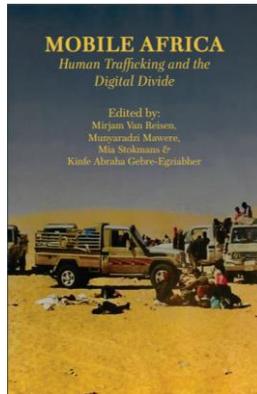# The Shaping of the EU's Migration Policy: The Tragedy of Lampedusa as a Turning Point

Klara Smits & Ioanna Karagianni

**Chapter in: Mobile Africa:
Human Trafficking and the Digital Divide**

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Connected and Mobile: Migration and Human Trafficking in
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Chapter 19

The Shaping of the EU's Migration Policy:
The Tragedy of Lampedusa as a Turning Point

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Introduction

By the end of 2017, the displacement of people had reached a record high: 68.5 million people were displaced globally, among whom 25.4 million were refugees, 10 million were stateless people and 3.1 million were asylum seekers awaiting a decision (UNHCR, 2018). Most displaced people, including refugees and migrants, remain close to home. Despite this fact, migration has dominated the political agenda in the European Union (EU) in recent years. From 2017–2018, the EU and its member states "intensified their efforts to prevent irregular entry and increased returns, including through policies that exposed migrants and those in need of protection to ill-treatment, torture and other abuses in countries of transit and origin" (Amnesty International, 2018c). People on the move face many dangers, often falling victim to human smugglers and

In 2013, 360 refugees drowned off the coast of Lampedusa in Italy. At that point in time a policy window opened to put the issue of refugees on the policy agenda in Europe. However, the issue was framed as a 'migration crisis' and one of 'illegal immigrants' instead of refugees. This language drove the response, and instead of implementing solutions focused on the protection of refugees, the EU externalised its borders and focused on stopping people entering its territory. Framed as a security issue, European policies have created a hostile environment for refugees fleeing inhumane and dangerous circumstances. Despite the large sums thrown at these policies, they are both unlikely to work and reflect badly on the EU's human rights record.

traffickers, whom they pay thousands of dollars in the hope of reaching safety. Due to the lack of protection and legal pathways for migrants, many end up stuck in countries like Libya, where horrendous living conditions, human trafficking for ransom, and gross human rights violations have been reported (Global Initiative Against Transnational Organized Crime, 2018).

The so-called 'mixed migration flows' from Africa enter Europe through the Central Mediterranean route, via Italy and increasingly Spain. Many people travelling to Europe via this route are fleeing war, persecution and human rights abuses, while others are seeking a better life; both groups run a high risk of being trafficked and facing severe abuse. In 2018, Tunisians were the largest group of people to enter Europe via the Mediterranean Sea to Italy (22%), followed by Eritreans (14%) and Sudanese (7%) (IOM, 2018).

Reaching a peak of a million people in 2015, the arrival of refugees and migrants in Europe has caused an overhaul of the way Europe deals with migration. The situation has become known as the 'migration crisis' or 'refugee crisis' in Europe; not so much because of the death of, and danger for, migrants and refugees, but on account of the political problem that it has unleashed for Europe.

The main research question in this chapter is: *How has the 'migration problem' been defined in Europe, what are the origins of this definition, and how has this shaped the EU policy agenda on migration?* In answering this question, the chapter looks at how the focus of the EU has shifted from the protection of human dignity to the reduction of migrant numbers, and how its migration policy has evolved in a debate increasingly dominated by right-wing movements, contributing considerably to phenomena like the Brexit-vote.

The EU has put a lot of effort into dealing with the migration situation through new policy frameworks. Increasingly, the EU has focused on stopping migration outside of its own territory by making deals with North African countries and by protecting its external borders. This chapter examines the EU's changing migration policy

in the last five years and its failure to protect people and guarantee them the rights agreed on in various international conventions, like the United Nations Convention on Refugees. The start of this chapter unfolds in Lampedusa, the Italian island where a ship with refugees sank in 2013 leading to the deaths of hundreds of people (BBC, 2013c). It is argued that this was the critical moment that shaped the European migration and asylum policy of today. It is where the foundations of the framing of the migrant crisis were laid.

Agenda setting

This chapter's theoretical basis is John Kingdon's multiple streams framework, a theoretical framework that proposes that policy change occurs when agenda setting, policy choices and politics are aligned (Kingdon, 2014). A policy window is:

> …*an opportunity for advocates of proposals to push for their pet solutions, or to push attention to their special problems... Sometimes the window opens quite predictably… At other times, it opens quite unpredictably. Policy entrepreneurs must be prepared, their pet proposal at the ready, their special problem well-documented, lest the opportunity pass them by.* (Kingdon, 2014)

Drawing inspiration from organisational development theory, the framework looks at the dynamics of the entire policy process from agenda setting to decision making to implementation and identifies three streams that determine the policy outcome. According to this theory, a policy window can open for change if: a problem is identified, a solution is available, and the political climate is ready for change. Especially relevant to this chapter is Kingdon's discussion about how different issues are treated by policymakers, in other words, their classification as a condition or a problem:

> *Conditions come to be defined as problems, and have a better chance of rising on the agenda, when we come to believe that we should do something to change them. People in and around government define conditions as problems in several ways. First, conditions that violate important values are transformed into problems. Second, conditions become problems by comparison with other countries or other relevant*

units. Third, classifying a condition into one category rather than another may define it as one kind of a problem or another. The lack of public transportation for handicapped people, for instance, can be classified as a transportation problem or as a civil rights problem, and the treatment of the subject is dramatically affected by the category. (Kingdon, 2014)

Kingdon's theory is used in this chapter as the basis for understanding and analysing the unfolding of EU policies around the 'migration problem' inside and outside the EU. Analysis is conducted through research and the examination of EU policy papers, press releases, news articles, briefs and documentaries. Furthermore, a number of interviews were conducted with EU officials (i.e., the Directorate General for Development Cooperation, representatives from the European External Action Service, members of the European Parliament, and policymakers from the Commissioners' Cabinets) in 2018 in Brussels, Belgium.

