space with 20 other detainees, had access to the toilets only at the discretion of the guards, was not allowed out into the open air, given very little to eat and made to sleep on a dirty mattress or the bare floor. When he was released after four days of detention in these conditions, MSS was notified that he was required to report within two days

⁸¹ European Asylum Support Office (EASO), 'Annual Report Situation of Asylum in the European Union 2013' (July 2014) available at: <https://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf> [28 March 2015]

⁸² G., Clayton "Asylum Seekers in Europe: *M.S.S. v Belgium and Greece*" (2011) Human Rights Law Review Vol 11 (4)758-759

to the Attica police station to declare his home address so that he could be informed of the progress of his asylum application.

Believing that a home address was a condition of proceeding with his claim, MSS did not report to the police station. A further deficiency in the asylum procedure occurred when MSS was given a written notice in Greek that referred to an asylum interview. However, the notice was given at the renewal of his registration card, and the interpreter made no mention of an interview date. In August 2009, the applicant attempted to leave Greece on a false identity card but was arrested, detained for seven days in the same conditions as before. He claimed that he was beaten in detention. He was sentenced by a criminal court for attempting to leave Greece using false papers. For much of his time in Greece the applicant had no means of subsistence and slept in a park.

MSS complained to the ECtHR about his treatment by both Greece and Belgium. Against Greece he alleged breaches of Article 3 of the ECHR by reason of his conditions of detention, his conditions of living, and a breach of Article 13 of the ECHR because of the deficiencies in the asylum procedure and the risk of his expulsion to Afghanistan without any serious examination of the merits of his asylum application or access to an effective remedy. His complaint against Belgium was that Belgium had breached Articles 3 and 13 by sending him to Greece and exposing him to these risks.

Appendix 28 Differences between the number of Syrians present irregularly in Italy and Greece and the number of applicant⁸³

Table 1: Applications and granting of protection status at first and second instance: 2014

	Total applicants in 2014 ¹	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary Protection rate	Humanitarian Protection rate	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
Total numbers	9,432	2,075	885	990	17,120	9.8%	4.3%	4.7%	81.2%
Old Procedure		558	265	990	10,854	4.5%	2.1%	8%	85.4%
New Procedure ²		1,517	620	N/A	6,466	17.7%	7.2%	N/A	75.1%
Breakdown by countries of origin of the total numbers									
Afghanistan	1,708	365	420	45	1,645	14.7%	17%	1.8%	66.5%
Pakistan	1,817	80	30	250	3,065	2.3%	0.9%	7.3%	90.3%
Syria	786	430	155	0	390	44.2%	15.8%	0%	40%
Bangladesh	635	55	15	55	1,370	3.7%	1%	3.7%	91.6%
Albania	589	15	5	65	1560	0.9%	0.3%	4%	94.8%
Iran	360	135	15	10	310	28.7%	3.2%	2.1%	66%
Georgia	350	0	0	10	1080	0%	0%	0.9%	99.1%
Sudan	335	145	30	5	205	37.6%	7.8%	1.3%	53.3%
Nigeria	331	20	0	0	440	4.3%	0%	0%	95.7%
Cameroon	280	10	0	0	100	9.1%	0%	0%	90.9%
Other countries of origin									
Eritrea	259	155	5	0	155	49.2%	1.6%	0%	49.2%
Iraq	174	575	40	0	495	51.8%	3.6%	0%	46.6%
Somalia	115	35	45	5	220	11.4%	14.7%	1.2%	72.7%

Source: Eurostat Asylum Statistics 2014 (miar asvaap: miar asvdec), unless otherwise specified

⁸³ Koulocheris S, 'National Country Report: Greece' (Greek Refugee Council & ECRE, April 2015) http://www.asylumineurope.org/sites/default/files/report-download/aida_greece_third_update_final.pdf [accessed 8 July 2015]

Table 2: Detection of irregular border crossings at the border crossing points of Greece: 2014

	Number	Percentage
Total number of detections	45,421	
Land	1,903	4.18%
Sea	43,518	95.82%
Top countries of origin³		
Syria	35,520	
Albania	16,751	
Afghanistan	12,901	
Pakistan	3,621	
Somalia	1,876	
Bangladesh	1,164	
Iraq	1,023	

Source: Hellenic Police,
http://www.astynomia.gr/images/stories/2014/statistics14/allod2014/statistics_all_2014_et.JPG

