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**Especialidad en Multilevel Integration and Fundamental
Rights**

**The European externalization of borders: an
evaluation of the compliance, effectiveness and
respect to human rights of the Spain-Morocco,
Italy-Libya and EU-Turkey migration deals**

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INDEX

1. INTRODUCTION	9
1.1. Justification and relevance of the topic.....	9
1.2. Research objectives and hypotheses.....	13
1.3. Methodology	15
1.4. Structure.....	19
2. MIGRATION: DRIVERS, POLICIES AND POLITICS. MIGRATION TOWARDS EUROPE AND THE EU MIGRATION AND ASYLUM POLICY	21
2.1. Migration flows: drivers, characteristics, policies and politics.....	21
2.1.1. Migration drivers.....	21
2.1.2. Migration flows characteristics: mixed migration flows.....	25
2.1.3. Migration, politics and policies.....	26
2.2. Migration within and towards Europe since the 1990s.	30
2.3. The EU Migration and Asylum Policy: development and characteristics.....	34
3. BORDER EXTERNALIZATION AS AN ELEMENT OF THE MIGRATION AND ASYLUM POLICY OF THE EUROPEAN UNION	42
3.1. Border externalization: definition, approaches and features.....	42
3.2. The EU border externalization: main features and governance.	46
3.2.1. The governance at the EU level.....	48
3.2.2. The governance at the EU member states level.....	49
3.2.3. The role of Frontex and EASO.....	52
3.3. The effect, effectiveness and respect to human rights of the EU border deterritorialization and externalization policies.....	54
4. COMPLIANCE OF THE AGREEMENTS ON BORDER DETTERRITORIALIZATION AND BORDER EXTERNALIZATION OF THE EU TOWARDS THIRD COUNTRIES	57
4.1. Spain-Morocco Agreement on cross-border police cooperation (2010, entered into force 20 May 2012).....	57
4.2. EU-Turkey statement (18 March 2016).....	59

4.3. Italy-Libya Memorandum of Understanding on cooperation in the fields of development, fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders (2 February 2017).	63
5. EFFECTIVENESS OF THE AGREEMENTS ON BORDER EXTERNALIZATION OF THE EU TOWARDS THIRD COUNTRIES.....	66
5.1. Spatial substitution effects.	71
5.2. Inter-temporal substitution effects.....	77
5.3. Reverse flows substitution effects.	85
6. RESPECT TO THE RIGHTS OF MIGRANTS, ASLYM SEEKERS AND REFUGEES IN MOROCCO, LIBYA AND TURKEY	91
6.1. Morocco.	92
6.2. Libya.	96
6.3. Turkey.....	99
7. CONCLUSIONS.....	104
REFERENCES	107
ANNEX 1. Reports on migrants, asylum seekers and refugee rights protection and promotion in Morocco, Libya and Turkey issued by international organizations, NGOs, and other institutions (2010-2021).....	124

TABLE OF FIGURES

Figure 1. Average of weighted changes in migration policy restrictiveness by policy area and across regions since 1945	30
Figure 2. EU multilevel governance of migration flows management externalization ..	48
Figure 3. Detections of illegal border-crossing on entry in the Western African, Western Mediterranean, Central Mediterranean & Eastern Mediterranean routes (2009-2021)..	67
Figure 4. Detections of illegal border-crossing on entry in the Central Mediterranean, Western Mediterranean & Western African routes (2009-2021)	69
Figure 5. Detections of illegal border-crossing on entry* of nationals Nigeria, Mali, Gambia, Guinea, Senegal, Morocco and Ghana in the Central Mediterranean and Western Mediterranean routes (2009-2021).....	73
Figure 6. Detections of illegal border-crossing on entry* of nationals from Afghanistan, Iran, Iraq, Lebanon, Pakistan, Somalia, Syria, Turkey and Yemen in the Eastern Mediterranean and Central Mediterranean routes (2009-2021)	75
Figure 7. Detections of illegal border-crossing on entry* of nationals from Bangladesh, Eritrea, Libya, Somalia, Sudan, Syria and Tunisia in the Central Mediterranean and Western Mediterranean routes (2009-2021).....	77
Figure 8. Sea arrivals of 'irregular' migrants to Greece and Cyprus, and migrants intercepted by Turkish Coast Guard (2016-2020)	79
Figure 9. Sea arrivals of 'irregular' migrants to Greece and interceptions by Turkish Coast Guard (2016).....	80
Figure 10. Sea arrivals of 'irregular' migrants to Italy and Malta, migrants intercepted by Libyan Coast Guard and Tunisian Coast Guard and deaths recorded in the Central Mediterranean (2016-2020).....	82
Figure 11. Sea arrivals in Italy and migrants intercepted by Libyan coastguards (2017)	82
Figure 12. Deaths recorded in routes to Europe (2016-2020).....	84
Figure 13. International migrant stock and estimated refugee stock in Libya, Turkey and Morocco (absolute terms, 1990-2019).....	86

Figure 14. International migrant stock as a percentage of the total population in Morocco, Libya and Turkey (1990-2019)..... 89

TABLE OF MAPS

Map 1. Main sea and land migration routes towards Europe 33

LIST OF ABBREVIATIONS

BCP	Border Control Post
CEAR	Comisión Española de Ayuda al Refugiado
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
DCIM	Department for Combating Irregular Migration (Libya)
DGMM	Directorate General of Migration Management (Turkey)
DTM	Displacement Tracking Matrix (International Organization for Migrations)
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard
ECA	European Court of Auditors
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
ENI	European Neighborhood Instrument
ENP	European Neighborhood Policy
EU	European Union
EUBAM	European Union Border Assistance Mission in Libya
EUNAVFOR MED	European Union Naval Force Mediterranean
EUTF	European Union Emergency Trust Fund for Africa
FIIAPP	Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas
FPA	Fisheries Partnership Agreement
FRA	Fundamental Rights Agency
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility

GNA	Government of National Accord (Libya)
HIP	Humanitarian Implementation Plan for Turkey
HRW	Human Rights Watch
IMC	International Medical Corps
IOM	International Organization for Migrations
IPA	Instrument for Pre-Accession Assistance
JO	Joint Operation
JRS	Jesuit Refugee Service
LCGPS	Libyan Coast Guard and Port Security
LFIP	Law on Foreigners and International Protection (Turkey)
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersexual
LGC	Libyan Coast Guard
LNA	Libyan National Army
MoU	Memorandum of Understanding
NEM	New Economics of Migration
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OLAF	European Anti-Fraud Office
ORAM	Organization for Refugee, Asylum and Migration
PCC	Police Cooperation Center
QMV	Qualified Majority Voting
R&D	Research and Development
RRT	Refugee Rights Turkey
RSD	Refugee Status Determination

RSN	US-Based Refugee Solidarity Network
SIS	Schengen Information System
SIVE	Spanish Integrated System of External Surveillance
TEU	Treaty of the European Union
TFEU	Treaty of the Functioning of the European Union
UK	United Kingdom
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNSMIL	United Nations Support Mission in Libya
US	United States of America
VIS	Visa Information System

1. INTRODUCTION

1.1. Justification and relevance of the topic.

In the last decades, the global migration flows have not only intensified, but also mutated: the border line between sending and receiving countries of migrants is more and more diffuse; there is a feminization of labour migration flows; while migration flows have become much more diverse, comprising labour migrants, unaccompanied minors, asylum seekers, refugees... giving birth to the new phenomenon of the mixed migration flows in an 'age of migration' (de Haas, Castles & Miller, 2019a). European Union countries have not been extent to participate in those changes and, in the last decades, its population born-outside Europe has increased until reaching 34.2 million people, which means a 7.7% of the total population of the European Union in 2019 (European Commission, 2021).

However, the European Union (EU) member states have either been isolated from the growing politization of migration neither from the increasingly general approach towards migration from a security perspective, especially to what relates to irregular migration flows (Arango *et al*, 2018; de Haas *et al* 2019a). As McMahon & Sigona (2018) point out, the approach towards migration from the security point of view in Europe relies on a perception that border enforcement is at crisis because of the increasing number of arrivals through irregular channels, no matter if such figures are increasing or decreasing from one year to another or the status of the migrants arriving. This perception, which conceptualizes migrants as a security threat to the nation state, may lead to a narrative of fear or hate in local populations promoted through bottom-up or top-down dynamics. This narrative would ultimately justify the need of establishing stricter security measures to deter such illegal entries at that moment of 'crisis' and afterwards (Stock *et al*, 2019). In EU member states, this has been particularly relevant in Southern states, such as Spain, Italy, Malta or Greece, which constitute the first border of Europe for those migrants arriving by sea or by land through the Eastern, Central and Western Mediterranean routes.

In the case of Spain, such approach towards migration seemed to appear during the 1990s, where the country built the two fences in the border cities with Morocco of Ceuta and Melilla to avoid the illegal entrance of immigrants (CEAR, 2020). However, it was during the 'cayucos crisis' in 2006 when that approach found its greatest expression until then. In 2006, thousands of immigrants, up to 31.000 people, departed

from Morocco and Western Sahara towards the Spanish Canary Islands in large boats called ‘cayucos’, which led to an unprecedented situation for Spain and for the European Union to solve (CEAR, 2020). Spain requested for the first time the intervention of the European Border and Coast Guard Agency (Frontex) within the operation HERA to intercept the boats; many of the migrants who arrived were moved to the Spanish peninsula and repatriated; while the country signed cooperation agreements with some origin or transit countries in the framework of its Africa Plan to favor their development and guarantee that illegal flows of migrants would be deterred before arriving to Spanish territory (Dudek & Pestano, 2019). This was a novel approach to face irregular migration flows within the Spanish and the European context, which was backed and partially funded by the EU too (Carrera et al, 2016).

More than a decade after the crisis in the Western Mediterranean route, the Central and Eastern Mediterranean routes reactivated in 2014, 2015 and 2016 mainly due to the war on Syria, which caused millions of people to flee, and due to the persistence of many protracted conflicts like the ones of Afghanistan, Iraq, Somalia, or others. Although many pieces of EU legislation on asylum were already passed, after several European Council meetings and the launching of the European Agenda on Migration by Commission in 2015, the Union adopted temporary emergency laws due to their lack of uniform implementation by member states (Peers, 2020). The EU allowed member states to re-introduce border controls on internal borders, Frontex budget and powers were enhanced to rescue migrants and to fight smuggler networks that were said to be profiting from the situation and quotas for resettlement and relocation were established to alleviate the migratory pressure over Italy or Greece. It was especially relevant the relocation of nearly one million migrants and asylum seekers in Germany, which contrasted with the rejection of most of the Central European member states to do so (Barbulescu, 2017).

Moreover, the European Union reached an agreement with Turkey in March 2016 for the latter to deter the above-mentioned migration flows, among other goals (Afailal & Fernández, 2018), while Italy signed a Memorandum of Understanding (MoU) with Libya to “curb illegal immigration” in February 2017, which was endorsed by the European Union in the Malta Declaration of 2017 (Vari, 2020; Palm, 2020). Irregular arrivals to European borders, which considered indistinctly asylum seekers, refugees and other categories of migrants, reduced from 900,000 in 2015 to the

88,698 registered by October 2019 (Migration Data Portal, 2021) and the ‘migration crisis’ was declared ended by Commission (Rankin, 2019).

Despite the significant differences in context, the management of these two crises share at least two similar characteristics: an increasing securitization and militarization of asylum policies; and the externalization of the management of migration flows (referred, for brevity purposes, as ‘border externalization’) to non-EU countries: Morocco, Libya, Turkey or Tunisia among others (Ruhmann & FitzGerald, 2016; Lemberg-Pedersen, 2018). This approach seems to even reinforce in the New Pact on Migration and Asylum presented by Von der Leyen Commission in September 2020. This New Pact aims to relaunch the process of harmonization and integration in asylum and migration policy within the EU, strengthen the partnerships with non-EU countries, achieve a ‘well-managed Schengen and external borders’, and settle fair and more effective internal rules regarding asylum or relocation (European Commission, 2020). As Kiriçci *et al* (2020) or Fanjul & González-Páramo (2020) contend, the Commission proposal reflects the will of the EU to not only maintain the current border externalization agreements, but to reinforce and to expand them (and even to tie cooperation with origin and transit countries to cooperation on migration management).

Although the process of externalization of the European border management will be further analyzed in next sections, it seems clear that such approach towards migration and its governance in the EU has raised some questions among academics, activists, citizens or policymakers.

Firstly, the deterrence of migrants in third states where concerns about their respect to human rights are widespread poses serious doubts about the guarantee of migrants and asylum seekers rights in those countries (McKay, 2019). Human rights violated may range from access to clean water, housing or healthcare to cruel treatment or punishments or to the possibility of asking for asylum, for a judicial remedy or even for not been subject of *refoulement* against article 33 of the 1951 Refugee Convention (HRW, 2019a, 2019b; UNHCR, 2020a; Amnesty International, 2018, to name a few). Moreover, according to Frelick *et al* (2016) or Müller & Slominski (2020), concerns arise about the de-link of EU member states and the EU itself from their responsibility of such violations of human rights by developing a complex system of legal, diplomatic and narrative techniques. In practice, for some authors, the aim of this deterritorialization system is to mainly prevent migrants and potential asylum seekers to

arrive to European territory to prevent, at the same time, any responsibility over the protection of their rights or any judgment of the Court of Justice of the EU resulting from a claim of any of these persons (Spijkerboer, 2017; Gammeltoft-Hansen, 2014).

Secondly, it has been questioned the respect of these agreements by counterparts. Accordingly, it is argued that some of these states, like Libya, may lack of capabilities and internal stability to enforce its borders and to comply with agreement provisions (Dastyari & Hirsch, 2019). Some other states, with greater capabilities and/or internal stability, may leverage these agreements in the pursue of other interests, such as economic or political ones, be internally or externally (Aydin-Düzgit et al, 2019; Abderrahim, 2019). Therefore, doubts arise about the reliance on such agreements to manage and deter migration flows towards Europe.

Thirdly, further than the compliance with the agreements and the respect to human rights, concerns appear on whether these pacts are effective in the terms they are signed, which is said to be, if they reduce the migratory pressure of such ‘illegal flows’ arriving to European borders. On the one hand, some authors contend that, even if border controls on third states are reinforced and some migratory routes are closed, other routes, which could be more dangerous, may open (Cornelius, 2006; Casas-Cortes *et al*, 2015a). On the other hand, as Commission and some EU member states have highlighted, these agreements may be effective because, since their entry into force, illegal arrivals drastically fell (European Commission, 2021). However, some authors contend that such conclusion may be distorted as other factors may take place: a cease in the causes that provoked the migration flows, a change in the behavior of migrants and asylum seekers for several reasons, the influence of other migratory policies, etc. (Spijkerboer, 2017).

In light of these concerns and in a context where the Court of Justice of the EU has already condemned some member states because of their actions during the 2015 migration crisis (see, for instance, case C-808/18 *Commission v Hungary*), it seems relevant to evaluate whether these agreements have been respected, whether they have been effective in the terms they have been signed to and whether human rights of asylum seekers, refugees and other migrants have been observed. If policies are not evaluated, then conclusions could not be drawn up about whether they are effective to their aims. Without that assessment, errors and failures can be replicated and, in

sensitive areas like migration policies, result in a greater harm to the most vulnerable ones, who are migrants and asylum seekers on the move.

1.2. Research objectives and hypotheses.

Thus, the aim of the present work is to evaluate whether externalization of border agreements of the EU member states and the EU itself have been respected and fully implemented, whether they have been effective in their signed terms, and whether human rights have been respected in countries where the management of migration flows have been externalized to. It pretends to contribute to the already existing literature on the study and evaluation of these agreements from a novel perspective by considering not only the border externalization of the EU countries towards Turkey, but also the externalization of Italian and Spanish borders towards Libya and Morocco respectively from a comparative point of view. As Menz (2015) argues, for a correct comprehension of the EU border externalization, these bilateral agreements of EU member states may be also considered.

However, it is not in the intention of the present work to study the reasons why the EU and its member states have opted for this approach, although the process to develop those policies at the national and communitarian level will be scrutinized. Neither it is pretended to explore in detail alternative models to the existing policies because it would be out of scope and extension on the present essay.

Therefore, considering the above-mentioned aims, three hypotheses will be tested:

Hypothesis 1: *European Union agreements to externalize the border management of irregular migration flows towards Morocco, Libya and Turkey are accomplished by the signing parts in the agreed terms.*

This first affirmative hypothesis aims to examine a common *a priori* condition disregarded when analyzing the outcome of externalization of border management policies: that the agreements signed with Morocco, Libya or Turkey are accomplished in the agreed terms (Carrera *et al*, 2016). Therefore, it will be studied if these countries have modified their policies and actions after reaching their agreements on cooperation

in migration matters with the European Union and its member states to enforce them. Moreover, the consistency of that enforcement along time will be also analyzed.

Hypothesis 2: *European Union agreements to externalize its border management of irregular migration flows towards Morocco, Libya and Turkey are effective because the goals settled in such agreements are achieved.*

Whether these agreements are enforced or not, it should be then considered whether they have contributed to the achievement of the objectives they have been designed to. Therefore, this hypothesis aims to study whether these agreements have been effective to achieve the goals established in the letter of the pacts: to prevent migrants from arriving to European borders through irregular channels, to make these countries process asylum applications of asylum seekers, or to make them accept returnees from EU member states.

With this hypothesis, it is expected to clear doubts about the above-mentioned concerns on the indirect and reverse impacts these agreements may have. These concerns could be briefly summarized in the fact that if borders are strictly enforced, migrants may seek other routes more dangerous (generally, through smugglers) to achieve their goal of arriving to European borders (Frelick *et al*, 2016), while others may be stuck in these countries, or other could wait for a better moment to cross. Consequently, these agreements might not be useful either to avoid further arrivals of migrants through illegal channels, neither to prevent smugglers and traffickers to continue with their criminal activities (Cornelius, 2006).

Hypothesis 3: *European Union agreements to externalize its border management of irregular migration flows towards Morocco, Libya and Turkey do not ensure the due respect of human rights of migrants and asylum seekers in those countries where migrants are deterred.*

Finally, with this third hypothesis, it is expected to test if these agreements have resulted in an indirect violation of human rights of migrants and potential asylum seekers in the countries they are deterred as many human rights organizations argue or, by the contrary, the relation of these agreements to those possible violations of migrant rights (if exist) is spurious as it is suggested from some institutional sectors.

This hypothesis may serve to not only examine if these agreements have been accomplished or effective, but whether they have an impact on human rights of migrants and asylum seekers. If so, the coherence of politics of the European Union and its member states in the human rights area could be undermined (Spijkerboer, 2017; or Palm, 2020).

1.3. Methodology

For the study of these three hypotheses, at least three determinants should be regarded. Firstly, and the most noticeable, the differences between countries towards which European borders are externalized to. While Libya is an instable country with different factions and governments fighting each other, Morocco or Turkey are consolidated countries, which does not mean that they are fully stable domestically, as the 2016 failed coup d'état in Turkey demonstrated, for instance (Castaldo, 2018; Abouzzohour & Tomé-Alonso, 2019; Fraihat & Yaseen, 2020).

Secondly, when assessing these agreements, De Haas *et al* (2019b) or Stock *et al* (2019) argue that three gaps should be considered: the discursive gap (the difference between what is announced and what specific policy outcomes result from those announcements), the implementation gap (the difference between those policy outcomes and how and to what extent such policies are implemented) and the efficacy gap (the difference between the implementation of those policies and their impact regarding the aims they pursue). If these gaps are not considered, it could not be possible to correctly evaluate “the internalization of the mechanisms of externalization” (Stock *et al*, 2019:3) and the possible violations of human rights of migrants or asylum seekers resulting from the implementation (or not) of these agreements.

Thirdly, these agreements were not reached at the same time, and they are generally the result of long processes of ‘cooperation’ in migration, criminal and police matters between countries. Thus, examining their compliance or effectiveness could be vitiated by previous conditions to their signing or even by the different moments they were reached. For instance, the Spain-Morocco deal on police cooperation was reached in 2010 after years of informal police cooperation, while the EU-Turkey agreement was reached in a context of a ‘migration crisis’ when cooperation with Turkey in this regard was still incipient (Dimitriadi *et al*, 2018).

To overcome these challenges, a transdisciplinary, cross-time and cross-country mixed-method comparative study will be conducted:

- It is transdisciplinary because the study will be addressed from a Law perspective when analyzing the agreements signed and the possible violations of human rights conventions on their implementation, from an International Relations perspective when considering the implementation of such agreements by Turkey, Libya or Morocco, from a Geographic perspective when dealing with the effects such agreements may have on migration flows directions, or from a Human Rights perspective when addressing the respect of migrants rights (Stock *et al*, 2019).
- It is cross-time (longitudinal) because it focuses on the study of the effects of the agreements four years before their signing (or more, if the timeseries allow it), just before their signing, just after their implementation and the period after their signing until current times (Sahin, 2020).
- It is cross-country because it compares the agreements' outcomes in three different countries: Morocco, Libya and Turkey. Tunisia could have been also considered for the present study, but for the analytical purposes it has been determined that Libya could well represent the case of the Central Mediterranean route due to its situation as one of the main hotspots of exit for migrants. Moreover, according to Sahin (2020), despite their differences, Morocco, Turkey or Libya may be subject of comparative study as they all encounter mixed migration flows, they belong to the EU-Mediterranean neighborhood policy, they are subject to the same international pressures and actors' intervention, and they may implement similar migration governance.
- It responds to a mixed-methodology because quantitative and qualitative data and approaches will be combined to not only distinguish the net impact of externalization agreements, but also to perceive their qualitative impact on migrants' itineraries and rights (Almeida, 2018).

In general, the study will consider the root causes of migration to be stable along time except for conflict-driven causes, which can result in huge, unexpected influxes of migrants, asylum seekers and refugees (Moore & Shellman, 2004; Schon, 2019). If not, migration through regular or irregular channels can be rather predicted, although

exceptions may also happen in cases of persistent violence and poverty, or economic collapse (Holland & Peters, 2020).

In addition, several control variables are proposed to answer the research hypotheses while considering the above-mentioned distortion effects.

Firstly, to overcome the discursive and implementation gaps and to test the observance of the agreements signed, it will be only considered the implementation of what it was agreed according to the letter of such agreements. Therefore, by scrutinizing official governmental sources from the EU and EU governments, Morocco, Turkey and Libya, it will be appreciated if the agreements have been accomplished by both parts in its economic and political terms. When no data is provided by governments or when these data are incomplete, other sources such as NGOs reports, international organizations such as the OECD or the IOM, or journalistic verified sources will be used.

Secondly, the effectiveness of these agreements will be tested according to the aim they are signed: to impede migrants and asylum seekers to arrive to European borders through ‘irregular’ channels. While an observation of the flow of ‘irregular’ arrivals to the EU (according to the data provided by Frontex and other harmonized sources like the IOM) is needed to assess it, it would be uncompleted because it would not consider the diversion effects these agreements may have on migration routes along time. To consider those diversion effects, the model designed by De Haas *et al* (2018) will be deployed. The model of De Haas *et al* (2018) considers three aspects that may impact on the effectiveness and effects of these agreements:

1. *Spatial substitution effects*. When some routes are closed and some borders are fortified to avoid ‘illegal’ migrants to cross without offering more legal ways to migrate, then some other routes may open due to the impossibility to patrol the whole territory and “the professionalization of smuggling methods” (De Haas *et al*, 2018:38). Nonetheless, these effects may not be immediately noticeable as some routes are slower than others and as it may take some time for smugglers to find newer routes or methods (Cornelius, 2006). Consequently, ‘irregular’ migrants would still arrive to country borders.

To consider possible substitution effects, the data collected by Frontex of detections through the different routes leading to Europe by sea or by land since 2009 will be analyzed considering the interrelation of the different routes.

2. *Inter-temporal substitution effects.* When an agreement for the externalization of the management of migration flows is signed, a ‘now or never’ phenomenon may happen. Having heard of the possibility of the border to be increasingly fortified or the migration policies to become further tightened, migrants and asylum seekers waiting for crossing the border may decide to do so before the implementation of such measures or right after. Consequently, the effectiveness of such agreement in the long-term will be counter-balanced in the short-term by this surge in migrant arrivals through ‘irregular’ channels. Nonetheless, for this effect to happen, migrants (or smugglers, in its case) are supposed to be informed of the policy changes taking place at governmental levels.

To study the existence of inter-temporal substitution effects, it will be analyzed whether the arrivals through irregular channels increase more during the month after the signing or announcement of the externalization agreement. This would be made in comparison with a month before, which would constitute the closer control situation. Data would be extracted from the Frontex and the Displacement Tracking Matrix (DTM) of the IOM. Nonetheless, if data for a specific country is not provided, other governmental or verified NGOs sources will be used.

3. *Reverse flows substitution effects.* When the management of migration flows is externalized to third countries, then the flow of transnational migrants who may go and come back to their origin countries due to work reasons or other reasons may interrupt. Fearing of being stuck in their origin countries, these migrants may decide to establish their permanent settlement in the countries they are in. Moreover, the same effect may happen in transit countries, where migrants may be retained without possibility of continuing their journey due to the implementation of these agreements, or the fear they may have of crossing the border due to the stricter patrolling measures, whereas others could initiate the trip back to their origin countries (voluntarily or forcibly).

To measure the existence and impact of this effect, it will be considered the variation of the stock number of migrants, asylum seekers and refugees according to data provided by the United Nations Population Division.

Thirdly, after considering the degree of implementation of these agreements and their effectiveness to achieve the goals pursued, the respect to human rights of migrant persons and asylum seekers who fall within the adopted measures resulting from these agreements will be studied. To that aim, it will be conducted a systematic analysis of reports of international organizations of human rights, international non-governmental organizations of human rights or verified journalistic sources regarding the respect of migrants and asylum seekers rights in Morocco, Libya and Turkey. If existing, reports will be analyzed according to the period of study to explore whether migrants' rights are respected, if such observation of migrants' rights has worsened or improved and if it may respond to the implementation of measures passed to comply with the border externalization agreement.

1.4. Structure

After this introductory chapter, the essay is structured in the following way. In the second chapter, two aspects will be analyzed: the drivers of migration, the characteristics of current migration flows and the evolution of migration flows towards Europe since the 1990s, moment where migration starts to be generally seen as a security threat (Castles *et al*, 2019); and the intersection of migration, politics and policies and their materialization in the evolution alongside of the European Union migration and asylum policies.

In the third chapter, it will be studied how the externalization of border management has become part of the EU migration and asylum policy. To begin, the same concept of externalization of borders will be conceptualized. Afterwards, its development in the EU context will be summarized, considering how these policies are governed and implemented at the EU level and at the member states level and how these two levels of governance interact. The Spain-Morocco, EU-Turkey and Italy-Libya agreements on migration will be particularly underscored, scrutinizing the main points of every agreement and the main features of each one.

In the fourth, fifth and sixth chapters, results will be presented for each of the hypothesis, determining whether these externalization of border agreements have been enforced (chapter four), whether they have been effective to their terms (chapter five) and whether they have contributed to the respect of migrants and asylum seekers rights or not respectively (chapter six). Finally, conclusions will be drawn.

2. MIGRATION: DRIVERS, POLICIES AND POLITICS. MIGRATION TOWARDS EUROPE AND THE EU MIGRATION AND ASYLUM POLICY

2.1. Migration flows: drivers, characteristics, policies and politics.

2.1.1. Migration drivers.

To correctly understand the impact of EU migration policies, and particularly the externalization of borders policies, it should be needed to firstly comprehend what root causes of migration these policies may aim to tackle and what migration flows they may aim to govern. Current literature may well illustrate both aspects, while statistics about migration towards and in Europe since the 1990s, a crucial moment in the EU regarding migrations as it is going to be stated, may also shed light about the evolution of migrant population in Europe.

In a reference article, Massey *et al* (1993) summarized the main theories which had explained international migration in the last decades, which analyzed and studied which the main drivers of migration were. According to the authors, every theory focused on the push factors in origin countries that led people to move, on the pull factors in destination countries which attracted migrants to those countries, or on both push-pull factors. Based on this approach, different theories underlined some drivers which could be behind the decision to migrate to another country. Firstly, theorists belonging to the Neoclassical Theory of migration contended that migration responds to an individual cost-benefit calculation, in which the person decides to move if the expected monetary returns are higher than those if he/she continues in his/her country. Moreover, according to Neoclassical authors, this decision to migrate is also grounded on the differences in the supply and demand of labour force between countries.

Secondly, nuancing the Neoclassical Theory approach, the New Economics of Migration (NEM) academics argued that the decision to migrate did not answer to a lineal relationship between wages and labour supply and demand, but rather to a household decision to diversify risks. According to these authors, in countries where families lack institutional mechanisms to cover their needs when they face situations of unemployment, disease or others, they tend to send one family member to another country to grant some remittances. This decision is also influenced by relative deprivation, which is said to be, by comparison with other compatriots who have already migrated and are able to avoid those risks.

Furthermore, responding to the Neoclassical theory, some other authors argued that migration did not occur due to a difference between supply and demand of labour force between countries in general, but due to a general demand of labour force of some countries in low skilled jobs. This is what they called the ‘secondary segment’ of the labour market, in which employment tended to encompass low-status and low-prestige jobs, giving birth to the Segmented Labour Market theory. Deepening in the logic of this theory, critical theory academics considered that this relationship was also influenced by inequalities of power in the world caused by capitalism, resulting in a global division between ‘core countries’ (most developed ones which retain the political power), ‘semi-periphery countries’ (those in transition to economic development) and ‘periphery countries’ (most undeveloped ones in capitalist terms). Migration would be then most likely to happen from peripheral countries to core ones as the expansion of capitalism modes of production among the former derives in an increase of migration. This may be due to the increasing economic capabilities of some part of the populations in peripheral countries or due to the depletion of resources for those populations to live.

