Human rights and protection of migrants in the context of the current Mediterranean crisis [1]

Emeritus Professor Roger Zetter
Refugee Studies Centre University of Oxford

EMN Educational Seminar,
„Irregular Migration – Borders and Human Rights"
25 – 27 August 2015, Bratislava, Slovakia

DO NOT QUOTE THIS PAPER WITHOUT THE CONSENT OF THE AUTHOR
_____

Introduction

Political rhetoric across the European Union member states (EUMSs) and within the European Commission tells us that Europe faces a so called «migration crisis». The crisis is epitomised by the tens of thousands of migrants intercepted crossing the Mediterranean in unseaworthy vessels, thousands of migrants drowning en route, very significant numbers of undocumented/irregular migrants arriving in Germany, makeshift camps of migrants at Calais seeking entry to the UK, the saliency of migration issues in parliamentary elections at national and the European levels, and so on. Indeed, over the last few years the rise of irregular migration to Europe and the inability of the «European project», at national and supranational levels, to manage the flow of migrants and asylum seekers have produced an extraordinarily high level of political discourse and reactive policy making.

Drawing on some of my recent research (Zetter 2014, 2014a, 2015, Bloch, Sigona and Zetter 2014), the paper offers two core arguments. First, to the extent that there is a crisis of migration across the Mediterranean, it is a primarily a crisis of failing protection and human rights for migrants, and not a crisis of migration *per se*. This situation is symptomatic of a wider crisis of migrant protection at a global level. The second contention is that, nevertheless, the crisis of protection and the crisis of migration are interlinked in the sense that the failure of protection derives in large part from the way Europe's' migration policies have been conceived and the underlying political agendas that they represent.

The paper asks «Why has this protection crisis arisen at Europe's borders?» «What are the dimensions and dynamics of the protection crisis?» «And why has this protection crisis been immune to policy intervention?» These questions are addresses in five parts.

Three short contextual sections i) define the background to the global crisis of migration and protection, ii) outline Europe's migration policy framework, and iii) provide some data

---

[1] This paper is a revised version of '*Migration, «Fortress Europe» and the failure of protection*' which will appear in German in Kursbuch (2015) published by the Institut für Soziologie by Ludwig-Maximilians-Universität, München.

on migration flows. The fourth section presents the core arguments of this paper: that there is a crisis of failing protection for migrants, not a crisis of migration *per se.* The crisis highlights a failure to develop coherent yet humane responses to a global phenomenon and, more importantly, it demonstrates a collective failure to abide by obligations and norms, under international law, to afford protection to migrants and refugees. In other words, the failing policies of «Fortress Europe» and the «rebordering of Europe» lie at the heart of the protection crisis.

The final section explains these outcomes in terms of the underlying objective of European policy making, the «securitisation of migration».

Critical to the analysis are three axioms.

First, protection is indeed under enormous stress and whilst the situation at Europe's borders dominates our agenda, it is important to set this in the context of much greater life threatening challenges to protection challenges in countries like Syria, Iraq, Eritrea, South Sudan, CAR and Afghanistan.

Second, states have a legitimate interest to control their borders and regulate entry to territory, and a legitimate concern that the process of international migration is managed in an orderly way.

However, third, these functions have become increasingly difficult to sustain, given the contemporary dynamics of international migration because, whilst not all the migrants seeking to enter Europe by irregular means are asylum seekers (although the majority have a plausible claim to this status), *all migrants have the right to protection*. It is the right to protection that is increasingly denied.

The crisis of migration and protection – global perspectives on the drivers and dynamics of displacement

The starting point for any analysis of the failing protection regime for migrants is an examination of the contemporary drivers and dynamics of migration and especially forced displacement.

We are confronted with: multi-variate factors that propel the migration of often highly vulnerable populations; complex and diverse patterns of dislocation within countries, across borders, forward and backward movements; and the diversity and fluidity of categories that define such people.

International migration is a complex and growing global phenomenon driven by the processes of economic globalisation that have unfolded in recent decades. The *voluntary* movement of people seeking better economic and social opportunities, as well as different life experiences and lifestyles outside their country of origin, approximates 232 million

people – over three per cent of the world's population and an increase of 57 million from 2000 (UN-DESA 2013).

New patterns and processes of international migration are emerging (see e.g. Castles et al. 2013; Faist and Özveren 2004). The majority of global migrants – some 70% – originate in the south. South-south migration is increasing: nevertheless post-industrial countries remain the most significant destination for international migrants, attracting 70% of global migrants.

In general, most voluntary migration is managed migration: that is to say it is an orderly process which recognises the right of any state to regulate entry by immigration controls. At the same time these measures, by and large, provide adequate protection to migrants, backed by a number of international conventions on migration.

Turning to *involuntary migration*, often now termed forced displacement and the main focus of this paper, a number of characteristics render this form of migration highly problematic to regulate and control. The precarious nature of this type of migration combined with the objectives of states to regulate it, renders involuntary migrants highly vulnerable thereby raising major issues of the quality of their protection and the safeguarding of their human rights.

