EUROPEAN ASYLUM POLICY AND THE POLITICAL MANAGEMENT OF REFUGES

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Abstract

This paper will account for the development of the European asylum system from the early 1990s dealing with displaced persons from the Soviet Union after its disintegration till the current efforts of the European Asylum Support Office to enforce common European asylum procedures. It intends to study the European asylum policy and how it has addressed the concerned challenges. It also aims to evaluate the extent to which it is effective in its implementation and to measure its policy outcome.

Keywords: Refugees, asylum, migration, security, borders, immigrants

Introduction

Over the last two decades, there has been a rise in asylum applications in Europe and other developed regions. It has sparked intense political debate in many European countries and has led to a succession of policy changes, particularly in the countries of the European Union (EU). The EU is the preferred destination for approximately two-thirds of all asylum seekers who want to make their way into the developed world. In the past two decades, over six million people have applied for asylum in the European Union. The majority of recent asylum applications to the EU come from Africa, Asia and Eastern Europe (Hatton 2015). Following the collapse of the erstwhile Soviet Union and the fall of the Berlin Wall, there was a surge in applications from Eastern Europe. In more recent times, there has also been a long upward trend in applications from Africa and Asia, following the Arab Spring and the Syrian refugee crisis in 2011 and 2015 respectively.

During the 1980s and early 1990s, the asylum policy in Europe was a matter which was largely dealt with by individual countries. The most notable case is Germany, which received over half of the total applications to the EU. By contrast, countries such as Finland, Greece, Ireland and Portugal received relatively few applications (Hatton 2004). These two factors - the long-term upward trend in the aggregate numbers and the uneven distribution of asylum applications across countries form the background to the 'policy backlash' that has taken place in the past two decades and a half. This has led to the introduction of a wide range of policy

reforms within the EU. This pattern, however, changed in the late 1990s when the EU started a process of building a Common European Asylum System (CEAS). This process had led to a large-scale harmonization and cooperation with regards to asylum policy (Hatton 2015). The EU has since implemented numerous directives and measures intending to harmonize European asylum procedures over the past two decades.

Since the beginning of 2015, the European Union has been facing one of the biggest refugee crises in its history. According to the European Commission, approximately 1.5 million people have arrived in Europe via the Greek and Italian coasts. Almost 1.2 million people have officially requested asylum (European Commission 2017). The influx of refugees and asylum seekers coming predominantly from Syria, Afghanistan and war-torn areas of Iraq has revived the old question of adequate EU coordination and effectiveness of the asylum policies that had existed since the early 1990s during the Yugoslav Wars and the collapse of the USSR (Eurostat 2017). Along with the economic issue raised by the influx of immigrants from the Balkans and Eastern Europe, EU member states are currently facing additional political pressures. These pressures mostly involve difficulties with the accommodation capacities throughout the Union. At the same time political challenges raise questions concerning the effectiveness of EU governance.

Over the last 20 years, policymaking towards asylum seekers and refugees has shifted away from national governments and towards the European Union, as the Common European Policy has developed. Most of the focus has been on the harmonization of policies related to refugees. Hence, this paper examines the basis upon which a joint EU asylum policy is effective in achieving its future goals. There comes a question of whether effective outcomes have been achieved by the Common European Asylum System (CEAS) in the past. It also intends to study the political feasibility of deeper policy integration by analysing the processing of asylum claims and the reception standards for asylum seekers.

International Conventions to establish a European Asylum System

The right to apply for asylum was first introduced to international law in Article 14 of the Universal Declaration of Human Rights (1948), which states that "everyone has the right to seek and enjoy in other countries asylum from persecution". This right was concretized with the United Nations' 1951 Convention Relating to the Status of the Refugee, a document that is currently ratified by 145 states worldwide, among them all European states. The convention lays down both the current definition of and basic rights of refugees, as well legal obligations for states to protect them. This document, along with the 1967 Protocol Relating to the Status of Refugees, remains arguably the two most important building blocks in international refugee law, with the latter removing geographical and temporal restrictions of the 1951 convention. Along with the 1951 Convention, the United Nations High Commissioner for Refugees (UNHCR) was established to serve as a guardian of the convention.

The main principle of the 1951 convention and the 1967 protocol is that non-refoulement, which states that no victim of persecution should be persecution should be transferred back to his or her perpetrator. The convention defines a refugee as a person outside of his or her home country or habitual residence who is "unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion". The minimum rights granted to refugees included the right for access to courts, primary education, work and personal documents. The 1951 convention was ratified by all European countries and this marked an important step towards a common asylum regime in Europe.

