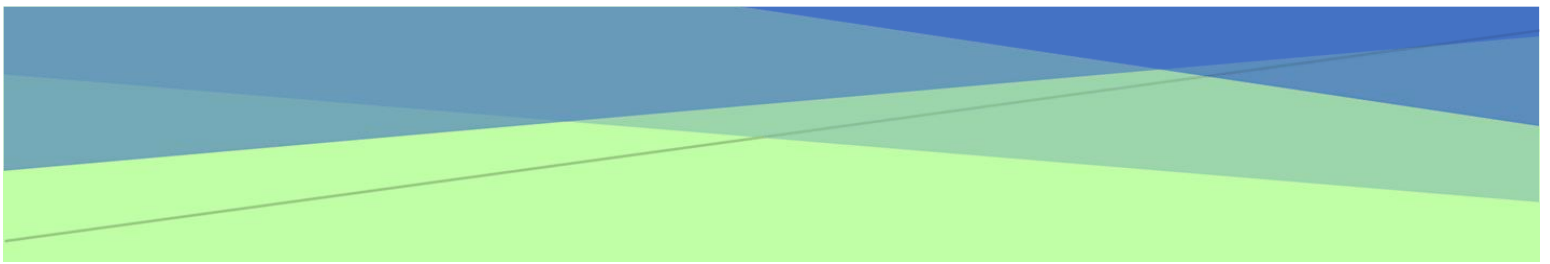


ADVERTIMENT. L'accés als continguts d'aquesta tesi doctoral i la seva utilització ha de respectar els drets de la persona autora. Pot ser utilitzada per a consulta o estudi personal, així com en activitats o materials d'investigació i docència en els termes establerts a l'art. 32 del Text Refós de la Llei de Propietat Intel·lectual (RDL 1/1996). Per altres utilitzacions es requereix l'autorització prèvia i expressa de la persona autora. En qualsevol cas, en la utilització dels seus continguts caldrà indicar de forma clara el nom i cognoms de la persona autora i el títol de la tesi doctoral. No s'autoritza la seva reproducció o altres formes d'explotació efectuades amb finalitats de lucre ni la seva comunicació pública des d'un lloc aliè al servei TDX. Tampoc s'autoritza la presentació del seu contingut en una finestra o marc aliè a TDX (framing). Aquesta reserva de drets afecta tant als continguts de la tesi com als seus resums i índexs.

ADVERTENCIA. El acceso a los contenidos de esta tesis doctoral y su utilización debe respetar los derechos de la persona autora. Puede ser utilizada para consulta o estudio personal, así como en actividades o materiales de investigación y docencia en los términos establecidos en el art. 32 del Texto Refundido de la Ley de Propiedad Intelectual (RDL 1/1996). Para otros usos se requiere la autorización previa y expresa de la persona autora. En cualquier caso, en la utilización de sus contenidos se deberá indicar de forma clara el nombre y apellidos de la persona autora y el título de la tesis doctoral. No se autoriza su reproducción u otras formas de explotación efectuadas con fines lucrativos ni su comunicación pública desde un sitio ajeno al servicio TDR. Tampoco se autoriza la presentación de su contenido en una ventana o marco ajeno a TDR (framing). Esta reserva de derechos afecta tanto al contenido de la tesis como a sus resúmenes e índices.

WARNING. The access to the contents of this doctoral thesis and its use must respect the rights of the author. It can be used for reference or private study, as well as research and learning activities or materials in the terms established by the 32nd article of the Spanish Consolidated Copyright Act (RDL 1/1996). Express and previous authorization of the author is required for any other uses. In any case, when using its content, full name of the author and title of the thesis must be clearly indicated. Reproduction or other forms of for profit use or public communication from outside TDX service is not allowed. Presentation of its content in a window or frame external to TDX (framing) is not authorized either. These rights affect both the content of the thesis and its abstracts and indexes.



UAB

**Universitat Autònoma
de Barcelona**

THE VICIOUS CIRCLE OF MIGRATION AND SECURITY:

**Adequate identification, inclusion and integration of migrants
as a way to sharpen States' security and stability.**

PhD Thesis in International Public Law and International Relations

Line of research: Regulatory mechanisms of the international system.

International relations and European integration.

Faculty of Law, Autonomous University of Barcelona (UAB) 2023

Author: Rosalinda COTTONE

rcottone@iom.int

Director and Tutor: Cristina BLASI CASAGRAN

Cristina.blasi@uab.cat

Acknowledgements

This study would not have been possible without the tremendous support of its coordinator, model of academic and brilliant personality, Doctor Cristina Blasi Casagran, to whom the author wishes to express heartfelt admiration and appreciation, as well as thanking Carles Lorente Rivera, former UAB fellow student and friend, who facilitated this connection.

This work was first conceived and discussed between Barcelona (Spain) and Algiers (Algeria), then developed in Tripoli (Libya) and Tunis (Tunisia), further developed and adapted in Beirut (Lebanon), and finally completed in Geneva (Switzerland) and Palermo (Italy).

A token of gratitude goes to my family, particularly my mother for her endless encouragements, and not to forget the extended family: Doctor Chiara Fontana for her precious insights on the Arabic language and culture and for boosting additional reflections, and Wassim Hariz for having taught me about the renowned Lebanese resilience and then introduced me to the Lebanese culture, politics and identity with his customised and exquisite analyses.

Special thanks for the valuable contributions of all the respondents that graciously accepted to share their knowledge and suggestions to ameliorate the case study, the Lebanese American University (LAU), Lebanon and Lebanese for hosting me during a study period, the Autonomous University of Barcelona (UAB) Faculty of Law, for providing me with numerous opportunities to work on and improve my analytical and research skills, and lastly the United Nations that allowed me to gain access to countless resources to inform this work. I am delighted and beholden that this work could benefit from Colleen Boland and Raffaele Bertini's thorough reviews and opinions.

Finally, I wish to dedicate this study to Pascal Reyntjens, Urwah Alhababeh and Haidar Baqir, my favourite migrants and refugees, as through their notable strength and courage they truly inspired this work from start to end.

Happy reading!

Linda

Table of Contents

Acknowledgements	1
Table of Contents	2
List of Abbreviations and Acronyms	5
Introduction.....	9
1. Scope of the analysis and the research question.....	13
2. Rationale, overview and methodology	15
Chapter 1 The management of migration at the border	18
1. The management of migration at the border	20
a) Migrant and migration profiles.....	25
b) Rights and principles applicable to migrants.....	30
ii. The principle of <i>non-refoulement</i>	35
iii. The right to legal identity.....	39
iv. The right to nationality.....	43
v. Preventing statelessness and realising migrants' rights	48
vi. The freedom to choose residence.....	54
vii. The principle of non-discrimination: some considerations on the margin of citizenship	55
2. International legal instruments to prevent cross-border crimes related to migration at sea 64	
a) Applicable international law of the sea	66
b) The IMO Circular paving the way for the adoption of the Palermo Protocol	70
c) The Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organised Crime	72
d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime.....	74
e) Distinguishing interception at sea from rescue operations	75
f) Relevant examples of bilateral agreements on immigration control: Spain and Italy	82
i. Spain	83
ii. Italy	86
g) The turning point on operations at sea: the <i>Hirsi Jamaa and others c. Italy</i> case.....	89
3. Accessing the territory: possible consequences of irregular migration	91
a) Access and admission to the territory through a visa	95
b) Human rights and humanitarian grounds to entry a host territory.....	96
c) Access to an asylum system	101
d) Entry and travel Bans, pushbacks at sea, entry to territory and situation at the border, including expulsion and extradition.	103
e) Immigration Detention and Alternatives to Detention	106

i.	Migrant children.....	110
ii.	Migrant women.....	111
iii.	Types of Alternatives to Detention and the Voluntary Return	112
f)	The Right to Return	114
g)	Border closures and mobility restrictions: some considerations on intersecting vulnerabilities in the margin of COVID-19	121
	Concluding remarks	128
	<i>Chapter 2 The identification as the first step for an adequate integration</i>	132
1.	Lessons learned from COVID-19: technology, surveillance technology and human rights.....	135
a)	Data protection, the right to private life and COVID-19.....	139
b)	The consequences for the right to freedom of movement and health.....	142
c)	Irregular migration, human rights and implications of mobility restrictions.....	144
2.	Identification as the first step for an adequate integration.....	147
a)	The EU and Schengen Area.....	148
b)	The importance of data protection in processing migrants' personal data	153
c)	Shortcomings in the identification process.....	158
d)	Identification and vulnerability: analytical frameworks and special cases	162
3.	Possible remedies to foster integration of migrants into local societies: Regular Pathways and Regularisation.....	170
a)	Defining regularisation and regular pathways.....	171
b)	Applicable legal framework	175
c)	The IMRF and the revision of the Anti-Trafficking Directive in the EU context.....	177
d)	Regularisation as a remedy in crisis situations	182
e)	The EU approach: residence permits to protect victims of trafficking.....	185
f)	Positive outcomes and State practice.....	187
g)	A possible solution for safety?	190
4.	From identification to full integration into host communities.....	192
a)	Scope and international legal framework on protection.....	193
b)	EU legislation on integration of migrants.....	197
c)	The rights and access to education, employment, health and housing	203
d)	Special focus on social protection	207
e)	Consular protection and assistance.....	213
5.	Diaspora Engagement for Migrant Integration	218
	Concluding remarks	227
	<i>Chapter 3 A Case Study on Lebanon</i>	231

Introduction.....	231
1. Methodology	236
2. Overview of the key findings.....	238
3. Context analysis	240
a) Legal framework: rights and principles of labour migration.....	244
b) Terrorism, transnational organised crime and smuggling of migrants	250
c) Trafficking in persons and <i>Kafala</i>	253
d) Instances of discrimination.....	258
e) The principle of <i>non-refoulement</i> and (non) access to asylum.....	266
f) Issues related to legal identity and statelessness.....	269
4. The impact of instability in the region: migration as a challenge	271
5. Lebanon as peripheral actor in the Euro-Mediterranean.....	274
6. Leveraging migration as an opportunity: education, diaspora and remittances.....	278
Conclusions and recommendations	284
Conclusion	287
Annex 1 –Questionnaire tools in English, French and Arabic.....	293
Annex 2 – List of Respondents.....	297
List of Figures and Tables	299
Bibliography	300

List of Abbreviations and Acronyms

2030 Agenda	Transforming our world: the 2030 Agenda for Sustainable Development (2015)
ACHPR	African Charter on Human and Peoples' Rights (Banjul, 1981)
ACHR	American Convention on Human Rights (San José, 1969)
AFIS	Automated Fingerprint Identification System (EU)
AMIF	Asylum, Migration and Integration Fund (EU).
ATD	Alternatives to Detention
AVR	assisted voluntary return
CAT	Convention against Torture (New York, 1984)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (1979)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Form of Racial Discrimination (1965)
COVID-19	COronaVirus Disease 19)
CPED	Convention on Enforced Disappearances
CPT	European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment
CRC	Convention on the Right of the Child (New York, 1989)
CRITERIA	Comprehensive data-driven Risk and Threat Assessment Methods for the Early and Reliable Identification, Validation and Analysis of migration-related risks
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CRVS	United Nations Principles and Recommendations for a Vital Statistics System
CSO	Civil Society Organisations
CSR	Convention relating to the Status of Refugees (Geneva, 1951)
CSS	Convention on the Status of Stateless Persons (1954)
CTOC	Convention against Transnational Organised Crime (Palermo, 2000)
DoMV	Determinant of Migrant Vulnerability (IOM)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950)
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West-African States

ECRIS-TCN	European Criminal Records Information System – Third Country Nationals (EU).
ECtHR	European Court of Human Rights
EES	Entry/Exit System (EU)
ENP	European Neighbourhood Policy (EU)
ETIAS	European Travel Information Authorisation System (EU)
EU	European Union
EU-ATD	Directive 2011/36/EU of the European Parliament (EU, Anti-Trafficking Directive)
EU-CFR	Charter of Fundamental Rights of the European Union
EU-LISA	European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (EU)
EUAA	European Union Agency for Asylum (EU)
EURODAC	Criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (EU)
EURODAC	Fingerprint database for identifying asylum seekers and irregular border-crossers (EU)
EUROPOL	European Union Agency for Law Enforcement Cooperation (EU)
FRA	EU Fundamental Rights Agency (EU)
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders
GCM	Global Compact for Safe, Orderly and Regular Migration (2018)
GCR	Global Compact on Refugees (2018)
GDPR	General Data Protection Regulations (EU)
GFMD	Global Forum on Migration and Development
GMG	Global Migration Group
GPD	Gross domestic product
HCR	Committee on Civil and Political Rights
ICAT	Inter-Agency Coordination Against Trafficking
ICCPR	International Covenant on Civil and Political Rights (New York, 1966)
ICESCR	International Covenant on Economic, Social and Cultural Rights (New York, 1966)
ICJ	International Court of Justice
ICRMW	International Convention on the Rights of Migrant Workers and All Members of their Families (New York, 1990)

IDAL	Investment Development Authority of Lebanon
IDPs	Internally displaced persons
ILO	International Labour Organization
ILO C189	C189 - Domestic Workers Convention, 2011 (No. 189)
ILO C190	C190 - Violence and Harassment Convention, 2019 (No. 190)
IMO	International Maritime Organization
IMRF	International Migration Review Forum (2022)
IOM	International Organization for Migration
ITFLOWS	IT Tools and Methods for Managing Migration Flows
LBN	Lebanon Business Network
LGBTQI	Lesbian, Gay, Bisexual, Transgender, Queer and Intersex
MRCC	Search and Rescue Center
NGOs	non-governmental organisations
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
Palermo Protocol on Smuggling of Migrants	Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organised Crime (Palermo, 2000)
Palermo Protocol on Trafficking in Persons	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime
PICUM	Platform for International Cooperation on Undocumented Migrants
SAR	Search and Rescue zone
SDGs	Sustainable Development Goals
SIS	Schengen Information System (EU)
SOGIESC	Sexual orientation, gender identity and expression, and sex characteristics
SOLAS	Convention for the Safety of Life at Sea (London, 1979)
STL	Special Tribunal for Lebanon
Syria	Syrian Arab Republic
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights (Paris, 1948)
UNC	United Nations Charter (San Francisco, 1945)
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commissioner for the Refugees

UNHCR	United Nations Refugee agency
UNICEF	United Nations Children's Fund
UNNM	United Nations Network on Migration
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
USD	United States Dollar
VCCR	Vienna Convention on Consular Relations
VIS	Visa Information System (EU)
VR	Virtual reality
WHO	World Health Organization

Introduction

Addressing migration cannot prescind from its transnational dimension as borders acquire the exceptional significance of defining legal implications and States' obligations. In this sense, borders are the key element triggering the security aspects of migration, that cannot be separated in the overall management of human mobility. Accordingly, migration and security are often presented and conceptually framed in a relation of reciprocal cause and effect as intensifying and aggravating one another and leading to a vicious circle inexorably worsening the situation. Conversely, this study argues that migration and security are intrinsically connected and two components of the same whole process of managing international migration. It challenges the fragmentation of international migration law reconciled under the aegis of the international custom (article 38, par. 2, lett. b. of the Statute of the International Court of Justice)¹ guiding States' action by analysing the relations between borders, the principle of *non-refoulement* and non-discrimination as essential for the protection of rights in the context of international migration. Moreover, it demonstrates the importance of applying international standards and legal definitions at the national level and in the context of extraterritorial jurisdiction including at sea, as further guided by the more recent developments in the international case-law and policy instruments, as source of soft law (article 38, par. 2, lett. c. and d. of the Statute of the International Court of Justice).² The latter are indeed progressively accompanying and describing the changing reality of migration and security alike. In this sense, this study adopts an innovative approach consolidating in the proposed legal analysis the outcomes and solutions advanced by States in the major policy fora on emerging challenges related to migration and security.

Human mobility is not a new global occurrence, and especially not for an old continent like Europe. Migration has always been driven by bidirectional in and out movements of goods and people. Such movements are indeed at the core and the roots of the creation of the European Union

¹ International Court of Justice, *Statute of the International Court of Justice*, available at <https://www.icj-cij.org/statute> last accessed September 2023.

² *Ibidem*.

organization itself. As integral part of the *acquis*,³ the freedom of movement of persons and goods has progressively strengthened the economic relations among the EU Member States, as well as facilitated the creation of more employment and labour mobility across the territory of these countries. Yet recently the perception of migration has changed, and it has been associated to an uncontrolled movement of people who constitute a threat, accompanied by a negative narrative and thus requiring to be dealt with beyond States' sovereign territory and through border externalisation.⁴

Media tends to frame increasing migratory movements as crises. However, the negative narratives and mistaken metaphors broadly used by international press and during public debates on migration⁵ tend to describe human mobility patterns as *the crisis*⁶ without considering that migratory movements might actually be driven by crises such as conflict, instability, abuses and violations of human rights. Such factors determine a “further crisis in the crises” instead.⁷ In the first issued pandemic-related policy brief, the United Nations Secretary-General, Antonio Guterres, referred to “migrants” as key actors for the response and recovery.⁸ The latter was released in March 2020 to guide Member States in addressing the challenges arisen due to the pandemic and encourage them to engage migrants more in defining responses. In fact, according to the analysis and projections of the policy brief, migrants contribute to mitigate the socio-economic impacts of COVID-19 against the disproportionate effects of the pandemic observed to date. These positive effects are however undermined by manifestation of xenophobia, job losses, limited remittances and difficult access for non-nationals to safety nets and social protection mechanisms in the country where they live and work away from home.⁹

³ EUR-Lex, Summary Glossary – Acquis, available at <https://eur-lex.europa.eu/summary/glossary/acquis.html>, last accessed September 2021.

⁴ EuroMed Rights, Napolitano A. (2023), *Artificial Intelligence: the new frontier of the EU's border externalisation strategy*, available at https://euomedrights.org/wp-content/uploads/2023/07/Euomed_AI-Migration-Report_EN-1.pdf last accessed September 2023.

⁵ B. Frouws (2021), *Negative narratives, mistaken metaphors. The need for careful language on migration*, available at <https://mixedmigration.org/articles/op-ed-negative-narratives-mistaken-metaphors-the-need-for-careful-language-on-migration/>, last accessed September 2021.

⁶ Italic added for emphasis.

⁷ C. Menjívar, M. Ruiz & I. Ness (eds.) (2018), *The Oxford Handbook of Migration Crises*, New York.

⁸ United Nations, *UN Response to COVID-19*, available at <https://www.un.org/en/coronavirus/UN-response>, last accessed September 2021.

⁹ United Nations (2020), *Shared Responsibility, Global Solidarity: Responding to the socio-economic impacts of COVID-19*, p. 8, available at https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_covid19.pdf, last accessed September 2021.

It is fascinating how public opinion and media in major countries of destination for migrants depict and reflect conflicting opinions and perceptions about migration and migrants in relation to many aspects of individuals' lives.¹⁰ It emerges that if people on the move look for better opportunities abroad they could somehow threaten the “life of the nation”, to quote literally the article 4 of the International Covenant on Civil and Political Rights (New York, 1966).¹¹ This is the sole principle grounding States to derogate, under certain conditions, their obligations to respect, protect and fulfil fundamental rights in case of threats and public emergency. This kind of narratives *per se* highlights how still little is known about the linkages between migration and security.

Currently, there is no definition in international law about security and specifically in the context of migration. Although research on the two subjects of migration and security separately is abundant, scholarly opinion highlights¹² how important understanding population movements and the security of the State is in the era of globalisation. Yet, their connection appears problematic and relative, as linked to who defines the two concepts and who benefits from such a definition.¹³ Hence, for the purpose of this study, it appears opportune to adopt the concept of security proposed in the 2030 Agenda¹⁴ in relation to development, whereby security in the context of migration can be interpreted as it links to peace and development. Accordingly, security equals to peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions, and against factors including conflicts which give rise to violence, insecurity and injustice, such as inequality, corruption, poor governance and illicit financial and arms flows.

Therefore, understanding how these two concepts might relate requires an in-dept legal analysis and re-thinking how well managed migration serves to increase security, and not the other way

¹⁰ For example, migrants are considered to be stealing jobs and other opportunities from nationals in a given country.

¹¹ Hereinafter referred as ‘ICCPR’. Paragraph 1 specifies: “In time of *public emergency which threatens the life of the nation* and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” Italic is added.

¹² Choucri, N. (2002). *Migration and Security: Some Key Linkages* in *Journal of International Affairs*, 56(1), 97–122, last accessed September 2023.

¹³ *Ibidem*.

¹⁴ United Nations (2015) *Transforming our world: the 2030 Agenda for Sustainable Development*, doc. A/RES/70/1, 2015, par. 34-35, available at https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E last accessed September 2023.

around. The latter became a pressing, thorny issue to address in legal terms and according to international standards.

In fact, if one considers the European Union context only, data confirms that the majority of Europeans think that non-EU immigrants are well-integrated in their local communities and see integration as a necessary investment in the long run for their country.¹⁵ Similarly, most citizens across Europe think that immigrants have an overall positive impact on their host countries, as they fill the jobs for which it is not easy to find workers, besides enriching the country's cultural life.¹⁶ However, others instead consider them as a burden on the national welfare system or even as criminals.¹⁷ The scope of the present analysis is a broader in-depth study of the international public law on migration and its implications. However, the European Union context is a good example to corroborate assumptions and examine rights and principles in practice, as it shows at a smaller scale the contradictions surrounding migration and its perception in present reality.

At the global level, rather than a benefit, this “negative” perception of migration is frequently framed as an issue. In fact, national legislation and policies to manage migration tend to focus on the security aspects and the emergency response, namely the ‘symptoms’ of migration, regardless of the root causes and drivers of human mobility. Thus, it is logical that this approach rather fosters nationals’ perception of migration as “threat” or a “public emergency”,¹⁸ rather than a channel for socio-cultural and economic growth of a given county. However, according to the United Nations’ International Organization for Migration (IOM), conceptually the emergency response is just one phase of a crisis, which should be managed and mitigated by States and international actors before it happens (prevention of forced migration and preparedness), as well as after, through transition and recovering initiatives.¹⁹

While acknowledging that conflict situations and climate change are among the structural causes of migration and displacement, the present study limits this analysis to the transnational dimension of migration without entering in the depth of root causes of conflicts and climate dynamics. Hence, in spite at the time of the analysis development the war in Ukraine erupted, this study remains in

¹⁵ Special Barometer 469 (2018), Report – *Integration of Immigrants in the European Union*, available at https://data.europa.eu/data/datasets/s2169_88_2_469_eng?locale=en, last accessed April 2022.

¹⁶ Ibidem.

¹⁷ C. Harris, J. Gruenewald (2020), *News Media Trends in the Framing of Immigration and Crime, 1990–2013*, in *Social Problems*, Volume 67, Issue 3, pp. 452–470.

¹⁸ Recalling again the dictum of article 4 ICCPR,

¹⁹ International Organization for Migration (IOM) (2012), *Migration Crisis Operational Framework*, doc. MC/2355 available at <https://www.iom.int/mcof>, last accessed September 2021.

the frame of its scope and only limits to reference to it marginally to illustrates good practices in relation to regularisation alternatives and engagement of diaspora associations, specifically in *Chapter 2*.

To give a better idea about the misleading concept of the “migration emergency”, since 2015 a so-called “migration crisis”,²⁰ perceived as a new phenomenon dominated the news broadcasting alarming rise in the number of migrants and refugees arriving to Europe, mostly across the Mediterranean Sea and mainly to claim for asylum and enter States’ borders irregularly by sea, especially in the south of Europe.²¹ To address the challenges posed by irregular migration, Member States of the European Union²² have taken up increasingly pervasive measures and responded to it considering rather the implications for internal security, instead of focusing on the concerns in terms of protecting human rights of the individuals involved. To this end, border States and particularly the coastal ones, have opted to regulate external borders entries to manage migration effectively and rather emphasising the priority to tackle internal and international security threats, including transnational organised crime, instead of abiding by humanitarian obligations.²³

1. Scope of the analysis and the research question

Against this background, this study presents the legal framework surrounding migration and security and related challenges emerging from States’ practice, under the angle of international public law and international relations. As the European context is frequently recalled as the

²⁰ According to the International Organization for Migration (IOM), a migration crisis is: “The complex and often large-scale migration flows, and mobility patterns caused by a crisis which typically involve significant vulnerabilities for individuals and affected communities and generate acute and longer-term migration management challenges. A migration crisis may be sudden or slow in onset, can have natural or man-made causes, and can take place internally or across borders”. International Organization for Migration, *IOM Migration Crisis Operational Framework*.op. cit., para. 4.

²¹ The Guardian (2018), *Five Myths About the Refugee Crisis*, available at <https://www.theguardian.com/news/2018/jun/05/five-myths-about-the-refugee-crisis>, last accessed September 2021.

²² But not only: States at large dealing with arrivals of migrants in the world.

²³ Border management is defined as “the administration of measures related to authorized movement of persons (regular migration) and goods, whilst preventing unauthorized movement of persons (irregular migration) and goods, detecting those responsible for smuggling, trafficking and related crimes and identifying the victims of such crimes or any other person in need of immediate or longer-term assistance and/or (international) protection”. International Organization for Migration (IOM) (2019), *Glossary on Migration*, Geneva, available at https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf last accessed September 2023.

intended destination for many migrants trying to reach its territory by air, land and sea borders,²⁴ the European Union law and policies²⁵ are analysed to a minor extent, focusing on how these interact and intersect with international law. Indeed, the scope of this study mainly targets the analysis (and reconciliation) of international migration law, as enshrined in international standards, treaties and soft law instruments, with the latter paving the way to further legislation and policy developments.

Against the assumption that enhanced security equals better migration (and not the other way around), the main objective of the present study is to examine how to redefine the vicious circle between migration and security issues by analysing their intrinsic connections. The goal is demonstrating that it is possible to leverage the benefits of migration (and security alike) by fostering a successful integration of migrants through an adequate identification of individuals' needs for improved migration and security management.

Thus, the research question this study aims to respond is: “What comes first between security of citizens and the identification and integration of migrants?”. Through unfolding the analysis of the legal concepts and definitions and related issues as exposed in *Chapter 1*, a “positive” or constructive approach is preferred, as opposed to the harmful narratives about migration and migrants.²⁶ For these reasons, the present study explores the positive contribution of migration for both countries of origin and receiving societies. Secondly, in *Chapter 2* this analysis demonstrates that migration also boosts the socio-economic change, and consequently it may contribute to the socio-economic and cultural growth for the countries of origin, transit and destination. The premise is that effective migration management, based on the identification and integration of migrants ultimately leads to sharpened internal and international security. In fact, safe migration could facilitate a broader access of all individuals to essential needs and corresponding rights, such as health services, education, housing and decent work, in the view to allow them to support the local economy of both origin and receiving countries, and possibly conducting to the overall poverty reduction.

²⁴ See IOM data on migration to Europe available at <https://migration.iom.int/europe?type=arrivals>, last accessed September 2021.

²⁵ See EU-law, available at https://europa.eu/european-union/law_en, last accessed September 2021.

²⁶ See Global Forum on Migration and Development (GFMD) (2020), *Shaping the Public Narrative on Migration and Migrants – A guide to Promote a Balanced Dialogue*, available at https://gfmd.org/files/documents/gfmd_communications_guide_on_shaping_public_narratives_on_migration_2020_0.pdf, last accessed September 2021.

The hypothesis put forward hereby is based on the two following assumptions: (1) an analysis of international standards, rights and principles and their application at domestic level demonstrates how fragmentation in norms, shortcomings in definitions in international law instruments and grey areas between migration and security (i.e., for example, the notion of nationality and possibility of dual citizenship) can lead to adverse effects. Above all, an incorrect application of international law instruments by States at domestic level can challenge the realisation of individuals rights as well as international peace and security. A case study on Lebanon presented in *Chapter 3* is the key selected migration context that opportunely and effectively sheds light on the effects of the (in)correct application of the norms at domestic level and how to address it to promote resilience. Therefore, (2) the analysis would lead to the second assumption, namely the need to correct the perception of human mobility to be interpreted as resilience factor for socio-economic and cultural growth. This study highlights the migration benefits observed even during crises such as the pandemic and in the examined migration context as affected by multiple crises at once in Lebanon. For example, lessons learned by the pandemic highlighted how migrants in host countries worked and are still working to ensure continuity of business in essential services and sectors, such as the medical care, food provisions and transportation. To this end, this study examines key migration-related concepts such as rights and obligations, and the actors (including non-State) involved in migration and security processes according to different contexts and situations. This is carried out in the view to define how human mobility can relate with threats to peace, namely it can definitely arise from instability but not constituting one element threatening peace in itself. The correct identification and (re)integration of migrants can have the positive outcome of sharpening security and stability.

2. Rationale, overview and methodology

Terminology on migration largely affects and shapes perceptions and practices and it informs the application of norms at domestic level. Therefore, this analysis starts by laying down key definitions and examining relevant norms surrounding migration, including but not limited to the essentials of migration, such as: who are the migrants? Why are they distinguished from nationals and citizens? What are the relevant rights and principles applicable when it comes to people on the move?

These interrogations query about one intrinsic element of migration: transnationalism,²⁷ a concept closely related for example in the context of *organised crime* and *diaspora*.²⁸ The transnational dimension of international migration also requires an in-depth analysis of what is beyond national borders and sovereign territory.

Therefore, a “territorial approach” is adopted in uncovering key terminology and definition related to migration.²⁹ In fact, “borders” are the fundamental discriminant defining States’ obligations and the internationalisation of migration processes. From migrants’ perspective, this study considers individuals embedded in their closer social arrangements – the family, the community of belonging, and the origin and host country. Then, it proceeds to analyse the broader society governed by States,³⁰ defining migration terminology starting from individuals *within* and *across* borders,³¹ and then analysing how their profiles and needs determine categories of human mobility throughout the migratory processes. Once key actors and categories are so defined, rights and principles deriving from international instruments surrounding migration are analysed to determine the scope of protection as opposed to violations of rights.

Individuals as subjects of rights and States’ obligations to protect are presented in a case study included in *Chapter 3* of the present study, situating the objectives and hypothesis of this analysis into the present reality and concrete conducive situation. Specifically, Lebanon provides an opportune context to examine multiple crises response that interact with the imperatives of mobility restrictions, the principle of *non-refoulement* and the continued attempts to reach the European Union territory. In this sense, the case of Lebanon is relevant, as it shows profiles and

²⁷ R. Longley (2022), *What Is Transnationalism? Definition, Pros, and Cons*, available at <https://www.thoughtco.com/what-is-transnationalism-definition-pros-and-cons-5073163>, last accessed September 2021.

²⁸ Italics added for emphasis. Crimes related to migration and diaspora indeed both fall under the scope of the present analysis, respectively referred in *Chapter 1* on the management of migration at the border, and *Chapter 2* on the identification as the first step for an adequate integration and covering burning issues, including data protection and regularization pathways.

²⁹ In practice, any decentralization policy reforms have proven to be more effective in terms of achieving development outcomes by engaging local authorities over the central government, mostly because of their more in-depth knowledge of the local context and individuals’ needs.

J. Rodriguez Bilbao (2014), *What is the Territorial Approach to Local Development?*, available at <https://europa.eu/capacity4dev/articles/what-territorial-approach-local-development>, last accessed September 2021.

³⁰ This is also defined by IOM as “ecological approach to migration” which is inspired to the ecological model developed by U. Bronfenbrenner in *The Ecology of Human Development*, 1979.

International Organization for Migration (IOM) (2019), *The IOM Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse*, p. 6, available at <https://publications.iom.int/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>, last accessed September 2021.

³¹ Italics added for emphasis.

diverse needs of migrants, asylum seekers and refugees and how the European Union³² and other States³³ and international actors are currently responding to address emerging issues. The research methodology adopted is a “mixed method”, combining desk review and field work conducted in Lebanon.

To ensure the applicability and translate the legal analysis into actionable and policy-oriented research, this investigation aims to contextualise the current debate on migration and its challenges by investigating and assessing the current application of international standards by States at national level. It builds on the state of the art on the subject of migration and analyse the existing doctrine developed by scholars enhancing the nexus between migration and security. Eventually, the study presents potential to contribute to the current scholar and academic debate about States practices, that plays an essential role in influencing decision-makers and governments. In fact, this study aims to identify, assess and focus on good practices as analysed by the most highly qualified publicists of the various nations, representing a subsidiary means for the determination of rules of law according to article 38 of the Statute of the International Court of Justice. To this end, the present analysis unfolds also the grey areas, research and policy gaps still to address through accurate and extensive, rights-oriented interpretations to promote international cooperation.

In this sense, this thesis aspires to support States subject to international law and governmental authorities to advocate for the respect of individuals’ human rights and to develop further research and policies accordingly. It encourages to make full use of comprehensive scientific analyses on what measures could work better to manage migration effectively.

Hence, the study is twofold. First it is focused on the human dimension of migration and exploring possible solutions that address the challenges related to internal and international security and this within the limit of jurisdiction and sovereignty of States. Secondly, it demonstrates that security and stability are enhanced through creating conditions for resilience, as a direct consequence of adequate identification at the borders and the integration into the host countries.

³² Particularly Cyprus.

³³ For example, Türkiye.

Chapter 1 The management of migration at the border

Table of Contents

1. <u>The management of migration at the border</u>	
a) <u>Migrant and migration profiles</u>	
b) <u>Rights and principles applicable to migrants</u>	
i. <u>The principle of non-refoulement</u>	
ii. <u>The right to nationality</u>	
vii. <u>Preventing statelessness and realising migrants' rights</u>	
vi. <u>The freedom to choose residence</u>	
viii. <u>The principle of non-discrimination: some considerations on the margin of citizenship</u>	
2. <u>International legal instruments to prevent cross-border crimes related to migration at sea</u>	
a) <u>Applicable international law of the sea</u>	
b) <u>The IMO Circular paving the way for the adoption of the Palermo Protocol</u>	
c) <u>The Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organised Crime</u>	
d) <u>The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime</u>	
e) <u>Distinguishing interception at sea from rescue operations</u>	
f) <u>Relevant examples of bilateral agreements on immigration control: Spain and Italy</u>	
i. <u>Spain</u>	
ii. <u>Italy</u>	
g) <u>The turning point on operations at sea: the <i>Hirsi Jamaa and others c. Italy</i> case</u>	
3. <u>Accessing the territory: possible consequences of irregular migration</u>	
a) <u>Access and admission to the territory through a visa</u>	
b) <u>Human rights and humanitarian grounds to entry a host territory</u>	
c) <u>Access to an asylum system</u>	
d) <u>Entry and travel Bans, pushbacks at sea, entry to territory and situation at the border, including expulsion and extradition</u>	
e) <u>Immigration Detention and Alternatives to Detention</u>	
i. <u>Migrant children</u>	
ii. <u>Migrant women</u>	
iii. <u>Types of Alternatives to Detention and the Voluntary Return</u>	
f) <u>The Right to Return</u>	
g) <u>Border closures and mobility restrictions: some considerations on intersecting vulnerabilities in the margin of COVID-19</u>	
<u>Concluding remarks</u>	

When as of 2015 a so-called “migration crisis”³⁴ started, the news referred about an alarming rise in the number of migrants and refugees arriving in Europe, mostly across the Mediterranean Sea, to claim for asylum and through attempts to enter States’ borders irregularly by sea, especially in the South of Europe.³⁵

This occurrence set off the European Union and its neighbour States³⁶ to engage in policies and legislation development to tackle migration as related to security through measures aimed to stabilise the Mediterranean region specifically on political, economic and security matters. These include actions to promote human rights and development outcomes for the individuals involved, as well as upholding States’ obligations to protect them through initiatives to tackle transnational and cross-border crimes, mostly taking place in the context of migration and notably trafficking in persons and smuggling of migrants.

This chapter focuses on the management of migration at the borders and related States obligations. However, States actions are guided and delimited in scope by some principles and core fundamental rights that cannot be restricted to respond to internal (or international) security priorities, unless requirements of necessity, proportionality and limited duration are met. To delve into this and related issues, this chapters first provides an overview about what is migration about, and more concretely how it is defined in international law and what type of movements and mobility States are called to address and respond to in compliance with their human rights obligations. Therefore, some considerations are exposed also on the different profiles of migrants, refugees and asylum seekers and their corresponding needs and rights that must be upheld accordingly. Among these principles and rights governing States action, special consideration is given to the principle of *non-refoulement*, that constitute the cornerstone to protect migrants and refugees, as well as the principle of non-discrimination. Likewise, in the first section a thorough analysis is dedicated to the emerging literature and practice on the right to a legal identity as it

³⁴ According to the *International Organization for Migration (IOM)*, a migration crisis is: “The complex and often large-scale migration flows and mobility patterns caused by a crisis which typically involve significant vulnerabilities for individuals and affected communities and generate acute and longer-term migration management challenges. A migration crisis may be sudden or slow in onset, can have natural or man-made causes, and can take place internally or across borders”.

International Organization for Migration, *IOM Migration Crisis Operational Framework*. *op. cit.*, para. 4.

³⁵ The Guardian (2018), *Five Myths About the Refugee Crisis*, *op. cit.*

³⁶ European Commission (2018), *European neighbourhood policy*, available at [https://commission.europa.eu/strategy-and-policy/policies/european-neighbourhood-policy_en#:~:text=The%20European%20neighbourhood%20policy%20\(ENP,political%2C%20economic%20and%20security%20terms](https://commission.europa.eu/strategy-and-policy/policies/european-neighbourhood-policy_en#:~:text=The%20European%20neighbourhood%20policy%20(ENP,political%2C%20economic%20and%20security%20terms) last accessed July 2023.

relates to the right to nationality and the prohibition of statelessness that contribute to migrants and refugees' rights realisation. As this background provides the elements to understand States obligation, section two of this study sheds light on the applicable legal framework governing border management, specifically in the context of the sea and maritime operations, including adding examples on States bilateral and regional cooperation initiatives. The last section of this chapter then focuses on the possible modalities to access to States territory, illustrating requirements, special circumstances and practices that might raise concerns in terms of violations of international law, such as push-backs operations and detention. Moreover, section three of this chapter presents some considerations on the right to seek for asylum as well as the right to return to the country of origin or habitual residence.

Some final considerations are exposed with regards to mobility restrictions and intersecting vulnerabilities for migrants and refugees. This *Chapter 1* is overall focused on civil and political rights of migrants and refugees and related States obligations. Recognising these, provide the basis to continue the analysis exposed in *Chapter 2* on the identification and integration processes, namely after the borders are crossed.

1. The management of migration at the border

In order to manage migration and security through borders effectively and in compliance with human rights, it is necessary to understand the implications and scope of cross-border movements, their root causes, their objectives, their outcomes and the subjects involved in it. In this sense, border officials as State agents implement States efforts to ensure security and safety within the limits of their sovereignty and according to their obligations, as part of their obligations to protect, border authorities are entrusted of the identification and assessment of eventual vulnerabilities that migrants and refugees moving across borders might present. While such processes that take place once migrants and refugees have already accessed States territory and are object of the analysis in *Chapter 2* of this study, this section focuses on the importance of the borders in delimiting States responsibilities, as well as defining the profiles, rights and needs that States have obligations to protect.

International borders separate the territory or maritime zones between States where they exercise their jurisdiction,³⁷ as enshrined in Article 2 of the International Covenant on Civil and Political Rights (New York, 1966), hereinafter referred to as ICCPR. Defined as such, borders identify the areas where national immigration legislation and policies are enforced as well as border governance measures are applied by States within their territory and as explained in this study in continuation,³⁸ in some cases also extraterritorially. Such areas include border crossing points, like airports, land border crossing points and ports and immigration and transit zones between crossing points of neighbouring countries, as well as embassies and consulates for visa issuance. As States perform controls to pursue their legitimate interests and protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others,³⁹ borders are crucial places for the identification of people on the move and their needs, and for tackling transnational organized crime alike. As such, they also represent the entry points to zones where obligations to protect, respect and fulfil human rights of all individuals apply, including in the very moment they cross the borders. Border governance indicates all the measures deriving from national immigration law, such as legislation, policies, plans, strategies, action plans and activities related to the entry into and exit of persons from the territory of the State, including detection, rescue, interception, screening, interviewing, identification, reception, detention, removal or return, as well as related activities such as training, technical, financial and other assistance, including provided to other States, whether neighbouring or not. To enforce immigration law, State authorities manage borders by adopting measures and related procedures (visa issuance) to authorise the entry of persons and checking that they access their territory regularly. Border management is aimed also at preventing unauthorized movement of persons (irregular migration) and goods to spot perpetrators of transnational organised crime such as smuggling of migrants, trafficking in persons and related crimes,⁴⁰ and identify and protect the victims of violations,

³⁷ United Nations Office of the High Commissioner on Human Rights (2014) *Recommended Principles and Guidelines on Human Rights at International Borders*, p. 4: available at https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf, last accessed September 2021: “The term ‘international borders’ refers to the politically defined boundaries separating territory or maritime zones between political entities and to the areas where political entities exercise border governance measures on their territory or extraterritorially (such areas include land checkpoints, border posts at train stations, ports and airports, immigration and transit zones, the high seas and so-called “no-man’s land” between border posts, as well as embassies and consulates)”.

³⁸ *Chapter 1*, section 2

³⁹ Article 12, par. 3 ICCPR.

⁴⁰ *Chapter 1*, section 2.

exploitation and abuse or any other person in need of immediate or longer-term assistance and (international) protection.

According to international law, legislation and policy on migration regulating the access to territory through borders, namely entry, stay and residence are under the exclusive domain of States and their sovereignty. In fact, as explained in this chapter, international standards provide general guidelines referring to “migration”, especially focused on limiting States jurisdiction to preserve the non-interference in other States’ territory and jurisdiction. In this sense, migration is an issue that States regulate as deemed appropriate and mostly according to their migration history and patterns observed over time and in their territory. Hence, in practice States determine rules on entry and stay of non-nationals on their territory, except for some limitations regarding certain categories of people on the move who have specific protection needs.

Over the course of the past two decades international norms and standards evolved towards preserving the absolute State sovereignty, with very few exceptions. In fact, in more recent times international law has developed significantly to accompany and reflect current reality of human mobility and changed circumstances, adapting its interpretation and translation into practice accordingly. Some binding obligations that are hereby presented are the sole legal framework influencing the discretionary margin of power that States have, and they must abide by them when dealing with individuals, including migrants, under their jurisdiction or within their territory. Such obligations are very clear as enshrined by human rights law, international humanitarian law, as well as international labour law, namely the main branches of international law relevant for migration management. Moreover, transnational criminal law also sets up standards for cooperation as well as legislative criteria influencing national systems regulating migration matters. All the above-mentioned branches of international law have a direct impact on people on the move throughout the different phases of their migratory journey (i.e., departure, transit, arrival, stay and return and removal), and establish some parameters of reference on how States exercise their sovereignty in relation to migration matters, as they have to conform to international standards anyways. Furthermore, as migration movements are continuously changing in scale and patterns over time and space, the need for strengthened cooperation among States to manage global and regional migration gained primary consideration at international level. Based on the cooperation principle, international law sets up a basis for better global, regional, and bilateral migration governance. The development of these international standards is evolving rapidly since

the last couple of decades and continues to adapt to ongoing, growing need for cooperation and the demand for legal guidance on the matter, which the present analysis is aimed to address.

By virtue of the principle of territorial sovereignty, States can freely regulate the conditions of entry and residence in their territory. This means that in order to counter transnational organised crime, they can discretionally define their own immigration legislation and policy. However, in doing so, they are bound by the obligations to respect, protect and fulfil human rights, be it deriving from customary law or set by international treaties.⁴¹ Such limits also apply at sea borders. Hence, for example if a coastal State arbitrarily prevents to reach its port to a boat transporting migrant in an irregular situation (e.g., undocumented, without travel documents and visa required to entry its territory) and their lives are in danger, this State would be liable for the infringement of the right to life.⁴²

Limits inherent to the international legal order have the function to guide States actions. This applies in case of expulsion too, once migrants have crossed the border and entered their sovereign territory. Not to incur in international responsibility for wrongful act,⁴³ States have the duty to adequately identify individuals at the border, assessing their situations, needs and possible vulnerabilities, including checking if there might be asylum seekers and refugees among people on the move, as they might want to claim for international protection upon arrival to the border. Overall, according to international law and the principle of *non-refoulement*, States are required to assess if any prejudices could result from expulsion of migrants, if removed from their national territory when they arrive at the border.⁴⁴

⁴¹ United Nations (2007), *Third report on the expulsion of aliens by Mr. Maurice Kamto, Special Rapporteur*, doc. NU A/CN.4/581, 17 April 2007, par. 19: « Limits inherent in the international legal order. Since international law applies to equal, sovereign entities “with the same claims to the exercise of absolute sovereignty”, it constitutes a vital means of regulating the coexistence of these sovereign entities while also being the necessary corollary thereof. In fact, in modern international law, State sovereignty cannot be understood in the absolute sense; it means only that no State is subordinate to any other State, but that each must respect the minimum rules that guarantee, on the one hand, the same privileges to all other States and, on the other hand, the very survival of the legal order. In this regard, State sovereignty is limited by a number of underlying tenets that are inherent in the legal order and without respect for which the very existence of international law would be compromised and the international community doomed to total anarchy.” Available at https://legal.un.org/ilc/documentation/english/a_cn4_581.pdf, last accessed September 2021.

⁴² United Nations (2009) *Fifth report on the expulsion of aliens by Maurice Kamto, Special Rapporteur*, doc. NU A/CN.4/611. The report sets out the definition and content of fundamental rights, including the right to life, the prohibition of torture and inhuman and degrading treatment, as also results from the international and regional conventions for the protection of human rights. Furthermore, the rights especially protected in the event of expulsion include respect for private and family life, and non-discrimination. Available at <https://digitallibrary.un.org/record/653889?ln=en>, last accessed September 2021.

⁴³ United Nations (2021), *Responsibility of States for Internationally Wrongful Acts*, available at https://legal.un.org/ilc/texts/instruments/english/draft_Articles/9_6_2001.pdf, last accessed September 2021.

⁴⁴ Conforti B. (2010), *Diritto internazionale*, Napoli, p. 232.

With the aim to combating crimes related to migration, States started to intensify controls on the entry of non-citizens to their territory, regardless of the means of transport used. When it comes to tackle increasing arrivals of migrants in irregular situation by sea, the set of rules of international law of the sea applies, recalling non-derogable obligations including the duty to render assistance to protect lives at sea in case of distress. In fact, the peculiarity of the sea context is that unlike for air and land movements, migrants at sea access the territory of a State passing through different maritime zones with corresponding different legal regimes and increasing sovereign powers of the coastal State. The latter only can interfere with the navigation of passing ships and vessels, depending on the proximity to its territorial waters, where the same regime of territory applies. Among the measures taken by States to prevent arrivals of migrants to their territory are maritime interceptions, i.e., operations conducted outside the national territory, on the high seas, where the freedom of the high seas principle applies, or in the territorial waters of other States, in order to stop or divert boats transporting undocumented migrants. Such measures and practices, analysed below, very often are conducted in violation of human rights - in particular the recalled principle of *non-refoulement* - because they do not allow adequate identification of vulnerabilities and needs of the concerned individuals. Therefore, if collectively and summarily rejected at the border, all the individuals in need of protection are easily exposed to the risk of persecution and serious harm. Rejecting migrants at sea borders without having properly identified them might also determine States responsibility against their obligation to protect, whenever the boats used for this purpose are unsafe, often overcrowded and with no master with adequate skills to deal with dangerous situations at sea.⁴⁵

Therefore, especially in the context of the sea, States not always take action to prepare effective search and rescue operations aimed at prompt disembarkation in a safe place, undermining the possibility to have adequate space where a thorough identification of profiles and needs of migrants can be carried out in the most expedite and proper manner and in accordance with the principle of saving human life at sea. In doing so, it is fundamental first to understand the different profiles to identify the needs of people on the move, as follows. A thorough exam of the legal definitions of profiles and related rights in the context of international migration enables to better

⁴⁵ Goy R. (2003), *Le régime international des migrants illicites par voie de mer*, in *Annuaire de droit de la mer*, p. 249-301.

grasp the importance of the identification processes, as linked with the use of appropriate terminology and unpacking existing flaws.

a) Migrant and migration profiles

In spite of the fragmentation that characterises international migration law,⁴⁶ the rights of migrants are derived by international standards that address their protection and vulnerabilities. Therefore, the fact that the Convention relating to the Status of Refugees (CSR),⁴⁷ the main instrument protecting individuals in need of international protection, received a higher number of ratifications by States (146) than the International Convention on the Rights of Migrant Workers and All Members of their Families (ICRMW)⁴⁸ (58) is not indicative of a higher importance attributed to the first profile over the second. Indeed, both instruments integrate and enshrine provisions contained in the main treaties protecting human rights, the International Covenant on Civil and Political Rights (ICCPR).⁴⁹

A comparison of the two profiles of migrants and refugees and related treaties is illustrative around how terminology can be misleading in applying international standards. However, rights are inherent to all without distinction. This is a fundamental principle that guides throughout the study on terminology that follows. In fact, understanding the profiles of people on the move and the related definition can have the effect of triggering and extending the more protection is required the more the vulnerability of each profile is higher. In this sense, as the following analysis aims to demonstrate the undisputed issue of the fragmentation of international migration law across many branches (human rights, refugees rights, labour rights, international organised crime and the law of the sea) and related instruments, which reflects into the use of legal definitions included in different international instruments.

Managing migration and displacement is progressively being promoted as a top priority in States' political agendas that follow international cooperative frameworks and related commitments, such

⁴⁶ Chetail, V. (2020). *COVID-19 and human rights of migrants: More protection for the benefit of all* in International Organization for Migration (IOM). Geneva.

⁴⁷ United Nations, *Treaty Series*, vol. 189, p. 137, available at <https://treaties.un.org/doc/Publication/UNTS/Volume189/v189.pdf> last accessed September 2023.

⁴⁸ United Nations, *Treaty Series*, vol. 2220, p. 3; Doc. A/RES/45/158 available at <https://treaties.un.org/doc/Publication/UNTS/Volume2220/v2220.pdf> last accessed September 2023.

⁴⁹ United Nations, *Treaty Series*, vol. 999, p. 171 and vol. 1057, p. 407

as those derived by the Global Compact for Migration (GCM)⁵⁰ and the Global Compact on Refugees (GCR).⁵¹ Yet, a certain discretionary margin is left to States to comply with international standards and identify individuals that need special attention and afford them adequate protection. In the context of international migration and in some instances, this might result in an apparent protection gap and uncertainty about what regime is applicable to migrants and people on the move to protect, respect and fulfil their rights, as well as abiding by related international obligations. For example, specific issues have emerged recently concerning the situation of internally displaced persons, the idea of migrants as key actors for development, or migration driven by environmental and climate change, and natural or human-made disasters. A rich catalogue of terminology in the field of migration has been developed throughout the years to cover specific needs and contexts, including conflicts and crisis. However, this did not entail the extension of the scope protection of human rights, including those according to the ICCPR, that instead remains the same and adapted depending on the situation.

The use of an inappropriate terminology can *de facto* narrow down the span of protection and highlight flaws and shortcoming in applicable international standards, especially at national level. Against this background, the need for better defining the different contexts and actors involved in international migration becomes apparent. Hence, this section provides solid elements for the analysis on how to adequately manage migration through an enhanced identification of individuals involved, their needs, and the applicable international law instruments, according to the different stages and situations surrounding migration.

First and foremost, in order to identify specific needs, it is necessary to define who the individuals involved in human mobility processes are and distinguishing the different profiles of people on the move.

⁵⁰ United Nations, (2018) *Global Compact for Safe, Orderly and Regular Migration*, doc. A/RES/73/195, par. 20, available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_73_195.pdf, last accessed September 2021.

⁵¹ United Nations (2018), *Global Compact on Refugees*, doc. A/RES/73/151 available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F73%2F151&Language=E&DeviceType=Desktop&LangRequested=False> last accessed September 2021.

To date, there is no universally accepted definition of “migrants” in any international law instruments. The United Nations Department of Social and Economic Affairs developed a definition for statistical purposes,⁵² referring to:

“migrant as an individual who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate”.

Under such a definition, those travelling for shorter periods as tourists and businesspersons would not be considered as migrants. However, common usage includes certain kinds of shorter-term migrants, such as cross-border and seasonal workers in sectors such as tourism and agriculture, who travel for short periods to work in specific settings or planting and harvesting farm products. The term “migrants” is generally used to refer to all those who migrate, regardless of the reasons. According to the IOM, “migration” is a movement of persons who leave their place and country of origin, or habitual residence, to establish themselves either permanently or temporarily somewhere else in another country, regardless of whether international borders are crossed.

IOM also developed an operating definition for “migrant”,⁵³ describing it as:

“An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her usual place of residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.”

This term includes certain categories of people on the move defined by the law, such as “migrant workers” and persons using particular types of movements and whose rights are protected by the law, such as “smuggled migrants”;⁵⁴ as well as it encompasses those individuals whose status, reasons and modality of movement are not specifically defined under international law, such as visiting, exchange programme and international students. Instead, the term “economic migrant” has no legal basis in the instruments of international migration law. The Convention on the Protection of the Rights of all Migrant Workers and Members of their Family (New York, 1990)⁵⁵

⁵² United Nations Department of Economic and Social Affairs (1998), *Recommendations on Statistics on International Migration*, available at https://unstats.un.org/unsd/publication/SeriesM/SeriesM_58rev1E.pdf, last accessed September 2021.

⁵³ IOM, *Glossary on Migration*, *op. cit.*, p. 137

⁵⁴ For example, Article 2 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo, 2000).

⁵⁵ Hereinafter ICRMW. Currently, 56 Members are party to it.

applies the term “migrant worker” to designate a person engaged in paid work in a country where he or she is not a national.⁵⁶

However, the expression “economic migrant” is largely used in the public discourse at present, often with a negative connotation, suggesting that migrants freely decide to move with the sole purpose of improving their financial situation, thus for personal gain or convenience, perhaps stealing jobs and burdening the social welfare systems in the country of destination and in detriment of the receiving society. In practice, and in legal terms, this mistaken terminology feeds a perception that can easily entail adverse consequences including triggering manifestation of intolerance, racism, xenophobia and against many migrants, in worst cases undermining the social fabric in the receiving State and the stability situation alike. Moreover, the use of “economic migrants” as opposed to “refugees” might lead the misleading impression that only refugees have and deserve legal protection and are entitled to enjoy their fundamental rights.⁵⁷ Therefore, reducing migrant population not seeking for international protection to “economic migrants” is an inaccurate and prejudicial simplification of the reality of people on the move, characterized by multifaceted human dimensions, needs and corresponding rights. In this context, international migration can be considered as one positive coping strategy to react to challenges determined by instability and unsafe, unjust and unequal societies.⁵⁸ Many individuals are pursuing the chance to improve their situation, namely looking for better incomes and wages, opportunities, safety or lifestyles. People on the move cross the borders between countries and even continents for a variety of reasons, including to study, seek better job opportunities, get married, reunite with family members, retire or escape conflict or natural disasters. Some are forced to move to run away from violence or environmental degradation and climate change, but many choose to migrate to attempt to access to similar opportunities offered in other countries, where usually there are more resources and labour market gaps to fill. So, the wish (or the need) for a better life is but one of the drivers behind international migration. For most people, the outcome of a migratory experience can be very positive, and the risks taken and the uncertainty surrounding a migratory journey are paid

⁵⁶ *Ibidem*, Article 2, par. 1.

⁵⁷ The definition of “refugees” and “asylum seekers” is analysed thoroughly below.

⁵⁸ United Nations (2020), *World Social Report 2020. Inequality In A Rapidly Changing World*, p. 127, available at <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/01/World-Social-Report-2020-FullReport.pdf>, last accessed September 2021.

back with benefits for people on the move, their family (whether left behind or not) and the whole societies of belonging.⁵⁹

Instead, for others the situation might turn to be different or unpredictable, and migrating becomes the only option for resilience. For example, when migration is driven by environmental degradation and climate change, human-made and natural disasters, the mismatch between rapid population growth and available resources, leaving home and the homeland can become as the only adaptation strategy, like in the case of the Sahel region in times of drought or as a response to regular flooding in the floodplains of India.⁶⁰

Enlightening in this sense is the African Union Convention for the Protection and Assistance of Internally Displaced Persons (IDP) in Africa (Kampala, 2009),⁶¹ the only international treaty binding upon its parties,⁶² that recognizes in its preamble the need of addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development. According to the United Nations, internally displaced persons⁶³ could be defined as:

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.”⁶⁴

⁵⁹ For example, through the money sent back home. Remittances are analysed in *Chapter 2*.

⁶⁰ Laczko F., Aghazarm C. (2009), *Migration, Environment and Climate Change: Assessing the Evidence*, in *International Organization for Migration*, Geneva, p. 18, available at https://publications.iom.int/system/files/pdf/migration_and_environment.pdf, last accessed September 2021.

⁶¹ Entered into force in 2012, to date 31 African Union Member States are party - available at: https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf, last accessed September 2021.

⁶² The convention establishes a legal framework for preventing internal displacement, and for the protection and assistance of IDPs. It promotes solidarity, cooperation and durable solutions, and it was adopted to address the responsibilities and obligations of state parties and other actors. State parties are legally bound to incorporate their obligations under the convention into domestic law and to adopt policies or strategies on internal displacement at both the national and local level.

⁶³ Hereinafter IDPs.

⁶⁴ United Nations (1998), *Guiding Principles on Internal Displacement*, par. 2, available at <https://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf>, last accessed September 2021.

Hence, regardless of their migration status (regular or irregular), people on the move within the borders could be categorized as IDPs, stateless persons⁶⁵ and diaspora.⁶⁶ Instead, migrants who crossed international borders and are outside their country of origin or habitual residence could be stateless persons, diaspora, migrant workers, refugees and asylum seekers.

Throughout the migratory processes, the profiles and needs of the individuals determine different categories of human mobility, that is “forced”, “labour and education”-driven, or “mixed migration”. Referring to “migrants” as a term encompassing people on the move generally, the type of movement depends on the drivers and determining causes: if they leave across borders to flee from conflict, insecurity and persecution, it comes to forced migration. If the push factors are education and work-related reasons and the search for better opportunities generally, human mobility can be described as labour migration and human development. Other movements might be driven by health and (or) family reasons when migrants join members of their family abroad for family reunification. If more than one reason listed above are the drivers of migration at the same time, then it comes to “mixed movements”. Lastly, when migrants decide to come back home after their migratory experience is completed (and they are not expelled by the receiving country nor rejected at the border) it is “voluntary return”,⁶⁷ in the exercise of their right to freedom of movement.

As showed, the articulated existing terminology and wealth of legal and operational definitions entails complexities in addressing individuals needs and protecting their rights. The fragmentation in international instruments lends itself to possible inconsistencies, different interpretations including among States, that might result in possible unequal treatment and the compression of certain rights for the individuals involved.

Therefore, as migrants as individuals enjoy several other rights, this analysis continues by illustrating the core principles and rights applicable to migrants and refugees.

b) Rights and principles applicable to migrants

⁶⁵ Statelessness is defined later on in relation to nationality, in its dedicated section of the present study.

⁶⁶ As already mentioned, diaspora is thoroughly analysed in *Chapter 2* on the identification as the first step for an adequate integration and covering burning issues, including data protection and regularization pathways.

⁶⁷ Assisted and voluntary return and reintegration (AVRR), along with circular migration pathways are subjects of analysis in *Chapter 2*.

Independently from the nationality, human rights apply to all individuals with certain limitations concerning some rights, that are hereby exposed.

The two main international treaties protecting fundamental rights are the ICCPR (New York, 1966) and the International Covenant on Economic, Social and Cultural Rights (New York, 1966).⁶⁸ As their respective title suggests, these two instruments enshrine two different sets of rights, whereby the civil and political rights are traditionally those protecting individuals against the State.⁶⁹ They impose on the State the duty not to interfere with the liberty, integrity and opinion of all individuals within its territory and subject to its jurisdiction, respecting and fulfilling these freedoms. These rights allow individuals to participate in the governance of their country.

As far as migrants are concerned, civil rights apply in the host country and instead the political ones remain excluded, as non-nationals in country are not entitled to the right to vote, restricted to nationals only.⁷⁰ Likewise, the right to return to his or her own country applies only to nationals (and permanent residents).⁷¹ Article 13 of the Universal Declaration of Human Rights (Paris, 1948)⁷² recognizes a general right to freedom of movement and residence within the borders of a State, as well as the right to leave a country and return to the country of origin. A similar provision, binding on States parties, is contained in Article 12 of the ICCPR.

Although according to Article 13 ICCPR the protection against unlawful deportation is applicable to migrants in regular situation in country, according to Article 22 of the ICRMW this right applies to migrants, including those in an irregular situation, which are also protected by the prohibition of collective expulsion,⁷³ applicable to all individuals.

The second set of rights (the economic, social and cultural ones) ensure a dignified and adequate standard of living to all individuals, including migrants. Some of these rights can be protected by States according to the progressive realization principle,⁷⁴ as provided by Article 2 ICESCR. According to this principle, States can fulfil these rights to the maximum of their available resources and as expeditiously and effectively as possible, within a reasonable time after ICESCR

⁶⁸ Hereinafter ICESCR.

⁶⁹ I. Bantekas, L. Oette (2016), *International Human Rights Law and Practice*, pp. 339-398.

⁷⁰ Article 25 ICCPR

⁷¹ Article 12.4 ICCPR.

⁷² Non-binding instrument, hereinafter UDHR.

⁷³ Examined further ahead, in *Chapter I*.

⁷⁴ Dugard J., Porter B., Ikawa D., Chenwi L. (2020), *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, pp. 275-300; Office of the United Nations High Commissioner for Human Rights (2008), *Frequently Asked Questions on Economic, Social and Cultural Rights – Factsheet 33*, available at <https://www.ohchr.org/Documents/Issues/ESCR/FAQ%20on%20ESCR-en.pdf>, last accessed September 2021.

entered into force and applied at domestic level. Economic, social and cultural rights are all human rights relating to the employment and workplace, social security and protection, family life, participation in cultural life, and access to housing, food, water, health care and education.

Economic, social and cultural rights are not necessarily provided for free by the government that are legitimately entitled to request beneficiaries to bear the costs, partially or entirely, to access health care, water, education, food and other goods and services. In effect, States have a responsibility to ensure that the accessibility to facilities, goods and services required for the enjoyment of such rights are available at similar and reasonable conditions offered to their citizens and without unjustified discrimination. Concretely, in order to be accessible, the costs related to housing, food, water, sanitation, health or education should be proportionate, affordable and adjusted to the local market, and in any case, they should represent a barrier for an individual to access such services, in the view not to compromise unfairly the enjoyment of other rights.

Nevertheless, in some instances, if States have the capacity and resources to ensure equal enjoyment of rights to all individuals, they might choose to establish mechanisms to make the access to such services free of charges for segment of populations that otherwise would not be able to enjoy certain rights. In other cases, in situation of emergency such as a severe drought, if the shortage of food contributes to increased prices, States may be required to provide food and water to their population at low or moderate costs. Furthermore, for some services that are necessary for realizing certain economic, social and cultural rights States are called to provide them free of charge. For example, under international law, primary education is free and compulsory for all, and secondary education should be available and accessible to all, in compliance with the progressive introduction of free education (Article 14 ICESCR).

The two sets of rights are granted to all individuals without discrimination (Article 2 ICESCR and 26 ICCPR). However, there is one exception in relation to non-nationals applicable in certain specific contexts, as enshrined in Article 2.3 ICESCR:

“The developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals”.

In any case this does not affect the core obligations to provide essential food (Article 11 ICESCR), the right basic health care (Article 12 ICESCR), and the right to shelter (Article 11 ICESCR) and education (Article 13 ICESCR), that are conditional and essential to realize other rights, including

the civil and political ones. Therefore, it can be concluded that all the mentioned rights are interrelated, besides that they apply to all individuals regardless of their nationality or migration status.

This is confirmed in the ICRMW, that rather than creating new rights and obligations, it recalls almost verbatim and reiterates all the rights and principles included in other human rights instruments, such as the ICCPR and ICESCR, that are relevant for all migrant workers and the members of their families and their specific situation. In this sense, the ICRMW is not infringing States discretionary and sovereign powers to regulate access, entry and stay of migrants in their territory, as stated in Article 79 of this convention. In fact, this provision is also complemented by Article 34, imposing a general duty upon migrant workers and the members of their families to respect the laws and regulations of the receiving or transit States as well as their citizens. Moreover, the ICRMW does not apply any distinction to the condition of stay of migrants, whether regularly or irregularly, in relation to some labour rights. Specifically, it prohibits slavery, servitude and forced and compulsory labour for all (Article 11), requiring States to apply employment-related conditions such as remuneration and working time similar to those benefitted by nationals (Article 25), granting the right to join and form a trade union (Articles 26 and 40), ensuring portability of earning and savings of migrants leaving the employment country (Articles 32 and 47), and informing migrant workers about their rights and obligations (Articles 33 and 37), during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence (Article 1). Although the right to freedom of movement (and residence) is enshrined by the major international treaties on human rights, it is “asymmetrical” as it is not complemented by a corresponding obligation for States to grant access to their territory. Only States hold the sovereignty to regulate discretionally the conditions for legal entry, defined in their domestic immigration laws. Paragraph 3 of Article 12 of the ICCPR itself recognizes such sovereign power to States, that in fact can restrict the right to reside in their territory to protect conflicting interests considered prevalent, such as internal security, public order and health.⁷⁵ However, in practice States hardly make

⁷⁵ The article provides: “The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Covenant.”

effective the freedom of residing in their territory, since the internal regulations on immigration of States often tend to condition the legal entry of migrants through certain criteria that hinder the rights set forth in Article 12 of the ICCPR. Among the fundamental rights of migrants there are the right to request asylum from persecution, complementary to the freedom of movement as enshrined in the UDHR (Article 14), and the prohibition of torture, cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR).

State sovereign powers are subject to the limits deriving from the respect of international obligations to protect human rights, codified in the relevant international instruments both at universal and regional level. Among these there is a *hard core* of human rights, including the protection of human life at sea to be guaranteed to all individuals, regardless of any circumstance. This principle is also affirmed by the International Court of Justice, in the case *Barcelona Traction, Light and Power, Ltd. (Belgium v. Spain)*.⁷⁶

Therefore, it derives that all migrants and refugees, like all individuals, enjoy their fundamental rights⁷⁷ such as the right to life, right to freedom and security and not to be subjected to torture or inhuman and degrading treatment.⁷⁸ Particularly, the prohibition of torture or inhuman and degrading treatment is also enshrined and article 3 of the Convention against Torture (CAT), which

⁷⁶ International Court of Justice (1970), *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962)*, Second phase, par. 33 and 34: “When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them. These obligations, however, are neither absolute nor unqualified. In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23); others are conferred by international instruments of a universal or quasi-universal character.”

⁷⁷ The semantic choice of *fundamental* instead of *human rights* is inspired and explained by the conceptual framework of *right-based approach* as opposed to *human-rights based approach*. The United Nations has consistently referred to the framework that they use in the context of development as a “human rights-based approach”. Specialised agencies of the United Nations system, such as IOM and the ILO, refer to a rights-based approach to broaden the framework and encompass rights of individuals derived from other sources of international law besides “human rights” such as for example “labour rights” from international labour law.

International Labour Organization (ILO) (2010), *International Labour Migration. A right-based approach*, available at https://www.ilo.org/global/publications/books/WCMS_125361/lang--en/index.htm last accessed April 2022.

⁷⁸ According to Article 55 of the United Nations Charter (San Francisco, 1945) the United Nations shall promote: “(...) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

implies an obligation for State not to return individuals to a country where they could be exposed to harm. This is a customary norm referred to as the principle of *non-refoulement*, which is cornerstone in the context of protecting migrants and refugees' rights. Its implications are exposed herein.

ii. The principle of *non-refoulement*

The principle of *non-refoulement* is key in extending protection to all individuals, and in the context of migration it is often associated to the principle of non-discrimination. Several norms of international and regional scope codify this customary norm, and depending on the situation, one provision in an international treaty can complement the protection accorded to a similar provision as provided in another thematic instruments and in different regional contexts.

This paragraph analyses in depth conditions of applicability of the protection of the principle of *non-refoulement* whether it comes to protecting migrants or refugees, and relevant international standards.

There is a prohibition of the refoulement of migrants to countries where they might suffer violations of certain rights, including the right to preserve their safety. The main international instrument that prohibits any action against the personal integrity is the CAT.⁷⁹ Article 3 prohibits the referral of a person to a country where it could suffer torture. In this sense, the prohibition of torture is a form of complementary protection against subjects whose integrity is threatened, but who do not fall within the definition of a refugee.⁸⁰ The prohibition contained in Article 3 CAT is recalled in multiple international instruments for the protection of human rights, including Article 7 of the ICCPR and other regional treaties such as Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950)⁸¹, Article 5 of the American Convention on Human Rights (San José, 1969)⁸² and Article 5 of the African Charter on Human and Peoples' Rights (Banjul, 1981).⁸³

⁷⁹ Convention against torture or other cruel, inhuman and degrading treatment, hereinafter CAT.

⁸⁰ Article 3, par. 2, CAT Convention: "For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

⁸¹ Hereinafter ECHR

⁸² Hereinafter ACHR

⁸³ Hereinafter ACHPR.

The prohibition of refoulement, which is not explicitly codified in all the human rights treaties mentioned above, can therefore be considered complementary to the prohibition of torture, an imperative norm that according to international law it cannot be derogated nor waived by any State. Consequently, any treaty providing otherwise is void under Article 53 of the Vienna Convention on the Law of Treaties of 1969.⁸⁴ In accordance with this provision, no circumstance can suspend the application of the prohibition of torture, as reiterated in Article 2, paragraph 2, of the CAT. Furthermore, this prohibition includes any form of refoulement, whether it comes to cases of an extradition, an expulsion or a return to the border by a State party to the CAT. This was stated by the Committee on Human Rights in relation to the application of Article 7 of the ICCPR.⁸⁵

At regional level, although the ECHR does not provide an explicit reference to the prohibition of refoulement, the European Court of Human Rights transposed this principle and developed a constant orientation in its jurisprudence, according to which this prohibition falls within the scope of Article 3 ECHR. This guidance was first adopted in the *Soering* decision *c. United Kingdom* of 1989⁸⁶ and its importance further stressed and recalled in the case-law developed after.

⁸⁴ United Nations, *Vienna Convention on the Law of the Treaties* (Vienna, 1969) entered into force in 1980 in United Nations, *Treaty Series*, vol. 1155, p. 331 available at https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en last accessed August 2023.

⁸⁵ United Nations (2008), *Human Rights Instruments Volume I – General Comment 20*, par. 9, doc. HRI/GEN/1/Rev.9 (Vol. I): “In the view of the Committee, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. States parties should indicate in their reports what measures they have adopted to that end.”

⁸⁶ European Court of Human Right (1989), *Case of Soering v. The United Kingdom*, Application no. 14038/88, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2214038/88%22%7D> last accessed September 2023. Article 3 (art. 3) makes no provision for exceptions and no derogation from it is permissible under Article 15 (art. 15) in time of war or other national emergency. This absolute prohibition of torture and of inhuman or degrading treatment or punishment under the terms of the Convention shows that Article 3 (art. 3) enshrines one of the fundamental values of the democratic societies making up the Council of Europe. It is also to be found in similar terms in other international instruments such as the 1966 International Covenant on Civil and Political Rights and the 1969 American Convention on Human Rights and is generally recognised as an internationally accepted standard.

The question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhuman or degrading treatment or punishment would itself engage the responsibility of a Contracting State under Article 3 (art. 3). That the abhorrence of torture has such implications is recognised in Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that “no State Party shall ... extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture”. The fact that a specialised treaty should spell out in detail a specific obligation attaching to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of Article 3 (art. 3) of the European Convention. It would hardly be compatible with the underlying values of the Convention, that “common heritage of political traditions, ideals, freedom and the rule of law” to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another

This protection principle is key in safeguarding the rights of all. Yet, given the cross-border implications of migrants and refugees situations, it acquires special consideration in guiding State's practice when deciding whether to admit or reject an individual at the borders. Moreover, it constitutes an obligation that creates responsibility for wrongful act if failing to comply with this protection leads to violations of the individual rights.

Considering the context of refugees and the forced nature of their displacement determined by the search for safety, the principle of *non-refoulement* also applies to refugees and asylum seekers, namely those people on the move who need international protection. Like in the case of the right to freedom of movement and residence, the right to asylum is also an "asymmetrical" one, as it is not complemented by a corresponding obligation of the States Parties to grant the recognition of this status. States discretionarily set the conditions for granting the refugee *status* and recognising asylum to those needing international protection. The CSR (Geneva, 1951) considers a refugee any individuals who falls under the definition of Article 1, par. A, 2:

"(...) owing to a 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."

"Asylum seekers" is the terminology proposed by the United Nations High Commissioner for the Refugees (UNHCR) to indicate:

"an individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on

State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3 (art. 3), would plainly be contrary to the spirit and intendment of the Article, and in the Court's view this inherent obligation not to extradite also extends to cases in which the fugitive would be faced in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article (art. 3)."

by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.”⁸⁷

The recognition of the status of refugee by the States has a merely declarative nature, since refugees are such because they meet the requirements contained in the above definition. Also in the context of refugee law, the most important form of protection for life and freedom for refugees is provided by the prohibition of refoulement, enshrined in article 33 of the CSR, which cannot admit any reservations:

“No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

In this way, even a refugee who has not formally received the recognition of this legal condition from a State falls anyways within the scope of protection of the principle of *non-refoulement*. For this reason, each State shall carry out prior appropriate checks to ascertain whether the return to a specific territory of a country could cause prejudice to the safety of the person, rather than proceeding to any form of expulsion of a migrant in need for international protection without an accurate identification.

However, there are special circumstances to consider too. In fact, even if a refugee regularly resides in the territory of a State, it is not possible to proceed with his/her expulsion, unless there are imperative reasons of internal security of the State or public order, and on condition that such decision is taken by a judicial authority and executed according to the internal procedures regularly carried out and with the meaningful participation of the refugee to be expelled, in the exercise of the right to access to justice.

Refugees, like all individuals, remain covered by the complementary protection offered by human rights and the prohibition of refoulement enshrined by human rights instruments that always apply, especially the norms with *jus cogens* nature. In this sense, in the regional context the European Court of Human Rights reiterated this principle in the case *Saadi c. Italy*.⁸⁸ This case concerns an

⁸⁷ United Nations High Commissioner for Refugees (2006), *UNHCR Master Glossary of Terms*, Rev.1, available at: <https://www.refworld.org/docid/42ce7d444.html>, last accessed September 2021.

⁸⁸ European Court of Human Rights (2008), *Case Saadi v. Italy*, Application no. 37201/06, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2237201/06%22%5D%7D> last accessed September 2023.

expulsion order issued by Italy against a Tunisian citizen who was suspected of being involved in international terrorism activities in Italy and sentenced by the Tunis Military Court to 25 years imprisonment for participation in an organization dedicated to international terrorism. Despite the seriousness of the disputed facts, which constitute a threat to the security of the host community, the Court pointed out that the scope of application of the principle of *non-refoulement* pursuant to article 3 of the ECHR has a wider scope than that of article 33 of the Geneva Convention, since it is possible to grant protection from *refoulement* even to a citizen of a third State who is at risk of ill-treatment, if expelled to the country of origin.⁸⁹

Whether applied in the context of voluntary or forced displacement, the principle of *non-refoulement* is the core protection extended to all individuals, serving as a guide orienting States' action when intervening within the legal sphere of each individual. In order to act on any legal situations States require a proof of identity, namely the precondition for the enjoyment of all rights. The right to legal identity, not explicitly mentioned in any core human rights treaty is derived by the inherent conditions of human being. This concept is progressively emerging as priority within major policy fora, and consequently it appears now indicated in instruments of soft law that provide further guidance to States in implementing their obligations to protect. Implications of legal identity and its importance are illustrated as follows.

iii. The right to legal identity

⁸⁹ Paragraph 137 and 138 of the decision: "137. The Court notes first of all that States face immense difficulties in modern times in protecting their communities from terrorist violence (see *Chahal*, cited above, § 79, and *Shamayev and Others*, cited above, § 335). It cannot therefore underestimate the scale of the danger of terrorism today and the threat it presents to the community. That must not, however, call into question the absolute nature of Article 3. Accordingly, the Court cannot accept the argument of the United Kingdom Government, supported by the Government, that a distinction must be drawn under Article 3 between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole (see paragraphs 120 and 122 above). Since protection against the treatment prohibited by Article 3 is absolute, that provision imposes an obligation not to extradite or expel any person who, in the receiving country, would run the real risk of being subjected to such treatment. As the Court has repeatedly held, there can be no derogation from that rule (see the case-law cited in paragraph 127 above). It must therefore reaffirm the principle stated in *Chahal* (cited above, § 81) that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of a State is engaged under Article 3, even where such treatment is inflicted by another State. In that connection, the conduct of the person concerned, however undesirable or dangerous, cannot be taken into account, with the consequence that the protection afforded by Article 3 is broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees (see *Chahal*, cited above, § 80, and paragraph 63 above). Moreover, that conclusion is in line with points IV and XII of the guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism (see paragraph 64 above)."

Regardless of nationality, migration status or special protection needs, the right to a legal identity is emerging among the fundamental rights as inherent to all human beings born free and equal in dignity and rights.⁹⁰ This has been recently discussed by Member States during the thematic Round Table Two of the first International Migration Review Forum (IMRF),⁹¹ held in New York in May 2022, during which they committed to ensure access to proof of legal identity to all migrants.⁹² In this section the right to legal identity and its implications are defined to sustain an interpretation of international law standards leading to a broader protection to all people on the move, including migrants and refugees.

In fact, every individual is entitled to a legal identity regardless of their migration status, even if at present there is no internationally agreed definition of *legal identity* nor *identity management*, of which a legal framework can be gleaned from existing international standards.⁹³ Some literature has been developed around this concept, specifically in relation to democracy and good governance.⁹⁴ Moreover, the United Nations also provided an operational definition, by which legal identity refers to it as:

“The basic characteristics of an individual’s identity (name, sex, place and date of birth) conferred through registration and the issuance of a certificate by an authorized civil

⁹⁰ Article 1 of UDHR: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

⁹¹ In 2018, Member States agreed to review the progress made at the local, national, regional and global levels in implementing the Global Compact for Safe, Orderly and Regular Migration (GCM) in the framework of the United Nations through a State-led approach and with the participation of all relevant stakeholders, more information available at <https://www.un.org/en/migration2022>, last accessed August 2022.

⁹² Background note of IMRF Round Table Two, available at <https://www.un.org/sites/un2.un.org/files/imrf-round-table-2-background-note.pdf>, last accessed August 2022.

⁹³ These include, among others, the United Nations Principles and Recommendations on Civil Registration and Vital Statistics (CRVS), international norms on data protection (such as the European General Data Protection Regulation and Council of Europe Convention 108+), global and regional standards and trust frameworks for identification, and the Principles on Digital Development. In the United Nations Principles and Recommendations for a Vital Statistics System (CRVS), par. 2, there are specific definitions relating to birth, death, fetal death, marriage, divorce, adoptions, legitimations and other vital events, which should be consistent with international standards.

⁹⁴ Harbitz M, Boekle-Giuffrida B. (2009), *Democratic Governance, Citizenship, and Legal Identity Linking Theoretical Discussion and Operational Reality*, in *Interamerican Development Bank*, available at <https://publications.iadb.org/publications/english/document/Democratic-Governance-Citizenship-and-Legal-Identity-Linking-Theoretical-Discussion-and-Operational-Reality.pdf>; Dunning C., Gelb A., Raghavan S. (2014), *Birth Registration, Legal Identity, and the Post-2015 Agenda*, in *Center for Global Development Policy Paper 046*, available at <https://www.files.ethz.ch/isn/183719/birth-registration-legal-identity.pdf>; Harbitz M., Tamargo M. (2009), *The Significance of Legal Identity in Situations of Poverty and Social Exclusion. The Link between Gender, Ethnicity, and Legal Identity*, in *Interamerican Development Bank*, available at <https://publications.iadb.org/publications/english/document/The-Significance-of-Legal-Identity-in-Situations-of-Poverty-and-Social-Exclusion-The-Link-between-Gender-Ethnicity-and-Legal-Identity.pdf>, last accessed September 2021.

registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally recognized identification authority; this system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death.”⁹⁵

Identity management should ensure the issuance of a proof or legal tender of identity to each individual and the maintenance of systems for managing information and documents associated with such identity. However, there are still many individuals in the world without any official confirmation of their identity who, consequently, are unable to gain access to a number of services provided by the government and private sector.⁹⁶ The legal identity is not only essential for the individuals as gateway to claim their rights and access to services, justice and judicial remedies, but it is also instrumental for States to protect them from violence, exploitation and abuse.

Ultimately, the legal identity is precondition to preserve the rule of law and ensure certainty in legal matters, so that individuals are provided with probatory instruments which allow them to prove, with ironclad certainty, the facts relating to their existence, identity, and personal and family situation. This is enshrined in the GCM,⁹⁷ an instrument of soft law and without binding nature, whose Objective 4 encourages States to:

“Fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality and relevant documentation, allowing national and local authorities to ascertain a migrant’s legal identity upon entry, during stay and for return, as well as to ensure effective migration procedures, efficient service provision and improved public safety.”

Closely connected with the concept of safety, legal identity contributes to the rule of law and legal certainty, and its provision and acknowledgement promote peaceful and inclusive societies for

⁹⁵ United Nations (2019) *United Nations Strategy for Legal Identity for All*, New York, 2019, par. 12, available at <https://unstats.un.org/legal-identity-agenda/documents/UN-Strategy-for-LIA-draft.pdf> and United Nations (2019) *Introduction of the United Nations Legal Identity Agenda: a holistic approach to civil registration, vital statistics and identity management*, New York, doc. E/CN.3/2020/15, par. 4, available at <https://unstats.un.org/unsd/statcom/51st-session/documents/2020-15-CRVS-E.pdf> last accessed September 2021.

⁹⁶ United Nations (2018), *Handbook on Civil Registration and Vital Statistics Systems: Management, Operation and Maintenance*, Rev. 1, New York, available at <https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf> last accessed September 2021.

⁹⁷ United Nations (2018), *Global Compact for Safe, Orderly and Regular Migration*, *op.cit.*, par. 20.

sustainable development to overall increase stability and security, as set out in target 16.9 of the Sustainable Development Goals (SDGs) of the 2030 Agenda,⁹⁸ as well as overall contributing to facilitate safe, orderly and regular migration promoting adequate identification processes.⁹⁹ Thus, it can be considered that the legal identity sets a standard for State to comply with the realization of this right, which is instrumental to manage migration effectively as well as to access to most of the rights entitled to all.

Since it complements the inherent right to life,¹⁰⁰ one's identity arises in the moment in which the individual comes to existence and this right is protected by the Convention on the Right of the Child (New York, 1989).¹⁰¹ Therefore, it can be proved through the birth registration.¹⁰² According to the United Nations Principles and Recommendations for a Vital Statistics System (CRVS),¹⁰³ civil registration is a major and critical element for establishing the essential rights, privileges as well as duties of all individuals.

This entails an obligation of States to protect this right by facilitating the registration of every child under their jurisdiction immediately after birth. The registration is prerequisite for everyone to acquire a name, a nationality and family relations.¹⁰⁴ Thus, it prevents statelessness and confers the right to be recognized as a person before the law against any unlawful interference.¹⁰⁵

Legal identity cannot be analysed separately from nationality, for which it is in a relation of complementarity. In other words, nationality confers the right to legal identity, which constitutes

⁹⁸ Target 16.9 indicates: "By 2030, provide legal identity for all, including birth registration".

⁹⁹ Objective 14 of the Global Compact for Migration (GCM) calls State to commit to "Enhance consular protection, assistance and cooperation throughout the migration cycle."

¹⁰⁰ Hereinafter CRC. Article 6, par. 1 provides that: "States Parties recognize that every child has the inherent right to life." The same right is enshrined in the UDHR, Article 3, and the ICCPR, Article 6.

¹⁰¹ For the purposes of this legal analysis, *identity* is treated as a legal concept, in accordance with States national law and their obligations under the relevant international instruments in this field, therefore without considering any individual factors (i.e., gender identity), subjective implications or in relation to the personality.

¹⁰² Article 7 of the CRC provides: "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

¹⁰³ United Nations (2014), *Principles and Recommendations for a Vital Statistics System (CRVS) - Revision 3*, par. 287, available at <https://unstats.un.org/unsd/demographic/standmeth/principles/m19rev3en.pdf>, last accessed September 2021.

¹⁰⁴ Article 8 of the CRC provides: "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

¹⁰⁵ The recognition as a person before the law is protected by Article 6 of the UDHR and Article 16 of the ICCPR: "Everyone shall have the right to recognition everywhere as a person before the law."

the proof of one's identity, including nationality. In this sense, they cannot be divided. Hence, considerations on nationality are exposed herein.

iv. The right to nationality

Closely linked to the right to legal identity explained above, it is important to examine a further key element in relation to protecting the rights of people on the move, namely the citizenship or nationality.¹⁰⁶ This key element is also linked and define the migration status of any individual crossing international borders. Defined as part of legal identity, nationality is an element to establish the relationship between an individual and a State bearing primarily the responsibility to protect.¹⁰⁷

States have the exclusive and sovereign competence to attribute their nationality on discretionary basis. However, they are not exempted from abiding by international law obligations including outside of their territory and wherever they exercise their jurisdiction,¹⁰⁸ and this applies regardless of nationality.

According to international law, the concept of nationality or citizenship is the fundamental element establishing the relationship between every individual and a State and it constitutes the link to identify the State primarily bearing the responsibility to protect.

Thanks to globalization, with continuous and larger amounts of movements of goods and people, contemporary societies are progressively changing accordingly. So, hosting a larger number of non-nationals in country is no longer exceptional as it was a couple decades before. Particularly, since connections and travels between States became easier and more frequent, human mobility is

¹⁰⁶ For the purposes of the present analysis, the two terms “nationality” and “citizenship” are hereby used interchangeably.

¹⁰⁷ United Nations General Assembly (2005), *Resolution adopted by the General Assembly on 16 September 2005 – 2005 World Summit Outcome*, doc. A/RES/60/1, par. 138 available at <https://undocs.org/A/RES/60/1> last accessed September 2021. The responsibility to protect embodies a political commitment to end the worst forms of violence and persecution. It seeks to narrow the gap between Member States' pre-existing obligations under international humanitarian and human rights law and the reality faced by populations at risk of genocide, war crimes, ethnic cleansing and crimes against humanity.

¹⁰⁸ The International Court of Justice stated that principle of effectiveness is the condition to establish a meaningful connection of a citizen to a State. Cfr. Case *Nottembohm (Liechtenstein v. Guatemala)*, 6 April 1955). Before this decision, the advisory opinion of the Permanent Court of International Justice (1923) in the case of *Nationality Decrees Issued by Tunis and Morocco* (7 February 1923) declared nationality as competence reserved to States but also added that this exclusiveness is subjected to the limits deriving from the obligations of international law. Cour Permanente de Justice Internationale (1923), *Avis consultatif n°4 Décrets de nationalité promulgués en Tunisie et au Maroc*, p. 24.

increasing alike. Hence, this is challenging the model of a State - nation with homogenous population, towards societies comprised of nationals and non-nationals with different cultures co-existing and cohesive and integrated. In this changed model of society, the legal concept of citizenship is evolving, and its scope can be rethought with an extensive interpretation, as proposed hereby.¹⁰⁹ International standards require two conditions and corresponding modalities to acquire the nationality of a State, namely having one or both parents who are citizens of a given State (*ius sanguinis*) or derived as birth right citizenship (*ius soli*).¹¹⁰

If one considers that citizenship defines an individual as member of a community, it conversely highlights the exclusion of foreigners or non-nationals (i.e., migrants) from this society. However, as emphasised previously, this does not imply that foreigners are deprived of their human rights. Indeed, like for the immigration regimes, even if States have the exclusive and sovereign competence to attribute their citizenship on discretionary basis, they are not exempted from their responsibility to protect human rights and to abide with the obligations arising from international law, including outside of their territory and wherever they exercise their jurisdiction. On this regard, the International Court of Justice in the case *LaGrand (Germany v. United States of America, 2001)* acknowledged the possibility that the norms of international law, commonly addressed to States, can also affect the sphere of individuals directly when it comes to broadening the scope of the protection of their fundamental rights.¹¹¹ Moreover, according to Articles 1, par. 3,¹¹² and 55¹¹³ of the United Nations Charter (San Francisco, 1945) human rights are promoted and protected by States at international level without any reference to nationality.

Thus, as duty bearers States are responsible to protect fundamental rights regardless from the nationality of the rights holders, as highlighted and corroborated by several decisions by

¹⁰⁹ O’Keefe D. (1994), *Union citizenship*, in O’Keefe D., Twomey P. (eds.), *Legal Issues of the Maastricht Treaty*, London, p. 106.

¹¹⁰ For a comparative perspective on the acquisition of the citizenship refer to Grosso E. (2013), *Si fa presto a dire “ius soli”*. *Considerazioni sparse sull’acquisto della cittadinanza nel diritto comparato*, in *Diritto, immigrazione e cittadinanza*, pp. 13-35.

¹¹¹ International Court of Justice (2001), Judgement *LaGrand (Germany v. United States of America)*, par. 77, available at <https://www.icj-cij.org/en/case/104> last accessed September 2021. The case makes reference to the norm contained in the Vienna Convention on Consular Relations (Vienna, 1963), art. 36, par. 1, lett. b. Cfr. Ronzitti N. (2013), *Introduzione al diritto internazionale*, Turin, 2013, p. 354. However, doctrine is not uniform on this matter: Cannizzaro E. (2011), *Corso di diritto internazionale*, Milan, p. 315 and Cassese A. (2005), *International Law*, p. 116.

¹¹² Article 1, par. 3, provides that among the purposes of United Nations there is also: “To achieve international co-operation (...) in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

¹¹³ Scovazzi T. (2014), *Il lato oscuro dei diritti umani: aspetti di diritto internazionale*, in Meccarelli M., Palchetti P., Sotis C. (eds.), *Il lato oscuro dei diritti umani*, Madrid, pp. 115-134.

international courts. This is very much the case of migrants in countries of transit and destination. The selected case-law examined as follows is aimed at demonstrating how international judges progressively adopted approaches that are rather more rights-oriented, than proposing the nationality as precondition for the enjoyment of other rights. Instead, the attribution of a nationality constitutes an exclusive exercise of sovereign powers by States, provided that it does not lead to the infringement of rights in compliance with the responsibility to protect human rights of all.¹¹⁴ First, the advisory opinion of the Permanent Court of International Justice in the case of *Nationality Decrees Issued by Tunis and Morocco* (7 February 1923) declared nationality as competence reserved to States but added that this exclusiveness is subjected to the limits deriving from the obligations of international law:¹¹⁵

“The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain. For the purposes of the present opinion, it is enough to observe that it might well happen that in a matter which, like that of nationality, is not, in principle, regulated by international law. The right of a State to use its discretion is nevertheless restricted by the obligations which it might have undertaken towards other States.”

The evolution of international law (and case-law) on this matter led to the necessity to define nationality within more precise limits. To this end, in the decision of the International Court of Justice on the case *Nottembohm (Liechtenstein v. Guatemala)*, 6 April 1955) the principle of effectiveness is the condition to establish a meaningful connection of a citizen to a State.¹¹⁶ In this case the Court clarifies that nationality has the purpose to determine that the citizen enjoys rights

¹¹⁴ On the principle of reserved domain concerning citizenship, see Marchisio S. (2000), *L'ONU. Il diritto delle Nazioni Unite*, Bologna, p. 69.

¹¹⁵ Permanent Court of International Justice (1923), *op.cit.*, p. 24.

¹¹⁶ International Court of Justice (1955), *Nottembohm Case (Liechtenstein v. Guatemala)*, second phase, p. 23: “nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection vis-à-vis another State, if it constitutes a translation into juridical terms of the individual’s connection with the State which has made him its national”, available at <https://www.icj-cij.org/public/files/case-related/18/018-19550406-JUD-01-00-EN.pdf> last accessed September 2021.

but also has the duty to abide with national laws set by the State in the exercise of its sovereign powers.

Nationality certainly creates a connection between the individual and a State. Though, it is not to be interpreted as the only ground to guarantee human rights, nor the exclusive possible connection between the individual with such a State.

For example, at regional level, the Inter-American Court of Human Rights in the interpretation of article 20 of the ACHR (San José de Costa Rica, 1969)¹¹⁷ proposes a definition of nationality more elaborated, as inherent to humankind and, to some extents, linked to legal identity:

“It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual’s legal capacity. Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights. The classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues.”¹¹⁸

Thus, the Inter-American Court considers nationality as the foundation of civil and political capacity of the individual in the territory of State of citizenship and it acknowledges that international law limits States’ discretion for a broader protection of human rights, including the right to a nationality as inherent to humanity.

Other international instruments that protect human rights contain provisions on nationality, however without specifying its content nor eventual limits. Among them there are: Article 15

¹¹⁷Article 20 of the Convention, titled *Right to Nationality*, provides as follows: “1. Every person has the right to a nationality. 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. 3.No one shall be arbitrarily deprived of his nationality or of the right to change it”.

¹¹⁸ Inter-American Court of Human Rights (1984), *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, par. 32-33, available at https://www.corteidh.or.cr/docs/opiniones/seriea_04_ing.pdf last accessed September 2021.

UDHR,¹¹⁹ the Article 23, par. 3 of ICCPR,¹²⁰ Article 7 of the CRC,¹²¹ and Article 29 of the ICRMW.¹²²

The fact that such norms are not homogenous and that no State is identified as the one responsible for the attribution of nationality highlights how this represents a thorny issue, on which international law standards traditionally have left a margin of discretion to States. However, this margin always encounters the limits in the sovereignty of other States in the attribution of the same right.¹²³

Similarly to the abovementioned right of asylum and the right to liberty of movement and reside, nationality is the third “asymmetrical” right presented in this analysis. Indeed, it is not complemented by the obligation of States to confer it.¹²⁴ Nonetheless, a complementary protection can be derived by the positive obligation upon States to avoid any cases of statelessness.¹²⁵ This constitutes a further limit to the exercise of the sovereignty on nationality matters, as no individual can be deprived of such right in the absence of a well-founded motivation or public interest of the State.¹²⁶ Article 15 of the UDHR provides that no one shall be arbitrarily deprived of his nationality.¹²⁷ In addition to that, the two international treaties on statelessness, the Convention on the status of Stateless Persons (New York, 1954) and the Convention on the Reduction of Statelessness (New York, 1961) require States parties to adopt procedures to facilitate the acquisition of the citizenship through naturalization of stateless persons on the basis of the criterion

¹¹⁹ Article 15 states: “Everyone has the right to a nationality”.

¹²⁰ Article 24, par. 3, provides: “Every child has the right to acquire a nationality”.

¹²¹ Article 7 provides “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

¹²² Article 29 provides “Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.”

¹²³ Forlati S. (2013), *Nationality as a human right*, in Annoni A., Forlati S. (eds.), *The Changing Role of Nationality in International Law*, London – New York, p. 28.

¹²⁴ Scovazzi T. (2013), *Human rights and Immigration at sea*, in R. Rubio Marín (ed.), *Human rights and Immigration*, Oxford, 2014, pp. 212-260 and Salerno F. (2013), *Diritto internazionale. Principi e norme*, Padua, p. 322.

¹²⁵ It is considered as “stateless” a person that no State treats as its citizen in the application of domestic law, according to Article 1 of the Convention relating to the Status of Stateless Persons (New York, 1954) United Nations – Treaties Series, *Volume 360*, p. 117. Currently (2021) 96 States are parties.

¹²⁶ De Vittor F. (2013), *Nationality and freedom of movement*, in Annoni A., Forlati S. (eds.), *The Changing Role of Nationality in International Law*, London – New York, pp. 96-116.

¹²⁷ Article 15, par. 2, provides: “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”.

of habitual residence or presence in their territory.¹²⁸ Therefore, this analysis proposes to conceptually and legally define implications of statelessness as follows.

v. Preventing statelessness and realising migrants' rights

As the above analysis on the right to legal identity and the right to nationality demonstrate, in practice to address such situations of potential violation of rights and even in cases of migrants and statelessness, States could provide everyone with a proof of legal identity or, as alternative, recognise the legal identification issued by another State or international organization to all the persons resident in their territory, including through the birth registration. Both measures represent crucial processes in preventing statelessness.¹²⁹

In case of forced migration, asylum seekers and refugees, the proof of legal identity could be issued by the host States. However, this does not rule out that the issuance of proof of legal identity to refugees may also be administered by an internationally recognized and mandated authority.¹³⁰ In this sense, in the context of refugee law article 27 of the CSR provides that States:

“Shall issue identity papers to any refugee in their territory who does not possess a valid travel document.”

The same applies for stateless persons, as provided by Article 27 of the Convention on the Status of Stateless Persons. In such situation, States might establish a national functional identification system for refugee status, or else the official proof of identification and authorization is issued by the authorities for this specific case, but it can be such also for other purposes or sectors (i.e., functional). Although the proof of legal identity, and particularly birth and/or marriage registration, is frequently a requirement for acquiring a citizenship, the legal identification is not necessarily linked to a nationality, as not all the national legal identification systems require so. Such systems

¹²⁸ Article 32 of the *Convention relating to the Status of Stateless Persons* and Article 1 of the *Convention on the Reduction of Statelessness* in United Nations – Treaties Series, *Volume 989*, p. 175. Currently (2021) 77 States are parties. Article 34 of the CSR contains a similar provision on naturalization, making reference to refugees.

¹²⁹ Convention on the Reduction of Statelessness (Geneva, 1961), Article 1, African Charter on the Rights and Welfare of the Child (1990), Article 6, American Convention on Human Rights (San José, 1969), art. 20, European Convention on Nationality (Strasbourg, 1997), Article 6.

United, Nations (2011), *Guidance Note of The Secretary-General - The United Nations and Statelessness*, available at <https://www.un.org/ruleoflaw/files/FINAL%20Guidance%20Note%20of%20the%20Secretary-General%20on%20the%20United%20Nations%20and%20Statelessness.pdf> last accessed September 2021.

