Asylum policy in the EU

Investigation to the development of a common asylum system in the EU

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3 January, 2011

THE HAGUE
UNIVERSITY
OF PROFESSIONAL EDUCATION

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Executive Summary

There have been refugee movements for centuries, yet since the Second World War the number of refugees augmented significantly and international action was undertaken by organizations like the League of Nations and its successor the United Nations, which established the United Nations Higher Commissioner for Refugees (UNHCR). Despite the existence of refugee movements, asylum policy does not have a long history. Since the 1950s, some European countries agreed on cooperating on several economic matters, which has been extended to political cooperation during the 1980s. With the introduction of the internal market in 1993, people could move freely within the European Union (EU) without any internal border controls. Adequate measures were necessary to control the movements of people, thus specific legislation had to be introduced.

The EU started to make plans on developing a common system on asylum at the Tampere Council meeting in 1999, based on the 1951 Geneva Convention Relating to the Status of Refugees and its Protocol of 1967. In the two phases 1999-2005 and 2005-2012, European legislation has been developed and special institutions were created to improve the harmonization of national policies. The European Council adopted various regulations and directives to regulate which Member State is responsible for the asylum application (Dublin Regulation) and to set up common minimum standards for e.g. reception conditions, asylum procedures and qualification. The institutions Frontex and the European Asylum Support Office were established to facilitate the cooperation between the EU Member States, in order to realize one homogeneous asylum system. The political direction and the focus of work have been determined in several Council Programmes. The Tampere Council resulted in the Tampere Programme, a five year policy programme that would last until 2004. It was succeeded by The Hague Programme (2004-2009) and the Stockholm Programme (2010-2014).

Despite the introduction of European common rules on asylum, there are still some obstacles that have to be eliminated before a well-functioning asylum system can operate. There are quite some differences in the national asylum situations. Especially southern border countries face problems, looking at for example the problematic situations in Greece and Malta, which receive big flows of immigrants.

The introduction of the CEAS has had some consequences in the Member States. In order to be in accordance with European legislation, Member States had to transpose the adopted measures into national legislation. Spain had to amend its national asylum law and introduced the 'Nueva Ley de Asilo' (New Asylum Law) in October 2009.

The EU has made big progress over a number of years by developing a common asylum system which should provide the same conditions for asylum seekers in every Member State of the EU. Nevertheless, before the realization of an asylum system that operates equally in every EU Member State, some problems remain to be solved.

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Preface

Since my internship at the Spanish non-governmental organization RESCATE Internacional, an international organization that works on behalf of refugees and displaced people, I have become very interested in refugees and asylum policy. Especially after hearing some personal stories of refugees I got interested by the asylum topic and I wanted to know more about how asylum procedures and regulation are organized. This internship has lead to my curiosity to investigate the asylum policy in Europe and the Common European Asylum System the EU is developing. I believe this is an important topic where the EU should make progress on. As a European prosperous community, we should be able to have a better system and take better care of refugees and asylum seekers.

I would like to thank my internship organization and my mentor Mrs. Azahara Montero for giving me the opportunity to work there and to get to know the working area. Furthermore, I would like to thank my family and friends for supporting and motivating me during the last and most difficult part of my studies. Lastly, I want to thank my supervisor mr. Nigten for his support and help during this period.

Wendy Geleijnse

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Introduction

1.1 Europe, the promised country?

Every year thousands of people come to Europe, all with different objectives and in different ways. People who come for economic reasons, people who have to flee from their home country because of persecution, or people who try to start a new life in a foreign country without war or natural disasters. Foreigners often see Europe as the continent where everything is possible, "the promised country". We all must have heard once of Africans who try to reach Europe in ramshackle boats across the Mediterranean Sea, Afghanis who risk their lives during dangerous journeys on their way to the European border, or South-Americans who try to pass the airport security in Madrid to enter European territory. People who leave behind their life, country, family, friends, work, past and future. Millions of reasons, millions of stories.

       In order to be able to stay permanently (and legally) in a country, one has to apply for asylum. Every Member State of the European Union has its own national legislation on asylum and migration, however, the European Union is developing a homogeneous European migration and asylum policy with the European Common Asylum System (CEAS). This will be a system wherein every asylum seeker will be treated in the same way, thus it will not matter whether asylum seekers apply in Malta or in Germany, they will receive the same conditions and procedures and in every Member State they will have the same chances of being be granted asylum. In this dissertation will be investigated how this system has developed and to what extend this harmonious objective has succeeded.

