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WHO BEARS RESPONSIBILITY?

MODELS AND PERSPECTIVES OF EUROPEAN REFUGEE POLICY

Katharina Senge

INTRODUCTION

On 3 October 2013, 390 refugees, mainly from Eritrea, drowned when their boat sank only one kilometer short of the Italian Mediterranean island of Lampedusa. Under challenging circumstances, people coming to the rescue in civilian boats only managed to rescue 155 individuals from the water. Images of the rows of coffins evoked a wave of shock and outrage throughout Europe because they provided a graphic illustration of the reality of life and death at Europe's boundaries. The incident turned Lampedusa into a symbol of the estimated 20,000 migrants who have drowned in the Mediterranean over the last 20 years.¹

The tragic events triggered a political debate not only about Europe's responsibility for the fate of the refugees, but also about sharing responsibility across Member States and about concrete political reforms. In Italy, border controls were complemented by the – now terminated – Mare Nostrum campaign, which involved purposeful sea rescue activities penetrating deep into international waters. This was a first response to the ethical dilemma that is inherent in the protection of the external EU borders. Various political actors have also put forward proposals for developing the European migration policy beyond the European

1 | Cf. German Bundestag, Committee on Internal Affairs, "Stellungnahme von Christopher Hein. Zum Antrag 'Das Massensterben an den EU Außengrenzen beenden – Für eine offene, solidarische und humane Flüchtlingspolitik der Europäischen Union', in Vorbereitung der öffentlich Anhörung beim Innenausschuss 2. Juli 2014", Bundestag printed paper 18/288, committee printed paper 18(4)106A, http://bundestag.de/blob/285500/9215a3cbe312d5beb839bfa2e204e494/stellungnahme_01-data.pdf (accessed 26 Jan 2015).

asylum system. These included suggestions on enhancing legal migration routes in order to minimise the number of hazardous journeys migrants embark on.

The question at the center of the debate, however, is how the responsibility for the refugees can be shared more equitably between Member States. The countries at the southern and southeastern boundaries of the EU

The southern EU countries in particular are demanding that the countries of Central and Northern Europe share the burden of taking in and caring for refugees.

in particular are demanding that the countries of Central and Northern Europe share the burden of controlling the borders and of taking in and caring for refugees. Various sides are calling for a distribution by fixed quotas. Other measures, such as providing compensation for the financial burden, are also under discussion. However, there has been no substantial reorientation of the European policy on refugees since the tragedy of Lampedusa. This was not likely to happen either, since the long and difficult process to adopt a Common European Asylum System (CEAS) has only just come to an end, and the Member States have yet to implement it.

That said, the debate has become more animated and the two threads of the discussion – namely the question of how to deal with refugees within the EU on the one hand and ways of preventing (or more realistically curbing) inhumane migration routes on the other – must be continued without being swayed by the latest images. After all, the situation in Europe's neighbouring regions means that it is likely that the current wave of refugees will continue and even grow during 2015.²

This paper focuses on the issue of solidarity within the EU in matters of refugee policy. After an examination of the ethical dilemma that pervades this policy area, a picture

2 | At 436,000, the number of asylum applications filed in the EU-28 in 2013 was the highest on record. The year-on-year increase was 30 per cent; in 2014, the figure rose even further to over 540,000 (although no final figures were available until December). Experts foresee this trend continuing in 2015. Cf. EASO, *2013 Annual Report on the Situation of Asylum in the European Union*, Luxembourg, 2014, <http://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf> (accessed 21 Jan 2015); and for 2014: Eurostat, "Asylum and new asylum applicants – monthly data", <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tps00189&plugin=1> (accessed 21 Jan 2015).

of the development of refugee numbers will be provided before describing three models of EU-internal refugee distribution currently under discussion, namely the existing Dublin System, quota-based distribution as well as the free choice of the country of destination.



Pope Francis in the EU Parliament: In November 2014, the Head of the Catholic Church renewed his plea for political actions regarding the refugee crisis. | Source: Tiberio Barchielli, Filippo Attili, Palazzo Chigi, flickr ©1999.

THE ETHICAL DILEMMA

The fact that people attempting to reach the European Union are paying with their lives in the thousands is a moral scandal. Pope Francis has repeatedly referred to the ethical dilemma and called Lampedusa shameful.³ In a speech held at the European Parliament in November 2014, he called upon politicians to act: "We cannot allow the Mediterranean to become a vast cemetery!"⁴ The images of bodies washed onto the shore or of people who

3 | Quoted from "Lampedusa, papa Francesco: 'E' una vergogna", Repubblica TV, 03 Oct 2013, <http://video.repubblica.it/dossier/lampedusa-strage-di-migranti/lampedusa-papa-francesco-e-una-vergogna/141793/140327> (accessed 26 Jan 2015).

