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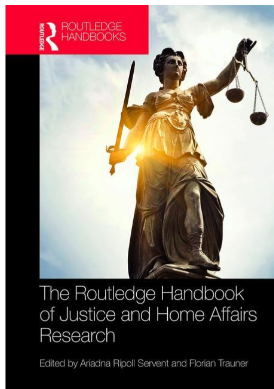

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Ariadna Ripoll Servent, Florian Trauner

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PART III

Analyzing justice and home affairs policies (the sectoral dimension)

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5

ASYLUM AND REFUGEE PROTECTION

EU policies in crisis

Petra Bendel and Ariadna Ripoll Servent

Introduction

Asylum has become a key subject of debate in national and European politics, especially since what has been named the 'refugee crisis' of 2015 and 2016. The countries of the European Union (EU) have always been normatively attached to the international regime that emerged following the 1951 Geneva Refugee Convention. After all, the need for international norms on refugee protection came as a response to the post-war situation in Europe. However, it was not until the 1990s that the policy area was regarded as a matter of common interests. Its origins relate to the 'compensatory measures' of the Schengen project. EU cooperation has, therefore, been characterized by the difficult efforts of member states to find ways to share the responsibility of asylum-seekers. On the one hand, they work to guarantee international norms and rights, and on the other, there is an unwillingness to show solidarity towards those in need or fellow member states. This chapter reviews the evolution of EU asylum policies by outlining the main rationales behind its construction and its failures to deal with recent increases in the number of asylum-seekers. It then considers the main debates that have accompanied the construction of this policy field, focusing on four aspects: burden-sharing, securitization, institutional change and externalization. In view of the current political and institutional development, the conclusion provides some gaps that can serve as a starting point for future research.

Evolution of EU asylum policies

EU asylum policies have been at the avant-garde of EU action in the field of justice and home affairs. The need to find a solution at the European level emerged as a spill-over of the Schengen project and has tested the willingness of member states to cooperate and share their responsibility for asylum-seekers. The history of EU asylum policies may be divided into three main periods: the first dates back to 1957, when member states started to coordinate their asylum policies within the framework of the European Economic Community (EEC). Although the EEC did not have genuine competences in this area, its member states did recognize the need to cooperate in internal security matters, especially after the signature of the 1985 Schengen Agreement. The second period started in 1990 with the signature of the Dublin Convention and is characterized by its intergovernmental nature. Given that Schengen planned to abolish

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the internal borders between participating member states, there were growing concerns that this might lead to increased "asylum-hopping" or "asylum-shopping" (as it was named pejoratively) – that is, asylum-seekers profiting from the open borders and trying their luck in several member states. On the other hand, human rights activists feared that Schengen would end up creating refugees 'on orbit'; that is, unable to ascertain which country was responsible for guaranteeing them the international protection they were seeking. These fears were accentuated by the rapid influx of refugees during the wars in the former Yugoslavia, which saw a peak in the number of asylum claims, especially in Germany. Member states recognized that Schengen required a new form of cooperation at the European level, since they needed to find a form to determine who was responsible for taking care of those seeking asylum (Guild 2006; Lavenex 2001). Despite attempts by the German government to introduce a distribution key that would share the number of applications proportionally to the size of each member state, the idea was rejected in favor of a 'responsibility system'. This principle determined that responsibility should be allocated to the member state that let asylum-seekers into the Schengen territory and naturally led to the 'first country of entry' logic that still constitutes the core of the Dublin logic and the whole EU asylum system (Thielemann and Armstrong 2013).

Since this principle does not allow asylum-seekers to choose a specific country to submit their claim for protection, it became evident that the EU should also try to harmonize national asylum systems so that people would have, at least approximately, the same chances and enjoy the same standards wherever they were asked to lodge their application. To this effect, the Treaty of Maastricht (1992) determined that asylum policy would from then on be regarded as a matter of common interest (i.e., be Community-regulated), but incorporated it as part of the third pillar, which gave national governments control over policy outputs. Recurrent deadlocks in the Council led to a major institutional shift in the Treaty of Amsterdam (1997), which inaugurated the third phase in the development of this policy field. The Treaty shifted asylum policies to the first pillar, which meant a 'communitarisation' of the field. Unwilling to let go of their control, member states introduced a transitional period, in which decision-making remained intergovernmental. It was, thus, not until 2005 that asylum policies came to be decided under qualified majority voting (QMV) in the Council and co-decision with the European Parliament (changed into the 'ordinary legislative procedure' by the Treaty of Lisbon).

