THE COMMON EUROPEAN ASYLUM SYSTEM AND THE 2015 EUROPEAN REFUGEE CRISIS

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ABSTRACT

Georgia Patrascu: The Common European Asylum System and the 2015 European refugee crisis (Under the direction of Robert Jenkins)

This thesis approaches the topic of migration and asylum seeking within the European Union and analyzes the Common European Asylum System (CEAS). Through the use of the theory of intergovernmentalism it argues how CEAS was created and how states were able to bargain in order to cede control over irregular migrants to the European Union. Then by using the theory of securitization, it is argued that migration became securitized which lead Member States to reclaim power over migration and asylum seeking.

It will argue that the European Union’s response to the large increase in irregular migration into EU territory in 2015 shows the limits of the European institutional framework in the asylum policy. While there is much cooperation within the European Union, when faced with security issues, of which migration and asylum are a part, Member States are reticent of giving up sovereignty.
To my family. Without all of you I would not have been able to do this.
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<td>CEAS</td>
<td>Common European Asylum System</td>
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<tr>
<td>EC</td>
<td>European Community</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>EEC</td>
<td>European Economic Community</td>
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CHAPTER 1: INTRODUCTION

The year 2015 was marked by many international events but one of the more influential and talked about events was the so called European refugee crisis. By the end of 2015 the European Union had seen a total of almost 1.3 million asylum applications which was twice as many as in 2014 and three times as many as in 2013 (Eurostat 2016a). The sheer amount of irregular migrants entering the EU, through whatever means they could find, has rendered the situation into a crisis by entering daily media and capturing political and public attention. Images of suffering and desperation flood the daily European psyche.

In addition, it has become a larger issue due to the fact (in addition to no longer being processed in the first country in which they have entered the EU), that the irregular migrants are no longer staying in one place, but migrating towards the heart of the European Union to find better economic and social conditions. The Southern European states have not been able to sustain the sudden and constant influx and therefore the larger, wealthier European states have seen themselves forced to take the burden of resettling the migrants.

As can be seen in Figure 1 there has been an increase annually in asylum seekers since the Arab Spring in 2011, started with a large spike in 2015.¹ More in depth, in 2011, there was a total of 259,395 applications, while in 2015 there were 1,297,420 applications or an increase of 400 percent in 5 years (Eurostat 2016a).

¹ Eurostat publishes data monthly and an analysis piece every quarter. At the time of writing the data past January 2016 was not available.
The sudden influx of asylum seekers created problems for the existing European asylum system due to the European Union being unprepared for the situation due to its failures in policy fields such as immigration, border control and, most importantly, in the common European asylum policy (Lehne et al. 2015). Burden sharing regarding refugee relocation and protection has been difficult, with tensions running high within the European Union.

To better understand the magnitude of the sudden influx of irregular migrants, Figure 2 displays how, there was a steady increase monthly of the number of first time asylum applicants and then in fourth quarter of 2015 there was a sudden influx. Due to the scope of the paper, not all of the months will be explained and explored but it is important to note that with the

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Figure 1: Number of Asylum Seekers per Year since 2010

2 The only month represented in the 2016 is January (see footnote 1).
appearance of ISIS and the worsening of the Syrian civil war, there is a direct correlation in the increase in asylum applications.

Figure 2: First time asylum applicants since 2010

First time asylum applicants increased by more than 130 percent in the fourth quarter of 2015 compared to the same quarter in 2014\(^3\) (Eurostat 2016b). First time applicants are those who have lodged an application for asylum for the first time in a given Member State and have never applied for international protection in any other Member State. Of those who applied, the top three citizenships of asylum seekers were Syrians, Afghanis and Iraqis with Syrians adding the most in absolute terms.\(^4\)

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\(^{3}\) In the fourth quarter of 2014 there were 184,415 applicants and in same quarter a year later there were 426,025 applicants (Eurostat 2016b).

\(^{4}\) There were 145,100 Syrians, 79,300 Afghanis and 53,600 Iraqis which made them the top three citizenships of asylum seekers (Eurostat 2016b).
Since 1999, with the Tampere Summit, the European Union has had a Common European Asylum System (CEAS) in which EU Member States have shared the responsibility of welcoming asylum seekers and ensuring they were treated fairly no matter where an applicant applied. The policy however is made up of minimum requirements that can easily be forgotten or pushed aside with the reasoning of protecting national interests and internal security.

CEAS stands on five directives or regulations creating a system made up of minimums (Apelblat 2016):

- Qualification Directive (2004/83/EC) on establishing common grounds to grant international protection
- Asylum Procedures Directive (2013/32/EU) on common standards of safeguards and guarantees to access a fair and efficient asylum procedure
- Reception Conditions Directive (2013/33/EU) on common standards of conditions of living of asylum applicants
- Temporary Protection Directive (2001/55/EC) on minimum standards for giving temporary protection in the event of a mass influx of displaced persons
- Dublin III Regulation (2013/604/EU) on establishing the criteria and mechanisms for determining the member state responsible examining an application for asylum

The Council Directive 2004/83/EC of 29 April 2004 set out minimum standards for granting refugees status or subsidiary protection to non-EU country or stateless persons. Those who did not qualify for refugee status could apply for the subsidiary protection. However, the Directive is an example of the struggle in reaching harmonization in the field of asylum. The Commission’s proposal and the European Parliament’s amendments in the consultation process stressed the need for the protection of asylum seekers but the Council mostly focused on the prevention of abuse of the asylum system (Velluti 2014, 9-10).

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5 Regulations are binding legislative acts that must be applied in their entirety to the EU. A directive on the other hand is a legislative act that sets out a goal that all EU countries must achieve, however it is up to the individual Member States to devise their own laws on how to reach said goals (EU Law 2015).
The Asylum Procedures Directive (2013/32/EU), streamlined the asylum application process, by making it more efficient and fairer for applicants while making sure that the international protection met EU-wide standards for granting and withdrawing international protection. It covered all applications for protection made in the EU countries at borders, in territorial waters or transit areas, with the exception of the UK, Ireland and Denmark, who have an opt-out agreement. The Directive set out that the process would not take longer than six months and when there was a question of national security, the process could and should take a shorter period of time.

The Reception Conditions Directive (2013/33/EU) made it clear that CEAS is a constituent part of the EU objective of establishing an area of freedom, security and justice that is opened to all those who are seeking protection in the Union. It also set up the rule that the asylum policy should be governed by the principle of solidarity and fair share of responsibility, which also includes financial burden sharing.

The Temporary Protection Directive (2001/55/EC) was characterized by the duration of the protection given to a large influx of refugees but did not have any rules for permanent resettlement, which is an important factor of the current crisis of irregular migration. The temporary protection is to be implemented in all Member States when the Council adopts, following a Commission proposal, a decision establishing a need for protection for a large influx of displaced persons (EUR-Lex 2001).

The Directive set out the mechanism for how the protection would work and who would benefit from it. The duration can be of one year and can be extended to two years, and the beneficiary would be granted the right to employment, education, vocational training, suitable accommodations, social welfare and means of subsistence, medical care, application for asylum
and for those under the age of 18, to access the education system as any other national of a Member State (EUR-Lex, 2001). There were also mechanisms for minors and separated families and finally rules for how the protected individuals shall be returned. The Directive, however was not used in the 2015 irregular migration crisis and the mandatory relocation quotas, currently in place, replaced it (Bednárová 2015).

The Dublin III Regulation (2013) will be covered in depth in the next section. The Dublin Regulation became the norm on deciding who was responsible for processing an asylum application. Ultimately it became a way for Member States to protect themselves from costly deportations because asylum seekers would become the responsibility of the original Member State through which an asylum seeker first came. It went through many amendments throughout the years and the most current version is the 2013 version.

When searching a clear structure of CEAS it was found that scholars organized it in one way (the way presented above) and the European Union presented it a different way.\(^6\) While the way the European Union organizes is not that different from how scholars organize it, it does speak to the fact that CEAS is not a coherent system, but a patchwork of directives and regulations that just create a common minimum standard that Member States have cooperated on.

