



REFUGEE CRISIS AND BORDER SECURITY IN THE EU

DISSERTATION OF EUROPEAN STUDIES
FACULTY OF MANAGEMENT & ORGANISATION
THE HAGUE UNIVERSITY OF APPLIED SCIENCES
MALU VAN DER GOES
12087386 - ESN 4B
DR. TROMBLE
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A story of tragedy that needs to be heard

Executive Summary

Since the political unrest in the Middle East and North Africa, the pressure on the European external borders has been increasing due to the enormous flow of refugees to Europe. States play a role in creating international refugee flows. For example, the interstate violence and violence between different social or cultural groups. In many countries, this led to the overthrow of governments. The unrest and uprisings are not the only consequence; it has also resulted in a great migration flow to the European Union. Migration flows of refugees are not something from the last years.

In the years after World War II, the European Union also suffered a refugee crisis. In these years, several conventions and protocols have been passed to protect refugees. Since the extension in the 1980s of political and economic cooperation and the internal market in 1993, adequate measures were necessary to control the levels of migration. In 1999, the EU started to make plans to develop a common asylum policy. Over time, the European Union has adopted several measures for a more efficient asylum system, but the harmonization of the CEAS across all European member states continues to prove very difficult, since not every state has the same asylum problems as other members.

The European Union has rapidly enlarged its borders and due to the Schengen Agreement, there are no border controls in the member states. After the enlargement, it was necessary to create an agency for the management and security of the European borders. In 2004, the EU established the border security agency Frontex. The agency was established to coordinate cooperation between member states in the field of border security. The agency has passed through rapid development and its functions and capabilities have been extended several times. Still, the agency is not working optimally and becomes a target of criticism when problems arise at the borders.

The pressure of the flow of refugees to the European Union has been increased. In many European countries, there has been increasing demand for tighter restrictions in the security, asylum, and migration policies. The biggest problem is the unwillingness of member states to unite and harmonize. Thereby, Frontex only assisted in the security of the external borders and has no official responsibility. The different problems surrounding are the reason that Public-Private Partnerships could be a solution. Government remains responsible for policymaking and legislation, but a private organization executes it. Frontex could work together with the European Asylum Support Office (EASO) as a new agency to determine asylum applications in the EU. The collaboration between Frontex and EASO will act as the distribution key.

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List of Abbreviations and Acronyms

AFSJ	Area of Freedom, Security and Justice
Arab Spring	Demonstrations and uprisings marked the beginning of a period of great political change across several countries in the Middle East and North Africa.
CEAS	Common European Asylum System
EASO	European Asylum Support Office
EC	European Commission
ECHR	European Convention for the protection of Human Rights
EP	European Parliament
EU	European Union
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the European Union
IOM	International Organisation for Migration
JHA	Justice and Home Affairs
MS(s)	Member State(s)
RABITs	Rapid Border Intervention Teams
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Preface

In front of you lies the final dissertation of my study, European Studies, at The Hague University of Applied Sciences. The dissertation addresses the growing concern about migration (of refugees) that it is both a security threat as well as a humanitarian challenge. I could not write this dissertation without the support, motivation and help of several people.

First of all, I will thank the entire staff of my study European Studies for giving me so much interesting knowledge in the field of European Studies and security management during my exchange at Coventry University. In special, I will thank Dr. Tromble, my supervisor, for supporting me during this process. Sometimes, she really needed to push me and send me in the right direction.

I would like to thank my parents and sister for always listening, the enormous patience and the helpful comments on several drafts. I am not always be the nicest person during the process of writing this dissertation, but there was always a cup of tea and someone who was listening to my concerns regarding the dissertation.

Lastly, I would like to thank my friends who were always there during the past year.

Introduction

Problem

Since 2010, the number of refugees who came to European Union (EU) has increased. A report released by the International Organisation of Migration (IOM) states that, the number of refugees who came to the EU in 2015 is four times as many as the number in 2014 (International Organization of Migration, 2015). On Wednesday 5 October 2016, the Italian coast guard announced that they had saved more than 10,000 refugees from the sea in 48 hours (NOS, 2016). The European leaders have been unable to successfully address the refugee crisis (Middelaar, 24) (Veld, 2016). Evidently, the security issues raised by migration levels in the EU need to be addressed. This dissertation builds on the underlying tension between EU's protection of her borders and citizens on the one hand and, on the other hand, the protection of immigrants for humanitarian reasons. Because of the great flow of immigrants into Europe, the European Union has intensified border-management activities on and across its external borders. Different actors such as European institutions, border agencies, national and international police officers, and security companies amongst others play a critical role in the border management of the EU (Carrera, 2007). The large number of actors, all of whom have diverse activities and priorities, means that the management and security of the borders is highly complex and often politicized.

This dissertation will focus on the main border security agency of the European Union Frontex. This agency will help Member States (MSs) of the EU in the coordination of cooperation between MSs in the field of border security in order to protect and manage their external borders. The demands presented by immigration are developing faster than the EU's asylum policy and the capacity of Frontex can manage (Middelaar, 24). This dissertation tries to give a better understanding of the deployment of the Common European Asylum System (CEAS) and its relationship with the border security agency of the EU. It asks, what is the role of Frontex and how are its duties related to the Member States and the CEAS?

Central question and sub-questions

This dissertation focuses on the research question: *should the role of Frontex be extended in the asylum procedure of the EU?*¹ To answer this question, this dissertation is divided into four sub-questions:

1. What has caused the increased flow of refugees to the EU?
2. What is the Common European Asylum System (CEAS) and how does it work into practice?

¹ Frontex is the European Agency for the Management of External Borders, founded in 2004 and operational since 2005.

3. What is Frontex' functions and relation with the MSs of the EU?
4. How can Frontex contribute, and be more useful, in the CEAS?

Firstly, in chapter one, the underlying cause of (refugee) migration² to Europe is described in general terms. This dissertation provides an answer to why humans flee from their country and seek asylum in the European Union. Key concepts such as refugee, interstate violence and the Arab Spring are explained. After a clearer picture, of the refugee crisis and the causes of the migration flow is established, chapter two gives an overview of the Common European Asylum System (CEAS). This asylum procedure is debated on an international, national and even local level. This chapter analyses the history of the asylum system, the development of its policy and how this policy is brought into practice in the EU. This dissertation's focus is limited to asylum law in the European Union; the asylum practice of other organisations such as the United Nations are not analysed. The third chapter focuses on the main border security agency of the European Union, Frontex. This is the European border control agency, which coordinates, advises and supports member states and neighbouring countries' border regulations. In this chapter, the dissertation will give a brief description of the agency. How it works, the role of the agency and the relation of the agency with the member states. In the fourth and final chapter, extensions of the role of Frontex in the migration system are analysed. It seeks to answer the question of whether the role of Frontex should be extended, and if so, how? After answering the four sub-questions, the main findings of this dissertation are presented and the research question is answered.

Objective

The main purpose of this dissertation is to make the European population aware of the serious problems raised by increasing numbers of refugees, and to demonstrate that their presence is becoming a security threat as well as a humanitarian challenge. The EU has enlarged its borders rapidly. This dissertation argues that, through the moving of borders, expansion of the EU and disappearance of border checks, the pressure on the European external borders is growing. Immigration is closely related to border security management. Therefore, the dissertation attributes this growing pressure to weakness in the polity of the asylum procedure and the border control agency Frontex.

Methodology

² Throughout this dissertation, the term 'refugee' or 'migration' is used when referring to flow of immigrants from the Middle East and North Africa; who are in need of international protection.

This dissertation answers four sub-questions to provide a good understanding of the problems. Instability in neighbour countries increases the pressure on the European external borders. The problems in neighbour countries reinforces the call for enhanced border security, but tighten border security increases the risks migrants will take to reach the EU and this will lead to humanitarian problems and violation of human rights. The methodology applied to address the complex problems due migration and security was primarily a desk-based research. Through the desk research I find policy analysis about the border management strategy and legal texts about the treaties and law of migration in the EU. The sub-questions will help to form a clear picture of the complex problems in EU and will help to answer the question whether the role of Frontex should be extended. To answer sub question one, I will use some historical sources about the Arab Spring. Thereby different academic sources will be consulted. As there will be several notions and theories of the migration flow to Europe, I will pick out or form one definition that will suit my research, and that will link the migration flow to the border control strategy of the agencies in sub question two. Regarding the second sub question, several reports, amendments, European law and public policies will be consulted in order to get a good picture of the Common European Asylum System. Besides that it is important to analyse the main points of the policies otherwise it will be become too broad. To answer sub question three, academic sources and reports will be consulted. Moreover, it will also connect Frontex with the Member States. What are the duties and responsibilities of the agency and how are they related to the responsibilities of the Member States? Furthermore, as it comes to sub question four I will first analyse the asylum procedures in the European Union. After a clear sense of the asylum procedure is formed several secondary data will be consulted to further analyse what are the main remarks, opinions, theories, ideas etc., and most important my opinion about the contribution of Frontex in the asylum policy. Reports of the European Union and Frontex will be consulted to measure the effects. After answering the sub-questions a conclusion based on the desk research, with mainly secondary sources, will be formed. Beside, primary sources such as the founding treaties and legal texts about migration, and secondary sources, consisting of reports and scientific literature, various other sources are also used, including online search engines and newspapers.