This third phase also saw the emergence of multi-annual working programs decided by the European Council that set out the main policy directions for justice and home affairs. The first of these programs, agreed in Tampere in 1999, set out an ambitious, liberal plan that aimed to create a pro-active and coherent Common European Asylum System (CEAS). The Commission followed up on the program with various proposals for directives and regulations that set up the basic standards of the CEAS. These core legislative texts aimed to determine who could claim to be a refugee (the so-called Qualification Directive 2003/9/EC), how asylum-seekers should be received in the member states (Reception Directive 2005/85/EC) and which procedural rights they enjoyed during the asylum process (Asylum Procedures Directive 2004/83/EC). The Commission also proposed to integrate the Dublin Convention as a regulation into EU legislation and to help its implementation with a new database that collected the fingerprints of asylum-seekers (Dublin and EURODAC Regulation 2000/2725/EC, 2003/343/EC). These efforts were supported by a new European Refugee Fund, established initially for the period from 2000 to 2004 (2000/596/EC) and in existence until 2013, when it was incorporated into the Asylum, Migration and Integration Fund (AMIF). In addition, two directives were agreed upon in order to regulate the rights of long-term residents (2003/109/EC) and establish the standards for giving temporary protection in the event of a mass influx of displaced persons (2001/55/EC), although the latter has never been activated. Although the initial

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proposals by the Commission followed the liberal spirit instituted by Tampere, the change in direction of asylum policies was short-lived, especially after the adoption of the Hague Programme in 2004, which was far less ambitious and more security-oriented. The return to a more restrictive stance on asylum policies was a response to the rise in security concerns that followed the terrorist attacks of 11 September 2001 and 11 March 2004 in Madrid, which changed the perception of migration, and also reflected a new political constellation in the Council (Guild 2006; Ripoll Servent and Trauner 2014).

The Stockholm Programme, following in 2009, was decided upon under changed political circumstances: Member states were more sceptical with regard to supranational decisions and reluctant to further harmonize asylum policies. Consequently, the proposals made by the Swedish presidency to introduce the mutual recognition of asylum decisions and to create a strong asylum office (which eventually became the European Asylum Support Office, EASO) were watered down. In this context, the reform of the CEAS between 2005 and 2013 proved slow and difficult. The recast of the main legal texts showed the unwillingness of member states to create a properly harmonized CEAS and did not introduce major changes that would effectively avoid the inconsistent implementation of EU asylum policy at the national level (Ripoll Servent and Trauner 2014). Consequently, recognition rates, reception conditions and asylum procedures continued to vary strongly across member states – what has become known as the 'asylum lottery' (ECRE 2008; see also Toshkov and Haan 2013). The 2014 Strategic Guidelines for the area of freedom, security and justice were criticized, once again, for being strongly driven by the interests of national ministries of the interior, who promoted a return to intergovernmentalism (Carrera and Guild 2014). Therefore, it is not surprising, that the Commission saw the necessity to propose a new revision of the CEAS legislation in the aftermath of the 2015 'refugee' crisis. Cooperation in the field of asylum has not been restricted to internal policy-making. Indeed, refugee protection is closely linked to border management as well as to immigration and visa policies; it is also becoming increasingly dependent on cooperation with third countries (see Chapters 6, 9 and 10). As a result, the focus of EU asylum policies has gradually moved towards external issues, which means an increasing overlap with foreign, security and defense policy. Cooperation with countries of origin and of transit has been present since 2005, particularly since the Global Approach for Migration and its 2011 successor, the Global Approach for Migration and Mobility (see also Lavenex 2006). The influx of asylum-seekers to Europe in 2015 and 2016, often named a 'refugee crisis' (although it was rather a crisis of refugee policies), emphasized the use of policies designed to tackle the root causes of migration and reduce the drivers for onward migration after asylum-seekers have arrived to transit destinations like Turkey or northern Africa. This has led to new concerns about the trend towards an externalization or extra-territorialization of EU asylum policies.

The main scholarly debates

Research on EU asylum policy has followed its rapid Europeanization and placed a special emphasis on its institutional development (cf. Bendel 2007; Guild 2006; Ripoll Servent and Trauner 2014; Thielemann and Armstrong 2013). Indeed, they have often been analyzed critically both in law and political science, which shows how inter- or rather multi-disciplinarity has thus far remained one of the key features of academic debates on EU asylum and refugee policies (e.g., Carlier and De Bruycker 2005; Hailbronner 1998). Indeed, asylum is a policy area which raises particular challenges because it is tightly embedded in international law (Lavenex 2001; Roos and Zaun 2014), which has led legal and political science scholars to emphasize normative issues based on human rights – with some adopting a pro-active and even activist orientation

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(Baldaccini *et al.* 2007; Bendel 2016; Huysmans 2006). This trend results from the interaction between academics and non-academics coming from think-tanks (for instance, the European Policy Center, the Migration Policy Institute, the Center for European Policy Studies), INGOs (notably UNHCR), European agencies like the Fundamental Rights Agency, Frontex and EASO as well as NGOs (especially the European Consortium for Refugees and Exiles (ECRE)), who have together built a rights-based policy agenda and sought actively to give policy advice, lobbying for refugee and migrant rights (Thiel and Uçarer 2014; see also Chapters 38 and 39, this volume). Although many of these contributions show numerous overlaps, we distinguish between four main debates: the nature of European integration, the content of EU asylum policies, the impact of institutional change on policy change and the trend towards externalization and extra-territorialization.