Irregular migration is now an issue of pre-border, border and post-border control (Morrison and Crosland 2001, 5). The current asylum policy is still reliant on very basic minimum asylum standards that replicate almost entirely current national standards and

procedures as opposed to being a harmonized policy that all Member States can abide by (Boccardi 2007, 216). The asylum policy is also loosely based on an over simplified definition of ‘irregular migration’ which includes all migrants who seem to be a threat to the European Union. Irregular migration, currently, is an instance where the power has stayed with the individual Member States and not with the EU institutions.

The threat of ‘foreign-fighters’ entering European soil has led to the large influx of irregular migrants being portrayed as a security issue by the media, European governments and societies. Terrorist attacks such as the ones in Paris in 2015 and the growth of homegrown terrorism have created a situation where the perceived threat of being attacked drives policies both at the Member State and the EU institutional level.

While there may be EU mechanisms to deal with a large influx of irregular migrants, these have not been used due to a lack of support from the Member States. Due to the fact that migration and asylum seeking cross the fine line between internal and external policy, Member States have chosen to deal with the situation internally and only minimally cooperate at the EU level. In September 2015, EU ministers decided to implement a quota system for all Member States. Some states were asked to resettle more refugees than others and many smaller states criticized the approach due to their social, economic and political inability to sustain a large amount of migration. The quota system has created tensions within the European Union and has shown the flaws of the European integration project when faced with strong Member States’ interests.

This thesis will argue that the European Union’s response to the large increase in irregular migration into EU territory in 2015 shows the limits of the European institutional framework in the realm of asylum policy. While there is much cooperation within the European
Union, when faced with security issues, of which migration and asylum are a part, Member States will be reticent of giving up sovereignty. Throughout the paper, it will be shown that while the European Union does have the competency to deal with migration and asylum at an institutional level, Member States have limited the power of the Union and its institutions. The Common European Asylum System (CEAS) created in 1999, at first an intergovernmental project seen as a positive by many Member States for sharing the burden of dealing with migrants and asylum-seekers, after 9/11 became a policy area where cooperation has been limited and Member States have maintained their sovereignty. While at first the Common European Asylum System was seen as a welcomed solution to the burden felt by large Member States to deal with large numbers of asylum seeking applications coming from people fleeing the Balkan Wars, after 9/11, and the subsequent securitization of migration, Member States saw themselves relying on national security measures to deal with asylum seekers as opposed to strengthening CEAS' directives.

Political scientists, like the ones cited in this paper, have tried to explain how European integration has come about and how it will advance. The theory of intergovernmentalism will work as a theoretical explanation to the bargaining and sovereignty pooling during the creation and expansion of the European Union. In addition, features of intergovernmentalism will be seen in the origins of the Common European Asylum System prior to 9/11. Post 9/11 however, the primacy of state sovereignty and the securitization of migration due to its link to the War on Terror, constituted a major obstacle in the harmonization of common European asylum policy goals (Velluti 2014,4-6).

In order to better understand how and why Member States securitized the issue of migration post-9/11, the theory of securitization will be explored. A constructivist theory,
securitization explains that migration and asylum policy is presented as a security threat by governments and international bodies in order to create legislation and institutions that ultimately end up militarizing social issues (Gerard 2014; Léonard 2010).

Migration and asylum policy illustrate an underlying contradiction between increasing integration and intergovernmental cooperation while still maintaining national interests and powers, debilitating the EU’s ability to create common policy. Besides national interest challenging the integration process, the increasing securitization of migration and borders for many of the reasons argued in this paper, has rendered the EU capacity weak which can be seen in the response to the 2015 influx of irregular migrants.
CHAPTER 2: BASIC TERMINOLOGY AND DEFINITIONS

The definition of “integration” / use to refer to European integration, is given by one of the most influential neofunctionalist writers, Leon Lindberg, who first came up with his concept in 1963. Lindberg (1963, 6) defines integration as a process with no end point, “whereby nations forgo the desire and ability to conduct foreign and key domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision-making process to new central organs” and where “political actors in several distinct settings are persuaded to shift their expectations and political activities to a new center.” The process of integration, requires that central institutions and central policies must develop, that the tasks assigned to said institutions must be important enough to activate socio-economic processes and that Member States must continue to see their interests align to those of the Union (Lindberg 1963, 7-8).

Lindberg explained that the way through which integration happens and advances is in a situation where Member States resolve their conflicts of interest in such a way that allows the positive convergence of pro-integration aims. The only way states will be able to converge on a solution is by bargaining in exchange of equal concessions and coming up with a minimum common denominator on which they can all agree while never going beyond what the least cooperative of them is willing to concede (Lindberg 1963, 11-12).

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7 The socio-economic processes about which Lindberg talks, are processes in which social and economic developments are made possible in European Member States due to their governments’ cooperation within the European Union forum.
Following the practice of the European Union, this thesis will use the term “irregular migration” and its grammatical derivations to describe those who have entered the EU territory through conditions that do not meet legal standards (EU Commission 2015, 2016). The terms “asylum seeker” and “refugee” will be used to give more dimension to the types of people who have crossed EU internal and external borders.

Refugees are people who leave their country of origin because of fear of persecution and their status is granted on request from a state’s government after proving the dangerous situation. Asylum seekers are those who have applied for the refugee status and are expecting a decision. All refugees are initially asylum seekers but not all will be recognized as refugees in the end. While they expect a decision about their case, the term ‘asylum seekers’ defines the people entering the EU the best (Preja and Cerbu 2014, 74-75).

Looking at the European Union terminology, one finds an incomplete definition, made up of different definitions from different sources. At first it seems to be an easy definition encompassing the different ways a person can move to a new place. Using the International Labor Organization definition, the European Commission (2016) defines irregular migration as the “movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.” The synonyms given are “clandestine migration, illegal immigration, illegal migration, unauthorised migration, undocumented migration,” where only the term “unauthorized migration” describes the status quo, while the others demonize the migrant and his or her journey. In the securitization

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8 The Commission (2016) even explains in its definition in a note that “there is no universally accepted definition of irregular migration” and that it all depends on the destination or the sending country. What that means is that from the perspective of a destination country, the entry, stay or work within a country without the necessary authorization or documents is defined as irregular migration. From the perspective
discussion it will become apparent that the way the political authors refer to things can influence legislation and state actions.

When looking at a major media outlet such as the BBC (2016), the definition given is “all those outside normal transit procedures, i.e. without documentation. The term "illegal migration" usually refers to people smuggling.

While the term used by the BBC does begin to describe the people who have entered the Union in 2015, it still fails to fully describe the situation.

The term “irregular migration” is used in many press releases about the refugee crisis to describe the current migration crisis because those seeking asylum after entering the EU started as unauthorized migrants, and then some tried to change their legal status after entering a Member State. Therefore, an asylum seeker falls in between international and national policy because migrants from outside the EU seek national protection and therefore do not just fall under the jurisdiction of international law but also the national law of a Member State.

of a sending country, the irregularity come from instances where a person crosses an international border without valid transport documentation, which is usually encountered in smuggling situations.
CHAPTER 3: CONCEPTUALIZING AND DEFINING INTERGOVERNMENTALISM AND SECURITIZATION

3.1. Intergovernmentalism

Intergovernmentalism as a theory first entered the field of international relations in the 1960s with the work of Stanley Hoffmann, who took it upon himself to explain why states as nationalistic as France could bring themselves to give up certain sovereign powers in order to promote a common market. This theory is based on the significance of the role of institutions in governing interstate relations. It is also based on the assumption that “international institutions favor negotiation by reducing transaction costs,” which are favorable for ‘low politics’ but in areas of high politics, such as sovereignty for example, “states endeavor to protect their powers and thus delegate them with the greatest parsimony” (Roche 2011).