4 | Pope Francis, "Visit of his Holiness Pope Francis to the European Parliament and to the Council of Europe. Address of Pope Francis to the European Parliament", Strasbourg, 25 Nov 2014, http://w2.vatican.va/content/francesco/en/speeches/2014/november/documents/papa-francesco_20141125_strasburgo-parlamento-europeo.html (accessed 21 Jan 2015).

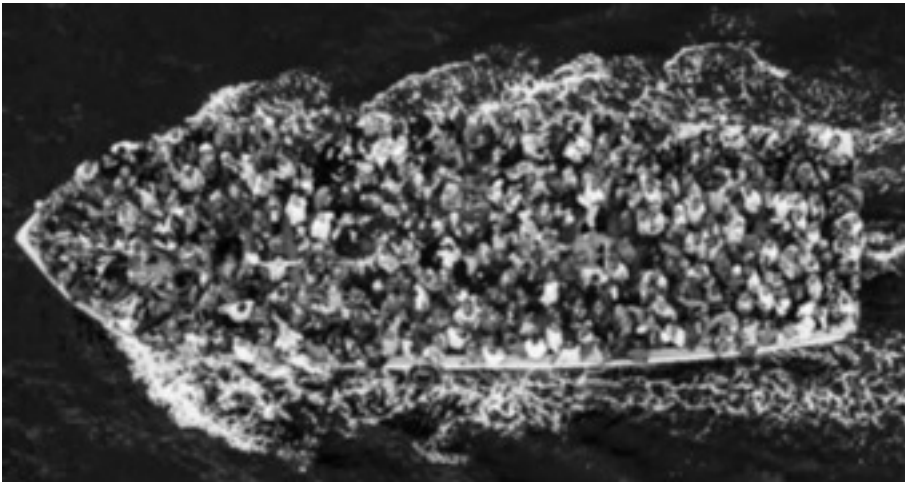
suffocated during the crossing call Europe's credibility and its values into question.

There are two sides to the dilemma. On the one hand, the irregular migration involves both refugees, i.e. individuals who saw themselves forced to leave their country for fear of persecution, and migrants in the usual sense of the word, i.e. individuals who wish to travel to Europe voluntarily in order to pursue a better and safer life for themselves and their families. These two groups are sitting in the same boats and risking their lives. Those belonging to the first group are accepted into the asylum system. Those in the second group either also go through the asylum process, subsequently potentially facing deportation back to their country of origin if they are unsuccessful in obtaining leave to remain by some other legal means, or they live below the official radar upon their arrival without ever being registered. Legal migration is still the best option for all parties involved, the countries of origin and destination and the migrants themselves. However, it is not always possible. According to the Universal Declaration of Human Rights, everyone has the right to leave any country, including his own, and to return to his country, as well as the right to seek and to obtain in other countries asylum from persecution.⁵ However, there is no right to immigrate to any specific country. It is up to sovereign nation states to determine the conditions for migration into their territory. At the same time, Article 33 of the Geneva Refugee Convention, the underlying piece of international law regulating the protection of refugees, prohibits the deportation of individuals to a country in which they are at risk from human rights violations (adherence to the principle of *non-refoulement*). Every refugee is therefore entitled to have his or her case examined on its merits. Since Lampedusa, the responsibility for events at the external EU borders is receiving greater attention and so is therefore the dilemma of border protection versus refugee protection.

According to the Universal Declaration of Human Rights, everyone has the right to leave his own country, and to return to it, as well as the right to seek in other countries asylum from persecution.

5 | Cf. United Nations, General Assembly, "Resolution adopted by the General Assembly. Universal Declaration of Human Rights", A/RES/217 A (III), Art. 13 (2), 10 Dec 1948, <http://www.un-documents.net/a3r217a.htm> (accessed 21 Jan 2015).

The second dimension of the ethical dilemma lies in the fact that opening up and facilitating access to the EU stimulates the incentives for irregular migration. If the prospects of successful and less risky migration increase, one has to assume that even more people will set off on the journey through unstable regions and thereby risk their lives. The extent to which this migration can be controlled then diminishes, not only from the perspective of the countries of destination, in this case the EU Member States, but also from that of the countries of origin, which are losing highly skilled members of their population. Efforts to create humane options for entering the EU can therefore have unintended negative consequences both at the individual level for (potential) migrants and for the countries of origin and destination.



Refugees from northern and Sub-Saharan Africa hope for a better life in Europe. That is why they risk the dangerous journey across the Mediterranean Sea. | Source: Jordi Bernabeu Farrús, flickr ©¹.

