A new European pact on immigration and asylum in response to the "migration challenge"

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Europe is one of the leading destinations in the world in terms of migratory flows: there are 77 million migrants in Europe, Russia included, according to the UN's department for population. But Europeans find it difficult to acknowledge that Europe is a land of immigration. The populist parties decry the "great replacement", "invasion", "conquest" and the States' loss of identity, whilst around 34,000 people have died in the Mediterranean since the start of this century.

International migration is structural: a certain number of factors lead people to migrate towards Europe in a global groundswell movement; firstly, the quest for better life and work opportunities and the bid to flee crises and conflicts. The dream of Europe became possible in the East thanks to the progressive opening to residency and work for citizens from the former Communist countries, establishing circulatory migration as a way of life. Most of the flows from the South are a result of family reunion, because in 1974 Europe suspended paid labour immigration for non-Europeans and its migration history explains this phenomenon, which it shares with the USA. Students are also an important component, since the opening up of Europe to qualified students for whom the continent has multiplied its efforts in terms of attractiveness (ERASMUS, ERASMUS+ and the points or residence permits for the most qualified).

Refugees are another component of migration: coming in number, notably during the Syrian crisis in 2015 (1.2 million asylum seekers in Europe to date), arrivals have now dropped back down to figures prior to the crisis, whilst they continue to make headlines because of the ongoing crisis in the way they are received. Finally, there is the demographic and environmental aspect is a major challenge for the ageing continent – even though Europe is just a secondary destination for the environmentally displaced.

These structural causes mean that whatever the method put forward; migration cannot be stopped. It will continue slowly and continuously toward Europe in conditions that will often be beyond the imaginable for those travelling without visas: crossing the Sahara Desert, imprisonment, rape, prostitution, enslavement, smugglers, drownings due to the security policy adopted by the States of Europe (Schengen, Dublin, Frontex), which delegate border control to the countries on the southern shores of the Mediterranean, such as Libya or Turkey .

Timidly Europe is addressing this new situation, which it deems unjustified, whilst endorsing world decisions of multilateral migration governance, as defined by the Marrakesh Pact of 2018 which five countries (including three Member States[1]) rejected during the General Assembly on 19th December 2018. On the one hand, the States of Europe are democracies which share common values and take heed of public opinion, which is afraid of both globalisation and migration. On the other hand, Europe needs migration in sectors where labour is short and is trying to attract skills and competences from the world over; and it cannot reject the international commitments it has made regarding refugees, the right to live in a family and the rights of minors, not forgetting the problem of its own ageing population.

The 2015 crisis regarding the reception conditions of asylum seekers revealed both a lack of solidarity between Member States, with those in the East refusing the host refugee quotas requested by the President of the European Commission, Jean-Claude Juncker – totalling 160,000 people – in contrast to

1. *Hungary, Poland, Czech Republic*

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a million in Germany and 1.2 million across the EU as a whole, and a series of "solidarity crimes" on the part of some, who deemed it is contemptible to allow thousands of migrants to die at sea or in the street. Apart from the 34,000 deaths since the end of the 1990's, migrants have often been received without an offer of housing, as in Calais, or in camps as in Lesbos and in urban peripheries, such as the Porte de la Chapelle in Paris.

What might we observe about Europe's response? A European crisis of solidarity and a crisis of trust between Member States, sometimes threatened by sovereignism, regarding the European institutions.

So, what should we do? Either act differently from the way it has been announced, given the discrepancy between what politicians say and reality, or review the European immigration policy completely by taking on board the reality of migration flows rather than fears, which would suppose political courage, which was only assumed by Angela Merkel in 2015 and by Pope Francis, as well as by a few local actors (like the Mayor of Palermo, Leo Luca Orlando, re-elected with 72% of the vote), and a multitude of associative players, who have sometimes been criminalised, and who host people in lieu of the States.