Finally, authors describe two related theories of migration which based their reasoning on the concept of social capital. According to the Social Capital theory, migrants tend to move to those countries and specific regions, cities or neighborhoods where compatriots already live, creating a kind of migrant networks. According to them, this phenomenon happens because it reduces the costs of migration as the migrant may rely on other migrants to find an employment or to ease the cultural shock the person may experience. In addition, as Cumulative Causation proponents conclude, these migrant networks can have a positive impact in communities and migrant lives through different ways (distribution of land, distribution of human capital, promotion of the culture of hosting...), favouring subsequent migration. This relationship tends to be particularly relevant in those flows between ex-colonies and ex-metropole countries, where cultural, language or economic ties may deepen migration from the former to the latter.

Although these theories have helped to explain international migration, increasing criticism has raised for whether being too simplistic, whether being too focused on Western countries and their migration patterns, forgetting about migration between non-Western countries; or whether narrowing to specific cases which may not encompass the broader reality of migration regimes (see, for instance, the analysis of

Kurekova, 2011 or Boucher & Gest, 2014). For this reason, although many authors recognize the value of these theories to offer an initial explanation to international migration, they have continued exploring the underlying drivers of international migration and combining theories in order to achieve models that can faithfully explain international migration or even the lack of it in some instances (King, 2002; Cummings *et al*, 2015).

Van Hear *et al* (2017) reconceptualize push-pull factors models by redescribing drivers as “the array of factors that may make up the external structural elements shaping the decision space for those considering migration” (van Hear *et al*, 2017:7), then identifying some drivers that may condition migration at different locations and in different timeframes and which could have been missing in previous models. They thus identify three key types of drivers. Firstly, ‘predisposing drivers’, which makes migration more likely (economic, political or environmental disparities between origin and destination countries together with geographical factors). Secondly, ‘proximate drivers’, which relate with conjunctural economic or political events, such as economic or business cycle downturns, disparities in human security, etc. Finally, ‘precipitating drivers’, which are those who motivate the departure, well as a household or an individual decision of the migrant, such as a financial crisis, the escalation of a conflict or a temporary relaxation of immigration control measures in destination countries. Moreover, these drivers are also influenced by ‘mediating drivers’ according to authors, such as the existence or not of transport infrastructure, the existence of those above-mentioned migrant networks or others.

Similarly, de Haas *et al* (2019b), Menz (2015), Castles (2010) or Collinson (2009) have vowed and opted for combining different approaches from diverse disciplines like the Political Economy, Sociology, Anthropology, Demography, Geography, History, Law or International Relations. According to Brettell & Hollifield (2014), a transdisciplinary approach on the analysis of migration drivers and migration flows characteristics may allow to overcome several limitations that traditional studies have shown. On the one hand, it allows to understand migration drivers and factors that affect migration processes at different levels, from the individual or micro level, to the meso or household level and to the macro or structural level. In addition, these approaches permit not only the analysis of the structural conditions or drivers of migration, but also the agency of actors involved in the migration processes, from the

migrants themselves to the states which shape migration policies, NGOs offering aid to migrants in origin, transit and destination countries or international organizations assisting migrants on the move. Therefore, greater comprehension of the reasons to migrate, the role of actors in the process of migration or migration impacts on sending, transit and receiving societies is possible. On the other hand, by integrating inputs from different disciplines, scholars can enhance migration models by testing different hypotheses which had been studied separately before. Thus, models may become more nuanced and precise, while better representing the reality of migration processes, which are becoming increasingly diverse and complex. Some contributions of these transdisciplinary approaches could be highlighted.

For instance, authors like Tienda & Booth (1991), Carling (2005) or Fleury (2016) have studied how gender interrelates with migration from a transdisciplinary approach at different levels of analysis (micro, meso and macro) to consider the specific drivers which take place in women's migration processes. Authors find, for instance, that women's aims when migrating are changing, passing from family reunification to becoming labour migrants who seek education or jobs, which tend to be part of the so-called 'gendered jobs' (health, domestic or care sectors) (Fleury, 2016); they conclude that women are more likely than men to send remittances for a longer period of time; or they note that women's decision to migrate may be heavily influenced by gender conditioning factors, such as escaping from forced marriage or gender violence, while their economic and social status may improve depending on the circumstances when arriving to destination societies (Tienda & Booth, 1991; Carling, 2005). Similar novel results have been obtained in the field of study of unaccompanied minors migration processes and how specific challenges may arise in their migration processes, from the risk of becoming trafficking victims, to access to education, care or health care (particularly mental health care) or to obstacles in the adaptation process (see, for instance, the review of Chávez & Menjívar -2009- about the literature on Central American and Mexican unaccompanied minors or the systematic review of Salmerón-Manzano & Manzano-Agugliaro -2018- about the concerns addressed when studying unaccompanied migrant minors flows).

However, as Castles (2003) accounts, these theories and models may not be appropriate to explain the drivers of forced migration, shortly defined as "coerced or involuntary movement from one's home" (Reed *et al*, 2016:605), because it has "its

own specific research topics, methodological problems and conceptual issues” (Castles, 2003:13). Regarding the drivers of forced migration, Reed *et al* (2016) remark four main displacement typologies: conflict-induced (war, civil unrest, violent protests, ethnic cleansing...), environmental or disaster-induced (resulting from natural disasters like floods or hurricanes or provoked disasters, like the explosion of a nuclear plant), development-induced (building of roads, dams, mining or other initiatives in already populated areas), or human trafficking for labour, sex or other kinds of exploitation. These drivers of forced migration led to many forced migrants (men, women, unaccompanied minors or complete families) to fall within the requisites needed to ask for asylum, becoming asylum seekers, and eventually becoming refugees. Therefore, they become subjects to a different kind of legislation than economic migrants (although boundaries between these categories are diffuse) which leads to different legal and hosting procedures in countries where asylum is asked for, while diverse challenges regarding education, health assistance or employment must be addressed (Becker & Ferrara, 2019).

2.1.2. Migration flows characteristics: mixed migration flows.

The combination of these approaches and contributions have refined the analyses of current migration flows, which have become increasingly complex, resulting in the so-called mixed migration flows, where the asylum-migration linkage gains relevance. As Ihlamur-Öner (2020) describes, since the 1990s, it has become progressively challenging to distinguish those factors which conduct people to migrate and, thus, to differentiate between those who migrate forcibly and reunite the requisites for asking for asylum and those who migrate voluntarily and may be considered as labour migrants, migrants seeking family reunification or other categories. According to de Haas et al (2019b), between 1960 and 2017, the number of migrants has increased proportionally to that of the global population, passing from less than 100 million migrants worldwide in the 1960s to around 250 million migrants currently, representing the 2.7%-3.3% of the total global population according to the World Bank and United Nations Population Division Data. Refugees have represented around the 10% of the total volume of migrants in the world, with variations in absolute terms depending on active conflicts, while internal displaced people and asylum seekers have increased in the last decade according to the UNHCR (2020b). Following the figures provided by the

UNHCR (2020b), there are more than 45.7 million internally displaced people, 26 million refugees and 4.2 million seekers by 2020.

In addition, independently of migrants current or possible legal status or aims, these migrants tend to converge in similar migration routes and itineraries, resulting in heterogenous migration flows. According to Kiseleva & Markin (2017) or King & Okólski (2018), this convergence of migrants who may need different legal protection enroots in the policies of “zero immigration” implemented by the Global North countries after the oil crisis in 1973. This policy implementation resulted in a narrowing of the regular channels labour migrants had to travel, then leaving asylum seeking and family reunification as the only ways to migrate through legally allowed pathways. Consequently, many migrants who might have opted for a work visa started to converge with many asylum seekers in the same irregular migration flows, being subject to the same risks of falling under smuggling or trafficking networks (Roman, 2015).

Finally, countries deterring these migration flows must identify which migrants may be subject of international protection. However, this migrant classification system may lack of preciseness due to the precise variety of factors leading to migration and which makes the line between forced and voluntarily migration increasingly blurred (King, 2002; Kiseleva & Markin, 2017). Therefore, migrant and asylum seekers legal protection may not be the adequate one, either in transit or in destination countries. International agreements like the recent Global Compact on Safe, Orderly and Regular Migration adopted in Marrakesh in December 2018 aims to tackle the root causes of mixed migration by expanding legal channels for regular migration or to strengthen cooperation between origin, transit and destination countries to enhance migrants’ human rights protection no matter their status and migrants’ legal rights to guarantee international protection to those who could be subject of it (Solomon & Sheldon, 2018). Despite the efforts, authors like Pécoud (2021) emphasize that different national approaches towards migration may still hamper the management of mixed migration flows, while the protection of asylum seekers and refugees remains uncertain.

2.1.3. Migration, politics and policies.

As Torpey (1998) mentions, “the emergence of migration policies is a direct consequence of modern nation-state formation and their intrinsic need to control people’s ‘legitimate means of movement’” (in de Haas *et al*, 2019:899). But as Castles (2004) or Geiger & Pécoud (2010) describe, migration policies are not only determined

by states, but also by other actors like international organizations dedicated to the migration field, firms, civil society actors or even national or supranational courts with their judgments. Furthermore, this interaction between actors to implement some measures to manage migration (who enters the country and under what status), which constitute the backbone of migration policies, are also shaped by the existing discourses and narratives about migration and its management, which result in specific forms of migration politics (Horvath *et al*, 2017).

The interplay between migration policies and politics is complex given their reciprocal influence: certain migration policies may favour some discourses on migration issues, while certain rhetoric on asylum or migration may impact the form some migration policies may take. For instance: during the so-called 2015 refugee crisis in Europe, German Chancellor Angela Merkel decided that Germany would host more than one million asylum seekers, a measure that scholars argue that did not enjoy the consensus on population but that changed the discourse towards a temporary more favourable position on asylum seekers hosting (Zehfuss, 2020). However, as Vollmer & Karakayali (2017) study, the shift on discourse that policy decision caused was then reversed by other actors, like media outlets or opposition and far right parties.

This case may well illustrate the argument of Castles (2004), who argue that several factors also intervene in this tension between migration politics and policies shaped by diverse actors. Among the factors within the political system, two could be highlighted: the possible conflict of interests between political actors (political parties, lobbies, unions, civil society...) and the pursue of hidden agendas in migration policies, which may be implemented to achieve other aims different to those officially stated. According to Castles (2004), this latter factor is particularly relevant in Western countries.

For this reason, some authors have showed their skepticism about the use of certain rhetoric such as the use of the concepts like ‘migration crisis’ or ‘illegal’ immigration, which are argued to be invoked to justify the implementation of more restrictive migration policies, even if their effectiveness is dubious (Cantant, 2020). In this sense, Dines *et al* (2018) criticize the use of the crisis concept in migration issues because it tends to neglect the reality of “other places, other times and other people” (Dines *et al*, 2018:446), as in the 2015 refugee crisis in Europe, qualified as a crisis when the volume of asylum seekers and refugees that EU countries could host and

eventually hosted felt behind to that of smaller and poorer countries in relative terms, like Lebanon. Furthermore, as Cantant *et al* (2020) review, the crisis narrative on migration selectively identifies certain episodes to build a whole narrative about migration as “a problem” or a “security issue” and take stricter migration and security policies which may precisely lead to an aggravation of the current and future ‘migration crises’.

Similarly, Scheel & Squire (2014) problematize the concept of illegal or irregular migrants/migration flows because they argue that it criminalizes forced migrants who have had to flee from their countries or migrants who had been unable to accede to a work visa due to the narrower migration policies of destination countries. In addition, as Casas-Cortes *et al* (2015b) contend, it is a political concept which varies from one country to another, depending on their laws and regulation, and then it is difficult to define what constitutes an illegal or irregular person/migration flow who runs through different countries.

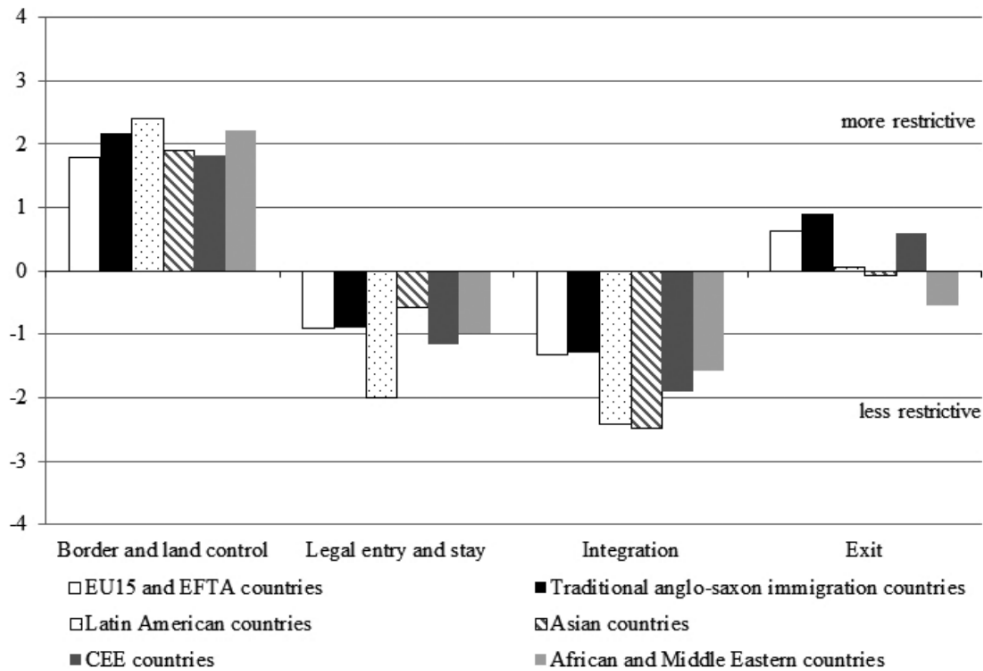
These concepts and narratives have evolved along time, as well as migration policies implemented. In its comprehensive analysis, Appleyard (2001) distinguishes different phases in the formulation and implementation of migration policies. Firstly, during the post Second World War period and the 1960s, Western European countries enacted policies to attract guest workers for the reconstruction, Asian and African recently-independent countries also started to define their own migration policies, although their nationals used to move to former colonies or Middle East countries (which were oil-reached and lacked labour force) seeking for jobs.

Secondly, after the outbreak of the 1973 Oil Crisis and different proxy wars (Angola, Nicaragua, El Salvador, Vietnam, Afghanistan...), Western countries began to implement more restrictive migration measures to reduce flows of low-skilled labour migration and asylum seekers or refugees from developing or Soviet Bloc countries, while they passed legislation to attract high-skilled professionals (United Kingdom, Canada, United States, Australia...). These policies of containment of ‘undesired’ migrants and asylum seekers were also replicated in some Sub-Saharan and Latin-American countries (where closed dictatorships flourished in this decade, while some Asian countries tended to accept these migrants to ultimately deport them when that labour force was no longer needed (Japan or Malaysia) (de Haas *et al*, 2016).

Thirdly, in the 1990s decade, after the end of the Cold War with the fall of the Union of Soviet Socialist Republics (USSR), economic and cultural globalization speeded up, increasing the interdependence of major economic powers. In this period, many policies persisted, such as those to attract high-skilled labour force and to restrict the volume of low-skilled migrants to the levels desired or reduce the stock of refugees in Western countries. Moreover, Appleyard (2001) remarks the increase of the influence of multinational corporations in the shaping of these policies (see, for instance, their role in the 1994 Cairo Conference on population and development), whereas migration policy-making started to happen not only at the national level, but also at the regional one. One relevant example may be the Europeanization of some aspects of the migration or asylum policies that commenced in this decade within the European Union (Menz, 2011).

Regarding the period started in the middle of the 2000s and which may run on current times, de Haas *et al* (2016) note that migration policies have not become more restrictive, but more complex “through a differentiation of policy instruments and a growing emphasis on criteria such as skills as a tool for migrant selection” (de Haas *et al*, 2016:354). According to the authors, some already existing policies have been reinforced and implemented through innovative ways, like border enforcement (through border externalization practices) or deportation practices (by invoking the 1990s concept of ‘safe third country’ or ‘safe origin country’). In addition, destination countries in general (like EU countries or US) have increased the categories for migrant classification while establishing stricter requirements to fit on them to limit who could access the countries. Consequently, many migrants or asylum seekers cannot get a visa or get their status of refugees recognized due to this narrow interpretation of their situations. This increases their vulnerability conditions and forces many of these migrants and asylum seekers to opt for irregular channels to accede countries, resorting to smugglers sometimes. However, contrary to what it could be believed, de Haas *et al* (2016) find that migration policies are more liberal than restrictive, although criteria for accession based on migrants’ skills, wealth, family ties and origin country have hardened. Thus, authors argue that border enforcement measures based on security concerns respond to a “performance of control” implemented by politicians, which clashes with the “less restrictive” reality of part of the migration policies of those countries themselves (see *figure 1*).

Figure 1. Average of weighted changes in migration policy restrictiveness by policy area and across regions since 1945



Source: de Haas, Natter & Vezzoli (2016)

These drivers, trends and complexities have also characterized migration flows coming from European countries and, in the last decades, arriving towards Europe, whose countries have enacted numerous policies to manage or deter such migration flows, especially the so-called irregular migration flows. However, some particularities of the migration regime from Europe, and especially towards Europe until current times, as well as the policies implemented at the EU level regarding non-EU migrants could be remarked.

2.2. Migration within and towards Europe since the 1990s.

In the decades between the 1950s-1970s, migration towards Europe was marked by the European states need of labour force for the post Second World War reconstruction, which favoured migration towards northern Europe from former European colonies (Senegal or Mali to France, the Caribbean countries to the UK), from Mediterranean states (Morocco, Tunisia, Algeria or Turkey) and from southern European states towards the northern ones (Spain, Italy, Greece, Portugal, Yugoslavia...) (van Mol & de Vak, 2016; de Haas *et al*, 2018; King & Okólski, 2018). In the period between the oil crisis in 1973 and the beginning of the 1990s, recruitment

of labour migrants halted, but far from abandoning the European countries and despite the increasing levels of unemployment among migrant communities, these previously called ‘guestworkers’ remained, seeking family reunion and giving birth to the first second generation migrants (Buechler & Buechler, 1987; Hansen, 2003).

However, authors seem to coincide in signaling the beginning and mid-1990s as a turning point in the trends of European migration and migration towards Europe due to factors like the fall of the Berlin Wall in 1989 and the disintegration of the Soviet Union, the disintegration of Yugoslavia and the subsequent wars in the Balkans for a decade or the entry into force of the Schengen Agreement between many EU member countries in 1995 (King, 2002; Salt & Almeida, 2006; King & Okólski, 2018; de Haas *et al*, 2019a). The post-1989 period, which some argue that lasts until the 2008 financial crisis, characterized by the economic growth of European economies and the transition of Eastern European countries to market economies and democratic regimes, which finally ended in their accession to the EU in 2004 and 2007. In this context, migration within Europe and towards Europe was defined by several features.

Firstly, during their transition to market economies and democracies, Eastern and Center European countries became a source of labour migrants for Western and Southern European countries (Morokvasic, 2004; Black *et al*, 2010). After their accession into the EU in 2004 and in 2007, these movements persisted, although EU-15 countries imposed restrictions to Eastern Europeans labour migration for a temporary period, except for the UK, Ireland and Sweden initially (Salt & Almeida, 2006; Black *et al*, 2010). In addition, while still being sending countries, Eastern European countries became simultaneously transit and destination countries for many migrants from Ukraine, Russia or Asian countries (Favell, 2008; de Haas *et al*, 2018). Secondly, channels for labour migration from non-EU countries continued to narrow for low-skilled migrants, while in this period of economic growth, highly-skilled migrants were sought by governments and, indeed, attracted by facilitating their arrival through preferential entry rules (de Haas *et al*, 2019a).

Thirdly, it is appreciable an increase in the volume of migrants arriving from Sub-Saharan Africa, Asia and Latin American countries, who tended to settle depending on factors like the cultural, language or family ties (Pedersen *et al*, 2004). Fourthly, in this period, Southern European countries like Italy, Spain, Portugal or Greece ended their migration transition period, passing from being net sending countries to net

destination ones, benefitting from the renewed movements from the above-mentioned regions and from their well macro-economic deployment (Doomernik & Bruquetas-Callejo, 2016).

Finally, the volume of asylum seekers increased at the beginning of the 1990s and the beginning of the 2000s due to the collapse of the communist system and the wars in the Balkans mainly (King & Okólski, 2018). Meanwhile, the asylum seekers from non-European territories started to converge with those Asian or Sub-Saharan migrants who could not accede to a work visa and opted for migrating through ‘illegal’ channels, resulting in some of the first ‘irregular migration crises’ in Europe by migrants coming from Northern African countries (Hatton & Williamson, 2006; Salt & Almeida, 2006).

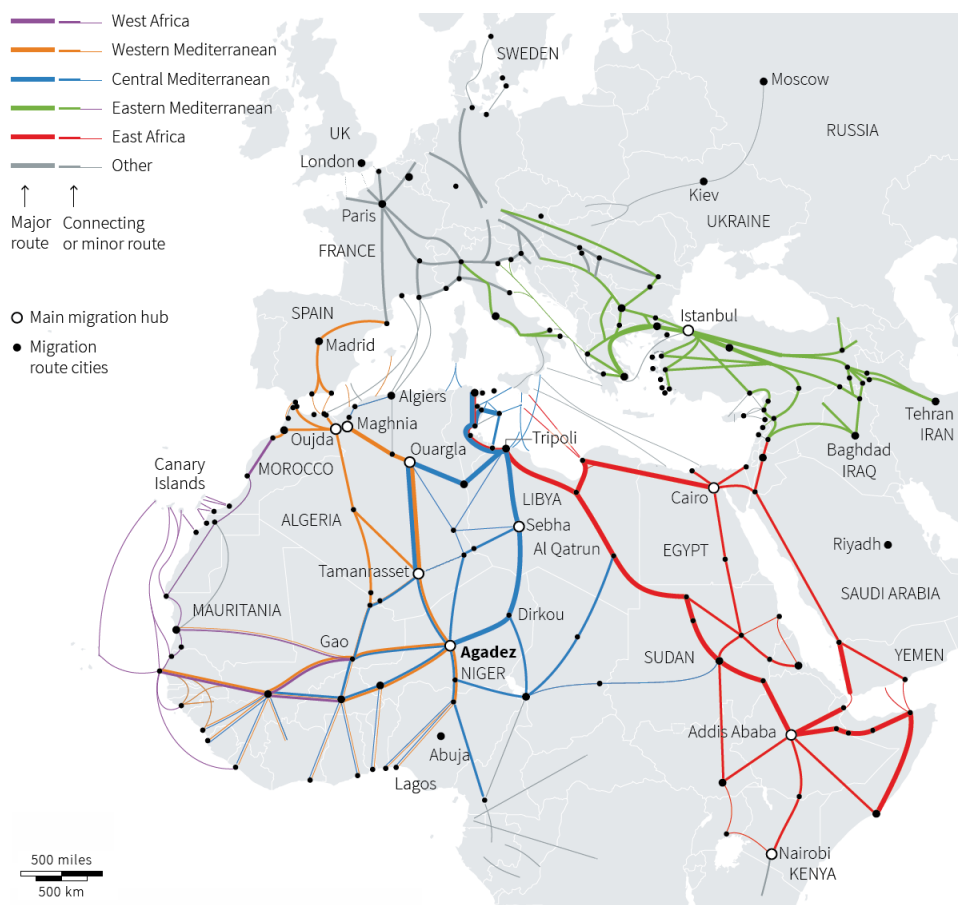
However, some of these trends changed after the 2008 monetary crisis, which severely affected EU countries, although with disparities. Firstly, intra-EU migration increased, especially from South to North European countries seeking for job opportunities, while East to West Europe migration did not slowdown in general trends, although some East-South flows reduced in absolute terms (Zaiceva & Zimmermann, 2016; Lafleur & Stanek, 2017; King & Okólski, 2018). Secondly, contrary to what it could have been expected, the economic and budgetary crisis that hit EU countries did not result in mass returns of those migrants who were already established in those countries (de Haas *et al*, 2019a). Instead, EU countries, including Southern, Central and Eastern ones, have continued to attract international migrants (de Haas *et al*, 2018). As Piqueras (2017) or Bonifazi & Papparuso (2019) explain, the decision to return to origin countries may be mediated by legal constraints (particularly for non-EU migrants), their transnational networks of support, the degree of integration of the person in the host community or the personal project that person could have.

Thirdly, the so-called 2015 Refugee Crisis erupted due to some phenomena like the instability in North African countries like Libya and Middle East countries after the Arab Spring at the beginning of the 2010s, the outbreak of the Syrian War or the South Sudan War, the aggravation of the Afghan conflict, the Eritrean government repression or the situation in Iraq or Sudan (Dragostinova, 2016). According to Eurostat data (2021), more than 2,400,000 formal asylum applications were registered between 2015 and 2016, mainly from Syrians and Afghans and nearly one million only in Germany,

decreasing this volume since then to the around 700,000 applications received in 2019, which are also driven by the arrival of Venezuelans asylum seekers.

Moreover, these asylum seekers and refugees flows converged with other migration flows towards the European continent, resulting in many mixed migration flows which found their path through different maritime or land routes: the Central Mediterranean route (from Libya to Italy or Malta), the Eastern Mediterranean route (from Turkey to Greece, Bulgaria or Cyprus), the Western African and Western Mediterranean routes (from Senegal, Mauritania or Morocco to Spain), or the Western Balkans route (which continues the Eastern Mediterranean route towards Central European countries) (Snel et al, 2020) (*see map 1*). As Andersson (2016) notes, some of these migrants and asylum seekers were also subject of smuggling and trafficking due to the growing restrictions of EU countries on the border and on third countries to curtail them, while around 17,955 of them died in the Mediterranean Sea between 2014-2018 according to the Missing Migrants Project (2021).

Map 1. Main sea and land migration routes towards Europe



Source: Inton et al (2016) based on the International Centre for Migration and European Commission data.

Finally, although it is still recent to evaluate its impact on migration trends within and towards Europe, some studies highlight that the leave of the UK from the EU ('Brexit') may lead to a temporary reduction of migration towards the UK from EU and non-EU countries, although it is predicted that British ethnic diversity and volume of migrants continue to grow (Lomax *et al*, 2020). Similarly, regarding the impact of covid-19 crisis on these migration trends, Guadagno (2020) underscores that the health, social and economic crisis can increase the vulnerability of already vulnerable populations, while becoming a catalyst factor for many people to move seeking for jobs opportunities to send remittances back.

2.3. The EU Migration and Asylum Policy: development and characteristics.

As Menz (2011), Wiesbrock (2016) or Peers (2020) analyze, the Europeanization of the migration and asylum policies of EU member states started at the mid-1980s with the 1985 Schengen Convention, continuing with the implementation of the 1986 Single European Act or the 1990 Dublin Convention, which finally led to the incorporation of the migration and asylum policy as 'matters of common interest' for EU member states in the 1992 Maastricht Treaty and their inclusion in the 1999 Treaty of Amsterdam as a matter of concern of the EU under Title IV TFEU. According to authors, the freedom of movement of goods, persons, services and capital agreed on the SEA and the elimination of physical borders between Schengen countries posed new challenges to European states regarding their sovereignty over who could enter their territories and under what conditions.

For that reason, in the Schengen Convention, signatories agreed on establishing common external border controls, settling a common visa policy for non-EU migrants, creating the Visa Information System (VIS), determining rules on the allocation of third-country nationals asylum application (which was further discussed in the 1990 Dublin Convention), combating illegal immigration, and reinforcing judicial and police cooperation with the creation of the Schengen Information System (SIS) (Peers, 2020). This set of measures has received the denomination of *Schengen acquis*. Some of these objectives were encompassed in the 1992 Treaty of Maastricht, especially those related to a common visa policy for non-EU workers, while it was in the 1999 Treaty of Amsterdam where the *Schengen acquis* was fully incorporated into the EU domain (Wiesbrock, 2016). Even after this modification, intergovernmentalism still determined

discussions and policies passed by EU member states at the communitarian level. As Menz (2011) appreciates, migration and asylum issues are sensitive issues where countries must play two level games at the national and at the EU level to find an equilibrium on interests of every party involved (NGOs, national parties, corporations, country general interests, etc.). However, this did not impede countries to reach consensus at the European Council level, whereas Commission gained momentum in advancing the agenda on migration and asylum issues.

Nevertheless, the intergovernmentalism which characterized the migration and asylum policy at the European level until then gave way to a new communitarian approach after the entry into force of the 2009 Treaty of Lisbon. In the Treaty of Lisbon, migration and asylum became a shared competence between the EU and its member states and their grounds were encompassed in Chapter 2 (articles 77-80) of Title V TFEU of the Area of Freedom, Security and Justice. In addition, the decision procedure changed to adapt to the ordinary legislative procedure with qualified majority voting (QMV) in the Council of the EU, while full competences were given to the Court of Justice of the EU to see cases of this area.

Consequently, while migration and asylum have gained relevance in the treaties until becoming one of the policy areas addressed under the Area of Freedom, Security and Justice of the EU, they have also gained relevance at the political level. In this sense, during the 1990s, Commission launched several communications calling for further integration in migration and asylum issues to tackle migration in all its phases considering the increasing arrivals of asylum seekers from the Balkans and ex-Soviet countries (Eisele, 2016). After the entry into force of the Treaty of Amsterdam, EU countries and EU institutions themselves have pursued more ambitious goals in two directions until the 2015 refugee crisis, which marked a halt in the way as it is going to be stated.

Firstly, EU countries have sought to harmonize and unify policies in the migration and asylum area. To that aim, subsequent European Council rounds have programmed to develop a five-year agenda on migration and asylum policies which should be passed at the EU level regarding non-EU migrants. In the 1999 European Council of Tampere, EU countries agreed on passing pieces of legislation on four areas: Partnerships with origin countries, common European asylum system, fair treatment of third-country nationals, and management of migration flows (Wiesbrock, 2016).