Where then does Europe's ethical responsibility begin and end, and how can one do it justice? The scope of action is relatively limited as the European Union can neither eliminate the causes of refugee movements around the world nor substantially influence people's individual decisions. When considering the question of responsibility, one should not exempt the countries of origin and the transit states. They too are called upon to take on responsibility for their

citizens and for the migration issue. That said, the EU should regularly check its policies and their consequences against human rights standards. To date, it has exercised its responsibility by promoting the application of equal, high protection standards to the reception of refugees in all EU countries. Those who have made it into the EU should be granted a fair asylum process in line with human rights standards whatever their location. In contrast, the access to protection still raises many questions. Nevertheless, they will not be addressed here.

Unlike the controlled immigration of skilled professionals, the EU asylum policy has been communitised speedily. This non-synchronous development of a common European migration policy has been the object of various scientific studies over recent years.⁶ Inward migration of skilled professionals is naturally demand-based, and the way it is controlled depends on the national labour markets. That is why there are fewer incentives to harmonise the migration of skilled labour than refugee migration. While they cannot control the latter, states are still under an obligation to offer protection to those at risk from persecution. This provides greater incentives for Member States to share the responsibility arising from the legal obligations. The creation of the Schengen Area and the abolition of the internal EU borders have also increased the need to exercise stronger control at the external borders. The Dublin System, which dictates that refugees are entitled to have their asylum application examined in the first Member State they enter, thereby also assigns clear responsibility to a specific state.

The creation of the Schengen Area and the abolition of the internal EU borders have also increased the need to exercise stronger control at the external borders.

6 | See, for example, the papers by: Simon Fellmer, *Vergemeinschaftung von Zuwanderungspolitik in der Europäischen Union. Anreize und Widerstände aus Sicht der Mitgliedstaaten*, Studien zu Migration und Minderheiten, vol. 26, 2013; Bernd Parusel, *Abschottungs- und Anwerbestrategien. EU-Institutionen und Arbeitsmigration*, 2010; Julia Wahnel, "Die Asyl- und Flüchtlingspolitik zwischen Europäisierung und nationalen Interessen. Das Beispiel Italien", in: Gudrun Hentges/Hans-Wolfgang Platzer (eds.), *Europa – Quo vadis?*, Wiesbaden, 2011; Jens Wassenhoven, *Europäisierung deutscher Migrationspolitik. Policy-Wandel durch Advocacy-Koalitionen*, 2011.

Table 1

Asylum applications in EU Member States in 2013

Number of asylum-seekers			Asylum-seekers per million inhabitants	
1	Germany	126,705	Sweden	5,680
2	France	66,265	Malta	5,330
3	Sweden	54,270	Austria	2,070
4	United Kingdom	29,875	Luxemburg	1,990
5	Italy	26,620	Hungary	1,905
6	Belgium	21,030	Belgium	1,885
7	Hungary	18,895	Germany	1,575
8	Austria	17,500	Cyprus	1,450
9	Netherlands	17,160	Denmark	1,280
10	Poland	15,240	Netherlands	1,025
11	Greece	8,225	Bulgaria	980
12	Denmark	7,170	France	958
13	Bulgaria	7,145	Greece	745
14	Spain	4,485	Finland	590
15	Finland	3,210	Italy	470
16	Malta	2,245	United Kingdom	465
17	Romania	1,495	Poland	395
18	Cyprus	1,255	Croatia	250
19	Croatia	1,075	Ireland	200
20	Luxemburg	1,070	Lithuania	135
21	Ireland	920	Slovenien	130
22	Czech Republic	695	Spain	95
23	Portugal	500	Latvia	95
24	Slovakia	440	Slovakia	80
25	Lithuania	400	Romania	75
26	Slovenia	270	Estonia	70

Number of asylum-seekers			Asylum-seekers per million inhabitants	
27	Latvia	195	Czech Republic	65
28	Estonia	95	Portugal	50
29	Switzerland*	21,305	Switzerland*	2,650
30	Norway*	11,930	Norway*	2,360
	Total EU-28	434,160	Average EU-28	860

* Switzerland and Norway are not EU Member States.

Comment: Countries ranked 1st to 12th receive an above-average number of asylum seekers in relation to the total population, those ranked 13th and lower receive a below-average number. Source: Eurostat, "Large increase to almost 435,000 asylum applicants registered in the EU28 in 2013", press release, STAT/14/46, 24 Mar 2014, http://europa.eu/rapid/press-release_STAT-14-46_en.pdf (accessed 17 Feb 2015).

