

**EUROPEAN UNION COMMON ASYLUM SYSTEM:
Effect on Greece**

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A capstone submitted in partial fulfillment of the requirements for the degree of
Masters of Science in Public Affairs, International Relations Track, MSPA-IR

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May 16, 2011

Abstract

The European Union (EU) has formulated policies with the intent to harmonize the asylum system, yet the system is not fully harmonized and has not prevented the current inadequate asylum system in Greece. Currently Greece is in crisis. An overwhelming number of asylum seekers are awaiting status. Greece holds asylum seekers in detention centers in deplorable conditions, unlike other Member States, Greece does not offer housing assistance or financial allowance and often deports those who qualify for status. Since the Geneva Convention of 1951, the asylum process has been a salient topic in the EU. In its inception, Member States' system to process asylum applications varied from State to State; as a result the Common European Asylum System (CEAS) was created in 1999 to streamline the process and reach an equal and adequate process for all asylum seekers in the EU.

Under CEAS, the Dublin Regulations of 2003 proved to be the most challenging policy for Greece. The Dublin Regulations' main priority is to send asylum seekers back to their first EU Member State of entry. This policy gives Member States the responsibility to process and protect all asylum seekers entering the EU through their State. The Dublin Regulations increased the number of asylum seekers in Greece facilitating the current backlog of over 52,000 asylum seekers awaiting status (UNHCR report, 2010). The crisis in Greece is also due to an inefficient asylum system aided by the financial crisis, geopolitics, racism and xenophobia.

Through my research I found that Greece has not been consistent with the standards and practices other Member States follow. While a complete harmonization among Member States may not occur, the inequality and lack of protection in Greece gives cause to believe that the flaws in the process are fundamental (UNHCR report, 2010).

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Glossary

Asylum Seeker:

When a person flees their own country and seek sanctuary in another country, they apply for asylum – the right to be recognized as a refugee and receive legal protection and material assistance. An asylum seeker must demonstrate that his or her fear of persecution in his or her home country is well-founded (UNHCR website).

Economic Migrant:

An economic migrant leaves a country voluntarily to seek a better life. If the migrant decides to return home, they can and would continue receiving protection from their government. On the other hand refugees and asylum seekers flee because of the threat of persecution and cannot return safely to their homes (UNHCR website).

Geneva Convention of July 28, 1951:

The United Nations Convention Relating to the Status of Refugees is an international convention that defines who is a refugee, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. The convention also sets out which people do not qualify as refugees, such as war criminals. The Convention also provides for some visa-free travel for holders of travel documents issued under the convention (UNHCR website).

Non-refoulement:

Non-refoulement is a principle in international law specific to refugee law. It focuses on the protection of refugees from being returned to their country of origin where their lives or freedoms are threatened. Non-refoulement refers to the generic repatriation of people, generally refugees into war zones and other disaster areas (UNHCR website).

Non-governmental organization (NGO):

An NGO is a non-profit, voluntary citizens' group which is organized on a local, national or international level with the task and driven by volunteers with a common interest. NGOs perform humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. Relationship with offices and agencies of the United Nations system differs depending on the goal of the NGO (UNHCR website).

Pink Card:

A card received by an asylum seeker in Greece after their claim has been processed and their status is granted (EU Commission Country Report, 2009).

Racism:

A belief that all members of each race possess characteristics, abilities, or qualities specific to that race, especially so as to distinguish it as inferior or superior to another race or races. Prejudice, discrimination, or antagonism directed against someone of a different race based on the belief that one's own race is superior (Oxford Dictionary online).

Refugee:

A refugee is someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or is afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries (UNHCR website).

Safe third country concept:

The application of a safe third country concept by a Member State on the basis of a national list and/or an individual examination provided the Member State concerned considers that the third country treats the applicant in accordance with international obligations and there is a connection between the applicant and that country (EU Home Affairs website).

Xenophobia:

Xenophobia is defined as the fear or hatred of foreigners. It can manifest itself through relations and perceptions of a group towards another group. Sometimes the fear comes from racism, distrust, aggression, fear of losing identity (Oxford Dictionary online).

Acronyms

CEAS	Common European Asylum System
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment
EAC	European Asylum Curriculum
ECRE	European Union Council on Refugees and Exiles
EDPS	European Data Protection Supervision
EU	European Union
EURODAC	European Dactyloscopy, fingerprint database for identifying asylum seekers
EUROSTAT	Statistical Office of the European Communities
UNHCR	United Nations Higher Commission on Refugees

Timeline for the Common European Asylum in Europe

First phase of the Common European Asylum System (1999-2004)

- 1999: Entry into force of the Amsterdam Treaty
- 1999: Adoption of the Tampere Programme
- 2003: Adoption of the Reception Conditions Directive
- 2003: Adoption of the Dublin and EURODAC Regulations
- 2004: The co-decision procedure was extended to all asylum issues. The European Parliament and the Council therefore are on equal footing for the adoption of instruments in the second phase of the Common European Asylum Systems.
- 2004: Adoption of the Qualification Directive
- 2004: Adoption of the Hague Programme

Second phase of the Common European Asylum System (2005-2012)

- 2005: Creation of the European Refugee Fund
- 2007: EU Commission Proposal to Recast the Reception Conditions Directives
- 2007: Creation of the European Asylum Support Office
- 2007: Treaty of Lisbon
- 2008: Policy Plan on Asylum
- 2009: Frontex: Securing Borders as a form to reduce asylum seekers
- 2010: Stockholm Programme

Introduction

The European Union (EU) has formulated policies with the intent to harmonize the asylum system, yet the system is not fully harmonized and has not prevented the current inadequate asylum system in Greece. In this capstone I analyzed EU policies towards a common asylum system, how one policy led to the next and its effectiveness. I also analyzed whether or not EU policies facilitate the current crisis in Greece and I make policy recommendations to ensure an equal and efficient process for all asylum seekers in the EU.

Currently Greece is in crisis. An overwhelming number of asylum seekers are awaiting status. Greece holds asylum seekers in detention centers in deplorable conditions, unlike other Member States Greece does not offer housing assistance or financial allowance and often deports those who qualify for status. The Geneva Convention known as the Refugee Convention was adopted on July 28, 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of December 14, 1950, defining the term refugee and the responsibilities of States to protect them (UNHCR website). Although the Geneva Convention does not give guidelines on the process to grant asylum and refugee status or how to integrate persons from third countries, the international community is encouraged to look to United Nations Refugee Agency (UNHCR) for guidelines on best practices for processing asylum seekers (UNHCR website).

Since the Geneva Convention in 1951, the asylum process has been a salient topic in the EU. In its inception, Member States' system to process asylum applications varied from State to State; as a result the Common European Asylum System (CEAS) was created in 1999 to streamline the process and reach an equal and adequate process for all asylum seekers in the EU. CEAS has gone through two phases thus far. In the first phase from 1999-2004, the Tampere

Programme and the Amsterdam Treaty were both adopted and the EU Commission took the lead while the EU Parliament acted as consultants. The second phase from 2005-2012, the Stockholm Programme, Dublin and EURODAC Regulations, Qualification Directives, Hague Programme were adopted and the EU Parliament is taking a greater role. In the current phase of CEAS there is a greater emphasis on Reception Conditions and assisting Member States reach equal access and treatment of asylum seekers. Currently under CEAS the EU Commission and Parliament are working to recast the asylum Procedures Directive and Qualification Directives (EUROPA website).

In Greece the current backlog of asylum seekers awaiting status is now over 52,000, this number continues to grow (BBC article, October 2010). Currently, those seeking international protection are not receiving it because they are awaiting status and others are discouraged to apply (UNHCR website). Greek officials claim that most seekers do not have the proper documentation and as a result have been kept in detention for an extended period of time. Critics say that the EU Commission and Parliament have not done enough to help reduce the crises. The EU Commission made funding available to Greece to build new detention centers and build a security parameter in the Evros River, between Turkey and Greece, claiming that the influx is due to the entry of undocumented migrants (UNHCR website). Through my research I found that Greece has not been consistent with the standards and practices other Member States follow. While a complete harmonization among Member States may not occur, the inequality and lack of protection in Greece gives cause to believe that the flaws in the process are fundamental (UNHCR report, 2010).

CHAPTER I

Background and broader context:

Common European Asylum Systems cause for critical effect for European Union Member States

Recently, there has been an influx in cross-border movement in Western EU countries (Cini and Perez-Solórzano, 2010). In 2010, over 132,000 undocumented migrants settled in Greece. Most are reportedly migrating through Turkey over an eight-mile stretch from the Evros River. As a result, Greece has several detention centers that hold undocumented migrants and asylum seekers. The number of migrants in the centers only continues to increase since the Greek government claims most do not have the proper documentation to receive asylum status. Those not granted with asylum status are left in detention centers until they are expatriated to their country of origin (Kakkissis, 2011).

National laws overpower EU regulations which play a key role in the current migration situation in Greece. Under the Dublin Regulation of 2003, EU Member States are mandated to send asylum seekers back to the Member State of entry for processing. This has created a burden on Greece. Today, UNHCR and EU leaders are calling for changes to the Dublin Regulation and stop sending asylum seekers back to Greece. Until that policy is changed, the Greek government is responsible for processing asylum seekers and protecting those who need it. There has been much criticism surrounding the treatment of asylum seekers in Greece because they are held in detention centers that are overcrowded and inhumane. The Greek government's solution to increase capacity was to build new detention centers to hold asylum seekers. In November 2010, Frontex, an independent agency tasked to coordinate the operational cooperation between Member States in regards to security, sent emergency crew along the Evros River and is now

planning to build barriers between Greece and Turkey to make it difficult for migrants to cross into the EU (Kakkissis, January 7, 2011).

In 2004, the EU Commission recognized the need to better regulate the asylum process and as a result is currently focusing on three elements to solve this problem: 1. “the managed entry of asylum-seekers into the EU, 2. enhanced protection in the regions of origin and 3. the creation of EU regional protection programmes (EU Commission Home Affairs website).”

Some EU leaders have suggested removing the application processes for asylum outside the EU to ensure that all states are following the same process (EUROPA website).

CHAPTER II

The UN Geneva Convention on the status of refugees 1951

A. EU adoption mandate

The right to asylum is guaranteed by the Charter of Fundamental Rights of the EU under the Geneva Convention of July 28, 1951, which was proposed on January 1967. In compliance with EU principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, all EU Members along with the international community adopted the Geneva Convention (EU-UN website). The Geneva Convention known as the Refugee Convention does not set specific requirements for national refugee determination systems. Each State is encouraged to look to United Nations Higher Commission on Refugees (UNHCR) for guidelines to process asylum seekers fairly and efficiently while offering protection to those who need it (UNHCR website).