Appendix 29 Asylum applications in Italy⁸⁴

Table 1: Applications and granting of protection status at first instance in 2013¹

	Total applicants 2013	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary protection rate	Humanitarian Protection rate	Rejection rate
		B	C	D	E	B/(B+C+D+E)%	C/(B+C+D+E)%	D/(B+C+D+E)%	E/(B+C+D+E)%
Total numbers	27 930	3310	5550	7525	9060	12%	20%	27%	32%
Breakdown by countries of origin of the total numbers									
Nigeria	3 580	65	205	1425	1860	2%	6%	40%	52%
Pakistan	3 310	240	370	705	1345	9%	14%	27%	51%
Somalia	2 885	330	1210	15	45	21%	76%	1%	3%
Eritrea	2 215	940	420	60	95	62%	28%	4%	6%
Afghanistan	2 175	285	1170	185	140	16%	66%	10%	8%
Mali	1 870	10	1025	480	200	1%	60%	28%	12%
The Gambia	1 825	20	10	355	300	3%	1%	52%	44%
Senegal	1 060	40	30	275	490	5%	4%	33%	59%
Egypt	975	100	55	205	135	20%	11%	41%	27%
Syria	695	260	150	0	370	33%	19%	0%	47%
Others²									
Russia	40	0	0	5	15	0%	0%	25%	75%
Serbia	165	0	10	130	150	0%	3%	45%	52%
Kosovo	105	5	10	50	45	5%	9%	45%	41%

Source: Eurostat, Asylum and new asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappctza] and First instance decisions on applications by citizenship, age and sex Annual aggregated data (rounded) [migr_asydcfsta], extracted on 23 May 2014

¹ See next page for total number of applicants in 2014

² Other main countries of origin of asylum seekers in the EU in 2013.

⁸⁴ Donato (de) M. 'National Country Report: Italy' (Italian Council for Refugees & ECRE, January 2015) available at: http://www.asylumineurope.org/sites/default/files/report-download/aida_italy_third_update_final.pdf [accessed 8 July 2015]

Appendix 30

ST & ET v. Secretary of State for the Home Department; Secretary of the state for the home department v C1 and C2 [2014] EWCA Civ 188 §43:

Each country has been left to its own devices to decide how it wishes to assist with the resettlement of refugees. (..) Some states do not afford resettlement facilities at all, including some member States of the European Union. I can see no reason why the obligation of a State signatory to the Convention should be taken to have assumed a wider obligation to assist the UNHCR by volunteering a resettlement program than a State that does nothing to assist at all.

Appendix 31 Comparative tables between Sweden, France and UK asylum systems⁸⁵

Country	Sweden	France	United Kingdom
Which types of procedures exist in your country	-	-	-
Regular procedure	Yes	Yes	Yes
Border procedure	No	Yes	No
Admissibility procedure	No	No	Yes
Accelerated procedure	Yes	Yes	Yes
Accelerated examination (fast-tracking)	-	No	No
Prioritised examination	-	No	No
Dublin Procedure	Yes	Yes	Yes
Others	-	none	none

Country	Sweden	France	United Kingdom
Does the law provide for an appeal against the decision in the Dublin procedure?	Yes	Yes	No
Type of Appeal	Judicial	Judicial & Administrative	-
Is it suspensive?	No	No	-

Country	Sweden	France	United Kingdom
Is a personal interview of the asylum seeker conducted in practice in most cases in the Dublin procedure?	Yes	No	No
If so, are interpreters available in practice, for interviews?	Yes	No	-

⁸⁵ AIDA, *Comparator: Sweden, France and the UK* <http://www.asylumineurope.org/comparator> [accessed 18 May 2015]

Country	Sweden	France	United Kingdom
Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?	Yes	Yes	Yes
- If yes, to which country/countries?	Greece	Greece	Greece

Country	Sweden	France	United Kingdom
Does the law provide for an appeal against a decision taken in an accelerated procedure?	Y	Y	Y
Type of Appeal	Judicial	Judicial	Judicial
If yes, is it suspensive?	-	-	-

Country	Sweden	France	United Kingdom
Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?	Some categories	No	No

Country	Sweden	France	United Kingdom
Is there a list of safe countries of origin?	No	Yes	Yes
Is the safe country of origin concept used in practice?	No	Yes	Yes
Is the safe third country concept used in practice?	No	No	Yes