Lampedusa: The window opens

For this analysis, one particular event which took place off the Italian island of Lampedusa is taken as a starting point. On 3 October 2013, a ship approaching the island carrying over 500 people, mainly from Eritrea, sank in the sea. The ship had sailed from Misrata, Libya. Over 360 people were reportedly drowned, while around 155 were rescued. On 11 October 2013, a second shipwreck would follow, even closer to the Italian coast, though smaller in size (BBC, 2013b). These were not the first shipwrecks, nor the last, but the size and their relative closeness to the shores of Europe made the Lampedusa tragedy a key moment in the European migration debate. Through the images of bodies being brought to shore, Europeans saw the horrific tragedy of migration through the Central Mediterranean route.

Europe was shocked. Then Italian Prime Minister Enrico Letta wrote on Twitter that the Lampedusa shipwreck was "an immense tragedy". The Italian government launched the rescue operation Mare Nostrum to help prevent further tragedies and they asked the European Union for help to save lives at sea (The Telegraph, 2013). Italian Deputy

Prime Minister Angelino Alfano stressed that the incident showed that European assistance was needed to deal with the continuing influx of refugees and characterised the incident as "a European tragedy, not just an Italian one" (The Telegraph, 2013). The European Union's response to the boat tragedy was immediate: Cecilia Malmström, then European Commissioner for Home Affairs, called the EU to increase its Mediterranean-wide search and rescue patrols to intercept migrant boats, through the Frontex border agency (BBC, 2013d). She said: "Let's make sure that what happened in Lampedusa will be a wakeup call to increase solidarity and mutual support and to prevent similar tragedies in the future" (European Commission, 2013a). José Manuel Barroso, then President of the European Commission, travelled to Italy and said that "this image of hundreds of coffins will never come out of my mind. It's something I think one cannot forget: coffins of babies, coffins with a mother and a child that was born just at that moment. This is something that profoundly shocked me" (BBC, 2013c). He further added that an additional funding of 30 million euros would be allocated to help refugees in Italy. Moreover, he had announced that the EU would work towards a common European asylum and migration policy, to have "much stronger mechanisms at [the] European level". At first glance, it seemed that the tragedy had shaken up the European Union. A policy window had opened, as a condition had come to be defined as a problem, and there was political will and the momentum to address it. However, the way that the problem definition would evolve in the days following the tragedy would prove highly influential in the EU's new migration policy framework.

Framing 'the problem' following the shipwreck

According to Kingdon's theory, the way one frames the problem determines the solution. The crucial framing that would come to define the 'migration crisis' has its roots in the Lampedusa tragedy. The shock of the tragedy created a policy window, enabling the issue to be placed firmly on the public and political agenda and a solution to be developed, powered by the necessary political will. However, this chapter will show that the framing of the problem shaped the direction of this policy change.

The initial political response to the Lampedusa tragedy was focused on the fact that a large number of people had passed away, but then the debate shifted to *who* the victims were. Unfortunately, the media and politicians categorised the people who had drowned as migrants (with a focus on their illegal crossing), not as refugees. This is characterised by the fact that the survivors of the Lampedusa shipwreck were charged with the crime of illegal migration. "The law is the law", stated Prime Minister Enrico Letta (Luciano & Piscopo, 2018). This key framing of the survivors not as refugees in need of international protection, but firstly as illegal migrants, has been key to the development of EU migration policy.

The HBO documentary *It Will be Chaos* (Luciano & Piscopo, 2018) has documented the unfolding of the Lampedusa tragedy and the EU response in detail, including how people were categorised as migrants by the politicians from the very beginning. The documentary shows Guisi Nicolini, the Mayor of Lampedusa, stressing to the media from the beginning: "let's make it clear. Those who land in Lampedusa aren't 'illegals' [sic]. They are refugees. We are talking about asylum seekers [...] I have to correct you otherwise you will report that these are 'illegals' [sic]. Well, if you don't get it, neither will your audience. Those who land in Lampedusa are not simply 'undocumented'. These people are refugees. You know, words are important" (Luciano & Piscopo, 2018). This excerpt shows that the media had already begun to refer to the irregular status of those involved in the tragedy. William Swing from the International Organization for Migration (IOM) said that "clearly, for us and I think for you [referring to Nicolini], the top priority has to be to save lives, to save people from dying. We should take urgent actions and stronger international coordination" (Luciano & Piscopo, 2018). Nicolini then emphasised the duty the stakeholders had to receive the refugees with adequate and decent reception standards. She also said "our system was conceived to push them back, rather than receiving them. The 'strength' of Lampedusa is to witness what's going on first hand" (Luciano & Piscopo, 2018). The documentary also depicts the solidarity between the refugees and the people of Lampedusa: a fisherman tells a refugee that there is no need

to thank him as he was happy to have been there to help. Later, the fisherman describes the shock he had experienced and that he could never go back in his boat again after the incident.