The success of the European Union rests in the “proper functioning of states capable of fostering the opening of civil society and waiving certain attributes of their sovereignty” and also on the “awareness that neighboring states have converging interests, a fact that can be attributed to the accelerated maturity of an international anarchy in which sovereign states are in a free competition” (Roche 2011). Sovereignty does not, therefore, disappear but becomes pooled in this scenario.
Hoffmann’s theory suggested that the European Economic Community (Hoffmann’s theory is shaped by his analysis of the EEC) was a multiplier of power for weakened states because the decisions within the EEC would become the lowest common denominator, on which states could agree, something Lindberg explained was an important factor of prolonged integration. However, once the European Economic Community evolved into the European Union and its functions expanded and changed, the theory of intergovernmentalism also changed.

3.2. Liberal intergovernmentalism

Andrew Moravcsik entered the debate by adapting Hoffmann’s theory to the 1990s reality of the European Union and changing it to the so called “liberal intergovernmentalism”. Liberal intergovernmentalism focuses more on how the Member States governments are able to bargain within the European Union and still maintain executive capacity at the national level (Rosamond 2004, 139).

While Hoffman analyzed how Charles De Gaulle promoted French national interests and its impact on European integration, Moravcsik focused more on the negotiations that led to the signing of the treaties developing the European Union and its monetary system.

The European Union does not have a government but instead it has a multitude of national governments that are accountable to their respective citizens and a complex system of common institutions, rules and norms that have shaped and developed a Member State’s influence in the EU (Tsoukalis 2014, 74). That web of interdependence has been achieved through and built upon bargaining and intergovernmental negotiations over many years.
The enactment of the Economic and Monetary Union was an instance where states were willingly giving up their control over issues of central importance to national sovereignty. However, post 9/11 the threat of terrorism, especially home-grown terrorism forced states to reinforce and guard their sovereignty in order to secure their populations. The EU, due to its Member States’ interests also shifted its interest to include security, defense and border control.

Moravcsik and Schimmelfennig’s (2009) definition of liberal intergovernmentalism rests on two basic assumptions about politics. First, that states are actors and second, that all states are rational.

Thomas Risse (2009, 146) eloquently explained that intergovernmentalism as a theory is adequate to explain the evolvement and building of European institutions. In addition, it helps explain the reliance on agencies as forums of cooperation and sovereignty pooling.

With that in mind, Andrew Moravcsik and Frank Schimmelfennig (2009, 68) explain that the EU can be studied correctly if states are treated as critical actors in the context of anarchy. Furthermore, through intergovernmental negotiation and bargaining, states achieve their goals, without having to rely on a centralized authority to make and enforce political decisions. In addition, national security is not a dominant motivation in the decision making process. States as rational actors tend to calculate the utility of alternative courses of action and choose the one that maximizes (or satisfies) their utility under different circumstances. Basically, this means that EU integration can be understood as a series of rational choices by national leaders that respond to constraints and opportunities stemming from the economic interests of each individual state in bolstering the importance of interstate commitments.
Integration in Moravcsik and Schimmelfennig’s theory will continue as long as states continue to rule by quasi-consensus with the fiscal, administrative and military power being decentralized to the individual Member States.

“Absent a major and unforeseen exogenous shock, the EU is likely to develop incrementally, improving and reforming policies within the current confederal constitution framework, with member states ruling by quasi-consensus and fiscal, administrative, and coercive powers decentralized to the states (Moravcsik and Schimmelfennig 2009, 83)”.

Therefore, policies such as political control over the major fiscal activities of the modern state, things like taxation, social welfare, immigration and citizenship, health care provisions, education, defense spending and criminal prosecution will remain in the national governments’ power.

This paper further agrees with the idea put forth by the authors, that power over national security remains under Member State control when faced with question of national security, such as migration and asylum seeking, Member States will protect their own interest, and common interests will be pushed to the side. Ultimately, asylum and migration policy are security issues that are also of crucial importance to the nation state. The national government’s control over who is allowed to reside on its territory is one way a state retains its sovereignty (Kraft-Kasak and Shisheva 2008, 2)

Catherine Gegout (2010) examines the effectiveness of the theory of intergovernmentalism when dealing with security issues and concludes that states are rational actors. When coming up with common policy, a state’s policy actually comes down to the individual state’s decision if cooperation is in its best interest. Again, the paper is consistent with her analysis, because when analyzing the common European asylum policy, it becomes apparent that national interests come first.
In addition, Gegout’s analysis shows that when Moravcsik was writing his book in 1998, and developing the theory of liberal intergovernmentalism, he believed that foreign policy coordination had no immediate economic impact on the Monetary Union. Therefore, the practice of intergovernmentalism was not necessary and power would remain with national leaders (Moravcsik 1998, 478).

Therefore, to breach the gap between the EU’s primary economic interests and its emerging interests in security and border control post-9/11, another theory is helpful. Migration and asylum policy is the perfect example of the creation of a policy in order to better deal with the so called “Other”. Jef Huysmans (2006) explains that the true nature of European integration “has fueled the securitization of migration in the region through the elevation of ‘illegal migration’ – phraseology that has come to include asylum seekers — to a security risk purportedly warranting regional-level policing and cooperation” (Gerard 2010, 39). The theory of securitization adds to the discussion because it helps to further explain why Member States will prefer to create national policy as opposed to creating opportunities for cooperation within the European institutions.

3.3. Securitization

Securitization theory can be understood in the context of the extreme politicization of migration and its presentation as a security threat (Léonard 2010, 231). Developed by Ole Wæver in collaboration with other researchers, who have come to be known as the Copenhagen School, this theory can be seen as a constructivist approach to security studies.9 It is based on the

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9 For this thesis, whenever constructivism is mentioned it will be assumed that I am using it to allude to the theory in international relations that many aspects of world affairs are socially constructed by humans, who are social beings, in the interest of creating a society and a nation-state. In the realm of security studies, the use of constructivist theory is to explain that threats are politically and socially created for social mobilization. For a further conversation about the creation of threats see Huysman, 2002.
idea that security threats are socially constructed, which means that it is impossible to ever fully assess whether threats are ‘real’ or not because they will be constructed and defined by those who claim they are affected by said threats (be they governments, or society).

The Copenhagen School believes that all security scholars should study the process through which an issue becomes socially constructed and recognized as a security threat. The way the Copenhagen School proposes the study should be done is by looking at the way discursive processes dramatize and prioritize an issue by presenting it as existential threat to the survival of the ‘referent object’ (i.e. a state, national identity etc.) and then the threat being accepted by the ‘audience’ of the speech act (i.e. the government, public opinion, etc.) as such (Léonard 2010, 235). The actor securitizing the issue is then able to claim that it requires emergency measures and justifies actions outside the normal bounds of political procedure (Buzan et al. 1998, 25 quoted in Léonard 2010, 235). For this school of thought there are no real security issues but only issues that have been perceived as threats through securitizing speech acts (Léonard 2010, 235).

Alison Gerard (2010) argues that there are three steps in securitizing an issue such as migration.

First, securitization seeps into policy development and implementation. Second, it is mobilized through political discourse that exaggerates the risks of migration and asylum, and either garners or diminishes allegiance to political parties. Third, securitization constructs migration as a security problem and proposes security-based solutions as the only viable remedy (39).

However, some scholars who use this theory have argued that it is not necessary to only use the role of discourse in the practice of securitizing an issue because in some situations there is more of an emphasis on the importance of practices, bureaucratic structures or networks linked to security practices and the specific technologies they use (Bigo 2000, 194; Huysmans 2004 in
Léonard 2010, 235). For example, practices like creating institutions or agencies that militarize, migration can be seen as instances of securitization. More exactly, activities that can be seen to securitize asylum and migration are policies or activities that have traditionally been implemented to tackle issues largely perceived as security issues, such as drug trafficking, terrorism or a foreign invasion. In addition, those policies that are extraordinary, those never or rarely used in asylum and migration issues, can also be seen as ways to securitize migration and asylum seeking (Léonard 2010, 238). The use of force, both military and police, is a good example of a policy that ends up securitizing migration in order to create policy. Securitization does not occur at one specific moment in time, but it is more long-term and diffuse, especially when evaluating policy (Abrahamsen 2005 quoted in Léonard 2010).

