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Managing Migration in the Mediterranean: Is the EU Failing to Balance State Security, Human Security, and Human Rights?

Introduction

In the early summer of 2015, when this contribution was written, migration across the Mediterranean was one of most hotly debated topics by the European media, political classes, and the general public. With the numbers of refugees and asylum seekers arriving on Europe's doorstep at their highest levels ever, and scores drowning while crossing the Mediterranean, pictures of dead bodies floating in the sea dominated the press. Right-wing parties across Europe issued warnings of a threat to European culture and identity. In a passionate speech, the president of one EU member state identified migration as a threat to Europe's existence, linking the growth of irregular migration to the rise of terrorism, higher unemployment, and increasing crime rates.¹ At the same time, civil society organizations and numerous citizens and politicians invoked human-rights obligations and humanitarian concerns, and a wave of civic engagement was evident in many European countries, manifesting itself, for example, in the private Migrant Offshore Aid Station (MOAS) initiative to rescue migrants at sea.²

As to the European Union's response to the tragedy unfolding in the Mediterranean, it has been an ungainly combination of humanitarian and security concerns. The EU's dominant understanding is that migration is a security issue, which has led to a focus on border management and policing, and even military elements.

In the field of security studies, a rethinking and broadening of the understanding of what constitutes a security threat has led, since the 1980s, to migration being seen largely as a security issue: "The duality of threats apparently caused by migration to both national sovereignty and human security are largely reflected in much of the recent academic literature."³

This contribution asks whether migration can justifiably be considered a security issue, and under which circumstances this may be the case. It focuses on two approaches to migration: a state-centric approach related to the notion

1 Cf. Margit Feher, Europe's Existence Threatened by Influx of Migrants Says Hungary's Orban, in: *Wall Street Journal*, 26 July, at: <http://www.wsj.com/articles/europes-existence-threatened-by-influx-of-migrants-says-hungarys-orban-1437827281>.

2 Migrant Offshore Aid Station, at: <http://www.moas.eu>.

3 Caryl Thompson, Frontiers and Threats: Should Transnational Migration Be Considered a Security Issue? In: *Global Policy*, 20 November 2013, at: <http://www.globalpolicyjournal.com/blog/20/11/2013/frontiers-and-threats-should-transnational-migration-be-considered-security-issue>.

of national security, and a human-security approach, based on human-security and human-rights considerations. It concludes with a brief evaluation of the EU's response to the migration crisis in the Mediterranean, arguing that Europe is betraying the principles on which it is founded by focusing insufficiently on the primacy of human rights. The contribution will not consider issues related to the reception, accommodation, and integration of migrants making their way across the Mediterranean Sea, as these are issues that deserve separate in-depth consideration. Nor will it discuss the Eurocentric nature of the debate on migration in the Mediterranean, which emphasizes the concerns of developed countries over those of developing countries (which host far more migrants with significantly less material means to cope with them).

The Phenomenon of International Migration

Migration can be understood as the movement of people from one place to another. The International Organization for Migration (IOM) defines migration in broad terms as “the movement of a person or a group of persons, either across an international border, or within a State. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.”⁴

Human migration has taken place throughout history. At times it has been considered a threat, but it is more often seen as an opportunity. The UN reports that the number of international migrants worldwide reached 232 million in 2013, up from 175 million in 2000 and 154 million in 1990.⁵ As for the European Union, Eurostat specifies that there are some 20 million non-EU nationals residing in the EU countries (making up four per cent of the population).⁶ Thus, the vast majority of the world's migrants do not reside in European countries. In fact 86 per cent of the world's forcefully displaced persons are hosted in developing countries. Jordan, for example, had 747,360 registered refugees in January 2015 from Syria alone.⁷ This is without taking into account other refugees that Jordan hosts. These facts are generally unknown to European public opinion. Significantly, polls indicate that the gen-

4 IOM, *Key Migration Terms*, at: <https://www.iom.int/key-migration-terms>.

5 Cf. United Nations Department of Economic and Social Affairs, Population Division, *The number of international migrants worldwide reaches 232 million*, Population Facts No. 2013/2, September 2013, at: http://esa.un.org/unmigration/documents/The_number_of_international_migrants.pdf.

6 Cf. Eurostat, *Immigration in the EU*, 10 June 2015, data from 2014, at: http://ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/immigration/migration-in-eu-infographic_en.pdf.

7 Cf. UNHCR, *2015 UNHCR country operations profile – Jordan*, at: <http://www.unhcr.org/pages/49e486566.html>.

eral public tends to overestimate the numbers of immigrants in EU countries. For instance, an Ipsos Mori survey discovered that “in Italy the public thinks 30% are immigrants when it’s actually 7%; and in Belgium the public thinks it’s 29% when it’s actually 10%.”⁸

In the past 18 months, most irregular migrants arriving in Europe did so in the Mediterranean region, and the number of these migrants is rising. According to UNHCR sources, 105,000 migrants arrived in Europe by sea in the first half of 2015 with 1,850 dead or missing, an increase of 112 per cent on the 49,500 who arrived in the same period during 2014. The total figures for 2014 were 219,000 arrivals by sea with 3,500 dead or missing,⁹ Particularly shocking is that the number of dead or missing thus totals 5,350 in slightly less than 18 months.

