

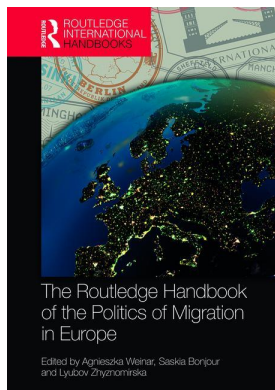
This article was downloaded by: 10.3.98.93

On: 19 Jun 2019

Access details: *subscription number*

Publisher: *Routledge*

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: 5 Howick Place, London SW1P 1WG, UK



The Routledge Handbook of the Politics of Migration in Europe

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Does European refugee policy exist?

Publication details

<https://www.routledgehandbooks.com/doi/10.4324/9781315512853-29>

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Published online on: 09 Jul 2018

How to cite :- Joanne van Selm. 09 Jul 2018, *Does European refugee policy exist? from: The Routledge Handbook of the Politics of Migration in Europe* Routledge

Accessed on: 19 Jun 2019

<https://www.routledgehandbooks.com/doi/10.4324/9781315512853-29>

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DOES EUROPEAN REFUGEE
POLICY EXIST?Regional dimensions of the refugee protection
approach in Europe*Joanne van Selm*

Headline writers talk of a European, or at least a European Union, refugee policy: Some recent examples include: ‘EU refugee policy marks progress, not success’ (Al Jazeera, 2016); ‘UNHCR calls for extensive reform of EU’s refugee policy’ (eKathimerini, 2016); ‘EU needs to rethink its refugee policy’ (Deutsche Welle, 2014). Yet closer analysis gives rise to the question ‘Does European refugee policy exist?’ That is the central question for this chapter. This Handbook focuses on three main themes: the state of research into migration issues across Europe; the power plays surrounding migration; and the question of whether there is a form of ‘European exceptionalism’ at play. As such, there are three sub-questions for this chapter: Does the research community handle refugee policy issues as a matter of ‘European’ policy and concern? Which actors deal with the refugee issue as being one of European interest? Does the EU in particular, and Europe more broadly, treat its approach to refugee policy as a manifestation of a specific, and exceptional, European character?

The question of whether there is a European refugee policy is largely conceptual. What might ‘European’ mean in this context? Is it all states in Europe individually or collectively; or is it a policy upheld specifically by the European Union (EU) and/or its Member States? What exactly does a ‘refugee policy’ entail? Is there a clear overlap with ‘asylum policy’? If not, which other policy areas are involved? How do, could or should they fit together? If we can establish the ‘who’ and ‘what’ elements of this conceptual line of questioning, then we need to move on to whether such a policy has a legal basis, is politically accepted and whether it has institutional foundations for implementation.

In a 2005 UNHCR Working Paper I argued that there was no such thing as a ‘European refugee policy’ – in fact, most European states at that time did not have a ‘refugee policy’ at all. They had an asylum policy, and the EU Member States among them were working on harmonizing those policies with the goal of a Common European Asylum System, but there was no European asylum policy as such, and certainly no clear ‘refugee policy’ (van Selm, 2005).

The question remains pertinent, and the answer, more than a decade later, is probably that while many states are coming closer to a ‘refugee policy’ and the elements of that are emerging for Europe as a whole, there is still not really a ‘European refugee policy’ on paper or in actions. Yet, the discussion of the need for a European approach to refugee issues persists. The question is therefore not only whether there is a European refugee policy, but also why, if the appeal to create one is so strong, there has not been more success in achieving this.

This chapter reviews the existing literature and major debates, discussions and positions taken on this topic. The questions to be covered include whether, by its very nature, the refugee protection system is ‘European’; what ‘refugee policy’ really means; what the European approach to the refugee policy is and what ‘European’ means in this context. The current situation will be sketched, and attention paid to potential ways forward. In concluding the review of the current status of refugee policy thinking in Europe, the author will address the central theme of the Handbook – that is, the question of whether some kind of ‘European exceptionalism’ is at play in the politics of refugee protection in Europe.

Is all refugee protection ‘European’?