¹³⁰ United Nations, *United Nations Strategy for Legal Identity for All*, *op.cit.*, par. 13,.

are rather established by States to facilitate the recognition before the law and provide a proof of legal identity.¹³¹

Therefore, preventing statelessness is a prerequisite to facilitate the access to rights for all, including migrants and refugees. For example, recognition before the law¹³² is one of the core elements required to access to justice for the effective protection of migrants' rights, along with the equality before the courts and tribunals,¹³³ the right to a fair trial and due process without discrimination.¹³⁴ In principle, migrants in countries of transit and destination are entitled to the same rights of nationals and they should be able to access the basic services provided by States. These include essential food and water, basic shelters¹³⁵ and primary health care¹³⁶. Moreover, migrants can also access to employment¹³⁷ and social security¹³⁸ according to the conditions and regulations determined by the receiving State. Migrants are entitled to seek and obtain reparation in case of discriminatory and inadequate policies of the host State resulting in a violation of their rights. Generally, accessing to such services requires beneficiaries to provide proof of legal identity. Hence, this demonstrates the existing linkages and complementarity between legal identity, nationality and prevention of statelessness. For example, this is the essential condition to benefit from social protection systems through cash-based programming. In fact, especially for cash-transfers, the direct payments of money or provision of vouchers to purchase particular goods or services are done to a recipient whose identity should be confirmed.¹³⁹

The official proof of legal identity is also necessary to define the type of protection and assistance from specific forms of exploitation and abuse. For example, it is required to prevent and assess cases of child labour, child marriage and underage recruitment of child soldiers involved in armed conflict.

¹³¹ The name and nature of legal identification systems varies under national law, but typically includes civil registration systems, national identification systems, population registries, and other foundational identification systems.

¹³² Article 16 ICCPR.

¹³³ Article 14 ICCPR.

¹³⁴ International Organization for Migration (2019), *IML Information Note on Access to Justice: A Migrant's Right*, available at https://www.iom.int/sites/default/files/our_work/ICP/IML/iml-infonote-access-to-justice.pdf last accessed September 2023.

¹³⁵ Article 11 of the International Covenant on Economic, Social and Cultural Rights (New York, 1966) (ICESCR).

¹³⁶ Article 12 ICESCR.

¹³⁷ Article 6 ICESCR.

¹³⁸ Article 9 ICESCR.

¹³⁹ International Organization for Migration (2015), *Cash-Based Transfer – Update and Case Studies*, available at https://www.sheltercluster.org/sites/default/files/docs/iom_cash-based_transfer_-_nov2015_-_lowres.pdf last accessed September 2023.

Likewise, being able to prove the legal identity is crucial upon arrival of migrants at the border, to avert the risk that an inaccurate identification and determination of their migration status and vulnerability could entail violations of their rights by any State border officials controlling entry and presence of non-nationals to their territory.

In this case, migrants can challenge a decision of rejection at the borders and expulsion if there are substantial grounds to believe that such measure can expose them to any harm or risks to their personal integrity, in accordance with the protection of the principle of *non-refoulement*.¹⁴⁰

In the event of administrative detention,¹⁴¹ migrants have the right to be informed and take proceedings before a court.¹⁴² Migrants deprived of their liberty are also entitled to consular assistance, whose function is, among the others, to preserve individual legal identity and all related rights, including issuing legal identity documents and registering births of their nationals abroad.¹⁴³

The principle of sovereignty confers States the power to decide on modalities to assist and protect their nationals.¹⁴⁴ Hence, States generally have discretion in determining the type of consular assistance that they provide to their citizens abroad.¹⁴⁵ Consular assistance should be provided for migrants in vulnerable situations returning to their country of origin, including providing a replacement or issuance of identity, nationality and travel documents, support for the pre-departure process, and help with international referrals for continuity of care in the country of origin.¹⁴⁶

However, States practice showed how during an emergency and under special circumstances, according to international law States are entitled to suspend consular protection, among other essential services and.¹⁴⁷ A recent case can be found in the global health crisis caused by COVID-

¹⁴⁰ Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 1984) and Article 7 ICCPR.

¹⁴¹ Administrative detention is analysed further ahead, in this *Chapter 1*.

¹⁴² Article 9 ICCPR.

¹⁴³ The provision of consular assistance is therefore primarily a right of States to provide consular services to their nationals such as providing evidence of legal identity, ensuring that they are recognized as persons before the law in foreign countries and assisting with protection of rights, and/or providing assistance in emergencies.

Grant S. (2019), *Consular Protection, Legal Identity and Migrants' Rights: Time for Convergence?*, available at <https://blogs.lse.ac.uk/mec/2019/05/17/consular-protection-legal-identity-and-migrants-rights-time-for-convergence/> last accessed September 2023.

¹⁴⁴ Dugard J. (2006) , *Seventh report on diplomatic protection: Diplomatic Protection*, UN Doc. A/CN.4/567, p. 11 available at https://legal.un.org/ilc/documentation/english/a_cn4_567.pdf, last accessed September 2021.

¹⁴⁵ Diplomatic protection and consular assistance of migrants are analysed in-depth in *Chapter 2*.

¹⁴⁶ IOM, *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse*, *op.cit.*

¹⁴⁷ Article 4, par. 1, ICCPR: “ In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

19 pandemic.¹⁴⁸ As a consequence, some States, including Bangladesh, Eswatini, Guinea-Bissau, India, Malawi, Nigeria, Panama, Samoa, Solomon Islands, Sri Lanka, Uganda,¹⁴⁹ had to temporarily suspend the issuance of civil and identity documentation, including birth registration, to all persons.¹⁵⁰ In many cases, this suspension undermines the possibility to confirm the nationality and/or the extension of validity of identification documents of many people abroad, exposing them to greater risks and vulnerability, especially in case of minority group members that became unable to (re)establish their nationality in the absence of documentation proving their place of birth and descent.¹⁵¹ Consular protection is examined in-depth in relation to identification and integration processes, namely when borders are crossed and are object of *Chapter 2* of this study.

Among the other COVID-19 implications,¹⁵² there are the side effects determined by control measures taken by States to ensure the respect of enforced quarantine, curfews, lockdowns, travel restrictions, border closure and limitations of the economic activities and gatherings in public. Such control measures that use surveillance technology are thoroughly analysed in relation to identification and integration in country that is object of this study in *Chapter 2*. However, in this context it should be noted that such technology might infringe privacy and data protection

¹⁴⁸ The coronavirus disease (COVID-19) outbreak was declared a global pandemic by the World Health Organization (WHO) on 11 March 2020.

World Health Organization (WHO) (2020), *Coronavirus disease (COVID-19) pandemic*, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019> last accessed September 2021.

¹⁴⁹ A complete list of States, divided per region can be found on the United Nations Legal Identity Agenda (LIA), launched in June 2019 and officially endorsed in March 2020. The UN LIA conducted a short survey in order to assess the impact of the COVID-19 pandemic on the functioning of civil registration worldwide, provide an information regarding national solutions and a forum for exchange of experiences. Results are accessible in the official website. Cfr. United Nations (2020), *United Nations Legal Identity Agenda. Impact of COVID-19*, available at <https://unstats.un.org/legal-identity-agenda/COVID-19/> last accessed October 2021.

¹⁵⁰ AbouZahr, Carla et al. (2021), The COVID-19 Pandemic: Effects on Civil Registration of Births and Deaths and on Availability and Utility of Vital Events Data., in American journal of public health. vol. 111,6, p 1123-1131 also available at <https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC8101592/pdf/AJPH.2021.306203.pdf>.

¹⁵¹ United Nations High Commissioner for Refugees (UNHCR) (2020), *The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices*, available at <https://www.refworld.org/docid/5eb2a72f4.html> last accessed September 2021.

¹⁵² COVID-19 implications are analysed further in this *Chapter 1*, section 3, par. g).

standards.¹⁵³ Many of the privacy-related measures, adopted by countries like Israel,¹⁵⁴ United States,¹⁵⁵ Peru,¹⁵⁶ Qatar¹⁵⁷ and Russia,¹⁵⁸ for example, are based on mobile location data programs developed to combat COVID-19, but without effective safeguards to protect everyone's identity and privacy.¹⁵⁹ Indeed, the collection and analysis of such data could reveal users' identities, movements, and associations in a manner that interferes with the right to privacy and, often, without having received the informed consent by data subjects for it.¹⁶⁰ Echoing Article 12 UDHR, Article 17 ICCPR underscores "the protection of the law" against "arbitrary or unlawful

¹⁵³ Among the others: the UN Principles on Data Privacy and Protection (2018), and COE, Convention 108+ (1981), OECD, Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data (1980), Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data as amended with Additional Protocol (1981), United Nations Guidelines for the Regulation of Computerized Personal Data Files (1990), European Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (1995), Charter of Fundamental Rights of the European Union (2000), Article 8: Protection of personal data Regulation (EC) No. 45/2001 on the Protection of Individuals with regard to the Processing of Personal Data by the Community Institutions and Bodies and on the Free Movement of such data (2000), Commission Decision on Standard Contractual Clauses for the transfer of personal data to third countries under Directive 95/46/EC (2001), OECD, Guidelines for the Security of Information Systems and Networks (2002), Committee on the Rights of the Child, General Comment No.6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin European Directive 2006/24/EC on the Retention of Data generated or processed in connection with the provision publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (2005), Paris Principles and Guidelines on Children Associated With Arms or Armed Groups (2007), Commission Decision of 5 February 2010 on Standard Contractual Clauses for the Transfer of Personal Data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (2010).

¹⁵⁴ Srivastava M. (2021) *Israel in 'dangerous place' as virus infections surge*, in *Financial Times*, available at <https://www.ft.com/content/44afdf58-4aaa-4c01-a5df-ea13d899dcf1>, last accessed October 2021.

¹⁵⁵ Schechner S., Grind K. and Haggin P. (2020) *Tech Firms Are Spying on You. In a Pandemic, Governments Say That's OK.*, in *The Wall Street Journal*, available at <https://www.wsj.com/Articles/once-pariahs-location-tracking-firms-pitch-themselves-as-covid-sleuths-11592236894> last accessed October 2021.

¹⁵⁶ Morachimo M. – Hiperderecho (2020), *Aplicación "Perú en tus manos" sigue dejando más preguntas que respuestas dos meses después*, available at <https://hiperderecho.org/2020/06/aplicacion-peru-en-tus-manos-sigue-dejando-mas-preguntas-que-respuestas-dos-meses-despues/> last accessed October 2021.

¹⁵⁷ Agence France Presse (2020), *Qatar virus tracing app stirs rare privacy backlash*, available at <https://amp.france24.com/en/20200525-qatar-virus-tracing-app-stirs-rare-privacy-backlash> last accessed October 2021.

¹⁵⁸ Human Rights Watch (2021), *Russia: Intrusive Tracking App Wrongly Fines Muscovites*, available at <https://www.hrw.org/news/2020/05/21/russia-intrusive-tracking-app-wrongly-fines-muscovites> last accessed October 2021.

¹⁵⁹ Human Rights Watch (2020), *Mobile Location Data and Covid-19: Q&A*, available at <https://www.hrw.org/news/2020/05/13/mobile-location-data-and-covid-19-qa>, last accessed September 2021.

¹⁶⁰ According to IOM Data Protection Principles: "The proof of identity from the data subject should be to the satisfaction of the data controller who reasonably believes that the data subject is who he/she purports to be. Registration cards or informal identification will suffice as proof of identity in situations where formal identification documents are unavailable. Personal data should be communicated to data subjects in a clear and intelligible manner and on a "need to know" basis. Data controllers should only reveal summaries of individual cases or copies of categories of personal data to meet the purpose of the access request."

International Organization for Migration (IOM) (2010), *IOM Data Protection Manual*, available at https://publications.iom.int/system/files/pdf/iomdataprotection_web.pdf last accessed September 2021.

interference” with an individual’s “privacy, family, home, or correspondence”. Therefore, human rights standards could guide the use of digital technologies to track and monitor individuals, populations and their identity in order to prevent States from interfering in their private life.¹⁶¹

Although digital technologies can be a benefit for the systematization of data and identity management, they might entail challenges too: not only for data protection and privacy, but also with regards to discrimination and practices of exclusion.¹⁶² In fact, migrants in vulnerable situations, and particularly those at the borders who are not able to obtain nor easily use identification, are exposed to a greater risk of being left behind whenever their legal identity should be confirmed to access services and they are unable to do so. Moreover, if digitalisation for identification management requires the use of the internet, this itself could be a downfall for many populations across the world if they have scattered access to the internet or they do not have it at all.¹⁶³

As the present analysis demonstrates, the right to nationality and prevention of statelessness through legal identity for all is fundamental in promoting peaceful and inclusive societies for development outcomes as, by contributing to preserve the rule of law and certainty in legal matters, it improves public security and safe, orderly and regular migration alike. Furthermore, it guarantees the access to fundamental rights and privileges to all, preventing discrimination and practices of exclusion that might expose certain segments of the society, including people on the move, to greater vulnerability. Because it complements the inherent right to life and combines the right to a nationality, private and family life, the legal identity plays an essential role in protecting individuals and migrants’ rights, particularly preventing statelessness and the risks related to unlawful interference, abuses and violations.

¹⁶¹ The Economist (2020), *Everything’s under control. The state in the time of covid-19*, available at https://publications.iom.int/system/files/pdf/iomdataprotection_web.pdf last accessed September 2021.

¹⁶² These include the most vulnerable segment of population, such as women and children, migrant populations, refugees and asylum seekers, remote and rural residents, ethnic, linguistic, or religious minorities, sexual and gender minorities, persons with disabilities, the internally displaced, stateless persons, conflict-affected persons, informal sector workers, and other marginalized or minority groups. See, for example, World Bank (2019), *Global ID Coverage, Barriers, and Use by the Numbers: An In-Depth Look at the 2017 ID4D-Findex Survey*, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/33430/Global-ID-Coverage-Barriers-and-Use-by-the-Numbers-An-In-Depth-Look-at-the-2017-ID4D-Findex-Survey.pdf?sequence=1&isAllowed=y> last accessed September 2021.

¹⁶³ On the need of universal access to the internet and the use of technology and innovation to support young migrant entrepreneurship: A. Nassim, L. Cottone, L. Zdruli and P. Loewi (2020), *Leveraging technology, innovation, and entrepreneurship to support young migrants and refugees*, available at <https://medium.com/@IOMatUN/leveraging-technology-innovation-and-entrepreneurship-to-support-young-migrants-and-refugees-1c4b61f5d4a7> last accessed September 2021.

Therefore, States are encouraged to establish adequate mechanisms to ensure the issuance of civil and identity documentation to prove legal identity, which is fundamental especially in situations at the border, but also in the view to facilitate everyone's access to age-appropriate education, employment, wages, property, justice and health care to advance cultural and socio-economic development and recovery from crisis situations.

To date, no comparable data is available on the coverage and progress of registration of legal identity by States, as they adopt different criteria for acceptable legal identification. Accordingly, monitoring the implementation of such systems and their impact on migration could be the first step towards promoting international cooperation on this matter to prevent crises and foster peace, legal safety and security, and thus just institutions and societies.

vi. The freedom to choose residence

The right to a nationality, prevention of stateless and legal identity are all corollary for migrants and refugees to access to several other rights. Migrants that voluntarily choose to move need travel document that are issued based on their legal identity.

Article 12 ICCPR associates the freedom to choose residence to the liberty of movement as two complementary rights. The habitual residence is a key element in the context of people on the move and especially for migrant workers, who decide to reside (with or without their family) in another country away from home in the exercise of their right to liberty of movement. In this case, the residence can be interpreted as a further link connecting migrant workers to a given State of transit or destination of their choice or of employment, which thus establishes such State's jurisdiction over them, regardless of the condition of entry and stay within its territory. Therefore, if the residence can be considered as one further objective element connecting individuals including migrants to a given State of transit or destination, it is also indicating stability, duration and continuity of the presence in a given territory. As such it creates an effective connection to the receiving State too, in addition to the one of nationality of migrants.¹⁶⁴ In fact, the residence interpreted as the main criterion to establish State's jurisdiction over migrants represents a more realistic and an adequate one, because of the stronger connection that it establishes with the State where they live, work or study and possibly where they access essential services that the State

¹⁶⁴ Panella L. (2010), *La cittadinanza e le cittadinanze nel diritto internazionale*, Napoli, p. 117.

provide to realise their rights. In fact, according to international law the residence is chosen in the exercise to the right to liberty of movement, as enshrined also in Article 13 of the UDHR as well as other international instruments on this matter.¹⁶⁵ The right to choose residence as complementary to the right to freedom of movement is enhanced with other principles specifically to protect migrants and refugees' rights. Indeed, as closely linked with human mobility, the right to residence cannot be enjoyed if not enhanced with the protection of the principle of *non-refoulement* and another key protection essential for the full realisation of migrants and the refugees' rights, the principle of non-discrimination that is analysed in continuation.

vii. The principle of non-discrimination: some considerations on the margin of citizenship

Regardless of the type of link connecting the individual to a State, it is important to emphasise once more that all the individuals, nationals and migrants, residing in each State, have the right to be treated with dignity and without discrimination in the realisation and access to their fundamental rights. It is not easy to establish when a State is considered to take measures that respect human dignity, as it comes to a concept that international standards do not define. Nevertheless, it could be mentioned that “human dignity” is a principle which inspired all the main international instruments on human rights. For example, the Preamble of the UDHR advocates for:

“[the] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family [a]s the foundation of freedom, justice and peace in the world”.

This principle of equality is also translated into a principle of non-discrimination including on the ground of nationality, that in relation to the condition of migrant workers, it is enshrined in article 70 of ICRMW stating:

“States Parties shall take measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.”

Consequently, States exercise their jurisdiction on nationality and citizenship matters and take

¹⁶⁵ For example, Article 12 of the *International Covenant on Civil and Political Rights*, and at regional level, Article 2 of the Protocol 4 to the *European Convention on Human Rights*. (Strasbourg, 1963).

actions in compliance with the obligations to respect human rights, regardless from the nationality of individuals. This entails a positive obligation to remove any unjustified interference in the realisation of rights that might entail discriminatory treatments. Therefore, citizenship and nationality, along with the residence, are all relevant and complementary elements to consider under international law as long as they create the necessary connections between individuals and States, as they identify States' jurisdiction, being the latter subjected to the limits deriving from the "laws of humanity" or human rights.¹⁶⁶ Moreover, the obligation to confer a nationality to individuals who are genuinely and effectively linked to a State arises also whenever a risk of statelessness materializes, complemented by the obligations to avoid and reduce statelessness in conformity with the international standards preventing statelessness.

Both in the context of migration and displacement, the principle of non-discrimination, guiding all States in exercising their sovereign powers, including when conferring their nationality to individuals, deserves special attention as it further limits States' discretion. The principle of non-discrimination is the cornerstone in protecting non-nationals. Besides Article 70 ICRMW, it is set out in two thematic international law treaties. The International Convention on the Elimination of All Form of Racial Discrimination (hereinafter CERD, New York, 1966)¹⁶⁷ requires States parties to ensure the rights to every individual without distinction, exclusion, restriction or preference based on race, colour, national or ethnical origin, and in particular the right to equal treatment before the tribunals and all other organs administering justice and the right to nationality.¹⁶⁸ The Convention on the Elimination of All Forms of Discrimination against Women (hereinafter CEDAW, New York, 1979)¹⁶⁹ includes the obligation of States to grant to women equal rights with men relating to acquire, change and retain their nationality.¹⁷⁰ Hence, even if it is not clearly mentioned, a denial to confer nationality may entail a violation of human rights.

On this topic, at the regional level the European Court of Human Rights interpreted extensively the ECHR, which does not include an autonomous right to nationality in its provisions. Indeed, recalling article 14 and the prohibition to discriminate the Court stated that the deprivation of the citizenship determines the violation of private and family life, protected by article 8 of the ECHR.

¹⁶⁶ Boll A. M. (2007), *Multiple Nationality and International Law*, Leiden, p. 171.

¹⁶⁷ Hereinafter ICERD

¹⁶⁸ Article 5, par. d, lett. III.

¹⁶⁹ United Nations – Treaties Series, *Volume 1249*, p. 13.

¹⁷⁰ Article 9.

In the case *Kurić and others v. Slovenia* ^{171[503]} the Court affirms that claimants were arbitrarily deprived of the possibility to acquire Slovenian citizenship following the declaration of independence of Slovenia in 1991. Claimants were also denied from filing their request in the short terms foreseen by national law. Consequently, when the terms expired some of the claimants became stateless and the following “cancellation” of nationality constituted an undue interference by the State in their private life. The State should have taken measures to regularize the status of the resident citizens of Former Yugoslavia and prevent that the non-attribution of the Slovenian citizenship could cause a disproportionate prejudice to the “cancelled” persons, whose private life remain protected under article 8. The failure to regularize their status and the impossibility to obtain a regular permit of stay made illegitimate State’s defence.¹⁷² Moreover, according to the Court, claimants suffered a treatment considered discriminatory on the ground of nationality, thus non-legitimate. Therefore, Slovenia has been condemned both for the violation of article 14 in conjunction to article 8.¹⁷³

The example of the European context can be taken as a good practice to guide State practice towards a more comprehensive protection framework regarding migrants and nationality matters. For example, according to the European Union (EU) law, citizenship represents the parameter of a general prohibition to discriminate, which is one *conditio sine qua non* to enjoy the freedoms included in the treaties establishing the EU.

The indivisible and universal values of human dignity, liberty and equality are the foundation of the EU, putting the person at the center through the institution of the European citizenship, for the respect of the cultural diversity and national identities of the different Member States, and aimed at strengthening the protection of fundamental rights.¹⁷⁴ Such are the inspirational principles characterizing the European citizenship, as elaborated in the EU law.¹⁷⁵ It contributed to develop

¹⁷¹ European Court of Human Right – Grand Chamber (2012), *Case Kurić and Others c. Slovenia*, Application no 26828/06.

¹⁷² Par. 359 of the decision.

¹⁷³ Par. 396 of the decision.

¹⁷⁴ See the preamble of the Charter of Fundamental Rights of the European Union. On the subject, see also G. Silvestri (2006), *Verso uno ius commune europeo dei diritti fondamentali*, in *Quaderni costituzionali*, pp. 7-24.

¹⁷⁵ On European citizenship, see Condinanzi M., Lang A., Nascimbene B. (2006), *Cittadinanza dell’Unione e libera circolazione delle persone*, Milano; Nascimbene B. (2011), *Cittadinanza dell’Unione europea e cittadinanza di residenza. Recenti profili*, in D’Amico (ed.), *Alle frontiere del diritto costituzionale. Scritti in onore di Valerio Onida*, Milan, p. 1301; Biondi Dal Monte F. (2012), *Cittadinanza europea, libera circolazione e parità di trattamento. Il diritto all’assistenza sociale dei cittadini dell’Unione*, in *Diritto, immigrazione e cittadinanza*, pp. 37-58; Favilli C. (2013), *Migration Law in Italy*, The Hague, p. 51; Veronesi P. (2014), *La dignità umana tra teoria dell’interpretazione*

a different perception of nationality, which is not limited to a mere parameter to establish a relationship between State and individuals, as described above. In fact, the definition of the European citizenship, which adds on the national one, evolved to facilitate and promote human mobility within the Union. Non-discrimination and citizenship are proposed as an example to highlight to this protection is interpreted in the EU context. Indeed, the concept of European citizenship was initially introduced with the Treaty of Maastricht (1992) with the aim to increase the protection of Member States' citizens benefiting from economical liberties set by the treaties establishing the Union.¹⁷⁶ Further rights were added later, such as some political ones and the free movement and residence.¹⁷⁷ Such rights are granted to European citizens who have the nationality of one Member State. As specified later by the Treaty of Amsterdam (1999) the European citizenship is complementary to the national one, thus it does not replace it. The EU has no power *per se* to interfere in the modalities to attribute national citizenship, which according to international law still falls under internal discretionary domain of States. The same setting was maintained with the Treaty of Lisbon (2007), which however intensified the value of participation of citizens to the democratic life of the Union.¹⁷⁸ Article 9 of the Treaty on the European Union (TEU),¹⁷⁹ enshrining the principle of equality of citizens, provides for the establishment of a European citizenship. Beside duties, the latter implies the attribution of a set of rights whose content is broadly specified. Among them, there are the right to move and reside freely in the territory of Member States, the right to vote and be elected for the European Parliament and the municipality of residence at the same and equal conditions as national citizens, the right to diplomatic protection in a territory of a third country (when the country of origin does not have diplomatic representation), the right to petition to the European Parliament, the right to apply to the Ombudsman, the right to write to the EU institutions in one of the official languages and the rights to access to EU documentation.

e topica costituzionale, in *Quaderni costituzionali*, pp. 315-356; Bartole S. (2009), *Costituzione e costituzionalismo nella prospettiva sovranazionale*, in *Quaderni costituzionali*, pp. 569-590.

¹⁷⁶ Tizzano A. (2011), *Alle origini della cittadinanza europea*, in Panella L., Spatafora E. (eds.), *Studi in onore di Claudio Zanghì*, Turin, Volume 3, Tome II, pp. 857-866.

¹⁷⁷ Hailbronner K. (2006), *Nationality in Public International Law and European Law*, in Bauböck R. Ersboll E., Groenendijk K, Waldrauch H. (eds.), *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries*, Amsterdam, pp. 35 – 104.

¹⁷⁸ See Article 10, par. 3 TEU.

¹⁷⁹ Text in *Official Journal of the European Union*, n. C 83/13, 30 March 2010.

The Treaty on the Functioning of the European Union (TFEU)¹⁸⁰ includes further provisions on European citizenship as the symbol of the intensity of the connection between the Member States (Articles 20-25), in the second part dedicated to “Non-discrimination and citizenship of the Union”).¹⁸¹ It specifies that the citizenship of the Union is additional and does not replace the national of a Member State (Article 20). The establishment of the European citizenship does not compromise nor restrict the competence of each Member State to decide the internal criteria to attribute their nationality, as also specified by the European Court of Justice in the case *Micheletti* (1992).¹⁸² However, it cannot entail unjustified discriminatory treatment. By echoing international law obligation to prevent statelessness, internal norms must respect the limit of non-deprivation of the citizenship. This was made clear in the *Rottmann* case (2010), where the Court stated that the decision by a Member State to revoke the citizenship obtained in a fraudulent manner must respect some requirements anyways including justifying such measure in relation with the seriousness of the infraction committed by the individual.¹⁸³

European citizens benefit from other rights arising from the EU treaties and regulations adopted by European institutions. For instance, the right to move and reside freely in the territory of Member States (Article 21 TEU) and political rights which can be exercised in a State different from the one of nationality of an individual (Article 22 TEU).

The Charter of Fundamental Rights of the European Union (Nice, 2000 - readapted in Strasbourg, 2007)¹⁸⁴ not only contains norms on citizenship of the Union (title V, Articles 39-46), but also it links it to non-discrimination (Article 21).

This analysis of the relevant instruments of the European Union highlights that the main aim of the Union is to actively engage and involve to the maximum extent the citizens in the European

¹⁸⁰ Text in *Official Journal of the European Union*, n. C 326/47, 26 October 2012.

¹⁸¹ On this subject, Gaja G., Adinolfi A. (2014), *Introduzione al diritto dell'Unione europea*, Bari, p. 14.

¹⁸² European Court of Justice (1992), decision *Micheletti*, case C-369/90, in *European Court Reports 1992 I-04239*. The Court observes: «Under international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality. However, it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty. » (par. 10). On this subject, see also: B. Nascimbene (1995), *Profili della cittadinanza dell'Unione Europea*, in *Rivista internazionale dei diritti dell'uomo*, p. 246.

¹⁸³ European Court of Justice (2010), decision *Rottmann*, case C-135/08, in *European Court Reports 2010 I-01449*. The Court recalls the principle of proportionality: « (...) it is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalization when that nationality has been obtained by deception, on condition that the decision to withdraw observes the principle of proportionality. (par. 59).

¹⁸⁴ Text in *Official Journal of the European Union*, n. C 83/389, 30 March 2010.

integration process, with the purpose to build a new “super-national” identity of the Europeans.¹⁸⁵ This objective is pursued through various initiatives. For example, the decision no. 1093/2012/UE adopted by the European Parliament and the Council on the European Year of Citizens (2013) is aimed to raise the awareness of European citizens on their rights and duties, promoting intercultural cohesion and countering discriminations, ultimately to foster a broader participation and integration of migrants coming from third countries into European societies.¹⁸⁶

Case-law of the European Court of Justice is abundant on this matter, playing an important role of guidance in clarifying the meaning and the scope of the European citizenship as a tool of inclusion and integration, including for migrants of third countries and on the basis of the principle of non-discrimination enshrined in Article 18 TFEU.¹⁸⁷ In general, in compliance with the *dictum* of the International Court of Justice in *Notthebohm* case, according to the Court of Luxembourg the European citizenship does not imply a strict interpretation of the principle of effectiveness. The *Micheletti* case mentioned above follows this orientation, promoting an effective enjoyment of freedoms and rights deriving from the European citizenship. Thus, besides the mere recognition of the citizenship, no other requirement is necessary to benefit from such rights.¹⁸⁸ It results that even if the Court affirms the value of the effectiveness criterion for citizenship, it does not consider the latter as the sole suitable requirement for the enjoyment of rights, especially when it comes to cases where the citizenship is attributed by a Member States and rights are exercised in the territory of another Member State in the Union. This was clarified in the case of *Zhu and Chen* (2004), where the Court expressed in favour of non-discrimination as a genuine link to a Member States is not necessary for the exercise of rights in another State, especially if the best interests of minors are involved.¹⁸⁹ Furthermore, the Court assumed a stronger position in favour of the individual

¹⁸⁵ Simone P. (2013), *Nationality and regional integration. The case of the European Union*, in Annoni A, Forlati S. (eds.), *The Changing Role of Nationality in International Law*, London – New York, pp. 169-192; Cortina A. (2007), *Cittadinanza europea: un'identità aperta*, in Trujillo I, Viola F. (eds.), *Identità, diritti, ragione pubblica in Europa*, Bologna.

¹⁸⁶ European Parliament (2013), *Resolution of 14 March 2013 on the integration of migrants, its effects on the labour market and the external dimension of social security coordination*, doc. (2012/2131(INI)).

¹⁸⁷ Parisi N., Urso G. (2011), *I principi di eguaglianza e di non discriminazione nell'ordinamento dell'Unione europea*, in Panella L., Spatafora E.(eds.), *Studi in onore di Claudio Zanghì*, Turin, Volume 3, Tome II, pp. 781-807.

¹⁸⁸ Simone P. (2014) *op.cit.*, p. 175; Cipolletti C., *Cittadinanza statale e cittadinanza europea: il caso della legge maltese*, in *Rivista di diritto internazionale*, 2014, pp. 463-485.

¹⁸⁹ Zhu was a minor who acquired the Irish citizenship upon birth in Ireland and her parents were considered entitled to reside in the UK exercising their freedom of movement and reside in another Member State, in quality of primarily responsible of their child's care and upbringing. European Court of Justice, decision 19 October 2004, *Zhu and Chen*, case C-200/02 in *European Court Reports 2004 I-09925*.

rights over national citizenship and immigration laws in a case involving a citizen of a third country, *Ruiz Zambrano* (2011).¹⁹⁰ In this case the applicant was a Colombian citizen who had two children with Belgian citizenship. The Court decided that he had a derivative right to reside in Belgium and he did not need a work permit because he was caring his children, averting his expulsion from Belgian territory. This decision represents a step forward towards the prominence of human rights over immigration and security interests of the State. The Court went further extending the scope of deriving rights of European citizenship in the decision *Dereci and others* (2011).¹⁹¹ All the applicants were from third countries (Nigeria, Serbia, Sri Lanka and Turkey), willing to reunite with their family members with European citizenship and living in Austria. Notwithstanding none of the Austrian members of the families were at risk of expulsion from the country, two citizens of the third countries were in condition of economic dependency from the European citizens. Based on the respect of the private and family life the Court recalled Articles 7 of the Charter of the EU and 8 of the European Convention on Human Rights and affirmed that the fundamental rights in this case are extended to the non-citizens members of the family of the EU citizens. This orientation rather gives more relevance to the protection of human rights than nationality or citizenship, despite applicants where third countries nationals. This could be interpreted as paving the way towards the acknowledgement of the predominance of human rights over nationality, making the latter important on a purely administrative plan and ensuring border management and security, but to a very limited extent when it comes to realizing rights for migrants.

The European experience as exposed shows how even if international law does not provide an obligation of States to attribute their nationality, individuals regardless their nationality enjoy human rights under the jurisdiction and in the territory of host States too. Such States shall treat them with respect of human dignity and in conditions of equality to nationals. In fact, human rights are granted all the time, and the mentioned international treaties are intended to protect individuals, rather than States' interests. For this reason, there exists a hard-core of human rights that cannot be suspended, not even in case of public serious threat, because such rights are regarded as fundamental and inherent to humankind. Thus, it emerges an obligation for States to take positive

¹⁹⁰ European Court of Justice (2011), decision *Ruiz Zambrano*, case C-34/09, in *European Court Reports 2011 I-01177*.

¹⁹¹ European Court of Justice (2011), decision *Dereci and others*, case C-256/11, in *European Court Reports 2011 - 00000*.

action accordingly and adopt all possible measures to remove the obstacles for a full enjoyment of human rights of individuals, in compliance with their responsibility to protect and trying to make an effort to progressively reduce the differences between citizens and foreigners or migrants.

At present, in countries and societies impacted by international migration, such distinction should be viewed as a mere formal acknowledgment and should not affect the substance of individuals rights. This assumption is based on the principle of humanity, as every individual is rights-holder, besides duty-bearer. Both international and national law should be applied accordingly by States, taking also into consideration that all the areas of international law incorporate the “considerations of humanity” as a guiding principle in the application of the norms.¹⁹² Such rights derive and are inherent to dignity of humankind, without consideration of the genuine link of an individual to a State of nationality. Multi-level protection of human rights systems and international jurisdictional remedies are set to allow individuals to claim the realization of their rights against States in case of violations. This mechanism and access to justice overall is intended not only to ensure that States comply with the core of rights, but also to integrate national legal systems when they narrow the scope of application of human rights, thus increasing the level of protection. Such interpretation leads citizenship to have more of a meaning of *affectio societatis* as it develops the sense of belonging to a given community, rather than being the foundation of the enjoyment of rights.

The increase of international migration, perceived with suspicion by States whenever uncontrolled movements of people represent a threat to internal security, certainly corresponds to the exercise of the fundamental right of individuals to leave their country and move freely, which can only be restricted in case of proven necessity to protect national security, public order or health reason. As explained above, it comes to flexible concepts with undefined limits, but established to protect the host community. However, when balancing interests at stake, States interests never prevail determining a substantial compression of rights for individuals, unless exceptional conditions apply. In fact, increasing globalization and human mobility are also accompanied by the multiplication of the levels of governance and sources of law,¹⁹³ which are promoting the progressive attainment of a “global law of heteronymous source” or a transnational protection of

¹⁹² In this sense the International Court of Justice (1949) in *Corfu Channel (U.K. v. Northern Ireland and Albania, 1949)* judgement, p. 22, and the International Tribunal for the Law of the Sea (1999) in *MV Saiga (No. 2) (Saint Vincent and Grenadines c. Guinea, 1999)* par. 155.

¹⁹³ Locchi M. (2014), *Lo ius soli nel dibattito pubblico italiano*, in *Quaderni costituzionali*, pp. 483-503.

human rights.¹⁹⁴ This could also contribute to boost an adaptation to changing societies and national contexts, more and more open to interculturality and internationality, towards more inclusive societies, and also encourage States' response in compliance with the non-discrimination principle. In this sense, nationality instead could assume relevance as reflecting the cultural identity of an individual, and it can be interpreted as the parameter to remind States not to discriminate non-nationals, regardless of their migration status and the reasons why they decide to work and reside in another country. Nonetheless, nationality still remains integral part of the legal identity of each individual and both should be acknowledged by States, especially to access to justice and other essential services. Failing to comply with it, could challenge security and potentially determine the cause and the consequence of uncontrolled movement of people trying to escape widespread discrimination and violations, especially if they are related to statelessness. Indeed, the latter *per se* undermines the access to basic rights and services.¹⁹⁵

¹⁹⁴ Morrone A. (2012), *Teologia economica v. Teologia politica? Appunti su sovranità dello Stato e «diritto costituzionale globale»*, in *Quaderni costituzionali*, pp. 829-853.

¹⁹⁵ Sironi A. (2016), *The Double Plight of Stateless Migrants*, , available at <https://weblog.iom.int/double-plight-stateless-migrants>, last accesses September 2021; Althaus A., Parker L. (2019), *Preventing statelessness among undocumented migrants: The role of the International Organization for Migration*, , available at <https://blogs.lse.ac.uk/mec/2019/05/07/preventing-statelessness-among-undocumented-migrants-the-role-of-the-international-organization-for-migration/>, last accessed September 2021.

2. International legal instruments to prevent cross-border crimes related to migration at sea

Identifying migrants and their needs appears to pose challenges in itself, especially at the border. In fact, international law is gradually evolving to improve identification and tackle the fragmentation of the legal framework governing migration as it links to security management. As a result, States security measures especially those undertaken at sea often conflict with adequately assessing individuals needs and providing rights in compliance with protection obligations and as part of migration management. While the second part, identification process is part of the analysis in *Chapter 2*, this study focuses now on the international legal instruments applicable in the context of the sea, hence intrinsically transnational and cross-border in nature.

State measures to identify migrants and refugees at sea are more complex to be undertaken when it comes to sea borders, that represents a major issue and triggers the reflections and observations that follows, notably on the extraterritorial application of human rights obligations. At present, the most updated data shows that overall and mostly in Europe (but not only) arrivals at the sea borders are the higher proportion and numbers,¹⁹⁶ compared to land and air entry points. Hence, this data requires much attention, specifically on the implications of managing migrations at the sea borders and the applicable instruments engaging countries in bilateral and regional cooperation to tackle transnational organised crime.

States have taken up increasingly pervasive measures to address the challenges posed by irregular migration by framing it more as a security matter, rather than focusing on the concerns in terms of protecting human rights of the individuals involved. To this end, in order to manage migration effectively, border States and particularly the coastal ones have opted to regulate external borders entries¹⁹⁷ by stressing their requirement to tackle internal and international security threats, including transnational organised crime, rather than abiding by humanitarian obligations.

¹⁹⁶ See for example IOM-DTM report *DTM Europe Summary of key activities and findings*, available at https://displacement.iom.int/system/tdf/reports/DTM%20Med%202020%20Info%20Sheet_final.pdf?file=1&type=node&id=10732, last accessed September 2021.

¹⁹⁷ Border management is defined as “the administration of measures related to authorized movement of persons (regular migration) and goods, whilst preventing unauthorized movement of persons (irregular migration) and goods, detecting those responsible for smuggling, trafficking and related crimes and identifying the victims of such crimes or any other person in need of immediate or longer-term assistance and/or (international) protection”. International Organization for Migration (IOM), *Glossary on Migration*, *op.cit.*

Nevertheless, mobility in Europe has always been driven by bidirectional in and out movements of goods and people, at the roots of the European Union organization itself. This freedom of movement of persons and goods has strengthened the economic relations among EU Member States, as well as facilitated the creation of more employment and labour mobility across the territory of these countries. Yet recently the perception of migration has changed. As mentioned above, migration has been associated to an uncontrolled movement of people who constitute a threat, accompanied by a negative narrative and thus requiring to be dealt with beyond States' sovereign territory. Consequently, migration is managed already at sea, including the interception of vessels transporting migrants in international waters. These actions are often confused with rescue operations at sea, for which all States are called to respond in case of situation of danger or distress at sea. In the case of migrants and refugees the danger is obvious: most of the times they are risking their lives on unseaworthy embarkations to cross the Mediterranean in the attempt to reach Europe.

To fill the gap in humanitarian protection, since the start of the 2015 migration crisis, available sources¹⁹⁸ report that many non-governmental organisations (NGOs) have intervened in search and rescue in the Mediterranean Sea, but they have been later condemned for criminal activities such as smuggling of migrants and trafficking in persons, that interceptions are aimed at combating. This fact not only highlights the need to understand what type of transnational organised crime the operations at sea are intended to counter, but also the necessity to redefine and update the constitutive elements of these crimes. For instance, smuggling, as currently regulated, could be interpreted in detriment of protecting individuals in distress at sea in need to be rescued, and or/deter any vessels to expeditiously proceed with these operations, no matter their status or flag State is. This interpretation could oppose to the international human rights law and international refugee law. In fact, according to international standards, States have the responsibility to ensure that border management legislation, policies and practices adhere to human rights and refugee law and respect the rights of all people moving across their borders despite their migration status.

In light of these elements, the present chapter focuses now on the limits of exercise of States powers outside their territory, especially to tackle transnational organised crime that should be

¹⁹⁸ Cuttitta, P. (2023). Bridgeheads of EU border externalisation? NGOs/CSOs and migration in Libya. *Environment and Planning C: Politics and Space*, 41(4), 752–770. <https://doi.org/10.1177/23996544221143905> last accessed September 2023.

balanced with the obligation to protect human life at sea. To this end, the legal framework of the law of the sea is presented with the purpose of shedding light on two measures whose purpose is clearly distinct but that are often confused in States practice – interceptions and rescue operations - aimed at combating two different crimes that are also confused but are clearly different – trafficking in person and smuggling of migrants.

a) Applicable international law of the sea

Whenever any action at sea is undertaken, no matter the purpose,¹⁹⁹ States have the obligation to first render assistance if needed.²⁰⁰ This fundamental principle is enshrined in the United Nations Convention on the Law of the Sea (UNCLOS) (Montego Bay, 1982), which is the constitution for the use of the different maritime zones and regulates the use of the seas, being the legal framework of reference to which other international law treaties add further specific regulations. The peculiarity of the Law of the Sea, as codified within the UNCLOS, is that the latter contains few norms directly addressed to individuals at sea and their conduct, rather than setting a framework for the States and the powers they can exercise in the use of the seas as reflected in customary law.²⁰¹ While States are in general called upon to protect human life at sea on the basis of Article 98 of the UNCLOS, the norms concerning human conduct are aimed at combating illicit activities at sea such as piracy, the transport of slaves, illicit drug trafficking and psychotropic substances and unauthorized transmissions, which allow some or even all States²⁰² to exercise repressive powers and punish the responsible of such crimes. However, this has not prevented the Law of the Sea from evolving with reality and responding to the current challenges and threats to the safety of maritime navigation. Among those there is transnational organised crime, including smuggling of migrants at sea and the tragic consequences deriving from it in terms of loss of human lives. The illegality of such type of illicit trafficking and the risks they entail are condemned by the international community and particularly by the United Nations General Assembly, which encourages States to manage international migration safely and according to a global approach,

¹⁹⁹ It would even include cases of transnational organised crime.

²⁰⁰ This duty enshrined in Article 98, par. 2, UNCLOS, is also supplemented by other international law of the sea thematic treaties, the SOLAS Convention and the SAR Convention.

²⁰¹ Papanicolopulu I. (2012), *The Law of Sea Convention: No Place for Persons?* in *The International Journal of Marine and Coastal Law*, p. 867.

²⁰² Articles 99, 108 and 109 UNCLOS.

through constant dialogue between States aimed at enhanced cooperation.²⁰³to exercise repressive powers and punish the responsible of such crimes. Among these, there is transnational organised crime, including smuggling of migrants at sea and the tragic consequences deriving from it in terms of loss of human lives. The illegality of such type of illicit trafficking and the risks they entail are condemned by the international community and particularly by the United Nations General Assembly, which encourages States to manage international migration safely and according to a global approach, through constant dialogue between States aimed at enhanced cooperation.²⁰⁴

Notwithstanding this, no UNCLOS norm nor any other standard of customary international law authorises a State to interfere in the freedom of navigation on the high seas by exercising its jurisdiction against foreign ships, even when there are reasonable grounds that the latter are used for the transport of irregular migrants. In fact, the illicit trafficking or transport of migrants is not considered as *crimen juris gentium* according to international law.²⁰⁵ This activity is rather relevant to the internal legal systems of the States, involving violations of immigration laws regulating the entry conditions to the territory. Therefore, all the infractions are realised only once the suspected ships transporting irregular migrants enter the territorial sea of the coastal State, breaching immigration laws and authorising the State to intervene with preventive powers.²⁰⁶ Conversely, vessels transporting irregular migrants cannot be seized or searched when they are still on the high seas. Beyond the twelve nautical miles delimiting the territorial sea, the coastal State can exercise

²⁰⁴ United Nations General Assembly (2012), *Resolution 67/68 Oceans and the law of the sea*, doc. UN A / RES / 67/78: « Calls upon States to continue to cooperate in developing comprehensive approaches to international migration and development, including through dialogue on all their aspects;”(par. 130). See also paragraphs 111-113 and 126-130, expressly dedicated to the challenges linked to transnational organised crime, in which the Assembly invites to strengthen the cooperation between States to counter this phenomenon and the consequences that derive from it, ensuring the safety of navigation in a more effective fashion and encouraging the application of the instruments on this subject promoted by the International Maritime Organization (IMO).

²⁰⁵ According to the *International Law Commission* a “*crimen juris gentium*” triggers the principle of “universal jurisdiction”, which is a unique ground of jurisdiction in international law enabling a State to exercise national jurisdiction over certain crimes in the interest of the international community. It is described as *criminal* jurisdiction based solely on the nature of the crime, without regards to the territory where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the State exercising such jurisdiction. The principle of universal jurisdiction increasingly has been invoked by States in the fight against impunity for heinous international crimes, which are among the most serious crimes of concern to the international community as a whole. Piracy is considered to be a classic example as it comes to a crime affecting the *communis juris* and is a *delictum juris gentium* (a “crime against the law of nations”).

United Nations International Law Commission (2018), *Report of the International Law Commission (Seventieth session) – Annex A*, doc. A/73/10, par. 1, 2 and 4.

²⁰⁶ Articles 21, par. 1 letter *h*, 25 and 27 UNCLOS.

the powers of control to enforce the internal laws on immigration provided by the contiguous zone regime, on condition that such zone has been established, declared and accepted by other States. However, the coastal State can always legitimately exercise the right to visit ships and boats without nationality on the high seas, in order to conduct operations of control and prevention of irregular immigration.²⁰⁷ This practice is quite widespread by coastal States, especially by those on the southern borders of the European Union, including Italy and Spain. Indeed, usually smuggled migrants use boats without a name, and they do not fly the flag of any given national state. More often they are unsecure wrecks out of use or removed from the naval registers due to unfitness to navigate, and the people transported are put at the command of helmsmen without the necessary permits for navigation.

In contrast, for irregular migration, the only legitimate interference against foreign ships on the high seas derives from the consent of the States concerned, on the basis of the principle *volenti non fit injuria*.²⁰⁸ The consent can be expressed orally by the flag State of a ship whenever the State deciding to intervene requests it to proceed with the exercise of the right of access on a ship suspected of transporting irregular migrants to its coasts. As alternative, it can be lent through an agreement between the coastal and the flag State. In any case, the conclusion of such type of treaties does not exempt the parties involved from the obligation to safeguard human life at sea, including that of irregular migrants. Indeed, the principle of saving life at sea comes into play whenever States prevent any vessels engaged in search and rescue to save migrants' lives at sea.²⁰⁹ In fact, to fill the humanitarian gap of coastal States that do not take immediate action to respond to distress calls of migrants at the mercy of sea while crossing the Mediterranean, many NGOs have intervened at sea with their own means and vessels to take migrants to a place of safety. The first ones were *Migrant Offshore Aid Station (MOAS)* in 2014, then *Sea-Watch* and *Médecins*

²⁰⁷ Article 110, par. 1, lett (d) UNCLOS: “a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with Articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that: (a) the ship is engaged in piracy; (b) the ship is engaged in the slave trade; (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under Article 109; (d) *the ship is without nationality*; or (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship” – italic added.

²⁰⁸ Ronzitti N. (2002), *Coastal State Jurisdiction over Refugees and Migrants at Sea*, in Ando, McWhinney, Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, p. 1274.

²⁰⁹ According to the UN experts, any measure against humanitarian actors should be halted. See United Nations Office of the High Commissioner for Human Rights (UNOHCHR), [Italy: UN experts condemn bill to fine migrant rescuers](#), 20 May 2019.

Sans Frontières (MSF) in 2015.²¹⁰ These private initiatives raised many controversies with coastal States trying to stop them or preventing them to enter their territorial waters. Many more NGOs started the same type of operations in 2016, but the number experienced a decrease the following year due to the concern that these organisations had to be prosecuted by the coastal State of disembarkation (especially in Italy) on the ground that the NGOs ships were transporting irregular migrants. The State could claim that they were aiding illegal migration and therefore these NGOs could be assimilated to “smugglers” or criminal networks.²¹¹ Conversely, while some of these NGOs limited their assistance to irregular migrants to providing basic response (food, water and medical assistance), others were patrolling international waters to spot migrants in distress and embark them, provide humanitarian aid and subsequently disembark them in the nearest port of safety. Thus, they were filling the gap left by the end of the Italian mission *Mare Nostrum*. NGOs’ interventions can be considered fully fledged “rescue operations” and, in any case, they cannot be assimilated to “smuggling of migrants”, since it does not come to the procurement by the NGOs of the illegal entry of rescued migrants into the coastal State for the purpose to obtain a financial or other material benefits.²¹² On the contrary, NGOs respond on the basis of the duty to render assistance to any person in danger at sea. As also specified by the United Nations Experts, article 98 UNCLOS is considered customary law and it applies to all maritime zones and to all persons in distress, without discrimination, as well as to all ships, including private and NGO vessels under a State flag.²¹³

Understanding the legal framework regulating trafficking in persons and smuggling of migrants requires a reflection on events and factors that led to the adoption to the two additional Protocols to the Convention against Transnational Organised Crime (Palermo, 2000), that is hereby presented.

²¹⁰ Gombeer, Kristof and Fink, Melanie (2018), *Non-Governmental Organisations and Search and Rescue at Sea in Maritime Safety and Security Law Journal*, Issue 4, available at SSRN: <https://ssrn.com/abstract=3468719>

²¹¹ The Washington Post (2017), Aid groups say Italy is forcing them to stop rescuing migrants at sea, available at <https://www.washingtonpost.com/news/worldviews/wp/2017/08/15/aid-groups-say-italy-is-forcing-them-to-stop-rescuing-migrants-at-sea/> last accessed on 24 October 2019.

²¹² According to the definition set by Article 3 of the *Palermo Protocol*.

²¹³ United Nations Office of the High Commissioner for Human Rights (UNOHCHR) (2019), *Italy: UN experts condemn bill to fine migrant rescuers*, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24628&LangID=E> last accessed 24 October 2019.

b) The IMO Circular paving the way for the adoption of the Palermo Protocol

States have committed to take joint action to prevent, repress and prosecute smuggling and transport of irregular migrants at sea. This commitment has resulted into the elaboration and adoption of many international thematic instruments, particularly some soft-law recommendations which paved the way for the most relevant international binding treaty: the Palermo Protocol on Smuggling of Migrants, additional to the Convention against Transnational Organised Crime. A list of recommendations was promoted and drafted in a document by the International Maritime Organization (IMO)'s Maritime Safety Committee, in December 1998, and then updated in June 2001. This instrument contains standards concerning provisional measures to be taken in the fight against dangerous activities associated with smuggling and transport of migrants at sea.²¹⁴

The IMO was the first organisation to tackle the problem of illegal smuggling of migrants by sea, focusing in particular on the aspects concerning navigation safety. The purpose of the 1998 IMO circular is to guide the States to coordinate their efforts recalling relevant rules of the IMO Conventions already in force and applicable in terms of maritime safety. It also encourages the States Parties to respect the obligations contained in the IMO Conventions.²¹⁵

The measures in this instrument concern only indirectly the transport of migrants, being more aimed at guaranteeing the safety of navigation and the protection of human life at sea.²¹⁶ These measures are applicable to any ship engaged in international transport with passengers on board.²¹⁷

²¹⁴ International Maritime Organization (IMO) (2001), *Interim Measure for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea*, doc. MSC / Circ.896 / Rev.1, available at <https://www.maritimelglobalsecurity.org/media/1024/msc1-circ896-rev1.pdf> last accessed September 2023.

²¹⁵ "The purpose of this circular is to promote awareness and co-operation among Contracting Governments of the Organization so that they may address more effectively unsafe practices associated with the trafficking or transport of migrants by sea which have an international dimension" (par. 3)

International Maritime Organization (IMO) (2001), *Interim Measures for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea*, doc. MSC / Circ.896 / Rev.1.

²¹⁶ Before the IMO, UNHCR had brought to the international attention the issue of the need for rescue with reference to the protection of refugees at sea during the Indochinese crisis. United Nations High Commissioner for Refugees (UNHCR) (1981), *Problems Related to the Rescue of Asylum-Seekers in Distress at Sea*, doc. EC/SCP/18, available at <https://www.unhcr.org/excom/scip/3ae68ccc8/problems-related-rescue-asylum-seekers-distress-sea.html> last accessed September 2023. The topic was then discussed first at the IMO Assembly in 1997 and then by the IMO Maritime Safety Committee

International Maritime Organization (IMO) (1997), *Resolution A.867 (20), Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea*, doc. A 20 / Res. 867, available at [http://www.imo.org/en/OurWork/Facilitation/docs/FAL related nonmandatory instruments/Resolution A.867\(20\).pdf](http://www.imo.org/en/OurWork/Facilitation/docs/FAL%20related%20nonmandatory%20instruments/Resolution%20A.867(20).pdf) last accessed September 2023; Nordquis H., Kraska N. (2021), *United Nations Convention on the Law of the Sea, 1982: A Commentary. Supplementary Documents*, Geneva, p. 790.

²¹⁷ See definition of "ship" contained in par. 2.1 of the Circular.

According to the circular, a ship is performing dangerous activities when, by carrying out an international transport, it contravenes the fundamental principles of maritime safety codified in the Convention for the Safety of Life at Sea (SOLAS, London, 1974) and when there is no crew nor permits required for this type of transport. This constitutes a threat to the life and health of people on board.²¹⁸ Therefore, the circular reaffirms a general obligation of the States to cooperate by collecting and disseminating the information concerning all the ships dedicated to the traffic and transport of migrants. In addition, State should prevent that these ships undertake any other dangerous journeys again or leave from the port where they are. The obligation of cooperation in the repression of such trafficking is applicable not only for the flag State of the ship, but also for every State that has justified reason to believe that a particular vessel is dedicated to the smuggling of migrants.²¹⁹ The measures in the circular include some exceptionally coercive powers that can be exercised on the high seas. Provided that there is a well-founded reason that a ship navigating on the high seas is involved in the illegal transport of migrants, a State may request the consent of the flag State so that its military ships²²⁰ may carry out the inspection on board the suspected vessel. If such suspicions are confirmed, the intervening State authorities may take “appropriate measures” for which it has been authorised by the flag State.²²¹ In the event that the suspected ship is without a nationality or assimilated to it and is engaged in unsafe practices associated with the trafficking or transport of migrants by sea, the State may request the assistance of other States in preventing the use for that purpose. The States so requested should render such assistance as is reasonable under these circumstances.²²² Every State that intervenes can avail itself of the prompt collaboration of the State whose consent is requested, and this consent might be subjected to certain conditions of mutual agreement between the two States, especially regarding the measures to be

²¹⁸ Section 2.3 of the Circular.

²¹⁹ Section 11 of the Circular.

²²⁰ Paragraph 20 of the Circular. According to par. 22 all vessels that have assisted people in danger at sea and have therefore embarked migrants should not be considered as engaged in dangerous activities, in compliance with international law and in particular with the SOLAS Convention.

²²¹ Paragraph 12 of the Circular: “A State which has reasonable grounds to suspect that a ship exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State is engaged in unsafe practices associated with the trafficking or transport of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that ship. The flag State may authorize the requesting State to, inter alia: 1. board the ship; 2. inspect and carry out a safety examination of the ship, and 3. if evidence is found that the ship is engaged in unsafe practices, take appropriate action with respect to the ship, persons and cargo on board, as authorized by the flag State. A State which has taken any action in accordance with this paragraph should promptly inform the flag State concerned of the results of that action.”

²²² Paragraph 11 of the Circular.

taken jointly.²²³ In fact, such conditions must comply with domestic and international law concerning the illegal transportation of migrants.²²⁴ They also have to comply with the safety of navigation rules, taking into account the humanitarian principles applicable to people on board.²²⁵ Noteworthy is the reference, in paragraph 5 of the Circular, to the respect of the rights of asylum seekers and refugees contained in the CSR and in the attached Protocol of 1967. Lastly, States are required to transmit to the IMO a report on the incidents eventually occurred and, on the measures taken to re-establish safety conditions.

This the IMO circular provided the conceptual base that led to the adoption of the first binding instrument on smuggling of migrants, exposed in continuation.

c) [The Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organised Crime](#)

In the framework of combating transnational organised crime, the action to reduce the incentives for irregular migration through combating exploitative practices is the first result that States are committed to achieve. This is done through addressing the root causes of migration in countries of transit and origin, considerably before crossing the sea.

Smuggling of migrants indicates “(...) the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.²²⁶ The Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention against Transnational Organised Crime (hereinafter the Palermo Protocol, New York, 2000)²²⁷ is a dedicated thematic international treaty adopted to prevent smuggling of migrants, tackle the criminal consequences of irregular migration by sea and promote the cooperation among States, while ensuring that the rights of the individuals involved are respected. In fact, the IMO Circular represented a first attempt to encourage such cooperation among States to comply with

²²³ Paragraph 13 of the Circular.

²²⁴ Paragraph 16 of the Circular.

²²⁵ Paragraph 17 of the Circular.

²²⁶ Article 3, lett. a) of the *Palermo Protocol*.

²²⁷ Hereinafter: *Palermo Protocol*, adopted by General Assembly Resolution A/RES 55/25 on 15 November 2000. Currently (September 2019) 149 States are parties to the Protocol. The text is reproduced in United Nations, *Treaty Series*, Vol. 2241, doc. A/55/383, p. 507.

safe and secure navigation rules. However, this latter instrument was not including any provision on prevention mechanisms or rights of migrants, but it was rather aimed at safeguarding the lives of migrants.

As a country particularly affected by international migration and arrivals by sea, Italy played an important role first in proposing the adoption of the *IMO Circular*, and also in the elaboration of the Palermo Protocol. The latter advocates for the introduction of a specific legal framework aimed at making international cooperation more effective for the prevention and repression of this dangerous illegal activity. To this end, Italy presented a joint proposal with Austria to the United Nations Commission for Crime Prevention and Criminal Justice, a body created by the Economic and Social Council (ECOSOC).²²⁸ The United Nations General Assembly approved the initiative establishing an *ad hoc* committee for the drafting of the text of an international treaty against transnational organised crime, whose formal adoption was completed in 2000.

Along with the Palermo Protocol, an additional treaty was also prepared with the objective to combat irregular migration by sea. The provisions contained in the 1998 IMO Circular were largely transposed in this. Its rules focus on the objective of prevention, leaving a certain unclarity regarding the measures to be adopted in the repression of smuggling and illegal transport of migrants. The State Parties maintain discretion in defining the methods of carrying out law enforcement actions against the crime exploiting irregular migrants. They can act in cooperation with each other by virtue of the international cooperation scheme that the Protocol itself intends to promote.

The need for enhanced cooperation for this particular criminal activity derives from the issue of addressing the smuggling of migrants taking place out of the jurisdiction of one single State, in an area where many more might be involved instead. Therefore, it is not always easy to identify which is the responsible State to protect the rights of the individuals, prosecute the authors of this crime and ensure compliance with the international standards. In this sense, high seas become the privileged area for carrying out illicit activities, including in the case of unsafe boats used for such type of unsecure transportation of irregular migrants. In this case the principle of territorial jurisdiction implies the extraterritorial application of States' jurisdiction, thus requiring joint

²²⁸ Momtaz D. (1999), *La lutte contre « introduction clandestine » de migrants par mer*, in *Annuaire du Droit de la Mer*, p. 49; Brolan C. (2002), An Analysis of the Human Smuggling Trade and the *Protocol Against the Smuggling of Migrants by Land, Air and Sea (2000)* from a Refugee Protection Perspective, *International Journal of Refugee Law*, Volume 14, Issue 4, Pages 561–596, <https://doi.org/10.1093/ijrl/14.4.561>, p. 582.

enforcement actions. In fact, precisely because irregular migration by sea is transnational by nature itself, only interstate cooperation can ensure an effective cross-border management.

Since smuggling of migrants entails irregular entry and cross-border movements, migrants accept and take the risk consenting to be transferred from a place to another, being then exposed not only to the vulnerability of the sea crossing but also to other exploitative conditions to the detriment of their fundamental human rights. The Protocol however pursues the objective to criminalise the criminal activity while avoiding making migrants liable for it.²²⁹

Exploitative practices that can be associated to smuggling of migrants fall under the scope of trafficking in persons, that is regulated in the second additional protocol to the Convention Against Transnational Organised Crime. Its provisions and scope are explained further as follows.

d) *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*

Smuggling of migrants, an illicit activity always transnational, is often confused with trafficking in person. However, trafficking in persons²³⁰ entails exploitation and is defined as:

“(...) the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

From this definition, it is relatively easy to ascertain the difference in conduct, means and purpose between trafficking in persons and smuggling of migrants. Hence, it can be deduced that six

²²⁹ Article 5 of *Palermo Protocol*.

²³⁰ For the purposes of the present study, the definition of *trafficking in persons* set forth by the Palermo Protocol is used, as opposed to *trafficking in human beings* which is preferred in European Union law: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>, last accessed August 2022.

fundamental elements distinguish trafficking in persons from smuggling of migrants.²³¹ First, the victims of trafficking are subject to coercion or fraud by the author of such illegal conduct, while migrants knowingly choose and consent to use the services provided by smugglers. Secondly, the smuggling of migrants ends when a migrant reaches the destination irregularly, while trafficking might take place within the border of the same country, or the exploitation might continue – but not necessarily - after the victim reaches another country. The third relevant element is the border crossing, which is required for smuggling to happen, and not necessarily for trafficking, that might also happen within the context of one country only. Moreover, the modality in which the profit is generated is different for trafficking in person as it derives from the exploitative activity, while for smuggling of migrants the facilitation of border crossing generates an income. Unlike for migrants involved in trafficking in persons, smuggled migrants are not considered as victims. Lastly, if smuggling of migrants is considered as crime against the State, trafficking in persons is a crime against the person.

Therefore, it becomes apparent that the two criminal activities are different in act, means and purposes. Though, they remain associated as they can both happen in the context of migration and displacement, presenting a further ground for heightened vulnerabilities for the individuals involved. Moreover, it practices it often happens that one situation (smuggling) might evolve to the other (trafficking), or the other way around.

Overall, the two binding instruments appear clear in defining difference between the two crimes. Yet, in State practice it is not infrequent to find instances and cases whereby the norms are transposed in the national legal framework as confused, featuring blurry lines between the typified conducts and leading to the incorrect application of the norms.²³²

e) Distinguishing interception at sea from rescue operations

Besides the distinction between smuggling and trafficking, there are two other concepts that are often confused in State practice: (1) rescue operations at sea, for which all States are called to

²³¹ Obokata, T. (2010) *The Legal Framework Concerning the Smuggling Of Migrants At Sea Under The Un Protocol On The Smuggling Of Migrants By Land, Sea And Air*. In *Extraterritorial Immigration Control*. Leiden, The Netherlands <https://doi.org/10.1163/ej.9789004172333.i-441.33>, p. 152.

²³² Cottone L. (2019), *The blurry line between smuggling and rescuing migrants according to the international law of the Sea* in *Quaderns de Recerca – Universitat Autònoma de Barcelona (UAB)*, available at https://ddd.uab.cat/pub/trerecpro/2019/hdl_2072_366031/N_49_-_Rosalinda_Cottone.pdf last accessed September 2023.

respond in case of situation of danger or distress at sea, and (2) interception or interdiction at sea, which are aimed at safeguarding internal security of a given State, involving one or two countries that share a sea border. The balancing interests and objectives pursued by the two operations are completely different: human life at sea on the one side, and internal security on the other. Therefore, according to The United Nations Refugee agency (UNHCR) such operations should be kept neatly separated, prioritising the first over the second. In fact, UNHCR proposed the following operational definition of interception:

“[It] is defined as encompassing all measures applied by a State, outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of prospective destination.”²³³

Although there is no uniform consensus on the definition of maritime interception at international level, this concept encloses measures to control the sea borders and entry and also the territory that States put in place outside the national borders, being that in the high seas or in the territorial waters of a third State, as long as the latter has given consent. In compliance with relevant immigration laws, these measures are aimed at combating irregular immigration by sea and pursue the objective to prevent and interrupt the navigation of the boats on which irregular migrants are transported. However, this form of extraterritorial control could undermine the possibility of obtaining international protection for those who, unlike migrants who leave the country of origin for economic or other reasons, are forced to leave and seek international protection. This would require State to adopt appropriate procedures and safeguards.²³⁴

States have taken steps to adopt bilateral treaties to combat irregular immigration even before the Palermo Protocol came into force in 2004. For instance, the agreement between Italy and Albania to stem arrivals by sea to southern Italy, concluded in 1997, represents the first case of bilateral agreement in the Mediterranean area. Multiple other examples of bilateral agreements on this matter have been concluded later based on that model, even in the Americas and

²³³ United Nations High Commissioner for Refugees (UNHCR) (2000) *Interception of Asylum Seekers and Refugees. The International Framework and Recommendations for a Comprehensive Approach*, doc. EC/50/SC/CRP.17, available at <https://www.unhcr.org/4aa660c69.pdf> last accessed September 2023.

²³⁴ *Ibidem*, par. 35.

Australia.²³⁵ Nevertheless, the methods used to carry out operations to combat irregular migration at sea might imply breaches of the obligations of international Law of the Sea and violations of the fundamental rights of migrants involved in smuggling and trafficking practices.

With regards to the first point, it should be noted that not always States' action is compatible with the rules of the Law of the Sea. In fact, control of irregular migration by sea on the basis of international instruments allows the right to visit the vessels only, not followed by any exercise of coercive powers, unless the flag State of the ship consents so. However, some States, especially in the southern border of Europe, have undertaken unilateral interdiction programmes. These States have got agreements with other coastal States following the scheme used for the treaties stipulated on the subject of the fight against drug trafficking.²³⁶ Therefore, these bilateral agreements allow States to resolve any eventual uncertainties on the exercisable measures not otherwise specified in the Protocol. Nevertheless, States' action must comply with the limits deriving from the respect of the obligations of safeguarding human life at sea, which - as mentioned above - applies even when the risks of unsafe transportation by sea effects smuggled migrants.²³⁷

Furthermore, States must also comply with the obligations to protect human rights deriving from international human rights and refugee law, in compliance with the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, enshrining the principle of *non-refoulement*.²³⁸

²³⁵ Consider, for example, some of the bilateral treaties concluded by the United States with Cuba in 1995 (See United States Department of State - Bureau of Public Affairs, *United States Joint Statement with the Republic of Cuba on Normalization of Migration*, in *United States Department of State Dispatch Magazine*, Volume 6 No. 19, 2 May 1995), with the Dominican Republic in 2003 (See United States of America – Department of State. Treaties and Other International Acts Series (Tias), *Agreement between the Government of United States and the Government of Dominican Republic concerning cooperation in maritime migration law enforcement*, no. 03-520, 20 May 2003) and with Bahamas in 2004 on trafficking of drugs and migrants (See United States of America – Department of State. Treaties and Other International Acts Series (Tias), *Agreement between The Government of The United States of America and The Government of The Commonwealth of The Bahamas concerning cooperation in maritime law enforcement*, no. 04-629, 29 June 2004). Australia concluded treaties with Nauru and Manus Island and Papua New Guinea in 2001 to intercept vessels carrying asylum seekers and move them to detention centers out of Australia mainland (See Parliament of Australia, *The 'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island*, 4 September 2012, available at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/PacificSolution#_Toc334509636, last accessed 24 October 2019).

²³⁶ Consider, for example, the treaty between Italy and Spain for the suppression of drug trafficking by sea, which is part of the 1988 Vienna Convention against drug trafficking and psychotropic substances.

Adam A. (1992), *La repressione del traffico di droga via mare in un recente trattato italo-spagnolo*, in *La Comunità Internazionale*, p. 348-378

²³⁷ Article 9 of the Palermo Protocol.

²³⁸ Article 19 of the Palermo Protocol and Article 33 of the CSR.

In practice, naval interdiction programmes aimed at controlling irregular immigration can be conducted jointly by several States and also unilaterally by one single State. These programmes consist of preventing ships from entering the territorial and internal waters of a given coastal State, often contravening with the above-mentioned relevant standards of international law. Through this type of interventions, States implement measures that concretely extend their sovereignty beyond the maritime zones. In these areas, the Law of the Sea provides less pervasive jurisdictional powers to the coastal State, depending on how far away from territorial waters they are undertaken and towards the freedom of seas regime. Interceptions could disturb the navigation of foreign ships, forcing them to change route. The reason why these control operations take place also outside the territorial sovereign area stands in the interest and intention of States to prevent foreign ships to enter the territorial waters under the jurisdiction of the coastal State.

States try to control these movements yet when the boat or ship is in the high seas. However, this is contrary to the regime of the freedom of the high seas included in Article 87 UNCLOS,²³⁹ which implies that a foreign ship cannot be subjected to interference in navigation, nor that it can be forced to change the route pursued, as the power belongs to the flag State only and exclusively. Yet, this rule is not without exceptions. One exception may occur in case the “theory of constructive presence principle”. This principle applies when the foreign ship is anchored on the high seas but, at the same time, it has sent small boats to the territorial waters of a coastal State with the purpose of disembarking smuggled migrants in contravention of this latter’s immigration laws. The coastal State in this case is certainly authorised not only to intercept and warn the anchored foreign ship to divert its route, but also to capture the small boats by virtue of its sovereign powers applicable in the maritime zone under its jurisdiction.

The absence of nationality of such small boats seems to be the condition most often used and invoked by States to intercept vessels carrying irregular migrants, refugees and asylum seekers on the high seas. Under the Law of the Sea, the latter should be subject exclusively to the right of

²³⁹ According to Article 87 UNCLOS: “The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII. 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.”

visit.²⁴⁰ However, since ships without nationality do not enjoy the protection of any State, they can be placed under the jurisdiction of the State intervening on them in order to re-establish public order on the high seas and guarantee the respect of the requirements of safety of navigation, whose control would normally be under the flag State.²⁴¹ Consequently, these boats can be taken to the port of the visiting State in order to proceed with required further checks regarding the purposes and conditions of transportation undertaken by the ship transporting migrants, including the identification of the individuals on board. Neither the Law of the Sea codified in the UNCLOS nor the Palermo Protocol, however, authorise the State that has intercepted the boat without nationality to exercise coercive powers towards individuals on board and to proceed with any arrest nor detention of any individuals. Given that these sovereign powers can be exercised depending on the national legislation of the intercepting State, it should be clarified that, according to the provisions of the Palermo Protocol, individuals cannot be criminally prosecuted for the sole reason of transporting migrants.²⁴² This applies also to the master of a ship or captains, members of an NGO, who embarked migrants after having provided them with assistance at sea. Conversely, the provision contained in Article 19 of the Palermo Protocol on smuggling encourages not to prosecute rescuers and it does not apply for those responsible or involved in smuggling of migrants' activities it refers to a conduct that all States shall criminalise in their domestic systems, according to the *Protocol*. In any case, any persons involved in the transportation of irregular migrants cannot be subjected to any form of detention or arrest for violating the immigration laws of the coastal State, as long as the intercepted ship is still on the high seas.

There are other forms of maritime interception to prevent the access of a foreign ship transporting irregular migrants to the territorial sea (or to the contiguous zone, if declared) by a given coastal State. These are border surveillance operations of the coastal State that, unless there is a danger or risk, can legitimately deny the entry into one of its ports as a preventive measure against any illegal activity such as irregular immigration.²⁴³

²⁴⁰ Article 110, par. 1, lett. *d*, UNCLOS.

²⁴¹ Article 94, par. 3 and 4, UNCLOS.

²⁴² Article 6, par. 1, on the criminalization, lists the criminal conducts as follows: "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: (a) The smuggling of migrants; (b) When committed for the purpose of enabling the smuggling of migrants: (i) Producing a fraudulent travel or identity document; (ii) Procuring, providing or possessing such a document; (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means."

²⁴³ Ronzitti N. (1998), *Coastal State Jurisdiction over Refugees and Migrants at Sea*, *op. cit.*, p. 1278.

Another issue raised by the interception at sea programmes concerns the compliance with the obligations relating to the fundamental rights of migrants involved in smuggling or trafficking activities. If a State intervenes on a ship with no nationality and engaged in the transport of irregular migrants, it is allowed to directly apply relevant international obligations to protect the persons on board. This State has the duty to prevent transported individuals to be in further danger or distress at sea and their life and integrity to be threatened. However, even if this is not specified by international law, if a ship on the high seas transports irregular migrants who are found to be in danger or are potential asylum seekers, States are required to take all necessary measures to rescue them. In such cases, international law calls States to proceed with rescue by immediately taking migrants to a safe place where their life is no longer in danger, ensuring international protection to whom qualify for it.

Unfortunately, States often attempt to stop the passage to the maritime zones that fall under the jurisdiction of the coastal State already on the high seas to avoid taking any responsibility for the treatment of asylum seekers and refugees on board. Such actions, especially in the case of transport and smuggling of irregular migrants whose lives are most likely in danger at sea, are contrary to the international laws. Particularly, these practices oppose Article 98 of the UNCLOS regarding the duty to render assistance at sea, the customary and international standards relating to the safeguard of human life at sea and, more generally, all the obligations to protect human life, personal integrity and the rights of refugees and asylum seekers.

The problematic issue arising from the practice of interceptions is that they are claimed by States to be rescue operations. On this matter, the United Nations General Assembly has stated that States should avoid the categorisation of interception operations as search and rescue operations, because this can lead to confusion with respect to disembarkation responsibilities.²⁴⁴ Instead, States tend to define interceptions as rescue operations as a way to interfere on a foreign ship even on the high seas legitimately. However, interceptions are rather related to the internal security of the State and

²⁴⁴ United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (2008), *The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees Report of the Office of the United Nations High Commissioner for Refugees*, doc. A/AC.2579/17, par. 20 available at <https://www.refworld.org/docid/49997aeb27.html> last accessed September 2023

United Nations High Commissioner for Refugees (2014), *UNHCR comments on the Commission proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)*, doc. COM 2013(197) final, available at <https://www.unhcr.org/534fd9e99.pdf> last accessed September 2023.

aimed at maintaining effective border and immigration controls and the security and safety of international shipping. It follows that States, in practice, take advantage of this confusion in the attempt to reduce their responsibilities following disembarkation. Even if the latter should be shared in collaboration with the other States involved in the search and rescue region, often they do not respond immediately nor adequately.²⁴⁵

The Palermo Protocol provides the conclusion of bilateral or regional agreements between the States Parties aimed at achieving better efficiency in complying with the standards contained hereto.²⁴⁶ Therefore, States are called to create a cooperation mechanism both at the international level among them and at interinstitutional level (*operational arrangements or understandings*) among the respective competent bodies.²⁴⁷ A relevant example of this are the maritime operations conducted within the framework of the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX), established by Regulation (EC) n. 2007/2004 of the Council of 26 October 2004.²⁴⁸ Such operations pursue the objective to guarantee the coordination of the actions undertaken by the Member States of the European Union in implementing the control measures and the surveillance of the external borders. Border control, however, remains and falls under the responsibility of each Member States.²⁴⁹ Since its creation, FRONTEX has conducted numerous joint patrolling and naval interdiction operations, both on the high seas and in the territorial waters of third or non-EU States, such as Mauritania, Senegal and

²⁴⁵ United Nations High Commissioner for Refugees (2006), *Meeting of State Representatives on Rescue at Sea and Maritime Interception in the Mediterranean – Background Discussion Paper: Reconciling Protection Concerns with Migration Objectives*, available at <https://www.unhcr.org/4963237a11.pdf> last accessed September 2023.

²⁴⁶ Article 17: “States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at: (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in Article 6 of this Protocol; or (b) Enhancing the provisions of this Protocol among themselves.”

²⁴⁷ United Nations Office on Drugs and Crime (UNODC) (2011), *International Framework for Action to Implement the Smuggling of Migrants Protocol*, Vienna, paragraph 185: “Given That addressing migrant smuggling is complex and necessarily multiple Involves agencies with important roles to play, to coordinate and to cooperate with the national community, which has to be carried out in the process of combating migrant smuggling, including through inter-ministerial consultations and the various strands of relevant policy tied together in a comprehensive response. Member States may also consider centralizing migration-related issues in a dedicated ministry or agency. Experience suggests that the establishment of an inter-agency coordinating body to work on smuggling issues ‘across government’ greatly assists in both policy and operational coordination. Such a body can provide agencies with a forum for regular meetings and policy making. Depending on the country concerned, the establishment of such a body may or may not involve legislation.”

²⁴⁸ Council Regulation (EC) (2004) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R2007-20140717> last accessed September 2023.

²⁴⁹ *Official Journal of the European Union*, number L. 349/1, 25 November 2004.

Cape Verde. However, these actions raise concern about their legality, due to the undue interference occurring in maritime zones usually subject to the sovereignty of States not involved in the bilateral agreements with the given Member States. FRONTEX Agency operates on the basis of such agreement.²⁵⁰ Furthermore, since these operations are conducted in an extraterritorial space, the enforcement of coercive powers, such as the arrest of smugglers or the seizure of a vessel or boat, should not be exercised if they are not expressly included in an official agreement providing the legal basis for it.²⁵¹

To illustrate the implications of such bilateral cooperation frameworks, a couple examples are presented in continuation.

f) Relevant examples of bilateral agreements on immigration control: Spain and Italy

States are not only encouraged to comply with the Palermo Protocol, but they are also compelled by bilateral agreements that regulate the law of the sea.²⁵² As mentioned above, the maritime interceptions of vessels with the aim of controlling irregular immigration and other illicit trafficking became the main tool for preventive purposes.²⁵³ In particular, European Southern border States have also started interception plans in the Mediterranean in order to prevent the arrival and disembarkation of unsafe boats coming from North-African countries. Migration from Africa to Europe through the Mediterranean Sea increased significantly in the last two decades, so the Sicilian Island of Lampedusa in Italy, Spain and the Canary Islands and finally Malta, have witnessed many incidents at sea due to the unstable boats used by smugglers. These three States,

²⁵⁰ Papastavridis F., *Fortress Europe" and FRONTEX: within or without international law?* in *Nordic Journal of International Law*, 2010, p. 93. Dünwald S. (2011), *On Migration and Security: Europe managing migration from Sub-Saharan Africa*.

²⁵¹ Koka E. (2019), *Irregular immigration by sea. International law and European Union law*, in *European Journal of Migration and Law*, p. 26. available at <https://unyt.edu.al/wp-content/uploads/2019/03/Paper-Published.pdf> last accessed September 2023.

²⁵² Article 311 UNCLOS, par. 3: "Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Convention, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Convention, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Convention.

²⁵³ Goodwin-Gill, McAdam, *The Refugees in International Law*, Geneva, 2007, p. 372.

which are the first entry points to Europe, have therefore requested assistance to the European Union and also to FRONTEX, which became operational in 2008.²⁵⁴

Italy and Spain have concluded a series of operational agreements with North African countries from where irregular migrants depart and criminal networks operate to facilitate their border crossing, more oriented to the purpose of readmitting migrants, rather than engaging on the cooperation to control and combat illegal activities and protect people on the move and in need of protection. The practice of conducting joint patrols in the Mediterranean off the African coast, aimed at creating a deterrent to the departures of illegal migrants, gave rise to numerous episodes of lack of assistance at sea and insufficient or ineffective cooperation between the States involved in terms of protection of the human rights of individuals. Consequently, intercepted migrants were abandoned to their uncertain destiny at sea. The safety of such migrants was not promptly ensured, and they were summarily pushed-back to countries in breach of the *non-refoulement* principle, mostly to Libya.²⁵⁵

i. Spain

Spain committed to border management and control of irregular migration through the conclusion of an agreement with Morocco.²⁵⁶ Morocco is a target transit country for those wishing to reach Europe through the two autonomous Spanish cities of Ceuta and Melilla, located on the African coast of the Mediterranean, near the Strait of Gibraltar.²⁵⁷ The cooperation agreement between the

²⁵⁴ It became operational at the end of 2008 and has since conducted around 50 maritime border control operations. See European Parliament and the Council (2016), *Regulation (EU) 2016/1624, establishing Frontex, the European Border and Coast Guard Agency* available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2016%3A251%3ATOC> last accessed September 2023; European Commission (2009), *Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking in human beings, external borders and the repatriation of illegally staying persons*, doc. SEC (2009) 320 final, 9. Spain, in particular, has been involved since 2006 in the Hera operations (supervising the area of the Canary Islands), Hera II (for the control of the arrivals of boats in the area between the Canary Islands and West Africa, through bilateral agreements with Senegal and Mauritania) and Hera III (in collaboration with the Senegalese authorities). On this point see Baldaccini A. (2010), *Extraterritorial Border Control in the EU: The Role of Frontex in Operations at Sea*, in Ryan, Mitsilegas (ed.), *Extraterritorial Immigration Control. Legal Challenges*, *op. cit.*, p. 229.

²⁵⁵ Gil-Bazo M.T. (2006), *The Practice of the Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revised*, in *International Journal of Refugee Law*, p. 579

²⁵⁶ The text of the agreement between Spain and Morocco is in «BOE» no. 83, de 7 April 2022, pages 46756 a 46760 (5 pages.), available at https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-5595, last accessed August 2022.

²⁵⁷ More agreements have been concluded by Spain on the control of maritime borders with Senegal and Mauritania in 2006, with Cape Verde in 2007 and with Gambia, Guinea and Guinea Bissau in 2008.

two countries provides the repatriation of irregular migrants to the territory of one of the two States involved.²⁵⁸ The continuous attempts of migrants to cross the border through reaching the Spanish enclaves and the harsh repression implemented by Morocco and the overall management of this crisis affecting this particular area raised the reaction of the United Nations and the then-Secretary-General Kofi Annan called for humane treatment of migrants.²⁵⁹

Since 1999, Spain has developed a maritime interception programme through a satellite system that allows for the identification and implementation of interdiction measures against small boats transporting irregular migrants to the Spanish coasts and the Canary Islands. If such boats are considered sufficiently safe, they are diverted and escorted back to the country of origin.²⁶⁰ However, since such type of interventions are performed without checking on the presence of asylum seekers and refugees on board, they are contrary to international fundamental rights obligations. Moreover, many of the migrants that arrived by sea from Morocco most likely fled from other African countries where they were subject to serious violations of human rights.

Spain was the first European State of which the Committee against Torture, an international body of the United Nations mandated to oversee the application of the Convention against torture and other cruel, inhuman or degrading treatment or punishment.²⁶¹ The Committee held Spain accountable for failing to comply with the obligations concerning the protection of the human rights of migrants who have been intercepted and rescued at sea, then conducted on the territory of a third State considered unsafe.²⁶² The case before the Committee concerns the rescue by the Spanish coast guard of the *Marine I* ship, which was found in international waters off the African coast. At the time of the incident, it was not clear what nationality the ship was. It was carrying 369 migrants of African and Asian origin, boarded in Guinea.²⁶³ Although the ship was in the

Agencia Española de Cooperación Internacional para el Desarrollo - Ministerio de Asuntos Exteriores y de Cooperación (2009), *Plan África 2009-2012*, p. 60 and 81.

²⁵⁸ Text available at Acuerdo entre el Reino de España y el Reino de Marruecos sobre la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente, in Boletín Oficial del Estado no. 100, 25 April 1992, no. 130, 30 May 1992, Article 3, par. d.

²⁵⁹ United Nations News Service (2005), *Annan urges humane treatment of migrants trying to cross Morocco-Spain border*,

²⁶⁰ García Andrade P. (2010), *Extraterritorial Strategies to Tackle Irregular Immigration by Sea: A Spanish Perspective*, in Ryan, Mitsilegas (ed.), *Extraterritorial Immigration Control. Legal Challenges*, op. cit., p. 316.

²⁶¹ Adopted by General Assembly Resolution 34/46 of 10 December 1984 and entered into force on 26 June 1987, of which 166 States are party. Text in United Nations, *Treaty Series*, vol. 1465, p. 85.

²⁶² Wouters, K and Den Heijer, M., (2010) The Marine I Case: A Comment in *International Journal of Refugee Law*, Vol. 22, Issue 1, pp. 1-19, available at SSRN: <https://ssrn.com/abstract=1565268> or <http://dx.doi.org/10.1093/ijrl/eep031>

²⁶³ United Nations Committee Against Torture (CAT) (2008), *J.H.A. v. Spain*, CAT/C/41/D/323/2007.

Senegalese search and rescue region, the authorities of the latter State requested assistance from the Spanish coast guard because they claimed that they did not have the means to conduct the rescue operation. The Senegalese authorities then informed Mauritania of the situation since the Mauritanian port of Nouadhibou was the closest to the emergency site. The Spanish ship *Luz de Mar* arrived at the place of the incident and the diplomatic negotiations between Spain, Senegal and Mauritania started, mainly to decide on the measures to be taken in regard to the *Marine I* ship and its passengers. Meanwhile the two ships were joined by the Spanish Coastguard, *Guardia Civil*, with members of the non-governmental organization *Médecins du monde* and the Spanish Red Cross on board to provide medical assistance, along with a representative of the Government of the Republic of Guinea. After eight days, Mauritania consented to the disembarkation of migrants in the port of Nouadhibou, from which all migrants would be repatriated. Once they reached the Mauritanian territory, migrants were placed under the custody of the Spanish authorities to proceed with the identification and repatriation. Among the migrants, 35 of Asian origin were transferred to the Canary Islands to request for asylum, other 35 of African origin were instead conducted to Cape Verde. The operations took place with the support of the International Organization for Migration (IOM) in order facilitate their movements to India and Pakistan. Based on the information received by the Committee against Torture, it was not clear whether migrants while being identified were also informed about their possibility to claim for asylum should their conditions allowed so. The 23 people who refused voluntary repatriation were held in Mauritania under the control of the Spanish authorities, until they were transferred to third countries, including Morocco, Senegal, Mali, Egypt and South Africa. After having declared the inadmissibility of the case on the ground of not having exhausted the internal judicial remedies before, the Committee affirmed the existence of the jurisdiction of Spain in the extraterritorial context since, even though it came to a space outside the sovereign territory, Spain has controlled migrants and exercised authoritative powers over them. This element was sufficient to activate the responsibility of the State in case of violation of the obligations related to the treatment of migrants and asylum seekers.²⁶⁴

²⁶⁴ “The Committee takes note of the State party's argument that the complainant lacks competence to represent the alleged victims because the incidents forming the substance of the complaint occurred outside Spanish territory. Nevertheless, the Committee recalls its general comment No. 2, in which it states that the jurisdiction of a State party refers to any territory in which it exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. [3] In particular, it considers that such jurisdiction must also include

In light of the episode involving Spain's responsibility, the importance of respecting the protection obligations deriving from human rights and refugee law must be reiterated. According to the Law of the Sea, a rescue operation is concluded when people are accompanied to a safe place. In the particular case in which there are also asylum seekers among the migrants, it is necessary that the intervening State takes into account the needs of the latter and therefore takes active measures to ensure that they are treated with humanity and are not pushed back towards countries where their integrity is threatened.

The decision of the Committee against Torture represented an important signal for States engaged in interception and rescue activities, especially in the Mediterranean region where these incidents occur frequently, delaying rescue operations due to the lack of prompt action by States, and affecting the protection needs of migrants, asylum seekers and refugees.

ii. Italy

Starting in May 2009, Italy began a policy of maritime interceptions of migrants by stopping them at sea and pushing them back to the countries from which they left, especially Algeria and Libya. On 30 August 2008 Italy concluded the Treaty of Friendship, Partnership and Cooperation between the Italian Republic and the Great Socialist Libyan Arab Jamahiriya,²⁶⁵ which entered into force in February 2009, following a series of agreements between the two countries.²⁶⁶ Before that, various cooperation agreements between Italy and Libya were concluded in order to regulate the

situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention. This interpretation of the concept of jurisdiction is applicable in respect not only of Article 2, but of all provisions of the Convention, including Article 22. In the present case, the Committee observes that the State-party maintained control over the persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place at Nouadhibou. In particular, the State party exercised, by virtue of a diplomatic agreement concluded with Mauritania, constant de facto control over the alleged victims during their detention in Nouadhibou. Consequently, the Committee considers that the alleged victims are subject to Spanish jurisdiction insofar as the complaint that forms the subject of the present communication is concerned." (par. 8.2).

²⁶⁵ Law of authorization for ratification and execution of 6 February 2009 n. 7, in the *Official Journal of the Italian Republic*, n. 40, 18 February 2009.

²⁶⁶ See the *Preamble*: "(...) taking into account the important initiatives already implemented by Italy in implementing the previous bilateral agreements; (...) considering to definitively close the painful "chapter of the past", for which Italy has already expressed in the 1998 Joint Communiqué, its own regret for the suffering caused to the Libyan people following the Italian colonization, with the solution of all bilateral disputes and underlining the firm will to build a new phase of bilateral relations, based on mutual respect, equal dignity, full cooperation and on a fully equal and balanced relationship (...)"

fight against irregular immigration. One of these is the Protocol of 29 December 2007,²⁶⁷ which refers to a previous programmatic agreement concluded in Rome in 2000 and in force in 2002.²⁶⁸ Through these last two instruments, the two States Parties promoted collaboration against terrorism, organised crime, drug trafficking and irregular immigration. The 2007 Protocol committed the Parties to the fight against irregular immigration, regulating the provision of training activities and organising joint patrols at sea, for which Italy ensured the temporary transfer of six Italian patrol boats to Libya.

According to the Protocol, the surveillance and search and rescue operations can take place both in the departure or transit points for vessels and boats transporting irregular migrants, as well as in the Libyan territorial waters and on the high seas, thus remaining unclear whether authoritative powers can be exercised also over ships flying the flag of third States. In addition, certain clauses of the abovementioned Protocol of 2007 were supplemented by the subsequent Protocol, which entered into force on 4 February 2009. This Supplement allows starting joint patrolling operations using Italian ships both on the high seas and in territorial waters of Italy and Libya. Though these operations, the presence of a Libyan officer and coordination from Libyan authorities is required. Yet, this instrument does not provide adequate clarification nor legal basis on the possibility to establish the Italian or Libyan jurisdiction over third States' vessels, which would be otherwise illegitimate. In fact, on the basis of the principle of consensus, the Italo-Libyan agreement can explain effects on both territories and maritime areas subject to their respective jurisdiction, but not towards third parties.²⁶⁹ With regard to vessels without nationality, Italian ships may exercise the right to visit in accordance with the Law of the Sea (Article 110) and the Palermo Protocol (Article 8).²⁷⁰ Italy can thus exercise coercive powers in compliance with

²⁶⁷ The Protocol was not published in the *Official Journal*, in violation of national legislation on the publication of treaties.

²⁶⁸ The text in the Supplement to the Official Journal of the Italian Republic (2003), no. 111, May 15, p. 53.

²⁶⁹ Article 34 of the *Vienna Convention on the Law of Treaties*: "A treaty does not create either obligations or rights for a third State without its consent."

²⁷⁰ Article 12, par. 9 *quater* of the Italian Consolidated Text on Immigration (1998), *Law 286/1998* provides: "The powers referred to in paragraph 9-bis [detention, inspection and seizure, conducting the ship in a port of the Italian State] may be exercised outside territorial waters, as well as by ships of the Navy, including by ships in police service, within the limits allowed by law, international law or bilateral or multilateral agreements, if the ship flies the national flag or even that of another State, or yes sections of a ship without a flag or flag of convenience." Considering the reference to the limits deriving from international law, contained in the same Article, in accordance with the law of the sea, Italy can act in the exercise of coercive powers only with respect to ships without nationality. Indeed, to proceed against a ship flying the flag of a third State it is necessary to request the authorization to it. National Legislative Bodies / National Authorities, *Italy: Legislative Decree No. 286 of 1998, Testo Unico sull'Immigrazione*, 25 July 1998, available at <https://www.refworld.org/docid/54a2c23a4.html>, last accessed 24 October 2019.

international obligations to protect human rights of individuals and refugees. In this sense, the seizure of boats with migrants on board and their repatriation through the conclusion of agreements with the countries of origin cannot be considered legitimate, without the intercepting authorities first proceeding to identify the persons on board and their eventual need for international protection.

No provision in this treaty refers expressly to treatment to refugees, since Libya is not a party to the 1951 CSR.²⁷¹ However, a general invite to both parties to respect human rights derives from the provision contained in Article 6, stating that “[t]he Parties, by mutual agreement, act in accordance with their respective legislation, the objectives and principles of the United Nations Charter and the Universal Declaration of Human Rights”.²⁷² Despite this generic clause relating to respect for human rights, the lack of means of control over the effective compliance with the obligations of protection in Libya constitutes a risk for migrants and asylum seekers that, if intercepted by the Italian authorities and pushed back and handed over to the Libyan authorities. If so, there is a bid chance that migrants suffer abuses, torture and inhuman or degrading treatment, in violation with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.²⁷³

It is no coincidence that the policy of push-backs at sea was condemned by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT), a body of the Council of Europe established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Strasbourg, 1987).²⁷⁴ The Committee stated that Italy, by intercepting irregular migrants heading towards the southern Italian coasts and taking them back to Libya and Algeria, did not adopt adequate guarantees against those who had serious reasons to believe that they would run a real risk of being subjected to torture or other ill-treatment, if sent back to a particular country.

²⁷¹ However, since 1981 Libya is party to the *Convention governing certain aspects of the refugee problem in Africa* (1969), within the framework of the Organization of the African Union (OAU) whose Article 8 provides for collaboration with the UNHCR. According to the aforementioned Article, this instrument complements the *Convention relating to the status of refugees* of 1951 in the region.

²⁷² The Universal Declaration of Human Rights was adopted by the General Assembly with Resolution 217 (III) A in 1948. Not having a binding nature, it rather assumes the value of proclamation of rights.

²⁷³ European Convention on Human Rights (Rome, 1950), Article 3: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

²⁷⁴ Council of Europe (2010), *Report to the Italian Government on the visit to Italy Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT) from 27 to 31 July 2009, Doc. CPT / Inf (2010) 14.

g) The turning point on operations at sea: the *Hirsi Jamaa and others c. Italy* case

The question on the legality of such operations at sea has been addressed by the European Court of Human Rights, in relation of the protection of human rights at sea. The case before the Grand Chamber of the European Court of Human Rights, *Hirsi Jamaa and others c. Italy*²⁷⁵ is the turning point for operations at sea involving migrants since it finally shed light on the issue of protecting human rights and international protection of refugees at sea and the compatibility of the immigration control measures and border surveillance with international law.

The application before the European Court was presented by 11 Somali and 13 Eritrean citizens who, at the time of the facts, were on 3 boats with other around two hundred migrants departed from Libya and headed for the Italian coasts. They were intercepted by Italian patrol boats at around 35 nautical miles from the southern coast of Lampedusa. They were promptly embarked on Italian ships and, without being informed, transferred back to Libya. The victims therefore claimed the violation of Article 3 of the ECHR for having been rejected by the Italian authorities, without having had the opportunity to oppose to the return to Libya, nor request international protection not to be repatriated to their countries of origin, in which, moreover, they could have been suffered torture or inhuman and degrading treatment. The applicants also claimed violation of Article 4 of Protocol No. 4, against the prohibition of collective expulsion, and Article 13 of the ECHR, providing the right to an effective judicial remedy.

The Court unanimously decided that the interception policy implemented by Italy not only violates the ECHR, but also the relevant international law, in particular the principle of *non-refoulement*. Regarding the legal ground on which Italy undertook these operations, particularly the bilateral treaty with Libya, the Court reaffirmed the prevalence of the protection guarantees of the Convention, thus making every agreement void, if incompatible with the provisions contained thereto.²⁷⁶ The Court also considered that the Italian authorities acted in violation of Article 13, in conjunction with Articles 3 and 4 of Protocol No. 4 of the ECHR, since the applicants once aboard the Italian ships were not informed by the Italian authorities both about the destination to which

²⁷⁵ European Court of Human Rights, Grand Chamber (2012), *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, available at [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2227765/09%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2227765/09%22]}) last accessed September 2023.

²⁷⁶ Paragraph 129 of the decision.

they were heading to nor on the existing procedures to prevent their return to Libya.²⁷⁷ In fact, the way in which the refoulement was carried out, embarking the applicants rescued on the high seas and leading them back to the place of departure, hardly allowed access to Italian justice and an individual and rigorous examination of the circumstances.²⁷⁸ The Court established the existence of the Italian jurisdiction in case of interceptions taking place on the high seas. It also declared the responsibility of Italy for putting the individuals in danger by accompanying them back to Libya, instead of taking them to a place of safety on Italian territory. The Court therefore based its decision on the existence of exceptional circumstances according to which the exercise of the jurisdiction of a State, which is normally exercised in the sovereign territory, can have its effects even outside it, by virtue of the effective control exercised on the individuals.

Consequently, if a person (or, as in this case, a ship) acting as an organ of the State is outside the territory, international law obligations of protection always apply.

Hirsi case remains to date the reference jurisprudence regarding the scope of States' jurisdiction concerning immigration in relation to protection obligations. Arguably, in the aftermath of *Hirsi*, doctrine²⁷⁹ interrogated whether a responsibility for extraterritorial jurisdiction in case of pull-backs operations towards Libya might arise upon Italy in case violations of rights materialise. These considerations are made in light of the recent establishment of a maritime Search and Rescue zone (SAR) by Libya with the support of the EU and its Member States, although it still remains questionable whether to consider Libya as a place of safety. Criticism over the externalization of borders in EU policies, sovereignty and extraterritorial jurisdiction has rightly been raised in scholarly opinions.²⁸⁰ On the other hand, the European Court of Human Rights has shed more light on the matter of collective expulsions in the case *Shahzad v. Hungary*,²⁸¹ confirming the violations of the rights of an individual at the external fence of the Hungarian border, holding Hungary responsible for the lack of an individualized assessment and identification, without a formal decision being issued, and without the possibility to exercise the right to an effective remedy

²⁷⁷ Paragraph 203 of the decision.

²⁷⁸ Paragraph 185 of the decision.