Using a broad conception of migration arguably does not really help us to explore whether migration is a security threat. It is therefore necessary to break the concept down more precisely.

The literature on the subject uses several different categories and terms for types of migration. While some authors attempt to explain differences in attitudes towards migrants by discussing a division into acceptable and unacceptable migrants,¹⁰ and polls and studies also point to the fact that racial considerations play a role in attitudes towards migrants, the most appropriate and useful categorization may be one that refers to the status of migrants. In particular, authors speak of undocumented migration,¹¹ unauthorized migration, clandestine migration,¹² illegal migration,¹³ and irregular migration. Such migration is increasingly perceived by the governments and citizens of wealthier countries as a security threat.

Demetrios Papademetriou argues that “no aspect of [...] interdependence seems to be more visible to the publics of advanced industrial societies than the movement of people. And no part of that movement is proving pricklier to manage effectively, or more difficult for publics to come to terms with, than irregular (also known as unauthorized, undocumented, or illegal)

8 Ipsos Mori, *Perceptions are not reality: Things the world gets wrong*, 29 October 2014, at: <https://www.ipsos-mori.com/researchpublications/researcharchive/3466/Perceptions-are-not-reality-Things-the-world-gets-wrong.aspx>.

9 Cf. UNHCR, *Special Mediterranean Initiative, Plan for an enhanced operational response, June-December 2015*, 16 June 2015, pp. 4 and 7, at: <http://www.unhcr.org/557ad7e49.html>.

10 Cf. Robert Ford, *Acceptable and Unacceptable Immigrants: How Opposition to Immigration in Britain is Affected by Migrants’ Region of Origin*, in: *Journal of Ethnic and Migration Studies*, 7/2011, pp. 1017-1037.

11 Cf. Platform for International Co-operation on Undocumented Migrants, *Who are Undocumented Migrants?* At: <http://picum.org/en/our-work/who-are-undocumented-migrants>.

12 Cf. Derek Lutterbeck, *Policing Migration in the Mediterranean*, in: *Mediterranean Politics* 1/2006, pp. 59-82.

13 See, for example, Paul Collier, *Illegal Migration To Europe: What Should Be Done?* In: *Social Europe Journal*, 9 September 2014, at: <http://www.social-europe.eu/2014/09/illegal-migration>.

migration”.¹⁴ Indeed, recent polls also point to this: Oxford University’s 2011 Migration Observatory report on public opinion on immigration in Britain suggests that the public distinguishes between “legal and illegal migration” and that opposition to migration is often focused on illegal migration.¹⁵

While the various terms used by scholars, policy-makers, and the media listed above are similar in that they refer to those migrants who are not authorized by countries of destination (and in some cases by countries of origin and transit), many reservations have been expressed about the impact such language may have on how such migrants are perceived, and on the consequences of this for policy-making and the welfare of migrants, among other things. A number of authors have pointed out that none of the available terms do justice to the phenomenon, and have attempted to find new terms (such as “desperate migration”, or, in the context of the Mediterranean, “boat people”).¹⁶ In this paper, we will use the term “irregular migration”, which, though not universally accepted, and not very precise (it encompasses a variety of types of migrants: economic migrants, asylum seekers, refugees), is used by organizations such as the IOM¹⁷ and the EU.¹⁸

The IOM defines irregular migration as migration “that takes place outside the regulatory norms of the sending, transit and receiving countries”. Thus, “from the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country.”¹⁹ These are not criminal offences, but rather administrative infringements, as human-

14 Demetrios G. Papademetriou, *The Global Struggle with Illegal Migration: No End in Sight*, Migration Policy Institute, 1 September 2005, at: <http://www.migrationpolicy.org/article/global-struggle-illegal-migration-no-end-sight>.

15 Cf. The Migration Observatory at the University of Oxford, *Thinking Behind the Numbers: Understanding Public Opinion on Immigration in Britain*, 16 October 2011, pp. 3-4, at: <http://migrationobservatory.ox.ac.uk/understanding-uk-public-opinion/executive-summary>.

16 See, for example, Joseph Chamie, former director of the UN Population Division, writing on “desperate migration”: Joseph Chamie, *The Dilemma of Desperate Migration. Humanitarian aid adds incentives for migrants to take risks in fleeing homelands*, YaleGlobal Online, 14 November 2013, at: <http://yaleglobal.yale.edu/content/dilemma-desperation-migration>; and Roderick Pace writing on “Mediterranean boat people”: Roderick Pace, *Migration in the Central Mediterranean*, Jean Monnet Occasional Paper 2/2012, at: https://www.um.edu.mt/_data/assets/pdf_file/0003/179058/JMProfPacePaperMigration022013webv3.pdf.

17 Cf. IOM, cited above (Note 4).

18 Cf. European Commission, Migration and Home Affairs, *Irregular Migration & Return*, at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/irregular-migration-return-policy/index_en.htm.