The early pushback on terminology and the framing by individuals such as Nicolini did not last; the police escorted the Eritrean survivors of the shipwreck from Lampedusa to mainland Italy, where they were persecuted for illegally crossing into Italy – criminalising the refugees, who had just survived a major traumatic event. The documentary *It Will be Chaos* shows a meeting with the refugees, where the Mayor of Lampedusa said that she would provide "maximum support to the victims' families", and the documentary shows the refugees demanding that they at least see the corpses of their lost family members. In a press brief, then President of the European Commission, Manuel Barosso said that: "Today, Lampedusa and Italy are the focus of attention but let's not forget that also other countries are facing strong migratory pressure – we the European Commission are doing everything we can to have much stronger mechanisms at European level" (Luciano & Piscopo, 2018). Moreover, then European Commissioner Cecilia Malmstrom said that: "This is not the European Union that we want. We need to do everything we can to prevent tragedies such as this one [Lampedusa] to happen again" (Luciano & Piscopo, 2018). The tragedy was beginning to drive change in the European Union, beyond Italy.

In December 2013, Task Force Mediterranean was set up by the European Commission in response to the Lampedusa Tragedy. This task force was mandated to prevent loss of human life, but with a focus to "prevent migrants from undertaking dangerous journeys" (European Commission, 2013c). The first point on a five-point list was cooperation with third countries to prevent migration. The other focal points were regional protection and legal pathways, the fighting of smuggling and trafficking, border surveillance and solidarity between member states. This shows that the main pillars of the EU's migration policy were founded on the understanding of migration as the key underlying problem, with stopping migration seen as the main solution to the problem.

Through the focus on the legal status of the victims of the Lampedusa tragedy, the framing of migration as the overall problem and the focus on the number of migrants crossing the Mediterranean Sea, the stage was set by the media, politicians, and people of Italy and Europe. This gradual categorisation of the situation as a 'migrant crisis' would persist and come to define the policy agenda.

A numbers game

Another driver of EU migration policy was the issue of solidarity, also shown in the Lampedusa tragedy. Following the boat disaster, Italian officials called for solidarity from the EU. Member states now had to face the challenge of how to manage the incoming population. The EU was not ready for the 'migration crisis', as Collett and Le Coz (2018) have argued. The 2015 and 2016 flows of migrants and refugees in Europe:

> …*presented the European Union with a transnational (and existential) crisis in a policy area that had not been constructed to manage fast-paced change. Deep political dissent and complex divisions of power between EU institutions, as well as between Member States, further hampered the European Union's ability to respond, exacerbating long-standing tensions that persist several years on.* (Collett & Le Coz, 2018)

Moreover, national machineries were inadequate for the number of arrivals in 2014 and 2015:

> …*national reception systems nearly collapsed under the volume of newcomers, and disagreements deepened through Member States over how to share responsibility for processing and offering protection to those in need […] While this period has widely been described as a 'migration crisis', suggesting the disorder was the somewhat inevitable result of the sheer number of persons arriving, this might be more accurately termed a 'systemic crisis'. The heightened arrivals revealed structural deficiencies within the design and implementation of national asylum systems and of the CEAS [Common European Asylum System]. The problem the crisis brought to light may have been greater in magnitude than had previously been seen, but they were not new and, in some cases, not unknown to many a close observer.* (Beirens, 2018)

This illustrates how internal, structural issues within the EU were externalised by politicians who were able to blame 'uncontrollable migration' as a convenient scapegoat for internal EU problems. The European Commission recognised the need for solidarity, proposing a mandatory relocation and resettlement scheme in 2015 to assist Greece and Italy, and to relocate refugees from third countries. However, strong resistance came from EU countries such as Hungary and Slovakia, and the idea of mandatory quotas was finally officially taken off the agenda in September 2018. The idea of Europe as a united entity which would tackle such problems together was shaken by the resistance, and further by the Brexit vote of June 2016, in which the migration debate played a large role. The definition of mixed migration flows as 'illegal' or 'irregular' migrants has continued to lead to individualised policy making within the European Union, undermining solidarity and a human rights-based response.

The policies: EU migration policy

How did Kingdon's second (policy – what can be done) and third (politics – the political climate) streams come together to change the EU's migration policy? This was a process of formation and refining of policy proposals around the policy window. As Kingdon puts it, this includes "swings in the national mood". It depends on the readiness of a nation – in this case a collection of nations, the European Union – to face a problem (Kingdon, 2014).

Kingdon has said that "the proposal [i.e., for a new policy] must be worked beforehand, and must surface and be pushed when the window is open" (Kingdon, 2014). However, in the case of the EU, it must be stressed that neither the member states nor the European Union were ready beforehand to deal with the 'migration crisis' in a way that would be in line with the EU's standards on human rights.

Due to the urgency and the political push, the European Union institutions had to find immediate solutions, as the wave of reaction was strong enough to start shaking the EU at its roots. EU member

states wanted to protect their sovereignty to decide over migration issues, which was possible due to the framing of the problem as an irregular migration problem, rather than an international protection problem.

The people of Lampedusa were taking to the streets saying that they had taken over the governments' job to defend themselves – the people shouted lines such as: "we are the ones to assist the migrants. We all need a psychologist", "This is a pressure cooker, sooner or later it will explode", "More and more people will keep coming here, if we don't help them, it will be a disaster – we need to act now, not just words, we need facts!" (Luciano & Piscopo, 2018). As the pressure on EU member states grew towards 2015, protests turned against refugees and migrants and became more violent, as refugees and migrants were linked in the public debate with violence, rape and terrorism. In an effort to formulate policy and control this outrage as much possible, the EU responded to the 'crisis' in multiple ways.