One could argue that the current international refugee protection regime, centred on the 1951 Convention Relating to the Status of Refugees (UNGA, 1951), the 1967 Protocol to that Convention (UNGA, 1967) and the Statute of the United Nations High Commissioner for Refugees (UNHCR) (UNGA, 1950), is to a large extent based on what could be termed traditional European values: human rights, rule of law, and a pragmatic understanding of the need for individuals to be protected by a nation-state within the global system. This regime began as a European construct, following the displacements on the continent during World War II and building on the legacy of the International Refugee Organization, and earlier situation-specific approaches. (See Orchard in this volume).

There are two ways in which protection regime became more universal during the 1960s and 1970s. People seeking protection were leaving more countries, particularly in Africa and in Asia, whether remaining in their region or travelling further, for example, to Europe. These displacements were largely a result of decolonization and independence, as well as intra-regional conflicts and ethnic conflicts or civil wars. Other regions started to adapt protection models and understandings (such as the 1969 OAU Convention on the Status of Refugees and the 1984 Cartagena Declaration in Latin America), and an increasing number of states became signatories to the 1951 Convention and its 1967 Protocol.

In sum, on an institutional level a Europe-focused approach in the 1940s and early 1950s became a ‘universal’ regime in 1951, still focused on European situations, but with broader definitions. Over time, it became global in scope and application. Does that mean the international refugee regime is ‘European’? It would be hard to argue that there was no European basis to the international or universal refugee protection regime (see Orchard, this volume). However, European states are among those whose politicians, media and populations most question and challenge the breadth of the refugee regime, and the standing of international law in this area, and have done so for almost two decades (see Chimni, 1998; UNHCR, 2000; ABC, 2015).

Providing shelter, safety and protection to people in need is in no way exclusively European. Modern discussions of refugee protection tend to centre on notions that are considered to be fundamentally part of a European values system and political and legal framework. One question then is whether if European countries turn away from the essential tenets of refugee protection, are they turning away from their own identity?

What is refugee policy?

Terminology in the world of displacement, and migration, often seems very fluid in its popular, and even expert, use. However, for the situations of the millions of people who leave their homes and homelands each year, precision is vital for their treatment. It is easy to expansively talk of ‘refugee policy’ while actually meaning ‘policy regarding who will be granted asylum in

our country'. Indeed, in many cases the broad term 'refugee policy' or 'refugee law' is used effectively as a synonym for 'asylum policy' or 'asylum law' in the European context (see Lambert *et al.*, 2013: 3). In fact, a robust 'refugee policy' would include the granting of asylum to those included in the definition for that status as just one of at least six strands:

- Asylum policy covers those people claiming refugee status on, or after, arriving in country.
- Resettlement policy covers the selection of refugees for organized movement to a country's territory, with refugee status already granted.
- Humanitarian assistance to refugees and displaced persons covers the administration of aid, direct and indirect, for those people in other countries.
- Representation of a position in international or multi-lateral organizations and relations, regarding the treatment of refugees and displaced persons.
- Potentially, and increasingly, active protection for refugees and displaced persons other than on the country's own territory. This could be through capacity building for local protection and integration, or through a greater 'on the ground' presence.
- Managing interception and rescue at sea for people who have been displaced.

None of these elements can be fully explored in the limited space available, but it is worth touching on the situation of each in turn.

In working out the extent to which European states have the elements of a refugee policy, one can say clearly that European states all have an *asylum policy*, and indeed the EU approach to its own broader region is to encourage all neighbouring states to develop an asylum system, if one does not already exist, and strengthen it if it does (Lavenex and Ucarer, 2002). Similarly, European states and the European Commission have all been represented in discussions on various aspects of work on migration, displacement, asylum and refugee protection in international forums.

The Scandinavian countries, as well as the Netherlands (with a pause) and the UK (although for a time it had switched to a very minimal programme) have a history of resettlement, and have been joined in recent years by Germany, Spain, Portugal and Ireland (see ERN, 2016). All of these resettlement programmes are much smaller than the annual asylum seeker arrival numbers for the countries in question (in contrast to the US, Canada and Australia). Expanding resettlement across all EU Member States faces challenges in perceptions towards refugees and immigration generally, particularly as the notion of inviting refugees in and managing their arrival flies in the face of some of the anti-foreigner rhetoric common in the current political debate (Jakulevičienė and Bileišis, 2016). Nonetheless, an active and robust resettlement policy is a key element in a genuine *refugee* policy.