First, indiscriminate patterns of violence, conflict and persecution, mostly at intrastate level, in countries such as Syria and Iraq, as well as Sierra Leone and Liberia in the past, and in Colombia over several decades, challenge the capacity of the international community to promote effective protection for people displaced by these drivers.

Second, other risk drivers such as poverty and poor governance may also precipitate involuntary migration such as in Zimbabwe or Mali in recent years. These factors often reflect fragile underlying conditions such as water scarcity, food insecurity, drought, environmental degradation, famine and natural disasters, as well as poverty, for example in the Horn of Africa. They pose complex protection needs for which the current regime is ill-equipped.

Third, a contemporary characteristic is the process of episodic violence and thus recurring and multiple displacement. Best exemplified by the case of Afghanistan, over almost four decades millions of Afghans have become refugees at different times, returned home also at different times, only to become IDPs or refugees again as conflict in that country moved through different phases. Such turbulence over such a protracted period calls into question the efficacy of current protection regimes.

Fourth, many forcibly displaced communities do not remain static in refugee camps for example. Instead mobility is a both key livelihood and a security strategy. For example, forcibly displaced people deploy circular or ongoing migration at very local levels to seek self-protection; or they may move to urban areas (where a majority of the world's refugees

and IDPs live); or they engage in staggered or incremental migration that links with transnational socio-economic networks and diasporic communities to sustain their economic wellbeing. The protection regime is not geared to these mobility strategies

Fifth, the majority of forcibly displaced people, including refugees and IDPs, are in protracted displacement, the outcome of complex emergencies that defy political solutions but pose major challenges to the norms and praxis of protection. Syria, continuing conflict and displacement in the Horn of Africa, longstanding displaced populations in DRC, Colombia, Pakistan and Afghanistan indicate that protracted displacement is now the norm. By the end of 2016, some 56 million people, or over 85% of globally displaced people will be in protracted displacement, a total which excludes a probably larger number who are undocumented.

Underlying these dynamics is the fundamental problem that the protection regime focuses on specific and long-established and highly defined legal and normative categories, primarily refugees (under the 1951 Geneva Refugee Convention) and IDPs (under the 1998 Guiding Principles). But predicating protection on a particular «status» is problematic. This is because it is often a complex combination of factors that drives contemporary displacement processes and trends and which produces large numbers of undocumented/irregular migrants in mixed migration flows who fall outside these two well-established protection categories of refugee or IDP and for whom there is no international apparatus or legal provision for protection. Moreover, the factors that compel people to flee lie outside the specific persecutory meaning of the label «refugee», for example, in international law. The so called «migration crisis» across the Mediterranean at Europe's borders typifies these conditions.

A continuum of displaced populations, not discrete categories, better reflects contemporary conditions and the commensurate need for wide ranging protection responses. Moreover, there are those who are unable to move – so called trapped populations - who are not easily protected. A recent phenomenon is the increase in trafficking and smuggling of populations, as well as deportees for whom protection is also needed. In privileging refugees, the needs of other affected populations noted above (such as migrants and hosts) must also be taken into account.

Overall, these circumstances bring into sharp focus conceptual and operational questions about the meaning of and praxis of protection.

Protection and the management of migration to Europe – a narrative of contradictions

To understand why the human rights and protection regime is failing migrants in the context of the current Mediterranean crisis we need to explore the Europeanisation of migration policy making (Guild 2006), its origins and the characteristics. There are four dimensions.

First we need to go back almost 30 years to the *Single European Act 1986*, the *Maastricht Treaty on European Union 1993* and the *Schengen Agreement 1985*. These initiatives marked the resuscitation of the European convergence «project»: they harmonised Europe's social and economic fabric and, notably in the present context, enabled the free movement of people (as well as services, goods and capital) across European space.

However, *second*, a borderless Europe had immediate and paradoxical implications in relation to immigration and asylum policy. The crux of the debate was not, fundamentally, how to handle the free intra-European movement of nationals within a borderless Europe – resistant though countries like the UK was and remains. Rather, a borderless Europe raised the bigger challenges of: a) how to control the movement of Third Country Nationals (TCNs), within or arriving at Europe's borders; and b) how European states should handle the reception of refugees and asylum seekers and the increasing flows of irregular/ undocumented migrants, together with the concomitant tasks of their integration and social cohesion. These questions arose because the advent of a borderless Europe occurred just as the numbers of spontaneous asylum seekers entering EUMSs were escalating to a then peak of 672,000 in 1992. Germany, at the time, was the major recipient country. Now as the global total of people forcibly displaced by war and conflict reaches almost 60 million refugees and internally displaced people (UNHCR 2015), the pressure of those seeking protection is commensurately greater.

Third, 'hi-jacked' by the asylum issue, these circumstances embedded a reactive policy stance towards migration that still infuses contemporary policy making in Europe. At the same time the reactions to the asylum problematique expose the divergence of state interests in Europe that undermines the avowed aim of communitarian convergence and harmonisation of immigration, asylum and migrant integration policy making. Evidence of this dichotomy, as we shall see in the next section, lies in the failure of the *Dublin Convention 1990* (now in its third iteration as «Dublin III»)[2].

