focus MIGRATION

POLICY BRIEF

No. 29 May 2015

German Asylum Policy and EU Refugee Protection: The Prospects of the Common European Asylum System (CEAS)

Introduction

In recent years, asylum policy and refugee protection have been the subject of constant debate in German domestic politics.[1] The number of asylum claims has been on the rise since 2009, and doubled between 2012 and 2014 alone. This development has triggered a fierce political debate as well as legislative activity. On the one hand, it became obvious that neither federal authorities nor the *Länder* (federal states) and municipalities were adequately prepared to react to the growing influx of asylum seekers, particularly with regard to providing sufficient capacities for accommodation. The Federal Office for Migration and Refugees (BAMF), which is responsible for processing asylum applications, had to deal with an increasing backlog. On the other hand, asylum seekers became subject to suspicions of "asylum abuse," and a number of political measures were adopted to tighten German asylum policy, which is rather generous compared to other countries.[2] Among other things, these restrictions reflected concerns that liberal asylum policies serve as a pull factor, motivating refugees resident in other European countries to move onward to Germany.

This reveals the transnational dimension of refugee policy: asylum law, is now nearly completely Europeanized and laid down in detailed minimum standards, and is subject to the jurisdiction of the European Court of Justice (EJC) and the European Court of Human Rights (ECHR). The scope to adopt restrictive measures at the national level is therefore limited. The Dublin Regulation determines the EU Member State responsible for examining an asylum application. At the same time, the European Union holds collective responsibility for its external borders – and therefore also for refugee tragedies in the Mediterranean, and for the protection of civil war refugees from Syria. An analysis of German asylum law and policy must therefore take into account the common European policy of refugee protection. It has to focus on two aspects: on the one hand, the empirically observable refugee flows, and, on the other hand, the reaction of individual states or the international community towards this form of migration. In view of the latter, Germany (and to an even greater extent the EU) will have to face multiple challenges in the coming years.

As a starting point, this policy brief provides an overview on international asylum law, which constitutes the framework for national provisions for refugee protection, followed by a summary of forms of humanitarian protection. Second, the paper discusses asylum law, refugee policy and humanitarian migration in the Federal Republic of Germany, and the efforts made within the EU to harmonize the policy field of refuge and asylum. Finally, the dossier addresses current developments in Germany, and ends with a preview of future European challenges with regard to refugee protection.

Info box: People in need of protection – the global dimension

At the end of 2013, according to the United Nations High Commissioner for Refugees (UNHCR), there were 51.2 million forcibly displaced persons worldwide who had to flee their place of residence due to persecution, violence or human rights violations. This is the highest number ever recorded since the beginning of such statistics in 1989. Among them were 16.7 million registered recognized refugees, 33.3 million internally displaced persons, and 1.2 million asylum seekers (pending applications). 86 percent of all refugees were hosted by developing countries. In 2013, 98,400 refugees were received by 21 countries in the framework of resettlement programs. 6.3 million refugees had already spent long periods living in harsh conditions (in so-called protracted situations) in refugee camps, or on their own in big cities.[3]

bpb: Bundeszentrale für politische Bildung

NETZWERK MIGRATION IN EUROPA

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Refugee Law: the International Framework

In theory, the migration of international migrants, e.g. labor migrants, is assumed to be based on a voluntary decision, while refugees are forced to leave their place of residence or country of origin due to armed conflicts or persecution. Empirically, these categories of voluntary and involuntary migrants cannot always be clearly distinguished, because the decision to migrate is generally not based on one single reason but on a combination of motives. From the point of view of states, however, it does seem necessary to distinguish between “normal” migrants and people in need of protection. But the international community does not recognize every type of involuntary migration – e.g. that caused by poverty or climate change – as relevant in terms of humanitarian protection.

Generally, states have the right to decide who may enter their territory and under what terms. However, the sovereignty of states is limited by international refugee law.[4] This law was developed as a reaction to the experience of the two world wars in the 20th century, which produced millions of international refugees. On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Article 14 states that “Everybody has the right to seek and to enjoy in other countries asylum from persecution.” The right to seek asylum does not mean, however, that the claimant is automatically granted refugee status. Two years later, on 14 December 1950, the UN General Assembly established the Office of the United Nations High Commissioner for Refugees (UNHCR), which was to be responsible for international refugees from then on. According to its mandate, UNHCR is in charge of coordinating international action to protect refugees, ensuring that refugees’ human rights are respected and that their right to claim asylum is not violated.

International refugee law, which has been subject to a constant process of development since the Second World War, is essentially based on the Geneva Convention relating to the Status of Refugees, which was signed on 28 July 1951 and entered into force in 1954.[5] Important elements of the Convention are the definition of the term “refugee” and the principle of *non-refoulement*, which prohibits returning a person to a country where (s)he has reason to fear persecution (Geneva Convention, Article 33). In Europe, this right is derived from Article 3 of the European Convention on Human Rights (ECHR, in force since 3 September 1953): “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” According to Article 1a(2) of the Geneva Refugee Convention, the term refugee shall apply to any person who holds “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” At first, this definition only applied to refugees in Europe and to events before 1 January 1951. The additional Protocol of New York, signed in 1967, removed this temporal and geographical restriction from the Convention, which thereby gained universal validity. To date, 140 states have signed the Convention and the Protocol, including the Federal Republic of Germany and all other EU Member States.

To this day, the provisions of the Geneva Refugee Convention continue to have an effect. Refugee law is still based on the obligation of asylum applicants to prove their *individual* persecution. Over the course of time, however, the interpretation of the Geneva Refugee Convention has undergone changes. Its scope has been enlarged, and now includes persecution by non-state actors and also gender-specific persecution. Alongside these international agreements, there are more and more European legal provisions in the field of asylum policy (see the section on “Refuge and Asylum as a Europeanized Policy Area”). Additionally, many states have their own national regulations and forms of protection: in Germany, for example, Article 16a of the German Constitution (*Grundgesetz*) guarantees the right to asylum for the victims of political persecution.

Forms of Humanitarian Protection

Asylum Procedure

There are four main forms of humanitarian protection.[6] They are not mutually exclusive, but complement each other. In Germany, the best-known form of humanitarian protection is the asylum procedure. As a territorial principle, it requires, however, that the person in need of protection has left his or her country of origin and has travelled to Germany unassisted, because an asylum application can only be lodged on German territory and not, for example, in the German embassy in the asylum seeker’s country of origin. To be able to claim asylum thus generally requires financial resources. Furthermore, the journey to Germany may be a risky matter due to illegal border crossings or the need to cross the Mediterranean Sea. Thus, only a very small share of people in need of protection worldwide actually make it to Germany or other European countries (see info box “People in need of protection - the global dimension”). Most refugees remain in their region of origin, in a neighboring country for instance. Once in Germany, an asylum application can, in principle, be filed at any public authority. It is, however, the regional branch office of the Federal Office for Migration and Refugees which is officially and formally responsible for handling asylum claims, so other public authorities will pass the application on to the branch office. After the application for asylum has been filed, the Federal Office conducts an individualized procedure to examine whether the applicant has the right to be granted any form of protection: recognition of asylum in accordance with Article 16a of the German Constitution, refugee status in accordance with the Geneva Refugee Convention, subsidiary protection, or a deportation ban.[7] The length of stay permitted, and other legal rights such as family reunification, depend on the form of protection granted. The widest scope of rights applies to persons entitled to asylum or refugee status in accordance with

the Geneva Convention. They are granted a three-year residence permit, whereas people granted other forms of humanitarian protection generally receive a residence permit valid for only one year. In the past few years, there has been an alignment of the rights of people granted subsidiary protection. A protection status can be revoked or withdrawn if the causes of flight no longer exist, e.g. if an armed conflict in the refugee's country of origin has ended.[8] Asylum seekers who have not been granted any form of protection are legally obliged to leave Germany. However, in many cases this does not happen, for various reasons: either repatriation is not possible (e.g. because the person in question does not possess valid identity documents), or there are no means of transport, or authorities cannot track the rejected asylum applicant.