However, the terrorist attacks of 11 September 2001 on New York and 2004 on Madrid and London changed the narrative on migration: fear sentiments mainly towards Muslim migrants and asylum seekers spread and xenophobic movements appeared (Messina, 2014). In order to show a sign of control or strength, EU countries adopted a security-oriented agenda in 2004, the Hague Programme, very focused on tackling irregular migration, combating trafficking networks or enhance border enforcement measures (Wiesbrock, 2016). However, for authors like Boswell (2007), this agenda did not represent a drastic change in migration and asylum policies neither a change in the main principles which drove national migration agencies. In 2009, the European Council passed a new agenda on migration and asylum on Stockholm which tried to find a more balanced approach between the two last ones to facilitate regular migration of labour migrants or migrants seeking family reunification while fighting against illegal immigration (European Commission, 2009).

Secondly, according to what EU countries had already stated on the 1992 Edinburgh European Council Declaration or the failed 1998 Austria's strategy paper for migration management in the EU, they have focused on limiting migration of 'unwanted' migrants (undocumented migrants, some low-skilled migrants, asylum seekers...) by intending to tackle the root causes of migration through enhancing development cooperation with third countries (European Commission, 2002). Moreover, in the Tampere and the Hague Programmes EU countries showed their support to the strengthening of cooperation with third countries to reach agreements of deportation and readmission of irregular migrants, while reinforcing EU border management to avoid further irregular entrances (European Commission, 2006).

Nonetheless, the European Council, Commission and Council realized that a more comprehensive approach towards migration was needed. Thus, in 2005, the "Global Approach to Migration" (GAM) was launched. With the GAM, EU institutions and countries aimed to address migrations from a development, security, freedom, justice and external relations perspective, encompassing every origin or transit country of the non-EU migrants arriving to the European continent (Cardwell, 2013). However, although the strategy was said to base on three main pillars -legal economic migration, migration and development nexus and irregular migration-, Eisele (2016) argues that it really focused on the fight of 'illegal migration', whereas Cardwell (2013) considers it

was an advanced tool on migration governance which encompasses different instruments and actors.

After the launch of the Stockholm Agenda, Commission adapted the GAM to enhance it considering events like the Arab Spring and the instability in the Southern Mediterranean region. Therefore, it proposed the “Global Approach to Migration and Mobility” (GAMM) (European Commission, 2011). Committed to being truly global and to respond to a comprehensive migration policy approach, the GAMM introduced a fourth pillar, the mobility partnerships. The mobility partnerships are conceived as agreements with third countries to favour migration within that country and the EU through regular channels for some categories of migrants like circular labour migrants, while facilitating the deportation of irregular migrants or asylum seekers who could not hold the status of refugees to their origin countries or to ‘third safe countries’ (European Commission, 2011). However, as Zanker evaluates, “there is a pronounced divergence between the management-oriented discourse [of the GAMM] and the restriction-orientated practice” (Zanker, 2019:14). In addition, Strik (2017) finds that the link of EU cooperation with the fight against irregular migration could be contradictory with other EU foreign policy goals like the defense of migrants’ human rights, as this policy could be an incentive for EU countries to opt for return programs of migrants and rejected asylum seekers rather than protection programs for them.

This period between the beginning of the 2000s and 2015, when EU approaches towards migration evolved while the EU gained increased competences on migration, was characterized by an intense normative activity in migration and asylum issues at the EU level. Regarding the EU external border controls, Regulation 2007/2004¹ establishing a European Agency for the Management of Operational Cooperation at the External Borders of the member states of the EU (the so-called Frontex) was passed. Moreover, EU countries adopted Regulation 539/2001² in 2001 for harmonizing visa policy to eliminate the requirement of a visa for certain non-EU nationals and soften the requisites for others. In this sense, the Visa Information System (VIS) established in Schengen has gained relevance over the years.

¹ Regulation 2007/2004 (OJ [2004] L349/1), as amended by Regulations 863/2007 (OJ [2007] L199/30), 1168/2011 (OJ [2011] L304/1), 1052/2013 (OJ [2011] L295/11) and 656/2014 (OJ [2014] L189/93).

² Regulation 539/2001 (OJ [2001] L82/1). This regulation has been periodically revised and adapted, being the last amendment made in Regulation 2018/1806 (OJ [2018] L303/39).

Regarding the pieces adopted for establishing legal paths for migration, legislation has been passed for allowing high-skilled professionals to travel and work in EU countries (the so-called ‘Blue Card Directive’³), for regulating the circular migration flows of seasonal workers (for instance, Directive 2014/36⁴), for establishing a common framework for researchers and undergraduate and graduate students to develop their activities in EU countries and remain after them (see, for instance, Directives 2005/71 or 2004/114⁵), or for setting common legal grounds for migrants seeking family reunion (Directive 2003/86⁶). According to Peers (2020), this set of regulations and directives regarding ‘legal’ migration has tended to “focus mostly on those who are young, wealthy, and highly skilled, and who are therefore more likely to bring a significant net financial benefit to Member States” (Peers, 2020:840).

Although ‘irregular’ migration and asylum have been treated separately at the EU level, the pieces of legislation passed are strongly related, as asylum seekers automatically become ‘illegal’ immigrants if they do not receive the status of refugees (Schuster, 2011). On the one hand, EU member states and institutions have aimed to counter irregular migration by passing tougher measures against trafficking of persons or smugglers (see, for instance, Directive 2002/90 or Directive 2011/36⁷) or establishing tougher sanctions on employers of undocumented migrants (Directive 2004/81⁸). In addition, common procedures for ‘illegal’ migrants’ detention and deportation were settled in Directive 2008/115⁹, also known as the ‘Returns Directive’, which nurtured from mutual agreements with origin countries for the readmission of their nationals or third country nationals.

On the other hand, EU countries and institutions held two rounds during this period to establish a Common European Asylum System (CEAS). In the first round (2003-2005), several issues were tackled through different pieces of legislation: the establishment of common requisites for granting the refugee status (Directive 2004/83, known as the ‘Qualifications Directive’¹⁰), the conditions under which EU countries

³ Directive 2009/50 (OJ [2009] L155/17).

⁴ Directive 2014/36 (OJ [2014] L94/375).

⁵ Directives 2005/71 (OJ [2005] L289/15) and 2004/114 (OJ [2004] L375/12), both merged in Directive 2016/801 (OJ [2016] L132/21).

⁶ Directive 2003/86 (OJ [2003] L251/12).

⁷ Directive 2002/90 (OJ [2002] L328/17) and Directive 2011/36 (OJ [2011] L101/1).

⁸ Directive 2004/81 (OJ [2004] L261/19).

⁹ Directive 2008/15 (OJ [2008] L384/98).

¹⁰ Directive 2004/83 (OJ [2004] L304/12), repealed by Directive 2011/95 (OJ [2011] L337/9).

should receive asylum seekers (Directive 2003/9, the ‘Reception Directive’¹¹), the procedures for applying to the refugee status (Directive 2005/85, the ‘Procedures Directive’¹²) and the responsibility of the first member state where asylum seekers were collected their fingerprint through the common Eurodac system to process their asylum application (Regulation 343/2003, known as the ‘Dublin II Regulation’¹³). Although passed with certain consensus, EU countries were unable to continue on deepening on integration in this area during the Hague Programme period due to their inability to overcome existing differences over some aspects which were not encompassed before. Eventually, consensus arose between 2011 and 2013 and member states agreed on further harmonizing some standards of the above-mentioned directives and regulation, while creating a new agency focused on assisting member states dealing with asylum applications, the European Asylum Support Office (EASO), argued to be created as a way of ensuring cooperation between member states in that area (Ripoll, 2018; Peers, 2020).

This creation of a common legal system on migration and asylum has been also influenced by the action of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). In this regard, case-law is abundant (see the track of Groenendijk *et al*, 2020) and, in general, it has sought to protect human and fundamental rights of migrants in family reunification cases (de Somer & Vink, 2015), detention and deportation cases (Peers, 2020), etc.

However, the advance towards a greater integration in migration and asylum issues and a greater harmonization in the application of EU directives, regulations and decisions in these areas suddenly halted with the 2015 ‘refugee crisis’. The asylum system of Southern European border countries collapsed due to the increase in arrivals of asylum seekers and the need to register them and process their asylum application according to the Dublin III requirements (Trauner, 2016). Moreover, the 2015 ‘crisis’ revealed the difficulties in applying the EU legislation regarding irregular migration and the EU legislation regarding asylum due to the characteristics of mixed migration flows.

The response of the EU, after numerous European Council meetings between 2015 and 2016, was to shape a European Agenda on Migration for the 2015-2020

¹¹ Directive 2003/9 (OJ [2003] L31/18), repealed by Directive 2013/33 (OJ [2013] L180/96).

¹² Directive 2005/85 (OJ [2005] L326/13), repealed by Directive 2013/32 (OJ [2013] L180/60).

¹³ Regulation 343/2003 (OJ [2003] L50/1), repealed by Regulation 604/2013 (OJ [2013] L180/31), known as ‘Dublin III Regulation’.

period which established a system of quotas for the relocation of 160.000 refugees and asylum seekers within EU countries (European Commission, 2015), to reintroduce internal border controls temporarily (Peers, 2020); to reinforce Frontex capabilities with the creation of the European Border and Coast Guard (EBCG); and to sign agreements with third countries like Turkey, Libya or Tunisia to reduce the volume of arrivals on the Eastern Mediterranean and Central Mediterranean routes by greatly enforcing their borders, processing asylum applications on their territories and facilitating the ‘safe return’ of ‘irregular migrants’ (Trauner, 2016; Bozorgmehr & Wahedi, 2017).

Even if German chancellor Angela Merkel decided to host more than one million asylum seekers and some top destination countries for these asylum seekers like Sweden or Austria backed the agreement, the relocation Commission proposal failed as some member states like the Visegrad countries rejected hosting any of them and continued to close their borders beyond limits established, while others did not host the assumed quota (Niemann & Zaun, 2018; Bauböck, 2018). According to Owen (2019), the 2015 ‘refugee crisis’ showed not only the divergences in migration and asylum issues between member states, but also the need to address normative imbalances in the CEAS which overburdened some member states when ‘irregular’ and asylum seekers arrivals increase. Furthermore, as Kriesi *et al* (2021) appreciate, “the overall outcome is an example of ‘defensive integration’, aiming squarely at joint solutions to stop the refugee flow outside the EU but not to manage it inside the EU” (Kriesi *et al*, 2021:331).

Although Commission tried to advance in the negotiation of a third round of measures regarding the CEAS and some other pieces of EU law on migration, efforts failed due to the persistence of discrepancies between member states (Hutter & Kriesi, 2021). Nonetheless, this has not impeded the approval of some new pieces of EU law like Regulation 2019/1240¹⁴, which created the European network of immigration liaison officers that aims to manage migration issues more effectively in origin and transit countries. Moreover, in an attempt to overcome the institutional deadlock, the Von der Leyen Commission launched in 2020 September the New Pact on Migration and Asylum (2021-2015) to “move away from ad-hoc solutions and put in place a predictable and reliable migration management system” from a comprehensive approach (European Commission, 2020). Thus, the proposal pivots on an integral

¹⁴ Regulation 2019/1240 (OJ [2019] L 198(88)).

reform and update of the above-mentioned EU legal system, while it emphasizes on working on the root causes of migration, reinforcing alliances with non-EU states to control and manage migration (including deportation of migrants who arrive ‘illegally’ to the EU) and reinforcing border management (Fanjul & González-Páramo, 2020).

However, the Pact, which must be negotiated in the Parliament and Council, has already been object of intense critics by some member states like Spain, Italy, Malta and Greece, which argue that it does not tackle the problems derived from the Dublin III system and that it leads to imbalances between the solidarity and the responsibility of EU member states (Cué & de Miguel, 2020). In this sense, “the Pact runs the risk of pursuing intergovernmentalism, of establishing a European asylum system of asymmetric interstate solidarity and legitimizing member states’ policies focused on speed, localization and externalization” (Carrera, 2020:12).

3. BORDER EXTERNALIZATION AS AN ELEMENT OF THE MIGRATION AND ASYLUM POLICY OF THE EUROPEAN UNION

3.1. Border externalization: definition, approaches and features.

To analyze the characteristics of a possible EU border externalization, it is firstly needed to determine what border externalization is, under what approaches it is justified and what models they result in; and what the main features of a border externalization are. In this regard, as Podkul & Kysel (2015) highlight, the notion of border externalization and its features vary, although some common grounds can be found.

To begin, del Valle (2019) draws a line between the concepts deterritoriality, extraterritoriality and externalization. According to the author, deterritoriality of border controls is a more neutral term which may encompass the processes of extraterritoriality of border controls and the externalization of the management of migration flows. In this sense, the externalization of the management of migration flows (“border externalization” hereinafter) may make reference to the “border control and migration policy functions a third state or third party performs as a direct or indirect consequence of agreements with other states” (del Valle, 2019:149), whereas the extraterritoriality of border control functions might refer to “those situations involving the direct or indirect exercise of state jurisdiction in another territory, applying its internal law” (del Valle, 2019:150). These deterritoriality processes can be understood in the broader context of the changing geographies of globalization, which have led to a reconfiguration of state territory understanding that ontologically transcends states’ borders to encompass further economic, legal or political practices in other states’ territories (Elden, 2005; Casas-Cortes *et al*, 2014). Thus, borders become ‘fuzzy’ and ubiquitous from a socio-spatial and a constructivist points of view (Novak, 2016).

Thus, authors seem to coincide in describing border externalization not as a process of expanding physical borders to other countries through conquer or invasion, but rather as a series of extraterritorial actions with the consent and complicity of third states which could perform similar functions to actual border controls (del Valle, 2019; Lemberg-Pedersen, 2019; Podkul & Kysel, 2015; Menjívar, 2014).

Secondly, regarding the policies which may fall under these border externalization or deterritorialization processes, Triandafyllidou (2014) underlines three areas: externalization of border controls, externalization of return/readmission and

externalization of asylum policies; and within each area, author distinguishes between gate-keeping policies and fencing policies. On the one hand, gatekeeping policies would encompass those legal measures taken by third countries to control and/or reduce the volume of ‘undesired migrants’ or asylum seekers. Among them, author mentions the introduction of stricter visa regimes in these third countries regarding countries of origin of migrants (Laube, 2019), the management of asylum procedures before those asylum seekers arrive to the country that is externalizing its border or even propaganda campaigns to discourage locals to emigrate (Watkins. 2017). On the other hand, fencing policies would involve every measure aimed to better enforce third countries’ borders supported by countries which externalize their management of migration flows. These measures would encompass some like increasing patrolling at the border, enhancing the technology to detect ‘irregular migrants’ and possible asylum seekers crossing the borders, or building larger fences or other type of barriers.

Thirdly, there seems to be a consensus around the fact that border externalization goes beyond state-state relations and agreements, so private actors are also involved (Lemberg-Pedersen, 2019; Podkul & Kysel, 2015; Schapendonk, 2018). Lemberg-Pedersen (2018) calls this set of public and private actors involved in border externalization as a whole ‘border control industry’ which profits with it. In this sense, author describes the following set of actors which play a role in this border externalization:

Some actors pursue contracts for border enforcement (for instance, detention or deportation practices), while others compete for contracts on border infrastructure (for instance, the building and operation of radar or satellite systems or high-tech research and development (R&D) programmes)¹⁵. Other actors, like consultancy firms and universities, produce border knowledge, and others, again, provide financial services in relation to technology investments (such as export credit agencies, investment firms and credit institutions) (Lemberg-Pedersen, 2018:13).

However, as Schapendonk (2018) remarks, these actors are part of a larger web of actors who develop their activity within the migration routes of ‘irregular’ migrants and asylum seekers and who aim to facilitate the protection of migrants’ rights, such as

¹⁵ In this sense, Moreno-Lax and Lemberg-Pedersen (2019) point out several European companies which may be benefiting from these agreements: Indra (Spain), Leonardo (Italy), Thales (France), Ocea (France), Dame (The Netherlands), Rheinmetall (Germany), Airbus (European consortium) and several aviation firms in charge of the ‘irregular migrants’ repatriation and readmission flights.

some NGOs. In addition, some other actors like international organizations such as the International Organization for Migrations (IOM) or the United Nations High Commissioner for Refugees (UNHCR) may be involved, although their humanitarian role in assisting refugees and asylum seekers is widely accepted while their role as facilitators or limiters of migration is dubious (Levy, 2010).

Fourthly, regarding the aims pursued by countries when opting externalizing their management of migration of flows, authors seem to coincide on underlining the goal of avoiding ‘non-desired’ migrants and asylum seekers to arrive to their territories by enforcing legal and physical barriers in origin and transit countries (Mirra, 2018; Podkul & Kysel, 2015; Menjívar, 2014; Hyndman & Mountz, 2008). In terms of Hyndman & Mountz (2008), these border externalization practices constitute a *neo-refoulement*. According to the principle of non-refoulement provided in article 33 of the 1951 Convention relating to the status of refugees and its 1967 Protocol, asylum seekers have the right to ask for asylum and countries cannot deport or return them until that asylum application is solved (in favour or not). As authors argue, border externalization seeks to avoid asylum seekers and other migrants who may ask for asylum to arrive to countries borders and, doing so, countries avoid to being responsible for their application, status and possible return if they are not recognized as refugees. Thus, these practices constitute a system which allows countries to indirectly avoiding the respect to the principle of non-refoulement by directly impeding asylum seekers to reach their borders (Hyndman & Mountz, 2008; Levy, 2010).

Considering this goal and the above-mentioned policies encompassed in border externalization practices, Menjívar (2014), Ghezelbash *et al* (2018) or Mlambo (2020) then frame border externalization within the securitization approach towards migration and asylum of Western countries since the beginning of the 2000s, by which countries conceptualize mixed migration as a security issue and, in consequence, adopt measures to tackle it, including the externalization of their management of migration flows.

Moreover, Menjívar (2014) argues that border externalization happens “at the request of the (more powerful) receiving states, such as the United States or the EU member states” (Menjívar, 2014:357). Therefore, border externalization would also follow a unidirectional path from Global North countries (the United States, EU member states, Australia...) to Global South countries (Mexico, Central American and Caribbean countries, Northern African and Middle East countries, and Malaysia and

other Southeast Asian countries respectively). Thus, scholars like M'charek (2020), Lemberg-Pedersen (2019) or Afailal & Fernández (2018) argue that border externalization reproduces neo-coloniality patterns, by which Global North countries take advantage of their economic or political power to achieve beneficial agreements to their interests in detriment on Global South countries or, at least, their societies, as elites may benefit of these agreements (Rijpma, 2017). Nevertheless, despite acknowledging the contexts of inequalities within these policies take place, Stock et al (2019) or Casas-Cortes *et al* (2015a) analyze the resistance practices emerging in origin and transit countries of the Global South from the Autonomy of Migration perspective and determine that civil society movements in these countries (where migrants are an essential part too) challenge the existing narratives, policies and migration regimes and even redefine them.

This deterritoriality, externalization of management of migration flows and approaches have marked some elements of migration and asylum policies of countries like the United States of America (US), Australia or the EU member states. As Mirra (2018) underscores, the first case of externalization can be found in the agreements signed between the US and Haiti in 1981 to intercept smugglers and traffickers' boats which went to the US, to interrogate migrants and to return all those migrants who might not meet the requirements for becoming refugees. In addition, the US government signed agreements with Jamaica and Turks and Caicos to process asylum applications of Haitians migrants. Similar approaches have been followed in successive US Administrations, which have expanded their externalization and repatriation agreements towards Mexico and Guatemala to curb Central American and South American 'irregular' immigration (Huerta, 2015). Meanwhile, as Watkins (2017) analyzes, Australia has been pioneer in reaching agreements with Southeast Asian and Pacific countries to immobilize asylum seekers in third countries and deter 'irregular migrants', whereas Australian Government has sought to use its humanitarian aid in Southeast Asia, Middle East and North African countries "to invest in places, spaces and diasporas of displacement to prevent asylum seekers from travelling far from their country of nationality in search of refuge" (Watkins, 2017:18). However, although the EU case shares some similarities with these cases, it has distinctive features which should be considered.

3.2. The EU border externalization: main features and governance.

The European Union case regarding the externalization of its management of migration flows could be considered as a unique case due to its supranational character. Different from the US, Australia and some other sovereign states, the EU action in migration and asylum has been limited to the conferred powers and competences that member states have been transferring over time until the entry into force of the Treaty of Lisbon. Even if some areas have been progressively integrated and have advanced towards a more supranational management (such as border management, visa policies or asylum procedures), the EU action in migration and asylum is still marked by a strong intergovernmentalism, where the European Council meetings gain relevance (with tensions between North-South or East-West member states determining their outcomes) while Commission tries to find consensus and advance on migration and asylum agenda (Hampshire, 2016). Thus, migration and asylum governance in the EU is characterized for being a truly multilevel governance, where member states retain some competences, while EU institutions and agencies exercise some others and coordinate member states actions. In this context, as Triandafyllidou (2014) argues, the externalization of the management of migration flows has become the external dimension of EU policies on migration and asylum.

This characteristic feature has led to a particular evolution of the externalization of borders of the EU and its member states, departing in some elements, such as the actors involved and the governance of the agreements; and sharing some similarities with other cases, such as the aims pursued or the externalized practices.

Regarding the similarities with other border externalization cases, three features could be at least highlighted. Firstly, proposals regarding the externalization of borders and management of migration flows seem to have responded to a reaction from a securitization perspective to some perceived migration crises: the 1990s Balkan and Soviet collapse crisis; the 2006 Atlantic crisis; and recently the Arab Spring and the 2015 refugee crisis at the Eastern European and Central European routes (Castan, 2014; Hampshire, 2016; Spijkerboer, 2017).

Secondly, during these periods, externalization practices have followed the same patterns above-mentioned described, and which will be further analyzed: from Global North (European countries) to Global South countries (North-African countries and Turkey), seeking to reinforce third countries border controls and surveillance in hotspots,

make them to process asylum applications of possible refugees and deterring ‘irregular migrants’ and deporting them to their origin countries (Tazzioli, 2018).

Thirdly, the objective pursued by the EU and its member states by externalizing the management of migration flows is to prevent ‘irregular migrants’ and asylum seekers from reaching EU territory by keeping them as far as possible (del Valle, 2019; Moreno-Lax & Lermberg-Pedersen, 2019; Campesi, 2018). According to Campesi (2018), this border externalization regime allows EU countries and EU itself to apply and consider the whole legal system resulting from the national and EU pieces of legislation on reception, treatment, legal procedures and eventual deportation of irregular migrants and/or asylum seekers whose status of refugees has not been recognized.

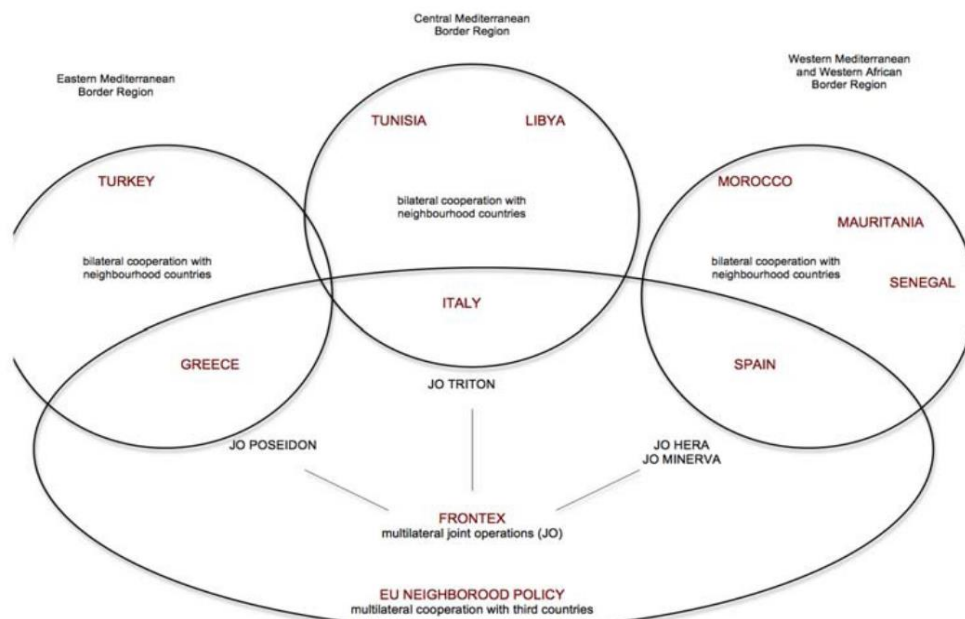
In the same line, del Valle (2019) argues that, by impeding asylum seekers and migrants to arrive to EU territories, member states create the framework to escape from any legal responsibility regarding the correct protection of migrants and asylum seekers’ rights, as it is very difficult to prove that the possible violations of those rights in the third countries where migration flows management has been externalized to are directly related to the agreements signed with EU countries. As the EU is not physically present in those countries carrying out the tasks and, instead, is ‘assisting’, ‘coordinating’ or ‘cooperating’ with those countries, the Court of Justice of the EU and the European Court on Human Rights are also prevented from seeing cases relative to those matters and either to pronouncing on cases of migrants who had not even reached European soil (Liguori, 2019; Spijkerboer, 2017; Rijpma, 2017). This has led to several CJEU judgments where the Court has argued that it had no jurisdiction to see such cases (judgements on *the EU-Turkey statement, X&X, A.S.* or *Jafari*)¹⁶ (Goldner, 2020). According to Müller & Slominski (2020), this way of acting started after the *Hirsi v Italy*¹⁷ judgment of the ECtHR of 2012, where the Court settled that EU countries were bound to the conventions on human rights and refugees’ rights when carrying out their operations outside their territories, in this case, when executing push-back operations at the sea.

¹⁶ Orders of the General Court in Cases T-192/16, T-193/16 and T-257/16 N.F., N.G. & N.M. v. European Council, ECLI:EU:T:2017:128, 28 February 2017, ECLI:EU:T:2017:129 and ECLI:EU:T:2017:130; Case C-638/16 PPU *X and X v État Belge*, 7 March 2017, ECLI:EU:C:2017:173; Case C-646/16 *Jafari*, 26 July 2017, ECLI:EU:C:2017:586; Case C-490/16 *A.S. v Slovenia*, 26 July 2017, ECLI:EU:C:2017:585.

¹⁷ ECtHR (2012). *Hirsi Jamaa and others v Italy* [GC], Application n° 27765/09.

However, the implementation of these externalization agreements is distinctive in the EU case due to their governance. In this sense, as Menz (2015) or Campesi (2018) describe, the EU externalization system results from the interaction of the EU Neighborhood Policy and the bilateral agreements signed by EU southern border states (Italy, Spain and Greece -in relation to Turkey, which is signed at the EU-27 level-), coordinated by the action of EU agencies such as Frontex or EASO (see *figure 2*).

Figure 2. EU multilevel governance of migration flows management externalization



Source: Campesi (2018:200)

3.2.1. The governance at the EU level.

At the EU level, two strategies have been followed within their conferred competences to complement member states bilateral agreements for their borders' externalization and management of migration flows. First, as Pijnenburg et al (2018) underlines, since the mid-1980s, the EU has linked its international cooperation actions to tackling the root causes of migration in origin countries, to the reinforcement of border control measures in these countries to curb 'irregular migration flows' or to the enhancement of their asylum systems. However, after the 2002 Seville Council, and within the Tampere Agenda, EU countries agreed that "any future cooperation, association or equivalent agreement which the EU or the EC concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of irregular migration" (European Council, 2002, in Geddes, 2005:793). Since then, the link between migration and cooperation has

institutionalized in the Hague or Stockholm Programmes until current times, when the last New Pact on Migration and Asylum demonstrates: “tackling the issues we see today – the loss of life first and foremost, but also shortcomings in migration management – means working together so that everyone assumes their responsibilities” (European Commission, 2020).

Second, the EU has also linked its external action to migration and border externalization concerns. One of the key elements of this ‘migration diplomacy’ is the use of the concept of ‘safe third country’ introduced in Dublin II and Dublin III regulations, by which an ‘irregular migrant’ can be sent back to a country which respects his/her rights and liberties and where the person may ask for asylum (Directive 2013/32, art. 38). In addition, after the *Hirsi* judgment, the EU changed its *modus operandi* and instead of directly acting in origin and transition countries, they provide these countries with “funding, training and/or equipment to stem migration flows” (Pijnenburg *et al*, 2018:369). Some other proposals of member states (the UK before leaving the EU, Denmark, the Netherlands, Austria or Germany) and Commission itself have attempted to incorporate to this policy the creation of external reception centers or disembarkation platforms for the deportation of ‘irregular migrants’, but they have ultimately failed (Moreno-Lax & Lemberg-Pedersen, 2019; Levy 2010).

Both, the link of international cooperation to stricter border enforcement of third countries and the ‘migration diplomacy’ to settle safe third countries, have marked the external action of the EU through the External Action Service (EEAS), particularly to what concerns the EU Neighborhood Policy in the Eastern Europe area and in the Mediterranean and North-African area (Triandafyllidou, 2014).

3.2.2. The governance at the EU member states level.

This action complements the cooperation agreements on the externalization of (or cooperation on, according to the official terminology used) migration flows management signed by southern EU member states at the bilateral level.

Regarding the *Western African and Western Mediterranean routes*, Spain has played a key role by signing cooperation agreements (which included readmission and border enforcement clauses) with Morocco (1992, 2010), Mauritania (2003), Senegal (2006), Gambia (2006), Guinea (2006), Mali (2007) or Guinea Bissau (2008) among others (Gabrielli, 2017; Menz, 2015).

Considering these agreements, the Spain-Morocco relation in migration issues is the most ancient and the pioneering one within EU member states when talking about border externalization. In 1992, both countries signed the Treaty of Good-neighborliness and Friendly Cooperation, a readmission agreement for Moroccans and third-country nationals in irregular situations which entered into force in 2003 and has been enforced intermittently (Gabrielli, 2017; Abderrahim, 2019). In 2004, they signed a Memorandum of Understanding for Common Patrolling, firstly used in 2005 when, after some ‘irregular’ entries in the Spanish border cities of Ceuta and Melilla and the 2006 ‘cayuco crisis’ in the Canary Islands, both governments started joint patrolling operations together with Frontex in the Moroccan Atlantic Coast (Hera operation) and the Gibraltar area (Minerva operation) (Gabrielli, 2017; Carrera *et al*, 2016). In 2010, an Agreement on Transborder Police Cooperation was signed and in 2019 a new MoU was launched on the promotion of the bilateral relationship in the political and security fields in which migration control was included (CEAR, 2020).

