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EUROPE AND REFUGEES

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Editorial

Europe and Refugees

Extra Dossiê

Entre 2014 e 2016, os Estados-membros da União Europeia (UE) receberam o maior número de pedidos de asilo da história recente. Só em 2015, ano que em foi atingido o pico do fluxo migratório com destino ao continente europeu, o Eurostat estima que 4,7 milhões de imigrantes tenham chegado à UE, 1,3 milhões dos quais requereu o estatuto de refugiado. Pese embora a existência do Sistema Europeu Comum de Asilo (SEAC), um mecanismo criado em 1999 pela Comissão Europeia e que visa a homogeneização e centralização dos procedimentos de asilo baseado no Regulamento de Dublin (2003), ficou clara a incapacidade europeia em gerir um fluxo de tamanhas dimensões. Acresce que à ineficácia do SEAC, resultante do princípio de que o Estado-membro responsável pela entrada do requerente é-o igualmente pela análise do pedido de asilo, juntou-se uma crise de solidariedade no seio da UE, relativa à recolocação geográfica dos refugiados entre os diversos Estados-membros.

Num contexto social e político marcado pela "ressaca" da crise económico-financeira, a designada "crise migratória" veio agravar fraturas e cisões no seio da União, dando espaço a um aumento dos movimentos nacionalistas e populistas, colocando em causa a imagem e a credibilidade externa da UE, para além de provocar um drama humanitário dentro e nas fronteiras da Europa.

As consequências desta crise ainda estão longe de ser avaliadas em toda a sua extensão. Importa, por isso, refletir sobre a (in)capacidade da UE em responder a este desafio que tem, desde logo, uma dimensão humanitária. A imagem de vulnerabilidade transmitida pela União aos seus cidadãos, mas igualmente aos Estados terceiros, perante uma situação que exigia uma resposta coesa e eficiente, afetou significativamente a credibilidade do projeto europeu. Essa resposta deveria situar--se, por um lado, ao nível das instituições europeias mas, igualmente, ao nível dos Estados-membros, no seu conjunto e não apenas dos que mais diretamente foram afetados pelos fluxos populacionais. Trata-se de solidariedade. Solidariedade entre Estados, mas também solidariedade humana. E a solidariedade não pode deixar de ser um valor fundamental ao projeto de integração europeia que a UE corporiza.

Mas para além da resposta institucional e humanitária a esta crise, importa igualmente refletir sobre as suas causas; sobre o que está na origem deste fluxo maciço de pessoas, muitas delas oriundas de áreas afetadas por conflitos prolongados e grande violência. Sem atendermos às causas, não será possível pensar em estratégias e respostas sustentáveis.

Este número da revista *Nação e Defesa* é dedicado ao tema "Europa e os refugiados", entendido como fundamental para a compreensão do momento atual e futuro da União Europeia.

Alice Cunha e Ivette Santos introduzem a temática, contextualizando-a historicamente, enquadrando os diversos contributos que fazem parte desta revista.

Ansgar Schaefer analisa as medidas tomadas pela diplomacia e polícia política portuguesa para impedir a entrada de refugiados provenientes da Alemanha e dos

países ocupados pelas forças nazis. A partir do caso das duas irmãs, Flora e Bela Rothschild, o artigo confronta-nos com o verdadeiro significado dessas restrições, mostrando os efeitos de uma política puramente legalista sobre a vida do ser humano.

Já Luiza Iordache Cârstea foca-se nas políticas e nas ações humanitárias da Comissão de Assistência Conjunta da Cruz Vermelha Internacional, um instrumento dessa instituição e da Liga das Sociedades da Cruz Vermelha para ajudar as populações civis, em particular mulheres e crianças, em diferentes países europeus durante a Segunda Guerra Mundial.

Finalmente, Sofia Rodriguez Serrador, com base nas cartas enviadas por refugiados espanhóis a diferentes comités de ajuda (muitas delas destinadas a Matilde Huici), encontradas nos Arquivos Nacionais de França, ajuda-nos a compreender as privações sentidas nos campos de refugiados.

No que diz respeito ao contexto que determina uma das origens dos fluxos recentes de refugiados com destino ao continente europeu, Andrzej Podraza analisa a guerra na Síria em termos geopolíticos e como catástrofe humanitária. O seu significado transcende a mera dimensão regional, tendo causado o maior desastre humanitário desde a Segunda Guerra Mundial. Esta "crise dos refugiados" conduziu não só a um acréscimo da instabilidade no Médio Oriente, como afetou a Europa como destino de eleição.

Numa abordagem jurídico-política, Lucia Della Torre aborda a implementação da Diretiva Europeia 2002/90/CE e da Decisão-Quadro do Conselho 2002/946/JHA – conhecidas como *Facilitators' Package* – relativas à definição e ao reforço do quadro penal para a prevenção do auxílio à entrada, ao trânsito e à residência irregulares de migrantes, como exemplo para analisar o âmbito e a natureza do emprego do poder discricionário dos Estados. Este artigo visa compreender como a margem de manobra conferida pelo *Facilitators' Package* pode funcionar como um dos principais elementos da resistência dos Estados à receção e integração dos refugiados, ao mesmo tempo que discute se a redução dos limites à apreciação nacional pode atuar como um primeiro passo para responder à crise de uma forma mais eficiente, embora humana.

Considerando uma dimensão igualmente fundamental, Asya Pisarevskaya analisa detalhadamente a integração económica dos refugiados em oito países europeus, em 2008, através de indicadores como o emprego, a qualidade do trabalho e a sobrequalificação.

A concluir, Periklis Kortsaris, tendo como base o conflito na Síria que causou uma das maiores vagas de deslocamento de refugiados no mundo – com cerca de seis milhões à escala global, dos quais 5,4 milhões em países vizinhos da Síria – analisa técnica e juridicamente a sua reinstalação em países terceiros, como uma solução destinada aos mais vulneráveis entre eles.

Na secção extra dossiê, Jorge Silva Paulo debruça-se sobre a questão da participação das Forças Armadas em matérias de segurança interna, revisitando o modelo do Estado de Direito Democrático, no qual se fundam as fronteiras entre segurança interna e externa. O autor procura conciliar as normas constitucionais e legais em vigor, para demonstrar que tais fronteiras são atuais.

Por fim, António Horta Fernandes afere criticamente, e sob a ótica da denominada "Escola Estratégica Portuguesa", o texto de Bruno Cardoso Reis sobre a guerra insurrecional – publicado recentemente pelo Instituto da Defesa Nacional –, argumentando que o contributo da referida escola foi subalternizado na análise.

<div align="right">Vítor Rodrigues Viana</div>

Europe and Refugees

One Hundred Years of Refugees
in Europe:
History's Encounter with the Present

Alice Cunha

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Yvette Santos

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The word "refugee" is not new in Europe. However, since 2015 refugees have been at the centre of a debate – among politicians, international organisations, non--governmental organisations and citizens – and a shared concern about how to receive and deal with the large number of refugees who have arrived in Europe, primarily from Syria, in search of safety and stability.

In fact, Europe and, more specifically, the European Union (EU) have not had to deal with a wave of refugees of this magnitude since the Second World War. Certainly the last three years cannot be compared to the 1940s nor is the context in which this new wave is occurring comparable, but the status of refugee remains essentially the same as do the causes leading to it.

This is not, however, a topic that enjoys either political or societal consensus. It is also a topic that frequently incites verbal exaggeration – with references to this flow as a "deluge", an "invasion", "swarms of people" – and even direct action such as demonstrations against the hosting of refugees and the construction of fences along borders between states. What is more, European citizens consider immigration to be the second most important issue facing the EU (European Commission, 2017, p. 4). Among their concerns are how these people, who do not share the same characteristics as they do particularly in terms of religion, can be integrated during a period of economic instability in the EU.

It is perhaps on account of the current large number of refugees – over a million – that this flow has been referred to as a "crisis" without precedent; however, this is not true as Europe has already had to deal with similar situations in the past in larger proportions and on more than one occasion. In fact, the issue of refugees has been analysed historically from a variety of perspectives. Associated with forced migrations, the massification and expansion of such movements marked the 20th century in particular, although situations of forced departures had already been recorded prior to that[1]. The literature has identified four great waves of refugees that have occurred in Europe since the end of the First World War up until the present day, as we shall see below.

The 20th century was in fact marked by various waves of forced migrations beginning with the Balkan Wars between 1912 and 1913 and, immediately afterwards, the First World War (1914-1918) when Eastern Europe saw millions of refugees

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1 Ever since the 14th century, we have been witness to forced migrations caused by people's religious non-alignment. Such is the case, for example, of the Portuguese and Spanish Jews who rejected conversion to Catholicism in the Iberian Peninsula and so were forced to leave Portugal and Spain, or of the Huguenots in France whose religion was different to the official religion determined by the monarchy and the Catholic Church. In the 19th century, Polish individuals sought refuge in France during the July Monarchy owing to the Polish conflict with Russia. In regard to this, see, for example, Noiriel (1997, pp. 34 and 36).

spreading in waves each time country boundaries were altered. However, the massive movement of refugees who fled during the 1917 Russian Revolution together with the forced displacement of over five million people between 1914 and 1922 as a result of borders being reconfigured in Eastern European countries and the conflict between Greece and Turkey that forced over 1.7 million people to migrate are considered the key moments that marked the first great wave of the inter-war wars (Bundy, 2016, p. 1). The second wave was characterised by the end of the Second World War and the migration of millions of people, with special emphasis on displaced persons located in Germany and Italy, those coming from Eastern European countries and also former prisoners of war. The end of the Soviet Bloc in 1989, wars in Iraq, Afghanistan and the former Yugoslavia, and the war on terrorism that started after 11 September 2001, all led to a mass exodus of refugees, thus representing the third European wave.

Finally, the present wave began in 2011 with the arrival in the European Union of refugees coming from countries in the Middle East (Syria, Libya and Iraq) and Afghanistan as well as from Africa (Sudan, Somalia and the Democratic Republic of the Congo). The situation grew considerably worse in 2015, the year when the number of people fleeing conflicts in their countries increased exponentially and the hosting countries started to show the first signs of collapse given that the flow of refugees was extremely intense and the refugees were very unequally distributed. They were concentrated in just a few countries, a situation that led to "overcrowding".

Political conflict, war and repression have all led to the forced displacement of millions of people, a displacement that is not confined to the European geopolitical and geographical context but is a global issue. At the end of 2011, the United Nations Refugee Agency (UNHCR) estimated the number of displaced persons in the world to be 42.5 million[2]. Of the 26.4 million people who benefited from the UNHCR's protection and assistance, only 10.4 million were refugees and covered by the Geneva Convention definition. At the end of 2016, about 65.6 million people had been forced to leave their place of origin because of different types of conflict. Of these, 22.5 million had refugee status, 40.3 million were internally displaced persons, that is, displaced within their own country, and 2.8 million had applied for refugee status[3].

Whether in a context of economic crisis or prosperity, conflict, repressive political regimes or climate change, forced migrations have been a part of the 20th century

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2   See UNHCR (United Nations Refugee Agency). *Une année de crises, Tendances mondiales 2011*. Available at http://www.unhcr.org/fr/statistics/unhcrstats/501145f39/tendances-mondiales-2011-refugies-demandeurs-dasile-rapatries-personnes.html [Accessed 2 August 2017]

3   See UNHCR. *Estatísticas*. Available at http://www.acnur.org/portugues/recursos/estatisticas/ [Accessed 13 September 2017].

and the present day, and both our understanding of them and their resolution have become increasingly complexified and diversified. Refugees have been progressively provided with a framework and orientation that is specifically related to forced migrations and distinct from other types of migration (such as for work) in order to provide a concerted response because, in addition to the urgently needed intervention of humanitarian aid, their reception and permanent settlement in the various countries must also be considered (Kévonian, 2005, pp. 95-97). Hence, understanding the phenomenon both as a whole and in its specifics requires a position taken from various perspectives and on various levels, ranging from the international body to the nation state, the individual to the intermediary, the local sphere to the international.

At this point it becomes necessary to distinguish between a migrant, a refugee and a political asylum seeker. For the first category, first Europe and then the European Union have been an attractive destination for both intra- and extra-European emigration flows, especially for those motivated by economic factors and seeking to improve their living conditions (fleeing from poverty), and for centuries the Mediterranean Sea has been the main route for migrants coming from Africa and the Middle East. The political asylum seeker, a term that comes from the legal figure of a person expressing their right to asylum, relates to an individual persecuted by their own country of origin for expressing their political or religious opinions, or because of their race or ethnicity, with each case being examined on an individual basis. This does not happen in the case of refugees given the enormity of these flows. Moreover, the concept of refugee has a somewhat restricted scope, being applied to people who have been forced to flee their country owing to persecution, war or violence on the grounds of race or religion, nationality policies and/or for belonging to a certain ethnic or social group. Based on the above categories and taking International Law as the reference, each individual (or group of individuals) is received according to different legal parameters depending on whether they are fleeing from poverty, from political or ideological persecution, or from armed conflict.

The issue of forced migration has been analysed from various different perspectives. First of all, the position of the international community towards refugees has been questioned (Weiss and Wilkinson, 2014). The absolute necessity of their involvement has not been ignored by studies on refugees that deal with the progressive construction of a global public space around forced migrations, deconstructing and reconstructing this space. The massification of such people's mobility since the end of the First World War together with the absence of a status allowing this mobility to be framed and defined has led to this whole question becoming a matter for international bodies. International governance has a fundamental role to play in determining categories of migrants and in seeking the homogenisation of

norms and refugee management practices, particularly when it comes to formulating their status and organising humanitarian management, protection and aid.

Secondly, the methods used by states themselves to manage the forced displacement of these populations as well as their reception and settlement conditions and public opinion are also points for academic reflection. Whereas the international dynamic has played a fundamental role in regulating these flows, the main purpose of these norms is to provide a global response to the challenges raised by these displacements. However, the literature has revealed the mismatch between international intention and the effective national and local application of these norms since each country is sovereign and answers to a logic and to migratory priorities specific to itself (circulation of people and border control, identification and administrative management of foreigners, economic and social inclusion in the hosting society). Over the years, states have remained free to define and execute rules and administrative procedures associated to the identification and hosting of refugees, delaying or hindering application of the legal norms defined by the Convention and thus subjecting refugees to the country's sovereignty and national interests (Noiriel, 1997, pp. 48-53).

However, according to Catherine Wihtol de Wenden, the actual globalisation of these migrations calls into question the pertinence of action in the name of national sovereignty given that border management at a European level is now controlled at a distance, for example, in the context of the Schengen Area. Furthermore, the migratory dynamic highlights the role of transnational actors in detriment to nation states, which have ceased to be the "base community of the international system" and the "most significant internal political framework in more cosmopolitan societies". In their turn, migrations have also led to a questioning of the concept of citizenship and human rights by introducing values that go beyond the national; hence the importance of the current accountability of international governance in the definition of global citizenship (Wenden, 2010, p. 15).

Thirdly, the role played by solidarity structures within the context of forced migrations has been brought to the fore[4]. These organisations intervene when the official (state) structures do not have a suitable framework available for certain situations and/or do not provide one. As intermediaries, they seek to be representatives and defenders of the rights of the refugees *in situ* in everyday life, but also before national, European and international government bodies. These solidarity structures are analysed through the activities they carry out to organise protection, humanitarian aid and medical assistance, notably in a variety of social and geographical spaces, and through the support they provide to facilitate the process of

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[4]   See, for example, Hinger (2016, pp. 78-88); Jönsson and Tallberg (2010).

the socio-professional integration of refugees in the hosting societies. These orga-
nisations are presented, moreover, as defenders of human rights and as key actors
when it comes to denouncing illegal situations of exploitation and abuse, parti-
cularly in reception, detention and/or internment centres, both past and present
(Clocher, Gastaut and Schor, 2004, pp. 19-20). Besides analysing their functions,
various studies question the ambiguity of their representativeness in society and in
the corridors of power as well as their capacity to maintain their autonomy and
independence before national and international bodies owing to their role as inter-
locutor between states, international bodies and the refugee (David, 2014; Rosales
Pena, 2016).

Finally, we must also mention individual and collective motivations as well as the
strategies used to ensure the displacement and survival of the refugees. Although
this population movement is associated to forced movement, it is also very closely
linked to a network involving intermediaries who facilitate this mobility at diffe-
rent levels. Both in the past and nowadays, these intermediaries have always been
indicated as being the main agents responsible for maintaining and increasing
forced mobility as well as for the human tragedies associated to this and the situa-
tions of vulnerability that refugees find themselves in. However, further theoretical
and empirical reflection on their role is justified, looking at it not only as "exploi-
tative" or as "profiteering" from these people but also as "facilitating" mobility in
situations involving daily repression.

The complexity of defining the category of refugee requires a historical retrospec-
tive in order to understand the process behind its construction with special empha-
sis placed on the weight of national and international situations. In fact, its cons-
truction is closely related to the historical contexts of forced migration since the
definition of refugee and the means to set it within a framework evolved as a result
of unprecedented situations of forced migration that states and international bodies
have been confronted with over the years.

The refugee was a figure that already existed in the 19th century, but the presence
of refugees in the hosting society was an isolated occurrence with little media visi-
bility, and the conditions governing their residence were dealt with on a case
by case basis at a national level. It was only after the end of the First World War,
with the Russian Revolution and the reconfiguration of the borders of Eastern
European countries, that forced migrations massified and refugee collectives
emerged. A definition of the figure of refugee was formed within the international
legal framework of the League of Nations in order to guide national states as well
as to make available the means to receive and host these individuals and to aid their
economic integration. This definition was initially applied to those individuals who
could not enjoy the diplomatic protection of their state of origin, or who had lost
their nationality of origin – the latter being known as stateless persons. This legal

framework gave birth to the Nansen Passport, for example, which was issued by the League of Nations between 1922 and 1938 and granted rights to stateless refugees (Torpey, 2000, pp. 155-180).

During the inter-war period, the refugee situation was not governed individually but collectively, sectoriallly and when necessary, with the base criteria for determining the type of intervention being the nationality of the refugees. The scheme that was set up led to discretionary situations arising between groups and caused difficulties in understanding, aggregating and managing the new realities of forced migrations on account of the fact that the system was incomplete. This made it impossible to manage the issue globally and permanently. The literature therefore regularly refers to the paradox of regulations in the face of the different categories of situations and refugees that appeared.

One of the most emblematic and frequently mentioned cases concerns Russian and Armenian refugees from the first migratory wave in the 1920s, who, having lost their nationality or been denied diplomatic protection by their country of origin, received a framework specific to their situation. This later served as a point of reference for managing other refugee groups. Nevertheless, the fact that these regulations were not always appropriate or suitable was confirmed in situations with different characteristics. By way of example, the international legal framework covering protection and assistance was not appropriate for Germans fleeing the Nazi regime during the 1930s and 1940s (Lochak, 2013, p. 38) since they retained their nationality of origin or they were not officially denied diplomatic protection.

After the Second World War, a significant change came about with the signing of the Convention Relating to the Status of Refugees, "the founding text of contemporary political asylum" (Cohen, 2000, pp. 56-78), in Geneva in July 1951. This provided the universal definition of the category of refugee adopted by the United Nations. Article 2 determined that a refugee was someone who "as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"[5]. This article sought to provide an abstract and universal definition, influenced by the context of the Cold War, so it could be applied to any individual in the world in a situation of persecution, yet leaving states the freedom to interpret the Convention in their own way. In addition, respect was also sought for indi-

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5   See UNHCR, 1951. Convention and Protocol relating to the Status of Refugees. Available at http://www.unhcr.org/3b66c2aa10.pdf [Accessed 21 November 2017].

vidual freedoms, thus breaking with the practices of the inter-war period by granting this status neither arbitrarily nor to collectives but to individuals subjugated by political persecution before 1 January 1951 within the European space. In 1967, the New York Protocol put an end to the geographical and temporal restrictions for applying the Convention. The right to asylum was therefore shaped after the Second World War not according to the diversification of the refugees' profile, but in accordance with the rules of the Convention that determined who could benefit from this status. Thus the right to asylum was defined according to the national and international scenario as the Cold War showed (since whoever fled a communist country was considered a refugee).

From the 1970s on, with the closing of borders to work migrants and the creation of the Schengen Area, the "side-slipping of categories" (Wenden, 2004, pp. 193-195) increased with the category of refugee becoming confused with the category of economic migrant. This became clear from the way cases of economic migration and asylum were managed together by the same European bodies. Definition of the rules for granting political asylum was the result of power relations between states and the restrictive immigration policies implemented in the 1970s. This then impacted on the directives regulating the conditions required to be granted asylum and on administrative practices in the 1980s (Legoux, 2004, pp. 9-22[6]; Spire, 2004, pp. 13-38). The fall of the Berlin Wall in 1989 was also an important milestone when it came to changing the concept of refugee as it put an end to the Cold War.

Given the diversity of situations of forced migration, the definition of refugee remained the same but the conditions required to obtain asylum were altered. The 1990 Dublin Convention, first applied in 1997 and then replaced by the 2003 Dublin Regulation[7], was characterised by restrictive policies on asylum. It drafted measures to make it difficult (through dissuasion, contention, *refoulement* or rejection of applications, among other means) for refugees to come and settle permanently in Europe in order to reduce the number of refugees applying for asylum although, according to the Geneva Convention, they were fully within their rights to do so.

From 2004 onward, Brussels determined three types of protection for refugees. While retaining asylum according to the precepts of the Geneva Convention – which are no longer adapted to the current migratory reality – a subsidiary protec-

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6   On the French government's attitude to the different methods of integrating refugees into the national labour market and the similarities in the case of economic immigrants, see Spire (2004, pp. 13-38).

7   Regulation (EC) no. 343/2003 of the Council of 18 February 2003, which establishes the criteria and mechanisms to determine which Member State is responsible for analysing an asylum application lodged in one of the Member States by a third-country national. Available at http://eur-lex.europa.eu/legal-content/PT/TXT/?uri=celex:32003R0343. [Accessed 21 November 2017].

tion of one year was allowed for individuals who could not make use of the protection granted by the Convention but for whom there was a strong suspicion they were in danger in their country of origin; it also became possible to grant asylum in the country of origin. The differentiated management of refugees led to diversification in the way they were categorised. This meant that the number of those categorised as internally displaced persons (IDPs) was greater than those who could benefit from the status of refugee under the Geneva Convention. Held in the country of persecution in a territorial space delimited and controlled by the UNHCR, these IDPs are, in theory, protected from threats from their own country (Lochak, 2013, pp. 33-47).

Another specific element of the Dublin Regulation[8] is one which determines that the country where the refugee first entered is obliged to initiate their case there. This overburdens the "border countries" since refugees are concentrated there. Considering that cases can sometimes take two years, there must be more solidarity from Member States in the hosting and distribution of refugees even though some countries have adopted certain antagonistic attitudes. Austria, for example, passed a new law last April restricting asylum rights in that country.

In sum, in the 20th century in the wake of the First and the Second World Wars and as a result of ethnic cleansing and genocide, Europe witnessed some of the largest waves of refugees and, at the same time, some of the most violent forced migrations in the history of Humanity. And now, more than seventy years later, Europe has witnessed a new wave of refugees starting in the summer of 2015 as a result of the civil war in Syria and political instability in Iraq, Afghanistan, Libya and Eritrea. This has driven huge numbers of people to flee, first to neighbouring countries such as Jordan, Lebanon and Turkey, and then to Europe.

The EU has been attentive to this specific situation, encompassing it within the general context of migrations. In May 2015 it presented the European Agenda on Migration (European Commission, 2015), which referred specifically to the need for the EU to adopt a comprehensive approach to managing migration. Since then, various measures have been introduced, notably the adoption of two emergency mechanisms to relocate in other Member States over 160 thousand people needing international protection who found themselves in the two Member States most affected by this flow, namely Italy and Greece. Even then, and despite this Emer-

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8   In its current version: Regulation (EU) No. 604/2013 of the European Parliament and the Council of 26 June 2013, which establishes the criteria and mechanisms to determine which Member State is responsible for analysing an application for international protection lodged in one of the Member States by a third-country national or by a stateless person (reformulation). Available at http://www.jrsportugal.pt/wp-content/uploads/pdf/glossario/Regulamento-Dublin-III.pdf. [Accessed 21 November 2017].

gency Relocation Mechanism[9], the refugees themselves have tried to take control of their own situation, mainly by "disappearing" from countries where they were placed and heading towards economically richer countries with generous social benefits – Germany, Sweden and Norway – and ethnic communities similar to their own, or where they already had family ties or friends. In this respect, Portugal is an illustrative example since about 40% of the refugees received abandoned the country (Dib, 2017) soon after their arrival. This is nothing new, however, as the same happened during the Second World War when Portugal was merely a country of passage with refugees heading for a better final destination, especially the United States of America.

Preferences apart, the position of Member States on this matter is not consensual. On one side there is Germany, which leads the position that is favourable to hosting – and in fact comes first in terms of hosting since it is the country with the highest number of settled refugees – while on the other side there is Hungary, which has adopted an anti-refugee stance proved by building a barbed wire fence along its border with Serbia and even with Croatia, a fellow EU Member State. However, in regard to the latter, the EU was clear when it stated categorically that "it will not finance fences or barriers on external borders" (Lusa, 2017) despite the Schengen Area being under pressure, particularly in terms of security on its external, and even internal, borders. Consequently, there have been various temporary suspensions in applying the Schengen Agreements and a return to some internal border controls.

Not only has this wave of refugees shown up some Member States' lack of solidarity but in others – for example, France and the Netherlands – it has fuelled a resurgence of political parties of the extreme right and their anti-immigration agendas or has led to their becoming more visible. However, we cannot talk about a real refugee crisis in Europe today if we are considering only one million refugees since, on a European scale, this number can be hosted within the European Union. The EU has a demographic deficit and needs a labour force, especially to fill those jobs not wanted by European citizens.

On the other hand, after the EU-Turkey Statement[10] of March 2016, the flow of refugees (and other migrants) coming from Turkey across the Aegean Sea decreased

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9   Read, in particular: Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D1754. [Accessed 21 November 2017].

10 Council of the European Union, 2016. Press Release, 144/16. EU-Turkey statement. 18 March. Available at http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf [Accessed 23 November 2017].

significantly with less than 100 people a day arriving in Greece on average. However, getting to the EU after a long or relatively short journey, and risking their lives to varying degrees, is only part of the refugees' trajectory. Following their arrival, issues of identification, accommodation and definitive settlement are discussed, which involve national institutions, community agencies and non-governmental organisations. The work of the NGOs though has not been free of criticism, including that of taking economic advantage (McKernan, 2017) of this migratory flow.

Thus there are multiple actors and areas of action surrounding the refugee issue today as there were in the past. Academia has also contributed over the years to the observation, reflection and analysis of this subject in various scientific areas. The importance of this question for academia is further reflected in the *International Journal of Refugee Law,* first published in 1989, and in the creation of research centres dedicated exclusively to this topic as is the case of the University of Oxford's Refugee Studies Centre. This current thematic issue forms part of this academic concern by dealing precisely with the refugee issue from both a past and a present perspective. To do so, it has brought together two groups of texts: the first group presents case studies relating to refugees in the context of the Spanish Civil War and the Second World War; the second brings together research on the Syrian Civil War, Community legislation on migration aid and the integration of refugees into the labour market. Lastly, the final text presents the view of a UNHCR expert currently working in the field.

In the first group, in *Dear Matilde: Letters from the Camps*, Sofia Rodríguez Serrador describes the mechanisms used for survival and resistance in internment camps during the Spanish Civil War through an analysis of letters written by Spanish refugees to humanitarian organisations. In addition, Serrador highlights the role of humanitarian organisations in the protection of Spanish refugees in France in the 1930s, showing the importance of the protagonism of those in charge, particularly the women, when it came to strengthening defence of the rights of refugees in various social and political spaces in both the country of origin and the host country.

In the context of the Second World War, Luiza Iordache Cárstea's article scrutinises the action undertaken by the International Red Cross through the Joint Aid Commission, whose objective was to help civilian populations, especially women and children, in different European countries. Through a case study of the humanitarian aid provided by this Commission in France between 1940 and 1945, Cárstea reflects on the difficulties, the importance and the need for humanitarian policies and means to help the more vulnerable groups during armed conflicts.

In his turn, Ansgar Schaefer speaks of an "invasion of the undesired". He analyses the historical reality of refugee migrants, in particular Jews fleeing Central and Eastern Europe in the 1930s and during the Second World War, who headed for

Portugal trying to find a way to reach America. In this article, he identifies Portuguese diplomatic and police administrative practices and mechanisms when managing visa applications after the annexation of Austria, showing the Portuguese government's intention to not facilitate the granting of visas.

In the second group, Andrzej Podraza's article describes the origins of the Syrian crisis from a historical and geopolitical perspective. By leading us from the formation of nation states by the imperial powers in 1916 to the refugee crisis, passing through the Cold War, the post-Cold War period – the Iran-Iraq War, September 11, and the process to legitimate American intervention in Afghanistan and Iraq – and the Arab Spring, Podraza highlights the power plays (by the USA, Russia and later the EU) as well as the divisions, the alliances and the failed attempts to organise democracies. In addition, he explains the impact this had on strengthening Islamic State's presence internationally and on creating interethnic conflicts. According to Podraza, the current Syrian situation can be explained as having been caused primarily by the great powers' failure to assert themselves on the international scene when faced with the rise of Islamic State.

The fight against illegal immigration in the EU, considered a threat to the stability and prosperity of Member States, has been going on now for over a decade. In relation to this, Lucia Della Torre focuses her analysis on the implementation of Council Directive 2002/90/CE which defines facilitating assistance for unauthorised entry, transit or residence and can, at the outside, even criminally penalise the provision of humanitarian aid. This Directive has become a sensitive legal instrument whose application has been sporadic and lacking in transparency. Even so, it has enabled some states to resist receiving and integrating refugees.

Finally, Asya Pisarevskaya's article questions the current processes for integrating refugees into the labour market. Taking a comparative and European perspective, Pisarevskaya compares various realities in European countries, giving particular emphasis to Greece, the United Kingdom and Norway, and shows how much differentiation in integration exists in terms of hiring, job quality and qualifications. In all the Member States analysed, the unemployment rate is always highest among refugees even when compared to immigrant unemployment.

Outside these two groups, but reflecting the view of someone who has actually been working in the field, the last article of this thematic issue by Periklis Kortsaris shows both the magnitude and the complexity of the Syrian crisis. Its main focus, though, is on the resettlement of Syrian refugees in the European area but it does not overlook the role played by the United Nations Refugee Agency in this context or the need for international cooperation and solidarity as well as multi-stakeholder intervention.

References

Clochard, O.; Gastaut, Y. and Schor, R., 2004. Les camps d'étrangers depuis 1938: continuité et adaptations. Du "modèle" français à la construction de l'espace Schengen. *REMI*, 20(2), pp. 57-87.

Cohen, D. G., 2000. Naissance d'une nation: les personnes déplacées de l'après-guerre, 1945--1951. *Genèses*, 38(1), pp. 56-78.

Colin, B., 2016. Migrants, réfugiés, histoire et précédents. *Revue des Migrations Forcées,* [e-journal] 51. Available at http://www.fmreview.org/fr/destination-europe/bundy.html [Accessed 2 August 2017].

David, T., 2014. *NGOs: a New History of Transnational Civil Society*. London: C. Hurst.

Dib, S., 2017. Portugal, um país indesejado por refugiados. *Jornal Económico*, 1 September. Available at http://www.jornaleconomico.sapo.pt/noticias/portugal-um-pais-indesejado-por-refugiados-203807 [Accessed 22 November 2017]

European Commission, 2015. *A European Agenda on Migration*. COM(2015) 240 final. Brussels: European Commission.

European Commission, 2017. *Standard Eurobarometer 87*. Available at http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2142 [Acessed 22 November 2017].

Hinger, S., 2016. Asylum in Germany: The making of the 'crisis' and the role of civil society. *Human Geography*, 9(2), pp. 78-88.

Jönsson, C. and Tallberg, J., 2010. *Transnational Actors in Global Governance: Patterns, Explanations and Implications*. Basingstoke: Palgrave Macmillan.

Kévonian, D., 2005. Enjeux de catégorisations et migrations internationales. Le BIT et les réfugiés (1925-1929). *REMI*, 21(3), pp. 95-124.

Legoux, L., 2004. Changements et permanences dans la protection des réfugiés. *REMI*, 20(2), pp. 9-22.

Lochak, D., 2013. Qu'est-ce qu'un réfugié? La construction politique d'une catégorie juridique. *Pouvoirs*, 144(1), pp. 33-47.

Lusa, 2017. Bruxelas responde à Hungria e diz que 'não paga cercas nem barreiras' nas fronteiras. *Diário de Notícias*, 1 September. Available at http://www.dn.pt/mundo/interior/bruxelas-responde-a-hungria-que-nao-paga-cercas-nem-barreiras-nas-fronteiras-8742437.html [Accessed 22 November 2017].

McKernan, B., 2017. Charities saving refugees in the Mediterranean are 'colluding' with smugglers, Italian prosecutor claims. *The Independent*, 24 April. Available at http://www.independent.co.uk/news/world/europe/refugee-boat-rescue-charities-medicins-sans-frontieres-save-the-children-mediterranean-sea-migrants-a7699571.html [Accessed 23 November 2017].

Noiriel, G., 1997. Représentation nationale et catégories sociales: l'exemple des réfugiés politiques. *Genèses*, n.º 26, pp. 25-54.

Rosales Pena, M., 2016. *Minding the Gap: the Role of UK Civil Society in the European Refugee Crisis.* Linköpings universitet, Institutionen för ekonomisk och industriell utveckling, Statsvetenskap.

Spire, A., 2004. Les réfugiés, une main-d'œuvre à part ? Conditions de séjour et d'emploi, France, 1945-1975. *REMI*, 20(2), pp. 13-38.

Torpey, J., 2000. *L'invention du passeport. État, citoyenneté et surveillance*. Paris: Ed. Belin, collection Socio-Histoires.

Weiss, T. and Wilkinson, R., eds., 2014. *International Organization and Global Governance*. London: Routledge.

Wenden, C. W. de, 2004. Le glissement des catégories de migrants. *Migrations Société*, 2(128), pp. 193-195.

Wenden, C. W. de, 2010. Introduction. In: *La Question Migratoire au XXIᵉ siècle. Migrants, réfugiés et relations internationales*. Paris: SciencesPo Les Presses, pp. 13-20.

Facing an "Invasion of Undesirables": The Worsening of the Restrictions on Entering Portugal – From the Annexation of Austria until the End of Legal Emigration from Nazi Germany

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Abstract

The article analyzes the range of actions enacted by Portuguese diplomacy and the political police force to prevent the arrival of refugees, whether from Germany or other Nazi occupied countries. While up until November 1938 German citizens, including German Jews, were free to enter the country for a period of up to 30 days, the outbreak of the Second World War brought a series of restrictions enacted with one objective: keep Jewish refugees out of Portugal. Based on the case of two sisters, Flora and Bela Rothschild, this article confronts the true significance of these restrictions through the effects of a purely legalistic policy on the lives of human beings.

Resumo

Enfrentando uma "Vaga de Indesejáveis": o Agravar das Restrições à Entrada em Portugal – da Anexação da Áustria até ao Final da Imigração Legal da Alemanha Nazi

Este artigo analisa as várias medidas tomadas pela diplomacia e polícia política portuguesa para impedir a entrada de refugiados provenientes da Alemanha e dos países ocupados pelas forças nazis. Se até novembro de 1938 qualquer cidadão alemão, incluindo judeus de nacionalidade alemã, podia entrar no país livremente e ficar por 30 dias, o início da Segunda Guerra Mundial provoca uma série de restrições que visam um objetivo único: manter Portugal livre de refugiados judeus. A partir do caso das duas irmãs Flora e Bela Rothschild, este artigo confronta-nos com o verdadeiro significado dessas restrições, mostrando os efeitos de uma política puramente legalista sobre a vida do ser humano.

Nazi Germany Policy of Forced Emigration

After Adolf Hitler's seizure of power on 30th January 1933, "the only thing a Jew could not choose was not to be a Jew" as Jacob Boas (1986, p. 244) points out. Overnight, anti-Semitism and anti-Judaism, two currents that had laid latent in the German soil for decades, became the political manifesto of a totalitarian regime, which correspondingly sought to uproot all Jews from German society.

In the first year after *Machtergreifung*, 63,400 out of the estimated total of 561,000 Jews living in Germany in 1933[1] fled to countries neighbouring the Reich, in particular to France, the Netherlands, Poland, Belgium, Czechoslovakia and Switzerland but also to Scandinavia and Britain. In subsequent years, however, this number would fall back to an annual average of about 35,000 people.

While the exodus of Jewish citizens during this period met the interests of the Nazi regime, the same did not apply to their possessions and belongings. The later President of the Jewish Community of Lisbon, Augusto d'Esaguy, explained to the Portuguese reader in his book *Europe 39*, how a German Jew who possessed 200,000 *Reichsmark* and decided to leave Germany, was able to only take 600 *Reichsmark*, something approximately like 0.3% of his/her assets (d'Esaguy, 1940)[2].

The New Constellation Following the Annexation of Austria

The annexation of Austria on March 13, 1938 was not only the first major success in Nazi Germany's new foreign policy but also initiated a new turn on the road that would lead to the death camps. The entry of German troops triggered an immediate hunt for Austrian Jews with a degree of violence unprecedented in Nazi Germany itself (Safrian, 1995, p. 30). The German writer Carl Zuckmayer remembers this day in his memoirs:

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1   Statistik-des-holocaust.de (ed.). *Jährliche Entwicklung der Jüdischen Bevölkerung in Deutschland, 1933-1945*, 2017. Available at http://www.statistik-des-holocaust.de/stat_ger_pop.html. [Accessed 15 January 2017].

2   About the financial situation of the Jews also see the report of the Portuguese diplomat Denis Fernandes, 1940. *O Problema dos Refugiados: Relatório elaborado pelo Consultor Económico do MNE Denis Fernandes*, 28 Jan. Fundo Colecção de Relatórios. Lisbon: Arquivo Histórico do Ministério dos Negócios Estrangeiros (AHMNE). Fernandes says in his 1940 report that the first Jewish refugees were allowed to take 75% of their possessions, a value that was gradually reduced over the next few years, until in 1937, those leaving Germany could take only around 10%, while the rest was withheld in the form of blocked funds, and in practice lost. Of great interest in this context is the passage taken from *Breslauer Tagebuch* written by Walter Tausk quoted in Aly and Heim (1997, p. 29). Tausk illustrates the serious problem caused by the low external value of the *Reichsmark* which was only 8% of its nominal value. Consequently, the amount of money people needed to be allowed to enter countries such as Kenya, which was 50£ *i.e.* 650 *Reichsmark*, buying the currencies within Germany, would increase up to 5,200 *Reichsmark* when currencies were bought outside of Germany.

"Hell began this night. The kingdom of darkness opened its gates and loosed its load, most horrendous and disgusting ghosts. The city became like one of the nightmarish paintings of Hieronymus Bosch (...). And all the people lost their features, resembled distorted faces: some with fear, others with lies, others in the wild, full triumph of anger." (Zuckmayer, 1976, p. 69).

Jews living in Austria had only two options left: death or flight. There are many and numerous records of an avalanche of suicides. As a matter of fact, the international press then referred to a number of about 200 a day – while between 45,000 and 50,000 people, about 25% of all Austrian Jews (Simpson, 1939, p. 29)[3], emigrated during the seven months following the German invasion, a phenomenon commented sarcastically by Joseph Goebbels in his diary entry for March 13, 1938: "The Jews mostly fled. Where? Being eternal Jews to nowhere" (Goebbels, 1999, p. 1216).

What Goebbels does not write in his diaries is that anyone who managed to flee Austria was deprived of his entire possessions, left totally dependent on the help of others, *i.e.* a position that made them simply undesirable to all bordering countries. Despite the wave of sympathy that accompanied the new victims of Nazi terror in London, Paris, or Prague, there were also growing concerns in neighbouring countries over a mass of new immigrants, impoverished and difficult to socially integrate, that might flood and overwhelm their labour markets.

Eleven days after the entry of German troops into Austria, U.S. President Franklin D. Roosevelt suggested organizing an international conference focused on facilitating the emigration of refugees from territories under German administration. In hindsight, the conference proposed by Roosevelt and held at Évian-les-Bains, France, from July 6 to 15 was a complete failure. No participating state government proved willing to actually help, shielded behind arguments around how their economic and social situation would not allow for any increase in their immigration quota. Indeed, the greatest concern for the participating states did not revolve around receiving more refugees but rather finding a way to move on those already in their territories (ICE, 1999, p. 40).

The Pogroms of November 1938

The pogroms of November 1938 marked the turning point in a policy evolving from forced migration to the physical destruction of the Jews. While the most visible consequences of the night from 9 to 10 November stemmed from the destruction of 250 synagogues and thousands of Jewish-owned shops, less visible, but

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3 In June 1939, Norman Bentwich estimated the number of Jews resident in Austria at 90,000, of whom only 1,000 did not reside in Vienna. After the annexation, according to the same source, about 10,000 died, were killed or committed suicide (Simpson, 1939, p. 29).

much more important to understanding the nature of these events, is the sheer number of people killed during those November days.

While an internal NSDAP report registered the occurrence of 91 murders, police records document a high number of rapes and suicides in the aftermath of the violence[4]. Additionally, about 30,000 Jews were "arrested" in the wake of November 10th. 10.911 were sent to Dachau Concentration Camp, 9,828 to Buchenwald and about 6,000 to Sachsenhausen (Wachsmann, 2015, p. 678). Some were shot shortly after their arrival at the camps, others died during escape attempts or due to the rigors of forced labour in these camps.

For our context, it is important to point out that, Jewish inmates then imprisoned exclusively for racial motives would be allowed to leave the camps whenever able to present an entry visa to any country. Deprived of all their belongings and faced with the equally terrifying alternative of either starvation or being sent to a concentration camp, the exodus of German Jews exploded from 25,500 (1937) to 49,001 (1938) and 68,000 (1939)[5]. The new exodus from Germany made it more than clear that the mechanisms developed over the previous five years, *i.e.* individual, well-planned departures from Germany, firstly to neighbouring countries and subsequently to countries overseas, had become insufficient to deal with this new situation. Arguing that their capacity to absorb refugees had become exhausted, governments began closing their borders to new refugees, limiting the stay of those who entered already to a certain timeframe, imposed severe labour restrictions on refugees or sent those who entered illegally to internment camps. In early 1939, of all the places in the world, there remained only one that allowed Jews entry without the requirement of a visa or residence permit: Shanghai (Simpson, 1939, p. 47).

The Position of the Portuguese Government on These Events Unfurling in Central Europe

As regards the international community, the Portuguese government repeatedly maintained the position that there was no refugee problem in Portugal. Indeed, until 1935, the Portuguese state did not differentiate between a refugee and a "normal" foreigner, provided that they had entered the country legally and were in possession of valid documentation[6]. However, unlike refugees from Germany, a

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4   United States Holocaust Memorial Museum. *Holocaust Encyclopedia: Kristallnacht*. Available at https://www.ushmm.org/wlc/en/article.php?ModuleId=10005201 [Accessed 20 January 2017].

5   Statistik-des-holocaust.de, ed. *Jährliche Entwicklung der Jüdischen Bevölkerung in Deutschland, 1933-1945.*

6   See Andrade, F. de, 1935. Letter dated 23 Oct. 3 P, A28, M49: "REFUGIADOS". Folder: *Office Internacional NANSEN, Passaportes e títulos de identificação dos refugiados. Expulsões destes.* 10/1935. Lisbon: AHMNE. "Refugiados".

country with which the Portuguese government had signed a visa waiver agreement, nationals from other countries seeking to enter the country required a visa issued by the Portuguese authorities. The Ministry of Foreign Affairs and the Ministry of the Interior had already agreed in 1934, to make the granting of visas to "Polish Jews" dependent on prior consultation with the Political Police (PVDE) in order to "prevent an invasion of Polish Jews being felt in Portugal"[7]. Thus, even by April 1934, *i.e.* five years before the outbreak of the Second World War, Portugal had already introduced "racial and religious segregation" (Fralon, 1999, p. 43) regarding foreigners wishing to reside in the country. Over the following years, the policy adopted by the Portuguese authorities had only one goal: to limit to the greatest possible extent the entrance of those foreigners who might eventually not be able to leave the country again.

In fact, only one year later, the rules applied to the entry of Polish Jews were extended: firstly, to stateless persons, – a group of people the ministry officials designated by the German term *heimatlose* – and those whose documentation had been issued by authorities other than those of their country of origin; secondly, to holders of Nansen and Russian passports[8].

An important step in further restricting the entrance of foreigners into Portugal came with the issuing of Circular n.º 1, dated 24th March 1936. In this document, the Ministry of Foreign Affairs informed its consular posts that the granting of entry and residence visas for "Polish, *heimatlos* and others" had fallen under the exclusive responsibility of the Ministry of the Interior, *i.e.* the Portuguese political police (PVDE – Polícia de Vigilância e Segurança do Estado)[9]. While at the outset even this group of people could theoretically still reside in Portugal, this scope was eliminated six months later when, on 24th September 1936, the consular posts were informed that henceforth such persons were only able to enter the country as tourists, thus only for a limited period of 30 days. Furthermore, the consuls were no longer entitled to issue visas without the prior consultation of the Ministry of Foreign Affairs, while the extension of these visas had to be decided by the PVDE[10].

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7   See Chalante (2011) on the Portuguese legislation regarding Polish Jews.

8   Handwritten note on the margin of a letter from the Portuguese Ministry of Foreign Affairs dated 23/7/1935. M358, L18, C37. Secretaria-geral, Ministério do Interior. Lisbon: Arquivo Nacional da Torre do Tombo (ANTT). See also Faria, J. A. de, 1935. Letter to the Secretary General of the Ministry of the Interior, 17 Sep. M477 (1935). Gabinete do Ministro, Ministério do Interior. Lisbon: ANTT.

9   Police of State Surveillance and Defense.

10 See circular n.º 8, dated 9/24/1936, as well as the letter from Sampayo, L. de, 1936. Letter to the director of PVDE, 10 June, in which he communicates the contents of the new circular. 3P, A13-A, M98 "Passaportes para a Metrópole, passaportes fraudulentos". Lisbon: AHMNE.

The analysis of these Circulars reveals how the PVDE was then closely monitoring the competences assigned to it under article 4 of the founding decree-law, specifically: "Preventing undocumented or undesirable aliens from entering the country"[11]. And such undesirables included, from the perspective of its leadership, in addition to political refugees, all persons characterized by sharing the same common trait: being of Jewish origin.

However, Circular n.º 8 did not prove able to put an end to the continued entry of German Jews into Portugal who, while in possession of valid German documentation, could enter and settle in the country or, when no longer having this documentation, could still enter as tourists. Just over a week after issuing the aforementioned Circular, the PVDE Secretary-general José Catela accused the Ministry of Foreign Affairs of supporting German nationals, whose passports were either expired or expired within a few days of their arrival, would "frequently" enter Portugal. As the German consulate refused to renew these documents, their holders became undocumented and therefore had to be expelled by the PVDE at the expense of the Portuguese state. It does not prove, surprisingly, that the victims of the Consulate's refusals were "only Jews." Catela announced in his official letter that "given the difficulty of distinguishing the German Jew from the rest", henceforth, "the entry of Germans with expired passports will not be allowed under any circumstances, and Germans in general will only be allowed to stay in Portugal as tourists for as long as their passports are valid, and will not be issued a permanent residence permit, without presenting the certificate of consular registration"[12].

Catela's letter initiated a new era in the relationship between the political police and the Ministry of Foreign Affairs. From this moment onwards, the PVDE became the sole deciding entity in the admission of foreigners into Portugal. All restrictive measures decreed by the Ministry of Foreign Affairs over the following years, were nothing other than attempts to formally legalize administrative acts already put into practice by the political police, when dealing with persons of Jewish descent.

At the heart of the Portuguese dilemma resided the 1929 German-Portuguese visa suppression agreement, which stipulated that residents of both nations did not require visas when travelling to the other country. As a matter of fact, it was the introduction of the "J" stamp on the passports of German Jews (on October 5, 1938) that would allow the Portuguese government to finally broaden the existing restrictions regarding foreign Jews to German nationals without suspending the existing

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11   Decree-law n.º 22:992, dated 29/08/1933. In *Diário do Governo*, Ist Series, n.º 195.

12   Catela, J., 1936. Letter from the PVDE, 6 Oct., 2P, A43, M38, Processo, 36,1 "Vistos nos passaportes de indivíduos de nacionalidade mal definida (normas que regulam a entrada de indivíduos de determinadas origens (polacos, *heimatlos* e portadores de passaportes, emitidos por autoridades diferentes das do seu país de origem)", Antigo Proc. 94, Data: 1936. Lisbon: AHMNE.

bilateral agreement. Still furthermore in the same month (on October 28, 1938), the Ministry of Foreign Affairs issued Circular n.º 10, which stipulated in relation to Jewish immigrants "the establishment of migrants in Portugal is not allowed..."[13]. Nevertheless, while the Circular forbade the residence of foreign Jews in Portugal, it continued to allow Jewish refugees to enter the country as tourists for a limited 30-day stay. One of the most interesting documents regarding Circular n.º 10 is a letter by the Minister of the Portuguese delegation in Berlin, Alberto da Veiga Simões. The Portuguese diplomat criticized the restrictions as not adequate to the daily situation experienced by German Jews. Indeed, the explanation Veiga Simões found for the disproportionate nature of the restrictions and the German reality was the "distance" that separated the Lisbon Ministry from "the situation of the Jews here". Veiga Simões elaborated:

> "The conditions of poverty and daily humiliation to which they are deliberately sub-jected aggravated by a lack of humanity and rudeness which I do not know if truly Aryan but undoubtedly specifically Germanic, the insecurity of their own people, some imprisoned, others sent to concentration camps where rumours are coming that we were accustomed to read only in the chronicles of Russia, all this leads these thou-sands of persecuted, most of them on the run, to see as their salvation the possibility of going to another country for 30 days, for 8 days, for 24 hours, as long as they can cross the border safe and sound... From then onwards, the future belongs to God [...] especially when it cannot be worse than the present."[14]

Despite these critical observations by Veiga Simões, the scope for seeking temporal shelter in Portugal had already been repeatedly sabotaged by the PVDE. In Febru-ary 1939, PVDE Captain Paul Cumano praised the work of his police force, which had prohibited the landing of German Jews in possession of valid tourist visas, concluding that due to their action "the stream of immigrants was stopped [...]"[15]. It should be noted, however, that there is consistency in the attitudes of the PVDE and the Ministry of Foreign Affairs in relation to the policies pursued regarding Jewish refugees. Both did agree that everything should be done so that Portugal would not be considered a "country of refuge". As already mentioned, the restric-tions applied by the PVDE were never targeting foreigners as a whole but only refugees who had left their native countries for racial or political reasons. No state-ment better illustrates the stance of the agents of the Portuguese political police than the verdict of its director, Agostinho Lourenço, who emphasized in a letter

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13   Circular n.º 10, dated 28 October 1938. Collection Telegramas Expedidas, bobine 125. Direcção--Geral dos Negócios Políticos e Económicos. Lisbon: AHMNE.

14   Simões, A. da V., 1938. Letter n.º 773 of the Head of the Portuguese Delegation in Berlin, Alberto da Veiga Simões, 23 Nov., 2P, A43, M38. Lisbon: AHMNE.

15   Cumano, P., 1939. Information attached to the letter of the PVDE, 7 Feb., 2P, A43, M38. Lisbon: AHMNE.

sent a few days after the annexation of Austria: "Enough years of service in this police allow us to affirm that the foreign Jew, as a rule, is morally and politically undesirable"[16].

Further Entrance Restrictions Following the Outbreak of the Second World War
One direct consequence of the conflagration of the Second World War was the termination of the aforementioned visa waiver agreement. Henceforth, all Germans wishing to travel to Portugal needed a consular visa. Over the following two years, the Ministry of Foreign Affairs gradually tightened the already existing restrictions on entering Portugal still further.

On November 14, 1939, the Ministry of Foreign Affairs issued Circular n.º 14 that forbade its consular and diplomatic posts from granting any visas without prior consultation with the Ministry of Foreign Affairs and PVDE to:

(1) Aliens of indefinite nationality (stateless persons, holders of Nansen or Russian passports);

(2) Foreigners without satisfactory reasons for coming to Portugal or whose passports would not allow them to return to the country from which they came;

(3) Jews expelled from the countries of their nationality or those from which they originated;

(4) People without a valid consular visa to enter the country of their final destination, or without a ship or plane ticket or embarkation guaranteed by the shipping company.

At that time, however, the Ministry could never have foreseen the decision's repercussions as, due to the apparently unstoppable advance of Nazi troops through neighbouring countries, there were no longer hundreds but thousands of people applying for visas whose profile demanded a decision from Lisbon. Hence, this explains why, on May 12, 1940 (ten days after the surrender of the Netherlands), the Ministry once more amended the existing regulation. The new directive demanded consuls to make a pre-selection of all visa applications, immediately rejecting all those without both a visa for the final destination country and a ticket for sea or air passage or a similar booking confirmation. Apart from that, and as a general rule, the consuls also had to dissuade all refugees from residing in Portugal, even temporarily, by facilitating only so-called transit visas limited to a stay of only 30 days. The Ministry purpose was clear: only those people that gave more than sufficient guarantees they would quickly leave the country would be allowed to enter.

The French defeat led Lisbon to impose further restrictions. On the day after the fall of Paris on June 14, 1940, the Ministry of Foreign Affairs applied still further

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16 Lourenço, A., 1938. Confidential letter from the PVDE, addressed to the Chief of the Office of the Minister of the Interior, 23 March. M495, C50. Ministério do Interior. Lisbon: ANTT.

restrictions on the consul's latitude for autonomous decision (Circular n.º 23). Henceforth, Portuguese diplomats could only grant transit visas to refugees already in actual possession of a passage ticket to the destination country. Simultaneously, the consuls had to provide the PVDE with all the data regarding visa applicants. With the issuance of Circular n.º 23, the Ministry of Foreign Affairs abdicated its responsibilities over the issuing of visas in favour of the political police who definitively and officially became the key entity that decided who entered and who had to stay outside Portugal. This decision was reinforced six months later (on December 16, 1940) by a telegraph distributed order which removed the authority of diplomatic and consular agents for granting any kind of visas[17]. By centralizing visa issuing at the headquarters of the political police, the Portuguese government sought to ensure that cases such as Aristides de Sousa Mendes, (the Portuguese consul in Bordeaux who helped thousands of refugees by handing them visas without any legal foundation) could never again happen.

Case Study of Flora and Bela Rothschild

But what did it really mean to lack one visa. As one example that represents the literally thousands of refugees refused entry into Portugal is the tragic fate of two German sisters, Flora and Bela Rothschild[18]. At the end of 1939, both ladies applied for an entry visa for Rhodesia where they intended to join the rest of their family. The Rhodesian police granted the request, ensuring both would receive the visa once they were in a neutral country. With this information, both women applied for a visa to Mozambique, the crossing point into Rhodesia. Furthermore, in December 1939, the Immigration Police in Beira, Mozambique, notified the Portuguese consul of Hamburg that the entry visas for Rhodesia were already in their hands. The Portuguese consul therefore informed Mrs. Bella Rothschild that for their departure from Nazi Germany they needed only the confirmation of their Portuguese visa by the Portuguese Ministry of Foreign Affairs. The Ministry instruction to grant the visas, which arrived in Hamburg via telegraph, however tated the condition that the passports had to already have the Rhodesian visa stamp, thus ignoring how these visas could not be received in Germany due to the war. Aware of this fact, the Ministry of Foreign Affairs contacted its colony counterpart to ask for their opinion on the situation. In its reply (on March 30, 1940), the Ministry of Colonies stated that it had previously rejected a similar

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17 See the letter of December 16, 1940, annexed to the order of the Secretary General of the Portuguese Ministry of Foreign Affairs, dated 13/6/1940. Arquivo R/C, M779. Lisbon: AHMNE.

18 The case "Rothschild" is contained in a folder with the title: "Suspended for aggravation of the situation (to be seen when there is opportunity)". Processo "Rothschild". 2P, A43, M80. Lisbon: AHMNE.

request concerning the same ladies considering that it was "inconvenient to comply with the claim".