European Agenda on Migration

A key document in the EU's migration strategy has been the European Agenda on Migration. It was formulated in May 2015 at the peak of refugee and migrant arrivals. Its objectives have guided and shaped the EU's migration approach since then. At the top of the list is increasing border protection, as shown by the 2015 intention of tripling the capacity of Frontex, the EU's border and coast guard agency. Other priority areas include the prosecution of traffickers and smugglers, the hotspot-approach to processing asylum seekers more quickly, and, further down the agenda, saving lives and improving legal migration. The immediate response, however, is aimed at protecting the EU's borders first; the safety of refugees and migrants comes much later.

Comparing the European Agenda on Migration from 2015 and its progress report released in 2018, an assessment can be made of what the EU has achieved – and what it has not. With this Agenda, the European Commission tried to "bring together the different steps the European Union should take now, and in the coming years, to build

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up a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration" (European Commission, 2015a). The report from 2018 reads that "the response was immediate but insufficient" (European Commission, 2018a), as across Europe there were doubts that the migration policy was proportionate to the amount of pressure. Conflicts, such as the reluctance of member states to 'share the burden' of migration – for example, the refusal by some member states to agree to mandatory relocation quotas from Italy and Greece to other EU member states – frustrated coherence in the European Union institutions. Members of the European Parliament reported growing more frustrated by the European Council and Commission's secrecy around its migration policy, especially in relation to its deals with third countries.

The European Commission's Agenda on Migration progress report of 2018 described the situation along the main migration routes as a continued challenge, even though there have been 28% fewer arrivals of people than in 2014; the situation remains fragile and "pressure on national migration systems, while decreasing, remains at a high level" (European Commission, 2018b). The First Vice-President of the European Commission Frans Timmermans described the report as a reflection of the EU's joint efforts to manage migration in a comprehensive way. Stressing that migration remains a high priority, he called the EU to "maintain this momentum and work hard to take further steps forward, including finding agreement on the reformed asylum system. Some of these actions are very urgent, such as honouring the financial contributions Member States committed to" (European Commission, 2018b).

More specifically, the report describes that, in 2017, more than 2,000 smuggled migrants were saved in the desert. It states that the joint African Union-European Union-United Nations Taskforce has helped more than 15,000 to return from Libya to their home countries in cooperation with IOM (European Commission, 2018a). As for funding, the report reads that it continues to play an important role in addressing the bedrock of immigration, protecting migrants and refugees on the routes and countering smuggling and trafficking,

"with now 147 programmes for a total of €2.5 billion approved across the Sahel and Lake Chad, the Horn of Africa and North Africa" (European Commission, 2018b). However, the report claims that there is still need for more funding.

The framing of successes in this report reflects the priorities of the EU: reducing the number of migrants equals a successful policy. However, the EU's approach of external border management, which will be discussed later, negatively impacts on its human rights record.

Frontex

On October 2016, the European Border and Coast Guard Agency was officially launched as an extension of the mandate of Frontex and to effectively monitor the EU's external borders. The European Council expressed the view that open internal borders (the Schengen area) will remain sustainable only if the external borders are secured and protected (European Council, 2016). The role and activities of Frontex have been significantly expanded to include helping in return operations (since 2017, there have been 135 such operations), among other things. In September 2018, President of the European Commission Jean Claude Juncker announced plans for an additional 10,000 Frontex border guards (European Commission, 2018d). This means tighter control of Europe's external borders. Moreover, apart from placing more guards in Frontex, the agency has also taken on a law enforcing role. Fabrice Leggeri, the agency's chief, told the EU observer that "I would not object if you define us as a law enforcement agency at EU level" (Nielsen, 2018).

Meanwhile, NGOs engaging in sea rescue operations face legal pressure, as they are seen as being associated with smugglers and traffickers. Facing pressure from Italy's right-wing government, the rescue vessel Aquarius, for example, has been docked and its rescue missions ended under pressure (Schlein, 2018). Such repercussions for human rights defenders, in combination with increased reliance on border guards and coast guards of third countries such as Libya, means that the focus continues to shift away from saving lives at sea to stopping migration. IOM's data shows that in response, smuggling

and trafficking networks are shifting to the more dangerous sea routes to Spain (IOM, 2018).

Furthermore, serious doubts exist over Frontex's commitment to fundamental rights. When in May 2018 the European Parliament hosted the Frontex Consultative Forum on Fundamental Rights (the Parliament has a solely consultative role in this regard) to discuss the latter's annual report on their activities and recommendations to Frontex, the members of the European Parliament responded with criticism (Karagianni, 2018b). The report describes the reluctance of the agency to adequately staff the Fundamental Rights Office, as well as its delays in adopting their Fundamental Rights Strategy. The members strongly criticised the reluctance of Frontex to implement human rights standards, as well as its denial of doing so. Member of Parliament Birgit Sippel (Socialists and Democrats party) said that:

> *Sometimes we could get the impression that the Fundamental Rights Office is only a kind of an alibi for everything else that is happening in Frontex […] There is, not for the first time, an apparent reluctance of Frontex to adequately staff the Fundamental Rights Office and this is especially alarming as, in its current form, especially this office lacks the minimum capacity to carry out its role including the monitoring of Frontex fundamental rights obligations as mandated in the regulation.* (Karagianni, 2018b)

Member of Parliament Ana Gomes (Socialists and Democrats party) also commented sharply, saying that when it comes to Libya, the EU institutions and EU member states "are in denial", "pretending that they are training local and armed forces" (Karagianni, 2018b) to help them deal with refugees and migrants, but actually "what we know is that these forces are indeed militia enabled to actually repress the people" (Karagianni, 2018b).