Theoretical framework

European decision-making and policy-making

“It is a time wherein the European Union continues to be in a crisis. A financial and economic crisis, but also a social and political crisis. Globalization demands more European unity. More unity demands more integration. More integration demands more democracy” – Jose Manuel Barroso, 2012 (Barroso, 2012).

These are the words of the old President of the European Commission, Jose Manuel Barroso in 2012. These words could not be more appropriate to introduce the themes discussed in this dissertation. The upheavals in the Middle East and North Africa, in fact, pushed more than 65.000 refugees through the “Mediterranean Route” (Frontex, 2011). The unrest in the countries around Europe and the refugee flow to the European Union is becoming more and more a social and political priority. The response of the EU in the field of migration and security is complex; the need to find a solution, which is quick and effective to problems in migration and security policies, coupled with the need to get a common approaches of it, involves trust and solidarity among the MSs of the EU (Balzacq, 2005).

To understand and evaluate the complex policy field of migration and security, it is necessary to know the type of framework in which European decision-making, and therefore policy-making takes place. The multi-level governance theory is chosen as the most suitable for this dissertation. There are other international relations theories such as supranationalism and intergovernmentalism, which are precious tools to analyse European policy-making, but these theories cannot explain fully the variegated forms of governance that are needed in the EU and where this dissertation mainly focus on (Chalmers, 2010). Multi-level governance came together with the process of ‘Europeanization’ of policies that needed a high political relevance within regional, national and international arena (Majone, 1999). ‘Europeanization’ as the change within MSs is tied to European policy and decision-making process (Majone, 1999).

Starting from the 1990s, the member states of the European Union started to delegate the competences and duties of the EU over a range field of policies, including immigration and security. Besides, the main institutions of the EU, the European Commission, the European Parliament and the Council, were charged with a whole new range of policies that required a high level of expertise. These policies, among which immigration, asylum and security, were delegated to ad-hoc agencies and committees (Giannetto, 2012).

Opposing the idea that the EU works on basis of a hierarchy between level of government on national and European level, the multi-level governance provide for a form wherein decision-making is not located in a specific level of government, but is spread over multiple and expertise centre and not hierarchically ordered (G. Marks, L. Hooghe and K. Blanke, 1996).

A second theoretical frame, which is valuable for this dissertation is 'experimentalist governance'. Experimentalist governance is the most developed form of multi-level governance (G. Marks, L. Hooghe and K. Blanke, 1996). In this form of governance is cooperation between 'central' and 'local' units. In this cooperation these units will form a broad framework goals and metrics for their achievements. The 'local' units are given a broad discretion to pursue these goals in their own way. In regulatory systems, the 'local' units will be mostly private actors, which are most expertise in the field of the policy (G. Marks, L. Hooghe and K. Blanke, 1996). This form of governance is relevant for the dissertation, because the role of Frontex can be extended in the CEAS, and this might be a solution to get more grip on the migration, asylum and security problems which the EU is facing at the moment. These two theories are the theoretical frame of policy-making. This dissertation will use the theory based on Public-Private Partnerships to research if the role of Frontex should be extended. Public-Private Partnerships will be fully discussed below.

Refugees and the upcoming unrest around the borders of the EU

Since 2010, there has been on going unrest in the Middle East and North African countries (Entzinger, 2015). The so-called Arab Spring resulted in toppled dictatorships and a large flow of refugees to the EU. Throughout this thesis, the term 'refugees' or 'flow of refugees' is used, because this dissertation will only focus on the people who are in need of international protection as a result of growing political instability in their home country.

To gain a better understanding of why people flee from their country and seek asylum in another country, it is important to know the definition of a refugee. Zolberg et al. (1989) describe the identity of a refugee in terms of their role in society as an activist; a target; and a victim (A.R. Zolberg, 1989), Refugees who may be considered activists have been involved in political actions against the authorities in their country of origin. Refugees who are considered targets are members of social or cultural groups towards whom the violence of the (pseudo) state or other social or cultural groups is aimed. The refugee victim is someone who, in his or her own country, is exposed to internal or interstate violence – although this violence is not directed towards him or her personally (A.R. Zolberg, 1989). However, it is difficult to draw a clear distinction between these three categories of refugees. For example, individuals who stand up for the rights of a social or cultural minority in a country are often themselves

members of this minority (Jennissen, 2015). This dissertation will only focus on the refugees who flee from the countries in the Middle East and North Africa due the Arab Spring, because these are the biggest group of migration to the EU. Besides, the research will only examine the political reasons of people to flee their home country, because most of the refugees, who enter the borders of the EU, flee for the toppled dictatorships in the Middle East and North Africa.

Political scientists are investigating the causes of the Arab Spring since the beginning. Many of them suggest there is a link between the growing globalization and the religions (Clingendael, 2011). The change in the political systems in the Arab world started with the globalization around the world. One of the main reasons of the demonstrations is the economic situation in the Middle East and North Africa (Jennissen, 2015). In many countries in the Middle East and Africa is the economic situation disturbing. According to the World Bank, the unemployment is the highest in these regions (World Bank Group, 2016). However, the number of students is quite high in the Middle East. So, the young population is willing to educate, but after an education finding a job is almost impossible. Beside, the religion and ideology factors was the revolutionary movements based on the Western and modern values. These were the main reasons to start the demonstrations, to develop the economy and create jobs.

Common European Asylum System

During the Tampere Council meeting in 1999, the first plans to develop a common system on asylum were be made, based on the Geneva Convention of 1951 and the Protocol of it in 1967 (Jennissen, 2015). In two phases is the European legislation of a common asylum system developed and special institutions, such as the European Asylum Support Office (EASO) were created to improve the harmonization of national policies. In the process of creating a common system on asylum in the EU, the European Council (EC) adopted various regulations and directives, such as the Dublin Regulation, to regulate which member state is responsible for the asylum application (Bruin, 2015). Institutions such as Frontex and EASO are responsible to facilitate the cooperation between the member states of the EU, in order to realize a harmonized and homogenous asylum system.

Harmonization is a key concept in the policy-making, and therefore a key concept of this dissertation. Harmonization in the European Union is essential for making identical rules in still more areas of governance. Under the founding Treaty of Rome, harmonization of national laws required unanimity (Baylis, 2011). Another important term is sovereignty. Baylis defined sovereignty as “the principle that within its territorial boundaries the state is supreme political

authority, and outside these boundaries the state recognizes no higher political authority” (Baylis, 2011). In the EU and, in particular for this dissertation, on asylum policy, the MSs give their sovereignty to a higher level, European level.

Frontex and the border control management

Border management is becoming a more and more important subject on both national as at European level. It is political priority, because modern nation states and the EU facing globalization; and it is also a humanitarian concern because the number of refugees who drowned in the Mediterranean Sea borders. Now, more than ever before borders are taking on new meaning. Despite the fact that one may not visually see the borderlines, borders constitute a central part of daily life. It has not been easy to construct a single theory of borders, however; a great number of theories exist about borders from many different perspectives, including those of culture, politics and security (Linklater, 2011).

According to A. Geddes (2008) can you make a distinction between three types of borders: territorial, organizational and conceptual (Geddes, 2008). The first one, territorial borders, are the ones defining “who is in and who is out”. Decisions made out a territorial border define the state’s will and capacity to exclude unwanted migrants. These territorial borders have been challenged through the integration process of the EU. Thereby, the globalization of the last thirty years, in the form of international migration has challenged the state sovereignty at the territorial borders. Second, organizational borders define the different areas of welfare in countries. Third, the conceptual border describes the concepts of “identity, belonging and entitlement” (Geddes, 2008). The three terms are fundamental for the state as the definition of its territory and its welfare; this last type of border is still felt as a strong divide between Europeans, even though the territorial borders has been removed (M. Anderson and E. Bort, 2001).

The implication of these definitions of borders lays in different policy approach towards migration. As A. Geddes mentioned in previous work: “concerns to maintain and protect borders of work, welfare and citizenship underpin the type, form and content of EU external action in the areas of migration and asylum” (Geddes, 2008). This thesis will focus on the dynamic relation between the borders of the EU and the flow of refugees from the Middle East and North Africa.