Some are suggesting a Lampedusa Pact to review the European immigration and asylum policy from the beginning, like Enrico Letta, former Italian Prime Minister who established the "Mare Nostrum" operation in 2013, whilst the structural, sustainable, and inevitable aspects of immigration are not accepted as a given by the majority.

THE 2015 CRISIS AND ITS IMPACT

On this ageing continent international migration is contributing to population growth: between 2000 and 2015 (a period without migration) in Europe the population decreased.

Since the fall of the Iron Curtain, the possibility of being able to leave has gone hand in hand with a closure of the borders, due to visa obligations for non-Europeans, according to a ranking which places developed countries first, with their populations that can travel the entire world visa free for three months and last, the States whose citizens represent a "migration risk". The development of the countries in the South is a factor of mobility, and conversely migration is a factor of development (more than 520 billion $ sent yearly to the countries of origin, i.e. three times the sum of public development aid), as demonstrated in the 2019 UNDP report).

Given the regionalisation of migration everywhere in the world, intra-European migrations have increased significantly since the opening of the borders to the countries of Eastern Europe and thanks to Erasmus, whilst the southern shores of the Mediterranean contribute to the majority of extra-European migration (Maghreb, Egypt, Middle East and Turkey). Many countries in the South are becoming host and transit countries after having exclusively been countries of departure in the past. Turkey is the biggest emigration country towards Europe (4.5 million Turks live in Europe) and it is also home to 4 million refugees, followed by Jordan, Lebanon and Pakistan in terms of forced migration from the Near and Middle East (5 million Syrians have left their country). Turkey has a negative migratory balance (fewer departures toward Europe than returns from Europe towards Turkey). Given its geographic position Morocco, (13 km separate it from Europe) is also a major emigration country (3.5 million Moroccans live in Europe) but it also a major Sub-Saharan transit and immigration country.

With the arrival of 1.2 million asylum seekers in the EU, the year 2015 shook the European immigration and asylum policy to the point that the EU's fundamental values of the respect of Human Rights and "burden sharing" have been challenged.

The Syrian crisis triggered 7 million cases of internal migration and led to 5 million international refugees. In the summer of 2015, the television images conveying an invasion struck the minds of many, because so many European border posts were closed along the Balkan route, after the arrival of Syrians on the Greek islands

close to Turkey (Lesbos, Kos, Samos). Successively the Member States put up borders (Greece/Turkey, Greece/Macedonia, Hungary/Serbia) including within the European Union itself (Hungary/Austria, France/Italy, Greece/Bulgaria).

Rising to the challenge of these inflows the President of the European Commission, Jean-Claude Juncker called on the Member States of the EU to share refugee quotas according to the wealth of each country and population size. Germany took in the most, since Angela Merkel's announcement in September 2015 that Germany was prepared to host 800,000 asylum seekers. Since that date it has taken in more than a million. Some countries of Central and Eastern Europe, like Hungary, the Czech Republic, Poland and Slovakia refused to implement the reception quotas, in virtue of their wish to protect the cultural homogeneity of their country, in a context a rise of the far right. Others, like France accepted the suggested distribution, although it received a great deal fewer asylum candidates than planned.

The principle of solidarity, which is included in the Lisbon Treaty (2007), stood shattered and the European policy of immigration and asylum was marked by increased sovereignism in the States of Europe in the face of the communitarisation of migratory flow policies, initially introduced by the Amsterdam Treaty (1997). A confidence crisis came in addition to that of solidarity between the EU and its States. Germany, Sweden and Austria granted most protection to asylum seekers, with France lying below the European average despite a rise in the number of refugees accepted (over 40%). Italy should be given a specific position, as it undertook a sustained rescue policy alone, noting that it was abandoned by the other Member States as it set up the Mare Nostrum operation in 2013 (which saved nearly 150,000 people in one year).

To alleviate the burden on Greece in its reception of refugees, Germany drew up a European agreement in March 2016 with Turkey which stipulated the payment of 6 billion € for the maintenance of the refugees within its borders (Syrians, Iraqis, Afghans).