Surprisingly, on the border of this letter, there is an unreadable signature and a pencil written note asking: "Would it not be of advantage to consult the English or the people of Rhodesia?" That note conveys how the idea of rejecting the requests of Bela and Flora Rothschild did not get full support in the Ministry of Foreign Affairs. However, on April 4, 1940, the Ministry did send a telegram to the Hamburg consulate, which read as follows: "Visa Rothschild sister passports rejected." But the relatives did not give up and, by April 1940, the two ladies had already received their passports from the German authorities and had even already purchased their passages to Beira (Mozambique) aboard the ship "Lloyd Triestino". These are the latest details to be found in the archive of the Portuguese Ministry of Foreign Affairs. The fact that the "Rothschild case" is filed in a folder entitled "Suspended due to worsened situation (for consideration when there is opportunity)" is no indication of a happy ending. Indeed, we find the names of both sisters in the *Memorial Book*[19] edited by the German Federal Archive, which remembers the names of the 149,600 German Jews killed in the Holocaust. Flora and Bella Rothschild were both deported on October 20, 1941 from Frankfurt to the Lodz ghetto where Bella most probably died while her sister Flora was killed at the Kulmhof (Chelmno) extermination camp[20].

Final Remarks

In the postwar period, Portugal repeatedly heaped praise upon itself as a country that had offered a safe haven to tens of thousands of Jewish refugees. Just one day after the unconditional surrender of Nazi Germany, António de Oliveira Salazar, the regime's dictatorial leader, addressed the National Assembly on the Portuguese contribution to the Allied victory, summarizing Portuguese refugee policy as follows:

> "Anyone in our situation would welcome refugees, save and shelter shipwrecked people, help and soften the hardship of the prisoners, send donations to the needy, not only for the duty of human solidarity, but also to maintain in the world, though convulsed by mortal hatreds, what one could call, though tenuously, charity, prevision, and even, though pale, justice and peace. Too bad we could not do more."[21]

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19 Das Bundesarchiv. *Memorial Book. Victims of the Persecution of Jews under the National Socialist Tyranny in Germany 1933-1945.* Available at http://www.bundesarchiv.de/gedenkbuch/index. html.en [Accessed 15 January 2017].

20 *Ibidem.*

21 Extraordinary legislative session from 4 May to 6 July 1945. In *Diário das Sessões, IIIª Legislatura, Índice Geral.* Lisbon: National Assembly 1946, p. 469.

Our analysis of the politics pursued by the two central Portuguese government agencies dealing with Jewish refugees, the Portuguese Ministry of Foreign Affairs and the Portuguese political police conveys how, very much contrary to Salazar's statement, Portugal undoubtedly could indeed have done much more to assist the Jewish refugees. After all, those who did manage to overcome all the bureaucratic obstacles and succeed in entering the country legally constituted only a very small minority when compared to the numbers who failed and were consequently excluded and left utterly in the lurch.

However, going to the extent of accusing Salazar and his government of having been an "involuntary accomplice to the genocide", as a Portuguese daily newspaper headline maintained several years ago (Correio da Manhã, 2012)[22], for not having played an active role in saving the hundreds of thousands refugees stranded north of the Pyrenees, means completely ignoring the specific situation prevailing back then. Indeed, at the height of the refugee crisis, in the Summer of 1940, the existence of Nazi concentration camps in occupied Europe was a known fact. However, no one could yet foresee either the later construction of the extermination camps or even imagine the tragic dimension of the Holocaust. On the other hand, while the annexation of Austria and, later, the November pogroms in Germany, Austria and Sudetenland did trigger a wave of international solidarity, the atrocities suffered by the Jewish population in Germany and the territories under German administration did not lead the governments of neighboring countries to reduce or otherwise facilitate the existing entry restrictions. In fact, on the contrary, as a brief overview of the refugee policies of three countries known for their tradition of generously granting asylum shall demonstrate.

While, during the 1930s, France stood out as the key destination for German emigration, harboring a total of around 100,000 refugees[23], the Daladier government, immediately after taking power in April 1938, passed several laws tightening the terms for refugees. Correspondingly, while those living in the country illegally, as well persons assisting them, were threatened either with a fine varying from 100 to 1000 Francs or with imprisonment from one month up to one year, new refugees entering illegally were now deemed eligible for repatriation (Grynberg, 1999, p. 33). A few weeks earlier (on March 28, 1938), the Swiss government had already introduced a visa for Austrian passport holders to reduce the inflow of Jewish refugees from Austria in the wake of the annexation. Only four months later (on August 19), the Swiss Federal Council passed a decree that stepped up border

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22 Quoting the Portuguese historian Manuel Loff.

23 Jüdisches Museum Berlin and Stiftung/Haus der Geschichte der Bundesrepublik Deutschland, eds., 2006. *Heimat und Exil: Emigration der Deutschen Juden nach 1933*. Frankfurt: Jüdischer Verlag im Suhrkamp Verlag, p. 44.

controls and led to the turning back of all refugees seeking to enter illicitly (ICE, 1999, pp. 75-76). While in France and Switzerland, the annexation of Austria led to much more restrictive refugee policies, in Great Britain, news about the Nazi atrocities during the *Anschluss* and the following November pogroms made the government loosen existing restrictions and also authorizing about 10,000 children from Nazi occupied territories to enter the country[24]. However, while the government was opening the borders of its own territory to the *Kindertransporte*, the British civil administration in Palestine was bending to the rules of *realpolitik*. In the face of constant Arab uprisings in Palestine and fearing that losing the support of the neighboring Arab states might jeopardize the lines of communication with India and the Far East, the British government reversed the Balfour Declaration with the publication of the so called White Paper (on May 1939) and limited the immigration of Jews into Palestine to a maximum of 75,000 over a five year period (Wasserstein, 1999, p. 18).

However, what about the refugee policy of Portugal's neighbour? The main difference between Spain under the dictatorship of Francisco Franco and Portugal under Salazar can be pinpointed to one historical aspect: their political proximity to Nazi Germany. While Franco opted for openly supporting the axis powers through a declaration of non-belligerence, Portugal affirmed its neutrality towards all warring countries. Franco's fascist regime, with the presence of Gestapo officers in Madrid and the poverty-stricken post-civil war country never appealed to the refugees fleeing Western Europe as many feared that they would be caught and extradited from Spain (Mühlen, 1992, p. 85). Although Salazar, exactly like Franco, feared the liberal spirit of these foreigners as a potential threat to the continued existence of his antidemocratic and antiparliamentarian regime, Portugal did still authorize the establishing of the main international Jewish organizations for the assistance of Jewish refugees on Portuguese soil (Milgram, 2010, p. 371). However, even this decision only reflects the basic principle underlying the entire Portuguese refugee policy: Portugal never accepted being a country of refuge but rather only of transit and correspondingly allowing in only those able to guarantee that they would leave just as soon as possible.

But with this policy, Portugal under Salazar behaved exactly like the (democratically elected) rulers of the entire world. And this probably embodies one of the most disturbing truths to the history of the Holocaust. Not one of the world's leaders proved willing to step beyond national interests and actively contribute to an international evacuation plan for the Jews in the Nazi occupied territories.

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24 During the previous years, Britain only allowed scientists and female refugees, who were going to be employed as maids, to enter the country. On the topic of the emigration of Jewish women from Germany, see Kushner (2006, pp. 72-75).

The failed international Evian conference of July 1938, organized in the aftermath of the annexation of Austria, simply made it clear, not only to wider public opinion but also to the victims within Nazi Germany, that the world "was not willing to provide any place to the Jews" (Jäckel, Longerich and Shoeps, 1993, p. 427).

References

Aly, G. and Heim, S., 1997. *Vordenker der Vernichtung. Auschwitz und die deutschen Pläne für eine neue europäische Ordnung.* Frankfurt am Main: Fischer Taschenbuch Verlag.

Boas, J., 1986. "The shrinking World of German Jewry, 1933-1938". In: *Leo Baeck Institute Yearbook.* London: Leo Baeck Institute, pp. 241-266.

Chalante, S., 2011. O discurso do Estado salazarista perante o "indesejável" (1933-1939). *Análise Social*, 46(198), pp. 41-63.

D'Esaguy, A., 1940. *Europa 39*. Lisbon: Livraria Portugália Editora.

Diner, D., 2006. "Vom 'Anschluss' zur 'Kristallnacht' – Das Krisenjahr 1938". In: Jüdisches Museum Berlin and Stiftung Haus der Geschichte der Bundesrepublik Deutschland, eds., *Heimat und Exil: Emigration der Deutschen Juden nach 1933*. Frankfurt: Jüdischer Verlag im Suhrkamp Verlag.

Eberhard, J. E.; Longerich, P. and Schoeps, J. H., eds., 1993. *Enzyklopädie des Holocaust: Die Verfolgung und Ermordung der europäischen Juden* (vol. I.) Berlin: Argon.

Fralon, J. A., 1999. *Aristides de Sousa Mendes: Um Herói Português*. Lisbon: Presença.

Goebbels, J., 1999. *Tagebücher* (Vol. 3: 1935-1939). München, Zürich, Pieper: Ralf Georg Reuth.

Grynberg, A., 1999. *Les camps de la honte: les internes Juifs des camps français 1939-1944*. Paris: Éditions La Découverte.

Independent Commission of Experts, 1999. *Switzerland and Refugees in the Nazi Era*. Bern. Available at https://www.uek.ch/en/publikationen1997-2000/fb-e.pdf [Accessed 15 January 2017].

Jüdisches Museum Berlin and Stiftung Haus der Geschichte der Bundesrepublik Deutschland, eds., 2006. *Heimat und Exil: Emigration der Deutschen Juden nach 1933*. Frankfurt: Jüdischer Verlag im Suhrkamp Verlag.

Kushner, T., 2006. "Fremde Arbeit: Jüdische Flüchtlinge als Hausangestellte". In: *Heimat und Exil: Emigration der Deutschen Juden nach 1933*. Frankfurt: Jüdischer Verlag im Suhrkamp Verlag, pp. 72-82.

Loff, M., 2012. Salazar foi cúmplice involuntário do Holocausto. *Correio da Manhã*, 29 October. Available at http://www.cmjornal.pt/politica/detalhe/salazar-foi-cumplice-involuntario-do-holocausto.

Milgram, A., 2010. *Portugal, Salazar e os Judeus*. Lisbon: Gradiva.

Mühlen, P. V. Z., 1992. *Fluchtweg Spanien-Portugal: Die deutsche Emigration und der Exodus aus Europa 1933-1945*. Bonn: Verlag J.H.W. Dietz Nachfolger.

Safrian, H., 1995. *Eichmann und seine Gehilfen*. Frankfurt am Main: Fischer Taschenbuch Verlag.

Simpson, J. H., 1939. *Refugees: A Review of the Situation since September 1938*. New York: Oxford University Press.

Wachsmann, N., 2015. *KL: A History of the Nazi Concentration Camps*. London: Little Brown.

Wasserstein, B., 1999. *Britain and the Jews of Europe 1939-1945*. London: Leichester University Press.

Zuckmayer, C., 1976. "Als wär's ein Stück von mir. Horen der Freundschaft". In: *Werkausgabe in zehn Bänden* (Vol 1). Frankfurt am Main: Fischer Taschenbuch Verlag.

Archives

Arquivo Histórico do Ministério dos Negócios Estrangeiros (AHMNE) – Portugal

Arquivo Nacional da Torre do Tombo (ANTT) – Portugal

Diário do Governo – Portugal

Diário das Sessões – Portugal

United States Holocaust Memorial Museum – USA

statistik-des-holocaust.de, ed. *Jährliche Entwicklung der jüdischen Bevölkerung in Deutschland, 1933-1945*, 2017. Available at <http://www.statistik-des-holocaust.de/stat_ger_pop.htm> [Accessed 15 January 2017].

The Importance of Humanitarian Aid During the Second World War: The Case of the Joint Relief Commission of the International Red Cross in France (1940-1945)*

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Abstract

This article analyse Joint Relief Commission's (JRC) humanitarian policies and practices of the International Red Cross, an instrument of the International Committee of the Red Cross (ICRC) and the League of Red Cross Societies to help civilian populations, particularly children and women, in different European countries during the Second World War. Through the case study of JRC's humanitarian aid in France between 1940-1945 and based on specific bibliography, documentary resources, archives and audio-visual collections of ICRC's library, the text reflects on the difficulties, importance and necessity of humanitarian policies and instruments favouring the most vulnerable groups during armed conflicts.

Resumo

A Importância da Ajuda Humanitária Durante a Segunda Guerra Mundial: o Caso da Comissão Conjunta de Ajuda da Cruz Vermelha Internacional em França (1940-1945)

Este artigo analisa as políticas e as ações humanitárias da Comissão de Assistência Conjunta da Cruz Vermelha Internacional, um instrumento dessa instituição e da Liga das Sociedades da Cruz Vermelha para ajudar as populações civis, em particular mulheres e crianças, em diferentes países europeus durante a Segunda Guerra Mundial. Através do estudo de caso da ajuda humanitária dessa Comissão em França entre 1940 e 1945 (baseado em bibliografia especializada, fontes documentais e audiovisuais do arquivo da Cruz Vermelha Internacional), o texto reflete as dificuldades, a importância e a necessidade de políticas humanitárias e de meios que ajudem os grupos mais vulneráveis durante os conflitos armados.

Introduction

"Les civils, pauvre troupeau de femmes, d'enfants, de vieillards, d'impotents, de malades, sortis de toutes les classes sociales et mélangés tous dans la même infortune, ouvriers, commerçants, agriculteurs, pauvres hères, gens sans aveu, de même que rentiers, fonctionnaires, savants, professeurs, etc., tous, quels qu'ils aient été, sans défense aucune contre la fatalité qui les a atteints indistinctement, sont devenus du jour au lendemain, des épaves livrées sans défense à l'envahisseur, ou fuyant sur les grandes routes au-devant de l'inconnu." (Comité International de la Croix-Rouge, 1921, p. 133).

The First World War (1914-1918) and its consequences, as well as the new contexts of violence from the *interbellum* period – civil wars, revolutions, and insurrections – represented new challenges for humanitarian organizations and demonstrated the risks that civilian populations had to face. What is more, they highlighted the existence of new categories of victims, such as civilian internees, deportees, refugees, political detainees and hostages, some of them unforeseen by existing international legislation (Palmieri, 2012, p. 8). As with previous conflicts, the Spanish Civil War (1936-1939), regarded as the preamble to the Second World War (1939-1945) and as the humanitarian field of acting, rehearsal, and improvisation, underlined once again that the lives of women, children, and the elderly, as well as those of the combatants, were in danger. The first world conflagration demonstrated the insufficient protection accorded by international law to civilian populations, including to the most vulnerable, victims of hostilities or enemy occupation (Becker, 2012). As mentioned in one of the International Committee of the Red Cross (ICRC) reports on its activities during the Great War,

"Les victimes civiles de la guerre furent doublement victimes du fait qu'aucun traité ne les ayant protégées, leur sort a dépendu du bon plaisir des autorités militaires de l'armée envahissante; elles ont constitué bien plus du matériel à représailles et à mesures d'intimidation qu'une prise de guerre plus ou moins légitime, au bénéfice des conventions internationales existantes." (Comité International de la Croix-Rouge, 1921, p. 133).

From 1939 on, these categories were to be affected even more by the advent of total war on land, sea, and air, with a modernization of combat techniques hitherto never tested. For this reason, this article seeks to reflect on the importance of humanitarian aid aimed at these vulnerable civilian victims through the study of the Joint Relief Commission's (JRC) and its relief activities in Europe, particularly in France, during the Second World War. Given the scarce bibliography that exists on the subject[1], this analysis feeds on Archives du Comité International de la Croix-Rouge

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[1] The work of the JRC in France it was not the object of an exhaustive study, even though, it is worth mentioning some general references or from the point of view of the development of the International humanitarian law mentioned in Bugnion (1997, p. 824) and Plattner (1992, p. 288).

(ACICR) documentary funds and sub-funds, especially from the JRC, as well as each of the reports published by the ICRC on its activities between 1939 and 1945, and on the Joint Relief Commission[2].

At the outbreak of the conflict in Europe in September 1939, humanitarian organizations like the ICRC had at their disposal international treaties such as the Geneva Conventions of 1864, 1906, and 1929 which, legally, were protecting the military, the sick, the wounded, the shipwrecked, and prisoners of war. Additionally, there was, in the field of the law of warfare, the Geneva Protocol of 1925, which prohibited the use of chemical and toxic or other similar products. However, at that time, the civilian populations were deprived of any formalised legal basis which protected them by means of conventions and which facilitated relief actions in their favour. However, it is worth mentioning that after the outcome of First World War, in 1918, there were some initiatives to redress the most obvious legal loopholes that had become evident since 1914. Some examples are the 10th International Conference of the Red Cross and Red Crescent of 1921, at which the most important principle was the desire that governments reach an agreement to foresee possible breaks of economic blockades in favour of children, the elderly and sick people. Again, in 1930, during the 14th International Conference, it was decided to avoid hardships of civilian populations through a less strict form of blockade, by allowing the provision of materials aid. Furthermore, the following International Conference in 1934 adopted a new project which aimed to protect civilians. It was intended that this project be presented at the diplomatic conference of 1940. However, the outbreak and development of the war interrupted that work to establish the legal basis for civil protection[3].

The Creation of the JRC

Given the new European circumstances marked by the advance of German troops and the Nazi occupation of a large part of Western Europe, the ICRC and the League of the Red Cross Societies attempted to alleviate the needs of those civilians most affected by war. From 1940 onwards, both institutions joined forces to create a joint body to develop relief movements in favour of civilians, especially children and women, victims of war. In October 1940, the name of "Joint Relief Commission"

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2   Part of the material used for this reports has already been released during the war period in the
     Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge. By
     way of example see: *Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de
     la Croix-Rouge* (1941a, pp. 659-671; 1941b, pp. 989-999; 1942a, pp. 18-19; 1945, pp. 549-564).

3   A more detailed description of the proposals made during the interwar period in order to rem-
     edy the existing loopholes in the International law on civilians protection can be found in
     Durand (1998, pp. 149-342) and Bugnion (2014, pp. 118-131).

was pronounced for the first time. The JRC was formally established on the 23rd of July 1941, as a non-profit association, in which the ICRC and the League would take part as members (Commission Mixte de Secours, 1948, pp. 9-11). The foundations of the new organization were set down in the above-mentioned resolutions, in the activity of the Civil Section of the International Prisoners of War Agency, and aid actions carried out by the ICRC during the First World War and the interwar period. Other equally important pillars were the principles of both organizations, among them human well-being, the preservation of human dignity, and the statutes of the International Red Cross of 1929, whose article 9 set forth:

> "The International Committee of the Red Cross and the League of Red Cross Societies shall cooperate in matters touching upon the activities of both, and especially in regard to the endeavours of relief organizations in the event of national or international calamities"[4].

During the war, the JRC turned into one of the main humanitarian instruments in Europe in the field of relief of the civil population due to the instruments that the founding members had provided. On one hand, the League maintained close contact with those National Societies that could offer financial donations and relief in the form of foodstuffs and materials. On the other hand, the ICRC was benefiting from universally-recognized prestige, being able to act in most of the belligerent countries with full authorization from the corresponding authorities, in addition to having delegations in different countries which were fundraising and intervening on the field.

Even though their beginnings were modest due to the lack of funds, between 1941 and 1946, the JRC bought, sent, and distributed in Europe 165,256,256 tonnes of goods, totalling 314,251,522 Swiss francs. The following figure shows the annual volume of shipments – relatively small in 1941 (2,539,801 tonnes); in 1944 (8,201,803 tonnes); and 1945 (15,266,058 tonnes) – compared to the corresponding quantity in 1942 (28,035,470 tonnes); in 1943 (39,474,878 tonnes); and in 1946 (71,738,246 tonnes):

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4   *Rapport interne sur l'activité de la Commission Mixte de Secours de la Croix-Rouge Internationale au cours de l'année 1941 et de la période janvier-avril 1942*, 7 Mai, 1942, pp. 3. O CMS B-033. Genève: ACICR (Archives du Comité International de la Croix-Rouge). See also Durand (1983, p. 188).

Figure 1 – Humanitarian relief dispatched by the JRC in Europe (1941-1946)
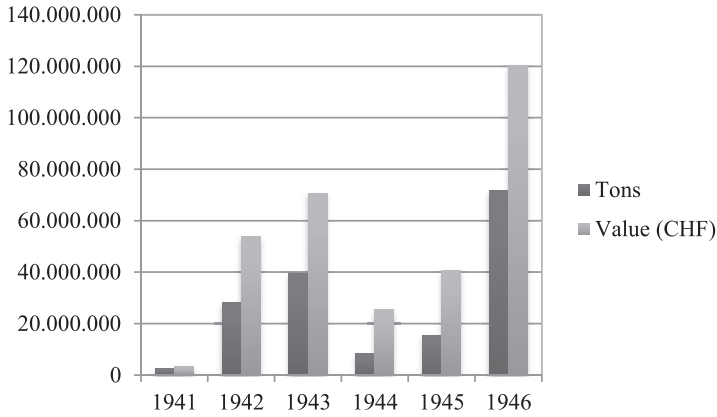
Source: Elaboration by the author from Commission Mixte de Secours (1948).

During the period of 1941-1946, the humanitarian map of the association changed in accordance with the development of the war, the licenses and transport possibilities of the relief aid, the received donations, and the selection of the most pressing needs. A total of sixteen countries benefitted from the material, intellectual, medical and moral relief provided by the JRC. From 1941 to 1944, Western Europe received the majority of the goods shipped by the JRC, particularly, Belgium, France, and The Netherlands; in the North, Norway and Finland; in the East, Poland and, occasionally, the Baltic countries; and in the South, Greece and Yugoslavia, that is to say, the majority of those countries occupied by Axis forces.

After the allied landing in Europe and the liberation of Rome and Athens, the table of relief distribution suffered slight modifications. For some months, humanitarian efforts focused on Holland, and the first shipments to Italy were made. France, Norway, and Poland remained the main beneficiaries of aid, whilst shipment to Greece, Yugoslavia, and Finland declined slightly. It was in 1945 when a fundamental change in the humanitarian policy occurred. In 1945, efforts became focused on middle and Eastern Europe, in countries like Romania, Hungary, Albania, Bulgaria, Poland, Yugoslavia, Germany, and Austria, all greatly weakened by the war. Despite this, until its dissolution in 1946, the JRC continued to send merchandises to western countries, thanks to the willingness of donors (Commission Mixte de Secours, 1948, pp. 127-129).

Humanitarian Aid of the JRC in France
In the light of the above mentioned, it can be observed that the humanitarian aid sent to France was a constant factor in JRC policy, reliably demonstrated by the

donations of the National Societies of the Red Cross, the International Red Cross
Societies, governments, charitable organizations and various associations, founda-
tions, and businessman and private citizens. The extensive documentation of the
JRC preserved by ICRC, and the reports of the JRC and ICRC during the Second
World War, allow us to reconstruct and quantify the humanitarian aid sent to France
during that period and to find out about the organizations that made all this pos-
sible. From this data, it is clear that, between 1941 and 1946, France received a total
of 19,471,398 tonnes of goods, worth 37,775,369 25 Swiss francs, almost 15% of the
total aid distributed by the JRC throughout Europe (Commission Mixte de Secours,
1948 p. 340).

Figure 2 – Humanitarian relief dispatched by the JRC to France (1941-1946)

	1941	1942	1943	1944	1945	1946
■ Foodstuffs and clothing	163,5	2.056,20	1.766,30	1.641,50	7.076,60	6.508
■ Pharmaceutical products	4,884	14,78	9,269	28,125	67,796	64,444
■ Total weight (tonnes)	168,384	2.070,98	1.775,57	1.669,63	7.144,40	6.572,44
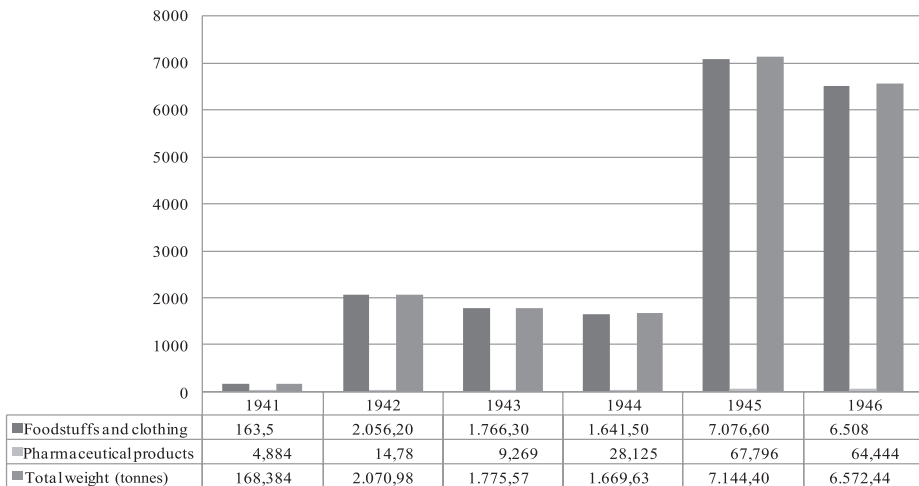
Source: Elaboration by the author from Commission Mixte de Secours (1948).

As can be seen from figure 2, the relief that was sent consisted of food, garments,
textiles, medicaments and other pharmaceuticals. It included, too, building mate-
rials and tools, apart from spectacles, toys, dental prostheses and orthopaedic
appliances, the latter, fruit of Swiss collections. The destinations of the humani-
tarian aid can be classified in three categories: to the French Red Cross (FRC), to the
camps in the South of France, and to the aid organizations exercising their activities
in certain towns or in a certain territory. In accordance with the founding principles
of the JRC, the aid was allocated to groups of civilians. In the first place, to children,
as is stipulated in *La contribution de la Commission Mixte de Secours à l'action d'entraide
en faveur de l'enfance, des hébergés civils et des civils nécessiteux de France 1941-1944*,
"children are always the most exposed group in a civilian population affected by

famine"[5]. To these can be added pregnant and breast-feeding women, the sick and the homeless and civilian internees[6].

Based on the economic situation created by the blockade in Europe, by the decrease of resources because of the war, by the diminishing of farming production, by the great number of French prisoners of war held in Germany, by the rationing, by the holdings of the army of occupation, and by the severe food situation France was going through, the humanitarian aid started to flow in May, 1940. Another fundamental factor was the exodus of thousands and thousands of inhabitants from Holland, Belgium, and France, who, in their escape from German troops, tried to reach Southern France. Immediately, their situation drew the attention of ICRC and that of the League, who on May 23, 1940, made the following appeal to the National Societies of the Red Cross in neutral and non-belligerent countries:

> "Some three million French, two million Belgian, seventy thousand Luxemburg and fifty thousand Dutch refugees or evacuees are in a serious state of destitution in France. The French Red Cross appeals to sister Societies for relief of people in distress. Needs are new clothes, shoes, layettes, bedding, kitchen utensils, minor surgical instruments, dressings, non-perishable foods, collapsible huts, textiles for workshops. Please send gifts in cash or kind to the Central Committee French Red Cross Paris and through the Véron transport agent for all ports." (International Committee of the Red Cross, 1948b, p. 416).

Despite the fact that the JRC had not been formally established, during 1940 an appropriate quantity of humanitarian aid was sent to France, fruit of the received donations that followed the call previously made. The relief was as follows: 20 tonnes of condensed milk provided by ICRC; 33 tonnes of food and clothing from the Swiss Red Cross (SRC); 70 tonnes of food and clothing offered by Swiss donators; 45 tonnes of flour, a Yugoslavian Red Cross donation; 283 tonnes of condensed and powdered milk, an SRC's donation; and 676 tonnes of food and 34 tonnes of clothing from diverse suppliers. All this aid was given to Belgian, Dutch, and French refugees who were seeking shelter in Southern France[7]. In this way, between July and August 1940, the JRC delivered 3,000 cartons of condensed milk, 12,000 kg of powdered milk and 5,000 packages of clothes and food, an ICRC's donation. Added to this were 300 kg of medicaments, surgical instruments, and healing material, apart from an economical donation worth 265,000 Swiss francs, to the camps at Gurs, Vernet, and Argelès-sur-Mer that were inspected by a delegate of ICRC (International Committee of the Red Cross, 1948, p. 527).

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5   *La contribution de la Commission Mixte de Secours à l'action d'entraide en faveur de l'enfance, des hébergés civils et des civils nécessiteux de France 1941-1944*, pp. 3. O CMS F-13. Genève: ACICR.

6   *Commission Mixte de Secours de la Croix-Rouge Internationale. Vivres et Vêtements*: Envois en France *1941-1942-1943*, pp. 2. O CMS B-033. Genève: ACICR

7   *Correspondance générale concernant les activités de la CMS en 1940*. O CMS B-034. Genève: ACICR.

Although at the beginning this aid was very modest, in the upcoming years the volume assigned to France increased considerably, reaching its peak in 1945. Between 1941 and 1944, the JRC dispatched an approximate total of 3,673,621 kg of food, of which 133,045·30 kg in 1941, among dairy products, vegetables, sardines, and raisins.

Figure 3 – Relief supplies dispatched by the JRC to France (1941)
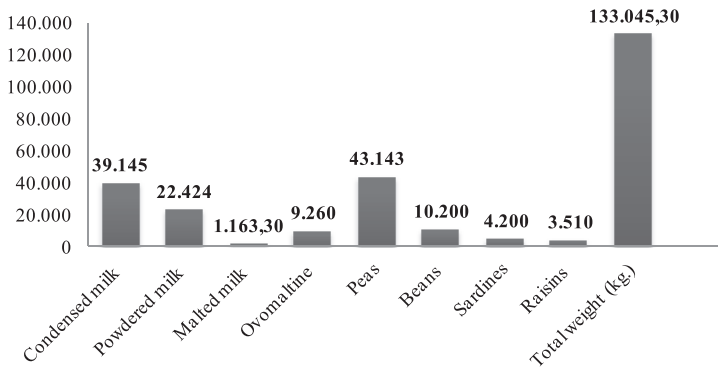
Source: Elaboration by the author from *Vivres et vêtements*: *Envois en France 1941-1942-1943*,
O CMS B-033. Genève: ACICR.

Compared to the previous year, the aid dispatched in 1942 was 15 times greater and varied, with a total of 2,033,888 kg, of which must be highlighted the large quantity of milk, peas, beans, and lentils.

Figure 4 – Relief supplies dispatched by the JRC to France (1942)
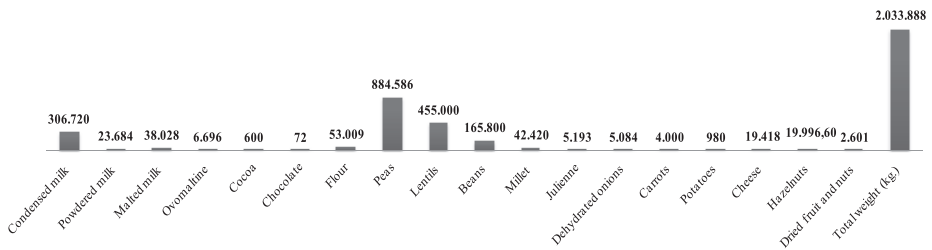
Source: Elaboration by the author from *Vivres et vêtements. Envois en France 1941-1942-1943*,
O CMS B-033. Genève: ACICR.

In the upcoming years, this aid was constant, up to 1,754,770.20 kg in 1943 and 1,582,408.50 kg in 1944, prevailing once more milk and vegetables, in addition to varied quantities of sardines and canned milk.

Figure 5 – Relief supplies dispatched by the JRC to France (1943)
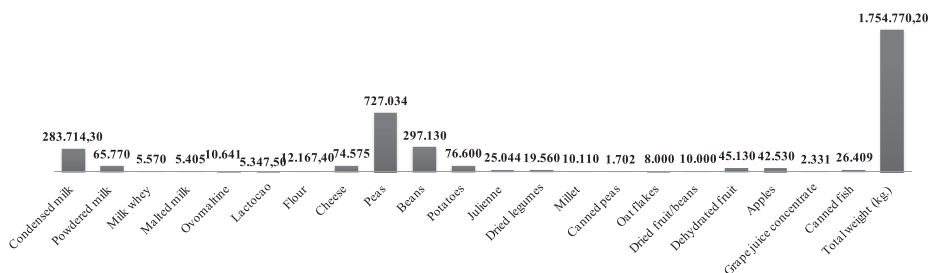
Source: Elaboration by the author from *Vivres et vêtements. Envois en France 1941-1942-1943*,
O CMS B-033. Genève: ACICR.

According to the previous figures and the following table, the quantity of condensed milk that was received and delivered was one of the greatest, together with other foodstuffs, like peas, in spite of the fact that, of course, the volume of the freight depended on its availability in the market, purchasing opportunities, transport and transit through Europe.

Table 1 – Relief supplies dispatched by the JRC to France (1944)

Condensed milk	704,786.70	Julienne	68,275
Powdered milk	30,840	Oranges	10,000
Biomalt	16,415	Apples	107,320
Ovomaltine	16,000	Dried fruit and nuts	16,020
Hacosan	15,923.40	Dried legumes	3,599
Milk whey	2,300	Flour	75,275
Lactocao	1,819.50	Tomato paste	1,364
Sugar	60,610	Bouillon	10,100
Pasta	9,060	Cénovis	131
Cheese	27,303	Bread	1,500
Potatoes	194,442	Marmalade	650
Dehydrated potatoes	5,500	Canned meats	1,406.40
Millet	25,513	Sausages	495
Lentils	5,000	Sardines	9,800
Peas	20,481	Canned peas	210
Steamed beans	350	**Total weight (kg.)**	**1,582,408.50**
Beans	139,920		

Source: Elaboration by the author from *Envois effectués par la Commission Mixte de Secours de la Croix-Rouge Internationale en France. 1944*, O CMS D-147. Genève: ACICR.

Together with foodstuffs, other aids equally important to those civilians in greatest need and most affected by the war were the textiles:

Figure 6 – Textiles, clothing, and various articles dispatched by the JRC to France (1942)
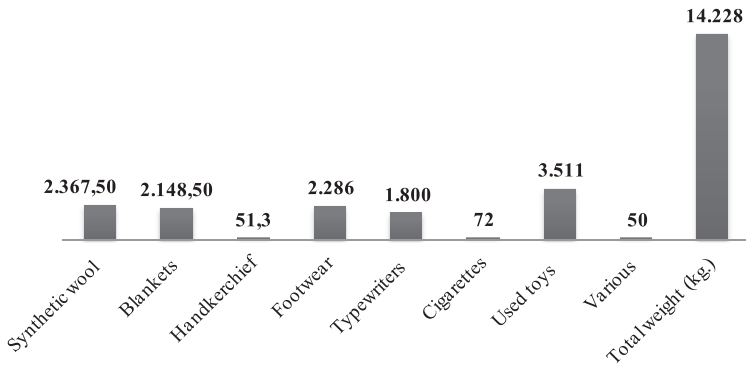
Source: Elaboration by the author from *Vivres et vêtements. Envois en France 1941-1942-1943*,
O CMS B-033. Genève: ACICR.

From 1942 to 1944, the JRC made a number of shipments to relieve the shortage of clothing, footwear, blankets, and other supplies like layettes, mattress bases, household goods, typewriters, toys, and cigarettes.

Figure 7 – Textiles, clothing, and various articles dispatched by the JRC to France (1943)
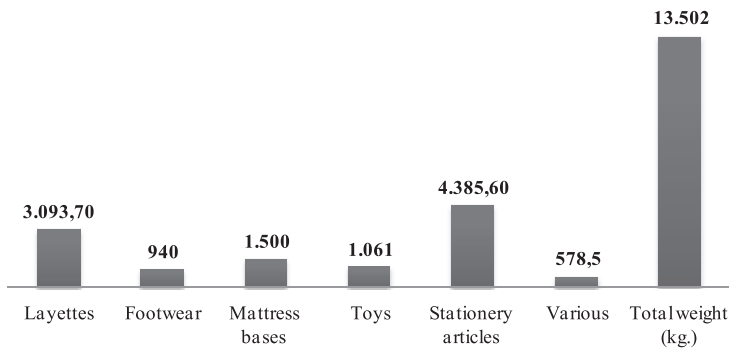
Source: Elaboration by the author from *Vivres et vêtements. Envois en France 1941-1942-1943*,
O CMS B-033. Genève: ACICR.

The figures 6 and 7, as well as the one below, show that the total amount that was sent between 1942 and 1944 increased to 51,997 tonnes.

Figure 8 – Clothing and various articles dispatched by the JRC to France (1944)
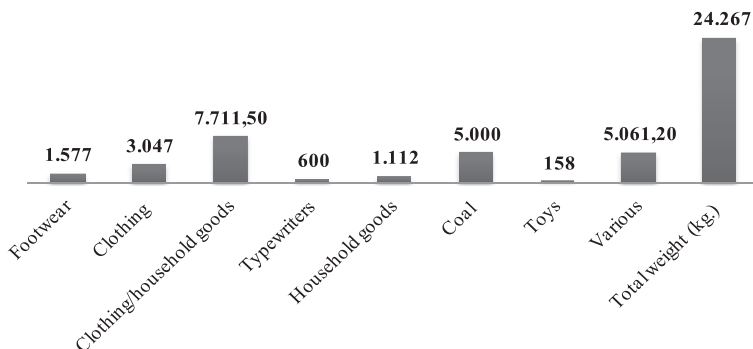
Source: Elaboration by the author from *Envois effectués par la Commission Mixte de Secours de la Croix-Rouge Internationale en France. 1944*, O CMS D-147. Genève: ACICR.

Besides the above-mentioned shipments, there were the medicaments and sanitary supplies provided to the French civilian population, internees, and refugees in the concentration camps of France by the JRC, during the war period, a total of 44,209·2 kg:

Figure 9 – Medicines and sanitary supplies provided by the JRC to France (1941-1944)
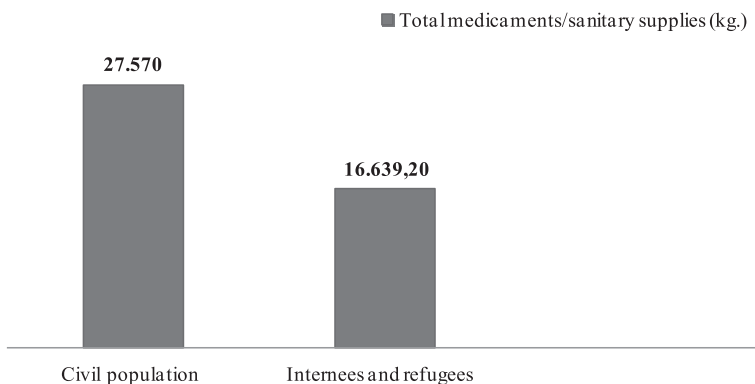
Source: Elaboration by the author from *Medicaments. Envois en France 1941-1942-1943-1944*, O CMS B-033. Genève: ACICR.

Through these figures and tables, it has been possible to quantify and to detail the humanitarian aid provided by the JRC thanks to the collaborations and donations of a number of organizations and associations of various types. From 1941 to 1946,

Colis Suisse (Zurich), the Union Internationale de Secours aux Enfants (Geneva), First Church of Christ, Scientist (Geneva), American Friends Service Committee, Civil Service International, Conseil Oecuménique des Églises, Caritas, Secours Quaker, among many others (Commission Mixte de Secours, 1948, pp. 335-336), collaborated and donated funds. Nonetheless, the detailed analysis of shipments and of the contributions of the donors shows a considerable increase since 1942, thanks to the goods purchased in Switzerland by the Swiss Red Cross-Children's Aid (Croix-Rouge Suisse-Secours aux Enfants). From 1942 to 1944, the JRC was in charge of obtaining export licenses and arranging dispatches to different European countries on behalf of the Swiss Red Cross-Children's Aid. Accordingly, the SRC contribution to provide supplies to Europe in that period was of 2,071 tonnes of goods. By way of example, in 1943, the main beneficiary of the SRC aid was France, with goods valued at more than one million Swiss francs addressed to the delegations and deposits of the SRC in the French territory for distribution to maternity hospitals, nurseries, colleges and school canteens (*Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge*, 1942, pp. 348-355; 1942a, pp. 516-521).

It is well-known that the main beneficiaries of the SRC's aid were children, and it is for this reason that a large amount of the funds had been used to buy milk and other dairy products. The following figure shows the quantity of milk the JRC dispatched, which also includes the SRC's shipment:

Figure 10 – Condensed milk and powdered milk dispatched monthly by the JRC (1941-1944)
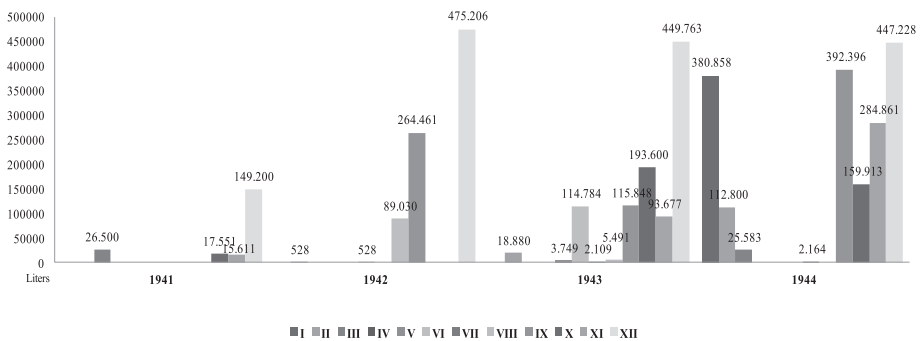
Source: Elaboration by the author from O CMS D-147. Genève: ACICR.

Another example of solidarity with the French children's situation was that of the Etchéa Foundation, a group of French residents of Egypt, which, between 1943 and 1945, donated a large quantity of money to the JRC. Thanks to the funds deposited, the JRC bought and distributed more than 100 tonnes of condensed milk, with or

without sugar, to babies, children, pregnant and lactating women from the Mediterranean coast, particularly to those affected by the war and who did not benefit from such aid. Thus, since October 1943 until early 1945, more than 80,000 children from Marseille and the Departments of Alpes-Maritimes and of Var were aided by the JRC in collaboration with the French Red Cross[8].

In 1944, the humanitarian map spread with the foundation of Don Suisse pour les victims de la guerre which bound the humanitarian aid to seventeen European countries. Like the SRC, from 1944 to 1946 the Don Suisse established a very close relationship with the JRC. This latter was the responsible of obtaining information concerning the zones most affected by war, and the necessities of the population, organizing the shipments and transport on the behalf of Don Suisse. As a result, through previous agreements, the JRC dispatched around 60,000 tonnes of priority aid (food, clothing, medicaments, barracks, and furnishings), and indirect aid (tools, surgical instruments, base hospitals, equipment for reconstruction, wood, etc.). Don Suisse's contribution to the struggle of the French population against hunger, hardships, and diseases increased to 10,000 tonnes of freight, France being the third most relieved country, after Germany and Austria (Commission Mixte de Secours, 1948, pp. 192-195).

Conclusion

The JRC was an instrument not only for the League and the ICRC to alleviate the pressing needs of the most disadvantaged populations. Since its foundation, the JRC has become a potent intermediary between donors of various kinds and the recipients of the humanitarian aid. The partnership created in 1941 was, clearly, an effective tool for the humanitarian organizations to locate, purchase, and transport goods throughout Europe. The strength of its founders, in particular of the ICRC, allowed it to overcome, on many occasions, the blockade and counter-blockade, obtaining the corresponding transit and distribution licenses, especially of Nazi Germany, considering that until 1944 the occupied countries represented the epicentre of the humanitarian aid.

In the role of an auxiliary body and compared to the Relief Division's supplies traffic to the POWs and civilian internees of ICRC, the JRC's contribution was very modest. In fact, the civilians received only a 10.6% of the total weight of the supplies destined to the prisoners of war and civilian internees. Although modest, the relief operations made through the JRC itself contributed to saving the lives and helped survive thousands and thousands of children and women who sometimes

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8   *Rapport sur la distribution de lait aux enfants du Sud de la France grâce au don de la Fondation Etchéa.* O CMS D-143. Genève: ACICR; *Les dons de la Fondation Etchéa au profit de l'enfance française.* O CMS D-146. Genève: ACICR.

were found in extreme situations as a consequence of the war. Without the help and collaboration of the humanitarian organizations, many of them had become victims of famine and epidemics. In this sense, the JRC was the foremost organization in its sole purpose of relieving civilians, particularly children and women, during a large-scale conflict.

The experience acquired in the field, as well as the lessons learned in the past for that present by the players on the humanitarian stage, made favourable the future of humanitarian aid and the strengthening of international humanitarian law. As with the Great War, the Second World War demonstrated once more that civilians "were certainly 'in the war' and exposed to the same dangers as the combatants, sometimes worse" (International Committee of the Red Cross, 2012, p. 30). It also revealed the existing loopholes in the field of humanitarian law, as stipulated in the ICRC report on its activity during the Second World War:

> "The Geneva Convention gives guarantees to the wounded and sick of the armed forces – just as to their adversaries – that their lives will be protected and that they will have the right to proper care; the Convention on the treatment of prisoners of war watches over the physical and moral situation of those in captivity. The terms of these instruments declare the absolute inviolability of an enemy who is no longer fit for combat and give recognition to the dignity of the human personality. Protection of the civil population must rest on these same principles. The same applies to the endeavours made by the Red Cross to bring relief supplies of all kinds – foodstuffs, clothing and indispensable medicaments – to women, children and old people in occupied territories. Safeguarding of children is the last line which the Red Cross must defend, if war is not to mean utter destruction of mankind." (International Committee of the Red Cross, 1948a, pp. 689-690).

Four years after the dissolution of the JRC, the fourth Geneva Convention, which related to the Protection of Civilian Populations in time of war, entered into force. It was something completely new and an extension of the existing regulations for the protection of civilian populations, victims of war, a field which so far had not been touched.

References

Becker, A., 2012. Los dilemas de la protección de los civiles en los territorios ocupados: el ejemplo precursor de la Primera Guerra Mundial. *International Review of the Red Cross*. Available at https://www.icrc.org/spa/assets/files/review/2012/irrc-885-becker.pdf [Accessed 12 June 2017].

Bugnion, F., 1997. L'action du CICR pendant la Seconde Guerre mondiale. *Revue Internationale de la Croix-Rouge*. Available at https://www.icrc.org/fre/resources/documents/misc/5fzgcb.htm [Accessed 12 June 2017].

Bugnion, F., 2014. *The International Committee of the Red Cross and the Protection of War Victims*. Geneva: Macmillan.

Comité International de la Croix-Rouge, 1921. *Rapport Général du Comité international de la Croix-Rouge sur son activité de 1912 à 1920*. Genève: CICR.

Commission Mixte de Secours, 1948. *Rapport de la Commission Mixte de Secours de la Croix--Rouge Internationale (1941-1946)*. Genève: CICR.

Durand, A., 1983. Origin and Evolution of the Statutes of the International Red Cross. *International Review of the Red Cross* n.º 235. Available at https://www.loc.gov/rr/frd/Military_Law/pdf/RC_Jul-Aug-1983.pdf [Accessed 12 June 2017].

Durand, A., 1998. *Historia del Comité Internacional de la Cruz Roja. De Sarajevo a Hiroshima*. Ginebra: Instituto Henry Dunant.

International Committee of the Red Cross, May 1948a. *Report of the International Committee of the Red Cross on its activities during the Second World War (September 1, 1939 – June 30, 1947)*. Geneva: ICRC, Vol. I.

International Committee of the Red Cross, May 1948b. *Report of the International Committee of the Red Cross on its activities during the Second World War (September 1, 1939 – June 30, 1947)*. Geneva: ICRC, Vol. III.

International Committee of the Red Cross, 2012. *The Geneva Conventions of 12 August 1949*. Geneva: ICRC, pp. 30. Available at https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf [Accessed 12 June 2017].

Palmieri, D., 2012. ¿Una institución a prueba del tiempo? Un repaso de los 150 años de historia del Comité Internacional de la Cruz Roja. *International Review of the Red Cross* n.º 888. Available at https://www.icrc.org/spa/assets/files/review/2013/irrc-888-palmieri.pdf [Accessed 12 June 2017].

Plattner, D., 1992. Assistance to the civilian population: the development and present state of international humanitarian law. *International Review of the Red Cross* n.º 288. Available at https://www.icrc.org/eng/resources/documents/article/other/57jmar.htm [Accessed 12 June 2017].

Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge, 1941a. Action de la Commission Mixte de Secours de la Croix-Rouge internationale en faveur des femmes et des enfants victimes de la guerre. *Revue Internationale de la Croix--Rouge et Bulletin International des Sociétés de la Croix-Rouge*, 272(23), pp. 659-671.

Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge, 1941b. Activité de la Commission mixte de secours de la Croix-Rouge internationale. Novembre et Décembre 1941. *Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge*, 275(25), pp. 989-999.

Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge, 1942a. La Commission mixte de secours de la Croix-Rouge internationale. *Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge*, 277(24), pp. 18-19.

Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge, 1942b. A propos de l'action suisse de secours en faveur des enfants. *Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge*, 281(24), pp. 348-355.

Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge, 1942c. A propos de l'action suisse de secours en faveur des enfants". *Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge*, 283(24), pp. 516-521.

Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge, 1945. Activité de la Commission mixte de secours de la Croix-Rouge internationale. *Revue Internationale de la Croix-Rouge et Bulletin International des Sociétés de la Croix-Rouge*, 319(27), pp. 549-564.

Archives

Archives du Comité International de la Croix-Rouge (ACICR) – Switzerland

Dear Matilde:
Letters from the Refugee Camps

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Abstract

The letters sent by Spanish refugees to different aid committees, and found in the National Archives of France, help us better understand the hardships experienced in the internment camps. They also provide interesting facts about the education of children in the camps, and the relationship that the exiles had with the aid organizations such as the *Comite de Ayuda a los Refugiados* and the *Commission d'Aide aux Enfants Espagnols Réfugiés en France*. Matilde Huici very actively collaborated with both organizations. She was the addressee of many of the letters that Spanish mothers wrote from the camp asking for warm clothes and shoes for their children or requesting information about the situation of their husbands, confined in other centres. Huici also served as an intermediary when, upon the beginning of the Second World War, the collaboration of Spanish refugees in the French economy was needed.

Resumo
Cara Matilde: Cartas dos Campos de Refugiados

As cartas enviadas por refugiados espanhóis a diferentes comités de ajuda e encontradas nos Arquivos Nacionais de França, ajudam-nos a melhor compreender as privações sentidas nos campos de refugiados. Além disso também mencionam factos interessantes acerca da educação das crianças nesses campos e a relação que os exilados tiveram com organizações de ajuda, tais como o Comité de Ajuda aos Refugiados e a Comissão de Ajuda às Crianças Espanholas Refugiadas em França. Matilde Huici colaborou ativamente com ambas as organizações tendo sido a destinatária de muitas cartas que mães espanholas escreveram a partir dos campos a solicitar roupas quentes e sapatos para os seus filhos, ou solicitando informação sobre o estado dos seus maridos que se encontravam noutros campos de refugiados. Huici também atuou como intermediária após o começo da Segunda Guerra Mundial quando o contributo dos refugiados espanhóis se tornou necessário para a economia francesa.

The Spanish Republican Exile

One of the most notable characteristics of the republican exile is its geographical, social, demographic, and political plurality. This exile was also pluralistic regarding the variety of reception countries[1]. This massive displacement of population was not the first one to take place in Europe in the 20th century. However, after the First World War the number of refugees reached a previously unheard of proportion, while the figure of the "stateless" emerged. *The Convention Relating to the International Status of Refugees* of 1933 defined the refugee as someone who "doesn't have or has never had the protection of their country". At the 1938 International Conference held at Evian, the universal criteria to define the refugee was determined to be "the fear of persecution" (Alted, 2005, p. 25). Sadly, the Republican exile coincided with the migratory movements caused by Hitler's regime and the human migration of 1939 would be quickly followed by the Second World War, leading in turn to new movements of population[2].

The first migration of the Spanish civilian population took place at the beginning of the Irun's final battle (August, 1936) at the Northern Front, and with the siege of Madrid in October of the same year. After the fall of San Sebastian, many people decided to cross the border to seek refuge. This first egress was improvised and disorganized[3]. In October of 1936, the War Refugee Committee was created to coordinate the tasks of the different institutions in charge of the evacuation. Although the Department of Health was responsible for the evacuation of the civilian population shortly after, the Department of Public Instruction took over the evacuation of children to areas under Republican control, through colonies organized to aid in their daily needs and to continue their education. In 1937, the official evacuations of

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1 Many researchers have studied the numbers and typology of Republican exile, its dispersion around the world, the legal measures that affected them, and the agencies that helped them, their experiences and every aspect that made up the history of a nation who had fled their homeland. The following works are references in the analysis of this issue: Rubio (1977), Cuesta and Bermejo (1996), Dreyfus (1999) and Alted (2005). For an exhaustive bibliographical review of the republican exile, see Piedrafita (2003).

2 In 1936 there were many other communities of foreigners and refugees in France. Ahead of the Spanish group, which was about 250,000 inhabitants before the Civil War, 720,000 Italians and 420,000 Polish lived in France. Of a population of almost forty-two million people, more than two million had not been born in France. In 1939 not only 470,000 Spaniards followed but also 400,000 German and Austrian refugees in October, 1939 from the *Reich*, (Peschanski, 2000, pp. 31-34). Regarding the protection of the refugees in Europe, refer to Ponte (2002) and Mariño (2008).

3 It is estimated that between 15,000 and 20,000 Spaniards went to France as a result of this first campaign on Northern Front, the majority of they were repatriated to Spain. Those received by relatives and resident friends in France could remain in the country.

children abroad began[4]. In August of 1936, the *Conference Européenne* was held, in the course of which the *Committee International de Coordination et d'Information pour l'Aide a L'Espagne Republicaine* was constituted[5]. Its intent was to promote the creation of National Help Committees for the Republican Spain, to centralize the humanitarian activities promoted by every country, by coordinating the movements of solidarity and informing the National Committees of the needs of the Spanish population. It was acting simultaneously as a tool of propaganda, spreading social, economic, and cultural activities carried out by the republican government. After Franco's offensive in Vizcaya, an overseas evacuation of Basque children was organized. Thus, 4,000 children left for England, and another 4,500 for France of which one-third were transferred to the Soviet Union, and just a few to Belgium. With the fall of Santander (August 1937) a group of children from different parts of the Basque Country, Santander, and Asturias departed mainly for the Soviet Union[6]. Javier Rubio estimated to be around 125,000 displaced to France due to the campaign of the Northern Front, mostly Basques[7]. The number of children evacuated throughout the war is estimated to be 33,000 mostly (approximately 20,000) admitted to France[8].

In the Spring of 1938, the Francoist army offensive took place in Alto de Aragon, causing an exodus of 24,000 people, mainly soldiers who were rapidly repatriated, although at the end of the year between 40,000 and 45,000 refugees remained in the neighboring country, of whom approximately a fourth were children. In December 1938 the final offensive against Catalonia began. Since mid-January the roads connecting with France filled with people trying to flee the country in the coldest winter of the war. For little more than three weeks about 465,000 people crossed the border through the *Department of Pyrénées-Orientales*, many of whom were women, children, and the elderly, without political or military responsibilities, forced into exile by fear of the Francoist repression. On top of that almost half a million people who fled to France in disbandment, the previous 50,000 from the first migrations caused by the Civil War is a number to keep in mind[9].

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4   The first expedition took 72 children to the Soviet Union, another led 450 Basque children to France. Though in September 1936 small groups of children had gone out towards France the expeditions organized by republican government took place in March 1937.

5   See facsimile in https://wdc.contentdm.oclc.org/digital/collection/scw/id/1919

6   They were 1,100 children, some of which stayed in France.

7   At the end of 1937 approximately 25,000 adults remained in the country, dispersed over numerous departments.

8   The Soviet Union admitted 2,900, Mexico 463, Switzerland around 430, Denmark a small group of 100 children, whereas Sweden and Norway supported colonies on the Mediterranean Spanish coast and in French soil. The reception of these children in the various countries varied, as well as reunions with their families into exile, or their return over the following years (Alted, 1996).

