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Filling the Gap of the Dublin System: A Soft Cosmopolitan Approach

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Abstract

Immigration and asylum issues are currently central in the European political debate. In this paper, I first analyse the European legislation on asylum, the so-called 'Dublin System', finding three main gaps affecting it: a) the allocation of refugees between member states; b) the differences between member states in the treatment of asylum seekers and asylum applications; and c) the differences in the rights granted to the refugee status across member states. Secondly, I examine the European proposals drawn up by the EC in order to fill these gaps. I argue that these proposals, while potentially promising in filling gaps b) and c), seem to be less effective in filling gap a), since they do not consider the question from the refugees' perspective. In the last sections, following a moderated cosmopolitan approach, I propose the establishment of a limited citizenship for refugees that might be thought of as a temporary citizenship conditioned on the possession of the refugee status. To this particular citizenship, one may apply different rights, but to face the issue highlighted, it may be sufficient to connect it only to the freedom of movement and residence throughout the EU. I argue that such a policy would have a number of advantages and could at least partially fill the identified gaps.

Keywords

European Policies; European Refugee Crisis; Dublin System; Cosmopolitanism

INTRODUCTION. CITIZENS BEYOND NATIONAL STATE

The idea that a person, as a human being, is a member of a community that extends beyond the state of which he is a citizen goes back in time. Originated from western philosophy in classical Greece and Rome, it has evolved over the centuries thanks to the efforts made by Renaissance and Enlightenment thinkers. However, it is only after the Second World War, and even more after the end of the Cold War, that the concept of global citizenship (or world citizenship) has grown in importance (Heater 1996: 213; Carter 2001: 1). Related to the concept of global democracy, in recent times, the concept of global citizenship has been further elaborated and refined by cosmopolitan thinkers and, in some cases, associated with the idea of world government. Nevertheless, as highlighted by Heater (1996: 170), the political content of the concept of global citizenship has not been coherently defined nor the term has been used with a consistent meaning.¹ However, it is worthwhile to highlight that the concept of global citizenship implies at least: (a) the existence of an emerging world community to which people identify themselves; and (b) that such a community has a nascent set of values and practices (Israel 2013).

The cosmopolitan project of a democratic world government, relying on these assumptions, represents a valuable exercise in trying to imagine a practical way in which the concept of global citizenship can be transposed from theory to practice. According to Archibugi (2008: 116), global citizenship can be imagined as a legal instrument that, together with the principal citizenship of the state to which individuals belong, would allow them to benefit from a minimal list of rights and duties vis-à-vis constituting cosmopolitan institutions. Without entering here into the debate about the different meanings attached to the concept of global citizenship, it is important to note how this theoretical exercise provides a basis for the conceptualization of a citizenship overcoming the boundaries of national states. A limited example of the application of such a form of citizenship is

the EU citizenship, established in 1992 by the Maastricht Treaty. As stated by Art. 9 of TEU 'it is added to national citizenship without replacing it'. Therefore, European citizenship emerges as partially opposed to the statist vision that considers citizenship as the exclusive emanation of a sovereign state. It 'partially' opposes because it is still up to the sovereign member states to establish the methods and procedures for the acquisition of national citizenship, which is a prerequisite to obtaining European citizenship.

The concept of citizenship is historically linked to that of nationality, but it is useful to distinguish the two concepts. Citizenship is defined as the legal relationship linking a particular individual to a particular jurisdiction (state), which recognizes to the individual a set of rights. In other words, citizenship is a legal instrument by which a state recognizes, for those classified as citizens, the entitlement to civil and political rights. The concept of nationality, instead, refers to the belonging to a certain nation, where belonging is defined on the basis of historical, cultural, linguistic, and religious characteristics. The concept of nationality indicates a bond that goes beyond mere legal recognition, and it is characterized by a certain community of people who feel somehow linked by common characteristics.

According to some authors, '[the] great migration and the increasingly globalized human activity are gradually changing, in some cases making it obsolete, the definitions of belonging and citizenship. The latter concept is evolving and becoming progressively [more] International, making inconsistent, so anachronistic, the correspondence between nationality and citizenship.' (Triggiani 2009: 438). One of the reasons behind this process comes from the 'progressive achievement of acts and international instruments relating to fundamental human rights, which limit the absolute power of states to determine their own regulations on the assignment and denial or deprivation of nationality; acts and instruments that also recognize to the foreigner an increasingly significant corpus of rights' (Triggiani 2009: 438). In other words, the development of international instruments that somehow would limit the sovereign power of the states, along with the process of globalization, is changing the classic link between the concepts of nationality and citizenship, marking a disjunction and widening the scope of citizenship beyond national borders.

The case of the EU is perhaps the most emblematic representation of this kind of development. In the words of Urbinati (2015), 'Europe has tried to become a new model of citizenship. This is one of the noblest ambitions of the EU project. Theorists and lawyers have talked about a new paradigm of political freedom capable of decoupling citizenship from national belonging'. However, at the European level, the immigration crisis and the unfavourable economic climate slowed down this phenomenon. Urbinati (2015) nicely summarises this problem when she writes that 'probing by the flow of migrants and the economic crisis, the European myth tarnishes. Nation states returning main players, the intergovernmental policy gains priority and with it the bilateral diplomacy; borders return to close [...] the countries that are located on the borders of 'Fortress Europe' become outposts in the rejection of the army of desperate people. Faced with landings of refugees in the world, Europe no longer seems certain to want to be the laboratory of a new nationality and addresses the issue of refugees as a national security issue and even as a war'. If so, what kind of citizenship is possible outside of the state? What are the possible subjects of this 'extra-national' citizenship?

