

# The 'refugee crisis' in Europe: Shortening Distances, Containment and Asymmetry of Rights—A Tentative Interpretation of the 2015–16 Events

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This article analyses the recent growth in asylum applications both in and at the borders of Europe. It enriches the scholarship on the so-called 'refugee crisis' with an emphasis on structural transformations and geographical processes. While an increase in regional violence near Europe in 2015 played a key role in triggering displacements, we suggest three longer-term factors that may have facilitated access to European borders but led to urgent and often dangerous migratory situations for asylum seekers: the 'shortening' of distances, the crisis of containment policies and the geographic asymmetry of rights. On this basis, we interpret the EU policy of closing borders as an attempt to (re)create a geographic buffer separating refugees from their destinations in the context of the globalization of asylum-related issues.

Keywords: asylum, refugees, migration crisis, Europe, Mediterranean, containment, numbers vs. rights

## Introduction

More than 2.5 million asylum applications were filed in Europe in 2015 and 2016 (Eurostat 2019). Thousands of human beings have lost their lives on the path of exile. Although the vast majority of refugees remain in countries of the Global South (UNHCR 2017), this 'migration crisis' has placed the issue of asylum at the centre of attention and triggered considerable tension in Europe. Three approaches to this crisis can be identified among scholars. The first focuses rather descriptively on the causes of migration and the itineraries followed by migrants (Crawley *et al.* 2016; Sassen 2016; Betts and Collier 2017; Düvell 2019; Stevens and Dimitriadi 2019) or on the post-arrival situation of asylum seekers (Stathopoulou and Eikemo 2019). The second focuses on European policies and discourses. It develops a conceptual and critical reflexion on categorization processes and on the

weaknesses of the European asylum system in terms of human rights (Rajaram 2016; Crawley and Skleparis 2017; De Genova 2017; Greussing and Boomgaarden 2017; Triandafyllidou 2018; Sigona 2018). The third approach adopts a political-science perspective on the lack of coherence of European governments and on the political crisis that followed (Newland 2016; Riaño and Piguet 2016; Streeck 2016; Hatton 2017; Bernhard and Kaufmann 2018; Faist 2018; Lucassen 2018; Scipioni 2018; Bauböck 2019). For example, Lucassen argued convincingly that four factors converged in 2015 and led Europe to the verge of political breakdown: 1) discomfort with immigration and integration of colonial and labour migrants of the 1970–80s; 2) growing social inequality and widespread pessimism about globalization; 3) growing fears regarding Islam and Islamic terrorism; and 4) the rise of radical right populist parties (Lucassen 2018).

In this article, we attempt to complement these analyses by focusing on structural transformations underpinning the growth in asylum applications in Europe. Our core thesis is that, despite certain commonalities with previous major episodes of refugee displacements (Bundy 2016), the 2015–16 events constitute an unprecedented phenomenon not only in terms of numbers, but also because they mark a caesura in the articulation of territories, sovereignty and rights (Sassen 2006).

### Scope of Displacements

Let us begin with a historical overview of the 10 main host countries in Europe for which long-term statistics are available (Figure 1). The record number of asylum applications in 2015–16 is obvious on the figure, but previous substantial inflows should be noted:

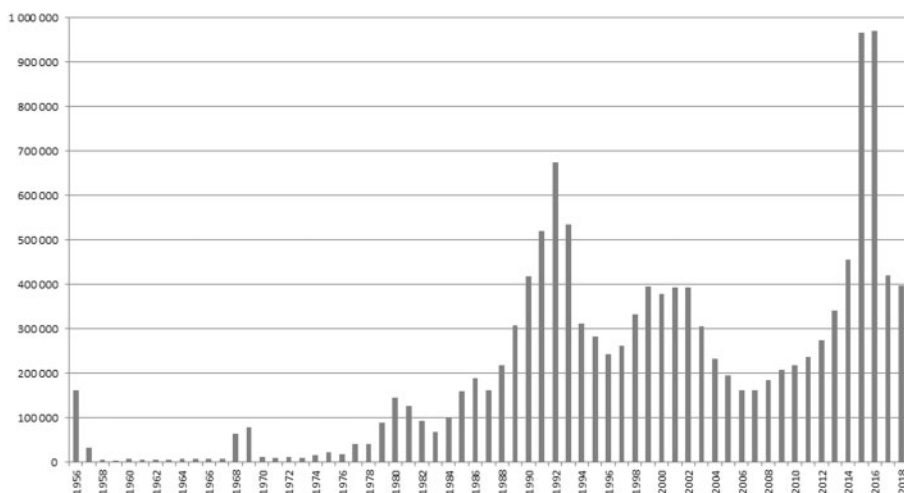


Figure 1.