Contribution of Frontex in the CEAS

The EU presents a good example of the functioning of the globalizing world, given the deconstructing, creating, shifting and moving its borders. Through the rapid expansion and

movement of its internal borders, Europe's internal border checks have disappeared; meanwhile, the pressure on the external borders of the EU has continued to grow (Middelhaar, 24). Due to mutual interest among European member states in facing the refugee crisis, pressure to protect the Schengen area has been increasing.

In this thesis, the problems about migration and security will be discussed by focussing on the relationship between public and private networks in these work- and policy fields. Recently, public-partnerships (PPPs) have become a discussing topic in the research of nation-states. In 1992, Dr. Deleuze already stated that there is a change in the form of power, from centered (public institutions) to more fluid (private companies) (Deleuze, 1992). In line with Deleuze, Risse claims that these private actors and companies are increasingly taken more influence, as a direct partner, in the international and national governance (Risse, 2002). More and more states and national government delegate certain functions to non-state actors. Delegation covers a wide array of PPPs – from forms in which private actors are held accountable by states in a rather tight way to cases in which “delegation” actually amounts to private self-regulation in the shadow of hierarchy (Risse, 2002).

Given the variety of problems in migration and security, this dissertation perceives PPPs as a significant solution for the problems in the EU. Frontex must work together with the European Asylum Support Office (EASO), to produce a new asylum and security agency, which will act as a distribution key. This would mean that when refugees arrive at the external borders of the Europe, Frontex would pick them up and together with EASO fairly distribute them across the EU. This dissertation is only focussing on the refugees, who get asylum and need to distribute across the EU. The refugees who are returned back to their home country, remains out of this dissertation.

1. What has caused the increased flow of refugees to the EU?

1.1. Introduction

This chapter seeks to answer why people flee from their country and seek asylum in the European Union. After the years of labour migration since 2010, there has been a change in the main form of migration within Europe. According to Eurostat³, in 2014 there were more than 600,000 asylum applications lodged in the EU (Eurostat, 2016) – more than double compared to 2010. The growing political instability in the ring of countries bordering the EU is an important factor in the influx of asylum seekers in recent years. This chapter investigates why there are such a large number of immigrants who want to enter Europe. The focus lies in the migration of refugees as a consequence of political unrest in the Middle East and North Africa. First, a brief history of refugees will form. After that, the chapter will explain why refugees flee to the EU.

1.2. History

During World War II, there was, established by the United Nations (UN), a refugee agency to help the Europeans who have been displaced because of the war. In the years after World War II, Europe also suffered an unprecedented refugee crisis (Jennissen, 2015). Subsequently, on 14 December 1950, the UN established the Institute of the High Commissioner for Refugees (United Nations High Commissioner for Refugees i.e. UNHCR). The insertion of the establishment of this institution was; the completion of the above work, and then elevate the institute. However, this worked out differently. The existence of the UNHCR was therefore not indispensable. UNHCR objective is primarily to safeguard the legal protection of refugees and seeking durable solutions to their livelihoods (Jennissen, 2015).

The UNHCR in 1951, the Geneva Convention, the Refugee Convention created. By concluding the 1951 UN Geneva Convention⁴ relating to the status of refugees, the international community tried to ensure that refugees could enjoy international protection in a state other than their own (Djordjevic, 2014). This convention defines a refugee as:

‘A person who is unable or unwilling to return to their country of origin owing to a well-founded fear has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (Assembly, 1956) (UNHCR, 1967).

³ Eurostat is a Directorate-General (DG) of the EU. The task of this DG, independent units, is to provide good statistical information for and about the EU.

⁴ The Geneva Conventions are a set of treaties regarding humanitarian issues of civilians and combatants in wartime.

Initially, only European refugees who were fleeing because of acts of war could rely on this convention. From the fifties and sixties onwards, Europe became increasingly inundated by refugees from Third World and from Eastern Europe (Wetenschappelijk Onderzoek- en Documentatiecentrum Ministerie van Veiligheid en Justitie, 2015). The so-called New York Protocol extended the operation of the UN Convention relating to the status of refugees in 1967; people who were forced to flee their country because of decolonization processes or persecution by a dictatorial regime were now allowed to make an appeal (Jennissen, 2015). The northwest European states have signed both the UN Convention of 1951 and the 1967 protocol. Another important convention which was signed by the UN in 1948 that refers inter alia to asylum and migration is the European Convention for the Protection of Human Rights (ECHR)⁵ (Jennissen, 2015). The third article of this convention states that no one shall be subjected to torture, or inhuman or degrading treatment or punishment (Council of Europe, 1950). This implicitly means that no person should be returned to a country in which such practices occur (Kooijmans, 2008). The countries that have signed this convention are expected to adhere to its terms irrespective of their own national legislation (Kooijmans, 2008).

After the collapse of the communist system in Central and Eastern Europe the migration increased to Western Europe. The asylum statistics in northwest Europe never reached such high numbers as in the foregoing period from the fall of the Iron Curtain in 1989 to the end of the war (Kooijmans, 2008). Due to the Kosovo crisis, in a brief revival after the end of the war, asylum migration disappeared from public debate and the political agenda in Europe. Partly due to the accession of some Central and Eastern European states, labour migration became the main form of migration in the migratory flow towards Northwest Europe instead; furthermore, it became the focus of attention of researchers and policy makers that dealt with migration issues in the first decade of this century (Kooijmans, 2008). Since 2010, however, there has been a reversal of this trend: the number of asylum seekers has increased in the EU every year (Frontex, 2016).

1.3. The causes of immigration

States play an important role in creating international refugee flows. In interstate violence and violence against the government, the role of immigration for its citizens is clear. However, if internal violence between different social or cultural groups within a state causes many people to flee as refugees, the state also plays a role, albeit in its absence (Keely, 1996). These conditions are referred to as an 'imploded state'. The characteristics of an imploded state are: collapsed administrative and legal systems, decayed infrastructure, a lack of basic social services, a primitive economy that is solely focused on the internal market, and currency that has become virtually

⁵ The European Convention on Human Rights (ECHR) is an international treaty to protect human rights and fundamental freedoms in Europe.

worthless (Keely, 1996). Keely (1996) points to mismanagement, corruption, natural disasters, disturbances in the economy and the cessation of external support as possible causes of imploded states. The disappearance of central authority led these multi-ethnic countries to much violence between their different population groups. People who need to flee because of the implosion of their state and the corresponding collapse of their central authorities do relatively often become victims of intra-state violence (A.R. Zolberg, 1989). Often, specific populations within these imploded states become targets of violence. For example, in the case of Afghanistan during the reign of the Taliban, the Hazaras, the Persian-speaking population in central Afghanistan, which often adheres to Shiite Islam, was often the target of Taliban oppression (Keely, 1996).

1.4. The Arab Spring

Since late 2010, there has been on going unrest in Middle Eastern and North African countries. The so-called Arab Spring that emerged in Egypt, Syria, Libya and Tunisia amongst others took the form of fierce protests and uprisings against poverty, corruption and oppression (Entzinger, 2015). In many countries, this led to the overthrow of governments.

For example, on 17 December 2010, the Tunisian town of Sidi Bouzid was startled by a public self-immolation of the 26-year-old Mohammed Bouazizi. The suicide marked the beginning of mass protestations against the Tunisian government. This sparked a chain of protests and uprisings in the rest of the Arab world: Egypt, Libya, Jordan, Algeria, Yemen, Bahrain, Iran, Morocco, Oman and Syria also saw large-scale demonstrations against poverty, corruption and oppression. These demonstrations and uprisings marked the beginning of a period of great political change across several countries in the Middle East and North Africa. Continuing violence against the population continued to provoke the intervention of international leaders. However, the outcome of the Arab Spring is disappointing; it has not brought democracy, peace or freedom to the region (Entzinger, 2015). Instead, in most Arab countries, the revolution turned into conflict or authoritarian rule; today, to mention just three of the afflicted countries, Syria is engaged in a civil war, Libya struggles with conflict amongst militias and local tribes and Egypt has operated without a parliament since 2012. The unrest and uprisings of the Arab Spring have done more than toppled dictatorships, however; the unrest in North Africa and the Middle East has resulted in a great migration flow to Europe (Knipp, 2013). Aside from the Arab Spring in the Middle East and North Africa, conditions in Turkey are also a major factor in migration to Europe.

2. What is the Common European Asylum System and how does it work in practice?

2.1. Introduction

Since 1999, the EU has been increasingly involved in drafting a common asylum policy (European Commission, 2015). Because of its greatly increased prosperity, Europe has become an attractive destination for both economic and political refugees (Baylis, 2011). The MSs of the EU have agreed to develop a common asylum policy to ensure that legal migration to the EU is well managed; this is called the Common European Asylum System (CEAS) (European Commission, 2015). The goals of this asylum policy include improving integration measures for migrants and their families and enhancing cooperation with the countries where the migrants came from (European Commission, 2015). This chapter will analyse how the CEAS is developed, the goals of its policy and how it works in practice.