19 IOM, cited above (Note 4).

rights groups note. Indeed, international law specifically states that persons who are entitled to refugee status may not be punished for illegal entry.²⁰

As we have noted, the numbers of irregular migrants have been growing. Experts consider that this is the result of four trends. The first is increased mobility as a result of globalization, advances in transport and communications, and indeed the general growth of migration. The second is increasing restrictions on opportunities for legal migration, as a result of government action. The third is the substantial mismatch that exists between the supply and demand sides for labour. The fourth trend is mass migration resulting from conflict and mass infringements of human rights, as in the cases of Syria, Libya, Iraq, Palestine, and Yemen.

The current number of irregular migrants worldwide can only be estimated. In 2010, the IOM indicated that “the overwhelming majority of migration is fully authorized. Estimates, while not exact [...], suggest that only some 10-15 per cent of today’s [...] international migrants are in an irregular situation.”²¹ The EU does not provide an estimate of the numbers of irregular immigrants, but points out that “a total of 567 427 third-country nationals irregularly staying in the Member States were *apprehended* in 2009. This represents a 7% decrease compared to 2008 [...]”²² The Clandestino project provides an estimate of the numbers of irregular migrants in the EU for 2008 as 1.9-3.8 million.²³ This estimate is used widely in the relevant literature. With the EU population reported as 505.7 million (in May 2014),²⁴ the scale of irregular migration cannot in itself really constitute the problematic part.

To understand the issue better, it is necessary to look at irregular migration from the two perspectives of state-centric and humanitarian approaches.

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- 20 Cf. Convention Relating to the Status of Refugees, Article 31(1), in: UNHCR, *Convention and Protocol Relating to the Status of Refugees*, p. 29, at: <http://www.unhcr.org/3b66c2aa10.html>.
 - 21 IOM, *World Migration Report 2010. The Future of Migration: Building Capacities for Change*, Geneva 2010, p. 29, at: http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf.
 - 22 European Commission/European Migration Network, *EMN INFORM, Migration and International Protection Statistics 2009*, p. 3, at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-informs/emn_inform_migratory_statistics_2009_june_2012_final_en.pdf (emphasis in the original).
 - 23 Cf. Hellenic Foundation for European and Foreign Policy (ELIAMEP), *Clandestino Project, Final Report*, 23 November 2009, p. 15, at: <http://cordis.europa.eu/documents/documentlibrary/126625701EN6.pdf>.
 - 24 Cf. European Commission Eurostat, *Population and population change statistics*, at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Population_and_population_change_statistics.

States and Humans

States

The public debate on the migration-security nexus tends to focus on a number of issues relating to national security, understood as the protection and promotion of the well-being of the citizens and legal residents of a state and its territory. This debate is thus state-centric in nature. As Khalid Koser argues, “the perception of migration as a threat to national security has certainly heightened in recent years, [...] in part in response to the rapid rise in the number of international migrants [...] and especially of ‘irregular’ or ‘illegal’ migrants [...]”.²⁵ There are of course other factors that may intensify that threat, such as when irregular migration is large scale or occurs during periods of recession. Real or imagined links to terrorism, organized crime, and health threats are at the core of the perception of irregular migration as a security threat. The “war on terrorism” and other transnational threats have been linked to migration,²⁶ especially irregular migration. Such threats have generally been found to be exaggerated in the public perceptions in countries of destination.²⁷ However, the matter of such links is a complex one, and deserves a serious and well-founded debate aimed at countering public fears.

25 Khalid Koser, *When is Migration a Security Issue?* Brookings, 31 March 2011, at: <http://www.brookings.edu/research/opinions/2011/03/31-libya-migration-koser>.

26 Cf. IOM, *Essentials of Migration Management, Volume Two: Developing Migration Policy*, Geneva 2004, Section 2.8. Migration and Security, p. 6, at: http://www.rcmvs.org/documentos/IOM_EMM/v2/V2S08_CM.pdf.

27 On the issue of crime, Luca Nunziata suggests that “our empirical findings show that an increase in immigration does not affect crime victimization, but it is associated with an increase in the fear of crime, the latter being consistently and positively correlated with the natives’ unfavourable attitude toward immigrants. Our results reveal a misconception of the link between immigration and crime among European natives.” Luca Nunziata, *Immigration and Crime: New Empirical Evidence from European Victimization Data*, IZA Discussion Paper No. 8632, November 2014, p.1, at: <http://ftp.iza.org/dp8632.pdf>.

The World Health Organization suggests that “in spite of the common perception of an association between migration and the importation of infectious diseases, there is no systematic association”, but rather a link between health and poverty levels. Communicable diseases tend to be imported by travellers rather than migrants. World Health Organization, Regional Office for Europe, *Migration and Health: Key Issues*, at: <http://www.euro.who.int/en/media-centre/events/events/2015/11/high-level-meeting-on-refugee-and-migrant-health/news/news/2015/09/population-movement-is-a-challenge-for-refugees-and-migrants-as-well-as-for-the-receiving-population/migration-and-health-key-issues#292117>.

The International Organization for Migration, in a 2010 evaluation of the link between migration and terrorism, points out that “the securitization of migration is unwarranted and unhelpful in some respects. Specifically, when migration and terrorism are linked too closely, or in a simplistic causal manner, there is a risk that policy prescriptions will be misguided or could even backfire by increasing community tensions and compromising social cohesion. The argument that there exists a link between migrants and terrorism needs to be challenged.” IOM, *International Terrorism and Migration*, Geneva 2010, p. 7, at: https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/tcm/international_terrorism_and_migration.pdf.