²⁷⁹ Pijnenburg, A. (2018). *From Italian Pushbacks to Libyan Pullbacks: Is Hirsi 2.0 in the Making in Strasbourg?*. in *European Journal of Migration and Law*, 20(4), pp. 396-426. <https://doi.org/10.1163/15718166-12340036> last accessed September 2023.

²⁸⁰ Jiménez Cortéz C. (2022), *La Desnaturalización de la Zona Sar en el Mediterráneo Central: De Pieza Clave para Salvar Vidas a Instrumento Contra Los Derechos Humanos* in *Revista Española de Derecho Internacional* pp. 245-270, <http://dx.doi.org/10.17103/redi.74.2.2022.1b.05> last accessed September 2023.

²⁸¹ European Court of Human Rights (2021), *Case of Shahzad v. Hungary* application No. 12625/17 available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2212625%2F17%22%7D> last accessed September 2023.

against the expulsion. This decision enabled the Court to clarify that even in situation of external borders, access to safety for border procedures and identification are a requirement for States not to incur in violations. In the same vein, in a more recent pending case *S.S. and others v. Italy*,²⁸² involving Italy once more in relations to facts happened in Libya, the Court is called to assess the responsibility of Italy for violations and abuses suffered by the applicants during rescue operations conducted by Libya, hence based on “contactless” effective control.²⁸³

Therefore, examining the implications of these decisions demonstrate that rights and principles guide States practices to abide by their obligations to protect, as well as the content and extent of such obligations. No matter the circumstances, the principle of *non-refoulement* is of paramount importance to protect individuals.

The following section sheds light on concrete applications of the principle in different contexts and depending on profile, needs and vulnerabilities characterizing migrants, refugees and asylum seekers in relation to their personal situation and in different contexts. It is worth noting that in some instances, these vulnerabilities are increased by restricting migration policies undermining the capability of these individuals to resist and cope with adversity and harm.²⁸⁴

3. Accessing the territory: possible consequences of irregular migration

Preventing the loss of life at sea and protecting migrants, refugees and asylum seekers reaching the international borders by sea and land remain imperative for States according to the international law obligations. Examined case-law²⁸⁵ shows that there are no “human rights-free zones” for

²⁸² European Court of Human Rights (2019), *S.S. and others v. Italy*, application 21660/18 available at [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2221660/18%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2221660/18%22]}) last accessed September 2023.

²⁸³ Moreno-Lax, V. (2020). *The Architecture of Functional Jurisdiction: Unpacking Contactless Control—On Public Powers, S.S. and Others v. Italy, and the “Operational Model”* in *German Law Journal*, 21(3), pp. 385-416. doi:10.1017/glj.2020.25 last accessed September 2023.

²⁸⁴ McCubbin, L., *Challenges to the Definition of Resilience*, in *American Psychological Association*, 2001 available at <https://files.eric.ed.gov/fulltext/ED458498.pdf> last accessed May 2023.

²⁸⁵ Cfr. this Chapter 1, section 2 on Hirsi case par. 134, as well as *S.S. and Others v. Italy*, App. No. 21660/18 and United Nations High Commissioner for Refugees (2010), UNHCR intervention before the European Court of Human Rights in the case of Hirsi and Others v. Italy, Application no. 27765/09 (‘UNHCR Hirsi intervention’), par. 4.3.1: <https://www.refworld.org/docid/4b97778d2.html> last accessed April 2023. UNHCR states that “De jure jurisdiction on the high seas derives from the flag state jurisdiction. De facto jurisdiction on the high seas is established when a state exercises effective control over persons.”

States.²⁸⁶ Instead, they are bound to carry out positive measures to equally protect individuals under their jurisdiction and effective control, no matter what their profiles, needs and vulnerability are.²⁸⁷ In this context, the use of new and emerging technologies at the borders could serve for better and effective migration management actions, if only and on condition that they allow for an adequate identification of such profiles and in the view of extending protection, as well as decreasing the risks for human rights violations faced by individuals during the border-crossing.²⁸⁸ First and foremost, the prime goal (and concern) of this analysis is understanding the background and rationale of the adoption of each and every border measure, assessing whether they are aimed to criminalize migrants arriving irregularly and examining their compatibility with international law obligations. To date, practice has showed that all the measures adopted by States such as pushbacks and summary returns could lead to undermining the access to asylum, as well as to other rights and protection safeguards that migrants, refugees and asylum seekers might be entitled to. This situation results in the increase of the vulnerability of individuals crossing international borders. However, the good news is that some alternative safe options exist. Expanding the opportunities for regular migration pathways seems to be the one that combines interests that are only apparently conflicting, namely the safety and security of States and individuals. A leading and innovative example of this is the trilateral joint commitment to Latin-America by the United States, Spain and Canada.²⁸⁹ The goal of this partnership is establishing possible avenues for safe, orderly and regular migration on temporary basis or based on circular mobility schemes. In this way economic and social opportunities for migrant workers in the region are promoted while upholding their rights

²⁸⁶ The expression has been used by the United Nations Special Rapporteur on extreme poverty to condemn the World Bank's fail to comply with human rights language. Cfr. "*The World Bank is a Human Rights-Free Zone*" – UN expert on extreme poverty expresses deep concern, 2015 available at <https://www.ohchr.org/en/press-releases/2015/09/world-bank-human-rights-free-zone-un-expert-extreme-poverty-expresses-deep> last accessed April 2023.

²⁸⁷ Santer K.O. (2023) *Governing Through Scalar Elasticity: An Analysis of the Accountability Gap in Migration Control in the Central Mediterranean*, in *Social & Legal Studies*.

²⁸⁸ Human Rights Council (2022), *Human rights violations at international borders: trends, prevention and accountability Report of the Special Rapporteur on the human rights of migrants*, Felipe González Morales, doc. A/HRC/50/31, par. 24, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/328/57/PDF/G2232857.pdf?OpenElement> last accessed April 2023.

²⁸⁹ *Trilateral statement on joint commitment to Latin America*, May 2023 available at <https://www.dhs.gov/news/2023/05/03/trilateral-statement-joint-commitment-latin-america> last accessed May 2023 and La Moncloa (2023), *España y EEUU colaborarán para impulsar la migración regular desde América Central y del Sur*, April 2023, available at <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/Paginas/2023/270423-acuerdo-migracion-regular-america.aspx> last accessed May 2023

Yet, situations of crisis, such as the COVID-19 pandemic, tend to disproportionately restrict the rights of migrants through border closures and emergency measures. The pandemic itself has also demonstrated the importance of safe migration and boosted an important collective reflection in this sense.

This section examines the existing options for migrants to access to the host territory, whether such access is granted or denied, from the perspective of border controls as part of migration management.

Whether arrived by sea, land and air borders, migrants and generally all non-nationals who travel irregularly and without complying with domestic immigration law in the country of destination might not be granted access to the host State automatically. The entry is conditioned by the requirements set forth in the national immigration law and policies. In fact, States exercise their sovereign powers on migration and border management matters by regulating and defining requirements to access to their territory, including on the conditions to entry, stay and reside. These conditions are under States exclusive domain according to and within the limits of international law. Limitations to such sovereign powers remain valid whenever the principle of *non-refoulement* and other non-derogable principles of *ius cogens* apply.²⁹⁰ If requirements for accessing territory are not met, migrants crossing borders in irregular fashion are more exposed to violations of their rights, as well as abuse,²⁹¹ violation²⁹² and exploitation.²⁹³ This section explores the possible consequences of irregular migration for migrants, refugees and asylum seekers at the border points and intending to access to States' territory. Among the risks encountered by individuals, (1) disappearances at the border, (2) escapes, (3) rejection by State authorities and (4) migrants finding themselves stranded in transit zones are all factors that undermine their safety and the realization of their rights, exposing them to violence, exploitation and abuse, often in conjunction with the implications of transnational organised crime including trafficking in persons and smuggling of migrants. By shedding light on such risks, it emerges that safe and regular migration pathways for

²⁹⁰ See above analysis – Chapter 1, section 1, lett. b), par. i.

²⁹¹ Ilyumade, B.O. (1975), *Scope and content of a complaint of abuse of right in international law* in *Harv. Int'l. LJ*, 16, p. 47; Taylor, G.D. (1972), *The content of the rule against abuse of rights in international law*. *Brit. YB Int'l L.*, 46, p. 323; Byers, M. (2001), *Abuse of rights: an old principle, a new age* in *McGill LJ*, 47, p. 389.

²⁹² Roht-Arriaza, N. (1990), *State responsibility to investigate and prosecute grave human rights violations in international law* in *Calif. L. Rev.*, p. 449; Danaher, M. (1980), *Torture as a tort in violation of international law: Filartiga v. Pena-Irala* in *Stan. L. Rev.*, 33, p. 353.

²⁹³ Allain, J. (2012), *Trafficking and human exploitation in international law, with special reference to women and children in Africa*. In *Trafficking in Slavery's Wake: Law and the Experience of Women and Children*, pp. 145-162.

migrants on the one hand,²⁹⁴ and humanitarian options for refugees and individuals at risk on the other, are preferred solutions for both the security of the States and safety of the individuals. Besides, they might play an important role in decreasing the appeal and negative effects of these crimes as well as their possible linkages with terrorism. Improved and enhanced international security is ensured through the effective national border controls. Such controls are not limited to the sole verification of the identity of individuals and the legitimacy of their title to stay, but encompassing the identification of profiles and needs of individuals with the aim to uphold their corresponding rights. To this end, visa systems are widely used by States to manage entry to their territory in a way that ensures safety of nationals as well as non-nationals present in country, being them mostly linked to access and realization of specific rights (e.g., right to liberty of movement, family reunification, health and so on). Such rights form the foundation and define the several conditions to obtain a visa and have the access granted, usually based on specific and well-established reasons.

While briefly elucidating on personal grounds, the present analysis focuses especially on the objective grounds entitling the entry and stay in country that, rather than relating to the personal circumstances justifying a visa claim, they are determined by human rights and humanitarian situation in the concerned individuals' country of origin or habitual residence. The study continues elaborating on what the access to asylum system entails in terms of protection safeguards. In addition, there are cases in which visa and access might not be granted based on the reasons exposed. Hence, the analysis delineates the consequences of entry bans - and, in the case Schengen area, travel bans - pushbacks at sea and what risks could manifest once migrants reach the border, specifically in terms of rights violations and how to avert them. In this section special attention is given to the use of immigration administrative detention and what alternatives could be adopted by State authorities not to incur in breaching international standards. The present review of other measures following border controls includes considerations on the extradition, expulsions and other safe options for migrants not admitted to cross the border and proceed to the territory. Also, it provides some reflections on return as a right, a preferred possible choice and opportunity for migrants that voluntarily opt for it, as it upholds the right to inherent dignity enshrined in the

²⁹⁴ Düvell, F. (2011), *Paths into irregularity: The legal and political construction of irregular migration in European Journal of migration and Law*, 13(3), pp. 275-295; Triandafyllidou A. ed. (2016), *Irregular migration in Europe: Myths and realities*, p. 2.

UDHR and other international instruments. Some reflections on mobility restrictions are also presented at the end of this section, as focused on the analysis of challenges that States were faced with during COVID-19 period, in relation to striking a balance between the obligation of ensuring public order, the protection of public health or morals, the interest of national security and public safety and collective rights as a whole as opposed to individuals' ones.²⁹⁵

a) Access and admission to the territory through a visa

To access a State's territory in the exercise of the right to liberty of movement complemented by the freedom to choose residence, an application for a visa is required.²⁹⁶ A visa is a document issued by States and added to passports or travel documents that authorizes individuals to arrive at the border of the issuing State. It is an authorization to access to a territory for a limited period of time and on specific grounds and reasons.²⁹⁷ The visa allows States to decide in advance to whom they grant access to their territory and if the grounds are deemed valid to authorize admission. The visa applicant, who can be either a migrant or a refugee whose status has been declared by another State, can formalize their requests at the Embassy or before consular authorities of the State to visit. The visa request, usually conditioned to the requirements established in the immigration national law, can be accepted or rejected. To make this decision, States authorities exercise their discretionary power and grant permission to enter to non-nationals that are admitted when they meet the conditions as per the domestic immigration legal framework. In application of the principle of *non-refoulement* countries are prevented to perform summary and collective expulsions, that do not allow for a thorough identification of individuals (migrants, refugees and asylum seekers) at the borders. For example, expulsions are also prohibited within the scope and jurisdiction of the Council of Europe's Member States in compliance with article 4 of the Protocol no. 4 to the ECHR, as confirmed by the *Hirsi* jurisprudence.²⁹⁸

²⁹⁵ Human Rights Committee (2020), *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, doc. CCPR/C/GC/37, pp. 41-45.

²⁹⁶ Neumayer, E. (2006), *Unequal access to foreign spaces: how states use visa restrictions to regulate mobility in a globalized world* in *Transactions of the Institute of British Geographers*, 31(1), pp. 72-84.

²⁹⁷ Mau, S., Brabandt, H., Laube, L., Roos, C., Mau, S., Brabandt, H., Laube, L. and Roos, C., (2012) *Visa Policies and the Regulation of Territorial Access. Liberal States and the Freedom of Movement: Selective Borders, Unequal Mobility*, pp. 54-87.

²⁹⁸ *Chapter 1*, section 2, lett. g).

The most common types of visas are issued for tourism or holidays and for a limited period of time. This might vary from State to State. For example, the Schengen visa allows for a short stay up to 90 days.²⁹⁹ Other criteria to allow temporary entry and stay include study, work, employment or business, health and medical reasons. Family reunification is contemplated by many States as a further ground to access to a country.³⁰⁰

b) Human rights and humanitarian grounds to entry a host territory

In addition to the abovementioned titles for entry and stay (tourism, study, work, employment and health reasons), there are other specific cases in which States accord national forms of admission and presence in country that are based on human rights or humanitarian protection grounds.³⁰¹ For example, the right to family according to article 17 ICCPR and to family unity according to article 9 CRC. Case-law developed by the ECtHR confirmed that under certain circumstances, individuals (including non-nationals) might be allowed to stay in country to exercise fundamental rights, such as the respect of family life (article 8 of the ECHR). Hence, States are called to fulfil this right, including by authorizing the permanence in the national territory as a way to:

“protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective “respect” for family”.³⁰²

Many migrants who do not qualify as “refugee” according to the legal definition can equally find themselves in situations of vulnerability that cannot justify a claim for international protection. These are the cases of displacements due to disasters, climate change and environmental degradation driven mobility. Other factors might push individuals to leave their country or habitual residence due to the lack of access to economic and social rights, including the right to health, food

²⁹⁹ Schengen Visa System is thoroughly analysed in relation to identification and integration and when borders are crossed, that is presented in *Chapter 2*.

³⁰⁰ While types of visa commonly accorded by States are hereby listed to understand grounds allowing migrants and refugees to cross borders, implications of visa systems and their importance in relation to the identification process are presented in this same study (*Chapter 2*) in relation to the conditions for the inclusion and integration of migrants in countries of destination, namely when migrants and refugees already crossed the border and are authorized the stay in country.

³⁰¹ Freeman, G.P (1992), *Migration policy and politics in the receiving states* in *International Migration Review*, 26(4), pp.1144-1167.

³⁰² European Court of Human Right (1985), *Case of Abdulaziz, Cabales and Balkandali v. The United Kingdom* (Application no. 9214/80; 9473/81; 9474/81) available at [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%229214/80%22\],\[%22itemid%22:\[%22001-57416%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%229214/80%22],[%22itemid%22:[%22001-57416%22]}) last accessed August 2022

and, if they are separated from their family members living abroad, their desire to reunite with their beloved. Besides these elements that qualify as external factors relating to the place of departure, vulnerability situations can be determined by the conditions of migration and displacement *per se*, that might expose migrants to violence, exploitation and abuse. However, these risks do not amount to trafficking in persons as they do not fall in the scope of the Palermo Protocol.³⁰³ Likewise, migrants exposed to this vulnerability are not protected by refugee law regime either.

Personal characteristics such as migrants age, sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)³⁰⁴ and disability or health status might affect migrants' personal integrity and expose them to further vulnerabilities.³⁰⁵ The GCM, in its Objective 7 encourages States to:

“respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with our obligations under international law. [And] further commit to uphold the best interests of the child at all times, as a primary consideration in situations where children are concerned, and to apply a gender-responsive approach in addressing vulnerabilities, including in responses to mixed movements”.

As suggested by the doctrine,³⁰⁶ if the GCM could be defined as an instrument of soft law with potential normative and interpretative force, this provision describes cases that are not (yet) included in any relevant international migration law instruments. Thus, objective 7 appears to be key in extending protection as it can be interpreted broadly to provide a greater protective framework in response to the current challenges of migration, especially those emerged years after the adoption of the two main instruments (the ICRMW and the Palermo Protocol on Trafficking

³⁰³ Chapter 1, section 2, lett d)

³⁰⁴ International Organization for Migration (2020), *Introducing SOGIESC Information into Pre-Departure Orientation Curriculums*, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/SOGIESC-LGBTIQ-Messages-for-Pre-Departure-Orientation-Curriculums.pdf> last accessed April 2023.

³⁰⁵ Global Migration Group, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, p. 5-7, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> last accessed August 2022.

³⁰⁶ On this reading see Höflinger, T. (2020), *Non-binding and therefore irrelevant? The Global Compact for Migration*. in *International Journal*, n. 75(4), 662–672, available at <https://doi.org/10.1177/0020702020975108> last accessed February 2023.

in Persons) and in light of the most recent crises and circumstances as driver and push-factors for migration. In fact, this provision sustains and is aligned with the human rights relevant jurisprudence promoting to fill the gaps and grey areas of extraterritorial application of national law and rights at the border and throughout migration towards a broader scope for the protection of rights.³⁰⁷ As pointed out in reaction to the adoption of the European Union New Pact on Migration and Asylum (2020),³⁰⁸ one example are those “stuck in limbo” at the border, namely those migrants who do not qualify as victims of trafficking so that related regime set forth by article 3 of the Palermo Protocol does not apply, nor does refugee law.³⁰⁹ Yet, those migrants exposed to violations are still protected by all general human rights instruments and the hardcore of inderogable rights and principles, which continue to limit States discretionary powers in enforcing their immigration norms. So, it can be derived that according to soft law international instruments, there is a first shy attempt to shift towards shared responsibilities that translate into a progressive erosion of the traditional model of one State bearing sovereign power of controlling access non-nationals to its territory. The proposed interpretation suggests moving on to a more flexible approach foreseeing admission in country for those more exposed to violations of their rights and vulnerability. This reading of the norm rests on the primacy of human rights and humanitarian considerations, that remain the backbone orienting States response to comply with related international law obligations. Based on this cornerstone principle of prevalence of human rights and humanitarian considerations, “admission” and “stay” encompass the right of migrants and refugees to access a State’s territory to avert any harm for their integrity. When conditions for humanitarian grounds are met, migrants in vulnerable situations and refugees are protected from rejection at the border and removal. Moreover, in some cases they can even be granted a legal immigration status (or regularization)³¹⁰ in the receiving country, as well as the required authorization to reside in it legally.

³⁰⁷ Cfr. above on *Hirsi* case, for example.

³⁰⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions on a New Pact on Migration and Asylum, doc. COM/2020/609 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609> last accessed April 2023.

³⁰⁹ European Economic and Social Committee (2021), *The New Migration Pact: fraught with flaws and stuck in limbo*, available at <https://www.eesc.europa.eu/en/news-media/news/new-migration-pact-fraught-flaws-and-stuck-limbo> last accessed April 2023.

³¹⁰ Regularisation pathways are analysed in *Chapter 2*, section 3, lett a).

Human rights and humanitarian grounds are complementary to the international obligations that prohibit removal, rejection and pushbacks, in addition to other human rights and humanitarian considerations that relate to the personal situation and needs of migrants who do not qualify as refugees. For example, these are the cases where migrants in the country of origin or habitual residence could be exposed to harm due to widespread violations of human rights, as well as disasters and limited or lack of access to healthcare. Such cases establish sufficient ground to be admitted. Moreover, these cases entitle migrants in the country of destination to entry and enjoy humanitarian protection that adds on the abovementioned cases where the principle of *non-refoulement* applies. Indeed, humanitarian protection and the principle of *non-refoulement de facto* prevent migrants to be rejected at the borders and entail their admission and stay in country of destination.

Once border is crossed, the respect of the right to private and family life in some cases can become a further ground to link migrants and their relatives in country of arrival, where they can be admitted and stay based on the element of family reunification. Additionally, employment, study, social and other emotional ties can be considered and determined discretionally by States in their national immigration legislation and policies to admit migrants in country safely and regularly.

An assessment of migrants' personal situation upon arrival at the border by States authorities provides elements to establish whether conditions to admit them exist and are valid. The entry and stay in country can also be justified in relation to the personal situations of migrants who have been smuggled and exposed to violence, exploitation and abuse, as well as victims of trafficking in persons or domestic, sexual and gender-based violence in the country of destination, and victims of other crimes, including labour exploitation, terrorism and crimes motivated by racism or other grounds of discrimination. These cases can equally entail an admission and stay in the receiving country for humanitarian grounds. Lastly, special considerations are given to those migrants with special needs, such as pregnant women and if it comes to unaccompanied and separated children. According to State practice (e.g., Argentina, Brazil, Portugal and Spain),³¹¹ in many cases, human rights and humanitarian considerations are the base for granting a temporary residence in country, which can be extended as long as the reasons for granting it last. When renewal of the period of

³¹¹ DLA Piper (2018), *Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice*, available at https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_DLA_Piper_Study.pdf, last accessed August 2022.

stay on such exceptional circumstances is no longer possible, or after a prescribed length of time, States might allow migrants and refugees to apply to convert their temporary stay to other residence permits, including providing the option for a long-term residence in country.

Grounds of non-removal and humanitarian considerations may lead to a suspension of deportation and removal of migrants and refugees from the country they have reached. This does not necessarily (or not always) translate to obtaining a legal status or residence permit in the country as an effect of this suspension. A deportation halt can be ordered in situations when non-removal is grounded on international human rights obligations, such as the principle of *non-refoulement*. However, even when such measure is adopted, migrants who are given a “tolerated” status³¹² to stay usually have very limited access to their rights and related services offered by the host country. Among these: the right to work, healthcare and education. This situation can be in itself a further cause of vulnerability for the individuals involved. Therefore, an evaluation of the personal situation of those migrants can be conducted by assessing the degree of access to rights and related social services in the host country. This access usually varies between host States and according to the reasons of residence in country. In fact, a residence on humanitarian and human rights grounds often results in migrants and refugees enjoying a lower level of access to rights and social services in comparison to other grounds of admission and stay in country. Usually, it comes to a more limited access than nationals of the same country. For example, Germany has issued a new law in July 2022 granting more than 100.000 migrants who have been staying in Germany for five years or longer with a *duldung* or “tolerated” status with a temporary suspension of deportation from the country. Based on this measure, the government provides a one-year residency status “on probation” in country when humanitarian reasons apply, depending on the situation of migrants and refugees, or if the conditions for integration in the host country are met. Among others, such conditions are primarily described as the financial independence and the enrolment in education and vocational training opportunities.³¹³ This temporary stay is extended to rejected asylum seekers, namely those claimants whose demand was deemed implausible and therefore ineligible for refugee status in country.³¹⁴

³¹² OHCHR uses this terminology, see above DLA Piper, *op.cit.*

³¹³ Mediendienst Integration (2020), *Was ist eine Duldung?*, available at <https://mediendienst-integration.de/migration/flucht-asyl/duldung.html> last accessed February 2023.

³¹⁴ Noll G. (2020), *Rejected Asylum Seekers: the Problem of Return*, available at <https://www.unhcr.org/research/working/3ae6a0cd0/rejected-asylum-seekers-problem-return-gregor-noll.html> last

c) Access to an asylum system

Refugees are those people forced to leave their countries of origin or habitual residence to seek for international protection.³¹⁵ Because they are rather forced to move and it is not their free choice, refugees often cross the border in search of protection irregularly, namely without a previous application for a visa nor complying with immigration requirements of the country of arrival.³¹⁶ No matter how they reach the border by land, air or at sea, if refugees manifest the intention to apply for asylum, authorities of the receiving State should refer them to the applicable national procedure. However, not in every country an asylum system is in place. Indeed, as stated above in this *Chapter*,³¹⁷ the right to asylum is considered to be “asymmetrical” as much as the right to freedom of movement, because it is not complemented by an obligation upon States to grant asylum. Nevertheless, in all cases the protection of the principle of *non-refoulement* still applies and asylum seekers cannot be rejected at the border or expelled to places where they are exposed to persecution, as provided by refugee law.³¹⁸ This concretely means that even if States are not prepared to grant asylum to refugees with well-founded fear of persecution and according to international standards, a rejection cannot be performed if asylum seekers are exposed to any risks of harm resulting by the non-admission in country. Therefore, State authorities are in charge to provide alternatives to avoid any rejection at the border contrary to the *non-refoulement* principle. Among these alternatives, there are the removal to a safe third country or another possible solution equivalent to asylum, including a temporary admission in country as a place of safety. As previously observed, the same can be said when the intention to apply for asylum is expressed in the context of the sea: in the high seas refugees are entitled to have their claim examined by State authorities; if they are in distress in territorial waters coastal States bear the responsibility to

accessed April 2023; IOM-EMN (2016), *Returning Rejected Asylum Seekers: challenges and good practices*, available at https://home-affairs.ec.europa.eu/system/files/2017-12/17a_lithuania_rejected_asylum_final_en.pdf last accessed April 2023.

³¹⁵ *Supra* – Chapter 1, section 1, lett. b) par. i.

³¹⁶ Goodwin-Gill, G.S. and McAdam, J. (2021), *The refugee in international law*, p. 274.

³¹⁷ *Ibid.* par. The Principle of Non-Refoulement for refugees and asylum seekers

³¹⁸ Lauterpacht E., Bethlehem D., (2003) *The Scope and Content of the Principle of Non-Refoulement: Opinion*, in Feller E., Türk V. and Nicholson F. (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, pp. 87-177.

facilitate the reach of a place of safety according to international law.³¹⁹ This interpretation is supported by article 31 of the CSR, that provides:

“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. (...)”

By supporting a certain margin of flexibility in case of illegal entry and stay, this provision indirectly creates a positive obligation upon States to facilitate a channel for refugees to reach safety, even if they could not complete immigration formalities and requirements prior to the arrival to country. It derives that the well-founded fear of persecution can constitute *per se* a justification for an illegal entry in country, depending on the personal circumstances of the asylum seekers that need to be verified by State authorities on a case-by-case basis.³²⁰

However, noteworthy to mention is the situation of asylum claims when borders are not crossed yet. If refugees formalize an application for a visa for an intended destination before the consular or embassy authorities of this country and they are still present in the country of origin or habitual residence, even if they express intention to request for asylum in the country they intend to reach, States still maintain discretion and the power to reject the visa application, including if humanitarian grounds apply. Consequently, if a visa is denied and the borders are not crossed, the protection of *non-refoulement* is not triggered for these asylum claimants. This was made clear by the ECtHR decision in the case *M.N. and others v. Belgium*,³²¹ according to which the exercise of public powers by the embassy for security considerations prevails over the humanitarian visa request. Therefore, as pointed out by scholars,³²² there is no obligation upon States to issue a visa

³¹⁹ In this same *Chapter 1*.

³²⁰ Goodwin-Gill, G. S., (2003) *Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection* in Feller E., Türk V. and Nicholson F. (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, pp. 185-211.

³²¹ European Court of Human Rights, Grand Chamber (2020), *M.N. and Others*, Application no. 3599/18, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-202468%22%5D%7D> last accessed September 2023

³²² Stoyanova V. (2020), *M.N. and Others v Belgium: no ECHR protection from refoulement by issuing visas*, available at <https://www.ejiltalk.org/m-n-and-others-v-belgium-no-echr-protection-from-refoulement-by-issuing-visas/> last accessed March 2023; Reyhani, A.N., (2020) *Expelled from Humanity: Reflections on MN and Others v. Belgium*, available at <https://verfassungsblog.de/expelled-from-humanity/> last accessed March 2023; Pustorino, P. (2003) *Refugees' Rights, Right to Citizenship and Other Political Rights*, in *Introduction to International Human Rights Law*, pp. 199-209.

that enables access to the asylum system in the intended country of destination. This entails risks for refugees that are faced with the absence of legal and safe pathways for asylum seekers to travel, and thus they are exposed to increased vulnerability.

d) **Entry and travel Bans, pushbacks at sea, entry to territory and situation at the border, including expulsion and extradition.**

State can control entry and presence of non-nationals, whereas according to article 12, par. 4 ICCPR, nationals are entitled to entry to their country at any moment. Conversely, all the other individuals arriving at the border without any title to stay are not authorized to enter the country. At the same time, they cannot be rejected at the border whenever there are grounds for non-refoulement.

For example, in the case of the European Union, visa common policy to entry and stay is enforced, and external borders are monitored by FRONTEX,³²³ a specialized agency conducting joint operations and providing technical support to Member States for this purpose. Border monitoring efforts are complemented by EUROSUR,³²⁴ which has functions of information exchange tool among Member States.³²⁵

As preventing unauthorised entry to non-nationals is prerogative of States according to national immigration frameworks, in most cases, this can entail a removal, extradition or expulsion from the territory. Such measures always encounter the limits of *non-refoulement* obligation, and in the most extreme cases, they can also raise an issue in relation to protecting the right to life, according to article 2 of the ECHR and article 6 ICCPR. Besides cases triggering the *non-refoulement* protection, if an expulsion is performed, it can be accompanied by a State's provision to ban the entry to the territory, which prohibits individuals from entering a state from which they have been

³²³ European Border and Coast Guard Agency: <https://frontex.europa.eu/>

³²⁴ European Border Surveillance System (EUROSUR), defined as “a common framework for the exchange of information and for the cooperation between EU Member States and Frontex to improve situational awareness and to increase reaction capability at the external EU borders for the purpose of detecting, preventing and combating irregular migration and cross-border crime, and contributing to ensuring the protection and saving the lives of migrants”. It was established by Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1052> last accessed April 2023.

³²⁵ A dedicated analysis of this system, along with all implications and functioning of the Schengen aquis and related visa regime will be analysed in the next chapter of this study (*Chapter 2*), in relation to identification and integration efforts, when borders have been crossed and access to the territory realized.

expelled. A ban can have a validity limited in time and pursues the objective of protecting internal security of the States to prevent that individuals who are considered a threat or undesirable in country are granted a visa, or they are otherwise admitted to the territory. To enforce a ban, border checks are performed without discrimination, and if individuals subjected to this ban are identified and rejected, the authorities have the obligation to provide some explanations about the decision taken.

Border checks can also lead to push-backs operations at sea,³²⁶ as analysed in the present study³²⁷ and where international law of the sea regime always applies, in combination with relevant human rights and refugee law principles. It is worthy to reiterate again about the importance of the principle of extraterritorial jurisdiction, which triggers the responsibility to protect upon States and related obligations including in the context of the high seas. Similarly, in transit zones, like for example border areas and airports, States jurisdiction is activated by virtue of the principle of effective control according to the *Hirsi* jurisprudence. Whenever and wherever a State *de facto* takes control over individuals, it is mandated to protect them.

Lastly, in some instances where special agreements have been concluded, individuals that meet certain conditions have authorization to stay in one country, they can cross internal borders of a given region and move freely across States within the same. Such conditions include the nationality or the fact of being national of a neighbouring country located in a specific region or area. For example, this is the case of the European Union and Schengen Area³²⁸ and, in West Africa, the Economic Community of West-African States (ECOWAS)³²⁹ region.

For those non-nationals that are not entitled to enter and stay in country, States authorities can decide not to admit them and order an expulsion from the territory to send them back to where migrants came from. When it comes to refugees intending to claim for asylum, the rejection at the

³²⁶ Human Rights Council, Report on means to address the human rights impact of pushbacks of migrants on land and at sea. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, doc. A/HRC/47/30, 12 May 2021, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/33/PDF/G2110633.pdf?OpenElement> last accessed April 2023.

³²⁷ *Chapter 1*, section 2.

³²⁸ Visa Schengen System is included in the present study, *Chapter 2*, in relation to identification and integration (section 2)

³²⁹ The Economic Community of West African States (ECOWAS) is made up of fifteen member countries that are located in the Western African region. These countries have both cultural and geopolitical ties and shared common economic interest. States party are Benin, Burkina Faso, Cabo Verde, Côte D'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. See <https://ecowas.int/> last accessed April 2023.

border and the expulsion would breach the obligations of *non-refoulement*,³³⁰ thus not possible in such cases. Likewise, in case such an order is issued against migrants, the expulsion cannot be enforced if it would pose risks relating to their personal integrity or due to other conditions in their country of origin or habitual residence. The principle of *non-refoulement* applies also in the context of pushbacks at sea operations.³³¹ Indeed, international standards set certain limits to the general rule of sovereignty on immigration and border control, and these are related to some specific situations of vulnerability that characterize certain categories of people on the move. They cannot be rejected at the border, independently from their migration status. First and foremost, as mentioned above, this is the case where the principle of *non-refoulement* applies, namely in those situations where migrants returned to their countries of origin or habitual residence would be exposed to treatments amounting to serious harm against the prohibition of torture. Then, there is also the case of refugees and asylum seekers that would be exposed to persecutions on the grounds that forced them out of their country in search of international protection. The principle of *non-refoulement* as applied in the jurisprudence *Soering v. UK*³³² limits the expulsion and like in this case, the extradition if such measures could interfere with the respect of private and family life as per article 8 of the ECHR. In this case the right to family and private life was indeed deemed prevalent over considerations of security, public health and public order, so that it was possible to suspend the decision to extradite the claimant in application of interim measures under Rule 39 of the Rules of the Court.³³³ This type of measures are usually applied in cases of a threat to life (situation falling under article 2 of the ECHR) or ill-treatment prohibited by article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment). However, as confirmed by this case, in highly exceptional cases interim measures according to Rule 39 can also be applied in respect of other fundamental rights including the respect for private and family life (article 8 of the ECHR).

³³⁰ Chapter 1, section 1, lett. b) par. i.

³³¹ Chapter 1, section 2 lett. g).

³³² European Court of Human Rights (1989), *Case of Soering v. The United Kingdom*, Application no. 14038/88), available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57619%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57619%22]}) last accessed April 2023.

³³³ “The Court may, under Rule 39 of its Rules of Court, indicate interim measures to any State party to the Convention. Interim measures are urgent measures which, in accordance with the established practice of the Court, apply only where there is an imminent risk of irreparable damage”. See https://www.echr.coe.int/Documents/PD_interim_measures_intro_ENG.pdf, last accessed August 2022.

As observed by some scholars,³³⁴ this leading case on extradition demonstrates that fundamental rights and protection of individuals' rights prevail over effort to tackle transnational crime by promoting extradition as means for States mutual assistance and international cooperation to pursue perpetrators. It is indeed necessary to strike a balance between human rights considerations and criminal justice for collective interests, whereby the interpretation of inhuman and degrading treatment or punishment challenge the rationale of the institute of the extradition of offenders.

e) Immigration Detention and Alternatives to Detention

Immigration (administrative) detention is a measure frequently used by States that criminalize irregular cross-border movements as a tool for effective migration management, specifically in case of accessing to the territory without authorization or a valid visa.³³⁵ Criminal detention has a clear legal base to prevent and prosecute criminal conduct (1), it follows procedural guarantees (2) and is based on an individual decision (3). Conversely, immigration administrative detention characterizes for more limited safeguards and procedural guarantees and does not follow an individualized approach. It is commonly used for unauthorized entry or prior to expulsion from the territory. Therefore, immigration detention might be harmful especially if such measure is automatically enforced by States without an adequate identification of profiles of migrants and refugees, as well as their needs and vulnerabilities.

According to UNHCR, the detention of migrants either criminal or administrative has been defined as a:

“Confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory”³³⁶

³³⁴ Dugard, J., Van den Wyngaert, C., (1998) *Reconciling Extradition with Human Rights*, in *American Journal of International Law*, volume 92 issue 2, p. 187-212, available at <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/reconciling-extradition-with-human-rights/6E577837A8255B5DB9D14BC5F60BCFC0> last accessed April 2023.

³³⁵ Sampson, R. and Mitchell, G.,(2013). Global trends in immigration detention and alternatives to detention: Practical, political and symbolic rationales. *Journal on Migration and Human Security*, 1(3), pp.97-121.

³³⁶ United Nations High Commissioner for Refugees (1999), *UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers*, guideline 1, available at <https://www.unhcr.org/protection/globalconsult/3bd036a74/unhcr-revised-guidelines-applicable-criteria-standards-relating-detention.html> last accessed April 2023.

On this point, the Inter-American Court of Human Rights clarified that detention is:

“(...) a measure to be identified as one that deprives a person of liberty, regardless of the specific name it is given at the local level ... [and] the person, in this case the child, cannot or is unable to leave or abandon at will the place or establishment where she or he has been placed.”³³⁷

It becomes apparent that detention could undermine the respect of rights including the right to liberty set forth in Article 9 of ICCPR, which requires States to ensure that any deprivation of liberty, including in the context of immigration, is “justified as reasonable, necessary and proportionate in light of the circumstances”.³³⁸ This provision is binding for all State parties to the ICCPR. According to this same provision, detention should always have a legal basis. The ICCPR does not provide an exhaustive list of conditions for detention. However, the Committee on Civil and Political Rights (HCR) provided guidance by specifying that the law should clearly establish the grounds for detention and “define them with sufficient precision to avoid overly broad or arbitrary interpretation or application.”³³⁹ The Committee also clarified that:

“there may be factors particular to the individual, such as the risk of absconding and lack of cooperation (...) Without such factors, detention may be considered arbitrary, even if entry [in country] was illegal”.³⁴⁰

As indicated by the Committee, individual circumstances of persons deprived of liberty can influence the lawfulness of such measures, specifically in case such risks concretely exist. Therefore, the personal situation of individuals placed in custody should be reassessed over time.³⁴¹

It derives that such type of detention must be lawful and accompanied by clear procedures and safeguards prescribed by the law, necessary and proportionate depending on the individual case, and for the shortest time possible.

³³⁷ Inter-American Court of Human Rights, Advisory Opinion (2014) Oc-21/14 of August 19, 2014 requested by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay - Rights and Guarantees of Children in the Context of Migration and /or in need of International Protection, par. 145., available at https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf last accessed April 2023.

³³⁸ Human Rights Committee (HRC) (2014), *General comment no. 35, Article 9 (Liberty and security of person)*, 16, CCPR/C/GC/35, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement> last accessed March 2023, par. 18.

³³⁹ *Ibidem*, par. 22.

³⁴⁰ HCR, *A. v. Australia*, Communication No. 560/1993

³⁴¹ HCR, General Comment No. 35, para 18.

Under the EU law, detention is permitted in the absence of other alternative measures and in the two cases of risk of absconding and when the migrants to be expelled from the territory avoid or hamper the preparation of the return or removal process (article 15 of the Return Directive).³⁴² The risk of absconding might exist when the migrants subject to this procedure of removal do not cooperate in determining their identity, they lack documentation or use false identity and they do not report to the authorities.

According to international law, if migrants and refugees reach the border in an irregular situation, the deprivation of their right to liberty and restriction of movement should be enforced as a measure of last resort, only when necessary, and in case no other alternatives measures can be adopted.³⁴³ Conversely, States are encouraged to explore alternatives to detention that could be non-custodial, or community based. Such alternatives reflect the exceptionality of immigration detention and are more compatible with the respect of migrants' dignity and human rights, while their immigration status is being resolved.³⁴⁴

In refugee law, article 31 of the CRS provides additional guidance:

“The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.” (par. 2)

The provision calls upon States to apply all necessary safeguards when imposing mobility restriction measures that are contrary to the right to liberty and security of the person, according to article 9 ICCPR. This obligation applies also to detention measures, including in the context of immigration and border management. On this matter, in the decision *Amuur c. France*, the ECtHR specified that a restriction of liberty of movement imposed on non-nationals should be accompanied by safeguards and can have the purpose of preventing or managing illegal

³⁴² European Union (2008) *Directive 2008/115/EC of The European Parliament and of The Council on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals*, article 15, par.1.

³⁴³ See the Opinions Adopted by the Working Group on Arbitrary Detention (2010) U.N. Doc. A/HRC/13/30/Add.1 available at <https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf> last accessed March 2023. In particular the Opinion No. 5/2009 (Lebanon), p. 7, para.12.

³⁴⁴ Working Group on Arbitrary Detention (2018), *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February, par. 17 available at https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf last accessed April 2023.

immigration, provided it complies with international obligations specifically relating to refugee rights.³⁴⁵ However, in a more recent decision, the Court took a different stance in relation to the guarantees provided by article 5 of the ECHR,³⁴⁶ allowing the defendant to compromise refugees rights in situation of crisis, specifically when a large number of refugees and migrants reach State border.³⁴⁷

In practice, migrants and refugees arriving at the border are often placed in administrative detention in prisons, centres or other premises controlled by the authorities of the receiving States where they are deprived of their liberty and their mobility is restricted. Immigration administrative detention can be limited in duration or prolonged, depending on State's discretion. However, it always constitutes an exception to the fundamental right to liberty. Indeed, the restrictions to the right to liberty of movement according to article of 12 ICCPR are allowed only if provided by law and in case of threats to national security, public health and public order and are subjected to the principles of necessity and proportionality, as enshrined in article 4 ICCPR.³⁴⁸ Likewise, if placed in State custody, authorities remain responsible of treating all migrants and refugees in a humane and dignified manner. The *New York Declaration for Refugees and Migrants* recognises the need to decriminalise irregular entry, with a view to ensuring that the status of individuals who cross

³⁴⁵ European Court of Human Rights (1996), *Amuur v. France*, Application no. 19776/92, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2219776/92%22%5D,%22itemid%22:%5B%22001-57988%22%5D%7D> last accessed Septemebr 2023, par. 43: "Holding aliens in the international zone does indeed involve a restriction upon liberty, but one which is not in every respect comparable to that which obtains in centres for the detention of aliens pending deportation. Such confinement, accompanied by suitable safeguards for the persons concerned, is acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations, particularly under the 1951 Geneva Convention Relating to the Status of Refugees and the European Convention on Human Rights. States' legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylum-seekers of the protection afforded by these conventions.

Such holding should not be prolonged excessively, otherwise there would be a risk of it turning a mere restriction on liberty - inevitable with a view to organising the practical details of the alien's repatriation or, where he has requested asylum, while his application for leave to enter the territory for that purpose is considered - into a deprivation of liberty. In that connection account should be taken of the fact that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country.

Although by the force of circumstances the decision to order holding must necessarily be taken by the administrative or police authorities, its prolongation requires speedy review by the courts, the traditional guardians of personal liberties. Above all, such confinement must not deprive the asylum-seeker of the right to gain effective access to the procedure for determining refugee status."

³⁴⁶ Stoyanova V. (2019), *The Grand Chamber Judgment in Ilias and Ahmed v Hungary: Immigration Detention and How the Ground Beneath Our Feet Continues to Erode*, available at <https://strasbourgothers.com/2019/12/23/the-grand-chamber-judgment-in-ili-as-and-ahmed-v-hungary-immigration-detention-and-how-the-ground-beneath-our-feet-continues-to-erode/> last accessed March 2023.

³⁴⁷ European Court of Human Rights (2019), *Ilias and Ahmed v. Hungary*, Application no. 47287/15, 21 available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-198760%22%5D%7D> last accessed September 2023, par. 228.

³⁴⁸ Chapter 1, section 1, lett. b).

international borders is assessed in accordance with due process and that alternatives to detention are pursued when this assessment takes place.³⁴⁹ In the same vein, the GCM³⁵⁰ encourages States to use immigration detention only as a measure of last resort and work towards alternatives (objective 13 GCM),³⁵¹ by prioritizing non-custodial alternatives to detention that are in line with international law, and by adopting a human rights-based approach supported by: the consolidation of best practices (1), the revision of existing legal frameworks (2) and the protection of family unity and the rights (3), upholding the best interest of the child principle regardless of migration status (4). Among the most vulnerable groups, there are for example pregnant and breastfeeding women, older persons, persons with disabilities, survivors of torture or trauma, persons who are victims of crimes such as trafficking, migrants with special physical or mental health needs, persons with disabilities, stateless persons, refugees and asylum seekers and persons with diverse SOGIESC. Detention is never a good choice for their protection.

i. Migrant children

Children are among the persons in vulnerable situations. Because of this, they are more at risk and detention is not always the best choice for their well-being and health. Specific solutions that are culturally appropriate and gender sensitive should be preferred in these cases.

In international law, migrant children, including unaccompanied and separated migrant children, require special considerations and protection and detention is to consider against the best interest of the child principle. Migrant children are entitled to the protection of rights enshrined by the CRC.³⁵² All decisions that concern them, including in the context of alternatives to detention, are informed by the principles of non-discrimination (article 2 CRC), the best interest of the child (article 3 CRC) and the right to life, survival and development (article 6 CRC), the respect for the view of the child (article 12 CRC). As already emphasized, detention is never to be considered in children best interest, even if article 37, par. *b* CRC describe it as a measure of last resort.

³⁴⁹ United Nations (2016), *Resolution adopted by the General Assembly on 19 September 2016*, doc. A/RES/71/1, 3, par. 33, available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf last accessed April 2023.

³⁵⁰ *Supra*.

³⁵¹ United Nations (2018), *Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration* doc. A/CONF.231/3, par. 29, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/244/47/PDF/N1824447.pdf?OpenElement> last accessed April 2023.

³⁵² *Supra*

According to the Committee on the Rights of the Child, unaccompanied or separated children should not be detained, and States must allow for immediate release and their placement in other forms of appropriate accommodation.³⁵³ Even if article 9 CRC protects family unity, a placement of children in detention to maintain family unity is however not justified. In case family members are in detention, States authorities are advised to find non-custodial alternatives for the whole family. On this matter, joint statements and general comments by the Committee on the Rights of the Child, the Committee on the Rights of Migrants Workers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment have added and clarified that detention as last resort measure does not apply to the case of children, as it would conflict with the best interest principle and their right to development.³⁵⁴ Moreover, detention of children resulting from their (or their parents’) migration status can be regarded as cruel, inhuman or degrading,³⁵⁵ and as a consequence it is unlawful. Therefore, States are encouraged to ensure the prohibition of child and family immigration detention is integrated in their legal frameworks, and detention abolishment gradually ensured in policy and practice.³⁵⁶

ii. Migrant women

Women in detention might be exposed, among other risks, to sexual abuse. Therefore, separate facilities dedicated to them would be an option to ensure their integrity is protected effectively. Specialized personnel in these facilities, preferably women as well, would be better placed to supervise and safeguard for a dignified treatment and access to their needs, including being prepared to eventually receive and respond promptly to any claims of sexual abuse.

³⁵³ Committee on the Rights of the Child (2005), *General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin*, par. 61, available at <https://www2.ohchr.org/english/bodies/crc/docs/gc6.pdf> last accessed April 2023.

³⁵⁴ Joint General Comment - No. 4 of the CMW and No. 23 of the CRC (2017) - on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, doc. CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, par. 10, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/65/PDF/G1734365.pdf?OpenElement> last accessed April 2023.

³⁵⁵ *Ibid.*, par. 9.

³⁵⁶ *Ibid.*, par. 12.

The principle of non-detention applies to pregnant and nursing women,³⁵⁷ considered part of vulnerable groups, as also clarified by the United Nation Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment:

“The threshold of prohibited ill-treatment generally will be reached sooner with regard to migrants with an irregular status or with other vulnerabilities. Moreover, ill-treatment or grossly inadequate detention conditions can even amount to torture if they are intentionally imposed, encouraged or tolerated by States for reasons based on discrimination of any kind, including based on immigration status.”³⁵⁸

iii. Types of Alternatives to Detention and the Voluntary Return

Bearing in mind the exceptionality of detention, alternatives or non-custodial measures exist and are ideally applied by authorities after an individual assessment and identification of profiles, needs and circumstances deemed favourable for these options. Alternative measures are enforced according to the non-discrimination principle among other guarantees referred to. Based on States practice,³⁵⁹ six types of alternatives include:³⁶⁰ community-based placement, which allows the migrants and refugees to enjoy the right to freedom of movement unconditionally; open or semi-open facilities where migrants and refugees are placed and where they can leave during the day and return at night in the respect of their right to freedom of movement; release from detention with registration of the residence and communication in case of changes; release with regular reporting obligation, with a set frequency decided on the base of the personal circumstances; release with obligation to reside in a given area or municipality; release against a guarantee that could be a sum of money, a document or a contract or through a guarantor that makes sure the

³⁵⁷ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 5 (2021) on migrants’ rights to liberty and freedom from arbitrary detention and their connection with other human rights, doc. CMW/C/GC/5, 21 July 2022, par. 45, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/411/19/PDF/G2241119.pdf?OpenElement>, last accessed April 2023.

³⁵⁸ HRC (2018), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, doc. A/HRC/37/50, par. 19, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/347/27/PDF/G1834727.pdf?OpenElement> last accessed April 2023.

³⁵⁹ Parliamentary Assembly of the Council of Europe (2010), *The detention of asylum seekers and irregular migrants in Europe*, doc. Doc. 12105, parr. 43-52 available at <https://pace.coe.int/pdf/addcc60e1c68629920ee2c6887f6c8b11521989bbb30cd4cd6c66684f932e8ae/doc.%2012105.pdf> last accessed April 2023.

³⁶⁰ International Detention Coalition (IDC) (2015), *There are alternatives. A handbook for preventing unnecessary immigration detention (revised edition)*, p. 59-74, available at <https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf> last accessed April 2023.

migrants or refugees comply with their duty; controlled release with a family members, which is widely practiced and successful in Canada, for example; and lastly, release with monitoring through an electronic device that follows the person benefitting from this alternative to detention wherever they go. The latter might be problematic in terms of the respect of the supervisee's right to freedom of movement, privacy and dignity. Therefore, if applied, it requires special attention in relation to the correct application of the principles of non-discrimination, necessity, proportionality and all judicial guarantees including legal review of the imposition of such measure over time.

In addition to the above options, migrants could express their desire to return to their country of origin or habitual residence. In these cases, States authorities might put in place policies and programs to assist them to leave their territory in the realization of their right to return. Without prejudice to fair evaluation of asylum claims and if added as an option to avoid detention for migrants, assisted voluntary return (AVR) could be a safe measure for effective migration and border management, especially if implemented with due safeguards that do not compromise individual fundamental rights and after an adequate assessment of migrants' needs and absence of vulnerabilities. If procedures are followed expeditiously to exclude any ground of vulnerability linked to the return, this process not only realizes the right to freedom of movement (article 12, par. 2, ICCPR) but also the right to liberty and security of the person (article 9 ICCPR) upholding migrants' inherent dignity.³⁶¹ This has been clarified in a recommendations by the United Nations Special Rapporteur on the human rights of migrants:

“The return of migrants who do not meet international or national legal standards to remain in their host country should be conducted in safety, with due regard for dignity, humanity and respect for human rights, and in compliance with international law, on the basis of the primacy of voluntary returns; cooperation between States of origin and reception; and enhanced reception and reintegration assistance for those who are returned. Given the potentially dramatic consequences, including rights violations, of forced or coerced returns, priority should be given to independent and voluntary returns at all times.”³⁶²

If this is the preferred option, it is essential that the return is not forced or imposed but *voluntary*,³⁶³ and based on informed and expressed consent of the beneficiary.

³⁶¹ See the *Preamble* of the UDHR and its article 1.

³⁶² HCR (2018), *Report of the Special Rapporteur on the human rights of migrants*, doc. A/HRC/38/41, par. 87, available at https://digitallibrary.un.org/record/1637425/files/A_HRC_38_41-EN.pdf last accessed April 2023.

³⁶³ Italic used to add emphasis.

In this sense, in compliance with the prevalence of the principle of *non-refoulement* and in order to avoid that migrants request this process out of despair, namely to avoid deportation, or because they are held in prolonged detention. In case of slow and complicated family reunification and asylum procedures, conditions to be met to proceed with a voluntary return are:

“a fully informed decision, free of coercion and backed by the availability of sufficient valid alternatives, such as temporary permits for work, study or humanitarian purposes, or opportunities for permanent residence or citizenship.”³⁶⁴

If return is implemented for individuals belonging to vulnerable groups and requiring special attention, including specific protection and health needs, return through the assisted measures process is performed with due consideration and safeguards to respect their rights, including allowing possibility to access to specialized services.

f) The Right to Return

Since the present analysis is focused on migration at the border, returns are hereby analysed under the profile of an opportunity and a choice presented to migrants and refugees to maintain their safety when access to country is not authorized. Therefore, all the subsequent implications for returnees once they reach their destination are object of the analysis on integration aspects, namely when the borders are being crossed, and entry to territory is permitted.³⁶⁵

The right to return is enshrined in article 12, par. 4 ICCPR,³⁶⁶ based on which anyone is entitled to return to their country. The Human Rights Committee in its *General Comment 27*³⁶⁷ has specified that the concept of returning implies a connection to a country, which could be based on the nationality or other special ties and relations to a given country. In the context of migration, a broader interpretation of this norm is preferable in order to encompass long term residents and stateless persons living in a country.³⁶⁸ In this sense, the International Court of Justice’s *Nottebohm*

³⁶⁴ *Ibidem*, par. 30.

³⁶⁵ *Chapter 2*, section 2.

³⁶⁶ The provision states: “4. No one shall be arbitrarily deprived of the right to enter his own country.”

³⁶⁷ HRC (1999), *General Comment No. 27*, doc. CCPR/C/21/Rev.1/Add.9, parr. 19-21 available at <https://digitallibrary.un.org/record/366604?ln=en> last accessed April 2023.

³⁶⁸ *Ibid.*

case recalled above³⁶⁹ and the “genuine and effective link” elaborated in this jurisprudence becomes a reference concept to establish the ground to return.³⁷⁰ This right applies also to refugees who fled their country and are wishing to return, like for example in the case of Palestinians and exiles from territories located in Israel and their descendants that maintained links with the disputed territories.³⁷¹ Likewise, refugees hold the same rights when international borders are settled, such as in the case of Guatemala, El Salvador and Honduras,³⁷² Malawi,³⁷³ Burma,³⁷⁴ Mauritania,³⁷⁵ and when borders are in quarrel like in Bosnia, Croatia, Kosovo,³⁷⁶ East Timor,³⁷⁷ Ethiopia and Eritrea.³⁷⁸

Understanding the scope of return in international law and its meaning is quite challenging. As confirmed by the Human Rights Committee, there is no international definition of the return in the context of migration and displacement.³⁷⁹ The Global Migration Group (GMG) elaborated one as follows:³⁸⁰

“return” is an “umbrella term to refer to all the various forms, methods and processes by which migrants are returned or compelled to return to their country of origin or of habitual residence, or a third country. This includes (...) deportation, expulsion, removal,

³⁶⁹ Chapter 1, section 2.

³⁷⁰ See above in this Chapter 1 the section on the *the Right to Nationality*.

³⁷¹ On the situation of Palestinians host in Arab countries see Asem K. (2009), *Palestinian Refugees in Arab States: A Rights-Based Approach*, in *CARIM Research Report*, 2009/08, , available at <https://cadmus.eui.eu/handle/1814/10792> last accessed April 2023.

³⁷² See United Nations (1933), *Reports of International Arbitral Awards – Honduras Borders (Guatemala, Honduras)*, volume II p. 1307-1366, available at https://legal.un.org/riaa/cases/vol_II/1307-1366.pdf last accessed April 2023.

³⁷³ Mayall, J. (1973), *The Malawi-Tanzania Boundary Dispute*, in *The Journal of Modern African Studies*, vol. 11, no. 4, p. 611–628 available at <http://www.jstor.org/stable/161618> last accessed April 2023.

³⁷⁴ Human Rights Watch (2022), *Myanmar: No Justice, No Freedom for Rohingya 5 Years On. Anniversary of Atrocities Highlights International Inaction*, available at <https://www.hrw.org/news/2022/08/24/myanmar-no-justice-no-freedom-rohingya-5-years> last accessed April 2023.

³⁷⁵ Suhrke, A. and Hazarika, S. (1993), *Pressure points: environmental degradation, migration and conflict*, p. 33 available at <https://www.cmi.no/publications/file/1374%20pressure-points-environmental-degradation.pdf> last accessed April 2023; see also on Mauritania and the IOM Frowd P.M (2018), *Developmental borderwork and the International Organization for Migration*, in *Journal of Ethnic and Migration Studies*, volume 44(10), pp.1656-1672.

³⁷⁶ See United Nations *What is Former Yugoslavia?* in *United Nations International Criminal Tribunal for the Former Yugoslavia* available at <https://www.icty.org/en/about/what-former-yugoslavia> last accessed April 2023.

³⁷⁷ Dolven B., Margesson R, Vaughn B (2012), *Timor-Leste: Political Dynamics, Development, and International Involvement*, in *Congressional Research Service* 7-5700, p. 8.

³⁷⁸ Stigant S., Phelan M. V. (2019) *A Year After the Ethiopia-Eritrea Peace Deal, What Is the Impact? Warming ties are part of a tectonic shift in the Horn of Africa, but the end results are far from certain* in *United States Institute of Peace, Analysis and Commentary*.

³⁷⁹ Human Rights Committee (2018), *Report of the Special Rapporteur on the human rights of migrants*, doc. A/HRC/38/41, par. 14, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/125/17/PDF/G1812517.pdf?OpenElement> last accessed April 2023.

³⁸⁰ *Ibidem*

extradition, pushback, handover, transfer or any other return arrangement.” (...) “the use of the term return provides no determination as to the degree of voluntariness or compulsion in the decision to return, nor of the lawfulness or arbitrariness of the return”.

The IOM also proposes an operating definition,³⁸¹ according to which return means:

“In a general sense, the act or process of going back or being taken back to the point of departure. This could be within the territorial boundaries of a country, as in the case of returning internally displaced persons (IDPs) and demobilized combatants; or between a country of destination or transit and a country of origin, as in the case of migrant workers, refugees or asylum seekers”.

In parallel to the types of migration and displacement as enunciated above in this analysis,³⁸² the return of migrants to their country of origin or habitual residence may qualify as forced, voluntary and assisted, based on the determining reason and ground for the movement. The forced return is performed by authorities of a State independently from the individual’s willingness to leave. It is a coercive measure to expel migrants towards the country of origin, transit or a country that agrees to receive the returnee following an agreement between the authorities of the States involved and in execution of an official decision proscribing so. The voluntary return takes place spontaneously as a free choice of the returnee and usually without any interference nor support extended by any of the State actors. As recalled above in relation to alternatives to detention, the IOM provides support to returnees through so-called “assisted voluntary return” programs (AVR).³⁸³ It facilitates administrative, logistical and financial support for migrants in vulnerable situations that are not authorized to entry and stay in the host country they have previously reached.³⁸⁴ As observed above, often times returnees resort to this type of assistance to avoid a deportation and detention in the country they have reached. In fact, it should be reiterated here that returning represents one safe alternative to any of such administrative measures that migrants can choose, specifically not

³⁸¹ International Organization for Migration (2019) *IML No. 34 - Glossary on Migration, op. Cit.*

³⁸² Cfr. *Chapter 1*, section 1.

³⁸³ Graviano N., Darbellay N. (2019), *A framework for assisted voluntary return and reintegration*, in *Migration Policy Practice*, volume IX No. 1, pp. 9-14 available at https://publications.iom.int/system/files/pdf/mpp_37.pdf last accessed April 2023.

³⁸⁴ In its official webpage IOM explains that “the main beneficiaries of IOM’s return and reintegration assistance are stranded migrants in host or transit countries, irregular migrants, regular migrants, asylum seekers who decide not to pursue their claims or who are found not to be in need of international protection, and migrants in vulnerable situations, such as victims of trafficking, unaccompanied and separated children, or migrants with health-related needs. IOM also provides pre-departure assistance as well as reception and reintegration support to migrants whose return has been organised by other actors.” Cfr. <https://www.iom.int/return-and-reintegration> last accessed April 2023.

to be subjected to any restriction to their right to liberty of movement. Like similar decisions interfering in the individual sphere, enforcing a return by State authorities comes with some limitations in relation to the respect of the right to life (article 6 ICCPR) and the prohibition of torture and cruel, inhumane, degrading treatment and punishment (article 7 ICCPR and article 2 CAT), as complemented by the absolute obligation of *non-refoulement* (article 3 CAT), preventing any return that might cause harm to the individual's personal integrity. Likewise, for asylum seekers issued with a forced return decision and in conjunction with an entry ban, the execution of this measure is not possible as long as the claim is pending to be examined and a final decision is taken.³⁸⁵

The process of return forms integral part of migration management as a whole and, especially following the so-called migration crisis from 2015 on,³⁸⁶ it became common for States and international actors to elaborate dedicated policies on this matter or to adjust their application to better respond to present challenges of migration. These policies led to significant negative implications for the protection of individuals rights. For example, in the European Union, the Directive 2008/115/EC on return for illegally staying third-country nationals³⁸⁷ provides a framework for its Member States to enforce returns for undocumented migrants whose migration status in country is not regularized,³⁸⁸ and it has been highly criticized due to the unjustified compression for migrants' rights operated by some Member States in its application.³⁸⁹ These include the systematic and prolonged detention of children and their families,³⁹⁰ with abuse and violations of the principle of *non-refoulement* and the lack of access to judicial remedies, among others.

³⁸⁵ Amnesty International (2017), *Deported: human rights in the context of forced returns – Summary*, available at https://www.amnesty.nl/content/uploads/2017/07/AMN_17_13_Rapport-mensenrechten-en-gedwongen-uitzetting_ENG-summary_WEB.pdf?x54531 last accessed April 2023.

³⁸⁶ Cfr. *Chapter 1*, section 2

³⁸⁷ European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0115> last accessed April 2023.

³⁸⁸ Cfr. *Chapter 2* on regularization.

³⁸⁹ Majcher I, Strik T. (2021), *Legislating without evidence: the recast of the EU Return Directive* in *European Journal of Migration and Law*, 31;23(2):103-26 available at https://brill.com/view/journals/emil/23/2/article-p103_1.xml last accessed April 2023; Acosta Arcarazo D. (2011), *The Returns Directive: Possible Limits and Interpretation*, in Zwaan K. (ed.), *The Returns Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, pp. 7-24.

³⁹⁰ Alonso Cano N., Todorova I. (2019), *Towards child-rights compliance in return and reintegration*, in *Migration Policy Practice*, volume IX No. 1, pp. 15-21 available at https://publications.iom.int/system/files/pdf/mpp_37.pdf last accessed April 2023.

Another instrument complementing return for migration management is the readmissions, that might be based on agreements between countries of destination and those of origin or transit of migrants, or by adding special clauses within international cooperation frameworks.³⁹¹ Readmissions aim to facilitate the return of undocumented migrants and require States to recognize and admit their own nationals, as well as including the possibility to admit other nationals based on special arrangements on this matter. In practice, readmissions are also associated with “safe third countries” policies that allow the rejection for refugees on the ground that they already found protection in another country, in most cases mistakenly considered to be safe based on uncertain criteria and not without grave legal implications and limitations to protection.³⁹² On this matter, literature raising criticism against such practices is abundant denouncing that individuals are more exposed to further risks and the breach of human rights standards. Among the others, this is the case of the EU readmissions from Greece to Türkiye, performed in 2015.³⁹³

Returns can be supported through reintegration assistance upon arrival of returnees, as a further measure used for migration management. States, policymakers and the academia define reintegration as a form of safe, dignified and sustainable return:³⁹⁴

“A process which enables individuals to secure and sustain the political, economic, social and psychosocial conditions needed to maintain life, livelihood and dignity in the country and community they return or are returned to, in full respect of their civil, political, economic, social and cultural rights. This should include targeted measures that enable returning migrants to have access to justice, social protection, financial services, health-care, education, family life, an adequate standard of living, decent work, and protection against discrimination, stigma, arbitrary detention and all forms of violence, and that allows

³⁹¹ Cassarino JP. (2007) *Informalising readmission agreements in the EU neighbourhood*, in *The international spectator*, volume 42, pp. 179-196.

³⁹² Gil-Bazo MT. (2015), *The safe third country concept in international agreements on refugee protection assessing state*, in *Netherlands Quarterly of Human Rights*, p. 42-77.

³⁹³ Ulusoy O, Battjes H. (2017), *Situation of readmitted migrants and refugees from Greece to Turkey under the EU-Turkey statement*, in *VU Amsterdam Migration Law Series*, Sönmez P, Kırık H., (2017) *Turkish-EU readmission agreement: a critique of EU-Turkey migration dialogue*, pp. 1-26.

³⁹⁴ United Nations Network on Migration (2021), *Ensuring Safe and Dignified Return and Sustainable Reintegration*, available at https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/position_paper_-_ensuring_safe_and_dignified_return_and_sustainable_reintegration.pdf last accessed April 2023.

returnees to consider that they are in an environment of personal safety, economic empowerment, inclusion and social cohesion upon return.”

In this sense, reintegration constitutes a safe option for migrants in the face of the absence of regular pathways for migration. With the adoption of the GCM, States committed to strengthen their cooperation for facilitating safe and dignified return and readmission, as well as sustainable reintegration (objective 21 GCM), through dedicated measures aimed to undertake individual assessments for the protection of the human rights of the returnees in compliance with *non-refoulement* considerations. According to the GCM, such measures are taken with the purpose to create conducive conditions for personal safety, economic empowerment, inclusion and social cohesion in the communities of returning migrants. This means that conditions for cooperative agreements, whether bilateral, regional or multi-lateral, between the involved States need to follow some specific requirements, such as: being informed by human rights obligations (1), upholding rights and special needs of women and children (2), they are based on adequate identification with respect to the right to privacy and data protection (3), providing consular protection where needed (4), complying with due process safeguards (5), including the establishment of monitoring mechanisms (6), conforming with the best-interest principle for cases of children and respect family unity (7), facilitating equal access to social protection, services and employment (8) and ideally to be more effective they are accompanied by development initiatives to support the receiving communities (9).³⁹⁵

IOM considers reintegration as sustainable if returnees assisted in the return country can meet self-sufficiency considering this process to impact in their economic, social and psychosocial spheres, and when an eventual decision to re-migrate is made as a matter of a spontaneous decision, rather than a necessity.³⁹⁶ While these aspects are comprehensively analysed in relation to integration implications of migration,³⁹⁷ it is sufficient here to acknowledge that the UN migration agency is playing an important role in supporting States to boost policy and legislative changes that better respond the present challenges of return as part of migration management. In fact, as major actor

³⁹⁵ All these aspects are object of the present analysis in relation to identification and integration of migrants and refugees (*Chapter 2*).

³⁹⁶ Koser K., Kuschminder K. (2015), *Comparative research on the assisted voluntary return and reintegration of migrants*, in *International Organization for Migration*, p 14 available at https://www.iom.int/sites/g/files/tmzbdl486/files/migrated_files/What-We-Do/docs/AVRR-Research-final.pdf last accessed April 2023.

³⁹⁷ *Chapter 2* on integration, section 2.

for the implementation of AVR programs, IOM developed and released in 2021 a policy on the full spectrum of return, readmission and reintegration to support of States efforts in realizing these commitments.³⁹⁸ This document is currently being used as a reference framework and implemented with the purpose to guide the these processes in being conducted by the organization actors and partners with a rights-based approach and oriented towards development, as well as to support States in aligning their practices, policy and legal frameworks with all the applicable international standards.

In this vein, the European Union went further in its effort to manage migration in collaboration with neighbouring countries, including by negotiating visa policy alignment, like in the case of Western Balkans. In February 2023,³⁹⁹ the European Council called up Member States to enhance cooperation on returns and readmission by creating opportunities for legal migration. To encourage diplomacy and collaboration among involved parties it recalled the possibility of introducing restrictive visa measures in relation to third countries that do not cooperate on returns, as provided by article 25, par. a, of the Visa Code.⁴⁰⁰ Moreover, this position adopted by the EU follows the policy document “Towards an operational strategy for more effective returns”⁴⁰¹ that develops an operational strategy for more effective returns set out in the New Pact on Migration and Asylum.⁴⁰² It articulates in six workstreams: (1) joint return operation between Member States, FRONTEX and the European External Action Service, (2) developing an analysis of functioning of return, (3)

³⁹⁸ International Organization for Migration (IOM) (2021), *IOM’s Policy on the Full Spectrum of Return, Readmission and Reintegration*, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/ioms-policy-full-spectrum-of-return-readmission-and-reintegration.pdf> last accessed April 2023.

³⁹⁹ Special European Council (2023), available at <https://www.consilium.europa.eu/en/meetings/european-council/2023/02/09/> last accessed April 2023.

⁴⁰⁰ Article 25, *Issuing a visa with limited territorial validity*, in its par. 1(a), provides: “A visa with limited territorial validity shall be issued exceptionally, in the following cases: (a) when the Member State concerned considers it necessary on humanitarian grounds, for reasons of national interest or because of international obligations, (i) to derogate from the principle that the entry conditions laid down in Article 5(1)(a), (c), (d) and (e) of the Schengen Borders Code must be fulfilled; (ii) to issue a visa despite an objection by the Member State consulted in accordance with Article 22 to the issuing of a uniform visa; or (iii) to issue a visa for reasons of urgency, although the prior consultation in accordance with Article 22 has not been carried out”. Cfr. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R0810> last accessed April 2023.

⁴⁰¹ European Commission, *Policy Document Towards an operational strategy for more effective returns*, doc. COM(2023) 45 Final, 24 January 2023, available at https://home-affairs.ec.europa.eu/system/files/2023-01/Towards%20an%20operational%20strategy%20for%20more%20effective%20returns_en.pdf last accessed April 2023.

⁴⁰² European Commission, *Communication from the Commission on a New Pact on Migration and Asylum*, doc. COM(2020) 609 final, 23 September 2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0609> last accessed April 2023.

increasing FRONTEX joint reintegration services by the end of 2023, (4) the expansion of the digitalisation efforts on readmission through the Readmission Case Management Systems' roll out for all relevant third countries and Member States, (5) FRONTEX's digitalisation gap analysis completion, and (6) return counselling led directly by Member States themselves.

g) **Border closures and mobility restrictions: some considerations on intersecting vulnerabilities in the margin of COVID-19**

The outbreak of the COVID-19 pandemic in 2020 has heavily influenced the rethinking of the scope and understanding around mobility and migration management as a whole. As part of border controls, the typical and continuous exchanges among several actors in a globalised world, including of technological, economic, political and socio-cultural nature were unavoidably challenged by the COVID-19 pandemic.⁴⁰³ Likewise and as a natural consequence, human mobility was affected and not without risks. In this paragraph, border closures and mobility restrictions are presented to reflect on the implications for the protection of human rights of migrants, refugees and asylum seekers. In fact, during the period in which border closures measures were imposed by States as a measure to contain the spread of the virus, many of the people on the move as well as migrant workers found themselves stranded and exposed to increased vulnerability.

In spite for many States the cross-border mobility between countries and labour migration remain essential for their development and to sustain their economy, the health considerations were given priority by States in response to the pandemic challenges. Such considerations led States to protect their nationals in country and contain the spread of the virus by resorting to extreme measures such as border closures. These measures were often applied accompanied with special control measures that in several instances determined a prominent interference in individuals' private life, including on their privacy and data protection contrary to international law.⁴⁰⁴ In addition, border closures with no guarantees for individuals involved resulted in undermining economic opportunities for migrant workers present in country, affecting to a large extent their livelihood. Among other

⁴⁰³ Awuah G., *Acting in a Globalized World: Marketing Perspective*, August 2012 available at <https://www.intechopen.com/chapters/38263> last accessed April 2023.

⁴⁰⁴ Article 17 ICCPR: "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."

negative effects, for example the South-South mobility was restricted. With it the income reduced, and the remittances transfers back home of workers abroad affected simultaneously the economy of countries of origin, transit and destination.

It then appears clear how border management actions being given priority with no safety measures to protect human rights of people on the move resulted in an inestimable damage for countries and increased harm for the individuals involved. The different profiles and needs are hereby examined along with the applicable legal framework in the attempt of identifying their respective vulnerabilities and protection needs.

Amid COVID-19 and especially in the early stages of the pandemic, most of the European Union Member States took the sudden decision to prevent their citizens to travel from neighbouring countries, with cascading effects. Many individuals found themselves stranded as transportation by land, sea and air were halted, flights were cancelled, or new regulations were adopted preventing the entry or exit from and to countries, and land main roads were closed as well. Among the other effects, this also caused delays in the delivery of medical supplies and food. This undermined individuals' access to their essential rights and needs. According to international law, in this context and at all times, countering efforts to tackle the global health emergency, imposing travel restrictions, quarantine and enforcing border management for public health and security considerations always encounter the limits of human rights obligations, especially the absolute ones. The hardcore of human rights always applies without discrimination. Such rights cannot be suspended unconditionally. Therefore, in light of the principle of prevalence of human rights, all security measures adopted by States are to be considered "extraordinary", just as the circumstances determined by COVID-19 were exceptional. It derives that health risks cannot justify pervasive control measures interfering in one's private life. In fact, international law provides that even in times of emergency when States restrict the applicability of certain human rights for public health reasons, international human rights law prohibits unjustified measures to limit people's fundamental rights and freedoms.⁴⁰⁵ According to international law, these measures must meet the requirements of legality, necessity, and proportionality.⁴⁰⁶ A state of emergency should be limited

⁴⁰⁵ The principles and state of emergency were analyzed thoroughly *supra this Chapter 1* in relation to statelessness and consular protection, and also in relation to alternatives to detention.

⁴⁰⁶ Human Rights Watch (2020), *Human Rights Dimensions of COVID-19 Response*, available at https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446577 last accessed April 2023

in duration and any curtailment of rights needs to take into consideration the disproportionate impact on vulnerable populations and marginalized groups. In line with this, the Human Rights Committee clarified that restrictions on the right to privacy must take place only “in cases envisaged by the law.” Likewise, restrictions must also be “proportionate to the end sought, and ... necessary in the circumstances of any given case.”⁴⁰⁷

States’ obligations to respect human rights must be assessed in light of the applicable legal framework and according to international standards.⁴⁰⁸ These obligations derives from the relevant human rights treaties that are applicable also in the context of COVID-19 and migration: the ICERD, ICCPR, ICESCR, the International Convention on the Elimination of All Forms of Discrimination Against Women (New York, 1979),⁴⁰⁹ the CRC and the Optional Protocol on to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (New York, 2000),⁴¹⁰ the ICRMW, the ILO Convention 182 on the Worst Forms of Child Labour (Geneva, 1999),⁴¹¹ the Statute of the International Criminal Court (Rome, 1998)⁴¹² and the CRS for the case of asylum seekers and refugees.⁴¹³

Considering that human rights do not disappear just because of emergency times, according to international human rights law, it is possible for States to strike a balance between conflicting values, as most of the human rights are not absolute and can, in some circumstances, be suspended. In fact, there are some rights and obligations that are non-derogable as also enshrined in the *Siracusa Principles* and these are known as “hardcore of human rights”.⁴¹⁴ They are: the right to life (article 6 ICCPR), the prohibition of torture (article 7 ICCPR), the prohibition of slavery, slave-

⁴⁰⁷ United Nations International Human Rights Instruments (2008), *Human Rights Instruments Volume 1 Compilation of General Comments and General recommendations adopted by Human Rights Treaty Bodies*, doc. HRI/GEN/1/Rev.9 (Vol.1), par. 12, available at https://www.ohchr.org/Documents/HRBodies/TB/HRI-GEN-1-REV-9-VOL-I_en.doc last accessed April 2023.

⁴⁰⁸ For the applicable legal framework in the EU, see European Union Agency for Fundamental Rights (FRA), [Fundamental rights of refugees, asylum applicants and migrants at the European borders](#), March 2020.

⁴⁰⁹ Hereinafter CEDAW, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>, last accessed April 2023.

⁴¹⁰ Text available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child> last accessed April 2023.

⁴¹¹ Text available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 last accessed April 2023.

⁴¹² Hereinafter the *Rome Statute*, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court> last accessed April 2023.

⁴¹³ Council of Europe, [Human rights are more important than ever in times of crisis. On the Front Line against Human Rights Violations](#), June 2020.

⁴¹⁴ American Association for the International Commission of Jurists, [Siracusa Principles on the Limitations and Derogations Provisions in the International Covenant on Civil and Political Rights](#), April 1985, par. 58

trade and servitude (article 8 ICCPR), the prohibition of imprisonment merely on the ground of inability to fulfil a contractual obligation (article 11 ICCPR), the prohibition of retroactivity and retrospective criminal laws, based on the principle of *nullum crimen sine lege, nulla poena sine lege* (article 15 ICCPR), the recognition as a person before the law (article 16 ICCPR), and the right to freedom of thought, conscience and religion (article 18 ICCPR). These rights are essential safeguards against any abuse of powers against individuals and applies in any circumstance. Therefore, States can only implement COVID-19 measures that are compatible with such rights. In this light, responding effectively to the pandemic to preserve lives is a primary responsibility of the State towards the individuals subject to its jurisdictions, namely nationals and non-nationals within their territory and under their effective control. Moreover, by their nature, for certain individual rights the collective imperatives, such as the public health, justifies the erosion of their scope of application to preserve the common good and the internal interest to protect the health of individuals under States' jurisdiction.

As mentioned earlier in this *Chapter 1*,⁴¹⁵ the protection of the life of the nation clause as derived from article 4 ICCPR should be based on scientific evidence and, in any case, it cannot be applied in an arbitrary nor discriminatory fashion. According to international standards and humanitarian law, the use of force is allowed only as a last resort, and it cannot be excessive in any case.⁴¹⁶ On this matter the doctrine took a stance against the abuse of power and the limitations to media freedoms undermining democracy itself, with identification of seven major types of violations: discriminatory measures, derogation of non-derogable rights, abusive enforcement, indefinite time for emergency measures, disproportionate limits to legislation, disinformation media campaigns and restricted media freedoms.⁴¹⁷ In some instances, like in Nigeria, such measures proved to lead to unlawful use of force, human rights violations, and other police misconducts that resulted from

⁴¹⁵ See above the paragraph on Preventing Statelessness and Realizing Migrants Rights.

⁴¹⁶ Ticehurst R. (1997), *The Martens Clause and the Laws of Armed Conflict*, International Review of the Red Cross, No. 317, available at <https://www.icrc.org/en/doc/resources/documents/article/other/57jnhy.htm> last accessed April 2023.

⁴¹⁷ Maerz SF, Lüthmann A, Lachapelle J, Edgell AB (2020), *Worth the sacrifice? Illiberal and authoritarian practices during Covid-19. Illiberal and Authoritarian Practices during Covid-19* in *V-Dem Working Paper*, pp. 1-110, available at <https://deliverypdf.ssrn.com/delivery.php?ID=225088106066097007096007113098099122063069081044038058081118102113067092069127106065019050096119055113011095024007103111108067008047028029049106117071124122071109089003015073093099086027015022086094020017011127112100098079081006097122071005116085003065&EXT=pdf&INDEX=TRUE> last accessed May 2023.

the enforcement of COVID-19 measures.⁴¹⁸ Unlike the non-derogable rights, the derogation to other human rights is instead justified if it comes to a temporary measures and applied as long as the emergency lasts, subject to review when the situation is conducive, and it must be proportionate to achieve the objective of containing further contamination.⁴¹⁹ The definite duration in time and the justification for such limitations are the conditions to make this measures lawful. On this point, back in March 2020, it was clarified by a group of United Nations human rights experts that when an emergency status is declared due to the COVID-19 outbreaks, this should not determine any discriminatory treatment against particular groups of individuals nor minority, nor it should translate into any abuse of powers, maintaining all measures human rights-based.⁴²⁰ Indeed, the exceptional measures adopted pursued the goal of containing the spread of the virus among the populations so that to ensure public health. However, the extraordinary use of surveillance technology as a COVID-19 related measure might appear to rather tackle a security treat, with all risks that such measure entails in terms of infringing privacy and data protection standards with no justification, namely a clear abuse of power for the purpose sought.⁴²¹ While data implications are examined in relation to identification (*Chapter 2*), it is however essential to conclude here that even if unprecedented levels of mobility surveillance and data exploitation by State occurred around the world as part of responses to the pandemic,⁴²² many of these privacy-related measures were based on mobile location data programs used to combat COVID-19. However, they might not be scientifically necessary and could have led to multiple human rights abuses as implemented without any effective safeguards to protect privacy. This issue correlates with the long history of emergency measures, such as repurposed surveillance measures put in place to counter terrorism,⁴²³ whose practice have showed that they often go too far, fail to have their desired effect, and,

⁴¹⁸ Aborisade RA. (2021), *Accounts of unlawful use of force and misconduct of the Nigerian police in the enforcement of COVID-19 measures* in *Journal of police and criminal psychology*, pp. 450-462, available at <https://link.springer.com/article/10.1007/s11896-021-09431-4> last accessed May 2023.

⁴¹⁹ Rossi A. (2020), *COVID-19: the 'fine balance' under human rights law*, available at <https://www.gcsp.ch/global-insights/covid-19-fine-balance-under-human-rights-law> last accessed April 2023.

⁴²⁰ United Nations Office for the High Commissioner for Human Rights (2020), *COVID-19: States should not abuse emergency measures to suppress human rights – UN experts*, available at <https://www.ohchr.org/en/press-releases/2020/03/covid-19-states-should-not-abuse-emergency-measures-suppress-human-rights-un?LangID=E&NewsID=25722> last accessed April 2023.

⁴²¹ Surveillance technology and related risks are analysed in *Chapter 2* of the present study, in relation to the importance of data protection while processing personal data for identification.

⁴²² Human Rights Council (2022), *Human rights violations at international borders: trends, prevention and accountability Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, op.cit..*

⁴²³ Human Rights Watch (2020), *Mobile Location Data and Covid-19: Q&A, op.cit..*

once approved, often outlast the legal basis and justification for States to resort to them.⁴²⁴ In fact, no matter how COVID-19 related measures as well as those to counter terrorism are applied by States,⁴²⁵ individuals are never exempted from the enjoyment of their fundamental rights and conversely governments have no valid justification to interfere in their private life.⁴²⁶ The same principle was also confirmed by OECD.⁴²⁷

For example, the above considerations mean that all contact-tracing apps should be implemented with full transparency, in consultation with major stakeholders to ensure robust privacy-by-design protections.⁴²⁸ These rules apply to efforts to track and manage COVID-19 using mobile location data. The collection and analysis of such data could reveal users' identities, movements, and associations in a manner that interferes with the right to privacy, contrary to article 17 ICCPR, which is derived from article 12 UDHR, enshrining "the protection of the law" against "arbitrary or unlawful interference" with an individual's "privacy, family, home, or correspondence."

If analysing the pandemic as exceptional circumstance and framing it as a situation of crisis, the protection of human rights still applies also in such situations. Migrants and mobile populations have faced additional challenges in relation to COVID-19, being exposed to additional risks and vulnerabilities as described in the present analysis. Their rights to life and safeguarding from torture or other cruel, inhuman or degrading treatment or punishment require States' positive actions to protect them against violence, abuse and exploitation. Likewise, States have also the obligation to respond to special needs of all individuals, particularly women and children to ensure an appropriate assistance to migrants and people on the move whose lives or safety are often endangered as consequence of the movements or, in the case of the situation determined by the

⁴²⁴ *Ibidem*.

⁴²⁵ United Nations Office for the High Commissioner for Human Rights (2008), *Human Rights, Terrorism and Counter-Terrorism – Fact-Sheet No. 32*, , available at <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-32-terrorism-and-counter-terrorism> last accessed April 2023: "In recent years, however, the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres, have often been disregarded. Other States have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of non-refoulement", p. 1 and 7.

⁴²⁶ The Economist (2020), *Everything's under control. The state in the time of covid-19*, available at <https://www.economist.com/leaders/2020/03/26/the-state-in-the-time-of-covid-19> last accessed April 2023.

⁴²⁷ OECD (2020), *Policy Responses to Coronavirus (COVID-19), Tracking and tracing COVID: Protecting privacy and data while using apps and biometrics*, available at <https://www.oecd.org/coronavirus/policy-responses/tracking-and-tracing-covid-protecting-privacy-and-data-while-using-apps-and-biometrics-8f394636/> last accessed April 2023.

⁴²⁸ Implications for data protection are object of *Chapter 2*.

pandemic, as being stranded in some places could undermine their access to essential services to meet their needs and realize their rights. As showed in this chapter multiple vulnerabilities might intersect because of the intrinsic risks the migration in itself presents more for the individuals involved, rather than for States' interests to protect public health, public order and security. For example, with the measures adopted to tackle the pandemic, migrants already in detention centres and deprived of their liberty found themselves exposed to serious risks of being unable to respect social distancing measures.⁴²⁹ Furthermore, the overcrowding in many detention places, which already in itself and in normal conditions undermines hygiene, health, safety and human dignity as a whole, during the COVID-19 context made a case as a standalone health issue that added on to the pandemic challenges States were called to respond. Moreover, in case of migrants, refugees and asylum seekers in detention, States remain bound by their obligations to facilitate the communications with their countries of origin or habitual residence under the Vienna Convention on Consular Relations (VCCR),⁴³⁰ informing the persons concerned without delay about the provisions concerning notification to and liaising with consular officers.⁴³¹ It derives that all law enforcement solutions adopted by States, including those for forced return and immigration detention, need to be balanced with human rights obligations and may need to be adjusted to ensure they are compatible with the effective public health strategies in adequate conditions. In this regard, it is essential that any limitations on freedom of movement do not unduly

⁴²⁹ UNODC, WHO, UNAIDS and OHCHR, (2020) *Joint Statement On Covid-19 In Prisons And Other Closed Settings*, available at https://www.ohchr.org/sites/default/files/Documents/Events/COVID-19/20200513_PS_COVID_and_Prisons_EN.pdf last accessed April 2023.

⁴³⁰ United Nations (1963), *Vienna Convention on Consular Relations*. 1963. Done at Vienna on 24 April 1963. Entered into force on 19 March 1967. United Nations, Treaty Series, vol. 596, p. 261, available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf last accessed August 2023.

⁴³¹ Article 36 of *Convention on Consular Relations* (Vienna, 1963): “1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State: (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State; (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph; (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action. 2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended”.

affect human rights and the right to seek asylum, and that restrictions are applied in a proportionate and non-discriminatory fashion. Moreover, prior to the pandemic, refugees and internally displaced persons in vulnerable situations were often already at risk of further being marginalized and, in the situation created by the pandemic whenever some countries have closed entry to all non-nationals, including asylum seekers as an effect of misinformation, it resulted in an unjustified compromise of their rights to seek international protection, adding on the difficulties they already face during their displacement and forced migration.⁴³²

Concluding remarks

This *Chapter 1* has provided the conceptual framework and definitions to understand migration, the borders and their relation to individuals. It has shed light on the importance of striking a balance between security and migration management at the borders on the one hand, and the rights and obligations on the other. Understanding the context of migration and different types of mobility is a fundamental step to assess the profiles and address the needs of the mobile population. Therefore, definitions of migration and displacement were examined, as well as migrants, refugees and asylum seekers. It was made clear that managing the borders encounters the limitations of applicable principles and rights obligations, which represent important safeguards to protect the rights of all. Among these, the principle of non-discrimination and *non-refoulement* appear to be essential in guiding States' actions, with special attention to legal identity as an emerging right inherent to all human beings born free and equal in dignity and rights. Legal identity constitutes the precondition for the enjoyment of many other rights, such as nationality and the prevention of statelessness. Being at the core of the more recent policy dialogues around migration, such as the IMRF 2022, its importance became apparent, and confirmed by the rule of law as developed in the soft law instruments, such as the GCM.

The overview of the applicable law of the sea, along with some concrete examples hereby presented, shows that the subtle line between smuggling and rescuing migrants at sea may appear blurred at a first glance. However, the applicable law of the sea is clear enough in defining States' responsibility to comply with international obligations, including the fundamental duty to render

⁴³² Foreign Policy (2020), *You Can't Practice Social Distancing if You're a Refugee*, available at <https://foreignpolicy.com/2020/03/20/you-cant-do-social-distancing-if-youre-a-refugee/> last accessed April 2023.

assistance at sea. This obligation implies the erosion of their jurisdiction when it comes to protect internal and international security-related interests, including combating transnational organised crimes. Among States' priorities to combat crime, there is the practice of smuggling of migrants, which is always transnational in nature, unlike trafficking in person. If interception operations are measures used by coastal States with the aim, among others, to combat these two heinous practices, they cannot prevail over the duty to save migrants' lives in danger at sea, which requires adequate search and rescue operations instead. Unlike the case of interception, rescuing migrants to be taken to a place of safety is the sole exception allowing a temporary compression of the sovereign powers of the coastal State to control the entry to its territory.

From this analysis it can be deduced that, whenever the coastal States prevent NGOs to disembark rescued migrants or prosecute them on the ground that they are aiding illegal migration or are colluded or involved in smuggling practices, such States are contravening their obligations deriving by international law, particularly the duty to render assistance in case of distress at sea, which prevails over any other security interests. Based on that, if NGOs are engaged in search and rescue operations, they should not be prevented to enter territorial waters to seek the cooperation of the coastal State in providing assistance.⁴³³ This rule prevails over all other national measures, including those national laws that fine NGOs rescuing migrants at sea. In this sense, this study argues that the right to life and the principle of non-refoulement should always prevail over national legislation or other measures purportedly adopted in the name of national security.

It can be thus concluded that current restrictive migration policies contribute to exacerbating migrants' vulnerabilities and only serve to increase trafficking in persons. Moreover, stigmatising migrants as "possible terrorists, traffickers and smugglers", without providing evidence, can foster the misleading perception of migration as a threat to security. This conception ultimately increases the climate of hatred and xenophobia against migrants and refugees, instead of emphasising the positive contribution they can give to the host communities and destination countries.

Overall, a final reflection on intersecting vulnerabilities related to COVID-19 measures and consequent mobility restrictions confirmed the hypothesis that they did not stop irregular

⁴³³ See on this the Decree issued by the Regional Administrative Court for Latium (TAR) (2019), N. 10780/2019 REG.RIC, on the mistrial of the provision by the Italian authorities on the prohibition of navigation of the ship *Open Arms* in Italian territorial waters.

migration.⁴³⁴ On the contrary, they put migrants at further risks when they got stranded in country and being unable to go back home.

As outcome, this review of measures and States practice demonstrates that increasing border controls oriented towards the prevalence of collective rights do not necessarily sharpen security. On the contrary, examined practice shows how border measures including mobility restrictions lead to undermine individuals' rights and further compound risks faced by people on the move, especially if they are not performed in compliance with human rights and humanitarian law obligations.

One consequence of such practices from the individuals' perspective is resorting more to criminal networks and thus making the demand for trafficking in persons and smuggling of migrants higher, with significant impacts on States security as well as growing informal economy.⁴³⁵ With mobility restrictions migrants and refugees with legal title to entry and stay can lose their regular status in country once their visa expires, making them stranded and exposed to crimes related to irregular migration. In other words, if they reach borders irregularly and they are stranded, in the absence of other safe options they are more likely to re-direct their already dangerous migration journeys to return back home or to their country of habitual residence. In doing so, most likely they resort once more to criminal networks and then increase their vulnerability to violations, besides contributing to a heightened demand for these crimes. This phenomenon became particularly apparent during the period of the pandemic, and it has been referred to by the doctrine as “reverse smuggling”.⁴³⁶

Therefore, it becomes clear that border controls without individuals' protection are not effective as if they create conditions for more violations of individuals' rights, they do not outweigh the advantages of prevailing collective rights. Instead, they bring about a prolific environment for illicit activities, affecting on security and safety of the persons, as well as on the increasing

⁴³⁴ All the phenomena related to integration and inclusion of migrants and refugees once they cross the border, they arrived at their intended destination and for part of the social fabric in country are analysed in *Chapter 2* of the present study.

⁴³⁵ Giammarinaro M., Palumbo, L. (2020), COVID-19 and inequalities: Protecting the human rights of migrants in a time of pandemic, in *Migration Policy Practice*, volume X No. 2, p. 21.

⁴³⁶ Ardittis S., Laczko F. (2020), *Introduction – Migration policy in the age of immobility*, in *Migration Policy Practice*, volume X No. 2, , p. 3, and El País (2020), *Más de 5.000 euros por escapar de España en patera*, available at <https://elpais.com/espana/2020-04-23/mas-de-5000-euros-por-escapar-de-espana-en-patera.html>, last accessed April 2023.

informal economy, ultimately taking a toll on the rule of law of States and undermining international peace and security.

Chapter 2 The identification as the first step for an adequate integration

Table of Contents

<u>1. Lessons learned from COVID-19: technology, surveillance technology and human rights</u>	
a) <u>Data protection, the right to private life and COVID-19</u>	
b) <u>The consequences for the right to freedom of movement and health</u>	
c) <u>Irregular migration, human rights and implications of mobility restrictions</u>	
<u>2. Identification as the first step for an adequate integration</u>	
a) <u>The EU and Schengen Area</u>	
b) <u>The importance of data protection in processing migrants' personal data</u>	
c) <u>Shortcomings in the identification process</u>	
d) <u>Identification and vulnerability: analytical frameworks and special cases</u>	
<u>3. Possible remedies to foster integration of migrants into local societies: Regular Pathways and Regularisation</u>	
a) <u>Defining regularisation and regular pathways</u>	
b) <u>Applicable legal framework</u>	
c) <u>The IMRF and the revision of the Anti-Trafficking Directive in the EU context</u>	
d) <u>Regularisation as a remedy in crisis situations</u>	
e) <u>The EU approach: residence permits to protect victims of trafficking</u>	
f) <u>Positive outcomes and State practice</u>	
g) <u>A possible solution for safety?</u>	
<u>4. From identification to full integration into host communities</u>	
a) <u>Scope and international legal framework on protection</u>	
b) <u>EU legislation on integration of migrants</u>	
c) <u>The rights and access to education, employment, health and housing</u>	
d) <u>Special focus on social protection</u>	
e) <u>Consular protection and assistance</u>	
<u>5. Diaspora Engagement for Migrant Integration</u>	
<u>Concluding remarks</u>	

This chapter explores all the opportunities and challenges for migrants, refugees and asylum seekers in the host country, after the borders have been crossed (ir)regularly and once present in States' territory.

The analysis of definitions and rights in relation to borders in Chapter 1 made clear that the *conditio sine qua non* to curb illicit activities of transnational dimension is ensuring proportionality in maintaining security and safety of individuals while protecting their individual rights. In this sense, border checks are aimed at ascertaining the identity of people reaching the territory and, depending on the case and different profiles, whether they are in a vulnerable situation requiring special assistance and protection. This determination can be made through performing an assessment of the individual situation with mechanisms that allow for an adequate identification. The latter represent the first step to reach integration in the host country, the society and the community. Similarly to the case of reintegration of nationals, defined in relation to the right to return (see *Chapter 1*, section 3, par. *f*), integration can be considered as a process for foreigners (migrants, asylum seekers and refugees) to participate to the life of the nation and specifically the local economy and development outcomes, while maintaining their safety and dignity. Ideally, through this process non-nationals attain self-sufficiency⁴³⁷ (or autonomy and overcome dependency, as defined after)⁴³⁸ without constituting a burden on the welfare of the host State, meaning that they can reach conditions of economic, psychosocial and social wellbeing that benefit the society as whole.

To corroborate the last affirmation, *Chapter 2* of the present study offers a reflection on the importance of identification mechanisms that are respectful of individual rights and that constitute the precondition for an effective and safe integration and inclusion within the social fabric of the

⁴³⁷ Davies, Gareth T., (2016) *Migrant Union Citizens and Social Assistance: Trying to Be Reasonable About Self-Sufficiency*, College of Europe Research Papers in Law No. 2/2016 available at <http://dx.doi.org/10.2139/ssrn.2825041>. Moreover, this terminology is used by IOM as closely linked to the notion of “sustainability” of reintegration of migrants, which comprises the three dimensions of economic self-sufficiency, social stability within their community and psychosocial well-being conducive to cope with drivers of (re)migration. Cfr. IOM (2017), *Towards an Integrated Approach to Reintegration in the Context of Return*, Geneva, available at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/AVRR/Towards-an-Integrated-Approach-to-Reintegration.pdf and Koser, K., Kuschminder, K. (2015), *Comparative Research on the Assisted Voluntary Return and Reintegration of Migrants*, Maastricht Graduate School of Governance, available at https://www.iom.int/sites/g/files/tmzbd1486/files/migrated_files/What-We-Do/docs/AVRR-Research-final.pdf last accessed July 2023.

⁴³⁸ See this *Chapter 2*, section 1, par c).

host State. It exposes why as primary duty bearers, State authorities treat and process personal data and are bound to respect relevant safeguards and international standards that apply as relevant. Therefore, the present study unpacks data protection implications and emerging challenges in relation to the increasing use of automated systems that often fail to be human rights compliant, providing an overview of current States practices. In relation to this and closely connected to the current practices, as shortcomings in the identification processes reveal, it is necessary to present some observations on the possible remedies as developed following emerging trends in reality of people on the move, specifically the current policy debates around how to rectify faults arising in the migration management measures. For example, in situations of higher vulnerability and for certain categories of migrants requiring special and exceptional measures in compliance with the principle of *non-refoulement*, there should be regular pathways for safe migration and regularisation of the migration status. Finally, the last step for participation in the host country is the effective integration into the host State that favours inclusion. Thus, this analysis considers the access and the realization of rights to education, employment, health and housing, among others and as prerequisite for a meaningful participation of non-nationals to the life of the nation. These rights and their scope are analysed as opposed to certain rights that differ in accessibility and might be limited depending on certain conditions as identified by sovereign States. Among these, the right to social protection and consular protection and assistance are also explained in this study. Ultimately, an important role in maintaining international peace and security in the context of migration is played by nationals themselves abroad, who might influence and contribute to economic and development outcomes in their country of origin. In fact, similarly to embassies supporting their nationals in countries of destination (hereby explained), when nationals move out from their countries of origin, they might decide to maintain a tie and build or participate to States or private initiatives allowing them to still offer their contribution in-kind or in-nature to their country of origin, be it in the form of supporting their households, their community or specific business activities. Thus, this chapter concludes by presenting some observations on the role of

diaspora as agents of development and prosperity,⁴³⁹ as praised by the GCM⁴⁴⁰ and a condition that in inclusive societies leads all people to have the opportunity and freedom to thrive.⁴⁴¹

1. Lessons learned from COVID-19: technology, surveillance technology and human rights.

Before entering on examining why a correct identification against any shortcomings prompts for the recognition of vulnerability and protection needs for adequate inclusion, a focus-analysis is now required to understand conditions that pave the way to integration, in order to explore the linkages between technology, security and migration management. In fact, technologies are increasingly used for mobility-related matters: from predictions of arrivals from the Mediterranean,⁴⁴² to automated decision-making systems for migrants and refugees in Canada,⁴⁴³ to support identification at the borders through interoperable systems in the EU, debated right after.⁴⁴⁴ The use of technology might raise protection concerns, and the limited specialized regulation to govern it poses a further challenge in this sense.⁴⁴⁵ However, human rights still provide a framework to orient States action and decisions. This paragraph presents some insights on State practice in relation to the COVID-19 pandemic and related measures adopted to understand their implications on human rights. Particularly, COVID-19 offered important lessons

⁴³⁹ The World Bank (2022) *Poverty and Shared Prosperity 2022 Correcting Course*, available at <https://www.worldbank.org/en/publication/poverty-and-shared-prosperity> last accessed July 2023.