REFUGEE MIGRATION TO EU MEMBER STATES

The number of asylum seekers in the EU has risen over the last three years. Table 1 shows the figures for individual Member States for 2013, first in absolute numbers of lodged asylum applications followed by the number of applications per one million of the population. The relative numbers give a quite different indication of the imposed burden. The figures confirm that refugee numbers are still on the increase, both for Germany (203,000 asylum applications in 2014 compared to 127,000 in 2013⁷) as well as for the EU as a whole, where applications rose by a further 23 per cent during the first six months of 2014 compared to the same period the previous year.⁸ In 2013, 70 per cent of all asylum seekers lodged their application in the following five countries: Germany (29 per cent), France (15 per

7 | By the end of the first six months of 2014, Germany had already received 65,700 new asylum applications and therefore the highest number of refugees among the industrialised countries, displacing the USA from the top spot: Cf. UNHCR, *Asylum Trends, First Half 2014. Levels and Trends in Industrialized Countries*, <http://unhcr.org/5423f9699.html> (accessed 21 Jan 2015); figures for 2014 in: Federal Office for Migration and Refugees (BAMF), "Aktuelle Zahlen zu Asyl", 12/2014, http://bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/statistik-anlage-teil-4-aktuelle-zahlen-zu-asyl.pdf?__blob=publicationFile (accessed 21 Jan 2015).

8 | See UNHCR, n. 7.

cent), Sweden (13 per cent), the UK (seven per cent) and Italy (six per cent). In relation to population size, Sweden, Malta, Luxembourg, Austria, Hungary and Belgium top the list.

As the origins of the refugees differ greatly from one country to the next and therefore the potentially acceptable reasons for which people have fled, discrepancies in the recognition rate are to be expected.

For its 2013 Annual Report, the European Asylum Support Office (EASO) compared the recognition rate at first instance in the EU Member States. It varied from 88 per cent in Bulgaria to single-digit percentages in Hungary and Estonia.⁹ As the origins of the refugees differ greatly from one country to the next and therefore also the potentially acceptable reasons for which people have fled, discrepancies in the recognition rate are to be expected. However, varying recognition rates for refugees from the same countries indicate that different standards regarding asylum procedures are applied. In 2013, Germany issued the largest number of transfer requests¹⁰ to other EU Member States, a procedure permitted under the Dublin System, as well as having the highest number of pending cases. The German Federal Office for Migration and Refugees (BAMF), which is responsible for handling the asylum cases, has since responded to the backlog by taking on more staff. In addition, Serbia, Macedonia and Bosnia-Herzegovina have now been classified as safe countries of origin by the legislator according to Michael Griesbeck, BAMF Vice President: "Around 25 per cent of asylum applications are lodged by people from the countries of the Western Balkans, who can enter Germany without a visa. These applications are almost always rejected as there are no grounds for protection."¹¹

9 | Cf. EASO, n. 2, p. 26.

10 | The number of transfer requests indicates that a significant number of people apply for asylum in Germany who might be the responsibility of other countries under the Dublin System. A further not insignificant number of refugees come to Germany by a legal route, for instance by plane with a visa, and then apply for asylum.

11 | Michael Griesbeck, "Europa als Ziel. Die Entwicklung der Flucht- und Asylinmigration", *Die Politische Meinung*, no. 529, 2014. In his paper, he also draws attention to the significance of people smugglers in this connection. He reports that asylum applications from the Western Balkans saw a sharp increase after the ruling by the Federal Constitutional Court to increase asylum seeker benefits. The lack of knowledge of the "clients", which makes them susceptible to the promises the people smugglers make for pecuniary gain, thus frequently has dire consequences.

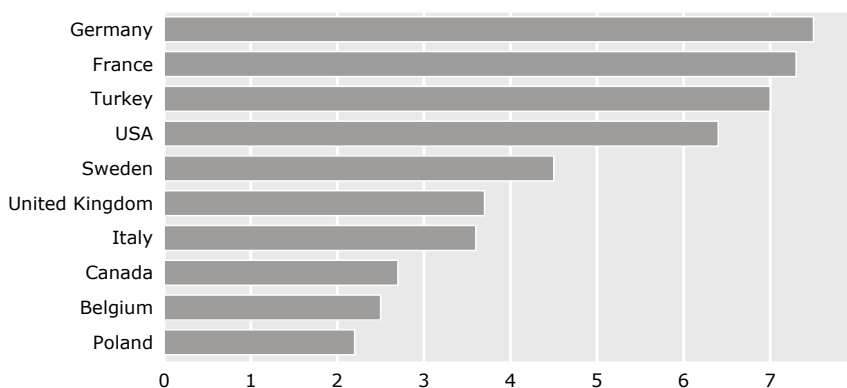
These figures suggest that the public debate is marred by national interests as well as misunderstandings:

1. Italy, which is considered to be particularly overburdened, is only ranked 15th in terms of the relative numbers of refugees received. In fact, thousands of refugees reach the Italian coast. But only a fraction of them is officially claiming asylum there and, thus, will appear in Italy's asylum statistics.
2. The figures contradict the simplistic view that the southern Member States fare badly in the balance of solidarity. In relation to their populations, Greece, Italy, Spain and Portugal are in places 13, 15, 22 and 28.
3. A great burden is borne by small countries such as Malta and Luxembourg, which hardly figure in the debate at all.

The challenge for the European asylum policy is to enhance harmonisation and solidarity between those countries that accept and provide for an above-average absolute or relative number of refugees and those who are affected less severely.