The nature of European integration: burden-sharing and the principle of responsibility

The question of why member states agreed to cooperate in this policy area has been at the core of academic debates from the start. Thus, research has concentrated on understanding the nature of the problem and why it has been so difficult to implement proper 'burden-sharing' solutions. Indeed, in view of the inequalities that have emerged in the aftermath of the Dublin Convention, it is still difficult to understand why member states at the border accepted this solution. One potential answer comes from 'public goods' theories, which have shown how the emphasis on external borders is due to Schengen being based on a 'weakest link': internal security can only be ensured as long as the weakest member state protects the external border as well as the strongest. This logic led to a very particular distribution of costs and benefits, and may explain why member states at the border accepted the Dublin Convention – taking responsibility for the borders was seen as a tradeoff for the benefits they would enjoy as members of the Schengen area. Dublin was, therefore, the entry price they had to pay to get into the Schengen club (Thielemann 2003; Thielemann and Armstrong 2013). Dublin certainly led to unexpected consequences: not only did it shift the number of applications towards countries at the EU's external borders, but it also helped entrench and even amplify a cleavage between 'strong regulators' like Germany, the United Kingdom, The Netherlands, France and Sweden, which had well-functioning domestic asylum systems and 'weak regulators' like Greece, Italy and Portugal, whose administrations were less effective and could not cope with extensive reforms to their asylum systems (Zaun 2017). Despite efforts to offset these weaknesses by providing 'in-kind' assistance, most notably in the shape of financial contributions through the European Refugee Fund (ERF) (Thielemann 2005) and operational support through EASO, the need to improve 'burden-sharing' and to find a more balanced form of cooperation among member states remains a major debate in academic and non-academic spheres (e.g., Angenendt *et al.* 2013; Thielemann 2010).

Securitization

The literature on burden-sharing served also to show how asylum policies had acquired a negative overtone in EU policy-making. The term 'burden' already pointed to the negative light in which refugees and asylum-seekers were frequently perceived by the member states. In addition, the link between Schengen and Dublin reinforced the potential for 'securitizing' asylum policies, since they were treated primarily as an after-effect of external border management. As a result, many researchers paid increasing attention to the content of EU asylum

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policies, pointing in particular to the aspects of securitization and control that had also been highlighted in border studies (Bendel *et al.* 2011; Huysmans 2006; Lavenex 2001). This strand of the literature used critical security studies to show how further stressing security aspects in asylum policies might jeopardize a vision centered on the protection needs of asylum-seekers and refugees. On the other hand, others pointed to the fact that minimum common rules agreed at the EU level had prevented a 'race to the bottom' and provided asylum-seekers with a minimum level of protection (El-Enany and Thielemann 2011; Kaunert and Léonard 2012). This debate was largely influenced by normative stances and led to a lively debate between research and activism, but it also served to highlight the importance of looking beyond policy outputs and examining the actual impact of EU policies upon member states' practices. Indeed, the first efforts to create a CEAS showed that minimum standards left the member states too much room for maneuver and thus thwarted a real 'common' asylum system. Ever since, lack of coherence has been an important claim; member states have tended to 'cherry-pick' only certain standards while leaving out others in the transposition and implementation of commonly agreed norms (El-Enany 2013; Zaun 2017). These debates have continued following the 2013 reform of the CEAS and the so-called 'refugee crisis' in 2015. They have underlined the need to distinguish between two policy dimensions: substantive content and procedural disagreements over the level of EU integration. In the first case, the extent to which asylum policies have been securitized continues to be disputed – the reform of the CEAS in 2013 did show some improvements, but did not manage to put a rights-based approach at the core of policy debates (Chetail *et al.* 2016; Ripoll Servent and Trauner 2014). As for the level of integration, scholars have also questioned whether the EU proposals corresponded to the aims proclaimed in the Tampere and the Hague work programs, underlining that the need for more common European actions should be reinforced (Berger and Heinemann 2016).

