1. Introduction

> *"By end of February 2016, over 1.1 million of people - refugees, displaced persons and the other migrants - have made their way to the European Union, either escaping conflicts and in search of better economic prospects. Many people arrive in Europe after perilous land or sea journey and require basic humanitarian assistance." (European Commission, 2016)*

This statement from the European Commission report on the Humanitarian Aid and Civil Protection, explains the unprecedented refugee crisis that is affecting the stability of the European Union and provoking a humanitarian emergency in the frontline Member States as witnessed by the call for a state of emergency on Greece Macedonia border (BBC, 2016). In fact, by end of 2015, one of the pillar of the Union - the Schengen Agreement - has been threatened by several potentially alarming declarations and unilateral decisions. In particular, France, Germany, Sweden, Denmark and Austria have reintroduced national border controls in order to stem the flow of migrants from the Southern countries of the Union (The Guardian, 2016a). The internal border controls can be temporary reintroduced as stated in the Chapter II of the Schengen Borders Code (REGULATION (EC) No 562/2006), in particular the article 24 states that the request for the reintroduction of the border controls must include the reasons for this measure, "detailing the events that constitute a serious threat to public policy or internal security" (REGULATION (EC) No 562/2006).

Although these measures can be considered as temporary and probably will not represent a serious threat to the long-term stability of the Schengen Agreements, it could be argued that this refugee crisis is seriously challenging and fostering the debate over the European system of asylum, fueling the widespread idea that the Dublin Regulations together with the Schengen Agreement need changes in order to properly hinder the humanitarian emergencies in different frontline Member States. Moreover, further disputes amongst Member States regards unilateral decisions taken by countries such as Hungary, Denmark or Sweden. For instance, the decision of the Hungarian government to build up a fence at the border with Croatia and Serbia - that besides being a violation of the International Law as pointed out by different NGOs (Amnesty, 2015; UNHCR, 2015) - it is deepening the historical contrast between Eastern and Western countries within the EU. This process could be witnessed by the proposals of the Visegrad Group, an organization created in 1991 by Poland, Czech Republic, Slovakia and Hungary to foster the cooperation of these former Communist countries. In February 2016, the leaders of these countries proposed to exclude Greece from the Schengen area, because of the alleged failure of Athens to "prevent hundred of thousands of migrants [...] from crossing its territory" (The Sofia Globe, 2016) and have rejected the proposal of Angela Merkel to equally redistribute the refugees amongst Member states. Instead, the proposal of Orban - Hungarian prime minister - that was backed by the Visegrad group, regards the creation of "a fence built on Bulgaria and Macedonia's borders with Greece, effectively cutting off Greece from the 26-nation Schengen Area" (The Sofia Globe, 2016).

In this context, a further exacerbation of the situation has been provoked by the declarations of different political actors. In fact, after the Amsterdam talks between the Member states interior ministers in January 2016, the Dutch migration minister said that a further request for the prolongation of the temporary measures for suspending Schengen was about to be presented at the European Commission (The Guardian, 2016a), while the Austrian interior minister said that "Schengen is on the brink to collapse" (The Guardian, 2016a). Even during the Davos economic summit, the refugee crisis became argument of debate, with the alarming declarations of the French prime minister, Manuel Valls, that stated: "The European project can die, not in decades or years but very fast, if we are unable to face up the security challenge" (The Guardian, 2016b). However, the current situation regarding the precariousness of the Schengen Agreement was already predictable in November 2015, when Donald Tusk, President of the European Council, stated that "without effective control on our external borders the Schengen rules will not survive" (The Telegraph, 2015).

The diplomatic impasse emerged from these declarations and unilateral decisions it is certainly worsening the situation at the external borders of the EU, provoking a humanitarian emergency. According to a report of the International Migration Organization quoted by Human Rights Watch, "over 3455 people have died at sea trying to reach the EU as of November 10, 2015" (Human Rights Watch, 2016), while the asylum claims in Europe in 2015 have been approximately more than a million (EUROSTAT, 2016). This data is particularly explanatory of the current emergency if compared with the one of 2011, when the asylum claims were approximately 300 thousands (EUROSTAT, 2016). Despite the different degree of emergency between the two crisis, it is interesting to note that already in 2011, few months after the beginning of the uprising in Tunisia, the governments of France and Italy pushed for a reform or a temporary suspension of the Schengen Agreement because of "exceptional difficulties" (BBC, 2011; The Economist, 2015).

1.1 Problem Formulation

In order to understand how this humanitarian, but also diplomatic crisis escalated in Europe in 2015 it is necessary to highlight the peculiar features that have led to this situation, that could not be simply related to the increased number of asylum claims in the last year. In particular, aim of this thesis is to investigate and understand which are the political and institutional features that have impacted on the refugee crisis that the European Union has experienced in 2015, by conducting a case study on Italy. The focus on this country will provide me with the chance to better understand the potential limitations of the current asylum system, mainly because Italy has already been a scenario of refugees emergency in 2011 - after the outburst of the Arab Spring -, with the emergence of tensions at the EU level for human rights violations (European Court of Human Rights[1]) and for its restrictive asylum legislation (European Court of Justice[2]) but also because it is one of the European countries in which the 'Hotspot

[1] European Court of Human Rights: Case Hirsi Jamaa and others v. Italy (Application no.27765/09)
[2] European Court of Justice: Case C-61/11 PPU

approach' - a newly implemented measure aimed to provide a platform for the agencies (EASO, Frontex and Europol) to intervene in frontline Member States (Explanatory Note on the Hotspot Approach, 2015) - has been applied. Through an analysis of the policy outputs (Hill, 2014), I will look at the different outcomes that the current asylum policy system - both at national and communitarian level - have produced in the current crisis in Italy. In particular, I will look at those outcomes in terms of human rights protection, level and degree of cooperation, but also in regards to alleged discrepancies in the policy enforcement process in Italy, with the aim also to understand which approach has been employed for the implementation of the considered policies.

In order to investigate which features have impacted on this crisis and how the measures adopted at the national and supranational level, address the refugee issue, I will employ different theories and concepts that will give me the opportunity to clarify and understand which could be the strengths and weaknesses of the measures adopted. Firstly, I will employ theories related to the labeling process of the refugees that will provide a conceptualization of the subjects of the policies considered, providing then a clear definition of the object of study and a comprehension of how this label could affect the way by which these policies are implemented. Moreover, it will clarify the main issues related to the "refugee" entitlement, that will give me the possibility to narrow down my research, for instance considering only the asylum seekers and not the economical migrants (Betts, 2010; Balibar, 2002; Zetter, 1991).

In addition, I will seek to explore the development process of the European immigration policy, providing then a brief explanation of the Europeanization process of the national immigration policies (Faist and Ette, 2007; Kaunert and Léonard, 2012), in order to describe the development process of the asylum legislation in Europe. Then, by identifying the potential problems and challenges of the harmonization process of the national migration policies I will be able to investigate which are the weaknesses of the actual Common European Asylum System and which could be the main obstacles to a further implementation of this system.

Subsequently, I will outline a concept underlying an approach that many scholars identified as dominant in the way the western countries decided to address the migration flows issue; an approach that relies on security issues, through a process of securitization of the border regime that could be seen as an important implication of the securitization theory (Aas and Bosworth, 2013; Bigo, 2002; Campesi, 2011; Longhi, 2014; Waever, 1995; Webber, 2012). By considering this theory I will be able to identify the double-layered problem that the European Union is experiencing in connection with the international obligations in terms of asylum protection and with the internal security problems of the Member States, especially after the recent threats carried out by the appearance of the Islamic State (Europol, 2016). However, it is still important to remember that these concepts will not be adopted to understand the actual extent of the terrorism menaces in Europe, instead they will help me exploring the need for the Union to develop what Aas and Bosworth have defined as "crimmigration law", a

perspective by which looking at the policies of migration and border control through a criminological glance (Aas and Bosworth, 2013), trying to understand how these policies are shaped at the supranational, national and subnational level (Campesi, p.3, 2011).

Finally, I will seek to explore the debate over the Dublin Regulations and over the approaches adopted by the European Union to control the migration flows, such as the policies of border controls and the forms of bilateral cooperation. In particular, I will employ studies and relevant literature to understand which counter effects these policies could occur in the application process of the asylum measures, by looking at the specific provisions whose national transposition has not been completely harmonized or that provisions that have been adopted through a restrictive interpretation.

The theoretical framework will drive the process of analysis of the case study; in fact, the hypothesis at the bottom of this theoretical framework will be consequently tested by the policy analysis at both national and European level, and subsequently checked by an impact evaluation of the asylum policy in Italy, so to investigate which features of the policies may and how have impacted on the current crisis.

2. Methodology

In this chapter I will outline the methodological stances adopted in this thesis for the investigation of the problem formulation, highlighting the method employed in order to investigate and understand those political-institutional features that have impacted on this refugee emergency. In particular, I will start presenting the research design that will be adopted, followed by the methods for data collection and analysis; finally, I will clarify the epistemological and ontological stances of this research, while in the last paragraph of the chapter I will outline the methodological limitations that I have experienced in the research making-process.

The research will follow a top-down approach in regard to the connection between theory and research, in the sense that the initial hypothesis will be deduced by the theory in order to be empirically tested. However, this mainly deductive approach will be applied and confronted with the case study analysis, and hence, it will also operate 'bottom-up' (Bryman, 2010, p.26). The interaction between a deductive and inductive approach will aim at providing an iterative approach, in which the hypothesis highlighted by the theoretical framework will be tested in the analysis part and potentially implemented by further findings, giving the researcher the possibility to adopt a fluid nature of design, eventually leaving space for changes and adjustments (Blanche, 2006).

2.1 Research design

Because of the purposes of this thesis I will adopt a research design based on a case study of the impact of the European and National asylum policies in Italy on the current refugee crisis. Then, as suggested by Stake, "case study research is concerned with the complexity and peculiar nature of the case in question" (Stake, 1995, quoted in Bryman, 2010, p.66); in particular, the choice to focus my attention on the Italian case to test the hypothesis at the base of the research relies on the peculiar 'explanatory' nature of this case. Moreover, the case study design will be particularly relevant because of the complex phenomena that I aim to study, in fact, in order to understand the peculiar phenomena it is necessary to carry out a policy analysis at different levels, looking at the normative contents both at the European and Italian level. The peculiar explanatory nature of the Italian case, it is then characterized by the different issue that arose in this country in the aftermath of the Arab Spring crisis, with the sanctions of the European Court of Human Rights to Italy for its policy of returning asylum seekers in 2012 (La Repubblica, 2012), but also because it could be seen as a peculiar explanatory case of the disproportionate burden-sharing view incorporated in the Dublin Regulations. Moreover, other issues related with this case regards the alleged cases of corruption and mismanagement that have affected the Italian institutions in the process of application of the asylum policies. In particular, this last consideration will be tested and analysed with the adoption of both qualitative and quantitative methods of research. In fact, as pointed by Bryman, "case studies are frequently sites for the employment of both quantitative and qualitative research" (Bryman, 2012, p.68).

Another important reason for the employment of a case study is related with the representative nature of this case; in fact, a typical or representative case will have as objective "to capture the circumstances and conditions of an everyday and commonplace situation" (Yin, 2009, p.48); therefore, it is arguable that a similar case study could have been employed for all the European Member States, since the 'refugee emergency' is affecting different countries of the Union. Then, it is necessary to mention here why the choice of a case study instead of a comparative design; in fact the latter would have produced a different form of research question, less focused on the 'how' or 'why' of the peculiar phenomena, but more related on the 'how many' and 'how much', or even on a 'what' question (Yin, 2009, p.9), since the researcher would have to evaluate and compare the policies outcomes in different countries, thus making more difficult also the process of comparison when evaluating the different national asylum policies but also the effects and applications of the European normative and directives. Moreover, the representativeness of this case study would also meet the 'external validity' requirements, since it would provide that pathway necessary for answering the research questions (Bryman, 2012, p.70); even though, as pointed by Yin, "single cases offer a poor basis for generalizing" (Yin, 2009, p.43).
Another important limitation regards the internal validity criteria, because of the explanatory nature of this case, that would make more difficult to produce causal relationship, since "a case study involves an inference every time an event cannot be directly observed" (Yin, 2009, p.43).

2.2 Method for data collection

As outlined in the paragraph 1.1 above (see p.5), aim of the research is to understand the political and institutional features that have impacted on this refugee crisis in Europe through an analysis of the crisis experienced in Italy in 2015-6. In particular, because of the need to investigate the impact of the political-institutional features on the 2015 crisis, it will be necessary to employ a diachronic or historical study, since "the focus will be on an issue that entails keeping track of representation as it happens, in which case the researcher may [...] go backwards in time" (Bryman, 2010, p.293); then, the analysis of this crisis will require to look at the measure and their application during and after the outburst of the Arab Spring crisis in 2011, that could be considered as the first refugee emergency since the entry in force of the Dublin Regulations (Von Helldorff, 2015). This process of policy evaluation by taking into account a 'diachronic or historical study' is mainly rooted on the need to understand the outcomes already produced by the considered asylum policy in Italy, but on the other hand, it will also allow to focus on the newly developed measures – such as the Hotspot approach -, with the aim to understand which differences have carried and the related policy-makers approach adopted for the implementation of these relevant measures.
In particular, the initial hypothesis, that will be further and carefully outlined in the theory chapter, will be tested by a policy analysis aimed to investigate the main institutional-legal causes that contributed to this situation in Italy; in order to do so, it will be necessary to employ both primary and secondary sources that will be analysed combining both qualitative and quantitative methods. In particular, according to

Bryman, employing two different source of data and methods, through a triangulation of the data will provide "a process of cross-checking findings deriving from both qualitative and quantitative research" (Deacon et al., quoted in Bryman, 2010, p.392). According to Hill, in the policy analysis process "the ideal is some combination of qualitative observation of the process with quantitative work on impact" (Hill, 2014, p.10), and for Jick, "the effectiveness of triangulation rests on the premise that the weaknesses in each single method will be compensated by the counter-balancing strengths of another" (Jick, 1979, p.609). In fact, the aim of a triangulation of different kind of sources and methods "is of developing a more effective method for the capturing and fixing of social phenomena in order to realize a more accurate analysis and explanation" (Cox and Hassard, 2005, quoted in Kohlbacher, 2006).