Contingent Refugees

In the event of a major refugee crisis (e.g. former Yugoslavia in the 1990s or Syria since 2011), people in need of protection may also be collectively evacuated from their region of origin or may be individually granted a visa to secure legal entry to Germany. In this case it is usually a fixed number (contingent) of refugees that is admitted. There is no individual assessment of the need for protection, but there are checks as to whether the person in question really belongs to the group of people that is to be granted protection, and whether there are any exclusion criteria such as a person's involvement in war crimes. Protection is granted on a temporary basis only.

Resettlement

A third form of protection is resettlement. In the framework of these programs, particularly vulnerable refugees who have already fled their country of origin and have sought refuge in another country, but can neither permanently settle in that country, nor foreseeable ever return to their country of origin, may be resettled in a third country. Resettlement measures are coordinated by UNHCR. In 2015, only about 127,000 resettlement places were offered worldwide, while 958,000 people needed to be resettled, according to UNHCR.[10] Generally, admission in the framework of resettlement programs is permanent. Both temporary admission programs and resettlement offer the advantage of safe entry into the host country. They also provide a chance of protection for vulnerable groups of refugees who do not possess the necessary financial resources to travel to a European country on their own in order to claim asylum there. Furthermore, these programs provide relief to the main refugee hosting countries in particular conflict regions, which do not have the capacity to adequately cope with large refugee flows.

Info box: What is "subsidiary protection"?

Third-country nationals "may be entitled to subsidiary protection if they cannot be protected either through recognition of refugee status or through the right to asylum. Such individuals are recognized as being entitled to subsidiary protection if they have submitted plausible reasons to presume that they are at risk of serious injury (Article 15 of the EU Qualification Directive 2011/95/EU) in their country of origin.

Serious injury is considered to be:

- the imposition or enforcement of the death penalty,
- torture or inhuman or degrading treatment or punishment, or
- a substantial concrete danger to the life and limb of a civilian within an international or domestic armed conflict."[9]

Regional Programs of Protection

A fourth form of protection is protection programs financed by Western industrial states in the immediate vicinity of the centers of conflict, that is, in the neighboring states where most refugees seek protection. Accommodation close to the refugees' country of origin has the advantage that it is less costly, and therefore support can be offered to a larger number of refugees. Additionally, people who have fled their countries of origin can return there faster when the conflict that caused their flight has ended.

Refugees referred to as "internally displaced persons" have to be distinguished from international refugees. They have not fled their country of origin, but have been forced to leave their place of residence and seek refuge in another part of the country. The degree of protection that the international community can offer them – e.g. food and medical supplies – depends on the security situation in the particular country.

In practice, the forms of protection outlined above may address refugees from the same country of origin. The case of Syrian refugees is a good example: Of a population of about 21 million before the outbreak of the war in early 2011, about half had fled their place of residence or even the country by the end of May 2015. About 7.6 million were internally displaced, and four million had sought refuge in neighboring countries. Only a little over 250,000 Syrians had filed an application for asylum in the EU, most of them in Germany and Sweden. Another 50,000 were granted protection through (temporary or permanent) humanitarian admission programs.[11]

Asylum Law, Refugee Policy and Humanitarian Migration in the Federal Republic of Germany

Parallel to the development of an international legal framework regarding refugee protection, a comparatively liberal law regulating the right to asylum was conceived in West Germany immediately after the Second World

Info box: Vietnamese boat people

At the end of the 1970s, the admission of the so-called boat people received much public attention. These were people, predominantly from Vietnam, but also from Laos and Cambodia, who had fled their countries of origin under dramatic circumstances. The term “boat people” refers to people who flee from their countries of origin (or transit countries) to other countries by sea, often in boats that are not seaworthy. From 1978 to 1986, the Federal Republic of Germany admitted about 40,000 Vietnamese refugees, most of whom had fled across the South China Sea. Some of them were brought to Germany in airplanes chartered by the German government, others in ships.[13] The ship “Cap Anamur,” which was hired by an association exclusively founded for this purpose, rescued more than 10,000 refugees. These Vietnamese refugees did not have to undergo an asylum procedure, but were granted a special status as so-called “contingent refugees,” including permanent residence and work permits. The legal basis was the “Law on Measures for Refugees Admitted in the Context of Humanitarian Relief Actions” (Gesetz über Maßnahmen für im Rahmen humanitärer Hilfsaktionen aufgenommene Flüchtlinge, HumHiG), also called “Law on Contingent Refugees.”

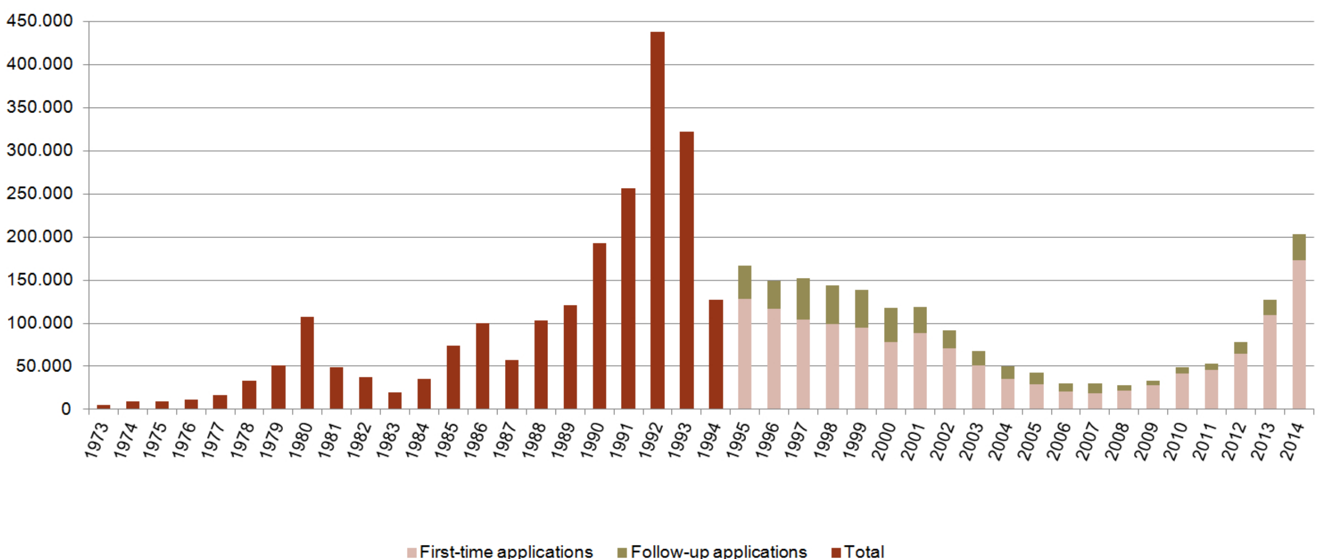
War. By adopting this permissive approach to the right to asylum, the Parliamentary Council (*Parlamentarischer Rat*) wanted to make a deliberate break with the National Socialist past, which had produced millions of deaths, refugees and displaced persons.[12] In 1949, the right to asylum was laid down in the Constitution. Until 1993, Article 16 of the Constitution (*Grundgesetz*) of the Federal Republic of Germany stated, without any further qualification, “Persons persecuted on political grounds shall have the right of asylum.”

Development of Humanitarian Migration to Germany

The war and the immediate post-war period were characterized by large refugee flows in Germany and throughout Europe. Shortly after the war, the German territory hosted nine million displaced persons of 20 different nationalities, survivors of the National Socialist system of labor camps, concentration camps and extermination camps. By 1949, 12.5 million Germans from the eastern territories or the German minority regions in eastern and southeastern Europe had fled or been displaced to the four occupation zones. Between 1949 and the building of the Berlin Wall, 2.7 million people immigrated from the German Democratic Republic (GDR) to the Federal Republic of Germany (FRG).

Until the end of the 1970s, most asylum seekers were political refugees from states of the Eastern bloc, the majority of whom were granted asylum. The number of asylum seekers reached its first peak in the years 1979-1981, when a total of 200,000 asylum applications was filed in the Federal Republic of Germany (see Figure 1). The most prominent causes of flight were the military coup in Turkey and the declaration of martial law in Poland.[14] In the middle of the 1980s, the number of asylum claims rose significantly once again. In this period, many asylum seekers were Tamils from Sri Lanka or Kurds from Turkey, Iran and Iraq. In the 1980s, rising numbers of applications for asylum sparked debates on the alleged abuse of the asylum law by “economic refugees.”