B. Definitions: What is a refugee? What is an asylum seeker?

According to UNHCR, the terms asylum seekers and refugees are often disordered. An asylum seeker is a person who claims to be a refugee but their status has not officially been identified (UNHCR website). UNHCR defines a refugee as, “someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or fear for their lives in doing so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries (UNHCR website).” An asylum seeker is defined as a person fleeing their country on their own, “When people flee their own country and seek sanctuary in another country, they apply for asylum – the right to be recognized as a refugee and receive legal protection and

material assistance. An asylum seeker must demonstrate that his or her fear of persecution in his or her home country is well-founded (UNHCR website).” Those not granted asylum status are sent back to their home country. Depending on the systems’ efficiency, this process can sometimes be lengthy. In some cases, asylum seekers leave their country of origin to seek better economic opportunities; this is classified as an economic migrant not an asylum seeker or a refugee. An economic migrant leaves his/her country voluntarily to seek a better life. If the migrant decides to return home, they can and would continue to receive protection from their government, unlike refugees and asylum seekers who flee because they cannot return home for threat of persecution (UNHCR website).

C. EUROSTAT: Statistical Office of the European Communities

According to EUROSTAT, the Statistical Office of the European Communities, 261,000 asylum applicants from 151 different countries were registered in the EU in 2009 (EUROSTAT website). Table 1 demonstrates the asylum application decisions made in 2009 by EU Member State. The Member States that received the highest number of asylum seekers in 2009 are; Austria, Greece, Germany, France, Italy, Netherlands, Norway, Sweden, Switzerland and United Kingdom. When an asylum seeker arrives at an EU Member State, they apply for asylum status, depending on the Member State their application is processed by the government and they are notified of their status. First instance decisions are positive asylum decisions made after the seeker has submitted an initial application. If the decision does not grant the asylum seeker status, the seeker has to right to appeal and re-submit their asylum status application. EUROSTAT also measures how often Member States grant positive decisions at first instance which they refer to as the registration rate. Greece has the lowest registration rate for both first

instance decisions which was at 1.2% and appeals 2% in 2009. The numbers in this table demonstrate the disparities between Member States.

Table 1:

Decisions on Asylum Applications in 2009								
	Decisions*			Positive decisions**				
	Total	First instance	Final decisions on appeal	Total	First instance		Final decisions on appeal	
					#	Rate of recognition (%)	#	Rate of recognition (%)
EU27	317505	228610	88895	78820	61750	2717	75	19.2
Austria	26665	14815	11850	4995	3220	21.7	1775	15
Belgium	21700	14365	7335	3190	2910	20.2	280	3.8
Bulgaria	695	645	50	280	270	41.7	10	21.6
Cyprus	6515	3855	2660	1210	130	29.3	80	3.0
Czech Republic	950	530	415	125	100	18.8	25	6.0
Denmark	295	1650	440	920	790	47.9	130	29.7
Estonia	25	25	0	5	5	17.4	0	0
Finland	2715	2650	60	1010	960	36.2	50	80.6
France	54840	35295	19545	10415	550	14.3	5365	27.4
Germany	33505	26780	6730	1255	9765	36.5	2	34.1
Greece	16460	14350	2105	210	165	1.2	40	2.0
Hungary	1960	1805	150	395	390	21.5	10	5.3
Iceland	60	25	30	5	5	11.5	5	12.5
Ireland	6560	3135	3420	395	125	4.0	270	7.8
Italy	22875	22000	875	8550	8440	38.4	110	12.5
Latvia	55	40	15	10	10	19.0	5	20.0
Liechtenstein	155	80	75	5	0	2.6	0	2.7
Lithuania	195	145	55	45	40	29.4	5	9.3
Luxembourg	670	465	205	140	110	23.6	30	15.3
Malta	350	2575	475	1690	1690	65.7	0	0
Netherlands	17016	16355	645	8120	7905	48.3	220	33.8
Norway	23180	14700	8480	4935	4510	30.7	430	5.1
Poland	6680	6580	1002	6152	525	38.4	95	92.1
Portugal	95	95	0	50	50	51.1	0	-
Romania	1210	540	670	210	115	20.8	95	14.2
Slovakia	355	315	35	195	180	56.2	15	41.7

Slovenia	200	130	70	20	20	15.2	0	0
Spain	6105	4480	1710	380	350	7.8	30	1.8
Sweden	39350	23930	15420	985	795	29.6	1990	12.9
Switzerland	19345	12695	6650	6665	625	47.5	640	9.6
United Kingdom	44890	3140	13850	12510	8350	26.9	4155	30.0

Table 2 from EUROSTAT data demonstrates that asylum seekers from Afghanistan were the highest number of asylum seekers in 2009 totaling 20,410. Following Afghanistan, Russia totaled 20,075, Somali 19,070 and Iraq, 18,655. All four countries have been unstable for the past few years. Some statistics that EUROSTAT collected by 2009 are as follows: “More than 90% of applicants from Bangladesh, India, Algeria and Pakistan were men. Zimbabwe was the only country of origin whose share of female applicants exceeded 50%. Almost 60,500 asylum applicants in the EU were minors, representing a quarter of the total number of asylum applicants, 12,210 asylum applicants were unaccompanied minors. The main country of origin of such applicants was Afghanistan with around 4,600 children representing 38% of all unaccompanied minors in the EU (EUROSTAT website).” Most asylum seekers seek status in a single country; this could be due to the fingerprinting system that prevents them from applying for status in different Member States.

Table 2:

Countries of origin of asylum seekers in the EU-27, 2008-2009

EU-27	2009	2008	Absolute Value	2008 and 2009 Rel. (%)	2008 Ranking	Rank Changes
Non-EU	260,730	256,090	4,640	1.8	(-)	(-)
Afghanistan	20,410	13,870	6,540	47.2	-4	(+3)
Russia	20,075	21,080	-1,005	-4.8	-2	0
Somalia	19,070	17,645	1,425	8.1	-3	0
Iraq	18,655	29,625	-10,970	-37	-1	(-3)

Kosovo	14,240	:	-	-	(-)	(-)
Georgia	10,465	5,090	5,375	105.5	-13	(+7)
Nigeria	10,345	11,910	-1,565	-13.2	-7	0
Pakistan	9,920	12,465	-2,545	-20.4	-6	(-2)
Iran	8,455	7,455	1,000	13.4	-8	(-1)
Zimbabwe	7,810	4,795	3,015	62.9	-14	(+4)
Srilanka	7,325	7,065	260	3.7	-11	0
Turkey	6,930	7,330	-400	-5.5	-9	(-3)
Armenia	6,825	4,580	2,245	48.9	-15	(+2)
Bangladesh	6,255	6,650	-395	-5.9	-12	(-2)
China	5,585	4,535	1,050	23.2	-17	(+2)
Serbia	5,235	-	-	-	(-)	(-)
Eritrea	5,220	7,240	-2,020	-27.9	-10	(-7)
Dem. Rep. Congo	4,910	4,580	330	7.3	-16	(-2)
Syria	4,690	4,380	310	7.1	-18	(-1)
Guinea	4,515	3,700	815	22.1	-20	0
Algeria	3,370	3,345	25	0.8	-22	(+1)
India	3,010	3,025	-15	-0.4	-23	(+1)
Azerbaijan	2,580	2,060	520	25.1	-27	(+4)
Vietnam	2,450	2,015	435	21.7	-29	(+5)
Albania	2,035	1,310	725	55.4	-35	*(+10)
Mongolia	2,010	1,545	465	29.9	-31	*(+5)
Ivory Coast	1,995	3,650	-1,655	-45.4	-21	(-6)
Sudan	1,985	2,060	-75	-3.6	-28	0
Ghana	1,950	2,770	-820	-29.7	-24	(-5)
Mauritania	1,855	1,620	235	14.6	-30	0
Other	40,545	45,050	-	-	(-)	(-)

CHAPTER III

European Legislation towards a Common Asylum System

There have been several attempts through legislation to harmonize the asylum system in the EU. I will discuss in more detail, legislation that had the most impact in regards to a common asylum system throughout this paper. The following is a list of legislations that the EU Parliament lists as the main existing legal instruments and proposals:

- “Council Decision 2000/596/EC of 20 September 2000 establishing a European Refugee Fund, OJ L 252/12, 6.10.2000;
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘EURODAC’ for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316, 15.12.2000;
- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212/12, 7.8.2001;
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31/18, 6.2.2003; recast proposal, COM/2008/0815 final;
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 25.2.2003; recast proposal, COM/2008/0820 final;

- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection, OJ L 304/12, 30.9.2004; recast proposal, COM/2009/0551 final;
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, 13.12.2005; recast proposal, COM/2009/0554 final;
- Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008-2013 as part of the general programme ‘Solidarity and Management of Migration Flows’ and repealing Council Decision 2004/904/EC, OJ L 144, 6.6.2007;
- Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008-2013 as part of the general programme ‘Solidarity and Management of Migration Flows’, OJ L 144, 6.6.2007;
- Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the integration of third-country nationals for the period 2007-2013 as part of the general programme ‘Solidarity and Management of Migration Flows’, OJ L 168, 28.6.2007;
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 (EU Parliament website).”

Today, the Council of the European Union, Commission and Parliament are working closely to ensure that Member States follow a common asylum system. They want each Member State to be accountable for asylum seekers entering the EU through their State and follow minimum standards for asylum seekers while their application is processed.

CHAPTER IV

First Phase of the Common European Asylum System – 1999 to 2004

A. Common European Asylum System (CEAS)

In 1999, EU Heads of State and Government officials were called to create CEAS in hopes of streamlining the process and creating an asylum system that would be equal and efficient for all EU States. Thus far, there have been two phases to CEAS. The first phase began in 1999 ending in 2004. In this phase is the four most pertinent actions included: Directives on Reception Conditions for asylum-seekers, Qualification for becoming a refugee or a beneficiary of subsidiary protection status, Asylum Procedures, and the Dublin Regulation (EUROPA website). The Dublin Regulations was the most crucial part of this phase because it set out to hold Member States responsible for examining asylum applications for those entering the EU through their Member State. Financial support was also established during this era for Member States through the creation of the European Refugee Fund. During this phase, the European Parliament and the European Council were not equally involved in the formation of asylum policies. The Parliament adopted a consultant role and the Council adopted the first phase instruments without proposals from the Parliament (EUROPA website).

The second phase began in 2005 and is currently underway until 2012. Thus far, one of the most pertinent policies is the creation of the Policy Plan in 2008, which set out Directives for all Member States to follow (EUROPA website). The European Parliament and the Council are on equal footing for the adoption of instruments in this second phase (EUROPA website).

CEAS currently runs on three pillars, first calls for the amendment of three EU asylum directives which focus on “reception conditions, asylum procedures and standards for qualification as refugees or persons needing international protection (EU Commission Home

Affairs website).” The EU Commission Home Affairs states that the first pillar seeks to reach common standards of protection for asylum seekers under any future alignment of Member State asylum legislation (EU Commission Home Affairs website). The second pillar, “Effective and well supported practical cooperation” ensured through the establishment of a European Support Office that will consolidate all activities related to practical cooperation in asylum, including country of origin information, training, common curriculum, asylum expert teams, etc. (EU Commission Home Affairs website). The third pillar calls for a “higher degree of solidarity and responsibility among Member States, as well as between the EU and third countries (EU Commission Home Affairs website).” The EU Commission explains the third pillar as a way to both improve the Dublin system and establish solidarity between the Member States. The EU Commission believes that solidarity among Member States is the best way to offer adequate support to States whose system is overburdened. Solidarity will be achieved by implementing Regional Protection Programs, Protected Entry Procedures and Resettlement (EU Commission Home Affairs website).