On this issue, the cosmopolitan literature offers a certain amount of writings and insights. Archibugi and other cosmopolitans argue that 'The implication of the disconnection of citizenship from state nationality can become a starting point for a general policy that guarantees fundamental rights to individuals regardless of their nationality', (Archibugi et al. 1998: 149). The idea, essentially, is that of a cosmopolitan citizenship that 'unify all human beings, which allows them to travel, visit and live in any corner of the world [...]' (Archibugi 2008: 114), and the refugees seem like the perfect category

for this model of citizenship because being citizens of nowhere, they are potentially world's citizens. (Archibugi 2008: 181). Following the cosmopolitan line of thought, the partial disjunction between citizenship and nationality that occurred with the introduction of European citizenship could become a starting point to imagine the implementation of a system granting certain rights regardless of the individual nationality so that it could be applied to refugees.

The cosmopolitan vision, perhaps too ambitious when it postulates the creation of a world government, and a world citizenship totally divorced from the individual's nationality, could be partly applied in the case of the EU at least to a specific category, namely, the refugees. Besides, such an approach could be considered consistent with the process that the EU has already started, which is that to establish a *sui generis* transnational citizenship that brings with it certain rights. The idea of an innovative European citizenship to be conferred on humanitarian grounds would make Europe an entity at the forefront of the protection of fundamental human rights by subverting part of the cardinal principle of the concept of citizenship, namely the exclusivity.

THE EUROPEAN LEGISLATION ON ASYLUM: THE DUBLIN SYSTEM, AND THE COMMON EUROPEAN SYSTEM

The legal institution of asylum is rooted in a long Western tradition. However, until the 1950s, when two important documents were signed —the Geneva Convention on Refugees (1951) and the European Convention of Human Rights (1950)— the right to asylum was still inextricably linked to the authority exercising its power on the places of asylum (the gods, the Church, or the State), therefore it was simply the consequence of the 'sovereignty' exercised on those sites. Successively, instead, another more revolutionary significance of asylum, as an institution capable of responding to the necessity to protect individual human rights, has been developed (Cherubini 2014: 7).

The changes that occurred in the second half of the twentieth century, in which the traditional conflicts between states have been almost completely replaced by internal conflicts and civil wars for political control, have made the institution of asylum an instrument for urgent actions.

At the European level, in addition to the international obligations imposed on member states, the right to asylum is reinforced both by primary and secondary legislation adopted by the European institutions. According to Article 18 of the European Charter of Fundamental Rights 'the right of asylum is guaranteed in compliance with the Geneva Convention of 1951 and the Protocol of 1967', while the principle of non-refoulement —potential refugees cannot be deported if there is a possibility that they would suffer persecution— is guaranteed by Article 19 of the Charter.

However, the cornerstone of the EU asylum legislation is represented by the so-called Dublin system that is enforced in all 28 member states as well as in Norway, Iceland, Switzerland, and Liechtenstein. The Dublin Convention, signed in 1990 and entered into force in 1997, established the principle that a single member state be responsible for processing an asylum application, and outlines the criteria for determining which state should have this responsibility. Dublin II, introduced in 2003, defines the hierarchical criteria to determine which state is responsible for processing the application, while Dublin III expands the guarantees for asylum seekers, and clarifies the rules and obligations up to them. A summary of the key components of the 'Dublin system' is shown in Table 1.

In essence, the Dublin Convention aims to establish a set of rules that allow better management of asylum applications by a regulation that establishes clearly and unequivocally which state is competent for examining any single application. In principle, the Convention provides that the member state competent for examining the asylum application is that of 'first arrival' of the

applicant, introducing some exceptions, mainly but not limited to family reunion, which derogate from this rule.

Table 1. The Dublin System Regulations

The 'Dublin system'		
Regulation	Entry into force	Principal content
Dublin Convention (97/C 254/01)	1997	Establishes the criteria to determine which member state should be responsible for the examination of the asylum application.
Dublin II (No. 343/2003)	2003	Replaces the Dublin Convention, re-establishing the principle that only a member state is responsible for examining an asylum application. It defines the hierarchical criteria to establish the member state responsible for each asylum application.
Dublin III (No. 694/2013)	2013	It extends the safeguards for asylum seekers and clarifies rules and responsibilities of member states, including which state should bear the cost of the application. With Dublin III, there is a possibility of appealing a transfer decision.

Source: Author's elaboration

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The need to ensure asylum seekers a uniform protection across the EU and offer fair and reasonable application procedures led, starting in 1999, to the development of the Common European Asylum System (CEAS). The Dublin system integrates into this most complex system (Table 2). Article 78 of the Treaty on the Functioning of the EU (TFEU) provides for the establishment of the CEAS with the main objective to reduce the disparities between member states in the procedures for examining the applications.

In order to ensure a greater level of harmonization and a greater degree of clarity on the issues related to asylum, the legal framework needs to be constantly reviewed. This resulted in updating the directives and regulations mentioned above with a new directive on asylum procedures, the Reception Conditions Directive and the Qualification Directive, entered into force in 2015.

Table 2. Common European Asylum System (CEAS)

Common European Asylum System (CEAS)	
EU Legislation	Objective
Asylum Procedures Directive 2005/85/EC	Establishes common standards of safeguards in order to reduce disparities between national examining procedures amongst member states. It sets out the rules of the whole process of claiming asylum.
Reception Conditions Directive 2003/9/EC	Establishes the minimum common reception conditions such as housing, food, and employment, which member states are required to grant to asylum seekers whilst processing applications. The Directive limits asylum applicants' secondary movements.
Qualification Directive 2011/95/EU	Clarifies the grounds for granting international protection. It also establishes the content of the protection granted to these persons from <i>refoulement</i> to access to education, accommodation, and medical care.
Dublin Regulation No. 604/2013	Establishes which member state is responsible for examining the application, and clarifies the rules governing the relations between states.
EURODAC Regulation No. 2725/2000	Establishes an EU asylum fingerprint database, making it easier to determine which member state is responsible for examining individual applications.