2.2. The development of the CEAS

Migration is not a phenomenon limited to only the twenty-first century. For centuries, people have travelled far from their homes to live in another country (Entzinger, 2015). As mentioned in the previous chapter, fewer problems were associated with refugees who fled to Europe, which meant that an asylum policy was not needed or developed. Since the extension in the 1980s of the economic cooperation with political cooperation of European countries and the introduction of the internal market in 1993, people have been able to move more freely within the EU (Middelaar, 24). Adequate measures were necessary to control levels of immigration to Europe.

During the Tampere Council meeting in 1999, the EU started to make plans to develop a common asylum policy and, in two phases, European legislation on the CEAS was developed (European Parliament, 1999). The first period was from 1999-2005 and the second period from 2005-2016. This chapter will analyse the policies of the CEAS in the two phases of its development. Special institutions and agencies were created to harmonise the legislation of MSs, and the European Council (EC) adopted various regulations and directives to regulate the asylum application across all member states.

2.2.1. First phase: 1999-2005

In this period, the first important treaty that came into force was the Treaty of Amsterdam in 1999. As part of this treaty, the member states of the EU devolved certain powers from national governments to European level. Powers such as legislating on immigration, adopting civil and criminal laws, and enacting foreign and security policy moved from the third pillar into the first

pillar⁶ of the EU constitution (P. Boeles, 2014). Another important agreement in this period was the Schengen Agreement. This agreement was created to abolish systematic border controls between all the member states that signed, and created the single market of free movement. Twenty-six member states signed, while the United Kingdom and Ireland only agreed to participate in the police cooperation aspect of the agreement; Bulgaria and Romania did not sign previously but are currently in the process of joining, while Croatia and Cyprus opted out entirely (European Commission, 2015).

A number of developments in European refugee legislation occurred between 1999-2005. Since the Treaty of Amsterdam was signed in 1999, policy improvement in the areas of freedom, security and justice has become one of the fundamental objectives of the EU. The principle element of the EU integration process was further developed in the Tampere Programme of 1999 (European Parliament, 1999). In this programme, the EC set out the main points for the development of the integration process and the management of the EU's external borders. In 2001, the Treaty of Nice was implemented; the most important change relating to CEAS contained in this treaty was the adoption of several measures to develop common asylum policy (European Commission, 2015). This resulted in diverse directives, which concentrated on protecting migrants, establishing minimum standards of asylum procedures and enabling family reunification. Because they contained more concrete legislation, these directives were a positive step for EU policy. In addition to these directives, the Dublin Regulation was introduced in 1997 (Entzinger, 2015). The Dublin Regulation replaced the Dublin Convention and determined which state would be responsible for asylum application (R. Bruin, 2015). The two main changes made from the original agreement were the increased focus on family reunification and the shortened length of time required to process asylum applications. The Hague Programme of 2004 is a supplement to the Tampere Programme. This programme was developed to reinforce the management of external borders with new security systems (R. Bruin, 2015).

The European Council set out several priorities for the Union with a view to strengthening in the next five years the areas of freedom, security and justice. The main goals are: to improve fundamental rights and citizenship, improve measures against terrorist threat, developing border security management of the EU, setting up a common European asylum system (European Law, 2005).

⁶ The three pillars of the EU illustrate how the various forms of cooperation are built up. Each of the three pillars represents a different policy area. The first pillar is the European Communities, the second pillar; Common foreign and security policy and third pillar; cooperation in Home and Justice Affairs.

2.2.2. Second phase: 2005-2016

Following the first phase of the CEAS, it became necessary to reflect on how the system had worked so far and how it needed further development. In 2007, the newly published Green Paper became the basis for widespread public consultation (Bruin, 2015). The responses and results of this consultation were used by the EC to publish their Policy Plan on Asylum (European Commission, 2015). This plan contained a general political direction on asylum and immigration legislation. As is stated in the policy plan, the development of the CEAS is underpinned by three pillars of goals; increasing harmonisation in the standards of protection in asylum legislation across all member states, effective cooperation and increasing the solidarity and responsibility among European Union states and between EU and non-EU states (European Commission, 2015).

In 2009, the European Commission adopted the Stockholm Programme; this was a new five-year programme designed to take over from The Hague Programme, which was due to end in 2009 (Bruin, 2015). In general, the Stockholm Programme focused on establishing a more open yet safe EU, in which the rights of its citizens were protected. Its goal was to establish a more flexible immigration policy, an international security system and improved protection of personal data. In short, its main priorities were to protect the rights of EU citizens, protect their lives and promote a more integrated society (European Commission, 2009).

Since the Treaty of Lisbon came into force on 1 December 2009, however, many things have changed, and these changes have also had consequences for the EU's asylum policy. There are three categories wherein the policy normally falls 'exclusive competence', 'shared competence' and 'supporting competence' (European Union, 2009). Following the Treaty of Lisbon, the areas of this European policy are categorized under article 4 of the Treaty of Lisbon, which regulates a shared competence between the European Union institutions and MSs.

Over time, the EU has adopted several measures for a more efficient asylum system. In May 2015, in response to the humanitarian tragedy occurring in the Mediterranean, the EC adopted the European migration agenda in order to reinforce the common asylum policy. The measures it contained were set to reform the CEAS, and were presented as two sets of legislative proposals in May and July 2016 (European Commission, 2015). The European Commission presented on 6 April 2016 options for the reform of the Common European Asylum System. The following improvements are presented by the EC; firstly, should the Dublin Regulation be adapted, which will automatically create a more fair distribution of refugees over the EU (Bruin, 2015). Secondly, asylum procedures should be streamlined so that asylum seekers are not aloud to secondary migration (Bruin, 2015). In addition, the Commission intends to make proposals to replace the existing directives with new regulations; measures should be taken to deter secondary movements

and to punish. This means that applicants do not travel to another Member State to seek asylum when they all arrived at a safe state; the European Asylum Support Office (EASO) could get an enhanced operational role in the implementation of European asylum legislation; and irregular migration can be addressed through changes to the Eurodac system (Strik, 2015). This system includes a database of fingerprints of asylum seekers and is used to support the EU's common asylum policy.

2.3. The CEAS in practice

The harmonization of the CEAS across all EU member states continues to prove very difficult, since not every state has the same asylum problems as other members. For example, MSs in the southern external borders of the EU have more asylum problems than others because they are often the first countries of arrival for immigrants (Entzinger, 2015).

The enormous flow of migration results in problematic situations. Regardless of the number of people trying to reach the EU and the problems associated with boat refugees, when the immigrants arrive in the EU they have the right to apply for asylum (Entzinger, 2015). However, EU countries are struggling to process the unprecedented number of asylum procedures requested of them. Furthermore, local governments often do not have sufficient resources to achieve the common European conditions necessary for receiving asylum seekers (Entzinger, 2015). Due to the increasingly large numbers of migrants, asylum procedures accumulate and result in long waiting lists; in practice, this has led to immigrants being housed in detention centres where they must wait for the results of their procedures. The conditions of detention are poor and asylum seekers often do not have the protection they should have according to international and European law (Entzinger, 2015). The southern MSs of the EU, Greece, Malta, Italy, Spain and more, are seriously struggling with the thousands of immigrants that have entered their borders, processing the many asylum procedures and accommodating all these immigrants (Schapendonk, 2015).

After analysing the development of the CEAS, it can be concluded that it is not a system without any problems. The southern MSs in particular are struggling to meet European standards on asylum. One of the discussion topics is the Dublin Regulation. According to the Dublin Regulation the first country of arrival is responsible for examining the asylum application (Schapendonk, 2015). The consequence of this system is evident in the number of asylum applications faced by the MSs on the EU's external border: they are required to handle many more applications (relatively) than the other MSs due to their geographical location (Schapendonk, 2015). This places more pressure on these countries, resulting in complex situations related to housing and application procedures. The European Parliament wants to make changes to the Dublin Regulation by adding a 'solidarity clause'. This would mean that northern EU countries have an obligation to

take asylum seekers from southern EU countries, because these countries cannot deal with such great pressure. Southern EU countries are positive about the idea, but northern countries are critical of it; for them, adding this clause would mean that the number of asylum seekers would increase in their countries (Schapendonk, 2015).