Externalisation of borders

After Lampedusa, the EU increasingly grouped refugees and migrants together under the heading 'migrants', often with the adjective 'irregular' to emphasise their status. This shift in narrative places a reduced obligation on the EU to offer protection to anyone who has

not clearly been labelled as a refugee or asylum seeker. Another approach that the EU took is to move the burden of the EU's problem externally, namely, to Turkey and Africa.

Following the Lampedusa tragedy, the EU partnered with Africa on migration at the regional level through the Khartoum Process. The Khartoum Process aims at:

> *…establishing a continuous dialogue for enhanced cooperation on migration and mobility, identifying and implementing concrete projects to address trafficking in human beings and the smuggling of migrants and giving a new impetus to the regional collaboration between countries of origin, transit and destination regarding the migration route between the Horn of Africa and Europe.* (European Union, 2015a)

The full name of the Khartoum Process, the 'EU-Horn of Africa Migration Route Initiative', reveals that the main goal of the Process is to stop migration from the Horn of Africa. The Process focuses heavily on preventing trafficking and smuggling, and not so much on the possible legal pathways that refugees could take to reach Europe or other destinations safely. In addition, the Khartoum Process is set apart by the inclusion of governments that have been accused of severe human rights abuses in its steering committee, such as Sudan and Eritrea, which are treated as equal partners despite accusations about their involvement in trafficking and smuggling operations (Van Reisen & Mawere, 2017). The full steering committee is comprised of five African countries (Egypt, Eritrea, Ethiopia, South Sudan, Sudan) and five European countries (Italy, France, Germany, United Kingdom, the Netherlands), as well as the European Commission, European External Action Service and African Union Commission. The Khartoum Process forms a platform for dialogue and projects and implements action funded by the multi-billion EU Emergency Trust Fund (EUTF) for Africa, which pays for, among other things, the Better Migration Management (BMM) regional project in the Horn of Africa. This will be covered in more detail later in this chapter.

By naming the Khartoum Process after the capital of Sudan, the name gives legitimacy to the Government of Sudan as a key actor and partner in migration management, as well as situating the responsibility to keep refugees and migrants in Africa and not in Europe. Legitimacy is also given to Eritrea, one of the main refugee-producing countries in Africa, which is set to chair the Khartoum Process in 2019 (Plaut, 2018). In its drive to stop migration, the EU is dependent on the help of the authorities of countries with poor human rights records as the only available partners.

Arguably, this policy has started to erode the human rights foundations of the European Union. Critics have argued that initiatives such as the Khartoum Process have "exacerbated the regional situation and [put] more migrants in harm's way (Woodnorth, 2017). Hala Al-Karib, Regional Director of the Strategic Initiative for Women in the Horn of Africa pointed out that:

> *Europe's efforts on migration are too focused on to trying to stop people from moving. They treat illegal cross-border movement as an issue of law enforcement rather than as a symptom of deep-seated governance and extreme poverty problems, and fail to take into account people's reasons for leaving, or their terrifying lack of choice.* (Woodnorth, 2017)

Dr Lutz Oette, Director of the Centre for Human Rights Law at the School of Oriental and African Studies in London has argued for the need to restructure the whole process: "I think one needs to go back to the drawing board in terms of policy making, get other actors involved and escape that instrumental, state-centric logic that has been pursued so far" (Woodnorth, 2017).

In the Valletta Summit on Migration (European Union, 2015b), stakeholders adopted a political declaration on European migration issues and set up the EUTF for Africa to address the "root causes of irregular migration and displaced persons in Africa" (European Commission, 2015c). This fund has been created for the EU to deliver aid and deal with emergencies. Directly managed by the European Commission, it is designed to increase the EU's global

visibility and deal with the risks created by political instability. The EUTF was adopted at the Valletta Summit in 2015.

As the European Commission stated, with the creation of the EUTF, the EU sought to "address the disorganization and fragmentation of the response of the international community and […] create a new form of European assistance cooperation that will ensure […] swift delivery of concrete results on field" (European Commission, 2015b). However, as the refugee crisis unfolded, the fund's focus shifted towards addressing the root causes of irregular migration in Africa by "promoting resilience, economic and equal opportunities, security and development and addressing human rights abuses, in three vast and very different regions: the Horn of Africa, the Sahel and Lake Chad, and North Africa" (Herrero Cangas & Knoll, 2016). As trust funds fall outside of the EU budget, it is not bound by the same EU budgetary rules and there is less oversight (European Parliament, 2018). Individuals in the European Commission welcome the fact that the fund has allowed them more freedom to spend beyond emergencies; however, the EUTF has also been criticised for its lack of transparency and use of development aid to stop migration. Notably, the European Parliament has been critical of the EUTF, noting in a 2016 resolution that the European Parliament: "is concerned that financing of the EUTF may be implemented to the detriment of other development objectives" and "condemns any use of EDF [European Development Funds] and ODA [overseas development assistance] funds for migration management and control of any other actions without development objectives" (European Parliament, 2016).