### Asylum Application in 10 European Countries 1956–2018

Source: UNHCR/Eurostat (first-time applications)—before 1980, author's estimates based on the UNHCR.

- In 1991, 1992 and 1993, numerous ex-Yugoslav nationals arrived in Europe—in particular, Germany—fleeing the crises in Slovenia, Croatia and especially Bosnia. Many had to go back as early as 1995, but an estimated 350000 remained for the long term (Bade 2002: 548).
- Between 1988 and 1993, the difficult post-Ceaușescu transition (Michalon and Nedelcu 2010) prompted 350000 Romanians to apply (mostly unsuccessfully) for asylum in Europe (UNHCR 1994).
- Ten years later, asylum applications approximated 400000 for 4 consecutive years, primarily due to the war in Kosovo (Loescher 2001: 329). A considerable number of Kosovans were granted protection thanks to temporary permits, but many were forced to return to their home country during the 2000s (Bade 2002: 555).

These figures reveal that, although not completely unprecedented, 2015 and 2016 were exceptional in terms of asylum applications in Europe. This observation remains valid prior to 1980; one need only consider the 200000 refugees who fled Hungary in 1956–57 (HCR 2000: 29) or the 170000 who fled Czechoslovakia in 1968–69 (Bade 2002: 461). The case of the Indochinese boat people as early as 1975 is comparable to the 2015–16 period in terms of departures and human tragedies (3 million departures and thousands of casualties due to shipwrecks), but only a small minority of refugees (185000) were resettled in Europe (HCR 2000: 79).

Proportionally to Europe's population (approximately 500 million), the arrival of 2.5 million asylum seekers in 2015 and 2016 is equivalent to an annual rate of 0.25 per cent. The flow is therefore nowhere near the 'flood' or 'outpouring' described by some media organizations. However, arrivals are concentrated in a few countries, including Germany (1 per cent) and Sweden (1.5 per cent). For historical demography, an annual immigration rate of 1 per cent constitutes a very high proportion (Héran 2007: 57), corresponding to the most sizable migration inflows into Europe in the 1960s and those of the late nineteenth century in the US (Marnot 2006). It is, therefore, understandable that, beyond the reprehensible xenophobic reactions, certain governments are concerned by the scope of the phenomenon.

For some commentators, the migration crisis is explained by the high ratio of economic migrants—who are not in need of protection—saturating asylum schemes. It is true that, at certain points in the past, this was partially true. For instance, in the early 1990s, tens of thousands of asylum applications by Romanian nationals in Germany had hardly any basis other than economic motives. More recently, many migrants from the Balkans have tried to migrate to Germany, Switzerland or elsewhere without experiencing violence or other clear violations of human rights. Table 1 shows that, during recent years, however, the origins of most asylum seekers are in countries where violence or large-scale violations of human rights are amply documented. In other cases (sub-Saharan Africa, Pakistan, the Balkans), conditions are not straightforward enough to be able to isolate specific migration drivers (Crawley and Skleparis 2017). Systematic quantitative studies on the displacement

of asylum seekers confirm, however, that human rights violations constitute the main cause of fleeing (Hatton and Moloney 2015: 21; Weber 2019).

Historically as well as recently, wars and violence remain the main causes of variations in asylum applications in Europe (Dumont 2016). However, other developments not directly related to push factors explain the upward trend obvious in Figure 1. Indeed, countless cases of violence have erupted in the post-war era without giving rise, for similar distances, to substantial population displacements towards Europe. In 1967, the war in the Biafra displaced 2 million people within Nigeria; in 1979, the invasion of Ethiopia by Somalia displaced 600000 refugees; in 1985, the war of independence in Eritrea led to 1.2 million refugees (Thiollet 2014); in 1992, the civil war in Mozambique led to 6 million displaced persons; in 1994, the genocide in Rwanda led to 3.5 million. In 2007, the UNHCR estimated that 2.2 million Iraqis fled, mainly for neighbouring countries. It is thus a novelty that hundreds of thousands of people seeking protection are heading to Europe in a spontaneous, disorganized manner and at an intolerable human cost. Three related explanations can thus be offered: the shortening of distances, the crisis of containment policies and the geographic asymmetry of rights. All three pertain to the assemblage of territories, sovereignty and rights mentioned in the introduction.