Institutional and procedural aspects

The observation on the nature of this policy area and its level of integration has opened up questions regarding the role of supranational EU institutions and their capacity to influence policy outputs. This line of research has concentrated on the process of institutional change this policy area has witnessed since the early 1990s and whether the shift in decision-making rules has contributed to substantial policy changes. We can appreciate two waves of scholarly debate (see also Bonjour *et al.* 2017). The first one was largely influenced by the institutional architecture provided by the Schengen Agreement and the Treaty of Maastricht. The predominance of intergovernmentalism led to the observation that national governments were using the EU as an alternative policy-making 'venue', which made it easier for them to upload more restrictive views on migration and circumvent potential critical voices at the domestic level, a phenomenon known as 'venue-shopping' (Guiraudon 2000). In the area of asylum, this particularly benefited 'strong regulators', which were able to upload their national standards to the EU level (Zaun 2017).

The second wave emerged alongside the formal institutional changes introduced in the Treaty of Amsterdam, which led to a normalization of policy-making in the area of asylum as of 2005 and the subsequent empowerment of the EU's supranational institutions (the Commission, the EP and the CJEU). Their shifting roles in legislation were important research topics for scholars of 'classical' EU and comparative politics (Boswell 2008; Uçarer 2001). This line of research started to question the validity of the 'venue-shopping' thesis, considering that, with their growing role in decision-making, supranational EU institutions now had the power to 'constrain' member states and force a more liberal view on migration policies (Bendel *et al.*

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2011; El-Enany and Thielemann 2011). In the area of asylum, Kaunert and Léonard (2012) noted the need to evaluate asylum policies as more liberal than other contiguous areas, notably border policies. They also assumed that the EP, the CJEU and the Commission would contribute to rebalancing EU policy outputs towards a rights-based approach. Some scholars noticed that the liberal character of the EU institutions was taken as a *fait accompli* that needed to be tested in real life (Maurer and Parkes 2007). The process that led to the recasting of the CEAS in 2013 showed that, in general, the Commission and the EP were largely willing to accommodate the wishes of member states in the area of asylum: this means that legislative reforms served to introduce only secondary changes in non-controversial areas, but still left wide room for manoeuvre to national administrations that did not encourage efforts to close the existing gaps in implementation (Bendel 2013; Ripoll Servent and Trauner 2014).

These empirical findings have opened up new lines of research and brought to our attention the need to merge institutional and policy studies: in order to understand policy-making in the area of asylum, developments such as the increasing importance of consensus in co-decision negotiations or the political role of the European courts in migration matters have to be taken into account (Costello 2012; see also Chapters 32 and 33, this volume). Since the late 2000s, several decisions were taken by the European Court of Human Rights (ECtHR) on the national asylum systems as well as on the CEAS, particularly regarding the Dublin system. It is indeed due to the intervention of the Courts that member states stopped sending people back to countries like Greece or Bulgaria, which were considered to provide insufficient standards of protection (Mitsilegas 2014). In addition, these continued failures in the implementation stage have underlined the importance of practical operational cooperation and the networking potential of Frontex and the EASO. Indeed, these two agencies have been strengthened and further supranationalized after 2015: both agencies are to receive stronger powers of monitoring and coordination. This means that, in cases where member states may not be able to cope with border control or asylum procedures, the agencies may intervene in that member state, whether or not it wishes to receive their support. The aim would then be to gradually eliminate the differences in acceptance rates and thus end the asylum 'lottery' that continues to exist in Europe.

External dimensions of migration and extra-territorialization of protection responsibilities

Besides developing a CEAS, from 2000 onward the European Commission began to stress the idea of a 'coherent global approach to migration' or the need to develop the 'external dimension' of migration (Boswell 2003; Papagianni 2013). This trend led to the development of a Global Approach for Migration (2005), replaced by the Global Approach for Migration and Mobility in 2011, which included both a strategy for asylum and for legal migration and development. Here, the scholarly debate has focused again on procedural and substantive dimensions of the 'external dimension'. When it comes to procedural matters, Lavenex (2006) remarked how the gradual communitarization of migration policies led to shifting the 'venue-shopping' strategy from the internal to the external domain, since foreign policy remains under the control of member states. Indeed, others have remarked upon the possibilities of 'cross-pillarization', which means that instruments of foreign policy become increasingly used in justice and home affairs policies (Pawlak 2009). On the substantive side, some have raised concerns about the loose framework developed by the European Commission, which made intensive use of instruments such as returns and readmission agreements for those who are not able to secure some sort of international protection in a EU member state (den Heijer 2012; Giuffré 2013; see also Chapter 7, this volume). However, asylum policies have been particularly affected by the trend

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towards 'outsourcing' or 'extra-territorializing' protection responsibilities to third countries, for instance, by expanding the use of 'safe third countries' of origin and transit, using development and trade to force countries at the border to enhance the control of their borders or launching initiatives for extraterritorial processing of asylum applications (Gammeltoft-Hansen 2012; Garlick 2006; Levy 2010; Sterkx 2008).