B. EU primary development of asylum regulations

Peers and Rogers in the book *EU immigration and asylum law: text and commentary* state that prior to the Treaty of Amsterdam, the EU went through two phases in the development of asylum laws (2004). They state, “Before the entry into force of the Treaty of European Union in November 1993, there was no formal Treaty for the adoption of rules on immigration and asylum at all within the European Communities, except for the highly disputed possibility that the regular rules of the ‘Community method’ could be used (2004).” This period was very informal, while it set out recommendations for Member States to follow, it lacked enforcement. Peers and Rodgers refer to this as an “informal intergovernmental” period. The Dublin

Convention followed in 1997 by setting out rules for asylum requests including non-binding resolutions and recommendations (Peers and Rodgers, 2004).

During the second phase known as the “Maastricht era,” from 1993-1999, Peers and Rogers state, “the Community gained its limited initial powers over visas, but the main powers were granted its limited initial powers over visas, but the main powers were granted to the ‘European Union,’ which was a ‘formal intergovernmental’ system (2004).” Member States however, were reluctant to agree to any binding measures during this period and most policies became resolutions or recommendations rather than enforced regulations. The Treaty of Amsterdam was the beginning of a more unified asylum system because it enabled EU institutions to participate in the formation of legislation on the asylum process (Peers and Rodgers, 2004).

C. Treaty of Amsterdam in 1999

In May 1999, the Treaty of Amsterdam was set as a new “constitution” for all Member States. The goal of the treaty was to allow Member States to work together on areas of common interest that included public health, equality between men and women, and immigration (EU delegation website). The Treaty also served to give greater power to the EU Parliament, which was important to Members because unlike other EU institution, EU members can elect Parliament members (EU delegation website). Under Declaration 17 of the Treaty of Amsterdam, UNHCR’s responsibility is also reflected; they are called to serve as consultants to EU Members States for any policies related to asylum and refugee resettlement (UNHCR December 2009 report). The Treaty of Amsterdam led the EU Commission and Parliament to draft Community legislative proposals to examine the policies in place at the time. The Community legislative proposals resulted in the Dublin Regulation, which were formulated by

the EU Commission and consulted with the EU Parliament to streamline asylum procedures through the Dublin Convention (EU Commission Home Affairs website). This also led to a new Treaty in 2001 to revise and formulate more concrete policies that would lead to a common asylum system.

D. Treaty of Nice 2001

After the Treaty of Amsterdam the EU Commission and Parliament decided that it would be beneficial to rework the measures that would lead them closer to a common asylum system through the Treaty of Nice (EU Parliament website). The Treaty of Nice was signed in 2001 and came into force in 2006. The following were areas of focus for this treaty:

- “criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States;
- minimum standards on the reception of asylum seekers in Member States;
- minimum standards with respect to the qualification of nationals of third countries as refugees;
- minimum standards on procedures in Member States for granting or withdrawing refugee status;
- minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and persons who otherwise need international protection;
- measures aimed at promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons (EU Parliament website)”.

From the Treaty of Nice it was stipulated that the Council of the EU would act in harmony with the EU Parliament when defining common asylum rules. This included basic principles and regulations to help Member States govern their individual asylum processes with common regulations that would be used across the EU (EU Parliament website). The Treaty stipulates the creation of minimum standards for granting status to asylum seekers, reception conditions and the standardization of any mechanisms that would be needed to have one common asylum goal (EU Parliament website). The EU Commission began to apply these minimum standards in 2005. These measures followed the creation of the minimum standards for all Member States to follow as a guide to process asylum seekers.

E. Minimum Standards

The EU Commission completed a set of guidelines in September 2001 for all Member States in hopes to decrease disparities of granting asylum to seekers. The proposal completed by the EU Commission listed minimum standards for the qualification of the status of third-country nationals and stateless persons as refugees or as persons who otherwise needed international protection (EU Commission Home Affairs website). A handbook with procedures and criteria for determining refugee status by UNHCR guided this process (EU Commission Home Affairs website). The handbook listed procedures and criteria for determining the status according to the 1951 Refugee Convention which includes joint application of status determination (EU Commission Home Affairs website). The EU Commission also consulted with each Member State and the EU Commission on Refugees and Exiles (ECRE).

This proposal was not only meant to streamline the definition of an asylum seeker and a refugee but also to establish a minimum level of protection for asylum seekers in all Member States. The EU Commission hoped to reduce disparities among Member States especially

related to how they process asylum seekers. The second purpose of this proposal was to decrease the number of secondary movements of applications by improving technology and tracking of where asylum seekers first requested asylum and the number of applications in process in different Member States. The last purpose for the proposal was to guarantee a high level of protection to asylum seekers who genuinely need it (EU Commission Home Affairs website).

In 2001, as a result, the EU Commission recommended Minimum Standards for the “qualification and status of third-country nationals and stateless persons as refugees or as a person who otherwise need intentional protection (EU Commission Home Affairs website).” The Council of the EU adopted directives for all EU Members to follow from the proposal by the EU Commission in 2001. The directive set out different regulations for granting status and protection to all who need it. According to the EU Commission, the Minimum Standards are a way to ensure that asylum seekers have their rights met. Asylum seekers have the right to information about the process of attaining asylum status, the possible opportunity for an interview, and access to legal assistance (EU Commission Home Affairs website). Minimum requirements also include the requirement for Member States to make decisions on each case individually and objectively. Calling for all personnel processing asylum applications to be trained on these common standards and follow common concepts and practices (EU Commission Home Affairs website).

Another component of the Minimum Standards is the “safe third country concept” that ought to be followed by all EU Member States under these new regulations. The EU Commission states the following:

- “The application of a safe third country concept by a Member State on the basis of a national list and/or an individual examination, provided the Member State concerned

considers that the third country treats the applicant in accordance with international obligations and there is a connection between the applicant and that country;

- The introduction of an EU list of third countries as safe countries of origin, including a mechanism for amending the list;
- The possibility for Member States to introduce additional national lists of safe countries of origin on the basis of the same criteria as the EU list;
- The possibility for Member States which already have in place a national mechanism for national lists at the time of the adoption of the Directive, to retain this mechanism on the basis of the national criteria;
- The possibility not to examine an application for asylum and send the person to a 'supersafe' third country through which he/she has travelled where the Council has decided, on a proposal of the Commission and after consultation of the European Parliament, that the third country observes the Refugee Convention and the European Convention on Human Rights and has in place an asylum procedure prescribed by law (EU Commission Home Affairs website).”

The “safe third country concept” has caused controversy in the international community; asylum seekers under this policy are moved from one EU Member State to the next. This policy was created to help alleviate the burden from Member States that receive larger number of asylum seekers (UNHCR publication Considerations on the "Safe Third Country" Concept, 1996). However Member States who did not process asylum seekers quickly sent seekers to other Member States but did not processes asylum seekers in a timely manner were not held accountable under the “safe third country” concept. This led to the idea that each Member State

should be held accountable for asylum seekers entering the EU through their State, eventually leading to the Dublin Regulation.

F. Dublin Regulation in 2003 to replace the Dublin Convention of 1993

The Dublin Regulation was adopted in 2003 to replace the Dublin Convention of 1990 (EUROPA website). The Council of the EU of Ministers adopted the Dublin Regulation (343/2003/EC) to set guidelines to determine a more unified asylum process to hold Member States responsible (EUROPA website). These guidelines sought particularly to avoid refugees from being shuttled from one EU Member State to another and to avoid multiple applications from being processed simultaneously (EUROPA website). This regulation also included language that Member States are responsible for examining asylum applications according to national law, which includes providing protection according to the Geneva Convention, and is obligated to take back applicants who entered the EU through their country (EUROPA website).

These regulations were established from criteria and mechanisms for determining the Member State responsibility to examine asylum applications (Peers and Rogers, 2004). The EU Commission Regulations mirrored these regulations and set detailed rules for the application of the Council of the EU regulations. UK and Ireland did not adopt the regulations instantly and Denmark did. Peers and Rodgers write that the regulations formed by the Council of the EU in 2003 make distinctions between taking charge and taking back. They explain, “Taking charge refers to where the application for asylum has not claimed asylum in any other Member State. Taking back refers to where the applicant for asylum has claimed asylum in another Member State, whether or not that claim has been determined (2010).” These policies were created to help minimize the duplication of applications and deter seekers from applying in several Member States after being denied in their first State of entry.

The Dublin Regulation also calls for unaccompanied minors to be sent to a Member State where a legally placed relative is currently living, in absence of that the Member State where the minor submits their application is responsible for their application process for them as referred in Article 6 of the Regulations (Peers and Rogers, 2004). Also, asylum seekers who have family members living as refugees in a Member State get their applications processed where their family members reside as referred in Article 7 of the Regulations (Peers and Rogers, 2004). Article 9 states that “asylum seekers with a valid visa, whichever State issued the visa will determine the asylum claim unless the visa was issued when acting for or on the written authorization of another Member State (Peers and Rogers, 2004).” Some asylum seekers may hold more than one valid visa or residence documentation. The following is described as the order of which their asylum state will be determined.

- “The Member State which issues the longest residence document or where the documents have the same length, the latest expiry date,
- Where visas are of the same variety, the Member State which issues one with last expiry date,
- Where visas are of a different variety, the Member State that issues the longest one or the one with last expiry date (Peers and Rogers, 2004).”

These policies bring back the responsibility to Member States where the asylum seeker initially entered. UNHCR expresses that these policies have increased unfair and inefficient asylum application processes for seekers who need protection.

G. Qualification Directive 2004

In April 2004, the EU Commission issued Qualification Directives 2004/83/EC on the Minimum Standards for the qualification and status of third-country nationals or stateless

persons. The Qualification Directives were to enhance and expand the current Minimum Standards that most EU Member States had already adopted. The directives include the following:

1. “Refugee states
2. Subsidiary protection status
3. Agent of persecution
4. Internal protection alternative
5. Crimes against humanity
6. Minimum rights and benefits
7. Non-refoulement principle
8. Torture (EU Commission Home Affairs website).”

This directive calls for a new type of international protection “subsidiary protection” (EU Commission Home Affairs website). The Geneva Convention does not cover all protection for those seeking refuge. This directive calls for an additional complimentary protection for those not qualifying for full protection under the Geneva Convention. This was done following the Dublin Regulation of 2003, which called for EU Member States to send asylum seekers back to their first EU State of entry to ensure that the seeker only applied in one Member State for status and to hold Member States accountable. After those policies, it was found that an additional protection was needed to help those while they wait for status (EU Commission Home Affairs website). According to the EU Commission, subsidiary protection was granted under; “The most pertinent of them being Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) (EU Commission Home Affairs website).” This falls under Article 3 of the UN Convention against Torture and other Cruel, Inhuman or Degrading

Treatment, and Article 7 of the International Covenant on Civil and Political Rights (EU Commission Home Affairs website).

H. Hague Programme of 2004

That same year, the Hague Programme was adopted by the EU Commission. It called for a submission by the EU Commission for a second phase in CEAS to the Council of the EU and the Parliament toward adoption of new submissions by 2010 (Sodorkoping website). The Programme sets out ten priorities to strengthen freedom, security and justice in the EU with a goal of five years. Each priority is set out with a timeline (EU Commission Home Affairs website). The following are the ten priorities:

- “Strengthening fundamental rights and citizenship.
- Anti-terrorist measures
- Defining a balanced approach to migration
- Developing integrated management of the Union’s external borders.
- Setting up a common asylum procedure
- Maximizing the positive impact of immigration
- Striking the right balance between privacy and security while sharing information.
Developing a strategic concept on tackling organized crime.
- A genuine European area of justice.
- Sharing responsibility and solidarity (EU Commission Home Affairs website).”