### Shortening Distances and Growth in Connections

Physical distance has historically constituted a major obstacle for people seeking protection (Black and Robinson 1993). Most refugees move only short distances to neighbouring regions or the first safe country they reach (Moore and Shellman 2007). However, distance has ‘shortened’ recently in the context of globalization (Grataloup 2015: 83). The populations seeking protection have, therefore, ‘come closer’ than was expected by countries that, in 1967, signed the protocol enlarging

*Table 1*

#### Main Origins of Asylum Seekers in EU +

2011		2012		2013	
Afghanistan	24235	Afghanistan	23385	Syria	49155
Pakistan	14985	Syria	22260	Russia	35810
Nigeria	13770	Russia	18030	Afghanistan	22580
Iraq	13485	Pakistan	17405	Eritrea	19930
Somalia	13260	Somalia	15725	Pakistan	19450
2014		2015		2016	
Syria	124750	Syria	377910	Syria	337505
Eritrea	45885	Afghanistan	193015	Afghanistan	186530
Afghanistan	39135	Iraq	126810	Iraq	128530
Kosovo	34590	Kosovo	67535	Pakistan	47780
Pakistan	20770	Albania	66990	Nigeria	47315

Source: Eurostat (first-time applications)—European Union + Switzerland and Norway.

the 1951 Convention—that had hitherto been limited to Europe—to the whole world. According to Gil Loescher,

The 1980s rudely shook the industrialized countries out of their *old notions* of insularity from the world's refugee problems. Apart from the occasional ballet dancer, rocket scientist, or *merchant marine* seaman from the Soviet bloc, political asylum had been an exceptional event for the West. (...) Western governments never envisaged large-scale population movements from the Third World. The developed world was simply too distant (Loescher 2001: 229).

Since then, the phenomenon of shrinking distances has been further amplified through four mechanisms: growing connections, more affordable costs of moving, fewer exit controls and smuggling networks.

#### *Growing Connections through New Technologies of Information/Communication (NTIC)*

It seems reasonable to postulate that groups or individuals subject to persecution or violence are today much better informed about potential host countries and how to reach them. The increasingly globalized flow of information sustained by NTIC and social media contrasts with the isolation of crisis zones during the Cold War era. A growing literature documents the impact of NTIC on mobility and migration (Lee 2011; Cooke and Shuttleworth 2018) and more specifically on forced migration (Koser and Pinkerton 2002; Zijlstra and Liempt 2017; Dekker *et al.* 2018; Gillespie *et al.* 2018; Leurs and Smets 2018). This is a long-term process—in 1938, scholars made similar observations regarding the technologies of that time (Simpson 1938)—but the recent acceleration of accessible mobile-communications technology remains remarkable. One study thus estimates that, at the beginning of the civil war, 86 per cent of young Syrian refugees in asylum camps owned a mobile phone (Koons 2015). World Bank statistics reveal an exponential rate of growth in mobile-phone subscriptions even in countries severely affected by violence. In 2015, these reached 62 per cent in Afghanistan, 82 per cent in Nigeria and 92 per cent in Iraq. Mobile telecommunication devices facilitate organizing journeys as well as the occasional rescue operation. In 2015, smartphone applications specifically tailored to crossing the Balkans or arriving in Germany were developed. More recently, applications for contacting a voluntary translator via Facebook appeared. The growing phenomenon of civil society supporting refugees through the use of social media also contributes to shortening distances by facilitating rescue operations in transit zones (Signorini 2011; Dekker and Engbersen 2014; McAuliffe 2016; Zijlstra and Liempt 2017).