Fourth, by switching immigration, refugee and asylum matters to First Pillar status (ie EU competence), the *Treaty of Amsterdam 1997* was intended to be the decisive point of transition in supranational convergence on this policy agenda. Instead, the outcome has been to expose deep political divisions lying behind «neo-functional convergence» (Geddes 2008). These divisions are both a cause and the consequence of the current «protection/migration crisis» as we shall see in the next section.

On the one hand, an early outcome of this initiative was the *Global Approach to Migration and Mobility 2005* (GAMM) (EU 2011). GAMM does indeed seek to provide what it terms a «migrant-centred approach», through a comprehensive, strategic framework to tackle the

---

[2] The Dublin Convention limits an asylum application to only one EUMS, that is the country of first arrival and thus the return of the claimant to that country should they transit across Europe and lodge the claim in another EUMS.

migration and asylum seeking challenges and opportunities which the EU and EUMSs face, based on shared European political principles and solidarity.

Set against the backcloth of the globalisation of migration, mixed migration flows and the complex dynamics of forced migration discussed in the preceding section, it aims to organise and facilitate legal channels of mobility and migration for safe access to the European Union. This is a welcome objective, because without well-functioning arrangements for regular migration, irregular migration with all the negative implications for protection, will inevitably increase. And, from an intra-European perspective, the objective of managing migration has been animated by political concerns to balance Europe's need for migrant labour with integration policies that mediate the perceived impacts of migrants (both EU citizens and TCNs) on 'social cohesion' and national identity (Zetter et al., 2005; Zetter 2006). To this end, GAMM defines a cohesive approach for EU policy dialogue and development cooperation with non-EU countries.

On the other hand, also at the intra-European level, EUMSs have struggled to reconcile the principles of communitarian convergence against entrenched sovereign state interests envisaged by the *Treaty of Amsterdam 1997* with respect to migration and especially asylum seeking and refugee matters. The *Common European Asylum System* (CEAS) 2013, which sets out common standards for the reception of asylum seekers and fair and effective procedures for the determination of refugee status took well over 10 years to agree.

But as we shall see, in response to the current «migration crisis», the adoption of the CEAS through the so-called post Stockholm Agenda has, in practice, provided little that is «common» or a «system», and still less the protection of irregular migrants and asylum seekers. And as regards GAMM priorities, we shall also see that the «migration crisis» arguably reinforces «Fortress Europe» through migrant push-back and extra-territorial processing of asylum claimants, not co-operation with non-EU partner countries bordering Europe. The result is the severe diminution of protection quality and scope.

The numbers
Before turning to the core of the paper, a brief review of salient data also sheds light on the extent to which there is a «crisis of migration» in Europe.

Based on a recent study (Triandafyllidou and Dimitriadi 2013) and allowing for slightly different time series, immigration into the EU – regular, undocumented and asylum seekers – amounts to less than one per cent per annum of the EU's resident population of just under 500 million in 2012. Regular immigration comprised 1.2 million migrants or about 0.2% of the 2013 population; undocumented migration (in 2008) was broadly estimated between 1.9 and 3.8 million or between 0.25% and 0.8% of the total EU population (Triandafyllidou 2009). In 2014, 570,800 people claimed asylum in the EU compared with 450,000 people in 2013 of whom 136,000, or 0.02% were granted some form of protection status (Eurostat

2014) [3] [4]. In addition there are about 1.2 million recognised refugees and persons of concern already resident in Europe in 2014 – less than 0.2% of the total population of the EU.

Although the volume of irregular migration appears to be increasing (for example, almost 240,000 migrants have arrived, mainly in Italy and Greece, since the start of 2015 – more than the total for the whole of 2014 (IOM 2015, 2015a[5]) - yet over 150,000 (70%) of these migrants come from the four main refugee producing countries in the world such as Syria, Eritrea, Somalia, Afghanistan, as well as countries where there is on-going conflict such as Nigeria. In other words, these are migrants who, ostensibly, would have a strong claim for protection as refugees.

Put in this context, these migration data are instructive since they show that, despite the political rhetoric, migration constitutes a remarkably small proportion of the total EU population; and concern about the apparent mixed migration flow crossing the Mediterranean gives a misleading picture since the majority are not «bogus asylum seekers» or economic migrants but likely to have a well-founded claim to refugee status.

Europe – Protection space or protection denied?
Having sketched the background to Europe's «migration crisis» the paper now turns to the core of the argument, that the crisis is a crisis of failed protection for migrants and policy contradictions, not a crisis of migration *per se*. The challenges of coping with mixed migration flows and irregular migration, and the search for communality of immigration and asylum policies, highlight how the European «migration project» has attempted to adapt and remodel the norms of a global protection system to its policy agenda and its political realities. But the approach by EUMSs has been ill-suited to the contemporary dynamics of migration and the protection needs that arise. Instrumentalising the response through tougher and tougher measures to stem the flow of migrants, fails to deal with the underlying structural factors. Accordingly, protection space for migrants, at the borders and within the EU, has contracted very severely.