Figure 1: Asylum applications in Germany, 1973 - 2014



Source: BAMF (2015b).

Info box: Jewish “contingent refugees”

A special group of immigrants that has been admitted on humanitarian grounds in Germany since the early 1990s are Jewish “contingent refugees” from the former Soviet Union. Their admission is based on decisions made by the East German parliament (*Volkskammer*) and Council of Ministers (*Ministerrat*) shortly before the reunification of Germany, stating that “persecuted Jews are to be granted asylum in the GDR.” On 9 January 1991, the Conference of Ministers of the Interior decided that the Law on Contingent Refugees (*Kontingentflüchtlingsgesetz*) would also apply to this group of immigrants. Admission is granted on a case-by-case basis, without numerical or temporal limitations, and those admitted are granted a status similar to that of persons entitled to asylum. By the end of 2013, around 215,000 Jewish contingent refugees had come to Germany.[17]

Starting towards the end of the 1970s, federal and state governments tried to curb the number of asylum claims and reduce the growing backlog through control measures and laws introducing accelerated procedures. Appealing against negative decisions on asylum was made more difficult, a visa requirement was introduced for some countries of origin, applicants were no longer allowed to work during the first twelve months of an asylum procedure, and social benefits were cut, following the principle of benefits in kind. Further measures aimed at making the Federal Republic of Germany a less attractive destination for asylum seekers were collective accommodation and the introduction of residency restrictions (*Residenzpflicht*). Despite all this, the number of asylum claims skyrocketed from 1988 onwards, with 103,100 asylum applications filed in that year alone. The recognition rate, however, sank to under 10 percent due to a more restrictive interpretation of existing laws. Yet many rejected asylum seekers remained in the country, and a considerable number of refugees stayed without filing an application for asylum at all, because the international human rights obligations of the Federal Republic of Germany or their lack of identity documents made their deportation impossible (so-called de facto refugees). This discrepancy fuelled political controversy over asylum policy.[15]

After the opening of the Iron Curtain, the number of asylum claims rose even further and reached its all-time peak in 1992, when 438,200 applications for asylum were filed. At the time, three quarters of all asylum applications registered in the EU were lodged in Germany. At the beginning of the 1990s, a particularly large number of refugees came from Romania and Yugoslavia.

From crumbling Yugoslavia alone, about 350,000 civil war refugees fled to Germany, not least because of existing networks with migrants who had come to Germany as temporary labor migrants (*Gastarbeiter*) in the 1960s and 1970s. Some of them claimed asylum; the majority, however, received a temporary leave to remain (tolerated stay).[16] The large-scale remigration of ethnic German emigrants, called *Aussiedler*, further fuelled the increasingly fierce political debate on asylum. The early 1990s saw a rising number of violent racist attacks (e.g. in Solingen, Mölln, Hoyerswerda, Rostock-Lichtenhagen) with numerous casualties, both in the old and the new *Länder*.

Restriction of the Constitutional Promise of Protection: the “Asylum Compromise”

Against the backdrop of these fierce debates and developments, the Social Democrats (SPD), the Free Democrats (FDP) and the Christian Democratic parties (CDU/CSU) agreed, at the beginning of December 1992, on a radical and restrictive reform of the German asylum law, known as the “asylum compromise” (*Asylkompromiss*). Since the middle of the 1980s, representatives of the CDU and the CSU had been pushing for restrictions to the broad right of asylum laid down in the German Constitution. But the SPD and FDP had withheld approval, so the two-thirds majority required to amend the Constitution could not be reached. On 6 December 1992 an all-party compromise finally led to the required constitution-amending majority, and a few months later the right of asylum was significantly curbed by decision

Info box: Safe third countries and safe countries of origin

According to German law, safe third countries are states which guarantee humanitarian protection in accordance with the Geneva Refugee Convention and the European Convention on Human Rights. Asylum seekers can be sent back to these countries without their application for asylum being reviewed by German authorities (Article 26a of the Asylum Procedure Act/AsylVfG). Besides the EU Member States, Norway and Switzerland are also currently considered safe third countries. Since Germany is surrounded by safe third countries, people seeking protection have to travel to Germany by air or sea, or cross the land border illegally.

Safe countries of origin are states where there is assumed to be no risk of political persecution, or of inhuman or humiliating punishment or treatment (Article 29a AsylVfG). Safe countries of origin are currently (as of March 2015) all EU Member States as well as Ghana, Senegal, Serbia, Macedonia, and Bosnia and Herzegovina. Asylum applicants from these countries undergo a simplified and accelerated asylum procedure with limited opportunities to appeal. The German *Bundestag* and *Bundesrat* (Federal Council, upper house of parliament) may decide which countries are added to, or removed from the list of safe countries of origin.

of the German *Bundestag* (lower house of parliament). In particular, the introduction of the concepts of "safe third countries" and "safe countries of origin" made it much more difficult to claim asylum in Germany (see info box on safe third countries and safe countries of origin). The asylum compromise also introduced the so-called airport procedure (*Flughafenverfahren*), an expedited mechanism allowing for asylum claims to be processed in the transit area of airports (Article 18a of the Asylum Procedure Act/AsylVfG). Furthermore, the adoption of the Asylum-Seekers' Benefits Act (*Asylbewerberleistungsgesetz*) created a separate social security system for asylum seekers, with a significantly lower level of benefits.[18]

On 1 July 1993, the restrictions on the right to asylum entered into force. In the second half of 1993, the number of new asylum applications dropped significantly. It remained on an annual level of over 100,000 for some years, then declined continuously as various conflicts in Europe ended, reaching its low point in 2007. These years saw a significant decrease not only in the absolute number of asylum claims filed in Germany, but also in Germany's share of all the asylum applications registered in the EU. In 1992, Germany had processed over 70 percent of all asylum applications filed in the European Community (EC), in 2000 it was just 20 percent.[19] Now, other European states hosted many more asylum seekers than Germany, which was also a repercussion of the German asylum compromise. At the same time, the German government succeeded to incorporate some of the main components of the restrictive German asylum law into European Community law. Thus, ever since the middle of the 1990s, asylum policy increasingly underwent a process of Europeanization.

Flight and Asylum as a Europeanized Policy Area: Achievements and Harmonization Goals

Within the European Union, it was only at a comparatively late stage that refugee policy issues became subject to integration efforts. The need for common European regulations only became obvious after Germany, France and the Benelux countries had signed the "Schengen Agreement" of 1985, to gradually abolish border controls on the movement of persons, and after the Heads of State and Government of the then twelve EC Member States had signed the Single European Act one year later, agreeing to the completion of a single European market. Henceforth, the abolition of border checks would allow asylum seekers to travel unobstructed from one Member State to another in order to claim asylum there.

Development of the Legal Framework

The Schengen Agreement, which was later integrated into the Community acquis, provided not only for the removal of internal border controls, but also for a harmonization of the regulations for granting visas. To minimize the potential security risks arising from the removal of internal border controls, the "Schengen States" agreed on better control of the external borders of the Community. The 1990 Convention Implementing the Schengen Agreement (CISA or "Schengen II") marked the starting point for a joint policy of immigration control,[20] which included among its key components regulations for dealing with refugees and asylum seekers. The "Dublin Convention" of 1990 provided the foundation for this, establishing regulations to determine which Member State would be responsible for processing an asylum application.[21] These stipulated that the responsibility for examining an application for protection, and for providing accommodation, lay with the Member State that had played the most important role in the asylum seeker's entry into Europe – for example if the applicant had travelled to close relatives already living in the country, or if he had been issued a visa or residence permit by this state. On the one hand, this was meant to ensure that only one state was responsible for any given asylum seeker, and to avoid the phenomenon of "refugees in orbit" – people living in the European Community with no official status, and with no state taking responsibility for looking after them and processing their applications for asylum. On the other hand, the aim was to make sure that each application for protection would receive only one substantive examination, so as to discourage "asylum shopping" – the submission of repeated or simultaneous applications in different Member States.