#### *Financial Resources and Diasporas*

A second development that facilitates access to Europe is the growth in financial resources at the disposal of households in many countries of origin. Although, on the one hand, global inequalities increase, on the other, hundreds of thousands of people have risen out of extreme poverty during the last decade. According to

Ranesh (2015: 11), 669 million people have, for example, moved from ‘poor’ to ‘low-income’ status. Although this development primarily concerns low-emigration countries such as China, high-emigration regions are concerned too. Africa has witnessed an important reduction in poverty, including in some countries marked by violence: in Ethiopia, the share of those living in poverty has diminished by 26 per cent and in Nigeria by 18 per cent in recent times. A few decades ago, financing an emigration journey was unattainable for most people in the Global South, although, in recent years, the possibility of having the ‘capacity to aspire’ (Appadurai 2004) has grown. The Syrian exodus, in which middle classes are highly represented, is a good example of this phenomenon (Yazgan *et al.* 2015) when compared, for instance, with the war in the Biafra at the end of the 1960s or, still today, with the exodus of Myanmar’s Rohingya population confined in Bangladesh by—among others—a lack of resources to move farther.

The growing existence of diasporas further intensifies the links between countries of origin and countries of potential destination, and thereby facilitates emigration funding. In some cases, pre-existing channels that evolved from previous labour or study migration can be reactivated during political crises—for example, between Switzerland and Kosovo in the 2000s—and allow substantial populations to flee. The closure of certain economic or family access routes can also reinforce incentives for migrants to become asylum seekers.

### *Exit Controls and Trafficking Networks*

A third noteworthy geographic development is the decline of ‘exit controls’—one of the main features of migration regimes until the 1990s (Wenden 2013). In this way, Warsaw Pact countries prevented citizens from emigrating by making it a crime. North Korea is a modern example of this type of control. Although democratic countries denounced the practice as a violation of civil liberties, it prevented massive exoduses that could have imperilled the international asylum regime. Currently, emigration is sometimes difficult, even severely punished, but the political fragmentation that characterizes the numerous conflict zones nonetheless enables significant cross-border movements. In certain areas, the central government no longer has the will or the resources to effectively control its citizens’ movements. In Eritrea, although the government does not hesitate to punish fugitives, it still takes advantage of expatriates by imposing a tax on income earned abroad. The symbolism of refugees might also play a role: those who fled during the Cold War were seen in both host and home countries as representative of each other’s superiority. However, this is largely no longer the case, which reduces the incentive to control emigration just as it reduces the incentive to generously take immigrants in (Price 2009). Finally, the increasing development of professional human-trafficking networks also facilitates emigration—while sometimes rendering it more dangerous. Although often singled out in political discourse, human trafficking remains more a consequence of the aforementioned developments—and the need to protect migrants—than a cause in itself (Landry 2016; Zhang *et al.* 2018).

Interdependently, these four developments contribute to a growth in the number of people who can consider emigrating to Europe. Although these developments have not eliminated the obstacles to migration, they have enlarged the geographic area of feasible access to Europe to include Syria, Afghanistan, Pakistan, the Horn of Africa and sub-Saharan Africa. These crisis zones, which dominate the geographic origins of the exodus to Europe (Table 1), correspond approximately to a 3000-kilometre perimeter. Beyond this, the Great Lakes of Africa, South America or Myanmar are still too distant to generate significant migration flows towards Europe.

### The Weakening of the Containment Pact

A second explanation of the current crisis involves the demise—or at least the weakening—of what one could call the 'containment pact' or the 'traditional burden-sharing scheme' that was informally introduced after the Second World War and during decolonization when the countries of the Global North grew concerned about the numbers of forcibly displaced populations around the world (Aleinikoff 1992; Shacknove 1993).

#### *Less Money to Support Refugees in the South*

According to Luc Legoux,

At the end of the 1960s, with the extension of the Cold War to the whole world, a division of labour was introduced . . . The West would always take in a small number of political refugees mainly from the Communist countries whereas the countries of the Global South would take in the massive numbers of refugees spawned by the localised wars linked to the conflict between the two blocs (Legoux 2008: 10).