Most scholarly definitions of “prosperity” link and present this concept as opposed to “poverty”. According to this orientation: “Poverty is defined as ‘the condition of having little or no wealth or few material possessions; indigence, destitution’ and prosperity, understood as ‘the condition of being prosperous, successful, or thriving; good fortune, success, well-being, wealth’ (Oxford English Dictionary)”. Murphy P. S. (2022) *The relationship between poverty and prosperity: a feminist relational account* in *Journal of Global Ethics*, pp. 82-99 available at <https://doi.org/10.1080/17449626.2022.2052155> last accessed July 2023.

⁴⁴⁰ United Nations, *op. cit.*, objective 16, par. 32.

⁴⁴¹ For an analysis of prosperity viewed as inclusive societies, open economies to promote people empowered to thrive and attaining self-determination for their living conditions, health, education and environment: The Legatum Institute Foundation (2023) *Defining Prosperity*, London, available at https://www.prosperity.com/download_file/view_inline/4779 last accessed July 2023.

⁴⁴² Villa M., Corradi E. (2020), What the Future Holds: Migration from Africa to the EU in Villa M. (ed.) *The Future of Migration to Europe*, Milano, pp. 12-35.

⁴⁴³ Molnar P., Jill L. (2018) *Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada's Immigration and Refugee System* available at <https://ihrp.law.utoronto.ca/sites/default/files/media/IHRP-Automated-Systems-Report-Web.pdf> last accessed July 2023.

⁴⁴⁴ Chapter 2, section 2.

⁴⁴⁵ Molnar, P. (2020) *AI and Migration Management*, in Dubber M. D., Pasquale F., and Das S. (eds) *The Oxford Handbook of Ethics of AI* Oxford Academic, available at <https://doi.org/10.1093/oxfordhb/9780190067397.013.49> last accessed July 2023.

learned in relation to the right to private life, the right to freedom of movement and the access to health, and what consequences might arise for those that are in irregular situation in country, which are all focus of this section.

In fact, the global pandemic proved to have accelerated and expanded the use of technology broadly and in many aspects of everyday life: from education to work sectors, regardless of their migration status, population at large was requested to operate remotely through telematic systems and platforms to reduce unnecessary mobility, in-person interactions and contacts. Technology was used also in relation to migration governance and in different contexts, including alternatives to detention, that were previously analysed in this study.⁴⁴⁶ When used for migration management purposes, technology can be advantageous for example in predicting movements and arrivals of migrants and refugees: the so-called “migration forecasts”. It should be noted that IOM tends to express concerns over this type of prediction, as they use statistics based on past quantitative data modelling that require a wealth of data not always possible to collect, especially in certain contexts, notably in conflict situations, and deemed overall unreliable.⁴⁴⁷ This is *inter alia* because of the lack of internationally accepted definition of “international migration”,⁴⁴⁸ that was pointed out also in this study.⁴⁴⁹

However, there are also good examples and good practices to consider. Among emerging predicting IT tools, one of this is the EU-Horizon 2020⁴⁵⁰ funded project “ITFLOWS”,⁴⁵¹ that promises to support EU Member States efforts by providing accurate mobility predictions of migrants and refugees attempting to reach the European Union territory. By facilitating preparedness through analytics and the EUMigraTool,⁴⁵² it uses these predictions to prevent eventual tensions which might arise against migrants in the host communities. In compliance with migrants rights, the outcomes sought are: a) aligning EU policies to drivers of migration in

⁴⁴⁶ Chapter 1, section 3, par. e).

⁴⁴⁷ IOM GMDAC (2020), *Future Migration Trends*, available at <https://www.migrationdataportal.org/themes/future-migration-trends> last accessed July 2023.

⁴⁴⁸ Ibidem.

⁴⁴⁹ See Chapter 1, section 1, par. a).

⁴⁵⁰ Horizon 2020 projects are now succeeded by *Horizon Europe*, available at https://research-and-innovation.ec.europa.eu/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe_en last accessed July 2023.

⁴⁵¹ At the time of developing this study, I had offered my contribution to this project by participating in the write-up of its proposals and related consultations and with the production of a policy brief. Cfr. IT Tools and Methods for Managing Migration Flows (ITFLOWS) (2019), available at <https://www.itflows.eu/about/project/> last accessed July 2023.

⁴⁵² See <https://www.itflows.eu/eumigratool/> last accessed July 2023.

countries of origin and transit, b) identify possible root causes of tension and negative attitude in receiving migrants and refugees, c) explore opportunities for relocation of refugees and asylum seekers and its feasibility based on existing conditions in selected socio-economic contexts, d) pursue socio-economic integration of migrants in the EU and e) replicate good practices and asylum policies according to human rights.

Likewise, and with similar purposes, “CRITERIA” project,⁴⁵³ also funded by the EU-Horizon 2020, uses data to assess risks and threats for early identification, validation and analysis of migration. To assist identification processes, this tool aims to develop comprehensive yet feasible and human-rights sensitive risk and vulnerability analyses framework, designed as a complementary tool for border agencies and to accompany their daily work on identification.

Despite these examples of good practices, resorting to technology, however, calls for a necessary reflection about their accuracy and whether it materialises the likelihood of an unnecessary interference in individuals’ privacy, even when justified by the need to protect collective interests. The second point required for reflection is providing more elements to elaborate also on whether legal issues might arise in terms of reducing the scope of application of fundamental rights, as well as what precautions and safeguards to apply in order to avoid such distortive side effects, that are present hereby.

First and foremost, an important remark to make is that digitalisation and interoperability of information systems used *inter alia* for management and security purposes and that are presented hereinafter, must be kept separated from the so-called “surveillance technology” that States resorted to as a measure of mobility management. Rather than a migration and integration tool *per se*, it was used prominently during COVID-19-related lockdown period. In this sense, additional observations on what this measure is about and the possible implication for human rights, specifically for migrants and refugees, becomes necessary to gain a better understanding on what the respective purposes pursued are and why they differ. Therefore, this section provides further elements to present and assess if there are well-founded grounds for States to resort to certain measures, including surveillance technology, and with the purpose of containing the spread of the virus in the context of a global health emergency, and why those should be limited to exceptional

⁴⁵³ Comprehensive data-driven Risk and Threat Assessment Methods for the Early and Reliable Identification, Validation and Analysis of migration-related risks (CRITERIA) (2021), available at <https://www.project-criteria.eu/about-criteria/> last accessed July 2023.

circumstances only to counter any extensive application of international law norms. In fact, the following analysis demonstrates that certain human rights that are crucial for the safety of migrants and refugees, such as the right to private life and the freedom of movements must not be restricted if failing the proportionality and necessity conditions check. Likewise, according to international law, any measures enforced by State authorities should not result in compressing rights nor potentially expose individuals, and specifically migrants, refugees and asylum seekers to any risk of further harm.

Among COVID-19 implications, there are the side effects determined by control measures performed by States on migrants, refugees and the overall population to ensure the respect of enforced quarantine, curfews, lockdowns, travel restrictions, border closures and limitations of the economic activities and gatherings in public especially adopted to tackle the exceptional circumstances determined by the global pandemic. Such control measures that use surveillance technology appear at a minimum problematic in case they might infringe privacy and data protection standards for all.⁴⁵⁴ Many of the privacy-related measures adopted by States were based on mobile location data programs developed to combat the spread of COVID-19 virus, but they were applied without effective safeguards to protect everyone's identity sharing and privacy rights and this seemed to have a disproportionate effect on the most vulnerable groups, including migrants and refugees. In spite in the European Union, such control applications usually are mostly in compliance with the main data and privacy protection norms (and no evidence shows otherwise), those measures applied for example by Armenia, Russia and Ecuador proved to be not human

⁴⁵⁴ Among the others: the UN Principles on Data Privacy and Protection (2018), and COE, Convention 108+ (1981), OECD, Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data (1980), Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data as amended with Additional Protocol (1981), United Nations Guidelines for the Regulation of Computerized Personal Data Files (1990), European Union Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (1995), European Union, Charter of Fundamental Rights of the European Union (2000), article 8 on the protection of personal data, European Union, Regulation (EC) No. 45/2001 on the Protection of Individuals with regard to the Processing of Personal Data by the Community Institutions and Bodies and on the Free Movement of such data (2000), European Union, Commission Decision on Standard Contractual Clauses for the transfer of personal data to third countries under Directive 95/46/EC (2001), OECD, Guidelines for the Security of Information Systems and Networks (2002), Committee on the Rights of the Child, General Comment No.6 (2005) Treatment of Unaccompanied and Separated Children Outside their Country of Origin, European Union, Directive 2006/24/EC on the Retention of Data generated or processed in connection with the provision publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (2005), Paris Principles and Guidelines on Children Associated With Arms or Armed Groups (2007), European Union, Commission Decision of 5 February 2010 on Standard Contractual Clauses for the Transfer of Personal Data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (2010).

rights compliant.⁴⁵⁵ Indeed, the collection and analysis of such data could reveal users' identities, movements and associations, in such a manner that interferes disproportionately with the right to privacy, whereby migrants and refugees – especially those in irregular situations in country - have limited means to challenge such interference due to their inherent conditions of vulnerability in country and consequent reduced accessibility to services, above all the legal remedies. Moreover, often this collection is conducted without having received the required informed consent by data subjects, and in a language that they can understand, which is crucial in the case of migrants and refugees. The informed consent is essential especially in cases in which the purposes of data collection go beyond containing the virus spread.⁴⁵⁶ Besides concerns in relation to data protection standards, these measures might lead to unlawful interferences in individuals' private life, that might have a higher impact on migrants and refugees compared to the rest of the population in country, especially those in irregular situations that might not have access to judicial remedy to context such measures. More data related concerns that might affect the population as a whole and particularly migrants and refugees are exposed as follows.

a) Data protection, the right to private life and COVID-19

Overall, as denounced by human rights defenders,⁴⁵⁷ at least 90 States authorities made use of digital technology for surveillance purposes to manage the pandemic effects and to inform the response.⁴⁵⁸ In some instances, the way States tackled the health emergency became as if authorities dealt with a “security threat”, with side effects derived from the adoption of extraordinary measures for exceptional circumstances. These measures *de facto* infringe privacy and data protection standards if the resort to surveillance technology is not adequately grounded by the law.

⁴⁵⁵ Human Rights Watch (2020), *Mobile Location Data and Covid-19: Q&A*, available at <https://www.hrw.org/news/2020/05/13/mobile-location-data-and-covid-19-qa> last accessed July 2023.

⁴⁵⁶ According to IOM Data Protection Principles: “The proof of identity from the data subject should be to the satisfaction of the data controller who reasonably believes that the data subject is who he/she purports to be. Registration cards or informal identification will suffice as proof of identity in situations where formal identification documents are unavailable. Personal data should be communicated to data subjects in a clear and intelligible manner and on a “need to know” basis. Data controllers should only reveal summaries of individual cases or copies of categories of personal data to meet the purpose of the access request.” See IOM (2010), *IOM Data Protection Manual*, available at https://publications.iom.int/system/files/pdf/iomdataprotection_web.pdf last accessed July 2023.

⁴⁵⁷ See Human Rights Watch (2020) *op. cit.*

⁴⁵⁸ Donelle, L., Comer, L., Hiebert, B., Hall, J., Shelley, J. J., Smith, M. J., Kothari, A., Burkell, J., Stranges, S., Cooke, T., Shelley, J. M., Gilliland, J., Ngole, M., & Facca, D. (2023). *Use of digital technologies for public health surveillance during the COVID-19 pandemic: A scoping review*, in *Digital health*, 9, available at <https://doi.org/10.1177/20552076231173220>, last accessed July 2023.

In fact, such measures were mostly taken without any of the safeguards provided by the principles of necessity and proportionality, thus resulting in illegal abuses of power by States, as performed in the absence of any clear and public legal basis defining the duration and timeline of validity for their application. As confirmed by Human Right Watch, the unprecedented levels of population surveillance with potential risks of data sharing, and in worse cases data exploitation as well, occurred around the world and they were presented (and justified?) as part of the response to the pandemic. For example, one scope creep issue (as analysed right after)⁴⁵⁹ observed in State practice relates to checking on the respect of travel restrictions and lockdown imposed earlier in 2020. However, many of these checks presented privacy-related concerns as they were based on mobile location data programs, initially developed for other purposes and then used to combat COVID-19, and they conferred the possibility of revealing one's location (and association) in any possible moment, and obviously without the data subject could previously consent to be checked on. No evidence exists to confirm scientific necessity of their use and related modality of operating. Hence, one could question about the implications for human rights. It seems reasonable to infer that it appeared that such measures were unilaterally imposed by State authorities, mostly not accompanied by effective safeguards to protect privacy and likely performed in the absence of an informed consent by those individuals being checked through this technology. And in fact, as rightly protested by Human Rights Watch,⁴⁶⁰ the long history of emergency measures, such as checks through surveillance technology on individuals' mobility, their goods and their overall private life without any legal basis nor safeguards in place, were firstly adopted to counter terrorism. Conversely, when State authorities do have a legal authorization to execute such measures, practice shows that they are instrumentally used and often go far beyond the legally established scope, fail to have their desired effect of protecting international security.⁴⁶¹ In worst cases, once they are approved at internal level, the same surveillance measures end up outlasting the legal basis and justification for States to resort to them.

Therefore, earlier in 2008, on this point the High Commissioner on Human Rights⁴⁶² had already the chance to clarify:

⁴⁵⁹ Chapter 2, section 2.

⁴⁶⁰ Human Rights Watch, op. cit.

⁴⁶¹ Ibidem.

⁴⁶² United Nations Office for the High Commissioner for Human Rights (2008), *Human Rights, Terrorism and Counter-Terrorism – Fact-Sheet No. 32*, p. 1 and 7, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf> last accessed July 2023.

“(…), the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres, have often been disregarded. Other States have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of *non-refoulement*.”

It derives that in both cases of COVID-19 related and counterterrorism measures human rights considerations play a prominent and guiding role, and legal safeguards continue to apply, including in extraordinary circumstances. As stated by the Economist⁴⁶³ and by OECD⁴⁶⁴, like in the case of counter terrorism measures, in the application of surveillance technology individuals are not exempted from the enjoyment of their fundamental rights, especially their private life. Thus, if technology provides significant opportunities to improve collective interests, be it preserving the nations from the threats to health or security as a whole, all the contact-tracing apps are still subject to full transparency, along with complying with other data protection principles. In this sense, far from condemning in absolute the use of technology, the only requirement is promoting its use with modalities that are compliant with international law and human rights safeguards. In this way, the potential of technology can be further expanded, even to empower communities in enhancing an emergency response against terrorist and other security threats. Indeed, this was the case, for example, of some community members in Lebanon that made use of digital means to respond promptly to a bomb attack occurred in Tripoli, Lebanon, back in August 2013.⁴⁶⁵

Using mobile location data proved to be useful, but overall, the collection and analysis of such data might reveal users’ identities, movements, and associations in a manner that interferes with their right to privacy and against data protection principles.⁴⁶⁶ Article 17 ICCPR, echoing article 12 UDHR, is the reference international law provision in this sense, as it establishes “the protection

⁴⁶³ The Economist, (2020) *Everything’s under control. The state in the time of covid-19*, available at <https://www.economist.com/leaders/2020/03/26/the-state-in-the-time-of-covid-19> last accessed July 2023..

⁴⁶⁴ OECD (2020), Policy Responses to Coronavirus (COVID-19), Tracking and tracing COVID: Protecting privacy and data while using apps and biometrics, available at <https://www.oecd.org/coronavirus/policy-responses/tracking-and-tracing-covid-protecting-privacy-and-data-while-using-apps-and-biometrics-8f394636/> last accessed July 2023.

⁴⁶⁵ Baytiyeh H (2018), The uses of mobile technologies in the aftermath of terrorist attacks among low socioeconomic populations, in *International Journal of Disaster Risk Reduction*, Volume 28, June 2018, Pages 739-747

⁴⁶⁶ Data protection is object of this study in *Chapter 2*, section 2.

of the law” against “arbitrary or unlawful interference” with an individual’s “privacy, family, home, or correspondence.” This principle applies to all individuals, especially to migrants and refugees who are generally more exposed to vulnerabilities related to the limited access to rights and available services. While vulnerability framework and definition is analysed as part of the identification process,⁴⁶⁷ some consequences directly affecting migrants and refugees in country are hereby exposed.

b) The consequences for the right to freedom of movement and health

As reference was made to mobility restrictions, another issue coming into play when dealing with technology used to enforce lockdowns is the right to freedom of movement (article 13 ICCPR), as the prerequisite to accessing and realising many other rights such as employment, livelihoods, health care, food, water, education and social services.⁴⁶⁸ Moreover, the United Nations denounced⁴⁶⁹ that limiting the right to movement might have impacts in terms of (lack of) safety at home, adequate standards of living and family life that in the long term can be heavily affected. Yet, it seems that the most common public health measure taken by States against COVID-19 has been restricting all individuals’ freedom of movement by imposing general lockdowns, stay-at-home instructions, and consequent cancellation of large-events, school and workplace closing and even flights and transportation bans.⁴⁷⁰ However, as observed in relation to other privacy and data protection rights, such measures conflict to the prominence of human rights, that remain universal and indivisible, no matter the exceptional circumstances and measures adopted correspondingly. Among the recalled rights,⁴⁷¹ subject to possible limitations in the context of the pandemic, a remark can be made here in relation to restricting the liberty of movement, as it prevents upholding human rights protection if not even creating obstacles in the access to healthcare, to name an essential one. In fact, the latter is the most closely linked to responding to the pandemic and it

⁴⁶⁷ Chapter 2, section 2, lett. d.)

⁴⁶⁸ The rights hereby listed are object of the analysis contained in this Chapter 2, specifically with reference to integration of migrants.

⁴⁶⁹ United Nations, (2020) *The Highest Aspiration A Call to Action for Human Rights*, available at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf last accessed July 2023.

⁴⁷⁰ Chen, F., Liu, Y., Ya, B., He, J., Leng, T., Sun, Y., & Xin, Q. (2021). *Latest Effective Measures to Combat COVID-19: A Review*, in *Iranian journal of public health*, 50(4), 640–648. <https://doi.org/10.18502/ijph.v50i4.5989> last accessed July 2023.

⁴⁷¹ Their scope and content are analysed in relation to migrant integration (Chapter 2, section 4).

requires to be ensured to all at any moment. This was also emphasized by the United Nations,⁴⁷² highlighting that regardless the migration status or reasons to stay, and the (ir)regular presence in country, everyone is entitled to have their human dignity respected and preserved, as it is the foundation for the full enjoyment of other fundamental rights, including health. This principle is complemented by the “progressive realization principle”,⁴⁷³ which entails universal health care for all but with some limitations depending on the available resources. This is a concept highly disputed as in practice often healthcare becomes a service dedicated to nationals only and denied to foreigners and migrant workers in country. As a consequence, non-nationals usually experience more challenges in accessing to public healthcare in the country they are living, paying bills and working in. The access might be restricted or subjected to certain conditions decided by each State. Yet, since especially during the pandemic everyone required be tested for COVID-19 to access to certain services and in determined spaces (hospitals, airports, to list a few) without discrimination based on nationality (or permit to stay), one could object that restricting access to healthcare contrasts with the general consideration that the unconditioned access to healthcare is in the collective interest to safeguarding public health. However, in general and especially for migrants present in country irregularly being attended for medical assistance becomes a real challenge, and this was already the case before the pandemic. As a matter of fact, countries such as the United Kingdom (since 2010) and the United States (since 2018) created a hostile environment to benefit from healthcare systems, especially in the case of undocumented migrants that remain *de facto* excluded.⁴⁷⁴ Conversely, Thailand and Spain constitute an positive exception⁴⁷⁵ as they facilitate the access to migrants without discrimination, along with the European Union that is putting efforts to make this a reality progressively in its Member States.⁴⁷⁶

⁴⁷² United Nations, (2020) *COVID-19 and Human Rights We are all in this together*, available at https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf last accessed July 2023.

⁴⁷³ United Nations Office of the United Nations High Commissioner for Human Rights, (2008) *Frequently Asked Questions on Economic, Social and Cultural Rights- Fact-Sheet No. 33*, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet33en.pdf> last accessed July 2023.

⁴⁷⁴ Legido-Quigley, H. et al. (2019), *Healthcare is not universal if undocumented migrants are excluded*, in *BMJ* 2019;366:14160, <https://doi.org/10.1136/bmj.14160> last accessed July 2023.

⁴⁷⁵ *Ibidem*.

⁴⁷⁶ Webb E., Offe J. and Van Ginneken, E (2022), *Universal Health Coverage in The EU: What Do We Know (And Not Know) About Gaps in Access?* in *Eurohealth*, Volume 28, n. 3, p. 13-17 available at <https://apps.who.int/iris/bitstream/handle/10665/362197/Eurohealth-28-3-13-17-eng.pdf?sequence=1&isAllowed=y> last accessed July 2023.

On the other hand, the COVID-19 pandemic might have worsened inequality in accessing health care for migrants in an irregular status, especially if internal movements in country were restricted and, at the same time, all necessary information to access to such services was not made available in a language that migrants could understand. This *per se* represents a further challenge for migrants in the host countries. In fact, potentially mobility restrictions imposed by States might have left many migrants with an irregular status without access to essential health, be it because it was conditioned or banned, for fear of being apprehended by authorities due to their migration status or because they found themselves unable to reach health facilities eventually available for their intake. The situation was further compounded for many migrants by their inability to leave their host countries to return to their home or redirect their migratory journeys. As a result, both migrants in irregular situations and migrant workers found themselves stranded abroad, in situations where not only they could not benefit from medical assistance but also, they were affected by job losses and unable to be repatriated to their home countries. This have certainly exacerbated the yet difficult conditions of living of these migrants, exposed to increased vulnerability as effect of their expired visa or permit to stay, due to their situation become irregular in country, and possibly they have lost all the benefits related to a regular stay in country, including their access to services and healthcare.

Whether COVID-19 related measures are more or less lawfully applied by State authorities, one bitter consideration remains still valid: migrants and especially the undocumented ones tend to be more prone to pay a higher price in terms of a more limited realizations of their rights, compared to nationals in any given country, even if according to international law and the principle of non-discrimination, this should not be the case. This situation requires a further reflection on their specific situation, inherently more prone to vulnerability.

c) Irregular migration, human rights and implications of mobility restrictions

No matter the migration status, everyone is covered by the protection of human rights, that apply in crisis situations too, including in the context of a global pandemic response. The abovementioned situations and cases are self-explanatory in demonstrating how migrants, displaced and mobile populations were negatively impacted and faced additional challenges during COVID-19 response, especially when mobility restrictions were applied and made them more

exposed to further risks and vulnerabilities, including the cases of those stranded away from home or their habitual residence.

Understanding that migrants in irregular situation remain entitled to fundamental rights is of paramount importance. For example, their rights to life and safeguards against torture or other cruel, inhuman or degrading treatment or punishment require State to take positive actions to respect and protect them against any violence, abuse and exploitation. Particularly, States have also the obligation to respond to special needs of women and children to ensure an appropriate assistance to migrants and people on the move whose lives or safety are endangered as a consequence of the pandemic and related measures that might be enforced. In fact, even prior to the pandemic migrant women accounted for those who experience the highest degree of socio-economic marginalisation, labour exploitation especially if they are domestic and care workers, and sometimes, even gender-based violence and abuse within the households they are employed in. Similarly, children, including unaccompanied and separated ones, young migrants, refugees and asylum seekers as well as families with very young children, are placed at further risk as they have limited understanding of the situation as exposed to increased vulnerability inherent to condition of irregularity in country, eventually in addition to the further consequences of disrupted learning. Moreover, these children often face language and pre-existing structural barriers.

Throughout the present study,⁴⁷⁷ reference was made to concerns related to immigration detention measures and one is worth mentioning again here in relation to the pandemic. In fact, migrants in detention centres are deprived of their liberty and exposed to serious risks of being unable to respect social distancing measures, if required.⁴⁷⁸ If considered in the COVID-19 context, the overcrowding in many detention places, which already in itself undermines hygiene, health, safety and human dignity, becomes a challenging standalone health response, and even more so as exacerbated by the pandemic. As suggested in the present study, considering alternatives to detention constitutes a possible solution to this issue, especially the non-custodial options, as it allows to mitigate health risks. Moreover, facilitating the communications with countries of origin or habitual residence of migrants, refugees and asylum seekers under the Vienna Convention on

⁴⁷⁷ See above and in *Chapter 1*, section 3, par. e).

⁴⁷⁸ UNODC, WHO, UNAIDS and OHCHR, (2020) *Joint Statement On Covid-19 In Prisons And Other Closed Settings*, available at https://www.ohchr.org/sites/default/files/Documents/Events/COVID-19/20200513_PS_COVID_and_Prisons_EN.pdf last accessed July 2023.

Consular Relations (Vienna, 1969)⁴⁷⁹ is a further important step to consider in identifying solutions in compliance with pertinent international obligations, specifically by informing people in detention without delay about the possibility to notify and liaise with consular officers.⁴⁸⁰ All the guarantees to be provided in detention were already mentioned as part of migration management at the border. However, it is important to stress once more for those already present in country that law enforcement operations, including forced return and immigration detention measures, abide by international obligations on condition that they are carried out by authorities in accordance with human rights safeguards, above all the right to seek for asylum for those in need of international protection. Moreover, all the restrictions to mobility follow the same conditions of any (lawful) interference in the individual private sphere, namely they require to be applied in a proportionate and non-discriminatory fashion, in accordance with the law.

The last consideration related to irregular migration status and human rights concerns refugees and internally displaced persons during COVID-19 mobility restrictions. If they were often already at risk of being marginalized before, as effect of the pandemic they became exposed to more harm. Indeed, as effect of misinformation, some countries had closed entry to all foreigners, including asylum seekers, increasing the difficulties they face to find safety, with the consequence of compromising their rights to seek international protection.⁴⁸¹ In addition, as a matter of fact, stigmatisation and discrimination have led to a rise in xenophobia against people on the move as one negative effect further. This risks having longer-term implications and might have affected their socioeconomic inclusion and, more broadly, the social cohesion within the host community of their receiving society.⁴⁸² Available evidence showed that among the numerous documented cases of racist and xenophobic attacks towards migrants and refugees, hate speech, racial slurs and

⁴⁷⁹ Consular protection is object to elaborate analysis in relation to migrant integration, in this *Chapter 2*

⁴⁸⁰ Article 36 of *Convention on Consular Relations* (Vienna, 1963).

⁴⁸¹ Foreign Policy, (2020) *You Can't Practice Social Distancing if You're a Refugee*, available at <https://foreignpolicy.com/2020/03/20/you-cant-do-social-distancing-if-youre-a-refugee/> last accessed July 2023.

⁴⁸² World Health Organization, (2020) *Coronavirus disease (COVID-19) advice for the public: MythBusters*, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> last accessed July 2023; ISD, (2020) *COVID-19 Disinformation Briefing No.1 – 27th March 2020*, available at <https://www.isdglobal.org/isd-publications/covid-19-disinformation-briefing-no-1/> last accessed July 2023; Donovan, (2020) *Here's how social media can combat the coronavirus 'infodemic'*, available at <https://www.technologyreview.com/2020/03/17/905279/facebook-twitter-social-media-infodemic-misinformation/> last accessed July 2023.

brutal acts of violence hampered their basic services otherwise available to the general population, as well as they jeopardised their safety and mental and psychological wellbeing.⁴⁸³

Therefore, as showed by the examples referred to, if mobility restrictions were applied indiscriminately their impact instead was disproportionate on migrants, especially those in irregular situation. Starting from the shutdown of economic activities and massive job cuts that affected first and foremost migrant workers, in practice they resulted in their inability to access services provided by States, including through the national social protection and safety nets systems,⁴⁸⁴ especially if they were employed in the informal economy. And this inevitably must have had an impact on their wellbeing too, given the uncertainty for their future and the loss of income needed for themselves and their family back home. Likewise, regardless of COVID-19 circumstances, refugees and persons seeking international protection lives and freedom are protected by the prohibition of *refoulement*. It is worth recalling that this principle, that certainly always applies including in crisis situations, means that in principle States cannot perform any collective expulsions nor deprive any individuals in need of international protection of their liberty. To be lawfully applied, State measures align with considerations of necessity and proportionality, based on an individual assessment of the circumstances of each case and they are applied only if it has been established that other less coercive measures cannot be implemented instead.

The most important lesson learned from COVID-19 is that the *hardcore* of human rights orients (and limits) States action in any circumstance and without exception, without discrimination and regardless the migration status. Above all, the right to life, the prohibition of torture, the protection to women, children, and asylum seekers cannot be put on hold in conditions of uncertainty, as their suspension slanders the rule of law, thus threatening safety and security.

2. Identification as the first step for an adequate integration

⁴⁸³ Indulekha Aravind – The Economic Times, (2020) *Covid-19 will have unprecedented effect on migrant economy*, available at <https://economictimes.indiatimes.com/opinion/interviews/covid-19-will-have-unprecedented-effect-on-migrant-economy-dilip-ratha-world-bank/articleshow/75648695.cms?from=mdr> last accessed July 2023.

⁴⁸⁴ A dedicated focus on social protection is provided in this study in *Chapter 2*, section 4.

The right to privacy and data protection principles are interconnected to each other and are the building blocks to grasp what identification is about. To better understand, it is now essential to uncover their scope and content, that are explained in this section.

Identification starts with the request by non-nationals to access a State's territory, usually through a visa.⁴⁸⁵ To respond to internal security requirements, States adopt various systems that support the correct implementation of their visa application processes.

a) The EU and Schengen Area

In the case of the EU for example, many information management systems (SIS, VIS, EURODAC and AFIS) and specialized agencies (EU-LISA, EUAA, EUROPOL) are involved and cooperate to respond depending on the different claims requiring identification tools.

The overall European Union visa policy is contained in the Visa Code, as per Regulation (EC) No 810/2009.⁴⁸⁶ As referred previously in the present study,⁴⁸⁷ it sets conditions of short stays in the territory of the Union for up to 90 days to the benefit of individuals who are not EU Member States citizens and that can be entitled to a visa with full enjoyment of free movement and other rights in the applicable area, the 24 out of the 27 EU Member States' territory and Croatia, Iceland, Liechtenstein, Norway and Switzerland or the "Schengen area".⁴⁸⁸ It describes types of visas and procedures to follow to obtain the authorization to stay. The Schengen area is the biggest border control-free travel region in the world, that visa applicants can reach and stay in for short periods for tourism (including joining the family, cultural and sport events), medical reasons, as well as study, research and business purposes. The EU is currently placing efforts to attract visitors and promote digitalisation processes that support free and safe movements across its external borders. For example, the Commission recently (July 2023) issued a common European tourism data space

⁴⁸⁵ For a definition of visas, refer to the present analysis *Chapter 1*, section 3, paragraph a) on accessing territory.

⁴⁸⁶ European Union, Consolidated text: Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0810-20200202> last accessed July 2023.

⁴⁸⁷ See *Chapter 1*, section 3, paragraph a).

⁴⁸⁸ "The Schengen area is one of the main achievements of the European project. It started in 1985 as an intergovernmental project between five EU countries— France, Germany, Belgium, the Netherlands and Luxembourg – and has gradually expanded to become the largest free travel area in the world. Being part of an area without internal border controls means that countries: do not carry out checks at their internal borders, except in cases of specific threats carry out harmonised controls at their external borders, based on clearly defined criteria." Cfr. European Union - Council of the European Union, *The Schengen Area Explained* available at <https://www.consilium.europa.eu/en/policies/schengen-area/#schengen> last accessed July 2023.

with the aim to encourage innovation and sustainability of tourism ecosystem, as well as boost economic competitiveness among Member States around the services provided.⁴⁸⁹

Undoubtedly such and similar initiatives must rely on timely processing of visa applications. As visa procedures entail the registration of personal data to confirm individuals' identity, the EU developed several tools to ensure adequate identification of individuals reaching the Schengen area. These systems work based on interoperability, namely they make use and exchange the same information. Among these, the Schengen Information System (SIS) connects several actors in charge of public security, national law enforcement, border control, customs, visa and judicial authorities and facilitates information exchanges among these regarding the individuals that are present in the EU territory and ensure the enjoyment of the space of freedom, security and justice.⁴⁹⁰ This important tool was first established in 2006 through Regulation (EC) No 1987/2006 (no longer in force as of March 2023)⁴⁹¹ and then updated in 2018 through Regulation (EU) 2018/1861.⁴⁹² By providing means for identification of non-nationals of the EU while ensuring their protection in accordance with the principle of proportionality (article 21 of the Regulation 2019/1861), this system enhances public security through introducing alerts of refusal of entry and stay, allowing to also tackle and prevent transnational organized crimes such as smuggling of migrants and trafficking in persons, as the system collects data on criminal records as listen the relevant provision (article 20 of the Regulation 2018/1861). Moreover, in compliance with data protection principles, the applicable normative regulates data protection (article 51), duty to inform (article 52) as well as it provides remedies in case of infringements (article 54).

⁴⁸⁹ European Union (2023) *Communication from the Commission - Towards a Common European Tourism Data Space: boosting data sharing and innovation across the tourism ecosystem* available at https://single-market-economy.ec.europa.eu/publications/communication-commission-towards-common-european-tourism-data-space_en last accessed July 2023.

⁴⁹⁰ European Union (2023), *Schengen Information System*, available at <https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Sis-Ii> last accessed July 2023.

⁴⁹¹ European Union, Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006R1987>, last accessed July 2023.

⁴⁹² European Union, Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32018R1861> last accessed July 2023.

With the reform of the SIS, the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, the EU-LISA⁴⁹³ is supporting EU Member States with technical solutions to increase security and work on information exchange regarding visa applications and asylum claims. Moreover, the agency facilitated the introduction of IT large-scale tools such as the Automated Fingerprint Identification System (AFIS), a biometric search capability foreseen in SIS, allowing for the identification of persons of interest solely using fingerprints. This enables performing border checks that also support in the fight against cross-border crime and terrorism, in compliance with EU data protection requirements. To complement these efforts, through Regulation (EC) No 767/2008⁴⁹⁴ the EU also established a Visa Information System (VIS)⁴⁹⁵ to promote information sharing on non-EU nationals' short stays visas between Member States consular authorities located in non-EU countries and to allow for a more effective management of external borders. Specifically, as enshrined in article 2 of the VIS Regulation, the purposes are verifying conditions and requirement for stay to expedite visa processing, identify the competent Member State responsible to examine the request and ensure effective border controls by avoiding eventual frauds, thus enhancing internal security. To this end, article 3 makes a direct reference to serious criminal offences, including terrorist attacks that the regulatory framework aims at preventing and prosecuting by using data for prompt detection and investigation. In this case, data safeguards apply by limiting the scope of use of collected data that is made accessible only for the purposes of identification (article 20). Likewise, this data can be accessed in case of determining and ascertaining the Member State competent to examine asylum applications (articles 21 and 22). This system is coordinated with EURODAC, the tool that supports asylum applications management within the Member States.

⁴⁹³ It is operational since 2012 and in charge of internal security, visa data and exchange of information concerning asylum claims. More information can be found at [https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-agency-operational-management-large-scale-it-systems-area-freedom-security-and-justice-eu_en#:~:text=European%20Agency%20for%20the%20operational.and%20justice%20\(eu%2DLISA\)](https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-agency-operational-management-large-scale-it-systems-area-freedom-security-and-justice-eu_en#:~:text=European%20Agency%20for%20the%20operational.and%20justice%20(eu%2DLISA)) last accessed July 2023.

⁴⁹⁴ European Union, Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R0767&qid=1415378549768> last accessed July 2023.

⁴⁹⁵ European Union (2023), *Visa Information System*, available at <https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Vis> last accessed July 2023.

EURODAC was established in 2013 by Regulation (EU) No 603/2013,⁴⁹⁶ and is currently implemented in 31 States (27 EU Member States and four Associated Countries - Iceland, Norway, Switzerland and Liechtenstein). This tool is applied by national asylum authorities to all cases requiring international protection and is aimed to collect data on new asylum claims cross-checking with the existing ones to avoid eventual duplication, besides confirming the Member State responsible for the examination of the claim. Similar to the SIS and VIS, this agency bears functions related to the maintain of internal security, as in cases of serious criminal offence records and terrorist threats the national law enforcement agents and EUROPOL⁴⁹⁷ can access related data. Likewise, EURODAC is used as a means to fight irregular migration, as all individuals found without an authorization to stay in the Schengen area are then provided with the option to leave and return to their country of origin or habitual residence. The creation of this agency responds to the efforts to complete the establishment of a Common European Asylum System⁴⁹⁸ through common safeguards and uniform procedures, overseen by the EU Asylum Agency (EUAA, replacing EASO).⁴⁹⁹

Overall, these tools have in common the aim to combine migration management with security affairs. To this end, the EU-LISA tools work through interoperability of information systems pursuing different matters in relation to migration and adequate identification (access to Schengen area, visa procedures and asylum claims) in the respect of individual rights and specifically data protection. Interoperability of data systems proved to be part of the proposed solutions to address some of the identified challenges before the amendment of SIS, such as the cumbersome and non-uniform application of visa procedures among Member States and the limited use of technology

⁴⁹⁶ European Union, Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0603> last accessed July 2023.

⁴⁹⁷ EUROPOL supports the EU Member States in preventing and combating all forms of serious international and organised crime, cybercrime and terrorism, including drug trafficking, money laundering, fraud, counterfeiting and trafficking in persons. European Union, *Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA* available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016R0794> last accessed July 2023.

⁴⁹⁸ European Union, *Common European Asylum System (CEAS)*, available at https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en last accessed July 2023.

⁴⁹⁹ European Union, *European Union Asylum Agency*, available at <https://euaa.europa.eu/> last accessed July 2023.

for information management, which seemed to be resulting in little cooperation of consular authorities, especially in countries outside the Schengen area.⁵⁰⁰

In fact, according to a recent assessment study on EU visa policy commissioned to Deloitte⁵⁰¹ by the European Commission, digitalisation and the use of digital technology are highly encouraged against the fragmentation of existing information systems. Digital means are conducive to increase the efficiency and a timely treatment of all demands, while improving effectiveness of border and migration management. This way, technology enables redistributing resources more effectively and increasing the security and reliability of the service.⁵⁰² The study found that digitalisation brings a beneficial impact at the economic, social and environmental levels, not to forget human rights considerations. The impact at economic level is explained in terms of the increase in accuracy of the information system, as well as making interactions between Member States authorities and users safer, besides facilitating a consistent approach to issuing a Schengen visa among States, being based on a proof of clearance. Secondly, digitalisation means also social benefits, as a strengthened and timely processing necessarily leads to increased security favouring the trust-building process between authorities and visa applicants, whereby privacy governance and data protection remain safeguarded. Moreover, the environmental impact of digital technology in visa processing stands in reducing CO2 emissions in relation to refraining and limiting paper-based documents and avoiding unnecessary movements to collect visa stickers. Indeed, in this sense digital storage of data respects the “principle of economies of scale”.⁵⁰³ The benefits of digitalisation for human rights not only relate to compliance with non-discrimination principle conducting for an equal treatment of towards elderly, low-IT literate and people with disabilities,⁵⁰⁴ but also to the protection of the rights of the children, especially when there are reasonable suspects

⁵⁰⁰ European Union (2013), *Impact assessment study supporting the review of the Union’s visa policy to facilitate legitimate travelling*, p. 22, available at https://home-affairs.ec.europa.eu/impact-assessment-study-supporting-review-unions-visa-policy-facilitate-legitimate-travelling_en last accessed July 2023.

⁵⁰¹ European Commission. Directorate General for Migration and Home Affairs, Deloitte (2022), *Study to Assess the Various Options Related to Visa Process Digitalisation and to Support the Preparation of an Impact Assessment: Final Report*, Publications Office of the European Union, available at <https://op.europa.eu/en/publication-detail/-/publication/690e099e-e6d6-11ec-a534-01aa75ed71a1/language-en/format-PDF/source-289929907> last accessed July 2023.

⁵⁰² *Ibidem*.

⁵⁰³ This means that more can be produced on a larger scale with less costs. Cfr. Krugman P. (1980) *Scale economies, product differentiation, and the pattern of trade* in *American Economic Review*, no. 5, pp. 950-959 available at <https://www.aeaweb.org/aer/top20/70.5.950-959.pdf> last accessed July 2023.

⁵⁰⁴ *Ibid.* p. 48 of the assessment study.

it might be cases of trafficking in children.⁵⁰⁵ The identification of this instance through digital and shared information systems could facilitate the detection and prosecution of perpetrators by authorities for such cases of criminal relevance.⁵⁰⁶

It emerges that in the EU model, prominent considerations are given to criminal and security aspects of mobility of people within the EU and Schengen area, that digitalisation promises to tackle effectively. However, the same cannot be stated regarding human rights considerations. Except the judicial remedies activated *post facto* in case of violations, in practice the EU tools and regulations appear to potentially expose individuals to risks and they pose serious threats specifically to their data protection, especially as it remains unclear how these tools are monitored for their compliance with international standards when they might result in *de facto* compressing specific rights. On the problematic issue of distinguishing between security measures and migration management, which is the overall object of the present study, some reflections were exposed with reference to the borders (*Chapter 1*). Hence, a further reflection on the same issue becomes hereby necessary with regard to the identification processes and data protection considerations.

b) The importance of data protection in processing migrants' personal data

As argued by Blasi Casagran (2021),⁵⁰⁷ the sole action of connecting migration and policing databases without required safeguards and caveats creates *per se* a fertile ground for confusion between the two very different activities and their respective divergent purposes. Indeed, resorting to means of identification and registration that do not recognize the individual profiles and needs of those who might qualify as foreigners, criminals and terrorists at once (but in reality they might be found to be migrants in vulnerable situations or refugees) definitely exposes them to further vulnerability, besides prioritizing collective security interests conflicting with individual fundamental rights.⁵⁰⁸ As a matter of fact, these individuals can be migrants, refugees or asylum

⁵⁰⁵ *Ibid* p. 49 of the assessment study.

⁵⁰⁶ Reference to trafficking and applicable legal framework is made in this *Chapter 2*, section 3. On the EU Policy, please refer to European Union (2023), *Together Against Trafficking in Human Beings*, available at https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings_en last accessed July 2023.

⁵⁰⁷ Casagran Blasi, C., 2021, *Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU*, in *Human Rights Law Review*, Volume 21, Issue 2, pages 433–457, available at <https://academic.oup.com/hrlr/article/21/2/433/6131329> last accessed July 2023.

⁵⁰⁸ *Ibidem*.

seekers and if this is the case their situation requires special attention, if not a referral to specialized assistance and services. Therefore, as observed above, even if the operationalization of interoperability regulations in full respect of fundamental rights by the end of this year 2023 represents an important milestone in terms of upholding some rights (i.e., non-discrimination, protection of children and prevention of trafficking in persons), it might lead to the infringement of the right to privacy and data protection principles, as well as resulting in discriminatory treatments and it can also lead to measures contrary to the necessity and proportionality principles. To enhance the interoperability of databases, according to Regulation (EU) 2019/817 on borders and visa⁵⁰⁹ and Regulation (EU) 2019/818 on police and judicial cooperation,⁵¹⁰ the EU promises to update and connect the existing information systems and data on border security and migration with the upcoming new ones gathering information the on the Entry/Exit System (EES), the European Travel Information Authorisation System (ETIAS) and the European Criminal Records Information System – Third Country Nationals (ECRIS-TCN). These three systems are all collecting data of non-EU citizens and aim to merge searches for border and migration management with justice and criminal records. It is then debatable that the national authorities operating this search would not be biased in conducting such a search depending on the purpose sought. This might create conditions for unjustified discriminatory treatments against non-nationals, who can mistakenly be associated to criminals rather than visitors of the EU *tout court*. No matter what the reason for traveling to the Schengen area is, in such conditions non-nationals' integrity and safety could be endangered by the threat of being associated to criminals without having committed any crime, rather than being adequately identified and treated based on their profiles of tourists in case of a short visits, refugees or asylum seekers in case of need for international protection, or lastly migrants who - for reasons that might require authorities' attention and to be investigated further - might overstay their visa for a temporary stay and thus

⁵⁰⁹ European Union, Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1560236503929&uri=CELEX:32019R0817> last accessed July 2023.

⁵¹⁰ European Union, Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1560236503929&uri=CELEX:32019R0818> last accessed July 2023.

become irregularly present in the area. In fact, in this case the reasons for overstaying are not to be overlooked by the authorities as they might entail a situation of vulnerability that, for example, prevents to leave the EU to a country triggering the *non-refoulement* obligations (and responsibility) for the host EU Member State. Even in the latter case, it is important to understand that the irregular migration status does not entail committing a crime *per se*, but rather it means committing an infringement of immigration requirements, hence an unlawful act administrative in nature, not a criminal offense. The difference between criminal and administrative torts, and corresponding procedural safeguards and guarantees for the indicted, were already exposed with regards to the alternatives to immigration detention.⁵¹¹ Therefore, it is just worth emphasising once more here that the terminology “illegal migrants” would not be appropriate when it comes to their situation (i.e., migration status), that only presents elements of unlawfulness, not the person.⁵¹² Thus, it characterise as “irregular migration status” and so it should be called, whereby “undocumented migrants” is a preferable and less stigmatizing terminology towards the individuals that *de facto* are not criminals. That being specified, a further aspect to consider is whether the authorities conducting this search in the interoperable databases are familiar, informed and trained enough to operate such distinctions between profiles and needs, all interlinked but with way different legal (if not negative) implications.

A further element for potential discriminatory treatment are the considerations on privacy and data protection, as proscribed by article 7 and 8 of the EU Charter of Fundamental Rights and by the General Data Protection Regulations. Article 5 of the General Data Protection Regulations (GDPR) established by Regulation (EU) 2016/679⁵¹³ and echoed by article 4 of the Directive (EU) 2016/680,⁵¹⁴ provides certain safeguard principles in collecting and processing personal data.

⁵¹¹ See this study *Chapter 1*, section 3, par. e).

⁵¹² OHCHR (2023), *Towards a Human Rights-Based Approach to Migration Training Guide Professional Training Series No. 26*, p. 34.

⁵¹³ European Union, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:FULL#d1e1384-1-1 last accessed July 2023.

⁵¹⁴ European Union, Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L0680> last accessed July 2023.

These are: a) lawfulness, fairness and transparency, b) purpose limitation, c) data minimisation, d) accuracy, e) storage limitation and f) integrity and confidentiality. Given the number of authorities-users that are able to access simultaneously such information systems and since data are thereto collected for either border and migration management purposes and for prosecution of crimes and terrorism, it can be said that interoperability regulations at a minimum breach all of the listed principles and safeguards at once, with the potential of determining serious violation for fundamental rights.

Moreover, biometric data collection such as fingerprints and facial images proved to be a reliable means in ascertaining individual identity. However, it cannot be neglected that they pose certain risks in terms of their processing and might fail the necessity and proportionality tests. According to the EU Fundamental Rights Agency (FRA),⁵¹⁵ the effectiveness of collecting fingerprints templates (and the extension of participation by data subjects) may vary depending on the situation. Indeed, visa applicants might be more inclined to provide these type of data as opposed to asylum applicants and migrants in irregular situation, who instead are *de facto* in a more stressful situation, hence less available to cooperate with the authorities. In worst case scenario, authorities might be inclined to deal with such situations by resorting to excessive use of force (i.e., imposing the template collection) or use detention eventually justified by this lack of cooperation.⁵¹⁶ As pointed out with regard to immigration detention,⁵¹⁷ any measures taken to address migration and asylum matters requires the respect of human dignity, as enshrined in article 1 of the EU Charter of Fundamental Rights. One could therefore question whether migrants, refugees and asylum seekers are able to grasp and understand the information on the use of data that authorities are called to provide upon collecting their biometrics in compliance with principles ex article 5 GDPR considering that, as also highlighted by the recalled FRA opinions, the rights holders/data subjects are often not comprehensively informed of all aspects regarding the data processing. Besides, the interoperability of information systems for different purposes might equally *de facto* attempt to the right to information. The same is valid for the rights of children. As enshrined by article 24 of the EU Charter of Fundamental Rights, the best interest of the child principle informs all actions

⁵¹⁵ European Union Agency for Fundamental Rights, *FRA Opinions Biometrics. Providing information in an understandable and transparent manner*, available at <https://fra.europa.eu/en/content/fra-opinions-biometrics#> last accessed July 2023.

⁵¹⁶ Ibidem.

⁵¹⁷ See this study *Chapter 1*, section 3, par. e).

taken by the authorities, and that includes collecting their fingerprints in a child-friendly and child-sensitive manner. Hence, it is complex to determine whether children rights to be informed is effectively realized by authorities when implementing such actions. Nevertheless, interoperability might present an advantage for cases of children who reach the border and end up missing or in the case of unaccompanied and separated children, thus exposed to vulnerability to violence, exploitation and abuse, including to trafficking in persons. For example, cross-checking data might support family tracking to ensure and establish the right to family unity. On this point, UNICEF clarified that biometric technology, defined as means to measure individual uniqueness through facial and iris recognition or fingerprints confirming one's claimed identity, benefits data linkage and a holistic service provision by authorities, especially for children on the move. However, they are usually designed for adults and might not perform as efficiently when applied to children cases.⁵¹⁸ Among the risks identified, noteworthy are cases of misuse of personal data and data protection considerations, such as the so-called "scope creep", which occurs "when data is used for new purposes or shared with others for purposes outside of the scope of original collection, and for which informed consent has not been given".⁵¹⁹ UNICEF lists three main risks for children that relate to: a) inaccuracy of digital identity management systems which do not capture certain age groups traits accurately, b) incapability of making informed decisions, especially in the most vulnerable cases, including on the participation of the template collection, and c) being at the forefront of the ongoing big data revolution, children are made more exposed to life-long data risks, including multiple collection of their data that ultimately amplifies the abovementioned risks.

It can be concluded that even if the collection of personal and biometric data and their systematisation through interoperability presents many advantages in terms of sharing information with cost-effectiveness of resources, fostering transnational cooperation among Member States and supporting the decision-making processes, authorities in charge of collecting such data and taking decisions for the purposes of border and migration management, as well as security matters, should be very wary of possible consequence of eventual inaccuracies. These can have a significant impact on migrants, refugees and asylum seekers, as well as those in the most vulnerable situations

⁵¹⁸ UNICEF (2019), *Faces, Fingerprints and Feet: Guidance on assessing the value of including biometric technologies in UNICEF-supported programmes*, available at <https://data.unicef.org/resources/biometrics/> last accessed July 2023.

⁵¹⁹ *Ibidem*, p. 18.

including children that might not have a choice. For example, in relation to the ethical use of technology in the context of immigration detention, experts intervening on a peer learning event among Member States and different stakeholders⁵²⁰ organized by the United Nations Network on Migration (UNNM)⁵²¹ in June 2021 had the chance to clarify that these cases require a thorough assessment of any ethical implications in relation to the informed consent, besides the data collection and sharing processes. It emerges that among the most important ethical considerations there are data protection implications to be considered throughout the processes, as well as the principles of necessity and proportionality, determined through assessment of risks and benefits and combined with human rights considerations. To be human rights compliant, such measures need to be performed with clear and comprehensive legal basis that clearly identify the data use, purpose and limitations against any misuse, in conformity with transparency and respect of individuals privacy. Then it would be ideal to establish some mechanisms to ensure accountability and oversight in the execution of such measures, that would be responsible to verify compliance with such ethical principles that take into account the special cases of data subjects in the most vulnerable situations, including those situations where children and special cases are involved.

c) Shortcomings in the identification process

What happens when these verification mechanisms that check on information systems for effective identification are not human-rights compliant? What if such processes are automated and entrusted to machines and technology IT means as an effect of the increasing use of artificial intelligence? This paragraph attempts to take a stance by presenting some considerations on the possible shortcomings in the identification process.

As explained with regards to interoperability systems connecting data and databases created for different purposes, the tools used to support identification processes might fail in protecting rights and thus they might have a greater impact than a simple human error in identification, with possible

⁵²⁰ United Nations Network on Migration – Working Group on Alternatives to Detention (2021), *Second Global Online Peer Learning Exchange. Case Management for Case Resolution: Scaling Up Alternatives to Detention*, available at https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/resources_files/report_-_2nd_online_peer_learning_exchange_on_atds_19_july_-_final.pdf last accessed July 2023.

⁵²¹ United Nations Network on Migration, (2021) *Terms of Reference for the United Nations Network on Migration*, available at https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/un_network_on_migration_tor_1_0.pdf last accessed July 2023.

negative consequence on individuals' lives. That is why it is better to emphasise once more the importance of State authorities to be well-trained on those rights and check on the authenticity and correctness of the data collected then used to profile individuals "automatically". On this point, the FRA shed light on the fact that data controllers are required to conduct a data protection impact assessment, otherwise individuals' fundamental rights might be at risk, specifically if automated profiling results in discrimination.⁵²² Moreover, in case of automated processes, the agency adds that interoperable systems might lead to higher risks for a discriminatory profile in case sensitive data are mistakenly interpreted and are then used incorrectly and simultaneously by different systems. In other words, a judgement and a decision on whether to admit and classify a person (not) entitled to enter and stay in the EU territory and their respective needs and rights would be based on algorithms that are determined by data revealing sensitive information about a person. If such information is made available to multiple systems at once without performing adequate controls on identities, needs and rights, interoperability could also magnify the potential effects of a discriminatory (and eventually inaccurate) profiling. Therefore, in spite the FRA suggests⁵²³ that interoperability might as well have the potential of reaching more accurate profiling by cross-checking data coming from different databases, building on the findings discussed so far it seems preferable to rely on verification mechanisms developed and implemented by well-trained staff that perform identification of profiles and needs in accordance with human rights. Namely this implies a certain margin of flexibility adopted by staff as it is conducive to correct any eventual mistakes in the profiling algorithms. Theoretically, this means taking decisions on people lives determined by a more accurate assessment that technology and IT tools still cannot perform (yet?). In fact, closely linked to algorithms is resorting to artificial intelligence (AI),⁵²⁴ for which there is still no consensus on a generally accepted definition for it. Yet, at its broadest it equates to algorithms.⁵²⁵

It is believed that generative AI can increase the global gross domestic product (GPD) and reshape the labour market thanks to its ability to generate the same outcomes as human-made actions with

⁵²² European Union Agency for Fundamental Rights (2017), *Fundamental rights and the interoperability of EU information systems: borders and security*, p. 45.

⁵²³ *Ibidem*.

⁵²⁴ Sheikh, H., Prins, C., Schrijvers, E. (2023), *Artificial Intelligence: Definition and Background*. In *Mission AI. Research for Policy*. Springer, Cham. https://doi.org/10.1007/978-3-031-21448-6_2 last accessed July 2023.

⁵²⁵ *Ibidem*.

reduced human interactions and labour.⁵²⁶ However, the same study adds the caveat that for the assessment of the benefits of using automation it very much depends on the sectors where it can be applied, as there are still some contexts that require human participation, whereby automated systems are used rather to complement human labour. It can be said that in light of the already highlighted sensitivity and possible consequences of individuals' life in case of wrongful identification, the same principle applies to border, migration and security management. The need to further refine such AI tools to avert risks of inaccuracy has been corroborated even by AI enthusiasts such as Mustafa Suleyman,⁵²⁷ that defined the last decade as dedicated to improving classification and prediction tools, whereby now more needs to be done for enhancing interaction and personalised intelligence similar to human ones. He further explains that AI supports innovative advances in sensitive sectors such as medical diagnostic or copywriting for which he also exhorts governments to take prompt action to support those who soon will find themselves out of the labor market and without income, and this as direct effect of AI implementation. However, broadly speaking it appears that, in spite of their usefulness,⁵²⁸ these AI means still leave some room for doubts under the legal perspective, and in fact practice shows that they cannot be considered as absolutely safe yet nor being compatible with an individual's legal safety, especially when considering AI tools that are "generative".⁵²⁹ For example, there is evidence that copyrights are often infringed and there is no consolidated case-law on the matter to orient actions yet.⁵³⁰ One interesting case recently denounced was about a lawyer building the case-law in support of a

⁵²⁶ Goldman Sachs Research (2023), *Generative AI could raise global GDP by 7%*, available at <https://www.goldmansachs.com/intelligence/pages/generative-ai-could-raise-global-gdp-by-7-percent.html> last accessed July 2023.

⁵²⁷ Financial Times (2023), *AI will create 'a serious number of losers', warns DeepMind co-founder*, available at <https://www.ft.com/content/0c105d93-e017-470d-8653-a2a30fd720b2> last accessed July 2023.

⁵²⁸ Neuburger J. D, Gesser A., Hewman R. H., Grossenbacher K., Bannigan M. K. (2023), *ChatGPT and Generative AI: Key Legal Issues*, available at <https://www.reuters.com/practical-law-the-journal/transactional/chatgpt-generative-ai-key-legal-issues-2023-06-01/> last accessed July 2023.

⁵²⁹ Wiggers, K. (2023), *The current legal cases against generative AI are just the beginning. AI that can generate art, text and more is in for a reckoning*, available at https://techcrunch.com/2023/01/27/the-current-legal-cases-against-generative-ai-are-just-the-beginning/?guccounter=1&guce_referrer=aHR0cHM6Ly9zdGF0aWNzLnRlYW1zLmNkbi5vZmZpY2UubmV0Lw&guce_referrer_sig=AQAAAKn0FARWcEYRfaOq57zPisUEhlunTfiSVaa55ZJLuWkMJamKwVf5dDWFwJr_QWn6AUmie6KximldyBF3oRi_f6fBRSFwzbpOoFbYVmqKyoBcTqVFez67Wf8PbZBdlQs8QbqHkzqNBUNp8kl6dXmVgpcWPBUOeKLHCODWT0Fh6eox last accessed July 2023.

⁵³⁰ Setty, R. (2023), *First AI Art Generator Lawsuits Threaten Future of Emerging Tech*, available at <https://news.bloomberglaw.com/ip-law/first-ai-art-generator-lawsuits-threaten-future-of-emerging-tech> last accessed July 2023.

plaintiff that turned out to be completely fictitious and based on non-existing precedents.⁵³¹ Moreover, according to a recent study on this matter, three-quarters of corporate law professionals expressed having risk concerns surrounding the use of ChatGPT as generative tool as well as AI as a whole, mostly in areas of accuracy, privacy, confidentiality, and security principles.⁵³² Nevertheless, the United Nations encourage the use of new technology and specifically AI and virtual reality (VR) tools “responsibly” to aid peace building efforts.⁵³³ Despite the highlighted challenges, the Department of Peace and Political Affairs recently reaffirmed its commitment in integrating technology means in peace processes and it already made use of it in prevention and peace building initiatives in Libya, Iraq, Lebanon, Haiti and Bolivia through AI-generated dialogues.⁵³⁴ One of the latest outputs is the realization of a VR documentary on Lebanon, “Dreaming of Lebanon”, that supports mediation for peace and social cohesion outcomes by presenting the reality of youth explaining their hopes for the future in their country through interactive interviews.⁵³⁵ While recognizing AI potential,⁵³⁶ it was acknowledged that ethical concerns and algorithm bias are manifest and regulatory frameworks, including stricter legal requirements, to address them are thus needed to incorporate the principle of transparency, human rights and inclusivity in peace support efforts.⁵³⁷

Hence, the question to ask for the purpose of this study is whether times are mature enough to eventually entrust AI for the identification at the borders of migrants, refugees and asylum seekers with special needs and requiring special attention. For now, it can be confidently stated that taking an eventual risk of human error by continuing relying on the accuracy and participation of well-trained staff for identification is paradoxically more advisable and less dangerous than entrusting

⁵³¹ Moran L. (2023), *Lawyer cites fake cases generated by ChatGPT in legal brief*, available at <https://www.legaldive.com/news/chatgpt-fake-legal-cases-generative-ai-hallucinations/651557/> last accessed July 2023.

⁵³² Thomson Reuters (2023), *Corporate legal departments see use cases for generative AI & ChatGPT, new report finds*, available at <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-corporate-legal-departments-2023/> last accessed July 2023.

⁵³³ United Nations – Department of Peace and Political Affairs (2023), *Artificial Intelligence and Virtual Reality — Used Responsibly — Can Help Peacebuilding Efforts*, available at <https://dppa.medium.com/artificial-intelligence-and-virtual-reality-used-responsibly-can-help-peacebuilding-efforts-e4aa700710bd> last accessed July 2023.

⁵³⁴ Ibidem

⁵³⁵ United Nations – Department of Peace and Political Affairs (2023), *Futuring Peace. Dreaming of Lebanon*, available at <https://futuringpeace.org/project/vr-experience-dreaming-of-lebanon> last accessed July 2023.

⁵³⁶ International Communication Union (ITU) (2023), *United Nations Activities on Artificial Intelligence (AI)*, available at https://www.itu.int/dms_pub/itu-s/opb/gen/S-GEN-UNACT-2022-PDF-E.pdf last accessed July 2023.

⁵³⁷ United Nations – Department of Peace and Political Affairs (2023), *Exploring the Potential and Pitfalls of Artificial Intelligence as a Tool for Prevention and Peacebuilding*, available at <https://dppa.medium.com/exploring-the-potential-and-pitfalls-of-artificial-intelligence-as-a-tool-for-prevention-and-77fb3e15b442> last accessed July 2023.

existing IT-tools. In doing so, a potentially wrong result can be averted, and with it an inaccurate profiling with the harmful consequences that lead to possible violations of individual rights and breach of States obligations alike.

d) Identification and vulnerability: analytical frameworks and special cases

The fundamental question is now: why it is so important to ensure proper and adequate identification? The simple answer is that a correct identification process aids the recognition of eventual situations of vulnerability, enabling the provision of protection and special attention to those cases that are more exposed to violence, exploitation and abuse. After a brief analysis about how to interpret the term “vulnerability” and discussing some models, the present paragraph presents the special cases of people with diverse SOGIESC and the identification for migrant children.

A reference to the concept of vulnerability was made in the present study in relation to borders and as a possible ground to ensure the entry to a host territory.⁵³⁸ Likewise, the importance of the same concept is stressed also in the GCM, objective 7, encouraging States to address and reducing vulnerabilities in migration. “Vulnerability” and “vulnerable groups” appear in several EU instruments in relation to migrants and asylum seekers: the Directive 2011/95/EU (in the definitions contained in the preamble and article 20),⁵³⁹ the Directive 2013/32/EU (articles 15 and 30),⁵⁴⁰ Directive 2013/33/EU (articles 2, 11, 17, 18 and 22)⁵⁴¹ as well as policy documents produced

⁵³⁸ See *Chapter 1*, section 3, par. b).

⁵³⁹ European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095> last accessed July 2023.

⁵⁴⁰ European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032> last accessed July 2023.

⁵⁴¹ European Union, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033> last accessed July 2023.

by EASO (now EUAA),⁵⁴² as well as the European Commission.⁵⁴³ Particularly, in its guidance note for researchers, the Commission emphasises the need for safeguards when the research subjects involve vulnerable groups, specifying the same ethical principles relevant to data apply (informed consent, confidentiality and data protection) as well as additional requirements: a treatment with care and sensitivity, the principles of objectivity and transparency, the need to avoid ethnocentricity, the protection of dignity including to family and friends of individuals involved, the respect for values and decision-making, and lastly a call for extra care in the case of unaccompanied minors.⁵⁴⁴

Similarly, the case-law of the ECtHR is also abundant in referencing the concept of vulnerability, mostly in relation to individuals in search for international protection. First and foremost, *M.S.S v. Belgium and Greece*⁵⁴⁵ refers to vulnerable groups in need of special protection, followed by *N.H. v. France*⁵⁴⁶ and *Tarakhel v. Switzerland*.⁵⁴⁷ For the latter case the Court had the chance to add that children are in extreme vulnerability requiring States to respond promptly to their special needs. However, the concept of vulnerability can also be applied to migrants. To this end, IOM defines migrants in vulnerable situation when characterized by these three elements: the inability to enjoy their human rights (1), the increased risk of violation and abuse (2), and, as a consequence of the previous two conditions, a heightened call of duty by the duty bearers (3).⁵⁴⁸

In relation to the additional concepts as embedded in this definitions, scholarly opinion attempted to establish analytical frameworks to facilitate a systematic understanding of vulnerability and design responses accordingly. Gilodi *et al*,⁵⁴⁹ for example, argue that the concept of vulnerability

⁵⁴² IARMJ-EUROPE, EASO (2021), *Vulnerability in the context of applications for international protection. Judicial analysis*, available at <https://op.europa.eu/en/publication-detail/-/publication/6d8c0c45-77e6-11eb-9ac9-01aa75ed71a1/language-en> last accessed July 2023.

⁵⁴³ European Commission (2021), *Guidance note — Research on refugees, asylum seekers & migrants*, available at https://ec.europa.eu/research/participants/data/ref/h2020/other/hi/guide_research-refugees-migrants_en.pdf last accessed July 2023.

⁵⁴⁴ Ibidem.

⁵⁴⁵ European Court of Human Rights – Grand Chamber (2011), *Application no. 30696/09* available at <https://hudoc.echr.coe.int/?i=001-103050>

⁵⁴⁶ European Court of Human Rights (2014), *Application no. 28820/13* available at <https://hudoc.echr.coe.int/eng?i=001-140865>

⁵⁴⁷ European Court of Human Rights – Grand Chamber (2014), *Application no. 29217/12* available at <https://hudoc.echr.coe.int/eng?i=001-148070>

⁵⁴⁸ IOM (2019), *International Migration Law No. 34 - Glossary on Migration*, definition of “migrants in vulnerable situation” available at <https://publications.iom.int/books/international-migration-law-ndeg34-glossary-migration> last accessed July 2023.

⁵⁴⁹ Gilodi, A., Albert, I. & Nienaber, B. (2022) *Vulnerability in the Context of Migration: a Critical Overview and a New Conceptual Model*. In *Human Arenas* available at <https://doi.org/10.1007/s42087-022-00288-5> last accessed July 2023.

is linked to the three definitions of risk, capacity and autonomy and dependency. The risk as recalled by the IOM's definition can materialize in discriminatory practices against migrants, and generally in violations risks. Accordingly, it can also be understood as exposition to hazards. The capacity comes into play as limited when it becomes impossible for migrants to cope with such hazards, affecting their autonomy and dependency (or self-sufficiency, as recalled above).⁵⁵⁰ Based on this analytical framework, the vulnerability can be considered as (1) innate, (2) situational and (3) structural: the first one characterises as a permanent risk inherent to the person and traditionally, this relates with the characteristics of gender, disability, medical cases and age (both elderly and children); the second one intersects with personal characteristics and contextual circumstances, such as protracted exposition to harm and crises, victims of violence, exploitation and abuse and homeless people, for example; the last one is created by the governing systems and related to the social, political, geographical and cultural contexts. This background describes migration alternatively as (1) potentially causing vulnerability and linked to the exposures to further risks (2) or resulting from vulnerability to escape such risks, (3) or else migration becomes impossible due to this vulnerability. Hence, the authors propose a model whereby States' structural interventions aim to counter discrimination to enable the individuals (migrants) to build their resistance to risks through collective actions at meso-level, namely through mediation that allow their interaction with the governments.

Göttsche⁵⁵¹ instead criticises this “normative perception” of vulnerability proposing a more neutral concept of vulnerability as a possibility. By analysing different interpretations depending on the context, including the political one that links it to risks and threats such as terrorism, she also analyses preventative measures to cope with risks that are “borrowed” by climate and ecological research.

Similarly, by developing the Determinant of Migrant Vulnerability (DoMV)⁵⁵² IOM adopted an “ecological approach to migration” inspired to the ecological model by Bronfenbrenner in “The

⁵⁵⁰ See this *Chapter 2*, introduction.

⁵⁵¹ Göttsche, S. (2021) *The Accumulation of Vulnerability Aspects in the Figure of the Migrant: A Theoretical Approach* in Fromm, N., Jünemann, A., Safouane, H. (eds) *Power in Vulnerability. Studien zur Migrations- und Integrationspolitik*. Springer VS, Wiesbaden https://doi.org/10.1007/978-3-658-34052-0_1 last accessed July 2023.

⁵⁵² IOM, *The IOM Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse*, 2019, p. 6, available at <https://publications.iom.int/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>, last accessed July 2023.

Ecology of Human Development”.⁵⁵³ According to this framework, migrants in a situation of vulnerability means those exposed or who have experienced violence, exploitation and abuse and who do not fall under the definition of victims of trafficking ex article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.⁵⁵⁴ The DoMV applies before during or after migrating, and along vulnerability it encompasses the concept of resilience, establishing an interaction between risk factors (contributing to harm) and protective ones, intended as the capacity to avoid, cope or recover from the harm. This framework considers such interactions in relation to individuals as situated in their household and families, the community and groups they belong to and inscribed in the broader society that constitutes the structural level. Because structural factors are influenced by the social, political, economic, environmental contexts as well as the institutions at regional, national and international level migrants circumstances and needs are affected by them, hence the terminology “ecological model”. For example, these structural factors could be impacted by crises, (lack of) respect for human rights, (weakened) rule of law, overall (migration) governance in a given country. According to this framework, responses can be adapted at all the four levels (individual, household/family, community and structural), without prejudice to States’ duty to uphold individual rights and reduce vulnerability to violations. On this point, OHCHR and the GMG have identified 20 guiding principles to protect migrants,⁵⁵⁵ that can be listed as follows: (1) addressing migration putting human rights at the centre; (2) non-discrimination; (3) access to justice; (4) safety and saving lives; (5) borders governance human-right compliant; (6) returns must respect international standards; (7) prohibition of torture; (8) prohibition of arbitrary detention, especially for children; (9) private life, family unity and reunification; (10) child protection; (11) protection of women and girls; (12) attainment of the highest physical and mental health for all migrants; (13) adequate standards of living; (14) conditions of work in just and favourable conditions; (15) right to education; (16) right to information, (17) accountability; (18) support human right defenders; (19) improve data collection in compliance with privacy and data protection; and (20) human-rights and gender-responsive

⁵⁵³ U. Bronfenbrenner (1981) *The Ecology of Human Development. Experiment by Nature and Design*, Harvard University Press.

⁵⁵⁴ For definitions see *Chapter 1*, section 2.

⁵⁵⁵ Global Migration Group, *op. cit.*, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> last accessed July 2023.

migration governance. It derives that by applying the DoMV framework in accordance with the protection principles, theoretically all migrants remain covered by complementary protection, including those cases that do not qualify as victims of trafficking or trafficking survivors,⁵⁵⁶ yet these migrants experience violations of their rights through violence, exploitation and abuse.

While a further detailed reflection follows in the next section of the present study, particularly with regards to possible grounds for regularisation remedies for those migrants that fall under the definition of trafficking in persons along with children as special cases, other special cases that are worth mentioning here are persons with diverse SOGIESC, as they can be exposed to vulnerability and also require dedicated protection. In fact, thinking vulnerability without mentioning their special cases would mean not being comprehensive. In light of their peculiar situation, their protection needs and resilience capacity might change significantly depending on the context they live in or migrate to. This was confirmed by a study recently released by IOM.⁵⁵⁷ In the attempt to address the lack of knowledge about their protection needs, it uncovers more information on their conditions, the internal diversification of this group implying possible intersecting vulnerabilities, as well as the existing gaps and disparity in protection and risk factors to cope with harm. What emerged from the findings of the study is that it comes to a heterogeneous group, whereby transgender migrants have been identified as the most vulnerable sub-group and intersex people appear to be the most invisible group both in research fieldworks and policy making processes. Moreover, migrants with diverse SOGIESC are individuals and rights holders with owned agencies, who are capable of sharing information on their own needs and who recognized the access to physical and material safety, legal safety and health care as most challenging as well as primary protection needs. When it comes to migration contexts it seems that protection, return and reintegration outcomes and their overall situations are heavily influenced by societal norms which

⁵⁵⁶ As explained by IOM on the terminology *victims* vs. *trafficking* survivors: “The choice of the title “trafficking survivors” promotes the understanding that “victims” that are protected and assisted in attaining safety and recovering physically, psychologically and socially ideally become “survivors” who are safe and empowered and have reasonable prospects of achieving their dreams and hopes.” Cfr. IOM and Samuel Hall (2023) *Monitoring the Reintegration of Trafficking Survivors: Study and Toolkit*, IOM, Geneva available at <https://publications.iom.int/books/monitoring-reintegration-trafficking-survivors-study-and-toolkit> last accessed July 2023. At the time of developing the present study, in my capacity of IOM staff member I coordinated this research project that started in 2021 and was completed and published in 2022.

⁵⁵⁷ At the time of developing the present study, in my capacity of IOM staff member I coordinated this research project that started in 2021 and was completed and published in 2023. Cfr. Samuel Hall and IOM (2023) *Mapping and research to strengthen protection and assistance measures for migrants with diverse SOGIESC*, IOM, Geneva available at <https://publications.iom.int/books/mapping-and-research-strengthen-protection-and-assistance-measures-migrants-diverse-sogiesc> last accessed July 2023.

contribute to their decision to migrate. Therefore, for as much as it is difficult to identify them within the broader group of migrants, refugees and asylum seekers, it would not be accurate for authorities in charge of identification processes to assess their vulnerability without considering how to integrate a tailored response to their needs. The challenge in dealing with their case resides in their possible unwillingness to disclose this aspect of their profile for fear to be exposed to further harm or they might be reluctant to participate in data collection processes due to the uncertainty on the use of such data. Moreover, as pointed out by UNWOMEN,⁵⁵⁸ most marker tools⁵⁵⁹ used by the main humanitarian actors to assist cases of migrants with diverse SOGIESC in vulnerable situation do not include forms for disaggregating this aspect of their profile, that usually are meant to support facilitating their inclusion. However, in general it appears that despite their “invisibility” more international and national actors are increasingly putting in place measures dedicated to them. In fact, the Council of Europe SOGI (Sexual Orientation and Gender Identity) Unit launched a publication examining the conditions of this group at the workplace focusing on diversity inclusion aspects,⁵⁶⁰ with the purpose to assist Member States in the application of the European Commission’s LGBTIQ Equality Strategy 2020-2025.⁵⁶¹ In the first progress report (2023),⁵⁶² developments were registered in the fight against discrimination and offering legal protection to this group, in a way that ensures their inclusion and safety at workplace and in the education and health sectors against violence and hate-speech. According to the same report, at least 18 Member States confirmed having adopted national LGBTIQ action plans or strategies or are currently preparing for the adoption of renewed LGBTIQ policy documents, highlighting a promising practice to possibly replicate in other contexts. In addition, against this background

⁵⁵⁸ UNWOMEN (2021), *Diverse SOGIESC Rapid Assessment Tool to Assess Diverse SOGIESC Inclusion Results in Humanitarian Contexts*, available at https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAAsia/Docs/Publications/2021/03/RAT/ap-Diverse-SOGIESC_RATGuidanceNote_Public_FINAL.pdf last accessed July 2023.

⁵⁵⁹ Examples of the latter include: Gender Equality Toolkit for IPPF; Gender-Age Marker Toolkit, European Commission 2014; and CARE Gender Marker, 2019

⁵⁶⁰ Council of Europe (2021), *Diversity in the workplace A sexual orientation, gender identity or expression, sex characteristics approach* available at <https://rm.coe.int/diversity-in-the-workplace-a-sogiesc-approach/1680a477ce> last accessed July 2023.

⁵⁶¹ European Union, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Union of Equality: LGBTIQ Equality Strategy 2020-2025*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0698> last accessed July 2023.

⁵⁶² European Commission (2023), *Progress report on the implementation of the LGBTIQ Equality Strategy 2020-2025* available at https://commission.europa.eu/document/98551259-7873-4d91-940c-323e4cd7d390_en last accessed July 2023.

EUAA created a specialized guidance to identify the challenges faced when processing claims for international protection based on applicants with diverse SOGIESC, with the aim to provide dedicate counselling to Member States.⁵⁶³ However, much more still needs to be done to create awareness around this specific group. The abovementioned IOM research is a good example and one step forward to develop more knowledge to prepare the ground for evidence-based responses to their needs. In fact, people and migrants with diverse SOGIEC characterise for their heightened risks and intersecting vulnerability, including being less visible than other groups and thus requiring a stronger effort to avoid any practice of discrimination, marginalization and exclusion from society.

The second group to consider as special case for their inherent vulnerability is children. Unaccompanied and separated children present exacerbated vulnerabilities, including and especially to trafficking in persons practices. Even more, if in situation of crises they are at increasing risk of distress, where they could be likely exposed to generalized violence, including gender-based, abuse and family separation that create favourable conditions for traffickers to lure them into such crime. Because of the nature of trafficking, if it is hard for victims to manifest themselves. Consequently, trafficking in children cases identification might become even more challenging as children themselves might not be aware of the risks they are running while controlled by their traffickers. In these cases, it is important for authorities to be familiar with the elements and means of trafficking⁵⁶⁴ to be able to spot any eventual signs of exploitation. In addition to the abovementioned elements of vulnerability (age, gender, disability or sexual orientation, among the others), in the identification of children it is important to confirm whether a parent or a relative is taking care of them to determine if it comes to cases of unaccompanied or separated children. In these cases, special safeguards as exposed above in the present study apply,⁵⁶⁵ along with the protections to address any intersecting vulnerabilities (gender-based violence and trafficking in persons, to list a couple). In this sense, what matters with regards to identification and vulnerabilities of children is assessing elements that may indicate the likelihood that they are being trafficked as well, in order to provide adequate protection to address

⁵⁶³ European Union Agency for Asylum (EUAA) (2022), *Survey on Sexual Orientation and Gender Identity. Key Findings Report*, available at https://euaa.europa.eu/sites/default/files/publications/2022-06/Survey_sexual_orientation_gender_identity_EN.pdf last accessed July 2023.

⁵⁶⁴ See *Chapter 1*, section 2 par. d).

⁵⁶⁵ The list of international instruments and standards protecting children is included in the present study *Chapter 1*, section 3, par. e), lett. i).

vulnerability in case this suspicion is confirmed. On this point, in its guidance on identification⁵⁶⁶ UNICEF provides a step-to-step guide and advises to evaluate if children behaviour indicates signs of psychosocial distress, unwillingness to answer questions or inconsistency in the response, which could be a manifestation of the abuse and violence suffered and might require referral to specialised protection services. The UNICEF approach proposes to conduct an assessment based on the analysis of all the levels and dimensions (individual, situation and structural including policy and laws) as well, as presented above in relation to understanding the concept of vulnerability.

To conclude on the importance of identification and vulnerability, it is definitely possible to apply the abovementioned analytical frameworks to special cases such as people with diverse SOGIESC, children as well as trafficking in person, as they all have in common facing multiple risks at once that translates into the intersectionality of different vulnerabilities. On this matter, in an issue brief⁵⁶⁷ launched on the occasion of the first ever GCM objectives implementation review (2022), the Inter-Agency Coordination Against Trafficking (ICAT) also attempted to elaborate a definition of vulnerability adapted to the context of trafficking in persons, which is very much coherent and aligned with the abovementioned frameworks and specifically inspired to a “socio-ecological approach” in addressing trafficking in persons issues.

Due to the negative impact of this crime, which along with countering efforts it requires robust protection measures for the victims by State authorities, trafficking in person is intrinsically linked to vulnerability. Because of the heinous nature of this crime, difficult to be spotted first and then prosecuted and at the same time dangerous for its lasting effects on the victims, in some cases States propose remedies to preserve survivors’ safety, even when it comes to undocumented migrants and in the context of irregular migration, exposed in continuation.

⁵⁶⁶ UNICEF (2022), *Practical Guide on identification of victims and persons at-risk of trafficking in human beings. Guidance for frontline responders*, Geneva, available at <https://www.unicef.org/eca/media/24371/file/Identification%20of%20Persons%20At-Risk%20of%20Trafficking%20in%20Human%20Beings.pdf> last accessed July 2023.

⁵⁶⁷ Inter-Agency Coordination Against Trafficking in Persons (ICAT) (2022), *Addressing Vulnerability to Trafficking in Persons*, Issue Brief 12/ 2022 available at https://www.icmpd.org/file/download/57956/file/icat_issue_brief_12_vulnerability_to_tip_published.pdf last accessed July 2023.

3. Possible remedies to foster integration of migrants into local societies: Regular Pathways and Regularisation

This section focuses on the context of irregular migration and therefore trafficking in persons is examined under the angle of constituting one of the grounds and an exceptional circumstance based on which States provide a remedy to the irregularity of their migration status and presence in country, namely the regular pathways and regularisation measures.

As this analysis shows so far, it is important to identify and register entry/exist of individuals, their profiles and eventual needs for adequate protection, as a border, migration and security management multi-purpose action. However, before examining the implications of integration and inclusion into the host-society, it is now necessary to connect the two phases of registration and identification with the integration processes that might follow more or less successfully.

Beforehand, there is a further step to consider: what State measures are in-between? Specifically, what happens when migrants, refugees and asylum seekers are already present in the host country, but they have no title to stay because a permit was never granted, or rather its duration of validity expired making them undocumented?

This section intends to answer these questions by shedding light on what the grounds are to remedy to the situation of irregular migrants with protection needs and that cannot be returned to their country of origin or habitual residence. In this sense, based on the States practice hereby analysed, trafficking victims (or survivors) and children seem likelier to be protected through regularisation measures adopted by States, and this is because of their inherent vulnerability. In fact, granting regular migration status might reduce their exposure to violence, exploitation, abuse and, generally, to discrimination. In addition, there are numerous benefits resulting from regularisation in terms of improving migration and security management for States and, at the same time, increasing the legal safety that provide more opportunities for individuals. Thanks to this measure, for example, they can maintain family unity as well as accessing public services, such as healthcare and education, that perhaps they were unable to reach before.

A global-wide reflection on regularisation as a possibility to sharpen safety and security of both duty bearers and rights holders was revamped and boosted by two concurring and impactful policy events, hereby presented: the revision of the Anti-Trafficking Directive in the EU and the first

stocktaking initiative on the implementation of the GCM objectives, which culminated with the adoption of the Progress Declaration of the IMRF.⁵⁶⁸ Particularly, this last document is of undoubtful relevance and it constitutes a milestone in acknowledging the changing reality of migration management. Indeed, it refers at least to three innovative concepts which constitute the essence of the present study in its entirety, among the others: (1) the considerations on legal identity⁵⁶⁹, (2) the regular pathways, including regularisation and (3) the identification through digitalization⁵⁷⁰:

“Recognizing the foundational role of proof of *legal identity* in fulfilling the objectives of the Global Compact [on Migration], such as enhancing access to *regular pathways*, preventing and reducing statelessness and facilitating safe and dignified return, as well as sustainable reintegration, we commit to accelerating efforts to ensure that all migrants have proof of legal identity and adequate documentation and that our nationals have non-discriminatory access to proof of nationality and other relevant documents, including by strengthening *identification procedures and documentation systems, including through digitalization* efforts, as well as consular capacities and cooperation, including via technical assistance and bilateral or regional agreements” (par. 64).⁵⁷¹

Understanding more on these key elements allows for laying the ground to then examine conditions for inclusion and integration in the host society after. Therefore, this analysis focuses on regularisation starting from the case of trafficking in person.

a) Defining regularisation and regular pathways

Overall, in the European context, regularisation has been usually associated with temporary residence and work permits, also following completion of education and study opportunities.

⁵⁶⁸ Hereinafter *the Progress Declaration*. United Nations General Assembly (2022), *Draft resolution submitted by the President of the General Assembly Progress Declaration of the International Migration Review Forum*, Doc. A/AC.293/2022/L.1, available at <https://migrationnetwork.un.org/system/files/docs/A%20AC.293%202022%20L.1%20English.pdf> last accessed July 2023.

⁵⁶⁹ See *Chapter 1*, section 1, par. b), lett. ii).

⁵⁷⁰ See this *Chapter 2*, section 2.

⁵⁷¹ Italics added for emphasis.

Instead, in the Americas the same type of programmes is described by the term “legalisation” and has usually facilitated the procurement of permanent residence permits at a later stage.⁵⁷²

However, as stated above, in some cases States provide regularisation on human rights or humanitarian grounds.⁵⁷³ For example, this is the case of the regularisation of migrant children in irregular situations,⁵⁷⁴ or migrants in irregular situations due to environmental disasters,⁵⁷⁵ protracted human rights crisis,⁵⁷⁶ and facilitating access to social protection mechanism for victims of trafficking in persons.⁵⁷⁷ Further cases of regularisation are based on socio-economic benefits for the State recognising the value added by migrants to the national economy. This is the case of investment in property,⁵⁷⁸ work and/or residence permits for students or recent graduates, which could also facilitate naturalisation.⁵⁷⁹

⁵⁷² Aspasia Papadopoulou, *Regularisation programmes: an effective instrument of migration policy?*, in *Global Migration Perspectives* n. 33, 2005, available at https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp33.pdf last accessed September 2022.

⁵⁷³ OHCHR-DLA Piper, *Admission and Stay Based on Human Rights and Humanitarian Grounds: a Mapping of National Practice*, 2018. See also in the present study *Chapter 1*, section 3, par. b).

⁵⁷⁴ United States of America, *The Development, Relief, and Education for Alien Minors Act (DREAM Act) and the Promise Act of 2021*. The Dream and Promise Acts would provide current, former, and future undocumented high-school graduates and GED recipients a pathway to U.S. citizenship through college, work, or the armed services. Available at <https://www.americanimmigrationcouncil.org/research/dream-act-overview>, last accessed September 2022.

⁵⁷⁵ In Brazil, the 2017 Migration Law grants a temporary residence permit for humanitarian reasons to people from any country which is in a situation of imminent and/or enduring instability, where there is armed conflict, major calamity, environmental disaster or serious violations of human rights or international humanitarian law, or in other cases. This humanitarian visa was created to respond to the large-scale arrivals of Haitians to Brazil after the 2012 earthquake. Moreover, the temporary residence has also been provided to people arriving from Venezuela, due to the humanitarian crisis. Adapted from OHCHR-DLA Piper, *Admission and Stay Based on Human Rights and Humanitarian Grounds: a Mapping of National Practice*, 2018.

⁵⁷⁶ On 1 March 2021, through Decree No. 216, the Government of Colombia adopted the Statute for Temporary Protection for Venezuelan Migrants Under a Temporary Protection Regime and other related migration dispositions. The Temporary Protection Statute for Venezuelan Migrants Under the Temporary Protection Regime is a legal mechanism for temporary protection for Venezuelan migrants wishing to remain in Colombia temporarily and that comply with the migratory criteria established in article 4 of Decree No. 216. This Temporary Statute of Protection for Venezuelan Migrants is composed of the Single Registry of Venezuelan Migrants and the Temporary Protection Permit (PPT), and it will have a validity of ten years - until 30 May 2031.

⁵⁷⁷ In Italy, under article 18 of Legislative decree 286, of 25 July 1998, victims of trafficking can be granted an initial six months temporary residence permit that can be prolonged by a further 12 months if this is deemed to be necessary. When the maximum of 18 months has expired, the victim can change the temporary residence permit issued to a work or study visa.

⁵⁷⁸ The Residence Visa for the Acquisition of Real Estate in Spain enables a foreigner to reside in Spain due to his/her investment in the acquisition of real estate for a value equal to or greater than 500,000 euros. <http://www.exteriores.gob.es/Consulados/LOSANGELES/es/InformacionParaExtranjeros/Paginas/Visado-de-Residencia-por-Adquisici%C3%B3n-de-Bienes-Inmuebles-en-Espa%C3%B1a.aspx>

⁵⁷⁹ France, Code de l'entrée et du séjour des étrangers et du droit d'asile (articles L313-8, R313-11-1 à R313-11-4, R311-10 à R311-13); Code du travail (articles R5221-17 à R5221-22); Arrêté du 12 mai 2011 fixant la liste des

No matter what the grounds to confer this special measure, regularisation represents the “half-way through safety” or a “compromise” between registration of entry (and consequent identification), the provision of regular avenues to reach the host country legally and safely and the integration and inclusion processes in the receiving society, whenever the circumstances made regular migration impossible. In this sense, to date it is interpreted as an exception, rather than the rule. For this reason, regularisation, also referred to as “amnesty”, “normalisation” or “legalisation”, is most generally defined as:

“[a]ny process or programme by which the authorities of a State allow non-nationals in an irregular situation to stay lawfully in the country, by granting them a regular status.” (IOM, 2019).⁵⁸⁰

In addition to regularisation processes *per se*, States offer opportunities and other types of regular pathways for migration that allow for or lead to regularisation or permanent residence of a non-national in the granting State, upon meeting certain criteria established by its authorities.⁵⁸¹ Deriving from sovereignty and depending on the State’s discretionary decision, such mechanisms and related law and policy are established by each State and allow migrants already present in the territory or already residing in a country (but in an unauthorised fashion) to acquire a legal status on a permanent or temporary basis.⁵⁸² In this cases, regularisation is granted to migrants by States and it is framed as a means of last resort, allowing them to control migration in country and, for

diplômes au moins équivalents au master; Arrêté du 18 janvier 2008 relatif à la délivrance, sans opposition de la situation de l'emploi, des autorisations de travail aux étrangers non européens. Carte de séjour - Recherche d'emploi/création d'entreprise | service-public.fr (service-public.fr available at <https://www.service-public.fr/particuliers/vosdroits/F17319> last accessed July 2023.

⁵⁸⁰ IOM IML, *Glossary on Migration*, 2019 available at https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf last accessed September 2022.

⁵⁸¹ Some examples are provided below in a non-exhaustive manner. Another example, based on political reasons, is the former 1966 Law No. 89-732 (Cuban Adjustment Act) of the United States for Cubans, which allowed the adjustment of the status of Cubans present in the United States to that of lawful permanent residents, as well as the related former 1995 so-called “wet-foot, dry-foot policy”, “under which Cuban migrants traveling to the United States who are intercepted at sea (“wet foot”) are returned to Cuba or resettled in a third country, while those who make it to U.S. soil (“dry foot”) are able to request parole and, if granted, lawful permanent resident status under the Cuban Adjustment Act.” <https://www.dhs.gov/sites/default/files/publications/DHS%20Fact%20Sheet%20FINAL.pdf>

⁵⁸² Aspasia Papadopoulou, *Regularization programmes: an effective instrument of migration policy?*, in *Global Migration Perspectives* n. 33, 2005 available at https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp33.pdf last accessed September 2022 and ILO, *Regularization and Employer Sanctions as Means towards the Effective Governance of Labour Migration*, 2009 available at https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_308873.pdf last accessed September 2022.

example, regularisation decisions can be adopted to facilitate meeting of labour market needs.⁵⁸³ As observed in practice, the grounds and conditions used by States to grant such remedy are mostly (a) for reasons of work, residence and family reunification, (b) in relation to international protection needs, and (c) for humanitarian or medical reasons.⁵⁸⁴ The modalities most frequently adopted to implement such measures are as described as follows.⁵⁸⁵ First, a decision is taken by authorities to grant permanent or “one-shot” authorization to stay in country. The second modality is a “*fait accompli*” ground, taking into account the existing ties built in country in relation to the period of residence prior to the adoption of such measure or because the beneficiary is (informally) employed in country. The same type of authorization to stay is provided as form of regularisation based on protection needs for humanitarian, health and family reasons. Another feature of regularisation measure to highlight is the target, as it could be an individual or a collective decision. Lastly, the process is activated out of expedience or by State authorities’ concession, or out of their obligation, being it organized through well-defined procedures, or alternatively through informal ones. In this sense, there are two typologies of implementation: regularisation programs for which the application is open for a limited period of time, and regularisation mechanisms that are instead regularly proposed by States that accept applications on a rolling basis.⁵⁸⁶ For example, Morocco initiated a regularisation program in 2014 and repeated in 2017, expanding the possibility to apply to women and their children, unaccompanied children and to spouses of Moroccan nationals.⁵⁸⁷ Ireland implemented

⁵⁸³ ILO, [Regularization and Employer Sanctions as Means towards the Effective Governance of Labour Migration](#), 2009

⁵⁸⁴ PICUM, *Manual on regularisations for children, young people and families*, 2018 available at https://www.picum.org/Documents/Publi/2018/Regularisation_Children_Manual_2018.pdf last accessed September 2022.

⁵⁸⁵ Papadopoulou A. (2005), *Regularization programmes: an effective instrument of migration policy?*, in *Global Migration Perspectives* n. 33, 2005 available at https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp33.pdf last accessed September 2022; ILO (2009) *Regularization and Employer Sanctions as Means towards the Effective Governance of Labour Migration* available at https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_308873.pdf last accessed September 2022

⁵⁸⁶ Platform for International Cooperation on Undocumented Migrants (PICUM) (2022), *Regularisation mechanisms and programmes: Why they matter and how to design them*, Brussels, available at https://picum.org/wp-content/uploads/2023/01/Regularisation-mechanisms-and-programmes_Why-they-matter-and-how-to-design-them_EN.pdf last accessed July 2023.

⁵⁸⁷ Abourabi Y. (2022), *Governing African Migration in Morocco: The Challenge of Positive Desecuritisation in International Development Policy | Revue internationale de politique de développement* par. 24, available at <https://doi.org/10.4000/poldev.4788> last accessed July 2023.

regularisation programs first in 2018 and then in 2022, and Italy activated these programs eight times between 1990 and 2021.⁵⁸⁸

To promote humane and fair regularisation, PICUM⁵⁸⁹ identifies ten key elements for States to respect: (1) undocumented migrants including children can apply, (2) civil society can influence and support evaluation of these programs, (3) clear criteria are identified objectively, (4) the possibility to appeal against a negative decision on the application should be granted, (5) the decision on the application must be taken impartially and based on the set criteria, (6) the procedure should be accessible in practice, (7) safeguards are provided, (8) temporary status can be granted pending the final decision on the case, (9) the residence permit allows to access the labour market and is long-term, safe and independent from other applications, and (10) it has to be accompanied through provision of support measures.

Since all processes remain subject to compliance with human rights standards and obligations, paramount considerations in the decision-making processes are given to the needs and vulnerabilities of migrants eventually entitled to be regularised. Considering the thorough assessment required to identify specific vulnerabilities, an individual regularisation appears as a more adequate response in relation to protection needs.

b) Applicable legal framework

The international migration law binding instruments refer only indirectly to regular and regularization pathways, leaving a margin of flexibility to States to establish mechanisms discretionally and according to their sovereignty. Nevertheless, article 7 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo, 2000), is the norm that creates a link between regularisation and cases of trafficking in persons, as it makes a reference to establishing such mechanisms to provide victims of trafficking with the opportunity to safely remain in country, temporarily or permanently, encouraging States to pay appropriate considerations to humanitarian and compassionate factors. Moreover, article 69 of the ICRMW calls States to consider the possibility of regularising the situation of migrant workers in irregular

⁵⁸⁸ European Migration Network (EMN) (2021), *Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway*, p. 32, available at https://home-affairs.ec.europa.eu/system/files/2021-07/00_eu_long_term_irregular_staying_migrants_study_en.pdf last accessed July 2023.

⁵⁸⁹ PICUM, *op. cit.* p. 20.

migration status in accordance with applicable national legislation and bilateral or multilateral agreements. According to this standard, while performing an assessment to decide for regularisation measures, authorities can evaluate the circumstances of potential candidates-beneficiaries' entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation. This norm represents a valid orientation for State actions.

Before the adoption of the Progress Declaration, other pre-existing soft law instruments pledged for mechanisms facilitating regularisation pathways, including the 2030 Agenda for Sustainable Development, target 10.7 on facilitating safe migration,⁵⁹⁰ and the GCM,⁵⁹¹ objectives 5 on enhancing availability and flexibility of pathways for regular migration and 7 on addressing vulnerabilities by facilitating access for migrants in an irregular status to an individual assessment that may lead to regular status (par. i). Furthermore, in the UN Secretary General's 2017 report *Making migration work for all*,⁵⁹² regularisation initiatives are encouraged as strategic and long-term solution to match the realities of labour market needs (par. 36), against marginalization and especially when authorities cannot account for migrants in irregular situation (par. 41). According to the document, such processes facilitate and encourage family reunification and the continuation of education opportunities, upholding human rights and international law and preventing crises (par. 63). Lastly, of paramount importance is a document including regularisation among the goals set out by the former UN Special Rapporteur in the *Migrants 2035 Agenda for Facilitating Human Mobility* which indeed promotes the adoption of this measure for migrants who work and are socially integrated in the host country, against any exploitative practices:⁵⁹³

“Proactive regularization procedures should be readily available to help migrants who work and are socially integrated to remain in the country with legal status and to fight exploitation and defend their rights, just like any other workers.” (par. 51, and Target 10.2 under Goal 2 *Protect the labour and human rights of all migrants, regardless of their status and circumstances*).

⁵⁹⁰ United Nations (2015) *Transforming our world: the 2030 Agenda for Sustainable Development*, *op.cit.*

⁵⁹¹ Global Compact for Safe, Orderly and Regular Migration, doc. A/RES/73/195, 2019 available at <https://undocs.org/A/RES/73/195> last accessed September 2022.

⁵⁹² Making migration work for all, doc. A/72/643, 2017 available at https://refugeesmigrants.un.org/sites/default/files/sg_report_en.pdf last accessed September 2022.

⁵⁹³ Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, doc. A/HRC/35/25, 2017 available at https://www.iom.int/sites/default/files/our_work/ODG/GCM/A_HRC_35_25_EN.pdf last accessed September 2022.