Migration can also be perceived as threatening the social and economic fabric of countries of destination, for instance, by leading to rising unemployment. Here again, the sense that migration poses a threat can prevail even when economists argue that migration is a positive force linked to the flows of goods and money, and that European demographics actually indicate that Europe would benefit from an influx of migrants. A 2014 World Bank report states that “international migration boosts world incomes. By allowing workers to move to where they are more productive, migration results in an increase in aggregate output and income.”²⁸

Migration also benefits developing countries through remittances amounting to three times the total of official aid (as of 2014). Furthermore, “destination countries benefit from the cheaper and often indispensable services provided by these migrant workers. Most economies, rich and poor, would grind to a halt without international migrant workers. And in the future, demographic balances imply a growing need for and supply of international migration, especially of the lower-skilled people.”²⁹

Another challenge posed by irregular migration is the perception by people in transit states and, in particular, destination states that the situation is out of control, and even threatens state sovereignty. Control of movement across borders is of course one of the basic functions of a state. Thus it can be argued that “states use migration control measures to demonstrate their sovereign control over territory and to palliate public concerns that sovereignty is being undermined.”³⁰ States determine who can enter, reside, and work in their territories, and the means they use to do so include migration management and border management policies.

Clearly there is a lack of honest debate on the above issues, and attempts to stop or at least reduce the flow of irregular migrants fuel further fears, creating a cycle of demand for security measures. Furthermore, it is of key importance to states that the entitlement to control who enters and who resides is not absolute and is restricted by a number of specific provisions of international law and human-rights obligations (as discussed below).

Humans

At the same time, the debate on migration and security reflects a general tendency to move beyond national security to embrace humanitarian concerns.

28 The World Bank, *Migration and Remittances*, April 2014, at: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20648762~menuPK:34480~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

29 Dilip Ratha, *The new European Agenda for Managing Migration: How to find the needle and not destroy the haystack*, The World Bank – People Move, 15 May 2015, at: <http://blogs.worldbank.org/peoplemove/new-european-agenda-managing-migration-how-find-needle-and-not-destroy-haystack>.

30 International Council on Human Rights Policy, *Irregular Migration, Migrants Smuggling and Human Rights: Towards Coherence*, Geneva 2010, p. 2, at: http://www.ichrp.org/files/reports/56/122_report_en.pdf.

While the national security perspective focuses on border management challenges that may undermine a state's sovereignty as well as the real or imagined threats that migration poses to the population of countries of destination, human security and human rights as alternative approaches to migration also consider the threats to the migrant: "The structural violence that causes many to migrate, the impact of deportation and detention policies and the hazards to personal safety of migrants resulting from the increasing reluctance of states to offer sanctuary to those genuinely in need are just some of the aspects of the nexus between migration and human security."³¹ From the human-security perspective, therefore, "the main imperative is not to curb migration by all possible means but rather to prevent the loss of life in the Mediterranean, protect the migrants against the human smugglers and ensure the rights of genuine refugees."³²

Koser argues that understanding migration as a national security issue has consequences for the kind of policies that are used to counter the perceived threat. It is used to justify "greater surveillance, detention, deportation and more restrictive policies".³³ This in turn has an impact on the human security of migrants (by encouraging them to use more dangerous routes and to turn to migrant smugglers and human traffickers, and by restricting their opportunities to reach safe countries), and on the public perception of immigration (by encouraging anti-immigrant tendencies). This is certainly true of the Mediterranean region. It is for this reason that many authors conclude that human-security threats to irregular migrants by far outweigh the national security threats that they may create.

Human security aims to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment. The thousands of deaths in the Mediterranean are attacking the most vital core of human security: life itself. From a human-rights perspective this failure is leading to a breach of the most fundamental of human rights: the right to life enshrined in Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, and Article 2 of the European Convention of Human Rights, among others. While it may be difficult, if not impossible, to prove legal liability for the breach of the right to life on the part of the EU and its Member States in respect of these deaths at sea, there is a case for attributing a degree of moral responsibility. After all, the EU declares in its constitutive treaty that "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".

31 Thompson, cited above (Note 3).

32 Lutterbeck, cited above (Note 12), p. 64.

33 Koser, cited above (Note 25).

State-Centric Versus Human-Security Approaches

The state-centric and human-security approaches are often seen as standing in tension with each other. The debate centres on the question of whose security we ought to be concerned about – should we really focus on the security of states, or should our first concern be the security of human beings, in this case the irregular migrants?

Yet Donald Kerwin argues pointedly that “human security is often set against the concept of national security, but the two need not be at odds. Properly crafted national security policies should further human security. However, the human security framework moves the migration discussion beyond national security’s narrow preoccupation with border control, detention, and the criminalization of migrants, and opens it to the conditions of insecurity that drive irregular and crisis migration. Human security also asks whether policies developed out of a misguided view of national security put people in less secure positions, like the hands of traffickers and smugglers.”³⁴ Consequently, effective migration management and border management policies would address national security problems while enhancing the human security of the migrants. This is arguably a rather complex task, and one at which Europe seems to be failing, as is argued below.