Fig. 1

**Number of asylum-seekers per 1 USD GDP (PPP)
per capita, 2009 to 2013**



Source: UNHCR, n. 7.

Table 2

Potential quota calculations based on the *Königsteiner Schlüssel* for asylum applications in the EU Member States, 2012

Member state	Key in per cent	Applications for asylum	Quota according to key	More/less applications than the quota	Deviation of the quota in %
Belgium	2.7	18,450	7,830	10,620	136
Bulgaria	0.7	1,230	2,017	-787	-39
Denmark	1.6	6,075	4,783	1,292	27
Germany	19.1	64,540	56,148	8,392	15
Estonia	0.2	75	514	-439	-85
Finland	1.3	2,920	3,956	-1,036	-26
France	14.7	54,280	43,365	10,915	25
Greece	1.7	9,575	5,113	4,462	87
Ireland	1.1	940	3,365	-2,425	-72
Italy	12	15,570	35,182	-19,612	-56
Croatia	0.5	—	1,514	—	—
Latvia	0.2	190	731	-541	-74
Lithuania	0.4	560	1,079	-519	-48
Luxemburg	0.3	2,000	750	1,250	166
Malta	0.1	2,060	184	1,876	1,019
Netherlands	4.2	9,665	12,298	-2,633	-21
Austria	2.1	17,450	6,275	11,175	178
Poland	4.5	9,175	13,217	-4,042	-31
Portugal	1.5	290	4,535	-4,245	-94
Romania	2.1	2,420	6,122	-3,702	-60
Sweden	2.7	43,930	7,999	35,931	449
Slovakia	0.7	550	2,120	-1,570	-74
Slovenia	0.3	260	932	-672	-72
Spain	8.3	2,355	24,494	-22,139	-90

Member state	Key in per cent	Applications for asylum	Quota according to key	More/less applications than the quota	Deviation of the quota in %
Czech Republic	1.5	515	4,344	-3,829	-88
Hungary	1.2	65	3,387	-3,322	-98
United Kingdom	14.1	27,410	41,450	-14,040	-34
Cyprus	0.1	1,590	435	1,155	266
Total	100	294,140	294,140		

Comment: The calculations are based on Eurostat data for 2012. The formula comprises the population (one third) and GDP in euros without adjustment for purchasing power (two thirds). Asylum seeker numbers relate to initial applications; there are no asylum figures available for Croatia, for Hungary only for 2011. The figure for Austria includes second applications, i.e. the number of initial applications is in fact lower.

Source: Daniel Thym/Carolin Beverungen/Sigrid Gies, "Ein 'Königsteiner Schlüssel' für die EU-Flüchtlingspolitik", Verfassungsblog, 11.10.2013, <http://verfassungsblog.de/koenigsteiner-schlüssel-fuer-eu-fluechtlingspolitik> (accessed 21 Jan 2015).

The group receiving high numbers of refugees in 2013 includes Germany, Sweden, France, Malta, Austria, the UK, Italy and Hungary. Numbers were lower for Estonia, Portugal, Latvia, the Czech Republic, Slovenia, Lithuania, Romania and Slovakia. The line of conflict where solidarity is concerned therefore does not, as is commonly thought, run between south and north but rather between west and east. The Eastern European Member States have neither relevant communities from the refugees' countries of origin that would exert a pull and that would facilitate integration, nor do they have long-established traditions of granting asylum in the context of European standards. To implement a quota-based distribution of refugees, particular efforts would therefore need to be made to convince these Member States and their populations. Moreover, in terms of immigration, emigration and asylum the national narratives of the most affected countries such as Italy, Sweden and Germany show significant differences. Historically grown and part of the societal self-image, these narratives also influence the perception of politics and policies of other Member States. Genuine cooperation therefore

requires historical knowledge of the national refugee policies in Europe.

Apart from the population size, economic strength is another criterion to determine the burden that the influx of refugees places on Member States. According to calculations by the UNHCR, Germany comes top in this list as well.

What form then could such an equitable distribution of refugees in the EU take? Daniel Thym, an expert in law concerning foreign nationals, tested a hypothesis in 2013, applying the *Königsteiner Schlüssel*,¹² a formula to regulate the distribution of asylum seekers across the German federal states, to the EU in modified form. By combining population numbers and GDP (see Table 2), he dispelled the inaccurate assumptions in the debate about solidarity. According to Thym's calculations for 2012, Malta had exceeded its quota by 1,000 per cent, Sweden by 450 and Germany by 15 per cent. Italy had a shortfall of 53 per cent, Hungary of 98¹³ and Portugal of 94 per cent.¹⁴

12 | Calculations in line with the *Königsteiner Schlüssel* are based two thirds on the tax revenues and one third on population size.