Providing aid to refugees in camps was largely assumed by the UNHCR in the context of the extension of its mandate promoted by High Commissioner Felix Schnyder (Loescher 2017) and funded by countries of the Global North (Crisp 2003: 5). The favourable context of the 1960s and 1970s—the common experience of the struggle for decolonization in the Global South, the scope of the financial support from the Global North and the relative prosperity in certain decolonized states (Crisp 2003: 5), as well as the geopolitical context of the Cold War—allowed an asymmetrical sharing of the burden. In the most problematic cases, a minority of refugees were ultimately resettled in the Global North. Southern scholars criticized this model as based on a 'myth of difference' between refugees in the North—considered a priori as 'political'—and refugees in the South, considered to be collectively fleeing violence (Chimni 1998). This myth is, however, obviously still in place, as shown by the vastly greater numbers of refugees hosted in the Global South as well as the scope of the UNHCR's assistance operations. The containment pact was, however, weakened with the end of the Cold War and Western countries often balk at funding-assistance operations (Goodwin-Gill 2016: 300).

The Syrian crisis is a blatant illustration of the Global North's diminished funding for countries hosting refugees in the South. Indeed, the World Food Program (WFP), the UNHCR and other refugee-assistance organizations faced major difficulties in financing operations at the onset of the crisis, when refugees were still in close proximity to conflict zones. In 2014, the WFP announced that it was forced to diminish aid to Syrian refugees in Lebanon by 30 per cent (Grisgraber 2014). Similarly, a few weeks before the surge in refugee arrivals in Greece in 2015, a joint report by 200 assistance organizations announced that, in initial-reception areas, 1.6 million Syrian refugees experienced a reduction in food aid, 750000 children did not have access to education and vital health services were too expensive for many refugees, including 70000 pregnant women (UNHCR/3RP 2015). Similar situations were described in Turkey (Düvell 2018). More broadly, although contributions to the UNHCR in absolute terms have grown in recent years (Grayson and Audet 2017), this has clearly not kept up with the growth in the need to protect the safety of migrants—as a sustained burden-sharing pact would have supposed.

It has always been difficult to mobilize funds in the Global North for refugee-assistance operations in the Global South. The UNHCR faced such a challenge in Indochina (Robinson 2004). However, the context of the Cold War—in terms of economic growth—was much more favourable than the current context of financial austerity and nationalistic revival. Additional trends probably also played a role: according to Jeff Crisp, for example, democratization in many countries of the Global South has rendered the acceptance of large-scale policies for welcoming and hosting refugees more difficult (Crisp 2003: 6), transposing from the North to the South the well-known tension between democratic processes and liberal policies towards refugees (Gibney 2001). Additionally, the trauma of the 1995 Srebrenica atrocities largely affected the creation of protected zones within conflict areas, as in the case of Operation Provide Comfort, which, according to Loescher (2001), prevented Iraqi Kurds from entering Turkey in 1991 and eventually migrating towards Europe. The creation of 'safe zones' in Sri Lanka in 2009 proved to be problematic too. This solution is still mentioned (Syria, Myanmar), however, and could make a comeback with the reinstatement of containment policies.

### *Closure of Protected Access Routes*

As noted above, another feature of the containment pact was the possibility of a minority of refugees to access countries of the North or to assert their need to receive protection from abroad. One such possibility involved the embassies: the *diplomatic asylum* theorized by Grotius in the seventeenth century had for a long time allowed diplomatic buildings to benefit from extraterritorial status that allowed asylum seekers to seek protection without leaving their countries (Värk 2012). In Switzerland, the possibility of filing an asylum application at an embassy, tacitly recognized in the post-war period, was formally included in the first

asylum law of 1979. This policy had counterparts in several European governments.

The second possibility was resettlement, with programmes mainly run under the aegis of the UNHCR. For a host country, these programmes involved accepting a group of people selected by the UNHCR in the zones of initial exile. Historical examples are numerous, from the international action plan for Indochina between 1985 and 1997 (Robinson 2004) to the 1999 Kosovo airlift. In the latter case, close to 100000 refugees were evacuated from the Balkans to Europe by NATO forces and then redirected to 28 host countries (Loescher 2001: 329).

These two instruments have allowed hundreds of thousands of people to benefit from protection, but their futures are also in crisis. Although resettlement programmes are still in place and the number of resettlement countries is increasing (Hashimoto 2018), the growth rate is far from matching the growth in protection needs. In 2016, resettlements only represented 3 per cent of protection decisions in Europe: all other refugees arrived due to their own efforts (Fratzke and Salant 2017).