The interplay between the problematic issue of migration management and the declining quality of protection is explored in four subsections: GAMM and Europe's migration policy framework; protecting Europe's borders – the non-entrée regime; re-bordering Europe; and the Common European Asylum System.

<u>GAMM</u>
Whilst GAMM offers a comprehensive migration policy framework, the substance of the instrument represents a «managerial turn» in protection, not a strengthening of the

---

[3] UNHCR data record a lower figure of 398,200 registered asylum claims to European Union Member States in 2013 (UNHCR 2014)

[4] In addition, 4% of the EU population, 20.4 million people, comprises Third Country Nationals.

[5] 140,000 arrivals in Greece, 102,000 arrivals in Italy; almost 92,500 from Syria alone have arrived by irregular means in Greece and Italy this year.

---

normative conditions of protection that might address the new dynamics of international migration. The ambiguities are evident in the way it addresses the more controversial policy matters: preventing and reducing irregular migration, reinforcing the fight against trafficking and smuggling, and strengthening the management of the EU's external borders. The operational dimensions of these policies, such as the Mediterranean Task Force, actions to prevent migrants from undertaking dangerous journeys to Europe, and the speedy return of irregular migrants, all question the quality of protection that is being provided.

GAMM's role in developing a governance framework to tackle the migration problematique, thus reveals the tension at the heart of the policy - the tension between the internal and external political interests that drive the EU's migration policy. Certainly protection will only be effective if it sits within a wider and comprehensive policy agenda for migration as a whole – GAMM. However, the danger is that migration policy is only seen only through the prism of irregular migration. In short, the quality of protection appears to be sacrificed to the primacy of migration enforcement and control.

<u>Protecting Europe's borders – the *non-entrée* regime</u>
In common with other major destination countries confronting the new dynamics of international migration, for example the USA and Australia[6], Europe has constructed a powerful *non-entrée* regime – described by others as «Fortress Europe» or the «thickening» of the EU's external border (Geddes 2008; Levy 2010) – to «securitise» the EU (Zetter 2014a), and to address the mobility-migration-citizenship nexus (Blitz 2014). This objective has relentlessly diminished the quality of protection for refugees, asylum seekers, forced migrants and people in mixed migration flows. And it has closed down the capacity of legal routes to access asylum.

The precarious situation of migrants crossing the Mediterranean, and the media profile given to the human rights violations and the loss of lives at sea, have dramatically highlighted the dilemmas of the non-entrée policy agenda and the failure of protection.

Inter alia, the non-entrée regime comprises a battery of instruments and interventions, mainly in southern member States and the Mediterranean, to enhance security of the common external border by reducing the quality of protection for migrants most in need of it – Frontex[7], EUROSUR[8], EASO[9], the Task Force for the Mediterranean, extensive border surveillance, the construction of border fences in Greece and Bulgaria. These physical and metaphorical instruments sit alongside efforts to unify intra-European asylum policy through the CEAS and the *Dublin Convention*, discussed below.

---

[6] Australia overtly deploys extra-territorial processing of asylum seekers in Nauru, formerly a dependent territory of Australia. More than 1100 asylum seekers are currently held in detention centres on the island.
[7] Frontex -European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
[8] EUROSUR - European External Border Surveillance System
[9] European Asylum Support Office

This portfolio constitutes a remarkably comprehensive and robust non-entrée regime. It denies the claims of the EU that the CEAS and GAMM enhance protection. Instead, vulnerability is increased and the human dignity, rights and quality of protection are all diminished. In these circumstances, the protection crisis at Europe's borders will grow while protection for all types of migrants will become an increasingly fragile commodity.

The growing intensity and scope of these measures reflect the fact that the EU simply does not have the means to prevent or contain large-scale irregular migration especially when the channels for regular migration to the EU, and the orderly resettlement of refugees have been insufficient to offer a realistic alternative means of territorial access. More significant, and critical to the protection issue, is that, confronted with mixed flows of mainly undocumented and irregular migrants, the majority of whom would have a plausible claim for refugee status or some form of humanitarian protection, the EU has neither a definitional framework nor the procedures to distinguish between the different categories of migrants and thus their different protection needs.

Moreover, by progressively trying to clamp down on irregular migration channels of entry to territory, migrants are rendered even more vulnerable to life-threatening risk, exploitation and smuggling (IFRC 2013). In other words, irregularity is intrinsically linked to policies aimed at limiting access to EU territory. The overall effect is a progressive reduction in the quality of protection for all migrants, but especially those who potentially have a well-founded claim for refugee status.