3. Frontex: its functions and relation with the Member States of the EU

3.1 Introduction

Over the years, the EU has rapidly enlarged its borders. The greatest enlargement in European history was in 2005, when Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia joined as members of the European Union. In 2007, Romania and Bulgaria also joined, while Croatia joined later, on 1 July 2013 (Europese Commissie, 2016). Among the MSs, which have signed the Schengen Agreement, there are no border controls since the introduction of the right to free movement of persons in 1985. In 2005, ten new member states joined the EU. After this enlargement, it was necessary to create an European agency for the management and security of the European borders (Frontex, 2004). In this chapter, the focus lies on the main border security agency of the EU: Frontex. First, it will give a brief historical background of the European border agency and, second, it will analyse its goals and structure. Finally, the chapter will analyse the duties and responsibilities of Frontex in relation to the MSs.

3.2 History of Frontex

The history of border management in the EU is enmeshed with the process of integration of the EU. In the past thirty years, it has undergone a fast evolution and decided to set border control responsibilities to EU institutions (Strik, 2015). This evolution has started by the introduction of the Schengen Agreement (1985), which was implemented to secure the smooth functioning of the internal market. As a matter of fact, the free movement of persons and the internal market need to secure. The Schengen Agreement, Tampere Programme and The Hague Programme (discussed in the previous chapter) were important for the beginning of Frontex: the agency is built on these agreements. These three agreements were the first plans made between the member states of the EU to cooperate in areas such as legislating on immigration and border security.

To briefly summarise, the Schengen Agreement was signed on 14 June 1985 to abolish systematic border controls between all the member states and created the single market of free movement. In the Tampere Programme of 1999, the EC set out the main points for the development of the integration process and the management of external borders. A continuation of the Tampere Programme, The Hague Programme was developed in 2004 to reinforce the management of external borders with new security systems.

3.3 Goals and structure of Frontex

The EU is made up of a range of European actors, such as institutions and agencies, which contribute in different ways to European border management. In the decision-making processes about border management, the EC plays the most influential role (Nielsen, 2013) (Strik, 2015). In

addition to the EC, The European Parliament (EP) and the European Council (EC) of Justice and Home Affairs (JHA) are involved in managing European borders. Furthermore, the national police or border agencies of EU member states are also involved in this duty. The fact that there are almost 100 different security-related national authorities may explain why the cooperation and the decision-making process between these agencies and organisations is complex (Nielsen, 2013).

In order to address the complexities in the existing border management processes, in 2004, the EU established the border agency Frontex. The agency is located in Warsaw, Poland, and was established as a specialized and independent agency to coordinate cooperation between MSs in the field of border security (Frontex, 2016). Additionally, Frontex offers technical and informational assistance to MSs of the EU to protect and manage their external borders. Specifically, the tasks of the agency include the following: it coordinate the functional cooperation in the field of border security of states and between states, assisting the member states in the training of national border guards, carrying out risk assessments, providing increased technical and operational assistance to the members and performing and supporting joint return operations⁷ (Strik, 2015).

Most of the staff that are posted from the member states determine for each operation the number and type of personnel that can be made available for Frontex's purposes. Furthermore, the equipment (ships and aircraft) available to Frontex is loaned by member states (Frontex, 2016). Frontex's management board composed of representatives of the heads of the border guard authorities of the EU member states, which also signed the Schengen agreement (Frontex, 2016). It should be noted that representatives of countries that are not EU member states but signed the Shengen Agreement (the United Kingdom, Ireland, Iceland, Lichtenstein, Norway and Switzerland) also participate in the meetings of the management board of Frontex, but have limited voting rights (Carrera, 2007).

In its relatively short existence, Frontex has passed through rapid development. Since its inception, its functions and capabilities have been extended several times. In 2007, the ability entitled Rapid Border Intervention Teams (RABITs) was added, which provided operational assistance for a limited period to a requesting MS if it was suddenly faced problems with the refugees who enter the external borders of the EU (Strik, 2015). The teams consist of officials from different member states, who are temporarily loaned to the agency for operations on the territory of another MS. In carrying out their tasks, team members wear their own uniform with a blue armband with the

⁷ Migration authorities for persons to be returned by a decision of a court and not allowed to stay in the EU organize return operations. Frontex provides the necessary support in this return operations.

insignia of the EU and Frontex. This is so that they can be identified as a member of the deployed team (Strik, 2015).

Besides voluntary contributions given by EU member states, subsidies of Frontex are mainly given by the EC. From 2006 to 2015, the subsidy of the EC and thus the budget of the agency significantly increased; in 2015, the budget went up to an amount of €114,053,000 (Frontex, 2016). The fact that the EC significantly subsidizes the agency demonstrates the increasing interest of the EU in border management (Frontex, 2016). The final operation budget distribution of Frontex in 2014 reveals that operational activities at sea borders have been the recipients of the biggest share of Frontex' budget allocations (Appendix I) (Frontex, 2016). In addition, it is important to note that the budget for sea operations in 2014 – 46.9% of the total budget for all operational activities – significantly increased (Frontex, 2016).

3.4 The relationship between Frontex and EU Member States

Frontex often becomes the target of criticism when problems arise at the borders –when migrants drown or refugees are refused entry to the EU, for example. But what exactly are the duties and responsibilities of this EU agency and how are they related to the responsibilities of the MSs themselves? (Strik, 2015)

Although the MSs originally had intended to form a supranational European institution of border guards, in 2002 they agreed to create an agency whose role was to facilitate cooperation, coordination and consistency between the national border guards, without taking over the responsibilities of the MSs (Strik, 2015). In order to provide Frontex with a coordinating role for national operations at Europe's external borders, the EU aimed to monitor the external borders more effectively and more uniformly. The external borders of the MSs include not only the land and sea borders of the countries, but also their airports and seaports. States considered the important added value of Frontex to be the support it could provide to MSs faced with high levels of illegal migration (Frontex, 2004).

Although Frontex initiates and coordinates operations led by the joint border intervention teams, the final responsibility for these operations lies with the host member state (Strik, 2015). The contents of the operational plan and the decision to deploy an intervention require the approval of both Frontex and the host state. Once the operation has started, the command and control of the activities of the border guards is the responsibility of the host state. The duties, responsibilities and liabilities of the national border guards from other MSs are extensively recorded. At its core, the position of the border guards is equated with that of the host MS (Frontex, 2016). They are deemed to be incorporated into the command structure of that state and should be treated in the

same way as guards from the host MS, even with regards to civil and criminal liability. This also means that they must respect that MS's national law and that the decision to refuse a migrant access is taken by the host member state – Detached border guards cannot fail to execute instructions to do so (Frontex, 2016). They may also carry weapons for their task or use violence in self-defence in the presence of colleagues from the host MS. A force instruction does require the consent of both the origin and the receiving country. Detached officials, including military personnel, do not enjoy immunity if they violate the criminal law. The rule that the host MS is liable only applies between MSs, but not if a third party makes a claim regarding an act of a seconded border guards. The sending state is therefore not completely free from responsibility in the host country if one of its officials commits an offense (Frontex, 2004).

Despite the expansion of its tasks and responsibilities, the policy that Frontex only assisted and bore no official responsibility remained unchanged. A question remains, however, whether this policy is still tenable. The execution of tasks such as consultancy, coordination and effective assistance can indeed endanger or even result in human rights violations (Strik, 2015). While shifting responsibility allowed between the actors and the criticism Frontex does not work the other way out. In the sense that MSs hide behind Frontex and go free in operations that affect fundamental rights.

4. How can Frontex contribute, and be more useful, more effectively to in the Common European Asylum System (CEAS)?

4.1. Introduction

The pressure exerted by the flow of refugees on the EU has been increasing. The EU continues to be highly attractive to many because of its prosperity and freedom of life. In many European countries, there has been increasing demand for tighter restrictions in admission policies (Middelhaar, 24). In recent years, the political tensions in the world have increasingly threatened to the European Union, while the EU itself seems to have less and less influence. Instability in neighbouring countries has also been acting to increase the pressure on Europe's external borders (Middelhaar, 24). This chapter will analyse if Frontex can contribute effectively in the Common European Asylum System. First, the CEAS will be analysed. Why is this system not working optimally? After that, there will be searched for a solution or option to make this asylum system more useful.

4.2. Why does the CEAS not (yet) work optimally?

The biggest problem in the competence of the CEAS is the willingness of member states to unite in the areas of migration and asylum policy (Guild, 2015). As described in previous chapters, the EU, as early as 1985 when the Schengen Agreement came into force, engaged all its MSs in cooperation on border management and migration policy. After this first attempt to bind sovereignty in the field of central powers of the EU regarding border control, immigration and asylum, the EU has a complex history of legislation: the Maastricht Treaty (1992), the Treaty of Amsterdam (1997) and the Lisbon Treaty.