The Council of the EU in this policy was concerned about long-term and medium-term residence for asylum seekers, including the continued work towards creating a common procedure for applications for asylum status. This concern led to the creation of the European Refugee Fund which would support Member States resettling refugees and asylum seekers. The

European Refugee Fund was created in 2005 and implemented in 2010. I discuss the fund and its work further in the second phase of CEAS ([EU Commission Home Affairs website](#)).

CHAPTER V

Second Phase of the Common European Asylum System – 2005 to 2012

A. Creation of the European Refugee Fund 2005-2010

In accordance with Article 8 of Council Decision 2004/904/EC, the European Refugee Fund was created between the periods of 2005 to 2012. The Council of the EU established the European Refugee Fund to support and encourage Member States to receive refugees and asylum seekers (EUROPA website). The fund targeted groups that fall under the following categories according to Article 3 of the aforementioned Council Decision:

1. “any third-country nationals or stateless persons having the status defined by the Geneva Convention of 28 July 1951 relating to the Status of Refugees and the 1967 Protocol thereto and permitted to reside as refugees in one of the Member States;
2. any third-country nationals or stateless persons enjoying a form of subsidiary protection within the meaning of Council Directive 2004/83/EC of 29 April 2004 (Official Journal L304 of 30/9/2004) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;
3. any third-country nationals or stateless persons who have applied for one of the forms of protection described in points 1 and 2;
4. any third-country nationals or stateless persons enjoying temporary protection within the meaning of Directive 2001/55/EC (EUROPA website European Refugee Fund document).”

Any Member State assisting persons falling under any of these four categories would receive funding through the European Refugee Fund. The group disperses 93% of its funds to Member States to assist with the following:

1. “reception conditions and asylum procedures;
2. integration of persons referred to in Article 3 of Council Decision 2004/904/EC whose stay in the Member State is of a lasting and stable nature;
3. voluntary return of persons referred to in Article 3 Council Decision 2004/904/EC, provided they have not acquired a new nationality and have not left the territory of the Member State (EUROPA website European Refugee Fund document).”

Reception conditions and asylum procedure are the most important categories to fund because when asylum seekers first enter the EU and apply for asylum status, they have the right to know application locations, have access to legal assistance, interpretation, and access to other assistance offered by the Member State. Some Member States have locations where asylum seekers can stay until their application is reviewed. In Greece, there has been controversy about reception conditions, asylum seekers are placed in overcrowded detention centers (UNHCR report, 2009). Integration is important to ensure that asylum seekers live a healthy life and contribute all they can in their new home country. The European Refugee Funds supports projects like the EU Commission’s EQUAL program where asylum seekers receive assistance to find employment, training, education, and civic engagement. The EU Commission utilizes 5% of their resources to determine ways for asylum seekers to contribute to development for reception and integration policies throughout the EU (EUROPA website European Refugee Fund document). These integration policies include social inclusion and anti-discrimination processes but also promotion of social and vocational integration linking. These are linked to the goals of the Common

European Asylum System (CEAS) and Directives and Minimum Standards that the EU Commission and Parliament have worked on since 2000 (EUROPA website European Refugee Fund document).

B. Recast of the Reception Conditions Directive, Dublin and EURODAC Regulations

In 2008, the EU Commission set proposals to improve CEAS harmonization through “better standards of protection (EUROPA website).” The first phase of these proposals included revisions to EURODAC and the Dublin Regulation. To date, the European Data Protection Supervision (EDPS) adopted the proposal for an additional two interlinked options of EURODAC Regulations, but also to redefine the Dublin Regulation. The European Data Protection Supervision (EDPS) adopted EDPS is utilized to track applicants who may have applied for asylum in multiple Member States; it decreases the chance of duplication. The Dublin Regulations’ main priority was to ensure that all asylum seekers were sent back to their original Member State, making the Member State responsible for processing and protecting asylum seekers that initially entered in their country. The revisions were done after the realizing that the Dublin Regulation caused a burden to some Member States who over time receive asylum seekers in elevated numbers, overwhelming some Member States like Greece with an unmanageable number of asylum seekers to process (EUROPA website).

The proposal also included EDPS new role as the “supervisory authority of EURODAC” which is a database of fingerprints for all asylum seekers applying for states (EUROPA website).

The following observations and recommendations were also included in the proposal:

- “rights of the data subject: EDPS insists on the need to clarify the provisions regarding the rights of the data subjects in both proposals. He underlines in particular the primary responsibility of national authorities to ensure the application of these rights;

- supervision: the EDPS welcomes the supervision model in the EURODAC proposal, as well as the role and supervisory tasks entrusted to the EDPS in the new system. The envisaged model reflects the current practice which proved efficient;
- procedures for fingerprinting: as concerns the EURODAC proposal, the EDPS calls for a better coordination and harmonization at EU level of the procedures for fingerprinting, whether they concern asylum seekers or any other persons subject to the EURODAC procedure. The question of the age limit for fingerprinting deserves special emphasis;
- mechanisms for information sharing: the EDPS draws particular attention to the new mechanisms for information sharing introduced in the proposal revising the Dublin Regulation, as it will involve the extremely sensitive personal data of the asylum seekers (EUROPA website).”

EDPS provided assistance to implement the Dublin Regulation, which called to send all asylum seekers back to their first country of entry. Presently, asylum seekers are fingerprinted when they first apply for asylum, this system is shared with all Member States to ensure that seekers are not applying in multiple States simultaneously. This helps the EU have a better idea of how many asylum seekers have applied for status and helps them plan for future integration assistance. There is however, criticism surrounding fingerprinting because there is no specific plan for unaccompanied or separated minors which are those refugee children who travel without a guardian and whether or not they should be fingerprinted (EUROPA website). The other criticism is not so much about the EDPS system, but the ability that it gives Member States to send asylum seekers back to their first country of entry. Sending asylum seekers to other Member States for processing makes the application process longer for seekers and it puts a burden on both the Member State sending and receiving asylum seekers due to the costs

associated with travel and the time it takes asylum officers of to process these transfers under the Dublin Regulation.

C. Commission Proposal to create a European Asylum Support Office

To better coordinate a common asylum system the EU Commission called for the creation of a European Asylum Support Office. The EU Commission Vice-President Jacques Barrot expressed the importance for the continued collaboration of all EU Member States towards reaching a common asylum process. In the EUROPA website he is quoted saying; "We are actively working to put in place the Common European Asylum System. In this context, it is essential that we align not only our laws but also our practices. The asylum authorities of the Member States have crucial need of material support for their day-to-day operational requirements. Support teams deployed by the Office will also help to find solutions to emergency situations, such as a mass influx of asylum seekers (EU Commission Home Affairs website)."

According to the EU Commission the support office will focus on three main tasks:

1. "develop practical cooperation among Member States on asylum, by facilitating exchange of information on countries of origin, by providing Member States with support for translation and interpretation, training of asylum officials and assisting in the relocation of beneficiaries of international protection;
2. support Member States under particular pressure, in particular through the establishment of an early warning system, coordinating teams of experts to assist EU countries in managing asylum applications and in putting in place appropriate reception facilities;
3. contribute to the implementation of the CEAS by collecting and exchanging information on best practices, drawing up an annual report on the asylum situation in the EU and adopting technical documents, such as guidelines and operating manuals, on the

implementation of the Union's asylum instruments (EU Commission Home Affairs Website).”

In 2008, the EU Commission expressed that the current asylum system was unequal and had major differences in the way Member States process applications. For example, in 2007 some Member States Iraqi's have a 71% chance of obtaining asylum states whereas in other Member States they only have a 2% chance to receive the status (EU Commission Home Affairs website). Unequal policy practices within the asylum system are priorities in the Policy Plan on Asylum that was adopted by the EU Commission in 2008. The hope is that the European Asylum Support Office can help move along the Policy Plan and other initiatives to better harmonize the Common European Asylum system. The main goal of the support office is to identify best practices for fairer asylum policy, train front line workers and improve access to the same information about rights to all asylum seekers in the EU regardless to the state of entry. They also provide technical assistance to those states who currently receive more asylum seekers and those who wish to improve their process for future influxes.

D. Treaty of Lisbon 2007

The Treaty of Lisbon signed on 2007 by EU Member States brought change to the asylum system by transforming the Minimum Standards to a common asylum system. This Treaty of Lisbon was compiled as a follow-up to the Treaty of Amsterdam and Nice (EU Parliament website). The Treaty calls to improve the CEAS through the following elements:

- “a uniform status of asylum,
- a uniform status of subsidiary protection,
- a common system of temporary protection,

- common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status,
- criteria and mechanisms for determining which Member State is responsible for considering an application,
- standards concerning reception conditions,
- partnership and cooperation with third countries (EU Parliament website).”

According to the EU Parliament the Treaty of Lisbon did not make changes to the decision-making processes in the EU. Most of the improvement was done in the EU Court of Justice. Under the Treaty of Nice, preliminary rulings are possible for any court in a Member State. Prior to this change, national courts only made rulings under national laws. This enabled the Court of Justice to develop larger bodies of case-law for asylum decisions. It is now being used by Member States and UNHCR in attempt to stop asylum seekers from being sent back to their first country of entry through the Dublin Regulations (EU Parliament website). Since the Treaty of Nice did not make decision-making processes in the EU it seeks for these changes in the creation of the Stockholm Programme.

E. Expected adoption of the Stockholm Programme

In 2007, the EU Commission approved the operational Stockholm Programme in Sweden from 2010 and also up to 2014 (EUROPA website). The Programme listed various regulations in regards to migration in the EU. It recalls that the establishment of CEAS remains a key policy objective for the Union (The Stockholm Programme, Official Journal of the European Union). The programme is a “Regional Structural Funds Programme for Regional Competitiveness and Employment in Stockholm from 2007-2013 (EUROPA website).” In 2007, the EU Commission approved the operational Programme for region of Stockholm in Sweden for the period between

then and 2013 (EUROPA website). The EU Parliament stated that the goal of the Stockholm Program reinforced the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection (EU Parliament website). The Stockholm Programme underlines the importance of solidarity between Member States.

According to the EU Commission the aim and purpose of the programme is to “The overall objective of the Operational Programme is to strengthen the international competitiveness of the Stockholm region. It will focus mainly on small and medium sized enterprises (SMEs) and increased cooperation between the industrial sector, the research sector and the public sector. The Programme will support also entrepreneurship, stimulate innovation and increase the integration of immigrants (EUROPA website).” Specific to CEAS, the Council of the EU in the Stockholm programme, calls “for the development of a comprehensive and sustainable Union migration and asylum policy framework, which in a spirit of solidarity can adequately and proactively manage fluctuations in migration flows and address situations such as the present one at the Southern external borders (The Stockholm Programme, Official Journal of the European Union).” They hope to strengthen partnership between Member States and third countries to enhance CEAS and attempt to avoid the deaths that occurred at sea while asylum seekers sought to land (The Stockholm Programme, Official Journal of the European Union).