An exchange of 72,000 Syrians was planned between Turkey and the EU, since Turkey, which is a signatory of the 1951 Geneva Convention on Refugees did not extend the benefit of the status to non-Europeans, whilst granting a one-year renewable residence permit and access to the labour market to Syrians. In this mission it is playing with its image in regard to Europe, similarly with this agreement, in Greece's eyes, Germany cleared its reputation as a "hard" country regarding the Greek debt; this was a kind of "soft" diplomacy undertaken by both Turkey and Germany using the migrants as an intermediary.

Despite this episode the Dublin Agreements were not modified (notably the referral system towards the country of first entry for asylum, the so-called "one stop one shop") which led to the burden being borne by the countries situated at the entry to Europe, notably those in the South.

Due to the Syrian crisis of 2015 the UN General Assembly decided to draft a Global Pact on Migration and Refugees that was adopted at the end of 2018 in Marrakesh. The Global Pact is also subtitled "For safe, orderly, regular migration", stressing the need for totally new policies in terms of migration that are drafted with realism in the face of the durable, structural, globalised nature of international migration, since dissuasive and repressive policies have failed in their bid of dissuasion, of return and in the development of alternatives to migration.

THE MEDITERRANEAN SEA AT THE HEART OF MIGRATION POLICY CHAOS

The Mediterranean lies at the heart of European preoccupations, since Libya became a place of passage and trafficking after having filtered sub-Saharan migration candidates for the countries of Europe until 2011. Progressively entry points shifted towards the Member States that lie on the Mediterranean – with Italy, Spain, Malta and Greece witnessing the arrival of both potential refugees and migrants seeking employment whilst fleeing countries in crisis: these are the so-called mixed flows for asylum and work.

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This involves extra-community migrants most of whom are trying to enter the Schengen Area without a visa, whereas Europe has barricaded itself in since the 1990's using a series of instruments to control its external borders:

• visas, since 1986,

• the Dublin asylum agreements (1990) in a bid to harmonise the delivery of asylum rights and to oblige seekers to make their request in the first country they enter on arrival in Europe (Dublin II, 2003),

• the Schengen Information System (SIS) which digitises the illegal, rejected and criminal candidates,

• Eurodac, which has been collating asylum seeker fingerprints since 2000 to prevent multiple entries under a false name,

• The Integrated External Vigilance System since 2002 (IEVS),

• Frontex, the pooling of police forces from the EU countries to monitor its external borders since 2004,

• Readmission agreements signed with the countries on the southern shores of the Mediterranean, like Morocco, Algeria, Tunisia, Libya, Turkey and beyond (sub-Saharan countries), so that they take back their deported nationals.

This system is not working. On the one hand, because the readmission agreements suppose the political stability of the countries with which the Member States come to agreement (agreements combining readmissions with more visas for the qualified and development aid), but also because the closure of borders encourages the rise of traffickers who help promote illegal border crossings. On the other hand, it is deathly: apart from the 34,000 deaths in the Mediterranean since 2000, others are dying or being seriously injured as they climb the fences that separate the Spanish enclaves of Ceuta and Melilla from Morocco to reach the EU via Spain. Others languish in overcrowded conditions in Turkey (which has taken in 3.7 million Syrians, to which we can add

Iraqis and Afghans), in Lebanon (there are more than a million Syrians) in Jordan (600,000). Some of them are in Greece and Italy, Lampedusa and many others on the Mediterranean islands of Malta and Cyprus, which host tourists on the one hand and refugees on the other.

The successive migration crises that Europe has had to face, together with the strengthening of its external borders have slowly transformed Italy into an entry country for African migration and refugees. Multiple shipwrecks have made the Italians feel that they have been abandoned by the other Member States, which led to the anti-system and far right parties to power in June 2018. At the same time solidarity initiatives are flourishing in civil society thanks to a partnership of a diversified associative movements, of town councils, which show hospitality (Palermo, a network of welcoming towns), and of mayors who experiment with insertion (Riace where the mayor was prosecuted and sentenced for "solidarity crimes"). And yet, Italy, due to its demographic profile, is dependent on professions that are not occupied by nationals (like the "badanti" who look after the elderly), whilst Italian graduates (200,000 per year) move to other Member States due to youth unemployment.