The data will then consist of primary literature deriving from official documents - written laws - that will be integrated with secondary sources such as official statistics deriving from the EUROSTAT[3], but also from relevant NGOs and researcher, such as the reports from UNHCR, ECRE and Médecins Sans Frontières and the contributions from the Italian professor Vassallo Paleologo, the ASGI (Organization for Juridical Studies on Immigration) and Melting Pot (grassroots NGO providing data and legal assistance to refugees). Moreover, I will also employ media reports deriving from two Italian newspapers (Il Fatto Quotidiano and La Repubblica), in order to shed light on a juridical inquiry relating the alleged corruption accusations at the institutional level in terms of asylum reception facilities management. Concerning the first level of analysis, the one related to the written law analysis, I decided to include 5 official documents from the European Union: the Dublin II and III Regulations, the International Protection Directive, the Temporary Protection Directive and the Explanatory Note on the "Hotspot" Approach; while 2 documents have been chosen for the policy analysis of the Italian legislation: the unified Italian legislation on immigration (Testo Unico sull'Immigrazione) and the bilateral agreement between Italy and Libya (Bengasi Treaty). As pointed by Kaunert and Léonard, the 'International Protection' and the 'Temporary Protection' directives "establish common minimum standards with regard to various aspects of national asylum systems, whilst the 'Dublin II Regulation' establish the criteria and mechanisms for determining" the responsible Member State (2012, p.1401), thus considering these directive and the regulation as the "EU's main achievements in the area of asylum" (Kaunert and Léonard, 2012, p.1401). On the other hand, due to the scope of this thesis, I also decided to include the 'Explanatory Note on the "Hotspot" approach' in order to evaluate the efficacy of the measures implemented after the outburst of the Arab Spring and the Dublin III Regulations, which represents a recast of Dublin II, thus allowing to investigate the most recent modifications carried to the Dublin system. Finally, the bilateral agreements between Italy and Libya will help me understanding the suitability of these agreements with the scope of the Common European Asylum System (henceforth: CEAS), but also to investigate and potentially evaluate the efficacy of the measures included in the Bengasi Treaty.

[3] Eurostat is a Directorate-General of the European Union, and its main responsibilities are to provide statistical information to the institutions of the European Union.

In relation to the second level of analysis, the heterogeneous nature of the sources selected will facilitate the process of triangulation of the data in the analysis discussion (Deacon et al., quoted in Bryman, 2010; Hill, 2004; Jick, 1979; Kohlbacher, 2006), thus providing an impact evaluation of the asylum legislation enforcement; in particular, the official statistics will be of primary importance for the evaluation of the Dublin system provisions in terms of responsibility allocation among Member States, while the qualitative secondary data have been chosen in order to understand the impact of the asylum legislation enforcement in Italy. In particular, the choice to employ this kind of secondary documents is mainly related to the outcomes of the content analysis of the official documents. In fact, the investigation of themes and codes has driven the research of the most relevant contributions for the evaluation of those issues that have been highlighted within the most recurrent themes, which could have impacted on the current crisis. Thus, this process of impact evaluation will help to answer to the problem formulation of this research.

2.3 Method for Data Analysis

By carrying out an analysis of the EU and Italian policy outputs, I will seek to outline the normative approach towards asylum policies, trying "to explain why levels of expenditure or service provision vary (over time or between countries or local governments)" (Hill, 2014, p.5). In order to properly define the object of the first part of the analysis it is important to mention here the definition of policy that better fits the peculiar phenomena studied. According to Smith, "the concept of policy denotes [...] deliberate choice of action or inaction", the key point of this definition regards the emphasis on the inaction, encompassing then, those features that resist to change (Smith, 1974, quoted in Hill, 2014, p.15). However, as pointed by Bacchi, it is important to mention that "there is an underlying assumption that policy [...] fixes things up", and thus, that "there are implied problems" (Bacchi, 2009). Then, it will be important to uncover the problem underlying the considered policy, since "showing that policies by their nature imply a certain understanding of what needs to change suggests that problems are endogenous - created within - [...] the policy making process" (Bacchi, 2009). A public policy analysis model developed by Cooper, Fusarelli and Randall, considers four important dimension for the understanding and analysis of the public policy process; the four levels are based on the i) normative, ii) structural, iii) constituentive and iv) technical dimensions (Cooper, Fusarelli and Randall, 2014). In this case, the normative dimension will refer to the goals and problems that the considered asylum policy seeks to address, the structural dimension is related to the "governmental arrangements, institutional structures, systems and processes that promulgate and support policies" (Owen, 2014, p.7). This dimension will allow me to focus on the most debated aspects of the European legislation in terms of asylum, such as the newly implemented 'hotspot system' or specific bilateral agreements. Then, the constituentive will focus on theories and researches developed by elites or interest groups among the others; this dimension will be particularly useful in order to include the debate over the Dublin Regulations, providing to the research the possibility to

highlight a set of concepts that will drive the process of analysis. Finally, I will consider the technical dimension, which "consist of planning, practice, implementation and evaluation" of the policy (Owen, 2014, p.8). This dimension will serve in this research for the evaluation of the policy application and then will be rooted on the analysis of statistics and studies. The employment of this model will help me in the selection process of the official documents and the secondary data necessary for a complete comprehension of the phenomena; however, this policy analysis model will also be of primary importance in order to drive the process of research. In fact, by adopting this model I will be able to understand how to analyse the data considered, providing a multi layered framework, in which each dimension will reveal peculiar political-institutional features that could have impacted on the refugee crisis. This model will then drive the entire process of analysis, that however could be divided in two parts; the first level of analysis will be based on a qualitative content analysis of the asylum legislation, while the second on a more quantitative method of analysis for the selected official statistics and relevant studies. In relation to the model outlined above, the first three dimensions (normative, structural and constituentive) will be detected and thus employed in the first level of analysis, while the technical level will be employed for the analysis of quantitative and secondary data.

On one hand, the qualitative content analysis will help me understanding to which extent these policies have impacted on the two refugee emergencies experienced by the European Union, particularly looking whether the further implementation of these policies have impacted on the current crisis, and exploring the way politicians decided to address this crisis; this last point is particularly relevant in connection with some of the concepts highlighted by the theoretical framework, such as the way the policies have labeled the refugees but also in relation to the existing literature over the Dublin regulations critique and regarding the tendency to merge criminal law with migration law. Furthermore, I will employ this model of analysis also for the secondary data deriving from NGOs, academics and media. On the other hand, the employment of quantitative data, such as official statistics, will help me to explore the issues connected to the application of the asylum policies in Italy, particularly looking at the efficacy of the Dublin system in relation to one of its main scope, such as the responsibility allocation and the burden-sharing issue. In fact, as pointed by Hill, the statistics could produce a quantitative analysis of the impact of the variables, allowing the researcher to test the theories, since "statistical methods are used to sort out the impact of a complex mix of variables" (Hill, 2014, p.11). While the first level of analysis will be particularly important for the normative recognition of the potential causes of this emergency, that will be primarily deduced by the theoretical framework, the second level will be important in order to test the initial hypothesis and the findings of the first level of analysis.

The method employed for the policy analysis will be the qualitative content analysis; this method will ensure the researcher the possibility to search for underlying themes in the analysis of official documents (Bryman, 2010, p.557). The investigation of themes or categories will be in this research particularly relevant because the themes

uncovered by a content analysis of official documents will potentially be at the base of the strict relationship between theory and data, providing then a reliable test for the hypothesis highlighted by the theoretical framework (Bryman, 2010, p.5-6). One of the strong points of the qualitative content analysis, as pointed out by Mayring, reflects the fact that "material is to be analyzed step by step, following rules of procedures" that become particularly important when employing different kind of sources (Mayring, 2000); moreover, by adopting a qualitative content analysis the researcher will "put categories at the centre of the analysis", through an iterative review of the documents considered, in order to search for the categories at the base of the research questions; furthermore, because of the deductive approach adopted in the first level of analysis, as outlined above, there will be "a theoretical based definition of the aspects of the analysis, main categories and subcategories" (Mayring, 2000). A qualitative content analysis of selected official documents will be crucial, in this research, for the investigation of the causes of this crisis; firstly, the set of themes will highlight the 'action or inaction' of the European and Italian politicians and institution in relation to the management of the humanitarian emergency. In particular, these themes will be particularly useful to understand how the European and Italian asylum policies have been developed in the last years, providing then a clear understanding of the more recent measures adopted; finally, the search for underlying themes in the analysis of official documents will uncover the potential weaknesses of these policies that could have impacted on this crisis. The same themes will then be analysed with a more empirical glance through the employment of secondary data, such as official statistics, reports and studies that will potentially reinforce the hypothesis, through a process of triangulation of the data.

For what concerns the employment of quantitative sources of data, such as the official statistics from EUROSTAT, I will adopt a critical approach of analysis, as outlined by Best (2012). In particular, being critical in the evaluation process of the statistics means "appreciating the inevitable limitations that affect all statistics", but also acknowledge that "statistics, while always imperfect, can be useful" (Best, 2012, p.170). An important consideration here, regards the time-span employed, in fact, due to the unavailability of statistics relating the year 2015, in which has erupted the current crisis, I decided to employ statistics concerning three years, from 2011 to 2013, in which the European Union has experienced the Arab Spring refugee crisis. For this reason, I will limit the employment of official statistics only to the evaluation of the burden-sharing view included in the Dublin system, which is still regulating the asylum seekers' responsibility allocation nowadays; thus, this quantitative analysis will provide results that can be adaptable and useful to understand the current situation affecting the frontline Member States.

2.4 Epistemology and ontology

In order to conduct a content analysis of selected documents at the base of the asylum set of policies I will adopt an interpretivist approach. In fact, the epistemology of this research will be rooted on the need to understand the "subjective meaning of the social

action” (Bryman, 2012, p.30), since I will seek to explore how the action or inaction underlying the policies analysed could have impacted on the humanitarian and diplomatic crisis that is currently affecting the EU. For this reason, during the research process the emphasis will be on the need “to understand human action”, or in this case political action, rather than explaining the human behaviour (Bryman, 2012, p.28).
For what concerns the ontology of this research, I will adopt a constructivist approach because of the peculiar nature of the social phenomena considered. In particular, the process of investigation of the political and institutional features that have impacted on these crisis needs to start from the assumption about the “indeterminacy of our knowledge of the social world” (Bryman, 2012, p.34), meaning that the researcher needs to acknowledge that social phenomena are in constant state of re-negotiation, through the action or inaction of the social actors, then providing many contexts to the social reality (Bryman, 2012, p.70), in fact, “knowledge is a human construction, never certifiable as ultimately true but problematic and ever changing” (Guba, 1990, p.26).

2.5 Limitations

In order to understand how the methodology of this project could affect the final results of the thesis it is important to highlight those features that, if employed in the research process, could have produced different outcomes. Firstly, it is important to mention here the choice of the case design: the employment of Italy as case study could in fact limit the representativeness of this research, since as pointed by Bryman, “no case can be representative in a statistical sense”, thus implying that the researcher should bear in mind the difficulties related to the attempt of treating a case study as depiction of reality (Bryman, 2012, p.550). For this reason, it is arguable that probably a comparative design of study would have provided a more clear understanding of the potential impact of the political-institutional features at the base of the asylum legislation, especially because of the focus on the European Union legislation, aimed at harmonizing different national legislations in terms of asylum, and thus requiring a more in depth analysis, able to detect the similarities and differences of the asylum policy enforcement amongst several Member States. However, the choice to focus on a case study, and thus considering only Italy, has made possible to narrow down the research to some aspects that are peculiar of the Italian context and also providing a less time-consuming process of research.

A last consideration that needs to be made here regards the decision to narrow down the research purposes only to the investigation of those political-institutional factors which could be considered at the base of the emergency, without emphasizing the role of other important factors, not directly connected to the policies implemented both at the national and European level, and that are connected to geopolitical factors or for instance an investigation over the actual extent of the ‘emergency’, that means understanding whether the rhetoric of the ‘refugee emergency’ - widely employed at the media level - is in fact justified by the numbers and the actual conditions of those in need of international protection. In fact, as outlined in the introduction, the perceived existence of this emergency has not been investigated but it has been acknowledged

through the declarations of several politicians, and thus considered as an hypothesis necessary for the purpose of the thesis.

3. Theoretical Framework

In this chapter I will outline those theories and concepts that will provide a more clear understanding of the context in which the crisis of the refugee escalated, thus, enhancing those features that will facilitate the research of relevant themes and categories necessary for the process of analysis.

3.1 Who's a refugee?

An important premise for the purposes of this research regards the contextualization and the definition of the subjects of the analysis. Thus, before presenting the concepts and theories related to the asylum and immigration policies in the EU, it is necessary to reflect upon what definition and categories needs to be considered when talking about being or not a refugee, which directly features and refers to a status, or non-status, having effects on entitlement and policy-making process.

The main policy referent that is taken into account when it comes to give a broad and universally accepted definition of 'refugee' is the 1951 Convention and Protocol relating to the status of refugee, better known as Geneva Convention. This Convention, is based on the article 14 of the Universal Declaration of Human Rights, and it is "both a status and a right-based instrument" (Convention and Protocol relating to the status of refugee, 1951) that recognize the refugee as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (Convention and Protocol relating to the status of refugee, 1951). This status is then mainly guaranteed by fundamental principles, such as the non-discrimination, non-penalization and non-refoulement. Non-refoulement, according to Betts (Betts, 2010, p.12), shall be considered as the core of this Convention, and it reflects the idea that a state cannot forcibly return a refugee to his or her country of origin. Moreover, an important point in this convention regards the fact that "refugee should not be penalized for their illegal entry or stay" (Convention and Protocol relating to the status of refugee, 1951) and the definition of the rights connected to this status, such as the "access to the courts, to primary education, to work and the provision for documentation, including a refugee travel document" (Convention and Protocol relating to the status of refugee, 1951). Furthermore, the Convention does not apply to people that have committed war crimes or acts that in general are contrary to the principles of the United Nations. Finally, within the process of evaluation of the asylum request, an important role is granted by the Convention to the United Nations High Commissioner for Refugees (henceforth: UNHCR) that should promote "international instruments for the protection of refugees, and the supervision of their application" (Convention and Protocol relating to the status of refugee, 1951).