Pragmatic, operational shifts in EU border protection policy, symptomatic of deep rifts between EUMSs in how to handle the crisis, produce inconsistent protection standards and norms leaving migrants vulnerable. After the October 2013 Lampedusa catastrophe, when as many as 360 migrants drowned in the Mediterranean, the *Mare Nostrum* initiative was adopted under the leadership of the Italian government. Detention and push back were rejected in favour of search and rescue at sea, and safe landing in Europe. This improved protection, temporarily at least. Arguing that *Mare Nostrum* merely encouraged more smuggling, and alarmed at the increasing secondary migration from Italy and Greece to Europe's heartland, some EUMSs called for a reversion to the tighter, pre-*Mare Nostrum*, controls in the Mediterranean. Yet replacing *Mare Nostrum* with Operation Triton made little difference to the migrant numbers; but it did lead to increasing fatalities at sea, as migrants took more risks whilst the quality of protection on the southern shores of the Mediterranean declined. Thus, in spring 2015, *Operation Triton* was partially relaxed with a revised package of search and rescue measures. However, without radical reconsideration, it remains questionable if protection, in a normative sense, has improved, or whether it is merely the physical safety of the migrants that may have been enhanced.

Regardless of the measures, large numbers of undocumented and irregular migrants create «downstream» blockages since, reception, admission, status determination and settlement procedures cannot keep pace with the volume of landed migrants. More significantly, *Mare Nostrum* and *Operation Triton* have revived underlying political tensions between member

states and presage a possible fragmentation in Europe's attempt to co-ordinate asylum policy thus far. Italy argues that it carries the principal burden as the «frontier state» but receives insufficient support from other EUMSs. Conversely other, mainly northern, EUMSs argue that they too carry the burden of large numbers of migrants who have transited through Italy but cannot be returned under Dublin III because Italy is insufficiently strict in conducting screening procedures such as finger printing. Radical proposals by the European Commission in May 2015 for quotas to resettle 40,000 recently arrived migrants who have a 75% chance of obtaining asylum[10] has, not surprisingly, run into resistance by EUMSs (Guardian 2015). Germany, Sweden, and Austria, the main recipient states support the proposal, others who receive few migrants such as the UK have already opted out. Thus the political sustainability of these managerial and operational shifts for solidarity and burden sharing by EUMSs, key principles underpinning the CEAS, must be questioned.

Re-bordering Europe
At the same time as strengthening its borders, the EU has also engaged in a process of «debordering and rebordering» (De Giorgi 2010; Harding 2012) to extend the reach of its *non-entrée* regime. Mobility Partnerships are European Commission (EC), or bilateral EUMS agreements with third countries that are sources of migrant labour coming to Europe and, more recently, transit countries for forced migrants and mixed migration flows destined for Europe (European Commission 2007). Ostensibly the aims are: to improve migration management so «that migration and mobility are mutually beneficial for the EU and its partners» (EC 2011:10); and to enhance international protection norms and asylum policy in countries that generally have weak human rights regimes[11].

Arguably, however, Mobility Partnerships have less to do with managing population mobility than shifting European protection responsibilities and obligations to third countries with weak immigration capacity by co-opting them into Europe's migration control regime. Partnerships enable the interception and push-back of migrants en route to Europe without clear status through «up-stream», extra-territorial processing – the «debordering and rebordering» of Europe at a distance. Alongside Readmission Agreements, the return of failed asylum seekers or undocumented migrants to transit and sources countries, «Partnerships» are simply additional instrument to serve Europe's armoury of migration controls by denying access to territory. Furthermore, extra-territorial processing removes migration control from the independent scrutiny of active national and international civil society organisations such as European Council on Refugees and Exiles (ECRE), simultaneously reducing democratic accountability over refugee protection.

---

[10] Essentially this means Syrians and Eritreans would have a good chance of lodging successful asylum claims in the EU

[11] Among the countries in partnership with the EC are Republic of Moldova, Georgia and Armenia and, more recently, Morocco, Tunisia, Mali and Africa (with the ILO as partner). Bilateral agreements have included Italy-Libya, France-Tunisia and Spain-Morocco.

Strengthening protection in transit countries, even if it is effective which is questionable, is not a substitute for meaningful protection processes at Europe's border or within the EU. It denies the right of the refugee, in the 1951 Refugee Convention, to claim refugee protection in a country of her/his choosing. In summary, what is happening is the conflation of three very different migration issues: migrant processing; the strengthening Europe's border management apparatus; and human rights and protection capacity building.

<u>Protection within Europe – the Common European Asylum System</u>
When, or more likely, if migrants arrive in Europe, what quality of protection can they expect? The parameters of protection are delimited by the Common European Asylum System and the Post- Stockholm Programme[12]. After more than a decade of negotiation – the time period is symptomatic of the political and operational tensions between the EUMSs on agreeing immigration and asylum polices – the CEAS was adopted in June 2013. It comprises a portfolio of Directives and Regulations[13] that sets out the minimum standards for reception, processing and interpretation of asylum in the EU, seeking to ensure consistent management and handling across all member states.

However an efficient asylum system for EUMSs is not the same thing as effective protection for the complex array of migrants seeking access and protection. In seeking to establish fair and efficient procedures, efficiency dominates and the quality of protection contracts. In four respects the CEAS is a landmark symbolising the extent to which protection space within Europe has shrunk.