These cooperation agreements on patrolling and border enforcement, police action or the readmission of third nationals have materialized in concrete actions, such as the implementation of the Spanish Integrated System of External Surveillance (SIVE, by its wording in Spanish) in the Moroccan borders and coasts since 2002 (which was replaced by the EU EUROSUR system) or in the sending of development aid conditioned to the fulfilment of these agreements through the I-II-III Spanish Africa Plans (Carrera *et al*, 2016; Gabrielli, 2017). In addition, these agreements and MoUs have been supported at the EU level through the participation of some EU agencies like Frontex, the creation of a Mobility Partnership in 2013 in the framework of the GAMM or by supporting Spain in the development aid provided to Morocco (Carrera *et al*, 2016; Abderrahim, 2019).

Regarding the *Central Mediterranean route*, Italy has played a major role by reaching agreements on the management of migration flows with Libya (2008) and Tunisia (2011, reinforced in 2017) mainly. The Italy-Libya cooperation started at the 1990s decade through informal cooperation in the areas of sea patrolling and police cooperation at the Libyan borders, persecution of networks of smugglers and traffickers and pushbacks from Italy to the North African country. In fact, the Libyan government carried out massive expulsions of migrants coming from Europe in 2000 (Dastyari & Hirsch, 2019). In 2007, these informal border externalization practices were crystalized

in a protocol on maritime cooperation and, eventually, in the 2008 Treaty on Friendship, Partnership and Cooperation where border enforcement and readmissions were key in exchange of Italian financial aid (5 US\$ billion) (Triandafyllidou, 2014).

However, after the Arab Spring and the collapse of the Libyan government, with the consequent civil war and the division of the country into three governments, Italy signed an eight-article MoU with the UN-backed Libyan government to curb ‘irregular’ migration in 2017, which was then backed by the EU through the Malta Declaration (Palm, 2020). In this MoU, the Italian government and the EU endorsed the above-mentioned Italy-Libya agreements and committed to train and enhance the material resources of the Libyan patrol guards in both the South and the North borders, as well as to train and finance the Libyan reception centers for ‘illegal’ migrants (arts. 1-2). Nonetheless, suspicions exist about Italian officials’ meetings with southern Libyan militias to better enforce the southern border of the country (Dastyari & Hirsch, 2019). Moreover, Italy pledges to provide financial resources and development aid to the Libyan government to tackle ‘illegal’ immigration, human trafficking and smuggling (art. 2 and 3). In addition, both parties commit themselves to enforce the MoU “respecting the international obligations and the human rights agreements which the two countries are parties” (art. 5).

Regarding the *Eastern Mediterranean route*, although Greece and Bulgaria were the most ‘overburdened’ states during the 2015 crisis, the agreement reached with Turkey in 2016 to prevent migrants and asylum seekers from arriving to European territory was the result of the EU members coordination. However, as it has been described before, the General Court of the EU argued that the EU-Turkey Statement of the 18 March 2016 published as a European Council press release was concluded by EU member states and Turkey, and not by the EU itself¹⁸, although the Union endorsed it afterwards and Frontex joined operations in the Mediterranean (Rijpma, 2017). Thus, this border externalization agreement falls within the bilateral (or multilateral, in this occasion) level too.

The nine-article EU-Turkey agreement settles as its main aim “to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk” (preamble). To that aim, however, both parts agree on the following

¹⁸ *Vid.* 16. Note that, for brevity purposes, the agreement will be mentioned as the EU-Turkey agreement to reflect that all EU countries participated in their signing and not the EU as organization itself.

aspects: to return to Turkey every ‘irregular’ migrant who arrives to Greece (art. 1); to return to Turkey every Syrian who arrives to Greece and to accept a Syrian refugee after Turkey had processed his/her application in refugee camps or resettlement areas (art. 2), the so-called “1-to-1 system”; to cooperate in the patrolling of the land and sea borders between Turkey and Greece to prevent further ‘irregular’ arrivals (art. 3); and, in exchange, the EU member states compromise to lift visa requirements for Turkish citizens (art. 5), to provide Turkey with 6 billion € for the management of migration flows and the resettlement and care of refugees, especially at the border area between Turkey and Syria (arts. 6 and 9); and to “re-energize” the Turkish accession process to the EU (art. 8), upgrading the Customs Union (art. 7), and cooperate “to improve humanitarian conditions in Syria” (art. 9). As McEwen (2017) considers, the readmission of asylum seekers without processing their application constitutes a novelty in the EU externalization of the management of migration flows, which could even go against the principle of *non-refoulement*, which Turkey might not be also respecting (paragraph 4.5., European Economic and Social Committee, 2018).

3.2.3. The role of Frontex and EASO.

EU agencies in charge of European border enforcement, migration and asylum issues such as Frontex and the EASO have progressively been attributed larger competences, whereas their role as seekers of consensus and cooperation between member states through ‘soft’ law and practices has been vowed (Ripoll, 2018). In this sense, these agencies may act as the nexus between the action of the EU and the action of member states in the migration and asylum areas. However, regarding the EU countries, Frontex has emerged as a key actor when dealing with the deterritorialization processes and the externalization of EU countries management of migration flows.

Since its inception, the competences attributed to Frontex, its autonomy and its budget have increased (Rimkute & Shyrokykh, 2017). Following its original mandate settled in Regulation (EC) 2007/2004, amended in further EU law, the agency is commended few tasks, which can be summarized in assisting and coordinating the management of the EU’s external borders through joint operations (JOs) and carrying out risk analysis; in training member states border forces; and in cooperating and exchanging information with third countries.

However, after the 2015 ‘refugee crisis’, the agency powers and budget have been expanded. In Regulation 2016/1624¹⁹, the Parliament and Council renamed the agency as the European Border and Coast Guard, the goal of preventing cross-border crime was explicitly stated as an agency objective, new competences were given to deploy officials in third countries in order to help them to better manage their migration flows, and special powers were conceded to intervene in member states borders when urgent situations happen and states do not address them (art. 19) (Campesi, 2018).

In Regulation 2019/1896²⁰, the EU further increased the budget of the agency for the 2021-2017 period until reaching 5.6 €billion (section 4 of the regulation) to better coordinate the return of ‘illegal’ migrants carried out by member states (section 8), while increasing its role in promoting European border management and return standards in third countries, where the agency can also deploy its officers if mutual agreement exists (section 11).

Thus, the agency does not only carry out internal operations (fencing policies), but also external ones (gate-keeping policies) within the broader context of the European Neighborhood Policy (ENP). Regarding the fencing policies, the agency has developed several JO with member states, such as the 2006 Hera operation in the Atlantic sea around the Canary Islands; the operations in the Central Mediterranean sea such as the Triton or Themis operations; or the joint operations at the borders of the territorial waters of Greece and Turkey since 2006 and which reinforced during the 2015 ‘refugee crisis’, giving birth to the Poseidon operation; while some operations have been developed in the Eastern European land route (Pomeon, 2017). Considering gate-keeping policies, the agency has signed 18 Working Arrangements with origin and transit countries to provide training and equipment to border control forces in countries like Turkey or Senegal; establishing liaison offices within those countries; or coordinating the readmission of ‘irregular’ migrants within the framework of bilateral cooperation agreements or the ENP (Pomeon, 2017).

In recent times, Frontex has been subject to intense criticism and internal scrutiny of the Parliament, the CJEU, the Fundamental Rights Agency (FRA) or the European Anti-Fraud Office (OLAF) for alleged violations of migrants and asylum seekers fundamental rights while carrying out joint operations, mainly due to pushbacks

¹⁹ Regulation 2016/1624 (OJ [2016] L 251/1), replaced by Regulation 2019/1896.

²⁰ Regulation 2019/1896 (OJ [2019] L 295/1).

without complying with the Returns Directive and the principle of *non-refoulement*; for disregarding fundamental rights when carrying out its actions in third-countries territories or even for the mismanagement of the budget in non-authorized activities (Rijpma, 2017; Cusumano, 2019; Christides *et al*, 2021).

3.3. The effect, effectiveness and respect to human rights of the EU border deterritorialization and externalization policies.

Although at the policy-making levels the deterritorialization and externalization of migration flows management are defended to be effective as they result in a decrease of ‘irregular migrants’ and asylum seekers arrivals (which is their main aim), there is a growing literature of research which problematizes this idea and analyzes the effectiveness of those measures and their effect, especially regarding their impact on migrants’ and asylum seekers’ rights.

According to Casas-Cortes *et al* (2015), these measures may result in a reconfiguration of migration routes and itineraries. Authors argue that when some routes are closed due to narrower visa policies, stricter border enforcement or asylum seekers deterrence, migrants tend to opt for other routes (sometimes with the intervention of smugglers), leading to similar problems in other geographical spaces. Then, these measures would result in a vicious cycle. Similarly, Czaika & de Haas (2015) or de Haas *et al* (2018) find some other ‘substitution effects’ which these policies may result in. For instance, the announcement of these border externalization agreements may derive in an increase of ‘irregular arrivals’ due to the ‘now or never effect’, as people may opt for migrating before visa policies or border enforcement constrain. Moreover, authors consider that reverse flows are not considered in the balance of the effectiveness of these policies, as many migrants could come back to their origin countries or stay in some other transit countries rather than going to European countries.

In another line of research, scholars like Urbaneja (2020), Kaya (2020) or Carrera *et al* (2016) underline that these border externalization agreements can be used by countries where borders are externalized to as a political tool to increase their leverage before their counterparts, then conditioning their implementation to the political context.

Further than their effectiveness for the aims settled, many authors have also evaluated the impact on these border externalization agreements on migrants' and asylum seekers rights. Podkul & Kysel (2015) find that the diversion of routes resulting from border externalization policies increases migrants and asylum seekers likelihood to being subject of smuggling, trafficking, suffering from violence and ill-treatment or even dying, as some routes imply crossing desserts or embarking at the sea in precarious boats. Tyszler (2019), who studies the gendered and racial effects of the Spanish border externalization agreement with Morocco, concludes that border externalization agreements result in women being more likely to be sexually or occupationally exploited to 'illegally' cross the borders, including being harassed and raped by soldiers at the same borders or civilians during their journeys.

It seems clear that the externalization of EU borders in Africa worsens the violence perpetrated against women seeking mobility throughout the migration process because it creates a continuum of spaces where black women have to resist and/or give in to relations of power of gender, race and class in order to cross securitized borders. Tyszler (2019:21).

When these migrants and asylum seekers arrive to the countries towards which borders have been externalized, Haferlach & Kurban (2017) consider that their human rights and rights as asylum seekers are more likely to be ignored or violated due to the general deficit of these countries regarding human rights protection or their lack of enforcement capabilities. For instance, authors point out the seizure of European funds managed by Turkey to those refugee camps where Yezidi refugees stayed, in an ethnic discrimination move, without any accountability required by EU member states. In the same line, Palm (2020) argues that this lack of accountability regarding human rights violations (and the unconcern of EU states) becomes more relevant in countries where human rights respect is dubious and where legal systems are weak or inexistent, such as Libya, where torture practices in migrant detention centers have been reported.

Furthermore, Menz (2015) or Podkul & Kysel (2015) also highlight that in these precarious legal systems, the screening of asylum seekers and refugees within mixed migration flows is often inappropriate. Thus, asylum seekers are also deterred and detained in detention centers and, eventually, returned to their origin countries or other countries, violating the principle of *non-refoulement* and seriously damaging the human

rights regime said to be defended by EU countries. In addition, Üstübcü (2019) analyzes the socio-legal implications of the retention procedures of migrants and asylum seekers in these countries once they have been screened. Scholar concludes that these agreements create a phenomenon of ‘differentiated legal status’ between those who are recognized as refugees and fall within humanitarian aid, those whose asylum application is being processed, those who are stuck in the country seeking to continue their journey and those who are waiting for deportation. These differences do not only affect their possibility to get the status of citizens, integrate in that society or resettle in another place, but also affect their physical and psychological wellbeing.

Thus, an analysis of these questions seems necessary in the context of the EU deterritorialization and border externalization agreements, starting from the mere compliance of such agreements to then study their effectiveness and effects, including their impact on migrants’ human rights.

4. COMPLIANCE OF THE AGREEMENTS ON BORDER DETERRITORIALIZATION AND BORDER EXTERNALIZATION OF THE EU TOWARDS THIRD COUNTRIES

4.1. Spain-Morocco Agreement on cross-border police cooperation (2010, entered into force 20 May 2012).

The 2010 agreement between the Government of Spain and the Government of Morocco on cross-border police cooperation, which entered into force in May 2012, settled as its main aim to reinforce the cooperation between the police forces of both countries by creating two Police Cooperation Centers (PCC) in Algeciras (Spain) and Tanger (Morocco) (art. 1 and 4 of the agreement). This part of the agreement has been accomplished by both parties, who inaugurated both centers the 28th of May 2012 in a joint visit of the Mister of Interior of Spain and the Minister of Interior of Morocco (EFE, 2012; CCME, 2012).

According to the agreement, these centers constitute a physical *locus* for sharing information and for the coordination between both countries with the aim of planning joint operations to tackle terrorism, arm and drug smuggling, and illegal immigration and human trafficking (art. 3, 5, 11). Nonetheless, the policepersons of the other country located in these centers cannot participate in the enforcement of such operations. These operations must be deployed by the policepersons national of the hosting country in collaboration with the forces of the other counterpart who could be specifically earmarked for the support of these operations (art. 9).

Following the joint communiqués of the Ministries of Interior of Spain and Morocco (Ministry of Interior of Spain, 2015, 2016), both countries agree that the PCC have fulfilled with their mandate and have “contributed to the good results of the police cooperation between both countries” in the above-mentioned areas. In the field of the irregular migration and human trafficking, the Minister of Interior of Spain highlighted in 2020 that the sharing of information, the joint operations carried out by both countries together with the EU (see, for instance, the coordination in the patrolling in the Atlantic and Mediterranean Seas or the Operation Indalo for the training of the Moroccan coastguards) and the reinforcement of the fences of Melilla and Ceuta had resulted in a decreasing of the 53.4% the irregular arrivals to Spain in 2019 in comparison with 2018 (Government Presidency of Spain, 2020).

Regarding the financing of the centers and the joint operations programmed by them, the agreement makes no explicit reference to an exact quantity of funds. Instead, it establishes that each part ‘shall determine of mutual agreement the material resources needed for the functioning of the PCC’ (art. 6.1), while the agreement ‘shall be implemented within the budgetary limits of each part’ (art. 13). Either the budget of the Ministry of Interior of Spain nor the budget of the Ministry of Interior of Morocco provides enough detail about the funds earmarked to the financing of the PCC and the operations carried out subject to the budget lines of international police cooperation.

In a recent public consultation of Access Info Europe to the Ministry of Interior of Spain on the total amount of transfers from Spain to Morocco to achieve the aims of this agreement and their deployment by the Moroccan government, the Ministry of Interior has denied providing them. The Spanish Ministry has argued that making these data available ‘can compromise the effectiveness of the police cooperation between both countries, especially in the fight against human trafficking and irregular migration’ (Resolution 565/2020 of the Council of Transparency and Good Governance of Spain, 2020:2). The Council of Transparency and Good Governance of Spain accepted this argument of the Spanish Government in its resolution 565/2020, thus making this information unavailable for the public, academics and interested persons both in Spain and in Morocco. A similar situation is encountered in Morocco, where accountability measures are being taken but where data are still not available (Kingdom of Morocco, 2021).

However, some data can be extracted from the public announcements of the Ministries of Interior of Spain and Morocco and the official data of the funds transferred by Spain to Morocco through EU funds for police cooperation and the fight against ‘irregular’ migration. In this sense, 26 million € were transferred to the Ministry of Interior of Morocco through the Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas (FIIAPP) for the acquisition of vehicles to patrol the border in July 2019 (Council of Ministers of Spain, 2019; Pérez, 2019). In addition, the Ministry of Interior of Spain announced on 19th July 2019 that received a 30 million € loan through the Contingency Fund to finance the fight against ‘irregular migration’ and human trafficking of the Ministry of Interior of Morocco (Government Presidency of Spain, 2019). Furthermore, Spain has actively advocated for Morocco to receive

more funds for the migration management since the early 1990s, when the first agreement between the two countries was signed.

Consequently, the North-African country has received more than 342 million € from the EU since 2013 in terms of migration cooperation through the EU Fiduciary Emergency Fund for Africa, or the European Neighborhood Instrument (ENI); 140 million € through the EU Emergency Trust Fund for Africa (EUTF) for reinforcing the border control both at land and at sea by acquiring new surveillance technology (and where Spanish FIIAPP participates) in 2018; or 101 million € for fighting the ‘irregular migration’ and human trafficking and 389 million € for reform, inclusive development and border management projects in December 2019 (Statewatch, 2019; PorCausa, 2020). However, after the surge in migrant arrivals to the Canary Islands (Spain) in 2020 and the greater demand of cooperation of Spain to Morocco in fighting ‘irregular’ migration, the North-African country has demanded increasing financial support to the EU (around 435 million € per year) (Kingdom of Morocco, 2021; Martín & De Miguel, 2021).

4.2. EU-Turkey statement (18 March 2016).

For analytical purposes, the study of the observance of the compromises assumed by the EU member states and Turkey in 2016 will be structured in four blocs: the cooperation for the return of ‘illegal’ migrants to Turkey (arts.1-2), the cooperation for the prevention of new sea and land routes for illegal migration opening from Turkey to the EU (art. 3), the 6 billion € transfer to Turkey assumed by the EU (art. 6), and the fulfillment of the political features of the agreement (arts. 4, 5, 8, 9).

Firstly, according to the UNHCR and European Commission data, around 28300 Syrian refugees recognized by Turkey have been resettled in EU countries, while 2735 ‘irregular’ migrants, asylum seekers whose application had been denied or Syrian nationals arriving to Greek islands have been returned to Turkey since April 2016 to March 2020 (UNCHR, 2020c, European Commission, 2020b). From them, 404 were Syrian nationals (19% of the total number of persons returned), while Pakistani nationals constitute the largest group of returnees (35% of the total), followed by Algerians, Afghans and Iraqis. In March 2020, returns were suspended due to the coronavirus outbreak, and they have not been restarted yet by the time of writing this

document. Indeed, Turkey is rejecting the Greece request for the country to readmit 1,450 returnees in 2021 (European Commission & High Representative, 2021).

In general, Commission reports on the progress made in the implementation of the EU-Turkey statement often makes references to the need of enhancing and speeding up the return procedures accordingly to the speed of the resettlement procedures of Syrian refugees in the EU. For instance, in its 6th report, Commission stated that “efforts to provide migrants with the possibility of effective return either to Turkey or to their countries of origin need to continue” (European Commission, 2017:5). In the 2019 general report on the European Agenda of Migration, Commission considered that ‘returns of all new irregular migrants from Greece to Turkey under the Statement is a continuous challenge (...), also linked to the lengthy asylum procedures currently in place in Greece’ (European Commission, 2019: 6). Similar conclusions are reached by the High Representative, who affirms that ‘the slow pace of returns has been an issue throughout the implementation of the Statement’ (European Commission & High Representative, 2021:8).

Secondly, some instability can be appreciated in the cooperation between Turkey and the EU to avoid the opening of new routes to European territory. On the one hand, Turkey, Greece and the EU (through Frontex) carry out coordinated patrolling operations to curb smuggling, human trafficking and ‘irregular’ migration, as well as to carry out coast guard functions of rescuing migrants at sea (Frontex, 2021). This is done in the context of the 2016 EU-Turkey Statement but also in the context of the 2012 MoU signed between Turkey and Frontex (Directorate General of Migration Management of Turkey, 2021). In the EU side, the Greek coastguards, together with more than 600 Frontex guest officers and NATO support, patrol the waters of the Hellenian country in the framework of the Operation Poseidon (Frontex, 2021). According to Council data (2021), more than 129,302 people were intercepted at the sea and rescued since 2015 up to March 2021 in this operation. In the Turkey side, the country has captured 1.232.083 ‘irregular’ migrants since 2016 up to May 2021 in its tasks of patrolling the waters of Turkey in the Aegean Sea and the land migration routes to Europe, according to the data provided by the Directorate General of Migration Management of Turkey (2021b).

On the other hand, this cooperation has been subject to ups and downs due to political tensions between Turkey and the EU, especially to what concerns the Cyprus

territorial dispute, the delimitation of the waters between Turkey and Greece, and Turkey action in Syria (Commission & High Representative, 2021). For instance, in February 2020, Turkish President Erdogan encouraged refugees and migrants in Turkey to cross the border to Greece and Bulgaria in a sign of protest for the promised EU funds for refugees “arriving too slowly”, although analysts argued that geopolitical reasons were behind such call (Smith & Busby, 2020; France 24, 2020; Tocci, 2020). More than 18.000 migrants were said to approach the border according to Turkish government (and ‘millions could be expected’ in words of President Erdogan), while Greece reported 4.000 illegal entries (Smith & Busby, 2020). This movement clearly went against the compromise assumed by Turkey in the 2016 Statement reflected in its article 3.

Thirdly, considering the €6 billion transfer from the EU to Turkey through the EU Facility for Refugees in Turkey, EU member states agreed in February 2016 on the distribution of the financing for the first tranche (2016-2017). €1 billion would be funded from the EU budget and €2 billion would be funded with contributions from member states, being Germany, France, the United Kingdom, Italy and Spain the countries which would contribute the most in absolute terms (Council of the EU, 2016). The funding of the second tranche (2018-2019, being contracting period extended to 2020) followed the same structure: €1 billion from the EU budget and €2 billion from member states (Council of the EU, 2018).

These funds earmarked to the Facility for Refugees in Turkey have been channeled through different instruments (Instrument for Pre-Accession Assistance - IPA-, the Humanitarian Implementation Plan for Turkey -HIP-, the EU Emergency Trust Fund for Africa, and more), as well as through diverse actors (NGOs working in Turkey, United Nations agencies, EU member states cooperation agencies and development banks, or Turkish Ministries directly). Between 2016-2020, more than 100 projects²¹ have been carried out with two focuses: providing humanitarian aid to refugees and asylum seekers, and booster development of communities where migrants and refugees were residing in (health, education, socio-economic support) (European Commission, 2020c). However, two migration management projects have been also funded in the first tranche: a €20 million project of the IOM to enhance the capacity of

²¹ Projects committed/decided, contracted and disbursed by 15th March 2021 can be consulted in the following document: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/facility_table.pdf

the Turkish Coast Guard, which materialized in the delivery of 6 lifeboats and the training of 1,081 Turkish border coast officials; and a project for personnel training and funding of 21 removal centers in Turkey (European Commission, 2020d).

EU institutions, together with the Turkish government, have extensively audited the expenditure of the funds pursuant to the approved projects by both parties. Regarding the execution of the funds of the first tranche, the conclusions of the European Court of Auditors (ECA) in its Special Report 27/2018 are of relevance. The ECA finds that, although the Facility quickly mobilized the amount of funding needed, the expenditure of the funds was not fully coordinated, and disagreements between Commission and Turkey led to some areas such as health, education or socioeconomic support to not being sufficiently covered; that projects “provided helpful support to refugees (...) but half of them have not yet achieved their expected outcomes”, including humanitarian projects (ECA, 2018:5); or that NGOs and other non-state actors had had difficulties in accessing migrants and refugees due to Turkish authorities reluctance to do so. The evaluation of the second tranche is under development by the time of writing this document because some funds are still being executed (around a 35% of the total €6 billion) (Commission & High Representative, 2021). However, according to Commission latest report on the Facility for Refugees in Turkey (2020d), progresses have been made in terms of “complementarity of instruments, reduction of indirect support costs and the development of a transition strategy” (European Commission, 2020d:16).

Finally, some other aspects of the Statement have not been fulfilled. Article 4 mentions the possibility of activating a Voluntary Humanitarian Admission Scheme (VHAS) once irregular crossings to the EU from Turkey declined. As the High Representative states, EU member states and Turkey endorsed the VHAS in December 2017, but it has not been activated yet although ‘irregular’ crossings have drastically reduced (Commission & High Representative, 2021). Regarding the achievement of visa liberalization, upgrade of the Customs Union and re-energization of the accession process, the EU has repeatedly argued that Turkey still does not comply with the requirements for either of these points due to the increasing centralism of President Erdogan, his attacks to the independence of the judicial branch, the several challenges the Turkish economy is facing or the territorial disputes the country holds with Cyprus (European Commission, 2021b).

4.3. Italy-Libya Memorandum of Understanding on cooperation in the fields of development, fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders (2 February 2017).

To begin must be noted that the Italy-Libyan Government of National Accord MoU signed in 2017 was renovated without amendments in February 2020 following its article 8, which affirms that the MoU “will be renovated by tacit agreement at the deadline for an equivalent period [triennial]”. The Italian government promised to improve it, paying special attention to the conditions of migrant reception centers and greatly involving the United Nations, but the content of such negotiations is still unknown (Maccanico, 2020). Therefore, the terms of the MoU, including the commitment of Italy and the EU ultimately to fund the MoU initiatives, are still in force. For the present analysis, it will be considered the compliance of four MoU areas since its signing in 2017 until present times: Libyan border enforcement, reception centers, and development programs.

Firstly, regarding the enforcement of the Libyan border, the MoU explicitly states the need to take actions to complete “the system of border control in Southern Libya” (art. 2.1.), whereas the preamble remarks “the importance of Libyan land and sea borders’ control and security”. In consequence, the Italian Government commits “to provide technical and technologic support to [the Libyan] institutions in charge of the fight against illegal immigration” (art. 1.3). To those aims, the Italian Ministry of Interior launched the project “Support to integrated border and migration management in Libya (first phase)” in July 2017 with a €42 million funding of the EU Emergency Trust Fund for Africa for the 2017-2020 period (European Commission, 2021c). In 2018, an additional €15 million second phase of the project was passed for the 2018-2021 period (still in implementation) (European Commission, 2021d).

The project was implemented in the framework of other EU operations in which Italy was and is still participating, such as the European Union Naval Force Mediterranean (EUNAVFOR MED) Operation Sophia, replaced by Operation Irini in 2021, or the EU Border Assistance Mission in Libya (EUBAM) (Latici, 2021; Political and Security Committee, 2021). It focused on the training of Libyan coastguards, border officials, ministries officials and other relevant actors on “security, border management, countering violent extremism, conflict prevention and human rights” (European Commission, 2021c). According to the official evaluation of the first phase of the

project, 118 officials were trained (40 of them in the *Guarda di Finanza* in Gaeta, Italy), which represented a 61% of the total target aimed by Italy in its project proposal (European Commission, 2021c). The second phase is still under development with a complementary focus on the respect to migrants' rights at reception centers. No further monitoring data are provided in this regard (European Commission, 2021d).

Moreover, during the 2017-2020 period, the Italian Ministry of Interior provided the Libyan Ministries of Interior and Defense with 12 vessels free of charge (more vessels are expected to be provided), repaired 4 patrol vessels of the Libyan Coast Guard and Port Security (LCGPS) and trained Libyan crews on their use (Ministry of Interior of Italy, 2019, 2020). However, the Italian Ministry highlights as a major challenge that two out of three of the vessels provided to Libya break down without the Libyan staff being capable of repairing them (Ministry of Interior of Italy, 2020). In addition to this initiative, a €45 million EUBAM program was approved in December 2018 to create a Maritime Rescue Coordination Center and the and foster the border management in the southern Libyan border (European Commission, 2018).

Secondly, the MoU reflects in its preamble the need to “identify urgent solutions to the issue of clandestine migrants crossing Libya to reach Europe by sea, through the provision of reception camps in Libya”, which Italy commits to fund (art. 2.2) and to train their personnel (art. 2.3). In addition, the Italian Government commits to support the international organizations present in Libya who are working with migrants (in these centers or not) and whose efforts “are also aimed at returning migrants to their countries of origin” (art. 2.5).

According to the latest data of the Global Detention Project (2020), there were more than 24 immigration detention centers in Libya by 2016, and some of them (especially in the South) are not controlled by the Department for Combating Illegal Immigration (DCIM) of the Libyan Government of National Accord, but rather by Libyan militias. In the April 2017 European Council decision, the Italian Government and EU member states agreed on adopting a €48 million package for improving the living conditions of migrants in Libya, including in detention centers, by providing them with basic healthcare and psychological aid, hygiene kits or learning supplies (European Commission, 2017b). Moreover, additional funding was approved in 2019 to that aim (Council of the EU, 2021b). Regarding the training of the personnel of migrant detention centers, no official specific data is published either by the Italian Government

neither by the Libyan Government, who include these personnel in the training provided to Libyan officials within the above-mentioned border enforcement project.

Considering the collaboration of Italy and the EU with international organizations present in the North-African country, the EU highlights its assistance to IOM programs of voluntary return of migrants in Libya to their origin countries. According to Council data, around 50,000 migrants returned to their origin countries thanks to EU-funded programs in the 2017-2020 period (Council of the EU, 2020).

Thirdly, this collaboration with international organizations extends to the field of development cooperation linked to “the elimination of the root causes of irregular migration” (art. 2.4) and to “job creation initiatives” (art. 2.6), as well as to some other areas. For instance, the EU supports the United Nations plan for achieving a sustainable solution to the Libyan conflict through the Instrument contributing to Stability and Peace (European Commission, 2021e). But in development and migration, the “the EU Emergency Trust Fund for Africa is the main tool in support of migration related actions in Libya”, with more than €445 million committed in the 2015-2020 period (European Commission, 2021e). In this sense, some projects earmarked in the Trust Fund can be underscored. In 2017, €42 million were committed for the socio-economic development of Libya at the municipal level with the aim of providing access to basic services to migrants and locals and to foster access to employment (European Commission, 2017b). In 2018, an EU-Italy €50 million funded project developed with UNICEF, the United Nations Development Program and the Government of National Accord were approved to provide locals and migrants with basic services as well in 24 municipalities (European Commission, 2018b). Similarly, €31 million were destined to the improvement of migration management and migrant conditions within Libya together with the UNHCR, the United Nations Population Fund (UNFPA), International Medical Corps (IMC) and the Italian NGO CESVI (European Commission, 2019b). By the time of writing this document, further funds for similar projects are considered, as cooperation between the EU-Italy with Libya is planned in a year by year basis due to the political instability in the country (European Commission, 2021e).