As pointed out by Betts, this peculiar status was established in the post World War II and Cold War period, therefore in a peculiar geographical and historical context, in which the refugee regime "served to discredit Communist regimes by enabling those fleeing from East to West" (Betts, 2010, p.13; Balibar, 2002, p.80-81). However, despite its political relevance for Europe and United States in the Cold War period, the definition of the status provided by the Convention has historically been adapted and accepted in order to maintain and support a conservative approach to the refugee status, with many countries adopting the more restrictive interpretation of the Convention. In fact, the dominant interpretation focuses on the issue of persecution as main driver for granting the refugee regime (Betts, 2010, p.13). Nowadays, as pointed by many scholars (Betts, 2010; Balibar, 2002; Marouf, Anker, Foster, 2009; McAdam, 2006; Vassallo Paleologo, 2012), the arbitrariness of the 1951 definition have produced important implications for human rights, since new drivers of cross-border displacement are gaining relevance, including "an interaction of factors such as environmental change, natural disaster, food insecurity, famine and drought state fragility and collapse of livelihood" (Betts, 2010, p.13-14).

For this reason, it is important to understand to which interpretation of the refugee status we are referring to when attempting to define refugees. In particular, from a normative point of view, the different interpretations refer mainly to the two terms of 'voluntary economic migrant' and 'refugee' (McAdam, 2006, quoted in Betts, 2010, p.14). For instance, in the 2004 European Union Qualification Directive, the protection is provided to people "fleeing serious harm, which consist of death penalty or execution, torture or inhuman or degrading treatment [...], serious and individual threat to a civilian's life or person by indiscriminate violence" (Council Directive 2004/83/EC, 2004). Through this definition the EU attempted to provide a form of 'complementary protection', by including people that "may not be refugees but face extreme forms of inhuman or degrading treatment", but not specifically expanding the "availability of protection to a much broader category of people" (Betts, 2010, p.14). In particular, Betts argues that in the evaluating process of the asylum applications the normative distinction between persecution and other forms of human rights deprivations is arbitrary, thus not allowing those group of people fleeing their country for human rights deprivation to be recognized as "refugee within the dominant interpretation of the refugee status in international law" (Betts, 2010, p.22). Moreover, as pointed by Zetter, even if refugees are 'fully-labeled in people's mind", it still exist "conceptual difficulties in establishing a normative meaning to a label which is a malleable and dynamic as refugee" (Zetter, 1991, p.40). For this reason, according to Betts, a new term shall be introduced; he then defines as 'survival migrants' those people that "are outside their country of origin", that are facing "an existential threat" and that are unable to "find a solution in the domestic courts or through an internal alternative, [then] making cross-border migration the only viable source of protection" (Betts, 2010, p.23). However, it is arguable that this new definition would provide a substantially different approach to the issue of the refugee identification, in fact, the focus on the causes of the displacement would probably make more difficult and

arbitrary the process of recognition of those who are lawfully eligible for asylum protection.

These conceptual differences within the refugee labels are particularly important for this research. In fact, by acknowledging the distinctions between the different potential categories of refugee, and also "between agency, government and the refugees' own perspectives", it is possible to understand why in the labeling process of refugees "there is no normative identity which can be agreed" (Zetter, 1991, p.60), thus providing a more clear understanding of why "disjunctive and confusing outcomes" are related to the refugee status (Zetter, 1991, p.60). This point is particularly relevant in relation to the attempts made by the EU to harmonize and integrate the different national migration policies, through a process of Europeanization, that will be explored in the following paragraph.

3.2 Europeanization of the immigration policies

In the first paragraph of this thesis, by introducing some declarations - by outstanding contemporary political actors on the question of asylum and migration - I have outlined the current impasse of the Union, adopting the phrase "diplomatic crisis". By employing this specific language I aimed to refer especially at the potential outcomes of this crisis, in particular the end of the Schengen Agreement. This situation would led to an unpredictable situation, that despite its relevance in many fields will not be part of this research, but it would also led to unpredictable results in the field of asylum seekers' protection and would definitely represent a serious setback for the further implementation of the European Common Asylum System (The Guardian, 2016a; The Independent, 2016).

In order to investigate the features that have impacted on this crisis it is necessary to outline the political and institutional context in which the crisis first burst out. For this reason, an explanation of the Europeanization process of the Member States immigration policies will serve to conceptualize the political and institutional environment in which the diplomatic crisis erupted, providing also a necessary historical background to understand the current development of the Common European Asylum System.
The process of integration of the different national immigration policies within the EU could be divided in four periods (Geddes, 2003; Faist and Ette, 2007). The first one goes from 1957 until the ratification of the Schengen Agreement and it could be considered as a period of "minimal immigration policy involvement", in which the immigration policies fell under the national control and the proposals of further integration at the European Commission were regularly declined (Faist and Ette, 2007, p.5). The second period goes from the 1986 to 1993, and it shall be considered as a period of "informal intergovernmentalism", in which the new provisions of the Schengen Agreement were integrated with a more closer cooperation amongst Member States, mainly in relation to security issues. The third period goes from 1993 to 1996 and it is characterized by a "formal intergovernmental cooperation" that was mainly

shaped by the entry in force of the Maastricht Treaty. In this period, by recognizing the common interest of the immigration issues, the intergovernmental cooperation increased and a "three-pillar structure of the EU integrated immigration policies under the EU umbrella" was established (Faist and Ette, 2007, p.6). The last period is the most relevant to understand the efforts made by the Member States to integrate their immigration policies and goes from the late 90s to the Amsterdam Treaty. In this period, a process of increasing "communitarization" begins as witnessed by the Title IV of the Amsterdam Treaty, in which the immigration policy became a Community pillar (Amsterdam Treaty, 1999, quoted in Faist and Ette, 2007, p.6) or the definition of the Tampere Programme in 1999, by which a 5 year programme of policies integration was set up. However, the Commission in 2004 declared that "it was not always possible to reach agreement at the European level for the adoption of certain sensitive measures relating to policies which remains at the core of national sovereignty" (Commission of the European Communities, 2004, quoted in Faist and Ette, 2007, p.6), and this mainly because of the unanimity requirements within the Council of Ministers. Furthermore, the 2005 crisis in the Spanish enclaves of Ceuta and Melilla opened a "windows of opportunity" for a further integration of migration policies, but, de facto, it witnessed the weaknesses of a migration policy deeply rooted on migration control and not trying to address the causes of migration (Faist and Ette, 2007, p.7). However, as pointed by Faist and Ette, in the last 30 years the Union have developed important changes in the way migration policies are addressed, and this change could be particularly seen in a shift of the approach adopted, from an intergovernmental cooperation to an 'intensive transgovernmentalism' (Lavenex and Wallace, 2005; Faist and Ette, 2007, p.7). This shift is clearly explained by the study of Léonard and Kaunert over the process of venue-shopping of the asylum policies making-process. The concept of 'venue-shopping' "refers to the idea that policy-makers, when encountering obstacles in their traditional policy venue, tend to seek new venues for policy-making that are more amenable for their preferences and goals" (Guiraudon, 2000, p.252 quoted in Kaunert and Léonard, 2012, p.1397). By adopting this definition, it is more clear the idea of the shift in the asylum policy-making process at the EU level. In fact, as pointed by Lavenex, it is possible to identify an 'outward shift' of policy making on migration towards the realm of EU foreign policy (Lavenex, 2005, quoted in Kaunert and Léonard, 2012, p.1398). However, it is necessary to mention here that this shift has not been driven by the entry in force of the Amsterdam Treaty, instead it has been mainly driven by the obstacles that governments encountered at the national level in developing more restrictive asylum and migration policies (Kaunert and Léonard, 2012, p.1398). This idea reflect also the theory of interdependence in the international relations field, arguing that "in an increasingly global world, state seeks international solutions to domestic problems" (Keohane and Nye, 1997, quoted in Faist and Ette, 2007, p.8).

This process of Europeanization, as described by Faist and Ette, will be particularly relevant for the purposes of this research since it carefully describes how the outcomes that the harmonization of the national policies have produced could be directly connected to the weaknesses of these policies, which have been revealed by the

outburst of the crisis. Then, in order to understand the change that the process of Europeanization carried at the policy-level, it could be useful to mention the four types of changes produced by this process, following the typology developed by Radaelli (2003):

a. Inertia: this outcome could be described as "a situation of lack of change", that may happens when EU policies are too dissimilar to the national ones and it could be detected by forms of delay in the process of transposition of the directives or "resistance to EU-induced change" (Radaelli, 2003, quoted in Faist and Ette, 2007, p.16);

b. Absorption: it describes "a type of change in which domestic policies [...] adapt to European requirements", and this will happen mainly because of the flexibility of the domestic existent practice or because the change does not imply real and essential modification of the national policy (Faist and Ette, 2007, p.16-17). This type of change could also be easily detected in this policy-making process and it will be more clearly analysed in the following chapter;

c. Transformation: this type of change occurs when "the fundamental logic of the domestic policy or political behaviour changes" (Faist and Ette, 2007, p.17). However, this type of change could be considered as quite rare, and there are just a couple of cases that witnesses this change, in particular involving the asylum policies of Austria and Poland, but that will not be included in this analysis;

d. Retrenchment: this change occurs when "national policies became less European than they were"; this outcome, even if only few cases exists, it is quite important to understand how the national interests could create obstacles to the harmonization of a certain policy (Faist and Ette, 2007, p.18).

Finally, it is important to bear in mind, as suggested by Faist and Ette, that a migration policy aim to address 5 different issues: 1) restriction and control of immigration; 2) refugee protection; 3) prevention of refugee movements; 4) integration of migrants; 5) attraction of special groups of immigrants (e.g. high skilled). In Faist and Ette's opinion, EU migration policy so far have only addressed the first issue, the one regarding the control and restriction, through a set of measures "that refers to selection, admission and deportation of third-country nationals" (Faist and Ette, 2007, p.35). These aspects of the migration approach adopted by the Union have been reinforced at the spite of the War on Terror after 9/11, that reshaped the way security issues are addressed. However, it was possible to detect these aspects of the border controls and of what has been called as "securitization" process of the asylum policies already during the period of the intergovernmental cooperation. In fact, these aspects were underlying all the initiatives that characterized that period (e.g. from the Trevi Group to Schengen II) with the important inclusion of the minimum standards mechanism in order to leave "enough space for the Member States to model their own understanding of migration issues" (Faist and Ette, 2007, p.35). But these aspects of

‘minimum standards’ and ‘securitization’ of the migration policies will be further examined in the next paragraphs of this chapter.

The concept of Europeanization of the domestic policy can of course be applied to all the dimensions of the European policy-making process, however it acquires a peculiar relevance in relation to the integration of the migration national policies, being this an issue that has been widely contested at the supranational level, even if it is considered as a pillar of the Union. Moreover, the type of changes described as inertia and absorption could be largely detected and thus considered particularly relevant for the investigation of the political-institutional features that have impacted on this crisis.

3.3 Crimmigration Law and Securitization

An important issue arisen from the debate over the potential measures that should be developed in order to counteract the refugee crisis, regards the theme of national security; in fact, after the recent Terror attacks in Paris in 2015, and in Brussels in 2016, with the threats carried by the Islamic State, many argued, at the media but also political level, that the asylum seekers issue could represent a menace to the internal security of the EU, then implying a sort of connection between refugees and terrorists. The employment of such arguments are at the base of the definition of a ‘security prism’, a process of social construction through which a problem is mediated by restoring a “rhetoric of emergency, threat and danger aiming at justifying the adoption of extraordinary measures” by pushing “an area of regular policy into the area of security” (Campesi, 2011, p.2). This concept could be certainly applied to different field of public policy, but it acquires an important meaning in regards to the process of securitization of the external borders of the EU, and that could be detected in the way asylum policy and directives have been shaped both at national and supranational level, because as pointed by Waever, “when a problem is securitized, the acts tend to lead to specific ways of addressing it: threat, defence and often state-centered solutions” (Waever, 1995, p.65, quoted in Campesi, 2011, p.2). In fact, it is important to mention here, that, this concept will serve simply as base for the detection of those policies that follow this particular policy approach, but it will not be used to investigate the actual extent of the employment of this rhetoric of emergency and threat at the European policy level.

The main assumption of this concept in the migration field regards the idea that borders “can be location of punishment” (Aas and Bosworth, 2013, p.292). Notwithstanding, many scholar argued that border crossing could not represent a crime and that migration law should not be considered as a form of punishment, Aas and Bosworth, among the others, tried to prove that “although immigration law is considered as administrative, [...] states have attempted to control border crossing through criminal law” (Aas and Bosworth, 2013, p.293). In particular they reshaped the concept of ‘crimmigration law’ developed by Stumpf (2006) in order to provide a clear definition and understanding of this process.

According to Stumpf, the connection between criminal law and immigration law lies in the "core functions that both [...] play in our society", since both act as "gatekeeper of membership in our society" (Stumpf, 2006, p.396). Despite both laws determine who should be included as member of the society, they produce different outcomes; on one level, within criminal law, a process of exclusion will result in the segregation from the society through incarceration, on the other level, an exclusion within the immigration law would produce the expulsion from the national territory (Stumpf, 2006, p.397). However, is it possible to detect different common features between these two fields of law; firstly, the border crossing infractions could be considered as criminal offences, and immigrants committing transgressions such as unlawful entry or reentry, are considered 'illegal immigrants', whose consequence of this entitlement will not just be the visa removal, but also "criminal prosecution and punishment prior to being deported" (Aas and Bosworth, 2013, p.294).

Moreover, another important point is related to the creation of a range of new criminal offences within the immigration law field, such as "concealing, harbouring, shielding, aiding, abetting, employing, carrying and associating with criminal migrants" (Aas and Bosworth, 2013, p.294).
This convergence between immigration law enforcement and criminal law could also be detected in the act of borders policing in many countries (including the ones at the external borders of EU) and by the increasing employment of technological innovations, that could be described as "a force enabler increasing the capacity for social control" (Aas and Bosworth, 2013, p.295), producing then a sort of 'migration-control industry', including defensive technology or the establishment of new hybrid forces, such as Frontex in EU. Moreover, as pointed by De Haas (2008), an important contribution to the immigration law enforcement is detectable in the bilateral policies approaches adopted by different European governments. In fact, the agreements concluded by Italy and Spain with North African countries on readmission and border control, have for instance produced the establishment of new immigration laws in Morocco and Tunisia that "institute severe punishment for irregular immigration" (De Haas, 2008, p.1309). However, the outcomes of these policies approaches - at national and supranational level - will be further examined and analysed in the following chapter of this thesis, particularly looking at how new measures of border and migration control - such as the Hotspot approach or specific bilateral agreements - have impacted on the current refugee crisis in Italy.