Source: Author's elaboration

THE GAPS IN THE EUROPEAN LEGISLATION

Created to introduce common rules allowing the objective determination of which state should be responsible for every single application for asylum, in order to contrast phenomena such as 'asylum shopping'² and 'asylum seekers in orbit',³ the Dublin System, in recent years, entered into crisis as a result of the asylum seekers' flows increase. Remaining quite stable from 1990s to 2010s, the flows started to grow following the Arab Springs and the consequent destabilization of the Northern-African region. Further increases have been registered following the Libyan civil war and the Western military intervention, and ended with the death of Muammar Qaddafi, which left the country highly divided and without a central government able to control the entire territory and its borders. Yet only with the onset of the Syrian civil war, between the end of 2011 and the beginning of 2012, and the advance of radical fighting groups (such as al-Nursa and Daesh) between 2013 and 2014, have the flows of asylum seekers begun to increase dramatically (UNHCR 2014).

This situation has shown the limits and the gaps of the European asylum system, and the idea that the Dublin system has failed because it was unable to carry out its task of efficiently managing the refugees' crisis has become a common opinion (Guild et al. 2015: 34). Due to the lack of political unity and cooperation among member states, and to the partial inadequacy of the legal framework, the system has failed, on the one side, in providing effective instruments capable of avoiding a disproportionate pressure between member states, and on the other side, in complying with human rights obligations concerning asylum seekers and refugees.

The current European asylum system suffers indeed from a number of issues that, despite the changes made over the decades, continue to affect the member states, the EU as a whole, and asylum seekers and refugees. The problems regarding the Dublin system can be divided into those affecting the legal framework and those affecting its implementation. From the legal perspective,

although fairly comprehensive in its legislation, which in theory rules all aspects of the process of seeking asylum, the Dublin system has a significant gap, namely:

- *The asylum seekers' allocation in EU member states:* making it mandatory to submit the application for international protection, and consequently the compulsory permanence, in case the application is accepted, in the first country of arrival, on the one hand generates unbearable disparities in asylum flows across member states, and on the other hand prevents the possibility for refugees to choose the member state in which they resettle themselves.

With respect to the implementation, the Dublin system presents two important gaps, namely:

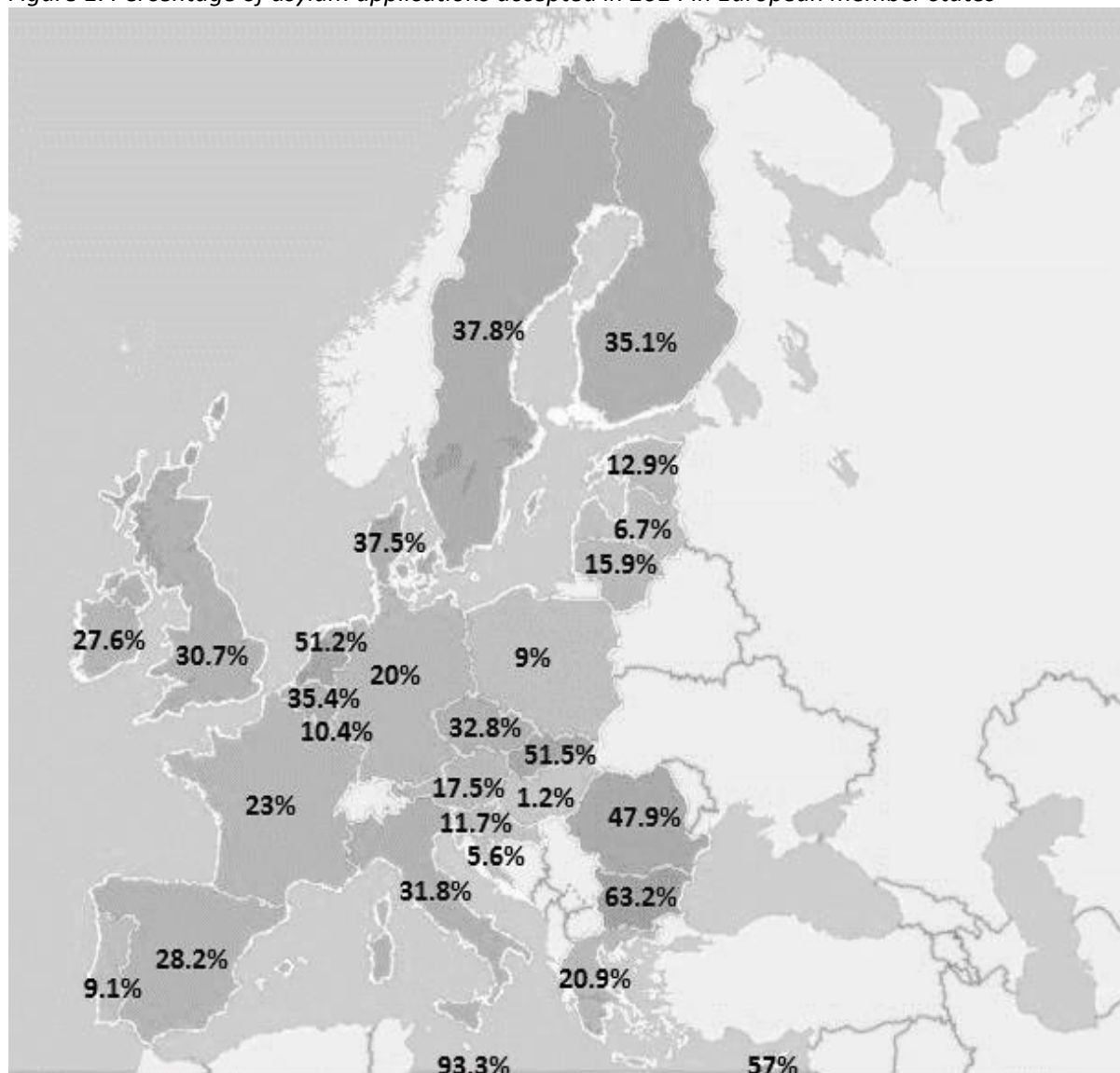
- *The differences between the member states in the treatment of refugees and asylum seekers:* member states show huge disparities in managing asylum applications and in the treatment of applicants. The disparities are reflected in the request procedures, timing, application procedures, and outcome;
- *The differences between the member states with respect to the rights granted to the refugee status:* member states have a strong autonomy in choosing which rights are granted to the refugee status and thus, again, this causes disparities between member states.