9   At the end of 1939 nearly 360,000 people had returned to Spain (Rubio, 1996).

For the French government, the Spanish exiles meant a political and economic problem, therefore the repatriation to Spain or the remigration to third countries was encouraged. Upon the breakout of the Civil War, the government of the Popular Front in France, presided over by the socialist Leon Blum tried to help Spain as much as possible, even after the signing of the Pact of Non-Intervention. Sectors of French society: political and trade union groups of the left-wing organized different ways of assistance, especially in regards to civilian aid. The French government's initial policy of reception during the Spanish Civil War was very well structured, because soldiers would be repatriated to the area of their personal choice, and those civilians who did not want to return to Spain were able to settle down in several departments of the center area of the country. In April of 1938, Edouard Daladier assumed the lead of a centre-right coalition government. This government was in charge of tackling the problem of the very high number of Spanish refugees in France since the middle of January 1939. Although it had been decided that the border between Spain and France would continue to be closed, the pressure caused by the high volume of people headed towards the border under Francoist bombings, and suffering the ravages of winter, persuaded the government to open the border in late January for women, children, the elderly, and the infirm. This action raised the levels of tension amongst the population, which was conditioned by the depiction of the refugees by the press, especially the conservative media who described the exiles as undesirable and dangerous[10]. Finally, in February the French government officially opened the border due to the amount of Republican soldiers who were entering the country mixed within the civilian population. After crossing the border, Spaniards were grouped into camps of classification (*triage*) to proceed afterwards to their further distribution in *centres d'accueil*. The majority of children, women, the elderly, and the infirm were driven to locations in the Centre or the West, while men and army fighters were taken to concentration or internment camps, where also children and women would settle later on. This geographical dispersion caused the separation of families and the need to request reunification, which would take months.

At the end of November 1938, the Dadalier government took measures on the part of the Spanish population considered undesirable. The intention was to expel them, and were this not to be possible they would be sent to special centers where they would be monitored permanently. These special centers would be real concentration camps. At first, all civilian men and soldiers would come into this category of undesirable population, and were thus transferred to the concentration camps.

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10 *Le Figaro* branded the exiles as "undesirable and subversive", the far-right *Gringoire* y *L'Action Française* were warning of the dangers for the public health this "red pest" of communists and anarchists (Alted, 2005, p. 66).

The first camps were created on Argeles and Saint-Cyprien beaches, followed by the fields of Vallespir and Cerdagne (soon evacuated to others in the center of the country because of the low temperatures in the area). It is necessary to remember that Saint-Cyprien and Argeles were vast expanses of sand, surrounded by barbed wire, where the sea acted as the "fourth wall" while its inhabitants were under strict surveillance by the French police and colonial troops. Due to administration and health issues, the French government built one more camp in the same department of Oriental Pyrenees, on the Barcares's beach. In order not to concentrate the whole immigration of the Spanish republicans on the beaches of the Roussillon more camps were constructed: Agde (Herault), Bram (Aude), Gurs (Bearn) and Judes's field (in Septfonds, Tarn et Garonne). Further detention centres were created for those considered dangerous, such as Collioure Fortress (the most dangerous of all[11]), and the disciplinary camps of Vernet-d' Ariege and Rieucros (for women)[12].

From the beginning of the Republican exile, numerous institutions provided aid including the International Red Cross, and the Quakers. Organizations were created for the purpose of caring for Spanish Republican children, the *Commission d'Aide aux Enfants Espagnols Réfugiés en France* – where Matilde Huici very successfully helped the refugees[13], among others.

Matilde Huici: an Intellectual Committed to the Second Republic

Matilde Huici worked intensely with Clara Campoamor, Victoria Kent, and Maria de Maeztu both intellectually and politically. Her extensive academic and professional life was focused quickly on the attention for disadvantaged and delinquent minors. As a very active militant feminist, she also pursued a remarkable political career over the Republican period, continuing to support minors in need. This activity increased over the Civil War and the exile periods.

Huici was a national teacher, therefore when in 1916, the *Residencia de Señoritas*, linked to the *Institucion Libre de Enseñanza* opened she applied for a vacancy there to prepare her joining in the *Escuela Superior de Magisterio de Madrid*. She immediately became very close to Maria de Maeztu, director of the residence where Huici would work as a librarian. When she finished her studies at the *Escuela Superior*, she

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11 The League of the Human rights denounced that the prisoners were submitted to a brutal treatment.

12 The first group of communist German women arrived in this camp in the middle of 1939, followed by women of other nationalities. In 1942 a convoy left for Auschwitz.

13 Her academic and life path is extremely extensive, she cultivated associationism, feminism, socialism, and endless labor in favour of the minors at risk of social exclusion and delinquency. Two biographies that detail her extraordinary life are García-Sanz (2010) and San Martín (2009).

pursued Law and obtained a two-year grant[14] from the *Junta para la Ampliación de Estudios e Investigaciones Científicas*, for an internship in the United States with the purpose of studying those institutions relating to delinquent children, and learn about different educational models that were applied, becoming one of the pioneers in child correctional psychology in Spain. Upon her return from the United States she completed her studies of Law in 1926, becoming the third woman registered in the *Ilustre Colegio de Abogados de Madrid*[15] that year, obtaining shortly after her doctorate in Law[16]. Luis Jimenez de Asua was one of her professors in the degree, and she collaborated with him (among other tasks) at the Commission which wrote the first draft for the 1931 Constitution[17]. Upon obtaining her the Law degree, she took an official exam for inspector of penitentiaries, and from early 1927, she was a member of the Minors Tutelary Court of Madrid, working as a lawyer in her spare time. She married Luis San Martin Adeva, colleague and judge for the juvenile court of Madrid – a position he held until the end of the Civil War. When they got married, Luis was a widower and father of a child who Matilde legally adopted.

Over the late 1920s Matilde Huici strengthened her bonds with the modern Spanish feminine intellectuals and joined feminist and cultural societies and organizations, also in some cases organizations of legal scope[18]. One of the most important asso-

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14 1923-1924, 1924-1925 school years.

15 The first woman was Victoria Kent, followed by Clara Campoamor, both in 1925.

16 In 1927 a North American paper published that Matilde Huici was the third Spanish woman who practiced Law in the country, being one of the most diligent candidates ever graduated. The article analyzes the situation of the women who decided to study Law in Spain, to end by mentioning how Huici, after passing brilliantly her examinations, acted as defending attorney in a penal case at the Supreme Court of Madrid The Arizona Republican, 1927. Third woman to practice Law in Spain faces Bar, *The Arizona Republican*, 5 February, p. 4.

17 One of the most important roles Matilde Huici played, after the proclamation of the Republic, was her work as a member on the Subcommittee on Criminal Law of the Juridical Commission Adviser of the Department of Justice, in which she took part of the Subcommittee that wrote the draft for the Constitution. Huici worked in favour of divorce law, presenting her particular vote, together with Jiménez de Asúa. In her defense of the rights of women presented her candidacy to the court.

18 It is very likely for Huici to even have been a founder of the *Juventud Universitaria Femenina* (JUF), promoted by María de Maeztu, although it is certain that Huici was, in 1928, its Vice-Secretary. She was part of the Committee created by the International Federation of University Women (FIMU) to investigate the position of women in public services. She was linked to another entity in these years, the *Liga Femenina Española por la Paz y la Libertad*. In 1915 the Women's International League for Peace and Freedom (WILPF) was founded, with headquarters in Geneva, aimed to persuade women around the world to object all exploitation by men and any form of oppression. When in 1919 the Congress of Associations pro Company of Nations was held in Madrid, Matilde Huici was among the Spanish delegates, as well as Clara Campoamor, Maria de Maeztu and Isabel de Oyarzabal. Afterwards arose the idea of creating

ciations she joined was the Lyceum Club, founded in 1926, being its leader Maria de Maeztu and Huici one of its founding members. She held several talks and was appointed vice-president in 1931[19]. At the Lyceum she joined several partners (Clara Campoamor or Elena Soriano, among others) to recover the leading figure of Concepcion Arenal and erect a statue in her honour in Madrid.

She also stood out in her political militancy: she was always a committed Republican, and together with Campoamor, refused any position of responsibility she received during the dictatorship of Primo de Rivera[20]. She actively participated in the vindication for women´s right to vote, claiming the recognition of women legal rights in the Constitution. From 1927, she and Campoamor took part in the founding of the *Agrupación Liberal Socialista*, although this formation did not consolidate. She was a team member for the female socialist group of Madrid as Victoria Kent and Clara Campoamor, but she did not join the PSOE (the socialist association of Madrid) until 1931, at the same time that her husband and Margarita Nelken did.

During the Republican period she took advantage of her official positions to reform the structures dedicated to the protection of infancy. She was part of the Commission which, in April and May 1931, studied the law on minor tutelary courts and introduced numerous changes in their operations. She was part of the *Consejo de Protección de Menores* which replaced the *Consejo Superior de Protección de la Infancia*, of which Luis Jimenez de Asua, Clara Campoamor and her husband, Luis San Martin Adeva were members as well. She became involved in the activities of the *Instituto de Estudios Penales*, through conferences to train prison staff, and for those interested in taking a Law degree. In 1933 she was designated, temporally, the chair for the Minor Tutelary Court of Appeal. In recognition of her labor for the protection of children, the first operational female preventorium in Spain (in 1933) was named after her[21].

She obtained the title of Pedagogy after this degree started to be taught in the Faculty of Philosophy and Arts of the Central University in 1932, and one year later she visited the USSR to observe the new methods used in the country related to the protection of juvenile delinquents and abandoned minors. In 1935, she founded the Child Auxiliary Association, offering Angel Ossorio y Gallardo to be its president.

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the *Liga Femenina Española por la Paz y la Libertad*, which was integrated by members of the JUF. Matilde Huici, as part of its board of directors, requested to join the National Association of Pro League of Nations.

19 The *ABC* newspaper of 24 November, 1929, gathers that Huici spoke in the "Woman in Spanish Law" conference. In: ABC, 1929. Informaciones y noticias de lecturas y conferencias: "La mujer en el derecho español. La mujer como persona", *ABC*, 24 November, p. 32.

20 Huici received offers to be a member of the board of the *Ateneo de Madrid* and to participate in the Paritary Committees of the Ministry of Labour.

21 In Vigo.

The intention of this association was to prevent situations of risk for lower class children who spent many hours on the streets while their parents were at work, providing libraries, clubs, and workshops for them in various neighborhoods of Madrid.

Huici participated in the 1936 elections by giving numerous speeches, encouraging the vote for the Popular Front, and at the outbreak of the Civil War, her political commitment increased. In October of 1937, she took part in the Second Conference of Anti-Fascists Women[22] in Valencia, bringing up issues related to the situation of women, their education, and their technical and cultural preparation. She chaired the Conference with other important women of the time, including Dolores Ibarruri. In the same year, she was a delegate for the Government of the Republic in the Consultative Commission of Social and Humanitarian Questions of the League of Nations, and the Minister of State, Julio Alvarez del Vayo appointed her, with provisional character, second-class Secretary in his Department. With this position she attended the General Advice of the League of Nations in Geneva. When the foreign organizations of Aids to Spain requested that someone be named to advice them in the meetings held to help the Republic, Huici was designated to carry out this function. Throughout the following year she continued her work in the League of Nations. Her role in the evacuation of Spanish children during the war led to her death sentence by the Francoist regime.

Matilde Huici and the *Commission d'Aide aux Enfants Espagnols Réfugiés en France*
The marriage Huici-San Martin moved from Madrid to Valencia, spending the last months of the war in Barcelona and, probably, at the beginning of 1939, they crossed the Catalonian border, taking turns to live between Paris and Geneva. In Paris she continued to look after Spanish children evacuated from the war, collaborating with the *Comité de Ayuda a los Refugiados*, the *Commission d'Aide aux Enfants Espagnols Réfugiés en France,* the International Red Cross and the League of Nations[23]. The family moved to Geneva, until they had to leave the European continent on their way to America in 1940.

Although their exile in France was short, around one year, from the letters that she received requesting her help as a member of the *Commission d'Aide aux Enfants*

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22 Huici was a member of the National Women's Committee against War and Fascism, established in Spain, as associate section of the World Committee with headquarters in Paris, in 1933.

23 Very little information is known on the work carried out by Matilde Huici in collaboration with the International Red Cross – merely her cooperation with this institution and the efforts made between the International Red Cross and the *Commission d'Aide aux Enfants Espagnols Réfugiés.* Her participation in the League of Nations is better known, although not the specific tasks she carried out during her time there.

Espagnols Réfugiés en France[24], it is possible to deduce her intense activity. She received a large number of missives sent by women in exile to request clothes and footwear for them and their children, reporting their serious lacks, not having winter clothes, and at times not even shoes or underwear. Sometimes, detailed lists including measurements were attached[25].Among these letters requesting clothes, one by Victoria Kent stands out. She asked for clothing for the children of a friend confined in a camp[26]. Although most of the senders of these letters were women some of them were men. Eleuterio Verdes de la Villa (Juan de Gredos, former editor of the Madrid newspaper *Politica*[27]), addressed a letter to Huici in March 1940 asking her to appear before the *Commission* in order to have clothes sent for his son, due to the fact that their situation was very bad because he could not find a job, he only knew how to be a journalist, and he did not receive any subsidy[28]. Many refugees wrote Huici requesting information from their families, dispersed, sometimes for months, by the policies of classification and internment of the Republicans in the camps. The *Commission* sent clothing, medicines, sanitary material for women, and food to the camps.

When the *Comission* and Matilde Huici received the letters they wrote back to obtain specific clothing and footwear sizes. Sometimes the answers came back as templates with the shape of a foot[29].Part of her work on the *Commission* consisted in coordinating with other organizations to aid refugees such as the *Service Social d'Aide aux Emigrants*, whose director was Blonay Adeli[30], the *Commission Internationale d'Aide aux Enfants Espagnols Réfugiés en Espagne,* that collaborated in turn with the Quakers of Philadelphia and their delegation in London; and also with the *International Civil Service* (with headquarters in Berne) and the *Union Internationale de Secours aux Enfants* (with headquarters in Geneva). Without a doubt, her role as link and organizer for the Republican Government during the Civil War, allowed Matilde to effectively continue her work in exile. Some of these organizations derived requests to her, especially regarding the aid for children, so that the *Commission Internationale d'Aide aux Enfants Espagnols Réfugiés en Espagne* would share the cases of missing exiled children[31].

Some of these organizations established a service of visitors or inspectors for the concentration and hosting camps, to write reports that then would be sent to their respective organizations, but also to Matilde Huici asking for help and narrating the situation of the refugees. Thus, Lucy Palsen, member of the International Civil

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24 The letters are deposited in the National Archives of France.
25 Box 20010221/6: National Archives of France (NAF).
26 Box, 20010221/6: NAF.
27 This newspaper was founded two years before the start of the Civil War.
28 Box 20010221/5: NAF.
29 Box 20010221/3: NAF.
30 Box 20010221/4: NAF.
31 Box 20010221/5: NAF.

Service wrote from the lower Loire, requesting help to find jobs for the refugees[32]. Jacinta Landa was another contributor to the *Commission*, in charge of field reports. She kept in touch with Matilde Huici and with the general-secretary of the *Comission*, Renee de Monbrison, even accompanying Lucy Palsen in some of the visits. Among the stories of life at the camps one which took place at the center where Landa lived (located in Niort) can be highlighted. The interpreter appointed to help communicate the commissioner and the prefect for the French department, told false stories about the danger posed by anarchists in the center, whom he accused of being armed with knives, intending to frighten the commissioner so the later would delegate the interaction with the refugees to the interpreter, turning thus his work at the camp into something essential.

Thanks to letters from Rosa Poy[33], Huici received more information by the International Commission for the Assistance of Child Refugees in Spain (ICACRS) regarding the situation of reception centres. She was one of the most active collaborators of the Quakers, through the work "Quaker friends" (Friends Service Council) of London, organizing canteens and colonies for the refugee children in Catalonia. From July 1939 to September 1942 (date in which she emigrated to Mexico) she was a delegate in France for the same organization, and in addition to the Service Committee in Philadelphia, she aided Spanish political refugees and from other countries, visiting concentration camps. She organized the help for a group of Spanish students that lived in Montpellier, who had interrupted their studies because of the war. Poy reported on the situation in Ceilhes, stressing its insalubrity and lack of medicines. She also mentioned the education of the children who lived there describing them as "savages", as well as the lack of teachers. Rosa Poy was at that point in contact with Miss Linsley who, in August of 1939, was working on a documentary on the camps, filming the situation of the Spanish exiles. The camp's visitors received funding from the *Commission* for travel expenses, while often the Quaker Committee in London financed their support. However, a more detailed reading of these letters reveals how sometimes inspectors would cover their own travel expenses[34].

Upon the beginning of the Second World War in September of 1939, Matilde Huici spread out a request from the French Department of Employment demanding

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32 Box 20010221/4: NAF.

33 Rosa Poy Martí, was a dentist (graduated in 1923) and national teacher of catalan origin. She was a member of Esquerra Republicana. Poy went to Mexico on the ship Nyassa in October 1942, as the database of migratory movements Ibero-American of the MEC shows. Her name appears on the list of passengers of the ship provided by the journal *Adelante* in its issue of October 15, 1942. In Mexico she was hired as a dentist by *Colegio Madrid*. In exile, she was one of the founders of the *Grupo Femenino Español Mariana Pineda*.

34 Box 20010221/4: NAF.

feminine workforce, indicating that one or several women should make lists of those willing to sign up for jobs, listing their skills[35]. She would then send the lists to the Department of Work. In one of the letters that she forwarded with lists of workers, she explained how in the new centres of housing some associations of aid to refugees had set up "charity wardrobes" (as a way to combat the idleness of the women) which according to her, could be used to make clothes for soldiers[36].

Moreover, Spanish aid agencies (the SERE and JARE) turned to the *Commission*, forwarding Matilde Huici the requests of clothing, and footwear that the refugees sent from the camps. In 1940, JARE contacted Huici requesting information about a rumour that the quartermaster military was providing wool for the refugees in the camps to manufacture garments for soldiers[37]. In their letters, they suggested specific people to take them into account for the distribution of labour. This was the case of Leonor Menendez Vinuela, qualified nurse, specialized in laboratory and surgery. They also denounced the attempts to deport refugees to Spain in order for the *Commission* to try to prevent them. Thus, in March of 1940, they informed that Palmira Pla Pechovierto, treasurer to the Socialist Aragonese Federation "has been invited by the prefect of the Department" where she lived, to return to Spain, entailing a serious danger for her. They also demanded assistance through Huici to solve the problem of those sent to family camps, who up to that point, had lived freely and self-sufficiently in French villages[38].

In February 1940, new governmental regulations divided refugees into three categories: those who could benefit from the right to be one; the dangerous, who needed to stay locked up; and those who could neither work nor contribute anything to the country, so they had to be expelled. Therefore, shelters were closed in March and the only individuals allowed to remain in the country were the relatives of those employed, in the Legion, in the battalions, in Workers' companies, or those whose lives would be threatened were they to return to Spain. Facing this new situation, Huici was contacted by friends and acquaintances requesting her mediation to obtain help from the *Commission*. Such was the case of Manuel J. Cluet, school teacher in Madrid, supporter of Freinet's pedagogy and the use of the printing press in schools[39],

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35 In the letter she explained "that the circumstances provided Spanish refugee women in France with the opportunity to work to support the country that had received them". Letter dated in September 1939. Box 20010221/2: NAF.

36 Box 20010221/2: NAF.

37 Box 20010221/7: NAF.

38 *Ibid*.

39 He designed his own model of printing press, the "Cluet" press (Hernández and Sánchez, 2012). Cluet traveled to the Dominican Republic, and he was a professor at the Normal School of San Juan de la Maguana. In 1969 he was professor of the Normal of Ciudad Trujillo and professor of the School of Diplomatic and Consular of the Secretary of State for Foreign Affairs.

who sent a letter to Matilde from the preventorium of the *Chateau the Bassine* (Lacaune, Tarn) in October of 1939. In his missive, he explained that the only solution to him and his family (with which he had finally managed to reunite three months earlier after a month and a half trying to find them, and more than five to regroup in the preventorium) was to go to America, because the refuge would be closing and their only alternative was their internment in concentration camps (in Le Bacarres for men, and Rieucros for women and children). They, however, seemed unlikely to be accepted because of the existing overwhelming number of refugees. Furthermore, they were not able to move to a French location, because the preventorium was very far away from other settlements, and the family almost did not have any contacts. Finally, in his letter, he asked for help to pay for the trip to America since the SERE only contributed with a portion of the expenses, and his family could not afford the rest[40]. It is well known the role played by the SERE and the JARW for the reception in Latin American countries; equally well-known are the political affiliation and professional requirements that they considered at the moment of processing the evacuations, as well as the conflicts between both associations.

The confrontation between the SERE and JARE was notorious. Federica Montseny, anarchist leader and former Minister of Health and Social Welfare of the republican government during the Spanish Civil War[41], wrote to Matilde Huci asking for her mediation on this issue for the *Commission* to receive SERE funds to be able to continue her work, but this organization was reticent arguing that the *Commission* already received funding from the JARE[42]. By Huici's reply, it can be concluded that up to this moment (January 1940), the financing was coming from the International Commission, and this Commission in addition had covered the demands from SERE but, now the help of this service was becoming essential to continue to work. She explained that she had even contacted Julio de Jauregui in August of the previous year in case he could somehow speed up the process[43].

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40 Box 20010221/4: NAF.

41 Member of the CNT (National Confederation of Labour) and the first woman to hold such a position in Europe, between November 1936 and March 1937, under the government of F. Largo Caballero, she promoted a bill to legalize abortion. Her responsibilities also covered the attention of refugees. In 1939, she left to exile in France with her family and remained hidden during the Nazi occupation, under the name of Fanny Germain. In 1942, she was imprisoned, two years later, she was eventually freed and settled in Toulouse, where she reorganized the libertarian movement of opposition to Francoism. Along with her political work, her role as a writer and speaker stood out, contributing to anarchist publications such as *Solidaridad Obrera* (Rodrigo, 2014).

42 Box 20010221/7: NAF.

43 *Ibidem.*

Huici received endless requests for help, many of them to be an intermediary before the *Commission*. As an instance in her role of agent mediator, the letter she wrote on behalf of Constancio Bernaldo de Quiros can be mentioned. He was a Criminology professor at the *Instituto de Estudios Penales* in Madrid, and it is possible that they interacted throughout their academic and professional activity both, in the Institute, and in the Minors' Tutelary Court.

Quiros wished to contact a teacher of his same field of expertise at the Sorbonne, and the specialist of police science, in order to apply for a job[44]. He was not the only person at her workplace that she tried to help find employment. Likewise, she helped allocate Spanish teachers in the French child art institution *Elai Alai*[45].

It has already been pointed out that Matilde Huici spent this first part of exile between Paris and Switzerland. This is probably the reason why many letters addressed to Huici were answered by the general-secretary of the *Comission*, Renee de Monbrison[46]. The work carried out by Monbrison was also fundamental in aiding the refugees, not only Spanish ones. According to Angel Garcia-Sanz, the Huici-San Martin marriage paid several visits to Azana on their way to the colony where his son lived. This colony was maintained by a Rothschild, quite possibly Yvone's husband (García-Sanz, 2010, p. 272). This is a clear example of the good relationship Matilde Huici enjoyed with the general-secretary of the *Commission*[47].

Finally, because of the advance of the Second World War, the Huici-San Martin family relocated to Chile in 1940. Luis San Martin travelled first with a nephew of Matilde's, and she followed with their adopted son on the "Orduna", a ship of

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44 Box 20010221/6: NAF.

45 Box 20010221/6: NAF.

46 Born as Renee Marie Louise Cahen de Monbrison, of Jewish family, she married the count de Monbrison, acquiring this way her surname and the corresponding title. During the Civil War the Monbrison supported in his Castle a colony of refugee children, many of them Spanish. Jewish children joined afterwards too. Her sister, Lydia Louise Yvone, married a member of the Rothschild family. The United States Holocaust Memorial preserves a film of the colony installed in the Castle Monbrison in 1939. In The United States Holocaust Memorial, 1939. Quincy 39 – Hubert Conquere de Monbrison – amateur. Hubert Conquere de Monbrison Collection. Available at https://collections.ushmm.org/search/catalog/irn1004611 [Accessed 18 July 2017].

47 When the Armistice in June of 1940 was signed, France had to hand the requested people over to the Gestapo, including members of the resistance, communists, trade unionists, and Jewish. Because of this situation, Renee de Monbrison and her family went into hiding in the Aquitaine region with the help of a married couple managing a hotel. The *Comité Français pour Yad Vashem,* provides this information, and the *Comité* bestowed this couple the title of the *Righteous among the Nations*. In: Comité Français pour Yad Vashem. Righteous Among the Nations. Ongaro Louis. Ongaro Yvonne. Available at https://yadvashem-france.org/les-justes-parmi-les-nations/les-justes-de-france/dossier-8619a/ [Accessed 17 July 2016].

the British Pacific Steamship Navigation Company, which transported European refugees to America, many Jews among them. In Chile, not being her Law degree valid, Huici worked on translations from French, this time for the publishing company *Espasa Calpe*. Rapidly, she regained her educator's role, establishing in 1944 the Educational School of Preschoolers at the University of Chile, and being its headmaster until 1962. She died three years later, passing an important pedagogic legacy down to Chilean society.

Conclusion

Matilde Huici, before going to exile, worked to alleviate the suffering of Spanish refugees, first as an organizer for international aid agencies, and afterwards from her position at the League of Nations. In France- working for the *Commission d'aide aux enfants espagnols réfugiés*, she tried to relieve the plight of exiles, who found themselves in serious need, unemployed, and unable to speak French. In this task, she did not forget the infancy. Unfortunately, the Second World War aggravated the situation of the Spanish republicans, sending many more to exile. The advance of the German troops throughout Europe increased the instability and problems for the Spaniards. Many of them were part of the companies or battalions that had been employed to build up fortifications at the frontier lines. When the Maginot line fell in June of 1940, and the German soldiers rapidly conquered France, the deportation of Spaniards to the camps of prisoners of Germany began. At the end of June, the neighboring country would be divided into two areas: "free France" and "Vichy France". The camps of internment for the Spaniards were recovered, and the systems of forced labor for the State continued. As a result, many republicans were sent to Germany as workforce.

References

Alted, A., 2005. *La voz de los vencidos: el exilio republicano de 1939*. Madrid: Aguilar.

Alted, A., 1996. Las consecuencias de la Guerra Civil española en los niños de la República: de la dispersión al exilio. *Espacio, Tiempo y Forma*, Serie V, História Contemporánea, tomo 9, pp. 207-228.

Cuesta, J. and Bermejo, B., eds., 1996. *Emigración y exilio: españoles en Francia, 1936-1946*. Madrid: Eudema.

Dreyfus, G., 1999. *L'exil des républicains espagnols en France: de la Guerre civile à la mort de Franco*. Paris: Albin Michel.

García-Sanz, A., 2010. *Matilde Huici (1890-1965): Una "intelectual moderna" socialista*. Navarra: Universidad Pública de Navarra and Fundación Carlos.

Hernández, J. L. and Sánchez, L., 2012. Ideas, materiales y prácticas freinet en España durante la II República. *Innovación educativa* nº23, pp. 75-95.

Mariño, F., 2008. La Convención de Ginebra sobre el Estatuto de los Refugiados. In: M. Balado, ed., *Inmigración, Estado y Derecho: perspectivas desde el siglo XXI*. s. l.: Editorial Bosch.

Peschanski, D., 2000. *Les camps français d'internement (1938-1946).* Phd. Université Panthéon-Sorbonne – Paris I. Available at https://tel.archives-ouvertes.fr/tel-00362523/document [Accessed 10 June 2016].

The Arizona Republican, 1927. Third woman to practice Law in Spain faces Bar, *The Arizona Republican*, 5 February, p. 4.

Piedrafita, F., 2003. *Bibliografía del exilio republicano español* (1936-1975). Madrid: Fundación Universitaria Española.

Ponte, M. T., 2002. La protección de los refugiados en el marco regional europeo. *Anuario de Derecho Europeo* nº2, pp. 329-352.

Rodrigo, A., 2014. *Federica Monstseny: Primera Ministra electa en Europa*. Barcelona: Editorial Base.

Rubio, J., 1977. *La emigración de la Guerra Civil de 1936-1939: historia del éxodo que se produce con el fin de la II República española* (Vol III). Madrid: San Martín.

Rubio, J., 1996. La población española en Francia de 1936 a 1946: flujos y permanencias. In: J. Cuesta and B. Bermejo, eds., 1996. *Emigración y exilio: españoles en Francia, 1936-1946*. Madrid: Eudema.

San Martín, M. N., 2009. *Matilde Huici Navaz: La tercera mujer*. Madrid: Narcea Ediciones.

ABC, 1929. Informaciones y noticias de lecturas y conferencias: "La mujer en el derecho español. La mujer como persona". *ABC*, 24 November, p. 32.

Archives

National Archives of France (NAF): http://www.archives-nationales.culture.gouv.fr/

United States Holocaust Memorial Museum: https://www.ushmm.org/

Comité Français pour Yad Vashem: https://yadvashem-france.org/

Geopolitical and Strategic Causes and Implications of the Syrian Civil War and the Refugee Crisis

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Abstract

This article analyze the war in Syria in geopolitical terms and as a humanitarian catastrophe. Its significance goes beyond merely its regional dimension. There are many different causes of the Syrian conflict, including its colonial past, the rivalry between the United States and the Soviet Union during the Cold War, the American invasion of Iraq in 2003, the sectarian polarisation and radicalization of Syria and Iraq and the West's lukewarm response to the "Arab Spring". Finding a solution to the conflict in Syria is not an easy task, due to the involvement of various global and regional powers in a proxy war, such as the United States, Russia, Iran, Saudi Arabia or Turkey, and due to the extraordinary brutality of the Syrian regime. The Syrian war has triggered the worst humanitarian disaster since the Second World War. The refugee crisis leads to the destabilization of the Middle East and affects Europe as the desired destination.

Resumo

Causas Geopolíticas e Estratégicas e Implicações da Guerra Civil na Síria e a Crise dos Refugiados

Este artigo analisa a guerra na Síria em termos geopolíticos e como catástrofe humanitária. O seu significado transcende a mera dimensão regional. Existem várias causas distintas para o conflito sírio, incluindo o seu passado colonial, a rivalidade entre os Estados Unidos da América e a União Soviética durante a Guerra Fria, a invasão americana ao Iraque em 2003, o sectarismo e a radicalização da Síria e do Iraque e a resposta "frouxa" do Ocidente à "Primavera Árabe". Encontrar uma solução para o conflito na Síria não é uma tarefa fácil devido ao envolvimento de vários poderes globais e regionais numa guerra por procuração, tais como os Estados Unidos, a Rússia, o Irão, a Arábia Saudita ou a Turquia, e devido à extrema brutalidade do regime sírio. A guerra síria despoletou o maior desastre humanitário desde a Segunda Guerra Mundial. A crise dos refugiados conduziu à destabilização do Médio Oriente e afeta a Europa como destino de eleição.

69

Nação e Defesa

Introduction

The conflict in Syria is one of the most serious problems of the modern world from the geopolitical and humanitarian points of view. Its significance goes beyond merely its regional dimension, since its consequences are felt not only in the Middle East, but especially in Europe, which is affected by an unprecedented wave of refugees. The issue of the attitude towards refugees significantly differentiates the position of European countries and leads to one of the most serious crises of the European Union. Given past and present internal crises, especially the Eurozone crisis and "Brexit", it may result in significantly weakening the European Union both in terms of internal coherence and effectiveness in international relations. The crisis in Syria also has a broader geopolitical dimension. Due to the involvement of global and regional powers, such as the United States, Russia, Iran, Saudi Arabia or Turkey, the conflict in Syria has quite quickly turned into a proxy war not only in an attempt to reshape the Middle East but also wider global relations. First and foremost, Russia treats it as an opportunity to return to the global stage by re-establishing itself as a key player in the Middle East. The involvement of external powers with contradictory interests in the Syrian war complicates the possibility to resolve the conflict. The emergence of many local parties involved in the conflict, including the Islamic State regarded as a terrorist group aiming at the establishment of a worldwide caliphate, is not an encouraging phenomenon.

As is frequently stressed, the Syrian conflict began in 2011 and has led to the biggest humanitarian crisis since the Second World War. 250,000 people have been killed, 4.5 million Syrians have escaped to neighbouring countries and Europe, 6.6 million are internally displaced. Due to the continuation of the war, the opportunity to resolve the humanitarian problem seems to be largely impossible. A tragic example is the air raid carried out on September 19, 2016 not far from Aleppo on the UN humanitarian convoy, which killed about 20 people and destroyed a large part of the cargo. This event and barbaric raids on civilians in Aleppo are testament to the tragic dimension of the situation in Syria, which for a long period of time will be difficult to solve.

Despite serious domestic causes of instability in Syria and devastating droughts prior to 2011, the Syrian refugee crisis has a significant international dimension. Therefore, the main aim of the article is to analyze the geopolitical and strategic causes and implications of the present Syrian refugee crisis. The role of main powers and the European Union in dealing with the Syrian conflict and the refugee crisis will also be taken into account. Efforts to solve the Syrian conflict are treated as a key issue in finding a solution to the refugee crisis.

There are a number of direct and indirect international causes of the Syrian war. The present situation in Syria and the Middle East is connected with the colonial past and especially with the Sykes-Picot Agreement of 1916 which has been

resented by the Arabs for a century. The superpowers' rivalry during the Cold War was also a very important factor complicating the situation in the Middle East where proxy wars were fought between the United States and the Soviet Union. Of great importance was the failure of the American strategy of democracy promotion in Iraq. After the 2003 invasion and removing Saddam Hussein from power, the United States did not provide any concrete plan to create a strong democratic state. It led to the rise of the Islamic State (ISIS), which played a vital role in the Syrian crisis. The failed response of the European Union and the United States towards the "Arab Spring" in emphasizing democratization over stabilization did not produce any concrete results in terms of the next wave of democratization. Contrary to expectations, internal conflicts developed and chaos erupted in several countries in North Africa or the Middle East, including Libya, Egypt and Syria.

Instability in the Middle East in a Historical Perspective: the Colonial Past and the Cold War

Many different factors influence the current complicated situation in the Middle East, including its colonial past. In particular, the Sykes-Picot agreement is still regarded by the Arabs as a sign of the imperial and military dominance of the West and the source of all misery for the past 100 years. Thus, as reported by the British newspaper *The Guardian*, when in 2014 "Islamic State fighters broke through the desert border between Iraq and Syria – flying black flags on their captured US-made Humvees – and announced the creation of a transnational caliphate, they triumphantly pronounced the death of Sykes-Picot" (Black, 2015). Concluded on May 16, 1916 by Mark Sykes and Francois Georges-Picot, the secret agreement of the governments of Britain and France, with the assent of Tsarist Russia, partitioned the Middle East into spheres of influence after World War I. Soon, Italian territorial ambitions in the Middle East were also accommodated. But after the revolution in Russia, the text of the agreement was exposed to the public in November 1917 in the Russian and British press. Although arbitrarily determined boundaries changed later, the Sykes-Picot agreement was regarded as an instrument of European imperialism, which did not take into account deep sectarian, communal or religious divisions shaped over the centuries while creating new nation-states (Wright and McManus, 1992, p. 51). First of all, it did not consider the Sunni-Shia divide inside Islam to be important, as Western powers wanted to create secular states. The process of leaving the heritage of imperial arrangements is now associated with the disappearance of strong nation states which prevailed in the Middle East in the immediate post-colonial period (The Rt Hon Lord Williams of Baglan, 2014). Moreover, at present, a challenge to an idea of statehood is not only a result of the "Arab Spring" and a desire to become democratic (Gaub and Pawlak, 2013, p. 2). It was the inability of the state to provide for people's physical and social security

which could be blamed for an eruption of the civil war in Syria. Regardless of which explanation is true, a possible dissolution of Iraq and Syria is a serious security threat with regional and transregional consequences. The increased influx of refugees to Europe is one of them.

With regard to the Middle East, the Cold War period was associated with the process of decolonization and an attempt to offer specific political and economic solutions in the post-colonial period by the two rival global camps. It is widely believed that the Cold War was introduced to the Middle East by the Suez Crisis of 1956. Great Britain and France, former imperial powers loosing most of their influence in the Middle East, were soon replaced by the United States and the Soviet Union, who were competing for hegemony in the region. Both superpowers were convinced that a victory in the "Third World" was vital for the future vitality of their systems (LeFeber, 1985, pp. 171-172).

Already in the late 1950s there was a division in the Middle East between the conservative, pro-Western monarchies and states and radical or socialist states supported by the Soviet Union (Trentin and Gerlini, 2012, p. 2). The Arab Cold War, proxy conflicts and power struggle in the Middle East were not a simple reflection of the global competition due to the greater margin of discretion of individual countries towards the United States and the Soviet Union as compared to Europe. Although the Middle East was of great importance from the point of view of Cold War strategies of both superpowers, the countries in the region were not only pawns in global politics. Another example can be fundamentalism growing since the 1970s, which was not supported by any superpower, as it posed a challenge for both the East and the West (Halliday, 2005, p. 129). This fundamentalism in various forms, including terrorist organizations like Al-Qaeda and the Islamic State, is one of the most severe problems in the Middle East today. Moreover, not all countries in the region were controlled by the superpowers. This particularly applies to Iran, which emerged as an independent entity and the first Islamic State as a result of the revolution in 1979. At that time, this meant not only the loss a very important ally in the Middle East for the United States, but also a strategic strengthening of the Soviet Union and its global advantage. Hence, the revolution in Iran was treated as an important Cold War crisis (Emery, 2013, p. 46). Despite a certain independence of the local actors, the Cold War was a period of conducting proxy wars in the Middle East. In particular, the Arab-Israeli conflict can be interpreted in such a way, which negatively affected its solution.

An analysis of the Middle East during the Cold War poses a very significant problem in determining the causes of conflicts in the region. This question is extremely important for clarifying the nature of relations in the Middle East today, including identifying the causes of the war in Syria. Generally, there are two opposing perspectives of Middle Eastern wars during the Cold War period (Tibi, 1998, pp. 22-42).

According to the globalist school, "Third World" wars were closely related to superpower competition. The Arab-Israeli War in 1973 may be the best, but not the only example, when Israel was attacked by Egypt and Syria in order to recapture their territory lost in 1967. It was a classic proxy war as Israel was supported by the United States and Egypt and Syria by the Soviet advisers and a big supply of ammunition. According to the opposite regionalist school, conflicts in the Middle East had their own dynamic and mostly unequivocally endogenous causes despite the Cold War rivalry. In this perspective, the local powers were not fully controlled by the United States and the Soviet Union, even if the two superpowers penetrated the Middle East. Internal and regional factors were more important in shaping foreign policy than global influences. An example would be Egypt, which in the early 1970s gradually changed the vector of its foreign policy from the Soviet Union to the West and the United States. Already in 1972, the new Egyptian president Anwar Sadat expelled the Soviet military advisors. Following the war of 1973, he acknowledged that only the United States could give the Egyptians a fair solution concerning the restoration of Sinai, the territory occupied by Israel, as the Soviets could only deliver the arms (Shama, 2014, p. 154). Some other factors played a role in the change of Egyptian foreign policy as a personal mistrust of the Soviets by Sadat. Generally, internal factors not related with global competition influenced Egypt's activities.

Both of these explanations can be applied to the present day situation, including the war in Syria. During the Cold War, developments in the Middle East were influenced by the rivalry between the superpowers, which often fought proxy wars in the region. But at the same time, some other considerations were equally important, like internal and regional factors as well as a self-definition of national interests by countries of the region. Globalist and regionalist schools were interrelated, just as it is today. The present Syrian war began in March 2011, when a pro-democracy and anti-authoritarian uprising soon transformed into an armed conflict and a brutal proxy war with the active involvement of neighbouring and European countries, the United States and Russia. Initially, the local and internal crisis soon changed through the involvement of outside powers into an armed conflict with serious regional and global implications.

The Middle East in the Post-Cold War International (dis)Order

The end of the Cold War strengthened the process of autonomization of the Middle East from global policy due to the disappearance of strategic rivalry between the two superpowers. Analyzing the trend of resistance of the Middle East's policy towards global cycles, Fred Halliday concludes that the Middle East Cold War finished not at the end of the 1980s, but to a large extent 10 years earlier, when there was a revolution in Iran (1979) and the outbreak of war between Iran and Iraq in

the 1980s (Halliday, 2005, p. 133). Therefore, as acknowledged by Richard Saull (2006, pp. 71-77), the challenge for the new post-Cold War international order was not the Soviet Union and states being in its sphere of influence, but the new social and political forces that do not fall within the conflict between communism and capitalism. New divisions, whose source can be traced back as early as in the 1970s, run between the pro-Western authoritarian states and reactionary Islam aiming to get rid of Western influence. Paradoxically, the United States is the main target of radical Islamic terrorist groups and at the same time is largely responsible for their appearance, by supporting them during the Cold War, when Islamic fundamentalism was treated as a bulwark against communism (Dreyfuss, 2005). Many factors contribute to the current conflict in Syria, but Islamic fundamentalism is of paramount importance due to the activities of the Islamic State.

The disappearance of East-West rivalry after the end of the Cold War was also evident in the Middle East. After the invasion of Kuwait by Iraq, the United States managed to secure various resolutions by the UN Security Council with the consent of the Soviet Union which developed friendly relations with Iraq during the Cold War (Nonneman, 2011, pp. 203-210). It was a sign of unity between two super-powers, and allowed for the creation of a coalition led by the United States with the participation of 34 countries and the removal of Iraq from Kuwait in 1991. Even the contribution of European states to the Gulf War was modest, since Operation Desert Storm was an expression of the development of transatlantic relations. This atmosphere of mutual understanding and trust between Russia and European powers quickly changed when, in 1993, the United States adopted the 'dual containment' policy directed towards both Iraq and Iran, a country which in fact supported the coalition against Iraq. This meant a return to the perception of the Middle East in terms of geostrategic interests and rivalry.

The terrorist attacks on the United States on September 11, 2001 constituted a very important turning point in the development of post-Cold War global politics and the situation in the Middle East. Since then, terrorism has been identified as a major threat to international security and the fight against Islamic fundamentalism, as the source of further terrorist attacks in Europe and various parts of the world, has become a necessity. As a response to the 9/11 events, the United States declared the war on terror and invaded Afghanistan (2001) and Iraq (2003), countries blamed for creating rampant terrorism. In particular, the intervention in Iraq led to significant divisions within the Western world and complicated transatlantic relations.

The opposition of Germany and France to the Iraq war contrasted with the participation of many European countries in the US coalition, *e.g.* the United Kingdom, Italy or Poland. Differences resulted from divergent perspectives on the ways to solve these international problems. While the Americans were convinced they should undertake unilateral actions, creating, if possible, a coalition of the willing,

Europeans were committed to the concept of multilateralism. The different approaches and transatlantic tensions were not the only reasons that further complicated the situation in the Middle East through the growth of radical and anti-Western sentiments.

One of the fundamental mistakes was an immediate dissolution of the Iraqi army what led to the rise of the ISIS, once a branch of the Al Qaeda, which began its operations as an Iraqi organization. As estimated by some experts (Thompson, 2015), around 25 of the ISIS's top 40 leaders once served in the Iraqi military. The dissolution of the Iraqi army and no clear American postwar planning led to sectarian violence between the Sunnis who dominated the regime of Saddam Hussein and the new Shia-led government sponsored by the United States. The outbreak of the conflict in Iraq was therefore the result of a failed idea of promoting democracy in a country that was not prepared for it. Contrary to the declared goals of the intervention in Iraq, the United States could not therefore ensure security in the Middle East by exporting democratic values (Podraza, 2015, pp. 81-82). Quite the contrary, "this project of ushering a democratic revolution in the heart of the Middle East has been met with a growing anti-American insurgency, Sunni/Shia sectarianism or civil war, and widespread anger throughout the region towards American intentions" (Barder, 2009, p. 55). The situation deteriorated when President Barack Obama withdrew American soldiers from Iraq at the end of 2011. Three years later, when Islamic State fighters swept into Iraq from Syria and made territorial gains, Obama decided to deploy American forces in Iraq once again (Schmidt and Landler, 2016). Errors made by the United States in Iraq and the lack of proper Western response to the events of the "Arab Spring" in Syria led to the strengthening of the threat from the Islamic State exploiting chaos and divisions within both Syria and Iraq.

The "Arab Spring" and the West's Response

Despite initial hopes concerning the events of the "Arab Spring" in the countries of the Middle East and North Africa, it quickly became apparent that the effect of the changes will not be democratization as expected, but the destabilization of individual countries and the region. The "Arab Spring" showed the limited abilities of the United States and European countries to influence the Middle East region, which was the result of both the lack of a clear strategy and the desire to avoid entanglement in another armed conflict. This was particularly evident in the case of the United States, which always played an important role in the Middle East. However, the experience resulting from many years of war in Iraq led President Obama to repeatedly stress the impossibility of sending ground troops to solve the Syrian crisis. As he acknowledged in 2013, his intention was to shift the United States away from "a perpetual wartime footing" (Delman, 2016). Military options

of the United States have since been limited to attempting to rely more on diplomacy than military measures.

The "Arab Spring" began in Tunisia in December 2010 as a protest inspired by the dissatisfaction with the social and economic conditions and the authoritarian rule. It quickly spilled over to other countries of North Africa and the Middle East, showing the frustration and determination of the protesters, largely young people, who due to the high level of unemployment, low income and widespread corruption felt a lack of prospects and development opportunities. Social media played a large role in the mobilization of protesters by activating the younger generation. The causes of the "Arab Spring" were primarily internal and were associated with an outdated model of management of the economy and the state. But from the perspective of 2018, its overall outcome is far from optimistic. As acknowledged by Daniel Byman (2011), one year after the beginning of the protests in Tunisia, the hope of the "Arab Spring" turned into the chill of an "Arab Winter", as "the peaceful demonstrations in Bahrain, Egypt, Libya, Syria and Yemen that were supposed to bring democracy have instead given way to bloodshed and chaos, with the forces of tyranny trying to turn back the clock". With the exception of Tunisia, which can be regarded as a success story, other countries, including Syria, Libya and Yemen became mired in civil wars or like Egypt started a counter-revolution. The basic problem, which appeared after the "Arab Spring", was the issue of how the pursuit of democratization would not undermine the stability of individual countries and the entire region of the Middle East and North Africa. It quickly became clear that the direct effects of the "Arab Spring" are chaos, a civil war, but also the rise to power of Islamic organizations in democratic elections, as in the case of Egypt. It could have negative consequences not only for the countries of the region, but also in the wider transnational dimension through the influx of refugees into Europe.

The reasons for the failure of the "Arab Spring" are diverse. They are both internal and result from the action of external actors. The myth of the democratization of Arab countries very optimistically referred to the experience of countries in Central and Eastern Europe. Such analysis did not take into account the specifics of the tradition of the Middle East and the different nature of the events of the late 1980s and of the beginning of the 1990s in Central and Eastern Europe. The difficulties in introducing democracy in the countries of the Middle East in comparison to Central and East European countries resulted from a powerful tradition of authoritarianism based on the long history of dynastic rule and the lack of a democratic tradition (Ahrari, 1996, p. 98). The concept of a nation-state exported by the colonial powers has never fully been accepted in the Middle East since religious and tribal identities in many countries are more important than national allegiances (Kupchan, 2012). In addition, no one was really aware of the possibility of eventually creating an Islamist political system as a result of the democratization process,

which, paradoxically, could undermine the possibilities for democratization in the Middle East. This problem is closely related to two things underestimated by both Western countries and demonstrators themselves (The Economist, 2016). The institutional fragility of many Arab states in coping with changes was not really taken into account. The second problem was the vicious determination of the regimes to retain or recapture control, leading to bloody civil wars like in Syria.

The West, meaning European countries and the United States, committed a number of significant errors in response to the "Arab Spring" that resulted from the absence of a clear strategy of how to react to events in the countries of the MENA (Middle East and North Africa) region. The reaction of the European Union, including its Member States, was an illustration of a number of problems of the EU as an unfinished international actor. The indecisive and relatively weak reaction of the European Union towards the "Arab Spring" and the Syrian crisis stemmed from the lack of clarity in defining desired objectives, the weakness of instruments and an inability to cope with the sudden and unexpected deterioration of the situation. To some extent, the Union made the same mistakes as when it reacted to the war in the former Yugoslavia in the 1990s. Both in the face of the disintegration of Yugoslavia and the growing radicalization in the Arab countries, Europeans wrongly concluded that political conditionality would be sufficient to achieve the desired change and stability of individual countries and the region in a situation of intensifying conflicts. The main problem for the EU strategy towards MENA countries prior to and after the "Arab Spring" was seeking a solution to the "stability *vs* democracy" dilemma (Mühlberger and Müller, 2016, pp. 54-59). Despite the rhetoric of promoting democratic values and taking into account the authoritarian nature of the Arab states, the EU to a greater extent developed a "stability partnership" with ruling elites up until the "Arab Spring". Development of political dialogue and trade relations were the only tools used vis-à-vis the Arab states. The EU's policy was therefore quite conservative in nature, in which stabilization prevailed over possible democratization. The consequence of the "Arab Spring" was a change of priorities by the European Union through greater emphasis on democratization and strengthening civil society. When in 2011 the European Union revised its European Neighborhood Policy, the concept of a "deep democracy" complemented the concept of "deep free trade," however, it lacked concrete elements (Casier, 2012, pp. 104-106).

The Syrian War and the Role of External Powers

The European Union did not have a clear and well-thought out strategy towards the conflict in Syria, which quickly turned into the biggest security threat towards Europe, both in terms of the influx of refugees and the terrorist attacks in European countries carried out by the Islamic State. The impact of the European Union and

individual Member States on developments in Syria was from the beginning very limited.

Launched in the Summer of 2011, diplomatic attempts to influence the Syrian regime through the freezing of cooperation, diplomatic pressure and economic sanctions did not produce the desired results (Asseburg, 2013, pp. 17-18). Being a member of the Friends of Syria group established in February 2012, the European Union gave diplomatic, technical and financial support to the Syrian opposition. But the Union's policy has been incoherent since then. Initially, there was a considerable difference of opinion on a number of issues, like arming the rebels or military intervention. As concluded by Muriel Asseburg (2013, p. 18):

> "In addition, European policies – as those of other third parties – have been inconsistent in that there has been a contradiction between a norm-based rhetoric encouraging the Syrian opposition in its ever more militant approach on the one hand (by stating that Assad had to go and by insinuating the establishment of buffer/protection/no-fly zones and the delivery of arms to the rebels, assuming the opposition organized itself according to the West's vision), and the lack of concrete and effective European support for achieving that objective (against the backdrop of concerns over a regional conflagration and the spectre of a Jihadi safe haven emanating in Syria) on the other".

Although it is hard to believe that the European Union will solve the Syrian conflict alone, the apparent lack of action or sending conflicting signals lead to increased activities of other players in the region, especially Russia. The cautious and indecisive attitude of the United States as the sole superpower in the post-Cold War period contributed to the difficulty in resolving the conflict.

The position of Barack Obama towards the escalation of the conflict in Syria, which is both a civil and a proxy war, was initially the result of criticism of the involvement of former President George W. Bush in the war in Afghanistan and especially in Iraq. Barack Obama's rise to power in 2009 was, to a certain extent, the result of challenging Bush's democracy promotion agenda in the Middle East by military means, which resulted in the intervention in Iraq. Moreover, Obama's initial Middle East strategy was based on the conviction that the United States should reduce its massive military and political presence in the Middle East at a time of economic crisis as it was a vital national security interest to reduce the United States' overextension (Lynch, 2015). As argued by Christopher Phillips (2016, pp. 1-9), the vacuum created by a perceived decline of the USA's power in the Middle East led to a violent competition between the United States and other powers like Russia, Iran, Saudi Arabia, Turkey, and Qatar in Syria regarded as a key battleground. The initial reaction of the United States towards the events of the "Arab Spring" was marked by ambiguity. There was a considerable gap between rhetoric and actions characterizing the USA's policy: "While the American rhetorical

response to all these crises followed a similar pattern, actions, even in similar circumstances, varied considerably" (Gilboa, 2013, p. 52). A change of the American position occurred in 2014, when President Obama realized that rising extremism had to be responded. But the reaction of Obama was still not without ambiguity (Testimony of Tamara Cofman Wittes, 2015). It is doubtful whether the commitment of the military coalition is sufficient to destroy ISIS and whether after a military campaign stability can be attained in Iraq and Syria.

Even before 2014 the conflict in Syria entered a very dangerous phase through the involvement of a number of regional players and, above all, Russia. Iran and Russia traditionally support Bashar al-Assad's regime. Iran is doing this mainly for religious reasons and for retaining strong presence in Syria and Lebanon, countries having borders with Israel. Russia's support has many causes. The first and foremost goal of President Putin in the long term is to restore Russia as a global power. It is to be achieved, among other things, by limiting the influence of the United States and other European powers in the Middle East. As in the case of Ukraine, Russia with suspicion assesses intentions of the Western countries, because it believes that their humanitarian or normative goals are designed to realize their own political and economic interests and to further marginalize Russia in the international arena. A naval presence in the Mediterranean is also an important factor since the only Russian base in the Mediterranean is located in a Syrian city Tartus. What's more, one of the objectives of Putin's policy, what motivates Russia's activities not only in Syria but also in Ukraine, is to prevent a success of any revolution aiming at overthrowing undemocratic regimes. Their success could in fact lead to a further reduction of Russian influence in international relations, which was launched at the start of the process of transition of Central and East European countries at the turn of the 1980s and 1990s. It could also serve as an example for Russian society to carry out a change of power in Russia by removing Putin. Russian support for the Syrian regime is thus determined by the interplay of geopolitical and internal factors particularly important in shaping Russian foreign policy. Russia's military action in Syria began in September 2015 and is the largest foreign operation after the end of the Cold War. Russia seeks to eliminate moderate opposition groups and strives for the survival of President Bashar al-Assad's regime. Russia's brutal bombing of Aleppo in September and October 2016 significantly contributed to deepening the humanitarian catastrophe in Syria. These attacks could even amount to crimes against humanity as suggested by Zeid Ra'ad al-Hussein, the United Nations High Commissioner for Human Rights (Al-Khalidi and Brunnstrom, 2016). They do not allow the international society to find a political solution to the conflict in Syria. A number of other powers, with diverse interests and supporting the different parties in the conflict, are involved in the war in Syria. Sunni Saudi Arabia supports a number of rebel groups by providing military and financial assistance. Saudi

Arabia is seeking to remove Bashar al-Assad from power. Its competition in Syria with Iran, a traditional rival since 1979, has been even described as a "cold war" (Kinninmont, 2014, p. 49). Saudi Arabia has been critical of the US policy in Syria because of the lack of military intervention, stressing that the world had betrayed the Syrian opposition (Thompson, 2016, p. 64). Turkey is also a major player in the Syrian war. Its activities with regard to Syria stem from the recognition that the Syrian civil war and the rise of ISIS are the main security threats (Thompson, 2016, pp. 58-63). Moreover, due to a renewed neo-Ottoman identity, Turkey wants to establish itself as a leader in the Middle East. Turkey's attitude towards the conflict in Syria is not entirely clear, and this has led to the deterioration of relations with Russia and Iran, but also with its Western allies (Altunışık, 2016, p. 39). Differences with Russia and Iran result from actions by Turkey directed against President Assad. Despite periods of close cooperation with other NATO Member States, Turkey's involvement in the Syrian conflict gave rise to a number of doubts.

In contrast to the United States, the position of Turkey in the fight against the Islamic State is not clear. Turkey officially entered the war against ISIS in July 2015, but it was rather a war against the Kurds and not the Islamic State, as mainly Kurdish targets were hit by the Turkish jets (Thompson, 2016, pp. 60-61). In this respect, Turkey adopts a different strategy than the US, since the Americans provide weapons to the Iraqi Kurds, while Turkey supports anti-Assad radical Islamic groups. An option under consideration by the Obama Administration was a plan to directly arm Syrian Kurdish fighters combating the Islamic State, a move which could lead to a deterioration of relations with Turkey (Schmitt, 2016). But Obama left this issue to President Donald Trump who finally took a decision in May 2017 to provide weapons to Syrian Kurds to retake the city of Raqqa from the Islamic State (Gordon and Schmitt, 2017). Differences in the approach of Turkey and the United States make it difficult to find a solution to end the conflict in Syria. Therefore, it is not possible to end the humanitarian catastrophe in Syria and the refugee crisis, which are the direct results of the escalating conflict.

From the very beginning the conflict in Syria has escalated into a war, which involved several regional and global powers representing divergent interests. Therefore, the conflict in Syria is not a civil but a proxy war. The possibilities for its solution are therefore limited. Various factors have an impact on this situation, as divisions within the opposition groups, the activities of the radical Islamic State in Syria, but also terrorist attacks in Europe and the United States, and the extraordinary brutality of the Syrian regime. The lack of a single strategy of external powers concerning the causes of and possible solutions of the Syrian crisis deepens the sectarian polarisation and radicalisation, which further complicates the situation inside Syria and does not allow for ending the conflict through diplomatic talks. From the perspective of the first half of 2017, it can be assumed that the most

likely scenario is a further escalation of the fighting in Syria. The risk of a "Leban-isation" of Syria should therefore be taken into account, but the effects of this devel-opment will be extremely negative in both the regional and global dimensions. Even by accident a proxy war may change into a direct clash between external powers. Without taking explicit action by the international community, the contin-uation of the conflict and the deterioration of the humanitarian situation in the coming years are very likely. Already at this point it is believed that the Syrian war has triggered the worst humanitarian disaster since the Second World War.