These international standards of binding and non-binding nature informed States' action and practice, as they decided to adopt regularisation measures or offer regular options as part of their respective migration management strategies. Some States that implemented regularisation in country contributed to create good practices and became leading examples, as triggered by both crises and in other exceptional circumstances.

c) The IMRF and the revision of the Anti-Trafficking Directive in the EU context

As a background to situate the remedy of regularisation in its circumstances and related issues, especially in the context of international migration, the crime of trafficking in persons has evolved in trends and patterns, also adapting to changing reality and as affected by humanitarian and other crises. So has States response, that is more and more influenced by policy debates within the different international thematic fora. Aimed at measuring the progress and current achievements, discussing challenges and agreeing on concerted solutions, such processes are mostly triggered by migration and displacement related crises and the challenges encountered, but they also provide an opportunity for positive changes. By adopting a participatory approach and through engaging policy and decision makers, along with other relevant actors involved in migration and displacement (including civil society organisations and the academia), such international processes and public consultations pursue the objective of bringing about improved and most effective policy and legislative changes to strengthen international cooperation, specifically in the fight against transnational organised crime and trafficking in persons. This is because they require a concerted response by States bearing a shared responsibility.⁵⁹⁴ Among these policy initiatives, the first ever IMRF⁵⁹⁵ was held in New York in May 2022, and the public consultation for the revisions of the EU Anti-Trafficking Directive was organized at the same time.⁵⁹⁶ While differing in scale and types of actors involved, as the IMRF characterises for a global' scope and the European Union public consultation is regional, such processes share the common goal of achieving solutions for combating trafficking in persons while protecting the rights of those involved. At the same time,

⁵⁹⁴ United Nations (2018), *Global Compact for Safe, Orderly and Regular Migration*, op.cit., parr. 11-12.

⁵⁹⁵ United Nations (2022), *International Migration Review Forum*, available at <https://www.un.org/en/migration2022>, last accessed September 2022.

⁵⁹⁶ European Commission (2022), *Fighting human trafficking – Review of the EU Rules*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules_en last accessed July 2023.

they promote strengthened cooperation among States to fight transnational organised crime, put forward legal pathways for migration (objective 5 of the GCM) and regularisation for victims of trafficking with the aim to reduce the vulnerability to such crime.

The present analysis focuses on the parallelism between the two interlinked processes and how they can influence one another specifically in the context of crises. It demonstrates that even if it is true that emergency settings provide opportunities for criminal networks and perpetrators, they can also boost positive changes regarding trafficking in persons governance, which is impacting migration management at international level and might lead towards a progressive erosion of States' sovereignty and their exclusive domain on this matter.

To this end, this study starts from presenting the public consultation for the revision of the EU Anti-Trafficking Directive, launched in parallel with the preparation of the IMRF. It continues analysing some normative gaps in the Directive that could be complemented by the outcomes of the IMRF, specifically the Progress Declaration,⁵⁹⁷ and in relation to crises situations whereby regularisation is one possible solution for victims of trafficking in persons to ensure their legal safety. Examining States good practices allows to conclude that undoubtedly migration issues at large and displacement crises are providing a chance to work on strengthening international cooperation, specifically in the fight of trafficking in person of transnational dimension while upholding victims of trafficking's rights.

In an effort to prompt European Union Member States' response to current challenges, in March 2022 the European Commission completed a public consultation for the revision of the EU Anti-Trafficking Directive 2011/36/EU (EU-ATD).⁵⁹⁸ The aim was responding to the need to monitor the Directive's implementation, based on the EU Strategy on combatting trafficking in human beings 2021- 2025, adopted on 14 April 2021.⁵⁹⁹ This consultation provided an opportunity to all citizens and stakeholders to share their expertise and inputs, taking stock of ten years implementation in their respective countries and formulating recommendations on how to better

⁵⁹⁷ Supra

⁵⁹⁸ Fighting human trafficking – Review of the EU Rules, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/F_en, last accessed September 2022.

⁵⁹⁹ European Commission, *EU Strategy on Combatting Trafficking in Human Beings (2021-2025)*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0171&from=EN>, last accessed September 2022.

respond to current trends and dynamics of trafficking in persons.⁶⁰⁰ By adopting a participatory approach to policy and legislation design and development, this initiative represented a step forward towards strengthening the cooperation among Member States and at international and cross-regional level, specifically on migration management and trafficking in person governance. This consultative revision was conducted in parallel and in preparation of the first ever IMRF, held in May 2022 to review the progress made at the local, national, regional and global levels in implementing the objectives of the GCM,⁶⁰¹ including the one specifically dedicated to preventing, combating and eradicating trafficking in persons in the context of international migration (objective 10). As highlighted above, the IMRF culminated in the adoption of the Progress Declaration, which is the outcome of a consultative process similar to the EU Anti-Trafficking Directive revision but carried out at a larger scale and in the framework of the United Nations, thus involving all Member States. It was completed through a State-led approach and with the participation of all relevant stakeholders. The Declaration encourages States for cross-border collaboration in their efforts to prevent trafficking in persons and prosecute and investigate the perpetrators, emphasising the need for strengthened international cooperation to tackle this crime, considering its transnational dimension. Likewise, this commitment certainly applies in the context of the European Union Member States. Thus, this analysis attempts to establish a correlation between the EU Directive review and how the IMRF broader discussion has influenced this process of revision. In fact, a thorough exam of the standards included in in the EU-ATD shows that more attention is required for some normative gaps, whereby the cross-border trafficking in persons is not mentioned in any provision, except on the preamble, in paragraph 5.⁶⁰² In practice, this means that countering trafficking in persons could *de facto* determine a challenge for Member States efforts to ensure prosecution and investigation of perpetrators, as enshrined in article 9 of the EU-ATD, because the scope of application of all States measures is limited solely within each Member State national territory and jurisdiction. Instead, addressing this lacuna by making direct

⁶⁰⁰ For the purposes of this analysis “trafficking in person” is used based on the definition contained in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo, 2000).

⁶⁰¹ Global Compact for Safe, Orderly and Regular Migration (GCM), available at <https://undocs.org/A/RES/73/195>, last accessed September 2022.

⁶⁰² Par. 5 of the *Preamble* indeed provides as follows: “The law enforcement authorities of the Member States should continue to cooperate in order to strengthen the fight against trafficking in human beings. In this regard, close cross-border cooperation, including the sharing of information and the sharing of best practices, as well as a continued open dialogue between the police, judicial and financial authorities of the Member States, is essential.”

reference to cross border collaboration directly and explicitly in the Directive provisions and set of articles - and not only limited to a non-binding declaration of principle - would provide States with a more comprehensive regulatory framework, aligned with international law standards and accompanying Member States in their efforts towards strengthened cooperation in countering trafficking in person, especially in cases of transnational scope.

Moreover, prevention measures and mechanisms are described in article 18 and refer generally to education and training and awareness raising to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings. However, such measures do not sufficiently stress the need to address challenges related to trafficking in persons of transnational dimension, nor they call upon Member States to establish transnational cooperation to tackle this crime. In this sense, EUROPOL⁶⁰³ bears a key role in bridging this normative gap, as trafficking in persons falls under the EU's priorities in the fight against serious and organised crime as part of European Multidisciplinary Platform Against Criminal Threats (EMPACT) 2022 – 2025,⁶⁰⁴ that could provide States with the necessary guidance and assistance to enhance international cooperation on this matter.

In addition, to fulfil their obligations to identify and assist victims of trafficking, States are called to establish mechanisms in cooperation with relevant support organizations (article 11, paragraph 4 of the Directive). However, the norm does not include any reference to national (NRM) or transnational referral mechanisms (TRM).⁶⁰⁵ Hence, as highlighted by scholars⁶⁰⁶ many of the Member States did not develop a mechanism that facilitate victims of trafficking identification and support their full inclusion in the society. Further guidance on this would better orient EU Member States and their agents to establish a formal or informal mechanism to support the realisation of the rights of victims of trafficking and improve their access to specialised services. As a result, according to the existing evidence generated on this matter, for those Member States that currently managed to establish such types of mechanisms the quality and efficiency of the response might

⁶⁰³ See this *Chapter 2*, section 3.

⁶⁰⁴ The policy cycle as well as priorities can be consulted in the official webpage, available at <https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact> last accessed July 2023.

⁶⁰⁵ OSCE – ODIHR (2004), *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons - A Practical Handbook*, available at <https://www.osce.org/files/f/documents/0/4/13967.pdf>, last accessed September 2022.

⁶⁰⁶ Marchetti S., Palumbo L. (2022), *10 Years After the Directive 2011/36/EU Lights and shadows in addressing the vulnerability of trafficked and exploited migrants*, policy brief no. 33, available at https://population-europe.eu/files/documents/pb33_vulner_human-trafficking_final.pdf last accessed July 2023.

differ significantly among Member States.⁶⁰⁷ In some of them, such as Ireland,⁶⁰⁸ cooperation mechanisms to identify and support victims of trafficking remain informal and based on personal connections. Correspondingly, the assessment studies on the progress made in the fight against trafficking in persons highlighted that victims of trafficking have hampered access to their rights and corresponding services because of the lack or ineffective referral mechanisms at national and transnational level.⁶⁰⁹

Therefore, inaccurate detection of this crime, lack of identification and subsequent limited data and knowledge on the number and scale of this crime remain an issue of concern. Existing reports show that the profile of victims of trafficking within the EU is for the majority women and girls that constitute a significant proportion of all victims, particularly in relation to sexual exploitation. In addition, child trafficking cases are prevalent as nearly a quarter of all victims identified in the EU are children.⁶¹⁰

The European Parliament resolution on the implementation of the Directive (February 2021)⁶¹¹ confirmed that the number of registered victims of trafficking increased to date. This data is based on the Commission's last study period (2017 and 2018) in comparison to the previous one.⁶¹² The proportion of this crime is likely to be greater than data actually reported, as many victims remain undetected and are then unable to access to assistance and protection.

In spite of the significant progress observed in law enforcement and criminal justice response, evidence confirms that a culture of impunity continues to prevail in relation to countering this crime, with very few convictions for trafficking offences.⁶¹³ In addition, traffickers' *modi operandi*

⁶⁰⁷ European Commission (2020), *Study on reviewing the functioning of Member States' National and Transnational Referral Mechanisms*, doc. HOME/2018/ISFP/PR/THB/0000 available at <https://op.europa.eu/en/publication-detail/-/publication/d5542e9c-0e92-11eb-bc07-01aa75ed71a1/language-en> last accessed September 2022.

⁶⁰⁸ *Ibidem*, p. 50.

⁶⁰⁹ First, Second and Third reports on the progress made in the fight against trafficking in human beings as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, available at https://ec.europa.eu/anti-trafficking/legal-and-policy-framework_en, last accessed September 2022.

⁶¹⁰ European Union (2020), Report From The Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, doc. COM/2020/661 final, p. 7, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0661> last accessed July 2023.

⁶¹¹ European Parliament, Resolution of 10 February 2021 on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI))

⁶¹² European Commission, Data Collection on trafficking in human beings in the EU, 2020, available at <https://op.europa.eu/en/publication-detail/-/publication/5b93c49f-12a0-11eb-9a54-01aa75ed71a1>, last accessed September 2022

⁶¹³ *Idem*

and business models have proven to be more flexible than States response, as criminals were promptly capable to adapt to recent challenges, such as mobility restrictions due to COVID-19 response measures. Moreover, research on the subject confirms that criminals resort to online technology means and the internet to maintain their connections both with (potential) victims and the criminal networks they are associated to.⁶¹⁴ In fact, traffickers prey on social inequalities, discrimination and marginalisation, limited access to employment opportunities and overall situations of vulnerability that have been exacerbated by the COVID-19 pandemic, which made it easier for them to find victims and take advantage of their challenging situations. This finding has been acknowledged also in the EU Strategy on Combatting Trafficking in Human Beings (2021-2025).⁶¹⁵ Available reports on the matter confirm that on the one hand the vulnerabilities of people already at-risk of trafficking have been further exacerbated by the pandemic, and conversely, on the other hand, people that before COVID-19 were less at risk of trafficking are now more likely to become victims.⁶¹⁶

In light of the exposed situation and described ongoing challenges, it emerges that the EU-ATD at its current stage presents several shortcomings that undermine an effective detection of this crime and the identification of its victims, hampering their protection. A revision presents an opportunity to better align with the EU Strategy on Combatting Trafficking in Human Being and other complementary instruments on this matter.

d) Regularisation as a remedy in crisis situations

Regularisation remedy can be first framed in the context of crises as a possible solution.

In fact, the EU Strategy on Combatting Trafficking in Human Beings (2021-2025) emphasises the need for more opportunities for victims of trafficking to access to solution, including by exercising

⁶¹⁴ United Nations, Successful strategies for addressing the use of technology to facilitate trafficking in persons and to prevent and investigate trafficking in persons, doc. CTOC/COP/WG.4/2021/2, 23 July 2021, available at https://www.unodc.org/documents/treaties/WG_TiP_2021/CTOC_COP_WG.4_2021_2/ctoc_cop_wg.4_2021_2_E.pdf, last accessed September 2022.

⁶¹⁵ Available at https://ec.europa.eu/home-affairs/system/files_en?file=2021-04/14042021_eu_strategy_on_combatting_trafficking_in_human_beings_2021-2025_com-2021-171-1_en.pdf, last accessed September 2022.

⁶¹⁶ Global Protection Cluster, *COVID-19 Pandemic: Trafficking in Persons (TIP) considerations in internal displacement contexts*, available at <https://www.refworld.org/publisher.GPC...5eac18e04,0.html> last accessed September 2022.

their rights to return to their country of origin or habitual residence, reintegration support and the (re)insertion on the local labour market. Like in the recalled example of granting entry to a host State on humanitarian grounds for migrants and refugees,⁶¹⁷ if present in country but with irregular migration status and without permit of stay and in some exceptional cases, States provide regularisation of victims of trafficking of their migration status on human rights or humanitarian grounds or, where conditions apply, they may grant refugee status. For example, there have been cases of regularisation of migrant children present in country in irregular situation, and cases of victims of trafficking who could access to social protection. In this sense, the creation of regular (and regularisation) pathways for undocumented migrants can be seen as another possible solution to consider for those who are also victims of trafficking. This solution was indeed discussed by Member States during the Round Table One of the IMRF,⁶¹⁸ as it was found by States as a viable option to promote the access to rights, decent work, the enhancement of the contributions of migrants to development and the prevention of vulnerabilities.

In this regard, the Progress Declaration comes out as an advanced instrument of soft law influencing the current policy debate and state practice in terms of strengthened international cooperation. It accurately reflects current challenges and solutions being discussed at international level, being very ambitious in upholding the rights of migrants regardless of their status:

“We commit to respecting, protecting and fulfilling the human rights of all migrant children, regardless of their migration status, including unaccompanied or separated migrant children, ensuring that the best interests of the child are a primary consideration in all actions concerning children in our legislation, policies and practices, including those related to integration, return and family reunification” (par. 57).

Moreover, on regularising migrants, it draws attention on the urge to include humanitarian situations:

“We will strengthen our efforts to enhance and diversify the availability of pathways for safe, orderly and regular migration, including in response to demographic and labour market realities, and for migrants in vulnerable situations, as well as those affected by disasters, climate change and environmental degradation, including by working coherently

⁶¹⁷ Chapter 1, section 3.

⁶¹⁸ Available at <https://www.un.org/pga/76/wp-content/uploads/sites/101/2022/05/IMRF-Round-table-1-Programme-1.pdf> last accessed September 2022.

across all relevant multilateral fora, concluding labour mobility agreements, optimizing education opportunities, facilitating access to procedures for family reunification through appropriate measures that promote the realization of the right to family life and the best interests of the child, and regularizing migrants in an irregular situation, in line with national laws” (par. 59).

Thus, by looking at emerging challenges especially related to conflict and crisis settings, the necessity for expanding opportunities for regularisation to ensure safety of affected population becomes apparent.

The EU Anti-Trafficking Directive does not explicitly refer to tackling this crime in emergency and conflict settings. However, as the situation determined by the ongoing war in Ukraine have further demonstrated,⁶¹⁹ trafficking in persons cases are not limited to situations of peace and stability. This crime significantly affects conflict and disaster areas.⁶²⁰ As declared by the United Nations Secretary General António Guterres on recent events in Ukraine:

“(…) for predators and human traffickers, war is not a tragedy. It’s an opportunity. And women and children are the targets.”⁶²¹

Such contexts are already prone to the widespread crime and violations that might exacerbate existing vulnerabilities to violence, exploitation and abuse. Moreover, humanitarian crises not only intensify existing trends of trafficking in persons, but they can also lead to new forms of exploitation.⁶²² Nonetheless, existing literature demonstrates that trafficking in persons response generally still overlooks or do not consider crisis and humanitarian situations enough, requiring

⁶¹⁹ The analysis of implications of the conflict in Ukraine falls out of the scope of this study, in spite a short reference is hereby added.

⁶²⁰ The security situation in Ukraine deteriorated rapidly following the launch of a Russian Federation military offensive on 24 February 2022. The crisis unfolding in Ukraine exacerbating existing humanitarian needs and creating new needs both inside the country and throughout the region. Six months into the full-scale war, it is estimated that 6.6 million Ukrainians have fled the country, and an additional 6.6 million are internally displaced within the country. It is estimated that almost half a million third-country nationals (TCNs) mostly overseas students and labour migrants were living in Ukraine when the fighting escalated and around 300,000 TCNs have left Ukraine since the crisis began, with many forced to overcome a frequently shifting security situation, complicated transit routes, and conflicting or unclear information. Cfr. United Nations News – Focus Ukraine, available at <https://news.un.org/en/focus/ukraine> and IOM, Ukraine Crisis : Six Months Response, available at https://www.iom.int/sites/g/files/tmzbdl486/files/situation_reports/file/IOM-Ukraine-Regional-Response2022-6-Month-Special-Report.pdf last accessed September 2022

⁶²¹ United Nations News (2022), *Ukraine: ‘We need peace now’ declares Guterres, warning of global hunger meltdown*, March 2022 available at <https://news.un.org/en/story/2022/03/1113882>, last accessed September 2022

⁶²² Inter-Agency Coordination Against Trafficking in Persons (ICAT) (2017), *Trafficking in Persons in Humanitarian Crises*, available at: <https://icat.un.org/sites/g/files/tmzbdl461/files/publications/icat-ib-02-final.pdf>, last accessed September 2022.

more evidence and analysis on this matter to inform States' action.⁶²³ This assumption is indeed further corroborated by the lack of reference to conflict and crisis situations in the EU Directive at present and prior to the revision.

e) The EU approach: residence permits to protect victims of trafficking

The urge to discuss solutions for those more exposed to vulnerability according to the GCM objective 7 emerged clearly during the first IMRF which contributed for the first time to advancing a dialogue of international scope on this subject. Indeed, the discussion on regular and regularisation pathways was confirmed as a top priority during the IMRF debates around managing migration and reducing vulnerabilities including to trafficking in persons in a way to enable undocumented migrants to have their fundamental rights protected and to promote access to corresponding services.

In this context, the EU response provides a good example to draw some observations on how regularisation can work in practice and what still remains to be improved. With the launch of the revision process of the EU-ATD, EU Member States clearly aligned with this priority and joined the IMRF shared purpose. In this vein and going a step forward, examining further the EU-ATD by linking it with the Directive 2004/81/EC on granting residence permits to victims of trafficking,⁶²⁴ can shed some light on this issue. First, the EU-ATD is silent on granting a resident

⁶²³ UNCHR, *Handbook for the Protection of Internally Displaced Persons*, 2009 Part IV.8 available at <https://www.unhcr.org/4c2355229.pdf> last accessed September 2022; IOM, *Handbook on Direct Assistance for Victims of Trafficking*, 2015, available at <https://publications.iom.int/books/iom-handbook-direct-assistance-victims-trafficking-0> last accessed September 2022; IOM, *Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse*, 2019, available at <https://publications.iom.int/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse> last accessed September 2022. In addition, the following reports contain important information on trafficking in crisis: UNODC, *Countering Trafficking in Persons in Conflict Situations*, 2018, available at https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf last accessed September 2022; UNODC, *Global Report on Trafficking in Persons in the Context of Armed Conflict*, 2018 available at https://www.unodc.org/documents/data-and-analysis/glotip/2018/GloTIP2018_BOOKLET_2_Conflict.pdf last accessed September 2022; OHCHR, *Trafficking in Persons in Humanitarian Crises*, 2017, available at <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/trafficking-conflict-and-humanitarian-crises> last accessed September 2022; IOM, *Addressing Human Trafficking and Exploitation in Times of Crises: Evidence and Recommendations for Further Action to Prevent Vulnerable and Mobile Populations*, 2015, available at <https://publications.iom.int/books/addressing-human-trafficking-and-exploitation-times-crisis-evidence-and-recommendations-0> last accessed September 2022.

⁶²⁴ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who

permit for victims of trafficking, which in itself represents a flaw in the protection extended to them. Secondly, since in practice EU-ATD provisions might be applied in conjunction with the second instrument, there could be double standards regarding conditions and different treatment for victims of trafficking who are EU nationals, in comparison to those who are third-country nationals. Moreover, whereas the EU-ATD provides for the unconditional access to assistance for the victims, article 8 of the Directive 2004/81/EC and its application subjects the grant of residence permits to the condition of participation or willingness to cooperate with judicial authorities in the investigation or criminal proceedings of a case of irregular migration. Controversially, this impedes or makes it difficult to access to protection and assistance for many victims, as well as undermining the prevention of cases of further re-victimisation. On the contrary, this condition might determine uncertainty and fear for those victims who might choose not to be involved in the judicial proceeding, ultimately exposing them to further violence, exploitation and abuse. Conversely, in other countries where victims of trafficking decided to collaborate with the justice, they are instead referred towards international protection mechanisms, with the potential negative effect of hampering an adequate declaration of the refugee status or distorting its purposes. In addition, this practice might have the effect of compromising the access to specific rights and specialised services and assistance dedicated to victims of trafficking in persons that, depending on the country, might differ from those offered to refugees. On this point, Giammarinaro⁶²⁵ criticises that the unjustifiable difference of treatment between victims who are EU citizens and third-country nationals represents a sufficient ground to revise both Directives to make them harmonised and coherent, so that to extend unconditional protection and assistance, including a residence permits to all victims *tout court*.

Such measure would make possible a complementary protection, including for those cases where international protection cannot be accorded, in light of the refugee law principle establishing that to qualify for refugee status a victim of trafficking must also meet the requirement of a “well-founded fear of persecution”. On this issue, UNHCR⁶²⁶ specified that:

cooperate with the competent authorities, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081> last accessed September 2022.

⁶²⁵ Giammarinaro M. G. (2021), *Revising EU Directive on human trafficking? For bad or good reasons?*, available at <https://giammarinaro.net/en/revising-eu-directive-on-human-trafficking-for-bad-or-good-reasons/> last accessed July 2023.

⁶²⁶ UNHCR (2011) *Trafficking for sexual exploitation: victim protection in international and domestic asylum law*, available at <https://www.unhcr.org/4d9c7c869.pdf>, last accessed September 2022.

“the UNHCR Trafficking Guidelines explain that there are several forms of exploitation that are endemic in the trafficking experience and constitute such serious violations of human rights as to rise to the level of persecution.”

Therefore, in principle not all the victims of trafficking qualify for international protection and since each case is unique, conducting a thorough assessment is necessary to avoid any incorrect application of the norms, particularly those protecting victims of trafficking.

Instead, it would be beneficial for the victims of trafficking if in practice a broad interpretation of the permit of residence standards would be possible, specifically if such permit is granted by analogy with international protection system in the country of identification and exclusively on the ground of being a victim of trafficking. This would enable decision-makers to separate refugees and victims of trafficking addressing their cases and assisting regardless of victims’ decision to collaborate with authorities in the criminal procedures in application of the Directive 2011/95/EU⁶²⁷ and the Directive 2013/32/EU.⁶²⁸

f) Positive outcomes and State practice

As already highlighted in this study in relation to borders, on the use of technology and limitations to certain rights, to respond to the crisis as determined by the pandemic several governments have incorporated a range of temporary restrictive policy measures as part of their efforts to mitigate its individual and societal impacts and to prepare for the recovery.⁶²⁹ At the same time, restrictive immigration policies proved to have adverse effects in terms of limiting freedom of movement and reducing border crossings, hampering the access to health for migrants and people on the move at large, with consequent increase of the informal economy as well as smuggling of migrants and trafficking in persons instances. As mentioned, this situation had a significant impact on those

⁶²⁷ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095> last accessed September 2022.

⁶²⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032> last accessed September 2022.

⁶²⁹ IOM, *COVID-19 Identification and Monitoring of Emerging Immigration, Consular and Visa Needs*, 2020 available at https://www.iom.int/sites/default/files/our_work/DMM/IBM/2020/en/covid-19iomissuebrief-immigrationconsularandvisarecommendations.pdf last accessed September 2022.

stranded in a country, affecting specific categories of labour including for example the seasonal workers. In addition, the access to visa procedures and consular support were also impeded, thus highlighting the urge to adapt regulations and rethink immigration processes and programmes to meet changed circumstances. In some cases, this led State authorities to examine claims through remote processing assistance.⁶³⁰

Several examples from the pandemic response by States highlighted how regular pathways for migration including regularisation are now at the core of the policy debate. Indeed, worldwide and especially during the pandemic, migrant workers regardless of their status proved to be key actors in ensuring the continuity of businesses and essential services provision, including in the healthcare, transportation and food sectors.⁶³¹ By meeting the labour market needs and benefitting from their right to decent work, migrant workers contributed also to advancing public health. To facilitate this positive outcome, many States put in place regularisation schemes as pragmatic response by issuing or extending temporary visas or residency status, promoting information and communication sharing on these measures that foster inclusion and ensure access to rights and basic services.⁶³² For example, France extended all residence permits by three months starting on March 2020, thereby guaranteeing access to work, social rights and social security for those who otherwise might have become vulnerable due to expirations of their permits amid the lockdown. France also extended protection for all children in the government's care until the end of the COVID-19 emergency, including unaccompanied and separated children and young adults under 21 who were previously cared for by the French child welfare services.

In Greece, although asylum services were temporarily suspended starting in March 2020 — including registration of asylum requests, asylum interviews and appeals in asylum cases — the asylum service stated that applicants' cards and residence permits due to expire during this suspension could remain valid. Ireland announced that all immigration permits due to expire

⁶³⁰ Freier L. F. (2020), *COVID-19 and rethinking the need for legal pathways to mobility: Taking human security seriously*, International Organization for Migration (IOM) Geneva, available at <https://publications.iom.int/system/files/pdf/rethinking-the-need-for-legal.pdf> last accessed September 2022.

⁶³¹ Mateo A. (2020), *Reflections on the UN Network on Migration's Listening Sessions on Alternatives to Detention*, available at https://migrationnetwork.un.org/sites/default/files/reflection_on_the_listening_session_on_regular_pathways_09_10_2020_amg.pdf last accessed September 2022.

⁶³² United Nations Network on Migration (UNNM), *COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?*, 2020 available at https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention_0.pdf last accessed September 2022.

between March and May 2020 were automatically renewed under the same conditions for a period of two months. Ireland has introduced a “COVID-19 Pandemic Unemployment Payment” as well, made accessible to all workers irrespective of their legal status. In addition, the government had confirmed its commitment not to share any data collected through this support system to any immigration authority.⁶³³ Similarly, Poland provided an extension to all migrants already holding work permits, visas or temporary residence permits for a further 30 days after the end of the emergency measures in place. Instead, Portugal went beyond the residence permit extension as it conferred migrants who previously applied for residency full citizenship rights during the pandemic and on temporary basis. In the UK, visas expired in January 2020 were extended until May 2020 for those stranded in country because of travel restrictions or self-isolation related to COVID-19. Further, all National Health Services were made accessible and free for everyone regardless of their immigration status, including COVID-19 testing and treatment, even if the result was negative. Exceptional measures were adopted also by the Slovak Republic that extended residency permits for non-citizens, as well as Italy that temporarily regularised the status of all migrants. This targeted regularisation was implemented for migrant workers in key sectors for national economy, such as agriculture and domestic workers.⁶³⁴

More recently, Ecuador implemented a regularisation or “migratory amnesty” to the benefit of Venezuelan migrants and refugees who fled the economic crisis and entered the country through official borders, and it plans to increase the number of beneficiaries throughout 2023.⁶³⁵ The same measure was adopted in 2021 by Colombia, through the recently introduced Temporary Protection Statute (EPTV) granting Venezuelan nationals in country a permit to stay which lasts ten years.⁶³⁶

⁶³³ Ibidem.

⁶³⁴ IOM, *COVID-19 Analytical Snapshot #71: Regularisation*, 2021, available at https://www.iom.int/sites/default/files/documents/covid-19_analytical_snapshot_71_regularization.pdf last accessed September 2022. See also *COVID-19 Snapshot #65: Irregularity, protection & smuggling Update available at https://www.iom.int/sites/default/files/documents/covid-19_analytical_snapshot_65_irregularity_update.pdf* last accessed September 2022 and *COVID-19 Analytical Snapshot #28: Impacts on Immigration Policies*, 2020 available at https://www.iom.int/sites/default/files/documents/covid-19_analytical_snapshot_28_-_impacts_on_immigration_policies.pdf last accessed September 2022.

⁶³⁵ Reuters (2022) *Ecuador begins regularization process for thousands of Venezuelan migrants*, available at <https://www.reuters.com/world/americas/ecuador-begins-regularization-process-thousands-venezuelan-migrants-2022-09-01/> last accessed July 2023.

⁶³⁶ Danish Refugee Council (DRC) (2021), *Press release: DRC commends Colombia's decision to regularize Venezuelan migrants*, available at <https://pro.drc.ngo/resources/news/press-release-drc-commends-colombia-s-decision-to-regularize-venezuelan-migrants/> last accessed July 2023.

Likewise, Canada plans to launch a regularisation program for around 500000 people in country, excluding temporary migrant workers and asylum seekers.⁶³⁷

In the overview of good practices, Spain emerges as the leading example as it that went a big step forward in advancing regularisation pathways by recently revising its legislation on immigration, entered into force on 16 August 2022.⁶³⁸ With this modification, migrants who have been in an irregular situation in Spain for at least 2 years are now able to request and obtain a residence permit for 12 months, if they prove they have completed training courses (new art. 124.4). This modification also eases the access to the labour market for people who are benefitting from a training in Spain and that entered with a study permit (art. 42). The modification of the regulation lowers the economic requirements for family reunification upholding family unity. Indeed, article 54 now allows the spouse of the permit holder to work as self-employee and as an employee, regardless of the type of permit that the permit holder already present in Spain had, thus removing any obstacle for family reunification that was previously a determining factor in the decision for the spouse to migrate to Spain. With the modification of the regulation on immigration, the option of losing the authorization of temporary and long-term residence was added specifically in relation to people convicted of trafficking in persons or smuggling of migrants crimes, thus importantly contributing to the fight against these two transnational organised crimes (art. 162). The codification of this measure represents a commendable effort by Spain to extend to the broadest scope of protection of individual rights, which adds on the already discussed trilateral joint commitment to Latin-America by the United States, Spain and Canada (2023) on possible avenues for safe, orderly and regular migration on temporary basis or based on circular mobility schemes.⁶³⁹

g) A possible solution for safety?

Such examples show that regularisation can contribute to improve migration governance, combat irregular migration, and reduce the risks and vulnerability to trafficking in person. This outcome can be easily reached especially if regularisation is combined with adequate border controls aimed

⁶³⁷ Radio Canada (2022), *Ottawa envisage de régulariser des centaines de milliers de sans-papiers*, available at <https://ici.radio-canada.ca/nouvelle/1922972/trudeau-canada-regularisation-sans-papiers> last accessed July 2023.

⁶³⁸ See Real Decreto 629/2022, de 26 de julio, por el que se modifica el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009, aprobado por el Real Decreto 557/2011, de 20 de abril, available at <https://www.boe.es/eli/es/rd/2022/07/26/629> last accessed September 2022.

⁶³⁹ See *Chapter 1*, section 3.

at stemming transnational organised crime accompanied by adequate sanctions for traffickers (like in the case of Spain) and for employers recruiting irregular migrants so to prevent the growth of informal economy. Therefore, as encouraged by the Progress Declaration, regularisation and regular pathways where offered - such in the case of the trilateral agreement as mentioned above - could be considered as one solution to reduce vulnerability to trafficking in persons. This could be achieved by operating on the structural level interventions, including by incorporating and integrating this remedy for safe migration into national legislation, or by revising the regulatory frameworks currently in force. This revision could be made for example in the discussed EU-ATD. Moreover, as demonstrated, if considered in the context of humanitarian emergency response, crises not only provide opportunities for criminal networks and perpetrators, but they can also boost positive changes, specifically regarding trafficking in persons governance. As the latter is impacting migration management at international level, it might lead towards a progressive erosion of States' sovereignty and their exclusive domain on this matter towards the "shared responsibility approach" praised by the GCM, as it promotes security and prosperity.⁶⁴⁰ As showed through the analysis of States practices, undoubtedly migration and displacement crises are providing a chance to push and encourage States to work on strengthening international cooperation in a more effective and solution-oriented way, specifically in the fight against trafficking in person of transnational dimension, while upholding victims' and affected populations' rights. In their cases and for those in most vulnerable situations, regularisation is one possible solution to attain legal safety.

Overall, regularisation presents significant advantages in terms or realization of rights, especially for decent work in just and favourable conditions and the protection of migrants from torture and all forms of violence and exploitation, whether inflicted by States or private actors. In this sense, it can contribute to the socio-economic development of the country as it may favour avoiding exploitative situations including trafficking in persons, but it also enables to take advantage of foreign labour leveraging additional skills.⁶⁴¹ Absorbing migrant workers in the local labour market is foremost to ensure their successful integration into the host society, as it can diminish

⁶⁴⁰ Par. 11 of the GCM.

⁶⁴¹ ILO (2009) *Regularisation and Employer Sanctions as Means towards the Effective Governance of Labour Migration*, p. 44, available at https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_308873.pdf last accessed September 2022.

tensions between migrant communities and national population, thus promoting social cohesion and inclusive societies.⁶⁴²

A last consideration on regularisation relates to increased knowledge on migration for improved management. Indeed, the process itself allows to make visible those that usually are left in the background due to their irregular migration status, the informal workers among the others. Making possible to account them as well means that the regularisation can play an important role in understanding more about migrants' profile, rights and needs, the reasons that brought them in country, ultimately becoming a tool to acquire data and knowledge on the migration profile of the country, improving data available for a more accurate analysis on migrant presence and informing evidence-based legislation and policy development and revisions. Regular pathways to migration and migrant regularisation can be considered also in terms of enhancing human security.⁶⁴³ This can be explained as such measure can facilitate the access to formal employment in country, reducing informal work accordingly. Hence, it can also provide the foundation for additional economic and tax contributions as it promotes greater access to labour force, to the benefit of the private sector alike. This way, it also fosters development through remittances that are sent back to the families in the countries of origin.

Interpreted as such, individuals benefit from regularisation as they can rely on legal safety, reducing the risks linked to exploitative conditions of work, they are provided with proof of legal identity as prerequisite to access to all public services that realize their rights, ultimately facilitating the creation of conditions of self-sufficiency in providing themselves housing and food, as well as their inclusion at large and the integration in the host country. Therefore, regularisation is a cross-cutting advantage: not only benefits States' security and migration management, but it also has an impact on the person benefitting from such measures, as well as the wide society.

4. From identification to full integration into host communities

According to the GCM objective 16,⁶⁴⁴ social cohesion and full inclusion in the host society are the two key elements for social and economic integration. To achieve prosperity and counter

⁶⁴² *Ibid.* p. 76.

⁶⁴³ Freier L. F. (2020), *op. cit.*

⁶⁴⁴ "Empower migrants and societies to realize full inclusion and social cohesion". Cfr. United Nations, *Global Compact for Safe, Orderly and Regular Migration*, *op. cit.*

poverty,⁶⁴⁵ integration in the GCM is referred to as linked to development outcomes, comprised of the social and economic dimensions. Likewise, with its “New Pact on Migration and Asylum” (2020),⁶⁴⁶ the European Union emphasises the need for a successful integration and inclusion as the two processes build on social cohesion and a dynamic economy. After having presented the benefits of an adequate identification, necessary to recognize eventual vulnerabilities, this section focuses on providing elements to understand the processes behind integration and their requirements in relation to the economic dimension (specifically skills, education and employment) of migration management that allow achieving self-sufficiency of migrants and refugees in the host society. In doing so, it aims to explain and distinguish the different types of protection, finally drawing the attention to diaspora engagement as it comes to key community members playing an important role for social security and development. Thus, by bridging transnational communities they reconcile migration and security at large, associating them under the angle of positive outcomes, rather than a threat.

Considering that some of the rights closely linked to integration phases and stages (and particularly the access to health) have already been referred to in Chapter 2 section 1, par b) above, the present section is dedicated to those that have not been analysed yet, mostly related to skills and education of migrants. In doing so, the protection of their rights is framed under the angle of accessing to specialised services and integration measures adopted by host States to facilitate inclusion and promote social cohesion. Before examining specific protection measures, such as social and consular protection, a brief overview on types of protection is herein presented.

a) Scope and international legal framework on protection

All the rights and principles pertaining the protection of people on the move (migrants, refugees and asylum seekers) are object of the analysis of migration at the border (Chapter 1) and some rights are examined in relation to the identification process and to assess vulnerabilities, including the right to family unity and reunification, the right and access to health in relation to the right to freedom of movement and mobility restrictions, the right to private life and data protection principles (Chapter 2). Having gained an understanding around these rights, it is now necessary to

⁶⁴⁵ See this *Chapter 2*, section 1.

⁶⁴⁶ European Union (2020), *New Pact on Migration and Asylum*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609> last accessed August 2023.

shed light on how States can provide different types of protection to people on the move to address their contextual vulnerabilities and their personal needs thus to facilitate their integration in the host societies. Among these protection measures, it is possible to distinguish between human rights and humanitarian protection, depending on whether State and non-State protection actors' response intervenes for violation of specific rights against individuals or groups of individuals, and in the second case, whether the response is activated by situations of crises, conflict and widespread violations. In these cases, States are bound by the obligations to “respect” or not interfere with the enjoyment of fundamental rights; “protect” namely remove any obstacle for the full enjoyment of rights, and “fulfil” meaning adopting positive actions for the complete realization of such rights.⁶⁴⁷ This was referred above as the “rights-based approach” to protection. Throughout this analysis, reference was made also to special protection needs for the most vulnerable cases. These include persons with disabilities,⁶⁴⁸ refugees and the protection set forth by refugee law,⁶⁴⁹ women and child protection⁶⁵⁰ and the cases of victims and survivors of trafficking in persons, as well as smuggled migrants⁶⁵¹ who might be exposed to violence, exploitation and abuse. Applicable for all, the key principles of non-discrimination and *non-refoulement* provide the foundation for the protection and realization of their rights. For their effective implementation, States provide “physical protection” through measures that ensure their safety and integrity of their person, as also enshrined by the prohibition of torture, inhuman and degrading treatments according to article 3 of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment (CAT, 1984).⁶⁵² States are required to offer “legal protection” and remedies to repair in case of any violations and restore the situation to the conditions prevailing before the infringements of rights, and the provision of effective judicial systems based on the rule of law, as well as the application of national and international legal frameworks. Indeed, by reducing risks of violations, the rule of law ensures individual safety and overall security. As part of the foreigner labour in country, migrant workers and members of their family are entitled to the same level of protection of their rights in country, as enshrined by the ICRMW (articles 1, 7 and 18). This

⁶⁴⁷ OHCHR (2023), Towards a Human Rights-Based Approach to Migration, op. cit. p. 48.

⁶⁴⁸ See *Chapter 1*, section 3, par. b).

⁶⁴⁹ See *Chapter 1*, section 3, par. c).

⁶⁵⁰ See *Chapter 1*, section 3, par. e).

⁶⁵¹ See *Chapter 1*, section 2.

⁶⁵² Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> last accessed August 2023.

international instrument sets a framework and orient States action by reemphasising the same rights as relevant human rights international instruments, such as the ICCPR, with the only exception that migrant workers can participate to the political life of the host country to a limited extent (article 42 ICRMW).

These types of protection find their legal basis in the core international human rights instruments.⁶⁵³ According to the United Nations,⁶⁵⁴ all States party have ratified at least one out of the total nine thematic instruments: ICCPR, ICESCR, CRC, the International Convention on the Elimination All Forms of Racial Discrimination (ICERD, 1965), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), the CAT, ICRMW, the Convention on the Rights of Persons with Disabilities (CRPD, 2006),⁶⁵⁵ and the Convention on Enforced Disappearances (CPED, 2010).⁶⁵⁶ These instruments protect rights inherent to any person as existing human beings, regardless of their nationality and any other status. Therefore, as enshrined by article 1 UDHR, such rights are broadly described as universal and inalienable, indivisible and interdependent, and equal and non-discriminatory. They comprise the most fundamental one, the right to life, and include those rights pertaining well-being and welfare: the rights to food, education, work, health and liberty.⁶⁵⁷

By emphasising that these rights are not created by States, the Council of Europe⁶⁵⁸ specifies that their protection and understanding rely upon the development and mechanisms created by the national legal framework, whereby regional and international monitoring mechanisms and judicial remedies bear a complementary role in case of deliberate violations, once internal legal actions are exhausted. Thus, international and regional organizations assume the role of supporting the States in upholding these rights according to the set minimum standards.⁶⁵⁹

⁶⁵³ United Nations, *The Core International Human Rights Instruments and their monitoring bodies*, available at <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> last accessed August 2023.

⁶⁵⁴ United Nations, *What are Human Rights?*, available at <https://www.ohchr.org/en/what-are-human-rights> last accessed August 2023.

⁶⁵⁵ Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> last accessed August 2023.

⁶⁵⁶ Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced> last accessed August 2023.

⁶⁵⁷ Ibidem

⁶⁵⁸ Council of Europe, *Legal protection of human rights*, available at <https://www.coe.int/en/web/compass/legal-protection-of-human-rights> last accessed August 2023.

⁶⁵⁹ Ibidem.

In this theoretical backdrop, scholarly opinions on ensuring the protection of these rights sway from assessing them as they vary in relation to the wealth, the national legal institutions playing a role in economic growth and the rule of law of the State granting access to them,⁶⁶⁰ and the image of a “responsible migrant”⁶⁶¹ whereby migration management and access to rights are influenced by the extent by which there is a link to development outcomes according to the GCM. In this view, the proposed reading of the GCM highlights migrants and refugees’ access to their rights as broader depending on whether they act responsibly or according to the law, making them potential contributors to development with an “obligation” to be engaged, especially in the case of diaspora organisations.⁶⁶²

For as much as the two interpretations might be captivating as they relate the scope of protection respectively to non-legal determinants (wealth and welfare) in the first case and an instrument of soft law (the GCM) in the second case, the obligations to protect remain binding upon States. The principles developed by international organizations as subsidiary means for the determination of rules of law, according to article 38, par. 1, letter d) of the Statute of the International Court of Justice,⁶⁶³ provide further guidance for State actions. In this sense, it is worth mentioning that on the occasion of the seventy-fifth anniversary of the United Nations, the Secretary General launched the framework “The Highest Aspiration. A Call to Action for Human Rights”⁶⁶⁴ where seven key aspects are indicated as priority for implementing an agenda for human rights, listed as follows: (1) the rights are at the core of sustainable development, where migrants and refugees are referred to among the key actors to engage in the society, (2) the violations of rights in times of crisis determine displacement and expose migrants and refugees to heightened risks, (3) gender equality and equal rights for women against discrimination and violence are at the core of the agenda, (4) the public participation and civic space are very important for the respect of rights, (5) the need to take in high consideration the rights of future generations, especially those in relation to climate justice, (6) the rights are at the heart of collective action, and (7) the need to consider new frontiers

⁶⁶⁰ Cross B. F (1999), The relevance of law in human rights protection, in *International Review of Law and Economics*, Volume 19, Issue 1, Pages 87-98, available at [https://doi.org/10.1016/S0144-8188\(98\)00028-3](https://doi.org/10.1016/S0144-8188(98)00028-3) last accessed August 2023.

⁶⁶¹ Oelgemöller, C., Allinson, K. (2020), *The Responsible Migrant, Reading the Global Compact on Migration in Law Critique* 31, pp. 183–207. <https://doi.org/10.1007/s10978-020-09265-9> last accessed August 2023.

⁶⁶² Ibidem.

⁶⁶³ Available at <https://www.icj-cij.org/statute> last accessed August 2023.

⁶⁶⁴ United Nations (2020), *The Highest Aspiration. A Call to Action for Human Rights*, available at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf last accessed August 2023.

of human rights. The latter point reflects possible violations of individuals exposed to violations of rights resulting from the use of technology including surveillance and AI as well as being threatened by the risk of limited access to social protection measures as a direct consequence of the digitization of social welfare systems.⁶⁶⁵

Of particular interest to complete the list of protection accorded by the host States to migrants in country, “social protection” and “consular protection” are two further types to add in this analysis, as they are closely linked with migration management and the integration process. The peculiarity and relevance of these two types of protection (that this analysis proposes to stress on further) are that they both establish different types of connections in the context of migration. In the case of social protection, the link is made between migrants with the authorities and institutions in the host country, particularly when specific requirements are met. In the case of consular protection, the connection is maintained between nationals and their country of origin while abroad. Both cases are relevant means to extend specific protection in relation to mobility, whereby communities can play a prominent role to facilitate the inclusion in the host society. To understand more on their contribution to the integration processes, they are object of dedicated focus analyses that follow a thorough exam of what is meant by integration, and specifically in the context of the EU.

b) EU legislation on integration of migrants

At international level, the discourse on “integration” associating migration and development in terms of increased security gained prominence with the adoption of the 2030 Agenda⁶⁶⁶ as one of the major policy outcomes on international law discourse around current opportunities and challenges in international peace and security. The Agenda refers to “economic integration and interconnectivity in sustainable development”⁶⁶⁷ and link it to “inclusive economic growth and poverty reduction”.⁶⁶⁸ Migrants are depicted as individuals in vulnerable situations along with internally displaced, refugees, children, youth, medical cases, elderly, people with disabilities and

⁶⁶⁵ *Ibidem* p. 12.

⁶⁶⁶ United Nations – General Assembly (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, doc. A/RES/70/1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement> last accessed August 2023.

⁶⁶⁷ *Ibidem*, par. 21.

⁶⁶⁸ *Ibidem*, par. 68.

overall populations affected by complex humanitarian emergencies and terrorism.⁶⁶⁹ Though migrants are also presented in the 2030 Agenda as contributors for inclusive growth and sustainable development.⁶⁷⁰ Hence, in the spirit of the principle of “no-one to be left behind”⁶⁷¹ their rights need to be protected as they account for a large proportion of migrant labour in host countries and they can send remittances back to the community of origin. Emphasising the importance of peace and security as favourable conditions for the respect of human rights generally, the 2030 Agenda makes very clear that even the right to development can only be implemented through accountable institutions, transparency and the rule of law, as they have an impact on economic and social development. In turn, they cannot exist without conflict prevention and rebuilding efforts, as effectively summed up in the statement as followed:

“Sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development” (par. 35).

In this sense, following the 2030 Agenda phraseology, integration emerges as a necessary step for cohesive communities and families, and as part of nationally owned sustainable development strategies,⁶⁷² whereby education and acquiring skills and learning are conducive to opportunities to participate to the society.⁶⁷³

Therefore, it becomes apparent that this participation seems traditionally easier and more likely to happen in stable contexts with high-income and facilitated access to resources. In spite a definition of integration according to international law appears as a complex operation of connecting norms against fragmentation of international standards rather regulating social and economic outcomes and rights, several tools and initiatives have been developed to assess integration processes through comparing migration laws and policies in different countries. Among these, Eurostat⁶⁷⁴ first attempted to measure migrant integration focusing on indicators such as employment, education, poverty and social inclusion, health and civic participation in the context of the EU countries. Likewise, the EU counts on the European Website on Integration (EWSI),⁶⁷⁵ established by the

⁶⁶⁹ *Ibidem*, par. 23.

⁶⁷⁰ *Ibidem*, par. 29.

⁶⁷¹ *Ibidem*.

⁶⁷² *Ibidem*, par. 63.

⁶⁷³ *Ibidem*, par. 25.

⁶⁷⁴ Eurostat (2011), *Indicators of Immigrant Integration A Pilot Study*, Luxembourg, available at <https://ec.europa.eu/eurostat/documents/3888793/5849845/KS-RA-11-009-EN.PDF> last accessed August 2023.

⁶⁷⁵ Available at https://ec.europa.eu/migrant-integration/home_en, last accessed August 2023.

European Commission to gather thematic information on relevant integration initiatives published on a platform accessed by policymakers and practitioners.

Pursuing the same purpose but with a broader geographic scope of analysis, the Migration Integration Policy Index (MIPEX)⁶⁷⁶ measures migrant integration policies across EU Member States and the UK, as well as other European countries (Albania, Iceland, North Macedonia, Moldova, Norway, Serbia, Switzerland, Russia, Türkiye and Ukraine), Asian countries (China, India, Indonesia, Israel, Japan, Jordan, Saudi Arabia, South Korea, United Arab Emirates), North American countries (Canada, Mexico and US), South American countries (Argentina, Brazil, Chile), South Africa, and Australia and New Zealand in Oceania. The eight policy areas covered by the MIPEX initiative are: (1) labor market mobility, (2) education, (3) political participation, (4) access to nationality, (5) family reunion, (6) health, (7) permanent residence, and (8) anti-discrimination.

In the same vein, the OECD and the European Commission⁶⁷⁷ propose a comprehensive international comparison to measure integration outcomes in selected countries, based on a set of 83 indicators developed to cover the three main areas of labour market and skills, living conditions, and civic engagement and social integration. According to this methodology, through analysing immigrants and their children's situation in the host countries, it is possible for OECD to observe how the immigrant communities are differently integrated in country depending on their size and in relation to national ones in the host society of reference. Their level of integration changes also depending on the length of presence and residence in country as, according to the report, another factor to consider in order to assess integration outcomes is the composition of migrant communities and how they affect the share of the total population in the host countries. In this sense, rather than a national effort and aspiration, integration is presented as a process acquiring relevance in the international panorama, whereby comparisons with other countries are an added value as they highlight related opportunities and challenges and provide countries with a benchmark to understand and measure the process itself.⁶⁷⁸ Overall, the latest OECD-EU report concludes that the last decade (2011-2021) registered a progress in the labour market integration

⁶⁷⁶ Solano, G., Huddleston, T. (2020), *Migrant Integration Policy Index 2020*, Barcelona/Brussels: CIDOB and MPG available at www.mipex.eu last accessed August 2023.

⁶⁷⁷ OECD/European Commission (2023), *Indicators of Immigrant Integration 2023: Settling In*, OECD Publishing, Paris, <https://doi.org/10.1787/1d5020a6-en>.

⁶⁷⁸ *Ibidem*, p. 23.

in spite of the pandemic adverse effects on unemployment, and this is a direct consequence of better and inclusive policies adopted by countries of reference and higher levels of education of migrants. However, according to the analysis exposed in the report, not all of migrants are able to fully use their skills in the host society.⁶⁷⁹ Conversely, in the same report discrimination is referred to have increased throughout the last decade in the EU, Canada and New Zealand, affecting especially women. Gendered discrimination is indicated by OECD-EU as a key indicator for social cohesion in country.⁶⁸⁰

Against the relativity (and measurement) of integration as set forth by the OECD and the EU's report, it becomes evident that there is no agreed upon definition of integration in international standards. However, practice and the abovementioned analytical frameworks demonstrate that common aspects in relation to integration of migrants can be found in the concepts of social inclusion, cohesive societies and participation.⁶⁸¹ For example, IOM advises States to promote integration through six lines of action: (1) access to the labour market and financial inclusion, (2) access to education, (3) access to health, (4) civic and political participation, (5) family reunification, and (6) anti-discrimination and social cohesion.⁶⁸²

Similarly, the focus of integration in the EU is on migrants or so-called “third-country nationals” and is grounded on article 79, par 4 of the TFUE,⁶⁸³ which provides Member States with measures and incentives on promoting the insertion of migrants residing legally in the EU. According to the “Common Basic Principles for Immigrant Integration Policy in the EU” (2004),⁶⁸⁴ integration is defined as a dynamic and two-way process of mutual accommodation between immigrants and the host society. Because of these frequent interactions between the host and migrant communities, this process builds on key principles, such as the participation to democracy and consultative initiatives, for example the revision of the EU-ATD as referred above,⁶⁸⁵ and it follows different steps such as familiarising with the EU values and knowledge of the host society's language,

⁶⁷⁹ *Ibidem*, p. 40.

⁶⁸⁰ *Ibidem*, p. 13.

⁶⁸¹ IOM (2017), *Integration and Social Cohesion: Key Elements for Reaping the Benefits of Migration*, available at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Integration-and-Social-Cohesion.pdf last accessed August 2023.

⁶⁸² *Ibidem*.

⁶⁸³ See *Chapter 1*, section 1, par. b) lett vii.

⁶⁸⁴ European Union – Council of the European Union (2004), *Common Basic Principles for Immigrant Integration Policy in the EU*, pp. 9-14, available at https://ec.europa.eu/migrant-integration/library-document/common-basic-principles-immigrant-integration-policy-eu_en last accessed August 2023.

⁶⁸⁵ See *Chapter 2*, section 3, par. c).

history and institutions. This is easily achieved through engaging in education and learning pathways and accessing to employment opportunities. However, migrants and refugees in the host societies face additional challenges in being included into the society, as a direct effect of their difficult insertion in education programs or in the labour market. Therefore, whereby immigration is called a “permanent feature of the European society”, integration represents an important component of migration management and is associated to security matters as it entails the promise for an increased feeling of security, along with fostering cultural diversity, stronger economies and greater social cohesion.⁶⁸⁶

In this vein, the more recently adopted “Action plan on Integration and Inclusion 2021-2027”,⁶⁸⁷ is an attempt to promote equality and social cohesion to address Member States’ common challenges with diversified approaches, also in the view of filling the existing gaps in skills in those essential sectors (healthcare, technology, science, and engineering) that allow to keep the EU economy competitive, as stated in this plan. Following the common basic principles for immigrant integration, the plan develops around the two dimensions of society and economy as part of migration and security management. It aims to support States by creating conditions for inclusive societies through empowering communities, both host and migrant ones, to participate to the economies by accessing to opportunities and security. Promoting such measures equals to creating social cohesion, as well as enhancing resilience and prosperity for both migrant and host communities. To achieve this goal, which aligns with the New Pact on Migration and Asylum, through the action plan the EU sets five guiding principles for its Member States. First, it promotes the inclusion for all, which translates into providing services, and specifically work and employment, in societies that need to adapt to the diversity of its members and their specific needs and challenges. According to the action plan, equality contributes to building trust in services and authorities. This means that an equal access enables efforts to counter exclusion and segregation that would create fertile ground for the extremist ideology to proliferate. Equal access allows to curb also the threat of terrorism and violent extremism. And this primarily explains why integration in the framework of migration management represents an important step to ensure security at large.

⁶⁸⁶ *Ibidem*, par. 1.

⁶⁸⁷ European Union (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions Action plan on Integration and Inclusion 2021-2027, doc. COM(2020) 758 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0758&qid=1632299185798> last accessed August 2023.

The second principle of the action plan is a targeted support which features specifically highly skilled and educated migrants and children, especially those unaccompanied. The third principle emphasises the need for a gender-responsive action in accordance with the non-discrimination principle, as women are considered more prone to be exposed to a challenging entry into the host labour market. Likewise, those in most vulnerable situations, including people with diverse SOGIESC and people living with disabilities, might encounter more difficulties not only to access the labour market but also to approach the housing market when they search for a place to stay. The fourth principle focuses on the support that Member States are required to extend throughout all stages of the integration process, from the early stages through pre-departure orientation and training through long-term measures and related resource investments. The last principle included in the action plan is about maximising the EU added value to continue attracting resources for the economic growth. This principle is implemented by the EU by providing coordination support to Member States that, by virtue of their sovereignty, remain the sole responsible to develop legislation and policies adapted to their respective context. Moreover, the EU promotes multi-stakeholder partnerships where all the actors involved in the integration process can participate in consultative processes leading to decision-making and promoting the intercultural dialogue, that at the same time they reinforce the efforts to counter radicalization. Among the key and possible stakeholders to include there are: migrants, asylum seekers and refugees, the host community members, the public authorities and institutions, civil society actors, religious and community leaders and the private sector, the latter specifically for its role as potential employer. In addition, the EU can provide funding opportunities, allocated by different types of intervention and based on selected priorities. So far, the EU have been providing resources for integration through four fund streams: (1) the Asylum, Migration and Integration Fund (AMIF)⁶⁸⁸ for intervention to support general integration strategies, training and capacity building, (2) the European Social Fund Plus (ESF+)⁶⁸⁹ for finance solutions, (3) the European Regional Development Fund and Cohesion

⁶⁸⁸ European Union (2022), Consolidated text: Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R1147-20220412> last accessed August 2023.

⁶⁸⁹ European Union (2021), Consolidated text: Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R1057-20210630> last accessed August 2023.

(ERDF)⁶⁹⁰ for investments on infrastructures and equipment, and (4) the EU program for education, training, youth and sport (ERASMUS Plus)⁶⁹¹ focused on education and training initiatives. Similarly and in parallel, the EU has been supporting knowledge and research and innovation through the *Horizon Europe* initiative,⁶⁹² that also covers topic related to participation and discrimination and the use of new technologies and digitization to serve purposes related to effective migration and security management.

As indicated in the New Pact on Migration and Asylum, the plan of action stresses the importance of focusing on the external dimension of migration management, both through establishing linkages between migration and development and strengthening policy dialogues on key areas such as education, employment, poverty, social exclusion and housing interventions and initiatives involving third countries, including by relying on diaspora to leverage on and promote the relationship with the countries of origin. In fact, integration in the EU is centered around the rights and access to education, employment, and fair access to housing and health systems, that are exposed in continuation.

c) The rights and access to education, employment, health and housing

According to the EU,⁶⁹³ more than a quarter of migrants in the EU is highly educated and their skills hardly leveraged. Hence, education and training is the first out of the four pillars of intervention for integration measures. Along with employment, it constitutes the foundation for an active participation in the society, promoting inclusion and gender equality, whereby health and housing are rather cross-cutting and the premise to access the first two.

⁶⁹⁰ European Union (2021), Consolidated text: Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R1058-20210630> last accessed August 2023.

⁶⁹¹ European Union (2021), Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013 (Text with EEA relevance), available at <https://eur-lex.europa.eu/eli/reg/2021/817/> last accessed August 2023.

⁶⁹² European Commission, Directorate-General for Research and Innovation, (2021). *Horizon Europe, budget: Horizon Europe - the most ambitious EU research & innovation programme ever*, Publications Office of the European Union., available at <https://data.europa.eu/doi/10.2777/202859> last accessed August 2023.

⁶⁹³ European Union (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions Action plan on Integration and Inclusion 2021-2027, *op. cit.*

According to international law, education is referred to in article 10 ICESCR, in relation to the family as the natural and fundamental group of society responsible of the dependent children. Moreover, according to article 13 ICESCR education is a right recognised to everyone.

In the prospect of integration, education for children represents the first step for inclusion in the society also for the family, as it allows to establish connection with the host community, as well as familiarising with the host society values and the language. Education (and information) creates the conditions to avoid instances of discrimination and segregation also for people living with disability. Integration through education cannot be achieved if separated from language learning opportunities, thus according to the EU and as indicated in the action plan, Member States are responsible to adopt positive actions to facilitate access to it.⁶⁹⁴ In addition, measures are encouraged to recognise certifications and other titles obtained in other countries, which enable the acquisition of increased skills to capitalise on to the benefit of EU Member States' local labour market. Indeed, while the EU acknowledges the significant contribution of migrants to the local economy, it aims to further develop skills and attract entrepreneurs that create even more employment opportunities for increased economic growth.

The right to work is enshrined in article 6 ICESCR, as to provide everyone with the opportunity to gain a living, and its accessibility is possible through technical, vocational and training programmes (article 6, par. 2, ICESCR) and just and favourable conditions of work (article 7 ICESCR). Article 25 of the ICRMW complements these provisions by stressing the importance of equality of treatment to migrant workers.

The right to employment is realised in the EU through measures that improve the accessibility to work. Among these, the shift towards digital services promise to create the basis to facilitate skills profiling tools and an enhanced capacity through technical vocational education and training opportunities. These tools are described in the action plan on integration as a means to ease the access to the labour market, especially for those facing more barriers, for example women. In addition, financial services can be provided by Member States to increase the remittances flow that better connects migration management efforts to development outcomes.

No integration initiative can be undertaken without taking into consideration the well-being and psychosocial dimensions of integration, in addition to the economic and social ones.

⁶⁹⁴ Ibidem.

The right to health is recognised in article 12 ICESCR, based on which State parties are required to ensure the highest attainable standard of physical and mental health to everyone. The same applies to migrant workers in need of medical services to preserve their life and avoid irreparable harm, in conditions of non-discrimination in relation to nationals in the host country (article 28 ICRMW). The EU places access to healthcare including mental health at the core of Member States response in supporting integration, including by informing on the existing services and eventual conditions to benefit from healthcare. This is very important in the case of migrants, refugees and those more exposed to trauma, violence, abuse, and especially in the cases of trafficking in persons who might need specialised assistance. This emerged as primary need in several IOM thematic studies on integration, return and reintegration after their migration experiences.⁶⁹⁵

The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions is recognised in article 11 ICESCR and recalled by article 43 by the ICRMW in relation to migrant workers, whereby it is indicated as a form of inclusion, particularly in social housing initiatives against any exploitative situations.

In the EU's action plan, the right to housing is deemed as a key element of integration, as it impacts the access to employment and education, and it can be determinant in avoiding cases of exclusion and segregation. For example, this protection need was highlighted in the IOM research⁶⁹⁶ by persons with diverse SOGIESC, citing cases of migrants with special needs ending up as homeless in the host country and thus lacking safety and facing exclusion. Though, respondents participating to this research cited a good example to avoid residential segregation promoted by the EU, the "Affordable Housing Initiative",⁶⁹⁷ in favour of asylum seekers whose claim is very likely to be approved and the status of refugee declared.

⁶⁹⁵ For example, IOM and Samuel Hall (2023) *Monitoring the Reintegration of Trafficking Survivors: Study and Toolkit*, op. cit., p. 19.

⁶⁹⁶ Samuel Hall and IOM (2023) *Mapping and research to strengthen protection and assistance measures for migrants with diverse SOGIESC*, op. cit., p. 16-17.

⁶⁹⁷ European Commission (2021), *Affordable Housing Initiative*, available at https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/affordable-housing-initiative_en#:~:text=The%20European%20Affordable%20Housing%20Consortium.construction%20of%2020%20Ighthouse%20districts. last accessed August 2023.

Avoiding residential segregation through creating urban resilience is part of the measures to build economic prosperity, as proposed by the United Nations.⁶⁹⁸ The paradigm of urban resilience includes measures to improve cities systems facilitating the access to health care, transportation and other government services. Specifically in the context of the Arab region, affected by overall increased poverty and social exclusion as impacted by conflict and displacement, the increased rental housing expenses registered for example in Beirut, Lebanon, proved to have a significant impact in labour mobility, women's participation to the labour market and the limited social protections.⁶⁹⁹ Likewise, it might expose migrant workers to heightened risks and vulnerabilities. Overall, as pointed out by some scholars,⁷⁰⁰ the European Union response to the diverse societies characterising its Member States, is a valid first attempt to mainstream migrant integration into national legislation, policies and governance based on a coherent framework, the EU action plan. It describes common traits of the diversity in the EU societies despite their different population composition and migrant presence. Based on the present analysis, the EU action plan appear to address the main points of criticism as highlighted in the proposed comparison⁷⁰¹ which stresses the differences between the models of response adopted respectively by France and the UK, engaging the local urban level of governance, Germany as a Federal State and Denmark with generic (and equal) interventions.

In this sense, a further analysis on intercultural integration approaches at local level⁷⁰² proposes a model for the Council of Europe Member States to address challenges related to increased diversity in the society in compliance with human rights. The model is divided in ten steps that include: (1) equality according to the principle of non-discrimination including gender considerations, (2) the recognition of migrants and refugees as individuals subject of rights and needs, taking into account their positive contributions, such as multilingualism and diasporic connections, (3) migrants and refugees, especially women, are an asset for society in terms of progress and prosperity, (4) the

⁶⁹⁸ UNESCWA (2022), *Policy advocacy for building urban economic resilience during and after COVID-19 in the Arab region*, available at <https://www.unescwa.org/publications/building-urban-economic-resilience-covid-19-arab-region> last accessed August 2023.

⁶⁹⁹ *Ibidem*, p. 15.

⁷⁰⁰ Scholten, P., Collett, E., & Petrovic, M. (2017). Mainstreaming migrant integration? A critical analysis of a new trend in integration governance in *International Review of Administrative Sciences*, 83(2), 283–302. <https://doi.org/10.1177/0020852315612902> last accessed August 2023.

⁷⁰¹ *Ibidem*.

⁷⁰² Wilson R. (2018), *Inclusive integration strategies: towards a shared model*, available at https://ec.europa.eu/migrant-integration/library-document/inclusive-integration-strategies-towards-shared-model_en last accessed August 2023.

importance of local authorities' role, (5) societies are open, including in sectors of housing, schooling and urban planning, (6) multilingualism, (7) pathways for citizenship and active participation, (8) promoting intercultural dialogues to avoid prejudice and hate speech, (9) competency of public services officials, and (10) the establishment of technical positions and offices to “depoliticise” integration measures adopted. Through the implementation of these steps the conceptual framework promises to achieve a successful integration turning migrants and asylum seekers into fellow citizens with equal agency and leveraging the diversity advantage.

All these measures appear reflected in the EU Pact on Migration and Asylum, translated into inclusion initiatives that do not emphasise enough the importance of labour migration for integration, as the focus remains more on returns and way less on concrete measures for legal pathways for those in need of protection and to attract talent.⁷⁰³

It should be noted that the EU addresses employment, social affairs and inclusion without making expressed reference to migrants and refugees and their integration. So, it could be assumed that social protection is extended to all those facing challenges relating to poverty to promote social inclusion of specific groups including children, persons with disability and homeless people.⁷⁰⁴ Indeed, the “European Pillar of Social Rights - Action Plan”⁷⁰⁵ includes the participation of migrant to the local labour market through promoting inclusion initiatives as funded by the Asylum, Migration and Integration Fund (AMIF).

Safety nets as measure to increase protection mechanisms for those migrants more exposed to increased vulnerability, including social protection are examined in continuation.

d) Special focus on social protection

Social protection was previously referenced in this study as one of the possible means to provide support in situations of vulnerability, such as the case of trafficking in persons and specifically in

⁷⁰³ PICUM (2021), *The EU Migration Pact: Questions and Answers*, available at <https://picum.org/eu-migration-pact-questions-answers/> last accessed August 2023.

⁷⁰⁴ European Union, *Employment, Social Affairs and Inclusion*, available at <https://ec.europa.eu/social/main.jsp?catId=750&langId=en> last accessed August 2023.

⁷⁰⁵ European Union (2021), *European Pillar of Social Rights - Action Plan*, available at <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/> last accessed August 2023.

the context of mobility restrictions,⁷⁰⁶ as well as in cases of regularisation, whereby this type of protection can be exceptionally accorded by host States as a result of the special vulnerability.⁷⁰⁷

Like the definition of integration is centred around the economic and social dimensions, social protection constitutes one of the tools to mitigate vulnerabilities. The vulnerability might be triggered or exacerbated by inequality, poverty, deprivation and social exclusion.

The EU defines social protection as a type of support provided to people who cannot cover their necessities because of the lack of income due to their specific situation.⁷⁰⁸ This includes unemployment, family responsibilities, sickness, disability or old age preventing individuals to meet their fundamental needs and situations that were referred above in this analysis as vulnerabilities.⁷⁰⁹ In the framework of the EU, social protection interventions are established mostly by public authorities and institutions and they can be either cash benefits in the case of pensions and unemployment, or in kind contributions, such as access to care services. The EU protects the right to social protection within its Member States (EU 27 + Iceland, Liechtenstein, Norway and Switzerland and, under certain conditions, the UK) through the social security coordination,⁷¹⁰ which applies to refugees and stateless persons too. Dedicated forms of social protection are provided to workers and self-employed,⁷¹¹ pensions to ensure adequate living at the old age,⁷¹² and long-term care for more extended periods of time linked to special vulnerabilities.⁷¹³ There is no commonly agreed definition of social protection, which overall indicates the set of policies and measures adopted by public institutions to prevent and reduce risks and threats in relation to poverty. States have committed to provide social protection too, along with access to healthcare, quality education, clean water, housing and other fundamental rights.⁷¹⁴ In fact, articles

⁷⁰⁶ Chapter 2, section 1, par. c).

⁷⁰⁷ Chapter 2, section 3, par. d).

⁷⁰⁸ European Union, *Social Protection – Definition*, available at <https://ec.europa.eu/social/main.jsp?catId=1063&langId=en> last accessed August 2023.

⁷⁰⁹ Chapter 2, section 2, par. d).

⁷¹⁰ European Union, *EU social security coordination*, available at <https://ec.europa.eu/social/main.jsp?catId=849> last accessed August 2023.

⁷¹¹ European Union (2022), *Partial update of the monitoring framework - Access to social protection for workers and the self-employed 2022*, available at <https://ec.europa.eu/social/BlobServlet?docId=26987&langId=en> last accessed August 2023.

⁷¹² European Union (2016), *Establishing an ETS: Recommendations for creating a European pension tracking service*, available at <https://ec.europa.eu/social/BlobServlet?docId=16387&langId=en> last accessed August 2023.

⁷¹³ European Union (2022), *Communication on the European care strategy*, doc. COM(2022) 440, available at <https://ec.europa.eu/social/BlobServlet?docId=26014&langId=en> last accessed August 2023.

⁷¹⁴ UNOHCHR (2021), *Ensuring that no one is left behind – How do we protect the poorest and most vulnerable from the crisis and empower them to realize the SDGs*, available at <https://www.ohchr.org/en/2021/07/ensuring-no-one->

9 and 10 ICESCR recognise the right to social security to everyone, whereas article 27 ICRMW recalls the same right applicable to migrant workers. Generally intended social protection comprises contributory and non-contributory benefits, in cash and in-kind to address poverty and vulnerability and avert social risks.⁷¹⁵ It pursues the four functions of (1) preventing deprivation, (2) (re)integrating in the labour market and in the society, (3) it is compensatory after the occurrence of identified social risks, and (4) it is transformative, or it ensures social equity and addresses exclusion.⁷¹⁶

The importance of social protection standards, and especially in the context of employment, has been acknowledged through the progressive development of norms on the matter by the International Labour Organization (ILO) under its mandate and starting as of 1919.⁷¹⁷ Starting from social insurance measures and until 2010, the ILO has adopted 31 conventions and 23 recommendations on social security, leading to the more recent notion and towards more defined legal frameworks for social protection mechanisms, which are broader in scope as they include also other benefits, support and services. For example, as a soft law instrument the 2030 Agenda⁷¹⁸ recommends implementing national social protection systems for all (SDG target 1.3), which links to achieving universal health coverage (SDG target 3.8). It derives that social policies adopted to promote development and eradicate poverty include the realisation of the rights to health, education and social security alike. Therefore, based on this principle an appropriate response by States might incorporate such consideration into domestic legal frameworks, ideally by intersecting social protection with respective sectoral policies and legislation, including on immigration and asylum not to leave migrants and refugees out of the scope of such protection. In practice, for example in the context of the pandemic, the United Nations observed that social protection proved not to be a high priority in many countries.⁷¹⁹ Yet, especially developing

[left-behind-how-do-we-protect-poorest-and-most-vulnerable-crisis-and?LangID=E&NewsID=27278](#) last accessed August 2023.

⁷¹⁵ IOM (2022), *Social Protection – An Operational Tool for the Humanitarian, Development and Peace Nexus: Linkages between Cash-based*, p. 3, available at <https://publications.iom.int/books/social-protection-operational-tool-humanitarian-development-and-peace-nexus-linkages-between> last accessed August 2023.

⁷¹⁶ Ibidem.

⁷¹⁷ ILO (2011), *2011 General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, par. 22., available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_152602.pdf last accessed August 2023.

⁷¹⁸ United Nations – General Assembly (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, op. cit.

⁷¹⁹ United Nations (2022), *Financing for Development in the Era of COVID-19 and Beyond – Report*, available at https://www.un.org/sites/un2.un.org/files/ffdi_cluster_ii_report.pdf last accessed August 2023.

countries responded to the increased demand for services,⁷²⁰ including healthcare, education and economic support for crisis affected population but leaving most non-nationals and especially undocumented migrants excluded.⁷²¹ Likewise, according to IOM, some countries in the Middle East and North Africa extended social protection benefits to nationals working in the informal sector, still excluding non-nationals from this opportunity.⁷²² In societies featured by significant migrant and refugees presence and informal work, individuals become more exposed to a heightened vulnerability that hardly complies with States' obligations to progressively achieve the full realisation of economic, social and cultural rights for all.

Unlike in the EU, where coordination among its Member States is in place, challenges related to social protection derive also from the national measures implemented towards nationals by virtue of the social contract.⁷²³ In fact, such measures are adopted by States as adapted and applicable to their respective contexts and jurisdictions only. Social protection mechanisms are usually not transnational in nature. Therefore, additional challenges faced by migrants and refugees in benefitting from social protection systems rely on their portability from the country of origin and nationality, or their accessibility in the host State. Indeed, States set the conditions to access this benefit which might be conditioned and restricted based on the nationality, it might be limited to the territory or accessed in relation to the conditions of residence in country. In this sense, the migration status acquire significance as depending on the applicable domestic framework it can *de jure* and *de facto* prevent access to undocumented migrants. Moreover, the access to social protection can be directly linked to the conditions of participation to the local labour market. For example, migrants and refugees that are integrated in tendentially more inclusive societies can access the labour market in conditions of equality as well as they benefit from comprehensive social protection schemes, thus being able to expand their contribution to the economic growth.

⁷²⁰ Almenfi M. et al. (2020), Where is the money coming from? Ten stylized facts on financing social protection responses to 35 COVID-19 in World Bank Social Protection and Jobs Policy Technical Note No. 23, available at <https://documents1.worldbank.org/curated/en/737761605775837011/pdf/Where-is-the-Money-Coming-From-Ten-Stylized-Facts-on-Financing-Social-Protection-Responses-to-COVID-19.pdf> last accessed August 2023.

⁷²¹ ILO (2021), *World Social Protection Report 2020-22*, pp. 68-70, available at https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@soc_sec/documents/publication/wcms_817572.pdf last accessed August 2023.

⁷²² IOM (2020), *COVID-19: Policies and impact on seasonal agricultural workers*, Issue Brief, available at https://www.iom.int/sites/g/files/tmzbdl486/files/documents/seasonal_agricultural_workers_27052020_0.pdf last accessed August 2023.

⁷²³ IOM (2022), *Social Protection – An Operational Tool for the Humanitarian, Development and Peace Nexus: Linkages between Cash-based*, op. cit., p. 5.

Consequently, due to such conditions, it is likely that they are in the position to attain the universal healthcare and other basic services as advocated by the GCM objective 15 and the SDGs targets recalled above. By virtue of its non-binding nature and as means to guide national decision-making, GCM objective 22 represents a push towards transnationality as it encourages States to establish mechanisms for the portability of social security entitlements and earned benefits.

Given its relevance for development and overall stability and prosperity, on this point the UNNM included social protection in its workplan 2022-2024⁷²⁴ as closely linked to the priority five on strengthening migrants' socio-economic integration. At the same time, it is indirectly linked to priority four of the workplan on enhancing pathways for regular migration through bilateral labour migration agreements and priority ten on enhancing regular pathways for migrants in vulnerable situations. The inclusion of this policy initiative promoted by the Network on Migration confirms the need to address systemic challenges to extend protection to migrants and refugees in the broader scope of integration efforts, as they link to development outcomes.

As there are no obligations *per se* for States to provide social protection for migrants in their national schemes, in practice accessing to this benefit for migrants very much depends on the national legal framework of the host country. Thus, besides the highlighted limited (or lack of) transnational initiatives to date, social protection features for lack of uniformity and accessibility among States. Nonetheless, this does not prevent States to work on adaptation strategies that address emerging challenges, including in relation to crisis and humanitarian responses. For example, it was observed that as one of the effects of the pandemic most of the major destination countries for migrants and refugees increased the access to social protection for many non-nationals who remained stranded in country or were simply in conditions of risk, such as in cases of intersecting vulnerability and specifically victims and survivors of trafficking in persons, as recalled above. Likewise, without prejudice to the responsibility of the host State to ensure social security, sending countries started to put in place measures to support their national workers abroad, including by partnering with the private sector to create livelihood initiatives and employment opportunities that reduce the reliance on non-contributory humanitarian assistance.⁷²⁵

⁷²⁴ United Nations Network on Migration (2023), *Workplan 2023-2024*, p. 10 available at <https://migrationnetwork.un.org/system/files/docs/UNNM%20Workplan%20Final.pdf> last accessed August 2023.

⁷²⁵ United Nations (2022), *Financing for Development in the Era of COVID-19 and Beyond – Report*, op. cit., p. 32.

Such initiatives acquire high significance especially in cases where State authorities and public institutions are unable to implement the social contract and have limited capacity to respond to specific needs regarding protection as a whole.

Indeed, within the private sector, in practice some private voluntary institutions and foundations undertake actions aimed to provide services such as health, education and other financial contributions that qualify as informal social protection arrangements of both contributory and non-contributory type.⁷²⁶ Another example is contributions provided by diaspora organisations abroad that support their nationals in the country of origin through remittances as important source of private capital, as encouraged by GCM objective 20. This scheme is currently widely used for example in Lebanon⁷²⁷ (and elsewhere) to support the local economy and development, as it constitutes a further and innovative informal mechanism to aid those in vulnerable situations.

Similarly, communities can also an important role to support those more exposed to social exclusion. This is the case of initiatives promoted by families towards their relatives or kinship-based, as well as religious-based.⁷²⁸ They bear a complementary function in relation to public institutions and enable comprehensive social protection systems in country. Moreover, they can facilitate the dialogue with associations and the private sector, as well as approaching those migrants that are traditionally hard-to-reach, such as undocumented migrants in the informal economy, and engaging diaspora members in country. In some cases, such as Lebanon, informal social protection arrangements enabled embassies in country to reach their nationals and provide support as part of their effort to regularise their migration and employment status in country. This is the case, for example, of the Philippines and Bangladesh supporting their nationals in Lebanon.⁷²⁹

It derives that social protection represents an important tool to support integration processes, and as such an essential part of migration and security management, both for States and for the individuals to reach safety. It is used in practice as a type of protection that supports the inclusion in the host societies and as a means to sustain those in vulnerable situations who benefit from

⁷²⁶ *Ibidem*, p. 35.

⁷²⁷ This is analysed in *Chapter 3*.

⁷²⁸ IOM (2022), *Social Protection – An Operational Tool for the Humanitarian, Development and Peace Nexus: Linkages between Cash-based*, op. cit., p. 23.

⁷²⁹ Olivier, M. (2023 – forthcoming). *Strengthening migrants' access to social protection in Lebanon* in International Organization for Migration (IOM) publication. In my capacity of research officer, I contributed to the development of this policy paper from its beginning in August 2022 through its finalisation in August 2023.

regularisation processes. However, as social protection is usually provided as an individual measure, an adequate identification that recognises vulnerabilities matters.

In this context, enabling the right to legal identity⁷³⁰ for verification of the identity and civil registration are an essential part of integration in the framework of security and migration management. As discussed, in the case of migrants abroad who are unable to access these services, the authorities of their country of origin and present in the host State and represented by their consular authorities can play an important role in addressing this flaw and contributing to realising their rights through consular protection, which is a complementary form of protection requiring a dedicate focus, as follows.

e) Consular protection and assistance

The case of informal social protection arrangements abroad demonstrated that the embassies like in the case of the Philippines and Bangladesh in Lebanon can provide an important contribution to sustain State and transnational efforts to regularise migration and employment status for non-nationals abroad.

Complementary to this goal, the identification process could be potentially undermined if migrants in the host State do not have access to their ID documents to prove their identity, whether because expired, lost or never possessed. Consular protection supports the right to legal identity and identity verification, contributing to adequate identification. Thus, it facilitates the access to rights that are exposed so far in this analysis, including to education and employment, social protection besides the other rights that contribute to legal safety, such as the access to justice and the right to return to the country of origin.⁷³¹

The GCM objective 14 enshrines consular protection, which links to other rights and corresponding GCM objectives concerning the legal identity (objective 4), addressing vulnerabilities (objective 7), providing alternatives to detention (objective 13), supporting return and reintegration (objective 21) and engaging diaspora in development (objective 19). As all these rights are already examined in this study, except the last one that is analysed in continuation.

According to international law, consular protection implies an obligation on the host States to facilitate migrants' access to consular authorities as part of addressing their vulnerabilities and

⁷³⁰ See *Chapter 1*, section 1, par b), lett. ii).

⁷³¹ See *Chapter 1*, section 3, par. f).

respect, protect and fulfil their rights. Moreover, an obligation upon the State of nationality is derived by article 36 of the VCCR,⁷³² that includes the right to communication with nationals, the need to provide consular information and the right to visit in conformity with laws and regulations of the receiving State. This point was confirmed by the case-law of the ICJ, specifically in a case concerning a death-penalty conviction of 54 Mexican nationals in several States of the United States, *Avena and other Mexican Nationals* case Mexico v. United States of America.⁷³³ In its decision the Court established a violation of both articles 5 and 36 of the VCCR:

“The Court finds that the duty upon the detaining authorities to give the Article 36, paragraph 1 (b), information to the individual arises once it is realized that the person is a foreign national, or once there are grounds to think that the person is probably a foreign national. Precisely when this may occur will vary with circumstances. The United States Department of State booklet, *Consular Notification and Access - Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them*, issued to Federal, state and local authorities in order to promote compliance with Article 36 of the Vienna Convention points out in such cases that: “most, but not all, persons born outside the United States are not [citizens]. Unfamiliarity with English may also indicate foreign nationality.” The Court notes that when an arrested person himself claims to be of United States nationality, the realization by the authorities that he is not in fact a United States national, or grounds for that realization, is likely to come somewhat later in time.” (par. 63).

All the consular functions are described in article 5 VCCR, and they include protection in the receiving State, promoting development initiatives, issuing passport and travel documents to nationals of the sending State, and overall protecting interests of nationals including providing safeguards as required. As specified by IOM,⁷³⁴ consular protection comprises consular assistance and differs by diplomatic protection. Indeed, in spite a situation that might have started as consular

⁷³² See *Chapter 1*, section 3, par. g).

⁷³³ International Court of Justice, *Avena and Other Mexican Nationals (Mexico V. United States Of America) Judgment of 31 March 2004* in *ICJ Reports 2004*, p. 12 available at <https://www.icj-cij.org/sites/default/files/case-related/128/128-20040331-JUD-01-00-EN.pdf> last accessed August 2023.

⁷³⁴ IOM (2021), *IML Note on Consular Assistance*, p. 5 available at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ICP/IML/iml_consular_assistance1.pdf last accessed August 2023.

protection, it might evolve thus requiring diplomatic protection. Though it should be noted that diplomatic protection falls out of the scope of this analysis in relation to integration and its implications, and therefore it is not hereby examined.

Rather than creating obligations, consular protection according to article 36 of VCCR establishes the authority on the State of nationality, which is a key element to consider in the context of migration, as it links nationals to the host country. This provision entails a series of rights that are very relevant also in the case of immigration detention as referred above,⁷³⁵ particularly in relation to accessing information in a language that can be understood by migrants held in custody by the authorities of the host State. Moreover, article 5 of the Vienna Convention stresses the importance of strengthening economic and cultural initiatives of transnational dimension, particularly between the sending country and host State. This could have important implications in the context of migration and integration as the provision could provide a legal basis to promote such initiatives that eventually support (re) integration efforts between the two States and overall reinforce international cooperation. The issue of passport and other travel documents are necessary for the identification process, all of which adds on the protection of rights of individuals involved. Consular protection as set forth in the provisions of the Vienna Convention, converge with the rights that are re-emphasised by the ICRMW, as confirmed by its article 23.

On this point, the ICJ in the cited *LaGrand*⁷³⁶ case specified that obligations on States might create rights on individuals):

“This fact does not prevent a State party to a treaty, which creates individual rights, from taking up the case of one of its nationals and instituting international judicial proceedings on behalf of that national, on the basis of a general jurisdictional clause in such a treaty.”
(par. 42).

Therefore, as pointed out by the ICJ, according to article 36, par. 1 (b), the receiving State and the sending State have both protection obligations towards a detained person, who is the responsible to trigger the procedure and the communications between the two States. Should the detained individual (article 36, par. 1 (c) oppose this right, then the sending State is released from this obligation.⁷³⁷

⁷³⁵ See *Chapter 1*, section 3, par. e).

⁷³⁶ See *Chapter 1*, section 1, par. b) lett iii. International Court of Justice, Judgement *LaGrand (Germany v. United States of America)*, 27 June 2001, par. 77, available at <https://www.icj-cij.org/en/case/104>

⁷³⁷ *Ibidem*, par. 77.

Moreover, in the Jadhav decision,⁷³⁸ the ICJ have clarified that the access to consular protection forms the basis to the right to a fair trial, as enshrined by article 14 ICCPR:

“(…) The Court points out that respect for the principles of a fair trial is of cardinal importance in any review and reconsideration, and that, in the circumstances of the present case, it is essential for the review and reconsideration of the conviction and sentence of Mr. Jadhav to be effective. The Court considers that the violation of the rights set forth in Article 36, paragraph 1, of the Vienna Convention, and its implications for the principles of a fair trial, should be fully examined and properly addressed during the review and reconsideration process. In particular, any potential prejudice and the implications for the evidence and the right of defence of the accused should receive close scrutiny during the review and reconsideration” (par. 145)

In the same vein, in its Advisory Opinion requested by Mexico,⁷³⁹ the Inter-American Court of Human Rights added that the right to information on consular assistance applies in the framework of the guarantees of due process of law. Specifically, in cases of detention of migrants, article 23 ICRMW needs to be interpreted in conjunction with articles 16, par. 7 on informing consular authorities about the migrant workers in detention, and 65, par. 2 that encourages States to provide such consular support. On this point the Committee on the Rights of Migrants Workers⁷⁴⁰ explains the roles of host States and sending State in the context of expulsion:

“Article 23 of the Convention provides for migrant workers and members of their families subject to an expulsion decision to be informed without delay of their right, and to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin. It also requires the authorities of the expelling State to facilitate the exercise of this right. Accordingly, the expelling State shall inform the person concerned without delay of this right, that is, at the time of or shortly after notifying the person of the expulsion decision and preferably in a language he or she understands. It shall facilitate any

⁷³⁸ International Court of Justice, *Jadhav (India v. Pakistan)*, Judgment, in *I.C.J. Reports 2019*, p. 418 available at <https://www.icj-cij.org/sites/default/files/case-related/168/168-20190717-JUD-01-00-EN.pdf> last accessed August 2023.

⁷³⁹ Inter-American Court of Human Rights (1999), *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, Advisory Opinion OC-16/99. Series A No. 16, para. 31, available at https://www.corteidh.or.cr/docs/opiniones/seriea_16_ing.pdf last accessed August 2023.

⁷⁴⁰ Committee on the Protection of the Rights of Migrant Workers and Members of their Families (2013), *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, doc. CMW/C/GC/2, par. 59, available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-rights-migrant-workers> last accessed August 2023.

communication between the person concerned and the consular or diplomatic authorities of the State of origin” (par. 59).

Consular protection is very relevant in case of migrant children. According to the best interest principle (article 3 CRC), consular authorities can support with birth registration and through consular registration of children to preserve their right to nationality in compliance with the prohibition of statelessness.⁷⁴¹ Consular authorities supporting the issue travel documents and passport are contributing to the enjoyment of other rights, such as the right to freedom of movement and return to the country of origin.

However, it must be noted that the same type of protection cannot be granted to refugees, asylum seekers who already claimed for international protection, as well as stateless people who, due to their status, they cannot request for consular protection to their national authorities. However, this case can be overcome and protection provided in case of dual citizens, whereby authorities of one State do not prevent the other State of nationality to intervene providing the required consular support.

Similarly, in the context of the EU based on articles 20, par. 2, lett. c, and article 22 TUE, and article 46 of the European Charter of Fundamental Rights, nationals in third countries benefit from equality of access to consular protection of any EU Member States authorities if there is no representation (no consulate or embassy) of their country of nationality in the host country.⁷⁴² Specifically, the authorities of another EU Member States can provide consular protection in cases of need of an emergency travel document, arrest or detention, being victim of a crime, a serious accident occurred or illness, relief and repatriation in case of emergency and in case of death.

The same scheme can be applied under special circumstances, such as crises such as cases of trafficking in persons and terrorist attacks, whereby authorities of the host States can exceptionally cover the functions of countries of origin as long as the situation of crisis lasts and with limited powers. This was also the case during the pandemic, where migrants stranded in countries received support by consular authorities of other countries under specific conditions and given the exceptional circumstances.

⁷⁴¹ See *Chapter I*, section 1, par. b), lett. vii.

⁷⁴² European Union, Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0637> last accessed August 2023.

Another special type of consular protection for migrants abroad can be provided by non-State actors under specific requirements and with limited purposes. This is the case of States entrusting international organizations such as IOM or other entities to support in visa applications through visa applications centres for Canada and other visa support solution.⁷⁴³

These examples elucidate how consular protection is equally fundamental as it serves identification, by ensuring clarity and safeguarding the legal certainty especially in cases of crises, thus preserve the safety of the migrants and refugees well-integrated abroad. Its importance is confirmed by those cases whereby States have limited capacity to ensure the protection of rights associated with consular services and other actors intervene in support and to complement migration (and security) management efforts to increase the legal safety of the persons involved. Other non-State actors playing an important role in migration management as linked to development outcomes, and specifically for socio-economic integration are diaspora members.

5. Diaspora Engagement for Migrant Integration

Diaspora members are increasingly recognized as important actors at a minimum influencing if not supporting migration management under the perspective of economic growth and prosperity. This section presents and analyses relevant international law and policies⁷⁴⁴ regarding diaspora engagement in countries of origin, which adds to their contribution for development outcomes achieved at destination and in the societies where they are already successfully integrated. As mentioned previously, in addition to their economic contribution, it examines how States can improve migration governance through the acknowledgement that diaspora are key actors for development and innovation, bridging countries and societies and creating transnational communities.

To do so, this analysis is focused on six elements diaspora members are contributing to: (1) the remittances which were already referred above as contributions to informal arrangements for social protection mechanisms, (2) their direct investments, (3) the human capital transfers, (4) initiatives for philanthropic contributions, (4) targeted capital market investments, and (5) tourism. Assisting

⁷⁴³ IOM, *Immigration and Visa Support Solutions*, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/activities/ibm/Immigration-and-Visa-Support-Solutions.pdf> last accessed August 2023.

⁷⁴⁴ This legal analysis is part of an information note developed in my capacity of IOM working for the International Migration Law Unit (2021).

the diaspora through consular protection and ensuring that the rights of migrants are respected in the State where they are hosted, is an enabler of those interventions and goals. The applicable legal framework to engage diaspora in their country of origin is examined below according to international law.

There is no universally agreed definition of the term “diaspora”.

However, according to IOM,⁷⁴⁵ it refers to:

“Migrants or descendants of migrants whose identity and sense of belonging, either real or symbolic, have been shaped by their migration experience and background. They maintain links with their homelands, and to each other, based on a shared sense of history, identity, or mutual experiences in the destination country.”

Moreover, IOM⁷⁴⁶ refers to diaspora as “transnational communities”, as:

“(…) in a world of unprecedented global mobility, they comprise people who are connected to more than one country. The transnational nature of diaspora implies that these people are crucial when it comes to connecting countries and communities, because they can call on multiple networks, relate to different identities and share a sense of belonging to more than one community”.

Historically the term “diaspora” was employed for the Jewish forcible expulsion from Babylon and, more generally, the colonies outside of the State of Palestine and the Greek and Armenian dispersion. As such, diasporas were more associated to a situation of exile, hence characterized by the longing of these community members abroad to return to their homeland.⁷⁴⁷ However, the term assumed a different and broader connotation over time, rather indicating communities of nationals living abroad, such as non-resident citizens, persons with origin or ties to a given country and expatriates, as commonly referred by policy makers and governments.⁷⁴⁸ Thus, the term is now increasingly used for any kind of migration, including for labour, trade, business and refugee

⁷⁴⁵ IOM IML (2019), Glossary on Migration, op. cit.

⁷⁴⁶ IOM (2013), *Strategy to Enable, Engage and Empower Diaspora*, available at <https://diaspora.iom.int/ioms-strategy-enable-engage-and-empower-diaspora> last accessed August 2023.

⁷⁴⁷ IOM (2011), *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries*, p. 17 available at https://publications.iom.int/system/files/pdf/diaspora_handbook_en_for_web_28may2013.pdf last accessed August 2023.

⁷⁴⁸ Ionesco D. (2006), *Engaging Diasporas as Development Partners for home and Destination Countries: Challenges for Policymakers*, IOM Migration Research Series No. 26, p. 14, available at https://www.iom.int/sites/default/files/our_work/ICP/IDM/MRS26.pdf last accessed 2023.

diasporas⁷⁴⁹ and, more generally, for communities abroad that share the same affiliation⁷⁵⁰ or live away from a country considered as homeland or the origin one.⁷⁵¹ In this sense, diasporas are individuals choosing and sharing the same components they recognize (for example, the country of origin, a specific community, an ethnic group or similar experience of marginalization) to define their social and individual identity. Overall, given the subjective element of such personal choice, it becomes difficult to recognize diaspora as fixed groups, as for example some individuals might be perceived as members of a certain group by external and governmental actors, while they do not identify themselves as such or they choose not to be part of a diaspora.⁷⁵²

The current ongoing policy discussions focus more on the practical recognition and definition of diasporas as key actors for development and innovation, bridging countries and societies and creating transnational communities. For instance, not only diaspora groups may invest in infrastructure projects benefitting their home communities, but also, if adequately supported by policy and legislation, these migrants abroad can be more inclined to allocate their remittances for public infrastructure and development projects in their communities of origin. Ideally, this happens if partnerships with diaspora associations of migrants in the country of destination are promoted to join efforts and assist their countries of origin in development initiatives.

While many countries do not operate with the concept of diaspora,⁷⁵³ the African Union offers a more development-focused definition of the African diasporas, described as:

“Any person of African origin living outside Africa who wishes to contribute to the development of Africa.”⁷⁵⁴

⁷⁴⁹ Cohen, R. (2008). *Global Diasporas: An Introduction* (2nd ed.). Routledge. <https://doi.org/10.4324/9780203928943> last accessed August 2023.

⁷⁵⁰ Brubaker R. (2005) *The ‘diaspora’ diaspora*, in *Ethnic and Racial Studies*, 28:1, 1-19, DOI: [10.1080/0141987042000289997](https://doi.org/10.1080/0141987042000289997) last accessed August 2023.

⁷⁵¹ Vertovec S. (2006), *Migrant Transnationalism and Modes of Transformation*, in *The International Migration Review*, Vol. 38, No. 3, 2004, p. 970-1001, <https://doi.org/10.1111/j.1747-7379.2004.tb00226.x> last accessed August 2023.

⁷⁵² Tölölyan K. (2012), *Diaspora studies Past, present and promise*, in *International Migration Institute*, volume 55, available at https://www.migrationinstitute.org/publications/wp-55-12/@_@download/file last accessed August 2023.

⁷⁵³ IOM (2013), *International Dialogue on Migration N°22 - Diasporas And Development: Bridging Societies And States*, available at <https://idiaspora.org/en/learn/resources/laws-and-policies/international-dialogue-migration-ndeg22-diasporas-and-development> last accessed August 2023.

⁷⁵⁴ World Bank – Plaza S., Ratha D. (2011), *Diaspora for Development in Africa*, p. 3 available at <https://www.cbd.int/financial/charity/africa-diasporas.pdf> last accessed August 2023. Statement at the African Union Consultation with the African Diaspora in the U.S, *Building Bridges across the Atlantic*, available at <http://unohrrls.org/meetings-conferences-and-special-events/statement-at-the-african-union-consultation-with-the-african-diaspora-in-the-us-building-bridges-across-the-atlantic/> last accessed August 2023.

Migration practitioners, including IOM⁷⁵⁵ assigns a prominent role to diasporas by implementing the collection and analysis of data and information on diasporas, among other things, as this information is considered as instrumental to inform migration management and related evidence-based policies, and it contributes to the adoption of whole-of-government approaches.

According to international law, diasporas are indirectly recognized by the norms protecting the right to freedom of movement (article 12 ICCPR) and to enter their own country (article 12, par. 4), as well as the right of children to acquire a nationality (article 24, par. 3 ICCPR) and article 25 ICCPR that related to the right of association, election and representation, which assumes a specific value in the case of diaspora and their need to organise in communities. With regards to the rights enshrined in the ICESCR and of relevance for diaspora, a linkage could be established with social protection as referred above. In this sense, it should be noted that article 9 recognises social security and insurance. Similarly, the ICRMW provides similar rights such as article 6 for the State of nationality and article 23 that was already mentioned in relation to social protection. Moreover, article 27 ICRMW emphasises the principle of equality with regards to social security. Article 29 ICRMW stresses the importance for children of the right to a name, birth registration and nationality. To create an enabling environment for diaspora members and organisations, protecting their right to cultural identity and cultural links is fundamental, and is provided by article 31 ICRMW. Likewise, they enjoy the right to participate in public affairs of their State of origin either directly (article 41 ICRMW) or through consular protection (article 65, par. 2) which contribute to strengthening ties on cultural and commercial nature. A further right for diaspora communities is enshrined by article 47 ICRMW around the right to transfer their earnings and savings required to provide support to their family members at home.

Since no other provision in the main international treaties protecting rights of migrants directly mentions the role of diaspora, other soft law instruments can be recalled, that provide further guidance to State to support their initiatives. First, it is worth mentioning once more the sustainable development goals as listed in the above mentioned 2030 Agenda.⁷⁵⁶ Planned and well managed migration policies (target 10.7) can foresee a space for diaspora to be included, as well as the goal

⁷⁵⁵ IOM (2015), Migration Governance Framework. The essential elements for facilitating orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies, Council Resolution n. C/106/40, available at https://www.iom.int/sites/default/files/about-iom/migof_brochure_a4_en.pdf last accessed August 2023.