The Situation in the Mediterranean

The General Situation

As Derek Lutterbeck notes, “the Mediterranean is nowadays considered one of the most important gateways through which undocumented immigrants seek to reach the EU”.³⁵ There has been a considerable increase in the numbers of irregular migrants arriving on boats since 2011, especially in Italy and Greece, but also in other northern Mediterranean states. The majority of irregular migrants arrive in the EU across the Mediterranean Sea. Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union reports that, in the second quarter of 2014, some 90 per cent of the irregular migrants arriving in the EU were reported from its sea border, mostly in southern Italy.³⁶

Frontex also suggests that 2014 “has been a truly disastrous year for irregular migrants attempting the perilous sea-crossing from North Africa to Europe. A troubling spike in serious armed conflicts around the world, from Mali in West Africa through to Gaza, Syria, Iraq and beyond, has proved a

34 Donald Kerwin, *Human Security, Civil Society and Migration*, p. 3 at: [https://docs.unocha.org/sites/dms/HSU/Kerwin statement.pdf](https://docs.unocha.org/sites/dms/HSU/Kerwin%20statement.pdf).

35 Lutterbeck, cited above (Note 12), p. 61.

36 Cf. Frontex, *FRAN Quarterly, Quarter 2, April-June 2014*, p. 5, at: http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q2_2014.pdf.

bonanza for the people smugglers – with strife-torn Libya now by far the most favoured point of departure. The figures are staggering.”³⁷ This trend continued in the first half of 2015, despite increased action on the part of the EU. Meanwhile, the number of people who perish while trying to cross the Mediterranean continues to grow.

Migrants Crossing the Mediterranean

UNHCR figures show that the top three nationalities of migrants crossing the Mediterranean by sea for the period January to June 2015 were Syrians, Afghans, and Eritreans.³⁸ In the case of Syria and Afghanistan, the reasons for migration are abundantly clear. In Syria, the danger to civilians from the ongoing civil war has reached an even greater level with the expansion of Islamic State (IS). The barbarous acts performed by IS in Syria do not need to be recited here, given how clearly they have been recorded by the international media.³⁹ The death toll as a result of the violence in Syria exceeded 210,000 in early 2015.⁴⁰

In the case of Afghanistan, the security situation remains difficult, with the Taliban and other insurgent forces making inroads in various locations. This is recorded by the EU’s own European Asylum Support Office (EASO), whose report on the Afghan security situation states that “armed insurgent groups, such as the Taliban and Hezb-e Islami Afghanistan, have increasingly conducted large scale attacks on the ANSF [Afghan National Security Forces]. The insurgents have been increasingly successful in conquering and holding territory, but the ANSF generally still manage to control large city centres and towns in most of the country. As from 2013, this increase in attacks has led to more civilian casualties mainly inflicted by crossfire, mortar and artillery shelling”.⁴¹

Eritrea presents a different but equally distressing situation for civilians. The country is ruled by a military dictatorship, which has engaged in systematic and grave human-rights abuses such as forced labour, arbitrary arrests, torture, and the suppression of religious freedoms.⁴² The security situation is

37 Frontex, *People smugglers: the latter day slave merchants*, 30 September 2014, at: <http://frontex.europa.eu/feature-stories/people-smugglers-the-latter-day-slave-merchants-UArKn1>.

38 Cf. UNCHR, cited above (Note 9), pp. 4.

39 See, for example, *ISIL on 24-hour “Killing Rampage” in Syria’s Kobane*, Al Jazeera, 27 June 2015, at: <http://www.aljazeera.com/news/2015/06/isil-24-hour-killing-rampage-kobane-150626144824173.html>.

40 Cf. *Syria death toll now exceeds 210,000: rights group*, Reuters, 7 February 2015, at: <http://www.reuters.com/article/2015/02/07/us-mideast-crisis-toll-idUSKBN0LB0DY20150207>.

41 European Asylum Support Office, *Press Release, Afghanistan security situation*, PR 01/2015, 13 February 2015, p. 2, at: <https://easo.europa.eu/wp-content/uploads/Press-release-Afghanistan-security-situation.pdf>.

42 Cf. Human Rights Watch, *Eritrea*, at: <https://www.hrw.org/africa/eritrea>.

so dire that travel warnings have been issued by a number of EU countries and the USA.⁴³

Between them, these three countries account for over 60 per cent of migrants crossing the Mediterranean by sea.⁴⁴ This context enables us to better comprehend the nature of the current wave of Mediterranean sea crossings. The great majority of these migrants are fleeing from armed conflict, civil strife, and grave human-rights abuse. There is thus a clear prima facie case for them to be regarded as refugees in terms of the Refugee Convention. Within this context, it is important to highlight the role of international law, which seeks to protect migrants and refugees as persons who require special protection due to their vulnerability as a result of their being outside the jurisdiction of the state of their nationality. International law thus provides dual protection for migrants and refugees: (i) general protection under human-rights treaties applicable to all persons and (ii) specific protection applicable to particular categories of persons (in this case migrants and refugees). One needs to stress that, according to the EASO, nationals coming from these countries of origin who manage to make it to EU member states are almost invariably granted protection.⁴⁵ The key problem lies in the fact that these individuals, who are entitled to receive protection, are often unable to enter Europe legally and thus face great peril in accessing the protection they need and the rights that accompany it.