Finally, as already mentioned, this approach of securitization of different policy areas could be detected by analysing "security discourses and security practices" (Campesi, 2011, p.7). However, in the analysis process I will limit my research to the detection of this approach at the institutional-political level, for instance focusing the attention for the case study analysis at the wide employment made by Italian policy-makers of legislative decrees under the provision of the law 225/1992, aiming to regulate cases of political, social or environmental emergency, in the aftermath of the 'Arab Spring crisis'.

3.4 Dublin critique

As outlined in the paragraph 3.2 above, from the 90s the EU has witnessed a period of stronger communitarization of the national migration policy, and it is in this period that could be detected the first attempts to establish the Common European Asylum System (henceforth: CEAS); in fact, as stated in the article 78, paragraph 2 of the Treaty on Functioning of the European Union (henceforth: TFEU): "the European Parliament and the Council, [...] shall adopt measures for a Common European Asylum System" (TFEU, 1992). This process of communitarization in terms of asylum policies produced the entry in force, in 1999, of the Amsterdam Treaty, that "set out six objectives for a first stage in a CEAS" (Collyer, 2004, p.375). Within the six objectives, it is particularly relevant for the purpose of this thesis to focus on the purpose of the Union to determine which Member State should be responsible for examining an asylum claim. Then, it is necessary to consider the measures carried by the entry in force of the Dublin Regulation (henceforth: Dublin II), in 2003, that replaced the Dublin Convention of 1997, and that "has been subject of intense debate since its inception", with some scholars considering it as the cornerstone of the CEAS, while others judged it as "a failure of solidarity and burden-sharing among EU Member States" (Fratzke, 2015, p.1).

As pointed by Battjes, in order to understand the extent of the efficacy of the current CEAS, it could be necessary to consider two important documents: the Directive on International protection and then Dublin II (Battjes, 2002 p.159), to whom I will refer henceforth as the Dublin system. The texts of these measures will be analysed more in depth together with the Italian legislation in the following chapter, it is firstly necessary to outline the most debated points of these measures. In particular, an outline of this academic debate will be of primary importance for the detecting process of those categories that will drive the policy analysis, so to investigate the alleged inefficacy of the asylum normative regulations both at the European and Italian level.
Amongst the various issues that have been debated in the last years, I will consider different points, starting from the human rights component of the system up to the more normative aspects related to the issue of the minimum standards for the national application of the system's provisions and to the Member States responsibilities for asylum application.

Firstly, as pointed by Hurwitz, "the declared objective of the Dublin system is to ensure freedom of movement for persons, on the territory of Member States through the abolition of checks at internal borders" (Hurwitz, 1999, p.648), so to prevent the asylum shopping and refugees in orbit phenomena. In particular, the latter is guaranteed by the fact that States are obliged to "complete the examination of the application for asylum" (Hurwitz, 1999, p.648); however, problems may occur in case of transfer of the asylum seeker to another Member State, in fact in this case, according to the provisions of the Dublin system, the transferring Member States should provide a proof of evidence for the transfers to another Member State, such as EURODAC evidences or DNA test for family reunions (Fratzke, 2015, p.13; Battjes, 2002, p.182);

despite the call for a 'genuine cooperation' among Member States by the Decision No.1/97 of the European Commission, this situation has led to the emergence of significant delays in the evaluation process of the claims and the related proofs of evidence for the transfers, creating "a new category of refugees in orbit, [...] whose application would not be examined until the procedure [...] had been completed" (Hurwitz, 1999, p.670). Moreover, in the study conducted by Fratzke, is it possible to observe that the transfer rates are particularly low due to a lack of cooperation between Member States and because of the increasing number of absconding asylum seekers (Fratzke, 2015, p.12). Moreover, this study outlines that the phenomena of 'asylum shopping' still remain an issue, since, for instance, " in 2013 more than one-third of asylum applicants registered with EURODAC, had already registered an application in another Member State" (Fratzke, 2015, p.14).

Moreover, the declared objective of the Dublin system would also suggests the inclusion of a human rights protection component, but as pointed by Battjes, "the communitarisation of asylum law [...], is meant to cope with a side-effect of abolishing internal border controls" (Battjes, 2002, p.159), meaning that, asylum seekers would be eventually free to move from a country to another. However, in order to prevent the occurrence of this situation, within the Dublin system has been included the 'authorization principle', that define the criteria for the determination of the Member State responsible for the asylum applications, basically stating that the Member State responsible for the application is the one that "facilitated the entry of the applicant into the European Union" (Battjes, 2002, p.160; Hurwitz, 1999, p.648). This principle, by recognising the Member States, implicitly allows the non-responsible Member State to "expel the applicant to the responsible one without considering the claim" and thus, not ensuring the principle of non-refoulement, that was discussed above (see p.14). This aspect of the Dublin system would be at the base of the critique concerning the alleged non-compliance of this policy with the fundamental principles included in the Geneva Convention of 1951, that is considered the normative base of the system.
In addition, another controversial outcome of the 'authorization principle' regards the cooperation problem among Member States; in particular, as pointed by Boswell, the scheme of burden-sharing set out in Dublin II only attempted to address the security issues related with migration, since "these provisions could encourage countries of transit to tighten control over illegal entry and stay", but "this form of burden sharing will not necessarily achieve a more equitable spread of the costs between states" (Boswell, 2003, p.332); in fact, it has been argued that Dublin II "is more likely to impose disproportionate costs on states with external borders" (Boswell, 2003, p.332; Battjes, 2002, p.184). Furthermore, Boswell's study on the national measures adopted in Germany and UK to disperse asylum seekers and ensure "a balance of efforts between States" (2003, p.316), suggests that in order to achieve this result it could be necessary "an existing pattern of inter-regional burden sharing, or strong central government competence to impose a top-down solution" (Boswell, 2003, p.333).
Another important aspect is related to what has been advocated as an 'unintended consequence', that also suggests the improvements that the Dublin system should encompass in order to avoid rights violations in all the Member States. Despite the

assumption that equal protection conditions are guaranteed in all the Member State under the Dublin system, many argued that protection conditions vary considerably among Member States (Fratzke, 2015; UNHCR, 2015). This point will be particularly relevant to drive the analysis of the case study, since it will ensure the opportunity to stress the peculiar aspects of the Italian asylum dispositions and application of the Dublin system.

Furthermore, another critique regards the limited possibilities for asylum seekers to choose their final destination; in fact, Dublin II, although it recognizes important features, such as the preservation of the family or cultural unit (Battjes, 2002, p.184), according to Collyer, a system in which the asylum seekers would be free to choose their country of asylum, would not produce a more unbalanced system than the one set out by Dublin II, since asylum seekers are not choosing the country of asylum simply on the base of more favorable asylum policy (Collyer, 2004, pp.395-6), thus suggesting that secondary movements are likely to continue if the system "does not take into consideration the reasons why asylum seekers may choose one destination over another", such as personal networks or language skills (Fratzke, 2015, p.24). However, some of these critics have been partially addressed within the implementation of the Dublin III regulations, which provides improvements in terms of appeal right and in relation to the timeframe for claims evaluation, thus I will consider and analyse the extent and the efficacy of these changes in the following chapter.

Finally, as pointed by Fratzke, the Dublin system mainly faced two widespread criticisms. Firstly, the peculiar approach of burden sharing adopted, as already mentioned, "pushes responsibility for examining claims to Europe's external borders" and secondly because it "causes delays that put the individuals [...] at risk for hardship and even rights violations" (Fratzke, 2015, p.7). Moreover, other critics are related to its costs and the failure in countering secondary movements. Despite the criticisms that it has provoked amongst scholars, it is arguable that this system has achieved some of its initial aims, on one hand in terms of normative dispositions that clearly allocates the responsibility of the asylum claims to the Member States, and in regard to the initial scope of achieving a 'minimum harmonization' of the national asylum policies; while on the other, the efforts aiming at the preservation of the family unit should be considered as a 'positive trait' (Battjes, 2002, p.191; Fratzke, 2015).

4. Policy Analysis

In this chapter I will outline an analysis of official documents deriving from the European Union and from the Italian government, together with international treaties. In particular, as already mentioned in the methodology chapter (see p. 10), I will employ a qualitative content analysis in this first stage of analysis (par. 4.1 and 4.2), thus searching for underlying themes and categories and bearing in mind the model proposed by Cooper, Fusarelli and Randall (Owen, 2014, p.7) for the policy analysis.
In the second stage of analysis (par. 4.3) I will adopt a more quantitative method of analysis, particularly looking at official statistics from the EUROSTAT database, while in the last paragraph I will consider reports from NGOs and researchers, in order to test the impact of those themes inferred within the first level of analysis.

4.1 European policy analysis

In this section I will adopt a qualitative content method of analysis in order to detect which themes are more recurrent in the selected official documents; the themes have been included in a table, whose final version is included in the Appendix (see Content Analysis Table, p.58). The themes investigated are directly connected to the content of the theoretical framework, while the codes included in each theme have been detected during the initial process of analysis of the documents, then providing me the opportunity to check and revise them within the entire process of analysis.

4.1.1 Dublin II

In this paragraph I will outline the underlying themes investigated through a qualitative content analysis of the Dublin II Regulation in order to detect those features that could have impacted on the 2015 refugee crisis.
An important consideration before outlining the themes found in this Regulation, regards the policy analysis dimension that this document seeks to address, according to the model by Cooper, Fusarelli and Randall outlined above (see pp.10-11). In fact, this document will be of primary importance to explore the normative dimension of the European asylum policy, since it states, from the first article that: "this Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third country national" (Dublin II, 2003). This statement is then clarifying the purpose of this regulation, aimed at identifying the goals of the proposed policy.

For this reason, it could be easily argued that the main theme identified in this document regards the 'policy enforcement', a theme encompassing all the practical measures that this policy put in practice, highlighting then those features that could reveal or explicit the problem that the policy is aimed to address. In fact, the focus on the 'criteria and mechanisms' in the first article of the Regulation is at the base of

the problem regarding which Member State should examine the asylum application so to avoid multiple application by asylum seekers within the EU countries. However, this main theme regarding the police in practice could be detected not only by the code of the 'responsibility allocation' but also in relation to the 'burden sharing view' that this measure implies; in fact, the article 4 of the Regulation states that: "the process of determining the State responsible [...] shall start as soon as an application for asylum is first lodged with a Member State" (Dublin II, 2003), thus providing an important role to the frontline States. Another important aspect related to this theme regards the issue of the 'transfers', regulated by the articles § 16-20 through the development of the concept of 'take charge' of the applicant. In particular, a Member State that consider another Member State to be responsible for a specific application should provide a proof of evidence, and in any case it should "call upon another Member State to take charge of the applicant" within three months of the date on which the application was lodged (Dublin II, 2003).

Another important recurring theme in this regulation is the emphasis on the 'Human Rights' protection outlined by the Geneva Convention; in particular, this theme include all those measures aimed at the protection of the Geneva Convention provisions and thus it will be particularly useful to detect the alleged compliance of the asylum policy with the human rights fundamental principles. In fact, as already pointed out in the theoretical framework (see p.23), an important aspect of this regulation regards the preservation of the family unit and the measures aiming at protecting the unaccompanied minors, as witnessed by the § 6, stating that: "where the applicant for asylum is an unaccompanied minor, the Member State responsible [...] shall be that where a member of his or her family is legally present, provided that this is the best interest of the minor" (Dublin II, 2003).

Another theme that could be detected in this Regulation is related to the 'label' issue; in fact, § 2 states that: "third-country national means anyone who is not a citizen of the Union", thus implying that anyone that is not citizen of the EU can apply for the recognition of the asylum status; while a 'refugee' is defined as "any third-country national qualifying for the status defined by the Geneva Convention and authorized to reside as such on the territory of a Member State" (Dublin II, 2003). This labeling distinction between 'third-country national' and 'refugee' reflects the distinction between those who can apply for asylum and those who can actually benefit from the asylum regime. In fact, the labels included in this regulation are mainly rooted on the definition provided by the Geneva Convention; thus, not recognizing other features for granting the 'asylum status', such as environmental change, natural disasters or food insecurity among the others, but only those person that are unable to return to their country of origin because of a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" (Convention and Protocol relating the refugee status, 1951).

4.1.2 Dublin III

The Dublin III Regulations (henceforth: Dublin III) recasts the Dublin II Regulations, thus including the provisions of the previous regulation but it brings about important changes that needs to be considered in order to clarify the actual normative impact that these policies could have produced in this refugee crisis, thus being particularly relevant for the purposes of this analysis.
Dublin III is applied in all the Member States and it has been adopted in June 2013, thus after the outburst of the Arab Spring and the related refugee emergency affecting some of the Member States; for this reason, the analysis of this document gains a particular relevance, since it should include those modifications necessary in order to avoid other cases of humanitarian emergency, just as the implementation of the 'Hotspot' system, that will be the last document among the European legislation to be analysed.

Firstly, an important modification included in Dublin III is related to the 'policy enforcement' theme, particularly concerning the issue of the timeframe within take-charge and take-back applications; in fact, § 22 states that the decision over the take-charge request made by another Member State needs to be taken within the following two months after the receipt of the request (Dublin III, 2013); thus, this regulation is shortening the timeframe set out within Dublin II. Moreover, the same article also provides more information regarding the kind of "proofs and circumstantial evidences" necessary in order to adopt a take-charge request (Dublin III, 2013), thus, making more clear the procedure and leaving less space for a discretionary application by Member States.