Another important convention for the future development of the European asylum regime was the 1950 European Convention on Human Rights which aimed at protecting human rights and political freedoms in Europe. It established the European Court of Human Rights (ECHR). Article 3 of the convention states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". This was later used by the European Court of Human Rights as a basis for granting a de facto asylum for aliens (Teitgen-Colly 2006).

Evolution of European Asylum Policy

There is an important distinction between immigration policies and asylum policies. Immigration policies are often framed while keeping in mind the benefit of host populations - either individuals such as in the case of family re-unification or towards the economy, while deriving benefits of labour migration. In contrast, asylum policies are exclusively built around the benefits of the refugees rather than towards the host society. There are other determining factors as well such as security and public order which also play an important role while formulating both kinds of policies (Hatton 2015).

While international agreements and conventions on the field of asylum can be traced back to the first half of the twentieth century in Europe, European cooperation on asylum issues was to surface much later. Implementation of international commitments was carried out on a national basis, which can be exemplified by the diversity in national institutions responsible for determining whether or not asylum seekers are qualified for the refugee status. In other words, European practices for implementing the 1951 convention and the 1967 protocol vastly differed over the decades (Bronkhorst 1991).

The harmonization of European asylum policies was first considered a necessity when work began to abolish internal borders in the Union, which in turn resulted in the first attempts of asylum policy harmonization. The arrival of refugees to the EU has been a source of heated debate depending upon the volume of applications each year. The surge of application in the 1980s reaching a peak in the early 1990s is what led to a policy backlash (Hatton 2004). This political backlash in many countries resulted in stricter policies such as increasing border controls, making the criteria for granting refugee status tougher and to delineate the

circumstances under which asylum seekers lived. These were coupled with the introduction of visa requirements for countries that were potential sources of asylum applicants. Another area of policy tightening was to determine whether an applicant would gain refugee status by narrowing the definition of a refugee. As a result, the number of applicants to the EU-15 countries fell drastically from 1985 to a decade later (Hatton 2015).

There is much debate about how the growing degree of harmonization should proceed and how deep cooperation should go. Two questions could be posed at this instance. Firstly, what is the purpose of having an integrated asylum policy rather than policies by the individual national governments? Hatton (2015) states that giving asylum to refugees is a humanitarian responsibility thus, may be underprovided in the absence of an integrated system. Secondly, is the convergence of national policies enough or is there a dire need for a more centrally controlled policy? According to Hatton (2005), the convergence of national policies may not lead to equal burden sharing therefore, a more systematic asylum policy which is centrally directed is required. When policy is implemented by national governments, the reference groups is the people that elected them. Hence, the voters of the EU member states have to be willing to see the responsibility shift from their national governments to a more centrally controlled direction of the EU with regards to asylum policy (Hatton 2015).

Cooperation on asylum policy between EU member states started gaining momentum in the early 1990s. The Dublin Convention of 1990 established that an asylum claim would be assessed by 'the country of first entry'. Therefore, it took a major step to prevent 'asylum shopping'. In addition, there were other measures such as the deportation of rejected applicants, strict restrictions placed on these asylum seekers during the processing of claims, restriction on the freedom of their movement in some cases and also difficulties in their rights to seek employment (Boswell 2003).

The common trends in asylum policy among EU member states was possible to identify during the 1990's but formal cooperation between them was minimal. These common trends could be seen in tightening border controls and adopting strict processing procedures; hence, these policies were a direct response to the rise in the number of asylum applications (Hatton 2004). This process was seen by many as a 'race to the bottom' (Noll 2003). During the 1990s, there were several discussions around the issues of burden-sharing and refugee redistribution but no formal deliberations were made until the end of the decade.

With the signing of the Treaty of Amsterdam, asylum policy was given prime importance and transferred to the primary agenda which gave the European Commission the right to propose legislation when the treaty came into force in 1999. (Thielemann 2003). Meanwhile, the European Council meeting at Tampere in 1999 laid out plans to build a Common European System (CEAS) based on the 'full and exclusive' application of the 1951 Refugee Convention.

Implementation of the Common European Asylum Policy (CEAS)

The first stage of the CEAS (1999 - 2004) (the Tampere Programme) focused mainly on the harmonization of key elements of asylum policy. The Reception Conditions Directive established common standards for access to employment and training, as well as to welfare, housing, health and education services for asylum seekers during the processing of their claims. A new version of the Dublin Regulation (Dublin II) revised the mechanism for determining the state responsible for asylum claims, linked in the EURODAC fingerprint database. The Qualification Directive laid out a common set of criteria to be used alongside asylum applications and the Asylum Procedures Directive laid down standards for designating authentic asylum claims, as well as covering issues such as legal assistance. These directives were included within a stipulated time into national legislation, but they laid down only minimum standards and they did not cover every aspect of the asylum process. Thus, harmonization was partial and incomplete.