The Maastricht Treaty established the three pillars of the EU. The first pillar, the European Community, is supranational alongside the EU institutions: European Parliament, European Commission and European Court of Justice. The other two pillars, the Common Foreign and Security Policy and Justice and Home Affairs, are intergovernmental (Baylis, 2011). Under the Treaty of Amsterdam, the MSs decided to devolve certain powers from national to European level in the areas of migration and criminal law (Baylis, 2011). In the Treaty of Lisbon, the prominent change for migration and security was the Fundamental Rights Charter, which considered the rights of EU citizens and residents (Baylis, 2011). Therefore, it is clear that the EU has already achieved much over the last thirty years in the fields of migration and security. Yet the migration policy remains a policy area where there is still plenty of room for improvement. At the present time, the interests of the MSs vary too widely to reach consensus.

The first problem is internal. Harmonising the migration policy across all MSs will take form in agreements on the division of responsibility for asylum seekers across the EU. The Dublin Regulation (Dublin III) regulate that all states in the EU are responsible for examining an asylum application. The purpose of the agreements reached in Dublin is twofold (Guild, 2015). The first objective is to prevent secondary migration within the EU by ensuring that only one MS is responsible for each asylum application. The second goal is to prevent the problem of 'refugees in orbit' by ensuring that an applicant, who wishes to make an asylum application at the external borders or on European territory, can complete the application in an European member state (Guild, 2015). The Dublin system distributes the responsibility for asylum seekers across the EU member states; however, it is distinctly unfair. If applicants were to be distributed in accordance with Dublin III Greece and Italy would suffer far more than any other MSs. The powerlessness – and to some extent unwillingness – of southern MSs to uphold this system appeared earlier. Eventually, the Greek asylum procedure proved so miserable that it violated human rights to send asylum seekers there (Guild, 2015). Italy made little effort to deter asylum seekers to travel to other EU countries.

The second problem in the CEAS is that the working of the CEAS is the type of cooperation chosen: 'the middle ground' between full Europeanization and classic intergovernmental cooperation (Guild, 2015). Asylum policy is based on minimum harmonization and mutual recognition of (negative) decisions between all MSs (Guild, 2015). However, implementation of the legislation to be achieved is wholly owned by the member states; the EU has no executive powers. Such cooperation will only work if MSs want it to work – if, for example, they have a shared view on a particular issue. However, that shared will and vision are entirely missing in asylum policy (Guild, 2015).

4.3. Wherein lies the solution?

A new justification for the integration process of the EU can only be found if the EU provides openness as well as protection (Middelhaar, 24). So far, inclusion has been practised in the freedom to cross borders, but the perspective of internal borders can only be sustained if the EU is going to give more attention to safety (Middelhaar, 24). If the EU is a community of values, it must also want to be a community of security (Kooijmans, 2008).

The different issues surrounding the refugee crisis and border security management are the reason there are increasing numbers of scientists indicating that Public-Private Partnerships (PPPs) could be a solution (Risse, 2002). Public-Private Partnership (PPP) is a model for public infrastructure projects; the government at local or national level represents the public partner, while the private partner can be a privately owned business or public corporation with expertise in a

specific area. PPP is a broad term and can be applied to various types of partnerships, from simple, short-term cooperation to long-term contracts. It provides only the desired goal to the government, and does not deal with the content and implementation of this goal (Risse, 2002). Linder and Roseau defined PPPs as a formation of cooperative relationships between government, profit-making firms and non-profit private organisations to fulfil a policy function (Risse, 2002). Government remains responsible for policymaking and legislation, but a private organization executes it. The concept of PPP fulfils what Deleuze predicted in 1992, that there would be a shift in state government, from centred power to increased fluidity in the issues of border management (Deleuze, 1992). Risse mentioned in his work PPPs are to increase both the effectiveness (problem-solving capacity) and the legitimacy of international governance in terms of democratic participation and accountability (Risse, 2002).

Given the problems that the refugee influx poses to migration and security policy in recent years, PPPs can be a significant solution. A new architecture of border management is needed, and cooperation on the local, national and international levels and between the public and private sector is useful, and thus a rise of public-private partnerships could be of great benefit (Nielsen, 2013). Furthermore, in line with this dissertation, Papademetriou refers to the changing character and growth of international collaboration on both the public and private levels, as well as the rise of private actors in security services (Papademetriou, 2011).

This dissertation applies this broadly applicable theory of public-private partnerships to Frontex. Frontex was intended to be a de-politicised community body. However, the following three factors prevent its immunity of a de-politicised community body: its capacity is overly dependent on the actual level of cooperation from European MSs, its activities are 'emergency driven' and a by-product of political pressures and strategies exercised by particular member states and the European Commission exercises significant influence over it (Carrera, 2007). The competencies of Frontex are guided by the principle of dependence on member states' solidarity. This is clearly linked to issues of sovereignty, and begs the question: under whose sovereignty lays the responsibility over decisions in the field of border security? In fact, Frontex can only act upon requests from MSs or in agreement or cooperation with MSs, which does not work effectively in practice (Strik, 2015). It means that the balance of power is unclear and European leaders are forced to improvise in an unforeseen crisis. (Veld, 2016) Furthermore, Frontex deals with these various challenges on an 'emergency-driven' basis, which has meant that states have been asking for help from Frontex when it is already too late, meaning that urgent and rapid action is needed (Scheffer, 2016).

4.4. How can Frontex assume a role in the CEAS?

One potential solution to the complex issues surrounding EU border control and migration is a co-operation between Frontex, the EU border protection organization, and the European Asylum Support Office (EASO). The EASO was founded in 2010 and operational since 19 June 2011. EASO supports the EU Member States by researching ways to coordinate better the various forms of asylum (Europa.nu, 2010).

As mentioned previously, southern countries on the EU border such as Italy, Spain, Malta and Greece experience greater issues from the increasing flow of migrants than other EU countries, since these are where migrants first arrive. Due to the large flow of migrants and the time-consuming procedures of asylum and the CEAS does not work optimally. According to the Dublin Regulation, the first country of arrival is responsible for the asylum application process. The southern EU countries will therefore receive more applications than northern countries, given that migration is often via the Mediterranean and the Balkans.

In a new form of cooperation between the EASO and Frontex, Frontex could take on the key role of distribution instead. According to Elspeth Guild, Cathryn Costello, Madeline Garlick and Violeta Moreno-Lax in the CEPS, the first problem is that some or all MSs fail to apply the binding standards of asylum procedures; and second, when MSs do properly apply the binding standards, they do not come to consistent conclusions (Elspeth Guild, 2015). To ensure that MSs fulfil their EU obligations, a new European agency is needed which has the power and duty to determine asylum applications in the EU; the Dublin Regulation should be replaced by a non-coercive, solidarity-based and fundamental rights system for asylum applications (Elspeth Guild, 2015). A legally binding EU distribution agency is needed and must ensure that asylum seekers are received across the whole EU in a manner that is fair for both the asylum seeker and the member states (Elspeth Guild, 2015).

4.5. Distribution key

Frontex must work together with the EASO to produce a new Migration, Asylum and Protection Agency (Elspeth Guild, 2015). It must be fully responsible for the surveillance of external borders in order to tackle the challenges and potential future threats in the field of migration at the external borders. Besides, Frontex have to ensure a higher level of internal security within the EU to safeguard the functioning of the Schengen area and respect the overarching principle of solidarity (Giannetto, 2012). The EASO would remain responsible for improving cooperation between EU countries with regards to asylum processes. As the new Migration, Asylum and Protection Agency, the collaboration between Frontex and EASO will act as the distribution key. When migrants arrive

at the borders of the EU, Frontex would pick them up themselves and, together with EASO, fairly distribute them across the EU. This would mean that Frontex and the EASO would have the power to decide in which countries refugees can and should apply for asylum. The allocation would be based on the prosperity of each country, its population, level of unemployment and number of existing asylum seekers (Rozumek, 2016).

On a national level, distribution systems already exist, such as in Germany, whose 'King Steiner Schlüssel' uses criteria based on population factors (one third) and tax revenues (two-thirds) to inform its decisions about refugee distribution (Guild, 2015). In Austria, a national plan entitled 'Save Lives' has been proposed, which aims to create several possible distribution systems based on demographic and economic factors (Guild, 2015). Austria's plan provides a model according to which decisions can be made about the distribution of asylum seekers across EU member states. The initiatives taken by several EU member states possibly reflect that support is growing for an actual distribution to come in the foreseeable future. A distribution plan would aim to equalize the treatment of asylum seekers in all EU countries. The EU is already active with a distribution plan. On 22 September of this year, the EU ministers agreed on a plan to share the burden of relocating up to 120.000 refugees from Greece and Italy, two EU states where the most refugees have arrived. Each member state of the EU gets a number of refugees based on its economic strength, population and unemployment. The plan is not comprehensive: Five times as many migrants have already arrived in Greece this year as the 120.000 who would be relocated to other countries by the plan. The MSs of the EU only want to receive the quantity of refugees, which are agreed in the plan to distribute 120.000 refugees. This is again the unwillingness of the MSs to unite and harmonise in the field of asylum. This dissertation suggests that an agency, which is responsible for the asylum application and the distribution of refugees will be more useful in the migration system.