Despite these investments and funds implementation, concerns arise regarding the impact of these border externalization agreements and on whether they are effective to their aims or not. Thus, a proper examination of this aspect seems appropriate.

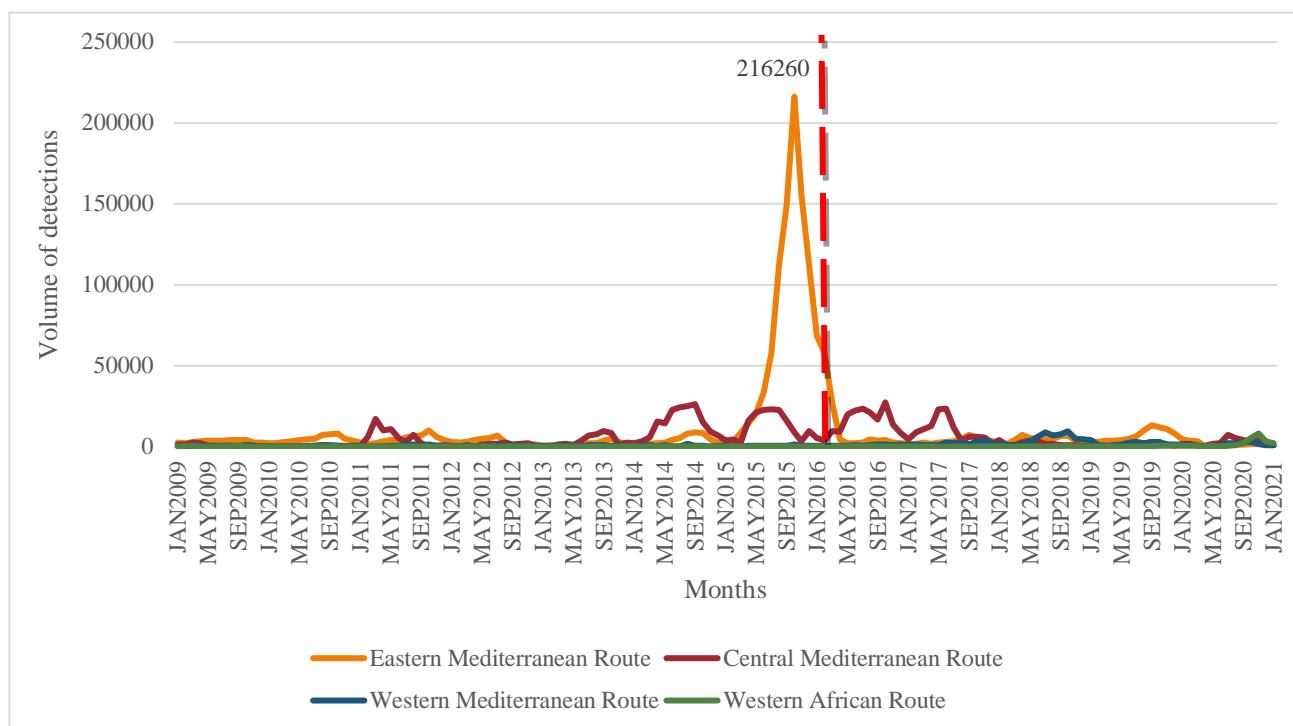
5. EFFECTIVENESS OF THE AGREEMENTS ON BORDER EXTERNALIZATION OF THE EU TOWARDS THIRD COUNTRIES

Following to what it has been stated in chapter 1, section 3, the effectiveness of the agreements for the externalization of the management of migration flows of the EU towards third countries will be measured according to the aim these agreements pursue: that migrants, asylum seekers and refugees do not reach the EU borders through ‘irregular’ channels.

To that aim, the data of Frontex (2021b) on detections of ‘illegal’ border-crossing on entry by migration routes from 2009 to 2021 will be analyzed. The EU agency collects the data reported by EU member states ministries and Schengen Associated Countries on detections of illegal border-crossings on entry between Border Control Posts (BCPs) whether by land or by sea. As Frontex (2021b) clarifies, it refers to the volume of crossings rather than to the volume of persons who cross the borders because one person may cross the same border several times. The collected data are aggregated by migrations routes. For the present analysis, the migration routes of interest are the Western African, the Western Mediterranean, the Central Mediterranean and the Eastern Mediterranean routes. For the analysis of the Central Mediterranean route, where Libya and Tunisia are both origin countries, it must be noted that Libya has been the main origin country until 2019, when the migration of the own Tunisian people surpassed the volume of migrants abandoning Libya (Frontex, 2021c). The frequency of the data reported is monthly, which allows a greater level of detail when analyzing the effect of the entry into force of the border externalization agreements.

Figure 3 represents the volume of detections of illegal border-crossings by routes between 2009 and 2021.

Figure 3. Detections of illegal border-crossing on entry in the Western African, Western Mediterranean, Central Mediterranean & Eastern Mediterranean routes (2009-2021)



Source: Frontex (2021). Own elaboration.

Some relevant conclusions can be drawn from this figure. Firstly, as it is appreciable, the Eastern Mediterranean route is the route where more illegal border-crossings are detected in aggregate terms. In this sense, the greatest volume of arrivals was registered in October 2015, where 216,260 entries were recorded only in the Eastern Mediterranean route. Among them, Syrians represented most migrants and asylum seekers who could cross the border, with more than 109,671 entries registered. They were followed by Afghans, with 65,642 entries, and Iraq migrant and asylum seekers, with 22,670 entries registered only in October 2015. This is consistent with the war situation experienced in Syria, aggravated by the expansion of DAESH between Syria and Iraq, as well as with the worsening of the protracted conflict between Taliban and the official government in Afghanistan.

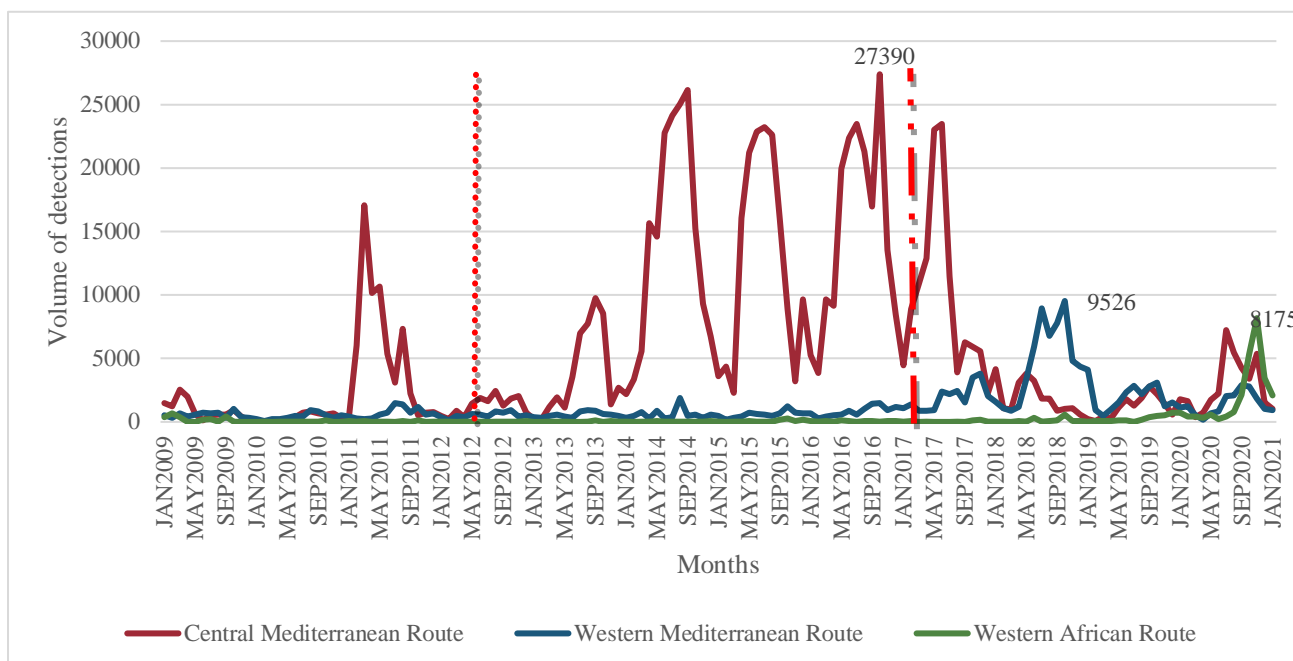
Secondly, on 29 November 2015, the EU and Turkey activated their joint action plan to curb ‘irregular’ border-crossings or provide Syrians with temporary protection in Turkey, while on 18 March 2016, the EU-Turkey statement took place. The EU-Turkey Statement of March 2016 is represented by the red dashed line in Figure 3. As it can be appreciated, the EU-Turkey Statement does not represent a significant change in the trend which started right after the implementation of the EU-Turkey joint plan in

November 2015. Since November 2015, a drastic fall in the illegal border-crossings can be seen, which may mean that measures taken to avoid them are effective to the aim of preventing Syrian, Afghan or Iraqi asylum seekers and migrants to cross EU borders.

In less than four months, crossings fell to from 216,260 to 4,324 in April 2016. Since then, crossings per month have remained stable between the 2,000 to the 4,000 crossings, except from concrete periods: in April, September and October 2018, around 6,000 and 7,000 migrants and asylum seekers achieved to ‘illegally’ cross the border each month, whereas in the second half of 2019 (from June to December), 6,000 to 10,000 migrants and asylum seekers crossed. Since April 2020 to June 2020, ‘illegal’ border crossings fell to minimum numbers not seen since collecting data. This latter fall in arrivals may be clearly related to the covid-19 restrictions to mobility, both in Turkey and in the EU. However, the referred periods between 2018 and 2019 seem to coincide with moments of diplomatic or geopolitical tensions between Turkey and the EU due to the authoritarian and controversial movements of President Erdogan after the failed coup d’état in July 2016, which ultimately led the EU to freeze the accession process of Turkey to the Union (Soler, 2019).

However, the peak in ‘illegal’ border-crossings at the Eastern Mediterranean route in 2015 summer precludes to correctly observe the effectiveness and effects of the Spain-Morocco and Italy-Libya agreements. Thus, *Figure 4* represents the volume of ‘illegal’ border-crossings in the Central Mediterranean, Western Mediterranean and Western African routes since 2009 to 2021.

Figure 4. Detections of illegal border-crossing on entry in the Central Mediterranean, Western Mediterranean & Western African routes (2009-2021)



Source: Frontex (2021). Own elaboration.

On the one hand, the entry into force of the Spain-Morocco agreement on cross-border police cooperation in May 2012 represented with the red dot line seems not to have a significant or immediate impact on ‘illegal’ border-crossings. In fact, arrivals remain constant and relatively low in comparison with other routes both at the Western Mediterranean and Western African routes until 2017. At the Western Mediterranean, around 300 to 600 arrivals were registered per month, whereas none or 60 to 100 arrivals were registered at the Western African route per month between the 2012-2017 period. Nevertheless, by 2017, an increase in illegal border-crossings is detected in the Western Mediterranean route, where ‘illegal’ border crossings reach a maximum in October 2018, with 9,526 in only one month. Although the volume of detections reduces, this trend continues in the years of 2019 and 2020, with 2,000, 3,000 or 5,000 crossings detected in some months.

A similar effect but in a different period can be observed in the Western African route, where crossings exponentially increased from June 2020 to November 2020, passing from around 200 crossings in June to 8,175 crossings in November only. After November 2020, a decreasing trend starts, although by January 2021, crossings remain high in comparison with trend of the last decade in the Western African route.

Therefore, the effectiveness of the Spain-Morocco agreement to the terms it was signed for could be compromised. In this case, and contrary to what it was argued in the Turkish case, the correlation between this increase in ‘illegal’ border-crossings and specific political or diplomatic circumstances between the EU-Spain and Morocco seems more diffuse. However, some authors consider that these increases can respond to the tensions between the North African country and the EU after the CJEU judgment on *Western Sahara Campaign UK*²² of 2018 (Reslow, 2020; Suárez-Collado & Contini, 2021). In short, the CJEU declared that the Western Sahara territories should be excluded from the Fisheries Partnership Agreement (FPA) between the EU and Morocco because the funds earned by Morocco thanks to this agreement were not being invested in the Western Sahara territories, thus breaching United Nations resolutions in this fact. This judgment, which was contrary to the Moroccan positions, was pronounced during the negotiations between the EU and Morocco on the FPA renewal in 2018.

Thus, it is argued that Morocco may have allowed a greater level of ‘illegal’ crossings to exert a greater pressure on EU states during negotiations in order to keep the FPA in Sahrawi territories. This is what Greenhill has called of ‘coercive engineered migration’ (Greenhill, 2019). The new FPA was finally concluded in July 2019, although some authors consider that Morocco may have continued to resort to the weaponization of migration to achieve concrete economic or diplomatic outcomes in its relation with the EU and Spain (Garcés, 2021). However, these theses must be object of further analysis, as recent increases in ‘illegal’ border crossings could respond to other factors, such as the economic hit the covid-19 pandemic has meant for the population of the origin countries of the migrants arriving to EU borders through these routes.

On the other hand, the impact of the Italy-Libya MoU of February 2017 represented in Figure 4 with the dash-dot red line seems not to have had an immediate effect in the volume of ‘illegal’ border-crossings, but rather a medium-term effect. As it can be appreciated, the ‘irregular’ arrivals to Italy and Malta exponentially increased in 2011 after the outburst of the Arab Spring in Libya and Tunisia, passing from 359 illegal crossings in January 2011 to 17,062 crossings in March 2011. After this initial period, crossings fell to 200 to around 2000 in the October 2011-April 2013 period.

²² Case C-266/16, *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs* ECLI:EU:C:2018:118.

However, since June 2013, a pattern of ups and downs of similar intensity and cadence in detections of illegal border-crossing can be appreciated. In this sense, crossings start to increase between January and March (2014, 2015, 2016, 2017), they exponentially increase until the months of summer (September 2014, July 2015, June 2017) or fall (October 2016) and they decline again until the next months of January-March. This cycle repeats in the years of 2014, 2015, 2016 and 2017 and leads to reach illegal border-crossing maximums of 22,000-27,000 migrants and asylum seekers in only one month: 26,125 in September 2014, 23,205 in July 2015, 23,498 in July 2016, 27,390 in October 2016 or 23,461 in June 2017. In this sense, the signing of the Italy-Libya MOU in February 2017 does not impede this cycle to happen in 2017.

Nevertheless, and considering that many of the causes which led migrants and asylum seekers to ‘illegally’ cross the EU border by sea persisted, the measures taken seem to impede the cycle to repeat in the 2018 and 2019 years, although a certain amount of crossings continued. In 2020, despite the covid-19 pandemic, border-crossings increased in the second half of the year until reaching a volume of 7,232 crossings in July 2020. Nonetheless, the intensity of such border-crossing increase differs from those of the 2014-2017 years.

However, for further understanding whether these impacts and effects are due to the implementation (or lack of) these agreements, some other elements and non-intended effects must be assessed.

5.1. Spatial substitution effects.

Firstly, it can be possible that illegal border-crossings reduce or increase due to a diversion of migrants and asylum seekers from some routes to others. This may happen if some of these routes are increasingly fortified or patrolled because of these border externalization agreements. To appreciate this effect, the nationality of migrants who are detected in illegal border-crossing in each route could shed light.

Due to geographic and social capital reasons, migrants tend to use similar ‘irregular’ migration routes when legal pathways to migrate are not sufficient. Therefore, the nationalities of those who cross the border ‘illegally’ through a specific route can be rather expected. However, if there is a significant increase in the number of migrants of a nationality which is not frequent in that specific route, then two

explanations could be found. On the one hand, a conflict or another cause of forced migration may have arisen in a country, thus forcing its people to flee to the nearer countries or to seek asylum in other countries, including EU ones. On the other hand, if a route has been closed due to a greater patrolling of the forces of that state resulting from the increase of their technical and human capabilities thanks to the above-mentioned agreements, migrants may seek other routes. This can be done by resorting to smuggling networks too. Therefore, an interconnected analysis of the main nationalities of the migrants who have ‘illegally’ crossed through the routes of analysis could allow to appreciate this effect (if exists).

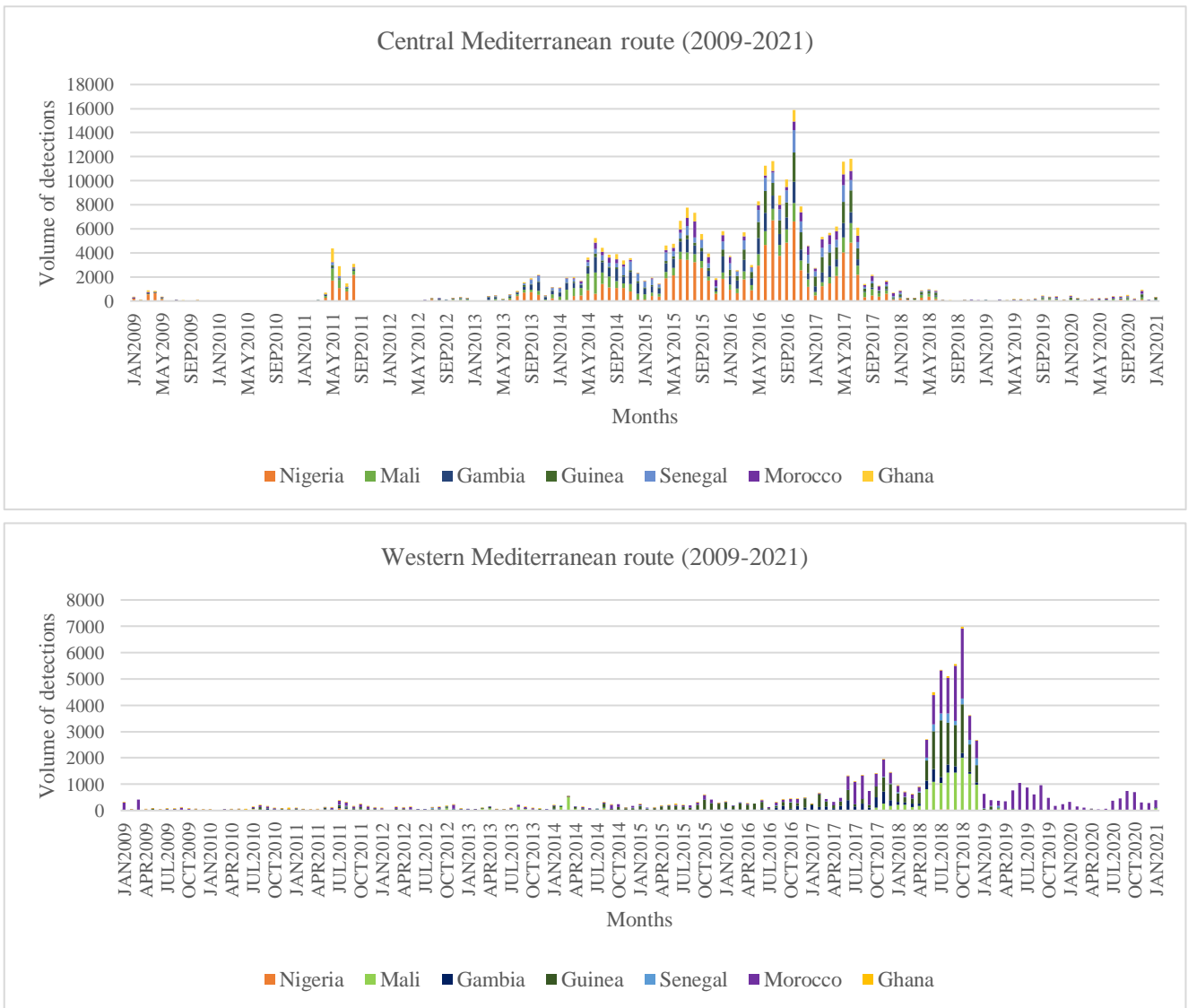
According to the data provided by Frontex (2021b) on the nationalities of the migrants whose illegal border-cross is detected between 2009-2021, some conclusions can be drawn. In general terms, a pattern of main nationalities can be appreciated in each route. The Eastern Mediterranean route is an itinerary usually followed by people from Asia, Middle East or Eastern Africa: Afghanistan, Pakistan, Iraq, Iran, Syria, Palestine and Somalia. Regarding the Central Mediterranean route, the main origin countries of migrants are Eritrea, Nigeria, Tunisia, Syria, Somalia, Mali, Gambia, Sudan, Côte d’Ivoire, Guinea, Senegal, Ghana, Bangladesh or Egypt. In the Western Mediterranean route, migrants from Algeria, Morocco, Guinea, Mali, Côte d’Ivoire, Gambia, Cameroon, Senegal, Guinea-Bissau or Mauritania can be found. Similarly, the Western African route is generally traversed by migrants of similar nationalities than those of the Western Mediterranean route.

Consequently, there are many countries whose nationals can migrate through one, two or three of these routes in greater or lesser volume. Therefore, following the above-mentioned appreciations on the fall or increase in migrant arrivals, it will be considered the main nationalities of migrants whose ‘illegal’ cross-border entries are registered. For analytical purposes, a time criterion will be used to describe possible spatial substitution effects which may arise between routes when border externalization agreements are enforced in each of these routes.

In this sense, the first agreement to be enforced is the Spain-Morocco agreement on cross-border police cooperation in 2012. As it has been pointed out, the volume of irregular border-crossings remained relatively low according to the trend happening before its entry into force and which continued afterwards until 2017. The greater patrolling and surveillance of the Moroccan parts of these routes could have led

migrants to resort to the Central Mediterranean route. In the 2012-2013 period, no significant increase can be appreciated in the illegal border-crossings of nationals from the Sub-Saharan countries which used to resort to the Western African and Western Mediterranean routes in the Central Mediterranean route. However, in the 2014-2017, there is a relevant increase in the volume of migrants from Mali, Gambia, Nigeria, Senegal, Guinea and even from Morocco in comparison with previous years in the Central Mediterranean route as shown in *Figure 5*. This happened while the ‘illegal’ border-crossings of nationals of the same countries remained low in the Western Mediterranean route until 2017 despite their geographic proximity.

Figure 5. Detections of illegal border-crossing on entry* of nationals Nigeria, Mali, Gambia, Guinea, Senegal, Morocco and Ghana in the Central Mediterranean and Western Mediterranean routes (2009-2021)



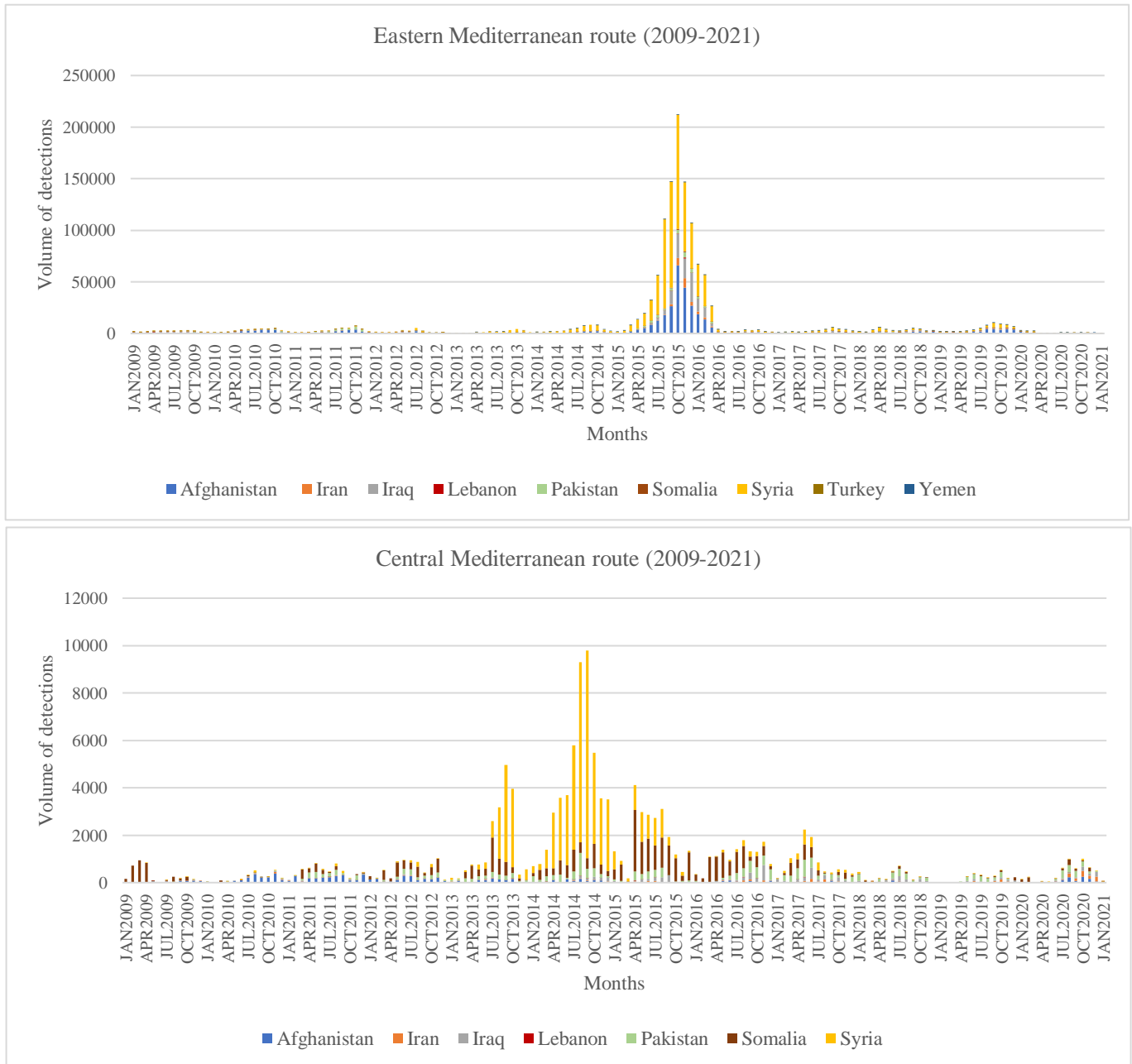
Source: Frontex (2021b). Own elaboration.
 *Data of detections at land and at sea are aggregated by route

Regarding the spatial substitution effects of the EU-Turkey Statement of March 2016, it must be pointed out that the closer and most likely route that migrants and asylum seekers who used to follow the Eastern Mediterranean route can resort to is the Central Mediterranean route. As it has been mentioned, the Eastern Mediterranean route is frequently traversed by migrants coming from Asian or Middle East countries, being most of them asylum seekers or refugees. In this case, *Figure 6* shows how asylum seekers from Syria used to follow the Central and the Eastern Mediterranean routes to flee, having more success in arriving to European borders through the Central Mediterranean route at first instance with less intensity (2013-2014), and then through the Eastern Mediterranean route in larger proportion (2015-2016). After the entry into force of the Statement, detections drastically decrease, even if the conflict persisted. As it is going to be studied in subchapter 5.3, one hypothesis is that these asylum seekers could have stayed in Turkey, Libya or other adjacent countries, rather than crossing to European territory.

Considering other nationalities of interest, there is no significant diversion of migrants from one route to another after the entry into force of the Statement. In fact, the volume of detections of migrants from Afghanistan, Iran, Iraq or Lebanon is not relevant enough in absolute or relative terms in the Central Mediterranean route to be considered that a spatial diversion effect could exist. Similarly, the detection of Pakistani migrants remain constant in the Central Mediterranean route, although no relevant increase can be appreciated after the enforcement of the EU-Turkey Statement. Moreover, there are nearly no records of Yemeni asylum seekers in the Central Mediterranean route.

Therefore, this data initially indicate that no spatial substitution effect exists between the Eastern Mediterranean and the Central Mediterranean routes after the entry into force of the EU-Turkey Statement. However, further details shall be provided regarding the nationality of the migrant and refugee stock of each country after the enforcement of the border externalization agreements. These latter data could prove that a spatial diversion effect has existed if there is a significant increase in the volume of migrants and asylum seekers who used to follow other routes but they are rather inhabiting in a country of transit of another route.