The European states, particularly those of Western Europe, have long-standing commitments to humanitarian assistance, including for displaced persons and refugees. However, this assistance – whether financial or technical, direct or via international organizations – has rarely been framed as part of a refugee policy, but rather as part of foreign aid or development programmes (see Branczik, 2004). This has also been the case for the European Commission Humanitarian Office (ECHO), that only recently became involved for the first time in assisting asylum seekers in an EU Member State – specifically, Greece (ECHO, 2016).

The European Commission developed Regional Protection Programmes in 2005, in Eastern Europe (Ukraine and Belarus), the Great Lakes, Horn of Africa and North Africa, and later in 2013 with the Regional Development and Protection Programme in response to the Syrian crisis. The earlier projects in particular were intended to focus on kick-starting a broader European refugee policy, but they failed to have this impact (see GHK, 2013: 10; ECRE, 2015).

These efforts have sought to support capacity building in the specified areas, to encourage states in the region to strengthen their refugee protection capabilities, and focused on durable solutions. They can clearly be seen as part of the European Commission's efforts to support asylum policy coordination by undertaking broader refugee policy efforts. However, there seems to have been a lack of strong strategic direction to fully engage all state actors and proceed further in this direction (GHK, 2013).

European countries have occasionally floated proposals for some kind of protection for refugees 'off-shore', though this has not really moved from concept to reality in more than two decades of suggestions, other than in failed efforts such as those of creating 'safe areas' in Bosnia in the 1990s. Carrera and Guild (2017) trace the history to the Blair Proposal of 2003 and its re-emergence over time. As they say,

A fundamental reason why these past proposals have not been successful relate to the following questions: can the offshoring of responsibility over asylum seekers be consistent with the member states' human rights obligations? What challenges will these proposals face and can they be seen as an alternative to irregular entry of asylum seekers into the Union?

(Carrera and Guild, 2017: 2)

The proposals generally replicate, to some degree, the Australian approach of processing asylum seekers outside of their desired destination. To a certain extent, the EU–Turkey migration deal, and subsequent efforts to create similar agreements with some African countries, starts to establish such an approach. However, organizations such as Human Rights Watch point out that the Australian approach is no model for Europe, being costly, temporary and requiring massive diplomatic capital (Garcia Bochenek, 2016). Others point to both the scale of the asylum arrivals (being much larger for Europe than for Australia) and the challenge to core values as reasons for which Europe should tread very carefully in seeking inspiration on off-shore processing (Pascouau, 2017).

Finally, the European states have certainly, individually and collectively, including through Frontex, increased their involvement in search and rescue for migrants travelling by sea. Boats of migrants will most frequently include at least some who seek protection through asylum. However, this approach remains under consideration for factors such as whether it encourages smuggling, and indeed has given rise to less caution on the part of both smugglers and those travelling, who view the entry point to Europe now as being the rescue onto a European boat at sea (Newland *et al.*, 2016).

In sum, while some European states are getting closer to a *refugee* policy, it is hard to say that any have a policy with a refugee focus, rather than an asylum policy, with some resettlement, all within an immigration context that is dominated by a non-entry approach. Such a 'Fortress Europe' focus might, in a sense, be said to be a 'European' approach to refugee issues. The question however is: What is meant by European in this context?

What do we mean by 'Europe' in the context of refugee policy?

A core, but circular question in trying to work out whether there is, or should be, a European refugee policy is whether the refugee policy issue requires a regional approach or whether because there is a regional approach on so many other issues, there must be a European policy on refugee issues. If European integration has led to a situation in which the crossing of the border of one Member State is equivalent, for practical and legal purposes, to the crossing of all

borders, then there has to be a common approach to the people who cross, or might cross, any external EU border. However, the legal situation of a refugee or asylum seeker in one Member State is not equal to that of a similar person in another Member State. If a person enters one Member State they have not, at the point of entry, really entered all. Unless they are in the UK or Ireland, they have entered the Schengen space in which they are unlikely to have their papers checked, and so could effectively turn up in another Member State, and request asylum there. EU Member States have sought to create clarity and rules, whereas arguably what they have needed is primarily trust and respect (van Selm, 2016a).