The Council of the EU calls for five basic commitments to set out these goals:

1. “to organize legal migration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration,
2. to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit,

3. to make border controls more effective,
4. to construct a Europe of asylum,
5. to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development (The Stockholm Programme, Official Journal of the European Union).”

These five commitments not only call for solidarity between Member States, but also begin to finalize what a common asylum system in the EU might look like. This Programme however focuses heavily on controlling illegal migration as much as it does to standardize common asylum systems.

F. Policy Plan on Asylum 2008

To help reduce disparities the EU adopted a Policy Plan on Asylum created by the EU Commission in June of 2008. This directive was an enhancement to the Policy Plan of 2005.

The top priorities in the directives and how Member States are to uphold them include:

- “Asylum seekers should only be detained as a last resort. If they are detained, the reasons for this and the conditions of detention should be clearly regulated;
- People with special needs, such as victims of torture and sexual violence, separated children, elderly or disabled people should be identified as early as possible to ensure they benefit from appropriate care during their asylum procedure;
- Asylum seekers should be allowed to work no later than six months after lodging their application (EU Commission Home Affairs website).”

These policies were put in place because many of the Member States who received an overwhelming number of asylum seekers were detaining them. Member State leaders claimed

that asylum seekers were detained when they did not have the proper document, entered a different Member State and was waiting to transfer or that the Member State did not have the capacity to process the applications on time due to the influx in applications. The Policy Plan condemns unwarranted detention of any asylum seekers. Also, the policy has a special focus on seekers with special needs like victims of sexual violence and torture, separated minors or elders. However, there are no strict guidelines for ensuring the safety of any asylum seeker that may fall under these categories while they await the asylum process. Lastly, there are no set guidelines for employment permits for asylum seekers, which allow them to begin to work immediately after they receive status (EU Commission Home Affairs website).

G. Frontex: Securing borders as a form to reduce the entry of asylum seekers

While the EU worked towards CEAS, EU Member States saw the need to create an independent body to control its borders. As a result, in 2004, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union was created under Council of the EU regulation No. 2007/2004 (Sodorkoping website). The agency was named Frontex, an independent agency that is responsible for the control and surveillance of external borders of all EU Member States. They are also responsible for facilitating the application of existing and future community measures relating to the management of all borders around Member States (Sodorkoping website). Frontex is responsible for the following:

- “coordinate operational cooperation between Member States as regards management of external borders;
develop a common integrated risk assessment model and prepare general and specific risk assessments;

- help Member States train their national border guards by developing common training standards, providing training at European level for instructors of national border guards, holding seminars and offering additional training to officials of the competent authorities;
- monitor research relevant to the control and surveillance of external borders;
- assist Member States in circumstances requiring increased technical and operational assistance at external borders;
- provide Member States with the necessary support in organizing joint return operations. The Agency may use the Community resources available for this purpose and must draw up an inventory of best practice for the removal of third-country nationals residing illegally in the Member States. Without prejudice to the competencies of the Agency, Member States may continue cooperation at an operational level with other Member States and/or third countries at external borders where such cooperation complements the action of the Agency. Member States must report to the Agency on such activities where they are conducted outside the framework of the Agency (Sodorkoping website).”

Although Frontex is an independent agency, one representative of each Member State and two Commission representatives appointed by Member States are appointed to it. Frontex is led by an executive director who is a designee of the Member States (Sodorkoping website). Frontex’s current priority is building a wall between Turkey and Greece to deter the illegal entry of migrants and asylum seekers through the Evros River.

CHAPTER VI

Role of the Council of the European Union, European Commission and European Parliament

Council of the EU

The Council of the EU is comprised of the collection of heads of state in the EU. This group is responsible for outlining the political direction and priorities of the EU. The Council, however, does not have legislative power (Council of the EU website). The Council sits in Brussels, where they meet several times a month, depending on the pending topics (Council of the EU website). The Council takes decisions by a vote of Ministers from EU Member States. There are three types of votes depending on Treaty provisions, “1. simple majority for procedural decisions; 2. Qualified majority a weighted voting system based on the populations of Member States used for many decisions concerning the internal market, economic affairs and trade and 3. Unanimity for foreign policy, defense, judicial and police cooperation and taxation (Council of the EU website).” The Council is responsible for decision-making and co-ordination for the following:

- “The Council of the European Union passes laws, usually legislating jointly with the European Parliament.
- The Council co-ordinates the broad economic policies of Member States.
- The Council defines and implements the EU’s common foreign and security policy, based on guidelines set by the European Council.
- The Council concludes, on behalf of the Community and the Union, international agreements between the EU and one or more states or international organizations.
- The Council co-ordinates the actions of Member States and adopts measures in the area of police and judicial co-operation in criminal matters.

- The Council and the European Parliament constitute the budgetary authority that adopts the Community's budget (Council of the EU website).”

During the most recent Council meetings in April 2011, the Council stated its support for Frontex and the European Asylum Support office (Council of the EU press release, April, 2011). The Council supports the process to better implement CEAS. During their meeting Ministers examined the state-of-play concerning the legislative proposals that take part of the establishment of CEAS (Council of the EU press release, April, 2011). The Council adopted an amendment to improve the Long Term Residents' Directive that extends rights for nationals legally residing in an EU Member State. The Long Term Resident's Directive allows legal third country nationals living in one EU Member State for more than five years to become citizens (Council of the EU press release, April, 2011).

The Council continues to discuss restructuring the Dublin Regulation. A highlight policy of the Dublin Regulations is the return of third country nationals seeking asylum status to their first country of entry through a sharing of information through a EURODAC database of asylum seekers (Council of the EU press release, April, 2011). Many including UNHCR and Amnesty International have criticized this regulation because it sends asylum seekers back to EU Member States like Greece where the asylum process is slow and inefficient (Council of the EU press release, April, 2011). The Council also tabled the revisions of the Reception Conditions and the Asylum Procedures Directive to be discussed at the Justice and Home Affairs Council in June 2011 (Council of the EU press release, April, 2011). The EU Parliament and Council have worked together on amending the Qualifications Directive to improve the process for third country nationals seeking asylum status. These negotiations began in February and March of 2011 and will continue until both bodies reach an agreement (Council of the EU press release,

April, 2011). One of the most recent recommendations of the Council was the creation of the European Asylum Support Office, which just recently commenced operation this spring, and began assistance in Greece in their asylum system. The details, however, have not been made public (Council of the EU press release, April, 2011).

European Union Commission

The Commission is the EU's executive body as it proposes and enforces legislation and represents the interest of all Member States (EUROPA website). The main function of the EU Commission is to ensure that all EU Member States abide by European treaties and laws in addition to implementing policies and allocating funds (EUROPA website). In regards to asylum, the Commission has been a major player in the creation of CEAS. The Commission began the process towards obtaining CEAS. During the first phase of CEAS (1999 to 2005), the EU Commission participated in the creation of Directives on Reception Conditions for asylum seekers, Qualification for becoming a refugee or a beneficiary of subsidiary protection status and on Asylum Procedures like the Dublin Regulation (EUROPA website).

The focus of the EU Commission today in respects to asylum is the continued development of CEAS:

1. "Reaching higher common standards of protection by further alignment of Member State asylum legislation. This requires amendments to the three most important EU asylum directives: dealing with reception conditions for asylum seekers, asylum *procedures* and *standards for qualification* as refugees or persons needing international protection.
2. Effective and well supported practical cooperation. This will be ensured through the establishment of a European Support Office that will consolidate all activities related to

practical cooperation in the area of asylum: country of origin information, training, common curriculum, asylum expert teams, etc.

3. Higher degree of solidarity and responsibility among Member States, as well as between the EU and third countries. This focuses on the one hand on improving the Dublin system (including EURODAC) and on the establishment of solidarity mechanisms between the Member States, in order to offer adequate support to Member States whose system is overburdened. On the other hand, three ways will be explored to alleviate asylum pressure in third countries: Regional Protection Programmes, Protected Entry Procedures and Resettlement (EUROPA website).”

The EU Commission was also a supporter of the European Refugee Fund to help those Member States that need additional support in the area of resettling third country nationals. The Commission will continue to work to recast legislative work with the Council of the EU and Parliament to reach a common asylum process for all EU Member States to follow (EUROPA website).

European Parliament

The European Parliament is supportive of creating a reliable and fair asylum process (EU Parliament website). The Parliament was not as involved as the EU Commission in the inception of CEAS, but quickly became more involved in the decision making during the first phase. EU Member States were supportive of the involvement of the EU Parliament as it is the only group that allows Member States to vote for Parliament representatives (EU Parliament website).

The EU Parliament is also supportive of the European Asylum Support Office. Currently the most important power that the Parliament holds is the ability to bring an action for annulment before the Court of Justice (EU Parliament website). The EU Commission legal summary of

October 2008 states that the Parliament brought an action before the Court of Justice, “for the annulment of the provisions of the Directive laying down that procedure, taking the view that they should have provided for the use of the co-decision procedure in order to adopt those lists, in accordance with the rules set out in the EC Treaty. The Commission intervened in support of the Parliament, arguing that the legislature cannot have recourse to procedures for the adoption of legislative acts, which is not provided for in the Treaty (EU Commission summary of legal documents, October 2008).” This has served as a key for the EU Parliament to terminate provisions in regards to “safe” third countries in Europe under the Directive 2005/85/EC (EU Parliament website).

The EU Parliament visited reception and detention centers throughout the EU as part of the Minimum Standard resolution in 2009 (EU Parliament website). Some of the findings from the visits led to amendments adopted by the EU Parliament to improve reception of asylum seekers, which encourages the provision of free legal aid to all asylum seekers and undocumented migrants, offering education opportunities and giving seekers financial allowance (EU Parliament website). In regards to the Dublin Regulation, the EU Parliament suggested that the system of transferring asylum seekers from one Member State to another should be improved (EU Parliament website). They did not, however, ask for the return of asylum seekers under the Dublin Regulations to be discontinued.

CHAPTER VII

Common Asylum Process System and the Case in Greece

A. The Case in Greece

Asylum status is not automatically granted. When an asylum seeker enters Greece, they submit a claim at an entry point or at a local Police Directorate. When their status is approved, they receive a “pink card.” The “pink card” is only obtained through the Police Directorate for Aliens in Athens who are in charge of processing all asylum applications (EU Commission Country Report, 2009). This process is managed by the Presidential Decree in Greece, which are laws created by the current Greek President, Karolos Papoulias (UNHCR Report, 2009). Most recently, Greece has received an increase in irregular migrants that continue to grow. Irregular migrants are asylum seekers who have entered illegally without prior notice (UNHCR December 2009 report). In the past four years, Greece has received an increase from 95,239 in 2006 to over 132,000 in 2009 of irregular migrants (UNHCR report, 2010).

Table 3:

Irregular Migrants in Greece	
2006	95,239
2007	112,364
2008	146,337
2009	132,000

Source: UNHCR report, 2011

Of those irregular migrants only portions apply for asylum status. UNHCR reports that Greece received an increase in asylum seeker applications in the past four years (UNHCR report, 2009). However, there has been a dramatic decrease in the number of applicants in 2010 with only 10,273 applications submitted due to the current inefficient asylum system in Greece

(UNHCR report, 2011). Table six demonstrates the decrease of asylum applications in the past four years.