Critics, including NGOs and think tanks, have also objected to the EUTF, its nature and intentions. For example, the European Centre for Development Policy Management pointed out that:

> …expectations need to be managed, with regards to what impact can be realistically achieved with a little extra cash. The programmes and activities funded by the Africa Trust Fund alone are rather unlikely to make a significant difference in accelerating

peace and prosperity in Africa, and quickly and effectively addressing the drivers of displacement and irregular migration. (Herrero Cangas & Knoll, 2016)

The European Council on Refugees and Exiles (ECRE) has also criticised the fund, stating that: "the program lacks checks and balances to guaranty [sic] the fund's benefit for African countries. The focus on short-term EU interests might jeopardize long term interests for African partners" (ECRE, 2017). In addition, the NGO Oxfam has stressed that:

[w]ithout sufficient investment in opening more safe and regular mobility pathways – both within Africa and towards Europe – the EUTF will not only fail to achieve its goals for development, but also its migration-related policy goals. Rather than leading to a reduction in migration, restricting irregular migration will simply force migrants to take more dangerous routes. (Oxfam, 2017)

Andrea Stocchiero, expert in migration for the NGO Concord Italy, has also said that:

EU Migration Compacts address only partially the drivers of forced migration, which requires a long-term, coherent and sustainable approach. They keep on focusing on 'quick fixes' (border controls and returns) and this is the main reason for their failure. Projects deviate from migration flows towards alternative dangerous routes and indirectly contribute to inhumane conditions and endangering human rights. The EU needs to reform the Trust Fund, and more broadly its overall migration policy, and use these kinds of instruments as the main tool to increase community resilience. (Concord, 2018)

Beyond the EUTF, since the Lampedusa tragedy, development funding by the EU has also increasingly been used to address migration. For example, in 2015, Neven Mimica, the EU Commissioner for International Cooperation and Development, named migration as a key reason to resume development funding to Eritrea, even though previous development funding had shown little to no results on improving human rights or poverty in Eritrea. Such funding was even suspended after the Eritrean government refused to cooperate. However, when the EU relaunched the plans for

development aid to Eritrea in 2015, Mimica stated: "This would be a development contribution to the root causes of migration in Eritrea" (Blair, 2015). However, in 2018, the European Commission realised that the budgets for most of its programmes with Eritrea remained unspent due to lack of independent partners to implement the programmes with. In addition, Eritrea did not accept the terms of the spending agreements. In order to continue engagement with Eritrea, Commissioner Mimica paid a visit to Eritrean President Isaias Afwerki on 8 February 2019, and the men agreed on a new EUR 20 million project for road construction between the Eritrean port of Massawa and the border with Ethiopia (European Commission, 2019). The project, unlike the earlier development aid which fell under the framework of the European Development Fund, will be organised under the EU Emergency Trust Fund for Africa. The details of the project have yet to be negotiated.

Deals with third countries

Another way that the European Union and individual member states have sought to externalise border control is through bilateral deals with third countries. The main example has been the EU-Turkey deal of March 2016, which saw Turkey agreeing to host and accept the return of refugees in exchange for EU funds and political gestures. The legality of the EU-Turkey deal and other such deals, which are masked as statements rather than treaties, but which have a more clearly-defined legal status, has been fiercely debated (Matusescu, 2016). Despite criticism over its human rights implications, the EU-Turkey deal has been hailed by the EU as "a game changer" (European Commission, 2018c).

Other such controversial deals, including for funding to stop migration, have been made. In 2016, confidential EU documents were leaked showing the EU's intention to engage with countries with dubious human rights record on migration: "to reduce onward movements to Europe" (ARTE/ZDF, 2018). The documents revealed the EU's awareness of how such deals would look: "the EU should consider its high reputational risk associated with the engagement with Sudan exclusively focused on migration"

(ARTE/ZDF, 2018). In its cooperation on border management in Sudan particularly, the EU faces criticism for giving legitimacy to the Sudanese regime and supporting, indirectly, the Rapid Support Forces in Sudan, which have been implicated in war crimes. Although the EU denies cooperation with the Rapid Support Forces, the documentary 'Türsteher Europas' states that the these forces play a role in Sudanese border management. When Sudan/EU talks were ongoing, the Rapid Support Forces detained 700 refugees, stating: "I underline, the refugees pose no danger to us. These people are trying to reach Europe, so we are assisting Europe" (ARTE/ZDF, 2018).

Deals with Libya (Aljazeera, 2017), including a controversial pact between Italy and Libya, have led to cooperation with the Libyan Coast Guard and the return of many migrants and refugees to Libya, where they face human traffickers and detention centres. The collaboration with Libya has attracted a lot of criticism from international organisations and civil society, as it has led to migrants and refugees becoming trapped in inhumane conditions (Karagianni, 2018a). For instance, the UN Human Rights Commissioner Zeid Ra'ad al-Hussein has openly characterised the EU's policy of helping Libyan authorities in detaining migrants as "inhuman". In addition, the Libyan Coast Guard has been accused of using excessive force to remove refugees who were too afraid to set foot in Libya from ships that were intercepted (Hagenberg, 2018). Heba Morayef, Amnesty International's Middle East and North Africa Director, has stated that "the EU is turning a blind eye to the suffering caused by its callous immigration policies that outsource border control to Libya" (Amnesty International, 2018a).