Access to asylum procedures in embassies has also been substantially scaled back. In 2002, seven European countries (Austria, Denmark, France, the Netherlands, Spain, Great Britain and Switzerland) provided such access (Noll *et al.* 2002). Since then, this practice has either been abolished or greatly restricted. Switzerland is the last country to have replaced asylum applications in its embassies by a much more restrictive humanitarian-visa procedure in 2014 (Piguet 2019).

Our analysis of the fate of the 'containment pact' leads to the conclusion that countries of the Global North have for a long time sought to keep potential refugees at a distance. 'Fortress Europe' is not, in this respect, something new, but has for a long time rested on a tacit pact between North and South involving substantial financial contributions and the preservation of alternative routes in exchange for blocking access in other areas.

The weakening of the containment pact described in this section and the shrinking distances described in the previous contribute to explaining the increased number of asylum requests lodged in Europe. A third factor lies in the growing asymmetry between the rights that come with being present on European territory and extraterritorial rights.

### **Geographic Asymmetry of Rights**

Although the attitude of many governments and the exploitation of the asylum issue by xenophobic movements have contributed to hardening public attitudes towards asylum seekers, and despite the introduction of multiple deterrence policies with little regard for fundamental human rights, a parallel but contradictory development towards broader rights for refugees can be observed over the last 20 years (Gibney 2001). As noted by Thielemann and Hobolth:

In many developed countries, material reception conditions have been improved, the definition of what constitutes protection needs has been widened, procedural safeguards in the refugee determination process and against the removal of those not qualifying for refugee protection have been strengthened (Thielemann and Hobolth 2016: 644).

The schizophrenic tendency of asylum policies to harden on the one hand while becoming more accommodating on the other is confirmed by the aggregated restrictiveness indicators that are remarkably stable in most host countries (Schmid and Helbling 2016). Two developments are particularly remarkable, namely the broadening of the definition of refugee and the judicialization of asylum procedures. These create a growing asymmetry in the availability of protection for refugees.

### *The Broadening of the Definition of Refugee*

The definition of refugee in the 1951 Convention entails an individual persecution related to a particular social group. Although it was from the beginning used in a flexible manner, depending on the political issues of the day (Skran 1992), this definition has gradually been substantially broadened in European legislation, jurisprudence and practice. Matthew Gibney argues that:

As restrictive measures have developed across Europe and North America, the legal grounds on which individuals can claim asylum have expanded significantly. Far from confining themselves simply to the 1951 Convention on Refugees, western countries now accept a range of human rights grounds as a basis for asylum (Gibney 2015: 1).

Many countries have thus considered non-state persecutions and generalized violence not targeted at particular groups as sufficient grounds for granting protection. The UNHCR has played a major role in this broadening towards a humanitarian definition of the notion of refugee that was already present in the 1967 Convention of the Organization of African Unity (Sharpe 2011) and the 1984 Carthage declaration on refugees in Latin America. This development is perceptible in the successive clarifications of the guiding principles on international protection between 2002 and 2016. The last clarification to date (2016) considers the 1951 Convention to be 'directly applicable to civilians displaced due to situations of armed conflict and violence' (UNHCR 2016: 1) and reflects the UNHCR's position during the Syrian crisis. In the past, the UNHCR's positions were more nuanced, for example in the case of the Tamils in Sri Lanka in the mid-1980s (Loescher 2001: 238) and ex-Yugoslav nationals in the early 1990s (HCR 2000: 165; Helton 2002: 167). In both cases, the UNHCR advocated temporary reception with no formal recognition of the status of refugee, partly out of pragmatism regarding the acceptability of such a solution by host countries.

One of the consequences of the broadening of the definition of refugee seems to have been, as early as 2013, a decline in the proportion of subsidiary and often temporary forms of protection (Figure 2). These second-rate statuses were