Another important theme detectable in this Regulation is related to the 'Human Rights' issue, in particular for what concerns the provisions aimed at the regulation of the 'detention practice'. In fact, as witnessed by the analysis of Dublin II, there is no mention within the previous regulations of a measure controlling the widespread practice of detention among Member States. In particular, § 28 authorise the employment of 'detention practices' only in the case in which "there is a significant risk of absconding" by the claimant that is waiting for a transfer decision (Dublin III, 2013). In particular, within this peculiar case, the article also states that the Member State shall require an "urgent reply" by the other Member State, that will then be obliged to reply in the following two weeks and carry out the transfer "as soon as practically possible" (Dublin III, 2013). However, it is arguable that, despite the importance of this measure, the field of application it is still too restrictive to this peculiar case, thus implying practical limitations that still allows different Member States to resort to this practice, as will be outlined within the second level of analysis, concerning the impact evaluation of these policies.

4.1.3 Asylum Procedures Directive

The Asylum Procedures Directive is a Council Directive from 2013, that replaces the Council Directive on “minimum standards on procedures in Member States for granting and withdrawing refugee status” (Council Directive, 2005/85/EC), while this one is related to the “common standards on procedures in Member States for granting and withdrawing refugee status” (Council Directive, 2013/32/EU). The main amendment to the previous Directive is related to the focus on ‘common standards’ instead of ‘minimum standards’; in fact, the previous one “was the lowest common denominator between Member States” with the result that the “rules were often too vague and derogations allowed Member States to keep their own rules, even if they went below basic agreed standards” (Migration and Home Affairs, EC, 2016). As stated in the first article, aim of this Directive is to establish a common set of procedures amongst Member States for granting and withdrawing the refugee status, according to the Tampere Conclusions, an agreement stipulated during the European Council Tampere meeting in 1999 (Council Directive, 2013/32/EU).
As suggested by the stated purpose of this Directive, the main theme here is related to those practical measures aimed to provide a ‘harmonization’ of the national procedures for granting or withdrawing the refugee status; then, by analysing this Directive I will be able to explore the normative and structural dimension of the European asylum policy.

An important aspect within the ‘policy enforcement’ theme regards the requirements that the Directive prescribes for Member State within the asylum application process. In particular, the § 6, § 10, § 11 and § 12 are related to all the practical requirements and guarantees that Member States should include within their national asylum policy. In the § 6 it is mentioned that the registration of an asylum application “shall be made no later than 3 working days after the application is made” (Council Directive, 2013/32/EU). Furthermore, the article 10 clarifies that whether a Member State denies the granting of the ‘refugee status’, it should determine the potential granting of a subsidiary status of protection, while the decision to reject both refugee and subsidiary protection should state “the reasons in fact and in law”, according to the article 11 (Council Directive, 2013/32/EU). Then, the article 12, is related to the guarantees that the Member State should provide to applicants, such as all the relevant information in a language which they understand, but also the possibility to “communicate with UNHCR or any other organization providing legal advice” (Council Directive, 2013/32/EU).

Moreover, the theme of the ‘human rights’ protection here is observable in the § 24 and § 25, in relation to the guarantees that Member States should grant to applicant in need of a “special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence” (Council Directive, 2013/32/EU) or to unaccompanied minors or even in relation to the principle of non-refoulement.

Another issue arisen from this Directive regards the § 43 and its provisions in terms of border procedures. Here, particularly in relation to the paragraph 2 it is detectable the theme of the 'security issue', since it includes the provision in case of an event of emergency characterized by "a large number of third-country nationals [...] lodging applications for international protection at the border or in transit zone" (Council Directive, 2013/32/EU). Then, it is important to mention here that in this cases, the time limit of three working days for the application registration, guaranteed by the § 6 aforementioned, could be suspended "where and for as long as" the applicants "are accommodated normally at locations in proximity to the border or transit zone" (Council Directive, 2013/32/EU).

Finally, another important theme which could be detected in this Directive is related to the 'level of cooperation' that it prescribes in order to facilitate the asylum policy application at national level. In particular, the § 29 indicates the duties that the Member States should grant to the UNHCR or to "an organization working on the territory [...] on behalf of UNHCR pursuant an agreement with that Member State" (Council Directive, 2013/32/EU). Here, the level of cooperation is related to the role of NGOs in providing advising, counseling or legal assistance to the asylum applicants, also "including those in detention, at the border and in transit zone" (Council Directive, 2013/32/EU). Moreover, the § 49 includes a level of administrative cooperation amongst Member States, by appointing a national contact point, through which, the "Member State shall [...] take all the appropriate measure to establish direct cooperation and exchange of information between the competent authorities" (Council Directive, 2013/32/EU).

4.1.4 Temporary Protection Directive

The Temporary Protection Directive is a Council Directive from 2001 that established "minimum standards for giving temporary protection in the event of a mass influx of displaced persons" (Council Directive, 2001/55/EC). Firstly, an important theme observable in this Directive is related to the 'label'; in fact, the Directive define as 'displaced persons' those person that have "fled areas of armed conflict or endemic violence, [and] persons at serious risk of [...] systematic or generalized violations of their human rights" (Council Directive, 2001/55/EC), and thus eligible for international protection according to the article 1A of the Geneva Convention. However, the definition of 'mass influx' is simply characterized by the arrival of "a large number of displaced persons" (Council Directive, 2001/55/EC), without any further specification.

However, it is important to note that in the § 5 and § 7 are deployed the conditions through which the Member States should grant the temporary protection. In particular, in the § 5 it is stated that the "existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission" (Council Directive, 2001/55/EC). Moreover, this decision shall be based on "an assessment of the advisability of establishing

temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures" (Council Directive, 2001/55/EC). This point is particularly relevant because of the explicit reference to the emergency situation and inadequacy of the existent measures on asylum, that makes detectable the theme of the 'security issue', through the code of the 'emergency'; in fact the employment of an emergency rhetoric could be seen as an effect of the securitization process of the EU asylum policy. In fact, it is arguable that the inclusion of this temporary provisions could be seen as a measure implemented also to address the security issue, in which the exceptional measures should stem the 'mass influx', and not just prevent a humanitarian catastrophe.

Finally, the articles included in the chapters VI and VII, are related to the 'level of cooperation' among Member States to grant the temporary protection status. In particular, the chapter VI highlights the concept of 'Community solidarity' when receiving displaced persons in an emergency situation; in fact, the § 24 allows Member States to benefit from the European Refugee Fund in order to guarantee the measure of this Directive and in the § 25 and § 26 recognize the role of the UNHCR or other international organizations for the decision over the eligibility of the status and over the requests for transfers (Council Directive, 2001/55/EC). Moreover, the Directive sets out also the level of administrative cooperation among Member States.

4.1.5 The Hotspot Approach

In this paragraph I will outline the most recent development in terms of asylum policy: a measure adopted by the European Union in 2015, the so-called 'hotspot approach', that it has been developed in order to avoid humanitarian emergencies in the Mediterranean sea, and it could be seen as a response to the refugee crisis that followed the outburst of the Arab Spring between 2011 and 2012.
In order to understand the provisions and the concept underlying this new approach to counteract situations of emergency, I will take into account the "Explanatory Note on the Hotspot Approach", a document proposed by the Commission in collaboration with the host Member States, Italy and Greece, as Annex to the Communication to the European Parliament, European Council and the Council on September 2015 (European Commission, 2015).

Aim of this Note is to clarify and define the operational ground of this approach in Italy and Greece by stating the mission and the main features related to it. Firstly, it is arguable that the main theme in this Note is related to issues of 'security', in fact particular attention is given to the measures aimed at securing the borders area of those frontline Member States that are facing "specific and disproportionate migratory pressure". Thus, it is detectable a rhetoric of emergency, that is then linked with the action of 'smugglers' and 'organized crime' (Explanatory Note on the Hotspot Approach, 2015). In order to develop this new approach, the Note defines the kind of support and assistance that the frontline Member States can request; in

particular, the approach aims to “provide a platform for the agencies to intervene, rapidly and in an integrated manner” (Explanatory Note on the Hotspot Approach, 2015). The agencies involved are Frontex, Europol and the European Asylum Support Office (EASO), that will help the States to “swiftly identify, register and fingerprint incoming migrants” (Explanatory Note on the Hotspot Approach, 2015).

These measures could be seen as an application of the ‘crimmigration law’, a concept that has been outlined in the theory chapter (see p.19), because of the focus on the “registration and screening of irregular migrants” (Explanatory Note on the Hotspot Approach, 2015). In the Note is then stated that, aim of this new approach is to provide targeted support to those frontline Member States that are experiencing disproportionate migratory pressure, but also to set up “parallel efforts in respect of tackling smuggling based on real time law-enforcement analysis of the situation on the ground” and “enhancing the return policy” (Explanatory Note on the Hotspot Approach, 2015).

Moreover, it is possible to detect also the theme related to the ‘level of cooperation’ included for the application of this approach; in particular, I will take into account the roadmap on the practical implementation of the ‘Hotspot approach’ in Italy, which describe the practical features of this measure. According to this roadmap, the four ‘hotspots’ established in Sicily should be composed by four officers from Frontex, that should help in the identification process of the displaced persons and “in collecting information regarding the journey” (Explanatory Note on the Hotspot Approach, 2015), one officer from EASO, that will assist “with the registration of asylum seekers” and one officer from EUROPOL that will “conduct investigation against the smugglers who facilitate the unauthorised entry” (Explanatory Note on the Hotspot Approach, 2015).

4.2 Italian policy analysis

In this paragraph I will take into consideration the most relevant political-institutional issues relating the asylum practices in Italy, by carrying out a content analysis of the Consolidated Text on Immigration, together with the Martelli Law from 1989, but also providing an analysis of the features characterizing the efforts made by Italy to stem the migration flows from North Africa through an example of bilateral cooperation. In fact, I will also consider those agreements relating the cooperation between Italy and Libya, which in my opinion represents a particularly explanatory case of the ‘crimmigration law’ development process, as outlined in the theory chapter (see p.19).

4.2.1 The Consolidated Text on Immigration and the 1989 Martelli Law

In this paragraph I will adopt the same framework employed for the content analysis of the European Directives, in order to outline the most relevant themes and codes underlying the Italian legislation in terms of asylum; in particular I will

focus the attention on the Consolidated Text on Immigration (Legislative Decree 286/1998), that could be considered the encompassing normative in terms of immigration and asylum, thus the text will not be entirely considered because of the presence of rules addressing the issue of migrants that could not be considered as asylum seekers. In fact, the most relevant basis for the definition of the Italian asylum normative are provided by the *Martelli* Law (Law 416/1989), which are not included in this Consolidated text and for this reason will also be taken into consideration in this paragraph. However, in the Consolidated Text on Immigration have been included all the most recent modifications to the existent asylum directives, with an high number of amendments, amongst which I will particularly consider the *Turco-Napolitano Law* (Law 40/1998) *Bossi-Fini Law* (Law 189/2002) and the *Public Security Act* (Law 94/2009), that produced noteworthy changes in relation to the asylum seekers issue.

Firstly, in the § 5 of the Consolidated Text on Immigration it is detectable the theme of the 'label', because of the lack of a clear distinction between migrants and refugees. In fact, in the text, all those people willing to enter in Italy are entitled as *'stranieri'* (henceforth: foreigners), while people trying to enter without valid documents are entitled as 'illegal immigrants'. Then, in the paragraph 6 of the same article the issue of the 'asylum seekers' is addressed by mentioning them in relation to the transposition of the Geneva Convention, and thus the residence permission on the Italian territory will be granted only to those 'foreigners' in need of humanitarian protection according to the disposition of the Convention and the European Directives (Legislative Decree 286/1998).

Moreover, the issue of the 'Human Rights' protection is detectable in the § 10 and § 43, that prescribe the rules concerning the expulsion of migrants without documentary evidences, with the only exception of migrants requesting forms of international protection included in the paragraph 4 of the § 10, thus safeguarding the non-refoulement principle (Legislative Decree 286/1998). In addition, this theme is detectable in relation to the preservation of the family unit and unaccompanied minors, in which the provisions prescribed by the European Directives are adopted, particularly in the chapter 4 of the text, relating the articles from 29 to 31 (Legislative Decree 286/1998).

However, an important theme detectable in this text regards the 'security' issue and those measures implemented in order to stem the migration flows. In particular, the article 11 prescribes which regional and national authorities are responsible for the borders policing efforts, also mentioning the need for the country to stipulate bilateral agreements with the countries of emigration; according to the paragraph 4 of the article 11, the Interior Minister could provide to those countries the necessary instruments to counteract the flee of 'illegal immigrants' without any charge (Legislative Decree 286/1998). This point is particularly relevant since it clearly explains what has been outlined in the theoretical chapter as the 'crimmigration law', pertaining all those measure addressing the immigration issue with a

criminological glance; this code could be also detected in the provisions regarding the refusal of entry of 'illegal immigrants' included in the *Bossi-Fini Law*, incorporated in the Consolidated Text in the article 12. In particular, the inclusion of the paragraph 9-*bis* allows the Italian Navy or Italian police naval forces to "stop, inspect and in case of conditions proving that the ship is transporting 'illegal immigrants', to seize the boat and convoy it in an harbour of the country", while the paragraph 9-*quater* guarantees this provision also in international waters (Legislative Decree 286/1998). However, an important mention here regards the modifications carried by the *Public Security Act*, that could be seen as a clear example of criminal law enforcement, by introducing a new paragraph to the article 6 of the Consolidated Text. In particular, the paragraph 3 states that "a stranger without documentary evidences justifying its presence on the Italian territory, should be punished with maximum 1 year of imprisonment and up to 2000 € of financial penalty (Legislative Decree 286/1998). This provision - which is basically introducing a new kind of crime, that in Italy has been called 'clandestine status of being' crime (*reato di clandestinità*) - could easily be observed as a clear example of the merging process between criminal and immigration laws, as described in the theory chapter (see pp.19-20).

Furthermore, the theme 'policy enforcement' regarding the measure and the practical outcomes of the policy could be detected in the Martelli Law (Law 416/1989). In particular, the article 1-*quater,* paragraph 2, establishes the Territorial Commissions for the evaluation of the applicant claims, stating that the Commission should convene the claimants for an audition no later than 30 days after the reception of the application by the Commission, and deciding whether granting or not the asylum status on the basis of the transcription of the auditions (Law 416/1989). Moreover, the article 1-*sexies* includes the measures and provisions for the assistance and the integration of the asylum seekers during the period in which the application is processed by the Territorial Commission, by creating a central agency in order to coordinate, supervise and provide information to the regional assistance centers, known in Italy as '*Centri di accoglienza per richiedenti asilo*' (henceforth: CARA) (Law 416/1989).