The reason why security studies have expanded to migration is because after the 9/11 attacks, the fight against terrorism became linked with correctly managing migration and asylum policy (Huysmans 2006, 12). With the terrorist attacks in New York, Madrid and London, the European Union’s security agenda changed and asylum and migration were implicated in this process.

Boswell (2007) attributes the link between migration and the fight against terrorism to the Member States’ Interior Ministers’ weight in the European Union’s institutions. These officials were already dominating the EU decision-making process in asylum, migration and security policy and therefore were able to create policies that had their national interests at heart (Chou 2009, 553). National interests, even according to Moravcisk’s theory, are important in how states will cooperate within each other with the EU institutional framework. In addition, Gegout’s (2010) analysis of intergovernmentalism and her conclusion that when faced with security issues,
such as terrorism, states will choose to look out for national interests as opposed to the interests of the EU is relevant.

The link between the War on Terror and migration comes from world governments framing migration in relation to terrorism and the threat of crime (Bigo 2002, 63-64). The creation of threats, though, speaks to the the fear of the politician of losing his or her symbolic control over territorial boundaries in a world where freedom is always associated with danger and insecurity (Bigo 2002, 65). Alison Gerard (2010, 29) further explains that a state’s sovereignty is reasserted through the securitization of migration due to its likeness to punitive law and order approaches to affirm a sovereign’s ability to control crime. In addition, if states would give up the power to unilaterally decide who gets to live on their land and under what conditions they are allowed to do so, then the sovereign state as known in modern history would be transformed (Kraft-Kasak and Shisheva 2008, 2)

Through the securitization of asylum and migration, there was a shift from the ‘low politics’ of humanitarian aid to the ‘high politics’ of security, with migration and asylum seeking being deemed or portrayed as a problem that could jeopardize national internal stability and security. Stanley Hoffman’s definition of intergovernmentalism, comes to mind because as he explained when it comes to ‘high politics’, Member States will try to conserve their power and will delegate it with greatest parsimony. This conservation of power speaks to Bigo’s argument of why an issue, like migration, gets securitized. European integration rests on cooperation between the Member States and for that to happen, they all need to agree on some basic principles that will not put their domestic policies in jeopardy.

Jef Huysmans (2006, 73) sees that there are three factors in how migration became securitized within the European Union. First, there is the cultural significance of border control
and its implication on the free movement of people (through the Schengen Agreement and the Dublin Regulation). Second, there is the question of integration or assimilation of migrants into the domestic societies of the member states. Finally, there is the relationship between European integration and the development of multicultural societies.

Coming from non-member states, refugees are culturally different to the citizens of European Union Members, which according to Huysman’s themes means the issue of migration can become securitized among the European Union’s Member States. Migration can bring people into a country that can be culturally different, such as the refugees coming by boat in 2015. The difference in culture creates an an ‘us’ vs. ‘them’ mentality where the Other is different and therefore a threat. Once a threat, as securitization theory explains, it will be dealt with in ways that end up militarizing the solution and using punitive national resources as opposed to restorative resources. Securitizing European migration and asylum seeking is connected to the creation of a European internal security field in which the securitization of cultural identity is subordinated to protecting European public order and safety (Huysmans 2006, 118). Those who are outside of the European cultural identity are seen as threats and therefore dealt with as such.

The passage of the Treaty of Maastricht (1992) and the Treaty of Amsterdam (1997) securitized migration in the way they sought to formalize the free movement of EU nationals and therefore creating strict external border controls keeping external migrants, or the so called ‘Other’ out. In addition, with the transformation of the European Union as an ‘Area of Freedom, Security and Justice’ in the Treaty of Amsterdam (1997) there was an emphasis on security and an attempt, all to create a common cultural identity that was only available to European nationals and not migrants (Grewcock 2003, 121). Migration and asylum seeking became a problem that
could jeopardize internal stability and security after internal borders were abolished with the Schengen Agreement’s entrance in European *aquis*.

Therefore, before exploring the history of CEAS, it is important to understand that integration of Member States within the European Union happens only when there can be positive convergence of policy aims and national interests do not come before those of the EU. The convergence can then only happen at the lowest common denominator because then Member States governments are able to create domestic policy that has national support.

The European Union is an institution with rules and norms created by Member States in order to better integrate policy and to share the burden of many issues facing European governments. That web of interdependence has been achieved and built over many years and according to Moravscik and Schimmelfennig, baring a catastrophic event, integration and cooperation cannot be shaken. However, when it comes to migration and asylum policy, states continually talk about it in securitized terms, which makes it difficult for the harmonization of common policies.

Once an issue is securitized, and a threat is created, states will revert to their own sovereign power and be weary of creating opportunities of cooperation. Once 9/11 became the point in modern history where security concerns and the fight against terrorism became a priority, migration and asylum seeking policy was no longer an area of cooperation for better burden sharing but an area where Member States weighed their own interests in keeping the ‘Other’ out. European integration no longer was reliant on quasi-consensus on fiscal and humanitarian issues, but reliant on keeping the Other out.
As it will be seen in the next section, through the history of migration and asylum policy, Member States’ interests changed and they finally created institutions that kept outsiders out even if it was at the cost of policy integration.
CHAPTER 4: SOCIOPOLITICAL CONTEXT OF THE COMMON EUROPEAN ASYLUM SYSTEM

To better understand the force of intergovernmental cooperation in furthering European integration, looking at how asylum policy came about is helpful. In the following chapter, in a chronological manner it will be shown how decisions, regulations, directives and intergovernmental cooperation pushed the Europeanization of migration and asylum policy.¹⁰

The legal duty of EU Member States to offer protection to refugees can be found in a combination of refugee, human rights and humanitarian law. The 1951 Geneva Convention on the Status of Refugees and the New York Protocol (1967), upon which the Common European Asylum System (CEAS) is based, constitutes the centerpiece of international refugee protection. The Geneva Convention lays out basic minimum standards for the treatment of refugees, which the European Union follows in its directives (Velluti 2014, 10-11). In addition, the use of these two international Conventions, the principle of non-refoulement, the international law principle that a true victim cannot be returned to the persecution of a specific state actor is affirmed and protected by EU legislation.¹¹

¹⁰ For the purposes of this paper the term ‘Europeanization’ will be defined as the process by which domestic policy areas become increasingly subject to European policy-making (Bürzel 1999, 574) and as an incremental process reorienting the direction and shape of politics to the degree in which European Union political and economic dynamics become part of the national policy making organizational structure (Ladrech 1994,69).

¹¹ Article 33 of the 1951 Geneva Convention
Various reasons explain the Member States’ desire to create CEAS. First, a well-functioning CEAS contributed to the image of the European Union as a protector of human rights, and secondly, a common procedure and a uniform asylum system would reduce a secondary movement of asylum-seekers across the EU searching for a better system. The harmonized system would then alleviate Member States from carrying out complex fact-finding tasks on their own because the burden would be shared among all Member States (Velluti 2014, 15).

However, the European Union would not have been able to create a common system without gaining more competencies over migration and asylum policy over the years. Through the involvement of the European Court of Justice (ECJ) in issues over the free movement of people from outside the Union, or the so-called “third-country nationals” (TCNs), the European Union gained many legal competencies over issues that were usually left within the Member States’ power.

The first step in giving the European Community the ability to deal with migration issues regarding those outside of the European Community was in the Treaty of Rome (1957) in Article 59, which declared that the Council could act unanimously in a proposal from the Commission by extending the provisions of the free movement of services to nationals of a third country (TCN) who provided services within the Community. Citing a 1968 Council Document (Regulation (EEC) No 1968/1612/6), Chou (2009, 544) explains that the original economic logic underpinning European economic integration in the early years, was promoted by the free circulation of the factors of production (labor, services, goods and capital) and EC nationals were seen as part of factors of production, therefore being allowed to move freely. Therefore,
provisions also had to be made for TCNs due to them being another important factor of production.