In September 2018, the EU announced that it will reinforce the relationship with Egypt to decrease the movement of refugees and migrants towards Europe. The United Nations High Commissioner for Refugees (UNHCR) special envoy for the Central Mediterranean said that the EU "cannot ask other countries to do things they are not ready to do themselves" (Barrigazzi, 2018) and suggested that at the European level it is important to work on the internal dimension of processing and distributing refugees. Furthermore, a report by the

Global Detention Project reads that Egypt "has been criticized by rights groups and European policymakers because of the wider human rights landscape… Reporting suggests that Egypt has become a 'dead-end' for migrants as a result of cooperation with the EU since 2015" (Global Detention Project, 2018). According to the same report: "the Egyptian criminal law provides grounds for prosecuting people for status-related violations" (Barrigazzi, 2018, p. 21). The report says that in the past sources have reported to the Global Detention Project that: "authorities frequently charged people for migration-related infractions. However, more recently observers report that authorities generally avoid criminal prosecution, instead holding migrants in detention through administrative orders from the Department of Passports, Immigration and Nationality" (Barrigazzi, 2018, p. 7). Moreover, Africa Monitors has reported that Eritrean refugees in Egypt face "issues of protection, Refugee Status Determination, Resettlement, financial assistance and social services (education, health care and employment)" (Africa Monitors, 2018). Amnesty International posted an article on Egypt and its "unprecedented crackdown on freedom of expression", arguing that:

…since December 2017 Amnesty International has documented cases of at least 111 individuals who have been detained by the National Security Services solely for criticizing the President and the human rights situation in Egypt. (Amnesty International, 2018b)

In the documentary 'Türsteher Europas', the film makers show how border externalisation has impacted on smuggling and trafficking in Africa. Vincent Cochetel from UNHCR Europe stated that:

The smugglers take much higher risks and there are more people being stranded in the desert. We now have more people dying in the desert, probably more than those drowning in the Mediterranean. (ARTE/ZDF, 2018)

At the bilateral level, cooperation with African countries takes place within the framework of the Cotonou Agreement (African, Caribbean Pacific [ACP]-EU Partnership Agreement). With the Cotonou Agreement's legal mandate due to end in 2020, the actors have started

discussing how to form a post-Cotonou Agreement. Migration is a major part of the discussion, as the EU is pressing the topic of migration to be a key part of the new relationship. However, African countries have pushed back against the EU on ideas for migration management, such as regional centres for processing asylum claims, called 'disembarkation centres'.

The deals with third countries, as well as the pushback at the European borders, contravene principles described in European and international law. For example, the Lisbon Treaty, the constitutional basis of the EU, states:

> *The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.* (European Union, 2007, Lisbon Treaty, Article 21, para 1)

The Cotonou Agreement includes references to fundamental elements, including in Article 9:

> *Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development.*
> (European Union, 2000b, Cotonou Agreement, Article 9, para 1)

The EU, by collaborating with countries like Libya, Sudan and Egypt, or supporting the pushing back of people arriving on European shores to their countries of origin or third countries such as Libya, without an explicit review of the reasons why the person is there, goes against the principle of non-refoulement. Article 33(1) of the Refugee Convention states that **"**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" (United Nations, 1951).

Apart from the UN Refugee Convention, the Charter of Fundamental Rights of the European Union also offers insights into how the EU has agreed to support migrants and refugees. Article 4 of the Charter states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment" and Article 6 describes that "everyone has the right to liberty and security of person". Moreover, Article 19 (1) states that collective expulsions are prohibited and Article 19 (2) brings to attention the principle of non-refoulement, saying that "no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment" (European Union, 2000a). Knowingly collaborating with actors and regimes that are themselves involved in human trafficking and human rights abuses, and assisting in the pushback of refugees and migrants to countries such as Libya, where horrific human rights abuses have been recorded, is not only against the EU's own regulations, but it makes the European Union complicit.

The political mood

The third stream of Kingdon's policy framework relates to politics or the political climate. This topic has permeated this chapter. The policy debate started out with a sense of European unity and managing the situation in accordance with human dignity. In the State of the Union address in 2015, European Commission President Juncker stated:

The first priority today is and must be addressing the refugee crisis. […] The numbers are impressive. For some they are frightening. But now is not the time to take fright. It is time for bold, determined and concerted action by the European Union, by its institutions and by all its Member States. […] We Europeans should remember well that Europe is a continent where nearly everyone has at one time been a refugee. Our common history is marked by millions of Europeans fleeing from

religious or political persecution, from war, dictatorship, or oppression. (Juncker, 2015)

This sentiment was also symbolised in the statement that German Chancellor Angela Merkel would later attempt to take back: "wir schaffen das" (we will do it) (Delcker, 2016). She was referring to Germany's commitment to receive refugees. In contrast, the 2018 State of the Union address by Juncker focuses more on how much the European Union has been able to achieve with regards to reducing migration. One of the first direct references to migration in this speech reads: "Our efforts to manage migration have borne fruit: arrivals have been drastically reduced – down 97% in the Eastern Mediterranean and 80% in the Central Mediterranean. EU operations have helped rescue over 690,000 people at sea since 2015" (Juncker, 2018).

The political mood has changed within the EU, from a sense of tackling (albeit reluctantly) the issue together, to the individualisation of member state policies through the pressure of right-wing movements. Key issues, such as mandatory relocation quotas, have built momentum for resistance to the European Commission's attempts to unite member states. When in 2015 a sense of panic broke out over the number of refugees and migrants arriving, which:

> *…resulted in a gradual loss of confidence in the EU's ability to protect its external borders, which led to a growing number of unilateral and uncoordinated actions by national authorities to suspend their implementation of binding EU agreements on internal borders and asylum-seekers.* (Arditis, 2016)

This, in turn, led to a focus on tackling the problem as it had been framed: an illegal migration problem. It meant that external border protection, which was not readily visible to the European public, such as strengthening Frontex and the Libyan Coast Guard, became the only remaining option that EU member states could sell to their constituents.