ASYLUM SEEKERS AND REFUGEES' ALLOCATION

By introducing the rule providing that only the state of first arrival should be responsible for examining an asylum application, the Dublin System has put greater pressure, both financial and social, on the member states sharing the EU's external borders. Being most exposed to the arrival of migrants, especially illegal ones, they have experienced a dramatic increase in the number of asylum applications submitted in their territory, the number of migrants who died trying to reach their coasts, and in the cost of patrolling borders. These disparities have resulted in a substantial different approach among member states, to the high number of applications, and the countries most affected by illegal arrivals showed frustration on the part of both public opinion and governments, which in some cases led to the adoption of no virtuous and questionable behaviours. For instance, according to The Spiegel Online (2013), Italian authorities have provided provisional documents to the potential asylum seekers facilitating them to reach other European countries, and in some cases, even providing the money needed to reach these places. Italy, however, is not the only country that has adopted questionable measures. The Hungarian government has approved and completed the construction of two walls, on its Serbian and Croatian borders, attempting to prevent asylum seekers arrivals. It is worthy to note that the construction of the second wall represents a much more serious fact, because it is the first time in EU history that a member country built a barrier on another member country border.

The Dublin regulation showed itself to be dysfunctional also from the refugees' point of view. The system according to which the first member state of arrival is responsible for examining asylum applications is based on the strong assumption that EU member states provide equal protection and equal criteria regarding the granting of asylum status, but data shows us that this assumption is not empirically satisfied. Looking, for instance, at data relating to the applications presented in EU member states and the rate of acceptance of applications (Figure 3), we can see that there are indeed substantial differences

Figure 1. Percentage of asylum applications accepted in 2014 in European member states



Source: Authors' elaboration on Eurostat data. Available at: [http://ec.europa.eu/eurostat/statisticsexplained/index.php/File:First instance decisions on %28nonEU%29 asylum applications, 2014 %28number, rounded figures%29 YB15 IV.png](http://ec.europa.eu/eurostat/statisticsexplained/index.php/File:First_instance_decisions_on_%28nonEU%29_asylum_applications,_2014_%28number,_rounded_figures%29_YB15_IV.png) [Accessed 3 February 2016].

As shown by Figure 1, the application acceptance rate in 2014 considerably varied from 1.2 per cent in the case of Hungary to 93 per cent in that of Malta. Of course, this is just a partial analysis, because the variance in the acceptance rates could depend also on differences in the composition of asylum seekers' citizenship, which can vary among member states. However, data⁴ shows that there are some cases in which, in spite of a homogeneous composition of asylum seekers' citizenship, the acceptance rate varies considerably. For instance, in 2014, in Slovenia and Slovakia, about 50 per cent of asylum seekers came from Syria, Afghanistan, and Somalia, however, the acceptance rates were respectively 11.7 and 51.5 per cent, and this seems to confirm the hypothesis that part of the variance can depend on the differences between member states in the management of the applications.

For these and for other reasons, such as greater employment opportunities, a more generous welfare system, or the presence of community networks, asylum seekers often do not wish to present their applications in the first member state of arrival. This implies that in many cases refugees attempt to escape the registration of fingerprints and their personal data, and when they

succeed often rely on criminal networks trying to reach the chosen country where they present their asylum applications. This behaviour can be better understood considering that the rule of the first country of arrival has the aim of reducing secondary movements not only for asylum seekers but also for refugees. In fact, when an asylum seeker obtains the refugee status, he does not acquire the right of free movement throughout the EU. The refugees' right to travel is regulated by member states that, in this context, maintain a certain degree of autonomy. An ad hoc query⁵ concerning the requirements for recognized refugees in order to travel within the EU, issued by Cyprus in 2014, shows that secondary movement for refugees is hardly limited. In fact, at the question 'Would Member states allow a recognised refugee who holds a temporary residence permit, and who has in his/her possession a refugee travel document according to the Geneva Convention, to travel to their territories for the purpose of residence/employment?', the majority of respondent countries claimed that refugees are entitled to stay in a member country, different from that of first arrival, for up to 90 days, requiring a long term resident permit in order to be able to legally work in that country. In other words, the refugee status does not automatically provide the right of free movement throughout the EU. Therefore, with the current European legislation on asylum, the easiest way for asylum seekers to set up themselves in a country different from the one of first arrival, when they gain the refugee status, remains trying to escape from fingerprint registration and reaching another member country in which to present their applications.