Institutionally, the EU is not the only European body to have worked on asylum or refugee issues. The Council of Europe has also worked extensively on the subject and associated areas of human rights (see van Selm, 2005). Discussions have been possible in the Council of Europe Assembly probing further into challenging issues and setting out possible paths that are more ambitious and rights-minded than those pursued by Member States in the EU context (see Council of Europe, 2014). Perhaps this is because the results do not become laws and regulations that states must follow? The European Convention on Human Rights, developed under the Council of Europe, and with recourse to the European Court of Human Rights, is, however, a European body of law that can be called upon by asylum seekers, particularly its Article 3 prohibition on torture and inhumane or degrading treatment. Many cases have been resolved, and *refoulement* (return to a country where persecution might take place – article 31 of the 1951 Refugee Convention) averted after recourse to the European Court of Human Rights.

The Council of Europe has had two broad impacts in Europe. First, it has offered an institutional setting in which creative thinking on protection can be discussed and developed (for example, Temporary Protection for former Yugoslavs in the early 1990s). Second, the discussions and any approaches developed cover not only the EU Member States but also other European states which are key ‘safe countries’ as far as the EU is concerned, presumed to offer effective protection and places to which asylum seekers can be returned if they transited en route to the EU.

However, when it comes to a legal basis for a European refugee policy, and political cooperation in a more binding sense, the EU is most often looked to. Within the EU, the Council of Ministers, representing each Member State, makes the regulations and decisions relating to asylum and other refugee policies. The European Commission tables proposals. These are frequently ambitious in nature, but result in more restrained directives following negotiations in Council. The European Parliament’s role is that of co-legislator, advancing its opinion on matters to be decided in co-decision. As such, the Member States, rather than the regional institutions, play the decisive role. However, Denmark does not participate in European policy on Justice and Home Affairs, including asylum matters, and the UK and Ireland follow an ‘opt in’ approach participating on an issue by issue basis. As such, EU policy on asylum and refugee issues cannot, geographically, be said to be fully European, nor does it even cover all Member States.

During the ‘Migrant Crisis’ starting in 2015, the call has often gone out that this is a ‘European Crisis’, requiring a ‘European Response’ (see *The Economist*, 2016a). This same call went out regarding Bosnians in the mid-1990s and Kosovars in 1999 (see van Selm, 2005).

Many migrants first arrive in Europe in one country, and might cross several more, before arriving in the European country in which they intend to stay. For the migrant, a country is a country, and arriving in Greece or Italy, while intending to travel to Germany, Sweden or the UK, is just part of the journey.

For EU Member States, with freedom of movement in a frontier-free zone, it has long been the case that an asylum seeker (or refugee, once status has been determined) entering one of the

EU states is effectively entering all of them. That is the fundamental reason for cooperation on and harmonization of asylum policies. The European starting point is that a national policy on asylum in a frontier-free Europe is only as strong and workable as the border policies of *other* Member States allow it to be, and that all Member States need to face asylum requests equally, otherwise those that are out of line might attract more, or let in more, asylum seekers.

Thus EU and other rules and regulations intended to manage migration from a state and regional perspective do not necessarily coincide with the individual's hopes and expectations. EU Member States, as well as Switzerland, Norway and Iceland, have been part of the 'Dublin System' determining which state is responsible for an asylum claim. That system has been put under serious pressure in the Migrant Crisis, and was suspended by some states for a period of time. The European Commission has put forward proposals for its reform (European Commission, 2016c).

Whether refugee policy, or the elements of it, are 'European' or not is clearly a question of both law and politics. There are EU level laws (directives and regulations) guiding some aspects of asylum policy, such as who is defined as a, or qualifies to be, a refugee or person in need of protection; what the procedures for deciding that should look like; the type of conditions in which asylum seekers should be received and live during the initial phase of their residence and status determination procedures; which state is responsible for assessing a claim; how temporary protection should be applied (European Commission, 2016a). It is up to the Member States to transpose those laws and implement them, and the European Court of Justice (ECJ) and European Commission to rule if there are apparent violations. So there is a body of EU law governing at least the asylum aspects of refugee policy.

However, the EU has chosen not to activate Temporary Protection, for example, even though it is an EU Directive, and could potentially have been applied to Syrians in 2015, with the aim of relieving pressure and stemming the flow (van Selm, 2015; Council Directive, 2001). In addition, the Council has reached decisions on issues such as relocation for asylum seekers and refugees who have arrived in EU Member States, but these have seen little follow through in practice (European Commission, 2016d).