13 | Since 2012, Hungary has seen an increase in asylum seeker numbers unprecedented in the EU. Consequently, its position fluctuates greatly depending on the year on which calculations are based.

14 | Steffen Angenendt from Stiftung Wissenschaft und Politik and Jan Schneider from the Expert Council of German Foundations on Integration and Migration have also put forward a model for calculating quotas based on differently weighted figures for economic strength, population, surface area and unemployment. Cf. Steffen Angenendt/Marcus Engler/Jan Schneider, "Europäische Flüchtlingspolitik. Wege zu einer fairen Lastenverteilung", *SWP aktuell* 65, 11/2013, http://swp-berlin.org/fileadmin/contents/products/aktuell/2013A65_adt_engler_schneider.pdf (accessed 26 Jan 2015). The main purpose of these contributions was to bring greater objectivity to the debate about solidarity by comparing the capacities of the Member States under objective criteria. Other proposals focus on the implementation of the quota model, in particular the question as to which criteria should be used to determine which refugees are to be "distributed" from a specific country to another specific country. Cf. Hillel Rapoport/Jesús Fernández-Huertas Moraga, "Tradable Refugee-admission Quotas: a Policy Proposal to Reform the EU Asylum Policy", EUI Working Paper RSCAS 2014/101, http://cadmus.eui.eu/bitstream/handle/1814/33097/RSCAS_2014_101.pdf (accessed 26 Jan 2015).

The quota concept sounds enticingly simple: solidarity between Member States, distribution of the burden associated with receiving refugees as well as preventing overburdening individual regions and causing conflicts with the indigenous population. While this may already be working at the level of the nation state (according to different distribution models), is this proposal of a quota-based distribution truly realistic? What could these models look like, and is the distribution of the refugees the answer to the refugee problem?

THE COMMON EUROPEAN ASYLUM SYSTEM AND DISTRIBUTION MODELS

During the last few decades, Brussels has made intensive efforts to address the areas of refugee migration and asylum policy and initiated steps for harmonisation.¹⁵ After 14 years of negotiation, the Common European Asylum System was adopted in 2013, to be implemented by the Member States by 2015. The aim is to accelerate the asylum process and to embed the same standards with respect to housing, the procedural process, access to the labour market and integration measures in all EU Member States. One element of the CEAS is the EURODAC Regulation, the main purpose of which is to regulate the collection of data, in a fingerprint database amongst other things, and transfer of this data between Member States in order to prevent multiple asylum applications being lodged in several countries.

The CEAS further comprises the Qualification Directive, which defines common criteria for considering a person a refugee, the Reception Conditions Directive, which determines the standards for the reception, housing and care of asylum seekers, as well as the Asylum Procedures Directive, which determines the specifics of the procedures to be followed, the deadlines involved and the refugees' rights while their case is being processed. The purpose was not just to bring the recognition rates into line with each other (and thereby ensure a fair chance of protection

15 | Cf. Petra Bendel, "Wohin bewegt sich die europäische Einwanderungspolitik? Perspektiven nach dem Lissabon-Vertrag und dem Stockholm-Programm", in: Gudrun Hentges/Hans-Wolfgang Platzer (eds.), *Europa – Quo vadis? Ausgewählte Problemfelder der europäischen Integrationspolitik*, Wiesbaden, 2011.

being granted), which had previously varied considerably for refugees from the same country of origin depending on which country was processing their case. There were considerable shortcomings in the asylum systems in some Member States as regards the provision of care and refugees' procedural rights, which the CEAS is intended to remedy. The CEAS thus has the potential to improve the situation of refugees, to increase their chance of having their case handled in a transparent and fair manner, and to reduce the incentives for refugees to turn to human traffickers to move on to another EU country, where better standards apply, and claim asylum there.

The CEAS further includes instruments aimed at exercising solidarity through financial and technical support. In addition to the Asylum, Migration and Integration Fund (AMIF), which makes available some 3.14 billion euros for the period from 2014 to 2020,¹⁶ a European Asylum Support Office (EASO) has been established in Malta with the remit to provide Member States with technical and practical assistance with the implementation of the CEAS.



Calais in northern France: The region is known as a transit point for people who want to cross the Channel and enter the UK. | Source: Marie Barbier, flickr ©①②③.

16 | Cf. European Commission, Migration and Home Affairs, "Asylum, Migration and Integration Fund (AMIF)", 23 Dec 2014, <http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund> (accessed 26 Jan 2015).

The Dublin System

The Dublin System, now in its third version, remains a central pillar of the CEAS. It is based on the principle that the EU Member State a refugee first enters should examine their asylum application. This means that there is a clear criterion for the responsibility to process the application. The purpose of this rule is, on the one hand, to prevent individuals from lodging multiple applications in different countries and, on the other hand, to prevent countries from evading their responsibility and sending refugees through the EU in the search for protection (so-called refugees in orbit). Furthermore, this system ensures – at least theoretically – that refugees are received and cared for immediately upon their arrival. In terms of functionality, the Dublin System is obviously closely linked to the CEAS and the standards set therein. Only if the two systems can be implemented simultaneously and to good effect will it be possible to realise the objectives of European refugee policy, namely the granting of protection, harmonisation and solidarity.