It was particularly states such as Germany and France which, in the 1990s, insisted on the defining of responsibilities in accordance with the Dublin Convention, since they feared that their high standards of protection and accommodation would make them a "reserve country of asylum" (*Reserveasylland*) within the Community, in which the majority of asylum seekers would apply for asylum, or in which economically motivated migrants with no history of acute persecution would also try their luck.[22] In addition to this, Germany successfully campaigned on a European level for restrictive instruments such as the specification of "safe countries of origin" or "safe third countries", or accelerated procedures in the case of "manifestly unfounded asylum applications".[23] The Dublin Convention came into force on 1 September 1997, and has applied to all EU Member States since 1 January 1998. Since then, the state responsible for the asylum process is, in most cases, the state which an asylum seeker first entered, or where he or she can be proven to have first stayed.

With the Treaty of Amsterdam, also signed in 1997, the Member States formally agreed on the development of a common asylum and migration policy, as a step towards creating an *area of freedom, security and justice*. Since the Treaty came into force on 1 May 1999, the regulation of asylum and refugee policy issues has been one of the "communitized" areas of policy. The EC treaty included the obligation to comply with important international agreements, including the Geneva Refugee Convention and the European Convention on the Protection of Human Rights and Fundamental Freedoms. The aim was to create, within five years, minimum standards

in EU refugee policy, both for the reception of asylum seekers and for legal recognition and the implementation of asylum procedures; the treaty also provided for the further development of the Dublin Convention and the creation of a legal basis for the reception of displaced persons or other groups of people in need of protection.

At a special meeting of the European Council in Tampere in October 1999, the first concrete steps were taken towards the goal of creating a Common European Asylum System (CEAS), based on the "full and inclusive application of the Geneva Convention". The Commission was charged with drafting relevant directives. At the same time, the decisions of the European Council envisaged, in the longer term, the creation of common asylum procedures and a uniform status, valid throughout the Union, for those granted asylum.[24] In terms of European integration, the decisions made sense in several respects. On the one hand, they conformed to the logic of seeing the united Europe as one domestic area with as much opportunity as possible for the free movement of persons. On the other hand, the planned minimum standards offered the prospect of a tangible improvement in the legal situation of asylum seekers in many EU States.

Another important step for European asylum law was the work of the Convention on Fundamental Rights, which explicitly incorporated the right to asylum in accordance with the Geneva Convention of 1951 and the Protocol of 1967 into the EU Charter of Fundamental Rights (Art. 18). This was proclaimed at the Nice Intergovernmental Conference in December 2000, and came into force with the Treaty of Lisbon in December 2009 – which gave it a kind of constitutional status.

Despite the fact that the Tampere agreements proved to be too ambitious, and there were delays in their implementation (not least due to the terrorist attacks of 11 September 2001 and the ensuing discourse on security), four key legal instruments of the CEAS had been decided on by 2005. These still constitute the axes of the common asylum policy (see Table 1). They are:

1. the "Qualification Directive", which sets minimum standards for the recognition of asylum seekers and for the rights of recognized refugees and persons with subsidiary protection status;

2. the "Reception Conditions Directive", which defines standards for social conditions of reception, accommodation and care;

3. the "Asylum Procedures Directive", which aims at standardizing the implementation of asylum procedures, and

4. the Dublin II Regulation, which superseded the Dublin Convention.

In addition to this, the so-called Eurodac Regulation stipulated that the fingerprints of all asylum seekers would be recorded when they made their application, and would then be available to the asylum authorities of the Member States, together with other data, in an EU-wide database. The Eurodac system is meant to facilitate to determine which state is responsible for the asylum procedure. On 8 August 2001, an additional directive on temporary protection (also known as the Mass Influx Directive) came into force. After the refugee crises caused by the civil wars in the former Yugoslavia, the EU wanted to establish a joint mechanism for the prompt admission of civil war refugees and displaced persons in similar crises. The aim was to fix a specific admission quota for each Member State. The directive, however, contained only an agreement on minimum standards for temporary admission. In other respects the principle of voluntary action remained intact, and Member States are still free to determine their own capacity to receive refugees.[25]

In the EU's five-year home affairs program for the years 2005 to 2010 (the Hague Program), the main policies agreed on (besides the CEAS) were measures related to security and defense, such as more intensive efforts to combat irregular migration. Since 2008 the EU has agreed on a common policy on deportation and for the use of coercive measures and (re-)entry bans, as set out in the "Return Directive".[26] These policies aimed in part at rejected asylum seekers who have remained in the EU illegally. In October 2004 the European border protection agency Frontex was established by order of the Council; since then it has centrally coordinated the surveillance of the EU's external borders from its headquarters in Warsaw.[27]

The Long Road to a Common European Asylum System

The first harmonization phase of the common asylum law (CEAS I) between 2000 and 2007 laid important foundations, but was unable to resolve central challenges. Many of the requirements and minimum standards were too vague, and in some cases the Member States deliberately failed to meet them. The main problems continued to be the substantial differences between the national recognition rates, and the inadequate accommodation and procedural standards in some EU Member States, such as Greece, Italy or Cyprus. Against this background, the European Commission issued a Green Paper in 2007, with concrete proposals for the further development of the European asylum system.[28] The core objectives were further harmonization and improvement of protection standards, the creation of a support office for asylum issues (see info box), and greater solidarity between EU States and towards third countries when it came to admitting refugees. In 2009 these priorities were adopted by the European Council in the "European Pact on Immigration and Asylum", and in the five-year justice and home affairs program for the years 2010 to 2014 (Stockholm Program).

The negotiations over the reform package were lengthy, but eventually led to the amendment of the relevant legal foundations between 2011 and 2013 (CEAS II). These must be transposed into national law by the middle of 2015. In particular, the revision of the Qualification Directive led to an improvement in the material protection of refugees. Moreover, the conditions are now

Table 1: Central legal acts of the Common European Asylum System (CEAS)

Legal act	In force since/ date of imple-mentation	Recast of legal act	In force since/ date of imple-mentation	Key provisions of legal act
Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for deter-mining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national	3-17-2003	Regulation (EU) No 604/2013 of 26 June 2013	7-19-2013	Responsibility of examining asylum application lies with MS which played the greatest part in the applicant's entry into the EU (issuance of visa or residence permit, first-time identification), usually transfer to this MS; other criteria are consid-ered (unaccompanied minors/best interests of the child, family ties, people in need of special protection); compulsory personal interview; possibility of appeals against transfer; legal assistance free of charge; detention only in case of risk of abscond-ing; legal clarity on transfer procedures between MS
Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the estab-lishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention	12-15-2000	Regulation (EU) No 604/2013 of 26 June 2013	7-20-2015	Basis for EU asylum fingerprint database; regulation of operational responsibility: agency for the operational management of large-scale IT systems; taking of finger prints and information on gender of applicant as well as place and date of applica-tion for asylum; transmission of these data and an identification number within 72 hours to the central unit of Eurodac (name and address are not transmitted); de-termination of circle of users: asylum authorities in MS, Europol, in special cases: selected national police forces; deletion of stored data after ten years
Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers	2-6-2005	Directive 2013/33/EU of 26 June 2013	7-20-2015	Ensures that asylum seekers have access to housing, food, healthcare (medical treatment and psychological support); higher standards for vulnerable persons; access to employment must be granted within maximum period of nine months; establishes detailed common rules on detention of asylum seekers: identification, preservation of evidence, decision on right of entry, late submission of asylum ap-plication, reasons of national security or public order, ensuring of Dublin transfer
Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualifi-cation and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted	10-10-2006	Directive 2011/95/EU of 13 Decem-ber 2011	12-21-2013	Guarantees principle of *non-refoulement* (obligation established by Geneva Refu-gee Convention and its additional Protocol); establishes standards for granting refugee status and subsidiary protection as well as rights connected to refugee status; especially determination of grounds for granting international protec-tion: (danger of) persecution or serious unjustified harm emanating from States, parties or organizations, non-State actors (if State does not provide protection); persecution must be severe (severe violation of human rights or accumulation of several, less severe human rights violations); forms of persecution, e.g.: physical, psychological or sexual violence, discrimination by state actors, disproportionate criminal prosecution/punishment, denial of means of judicial redress, gender-relat-ed discrimination; largely equal level of rights of recipients of subsidiary protection and recognized refugees (e.g. access to employment, health care and integration measures)
Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status	12-1-2007	Directive 2013/32/EU of 26 June 2013	7-20-2015	Access of asylum seekers to efficient asylum procedures and legal remedy/possi-bilities of appeal; right to personal interview with support of translator if necessary; written, accessible interview report; UNHCR has access to applicants; individual and objective examination of asylum claim based on up-to-date information on ap-plicant's country of origin; in the procedure not only the applicant's right to refugee status but also to subsidiary protection must be evaluated; unaccompanied minors have competent representative; in case of entry via safe third country no require-ment to examine asylum application; MS may establish regulations on "manifestly unfounded applications", a list of safe third countries, and accelerated procedures at their borders ("airport procedure"); length of examination procedure: six months