Analysis

This thesis has attempted to describe and understand the problems surrounding the enormous flow of refugees to the EU and on the other hand the border security management of the EU. As each chapter has demonstrated, there is a tension between the protection of the European Union, its citizens and its external borders and the protection of refugees. This dissertation has examined why people flee to Europe and why this flow of refugees causes problems and if there is a solution for these problems. This dissertation also examined the CEAS, asylum system of the EU and Frontex, the border security agency of the EU. Each chapter has focused on one of these elements in order to answer the research question.

Chapter one has shown that migration is of all times. After World War II, Europe also suffered an unprecedented refugee crisis. In 1951, the UN created the Geneva Convention relating to the status of refugees. After this other convention were by signed to protect refugees. Over the years, states have played an important role in refugee flows. For example, interstate violence or violence against the government. But as well violence between different social groups wherein the state plays a role albeit in its absence. The disappearance of central authority led to more violence between different social and cultural groups. Since 2010, there has been political unrest, the so-called Arab Spring, in the Middle East and North Africa. In many Arabic countries, this led to the overthrow of governments. Continuing violence against the population continued to provoke the intervention of international leaders. However, the outcomes are disappointing; it has not brought democracy, peace or freedom. Thereby, the unrest in North Africa and the Middle East has resulted in a great migration flow to the EU.

The second chapter focused on the Common European Asylum System. In 1999, the EU start to make plans for a common asylum policy to ensure that legal migration in and to the EU is well managed. In the past time, from 1999 till now, there are a lot of treaties, programmes, protocols, directives etc. came into force, which helped to create and develop the Common European Asylum System. Despite the past time, the harmonization of the CEAS across the EU continues to prove very difficult. Not every state has the same asylum problems as other states and the enormous flows of refugees have results in problematic situations. There are two reasons for the difficulty in the competence of the CEAS. The first one is the willingness of the MSs to unite in the area of asylum policy. The second one is that the CEAS is based on minimum harmonization. The legislation on asylum policy is wholly owned the Member States; the EU has no executive power. The biggest problem lies in the Dublin Regulation. According to the Dublin Regulation the first country of arrival is responsible for examining the asylum application. The consequence of this system is evident in the number of asylum applications faced by the MSs on the EU's external

border: they are required to handle many more applications (relatively) than the other MSs due to their geographical location.

In chapter three the border security agency of the EU: Frontex and her duties have been discussed. Over the years, the EU has rapidly enlarged its borders. Since the Schengen agreement has been signed, there are no border controls. After the enlargements and the right to free movement of person it was necessary to create an European agency for management and security of the European borders. Frontex offers technical and informational assistance to MSs of the EU to protect and manage their external borders of the EU. In its relatively short existence, the agency has passed through rapid development. Although Frontex initiates and coordinates operations led by the joint border intervention teams, the final responsibility for these operations lies with the host member state. This means that they must respect that MS's national law and that the decision to refuse a migrant access is taken by the host MS. Despite the expansion of its tasks and responsibilities, the policy that Frontex only assisted and bore no official responsibility remained unchanged

After examining all the issues, which lead to asylum and security problems, chapter four discussed of Frontex could contribute more effectively in the CEAS. This dissertation suggests that Public-Private Partnership could be a solution. The competencies of Frontex are guided by the principle of member state's sovereignty. In fact, the agency can only act upon requests from MSs or in agreement or cooperation with MSs, which work not effectively in practice. Therefore, Frontex should work together with the EASO in the role of distribution key. To ensure that MSs fulfil their EU obligations and that one MS will do the asylum applications an agency is needed which has the power and duty to determine asylum applications in the EU. Frontex must be fully responsible for the surveillance of external borders in order to tackle the challenges and potential future threats in the field of migration at the external borders. The EASO would remain responsible for improving cooperation between EU countries with regards to asylum processes. When migrants arrive at the borders of the EU, Frontex would pick them up themselves and, together with EASO, fairly distribute them across the EU. This would mean that Frontex and the EASO would have the power to decide in which countries refugees can and should apply for asylum.

Conclusion

In this dissertation the refugee crisis and the border security in the EU has been investigated and if the role of Frontex should be extended in the asylum procedure of the EU. At this time, there is a compelling need to protect the refugees who are in need. Most Europeans pull the fate of the migrants, but the question is being asked in the European Union if our migration policy has been calculated on the pressure of thousands of migrants. The EU must remain a safe haven for those fleeing persecution, and remain an attractive destination for talented and enterprising students, researchers and employees. We must respect our international obligations and uphold our values and at the same time secure our borders and create good conditions for economic prosperity and social cohesion in the EU. This is a difficult balancing act, which requires coordinated action at European level. No member state can effectively handle the migration. There is a clear need for a new, more European approach.

In 1999, the EU started to make plans for a common asylum policy to ensure that legal migration in and to the EU is well managed. In the past time, from 1999 till now, there are a lot of treaties, programmes, protocols, directives etc. came into force, which helped to create and develop the Common European Asylum System. Despite the past time, the harmonization of the CEAS across the EU continues to prove very difficult.

Given the fact that the CEAS works yet not optimally, the different issues surrounding the refugee crisis and border management, the dissertation indicates that Public-Private Partnerships could be a solution. A potential solution could be a co-operation between Frontex and EASO. They are the private actor, who is responsible for the implementation of the asylum and security policy, made by the EU institutions, the public actor. The two agencies will form together a new agency, which has the power and duty to determine asylum applications. Hereby, the agency will help and check MSs with applying the binding standards of asylum procedures. The new agency will act as the distribution key, which will replace the Dublin Regulation by a solidarity-based and fundamental rights system for asylum applications. When migrants arrive at the borders of the EU, Frontex would pick them up and, together with EASO, fairly distribute them across the EU.

In conclusion, the answer on the research question: "Should the role of Frontex be extended in the asylum procedure of the EU?" is yes. The complex and different problems surrounding the refugee crisis and the border security management are asking for a quick and effective solution. This dissertation argues that Frontex, as a private actor, increase the effectiveness (problem-solving capacity) of European governance. The European institutions still are responsible for law and policy-making, but Frontex, the private actor, carry out this asylum and security policy. This will

mean that decreasing state autonomy and delegate national asylum law to European level might be the price to be paid for an increase in problem-solving and legitimacy of international public policy.

List of References

- A.R. Zolberg, A. S. (1989). *Escape from violence: conflict and the refugee crisis in developing world*. Oxford: Oxford University Press.
- Assembly, G. (1956, August 1). *Convention relating to the status of refugees*. Retrieved on July 19, 2016, from Overheid.nl: wetten.overheid.nl/BWBV0001002/1956-08-01
- Balzacq, J. (2005). *Migration, borders and asylum. Trends and vulnerabilities in EU policies*. Brussels: Centre for European Policy Studies.
- Barroso, J. (2012). *State of the European Union speech*. Brussels: European Commission.
- Baylis, J. (2011). *The globalization of world politics*. Oxford: Oxford University Press.
- Bruin, R. (2015). *Dublin: blind interstatelijk vertrouwen in een fictie*. Ministerie van Veiligheid en Justitie, Wetenschappelijk Onderzoek- en Documentatie centrum. Den Haag: Boom Juridische uitgevers.
- Carrera, S. (2007). *The EU border Management Strategy FRONTEX and the challenges of irregular immigration of the Canary Islands*. CEPS Working Documents.
- Chalmers, D. (2010). *European Union Law*. Cambridge: Cambridge University Press.
- Clingendael. (2011). *De hernieuwde Arabische lente: tussen revolte en revolutie*. Den Haag: The Clingendael Institute.
- Council of Europe. (1950, November 4). *Convention for the protection of human rights and fundamental freedoms*. Retrieved on October 31, 2016, from Council of Europe: www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005
- Deleuze, G. (1992). *Postscripts on the societies of control*. The MIT Press.
- Djordjevic, N. (2014). Exclusion under article 1F(b) of the Refugee Convention: the uncertain concept of internationally serious common crimes. *Journal of International Criminal Justice*, 1057-1074.
- Elsbeth Guild, C. C.-L. (2015, September). *The 2015 Refugee Crisis in European Union*. Retrieved on November 30, 2016, from CEPS: www.ceps.eu/system/files/CEPS%20PB332%20Refugee%20Crisis%20in%20EU_0.pdf
- Entzinger, H. (2015). *Op zoek naar bescherming in een vrije wereld - Asielmigratie naar Europa ontleed*. Wetenschappelijk Onderzoek- en Documentatiecentrum, Ministerie van Veiligheid en Justitie. Den Haag: Boom Juridische uitgevers.