Figure 6. Detections of illegal border-crossing on entry* of nationals from Afghanistan, Iran, Iraq, Lebanon, Pakistan, Somalia, Syria, Turkey and Yemen in the Eastern Mediterranean and Central Mediterranean routes (2009-2021)



Source: Frontex (2021b). Own elaboration.
 *Data of detections at land and at sea are aggregated by route

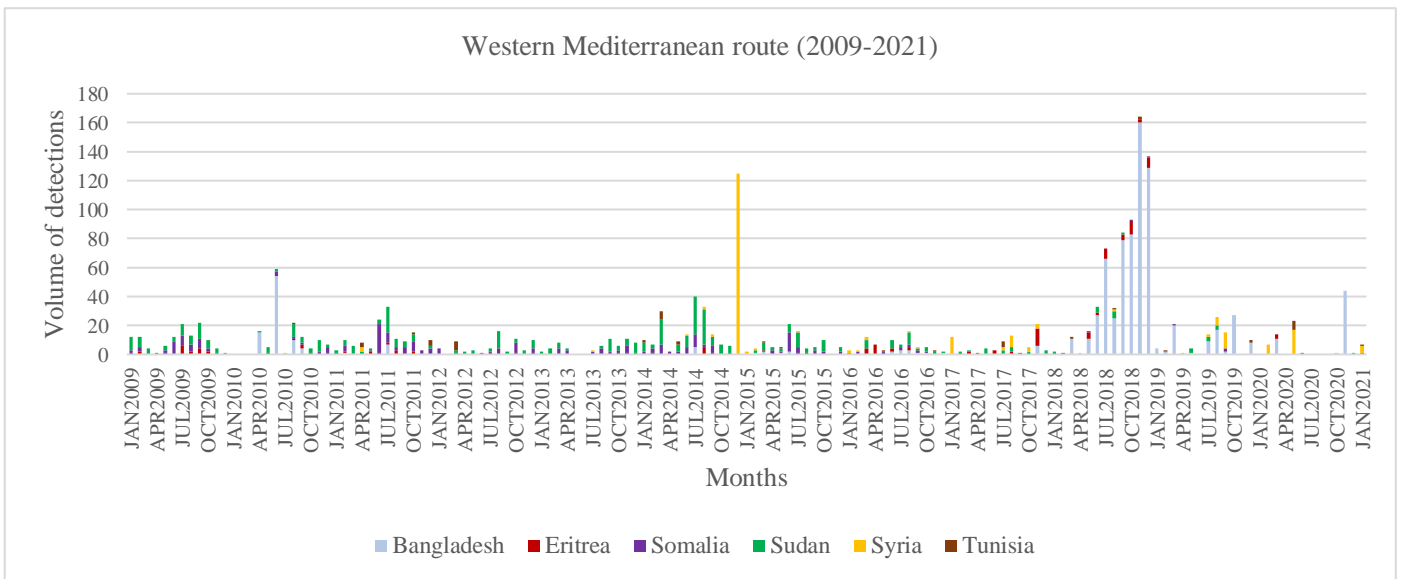
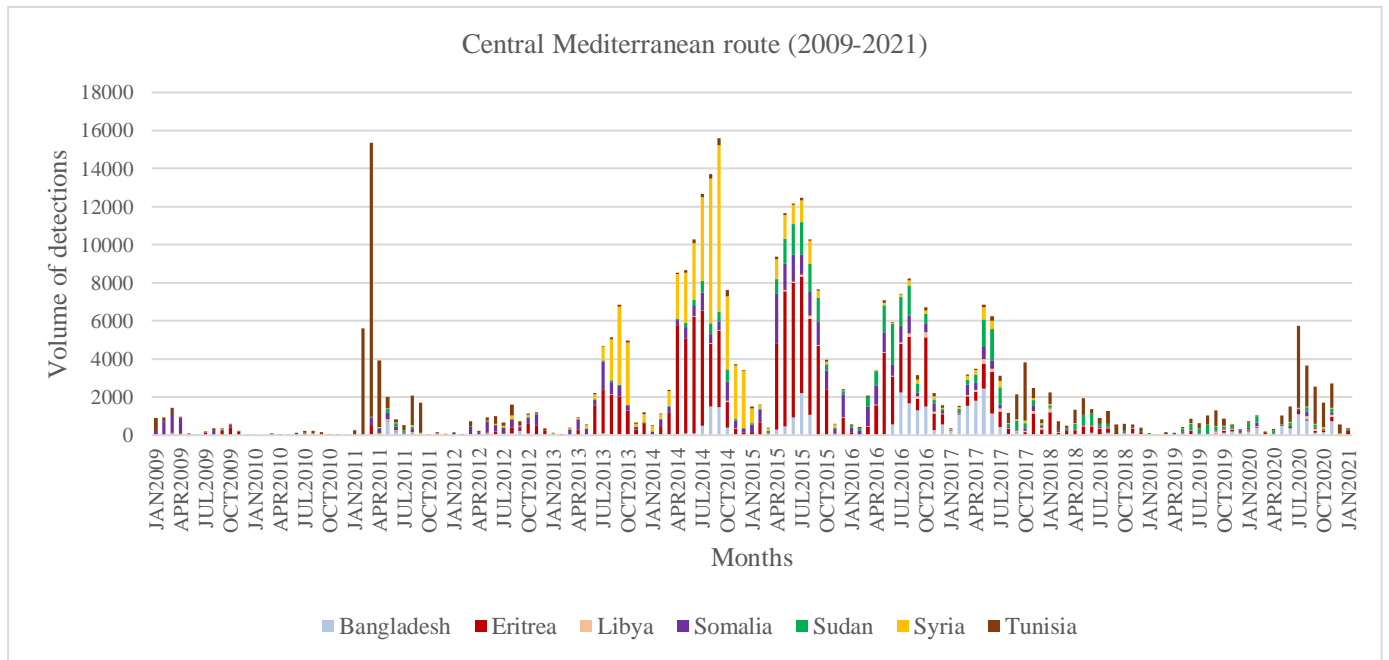
Finally, the implementation of the Italy-Libya MoU in February 2017 could have resulted in a diversion of migrants and asylum seekers to the Eastern Mediterranean or the Western Mediterranean routes (as well as to remain in Libya). However, the analysis of this effect in the Eastern Mediterranean route depending on the volume of detections of illegal cross-border entries through this route may not be useful.

This is because the arrivals to European borders through this route drastically decreased after the entry into force of the Statement. Therefore, this effect (if happened), would be rather appreciated in the nationality of migrant and refugee stock of Turkey during these years in subchapter 5.3. Having considered this fact, it may be of interest analyzing the possible spatial substitution effects that the Italy-Libya MoU may have had in the Western Mediterranean route.

As it can be regarded in *Figure 7*, before the implementation of the MoU, the main countries of origin of detected migrants and asylum seekers in the Central Mediterranean route were: Eritrea, Tunisia (going out from Tunisia mainly, rather from Libya), Syria, Somalia, Bangladesh and Sudan, among others which have been studied above (Nigeria, Mali, Gambia, and more). However, as it is clearly visible, there is nearly no spatial diversion of migrants from the Central Mediterranean route to the Western Mediterranean route except for some Bangladeshis migrants in 2018 and 2020 (whose maximum illegal-border crossings detected were 160 in November 2018). In fact, no Libyans or Somalians are detected.

These results are consistent with previous qualitative studies which demonstrate that migrants from Eastern African or Middle East countries which used to follow the Central Mediterranean route tend to avoid opting for the Western Mediterranean route (Ben Romdhane, 2019). Some of the reasons argued are the geographical distance, the need to pass through countries in conflict and with serious terrorism issues or the lack of resources to fund smugglers for these routes (Ben Romdhane, 2019).

Figure 7. Detections of illegal border-crossing on entry* of nationals from Bangladesh, Eritrea, Libya, Somalia, Sudan, Syria and Tunisia in the Central Mediterranean and Western Mediterranean routes (2009-2021)



Source: Frontex (2021b). Own elaboration,
 *Data of detections at land and at sea are aggregated by route

5.2. Inter-temporal substitution effects.

Secondly, it could be likely that the increase or reduction in the volume of arrivals to EU borders were the result of two opposing phenomena resulting from the enforcement of the border externalization agreements. On the one hand, arrivals could increase after the entry into force of these agreements because migrants seek to cross the border before greater patrolling or surveillance measures are implemented. This is what

it has been called a ‘now or never’ effect above. On the other hand, it could happen that these agreements have a dissuasive effect along time, which is said to be, that migrants do not find themselves capable of arriving to their destinations due to the greater protection of borders since the implementation of these agreements. Moreover, in the case of smugglers, they could find that there are less probabilities of success in bringing migrants to their destination due to these measures, thus waiting for these border enforcement measures to relax or finding new routes.

For the present article, it has been considered that the drivers of migration remain stable along time, except those which can lead to a sudden unexpected flow of migrants and asylum seekers, such as conflict driven factors. Therefore, it is argued that the volume of migrant flows will remain constant, no matter whether these migrants decide to stay in the foreign countries they are in (such as the countries of analysis - Turkey, Libya, Morocco...-) of whether they decide to move and try to cross to other countries (such as EU member states ones).

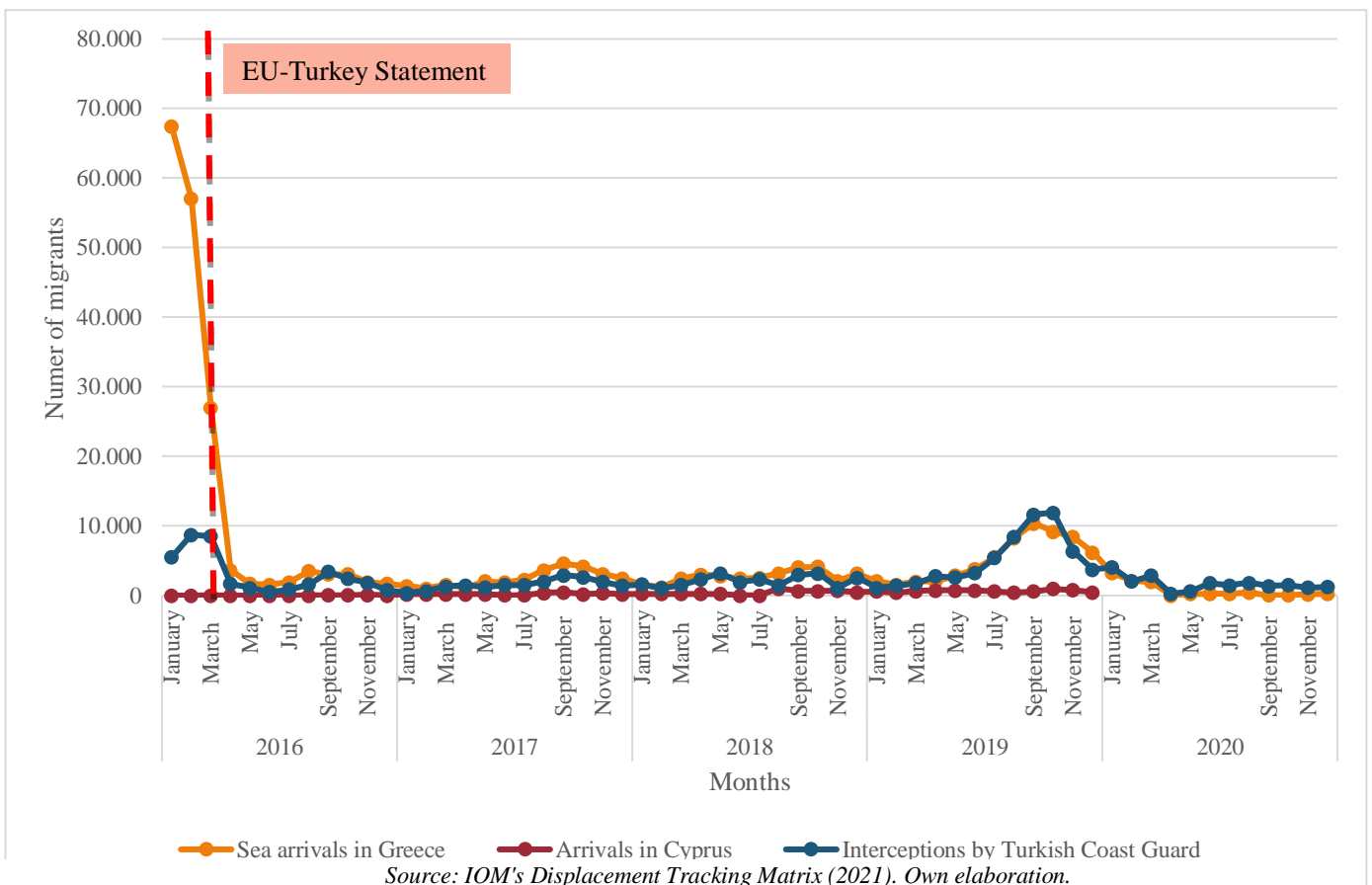
Thus, to study the existence of these inter-temporal effects, the data provided by the IOM’s Displacement Tracking Matrix (DTM, 2021) on sea and land arrivals of ‘irregular’ migrants and on migrants intercepted by transit and destination countries will be analyzed. The DTM dataset includes “all available data on attempted migrant crossings of the Mediterranean Sea from 2016 to current times” (DTM, 2021) provided by the IOM. Simultaneously, these data come from official governmental sources of Turkey, Libya, Tunisia, Algeria, Greece, Malta, Italy, Cyprus and Spain. However, the only country who is not reporting to the IOM is Morocco, which does not inform on the volume of migrants intercepted by the Moroccan coastguard.

The data of sea and land arrivals combined with the data of interceptions of migrants by the coastguard of Turkey or Libya can provide an optimal reference for detecting inter-temporal substitution effects resulting from border externalization agreements. If such effects exist, it is expected that the volume of ‘irregular’ arrivals increase before the implementation of the agreement. If the volume of ‘irregular’ arrivals does not increase, but rather does the volume of interceptions by Turkish or Libyan coastguards, that could mean that this inter-temporal effect exists but that coastguards are effective in intercepting migrants and avoiding their arrival to EU borders.

The lack of one of these two variables may preclude this analysis, as it happens in the Spain-Morocco case with the lack of data of migrants intercepted by Moroccan coastguard. The reason is that the increase or decrease of the volume of arrivals to Spain is mediated by the increase or decrease in the volume of interceptions by Morocco. This impedes interpreting whether they are the result of a lack of migrants trying to cross the border or a result of an increase in the volume of migrants trying to do so, or whether this increase or decrease is an outcome of an effective coastguard patrolling, which may demonstrate that an inter-temporal effect exists but that migrants have been avoided to arrive to Spanish territory. Consequently, the Spain-Morocco case cannot be studied in this case.

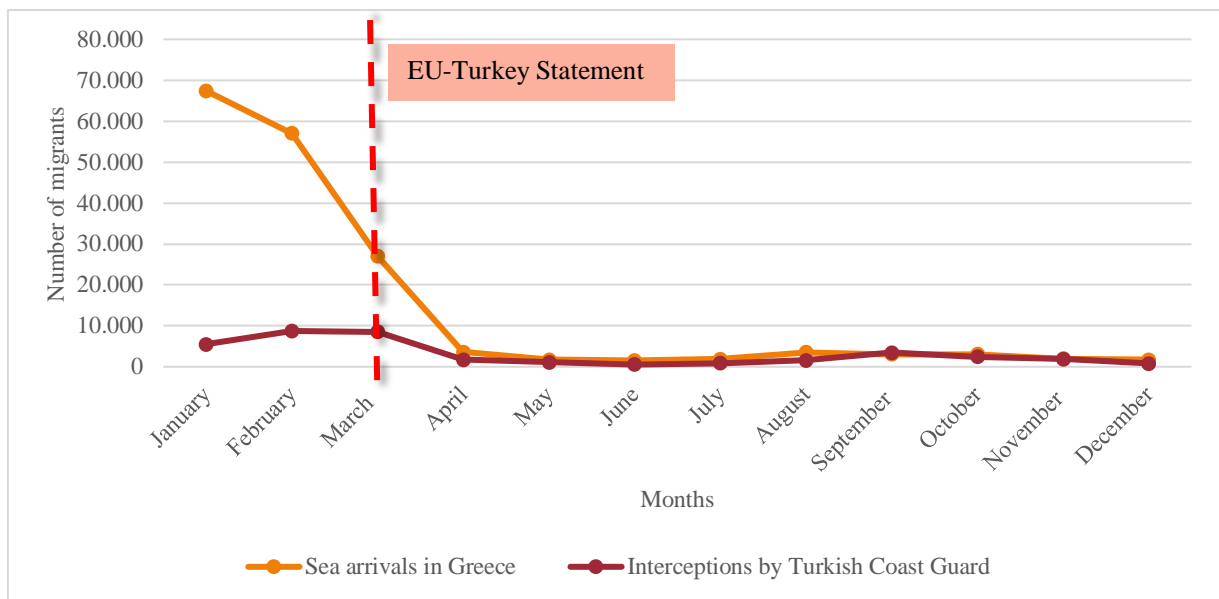
Regarding the effects of the EU-Turkey Statement, it seems that its enforcement has a more dissuasive effect rather than a 'now or never' effect as it can be appreciated in *Figure 8*. Accordingly, the volume of arrivals to Greece (in orange) and the volume of arrivals to Cyprus (in red) were drastically falling after the implementation of the Statement as it has been appreciated before. Consequently, the complete historical series demonstrate that the volume of arrivals were already decreasing. If we appreciate the volume of interceptions of the Turkish coastguard (in blue), we detect that it intercepts nearly 9,000 migrants in the months of February and March 2016, respectively.

Figure 8. Sea arrivals of 'irregular' migrants to Greece and Cyprus, and migrants intercepted by Turkish Coast Guard (2016-2020)



In *Figure 9*, which shows the volume of sea arrivals to Greece and the volume of interceptions of Turkish coastguard in 2016, this pattern can be better observed. Before the implementation of the Statement, arrivals were falling, while they do not increase in the month after its entry into force. This lack of increase in arrivals after March 2016 could be argued to respond to a better action of Turkish coastguards. However, interceptions do not rise either in April 2016, which means that there was a lack of migrants or asylum seekers trying to cross to EU territory.

Figure 9. Sea arrivals of 'irregular' migrants to Greece and interceptions by Turkish Coast Guard (2016)



Source: IOM's Displacement Tracking Matrix (2021). Own elaboration.

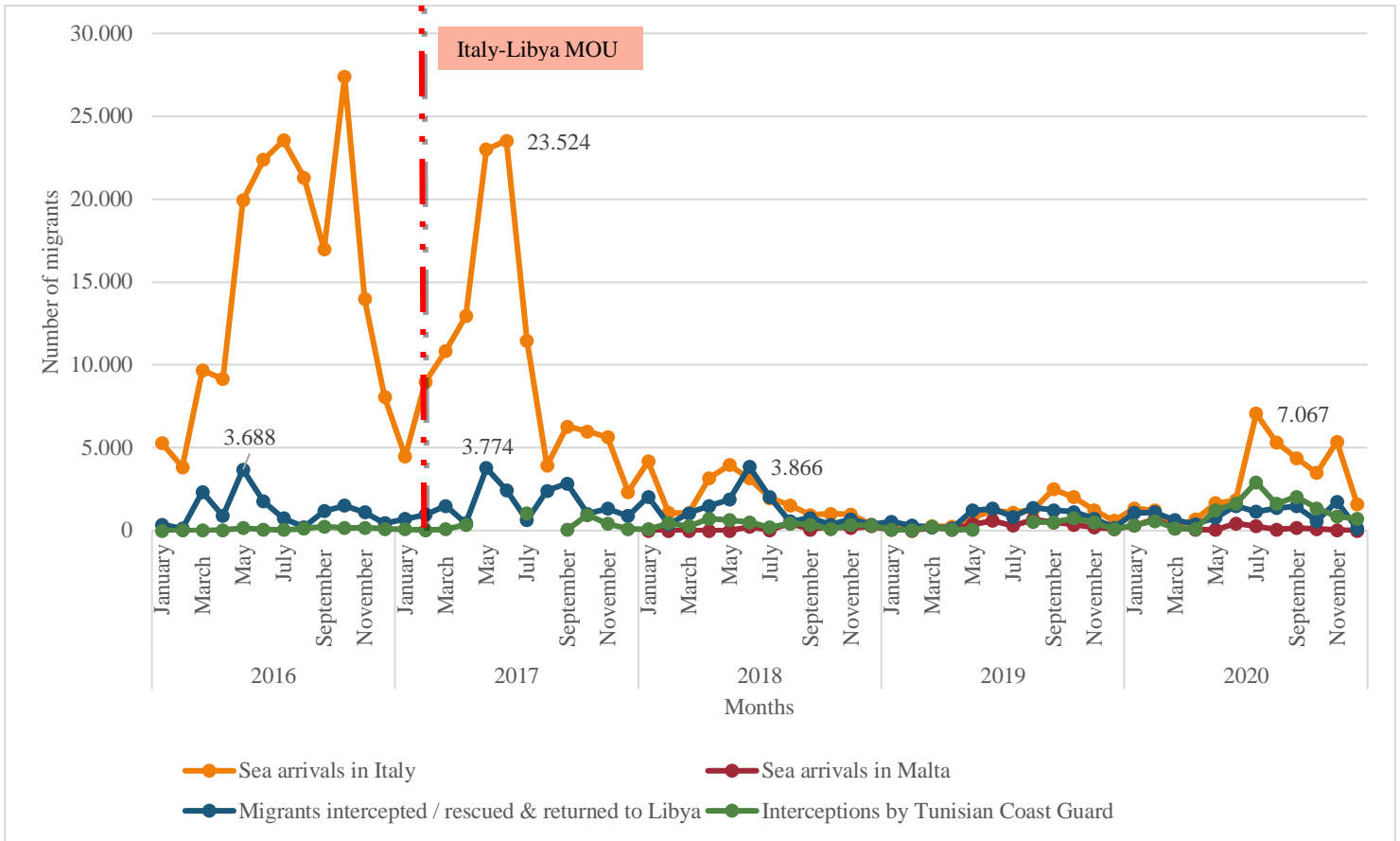
In consequence, if the volume of arrivals to Greece were decreasing before the implementation of the agreement and the trend is not reversed in the months before and after the implementation of the Statement, whereas the volume of detections do not drastically increase and even falls after the implementation of the Statement, it can be concluded that no inter-temporal effect can be detected. Rather, it seems that migrants prefer not to cross towards Greece after the implementation of the Statement in March 2016 as it demonstrates the low volume of interceptions. The reason could be found in the same Statement and the composition of the migration flows which were traversing the Eastern Mediterranean route. As most migrants crossing towards the EU were Syrian, Afghan or Iraqi refugees and asylum seekers, the greater enforcement of patrolling measures, the high risk of crossing the Aegean Sea, the collapse of the asylum system in Greece and the promise of being granted asylum in Turkey could have led these asylum seekers to remain in the country.

Nevertheless, the increase in arrivals in some months of 2017, 2017 and mid-2019 shown in figure 8 demonstrates that there has been a mass of remaining migrants and asylum seekers ready to abandon Turkey to cross to EU territory. Contrary to what it has been argued, Turkish coastguard has acted in each of these episodes, intercepting more than the 50% of migrants who were trying to cross the border (see, for instance, the case of September or October 2019, when it intercepted around 11,000 migrants and asylum seekers compared to the around 9,000 who managed to arrive).

In the Central Mediterranean route, however, the inter-temporal effects of the Italy-Libya MoU of February 2017 are not as straightforward as in the Eastern Mediterranean route. In this case, the signing of the MoU did not curb the volume of irregular arrivals just after its entry into force, but rather some months after as *Figure 10* shows. However, it has been argued that the increase in arrivals to Italy just after its signing responds to a pattern of cyclical ups and downs in arrival volumes. Nevertheless, the pattern that starts before the implementation of the MoU may be different as by January-February 2018 the cycle does not repeat. Therefore, it is contended that this latest cycle in arrivals likely responded to a ‘now or never’ effect.

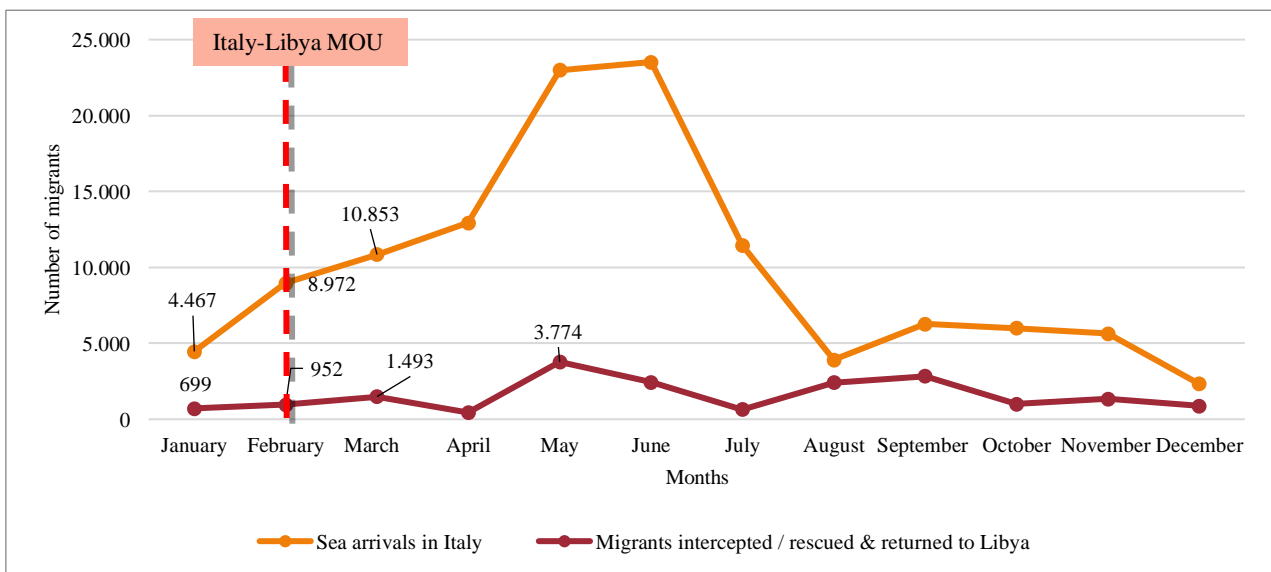
On the one hand, it can be argued that this prevention in cycle repetition is due to the increase of migrants’ interceptions by the Libyan coastguards thanks to the enhancement of its capabilities resulting from the MoU implementation. On the other hand, if we observe the trend of such interceptions in *figure 10* (in blue), it is noticeable that the Libyan coastguard intercepts many migrants after the MoU (3,774 in May 2017; 3,886 in June 2018), but no more than in previous occasions (see, for instance, the 3,688 migrants intercepted in May 2016, before the MoU being signed). Similar conclusions can be extracted from the observance of *figure 11*, which shows the volume of migrant arrivals in Italy and the volume of interceptions of migrants by the Libyan coastguard in 2017. In this sense, the level of interceptions of migrants by the Libyan coastguard demonstrates to being irregular. For instance, it increases in March 2017, decreases in April 2017, and then increases again in the month of May 2017 even if the volume of migrants who were trying to cross the sea and arrive to Italy was increasing.

Figure 10. Sea arrivals of 'irregular' migrants to Italy and Malta, migrants intercepted by Libyan Coast Guard and Tunisian Coast Guard and deaths recorded in the Central Mediterranean (2016-2020)



Source: IOM's Displacement Tracking Matrix (2021). Own elaboration.

Figure 11. Sea arrivals in Italy and migrants intercepted by Libyan coastguards (2017)



Source: IOM's Displacement Tracking Matrix (2021). Own elaboration.

These data may reveal two aspects: 1) that Libyan coastguard is able to intercept migrants, but that its capabilities are limited even after the implementation of the MoU; 2) that the fall or increase in migrants' arrivals to Italian coasts are more related to a fall or increase in the volume of migrants who try to cross through this route.

The variation in the volume of migrants or asylum seekers who try to reach Italian or Maltese coasts from Libya may depend on three facts, at least. Firstly, as it has been previously observed, there is a spatial diversion effect for migrants coming from Western African countries who opted for this route rather than for the Western African or the Western Mediterranean routes, which were closer for them.

Secondly, this route is especially conditioned by the intervention of networks of smugglers, who ask migrants for large sums of money to be embarked towards Italy or Malta (Sánchez, 2020). Thus, one likely explanation of the increase in the volume of arrivals after the implementation of the MoU is that smugglers gained momentum before the implementation of stricter patrolling measures (even if these measures have been implemented with difficulties and deficiencies, as studied before). Afterwards, the fear of the same migrants to dying at the sea or being intercepted and detained in the Libyan detention centers could have constituted a factor for explaining the decrease in arrivals too. The surge in arrivals in 2020 is partly explained by the increase in the volume of Tunisian migrants who abandoned their country through this route.

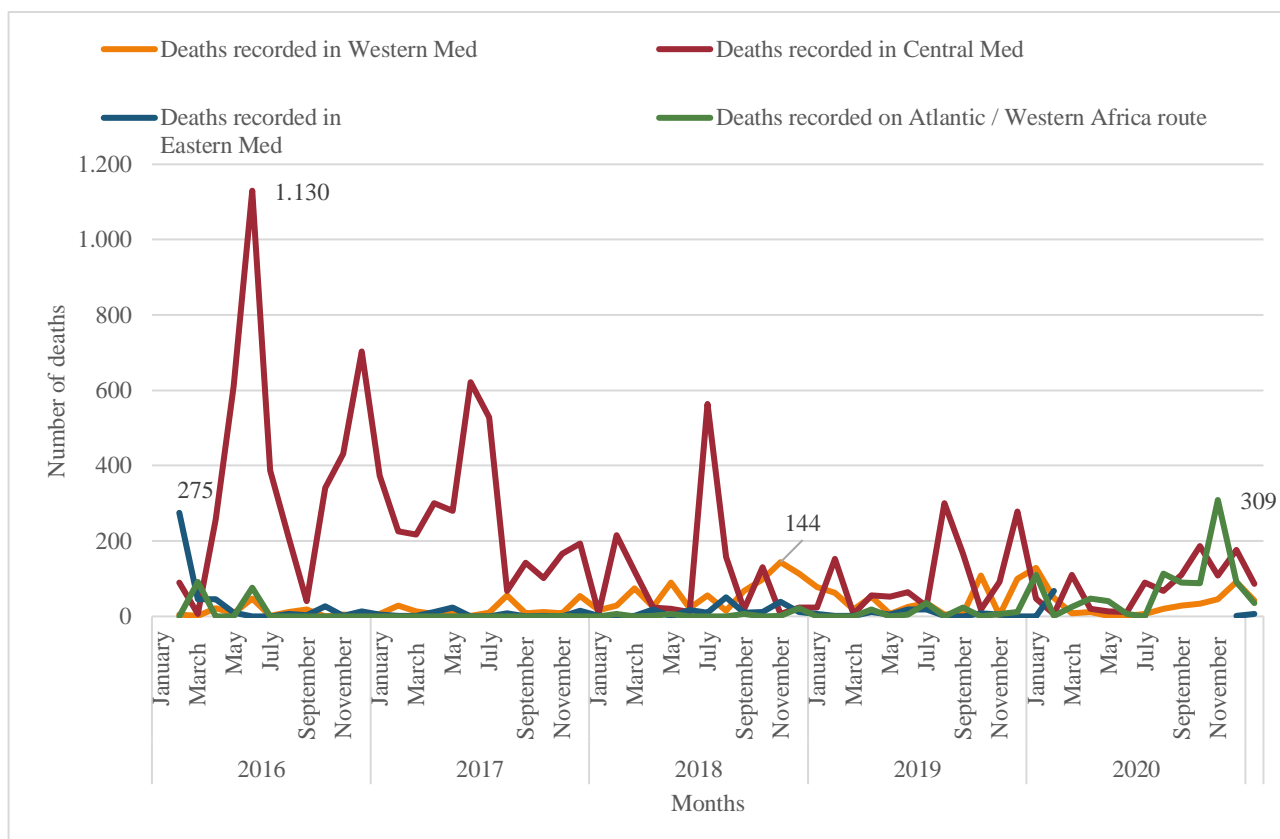
Thirdly, it could be likely that, after the implementation of the MoU, some of the migrants who were already in Libya or who arrived afterwards were detained or suffered greater difficulties to arrive to the Northern cities of Libya (Ben Romdhane, 2019). This latter aspect will be studied in subchapter 5.3.