SOME PROPOSALS

The review of the European immigration and asylum policy brings to light a great number of shortcomings, if not to say humanitarian scandals that will mark its history forever: the deaths in the Mediterranean, the rise of criminal smuggling networks in Libya and even those in the Near and Middle East, offering candidates access to Europe, in not simply deadly conditions but also prior to their journey, as illustrated in the report by the department for Human Rights at the UN: enslavement, imprisonment, rape, prostitution, the sale of organs, camps, whose living conditions are beyond imaginable in the 21st century, as in the Greek Dodecanese islands (notably Lesbos), the "jungles", as in Calais until 2016, temporary 'world towns" as in Grand Synthe, or near the enclaves of Ceuta and Melilla, perilous mountain crossings, as in the Valley of the Roya (France) in a bid to avoid the border of

Vintimiglia, a life on the street for under 18's or young adults, because they have no fixed abode.

We are confining people to an intolerable, unspeakable extent, creating "undesirables", as we exhibit them in conditions that are unimaginable in the 21st century. Policies to close borders to paid labour immigration since 1973 in the European countries then, (and in France since 1974), a tightening of access conditions to the right to asylum in comparison with the 1970's together with the visa regime, have been the main cause of this.

1) Harmonising the asylum policy has been a priority for Europe for many years. Several bids have been made, notably via the Dublin I system to prevent, as of 1990 'asylum shopping' (applying in several countries whilst waiting for the answer by the one with the best offer), but this has not brought to an end the diversity of response depending on the Member States for the same kind of profile, for various reasons (different interpretations of the Geneva Convention regarding the idea of persecution, and founded fear of persecution in a given region, historical or geographical vulnerability according to one flow or another in a Member State's opinion, diplomatic or economic considerations with the countries or regions of departure, philosophy regarding asylum in each country etc.). The Dublin II agreements – "one shop-one stop" which require that each asylum seeker make his request in the first European country where he has set foot, have been disastrous in their implementation because candidates try to go where they have family, linguistic or social ties and do not stay in the first country of arrival if there is no ready-made migration networks there.

On France's initiative in 2008, the European pact on immigration and asylum formulated the goal of asylum harmonisation as one of its five priorities, but the 2015 crisis threw this off course. Strengthening the Maltese based EASO (European Asylum Support Office) and giving it greater visibility and authority in Europe and simultaneously a total review of the Dublin agreements should be a priority, notably with the abolition of the Dublin II system. Amongst the

perverse effects of this system's total lack of efficacy we might quote the crisis linked to the reopening of rejected candidates' cases after appeal in Germany which led to the reopening of their files in France as of 2017.

The harmonisation of social services offered to asylum seekers between European States is also necessary even though the supposed "call effect" in the comparison of social reception conditions is rarely the main reason behind the attraction to one Member State or another on the part of young asylum seekers. Germany is attractive because of its economic situation, the UK for its "ethnic" jobs between fellow countrymen from the Middle East and the lack of ID checks within the UK itself, Sweden is appealing because in the past it has hosted many refugees from the Middle East. France comes second in line after Italy and Greece as countries of first entry, which are often abandoned by the migrants if they have the opportunity to do so.

2) The reopening of labour immigration in struggling economic sectors is the corollary of the chaos in which the European immigration and asylum policy finds itself. When legal labour immigration was accessible to non-Europeans (which is only the case for a minority selected according to their studies, high level skills, artistic or sporting achievements or the wealthiest, the categories which are eligible for the award of a visa or a residence permit), there were no "mixed-flows" as there is now, flooding the authorities which deliver asylum, and who have but a slim chance of regularisation with a residence permit after several years for those who are rejected.