On this point, since its implementation, the Dublin system has been criticized and contested. Focused on the incoherence of the legal system, critics concentrated on the lack of mutual recognition of positive decisions between member states. Currently, in fact, while negative decisions (such as the one of not granting the protection, and the decision to return an asylum seeker in his country of origin) are mutually recognized, so that a decision made by a member state is valid for all the others, positive decisions are not.

As pointed out by Chetail et al. (2016: 87), 'A uniform status valid throughout the Union [would require] that the protection status obtained in one EU member state is transferred to another member state in case a beneficiary of international protection takes up residence in that other Member State. This is currently explicitly excluded from the scope of the amended long term residence directive and is not covered elsewhere in the EU asylum acquis. Moreover, the amended long term residence Directive only applies once a person has obtained long term residence status, which is only possible after a period of at least five years.' The 'mutual recognition' discourse, based on legal and human rights concerns, suggests the need to create and implement a legal instrument capable of overcoming such a gap, claiming that the current EU legislation would already provide the legal presuppositions.⁶

TREATMENT OF ASYLUM SEEKERS AND REFUGEES

The problem of the differences between member states in the treatment of asylum seekers and asylum applications, and the differences in the rights granted to the refugee status can be analysed together. Both in fact arise from the unrestrained autonomy left to the member states in the application of European rules and, as we shall see, they share the same consequences. Therefore, a similar argument can be claimed regarding the treatment of asylum seekers and those who are granted refugee status.

Despite the EU attempts to make the rules more consistent through the Dublin System, substantial differences remain across member states with respect to the procedures for the recognition of the status as well as with respect to the living conditions of refugees after the recognition of the

international protection. These differences, as shown briefly by The Spiegel Online (2013), are reflected in several aspects including the time required to examine applications, housing conditions, health assistance, and the possibility of integration following the recognition of the status. The Spiegel's article shows how applying for asylum in a member state rather than another can make great difference for asylum seekers.

As for what concerns the timing, a survey carried out by Euractive (2015) shows the significant differences in the examination of asylum applications, pointing out how they vary widely from a few months for Sweden to one or two years in the cases of Italy and France. From the standpoint of reception conditions, the differences are even deeper. On the one hand, some Northern-European countries such as UK, Sweden, and Norway offer relatively high hosting standards; on the other hand, some Southern-European countries such as Italy have relatively poor standards. Once the refugee status is recognized, in Norway the state provides a well-structured assistance program, lasting two years, granting access to housing, salary, language and professional courses, and a wide range of social and welfare services. In Italy, on the contrary, the lack of sufficient accommodation and investment, and the disorganization of the international protection system ensures that refugees are often forced to live in conditions of hardship and marginalization, in occupied structures, or in tent camps (Povoledo 2012).

THE EUROPEAN RESPONSES TO THE CRISIS

While member states have tried to respond to the crisis in very different ways the European institutions have undertaken several actions. In May 2015, the EU Commission approved the so-called European Agenda on Migration, proposing a number of short- and long-term solutions to be implemented along the next years, through the approval of individual law packages.⁷ The Agenda is important because with this act the Commission began to recognize the need to adopt a broader and decisive approach, with respect to the common management of immigration, and the need for reforming the Dublin System. Based on the Agenda, other proposals have been approved and some concrete actions have been implemented. With respect to short-term measures, the most important are undoubtedly the adoption of an emergency scheme relocating 160,000 people, from the most affected to other member states, according to parameters such as GDP, unemployment rate, and number of refugees accepted in previous years. This solution, according to the statements made by the Commission itself, will only be a forerunner to a permanent scheme aimed to share the burden and costs of the reception more fairly between the member states.

In this regard, we can note that the approval of the first reallocation package, mainly forced by Germany, primarily represented a signal to the European public opinions and to the member states, in fact, at the current rates, the number of refugees reallocated was lower than the number of people arriving in Europe in a single month (Cerretelli 2015). Moreover, once relocated in different EU member states, applicants will still be obligated to submit their request for asylum in the country in which they were relocated. With respect to long-term actions, the European Commission has recently presented a series of proposals aimed at reforming both the Dublin system and the CEAS.

Concerning the Dublin system, the Commission proposed two reforming options:⁸

- i. *A corrective fairness mechanism*: this option provides the preservation of the current first country rule, but it would be supplemented with a permanent relocation and redistribution mechanism which would be activated in emergency circumstances, when a member state would face disproportionate pressure.

- ii. *(A new system for refugees' allocation):* this option provides a new allocation system based on a permanent redistribution scheme reflecting the relative size, wealth, and absorption capacity of each member state.

Concerning the reform of the CEAS, the Commission proposed a five-point strategy:

- i. *Reforming the Dublin system:* establishing a sustainable and fair system for determining the member state responsible for dealing with an asylum claim;
- ii. *Reinforcing the EURODAC system:* extending the scope of the rules and allowing the system to be used to facilitate the return of irregular migrants;
- iii. *Achieving greater convergence in the EU asylum system:* transforming the current Asylum Procedures Directive and Qualification Directive into Regulations to ensure a harmonised treatment of asylum applications across the EU;
- iv. *Preventing secondary movements:* attaching proportionate sanctions to failure by an applicant to remain in the member state responsible for his claim;
- v. *A new mandate for the EU's asylum agency:* to enable it to monitor the compliance by member states with the asylum standards and quality of asylum decisions.