Moreover, another theme is detectable in the article 1-*quater*, since the first paragraph is also stating the level of cooperation involved for the establishment of the Territorial Commissions; in fact, each Commission is composed by one prefect, one police officer, one regional functionary and one commissioner from the UNHCR (Law 416/1989).
Finally, another point relating this theme is detectable in the *Turco-Napolitano Law*, which establishes in § 12 the creation of temporary centres for detention for those people which expulsion has been postponed through the measure called "accompagnamento differito" (henceforth: postponed expulsion) made by the Italian police forces. This measure has important implications relating the level of cooperation involved in this centres, especially after the establishment of the

hotspot system, as will be pointed out within the second level of analysis through the impact evaluation of the asylum policies.

4.2.2 Italy-Libya cooperation

In order to understand which features could have impacted on the current refugee crisis in Italy it is important to consider a bilateral agreement and thus an analysis of the cooperation between Italy and Libya would serve to investigate and understand what Cooper, Fusarelli and Randall highlighted as the 'structural dimension' within a process of policy analysis. In particular, by considering this dimension I aim to investigate the governmental arrangements that promulgate and support a specific policy, thus trying to understand how this specific bilateral agreement and the level of cooperation involved could have impacted on the current crisis. Moreover, the choice to focus on the Italy-Libya cooperation will allow me to understand whether the efforts against the illegal immigration included in this partnership have affected the way the crisis have been addressed and at the same reveal the underlying concepts in the Italian asylum policy-making process.
The process of analysis of this bilateral cooperation will take into account the Bengasi Treaty, stipulated in 2008 between Gheddafi and the Italian PM, Berlusconi. This treaty represents the end of the hostility amongst the two countries after the colonial past; in particular, it is considered as a treaty of Friendship and Cooperation, encompassing measures for an economical, political and strategic cooperation relating fields such as Human Rights and fight against illegal immigration. For the purposes of this research I will focus the analysis on this last point, thus looking at all the measures aiming at contrasting the illegal immigration from the Libyan shorelines to Italy. However, it is important to mention that the 'migrants issue' had already been discussed between the two governments in 2007 when the cooperation Protocols were signed and thus included in the Bengasi Treaty.

The most prominent theme detectable in the Bengasi Treaty and in the Cooperation Protocol regards the 'security' issue. In fact, in the first article of the Cooperation Protocol the code relating 'borders policing' efforts is made particularly explicit by the transfer of patrol vessels to the Libyan government (Italy-Libya Cooperation Protocol, 2007, included in Bengasi Treaty, 2008). Moreover, the Italian government guarantees the transfer of technical expertise, equipments and police officers in order to assist the Libyan institutions to stem the migrant flows. Furthermore, the § 19 of the Bengasi Treaty states the necessity to continue this technical cooperation included in the 2007 Protocol in order to counteract the terrorism menaces, and includes also the level of cooperation involved for the cost distribution. Thus, in this article it is detectable also the theme relating the 'level of cooperation' involved in the attempt to apply the policy provisions. In particular, the 50% of the costs for setting up this technical cooperation will be covered by the Italian government, while the other 50% will be covered by the European Union, thus implying a bilateral cooperation involving both the national level and the

supranational level (Bengasi Treaty, 2008). This last point is particularly relevant because it makes clear that the basis for this cooperation against illegal immigration in Libya are shared also at the EU level, as witnessed by the developments within the Memorandum of Understanding between EU and Libya that acknowledge the contents of the Bengasi Treaty and thus provide financial aid to make operative the technical cooperation included in the Cooperation Protocol.

Finally, a lost point is related to the 'policy enforcement' theme since the § 19 of the Bengasi Treaty is also stating that "the two Parts will cooperate [...] to prevent the illegal immigration phenomena in those countries of origin of the migratory flows" (Bengasi Treaty, 2008); however, despite the importance of this point - that would imply a different approach to deal with the migration issue in comparison with the technical cooperation outlined above - there is no further mention regarding the specific initiatives and programs to be developed in order to achieve this goal.

4.3 Impact evaluation

In this second level of analysis I will employ a combination of both qualitative and quantitative methods in order to provide a more clear understanding of the political-institutional features which could have impacted on the current crisis. In fact, within this level of analysis I aim to evaluate the impact of the most recurrent themes investigated in the official documents analysis, which have been deduced by the theoretical framework.
In particular, the employment of EUROSTAT official statistics will provide a quantitative test of the initial hypothesis regarding the issues of the 'burden-sharing' view included in the Dublin system, with the aim to provide an impact evaluation of one of the Dublin system most debated aspects (Fratzke, 2005; Boswell, 2003; Battjes, 2002; Hurwitz, 1999). Moreover, I will also employ qualitative data regarding the asylum application in Italy by considering NGOs reports and academic studies, with the aim to test and investigate the impact of other recurrent themes, such as the 'security' issue, the 'level of cooperation' and the 'policy enforcement' (see Appendix, p.58).

4.3.1 Statistical analysis

In order to understand whether the current crisis has been affected by political-institutional features it is necessary to take into account official statistics from the EUROSTAT database relating the functioning process of the Dublin System. In particular, from the EUROSTAT data I will consider the tables related to the total requests for asylum per EU country in the period 2011-2013, the total take-charge[4] requests per country and the decisions over the take-charge requests per country. These tables (see Appendix, pp.55-58) will help me understanding whether the

[4] Take-charge request: the §21 of Dublin III displays that "where a Member State with which an application has been lodged considers that another Member State is responsible for examining the application, it may, [...] request that other Member State to take charge of the applicant" (Dublin III, 2013)

critics to the Dublin system outlined in the theoretical framework (see p.20) will be confirmed or refuted by evidences. In particular, I will compare the total number of requests lodged per EU country (see table A, Appendix, p.55) with the take-charge requests (see table B, Appendix, p.56) in order to investigate the allegedly unfair burden-sharing view included in the Dublin system during the time-span considered. Besides, the take-charge requests table will be compared with the decision taken over it (see table C, Appendix, p.57). As already outlined in the methodology chapter (see p.12), the time-span will focus only on the period from 2011 to 2013, in which the number of applicants increased in each country of the EU because of the outburst of the Arab Spring; the lack of statistics pertaining the number of applications in 2015 makes more difficult to evaluate the impact of the Dublin regulations on the current crisis. But considering the impact of this system during these three previous years, allows to understand the impact during the Arab Spring refugee crisis, and thus also to be able to detect the potential limitations that the application of the Regulation could have provoked in the current crisis.

The first table (see table A, Appendix, p.55) considered is related to the total number of asylum application lodged in each Member State. The table shows that Italy has been the country with the highest number of requests for each year considered; in particular 11.498 in 2011, 12.358 in 2012 and 15.532 in 2013, moreover it is also important to mention that the number of application lodged in Poland in 2011 and 2012 - which is the second country for number of applications - is one third of the total Italian applications. These numbers would be already particularly explanatory of the disproportionate burden sharing view included in the Dublin system, in which the application is lodged in the country that facilitated the entry in the EU (EUROSTAT, 2016). In fact, it is arguable that during the Arab Spring refugee crisis the high number of applications lodged in Italy is attributable to geographical features. This aspect is even more evident when considering the take charge applications figures. In particular, a request for taking charge an application happens when a Member State considers that another Member State should be responsible for the application, providing the necessary evidences, as outlined in the theory chapter (see p.21). The second table (see table C, Appendix, p.57) shows that Italy is also the country that has presented the highest number of taking charge requests for all the years considered, thus implying that, for instance, amongst the number of applications considered in 2013 (15.532), almost half of them (6.345) were charged to another country that according to the evidences provided by the Italian institutions was responsible for the specific claim (EUROSTAT, 2016). These statistics makes more clear that often the first transit country for refugees is not the country where claimants wish to apply for asylum.
Finally, from the analysis of the last table (see table C, Appendix, p.57) - registering the positive decisions over the taking-charge requests - it is arguable that the hypothesis inferred from the second table would be confirmed; in fact, if we consider the number of take charge requests made by Italy in 2013, more than half of them were accepted by the Member State considered responsible for that

application, in fact out of 6.345 take-charge requests, 4.378 have been accepted (EUROSTAT, 2016).
These statistics, as already mentioned, are particularly explanatory of the disproportionate burden-sharing view of the Dublin system, in which the costs to examine the responsibility of a Member State over the asylum claims are mainly allocated to the external borders countries. This aspect is particularly relevant when considering the problems that mass influxes could generate in the frontline Member States, and it could be particularly explanatory of the humanitarian crisis experienced during the Arab Spring refugee crisis in the southern parts of Italy and Spain but also in relation to the serious problems currently affecting the border areas of Greece and Bulgaria in dealing with the current mass influx of refugees from Syria and Turkey (BBC, 2016; StateWatch, 2016; The Guardian, 2016c; The New York Times, 2016).

4.3.2 Non-political contributors

In this chapter I will highlight concepts and issues related to the impact of the national and European asylum policies; in order to do so, I will take into account studies, reports and academic contributions from scholars and relevant NGOs, as outlined in the methodology chapter (see p.9). For this reason, this paragraph will be further divided into three more sections in relation to the issues highlighted, which are strictly connected to the most recurrent themes investigated within the first level of analysis (see par.4.1 and 4.2) and shown in the Content Analysis Table (see appendix, p.58). In order to evaluate the impact of the features related to these themes, I will start taking into consideration relevant NGOs reports evaluating the normative approach of the Dublin system. Then, I will proceed by considering the alleged cases of mismanagement and corruption within the regional assistance centres in Italy and finally I will consider academic studies and NGOs reports over the efficiency of the newly implemented Hotspot system and over the effects of the Italy-Libya cooperation.

4.3.2.1 NGOs Reports on Dublin II

In order to understand how the policies analysed above could have impacted on the current crisis I will take into consideration two reports produced by relevant non-governmental actors: the UNHCR (United Nations High Commissioner for Refugees) and ECRE (European Council on Refugees and Exiles). In particular, I will search for themes and codes related to the main issues highlighted within the first level of analysis in order to test them and understand whether and how these features have impacted on the current refugee crisis. In particular, I will consider the UNHCR's "Comments on the European Commission proposal for a recast of the Regulation" (UNHCR, 2009) and the ECRE's "Summary report on the application of the Dublin II Regulation in Europe" (ECRE, 2006). These two specific reports are particularly relevant for this research, mainly for two reasons: on one level the reports will provide an important and reliable test for the analysis of the impact of

those themes and codes detected in the Dublin II analysis; on the other level the analysis of the suggested modification to Dublin II by these two notable NGOs will be of primary importance to understand which features of these reports - which are both directly addressed to the attention of the European Commission - have been included in the Dublin III regulations, which represent the recast of Dublin II, thus investigating whether and how the suggested modifications to Dublin II have been included within Dublin III, highlighting those features that could have impacted on the current crisis.

A feature relating to the theme 'policy enforcement' that has been easily detected in both reports regards the 'degree of harmonization' of the European asylum policy within the Member States; in fact, it is argued that several measures are still differently applied according to the Member State interpretation of the Dublin II regulation; thus, the first theme detected will be related to the issue of the 'policy enforcement' by highlighting which measures of the Regulation are not completely harmonized with the national regulations. Firstly, the 'take-back applicant' issue is particularly explanatory of the different interpretation of the Dublin II Regulation amongst Member States. In fact, starting from the Greek Presidential Decree n.61/1999, Greece is allowed to "interrupt the asylum claims of individuals having transited illegally to other Member States and subsequently use this as justification for denying these individuals access to an asylum procedure when returned to Greece under Dublin" (ECRE, 2006, p.6). This provision has been criticized also by the UNHCR report, stating the noncompliance of the provision with the non-refoulement principle (ECRE, 2006, pp.6-7; UNHCR, 2009, p.13); moreover, a number of Member States - among which Italy - have adopted similar provision to the one implemented in Greece, for the reception of take-back applications. In particular, "many states close a case if the applicant is deemed to have implicitly withdrawn or abandoned an asylum application" (ECRE, 2006, p.7). Thus, these applicants have the only solution to submit a second application, that however in most of the cases, is rejected because of the restrictive conditions implied in the second claims procedures, and for this reason it would led in many cases to detention or refoulement (ECRE, 2006, p.7).

Another issue related to the different degree of policy harmonization among Member States is connected to the practice of detention. According to ECRE, the lack of specific provisions for detention in the Regulation have produced a situation in which many Member States "have resorted to the increased use of this measure for the effective transfer of asylum seekers to the Responsible Member State" (ECRE, 2006, p.17). Moreover, UNHCR argues that several Member States "use detention on a systematic basis for Dublin claimants'" (UNHCR, 2009, p.17). In particular, this practice is even more common in those countries in which detention is applied for reasons related to illegal entry, as occurred in Italy with the aforementioned *Bossi-Fini Law*. However, as pointed out in the analysis of Dublin III, the inclusion of the § 28, on one hand represents an important achievement in terms of detention practices regulation, but, on the other hand, it is also arguable

that there is still room for improvement, because of the restrictive nature of this rule - which is applicable only for one specific case (see p.26) -, thus still providing some Member States with the possibility to resort the detention practices, as will be highlighted in the following paragraphs concerning the asylum policies application in Italy.
Another important theme that could be detected from the analysis of these two reports regards the 'human rights' issue. In particular, it has been pointed that in many countries the asylum seekers are not provided with all the relevant information that the Dublin II Regulation should guarantee. Both ECRE and UNHCR states that divergences occur in many countries in relation to the personal interview and the related need to obtain information regarding the family members of the claimants, thus enabling an easier recognition of the responsible Member State (UNHCR, 2009, p.15; ECRE, 2006, p.16). Moreover, both reports highlights the difficulties experienced by several NGOs in receiving information in order "to know whether time limits are being complied with by Member States" (ECRE, 2006, p.18); however, it has been acknowledged that delays have been experienced in the evaluation process of the claims in many countries, among which Italy (ECRE, 2006, p.18; UNHCR, 2009, p.22).