Finally, in order to correctly assess the volume of migrants who try to cross through the different routes to arrive to EU borders, the number of deaths in each of these routes must be considered. *Figure 12* represents the deaths recorded in each of these routes by the Missing Migrants Project of the OIM from 2016 to 2020. The Missing Migrants Project records all deaths reported by fellow migrants themselves, governmental sources or news in these routes, whether at sea or at land. In absolute terms, the deathliest route is the Central Mediterranean one, where 10,993 deaths were reported in total with peaks of 1,130 migrants died in only one month (2016 June). It is

followed by the Western Mediterranean route, with 2,055 deaths recorded; the Western African route, with 1,274 deaths; and the Eastern Mediterranean one, with 845 deaths registered. However, it must be noted that these results may be influenced by the fact that registration period starts in 2016, right after the surge in migrant and asylum seekers arrivals in the Eastern Mediterranean route.

Furthermore, by relative terms, the Central Mediterranean route is one of the deadliest one, especially from 2018. In June 2018, 6.6% of the migrants who attempted to cross died. In January 2019, a maximum was reached, with 15.33% of attempted crossings resulting in death. Nonetheless, the death rate of the Western Mediterranean and Eastern Mediterranean fluctuates from 1% to 7% in some cases. Finally, the unique features of the Western African route (less volume of arrivals, longer distance from departure points to arrival ones) makes that its death rate reaches the rate of 100% in some months, which means that all migrants who attempted crossing died. This is the case of February 2016 (92 out of 92 migrants), May 2016 (77 out of 77 migrants), October 2017 (1 migrant) or March 2018 (68 out of 68 migrants). Then, death rates have reached values of 31% (November 2018) or 38.29% (June 2019), while on average it fluctuates from 3% to 16% per month.

Figure 12. Deaths recorded in routes to Europe (2016-2020)



Source: IOM's Missing Migrants Project (2021). Own elaboration.

5.3. Reverse flows substitution effects.

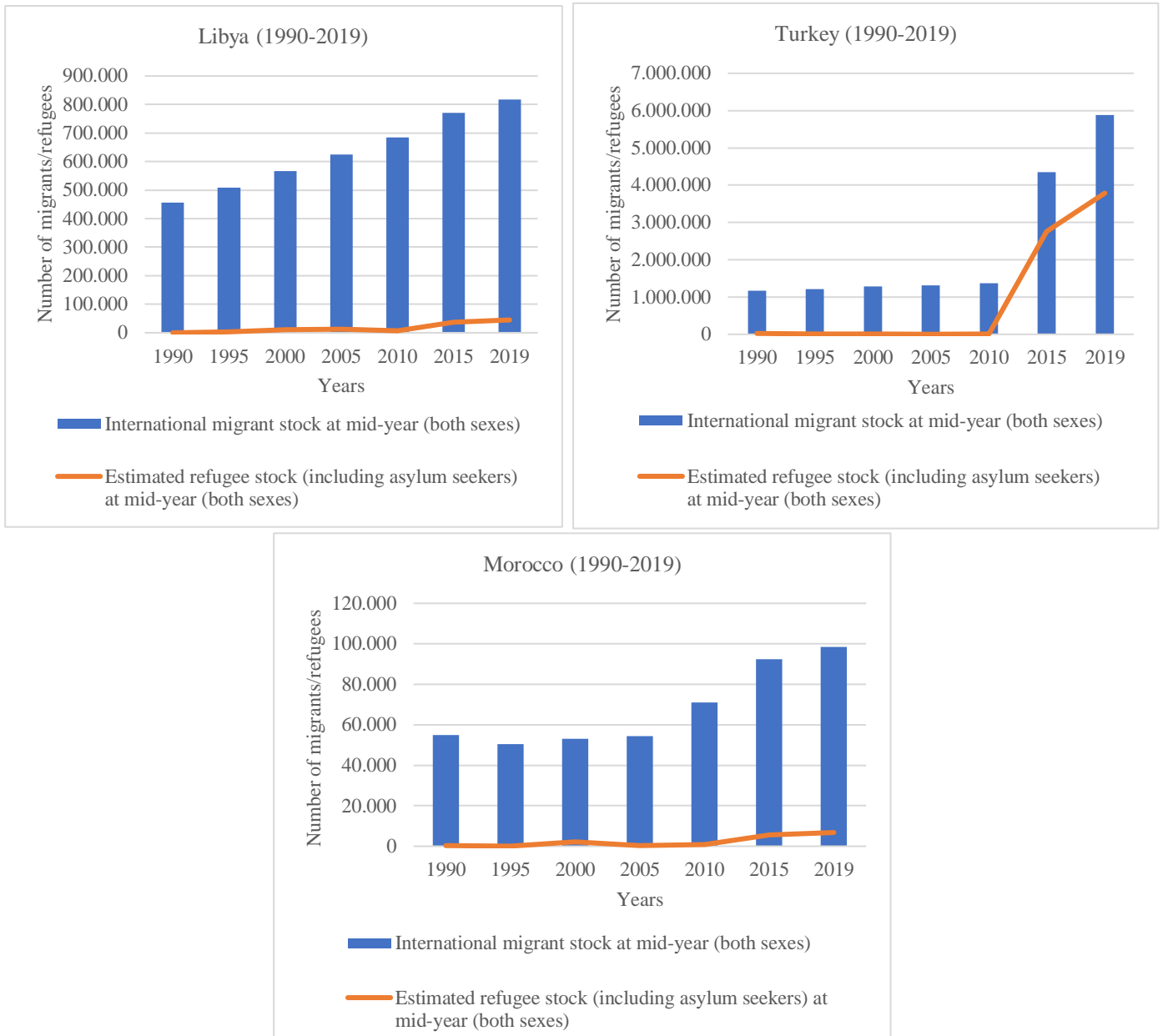
Thirdly, it may be likely that the implementation of these border externalization agreements resulted in three (unintended) effects: that migrants get stuck in the country where the agreement is implemented, that migrants remain in the country where the agreement is enforced because they fear crossing the border due to the stricter patrolling, surveillance and detention measures, or that migrants decide to return to their home countries or to opt for another route. This latter possibility has been already studied when considering the spatial substitution effects that these agreements may have had, while the second option has been considered when analyzing the inter-temporal substitution effects. In both cases, migrants decided to opt for alternative routes or for not crossing through one route on some occasions, as it has been described.

However, the first option has not been explored yet. Migrants could cross or not the border limits to reach EU borders or they can seek for alternative routes, but there are some who may remain in the country waiting for a moment to cross the border, for establishing their temporary residency until they could come back to their origin countries, or directly establishing their permanent residency if none of these options are possible or desirable. To determine if these border externalization agreements have had such effect, the data of the international migrant stock and estimated refugee stock of the Population Division of the Department of Economic and Social Affairs of the United Nations (2019) will be studied. The UN Population Division provides each five or four years the statistics on the volume of population, international migrant stock and estimated refugee/asylum seekers stock in every country in the world. In addition, it details the origin of the international migrants, refugees and asylum seekers residing in each country, as well as the division of these data by sexes.

Figure 13 shows the international migrant stock and estimated refugee stock in Libya, Turkey and Morocco in absolute terms since 1990 until 2019, which is the latest dataset published by the UN Population Division. Columns represent the total migrant stock per each counting year (which includes the total refugee stock), meanwhile the lines represent the total estimated refugee stock (including asylum seekers) per counting year. As it can be appreciated, the volume of international migrants has increased in each country, according to the increase of the global population too. By 2019, the country which has the largest mass of international migrants (refugees and asylum seekers included) is Turkey, with 5,876,829 migrants, followed by Libya, with 818,216

migrants, and Morocco, with 98,574 migrants. In this sense, the implementation of the border externalization agreements seems to have had a larger impact in Turkey and in Libya than in Morocco.

Figure 13. International migrant stock and estimated refugee stock in Libya, Turkey and Morocco (absolute terms, 1990-2019)



Source: Population Division of the Department of Economic and Social Affairs of United Nations (2019). Own elaboration.

In Turkey, the significant increase in the international migrant stock since 2010 clearly responds to the increase in the volume of refugees and asylum seekers. By 2010, the number of refugees in Turkey was of 10,032, while it increased to 2,753,760 in 2015 and 3,787,207 in 2019. If we have a look at the nationality of these migrants and asylum seekers, Syrians represent 3,743,494 of these migrants/refugees, followed by Bulgarians

(652,900) and Germans (371,430, probably German descendants of Turkish guestworkers who came back to the country). Therefore, it can be concluded that the implementation of the EU-Turkey statement has had a very relevant impact in the composition of the migrant and refugee stock of the country and that most Syrian refugees have opted or have been forced to remain in Turkey due to the “closing” of the Eastern Mediterranean route and the obligation of Turkey to process their asylum applications before being relocated in EU territory.

In Libya, the situation is similar than in Turkey, although in a different scale. In a country of around 6,7 million people, there are more than 818,216 migrants by 2019. The volume of asylum seekers and refugees have also increased since 2010, passing from around 8 thousand in 2010 to 36,784 in 2015 and 44,982 in 2019. The detention of many migrants and asylum seekers in the Libyan detention centers following the Italy-Libya MoU of 2017 may have impacted these numbers, as many migrants who may be subject of international protection are retained in Libya. By nationality, most of these migrants are Palestinians who were former asylum seekers and have lived in the country for decades (around 303,000 Palestinians were living in Libya by 2019), followed by Somalians (101,919 in 2019), Iraqis (72,656 in 2019) and Syrians (around 44,184 in 2019). As it can be regarded, the volume of recognized asylum seekers and refugees differs from the total volume of migrants who could hold the status of refugee, such as many Syrians or Iraqis themselves.

In the case of Morocco, the reality differs to that of Turkey and Libya. In a country of 36 million inhabitants, there are less than 98,574 international migrants, from which only 6,779 hold the status of refugees/asylum seeker by 2019. However, the volume of asylum seekers and refugees has also increased since 2010, passing from 792 refugees to 5,473 in 2015 and 6,779 in 2019. More than a correlation with the Spain-Morocco agreement, which is focused on cross-border police cooperation, this increase in the number of refugees can be due to the regularization of the status of hundreds of migrants or asylum seekers carried out in 2014. However, if we look at the nationality of the migrants who reside in Morocco, the major colony is formed by French migrants (around 37,000 in 2019), which might be composed by second generation migrants in France with Moroccan ascendance who might opt for moving to the North African country on some occasions. This number is followed by the 14,164 migrants coming from Algeria and the 4,320 coming from Spain (who could follow a similar pattern than

those coming from France). In this sense, the volume of Sub-Saharan migrants in the country is lesser than the expected one due to the passing of the Western Mediterranean route through the country.

If we consider the international migrant stock (refugees or not) by sex, these patterns are clear. On the one hand, in Morocco there is a similar volume of women and men (around 49,000 each one), which might mean that there is a feminization of the migration flows which traversed the country or that whole families have migrated to the country. In Turkey, the volume of migrant women is also representative, as there are 2,6 million women in comparison with the 3,2 million men. Considering the distribution by origin countries, these data make sense as many of the Syrian or Iraqi refugees moved altogether in family units, while on some other occasions, men might have initiated the trip alone (such in the case of Afghans) to then seek family reunification or send remittances to their families at origin. On the other hand, the volume of male migrants in Libya doubles the volume of female migrants (549 thousand men in comparison with 235 thousand women). This is significant as Palestinian migrants or asylum seekers may have followed a similar pattern than Syrian refugees, moving in family units. Contrary, and although there is a strong feminization of many of these migration flows, it is still frequent that men started the trip before their families do so, as it happens in the case of Somalians or Eritreans.

If we compared the volume of the international migrant stock of each country in relation with its total population, we could better perceive the impact these border externalization agreements may have had in the country and what it might have happened with those migrants moving through each of the routes. *Figure 14* represents the international migrant stock as a percentage of the total population in Libya, Turkey and Morocco since 1990 to 2019, according to the data provided by the UN Population Division. Traditionally, Libya has been the country with the major proportion of migrants and asylum seekers in relation to its total population (around a 10% of it), whereas migrant population has represented around a 2% of the population of Turkey, and Morocco has usually had a 0,3% of migrants in relation with its total population.

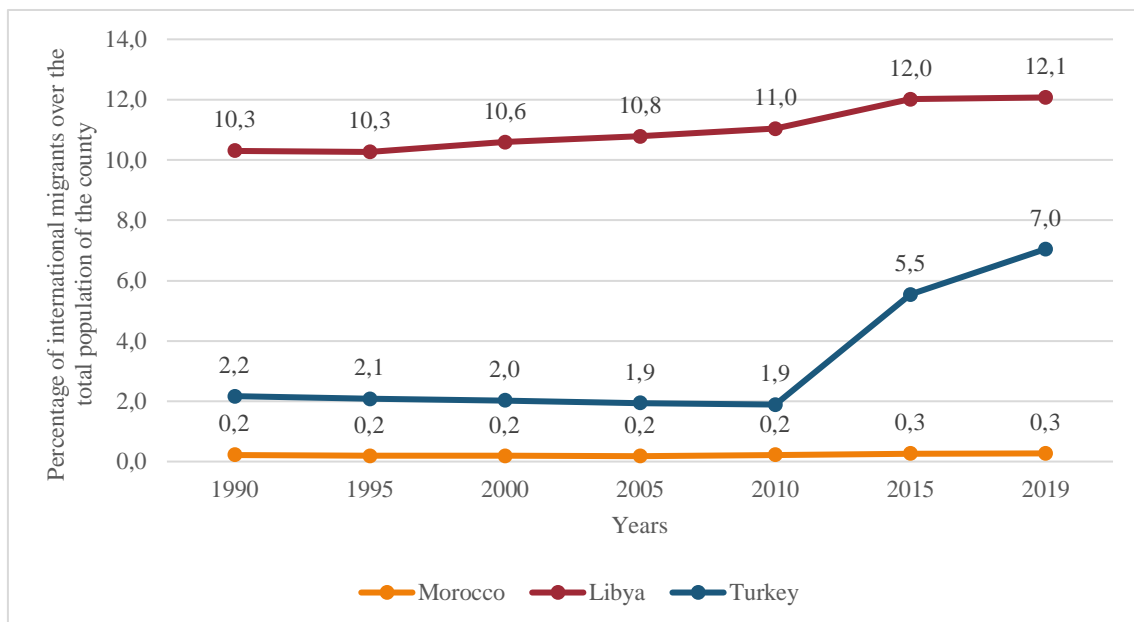
However, after the implementation of the border externalization agreements, these patterns have radically changed in Turkey, slightly in Libya, and nearly nothing in Morocco. In Turkey, the need to process asylum applications of Syrian refugees before they are relocated to the EU have resulted not only in a growth of the number of

international migrants and refugees in absolute terms, but also in relative terms. Consequently, the 7% of the population of Turkey is composed by international migrants and refugees in 2019, in comparison with the 1.9% of 2010.

However, these numbers are still far from those of Libya in relative terms, whose population was in a 12% composed by international migrants or refugees. In this sense, it has not only increased the volume of the Libyan population, but also the volume of international migrants and refugees in a greater proportion than the local population in recent years. Although reasons are diverse, one of them could be the enforcement of the Italy-Libya MoU, which has resulted in a greater volume of migrants being detained, stuck or waiting in Libya for crossing the border.

Finally, the case of Morocco differs from the cases of Libya and Turkey. It is the country of these three with the lowest volume of migrants in comparison with its total population (only a 0.3% in 2019) and the implementation of the Spain-Morocco agreement seems not to have had any relevant impact in this composition.

Figure 14. International migrant stock as a percentage of the total population in Morocco, Libya and Turkey (1990-2019)



Source: Population Division of the Department of Economic and Social Affairs of United Nations (2019). Own elaboration.

The implementation of these border externalization agreements results in an overstay of asylum seekers whose asylum applications are being processed and who could have continued until reaching EU borders for asking for asylum. However, two more reasons could be found to explain the reasons why the volume of migrants and

asylum seekers increase in some countries and not in others. On the one hand, returns and deportations must be considered. If one of these countries favour voluntary returns or carry out deportations, then the stock of migrants should not increase, even if the flow of migrants has done so. These countries count with the funding support of the EU and the logistical support of the IOM to conduct these returns or deportations. In Libya, 50,000 benefitted from the Voluntary Humanitarian Return program of the IOM funded by the EU Trust Fund for Africa between 2015-2020 (IOM, 2020). Similarly, 7,087 migrants are said to benefitted from the Assisted Voluntary Return and Reintegration program of IOM in Morocco in the 2015-2020 period (IOM, 2020b), while 8,098 were helped in the 2009-2018 period from Turkey in the framework of this program (IOM, 2019). However, further detailed data should be provided on the volume of not voluntary returns (deportations) carried out from each country. For instance, IOM published that 69,540 migrants were assisted to return to their countries from Turkey only in 2015, but no more data are given (IOM, 2019). These data are necessary to fully comprehend how border externalization agreements impact in the total stock of migrants of these countries.

On the other hand, we lack data of the volume of migrants in irregular legal situations who live or are crossing Morocco, Libya or Turkey. Capturing these migrants into the statistics is extremely complicated, as they usually live at the margins of society to avoid detentions or deportations. These migrants and asylum seekers, who are not even registered by the IOM, find themselves in a situation of extreme vulnerability which trafficking networks take advantage of. Their misrepresentation in these data make datasets uncomplete, so numbers could be even higher than those which have been depicted here.

6. RESPECT TO THE RIGHTS OF MIGRANTS, ASYLM SEEKERS AND REFUGEES IN MOROCCO, LIBYA AND TURKEY

Independently of whether migrants are in transit through Morocco, Libya or Turkey, or whether they plan to remain in the country for several reasons, the reality is that these three countries are responsible of the respect and promotion of migrants, asylum seekers and refugee rights.

As it has been argued, migrants and asylum seekers are affected by the implementation of the border externalization and deterritorialization agreements signed between EU countries and Morocco, Libya or Turkey. Therefore, migrants travelling through these irregular routes may be subject of greater police and armed forces violence in border zones, they may be detained and deported, or they may simply get stuck in the country waiting for crossing the border, starting the trip back to their origin countries or seeking alternative routes.

According to what it has been developed before, EU countries or the EU itself cannot be considered directly responsible for the violation of migrants' rights in these countries as this is one the main aims this border externalization system pursues. However, a certain indirect responsibility may arise if the conditions these migrants and asylum seekers experience and suffer results from a legal scheme which favour that these countries process their asylum applications, act to curb irregular migration flows and ultimately deport these migrants.

Consequently, it will be analyzed the respect of migrants and asylum seekers rights in Morocco, Libya and Turkey in the last decade to appreciate whether migrants' rights are respected and whether this respect has improved or worsened after the years. To that aim, an advance online search of reports on migrants, asylum seekers and refugee rights in Morocco, Libya and Turkey from international organizations, NGOs and other sources have been conducted. Five alternate key words have been deployed: migrant/refugee, rights, country (Morocco, Libya, Turkey), (year) and (report). Three rounds of search have been done, using firstly the words migrant/refugee rights (country), then migrant/refugee rights (country) (year) and finally migrant/refugee rights (country) (year) report. The search has been conducted in English, Spanish and French

to capture a comprehensive and representative volume of reports. A total of 39 reports have been found (for the full list of reports found, see *Annex I*)²³.

For analytical purposes, the content of these reports will be studied following three elements: the legal framework of each country regarding the establishment of asylum procedures and the protection and promotion of migrants' rights; the effective protection and promotion of migrants, asylum seekers and refugee rights; and the integration and guarantee of rights such as the right to health, education or housing of migrants.

6.1. Morocco.

As Jiménez-Álvarez *et al* (2020) underline, “migration has had a continuous presence in the political, economic and sociocultural structure of contemporary Morocco, which has historically been a country of immigration, emigration (and the return of its nationals), and transit” (Jiménez-Álvarez *et al*, 2020:7).

Regarding the Moroccan legal framework on migration and asylum, the country ratified the 1951 Convention relating to the Status of Refugees in 1956 and its 1967 Protocol in 1968; and it is party of the International Convention on the Protection of the Rights of Migrant Workers and their Families (CMW) since 1993 and the United Nations Convention against Transnational Organized Crime and its additional Protocols to prevent, suppress and punish trafficking in persons and against the smuggling of migrants by land, sea and air since 2000. However, Morocco has not signed the 1954 Convention relating to the Status of Stateless Persons nor the 1961 Convention on the Reduction of Statelessness (UNHCR, 2016; Jiménez-Álvarez *et al*, 2020).

For the implementation of the 1951 Convention, Morocco adopted the Royal Decree of 29 August 1957, which created the Office for Refugees and Stateless Persons (BRA by its acronym in French). This Office is the responsible of acknowledging asylum in the country, as well as of granting that refugee and migrants rights are respected and it has been activated and de-activated several times. In addition, the international conventions on migration were incorporated into the Moroccan legal system through the Law N°. 02-03 of November 2003 (the ‘Immigration Law’). This law regulates the area of emigration, immigration and irregular immigration, and

²³ Reports referred in this chapter can be found in *Annex I*, rather in *References* section.

introduced some novelties like provisions establishing sanctions of illegal entries and stay, for detaining migrants in legal irregular situations or for ultimately deport them (Elmadmad, 2009). As Natter (2013) or Jiménez-Álvarez *et al* (2020) analyze, the Moroccan immigration law responded to an align of Moroccan immigration policy to EU interests, as well as to some domestic and geopolitical interests like becoming the bridge between EU and African countries regarding migration.

In 2007, Morocco and the UNHCR signed an agreement for developing a national refugee law and asylum system after the 2004-2005 crisis in the Western African route and in the border with the Spanish cities of Ceuta and Melilla. However, this project did not gain momentum until the revolts of 2011 (20 February Movement), when the King Mohammed VI announced the elaboration of a new Constitution and the creation of an independent institution for the advancing of human rights in Morocco (including migrants' rights), the Conseil National des Droits de l'Homme (CNDH) (Jiménez-Álvarez *et al*, 2020). In 2013, the CNDH issued two reports on the situation of migrants and refugees in Morocco which, in words of Amnesty International (2015), motivated an exceptional regularization period of migrants and asylum seekers in Morocco in 2014 and the launching the National Strategy on Immigration and Asylum (SNIA, by its acronym in French) to manage migration in a more 'humane' way. According to Amnesty International (2015), 17,916 regularization applications were accepted among the 27,332 submitted. Finally, Morocco has played a key role in the drafting of the Global Pact for Safe, Orderly and Regular Migration (GCM), read in Marrakesh in December 2018.

These legal initiatives have been recognized as a step forward in the protection of migrant, asylum seekers and refugee rights (UNHCR, 2020). However, reports on the respect of migrants and refugee rights in Morocco show a reality that may differ from that envisioned in legal texts. Firstly, reports have denounced an inadequate legal assistance and access to asylum procedures since 2010, including some flagrant violations of such procedures by Moroccan authorities. Amnesty International denounced in 2010 that "although Morocco is party to the 1951 Refugee Convention and its 1967 Protocol, the authorities did not issue residency cards or other necessary documents to refugees recognized by UNHCR". In 2013, the Global Detention Project of the Graduate Institute of Geneva reported that there was a significant lack of legal information on asylum procedures offered to migrants in transit or detained. In this

sense, the UNHCR stated in its evaluation report for the period 2016-2019 that there is an urgent need of “building a national asylum system by raising awareness about asylum and refugee protection among a broad spectrum of public bodies” (UNHCR, 2020:5).

Secondly, reports have denounced practices of raids and collective expulsions which have persisted along this last decade, clearly breaching the international conventions on migrant and refugee rights to which Morocco is committed. The CNDH also denounced these practices in 2013 and 2014, alleging that migrants and asylum seekers were summarily expelled and returned to Algerian and Mauritanian borders, even if they were not nationals of those countries. Human Rights Watch appreciated in 2014 that these expulsions took place no matter the legal status of the person, even if persons held the status of refugee (and thus arguably breaching the principle of *non-refoulement*). Moreover, it denounced that excessive force was used by Moroccan police, the Royal Gendarmerie and Auxiliary Forces against migrants during raids.

Reports seem to coincide that there was a halt in these collective expulsions during the 2014 regularization period, but that they returned just after it ended in 2015 (CEAR, 2015; Amnesty International, 2015). From 2015 to 2020, the Spanish Jesuit Refugee Service (JRS), the European Center for Constitutional and Human Rights (ECCHR), Amnesty International (2015) or the Group Antiraciste d’accompagnement et de Défense des Étrangers et Migrants (GADEM, 2018) observed similar patterns on collective expulsions than in the 2010-2015 period. In this sense, Amnesty International noted that “migrants and refugees apprehended in the course of such raids [in Nador and Oujda camps] used to be taken to the desert area between Morocco (Oujda) and Algeria (Maghia) and expelled to Algeria without any formal procedure” (Amnesty International, 2015:26). Similarly, ECCHR observed that automatic expulsions of migrants from Spain to Morocco carried out by the Spanish armed forces in the cities of Ceuta and Melilla had been a trend in the 2013-2020 period. This contradicts what organizations like Human Rights Watch recommended to Spain and the EU in 2014, where it warned “to refrain from returning third country nationals to Morocco under existing bilateral readmission agreements” (HRW, 2014:9).

Thirdly, reports have focused on analyzing the conditions of migrant detention centers, where migrants detained in raids or in other contexts are retained until their deportation. According to the Global Detention Project (2014) or Human Rights Watch

(2014), these centers characterize by their precarious hygienic conditions, the lack of access to basic healthcare, and the use of excessive force and ill-treatment practices by armed force officials in charge. However, UNHCR (2020) affirms that access to detention centers by international organizations, local organizations and NGOs (like the CNDH) has improved. In the United Nations agency view, this has been essential “in broadening the protection space in Morocco, setting up effective identification, referral and protection mechanisms, fostering respect for the principle of non-refoulement and resolving cases of arbitrary detention that still occur” (UNHCR, 2020:5). Nonetheless, some of these legal and material challenges persist.

Fourthly, reports on migrant rights in Morocco frequently remarks the violence that migrants in irregular situation or asylum seekers suffer, particularly Sub-Saharan migrants. According to Doctors Without Borders (2013), Human Rights Watch (2014), the Association Marocaine des Droits Humans (2015), the Spanish Jesuit Refugee Service (JRS, 2017) or the United States Department of State (2020), among others, Sub-Saharan migrants are more likely of being detained or suffering the use of excessive force by Moroccan armed forces than other migrants due to a racialized identification and repression of this collective. Moreover, these organizations have verified that the majority of Sub-Saharan women who arrive to Morocco are victims of trafficking, sexual exploitation or labour exploitation. In fact, the Spanish Jesuit Refugee Service (2017) estimates that “English-speaking Sub-Saharan women are victims of trafficking in 95% of all cases, and those who are not victims of trafficking are still in highly vulnerable situations” (JRS, 2017:13). As the JRS follows, this general violence towards Sub-Saharan migrants makes that many of them live in constant fear of being arrested in the camps or in other urban centers, so they decide not to approach to them. Thus, many of these migrants usually live in conditions of marginality and absolute exclusion.

Finally, Morocco officially recognizes the right of migrants and refugees to access to the public education and health system (UNHCR, 2020). However, the same UNHCR remarks that many challenges persist due to the lack of funding to provide migrants (and Moroccans in general) with services of quality, and due to the difficulties of reaching the most vulnerable migrant collectives, such as newcomers, LGBTI migrants, people with disabilities, people with serious illnesses, people with mental

health issues, and more. These challenges are also extensive to the housing and employment policies.

6.2. Libya.

In Libya, few organizations have been able to document the reality of migrants and asylum seekers due to the civil war in the country, but those who had been able to do it describe it as a “hell” (Refugees International or Human Rights Watch) or as a country with a “human rights crisis” (Global Detention Project). Regarding the Libyan legal framework on migration and asylum, it must be noted that the country is not party of the 1951 Refugee Convention either its 1967 Protocol, and the country has repeatedly rejected to being party of it, while it has not specific legislation criminalizing trafficking in persons (Global Detention Project, 2019; United Nations Secretary General, 2020). Nevertheless, the country has signed the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1965 Protocol for the Treatment of Palestinians in Arab States (known as the “Casablanca protocols”), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination Against Women, or the International Covenant on Civil and Political Rights.

Some of the provisions of these conventions have been incorporated into the main two laws which used to rule asylum and migration in the country: the Law N°.6 regulating the entry, residence and exit of foreign nationals to/from Libya of 1987 as amended by Law N°. 2 (2004), and the Law N°. 19 on combating irregular migration of 2010. As the Global Detention Project affirms, the violation of any of the provisions of these law is criminalized and thus migrants and asylum seekers (as Libyan law does not make a distinction between them) can be sanctioned with fines, imprisonment and deportation. Moreover, these laws only provide the recognition of the status of refugee (and the rights derived of it, such as the *non-refoulement*) to seven nationalities: Syrians, Palestinians, Iraqis, Somalis, Sudanese, Ethiopians, and Eritreans. Regarding applications for international protection from asylum seekers of other nationalities, the Libyan government recognized the capacity of the UNHCR to conduct Refugee Status Determinations (RSD) in 1991 (Global Detention Project, 2019). Nonetheless, it did so without signing any formal agreement and, thus, the decisions of UNHCR (or even its

power to access to migrant detention centers) may not be recognized by Libyan authorities.