       The first steps towards European cooperation on migration were taken in 1985 with the Schengen Agreement, where five countries agreed on creating a territory without checks at the internal borders, i.e. an area with free movement of persons in the 'Schengen countries' (Ferguson, 2007, p. 13). As a result of the free movement, once asylum seekers had entered the Schengen area they could move without any border checks. Due to the enlargement of the Schengen community and the development of the European Union, policy on foreign affairs and migration had to be developed and extended. Since then, improvements have been made for further collaboration on migration and asylum between the Member States of the European Union (EU), which resulted in common European asylum legislation.

1.2 Central question and sub questions

This dissertation is focused on one central question, which is: *"How has the Common European Asylum System developed in the EU and what consequences does the introduction have in the Member States?".*

       To answer this central question, the dissertation is divided into three parts. Firstly, asylum will be described in general. Because several terms are often mixed up, these will be defined and

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furthermore, the history of refugee movements will be treated and the organizations which have been important concerning refugee assistance. After having a clear vision on asylum, in chapter two the development of a Common European Asylum System will be discussed, as well as the most important Council Programmes and the adopted European legislation on asylum. In the third part, the consequences of the introduction of the CEAS will be analyzed, especially in the southern border countries of the EU, which face problematic situations regarding the flows of asylum seekers. Due to the implementation of European legislation, Member States have to guarantee asylum seekers some minimum standards. National policies have to be amended in order to correspond to European Law, e.g. Spain, which adopted a new Asylum Law in 2009. This example will be used to explain how European legislation is transposed into national legislation.

1.3 Objective

The main purpose for writing this thesis is to provide the European population information about asylum, especially at European level and the development of a Common European Asylum System. The Single European Act in 1986, was an important step for starting cooperation in the EU on migration and asylum. One year after the Schengen Agreement, this Act was signed by the twelve Member States of the European Economic Community (forerunner of the European Union) with the objective of completing one free internal European market in 1993, with free movement of capital, goods, services and persons. ("The Single European Act", 2007, "Birth" section). Since then, agreements, directives and law have been published on asylum. This dissertation is written to get a better overview on the development of asylum policy in the EU, which problems the EU faces on asylum and how the EU Member States have to adapt national policies in order to be in accordance with European legislation.

1.4 Justification of research methods

The investigation to asylum policy in the EU is mostly based on desk research. A lot of information on the websites of the EU and the United Nations High Commissioner for Refugees was useful. The obtained information from these websites is complete and veritable, so they can be considered as valuable sources. They were especially important for the history and development of asylum policy. Beside Internet, English and Spanish books and articles were used, to get a clear vision on the development of the asylum policy. For the last chapter, a book of the Spanish nongovernmental organization 'CEAR' (Spanish Commission for Refugee Aid) is used, because it gave recent information on asylum policy in Spain and Europe. Beside desk research, I could also use the knowledge that I have gathered during my internship in Spain, where I attended several seminars on asylum and the introduction of the CEAS.

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2. Asylum Policy Development

2.1 Introduction

Asylum policy is a discussed subject; internationally, but also on national and local level. Citizens, politics, nongovernmental organizations (NGOs) and other international organizations do all have different opinions on how to deal with immigration problems, policymaking and asylum seekers. In this chapter an introduction will be given to asylum policy: terms, history and important related organizations will be explained and analyzed.

2.2 What is asylum?

If one reads articles on the internet or in newspapers and books on this topic, a lot of different terms can be found. This can be very confusing, because a lot of terms are mixed up and used disorderly. Is a foreigner the same as a migrant? When is someone an asylum seeker? And what is the difference between a refugee and an internally displaced person? All these terms are related, nevertheless, there are some explicit differences. To avoid misinterpretations, it is important to be aware of these differences.

      A 'foreigner' can be defined as a person who comes from another country and who does not have the nationality of the country where he is in (Macmillan English Dictionary, 2002, p. 552). Being a foreigner does not especially mean the foreigner is a migrant. A 'migrant' is someone who travels to another country (Macmillan English Dictionary, 2002, p. 900). There are different types of migrants:

> ➢ 'Emigrant': someone who leaves his country in order to live in another country (Macmillan English Dictionary, 2002, p. 452);
> ➢ 'Immigrant': someone who comes to live in a country from another country (Macmillan English Dictionary, 2002, p. 716) ;
> ➢ 'Re migrant': an emigrant who is returning to his country ("Remigrant", "Definition");
> ➢ 'Transit migrant': someone who is passing through a country of transit on the way to another country in which he intends to settle ("Transmigrant", "Definition"). (I.e. from country of origin, to country of transit, to country of destination).