4.3.2.2 Asylum in Italy

In this paragraph I will consider three important outcomes related to the asylum policy application in Italy through the employment of qualitative contributions from a relevant NGO such as Médecins Sans Frontières and studies conducted by Vassallo Paleologo, an Italian academic and migration lawyer working in Sicily as University professor, also founder of a blog called Diritti e Frontiere (Rights and Borders) and author of the book 'Diritti sotto sequestro'. Moreover, I will also employ data from media sources, such as two Italian newspapers that will allow me to consider the judicial inquiry over the alleged mismanagements relating the functioning procedures of the CARA in Mineo (a reception facility operating in Sicily) in order to investigate those limitation within the law enforcement process in Italy that could be particularly useful to understand which features have impacted on the humanitarian crisis.

Firstly, I will consider the report from Médecins Sans Frontières over the reception conditions in the first aid shelter of Pozzallo, in Sicily that has been published on November 2015. Here, the main theme detectable regards the 'Human Rights' issue, in fact the report clearly indicates and describes the several inadequacies of this reception centre, among which:

a. Overcrowding: the number of refugees harboured in this first aid shelter it has exceeded the legal maximum number allowed for several periods of time during 2015 (Médecins Sans Frontières, 2015, p.3);

b. Degrading conditions of the buildings: the NGO has indicated several times to the relevant authorities the need for repairing parts of the building structure because of infiltrations, parasites infestations, inadequacy of the hygienical services, inadequacy of medical aid against scabies and inadequacy of the security facilities, such as the inadequacy of the fire escape system (Médecins Sans Frontières, 2015, pp.3-7);

c. Services to asylum seekers: the asylum seekers harboured in this centre should receive first medical aid kit the first time they enter in the centre and then in case they are harboured for more than 48 or 72 hours, there need to be a redistribution of these kits. The NGO has reported the partial distribution of this kit for first entering seekers and the total lack of redistribution for those staying for more than 48 hours. Moreover, other basic rights are not provided, such as the impossibility of any external communication because of the inadequacy of the telephonic devices but also the total lack of information regarding the asylum procedure such as the need for fingerprinting and where to apply for asylum (Médecins Sans Frontières, 2015, pp.8-12).

In his book, "Diritti sotto sequestro", professor Vassallo Paleologo is also pointing against the degrading conditions of many other reception centres in Sicily, explaining that the same conditions described in the Médecins Sans Frontières report could be found in the first aid shelter of Contrada Imbricola, in Lampedusa, which recently became an Hotspot facility (Vassallo, 2012, pp.153-155). Moreover, Vassallo also describes the discretionality of the police within the recently developed CIE (center for identification and expulsion). In particular, according to the aforementioned § 12 of the *Turco-Napolitano Law* the police commissioner is allowed to employ the measure called 'postponed expulsion' that provides "a great space for the employment of the police discretionality" in deciding how and when the refugees could have been escorted to the borders for the expulsion (Vassallo, 2012, p. 155). In particular, the modalities and the times for the execution of the expulsion provisions were in most of the cases "not fulfilling those fundamental human rights in terms of freedom and defence of the person that should be granted to anyone, and not just to citizens, in a normal State of Law" (Vassallo, 2012, p.155).

Finally, a last point is related to the outburst of an important inquiry in Italy, which is strictly connected to the theme relating the 'policy enforcement', since it reveals a serious aspect of the asylum policy application in Italy. In fact, the inquiry has revealed a system of rigged public tenders that allowed a corrupted consortium to manage the CARA in Mineo. The inquiry, called 'Mafia capitale', rooted around a mafia organization in Rome that, through strict connections with institutional representatives, has been able to grant the concession for the management of this CARA to a consortium called 'Calatino Terra d'Accoglienza' without a regular tender. In particular, the President of Anticorruption Authority, Raffaele Cantone, said on May 2015 that "the tender relating the management of the CARA in Mineo was unlawful" because of "contrasts with the competition, transparency and proportionality rules" (Cantone, quoted in Il Fatto Quotidiano, 2015). The inquiry

also revealed how the system was created and developed: it was mainly based on the strict relationship between Odevaine, chief of the Provincial Police Force in Rome and Buzzi, owner of different consortia and cooperatives operating in the field of the refugee reception facilities (Il Fatto Quotidiano, 2014; La Repubblica, 2015). This relationship was based on the capability of Odevaine to falsificate the public tenders in order to grant the concession for the management of this centre to one of Buzzi's consortium and thus providing this consortium with public funding for the establishment of this centre; these funds would have then been shared within the mafia system, but providing an inadequate service to the refugees harboured in that centre, as particularly witnessed by the journalistic investigation of an Italian TV program called Report (Il Fatto Quotidiano, 2014; La Repubblica, 2015). Particularly explanatory of this mafia system that was set up during the Arab Spring 'emergency' is a wiretapping between Buzzi and the owner of another cooperative - that, according to the magistrates, has allegedly obtained management concession for another CARA through rigged tenders, even though has not yet been proved - in which Buzzi explains: "You can not even figure it out how much I can earn with immigrants, even more than through drug trafficking.." (Buzzi quoted in Il Fatto Quotidiano, 2014). The inquiry is still not closed and the works of the magistrates have revealed potential other cases of corruption in the management of different CARAs, by including in the investigation - that is however still in process - other politicians and presidents of consortium that received the concession for the management of others CARAs (La Repubblica, 2016). These judicial inquiries are disclosing an alarming framework regarding the business-oriented management of the migrant crisis situations in Italy, where the business of the reception facilities has not been the only case in which migrants have been economically exploited (Longhi, 2014, pp.78-80).

4.3.2.3 Hotspot system and bilateral cooperation outcomes

In this paragraph I will consider the outcomes in terms of reception conditions and facilities for asylum seekers that have been produced by the newly implemented Hotspot system and by the bilateral cooperation between Italy and Libya. In order to understand whether these political-institutional features have impacted on this refugee crisis I will take into account studies conducted by Italian NGOs, such as ASGI (Organization for Juridical Studies on Immigration, from Italian: Associazione per gli Studi Giuridici sull'Immigrazione) and Melting Pot (grassroots organization providing info and legal advices to migrants) but also the works of Vassallo Paleologo over the impact of the Italy-Libya cooperation before and during the Arab Spring crisis. According to the European Commission 'Progress Report on the implementation of the hotspots in Italy', the newly implemented hotspot system would also facilitate the development and the enactment of the relocation scheme, that would loosen the migratory pressure affecting Italy (Communication from the European Commission to the European Parliament and Council, 2015). However, in a paper published by ASGI and directed to the Interior Minister of Italy it is possible

to detect themes that would help in clarifying the actual extent of the measures set out by this newly implemented system.

Firstly, as pointed by the paper of ASGI the establishment of the Hotspots should be based on the need to simplify the work of the Italian authorities for the identification and screening of the refugees in order to understand whether considering them as refugees or economic migrants and then understand who is eligible of international protection and who should be sent back; but ASGI suggests that the implementation of this system has provoked a situation in which "the identification [of the migrants] is particularly 'hasty'" and the places where the hotspots have been established (Pozzallo, Porto Empedocle, Trapani and Lampedusa) "seem now to be set up as closed places in which is it possible the access only for the Italian police force and the European agencies" (ASGI, 2015, p.1). Moreover, the reports also highlights that, despite the presence of the European agencies, cases of "excessive discretionality" of the police are still occurring (ASGI, 2015, p.2). In particular, as pointed in the report, the lack of information provided to the migrants and the 'hasty' procedures for identifying those who are eligible for international protection is provoking many cases in which migrants that, according to the law, should be rejected for illegal entry, are then left on the Italian territory without providing them any assistance and at the same time they can not be rejected because of the non-refoulement principle (ASGI, 2015, p.1). In fact, according to ASGI, this situation is happening because of the undefined legal nature of these structures denominated hotspots, thus not owning any "legal binding efficacy" in Italy (ASGI, 2015, p.1). This legal vacuum would provoke a situation in which these migrants - which are not eligible for international protection and not forcibly returned to the borders - have the only solution to escape from Italy trying to reach countries where they can lodge a new asylum application. Another NGO, called Melting Pot Europa has claimed in several articles the same issues regarding the lack of juridical validity of these newly implemented reception facilities, and it has also argued that in the Hotspot located in Lampedusa, are taking place various violations of the European regulations, of the Italian Constitution and in some cases also serious human rights violations (Melting Pot, 2016). In particular, in an article written by Alessandra Ballerini - a lawyer working with grassroots NGOs in Sicily, which has inspected the hotspot centre in Lampedusa, together with Ms. Schlein, Member of the European Parliament - are described the degrading conditions of the centre, which is overpopulated and completely lacking of basic furniture (Melting Pot, 2016). Furthermore, it has been reported that during the inspection the Frontex and EASO agents were not in the centre, and also that there were no asylum application forms available (the so-called C-3 form), so it has been impossible for the hosts to formally present the asylum claims, but only stating the wish to request international protection, which is not enough for the granting of any type of status (Melting Pot, 2016). Thus, the migrants received in the hotspot centre are only screened and fingerprinted and then registered to EURODAC, but are not provided with the possibility to request for asylum protection, "being then detained *sine die* in the centre" (Melting Pot, 2016).

Moreover, the last point of this policy impact analysis will focus on the outcomes produced by the bilateral cooperation between Italy and Libya. In particular, in his book 'Diritti sotto sequestro' Vassallo describes the practical outcomes of the Cooperation Protocol between Italy and Libya, that served to build up two detention centers for irregular migrants in Libya paid by Italy and the provision of charter flights in order to expel 5688 migrants (Vassallo, 2012, p.82). Moreover, an important point highlighted in his book is related to the degrading conditions of the detention centers in Libya, in which according to reports from NGOs, and most importantly, according to a confidential report from the European Commission, there have been several documented cases of abuses, such as food privation, tortures and diffused employment of violence (Vassallo, 2012, p.83). Moreover, during the cooperation of the Italian government with Gheddafi it is arguable for Vassallo that "according to these bilateral agreements have been experimented intense forms of discretionary expulsion or collective refusal of entry in international waters" (Vassallo, 2012, p.84). However, after the fall of Gheddafi all these practical measures of cooperation among police forces have been interrupted, and the current civil war in Libya makes more difficult for Italy but also for the EU to set out the grounds for a new form of cooperation in order to counteract the increasing humanitarian crisis.

5. Discussion

As already mentioned in the methodology chapter (see p.11) and in the introduction to the analysis (see p.6), the process of analysis has been divided into two parts. The first part, is based on the analysis of primary data, such as official documents on the asylum legislation in Italy and EU. The second layer of analysis is mainly based on secondary data, and the aim of this kind of analysis has been to understand and clarify the impact that the policies considered in the first layer may have in the way asylum issues have been addressed in Italy thru the years.

In particular, the content analysis of official primary documents has been of remarkably importance, because it gave me the opportunity to uncover the main themes and codes necessary to understand how the policy-makers have addressed the asylum issue within both the EU and Italy. By employing a content analysis method to documents, I have been able to uncover the problems and potential solutions that the asylum policies address and aim. Following the policy analysis model developed by Cooper, Fusarelli and Randall - the normative dimension (see p.10) - but also the search for those structures set out by the European and Italian institutions, it has allowed to reveal and understand how policy-makers aim to address and solve the crisis. These problem 'solutions' were then addressed concretely in the second level of the model above, thus focusing on the structural dimension (see p.10). As outlined in the methodology chapter, the model developed by Cooper, Fusarelli and Randall also includes two more levels that need to be taken into account when conducting a policy analysis, the constituentive and the technical levels. In particular these levels are related to the theories and empirical studies

outlined by other actors, such as interest groups or NGOs. For this reason, in this research, these two levels have been included within the impact evaluation paragraph of analysis (see par. 4.3), which, as already mentioned, consists of secondary sources by non-political actors.

Concerning the themes and codes emerged from the content analysis of official documents, it is important to mention here the connection with the theoretical framework; in fact, as suggested by the content analysis table (see Content Analysis Table, Appendix, p.58), the themes employed are strictly connected with the set of theories and concepts adopted in this research. In fact, the themes named as "Human Rights" and "Label" find most of their codes within the first concept employed, relating to the labeling process of the refugees and to the provisions included in the Geneva Convention. Furthermore, the theme "Policy enforcement" or "Policy in practice" are strictly related to the theory paragraphs over the Dublin debate and the Europeanization process of the asylum policies, thus dealing with some of the most debatable issues of the Dublin Regulations and with problems related to the degree of harmonization of the European normative on asylum matters. Then, the theme of "Security" reveals to be particularly connected with the concepts of 'securitizations' and 'crimmigration law', while the theme on "cooperation" has been mainly employed to understand how the asylum problems affect the national and supranational level, but also how these problems have been addressed in relation to the bilateral agreements with non-EU actors.

In order to discuss the results of this two-layered analysis it is necessary to understand which of the themes highlighted in the theory have recurred more often in the policy analysis, trying to connect them with the related potential impact outlined in the second layer of analysis. This discussion will then serve to connect the two levels of analysis with the aim to clarify which of these themes could have impacted on the current crisis, and thus aiming to answer to the research question.

Firstly, the theme of the 'human rights' has been particularly relevant in all the documents selected. The provisions incorporated within the Geneva Convention regarding the rights of the asylum seekers, represents the milestone for the definition of the asylum policies both at the European and Italian level. In fact, it is arguable that the 'human rights' theme it has been particularly recurrent within the European policies, especially within Dublin II and III, but also within the Asylum Procedures Directive, where it is guaranteed the protection of fundamental rights for unaccompanied minors (Dublin II, 2003; Council Directive, 2013/32/EU) and for those in need of assistance for being victims of human rights violations (Council Directive, 2013/32/EU). Worth to note is the inclusion within Dublin III of an article addressing the issue of detention; an issue that has been strongly advocated by the two reports from UNHCR and ECRE, which have pointed the wide employment of this practice when the Member States are executing the transfers. On the other hand, even if the provision is applicable only in cases in which there is "a significant risk of absconding" (Dublin III, 2013), it is arguable that this rule is

still too vague and implicitly allowing a discretional use of this practice, thus not preventing the wide employment of detention practices in several countries of EU, as particularly witnessed by the Italian case. In fact, according to Vassallo and as pointed out in the paragraph 4.3.2.3 (see pp.40-42), this practice has been widely employed in Italy especially after the agreement set out with the Libyan government in 2008 but also when executing transfers of applicants from Italy to other Member States. Another important code relating this theme is related to the "reception conditions", which deals with all the measures aimed at providing the structures and facilities to those 'migrants' in need of any form of protection. In particular this code - particularly detectable within different articles of the Asylum Procedures Directive, the *Martelli Law* and the Consolidated Text on Immigration - has made possible to expose several discrepancies in the practical application of these provisions in Italy. As for this issue, the report of Médicinès Sans Frontieres and the study of Vassallo have revealed serious degrading conditions of different reception facilities Italy wide and thru time.