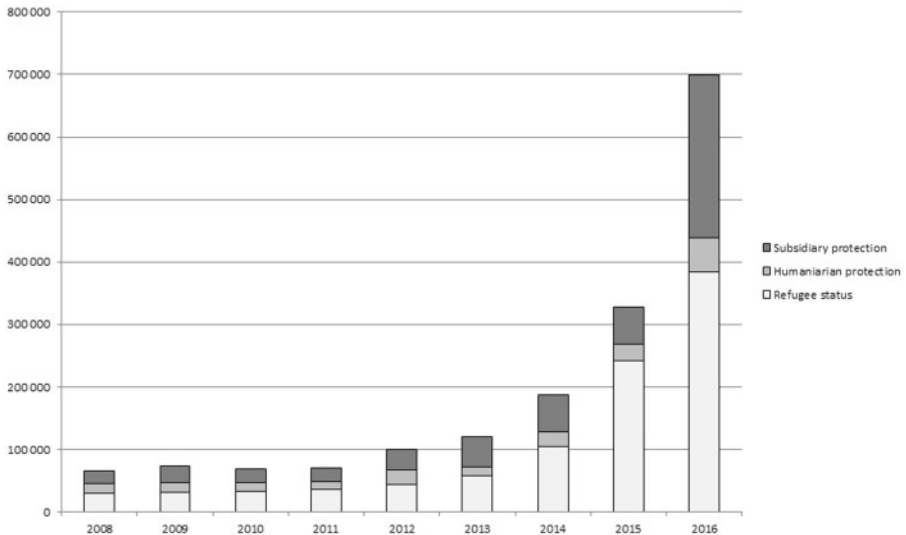


Figure 2.

**First-Instance Positive Decisions of Protection in the EU+ According to Status (Absolute Terms)**

Source: Eurostat.

introduced in the 1990s at Germany's request with the aim of dissuading potential refugees and were quickly applied to 50 per cent of protection decisions within the EU (HCR 2000: 162–165). Their share fell to around 20 per cent in 2015 before rising again in 2016, probably following the restrictive about-face of several European countries (EASO 2017).

### *Judicialization*

The second important development in terms of refugee rights noted by several scholars is the partial transfer of decision-making power from the administrative to the judicial sphere (Gibney 2001: 12; Price 2009). The courts thus play a growing role in determining protection status and tend to moderate or reverse the restrictive tendencies of state administrations. Procedures based on clearly defined and universal rights take the place of the discretionary granting of asylum by the state, which for a long time was the dominant mode of granting asylum. This development is part of a long-term trend of depoliticizing asylum policy: the reception criteria are no longer linked to the host state's judgement on the state of origin, as was the case for the refugees of the nineteenth century or the Cold War. An illustration of the old political approach in Switzerland is the difference between the generous reception of Czechs and Hungarians in 1956 and 1968 and the highly restrictive reception of Chileans after 1973 (Piguet 2013). Historian Gérald Arlettaz notes that:

Throughout the 19th and 20th centuries, political discourse is unequivocal about the fact that there is no individual subjective right to asylum but only the right of the State to grant it in reference to the tradition, independence, customs, opportunity, reason, prosperity and security of the Confederation and the possibility of integrating asylum seekers, that is ultimately in reference to the will of national sovereignty exercised in all these fields, to the exclusion of any other consideration (Arlettaz 1999: 21).

In the US, one can contrast, in the same vein, the (generous) reception of Nicaraguans with the (restrictive) reception of Salvadorians and Guatemalans in the 1980s and, more recently, of Cubans and Haitians (HCR 2000: 174). In all these cases, political considerations played a defining role (Loescher and Scanlan 1986). In many countries, such considerations have been supplanted by the individual humanitarian situation of the asylum seekers. Matthew Price talks about the depoliticization and humanitarianization of asylum (Price 2009: 7). The European Court of Human Rights (ECHR) has, moreover, developed an important jurisprudence that extends certain protections, until now reserved for refugees, to persons who cannot claim this status (HCR 2000: 170). As noted by Alexander Betts:

The most high-profile cases have shown that those who are not includable or are excludable under international refugee law may nevertheless be entitled to international protection if they face, for example, the prospect of torture or cruel, inhuman, and degrading treatment on their return (Betts 2010: 364).

In this way, the ECHR's *Salah Sheek v. the Netherlands* ruling in 2007 (Application 1948/04) considers for the first time that an expulsion can be prohibited due to a situation of generalized violence in the country of origin, without the individual condition of the targeted person being different from that of the rest of the population (Goepfert 2016: 5). Several other ECHR judgments—such as *M.S.S v. Belgium and Greece* (Application 30696/09), which condemned Belgium for sending an Afghan asylum seeker to Greece without assisting him properly—sustain this process of judicialization of asylum-related procedures.