As human rights organisations regularly point out, the downside of the Dublin System is that it leaves hardly any room to (be able to) take into account refugees' preferences for specific countries of destination. It also provides an incentive to countries on the external EU borders to take measures to prevent refugees from entering their territory.¹⁷ The Dublin principles are, however, not responsible for the also frequently criticised "protection lottery", i.e. the unequal chances of being granted protection in different Member States and the shortcomings in the asylum systems of some countries. This is a result of different standards in the Member States. The implementation of the CEAS could bring about significant improvements in these respects. Nor does the Dublin System initially envisage any solidarity mechanisms to balance out the uneven burdens that result in practice.

The Dublin System is not responsible for the unequal chances of being granted protection in different Member States and the shortcomings in the asylum systems of some countries.

17 | Cf. Deutscher Anwaltverein et al. (eds.), *Memorandum. Flüchtlingsaufnahme in der Europäischen Union: Für ein gerechtes und solidarisches System der Verantwortlichkeit*, 3/2013, http://proasyl.de/fileadmin/proasyl/fm_redakteure/STARTSEITE/Memorandum_Dublin_deutsch.pdf (accessed 26 Jan 2015).

Quota Systems

By contrast, quota-based distribution could strengthen the solidarity aspect, as – unlike balancing payments – it would place an obligation on all countries to also open up their societies to welcome those in need of protection. The criteria to determine the capacity for receiving refugees and the limits of the imposed burden would need to be clearly defined, which may lay the dispute about greater solidarity to rest. However, this would require a new system in terms of admitting refugees to the host countries as well as in terms of the practical implementation. Due to the likely complexity and bureaucracy involved, critics are painting a picture of Europe as a shunting yard for refugees. Even if a quota system were put in place, the harmonisation aspect would still depend on the CEAS being implemented. It is thought that the likelihood of a refugee being granted protection would remain dependent on the concrete form of procedure and could either increase or decrease by comparison with the Dublin System. The disadvantages of a distribution system for refugees therefore appear to outweigh the advantages where practical implementation is concerned. For now, the question of quotas therefore remains an abstract discussion about solidarity criteria, which does, however, need to be conducted.



Refugee boats in Malta: In relation to its population size, the country is hosting the most refugees within the EU and insists on sharing the burden. | Source: Chuck Holton, flickr ©①©②.

Free Choice of the Country of Destination

A third proposal voiced during the debate envisages refugees being able to choose their country of destination freely. Refugee organisations have criticised the Dublin System for a long time and demand the distribution of refugees to take into account their wishes, which would facilitate integration and thereby reduce costs.¹⁸ To gain a better understanding of this approach and to provide an idea of the refugees' preferences it is helpful to change perspective and look at the situation at the level of the individual.

Under the Dublin System, a refugee who has made it to the EU cannot choose where to lodge their asylum application, unless they have succeeded in reaching their preferred country of destination directly (for instance with a visa). There is evidence that particularly for refugees arriving in one of the EU's southern countries by road or sea, the routes they take depend to a large extent on chance, such as what options they are being offered by the human traffickers as well as their spontaneous adaptation to changing circumstances and serendipitous opportunities.¹⁹ If the country they first reach differs from their preferred country of destination, this can then produce a number of problems from their point of view (such as separation from relatives), which influences their conduct and therefore has an impact on the feasibility of proposed methods of distribution between Member States.

If the country the refugees first reach differs from their preferred country of destination, it can produce a number of problems from their point of view.

This implies drastic consequences: In Italy, not even half of the debarked refugees lodged an application for asylum in 2013. The others mostly travelled on illegally, in order to reach and seek asylum in the preferred host country. There, a check is carried out to establish how the person entered the country and whether a different state might, in fact, be responsible. Without registration in the country of entry into the EU, however, this is difficult to establish.

18 | Cf. *ibid.*

19 | Cf. Susanne Schmidt/Kevin Borchers, *Vor den Toren Europas? Das Potenzial der Migration aus Afrika*, Forschungsbericht 7, BAMF, Nuremberg, 8/2009, https://bmi.bund.de/cae/servlet/contentblob/872076/publicationFile/54527/migration_afrika.pdf (accessed 26 Jan 2015).

Talking about the situation in Malta, Ahmed Bugre from the Foundation for Shelter and Support to Migrants reports on cases of registered asylum seekers, who travelled to Northern Europe and lived there under the official radar until they were picked up – after one or two years – and returned to Malta. Some went through this several times. In these cases, people never arrive at a place where they actually have a future, and – according to Bugre – this wears them down.²⁰ It remains to be seen to what extent the introduction of the CEAS will help to reduce these weaknesses of the asylum system and in which ways the system could be tweaked through flexible and possibly bi-lateral instruments.