MS = (EU) Member State(s)
Source: Authors' own compilation on the basis of the legal acts, FRA/Council of Europe (2014), COM (2014).

in place for more uniform standards of accommodation and asylum procedures (see Table 1).

In the process of harmonization, it is not only the Member States who have obligations to fulfill. If there is actually to be a unitary asylum standard in the EU, vital coordinating work needs to be done, especially by the Commission and the European Asylum Support Office (EASO). At present, there is still a huge gap between the aspiration to a common asylum system and the reality, with individual Member States repeatedly violating the principle of *non-refoulement* and other provisions of international humanitarian law.[30] Seminal court rulings in the last few years have helped to frame the sometimes vague political guidelines in more precise terms, and have shown that there is as yet no coherent application of the CEAS standards. Both the European Court of Human Rights (ECHR) and the European Court of Justice (ECJ) have made decisions that are of central importance for the EU as a common asylum area, and especially for the Dublin system.[31] These judgments have strengthened the rights of refugees, especially with regard to their accommodation and the quality of asylum procedures.

In January 2011, in the case of an Afghan citizen (M.S.S. against Belgium and Greece), the ECHR ruled that asylum seekers may not be returned to countries – even within the EU – in which they face the threat of inhumane or degrading treatment (Art. 3 European Convention on Human Rights/ECHR). The applicant had been transferred from Belgium to Greece, in accordance with the Dublin Regulation, because that was where his fingerprints had first been recorded. His accommodation proved to be inhumane in terms of Art. 3 of the ECHR, and in breach of the provisions of the EU Reception Conditions Directive.[32] This was followed in December 2011 by a landmark decision by the ECJ, which determined that an asylum seeker may not be transferred to a Member State if the respective asylum system displays "systemic deficiencies".[33] Since the judgment of January 2011, asylum seekers are no longer transferred from Germany to Greece.

With regard to the Italian asylum system, there is evidence that it fails to guarantee conditions of reception that are compliant with Community directives, and there is still disagreement over whether this system also has "systemic deficiencies". Despite numerous temporary injunctions against transfers to Italy, this question has so far been negated by the courts. In a judgment from November 2014 (Tarakhel vs. Switzerland), however, the ECHR decided that families may only be transferred to Italy if the Member State returning them receives assurances for every individual case that adequate accommodation will be provided in accordance with the Reception Conditions Directive.[34]

Another important decision strengthening the rights of refugees in the EU was a judgment of the ECHR in February 2012 (Hirsi Jamaa et al. vs. Italy). This extended the scope of the European Convention on Human Rights to the high seas, and thus obliged EU States to allow asylum applications from people picked up in international waters by ships bearing the flag of an EU State.

The revision of the common asylum regulations in the second CEAS phase, and the different precedent-setting decisions of the highest European courts, have laid the foundations for a European system of protection. However, this system still has numerous gaps, shortcomings and dysfunctionalities – not least because the directives have not yet been implemented in all the Member States, and no answers have yet been found for central questions (see "Current and Future Challenges"). Further efforts at harmonization are needed in order to find joint EU solutions to the challenges associated with rising refugee numbers. These challenges are particularly obvious in Germany.

Info Box: The European Asylum Support Office (EASO)

The European Asylum Support Office (EASO), based in Valetta (Malta), is intended to contribute to better implementation of the CEAS – mainly by promoting the exchange of information and practical collaboration on asylum issues within the EU, and by providing organizational support for those Member States whose asylum system is overburdened. In concrete terms, the office systematically gathers information about the situation in the countries of origin of asylum seekers, promotes relocation measures (i.e. the relocation of recognized refugees from overburdened EU States to other Member States), and organizes asylum-related training for the staff of government agencies. It also dispatches asylum support teams to states whose asylum systems are overburdened, and plans their work. EASO collaborates closely with the asylum authorities in the Member States and with the Commission, but is independent. The annual budget has risen from less than five million euros (up to and including 2012) to around 15 million euros (for 2015). EASO has around 80 staff, and is headed by an executive director. Every year, the office produces a report on the asylum situation in the Union.[29] As a relatively young institution, EASO is still in the consolidation phase, and needs to be gradually strengthened - both ideally as well as in terms of staff - in order to effectively fulfill its mandate.

Current Developments in Germany

Rising Number of Asylum Applications

Since its low point in 2007, when only about 20,000 first-time applications were registered, the number of asylum claims has been rising steadily. In 2014, more than 173,000 first-time applications for asylum were filed, a number last recorded in 1993. Germany has therefore regained its place as one of the main destinations for asylum seekers, in comparison to other industrial states

Info box: Why do asylum seekers come to Germany?

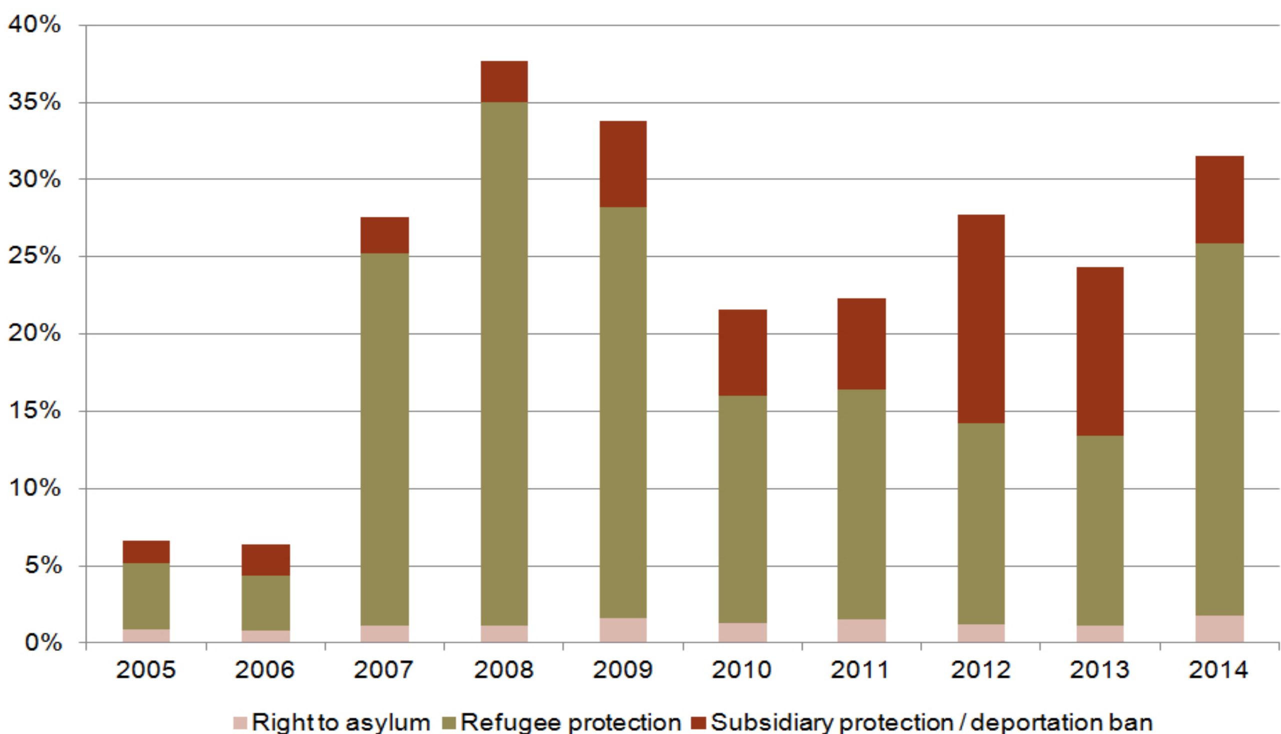
In 2014, 600,000 asylum applications were filed in the EU, one third of them in Germany. A question regularly raised in public debate is why people are increasingly choosing to seek protection in Germany, and not in other European states with a more appealing geographic location. In many arguments, this is solely attributed to the comparatively high social security benefits for refugees in Germany. Numerous studies on the choice of destination have shown, however, that this is a very narrow and one-sided view, which does not take the complexity of such decisions into account. It is true that the country's prosperity and the level of social security benefits play a role in the choice of destination, yet these aspects are not more important than other factors, such as the level of protection and accommodation standards. In fact, it is existing social networks that are of paramount importance with regard to destination choice. This may explain the huge divergence in refugees' countries of origin that can be observed when comparing the refugee population in different EU Member States. For example, Germany receives many asylum claims from Afghans, Syrians and citizens of West Balkan countries because there are already larger communities of these groups in Germany than in other European states.[36]