During the 1973 oil crisis, when people saw themselves forced to leave their countries seeking better economic opportunities in economically developed countries, the Council issued a resolution to establish a ‘social action program’ for all migrants irrespective of their nationalities. The Commission then asked in 1974 for the establishment of coordination of national policies of Member States towards migration and migrants at the Community level (Council Resolution, 1976). By 1979, through its rhetoric, the Commission (European Commission 1979), was stressing that external migration regulation was a corollary to the Community policy of free movement of Community workers suggesting that internal and external migration were inseparable (Chou 2009, 545).

In 1985, the Commission (1985) adopted an internal decision that forced all Member States to circulate to one another and the Commission, any draft or existent legislation regarding TCNs workers and their families. The Decision was based on Article 118 of the Treaty of Rome (1957).12 The measure, however, was challenged by five different Member States in front of the European Court of Justice (1987)13. It is important to note that there already was a transformation of the idea of external migration from an economic discussion to a security discussion. The objections brought by the five member states were based on the fact that the conditions of entry, residence and employment of TCNs affected the Member States’ ability to

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12 This article gives the Commission competence to promote closer cooperation among the Member States in the social field (social security, labor law or working conditions, etc).

13 Federal Republic of Germany, Kingdom of Netherlands, French Republic, United Kingdom of Great Britain and Northern Ireland and Kingdom of Denmark (ECJ 1987).
provide security for their own nationals (Chou 2009, 544-545). The ECJ (1987) rejected the security justification on the grounds that migration policy in relation to non-member states did not fall within the scope of domestic public-policy which was the only reason Member States could derogate from their treaty obligations.

Then in 1986, migration policy went through another process of Europeanization with the Iberian expansion to Spain and Portugal. Then the deliberations about migration policy at the EU level were framed in three main themes: the protection of public order and the preservation of domestic stability, challenges to the welfare state and questions about multiculturalism or the cultural composition of the nation (Huysmans 2006, 68).

It became increasingly clear that there was a need for the communitarization of migration and asylum policy when countries like Germany and Austria came under enormous strain in the late 1980s and early 1990s when they tried coping with the asylum applications they received. They believed that the possible communitarization of their refugee problems might ease the strained circumstances they found themselves facing (Boccardi 2007, 211). Boccardi (2007, 211) explains though that in the negotiations for the Maastricht Treaty (1992) there was a German proposal to include asylum cooperation in the Union’s competencies under the First Pillar (or the Pillar handling economic, social and environmental policies) but it was quickly rejected by the other Member States.

The full communitarization of migration and asylum policy had to wait until 1997 with the Treaty of Amsterdam. The Third Pillar on Justice and Home Affairs, made migration and asylum seeking EU issues that had to be dealt with through Member State cooperation. There

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14 See footnote 10. For the purposes of this paper the two words will be used interchangeably based on the definition of Europeanization given by Bürzel (1999).
was an acknowledgement that many common problems had both a global and a regional perspective. Asylum seeking becoming a European issue as opposed to just a national issue paving the way for the process of Europeanization of Member State’s practices and legislations (Velluti 2014, 13).

Migration and asylum seeking, from the beginning, were caught in the debate within the European Union about irregular migration being a problem caused by international organized crime that could be seen as threat to democracy and civil society (Morrison and Crosland 2001, 23). While powers given to the European Union aimed to deter organized crime they were already used to target ‘aliens’ as the main threat to public order and State security (Mathiesen 2000, 176).

Consistent to Huysmans (2006) analysis, the protection of public order and domestic stability became an important factor as seen in the domination of security and border control policy in the European agenda by the end of the 1990s (Grewcock 2003, 122). It is then to no surprise that a special meeting of the European Council at the Tampere Summit in October 1999, set out the elements for a Common European Asylum System confirming its commitment to reinforcing the fight against serious organized and transnational crime in addition to creating minimum requirements for the protection of refugees and asylum seekers (Grewcock 2003, 122).

The creation of CEAS, as explained by Velluti (2014) was motivated by the want to create an image of the EU as a protector of human rights but, as other authors point it was created in order to share the burden of dealing with organized crime and transnational crime. Asylum seeking gets caught in the discourse about transnational crime due to its links to human smuggling and other types of organized crime. The securitization of migration, and its impact on
integration (more exactly the creation of intergovernmental cooperation) becomes inherent to European integration.

As can be seen in the reluctance of some Member States of communitarizing migration and asylum policy, the claim made by this thesis that when faced with security issues, which a Member State deems as threats to its people, it will revert to national policy and will not seek cooperation within the European Union, making the harmonization of common goals difficult, still stands true.

Ultimately, despite a push toward the communitarization of asylum and migration policy, when Member States felt like their ability to provide security for their nationals would be put in danger, they would limit the European Community’s power. In the important pieces of the European asylum system explored below, there are mechanisms set up by Member States to be able to limit the pooling of sovereignty when faced with security issues. For example, the Schengen Agreement was made to facilitate the movement of people, but it can be restricted when faced with threats from the outside of the Union. The Dublin Regulations give a sense of responsibility for one Member State to decide who and under what conditions a TCN is allowed to live within the European Union but the technical and enforcement issues make it almost useless. Finally, the creation of Frontex, an institution made to pool resources to patrol and keep the external European border safe, shows the effect of securitization at the EU level and the limits put on the EU institutional framework, by Member States when dealing with security issues.
CHAPTER 5: THE SCHENGEN AGREEMENT, DUBLIN REGULATION AND THE IMPORTANCE OF FRONTEX

5.1. Introduction

Following with the claims made by the thesis that when faced with security issues, Member States will limit the power given to the European Union, the following chapter will look at three important pieces of the European asylum and migration policy to prove that claim.

The Schengen Agreement is an illustration of successful intergovernmental cooperation for the benefit of furthering integration. Its incorporation into the European aquis influences how all other migration and asylum policy is treated because of the importance put on the free movement of people component of the Schengen aquis.

The Dublin Regulations\textsuperscript{15} began as a intergovernmental cooperation project to burden share the effort of processing asylum seeking application, but has shown its failures when, first, Member States became parsimonious with the transferring sovereignty to other states for the decision of who gets to live on their land, and secondly due to the securitization of migration and border control.

\textsuperscript{15} In this chapter the Dublin III Regulation will be analyzed as it is the latest version of the regulation. The original Dublin Convention of 1990 set up the process of examining an asylum application, and then in 2003 Dublin II Regulation was adopted, making a binding legislative that was required to be applied in its entirety in the Member States legislature. The 2013 Dublin III Regulation was signed in order to correct some of the deficiencies in efficiency seen by the Commission (Commission, 2008; Dublin II Regulation, 2013).
Finally, Frontex will be a good example of the process of integrating resources in an institution, while in the process securitization migration and asylum seeking. These three components do not work independently of each other, but rather, complement and contrast each other to create a common European asylum system made up of puzzle pieces that do not seem to interlock fully.

5.2. Schengen Agreement

The Schengen Agreement of 1985 began with discussion between Germany, France, Belgium, the Netherlands and Luxembourg to create a territory where internal borders were abolished in lieu of a single external border. The Agreement (1985) was signed in June 1985 and then implemented through a Convention (1990), the abolition of internal border controls and the creation of a common visa were proposed. The Agreement took effect in 1995. With the Treaty of Amsterdam (1997), the Schengen Agreement was incorporated into the EU *aquis* which meant that it no longer had a treaty status but was part of the EU legislation and had to be followed as such.

The Schengen *aquis* assures that there is a common policy regarding visas for short stays, asylum requests and border controls. Some of the key rules adopted with the Schengen *aquis* are the removal of check of persons at the internal border and common set of rules applying to people crossing EU Member States’ external borders, with a goal the better movement of people and goods within the European Union (Eur-Lex, 2009).