The reform of the Dublin system proposed by the Commission, despite promising to resolve the problems from the states' point of view, does not face them from the potential refugees' perspective. Both proposals could probably reduce the pressure of the accommodation costs imposed on the more exposed states, but they do not address the applicants' inability to present their requests in a member state of their choice with the consequence that, even when the refugee status is acquired, they cannot easily set up their new lives in the desired member state. Consequently, the proposals probably will leave unchanged the practice according to which asylum seekers try to escape the registration upon arrival on European territory, trying to illegally reach, risking their lives, different countries where they present their asylum application.

Therefore, the strategy outlined by the Commission seems to address only in part the identified gaps. With respect to the allocation of asylum seekers and refugees, the proposals, as mentioned above, does not consider in any way the issue of the asylum seekers' inability to decide in which European country they present their asylum application. On the contrary, the Commission intends to strengthen the instruments such as Eurodac, ensuring that the rule of the first state of arrival or the permanent allocation mechanism will be respected in a more effective way, therefore, it does not seem to question the policies on secondary movement, denying the possibility, for a person who has obtained refugee status, to move freely within Europe.

This last point seems in my opinion particularly contrasting with the desire to establish a 'fair' common European asylum policy to enhance the protection of asylum seekers and refugees. A common European asylum system should imply that the decision of a member state to grant refugee status to a subject is mutually recognized and automatically accepted by all member states, and therefore that a person who has been recognized as a refugee should have the opportunity to decide in which member state to settle their new home. Allowing refugees to choose where to stay once they get the status would partially eliminate the reasons why a number of asylum seekers attempt to evade the controls arriving on European territory, thus avoiding that they might be pushed toward the criminal networks trying to reach a European country different from that of first arrival or that in which he is assigned. The authorization to move and to stay within all EU countries could facilitate employment and the social integration of refugees. Being able to move freely, they could move to a member state where there is less unemployment and more job offers or simply to a member state in which some acquaintances may reside who could help them to socially and

economically integrate. Finally, such a choice would greatly facilitate family reunification, avoiding bureaucratic delays that currently can span across several months.

With respect to the issues of the differences between the member states in the treatment of asylum seekers and refugees, the Commission seems to address them more effectively. The Commission assumes that, if applied, the rules concerning the treatment of asylum seekers and refugees, contained in the three procedures, reception, and qualification directives, are in principle sufficient to ensure a harmonized approach between member states. Consequently, the proposals aim to strengthen the monitoring and evaluation system regarding the rules on reception conditions implemented by member states to transpose European legislation. In addition, if implemented, the proposal of transforming the current Asylum Procedures Directive and Qualification Directive into Regulations would surely improve the harmonization of national practices and doing so dealing effectively with the gaps of the differences between the member states in the treatment of refugees and asylum seekers. However, in order to determine the effectiveness of such an approach, we should wait until it will be enforced, and check how the Commission and the Council will decide to implement it. Moreover, in order to be implemented, the Commission proposals must be approved by the Council, which is the ultimate decision-making body of the EU.

FILLING THE GAP: A EUROPEAN CITIZENSHIP FOR REFUGEES

The European Agenda on Migration and the successive Commission's proposals are undoubtedly a good starting point, not only to address the immediate emergency, but also in the effort to create a rational and efficient European system, eliminating the gaps currently present in both the legislation and its implementation. However, to eliminate the gaps highlighted above, further steps without doubt could and should be undertaken, and the efforts should move in the direction of trying to fill the gaps, paying attention to both national needs and the needs of asylum seekers and refugees.

Concerning the implementation gaps, namely the differences between member states in the treatment of refugees and asylum seekers, and in the rights granted to the refugee status, the Commission's proposal of transforming the current Asylum Procedures and Qualification Directives into Regulations, the strengthening of the control on the application of EU law, and the decision to appeal more broadly to the tool of the infringement procedure are a good starting point, but are not enough. Regardless of these measures, member states will maintain a high degree of autonomy, so that some of them will continue to provide more opportunities and guarantees through the implementation of well-structured programs of proven effectiveness, as in the case of Norway, and this will provide an incentive to asylum seekers to try to reach these countries.

A viable solution would be a partial reform of the directives, aimed at reducing the national autonomy, adopting in all member states a common program built on the good practices put in place by the best performing countries including policies to support both economic and social integration. Such an approach, in conjunction with a better monitoring of the compliance with European standards, could be able to solve the above mentioned gaps. With respect to the allocation gap, instead, the Commission's proposals seem to be less effective. Despite the need to begin to consider the problem not only from the point of view of the states but also from the point of view of the refugees it is becoming increasingly clear, the EC does not seem to make much progress in this direction. While both the corrective fairness mechanism and the permanent allocation scheme options probably would fill the gap affecting member states, they would not fill that affecting refugees.

From the member states' perspective, implementing a corrective mechanism that, preserving the first country rule, would be activated in emergency circumstances would reduce the pressure currently faced by the countries sharing European external borders. And the same result would be achieved through the implementation of a permanent redistribution scheme. The second option, however, would probably be more effective than the first since it would not leave room for interpretation issues (How do we define an emergency? How do we quantify a disproportionate pressure?). From the refugees' perspective, however, in both cases, the issue of the impossibility to freely and easily settle themselves in a country of their choice would remain, and this impossibility could continue to push asylum seekers to try to escape the registration on arrival. Rates of applications acceptance, timing for procedures completion, reception conditions during the application process, and economic and social assistance conditions once achieved the refugee's status are not the only considerations pushing an asylum seeker to evade the system.

An asylum seeker could aspire to settle himself in a country different from that assigned to him in order to meet his family (reunifications currently required up to several months, varying from a member state to another) or to meet a relative currently excluded from the definition of family, or even to settle in a country of which he knows the language, or in which job opportunities for his profession are grater. The motivation and the incentives explaining such behaviour may be various, but all of them may contribute to encouraging asylum seekers to escape the Dublin system and trying to reach other countries different than that of first arrival, often doing so relying on human traffickers.