internationally and in the EU. Together with the USA, Germany recorded by far the highest absolute number of asylum claims in the period 2010 to 2014, with more than 400,000 initial applications filed in each of the two countries.[35] When it comes to the number of asylum applications in relation to population size, Germany is in the upper mid-range of industrial states.

High Recognition Rates

In public debate, special attention is attributed to recognition rates, that is, the share of positive asylum decisions measured against all decisions taken on asylum claims. Low recognition rates are sometimes regarded as an indication of asylum seekers' non-existent need for protection, or of alleged asylum abuse in order to claim social benefits. In fact, recognition rates have to be looked at carefully. Low recognition rates – the media sometimes misleadingly only reports refugee recognition in accordance with Article 16a of the German Constitution – may be a result of a state's restrictive approach to granting asylum. A useful indicator is therefore the "gross recognition rate" (*Gesamtschutzquote*), which encompasses all forms of protection (right to asylum in accordance with Article 16a of German Basic Law, Geneva Convention refugees, subsidiary protection). In 2014, the "gross recognition rate" was at 31.5 percent, equal to the average of the last eight years (see Figure 2).

Figure 2: Recognition rates, 2005-2014



Source: BAMF (2015b).

The significant rise in recognition rates since 2007 is the result of the implementation of the EU Qualification Directive, according to which non-State persecution has to be recognized more strongly as a reason for granting protection. In fact, the level of recognition is even higher if so-called “formal decisions” are excluded. These are decisions made without closer examination as to the content of the asylum application, e.g. because, according to the Dublin Regulation, another EU Member State is responsible for processing the application. In 2014, the so-called “adjusted gross recognition rate” was 48.5 percent. The actual recognition rate is even higher because some court appeals against negative asylum decisions by the Federal Office for Migration and Refugees (BAMF) are successful. So far, the rise in the number of asylum seekers has not led to a decreasing level of recognition.

Resettlement Program

In the past, the Federal Republic of Germany has occasionally been involved in the resettlement of refugees, for example in the case of Vietnamese boat people, or the admission of 2,500 Iraqi refugees from Syria and Jordan in 2009 and 2010, within the framework of EU-wide coordinated action.[37] However, it is only since 2012 that Germany has offered a regular resettlement program with a fixed annual number of resettlement places. The program was adopted by decision of the Standing Conference of Ministers of the Interior of the *Länder*. In an initial pilot phase from 2012 to 2014, 300 refugees were accepted annually within the framework of the UNHCR resettlement program. In their coalition agreement for the 18th legislative period, the CDU, CSU and SPD agreed on consolidating the resettlement procedure and making more admission places available. So far, the number of resettlement places has only risen slightly: 500 are available in 2015.

Temporary Admission Programs

In reaction to the Syrian refugee crisis, Germany was one of the few European states to launch large-scale humanitarian programs for the temporary admission of Syrian refugees, complementary to the regular asylum procedure. In May 2013, the first federal program for the reception of 5,000 refugees was set up; in December 2013, the federal government agreed to accept another 5,000 Syrian refugees, and in June 2014 it decided to enlarge the program once again and make another 10,000 places available. Refugees accepted in the framework of this program come to Germany from Syria’s neighboring countries (especially from Lebanon) without having to undergo the regular asylum procedure. They are initially granted a two-year residence permit and are immediately entitled to work. In addition to the federal program, 15 *Länder* (with the exception of Bavaria) drafted admission decrees, allowing Syrians already living in Germany to bring their relatives to Germany, on the condition that they pay for the costs of accommodation and living. It was these obligations, however, that proved to be too high a hurdle for many families. Additionally, refugee organizations criticized the fact that the admission programs were agreed upon too late and implemented too slowly to provide effective relief.

New Controversies

The significant rise in the number of asylum claims since 2010 has reignited the debate on asylum and refugee protection. Municipalities in Germany are confronted with huge challenges regarding the accommodation of refugees. At the same time, the Federal Office for Migration and Refugees did not have sufficient staff to process the asylum applications, so the backlog has grown – even though the current government parties pledged to reduce the length of asylum procedures to three months in their coalition agreement of 2013.

In particular, the large number of asylum applications filed by Serbians, Macedonians and citizens of Bosnia and Herzegovina have fuelled a new debate on “asylum abuse,” in light of the low recognition rates for their asylum claims (2014: <0.5 percent). After the abolition of the visa requirement for citizens of these countries in December 2009, and an increase in social benefits following a verdict of the German Constitutional Court of July 2012, the number of asylum applications escalated. As a result of the coalition negotiations in the fall of 2013, Serbia, Macedonia, and Bosnia and Herzegovina were added to the list of safe countries of origin. This legal measure entered into force at the beginning of November 2014. In exchange for this, Parliament passed a legislative package in September 2014, reducing the ban on work for asylum seekers from nine to three months and making residence requirements less restrictive, along with other provisions. Until then, the so-called *Residenzpflicht* had obliged asylum seekers to stay in the administrative district of the reception center in which they were accommodated, only allowing them to leave this territory in exceptional cases and on the basis of a formal request.

At the beginning of 2015, the Federal Office for Migration and Refugees registered rising numbers of asylum applications lodged by citizens of Kosovo, which, so far, has not been declared a “safe country of origin”. However, only very few Kosovars were granted some form of humanitarian protection. Since February 2015 their applications are examined in an expedited procedure, generally within two or three weeks. In combination with very low recognition rates and information campaigns in Kosovo this measure has led to a significant drop in asylum claims of Kosovars.

The local municipalities respond to the challenges of receiving refugees in different ways. In many places, the population shows huge solidarity and provides support for refugees. Elsewhere, however, citizens’ movements react to the establishment of new refugee accommodation in a skeptical or even hostile manner. In this context, numerous protests against the reception of asylum seekers have been initiated or exploited by radical right-wing actors such as the National Democratic Party of Germany (NPD). So far, nevertheless, solidarity and

the willingness to take in refugees have prevailed within the population, and the current situation is different to the one at the beginning of the 1990s. According to a study published in 2014, 24 percent of Germany's population stated that they would support citizens' initiatives against the establishment of refugee shelters; in 1992, 37 percent of the population shared that attitude. In the same period, the share of those who explicitly said they would not vote against the erection of shelters for asylum seekers increased from 41 percent to 51 percent of the population.[38]

Current and Future Challenges - the EU's Common Responsibility

The admission and reception of asylum seekers will remain a central political challenge in Germany. For 2015, the Federal Office for Migration and Refugees expects to receive 450,000 asylum applications.[39] But the number of asylum claims is high in other EU Member States as well. In view of continuing conflicts at the margins of Europe, the number of people forced to leave their country of origin will probably remain high or rise even further. Germany's challenges are, at the same time, challenges for the EU, because there is a growing need for common European solutions in the current refugee crisis. Against this backdrop, the interests of the individual nation-states (which lead to efforts to attract "profitable" immigration, e.g. skilled labor migration) should take second place to the recognition of international and humanitarian responsibility. So far, it is less developed countries, located in the geographical neighborhood of crisis-torn states, that host by far the largest number of refugees. In addition to the individual right of asylum, Germany and the EU should therefore extend programs for the direct and collective admission of refugees, both temporarily and permanently. This mission raises a number of critical questions, which have yet to be resolved, e.g. about the fair distribution of asylum seekers, burden-sharing, and solidarity among Member States.