The Refugee Convention defines a refugee as any person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country [...]”⁴⁶ The notion of persecution is particularly central, as it underscores the reason why refugees require special protection. Under international law, individuals fleeing persecution have not only the right to be accorded refugee status but also the right not to be returned to places where they are in danger (the principle of non-refoulement). Quite apart from legal obligations that exist towards such people once they reach European territory, countries that claim to be guided by human rights and humanitarian principles also have a moral obligation to assist people fleeing violent conflict and human-rights abuses.

As well as people who are eligible for refugee status under international law because they are fleeing persecution and warfare, the second category of individuals who are migrating across the Mediterranean are those who are

43 See, for example, US Department of State, Bureau of Consular Affairs, *Eritrea Travel Warning*, at: <http://travel.state.gov/content/passports/english/alertswarnings/eritrea-travel-warning.html>; and the UK government’s travel advice: *Foreign travel advice, Eritrea*, at: <https://www.gov.uk/foreign-travel-advice/eritrea>.

44 Cf. UNHCR, cited above (Note 9), p. 4.

45 Cf. European Asylum Support Office, *Annual Report on the Situation of Asylum in the European Union 2014*, July 2015, p. 26, at: <https://easo.europa.eu/wp-content/uploads/EASO-Annual-Report-2014.pdf>.

46 *Convention Relating to the Status of Refugees*, cited above (Note 20), Article 1(2), p. 14.

often referred to as “economic migrants”. Alongside Syria, Afghanistan, and Eritrea, significant numbers of migrants crossing the Mediterranean also originate in countries such as Mali, Nigeria, Gambia, and Senegal. These are all countries with low human development index ratings. People who leave these countries do so, in the main, because they are looking for employment, better healthcare for themselves and their families, and better education and prospects for their children. These are not unlike the reasons that led millions of Europeans to migrate to the USA in the 19th and 20th centuries. In effect, such economic migrants are in search of a greater degree of human security and a deeper fulfilment of their human rights. It has been argued that human security “means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity”.⁴⁷ The social, environmental, and economic concerns that lead economic migrants to leave their country of origin are important ways of contextualising the discussion of economic migration. From a human-rights perspective, it is important to recall that the right to work, the right to health, and the right to education are also human rights under international law (enunciated, e.g., in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights).

The EU Response

The EU’s response to the situation in the Mediterranean points to an unresolved tension between approaches stressing national security and those that focus on human security. While official rhetoric takes note of the humanitarian considerations of saving lives and guaranteeing the human rights of irregular migrants, and the need to address the root causes of increased migration (conflicts, human-rights abuses, poverty, and socio-economic factors such as unemployment in the countries of origin), the response focuses largely on measures intended to curtail irregular migration by means of migration management and border management.

The EU’s immediate response to the tragedies of April 2015 (among the worst in terms of loss of lives in the Mediterranean) is indicative of the focus on state security-based approaches. The response, adopted in the weeks following these tragedies and known as the Ten-Point Plan, focused on ten key areas:

- “Reinforce the Joint Operations in the Mediterranean, namely Triton and Poseidon, by increasing the financial resources and the number of assets. We will also extend their operational area, allowing us to intervene further, within the mandate of Frontex;

47 Commission on Human Security, *Human Security Now*, New York 2003, p. 4.

- A systematic effort to capture and destroy vessels used by the smugglers. The positive results obtained with the Atalanta operation should inspire us to similar operations against smugglers in the Mediterranean;
- EUROPOL, FRONTEX, EASO and EUROJUST will meet regularly and work closely to gather information on smugglers modus operandi, to trace their funds and to assist in their investigation;
- EASO to deploy teams in Italy and Greece for joint processing of asylum applications;
- Member States to ensure fingerprinting of all migrants;
- Consider options for an emergency relocation mechanism;
- A EU wide voluntary pilot project on resettlement, offering a number of places to persons in need of protection;
- Establish a new return programme for rapid return of irregular migrants coordinated by Frontex from frontline Member States;
- Engagement with countries surrounding Libya through a joined effort between the Commission and the EEAS; initiatives in Niger have to be stepped up.
- Deploy Immigration Liaison Officers (ILO) in key third countries, to gather intelligence on migratory flows and strengthen the role of the EU Delegations.⁴⁸

These points focus primarily on the smugglers who ferry the migrants across the Mediterranean Sea, mostly on unseaworthy vessels. However, targeting smugglers is merely targeting a symptom rather than a cause. The root cause of the migration, as has been outlined above, is human insecurity related to conflict, persecution, and poverty. The destruction of smugglers' capacities, assets, and networks does nothing to address these causes of human insecurity, or the resulting need to cross the Mediterranean Sea. As already mentioned, the dangerous sea crossings are themselves in part also the result of the "Fortress Europe" mentality that is buttressed by a highly bureaucratic visa procedure for the Schengen area, which makes authorized travel into the European Union all but impossible for people escaping conflict, persecution, or poverty.