To solve this gap, the solution I propose is the establishment of a European citizenship for refugees. Once resolved or greatly mitigated, the problem of differences of treatment, the establishment of such an instrument would reduce considerably the incentives for refugees to escape the Dublin system. In other words, while maintaining the rule of the first country of arrival or applying a permanent allocation scheme, when an applicant expects to find similar conditions among member states— with respect to rates of applications acceptance, timing for procedures completion, reception conditions during the application process and, economic and social assistance conditions once achieved the status— much of the incentives to evade the system would vanish.

Therefore, once the implementation gaps are filled, introducing the opportunity for an individual to move into the European territory once refugee status is acquired, would leave no more incentives for an asylum seeker to escape the system. In such a context indeed, if granted refugee status, he could move to his family, easily reach any friends or relatives, to move himself to a country of which he knows the language or, to a country where the job market is more favourable.

EUROPEAN CITIZENSHIP FOR REFUGEES: IMPLEMENTATION

As provided by the Treaties, European citizenship adds a number of additional rights to those already conferred by the possession of the nationality of a member state. These rights are: freedom of movement and residence throughout the EU; the active and passive right to vote in local elections and European elections in the member state of residence; the protection by the diplomatic and consular bodies of any member state in a third country in which the state of which the person concerned is a national is not represented; the right to petition to the European Parliament and to complain to the Ombudsman.⁹

A similar framework could be applied to the case of refugees. European citizenship for refugees might be thought as a temporary citizenship conditioned to the possession of the refugee status. In

other words, in this case, European citizenship would not be linked to the nationality of the subject but to the refugee status, which currently entitles the person who possess it to stay in the territory of the member state that has granted the status. It would also be temporary, in the sense that the refugee would lose it when he would no longer be in possession of the refugee status for one of the grounds specified in the European standards.

Which rights to associate with this form of citizenship is a matter of debate among policymakers. Rush and Martin (2008, 2010), analysing economic migration, developed a theory suggesting the existence of a trade-off between the number and rights of migrants, in high-level countries. In other words, they claim that when increasing the number of migrants and the economic costs associated with them, the rights recognized to them tend to decrease. Applied to the context of refugees, the theory should provide a similar outcome, but economic concerns do not seem to be the only variable taken into account by policymakers. Especially in the EU context, non-majoritarian institutions such as the EC and European Court of Justice, less dictated by budgets constraints and more isolated from populist majoritarian demands to impose ever greater restrictions on access to protection, seem to be more incisive in conditioning the policymaking process (Thielemann and Hobolth 2016).

Therefore, in order to decide which rights to associate with this form of citizenship economic, political, and social concerns have to be jointly considered. One might decide to guarantee the same rights as those granted by European citizenship to nationals of member states; or one may instead decide to cover only certain rights deemed to be essential. For example, this form of citizenship may exclude the recognition of the right to vote, but recognize education related rights. However, for what concerns the above mentioned gaps, since basic rights are currently provided by the Dublin system and the EU seems willing to harmonize and to enforce them throughout its territory, the minimum fundamental right linked to this form of European citizenship should include temporary freedom of movement and residence throughout the EU.

From a political point of views, for member states, such an instrument could probably represent a political cost, especially for populist parties and for those countries where immigration is a very politicized topic. However, the fact that such a decision should be taken in the framework of European institutions that in some sense are less sensible to the political cost issue,¹⁰ would greatly mitigate such a cost for member states. From the economic point of view, granting freedom of movement to refugees would not represent a costly right, neither for member states nor for the EU. Of course, if refugees were able to move through the EU, some member states would probably accommodate more of them, affording higher costs. However, since the major cost for member states remains the management of asylum seekers (accommodation costs, welfare costs), this new system could be implemented jointly with a compensation mechanism —added to the emergence or the permanent quota schemes depending on which of the two options would be implemented by the EU— which allocates a smaller share of asylum seekers to countries that have welcomed a greater number of refugees.

Finally, from the social perspective, for member states and the EU, allowing refugees to settle in a country of their choice would probably represent a profit rather than a cost or at least it would not create major costs. On the one side, the possibility for a refugee to settle in a country of which he knows the language, in which other friends or relative reside, or in which there are more job opportunities for his profession, could improve the possibility for the refugee to integrate himself in the social and economic context of that country, therefore representing a benefit rather than a cost. On the other side, once registered in the Eurodac database, which includes a set of biometric parameters aimed to register asylum seekers and refugees, the ability to move within the EU would not create any particular public security problem. A system reformed in this way would represent a

huge step forward in improving the common European management of asylum and would probably be more consistent with the principles of democracy, rule of law, and human rights that underpin the EU itself.

CONCLUSION

The immigration and asylum issues are currently central in the European political debate, and this extremely fluid situation makes it quite complicated to make a precise analysis of the policies proposed and implemented at the national and European levels. However, an analysis of the European legislation and practices related to the Dublin system allowed us to identify and isolate some major problems inherent in the current Common European Asylum System: (a) the allocation problem; (b) the problem of the conditions of asylum seekers and refugees; and (c) the differences in the rights granted to the status of refugee among member states.