Currently, the major common European challenge regarding questions of asylum and refugee policy continues to be the comprehensive implementation of standards laid down in EU law, in the Geneva Refugee Convention, and the European Convention on Human Rights, in order to guarantee effective humanitarian protection in all Member States. In this respect, both the individual Member States and the EU as a whole have a great deal of responsibility for international refugees seeking protection. In this context, the Common European Asylum System II is a step in the right direction, because it promises to raise protection standards in those EU countries where they have previously been low.[40] At the same time, the growing number of migrants who perish while trying to reach Europe by crossing the Mediterranean Sea discredit the European asylum and refugee protection system. According to calculations by the International Organization for Migration (IOM), more than 22,400 people have already died in their attempt to cross the Mediterranean since 2000, more than 3,000 in 2014 alone (this constitutes 75 percent of all migrant deaths at worldwide maritime borders).[41] IOM data suggests that in the first four months of 2015 about 1,800 people have drowned in the Mediterranean in their attempt to reach Europe. On 18 April alone, around 800 migrants and refugees died when their overcrowded vessel capsized off the Libyan coast.

Search and Rescue Operations in the Mediterranean

After the maritime disaster near Lampedusa on 3 October 2013, in which more than 350 people lost their lives trying to reach Europe from the Libyan coast, the Italian government initiated the humanitarian sea rescue operation "Mare Nostrum." For almost one year the Italian navy patrolled most of the southern Mediterranean and rescued more than 100,000 people, according to their own information.[42] Contrary to Italy's request, the EU contributed only a small, symbolic amount of money to cover the expenses of the operation, which amounted to nine to ten million euros per month. Mare Nostrum ended in November 2014, and the EU set up a new border control operation in the Mediterranean Sea to replace it. Called "Triton," it is coordinated by the European border management agency Frontex. Triton is the most expensive and personnel-intensive operation in the history of Frontex, involving 21 Member States, 65 employees, a monthly budget of 2.9 million euros, and the appropriate equipment. Nevertheless, it cannot replace Mare Nostrum, because border control remains the operation's focal point, and its humanitarian component is weaker.[43] Therefore, a central dilemma continues to exist for the EU: On the one hand, it wants to fulfill its humanitarian obligations by rescuing shipwrecked persons. On the other hand, the prevention of illegal entries continues to be of paramount importance. In fact, the rescuing mandate remains subordinate, because the primary function of Frontex is to secure the EU's borders.[44]

Access to Refugee Protection in the EU

The EU Charter of Fundamental Rights guarantees the right to humanitarian refugee protection. In the common asylum legislation, however, there is no mechanism that facilitates entry to EU territory for asylum seekers. Instead, the general visa provisions apply to asylum seekers as well. People seeking protection originate predominantly from countries whose citizens need a visa to enter the EU. Often, however, they do not meet the prerequisites to be issued a visa. Therefore, they have to try to enter EU territory illegally, and often risk their lives in doing so (see section on search and rescue operations). Increased controls of the EU's external borders have aggravated this problem. A central challenge for the EU therefore lies in offering people who seek refuge safe access to humanitarian protection in Europe, including but not limited to the individual right of asylum.[45] Especially with regard to the Syrian refugee crisis, it seems necessary to create a temporary collective protection procedure at the EU level for the joint and coordinated admission of refugees.[46] Yet the majority of Member States lack

the willingness to create such a status, and provide no avenues for protected entry for persons individually applying for asylum.

Such protected entry procedures, which would allow people to claim asylum in an embassy, or apply for a humanitarian visa, involve some risks, however: Officials working in consulates and embassies would need to conduct a sort of preliminary examination of the applicant's right to asylum, without being trained to do this. It also remains unclear how politically persecuted persons could effectively get access to legal counsel and support. Particularly in times of large numbers of asylum claims, there is hardly any realistic chance that these approaches will be implemented.[47]

The coming years will reveal to what extent the EU is able to substantially extend the common resettlement program, which is coordinated in cooperation with UNHCR and aims at resettling recognized refugees living in overburdened third states to the EU. From 2010 to 2014, only about 5,000 resettlement places were offered EU-wide per annum, 90 percent of these by Member States that already have long-standing resettlement programs as a central instrument of refugee protection (UK, Sweden, the Netherlands, Finland, Denmark).[48] The European Agenda on Migration, adopted in May 2015, proposes the establishment of an EU-wide resettlement scheme which offers 20,000 places to "people in clear need of international protection". However, it is still not certain that all Member States will agree to such a measure.

Mutual Recognition of Asylum Decisions

The Common European Asylum System II provides a solid platform for the harmonization of asylum decision-making, accommodation and procedural standards. So far, however, EU Member States have made virtually no progress in the mutual recognition of residence permits: Persons entitled to either asylum or subsidiary protection may only reside in the country that granted protection. There is no mechanism for the mutual recognition of national decisions on asylum (and thus no mechanism for transferring the responsibility to protect) if a person granted some form of protection settles in another Member State. In accordance with the EU Qualification Directive, they can be issued an EU-wide permanent residence permit only after five years of residence,[49] and only under conditions which many find hard to meet (e.g. supporting themselves without recourse to public funds, having sufficient health insurance cover).

Fairness and Solidarity among Member States

Another challenge lies in the lack of intra-European solidarity when it comes to taking the necessary responsibility that a large number of people seeking protection implies. In fact, the Commission, Council and Parliament, referring to the principle of solidarity laid down in the EU Treaties, have repeatedly advocated a common asylum system that adheres to this principle.[50] However, in accordance with the reformed Dublin-III-Regulation, some Member States will continue to be disproportionally affected by refugee migration flows, whereas others hardly register any asylum claims at all.

The Regulation does not provide for mandatory burden and responsibility sharing. There is only an early warning mechanism, which is meant to detect any critical overloading of national asylum systems in advance, and to help deal with this situation in cooperation with the European Asylum Support Office (EASO) (see info box on EASO). When the strategic guidelines for the EU's domestic policy were passed in summer 2014, the EU Council once again stressed the need for European solutions to common challenges, as well as the principle of internal solidarity and fair burden-sharing.[51] This requires agreement on criteria that will determine, at least in theory, fair admission quotas. These will help to guarantee an equal sharing of responsibilities, e.g. through financial compensation for the admission of asylum seekers, similar to that provided since 2014 by the Asylum, Migration and Integration Fund (AMIF), for the resettlement of recognized refugees and their relocation within the EU.[52] The European Agenda on Migration, presented in May 2015, provides for the introduction of a quota system in the framework of which refugees from overburdened Member States at the EU's external borders could be relocated to other Member States. The Commission will draft a legislative proposal for a mandatory and automatically triggered relocation scheme by the end of 2015 which is supposed to "distribute those in clear need of international protection within the EU when a mass influx emerges". Furthermore, a common resettlement scheme is to be established. The idea of such a quota system is not supported by all Member States so that it is still not clear whether it will finally be implemented

Legal Migration, Foreign Policy and Development Cooperation

A decisive factor for future European asylum policy will be the extent to which the EU can take pressure off Member States' asylum systems, and initiate additional political measures to better differentiate between people seeking protection and other migrants. In this context, the eradication of causes of flight presents the most complex challenge. A promising approach is so-called mobility partnerships, agreement-based cooperations with selected third countries, which combine the goals of both migration policy and development policy. At best, mobility partnerships lead to a "triple win" situation:

1. Third-country citizens are provided with a legal alternative to an asylum procedure and therefore a chance to temporarily reside in Europe;
2. The countries of origin receive development support in their difficult transition period, with remittances and technology transfer fostering economic growth;
3. Finally, mobility partnerships are an additional instrument to counteract skill shortages in European host countries.