⁷⁵⁶ United Nations, Transforming our world: the 2030 Agenda for Sustainable Development, op. cit.

to reduce to less than three percent the transaction costs of migrant remittances and eliminate those bearing costs higher than five percent (target 10.c).

The GCM⁷⁵⁷ is the first soft law instruments explicitly mentioning contributions by diaspora. In its objective 19 it recommends States to create necessary conditions for diasporas to support development outcomes in all countries, by empowering them in harnessing the benefits of migration as a multidimensional process involving countries of origin, transit and destination. Moreover, the GCM encourages to invest on them through research, skills transfer and civic engagement initiatives, establishing focal points in diplomatic or consular missions. Diasporas can provide development and investment funds, besides organising dedicated trade fairs and offer contributions that are voluntary or philanthropic and especially in humanitarian situations and crises. Diasporas are also described as actors capable to influence peace and reconciliation processes, making their contribution to “building partnerships between local authorities, local communities, the private sector, diasporas, hometown associations and migrant organizations to promote knowledge and skills transfer between their countries of origin and their countries of destination, including by mapping the diasporas and their skills, as a means to maintain the link between diasporas and their country of origin.”

According to the GCM, diasporas can also play their role for integration processes and social cohesion, specifically as they could start community programs and intercultural dialogues and develop business ties and promote mutual respect (objective 16, lett. f.). It should not be underestimated that this type of interventions can have an impact in shaping cohesive societies, through eliminating discrimination and influencing migrant perception against instances of intolerance, racism, xenophobia (GCM objective 17, lett. g). Diasporas’ contributions are recognised through the support of faster, safer and cheaper transfer of remittances and financial inclusion, as recommended in objective 20 GCM).

Other instruments of soft law assign a prominent role to diaspora. In the UN Secretary General’s report *Making migration work for all*,⁷⁵⁸ diasporas are mentioned as actors for innovation and development:

⁷⁵⁷ United Nations – General Assembly, Global Compact for Safe, Orderly and Regular Migration, op. cit.

⁷⁵⁸ United Nations (2017), *Making migration work for all*, doc. A/72/643, available at https://refugeesmigrants.un.org/sites/default/files/sg_report_en.pdf last accessed August 2023.

“Migrants offer expertise and entrepreneurship that benefit their host societies, and migration is linked to improvements in skills and education in countries of origin. Migrants and returnees share ideas and inspire others to raise their economic ambitions. Diaspora communities can be bridge-builders between States through philanthropy, investments and innovation in their countries of origin.” (par. 21)

Perceived and interpreted by international actors as such, diasporas become transnational communities by bridging societies and States, whereby States are called to create the conditions for migrants and diasporas to fully contribute to sustainable development in all countries. Indeed, based on the abovementioned international standards, connecting diaspora communities to their countries of origin means also linking migration to development. More favourable conditions for diaspora engagement can be created if such initiatives are accompanied through existing or developing policies and legislation, and specifically by: a) regulating diasporas’ non-financial contribution and their skills transfer, b) creating dedicated offices and services with focal points to provide information and assistance (including by setting up *ad hoc* institutions or sections within the diplomatic and consular missions), c) facilitating support programmes and financial products, d) adopting plans and disseminating information on programs for effective financial, voluntary, philanthropic engagement of diaspora members abroad, especially to support countries in crisis, d) enhancing the participation to the public life of both countries of origin and destination, including by providing the right to vote, and e) promoting dedicated procedures for visa, residency and citizenship in the view to boost transnational investments and partnership with private and public sectors and international cooperation generally.

To achieve such ambitious aspirations, national legal frameworks could include dedicated provisions to encourage diaspora engagement in key areas as follows: a) flexible laws governing citizenship for residents abroad, b) residency and visa issuance, c) facilitating the exercise of political rights, d) protecting property rights, e) providing tax incentives for investment, social security and portable pension, f) including tailored insurance schemes and health care benefits, and g) formal recognition of diasporas as meaningful contributors for national development. On this point, IOM suggest focusing on interventions around the six sectors of: a) remittances, b)

direct investments, c) human capital transfers, d) philanthropic contributions, e) capital market investments, and f) tourism.⁷⁵⁹

For diaspora effective engagement, more precise and adequate information about diaspora members living abroad is required. One option for States to acquire such information could be registering at the consular offices in the country of destination or collecting and analysing data on the remittances received from abroad. Hence, the importance of consular protections becomes apparent including at the earliest engagement steps. By favouring processes to build trust in their country of origin, migrants abroad and diasporas could potentially feel more encouraged to register and actively participate in the public life back home as well as to the socio-economic and cultural growth of their country of origin. The latter outcome is more easily achieved if diaspora members and migrants can benefit from a dual citizenship. This possibility represents an expression of support by both governments towards their nationals. This trust is reached through the commitments by migrants and diaspora to fulfil all the duties and obligations derived from their citizenship to more than one State, the one of origin and the one of destination or habitual residence where they decided to live.

To sustain the benefits of registration, consular networks in destination countries are essential, as they assess and understand the needs and capacity of the diaspora members in country, extending support as necessary and working on creating strategic partnerships with the private and public sectors in the country of origin. Consular protection in this case contributes to creating the transnational communities. Indeed, according to the law and the VCCR consular networks play an important role in maintaining commercial relationships and they can have a crucial role in promoting and supporting programs for the returns of talents back to their country of origin and encouraging tourism for health, business or cultural and religious heritage purposes. By doing so, in destination countries, consular networks contribute to strengthening the interactions between diaspora members and countries of origin not only by offering protection and assistance in the destination countries and in accordance with the Vienna Convention, but also in preserving the cultural, social and individual identity and maintaining a cultural linkage to the homeland.

⁷⁵⁹ IOM (2011), Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries, p. 67 available at https://publications.iom.int/system/files/pdf/diaspora_handbook_en_for_web_28may2013.pdf last accessed August 2023.

At national level, other institutions can be entrusted with similar functions to support diasporas abroad, that are usually conferred by the governments in countries or origin.⁷⁶⁰ This can be done at different levels of political engagement (and provided the situation in country is stable and conducive). The highest level is establishing *ad hoc* ministries dedicated to diasporas and nationals abroad. Further options are creating synergies of work within existing institutions in country with specific interests on diaspora affairs through dedicated programmes (i.e., ministries of labour, tourism and foreign affairs), or by setting up institutions at sub-ministry level, more frequently labour or foreign affairs. This is the example of Egypt that created the Ministry of Manpower and Emigration, Emigration Sector.⁷⁶¹ Egypt is among the countries that also established an institution at national level mandated with supporting citizens abroad,⁷⁶² the Higher Committee for Migration.⁷⁶³

Besides the registration, the support extended through diplomatic and consular missions and promoting mechanisms at national level in the country of origin, remittances are a further means to strengthen the linkages between diaspora members and their country of origin. Hence, remittances flow facilitation for development is a further area for diaspora engagement to be prioritized. For example, Egypt facilitates tax breaks for non-residents that send money back home through banks for up to ten years from the first transfer.⁷⁶⁴

In addition to contributing to development, remittances sent in the countries of origin and diasporas can also create the conditions for starting new business ideas and potentially expand the labour market in country, boosting also international exchanges of skills, resources and innovation. Therefore, it is important that diasporas benefit from the support of the countries of origin and destination where they can enjoy their rights derived from their regular situation and presence in country. In addition, they could be granted dual citizenship or special visas. Such conditions are the basis to enhance diasporas participation in the life of the countries of origin and destination and sustain a positive public perception of migrants in both contexts. Indeed, diaspora members

⁷⁶⁰ IOM (2012), *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries*, op. cit., p. 72.

⁷⁶¹ *Ibid.* p. 77.

⁷⁶² *Ibid.*, according to IOM others are Bulgaria, Chile, China, Guatemala, Hungary, Mali, Mexico, Morocco, Niger, Nigeria, Philippines, Poland, Portugal, Sierra Leone, Slovakia and Switzerland.

⁷⁶³ Jureidini R. (2020), *Regulation of Migration in Egypt*, available at <https://www.mei.edu/publications/regulation-migration-egypt> last accessed August 2023.

⁷⁶⁴ European Union - Global Diaspora Facility (2020), *Egypt - Diaspora Engagement Mapping*, available at https://diasporaforddevelopment.eu/wp-content/uploads/2020/07/CF_Egypt-v.4.pdf last accessed August 2023.

would be placed in conditions enabling them to be more capable to operate in inclusive and cohesive societies and thus, being less exposed to manifestation of xenophobia, racism and marginalization. Diaspora engagement can contribute to improve the overall migration governance through the acknowledgement of diasporas as key actors for development and innovation, bridging countries and societies and creating transnational communities. Therefore, if adequately supported by policy and legislation, these migrants abroad can help to preserve the intangible cultural heritage and national identity and to create opportunities for tangible development outcomes through remittances, investments and innovation. In accordance with the international legal framework, diaspora engagement policy and legislation could potentially lead to flexible laws governing citizenship for residents abroad, residency and special visas, political rights, property rights, tax incentives for investment, social security and portable pension, insurance and health care benefits, and formal recognition of diasporas as meaningful contributors for national development.

Not only, as direct effect of a successful integration in country, diasporas can support the host State to respond to crises. By building the transnational communities, diaspora members are more effectively in the position to mobilize resources and funds to create necessary connections with the country of destination – the host State – and population affected by crises for a prompt humanitarian response. This was observed in the case of the Ukrainian community in Italy that was able to locate those in need through the ongoing conflict in Ukraine.⁷⁶⁵ In fact, Ukrainian diaspora quickly mobilised in organisation to provide assistance and relief. This result was achieved by organising consultations with institutionalised stakeholders led by the Italian Ministry of Labour and Social Policies, that opted to leverage on diaspora contributions. Through this model it was possible to raise funds and track remittances that were included in the humanitarian response. The model represents a successful framework for diasporas engagement in organising State humanitarian assistance which also bridges a gap through development initiatives possible only through a conducive legislative and policy structure and financial support. Moreover, it is worth mentioning that it represents an effective attempt to implement the localisation agenda⁷⁶⁶ in

⁷⁶⁵ IOM (2023), A Model for Diaspora Engagement in Humanitarian Contexts at Country Level: Engagement of the Ukrainian diaspora organizations - Italian Case Study, available at <https://publications.iom.int/books/model-diaspora-engagement-humanitarian-contexts-country-level-engagement-ukrainian-diaspora> last accessed August 2023.

⁷⁶⁶ First launched in 2016 during the World Humanitarian Summit, the *Grand Bargain* was revised in June 2023 and localisation agenda included in focus area one. Cfr. Inter-Agency Standing Committee (2023), *Grand Bargain Beyond*

humanitarian response which consists in empowering communities to deliver the humanitarian aid to affected populations while enhancing the local ownership, promoting long-term responses and development. This approach recognises the local knowledge and cultural understanding for more adequate interventions adapted to the contexts.⁷⁶⁷

Through the support they provide diasporas are increasingly becoming part of migration management for inclusive societies and as they represent a successful model of integration, overall contributing to security. Their response for development and humanitarian settings became apparent especially in context confronted with multi-layered and protracted crisis. The case of Lebanon provides a concrete and effective example of positive outcomes and thus it is object of a dedicated case study in *Chapter 3*.

Concluding remarks

This *Chapter 2* argues how migration and security interact with each other in the context of migration management. It explains the implications and negative impact of informal economy often driven by irregular migration through presenting the opportunities and alternatives for safe migration, as grounded in the rule of law and enhancing international peace and security. The analysis in this *Chapter 2* builds on the reflection on migration at the border exposed in *Chapter 1* and focuses on what happens to migrants and refugees once they cross these borders and they find themselves in the territory of the host State. While the observations made in *Chapter 1* were more linked to the civil and political rights allowing individuals to participate in the governance of their country,⁷⁶⁸ this *Chapter 2* sheds light on the second set of rights (the economic, social and cultural ones) ensuring a dignified and adequate standard of living to all individuals, including migrants and refugees and in compliance with the progressive realization principle included in article 2 ICESCR.

As stated in *Chapter 1* around nationality, rights, principles and increasing international migration,⁷⁶⁹ for as much as sometimes migration is perceived by States with suspicion if it takes

2023, available at <https://interagencystandingcommittee.org/system/files/2023-06/Grand%20Bargain%20beyond%202023%20-%20Framework.pdf> last accessed August 2023.

⁷⁶⁷ European Union, *Localisation Factsheet*, available at https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/localisation_en last accessed August 2023.

⁷⁶⁸ *Chapter 1*, section 1, par. b).

⁷⁶⁹ *Chapter 1*, section 1, par. b), lett iii.

the form of uncontrolled movements of people arriving to their territory and potentially creating risks for internal security, it certainly responds and corresponds to improved conditions for individuals in the host State where migrants and refugees feel safe enough to benefit from the fundamental right to reside abroad after leaving their country. In this sense, it is rather a positive outcome and an achievement for individuals' rights. Consequently, when balancing interests at stake, States' duties can never prevail if they determine a substantial compression of the rights for individuals. Indeed, as highlighted in relation to irregular migration and borders, globalization and human mobility are promoting the progressive attainment of a "global law of heteronymous source" or a transnational protection of human rights where the individuals acquire subjectivity in international law. This is reflected in the abovementioned "consideration of humanity" principle⁷⁷⁰ as well as in the adaptation to changing societies and national responses that integrate interculturality and internationality, towards more inclusive societies where the non-discrimination principle is upheld. This is also an effect of changes in migration and security management that, shifting from the traditional idea of this matter as an exclusive domain of States' sovereignty, it is increasingly evolving towards methods and models that leverage technology non-State actors. As illustrated in this chapter, this statement is corroborated by the case of surveillance technology and interoperability systems used as innovative methods repurposed for migration and security management. In addition, the same stance is also demonstrated by the case of consular protection functions entrusted to organisations in charge of visa applications centres, and the instances of informal arrangements for social protection systems provided by community members, rather than public institutions and authorities. Lastly, diaspora members proved to be non-State actors yet key agents of development and prosperity as they establish and link transnational communities and support migration governance with their contribution.

Chapter 2 stresses the importance of performing thorough assessments of individual situations as instrumental to achieve a successful integration in the host society. In fact, the identification process is the first step for integration within the broader society and especially through communities that can facilitate insertion in the local context through education and learning programs. Participating to the local economy is of the utmost importance for migrants and refugees in the host country, as not only it enables them to contribute to development outcomes at large, but also it is fundamental in attaining self-sufficiency without creating extra burden on State welfare.

⁷⁷⁰ *Chapter 1*, section 1, par. b), lett iv.

This study explains the implications and related safeguards required to process personal data collected and used during the identification process. It elucidates on possible consequences with regards to shortcomings in the identification process specifically through using complementary means that are (yet) unable to ascertain vulnerabilities of migrants and refugees. For this reason, this study exposes some analytical frameworks to understand the concept of vulnerability. In special circumstances, identifying migrants and refugees effectively prompts States to support them by regularising their status in country and thus enabling them to access to safeguards and rights that otherwise are not granted or hardly realised due to their irregular situation. Regular pathways and regularisation characterise as a remedy to irregularity and an opportunity provided by State that overall facilitates the inclusion of migrants and refugees in country, as well as paving the way for their meaningful participation to the life of the country. Several non-binding instruments are being developed to encourage States to resort to this type of measures, whether as boosted by the lesson learned from COVID-19 pandemic or to address the most vulnerable groups and emerging challenges of migration as discussed in the major policy fora. In fact, regular pathways and regularisation present the advantage of increasing legal safety of the individuals as well as making the most out of migration in terms of development outcomes. Hence, they require States to align to the changing reality of migration. It could be argued that times might not be mature to incorporate such measures in national immigration law frameworks through the adoption of binding instruments, especially if compared and considered under the perspective of traditional forms of migration management and protection, such as the consular protection that appears crystallised in customary norms and international instruments as longstanding support extended to nationals abroad and international migration contexts. Yet, as analysed in this chapter, emerging challenges are boosting the development of policy and legislation that are increasingly influenced by soft law instruments developed to respond to the current reality of migration. Practice shows that this is increasingly done by resorting to engaging migrants, refugees and asylum seekers to more consultative and democratic processes that favour their inclusion and participation as active contributors, rather than passive receivers of protection measures only. In most cases such participation is realised through their communities that become complementary actors contributing to resilience when States are unable to comply to their obligations or to abide by their duties to ensure efficient public services. The case of diaspora organizations supporting the societies and the economic growth through offering dedicated services and funds in health, education and

employment sectors *de facto* contributes to the stability of a country. Therefore, diaspora engagement and participation to migration governance might reconcile migration and security at large, highlighting the positive and development outcomes, rather than the risks and threats related matters. This becomes apparent in the model presented and analysed in continuation in *Chapter 3*, the case study on Lebanon as a country that made of resilience its cornerstone in the face of multiple crises and as impacted by protracted conflicts in the region, compelling migration and displacement.

Chapter 3 A Case Study on Lebanon

Table of Contents

<u>Introduction</u>	
<u>1. Methodology</u>	
<u>2. Overview of the key findings</u>	
<u>3. Context analysis</u>	
a) <u>Legal framework: rights and principles of labour migration</u>	
b) <u>Terrorism, transnational organised crime and smuggling of migrants</u>	
c) <u>Trafficking in persons and Kafala</u>	
d) <u>Instances of discrimination</u>	
e) <u>The principle of non-refoulement and (non) access to asylum</u>	
f) <u>Issues related to legal identity and statelessness</u>	
<u>4. The impact of instability in the region: migration as a challenge</u>	
<u>5. Lebanon as peripheral actor in the Euro-Mediterranean</u>	
<u>6. Leveraging migration as an opportunity: education, diaspora and remittances</u>	
<u>Conclusions and recommendations</u>	
<u>Annex 1 – Questionnaire tools in English, French and Arabic</u>	
<u>Annex 2 – List of Respondents</u>	

Introduction

Since the very start of the study period that made this case study on Lebanon possible “*ma fi kahraba*” (i.e., “there is no electricity”) resounds all over Lebanon,⁷⁷¹ once known as “the Switzerland of the Middle-East” and now enduring the consequences of the worst economic crisis in modern history, where the realisation of the essential rights of education, healthcare and electricity are undermined and became an extravagance not accessible for many, besides many

⁷⁷¹ This case study was possible thanks to a one-year study period in Lebanon started in 2021, and regular visits up to 2023.

public institutions being discontinued.⁷⁷² Yet, the weakened rule of law, accountability and transparency bolstered Lebanese and the host population in country to redeem their rights through solidarity and resilience to resist to multiple crises.⁷⁷³

This chapter consists of a case study on Lebanon that focuses on a model addressing shortcomings in implementing international law through the interventions of non-State actors complementing State efforts in managing migration. Indeed, Lebanon is a country that made of resilience its cornerstone in the face of multiple crises being impacted by protracted conflicts and instability in the region. These factors inevitably compel migration and displacement. Remarkably the analysis of the context of Lebanon is opportune put into practice the considerations on the rights and principles as exposed in *Chapter 1* in relation with borders and *Chapter 2* regarding integration, so to enlighten around possible mechanisms to support migrants and Lebanese nationals through engaging non-State actors in migration governance.

Lebanon features different migrant and migration profiles, including migrant workers, refugees and asylum seekers that reach (or leave) this country due to either voluntary migration or forced displacement. In its history Lebanon proved to be *de facto* (and not *de jure*) a country of refuge to many displaced populations, against the recent branding of “no country of asylum” (corroborated by primary data collected) that contrasts with its approach to international protection rather progressive, inclusive and rights-based.⁷⁷⁴ Nevertheless, since 2015 there is no asylum procedure in place.⁷⁷⁵ Lebanon represents a model of resilience as in practice it implements soft law international standards promoting the development of adequate instruments and tools to better adapt to emerging challenges in migration and security management by capitalising on development outcomes and thus boosting socio-economic growth. In this sense, it is relevant to mention the best practices of facilitating access to rights and services for those exposed to

⁷⁷² United Nations Human Right Office of the High Commissioner (2023), *Global update: High Commissioner outlines concerns in over 40 countries*, available at <https://www.ohchr.org/en/statements-and-speeches/2023/03/global-update-high-commissioner-outlines-concerns-over-40-countries> last accessed August 2023.

⁷⁷³ United Nations Economic and Social Commission for West Asia (2020), *ESCWA warns: more than half of Lebanon’s population trapped in poverty*, available at <https://www.unescwa.org/news/lebanon-population-trapped-poverty> last accessed August 2023.

⁷⁷⁴ L’Orient Today (2023), *Lebanon’s branding as ‘no country of asylum’ is historically misleading*, available at <https://today.lorientlejour.com/article/1331292/lebanons-branding-as-no-country-of-asylum-is-historically-misleading.html#:~:text=University%20of%20Beirut,-.Lebanon%20seeks%20to%20position%20itself%20as%20E2%80%9Cno%20country%20of%20asylum.notably%20in%20the%20joint%20UN%2D> last accessed August 2023.

⁷⁷⁵ Janmyr M. (2018), *UNHCR and the Syrian refugee response: negotiating status and registration in Lebanon*, in *The International Journal of Human Rights*, Volume 22,3, pp. 393-419, DOI: 10.1080/13642987.2017.1371140

heightened vulnerability, particularly through informal and community-based social protection mechanisms and remittances, in addition to the important role played by diaspora communities for their country of origin.

Moreover, Lebanon is traditionally considered as a peripheral actor in the Euro-Mediterranean migration system whereby the State attempts to provide adequate reception of migrants and refugees. At the same time, relations and a dialogue with the EU are ongoing and fall under the scope of the present analysis. It should be noted that the EU adopted initiatives such as the EU Action Plan on the Western Mediterranean and Atlantic migration routes,⁷⁷⁶ in addition to the previously adopted the Central Mediterranean Route,⁷⁷⁷ and on the Western Balkans Route.⁷⁷⁸ Such instruments promise to implement solutions to common migration challenges, based on a comprehensive whole-of-route approach focused on the external border dimension and on selected areas, and aimed at countering smuggling of migrants, strengthening border management, return, readmission and reintegration, protection and legal pathways that facilitate labour mobility. Nonetheless, none of these initiatives involves Lebanon, nor similar *ad hoc* comprehensive interventions of regional scope are referring to this country thus far. Yet, that does not imply that cooperation with the EU in country is not happening. In fact, such interventions are triggered by migration patterns in country that, as evidence shows, characterise for a growing trend of migrants and refugees, for the majority from the Syrian Arab Republic⁷⁷⁹ and the State of Palestine. Such movements are recently joined by Lebanese nationals⁷⁸⁰ that are increasingly taking the sea to Cyprus⁷⁸¹ as entry point to Türkiye in the hope to proceed to other European countries from there.

⁷⁷⁶ European Union (2023), *EU Action Plan for the Western Mediterranean and Atlantic routes*, available at https://home-affairs.ec.europa.eu/eu-action-plan-western-mediterranean-and-atlantic-routes_en last accessed August 2023.

⁷⁷⁷ European Union (2022), *EU Action plan for the Central Mediterranean*, available at https://home-affairs.ec.europa.eu/eu-action-plan-central-mediterranean_en last accessed August 2023.

⁷⁷⁸ European Union (2022), *EU Action Plan on the Western Balkans*, available at https://home-affairs.ec.europa.eu/eu-action-plan-western-balkans_en last accessed August 2023.

⁷⁷⁹ Hereinafter referred as “Syria”.

⁷⁸⁰ IOM (2023), *Lost Hope, Lost Lives: Insights into Lebanese Irregular Migration*, available at <https://publications.iom.int/books/lost-hope-lost-lives-insights-lebanese-irregular-migration> last accessed August 2023.

⁷⁸¹ Houssari, N. (2020), *New migrant crisis at sea as young Lebanese flee to Cyprus* in *Arab News* available at <https://www.arabnews.com/node/1730456/middle-east>; Andreou, E. (2020), *Migrant boat spotted as meeting to assess increased arrivals*. *Cyprus Mail* available at <https://cyprus-mail.com/2020/09/07/migrant-boat-spotted-as-meeting-to-assess-increased-arrivals/>; Wallis, E. (2020) *5 migrant boats arrive in Cyprus in 3 days* in *Infomigrants* available at <https://www.infomigrants.net/en/post/27084/5-migrant-boats-arrive-in-cyprus-in-3-days>; The Daily Star Lebanon (2020), *Uptick in boats of Lebanese, Syrian migrants in Cyprus*, available at

This results partly from the instability in the region (Israel and the State of Palestine setback and the ongoing conflict in Syria) that significantly affects the situation in Lebanon, and it adds on the continued socio-economic, political and financial crisis in the aftermath of the 4 August Beirut blast (2020),⁷⁸² besides the adverse effects of the COVID-19 pandemic.⁷⁸³

The review of international standards, rights and principles and their application at domestic level in Lebanon are herein exposed to demonstrate how shortcomings in definitions and grey areas between migration and security according to international law (for example, in the case of the notion of nationality as a precondition for the enjoyment of certain rights) could potentially lead to adverse effects for the protection of rights. Such normative flaws could also determine the incorrect application of international law instruments by States, thus limiting the realisation of individual rights and challenging international peace and security alike.

In Lebanon, an emerging practice is becoming increasingly established in society whereby of non-State actors, specifically group of individuals and communities, are implementing initiatives that complement States' responsibility to protect. They *de facto* facilitate and provide access to certain rights to their community members in sectors traditionally led by national institutions. This is the case, for example of social protection informal mechanisms that were referred to in *Chapter 2*⁷⁸⁴ and that constitute in this sense an effective practice and a model to potentially replicate in other contexts. Therefore, this research intends to explore such alternative ways to extend broader protection to all. In principle, Lebanon case confirms that shifting the understanding of migration towards resilience rather than a security threat can potentially lead to socio-economic and cultural growth. In a context deeply affected by multiple crises it appears essential that every individual is capable to access their rights and corresponding services acquiring a role of key contributors that decreases risk factors and reduces vulnerabilities. Therefore, the challenge remains setting clear boundaries between what (or who?) creates possible threats to peace and understating more about

<https://www.dailystar.com.lb/News/World/2020/Sep-06/511292-uptick-in-boats-carrying-lebanese-syrian-migrants-cyprus.ashx>; The Middle East Eye (2021), *Lebanon intercepts Syrian refugees attempting Mediterranean sea crossing*, available at <https://www.middleeasteye.net/news/lebanon-syria-refugees-sea-crossing-intercept> last accessed August 2023.

⁷⁸² OCHA (2020), *Lebanon: Beirut Port Explosions Situation Report No. 6 (As of 21 August 2020)*, available at <https://reliefweb.int/report/lebanon/lebanon-beirut-port-explosions-situation-report-no-6-21-august-2020> last accessed August 2023.

⁷⁸³ United Nations Economic and Social Commission for Western Asia (2020), *Poverty in Lebanon: Impact of Multiple Shocks and Call for Solidarity*, available at https://www.unescwa.org/sites/www.unescwa.org/files/20-00268_pb15_beirut-explosion-rising-poverty-en.pdf last accessed August 2023.

⁷⁸⁴ *Chapter 2*, section 4, lett. d).

potential contributors. Indeed, such important actors need to be correctly identified and supported to be able and enabled to integrate into the host society so that they can participate in the (re)building the prosperity of the country. This can be done through reinterpreting migration for positive outcomes, thus sharpening security and stability.

The key findings of this case study that are hereby presented attempt to shed light on how to reach this (not so) ambitious goal. First, the study starts by assessing the general migration context in country and eventual instances of discrimination on the ground of nationality, gender and others. Then it continues by understanding the impact of instability in the region on migration patterns in Lebanon. After having set this background, this study explores eventual normative and policy gaps that translate into challenged security and fragmented societies, as well as the effects of transnational organised crime. A thorough assessment on how Lebanon positions itself as EU-Mediterranean peripheral actor is then provided. This analysis concludes moving away from the concept of migration as a crisis to rather highlight the benefits of communities' contributions, including diaspora engagement to strengthen resilience efforts.

It is worth specifying that this hypothesis is put forward based on an attentive desk review that elaborates on emphasising the positive approach of migration, in favour of exploring opportunities for successful integration in the host society to reduce economic and social vulnerabilities, inequality, poverty, deprivation and social exclusion. However, it is fascinating how Lebanon is rarely cited in the existing literature as a model for resilience that highlights the intersection between migration and development outcomes. Available studies tend to focus separately on some aspects concerning migration, mostly irregularity⁷⁸⁵ and forced displacement and their drivers, the policy developments in migration management mainly related to the situation of domestic workers and the *kafala*,⁷⁸⁶ a sponsorship or guardianship system widely used in country for migrant workers, the asylum and statelessness governance, and assessing barriers and migrants and refugees' vulnerabilities during the pandemic.⁷⁸⁷ Against this background, the ambition of this research is to explore those aspects combined, establishing a dialectical intersection among five proposed angles of analysis. Moreover, studies on development outcomes and diaspora

⁷⁸⁵ IOM (2023), *Lost Hope, Lost Lives: Insights into Lebanese Irregular Migration*, *op. cit.*

⁷⁸⁶ Chapter 3, section

⁷⁸⁷ United Nations Economic and Social Commission for Western Asia (2022), *Situation Report on International Migration 2021: Building Forward Better for Migrants and Refugees in the Arab region*, available at <https://www.unescwa.org/publications/situation-report-international-migration-2021> last accessed August 2023.

engagement in Lebanon remain overall under researched or outdated, rather included in analyses of regional scope.⁷⁸⁸ Consequently, the elements emerged from the desk research laid the ground to define the research angles of the five selected topics and conduct interviews to complement the evidence gaps found. Under such methodology it was possible to build a comprehensive analysis that corroborates the empirical and theoretical frameworks, as previously exposed, particularly on border, migration and security management, as well as integration and contributions for cohesive, resilient and prosperous societies.

To elaborate this comprehensive analysis, a rigorous methodology was followed, exposed in the related section in continuation.

1. Methodology

Based on the above context and considering its specificities in terms of Lebanon migration profile, border crossings and possible integration and development outcomes, this case study has been conducted as part of the overall analysis on the relations between migration and security and adequate identification to sharpen stability to assess how the definitions, concepts and international standards examined in the previous two chapters apply in practice and in a given context.

After conducting a preliminary literature and desk review, the fieldwork in Lebanon commenced in September 2021 and was completed in September 2023. Except for the very first interview conducted with a subject expert (held in person in Beirut on 8 September 2021), interviews were conducted remotely via either phone call or through online platforms, such as MS Teams meetings. Offline means were also used, particularly through the circulation of an online survey purposely developed in English (through MS Forms) and translated into French and Arabic. Such survey was kept open and active from 30 June 2023 until 30 August 2023.

In this case study the general research question constituting the objective of this overall study – “*What comes first between security of citizens and the identification and integration of migrants?*” – was answered by centring the analysis of the Lebanese context around five specific topics (and corresponding questions). The survey questionnaire (which is added in Annex 1) touched upon the

⁷⁸⁸ Al-Dajani, H., Baroud, M., & Yassin, N. (Eds.). (2023), *Refugee Resilience and Adaptation in the Middle East: Reclaiming Agency in the Informal Economies of Lebanon and Jordan*. Taylor & Francis; Darkal, H., & Al-Dajani, H. (2023). Forced migration, resilience, and informal adaptive mechanisms: A literature review. *Refugee Resilience and Adaptation in the Middle East*, 12-35; Dennison, J., (2022) *Re-thinking the drivers of regular and irregular migration: evidence from the Euro-Mediterranean*, in *ICMPD report, 2022, Migration Policy Centre* – available at <https://hdl.handle.net/1814/75596> last accessed August 2023.

following topics: (1) migration in general, (2) the impact of instability in the region, (3) the legal framework on trafficking in persons and smuggling of migrants, (4) the relations with European Union, and lastly (5) migration as an opportunity through diaspora, remittances and other contributions to local development. Each of these topics are in-dept examined in the analysis that follows.

The research questionnaire was specifically developed to examine the validity of the data collected with an expository design, that provides comprehensive information on the five topics to allow for a better understanding of the context and practice. At the same time, the study adopts a persuasive design, promoting the perspective of alternatives for safe migration conducive to prosperity in country. In this way it is possible to counter the narrative of migration as a security matter, rather than instrumental for the development and resilience of a country, that is instead what this case study aims to demonstrate.

The primary data collected through this fieldwork comprises facts, observations and experiences related by the selected respondents. It comes exclusively to qualitative data gathered through semi-structured individual interviews to gain an understanding of the context and practice as interpreted by the respondents. In most cases, the results were corroborated by reports and publications on the matter confirming the relates. As a follow up to the interview, some respondents also provided *ex-post* suggestions on additional thematic literature to sustain the thesis put forward in this case study, including articles and documents authored by themselves and produced at the time or right after the interview took place.

The sample comprised selected key informants with proven knowledge of the context such as scholars and practitioners expert on the Middle East with previous field and / or research experience in Lebanon and in the region. Responders were selected purposely with different profiles and not necessarily with an academic background, so that to incorporate a multi-disciplinary approach to the examined matter. Thus, subject and situation experts participating to this study are knowledgeable around human rights, international law and migration in the region and they responded based on their professional experience or their previous research on the legal and cultural norms, in the attempt to provide a perspective on how they translate in the Lebanese context. Approximately 100 potential respondents were contacted over the course of two years (2021-2023), out of which 15 were finally shortlisted and invited to participate in this study (the list is available in Annex 2). The sample was initially purposive and key respondents were first

selected based on the proven in-depth knowledge on the research subject, as confirmed by publications authored by them and existing literature on the matter. At a later stage and based in the previous round of interviews conducted, a snowball and response-driven sampling was adopted based on first responders’ identification and suggestions on contacting other responders. The referral was facilitated to first responders themselves, who often times provided the contacts of other experts or established a communication channel around the present research themselves. In selecting the responders, gender considerations and equality were given prominent importance, as well as the geographical distribution: not all of the respondents participating to this study are Lebanese nationals, to avoid any bias implications and thus promote diversity and multi-disciplinary perspective for as much as it was possible and relevant. The gender and nationality of respondents’ breakdown can be ascertained in the figure below.



8 enquestats (53%) han respost **Lebanon** a aquesta pregunta.



Figure 1: Respondents’ gender and nationality breakdown

2. Overview of the key findings

Informed by the methodology as presented above, the account of Lebanon emerging from primary data collected can be outlined as “the paradox of open borders and restricted opportunities”.

Indeed, it appears as a country subject to internal and external pressures,⁷⁸⁹ whereby the sectarian context leads decision-makers not to affect the demography, thus maintaining a balanced presence of Christians and Muslims. This results in slowing down, if not even countering the integration of migrants and refugees in country, characterising for a non-friendly environment especially for migrant workers often exposed to rights' violation, mostly labour rights.

Despite different background, knowledge and experience of the selected respondents, it is striking how the information shared appears dramatically consistent and favourable to build coherent findings to support this study. The data analysis led to identify 15 main findings that inform the interpretation proposed in continuation. Compatibly with existing literature examined through desk review, these findings come across as outstandingly influencing migration and security situation in Lebanon. Key findings are defined below, with indication of proportion of responses.

Table 1: Key findings

#	Key Findings	Cited by
1	Multiple crises: political, economic and financial collapse, poor infrastructures and COVID-19	All
2	Instability in the region heavily impacts the situation, including migration and displacement	All
3	Refugees and migrants, including migrant workers, are present in country with limited opportunities	All
4	Trafficking in children, domestic workers and Kafala represent an issue	All
5	Discrimination on the ground of nationality, religion, gender and diverse SOGIESC, classes and economic status	14 out 15
6	Instrumentalisation of crises for political purposes, whereby media plays a role in fomenting hatespeech, intolerance and racism	10 out 15
7	Reliance on humanitarian aid and funding from abroad (including EU and diaspora contributions)	9 out 15
8	Flaws in sectoral policies and institutional frameworks, i.e. in regulating diaspora contributions and migrant integration	8 out 15
9	Corruption and weakened trust on the rule of law, due to inequalities, outdated legislations and lengthy processes of revision, as well as inadequate implementation and law enforcement	8 out 15
10	Influence of sectarianism and demographic concerns	7 out of 15

⁷⁸⁹ Interview No. 15.

11	Lebanon is a country of "no asylum"	5 out of 15
12	Poor attention to Lebanese nationals' needs in country and abroad	4 out of 15
13	Lebanon is a transit country	3 out of 15
14	Limited data for migration and displacement result in the possibility of inaccurate estimates	3 out of 15
15	Lack or limited political will to address ongoing issues to maintain the fragmentation in the society	2 out of 15

These topics are covered in the following sections dispersedly and integrated in the analysis that follows. Each of these findings is examined as crosscutting across the five topic of research (and related five questions asked to the respondents), specifically around: (1) migration in general, (2) the impact of instability in region, (3) the legal framework on trafficking in persons and smuggling of migrants, (4) the relations with the EU, and (5) migration as an opportunity through diaspora, remittances and other contributions to local development.

3. Context analysis

“The situation in Lebanon is Kafkaesque. State institutions and infrastructures are not adequate to cater the needs of Lebanese, divided over too many important matters including the identity of Lebanon. (...) While no one is challenging the sanctity of human dignity and the right to protection, there is a minimum of obligations that are not being respected in the relations between Syrians and local communities in Lebanon. Obligations and commitments are corollaries, this is not the case at present.”⁷⁹⁰

As emphasised by respondents during the fieldwork, accurate data collection in country remains challenging and the proportion and figures presented by political leaders and disseminated through the media in country might not reflect the reality of migration. Overall evidence confirms this trend,⁷⁹¹ presenting it rather as a general feature for the region. For instance, IOM⁷⁹² found as one possible reason the fact that Western Asia is not often referenced in literature as a regional

⁷⁹⁰ Interview No. 5.

⁷⁹¹ IOM (2023), *Data strength and limitations. Migration Data in Western Asia*, available at <https://www.migrationdataportal.org/regional-data-overview/migration-data-western-asia> last accessed August 2023.

⁷⁹² *Ibidem*.

classification. Besides, it seems that data on the migration flows in this region tends to focus on the inflows rather than outflows, which adds on the continued complexity of data collection operations made harder due to the onset of conflicts in the region, creating difficulties in tracking movements and accessing most of the affected areas. Nonetheless, against this background and despite data limitations, Lebanon offers an opportune context to analyse integration and development outcomes, given its migration characteristics and different migrant profiles coexisting together and shaping the different population segments in country. To date, it is estimated that in 2023 the total population in country is comprised of 5,331,203 individuals.⁷⁹³ Lebanon acknowledges the importance of relying on administrative data in country regarding migration by leveraging the capacity of the Central Bureau of Statistics to coordinate and promote data exchange among relevant sectoral ministries and departments.⁷⁹⁴ On this point, the Ministry of Justice highlights that disaggregated data for migrants and displaced before the courts can serve efforts to improve trafficking in person response, including protection of victims and adequate prosecution of perpetrators.⁷⁹⁵

The most updated secondary sources indicate that international migrant and refugee population is estimated at 1,712,762 individuals, constituting the 25.1 per cent of the total population in country, whereby migrant and refugee women and girls account for 51 per cent.⁷⁹⁶ Major countries of origin are Syria (1,042,785), the State of Palestine (476,033), Iraq (102,319), Egypt (70,643) and Sri Lanka (2,711).⁷⁹⁷ More updated data provided by IOM⁷⁹⁸ indicates the presence of 160,738 migrants, whereby women and girls comprise the 65 per cent of the migrant population, totalling 102,566 individuals. Out of the 84 total identified, the major nationalities of migrant population are Ethiopian (37%), Bangladeshi (22%) and Sudanese (9%). On the other hand, concerning forced migration the UN Refugee Agency presents Lebanon as the country hosting the largest number of

⁷⁹³ CIA (2023), *The World Factbook – Lebanon*, available at <https://www.cia.gov/the-world-factbook/countries/lebanon/> last accessed August 2023.

⁷⁹⁴ United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, p. 38, available at <https://www.unescwa.org/node/41947> last accessed August 2023.

⁷⁹⁵ *Ibidem*.

⁷⁹⁶ United Nations Department of Economic and Social Affairs, Population Division (2020). *International Migration 2020 Highlights* doc. ST/ESA/SER.A/452, available at https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf last accessed August 2023.

⁷⁹⁷ *Ibidem*.

⁷⁹⁸ IOM (2023), *Lebanon - Baseline Assessment Round 3*, available at <https://dtm.iom.int/reports/lebanon-baseline-assessment-round-3?close=true> last accessed August 2023.

refugees in the world, with a total 795,322 registered Syrian refugees,⁷⁹⁹ in addition to 5,018 refugees from Iraq, 2,226 from Sudan and 3,531 from other countries.⁸⁰⁰ In average, the Government estimates that there are 1.5 million Syrian refugees and some 13,715 refugees of other nationalities.⁸⁰¹

Regarding border management, Lebanon shares boundaries with two countries: in the North and East by Syria, and in the South by Israel, both countries in turmoil. To the West, the maritime border is the Mediterranean Sea. In a country referred to by three out of the 15 respondents as “a transit country”, for migrants and refugees intending to cross Lebanon in search of safety, the choice is only theoretical: with the southern border being closed due to the security and political situation and the ongoing conflict in Syria, the sole option remains taking the sea. Indeed, since 2020 onwards there has been an increase of arrivals of boats with Syrians departing from northern Lebanon to Cyprus.⁸⁰² However, according to available information the boats are being intercepted and returned in violation of the *non-refoulement* principle.⁸⁰³ Such movements can be considered as mixed migration according to the definition provided in *Chapter 1*,⁸⁰⁴ as boats transporting Syrians attempting to reach better opportunities are often joined by Lebanese nationals wishing to escape the economic situation,⁸⁰⁵ in search of safety⁸⁰⁶ and due security concerns and (legal) uncertainty following the Beirut blast and its consequences and implications.⁸⁰⁷ Specifically, the

⁷⁹⁹ UNHCR (2023), *Operational data portal refugee situations*, available at https://data.unhcr.org/en/situations/syria/location/71?_gl=1*_w146ul*_rup_ga*MTM4MTk0NDg0MC4xNjkwOTczMTk5*_rup_ga_EVDQTJ4LMY*MTY5MzU4OTI2NS4zLjAuMTY5MzU4OTI2NS4wLjAuMA..*_ga*MTM4MTk0NDg0MC4xNjkwOTczMTk5*_ga_MTW6FNGL18*MTY5MzU4OTI2NS4zLjAuMTY5MzU4OTI2NS4wLjAuMA.#_ga=2.205282256.1114580461.1693589266-1381944840.1690973199 last accessed August 2023.

⁸⁰⁰ UNHCR (2023), *Lebanon Fact Sheet July 2023*, available at <https://reporting.unhcr.org/lebanon-factsheet-5270> last accessed August 2023.

⁸⁰¹ UNHCR (2023), *UNHCR Lebanon at a glance*, available at <https://www.unhcr.org/lb/at-a-glance#:~:text=Lebanon%20remains%20the%20country%20hosting,13%2C715%20refugees%20of%20other%20nationalities>. Last accessed August 2023.

⁸⁰² Ynetnews (2020). *Cyprus worried as 4 migrant boats reach island in 48 hours.*, available at <https://www.ynetnews.com/article/S1LVV00GND>, last accessed August 2023.

⁸⁰³ Euromed Rights (2022) *Cyprus: Refoulements to Lebanon and Syria under scrutiny again*, available at <https://euromedrights.org/publication/cyprus-refoulements-to-lebanon-and-syria-under-scrutiny-again-2/> last accessed August 2023.

⁸⁰⁴ *Chapter 1*, section 1, lett a).

⁸⁰⁵ The New Humanitarian – Sewell A. (2020) *Overlapping crises in Lebanon fuel a new migration to Cyprus*, available at <https://www.thenewhumanitarian.org/news-feature/2020/09/21/Lebanon-Cyprus-Beirut-security-economy-migration> last accessed August 2023.

⁸⁰⁶ Al Jazeera - Ibrahim, A. (2020). *A new exodus from Lebanon after deadly Beirut blast*. Available at <https://www.aljazeera.com/news/2020/08/mass-exodus-lebanon-deadly-beirut-blast-200821191208211.html> last accessed August 2023.

⁸⁰⁷ Strategy& part of PWC network (2020), *Beirut Explosion Impact Assessment*, available at <https://www.strategyand.pwc.com/m1/en/beirut-explosion.html> last accessed August 2023.

latter have been described by respondents as a reaction and an effect of a loss or diminished trust in the rule of law, on the institutions, the political leaders and governance for the ineffective justice in country (key findings 1 on multiple crises, 9 on corruption and 15 on weak responses to internal security issues). This has been corroborated by existing doctrine opinions⁸⁰⁸ as well as the United Nations treaty-based monitoring mechanisms.⁸⁰⁹ Particularly on this point, the UN Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, in his latest report denounced this as a “man-made crisis” in a “failing State”, whereby financial and political leaders’ actions are pushing the population in Lebanon into poverty amid sectarian political stasis.⁸¹⁰ Therefore, it emerges that conditions of living for Lebanese migrant and refugees are in fact difficult due to the ongoing political and economic crises. After having acquired its independence in 1943, the political setting is heavily influenced by sectarianism.⁸¹¹ Additionally, the 1975-90 civil war caused social and political instability. Ever since, Lebanon has witnessed periods of upheaval alternated with prosperity and economic growth, that started declining as of the 2019 economic crises, affecting currency, debt and banking sectors all at once, thus constraining many Lebanese to (trying to) leave the country in search of a better life and peace. As a result, even more following the economic downturn, the country relies on remittances. Indeed, according to the World Bank⁸¹² with an estimated 6 billion dollars in 2021, Lebanon makes the highest recipient of remittances in the Arab region and ranks as the third major receiver country in the whole world. Remittances contribute to approximately 35 per cent of its gross domestic product (GDP),⁸¹³ affirming itself as a country of significant emigration. Indeed, evidence⁸¹⁴ confirms that by 2004

⁸⁰⁸ Independence of the Judiciary Coalition (2023), *Statement on the Third Anniversary of the Beirut Port Blast: Time to Shake Off the Ashes of the Coup and Article 751 in The Legal Agenda*, available at <https://english.legal-agenda.com/independence-of-the-judiciary-coalition-statement-on-the-third-anniversary-of-the-beirut-port-blast-time-to-shake-off-the-ashes-of-the-coup-and-article-751/> last accessed August 2023.

⁸⁰⁹ United Nations (2023), *Lebanon: UN expert concerned by interference in Beirut blast probe*, available at <https://www.ohchr.org/en/press-releases/2023/04/lebanon-un-expert-concerned-interference-beirut-blast-probe> last accessed August 2023.

⁸¹⁰ United Nations General Assembly (2022), *Visit to Lebanon. Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter*, doc. A/HRC/50/38/Add.1 available at <http://undocs.org/A/HRC/50/38/Add.1> last accessed August 2023.

⁸¹¹ Deeb L, Nalbantian T. Sbaiti N. (2022) *Practicing Sectarianism. Archival and Ethnographic Interventions on Lebanon*, Stanford University Press.

⁸¹² World Bank (2021), *Migration and Development Brief 35. Recovery: COVID-19 Crisis through a Migration Lens*, p. 48, available at <https://www.knomad.org/publication/migration-and-development-brief-35> last accessed August 2023.

⁸¹³ *Ibidem*.

⁸¹⁴ IOM – Khouri R. (2004), *Characteristics and Magnitude of Arab Migration Patterns in the Mashreq: South-South Context Arab Migration Patterns: The Mashreq in Arab Migration in a Globalized World*, p. 21, available at https://publications.iom.int/system/files/pdf/arab_migration_globalized_world.pdf last accessed August 2023.

Lebanese abroad accounted for 14 million nationals, namely approximately four times its population in country.

Labour migration and migration governance in country are significantly impacted by the *kafala* legal institution or “sponsorship”, that is widely used in the Arab region and in Lebanon to regulate migrant workers, specifically for domestic workers.⁸¹⁵ Moreover, especially during the pandemic measures were recently taken by the government to attract high skilled migrant workers, as well as to regulate the situation of Palestinians for obtaining work permits and, until 2020, Lebanon provided remedies to regularise Syrian workers legal situation in country.⁸¹⁶ Similar regularisation mechanisms were valid for other migrant workers too, who until 2019 could benefit from work and residence permits for a durations of one, two or three years according to corresponding fees.⁸¹⁷ This is however no longer the case in more recent times.

More details on the context specifically regarding legal implications of each of the abovementioned situations are presented as follows.

a) Legal framework: rights and principles of labour migration

*“When the law is not applied equally it makes no difference which laws are on the books.”*⁸¹⁸

Overall, respondents manifest a lost trust in the rule of law as undermined by widespread corruption, highlighting practices and decisions taken by political leaders reflecting the overall fragmentation of the international standards applicable in country to protect rights and abide by principles regulating migration and asylum in country. They all refer to *kafala* as a serious form of inhuman treatment and a form of modern slavery. In addition, the political influence of international actors including the EU as major donor in country, coupled with the reliance of the Lebanon on humanitarian aid seem to play a prominent role in shaping the policy and legislative environment. Overall, the weak rule of law in country and legal uncertainty present advantages of opening doors to possible positive outcomes,⁸¹⁹ including providing alternatives for non-State

⁸¹⁵ United Nations Economic and Social Commission for Western Asia (2022), *Situation Report on International Migration 2021: Building Forward Better for Migrants and Refugees in the Arab region*, op. cit., p. 67.

⁸¹⁶ *Ibidem*, p. 68.

⁸¹⁷ *Ibidem*.

⁸¹⁸ Interview No. 4,

⁸¹⁹ Interview No. 6.

actors to intervene in specific sectors such as education or social protection, to complement State efforts in abiding by their obligations to respect, protect and fulfil the rights of all individual.

The following analysis of the legal framework illustrates the underlying reasons behind this perception.

Lebanon gained its independence in 1943, although its Constitution⁸²⁰ was adopted in 1926. Such bill has been subject to several amendments, the last one being adopted in 2004.⁸²¹ The Lebanese legal system features elements derived from the French civil code, longstanding traditions part of its cultural identity and the religious civil law governing aspects of personal status, marriage, divorce and family law, that incorporate regulations from Jewish, Islam and Christian communities.⁸²²

This premise delineates the backbone structure to better understand how the sectarian balance characterising the current political setting is based on the National Pact adopted in 1943,⁸²³ between Lebanese Christians and Muslim, which establishes the governing composition. According to the Pact, the President (article 49 of the Constitution) must be a Maronite Christian and the Prime Minister (article 64) a Sunni Muslim, the speaker of the National Assembly has to be a Shia Muslim and the cabinet's seats are divided equally between Christians and Muslims, governing institutions including in article 19 of the Constitution, which does not however specify this partition and religious requirements.

The Lebanese Constitution recognises its Arab identity and affiliation and defines as a founding active member of the United Nations, abiding by its covenants and the UDHR. The equality before the law and protection of civil and political rights are enshrined in article 7 of the Constitution, as well as providing for free education in compliance with public order, morals and without offending any religious community and sect (article 10).

As of the applicable international legal framework, out of the nine core human rights treaties, Lebanon has ratified six and specifically on the prohibition of torture, on civil and political rights,

⁸²⁰ Lebanon Presidency (1995), *The Lebanese Constitution*, available at <https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf> last accessed August 2023.

⁸²¹ CIA (2023), *The World Factbook – Lebanon*, *op. cit.*

⁸²² *Ibidem.*

⁸²³ Khazen F. (1991), *The Communal Pact of National Identities: the Making and Politics of the 1943 National Pact*, in *Papers on Lebanon 12*, Oxford, available at <https://lebanesestudies.com/wp-content/uploads/2012/03/8b844d712.-The-Communal-Pact-of-National-Identities-The-Making-and-Politics-of-the-1943-National-Pact-Farid-el-Khazen-1991.pdf> last accessed August 2023.

on the economic, social and cultural rights, on discrimination and on the rights of the child, as shown in the below table:

Table 2. Lebanon: status of ratification of human rights treaties in Lebanon.

#	Treaty	Acronym	Signature	Ratification
1	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	CAT		05 Oct 2000 (a)
2	International Covenant on Civil and Political Rights	CCPR		03 Nov 1972 (a)
3	Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty	CCPR-OP2-DP		
4	Convention for the Protection of All Persons from Enforced Disappearance	CED	6-Feb-07	
5	Convention on the Elimination of All Forms of Discrimination against Women	CEDAW		16 Apr 1997 (a)
6	International Convention on the Elimination of All Forms of Racial Discrimination	CERD		12 Nov 1971 (a)
7	International Covenant on Economic, Social and Cultural Rights	CESCR		03 Nov 1972 (a)
8	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ICRMW		
9	Convention on the Rights of the Child	CRC	26-Jan-90	14-May-91
10	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC-OP-AC	11-Feb-02	
11	Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	CRC-OP-SC	10-Oct-01	8-Nov-04
12	Convention on the Rights of Persons with Disabilities	CRPD	14-Jun-07	

It is visible that the ICRMW was not ratified, yet migrants' rights remain covered by the other human rights treaties, in combination with the applicable national legislations and policies on migration governance. Among these, policies regulating residence and work permits to attract migrant workers in Lebanon were updated and issued during the period 2019-2020, indicating applicable procedures and corresponding costs set by the Ministry of Labour in related instruments. For example, for directors of certain companies the Ministry waived the requirement

of obtaining a work permits for non-Lebanese not residing in Lebanon.⁸²⁴ During the COVID-19 pandemic, the Ministry of Labour provided the possibility to resume the applications for work permits for all migrant workers.⁸²⁵ In the same period, the Ministry provided a Standard Unified Contract for the employment of domestic workers to regulate conditions of work of this worker category and extending more safeguards allowing them for leaving the household for their rest day once per week and during their holidays, without imposing recruitment fees or other costs. Additional provisions concern the prohibition for employers to retain wages or identity documents, with the aim to increase the protection of the employees' rights. In addition, the Ministry introduced in the contract the possibility of termination by either party with one month notice in case of violations of the contractual conditions. However, the latter measure was recently suspended following a decision of the highest administrative court, the Shura Council, after the recruitment agencies filed a complaint against such provision.⁸²⁶

The possibility to regularise migration status⁸²⁷ in country for migrant workers was set by the Ministry of Labour with decision no. 1/82 in application of the decree no. 4340 of 2019. The decision establishes a grace period to request such possibility for those who recruited migrant labour without prior requesting a work permit, indicating conditions to benefit from it and related procedures to follow.⁸²⁸ However, this measure is not applicable to domestic workers. To ensure compliance and increase transparency in procedures, the memo 2/13 released in 2020 by the Ministry of Labour requests to provide additional explanations and documentation in case a migrant worker intends to appeal a rejected application for work permit.

Regularisation was made possible by Lebanese General Security in 2020 also in case of irregular migration. According to the released guidelines, this measure is extended to nationals of the Arab countries and others who accessed the territory without necessary documentation or in case they overstayed their visa. All conditions are specified thereto, and special procedures are in place for migrant workers and their sponsor-*kafeel*, as well as for Syrians, though leaving in a legal vacuum the situation of Palestinians forced to leave Syria.⁸²⁹

⁸²⁴ United Nations Economic and Social Commission for Western Asia (2022), *Situation Report on International Migration 2021: Building Forward Better for Migrants and Refugees in the Arab region*, op. cit., p. 67.

⁸²⁵ *Ibidem*.

⁸²⁶ *Ibidem*.

⁸²⁷ Chapter 2, section 3, lett. a).

⁸²⁸ *Ibidem*, p. 77.

⁸²⁹ *Ibidem*, p. 79.

Syrians in Lebanon are currently exposed to return decision by the authorities in country, in blatant violation of the principle *non-refoulement*. This is further analysed in relation to the asylum system in country.⁸³⁰ On the other hand, during the pandemic Lebanon provided support to Lebanese abroad who opted to return to their country of origin, in compliance with the Government's COVID-19 strategy led by the Ministerial Council and the Ministry of Health.⁸³¹

Lebanon adopted the GCM and is placing efforts to achieve the targets set by the 2030 Agenda for Sustainable Development.⁸³² Indeed, the Presidency of the Council of Ministers launched in 2007 a Steering Committee that represents a multi-stakeholder platform of dialogue including the civil society organisations with the aim to protect migrant women and domestic workers. This commitment has been renewed after the adoption of the GCM.⁸³³ Other commitments pertain countering trafficking in persons and smuggling of migrants, the elimination of discrimination against women, providing alternatives to immigration detention and initiatives to foster migration and development. These aspects are analysed in the related sections in continuation. Noteworthy to mention in this context are the measures adopted to address the issues compelling Lebanese towards reducing emigration through the progressive creation of social and economic safety nets. For example, the Directorate-General of Emigrants at the Ministry of Foreign Affairs and Emigrants in Lebanon has developed a Facebook page⁸³⁴ collecting success stories of Lebanese abroad and emphasising their ties to their country of origin. Such outcomes are further analysed in the section of this study dedicated to leveraging migration as an opportunity and diaspora affairs.⁸³⁵ In the same vein, to protect family unity the Directorate-General of General Security provides the possibility to grant courtesy residence permit to all non-nationals married to Lebanese women and their children.⁸³⁶ The advantages of linking migration to development are confirmed also by the active participation of the Lebanon's Ministry of Foreign Affairs and Emigration to international

⁸³⁰ Chapter 3, section 3, par. e).

⁸³¹ United Nations Economic and Social Commission for Western Asia (2022), *Situation Report on International Migration 2021: Building Forward Better for Migrants and Refugees in the Arab region*, op. cit., p. 89.

⁸³² United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, op. cit., p. 12.

⁸³³ *Ibidem*.

⁸³⁴ https://www.facebook.com/EmigrantsDirectorate2020/?ref=page_internal.

⁸³⁵ Chapter 3, section 6.

⁸³⁶ United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, op. cit., p. 28.

dialogues and consultations, including the 2020 Abu Dhabi Dialogue through IOM,⁸³⁷ and the Global Forum on Migration and Development (GFMD).⁸³⁸ Moreover, the Ministry of Foreign Affairs and Emigrants is leading the development of a “National Strategy on Migration”,⁸³⁹ in coordination with relevant ministries and with the aim to regulate all aspect of migration, from labour migration to migrant protection. The approach adopted promote decentralisation and multi-level governance as, along with the Prime Minister’s Office, the Ministries of Labour, Interior, Defence, Justice, Health, Culture and Education are engaged in discussion with the Municipalities, the National Commission for Lebanese Women, the Central Bank and the Central Bureau of Statistics, as well as non-State actors and civil society organisations.⁸⁴⁰

As observed in literature,⁸⁴¹ currently the overall migration policy in Lebanon is influenced by the degree of enjoyment of civil of political rights by each individual that is not uniformed for all, being set around the two pillars of nationality and the right to vote as expression of participation to the political life of the nation. In the absence of a coherent centralised framework, much of the regulations are left to municipalities through administrative and executive actions that can be overruled by the central government, hence exposed to the political interplay featuring the overall governance setting in country.

Immigration in country is regulated by a visa system⁸⁴² for employment reasons that is adapted per nationality and determines multiple standards of treatment amounting to discrimination that are thoroughly examined in this study in a dedicated section.⁸⁴³ Non-nationals are admitted in country according to Legislative decree no. 10188 Decision no. 320 of 1962, that regulates cross-borders mobility through entry point.⁸⁴⁴ The national labour code set forth in 1964 (Law No.17561) rules the conditions of migrant workers, and according to its article 7 migrants domestic workers are

⁸³⁷ Abu Dhabi Dialogue Among the Asian Labour Sending and Receiving Countries (2020), available at <http://abudhabidialogue.org.ae/index.php/library?folder=147>; and ILO-African Union (2021), *Bilateral labour migration instruments – Africa and Arab States* available at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/documents/publication/wcms_831911.pdf last accessed August 2023.

⁸³⁸ Global Forum on Migration and Development (GFMD), available at <https://www.gfmd.org/> last accessed August 2023.

⁸³⁹ United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, op. cit., p. 9.

⁸⁴⁰ *Ibidem*.

⁸⁴¹ Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon* in Chr. Michelsen Institute available at <https://www.cmi.no/publications/8589-national-and-international-migration-policy-in-lebanon> last accessed August 2023.

⁸⁴² *Chapter 1*, section 3, par. a).

⁸⁴³ *Chapter 3*, section 3, par. d).

⁸⁴⁴ *Chapter 1*, section 3, par. d).

excluded from its safeguards and their labour rights remain unprotected as a consequence of Lebanon ratifying all the main related ILO conventions except the treaty No. 189 protecting domestic workers.⁸⁴⁵ Bilateral labour agreements were stipulated, including one with Syria in force from 1994 until 2014 and enabling freedom of movement between the two countries, residency rights and employment. The agreement was repealed later in 2014 when a policy subjecting Syrians to sponsorship system came into effect. Historically, Lebanese Syrian border points are four and the one in the northern region named “Anti-Mountain” is the most used for smuggling of goods, that otherwise are too expensive in Lebanon and are considered to sustain the economy of villages in the area.⁸⁴⁶

Smuggling of migrants is another issue Lebanon has been engaging in international cooperation efforts for, specifically with Cyprus. To this end, an exam of the transnational dimension of managing migration and security in country is presented, specifically tackling terrorism threats, transnational organised crime and bilateral agreements in place.

b) Terrorism, transnational organised crime and smuggling of migrants

While an assessment of the complex Lebanon terrorism dynamics⁸⁴⁷ *per se* falls out of the scope of the present study, it should be noted that some considerations are hereby presented regarding human rights implications for cross-border movements and security management. Relevant in this sense is the establishment of the Special Tribunal for Lebanon (STL). After a terrorist attack that killed 22 people including the former prime minister Rafik Hariri in 2005, Lebanon requested the United Nations the establishment of a special tribunal,⁸⁴⁸ created with Security Council Resolution 1757⁸⁴⁹ that has the peculiarity of prosecuting terrorism and its victims distinctly by applying

⁸⁴⁵ International Labour Organisation (ILO), (2011), *C189 - Domestic Workers Convention, 2011 (No. 189)*, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 last accessed August 2023.

⁸⁴⁶ Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon, op. cit.*

⁸⁴⁷ CIA (2023), *op. cit.*, lists the following groups operating in country: Abdallah Azzam Brigades; al-Aqsa Martyrs Brigade; Asbat al-Ansar; HAMAS; Hezbollah; Islamic Revolutionary Guard Corps/Qods Force; Islamic State of Iraq and ash-Sham (ISIS); al-Nusrah Front (Hay'at Tahrir al-Sham); Palestine Liberation Front; Popular Front for the Liberation of Palestine (PFLP); PFLP-General Command.

⁸⁴⁸ Special Tribunal for Lebanon (2009), *About the STL*, available at <https://www.stl-tsl.org/en/about-the-stl> last accessed August 2023.

⁸⁴⁹ United Nations Security Council (2007), *Resolution 1757 (2007)*, doc. S/RES/1757 (2007), available at <https://digitallibrary.un.org/record/600560> last accessed August 2023.

international and Lebanese criminal law and being comprised of international and Lebanese judges. To date, its mandate is set to be completed in September 2023. In the context of the present analysis, it is worth emphasising the case of the former prime minister as it was cited several times by respondents of primary data collection as one of the highest contributors for economic development linked to transnational dimension of migration, notably promoting initiatives to support education of Lebanese and the rebuilding processes after the civil war, as well as contributing to integrating Syrians in need in the labour and social fabric in Lebanon. In this sense, it should be noted that cross-border dynamics and movements between Syria and Lebanon go back in time and historically link the two countries in circular migration dynamics that increasingly contributed to the establishment of transnational networks as policy developed towards more restrictions,⁸⁵⁰ not without negative consequences and rights violations. The very recent creation of another independent subsidiary mechanism⁸⁵¹ to pursue serious crimes related to cross-border dynamics in the two countries and that resulted in several disappearances is a further confirmation of this. However, as highlighted by one of the STL Lebanese Judges,⁸⁵² as long as the newly created General Assembly mechanism represents a step forward for truth and justice regarding these heinous crimes as it enables victims of missing people to participate, it might not be as effective as it does not create obligations upon States to cooperate with its works, unlike the mechanisms created by the Security Council under Chapter VII of the United Nations Charter.⁸⁵³ An interesting fact to note in this regard is that even if among the missing people Lebanese are accounted for, detained and then gone missing during the 1975-1990 civil war, Lebanon abstained from voting this resolution, illustrating a foreign policy in favour of the primacy of good relations with Syrian regime over victims' rights.⁸⁵⁴ This risks to increase the possibility to protract a culture

⁸⁵⁰ Doräi, K., & Amer, I. (2023), *Chapter 9: Lebanese migration policy since 2011 and its role in the Syrian refugee movement in Migration Patterns Across the Mediterranean*, Cheltenham, UK: Edward Elgar Publishing available at <https://doi.org/10.4337/9781800887350.00018> last accessed August 2023.

⁸⁵¹ United Nations General Assembly (2023), *Resolution adopted by the General Assembly on 29 June 2023. Independent Institution on Missing Persons in the Syrian Arab Republic*, doc. A/RES/77/301 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/190/47/PDF/N2319047.pdf?OpenElement> last accessed August 2023.

⁸⁵² Abou Kasm A. (2023), *Quel horizon pour le mécanisme onusien relatif aux personnes disparues en Syrie ?* In *L'Humanité*, available at <https://www.humanite.fr/en-debat/syrie/quel-horizon-pour-le-mecanisme-onusien-relatif-aux-personnes-disparues-en-syrie-803543> last accessed August 2023.

⁸⁵³ *Chapter I*, section 1, par b), lett. iii.

⁸⁵⁴ *Ibidem*.

of impunity in country⁸⁵⁵ that started after Hariri case, and that adds on the existing grounds for the limited trust on institutions that was recalled above.⁸⁵⁶

On foreign policy and regarding other ongoing transnational issues, the case of the bilateral cooperation on maritime operations that Lebanon strengthened with Cyprus is another important outcome to analyse. Specifically, to tackle smuggling of migrants in the context of sea crossings taking place in the North of Lebanon, a working group was set by the two countries to combat irregular migration through joint initiatives and sharing information.⁸⁵⁷ This is part of the obligations derived from the Palermo Protocol on smuggling of migrants,⁸⁵⁸ that Lebanon has signed in 2002 and ratified in 2005. The newly launched initiative complements the bilateral efforts undertaken already in 2020 through signing an agreement between the two countries to stop departures, intercept boats attempting to reach the Cypriot shores and return them to Lebanon.⁸⁵⁹ However, these practices raise concerns in terms of violation of the principle of *non-refoulement* that are already abundantly denounced,⁸⁶⁰ specifically regarding the issues of family reunification and migrant disappearances,⁸⁶¹ and the threat to use of weapons against migrants and refugees.⁸⁶² Against this backdrop and the increasing reality of risky maritime migration by sea that impacts the two countries,⁸⁶³ the establishment of a Search and Rescue Center (MRCC) supported by

⁸⁵⁵ France 24 (2020), *Hezbollah militant sentenced to life in Lebanon's Hariri assassination case*, available at <https://www.france24.com/en/middle-east/20201211-un-backed-court-sentences-hezbollah-man-to-life-in-lebanon-s-hariri-assassination-case> last accessed August 2023.

⁸⁵⁶ Chapter 3, section 3.

⁸⁵⁷ Theodoulou N. (2023) *Cyprus and Lebanon establish group to combat illegal migration*, in *Cyprus Mail*, available at <https://cyprus-mail.com/2023/07/27/cyprus-and-lebanon-establish-group-to-combat-illegal-migration/> last accessed August 2023.

⁸⁵⁸ Chapter 1, section 2, lett c)

⁸⁵⁹ EuroMed Rights (2022), *Cyprus: Refoulements to Lebanon and Syria under scrutiny again*, available at <https://euromedrights.org/publication/cyprus-refoulements-to-lebanon-and-syria-under-scrutiny-again-2/> last accessed August 2023.

⁸⁶⁰ Council of Europe (2022), *Pushed beyond the limits Four areas for urgent action to end human rights violations at Europe's borders*, p. 23, available at <https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d> last accessed August 2023.

⁸⁶¹ European Council of Refugees and Exiles (2023), *Cyprus: Overview of the main changes since the previous report update*, available at <https://asylumineurope.org/reports/country/cyprus/overview-main-changes-previous-report-update/> last accessed August 2023.

⁸⁶² EuroMed Rights and Kisa (2022) *Input for the Special Rapporteur's report on pushback practices and their impact on the human rights of migrants and refugees, with a focus on pushbacks from Cyprus to Lebanon and Turkey*, available at https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/Joint_KISA_EuroMed_Rights_Sub_mission.pdf last accessed August 2023.

⁸⁶³ Diab JL, Jouhari I. (2023), *Analysis Conflict, Crisis, and Migration: Maritime Irregular Migration from Lebanon Since 2011* in *Friedrich Naumann Foundation for Freedom Madrid*, available at <https://www.freiheit.org/lebanon/conflict-crisis-and-crimmigration> last accessed August 2023.

Lebanon represents a promising practice and is implemented in the framework of the ongoing project in cooperation with the Government of Cyprus and the European Border and Coast Guard Agency (FRONTEX).⁸⁶⁴ As part of the project, Lebanese officials are benefitting from training and capacity building activities.⁸⁶⁵

The last instance of transnational dimension, trafficking in person, presents complexities that are examined in the following dedicated section.

c) Trafficking in persons and *Kafala*

*“Domestic workers in Lebanon remain under the inhumane kafala system”*⁸⁶⁶

°Trafficking in children, domestic workers and *kafala* are unanimously referred to by all respondents as a major issue affecting migration and security in country.

Lebanon is party to the Palermo Protocol on trafficking in persons,⁸⁶⁷ having signed this treaty in 2002 and ratified in 2005.

On the other hand, *kafala* is a separate practice and a legal institution commonly used in North Africa and the Middle East region context to facilitate the entry of a non-national mostly for employment purposes, and in some instances it might present elements that amount to exploitative practices against the Palermo Protocol provisions and obligations. Nonetheless, this represents the only means for many migrant workers to reach Lebanon in a relatively safe manner and with regular status,⁸⁶⁸ especially for those escaping lack of opportunities, abuse, violations and widespread violence in their country of origin. This was cited⁸⁶⁹ as a common practice for many women from Sri Lanka, Bangladesh and Indonesia, where the living and work conditions are much worse, so choosing to come to Lebanon in however conditions is deemed as the safest option and the only opportunity to send remittances back home.⁸⁷⁰ In this sense trafficking in persons and

⁸⁶⁴ United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, op. cit., p. 22.

⁸⁶⁵ Joint Rescue Coordination Centre (2021), *Search and Rescue training to Lebanese Officers*, available at <https://www.mod.gov.cy/mod/cjrcc.nsf/All/977D583922DAFB65C225876F0046D2DB?OpenDocument>, last accessed August 2023.

⁸⁶⁶ Interview No. 1.

⁸⁶⁷ Chapter 2, section 2, lett. d).

⁸⁶⁸ Interviews No. 3 and 4.

⁸⁶⁹ Interview No. 6.

⁸⁷⁰ Chapter 3, section 6.

kafala become closely linked in the context of Lebanon, as *kafala* may turn in trafficking in persons' cases. Therefore, they are examined jointly.

In 2011 the Law No. 164 was adopted to regulate responses to trafficking in persons and smuggling of migrants under the perspective of transnational organised crime.⁸⁷¹ However, this instrument does not contemplate *kafala* as a form of exploitative practice. The applicable norms and the overall national legal framework on this matter in Lebanon is referred to as outdated, hardly enforced⁸⁷² and could thus benefit from a review to better align with current reality and changing society.⁸⁷³ Overall, respondents mentioned corruption undermining a more effective response to this crime, and law enforcement agents are deemed to take part in this lucrative transnational business linked to trafficking in persons.

Available evidence and analysis on prosecution case-law⁸⁷⁴ shows that the crimes mostly prosecuted before the national criminal courts are cases of sexual exploitation and prostitution, a case of a Syrian involved in child begging, a case of illegal adopted and a case of labour exploitation of a Bangladeshi migrant worker. In all cases the transnational dimension of the crime is established, as well as the organised nature of conduct, involving Syria, Iraq and Ukraine and a case of a victim transported from Lebanon to the United Arab Emirates as *loci commissi delicti*, and mostly victims identified are non-nationals including Syrians, Palestinians, Jordanians and Ukrainians.⁸⁷⁵

Nevertheless, Lebanon has the adopted legislation to curb trafficking networks and is working on improving the capacity to identify the victims and those more vulnerable and exposed to such practice.⁸⁷⁶ This would address the reportedly⁸⁷⁷ issue of arresting the unidentified victims on the ground of irregular migration which is contrary to article 7 of the Palermo Protocol, confirmed in available evidence.⁸⁷⁸ The capacity of the government to perform identification of victims of

⁸⁷¹ Interview No.13.

⁸⁷² Interviews No. 11 and 13.

⁸⁷³ Interview No. 7.

⁸⁷⁴ Frangieh G. (2018), *Human Trafficking Crimes Before the Courts: In the Shadow of Prosecution*, in the *Legal Agenda* available at <https://english.legal-agenda.com/human-trafficking-crimes-before-the-courts-in-the-shadow-of-prosecution/> last accessed August 2023.

⁸⁷⁵ *Ibidem*.

⁸⁷⁶ United States Department of State (2023), *2023 Trafficking in Persons Report: Lebanon*, available at <https://www.state.gov/reports/2023-trafficking-in-persons-report/lebanon/#:~:text=Adults%20and%20children%20among%20the,this%20population's%20vulnerability%20to%20trafficking.> last accessed August 2023.

⁸⁷⁷ Interview No. 8.

⁸⁷⁸ United States Department of State (2023), *2023 Trafficking in Persons Report: Lebanon*, *op. cit.*

trafficking is limited, thus it relies on civil society and non-governmental organisation to support on this process, as well as on providing protection services.⁸⁷⁹

In the framework of the GCM regional voluntary review, Lebanon has committed to align migration management with human rights, specifically by increasing efforts to end violence and combat trafficking in persons in compliance with its national priorities.⁸⁸⁰ To this end, it adopted several reforms to the national legal system, and enhanced the cooperation between the Directorate-General of General Security and civil society organisations and other actors to provide comprehensive protection services to the victims of trafficking, that include the collaboration with the National Commission for Lebanese Women for raising awareness and with the Ministry of Social Affairs to provide shelter support, especially for migrant domestic workers more exposed to vulnerabilities.⁸⁸¹

Recently, to tackle the issue of trafficking in persons in country for the purpose of labour exploitation, the Ministry of Labour discouraged the employers from promoting the recruitment of domestic workers through social media means, framing these actions as unlawful as they encourage trafficking practices and therefore are criminalised by law and considered contrary to the prohibition of trafficking in persons practices.⁸⁸²

The category more exposed to exploitation and abuse are migrant domestic workers often neglected and their deaths not investigated for lack of evidence.⁸⁸³ According to the Lebanese labour law this category of migrant workers remains exempted and excluded from the protection of a minimum wage, limits on working hours and days off work. Though in spite Lebanon has not ratified the International Labour Organisation Convention 189 on domestic workers,⁸⁸⁴ nor the Convention 190 on violence and harassment.⁸⁸⁵ the ILO has been engaging in consultations with

⁸⁷⁹ *Ibidem*.

⁸⁸⁰ United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, *op. cit.*, p. 15.

⁸⁸¹ *Ibidem*, p. 23.

⁸⁸² United Nations Economic and Social Commission for Western Asia (2022), *Situation Report on International Migration 2021: Building Forward Better for Migrants and Refugees in the Arab region*, *op. cit.*, p. 75.

⁸⁸³ Allaw S. (2023), *A New Judicial Precedent: Charges Laid for the Death of a Neglected Domestic Worker*, in *The Legal Agenda* available at <https://english.legal-agenda.com/a-new-judicial-precedent-charges-laid-for-the-death-of-a-neglected-domestic-worker/> last accessed August 2023.

⁸⁸⁴ ILO (2011), *C189 - Domestic Workers Convention, 2011 (No. 189)*, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 last accessed August 2023.

⁸⁸⁵ ILO (2019), *C190 - Violence and Harassment Convention, 2019 (No. 190)*, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190 last accessed August 2023.

the Lebanese Ministry of Labour to explore reforms that could extend this protection to domestic migrant workers.⁸⁸⁶ Indeed, migrant domestic workers situation is currently regulated by the *kafala* system,⁸⁸⁷ a guardianship or sponsorship system that entitles governmental authorities and mandated recruitment agencies to control the relations between a sponsor, the “*kafeel*”, intending to employ migrant workers, regulating the entry, residency and stay in country conditions, as well as exit procedures. Through this institution, the sponsor has authority and responsibility over employment and living conditions of the employee, the *makful*. The EU⁸⁸⁸ has analysed this institution from the perspective of recognising this legal situation by Member States in relation to cases of international adoptions of a non-national (third-country nationals). By analogy in such cases, the EU clarified that all the safeguards provided by the CRC apply, regardless whichever EU Member States the adopted child is going to be residing.⁸⁸⁹ Likewise, the same is valid for migrant domestic workers that are protected by core of human rights. However, *kafala* cases in Lebanon appears more complex. As noted by Human Rights Watch,⁸⁹⁰ as socio-economic conditions of living in Lebanon are deteriorating, the *kafala* to which many domestic workers are subjected, presents characteristics similar to forced or bonded labour contrary to the Palermo Protocol. In this sense, it becomes apparent that its application in country raises concerns in terms of violation of the right to just and favourable conditions of work, as enshrined by article 7 ICESCR, as well as the principle of non-discrimination, besides limiting the rights to liberty of movement ex article 12 ICCPR. For these reasons, it is found to constitute “a justified platform for violations that infringes dignity”,⁸⁹¹ especially when condoning forms of illegal and forced labour. Furthermore, *kafala* presented heightened risks for many domestic workers especially during the pandemic, as because of the worsened economic crisis in country, many employers who could no longer afford to pay their employee left them without any support, undocumented and stuck in the

⁸⁸⁶ ILO (2020), *National Consultation on Kafala Reform in Lebanon*, available at https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/meetingdocument/wcms_737980.pdf last accessed August 2023.

⁸⁸⁷ Robison K. (2022), *What is the Kafala System?*, in *Council on Foreign Relations*, available at <https://www.cfr.org/backgrounder/what-kafala-system> last accessed August 2023.

⁸⁸⁸ European Union – Curia Research and Documentation Directorate (2018), *Research Note. Recognition of kafala in the Member States, in particular in connection with the right of entry and residence in Member States*, available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-09/ndr_2018-008_neutralisee-finalisee-en.pdf last accessed August 2023.

⁸⁸⁹ *Ibidem*.

⁸⁹⁰ Human Rights Watch (2022), *Lebanon’s Abusive Kafala (Sponsorship) System*, available at <https://www.hrw.org/news/2022/01/04/lebanons-abusive-kafala-sponsorship-system> last accessed August 2023.

⁸⁹¹ Interview No. 5.

country,⁸⁹² unable to return to their country, exposing them to uncertainty, risks to be arrested and overall in a position of heightened vulnerability. *Kafala* is described as a highly gendered practice affecting disproportionately women due to the nature of domestic work *per se* and most frequently performed by them in country.⁸⁹³

In addition, instances of gendered abuse are a widespread practice in country for migrant domestic workers.⁸⁹⁴ According to the United Nations,⁸⁹⁵ migrant women are confined to works in the health, education, non-governmental organisations sectors and domestic work. As the protection of the abovementioned ILO conventions does not apply, the conditions of domestic workers are concerning due to the higher risks of abuse, harassment, exploitation, gender-based violence and instances of discrimination, including in wages. In addition, regarding the gendered dimension of trafficking in persons, among the practices reported,⁸⁹⁶ one of great concern especially for women is the application process for Artist Visa⁸⁹⁷ being repurposed to cover practices of sexual exploitation and prostitution.⁸⁹⁸ Specifically, the visa (provision V) is granted for an initial one month and then extended for 6 months for non-nationals and only for one month for Arabs, creating an evident double standard of treatment. This data has been confirmed in literature,⁸⁹⁹ with the resort of artist visa concealing the exploitation in the entertainment sector.

Noteworthy are the cases of trafficking in children, whose account remain in the shadow due to the nature of this crime, and whose cases remain overall underreported and outdated in available literature, also as effect of the lack of national data collection system to document cases of violation, exploitation and abuse.⁹⁰⁰ In this context, as a result of the highlighted restrictive political and religious policy environment, Syrian displaced children and especially those unaccompanied and separated cross the borders and access Lebanon irregularly.⁹⁰¹ This

⁸⁹² Interview No. 7.

⁸⁹³ Interview No. 13.

⁸⁹⁴ Robison K. (2022), *What is the Kafala System?*, in *Council on Foreign Relations*, *op.cit.*

⁸⁹⁵ United Nations Economic and Social Commission for Western Asia (2022), *Situation Report on International Migration 2021: Building Forward Better for Migrants and Refugees in the Arab region*, *op. cit.*, p. 108.

⁸⁹⁶ Interview No. 10.

⁸⁹⁷ General Directorate for General Security, *Entry of artist in nightclubs*, available at <https://www.general-security.gov.lb/en/posts/46#:~:text=The%20general%20director%20of%20General.after%20paying%20the%20concerned%20expenses>.

⁸⁹⁸ United States Department of State (2023), *2023 Trafficking in Persons Report: Lebanon*, *op.cit.*

⁸⁹⁹ Frangieh G. (2018), *Human Trafficking Crimes Before the Courts: In the Shadow of Prosecution*, *op. cit.*

⁹⁰⁰ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon*, doc. A/HRC/WG.6/37/LBN/2, par. 69-70, available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/37/LBN/2&Lang=E> last accessed August 2023.

⁹⁰¹ Interview No. 3.

intrinsically exposes them to vulnerability, notably in case these children avoid seeking for humanitarian aid and they refrain from reporting abuse due to the fear of being detained. Moreover, reportedly⁹⁰² they are unable to attend education, they hide not to be apprehended or in any ways tracked by General Security officials, and thus they are likely to resort to negative coping mechanism, amounting to trafficking practices, such as survival sex or child labour, especially in the agriculture sector.⁹⁰³ In this context, the institutional capacity offered by the Unit for the Protection of Juveniles in Lebanon is deemed inadequate to protect these children and to cover their basic needs, due to the limited available shelters, formal foster care and adoption schemes. Furthermore, the appalling practice of recruiting and training children by armed groups to be trafficked to fight in the Syrian conflict raises additional concerns in terms of protecting children from such exploitative treatments, and it has been denounced by the United Nations human rights monitoring mechanisms.⁹⁰⁴

Trafficking in persons cases are often intersecting with other violations, including instances of discrimination due to the diverse perception and multiple standards of treatment that society assigns to each segment of the population in country.

d) Instances of discrimination

*“The sectarian system of Lebanon ingrains hierarchy based on factors beyond a person’s control such as ethnicity, which lends itself well to narrow-minded racism, and thinking of particular groups as superior”.*⁹⁰⁵

Although, according to primary data collection and most of the respondents, Lebanon is deemed as a country accustomed to hosting migrants, displaced and refugees from many countries and nationalities, a certain discontent is observed in the society around their increasing presence. This is allegedly due to the compounded crises, the difficult and worsening living conditions in country

⁹⁰² Achilli, L. (2018), *The “Good” Smuggler: The Ethics and Morals of Human Smuggling among Syrians in The ANNALS of the American Academy of Political and Social Science*, 676(1), 77–96. <https://doi.org/10.1177/0002716217746641> last accessed August 2023.

⁹⁰³ Frangieh G. (2018), *Human Trafficking Crimes Before the Courts: In the Shadow of Prosecution*, op. cit.

⁹⁰⁴ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon*, op. cit. par. 13.

⁹⁰⁵ Interview No. 4.

with poor infrastructures and limited services⁹⁰⁶ and the increase of overall poverty.⁹⁰⁷ In addition, the limited attention to Lebanese nationals' needs (cited by four out of 15 respondents), as opposed to services provided to refugees registered might contribute to creating more tension and fractures in the social fabric. Nevertheless, even if according to Lebanese presumably all Syrians displaced in Lebanon receive cash assistance, this does not always correspond to the reality,⁹⁰⁸ besides that based on UNHCR information it amounts to 20 USD per month, whereby jointly with the World Food Programme the two agencies are able to cover only the 43 per cent of the humanitarian needs for the affected population.⁹⁰⁹

Consequently, almost all (14 out of 15) respondents highlighted issues in country with relation to discrimination on the ground of nationality, religion, gender and diverse SOGIESC, classes and economic status. Such instances are aggravated as they are supposedly triggered and instigated by the instrumentalisation of crises for political purposes, whereby media plays a role in fomenting hate speech, intolerance and racism, as emphasised by ten out of 15 respondents.

Lebanon has not adopted an anti-discrimination law that lists all possible grounds of discrimination, leaving the more vulnerable groups to racial discrimination unprotected.⁹¹⁰

Overall, migration and displacement seem to influence the economic, social and political settings in Lebanon, that remain at once *de facto* a refugee host country, a country of migrants notably for the Lebanese abroad, and a host country for many migrant workers.⁹¹¹ The peculiarity of this context is that each group is treated differently, and this creates multiple standards and risks of violations, besides it threatens to amplify existing tensions in country. In this situation, Lebanese immigration (and asylum) system tends to limit the opportunities of non-nationals in country, apart from a minority of Palestinian Christians that are naturalised.⁹¹² Citizenship matters *per se* create the conditions for discrimination especially framed in the gender dimension, and therefore these two aspects are analysed as a separate (further) issue pertaining to nationality and statelessness.⁹¹³

⁹⁰⁶ Interview No. 11.

⁹⁰⁷ United Nations General Assembly (2022), *Visit to Lebanon. Report of the Special Rapporteur on extreme poverty and human rights*, Olivier De Schutter, *op. cit.*

⁹⁰⁸ Álvarez B., Abreu O. (2023), *The Syrian-Lebanese Migration Puzzle: A new EU approach?* In *The Friedrich Naumann Foundation for Freedom*, available at <https://www.freiheit.org/spain-italy-portugal-and-mediterranean-dialogue/syrian-lebanese-migration-puzzle-new-eu-approach> last accessed August 2023.

⁹⁰⁹ *Ibidem.*

⁹¹⁰ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon*, *op. cit.* par. 8.

⁹¹¹ Interviews No. 4 and 7.

⁹¹² Interview No. 4.

⁹¹³ *Chapter 3*, section 1, lett f).

Conversely, discrimination based on nationality is particularly manifested against Syrian and Palestinian refugees, against the latter especially if stateless.⁹¹⁴

According to primary data,⁹¹⁵ migrants and refugees in country are divided in groups and corresponding lesser extent of realisation and access to their rights, whether they are, hierarchically: (1) Arabs, (2) non-Arabs, (2) women between 17 and 35 years old from East-Europe and Asian countries working in the entertainment sector, (4) other migrants employed as domestic workers and thus subjected to *kafala*. Consequently, it becomes apparent that the economic status and “class” (referred by three respondents) as intended as group of individuals sharing the same rights and benefits⁹¹⁶ is found as an intersecting ground of discrimination based on the nationality, as well as religion and employment sector.⁹¹⁷

This partition is illustrative around the different standards of treatment existing in country at once. Such treatments somehow appear legitimated by the sectarian system interplay and the political will to preserve the demography in country,⁹¹⁸ that are however increasingly leading to manifestations of racism. Overall, this has the effect of slowing down if not countering the integration processes outcomes for migrants and refugees in country.

Another perspective to consider in relation to discrimination is the treatment towards Palestinian refugees that, as observed in relation to cases of naturalisation, highlights an inconsistent approach. In some cases, Palestinians are “assimilated” and integrated, others are discriminated against. Intrinsically, the question of Palestine⁹¹⁹ presents complexities associated to the *nakba*, the catastrophe in Arabic, or what the United Nations defines “the longest unresolved refugee crisis in the world”⁹²⁰ referring to the large-scale displacement and dispossession of Palestinian during the

⁹¹⁴ Interview No. 2.

⁹¹⁵ Interview No. 4.

⁹¹⁶ There is no legal definition of “class” in international law, whereby the term is most commonly used to indicate a “class action” when group of individuals belonging to the same group undertake jointly a legal action. One definition could be: “A subdivision of a larger group of people who enjoy the same rights and benefits according to law as they belong to a particular group or category. Example- people belonging to a particular group who enjoy certain specified benefits like children, women, aged people etc, people who have suffered damages from a common cause or accident and are making claims are said to belong to the same class.” Cfr. Legal Explanations (2023), *Class definition and legal meaning*, available at <https://legal-explanations.com/definition/class/> last accessed August 2023.

⁹¹⁷ Interview No. 3.

⁹¹⁸ Interview No. 15.

⁹¹⁹ United Nations (2023), *The question of Palestine*, available at <https://www.un.org/unispal/about-the-nakba/> last accessed August 2023.

⁹²⁰ United Nations (2023), *UN marks 75 years since displacement of 700,000 Palestinians*, available at <https://news.un.org/en/story/2023/05/1136662> last accessed August 2023.

1948 Arab-Israel war. According to existing literature,⁹²¹ the situation of Palestinians is first impacted by the lack of formal citizenship. At the same time, as argued⁹²² the international measures for asylum are by definition temporary and inadequate for situation of protracted displacement. The definition of refugee according to the CSR⁹²³ is not applicable to many, making necessary the development of an operating one by the UN mandated agency, UNRWA:⁹²⁴

“persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.”

Lebanon endorsed the League of Arab States Casablanca Protocol of 1965 that refers to “Palestinians” rather than Palestinian refugees with reservation.⁹²⁵ Both instrument’ definition implies the right to protection by the host State, including the safeguards provided by the principle of *non-refoulement*. However, Palestinians in Lebanon *de facto* suffer from legal restrictions⁹²⁶ in accessing their civil rights including nationality, naturalisation and family reunification, as well as socio-economic rights, such as employment, property, housing, education and health. As Lebanon supports a non-integration policy by virtue of the 1989 Taef agreement, whereby *tawteen* or non-naturalisation is opposed and backed by Palestinians⁹²⁷ on the ground that it contravenes their right to return.⁹²⁸ However, in light of the highlighted sectarian balance featuring the political setting and decision-making, in 1994 the prime minister Hariri adopted a naturalisation decree in favour of Christian Palestinians, deemed and aimed to keep the power balance in Lebanon.⁹²⁹ Later in 2001, a law excluding Palestinians from ownership and registration of property made impossible also to transmit real estate to their heirs.⁹³⁰ It emerges that Palestinians in Lebanon, that are divided

⁹²¹ Khalil A. (2009), *Palestinian Refugees in Arab States: A rights-based approach*, in *CARIM Research Report*. Robert Schuman Centre for Advanced Studies, available at https://cadmus.eui.eu/bitstream/handle/1814/10792/CARIM_RR_2009_08REV.pdf last accessed August 2023.

⁹²² *Ibidem*.

⁹²³ *Chapter I*, section 1, lett. b) par. i.

⁹²⁴ United Nations Relief and Works Agency for Palestine Refugees in the Near East, *Palestine Refugees*, in <https://www.unrwa.org/palestine-refugees> last accessed August 2023.

⁹²⁵ Khalil A. (2009), *Palestinian Refugees in Arab States: A rights-based approach*, *op. cit.*

⁹²⁶ Citino N., Martín Gil A., Norman K. P. (2023), *Generations of Palestinian Refugees Face Protracted Displacement and Dispossession in Migration Policy Institute – Migration Information Source*, available at <https://www.migrationpolicy.org/article/palestinian-refugees-dispossession> last accessed August 2023.

⁹²⁷ Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon*, *op.cit.*

⁹²⁸ *Chapter I*, section 3, par. f).

⁹²⁹ Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon*, *op.cit.*

⁹³⁰ *Ibidem*.

in registered with UNRWA, with legal Lebanese identity documents and not recognised, are hosted in country but unable to integrate in the society, determining a threat to social and political stability. Being their right to legal identity⁹³¹ compromised, their access to residence, nationality and family unity become also undermined, with statelessness constituting a further challenge of instability and insecurity in Lebanon.⁹³²

Primary data collection suggests that Palestinian workers employed in the formal economy, reportedly suffer from discriminatory treatment at work, specifically in high-profile international environments.⁹³³ In this context, the State comes across as providing ineffective, “bipolar” responses and reception to Palestinians in country, that is limiting their right to freedom of movement, especially those living in the camps, leaving them with the inability to move from these settling nor leave the country. Moreover, for some of them allegedly the conditions of living are precarious and segregated in specific areas, exposing them to the increasing likelihood to be further discriminated against the CERD standards (specifically article 3).⁹³⁴ Conversely, Palestinians with more economic means for self-sufficiency usually live outside the camps in the main Lebanese cities. Unlike the other displaced populations such as Iraqis, Sudanese, Yemeni crossing Lebanon, after having been expelled from Jordan in 1970-71, Palestinians present the peculiarity of moving “in communities”, rather than families or individuals,⁹³⁵ which could either have positive effects in their integration in society, or rather creating segregation outcomes. They mostly settled in the capital Beirut, as well as in Beqaa region and Southern Lebanon. Anecdotal assumptions suggest that they might have paid monetary incentives to Lebanese political leaders in order to obtain the authorisation to stay. In turn, Palestinians settlement is deemed to have served the political purpose of maintaining sectarian and power dynamics, to balance their presence with Christians, especially Armenians in country, and overall perpetuate the fragmentation in the society.⁹³⁶

On the other hand, for both Palestinians and Syrians restricted movements are often established, including preventing to access to some areas, neighbourhood and villages and imposing curfews based on their nationality,⁹³⁷ which is another unjustified discriminatory practice.

⁹³¹ *Chapter 1*, section 1, lett. b) par. ii.

⁹³² Khalil A. (2009), *Palestinian Refugees in Arab States: A rights-based approach*, *op. cit.*

⁹³³ Interview No. 9.

⁹³⁴ Interview No. 9.

⁹³⁵ Interview No. 14.

⁹³⁶ Interview No. 14.

⁹³⁷ Interview No. 10.

*“There is a strong propaganda against the Syrian refugees in country. You might have noticed some flyers in the street expressing opinions and extremist views. Media plays a big role in influencing those, specifically two TV stations are fomenting racism against Syrians in Lebanon, that are blamed for taking jobs away from Lebanese.”*⁹³⁸

Instances of discrimination against Syrians are widely reported in the primary data collected for this study and deemed⁹³⁹ as an expression of general discontent about the overall State response to address ongoing multiple crises in country. Manifestations of discrimination and racism against Syrians in the host society are on the rise and contrary to CERD, to which Lebanon is State party. In some instances, such actions amount to violent extremism in particular through messages conveyed by the media, that plays a prominent role in influencing public opinion.⁹⁴⁰ Indeed, media is believed to expose Syrians in Lebanon to risks and threats from the Lebanese community itself.⁹⁴¹

Accordingly, even before the conflict erupted in 2011 many Syrians were already living and working in Lebanon,⁹⁴² doing all the kinds of “3D works” (dirty, dangerous and demanding),⁹⁴³ and that still continues to be the case. What seems to have changed compared to before the conflict in Syria is that some of them are now registered with the UNHCR.⁹⁴⁴ Discrimination against Syrians seems to be rooted before, in 1999 when employers in Lebanon used to treat them relatively inhumanely and call them the “the green guys” (from the raincoats they were wearing) or *Sukleen*⁹⁴⁵ (from the name of the company) where most of them were employed under the Hariri administration to support garbage management. The terrorist attack that killed former prime minister Hariri created a divide and an increase in discriminatory manifestation against Syrians that seem to continue up until now.⁹⁴⁶ This is also a reflection of the current level of wage that is

⁹³⁸ Interview No. 14.

⁹³⁹ Interview No. 9.

⁹⁴⁰ Interviews No. 2 and 14.

⁹⁴¹ Interview No. 14.

⁹⁴² Interview No. 14.

⁹⁴³ Interview No. 6.

⁹⁴⁴ Interview No. 6.

⁹⁴⁵ Kreidy C. (2022), *Unpacking solid waste management policies in Lebanon: Public policies based on power-sharing politics rather than evidence-based decision-making*, in the Arab Reform Initiative, available at <https://www.arab-reform.net/publication/unpacking-solid-waste-management-policies-in-lebanon-public-policies-based-on-power-sharing-politics-rather-than-evidence-based-decision-making/> last accessed August 2023.

⁹⁴⁶ Interview No. 6.

lower for Syrian employees and more convenient for Lebanese employers, as well as a political move towards the EU to position Lebanon as strategic partner that contains the outflow movements of refugees.⁹⁴⁷ To this end, the relations between Lebanon and the EU are examined in a dedicated section of this study.⁹⁴⁸

However, it can be said the Syrian refugees manage to integrate to a limited extent in the work and social environments in Lebanon, mostly resorting to the informal economy and in the construction sector. The context where discrimination becomes more visible seems the public institutions, mostly health and education (for example, children at school), where Syrians endure more discrimination and limited accessibility to essential services, mirroring the societal attitude towards them.⁹⁴⁹

Migrant workers from other nationalities (non-Arab) are discriminated as an effect of their work and living conditions in Lebanon,⁹⁵⁰ in some cases alarming due to the lack of access to basic services.⁹⁵¹ They are frequently stopped for checks by the police, and if undocumented they are arrested and placed in detention premises managed by the Directorate General for General Security, often without an assessment of their conditions of vulnerability.⁹⁵² Migrant domestic workers subjected to control as part of the *kafala* system and domestic workers,⁹⁵³ also face manifestation of discrimination in the society, as a consequence of their limited freedoms and unequal labour rights. In some instances, discrimination against other migrant workers, especially from Ethiopia, Nigeria and the Philippines turns to racism, and as result of them being treated as commodities they often receive undignified treatment with limited considerations are exposed to violence.⁹⁵⁴

More recently, an emerging incidence is reportedly⁹⁵⁵ increasing regarding discrimination against people with diverse SOGIESC,⁹⁵⁶ specifically in relation the LGBTQI (Lesbian, Gay, Bisexual,

⁹⁴⁷ Interview No. 6.

⁹⁴⁸ *Chapter 3*, section 5.

⁹⁴⁹ Interview No. 9.

⁹⁵⁰ Lebanese Republic Central Administration of Statistics (CAS); International Labour Organization (ILO); European Union (EU) (2020), *Labour Force and Household Living Conditions Survey 2018-2019 Lebanon, Beirut*, available at <http://www.cas.gov.lb/images/Publications/Labour%20Force%20and%20Household%20Living%20Conditions%20Survey%202018-2019.pdf> last accessed August 2023.

⁹⁵¹ Interviews No. 9 and 14

⁹⁵² Interview No. 14.