While the Ten-Point Plan attempts to deal with the deaths at sea by increasing the financial resources and military assets dedicated to saving lives, it fails to address the root causes of this seaborne migration. What does stand out, apart from the emphasis on smugglers, are the references to traditional approaches to border management such as fingerprinting of migrants, intelligence gathering, rapid return of irregular migrants, and engaging with countries of origin (with the inference that such engagement is directed at stopping migrants from crossing). It is telling that nowhere in the ten points is

48 European Commission, *Joint Foreign and Home Affairs Council, Ten Point Action Plan on Migration*, Luxembourg, 20 April 2015, at: http://europa.eu/rapid/press-release_IP-15-4813_en.htm.

there any reference to the human rights, human dignity, and human security of migrants.

The follow-up to the Ten-Point Plan, and the key document currently guiding the EU's approach to managing migration is the European Agenda on Migration,⁴⁹ which was adopted on 13 May 2015. This document adopts an approach that is evidently more comprehensive and nuanced. It also demonstrates, at least in terms of the language used, a willingness to engage with migration from a human-security perspective. In its introduction, the Agenda states that "the collective European policy on the matter has fallen short" and expresses the aim to halt "the human misery created by those who exploit migrants" and arguing that to do so "we need to use the EU's global role and wide range of tools to address the root causes of migration".⁵⁰ This focus on human misery and root causes is important, though the implication that this misery is created by smugglers is both simplistic and incomplete. The misery, as highlighted above, is caused by numerous factors that threaten human security, such as conflict, abuses of human rights, or persistent poverty. The Agenda further states that "Europe should continue to be a safe haven for those fleeing persecution as well as an attractive destination for the talent and entrepreneurship of students, researchers and workers. Upholding our international commitments and values while securing our borders and at the same time creating the right conditions for Europe's economic prosperity and societal cohesion is a difficult balancing act that requires coordinated action at the European level."⁵¹

The Agenda is based on four pillars: (i) reducing incentives for irregular migration; (ii) border management and saving lives at sea; (iii) a strong common asylum policy; and (iv) a new policy on legal migration. The pillar relating to reducing incentives for irregular migration emphasises countering smuggling as well as procedures for the return of migrants. Within this pillar, the traditional state-centric security approach is clear and unequivocal. Likewise, the measures on border management and saving lives, though ostensibly paying attention to the imperative of saving lives at sea, also dwell considerably on border management from a state-centric perspective. They emphasize the EU's need to manage its borders more efficiently, highlighting the use of various technologies that the Agenda claims can "bring benefits to border management, as well as to enhance Europe's capacity to reduce irregular migration and return irregular migrants".⁵² Thus the reduction of migratory flows into the EU seems to be an important concern here as well; a

49 Cf. European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration*, Brussels, 13 May 2015, at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf.

50 Ibid., p. 2.

51 Ibid.

52 Ibid., p. 11.

point that is reiterated when the Agenda discusses the EU's idea of "smart borders", which are envisaged as assisting in "the fight against irregular migration by creating a record of all cross-border movements by third country nationals".⁵³

The pillar relating to the creation of a strong European asylum policy should, in principle, have offered an opportunity to focus significantly on the human aspects of migration: human rights, human security, and the dangers migrants face. Instead, after opening with the brief and clichéd statement that "all asylum applications must be processed and protection granted to those who qualify", this section continues: "One of the weaknesses exposed in the current policy has been the lack of mutual trust between Member States, notably as a result of the continued fragmentation of the asylum system. This has a direct impact on asylum seekers who seek to 'asylum shop', but also on EU public opinion: it encourages a sense that the current system is fundamentally unfair."⁵⁴

The focus once again seems to be on the states, on European public opinion, which shapes government behaviour, and on the EU itself. The reference to unfairness in the quoted passage refers to perceived unfairness towards certain member states; an intriguing perspective in a text that ostensibly concerns asylum seekers.

In the final pillar, entitled "a new policy on legal migration", the Agenda sets out a plan to increase legal avenues for migration in order to meet the EU's economic and demographic challenges. The Agenda also refers to the EU's Blue Card Directive,⁵⁵ which it proposes should be implemented more widely, and to the modernization of visa policy. This section also contains arguments for the integration of development and migration policies and for the facilitation of remittance transfers. Most of these measures, if implemented, would be welcome improvements to the EU's migration policy, although the discourse still appears to be dominated by a state-centric approach that focuses primarily on the needs of member states and the EU as a whole.

On the whole, in terms of human aspects of migration, the EU Agenda on Migration is disappointing. The introduction strikes a refreshing note with passages such as "Throughout history, people have migrated from one place to another [...] Every person's migration tells its own story. Misguided and stereotyped narratives often tend to focus only on certain types of flows, overlooking the inherent complexity of this phenomenon, which impacts society in many different ways and calls for a variety of responses [...] The immediate imperative is the duty to protect those in need."⁵⁶ Notwithstanding this auspicious start, the rest of the document contains scant references to

53 Ibid.

54 Ibid., p. 12.

55 Cf., for example, *EU Blue Card – Live and work in the European Union!* At: <http://www.eu-bluecard.com>.

56 European Commission, cited above (Note 49), p. 2.

human security and human rights, while state-centric approaches remain at the centre of EU migration policy. The European Agenda on Migration acknowledges that the EU needs “to strike the right balance in its migration policy”.⁵⁷ Yet the balance remains very much in favour of state-centric approaches and perspectives.