The 2015 crisis of EU refugee policies

This previous overview of EU legislation and the main academic debates it has raised in the last couple of decades should help in understanding why we are now witnessing what many have come to call an 'asylum' or 'refugee crisis'. This crisis reached its peak in late 2015/early 2016, but several incidents, like the repeated drownings on the shores of Lampedusa in 2013, had already served as warning signs. Indeed, only a month after the reform of the CEAS was concluded in June 2013, there were voices claiming that there was a need to reform the EU's asylum policies (Bendel 2013; Ripoll Servent and Trauner 2014). The crisis has, therefore, showed mostly the failure to harmonize refugee protection at the EU level, and the lack of solidarity, shared responsibility and trust among member states. The efforts to find a common solution to the problem have revealed the lack of political will to reach a consensus on a reform of the common asylum policy and has led to 'Council-mania' (Bertoncini and Pascouau 2016: 2) that has put the European Council at the core of decision-making and emphasized national instead of European solutions. Even the reform of the CEAS, which was started in 2016 with the aim of speeding up the asylum process and harmonizing standards across the EU, has been confronted with serious deadlocks. The rapid growth in numbers of asylum-seekers during these years has led to an unprecedented political polarization among the member states and within the EU institutions. This manifested itself especially in disputes about the (mandatory) distribution of refugees. Underlying these conflicts remains a deep disagreement about both the question of EU competences and the substantive direction that asylum policies should take in the future (cf. Trauner 2016).

These cleavages appeared with particular sharpness during negotiation on the relocation of asylum-seekers who had been able to cross the external borders of Schengen. The proposed system, designed to relieve the so-called 'hotspots' in Italy and Greece by relocating asylum-seekers to other member states through a fixed distribution key, demonstrated a reluctance to agree to any compulsory mechanism. It also showed the reluctance of new EU member states to welcome people in need of international protection to their territory. The relocation system is supported by Migration Management Support Teams and in cooperation with EU agencies, but it has proved to be of limited success: member states have proved reluctant to accept their share, which means that countries at the external borders have not been able to overcome their backlog and have even been accused of not doing justice to the asylum-seekers' protection needs. In view of these difficulties, in 2016, the Commission suggested a new reform to the Dublin III Regulation (2016/0133/COD), which essentially retained the principle that the countries of first arrival in the EU are responsible for admitting asylum-seekers. It has, however, introduced a 'fairness mechanism' similar to that proposed in the relocation system to be managed by an upgraded version of the EASO. The proposal has been seen as highly controversial: for some, it fails to introduce any substantial changes that could contribute to going beyond the 'first-country-of-entry' principle, while for others it is a step too far in the direction of more EU integration.

We have seen, therefore, the Commission struggling to produce significant changes to the content and structure of the CEAS. That is why some of the more innovative proposals have

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come instead from the external dimension of asylum policies. Although still without a concrete proposal from the Commission, extraterritorial processing of asylum claims has been a much debated possibility since Tony Blair's 2003 'New Vision for Refugees', which proposed the creation of 'Regional Protection Zones' and 'Transit Processing Centres' (Garlick 2006; Levy 2010). The attractiveness of such proposals evidently lies in the fact that refugees and asylum-seekers with some prospect of being accepted could come to Europe via secure and legal routes. This would at the same time lower the number of those who come without any prospects and reduce the need to return failed asylum-seekers. However, the debate gives rise to concerns in terms of human and refugee rights, particularly the extent to which the European Union and its member states outsource part of their responsibility to protect and transfer the responsibility for reception and protection to third parties. One should not forget that the principle of *non-refoulement* applies also outside one's own national territory, whether in international waters, border areas or on the territory of another state, as long as states exercise effective control over individuals. This also includes the need for compliance with procedural protection measures such as access to a hearing, legal aid, interpreters, information and access to legal remedies. Alternative policy recommendations thus far focus on the necessity of access to the territory via legal routes, for instance, by providing humanitarian visas (Collett *et al.* 2016; Fundamental Rights Agency 2015; Jensen 2014). In July 2016, the Commission proposed a coordinated resettlement approach (2016/0225/COD) as an alternative avenue to allow third-country nationals to enter the EU legally and safely.

The influx of asylum-seekers in 2015 and 2016 also underlined the importance of cooperating with third countries. Indeed, the much-contested EU–Turkey statement may become a blueprint for negotiations with other northern African states (Carrera *et al.* 2016; see also Chapters 24 and 26, this volume), which is certainly problematic, given the criticisms raised regarding the lack of human and refugee rights guarantees in Turkey itself as well as the steps backward that the country has taken in the area of rule of law, human rights and protection for minorities. Human rights organizations claim that asylum-seekers' right to non-refoulement is often not considered, they often have no way to access a fair and efficient asylum process and they have no prompt access to a lasting solution, such as return, integration or resettlement (Pro Asyl 2016). Therefore, the problematic legal basis at the core of the EU–Turkey deal and its consequences for asylum-seekers raise important questions when considering similar agreements with countries like Libya or Egypt that, given their poor human rights performances, would be problematic to consider as 'safe third countries'.