Due to internal borders being abolished, the external EU border became more guarded and protected and Member States had the responsibility of guarding their share of the European external border, which is unevenly distributed considering the comparative lengths of their
respective borders as well as the natural geographical circumstances (Rijpma and Vermeulen 2015, 454). Basically, while Member States never stopped guarding their own external borders, with the adoption of the Schengen Agreement, they were also doing it as part of their shared burden of guarding the European Union’s external border.

Illustrating intergovernmentalism, the Schengen Agreement came out of intergovernmental negotiations between EU Member States in order to create better integration at the institutional level. The Agreement reflected the phase of turning the economic union into a political actor that was able to act by itself to protect the common market (Fischer 2012, 38). With the Maastricht Treaty (1992) creating a more complex administrative structure, the European Union was becoming more capable of creating policy and a culture of institutional cooperation was solidifying (Fischer 2012, 38).

In addition, Schengen is much more than just an area without border controls and the free movement of people. It also includes intelligence gathering and sharing, all instances of securitizing the movement of people. The Schengen Information System is supposed to allow national border control and judicial authorities to obtain information on people and objects circulating within the Schengen zone (Dempsey 2016).

As a growing political actor, the European Union alter received more power with the Treaty of Amsterdam (1997). Member States agreed to devolve national power to the European Parliament in many fields, including migration due to its importance to the advancement of the economic union (Fischer 2012, 45). Intergovernmental cooperation and the pooling of
Sovereignty at the EU level became important in order to guard the so-called Four Freedoms of the internal market.\footnote{The Four Freedoms are: Free movement of goods, free movement for workers, free movement of services and freedom of establishment and the free movement of capital.}

\textit{5.3. Dublin Regulations}

Due to the burden put on Germany and Austria in dealing with asylum applications in the early 1990s, and later with the shared responsibility of protecting the EU’s external border, in order to share the burden, another mechanism was created in 1990. The Dublin Regulation was originally established by the Dublin Convention (1990) only four days before the implementation of the Schengen Agreement. The main purpose was the harmonization of asylum policy and most importantly the rules of responsibility among the Member States in order to prevent the so-called ‘asylum shopping’. Cooperation for this Convention came from the asylum crises in the beginning of the 1990s when large Member States were under pressure due to the increasing number of asylum seekers during the Balkan Wars (Fischer 2012, 75-76). It does need to be noted that it is not very clear what international event prompted the Dublin Convention. There are many factors involved, such as the Schengen Agreement coming into force and due to its effect on borders, Member States wanted to have a mechanism that would deter future asylum seekers from abusing the system, or the end of the Cold War and its impact on the amount of migrants from Central and Eastern Europe looking for better conditions in Western Europe. The explanation is beyond the scope of this project and therefore cannot be broached here.

At first, deals were signed between Member States regarding asylum policy due to the legal emphasis on the return of irregular migrants because Member States preferred to return the
illegal entrants overland to the last Member State from which they had entered rather than the much more expensive option of returning them to their respective homeland. The return of migrants resulted in the disproportionate arrest duration or people going underground, as for example in the Czech Republic (a recent Member of the European Union) or Germany where a document was issued to the person in question to leave the Schengen area without actually making sure the person left and them becoming illegal migrants who were hiding from the law (Fischer 2012, 78).

One of the main reasons for the signing of the Dublin Agreement was a need to communitarize the burden of the bureaucracy of the asylum seeking process and not actually to create a common migration and asylum policy. The fundamental idea of the Dublin Agreement was based on a solidarity component, according to which a State bearing the biggest responsibility for the entry into the common territory of an asylum seeker was the State in which the application was processed. Only one Member State could be responsible for the burden of processing the claim and everything that came with it (investigation, cataloguing, financial burden etc.) (Boccardi 2007, 212-213).

In addition, the Internal Market’s objective required minimal rules to reduce internal circulation of irregular migrants such as asylum-seekers, and subsequently securitizing migration. According to Boccardi (2007) Schengen and Dublin tried to do just that in allocating responsibility for asylum applications to all Member States, but to achieve such a goal, only minimum mutual recognition rules were introduced (213). In addition, for Dublin to work, Member State are asked to fingerprint all of the asylum seekers entering their territory.

outstanding job analyzing the time it takes from the moment fingerprints are taken to the moment they get sent to the European Dactyloscopy (EURODAC) Central Unit. His analysis shows a significant delay in the processing of information, and implementation of the system. In 2009 for example, the worst delay was the average 54.99 days in Greece. He also shows that the Dublin Regulation relieves the middle and north European destination Member States at the expense of southern European Member States which have become the emphasis of illegal border crossings (Fischer 2012, 85-91).

The European Dactyloscopy is the fingerprint data base for identifying asylum seekers and irregular border-crossers and is part of the European Commission and Dublin’s success rests on it. The data base insures that authorities are able to determine whether asylum seekers have already applied for asylum in another EU Member State or have illegally crossed borders. Called the ‘electronic heart’ of the European asylum system, it has come under fire due to the policy of keeping asylum seekers’ information on file for 10 years as opposed to the 1.5 years for other irregular migrants. Its necessity is still uncertain because, access to the database is not only granted to immigration authorities but also police and public prosecutors, such as Europol. Due to the fact that only migrants are recorded in such a way it gives the impression that asylum seekers are criminals and must be dealt with as offenders or potential suspects (Dernbach 2015).

In addition, one of the main failures of the Dublin III Regulation (2013), is that many Member State’s conditions for the newly arrived refugees are so mediocre that larger, wealthier Member States refuse to send the refugees back to them when they discover they had not applied for asylum in the first country of the Union they had entered. In the 2015 refugee crisis, many Member States did not have efficient systems to register migrants and asylum seekers and therefore the Dublin Regulation was inefficiently used (Dempsey 2016).
5.4. Frontex

Through the cooperation and discussions that came following the Treaty of Nice (2001) and the importance given to the principle of majority, the Council debated the creation of an entity that could harmonize security within the European Union. The European Union Member States wanted an agency that controlled the migration flows across European borders. With the signing of the Schengen Agreement, the internal customs and border posts were abandoned and replaced by watch towers and radar detection systems at the external borders of the EU; the outer border of the EU was marked by heightened control mechanisms, new surveillance technologies and a paramilitary deployment of patrol boats, border agents and aircraft (Casas-Cortes, Cobarrubias and Pickles 2013, 38). The external European border became highly militarized and the question of migration control also became highly securitized.

In addition, after 9/11, within the European Union, there was a reiteration of the assumption that sources of insecurity must come from ‘outside’ and that immigration was a large source of outsiders (Neal 2009, 339). The management of the common external borders fell under contention because there was a question about which EU institution had jurisdiction over it. Therefore, the EU created an agency, which showed the shift from an intergovernmental approach of managing the external border to that of an institutional approach (Neal 2009, 343).

To manage the security personal and resources of guarding the European external border, the European Agency for Management of Operational Control at the External Borders of the Member States of the European Union, later known as Frontex was created (Regulation No 2007/2004).

According to Neal (2009) Frontex was not created to securitize migration but in response to the disintegration of a common EU response to migration, security and borders. Due to its
ability to act as an independent agent it can be a tool in the securitization as opposed to being a result of it (346).

The agency’s creation was prompted by three main factors. First, by how contentious migration flows had become in Europe since the end of the Cold War, which led to several Member States taking various measures to curb the number of migrants, including the strengthening of border controls to restrict access to their territory. Second, the 2004 and 2007 enlargements of the EU brought some concerns about the ability of the new Member States to control the new external border of the EU. Then, the fight against terror in the War on Terror led to the tightening of external border controls (Léonard 2010, 234). An agency like Frontex was necessary to harmonize the effort of securing and tightening the external EU border.