The Refugee Crisis
The immediate result of the Syrian conflict is the refugee crisis. Its short and long-term humanitarian, political and economic effects are and will be enormous for Syria, the Middle East, Europe and other parts of the world. As estimated in Sep-tember 2016, 13.5 million people in Syria were in need of humanitarian assistance and 6.6 million were internally displaced (European Commission, 2016, p. 1). The Syrian refugee crisis began in April 2011 when 5000 refugees fled to Lebanon. Now there are over 4.8 million refugees in neighbouring countries and the wider region. Turkey and Lebanon are the most affected countries. According to the United Nations High Commissioner for Refugees (UNHCR) (2016), there are over 3 million people in Turkey and more than 1 million in Lebanon. In Europe between April 2011 and August 2016 there were 1,151,865 Syrian asylum applications (UNHCR, 2016). Compared to Syria's neighbouring countries, this amount is relatively low as it represents slightly more than 10% of Syrians fleeing the country. The population of Syria has also decreased as a result of war. As estimated by the United Nations, the death toll has exceeded 250,000 people, but according to the Syrian Center for Policy Research (SCPR), it reaches the level of 470,000 with 1.2 million injured peo-ple (The World Bank, 2016).

Without ending the conflict in Syria, it is impossible to resolve the refugee crisis. In the regional dimension, it leads to the destabilization of the Middle East, because the Syrians are first of all fleeing to neighbouring countries, especially to Lebanon, Jordan and Turkey. These countries are deeply affected socially and economically by the growing influx of refugees. This significantly deepens the internal problems of the host countries. At the beginning of 2014, 927,638 Syrian refugees were regis-tered in Lebanon, representing around 21% of the total population in the country what implied a significant social and economic impact on Lebanon, including the labour market (International Labour Organization, 2014). The World Bank esti-mated in 2014 that there would be an increase in the labour supply in Lebanon by 30-50% (Tan, 2015, p. 309). Taking into account other negative manifestations of the presence of refugees in Lebanon, such as a price increase of essential goods and services, this leads to a considerable fall of public sympathy towards refugees. It is

reported that over 90% of Lebanese nationals "perceived refugees as threats to their economic livelihood and value system, and over two-thirds perceived them as existential threats" (Tan, 2015, p. 308).

Despite some differences between the host countries, similar problems to those in Lebanon appear in other countries. Therefore, neighbouring countries seek to limit the influx of refugees by strengthening the borders, stopping the refugees at the border, introducing visas and a range of other activities. Such actions aggravate the situation of refugees, who are often trapped in *no-man's land*. Jordan was the first country to shut its border to refugees in mid-2014 and since then, 75,000 Syrians have been stranded in dire conditions on the Jordanian border (Kingsley, 2016). Syria's neighbours largely undertake measures due to the lack of adequate support from the international community. This problem is particularly evident in regard to Turkey. "Turkish reception policies at the outset predicated on the assumption that the conflict would come to a swift conclusion" (İçduygu, p. 1). Yet, as the situation in Syria has deteriorated, the Turkish state is not able to provide adequate assistance to all in need. As estimated in July 2016, there were over 3.1 million Syrians in Turkey, which became the host country with the largest refugee population in the world (European Commission, 2016, p. 1). Poor living conditions mostly outside special camps forced Syrians to illegally migrate to Europe. As reported by Frontex – the European Border and Coast Guard Agency (2016a), in 2015, some 885,000 migrants arrived in the European Union from Turkey via the Eastern Mediterranean route (through the Greek islands, especially Lesbos) – 17 times the number in 2014. These migrants tried to reach Western Europe, especially Germany, and they used the Western Balkan route going through the Former Yugoslav Republic of Macedonia, Serbia, Hungary and Croatia. In 2015, there were 764,000 detections of illegal border crossings by migrants, a 16-fold rise from 2014 (Frontex, 2016b). Most of them were Syrians, but also Iraqis, Afghans and other nationalities. According to Eurostat (2016), in 2015, 1.2 million (1,255,600) first-time asylum seekers were registered in the European Union. It was double the number from the previous year. Almost 1 out of 3 asylum seekers originated from Syria (362,800 – 29%) followed by Afghans (178,200 – 14%) and Iraqis (121,500 – 10%). The countries most affected by the influx of refugees were Germany (441,800 applicants – 35%), followed by Hungary (174,400 – 14%) and Sweden (156,100 – 12%). Compared with the population of each Member State, Hungary was at the top of the list.

Such a large influx of refugees into EU countries in 2015 was a result of many factors, among others, of the Turkish policy to put pressure on European states (the EU-Turkey migrant agreement was concluded in March 2016) and Germany's welcoming policy. Angela Merkel, Germany's chancellor, at the end of August 2015 declared that "we can do it" and this was a reaction to the tragic fate of some refugees dying in the Mediterranean and a result of the normative character of German

and European policy. In the opinion of critics, the effects of Merkel's unilateral declaration were negative for Europe. Opinion polls, already published in October 2015, pointed to the critical attitude of most Germans towards Angela Merkel's decision (Paterson, 2015). 49% of respondents negatively assessed Merkel's policy in this area and only 39% approved of it. Also, various EU Member States responded critically towards the unilaterally declared open-door policy (Heisbourg, 2015-2016, pp. 12-13). The criticism mainly related to the lack of appropriate consultation and coordination. It was also thought that Germany, breaching the Dublin Regulation, believed that a rules-based European order should be respected by others and not by Berlin. Germany's attitude contributed to deep divisions between the EU Member States and to a certain degree to the decision of the British to leave the European Union. Moreover, an almost uncontrolled influx of refugees into Europe allowed terrorists from the Islamic State to create new modes of entry or re-entry into the European Union (they are citizens of the EU Member States fighting in Syria). Although only a small minority of refugees are in fact terrorists, attacks in Paris, Brussels and Nice in 2015 and 2016 had a negative impact on public sentiment towards refugees and reinforced isolationist or even xenophobic attitudes in various countries.

The divisions in the European Union, that have been caused by the refugee crisis, leads to increasing difficulties as regards an adoption of a coherent policy towards external problems. Despite a lot of efforts, the European Union cannot become an effective geopolitical player as it lacks a clear strategy to address the problems of its neighborhood despite the direct security consequences of the Syrian conflict for the Member States. So far the Union proves that it does not have a genuine Common Foreign and Security Policy and its normative influence has its obvious limits. This is not only a problem of the external influence of the European Union, which also in the past was not an effective actor in the situation of bloody conflicts, as in the case of the wars in the former Yugoslavia. The problem also applies to crisis management in the EU itself, which could not and cannot solve the problem of its borders control and the distribution of refugees among the Member States. The first issue results from the lack of effectiveness, while the second is connected with a difficulty of achieving a common position in the face of differences between the Member States. Therefore, different groups of countries within the European Union, whose interests are clearly differentiated, can be distinguished. Countries most affected by the influx of refugees, as for example Germany, Sweden, Greece or Italy, are interested in the establishment of refugee burden-sharing mechanisms. Other countries, like the Baltic states, Poland, Hungary, the Czech Republic and Slovakia, are reluctant to accept such a scheme and are in favour of a national control of immigration policies. The Syrian conflict and the refugee crisis reveal limitations of the European Union in playing an important geopolitical role. What's more, they

can lead to a political earthquake in some Member States, which will not only reshape Europe's politics, but also significantly weaken the EU's international position. Renationalisation may in fact lead to disintegration or at least to a change of the model of unification towards a more intergovernmental paradigm. There is no doubt that Russia would be the geopolitical winner of an eventual decline of the European Union.

Conclusions

The geopolitical and strategic implications of the refugee crisis are especially important as the impact of the Syrian conflict goes beyond a pure regional dimension and might drastically deteriorate international relations. Rising instability in the Middle East and the Mediterranean Sea basin may lead to possible future conflicts. Moreover, an increasing penetration of Syria by various powers, like the United States, Russia, Turkey, France, the United Kingdom, Iran etc., could lead to their rivalry as the outbreak of a proxy war is now a fact. The destabilization of the European Union is also possible due to a rise of anti-immigrant sentiments and differences between the Member States. It could also lead to a possible change in the model of European integration in terms of developing a more intergovernmental mechanism or adopting the idea of a two-speed Europe.

References

Ahrari, M. E., 1996. "Islam as a source of continuity and change in the Middle East". In: M. E. Ahrari, ed., *Change and Continuity in the Middle East: Conflict Resolution and Prospects for Peace*. Basingstoke: Macmillan, pp. 93-113.

Al-Khalidi S. and Brunnstrom, D., 2016. Rebels fend off Aleppo assault as nations seek to rebuild peace process. *Reuters*, 4 October. Available at http://www.reuters.com/article/us-mideast-crisis-syria-aleppo-idUSKCN1240WU [Accessed 15 December 2016].

Altunışık, M. B., 2016. The inflexibility of Turkey's policy in Syria. *IEMed. Mediterranean Yearbook 2016*, pp. 57-62.

Asseburg, M., 2013. Syria's civil war: geopolitical implications and scenarios. *IEMed. Mediterranean Yearbook 2013*, pp. 18-23.

Barder, A. D., 2009. "Power, violence, and torture: making sense of insurgency and legitimacy crises in past and present wars of attrition". In: F. Debrix and M. Lacy, eds., *The Geopolitics of American Insecurity: Terror, Power and Foreign Policy*. Abingdon: Routledge, pp. 54-70.

Black, I., 2015. Middle East still rocking from First World War pacts made 100 years ago. *The Guardian*, 30 December. Available at https://www.theguardian.com/world/on-the--middle-east/2015/dec/30/middle-east-still-rocking-from-first-world-war-pacts-made-100-years-ago [Accessed 12 December 2016].

Byman, D., 2011. After the hope of the Arab Spring, the chill of an Arab Winter. *The Washington Post*, 1 December. Available at https://www.washingtonpost.com/opinions/after-the-hope-of-the-arab-spring-the-chill-of-an-arab winter/2011/11/28/gIQABGqHIO_story.html?utm_term=.b91221cf53d4 [Accessed 15 December 2016].

Casier, T., 2012. "The European Neighborhood Policy: assessing the EU's policy toward the region". In: F. M. Bindi and I. Angelescu, eds., *European Neighborhood Policy: Living up to Regional Ambitions*. Washington: Brookings Institution Press, pp. 99-117.

Delman, E., 2016. Obama promised to end America's wars – has he? The president's military record, by the numbers. *The Atlantic*, 30 March. Available at http://www.theatlantic.com/international/archive/2016/03/obama-doctrine-wars-numbers/474531/ [Accessed 15 December 2016].

Dreyfuss, R., 2005. *Devil's Game: How the United States Helped Unleash Fundamentalist Islam*. New York: Owl Books.

Emery, C., 2013. *US Foreign Policy and the Iranian Revolution: the Cold War Dynamics of Engagement and Strategic Alliance*. Basingstoke: Palgrave Macmillan.

European Commission, 2016. *ECHO factsheet – Syria crisis*. September 2016. Available at <http://reliefweb.int/sites/reliefweb.int/files/resources/syria_en_23.pdf [Accessed 18 December 2016].

Eurostat, 2016. *News release. Asylum in the EU Member States. Record number of over 1.2 million first time asylums seekers registered in 2015. Syrians, Afghans and Iraqis: top citizenships*. 4 March. Available at http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/ [Accessed 18 December 2016].

Frontex, 2016a. *Eastern Mediterranean route*. Available at http://frontex.europa.eu/trends--and-routes/eastern-mediterranean-route/ [Accessed 16 October 2016].

Frontex, 2016b. *Western Balkan route*. Available at http://frontex.europa.eu/trends-and-routes/western-balkan-route/ [Accessed 16 October 2016].

Gaub, F. and Pawlak, P., 2013. Sykes-Picot and Syria. *European Union Institute for Security Studies, Paris. Alert* 34, 2 October. Available at http://www.iss.europa.eu/uploads/media/Alert_34-Sykes-Picot_and_Syria.pdf [Accessed 15 December 2016].

Gilboa, E., 2013. "The United States and the Arab Spring". In: E. Inbar, ed., *The Arab Spring, Democracy and Security: Domestic and International Ramifications*. London: Routledge, pp. 51-74.

Gordon, M. R. and Schmitt, E., 2017. Trump to arm Syrian Kurds, even as Turkey strongly objects. *The New York Times*, 9 May. Available at https://www.nytimes.com/2017/05/09/us/politics/trump-kurds-syria-army.html [Accessed 26 June 2017].

Halliday, F., 2005. *The Middle East in International Relations: Power, Politics and Ideology*. Cambridge: Cambridge University Press.

Heisbourg, F., 2015-2016. The strategic implications of the Syrian refugee crisis. *Survival*, 57(6), pp. 7-20.

İçduygu, A., 2015. *Syrian Refugees in Turkey: The Long Road Ahead*. Washington: Migration Policy Institute.

International Labour Organization, 2014. *Assessment of the impact of Syrian refugees in Lebanon and their employment profile 2013*. Available at http://www.ilo.org/wcmsp5/groups/ public/---arabstates/---ro-beirut/documents/publication/wcms_240134.pdf [Accessed 8 September 2016].

Kingsley, P., 2016. Jordan to deliver aid by crane to Syrian refugees trapped in no-man's land. *The Guardian* 10 October. Available at https://www.theguardian.com/world/2016/ oct/10/jordan-crane-to-deliver-aid-syrian-refugees-supplies-border [Accessed 16 October 2016].

Kinninmont, J., 2014. The Syria conflict and the geopolitics of the region. *IEMed. Mediterranean Yearbook 2014*, pp. 48-53.

Kupchan, C. A., 2012. *No One's World: the West, the Rising Rest, and the Coming Global Turn*. Oxford: Oxford University Press.

LeFeber, W., 1985. *America, Russia, and the Cold War 1945-1984*. New York: Alfred A. Knopf.

Lynch, M., 2015. Obama and the Middle East. *Foreign Affairs*, 94(5). Available at https:// www.foreignaffairs.com/articles/middle-east/obama-and-middle-east [Accessed 15 December 2016].

Mühlberger, W. and Müller, P., 2016. "The EU's comprehensive approach to security in the MENA region: what lessons for CSDP from Libya?" In: L. Chappell, J. Mawdsley and P. Petrov, eds., *The EU Strategy and Security Policy: Regional and Strategic Challenges*. London: Routledge, pp. 51-67.

Nonneman, G., 2011. "Europe, the US, and the Gulf after the Cold War". In: D. Möckli and V. Mauer, eds., *European-American Relations and the Middle East: From Suez to Iraq*. London: Routledge, pp. 203-219.

Paterson, T., 2015. Refugee crisis: nearly half of Germans say Angela Merkel's 'Welcome' policy is wrong. *The Independent*, 11 October. Available at http://www.independent.co. uk/news/world/europe/nearly-half-of-germans-say-angela-merkels-refugee-policy-is-wrong-a6689966.html [Accessed 18 October 2016].

Phillips, C., 2016. *The Battle for Syria: International Rivalry in the New Middle East*. New Heaven: Yale University Press.

Podraza, A., 2015. "Towards a new system of global democratic governance: the transatlantic security community and the role in democracy promotion in the 21st century". In: C. Crespo, D. Silander, D. Wallace and I. Albella, eds., *Global Challenges to the Transatlantic World*. Alcala de Henares – Madrid: Universidad de Alcala, pp. 73-84.

Saull, R., 2006. "Reactionary blowback: the uneven ends of the Cold War and the origins of contemporary conflict in world politics". In: A. Colas and R. Saull, eds., *The War on Terrorism and the American 'Empire' after the Cold War*. London: Routledge, pp. 65-90.

Schmidt, M. S. and Landler, M., 2016. U.S. will deploy 560 more troops to Iraq to help retake Mosul from ISIS. *The New York Times*, 11 July. Available at http://www.nytimes.com/2016/07/12/world/middleeast/us-iraq-mosul.html [Accessed 8 September 2016].

Schmitt, E., 2016. Obama administration considers arming Syrian Kurds against ISIS. *The New York Times*, 21 September. Available at http://www.nytimes.com/2016/09/22/world/middleeast/obama-syria-kurds-isis-turkey-military-commandos.html [Accessed 18 December 2016].

Shama, N., 2014. *Egyptian Foreign Policy from Mubarak to Morsi: Against the National Interest*. London: Routledge.

Tan, C., 2015. The Syrian refugee crisis: conflicts in the making. *IEMed. Mediterranean Yearbook 2015*, pp. 307-311.

Testimony of Tamara Cofman Wittes Director and Senior Fellow Center for Middle East Policy at the Brookings Institution Hearing: regional impact of U.S. policy toward Iraq and Syria House Foreign Affairs Subcommittee on the Middle East and North Africa April 30, 2015. Available at https://www.brookings.edu/wp-content/uploads/2016/06/TCWittesHFAC-Testimony04302015-1.pdf [Accessed 15 December 2016].

The Economist, 2016. The Arab Winter. *The Economist*, 9 January. Available at http://www.economist.com/news/middle-east-and-africa/21685503-five-years-after-wave-uprisings-arab-world-worse-ever> [Accessed 15 December 2016].

The Rt Hon Lord Williams of Baglan (Michael Williams), 2014. Goodbye to Sykes-Picot? *Chatham House. Expert Comment*, 17 June. Available at https://www.chathamhouse.org/expert/comment/14903 [Accessed 19 June 2017].

The World Bank, 2016. *Syria. Overview*. Available at http://www.worldbank.org/en/country/syria/overview> [Accessed 8 September 2016].

Thompson, E., 2016. "Reexamining proliferation drivers in the Middle East". In: S. Minot, ed., *Project on Nuclear Issues: a Collection of Papers from the 2015 Conference Series*. Washington: Center for Strategic and International Studies, pp. 52-69.

Thompson, M., 2015. How disbanding the Iraqi army fueled ISIS. *Time*, 28 May. Available at http://time.com/3900753/isis-iraq-syria-army-united-states-military [Accessed 21 January 2017].

Tibi, B., 1998. *Conflict and War in the Middle East: from Interstate War to New Security*. Basingstoke: Palgrave Macmillan.

Trentin, M. and Gerlini, M., 2012. "Introduction". In: M. Trentin and M. Gerlini, eds., *The Middle East and the Cold War: between Security and Development*. Newcastle upon Tyne: Cambridge Scholar Publishing, pp. 1-9.

UNHCR, 2016. *Syria regional refugee response*. Available at http://data.unhcr.org/syrianrefugees/regional.php> [Accessed 8 September 2016].

Wright, R. and McManus, D., 1992. *Flashpoints: Promise and Peril in a New World*. New York: Random House.

Facilitators' Package: Discretion in a Time of Challenge

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Abstract

The provisions of the so called Facilitators' Package require Member States to sanction a wide range of conducts which, having human smuggling at their core, can be broadened up to even include humanitarian assistance. They do so in a very ambiguous way, thus leaving a wide margin of appreciation to the single States in their application. Inside this elbowroom the conditions for the increasing criminalization, within national legislations, of behaviours of facilitation of entry, transit or stay of migrants have been created, making the work of those trying to respond to the needs of refugees more arduous, at constant risk of being equated to human smuggling – and punished as such. The sensitivity of this issue emerges forcefully against the backdrop of the current migration crisis which sees, within an increasingly hostile and militarized context, hundreds of thousands of people waiting at the gates of Europe and ready to cross its borders even without permission. It is used the implementation of the Facilitators' Package as an example to analyse the scope and content of States' discretion in a time of challenge, investigating how this room for manoeuvre can become one of the main elements of States' resistance to the welcoming and integration of refugees and discussing whether limitations to such margin of appreciation may emerge as a first step to respond to the present crisis in a more efficient, yet humane, way.

Resumo

Facilitators' Package: Poder Discricionário em Tempo de Desafios

As disposições contidas no chamado "Facilitators' Package" obrigam os Estados-membros a sancionar um vasto espectro de condutas que, tendo no seu âmago o tráfico humano, pode ser alargado inclusive até à assistência humanitária. Os Estados fazem-no de forma muito ambígua, deixando margem de manobra quanto à aferição da sua aplicação. Perante esta flexibilidade, foram criadas, nas legislações nacionais, as condições para a crescente criminalização de comportamentos de auxílio à entrada, circulação ou permanência de migrantes, o que dificulta o trabalho daqueles que tentam auxiliar os refugiados, tornando esse trabalho perigoso e podendo inclusive ser comparado ao de traficantes humanos e punido enquanto tal. A natureza sensível deste assunto surge obrigatoriamente contra o cenário da atual crise migratória, num contexto cada vez mais hostil e militarizado, no qual centenas de milhares de pessoas estão às portas da Europa e dispostas a atravessar as fronteiras mesmo sem autorização. O caso da implementação do Facilitators' Package é usado como exemplo para analisar o âmbito e a natureza do emprego do poder discricionário dos Estados numa época desafiante, investigando como esta margem de manobra pode funcionar como um dos principais elementos da resistência dos Estados à receção e integração dos refugiados, discutindo-se se as limitações a esta margem podem atuar como um primeiro passo para responder à atual crise de uma forma mais eficiente, embora humana.

Introduction

The past two summers have been filled not only with images of migrants trying to pass land or maritime borders, often risking their lives in the process, but also with the stories of those trying to help them: in most of the cases, they are stories of engagement, passion and generosity; in other cases, though, they also become kafkaesque tales of judicial and bureaucratic hurdles sometimes ending up in a criminal court or in a police cell. From the Austrian citizen arrested after driving two irregular migrants coming from Hungary through the border with Germany (BBC, 2015)[1], to the police charges brought against ten volunteer safeguards operating on the Greek shores (Safadar, 2016), to the crackdown on volunteers in Hungary (Zalan, 2015), to the trial against the former mayor of the French town of Onnion charged for hosting a Kosovan family at his place (Belaich, 2016), the news constantly remind us that the present "immigration crisis", far from only involving third-country nationals fleeing from desperate situations, concerns us all: entries, passages and residences of irregular migrants challenge the human networks of the host countries, calling into question the extent (and very meaning) of European solidarity.

The so called crimes of solidarity (*crimes solidarios, délits de solidarité*) locate themselves on the very edgy (and ever busier) border between migration and criminal law[2]: the *extrema ratio*, the certainty and the proportionality principles, which are at the basis of modern criminal law, are by them often called into question, as well as the concepts of excuse, justification and exculpation. Any discussion regarding the possible reform of such crimes within domestic legislation has, therefore, to take such elements into account: where modified, they may expand or restrain the norms' scope and application, either making it more or making it less difficult to prosecute and condemn ordinary citizens supporting irregular migrants in their acts of entry, passage or stay within the borders, in breach of the national provisions on migration. Despite the many differences amongst them, given precisely by the normative peculiarities of each European legislative framework, such crimes can all though be reconnected to a unique source (if not of origin, at least clearly) of inspiration, the European Directive 90/2002 and the Council Framework Decision[3] implementing it: together, they are known as the Facilitators' Package.

This analysis starts from such Package in order to present the main issues related to the structure and scope of the crimes of solidarity – to then move on to analyse

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1   For a general overview, see also Gkliati (2016).
2   On the criminalization of migrants, and on the intersection between criminal and migration law, see Parkin (2013).
3   Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

the normative solutions conceived in this field by two as big Western European receiving countries as France and Spain. Despite the many differences with which the Facilitators' Package has been implemented within the two domestic legislations, the core of the provisions related to the *délits de solidarité* is always made of the same substance, the one of discretion; what's more, discretion is actually embedded in the main legislative basis upon which the various national criminal provisions have been constructed. It is therefore through this idea, or rather through a possible rationalization of this idea, that we will try and provide a reading of the national and supranational frameworks related to facilitating behaviours, their scope and their main criticalities in order to, possibly, also to suggest some ways forward.

The Facilitators' Package
When Directive 90/2002 was adopted, Europe had already long been in the midst of the fight against irregular migration – seen as a threat to the peace, stability and prosperity of the Member States: a fear possibly made worse by the shock of the 9/11 attacks and by the subsequent "war on terror"[4]. As clarified by the Preamble, the creation of an area of freedom, security and justice within the European union implied that "irregular migration" had to be reduced or eliminated, and that, therefore, measures should be taken to combat "the aiding of illegal immigration" as well: the purpose of the Directive was precisely to define what "facilitation of illegal immigration" was, and to "approximate existing legal provisions" for what concerned both the criminalized behaviour and the sanctions to be applied to it.
In targeting the aid of illegal immigration as a criminal behaviour in itself, the European Legislators had to have in mind the UN Protocols signed in Palermo just two years before, especially the one related to the phenomenon known as "smuggling"[5]. They also, surely, had to have in mind all the debates and controversies that that Protocol had sparked, precisely related to the difficulty of defining such a liquid, polymorphous and ever-changing matter as smuggling is: transporting one or more migrants through the borders of a State in breach of that States' provision is a

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4   See, for instance, Pickering and Ham (2015).
5   The so called Palermo protocols are three protocols adopted by the UN to supplement the Convention against Transnational Organized Crime. They are: United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (so called Trafficking Protocol), New York, 15 November 2000; United Nations, Protocol against the Smuggling of Migrants by Land, Sea and Air (so called Smuggling Protocol), New York, 15 November 2002, and United Nations, Protocol against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components and Ammunition, 31 May 2001. All the Protocols supplement the United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000.

process that not only calls into question the intentions and goals of the smuggler, but also the ones of the migrant, who can easily find himself in the difficult and vulnerable position of being a law-breacher and a victim at the same time. The ambiguity deriving from the necessity of recognizing States' own jurisdiction and sovereignty over their borders, at the same time protecting the human rights of the smuggled migrants, ran through the whole Smuggling Protocol[6], and was called into question on multiple occasions. Despite this, one significant goal certainly reached by the United Nations (UN) Protocol was precisely the one related to the thorny issue of the crimes of solidarity. In its provision no. 6, in fact, the Protocol establishes that: "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and *in order to obtain, directly or indirectly, a financial or other material benefit*": as specified by the *Travaux Preparatoires* (UN, 2000, p. 469), such reference to an element of financial gain is intended to exclude "family members or support groups such as religious or non-governmental organisations" from punishment. In other words, the idea of the UN assembly was to avoid the criminalization or punishment not only of family members that may help irregular migrants to enter, transit or settle for reasons of affection and emotional linkage, but also to shield from prosecution average citizens involved in the assistance and support, for *humanitarian reasons*, of the same migrants. This was, on the other hand, coherent with the very basic principles laying at the foundation of the UN: starting with article 1 of the Universal Declaration, many references to the concepts of humanity and solidarity are found in the body of the UN Conventions, Resolutions and Declarations, all pointing to their relevance in order to ensure the full respect and full protection of human rights[7].

Now, despite the above and despite the fact that the same principles of solidarity and of humanity have also inspired the very foundation of the European Community[8], Directive 90/02, criminalizing the aid and assistance to illegal immigration is,

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6   For example: according to the Protocol, smuggled migrants should not be incriminated. But, at the same time, the Protocol leaves it open to the signatory States whether to criminalize irregular immigration within their domestic legislation. See for instance Watson (2015, pp. 7-41).

7   See for instance UN, General Assembly (1999), article 9, paragraph III, lett. C: "Everyone has the right […] To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms". See also article 12: "everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms". (UN, General Assembly, 2005).

8   According to the funding Treaty of the European Union, signed in 1957, the original Member States wanted to: "confirm the solidarity which binds Europe and overseas countries, and

with regards to the conducts of those assisting third country nationals, much more careful in this regard.

More specifically, according to the Directive, Member States should adopt appropriate sanction both on those "who intentionally assist a person […] to enter or transit across the territory of a Member State in breach of the laws of the State concerned" and on "any person who, *for financial gain*, intentionally assists a person who is not a national of a member state to reside within the territory of a Member State". The conduct incriminated by the Directive is therefore twofold: either assistance in the entry and transit, or assistance in the residence. Yet, the element of financial gain is specifically mentioned only for the second half of the conduct (assistance in the residence), whilst it is not mentioned in the provision related to the first one (entry and transit). Such omission is obviated to in co. II of the same article 1, which provides that "any member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice *for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned*".

Leaving aside the difficulties deriving from the way in which the incriminated behaviour is described[9], the main problem with article 1 of the 90/2002 Directive is that discretion is left to the single Member States as to whether to refrain from imposing sanctions in the case of help with the entry/transit for non-financial purposes: this, in turn, opens a variety of options to the Member States, which first have to decide whether to recur to the criminal toolbox or not. Then, they must also decide whether to only make use of pecuniary sanctions or to resort to detention measures as well, weather to exclude the person helping the third country national from any form of prosecution or, rather, to just prosecute without penalties (Carrera *et al.*, 2015, p. 25), and so on.

The consequences of such a normative choice (or, rather, non-choice) have been described in various studies that have analysed the existing state of the crimes of solidarity in Europe[10]: the application of the Directive in the legislative implementation within the Member States is patchy, and it is also opaque. In the first sense, while some States have made use of the exclusion humanitarian clause, some have not; while some introduced it explicitly also for the assistance in the case of resi-

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desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations" On the specific situation of Human Rights Defenders see, for instance, Council of Europe (2009).

9 Which, as anticipated, call into question elements of general criminal law that it would not be appropriate to deal with in this paper.

10 Beside the study of Carrera and others cited, see also: Carrera and Guild (2016), Provera (2015), FRA (2014).

dence, some others did not; furthermore while, in some cases, the humanitarian nature of the help provided prevents a trial to be opened (exclusion from prosecution) in some other cases it can just allow for the sanction not to be applied; finally, in the cases where the conduct is criminalized regardless of the intent of the author, sanctions can vary in quality and quantity, ranging from relatively small fines to many years of imprisonment. In the second sense, the data about the numbers of prosecutions, trials, sanctions and acquittals regarding the crimes of solidarity is sometimes missing, sometimes incomplete, sometimes substituted by only anecdotal references. The overall impression is that of a transparent, and yet very heavy ensemble of laces that can tie, in a more or less predictable way, European citizens' supportive behaviour towards third country nationals: there is no certainty of prosecution, nor of condemnation or of sanction, and, yet, their possibility is always present, with the (perhaps pursued) effect of "chilling"[11], such acts of solidarity before they even take place.

The exam of the specific situation of Spain and France should now allow for a more in-depth evaluation of the extension and scope of the problem.

France: General Overview

Starting point for the analysis of the French normative framework regarding the crimes of solidarity is article L622 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA). Such provision, punishing with a fine of 30.000 euros and 5 years imprisonment all those who "directly or indirectly facilitate or try to facilitate the irregular entry, transit and stay of a foreigner in France"[12], comes directly from a decree-act dating back to the 1938 then translated into the 1945 provisions, and has since then always been a part of the French normative framework (Carrere and Baudet, 2004): "in spite of a few exemption clauses, the scope of the law has always been large, and penalties have accrued with time" (Allsopp, 2012, p. xx). When, in 2003, the French legislator had to transpose the provisions of the European directive 90/2002, it did so in a very selective and strict manner: "the law expanded the geographical scope of the article and penalties were again extended. The Government's failure to incorporate the for-profit clause for the sake of efficiency met with renewed opposition, as did its refusal to introduce the recommended exemption clause for those who assist with the aim of bringing humanitarian aid" (Allsopp, 2012, p. 14).

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11 More on the "chilling" effect of criminal provisions below.

12 Article L622-1: "Any person who, by direct or indirect assistance, facilitates or attempts to facilitate the illegal entry, movement or residence of a foreigner in France shall be punished by imprisonment for five years and a fine of 30,000 Euros".

Despite the official position of the French Government regarding the existence of the crimes of solidarity being, at least until 2009, that "they do not exist"[13] and that their presence in the French normative framework is "just a myth", since 2003 the cases of French citizens prosecuted and sentenced on the basis of article L622 CESEDA multiply[14].

The situation becomes so unbearable that, further to a lot of media and public society pressure (Allsopp, 2012), in 2012 a new law is passed, that partially changes the content of article L622 to allow for some exclusion clauses. More specifically, further to the so called *Loi Valles* (from the name of the prime Minister that passed it) the field of family immunities is streamlined, and humanitarian conducts consisting of "providing legal, catering, hospitality or medical services finalized at granting dignified and decent living conditions to the foreigner, as well as any other aid finalized at preserving the his dignity and physical integrity" are no longer prosecuted, "so as to put an end to what has been commonly known as crimes of solidarity"[15].

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13 From a letter by the then Ministry for Migration, Eric Besson, sent to the organisations that had signed an appeal against the crime of solidarity in France. See GISTI (2009).

14 Some examples are reported to exemplify how deep can the normative provisions go in pursuing social and even relational bonds between French and third country citizens, in the fight against irregular immigration. In April 2007 a 60 year old woman on a plain complains at the sight of two cushions placed over the mouths of two Malian men being deported on her Air France Flight: she is "removed from the air plane, searched and placed in custody overnight, accused of inciting two undocumented migrants and other passengers to "rebellion with a view to violently resisting people in authority". On the 18th of March 2008, in France, the Tribunal of the city of Lyon has to consider the situation of a French citizen, in a civil partnership with a third country national (Turkish) in an irregular position. The couple is living together since one year, and is about to get married. The French citizen goes to Turkey to make plans for the wedding and, upon return, she is placed under surveillance, whilst her partner, who has come to the airport to pick her up, is in the meantime arrested. He is further expelled, and she is pursued for facilitation of irregular residence. A similar story is the one related to a couple formed by a French citizen and an Algerian one. Short before the wedding, the third country national is expelled – the partner then travels to Algeria in order to get married and, upon return to France, she is tried for aiding irregular migration. In 2008/2009, Mme Claudine Louis, who is part of a solidarity network, meets a group of Afghans sleeping rough in a park, in Paris. Amongst them there is a minor, aged 16 years, whom she decides to puts up in her flat – she is taken to trial for violation of L622-1. In 2009, February, a volunteer in a migrant support organisation is placed in custody in Calais: the crime, in this case, is to recharge the mobile phones of undocumented migrants. All examples have been collected by GISTI (2017) and are available.

15 From the administrative memorandum of 18th January 2013. See articles 11 and 12 of the *Loi/ Law n. 2012-1560*, of 31 December 2012, *Relative à la retenue pour vérification du droit au séjour et modifiant le délit d'aide au séjour irrégulier pour en exclure les actions humanitaires et désintéressées, JORF n. 0001 of 1 January, 2013.*

The French case is presented (and, indeed, is) as an important victory of public opinion and society with regards to the criminalization of the *délits de solidarité*[16]: certainly, the amendments introduced by the "Valls law" transpose the instances of all the associations operating in the field of protection and assistance to undocumented migrants, and at least in part reduce the severity and stiffness of previously applicable law and regulations. On the other hand, one cannot help but notice that this normative change does not seem to have had a very significant impact on the practice: some very recent decisions of the French courts continue to sentence on the basis of article L622 CESEDA, to the point that, according to one of the most important French associations dealing with migrants the crime of solidarity is not dead (yet)[17]. Before attempting to provide a reading for this setback in the application of the amended law we will now turn to the Spanish case, which presents some interesting similarities with the French one.

Spain: General Overview

In Spain, the facilitation of irregular migration is disciplined by article 318*bis* of the Criminal code. Originally, the provision punished very severely (detention from 4 to 8 years) all those who "directly or indirectly promote, favor, or facilitate the illicit trafficking or clandestine immigration of people from, through or to Spain or other Member States". No mention was made of the possibility of excluding from the application of the provision people assisting or helping migrants for humanitarian purposes – something nevertheless allowed, as seen, by the very broad margin of evaluation left to the member states by the 90/2002 Directive.

Such a provision led to two very different judicial attitudes (Munoz Ruiz, 2016, p. 7). A first, stricter one, applied the provision quite frequently in order to sanction behaviours integrating some kind of help to or facilitation for the irregular migrant. Examples of this first approach can be found in the decisions that sentenced to two years of prison a man and a woman that were trying to smuggle within the Spanish territory a young Moroccan guy that they had met along the way; similarly, a Moroccan citizen who was trying to smuggle his nephew through the border, presenting him as his son, was also sentenced to three years[18].

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16 See for instance Allsopp (2012), Sigona (2016).

17 The Groupe d'information et de soutien des immigrés (GISTI). See for instance the case of Rob Lawrie, charged with the crime of aiding irregular migration for driving an Afghan girl from France to the UK in January 2016, in Baumard (2016). See also the case of a French citizen sentenced for assisting two irregular migrants to reach Antibes railway station in LDH Toulon (2015). Finally, see the case of the ancient mayor of the city of Onnion, see Belaich (2016).

18 According to this same approach, the conduct of article 318bis of the Spanish criminal code would not only be breached in case of help to a clandestine entry, but also in case of an entry with irregular documents. See, for instance: *Sentencia de la Audiencia Provincial de Málaga*

Another, more lenient approach, makes a sparser application of the provision – grounding its softer approach in a careful application of the principles of proportionality and legality: according to this reading, article 318*bis* of the Criminal code would only be called into question in case of danger or breach for the individual rights of the foreigners. When, on the other hand, "the behaviour only presents a threat or a danger against the regulation of migration fluxes, and there is no danger of breach of the rights of the migrant, there is no need and no reason to apply the criminal sanction": following this approach, the Supreme Tribunal refused for instance to condemn two Guatemalan citizens, brother and sisters, who were hosting and assisting in the search for a job some irregular compatriots, without any financial gain[19].

This softer judicial approach came under close scrutiny in 2015, when talks at a parliamentary level were started regarding a possible reform of the 318*bis* provision: one of the main topic of discussion was whether a specific clause exempting from prosecution those who were providing humanitarian aid to the irregular migrants should be introduced or if, on the contrary, the possibility of refraining from prosecution in the case of humanitarian assistance should be left to the discretion of the public prosecutor[20]. Civil society mobilized[21], particularly in the southern part of the country which, for geographical reason, is more interested to the phenomenon of irregular arrivals and, further to the pressure of public opinion, the original project of law was amended: the present provision does now allow for an exemption of prosecution in the case of humanitarian assistance, to be applied in any case and regardless of the intervention of the public prosecutor[22].

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15/2004, [JUR 2004\121926] and *Sentencia de la Audiencia Provincial de Málaga 10/2005, [JUR 2005\84742]*

19 *Tribunal Supremo, n. 1378 14 December 2011 [Repertorio de Jurisprudencia 2012\453]; Tribunal Supremo, n. 212 9 March 2012 [Repertorio de Jurisprudencia 2012\4642]; Tribunal Supremo, n. 446 28 Mary 2012 [Repertorio de Jurisprudencia 2012\6563].*

20 *Anteproyecto de ley orgánica por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal* [Draft proposal to amend the Criminal Code]: "Any person who intentionally helps a person who is not a national of a Member State of the European Union to enter the territory of another Member State or to transit through it in breach of the law of that State on the entry or transit of foreigners shall be punished with a fine of three to twelve months or imprisonment of six months to two years. The Public Prosecutor may refrain from accusing for this offense when the objective pursued is solely to provide humanitarian aid to the person concerned. If the facts were committed for profit, the penalty will be imposed in its upper half".

21 Salvemos la hospitalidad (2013).

22 *Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, articulo 318bis*: "Any person who intentionally helps a person who is not a national of a Member State of the European Union to enter or transit through Spanish territory

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It is still early to consider whether this change in the law has been already implemented in the practice, but a very recent decision[23] taken by the Supreme Tribunal seems to follow the Legislator's lead: considering the case of a woman assisting her compatriots in traveling to Spain, offering them hospitality and helping them to find a job, the Tribunal came to the decision of condemning her for breach of (new) article 318*bis* Criminal code on the basis that, in order to support the third country nationals in finding an occupation, she had also recurred to falsified job contracts or job offers, asking her "clients" for money in return for her services. The element of financial gain (and even of exploitation, it seems) was so evident and clear that, as anticipated, the Tribunal could not but find the covenant guilty. At the same time, though, the Supreme Judges dedicate sometime to analyze the new amendments of article 318*bis* Criminal Code: since, they find, the new criminal provision "is much more benevolent [than the previous one] and explicitly excludes [from prosecution] the cases of humanitarian aid", only very serious conducts that facilitate entry or stay in breach of the normative provisions can be sanctioned. Therefore, according to the Judges, the fact of hosting irregular migrants, or even of helping them looking for a job or getting a residence permit would not (anymore) constitute *per se* a breach of the (new) law, and would therefore go unpunished – as said, what in this case made the balance oscillate in favor of a condemnation was the fact that the convicted lady was not only faking official documents, but also asking to be paid for the trouble.

France and Spain Before the Aid to Irregular Migration
The Spanish and French experiences with regards to the handling of the so called crimes of solidarity present some interesting elements in common, that justify their compared analysis. First of all, as seen, both countries had provisions in place against the phenomenon that pre-dated the passing of the European directive no 90/2002; furthermore, the mere entry into force of the Directive did not push either of them to amend or change their legal norms in any way, especially not in the sense of implementing the possibility of introducing the humanitarian justification clause provided by article 1.2 of the Directive itself. As a consequence, there were, in both countries, cases of prosecution and of conviction for the crimes provided by article L622 CESEDA and 318*bis* Criminal Code. Such episodes in turn sparked a reaction in the public opinion and in the media, which pushed for a reform of the domestic

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in a way that violates the law on the entry or transit of aliens shall be punished with a penalty of a fine of three to twelve months or imprisonment of three months to one year. *The facts will not be punishable when the objective pursued by the author is only to provide humanitarian aid to the person in question*" (italics added).

23 Tribunal Supremo 2908/2016.

framework allowing for the humanitarian justification clauses to be introduced, in France in 2012 and in Spain in 2015.

These developments can be explained through the reading suggested by those maintaining that, against the general indifference and even hostility that seems nowadays to surround the migratory phenomenon, civil society still has an important role to play (to the point of even getting to change the law) in order to build solidarity and support towards third country nationals entering and living within the State members (Allsopp, 2012; Sigona, 2016). Yet, as anticipated, the commitment and passionate involvement of civil society, and even legislative reforms, have not been enough to avoid, even recently, prosecutions and convictions of aiding behaviours, especially in France. To try and explain this, we will now turn to the issue that lays at basis of the crimes of solidarity, both at a national and at a supranational level: the problem of discretion.

Shaping Discretion

According to D. J. Gallighan (1990, p. 23), "discretionary power is based around […] two variables: the scope for assessment and judgment left open to the decision-maker by the terms of his authority, and the surrounding attitudes of officials as to how the issues arising are to be resolved". The first element of the definition, related to the decision-maker's own margin of manoeuvre, focuses the attention on how bureaucratic thinking and problem solving interacts with rules. The second element, related to the interaction between powers, enlightens the complex balance of prerogatives and competences that is at the basis of any exercise of administrative discretion. Such a definition, relying as it does on the ideas of "progression" and dynamism, is very useful to our purposes: by so doing, in fact, on the one hand it avoids the dichotomy, often present within the legal thinking, between rules and their absence, allowing to see that discretion is actually present and operating *within* the rules themselves – what can vary is its intensity, which in turn depends on the structure of the norm and on the use made of it by the decision maker. On the other hand, such definition clarifies how discretion cannot be conceived as something completely autonomous and auto-referential, but rather as something dynamic, depending on the interaction with the different powers of the State, the judicial one in particular.

If the above definition is applied to the issue of the way crimes of solidarity are shaped and dealt with in Spain and France, some interesting reflections develop. For what concerns the first element of the definition, and namely the way in which the norm is built and the way in which the decision maker relates to it, the experiences of the two countries seem to overlap quite easily: in both cases the definition of the crime is very vague, characterized by a number of technical hurdles and therefore allowing the single decision maker (the police officer, mainly) for a very

significant margin of maneuver. This is, *per se,* neither a good nor a bad thing: aside from the fact that the social sciences have shown that discretion is in reality much more codified and structured than what it was generally believed (Hawkins and Feldman, 1992), the natural diffidence of a lawyer *vis a vis* discretion needs to be overcome by the consideration that discretion is essential to the functioning of the modern State, and that the French Revolution ideal of a perfect law codifying every aspect of reality is nothing but a (perhaps even dangerous) illusion. The moment discretion becomes an issue, though, is when it brings the single decision maker to make choices that are in *contradiction* with the goal and scope of the normative provisions that he should apply: as seen in the French case, for instance, reviving or re-expanding the scope of incrimination clauses that should have been reformed or even suppressed.

The second element of the definition, and namely the interaction between the decision makers' margin of *maneuver*, on the one hand, and the other powers of the State – particularly the judiciary, on the other, comes then into question: in a democracy, in fact, the discretionary power of the single street-level bureaucrat is just as broad as the judiciary powers allows it to be. It is on the judiciary that impends the responsibility of checking that the use of discretion is not misdirected or misguided: the less pervasive the control, the wider the discretion, and, possibly, also the abuse.

It is here that the French and the Spanish experiences seem to start differentiating from one another: whilst in Spain, as seen, there had always been, long before talks over a possible reform of the article were started, a very reputed and highly respected interpretation of the previous article 318*bis* Criminal Code that tended to reduce its application, consequently allowing for a wider scope of the (then still not codified) humanitarian clause, the standing of the French judges has always been in this respect much stricter[24]. This difference of jurisprudential approach can also explain why, despite the very many similarities, the French and the Spanish cases seem finally to diverge when it comes down to the real application of the humanitarian clause introduced through a lot of grass-root work and advocacy: the intervention of the civil society, and even the legislative reform themselves, may not be the final solution to the problem of the crimes of solidarity because, at the roots of such provisions, is the discretion of the single bureaucrat, who enjoys a wide margin of appreciation given the very blurry nature of these norms. What can make the difference, according to the definition of discretion that we are using here, is instead only the intervention of the judiciary power, to which the onus is entrusted to verify that, in the exercise of such discretion, the decision maker does not contravene to the goal and spirit of the norms he needs to apply.

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24 Despite the important suggestions coming from the French Constitutional Court, see: decision n. 96-377 DC, JO, 23 July 1996.

In light of the above, then, whilst some hope for a restriction of the application of the *délits de solidarité* seem to be in order in Spain, much less sure seems to be the real impact and outcome of the 2012 French legislative reform: in the absence of a different approach on the part of the judiciary, the single decision maker's discretion could always void the new humanitarian clauses of any real efficacy.

The fate of the *délits de solidarité* seems therefore to still be far from certain. Whether there is any indication in this respect that can come from the broader European Framework is what we will try to ascertain now.

The European Way to Discretion

If read through the first element of our operational definition, namely the structure of the norm, the Facilitators' Package stands out as the embodiment of discretion *within* the law: the definition of the conduct is so broad, so vague and so undetermined as to the pursued scopes of the provision that, as also confirmed in the two examples carried out in this paper, the margin of maneuver for the single decision maker (in this case the Member States) is extremely broad. This has led to a double, and somehow contrasting result: on the one hand, the application of the Directive is by all standards unsatisfactory because patchy, opaque and ineffective. On the other hand, though, volunteers all over Europe feel uncomfortable carrying out their task, as they fear that the vague, and yet impending criminal axe may strike them at any given moment. The Directive may not be effective enough to contrast smuggling – but it is very effective in hindering solidarity.

The second element of the definition should now allow us to investigate whether the elbowroom of the Member States is counterbalanced by the European Judges, in particular by the Judges of the European Court of Human Rights (ECHR): if, in other words, a guidance is somehow provided so as to limit such discretion thus increasing the effectiveness of the Directive that provides for it.

Strasbourg has not had many chances to consider the application of the crimes of solidarity: the only opportunity came in 2011[25], when the Court had to consider the case of a Moroccan citizen who, in France, had hosted in his house his son – in – law, who had remained in the country in order to assist his wife (the claimant's daughter) during a difficult pregnancy. The Moroccan citizen had been sentenced for aiding illegal migration – the judges had, though, recognized that his behaviour came out of generosity and had therefore decided not to apply any sanction.

The European Judges had two issues to address: the first one was to decide whether there was a family life worth protecting[26], the second was whether the intervention

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25 ECHR, n. 29681/08, Mallah c. France.

26 Given the fact that the judgement turned around the previous version of article 622 CESEDA, which did not mention, amongst the family relations that could give rise to an exception in the application of the provision, the one between son and father in law.

was necessary and proportionate according to the criteria established in article 8 ECHR.

The Court found in favour of the Government, considering that not only was the provision of article L622 necessary to counter illegal migration, but that it was also proportionate, *i.e.* respecting the balance between the goal pursued and the interference in the private sphere of the applicant. The reason for this finding laid on the fact that the claimant, even if sentenced, had not been subject to any kind of punishment: therefore, the interference of the French state in his personal sphere did not seem excessive to the Judges[27].

Yet, is precisely on this front that the Court's decision seems very self-restrained, and even in contradiction with other decisions revolving around the same aspect[28]. The problem here is that the Court deliberately avoided to address the "chilling" effect that sanctions (even if not applied) or, before them, criminal proceedings can have on the individuals: such effects, which range from shame to insecurity, uncertainty and sometimes fear, can be produced by the sheer fact of having to do with criminal forces such as the police, of being interrogated, of having one's house searched, and so forth. They can even spring from the mere fact of knowing that the criminal provision is there, waiting to be used, even though nothing has happened yet.

By refusing to address this aspect – which is on the other hand crucial when it comes down to the crimes of solidarity as they mainly rely on the deterrent or dissuasive aspect of the criminal provision precisely to "chill" any attempt to support or to aid irregular migration – the Strasbourg Court has thus refrained from intervening on the contested and controversial issue of whether State's total discretion on the application or non-application of a humanitarian exclusionary clause can

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27 The decision, though, was not taken lightly. See, in this respect, the dissenting opinion of Judge Power Forde.

28 On the "chilling effect" that provisions criminalising homosexuality can have on private life, regardless the fact they are or are not applied, see for instance ECHR, Dudgeon v. United Kingdom, Series A, n. 45: "the maintenance in force of the impugned legislation constitutes a continuing interference with the applicant's right to respect for his private life (which includes his sexual life) within the meaning of Article 8 (1). In the personal circumstances of the applicant, the very existence of this legislation continuously and directly affects his private life either he respects the law and refrains from engaging (even in private with consenting male partners) in prohibited sexual acts to which he is disposed by reason of his homosexual tendencies, or he commits such acts and thereby becomes liable to criminal prosecution". See also, ECHR, n. 27520/07, Altug Taner Akcam v. Turkey, for the same considerations re provisions restricting and criminalising freedom of expression: "The Court further notes the chilling effect that the fear of sanction has on the exercise of freedom of expression, even in the event of an eventual acquittal, considering the likelihood of such fear discouraging one from making similar statements in the future".

really be considered compatible with the protection not only of the life and integrity of irregular migrants, but also with the preservation of solidarity networks between European citizens. Self-restraining itself in such a politically charged field, the Court seems to have missed an opportunity to reshape the discretion at the basis of the European Directive, and therefore of the national legislation, in a form more compatible with human rights.

Ways Forward

Already at the end of the 1990s, whilst analyzing the contents of the Treaty of Amsterdam, scholars were noticing that the original EU approach – the one of reducing State's discretion in order to increase the privates' one (under the coherent control of the EU) seemed to have somehow weakened when addressing the rights of third country nationals. The existence of a link between clearance and coherence of the EU's body of law (and jurisprudence) on the one hand, and individuals' freedom on the other was therefore suggested (Guild, 1998, pp. 613-625)[29]. In other words, so long as the normative framework at a European level was strong, this, at least in the field of freedom of movement and migration, would often correspond to an improvement in the enjoyment of these rights on the part of the individuals. When, on the other hand, States regain some margin of maneuver, this could have a significant impact on individual situations. The closing of the article was somehow prophetical: the bones which the new structure of the rights of third country nationals was built upon were quite fragile, and the meat that would be put on them would determine the real extent of the rights that the third country nationals would be able to enjoy (Guild, 1998, p. 618). There is no better example of how fitting that warning was, then to look at the legal framework now related to the "facilitation of unauthorized entry, transit and residence": the broad discretion left open to the decision makers has led to a vague and opaque system of sanctions and

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29 "Giving the EU competence, combined with the pressure of coherence, results in the exclusion of national discretion in the treatment of persons within the scope of Community law [...]. This means that as the member states gave exclusive responsibility to the Community to regulate intra-Union movement of nationals of the member states, they lost, individually, the right to control that movement […] Differing perspectives on the role of national discretion have informed and moulded the Union debate regarding third country nationals […] The first step of the Union over movement of third country nationals – the abolition of internal borders – exhibited the classic characteristics of Community law in respect of persons – competence to the Community, coherence through the creation of rights and the concomitant exclusion of national discretion. In the ten years between the Single European Act and the Amsterdam Treaty that foundation which would have brought Europe's third country nationals within the same framework of an ever closer Union of the peoples of Europe was abandoned in an orgy of national discretion." (Guild, 1998, pp. 613-625).

stigma that involves not only third country nationals, but European citizens as well.

Two possible ways to counter this state of things could be suggested: either reshape the relationship of the decision makers with the norms, or to increase the responsiveness of other State's actors towards the single decision maker's exercise of discretion. In the first sense, the norms should be reformed so as to make them clearer, for instance specifying the main interest that should be protected by the offense or making the use of the humanitarian exemption clause mandatory for everyone (Carrera, *et al*., 2015, p. 64). Other solutions that have been suggested, such as the one of "obliging Member States to put in place adequate systems to monitor and independently evaluate the enforcement of the Facilitators' Package" (Carrera, *et al*., 2015, p.11), impinge already on the second element of our operational definition, advocating, as they do, for the use of external and impersonal factors (a monitoring system) so as to counterbalance the discretion of the decision makers (both individuals and States).

This suggestion could, though, be maybe brought a little further: the best controlling factor, for the use and extension of a norm that targets human relationships, is precisely the human factor. In other words, it is also by placing more trust (and more responsibility, as well) upon the other actors playing on the field of crimes of solidarity that the discretionary, and sometimes arbitrary application of provisions incriminating simple behaviours of help and assistance towards migrants can be countered. Important proof has in this sense been already given by the civil society, and sometimes even by the national legislators. It is from the judges, both at a national and at a European level, that a clear and strong answer is now awaited.

References

Allsopp, J., 2012. *Contesting Fraternité: Vulnerable migrants and the politics of protection in contemporary France*. Available at https://www.rsc.ox.ac.uk/files/publications/working-paper-series/wp82-contesting-fraternite-2012.pdf [Accessed 20 May 2017].

Baumard, M., 2016. *Rob Lawrie, dernier exemple de poursuite pour "délit de solidarité"*. Available at http://www.lemonde.fr/police-justice/article/2016/01/14/un-anglais-juge-pour-delit-de-solidarite_4846848_1653578.html [Accessed 20 May 2017].

BBC, 2015. *Migrant crisis: Activist convoy drives to Hungary*. Available at http://www.bbc.com/news/world-europe-34166882 [Accessed 20 May 2017].

Belaich, C., 2016. *Un procès relance le débat sur le «délit de solidarité»*. Available at http://www.lemonde.fr/police-justice/article/2016/04/07/un-proces-relance-le-debat-sur-le-delit-de-solidarite_4898230_1653578.html [Accessed 20 May 2017].

Carrera, S.; Guild, E.; Aliverti, A.; Allsopp, J.; Manieri, M. G. and Levoy, M., 2015. *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants. Study for the LIBE Committee.* Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU%282016%29536490_EN.pdf [Accessed 20 May 2017].

Carrera, S. and Guild, E., eds., 2016. *Irregular Migration, Smuggling and Trafficking of Human beings.* Available at https://www.ceps.eu/system/files/Irregular%20Migration,%20Trafficking%20and%20SmugglingwithCovers.pdf [Accessed 20 May 2017].

Carrere, V. and Baudet, V., 2004. *Délit de solidarité*. Available at http://www.gisti.org/doc/plein-droit/59-60/solidarite.html [Accessed 20 May 2017].

Council of Europe, Parliamentary Assembly, 2009. *Situation of human rights defenders in Council of Europe.* Available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17727&lang=en [Accessed 20 May 2017]

Feldman, M. S., 1992. "Social Limits to Discretion: an Organisational Perspective". In: K. Hawkins, ed., *The Uses of Discretion*. Oxford: Clarendon Press, pp. 163-183.

FRA – European Union Agency for Fundamental Rights, 2014. *Criminalisation of migrants in an irregular situation and of persons engaging with them.* Available at http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants_en.pdf [Accessed 20 May 2017]

Gallighan, P. J., 1990. *Discretionary Powers*. Oxford: Oxford University Press.

GISTI, 2009. *Délit de solidarité: Besson ment!* Available at http://www.gisti.org/spip.php?article1791 [Accessed 20 May 2017].