Conclusion and agenda for research

As a particularly active policy field, EU asylum has attracted scholars right from the start. Academic research has focused on policy shifts, discourses and practices as well as on institutional developments, thereby linking concepts derived from political science and law. The nature of EU asylum and refugee policies has emphasized its normative dimension and strengthened its links with non-academic organizations and political activism. Although this is important in a policy area that is intimately linked to the protection of human beings, it has often led to emphasizing the empirical side of the field and disregarding theoretical concepts. Therefore, working towards a stronger link between the theoretical and methodological aspects of political science is recommendable. We propose here some avenues for further research and new interdisciplinary work.

First, the institutional changes that have taken place in this policy area have emphasized the importance of a more diverse group of actors for policy-making, slowly achieving more

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sophisticated understandings of the role of member states and the European Parliament in this field while largely neglecting the Commission and the Court of Justice. It is, therefore, important to pay more attention to these EU institutions in the future. The role of external actors like NGOs and private companies (especially when dealing with databases or border management) could do with more systematic analyses. Finally, the new role of the European Council and the cleavages that have emerged among member states will need to be further explored in the years to come. Given the rise in populist politics and the trend towards renationalization, whether member states manage to overcome their distrust may become a breaking point for the future of the CEAS.

Second, more attention needs to be paid to concepts and how to operationalize them. Many of the academic debates we have raised show that misunderstandings often correspond to a lack of common and transparent definitions. For instance, there have been very diverse methods to measure policy change or to define 'liberal' and 'restrictive'. We need to be more careful in how we create categories, what we compare and how we do it. The EU is an extremely complex system of governance; therefore, we need to be transparent about our levels and objects of analysis (see also Bonjour *et al.* 2017). In addition, we still have a large gap to fill when it comes to comparative analysis, especially at the member state level. We need to further our understanding of how recent changes in refugee protection and asylum laws have impacted the different member states. That may require the use of mixed methods to inquire into domestic implementation, in order to capture patterns across the countries participating in asylum policies as well as investigating more in-depth, informal practices and shifting norms among street-level bureaucrats.

Finally, the latter point reveals the need to open up to further disciplines like ethnography, area studies, developmental studies, transition studies and conflict analysis if we want to understand phenomena like root causes of migration, the situation in countries of origin and transit or the way asylum-seekers and refugees adapt to EU policies. The fact that recent political decisions on asylum and refugees have shifted more and more towards cooperation with third countries means that we need to better understand the effects of EU policies on these third countries and on the fundamental rights of refugees and asylum-seekers as well as the growing importance of foreign (or even defense) policy tools for the management of migration. To this effect, alternative methods like risk analysis and scenario-building may prove beneficial to the field.

Bibliography

Angenendt, S., Engler, M. and Schneider, J. (2013). *Europäische Flüchtlingspolitik: Wege zu einer fairen Lastenteilung*. Available at www.swp-berlin.org/fileadmin/contents/products/aktuell/2013A65_adt_engler_schneider.pdf (accessed April 2017).

Baldaccini, A., Guild, E. and Toner, H. (2007). *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*. Portland: Hart Publishing.

Bendel, P. (2007). Everything under Control? The European Union's Policies and Politics of Immigration. In T. Faist and A. Ette (eds), *The Europeanization of National Policies and Politics of Immigration*. Basingstoke: Palgrave Macmillan, pp. 32–48.

Bendel, P. (2013). Nach Lampedusa – das Neue Gemeinsame Europäische Asylsystem auf dem Prüfstand. *Studie im Auftrag der Abteilung Wirtschafts- und Sozialpolitik der Friedrich-Ebert-Stiftung; WISO-Diskurs*. Available at http://library.fes.de/pdf-files/wiso/10415.pdf (accessed November 2014).

Bendel, P. (2016). *Refugee Policy in the European Union: Protect Human Rights!* Bonn: Friedrich-Ebert-Stiftung. Available at http://library.fes.de/pdf-files/wiso/12405.pdf (accessed January 2017).

Bendel, P. (2017). *EU refugee policy in crisis. Blockades, decisions, solutions, Bonn*. Available at http://library.fes.de/pdf-files/wiso/13536.pdf (accessed September 2017).

Bendel, P., Ette, A. and Parkes, R. (eds) (2011). *The Europeanization of Control: Venues and Outcomes of EU Justice and Home Affairs Cooperation*. Münster: LIT Verlag.