Another important term which is often used, is 'asylum seeker'. An asylum seeker is a foreigner who has left his country and applies for asylum and protection in a foreign country (Macmillan English Dictionary, 2002, p. 73). The right to stay in a country, given by a government to protect someone who has escaped from war or trouble in his own country, is called 'asylum' (Macmillan English Dictionary, 2002, p. 73). This form of protection is based on the non-refoulement principle, which prohibits States to return refugees to countries where there is a risk that their lives or freedom would be threatened (UNHCR, 2003, "Refugee protection in international law", p. 3). When asylum seekers apply for asylum, it is not yet ascertained if they meet the requirements to be granted asylum. The best

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known grounds for a granted asylum is the official refugee status. Additionally, an asylum seeker also grants asylum if he risks threat or inhuman treatments (e.g. torture), if he has suffered traumatic experiences and therefore not able to return to his country, or if it is impossible to return due to an unsafe situation (IND, 2004, "Asylum seeker or refugee?"). To avoid abuse of the asylum system, every application is examined by national competent asylum authorities. Thus, an asylum seeker is someone who is examined whether he can be recognized as a refugee or not.

The definition of a 'refugee' is a special one, which has been modified over the years. According to the United Nations Convention Relating to the Status of Refugees of 1951, the status of refugee applies to any person who:

> "As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (Convention Relating to the Status of Refugees, 1951, Art. 1A(2))."

In short: if one is persecuted because of his race, religion, nationality, membership of a particular social group or political opinion, and if one is outside the country of his nationality, one can be considered as a refugee in international law.

There are some important differences between a refugee and a migrant. Mostly, a migrant leaves his country because he thinks he can improve his economic situation somewhere else. He can prepare his migration carefully and he is able to take his decision without coercion. The exodus of a refugee on the other hand, is regularly forced, chaotic and suddenly taken due to complicated situations, often caused by violence or persecution.

The given definition of a refugee in the 1951 Geneva Convention is rather limited than specific. Because what about the people who are victim of a civil war, for example in the Democratic Republic of Congo? Millions of people flee their home because their life is in danger. According to the Geneva Convention they cannot be called refugees, because they remain within their country's borders. The convention does not cover those internally displaced persons. Even if they had fled for comparable reasons as refugees, international law determines that a government is responsible for its citizens protection (even if that government is the cause of the flight) (UNHCR, "Internally Displaced People" section). Nevertheless, in cases of grave war violence or extreme dictatorship, most of the EU's Member States have included additional protection in their national policy (VluchtelingenWerk Nederland, "Beperkte definitie van een vluchteling" section).

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2.3. History of asylum policy

2.3.1 Refugee movement and organizations

Movement from one country to another is not something modern, it has occurred for centuries. Before the 20th century, passports were not generally required for international travelling and the right to move to other countries was commonly recognized (Benedictus, 2006, "A brief history of the passport"). Refugees (in that time not yet a legally codified term) moved principally for religious and racial reasons. Examples are the expulsion of Jews from Spain in the 15th century, who were forced to leave the territory of the Catholic Monarchs, or the persecution of Protestant Huguenots in France during the 17th century (Jewish Virtual Library, "The virtual Jewish History Tour", "The Inquisition" section) (National Huguenots Society, 2009, "History" section). Since the 20th century, refugees started to move because of political reasons, for example during the Armenian genocide in the Ottoman Empire in the beginning of the 20th century. Moreover, during the Russian Revolution of 1917, more than one million opponents of communism were expulsed, and in the Spanish Civil War from 1936-1939, thousands of republicans fled to France (Britannica, 2010, "Refugee" section). While there have been several refugees movements throughout history, until the 20th century a true international refugee problem had not arisen.

The League of Nations was the first organization that undertook international action on the situation of refugees after its establishment in 1919, initially for refugees who fled the Russian Revolution. The Norwegian Fridtjof Nansen was appointed by the League of Nations as high commissioner for refugees. After his death in 1930, the League of Nations opened the Nansen International Office for Refugees to complete Nansen's work. The organization was set up for an eight-year period wherein it should solve the refugee problem. Although the Nansen Office was incapable to solve the refugee problem by itself, it was awarded the Nobel Peace Prize of 1938 for all its efforts and its accomplished work (The Nobel Foundation, "The Nobel Peace Prize 1938", "History of Organization" section).