### *Asymmetry of Rights*

The effect of broadening the definition of 'refugee' and the judicialization of procedures are to broaden the prospects for protection and residence for asylum seekers in Europe. At the same time, this requires being present on the host country's territory at a time when access routes are becoming rarer and restrictions multiply in the framework of a *non-entry* regime (Chimni 1998; Guild and Bigo 2003). Derived from the Treaty of Westphalia (1648) and centred on the concept of the nation state, the right of asylum remains defined by this fundamental condition: to receive protection, one has to be *within* the host country's territory (Price 2009). The asymmetry between the countries where the right to protection applies and the rest of the world is thus intensified. A ruling of the Court of Justice of the EU recently confirmed this asymmetry by dismissing the claim of a Syrian family

that had attempted to request a visa to flee the besieged city of Aleppo (Judgment in Case C-638/16 PPU). The family clearly fulfilled the conditions that would have allowed them to obtain a residence permit if the request had been filed in Europe. The *non-refoulement* clause, now generalized by the ECHR (Goepfert 2016: 20), tends to intensify this asymmetry of rights. Admitting people who are fleeing violence is now an international legal obligation and no longer a discretionary humanitarian or political act for receiving countries.

## Conclusion

The proximity of major humanitarian crises, the growing interconnectedness linked to advances in NTIC, the lessening of exit controls, the weakening commitment by the Global North to provide assistance to refugees in the South, the blocking of protected access routes and the geographic asymmetry of rights to protection are key elements to understand the growing number of asylum requests lodged in Europe in 2015–16. This multicausality illustrates the need to take into account several geographic and temporal scales, and to jointly consider structural developments, political trends and the agency of those who seek protection.

From the point of view of asylum law, the remote controls that Europe now carries out through containment agreements, the heightened surveillance of the border and the general policy of non-access (Guild and Bigo 2003; Thielemann and Hobolth 2016) appear as the other side of the coin of an asylum regime that tends to be more welcoming once asylum seekers are within the territories of host countries (Gibney and Hansen 2005: 20). In this way, the states grant more extensive rights with one hand, while blocking off access with the other. This political oxymoron is reminiscent of the *number versus rights dilemma* identified regarding economic migration: countries who grant fewer rights to immigrant workers often do admit more of them and vice versa (Kosłowski 2011; Martin 2011; Ruhs 2013). Our analysis suggests that the trade-off also plays a role in asylum policy: the granting of increased rights by courts drives states to restrict entry by blocking access. It might, however, not apply to all aspects of the overlaps between mobility regimes (Betts 2011) and would require increased empirical research to be confirmed. At this stage, the only empirical study directly addressing the issue tends to reject the hypothesis. It is, however, based on a very specific indicator of restrictivity—the visa policy—and does not control for push factors in origin countries (Thielmann and Hobolth 2016).

The recent provisional approach to the migration crisis—blocking access routes to Europe, for example—could also be interpreted in a less functionalist way as the recreation of a traditional burden-sharing scheme that keeps refugees at a distance. This type of containment had for a long time been dominant. The 2016 formal agreement with Turkey and the 2017 informal arrangements with Libyan factions remind us in this respect of the 2008 agreement between Italy and Libya, the Spanish policy of the 2005 'pirogue crisis' (Vives 2017), as well as the containment in place throughout the second half of the twentieth century (Aleinikoff 1992).

A future direction for research will be to evaluate the extent to which the structural transformations and geographical processes described in this article also concern populations that do not submit an asylum request once they have reached Europe ((undocumented) ‘migrants’ in general, to use the recently established term). Another will envisage the case of non-European host countries—such as Canada, the US, South Africa or Australia—and assess the validity of our framework of interpretation in those contexts. The current Central American refugee crisis would be a case in point. Our prediction is that many of the processes outlined to explain the European asylum crisis also impact human ‘survival’ displacements in the rest of the world. Finally, a pressing question is that of the policies needed to properly address the future displacement of populations fleeing violence. Believing that a simple trade-off between numbers and rights exists and can be optimized is obviously simplistic, but reducing the geographic asymmetry of rights appears to be an essential issue. Very concretely, it would mean improving the opportunities of threatened populations to benefit from protection *in situ*, to lodge asylum requests in embassies or dedicated protection centres or, for the most vulnerable, to be resettled without being forced to travel distances that, despite being shorter than in the past, often remain dramatically deadly.

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