Factors such as the economic and the employment situation in the country of destination determine which country refugees would go to given the choice.

While the country where refugees first enter EU territory is influenced by the geographic location and the people smugglers'²¹ calculations, other factors determine which country the refugees would go to given the choice. These include the economic and the employment situation in the country of destination as well as historical and cultural connections,²² but also the country's reputation, for instance due to its involvement in development cooperation. The migration regimes applied by individual Member States (such as a restrictive or open asylum policy) probably have comparatively less impact than these factors.²³ However, one should not ignore the fact that allowing a free choice of the country of destination would reassess

20 | At an event organised by the Konrad-Adenauer-Stiftung in Berlin in December 2014, cf. Winfried Weck, "'...als wären eine Million Flüchtlinge in Berlin'. Prävention und Rückführung – Wirksame Ansätze einer integrierten Flüchtlingspolitik?", <http://kas.de/wf/de/33.39830> (accessed 21 Jan 2015).

21 | With people smuggling costs estimated at 10,000 euros per person and 430,000 refugees entering the EU in 2013, the revenues earned in this "industry" totalled 4.3 billion euros for the registered refugees alone. Cf. Deutscher Anwaltverein et al. (eds.), n. 17.

22 | The existence of a relevant community in the country of destination and networks providing links to the country of origin (maybe even acquaintances, friends or family members) increase the attraction of a potential host country. Cultural, economic and linguistic links created by historic connections can also play a role. Cf. Eiko R. Thielemann, "Towards a Common EU Asylum Policy? The Political Economy of Refugee Burden-Sharing", 2006, https://www.utexas.edu/cola/centers/european_studies/_files/PDF/immigration-policy-conference/thielemann.pdf (accessed 26 Jan 2015).

23 | Cf. *ibid.*

asylum policy to the level of the nation states. It would place the focus back on the political level and it would give an incentive to Member States to make the standards for housing, care and the asylum process as off-putting as possible so as to reduce the country's attraction for refugees. It was the Expert Council of German Foundations on Integration and Migration that last warned of such a "race to the bottom" in the EU.²⁴

CONCLUSION

While the Common European Asylum System is in the implementation phase, efforts to fundamentally restructure the EU's internal asylum policy would add little value. The new standards for fair and equal procedures should be implemented, and Member States should utilise the available technical and financial instruments for developing the appropriate asylum systems and for managing the current influx of refugees. Taking advantage of the mechanisms for sharing the burden, which are yet to be developed, will also depend on correct procedures being followed, first and foremost the registration of refugees. Overcoming the *quid pro quo* attitude that is currently preventing an objective debate about solidarity and responsibility will require the development of mutual trust as well as cooperation between Member States, particularly between those that are strongly affected in absolute or relative terms. In the long term, the debate about solidarity will, however, have to include those countries that are currently not seeing a great influx of refugees, either in absolute or relative terms. Member States will also need to continue their cooperation regarding approaches for sharing the burden, such as the project involving voluntary relocation for refugees from Malta.

The CEAS should be implemented, and Member States should utilise the technical and financial instruments for developing the asylum systems and for managing the current influx of refugees.

There is, however, one issue the EU will have to address if it wants to resolve the ethical dilemma: the need to develop approaches for regulated migration, beyond the context of the highly skilled and family reunion. A solution will have

24 | Cf. Expert Council of German Foundations on Integration and Migration, *Deutschlands Wandel zum modernen Einwanderungsland. Jahresgutachten 2014 mit Integrationsbarometer*, Berlin, 2014, p. 88, http://svr-migration.de/wp-content/uploads/2014/11/SVR_JG_2014_WEB.pdf (accessed 26 Jan 2015).

to be found for dealing with so-called “economic refugees”. This will require bilateral cooperation with the countries of origin and transit states based on the links between development and migration, taking into account the interests of all parties involved.²⁵ The existing mobility partnerships of the EU do not fulfil this function adequately yet.

Migration with its causes and repercussions is a topic that cuts across all policy areas. The migration situation in the regions of origin and transit regions should influence the positions taken in development and foreign policy with respect to those regions. While it will not be possible to fully control the flows of refugees by providing a political framework in a farsighted and proactive manner, this will be the most appropriate way to assume political responsibility.

25 | Cf. Steffen Angenendt, “Migration, Mobilität und Entwicklung. EU-Mobilitätspartnerschaften als Instrument der Entwicklungszusammenarbeit”, *SWP-Studie* S 25, 11/2012, http://swp-berlin.org/fileadmin/contents/products/studien/2012_S25_adt.pdf (accessed 26 Jan 2015).