Moreover these mixed flows are often made up of "neither-nor" candidates; they can neither be deported or given legal status, because they come from countries that are dangerous or at war, and cannot be returned home and vegetate for years on the streets or work on the black. "Mixed" migrants ask for asylum because it is the only way to enter a country or a group of countries without a visa or which demand a visa, even though the chances of being awarded the status of refugee are minimal. The

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Marrakesh Pact of 2018, which calls for "safe, orderly, regular" immigration says nothing other than this, but in an indirect manner: for the entry to be safe, orderly and regular the conditions of entry must be safe and not subject to the mercy of smugglers, seekers' and workers' entry profiles should be differentiated, and entries should be legal.

The advantage of an opening of the borders to wider categories would be manifold: partial or total eradication of mafia-like networks and the many deaths at sea, camps, jungles and other unworthy places, access to legal work in sectors where many work illegally, whilst the latter may be struggling due to labour shortages, thereby bringing to an end the multiple forms of sub-citizenship (undocumented, neither-nor, those rejected from asylum), the abusive rhetoric, the pull-effect and the institutional goal of the lowest bidder (the poorer the reception conditions, the fewer of them will come). The assessment of industrial sectors suffering labour shortages could be made at European level.

3) A distribution of migrants rescued in the Mediterranean, in a concerted European policy is necessary to bring to an end the theatrical staging of the control of Europe's external borders in the Mediterranean by the countries where populism is rising. Hence Italy closed its ports to rescue boats in 2018. The other Member States on the shores of the Mediterranean then passed the buck (Malta, France, Spain) depending on their political climate and the fears of those concerned about immigration.

4) Support to friendly cities and to those convicted for the "crime of solidarity" when they have helped pro bono at sea or on land, is also a priority. This network is often supported by a population of voluntary associative activists who belong to wider political leanings (Christian charities, red and green alternative movements), but which is apparently under-estimated in number by many political decision makers, who tend to formulate their migration policies in the light of surveys and the rise of the far right. The demographic ageing of the European population, sectoral labour shortages; a lack of

qualified professions such as doctors in rural areas, IT experts and the explosion in the demand for jobs in services to people (the elderly and sick), agriculture, the construction industry, tourism and the hospitality industry call for a rational response and not a discretionary adjustment.

5) The European immigration and asylum policy must no longer be subject to a unanimous vote and has to be implemented according to the majority rule otherwise any changes will be blocked. The management of migratory flows must be undertaken in the respect of Human Rights, which proved impossible with the regime defined in the Amsterdam Treaty. The European Union has wavered in terms of its values (solidarity, included in the Lisbon Treaty, with diversity being the goal of living together, asylum rights, children's rights), a lack of trust has not only grown between the Member States, but also between the States and the European institutions with the refugee reception crisis in 2015, due to the refusal of the so-called Visegrad countries (Poland, Hungary Czech Republic and Slovakia) to share the "burden" of new arrivals, asserting their concern about remaining homogeneous. We might imagine for example – as was the case with Schengen – which has always been optional (the UK did not implement it), an opt-out clause in which some States decide not to participate in the common European immigration and asylum policy and manage their own borders. In 2015 Europe was weak when it was confronted by Hungary: there was no reduction in structural funds for the non-admission of asylum seekers, which seemed to endorse Hungary's position.

6) Finally, necessary steps include **an assessment of the cost/efficacy ratio of external border control policies in the Mediterranean by monitoring operations as sea**, by borders built on Europe's doorstep, by bi- and multilateral agreements concluded with third countries for the externalisation of Europe's external borders, by return and development policies often put forward in exchange in the Euro-Mediterranean agreements. Those who wrongly thought, as of 1975, that development can be substituted in the short to mid-term inspired

these policies. But although qualitative experiments of reinsertion have succeeded, we note a quantitative failure of these measures, because migration and development function together, as illustrated by the PNUD report. If we want to go from Tampere 1999 to Tampere 2019, we must return to the fundamentals of the European immigration and asylum policy.

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