Table 4: Number of Asylum applicants in Greece

Number of Asylum applicants in Greece	
2007	25,113
2008	19,884
2009	16,000
2010	10,273

Source: UNHCR report, 2011

Greece has not processed applications in a timely manner, making it difficult for seekers to attain status and discouraging others who qualify to apply. In 2009, Greece ranked sixth when compared to other EU Member State with 16,000 asylum seekers applying for status. Greece follows France with 19,838, the United Kingdom with 19,665, Germany with 11,979, Sweden with 10,127 and Italy with 9,974 (UNHCR December 2009 report). Yet the number of annual completed applications by Greece is disproportionate to the other five Member States listed above.

The EU Commission conducted a Country Report of Greece in 2008 (revised in 2009), to help Greek policy makers draft and implement appropriate migration policies. The EU Commission recommends in its report that the asylum system in Greece needs to become more efficient. It says that those in need of international protection are being deported. The report states, “...given the problems with the asylum seeking applications processing in Greece (long delays, superficial interviews, red tape) there is a risk that people in need of protection are deported (2009).” The deportation of third country nationals seeking protection violates the 1951 Geneva Convention that was signed and ratified by Greece. Greek and EU officials need to recognize this issue and implement a equal and efficient asylum process that will offer protection

to those who need it. The EU Commission has suggested setting up an independent asylum authority to examine asylum seeking as opposed to the current system that the Greek Police currently use (EU Commission Country Report, 2009).

B. Financial Crisis

Greece is currently in a financial crisis, over the past decade Greece has borrowed from international capital markets to be able to fund their government and pay off debt (Belkin et al, April 27, 2010). In 2009, the Report for Congress *Greece's Debt Crisis: Overview, Policy Responses, and Implications* reported that the Greek government raised the estimate of the government deficit from 6.7% of the gross domestic product (GDP) to 12.7% of the GDP (Belkin et al, April 27, 2010). However, EUROSTAT estimated Greece's deficit to be over 13.6% of the GDP. In 2010, Greece's maturing debt obligation estimate was at €300 billion (\$413.6 billion) (CNN article, March 26, 2010). However, the Greek government continues to ask for financial assistance most recently from other EU Member States and the International Monetary Fund (IMF) (Belkin et al, April 27, 2010). To date, the debt crisis in Greece has had both international and domestic effects. Domestically, there have been cuts in pay for government employees including Law Enforcement, which processes asylum applications in Athens (Belkin et al, April 27, 2010). Internationally there are speculations that the financial crisis in Greece is a result of accepting low interest loans (post euro adoption) from the EU and have since been unable to pay them off (Belkin et al, April 27, 2010).

Thus far, the Greek government has responded to the debt crisis by "...slashing away at spending and has implemented austerity measures aimed at reducing the deficit by more than €10 billion (\$13.7 billion). It has hiked taxes on fuel, tobacco and alcohol, raised the retirement age by two years, imposed public sector pay cuts and applied tough new tax evasion regulations

(CNN article, March 26, 2010).” The cuts in public sector pay have affected the process since those processing asylum seekers are public employees.

C. Geopolitics of Greece

The geographical position of Greece is the main reason it receives a great deal of asylum seekers. Greece shares its borders with Turkey, Albania and Bulgaria and also holds Europe’s longest coastline with about 16,000 km, 3,000 islands and islets and mountain mainland making it difficult to control borders (Papadopoulou-Kourkaoula, 2008). Turkey plays a key role in migration in Greece. Both countries signed a bilateral readmission agreement facilitates the expulsion of third-country nationals between two States in 2001 (EUROPA website). Under the agreement both States readmit to their territory without any formality persons with the nationality of that country that crossed its frontier illegally (EUROPA website). The readmission agreement between Turkey and Greece has not been made useful since in 2007 Turkey only accepted 2,000 out of over 26,000 deportations. Turkey and the EU have yet to sign a readmission agreement (UNHCR report, 2009). UNHCR reports that Turkey maintains the geographical limitation to the 1951 Convention and does not accept responsibility for refugees from outside the EU. Additionally, they have been known to deport third country nationals back to their country of origin (UNHCR report, 2010). Turkey's obligations under the 1951 Convention relating to the Status of Refugees are confined to European refugees. On the other hand, when certain conditions are met, Turkey grants temporary stay to non-European refugees to enable them to resettle in a third State (Zieck, 2010).

Table 5: Map of Greece



Source: Maps of the World website

Papadopoulou-Kourkaoula in his paper *Transit migration through Greece* explains that modernization, reconstruction and the European integration changed Greece’s economic profile by increasing living standards and making the Member State more appealing to migrants (Papadopoulou-Kourkaoula, 2008). Policy makers in Greece claim that they are still a new immigration country in Europe. Papadopoulou-Kourkaoula argues that Greece should no longer be called a new immigration country since its history of immigration goes back fifteen years (Papadopoulou-Kourkaoula, 2008). He states that this is just a way to reason failures in

immigration policies in Greece (2008). The current migration policies in Greece do not support resettlement and asylum policies are restrictive. Greece hosts mostly refugees from the Middle East, Afghanistan, Pakistan, Nigeria, Somalia and the former Soviet republics. The number of refugees and asylum seekers has increased over time, peaking in 1996-97, 2005 and 2006-07 (Papadopoulou-Kourkaoula, 2008). When compared to other EU Member States Greece has registered relatively less asylum seekers and refugees. The number of asylum seeker applications has increased by 185% between 2003 and 2007; Table 3 gathered from UNHCR’s report demonstrates that in just five years Greece became one of the most important asylum destinations in the EU (UNHCR report, 2009).

Table 6: Greece the most important asylum destination in the EU

	2003	2007	Increase 2003- 2007
Greece	8,810	25,110	185%
Spain	5,920	7,460	26%
Italy	13,460	14,050	4%
France	59,770	29,160	-51%
UK	60,050	27,900	-54%

Source: UNHCR, Asylum levels and trends in industrialized countries 2007, 18 March 2008

The war in Iraq and Afghanistan are two of the causes in the increase in asylum applicants in Greece. On the other hand, irregular migration from Africa, Middle East and Asia are mostly due to economic migration (Papadopoulou-Kourkaoula, 2008). Papadopoulou-Kourkaoula explains that Greece is “mostly focused on apprehension and deportation, rather than comprehensive and long lasting solutions. Enhancing border controls, and even more sea patrols are now high on the agenda (2008).” Greece has also signed agreements with most of its geographical neighbors, Albania, Bulgaria, Croatia, Bosnia-Herzegovina, Romania, Russia, Ukraine, Tunisia, Egypt, China and Pakistan (Papadopoulou-Kourkaoula, 2008). Turkey

continues to be reluctant to take in migrants. In 2007, Turkey accepted 2,087 out of a total 26,697 deportations (Papadopoulou-Kourkaoula, 2008). A Turkey and EU readmission agreement does not exist and they do not have readmission agreements with many of the countries where migrants originate from, this may also have to do with the fact that Turkey has geographical limitations to the 1951 Convention and does not accept responsibility for refugees from outside Europe (UNHCR report, 2010). Turkey, Greece and neighboring countries in that region do not coordinate on deportations and readmissions because each country is reluctant to take on more migrants including asylum seekers. Papadopoulou-Kourkaoula explains that the process that Turkey and Greece currently has does not satisfy the protection that asylum seekers need under the 1951 Geneva Convention (2008). Better defined policies and responsibilities on readmissions operations in processing irregular migrants, including asylum seekers has not yet been explored appropriately (Papadopoulou-Kourkaoula, 2008).

D. Current Asylum System in Greece

Today, the Greek asylum system is weak. Greece has had difficulties accessing a common asylum procedure and also implementing EU asylum policies. Greece's process is inefficient and long, recognition rate is low since they register less asylum seekers than any other EU Member State, and have inadequate reception and detention conditions (Papadopoulou-Kourkaoula, 2008). The situation in Greece is dire and continues to get worse, the log of asylum seeker applications continues to increase while recognition rates decrease (UNHCR website). According to UNHCR, the recognition rates have ranked just about or sometimes below 1.2% for first instance decisions and 2% for decisions after appeals (UNHCR report).

In 2009, the Minister of Citizen Protection established a Committee of Experts on asylum systems in Greece. The Committee was said to be comprised by representatives from relevant

Ministries and agencies, academics, NGOs and UNHCR (UNHCR December 2009 report). The Committee's task is to create a proposal for the reform of the Greek asylum system (UNHCR December 2009 report). This proposal will serve as an amendment to the Presidential Decree 81/2009 to strengthen the legal framework while the adoption of comprehensive EU legislation takes place (UNHCR December 2009 report). This effort is to minimize the current crises and ensure that asylum seekers receive humane and fair treatment while they wait to attain status. The Committee's first step was to reach is to move the asylum procedure authority from the police to some sort of authority uninvolved in law enforcement (UNHCR December 2009 report). Also, UNHCR under this Committee, urges EU Member States and institutions to stop sending asylum seekers back to Greece under the Dublin Regulation (UNHCR December 2009 report).

UNHCR in their report in 2009, *Observations on Greece as a country of asylum* state "Until the reform of the Greek asylum system is put in place, UNHCR has no choice but to continue to recommend against transfers to Greece under the Dublin Regulation or otherwise. This position is based on the problems observed in the Greek asylum procedure (UNHCR December 2009 report)." UNHCR's involvement in Greece stems from its supervisory responsibility under paragraph 8 of the Office's Statute in conjunction with Article 35 of the 1951 Convention, that relates to the status of refugees and Article II of its 1967 Protocol (UNHCR December 2009 report). UNHCR has kept the situation in Greece under active review and continues to revise its position according to new developments.

E. How policies led up to the case in Greece: the transfer of asylum-seekers and beneficiaries of international protection under the Dublin Regulation

When asylum seekers apply for status in the EU they are automatically registered in the EURODAC system to help eliminate duplicate applications. According to UNHCR some asylum seekers are discouraged to apply for status in Greece because their country of entry will register as Greece and if they seek status in another Member State they are automatically sent back to Greece (UNHCR December 2009 report). Asylum seekers do not want to be sent back to Greece for processing because the process is slow and many do not receive status or wait years in detention centers hoping to receive it while living in inadequate conditions.

A UNHCR report in 2009, “According to article 2 of Presidential Decree 90/2008, the ‘competent authorities to receive and register asylum claims’ are: (1) the Asylum Departments of the Aliens' Directorates of Attica and of Thessaloniki, (2) the Security Departments of the National Airports, and (3) the Subdirectorates and Security Departments belonging to the Police Directorates across the country (there are 53 Directorates).” This process makes it difficult to launch a claim for status outside Athens. UNHCR report states “Border authorities frequently refuse to register claims, and refuse entry, or remove irregularly arriving people...” According to UNHCR, Greece has not arranged points of entry for those seeking international protection appropriately. They do not offer interpretation or translation of material for seekers who need it; they do not offer legal advice or any other form of assistance. Entry point staff lack training to appropriately respond to vulnerable persons like unaccompanied and separated children or those who have experienced trauma (UNHCR December 2009 report).