GISTI, 2017. *Condemnations.* Available at http://www.gisti.org/spip.php?article1621 [Accessed 20 May 2017].

Gkliati, M., 2016. *Proud to Aid and Abet Refugees: The Criminalization of 'Flight Helpers' in Greece.* Available at https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/05/proud-aid-and [Accessed 20 May 2017].

Guild, E., 1998. Competence, discretion and third country nationals: The European Union's legal struggle with migration. *Journal of Ethnic and Migration Studies,* 24(4), pp. 613-625.

Hawkins, K., 1992. "The Use of Legal Discretion: Perspectives from Law and Social Science". In: K. Hawkins, ed., *The Uses of Discretion*. Oxford: Clarendon Press, pp. 11-46.

Munoz Ruiz, J., 2016. La ayuda Humanitaria: una excusa absolutoria o una causa de justificaciòn? *Revista Electronica de Ciencia Penal y Criminologia*, 18(8), pp. 1-27. Available at http://criminet.ugr.es/recpc/18/recpc18-08.pdf.

Parkin, J., 2013. *The Criminalization of Migration in Europe: A State-of-the-Art of the Academic Literature and Research*. Available at https://www.ceps.eu/system/files/Criminalisation%20of%20Migration%20in%20Europe%20J%20Parkin%20FIDUCIA%20final.pdf [Accessed 20 May 2017].

Pickering, S., and Ham, J., 2015. *The Routledge Handbook on Crime and International Migration*. Oxon: Routledge.

Provera, M., 2015. *The Criminalisation of Irregular Migration in the European Union.* Available at https://www.ceps.eu/system/files/Criminalisation%20of%20Irregular%20Migration.pdf [Accessed 20 May 2017].

Safadar, A., 2016. *NGOs decry charges against volunteers in Greece.* Available at http://www.aljazeera.com/news/2016/01/ngos-decry-arrests-volunteer-lifeguards-greece-160116193522648.html [Accessed 20 May 2017].

Salvemos la hospitalitad, 2013. *La Hospitalitad no es delito.* Available at http://www.salvemoslahospitalidad.org/ [Accessed 20 May 2017]

Sigona, N., 2016. *The dangerous spread of crimes of solidarity.* Available at https://nandosigona.wordpress.com/2016/03/11/crime-of-solidarity/ [Accessed 20 May 2017].

United Nations (UN). General Assembly, 1999. *Declaration on Human Rights Defenders.* New York: United Nations.

United Nations (UN). Office on Drugs and Crimes, 2000. *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.* New York: United Nations Office on Drugs and Crimes.

United Nations. General Assembly, 2005. *World Summit Outcome.* New York: United Nations.

Watson, S., 2015. The Criminalization of Human and Humanitarian Smuggling. *Migration, Mobility, & Displacement n.º* 1, pp. 7-41.

Zalan, E., 2015. Hungary: Volunteers who help migrants turn anti-Orban. Available at https://euobserver.com/migration/130084 [Accessed 20 May 2017].

Archives

Ligue des Droits de l'Homme, Toulon – France

Journal Officiel de la Republique Francaise – France

Conseil Constitutionnel – France

European Court of Human Rights, HUDOC – France

Consejo General del Poder Judicial, CENDOJ – Centro de documentacion Judicial – Spain

Gobierno de Espana, Agencia Estatal Boletín Oficial del Estado – Spain

Differences in Labour Market Integration of Refugees in European Countries

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Abstract

There is insufficient research on the question: why are refugees better integrated in some countries than in others? In addition, there are few comparative studies describing differences in integration outcomes of refugees. This article investigates economic integration across eight European countries, in the year 2008, through the indicators of employment, quality of jobs and overqualification. None of the countries studied demonstrated a high level of economic integration of refugees. In Greece refugee employment opportunities were almost equal to those of natives, but the quality of employment and overqualification rates were much worse. On the contrary, in the UK, the chances of getting a "good job" and rates of skill mismatch are similar, but the probability of refugees finding employment is much lower. Other countries revealed moderate disadvantages for refugees in the labour market, with Norway as a positive outlier. The reasons for these disparities may lie in the variations between types of welfare states, but further research is needed.

Resumo

Diferenças na Integração de Refugiados no Mercado Laboral de Países Europeus

Não existe investigação suficiente sobre a questão: porque é que os refugiados são mais bem integrados nalguns países do que noutros? Além disso, existem poucos estudos comparativos que descrevam as diferenças dos resultados da integração dos migrantes humanitários. Este artigo investiga a integração económica em oito países europeus, em 2008, através de indicadores como o emprego, a qualidade dos trabalhos e a sobrequalificação. Nenhum país demonstrou um nível elevado de integração económica desses migrantes. Na Grécia, as suas oportunidades de emprego são quase iguais às dos nacionais, mas a qualidade do emprego e as taxas de sobrequalificação são muito piores. Pelo contrário, no Reino Unido, as probabilidades de se conseguir um "bom emprego" e de acordo com as suas competências são semelhantes, mas a probabilidade de encontrarem um trabalho é bastante menor. Outros países revelaram desvantagens moderadas no mercado de trabalho para os refugiados, com a Noruega a destacar-se pela positiva. As razões para estas disparidades podem residir nas variações entre os diferentes tipos de estados sociais, mas será necessária mais investigação para conformar esta hipótese.

Introduction

Whilst the current refugee crisis poses tremendous challenges for the first reception and recognition of asylum seekers, it is also important to think about the long-term future of these people and of the host countries. Forced migrants may settle in their countries of asylum for life. The issue of their integration is therefore critical for the governments of the receiving states, the native population, and of course for the refugees themselves. Wars and civil unrest are an ancient phenomena, and unfortunately people fleeing their homes under threat of violence is nothing new. We cannot predict what will happen in the future with the people who are currently claiming asylum in European countries, but we can look at what happened in the recent past with other refugees, namely those who arrived in the 1990s-early 2000s. In this article, the term "refugees" is used to describe individuals, who have changed their country of residence due to life and safety threatening reasons: war, unrest, famine, persecution of all kinds. This should not be confused with the term "recognized refugees", which is a specific legal status, granted in the country of asylum. The legal statuses of these persons can change over time: from that of irregular migrant, to asylum seeker, to recognized refugee, to being a naturalized citizen – in the best-case scenario. In the worst case scenario, an asylum seeker may also be denied a refugee status, receive a subsidiary international protection or remain undocumented. The migration experiences of people seeking international protection and the regulations of the host countries set them aside from other migrants, who move for work or family reasons. Thus, it is important to study migrants, who came for humanitarian reasons, separately from other groups.

The literature on the integration of forced migrants, is a sub-group of the literature on immigrant integration. It is dominated by qualitative case-studies, based on national data, which makes it hard to compare the success of integration across countries and policy contexts. The lack of cross-national quantitative data on refugees complicates the assessment of their integration in European countries. However, the Eurostat has produced a data set (Eurostat, 2008), which up until now has not been fully utilised. This article aims to look at the outcomes of refugee economic integration in different European countries. Given that a comparative approach has been proven useful in migration research (Bloemraad, 2013) and other fields, it can also be helpful in investigating the topic of refugee integration.

The article is structured as following: the first section presents the theoretical framework as the basis of the article; the second part describes the methodology and its limitations; the third and final part is devoted to the results and discussion.

Theoretical Overview

A brief overview of the overarching concept of immigrant integration, within which lies a discussion of their economic inclusion, is due. In recent decades, this term has

acquired a lot of popularity among migration scientists and politicians. The concept has been widely used and interpreted in various ways (Castles, *et al.*, 2002). Not all controversies and debates have been resolved, but most of the scholars (Ager and Strang, 2004; Bakker, Dagevos and Engbersen, 2014; Phillimore, *et al.*, 2006) agree that integration can be described by the following statements: (1) integration is a two-way process that involves the receiving societies and immigrating individuals; (2) integration starts upon arrival of the newcomers; and (3) integration is complex and multidimensional.

The dimensions, or areas, of integration have been described with different degrees of detail. The most cited theoretical framework of immigrant integration was developed by Ager and Strang (2004, 2008). According to them, integration can be described by four domains ordered in the shape of an upside-down pyramid: (1) Foundation: rights and citizenship; (2) Facilitators: language, cultural knowledge, plus, safety and stability; (3) Social connections; (4) Markers and Means: employment, along with housing, education and health, is part of the fourth domain, which represents socio-economic indicators of the immigrants' position in society. Advancement in one of the areas can facilitate progress in other areas, this is why these elements are also called means of integration.

An alternative distinction of the dimensions was suggested by Esser (2004), who broke down the integration process into: (1) *Kulturation*; (2) *Plazierung* (socio-economic achievements); (3) *Interaktion* (social connections); (4) *Identifikation* (emotional link with the host country).

Another conceptual framework has been generated by Juzwaik and colleagues (2014), who on the basis of policy-oriented literature identified five main domains, within which integration is fulfilled: (1) social; (2) cultural and religious; (3) economic; (4) legal and (5) political.

Others, such as Da Lomba (2010), made it simpler, stating that integration can be divided into two main spheres: (1) social and legal (socio-economic status and legal framework); (2) private (personal perceptions of integration).

The economic aspect is never left out of these x-rays of immigrant integration, in fact it is one of the most researched ones (Ager and Strang, 2008), however, not in relation to forced migrants. Refugees are distinguished from labour migrants because their reasons for migration are not considered to be economic in the first place. Yet, once they arrive in the country of asylum, the need to secure a stable source of income becomes vitally important for them. That is why in this article the focus is specifically on the integration of refugees into the economic sphere. On the one hand, a job is a means to sustain oneself and ones' family, on the other hand, work is a part of an individual's identity – a component of self-definition.

Several researchers (Bloch, 2000; Coussey, 2000; Phillimore, *et al.*, 2006) claim that employment is a priority for refugees, since it helps them to achieve self-sufficiency

(Haines, 1988) and to become independent from the state's financial help (Juzwaik, McGregor and Siegel, 2014). Ager and Strang (2008), highlight that refugees can also advance in other spheres of the integration process through employment: learn the language, establish networks with the locals, regain self-confidence and a sense of stability. However, the relationships between these aspects of integration can also be reversed. Language, networks and cultural competencies have been proven to positively influence one's employability (Cheung and Phillimore, 2014).

It is generally claimed that integration is finished (and seen as successful), when the integrating groups achieve an equal socio-economic position with the wider host communities (Ager and Strang, 2004; Phillimore and Goodson, 2006). Besides, many integration programmes in the EU guide immigrants (especially poor ones) towards cultural assimilation (Carrera, 2006). In this article, the focus is on the economic side of the integration process, not forgetting that these outcomes may be mediated by other dimensions too.

The concepts of economic integration and labour market integration are usually used as synonyms in the literature. They are conceptualized in terms of (un)employment rates (Colic-Peisker, 2008), log earnings (Edin, Fredriksson and Aslund, 2004), labour market participation (Bevelander and Lundh, 2007) and skills mismatch, which can also be called underemployment (Krahn, *et al.*, 2000) or overqualification (Capps and Newland, 2015; Cheung and Phillimore, 2014; Haines, 1988). Overqualification is regarded as waste of human capital by some researchers (Krahn, *et al.*, 2000). Other aspects of economic integration described in the literature are levels of idleness (Edin, Fredriksson and Aslund, 2004) and number of people receiving welfare benefits (Hohm, Sargent and Moser, 1999). In the studies on integration of labour immigrants, these indicators are compared with those of the natives, but such a comparison has rarely been made in the studies on refugees. In this article, integration success is measured in terms of differences between the economic indicators of natives and of refugees. If this comparison is absent, we are not talking about integration, but rather about labour market performance.

Theories and empirical studies on this topic emphasise that the integration process is shaped by both individual and institutional factors. The personal characteristics influencing economic success and the integration of refugees are: (1) motivation, aspirations and personal character (Mestheneos and Ioannidi, 2002); (2) gender and cultural norms related to it (Allen, 2009); (3) education level and qualifications (Bloch, 2008); (4) host country's language proficiency (Bloch, 2000); (5) ethnic and cultural visibility (Colic-Peisker, 2008); and (6) psychological health (Bakker, Dagevos and Engbersen, 2014).

Besides individual characteristics, there are structural factors shaping the economic integration of refugees. These are the features of the host societies or of the policy environment. Individuals find themselves in circumstances that they cannot

change, and these circumstances can impact favourably or unfavourably their life and work trajectories. They are: (1) racism and institutionalized racism (Mestheneos and Ioannidi, 2002); (2) length of stay on asylum residences (Bakker, Dagevos and Engbersen, 2014); (3) access to official labour market (Bhattacharjee, 2013); (4) access to secure residence status (*i.e.* refugee status, citizenship); (5) recognition of pre-migration qualifications and degrees (Bloch, 2000); (6) settlement policy of the state (Wright and McKay, 2008); (7) labour market structure and strength of economy (OECD, 2015); and (8) generosity of welfare benefits and welfare state structure (Rosholm and Vejlin, 2010; Tress, 1998).

The impact of individual factors on labour market integration of refugees, has been researched in more detail than the impact of structural factors (Mulvey, 2015). Although it is acknowledged that both of these levels jointly shape the integration process, it is difficult to trace and test these complex interaction patterns on the available data, due to the variety of policy and economic conditions, as well as diversity of migrant populations across societies. Hence, a good comparative account of the economic integration of refugees is lacking, because the research in this field largely consists of single-country case studies that are not comparable either across time, or across countries. This lack of knowledge is one of the reasons that members of the public and of populist right-wing parties, are able to claim that refugees do not integrate, or integrate badly, due to their individual characteristics. In this article, the outcomes of economic integration of refugees in several European countries in 2008 are presented, with the aim of determining if there are any institutional driving forces behind the differences in level of integration.

The first reason for the different economic integration outcomes may concern the nature of welfare systems (Esping-Andersen, 1990). It is suggested that in a liberal welfare system "characterized by high labour market flexibility, weak industrial relations and market-based social insurance", immigrants are less prone to unemployment, than in the countries with socio-democratic welfare systems and "more rigid labour markets with high labour costs and either employer-based or universal social insurance" (Reyneri and Fullin, 2011, pp. 38-39).

The availability of informal employment opportunities in the lower occupational sector, is also considered a facilitator of employment for refugees. It must be noted however, that although the informal economy may provide jobs for immigrants, it does not offer good and stable jobs (Ballarino and Panichella, 2015).

Several European countries with different types of welfare system are analysed (see Table 1): Scandinavian, Continental European Socio-Democratic, Liberal Anglo-Saxon and Southern-European. The expectation is that greater equality between the natives and refugees will be observed in an Anglo-Saxon welfare state model. In the Scandinavian and Continental welfare models the employment gap will be higher, because with the high level of welfare support people can afford not to work. But it

is expected that less difference will be found in the skill mismatch: highly skilled refugees have less pressure to find any job, and they try to find jobs suitable to their qualifications, even if it requires more time.

Table 1 – List of countries and welfare systems

Country	Welfare State Type
Sweden	Scandinavian
Norway	
Netherlands	Socio-democratic (corporatist)
Switzerland	
Germany	
Austria	
Greece	Southern European with informal labour market
United Kingdom	Liberal

The second institutional factor that it is considered is the policy 'attitude' towards immigrants. Studies highlight that institutional racism and public xenophobia influence the employment integration of all immigrants negatively (Colic-Peisker, 2008). The policy direction taken by a government may fall in line with public opinion (Facchini and Mayda, 2010) or even shape it (Mulvey, 2015). Thus, with a more restrictive policy change, the growing suspicion towards immigrants undermines equal treatment and negatively affects their labour market integration outcomes.

So, the hypothesis is that if the policy changes have been restrictive for some years this may have undermined the integration of refugees. On the contrary, in the countries where the policy has become less restrictive, the refugees are better integrated and their economic outcomes are more equal with the locals.

Data and Methodology

The data set of the European Union Labour Force Survey (EU-LFS), Ad-hoc module on migration 2008[1] is used in this paper. This is a unique cross-country survey that includes both natives and migrants, and allows for a distinction to be made between types of immigration. Another advantage of using this dataset, is that the impact of the economic crisis on employment rates had not yet been felt at the time of the survey. According to Eurostat (2016), the strongest impact on the labour market took place in 2009.

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1   This survey was conducted in 33 countries of Europe with translated questionnaires, covering individuals in private households. Various methods of data collection were used: face-to-face interviews, self-administered survey and telephone interviews. In most of the countries multi--staged stratified random sample design was used. The data has been fully available since 2013.

Below, the operationalization of the outcomes of economic integration and the application of the logistic regression, is presented. Then the three categories of migration are defined, and the differences between them are explored. At the end of this section, the descriptive statistics of the data and its limitations are shown.

As was mentioned earlier, the concept of economic integration is usually operationalized in terms of equal employment opportunities, quality of jobs, underemployment and independence from state financial support. To provide a good basis for both intergroup and intercountry comparison, economic integration was operationalised through the indicators of relative difference: (1) gap in probabilities of employment; (2) gap in probabilities of having a higher skilled job; and (3) gap in probabilities of being overqualified for the occupation.

If the differences between refugees and natives are small, then there is more equality, so the integration can be claimed to be more successful in this case. The employment rates for the natives (as well as their quality of jobs) vary from country to country, but if we take the native employment levels as an average mainstream level that the newcomers are expected to achieve, then we can compare the differences between these key groups, in order to estimate in which countries those differences are smaller and where they are larger.

To evaluate the differences while controlling for the individual characteristics, binary logistic regression models are used. Country binary variables are included in each model as interaction terms with the migrant's category. Conceptually, that means that the difference in the effects of being a humanitarian migrant (or a migrant) in each country is estimated, using the indicator of economic integration. Thus, it is possible to evaluate whether those differences are statistically significant for each migrant category and across the countries.

The dependent variables are listed below:

(1) *Employment* is operationalized using the standard International Labour Organization definition. The inactive population is not included in the analysis.

(2) *Quality of jobs* is evaluated according to the International Standard Classification of Occupations (International Labour Organization, 2012). Higher skilled jobs are defined as those below the score 500, lower skilled jobs – 500 and above.

(3) *Overqualification* is defined as occupation-education mismatch, when an individual has a higher level of education than the employees on the same position typically have in a given country.

The individual characteristics influencing labour market integration have been listed in the theoretical part of the article. The following control variables were included in the logistic regression models: level of education, gender, age, language proficiency and length of residence in the host country. If the gaps in employment indicators are only due to the differences between the individual characteristics of the migrant and native groups, the effects of belonging to a certain migrant category should not be statistically significant.

The population categories are defined on the basis of the region of birth and the reason for migration[2]:

(1) *Natives* are operationalized as individuals, who are born in the country of analysis and have not migrated.

(2) *Non-EU migrants* are those, who are born in other countries (not in the European Union (EU) nor in the countries of European Free Trade Association (EFTA)[3]) and migrate for various reasons.

(3) *Refugees* are those, who are born in other countries, not in the EU or EFTA, and whose main reason for migration is international protection[4].

Individuals, whose country of birth is missing, are coded as "stateless/unknown". They are put in one of the two migrant categories on the basis of their main reason for migration. EU migrants are not included in the analysis.

Due to very uneven samples of different migrant categories in the data set, it was decided to split the analysis into two stages: stage 1 – native population is compared with all non-EU migrants; and stage 2 – refugees are compared with all other types of migrants.

Visually, the comparison is presented in Figure 1.

Figure 1 – Visualization of migration categories
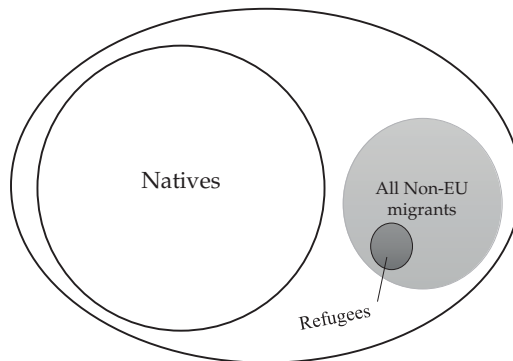
Since the EU-LFS Survey is not specifically designed to sample refugees, not all the countries have enough observations in this category. Only those countries where at least 100 individuals were surveyed have been selected: Austria (AT), Germany

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2   Except for Germany, see Annex for further explanation.
3   The European Free Trade Association (EFTA) is an intergovernmental organisation set up for the promotion of free trade and economic integration to the benefit of its four Member States: Iceland, Liechtenstein, Norway, and Switzerland. Available at http://www.efta.int/.
4   In the data set there is no information on the type of residence permits and legal statuses the individuals have or had before.

(DE), Greece (GR), Netherlands (NL), Norway (NO), Switzerland (CH), Sweden (SE) and the United Kingdom (UK).

Due to the small samples of refugees, it is not possible to control for the differences caused by the ethnic origin of migrants. However, it is acknowledged that the difference in integration success across countries may be caused by cultural (dis)similarity of refugees with the natives. Many individuals who are categorized as migrants, by 2008 have acquired citizenship of the country of residence. The effect of citizenship status on migrant economic integration, has not been shown to be significant, and was therefore excluded from further models. In addition, the cross-sectional data does not provide the full picture of integration. Longitudinal data is needed to better explore the process of economic adaptation of refugees. Unfortunately, such studies are extremely rare. The migrant categories in my analysis are defined on the basis of the reasons for migration. The information about the type of residence permits, if available, would have been very helpful to distinguish refugees from other types of migrants more accurately.

Description of the Data Set

Table 2 below, shows that in all the countries of analysis the employment rates of non-EU migrants are lower than those of the natives (91% against 96%), the percentage of individuals employed in 'good' jobs is also lower (39% against 56%), moreover, the percentage of overqualified people is larger (26% against 19%). Regarding individual characteristics, the average age of non-EU migrants in the sample is around 38,5 years, while the natives are slightly older – 40,5 years. The migrants sub-sample contains 2% fewer female respondents than that of the natives. In terms of education level, migrants have a larger percentage of individuals with a lower secondary education and a smaller proportion of individuals with a tertiary level of education.

Table 2 – Data overview for the stage 1 of the analysis

Stage 1	Variables	Natives		All non-EU Migrants	
		N	Mean	N	Mean
Dependent	Employed	232.888	0,96	21.532	0,91
	Good jobs	223.633	0,56	19.601	0,39
	Overeducated	182.840	0,19	16.089	0,26
Control variable	Age	232.888	40,48 (12,67)	21.532	38,48 (11,05)
	Female (sex)	232.888	0,47	21.532	0,45
	Education				
	Lower secondary education	232.364	0,22	21.410	0,34
	Upper secondary education	232.364	0,49	21.410	0,40
	Third level education	232.364	0,29	21.410	0,26

In the second stage of comparison a regression was run on the sub-samples of refugees and all other types of migrants. In Table 3, it can be seen that refugees have lower employment rates (87%) than other migrants (91%). Less are employed in "better jobs" (27%) compared to (40%) among other migrant categories A higher number of refugees are employed below their level of educational attainment (30% compared to 26%). This group of migrants is a bit older than the rest; the average age is between 41-42 years, while for other migrants it is 38 years. There are significantly less females among refugees (34%), other migrants' categories have more balanced gender distribution (47%). Interestingly, the educational level of the two groups is very similar, there are just 2% fewer refugees with university degrees than the others.

Table 3 – Data overview for stage 2 of the analysis

Stage 2	Variables	Refugees		Other Migrants	
		N	Mean	N	Mean
Dependent	Employed	2.131	0,87	19.401	0,91
	Good jobs	1.858	0,27	17.743	0,40
	Overeducated	1.590	0,30	14.499	0,26
Control variable	Age	2.131	41,76 (9,19)	19.401	38,12 (11,19)
	Female (sex)	2.131	0,34	19.401	0,47
	Education				
	Lower secondary education	2.115	0,34	19.295	0,34
	Upper secondary education	2.115	0,41	19.295	0,40
	Third level education	2.115	0,25	19.295	0,27
	Language profficiency (LP)				
	No need to improve LP	2.131	0,63	19.401	0,61
	Need to improve LP	2.131	0,31	19.401	0,23
	N/A language	2.131	0,05	19.401	0,16
	Years of residence	2.131	14,17 (6,89)	19.286	17,09 (12,14)

Results and Discussion

This section presents the results for the three indicators of economic integration: employment, quality of jobs and overqualification. Reporting the findings for each indicator. It starts with a description of the differences between the natives and all the non-EU migrants (stage 1), then continues presenting the comparison between the refugees and all other migrants (stage 2), finally these differences are summarised and conclusions are drawn based on the gaps observed between the natives and refugees in the countries of study. The discussion section summarizes the inter-country differences between the levels of economic integration and investigates the linkages with the institutional causes: type of welfare system and immigration policy change.

Employment

Stage 1: All migrants compared to natives

A significant level of influence is observed in all of the control variables. Lower levels of education correlate with a decrease in probability of employment by 103% for individuals with lower secondary education, and by 50% for those with upper secondary education. Women's probability of being employed is 23% lower than that of men. With age the employment chances increase by 4% each 5 years (Table 4).

Compared to the natives, migrants experience an employment penalty[5] in all of the countries except Greece. In six countries, the decrease in the probability of employment for migrants is statistically significant, and only in the UK it is not. The statistically significant decrease ranges from 83% in Austria, up to 150% in Sweden. The differences between the countries are not always significant. Whilst in Greece and the UK the chances of employment are more equal for the natives and all migrants, in Austria, Germany, the Netherlands, Norway and Switzerland the gaps are larger, and in Sweden the gap is statistically the largest of all the countries (Table 5).

Table 4 – Stage 1 (employment)

Control Variables	Coefficient B	
Lower secondary education	-1,03	***
Upper secondary education	-0,52	***
Female	-0,23	***
Age	0,04	***
*** significant at 0,01 confidence level		

Table 5 – Stage 1 (difference in probability of employment)

Natives *vs* All Migrants		
Countries	Coefficient B	
Austria	-0,83	***
Switzerland	-1,11	***
Germany	-0,87	***
Greece	0,24	
Netherlands	-1,00	***
Norway	-1,01	***
Sweden	-1,51	***
United Kingdom	-0,53	
*** significant at 0,01 confidence level; ** significant 0,05; * significant 0,1		

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5   Decrease in the probability of being employed.

Stage 2: Refugees compared to other migrants

For the second stage of the analysis, only migrant populations are compared. Refugees are contrasted with other types of non-EU migrants. Here too the control variables for personal characteristics indicate a statistically significant effect (Table 6). In the same way as in the first stage of analysis, lower levels of education decrease the chances of being employed (65% for lower secondary education, 29% for upper secondary education). Migrant women have a 30% lower chance of being employed than migrant men, which is higher than in the sample overall. The effect of age is less pronounced: an increase of 5 years gives a 1% of increase in employment chances.

Refugees have lower chances of being employed than other types of migrants (Table 7). Only in Norway do the results show a 30% increase in the probability of employment, but this increase is not statistically significant. In Sweden, Switzerland and Austria, the likelihood of refugees being employed is similar to that of other migrants: although the gaps are negative, they are not statistically significant. A more pronounced decrease in employment chances for refugees is observed in the Netherlands, Greece and Germany (between 45%-57%). The largest disparity is found in the UK, where the chance of refugees being employed is 100% lower than the chances of other migrants being employed.

Table 6 – Stage 2 (Employment)

Control Variables	Coefficient B	
Lower secondary education	-0,65	***
Upper secondary education	-0,29	***
Female	-0,30	***
Age	0,01	***
Need to improve language	-0,60	***
N/A language	-0,50	***
Years of residence	0,02	***
*** significant at 0,01 confidence level		

Table 7 – Stage 2 (difference in probability of employment)

Refugees *vs* Other Migrants		
Countries	Coefficient B	
Austria	-0,21	
Switzerland	-0,19	
Germany	-0,57	***
Greece	-0,46	*
Netherlands	-0,45	**
Norway	0,30	
Sweden	-0,03	
United Kingdom	-1,09	***
*** significant at 0,01 confidence level; ** significant 0,05; * significant 0,1		

Final Estimation

Figure 2, presents the concluding estimates of the likelihood of being employed for refugees, compared to natives. The black line shows the joint decrease and the shades of the bars show how much of the decrease is produced by the first or the second stage of comparison.

In Greece, the chances of employment are the most equal between refugees and natives. This is followed by Norway and Austria, where the chances are somewhat lower. In all other countries the chances of refugees being employed, are much lower than of the natives. In both Sweden and the UK refugees have very low chances of employment, but whilst in Sweden their chances are similar to those of other migrants, in the UK they do much worse than other migrants. These differences might be the product of different policy conditions in these two countries, or of some unobserved personal characteristics. A similar trend is found in Germany and the Netherlands, where the negative effect adds up for the humanitarian subcategory of migrants.

On the contrary, in Norway refugees have better chances of being employed than other migrants. This could be due to preferential treatment of refugees by state policy.

Figure 2 – Accumulated decrease in probabilities to be employed
for Humanitarian migrants compared to Natives
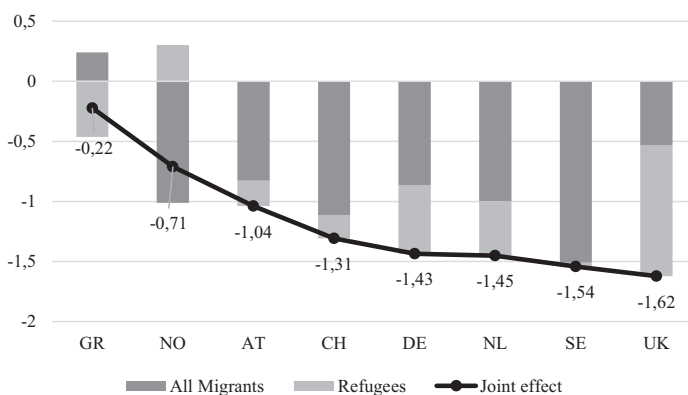
Quality of Jobs

Stage 1: All migrants compared to natives

This model was run on the sample of employed population. All the control variables of the model are significant (Table 8). Individuals with secondary education are 312% – 208% less likely to be employed in better jobs. Females are 74% more likely

to be employed in highly skilled occupations than men. With age, the probability of having a better job increases by 2%. Those working part-time are 56% less likely to have good quality jobs.

Overall, migrants show the tendency to have lower chances of employment in good quality jobs than natives (Table 9). This decrease is more pronounced in Austria (-134%) and Greece (-212%), while in the UK the chances are only 16% lower. A larger gap is observed in the Netherlands and Norway, followed by Sweden, Germany and Switzerland. The estimates of the probability decrease in those countries vary by around 95%.

Table 8 – Stage 1 (quality of jobs)

Control variables	Coefficient B	
Lower secondary education	-3,12	***
Upper secondary education	-2,08	***
Female	0,74	***
Age	0,02	***
Part-time	-0,56	***
*** significant at 0,01 confidence level		

Table 9 – Stage 1 (difference in probability to have a quality job)

Natives *vs* All Migrants		
Countries	Coefficient B	
Austria	-1,34	***
Switzerland	-0,98	***
Germany	-0,94	***
Greece	-2,12	***
Netherlands	-0,63	***
Norway	-0,69	***
Sweden	-0,91	***
United Kingdom	-0,16	***
*** significant at 0,01 confidence level		

Stage 2: Refugees compared to other migrants

All of the control variables are also significant for the stage 2 analysis (Table 10). The less educated migrants tend to have much lower chances of ending up in good quality jobs, than the highly educated migrants. Contrary to the population in the stage 1 analysis (where the sample is dominated by natives), older migrants tend to have less chance of being employed in higher skilled jobs than younger ones do.

The probability decreases by 1% for each 5 years of age. However, the years of residence have a positive effect on the probability of having a good job, this effect is even stronger than the one for age. For each year of residence there is 3% increase in the chances of employment. Migrants who stated that they needed to improve their knowledge of the language, were 58% less likely to be employed in a higher skilled job.

In the Netherlands, refugees experience the most pronounced decrease in the probability of having quality employment, their chances are 62% lower than those of all other non-EU migrants (Table 11). Also in Sweden and Switzerland, the chances of refugees being employed in better jobs are around 40% lower than those of other non-EU migrants. In other countries the gap between these groups is not statistically significant, meaning that refugees are on the same level as other types of migrants (given the equal individual characteristics).

Table 10 – Stage 2 (quality of jobs)

Control Variables	Coefficient B	
Lower secondary education	-2,91	***
Upper secondary education	-1,87	***
Female	0,34	***
Age	-0,01	***
Need to improve language	-0,58	***
N/A language	-0,22	***
Years of residence	0,03	***
*** significant at 0,01 confidence level		

Table 11 – Stage 2 (difference in probability to have a quality job)

Refugees *vs* Other Migrants		
Countries	Coefficient B	
Austria	-0,32	
Switzerland	-0,40	**
Germany	-0,12	
Greece	0,12	
Netherlands	-0,62	***
Norway	-0,30	
Sweden	-0,39	**
United Kingdom	-0,19	
*** significant at 0,01 confidence level; ** significant 0,05; * significant 0,1		

Final Estimation

The UK has the smallest gap between the probabilities of refugees having a higher skilled occupation, when compared to natives (Figure 3). Norway, Germany, the Netherlands and Sweden are approximately on the same level (100% – 138% probability decrease). In Austria and Greece, the gap between the chances of the natives and the refugees having a good quality job is the largest of all the countries (-166% and –200% respectively).

Figure 3 – Accumulated decrease in probabilities to have a good job for refugees compared to natives
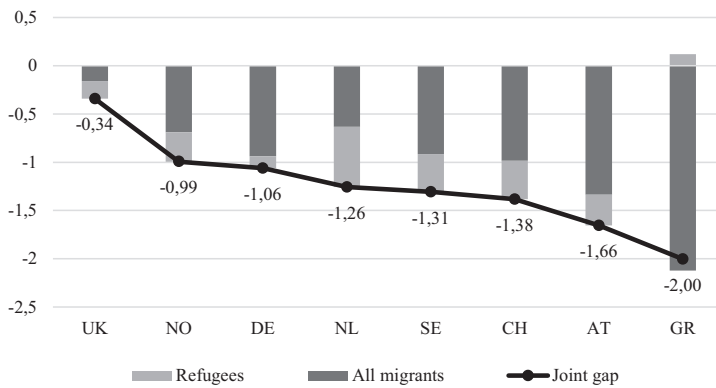
Overqualification

Stage 1: All migrants compared to natives

There are only two control variables left for this model (Table 12), since the education variable was the basis for the dependant variable. Women tend to have 12% less probability of being overqualified for their jobs. With age the tendency decreases but just 0,3%.

The largest gap in overqualification probabilities between natives and all migrants is observed in Sweden (103%) and Norway (92%). In Greece and the Netherlands the chances of being overqualified are more equal; the likelihood of migrants working in jobs below their qualification level is around 23-26% higher than for the natives (Table 13).

Table 12 – Stage 1 (overqualification)

Control variables	Coefficient B	
Female	-0,12	***
Age	-0,003	***
*** significant at 0,01 confidence level		

Table 13 – Stage 1 (difference in probability to be overqualified)

Natives *vs* All Migrants		
Countries	Coefficient B	
Austria	0,41	***
Switzerland	0,34	***
Germany	0,50	***
Greece	0,23	***
Netherlands	0,26	***
Norway	1,03	***
Sweden	0,36	***
United Kingdom	0,92	***
*** significant at 0,01 confidence level		

Stage 2: Refugees compared to other migrants

For the second stage of comparison, the chances of being overqualified for refugees were only found to be significantly higher than for other migrants (62%) in Germany. This means that more highly skilled refugees are employed in jobs that require lower levels of qualifications than those that they have (Table 15).

In other countries, the differences still exist but they are not statistically significant. Most of the difference is explained by gender, age, years of residence in the country and knowledge of the language (Table 14). Individuals, who stated that their language proficiency needs to be improved, are 21% more likely to be overqualified for their jobs. In addition, women are 17% more likely than men to be overqualified for their occupations.

Table 14 – Stage 2 (overqualification)

Control Variables	Coefficient B	
Female	0,17	***
Age	0,03	***
Need to improve lang	0,21	***
N/A language	0,28	***
Years of residence	-0,03	***
*** significant at 0,01 confidence level.		

Table 15 – Stage 2 (difference in probabilities to be overqualified)

Refugees *vs* Other Migrants		
Countries	Coefficient B	
Austria	0,15	
Switzerland	0,06	
Germany	0,62	**
Greece	0,20	
Netherlands	0,20	
Norway	-0,04	
Sweden	-0,27	
United Kingdom	-0,03	
*** significant at 0,01 confidence level; ** at 0,05 confidence level		

Final Estimation

In Figure 4, the summed gaps in probabilities for overqualification and the differences across countries can be seen. In the UK, the gap in the chance of being overqualified between refugees and natives is the smallest. In Switzerland, Greece, the Netherlands and Austria this gap is higher, with chances of overqualification between 40%-55%. The largest gap is observed in Norway, Sweden and Germany. While in Norway and Sweden the gap is mostly due to the fact that individuals were non-EU migrants, in Germany approximately half of the penalty is produced by the fact that the migrants were humanitarian, they tend to be overqualified for their jobs more often than others.

Figure 4 – Accumulated increase in probabilities to be overqualified for refugees compared to natives
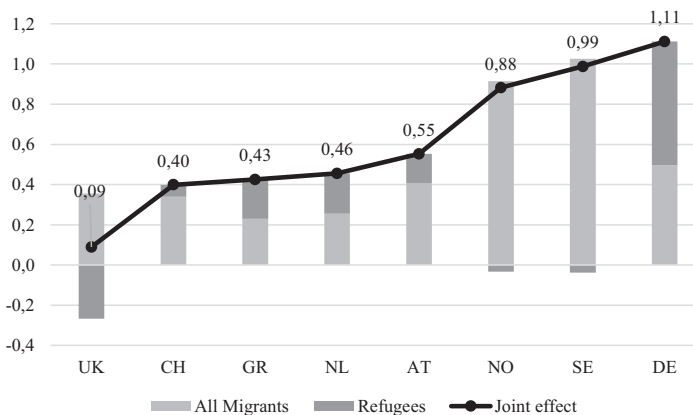
Discussion

The labour market situation of refugees compared to natives is not equal in all of the countries studied (Table 16 and Figure 5). In Greece, the employment gap is the smallest, which corresponds to my initial expectation that welfare systems with few protections and a big share of informal labour market, facilitate the employment of refugees. This result is also confirmed in other Southern European countries (Ambrosini, 2011). The quality of this employment, however, is not so good. In comparison to natives, refugees are employed in the lower skilled sector. In contrast to expectations, in a liberal welfare model (the UK) refugees were at a much higher risk of unemployment when compared to natives. However, those who worked, were less disadvantaged than in other countries in terms of quality of jobs and risk of overqualification.

Table 16 – Indicators of economic integration and welfare systems

Country	Type of Welfare State	Gap EMPL		Gap QJ		Gap OVERQ	
Austria	Southern European	○	-0,22	●	-2,00	◑	0,43
Switzerland	Socio-democratic	◑	-1,04	●	-1,66	◑	0,55
Germany	Socio-democratic	●	-1,31	◑	-1,38	◑	0,40
Greece	Socio-democratic	●	-1,45	◑	-1,26	◑	0,46
Netherlands	Socio-democratic	●	-1,43	◑	-1,06	●	1,11
Norway	Scandinavian	●	-1,54	◑	-1,31	●	0,99
Sweden	Scandinavian	◑	-0,71	◑	-0,99	●	0,88
United Kingdom	Liberal	●	-1,62	○	-0,34	○	0,09
Note: white circles represent the smallest gap, black - the highest gap, grey - the medium gap							

The countries with a socio-democratic welfare model have similar integration results. Refugees who live in Switzerland, Netherlands, Germany and Austria tend to be at a higher risk of unemployment than the natives. Only in Austria are the differences in employment probabilities relatively lower. However, the chances of the refugees being employed in worse jobs than the natives is higher in Austria than in the other countries of this group. In Switzerland and the Netherlands, the economic integration of refugees is very similar: the gaps for having a quality job and being overqualified are moderately large. In Germany, refugees experience a much higher risk of being underemployed.

Figure 5 – Map of economic integration of refugees
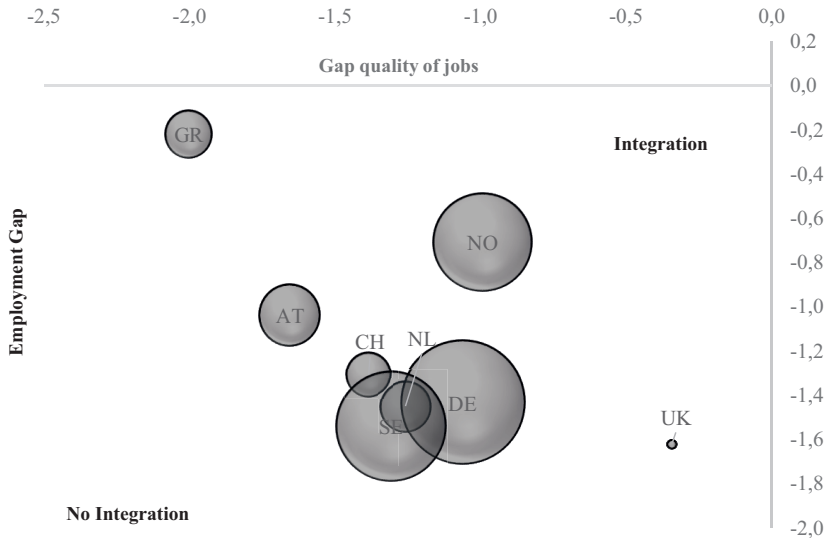
Norway and Sweden turn out to be more different in their integration outcomes than expected. The employment gap between the natives and refugees is smaller in Norway, and their chances of being employed in quality jobs is less unequal than in Sweden. However, both countries have a very large difference in the chances of being overqualified for the occupation, meaning that far fewer natives hold qualifications above the level required in their jobs, than refugees. The expectation that in coordinated welfare systems refugees will have a larger gap in probabilities of employment than in a liberal welfare system is not confirmed.

The Policy Change

The populations of refugees observed in the sample immigrated between 1960 and 2008. Using the DEMIG POLICY (2015) data base, an estimation[6] was made of

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6   The DEMIG POLICY data base contains all the policy changes observed in the countries under analysis. There are variable on the direction of change: (-1 less restrictive; 0 – no change in restrictiveness; +1 more restrictive); variable on the level of change (1. fine-tuning; 2. minor change; 3. mid-level change; 4. major change). It was created an indicator combining the direction of change and the level of change. Summing up this values, it was obtained an estimation of how much and to which direction the policy of each country has changed since 1960. The

the policy changes that occurred in the countries of study during that time period. The data base contains the policy changes targeted at all migrants and specifically at refugees. Those changes are assessed by their scale (minor – medium – large) and direction (more restrictive/less restrictive). Summing up all of the changes weighted on the scale, the estimation of the policy changes displayed in Figure 7 was calculated. It is visible on the chart that the UK and Norwegian policy became more restrictive throughout the years. Swedish and German policy, on the contrary, became less restrictive. The policy of the other countries showed little change.

Figure 6 – Policy change in the countries in the period from 1960 – till 2008
(above 0 – more restrictive, below 0 less restrictive)
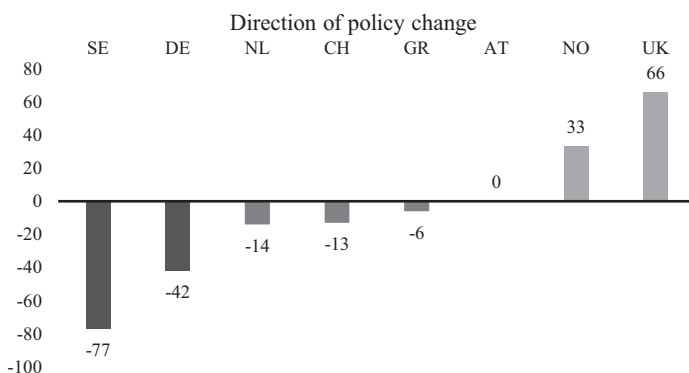
Source: DEMIG POLICY data base, author's calculations.

Looking at Table 17, it can be concluded that the hypothesised link between the direction of policy change and the economic integration of refugees, is non-existent. In some cases the results indicate a relationship opposite from the one expected. Sweden experienced a shift towards less restrictive integration policy, however, the employment gap in this country is large, meanwhile in Norway, where the policy became more restrictive, the gap is moderate and less than in Sweden. The trend in the UK goes in line with the expectation, the policies of the country became more restrictive and the employment gap between refugees and the natives is the highest of all the countries.

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less is the value of this indicator – the less restrictive has its policy became, if the value is more positive – the policy has become more restrictive in that period of time.

Table 17 – Policy change and the indicators of economic integration

Countries	Policy Change	Gap EMPL		Gap QJ		Gap OVERQ	
Sweden	-77	●	-1,54	○	-1,31	●	0,99
Germany	-42	●	-1,43	○	-1,06	●	1,11
Netherlands	-14	●	-1,45	○	-1,26	○	0,46
Switzerland	-13	●	-1,31	○	-1,38	○	0,40
Greece	-6	○	-0,22	●	-2,00	○	0,43
Austria	0	○	-1,04	●	-1,66	○	0,55
Norway	33	○	-0,71	○	-0,99	●	0,88
United Kingdom	66	●	-1,62	○	-0,34	○	0,09
Note: white circles represent the smallest gap, black - the highest gap, grey - the medium gap							

Source: Final estimates of probability gaps from the Figures 2, 3 and 4 above.

Conclusion

In this article, the differences in the economic integration of refugees in eight European countries were investigated, on the basis of the EU-LFS dataset from 2008. The study re-confirmed previous findings that individual characteristics, such as age, gender, level of education, years of residence in the country and knowledge of the host country's language, influence economic integration for all types of migrants, including those coming for humanitarian reasons.

Women have lower employment chances than men in both samples, but among the migrants this gap is more pronounced. They are also at greater risk of being overqualified for their occupations. This might be due to the traditional values that are widely spread in non-European societies that prescribe to males the role of breadwinner, and females the role of caring for the home and children. However, women have higher chances than men of working in higher skilled jobs. Lower levels of education contribute to disadvantages in the labour market. Individuals with secondary education are more at risk of unemployment and have higher chances of being employed in lower skilled jobs. Language proficiency and length of settlement are also crucial factors for migrants to achieve greater equality in the labour market.

In the country level comparison, the study revealed that refugees integrate into the labour market differently in the eight European countries. Full economic integration across all three indicators is not observed in any of the countries, nor is there a country in which the refugees are especially strongly disadvantaged in all three dimensions. Greece and the United Kingdom represent cases with opposite integration outcomes, with Norway and Austria in between the poles. Refugees in the UK have a large employment gap with the natives, but equal chances of having a "good job" that fits their education level. In Greece it is the opposite, the

employment gap between natives and refugees is small, however, the quality of jobs is much lower, with a medium overqualification risk. In Norway, the difference in employment chances between natives and refugees is the second smallest after Greece, the quality of economic integration is hindered by the large overqualification risks and moderate gap in chances of having a good job. In Austria, the labour market disadvantage of refugees is larger than in Norway in terms of both employment opportunities and quality of work, but less difference is observed in the overqualification probabilities. Other countries – Sweden, the Netherlands, Germany and Switzerland – reveal very similar outcomes of economic integration for refugees. All of them demonstrate pronounced employment gaps and moderate gaps in the quality of jobs. Switzerland and the Netherlands have smaller overqualification gaps than Germany and Sweden.

The measure of the restrictiveness of change in the countries' immigration policy, did not provide meaningful explanation for the differences in economic integration. A partial explanation can be drawn from the differences in welfare systems and labour market structure. The UK (liberal welfare system) and Greece (informal labour market, Southern European welfare system) stand out among other countries with more rigid socio-democratic welfare types. A liberal welfare state does not seem to facilitate the employment chances of refugees, but it does offer a higher quality of employment based on the recognition of skills. The informal economy works better to bring refugees to work, but it pushes them to the lower edge of the occupational ladder. The initial expectation that the economic integration of refugees will be similar in the two Scandinavian countries, has been proven wrong. The economic integration of refugees is more successful in Norway than in Sweden.

More research is needed to understand the reasons behind these differences. Maybe the integration policies in some countries were more effective in facilitating economic inclusion of asylum seekers and refugees. It may also be helpful to estimate the restrictiveness of immigration policies across the countries, and find a pattern comparing more and less restrictive countries. Migration scholars need more refined cross-national samples, with higher shares of refugees surveyed. Having a data set with information on the type of residence permits and precise countries of origin, would improve the accuracy of inter-group comparisons within the countries and between them.

References

Ager, A. and Strang, A., 2004. *Indicators of integration: Final report*. Home Office Development and Practice Report n.º 28. London: Home Office.

Ager, A. and Strang, A., 2008. Understanding Integration: A Conceptual Framework. *Journal of Refugee Studies*, 21(2), pp. 166-191.

Allen, R., 2009. Benefit or Burden? Social Capital, Gender, and the Economic Adaptation of Refugees. *International Migration Review*, 43(2), pp. 332-365.

Ambrosini, M., 2011. Immigration in Italy: Between Economic Acceptance and Political Rejection. *Journal of International Migration and Integration*, 14 (1), pp. 175-194.

Bakker, L.; Dagevos, J. and Engbersen, G., 2014. The Importance of Resources and Security in the Socio-Economic Integration of Refugees: A Study on the Impact of Length of Stay in Asylum Accommodation and Residence Status on Socio-Economic Integration for the Four Largest Refugee Groups in the Netherlands. *Journal of International Migration and Integration*, 15(3), pp. 431-448.

Ballarino, G. and Panichella, N., 2015. The Occupational Integration of Male Migrants in Western European Countries: Assimilation or Persistent Disadvantage? *International Migration*, 53(2), pp. 338-352.

Bevelander, P. and Lundh, C., 2007. *Employment Integration of Refugees: The Influence of Local Factors on Refugee Job Opportunities in Sweden*. Discussion Paper n.º 2551.

Bhattacharjee, S., 2013. Situating the right to work in international human rights law: An agenda for the protection of refugees and asylum-seekers. *NUJS L. Rev.*, 6, p. 41.

Bloch, A., 2000. Refugee settlement in Britain: The impact of policy on participation. *Journal of Ethnic and Migration Studies*, 26(1), pp. 75-88.

Bloch, A., 2008. Refugees in the UK labour market: The conflict between economic integration and policy-led labour market restriction. *Journal of Social Policy*, 37(01), pp. 21-36.

Bloemraad, I., 2013. The promise and pitfalls of comparative research design in the study of migration. *Migration Studies*, 1(1), pp. 27-46.

Capps, R. and Newland, K., 2015. *The Integration Outcomes of U.S. Refugees: Successes and Challenges*. Washington D.C.: Migration Policy Institute.

Carrera, S., 2006. *A Comparison of Integration Programmes in EU: Trends and Weaknesses*. Brussels: Centre for European Policy Studies, Challenge Papers 1. Available at http://aei.pitt.edu/6773/1/1310_01.pdf [Accessed: 17 June 2017].

Castles, S. *et al.*, 2002. *Integration: Mapping the field*. Report of project at University of Oxford Center for Migration and Policy Research. London: Research Development and Statistics Directorate, Home Office.

Cheung, S.Y. and Phillimore, J., 2014. Refugees, Social Capital, and Labour Market Integration in the UK. *Sociology*, 48(3), pp. 518-536.

Colic-Peisker, V., 2008. "The 'Visibly Different' Refugees in the Australian Labour Market: Settlement Policies and Employemnt Realities". In: S. McKay, ed., *Refugees, Recent Migrants and Employment: Challenging Barriers and Exploring Pathways*. New York: Routledge, Taylor & Francis, pp. 67-83.

Coussey, M., 2000. *Framework of integration policies*. Strasbourg: Council of Europe Publishing.

Da Lomba, S., 2010. Legal Status and Refugee Integration: A UK Perspective. *Journal of Refugee Studies*, 23(4), pp. 415-436.

Edin, P-A.; Fredriksson, P. and Aslund, O., 2004. Settlement policies and the economic success of immigrants. *Journal of Population Economics*, 17(1), pp. 133-155.

Esping-Andersen, G., 1990. *The Three Worlds of Welfare Capitalism.* Princeton, N.J.: Princeton University Press.

Esser, H., 2004. Does the "New" Immigration Require a "New" Theory of Intergenerational Integration? 1. *International Migration Review*, 38(3), pp. 1126-1159.

Eurostat, 2008. Labour Force Survey, Ad-hoc Module 2008 Labour market situation of migrants. Released in 2013.

Eurostat, 2016. *Unemployment statistics – Statistics Explained*. Available at: http://ec.europa.eu /eurostat/statistics-explained/index.php/Unemployment_statistics [Accessed: 4 October 2016].

Facchini, G. and Mayda, A. M., 2010. "What Drives Immigration Policy? Evidence Based on a Survey of Governments' Officials". In: I. N. Gang and G. S. Epstein, eds., *Migration and culture.* (Frontiers of Economics and Globalization – Vol. 8). Bingley, U.K.: Emerald, pp. 605-648.

Haines, D. W., 1988. The Pursuit of English and Self-sufficiency: Dilemmas in Assessing Refugee Programme Effects. *Journal of Refugee Studies*, 1(3-4), pp. 195-213.

Hohm, C. F.; Sargent, P. and Moser, R., 1999. A Quantitative Comparison of the Effectiveness of Public and Private Refugee Resettlement Programs: An Evaluation of the San Diego Wilson Fish Demonstration Project. *Sociological Perspectives*, 42(4), pp. 755-763.

International Labour Organization, 2012. *International Standard Classification of Occupation: ISCO-08*. Geneva: International Labour Office, International standard classification of occupations. Available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/ ---dcomm/---publ/documents/publication/wcms_172572.pdf [Accessed: 12 June 2017].

Juzwaik, T.; McGregor, E. and Siegel M., 2014. *Migrant and Refugee Integration in Global Cities: The role of Cities and Businesses*. The Hague Process on Refugees and Migration. Available at: http://thehagueprocess.org/wordpress/wp-content/uploads/2014/04/MigrantRefugeeIntegrationGlobalCities.pdf [Accessed: 29 August 2015].

Krahn, H.; Derwing, T.; Mulder, M. and Wilkinson, L., 2000. Educated and underemployed: Refugee integration into the Canadian labour market. *Journal of International Migration and Integration/Revue de L'integration et de la Migration Internationale*, 1(1), pp. 59-84.

Mestheneos, E. and Ioannidi, E., 2002. Obstacles to Refugee Integration in the European Union Member States. *Journal of Refugee Studies*, 15(3), pp. 304-320.

Mulvey, G., 2015. Refugee Integration Policy: The Effects of UK Policy-Making on Refugees in Scotland. *Journal of Social Policy*, 44(02), pp. 357-375.

OECD, 2015. *Is this humanitarian migration crisis different?* Migration Policy Debates n.º 7, pp. 1-15.

Phillimore, J. *et al.*, 2006. *Employability initiatives for refugees in Europe: looking at, and learning from, good practice.* Report for EQUAL and the Home Office.

Phillimore, J. and Goodson, L., 2006. Problem or opportunity? Asylum seekers, refugees, employment and social exclusion in deprived urban areas. *Urban Studies*, 43(10), pp. 1715--1736.

Reyneri, E. and Fullin, G., 2011. Labour market penalties of new immigrants in new and old receiving West European countries. *International Migration*, 49(1), pp. 31-57.

Rosholm, M. and Vejlin, R., 2010. Reducing income transfers to refugee immigrants: Does start-help help you start? *Labour Economics*, 17(1), pp. 258-275.

Tress, M., 1998. Welfare state type, labour markets and refugees: A comparison of Jews from the former Soviet Union in the United States and the Federal Republic of Germany. *Ethnic and Racial Studies*, 21(1), pp. 116-137.

Wright, T. and McKay, S., 2008. "Legal Frameworks Regulating Employment of Refugees and Recent Migrants". In: S. McKay, ed., *Refugees, Recent Migrants and Employment: Challenging Barriers and Exploring Pathways.* New York: Routledge, pp. 53-66.