The *first* and principal concern is that tightening every stage in the asylum seeking process severely reduces the quality of protection space that is available in the EU for all migrants. With its focus on the refugee determination paradigm, the tightening of procedures and standards has not only diminished the quality of protection for refugees, but it has failed to tackle the complex processes of mixed migration flows. Either a migrant fits, with some difficulty, the refugee label or she/he does not. The CEAS is not a framework that tackles the complexities of contemporary forced migration and the protection needs of forced migrants who are not *prima facie* refugees.

The *second* major concern is the lack of consistency and coherence in the way member states provide protection, despite harmonisation being one of the major objectives of the

---

[12] The Stockholm Programme (2009-2014) provided the framework for the harmonisation of the CEAP. Thus the Post Stockholm Programme refers to the process, now underway, for the transposition and implementation of the asylum *acquis* through interpretative guidelines remedy of remaining flaws and protection gaps and incorporation of rights through jurisprudence.
[13] The Qualification Directive 2011/95/EU (application 21 December 2013)
The Reception Conditions Directive 2013/33/EU (application 20 July 2015)
The Asylum Procedures Directive 2013/32/EU (application 20 July 2015)
The Dublin III Regulation 604/2013 (application 1 January 2014)
The Eurodac Regulation 603/2013 (application 20 July 2015)

CEAS. Instead of convergence, policy and operational divergence is substantial, as a recent Eurodac report noted: «There is a wide diversity in the handling of asylum applications across the EU Member States: this may be linked to differences in the citizenship of applicants in each EU Member State, and may also reflect asylum and migration policies that are applied in each country» (Eurostat 2014:6).

Evidence of this divergence in procedures (reception, admission, status determination, nationality and age verification test, appeals, and removals) can be found in the recognition rates for asylum applications. Whereas only 4% of asylum applicants received positive first instance decisions in Greece in 2013 and 18% in France, in Italy the rate was 60%, in Sweden 53% and in Switzerland 40% (Eurostat 2014 2013:6).

The *third* issue is that, as with all policy making in Europe, the underlying motivations are harmonisation, solidarity and burden sharing: these mantra appear frequently in the context of the CEAS. But harmonisation is far from being achieved with negative impacts on the quality of protection. Likewise, whereas burden sharing and solidarity should, in principle, offer secure foundations for equal standards and procedures for protection, in practice they do not. The thinning of Europe's internal borders – essentially the borderless Europe of the Schengen area – tied to the thickening of the EU's external borders has, ironically, reduced the solidarity and burden sharing apparatus of the CEAS. These countervailing tendencies are most evident in the operation of the Dublin Convention. Framed as an explicitly EU-wide response to the growing pressure of asylum claims, the paradoxical outcome has been to reinforce the national interests of the core north-western EUMSs (the main destination for undocumented asylum applicants and other migrants) who then seek to repatriate the growing number of claimants to the peripheral states of Europe where the vast majority of migrants first arrive (primarily Italy and Greece but also to a lesser extent other European border states such as Spain, Romania and Cyprus).

The *final* concern is that, by focusing so strongly on asylum and, implicitly, irregular migration, the wider context of migration policy is being ignored, if not at the Commission level, then almost certainly at member state level under constant political pressure to «solve» the asylum/migration crisis. The CEAS cannot provide effective protection unless it sits within a wider and comprehensive policy agenda for migration that includes: enlarged, resettlement and humanitarian admissions policy for refugees; a coherent labour migration policy that could relieve the pressure of irregular migration; and the framework of GAMM. Seeing the issue of migration only through the prism of asylum obscures both wider migration policy objectives, and the protection needs of other forced migrants who are more numerous, but do not clearly fit the refugee profile.

Securitising migration – Europe's dominant agenda
Beyond the broader yet ambiguous political-economy discourse on Europe's need for migrant labour and the socio-economic challenges which international migration poses to EUMSs, the national and EU-wide migration discourse is now dominated by a new political rhetoric. What drives «Fortress Europe» now is the agenda of «securitisation and

migration», sometimes termed «human security and migration». Immigration in general, and irregular migration by putative refugees and asylum seekers in particular, are increasingly portrayed as key vectors of the existential threat of terrorism in Europe. To an extent the legitimacy of «securitising migration» has been confirmed, in the minds of European policy makers, by events such as 9/11, the Madrid and London bombings in 2004/2005, attacks on Charlie Hebdo in Paris in 2015 as well as civil disorder involving ethnic minority migrant communities in, for example the UK, France, the Netherlands and Italy at various times. Whilst not denying the severity of these events, the existential danger evoked by securitising these risks need not necessarily have to be real, as Buzan notes (Buzan et al., 1998): only that there is a perception that current polities and value systems are threatened. That significant numbers of asylum seekers and other migrants are undocumented and arrive by irregular means reinforces the perception of a security threat, irrespective of the legitimacy of the claims once they have arrived.