F. Accommodations and Other reception assistance for asylum-seekers

According to UNHCR, most asylum-seekers do not receive written or verbal instructions on how to apply to asylum status or their rights when they first arrive Greece (UNHCR Report, 2011). At one point the Greek government provided written leaflets at the Athens airport and at Entry points in Evros, but those leaflets have not been maintained and are no longer up to date (UNHCR Report, 2011). The leaflets are also not in the languages most asylum seekers need, making it difficult for many to be made aware of the process and next steps for applying for status. According to UNHCR, in November 2010, Presidential Decree 114/2010 mandates the draft of a new information leaflet to be released; the leaflet has not been released as of January 2011 (UNHCR Report, 2011).

i. Translation and Interpreting

Translation and Interpreting is not available at entry points in Greece (UNHCR Report, 2011). This would enable asylum seekers to know they have the right to international protection and the procedure they must follow to receive asylum status (UNHCR Report, 2011). It also limits communication between asylum seekers and officials delaying the process. In the Evros region between the border of Greece and Turkey there are some languages available by Frontex staff but they are not consistent (UNHCR Report, 2011). Frontex sent teams to this region, not to serve as interpreters to asylum seekers, but to ascertain information for the purpose of controlling travel between Greece and Turkey (UNHCR Report, 2011). The absence of interpreters and access to materials in languages asylum seekers can understand deters asylum seekers from receiving the protection they deserve.

ii. Financial Assistance

The European Court of Human Rights (ECHR) found that although under the Reception Conditions Directives of 2003, article 3, there is not specific obligation to provide asylum

seekers with a home or financial assistance (ECHR website). However, asylum seekers are usually underprivileged and vulnerable populations that are often in need of protection. In 2008 a claim of an Iranian asylum seeker in Greece, was denied financial assistance, the court ruled that Greece violated article 3 under the Reception Conditions Directive of 2003 (ECHR website). Although the Reception Conditions Directive of 2003 does not require an EU Member State to offer financial assistance to asylum seekers, it does require a State for those in dire need.

Before this ruling many EU Member States already offered financial assistance. The UK offers financial assistance to asylum seekers. They offer cash support that mirrors what UK citizens would receive if in need of assistance (UK Border Agency website). Similarly, Sweden offers financial assistance to asylum seekers through their Migration Board that is sufficient for asylum seekers to purchase food, clothes and other essentials (Migration Board report, 2007). When asylum seekers live in the Migration Board centers they are given subsidized assistance because the centers offer shelter and food (Migration Board report, 2007). Greece, on the other hand, does not offer financial assistance. There have not been legislations to do so since the Reception Conditions Directives of 2003.

G. Detention centers

According to UNHCR, there are twelve reception centers available for asylum seekers in Greece. Four of these centers are state run and the rest are managed by NGOs. There are no standard operational procedures and those run by NGOs depend on private funding that, at times, is not sufficient. As a result, many asylum seekers are left without shelter; most of the spots are reserved for families, women and children. This leaves single men with no place to stay (UNHCR December 2009 report). Accommodations for asylum seekers are not adequate since 20,000 asylum applications were received in 2010 and there were only 1,000 places in the twelve

detention centers (UNHCR December 2009 report). Most asylum seekers are left without shelter or other state support.

Currently, the Greek government holds irregular migrants in “reception facilities,” but UNHCR claims they are detention centers in deplorable conditions. The detention of asylum seekers is not mandatory in Greece, but they are systematically detained with other irregular entrants. Migrants without documentation are called to be detained to wait for deportation that should occur 48 hours upon arrest (UNHCR December 2009 report). However, asylum seekers are not given other choices for shelter. Their stay at the detention center can extend if those detained as irregular migrants later apply for status. In 2009, legislative amendments in Greece prolonged the maximum period of administrative detention for illegal entrants from 3 to 6 months, some depending on circumstance can be held for up to a year (UNHCR December 2009 report). UNHCR claims the centers are overcrowded, inhumane and unable to offer protections for those who need it.

The detention centers are understaffed and do not have the adequate support services that seekers need, specifically regarding mental health needs. Some seekers have suffered torture and other sort of violence and they do not get the psychological support needed to help them integrate and lead a healthy life. Financially, accommodations are also inadequate, asylum seekers do not receive financial allowance for daily living expenses, this is not offered in accordance to Greek Law “54 P.D. 220/2007, transposing the EU Reception Conditions Directive, article 1 paragraph 16 and article 12 (UNHCR December 2009 report).” This has caused many asylum seekers to live in dire conditions.

In 2009, the Greek government closed detention centers in Pagani located on Lesbos Island to be replaced by new detention centers to increase their capacity. In November 2010,

Frontex, the EU border-patrol agency sent emergency crew along the Evros River and are now planning to build barriers between Greece and Turkey to make it difficult for migrants to cross into the EU (Kakkissis, January 7, 2011). UNHCR reports, from a visit to the detention center in 2009, that facilities are extensively used and inappropriate for holding persons longer than just a few days. The center housed 200 unaccompanied and separated children in a separate building where the majority being from Afghanistan. Women and children totaling 200 were housed separately because they were suffering from illnesses due to unsanitary conditions when they were detained with the rest of migrants (UNHCR December 2009 report). Separate facilities for women and children is not common at other detention centers, and it has been reported that some facilities hold men, women and children in the same locations, sharing bathrooms and sleeping space (UNHCR December 2009 report).

Through their visit in 2009, UNHCR identified that detention centers are “poor hygienic conditions in the main Border Guard Police Stations, as well as failure to separate men, women and unaccompanied minors, and limited access to medical care for detainees (UNHCR December 2009 report).” They interviewed asylum seekers who testified that they Greek police often abused detainees. This allegation is not the first made of Greek Law Enforcement, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) reported in 2008 that asylum seekers were treated inappropriately by law enforcement, as well as the living conditions being deplorable at the detention centers (UNHCR December 2009 report). CPT also reported that seekers did not have access to information, legal counseling and interpreters (UNHCR December 2009 report).

H. Protest in Detention Centers

Some Asylum seekers have been living in Greece for years without status. Many are not allowed to legally work in Greece and do not qualify for basic social services. In March 2011, over 300 asylum seekers and undocumented migrants, who have yet to apply for asylum, ended a six week hunger strike demanding that the Greek government recognize them and give them residence permits (Bradbant, March 9, 2011). During the six week hunger strike it was reported that over 100 strikers were taken to the hospital with kidney failure. This brought a great deal of international attention to the asylum process in Greece. As soon as the strike received international attention, concerns were raised in the Greek government that some of the protesters might die during the strike. They agreed to grant those protesting with temporary residency permits while their asylum status was reviewed. Although it is too early to tell whether or not the Greek government will follow through with its promise, UNHCR, NGOs and the international community are waiting for more details (Bradbant, March 9, 2011).

I. Unaccompanied and separated children

The referral and recognition of unaccompanied minors is also inadequate, minors receive the same treatment as adults according to UNHCR's visit in 2009. Greece does not have an appropriate framework to help identify unaccompanied minors and those minors separated from parents. Minors are arrested when entering Greece along with adult migrants. Greek Law Enforcement is not trained to recognize or assist minors in any way. Again in this instance, interpreters are scarce and there are no social workers available to assist with trauma the minor may have faced. Greek Law Enforcement is required to refer an unaccompanied or separated minor to the Public Prosecutor's Office for a temporary guardian. This process is not followed. Some minors are released from detention centers with a notice to leave Greece in 30 days rather

than being referred to the Public Prosecutor's Office. If a minor is referred to the Public Prosecutor's Office, the prosecutor assumes temporary guardianship, but this process is not enforced, often leaving minors without shelter or proper care (UNHCR December 2009 report).

J. Quality of the asylum procedure

The quality of the Greek asylum procedure is in question since it not consistent throughout Greece. UNHCR found that in Petrou Ralli in Athens, the process of registering claims is not efficient. Applications are only received once a week. In 2009, only 20 claims were registered in that one-day but there are up to 2,000 persons seeking to apply for status each day (UNHCR December 2009 report). Seekers are given no choice but to return repeatedly, sometimes for months and in some cases, years to apply for status. A system for collecting applications does not exist and the frequency and access to apply is also not regulated (UNHCR December 2009 report). Applicants are also expected to provide a permanent address in Greece, which is impossible for many applicants. Also making it impossible for the Greek government to notify asylum seekers in regards to their status. At times seekers lose the opportunity to appeal decisions because they are not informed timely (UNHCR December 2009 report).

The Greek asylum procedures are governed by Presidential Decree PD81/200990, July 2009. This Presidential Decree implemented many changes to the asylum procedure of the past. According to UNHCR, these changes had a negative impact on the efficiency of the first instance decisions of granting asylum. It also removes the review of a second instance decision (UNHCR December 2009 report). Asylum applications are first processed in 53 Police Directorates near Greek borders. Asylum seekers personally appear to any one of the Police Directorates and apply for asylum; they are fingerprinted, photographed and logged in the EURODAC system. In most cases, months after applying for asylum the Refugee Committee

interviews the seeker and the seeker is given a “pink card.” The asylum seeker only receives a letter that states the registration of an asylum claim, but it does not have any legal basis. The Refugee Committee interviews asylum seekers and makes the decision in regards to the status. The Committee is made up of two members of the Police Department and one from the Regional Authority (UNHCR December 2009 report). UNHCR conducted research in 31 of the 53 Police Directorates from September to November 2009, where they found that there are shortcomings in training and expertise and long waiting periods for interviews among other issues. UNHCR reports, “The findings of this research were shared with the Government. These findings included, inter alia, shortcomings in training and expertise, conflicts-of-interest between asylum responsibilities and other duties, long waiting periods for interviews, continued problems in access to the asylum procedures, inadequate availability and use of country of origin information by the examining authorities, divergent practices between different Police Directorates, insufficient attention to needs of unaccompanied children who seek asylum and severe deficiencies in the provision of interpretation (2009).” UNHCR documented that the asylum system in Greece suffers from insufficient resources and many dire issues of rights for asylum seekers go unaddressed.

Appeal decisions are even more difficult for asylum seekers to receive. These are decisions made when an asylum seeker files for an appeal to the decision made in the first application. Under the Presidential Decree (PD), the Appeal Board that formerly made decisions after a seeker appealed was eliminated and replaced with a limited form of judicial review before the Council of State (UNHCR December 2009 report). Although the Advisory Committee reviews cases, they do not make decisions. The Appeal Board plays an advisory role making recommendations to the Alternate Minister of Public Order. Under the PD the committee that

was called to be formed to look at the backlog of pending appeals has not been assigned (UNHCR December 2009 report). The opportunity to access a second decision before the Council of State is extremely limited. According to UNHCR, this defeats the intent of the Presidential Decree, which is to improve the asylum process. UNHCR writes in their 2009 report that it “weakens the effectiveness of the remedy. These include:

- “Complicated procedural rules for submitting applications for annulment of negative decisions;
- Court decisions on a request for temporary suspension of execution of the challenged decision may take 10 days to 4 months, leaving the applicant without protection against deportation during that time;
- Although free legal aid is provided by law, the system does not function in practice, with gaps in coverage of expenses and great delays in the payment of lawyers’ compensation. Thus relatively few lawyers are willing to be included in the free legal aid list of the Lawyers’ Associations (UNHCR December 2009 report).”