The second stage of the CEAS (2004 - 2010) (the Hague Programme) involved deeper cooperation in a number of areas. In 2005, the FRONTEX agency was established to standardize border control and surveillance operations. The further harmonization of rules and procedures was carried out through the determination of refugee status and appeals. A third initiative was to deal with issues such as the rights and benefits to social security, health and education of refugees. The fourth one is promoting integration programmes for recognized refugees with increased financial support for the European Refugee Fund (ERF). The fifth, is that new regulations have been promulgated on employer sanctions on the return of illegal immigrants.

Before its completion, the Hague Programme was superseded by Stockholm Programme, with the aim of completing the CEAS by 2014. An important development was the establishment of European Asylum Support Office (EASO), which is located in Malta and began its operations in 2010. This office is tasked with fostering the exchange of information as well as establishing an early warning system and mechanisms for supporting states that are under 'particular pressure'. This office is also expected to assist in the relocation of recognized refugees. However, this can only be done on an 'agreed basis' between member states and with the consent of the individuals concerned. The Stockholm Programme focused mainly on measures to combat illegal immigration people, smuggling and trafficking as well as greater cooperation within the EU states such as the joint processing of asylum applications.

Challenges and Future Developments

The arrival of approximately 1.3 million asylum seekers to Europe shook the CEAS to its very foundation. In the summer of 2015, the CEAS was catering to the reception and welcoming of everyone who came along the Western Balkan route, while only six months later the very same legal instruments seem to check the rising "irregularly arriving refugees and migrants" and "persons in need of protection", to objecting the

arrivals of "economic migrants". Policy makers were widely overwhelmed and seemed to remain in a state of shock due to the mass of refugees and migrants transiting or arriving to the EU member states (Greenhill 2016).

Following the initial shock, the EU member states recognized that the CEAS instruments were failing in the face of the sheer number of applicants arriving in the certain EU member states in the aftermath of the Arab Spring and the refugee crisis of 2015. However, the approaches taken by policy makers to the EU level and those at the national level could not be more different. While the EU stressed that only a European Union acting in solidarity could shoulder the unprecedented mass arrivals, the member states went in the opposite direction by making unilateral policy decisions; including building fences, introducing upper ceilings, using the wide discretion of the CEAS to create unattractive national asylum systems that deter asylum seekers and show minimal commitment to the solidarity measures (Greenhill 2016)

The CEAS instruments provided clear benchmarks for countries acceding to the EU for adapting their asylum systems, which undeniably brought an increased level of harmonization in applied standards. However, the CEAS is not "common", in the sense of one EU wide asylum system, nor has it developed into a single "system" used in every EU member states. On the contrary, the Common European Asylum System still consists of 28 different asylum systems, with different actors responsible, different procedures and different results. For years, some of the CEAS instruments have been subject to strong criticism. Above all, the Dublin III Regulation is probably the most contested instrument, despite that it is often labeled as the "corner stone" of the CEAS. The Asylum Procedures Directive and the Reception Conditions Directive have often been criticized as too complex and leaving too much discretion to EU member states. The Temporary Protection Directive is commonly ignored, although it is supposed to be the EU's special tool to address mass influx of persons seeking international protection. The recast phase of the CEAS instruments unfortunately did not succeed in addressing those fundamental deficiencies. Thus, opportunities were lost to fundamentally re-consider the CEAS architecture and in particular, the Dublin System.

Conclusion

The refugee flows have exposed deep divisions within the EU. The states via which these flows usually take place and key destination countries situated further north express discontent at the EU's insufficient burden sharing mechanism and in its ways of managing refugee flows and asylum requests. Many EU countries also complain that authorities in the frontline are often lax about registering new arrivals properly enabling many to leave and seek asylum elsewhere. This is against the EU's Dublin regulation which states that the first EU country an asylum seeker enters as responsible for examining that individual's asylum application. Governments in central European countries have been particularly vocal opponents of efforts to redistribute asylum-seekers throughout the EU, fearing that migrants and refugees, many of whom are Muslim, could alter the primarily Christian identities of their countries.

There is an urgent need within the EU law to be reconsidered regarding issues of providing protection to individuals. The EU needs to correct the basis on which it has been dealing with the admission of asylum seekers. The way forward for the EU is to set a high standard of human rights protection and provide asylum based on the application of the 1951 Convention.

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