After the dissolution of the League of Nations, the United Nations (UN) was established in 1945. This intergovernmental organization, set up by 51 nations, had as purpose to cooperate internationally on justice, development, human rights and social progress in order to achieve world peace (United Nations, "An Introduction for Students" section, para. 2). The International Refugee Organization (IRO) was set up by the UN to take care of the massive refugee problems created by the Second World War (Britannica, 2010, "International Refugee Organization" section). In 1950, the Office of the United Nations High Commissioner for Refugees (UNHCR), also known as the UN Refugee Agency, was founded and replaced the tasks of the IRO in 1952 (UNHCR, "Establishment of UNHCR" section, para. 1).

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2.3.2 Legally recognition in international law

One of the first actions of the UNHCR was the creation of the Convention relating to the Status of Refugees. This Convention was signed in 1951 in Geneva and defined who is a refugee, the rights refugees have and the legal obligations of states (UNHCR, "The Legislation that Underpins our Work" section, para. 1). Originally, the Convention was set up for people who fled during and directly after the Second World War, due to the considerably increasing number of refugees. The first article of the original 1951 Geneva Convention recognizes a refugee when one is persecuted for his race, religion, …, "as a result of events occurring in Europe before 1 January 1951". Nevertheless, after the Second World War other refugees movements came up e.g. from the Eastern Bloc and former colonies. This was not predicted during the developments in 1951, hence, in order to not exclude this new flow of refugees, in 1967 the New York Protocol was added to the Geneva Convention. This additional Protocol removed the geographical and temporal restrictions and since then, the Convention also applied to persons who fled their country after 1951 (UNHCR, "The Legislation that Underpins our Work" section, para. 1).

2.4 Contemporary refugee related organizations

During the 20th century, refugee movements had become a serious international issue, due to the increasing number of refugees and the political complicated situations. This resulted in numerous international and national organizations which started to take care of refugees, internally displaced persons, victims of war, etc. Two important international organizations that work specifically with refugees are the earlier mentioned UNHCR and the European Council on Refugees and Exiles. In the following two subparagraphs these organizations will be shortly analyzed.

2.4.1 UNHCR

The UNHCR is one of the most important organizations in the area of help to refugees, due to its history, broad international support, experience and funding. The main objective of the UNHCR is to protect refugees and support them with the reception, return or settlement in other countries. Besides, it provides humanitarian aid to internally displaced people and other vulnerable people. Initially, the UNHCR was established for a three-year period, however, the number of refugees did not decrease. Therefore, in 2003, the General Assembly decided to extend the mandate "until the refugee problem is solved" (UNHCR, "Governance and Organization", "How UNHCR is run and structured" section, para. 2). The annual report of 2009 announced still 16 million refugees and 26 million internally displaced people worldwide (UNHCR, 2009, "UNHCR annual report shows 42 million people uprooted worldwide", para. 1), thus probably in the upcoming years, the UNHCR will not stop its activities.

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The UNHCR is set up by the UN in 1950, and is directed by the UN General Assembly and the Economic and Social Council (ECOSOC). The General Assembly appoints as head of the organization the High Commissioner, who in turn appoints the 79 members of the Executive Committee. This committee approves the agency's programs and its budget and furthermore, it gives advice on international protection (UNHCR, "Executive Committee" section, para. 1). The agency was awarded with the Nobel Peace Prize in 1954 and 1981 for all its activities and efforts (The Nobel Foundation, "All Nobel Peace Prices" section, para. 1).

The UNHCR has a working staff of 6,600 persons in approximately 110 countries (UNHCR, Governance and Organization, "How UNHCR is run and structured" section, para. 4). In order to promote its work, in various countries the UNHCR created national committees. An example is the Spanish committee of the UNHCR, (in Spanish 'Alto Comisionado de las Naciones Unidas para los Refugiados' [ACNUR]) that was established in 1993 with the objective to sensitize the Spanish population about the motives for fleeing and the refugee's situations of origin (ONG Consumer, Comité español de ACNUR, "Descripción y objetivos" section). Other national committees are Australia for UNHCR, Japan for UNHCR and USA for UNHCR (UNHCR, ACNUR en el mundo, "Otros comités" section).