⁹⁵³ Interview No. 12.

⁹⁵⁴ Interviews No. 10 and 15.

⁹⁵⁵ Interview No. 5.

⁹⁵⁶ *Chapter 1*, section 3, lett. b); *Chapter 2*, section 2, lett. d).

Transgender, Queer and Intersex) group. Human Rights Watch⁹⁵⁷ reports incidents of incitement to violence against this group by religious leaders, bans of events organised around gender and sexuality, accompanied by proposals for legislation criminalising same-sex relations as framed as promoting homosexuality. Likewise, available evidence reports⁹⁵⁸ that since 2017 Lebanese security forces have repeatedly interfered in events regarding gender and sexuality, in spite Lebanese jurisprudence shows a contrary orientation to convict gay and transgender people for conducts contrary to article 534 of the penal code that criminalises “any sexual intercourse contrary to the order of nature”.

“Gender is definitely an issue in Lebanon, in terms of salary and access to opportunities”⁹⁵⁹

This adds on the already existing instances of discrimination based on gender,⁹⁶⁰ for which a dedicated legislation has not been developed yet, besides the adopted national strategy for women 2021-2021.⁹⁶¹ However, evidence confirms⁹⁶² that Lebanese women in country feature the lowest participation in labour in the world accounting for the 26 per cent of the total population in the Mashreq region⁹⁶³ and are unequally present in political leadership roles, compared to men. The United Nations human rights monitoring mechanisms have stressed the importance of increasing the evidence base on the situation of women in country by establishing a data collection system, that also gathers data on cases of gender-based violence, abusive practices in the workplace and forced marriage for migrant and refugee women and girls. This is particularly important, especially

⁹⁵⁷ Younes R. (2023) *Violent Assault on Drag Event in Lebanon* in *Human Rights Watch – Lebanon*, available at <https://www.hrw.org/news/2023/08/25/violent-assault-drag-event-lebanon> last accessed August 2023.

⁹⁵⁸ Coalition to Defend Freedom of Expression (2023), *Lebanon: Attack on Freedoms Targets LGBTI People. Repressive Legislation; Unlawful Crackdown in The Legal Agenda*, available at <https://english.legal-agenda.com/lebanon-attack-on-freedoms-targets-lgbti-people-repressive-legislation-unlawful-crackdown/> last accessed September 2023.

⁹⁵⁹ Interview No. 8.

⁹⁶⁰ Interview No. 7.

⁹⁶¹ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon*, *op. cit.* par. 59-64.

⁹⁶² Skulte-Ouaiss J., Mourad J. G. (2023), *CHAPTER 2 COVID-19: A Threat to Lebanese Women’s Precarious Condition*. in R. Stephan (Ed.), *COVID and Gender in the Middle East* (pp. 28-47). New York, USA: University of Texas Press. <https://doi.org/10.7560/326527-006> last accessed August 2023.

⁹⁶³ World Bank (2023), *Second State of the Mashreq Women Report: “Who Cares?” Care Work and Women’s Labor Market Outcomes in Iraq, Jordan and Lebanon*, available at <https://www.worldbank.org/en/country/jordan/publication/second-state-of-the-mashreq-women-report-who-cares-care-work-and-women-s-labor-market-outcomes-in-iraq-jordan-and-lebanon> last accessed August 2023.

for migrant women in country that are heavily affected by the applicable regulation of citizenship, preventing them to confer the Lebanese nationality to their children, thus creating conditions of multiple and multi-level violations, as extending to their family members that are left without legal safety. Other forms of discrimination observed in country relate to the unequal level of wage, that for migrant women is lower than the average for nationals.⁹⁶⁴

The overall worsening of the crises created an anti-refugee sentiment that often resulted in violent actions against refugee communities in country,⁹⁶⁵ requiring a necessary reflection on what rights and principles provide protection to forced displaced and how they are applied in Lebanon.

e) The principle of *non-refoulement* and (non) access to asylum

Despite the large segment of refugee comprising the overall population in country, Lebanon is rather considered as a transit country, with three respondents out of the total 15 referring to it as such. A smaller percentage of total respondents (30%) raised the issue of Lebanon being a “no asylum” country, based on a non-harmonised refugee policy scattered across municipalities management. The lack of a comprehensive national legal framework in combination with the insufficient integration measures accentuate the temporary character of Lebanon response to displacement as refugees host country that highlights the need to shift towards long-term solutions for sharpened stability. The dire situation faced by Syrians forced displaced is compounded by the growing anti-refugee sentiment promoted by media and political leaders that associate their presence in country as a security threat, referred in literature with the meaningful expression “crimmigration”.⁹⁶⁶ Given its background and history with displacement matters, Lebanon has a long tradition of promoting migrant and refugees’ rights, having also supported the creation of the United Nations Refugee agency.⁹⁶⁷ The national legal framework on asylum is set forth by article 26 of the Law on Foreigners of 1962, regulating the status, rights and duties of non-nationals in country and referring to the position of political asylum for committing crimes followed by a

⁹⁶⁴ Interview No. 8.

⁹⁶⁵ Interview No. 10.

⁹⁶⁶ Diab J. L. (2023), *On Prosecution, Persecution and Protection: Unpacking Anti-Refugee Narratives, Kinopolitics and Selective Outrage in Lebanon*, in *Refugee Law Initiative Blog on Refugee Law and Forced Migration* available at <https://rli.blogs.sas.ac.uk/2023/05/16/on-prosecution-persecution-and-protection-unpacking-anti-refugee-narratives-kinopolitics-and-selective-outrage-in-lebanon/#more-2671> last accessed August 2023.

⁹⁶⁷ Kheshen N. (2022), *Lebanon’s Refugee and Asylum Legal Framework*, in *The Tahir Institute of Middle East* available at <https://timep.org/2022/12/08/lebanons-refugee-and-asylum-legal-framework/> last accessed August 2023.

conviction by non-Lebanese authorities that threatens the life and freedom of the convicted.⁹⁶⁸ Article 27 of the same instrument confers the Committee of Asylum discretionary powers to decide on the asylum case. Nevertheless, ever since the provision is in force in history only in one instance the asylum was granted *de jure*.⁹⁶⁹

In light of the Palestinian displacement experience, as of 2011 the Syrian refugee crisis in Lebanon was dealt with differently, and by virtue of the 1994 open border policy initially Syrians displaced were instructed by the Lebanese authorities to register with UNHCR. Indeed, in 2003 a Memorandum of Understanding with the United Nations Refugee Agency enacted the access for forced displaced to “international cover and humanitarian assistance”, assimilating them to holding the status of refugees.⁹⁷⁰ Although Lebanon is not party to the CSR, it is still subjected to the customary international norm prohibiting *refoulement* protecting forced displaced safety, in compliance with the primacy of international standards enshrined by the Lebanese Constitution and the cited Law on Foreigners (article 2). Nevertheless, the registration programme with UNHCR was subsequently halted in 2015⁹⁷¹ and Syrians that are referred to as *nazihun* or displaced are indeed considered “temporarily displaced”, rather than refugees.⁹⁷² In addition, as of 2019 a sign-up process was set up for Syrians to express preference and benefit from the return alternative.⁹⁷³ Returns of Syrians started to be performed raising concerns around whether the process followed a genuine *voluntary* decision by returnees,⁹⁷⁴ as well as their compliance with the right to return as an entitlement and not an obligation. Nonetheless, this measure aligns with the overall refugee policy (and position) adopted by Lebanon not to accept refugee camps,⁹⁷⁵ that appears highly influenced by the political interplay preventing to officially admit refugees and

⁹⁶⁸ Available at <https://www.ilo.org/dyn/natlex/docs/SERIAL/39234/97115/F1369890137/LBN-39234.pdf> last accessed August 2023.

⁹⁶⁹ Kheshen N. (2022), *Lebanon's Refugee and Asylum Legal Framework*, *op. cit.*

⁹⁷⁰ Ivanov, D. V., & Pchelitseva, V. V. (2023). *Durable Solution to the Problem of Externally Displaced Persons from the Syrian Arab Republic in OIC Member States: Legal Obligations and International Cooperation with UNHCR, EU and OIC* in *European Journal of Migration and Law*, 25(1), pp. 31-53. <https://doi.org/10.1163/15718166-12340143> last accessed August 2023.

⁹⁷¹ *Ibidem*.

⁹⁷² Janmyr M. (2017), *No Country of Asylum: 'Legitimizing' Lebanon's Rejection of the 1951 Refugee Convention*, in *International Journal of Refugee Law*, Volume 29, Issue 3, pp. 438–465, <https://doi.org/10.1093/ijrl/eex026> last accessed August 2023.

⁹⁷³ Kheshen N. (2022), *Lebanon's Refugee and Asylum Legal Framework*, *op. cit.*

⁹⁷⁴ Fakhoury T., Ozkul D. (2019) *Syrian refugees' return from Lebanon*, in *Forced Migration Review No. 62*, available at <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/return/fakhoury-ozkul.pdf> last accessed August 2023.

⁹⁷⁵ Sanyal R. (2017), *A no-camp policy: Interrogating informal settlements in Lebanon*, in *Geoforum*, Volume 84, pp. 117-125, <https://doi.org/10.1016/j.geoforum.2017.06.011> last accessed August 2023.

camps in country.⁹⁷⁶ The situation escalated when as of 2023 Lebanese armed forces started to forcibly return Syrians following increasing raid and arrests,⁹⁷⁷ a practice manifestly contrary to the principle of *non-refoulement*⁹⁷⁸ that exposes Syrians to risks for their personal integrity and violations of rights. Such practices have been widely contested by international actors,⁹⁷⁹ discouraging summary pushbacks at the border and return operations without safeguards.⁹⁸⁰ Against this background, reportedly the Ministry of Social Affairs reassured that for those who qualify as refugees according to UNHCR data no returns are being performed.⁹⁸¹

The (non) asylum system created in Lebanon responds to the priority of maintaining the sectarian balance in country that influences Lebanon's applicable legal framework, as well as migration and security management, including in the transnational dimension. In this sense, the National Pact of 1943 and the subsequent arrival of Palestinian refugees in 1948 appear as crucial in defining the refugee response in country.⁹⁸² Despite participation to the political life is excluded, refugees acquire a peculiar role in Lebanon influencing power balance in political matters. However, they are still affected by the absence of integration prospects as a consequence of the non-integration policy that subject the issue of residency right to the sponsorship system. This results in the presence of more than 80 per cent of Syrians with irregular status in country,⁹⁸³ as the waiver for residency permit requests is applied to Syrians registered with UNHCR prior to 2015 only. Therefore, the realisation of basic rights such as freedom of movement, liberty and security, birth and civil status registration, and adequate standards of living is heavily impacted, including undermining the access to employment.⁹⁸⁴

The increasing number of refugees in country appears to place a burden on public institutions that are already overloaded and hampered with limited resources as the effect of the multiple crises,

⁹⁷⁶ Interviews No. 6 and 13.

⁹⁷⁷ Kheshen N., Safi M., (2023), *Nightmare Realized: Syrians Face Mass Forced Deportations from Lebanon in The Tahir Institute for Middle East Policy* available at <https://timep.org/2023/05/24/nightmare-realized-syrians-face-mass-forced-deportations-from-lebanon/> last accessed August 2023.

⁹⁷⁸ *Chapter I*, section 1, lett b) par. ii.

⁹⁷⁹ Human Rights Watch (2023), *Lebanon: Armed Forces Summarily Deporting Syrians*, available at <https://www.hrw.org/news/2023/07/05/lebanon-armed-forces-summarily-deporting-syrians> last accessed August 2023.

⁹⁸⁰ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon, op. cit.* par. 86.

⁹⁸¹ Sewell A., Chehayeb K. (2023), *Syrian refugees fearful as Lebanon steps up deportations* in *AP News* available at <https://apnews.com/article/lebanon-refugees-syria-arrests-deportations-356d55f1412f830b6521180c5390a869> last accessed August 2023.

⁹⁸² Interview No. 4.

⁹⁸³ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon, op. cit.* par. 31.

⁹⁸⁴ *Ibidem*.

notably the health and education systems.⁹⁸⁵ Hence, this has been compounded by the increased needs and consequence reliance on humanitarian actors and funds to cover population needs.⁹⁸⁶

A last observation in relation to rights and principles compromised by the situation of overlapping crises concerns the lack of fulfilment of certain rights particularly affecting displaced population and closely linked with their personal civil status in Lebanon, that are herein examined.

f) Issues related to legal identity and statelessness

Closely linked to the situation of the asylum system in country, issues related to legal identity as closely linked and as proof of nationality, citizenship and statelessness affect the conditions of many refugees and displaced in country, as well as border and migration management as whole.⁹⁸⁷ Moreover, half of the respondents (7 out of 15) cited the influence of sectarianism and demographic concerns shaping migration and security in county.

Based on article 6 of the Constitution, *ius sanguinis* is applied to confer citizenship to new-borns, that can only follow the nationality of the father.⁹⁸⁸ This is regulated in article 1 of the Decree No. 15 of 1925, amended by Law No. 11 of 1960. Article 5 of the Decree specifies that a non-nationals woman married to a Lebanese man can acquire nationality after one year, which preserves family unity. Moreover, the government does not object the conferment of a second nationality, which is beneficial for those Lebanese wishing to move abroad and yet maintain ties with their country of origin. This is reflected in measures adopted by the Ministry of Foreign Affairs recalled above,⁹⁸⁹ that are examined further with regards to diaspora and leveraging migration as an opportunity.⁹⁹⁰ According to available evidence,⁹⁹¹ there is no official data on the presence of stateless persons in Lebanon. They are however reported to face restrictions in mobility and accessing public services, including education and healthcare and they encounter challenges in finding employment because of their lack of proof of legal identity.

Based on primary data collection, Lebanon does not offer pathways to acquire citizenship for migrants, unless it is conferred by *ius sanguinis*, namely exclusively by the Lebanese father. This

⁹⁸⁵ Interview No. 10.

⁹⁸⁶ Interview No. 10.

⁹⁸⁷ Interview No. 7.

⁹⁸⁸ CIA (2023), *The World Factbook – Lebanon*, *op. cit.*

⁹⁸⁹ *Chapter 3*, section 1 lett a).

⁹⁹⁰ *Chapter 3*, section 6.

⁹⁹¹ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon*, *op. cit.* parr. 89-90.

results in situations of legal uncertainty for many of the migrants unable to proof their legal identity, finding themselves stateless and thus exposed to heightened vulnerability and violations of their rights. This restrictive regulatory framework regarding citizenship, accompanied by “selective naturalisations” as recalled above⁹⁹² is reportedly⁹⁹³ a reflection of a political strategy not to alter the demographics in country to maintain the sectarian balance of power in country. In this sense, it is noteworthy that Palestinian refugees are referred as the most affected by statelessness.⁹⁹⁴ This is corroborated by available sources,⁹⁹⁵ that refer to tens of thousands of persons are stateless in Lebanon, including many Palestinian refugees and their descendants, Syrian Kurds denaturalized in Syria in 1962, children born to Lebanese women married to foreign or stateless men. Most children born to Syrian refugees are also deprived of nationality, as well as Lebanese children whose births are unregistered. Reportedly, situations of statelessness for children expose them to exploitation and abuse, besides affecting inheritance rights.⁹⁹⁶

Against this background, in the case of migrant workers, a good practice to cite is that Lebanese authorities enacted the registration of non-nationals born in country from migrant domestic workers, in conditions of equality with Lebanese born ones.⁹⁹⁷ This process requires the submission of a draft birth certificate to the Directorate-General of Personal Status.⁹⁹⁸ Likewise, in compliance with the obligation to prohibit statelessness, any babies born from parents of unknown origin in the Lebanese territory are *de facto* Lebanese nationals.⁹⁹⁹

An in-depth understanding of migration and displaced frameworks in Lebanon cannot prescind from situating the country in the regional setting, which is prone to conflict and instability affecting the weakened rule of law and limited capacity to respond in Lebanon.

⁹⁹² Chapter 3, section 1, lett d).

⁹⁹³ Interview No. 2.

⁹⁹⁴ Interview No. 1.

⁹⁹⁵ *Ibidem*.

⁹⁹⁶ Van Esveld B. (2023), *Lebanon Rejects Civil Marriages, Puts Children at Risk* in *Human Rights Watch* available at <https://www.hrw.org/news/2023/02/07/lebanon-rejects-civil-marriages-puts-children-risk> last accessed August 2023.

⁹⁹⁷ United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, *op. cit.*, p. 20.

⁹⁹⁸ *Ibidem*.

⁹⁹⁹ *Ibidem*.

4. The impact of instability in the region: migration as a challenge

*“Instability in the region has huge impact. It’s a double-edged sword affecting the internal and international stability.”*¹⁰⁰⁰

All respondents reported instability in the region as heavily impacting the situation in country and, looking at Lebanon under the perspective of a transit country, it is creating the conditions for further migration and displacement. In light of the considerations exposed thus far, specifically under the angle of a host country and the situation of migrants and refugees, Lebanon is confronted with a climate of legal uncertainty due to the limited State capacity to respond to emerging challenges and crises, coupled with the likelihood of infringements and violations of basic rights and principles. These become apparent especially in the context of labour migration and the *kafala* system, transnational organised crime, including smuggling of migrants, trafficking in persons, violations to the principles of *non-refoulement* and non-discrimination, and lastly the issues related to nationality, citizenship and statelessness. This certainly translates into challenged security that undermines legal safety and exposes individuals to exacerbated vulnerabilities in relation to the limited access to vital institutions and realisation of their rights. The situation is also compounded by the ongoing multiple crises in Lebanon, disproportionately affecting the different segments of the overall population, as illustrated above. Furthermore, analysing Lebanon as a *de facto* refugee country and under the perspective of migrant and refugee population in country, instability is created by the overall difficult conditions endured in country, that find itself strained in terms of limited resources, affected economy, aggravated poverty leading to exclusion and inequality.¹⁰⁰¹ In addition, the stasis of societal balance has the effect of increasing existing tensions within the host communities,¹⁰⁰² and that risks in itself to create further fractures in the social fabric conducive to a fertile ground for harm, marginalisation, radicalisation and violent extremism.

¹⁰⁰⁰ Interview No. 6.

¹⁰⁰¹ Human Rights Watch (2023), *Lebanon: Electricity Crisis Exacerbates Poverty, Inequality*, available at <https://www.hrw.org/news/2023/03/09/lebanon-electricity-crisis-exacerbates-poverty-inequality> last accessed August 2023.

¹⁰⁰² Interview No. 3.

Moreover, internal instability in Lebanon itself, specifically from 1970s to the 1980s, is deemed as a determinant factor creating the conditions for the “post-war contractor bourgeoisie”¹⁰⁰³ or an élite governance setting in country.¹⁰⁰⁴

*“The economic collapse and poverty in addition to conflicts and political situation that unstable affected the life of Lebanese people in all aspects, which led them to be more offensive against foreigners”*¹⁰⁰⁵

Instability in the region affecting Lebanon can be assessed under two angles: the external perspective and the internal response. The first one concerns the two countries in turmoil that share border with Lebanon, namely Israel and Syria, with the latter witnessing increasing cross-border displacement. The second one concerns Lebanon’s responsibilities to protect migrants and refugees that are hosted in country and that are fulfilled with a rather flawed response, also due to the heavy reliance to external actors’ aid and resources. Limited efforts to adapt and develop migration (and asylum) policies are negatively affecting migration and security management, resulting in violations of rights. However, faced with multiple crises, the ideal of Lebanon being able to comply to the governance objectives remains a political imaginary.¹⁰⁰⁶ Against this background, as highlighted above and since there are multi-levels of coexistence of migrants and refugees that however form integral part of the society, communities have organised to respond to their members’ needs, upholding a bottom-up approach to challenges encountered in country in a way that underscores the overall resilience of its population. In this sense, the cases cited in *Chapter 2* on responding to terrorist attacks,¹⁰⁰⁷ the informal arrangements for social protection schemes,¹⁰⁰⁸ and contribution through Lebanese diaspora abroad are pertinent and successful examples and a proof of the Lebanese flexibility to adapt to shocks and crises.

In primary data collection the neighbouring Türkiye and Jordan are cited¹⁰⁰⁹ as countries enforcing good practices in dealing with Syrian refugees, by assisting them systematically and in a structured

¹⁰⁰³ Interview No. 4.

¹⁰⁰⁴ Baumann H. (2023) Bringing the State and Political Economy Back in: Consociationalism and Crisis in Lebanon, Nationalism and Ethnic Politics, DOI: [10.1080/13537113.2023.2188655](https://doi.org/10.1080/13537113.2023.2188655) last accessed August 2023.

¹⁰⁰⁵ Interview No. 10.

¹⁰⁰⁶ Interview No. 15.

¹⁰⁰⁷ *Chapter 2*, section 1, lett a).

¹⁰⁰⁸ *Chapter 2*, section 4, lett. d).

¹⁰⁰⁹ Interview No. 5.

fashion. Their response foresees measures to host displaced in camps through temporary accommodation and settlements. In spite this is not a solution for displacement in the long-term, their approach is preferred as it provides an opportunity to mitigate the risks related to the crisis, reducing its scope and enhancing the damage control.

Instead, in Lebanon, and especially in the capital, increasing tension is observed in Palestinian refugee camps.¹⁰¹⁰ Likewise, Syrian displaced population is the largest in country and their presence contributed to determine upheavals in the demographic aspects as well as in sectors such as education, healthcare and the overall labour market, that however are not accompanied with sectoral or urban policies that might contribute to mitigate existing tensions.

Thus, it emerges an overall picture of Lebanon dismissing its obligations to provide a management strategy and measures to support its nationals and the integration of non-nationals, failing at boosting development outcomes with structural interventions, ultimately compromising the social contract. These results mainly from the political inaction on migration and security management, combined with an insufficient leveraging of mobility opportunities throughout the different administrations that succeeded one other, which is also recognised as having aggravated the existing and ongoing crises.¹⁰¹¹

Indeed, at the same time instability in the region and the internal political and financial precariousness are also acknowledged as drivers for outward migration and displacement, prompting Lebanese to leave the country in search of better opportunities abroad.¹⁰¹² Gulf countries and the EU are reportedly the most aspired destinations.¹⁰¹³

Conversely, an interesting insight provided by scholars¹⁰¹⁴ argues that in its attempts to pursue humanitarian outcomes, through its “hybrid governance” the EU is exacerbating tensions within the communities in Lebanon as a result of the “from below” approach. Accordingly, leveraging localisation¹⁰¹⁵ the EU engages in negotiations with State authorities and municipalities, implementing partners on the ground and the civil society organisations is rather grounded on a compromise that responds to the imperative of containing uncontrolled movements to the EU

¹⁰¹⁰ Interview No. 9.

¹⁰¹¹ Interview No. 5.

¹⁰¹² Interview No. 9.

¹⁰¹³ Interview No. 11.

¹⁰¹⁴ Cooper, L., & Nimer, M. (2023). *Generating instability? The impact of the EU's hybrid migration governance in Turkey, Lebanon and Jordan* in *Governance*, 1–XXX available at <https://doi.org/10.1111/gove.12801> last accessed August 2023.

¹⁰¹⁵ *Chapter 2*, section 5.

territory, in accordance with the EU policy and its overall externalisation of migration management. In this way, the cooperation with the EU appears as a badly concealed top-down imposition of questionable legitimacy, that is however not attentive enough to the local contexts and dynamics. This has proved to generate instability in the region and in Lebanon alike. To this end, a detailed exam of the constitutive elements of the relations between Lebanon and the EU is presented herein.

5. Lebanon as peripheral actor in the Euro-Mediterranean

*“Official Lebanese attitude can be described as “we help Syrians coming here and doing EU a favour to keep them in Lebanon.” It is true partially, and Lebanese gain from having the Syrians in country.”*¹⁰¹⁶

When it comes to relations with the EU, primary data underscores the reliance on humanitarian aid and funding from abroad (including the EU and diaspora contributions), amounting to a key element influencing Lebanon’s external relations and engagements at international level regarding the Euro-Mediterranean space.

The bilateral relations between Lebanon and the EU are grounded on two main instruments. The first one, the European Neighbourhood Policy (ENP)¹⁰¹⁷ constitutes the regional framework consisting of 16 partners,¹⁰¹⁸ and is aimed to foster stability, security and prosperity in the region neighbouring the EU and it includes Lebanon in its southern dimension through the “Renewed partnership with Southern Neighbourhood – A new Agenda for the Mediterranean”.¹⁰¹⁹ Initiatives in this framework are centred around the three priorities of economic development and stabilisation, security and migration and mobility. The second, a bilateral agreement with Lebanon,

¹⁰¹⁶ Interview No. 6.

¹⁰¹⁷ European Commission (2021), *European Neighbourhood Policy*, available at https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en last accessed August 2023.

¹⁰¹⁸ Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, Syria, Palestine, Tunisia, Ukraine.

¹⁰¹⁹ European Union (2021), *Renewed partnership with the Southern Neighbourhood - A new agenda for the Mediterranean*, doc. JOIN(2021) 2 final, available https://www.eeas.europa.eu/sites/default/files/joint_communication_renewed_partnership_southern_neighbourhood.pdf last accessed August 2023.

forms the legal basis of this bilateral cooperation, the EU-Lebanon Association Agreement.¹⁰²⁰ Entered into force in 2006, it combines development and humanitarian areas of interventions. It contains a set of initiatives focused on democracy and the rule of law, the fight against corruption, human rights and fundamental freedoms, reforms for the security sector, countering terrorism, economic and social reforms, and sustainable development. Following this agreement, the EU-Lebanon Partnership Priorities¹⁰²¹ was adopted in 2016 jointly with the EU-Lebanon Compact.¹⁰²² These instruments develop a cooperation framework in terms of (1) security and counter terrorism, (2) governance and the rule of law, (3) fostering economic growth and job opportunities, and (4) migration and mobility. Though, according to primary data collection¹⁰²³ the Compact was not effectively implemented, as confirmed also in literature.¹⁰²⁴

Prominent scholarly opinion¹⁰²⁵ on the matter of EU-Lebanon relations argues that the priority on migration and mobility rather translates to a focus on addressing concerns arising from the Syrian refugee crisis, thus the nexus between security and stability. Accordingly, the relations between the two actors were increased as boosted by the 2015 migration crisis in the EU, that led to engage Lebanon as part of the neighbourhood to contain mobility and falling under the structure of externalisation of migration management. In this sense, the cooperation with Lebanon's main goal appears to be avoiding destabilisation in country by creating an enabling environment as host country. To this end, the grounds of the EU-Lebanon cooperation become threefold: addressing threats related to the Syrian refugees to preserve stability in Lebanon, tackle the internal security situation as "transferred" from Syria, and managing the divide created by the political situation as impacted by sectarianism, considering the strong position of Hezbollah political party in the

¹⁰²⁰ European Union (2006), *Proposal for a Council Decision on the position to be adopted by the European Community and its Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Lebanon Action Plan*, doc. COM/2006/0365 final available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006PC0365&qid=1608734811074> last accessed August 2023.

¹⁰²¹ The Association Council (2016), *Association between the European Union and Lebanon. Decision No 1/2016 of the EU-Lebanon Association Council of 11 November 2016 agreeing on EU-Lebanon Partnership Priorities*, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-12/eu_lebanon_partnership_priorities_2016-2020_and_their_annexed_eu-lebanon_compact.pdf last accessed August 2023.

¹⁰²² *Ibidem*, Annex.

¹⁰²³ Interview No. 4.

¹⁰²⁴ Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon, op.cit.*

¹⁰²⁵ Seeberg, P. (2018), *EU policies concerning Lebanon and the bilateral cooperation on migration and security – new challenges calling for new institutional practices?* In *Palgrave Communications* DOI: 10.1057/s41599-018-0192-7 available at <https://d-nb.info/1174670142/34> last accessed August 2023.

Lebanese society and its participation to the war in Syria. Indeed, Hezbollah is a governmental actor in Lebanon that gradually become a hybrid terrorist organisation operating on different sectors such as social welfare, religious education and political participation. It imposed itself as sub-State actor in international relations and security, including due to its involvement in the Syrian conflict.¹⁰²⁶ Hezbollah represents a further security issue for the EU, which adds an extra layer in this cooperation and according to a multi-level model that engages local and international actors.¹⁰²⁷ Arguably, this multi-level governance is criticised in scholarly review¹⁰²⁸ for fomenting fragmented accountability, combined with the incoherent policy making and a strong emphasis on securitisation aspects that overall appear to compromise the principle of good governance and the political reforms aspired in the framework of the EU-Lebanon relations.

Primary data collection also underlines Lebanon as fragmented, with multiple political factions engaging in separated relations with the EU,¹⁰²⁹ that is described as of a “mutual dependency type”.¹⁰³⁰

From the exposed overview on its context, Lebanon emerges as underlying normative gaps in protecting migrants and refugees, and existing legislation as reflecting international standards is not correctly implemented.¹⁰³¹ A comprehensive migration governance framework remains at the core of this issue, and the EU is mostly seeking for interventions that hardly align with the existing context.¹⁰³² As stressed above particularly on the refugees question,¹⁰³³ the approach remains having no policy nor a coherent asylum system. Yet, following the “hybrid” migration governance,¹⁰³⁴ recently the EU Parliament issued a resolution to invite Lebanon to refrain from returning Syrian refugees to Syria, which is not a safe country.¹⁰³⁵ This is contributing to create

¹⁰²⁶ Zrůst T. (2020), *Hezbollah between local and international dimension: intervention in Syria*, in *Institute of International Relations Prague*, available at <https://www.iir.cz/en/hezbollah-between-local-and-international-dimension-intervention-in-syria> last accessed August 2023.

¹⁰²⁷ Seeberg, P. (2018), *EU policies concerning Lebanon and the bilateral cooperation on migration and security – new challenges calling for new institutional practices?*, *op. cit.*

¹⁰²⁸ Fakhoury T. (2021), *Lebanon as a Test Case for the EU's Logic of Governmentality in Refugee Challenges* in *Istituto Affari Internazionali*, available at <https://www.iai.it/en/pubblicazioni/lebanon-test-case-eus-logic-governmentality-refugee-challenges> last accessed August 2023.

¹⁰²⁹ Interview No. 1.

¹⁰³⁰ Interview No. 3.

¹⁰³¹ Interview No. 5.

¹⁰³² Interview No. 5.

¹⁰³³ *Chapter 2*, section 3, lett. e).

¹⁰³⁴ *Chapter 3*, section 4.

¹⁰³⁵ European Parliament, *Joint Motion for a Resolution on the situation in Lebanon*, doc. RC-B9-0323/2023, par. 13, available at https://www.europarl.europa.eu/doceo/document/RC-9-2023-0323_EN.html last accessed August 2023.

further political tensions as no long-term support is provided to favour the integration into society. In addition, the resolution was rather received by Lebanese as an imposition and an unjustified interference on the sovereignty of the country.¹⁰³⁶ Likewise, the EU policy underlines an acquittal of the multiple ongoing crises the country is suffering in addition to the insufficient attention to Lebanese as part of the whole population affected, which is instead disproportionately balanced towards the Syrian refugees and without any pledge for solidarity in responsibility for burden sharing.¹⁰³⁷

In this context, negotiations with the EU suit different normative and governance outcomes, whereby the EU seeks to provide humanitarian support but in fact the initiatives undertaken pursue rather political, economic and security interests, notably on managing (or contain) mobility in country.¹⁰³⁸ Indeed, interventions agreed focus mainly on assisting Syrian refugees by regulating their stay and providing for waivers of residence fees and simplifying the access to the labour market. However, terms and conditions are silent on upholding the rights of the host population as well as other migrants and refugees, highlighting a questionable transformative method that cannot bring any good results in the long run and accordingly presents downstream dangers of political tension and State collapse.¹⁰³⁹ Furthermore, it can be argued that enabling refugees to stay in country without making them able to meet their basic needs and reaching self-sufficiency translates into a paradoxical or incomplete response. On the other hand, providing support and social protection without extending the same safeguards and access to Lebanese can lead to fractures and further aggravate tension in the society. Therefore, far from remaining a reactive type of support by protracting temporary measures, effective support interventions of the EU in Lebanon would be more appropriate and adequate if targeting the affected population as whole, by combining humanitarian aid to refugees with assistance for the Lebanese population to cope with ongoing multiple crises.¹⁰⁴⁰

Regarding possible development outcomes for the future, it should be noted that Lebanon is also availing on others cooperation mechanism promoted by the EU, notably in the sector of education

¹⁰³⁶ Interviews No. 12 and 13.

¹⁰³⁷ Fakhoury T. (2021), *Lebanon as a Test Case for the EU's Logic of Governmentality in Refugee Challenges*, *op. cit.*

¹⁰³⁸ Interviews No. 2 and 8.

¹⁰³⁹ Cooper, L., & Nimer, M. (2023). *Generating instability? The impact of the EU's hybrid migration governance in Turkey, Lebanon and Jordan*, *op. cit.*

¹⁰⁴⁰ Interview No. 15.

(Erasmus Plus Programme¹⁰⁴¹ and Horizon 2020 Programme and the Seventh Framework Programme),¹⁰⁴² that support innovative and technology research. However, reportedly¹⁰⁴³ Lebanon could benefit from increased education opportunities including creating exchanges to develop skills and specifically to research further on the conditions of women refugees in country and provide them with better chances to improve their situation in country. Similar prospects are ongoing in Lebanon, where bottom-up initiatives undertaken by non-State actors, such as philanthropic institutions, prove to be a mechanism that boosts resilience through investing in education and in future economic development, as illustrated in continuation.

6. Leveraging migration as an opportunity: education, diaspora and remittances

*“Economic interests and politics are intertwined, and political affairs supported by diaspora communities”.*¹⁰⁴⁴

Primary data collection reveals a diverse and overall coherent understanding of migration connected with development outcomes. When asked about education and other opportunities to promote resilience and prosperity, the reactions by respondents are uniform stressing on the importance to address flaws in sectoral policies¹⁰⁴⁵ and the need of institutional frameworks, i.e. in regulating diaspora contributions and migrant integration, as well as countering corruption that leads to weakened trust on the rule of law. The crisis of trust is attributed to inequalities, outdated legislations and lengthy processes of revision, as well as the inadequate implementation and law enforcement.

Education is cited in primary data collection as the key driver of change and the sector to invest on for long-term positive outcomes, especially if combined with initiatives engaging the private sector.¹⁰⁴⁶ In fact, Lebanese people’s prominent and renowned vocation for entrepreneurship and financial ability made the country acquire the denomination of the “Switzerland of the Middle-

¹⁰⁴¹ Chapter 2, section 4, lett. b).

¹⁰⁴² *Ibidem*.

¹⁰⁴³ Interview No. 6.

¹⁰⁴⁴ Interview No. 15.

¹⁰⁴⁵ Interview No. 1.

¹⁰⁴⁶ Interview No. 1, 5, 7 and 8.

East”,¹⁰⁴⁷ also in light of tax favourable environment prior to the economic crisis.¹⁰⁴⁸ However, as highlighted by the United Nations Special Rapporteur on extreme poverty,¹⁰⁴⁹ the education sector is affected by corruption and the lack of transparency in granting government subsidies provided to support the private institutions, damaging public institutions remained underfunded, overcrowded and with stretched capacity to meet education needs for many students and children in country.¹⁰⁵⁰ This situations results in inequalities and inaccessibility to education for many, including school dropouts for children, besides creating tensions in the society.¹⁰⁵¹ The crisis and poverty in the rise are also changing the setting, whereby austerity measures are making necessary extensive cuttings in jobs in the public sectors including, among the others, for teachers at the university.¹⁰⁵² These circumstances are also expected to slowly affect the middle class¹⁰⁵³ and the investments from diaspora associations, once widely encouraged to support the business in country. It also led to increased outflow migration for Lebanese in search of more affordable and quality higher education abroad, especially towards Gulf countries, Türkiye, Cyprus, Canada and Europe. These movements are perceived as a further concern for the demographic status and stasis, as emigration might entail changes for the political power balance and the overall situation in country.¹⁰⁵⁴

Certainly, the absence of a future horizon and armed conflicts negatively affect the survival of citizens in their country. It encourages them to look for other countries to settle.”¹⁰⁵⁵

Nevertheless, Lebanon positions itself as a country fostering resilience and development, as it demonstrates outstanding openness to internationalisation, also confirmed by the possibility of

¹⁰⁴⁷ Interview No. 14.

¹⁰⁴⁸ United Nations General Assembly (2022), *Visit to Lebanon. Report of the Special Rapporteur on extreme poverty and human rights*, Olivier De Schutter, *op. cit.*, par. 13.

¹⁰⁴⁹ *Ibidem*, par. 81.

¹⁰⁵⁰ United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon*, *op. cit.* parr. 52-58.

¹⁰⁵¹ Van Esveld B. (2023), *Thousands of Refugee Students Cut off from Classes in Lebanon*, in *Human Rights Watch* available at <https://www.hrw.org/news/2023/02/22/thousands-refugee-students-cut-classes-lebanon> last accessed August 2023.

¹⁰⁵² Vohra, A. (2020), *The Death of Lebanon’s Middle Class in Foreign Policy*, available at <https://foreignpolicy.com/2020/05/21/lebanon-coronavirus-middle-class-poverty/> last accessed August 2023.

¹⁰⁵³ Cornish, C. (2020). *Lebanon’s economic crisis threatens to destroy its middle class* in *Financial Times*, available at <https://www.ft.com/content/ecf04229-b4ed-4419-b4ea-48b98acd5b76> last accessed August 2023.

¹⁰⁵⁴ Hamdan H. (2021), *Will Lebanon’s economic crunch stir demographic change?*, in *Al Monitor*, available at <https://www.al-monitor.com/originals/2021/12/will-lebanons-economic-crunch-stir-demographic-change> last accessed August 2023.

¹⁰⁵⁵ Interview No. 11.

dual citizenship. Despite its population is desperate to escape the crisis,¹⁰⁵⁶ Lebanese are promising to fix it through rebuilding and development initiatives,¹⁰⁵⁷ as well as through remittances and the diaspora engagement. In fact, national legislation enacts its nationals to obtain a second nationality¹⁰⁵⁸ while fulfilling all obligations of full citizenship abroad and enabling to maintain ties with the country of origin, including by virtue of the right to vote,¹⁰⁵⁹ conferred according to the 2008 Parliamentary Election Law.¹⁰⁶⁰ The emigration matters are managed by the Ministry for Foreign Affairs and Emigrants, that as regulated by the Law No. 247 of 2000,¹⁰⁶¹ promotes cultural relations and investments from abroad through the General Directorate of Emigrants, and entrusted the Directorate of Political and Consular Affairs with consular protection and administrative matters.¹⁰⁶² Likewise, this Ministry is charged of diaspora affairs through a network of consulates and embassies and created the Investment Development Authority of Lebanon (IDAL) to support their investments. Another remarkable measure is the addition in 2018 of six Parliamentary seats for the diaspora, further demonstrating the link of the overall migration policy closely linked to the right to vote.¹⁰⁶³

Overall, the overlapping crises effects pushing many Lebanese into poverty are relieved by nationals abroad that contribute to generate profit through seasonal tourism and sending money back home and to the family. However, during primary data collection respondents emphasised that, in the absence of institutional policies regulating such contribution derived from tourism, the income generated in the summer or winter holidays is then used to cover family or individual basic needs, such as covering health and electricity expenses,¹⁰⁶⁴ and then reinvested in the community and villages of belonging.¹⁰⁶⁵ Particularly, the right to electricity, that is instrumental for the

¹⁰⁵⁶ Bou Mansour C. (2020), *Lebanese are no longer begging for change. Instead, they are begging to leave.* in *Middle East Monitor*, available at <https://www.middleeastmonitor.com/20201017-lebanese-are-no-longer-begging-for-change-theyre-begging-to-leave/> last accessed August 2023.

¹⁰⁵⁷ Yee, V. (2020), *Desperate to Leave Beirut, Young Lebanese Are Also the Ones Fixing It.* in *The New York Times*, available at <https://www.nytimes.com/2020/08/27/world/middleeast/beirut-explosion-volunteers.html> last accessed August 2023.

¹⁰⁵⁸ *Chapter 3*, section 3, par. f).

¹⁰⁵⁹ Interviews No. 4 and 5.

¹⁰⁶⁰ Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon*, *op. cit.*

¹⁰⁶¹ *Ibidem.*

¹⁰⁶² *Chapter 2*, section 4, lett. e).

¹⁰⁶³ Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon*, *op. cit.*

¹⁰⁶⁴ Interviews No. 1 and

¹⁰⁶⁵ Interview No. 10.

realisation of other rights such as housing, education, work and food, has been recognised as a pressing priority for authorities to address to the benefit of Lebanese people. Indeed, the whole population in country endures the consequences of the electricity sector¹⁰⁶⁶ affected by vested interests and only few hours of electricity per day.¹⁰⁶⁷ In this sense, considering they are used to meet essential needs, these funds are deemed far from being an added value or resolving the overall economic situation, nor they reach the extent of boosting development growth.¹⁰⁶⁸ Hence, they remain a useful resource for a “survival strategy”¹⁰⁶⁹ and limited to the rebuilding efforts only. Families and communities running businesses in Lebanon also benefit from contributions from abroad and through philanthropic initiatives and donations, that can be of religious type notably offered by the Christian church and the *zakat*,¹⁰⁷⁰ an Islamic finance mechanism referring to the religious obligation of an individual to donate for charitable causes.¹⁰⁷¹ Among these, the “Hariri Foundation for Sustainable and Human Development”¹⁰⁷² established in 1979 by H.E. Rafic Hariri and H.E. Bahia Hariri, commits to sustain efforts in the four areas of education transformation, active citizenship, policy dialogue and urban resilience. Similarly, a further non-State and top-down initiative is the Lebanon Business Network (LBN), a platform created to connect the Lebanese community abroad through an entrepreneurship network of global scale with the view of enhancing the economic growth in Lebanon.¹⁰⁷³ Likewise, financial diasporic contributions that were encouraged prior to the crisis and allegedly used also to finance political activities,¹⁰⁷⁴ are currently being reallocated back to provide support in Lebanon to the families and cover their essential needs.

Therefore, the exposed considerations uncover a great potential for leveraging migration as an opportunity, especially by enhancing resilience boosted from outside the country. Though such

¹⁰⁶⁶ Human Rights Watch (2023), *Cut Off from Life Itself” Lebanon’s Failure on the Right to Electricity*, available at <https://www.hrw.org/report/2023/03/09/cut-life-itself/lebanons-failure-right-electricity> last accessed August 2023.

¹⁰⁶⁷ United Nations General Assembly (2022), *Visit to Lebanon. Report of the Special Rapporteur on extreme poverty and human rights*, Olivier De Schutter, *op. cit.*, par. 75-80.

¹⁰⁶⁸ Interview No. 4.

¹⁰⁶⁹ Interview No. 7.

¹⁰⁷⁰ Interview No. 10.

¹⁰⁷¹ ILO (2021), *World Social Protection Report 2020–22. Regional companion report for the Middle East and North Africa (MENA) region*, p. 19, available at https://www.ilo.org/wcmsp5/groups/public/@arabstates/@ro-beirut/documents/publication/wcms_830406.pdf last accessed August 2023.

¹⁰⁷² Hariri Foundation for Sustainable and Human Development, available at <https://hariri-foundation.org/> last accessed August 2023.

¹⁰⁷³ Lebanon Business Network, available at <https://www.lbn.com.lb/> last accessed August 2023.

¹⁰⁷⁴ Interview No. 14.

instruments do not come without consequences, noting the repercussions and price to pay in terms of brain drain currently affecting the country,¹⁰⁷⁵ and the abandonment and depopulation of rural areas especially in the mountains.¹⁰⁷⁶ This situation leads to the consequent adverse effects on the agriculture that prior to the crisis used to constitute an important source of revenue, along with tourism, industry and infrastructures.¹⁰⁷⁷

*“By glorifying the role of the diaspora in alleviating under-development, we run the risk of feeding into neoliberal ideologies and absolving the state from its role for development”.*¹⁰⁷⁸

Nevertheless, Lebanese diaspora migration continues to play an important role in the country, as one of the positive effects of the legacy of emigration. Throughout the years, Lebanese migrant became the major source of funding and contribution to the country from abroad.¹⁰⁷⁹ They maintain the ties with Lebanon by actively participating to the political life of the country,¹⁰⁸⁰ also through targeted contributions to support political initiatives undertaken by decision-makers in country.¹⁰⁸¹ However, such contributions are made on an *ad hoc* basis, as national authorities did not regulate nor institutionalise them (yet) through diaspora policies. Hence, the lack of regulations on remittances accounts as an effect of Lebanon’s modest efforts to leverage migration opportunities. The over-reliance on remittances is deemed to provide a false sense of security and stability in country,¹⁰⁸² whereby institutional interventions only have the means and authority to transform them into development outcomes. Conversely, the political élite is reportedly taking advantage of remittances to inflate the informal economy,¹⁰⁸³ which damages further the yet instable financial

¹⁰⁷⁵ Interview No. 1.

¹⁰⁷⁶ Interview No. 9.

¹⁰⁷⁷ Interview No. 14.

¹⁰⁷⁸ Interview No. 2.

¹⁰⁷⁹ Interview No. 15.

¹⁰⁸⁰ Skulte-Ouaiss J, Tabar P. (2015) *Strong in Their Weakness or Weak in Their Strength? The Case of Lebanese Diaspora Engagement with Lebanon, in Immigrants & Minorities*, 33:2, 141-164, DOI: [10.1080/02619288.2013.877347](https://doi.org/10.1080/02619288.2013.877347) last accessed August 2023.

¹⁰⁸¹ Interview No. 15.

¹⁰⁸² Interview No. 2.

¹⁰⁸³ Interview No. 13.

situation due to the modalities to channel the deposit of funds that circumvents the bank system and related high costs.¹⁰⁸⁴

“[on remittances] *It’s like taking Panadol pills to appease the pain!*”¹⁰⁸⁵

Predominantly, the common opinion to encapsulate is the fragmentation of State institutions and infrastructures proving inadequate to respond to the needs of Lebanese and reflecting the same fragmentation characterising the identity of Lebanese communities, allegiances to political parties and stances, and a governance model whereby decision-making emerges aimed to perpetuate the current political setting and balance.

*“In a context where corruption features the political setting, families were supported first, then the political parties, and now the support goes directly to the families”*¹⁰⁸⁶

Against this background, migration opportunities are potentially endless if channelled through initiatives and structured plans that foster development, including by addressing the dichotomy of integration *or* return and turning it in a dialectic relation of integration *and* return instead. Indeed, designing such a strategy could be based on policies that attract and incentive the returns of Lebanese abroad. This can be done through dedicated interventions acknowledging their transnational identity,¹⁰⁸⁷ as well as their role in bridging communities and linking humanitarian with development outcomes, considering that Lebanon context is conducive and presents great chances to this end. Indeed, as explained in *Chapter 2* of this study,¹⁰⁸⁸ Lebanon reunites at least four out of the total five conditions for successful diaspora engagement policies: remittances are used as contributions to informal arrangements for social protection mechanisms along with the relief measures recently adopted to alleviate the severe currency devaluation,¹⁰⁸⁹ diaspora member

¹⁰⁸⁴ Interview No. 15.

¹⁰⁸⁵ Interview No. 5.

¹⁰⁸⁶ Interview No. 14.

¹⁰⁸⁷ Abdulloeva, N., (2023), *Diaspora and Transnational identities - An Analysis of Legal Frameworks and Policies*. International Organization for Migration (IOM), Geneva, available at <https://publications.iom.int/books/diaspora-and-transnational-identities-analysis-legal-frameworks-and-policies> last accessed August 2023.

¹⁰⁸⁸ *Chapter 2*, section 5.

¹⁰⁸⁹ United Nations Social and Economic Commission for West Asia (2023), *Annual Digest of Social Protection Reforms in the Arab Region, 2022*, doc. E/ESCWA/CL2.GPID/2023/1, p. 54, available at <https://www.unescwa.org/publications/annual-digest-social-protection-reforms-arab-region-2022-vol-1> last accessed August 2023.

make direct investments, the human capital transfers exists, the initiatives for philanthropic contributions are made, and last but not least the tourism sector is growing.

Therefore, as highlighted, the only intervention missing is the targeted capital market investments that would benefit from an institutional regulatory framework for structural interventions, thus avoiding reliance on the *ad hoc* contributions.

In addition, advancing development policies that favour integration of migrant and refugees' population resident in country in conditions of equality and in the long term presents the advantages of creating conditions for inclusive societies. Indeed, historically migrants and refugees in country and especially before the conflict outbreaks already provided their significant contribution for the economic growth and prosperity, especially through circular migration pathways, and notably with Syria. This enabled and still provides opportunities for certain sectors, such as construction, to grow and contribute to the (re)building efforts, through flexible workforce and exchanges of skills and resources.¹⁰⁹⁰

Conclusions and recommendations

This chapter examines migration and security in Lebanon focusing on the perspectives of (1) migration in general, (2) the impact of instability in region, (3) the legal framework on trafficking in persons and smuggling of migrants, (4) the relations with the EU, and (5) migration as an opportunity through diaspora, remittances and other contributions to local development.

Lebanon provides the ideal case study as it offers the perfect example of a country where migration and displacement trends have directly shaped its security measures. Different profiles of migrants and refugees interact altogether and coexist in the same environment., and migration and security influence the economic, social and political settings in Lebanon. This country remains *de facto* a refugee host country, a country of migrants notably for the Lebanese abroad, and a host country for many migrant workers. The peculiarity of this context is that each group is treated differently, which creates multiple standards and consequent risks of violation threatening to amplify existing tensions in country. In this context, maintaining the sectarian balance in country emerges as a

¹⁰⁹⁰ Interview No. 3.

determining priority besides shaping Lebanon's legal framework, as well as migration and security management and especially in the transnational dimension.

The analysis of the international standards on migrant and refugee protection as characterised by a certain degree of fragmentation is addressed under the aegis of applicable customary norms and principles that create the basis of an underlying coherent framework grounded on the principles of *non-refoulement* and non-discrimination. This becomes apparent in the context of Lebanese case, whereby the national legal framework on migration and asylum also presents fragmentation, as well as multi-level governance and accountability. Likewise, migration and security management in country features the intersection between civil and political rights and economic, social and cultural ones, and the migration governance is overall structured around nationality and the right to vote. Despite the internal political interests in country are significantly influencing the refugee crisis response, Lebanese authorities and institutions are attempting to address the protection needs of the whole population, meanwhile international actors engaged in cooperation efforts are also contributing to aggravate the ongoing overlapping crises. Indeed, international actors put forward interventions that hardly comply with the solidarity in burden-sharing principle, as targeting assistance only for certain groups within the affected population underscores an exclusive approach that leads to marginalisation, violent extremism and overall tensions in the host society. In fact, migration and security situation in Lebanon also shows how cross-borders dynamics are intertwined with transnational organised crime and terrorism, whereby individuals' rights are threatened. Therefore, addressing normative shortcomings and fragmentation requires a thorough analysis of the country context in relations to its regional dimension and the related socio-cultural dynamics and customs, including the legal institutions. For example, the *kafala* system presents legal implications in terms of violating the rights to freedom of movement, liberty and security of the person and the protection against exploitative conditions. Though, it demonstrates that individuals remain however protected by extending the safeguards set forth in the trafficking in persons instruments, along with relevant human rights standards.

Despite decentralisation of governance and localisation translate into fragmented accountability and a lost trust in the rule of law driven by corruption, there are several takeaways and lesson learned from the Lebanese experience. For example, Lebanon institutions' limited capacity to respond in identifying and protecting victims of abuse being addressed by non-State actors, particularly civil society and non-governmental organisations, illustrates a level of participation

and engagement to the public life departing from the fractures in the Lebanese society. The same level of engagement can be observed in Lebanese abroad maintaining ties with the country of origin and supporting the (re)building efforts in the face of the crises. These circumstances prominently highlight the Lebanese flexibility to adapt to shocks and crises, that jointly with the renowned vocation for entrepreneurship and internationalisation feature migration as an opportunity and set the country as a model of resilience.

Therefore, a shift in understanding migration can be finally established, moving away from a threat to security towards emphasising its opportunities through economic growth and improved security, as grounded on the legal certainty and safety that leverage innovative and alternative solutions. In this sense, it is manifest that the only threat to security and stability is the lack of uniformed applications of the relevant norms and their overall fragmentation.

Against this background, developing more comprehensive research around the interactions between transnational dimensions of migration, actors involved (including non-State), implications for rights, principles and contextual challenges is but the first step towards establishing coherent, inclusive and context-specific legal frameworks and sectoral policies addressing crises effectively.

Conclusion

This study proposed a conceptual and analytical framework to examine the adequacy of international standards governing migration and security in order to promote an interpretation and approach that favour sharpened security and stability. Specifically, it advanced the thesis that if the principles of *non-refoulement* and non-discrimination, essential in the international and transnational dimensions of migration, are upheld as the foundation of border and migration management, the fragmentation of international migration law can be overcome. Consequently, the legal certainty and the rule of law can lead to conducive conditions for stability, resilience, socio-economic growth and thus improved security.

Chapter 1 exposes the analysis of relevant legal concepts in the field of migration, including definition, rights, principles and related issues as applicable at the borders. *Chapter 2* analyses legal implications for migrants and refugees after borders are crossed, particularly in the identification and integration processes. This analysis sheds light around possible mechanisms to support resilience and protective factors that include engaging non-State actors in migration governance. The case study examined in *Chapter 3* illustrates how the above assumptions translate into practice, thus focusing on Lebanon as a model context addressing shortcomings in implementing international law through the interventions of non-State actors that complement State obligations and efforts in managing migration. Indeed, Lebanon is a country that made of resilience its cornerstone in the face of multiple crises, being impacted simultaneously by protracted conflicts and instability in the region. These factors inevitably compel migration and displacement. Hence the case study articulates legal implications on migration and security under the perspectives of (1) migration in general, (2) the impact of instability in region, (3) the legal framework on trafficking in persons and smuggling of migrants, (4) the relations with the EU, and (5) migration as an opportunity through diaspora, remittances and other contributions to local development.

The hypothesis developed and analysed in this study has uncovered and confirmed that effective migration management, based on the identification and integration of migrants ultimately leads to sharpened internal and international security. To this end, creating conditions for the realisation of

rights and access to essential services enables migrants and refugees to participate as active contributors for the socio-economic growth of the host State. Likewise, in the case of migrant workers and diaspora, conducive migration policies and legislation foster inclusion allowing them to support development outcomes for their countries of origin, including in through diaspora associations. Ultimately, enabling migration management can play a significant role in reducing the overall poverty and lead to stability and increased security, as grounded on the legal certainty and safety and innovative, alternative solutions to address crises. In fact, safe and regular migration *de facto* and *de jure* facilitates a broader access of all individuals to essential needs and corresponding rights, such as health services, education, housing and decent work. Moreover, safe pathways enable and engage all actors involved to support the local economy of both origin and host countries, and possibly conducting to the overall poverty reduction.

Through this study it has become apparent that international migration is changing reality and increasingly affecting the society and political settings. It is progressively moving away from instances of xenophobia, marginalisation and exclusion leading to violent extremism,¹⁰⁹¹ towards greater solidarity whereby non-State actors are gradually acquiring a higher level of engagement and participation in migration related processes. For example, the stigmatisation and discrimination manifestations registered during the period of the pandemic have led to a rise in xenophobia against mobile population that risks leading to longer-term implications for migrants and refugees' socioeconomic inclusion and, more broadly, the social cohesion within the host community of the receiving society.¹⁰⁹² Numerous documented cases of racist and xenophobic attacks towards migrants exist and range from hate speech, racial slurs, to brutal acts of violence that hamper migrants from accessing health and other social support services that are otherwise available to the general population, as well as they jeopardise their safety and mental and psychological wellbeing. In addition, as demonstrated in this study, the shutdown of economic activities and massive job cuts affected migrant workers first, also due to their inability to access

¹⁰⁹¹ Bello V. (2017), *International Migration and International Security. Why Prejudice Is a Global Security Threat*. Routledge.

¹⁰⁹² World Health Organization (2020), *Coronavirus disease (COVID-19) advice for the public: MythBusters*, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters> last accessed April 2023; ISD (2020), *COVID-19 Disinformation Briefing No.1 – 27th March 2020*, available at <https://www.isdglobal.org/isd-publications/covid-19-disinformation-briefing-no-1/> last accessed April 2023; Donovan (2020), *Here's how social media can combat the coronavirus 'infodemic'*, , available at <https://www.technologyreview.com/2020/03/17/905279/facebook-twitter-social-media-infodemic-misinformation/> last accessed April 2023.

services provided through the national social protection and safety nets systems, especially if when employed in the informal economy.¹⁰⁹³ This had an impact on their wellbeing too, given the uncertainty for their future and the loss of income needed for themselves and their family back home.

Furthermore, as showed in the cited practices, international migration is being impacted by conflicts and inequality, as well as the progress advanced in digital technologies,¹⁰⁹⁴ that are also determining people on the move to follow paths of human insecurity. Hence, this study has analysed the consequence of irregular migration and postulated possible solutions including legal pathways and regularisations. The existing linkages between international migration and transnational organised crime and terrorism are also an alarming reality¹⁰⁹⁵ that cannot be disregarded when tackling and addressing international migration and security. Instances of punishment of children associated with armed groups and the obligations of States to uphold their rights, by adequately identifying them and protecting them from these risks have been widely documented.¹⁰⁹⁶

As new threats are taking over, including cyberinsecurity, harms in social media, artificial intelligence-based decision-making as well as the uneven access to technological innovation, migration and security require considerations on the changed reality to move away from the analysis of security of individuals and communities separately towards a more coherent and comprehensive approach that focuses on the interdependence of actors involved, including State and non-State ones, and the related intertwined dynamics. Such an approach has been encouraged

¹⁰⁹³ Indulekha A. (2020), *Covid-19 will have unprecedented effect on migrant economy*, in *The Economic Times*, available at <https://economictimes.indiatimes.com/opinion/interviews/covid-19-will-have-unprecedented-effect-on-migrant-economy-dilip-ratha-world-bank/articleshow/75648695.cms?from=mdr> last accessed April 2023.

¹⁰⁹⁴ United Nations Development Programme (2022), *New threats to human security in the Anthropocene Demanding greater solidarity*, available at <https://hdr.undp.org/system/files/documents/srhs2022pdf.pdf> last accessed September 2023.

¹⁰⁹⁵ United Nations General Assembly (2021) *Trafficking in persons, especially women and children. Note by the Secretary-General*, doc. A/76/263 available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F263&Language=E&DeviceType=Desktop&LangRequested=False> last accessed September 2023.

¹⁰⁹⁶ United Nations General Assembly (2021), *Implementation of the non-punishment principle Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally*, doc. A/HRC/47/34 available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F47%2F34&Language=E&DeviceType=Desktop&LangRequested=False> last accessed September 2023.

by the United States Secretary-General,¹⁰⁹⁷ emphasising the importance of the principle of shared solidarity in burden sharing in managing migration, engaging non-State actors, and leveraging resilience for the protection and prevention of violations of rights. These processes are necessary steps for a renewed social contract that responds to the current challenges of international migration.

While examining human mobility, separating security and migration would be an inaccurate and ineffective approach, since the latter constitutes integral part for managing and regulating the former. What requires a further reflection in the context of migration is instead identifying the threats to recognise what type of security and to whom they actually constitute a threat.

Violations of rights compromise legal safety and determine a climate of uncertainty around the effectiveness of the rule of law, as well as the lack of transparency and accountability. This is the core of migration and security management that comprises processes to better align civil and political rights on the one hand, and economic, social, cultural ones on the other with the aim to boost development outcomes. In order to follow the aspired positive approach (and related positive obligations for States) the intersection between the two sets of rights advances and leverages migration as an opportunity, specifically by shifting the narrative around migration and security from the mere (or the sole) humanitarian response in situations of crises, towards progressively linking migration more closely to development outcomes. In this context departing from a dichotomy between the right to return and integration and prefer instead norms conducive to a dialectic relation between the right to return and the (re)integration process proved to sharpen security and stability, thus advancing the rule of law and legal safety. This approach is thus preferable as it appears as adequately addressing the legal uncertainty that only leads to fear and resorting more to transnational organised crime and unlawful means for irregular migration.

¹⁰⁹⁷ United Nations (2021), *Our Common Agenda – Report of the Secretary-General*, available at https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf last accessed September 2023.

This study has thus demonstrated that the nexus between migration and security resides in their complementarity, as they form part of the same process of managing borders in compliance with the principles of *non-refoulement* and non-discrimination, whereby adequate identification and integration enhance security and not the other way around. Hence, migration and security are more effectively dealt with through comprehensive approaches. As such, upholding rights is the *conditio sine qua non* for legal certainty and the rule of law against the fragmentation of international migration law. In other words, identifying migrants and refugees and enabling them to participate to the life of the nation translates in enhanced security for the host country and its nationals. Therefore, shifting migration and security management towards supporting resilience and protection becomes essential to address the threats to peace determining migration and displacement. In this sense, in order to bolster law and policy changes by decision-makers, the present study substantiates the necessity to research further on comprehensive frameworks to analyse migration spanning from its transnational and cross-border dynamics and existing and potential linkages with challenges and opportunities for development outcomes, as well as the openings for the engagement and participation of all actors, including State, non-State, and migrants and refugees themselves.

Annex 1 –Questionnaire tools in English, French and Arabic

Dear Subject Expert / Key Informant,

Thank you for your precious time and availability to share your knowledge!

You were contacted as you are considered a precious contributor to creating more knowledge on Lebanon.

My name is Linda Cottone, and I am currently PhD Candidate in International Public Law and International Relations at Autonomous University of Barcelona (UAB).

As a last step to complete my doctoral thesis titled “The vicious circle of migration and security. Adequate identification, inclusion and integration of migrants as a way to sharpen States’ security and stability”, I am conducting research that will allow me to gather more information and complete a case study on Lebanon on addressing shortcomings in international standards.

The questionnaire below is comprised of five questions and corresponding topics.

You have received this document in three languages (English, French and Arabic). Please choose one only and respond in writing to the best of your knowledge.

The last question provides the possibility to add final comments, recommendations and suggestions that I will carefully take into account and consolidate in this study.

If you wish, you can also indicate me further experts that you deem I must contact to gain the most comprehensive understanding of the context.

If you like to know more about my research profile, please take a look at [my page](#).

With much gratitude,

Linda

Proposed questionnaire:

1. General - migration in country:

In relation to refugees, asylum seekers and migrants (including migrant workers) in (ir)regular situation, how are mobility and migration overall dealt with in Lebanon?

In your opinion, are foreigners well / bad received in country? Did you observe any discriminatory treatments based on nationality, statelessness, gender, other grounds?

2. Migration as a challenge - Impact of instability in the region:

How would you describe the impact of instability in the region towards migration in Lebanon?

Does it represent a driver of mobility? Or it rather has no impact at all?

3. Lebanon as peripheral actor in the Euro-Mediterranean:

From your standpoint, what are the relations between Lebanon and the European Union?

Are you aware of any steps in opening a dialogue between Lebanon and the EU?

4. The legal framework on trafficking in persons and smuggling of migrants:

Is the current Lebanese legal framework sufficiently aligned to the international standards on trafficking in person and smuggling of migrants?

Would you consider domestic work and Kafala as a form of trafficking in person?

5. Migration as an opportunity - diaspora, remittances, education:

In your opinion, what is the role of Lebanese abroad for local development? Can education play a role?

For example, through dual citizenship, sending money back home/to the family, supporting businesses in Lebanon, contributing to seasonal tourism, establishing philanthropic contributions

such as Hariri Foundation Scholarship Program or the Lebanon Business Network, and others that you are aware of.

6. **Would you have any additional comments? Could you indicate further Subject Experts / Key Informants you would recommend being consulted for the purpose of this study?**

Thank you very much!

Cher(e) expert(e) de la matière / informateur(trice) clé,

Merci pour votre temps précieux et votre disponibilité à partager vos connaissances !

Vous avez été contacté car vous êtes considéré comme un contributeur précieux à la création de plus de connaissances sur le Liban.

Je m'appelle Linda Cottone et je suis actuellement candidate au doctorat en droit international public et relations internationales à l'Université Autonome de Barcelone (UAB).

Comme dernière étape pour compléter ma thèse de doctorat intitulée « Le cercle vicieux de la migration et de la sécurité. Identification, inclusion et intégration adéquates des migrants comme moyen d'améliorer la sécurité et la stabilité des États », je mène des recherches qui me permettront de recueillir plus d'informations et de réaliser une étude de cas sur le Liban sur les lacunes des normes internationales.

Le questionnaire ci-dessous comprend cinq questions et les sujets correspondants.

Vous pouvez choisir de répondre au questionnaire en anglais, français et arabe. Veuillez n'en choisir qu'un seul et répondre par écrit au mieux de vos connaissances.

La dernière question offre la possibilité d'ajouter des commentaires finaux, des recommandations et des suggestions que je prendrai soigneusement en compte et que je consoliderai dans cette étude. Toutes les données et informations partagées seront protégées et traitées avec confidentialité.

Si vous le souhaitez, vous pouvez également m'indiquer d'autres experts que vous jugez que je dois contacter pour acquérir la compréhension la plus complète du contexte.

Si vous souhaitez en savoir plus sur mon profil de recherche, veuillez consulter [ma page](#).

Pour plus d'informations dont vous pourriez avoir besoin, vous pouvez me contacter à linda.cottone@gmail.com.

Avec plein de gratitude,

Linda

Questionnaire proposé :

1. Général - migration dans le pays :

En ce qui concerne les réfugiés, les demandeurs d'asile et les migrants (y compris les travailleurs migrants) en situation (ir)régulière, comment la mobilité et la migration sont-elles traitées globalement au Liban ?

Selon vous, les étrangers sont-ils bien / mal reçus dans le pays ? Avez-vous observé des traitements discriminatoires fondés sur la nationalité, l'apatridie, le sexe ou d'autres motifs ?

2. La migration comme défi - Impact de l'instabilité dans la région :

Comment décririez-vous l'impact de l'instabilité et des conflits dans la région sur la migration au Liban ?

Représente-t-il un moteur de mobilité ? Ou plutôt n'a-t-il aucun impact ?

3. Le Liban comme acteur périphérique dans l'Euro-Méditerranéen :

De votre point de vue, quelles sont les relations entre le Liban et l'Union Européenne ?

Connaissez-vous des mesures visant à ouvrir un dialogue sur la migration entre le Liban et l'UE ?

4. Le cadre juridique de la traite des personnes et du trafic illicite de migrants :

Le cadre juridique libanais actuel est-il suffisamment aligné sur les normes internationales relatives à la traite des personnes et au trafic illicite de migrants ?

Considèreriez-vous le travail domestique et la kafala comme une forme de traite des personnes ?

5. La migration comme opportunité - diaspora, envois de fonds, éducation :

Selon vous, quel est le rôle des Libanais de l'étranger pour le développement local ? L'éducation peut-elle jouer un rôle ?

Par exemple, en détenant la double nationalité et en remplissant toutes les obligations de pleine citoyenneté au Liban, en envoyant de l'argent à la maison / à la famille, en soutenant les entreprises au Liban, en contribuant au tourisme saisonnier, en établissant des contributions philanthropiques, telles que Hariri Foundation Scholarship Program ou le Lebanon Business Network, et d'autres que vous connaissez.

6. Auriez-vous d'autres commentaires ? Pourriez-vous indiquer d'autres experts en la matière et informateurs clés que vous recommanderiez de consulter aux fins de cette étude ?

Merci beaucoup !

عزيزي(ة) خبير(ة) الموضوع / المخبر(ة) الرئيسي(ة)،
شكرا جزيلاً لك على وقتك الثمين وتوافر الرغبة في المشاركة بمعرفتك!
تم الاتصال بك لأنك تعتبر مساهماً ثميناً في خلق المزيد من المعرفة حول لبنان.
يسعدني أن أقدم نفسي، أنا ليندا كوتون، طالبة الدكتوراه في القانون الدولي العام والعلاقات الدولية في جامعة برشلونة المستقلة (UAB).
كخطوة أخيرة لإكمال أطروحة الدكتوراه الخاصة بي بعنوان "الحلقة المفرغة للهجرة والأمن. تحديد هوية المهاجرين وإدماجهم واندماجهم بشكل كاف كوسيلة تعزيز أمن الدول واستقرارها"، يسرني كثيراً أن أوجه اليك هذا الاستقصاء حتى تساعد(ي)ني في جمع مزيد من المعلومات عن وضع الهجرة في لبنان وإنجاز دراسة الحالة التي تعالج قلة المعايير الدولية الملائمة في هذا الموضوع.
يتضمن الاستقصاء أدناه خمسة أسئلة تتناول مواضيع.
يمكنك الوصول إلى هذا المستند بثلاث لغات (الإنجليزية والفرنسية والعربية). الرجاء اختيار واحدة منها فقط والإجابة كتابياً على حدّ علمك.
يتيح السؤال الأخير إمكانية إضافة تعليقات وتوصيات واقتراحات ختامية سأأخذها بعين الاعتبار بعناية وأعززها في هذه الدراسة.
سيتم التعامل مع البيانات الخاصة بك سريةً ووفق قانون الاتحاد الأوروبي رقم 2016/679 الخاص بحماية المعلومات
إذا توفرت الرغبة في ذلك، يمكنك أيضاً أن تشير(ي) لي إلى المزيد من الخبراء الذين ترى(ين) أنه يجب على الاتصال بهم للحصول على فهم أكثر شمولاً للسياق.
إذا كنت ترغب في معرفة المزيد عن ملفي البحثي، فيرجى إلقاء نظرة على [صفحتي](#).

أرجو عدم التردد في الاتصال بي للحصول على مزيد من المعلومات على عنوان البريد الإلكتروني التالي linda.cottone@gmail.com.

مع فائق الشكر والتقدير،

ليندا

الاستبيان المقترح:

1. 1. عام - الهجرة في البلد:

فيما يتعلق باللاجئين وطالبي اللجوء والمهاجرين (بمن فيهم العمال المهاجرون) في وضع (غير نظامي)، كيف يتم التعامل مع التنقل والهجرة بشكل عام في لبنان؟

في رأيك، هل الأجانب يستقبلون بشكل جيد / سيء في البلد؟ هل لاحظت أي معاملة تمييزية على أساس الجنسية، أو انعدام الجنسية، أو النوع الاجتماعي، أو لأسباب أخرى؟

2. 2. الهجرة كتحدي - تأثير عدم الاستقرار في المنطقة:

كيف تصف(ين) تأثير عدم الاستقرار والصراعات في المنطقة على الهجرة في لبنان؟

هل يمثل القائم بعملية التنقل أهمية؟ أو بالأحرى ليس له أي تأثير على الإطلاق؟

3. 3. لبنان كلاعب هامشي في المنطقة الأوروبية ومتوسطة:

من وجهة نظرك، ما هي العلاقات بين لبنان والاتحاد الأوروبي؟

هل أنت على علم بأي خطوات لفتح حوار حول الهجرة بين لبنان والاتحاد الأوروبي؟

4. 4. الإطار القانوني للاتجار بالأشخاص وتهريب المهاجرين:

هل الإطار القانوني اللبناني الحالي يتماشى بما فيه الكفاية مع المعايير الدولية المتعلقة بالاتجار بالأشخاص وتهريب المهاجرين؟

هل تعتبر(ين) العمل المنزلي والكفالة شكلا من أشكال الاتجار بالبشر؟

5. 5. الهجرة كفرصة - الشتات والتحويلات المالية والتعليم:

برأيك، ما هو دور اللبنانيين في الخارج في التنمية المحلية؟ هل يمكن للتعليم أن يلعب دورا؟

أو على سبيل المثال، قوم المواطن بجميع التزامات المواطنة في لبنان حتى في حالة ازدواجية الجنسية،

وإرسال الأموال إلى الوطن / إلى العائلة، ودعم الشركات في لبنان، والمساهمة في السياحة الموسمية،

تدعمها مؤسسة الحريري للتنمية البشرية وإنشاء مساهمات خيرية، مثل برنامج المنح الدراسية في الخارج

أو شبكة (الأعمال اللبنانية، وغيرها ممن Hariri Foundation Scholarship Program) المستدامة

تعرفون عنهم.

هل لديك أي تعليقات إضافية؟ هل يمكنك الإشارة إلى المزيد من خبراء الموضوع / المخبرين الرئيسيين

الذين توصي باستشارتهم لغرض هذه الدراسة؟

شكرا جزيلا!

Annex 2 – List of Respondents

Name	Title	Affiliation	Country
Elise Salem	Professor and Vice President	Lebanese American University (LAU)	Lebanon
Rasha Akel	Junior Researcher at the Lebanese Center for Policy Studies	Junior Researcher at the Lebanese Center for Policy Studies. Recently graduated with an MA in Migration Studies from the Lebanese American University (LAU)	Lebanon
Luigi Achilli	Assistant Professor	European University Institute (EUI)	Italy
Robert Forster	Doctoral researcher	Chr. Michelsen Institute	Norway
Melkar El Khoury	Director Research and Consultancy at the Central Research House	Central Research House (https://www.crh-lb.org)	Lebanon
Peter Seeberg	Associate Professor / Professor Emeritus	Centre for Contemporary Middle East Studies, University of Southern Denmark	Denmark
Jennifer Skulte-Ouaiss	Director, Title IX--Equity & Inclusion, Office of the President, Central and Gender Expert, MEPI-Tomorrow's Leaders	Lebanese American University (LAU)	Lebanon
Ivana Roagna	Lawyer	UNICRI, United Nations	Italy
Raffaele Bertini	Economic Affairs Officer	United Nations	Lebanon
Erica Talentino	Child Protection Specialist	UNFPA, UNICEF, United Nations	Lebanon
بشير	مصطفى	أستاذ وكاتب صحفي	لبنان
Outeiba Merhebi	Lawyer	Law and human rights	Lebanon
Samer Annous	Senior Research Fellow	Tripoli Institute for Policy Studies (also working on establishing an association against xenophobia with lawyers in Tripoli, specifically on the impact on the crises to lobby informally and through communities for refugees)	Lebanon

Anonymous Respondent Official of the United Nations United Nations Syria

Tamirace Fakhoury Associate Professor Department of Politics and Society Aalborg University Denmark

List of Figures and Tables

Figure 1 *Respondents' gender and nationality breakdown*

Table 1 *Lebanon case study: key findings*

Table 2 *Lebanon: status of ratification of human rights treaties in Lebanon.*

Bibliography

Abdulloeva, N., (2023), *Diaspora and Transnational identities - An Analysis of Legal Frameworks and Policies*. International Organization for Migration (IOM), Geneva, available at <https://publications.iom.int/books/diaspora-and-transnational-identities-analysis-legal-frameworks-and-policies>

Aborisade RA. (2021), *Accounts of unlawful use of force and misconduct of the Nigerian police in the enforcement of COVID-19 measures* in *Journal of police and criminal psychology*, pp. 450-462, available at <https://link.springer.com/article/10.1007/s11896-021-09431-4>

Abou Kasm A. (2023), *Quel horizon pour le mécanisme onusien relatif aux personnes disparues en Syrie ?* In *L'Humanité*, available at <https://www.humanite.fr/en-debat/syrie/quel-horizon-pour-le-mecanisme-onusien-relatif-aux-personnes-disparues-en-syrie-803543>

Abourabi Y. (2022), *Governing African Migration in Morocco: The Challenge of Positive Desecuritisation in International Development Policy* | *Revue internationale de politique de développement* par. 24, available at <https://doi.org/10.4000/poldev.4788>

AbouZahr, C. et al. (2021), *The COVID-19 Pandemic: Effects on Civil Registration of Births and Deaths and on Availability and Utility of Vital Events Data*, in *American journal of public health*. vol. 111,6, p 1123-1131 also available at <https://www.ncbi.nlm.nih.gov/pmc/Articles/PMC8101592/pdf/AJPH.2021.306203.pdf>.

Abu Dhabi Dialogue Among the Asian Labour Sending and Receiving Countries (2020), available at <http://abudhabidialogue.org.ae/index.php/library?folder=147>; and ILO-African Union (2021), *Bilateral labour migration instruments – Africa and Arab States* available at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/documents/publication/wcms_831911.pdf

Achilli, L. (2018), *The “Good” Smuggler: The Ethics and Morals of Human Smuggling among Syrians* in *The ANNALS of the American Academy of Political and Social Science*, 676(1), 77–96. <https://doi.org/10.1177/0002716217746641>

Acosta Arcarazo D. (2011), *The Returns Directive: Possible Limits and Interpretation*, in Zwaan K. (ed.), *The Returns Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, pp. 7-24.

Acuerdo entre el Reino de España y el Reino de Marruecos sobre la circulación de personas, el tránsito y la readmisión de extranjeros entrados ilegalmente, in *Boletín Oficial del Estado* no. 100, 25 April 1992, no. 130, 30 May 1992, Article 3, par. d.

Adam A. (1992), *La repressione del traffico di droga via mare in un recente trattato italo-spagnolo*, in *La Comunità Internazionale*, p. 348-378

African Charter on the Rights and Welfare of the Child (1990),

African Union (2012) Kampala Convention available at: https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf

Agence France Presse (2020), *Qatar virus tracing app stirs rare privacy backlash*, available at <https://amp.france24.com/en/20200525-qatar-virus-tracing-app-stirs-rare-privacy-backlash>

Agencia Española de Cooperación Internacional para el Desarrollo - Ministerio de Asuntos Exteriores y de Cooperación (2009), *Plan África 2009-2012*, p. 60 and 81.

Agreement between Spain and Morocco is in «BOE» no. 83, de 7 April 2022, pages 46756 a 46760 (5 pages.), available at https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-5595,

Al Jazeera - Ibrahim, A. (2020). *A new exodus from Lebanon after deadly Beirut blast*. Available at <https://www.aljazeera.com/news/2020/08/mass-exodus-lebanon-deadly-beirut-blast-200821191208211.html>

Al-Dajani, H., Baroud, M., & Yassin, N. (Eds.). (2023), *Refugee Resilience and Adaptation in the Middle East: Reclaiming Agency in the Informal Economies of Lebanon and Jordan*. Taylor & Francis; Darkal, H., & Al-Dajani, H. (2023). Forced migration, resilience, and informal adaptive mechanisms: A literature review. *Refugee Resilience and Adaptation in the Middle East*, 12-35; Dennison, J., (2022) *Re-thinking the drivers of regular and irregular migration: evidence from the Euro-Mediterranean*, in *ICMPD report, 2022, Migration Policy Centre* – available at <https://hdl.handle.net/1814/75596>

Allain, J. (2012), *Trafficking and human exploitation in international law, with special reference to women and children in Africa*. In *Trafficking in Slavery's Wake: Law and the Experience of Women and Children*, pp. 145-162.

Allaw S. (2023), *A New Judicial Precedent: Charges Laid for the Death of a Neglected Domestic Worker*, in *The Legal Agenda* available at <https://english.legal-agenda.com/a-new-judicial-precedent-charges-laid-for-the-death-of-a-neglected-domestic-worker/>

Almenfi M. et al. (2020), *Where is the money coming from? Ten stylized facts on financing social protection responses to 35 COVID-19 in World Bank Social Protection and Jobs Policy Technical Note* No. 23, available at <https://documents1.worldbank.org/curated/en/737761605775837011/pdf/Where-is-the-Money-Coming-From-Ten-Stylized-Facts-on-Financing-Social-Protection-Responses-to-COVID-19.pdf>

Alonso Cano N., Todorova I. (2019), *Towards child-rights compliance in return and reintegration*, in *Migration Policy Practice*, volume IX No. 1, pp. 15-21 available at https://publications.iom.int/system/files/pdf/mpp_37.pdf

Althaus A., Parker L. (2019), *Preventing statelessness among undocumented migrants: The role of the International Organization for Migration*, available at <https://blogs.lse.ac.uk/mec/2019/05/07/preventing-statelessness-among-undocumented-migrants-the-role-of-the-international-organization-for-migration/>,

Álvarez B., Abreu O. (2023), *The Syrian-Lebanese Migration Puzzle: A new EU approach?* In *The Friedrich Naumann Foundation for Freedom*, available at <https://www.freiheit.org/spain-italy-portugal-and-mediterranean-dialogue/syrian-lebanese-migration-puzzle-new-eu-approach>

American Association for the International Commission of Jurists (1985), *Siracusa Principles on the Limitations and Derogations Provisions in the International Covenant on Civil and Political Rights*, available at <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

American Convention on Human Rights (San José, 1969),

Amnesty International (2017), *Deported: human rights in the context of forced returns – Summary*, available at https://www.amnesty.nl/content/uploads/2017/07/AMN_17_13_Rapport-mensenrechten-en-gedwongen-uitzetting_ENG-summary_WEB.pdf?x54531

Andreou, E. (2020), *Migrant boat spotted as meeting to assess increased arrivals*. *Cyprus Mail* available at <https://cyprus-mail.com/2020/09/07/migrant-boat-spotted-as-meeting-to-assess-increased-arrivals/>

Arab News (2020), *New migrant crisis at sea as young Lebanese flee to Cyprus* in *Arab News* available at <https://www.arabnews.com/node/1730456/middle-east>;

Aravind I. (2020) *Covid-19 will have unprecedented effect on migrant economy*, in *The Economic Times*, available at <https://economictimes.indiatimes.com/opinion/interviews/covid-19-will-have-unprecedented-effect-on-migrant-economy-dilip-ratha-world-bank/articleshow/75648695.cms?from=mdr>

Ardittis S., Laczko F. (2020), *Introduction – Migration policy in the age of immobility*, in *Migration Policy Practice*, volume X No. 2, , p. 3, and El País (2020), *Más de 5.000 euros por escapar de España en patera*, available at <https://elpais.com/espana/2020-04-23/mas-de-5000-euros-por-escapar-de-espana-en-patera.html>,

Asem K. (2009), *Palestinian Refugees in Arab States: A Rights-Based Approach*, in *CARIM Research Report*, 2009/08, available at <https://cadmus.eui.eu/handle/1814/10792>

Australia, Parliament of Australia, *The ‘Pacific Solution’ revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island*, 4 September 2012, available at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/PacificSolution#_Toc334509636,

Awuah G., *Acting in a Globalized World: Marketing Perspective*, August 2012 available at <https://www.intechopen.com/chapters/38263>

Baldaccini A. (2010), *Extraterritorial Border Control in the EU: The Role of Frontex in Operations at Sea*, in Ryan, Mitsilegas (ed.), *Extraterritorial Immigration Control. Legal Challenges*, *op. cit.*, p. 229.

Bantekas I., Oette L. (2016), *International Human Rights Law and Practice*, pp. 339-398.

- Bartole S. (2009), *Costituzione e costituzionalismo nella prospettiva sovranazionale*, in *Quaderni costituzionali*, pp. 569-590.
- Baumann H. (2023) Bringing the State and Political Economy Back in: Consociationalism and Crisis in Lebanon, Nationalism and Ethnic Politics, DOI: [10.1080/13537113.2023.2188655](https://doi.org/10.1080/13537113.2023.2188655)
- Baytiyeh H (2018), *The uses of mobile technologies in the aftermath of terrorist attacks among low socioeconomic populations*, in *International Journal of Disaster Risk Reduction*, Volume 28, Pages 739-747
- Bello V. (2017), *International Migration and International Security. Why Prejudice Is a Global Security Threat*. Routledge.
- Biondi Dal Monte F. (2012), *Cittadinanza europea, libera circolazione e parità di trattamento. Il diritto all'assistenza sociale dei cittadini dell'Unione*, in *Diritto, immigrazione e cittadinanza*, pp. 37-58
- Boll A. M. (2007), *Multiple Nationality and International Law*, Leiden, p. 171.
- Bou Mansour C. (2020), *Lebanese are no longer begging for change. Instead, they are begging to leave*.in *Middle East Monitor*, available at <https://www.middleeastmonitor.com/20201017-lebanese-are-no-longer-begging-for-change-theyre-begging-to-leave/>
- Brolan C. (2002), An Analysis of the Human Smuggling Trade and the *Protocol Against the Smuggling of Migrants by Land, Air and Sea (2000)* from a Refugee Protection Perspective, *International Journal of Refugee Law*, Volume 14, Issue 4, Pages 561–596, <https://doi.org/10.1093/ijrl/14.4.561>, p. 582.
- Bronfenbrenner U. (1981) *The Ecology of Human Development. Experiment by Nature and Design*, Harvard University Press.
- Brubaker R. (2005) *The 'diaspora' diaspora*, in *Ethnic and Racial Studies*, 28:1, 1-19, DOI: [10.1080/0141987042000289997](https://doi.org/10.1080/0141987042000289997)
- Canada, Radio Canada (2022), *Ottawa envisage de régulariser des centaines de milliers de sans-papiers*, available at <https://ici.radio-canada.ca/nouvelle/1922972/trudeau-canada-regularisation-sans-papiers>
- Cannizzaro E. (2011), *Corso di diritto internazionale*, Milan, p. 315
- Casagran Blasi, C., 2021, *Fundamental Rights Implications of Interconnecting Migration and Policing Databases in the EU*, in *Human Rights Law Review*, Volume 21, Issue 2, pages 433–457, available at <https://academic.oup.com/hrlr/article/21/2/433/6131329>
- Cassarino JP. (2007) *Informalising readmission agreements in the EU neighbourhood*, in *The international spectator*, volume 42, pp. 179-196.
- Cassese A. (2005), *International Law*, p. 116.

Charter of Fundamental Rights of the European Union.

Chen, F., Liu, Y., Ya, B., He, J., Leng, T., Sun, Y., & Xin, Q. (2021). *Latest Effective Measures to Combat COVID-19: A Review*, in *Iranian journal of public health*, 50(4), 640–648. <https://doi.org/10.18502/ijph.v50i4.5989>

Chetail, V. (2020). *COVID-19 and human rights of migrants: More protection for the benefit of all* in International Organization for Migration (IOM). Geneva.

Choucri, N. (2002). *Migration and Security: Some Key Linkages* in *Journal of International Affairs*, 56(1), 97–122

CIA (2023), *The World Factbook – Lebanon*, available at <https://www.cia.gov/the-world-factbook/countries/lebanon/>

Citino N., Martín Gil A., Norman K. P. (2023), *Generations of Palestinian Refugees Face Protracted Displacement and Dispossession* in *Migration Policy Institute – Migration Information Source*, available at <https://www.migrationpolicy.org/article/palestinian-refugees-dispossession>

Coalition to Defend Freedom of Expression (2023), *Lebanon: Attack on Freedoms Targets LGBTI People. Repressive Legislation; Unlawful Crackdown* in *The Legal Agenda*, available at <https://english.legal-agenda.com/lebanon-attack-on-freedoms-targets-lgbti-people-repressive-legislation-unlawful-crackdown/>

COE, Convention 108+ (1981)

Cohen, R. (2008). *Global Diasporas: An Introduction* (2nd ed.). Routledge. <https://doi.org/10.4324/9780203928943>

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 5 (2021) on migrants’ rights to liberty and freedom from arbitrary detention and their connection with other human rights, doc. CMW/C/GC/5, 21 July 2022, par. 45, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/411/19/PDF/G2241119.pdf?OpenElement>,

Committee on the Protection of the Rights of Migrant Workers and Members of their Families (2013), *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, doc. CMW/C/GC/2, par. 59, available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-2-rights-migrant-workers>

Committee on the Rights of the Child (2005), *General Comment No. 6 Treatment of unaccompanied and separated children outside their country of origin*, par. 61, available at <https://www2.ohchr.org/english/bodies/crc/docs/gc6.pdf>

Committee on the Rights of the Child, General Comment No.6 (2005) *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*

Comprehensive data-driven Risk and Threat Assessment Methods for the Early and Reliable Identification, Validation and Analysis of migration-related risks (CRITERIA) (2021), available at <https://www.project-criteria.eu/about-criteria/>

Condinanze M., Lang A., Nascimbene B. (2006), *Cittadinanza dell'Unione e libera circolazione delle persone*, Milano

Conforti B. (2010), *Diritto internazionale*, Napoli, p. 232.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 1984)

Convention relating to the Status of Stateless Persons (New York, 1954)

Cooper, L., Nimer, M. (2023). *Generating instability? The impact of the EU's hybrid migration governance in Turkey, Lebanon and Jordan* in *Governance*, 1–XXX available at <https://doi.org/10.1111/gove.12801>

Cornish, C. (2020). *Lebanon's economic crisis threatens to destroy its middle class* in *Financial Times*, available at <https://www.ft.com/content/ecf04229-b4ed-4419-b4ea-48b98acd5b76>

Cortina A. (2007), *Cittadinanza europea: un'identità aperta*, in Trujillo I., Viola F. (eds.), *Identità, diritti, ragione pubblica in Europa*, Bologna.

Cottone L. (2019), *The blurry line between smuggling and rescuing migrants according to the international law of the Sea* in *Quaderns de Recerca – Universitat Autònoma de Barcelona (UAB)*, available at https://ddd.uab.cat/pub/trerecpro/2019/hdl_2072_366031/N.49_-_Rosalinda_Cottone.pdf

Council of Europe (2010), *Report to the Italian Government on the visit to Italy Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009*, Doc. CPT / Inf (2010) 14.

Council of Europe (2020), *Human rights are more important than ever in times of crisis. On the Front Line against Human Rights Violations*, available at https://www.coe.int/en/web/portal/covid-19?p_p_id=101_INSTANCE_FuoQMFekxR8a&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_pos=2&p_p_col_count=3&_101_INSTANCE_FuoQMFekxR8a_delta=3&_101_INSTANCE_FuoQMFekxR8a_keywords=&_101_INSTANCE_FuoQMFekxR8a_advancedSearch=false&_101_INSTANCE_FuoQMFekxR8a_andOperator=true&p_r_p_564233524_resetCur=false&_101_INSTANCE_FuoQMFekxR8a_cur=1

Council of Europe (2021), *Diversity in the workplace A sexual orientation, gender identity or expression, sex characteristics approach* available at <https://rm.coe.int/diversity-in-the-workplace-a-sogiesc-approach/1680a477ce>

Council of Europe (2022), *Pushed beyond the limits Four areas for urgent action to end human rights violations at Europe's borders*, p. 23, available at <https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>

Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data as amended with Additional Protocol (1981)

Council of Europe, *Legal protection of human rights*, available at <https://www.coe.int/en/web/compass/legal-protection-of-human-rights> last accessed August 2023.

Council Regulation (EC) (2004) *No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02004R2007-20140717>

Cour Permanente de Justice Internationale (1923), *Avis consultatif n°4 Décrets de nationalité promulgués en Tunisie et au Maroc*, p. 24.

Cross B. F (1999), The relevance of law in human rights protection, in *International Review of Law and Economic* Volume 19, Issue 1, Pages 87-98, available at [https://doi.org/10.1016/S0144-8188\(98\)00028-3](https://doi.org/10.1016/S0144-8188(98)00028-3)

Cuttitta, P. (2023). Bridgeheads of EU border externalisation? NGOs/CSOs and migration in Libya. *Environment and Planning C: Politics and Space*, 41(4), 752–770. <https://doi.org/10.1177/23996544221143905>

Danish Refugee Council (DRC) (2021), *Press release: DRC commends Colombia's decision to regularize Venezuelan migrants*, available at <https://pro.drc.ngo/resources/news/press-release-drc-commends-colombia-s-decision-to-regularize-venezuelan-migrants/>

Davies, Gareth T., (2016) *Migrant Union Citizens and Social Assistance: Trying to Be Reasonable About Self-Sufficiency*, College of Europe Research Papers in Law No. 2/2016 available at <http://dx.doi.org/10.2139/ssrn.2825041>.

De Vittor F. (2013), *Nationality and freedom of movement*, in Annoni A., Forlati S. (eds.), *The Changing Role of Nationality in International Law*, London – New York, pp. 96-116.

Decree issued by the Regional Administrative Court for Latium (TAR) (2019), N. 10780/2019 REG.RIC, on the mistrial of the provision by the Italian authorities on the prohibition of navigation of the ship *Open Arms* in Italian territorial waters.

Deeb L, Nalbantian T. Sbaiti N. (2022) *Practicing Sectarianism. Archival and Ethnographic Interventions on Lebanon*,

Diab J. L. (2023), *On Prosecution, Persecution and Protection: Unpacking Anti-Refugee Narratives, Kinopolitics and Selective Outrage in Lebanon*, in *Refugee Law Initiative Blog on Refugee Law and Forced Migration* available at <https://rli.blogs.sas.ac.uk/2023/05/16/on->

[prosecution-persecution-and-protection-unpacking-anti-refugee-narratives-kinopolitics-and-selective-outrage-in-lebanon/#more-2671](#)

Diab JL, Jouhari I. (2023), *Analysis Conflict, Crisis, and Migration: Maritime Irregular Migration from Lebanon Since 2011* in *Friedrich Naumann Foundation for Freedom Madrid*, available at <https://www.freiheit.org/lebanon/conflict-crisis-and-crimmigration>

DLA Piper (2018), *Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice*, available at https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_DLA_Piper_Study.pdf,

Dolven B., Margesson R, Vaughn B (2012), *Timor-Leste: Political Dynamics, Development, and International Involvement*, in *Congressional Research Service* 7-5700, p. 8.

Donelle, L., Comer, L., Hiebert, B., Hall, J., Shelley, J. J., Smith, M. J., Kothari, A., Burkell, J., Stranges, S., Cooke, T., Shelley, J. M., Gilliland, J., Ngole, M., & Facca, D. (2023). *Use of digital technologies for public health surveillance during the COVID-19 pandemic: A scoping review*, in *Digital health*, 9, available at <https://doi.org/10.1177/20552076231173220>,

Donovan J.(2020), *Here's how social media can combat the coronavirus 'infodemic'*, , available at <https://www.technologyreview.com/2020/03/17/905279/facebook-twitter-social-media-infodemic-misinformation/>

Doraï, K., Amer, I. (2023), *Chapter 9: Lebanese migration policy since 2011 and its role in the Syrian refugee movement in Migration Patterns Across the Mediterranean*, Cheltenham, UK: Edward Elgar Publishing available at <https://doi.org/10.4337/9781800887350.00018>

Dugard J. (2006), *Seventh report on diplomatic protection: Diplomatic Protection*, UN Doc. A/CN.4/567, p. 11 available at https://legal.un.org/ilc/documentation/english/a_cn4_567.pdf,

Dugard J., Porter B., Ikawa D., Chenwi L. (2020), *Research Handbook on Economic, Social and Cultural Rights as Human Rights*, pp. 275-300

Dugard, J., Van den Wyngaert, C., (1998) *Reconciling Extradition with Human Rights*, in *American Journal of International Law*, volume 92 issue 2, p. 187-212, available at <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/reconciling-extradition-with-human-rights/6E577837A8255B5DB9D14BC5F60BCFC0>

Dunning C., Gelb A., Raghavan S. (2014), *Birth Registration, Legal Identity, and the Post-2015 Agenda*, in *Centre for Global Development Policy Paper 046*, available at <https://www.files.ethz.ch/isn/183719/birth-registration-legal-identity.pdf>

Dünnwald S. (2011), *On Migration and Security: Europe managing migration from Sub-Saharan Africa*.

Düvell, F. (2011), *Paths into irregularity: The legal and political construction of irregular migration* in *European Journal of Migration and Law*, 13(3), pp. 275-295

EU-Lex, available at https://europa.eu/european-union/law_en

EUR-Lex, Summary Glossary – Acquis, available at <https://eur-lex.europa.eu/summary/glossary/acquis.html>

EuroMed Rights (2022) *Cyprus: Refoulements to Lebanon and Syria under scrutiny again*, available at <https://euromedrights.org/publication/cyprus-refoulements-to-lebanon-and-syria-under-scrutiny-again-2/>

EuroMed Rights and Kisa (2022) *Input for the Special Rapporteur’s report on pushback practices and their impact on the human rights of migrants and refugees, with a focus on pushbacks from Cyprus to Lebanon and Turkey*, available at https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/Joint_KISA_EuroMed_Rights_Submission.pdf

EuroMed Rights, Napolitano A. (2023), *Artificial Intelligence: the new frontier of the EU’s border externalisation strategy*, available at https://euromedrights.org/wp-content/uploads/2023/07/Euromed_AI-Migration-Report_EN-1.pdf

European Border and Coast Guard Agency: <https://frontex.europa.eu/>

European Border Surveillance System (EUROSUR), Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1052>

European Commission (2009), *Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking in human beings, external borders and the repatriation of illegally staying persons*, doc. SEC (2009) 320 final,

European Commission (2018), *European neighbourhood policy*, available at [https://commission.europa.eu/strategy-and-policy/policies/european-neighbourhood-policy_en#:~:text=The%20European%20neighbourhood%20policy%20\(ENP,political%2C%20economic%20and%20security%20terms](https://commission.europa.eu/strategy-and-policy/policies/european-neighbourhood-policy_en#:~:text=The%20European%20neighbourhood%20policy%20(ENP,political%2C%20economic%20and%20security%20terms)

European Commission (2020), *Study on reviewing the functioning of Member States’ National and Transnational Referral Mechanisms*, doc. HOME/2018/ISFP/PR/THB/0000_ available at <https://op.europa.eu/en/publication-detail/-/publication/d5542e9c-0e92-11eb-bc07-01aa75ed71a1/language-en>

European Commission (2021), *Affordable Housing Initiative*, available at https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/affordable-housing-initiative_en#:~:text=The%20European%20Affordable%20Housing%20Consortium,construction%20of%20%20lighthouse%20districts.