Yet, the securitisation discourse highlights the contradictory dynamics inherent in the evolution of Europe's migration policies and the so called «migration crisis» at Europe's borders. Many of the countries producing the largest numbers of refugee claims lodged in EUMSs such as Afghanistan, Syria, Iraq, Somalia and Eritrea, are those whose lack of security is identified as being the most threatening to national security in Europe. Yet ironically, it is precisely these same challenges to human security - fragile governments and a limited ability to protect the rights of individuals from persecution and violence - which constitute the normative basis for a well-founded claim for protection through refugee status. However, being ascribed a «threatening identity» because of the countries from which they originate greatly diminishes the strength of their claim for protection as refugees in EUMS. Those most in need of protection find it increasingly hard to assert these claims precisely because their ascribed identity is that they are, might be, a security threat.

Moreover because legal routes to enter Europe are increasingly foreclosed by *inter alia* tighter visa controls, carriers' liability, enhanced passport security and border controls, the diminishing scope of humanitarian protection and reduced opportunities for family reunion, those seeking protection are increasingly compelled to seek irregular entry routes. The image of well-organised networks of smugglers has been instrumentalised to reinforce the picture of illegality and a justification for securitising the borders.

Underpinning these perceptions is a culture of disbelief (Robinson 1999), in which irregular migration is criminalised. Creating the identity of the «illegal migrant» or «bogus asylum seeker» (Zetter 2007) also ascribes an identity that reinforces the securitisation agenda and the existential threat represented by migrants who are perceived to be abusing rights of sanctuary, protection and welfare support. However, although the process of migration to Europe is largely irregular, migration of itself is not illegal. Irregular migration is not a crime: it is state policies and practices that effectively criminalise forced migrants for seeking protection through irregular means. «Illegality» is a constructed concept, not an *a priori* or objective condition. Asylum seekers who enter «illegally» are not criminal *per se*, as the

ascribed identity implies. We want asylum seekers to be constructed as stereotypical victims, but when their identity does not conform to this stereotyped label (Zetter 2007) and they use their agency to arrive «illegally» and go underground, we designate them opportunists with no call on our moral obligation tom protect them. Notions of the asylum seeker as «illegal», as clandestine and criminal, resonate powerfully with a public rhetoric on migration and asylum seeking which is increasingly politicised and managed as a «securitisation» threat.

Thus, the objective of managing migration in the EUMSs is now driven as much by the perceived need to «securitise» national populations against the «fear of the other» represented by mixed flows of migrants and asylum seekers, as it is by a rationale to sustain «good community relations» amongst an increasingly diverse mix of ethnicities, or the economic imperatives to manage domestic labour markets, or still less to reinforce the right of refugees to seek protection (Geddes 2008, 2003; Lavenex 2001; Zetter 2014a). The intensity and persistence of the «migrant-as-security-threat», whether real or not, is usually correlated to the institutionalisation of responses: precisely what has occurred with dramatic effect at national and supranational levels within the EU. It is a political discourse which reinforces the securitisation of migration and asylum at the expense of the rights and protection of migrants (Huysmans 2006; Zetter 2015).

As these rights and protection needs deteriorate, the long-standing vision of strengthening the European Union as an area of freedom, security, and justice (EC 2001) is increasingly subordinated to just one interest, security – not freedom and justice for migrants.

It is for these reasons that I argue that Europe's «migration crisis» of is in many ways a constructed crisis that originates through the failure of its migration policies as a whole. More fundamentally, the «migration crisis» masks a profound crisis in protection for migrants. Until we address the scope and scale of the «protection crisis» by shifting the focus from reactive instrumental responses to the underlying structural factors which precipitate migration, we are unlikely to address the migration crisis and thousands more migrants will perish in the Mediterranean.

Bibliography
Blitz, B. (2014) *Migration and Freedom: Mobility, Citizenship and Exclusion*, London: Edward Elgar Publishing.

Bloch, A., Sigona, N., and Zetter, R. (2014) *Sans Papiers: the social and economic lives of undocumented young migrants*, London, Pluto Press.

Buzan, B., Waever, O., and De Wilde, J. (1998) *Security: A New Framework for Analysis*, Boulder, CO: Lynne Rienner Publishers.

Castles, S., de Haas, H., and Miller, M. (2013) *The Age of Migration: International Population Movements in the Modern World*, Basingstoke: Palgrave Macmillan, 5th Edition.

De Giorgi, A. (2010) 'Immigration Control, post-Fordism and less eligibility: a materialist critique of the criminalization of asylum across Europe', *Punishment and Society*, 12:2, pps, 147-167.

European Commission. (2001) *Unity, Solidarity, Diversity in Europe, its People and its Territory.* Second report on economic and social cohesion adopted by the European Commission on 31 January 2001, Brussels: European Commission.
http://bookshop.europa.eu/en/unity-solidarity-diversity-for-europe-its-people-and-its-territory-pbKN5301002/

European Commission. (2007) *Circular migration and mobility partnerships between the European Union and third countries*, MEMO/07/197, 16/05/2007, Brussels: European Commission.
http://europa.eu/rapid/press-release_MEMO-07-197_en.htm link to, MEMO-07-197_EN-2.pdf
EU. (European Union) (2011) *The Global Approach to Migration and Mobility*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2011) 743 final,{SEC(2011) 1353 final}, Brussels, 18.11.2011
http://ec.europa.eu/dgs/home-affairs/news/intro/docs/1_en_act_part1_v9.pdf

Eurostat. (2014) *Asylum Statistics*, Brussels: European Union.
http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics

Faist, T., and Özveren, E. (eds) (2004) *Transnational Social Spaces: Agents, Networks, and* Institutions, Aldershot: Ashgate.