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Berger, M. and Heinemann, F. (2016). *Why and How There Should Be More Europe in Asylum Policies*. Available at http://ftp.zew.de/pub/zew-docs/policybrief/pb01-16.pdf (accessed April 2017).

Bertoncini, Y. and Pascouau, Y. (2016). *What Migration Strategy for the EU?* Jacques Delors Institute. Available at www.delorsinstitute.eu/media/eumigrationstrategy-bertoncinipascouau-jdi-mar16.pdf (accessed April 2017).

Bonjour, S., Ripoll Servent, A. and Thielemann, E. (2017). Beyond Venue Shopping and Liberal Constraint: A New Research Agenda for EU Migration Policies and Politics. *Journal of European Public Policy*. doi: 10.1080/13501763.2016.1268640.

Boswell, C. (2003). The 'External Dimension' of EU Immigration and Asylum Policy. *International Affairs*, 79(3), pp. 619–638.

Boswell, C. (2008). Evasion, Reinterpretation and Decoupling: European Commission Responses to the 'External Dimension'of Immigration and Asylum. *West European Politics*, 31(3), pp. 491–512.

Carlier, J-Y. and De Bruycker, P. (2005). *Immigration and Asylum Law of the EU: Current Debates*. Brussels: Bruylant.

Carrera, S., Cassarino, J-P., El Qadim, N., Lahlou, M. and den Hertog, L. (2016). *EU–Morocco Cooperation on Readmission, Borders and Protection: A Model to Follow?* Available at www.ceps.eu/publications/eu-morocco-cooperation-readmission-borders-and-protection-model-follow (accessed April 2017).

Carrera, S. and Guild, E. (2014). The European Council's Guidelines for the Area of Freedom, Security and Justice 2020: Subverting the "Lisbonisation" of Justice and Home Affairs? *CEPS Essay*, (13). Available at www.ceps.eu/publications/european-council%E2%80%99s-guidelines-area-freedom-security-and-justice-2020-subverting- (accessed April 2017).

Chetail, V., Bruycker, P.D. and Maiani, F. (2016). *Reforming the Common European Asylum System: The New European Refugee Law*. Boston, MA: Brill Nijhoff.

Collett, E., Clewett, P. and Fratzke, S. (2016). *No Way Out? Making Additional Migration Channels Work for Refugees*. Available at www.migrationpolicy.org/sites/default/files/publications/MPIEurope_UNHCR-Resettlement-FINAL.pdf (accessed April 2017).

Costello, C. (2012). Courting Access to Asylum in Europe: Recent Supranational Jurisprudence Explored. *Human Rights Law Review*, 12(2), pp. 287–339.

den Heijer, M. (2012). *Europe and Extraterritorial Asylum*. Portland: Hart Publishing.

ECRE (2008). *Ending the Asylum Lottery – Guaranteeing Refugee Protection in Europe*.

El-Enany, N. (2013). The EU Asylum, Immigration and Border Control Regimes: Including and Excluding the 'Deserving Migrant'. *European Journal of Social Security*, 15(2), pp. 171–186.

El-Enany, N. and Thielemann, E. (2011). The Impact of EU Asylum Policy on National Asylum Regimes. In S. Wolff, F. Goudappel and J.W. De Zwaan (eds), *Freedom, Security and Justice after Lisbon and Stockholm*. The Hague: TMC Asser, pp. 97–117.

Fundamental Rights Agency (2015). *Legal Entry Channels to the EU for Persons in Need of International Protection: A Toolbox*. Available at http://fra.europa.eu/sites/default/files/fra-focus_02-2015_legal-entry-to-the-eu.pdf (accessed April 2017).

Gammeltoft-Hansen, T. (2012). The Externalisation Of European Migration Control And The Reach Of International Refugee Law. In E. Guild and P. Minderhoud (eds), *The First Decade of EU Migration and Asylum Law*. Leiden: Martinus Nijhoff Publishers, pp. 273–298.

Garlick, M. (2006). The EU Discussions on Extraterritorial Processing: Solution or Conundrum? *International Journal of Refugee Law*, 18(3–4), pp. 601–629.

Giuffré, M. (2013). Readmission Agreements and Refugee Rights: From a Critique to a Proposal. *Refugee Survey Quarterly*, 32(3), pp. 79–111.

Guild, E. (2006). The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law*, 18(3/4), pp. 630–651.

Guiraudon, V. (2000). European Integration and Migration Policy: Vertical Policy-making as Venue Shopping. *Journal of Common Market Studies*, 38(2), pp. 251–271.

Hailbronner, K. (1998). European Immigration and Asylum Law under the Amsterdam Treaty. *Common Market Law Review*, 35(5), pp. 1047–1067.