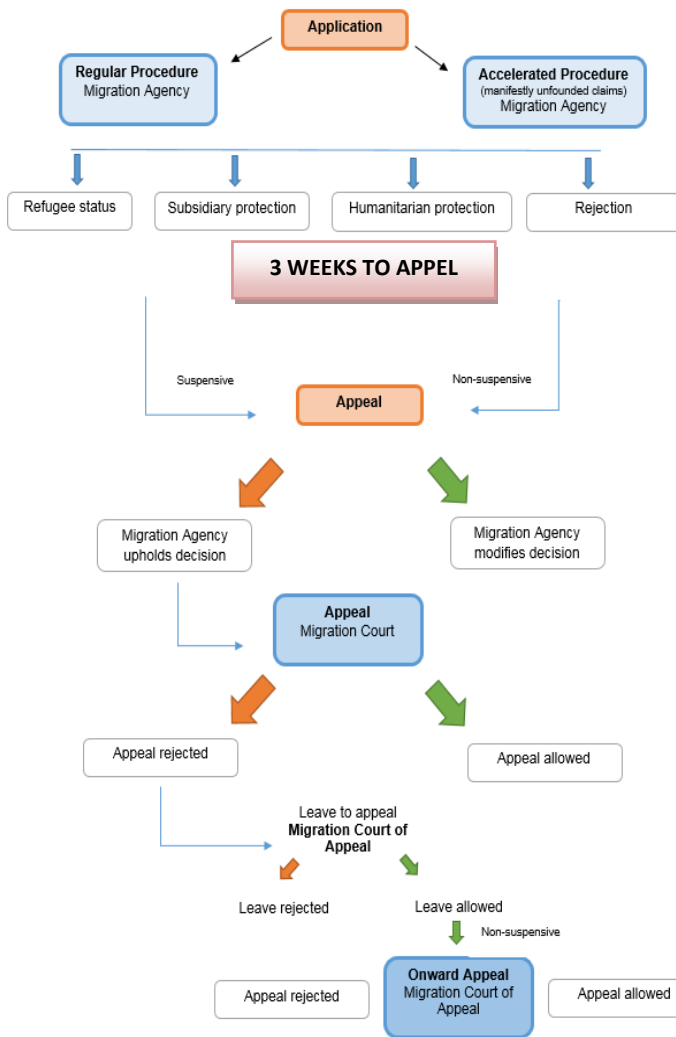
Country	Sweden	France	United Kingdom
Does the legislation provide for the possibility to reduce material reception conditions?	Yes	Yes	No
Does the legislation provide for the possibility to withdraw material reception conditions?	No	Yes	Yes

Country	Sweden	France	United Kingdom
Are asylum seekers entitled to material reception conditions according to national legislation	-	-	-
During the accelerated procedure?	Yes	Limited	Yes
During admissibility procedures?	-	-	Yes
During border procedures	-	No	-
During the regular procedure?	Yes	Yes	Yes
During the Dublin procedure	Yes	Limited	Yes
During the appeal procedure (first appeal and onward appeal)	Yes	Limited	Yes
In case of a subsequent application	Limited	Limited	Limited