Annex

Table I – Definition of migration categories in all countries (except for Germany)

Respondent's country of birth/ Old category	New category	1) Re-categorisation of the country of birth (table I)
National/Native of own country	Native	2) Definition of Groups: Natives, Refugees and Other non-EU migrants
European Union 15	EU	• Natives: Born in country + Not Migrated
NMS10 (10 new Member States of 2004)		• Refugees: reason for migration International Protection + Non-EU (region of birth)
NMS3 (3 new Member States of 2007)		
EFTA		
Other Europe	Non-EU	OR Reason for migration International Protection + Stateless/Unknown (region of birth)
North Africa		
Other Africa		
Near and Middle East		• Other Non-EU Migrants: reason for migration not International Protection + Non-EU (region of birth)
East Asia		
South and South East Asia		
North America		
Central America (and Caribbean)		OR
South America		• Reason for migration not International Protection + Stateless/ Unknown (region of birth)
Australia and Oceania		
Missing	Stateless/ Unknown	

Table II – Definition of migration categories in Germany

Country of birth of father/mother	New Category "Region of birth"
National/Native of own country	Native
European Union 15	EU
NMS10 (10 new Member States of 2004)	
NMS2 (2 new Member States of 2007)	
EFTA	
Other Europe	Non-EU
North Africa	
Other Africa	
Near and Middle East	
East Asia	
South and South East Asia	
North America	
Central America (and Caribbean)	
South America	
Australia and Oceania	
Missing	Stateless/Unknown

1) Variable "Country of birth" contains information only about "National/Native of own Country", all others are missing. German born = 1, Missing = 0 (not German born)

For those not born in Germany, region of origin is defined approximately on the basis of country of birth of their both parents (table II).

Variable origin for not German born defined following the algorithm:
   EU*EU –> EU
   nonEU*nonEU –> nonEU
   If region of both parents is unknown –> origin is Unknown
   If both parents are Native (but respondent's country of birth is not Germany) –> origin is Unknown

When regions do NOT match:
   If EU*non-EU –> EU is chosen as origin
   Unknown is denied in favour of EU or Non-EU of the known parent's country of birth
   Native is denied in favour of EU or Non-EU of the other parent's country of birth (see table III)

Table III – Respondent's estimated origin

Respondent's estimated origin (cross-section)		Father's region of birth			
		Native	EU	Non-EU	Stateless/Unknown
Mother's region of birth	Native	Unknown	EU	Non-EU	Unknown
	EU	EU	EU	EU	EU
	Non-EU	Non-EU	EU	Non-EU	Non-EU
	Stateless/Unknown	Unknown	EU	Non-EU	Unknown

1) Observations with origin = EU are deleted

2) Definition of Natives, Refugees, Other non-EU migrants in Germany
   • Natives: born in Germany + Not Migrated
   • Refugees: Reason for migration International Protection + origin non-EU

OR

Reason for migration International Protection + Origin Stateless/Unknown
Other Non-EU Migrants: reason for migration not International Protection + origin non-EU

OR

Reason for migration not International Protection + origin Stateless/Unknown

The Syrian Refugee Crisis: Resettlement and Other Complementary Pathways of Admission to Third Countries as Part of the Response

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Abstract

The armed conflict in Syria has caused one of the world's largest displacement situations, with close to 6 million refugees worldwide, of whom 5.4 million are hosted by countries neighboring Syria. Europe has also witnessed large-scale arrivals of Syrians fleeing the conflict, especially, during the influx of refugees and migrants by sea into the European Union that peaked in 2015.

Resettlement to a third country is one of the durable solutions to refugee displacement and, specifically, a solution targeting the most vulnerable among refugees. It is also an expression of international cooperation, solidarity and responsibility-sharing to countries and host communities struggling to cope with the impact of large refugee movements on their domestic structures. In addition to resettlement, other legal pathways to admission in third countries can also provide solutions in the short or long term.

This article looks into the role and importance of resettlement and complementary pathways for Syrian refugees, as part of the response in Europe as well as into more recent developments. Particular focus is placed on key elements that could be of relevance to future policy and practice.

Resumo

A Crise de Refugiados Sírios: Reinstalação e Outras Opções Complementares para a Admissão em Países Terceiros como Parte da Resposta

O conflito armado na Síria causou uma das maiores situações de deslocamento de pessoas no mundo, com cerca de seis milhões de refugiados dispersos por todo o mundo, dos quais 5,4 milhões instalados em países vizinhos da Síria. A Europa testemunhou a chegada em grande escala de sírios que fogem do conflito, especialmente durante o afluxo de refugiados e migrantes por mar para a Europa, o qual atingiu o pico em 2015.

A reinstalação num país terceiro é uma das soluções duradouras para o deslocamento de refugiados e, especificamente, uma solução destinada aos mais vulneráveis entre eles. É também uma expressão da cooperação internacional, da solidariedade e da partilha de responsabilidade para com países e comunidades anfitriãs que enfrentam o impacto de grandes movimentos de refugiados nas suas estruturas internas. Além da reinstalação, outras opções legais para a admissão em países terceiros também podem fornecer soluções a curto ou longo prazo.

O artigo analisa o papel e a importância da reinstalação e as opções complementares para os refugiados sírios, como parte da resposta da Europa, bem como alguns desenvolvimentos mais recentes. Um foco particular é colocado em elementos-chave que possam ser relevantes para políticas e práticas futuras.

Introduction

The armed conflict in Syria has caused one of the world's largest displacement situations, with 6.1 million internally displaced persons (IDPs)[1] and close to 6 million refugees worldwide, of whom 5,480,000 are refugees hosted by neighboring countries in the region[2], namely, Turkey, Lebanon, Jordan, Iraq and Egypt[3]. While these countries are hosting the majority of Syrian refugees, European countries, whether EU Member States or others, have also witnessed large-scale arrivals of Syrians fleeing the conflict, especially, during the influx of refugees and migrants by sea into the EU that peaked in 2015[4].

In a bid to stem movements through the Aegean Sea, in March 2016, the European Union (EU), entered in an agreement with Turkey that among other objectives aimed at increasing the resettlement of Syrian refugees from Turkey to Europe[5]. At the same time, from mid-2015 onwards and after a drowned 3-year old Syrian refugee child became the symbol of the refugee crisis[6], European and other countries with first the United States (US), Canada, Australia, New Zealand and also countries in Latin America, such as Brazil, Argentina and Chile, started to significantly increase their resettlement quotas for Syrian refugees while also introducing or strengthening other legal pathways of admitting Syrian civilians through humanitarian visas programmes, private sponsorship, academic scholarships, and, very importantly, family reunification[7].

Against this background, the present article looks into the role and importance of resettlement and other pathway programmes in the protection and solution

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1   See Humanitarian Needs Overview, 2018 (available at https://hno-syria.org/#key-figures).

2   For ease of reference, the region of these five main countries hosting Syrian refugees is sometimes referred to in the text as MENA/Turkey. MENA is the abbreviation for Middle East and North Africa. Egypt and Turkey are parties to the 1951 UN Refugee Convention, while Iraq, Lebanon and Jordan are not.

3   See UNHCR, 2018 (available at http://data.unhcr.org/syrianrefugees/regional.php). In addition, there are approximately 8.8 million IDPs and IDP-returnees as well as 900,000 non-Syrian refugees hosted in MENA/Turkey. These numbers do not include the 5.3 million Palestinian refugees registered with UNRWA (see https://www.unrwa.org/palestine-refugees). The region alone therefore hosts more than one third of the world's 65.6 million displaced persons.

4   In 2015, Syrians represented 49 per cent of the over 1 million people who risked their lives crossing the Mediterranean. See UNHCR, 2016 (available at http://www.unhcr.org/56a 628619.pdf.).

5   See European Council, 2016 (available at http://www.consilium.europa.eu/en/press/press--releases/2016/03/18/eu-turkey-statement/).

6   See The Guardian (2015).

7   It is estimated that countries of the Gulf Cooperation Countries (GCC) host around 1 million Syrians who live on migration (*kafala*) status. According to some sources, this number could be as high as 2 or 3 million people. See Open Source Investigations (2015).

response to the Syrian refugees with specific focus on key aspects, including best practices from the response in Europe. Particular focus is placed on key elements that could be of relevance to Portugal's current and future policy and practice, keeping in mind that admission to safety is the primary concern of those fleeing conflict.

Resettlement and Other Admission Pathways for Syrian Refugees: Global, Regional/EU and Country Responses

Resettlement

While traditionally referring to the three durable solutions as being voluntary repatriation, local integration and resettlement, acknowledging the realities and challenges of today's large-scale refugee movements that countries on the frontline of a crisis are faced with, in addition to "*voluntary repatriation*", reference is now being increasingly made, especially, in the context of the Syrian refugee crisis, to "*local solutions*" as opposed to "*local integration*"[8], and to "*resettlement and complementary pathways for admission*"[9] as opposed to "*resettlement*" only. Regarding the latter, this is a reflection of a broader need for a more flexible approach and changing attitudes to solutions that now give a greater emphasis on mobility and options linked to personal circumstances that include not only vulnerabilities and protection needs but also other features such as professional or occupational skills, family links and educational background[10].

Resettlement of refugees from a host country to a third country is therefore one of the durable solutions to refugee displacement[11] and, more specifically, a durable solution targeting the most vulnerable among refugees. This is illustrated by the submission categories based upon which refugees are identified for resettlement consideration that are legal and physical protection needs, survivors of violence and torture, medical needs, women and girls at risk, family reunification, children and adolescents at risk, and lack of foreseeable alternative solutions[12].

It is advocated that resettlement serves two important functions[13]:

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8 Many of today's main hosting countries are not parties to the 1951 Refugee Convention.

9 United Nations General Assembly, *New York Declaration for Refugees and Migrants*, Annex I, para. 10 (emphasis added).

10 See, for instance, Long and Crisp (2010) and Sturridge (2011).

11 Durable solutions are complementary to one another and can function simultaneously. As witnessed in the case of displacement from and in the former Yugoslavia, depending on individual and other surrounding circumstances, refugees may return to the country of origin, be resettled permanently or temporarily in a third country, or opt to stay in the country of asylum. See Türk and Garlick (2016).

12 UNHCR, 2011. *Resettlement Handbook* (revised version), pp. 243-286.

13 *Ibid.*, preface.

(1) To provide international protection and a durable solution by meeting the specific needs of vulnerable refugees – individuals or groups – whose life, liberty, safety, health or other fundamental rights are, because of their personal circumstances, profile and background, at risk in the country where they have sought refuge;

(2) As an expression of international cooperation, solidarity and responsibility-sharing[14] to provide tangible support to countries of first asylum and host communities struggling to cope with the economic[15], social or security[16] impact of large refugee movements on their domestic structures that are often fragile.

The "*strategic utilization of resettlement*"[17], especially, within a comprehensive protection and solution strategy can moreover lead to additional benefits such as generating leverage for the preservation or ideally the improvement of the protection space of those refugees who remain in the host country[18] and, equally importantly, the reduction of dangerous irregular onward or secondary movements of refugees in search of protection elsewhere. Where more meaningful, in terms of quotas, resettlement programmes are offered by third countries, there are therefore better chances for all stakeholders to maximize these protection dividends. To that effect, coordination and harmonized approaches are crucial at regional and global level in order to address a situation in a predictable and strategic manner. With support from the United Nations High Commissioner for Refugees (UNHCR), Member States are therefore often establishing Core Groups (at global level) or Contact Groups (at county-level) to coordinate their resettlement response[19]. One such group is the Core Group for Syrian Resettlement that was established in December 2013[20]. Thanks to participating resettlement countries' coordination, technical sug-

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14 For the legal foundations for international cooperation, solidarity, and responsibility-sharing, see Türk and Garlick (2016).

15 See, for instance, Zetter and Ruaudel (2014).

16 Though, perhaps, with the exception of Iraq, countries in the region hosting large numbers of Syrian refugees, are not in a state of conflict themselves, "they are [nonetheless] experiencing the contagion of an extended period of regional upheaval" as a result of the Syrian conflict. See Dahi (2014).

17 See, for instance, UNHCR (2011, pp. 39-40) and UNHCR (2003, pp. 249-255).

18 In that respect, it might be worth noting that, in July 2017, the Secretary-General urged all countries to preserve the right for all Syrians to seek asylum and enjoy refugee protection until conditions are conducive for return in safety and dignity. See United Nations (2017). Available at https://www.un.org/sg/en/content/sg/statement/2017-07-10/statement-attributable-spokesman-secretary-general-syria.

19 See UNHCR (available at http://www.unhcr.org/core-and-contact-groups.html). The large resettlement programmes for Syrian refugees and other nationalities moreover triggered the setting up of an Emerging Resettlement Countries Joint Support Mechanism (see UNHCR, available at http://reporting.unhcr.org/node/15495).

20 See European Union, 2016 (available at http://www.resettlement.eu/news/focus-syria).

gestions and advocacy efforts, resettlement became very soon an integral part of the regional protection strategy and the protection response. As a result, since 1 January 2013 and following resettlement pledges of Core Group members, UNHCR was able to submit around 187,300 Syrian refugees from the five countries neighboring Syria for resettlement, of whom around 61,000 (as of December 2016)[21] had left for 33 resettlement countries[22]. The majority of these countries are in Europe, where Syrian refugees are granted either refugee or subsidiary protection status[23]. Table 1 shows the numbers of Syrian refugees submitted by UNHCR operations in MENA/Turkey to third countries for resettlement consideration.

Table 1 – Numbers of Syrian refugees submitted by UNHCR operations in MENA/Turkey to third countries for resettlement consideration[24]

2013	2014	2015	2016	2017
5,400	15,500	53,000	76,500	36,900

In resettlement countries admitting large numbers of vulnerable Syrian refugees, specific programmes and case-processing methodologies were developed together with UNHCR at the beginning of the crisis, and continually reviewed[25]. The Humanitarian Admission Programme (HAP), for instance, was first developed in

21 UNHCR data.

22 While the focus of the present article is on resettlement and other pathways for Syrian refugees, it should be reminded that, for the majority of the approximately 900,000 non-Syrian refugees in MENA/Turkey region, resettlement remains the mainly protection tool and also the only durable solution. This is especially so, when conditions in their countries of origin are not conducive to return in safety and with dignity despite the needs, resettlement quotas are particularly limited for these groups. In 2017, less than 9,000 quota had been secured for non-Syrian refugees that cannot address the imminent needs of many non-Syrian refugees. An increased and diversified resettlement quota from States is therefore needed in order to address the needs of the most vulnerable refugees from all refugee populations in the region.

23 For the differences in treatment between refugee and subsidiary protection status see, for instance, Bauloz and Ruiz (2016, pp. 240-268).

24 Numbers are estimations based on UNHCR data; the number of Syrian refugees, whose cases were submitted to Portugal for resettlement consideration by UNHCR operations in MENA/Turkey is 319 persons: 0 (2013), 27 (2014), 25 (2015), 46 (2016) and 221 (2017).

25 Among these various programmes, there are procedural differences (e.g. UNHCR's and receiving third countries' responsibilities in the process) as well as substantive ones, as to the status granted to the Syrian refugee once in the receiving third country. For instance, where, a resettled refugee would in principle be granted a permanent residence permit, a Syrian refugee admitted through HAP will be granted a shorter-term residency with the expectation of reviewing the ongoing need for protection in the future (see, for instance, European Commission, 2016. European Migration Network, *Resettlement and Humanitarian Admission Programmes in Europe – what works?*, 9th November.

2013 in collaboration with Germany to process a large number of Syrians for humanitarian admission in an expedited manner. Since then, Austria and France also used HAP[26]. Similarly, during November 2015-February 2016, Canada admitted close to 25,000 vulnerable Syrian refugees from Egypt, Jordan, Lebanon and Turkey through a Humanitarian Transfer Programme (HTP)[27]. In 2015, the UK announced its Syrian Vulnerable Persons Relocation Scheme (VPRS) to resettle up to 20,000 Syrian Refugees over the course of the current UK Parliament (until 2020)[28].

At the EU level, the response regarding Syrian resettlement and other admission pathways evolved around four points that proved to be inextricably linked to one another: (a) the European Commission's proposed European Resettlement Scheme; (b) the EU temporary emergency relocation programme; (c) the European Commission's proposal for the use of places that were initially foreseen for the relocation programme, for the purpose of legal admission of Syrian refugees from Turkey; and (d) the EU-Turkey agreement.

In June 2015, the Commission adopted a proposal on a European Resettlement Scheme, which was followed by an agreement among Member States on 20 July to resettle 22,504 persons "in clear need of international protection, in line with the figures put forward by the United Nations High Commissioner for Refugees"[29]. Then, in September 2015, faced with an influx of refugees and migrants, EU Member States agreed to a two-year plan to relocate 160,000 asylum seekers[30] in total from Greece, Italy and, if relevant, other countries to alleviate the pressure on those countries. The figure of 160,000 was eventually brought down to 98,255[31]. On the 18th of March 2016, the EU and Turkey entered in an agreement to "end the irregular migration from Turkey to the EU"[32]. Among the various points of the agreement, it

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26 *Idem.*

27 See, UNHCR (2017).

28 See UK Home Office (2017).

29 European Commission, 2015. *Commission Recommendation of 8.6.2015 on a European resettlement scheme*. Brussels, 8.6.2015 C(2015) 3560 final.

30 The temporary emergency relocation scheme was established in two Council Decisions in September 2015. Relocation only applies to applicants for whom the average recognition rate of international protection at the EU level is above 75%. This would apply to Syrian, Eritrean and Iraqi applicants. Receiving Member States get 6,000 euros for each person admitted. The number of applicants that EU Members Sates should take is based on a distribution calculated on the basis of objectives criteria, i.e. population size, total GDP, average number of asylum applications over the last four years and unemployment rate (see European Commission, *European Solidarity: a Refugee Relocation System*).

31 See European Commission (2017).

32 For the text of the agreement, see European Council/Council of the European Union, 2016. *EU-Turkey Statement*, 18 March. Regarding UNHCR's position on the agreement, see, for

was decided that "all new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 [including Syrian civilians fleeing the war but arriving from Turkey to Greece in an irregular manner] will be returned to Turkey" while "for every Syrian being returned to Turkey from the Greek islands, another Syrian will be resettled to the EU"[33]. The agreement that was moreover accompanied by three billion dollars for refugee projects inside Turkey clearly had an impact as numbers of irregular movements from Turkey through the Aegean Sea went immediately and were kept down ever since[34].

In light, however, of the low numbers of applicants relocated from Greece and Italy[35], on 21st of March 2016, the Commission proposed the creation of an additional 54,000 places initially foreseen for the temporary emergency relocation[36]. These 54,000 places that were to be allocated for resettlement and other pathways of Syrian refugees from Turkey were then brought down to "over 34,000"[37].

Linked to the above, in March 2017, the European Commission noted that "[d]espite good progress overall, the Member States who have not yet resettled (…) (Bulgaria, Croatia, Cyprus, Greece, Malta, Poland, Romania, Slovakia and Slovenia) and those who are still far away from reaching their target such as the Czech Republic, Denmark, and Portugal, who have not reported any progress in several months, should step up their efforts"[38].

It was against this background that, during the period 2016-2017, in coordination with Turkey's Directorate General for Migration Management (DGMM) and other partners, UNHCR Turkey prepared and submitted cases of around 23,300 Syrian

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instance, UNHCR, 2016. *UNHCR on EU-Turkey deal: Asylum safeguards must prevail in implementation*, 18 March.

33 European Council/Council of the European Union, *EU-Turkey Statement*, *op. cit.*, point 2. The mechanism is also known as 1:1 mechanism, i.e. one resettled Syrian from Turkey to Europe for every returned Syrian to Turkey from Greece.

34 See UNHCR, 2018. Operational Portal, refugee situations, Mediterranean situation. Available at http://data2.unhcr.org/en/situations/mediterranean.

35 By the end of September 2017, when the relocation programme drew to a close, only 20,066 asylum-seekers were relocated from Greece and 9,078 from Italy (UNHCR, *UNHCR calls for the EU relocation scheme to continue*, 26 September 2017 (available at http://www.unhcr.org/news/press/2017/9/59ca64354/unhcr-calls-eu-relocation-scheme-continue.html).

36 European Commission, 2016. *Commission makes immediate proposal to implement EU-Turkey agreement: 54,000 places allocated for resettlement of Syrians from Turkey*, 21 March. The proposal's geographic focus was on North Africa, Middle East and Horn of Africa.

37 See European Commission, 2016 (available at http://europa.eu/rapid/press-release_MEMO-17-349_en.htm).

38 See European Commission, 2017 (available at http://europa.eu/rapid/press-release_MEMO-14-257_en.htm).

refugees to various European countries, including 251 Syrians to Portugal, 46 in
2016 and 205 in 2017[39].

As of April 2017, the total number of Syrians admitted through other pathways to
European countries from Turkey as well as other host countries in the MENA region
was pledged to be around 34,668 persons[40]. It is however noted that, to date, only
few States share mere figures of Syrian refugees admitted and this for only some of
these other pathways thus limiting the scope of any analysis and planning.

Regarding UNHCR's role in the above resettlement programmes[41], many of which
are still ongoing, all cases are prepared and submitted by UNHCR to States. To that
effect, UNHCR has put in place individualised and rigorous procedures, under
which each refugee is submitted for resettlement through registration and verifica-
tion, documents verification, multiple interviews and case-reviews. Biometrics data
(iris-scanning) is collected by UNHCR at registration as an additional measure. In
Turkey, the registration is not undertaken by UNHCR but by the Government,
which fingerprints all registered refugees. The use of biometrics[42] collected by
UNHCR for the identity confirmation and anti-fraud after the case is submitted to
a third country for resettlement consideration was first piloted in Jordan in 2016[43].
Also to note that, during UNHCR registration, detailed information is collected
with regard to, among others, family composition, including presence of nuclear

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39 Estimated numbers based on UNHCR data. The figure includes around 1,640 Syrian refu-
    gees submitted to the UK by UNHCR Turkey in 2016-2017. The EU Member States that has so
    far considered Syrian cases under this agreement are Estonia, Finland, Germany, Ireland, Italy,
    Lithuania, Luxembourg, the Netherlands, Sweden and the UK. Associated Countries Switzer-
    land, Liechtenstein and Iceland have also participated in the programme. It has been reported
    that the number of Syrians resettled to European countries from Turkey under the agreement
    was lower than that of Syrians returned from Greece to Turkey. In the Commission's view, "it
    is important to continue to build up a substantial number of resettlement so that a clear mes-
    sage is communicated to Syrians that a safe and legal pathway has been set up for them to get
    o the EU". See, European Commission, 2017. *Communication from the Commission to the European
    Parliament, the European Council and the Council Second Report on the progress made in the imple-
    mentation of the EU-Turkey Statement*. Brussels, 15.6.2016 COM(2016) 349 final, p. 8.

40 These countries were France: 4,600 through humanitarian visa and 1,000 through scholarships,
    Germany: 23,140 through private sponsorship and 156 through scholarships, Hungary: 50
    through scholarships, Ireland: 119 through private sponsorship, Italy: 803 through humanita-
    rian corridor, Portugal: 70 through scholarships, and Switzerland: 4,700 through humanitarian
    visa (see UNHCR, 2017. *Resettlement and Other Admission Pathways for Syrian Refugees*).

41 See, UNHCR, 2011. *Resettlement Handbook*, in particular, pp. 299-361.

42 For issues relating to refugee consent and the protection of refugees' personal data, see, also,
    UNHCR, 2015. *UNHCR Policy on the Protection of Personal Data of Persons of Concern to UNHCR*,
    May.

43 Similarly, refugees are well-positioned to identify fraudulent services on social media and
    elsewhere and can contribute to anti-fraud and exploitation measures.

family members and other relatives in the country of origin, the current host country and also in third countries; university, technical or vocational educational background and professional background as well as occupation. Individual information is updated for all UNHCR-registered refugees at least once, if not more times every year through continuous registration entailing the renewal of UNHCR documents, protection interviews, home visits and counselling sessions. Importantly, in Syria situation operations, UNHCR and partners have established methodologies for the assessment of refugee vulnerabilities, based on commonly agreed upon indicators. It is on the basis of this comprehensive data that UNHCR operations in the region identify refugees that may be interviewed for resettlement consideration. Depending on the outcome of such interviews, a case would eventually be submitted to a specific country for resettlement consideration, subject to the refugee's agreement with that country.

Resettlement countries have also their own screening procedures in place and make the final decision on whether or not to accept UNHCR's referrals while, in addition to their advocacy efforts, civil society frequently provide support to refugees upon arrival in resettlement countries. For example, many Syrian and Iraqi refugees receive support from Christian organizations and communities in Europe[44].

Complementary Pathways to Admission in Third Countries

In addition to resettlement, other pathways to admission in third countries that complement but do not substitute or replace resettlement programmes can provide solutions in the short or longer term. These solution pathways put in place as means of international solidarity by States but also academia, NGOs, the private sector and other civil society actors are often referred to as "*complementary*"[45], or "*safe and legal*"[46]. They mainly include humanitarian visa programmes, private sponsorship, family reunification, academic scholarships and apprenticeships, and labour mobility schemes. Below are selected examples of efforts undertaken by States and other actors in third countries with regard to the admission of Syrian refugees outside the scope of resettlement programmes[47].

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44 See, for instance, UNHCR, 2017. *Christian community welcomes Syrian family to Canada*, 10 January.

45 See, for instance, United Nations General Assembly, 2016. *Declaration for Refugees and Migrants*, *op. cit*. Annex I, para. 10.

46 See, for instance, Irish Refugee Council (2016) and UNHCR, 2016. *Better Protecting Refugees in the EU and Globally*, p. 2.

47 Though this listing is far from being exhaustive, the criteria for the selection of specific examples related to their Syrian-specific scope and innovative character, especially, in terms of civil society involvement or treatment standards. For a comprehensive overview, see, for instance, International Catholic Migration Commission (2015).

In September 2013, Brazil put in place a Humanitarian Visa Programme (HVP) for "Syrian refugees and others affected by the Syrian crisis"[48] issuing around 8,450 visas globally during 2013-2015[49]. Those eligible are exempted from submitting bank account information, letters of invitation, proof of employment or economic activity in Brazil, or return ticket. With proof of identity (passport or other identity document, including UNHCR registration), a Brazilian Consulate in the region may assist in the issuance of a *laissez-passer* for refugees with expired passports. A gap in Brazil's humanitarian visa programme is, however, the fact that there is no support for travel and integration assistance. In a country where refugees have no familiarities or networks with, lack of assistance could therefore hinder their successful integration prospects[50]. That being said, there are indications from other Latin American countries of their interest in establishing similar humanitarian visa programmes[51]. This would be an avenue worth exploring potential investment in terms of provision of technical support and where appropriate, funding, for instance, from European Union (EU), the Gulf Cooperation Council (GCC) or others, to ensure sustainable integration programmes. Such an investment could also create additional places for Syrian refugees for whom admission to a third country is the only durable solution.

Regarding family reunification, hundreds of thousands of Syrian refugee families in MENA/Turkey remain separated within the region and across continents. In practice, however, family reunification procedures can be lengthy with onerous documentation requirements which, as a result, risk to leave refugee families for protracted periods of time in precarious situations[52]. As noted by UNHCR (2011, p. 271), while "[i]n some situations the most efficient route to family reunification is under the State's direct family reunification or other humanitarian programmes there might be cases whereby family members may not meet the State's criteria, there may be very long waiting lists and other circumstances[53] make it unlikely that

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48 See Jubilut, De Andrade and Maureir (2016, pp. 76-78).

49 See UNHCR, 2017 (available at http://www.unhcr.org/573dc82d4.pdf). Following the exchange of letters between UNHCR and Brazil in 2015, UNHCR has provided technical training to the Brazilian consular staff in Jordan, Lebanon and Turkey on reception and interviewing of applications for the Brazil HVP.

50 Similarly to Portugal's case, a number of faith-based organisations are involved in volunteer programmes supporting integration of resettled refugees and others in Brazil and other Latin American countries.

51 See, for instance, UNHCR, 2015. *Evaluation of Resettlement Programmes in Argentina, Brazil, Chile, Paraguay, and Uruguay*, December.

52 See UNHCR, 2015. *Family Reunification in Europe*. Brussels.

53 See UNHCR, 2017. Syrian father of eight fights to give his family a future, 29 December (available at http://www.unhcr.org/news/stories/2017/12/5a3a6e659/syrian-father-eight-fights-give-family-future.html).

the reunification will be processed quickly. In these cases a resettlement submission may be warranted". Assisted family reunification for refugees, including those with close relatives and other dependants beyond restrictive "*family*" definitions[54], will therefore protect their right to family unity, reduce the need for refugees to undertake irregular journey or fall victims to exploitation schemes, and ultimately facilitate integration in third countries[55].

While Canada[56], along with few other non-European countries, has been a pioneer in the implementation of private sponsorship programmes on behalf of Syrian refugees[57], in Europe, similar good practice examples include community-based initiatives such as the Humanitarian Corridor in Italy[58]. As a part of a project named "Mediterranean Hope", the Federation of Protestant Churches in Italy (FCEI) along with the Community of Sant'Egidio, the Waldensian Church and the Pope John XXIII Community Association negotiated with the Italian Foreign Ministry and the authorities in Morocco, Lebanon, and Ethiopia to set up Humanitarian Corridors for people seeking asylum. Based on the provision in Article 25 of the Visa Code (EC regulation no. 810/2009) for the issuance of Limited Territorial Validity (LTV) visas for humanitarian reasons, the project aims to bring particularly vulnerable persons, including Syrian refugees in Lebanon, to Italy so that they can make asylum applications without undertaking dangerous journeys by sea[59]. Profiles of Syrian refugees considered under the programme include unaccompanied minors, single refugee-women with children, sick, handicapped, or older refugees.

The project is funded entirely by church organizations and private donors, with the Italian government making no financial commitment. The cost of the project was estimated at 1 million euros for the intended intake of 1,000 persons in

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54 See UNHCR (2011, pp. 273-275).

55 It is acknowledged that family reunion is a core element of successful refugee integration (see, for instance, UNHCR, 2001. Annual Tripartite Consultations on Resettlement, Geneva, 20-21 June 2001, *Family reunification in the context of resettlement and integration NGO Statement by Ralston Deffenbaugh President, Lutheran Immigration and Refugee Service*).

56 See Government of Canada (2017). Canada was the first country to introduce private sponsorship in 1978 and its programme serves as a reference in European discussions about such programmes (see http://resettlement.eu/page/emerging-private-sponsorship-programmes-europe-new-partnership-between-government-and-local-1).

57 Argentina, Australia, Canada, Germany, Ireland, New Zealand, and the UK have private sponsorship programmes (see European Migration Network, *Resettlement and Humanitarian Admission Programmes in Europe – what works?*).

58 See http://www.santegidio.org/pageID/11676/langID/en/Humanitarian-Corridors-for-refugees.html.

59 FCEI, *Humanitarian Channel Proposal*. Available at https://www.kerkinactie.nl/download/CAwdEAwUUkRBXkE=&inline=0 and https://mediterraneanhope.wordpress.com/2015/04/22/the-proposal-of-federation-of-protestant-churches-in-italy-and-the-community-of-santegidio/

2015[60]. The FCEI, the Community of Sant'Egidio, and the Waldensian Church signed an agreement with the Italian Ministries of Internal and Foreign Affairs, and the official start of the project was announced at a press conference held on the 16th of December 2015 by the Community of Sant'Egidio. This project has been referred to by the FCEI as a pilot program and a model for other European countries. The President of the Community of Sant'Egidio also linked the project to efforts to reintroduce the system of private sponsorship of refugees in Italian legislation[61].

Those selected are granted LTV visas and will be expected to apply for asylum in Italy upon arrival. The church organizations have committed to providing transport to Italy, and after arrival, lodging, food, healthcare, Italian lessons, legal assistance and assistance in finding work and enrolling children in public schools. These costs are to borne entirely by the sponsoring church organizations, with the Waldesian Church's 8/1000 system[62] to provide the majority of the funding. The State has made no financial commitment to support the resettlement process.

The Humanitarian Corridor is still a project but could be a precursor to the development of a private sponsorship system in Italy. Indeed the president of the Community of Sant'Egidio made comments indicating that this may be one of the goals of the programme. In the absence of a legal framework for such a programme, the Visa code provisions for LTV visas are being used to provide access to the internal asylum procedure, however if the programme is a success, it may plant the seeds for the creation of a private sponsorship programme in Italy similar to those available in Canada, Australia and elsewhere.

Academic scholarships offered by governmental bodies, academic institutions, individuals or NGOs sponsoring studies in third countries have been offered to Syrian and to a limited extent other refugee students in the MENA/Turkey region including multi-year pledges, mainly, from 2013 onwards. Limited tertiary opportunities in host countries[63] and increasing hardship throughout the region makes it

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60 RFI, 2015. *Sant'Egidio crée des corridors humanitaires avec le Maroc et le Liban*, 16 December. Available at http://www.rfi.fr/europe/20151216-migrants-sant-egidio-corridors-humanitaires-maroc-liban-italie-?ns_campaign=reseaux_sociaux&ns_source=twitter&ns_mchannel=social &ns_linkname=editorial&aef_campaign_ref=partage_user&aef_campaign_date=2015-12-16.

61 See Vatican Insider, 2015. Sant'Egidio: Humanitarian corridors open for one thousand people. *Vatican Insider*, 16 December, available at http://www.lastampa.it/2015/12/16/vaticaninsider/eng/world-news/santegidio-humanitarian-corridors-open-for-one-thousand-people-7F1BrNhUFKY1CqirpOULcM/pagina.html.

62 The Waldensian evangelical church is one of the religious groups that Italian taxpayers can select to receive a small percentage of their federal income taxes (available at http://www.mediterraneanhope.com/corridoi-umanitari/italian-church-groups-open-refugee-humanitarian-corridors-921).

63 See, for instance, UNESCO and UNHCR, 2017. *The Regional Conference on Higher Education in Crisis Situations: "Higher Education in Crisis Situations: Synergizing Policies and Promising Practi-*

difficult for Syrian refugees to pursue higher education, making third country scholarships a valuable complementary option. According to a survey conducted by UNHCR with Syria Core Group countries for the period January 2013-April 2017[64], around 1,276 Syrian refugee youth were admitted in European countries through academic scholarship. A growing number of State and private actors are also stepping forward to offer scholarships for Syrian refugees in third countries[65]. Japan thus announced a five year programme programme (2016-2020) to support up to 150 Syrian refugees to pursue higher education in Japan of which 100 are offered for Syrian refugees in Jordan and Lebanon[66]. The main features of the Japanese Initiative for the future of Syrian Refugees include full funding, issuance of travel documents if needed, preservation of legal status to remain in Japan after the period of study and, very importantly, the option for family members to accompany the refugee student.

While some of the complementary pathways, in particular, family reunification, have traditionally been perceived as a State responsibility, this is an area representing an opportunity for a greater operational role for civil society, including private sector actors as well as UNHCR[67].

Moreover refugee resettlement and complementary pathways is an entry point to further discuss other protection-responses linked to the situation of internally displaced persons (IDPs), who are in a very comparable situation to that of refugees with the only perhaps exception of not having crossed an internationally recognised border. For IDPs, however, their additional exposure to risks of serious human rights violations inside the country of origin as well as their lack of access to services potentially offered in a refugee context can only increase their vulnerability and suffering.

In 2017, further to the request of the Canadian government, UNHCR and protection partners in the Kurdistan Region of Iraq (KR-I) joined efforts to identify and process a number of cases of extremely vulnerable Iraqi IDPs who have survived

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ces to Enhance Access, Equity and Quality in the Arab Region", Sharm El-Sheikh – Egypt, 28-29 March.

64 UNHCR, 2017. *Resettlement and Other Admission Pathways for Syrian Refugees* (updated as of 30 April 2017).

65 There is also a number of programmes supporting tertiary education of Syrian refugees in host countries (see, for instance, UNESCO and UNHCR, 2017).

66 Japan International Cooperation Agency, 2018. Announcement of the 2018 round of admission of the "Japanese Initiative for the future of Syrian Refugees" a scholarship program for Syrian refugees, 8 September 2017.

67 UNHCR, 2016. Executive Committee of the High Commissioner's Programme, *New approaches to solutions*, Standing Committee, 66th meeting, EC/67/SC/CRP.14, 7 June. Available at http://www.unhcr.org/575a74597.pdf.

atrocities in the context of the conflict, for the purposes of admission to these two countries. As at 30 September 2017, some 849 survivors and family members were submitted to Canada for consideration of whom 290 had already departed[68]. Of note, cases were identified and referred to UNHCR for interviewing through a collaborative process involving relevant KR-I authorities and humanitarian actors. The processing methodology for the individual cases (e.g. identification, referral, collection of data, interview and preparation of written submission by UNHCR for receiving States) was largely guided by case management procedures applying to refugee-resettlement[69].

Portugal's Response

Against this background, Portugal has been a country that has received Syrian refugees both through resettlement and other admission/solution pathways. Traditionally, however, Portugal, like Greece, had never received large numbers of refugees before the Syrian conflict[70]. While an ad hoc resettlement scheme was already implemented in 2006, the country started an annual resettlement quota programme in 2007 of close to 30 persons submitted by UNHCR[71]. As a result of the Syrian crisis, Portugal increased its annual quota and for the period 2013-2017, a total of 319 vulnerable Syrian refugees were submitted to Portugal for resettlement consideration by UNHCR operations in MENA/Turkey – 251 of them were Syrian refugees in Turkey and the rest 68 from other host countries in the region[72]. All cases considered by Portugal are being decided upon by the competent authorities on dossier; in other words, the authorities do not in principle conduct individual interviews of the refugees already interviewed and submitted by UNHCR. A very positive feature of the programme is that, so far, all resettled Syrian refugees have been

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68 See, for instance, Government of Canada, 2016 (available at https://www.canada.ca/en/immi gration-refugees-citizenship/news/2017/02/canada_to_welcome1200yazidiandothersurvivor sofdaesh.html). The U.S. Government created a similar though not identical programme, the Protection Transfer Arrangement (see The Guardian, 2016, available at https://www.theguar dian.com/world/2016/jul/26/central-american-refugees-costa-rica-obama-administration).

69 See also UNHCR, 2016. *Humanitarian evacuations in violence and armed conflict (internal note)*. Geneva, 17 June.

70 See Costa and Sousa (2017).

71 The legal basis for resettlement in Portugal is set out in Article 35 of Asylum Law 27/2008. Following two ad-hoc resettlement schemes in 2006, an official Resolution of the Council of Ministers (no. 110/2007) established Portugal as a resettlement country with an annual quota of 30 refugees per year (see http://www.resettlement.eu/country/portugal).

72 At the time of the writing of the present article, Portugal was reportedly revising its resettlement commitments in order to plan for the admission of more refugees submitted by UNHCR from Turkey and Egypt.

granted Convention refugee status[73] thus enabling family reunification and integration in the country.

The call from the European Commission in 2015 for Member States to share the burden with frontline countries, namely, Greece and Italy, therefore, presented a new challenge to Portugal. To the Commission's initial call to Portugal for 1,642 persons, the number has since risen to 2,951[74] while Portugal replied with an offer to take 4,500, which it later revised upwards to 10,000[75]. This generous gesture of international solidarity came in clear contrast to the restrictive policies and practices of other Member States[76].

The creation in 2015 of the *Plataforma de Apoio aos Refugiados* has enabled the country to overcome its own limited reception capacity by bringing together a wide range of national, regional, and local entities from all sectors, including the private sector, universities and religious institutions[77]. The initiative and the approach undoubtedly built strong blocks of support and solidarity vis-a-vis Syrian refugees. Despite this enabling environment, it has been reported that relocated or resettled refugees often leave the country to move onwards to other EU Member States, mainly, because of family and community links or better work opportunities in those countries[78]. Whether this is an established trend, the country has another successful example to showcase in the area of complementary pathways for solutions.

Where Portugal has really innovated, if not pioneered, is the area of academic scholarships. In November 2013, a Global Platform for Syrian Students, also known by its abbreviation GP4SS, was set up in Portugal[79]. To date, the initiative that was launched by the former President of the Portuguese Republic, Jorge Sampaio,

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73 See http://www.resettlement.eu/country/portugal.

74 Of a total 25,392 persons to be (initially) relocated from Greece and Italy, Portugal was finally allocated 2,951 places. By September 2017, Portugal admitted 299 persons from Italy and 1,197 from Greece, i.e. a total of 1,496 persons (see UNHCR, 2017. *EU Emergency Relocation Mechanism* [as of 27 September 2017]).

75 See Costa and Sousa (2017).

76 See, for instance, UNHCR, 2017. Border fences and internal border controls in Europe. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/55249.pdf.

77 As noted by Costa and Sousa, "Portugal's influential Catholic Church has taken its lead from Pope Francis' pro-refugee stance bolstering national support. The positive political environment was demonstrated when councils all over the country submitted local integration plans from the first time. (…) Refugee families have been distributed throughout the country, avoiding geographical concentration, but also taking advantage of local support from councils" (Costa and Sousa, 2017).

78 Jurriaans (2017) reported that "more than 40% of those who arrived in Portugal [under the EU relocation scheme] have left within 18 months, according to (…) Portuguese media".

79 See www.globalplatformforsyrianstudents.org.

brings together close to 30 universities having a two-fold approach. The network
has a core group of institutional partners, namely, the Council of Europe, the League
of Arab States, the International Organization of Migration and the Institute of
International Education[80]. The GP4SS supports opportunities for tertiary education
both in major host countries, such as Turkey, Lebanon and Iraq but also in third
countries through scholarships. The latter include Belgium, Brazil, Switzerland and
of course Portugal[81]. The platform has set up an Emergency Student Fund that is
made up of voluntary donations and grants made to the GP4SS. Lack of sufficient
funding could always leave students without scholarship[82].

In coordination with relevant authorities, the programme facilitates (pre-arrival)
admission formalities to the third country as well as the process of validation
of previous qualifications. It also covers academic fees, accommodation, Portu-
guese language and bridging courses, transport, health insurance and subsis-
tence. It also offers integration/psycho-social support. Having a longer-term
vision, the platform moreover creates opportunities for internships as well as
employment.

For its implementation, similarly to Italy's community-based sponsorship pro-
gramme of Humanitarian Corridor, the platform brings together governments,
international and regional organisations, donor agencies, universities, foundations,
NGOs of different cultural backgrounds and faith-based organisations, private
companies and individuals, including families hosting Syrian students.

Specifically for academic scholarship programmes, UNHCR has been advocating
for a non-discriminatory approach[83] and a transparent selection based on academic
merit. Durability of the student's legal status in the third country is also crucial in
order to ensure protection against forced return to the country of origin or stateless-
ness. It is therefore of utmost importance to ensure that refugee students do not find
themselves in situations of expired residency, destitution or forced return to the

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80 The Global Platform has an international Advisory Board comprising representatives of the
    League of Arab States and of the Council of Europe and a number of eminent personalities
    such as Kerstin Eliasson, former Secretary of State for Education, Sweden; HRH Princess Rym
    Ali, President of the Jordan Media Institute and Richard Branson, CEO Virgin Group (see
    http://www.globalplatformforsyrianstudents.org/index.php/the-network/17-about).
81 Almost two thirds of the participating universities and polytechnic institutions are Portu-
    guese.
82 As noted in an article, "although proving to be a very effective and low cost model, a lack
    of funding [had at some point in 2014] left 700 Syrian students without the scholarship they
    [needed] to continue their studies in spite of having secured their admission at a university
    with tuition fee waivers" (Goodman and Sampaio, 2014).
83 To note that, in practice, some scholarship and other admission programmes may openly or
    indirectly favor refugees of a specific ethnic or religious profile and background.

country of origin as a result of pursuing studies abroad. This is particularly important for Syrian refugee students in the region, as many host countries do not readmit back refugees once they have left that country regardless of the reason, e.g. permanent resettlement or academic scholarship in a third country. Universities and receiving States must therefore consider facilitating official exit from host countries and entry to receiving countries, including prospects to remain legally beyond the period of study, if needed, for protection purposes. Along the good-practice example of the implementation of the Brazilian HVP, measures can include facilitation of issuance of travel documents for students who for various reasons may be unable to obtain national passports.

Scholarships also need to cover a full course of study to enable the refugee student to complete a certification, degree, or other qualification. Programmes may also provide support for cost of living, accommodation, possibility for family members to join during the course of study, and proper orientation and social support throughout the course of study. This is particularly important for disadvantaged or socially vulnerable students, who will require intensive, long-term support to benefit in a meaningful way from the programme. Once in the receiving country, access should be facilitated to asylum procedures and the ability to convert their visa into work or other visa types so as to provide additional prospects for the student to remain should return to Syria (or any other country of origin) be impossible. Universities may moreover consider the possibility of arranging work placement support to provide further development opportunities and encourage self-reliance for the student.

Recent Developments

Having seen examples of the response of European and other states – whether collectively or individually – with regard to international solidarity and responsibility-sharing, in particular, the legal admission of Syrian refugees from MENA/Turkey, it is now necessary to place the entire issue in its present context, particularly, in light of the current situation in Syria.

There are presently around 5,4 million Syrian refugees registered with UNHCR (and in Turkey's case, DGMM) in MENA/Turkey. In the absence of a political solution to the conflict[84], the region continues to be shaped by the situation in Syria and as a result, the continuous needs for protection and solutions for Syrian displaced[85]. According to UNHCR, the projected needs for resettlement of Syrian refugees in

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84 See Unite Nations Office for the Coordination of Humanitarian Affairs. Available at http://www.unocha.org/syrian-arab-republic/syria-country-profile/about-crisis.

85 See UNHCR, 2017. *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update V*, 3 November.

MENA/Turkey relate to close to half a million persons, i.e. 201,970 out of host countries in MENA and 275,000 out of Turkey[86].

These projections are evidence-based. Vulnerability assessments[87] conducted in host countries establish the alarming worsening of the socio-economic situation of Syrian refugees in the region. In Lebanon, for instance, the 2017 Vulnerability assessment for Syrian refugees demonstrates that "more than half of refugees [live] in extreme poverty, and that food insecurity rates [though] stable (...) remain high"[88]. As a copying mechanism to deal with the lack of food or money to buy food, nearly all Syrian refugee households surveyed (96%) adopted food-related coping strategies, most commonly, including "reducing the number of meals per day (54%) and reducing meal portion size (47%)"[89]. Other copying mechanisms "adopted by a small percentage of refugees included sending household members to eat elsewhere, spending days without eating, or restricting consumption by female household members"[90]. Specific groups, such as children with disabilities that represent 2.3% of the refugee population were among the most marginalized in Lebanon and the less likely to be enrolled in school and facing risks of physical violence everywhere, "both outside and inside the home"[91]. The analysis of the finding moreover revealed the vulnerability of households headed by women across all indicators: "[f]emale-headed households were less food secure, had worse diets, adopted severe coping strategies more often and had higher poverty levels"[92]. Female-headed households were almost twice as likely as male-headed households to live in informal settlements, and were less likely to have legal residency. In addition, the monthly income for working women was only US$ 159, compared to US$ 206 for men, despite being employed for nearly the same number of working days (13 for women and 14 for men). Furthermore, refugees who live in

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86 See UNHCR, 2017. *2018, Projected Global Resettlement Needs – 23rd Annual Tripartite Consultations on Resettlement*, Geneva, 12-14 June 2017. Available at http://www.unhcr.org/593a88f27.pdf, in particular, pp. 37, 43 and 67.

87 UNHCR and partners in host countries have developed a multi-sectoral framework to capture socio-economic vulnerabilities, to identify refugees who are most in need of cash or other assistance but also resettlement. See, for instance, Vulnerability Assessment Framework (VAF) in Jordan. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/VAF101.pdf.

88 See UNHCR, UNICEF, WFP, *VASYR*, 2017. *2017: Vulnerability Assessment of Syrian Refugees in Lebanon*, 15 December, available at https://reliefweb.int/report/lebanon/vasyr-2017-vulnerability-assessment-syrian-refugees-lebanon. In Jordan, 82 percent of Syrian refugees are living below the poverty line (CARE, 2017).

89 *Ibid.,* p. 77.

90 *Idem*.

91 *Ibid.*, p. 14

92 *Ibid.*, p. 15

the most vulnerable localities have greater exposure to abuse and exploitation that both heighten risks of violence and aggression towards them[93]. In a context of a "*persisting poverty*", women and children, constituting the majority of the Syrian refugee population (80% in Lebanon, 76% in Jordan and Egypt and 68% in Iraq), continue to be the most affected by the refugee crisis, being particularly vulnerable to exploitation and violence[94].

At the same time, although nowhere close to the 1 million arrivals by sea to Europe in 2015, in 2016 and 2017, there were 362,000 and 171,000 arrivals respectively. During these years (2016-2017), arrivals by sea included close to 100,000 Syrians[95]. As underlined in the New York Declaration for Refugees and Migrants (NYD)[96] and the Comprehensive Refuge Response Framework (CRRF) in its Annex I, resettlement quota commitments and complementary pathways are crucial tools to enable solutions to refugees who are fleeing persecution and at the risk of their lives, are moving from one country to another searching for protection. Regarding Syrian refuges however, despite the call made by the UNHCR/High Commissioner on 30 March 2016 for resettlement and facilitated pathways for around 500,000 (10% of all Syrian refugees) by 2018, to date, close to 250,00 places have been made available[97]. More therefore needs to be done. While resettlement and other admission streams cannot in themselves be the solution to everything, a more enhanced response, including following through previous commitments is necessary. This is especially the case for the most vulnerable refugees for whom resettlement is the only solu-

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93 See International Rescue Committee, 2016. *Vulnerability Assessment of Syrian Refugee Men in Lebanon*, January.

94 UNHCR, UNICEF, WFP, 2017. *Op. cit.*, p. 16.

95 More specifically, the total is 99,533 persons, i.e. 17,584 Syrians in 2017 (see http://data2.unhcr.org/en/situations/mediterranean) and 81,949 in 2016 (see https://data2.unhcr.org/ar/documents/download/53447).

96 Concerned about the increasing numbers of refugee and migrant movements, the United Nations Secretary-General, in an address to the General Assembly on 20 November 2015, announced a progressive roadmap for addressing large movements of refugees and migrants. To address one of the most immediate and urgent displacement crises, he requested the United Nations High Commissioner for Refugees to convene this ministerial-level meeting on pathways for admission of Syrian refugees (in March 2016). Noting the global nature of displacement, however, he also called for a high-level Summit in New York in September 2016, to address other large displacement situations. In October 2016, the New York Declaration for Refugees and Migrants was adopted by the UN General Assembly (see http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf). See, also, Türk and Garlick (2016).

97 See UNHCR, 2017. A year after key conference sought to boost resettlement targets for Syrian refugees, half of the 500,000 places sought have been achieved. Available at http://www.unhcr.org/news/press/2017/3/58dcbf934/year-key-conference-sought-boost-resettlement-targets-syrian-refugees-half.html.

tion. In a context of international cooperation and responsibility-sharing, States may wish to consider innovative approaches to encourage and establish complementary pathways. Under such circumstances, failing to do so would risk pushing refugees to move onwards or worst, return in unsafe conditions. If not managed well, Europe and the wider region may end up dealing with large numbers of departures from Western, Central and Eastern Mediterranean simultaneously.

In that regard, the NYD that "aims at responding to the growing global phenomenon of large movements of refugees and migrants"[98] is important mainly because UN member states renew their profound solidarity with refugees, acknowledge the shared responsibility for protecting refugees and providing support to host countries in an equitable and predictable manner, and pledge to strengthen and facilitate a well-funded humanitarian and development response as well as to support a smooth transition between the two. Furthermore, UN Member States reaffirm their commitment to pursue durable solutions for refugees, namely, voluntary repatriation, local solutions or opportunities and resettlement and complementary pathways for admission to third countries, such as family reunification, labor mobility and education.

In its Annex I, the NYD outlines elements of a Comprehensive Refugee Response Framework for a more systematic and sustainable response that benefits both refugees and their hosts. The framework's scope is designed to ensure rapid and well-supported reception and admission measures; support for immediate and ongoing needs; assistance to national/local institutions and communities receiving refugees; and opportunities for durable solutions. Based on the application of the CRRF in diverse situations, the Declaration pursues the adoption of a Global Refugee Compact in 2018 with the following four main objectives or pillars: (1) easing pressure on host countries; (2) enhancing refugee self-reliance; (3) expanding third-country solutions; and (4) supporting conditions in countries of origin for return in safety and dignity.

The third part of the CRRF on expanding opportunities for solutions[99] is clearly the most detailed of all four. Regarding solutions, the main new element in the text is the Member States' commitment to explore additional avenues for refugees to be admitted to third countries, i.e. countries other than the refugees' country of origin or their first country of asylum, including through "*increased*" resettlement and other pathways in order to enable the annual resettlement needs identified by UNHCR to be met[100]. Specifically, Member States urge:

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98 United Nations General Assembly, 2016. *Resolution adopted by the General Assembly on 19 September 2016 – New York Declaration for Refugees and Migrants, op. cit.*, Title I. Introduction, para. 2.

99 *Ibid.*, Annex I , paras. 8-16.

100 *Ibid.*, Title IV. Commitments for refugees, para. 78 and Annex I, para. 16.

(1) other Member States that "have not yet established resettlement programmes to consider doing so at the earliest opportunity"[101];

(2) others that "have already done so are encouraged to consider increasing the size of their programmes"[102]; and making available or expanding "humanitarian admission programmes, possible temporary evacuation programmes, including evacuation for medical reasons, flexible arrangements to assist family reunification, private sponsorship for individual refugees"[103] as well as "making opportunities for skilled migration, labour mobility and education"[104].

UN Member States invited UNHCR/ the High Commissioner to propose a Global Compact for Refugees in his annual report to the General Assembly in 2018 for the Assembly's consideration at its seventy-third session. To that effect, throughout 2017, UNHCR convened among others a series of thematic discussions on past and current burden and responsibility sharing arrangements, measures to be taken at the onset of a large movement of refugees, meeting the needs and supporting communities, durable solutions and issues cutting across all four substantive sections of the CRRF and overarching issues[105].

Conclusions and Further Operationalizing Solution Pathways

In light of the magnitude and complexity of the Syria crisis, and its impact on neighboring countries as well as those further afield, the need for international cooperation and solidarity remains urgent, especially, for host-countries neighboring Syria as well as a number of European countries because of the proximity. In host countries neighboring Syria, resettlement has always played a strategic role. Regardless of the solution chosen by individual refugees, a number of vulnerable refugees and others with continuous protection needs will never be able to remain in these host countries or return to the country of origin. Others who may or not be eligible for resettlement can also be enabled to find a solution through complementary pathways and hence, support others remaining in the region or displaced in the country of origin to do the same. Where there is good level of resettlement and other admission quotas, the role of these solution tools is also to avoid the need for refugees to undertake irregular onward movements.

Initiating and sustaining solutions in complex displacement crises, such as the Syrian one, require a multi-stakeholder approach that, as underlined in the CRRF,

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101 *Ibid.*, Title IV. Commitments for refugees, para. 78.
102 *Ibid.*, Title IV. Commitments for refugees, para. 78.
103 *Ibid.*, Title IV. Commitments for refugees, para. 79.
104 *Ibid.*, Annex I, para.14.
105 See http://www.unhcr.org/thematic-discussions-for-the-global-compact-on-refugees.html.

includes "national and local authorities, international organisations, international financial institutions, and local authorities, international organisations, international financial institutions, civil society partners (including faith-based organisations, diaspora organisations and academia), the private sector, the media and refugees themselves"[106].

The United States, Canada, European and other third countries as far as Brazil, have over the last years[107] been generous in admitting hundreds of thousands of Syrian refugees through these admission streams. As a result of mass external displacement, resettlement for Syrian refugees increased by ten times during 2013-2015. This was a major achievement thanks to the strong commitment and generous support of States, civil society and – perhaps fair to say – a strong can-do spirit of UNHCR and partners interviewing and preparing the thousands of individual case-submissions for resettlement consideration.

Against this background, there is currently an alarming reduction in quotas for Syrian refugees – from 76,000 in 2016 to less than 40,000 in 2017 – mainly reflective of the policy shift in the United States[108]. Many resettlement countries in Europe (UK, France, Italy, Germany, and Sweden) continue to have significant Syrian resettlement programmes thus demonstrating a high degree of public opinion support and ensuing political commitment in Europe to respond to responsibility-sharing needs linked to Syria's displacement. This needs to continue. To that effect, in line with the NYD and the UNHCR's call to increase solution opportunities, the following considerations are offered.

(1) Refugees eligible for family reunification should be a priority under this stream. Issuing travel documents when refugees have no valid passport, expediting processing time, waiving administrative fees and providing travel assistance are tangible ways to assist refugees to reunite with their family members. UNHCR could assist in, among others, triaging before departure, outreach and providing guidance and counselling to refugees in coordination with states.

(2) Numbers bring reality and to that effect, data-sharing from States on other pathways is crucial. Countries, including (reportedly) Portugal, that have not been able to consolidate and analyse data, including numbers and background/profiles of those admitted through non-resettlement streams, may

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106 United Nations General Assembly, 2016. *Resolution adopted by the General Assembly on 19 September 2016, New York Declaration for Refugees and Migrants,* Title IV. Commitments for refugees, para. 69.