Huysmans, J. (2006). *The Politics of Insecurity: Fear, Migration and Asylum in the EU*. London: Routledge.

Jensen, U.I. (2014). *Humanitarian Visas: Option or Obligation?* Available at www.europarl.europa.eu/RegData/etudes/STUD/2014/509986/IPOL_STU(2014)509986_EN.pdf (accessed June 2015).

Kaunert, C. and Léonard, S. (2012). The Development of the EU Asylum Policy: Venue-shopping in Perspective. *Journal of European Public Policy*, 19(9), pp. 1396–1413.

Lavenex, S. (2001). The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies. *Journal of Common Market Studies*, 39(5), pp. 851–874.
Lavenex, S. (2006). Shifting Up and Out: The Foreign Policy of European Immigration Control. *West European Politics*, 29(2), pp. 329–350.
Levy, C. (2010). Refugees, Europe, Camps/State of Exception: 'Into The Zone', the European Union and Extraterritorial Processing of Migrants, Refugees, and Asylum-seekers (Theories and Practice). *Refugee Survey Quarterly*, 29(2), pp. 92–119.
Maurer, A. and Parkes, R. (2007). The Prospects for Policy-change in EU Asylum Policy: Venue and Image at the European Level. *European Journal of Migration and Law*, 9, pp. 173–205.
Mitsilegas, V. (2014). Solidarity and Trust in the Common European Asylum System. *Comparative Migration Studies*, 2(2), pp. 181–202.
Papagianni, G. (2013). Forging an External EU Migration Policy: From Externalisation of Border Management to a Comprehensive Policy? *European Journal of Migration and Law*, 15(3), pp. 283–299.
Pawlak, P. (2009). The External Dimension of the Area of Freedom, Security and Justice: Hijacker or Hostage of Cross-pillarization? *Journal of European Integration*, 31(1), pp. 25–44.
Pro Asyl (2016). *Observations on the EU–Turkey Deal: Is There Really Effective Access to Asylum in Turkey?* May 13, 2016. Available at www.proasyl.de/en/news/observations-on-the-eu-turkey-deal-is-there-really-effective-access-to-asylum-in-turkey/ (accessed April 2017).
Ripoll Servent, A. and Trauner, F. (2014). Do Supranational EU Institutions Make a Difference? EU Asylum Law before and after 'Communitarization'. *Journal of European Public Policy*, 21(8), pp. 1142–1162.
Roos, C. and Zaun, N. (2014). Norms Matter! The Role of International Norms in EU Policies on Asylum and Immigration. *European Journal of Migration & Law*, 16(1), pp. 45–68.
Sterkx, S. (2008). The External Dimension of EU Asylum and Migration Policy: Expanding Fortress Europe? In J. Orbie (ed.), *Europe's Global Role: External Policies of the European Union*. Farnham: Ashgate, pp. 117–138.
Thiel, M. and Uçarer, E.M. (2014). Access and Agenda-setting in the European Union: Advocacy NGOs in Comparative Perspective. *Interest Groups & Advocacy*, 3(1), pp. 99–116.
Thielemann, E. (2003). Between Interests and Norms: Explaining Burden-sharing in the European Union. *Journal of Refugee Studies*, 16(3), pp. 253–273.
Thielemann, E.R. (2005). Symbolic Politics or Effective Burden-sharing? Redistribution, Side-payments and the European Refugee Fund. *Journal of Common Market Studies*, 43(4), pp. 807–824.
Thielemann, E.R. (2010). The Common European Asylum System: In Need of a More Comprehensive Burden-sharing Approach. In A. Luedtke (ed.), *Migrants and Minorities: The European Response*. Newcastle-upon-Tyne: Cambridge Scholars Publishing, pp. 82–97.
Thielemann, E. and Armstrong, C. (2013). Understanding European Asylum Cooperation under the Schengen/Dublin System: A Public Goods Framework. *European Security*, 22(2), pp. 148–164.
Toshkov, D. and Haan, L. de (2013). The Europeanization of Asylum Policy: An Assessment of the EU Impact on Asylum Applications and Recognitions Rates. *Journal of European Public Policy*, 20(5), pp. 661–683.
Trauner, F. (2016). Asylum Policy: The EU's 'Crises' and the Looming Policy Regime Failure. *Journal of European Integration*, 38(3), pp. 311–325.
Uçarer, E.M. (2001). From the Sidelines to Center Stage: Sidekick No More? The European Commission in Justice and Home Affairs. *European Integration online Papers (EIoP)*, 5(5). Available at http://eiop.or.at/eiop/pdf/2001-005.pdf (accessed July 2011).
Zaun, N. (2017). *EU Asylum Policies: The Power of Strong Regulating States*. Basingstoke: Palgrave Macmillan.

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