Frontex’s primary mandate is to coordinate the flow of information (data analysis and the plans of action at the border) between Member States (Klumsmeyer, 2009, 224). It is a semi-autonomous agency founded to coordinate the control of the EU’s external borders in collaboration with all member states (Casas-Cortes, Cobarrubias, Pickles, 2013). The agency promotes a common EU policy for border security. Based on its website, \(^{17}\) it has several areas of activity. It plans, coordinates, implements, trains and analyzes intelligence on the ongoing situation at the external borders and provides a rapid response capability by using the Member States’ staff and equipment at the external borders (FRONTEX 2016). Most importantly, Frontex extends the efforts of EU Member States to control borders but it has grown into a separate and increasingly powerful agency while also enjoying a high degree of independence (Dünnwald 2011). For example, “sea patrols along the African shores are joint operations. They are run

under the responsibility of one member state involved, and are coordinated by Frontex” (Dünnwald 2011, 114). While Member States act as lead of a joint project, Frontex does the coordination, organization of the material and staff while also managing the equipment (Dünnwald 2011, 114). Frontex sea operations are concentrated on the sea between the Canary Islands, and the African coast, the Strait of Gibraltar, the sea between Libya, Tunisia, Malta and the southern Italian islands, and the Greek-Turkish border, focusing on Greek islands just offshore the Turkish coast (Dünnwald 2011, 114).

Though independent, Frontex does rely on financial support from the European Union, in addition to Member States’ equipment. In 2015, due to the large influx of refugees to the Union, the agency was given a 54 percent budget increase as part of a package of incentives to tackle the continent’s refugee and migrant situation. In 2016, its budget will reach 176 million Euros, while also increasing its headquarters staffing from 304 to 340 people (Mathiason, Parsons and Jeory, 2015). With all of these changes, Frontex declares it will have the ability to work with Europol in returning illegal migrants while also providing safe passage to what the agency calls ‘genuine refugees’ and also disrupting people-smuggling rings (Mathiason, Parsons and Jeory, 2015).

As Fischer’s (2012) analysis showed, EURODAC has been plagued by delays and inconsistencies for many years, therefore, Frontex has had to develop new fingerprint processing technology. However, there were some shortcomings which made the processing of the irregular migrants coming into Europe in 2015 difficult (Mathiason, Parsons and Jeory 2015). Individual countries have hindered the Agency’s ability to become a strong EU agency because countries like Germany, Austria, and other EU countries have declined to give Frontex the support it needs. Support, such as high quality personnel and financial support, has not come from many EU countries due to their refusal to cooperate (Dempsey 2016).
While Frontex declares it is only coordinating with Member States, the role of Frontex is not only a coordinating one because coordinating operations consists of assigning and supporting Member States only when needed. While the Commission is involved in the planning of the Frontex operations, it is not involved in its operational plan and therefore Frontex not only supports Member States’ activities but also directs operations (Mungianu 2013, 379).

The joint operations however have not always been successful and have been criticized for militarizing border control because migration and asylum seeking have been securitized by being dealt with by the military and armed forces, which are usually used in a war environment or a situation of immediate danger. In addition, Frontex and Europol have created a close relationship and have shared competences. Just the mere fact that all persons that are intercepted, returned or prevented from entering EU territory, are treated as illegal immigrants, means that no provision is made for potential asylum-seekers. Therefore, EU Member States are not respecting their international obligations in providing a safe environment while also abiding by the non-refoulement principle (Léonard 2010, 240-241).

Frontex is providing RABITs, or Rapid Border Intervention Teams.18 Greece, dealing with the large influx of irregular migrants, requested the assistance of Frontex, through the use of RABITs, in December 2015 in addressing the number of migrants arriving on its islands. In a press release Frontex (2015) made clear that there were going to be larger numbers of officers and technical equipment provided to support Greece in an operation named Poseidon Rapid Intervention. In this operation, Frontex specified there was going to be a greater emphasis on

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18 According to Regulation (EC) No 863/2007 the members of RABITs are placed under the responsibility of the host Member State and they follow its instructions while taking actions under the supervision of national border controls. They remain officers of their Member State, authorizing them to still carry their service weapon and uniform with a blue armband with the EU and Frontex insignia on it. In addition, they are allowed to use force and are liable for any damage they cause (EUR-Lex 2007).
security checks. The checks would be done by providing Greece with the help from “experts in screening, debriefing, fingerprinting and forged documents from various EU Member States and Schengen Associated Countries” (Frontex 2015). The collected information would then be shared with national governments and Europol.

The surveillance and controls used to address the migration crisis in 2015 show that methods traditionally used to address security issues are becoming adequate in dealing with migrants and asylum seekers, which speaks to the securitization of migration. Sold as a cooperation between Member States to secure borders, what these RABITs actually do is to embody the application of a mechanism that historically is used in dealing with emergencies and acute threats such as foreign armed attacks. Reminiscent of the ‘solidarity clause’ of NATO, the cooperation of all Member States is required unless there would be a threat to national security required by the discharge of national tasks.

It is then not surprising that in January 2016, NATO and Frontex announced that they would cooperate in the Aegean Sea in an operation that will bring additional support to the 739 officers, staff and crew members on the Greek islands who were already there when the announcement was made (Frontex 2016).

There is also a system that works jointly with Frontex that was created mainly to “prevent illegal immigration and cross-border crime at the external borders” and to ensure “the protection and saving the lives of migrants trying to reach European shores” (EUR-Lex 2014). Presented by the European Commission as a new tool to save migrants’ lives and prevent crimes at the EU borders, the European border surveillance system, known as Eurosur, is multi-purpose and it provides mechanisms for border surveillance through national coordination in order to ensure a faster response to information about new routes and methods used by criminal networks (EUR-
Lex 2014). It was put into effect in 2013 and has not had time to fully have an impact on Frontex’s operations.

Ultimately, one of Frontex’ issues is the lack of substantial funding and the capabilities to react to a crisis do not refer “to the ability to perform actions to save lives, but only to the ability to perform actions against illegal migration” (Rijmpa and Vermeulen 2015, 466).

In conclusion, The Schengen Agreement began through intergovernmental cooperation between Member States and its effect was felt on how the European Union managed its border, external border in lieu of the abolished internal borders. While the Agreement did not spark a change in the EU, it was an illustration of the direction the European Union, was heading into. Following the free-movement of people provisions that came with Schengen, a bureaucratic mechanism such as the Dublin Regulation was needed. Sharing the burden of processing asylum application, did create problems over the transference of sovereignty to other Member States first and then to the European Union as a whole.

In addition, the failures of EURODAC in being able to handle a large influx of data and applications, rendered the Dublin Regulation weak and hard to enforce. Also, due to the different economic conditions across the EU, with smaller Member States not being able to accommodate large amounts of irregular migrants and their applications and allowing them to leave in search for a larger Member State able to process them, enforcing the Dublin Regulations has also been difficult.

As some authors in this chapter argued, the common European asylum policy has its inefficient issues and the creation of Frontex was supposed to ameliorate some of those inefficient issues. It was however, not given enough power by other Member States, and it has become a tool of securitization.
CHAPTER 6: DISCUSSION AND CONCLUSION

Migration and asylum seeking have been at the basis of the European project since its inception. In the Treaty of Rome (1957) the Council was given the ability to act unanimously in extending provisions of the free movement of services to TCNs because of their importance to the common European economic goals. In addition, the Geneva Convention Relating to the Status of Refugees (1951) and the New York Protocol (1967), are all components of European treaties, directives and regulations regarding the treatment of migrants and asylum seekers. The later created Common European Asylum System, stands on these two international treaties.

At the height of the oil crisis, when TCNs were looking for work in affluent European countries, the EC created provisions for them and their families through intergovernmental deals and agreements.