The Economist (2016b) noted in an editorial in February 2016 that 'The flow of refugees would have been manageable if European Union countries had worked together, as Angela Merkel, Germany's chancellor, has always wished (and *The Economist* urged). Instead Germany and Sweden have been left to cope alone'. The editorial goes on to suggest that Europe should soon 'restore order', otherwise the EU will fall apart as a consequence of a migrant free-for-all resulting in a need for states to act unilaterally to close borders, rather than acting collectively to manage them. This line suggests that for policy to be 'European' there is a need for collective action. However, one could also argue that a policy based on European values would be more open and welcoming to refugees, who have suffered the impacts of conflict and human rights abuses. This was the point made by French Foreign Minister, Laurent Fabius, when he said of the fences being erected in Hungary: 'Europe has values and these values are not respected by putting up wire fences' (Euronews, 2015).

Finally, for the purposes of this chapter, in considering what 'European' means, it is also useful to ask how culture and history impact the ways in which refugee policy is formulated and implemented. In focusing on the European Union as the organization which develops pan-European law it is easy to exclude non-Member States, but also easy to overlook the various geographical, political and historic dichotomies.

The most obvious of these is the East-West divide: from the inception of the current international refugee regime until 1989, Eastern Europeans were the people most prominently thought of, certainly by West European policy makers, as candidates for refugee status. The

1951 Convention was a Cold War construct, to cover people persecuted under Communism and fleeing to the West, usually as individuals or in small groups, but also to cover larger exoduses (such as of Hungarians in 1956 or Czechoslovaks in 1969), which challenged Western Europe's ability to cope. Eastern European countries have gone, in a relatively short space of time, from being source of refugees, through being considered 'safe', to becoming part of the EU/Schengen system in some cases, or working on applications for membership in others. With the 2015 crisis, as well as the series of terrorist attacks on various EU Member States during 2015–2017, several states have reinstated border controls, at least temporarily, and stand out for their opposition to the influx of refugees and migrants (ECFR 2016).

Although the East–West dichotomy is most obvious, there are three more: North–South; states with sea borders and those that are landlocked, and the states with external EU borders versus those with only EU frontiers. These divisions and their consequences often overlap – so a historically less prosperous Southern European state with primarily maritime external borders is likely to have more difficulties enforcing arrival controls than a more Northern (i.e. distant), primarily landlocked, prosperous country – yet the latter is more likely to attract people looking for a long-term protection solution. As such, a 'European refugee policy' would need to manage the arrival of people seeking protection in one part of Europe, not necessarily the part in which they initially arrive, and handle their expectations as the protection for them might only be available in a third part of the continent.

In the North–South divide, we see the implications both of geography and of longer-standing prosperity. The countries of Northern Europe are more often viewed as magnets for immigrants and refugees, whereas those of the South (Greece, Italy, Spain in particular) are thought of rather as entry and transit countries. This is far from being always a hard and clear line. However, for the EU Member States part of the political history has been one of the Northern countries seeking both stronger border controls in Southern Member States, and that Southern Member States deal with asylum claims and long-term protection themselves, rather than allowing people to transit and claim asylum in the North.

European countries with maritime borders, most particularly those in the South, have become the most exposed to irregular arrivals, as sea borders are much more difficult to manage and control than either airports or land crossings. Member States with external EU borders, particularly those with countries whose history, culture, politics and contemporary paths might differ significantly with those of the EU and what might be called 'core European' states, obviously also face quite different challenges in managing entries than those states with only EU or strong European partners on the other side of their national boundaries.

One of the challenges for the EU in particular, but actually Europe as a whole, is negotiating a refugee policy that not only puts the humanitarian at its heart (rather than immigration, integration and border concerns) but also accommodates the very varied situations of the participant states. It might be 'ideal' if European states could wipe the slate clean and simply create a refugee policy that suits today's needs, with Europe at the centre, rather than bringing along the baggage of at least the past 60 years of immigration and asylum issues on the national level. However, the reality is that negotiations of a European approach are based on the context of each distinct national approach: a refugee simply does not arrive in Europe, by whatever means, but arrives in a nation-state with its own policy approach. That national approach might be guided by European rules and discussions, but that is the extent to which it can be called 'European'.