- Europa Nu. (2016, November 6). *Duits plan: stuur geredde migranten terug*. Retrieved on November 7, 2016, from Europa Nu: www.europa-nu.nl/id/vk8y7uh0uux/nieuws/duits_plan_stuur_geredde_migranten_terug
- Europa.nu. (2010, June 18). *Europees Ondersteuningsbureau voor asielzaken (EASO)*. Retrieved on December 20, 2016, from Europa Nu - Onafhankelijk en Actueel: www.europa-nu.nl/id/vic1c73vultr/europees_ondersteuningsbureau_voor_asielzaken
- European Commission. (2009, December 2). *The Stockholm Programme - an open and secure Europe serving and protecting the citizens*. Retrieved on October 13, 2016, from Together against trafficking human beings: ec.europa.eu/anti-trafficking/eu-policy/stockholm-programme/open-and-secure-europe-serving-and-protecting-the-citizens_en
- European Commission. (2015, June 23). *Common European Asylum System*. Retrieved on October 13, 2016, from Migration and Home Affairs: ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm
- European Law. (2005, September 25). *The Hague Programme: 10 priorities for the next five years*. Retrieved on September 12, 2016, from EUR-lex: www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l16002
- European Parliament. (1999). *Tampere European Council 15 nd 16 October 1999: Conclusions of the Presidency*. Brussel: European Parliament.
- European Union. (2009). *Treaty of Lisbon*. Bruxelles: European Union.
- Europese Commissie. (2016). *Beleid uitbreiding Europese Unie*. Retrieved on July 19, 2016, van Europa-nu: www.europa-nu.nl/vi9pktppo1xz/beleid_uitbreiding_europese_unie
- Eurostat. (2016, May). *Migration and migrant population statistics*. Retrieved on July 2016, van Eurostat: ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics
- Frontex. (2004). *Het Europees agentschap voor het beheer van de operationele samenwerking aan de buitengrenzen van de lidstaten van de Europese Unie*. Verordening 2007/2004 . Europees Parlement.
- Frontex. (2011). *Futures of borders. A forward study of European Border Checks*. Warsaw: Frontex.
- Frontex. (2016). *Annual risk analysis*. Frontex. Warschau: Frontex 2016.
- Frontex. (2016). *Management Board*. Retrieved on September 29, 2016, from Frontex, European border and coast guard agency: www.frontex.europa.eu/about-frontex/organisation/management-board
- Frontex. (2016). *Missions and Tasks*. Retrieved August 12, 2016, from Frontex: www.frontex.europa.eu/about-frontex/missions-and-tasks/

- G. Marks, L. Hooghe and K. Blanke. (1996). European Integration from the 1980s: from state-centric to multi-level governance. *Journal of Common Market Studies*, 34.
- Geddes, A. (2008). *Immigration and European integration*. Manchester: Manchester University Press.
- Giannetto, L. (2012). *The borders of Accountability*. Rome: University of International Studies.
- Guild, E. (2015). *Enhancing the common european asylum system and alternatives to Dublin*. Brussels: CEPS Papers.
- International Organization of Migration. (2015, December 21). *Bijna een miljoen migranten en vluchtelingen naar Europa in 2015*. Retrieved on September 29, 2016, from IOM-Nederland: <http://www.iom-nederland.nl/nl/553-bijna-een-miljoen-migranten-en-vluchtelingen-naar-europa-in-2015>
- Jennissen, R. (2015). *Asielzoekers in Europa: geopolitieke context*. Den Haag: Justiele verkenningen.
- Keely, C. (1996). How nation-states create and respond to refugee flows. In *International Migration* (pp. 1046-1066). New York: Center for Migration Studies New York.
- Knipp, K. (2013, October 18). *Arab Spring changes migration to Europe*. Retrieved on September 16, 2016, from DW: www.dw.com/en/arab-spring-changes-migration-to-europe/a-17166708
- Kooijmans, P. (2008). *Internationaal Publiekrecht in vogelvlucht*. Deventer: Kluwer.
- Linklater, A. (2011). Globalization and the transformation of political community. In S. S. John Baylis, *The Globalization of World Politics* (p. 532). Oxford: Oxford University Press.
- M. Anderson and E. Bort. (2001). *The frontiers of the European Union*. Basingstoke: Palgrave.
- M. Chotkowski, A. S. (2014). De Nederlandse Migratiekaart 2013: achtergronden en ontwikkelingen in internationale migratiestromen in de periode vanaf 2000. In R. J. Nicolaas, *Asielmigratie* (pp. 129-176). Den Haag: WODC.
- Majone, G. (1999). *The Regulatory State and Its Legitimacy Problems*. Pittsburgh: West European Politics.
- Middelaar, L. v. (24, September 2016). Europa moet leren bescherming te bieden. 24. (H. Steketee, Interviewer) Rotterdam, The Netherlands: NRC Handelsblad.
- New York Times. (2016, April 8). *LENS: Photography, video and visual journalism*. Retrieved on December 29, 2016, from The New York Times: www.lengs.blog.newyorktimes.com/2016/04/08/photography-pulitzer-for-coverage-of-refugee-crisis/?_r=0

- Nielsen, N. (2013, October 1). *Security industry is shaping EU legislation*. Retrieved on August 12, 2016, from Euobserver: www.euobserver.com/priv-immigration/121485
- NOS. (2016, October 5). *Italie pikt in twee dagen 10.000 migranten op uit zee*. Retrieved on October 17, 2016, from nos.nl: www.nos.nl/artikel/2136071-italie-pikt-in-twee-dagen-10-000-migranten-op-uit-zee.html
- P. Boeles, M. d. (2014). *European migration law*. Antwerp: Intersentia.
- Papademetriou, J. (2011). *A New Architecture for Border Management*. Washington: Migration Policy Institute.
- R. Bruin, S. K. (2015). *Dublin: Blind interstatelijk vertrouwen is een fictie*. Ministerie van Veiligheid en Justitie, Wetenschappelijk Onderzoek- en Documentatiecentrum. Den Haag: Boom Juridische uitgevers.
- Risse, T. (2002). *Public-Private Partnerships: Effective and Legitimate tools of International Governance*. Berlin: Istitute for Social Science.
- Rozumek, Z. S. (2016, November 14). *How to Reform the Common European Asylum System*. Retrieved on December 20, 2016, from Social Europe: www.socialeurope.eu/2016/11/reform-common-european-asylum-system/#
- Schapendonk, J. (2015). *De dynamiek van een migratiereis van Afrika naar Europa*. Den Haag: Boom juridische uitgevers.
- Scheffer, P. (2016, April 1). *Groot Europa is zwak Europa*. Retrieved on October 20, 2016, from NRC Handelsblad: www.nrc.nl/nieuws/2016/04/01/groot-europa-is-zwak-europa-1603376-a119117
- Strik, M. (2015). *Frontex en de grenzen van zijn mandaat*. Den Haag: Boom Juridische uitgevers.
- UNHCR. (1967). *Convention and Protocol Relating to the Status of Refugees*. Geneva: UNHCR.
- Veld, G. V. (2016, February 3). *Zo los je de vluchtelingencrisis op*. Retrieved on September 29, 2016, from NRC: www.nrc.nl/nieuws/2016/02/03/zo-los-je-de-vluchtelingencrisis-op-1587731-a1191823
- Verenigde Naties. (1997). *International migration and development: the concise report*. New York: Verenigde Naties.
- Weber, S. P. (2006). *Borders, Mobility and Technologies of control*. Amsterdam: Springer.
- Wetenschappelijk Onderzoek- en Documentatiecentrum Ministerie van Veiligheid en Justitie. (2015). *Justitiele verkenningen: Vluchtelingen in Europa*. Ministerie van Veiligheid en Justitie. Den Haag: Boom Juridische uitgevers.
- World Bank Group. (2016). *Unemployment, % of total labour force*. World Bank Group.

Appendices

Appendix I: Final Operational Budget Distribution

payment appropriations made in 2013. Of the total amount carried forward from 2013 to 2014, EUR 28.9 million was paid in 2014, while EUR 2.8 million needed to be cancelled. The main reasons for the cancellations were related to the non-implementation of contracts or due to the fact that grant beneficiaries requested lower amounts than estimated at the beginning of an operational activity. Nevertheless, the total budget utilisation of the appropriations made available to Frontex in 2013 was 95%.

Procurement

Part of the implementation of the Agency's budget relates to the execution of procurement procedures - purchasing products and services from contractors. It needs to be emphasised that Frontex is not outsourcing any of its operational activities.