107 In particular, in 2015-2016.

108 See, for instance, UNHCR, 2017. UNHCR alarmed at impact of US refugee program suspension, 31 January.

want to seek other countries' or UNHCR's technical support, also, in order to identify good practices and areas of improvement that can then be shared with others.

(3) Funding is crucial both for resettlement and other pathways, in particular, academic scholarships, private sponsorships and humanitarian visa programmes (e.g. Brazil). Countries in Europe, the GCC and elsewhere as well as regional organisations and civil society members, including the private sector, could consider funding such admission programmes, especially, where countries are willing but, perhaps, financially unable to admit (and integrate) Syrian and other refugees. Small-scale pilot programmes could be a good start for everyone.

(4) As far as academic scholarships are concerned, unlike most other such programmes that are specific to a country or a university, the GP4SS brings together a large number of academic institutions both in host as well as in third countries. In an effort to further expand such programmes, strengthening coordination is strategic. It might therefore be necessary that, through participating universities in host countries, the GP4SS liaises with coordination fora (e.g. contact groups) on resettlement and other pathways organised by States and UNHCR operations in the MENA/Turkey region, as applicable. Such an approach is expected to bring further awareness about these programme, improve collection and analysis of data, communication with communities as well as create momentum for additional pledges and funding or other support. In an effort to acknowledge the import role of host communities in refugee protection and solutions[109], such programmes could also consider granting or increasing the number of scholarships to nationals of host countries.

(5) South-European countries with strong civil society support vis-a-vis Syrian and other displaced, such as Italy and its faith-based organisations or Portugal and its academic institutions and local church organisations, could learn from one another as well as from other countries in the continent, such as the UK, Germany and Ireland. This could enable other European countries in the region to collectively think, strategise and make policy recommendations with regard to tailor-made private sponsorship frameworks adjusted to individual country-specific contexts but applying common protection standards.

(6) For the well-being of refugees admitted to third countries in a regular manner, be it through resettlement or other legal pathways, and in order to maximise protection dividends, it is crucial that these refugees are able to go back to their

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109 See, also, United Nations General Assembly, 2016. *Resolution adopted by the General Assembly on 19 September 2016, New York Declaration for Refugees and Migrants, op. cit.*, Annex I, para. 8 on support of host countries and communities.

host countries in order to e.g. visit family members. The mere thought of not
being able to see family members and friends again could have devastating
effects on the individual and prevent solution pathways from reaching their
potential.

(7) Offering possibilities for the temporary or permanent admission of extremely
vulnerable IDPs, along, the lines of e.g. the Canadian programme in Iraq, could
certainly enhance protection and solutions for IDPs, many of whom are, because
of objective and personal circumstances, equally if not more vulnerable than
many refugees. Such a programme will obviously need close consultations and
coordination with UNHCR and other stakeholders. Having already established
its solidarity towards other countries closer to the frontline of the refugee
response, Portugal, could, depending on the needs, consider piloting a similar
programme from any IDP operation in the world.

At the time of the writing of this paper, the conflict in Syria was nearly seven years
old. Few anniversaries offer less cause for celebration than that marked by the
forced displacement of millions of civilians and the loss of human lives inside and
outside the country in desperate onward trips. Since the beginning of their long-
standing displacement, the living conditions for Syrian refugees have come under
enormous pressure, despite the continued generosity of refugee-hosting countries
and donors. In desperation, hundreds of thousands of Syrian refugees have moved
onwards, particularly to Europe.

The year 2018 is a landmark year – a Global Compact on Refugees is to be adopted.
While the CRRF does not, at this point, formally apply to either the Syria situation
or in any of the host countries in the region, the commitments set forth in the
Declaration can already be a helpful reference for dialogue on refugee solutions[110].
Because of its experience in relocation, resettlement, academic scholarships and
how public and civil society support can advance refugee-solutions, even, during a
severe debt crisis, Portugal together with other EU Member States could play a
strategic role within the EU, especially, in light of its upcoming EU Presidency in
2020.

2018 is also the year when progress of the implementation of the (2016-2018)
pledging target for the resettlement and other pathways for 10% (500,000) of the
Syrian refugee population in MENA/Turkey will need to be assessed. Though the
importance of ensuring financial support in addressing a refugee crisis cannot be
overemphasized, innovation and pro-activeness can also make a difference to the
lives of Syrian refugees, the vast majority of whom remain in the MENA/Turkey
region.

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110 See UNHCR, 2016. Better protecting refugees in the EU and Globally, p. 2.

References

Bauloz, C. and Ruiz, G., 2016. "Refugee Status and Subsidiary Protection: Towards a Uniform Content of International Protection?". In: V. Chetail, P. De Bruycker and F. Maiani, eds., *Reforming the Common European Asylum System: The New European Refugee Law*. Leiden: Brill/Nijhoff, pp. 240-268.

Borgarbúi, M., 2015. What you should know about refugees in Portugal?, 9 November. Available at http://expnowhere.com/interview/what-you-should-know-about-refugees-in-portugal/.

CARE, 2017. 7 Years into Exile: How urban Syrian refugees, vulnerable Jordanians and other refugees in Jordan are being impacted by the Syria crisis, 20 June. Available at https://reliefweb.int/report/jordan/7-years-exile-how-urban-syrian-refugees-vulnerable-jordanians-and-other-refugees.

Costa, P. M. and Sousa, L., 2017. Portugal's Openness to Refugees Makes Demographic and Economic Sense, 10 February. *Refuges Deeply*. Available at www.newsdeeply.com.

Dahi, O., 2014. The refugee crisis in Lebanon and Jordan: the need for economic development spending. *Forced Migration Review* nº47, pp. 11-13. Available at http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria/syria.pdf.

Deffenbaugh, R., 2001. *Family reunification in the context of resettlement and integration – NGO Statement*, President, Lutheran Immigration and Refugee Service, Annual Tripartite Consultations on Resettlement. Geneva, 20-21 June. Available at http://www.unhcr.org/3b30bace4.pdf.

Donn, N., 2015. Refugees don't want to come to Portugal, 27 November. Available at http://portugalresident.com/refugees-don%E2%80%99t-want-to-come-to-portugal.

European Commission, 2015. *Commission Recommendation of 8.6.2015 on a European resettlement scheme*, Brussels, 8.6.2015 C(2015) 3560 final. Available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/general/docs/recommendation_on_a_european_resettlement_scheme_en.pdf.

European Commission, 2015. *Communication to the European Parliament, the European Council and the Council – Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration*, Brussels, 23.9.2015 COM(2015) 490 final.

European Commission, 2016. Commission makes immediate proposal to implement EU--Turkey agreement: 54,000 places allocated for resettlement of Syrians from Turkey, 21 March. Available at http://europa.eu/rapid/press-release_IP-16-981_en.htm.

European Commission, 2016. *Communication from the Commission to the European Parliament, the European Council and the Council Second Report on the progress made in the implementation of the EU-Turkey Statement*, Brussels, 15.6.2016 COM(2016) 349 final. Available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160615/2nd_commission_report_on_progress_made_in_the_implementation_of_the_eu-turkey_agreement_en.pdf.

European Commission, 2016. European Migration Network, *Resettlement and Humanitarian Admission Programmes in Europe – what works?*, 9 November 2016 – Final version. Available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00_resettlement_synthesis_report_final_en.pdf.

European Commission, 2016. *European Solidarity: a Refugee Relocation System*. Available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_solidarity_a_refugee_relocation_system_en.pdf.

European Commission, 2017. Questions and Answers: Commission calls for renewed efforts in implementing solidarity measures under the European Agenda on Migration, 2 March. Available at http://europa.eu/rapid/press-release_MEMO-17-349_en.htm.

European Resettlement Network, 2017. *Focus on Syria*. Available at http://www.resettlement.eu/news/focus-syria.

European Resettlement Network, 2017. *Portugal*. Available at www.resettlement.eu/country/portugal.

Global Platform for Syrian Students, 2017. The Global Platform at a Glance. Available at http://www.globalplatformforsyrianstudents.org/index.php/the-network.

Global Platform for Syrian Students, 2017. Main Accomplishments and Figures 2015. Available at http://www.globalplatformforsyrianstudents.org/index.php/achievements.

Global Platform for Syrian Students, 2017. The Network of Partners. Available at http://www.globalplatformforsyrianstudents.org/index.php/partners.

Global Platform for Syrian Students, 2017. The Academic Consortium. Available at http://www.globalplatformforsyrianstudents.org/index.php/academic-consortium.

Goodman, A. E. and Sampaio, J., 2014. *What Will Become of Syria's Students and Scholars?* Available at https://www.huffingtonpost.com/allan-e-goodman/what-will-become-of-syria_b_5862984.html

Holpuch A., 2016. *US partners with Costa Rica to protect Central American refugees*. *The Guardian*, 26 July. Available at https://www.theguardian.com/world/2016/jul/26/central-american-refugees-costa-rica-obama-administration.

Humanitarian Needs Overview, 2018. Available at https://hno-syria.org/#key-figures.

International Catholic Migration Commission, 2015. *10% of refugees from Syria: Europe's resettlement and other admission responses in a global perspective*, June. Available at http://resettlement.eu/sites/icmc.tttp.eu/files/10%25%20of%20Refugees%20from%20Syria_compressed_LR.pdf.

International Rescue Committee, 2016. *Vulnerability Assessment of Syrian Refugee Men in Lebanon*, January. Available at https://www.rescue.org/sites/default/files/document/464/irclebanonrefugeemensvulnerabilityassessment.pdf.

Irish Refugee Council, 2016. *Safe and Legal Pathways to Protection: The challenges and opportunities for Ireland*, 20 June. Available at http://www.irishrefugeecouncil.ie/wp-content/uploads/2016/06/Safe-and-Legal-Pathways-to-Protection-WRD-20.6.16-2.pdf.

Japan International Cooperation Agency, 2017. *Announcement of the 2018 round of admission of the "Japanese Initiative for the future of Syrian Refugees"*, 8 September. Available at https://www.jica.go.jp/english/news/press/2017/170908_02.html.

Jubilut, L. L.; De Andrade, C. S. M. and Maureir, A. de L., 2016. Humanitarian visas: building on Brazil's experience. *Forced Migration Review* nº53, pp. 76-78. Available at http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/community-protection/jubilut-andrade-madureira.pdf.

Jurriaans, K-J., 2017. Portugal Offers Refugees a Warm Welcome, but Can't Get Them to Stay. *Refugees Deeply*, 1 September. Available at www.newsdeeply.com.

Long, K. and Crisp, J., 2010. Migration, mobility and solutions: an evolving perspective. *Forced Migration Review* nº35, pp. 56-57.

Open Source Investigations, 2015. Gulf States Response to Syrian Refugee Crisis: A Myth Debunked. Available at https://www.opensourceinvestigations.com/syria/gulf-states-response-to-syrian-refugee-crisis-a-myth-debunked/.

Pelaez, M. W., 2016. Unlike Other Parts of Europe, Portugal is Welcoming Refugees with a Wave of Solidarity. Available at http://www.theglobepost.com/2017/11/07/portugal-welcoming-refugees/

Phillips, M. and Starup, K., 2014. Protection challenges of mobility. *Forced Migration Review* nº47, pp. 27-30. Available at http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria/syria.pdf.

Portugal News, 2017. Number of refugees abandoning Portugal doubles in two months. *The Portugal News*, 27 April. Available at www.theportugalnews.com.

Sturridge, C., 2011. *Mobility and Durable Solutions: a Case Study of Afghan and Somali Refugees*. New Issues in Refugee Research, Research Paper nº204. Geneva: UNHCR.

The Guardian, 2015. Shocking images of drowned Syrian boy show tragic plight of refugees. *The Guardian*, 2 September. Available at https://www.theguardian.com/world/2015/sep/02/shocking-image-of-drowned-syrian-boy-shows-tragic-plight-of-refugees.

Türk, V. and Garlick, M., 2016. From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response and a Global Compact on Refugees. *International Journal of Refugee Law*, 28(4), pp. 656-678.

UK Home Office, 2017. *Syrian Vulnerable Persons Resettlement Scheme (VPRS) – Guidance for local authorities and partners*. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/631369/170711_Syrian_Resettlement_Updated_Fact_Sheet_final.pdf.

UNESCO and UNHCR, 2017. *The Regional Conference on Higher Education in Crisis Situations: "Higher Education in Crisis Situations: Synergizing Policies and Promising Practices to enhance*

Access, Equity and Quality in the Arab Region". Sharm El-Sheikh–Egypt, 28-29 March 2017.
Available at http://www.unesco.org/fileadmin/MULTIMEDIA/FIELD/Beirut/Lebanon.
pdf).

United Nations General Assembly, 2016. *Resolution adopted by the General Assembly on 19 September 2016 – Declaration for Refugees and Migrants*, Seventy-first session, A/RES/71/1, 3 October. Available at http://www.unhcr.org/57e39d987.

UNHCR, 2003. Global Consultations on international Protection, "Strengthening and expanding resettlement today: dilemmas, challenges and opportunities", 4th Meeting, EC/GC/02/7, 25 April 2002. *Refugee Survey Quarterly*, 22(2/3), pp. 249-255.

UNHCR, 2011. *Resettlement Handbook* (Revised Version). Geneva. Available at http://www.unhcr.org/46f7c0ee2.pdf.

UNHCR, 2015. *Policy on the Protection of Personal Data of Persons of Concern to UNHCR*. Available at http://www.refworld.org/docid/55643c1d4.html.

UNHCR, 2015. *Higher Education Considerations for Refugees in Countries Affected by the Syria and Iraq Crises.* Education and Resettlement Units, DIP.

UNHCR, 2015. *Family Reunification in Europe*. Brussels. Available at http://www.unhcr.org/56fa38fb6.pdf.

UNHCR, 2015. *Evaluation of Resettlement Programmes in Argentina, Brazil, Chile, Paraguay, and Uruguay*, Available at http://www.unhcr.org/57c983557.pdf.

UNHCR, 2016. *High-level meeting on global responsibility sharing through pathways for admission of Syrian refugees 30 March 2016 – Preliminary concept note (Rev. 1)*, 8 January. Available at http://www.unhcr.org/5694d2ab6.pdf.

UNHCR, 2016. *Strengthening refugee resettlement and other pathways to admission and solutions – Global Strategy 2016 – Supplementary Appeal,* February 2016. Available at http://www.unhcr.org/56bddc689.pdf.

UNHCR, 2016. *UNHCR on EU-Turkey deal: Asylum safeguards must prevail in implementation*, 18 March. Available at http://www.unhcr.org/news/press/2016/3/56ec533e9/unhcr-eu-turkey-deal-asylum-safeguards-must-prevail-implementation.html.

UNHCR, 2016. High-level meeting on global responsibility sharing through pathways for admission of Syrian refugees. Geneva, 30 March, *Background Note*. Available at http://www.unhcr.org/56a628619.pdf.

UNHCR, 2016. *Summary of key outcomes 30 March 2016 High Level Meeting on global responsibility sharing through pathways for admission of Syrian refugees*, 14 April. Available at http://www.unhcr.org/571dd1599.pdf.

UNHCR, 2016. *Executive Committee of the High Commissioner's Programme, New approaches to solutions, Standing Committee, 66th meeting, EC/67/SC/CRP.14*, 7 June. Available at http://www.unhcr.org/575a74597.pdf.

UNHCR, 2016. *Humanitarian evacuations in violence and armed conflict (internal note)*. Geneva, 17 June. Available at http://www.refworld.org/pdfid/57fe09284.pdf.

UNHCR, 2016. *Better Protecting Refugees in the EU and Globally*, December. Available at http://www.refworld.org/docid/58385d4e4.html.

UNHCR, 2017. *The New York Declaration for Refugees and Migrants, Answers to Frequently Asked Questions*, 4 January. Available at http://www.unhcr.org/584689257.pdf.

UNHCR, 2017. Christian community welcomes Syrian family to Canada, 10 January. Available at http://www.unhcr.org/news/stories/2017/1/5857bcef4/christian-community-welcomes-syrian-family-canada.html.

UNHCR, 2017. UNHCR alarmed at impact of US refugee program suspension, 31 January. Available at http://www.unhcr.org/ph/11133-unhcr-alarmed-impact-us-refugee-program-suspension.html.

UNHCR, 2017. Border fences and internal border controls in Europe, March. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/55249.pdf.

UNHCR, 2017. A year after key conference sought to boost resettlement targets for Syrian refugees, half of the 500,000 places sought have been achieved, 30 March. Available at http://www.unhcr.org/news/press/2017/3/58dcbf934/year-key-conference-sought-boost-resettlement-targets-syrian-refugees-half.html.

UNHCR, 2017. Canada's 2016 record high level of resettlement praised by UNHCR, 24 April. Available at http://www.unhcr.org/news/press/2017/4/58fe15464/canadas-2016-record-high-level-resettlement-praised-unhcr.html.

UNHCR, 2017. *Resettlement and Other Admission Pathways for Syrian Refugees (updated as of 30 April 2017)*. Available at http://www.unhcr.org/573dc82d4.pdf.

UNHCR, 2017. *2018 Projected Global Resettlement Needs, 23rd Annual Tripartite Consultations on Resettlement*, Geneva, 12-14 June 2017. Available at http://www.unhcr.org/593a88f27.pdf.

UNHCR, 2017. *EU Emergency Relocation Mechanisms (as of 27 September 2017)*, 28 September. Available at http://www.refworld.org/docid/59d37a7b4.html.

UNHCR, 2017. *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update V*, 3 November. Available at http://www.refworld.org/docid/59f365034.html.

UNHCR, 2017. Syrian father of eight fights to give his family a future, 29 December. Available at http://www.unhcr.org/news/stories/2017/12/5a3a6e659/syrian-father-eight-fights-give-family-future.html).

UNHCR, UNICEF, WFP, 2017. *VASYR 2017: Vulnerability Assessment of Syrian Refugees in Lebanon*, 15 December. Available at https://reliefweb.int/report/lebanon/vasyr-2017-vulnerability-assessment-syrian-refugees-lebanon.

United Nations Secretary-General, 2017. *Statement attributable to the Spokesman for the Secre-tary-General on Syria*, 10 July. Available at https://www.un.org/sg/en/content/sg/statement/2017-07-10/statement-attributable-spokesman-secretary-general-syria.

University of Porto (n.d.). University of Porto & Global Platform 4 Syrian Students (PT), Higher Education Supporting Refugees in Europe. Available at www.inhereproject.eu.

Windfield, N., 2016. Italian church groups open refugee 'humanitarian corridors'. *Associated Press*, 21 January. Available at http://www.mediterraneanhope.com/corridoi-umanitari /italian-church-groups-open-refugee-humanitarian-corridors-921.

Zetter, R. and Ruaudel, H., 2014. Development and protection challenges of the Syrian refu-gee crisis. *Forced Migration Review* nº47, pp. 6-10. Available at http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/syria/syria.pdf.

Extra Dossiê

Porque Não Devem os Militares Ser Polícias, em Democracia

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Resumo

A primeira revisão constitucional (1982) determinou o afastamento das Forças Armadas da segurança interna em Portugal, quebrando uma tradição de quase dois séculos. A mudança tem demorado a concretizar-se em pleno. Houve oposição a esta mudança, e hoje há quem defenda uma revisão constitucional para esbater as fronteiras entre segurança interna e defesa. Este artigo trata de rever o modelo do Estado de Direito Democrático, no qual se fundam aquelas fronteiras, e de o conciliar com as normas constitucionais e legais em vigor, visando mostrar que ele e aquelas fronteiras são atuais.

Abstract
Why the Military Should Not be Policemen, in Democracy

The first constitutional amendment (1982) determined that the armed forces would stop having a role in domestic security in Portugal, breaking an almost two-century tradition. But this change is taking too long to be fully accomplished. There was opposition to this change, and today there are advocates of a new constitutional amendment to blur the frontiers between internal security and defense. This analysis reviews the democratic and rule of law model, upon which these frontiers were founded, and tries to conciliate it with the current constitutional and legal norms, to demonstrate that the model and these frontiers are still up to date.

Introdução

A presença de militares na segurança interna em Portugal é uma constante desde a Guarda Real de Polícia, criada em 1801. Sobreviveu a vários regimes e devia ter acabado em 1982 com a primeira revisão constitucional. Pelo contrário, sobreviveu com a Armada a dominar a Autoridade Marítima; a PSP só na década de 90 deixou de ser militarizada; e ainda são oficiais do Exército que dirigem superiormente a GNR – mas neste caso, já desligados do ramo. A demora de décadas na mudança do modelo do Estado Novo para o modelo constitucional pós-1982, inerente a um Estado de Direito Democrático (EDD), em especial no âmbito da Polícia Marítima, causa perplexidade: poucas pessoas admitirão militares do Exército a mandar parar e fiscalizar viaturas, sem ser no estado de sítio; mas poucos parecem chocar-se com militares da Marinha em cargos das Forças Armadas (FA) a mandar parar um navio e a fiscalizarem-no no mar, ou cidadãos nas praias – exceto em casos muito específicos são medidas de polícia nos dois casos.

Em Portugal, a Constituição (CRP) e a lei estabelecem como podem as FA atuar na segurança interna. O modelo filosófico-político é idêntico aos modelos dos demais EDD, mas muitos comentadores não os entendem. Além disso, várias pessoas pensam que as FA devem poder atuar na segurança interna com poucas limitações, sobrepondo-se ou substituindo as forças e serviços de segurança (FSS); várias vozes, sobretudo militares, têm defendido a revisão da CRP para que as FA possam ter competências próprias na segurança interna (Prata, 2010; Borges, 2013). Os recentes ataques terroristas reavivaram a questão. Embora o essencial já tenha sido dito antes, há décadas, incluindo nas páginas da *Nação e Defesa* (em especial, no n.º 94) importa rever a matéria adaptando-a à realidade recente. É isso que visa este artigo, que constitui uma adaptação e uma evolução ao elaborado em Paulo (2014). Começa-se por apresentar a racionalidade do modelo que a CRP pôs em vigor após 1982. De seguida caracteriza-se o enquadramento constitucional e legal sobre a atuação das FA na segurança interna. Prossegue-se com a identificação das principais implicações da segurança sobre a democracia, terminando com algumas considerações finais.

A Racionalidade do Modelo Político-Constitucional

A racionalidade do modelo constitucional pós-1982 explica-se com base na natureza do EDD, nas consequências diretas que ele tem sobre a organização da segurança nacional e nos equilíbrios políticos que foi possível alcançar naquela data.

O Estado de Direito Democrático

A democracia é o governo do e pelo povo; no EDD o povo é o soberano. O povo é o conjunto dos cidadãos de um Estado. No EDD, cada cidadão é um fim em si mesmo: tem um direito inalienável à vida e à liberdade e é responsável por conduzir a sua

vida (Lasswell, 1951, p. 194). A liberdade traduz-se numa esfera de autonomia individual, que todos – incluindo os poderes públicos – devem respeitar.

Só há democracia em liberdade. Só assim se pode garantir a igualdade de todos os cidadãos e a tolerância de uma pluralidade de concretizações, para que os cidadãos possam viver com dignidade, possam realizar as suas potencialidades e realizar-se como seres humanos. Daí a preferência do EDD pela resolução de conflitos (possíveis e até inevitáveis, e ainda mais visíveis e prováveis, num regime com amplas liberdades públicas) por via pacífica.

O EDD é um sistema formal ou de regras: "[a democracia é] caracterizada por um conjunto de regras (primárias ou fundamentais) que estabelecem *quem* está autorizado a tomar as decisões coletivas e com quais *procedimentos*" (Bobbio, 1987, p. 18)[1].

O EDD tem três características essenciais, estabelecidas na Constituição de cada Estado, que se interpenetram:

(1) O império da lei (a primeira parte da *rule of law*) com três elementos: a supremacia da lei (subordinada à constituição), por oposição aos poderes arbitrários e prerrogativas de pessoas, grupos ou dirigentes; a igualdade de todos, incluindo órgãos e agentes do Estado, perante a lei geral e abstrata; e a legitimidade que resulta de emanar do povo soberano (Dicey, 1889, pp. 171-183; Novais, 2006, p. 55; Bingham, 2010, pp. 3-9). Um corolário da *rule of law* é o princípio da legalidade[2]: ele visa autolimitar o Estado pela sua vinculação à lei; e determina que todos os órgãos e agentes do Estado estão vinculados ao interesse público e só podem atuar e exercer as suas funções com base na, e dentro da, lei.

(2) Um elenco de direitos e liberdades fundamentais (a outra parte da *rule of law*) para dar certeza jurídica a todos e cada um dos cidadãos, sobretudo de minorias, sobre a esfera da sua autonomia individual, face às maiorias e aos diversos poderes. Além disso, a lei define um catálogo de crimes, atos que a comunidade considera muito nocivos para si própria, a ordem, o indivíduo ou quaisquer grupos, por violarem direitos importantes ou fundamentais.

(3) A separação dos poderes executivo, legislativo e judicial, tendo cada um uma esfera de autonomia própria, para evitar, através do controlo mútuo, os abusos (potenciados pela concentração) (Novais, 2006, pp. 73-102).

Servindo as anteriores, importa referir mais duas características:

(1) A democracia representativa, na qual os governantes emergem da competição política e de eleições livres e universais, com um mandato do povo para o gover-

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1 Itálico do autor.
2 Por oposição ao Princípio da Liberdade, que preside ao domínio privado: "[…] a atual distinção entre a esfera pública (coberta pela lei) e a privada (onde, como na organização caseira ou na elaboração de um testamento, por exemplo, as pessoas são livres de fazer o que entenderem) [….]" (Creveld, 1999, p. 4).

nar. Ninguém tem mais legitimidade do que os políticos eleitos, pois ninguém pode reivindicar que representa o povo sem se ter submetido a eleições (Weber, 1946, pp. 225-226; Lourenço, 2013, pp. 99-100).

(2) A supremacia civil, "[…] o princípio basilar de toda e qualquer Democracia[…]" (Lourenço, 2013, p. 68), determina a subordinação dos subsetores da segurança aos órgãos de soberania e aos dirigentes democraticamente eleitos, como um instrumento da governação[3] (Vagts, 1959, p. 103; Diez-Alegria, 1973, p. 44; Santos, 1976a; Dahl, 1989, p. 245; Gunther *et al.*, 1995, p. 7; Kohn, 1997; Matos, 2008, p. 103). Pelo que "a tradição da supremacia do poder civil constitui uma barreira moral e legal contra a tentação de alguns militares pelo poder" (Santos, 1977, p. 3).

"A supremacia civil alcança-se por um processo que consiste, primeiro, no afastamento das FA de posições de poder fora do setor da defesa e, segundo, pela nomeação e reconhecimento de políticos civis no topo do setor da defesa e militar." (Agüero, 1995, p. 126).

"Numa democracia consolidada não há setores da administração fora do controle dos dirigentes eleitos." (Serra, 2010, p. 31).

"É o seu estatuto fatalmente privilegiado – a detenção da força bruta – que autolimita politicamente a instituição militar. Não é possível acumular nas mesmas mãos os dois gládios – o da força pura e o da supremacia política – sem confiscar de maneira tirânica a liberdade civil. De todos os cidadãos, aquele que precisa de ser mais democrático é o militar." (Lourenço, 2013, p. 127).

É também referida como um avanço civilizacional do século XX:

"O grande facto da modernidade é que o enorme exército permanente é um austero garante da lei, é obediente às ordens da autoridade civil e tem pouca influência política, exercendo quando muito indiretamente a influência que tenha. Sendo corrente nos países da civilização europeia, representa uma muito feliz exceção, se não for absolutamente inédita, na história da humanidade." (Mosca, 1923, p. 229).

A Organização da Segurança Nacional em Democracia

O EDD prefere a prevenção à repressão, visto nesta ser mais intenso o uso da força, um mal a evitar, pois envolve a interferência na esfera de autonomia individual. A segurança também tende a preferir a prevenção, por razões de custos e eficácia, mas cada vez mais por influência do EDD, o qual impõe a proporcionalidade. Para a segurança, o uso da força visa dissuadir o opositor e, se falhar a dissuasão, derrotá-

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3   De notar que a supremacia civil é uma condição necessária ao exercício da democracia, mas não é uma condição suficiente, como se prova pela subordinação das FA a regimes autoritários e totalitários civis (Carrilho, 1994, p. 87).

-lo. No EDD, pode fazer-se uso da força, mas só pode ser em último recurso, sob a autoridade legítima e sob a norma da proporcionalidade:

> "[…] a eliminação da violência armada constitui um objectivo basilar do Estado moderno. Por norma, o poder público não destrói as armas, mas concentra-as nas mãos do aparelho estatal, retirando o seu usufruto à maioria dos cidadãos comuns. Aliás, o Estado caracteriza-se precisamente por deter esse monopólio da coacção." (Clemente, 1998, p. 138).

Os diferentes contextos, externo e interno, dos Estados determinam uma divisão do trabalho de produção da segurança nacional entre segurança interna e segurança face a ameaças externas (ou defesa nacional), doutrina já defendida no século XIX (Constant, 1815, pp. 209-219) e hoje consensual e típica dos EDD (Agüero, 1997; Amaral, 1983; Bebler, 1994; Brooks, 2005; Clemente, 1998; Cohen, 2002; Colaço, 2014; Diamond, 1997; Diogo, 2004, pp. 130-137; Finer, 1962; Goodman, 1996; Huntington, 1991; Lioe, 2011; Lourenço, 1978, p. 6; Morais, 2000; Pereira, 2010, pp. 84-85, 2012a, pp. 14-16, 2012b, p. 414; Pion-Berlin, 2005; Santos, 1976a). Esta doutrina defende a existência de dois instrumentos do Estado (*agencies of civil power*, como definiu Vagts (1959, p. 103) especializados no uso da força para produzir a segurança nacional, as FA e as FSS:

> "Um – chamemos-lhe 'soldados' – dirige-se contra outras forças armadas visando derrotá-las. A ação do outro – chamemos-lhe 'polícia' – visa manter ou restabelecer o nível adequado de legalidade e ordem pública no seio duma entidade política, tipicamente um estado. A vitória, que não tem necessariamente uma conotação moral, é o objeto de uma força; levar à justiça os que cometem ilícitos, o que tem uma conotação moral, é o objeto da outra." (Hobsbawn, 2010, p. 22).

> "A segurança nacional trata de garantir a soberania do estado sobre o seu território e a sua população. A segurança pública é a capacidade dum governo em manter a ordem pública necessária para a realização de funções básicas como o comércio, os transportes e as comunicações. A segurança dos cidadãos tem a ver com a capacidade dos indivíduos e dos grupos exercerem os seus direitos políticos, económicos, civis e humanos que os tornam cidadãos." (Shemella, 2006, p. 138).

No EDD, as FA têm uma orientação externa e atuam contra inimigos: "[…] a defesa da integridade do território é o fim permanente, razão de ser da existência das Forças Armadas" (Santos, 1976b, p. 9).

As FSS têm uma orientação interna, com o uso da força de baixa intensidade e defendem a segurança dos cidadãos:

> "[…] as forças de polícia […] vivem afastadas das forças armadas e, sobretudo, por enfrentarem um adversário em geral praticamente desarmado, o seu armamento pode ser muito mais ligeiro." (Diez-Alegria, 1973, p. 15).

> "[…] a força pública não procura por norma o extermínio do adversário da ordem instituída, apenas a punição jurídica em sede judicial e a ressocialização do desvio

social." (Clemente, 1998, p. 50) E mais à frente: "Os direitos dos cidadãos constituem um dos fins da função policial, daí a natureza excepcional do uso da força física e excepcionalíssima do uso das armas de fogo, por parte das Forças de Segurança. […] torna-se já pouco aceitável que a segurança pública seja assegurada com recurso usual às armas de guerra (espingardas, metralhadoras, carros de combate, etc.), salvo em circunstâncias gravíssimas de alta violência e de terrorismo e de guerra civil." (Clemente, 1998, p. 51).

Este modelo de produção de segurança está interiorizado e assente e tem boas razões nos EDD: a segurança ante ameaças externas pode obrigar a dissuadir, resistir e retaliar, até aos mais altos níveis de intensidade do uso da força, podendo chegar à destruição generalizada; isto é, as FA operam contra inimigos que visam dominar ou destruir pela ameaça ou uso da força. Militar "significa o treino para o uso da força máxima numa dada organização social" (Matos, 2008, p. 91). Como enfatizam vários autores:

> "Em guerras defensivas, como nas ofensivas, é necessário visar uma finalidade: a destruição do exército inimigo, em batalha ou tornando a sua sustentação extremamente difícil." (Clausewitz, 1812, p. III.2.3).

> "[…] as forças armadas podem proteger-se sozinhas a si próprias, tornar credíveis as suas exigências, e ameaçar usar os meios mais violentos ao dispor do estado." (Perlmutter, 1977, p. 281).

> "[…] a força militar pode ser usada para causar sofrimento. Além de se apoderar e de proteger bens valiosos pode destruir bens. Além de enfraquecer um inimigo militarmente pode causar-lhe simplesmente sofrimento […]" (Schelling, 1966, p. 2).

"Aquilo que distingue definitivamente a profissão militar de todas as outras é a sua finalidade última: *a administração organizada da violência armada*." (Vaz, 2001, p. 103). Esta lógica é incompatível com a segurança interna no EDD, centrada no cidadão, cujos direitos têm de ser respeitados e perante o qual o uso da força e a sua ameaça devem ser mínimos ou nulos. Já os desafios de segurança interna, em geral de mais baixa intensidade no contexto do império da lei, são enquadrados pela segurança pública, pela manutenção e reposição da ordem pública, pela investigação criminal e pelas informações e subordinam-se às exigências de obtenção e preservação da prova para, com os suspeitos, serem apresentados para julgamento em tribunal (*law enforcement*) (Valente, 2014, pp. 45-70).

A disponibilidade dos mais altos níveis de intensidade do uso da força no âmbito interno é raramente proporcional ao desafio, por não ter oposição comparável, e cria oportunidades para as FA interferirem sem legitimidade na vida política e social, ou extraírem benefícios setoriais; ou involuntariamente destruírem as provas. O abuso de poder e a desproporcionalidade são inaceitáveis no EDD, e podem ocorrer por abuso dos militares, mas também por uso inadequado das FA por parte de um governo para resolver crises internas.

Em poucas palavras: as FSS dirigem-se a cidadãos, evitam usar a força e visam a obtenção e preservação da prova; as FA dirigem-se a inimigos e admitem a destruição como resultado:

> "As forças armadas […] em geral são treinadas para missões muito diferentes das necessárias para alcançar a segurança interna. […] Enquanto os agentes que aplicam a lei são treinados para usar a força em último recurso, os soldados são treinados para usá-la na primeira oportunidade. […] Os soldados não são agentes de polícia, e há sempre o perigo de que usem a força de maneira inadequada ao contexto doméstico." (Clarke, 2006, p. 1).

Desde Lasswell (1941), validado pelas experiências da América Latina desde os anos da década de sessenta (Stepan,1986), que emergiram consensos académicos e políticos, nos quais só a existência de um complexo ambiente de ameaças, com ramificações internas, justifica alargar as missões das FA da defesa à segurança interna. Vários autores de referência argumentam no mesmo sentido:

> "[…] tornou-se impossível ser especialista na gestão da violência na defesa nacional e ao mesmo tempo ser perito em política ou no uso da força para a manutenção da ordem pública. As funções do oficial divergiram das do político e do polícia." (Huntington, 1957, p. 32).

> "[…] pessoalmente repugna-me considerar as Forças Armadas empenhadas na manutenção da ordem […] essa é a missão das forças de polícia." (Beaufre, 1964, p. 148).

> "Num regime democrático, as FA não são uma super-polícia do governo […]." (Santos, 1976b, p. 17).

> "[…] não fornecer a ninguém qualquer pretexto a que, no futuro, pudesse invocar-se o conceito amplo de defesa nacional para tentar justificar a intervenção militar na solução de crises políticas internas." (Amaral, 1989, p. 659).

> "As missões externas são as mais propícias à existência de padrões saudáveis de relações civis-militares, enquanto missões não-militares, internas, com frequência causam diversas patologias." (Desch, 1996, p. 13).

> "Atribuir aos militares tarefas correntes de aplicação da lei, por oposição a manter a ordem em último recurso, coloca as Forças Armadas contra a população, com uma perda de confiança e eventual alienação mútuas e redução do controlo civil." (Kohn, 1997, p. 145).

> "[…] as FA são estruturadas pelas tarefas que a sociedade lhes atribui – pelas missões que lhes dá." (Matos e Bacalhau, 2001, p. 47).

> "[…] o militar […] possui os meios para modificar, se necessário pela força, a ordem constitucional, […]" (Vaz, 2001, p. 86).

> "Como as FA têm o inimigo mais poderoso, têm que ter o máximo poder de fogo possível numa dada organização política; deste poder de fogo resulta que as FA são

suscetíveis de submeterem pela força qualquer segmento da organização política; […]" (Matos, 2008, p. 90).

"[…] a ausência de ameaça de golpe de estado não afasta todos os problemas relacionados com a intervenção das Forças Armadas." (Serra, 2010, p. 25).

"Um passo essencial no processo de subordinação das Forças Armadas ao controlo civil é a transformação da polícia num corpo civil." (Serra, 2010, p. 74).

As tarefas não-militares podem distrair as FA daquilo em que são insubstituíveis (a sua missão, a defesa militar), com indesejável perda de eficácia, posição que foi imortalizada pelo General Sherman: "Devemos manter a paz, sempre; mas não atuar como agentes da justiça e deter ladrões. Isso está abaixo da vocação do soldado." (Thorndike, 1894, p. 342; divulgando uma carta de 1875). Na mesma linha, Shemella (2006, p. 137) defende que "em algumas missões não-convencionais, como a manutenção da paz e o apoio humanitário, a missão são os próprios civis. Nestes casos, não é uma mentalidade de guerreiro que faz falta para alcançar o êxito. Os militares treinados para a guerra encontram-se nesses casos a tentar perceber e a adaptar-se à mentalidade de aplicação da lei." A asserção é completada por Serra (2010, p. 72), ao afirmar que "Forças Armadas com acesso independente a informação sobre assuntos internos têm uma inclinação incurável para intervir nos assuntos internos de um país."

Por outro lado, para que as FA tenham competências próprias na segurança interna, terão de ter alguma autoridade sobre as FSS, o que pode confundir as FSS: em vez de defenderem a segurança do cidadão podem vir a ser empregues para defender a segurança do Estado ou do governo em funções; em vez de servirem o cidadão podem ser tentadas a vê-lo como "inimigo interno", o que é inaceitável (Ballbé, 1983, p. 463; Amaral, 1989, p. 658).

Sem merecer desenvolvimento neste estudo, importa ainda referir um outro elemento produtor de segurança, os serviços de informações, cujo produto se destina às FA e às FSS. Um quarto pilar da segurança são os serviços de proteção civil, que estão orientados acima de tudo para a proteção das pessoas e do seu património, em especial face a perigos involuntários.

A Viabilidade das Forças Armadas

Sobretudo depois da Guerra Fria, as operações militares passaram a ter teatros muito variados e alargou-se o espetro de missões, desde a guerra às chamadas missões de paz. As FA são empregues num alargado espetro de tarefas e de uso da força e as operações poderão ser menos intensas, mas mais complexas do que a guerra tradicional. A aproximação de algumas tarefas militares às FSS, usando a força com baixa intensidade ou sem a usar, levou alguns autores a chamar *constabulary forces* às FA (Everts, 2002, p. 78; Easton e Moelker, 2010, pp. 20-22):

"A instituição militar converte-se numa força policial quando está permanentemente preparada para atuar, empenhada no uso mínimo da força e procura relações internacionais viáveis, em vez da vitória." (Janowitz, 1960, p. 418).

Mas da redução que se observa da guerra tradicional entre Estados não se pode inferir que as FA se tornaram, se vão tornar, ou se devem tornar, em FSS muito robustas ou "superpolícias". Não desapareceram as diferenças substantivas entre FSS e FA, nem desapareceu a eventual necessidade de usar a força até à destruição; só os teatros de operações das FA se afastaram (por agora) das fronteiras físicas dos Estados europeus. Mas a necessidade e a missão das FA não desapareceram, nem nada sugere que vão desaparecer.

Apesar do alargamento de missões, existem alguns receios de perda de importância das FA que têm levado diversos militares a procurar a legitimidade social através de um papel ativo na segurança interna (Horta, 1991). Seguindo uma tradição antiga, existem significativos setores das FA que desejam uma conceção abrangente da defesa (Morais, 2000, pp. 59-61); e invocam-se as capacidades das FA para suprir deficiências das FSS perante ameaças com componentes externas ou muito violentas. Mas as tarefas não-militares podem criar divisões internas nas FA e distraí-las da sua missão militar, com indesejável perda de eficácia. Como sublinha Santos (1980, p. 61): "não tenhamos dúvidas que umas Forças Armadas capazes de tudo fazer mas incapazes de fazer a guerra não são Forças Armadas." Para o mesmo autor, "o combate na guerra continuará a constituir a sua [das FA] razão de ser, pelo que deverão resistir à tentação de esquecer essa missão, em tempos de apoio difícil por parte de opiniões públicas mais recetíveis a aceitar despesas com o bem-estar social do que com a segurança, evitando encontrar fundamentos para a sua existência e missão em ações de polícia ou daquilo que passou a designar-se por 'missões de interesse público' (como se a sua missão principal não constituísse a sua missão de interesse público por excelência)." (Santos, 2014, p. 349).

Mesmo concetualmente, não é por alguma ameaça externa se projetar no plano interno que passa a ser interna. De resto, pela definição de ameaça, todas as ameaças externas visam conseguir impacto interno; simetricamente, não é por uma ameaça que ocorra no plano doméstico ter origem em alguma componente externa que se torna em ameaça externa. No EDD, portanto, não é a origem nem o local de concretização da ameaça que determinam a maneira de a enfrentar ou resolver; o que é decisivo é o mecanismo pelo qual se enfrentam as ameaças, que começa por considerar uma ameaça concreta como uma violação da lei. No EDD, não são as capacidades que dão a autoridade (ou as competências), mas a lei (Paulo, 2012 e 2013). Assim, o emprego das FA é restrito no plano doméstico e não é obrigatório nem automático por existirem ameaças externas. Como enfatiza Serra (2010, p. 86): "Missões ligadas à segurança interna devem ter curta duração, não serem permanentes [...] executadas sob controlo civil e sujeitas à legislação civil."

O Contexto Português

A CRP estabelece no artigo 2..º (desde 1982) que a "República Portuguesa é um Estado de direito democrático"; de 1976 até 1982 dizia apenas "Estado democrático". A CRP estabelece ainda o princípio da legalidade: "Os órgãos e agentes administrativos estão subordinados à Constituição e à lei […]" (n..º 2 do artigo 266..º); a versão de 1976 já o estabelecia (n..º 2 do então artigo 267..º). Por isso, todos os órgãos e serviços da AP, designadamente a administração pública militar, estão vinculados ao disposto na CRP e na lei, por exemplo ao princípio da legalidade: a lei é o fundamento e o limite da atividade administrativa (Canotilho, 1999, p. 22): "Os órgãos da Administração Pública devem atuar em obediência à lei e ao direito, dentro dos limites dos poderes que lhes forem conferidos e em conformidade com os respetivos fins." (n..º 1 do artigo 3.º do decreto-lei n.º 4/2015 de 7 de janeiro, Código do Procedimento Administrativo, CPA).

Também relevante neste âmbito é o princípio da proporcionalidade[4], ou princípio de proibição do excesso, o qual vincula o Estado a "provocar com a sua decisão a menor lesão de interesses privados compatível com a prossecução do interesse público em causa" (n.º 2 artigo 266.º CRP; Caupers, 1998, p. 22).

Importa sublinhar que as FA estão integradas na AP e pertencem à administração direta do Estado através do MDN (Canotilho, 1984, pp. 139-141), de acordo com a lei, mesmo nas suas versões anteriores[5].

A integração das FA na AP, e em particular na administração direta do Estado, sujeita ao poder de direção do Governo, é um dos meios pelos quais se afirma a supremacia civil inerente ao EDD. Para garantir a supremacia civil é necessário limitar a autonomia e as possibilidades de intervenção das FA na segurança interna, tendo presente a tradição que vem de 1820 das FA portuguesas terem competências domésticas próprias, estarem à disposição dos governos para serem empregues em cenários domésticos, ou intervirem porque assim o entendem: "Desde o início do século XIX as Forças Armadas portuguesas têm estado sempre no, ou perto da superfície do, poder." (Wiarda, 1989, p. 139).

É fundamental ter presente a desconfiança dos oficiais das FA em relação aos políticos, e que foi há muito reconhecida por Wiarda (1989, p. 136): "[o corpo de oficiais] desconfia e é hostil face aos partidos e políticos civis" […] "o Movimento das Forças Armadas era hostil face a todos os partidos políticos, que entendia que

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4 O princípio da proporcionalidade foi introduzido na revisão constitucional de 1989.

5 N.º 1 do artigo 23.º da lei orgânica n.º 5/2014 (29 de agosto), Lei de Defesa Nacional (LDN); n.º 2 do artigo 1.º da lei orgânica n.º 6/2014 (1 de setembro), Lei Orgânica de Bases de Organização das Forças Armadas (LOBOFA); n.º 1 do artigo 4.º decreto-lei n.º 183/2014 (29 de dezembro), lei orgânica do MDN (LOMDN); e as leis orgânicas dos três ramos das FA.

dividiam e prejudicavam o verdadeiro interesse nacional, que só ele representava" (Wiarda, 1989, p. 125).

Esta desconfiança é indissociável das intervenções militares na vida política da Monarquia Constitucional de 1820 a 1851, na I República e já no "Estado Novo" (Caeiro, 1997, pp. 174-175; Matos, 2008, pp. 210-232); e tiveram pouco respeito pela norma inserida nas constituições de 1820 a 1911: "A força pública é essencialmente obediente. Os corpos armados não podem deliberar"[6]. De facto, "[…] não há nenhuma grande modificação na estrutura do poder político em Portugal que não tenha por detrás, aberta ou veladamente, por ação ou omissão, a mão do instrumento militar." (Santos, 1980, p. 263).

> "[…] um dos aspetos mais interessantes da revolução em Portugal foi o esforço das Forças Armadas de consolidar o seu poder, de subordinar a política civil à autoridade militar e de edificar estruturas institucionais para garantir que as Forças Armadas teriam a última palavra nos assuntos nacionais." (Wiarda, 1989, p. 139)

> "[…] a presença dos militares no poder, […], não iria parar. E a revolução de 1820 é disso o primeiro exemplo. Daí em diante, assistir-se-ia a toda uma dinâmica de luta pela aquisição, manutenção e exercício do poder político, toda ela subordinada à filosofia militar. […], de instrumento de uma classe – a nobreza – passa a instituição militar a instrumento do poder […]." (Caeiro, 1997, p. 41).

Também no Estado Novo, as FA tinham tarefas domésticas: "O Estado assegura a existência e o prestígio das instituições militares de terra e mar exigidas pelas supremas necessidades de defesa da integridade nacional e da manutenção da ordem e paz pública." (artigo 53.º da Constituição de 1933). Era o modo como Salazar decidiu integrar os militares no regime: "[…] Salazar elevou as Forças Armadas ao papel de 'poder moderador' historicamente reservado para a coroa, assegurando assim a lealdade e o apoio das Forças Armadas enquanto preservava ao mesmo tempo o apoio de todos, exceto os mais fervorosos monárquicos, integralistas e conservadores católicos." (Wiarda, 1989, p. 173).

Também após o golpe militar de 25 de abril de 1974, o decreto-lei n.º 310/74[7] de 8 de julho criou o COPCON, uma nova unidade militar com atribuições e competências, e atuação, sobre a ordem e a segurança públicas (Carrilho, 1994, p. 45). Encarnando um papel moderador, análogo ao que Salazar lhes atribuiu no Estado Novo, as FA impuseram o Pacto MFA-Partidos de 1975, que marcou a versão da CRP-1976, a qual, além de manter um órgão de soberania militar, o Conselho da Revolução (regulado pelos artigos 113.º e 142.º a 149.º) para tutelar o regime atribuiu às FA

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6   Nestes termos, ou noutros equivalentes, seguindo o artigo 12.º da Constituição Francesa de 1791, nas constituições de 1822: artigo 172.º; 1826: artigo 115.º; 1838: artigo 122.º; e 1911: artigo 69º.

7   O autor não conseguiu encontrar diploma legal de revogação.

competências no plano doméstico (Wiarda, 1989, pp. 111-112): "As Forças Armadas portuguesas garantem o regular funcionamento das instituições democráticas e o cumprimento da Constituição" (artigo 273.º). A manutenção da ordem interna era reconhecida pela Armada como uma das suas missões (Marinha, 1980).

Por fim, o Presidente da República, General Ramalho Eanes (1976-1986), revelou as suas reservas à primeira revisão constitucional partilhadas por numerosos militares sobretudo nos mais altos escalões (Ferreira, 2001, p. 190); em coerência, vetou a lei n.º 29/82 de 11 de dezembro[8]. Entre outros aspetos, opunha-se à extinção do Conselho da Revolução, às fronteiras entre defesa e segurança interna, à redução da autonomia das FA e à subordinação das FA ao MDN e ao Governo (Amaral, 1983, pp. 483-489). Findo o seu mandato, Eanes tornou-se presidente de um partido (Partido Renovador Democrático), composto por diversos militares seus aliados e apoiantes, cuja formação terá tido a sua influência pessoal (Manuel, 1996, p. 58).

Estas opções, e os seus resultados, revelam um padrão de presença e intervenção na vida política e na governação das FA e de militares no ativo levando muitos políticos e cidadãos a concluir que as FA não devem ter missões domésticas próprias em democracia, exceto quando estiver em vigor a lei marcial (Bruneau e MacLeod, 1986, pp. 12-24). E é por isso que a CRP estabelece que "Às Forças Armadas incumbe a defesa militar da República." (n.º 1 do artigo 275.º), uma das componentes da defesa nacional, a qual diz a CRP que tem por objetivos "[…] garantir, […], a independência nacional, a integridade do território e a liberdade e a segurança das populações contra qualquer agressão ou ameaça externas" (n.º 2 do artigo 273.º). Só está prevista uma exceção, que é a lei marcial ou Estado de Sítio, previsto no artigo 19.º e no n.º 7 do artigo 275.º da CRP e regulado pela lei orgânica n.º 1/2012 de 11 de maio, que alterou a lei n.º44/1986 de 30 de setembro.

Como já referido, muitos estudiosos e políticos defendiam a divisão da produção de segurança entre as FA e as FSS[9], adotada em vários países, por rejeitar em absoluto a possibilidade do "inimigo interno" (Ferreira, 2001, p. 190). Esta opção tornou-se explícita só em 1982, quando passou a ficar plasmada na CRP e na lei.

Serra (2010)[10] defende o afastamento das FA das funções de polícia, questão relevante para a Polícia Militar e para a GNR, cujo comandante-geral (CG) é um oficial-general de três estrelas da Armada no ativo. Esta tese foi reconhecida em parte em Portugal: a PM adota um modelo civil mas é chefiada por oficiais da Armada e composta por pessoal militarizado. O conceito de "pessoal militarizado" neste con-

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8   Lei de Defesa Nacional (LDN).

9   E em serviços de informações, embora as FA e as FSS sejam os principais atores no âmbito da presente análise.

10   Cuja relevância resulta de ter sido MDN em Espanha de 1982 a 1991, na fase de consolidação do respetivo EDD.

texto tem dignidade constitucional desde 1982 (artigo 270.º), mas carece de uma definição jurídica rigorosa.

Esta divisão da produção de segurança em Portugal consolidou-se e densificou-se com o parecer do Conselho Consultivo da Procuradoria-Geral da República (CC-PGR) n.º 147/2001 de 9 de novembro, homologado pelo MDN, que interpretou o conteúdo daquelas normas da CRP, e as balizas da eventual atuação das FA na segurança interna; destacam-se duas passagens (uma no corpo e outra nas conclusões) deste parecer homologado em 2001:

> "O conceito constitucional de defesa nacional passou a ter como vetor essencial a segurança do País contra agressões ou ameaças externas, através das Forças Armadas, distinguindo-se da defesa da ordem interna, constitucionalmente cometida à polícia.
> Podemos dizer que a preocupação fundamental que presidiu à alteração dos preceitos acabados de referir foi, por um lado, separar a defesa nacional da defesa da ordem interna (segurança interna) e, por outro, redefinir o modelo constitucional das Forças Armadas, em conformidade com o que vigorava nas constituições democráticas do mundo ocidental, através da sua subordinação de forma inequívoca e substancial ao poder político" (CC-PGR, 2001, p. 3102).
> (…)
> "A defesa militar perante ameaças externas ao funcionamento de sectores de produção e abastecimento alimentar, industrial e energético, dos transportes e das comunicações, na medida em que constituem interesses vitais para o bem-estar e segurança das populações, compreende-se na previsão do n.º 2 do artigo 273.º da CRP e no n.º 1 do artigo 2.º da LDNFA." (CC-PGR, 2001, p. 3105).

Deste parecer homologado resulta que as FA não podem, em geral, intervir na segurança interna, o que inclui a direção ou o controlo de FSS. Mas a CRP desde 1982 que admite que as FA podem apoiar outros órgãos e serviços, como as FSS e os serviços de proteção civil (e fazem-no):

> "As Forças Armadas podem ser incumbidas, nos termos da lei, de colaborar em missões de proteção civil, em tarefas relacionadas com a satisfação de necessidades básicas e a melhoria da qualidade de vida das populações, e em ações de cooperação técnico-militar no âmbito da política nacional de cooperação." (artigo 275.º da CRP).

Entre as necessidades básicas em que as FA podem colaborar com as autoridades competentes está a segurança interna, como nota Morais (2000, p. 63). A colaboração é definida e realizada através da articulação entre o órgão de comando das FA (CEMGFA) e o órgão administrativo de coordenação ou direção superior do serviço a apoiar. No caso da segurança interna é o secretário-geral do Sistema de Segurança Interna (SGSSI), e está prevista na Lei de Segurança Interna no artigo 35.º da lei n.º 53/2008 de 29 de agosto de 2008:

> "As Forças Armadas colaboram em matéria de segurança interna nos termos da Constituição e da lei, competindo ao Secretário-Geral do Sistema de Segurança

Interna e ao Chefe do Estado-Maior-General das Forças Armadas assegurarem entre si a articulação operacional."

Esta norma está espelhada na Lei de Defesa Nacional, lei orgânica n.º 5/2014 de 29 de agosto, no artigo 48.º:

"1 – As forças de segurança colaboram em matéria de defesa nacional nos termos da Constituição e da lei.
2 – Compete ao Chefe do Estado-Maior-General das Forças Armadas e ao Secretário--Geral do Sistema de Segurança Interna assegurar entre si a articulação operacional, para os efeitos previstos na alínea e) do n.º 1 do artigo 24.º."

As normas jurídicas não o referem, mas está implícito que a atuação e o emprego das FA em tarefas fora da sua missão (por exemplo, de colaboração ou apoio a FSS ou a serviços de proteção civil) se faz com as capacidades sobrantes e sem desguarnecer a sua missão. Logicamente, quem dirige um organismo tem por primeira prioridade cumprir a missão desse organismo; só depois tem sentido atribuir os recursos, pelos quais é responsável, a outras tarefas. É absurdo um dirigente deixar a sua missão por cumprir para apoiar outros serviços, exceto numa situação pontual de emergência ou se receber instruções políticas específicas nesse sentido.

Impactos da Segurança Nacional sobre a Democracia
O efeito mais saliente da segurança nacional sobre o EDD é a existência de FA, de FSS e de serviços de informações. Estando na essência da democracia a aversão ao uso da força e a preferência pelo diálogo e pela negociação para encontrar compromissos satisfatórios para os cidadãos envolvidos em conflitos, a mera existência de dispositivos para usar e gerir a força, ainda que legítima, divergem da, e podem chegar a opor-se à, essência do EDD.
Outro efeito é a pressão da segurança pelo secretismo ou, pelo menos, para garantir um "domínio reservado". Invoca-se o imperativo da ocultação de táticas e vulnerabilidades, para impedir eventuais vontades ameaçadoras de se prepararem e ganharem vantagem num conflito. Quanto aos serviços de informações podem estar em causa atuações ocultas ou ilegais, cuja exposição não só anulará os seus objetivos, como pode revelar violações da lei ou colocar o Estado em situações embaraçosas.
Dois efeitos associados ao uso da força (ou, pelo menos, da autoridade apoiada pela força), são a preferência da segurança pela prevenção e pela repressão que impeça eventuais reações. As FA e as FSS tendem a preferir a prevenção, pois esperam mais eficácia e menores custos se atuarem perante indícios de ameaças, do que terem de reagir a, e enfrentar, ataques. O EDD também prefere prevenir a reprimir para evitar penetrar e ferir mais a esfera de autonomia individual (o valor primordial); mas em ambas podem ocorrer abusos. E devem admitir-se exceções.