Geddes, A. (2003) *The Politics of Migration and Immigration in Europe*, London: Sage.

Geddes, A. (2008) *Immigration and European Integration: Towards Fortress Europe?*, Manchester: Manchester University Press, 2nd Edition.

The Guardian. (2015) 'EU countries to take in 40,000 asylum seekers in migration quota proposal', May 27, http://www.theguardian.com/world/2015/may/27/eu-countries-take-40000-asylum-seekers-migration-quota-syria-uk

Guild, E. (2006) 'The Europeanisation of Europe's Asylum Policy', *International Journal of Refugee Law*, 18:3-4, pps, 630-651.

Harding, J. (2012) *Border Vigils: Keeping Migrants out of the Rich World*, London and New York: Verso.

Huysmans, J. (2006) *The Politics of Insecurity: Fear, Migration and Asylum in the EU*, London: Routledge.

IFRC. (International Federation of the Red Cross) (2013) *Shifting Borders; Externalising Migrant Vulnerability and Rights*, Brussels: Red Cross European Office.

IOM. (2015) 'Number of Migrants Landing in Europe in 2015 Passes 100,000' June 9, https://www.iom.int/news/number-migrants-landing-europe-2015-passes-100000

IOM. (2015a) 'Mediterranean Update Missing Migrants Project 14 August 2015', http://www.iom.int/sites/default/files/infographic/IOM-Mediterranean-Update-Aug14.pdf

Lavenex, S. (2001) *The Europeanisation of Refugee Policies: Between Human Rights and Internal Security*, Farnham, UK: Ashgate.

Levy, C. (2010) 'Refugees, Europe, Camps/State of Exception: "Into The Zone", the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-seekers (Theories and Practice)' *Refugee Survey Quarterly*, 29:1, pps, 92-119.

Triandafyllidou, A. (2009) *Clandestino Project: Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe. Final Report*, 23 November 2009. Prepared for the European Commission. http://irregular-migration.net//index.php?id=217

Triandafyllidou, A., and Dimitriadi, A. (2013) *Governing Irregular Migration and Asylum at the Borders of Europe: Between Efficiency and Protection,* Florence: Instito Affari Internazionale. http://www.iai.it/pdf/ImaginingEurope/ImaginingEurope_06.pdf

Robinson, V. (1999) 'Cultures of Ignorance, Disbelief and Denial: Refugees in Wales', *Journal of Refugee Studies*, 12:1, pps, 78-87.

UN Department of Economic and Social Affairs. (UN-DESA) (2013) Number of international migrants rises above 232 million. http://www.un.org/en/development/desa/news/population/number-of-international-migrants-rises.html

UNHCR. (2014) *Asylum Trends 2013*, Geneva: UNHCR**.** http://www.unhcr.org/5329b15a9.html

UNHCR. (2015) '*World at War* '*Global Trends: Forced Displacement in 2014*, Geneva: UNHCR http://www.unhcr.org/556725e69.html,

Zetter, R. (2006) Immigration, Social Cohesion and Social Capital: What are the Links?, Monograph for Joseph Rowntree Foundation, York, Joseph Rowntree Foundation, (with Griffiths, D., and Sigona, N.) http://www.jrf.org.uk/publications/immigration-social-cohesion-and-social-capital-what-are-links

Zetter, R. (2007) 'More Labels, Fewer Refugees: Making and Remaking the Refugee Label in an Era of Globalisation', *Journal of Refugee Studies* 20:2, pps, 172-192.

Zetter, R. (2014) *Protecting Forced Migrants: A State of the Art Report of Concepts, Challenges and Ways Forward*, Monograph for Swiss Federal Commission on Migration (FCM) Art.-Nr. 420.933 E, Bern, Switzerland, December, https://www.ekm.admin.ch/ekm/de/home.html

Zetter, R. (2014a) 'Creating Identities – diminishing protection: securitising asylum seeking in the

EUMS', Chapter 3 in *Refugee Protection and the Role of Law: Conflicting Identities*, Kneebone, S., Stevens D., and Baldassar., L. (eds), Abingdon: Routledge.

Zetter, R. (2015) *Protection in Crisis: Forced Migration and Protection in a Global Era*, Policy Paper for Transatlantic Council on Migration, Washington DC: Migration Policy Institute. http://migrationpolicy.org/research/protection-crisis-forced-migration-and-protection-global-era

Zetter, R., Griffiths, D., (lead author) and Sigona, N. (2005) 'Integrative Paradigms, Marginal Reality: Refugee Community Organisations and Dispersal in Britain', (Griffiths D, lead author and Sigona N), *Journal of Ethnic and Migration Studies*, 32:5, pps 881-898.