As authors such as Derek Lutterbeck note, there has been “a considerable expansion and intensification of policing and law enforcement activities in and across the Mediterranean sea. [...] this has involved both an increasing deployment and upgrading of various types of security forces involved in policing the Mediterranean, as well as a considerable deepening of law enforcement co-operation between countries north and south of the Mediterranean.”⁵⁸ Apart from this, it is used to justify detention, deportation, pushback, and other restrictive policies.

Public opinion and the changing political landscape in a number of EU member countries, where right-wing political forces have grown in strength in recent years, are likely to further impact on changing the balance of state-centric and humanitarian approaches towards irregular migration. But the securitization of migration, especially irregular migration, has significant consequences, including hidden costs, and creates a self-perpetuating (vicious) circle of supply and demand for security. Such processes serve short-term needs but are arguably not in the long-term interests of the developed countries of destination with respect to the preservation of human rights and liberal values.

Conclusion

Labelling an issue as a security threat to states has significant implications in terms of laws, norms, policies, and procedures. In relation to migration, the label has been used to justify harsh and restrictive policies. These policies impact on the migrants, reducing the ability of asylum seekers to access safe countries, forcing them to turn to people smugglers and human traffickers, and to undertake unsafe passages, and contributing to growing anti-migrant tendencies. They also create a gap between the protection that migrants formally enjoy under international law and the realities they experience as they travel and work across different countries. As a result, differences are growing between the interests of migrants and those of the states trying to control their movements and entry, as is the gap between the interests of governments and the aims of NGOs and civil societies in these countries.

In the Mediterranean, the complexity of the situation, which is characterized by sea borders, weak and conflict-stricken states, and the recent surge in irregular migration and loss of human life, makes the issue particularly

57 Ibid., p. 6.

58 Lutterbeck, cited above, (Note 12), p. 60.

relevant. The EU's current policies show how difficult it is to develop approaches that strike a balance between national and human security. Is it possible to reconcile these two perspectives in the Mediterranean? There is an urgency to this question, as some are arguing that "Europe's immigration nightmare is only beginning",⁵⁹ given the socio-economic disparities between the countries north and south of the Mediterranean Sea, and particularly the conflicts currently ravaging the region. The Mediterranean is becoming a militarized and heavily patrolled area. Recent events such as the drownings of irregular migrants and the debate on the maritime operations Mare Nostrum and Triton expose the EU's difficulty in framing the issue.

Alongside effective policies for migration management and border management, Europe also urgently needs to find innovative means of both toning down the aggressive public debate by presenting hard facts and of working towards protecting the human rights and human security of the migrants. Efforts to address the genuine security challenges that irregular migration poses for developing countries must go hand-in-hand with measures of this kind, as well as with a development agenda that tackles the root causes of irregular migration. The EU clearly has much work ahead if it is to craft approaches to migration and border management that take account of these broad concerns. But the first step will be to acknowledge that its actions belie its rhetorical focus on the human security of migrants and to finally act in accordance with its declared principles and founding documents.

This contribution has argued that the EU has maintained a primarily state-centric approach in managing migration across the Mediterranean. In doing so, it has failed to uphold the human-rights principles upon which it is founded. Transforming the EU's migration policy to pay greater attention to humanitarian aspects of the phenomenon is evidently difficult. The governments of EU member states, which maintain a key voice in shaping EU migration policy, easily fall prey to the temptation of pandering to anti-migration sentiments, especially at a time of economic hardship. We therefore suggest that a critical step in shifting the EU's migration policy will be to change the terms of the debate around migration within the EU. EU citizens need to be encouraged to engage with this debate by means of efforts that seek to highlight (i) relevant international laws and norms: the ones that concern human rights, migration, and refugees, (ii) the fact that migration and forced migration are realities of the world around us and that developing countries are actually hosting more forcefully displaced persons; and (iii) that migration is not an economic problem but overall, in the long term, an economic opportunity. This latter point is especially relevant at a time of economic crises, when fear of migrants "stealing" jobs, housing, or welfare support is widespread. Within this context, the discussion should centre around guaranteeing access to socio-economic rights for everyone, and not on zero-

59 Khalid Koser, *Why Europe's immigration nightmare is only beginning*, CNN, at: <http://edition.cnn.com/2013/10/30/opinion/europe-immigration-debate-koser>.

sum games. Were these elements to enter European public debate to a far greater degree, European citizens and governments might develop a more reasonable, balanced, and comprehensive attitude that focuses on both the human dimension of migration and on the economic benefits that accrue for everyone. The EU institutions, its member states, and its citizens need to decide whether they are to live up to their declared principles or merely to maintain a rhetoric of humanitarianism while pursuing policies of narrow, and in some cases bigoted, self-interest.