According to UNHCR report in 2009, there is a backlog of 6,145 unprocessed first instance claims. The backlogs for second instance, which are appeals asylum seekers have submitted, is currently 52,000 and growing. These numbers do not include persons wishing to seek asylum who have not had the opportunity to lodge their applications (UNHCR December 2009 report). These backlogs make the international protection rate in Greece extremely low. According to UNHCR report, 2% of cases that receive first instance decisions were offered protection. Other EU Member States like, France, UK, Italy, Sweden and German average protection rate in the first instance decision is 36.2% (UNHCR December 2009 report).

K. Racism and Xenophobia

Racism and xenophobia are other main causes for inadequate treatment asylum seekers receive in Greece. UNHCR reports racist crimes against asylum seekers and have asked the Greek government to investigate and punish perpetrators (UNHCR report, November 2010). UNHCR suggests the Greek government draft a comprehensive social policy that includes security, public health, human rights, decent living conditions for all asylum seekers (UNHCR report, November 2010). UNHCR worries that racism and xenophobia can threaten the protection of asylum-seekers and refugees. UNHCR reports an “increase in ill-treatment against immigrants, asylum seekers and refugees in Greece (UNHCR report, November 2010).” They collect documentation of cases in Greece where racism and xenophobia led to violence against immigrants and found that it was most common in Agios Panteleimonas located in Central Athens. There are organizations that promote hate towards immigrants in high immigrant populated areas. UNHCR reports that while one extreme hate organization “Chrisi Avgi” has been charged with hate crimes, most Greek Law Enforcement favor the hate groups or do not take allegations against them seriously (UNHCR report, November 2010).

In May 2009, The Economist reported that protesters from the far right in Greece stormed into a building in Athens that housed over 600 immigrants live and injured residents. After complaints from migrants that Greek police did nothing to help, four protesters were arrested (The Economist, May 14, 2009). UNHCR reports that in the past two years, there have been incidents reported in the press on attacks on immigrants’ residences, arson attacks on places of worship and physical violence against immigrants regardless of their legal status (UNHCR report, November 2010). These attacks are rarely reported to NGOs or the police mostly because

these incidents happen to immigrants who may be undocumented or refugees who can also get deported as a result of reporting.

UNHCR in their November 2010 report recommend the following for the increase in violence:

- “Investigate incidents of racist violence effectively and objectively and punish those responsible in accordance with the law.
- Draft a comprehensive social policy, in cooperation with refugee and migrant organizations/communities. It should include all aspects of security, public health, human rights, decent living conditions, etc., and not be limited to police measures.
- Take measures for undocumented irregular aliens (especially for those whose deportation is unfeasible) so as to allow registration and provide access to basic social services. These steps will create safeguards against marginalization.
- Establish an independent body in charge of examining in a fair and efficient procedure allegations of ill-treatment or torture by law enforcement organs.

(UNHCR report, November 2010).”

UNHCR reports if the Greek government does not take action to reduce and ultimately eliminate violence against immigrants, the asylum situation in Greece will not improve. If immigrants had access to social services, they will be able to better integrate in Greek life, which would ultimately reduce racism and xenophobia.

L. Presidential Decree 114/2010

With increasing pressure from UNHCR and the international community, the Greek government has sought ways to reduce the applicant backlog and improve the asylum process. On January 31, 2011, UNHCR reports that the Presidential Decree 114/2010 calls for asylum

applications to be registered and interviews conducted at the Athens International Airport, including Dublin transfers from EU Member States. This process began the end of January and there have yet to be reports on its progress (UNHCR Report, 2011). The Presidential Decree establishes a transitional arrangement to help the Greek government deal with both first instance and appeal cases to reduce the significant back log of 52,000 (UNHCR Report, 2011). The Decree reinforces the responsibility of determining asylum applications at first instance and second instance decisions to fourteen Police Directorates throughout Greece. This initiative is welcomed by UNHCR however since the Presidential Decree; Greek Law Enforcement has yet to receive training prior to processing asylum applications. Also, access to interpreters at Police Directorates was not a priority in this decree and continues to be a challenge (UNHCR Report, 2011). UNHCR believes that unless the necessary resources are made available to build capacity within Greek Law Enforcement, an equal and effective asylum system will cease to exist in Greece.

CHAPTER VIII

Policy Implications

The Dublin Regulation of 2003 that replaced the Dublin Convention of 1990 presents a unique challenge for Greece. It calls for all EU Member States to send back asylum seekers to their first Member State of entry. The former regulations, under the Dublin Convention of 1990, called for a system for determining the States responsibility for examining applications of asylum seekers lodged in their State (International Journal of Refugee Law website). The Dublin Regulation of 2003 takes this regulation further; it determines the EU Member State responsible for processing an asylum claim for asylum seekers who first entered the EU through their State including Norway and Iceland (ECRE, Transfer of Asylum Seekers, 2007). The purpose of the Dublin Regulation is to reduce duplicate applications processed for one asylum seeker. Under the Dublin Regulation, asylum seekers are fingerprinted and their application and information is stored in a database system called EURODAC. The database is shared with all EU Member States and any asylum seekers who may have applied elsewhere are sent back to their first State of entry.

The Dublin Regulation falls under the second CEAS pillar: “Higher degree of solidarity and responsibility among Member States, as well as between the EU and third countries (EU Commission Home Affairs website).” This focuses on the one hand on improving the Dublin system and on the establishment of solidarity mechanisms between Member States, in order to offer adequate support to Member States whose system is overburdened. On the other hand, three ways will be explored to alleviate asylum pressure in third countries: Regional Protection Programmes, Protected Entry Procedures and Resettlement (EU Commission Home Affairs website). There are some exceptions to this regulation, if the asylum seeker has a spouse living

in a different Member State or if the seeker is a child and has a parent living in a different Member State, then they can automatically request to be reunited with their family member and can file their application for status in the State where their family resides (ECRE, Transfer of Asylum Seekers, 2007).

There is overwhelming evidence from UNHCR, ECRE, NGO's, the Council of the EU, Commission and Parliament that Greece is not a safe place for those seeking international protection (ECRE, Transfer of Asylum Seekers, 2007). Therefore, asylum seekers sent back to Greece for processing are not receiving the international protection they seek (ECRE, Transfer of Asylum Seekers, 2007). In November 2007, Norway suspended the referral of asylum seekers to Greece, the Norwegian government stated that this decision was reached on the "basis of the latest information about the possible violations of the rights of asylum seekers in Greece, and on the basis of the need for more information about the conditions of the asylum seekers in this country (ECRE, Transfer of Asylum Seekers, 2007)." That same year in November, a report from German officials stated that the reception conditions in Greece were inhumane, including findings of physical abuse of asylum seekers by authorities and multiple incidents of violence physical abuse by the Greek Coast Guard to prevent boats containing migrants to reach Greek territory (ECRE, Transfer of Asylum Seekers, 2007). In July 2007, the EU Commission initiated infringement proceedings against the Greek government for failure to adhere to the requirements of the Dublin Regulation, and in January 2008, the Commission referred the action to the European Court of Justice, moving the case to the Council of the EU for its final decision (ECRE, Transfer of Asylum Seekers, 2007).

The situation in Greece is so dire that UNHCR and other international organizations urge Member States not to send asylum seekers back to Greece because the asylum process is not

adequate and asylum seekers are more likely to receive international protection in other Member States. UNHCR argues that the Dublin Regulation would only work in a harmonized common asylum system. The lack of such a system does not allow for an equitable process for seekers. Asylum seekers are experiencing serious challenges receiving status and accessing protection under the Dublin Regulation. Although the Greek government has taken positive steps to include the Temporary Protection and Reception Conditions Directives into national law, they have more work to do to decrease the wait of asylum applicants and improving conditions at detention centers (UNHCR December 2009 report).

UNHCR reports that the recognition rates in Greece, which is 1.2%, are the lowest in the EU (UNHCR website). In addition, to the low number of positive decisions, asylum seekers receive different treatment depending on their country of origin. In 2007, it was reported that Iraqi asylum seekers' claims in Greece were not recognized at all, but were recognized in other Member States; 87.5% in Cyprus, 85% in Germany and 82% in Sweden (ECRE, Transfer of Asylum Seekers, 2007). Greece has not been consistent with the standards and practices that other EU Member States follow. While a complete harmonization among EU Member States may not occur, the disparity and the lack of protection in Greece gives cause to believe that the flaws in the process are fundamental (UNHCR Report, 2011).

CHAPTER IX

Policy Recommendations

Greece is not a safe place for persons seeking refuge from persecution, but under the Dublin Regulation they get sent back to Greece. Taking into account the challenges the Dublin Regulation has caused asylum seekers in Greece; my *first* recommendation is to cease the return of asylum seekers to Greece. The Dublin Regulation of 2003 calls to send all asylum seekers back to their first country of entry. Asylum seekers are fingerprinted and inputted into the EURODAC system where it is shared among Member States to ensure that seekers do not apply in multiple States. This policy enables the EU to have a better sum of the number of asylum seekers applying for status. However, it increased the number of asylum seekers returning to Greece. Thus far, there have been cases where EU Member States did not abide by the Dublin Regulation and processed asylum seekers who entered the EU through Greece. This happened after much intervention by UNHCR, ECRE and NGO's, when they recommended that Member States process asylum seekers that first entered the EU through Greece because the asylum system in Greece is inadequate and does not offer protection. EURODAC, the fingerprinting system should continue to be implemented to ensure that asylum seekers only apply for status in one Member State at a time but that should not determine where asylum seekers receive status. Greece's current asylum system does not offer protection to those who need it because the system is inefficient. Until the asylum system in Greece is revised, asylum seekers should not be sent to Greece.

My *second* recommendation is to remove Greek Law Enforcement from the asylum process. As the EU Commission suggests, an independent asylum authority needs to be set up to examine asylum applications instead of leaving the decision making up to Greek Law

Enforcement (EU Commission Country Report, 2009). The independent asylum authority would be trained by UNHCR on regulations to process asylum seekers. Through this new system all applicants in Greece would be processed equally. In addition to this new independent system, the Council of the EU, Commission and Parliament should interject and help ensure that the asylum applicant backlog that is now over 52,000 gets processed. Asylum seekers who receive status should be disbursed to EU Member States where they may have family members; those who do have family members living in the EU will be placed in their first country of choice. Asylum seekers throughout the process will have access to legal aid, interpreters and translation and social services that will be funded through the European Refugee Fund.

The *third* recommendation is to develop social policies to improve integration in Greece. UNHCR, Non-Governmental Agencies (NGO) and other international organizations should work with the Greek government to improve accommodations and reception conditions. The Council of the EU tabled the revisions of the Reception Conditions and the Asylum Procedures Directive for their next meeting in June 2011 at the Justice and Home Affairs Council. The revisions will define minimum standards for asylum procedures throughout the EU that can serve as a model for Greece (Council of the EU press release, April, 2011). The full integration of asylum seekers to Greek life must include access to job training, educational opportunities and social services. In addition, UNHCR will design a cultural sensitivity training that will be mandatory for all Greek Law Enforcement. This will help reduce racism and xenophobia within the Greek government and hopefully encourage the same from its citizens.

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