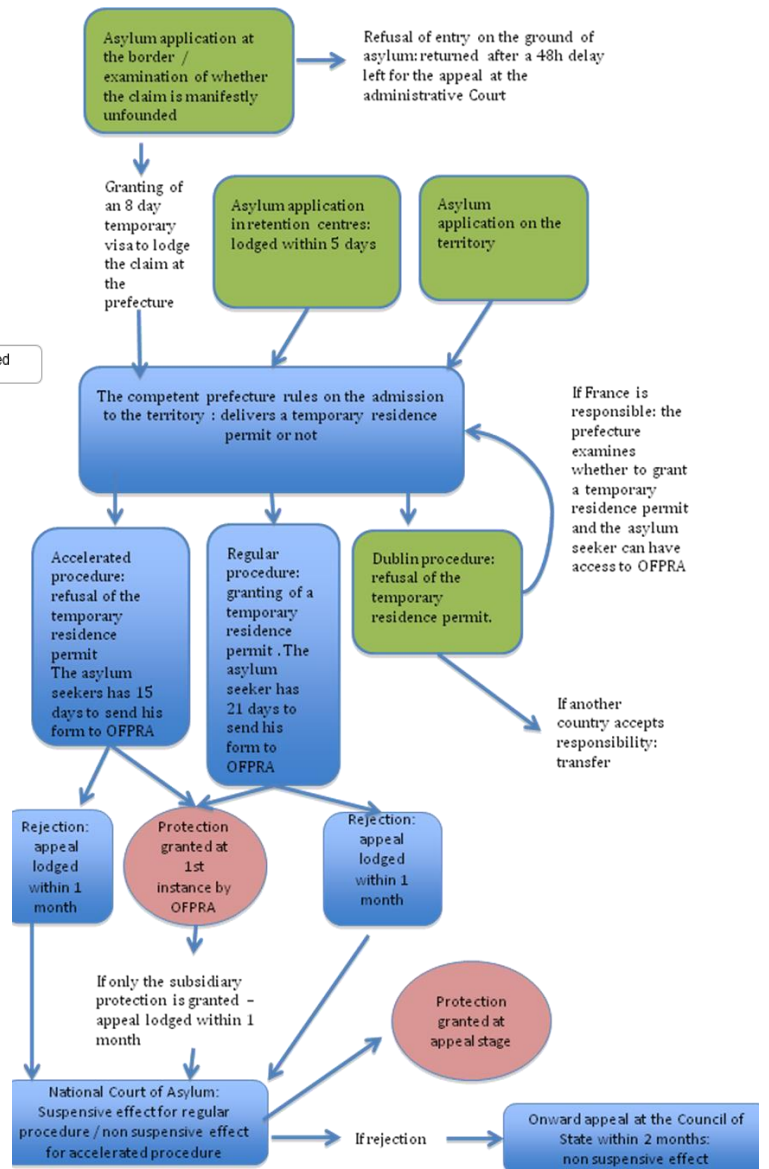
Country	Sweden	France	United Kingdom
Does the legislation allow for access to the labour market for asylum seekers?	Yes	Yes	Yes
If applicable, what is the time limit after which asylum seekers can access the labour market?	The day after applying for asylum	1 year	1 year
Are there restrictions to access employment in practice?	Yes	Yes	Yes

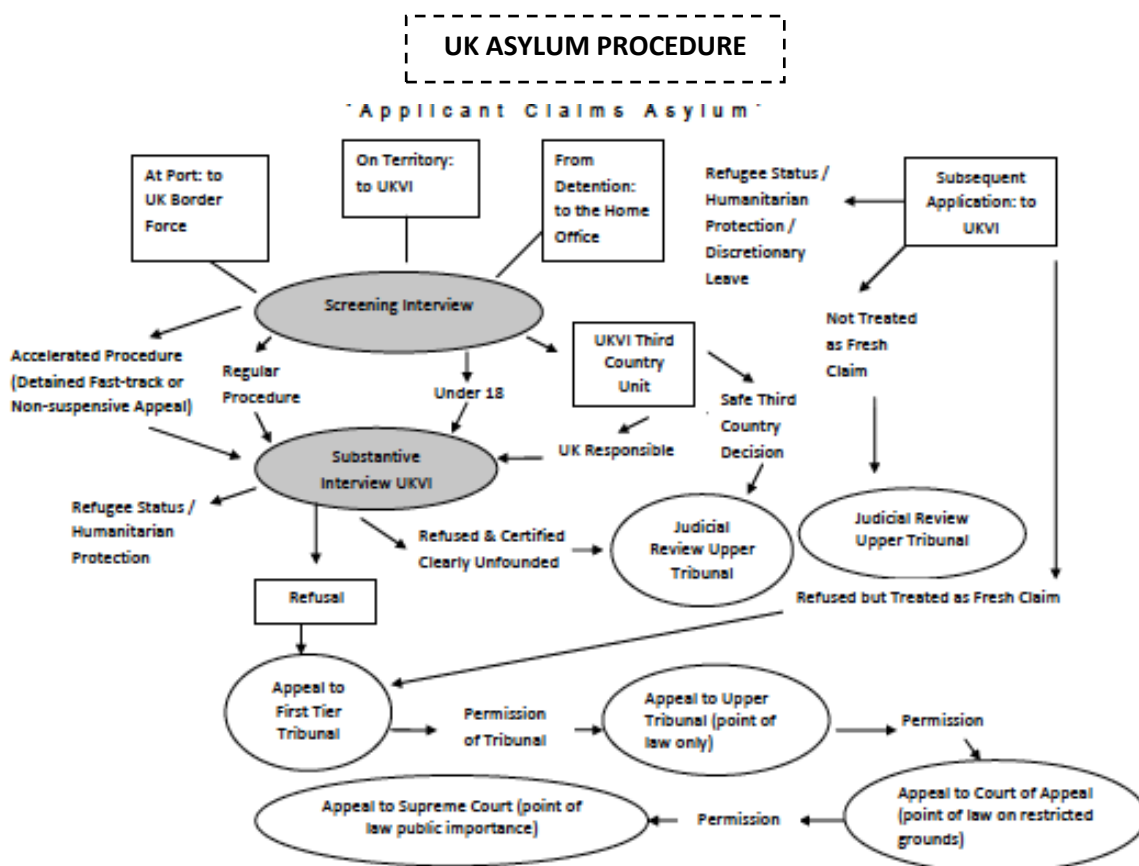
Country	Sweden	France	United Kingdom
Number of places in all the reception centres (both permanent and for first arrivals)	49395	24,689 (30 June 2014) / 25,689 (early 2015)	Around 1200 places in initial accommodation centres for new claimants
Type of accommodation most frequently used in a regular procedure	Private housing	Reception Centre	Private housing
Are there any problems of overcrowding in the reception centres?	No	Yes	Yes