Analysing the most recent European proposals, developed in the effort to reform the system and to create the conditions for the implementation of a migration policy more effective and efficient in the long run, I have shown how these proposals address the identified gaps only in part. In particular, while promising to solve the allocation problem from the states' point of view, the proposals fail to address it from the potential refugees' perspective. With respect to the issue of the differences between member states in the treatment of asylum seekers and refugees, the EU seems to address the issue effectively. The Commission assumes that if the rules concerning the treatment of asylum seekers and refugees were to be applied, this would be sufficient to ensure a harmonized approach among member states. For this reason, the solution presented by the EC is to transform the current Asylum Procedures Directive and Qualification Directive into Regulations and strengthen the monitoring and evaluation system of the EU rules implemented by states. This scenario, if implemented, could actually homogenise the practice on asylum seeking and the rights associated with the refugee status among member states.

Concerning the allocation gap, instead, the EC proposals seemed to be less convincing. The quota system proposed—either the compensation scheme with the maintenance of the first country rule, or the permanent one abolishing the first country rule— can reduce the economic and social pressure imposed on the more exposed states, but cannot solve the problem of the applicant's inability to present his request in a member state of his choice. Doing so, the proposals probably will leave unchanged the practice whereby asylum seekers are trying to escape the controls upon arrival on European territory to try to reach, in a clandestine way and risking their lives, a different country where they may present their application. For these reasons, the allocation gap could be filled only in part. In any case, the implementation of these proposals is subjected to the approval of the legislative and operational measures required to implement them. From this point of view, in order to assess the effectiveness of the EC proposals, we will need to wait for the approval of legislative packages essential to its implementation.

Since both the gaps of the differences between member states in the treatment of asylum seekers and asylum applications, and the differences in the rights granted to the refugee status appear to be satisfactorily addressed by the EC, I presented a proposal focused on filling the allocation gap, which currently seem to be addressed only in part, considering the perspective of refugees. Even if one of the two EC proposals about the reform of the Dublin system would be implemented, in fact, it will remain an impossibility for a refugee to freely and easily settle itself in a country of his choice, and this impossibility could continue to push asylum seekers to try to escape the registration on arrival.

The solution I propose, relying on the insights offered by the cosmopolitan literature, is the establishment of a European citizenship for refugees. Following the cosmopolitan line of thought, the partial disjunction between citizenship and nationality that occurred with the introduction of European citizenship could become a starting point to imagine the implementation of a system granting certain rights regardless of the individual nationality so that it could be applied to refugees. Once the problems of differences of treatment are solved, the establishment of such an instrument would reduce to a minimum the incentives for refugees to escape the Dublin system. While maintaining the rule of the first country of arrival or applying a permanent allocation scheme, when an applicant is expected to find similar conditions among member states—with respect to rates of applications acceptance, timing for procedures completion, reception conditions during the application process and, economic and social assistance conditions once achieved the status—much of the incentives to evade the system would vanish.

When the implementation gap is filled, the introduction of the possibility for refugees to move into the European territory once refugee status is acquired would not leave much incentive for an asylum seeker to escape the system. In a similar context, he could move to his family, easily reach any friends or relatives (currently not included in the definition of family, and so excluded from the reunification procedure), to move himself to a country of which he knows the language or, to a country where job market is more favourable. Such a European citizenship for refugees might be thought of as a temporary citizenship conditioned on the possession of the refugee status. It would also be temporary in the sense that the refugees would lose it in case they were no longer in possession of the refugee status. To this particular type of citizenship, one may apply different rights, for instance the same rights as guaranteed by European citizenship to nationals of member states, or just a subset of those rights deemed essential. With regard to the problems considered here, however, it may be sufficient to connect to European citizenship for refugees only the freedom of movement, residence, and work throughout the EU.

Such a policy would have a number of advantages. Allowing refugees to choose where to stay once they got the status would partially eliminate the reasons why a number of refugees attempting to evade the registration once arrived on European territory, thus avoiding their being pushed toward criminal networks in the attempt to reach a different country. The authorization to move and to stay within the entire European territory could facilitate employment and social integration, and in doing so reduce the costs related to the accommodation of refugees. Being able to move freely, they could move to a member state where there is less unemployment and more job offers, or simply to a member state in which there may reside any acquaintances who could help them to socially and economically integrate in a given country. In addition, such a choice would greatly facilitate family reunification, avoiding delays that often span several months. A system so reformed would represent a huge step forward in the achievement of a genuine common European asylum management that would be more consistent with the principles of democracy, rule of law, and human rights underpinning the EU itself.

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ENDNOTES

¹ For a review of the different understanding of the concept of global citizenship see Heater 1996.

² The possibility, by the applicant, to submit their applications in more than one European countries.

³ The fact that the applicant was sent from a member state to another without anyone being declared competent for the examination of its application.

⁴ See data: Eurostat, Five main citizenships of (non-EU) asylum applicants, 2015. Available at: <http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics>.

⁵ European Migration Network, 2014. Ad hoc query on right of recognised refugees to travel in EU, requested by CY EMN NCP.

⁶ For a thorough analysis of the mutual recognition discourse see: European Council on Refugees and Exiles (2014).

⁷ For the complete Agenda's content, see: EC. European Agenda on Migration, COM (2015) 240.

⁸ European Union: European Commission, Communication from the Commission to the European Parliament and the Council Toward a Reform of the Common European Asylum system and Enhancing Legal Avenues to Europe, 6 April 2016, COM(2016) 197 final. Available at: <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agendamigration/proposalimplementationpackage/docs/20160406/towards a reform of the common europe an asylum system and enhancing legal avenues to europe - 20160406 en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agendamigration/proposalimplementationpackage/docs/20160406/towards_a_reform_of_the_common_europe_an_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf)> [Accessed 21 May 2016].

⁹ TFEU Articles 20-25.

¹⁰ On this point, see the position of the European Commissioner for migration, Dimitris Avramopoulos, in Holehouse (2015).

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