The first implication for asylum seekers stems from the Dublin Regulation (European Commission, 2013b). The purpose of this EU law is to: "assign one member state to one asylum seeker to ensure that individuals do not ask for asylum in multiple countries, and that governments do not outright ignore a person's asylum request" (Jesuit Refugee Service, n.d.). Both the UNHCR and ECRE have said that the Dublin Regulation impedes asylum seekers' legal rights, along with their right to a fair examination of their asylum claims and, where recognised, to their effective protection (ECRE, 2009). ECRE, already in 2008, had characterised the Dublin Regulation as an anachronism, as it "does not promote harmonization of EU asylum systems, seriously impedes integration, and sows dissension among Member States. It simply does not work" (ECRE, 2008). Furthermore, the Dublin Regulation has imposed "untenable pressure on those States situated along Europe's borders, gateway countries such as Poland, Spain, Italy and Greece" (Arimatsu, Samson, & Royal Institute of International Affairs, 2011). The failing of mandatory quotas in the EU paired with the problems for both asylum seekers and countries bound by the Dublin Regulation means that political discord has grown between EU member states.

Through the framing of people entering Europe in an irregular way as 'illegal migrants', refugees and migrants alike have become scapegoats for discontent in Europe. Combined with a series of terrorist attacks, which were sometimes, often falsely, blamed on migrants, the right-wing movements of Europe have used migration to gather momentum for their political agenda. Security and the protection of human rights are presented as trade-offs. Together with the problems created by the Dublin Regulation and the pressure placed on the EU border member states (i.e., Greece, Italy, Spain), nationalism and protectionism have grown. Some member states have started closing their borders: for instance, Poland has not and still does not accept any refugees. Jaroslaw Kaczynski, leader of Poland's ruling Law and Justice party, said in 2016 that "after recent events connected with acts of terror, [Poland] will not accept refugees because there is no mechanism that would ensure security" (Broomfield, 2016). Nationalistic tendencies have also grown in Italy.

When Mateo Salvini, Italian Minister of Interior, was elected in the general elections in 2018, he ordered that Malta accept refugees, saying that, Italy, having accepted refugees the last two years, would not accept anyone anymore (Durden, 2018). Furthermore, he drafted a decree which would "suspend the refugee application process of those who are considered 'socially dangerous' or who have been convicted of a crime" (Giuffrida, 2018).

Conclusion

Europe has gone from compassion to a focus on border control. According to Kingdon, when society faces a problem, a policy window can open for change if: the problem is identified, a solution is available, and the political climate is ready for change. According to Kingdon, a policy window opens when the three streams necessary for policy change – agenda-setting, policy and politics – are aligned.

This chapter analyses how a policy window opened in Lampedusa in 2013, when the problem was defined and both the political will and momentum were present. Unfortunately, the problem, despite the tragedy that occurred, was mainly defined as the illegal crossing of migrants into Europe. The problem was framed from the perspective of the rising concern among European citizens and overlooked the legitimate protection claim of the refugees and the global drivers of migration, as well as the lack of legal pathways for migration to Europe. The tragedy in Lampedusa simultaneously created pressure for change and the EU's migration policy was shaped under this pressure. However, as the EU was not prepared to respond and because of the difficulty of coordinating the member states, the EU focused on stopping migration through the externalisation of its borders and increased border protection. Migration was framed as mainly an external problem that should be solved externally, rather than an internal EU issue.

The changed narrative in the EU show the vast difference between 2015, a peak year in terms of arrivals, but when EU policymakers tried to create a sense of togetherness and European identity ('wir schaffen

das') and the present. The commitment to human rights that was still on the agenda in 2015 has slowly been eroded. This chapter argues that this was inevitable, as the problem was framed from the outset as a problem of illegal migration – something external – rather than a problem of protection – something that the EU member states could tackle together.

The policies that evolved addressed this framing of the problem. They focused on strengthening the EU border and coast guard agency Frontex, investing development funding into migration management, and making deals with third countries, even treating regimes involved in trafficking and human rights abuses, such as Eritrea and Sudan, as equals. In a strange turn of events, Eritrea will chair the Khartoum Process in 2019, despite being accused of ongoing human rights violations and being one of the main refugee-producing countries (Plaut, 2018). Now, the policy window for change has closed, locking in the current EU Agenda on Migration, and can now be characterised as a missed opportunity for policy change in line with the EU's Charter of Fundamental Rights and international law.

From the very beginning after the Lampedusa tragedy, the stakeholders involved in EU policy making framed the problem in language that goes against international law. Refugees and migrants have different reasons for leaving their countries and, therefore, need different mechanisms of reception when they arrive in Europe. Refugees are entitled to protection and, until their claims can be examined, should be assumed to be legitimate. The EU is increasing border protection without providing adequate legal means for refugees and migrants to reach Europe. Moreover, the EU has placed the responsibility of dealing with migration on Africa and other third countries and has not made the necessary changes to the EU reception system. Due to the pressure to stop migration, it has come to dominate many of the discussions between the EU and its African partners, yet the political factors that cause migration have not been addressed and the protection of refugees in the region has been reduced.

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