ASYLUM PROCESS IN SWEDEN



ASYLUM PROCESS IN FRANCE





Appendix 32 Applications and granting of protection in Sweden (2014)¹

Table 1: Applications and granting of protection status at first instance in 2014

	Total applicants in 2014	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary protection rate	Humanitarian Protection	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
Total numbers	81,301	10,263	19,158	1,321	17,299	21.9%	39.8%	2.7%	35.6%
<i>Breakdown by countries of origin of the total numbers</i>									
Syria	30,583	1,759	14,584	10	1,286	9.9%	82.6%	0.05%	7.2%
Somalia	4,831	761	279	24	1,680	27.7%	10%	0.8%	61.2%
Afghanistan	3,104	621	339	497	861	26.7%	14.6%	21.4%	37.1%
Serbia	1,512	1	0	21	929	0.1%	0%	2.2%	97.7%
Eritrea	11,499	5,131	115	1	1,160	80%	1.8%	0.01%	18.1%
Bosnia Herzegovina	496	2	4	2	307	0.6%	1.2%	0.6%	97.6%
Iran	997	328	4	27	314	48.7%	0.6%	4%	46.6%
Albania	1,699	3	9	2	1,126	0.2%	0.8%	0.2%	98.8%
Iraq	2,666	117	89	195	314	16.4%	12.4%	27.2%	44%
Kosovo	1,474	2	6	61	782	0.2%	0.7%	7.1%	92%
<i>Other main countries of origin of asylum seekers in the EU</i>									
Russia	879	175	14	24	478	25.3%	2%	3.5%	69.2%

Source: Swedish Migration Agency
Statistics on second instance decisions not available.

¹ Joseph G., 'National Country Report: Sweden' (Caritas Sweden & ECRE, April 2015)
http://www.asylumineurope.org/sites/default/files/report-download/aida_sweden_second_update_final.pdf
[16 May 2015]

Appendix 33 Testimonies of asylum seekers from Syria in Sweden²

We meet three Syrians who have just arrived at the centre in Märsta and two others who are about a year into their stay in Sweden and have started to learn the language and to look for work.

The Damascus radio station where Asped worked for just over a year was under constant threat. When a second bomb exploded outside his office, Asped decided to quit and took up a job as a website editor instead.

"Sweden has a reputation for respecting human rights and for offering protection for asylum seekers." Asped

Alan was in the second year of his law degree when the conflict forced him to end his studies. The fighting in his home town, al-Hasakah, had become so intense that simply leaving home had become extremely dangerous. Alan has spent around \$9,000 in fees to people smugglers. When he arrived in Turkey, he encouraged his best friend to come as well. Three weeks later he found out on Facebook that his friend had stepped on a landmine near the Syria-Turkey border. "I think I helped him die because I told him to come," says Alan.

Khalid "I was sure that the regime was killing people under the pretext that they were terrorists... I didn't want to be part of the crimes committed against the Syrian people," says Khalid, a defected Syrian diplomat with a 14-year-long career behind him. Khalid has a brother in Sweden, but his other two siblings and parents are still in Deir ez-Zor. "They are living under a huge security threat," says Khalid

"The challenge for me now is that I have to forget that I was a diplomat...The only jobs available for me here are in cafés or restaurants...