'Detention' and 'human rights' are strictly connected with the "security" theme: this practice can be interpreted as a direct consequence of the development of the 'crimmigration law' within the national and supranational migration laws. In particular the 'security' theme has been widely detected at the European level within the Asylum Procedures Directive, the Temporary Protection Directive, the Explanatory Note on the Hotspot Approach and at the Italian level, within the *Bossi-Fini Law,* the *Public Security Act* and within the texts establishing the cooperation between Italy and Libya. More in depth, while at the European level the main code has been the potential 'emergency' situation that would be provoked by disproportionate mass influxes, at the Italian level the more recurrent code is related to the definition of 'illegal immigrants'. For what concerns, the recurrent employment of an 'emergency rhetoric' within the European normative it is arguable that the conditions for the recognition of a properly-defined 'state of emergency' are not sufficiently prescribed, thus providing problems in the process of harmonization of the European directives at the national level. On the other hand, the development of what Aas and Bosworth have called as "the migration control industry" (Aas and Bosworth, 2013, p.295) it is particularly detectable within the efforts made by the Italian policy-makers to counteract the migration flows, especially from Libya, as witnessed by the Cooperation Protocol between Italy and Libya, that also clearly explains how migration laws are directly connected to the 'borders policing' issues. Moreover, the establishment of the '*reato di clandestinità'* within the *Public Security Act* (Law 94/2009) and the provisions included within the *Bossi-Fini Law* (Law 189/2002) are a clear example of the convergence between immigration law enforcement and criminal law. This convergence has resulted into the discretionary employment of the police forces in Italy, also in those facilities that should be regulated through the newly developed Hotspot approach, but also it has been at the base of the cooperation between Italy and Libya, as clearly deduced from the analysis of the Cooperation Protocol and later tested through the study of Vassallo (see p.41).

However, the most recurrent theme in the policy analysis of the European documents it is related to the identification of those potential outcomes that the regulations and the directives could provoke or have provoked at the practical level, and thus it has been called ‘policy enforcement’. The most important aspect related to this theme is detectable through the ‘responsibility allocation’ or ‘burden sharing’ codes. In particular, these codes identify all the potential limitations deriving from the application of the Dublin System for the frontline Member States, as then verified through the employment of the official EUROSTAT statistics (see pp.34-36). Moreover, an important code within this theme is the ‘transfers’ issue; here, in fact Dublin II and III establish the provisions for the taking-charge and taking-back request of an applicant among different Member States, mentioning the proofs and evidences necessary for the recognition of the requests (Dublin II, 2003; Dublin III, 2013). However, these measures have provoked outcomes that have been clearly described by the UNHCR and ECRE reports in relation to the taking-back applications. In particular, the reports have highlighted the Member States tendency to reject asylum claims in the cases in which a refugee has ‘implicitly’ withdrawn his/her first lodged application, thus not counteracting the ‘asylum seekers in orbit’ phenomenon, which refers to the transfers of an applicant from a Member State to another, without accepting the claim. On the other hand, this tendency is the result of a measure that has been restrictively interpreted by several Member States, and thus is also revealing the practical limitations involved in the harmonization process of the European normative at the national level. Furthermore, the issue of ‘asylum seekers in orbit’ - which was a practice that the Dublin system aimed to interrupt (Battjes, 2002; Fratzke, 2015; Hurwitz, 1999) - it has been observed in Italy by the study of ASGI as a potential outcome occurring after the establishment of the Hotspot system in Sicily, where the reception facilities have no ‘legal binding efficacy’ and thus provoking a situation in which migrants are neither eligible of international protection because of illegal entry and nor forcibly returnable to the fleeing countries (ASGI, 2015), with the only solution to escape and try a second application in another Member State.

The theme concerning the ‘labeling’ issue it is detectable in most of the documents, however it is possible to argue that both the European and Italian official documents adopt the labels and thus the related forms of protection that are pointed out in the Geneva Convention. For this reason, each of the European selected official documents presents an introductory description of the terms employed to refer to those who can apply for international protection (third-country nationals) and those who can actually benefit from it (refugees), taking as reference the distinction provided by the Geneva Convention. However, it is important to mention here, the labels included in the Italian legislation; in particular, the label ‘foreigners’ would refer to any third-country nationals, and thus reflects the distinctions provided by the European legislation and subsequently by the Geneva Convention. On the other hand, it is important to reflect upon the label provided to the illegal migrants within the *Bossi-Fini Law* and the *Public Security Act*. In fact, as already pointed out in the analysis of the Italian legislation (see p.30), the policy-makers here, have coined a

new form of crime related to the illegal entry of third-country nationals, who are labeled as 'clandestino' (in english: stowaway). This term is particularly explanatory of the peculiar nature of this migration law, where the employment of this term is suggesting the merging process between migration and criminal law. The employment of this kind of label is then particularly relevant for the recognition of that rhetoric and semantics ('security discourses') at the base of the securitization process (Campesi, 2011, p.7), which could affect the way emergencies or crisis situations are being addressed at the institutional-political level.

In conclusion, it is important to mention the last theme detected in the policy-analysis process, even though it has not been as widely employed as the others mentioned above. This theme focuses on the issue of cooperation amongst the different governmental levels, thus it has been investigated in order to understand which level of cooperation is required for the application of the asylum policies. By searching for this theme I aimed to understand which issues and features related to intergovernmental cooperation could impact on the process of identification, reception and placement of the migrants.
In particular, I have detected this theme in the Temporary Protection Directive, in the Explanatory Note on the Hotspot Approach, in the *Martelli Law* and in the Protocol of Cooperation between Italy and Libya. Firstly, it is important to mention here the level of cooperation involved at the European level when a country is facing situation of 'emergency'. In fact, as stated in the Temporary Protection Directive, the cooperation in these cases is based on the principle of 'Community solidarity', which grants the countries facing disproportionate mass influxes the possibility to benefit from the European Refugee Fund, thus implying a level of supranational cooperation mainly based on economic features. Furthermore, as also pointed by the Explanatory Note on the Hotspot Approach, within the process of recognition and reception of the asylum applicants, the level of cooperation involves the participation of non-governmental actors, such as the UNHCR but it also implies a strong collaboration between EU agencies and national institutions. However, as described in the report from ASGI and through the contributions of Vassallo and Melting Pot (see pp.40-42), it is arguable that this multi-layered cooperation is not properly taking place in the Sicilian hotspot centers, as witnessed by the difficulties for the NGOs to get access to the centers and the alleged lack of cooperation between Italian institutions and European agencies in the hotspot located in Lampedusa. Finally, the last issue that needs to be highlighted for the discussion of this theme regards the level of cooperation at the national level; in fact, as already pointed out this theme has been also detected within the *Martelli Law* analysis, that described the level of cooperation involved for the administration of the regional centers for the reception of the migrants, the CARA. In particular, as described in the analysis (see p.32), the private administration of these centers should be characterized by the co-assistance of police officers, regional officers and representatives from UNHCR; however, it is arguable that, at least for the case described in the analysis (see pp.39-40) - relating the corruption accusations moved to the cooperative in charge for the administration of the CARA in Mineo - the level

of cooperation required by the § 1-*quater* of the *Martelli Law*, has not provided an efficient service for the migrants hosted in the centre and moreover has not prevented the establishment of a corrupted system of public tenders. The importance of this outcome should not be underestimated, in fact, the ongoing investigations by the prosecutors are revealing the existence of a structured system able to manipulate several public tenders relating more than a CARA, and thus not only the one in Mineo (La Repubblica, 2016).

6. Conclusion

The aim of this thesis has been the investigation of the political-institutional features that have impacted on the current refugee emergency that is affecting the European Union on different levels. In fact, it is arguable - even though the investigation over the existence or not of an emergency situation has not been the purpose of this research, as pointed out in the limitations paragraph (see p.13) - that the European Union is facing a situation in which urgent action is needed in order to stem the copious migration flows deriving from those areas of North Africa and Middle East that are affected by turmoil and internal wars. The perspective of mass influxes of refugees in Europe - as already experienced in 2015 (Human Rights Watch, 2016) - for the following months of 2016 would probably produce a double-layered outcome, on one hand it would exacerbate the humanitarian emergency that some frontline Member States are experiencing since 2015, primarily Greece and Hungary (BBC, 2016; StateWatch, 2016; The Guardian, 2016c; The New York Times, 2016), while on the other hand, it would probably deepen the diplomatic crisis among the European Member States, whose difficulties in addressing the migrant issues could be witnessed by several different features: firstly, as pointed out in the introduction of this thesis (see pp.3-4), the unilateral decisions of several Member States to build fences (Hungary and Austria) and to reintroduce border controls (Germany, France, Sweden, Denmark, Austria). Another feature is related to the difficulties experienced in the last months to open up a dialogue with Turkey, that would bring back to Turkey those migrants illegally entered to Greece and now harboured at the Macedonian border (The Guardian, 2016d). Furthermore, the challenge carried by the referendum that will take place in Great Britain on June, 2016 over the permanence of the UK within the EU may also affect the migration issue at the European level. Finally, there is a geopolitical and security issue, that relates to the terror menaces carried by the Islamic State, even though, as pointed out in the latest report from Interpol and Europol over the smugglers issue, “while a systematic link between migrant smuggling and terrorism is not proven, there is an increased risk that foreign terrorist fighters may use migratory flows to (re)enter the EU” (Europol, 2016). This point is particularly significant for the findings of this thesis, in fact whether on one level this issue should not affect migrants in need of international protection, on the other it is arguable that this situation is increasing the difficulties of the respective Member States governments’ to address the humanitarian emergency without employing restrictive and ‘security-oriented’

rhetoric and procedures. This situation, as particularly witnessed by the impact evaluation of the policy analysis, facilitate the widespread employment of measures and procedures aimed at addressing more the security issue than the real humanitarian emergency experienced by refugees. In fact, as already pointed out in the theoretical framework (see pp.19-20), the analysis of the European and Italian migration policies, and more particularly the enforcement process of these policies, has revealed the tendency to address the migration issue with a criminological glance, thus resulting in the merging process between two different issues as the 'migration control' and the 'criminal repression'.
The outcomes of this merging process has then, as direct consequence the emergence of the human rights issue, in fact, as pointed out in the discussion chapter (see p.42), another recurrent theme relates to the compliance of the policies analysed with the provisions of the Geneva Convention; in particular, the restrictive application of the Geneva Convention and the European regulations for some Member States has led to many cases of human rights violations - as witnessed by the different verdicts of the International Courts (European Court of Human Rights, Application no.27765/09; European Court of Justice, Case C-61/11 PPU) - and more specifically in Italy, it has led to a wide employment of discretionary measures by the political institutions within the enforcement process of the European and Italian legislations, as particularly witnessed by the reports from UNHCR, ECRE, ASGI and the contributions from Vassallo in relation to the application of the Hotspot directive, the bilateral agreement between Italy and Libya, the legal timeframe and the detention practices relating the transfers, as regulated by Dublin III, but also by the business-oriented management of the reception facilities in Italy (see p.40). These outcomes are thus particularly explanatory of other issues, that are strictly connected to those recurrent themes highlighted in the discussion chapter. In fact, the discretionary nature of the asylum policy enforcement - both at supranational and national level - reveals on one hand the difficulties experienced to provide a uniform harmonization of the European legislation in terms of asylum, while on the other reveals those cooperation problems amongst Member States within the policy enforcement process.

Through this double-layered analysis, I aimed to uncover those political-institutional features that could have made more difficult the asylum policy enforcement, by taking the Italian case as peculiar example. Subsequently, within the second layer of analysis I have explored which and how those features highlighted within the first level of analysis have impacted on the current emergency situation. In particular, it is arguable that the process of analysis has highlighted the growing tendency among the policymakers, at both levels, to address the migration control issue by employing a criminal law perspective. This perspective, if on one hand could appease the growing fears of the European citizens toward the alleged 'migrant invasion', on the other hand it could be seen as a clear example of 'short-term solution'. In fact, the efforts set up by several Member States to control the borders, to build fences and to restrict the free circulation of persons could not be considered as measures aimed at the 'long-term solution' of the refugee crisis. In

fact, it is arguable that this crisis is more connected to other features which are not primarily related to the security issue in Europe, but mainly dealing with geopolitical and economic considerations, such as wars and fragile economic conditions in neighboring countries. Moreover, the decision to enhance the border policing efforts could be considered, in my opinion, a short-sighted strategy to counteract the migration flows because of the peculiar geography of the EU borders, which would allow smugglers and trafficking persons to constantly seek for new routes for the illegal entry of displaced people. Furthermore, another aspect that has been deduced by this research is related to the need for an urgent development of what has been called the 'Common European Asylum System', an integrated system of asylum protection for all the European countries that would then enhance the efficacy of the Dublin system by improving some of those limitations that have been highlighted in this thesis, such as the disproportionate burden-sharing view amongst Member States and the discretionary nature of the asylum policy enforcement.

In conclusion, it is arguable that this policy analysis has revealed different political-institutional features that have impacted on both the humanitarian emergency and the diplomatic impasse; in particular, it is important to remember 'security-oriented' approach adopted both at the European and Italian level for the asylum policy implementation and enforcement, that has uncovered what in my opinion can be considered a short-sighted strategy in dealing with refugee mass-influxes, that is certainly worsening the humanitarian emergency in some areas of the EU. Moreover, the lack of a more binding European legislation in terms of asylum – the lack of a definitive and complete Common European Asylum System - has provoked different cases of inadequate harmonization and transposition of the asylum normative at the national levels, as particularly witnessed by the Italian case, characterized by a discretionary way of asylum policy enforcement. Finally, a last consideration regards the need to reform the Dublin system, a need expressed by several NGOs, interest groups, political actors and which has been illustrated by this policy analysis, where the disproportionate burden-sharing view and costs allocation can be considered as one of the reasons of the serious diplomatic impasse affecting the European Union, where new and old frictions are emerging between Northern and Southern countries or Western and Eastern countries.