Bordignon and Moriconi (2017: 1) point out that the current system of fundamental differences between Member States on essential issues such as how resettled refugees are welcomed, totally different outcomes in asylum procedures for people coming from the same situations and requesting protection in different EU Member States and others, are 'not only inequitable, but

also inefficient'. They note that politics and culture alone explain the reluctance and discrepancies in accepting refugees within the EU. They suggest that financial compensation for those taking refugees, coming from those reluctant to be hosts, is the optimal route. It could be argued, however, that paying for another state to take the refugees you do not want is actually un-European, if indeed Europe is based on rights and humanitarianism, and if the aim is to have European states live up to a European approach. Or, perhaps politics and culture prevent the welcoming Member States from accepting that other states to pay them for offering protection to refugees? These issues, and the balance between them, underlie many current European debates on refugee policy, including relocations from Greece.

What is the current state of 'European refugee policy'?

Oltmer highlights two key features of current European refugee policy: it is built on the myth of an 'invasion' by migrants from developing countries, with immigration portrayed as negative for society (Deutsche Welle, 2014). Facts, however, portray different reality. For example, 90 per cent of immigrants to Germany are European, and 80 per cent are EU citizens. Of the 10 per cent who are not European, not all are from developing countries, and even of those, not all are refugees, or asylum seekers (Deutsche Welle, 2014).

McGowan has noted the rapidly increasing trend in using EU foreign policy and development aid tools to address migration issues, with efforts underway not only in Turkey, but also Afghanistan, the Middle East and several African states (McGowan, 2016). European refugee and migration policy is being driven a) by a focus on non-arrival in the EU and b) using foreign policy tools to avoid the need to employ the asylum system (Gammeltoft-Hansen, 2014; Frelick *et al.*, 2016). However, the number of arrivals remained high. People might be using different routes, and might not be coming from the same places of origin or transit, but people were still arriving, or failing in the attempt and drowning at sea (IOM, 2016).

One of the most dramatic recent forms of EU refugee policy has been the EU–Turkey deal of March 2016 (European Council, 2016). Widely predicted to fail (see Greene and Kelemen, 2016; van Selm, 2016b; Verhofstadt, 2016), the EU has largely claimed it to be a success (European Commission, 2016b) even if other states have been more dubious (Nielsen, 2016). Those claims of success are based on reduced arrivals to Greece and fewer known tragedies at sea between Turkey and Greece. However, arrivals on other routes, particularly into Italy, have, predictably, risen. The EU is seeking to extend the Turkish–deal model through agreements with various countries, although, as Greene and Kelemen (2016: 3–4) argue:

The EU cannot wish away these problems by trying to outsource its migration policy to leaders in developing countries. If the EU wants to restore free movement within the Schengen area, end the humanitarian catastrophe in the Mediterranean, and stay true to its values, it must introduce more profound reforms.

A particularly egregious example of EU refugee non-arrival policy trumping European values was the case of the EU 'pressuring Greek authorities to reshape the asylum appeals board that had blocked deportations and to put in place a new board that would allow them' (Greene and Kelemen, 2016: 5–6).

Therefore, the current European (or EU) refugee policy seems to conceptually be in a place where there is support for non-arrival in Europe, particularly not within mixed flows, and the effort is put to have governments in countries of origin and transit keep people there, deterring them from travelling to Europe. Meanwhile, European authorities are being adapted to find it

appropriate that those who do arrive on European soil can be deported, regardless of humanitarian need or their human rights. The question is: how did Europe arrive in this situation?

The larger answer would require a divergence into populist discourse and the emergence of extreme right parties and xenophobia over the past two decades. The more detailed and specific response can be found in the spiral of the development of the EU's Common Asylum System.

Battjes *et al.* (2016) succinctly describe the fault line of the development of the EU Common Asylum System which has contributed to a situation of crisis proportions in which people seeking asylum were initially not in a position to get to EU Member States, or their associates under various agreements such as Schengen, and then, in desperation, turned to smugglers to achieve their goal of safety and security.