Entretanto, os servidores do Estado também têm visões e interesses próprios (que podem divergir dos anseios e dos desígnios das populações que se obrigaram a servir), e que podem tentar prosseguir, explorando as suas posições – sem se saber previamente se, quando e como o farão. Há séculos que foi identificada esta questão, como um problema:

> "O exército desprezará sempre um senado e respeitará os seus oficiais. Não respeitará as ordens que lhe serão dadas por um corpo composto por pessoas que considera tímidas, e por isso indignas de o comandar." (Montesquieu, 1748, p. 136).

> "Um grande exército permanente põe em perigo as liberdades de um povo, não só porque os governantes podem usá-lo para os suportar nalguma usurpação do poder, que podem achar adequada, mas também há grande perigo em que um exército subverta a governação, sob cuja autoridade foi edificado e estabelecido, segundo as preferências do seu líder." (Brutus, 1788, p. 495).

Autores mais recentes concordam:

> "Acreditar que as Forças Armadas não são um grupo de pressão eficaz sobre o poder político constitui um erro político." (Janowitz, 1960, p. vii). E reforça: "Claramente, a conduta política das Forças Armadas, como a de qualquer grande organização, está fundada em fortes elementos de interesse pessoal e organizacional." (Idem, p. 285).

> "Como as FA têm o inimigo mais poderoso, têm que ter o máximo poder de fogo possível numa dada organização política; deste poder de fogo resulta que as FA são suscetíveis de submeterem pela força qualquer segmento da organização política." (Matos, 2008, p. 90).

> "As Forças Armadas podem causar danos significativos no processo de democratização através da tentativa de realização dos seus estreitos interesses institucionais ou pela intimidação de rivais potenciais." (Goodman, 1996, p. 38).

Não se trata de todos os militares usarem enviesadamente o poder que possuem. Mas cabe notar que a posse de armas – em especial das armas mais poderosas de um país – confere poder, o qual cria nalguns a tentação, e a outros dá a oportunidade, para realizar fins particulares; e, noutros ainda, uma atitude de reverência face a militares, apenas pelas suas posições ou presença. Mesmo numa forma benigna, e nem sempre o é, o Estado constitui, por vezes em simultâneo, causa de segurança e de ameaça:

> "Enquanto o estado providencia alguma segurança ao indivíduo, só o pode fazer impondo ameaças." (Buzan, 1991, p. 50). E ainda: "O estado é uma das maiores fontes de ameaças e segurança dos indivíduos. Estes proporcionam muita da razão, e alguns dos limites, para as atividades securitárias do estado." (Idem, pp. 35-37)

Considerações Finais

Não é por uma ameaça ser externa, ou por as FA terem capacidades adequadas, que se justifica, automaticamente, o emprego das FA contra a ameaça, ou o estabelecimento da lei marcial – pela qual as FSS ficam parcial ou totalmente subordinadas às FA.

A CRP só autoriza as FA a atuar na segurança interna se houver proporcionalidade no seu emprego, e nos termos das normas constitucionais e legais aplicáveis; ou seja, após uma decisão dos órgãos de soberania (nos termos da CRP e da lei, uma vez declarado um estado de exceção), ou em colaboração com as autoridades competentes, a seu pedido e com balizas bem delimitadas.

Atribuir às FA competências próprias na segurança interna (ou na proteção civil) porque isso aumenta a sua aprovação social e ajuda a contrariar a sua retração inverte o sentido da prestação do serviço aos cidadãos, e passa a impor ao cidadão a preferência do servidor. E, ainda pior, terá como consequência inevitável e a curto prazo a instabilidade política, como os dois últimos séculos mostram em abundância.

Referências

Agüero, F., 1995. "Democratic consolidation and the military in Southern Europe and South America". In: R. Gunther; P. N. Diamandouros e H-J. Puhle, eds, *The Politics of Democratic Consolidation-Southern Europe in Comparative Perspective*. Baltimore: The Johns Hopkins University Press, pp. 124-165.

Agüero, F., 1997. "Toward civilian supremacy in South America". In: L. Diamond, M. Plattner, Y-H. Chu e H-M. Tien, eds., *Consolidating the Third Wave Democracies-Themes and Perspectives*. Baltimore: The Johns Hopkins University Press, pp. 177-206.

Amaral, D. F. do, 1983. *A Lei da Defesa Nacional e das Forças Armadas*. Coimbra: Coimbra editora.

Amaral, D. F. do, 1989. "A Constituição e as Forças Armadas". In: M. B. Coelho, ed., *Portugal. O Sistema Político e Constitucional 1974-1987*. Lisboa: Instituto de Ciências Sociais, pp. 647-661.

Ballbé, M., 1983. *Orden Público y Militarismo en la España Constitucional (1812-1983)*. Madrid: Alianza editorial.

Beaufre, A., 1964. *Dissuasion et Stratégie*. Paris: Librairie Armand Colin.

Bebler, A., 1994. The evolution of civil-military relations in Central and Eastern Europe. *NATO Review* 42(4), pp. 28-32. Disponível em http://www.nato.int/docu/review/1994/9404-7.htm.

Bingham, T., 2010. *The Rule of Law*. London: Penguin Books.

Bobbio, N., 1997 [1984]. *O Futuro da Democracia: Uma Defesa das Regras do Jogo*. São Paulo: Editora Paz e Terra.

Borges, J. V., 2013. As Forças Armadas na segurança interna: Mitos e realidades. *Revista Militar* n.º2532. Disponível em https://www.revistamilitar.pt/artigo/796.

Brooks, R., 2005. The military and homeland security. *Public Administration and Management*, 10(2), pp. 130-152.

Bruneau, T. e MacLeod, A., 1986. *Politics in Contemporary Portugal*. Boulder: Lynne Rienner Publishers.

Brutus, 1788. "Letter X". In: T. Ball, ed., 2003, *The Federalist with Letters of Brutus*. Cambridge: Cambridge University Press, pp. 495-501.

Buzan, B., 1991. *People, States, and Fear* (2nd edition). Boulder: Lynne Rienner Publishers.

Caeiro, J. C., 1997. *Os Militares no Poder*. Lisboa: Hugin editores.

Canotilho, J. J. G., 1999. *Estado de Direito*. Lisboa: Gradiva.

Carrilho, M., 1994. *Democracia e Defesa: Sociedade Política e Forças Armadas em Portugal*. Lisboa: Publicações Dom Quixote.

Clarke, J. C., 2006. "Introduction". In: J. C. Clarke, ed., *Armies in Homeland Security: American and European Perspectives*. Washington, D.C.: National Defense University Press, pp. 1-3.

Clausewitz, C. von, 1812. *Principles of War*. Disponível em https://www.clausewitz.com/mobile/principlesofwar.htm#I.

Clemente, P. L., 1998. *Da Polícia de Ordem Pública*. Lisboa: Governo Civil do Distrito de Lisboa.

Cohen, E., 2002. *Supreme Command: Soldiers, Statesmen and Leadership in Wartime*. New York: Free Press.

Colaço, A. B., 2014. A Polícia numa óptica constitucional. *Público*, 12 de dezembro. Disponível em http://www.publico.pt/portugal/noticia/a-policia-numa-optica-constitucional-1679143.

Conselho Consultivo da Procuradoria-Geral da República, 2001. *Parecer n.º 147*. Lisboa: PGR, 9 de novembro.

Constant, B., 1815. *Principes de Politique*. Paris: Chez Alexis Aymery. Disponível em http://gallica.bnf.fr/ark:/12148/bpt6k1054556w.

Creveld, M. van, 1999. *The Rise and Decline of the State*. New Haven: Yale University Press.

Dahl, R., 1989. *Democracy and its Critics*. Cambridge: Cambridge University Press.

Desch, M., 1996. "Threat environments and military missions". In: L. Diamond, M. Plattner, Y-H. Chu e H-M. Tien, eds., *Consolidating the Third Wave Democracies-Themes and Perspectives*. Baltimore: The Johns Hopkins University Press, pp. 12-29.

Diamond, L., 1997. "Introduction: in search of consolidation", in L. Diamond, M. Plattner, Y-H. Chu e H-M. Tien, eds., *Consolidating the Third Wave Democracies-Themes and Perspectives*. Baltimore: The Johns Hopkins University Press, pp. xiii-xlvii.

Dicey, A., 1889. *Introduction to the Study of the Law of the Constitution*. London: MacMillan & Co. Disponível em http://files.libertyfund.org/files/1714/0125_Bk.pdf.

Diez-Alegria, M., 1973. *Ejército y Sociedade*. Madrid: Alianza Editorial.

Diogo, L. C., 2004. Ameaças difusas nos espaços marítimos sob jurisdição nacional: A autoridade marítima no quadro constitucional da intervenção dos órgãos de estado. *Nação e Defesa* n.º 108, pp. 85-138.

Easton, M., Moelker, R., 2010. "Police and Military: two worlds apart? Current challenges in the process of constabularisation of the armed forces and militarisation of the civilian police". In: M. Easton; M. Den Boer; J. Janssens; R. Moelker e T. Vander Beken, eds., *Blurring Military and Police Roles*. Den Haag: Boom Juridische Uitgevers, pp. 11-21.

Ferreira, J. M., 1992. *O Comportamento Político dos Militares: Forças Armadas e Regimes Políticos em Portugal no Século XX*. Lisboa: Editorial Estampa.

Ferreira, J. M., 2001. *História de Portugal: Portugal em Transe* (VIII Volume). Lisboa: Editorial Estampa.

Finer, S., 1962. *The Man on Horseback: The Role of the Military in Politics*. London: Pall Mall Press.

Goodman, L., 1996. "Military roles, past and present". In: L. Diamond e D. Plattner, eds., *Civil-Military Relations and Democracy*. Baltimore: The Johns Hopkins University Press, pp. 30-43.

Gunther, R.; Diamandouros, N. e Puhle, H-J., 1995. "Introduction". In: R. Gunther; P. N. Diamandouros e H-J. Puhle, eds, *The Politics of Democratic Consolidation-Southern Europe in Comparative Perspective*. Baltimore: The Johns Hopkins University Press, pp. 1-32.

Hobsbawn, E., 2010. *Globalization, Democracy, and Terrorism*. New York: Abacus.

Horta, H. S., 1991. Marinha de Guerra: ramo das Forças Armadas e serviço público. *Anais do Clube Militar Naval* (Vol. CXXI, Jan-Mar), pp. 15-25.

Huntington, S., 1957. *The Soldier and the State: The Theory and Politics of Civil-Military Relations*. New York: Vintage Books.

Huntington, S., 1991. *The Third Wave: Democratization in the Late Twentieth Century*. Oklahoma: University of Oklahoma Press.

Janowitz, M., 1960. *The Professional Soldier: A Social and Political Portrait*. New York: Free Press.

Kohn, R., 1997. How democracies control the military. *Journal of Democracy*, 8(4), pp. 140-153.

Lasswell, H., 1941. The garrison-state. *The American Journal of Sociology*, 46(4), pp. 455-468.

Lasswell, H., 1951. *The Political Writings of Harold Lasswell*. Glencoe: Free Press.

Lioe, K. E., 2011. *Armed Forces in Law Enforcement Operations? The German and European Perspective*. Berlin: Springer-Verlag Berlin Heidelberg.

Lourenço, E., 1978. Pensar o Exército. *Baluarte* n.º27, pp. 2-7.

Lourenço, E., 2013 [1975]. *Os Militares e o Poder*. Lisboa: Gradiva.

Marinha, 1980. *Marinha Portuguesa*. Lisboa: Instituto Hidrográfico.

Manuel, P. C., 1996. *The Challenges of Democratic Consolidation in Portugal: Political, Economic, and Military Issues, 1976-1991*. Westport: Praeger.

Matos, L. S., 2008. *Como Evitar Golpes Militares*. Lisboa: Imprensa de Ciências Sociais.

Matos, L. S., e Bacalhau, M., 2001. *As Forças Armadas em Tempo de Mudança: Uma Sondagem à Opinião Pública nas Vésperas do Século XXI*. Lisboa: Edições Cosmos, Instituto da Defesa Nacional.

Montesquieu, 1849. *Esprit des Lois*, Paris: Librairie de Firmin Didot Frères. Disponível em https://ia902707.us.archive.org/18/items/espritdeslois00montuoft/espritdeslois-00montuoft.pdf.

Morais, C. B. de, 2000. "Alinhamentos sobre o regime jurídico da organização e funcionamento da defesa nacional e das Forças Armadas". In: J. Miranda e C. B. de Morais, eds., *O Direito da Defesa Nacional e das Forças Armadas*. Lisboa: Edições Cosmos-Instituto de Defesa Nacional, pp. 27-134.

Mosca, G., 1939. *The Ruling Class (Elementi di Scienza Politica)*. New York: McGraw Hill. Disponível em https://archive.org/details/rulingclass031748mbp.

Novais, J. R., 2006. *Contributo para uma Teoria do Estado de Direito*. Coimbra: Almedina.

Paulo, J. S., 2012. Ser militar no Estado de Direito. *Diário de Notícias*, 29 de março. Disponível em http://www.dn.pt/opiniao/opiniao-dn/convidados/interior/ser-militar-no-estado-de-direito-2390650.html.

Paulo, J. S., 2013. Capacidades não dão autoridade. *Diário de Notícias*, 30 de agosto. Disponível em http://www.dn.pt/opiniao/opiniao-dn/convidados/interior/capacidades-nao-dao-autoridade-3394468.html.

Paulo, J. S., 2014. Fronteiras das Forças Armadas em democracia. *Segurança e Defesa*, n.º 29, Ago-Out, pp. 66-75.

Pereira, R., 2010. Segurança interna e defesa nacional: autonomia e convergência das funções de soberania. *I Congresso Nacional de Segurança e Defesa*. Loures: Diário de Bordo, pp. 75-85.

Pereira, R., 2012a. "Política e Segurança: Antinomia ou Compatibilidade". In: E. Correia e R. Duque, eds., *O Poder Político e a Segurança*. Lisboa: Fonte da Palavra, pp. 11-22.

Pereira, R., 2012b. "A Segurança na Constituição". In: J. B. Gouveia, ed., *Estudos de Direito e Segurança*. Coimbra: Almedina, pp. 409-421.

Perlmutter, A., 1977. *The Military and Politics in Modern Times: On Professionals, Praetorians, and Revolutionary Soldiers*. New Haven: Yale University Press.

Pion-Berlin, D., 2005. Political management of the military in Latin America. *Military Review*, 85(1), pp. 19-31.

Prata, G., 2010. As Forças Armadas e a segurança interna. *Operacional*, 6 de janeiro. Disponível em http://www.operacional.pt/as-forcas-armadas-e-a-seguranca-interna/.

Santo, G. E., 2014. *Da Arte da Guerra à Arte Militar*. Cascais: Tribuna da História.

Santos, J. L. dos, 1976a. Grandes Tarefas das Forças Armadas. *Baluarte* n.º 9-10, pp. 6-8.

Santos, J. L. dos, 1976b. Elementos de estudo para um projecto de reestruturação das Forças Armadas tendo em vista o cumprimento das suas tarefas. *Baluarte* n.º 11, pp. 2-17.

Santos, J. L. dos, 1977. Forças Armadas em sociedade democrática. *Baluarte* n.º 20-21, pp. 2-5.

Santos, J. L. dos, 1980. *Forças Armadas, Defesa Nacional e Poder Político*. Lisboa: Imprensa Nacional-Casa da Moeda.

Serra, N., 2010. *The Military Transition: Democratic Reform of the Armed Forces*. Cambridge: Cambridge University Press.

Schelling, T., 1966. *Arms and Influence*. New Haven: Yale University Press.

Shemella, P., 2006. "The spectrum of roles and missions of the armed forces". In: T. C. Bruneau e S. D. Tollefson, eds., *Who Guards the Guardians and How-Democratic Civil-Military Relations.* Austin: University of Texas Press, pp. 122-142.

Stepan, A., 1986. "The new professionalism of internal warfare and military role expansion". In: A. F. Lowenthal e J. S. Fitch, eds., *Armies and Politics in Latin America*. New York: Holmes & Meier, pp. 134-150.

Thorndike, R. S., 1894. *The Sherman Letters*. New York: Charles Scribner's Sons. Disponível em https://archive.org/details/shermletterscorr00sheriala.

Vagts, A., 1959. *A History of Militarism: Civilian and Military*. New York: The Free Press.

Valente, M. G., 2014. *Teoria Geral do Direito Policial*. Lisboa: Almedina.

Vaz, N. M., 2001. *Civilização das Forças Armadas nas Sociedades Demoliberais*. Lisboa: Instituto da Defesa Nacional, Edições Cosmos.

Weber, M., 1946. *From Max Weber: Essays in Sociology*. New York: Oxford University Press.

Wiarda, H., 1989. *The Transition to Democracy in Spain and Portugal*. Washington: American Enterprise Institute.

Sobre a Guerra Insurrecional: A Propósito de um Opúsculo de Bruno Cardoso Reis

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Resumo

A guerra subversiva é um tema difícil mas ao mesmo tempo um aferidor importante para compreender a complexidade ontológica da guerra. Tomando como pretexto um opúsculo do investigador português, Bruno Cardoso Reis, que versa, não só, mas sobremaneira acerca da guerra insurrecional – que por princípio de caridade epistemológica tomamos como um outro nome para a guerra subversiva – debruçamo-nos sobre a doutrina da guerra subversiva. Como Bruno Cardoso Reis quase ignora a consolidada doutrina portuguesa, que mereceu aprofundada discussão no seio da Escola Estratégica Portuguesa, trazendo à colação um conjunto de asserções problemáticas de origem anglo-americana, tal dificilmente poderia passar sem resposta.

Abstract

Insurrectional War: About an Essay by Bruno Cardoso Reis

Subversive war is a difficult subject but at the same time an important gauge to understand the ontological complexity of war. Using, as a pretext, an essay from a Portuguese researcher, Bruno Cardoso Reis, about (but not only) the insurrectional war – which, under a principle of epistemological charity, we use as another name for subversive war – we focus on the doctrine of subversive war. Because Bruno Cardoso Reis brings forward plenty Anglo-American problematic assessments and almost ignores the consolidated Portuguese doctrine that deserved a deep discussion within the Portuguese Strategic School, this could hardly go without a proper answer.

Bruno Cardoso Reis é um brilhante polemologista, estrategista e historiador, que de há alguns anos a esta parte tem produzido notáveis trabalhos nestas matérias, dando a face por eles com inteira coerência, e sem pejo, no concernente à fundamentação das teses por si propostas. Recentemente, deu à luz um opúsculo, publicado nos *IDN Cadernos*, intitulado *Novo Século, Novas Guerras Assimétricas? Origem, Dinâmica e Resposta a Conflitos não-Convencionais como a Guerrilha e o Terrorismo*, que não é exceção à qualidade acima mencionada. Destarte, a análise crítica abaixo subscrita (centrada no conceito de guerra insurrecional), é de valor relativo, e quiçá de importância muito modesta, olhando ao conjunto da obra publicada por Bruno Cardoso Reis, incluindo o todo do argumento do presente opúsculo.

Algumas Interrogações Preliminares

O título do opúsculo em causa é desde logo merecedor de alguns reparos. O nosso polemologista refere-se a conflitos não-convencionais, tais como a guerrilha e o terrorismo, levando o leitor a pressupor que o terrorismo e a guerrilha sejam modalidades ou tipologias de guerra. Pressuposição confutada pelo próprio, e bem, de imediato no resumo antecedente da obra. Como é sabido, a guerrilha é uma tática e /ou um procedimento técnico à disposição dos atores num conflito armado, da mesma forma que atos que se poderiam considerar terroristas, têm precisamente o mesmo perímetro e não mais. Não outra coisa diz Bruno Cardoso Reis, quando faz menção às táticas de terrorismo e de guerrilha (Reis, 2017, p. 7).

Porém, neste ponto, convém sublinhar que, à parte atos esporádicos passíveis de serem considerados como terroristas, o problema com o terrorismo não se resume a ser uma mera tática e/ou procedimento adentro de um conflito. A meu ver, o terrorismo é um fenómeno completamente distinto da guerra. Ora, este assunto foi já debatido publicamente entre nós no *IDN Brief* (números de novembro e dezembro de 2016, assim como de janeiro de 2017), pelo que, em termos erísticos, sempre que o texto de Bruno Cardoso Reis faz referência ao terrorismo como fenómeno bélico, opto por não tecer qualquer comentário, porquanto continuo sem encontrar razões que me levem a modificar o meu ponto de partida, expresso num artigo publicado há já alguns anos (Fernandes, 2010). Nesse artigo conclui-se ser o terrorismo um fenómeno que atravessa o campo da política sem nunca ser político (a guerra é desde da Idade Moderna um fenómeno político *de jure*), no qual os meios são afinal os fins, isto é, apesar da ganga retórica, a violência apenas procura violência. De resto, a magnífica estória contada por Joseph Conrad em *O Agente Secreto* ilustra-o à maravilha, quando Vladimir defende:

> "Para que um atentado com uma bomba tenha alguma influência na opinião pública, deve ultrapassar a ideia de vingança ou terrorismo. Deve ser puramente destrutivo. Deve ser isso, e apenas isso, para lá da mais vaga suspeita de qualquer outro objetivo" (Conrad, 2012, p. 42).

Na mesma linha, a do terrorismo de facto ultrapassando a sua própria marca "terrorismo", também outro personagem, Karl Yundt se refere a:

> "Homens suficientemente fortes para se apelidarem com toda a sinceridade de destruidores, e libertarem-se da mácula desse pessimismo resignado que apodrece o mundo. Sem qualquer piedade para o que quer que seja à superfície da Terra, incluindo eles mesmos, a morte recrutada de vez, e tudo isso ao serviço da humanidade" (Conrad, 2012, p. 54)[1].

Por outro lado, um projeto bélico enquanto político, ainda que hipoteticamente atravessado pelo niilismo da era técnica, não é niilista, já o terrorismo não lhe consegue escapar, como se acaba de ilustrar, *pace Di Cesare*. Segundo as importantes considerações da filósofa italiana, o terrorismo contempla uma aversão radical, um remeter-se às raízes, face ao insuportável peso do nada. O terrorista encarna a negatividade, o dizer não ao desenraizamento avassalador próprio da engrenagem da era da técnica (Cesare, 2017:88, 116-117). Todavia, Donatella Di Cesare não só exagera a importância supostamente política dos motivos dos terroristas, como parece passar por alto que, não parecendo ser o terrorismo tecnicamente niilista à partida, e nisso tem em parte razão, porquanto a pura reatividade (muito moderna) do terrorismo se pretende alcandorar contra o eterno retorno do nada, da ideia de uma progressão sem fim que sistematicamente tudo nadifica, na prática, a resposta puramente reativa enquanto puro exercício violento, mais não é do que um elemento adicional dessa engrenagem avassaladora. Porém, apenas num sentido técnico-filosófico muito estrito pode o terrorismo ser considerado contraniilista, porque se pensarmos no terrorismo como uma figura do mal, assunto que também aflora na prosa de Di Cesare (como mal político), bem como em Baudrillard, citado por Di Cesare com aprovação, torna-se evidente ser o terrorismo intrinsecamente niilista. O mal é pura desagregação, parasitação, a caminho da inanidade que o configura, estando muito presente nas derivas niilistas que assoberbam o projeto moderno. E nesse caso podemos mesmo interrogar-nos se essa aparente reação à catástrofe, à vertigem do desenraizamento através da radicalização, de um assumir a raiz seja qual for até ao fim, se esse gesto desesperado não é senão mais um dos embustes ominosos do mal, para se imunizar (e aos desvarios da modernidade) de forma altamente sofisticada e não menos solerte, quando se pretendia apenas compreender, sem de modo nenhum querer justificar, pelo contrário, o fenómeno terrorista.

Um outro ponto que gostaria desde já de deixar claro, prende-se com a redundância infra-explicativa, diria mesmo, geradora de incompreensão, do sintagma *guerras*

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1   Não por acaso, a terrorista russa Vera Figner referia-se ao culto à bomba e à arma, no qual o assassinato e o cadafalso detinham um fascínio magnético. Mencionado por (Figes, 2017:169).

assimétricas. Bruno Cardoso Reis assume a bondade do argumento nele expressa e define-o por palavras suas, sem se afastar da linha de rumo mais comumente aceite, referindo-se a um conflito entre contendores com potenciais de base muito distintos, mesmo profundamente assimétricos, como geralmente acontece entre um ator não-estatal e um ator estatal (Reis, 2017, p. 12). Porém, a expressão sintagmática *guerras assimétricas*, não é nem nunca foi uma expressão feliz. Na realidade, mesmo pressupondo potenciais exatamente simétricos, a natureza camaleónica, imprevisível, mutável, não-linear da guerra, torna-os assimétricos no decorrer da refrega. Em bom rigor, não havendo nenhuma guerra que não seja assimétrica, pelas razões que acabámos de apresentar, sendo, portanto, todas as guerras assimétricas, a referência a guerras assimétricas é redundante e nada esclarece. Mas, mesmo fazendo uso do princípio epistemológico da caridade, tão caro a Donald Davidson – se eu estou a dizer sabre e ele insiste em florete, respaldado pelo seu sistema de crenças, quiçá a arma seja a mesma, caso contrário não haverá comunicação possível (Davidson, 1991, p. 346 e ss.) –, o designativo não se torna mais operativo por isso. Pensemos numa guerra convencional entre dois atores estaduais, os EUA e o Butão, ou, para fazer justiça à ideia de que um ator deve ser não-estatal, alvitremos um conflito entre o já assinalado Butão e um equivalente à Frente Nacional de Libertação vietnamita no auge do seu poder. No primeiro caso, a assimetria de potenciais é esmagadora, no segundo caso, a primazia parece ir para o ator não-estatal, algo que põe em causa, apesar de perfeitamente legítimo, o sentido corrente do uso do designativo – embora Bruno Cardoso Reis pareça, por momentos, reconhecer estas hipóteses aventadas na qualidade de objeções quando afirma que há conflitos que merecem ser rotulados de essencialmente assimétricos, dado o diferencial de potencial, não-estatal, ou *estatal* (Reis, 2017, p. 14). Não é realmente uma boa ideia falar em guerras assimétricas[2].

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2   Sem escapar de todo às aporias, a única solução viável seria a proposta pelo general Pezarat Correia: "simetria dá-se quando as partes em confronto podem dispor de potenciais semelhantes que, não sendo necessariamente iguais, são do mesmo tipo e optam por formas de atuação e estratégias idênticas. Dissimetria significa que as partes se confrontam com uma notória diferença nos seus potenciais, quer humanos, quer materiais. Assimetria verifica-se quando as partes, em consequência dos seus potenciais dissimétricos, recorrem a estratégias, isto é, a formas de atuação distintas" (Correia, 2017, p. 37). O problema é que a guerra não se resume a potenciais e estratégias, sendo antes de mais um processo não-linear, onde o acaso, a fricção e o atrito campeiam. A caracterização dos potenciais para definir o conflito, por antonomásia, revela-se pouco rigorosa e pode induzir em erro sistemático – é de espantar quando o Real Madrid perde um jogo com uma equipa do fim da tabela da terceira divisão espanhola (e aludimos ao futebol, porque é do jogos onde a roda da fortuna também é maior), mas se num campeonato, longo, e mais do que uma vez o resultado não é o previsível, então é porque as categorias estão desajustados para caracterizar o perfil das equipas. Rotular o grande x e o pequeno y deixa de fazer muito sentido, tanto mais que entre o grande x e o grande z, o resultado continua a ser sempre

Antes de me concentrar no essencial deste artigo, a questão da guerra insurrecional, seja-me permitido ainda um breve apontamento sobre o significado de guerra convencional. Como muito bem salienta Bruno Cardoso Reis, a guerra convencional é uma guerra de acordo com determinadas convenções históricas. Na prática, estamos a falar das convenções criadas paulatinamente ao longo da Idade Moderna, dizendo respeito ao enfrentamento de exércitos regulares, enquadrados como tais, sob pertença de atores estaduais, que se digladiam de acordo com regras de manobra, atrito e empenhamento em função da batalha, dos cercos, e mais tarde, da sequência de batalhas – a título de exemplo, a campanha de 1944 após o desembarque aliado na Normandia. É claro que estas convenções evoluíram e tiveram de se adaptar as forças ligeiras de infiltração e às operações especiais (e não sem resmungo), e, portanto, a ações com certas semelhanças de família com a guerrilha e contraguerrilha, quando não mesmo campanhas de guerrilha franca e oficialmente envolvidas na manobra geral, como ocorreu na frente oriental durante o segundo conflito mundial. Todavia, se essas ações passassem a ser o *core business* da força em geral, em regime de autogoverno, e em particular se essas forças fossem irregulares, a extensão do conceito de guerra convencional não se aplicava, e ainda se não aplica.

Por outro lado, a rutura praxeológica e epistemológica trazida pelo nuclear, mesmo que naturalmente a sua operacionalização seja feita mediante o recurso a forças regulares, está para além do convencional. A guerra nuclear desde cedo passou a ser um caso à parte, uma nova tipologia estrutural de guerra, independente da guerra convencional.

Face a este panorama, falar em guerras híbridas parece ocioso, incrementa a confusão. Misturar, nas grelhas analíticas, e no mesmo patamar, elementos distintos, seja o terrorismo, que nada tem a ver com o fenómeno bélico, sejam ações de natureza tática ou processos de fazer a guerra, como a guerrilha, com tipologias mais estruturais, como a guerra convencional ou a guerra insurrecional, e esquecendo que determinada guerra pode transformar-se, começando de acordo com uma tipologia preponderante e acabando com outra, não serve nem a compreensão nem o apoio à decisão. De resto, lido pelos estritos critérios do convencional oitocentista, como ideal-tipo, mais do que como realidade, as guerras foram quase sempre híbridas. Aliás, as guerras apenas podem ser consideradas híbridas face a um modelo puro. Mas qual é ele? Se pensarmos bem, ações como aquela a que convencionámos denominar por guerrilha sempre teriam ocorrido. Porém, tais ações apenas ganham tal significado caso se ajustem à ideia de grande guerra como ideal-tipo, num qua-

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imprevisível, apesar de haver ciclos de vitórias seguidas de um deles. Quer isso dizer que num desses ciclos, um deles, x ou z, deixaria de ser grande? Nos períodos da boa estrela militar de Luís XIV, passou a ser tudo pequeno?

dro taxinómico sistemático, onde diferem dessa mesma grande guerra por um conjunto de características, as quais fariam delas uma pequena guerra. Sem esse quadro sistemático, historicamente muito tardio, a categoria de guerrilha não tem qualquer aplicação.

Guerra Insurrecional: a Sequência de Aporias

Concentrar-me-ei agora na parte que reputo como central neste artigo: a discussão da natureza, digamos assim, da guerra insurrecional.

Em primeiro lugar, tenho de esclarecer que tomo por bom, para os presentes efeitos, o carácter sinonímico de guerras insurrecionais, guerras subversivas (termo que prefiro) e guerras de insurgência, embora esta última expressão aflija mais o português[3].

Com muito a propósito, Bruno Cardoso Reis argumenta não estar o estudo da guerra insurrecional ainda hoje consolidado, bem como a institucionalização da prática da contrainsurreição, apesar da sua manifesta presença desde 1945 e da tendência para o crescimento desta tipologia de guerras (Reis, 2017, pp. 9-11). Argui o estrategista português que por detrás da relutância em consolidar a viragem para a insurreição parece estar a compreensão dos "elevados custo deste tipo de conflitos, tipicamente prolongados, e em que é muito difícil obter resultados decisivos" (Reis, 2017, p. 11). Acrescentaríamos que a lassidão, a inércia e a insídia que lhe são próprios, podem criar uma espécie de guerra total e mesmo um aflorar mais nítido da guerra absoluta, ditando a experiência cautela em relação a estes conflitos. Não podemos olvidar que neste tipo de guerra se mimetizam as dinâmicas de tempo de paz, parasitando-as para fazer a guerra. Não admirando que os últimos compartimentos vivenciais ainda relativamente estanques à violência, aqui com carácter muito insidioso, vão cedendo, criando comportamentos psicóticos que se esparzem, mormente se o tempo da guerra se avoluma.

Porém, o leitor suspeita rapidamente estar perante um foco desproporcionalmente militar no tratamento do tema, o mesmo é dizer, concentrado em excesso na luta

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3   Em rigor, na guerra insurrecional, não é obrigatório que a luta armada seja desencadeada por uma parte da população, como acontece com a guerra subversiva. O *Alzamiento* de julho de 1936, na origem da guerra civil espanhola, poderia ser considerado uma insurreição. Todavia, calha melhor no conceito de revolta ou pronunciamento militar. Assim, ao longo do tempo o conceito de guerra insurrecional tem vindo a restringir o seu campo objetal e a sobrepor-se ao conceito de guerra subversiva. Muitos autores não gostam deste último, provavelmente porque a ideia de subversão lhes parece ideologicamente suspeita, afim a uma mentalidade repressiva por parte de quem a produz. O que não tem necessariamente de ser verdade, ou por outra, nos dois conceitos pode pressentir-se uma certa preferência não-consciente pela dinâmica estadual imposta a partir do século XVI. Mas isso é válido para cada um deles sem exceção. Certamente, os monarcómacos ter-lhe-iam arranjado outro título.

armada; insinuado logo que Bruno Cardoso Reis (Reis, 2017, p. 10) aplica o rótulo de guerra não-convencional à guerra insurrecional. É evidente que do ponto de vista militar, isto é, no estrito campo das operações militares, a guerra insurrecional é não-convencional, segundo os termos clássicos da guerra de manobra entre forças regulares, normalmente estatais ou paraestatais. Contudo, a guerra subversiva implica outras modalidades não-armadas de guerra, as mais importantes, subli-nhe-se, as modalidades de guerra fria, as quais não são nem mais nem menos convencionais, porquanto esse é um termo apenas aplicável à luta armada.

Se a suspeita se adensa-se por este lado, logo Bruno Cardoso Reis esclarece que é justamente por esse lado que investe. A definição de guerra insurrecional escolhida é a de Bard O'Neill. A guerra insurrecional seria assim:

> "Uma luta entre um grupo opositor e as autoridades governamentais, nas quais o grupo opositor utiliza conscientemente recursos políticos (por exemplo, organização, conhecimento, propaganda e demonstrações) e a violência armada para destruir, reformular ou sustentar a da legitimidade política de um determinado Estado" (O'Neill citado por Reis, 2017, p. 12).

Lembremos que a definição portuguesa geralmente aceite de guerra subversiva reza da seguinte maneira: "luta conduzida no interior de um dado território, por uma parte dos seus habitantes, ajudados e reforçados ou não do exterior, contra as autoridades de direito ou de facto estabelecidas, com a finalidade de lhes retirar o controlo desse território ou, pelo menos, de paralisar a sua acção" (IAEM, 1966, p. 1).

À primeira vista não há grande diferença entre as duas definições. Na segunda delas, o levantamento de parte da população faz-se por intermédio da organização em grupo, como na primeira definição citada, e realmente, o fator de acionamento da guerra propriamente dito será sempre um levantamento armado, porquanto qualquer manifestação de guerra fria, sem o alcance da coerção física, nunca prosperaria, tal o diferencial à partida. Qualquer tentativa puramente pacífica de resistência acabaria simplesmente na prisão[4]. Todavia, rapidamente as semelhanças se desvanecem, porque citando outro autor, no caso Larry Cable, Bruno Reis concorda com a ideia de que a insurreição é a expressão armada de uma divergência política.

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4   O exemplo da *Satyagraha* de Gandhi em contrário dá muito que pensar, na medida em que oscila entre a pura desobediência civil pacífica em relação aos mecanismos soberanos, e o encaminhar dessa resistência de acordo com uma dinâmica insurrecional mais franca, própria dos paradoxos das estratégias inversas (Herman, 2013, pp. 173-174, 212, 219, 258, 456, 475, 485, 524 e Schell, 2003, p. 103 e ss.). Tal assunto carece, todavia, de maior investigação empírica e sobretudo de ser observado à luz das categorias do pensamento indiano, uma zona de transição civilizacional radical em relação às civilizações abraâmicas. Manifestamente temos algumas ideias, mas não possuímos saber para as concretizar da melhor maneira.

Ora, aqui está a enorme aporia de leitura, em última análise explicável se atendermos a que a esmagadora maioria dos autores anglo-saxónicos tende a centrar a guerra apenas na luta armada, e tende igualmente a identificar algures e ultimamente estratégia com estratégia militar, apesar dos esforços formulados em torno do conceito de grande estratégia. Nem os autores hoje mais sofisticados, como Colin Gray ou Beatrice Heuser, parecem descolar completamente deste casamento, historicamente apenas válido, e não de forma plena, até ao dealbar da era nuclear. Segundo Beatrice Heuser, a estratégia é uma via para a realização de fins políticos, incluindo a ameaça ou o uso efetivo da força, no quadro de uma dialética de vontades (Heuser, 2013, p. 27). O contexto onde aparece, por fim, esta sugestão de definição, está aberto a outros instrumentos para além do militar, tendo ela em mente o conceito aglutinador de grande estratégia. Porém, quando mostra imediatamente a seguir alguma incomodidade pela apropriação do termo estratégia pelas áreas da economia e da gestão, não deixa de referir que uma cadeira de estratégia pode hoje eventualmente fazer referência tanto à área da gestão quanto ao domínio mais tradicional do militar.

Por sua vez, Colin Gray define grande estratégia da seguinte forma:

> "The direction and use made of many or all among the total assets of a security community in support of its policy goals as decided by politics. The theory and practice of grand strategy is the theory and practice of statecraft itself" (Gray, 2010, p. 18).

Uma definição que, ao pretender incorporar outras dimensões que não a militar, mas talvez não lhe reconhecendo *tout court* a dimensão de luta, corre o risco de evacuar o agonismo, ou, em contrário, de sobre-estrategizar todas as dimensões políticas da vida comum, ao quase amalgamar estratégia e política, e tendo em atenção que a estratégia emerge da área do poder nu[5].

Na verdade, embora a luta armada seja um fator de acionamento e nunca possa ser perdida de vista na guerra insurrecional, a parte de leão não se joga no militar, apenas subsidiário, antes na conquista das populações, se é que alguma das partes quer ter êxito, em particular a parte mais fraca no início. E isto é de tal maneira assim, que na Escola Estratégica Portuguesa se chegou por temer pela ontologia da guerra e da estratégia, mesmo assumindo a estratégia como ético do conflito, dadas certas ações estratégicas de subversão ou de contra-subversão. É claro que na guerra insurrecional se mesclam atos de constrangimento estratégico sobre as populações, conjuntamente com atos de violência armada contra o oponente direto que lhe faz frente, com atos de atração, de atrair para a nossa banda, enquanto atos

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5   Não equacionamos sequer o absolutamente desastrado prólogo da muito badalada obra de Lawrence Freedman (2013), *Strategy*, onde a estratégia é tudo e não é nada. A completa falta de cuidado ôntico e epistemológico paga-se caro.

de sedução de entrega calculada, e ainda atos de serviço e resolução efetiva dos problemas enquanto atos mais do lado da entrega, do acolher, que do cálculo, do vencer. Mas o problema punha-se verdadeiramente com estes últimos, embora se tenha concluído serem ainda atos estratégicos modulados no jogo da astúcia, tendo também em conta o todo da unidade de ação da guerra, na medida em que na guerra insurrecional a lassidão e o arrasto de tempo parecem exigir serem lidos na condição de unidade de tempo[6].

Seria até bizarro que a conquista das populações, a exigir maioritariamente as restantes estratégias gerais que não a militar, num conjunto coerente (daí a inexistência de guerra insurrecional antes da segunda metade do século XX), obedecesse a um eixo de ação em que predominassem as operações ofensivas e defensivas, certamente adaptadas. Da mesma forma, a questão não reside em estabilizar militarmente e depois em reconstruir ou em reedificar. A ação edificativa deve ser sempre omnipresente, em qualquer fase, atuando a força armada de forma supletiva. No âmbito da estratégia integral, a toda a hora se aplica o princípio de forças concorrentes e não o princípio de forças diametralmente opostas.

Mesmo quando a insurreição armada se consolida e as forças militares de contra-insurreição passam a ter como principal objetivo o combate às forças rebeldes, ainda assim, o combate é estrategicamente instrumental, dependendo da conquista das populações. O combate é útil na medida em que dialeticamente protege a população cativando-a inclusive no nível securitário, em sentido estrito. Quando, obviamente, noutros tipos de guerra, o combate ao inimigo é um fim em si mesmo, visando a sua rendição, ou pelo menos, é um fim militar em si e um dos fins interativos sinergéticos a usar pela estratégia integral e, acima dela, pela política.

Não encontro razões para se insistir em tomar a parte, uma pequena parte, ainda que a mais visível e chamativa, e em aparência a mais consonante com a realidade de uma guerra em curso, pelo todo. Pondo o foco no militar, ou no político-militar, jamais se compreenderá a complexidade da guerra insurrecional, e nem se entenderá como de aparente simples modalidade de guerra interna passou a ser uma tipologia de guerra particularmente enredada. Nada disto significa, no entanto, que em determinados momentos específicos de uma guerra insurrecional, a ação armada não tenha de tomar o protagonismo. E não me refiro apenas às fases (em termos de doutrina) mais avançadas de instalação da insurreição, com áreas "libertadas", nas quais as operações militares tomam uma vertente para-convencional, e em que o esforço militar pode ser o impulso decisivo em falta (e à vista) para o desfecho final, sobretudo para a insurreição, embora se esta se expuser demasiado nesse esforço militar, uma espécie de campanha composta de batalhas decisivas,

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6   Os últimos desenvolvimentos deste debate podem ser encontrados em Fernandes (2017, pp. 233-238).

também lhe possa ser fatal. Refiro-me antes à importância pontual do militar em fases menos avançadas. O carácter camaleónico da guerra está em reconhecer isso, mas só mesmo isso. Porque, no caso da guerra insurrecional, a compreensão da complexidade da guerra, a arrepio dos juízos clássicos (e lá está uma vez mais o carácter camaleónico, de um ponto de vista estrutural) reside no reconhecimento de que a tipologia da guerra insurrecional deve ser lida sobremaneira como constante unidade de tempo, como já afirmei, e não como relação causal de momentos diferentes ou cadeia de ações temporalmente distintas – por exemplo, primeiro assegurar, depois edificar.

Bruno Cardoso Reis chama à colação em seu benefício Charles Callwell (Reis, 2017, pp. 13-14). Não obstante, de pouco lhe pode valer, já que Callwell está imerso numa época que desconhece ainda as guerras insurrecionais. Quando muito, as pequenas guerras carreiam elementos a ser posteriormente incorporados nas guerras insurrecionais, ao jeito de prolegómenos. Em rigor, é necessário precisar que, historicamente, até à familiarização e capacitação para agilizar com proveito outras formas de guerra e de estratégia que não a militar, isto é, até ao advento da era nuclear, as putativas manifestações de guerra insurrecional não passam disso mesmo, de putativas. O seu objetivo consiste em paralisar ou derrotar a manobra militar do adversário, geralmente com recurso à guerra irregular e às táticas de guerrilha. Mas esse, como está bom de ver, não é o objetivo da guerra insurrecional. É certo que para a doutrina da pequena guerra levada a cabo pelas potências europeias nos espaços coloniais no século XIX, a destruição física da força inimiga, quando a havia estruturada, não era necessariamente o objetivo principal, antes o efeito moral e psicológico de castigar, aterrorizar e, não poucas vezes, semear o caos entre a população, tal como o parece expressar Callwell[7]. Mas tal efeito coloca-nos, como se pode notar, nos antípodas do que preconiza a doutrina da guerra insurrecional, tanto para a insurreição como para a contra-insurreição. Além do mais, os atos de punição preconizados pela pequena guerra, ou no caso da resistência, o desgaste do ocupante, independentemente do efeito moral e psicológico, é de natureza militar. Já a guerra insurrecional pressupõe o desenvolvimento de modalidades de guerra que não só a luta armada e dos ramos da estratégia distintos do militar, sob pena dos atos estratégicos de *bargaining*, de atração, de persuasão, com manha e constrangimento últimos, acabarem por se tornar contraproducentes na raiz.

Segurança *versus* Desenvolvimento: uma Falsa Disjuntiva
O excurso empreendido até aqui poderia, afinal, falhar em parte o alvo, porque aquilo que se segue às quinze primeiras páginas do opúsculo é uma análise histó-

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7   Estou grato a Bruno Cardoso Reis por, em tempos, me emprestar o seu precioso exemplar de Callwell.

rica notável da faceta militar da guerra insurrecional e dos seus prolegómenos; com um bom enquadramento em relações internacionais. Assim sendo, a minha crítica poderia pecar por ser demasiado unilateral. Só se justificando atendendo ao título e à preocupação com os leitores não-iniciados poderem interpretar o trabalho de Bruno Cardoso Reis de forma redutora. Nesse caso, afigurava-se importante frisar que a dimensão militar era significativa mas não única nem sequer a mais premente na guerra insurrecional.

Mas eis que Bruno Cardoso Reis se trai na página 38 do seu estudo, e num ápice, perdoe-se o plebeísmo, a casa vem abaixo, e com estrondo. De repente, e porque quer defender a guerra insurrecional como uma questão essencialmente militar, Bruno Cardoso Reis arremete contra moinhos de vento. Afirma Bruno Cardo Reis haver:

> "Quem defenda que este tipo de conflitos resulta fundamentalmente, ou mesmo exclusivamente de questões económicas, sociais e políticas. Não há dúvida de que estas dimensões são muito importantes. Mas há quem vá mais além, defendendo que este tipo de conflitos não devem ser militarizados […]. A solução estaria no desenvolvimento. Esta posição confunde causas estruturais que potenciam este tipo de conflitos, com os gatilhos que resultam numa explosão violenta. Aponta apenas para as soluções holísticas de longo prazo, ignorando a necessária criação de condições de segurança no curto e no médio prazo para o sucesso dessas medidas, em que as forças de segurança e as forças militares são indispensáveis, pois uma simples força policial não consegue lidar sozinha com uma insurreição armada de alta ou mesmo média intensidade" (Reis, 2017, p. 38).

Ninguém, de bom senso, defende (*pace* os nefelibatas que Bruno Cardoso Reis momentaneamente transforma em interlocutores válidos) que numa guerra não haja força armada. Não por acaso, a definição clássica de guerra de Abel Cabral Couto, refere como insofismável a presença da luta armada como, pelo menos, uma possibilidade potencial[8]. Não se trata valorizar esta modalidade de luta como por definição sendo superior às restantes, antes assinalar ser a luta armada aquela que mais se presta ao desencadear da violência sem quartel, à caótica derradeira (guerra absoluta), que estabelece o preço do fenómeno guerra, identifica o seu valor de utilidade marginal, permitindo-lhe dessa maneira adquirir singularidade enquanto tal fenómeno. Dessa forma, porque se trata de uma guerra, a natureza do conflito insurrecional implica a participação direta das forças militares no apoio às popula-

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8   Relembremos a conhecida definição de guerra de Abel Cabral Couto: "violência organizada entre grupos políticos, em que o recurso à luta armada constitui, pelo menos, uma possibilidade potencial, visando um determinado fim político, dirigida contra as fontes do poder adversário e desenrolando-se segundo um jogo contínuo de probabilidades e acasos" (Couto, [s.d.], p. 148).

ções, ou exige a sua presença por perto. Quer isto dizer que uma fatia significativa da ação das forças militares se concentra no serviço à sociedade em risco de deslaçamento. Naturalmente, se o clima não fosse de confrontação, poderiam ser enviados, em alternativa, missionários. O lança-mantas substituiria integralmente, com proveito, o lança-chamas. É Bruno Cardoso Reis que confunde os gatilhos que espoletam a violência bélica com os objetivos da guerra insurrecional.

Bruno Cardoso Reis afirma que se aponta demasiado para as soluções holísticas de longo prazo, ignorando a necessária criação de condições de segurança a curto e médio prazo (Reis, 2017, p. 38). Lá está uma vez mais a insistência numa leitura desgarrada da unidade de tempo, tanto mais que este é um jogo entre a lassidão e a contra-lassidão, como o próprio autor reconhece ao longo do estudo. Se não for abafada logo no seu início, a insurreição penetra uma camada mais profunda e necessariamente mais inercial das mentes e dos corações, para usar uma expressão comum hoje em dia (a conquista das mentes e dos corações), exigindo uma resposta no seu tempo próprio, que não se coaduna com a pressa nem com parches rápidos, independentemente de se conseguir obter das estratégias indiretas novos efeitos capazes de consumir menos tempo, com menores recursos e desgaste. E se isto é assim, mesmo para as estratégias indiretas, quanto mais não o será para as tentações de uma punção militar fulminante, as fantasias da arma decisiva, ou do último grito, "de arrasar", nunca antes visto ou imaginado, da estratégia militar – claro está que se pode sempre tentar terraplanar e ermar a terra, embora eventuais ações desse género possam suscitar algumas dúvidas acerca da sua correspondência com o objetivo preconizado; ou sequer com qualquer objetivo que possamos honestamente idear.

De qualquer forma, a segurança só se consegue com o desenvolvimento; é este que traz segurança. Mesmo as ações de contra-insurreição realizadas no patamar militar da segurança não visam apenas prover condições para o desenvolvimento. Pretendem, sobretudo, mostrar (nos termos da estratégia declaratória, mas igualmente de forma efetiva) que até numa situação de conflito o desenvolvimento é seguro. A população é assim cativada em todos os pilares da edificação/reedificação, incluindo a segurança.

Por conseguinte, não é como afirma Bruno Cardoso Reis, que a contra-insurreição deva "responder de forma holística na sua abordagem ao desafio armado *mas também* político, económico, social da insurreição" (Reis, 2017, p. 41)[9]. Não se trata de "mas também", antes de *fundamentalmente*. A mostrá-lo, estão aí os exemplos norte-americanos, quer dizer, os desastres sucessivos, do Vietname ao Afeganistão, passando pela retirada recente do Iraque.

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9   O itálico é meu, como forma de ênfase.

Não por acaso, e permita-se-me mais este apontamento técnico, Bruno Cardoso Reis valoriza sobremodo o uso de forças de operações especiais, na nova abordagem da *surge* (Reis, 2017, p. 39 e ss.). É coerente com todo o anterior. Mas conviria perguntar que tipo de abordagem é esta para as operações especiais. Na realidade, no caso norte-americano tem-se procurado uma abordagem musculada, consonante com uma lógica mais militarizada, a despeito do *compreensive approach*, pondo o acento tónico nas operações de busca e destruição e raides contra alvos principais, em particular, a neutralização de alvos, as chamadas operações F3 (*Find*, *Fix*, *Finish*), numa leitura algo restritiva da doutrina geral "clássica" do "golpe de mão"[10], remetendo as missões de reconhecimento avançado e patrulhas de longo raio de ação para um papel subsidiário. Como se estivéssemos diante de operações especiais contraterroristas de polícia (não será por acaso, mas isso levava-nos a outro tema, a da cada vez maior permanência dos estados de exceção), ou de operações encobertas de contra-espionagem, em detrimento das missões clássicas de montagem paulatina de contra-guerrilha, conquistando as populações, como se tentou no Vietname central durante a guerra do Vietname, com as infiltrações e reconhecimento avançado subordinados a esse esforço. Cada vez mais as forças operacionais para estas últimas missões são secundarizadas; nomeadamente os conhecidos *green berets*, amiúde despectivamente apelidados de antropólogos armados.

Em jeito de conclusão, diria que se percebe a concentração dos autores anglo-americanos num ponto de vista mais militarizado em relação à guerra insurrecional. Uma tal perspetiva deriva da sua compreensão serôdia da natureza da guerra e da estratégia, dependente da preeminência atribuída à luta armada, e em particular, à manobra e ao choque clássico entre exércitos. Pelo que, em última instância, as outras formas de luta seriam modalidades de infra-guerra e as restantes estratégias,

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10 Entre outras coisas diz-se que o golpe de mão é uma "operação ofensiva, executada de surpresa, em regra por uma força de efetivos limitados, e que com prende uma incursão em terreno na posse do In ou controlado por este [...]. As suas finalidades podem ser uma ou mais das seguintes: colher informações, capturar ou aniquilar pessoal; obter ou destruir documentos e materiais; destruir instalações; libertar pessoal amigo prisioneiro; semear a confusão no In" (IAEM, 1977, p. 56). Objetar-se-á que a obra em causa, recolhendo alguma da doutrina NATO, ainda está muito presa à experiência portuguesa em África. Mas não é justamente de guerras insurrecionais de que estamos a falar? Mais, da possibilidade de tergiversação da doutrina de operações especiais para esta tipologia de conflitos, em nome de um fascínio pelo tecnologicamente centrado, musculado, espetacular e sobretudo de efeitos imediatos politicamente visíveis e apresentáveis, do tudo aqui e agora? Não estaremos aqui diante de um certo esteticismo próprio das tecnologias de poder e da governamentalidade das sociedades de espetáculo avançadas e dromológicas (baseadas na vertigem da velocidade), em prejuízo da eficácia militar propriamente dita? Apesar de criticáveis em muitos aspetos, veja-se acerca da influência da mediatização da vida na guerra os trabalhos de Öberg e Nordin (2015) e de Fernández Gonzalo (2017).

para além da estratégia militar, configurariam estratégias derivadas. Não deixa de ser algo estranho que num mundo heliocêntrico, permita-se-me a analogia em instância metafórica, os autores anglo-americanos insistam no geocentrismo, ou, se quisermos, perante os últimos avanços em mecânica quântica e alguns esboços adicionais de teses mais arrojadas ainda em busca de paradigma, os mesmos autores ainda se atenham aos efeitos físicos da teoria do flogisto. Porque na ordem de grandeza das aporias, a comparação apenas pode ser essa. Todavia, mais bizarro ainda é que um polemólogo conhecedor em primeira mão, na sua formação, da mecânica quântica opte pela física setecentista e oitocentista. Mas esse mistério, creio, só o próprio o poderá desvelar.

Referências

Cesare, D. D.. 2017. *Terrorismo: Una guerra civil global*. Barcelona: Gedisa.

Conrad, J., 2012. *O Agente Secreto*. Lisboa: 11/17.

Correia, P. P., 2017. *Guerra e Sociedade*. Lisboa: Edições 70.

Couto, A. C., s.d. *Elementos de Estratégia*, Vol. I. Lisboa: IAEM.

Davidson, D., 1991. "Uma Teoria Coerencial da Verdade e o Conhecimento". In: M. M. Carrilho, org., *Epistemologia: Posições e Críticas*. Lisboa: FCG, pp. 327-360.

Fernandes, A. H., 2010. Estratégia, Guerra e Terrorismo: a Inexistência de um Vínculo Topológico. *Nação e Defesa*, nº 126, pp. 245-259.

Fernandes, A. H., 2017. *Livro dos Contrastes. Guerra e Política (*Homo Strategicus *III)*. Porto: Fronteira do Caos.

Figes, O., 2017. *A Tragédia de um Povo: a Revolução Russa 1891-1924.* Alfragide: Dom Quixote.

Freedman, L., 2013. *Strategy: A History*. Oxford: Oxford University Press.

Gonzalo, J. F., 2017. *Iconomaquia: Imágenes de Guerra*. Madrid: Páginas de Espuma.

Gray, C., 2010. *The Strategy Bridge: Theory for Practice*. Oxford: Oxford University Press.

Herman, A., 2013. *Gandhi vs. Churchill*. São Pedro do Estoril: Saída de Emergência.

Heuser, B., 2013. *Penser la Stratégie de l'Antiquité à nos Jours*. Paris: Picard.

IAEM, 1977. *Dicionário de Termos Militares*. Lisboa: IAEM.

Instituto de Altos Estudos Militares (IAEM), 1966. *O Exército na Guerra Subversiva,* Vol. I. (2ª edição). Lisboa: IAEM.

Öberg, D. e Nordin, A., 2015. Targeting the Ontology of War: from Clausewitz to Baudrillard. *Millenium: Journal of International Studies*, 43(2), pp. 392-410.

Reis, B. C., 2017. Novo Século, Novas Guerras Assimétricas? Origem, Dinâmica e Resposta a Conflitos não-Convencionais como a Guerrilha e o Terrorismo. *IDN Cadernos* nº26. Disponível em http://www.idn.gov.pt/publicacoes/cadernos/idncadernos_26.pdf.

Schell, J., 2003. *The Unconquerable World: Power, Nonviolence, and the Will of the People*. New York: Metropolitan Books.

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