These precarious laws, which in words of UN Secretary General (2020) cannot constitute “an asylum legislation”, became irrelevant after the outburst of the Libyan civil war in 2011 between the UN and EU backed Libya’s Government of National Accord (GNA), the Libyan National Army (LNA) and militias in the south of Libya. Since then, the violation of migrants and asylum seekers rights (further than those Palestinians, Syrian refugees already established in the country) became flagrant. Reports coincide in warning that militias are not the only actors who perpetrate them, but also Libyan armed forces and officials of the GAN, especially those of the Department for Combating Irregular Migration (DCIM) established in 2012 by the GAN Ministry of Interior. In terms of the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) (2018), “migrants and refugees suffer unimaginable horrors during their transit through and stay in Libya” (UNHCR & OHCHR, 2018:4).

Firstly, as the UNHCR, IMPACT and Altai Consulting detail (2017), most migrants and asylum seekers seek the help of criminal networks and smugglers to arrive to Libya and cross its territory, except from some seasonal migrants from Sudan, Niger and Chad. Given the high debt and penalty that these smuggling networks impose, migrants suffer labour exploitation and extortion until they pay their “debt” and can continue to the north of the country, where the process repeats (UNSMIL & OHCHR, 2016). In the case of women and girls, they are sexually abused and exploited during their journey by smugglers, militia soldiers, LNA forces and GNA officials, resulting in pregnancy on many occasions (Refugees International, 2017). Further than trafficking and smuggling, Refugees International (2017), the Global Detention Project (2018), UNSMIL & OHCHR (2018) have heard testimonies of migrants being subject of slavery and, particularly, of the existence of slavery markets, where they were bought and sold several times.

Secondly, migrants and asylum seekers in transit through Libya may be detained, while those intercepted by the Libyan Coast Guard (LCC) are directly transferred back to detention centers (UNSMIL & OHCHR, 2018). According to the Global Detention Project, Libya has a detention capacity of around 10,000 to 20,000 migrants in around 24 detention centers. These detention centers are not only ruled by

DCIM, but also by militias (especially in south Libya). As UNSMIL & OHCHR already denounced in 2016, there are no formal registration, no legal process, and no access to lawyers nor judicial authorities in these centers. Therefore, migrants and asylum seekers face indefinite detention, with reported cases of three years imprisoned (Human Rights Watch, 2019; UNSMIL & OHCHR, 2019; Amnesty International, 2020). In these centers, migrants find themselves in overcrowded places with extreme precarious hygiene conditions, and they suffer ill-treatment, physical abuses and rape, torture and summary killings, being recently reported the killing of a group of migrants seeking to escape from one of these centers in July 2020 (UN Secretary General, 2020). Human Rights Watch (2019) also reported these practices in DCIM-ruled and EU-supported detention centers of Tripoli, Misrata, Zuwara, Ain Zara or Tajoura. The organization denounced that migrants did not have access to quality food or water, they lack healthcare, and they were subject to extreme violence by guards, who beat and electrocuted them. Children, who are also detained, may be subject of this treatment and these policies too.

Thirdly, as Amnesty International (2020) puts, migrants and asylum seekers can only escape these centers by fleeing, by paying ransom, or by asking for resettlement or voluntary return to their origin country with the help of IOM. Reports highlight the role of IOM and UNHCR in assisting migrants and asylum seekers in Libya, even if their mandates are curtailed and their functions cannot be easily exercised. Even though, HRW (2019) considers that these organizations may not talk about voluntary returns of migrants and asylum seekers, because these returns happen in a context where alternatives are indefinite detention in Libya, risking their lives at the Mediterranean or risking being brought back to detention if intercepted. For all these reasons, the UNSMIL & OHCHR strongly recommended EU countries to train and support Libyan institutions to end arbitrary detention (among other goals) in 2016, while the United Nations Secretary General affirmed in his report to the UN Security Council that “Libya cannot be considered a place of safety for the disembarkation of refugees and migrants” (paragraphs 10 and 44).

Finally, regarding the living conditions of migrants and asylum seekers in the country, IOM & United Kingdom Aid (2020) remark that those refugees who were already established in the country enjoy of a certain level of integration and employment, but migrants in transit suffer severe problems in accessing to health care,

housing or other basic goods. After the covid-19 pandemic, this situation has worsened and many find themselves in extreme economic deprivation.

6.3. Turkey.

The respect to migrants' rights in Turkey may be well different to the cases accounting in Libya, although violations of the rights of migrants, asylum seekers and refugees have been reported and room for improvement in their respect exists. Turkey is party of the 1951 Convention relating to the Status of Refugees since 1962 and its 1967 Protocol, as well as to the 1990 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families since 2004 and the 1954 Convention relating to the Status of Stateless Persons since 2015. Moreover, Turkey ratified the Council of Europe's Convention on Action against Trafficking in Human Beings in January 2016 and further legal measures have been taken to offer legal assistance, protection and material aid to trafficking victims (UNHCR, 2020).

However, the country has not ratified the 1961 Convention on the Reduction of Statelessness and, most importantly, it ratified the 1951 Refugee Convention and its 1967 Protocol with declarations that limited the geographical scope of their article 1 to people from European origin only (European Council on Refugees and Exiles -ECRE- & Refugee Rights Turkey -RRT-, 2015; UNCHR, 2019). The granting of the status of refugee to people from Europe exclusively has been a determinant in the asylum and migration policy of the country, especially since the increase in the arrivals of Syrian, Afghan or Iraqi asylum seekers.

By 2011, as the Helsinki Citizens Assembly, the Turkey Refugee Advocacy and Support Program and the Organization for Refugee, Asylum and Migration (ORAM) acknowledged, Turkey lacked a settled law on asylum procedures and requisites and only granted the status of refugee to Europeans. Regarding non-European asylum seekers, the country recognized them a "temporary protection status", which allowed them to remain in the country legally, be protected from *refoulement*, and access to basic rights and services like free healthcare. This status was a *sine qua non* condition for applying for asylum to the UNHCR, who decided on their asylum applications in Turkey. If the refugee status was recognized to these non-European asylum seekers,

then they became subject of relocation. If status was not granted, they entered into the deportation system (ECRE & RRT, 2015).

Nevertheless, given the accession procedure of Turkey to the EU and the need to address the increasingly higher volume of asylum applications of non-Europeans, Turkey passed the “Law on Foreigners and International Protection (LFIP)” in 2013, which entered into force in 2014. As the ECRE & RRT (2015) accounts, this was the first law of the country regarding asylum procedures and requisites, it was deeply inspired on EU *acquis* on asylum and migration, and it ‘create(s) a set of binding protection obligations towards all persons seeking international protection in Turkey regardless of country of origin’ (ECRE & RRT, 2015:19). One of the main novelties this law introduced was the creation of the civilian Directorate General of Migration Management (DGMM), among whose functions are the processing of temporary protection status applications, applications for international protection of Europeans, and also applications for international protection of non-Europeans. Therefore, DGMM started to assume the functions that UNHCR had deployed until then and it undertook the refugee status determination of Europeans and non-Europeans by 2018.

After the entry into force of the LFIP and the assumption of functions by the DGMM, Turkey grants three types of international protection: refugee status to Europeans, conditional refugee status to non-Europeans, and subsidiary protection. As ECRE (2020) notes, the difference between a refugee and a conditional refugee is that conditional refugees “are not offered the prospect of long-term legal integration in Turkey and are excluded from Family Reunification rights” (ECRE, 2020:125). Meanwhile, temporary protection status has been needed until 2018 as a requisite for asking for asylum, while it is currently reserved to those occasions where mass influxes of asylum seekers or refugees arrive to the country, especially from Syrians arriving from Syria and Stateless Palestinians (ECRE, 2020). UNHCR continues to exercise complementary and support functions.

In general, it can be affirmed that the country has progressed in the building of an asylum and migration system capable of processing the massive influx of asylum applications received in the last decade, as well as of distributing asylum seekers and migrants across the country to not overburden specific places. That said, severe concerns exist not only on the access to asylum procedures, but also on the conducting

of these asylum application procedures and eventually deportations (or voluntary returns) to countries which are not considered to be safe.

Firstly, when dealing with asylum, the access to legal assistance becomes crucial because asylum seekers and migrants in general need bars to apply for the temporary protection status or for international protection. In this sense, Refugee Rights Turkey (RRT) and US-Based Refugee Solidarity Network (RSN) underlined in a 2019 report the difficulties of migrants to do so. Since the increase of asylum applications since 2016 (mainly due to the EU-Turkey Statement), the Turkey's Union Advocates Association undertook several measures to reinforce the link between advocates and migrant-refugee communities, while it started a hotline for translation in Arabic and Farsi together with UNHCR in 2017. Nonetheless, RRT & RSN (2019) stated that many migrants or asylum seekers cannot find legal assistance because they lack information on how to do so, because there is a lack of resources to provide a state-funded translation assistance, and because many associations of advocates work without coordination and thus cases are difficult to follow. In addition, after the outburst of the covid-19 pandemic, asylum seekers have found "extreme hardship" to apply for international protection given the lack of material resources to do so (ECRE, 2020).

Moreover, according to a 2018 report of Refugees International, there are migrants and asylum seekers of certain nationalities who find greater barriers in even access to the application for international protection on the grounds of their nationality. In this case, Refugees International documents the case of Afghan asylum seekers whose asylum applications were rejected by DGMM officials on the grounds that the DGMM does not register single men, or that these asylum seekers should return some months later. This precludes these asylum seekers and migrants from obtaining the legal residence permit and, therefore, they lack access to basic services such as education or health, or access to programs of cash assistance, leaving them in situations of exclusion and marginality. Contrarily, Afghan families find more easiness in registering their asylum applications.

Secondly, if the application for asylum is accepted, refugees are proposed for resettlement, and if it is rejected, they are proposed for deportation and enter in removal centers. Removal centers differentiate from temporary accommodation centers in their aims and volume. While temporary accommodation centers provide shelter for asylum seekers whose temporary protection or international protection applications are being

processed, removal centers are created with the aim of retaining migrants whose asylum applications have been rejected until they get deported. In this sense, the number of temporary accommodation centers have decreased along time, whereas the number of detention centers have skyrocketed. According to ECRE (2020), 6 temporary accommodation centers were closed in 2018, remaining active only 11 of these centers in 2019. As ECRE (2020) provides, the number of people living there has also decreased, passing from 64,048 people in February 2019 to 56,970 people in April 2021. Meanwhile, as a Global Detention Project report of 2019 highlights, “Turkey has one of the world’s largest immigration detention systems, which is comprised of some two dozen removal centers as well as *ad hoc* detention sites along its borders, transit facilities in airports and police stations” (Global Detention project, 2019:7). In fact, the organization underscores that the 6 temporary reception centers originally funded by the EU were transformed into removal centers. According to ECRE (2020), Turkey’s immigrant detention capacity ups to 16,800 places in 2020, which is less than in 2019, when the country had 20,000 places. The conditions in these detention centers vary from one to another, but the Global Detention Project (2019) or RRT & RSN (2019) report some centers being overcrowded, lacking access to medical care, or where access to legal assistance being extremely precarious (thus relying only on the mobilization of civil society organizations).

Thirdly, asylum seekers whose application for international protection is denied, or migrants in irregular legal situation are detained in removal centers and afterwards deported. Moreover, asylum seekers or refugee can ask for a voluntary return. The conditions in which deportations and voluntary returns take place, as well as the safeness of the countries they are deported to have been subject of extensive analysis by international organizations and non-governmental organizations. In a 2016 report, Amnesty International denounced that Turkey was carrying out deportations of asylum seekers and refugees to Afghanistan, Iraq and Syria, which the Turkish government denied. However, in that same year and after the failed coup d’état, the Turkish Presidency led by President Erdogan passed the Presidential Decree N°. 686 amending the 2013 LFIP. As UNHCR (2020) notes, this decree allowed migration authorities to issue deportation orders for asylum seekers and refugees if they are considered a threat to the public order or the public security of Turkey. According to the Global Detention Project (2019), “since the decree, Turkey has increased deportations of refugees and

asylum seekers to unsafe countries, including Afghanistan, Syria and Iraq” (Global Detention Project, 2019:8), and then breaching the principle of *non-refoulement*. Indeed, UNHCR (2020) warns that the application of this provision must be followed given that it could be used with other aims than those of granting public security.

Amnesty International (2016, 2019, 2020) and Human Rights Watch (2019), among other organizations, have documented these deportations to unsafe countries, including the deportations of refugees and asylum seekers. According to these organizations, the Turkish police and gendarmerie have intensified their raids in the search of migrants in legal irregular situations and even Syrian refugees, especially after the 2016 failed coup d'état and in areas like Istanbul or Antakya. In 2019, Amnesty International reported a hundred detentions and deportations of migrants apprehended in Istanbul while working or walking: “Amnesty International documented 20 detailed cases of forced returns [to unsafe countries] between 25 May and 13 September 2019, with most (14) in July” (Amnesty International, 2019:5). Human Rights Watch (2019) certified these 100 deportations to Idlib (Syria) too by directly talking to Syrian refugees expelled (HRW, 2019). In addition, Amnesty International acknowledges that, despite the measures taken for protecting victims of trafficking, they remain “unidentified and are detained and deported” (Amnesty International, 2019:18).

Moreover, Amnesty International (2019), HRW (2019) and ECRE (2020) have casted doubts on the voluntary aspect of the 315,000 voluntary returns of Syrians to Syria, especially from those who were in detention centers. Following the testimonies of returnees, Amnesty International states that forms for voluntary return are not clear, that refugees do not even know what they are signing, or that they are beaten or intimidated by Turkish Gendarmerie to sign. In addition, they denounce a lack of access to legal services and to legal remedies to denounce that it is not a voluntary return or that the deportation (if so) is not grounded in law. This latter aspect was challenged before the Constitutional Court of Turkey, which declared in December 2020 that administrative appeals against a deportation decision had suspensive effects.

According to these organizations and UNHCR (2020), these movements respond to the will of President Erdogan to establish a demilitarized “safe border zone” in the Turkish border with Syria “to relocate part of its 3,6 million Syrian refugee population there” (Amnesty International, 2019:6). Moreover, Turkey has sealed this border area since 2017 and HRW denounces mass summary pushbacks and killings of Syrian

refugees trying to cross to Turkey by Turkish border guards. Despite the warnings of the international community and international organizations, deportations of Syrians in Turkey to this area are being reported. For instance, in May 2020, Amnesty International found that six Syrians who held a temporary protection identity document were deported to Syria on 22 May 2020 from the police station in Konya, even despite the covid-19 pandemic restrictions to mobility and closure of borders.

Finally, reports have focused on the access of migrants and asylum seekers to goods and services in Turkey. It must be noted that most asylum seekers and refugees (around a 97% according to UNHCR, 2020) do not live in refugee camps, but rather in urban or rural areas within local communities. Therefore, the access to housing and employment for obtaining any income are essential. In 2013, 62% of the Syrian refugees who lived outside camps were living in houses of 2.1 units on average and in groups of 8 people (Amnesty International, 2016). By 2015, only 33% of the Syrian refugees residing in southern border provinces who were surveyed were living in well-insulated buildings, while a 43.3% was living in structures with cold and humidity and a 17,9% in tents (Amnesty International, 2016). Similar situation can be found in current times (ECRE, 2020). Regarding the access to employment, ECRE (2020) underlined that most of migrants and asylum seekers work in informal sectors, so the covid-19 crisis has severely hit their employment opportunities and economic status. Regarding the access to education, Turkey grants education to migrant and refugee children. However, Turkey still lacks enough mechanisms to protect LGBTI migrants and refugees, who may suffer violence and specific forms of discrimination in the employment, housing or education areas.

7. CONCLUSIONS

The present essay has aimed to contribute to the assessment of the European Union migration and asylum policy, particularly to what concerns the externalization of the management of migration flows (referred as ‘border externalization’) to Morocco, Libya and Turkey. From the analysis of the compliance, effectiveness (and unintended effects) and respect to the human rights of migrants, asylum seekers and refugees, the following conclusions can be drawn:

1. The Spain-Morocco agreement on cross-border police cooperation has been complied in its part referring to the establishment of Police Cooperation Centers and the funding of joint activities to curb irregular migration and smuggling. However, the amount of funds given by Spain and their exact destination by Morocco remain unknown due to the rejection of both countries to make it public.
2. The enforcement of the Spain-Morocco agreement does not result in a significant reduction of illegal border-crossing detections, which were already low in the Western Mediterranean and Western African routes. Instead, detections increase since 2017 in both routes, thus compromising the effectiveness of the agreement. Spatial substitution effects can be appreciated, as migrants from Western African countries opt for the Central Mediterranean route in the period 2013-2017 until the Italy-Libya MoU is enforced, and then their detections increase in the period 2017-2019 in the Western Mediterranean route. Inter-temporal substitution effects cannot be considered due to the lack of data on the interception of migrants by Moroccan coastguard. Finally, no reverse substitution effects can be appreciated, and the volume of migrants in Morocco has only slightly increased in absolute and relative terms.
3. Morocco has a national law regulating asylum and immigration, although protection to migrant and asylum seeker rights cannot be granted. Raids and police violence towards Sub-Saharan migrants is frequent, detention centers conditions are precarious and summary deportations have been reported. Migrants have a limited access to public services.
4. The EU-Turkey Statement has been complied in its area referring to the deterrence of migration flows by Turkey, the processing of asylum applications of Syrian nationals and the disbursement of €6 billion of EU funds. However, this disbursement has been slower than expected due to its project-based character, and cooperation between EU and Turkey has also suffered ups and downs. The Statement has not been fully complied in its part referred to the return of migrants and asylum seekers from Greece to Turkey.
5. Since the entry into force of the EU-Turkey statement, the volume of irregular border-crossings drastically fell. However, this effect can be rather attributed to the previous November 2015 EU-Turkey joint plan. No spatial substitution effects (diversion of migrants to the Central Mediterranean route) can be appreciated in this case. There are neither inter-temporal substitution effects, so the Statement seems to

have a more dissuasive effect. Most migrants and asylum seekers (mainly from Syria) remain in Turkey, thus increasing the volume of migrants and asylum seekers in the country in absolute and relative terms since the Statement entry into force.

6. Turkey has a relatively well developed migration and asylum law, although some discrimination exists for migrants of specific nationality. Major concerns arise regarding summary deportations to unsafe countries, as well as the lack of access to legal assistance in detention and removal centers, which have widespread. Migrants and asylum seekers are granted basic access to services.
7. The Italy-Libya MoU has been complied regarding the funding and training to Libyan coastguards and forces in charge of the control of migration flows, the funding of projects for improving the conditions of detention centers, as well as the execution of development cooperation projects in the country. However, Libya still finds difficulties in enforcing its southern border and preserving its technical equipment.
8. The entry into force of the Italy-Libya MoU does not preclude an increase in the illegal border-crossing detections in the year 2017. However, the MoU seems to be effective to its aim in the medium-term due to its dissuasive effect (further study would be needed in this aspect), although it does not prevent a surge in detections in 2020 (in lesser volume than former occasions). This effectiveness is linked to the lesser volume of migrants willing to cross the border, as the analysis of inter-temporal substitution effects prove. No spatial substitution effects can be regarded to the Eastern Mediterranean route, Western African migrants opt for the Western Mediterranean route, and Eastern African and Middle East migrants do not opt for any other route. Slight reverse flow substitution effects can be observed, especially due to the detention of migrants and asylum seekers in the country.
9. Migrants and asylum seekers rights, and human rights in general, are violated in mass scale in Libya. The Libyan asylum and migration law has become irrelevant for actors involved in the Libyan civil war, and summary killings, slavery, torture, sexual violence, indefinite detention and migrants in extreme poverty situations have been reported. The country cannot be considered a safe port for disembarkation.

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ANNEX 1. Reports on migrants, asylum seekers and refugee rights protection and promotion in Morocco, Libya and Turkey issued by international organizations, NGOs, and other institutions (2010-2021)

Date of publication	Years of coverage	Country	Organization	Report name	Link
2010	2009	Morocco	Amnesty International	<i>Amnesty International Report 2010 - Morocco/Western Sahara</i>	https://www.refworld.org/docid/4c03a812c.html
2010	2000-2010	Morocco	Policy Development and Evaluation Service of the United Nations High Commissioner for Refugees	<i>Refugee protection and international migration: a review of UNHCR's role and activities in Morocco</i>	https://www.unhcr.org/4ba8ce896.pdf
2012	2005-2011	Morocco	Euro-Mediterranean Human Rights Network	<i>Asylum and Migration in Maghreb: Morocco</i>	https://www.refworld.org/pdfid/514d77c22.pdf
2013	2003-2012	Morocco	Conseil National des Droits de l'Homme	<i>Thematic Report on situation of migrants and refugees in Morocco</i>	https://www.ecre.org/wp-content/uploads/2013/09/www.ccdh.org.ma_IMG_pdf_CNDH_report_-_migration_in_Morocco.pdf
2013	2003-2013	Morocco	Doctors Without Borders	<i>Violence, vulnerability and migration: trapped at the gates of Europe. A report on the situation of sub-Saharan migrants in an irregular situation in Morocco</i>	https://www.msf.org/morocco-migrants-face-persistent-violence
2013	2010-2013	Morocco	Institute for Public Policy Research	<i>Report. The myth of transit: sub-Saharan migration in Morocco</i>	https://www.ippr.org/files/images/media/files/publication/2013/07/myth-of-transit-morocco-ENG_June2013_11051.pdf
2013	2010-2013	Morocco	Conseil National des Droits de l'Homme	<i>Informe ejecutivo: Extranjeros y Derechos Humanos en Marruecos: para una política migratoria y de asilo radicalmente nueva</i>	https://www.ceja.ch/images/CEJA/DOCS/Bibliotheque/Doctrine/Maroc/CNDH/ESP/AGNOL/Informes%20them%C3%A1ticas/Extranjeros%20y%20derechos%20humanos.pdf
2014	2010-2013	Morocco	Global Detention Project of the Graduate Institute of Geneva	<i>Immigration detention in Morocco</i>	https://www.globaldetentionproject.org/wp-content/uploads/2016/06/Morocco_report.pdf
2014	2012-2013	Morocco	Human Rights Watch	<i>Abused and Expelled Ill-Treatment of Sub-Saharan African Migrants in Morocco</i>	https://reliefweb.int/sites/reliefweb.int/files/resources/morocco0214_ForUpload.pdf

2015	2014	Morocco	Association Marocaine des Droits Humans - section de Nador	<i>Rapport annuel 2015 sur la migration et l'asile à Nador</i>	https://www.borderline-europe.de/sites/default/files/background/rapport%20migration%202015%20AMDH%20Nador.pdf
2015	2014	Morocco	Comisión Española de Ayuda al Refugiado (CEAR)	<i>Marruecos: Desprotección y vulneración de derechos de las personas migrantes y refugiadas a las puertas de Europa</i>	https://www.cear.es/wp-content/uploads/2016/11/informe_marruecos_cear_2015_definitivo.pdf
2015	2000-2015	Morocco	Amnesty International	<i>Fear and fences: Europe's approach to keeping refugees at bay</i>	https://www.amnesty.org/es/documents/eur03/2544/2015/es/
2017	2016-2017	Morocco	Spanish Jesuit Refugee Service and Comillas Pontifical University	<i>No protection at the border. Human rights at the southern frontier: between Nador and Melilla</i>	https://asylumineurope.org/wp-content/uploads/2016/07/resources_no-protection-at-the-border_sjm.pdf
2018	2018	Morocco	Group Antiraciste d'accompagnement et de Défense des Étrangers et Migrants (GADEM)	<i>Expulsions gratuites: note d'analyse sur les mesures d'éloignement mises en oeuvre hors tout cadre légal entre septembre et octobre 2018</i>	https://gallery.mailchimp.com/66ce6606f50d8fd7c68729b94/files/3690d5cc-2b47-404c-a43d-ca0beeb7e383/20181011_GADEM_Note_Expulsion_gratuite_VF.pdf
2019	2016-2019	Morocco	United Nations High Commissioner for Refugees	<i>Evaluation Report. UNHCR Country Portfolio Evaluation: Morocco (2016-2019)</i>	https://www.unhcr.org/5e1f058d7.pdf
2020	2019	Morocco	US Department of State	<i>2020 Country Reports on Human Rights Practices: Morocco</i>	https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/morocco/
2020	2013-2020	Morocco	European Center for Constitutional and Human Rights (ECCHR)	<i>Case Report. The Spanish Moroccan land border in Melilla - a lawless zone of automatic expulsions</i>	https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport_ECtHR_Melilla_EN_Jan2020.pdf
2015	2000-2015	Libya	Amnesty International	<i>Fear and fences: Europe's approach to keeping refugees at bay</i>	https://www.amnesty.org/es/documents/eur03/2544/2015/es/
2016	2015	Libya	United Nations Support Mission in Libya (UNSMIL) and Office of the United Nations High Commissioner for Human Rights (OHCHR)	<i>Detained and dehumanised: report on human rights abuses against migrants in Libya</i>	https://unsmil.unmissions.org/sites/default/files/migrants_report-en.pdf
2017	2016	Libya	UNHCR, IMPACT and Altai Consulting	<i>Mixed Migration Trends in Libya: Changing Dynamics and Protection Challenges</i>	https://www.unhcr.org/595a02b44.pdf

2017	2015-2017	Libya	Refugees International	<i>"Hell on Earth": abuses against refugees and migrants trying to reach Europe from Libya</i>	https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/592f37468419c2ac554b4c9f/1496266580341/2017.6.1+Libya.pdf
2018	2018	Libya	Global Detention Project of the Graduate Institute of Geneva	<i>Country report. Immigration detention in Libya: a human rights crisis</i>	https://reliefweb.int/sites/reliefweb.int/files/resources/GDP-Immigration-Detention-Libya.pdf
2018	2017-2018	Libya	United Nations Support Mission in Libya (UNSMIL) and Office of the United Nations High Commissioner for Human Rights (OHCHR)	<i>Desperate and dangerous: report on the human rights situation of migrants and refugees in Libya</i>	https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf
2019	2016-2019	Libya	Human Rights Watch	<i>No escape from hell: EU policies contribute to abuse of migrants in Libya</i>	https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya
2020	2020	Libya	IOM's Displacement Tracking Matrix and United Kingdom Aid	<i>Libya's migrant report</i>	https://displacement.iom.int/system/tdf/reports/DTM_R32_Migrant_Report.pdf?file=1&type=node&id=9757
2020	2020	Libya	United Nations Security Council	<i>Report of the Secretary-General on the implementation of resolution 2491 (2019), S/2020/876</i>	https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2020_876.pdf
2020	2015-2020	Libya	Amnesty International	<i>Between life and death': refugees and migrants trapped in Libya's cycle of abuse</i>	https://www.amnesty.eu/wp-content/uploads/2020/09/Libya-report-Between-life-and-death.pdf
2011	2008-2009	Turkey	Helsinki Citizens Assembly, Turkey Refugee Advocacy and Support Program and Organization for Refugee, Asylum and Migration (ORAM)	<i>Unsafe haven: the security challenges facing Lesbian, Gay, Bisexual and Transgender asylum seekers & refugees in Turkey</i>	https://www.mhd.org.tr/images/yayinlar/MHM-50.pdf
2015	2015	Turkey	European Council on Refugees and Exiles (ECRE) and Refugee Rights Turkey (RRT) - AIDA (Asylum Information Database)	<i>Country report: Turkey</i>	https://www.mhd.org.tr/images/yayinlar/MHM-48.pdf
2016	2011-2016	Turkey	Amnesty International	<i>No safe refuge: asylum-seekers and</i>	https://www.amnesty.org.uk/files/webfm/

				<i>refugees denied effective protection in Turkey</i>	Documents/issues/embargoed_turkey_briefing_2june2016.pdf?VersionId=wf7BB.dGPs9iTb9roUaznbQzJP9ivvdR
2018	2018	Turkey	Refugees International	<i>"You cannot exist in this place": lack of registration denies Afghan refugees protection in Turkey</i>	https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5c12e207575d1fee96a38864/1544741385940/Turkey+Report+-+November+2018+-+in+English+-+2.0.pdf
2019	2018	Turkey	Refugee Rights Turkey (RRT) and US-Based Refugee Solidarity Network (RSN)	<i>Access to state-funded legal aid services by asylum-seekers and migrants in Turkey: challenges and opportunities</i>	https://www.mhd.org.tr/images/yayinlar/MHM-74-EN.pdf
2019	2019	Turkey	Amnesty International	<i>Sent to war zone: Turkey's illegal deportations of Syrian Refugees</i>	https://www.amnesty.org/download/Documents/EUR4411022019ENGLISH.pdf
2019	2019	Turkey	Human Rights Watch	<i>Turkey: Syrians being deported to danger</i>	https://www.hrw.org/news/2019/10/24/turkey-syrians-being-deported-danger
2019	2016-2019	Turkey	Global Detention Project of the Graduate Institute of Geneva	<i>Immigration detention in Turkey: a serial human rights abuser and Europe's refugee gatekeeper</i>	https://www.globaldetentionproject.org/wp-content/uploads/2019/10/ONLINE-191024-Immigration-Detention-in-Turkey.pdf
2019	2018-2019	Turkey	United Nations High Commissioner for Refugees (UNHCR)	<i>Submission by the UNHCR for the Office of the High Commissioner for Human Rights' Compilation Report for the Universal Periodic Review (3rd cycle, 35th session). Turkey</i>	https://www.refworld.org/country,...TUR,.5e1732e216,0.html
2020	2019	Turkey	European Council on Refugees and Exiles (ECRE) - AIDA (Asylum Information Database)	<i>Country report: Turkey</i>	https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf
2020	2020	Turkey	Amnesty International	<i>Turkey: halt illegal deportation of people to Syria and ensure their safety</i>	https://www.amnesty.org/download/Documents/EUR4424292020ENGLISH.pdf