In the 1980s the debate about migration policy, at the Member State level, was divided into three main themes: the protection of public order and domestic stability, the challenges of the welfare state of accommodating the new arrivals and questions about multiculturalism and the maintenance of the European identity. All of these themes are consistent with fears created by Member State governments to securitize migration. As exemplified in the ECJ challenge coming from some major Member States in 1987 to the decision to cooperate on the free movement of TCNs, when talking about migration and asylum seeking as threats, EU Member States tended to be weary of transferring sovereignty powers to the EU and to each other.
However, while Member States were weary of the transfer of power, the EC had the prerogative that all people would be treated fairly no matter where they came from and what Member State they wanted to live and work in based on the commitments it had made to the international community through its treaties.

As time went on and the Berlin Wall came down, the Cold War ended, and there was potential for mass migration from Central and Eastern Europe in the late 1980s–early 1990s, in addition to the crisis in the Former-Yugoslavian nations, European Member States saw themselves having to share the burden of processing of migrants and asylum seekers. States like Germany came under enormous strain (almost reminiscent of the 2015 crisis) coping with asylum application, which forced Member States to seek the communitarization of migration and asylum policy just to be able to share the burden amongst all Member States.

Once migration and asylum seeking were fully communitarized, with the Treaty of Amsterdam (1997) by being put under the Third Pillar on Justice and Home Affairs, intergovernmental cooperation was necessary and required and the only opt-out was to cite security concerns and therefore needing to revert to national policy as opposed to EU policy.

By the end of the 1990s, with the adoption of the Schengen Agreement into the EU aquis, and its subsequent effect on the European internal borders, the securitization of border control, became inherent in European integration. The Schengen aquis made national borders, also European borders and added the component of the EU involvement in national interests and powers. Securitization, thus became inherent in the European integration project.

Then, after 9/11, asylum seekers and migrants, were seen as being involved with the height in terrorism threats, civil unrest and other issues pertaining to national security. The European Union was still following its commitment to non-refoulement and the protection of
human rights, but the regulations and directive that came after the terrorist attacks in the early
2000s\textsuperscript{19}, did have a more focused approach on security and most importantly securitizing
migration and asylum seeking.

In addition, the involvement of Member States in CEAS, changes how efficient the
system actually is. Due to a lack of support, both economic and logistical, CEAS has been
plagued by inefficiencies since the beginning.

The Dublin Regulations, plagued by issues of inefficiency, illustrate what happens when
Member States refuse to fully allow other Member States to make decisions for them, in addition
to illustrating how the difference in economic and political capabilities across the EU, deeply
influence the application of the regulation. In the 2015 crisis, it was hard to enforce the Dublin
regulation in Greece, the first country many of the irregular migrants landed in, due to a lack of
economic resources. Refugees and asylum seekers were allowed to leave Greece without being
fingerprinted, putting in jeopardy the effectiveness of EURODAC and the Dublin III Regulation.

Then, the creation of Frontex was meant to consolidate the protection of the
external border in addition to dealing with irregular migration as a centralized institution. It’s
reliance on Member States to give resources and personnel leaves it open to failure because
when Member States refuse to cooperate, the institution does not have enough power to fully do
its job. Therefore, in 2016, it comes to no surprise Frontex asked for NATO aid.

\textsuperscript{19} The terrorist attacks on 9/11 is seen by many scholars as a turning point in the creation of
threats worldwide, but for it would be wrong to forget the terrorist attacks in Madrid in 2004 and
the London attacks in 2006. The European terrorist attacks in the early 2000s changed how
countries saw foreigners, of which being asylum seekers. The analysis of each European terrorist
attack and its influence on EU legislation is beyond the scope of this thesis, but it worthy of
research.
This thesis’ claim that the European Union’s response to the large increase in irregular migration into EU territory in 2015 shows the limits of the European institutional framework in the realm of asylum policy still stands after looking at the history of asylum policy and analyzing the institutions, directives and regulations that make it up. While there is much cooperation within the European Union, when faced with security issues, it has been proven throughout the years, Member States will be reticent of giving up sovereignty to each other and to EU institutions.

To conclude a paper regarding such a current topic seems almost impossible. Things change everyday and it is impossible to make predictions about the future of the European asylum and migration system.

Maybe the numbers of irregular migrants such as refugees and asylum seekers will lower but people will not stop from coming to the continent and this means that the European Union in order to insure its survival and also abide by its guiding principles, should create a common asylum policy that all Member States can follow and do not threaten their sovereignty.

The dysfunction within CEAS is damaging to the Member States themselves because they leave themselves opened to security issues and costly solutions. Once the migration and asylum system no longer was an issue that needed to be dealt with in order to allow the free movement of workers within the EU, but an issue of security and state sovereignty, this policy area became less integrated due to Member States being less willing to cede more power for intergovernmental agreements to be negotiated.

Following the definitions given by the intergovernmentalism authors used in the paper, integration can only continue when states pool resources and sacrifice sovereignty in order to
communitarize issues, share the burden of acting on said issues and subsequently gain more support within their own countries and domestic policy.

Such a practice existed in the negotiations for the first regulations on migrant workers and then in the Schengen Agreement and Dublin Regulations. However, even in those negotiations, Member States were unenthusiastic about ceding power over to the European Union because they were giving up control over their territories and the decision making process of how the new migrants would be allowed to live on them.

The theory of securitization is suitable to explain why states would be unenthusiastic and almost unwilling to cooperate with other states within the European Union when it came to migration and asylum policy. Securitizing an issue means that it is immediately dealt with as a threat to the well being of the state and its population. Due to the link between migration and terrorism and the subsequent fight in the War on Terrorism after 9/11, the issue became highly securitized and Member States were more reticent to give up power over the ability to decide who would be allowed to live on their territories.

While the theory of securitization was created after analyzing state discourse, other authors used in this paper showed that even practices that tend to militarize issues can be considered examples of behavior that securitizes policy issues. The creation of Frontex is an example of creating an institution that deals with migration and especially irregular migration, as a security threat where security-based solutions were the only viable remedies.

When faced with an issue such as the sudden influx of irregular migrants in 2015, Member States did not fully use CEAS, which had been set in place in 1999 in order to deal with a situation such as this. The Dublin Regulations have also not been enforced truly due to lack of resources and unwillingness from Member States to fully cooperate with each other.
A humanitarian aid crisis as described by the 1951 Geneva Convention on the Status of Refugee, the 2015 refugee crisis was however dealt with by security-based solutions. Arrests, deportations, borders closing and heightened police presence, are all actions used in times of war or grave danger to societies, and not in humanitarian crises. In addition, the principle of non-refoulement has not been followed one-hundred percent of the time, because many irregular migrants were returned to Turkey in the spring of 2016.

Furthermore, ‘asylum-shopping’, something of which EU officials had been afraid, has become a serious issue in the status-quo due to the differences in resources Member States are able to offer to the large influx of irregular migrants.

Not having a strong enough common asylum system creates issues not only for the security of the European Union as a whole but also for its Member States’ abilities to sustain the agreements signed in the negotiation efforts emphasized by intergovernmentalists. CEAS was created in order to first contribute to the image of the EU as a protector of human rights and then as a common procedure that would ultimately reduce secondary movement of asylum seekers across the EU searching for a better system. The 2015 refugee crisis showed exactly how a powerless system made up of minimums, created exactly the problem it was trying to prevent. People leaving Greece and not filing for asylum there and going on foot to Germany to apply, just because the national asylum process is more streamlined and more welcoming, is a great example of how CEAS has failed the European Union.

The Schengen Agreement, a true example of intergovernmentalism, has been put in jeopardy by Member States restricting the free movement of people and migrants by closing borders and augmenting the border controls just because they could not rely on a system they had
previously created to avoid a situation in which they would have to close borders to protect their internal security.

Much remains to be research and analyzed regarding this policy issue. This paper is a small piece of a larger research field that is ever changing due to the changing power dynamics within the European Union and even more importantly due to the ramifications of securitizing migration and the subsequent links to the War on Terror. The Common European Asylum System is a system created by good intentions but rendered powerless and almost nonexistent by actors being ruled by fear.
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