As Battjes *et al.* (2016: 3–6) describe, the EU Member States first established a common list of countries of origin for whose nationals a visa would be required. This list included all refugee-producing countries, meaning that an asylum seeker effectively could not legally arrive in an EU Member, or Schengen, State. Airlines were co-opted to ensure that such people could not arrive by air. So asylum-seeking journeys had to take place over land or by boat. The EU/Schengen states next developed a list of safe third countries, countries to which asylum seekers or irregular migrants could be returned because their safety could be assumed in those countries. That list included all countries bordering the EU/Schengen zone. Whether people could gain effective protection in those States or not should have been material to the 'safe' designation, but was more or less presumed, regardless of number or influx rate. That left the sea route, which became, in 2015, the route of choice for Syrians who had sought refuge in Turkey, Lebanon and Jordan, but, after four or five years in ever-growing camps or desperate urban situations, without the ability to fully exercise rights to work and study, were growing desperate. As resettlement opportunities for Syrians – a key component of a full refugee policy – were, and remain, minimal in comparison to the number needed (see van Selm, 2016c), the options for individuals were limited. In other words, while the conflict in Syria, and absence of solutions to the fighting, were the proximate cause of the displacement, the absence of a European refugee policy, including opportunities for resettlement and the ability to safely seek asylum, contributed to the Migrant Crisis of 2015 onwards, which in turn has disrupted not only the European efforts to cooperate on migration policy, but also the fundamental underpinnings of the EU project, in particular freedom of movement within the EU territory.

Is there a European exceptionalism at play in refugee policy?

As noted above, a key theme of this Handbook is the question of whether migration and refugee policy in Europe is based on a 'European exceptionalism'. The preceding paragraphs would seem to suggest that there is. However, one could argue that it is a complicated, and at least two-sided, exceptionalism.

On the one hand, there is the belief in Europe as an exceptional target of asylum seekers. This belief could be characterized as follows: Europe is a prosperous and peaceful continent, conveniently located within easy distance from less developed, and less peaceful Africa; an unsettled Middle East, and with wider Asia, frequently inhospitable to minorities as well as conflict prone, also on a land route. While the other continents of prosperity (i.e. North America and Australia) are geographically distant from the hotbeds of conflict and poverty, Europe is right there. Man-made barriers to entry are therefore necessary to hold back the masses of displaced (not to mention economic migrants who are often involved in mixed flows with asylum seekers and complicate the issue further).

On the other hand, there is the fundamental belief in values, a rights-based and humanitarian system that underpins the social, cultural and political existence of Europe as a peaceful continent. The notion that everyone's rights should be upheld is, to an arguable degree, ingrained. The contradiction comes in the question of where they should be upheld. This can be characterized along the lines of: Once people arrive in Europe, their rights must be guaranteed there – but, as there are limits, it would be better to have their rights upheld somewhere else, either where they come from, or in a neighbouring country.

One could argue that the underlying tension in approaching a European refugee policy is entirely based on the confluence of these two forms of exceptionalism. Only exporting European values and paths to prosperity will prevent 'everyone' trying to get to Europe to enjoy peace and a good level of socio-economic satisfaction there.

What could European refugee policy become?

By way of Conclusion, it is useful to ask what European refugee policy could become. First, is it possible for there ever to be a really European, really refugee, policy? The answer to that has to be 'yes' – if there is political will to have such a policy.

Could it be pan-European in the fullest sense? That would again depend largely on political will. It would also depend on the degrees of sovereignty over such a policy's implementation that would be claimed by an over-arching, supra-national institution, including both on the day-to-day decision level, on appeals and on the judicial system of review. The more a European institution would have jurisdiction, the more likely it would need to be part of the EU construct, thereby excluding non-Member States, except through cooperation agreements. If, on the other hand, it were to mean European coordination of national policies, the Council of Europe could also be a setting for such an approach.

Would European states contemplate a full 'refugee policy'? The answer here might be that they are increasingly doing so, with increased numbers of resettlement places and cooperation agreements with countries in the regions of origin or first asylum, and greater cooperation between ECHO and Justice and Home Affairs in the European Commission, for example. However, the predetermining factor for Europe's politicians is still emphatically on refugee policy as part of immigration policy, not as part of a global approach to the significant displacement problems, only a very small proportion of which involve people seeking asylum in European states.

Thus, achieving either a European policy on refugees, or a refugee policy which is European is a mountain to climb, if the political players, the populations they represent and the institutions they have created are willing to take that route. Perhaps a final question in this thought process has to be: if handling asylum and refugee issues as first and foremost about immigration to a nation-state seems to have failed or be disappointing, might it be worthwhile to consider an alternative path?

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