European Commission (2021), *European Neighbourhood Policy*, available at https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en

European Commission (2021), *Guidance note — Research on refugees, asylum seekers & migrants*, available at https://ec.europa.eu/research/participants/data/ref/h2020/other/hi/guide_research-refugees-migrants_en.pdf

European Commission (2022), *Fighting human trafficking – Review of the EU Rules*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules_en

European Commission (2023), *Progress report on the implementation of the LGBTIQ Equality Strategy 2020-2025* available at https://commission.europa.eu/document/98551259-7873-4d91-940c-323e4cd7d390_en

European Commission, *Communication from the Commission on a New Pact on Migration and Asylum*, doc. COM(2020) 609 final, 23 September 2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0609>

European Commission, *Data Collection on trafficking in human beings in the EU, 2020*, available at <https://op.europa.eu/en/publication-detail/-/publication/5b93c49f-12a0-11eb-9a54-01aa75ed71a1>,

European Commission, Directorate-General for Research and Innovation, (2021). *Horizon Europe, budget: Horizon Europe - the most ambitious EU research & innovation programme ever*, Publications Office of the European Union., available at <https://data.europa.eu/doi/10.2777/202859>

European Commission, *EU Strategy on Combatting Trafficking in Human Beings (2021-2025)*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0171&from=EN>,

European Commission, *Policy Document Towards an operational strategy for more effective returns*, doc. COM(2023) 45 Final, 24 January 2023, available at https://home-affairs.ec.europa.eu/system/files/2023-01/Towards%20an%20operational%20strategy%20for%20more%20effective%20returns_en.pdf

European Commission. Directorate General for Migration and Home Affairs, Deloitte (2022), *Study to Assess the Various Options Related to Visa Process Digitalisation and to Support the Preparation of an Impact Assessment: Final Report*, Publications Office of the European Union, available at <https://op.europa.eu/en/publication-detail/-/publication/690e099e-e6d6-11ec-a534-01aa75ed71a1/language-en/format-PDF/source-289929907>

European Convention on Human Rights (Rome, 1950)

European Convention on Nationality (Strasbourg, 1997)

European Council of Refugees and Exiles (2023), *Cyprus: Overview of the main changes since the previous report update*, available at <https://asylumineurope.org/reports/country/cyprus/overview-main-changes-previous-report-update/>

European Court of Human Right – Grand Chamber (2012), *Case Kurić and Others c. Slovenia*, Application no 26828/06.

European Court of Human Right (1985), *Case of Abdulaziz, Cabales and Balkandali v. The United Kingdom* (Application no. 9214/80; 9473/81; 9474/81) available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%229214/80%22%2C%229473/81%22%2C%229474/81%22%5D%2C%22itemid%22:%5B%22001-57416%22%5D%7D>

European Court of Human Right (1989), *Case of Soering v. The United Kingdom*, Application no. 14038/88, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2214038/88%22%5D%7D>

European Court of Human Rights – Grand Chamber (2011), *Application no. 30696/09* available at <https://hudoc.echr.coe.int/?i=001-103050>

European Court of Human Rights – Grand Chamber (2014), *Application no. 29217/12* available at <https://hudoc.echr.coe.int/eng?i=001-148070>

European Court of Human Rights (1989), *Case of Soering v. The United Kingdom*, Application no. 14038/88), available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57619%22%5D%7D>

European Court of Human Rights (1996), *Amuur v. France*, Application no. 19776/92, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2219776/92%22%5D%2C%22itemid%22:%5B%22001-57988%22%5D%7D>

European Court of Human Rights (2008), *Case Saadi v. Italy*, Application no. 37201/06, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2237201/06%22%5D%7D>

European Court of Human Rights (2014), *Application no. 28820/13* available at <https://hudoc.echr.coe.int/eng?i=001-140865>

European Court of Human Rights (2019), *Ilias and Ahmed v. Hungary*, Application no. 47287/15, 21 available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-198760%22%5D%7D>

European Court of Human Rights (2019), *S.S. and others v. Italy*, application 21660/18 available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2221660/18%22%5D%7D>

European Court of Human Rights (2021) *S.S. and Others v. Italy*, App. No. 21660/18

European Court of Human Rights (2021), *Case of Shahzad v. Hungary* application No. 12625/17 available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2212625/17%22%5D%7D>

European Court of Human Rights, Grand Chamber (2012), *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22%3A%2227765%2F09%22%7D>

European Court of Human Rights, Grand Chamber (2020), *M.N. and Others*, Application no. 3599/18, available at <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%222001-202468%22%7D>

European Court of Justice (1992), decision *Micheletti*, case C-369/90, in *European Court Reports 1992 I-04239*.

European Court of Justice (2011), decision *Dereci and others*, case C-256/11, in *European Court Reports 2011 I-00000*.

European Court of Justice (2011), decision *Ruiz Zambrano*, case C-34/09, in *European Court Reports 2011 I-01177*.

European Court of Justice, decision 19 October 2004, *Zhu and Chen*, case C-200/02 in *European Court Reports 2004 I-09925*.

European Economic and Social Committee (2021), *The New Migration Pact: fraught with flaws and stuck in limbo*, available at <https://www.eesc.europa.eu/en/news-media/news/new-migration-pact-fraught-flaws-and-stuck-limbo>

European Migration Network (EMN) (2021), *Responses to long-term irregularly staying migrants: practices and challenges in the EU and Norway*, p. 32, available at https://home-affairs.ec.europa.eu/system/files/2021-07/00_eu_long_term_irregular_staying_migrants_study_en.pdf

European Parliament (2013), *Resolution of 14 March 2013 on the integration of migrants, its effects on the labour market and the external dimension of social security coordination*, doc. (2012/2131(INI)).

European Parliament and the Council (2016), *Regulation (EU) 2016/1624, establishing Frontex, the European Border and Coast Guard Agency* available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2016%3A251%3ATOC>

European Parliament, *Joint Motion for a Resolution on the situation in Lebanon*, doc. RC-B9-0323/2023, par. 13, available at https://www.europarl.europa.eu/doceo/document/RC-9-2023-0323_EN.html

European Parliament, *Resolution of 10 February 2021 on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (2020/2029(INI))

European Union - Council of the European Union, *The Schengen Area Explained* available at <https://www.consilium.europa.eu/en/policies/schengen-area/#schengen>

European Union - Global Diaspora Facility (2020), *Egypt - Diaspora Engagement Mapping*, available at https://diasporafordevelopment.eu/wp-content/uploads/2020/07/CF_Egypt-v.4.pdf

European Union – Council of the European Union (2004), *Common Basic Principles for Immigrant Integration Policy in the EU*, pp. 9-14, available at https://ec.europa.eu/migrant-integration/library-document/common-basic-principles-immigrant-integration-policy-eu_en

European Union – Curia Research and Documentation Directorate (2018), *Research Note. Recognition of kafala in the Member States, in particular in connection with the right of entry and residence in Member States*, available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-09/ndr_2018-008_neutralisee-finalisee-en.pdf

European Union (1995) Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data

European Union (2000), Charter of Fundamental Rights of the European Union

European Union (2001), Commission Decision on Standard Contractual Clauses for the transfer of personal data to third countries under Directive 95/46/EC

European Union (2006), *Proposal for a Council Decision on the position to be adopted by the European Community and its Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Lebanon Action Plan*, doc. COM/2006/0365 final available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006PC0365&qid=1608734811074>

European Union (2008), *Directive 2008/115/EC of The European Parliament and of The Council on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals*,

European Union (2010), Commission Decision of 5 February 2010 on Standard Contractual Clauses for the Transfer of Personal Data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council

European Union (2010), Parliamentary Assembly of the Council of Europe, *The detention of asylum seekers and irregular migrants in Europe*, doc. Doc. 12105, parr. 43-52 available at <https://pace.coe.int/pdf/addcc60e1c68629920ee2c6887f6c8b11521989bbb30cd4cd6c66684f932e8ae/doc.%2012105.pdf>

European Union (2011) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>,

European Union (2013), *Impact assessment study supporting the review of the Union's visa policy to facilitate legitimate travelling*, p. 22, available at https://home-affairs.ec.europa.eu/impact-assessment-study-supporting-review-unions-visa-policy-facilitate-legitimate-travelling_en

^European Union (2016), *Establishing an ETS: Recommendations for creating a European pension tracking service*, available at <https://ec.europa.eu/social/BlobServlet?docId=16387&langId=en>

European Union (2020), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions Action plan on Integration and Inclusion 2021-2027, doc. COM(2020) 758 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0758&qid=1632299185798>

European Union (2020), *New Pact on Migration and Asylum*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>

^European Union (2020), *Report From The Commission to the European Parliament and the Council Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, doc. COM/2020/661 final, p. 7, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0661>

^European Union (2021) *Strategy on Combatting Trafficking in Human Beings* available at https://ec.europa.eu/home-affairs/system/files_en?file=2021-04/14042021_eu_strategy_on_combatting_trafficking_in_human_beings_2021-2025_com-2021-171-1_en.pdf,

European Union (2021), Consolidated text: Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R1057-20210630>

European Union (2021), Consolidated text: Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R1058-20210630>

European Union (2021), *European Pillar of Social Rights - Action Plan*, available at <https://op.europa.eu/webpub/empl/european-pillar-of-social-rights/en/>

European Union (2021), Regulation (EU) 2021/817 of the European Parliament and of the Council of 20 May 2021 establishing Erasmus+: the Union Programme for education and training, youth and sport and repealing Regulation (EU) No 1288/2013 (Text with EEA relevance), available at <https://eur-lex.europa.eu/eli/reg/2021/817/>

European Union (2021), *Renewed partnership with the Southern Neighbourhood - A new agenda for the Mediterranean*, doc. JOIN(2021) 2 final, available at https://www.eeas.europa.eu/sites/default/files/joint_communication_renewed_partnership_southern_neighbourhood.pdf

European Union (2022), *Communication on the European care strategy*, doc. COM(2022) 440, available at <https://ec.europa.eu/social/BlobServlet?docId=26014&langId=en>

European Union (2022), Consolidated text: Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R1147-20220412>

European Union (2022), *EU Action plan for the Central Mediterranean*, available at https://home-affairs.ec.europa.eu/eu-action-plan-central-mediterranean_en.

European Union (2022), *EU Action Plan on the Western Balkans*, available at https://home-affairs.ec.europa.eu/eu-action-plan-western-balkans_en.

European Union (2022), *Partial update of the monitoring framework - Access to social protection for workers and the self-employed 2022*, available at <https://ec.europa.eu/social/BlobServlet?docId=26987&langId=en>

European Union (2023) *Communication from the Commission - Towards a Common European Tourism Data Space: boosting data sharing and innovation across the tourism ecosystem* available at https://single-market-economy.ec.europa.eu/publications/communication-commission-towards-common-european-tourism-data-space_en

European Union (2023), *EU Action Plan for the Western Mediterranean and Atlantic routes*, available at https://home-affairs.ec.europa.eu/eu-action-plan-western-mediterranean-and-atlantic-routes_en

European Union (2023), *Schengen Information System*, available at <https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Sis-Ii>

European Union (2023), *Special European Council*, available at <https://www.consilium.europa.eu/en/meetings/european-council/2023/02/09/>

European Union (2023), *Together Against Trafficking in Human Beings*, available at https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings_en

European Union (2023), *Visa Information System*, available at <https://www.eulisa.europa.eu/Activities/Large-Scale-It-Systems/Vis>

European Union Agency for Asylum (EUAA) (2022), *Survey on Sexual Orientation and Gender Identity. Key Findings Report*, available at https://euaa.europa.eu/sites/default/files/publications/2022-06/Survey_sexual_orientation_gender_identity_EN.pdf

European Union Agency for Fundamental Rights (2017), *Fundamental rights and the interoperability of EU information systems: borders and security*

European Union Agency for Fundamental Rights (FRA) (2020), Fundamental rights of refugees, asylum applicants and migrants at the European borders, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2020-european-law-land-borders_en.pdf

^European Union Agency for Fundamental Rights, *FRA Opinions Biometrics. Providing information in an understandable and transparent manner*, available at <https://fra.europa.eu/en/content/fra-opinions-biometrics#>

European Union, *Common European Asylum System (CEAS)*, available at https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en

European Union, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions on a New Pact on Migration and Asylum*, doc. COM/2020/609 final, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>

European Union, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Union of Equality: LGBTIQ Equality Strategy 2020-2025*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0698>

European Union, Consolidated text: Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0810-20200202>

European Union, Council Directive (EU) 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0637>

^European Union, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081>

European Union, Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L0680>

European Union, Directive 2006/24/EC on the Retention of Data generated or processed in connection with the provision publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (2005)

European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32008L0115>

European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>

^European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>

European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032>

^European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032>

European Union, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

European Union, *Employment, Social Affairs and Inclusion*, available at <https://ec.europa.eu/social/main.jsp?catId=750&langId=en> 1

European Union, *EU social security coordination*, available at <https://ec.europa.eu/social/main.jsp?catId=849>

European Union, *European Union Asylum Agency*, available at <https://euaa.europa.eu/>

^European Union, *Fighting human trafficking – Review of the EU Rules*, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13106-Fighting-human-trafficking-review-of-EU-rules/F_en,

^European Union, *First, Second and Third reports on the progress made in the fight against trafficking in human beings as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, available at https://ec.europa.eu/anti-trafficking/legal-and-policy-framework_en,

European Union, *Horizon Europe*, available at https://research-and-innovation.ec.europa.eu/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe_en

European Union, *Localisation Factsheet*, available at https://civil-protection-humanitarian-aid.ec.europa.eu/what/humanitarian-aid/localisation_en

European Union, *Official Journal of the European Union*, n. C 326/47, 26 October 2012.

European Union, *Official Journal of the European Union*, n. C 83/13, 30 March 2010.

European Union, *Official Journal of the European Union*, n. C 83/389, 30 March 2010.

European Union, *Official Journal of the European Union*, number L. 349/1, 25 November 2004.

European Union, Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006R1987>,

European Union, Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R0767&qid=1415378549768>

⁶European Union, Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R0810>

European Union, Regulation (EC) No. 45/2001 on the Protection of Individuals with regard to the Processing of Personal Data by the Community Institutions and Bodies and on the Free Movement of such data (2000)

European Union, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.119.01.0001.01.ENG&toc=OJ:L:2016:119:FULL#d1e1384-1-1

European Union, *Regulation* (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016R0794>

European Union, Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System

(SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32018R1861>

European Union, Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1560236503929&uri=CELEX:32019R0817>

European Union, Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1560236503929&uri=CELEX:32019R0818>

²European Union, Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0603>

European Union, *Social Protection – Definition*, available at <https://ec.europa.eu/social/main.jsp?catId=1063&langId=en>

European Union, Special Barometer 469 (2018), Report – *Integration of Immigrants in the European Union*, available at https://data.europa.eu/data/datasets/s2169_88_2_469_eng?locale=en

European Union, The Association Council (2016), *Association between the European Union and Lebanon. Decision No 1/2016 of the EU-Lebanon Association Council of 11 November 2016 agreeing on EU-Lebanon Partnership Priorities*, available at https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-12/eu_lebanon_partnership_priorities_2016-2020_and_their_annexed_eu-lebanon_compact.pdf

³EUROPOL, available at <https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact>

Eurostat (2011), *Indicators of Immigrant Integration A Pilot Study*, Luxembourg, available at <https://ec.europa.eu/eurostat/documents/3888793/5849845/KS-RA-11-009-EN.PDF>

Fakhoury T. (2021), *Lebanon as a Test Case for the EU's Logic of Governmentality in Refugee Challenges* in Istituto Affari Internazionali, available at <https://www.iai.it/en/pubblicazioni/lebanon-test-case-eus-logic-governmentality-refugee-challenges>

Fakhoury T., Ozkul D. (2019) *Syrian refugees' return from Lebanon*, in *Forced Migration Review* No. 62, available at <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/return/fakhoury-ozkul.pdf>

Favilli C. (2013), *Migration Law in Italy*, The Hague, p. 51

Financial Times (2023), *AI will create 'a serious number of losers', warns DeepMind co-founder*, available at <https://www.ft.com/content/0c105d93-e017-470d-8653-a2a30fd720b2>

Foreign Policy (2020), *You Can't Practice Social Distancing if You're a Refugee*, available at <https://foreignpolicy.com/2020/03/20/you-cant-do-social-distancing-if-youre-a-refugee/>

Forlati S. (2013), *Nationality as a human right*, in Annoni A., Forlati S. (eds.), *The Changing Role of Nationality in International Law*, London – New York, p. 28.

Fosters R., Knudsen A. J (2022), *EFFEXT Background Paper – National and international migration policy in Lebanon* in Chr. Michelsen Institute available at <https://www.cmi.no/publications/8589-national-and-international-migration-policy-in-lebanon>

France 24 (2020), *Hezbollah militant sentenced to life in Lebanon's Hariri assassination case*, available at <https://www.france24.com/en/middle-east/20201211-un-backed-court-sentences-hezbollah-man-to-life-in-lebanon-s-hariri-assassination-case>

France, Code de l'entrée et du séjour des étrangers et du droit d'asile (articles L313-8, R313-11-1 à R313-11-4, R311-10 à R311-13); Code du travail (articles R5221-17 à R5221-22); Arrêté du 12 mai 2011 fixant la liste des diplômes au moins équivalents au master; Arrêté du 18 janvier 2008 relatif à la délivrance, sans opposition de la situation de l'emploi, des autorisations de travail aux étrangers non européens. Carte de séjour - Recherche d'emploi/création d'entreprise | service-public.fr (service-public.fr available at <https://www.service-public.fr/particuliers/vosdroits/F17319>

Frangieh G. (2018), *Human Trafficking Crimes Before the Courts: In the Shadow of Prosecution*, in *the Legal Agenda* available at <https://english.legal-agenda.com/human-trafficking-crimes-before-the-courts-in-the-shadow-of-prosecution/>

Freeman, G.P (1992), *Migration policy and politics in the receiving states* in *International Migration Review*, 26(4), pp.1144-1167.

Freier L. F. (2020), *COVID-19 and rethinking the need for legal pathways to mobility: Taking human security seriously*, International Organization for Migration (IOM) Geneva, available at <https://publications.iom.int/system/files/pdf/rethinking-the-need-for-legal.pdf>

Frouws B. (2021), *Negative narratives, mistaken metaphors. The need for careful language on migration*, available at <https://mixedmigration.org/articles/op-ed-negative-narratives-mistaken-metaphors-the-need-for-careful-language-on-migration/>

Frowd P.M (2018), *Developmental borderwork and the International Organization for Migration*, in *Journal of Ethnic and Migration Studies*, volume 44(10), pp.1656-1672.

Gaja G., Adinolfi A. (2014), *Introduzione al diritto dell'Unione europea*, Bari, p. 14.

García Andrade P. (2010), *Extraterritorial Strategies to Tackle Irregular Immigration by Sea: A Spanish Perspective*, in Ryan, Mitsilegas (ed.), *Extraterritorial Immigration Control. Legal Challenges*, *op. cit.*, p. 316.

Giammarinaro M. G. (2021), *Revising EU Directive on human trafficking? For bad or good reasons?*, available at <https://giammarinaro.net/en/revising-eu-directive-on-human-trafficking-for-bad-or-good-reasons/>

Giammarinaro M., Palumbo, L. (2020), *COVID-19 and inequalities: Protecting the human rights of migrants in a time of pandemic*, in *Migration Policy Practice*, volume X No. 2, p. 21.

Gil-Bazo M.T. (2006), *The Practice of the Mediterranean States in the context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revised*, in *International Journal of Refugee Law*, p. 579

Gil-Bazo MT. (2015), *The safe third country concept in international agreements on refugee protection assessing state*, in *Netherlands Quarterly of Human Rights*, p. 42-77.

Gilodi, A., Albert, I. Nienaber, B. (2022) *Vulnerability in the Context of Migration: a Critical Overview and a New Conceptual Model*. In *Human Arenas* available at <https://doi.org/10.1007/s42087-022-00288-5>

Global Forum on Migration and Development (GFMD) (2020), *Shaping the Public Narrative on Migration and Migrants – A guide to Promote a Balanced Dialogue*, available at https://gfmd.org/files/documents/gfmd_communications_guide_on_shaping_public_narratives_on_migration_2020_0.pdf

Global Forum on Migration and Development (GFMD), available at <https://www.gfmd.org/> last accessed August 2023.

Global Migration Group , *Principles and Guidelines*, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, p. 5-7, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>

Global Protection Cluster, *COVID-19 Pandemic: Trafficking in Persons (TIP) considerations in internal displacement contexts*, available at <https://www.refworld.org/publisher.GPC...5eac18e04,0.html>

Goldman Sachs Research (2023), *Generative AI could raise global GDP by 7%*, available at <https://www.goldmansachs.com/intelligence/pages/generative-ai-could-raise-global-gdp-by-7-percent.html>

Gombeer, K. and Fink, M. (2018), *Non-Governmental Organisations and Search and Rescue at Sea in Maritime Safety and Security Law Journal*, Issue 4, available at SSRN: <https://ssrn.com/abstract=3468719>

Goodwin-Gill, G. S., (2003) *Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection* in Feller E., Türk V. and Nicholson F. (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, pp. 185-211.

Goodwin-Gill, G.S. and McAdam, J. (2021), *The refugee in international law*, Geneva

Goodwin-Gill, McAdam (2007), *The Refugees in International Law*, Geneva

Göttsche, S. (2021) *The Accumulation of Vulnerability Aspects in the Figure of the Migrant: A Theoretical Approach* in Fromm, N., Jünemann, A., Safouane, H. (eds) *Power in Vulnerability. Studien zur Migrations- und Integrationspolitik*. Springer VS, Wiesbaden https://doi.org/10.1007/978-3-658-34052-0_1

Goy R. (2003), *Le régime international des migrants illicites par voie de mer*, in *Annuaire de droit de la mer*, p. 249-301.

Grant S. (2019), *Consular Protection, Legal Identity and Migrants' Rights: Time for Convergence?*, available at <https://blogs.lse.ac.uk/mec/2019/05/17/consular-protection-legal-identity-and-migrants-rights-time-for-convergence/>

Graviano N., Darbellay N. (2019), *A framework for assisted voluntary return and reintegration*, in *Migration Policy Practice*, volume IX No. 1, pp. 9-14 available at https://publications.iom.int/system/files/pdf/mpp_37.pdf

Grosso E. (2013), *Si fa presto a dire "ius soli". Considerazioni sparse sull'acquisto della cittadinanza nel diritto comparato*, in *Diritto, immigrazione e cittadinanza*, pp. 13-35.

Hailbronner K. (2006), *Nationality in Public International Law and European Law*, in Bauböck R. Ersboll E., Groenendijk K, Waldrauch H. (eds.), *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries*, Amsterdam, pp. 35 – 104.

Hamdan H. (2021), *Will Lebanon's economic crunch stir demographic change?*, in *Al Monitor*, available at <https://www.al-monitor.com/originals/2021/12/will-lebanons-economic-crunch-stir-demographic-change>

Harbitz M, Boekle-Giuffrida B. (2009), *Democratic Governance, Citizenship, and Legal Identity Linking Theoretical Discussion and Operational Reality*, in *Interamerican Development Bank*, available at <https://publications.iadb.org/publications/english/document/Democratic-Governance-Citizenship-and-Legal-Identity-Linking-Theoretical-Discussion-and-Operational-Reality.pdf>

Harbitz M., Tamargo M. (2009), *The Significance of Legal Identity in Situations of Poverty and Social Exclusion. The Link between Gender, Ethnicity, and Legal Identity*, in *Interamerican Development Bank*, available at <https://publications.iadb.org/publications/english/document/The-Significance-of-Legal-Identity-in-Situations-of-Poverty-and-Social-Exclusion-The-Link-between-Gender-Ethnicity-and-Legal-Identity.pdf>

Hariri Foundation for Sustainable and Human Development, available at <https://hariri-foundation.org/>

Harris C., Gruenewald J. (2020), *News Media Trends in the Framing of Immigration and Crime, 1990–2013*, in *Social Problems*, Volume 67, Issue 3, pp. 452–470.

Höflinger, T. (2020), *Non-binding and therefore irrelevant? The Global Compact for Migration*, in *International Journal*, n. 75(4), 662–672, available at <https://doi.org/10.1177/0020702020975108>

Human Rights Committee (2018), *Report of the Special Rapporteur on the human rights of migrants*, doc. A/HRC/38/41, par. 14, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/125/17/PDF/G1812517.pdf?OpenElement>

Human Rights Committee (2020), *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, doc. CCPR/C/GC/37, pp. 41-45.

Human Rights Watch (2020), *Human Rights Dimensions of COVID-19 Response*, available at https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446577

Human Rights Watch (2020), *Mobile Location Data and Covid-19: Q&A*, available at <https://www.hrw.org/news/2020/05/13/mobile-location-data-and-covid-19-qa>,

Human Rights Watch (2021), *Russia: Intrusive Tracking App Wrongly Fines Muscovites*, available at <https://www.hrw.org/news/2020/05/21/russia-intrusive-tracking-app-wrongly-fines-muscovites>

Human Rights Watch (2022), *Lebanon's Abusive Kafala (Sponsorship) System*, available at <https://www.hrw.org/news/2022/01/04/lebanons-abusive-kafala-sponsorship-system>

Human Rights Watch (2022), *Myanmar: No Justice, No Freedom for Rohingya 5 Years On. Anniversary of Atrocities Highlights International Inaction*, available at <https://www.hrw.org/news/2022/08/24/myanmar-no-justice-no-freedom-rohingya-5-years>

Human Rights Watch (2023), *Cut Off from Life Itself" Lebanon's Failure on the Right to Electricity*, available at <https://www.hrw.org/report/2023/03/09/cut-life-itself/lebanons-failure-right-electricity>

Human Rights Watch (2023), *Lebanon: Armed Forces Summarily Deporting Syrians*, available at <https://www.hrw.org/news/2023/07/05/lebanon-armed-forces-summarily-deporting-syrians>

Human Rights Watch (2023), *Lebanon: Electricity Crisis Exacerbates Poverty, Inequality*, available at <https://www.hrw.org/news/2023/03/09/lebanon-electricity-crisis-exacerbates-poverty-inequality>

IARMJ-EUROPE, EASO (2021), *Vulnerability in the context of applications for international protection. Judicial analysis*, available at <https://op.europa.eu/en/publication-detail/-/publication/6d8c0c45-77e6-11eb-9ac9-01aa75ed71a1/language-en>

ILO (2011), *2011 General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, par. 22., available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_152602.pdf

ILO (2011), *C189 - Domestic Workers Convention, 2011 (No. 189)*, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189

ILO (2019), *C190 - Violence and Harassment Convention, 2019 (No. 190)*, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

ILO (2020), *National Consultation on Kafala Reform in Lebanon*, available at https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/meetingdocument/wcms_737980.pdf

ILO (2021), *World Social Protection Report 2020-22*, pp. 68-70, available at https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@soc_sec/documents/publication/wcms_817572.pdf

ILO (2021), *World Social Protection Report 2020–22. Regional companion report for the Middle East and North Africa (MENA) region*, p. 19, available at https://www.ilo.org/wcmsp5/groups/public/@arabstates/@ro-beirut/documents/publication/wcms_830406.pdf

ILO, *Regularization and Employer Sanctions as Means towards the Effective Governance of Labour Migration*, 2009 available at https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_308873.pdf

Ilyomade, B.O. (1975), *Scope and content of a complaint of abuse of right in international law* in *Harv. Int'l. LJ*, 16, p. 47; Taylor, G.D. (1972), *The content of the rule against abuse of rights in international law*. *Brit. YB Int'l L.*, 46, p. 323; Byers, M. (2001), *Abuse of rights: an old principle, a new age* in *McGill LJ*, 47, p. 389.

Independence of the Judiciary Coalition (2023), *Statement on the Third Anniversary of the Beirut Port Blast: Time to Shake Off the Ashes of the Coup and Article 751* in *The Legal Agenda*, available at <https://english.legal-agenda.com/independence-of-the-judiciary-coalition-statement-on-the-third-anniversary-of-the-beirut-port-blast-time-to-shake-off-the-ashes-of-the-coup-and-article-751/>

Indulekha A. (2020), *Covid-19 will have unprecedented effect on migrant economy*, in *The Economic Times*, available at <https://economictimes.indiatimes.com/opinion/interviews/covid-19-will-have-unprecedented-effect-on-migrant-economy-dilip-ratha-world-bank/articleshow/75648695.cms?from=mdr>

Inter-Agency Coordination Against Trafficking in Persons (ICAT) (2022), *Addressing Vulnerability to Trafficking in Persons*, Issue Brief 12/ 2022 available at https://www.icmpd.org/file/download/57956/file/icat_issue_brief_12_vulnerability_to_tip_publication.pdf

Inter-Agency Coordination Against Trafficking in Persons (ICAT) (2017), *Trafficking in Persons in Humanitarian Crises*, available at: <https://icat.un.org/sites/g/files/tmzbdl461/files/publications/icat-ib-02-final.pdf>,

Inter-Agency Standing Committee (2023), *Grand Bargain Beyond 2023*, available at <https://interagencystandingcommittee.org/system/files/2023-06/Grand%20Bargain%20beyond%202023%20-%20Framework.pdf>

Inter-American Court of Human Rights (1984), *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Advisory Opinion OC-4/84, par. 32-33, available at https://www.corteidh.or.cr/docs/opiniones/seriea_04_ing.pdf

Inter-American Court of Human Rights (1999), *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*, Advisory Opinion OC-16/99. Series A No. 16, para. 31, available at https://www.corteidh.or.cr/docs/opiniones/seriea_16_ing.pdf

Inter-American Court of Human Rights (2014), *Advisory Opinion (2014) Oc-21/14 of August 19*, requested by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay - Rights and Guarantees of Children in the Context of Migration and /or in need of International Protection, par. 145., available at https://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf

International Communication Union (ITU) (2023), *United Nations Activities on Artificial Intelligence (AI)*, available at https://www.itu.int/dms_pub/itu-s/opb/gen/S-GEN-UNACT-2022-PDF-E.pdf

International Court of Justice (1949) in *Corfu Channel (U.K. v. Northern Ireland and Albania, 1949)* judgement, p. 22

International Court of Justice (1955), *Nottembohm Case (Liechtenstein v. Guatemala)*, available at <https://www.icj-cij.org/public/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>

International Court of Justice (1970), *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962)* (Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951, p. 23

International Court of Justice (1995) *Case Nottembohm (Liechtenstein v. Guatemala, 6 April 1955)*.

International Court of Justice (2001), Judgement *LaGrand (Germany v. United States of America)*, par. 77, available at <https://www.icj-cij.org/en/case/104>

International Court of Justice, *Avena and Other Mexican Nationals (Mexico V. United States Of America) Judgment of 31 March 2004* in *ICJ Reports 2004*, p. 12 available at <https://www.icj-cij.org/sites/default/files/case-related/128/128-20040331-JUD-01-00-EN.pdf>

International Court of Justice, *Jadhav (India v. Pakistan), Judgment*, in *I.C.J. Reports 2019*, p. 418 available at <https://www.icj-cij.org/sites/default/files/case-related/168/168-20190717-JUD-01-00-EN.pdf>

International Court of Justice, Judgement *LaGrand (Germany v. United States of America)*, 27 June 2001, par. 77, available at <https://www.icj-cij.org/en/case/104>

International Court of Justice, *Statute of the International Court of Justice*, available at <https://www.icj-cij.org/statute>

International Covenant on Civil and Political Rights (New York, 1966)

International Covenant on Economic, Social and Cultural Rights (New York, 1966)

International Detention Coalition (IDC) (2015), *There are alternatives. A handbook for preventing unnecessary immigration detention (revised edition)*, p. 59-74, available at <https://idcoalition.org/wp-content/uploads/2015/10/There-Are-Alternatives-2015.pdf>

International Labour Organisation (ILO), (2011), *C189 - Domestic Workers Convention, 2011 (No. 189)*, available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189

International Labour Organization (ILO) (2010), *International Labour Migration. A right-based approach*, available at https://www.ilo.org/global/publications/books/WCMS_125361/lang-en/index.htm

International Maritime Organization (IMO) (1997), *Resolution A.867 (20), Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea*, doc. A 20 / Res. 867, available at [http://www.imo.org/en/OurWork/Facilitation/docs/FAL related nonmandatory instruments/Resolution A.867\(20\).pdf](http://www.imo.org/en/OurWork/Facilitation/docs/FAL_related_nonmandatory_instruments/Resolution_A.867(20).pdf)

International Maritime Organization (IMO) (2001), *Interim Measure for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea*, doc. MSC / Circ.896 / Rev.1, available at <https://www.maritimeglobalsecurity.org/media/1024/msc1-circ896-rev1.pdf>

International Maritime Organization (IMO) (2001), *Interim Measures for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea*, doc. MSC / Circ.896 / Rev.1.

International Organization for Migration (2015), *Cash-Based Transfer – Update and Case Studies*, available at https://www.sheltercluster.org/sites/default/files/docs/iom_cash-based_transfer_-_nov2015_lowres.pdf.

International Organization for Migration (2019), *IML Information Note on Access to Justice: A Migrant's Right*, available at https://www.iom.int/sites/default/files/our_work/ICP/IML/iml-infonote-access-to-justice.pdf

International Organization for Migration (2020), *Introducing SOGIESC Information into Pre-Departure Orientation Curriculums*, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/SOGIESC-LGBTIQ-Messages-for-Pre-Departure-Orientation-Curriculums.pdf>

International Organization for Migration (IOM) (2010), *IOM Data Protection Manual*, available at https://publications.iom.int/system/files/pdf/iomdataprotection_web.pdf

International Organization for Migration (IOM) (2012), *Migration Crisis Operational Framework*, doc. MC/2355 available at <https://www.iom.int/mcof>

International Organization for Migration (IOM) (2019), *Glossary on Migration*, Geneva, available at https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf

International Organization for Migration (IOM) (2019), *The IOM Handbook on Protection and Assistance to Migrants Vulnerable to Violence, Exploitation and Abuse*, available at <https://publications.iom.int/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>

International Organization for Migration (IOM) (2021), *IOM's Policy on the Full Spectrum of Return, Readmission and Reintegration*, available at <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/ioms-policy-full-spectrum-of-return-readmission-and-reintegration.pdf>

IOM – Khouri R. (2004), *Characteristics and Magnitude of Arab Migration Patterns in the Mashreq: South-South Context Arab Migration Patterns: The Mashreq in Arab Migration in a Globalized World*, p. 21, available at https://publications.iom.int/system/files/pdf/arab_migration_globalized_world.pdf

IOM (2011), *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries*, p. 17 available at https://publications.iom.int/system/files/pdf/diaspora_handbook_en_for_web_28may2013.pdf

IOM (2011), *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries*, p. 67 available at https://publications.iom.int/system/files/pdf/diaspora_handbook_en_for_web_28may2013.pdf

IOM (2013), *International Dialogue on Migration N°22 - Diasporas And Development: Bridging Societies And States*, available at <https://idiaspora.org/en/learn/resources/laws-and-policies/international-dialogue-migration-ndeg22-diasporas-and-development>

IOM (2013), *Strategy to Enable, Engage and Empower Diaspora*, available at <https://diaspora.iom.int/ioms-strategy-enable-engage-and-empower-diaspora>

IOM (2015), *Addressing Human Trafficking and Exploitation in Times of Crises: Evidence and Recommendations for Further Action to Prevent Vulnerable and Mobile Populations*, available at <https://publications.iom.int/books/addressing-human-trafficking-and-exploitation-times-crisis-evidence-and-recommendations-0>

IOM (2015), *Handbook on Direct Assistance for Victims of Trafficking*, 2015, available at <https://publications.iom.int/books/iom-handbook-direct-assistance-victims-trafficking-0>

IOM (2015), *Migration Governance Framework. The essential elements for facilitating orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies*, Council Resolution n. C/106/40, available at https://www.iom.int/sites/default/files/about-iom/migof_brochure_a4_en.pdf

IOM (2017), *Integration and Social Cohesion: Key Elements for Reaping the Benefits of Migration*, available at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Integration-and-Social-Cohesion.pdf

IOM (2017), *Towards an Integrated Approach to Reintegration in the Context of Return*, Geneva, available at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/AVRR/Towards-an-Integrated-Approach-to-Reintegration.pdf

IOM (2020) *COVID-19 Analytical Snapshot #28: Impacts on Immigration Policies*, 2020 available at https://www.iom.int/sites/default/files/documents/covid-19_analytical_snapshot_28_-_impacts_on_immigration_policies.pdf

IOM (2020) *COVID-19 Snapshot #65: Irregularity, protection & smuggling Update* available at https://www.iom.int/sites/default/files/documents/covid-19_analytical_snapshot_65_irregularity_update.pdf

IOM (2020), *COVID-19: Policies and impact on seasonal agricultural workers*, Issue Brief, available at https://www.iom.int/sites/g/files/tmzbd1486/files/documents/seasonal_agricultural_workers_270_52020_0.pdf

IOM (2021), *IML Note on Consular Assistance*, p. 5 available at https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ICP/IML/iml_consular_assistance1.pdf

IOM (2022), *Social Protection – An Operational Tool for the Humanitarian, Development and Peace Nexus: Linkages between Cash-based*, p. 3, available at <https://publications.iom.int/books/social-protection-operational-tool-humanitarian-development-and-peace-nexus-linkages-between>

IOM (2023), *A Model for Diaspora Engagement in Humanitarian Contexts at Country Level: Engagement of the Ukrainian diaspora organizations - Italian Case Study*, available at <https://publications.iom.int/books/model-diaspora-engagement-humanitarian-contexts-country-level-engagement-ukrainian-diaspora>

IOM (2023), *Data strength and limitations. Migration Data in Western Asia*, available at <https://www.migrationdataportal.org/regional-data-overview/migration-data-western-asia>

IOM (2023), *Lebanon - Baseline Assessment Round 3*, available at <https://dtm.iom.int/reports/lebanon-baseline-assessment-round-3?close=true>

IOM (2023), *Lost Hope, Lost Lives: Insights into Lebanese Irregular Migration*, available at <https://publications.iom.int/books/lost-hope-lost-lives-insights-lebanese-irregular-migration>

IOM and Samuel Hall (2023) *Monitoring the Reintegration of Trafficking Survivors: Study and Toolkit*, IOM, Geneva available at <https://publications.iom.int/books/monitoring-reintegration-trafficking-survivors-study-and-toolkit> last accessed July 2023.

IOM data on migration to Europe available at <https://migration.iom.int/europe?type=arrivals>

IOM GMDAC (2020), *Future Migration Trends*, available at <https://www.migrationdataportal.org/themes/future-migration-trends>.

IOM-DTM report *DTM Europe Summary of key activities and findings*, available at https://displacement.iom.int/system/tdf/reports/DTM%20Med%202020%20Info%20Sheet_final.pdf?file=1&type=node&id=10732.

IOM, *COVID-19 (2020) Identification and Monitoring of Emerging Immigration, Consular and Visa Needs*, available at https://www.iom.int/sites/default/files/our_work/DMM/IBM/2020/en/covid-19iomissuebrief-immigrationconsularandvisarecommendations.pdf

IOM, *COVID-19 Analytical Snapshot #71: Regularisation*, 2021, available at https://www.iom.int/sites/default/files/documents/covid-19_analytical_snapshot_71_regularization.pdf

IOM, *Immigration and Visa Support Solutions*, available at <https://www.iom.int/sites/g/files/tmzbdl486/files/jahia/webdav/shared/shared/mainsite/activities/ibm/Immigration-and-Visa-Support-Solutions.pdf>

IOM, *Ukraine Crisis : Six Months Response*, available at https://www.iom.int/sites/g/files/tmzbdl486/files/situation_reports/file/IOM-Ukraine-Regional-Response2022-6-Month-Special-Report.pdf

Ionesco D. (2006), *Engaging Diasporas as Development Partners for home and Destination Countries: Challenges for Policymakers*, IOM Migration Research Series No. 26, p. 14, available at https://www.iom.int/sites/default/files/our_work/ICP/IDM/MRS26.pdf

ISD (2020), *COVID-19 Disinformation Briefing No.1 – 27th March 2020*, available at <https://www.isdglobal.org/isd-publications/covid-19-disinformation-briefing-no-1/>

IT Tools and Methods for Managing Migration Flows (ITFLOWS) (2019), available at <https://www.itflows.eu/about/project/>

Italy, Consolidated Text on Immigration (1998), *Law 286/1998*

Italy, Law of authorization for ratification and execution of 6 February 2009 n. 7, in *the Official Journal of the Italian Republic*, n. 40, 18 February 2009.

Italy, National Legislative Bodies / National Authorities, *Italy: Legislative Decree No. 286 of 1998, Testo Unico sull'Immigrazione*, 25 July 1998, available at <https://www.refworld.org/docid/54a2c23a4.html>,

Italy, Supplement to the Official Journal of the Italian Republic (2003), no. 111, May 15, p. 53.

Ivanov, D. V., & Pchelitseva, V. V. (2023). *Durable Solution to the Problem of Externally Displaced Persons from the Syrian Arab Republic in OIC Member States: Legal Obligations and International Cooperation with UNHCR, EU and OIC* in *European Journal of Migration and Law*, 25(1), pp. 31-53. <https://doi.org/10.1163/15718166-12340143>

Janmyr M. (2017), *No Country of Asylum: 'Legitimizing' Lebanon's Rejection of the 1951 Refugee Convention*, in *International Journal of Refugee Law*, Volume 29, Issue 3, pp. 438–465, <https://doi.org/10.1093/ijrl/eex026>

Janmyr M. (2018), *UNHCR and the Syrian refugee response: negotiating status and registration in Lebanon*, in *The International Journal of Human Rights*, Volume 22,3, pp. 393-419, DOI: 10.1080/13642987.2017.1371140

Jiménez Cortéz C. (2022), *La Desnaturalización de la Zona Sar en el Mediterráneo Central: De Pieza Clave para Salvar Vidas a Instrumento Contra Los Derechos Humanos* in *Revista Española de Derecho Internacional* pp. 245-270, <http://dx.doi.org/10.17103/redi.74.2.2022.1b.05>

Joint Rescue Coordination Centre (2021), *Search and Rescue training to Lebanese Officers*, available at <https://www.mod.gov.cy/mod/cjrcc.nsf/All/977D583922DAFB65C225876F0046D2DB?OpenDocument>,

Jureidini R. (2020), *Regulation of Migration in Egypt*, available at <https://www.mei.edu/publications/regulation-migration-egypt>

Khalil A. (2009), *Palestinian Refugees in Arab States: A rights-based approach*, in *CARIM Research Report. Robert Schuman Centre for Advanced Studies*, available at https://cadmus.eui.eu/bitstream/handle/1814/10792/CARIM_RR_2009_08REV.pdf

Khazen F. (1991), *The Communal Pact of National Identities: the Making and Politics of the 1943 National Pact*, in *Papers on Lebanon 12*, Oxford, available at <https://lebanesestudies.com/wp->

content/uploads/2012/03/8b844d712.-The-Communal-Pact-of-National-Identities-The-Making-and-Politics-of-the-1943-National-Pact-Farid-el-Khazen-1991.pdf

Kheshen N. (2022), *Lebanon's Refugee and Asylum Legal Framework*, in *The Tahir Institute of Middle East* available at <https://timep.org/2022/12/08/lebanons-refugee-and-asylum-legal-framework/>

Kheshen N., Safi M., (2023), *Nightmare Realized: Syrians Face Mass Forced Deportations from Lebanon* in *The Tahir Institute for Middle East Policy* available at <https://timep.org/2023/05/24/nightmare-realized-syrians-face-mass-forced-deportations-from-lebanon/>

Koka E. (2019), *Irregular immigration by sea. International law and European Union law*, in *European Journal of Migration and Law*, p. 26. available at <https://unyt.edu.al/wp-content/uploads/2019/03/Paper-Published.pdf>

Koser K., Kuschminder K. (2015), *Comparative research on the assisted voluntary return and reintegration of migrants*, in *International Organization for Migration*, p 14 available at https://www.iom.int/sites/g/files/tmzbd1486/files/migrated_files/What-We-Do/docs/AVRR-Research-final.pdf

Kreidy C. (2022), *Unpacking solid waste management policies in Lebanon: Public policies based on power-sharing politics rather than evidence-based decision-making*, in *the Arab Reform Initiative*, available at <https://www.arab-reform.net/publication/unpacking-solid-waste-management-policies-in-lebanon-public-policies-based-on-power-sharing-politics-rather-than-evidence-based-decision-making/>

Krugman P. (1980) *Scale economies, product differentiation, and the pattern of trade in American Economic Review*, no. 5, pp. 950-959 available at <https://www.aeaweb.org/aer/top20/70.5.950-959.pdf>

L'Orient Today (2023), *Lebanon's branding as 'no country of asylum' is historically misleading*, available at <https://today.lorientjour.com/article/1331292/lebanons-branding-as-no-country-of-asylum-is-historically-misleading.html#:~:text=University%20of%20Beirut,-,Lebanon%20seeks%20to%20position%20itself%20as%20%E2%80%9Cno%20country%20of%20asylum,notably%20in%20the%20joint%20UN%2D>

La Moncloa (2023), *España y EEUU colaborarán para impulsar la migración regular desde América Central y del Sur*, April 2023, available at <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/Paginas/2023/270423-acuerdo-migracion-regular-america.aspx>

Laczko F., Aghazarm C. (2009), *Migration, Environment and Climate Change: Assessing the Evidence*, in *International Organization for Migration*, Geneva, p. 18, available at https://publications.iom.int/system/files/pdf/migration_and_environment.pdf

Lauterpacht E., Bethlehem D., (2003) *The Scope and Content of the Principle of Non-Refoulement: Opinion*, in Feller E., Türk V. and Nicholson F. (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, pp. 87-177.

Lebanese Republic Central Administration of Statistics (CAS); International Labour Organization (ILO); European Union (EU) (2020), *Labour Force and Household Living Conditions Survey 2018-2019 Lebanon, Beirut*, available at <http://www.cas.gov.lb/images/Publications/Labour%20Force%20and%20Household%20Living%20Conditions%20Survey%202018-2019.pdf>

Lebanon Business Network, available at <https://www.lbn.com.lb/>

Lebanon Law on Foreigners, available at <https://www.ilo.org/dyn/natlex/docs/SERIAL/39234/97115/F1369890137/LBN-39234.pdf>

Lebanon Presidency (1995), *The Lebanese Constitution*, available at <https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>

Lebanon, General Directorate for General Security, *Entry of artist in nightclubs*, available at <https://www.general-security.gov.lb/en/posts/46#:~:text=The%20general%20directorate%20of%20General,after%20paying%20the%20concerned%20expenses.>

Lebanon, Ministry of Foreign Affairs (Lebanon) Facebook, available at https://www.facebook.com/EmigrantsDirectorate2020/?ref=page_internal.

Legal Explanations (2023), *Class definition and legal meaning*, available at <https://legal-explanations.com/definition/class/>

Legido-Quigley, H. et al. (2019), *Healthcare is not universal if undocumented migrants are excluded*, in *BMJ* 2019;366:14160, <https://doi.org/10.1136/bmj.14160>

Locchi M. (2014), *Lo ius soli nel dibattito pubblico italiano*, in *Quaderni costituzionali*, pp. 483-503.

Longley R. (2022), *What Is Transnationalism? Definition, Pros, and Cons*, available at <https://www.thoughtco.com/what-is-transnationalism-definition-pros-and-cons-5073163>

Maerz SF, Lührmann A, Lachapelle J, Edgell AB (2020), *Worth the sacrifice? Illiberal and authoritarian practices during Covid-19. Illiberal and Authoritarian Practices during Covid-19 in V-Dem Working Paper*, pp. 1-110, available at <https://deliverypdf.ssrn.com/delivery.php?ID=225088106066097007096007113098099122063069081044038058081118102113067092069127106065019050096119055113011095024007103111108067008047028029049106117071124122071109089003015073093099086027015022086094020017011127112100098079081006097122071005116085003065&EXT=pdf&INDEX=TRUE>

- Majcher I, Strik T. (2021), *Legislating without evidence: the recast of the EU Return Directive in European Journal of Migration and Law*, 31;23(2):103-26 available at https://brill.com/view/journals/emil/23/2/article-p103_1.xml
- Marchetti S., Palumbo L. (2022), *10 Years After the Directive 2011/36/EU Lights and shadows in addressing the vulnerability of trafficked and exploited migrants*, policy brief no. 33, available at https://population-europe.eu/files/documents/pb33_vulner_human-trafficking_final.pdf
- Marchisio S. (2000), *L'ONU. Il diritto delle Nazioni Unite*, Bologna, p. 69.
- Mateo A. (2020), *Reflections on the UN Network on Migration's Listening Sessions on Alternatives to Detention*, available at https://migrationnetwork.un.org/sites/default/files/reflection_on_the_listening_session_on_regular_pathways_09_10_2020_amg.pdf
- Mau, S., Brabandt, H., Laube, L., Roos, C., Mau, S., Brabandt, H., Laube, L. and Roos, C., (2012) *Visa Policies and the Regulation of Territorial Access. Liberal States and the Freedom of Movement: Selective Borders, Unequal Mobility*, pp. 54-87.
- Mayall, J. (1973), *The Malawi-Tanzania Boundary Dispute*, in *The Journal of Modern African Studies*, vol. 11, no. 4, p. 611–628 available at <http://www.jstor.org/stable/161618>
- McCubbin, L., *Challenges to the Definition of Resilience*, in *American Psychological Association*, 2001 available at <https://files.eric.ed.gov/fulltext/ED458498.pdf>
- Mediendienst Integration (2020), *Was ist eine Duldung?*, available at <https://mediendienst-integration.de/migration/flucht-asyl/duldung.html>
- Menjívar C., Ruiz M, Ness I. (eds.) (2018), *The Oxford Handbook of Migration Crises*, New York.
- Molnar P., Jill L. (2018) *Bots at the Gate: A Human Rights Analysis of Automated Decision Making in Canada's Immigration and Refugee System* available at <https://ihrp.law.utoronto.ca/sites/default/files/media/IHRP-Automated-Systems-Report-Web.pdf>
- Molnar, P. (2020) *AI and Migration Management*, in Dubber M. D., Pasquale F., and Das S. (eds) *The Oxford Handbook of Ethics of AI* Oxford Academic, available at <https://doi.org/10.1093/oxfordhb/9780190067397.013.49>
- Momtaz D. (1999), *La lutte contre « introduction clandestine » de migrants par mer*, in *Annuaire du Droit de la Mer*, p. 49;
- Morachimo M. – Hiperderecho (2020), *Aplicación “Perú en tus manos” sigue dejando más preguntas que respuestas dos meses después*, available at <https://hiperderecho.org/2020/06/aplicacion-peru-en-tus-manos-sigue-dejando-mas-preguntas-que-respuestas-dos-meses-despues/>
- Moran L. (2023), *Lawyer cites fake cases generated by ChatGPT in legal brief*, available at <https://www.legaldive.com/news/chatgpt-fake-legal-cases-generative-ai-hallucinations/651557/>

Moreno-Lax, V. (2020). *The Architecture of Functional Jurisdiction: Unpacking Contactless Control—On Public Powers, S.S. and Others v. Italy, and the “Operational Model”* in *German Law Journal*, 21(3), pp. 385-416. doi:10.1017/glj.2020.25

Morrone A. (2012), *Teologia economica v. Teologia politica? Appunti su sovranità dello Stato e «diritto costituzionale globale»*, in *Quaderni costituzionali*, pp. 829-853.

Murphy P. S. (2022) *The relationship between poverty and prosperity: a feminist relational account* in *Journal of Global Ethics*, pp. 82-99 available at <https://doi.org/10.1080/17449626.2022.2052155>

Nascimbene B. (2011), *Cittadinanza dell’Unione europea e cittadinanza di residenza. Recenti profili*, in D’Amico (ed.), *Alle frontiere del diritto costituzionale. Scritti in onore di Valerio Onida*, Milan, p. 1301

Nassim A., Cottone L., Zdruli L. and Loewi P. (2020), *Leveraging technology, innovation, and entrepreneurship to support young migrants and refugees*, available at <https://medium.com/@IOMatUN/leveraging-technology-innovation-and-entrepreneurship-to-support-young-migrants-and-refugees-1c4b61f5d4a7>

Neuburger J. D, Gesser A., Hewman R. H., Grossenbacher K., Bannigan M. K. (2023), *ChatGPT and Generative AI: Key Legal Issues*, available at <https://www.reuters.com/practical-law-the-journal/transactional/chatgpt-generative-ai-key-legal-issues-2023-06-01/>

Neumayer, E. (2006), *Unequal access to foreign spaces: how states use visa restrictions to regulate mobility in a globalized world* in *Transactions of the Institute of British Geographers*, 31(1), pp. 72-84.

Noll G. (2020), *Rejected Asylum Seekers: the Problem of Return*, available at <https://www.unhcr.org/research/working/3ae6a0cd0/rejected-asylum-seekers-problem-return-gregor-noll.html> last accessed April 2023; IOM-EMN (2016), *Returning Rejected Asylum Seekers: challenges and good practices*, available at https://home-affairs.ec.europa.eu/system/files/2017-12/17a_lithuania_rejected_asylum_final_en.pdf

Nordquis H., Kraska N. (2021), *United Nations Convention on the Law of the Sea, 1982: A Commentary. Supplementary Documents*, Geneva, p. 790.

O’Keefe D. (1994), *Union citizenship*, in O’Keefe D., Twomey P. (eds.), *Legal Issues of the Maastricht Treaty*, London, p. 106.

Obokata, T. (2010) *The Legal Framework Concerning the Smuggling Of Migrants At Sea Under The Un Protocol On The Smuggling Of Migrants By Land, Sea And Air*. In *Extraterritorial Immigration Control*. Leiden, The Netherlands <https://doi.org/10.1163/ej.9789004172333.i-441.33>, p. 152.

OCHA (2020), *Lebanon: Beirut Port Explosions Situation Report No. 6 (As of 21 August 2020)*, available at <https://reliefweb.int/report/lebanon/lebanon-beirut-port-explosions-situation-report-no-6-21-august-2020>

OECD (1980), Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data

OECD (2002), Guidelines for the Security of Information Systems and Networks

OECD (2020), Policy Responses to Coronavirus (COVID-19), Tracking and tracing COVID: Protecting privacy and data while using apps and biometrics, available at <https://www.oecd.org/coronavirus/policy-responses/tracking-and-tracing-covid-protecting-privacy-and-data-while-using-apps-and-biometrics-8f394636/>

OECD/European Commission (2023), *Indicators of Immigrant Integration 2023: Settling In*, OECD Publishing, Paris, <https://doi.org/10.1787/1d5020a6-en>.

Oelgemöller, C., Allinson, K. (2020), *The Responsible Migrant, Reading the Global Compact on Migration in Law Critique* 31, pp. 183–207. <https://doi.org/10.1007/s10978-020-09265-9>

OHCHR (2017), *Trafficking in Persons in Humanitarian Crises*, available at <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/trafficking-conflict-and-humanitarian-crises>

OHCHR (2023), *Towards a Human Rights-Based Approach to Migration Training Guide Professional Training Series No. 26*

OHCHR-DLA Piper, *Admission and Stay Based on Human Rights and Humanitarian Grounds: a Mapping of National Practice*, 2018.

Olivier, M. (2023 – forthcoming). *Strengthening migrants' access to social protection in Lebanon* in International Organization for Migration (IOM)

OSCE – ODIHR (2004), *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons - A Practical Handbook*, available at <https://www.osce.org/files/f/documents/0/4/13967.pdf>,

Palermo Protocol, adopted by General Assembly Resolution A/RES 55/25 on 15 November 2000. Currently (September 2019) 149 States are parties to the Protocol. The text is reproduced in United Nations, *Treaty Series*, Vol. 2241, doc. A/55/383, p. 507.

Panella L. (2010), *La cittadinanza e le cittadinanze nel diritto internazionale*, Napoli, p. 117.

Papadopoulou A. *Regularisation programmes: an effective instrument of migration policy?*, in *Global Migration Perspectives* n. 33, 2005, available at https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/gmp/gmp33.pdf

Papanicolopulu I. (2012), *The Law of Sea Convention: No Place for Persons?* in *The International Journal of Marine and Coastal Law*, p. 867.

Papastavridis F., *Fortress Europe" and FRONTEX: within or without international law?* in *Nordic Journal of International Law*, 2010, p. 93.

Paris Principles and Guidelines on Children Associated with Arms or Armed Groups (2007),

Parisi N., Urso G. (2011), *I principi di eguaglianza e di non discriminazione nell'ordinamento dell'Unione europea*, in Panella L., Spatafora E:(eds.), *Studi in onore di Claudio Zanghi*, Turin, Volume 3, Tome II, pp. 781-807.

Permanent Court of International Justice (1923) *Nationality Decrees Issued by Tunis and Morocco*

PICUM (2021), *The EU Migration Pact: Questions and Answers*, available at <https://picum.org/eu-migration-pact-questions-answers/>

PICUM, *Manual on regularisations for children, young people and families*, 2018 available at <https://www.picum.org/Documents/Publi/2018/Regularisation Children Manual 2018.pdf>

Pijnenburg, A. (2018). *From Italian Pushbacks to Libyan Pullbacks: Is Hirsi 2.0 in the Making in Strasbourg?*. in *European Journal of Migration and Law*, 20(4), pp. 396-426. <https://doi.org/10.1163/15718166-12340036>

Platform for International Cooperation on Undocumented Migrants (PICUM) (2022), *Regularisation mechanisms and programmes: Why they matter and how to design them*, Brussels, available at https://picum.org/wp-content/uploads/2023/01/Regularisation-mechanisms-and-programmes-Why-they-matter-and-how-to-design-them_EN.pdf last accessed July 2023.

Protocol 4 to the European Convention on Human Rights. (Strasbourg, 1963).

Pustorino, P. (2003) *Refugees' Rights, Right to Citizenship and Other Political Rights*, in *Introduction to International Human Rights Law*, pp. 199-209.

Reuters (2022) *Ecuador begins regularization process for thousands of Venezuelan migrants*, available at <https://www.reuters.com/world/americas/ecuador-begins-regularization-process-thousands-venezuelan-migrants-2022-09-01/>

Reyhani, A.N., (2020) *Expelled from Humanity: Reflections on MN and Others v. Belgium*, available at <https://verfassungsblog.de/expelled-from-humanity/>

Robison K. (2022), *What is the Kafala System?*, in *Council on Foreign Relations*, available at <https://www.cfr.org/backgrounder/what-kafala-system>

Rodriguez Bilbao J. (2014), *What is the Territorial Approach to Local Development?*, available at <https://europa.eu/capacity4dev/articles/what-territorial-approach-local-development>

Roht-Arriaza, N. (1990), *State responsibility to investigate and prosecute grave human rights violations in international law* in *Calif. L. Rev.*, p. 449; Danaher, M. (1980), *Torture as a tort in violation of international law: Filartiga v. Pena-Irala* in *Stan. L. Rev.*, 33, p. 353.

Ronzitti N. (2002), *Coastal State Jurisdiction over Refugees and Migrants at Sea*, in Ando, Mcwhinney, Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, p. 1274.

Ronzitti N. (2013), *Introduzione al diritto internazionale*, Turin, 2013, p. 354.

Rossi A. (2020), *COVID-19: the 'fine balance' under human rights law*, available at <https://www.gcsp.ch/global-insights/covid-19-fine-balance-under-human-rights-law>

Sampson, R. and Mitchell, G.,(2013). Global trends in immigration detention and alternatives to detention: Practical, political and symbolic rationales. *Journal on Migration and Human Security*, 1(3), pp.97-121.

Samuel Hall and IOM (2023) *Mapping and research to strengthen protection and assistance measures for migrants with diverse SOGIESC*, IOM, Geneva available at <https://publications.iom.int/books/mapping-and-research-strengthen-protection-and-assistance-measures-migrants-diverse-sogiesc>

Santer K.O. (2023) *Governing Through Scalar Elasticity: An Analysis of the Accountability Gap in Migration Control in the Central Mediterranean*, in *Social & Legal Studies*.

Sanyal R. (2017), *A no-camp policy: Interrogating informal settlements in Lebanon*, in *Geoforum*, Volume 84, pp. 117-125, <https://doi.org/10.1016/j.geoforum.2017.06.011>

Schechner S., Grind K. and Haggin P. (2020) *Tech Firms Are Spying on You. In a Pandemic, Governments Say That's OK.*, in *The Wall Street Journal*, available at <https://www.wsj.com/Articles/once-pariahs-location-tracking-firms-pitch-themselves-as-covid-sleuths-11592236894>

Scholten, P., Collett, E., & Petrovic, M. (2017). Mainstreaming migrant integration? A critical analysis of a new trend in integration governance in *International Review of Administrative Sciences*, 83(2), 283–302. <https://doi.org/10.1177/0020852315612902>

Scovazzi T. (2013), *Human rights and Immigration at sea*, in R. Rubio Marín (ed.), *Human rights and Immigration*, Oxford, 2014, pp. 212-260 and Salerno F. (2013), *Diritto internazionale. Principi e norme*, Padua, p. 322.

Scovazzi T. (2014), *Il lato oscuro dei diritti umani: aspetti di diritto internazionale*, in M. Meccarelli, P. Palchetti, C. Sotis (eds.), *Il lato oscuro dei diritti umani*, Madrid, pp. 115-134.

Seeberg, P. (2018), *EU policies concerning Lebanon and the bilateral cooperation on migration and security – new challenges calling for new institutional practices?* In *Palgrave Communications* DOI: 10.1057/s41599-018-0192-7 available at <https://d-nb.info/1174670142/34>

Setty, R. (2023), *First AI Art Generator Lawsuits Threaten Future of Emerging Tech*, available at <https://news.bloomberglaw.com/ip-law/first-ai-art-generator-lawsuits-threaten-future-of-emerging-tech>

Sewell A., Chehayeb K. (2023), *Syrian refugees fearful as Lebanon steps up deportations* in *AP News* available at <https://apnews.com/article/lebanon-refugees-syria-arrests-deportations-356d55f1412f830b6521180c5390a869>

Sheikh, H., Prins, C., Schrijvers, E. (2023), *Artificial Intelligence: Definition and Background*. In *Mission AI. Research for Policy*. Springer, Cham. https://doi.org/10.1007/978-3-031-21448-6_2

Silvestri G. (2006), *Verso uno ius commune europeo dei diritti fondamentali*, in *Quaderni costituzionali*, pp. 7-24.

Simone P. (2013), *Nationality and regional integration. The case of the European Union*, in Annoni A, Forlati S. (eds.), *The Changing Role of Nationality in International Law*, London – New York, pp. 169-192

Simone P. (2014) *op.cit.*, p. 175; Cipolletti C., *Cittadinanza statale e cittadinanza europea: il caso della legge maltese*, in *Rivista di diritto internazionale*, 2014, pp. 463-485.

Sironi A. (2016), *The Double Plight of Stateless Migrants*, available at <https://weblog.iom.int/double-plight-stateless-migrants>

Skulte-Ouais J, Tabar P. (2015) *Strong in Their Weakness or Weak in Their Strength? The Case of Lebanese Diaspora Engagement with Lebanon*, in *Immigrants & Minorities*, 33:2, 141-164, DOI: [10.1080/02619288.2013.877347](https://doi.org/10.1080/02619288.2013.877347)

Skulte-Ouais J., Mourad J. G. (2023), *CHAPTER 2 COVID-19: A Threat to Lebanese Women's Precarious Condition*. in R. Stephan (Ed.), *COVID and Gender in the Middle East* (pp. 28-47). New York, USA: University of Texas Press. <https://doi.org/10.7560/326527-006>

Solano, G., Huddleston, T. (2020), *Migrant Integration Policy Index 2020*, Barcelona/Brussels: CIDOB MPG available at www.mipex.eu

Sönmez P, Kırık H., (2017) *Turkish-EU readmission agreement: a critique of EU-Turkey migration dialogue*, pp. 1-26.

Spain, Real Decreto 629/2022, de 26 de julio, por el que se modifica el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009, aprobado por el Real Decreto 557/2011, de 20 de abril, available at <https://www.boe.es/eli/es/rd/2022/07/26/629>

Srivastava M. (2021) *Israel in 'dangerous place' as virus infections surge*, in *Financial Times*, available at <https://www.ft.com/content/44afdf58-4aaa-4c01-a5df-ea13d899dcf1>

Stigant S., Phelan M. V. (2019) *A Year After the Ethiopia-Eritrea Peace Deal, What Is the Impact? Warming ties are part of a tectonic shift in the Horn of Africa, but the end results are far from certain* in *United States Institute of Peace, Analysis and Commentary*.

Stoyanova V. (2019), *The Grand Chamber Judgment in Ilias and Ahmed v Hungary: Immigration Detention and How the Ground Beneath Our Feet Continues to Erode*, available at

<https://strasbourgobservers.com/2019/12/23/the-grand-chamber-judgment-in-iliyas-and-ahmed-v-hungary-immigration-detention-and-how-the-ground-beneath-our-feet-continues-to-erode/>

Stoyanova V. (2020), *M.N. and Others v Belgium: no ECHR protection from refoulement by issuing visas*, available at <https://www.ejiltalk.org/m-n-and-others-v-belgium-no-echr-protection-from-refoulement-by-issuing-visas/>

Strategy& part of PWC network (2020), *Beirut Explosion Impact Assessment*, available at <https://www.strategyand.pwc.com/ml/en/beirut-explosion.html>

Suhrke, A. and Hazarika, S. (1993), *Pressure points: environmental degradation, migration and conflict*, p. 33 available at <https://www.cmi.no/publications/file/1374%20pressure-points-environmental-degradation.pdf>

The Daily Star Lebanon (2020), *Uptick in boats of Lebanese, Syrian migrants in Cyprus*, available at <https://www.dailystar.com.lb/News/World/2020/Sep-06/511292-uptick-in-boats-carrying-lebanese-syrian-migrants-cyprus.ashx>

The Economic Community of West African States (ECOWAS) <https://ecowas.int/>

The Economist (2020), *Everything's under control. The state in the time of covid-19*, available at <https://www.economist.com/leaders/2020/03/26/the-state-in-the-time-of-covid-19>

The Guardian (2018), *Five Myths About the Refugee Crisis*, available at <https://www.theguardian.com/news/2018/jun/05/five-myths-about-the-refugee-crisis>

The Legatum Institute Foundation (2023) *Defining Prosperity*, London, available at https://www.prosperity.com/download_file/view_inline/4779

The Middle East Eye (2021), *Lebanon intercepts Syrian refugees attempting Mediterranean sea crossing*, available at <https://www.middleeasteye.net/news/lebanon-syria-refugees-sea-crossing-intercept>

The New Humanitarian – Sewell A. (2020) *Overlapping crises in Lebanon fuel a new migration to Cyprus*, available at <https://www.thenewhumanitarian.org/news-feature/2020/09/21/Lebanon-Cyprus-Beirut-security-economy-migration>

The Washington Post (2017), *Aid groups say Italy is forcing them to stop rescuing migrants at sea*, available at <https://www.washingtonpost.com/news/worldviews/wp/2017/08/15/aid-groups-say-italy-is-forcing-them-to-stop-rescuing-migrants-at-sea/>

The World Bank (2022) *Poverty and Shared Prosperity 2022 Correcting Course*, available at <https://www.worldbank.org/en/publication/poverty-and-shared-prosperity>

Theodoulou N. (2023) *Cyprus and Lebanon establish group to combat illegal migration*, in *Cyprus Mail*, available at <https://cyprus-mail.com/2023/07/27/cyprus-and-lebanon-establish-group-to-combat-illegal-migration/>

Thomson Reuters (2023), *Corporate legal departments see use cases for generative AI & ChatGPT, new report finds*, available at <https://www.thomsonreuters.com/en-us/posts/technology/chatgpt-generative-ai-corporate-legal-departments-2023/>

Ticehurst R. (1997), *The Martens Clause and the Laws of Armed Conflict*, International Review of the Red Cross, No. 317, available at <https://www.icrc.org/en/doc/resources/documents/article/other/57jnhy.htm>

Tizzano A. (2011), *Alle origini della cittadinanza europea*, in Panella L., Spatafora E. (eds.), *Studi in onore di Claudio Zanghì*, Turin, Volume 3, Tome II, pp. 857-866.

Tölölyan K. (2012), *Diaspora studies Past, present and promise*, in *International Migration Institute*, volume 55, available at <https://www.migrationinstitute.org/publications/wp-55-12/@@download/file>

Triandafyllidou A. ed. (2016), *Irregular migration in Europe: Myths and realities*, p. 2.

Ulusoy O, Battjes H. (2017), *Situation of readmitted migrants and refugees from Greece to Turkey under the EU-Turkey statement*, in *VU Amsterdam Migration Law Series*,

UNCHR (2009), *Handbook for the Protection of Internally Displaced Persons*, Part IV.8 available at <https://www.unhcr.org/4c2355229.pdf>;

UNESCWA (2022), *Policy advocacy for building urban economic resilience during and after COVID-19 in the Arab region*, available at <https://www.unescwa.org/publications/building-urban-economic-resilience-covid-19-arab-region>

UNHCR (2011) *Trafficking for sexual exploitation: victim protection in international and domestic asylum law*, available at <https://www.unhcr.org/4d9c7c869.pdf>,

UNHCR (2023), *Lebanon Fact Sheet July 2023*, available at <https://reporting.unhcr.org/lebanon-factsheet-5270>

UNHCR (2023), *Operational data portal refugee situations*, available at https://data.unhcr.org/en/situations/syria/location/71?_gl=1*_w146ul*_rup_ga*MTM4MTk0NDg0MC4xNjkwOTczMTk5*_rup_ga_EVDQTJ4LjAuMTY5MzU4OTI2NS4zLjAuMTY5MzU4OTI2NS4wLjAuMA..*_ga*MTM4MTk0NDg0MC4xNjkwOTczMTk5*_ga_MTW6FNGL18*MTY5MzU4OTI2NS4xLjAuMTY5MzU4OTI2NS4wLjAuMA.#_ga=2.205282256.1114580461.1693589266-1381944840.1690973199

UNHCR (2023), *UNHCR Lebanon at a glance*, available at <https://www.unhcr.org/lb/at-a-glance#:~:text=Lebanon%20remains%20the%20country%20hosting,13%2C715%20refugees%20of%20other%20nationalities.>

UNICEF (2019), *Faces, Fingerprints and Feet: Guidance on assessing the value of including biometric technologies in UNICEF-supported programmes*, available at <https://data.unicef.org/resources/biometrics/>

UNICEF (2022), *Practical Guide on identification of victims and persons at-risk of trafficking in human beings. Guidance for frontline responders*, Geneva, available at <https://www.unicef.org/eca/media/24371/file/Identification%20of%20Persons%20At-Risk%20of%20Trafficking%20in%20Human%20Beings.pdf>

United Nations (2019) *United Nations Strategy for Legal Identity for All*, New York, 2019, par. 12, available at <https://unstats.un.org/legal-identity-agenda/documents/UN-Strategy-for-LIA-draft.pdf>

United Nations - Office of the United Nations High Commissioner for Human Rights (2008), *Frequently Asked Questions on Economic, Social and Cultural Rights – Factsheet 33*, available at <https://www.ohchr.org/Documents/Issues/ESCR/FAQ%20on%20ESCR-en.pdf>

United Nations – Department of Peace and Political Affairs (2023), *Artificial Intelligence and Virtual Reality — Used Responsibly — Can Help Peacebuilding Efforts*, available at <https://dppa.medium.com/artificial-intelligence-and-virtual-reality-used-responsibly-can-help-peacebuilding-efforts-e4aa700710bd>

United Nations – Department of Peace and Political Affairs (2023), *Futuring Peace. Dreaming of Lebanon*, available at <https://futuringpeace.org/project/vr-experience-dreaming-of-lebanon>

United Nations – Department of Peace and Political Affairs (2023), *Exploring the Potential and Pitfalls of Artificial Intelligence as a Tool for Prevention and Peacebuilding*, available at <https://dppa.medium.com/exploring-the-potential-and-pitfalls-of-artificial-intelligence-as-a-tool-for-prevention-and-77fb3e15b442>

United Nations – General Assembly (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, doc. A/RES/70/1, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>

United Nations – Treaties Series, *Volume 1249*, p. 13.

United Nations – Treaties Series, *Volume 360*, p. 117.

United Nations – Treaties Series, *Volume 989*, p. 175.

United Nations (1933), *Reports of International Arbitral Awards – Honduras Borders (Guatemala, Honduras)*, volume II p. 1307-1366, available at https://legal.un.org/riaa/cases/vol_II/1307-1366.pdf

United Nations (1963), *Vienna Convention on Consular Relations*. 1963. Done at Vienna on 24 April 1963. Entered into force on 19 March 1967. United Nations, Treaty Series, vol. 596, p. 261, available at https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

United Nations (1990), *Guidelines for the Regulation of Computerized Personal Data Files*

United Nations (1998), *Guiding Principles on Internal Displacement*, par. 2, available at <https://www.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf>

United Nations (2007), *Third report on the expulsion of aliens by Mr. Maurice Kamto, Special Rapporteur*, doc. NU A/CN.4/581, available at https://legal.un.org/ilc/documentation/english/a_cn4_581.pdf.

United Nations (2008), *Human Rights Instruments Volume I – General Comment 20*, par. 9, doc. HRI/GEN/1/Rev.9 (Vol. I)

United Nations (2009) *Fifth report on the expulsion of aliens by Maurice Kamto, Special Rapporteur*, doc. NU A/CN.4/611 available at <https://digitallibrary.un.org/record/653889?ln=en>,

United Nations (2014), *Principles and Recommendations for a Vital Statistics System (CRVS) - Revision 3*, par. 287, available at <https://unstats.un.org/unsd/demographic/standmeth/principles/m19rev3en.pdf>

United Nations (2015) *Transforming our world: the 2030 Agenda for Sustainable Development*, doc. A/RES/70/1, available at https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

United Nations (2015), *The World Bank is a Human Rights-Free Zone” – UN expert on extreme poverty expresses deep concern*, available at <https://www.ohchr.org/en/press-releases/2015/09/world-bank-human-rights-free-zone-un-expert-extreme-poverty-expresses-deep>

United Nations (2016), *Resolution adopted by the General Assembly on 19 September 2016*, doc. A/RES/71/1, par. 33, available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf

United Nations (2017) *Making migration work for all*, doc. A/72/643, available at https://refugeesmigrants.un.org/sites/default/files/sr_report_en.pdf.

United Nations (2017) *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, doc. A/HRC/35/25, available at https://www.iom.int/sites/default/files/our_work/ODG/GCM/A_HRC_35_25_EN.pdf

United Nations (2018) *Principles on Data Privacy and Protection*

United Nations (2018), *Global Compact on Refugees*, doc. A/RES/73/151 available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F73%2F151&Language=E&DeviceType=Desktop&LangRequested=False>.

United Nations (2018), *Handbook on Civil Registration and Vital Statistics Systems: Management, Operation and Maintenance*, Rev. 1, New York, available at <https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/crvs-mgt-E.pdf>.

United Nations (2018), *Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration* doc. A/CONF.231/3, par. 29, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/244/47/PDF/N1824447.pdf?OpenElement>

United Nations (2019) *Introduction of the United Nations Legal Identity Agenda: a holistic approach to civil registration, vital statistics and identity management*, New York, doc. E/CN.3/2020/15, par. 4, available at <https://unstats.un.org/unsd/statcom/51st-session/documents/2020-15-CRVS-E.pdf>

United Nations (2020), *Shared Responsibility, Global Solidarity: Responding to the socio-economic impacts of COVID-19*, p. 8, available at https://www.un.org/sites/un2.un.org/files/sg_report_socio-economic_impact_of_covid19.pdf,

United Nations (2020), *The Highest Aspiration. A Call to Action for Human Rights*, available at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf

United Nations (2020), *United Nations Legal Identity Agenda. Impact of COVID-19*, available at <https://unstats.un.org/legal-identity-agenda/COVID-19/>

United Nations (2020), *World Social Report 2020. Inequality In A Rapidly Changing World*, p. 127, available at <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/01/World-Social-Report-2020-FullReport.pdf>,

United Nations (2021) *Background note of IMRF Round Table Two*, available at <https://www.un.org/sites/un2.un.org/files/imrf-round-table-2-background-note.pdf>

United Nations (2021), *Our Common Agenda – Report of the Secretary-General*, available at https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf

United Nations (2021), *Responsibility of States for Internationally Wrongful Acts*, available at https://legal.un.org/ilc/texts/instruments/english/draft_Articles/9_6_2001.pdf,

United Nations (2022), *Financing for Development in the Era of COVID-19 and Beyond – Report*, available at https://www.un.org/sites/un2.un.org/files/ffdi_cluster_ii_report.pdf

United Nations (2022), *International Migration Review Forum*, available at <https://www.un.org/en/migration2022>,

United Nations (2023), *Lebanon: UN expert concerned by interference in Beirut blast probe*, available at <https://www.ohchr.org/en/press-releases/2023/04/lebanon-un-expert-concerned-interference-beirut-blast-probe>

United Nations (2023), *The question of Palestine*, available at <https://www.un.org/unispal/about-the-nakba/>

United Nations (2023), *UN marks 75 years since displacement of 700,000 Palestinians*, available at <https://news.un.org/en/story/2023/05/1136662>

United Nations Charter (San Francisco, 1945)

United Nations Committee Against Torture (CAT) (2008), *J.H.A. v. Spain*, CAT/C/41/D/323/2007.

United Nations Department of Economic and Social Affairs (1998), *Recommendations on Statistics on International Migration*, available at https://unstats.un.org/unsd/publication/SeriesM/SeriesM_58rev1E.pdf

United Nations Department of Economic and Social Affairs, Population Division (2020). *International Migration 2020 Highlights* doc. ST/ESA/SER.A/452, available at https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesad_2020_international_migration_highlights.pdf

United Nations Development Programme (2022), *New threats to human security in the Anthropocene Demanding greater solidarity*, available at <https://hdr.undp.org/system/files/documents/srhs2022pdf.pdf> ..

United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, p. 38, available at <https://www.unescwa.org/node/41947> .

United Nations Economic and Social Commission for West Africa (2021), *The Arab Regional GCM Review Report: Progress, Priorities, Challenges and Future Prospects*, *op. cit.*, p. 28.

United Nations Economic and Social Commission for West Asia (2020), *ESCWA warns: more than half of Lebanon's population trapped in poverty*, available at <https://www.unescwa.org/news/lebanon-population-trapped-poverty>

United Nations Economic and Social Commission for Western Asia (2020), *Poverty in Lebanon: Impact of Multiple Shocks and Call for Solidarity*, available at https://www.unescwa.org/sites/www.unescwa.org/files/20-00268_pb15_beirut-explosion-rising-poverty-en.pdf.

United Nations Economic and Social Commission for Western Asia (2022), *Situation Report on International Migration 2021: Building Forward Better for Migrants and Refugees in the Arab region*, available at <https://www.unescwa.org/publications/situation-report-international-migration-2021>

United Nations General Assembly (2005), *Resolution adopted by the General Assembly on 16 September 2005 – 2005 World Summit Outcome*, doc. A/RES/60/1, par. 138 available at <https://undocs.org/A/RES/60/1>

United Nations General Assembly (2012), *Resolution 67/68 Oceans and the law of the sea*, doc. UN A / RES / 67/78:

United Nations General Assembly (2021) *Trafficking in persons, especially women and children. Note by the Secretary-General*, doc. A/76/263 available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F263&Language=E&DeviceType=Desktop&LangRequested=False> ..

United Nations General Assembly (2021), *Implementation of the non-punishment principle. Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally*, doc. A/HRC/47/34 available at <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F47%2F34&Language=E&DeviceType=Desktop&LangRequested=False>

United Nations General Assembly (2022), *Draft resolution submitted by the President of the General Assembly Progress Declaration of the International Migration Review Forum*, Doc. A/AC.293/2022/L.1, available at <https://migrationnetwork.un.org/system/files/docs/A%20AC.293%202022%20L.1%20English.pdf>

United Nations General Assembly (2022), *Visit to Lebanon. Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter*, doc. A/HRC/50/38/Add.1 available at <http://undocs.org/A/HRC/50/38/Add.1>

United Nations General Assembly (2023), *Resolution adopted by the General Assembly on 29 June 2023. Independent Institution on Missing Persons in the Syrian Arab Republic*, doc. A/RES/77/301 available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/190/47/PDF/N2319047.pdf?OpenElement>

United Nations High Commissioner for Refugees (1999), *UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers*, guideline 1, available at <https://www.unhcr.org/protection/globalconsult/3bd036a74/unhcr-revised-guidelines-applicable-criteria-standards-relating-detention.html>

United Nations High Commissioner for Refugees (2006), *Meeting of State Representatives on Rescue at Sea and Maritime Interception in the Mediterranean – Background Discussion Paper: Reconciling Protection Concerns with Migration Objectives*, available at <https://www.unhcr.org/4963237a11.pdf>

United Nations High Commissioner for Refugees (2006), *UNHCR Master Glossary of Terms*, Rev.1, available at: <https://www.refworld.org/docid/42ce7d444.html>,

United Nations High Commissioner for Refugees (2010), UNHCR intervention before the European Court of Human Rights in the case of *Hirsi and Others v. Italy*, Application no. 27765/09 (‘UNHCR Hirsi intervention’), par. 4.3.1: <https://www.refworld.org/docid/4b97778d2.html> last accessed April 2023.

United Nations High Commissioner for Refugees (2014), *UNHCR comments on the Commission proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders*

of the Member States of the European Union (Frontex), doc. COM 2013(197) final, available at <https://www.unhcr.org/534fd9e99.pdf>.

United Nations High Commissioner for Refugees (UNHCR) (1981), *Problems Related to the Rescue of Asylum-Seekers in Distress at Sea*, doc. EC/SCP/18, available at <https://www.unhcr.org/excom/scip/3ae68ccc8/problems-related-rescue-asylum-seekers-distress-sea.html>

United Nations High Commissioner for Refugees (UNHCR) (2000) *Interception of Asylum Seekers and Refugees. The International Framework and Recommendations for a Comprehensive Approach*, doc. EC/50/SC/CRP.17, available at <https://www.unhcr.org/4aa660c69.pdf>

United Nations High Commissioner for Refugees (UNHCR) (2020), *The Impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices*, available at <https://www.refworld.org/docid/5eb2a72f4.html>

United Nations Human Right Council (2021) *Universal Periodic Review – Lebanon*, doc. A/HRC/WG.6/37/LBN/2, par. 69-70, available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WG.6/37/LBN/2&Lang=E>

United Nations Human Right Office of the High Commissioner (2023), *Global update: High Commissioner outlines concerns in over 40 countries*, available at <https://www.ohchr.org/en/statements-and-speeches/2023/03/global-update-high-commissioner-outlines-concerns-over-40-countries>

United Nations International Human Rights Instruments (2008), *Human Rights Instruments Volume 1 Compilation of General Comments and General recommendations adopted by Human Rights Treaty Bodies*, doc. HRI/GEN/1/Rev.9 (Vol.1), par. 12, available at https://www.ohchr.org/Documents/HRBodies/TB/HRI-GEN-1-REV-9-VOL-I_en.doc

United Nations International Law Commission (2018), *Report of the International Law Commission (Seventieth session) – Annex A*, doc. A/73/10, par. 1, 2 and 4.

United Nations Network on Migration – Working Group on Alternatives to Detention (2021), *Second Global Online Peer Learning Exchange. Case Management for Case Resolution: Scaling Up Alternatives to Detention*, available at https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/resources_files/report_-_2nd_online_peer_learning_exchange_on_atds_19_july_-_final.pdf

United Nations Network on Migration (2021), *Ensuring Safe and Dignified Return and Sustainable Reintegration*, available at https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/position_paper_-_ensuring_safe_and_dignified_return_and_sustainable_reintegration.pdf

United Nations Network on Migration (2023), *Workplan 2023-2024*, p. 10 available at <https://migrationnetwork.un.org/system/files/docs/UNNM%20Workplan%20Final.pdf>

United Nations Network on Migration (UNNM) (2020), *COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?*, available at https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention_0.pdf

United Nations Network on Migration, (2021) *Terms of Reference for the United Nations Network on Migration*, available at https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/un_network_on_migration_tor_1_0.pdf

United Nations News – Focus Ukraine, available at <https://news.un.org/en/focus/ukraine>

United Nations News (2022), *Ukraine: ‘We need peace now’ declares Guterres, warning of global hunger meltdown*, March 2022 available at <https://news.un.org/en/story/2022/03/1113882>

United Nations News Service (2005), *Annan urges humane treatment of migrants trying to cross Morocco-Spain border*,

United Nations Office for the High Commissioner for Human Rights (2020), *COVID-19: States should not abuse emergency measures to suppress human rights – UN experts*, available at <https://www.ohchr.org/en/press-releases/2020/03/covid-19-states-should-not-abuse-emergency-measures-suppress-human-rights-un?LangID=E&NewsID=25722>

United Nations Office for the High Commissioner for Human Rights (2008), *Human Rights, Terrorism and Counter-Terrorism – Fact-Sheet No. 32*, available at <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-32-terrorism-and-counter-terrorism>

United Nations Office for the High Commissioner for Human Rights (2008), *Human Rights, Terrorism and Counter-Terrorism – Fact-Sheet No. 32*, p. 1 and 7, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf>

United Nations Office of the High Commissioner for Human Rights (UNOHCHR) (2019), *Italy: UN experts condemn bill to fine migrant rescuers*, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24628&LangID=E>

United Nations Office of the High Commissioner on Human Rights (2014) *Recommended Principles and Guidelines on Human Rights at International Borders*, p. 4: available at https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf

United Nations Office of the United Nations High Commissioner for Human Rights, (2008) *Frequently Asked Questions on Economic, Social and Cultural Rights- Fact-Sheet No. 33*, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet33en.pdf>

United Nations Office on Drugs and Crime (UNODC) (2011), *International Framework for Action to Implement the Smuggling of Migrants Protocol*, Vienna

United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (2008), *The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees Report of the Office of the United Nations High Commissioner for Refugees*, doc. A/AC.2579/17, par. 20 available at <https://www.refworld.org/docid/49997aeb27.html>

United Nations Relief and Works Agency for Palestine Refugees in the Near East, *Palestine Refugees*, in <https://www.unrwa.org/palestine-refugees>

United Nations Security Council (2007), *Resolution 1757 (2007)*, doc. S/RES/1757 (2007), available at <https://digitallibrary.un.org/record/600560>

United Nations Social and Economic Commission for West Asia (2023), *Annual Digest of Social Protection Reforms in the Arab Region, 2022*, doc. E/ESCWA/CL2.GPID/2023/1, p. 54, available at <https://www.unescwa.org/publications/annual-digest-social-protection-reforms-arab-region-2022-vol-1>

United Nations *What is Former Yugoslavia?* in *United Nations International Criminal Tribunal for the Former Yugoslavia* available at <https://www.icty.org/en/about/what-former-yugoslavia>

United Nations, (2018) *Global Compact for Safe, Orderly and Regular Migration*, doc. A/RES/73/195, par. 20, available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_73_195.pdf,

United Nations, (2020) *COVID-19 and Human Rights We are all in this together*, available at https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf

United Nations, HCR (2018), *Report of the Special Rapporteur on the human rights of migrants*, doc. A/HRC/38/41, par. 87, available at https://digitallibrary.un.org/record/1637425/files/A_HRC_38_41-EN.pdf

United Nations, HCR, General Comment No. 35, para 18.

United Nations, HRC (1999), *General Comment No. 27*, doc. CCPR/C/21/Rev.1/Add.9, parr. 19-21 available at <https://digitallibrary.un.org/record/366604?ln=en>

United Nations, HRC (2018), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, doc. A/HRC/37/50, par. 19, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/347/27/PDF/G1834727.pdf?OpenElement>

United Nations, Human Rights Committee (HRC) (2014), *General comment no. 35, Article 9 (Liberty and security of person)*, 16, CCPR/C/GC/35, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/244/51/PDF/G1424451.pdf?OpenElement>

United Nations, Human Rights Council (2021), Report on means to address the human rights impact of pushbacks of migrants on land and at sea. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, doc. A/HRC/47/30, , available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/106/33/PDF/G2110633.pdf?OpenElement>

United Nations, Human Rights Council (2022), *Human rights violations at international borders: trends, prevention and accountability* Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, doc. A/HRC/50/31, par. 24, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/328/57/PDF/G2232857.pdf?OpenElement>

United Nations, Joint General Comment - No. 4 of the CMW and No. 23 of the CRC (2017) - on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, doc. CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, par. 10, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/343/65/PDF/G1734365.pdf?OpenElement>

United Nations, OHCHR (2021), *Ensuring that no one is left behind – How do we protect the poorest and most vulnerable from the crisis and empower them to realize the SDGs*, available at <https://www.ohchr.org/en/2021/07/ensuring-no-one-left-behind-how-do-we-protect-poorest-and-most-vulnerable-crisis-and?LangID=E&NewsID=27278>

United Nations, Special Tribunal for Lebanon (2009), *About the STL*, available at <https://www.stl-tsl.org/en/about-the-stl>

United Nations, *Successful strategies for addressing the use of technology to facilitate trafficking in persons and to prevent and investigate trafficking in persons*, doc. CTOC/COP/WG.4/2021/2, 23 July 2021, available at https://www.unodc.org/documents/treaties/WG_TiP_2021/CTOC_COP_WG.4_2021_2/ctoc_cop_wg.4_2021_2_E.pdf,

United Nations, *The Core International Human Rights Instruments and their monitoring bodies*, available at <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>

United Nations, The International Tribunal for the Law of the Sea (1999) in *MV Saiga (No. 2) (Saint Vincent and Grenadines c. Guinea*, 1999) par. 155.

United Nations, *Treaty Series*, vol. 1465, p. 85.

United Nations, *Treaty Series*, vol. 189, p. 137, available at [https://treaties.un.org/doc/Publication/UNTS/Volume 189/v189.pdf](https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf)

United Nations, *Treaty Series*, vol. 2220, p. 3; Doc. A/RES/45/158 available at [https://treaties.un.org/doc/Publication/UNTS/Volume 2220/v2220.pdf](https://treaties.un.org/doc/Publication/UNTS/Volume%202220/v2220.pdf)

United Nations, *Treaty Series*, vol. 999, p. 171 and vol. 1057, p. 407

United Nations, *UN Response to COVID-19*, available at <https://www.un.org/en/coronavirus/UN-response>

United Nations, *Vienna Convention on the Law of the Treaties* (Vienna, 1969) entered into force in 1980 in United Nations, *Treaty Series*, vol. 1155, p. 331 available at https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=en

United Nations, *What are Human Rights?* available at <https://www.ohchr.org/en/what-are-human-rights>

United States Department of State (2023), *2023 Trafficking in Persons Report: Lebanon*, available at <https://www.state.gov/reports/2023-trafficking-in-persons-report/lebanon/#:~:text=Adults%20and%20children%20among%20the,this%20population's%20vulnerability%20to%20trafficking.>

United States of America – Department of State. *Treaties and Other International Acts Series* (Tias), *Agreement between the Government of United States and the Government of Dominican Republic concerning cooperation in maritime migration law enforcement*, no. 03-520, 20 May 2003)

United States of America – Department of State. *Treaties and Other International Acts Series* (Tias), *Agreement between The Government of The United States of America and The Government of The Commonwealth of The Bahamas concerning cooperation in maritime law enforcement*, no. 04-629, 29 June 2004).

United States of America – Homeland Security (2023) *Trilateral statement on joint commitment to Latin America*, available at <https://www.dhs.gov/news/2023/05/03/trilateral-statement-joint-commitment-latin-america> last accessed May 2023

United States of America, Department of State - Bureau of Public Affairs, *United States Joint Statement with the Republic of Cuba on Normalization of Migration*, in *United States Department of State Dispatch Magazine*, Volume 6 No. 19, 2 May 1995)

United States of America, *The Development, Relief, and Education for Alien Minors Act (DREAM Act) and the Promise Act of 2021. The Dream and Promise Acts would provide current, former, and future undocumented high-school graduates and GED recipients a pathway to U.S. citizenship through college, work, or the armed services*, available at <https://www.americanimmigrationcouncil.org/research/dream-act-overview>,

United, Nations (2011), *Guidance Note of The Secretary-General - The United Nations and Statelessness*, available at <https://www.un.org/ruleoflaw/files/FINAL%20Guidance%20Note%20of%20the%20Secretary-General%20on%20the%20United%20Nations%20and%20Statelessness.pdf>

United, Nations, HCR, *A. v. Australia*, Communication No. 560/1993

UNODC (2018), *Countering Trafficking in Persons in Conflict Situations*, available at [https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering Trafficking in Persons in Conflict Situations.pdf](https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf)

UNODC (2018), *Global Report on Trafficking in Persons in the Context of Armed Conflict*, 2018 available at https://www.unodc.org/documents/data-and-analysis/glotip/2018/GloTIP2018_BOOKLET_2_Conflict.pdf

UNODC, WHO, UNAIDS and OHCHR, (2020) *Joint Statement On Covid-19 In Prisons And Other Closed Settings*, available at https://www.ohchr.org/sites/default/files/Documents/Events/COVID-19/20200513_PS_COVID_and_Prisons_EN.pdf

UNWOMEN (2021), *Diverse SOGIESC Rapid Assessment Tool to Assess Diverse SOGIESC Inclusion Results in Humanitarian Contexts*, available at https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAAsia/Docs/Publications/2021/03/RAT/ap-Diverse-SOGIESC_RATGuidanceNote_Public_FINAL.pdf

Van Esveld B. (2023), *Lebanon Rejects Civil Marriages, Puts Children at Risk* in *Human Rights Watch* available at <https://www.hrw.org/news/2023/02/07/lebanon-rejects-civil-marriages-puts-children-risk>

Van Esveld B. (2023), *Thousands of Refugee Students Cut off from Classes in Lebanon*, in *Human Rights Watch* available at <https://www.hrw.org/news/2023/02/22/thousands-refugee-students-cut-classes-lebanon>

Veronesi P. (2014), *La dignità umana tra teoria dell'interpretazione e topica costituzionale*, in *Quaderni costituzionali*, pp. 315-356

Vertovec S. (2006), *Migrant Transnationalism and Modes of Transformation*, in *The International Migration Review*, Vol. 38, No. 3, 2004, p. 970-1001, <https://doi.org/10.1111/j.1747-7379.2004.tb00226.x>

Villa M., Corradi E. (2020), *What the Future Holds: Migration from Africa to the EU* in Villa M. (ed.) *The Future of Migration to Europe*, Milano, pp. 12-35.

Vohra, A. (2020), *The Death of Lebanon's Middle Class* in *Foreign Policy*, available at <https://foreignpolicy.com/2020/05/21/lebanon-coronavirus-middle-class-poverty/>

Wallis, E. (2020) *5 migrant boats arrive in Cyprus in 3 days* in *Infomigrants* available at <https://www.infomigrants.net/en/post/27084/5-migrant-boats-arrive-in-cyprus-in-3-days>;

Webb E., Offe J. and Van Ginneken, E (2022), *Universal Health Coverage in The EU: What Do We Know (And Not Know) About Gaps in Access?* in *Eurohealth*, Volume 28, n. 3, p. 13-17 available at <https://apps.who.int/iris/bitstream/handle/10665/362197/Eurohealth-28-3-13-17-eng.pdf?sequence=1&isAllowed=y>

Wiggers, K. (2023), *The current legal cases against generative AI are just the beginning. AI that can generate art, text and more is in for a reckoning*, available at https://techcrunch.com/2023/01/27/the-current-legal-cases-against-generative-ai-are-just-the-beginning/?guccounter=1&guce_referrer=aHR0cHM6Ly9zdGF0aWNzLnRlYW1zLmNkbi5vZmZpY2UubmV0Lw&guce_referrer_sig=AQAAAKn0FARWcEYRfaOq57zPisUEhIunTfiSVaa55ZJLuWkMJamKwVf5dDWfWJr_QWn6AUmie6KximldyBF3oRi_f6fBRsFwzbpOoFbYVmqKyoBcTqVFez67Wf8PbZBdIQs8QbqHkzqNBUNp8kl6dXmVgpcWPBUOeKLHCQDWT0Fh6eox

Wilson R. (2018), *Inclusive integration strategies: towards a shared model*, available at https://ec.europa.eu/migrant-integration/library-document/inclusive-integration-strategies-towards-shared-model_en

Working Group on Arbitrary Detention (2010) U.N. Doc. A/HRC/13/30/Add.1 available at <https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf> last accessed March 2023.

Working Group on Arbitrary Detention (2018), *Revised Deliberation No. 5 on deprivation of liberty of migrants*, par. 17 available at https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/RevisedDeliberation_AdvanceEditedVersion.pdf

World Bank – Plaza S., Ratha D. (2011), *Diaspora for Development in Africa*, p. 3 available at <https://www.cbd.int/financial/charity/africa-diasporas.pdf> last accessed August 2023. Statement at the African Union Consultation with the African Diaspora in the U.S, *Building Bridges across the Atlantic*, available at <http://unohrlls.org/meetings-conferences-and-special-events/statement-at-the-african-union-consultation-with-the-african-diaspora-in-the-us-building-bridges-across-the-atlantic/>

World Bank (2019), *Global ID Coverage, Barriers, and Use by the Numbers: An In-Depth Look at the 2017 ID4D-Findex Survey*, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/33430/Global-ID-Coverage-Barriers-and-Use-by-the-Numbers-An-In-Depth-Look-at-the-2017-ID4D-Findex-Survey.pdf?sequence=1&isAllowed=y>

World Bank (2021), *Migration and Development Brief 35. Recovery: COVID-19 Crisis through a Migration Lens*, p. 48, available at <https://www.knomad.org/publication/migration-and-development-brief-35>

World Bank (2023), *Second State of the Mashreq Women Report: “Who Cares?” Care Work and Women’s Labor Market Outcomes in Iraq, Jordan and Lebanon*, available at <https://www.worldbank.org/en/country/jordan/publication/second-state-of-the-mashreq-women-report-who-cares-care-work-and-women-s-labor-market-outcomes-in-iraq-jordan-and-lebano>

World Health Organization (2020), *Coronavirus disease (COVID-19) advice for the public: MythBusters*, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters>

World Health Organization (WHO) (2020), *Coronavirus disease (COVID-19) pandemic*, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

World Health Organization, (2020) *Coronavirus disease (COVID-19) advice for the public: MythBusters*, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters>

Wouters, K and Den Heijer, M., (2010) The Marine I Case: A Comment in *International Journal of Refugee Law*, Vol. 22, Issue 1, pp. 1-19, available at SSRN: <https://ssrn.com/abstract=1565268> or <http://dx.doi.org/10.1093/ijrl/eep031>

Yee, V. (2020), *Desperate to Leave Beirut, Young Lebanese Are Also the Ones Fixing It*. in *The New York Times*, available at <https://www.nytimes.com/2020/08/27/world/middleeast/beirut-explosion-volunteers.html>

Ynetnews (2020). *Cyprus worried as 4 migrant boats reach island in 48 hours.*, available at <https://www.ynetnews.com/article/S1LVV00GND>,

Younes R. (2023) *Violent Assault on Drag Event in Lebanon* in *Human Rights Watch – Lebanon*, available at <https://www.hrw.org/news/2023/08/25/violent-assault-drag-event-lebanon>

Zrůst T. (2020), *Hezbollah between local and international dimension: intervention in Syria*, in *Institute of International Relations Prague*, available at <https://www.iir.cz/en/hezbollah-between-local-and-international-dimension-intervention-in-syria>