In addition to migration and development-oriented policies, there is also a need for approaches driven by for-

eign, economic and trade policy. This means providing potential migrants with better information about existing legal channels of migration, e.g. for specialists and skilled workers. Better information may prevent illegal, dangerous and (because of the fees paid to smugglers) expensive attempts to enter the EU in order to claim asylum there.

Integrating Immigrants and Utilizing Their Potential

Like all EU States, Germany can expect to continue to be a destination for people seeking protection, and it should prepare for temporarily or even permanently hosting large numbers of refugees. In view of this, it makes sense to offer integration measures (such as language courses and vocational training) early on. It also makes sense to recognize the potential of immigration: aging societies like those of the EU should make greater efforts to utilize and promote the potential, talents and skills of refugees. This is because refugees are generally much younger than the local population, and may help to counteract skill shortages and overall demographic risks, under the condition of their successful integration into society. In this context, a central and ongoing challenge will be to maintain and strengthen the acceptance of refugee admission within the local population.

Notes

[1] Etymological origin: Greek term "ásylon": a place where a persecuted person may not be seized and may find refuge.

[2] Pertinent statements were made in the context of the political debate on adding the Western Balkan countries to the list of safe third countries, see for example "De Maizière warnt vor Asylmissbrauch" ["De Maizière Warns of Asylum Abuse"], FAZ of 8 February 2014; protocol of the 15th session of the Bundestag Committee on Internal Affairs of 23 July 2014, BT-Pl. Pr. 18/46 of 3 July 2014, p. 4180.

[3] "Protracted Situations" are defined as situations in which 25,000 or more refugees of the same nationality have sought asylum in another country for at least five consecutive years (UNHCR 2014b, p.6).

[4] Kluth (2014), pp. 2-3.

[5] Hatton (2012).

[6] This list makes no claim to be exhaustive. In addition, there are other forms of humanitarian protection, e.g. deportation bans for people being forced to leave the country.

[7] For an overview of different forms of protection and the rights they imply, see Parusel (2010).

[8] In accordance with German law, appeals have to be processed at the latest three years after the decision on granting asylum has been made at final instance (Article 73 Paragraph 2a of the Asylum Procedure Act/AsylverfG).

[9] http://www.bamf.de/EN/Migration/AsylFluechtlinge/Subsidiaer/subsidiaer.html?nn=1451242

[10] UNHCR (2014d), p. 9.

[11] Own calculation based on Eurostat data; www.resettlement.eu/news/crisis-syria (accessed: 2 February 2015).

[12] Münz/Seifert/Ulrich (1997), p. 45; Herbert (2014), pp. 89-90.

[13] Kleinschmidt (2013).

[14] Münz/Seifert/Ulrich (1997), p. 46.

[15] Herbert (2003), pp. 264-272; Münch (2014), pp. 78-79.

[16] Bade/Oltmer (2004).

[17] BAMF (2015b), p.114.

[18] At the same time, the "asylum compromise" was a "compromise on immigration": as a result of negotiations, for example, the remigration of ethnic German emigrants (*Aussiedler*) was curtailed and naturalization was made easier (Herbert 2003, pp. 196ff, 318f; Schimany/Luft 2014).

[19] Schimany (2014), p. 51.

[20] Baumann (2014), p. 5.

[21] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (15 June 1990).

[22] Lavenex (2001); Niemann/Lauter (2011), pp. 146f.

[23] Schwarze (2001), pp. 162ff.; Niemann/Lauter (2011). The transfer of these restrictive policies from the fierce asylum debate at the national level to the intergovernmental arena of policy making at the European level has been viewed as proof of the venue-shopping hypothesis (Guiraudon 2000, p. 262; Bulmer 2011). According to this theory, the home-affairs dominated ministerial bureaucracies of the Member States, aiming at restriction and migration control, tend to implement their policy goals at the supranational level, because there they can act beyond parliamentary control or political opposition and are not bound to restrictive judicial interference. Acting at the European level helps to make allies (interior ministers of other states), and eventually allows governments to implement their political aspirations at the national level as well, legitimizing the implementation by referring to multilateral agreements of European institutions.

[24] Presidency Conclusions, Tampere European Council, 15 and 16 October 1999.

[25] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. In addition, a decision of the Council on the existence of a "mass influx", adopted by a qualified majority, is needed in order to activate the directive. This, however, has never been the case since the directive entered into force in August 2001 (not even during the massive influx of Syrian war refugees from 2011 to 2014).

[26]Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals..
[27]Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. For further information see Baumann (2014).
[28]COM (2007) 301 final of June 2007; see also Angenendt/Parkes (2007).
[29]EASO (2014).
[30]Mink (2012).
[31]For detailed information see SVR (2014), pp. 81-83.
[32]Moreno-Lax (2012a), pp. 20ff.
[33]Pelzer (2012).
[34]Thym (2013); ECHR, Grand Chamber, Case of Tarakhel v. Switzerland, Application no. 29217/12.
[35]UNHCR (2014a); UNHCR (2014c)
[36]Scholz (2013); Brekke/Aarset (2009), Nordlund/Pelling (2012), Neumayer (2004); SVR (2014); Baraulina et al. (2007).
[37]Trosien (2011), p. 2.
[38]Robert Bosch Stiftung (2014), pp. 30f.
[39]Die Welt, 20 February 2015.
[40]Bendel (2014), p. 40.
[41]Brian/Laczko (2014), p. 20.
[42]Grote (2014). Some EU Member States, including Germany, argued that the operation “Mare Nostrum” was an important pull factor for human smugglers and irregular immigrants, and served as a “bridge to Europe” (German interior minister de Maizière, Bundestag plenary protocol [Plenarprotokoll] 18/49 of 9 September 2014, p. 4487.
[43]Following the ship disasters of April 2015 in the Mediterranean, the Frontex budget was tripled in order to enhance the rescue capacities.
[44]Basaran (2014); Haarhuis (2013).
[45]Moreno-Lax (2012b).
[46]SVR (2014), p. 89.
[47]Hein/de Donato (2012). The trend is running in the opposite direction: in the last few years, states such as Austria, France, the Netherlands, the United Kingdom and most recently Switzerland, in 2012, have abolished procedures of this kind as the influx of asylum seekers has grown.
[48]Bokshi (2013), pp. 8ff; Eurostat database, resettled persons [migr_asyresa].
[49] Based on the Directive on the status of non-EU nationals who are long-term residents, third-country nationals may be issued a permanent residence permit. See Directive 2011/51/EU of the European Parliament and the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.
[50]COM (2011) 835; Council of the European Union (2012): Council conclusions on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows. Outcome of proceedings of Council (Justice and Home Affairs) on 8 March 2012 (No 7485/12); European Parliament (2012): European Parliament resolution of 11 September 2012 on enhanced intra-EU solidarity in the field of asylum (2012/2032(INI)).
[51]Conclusions of the European Council, session on 26 and 27 June 2014, Brussels (EUCO 79/14).
[52]See the proposal for a model considering multiple factors to determine fair admission quotas in Schneider/Engler/Angenendt (2013), as well as its incorporation into a new institutional mechanism to detect (temporarily) overburdened asylum systems, outlined by the Expert Council of German Foundations on Integration and Migration in SVR (2014), pp. 88f.

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Publishers: Institute for Migration Research and Intercultural Studies (IMIS) of the University of Osnabrück, Neuer Graben 19/21, 49069 Osnabrück, Germany, Phone: +49 (0)541 969 4384, Fax: +49 (0)541 969 4380, Email: imis@uni-osnabrueck.de

German Agency for Civic Education (bpb), Adenauerallee 86, 53113 Bonn, Germany;
with the collaboration of Network Migration in Europe e.V.

Editorial staff: Vera Hanewinkel, Apl. Prof. Dr. Jochen Oltmer (head)
Translation into English: Vera Hanewinkel, Textworks Translations

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