Before, I hoped that one day I would return to my old job once the regime is gone and I would do something for my country and my people, but now every day something depressing happens, something that makes every Syrian everywhere in this world feel that the space for hope is narrowing."

Daniel

Daniel Abu-Asali went straight to the arrival centre in Märsta to apply for asylum after arriving in Sweden by plane from Turkey. He used a human smuggler to get out of Syria. Had he stayed home he would have been forced to join the military and, he says, "whoever goes to the military just goes to die".

² 'Sweden: Stories from Stockholm' Refugees: A Snapshot of the Crisis in the Middle East and in Europe', MPC http://syrianrefugees.eu/?page_id=622 [accessed 15 May 2015]

Daniel was a men's hairdresser back home in Sueda. He hopes to find work in Sweden and to make a good life for himself here. But if things improve in Syria, he would like to return, he says.

Appendix 34 Asylum application and granting of protection in France (2013)³

	Total applicants in 2013 ^a	Refugee status (both instances)	Subsidiary protection (both instances)	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subsidiary protection rate	Humanitarian rate	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
Total numbers	51488	9044	2282	0	40596	17.42%	4.39%	0%	78.19%
Breakdown by countries of origin of the total numbers									
DR Congo	4284	895	90	0	2820	24%	2%	0%	74%
Kosovo	3862	136	85	0	2819	4%	3%	0%	93%
Albania	3338	53	126	0	2045	2%	6%	0%	92%
Bangladesh	4355	544	46	0	3386	14%	1%	0%	85%
Russia	3064	1001	120	0	2208	30%	4%	0%	66%
China	2294	292	5	0	1838	14%	0.2%	0%	86%
Guinea	2041	509	74	0	1407	26%	4%	0%	70%
Sri Lanka	2395	931	48	0	2163	30%	1%	0%	69%
Georgia	1994	145	54	0	1519	9%	3%	0%	88%
Pakistan	1683	144	28	0	1711	8%	1%	0%	91%
Others^d									
Syria	878	497	364	0	46	55%	40%	0%	5%
Afghanistan	466	230	421	0	250	25%	47%	0%	28%
Serbia	379	72	14	0	399	15%	3%	0%	82%

Source: OFPRA Activity Report 2013 (Annex 3)

Appendix 35 Asylum applications and granting of protection in the UK (2013)⁴

Table 1: Applications and granting of protection status at first instance in 2013

	Total applicants in 2013	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Otherwise closed / disconfid	Refugee rate	Subs.Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	F	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
Total numbers	30,090	7,475	70	960	13,965	2,552	33%	0.3%	4%	62%
Breakdown by countries of origin of the total numbers										
Top 10										
Pakistan	4,645	905	5	55	2,640	428	25%	0.1%	1.5%	73%
Iran	3,055	1,255	10	45	1,40	88	53%	0.4%	2%	44%
Sri Lanka	2,280	310	0	25	1,295	50	19%	0%	1.5%	79%
Syria	2,040	1,440	10	5	235	57	85%	0.6%	0.3%	14%
Eritrea	1,435	810	0	5	15	22	81%	0%	0.5%	18%
Albania	1,615	95	0	170	680	163	10%	0%	18%	72%
Afghanistan	1,550	295	10	135	745	149	25%	0.8%	11%	63%
Nigeria	1,405	80	5	75	970	108	7%	0.4%	6%	85%
Bangladesh	1,270	30	0	25	775	249	4%	0%	3%	93%
India	1,145	5	5	5	660	341	0.7%	0.7%	0.7%	98%
Others^f										
Serbia	5	0	0	0	5	0	0%	0%	0%	100%
Kosovo	40	0	0	5	15	5	0%	0%	25%	75%

Source: Eurostat

³ Salignat C., 'National Country Report: France' (Forum Réfugiés-Cosi & ECRE, January 2015)

http://www.asylumineurope.org/sites/default/files/report-download/aida_france_third_update_final.pdf, 16 May 2015] p.12

⁴ Nash C., 'National Country Report: United Kingdom' (Asylum Aid & ECRE, January 2015)

http://www.asylumineurope.org/sites/default/files/report-download/aida_-_uk_thirduupdate_final.pdf [16 May 2015], p.10