2.4.2 ECRE

The European council on Refugees and Exiles is a pan-European network of NGOs that works on behalf of refugees. Together with its member organizations, it promotes the protection, integration and rights of asylum seekers, refugees and internally displaced persons. At European level, it investigates and responds to the policies of the European Union in the field of European asylum. It promotes a humane and generous European asylum policy (ECRE, "About Us" section, para. 1) (ECRE, "Vision & Values" section). Among other organizations, Amnesty International, national Red Cross committees and national councils for refugees are members of ECRE.

ECRE was founded in 1974, when some Western European refugee assisting organizations recognized the need for collaboration between states to guarantee the protection of refugees in Europe. It is led by 69 member organizations based in 30 countries, who elect an Executive Committee that oversees the secretariat and contributes to its work (ECRE, "About Us" section, para. 1). The secretariat works in the following areas: policy and advocacy, information and communications, capacity building and international operations.

The activities and goals of the ECRE are decided by its member organizations through recommendations made at the yearly conference. Furthermore, at the Annual General Meeting the members of the Board are elected (ECRE, "Executive Committee" section).

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2.4.3 Role of international organizations

The UNHCR, the Refugee Agency of the intergovernmental organization United Nations, fulfills an important international role. Nearly every internationally recognized, independent state in the world is member of the UN. The UN's activities derive from international conventions like the UN Charter, the Statute of the International Court of Justice and the Universal Declaration of Human Rights. Being an agency of the UN, the UNHCR is widely supported and has quite some influence given that national governments (and Member States of the UN) consider the international conventions and the UN's vision of high value.

ECRE on the other hand, is not established by nations but by Non-Governmental Organizations (NGOs). Due to its large number of member organizations it can be considered as an important network as well. Moreover, because NGOs mostly have based their principles on the earlier mentioned international agreements. Therefore, the UNHCR started cooperating with other governmental and Non-Governmental Organizations and in 1994, it launched the Partnership in Action initiative (PARinAC). This established a framework for cooperation between UNHCR and the high number of NGOs around the world with whom it works, because according the UNHCR "NGOs are very important in the process of coming up with solutions for the refugee problem" (UNHCR, History of UNHCR-NGO Partnership, para. 5-7).

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3. Asylum in the EU

3.1 Introduction

Beside the numerous refugee related organizations, nations also play a significant role in solving the refugee problem. Member States of the EU have developed their national policies and regulations on asylum, and since a couple of decades they also try to cooperate on this area. But what exactly is this European asylum policy? How did it develop? And to what extend is the national regulation still important? In this chapter the focus will be on the development of the Common European Asylum System and the improvement of collaboration between Member States of the EU. Furthermore, two agencies that were set up in the process towards a CEAS will be discussed: Frontex and the European Asylum Support Office.

3.2 Concept of European asylum policy

International cooperation on asylum policy does not have an extensive history, in fact, it is rather modern. As can be read in the previous chapter, before the Second World War there were no significant problems with refugee movements thus specific asylum policy was not developed. Due to the migration movements after the Second World War, nations started to make policy on this area. For a long time, governments decided how law was regulated on national territory, because nations had their sovereignty on political issues. But by developing a European policy, more actors were involved than just one nation. How can European regulation on asylum be seen? The European asylum policy can be defined as a compilation of instruments, procedures and institutions of the EU to give a common and harmonized answer to the asylum problems (Sánchez Legido, 2010, Seminar).

Until the 1980s, there was only cooperation on economic level in the EU. In 1957, the European Atomic Energy Community (EAEC or Euratom) and the European Economic Community (ECC) were established by the Treaties of Rome. The situation of solely economic cooperation started to change when the Member States took their cooperation to the next level with the Single European Act in 1986. A European Political Cooperation was established to coordinate the foreign policy of the community (EU, Glossary, "European Political Cooperation" section). The Single European Act has been an important step in the development of the European Union, because it set the objective of establishing an internal market, which would finally come into force in 1993 with the Maastricht Treaty (Treaty of the EU). Consequently, European borders faded and this was significant for policymaking on asylum. By harmonizing national policies for third-country nationals, supplementary and compensatory measures had to be taken, in order to provide equal conditions to these third-country nationals who wanted to enter the EU.

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3.3 Development CEAS

European asylum policy has been connected to two other policies: immigration policy and border control, and police and judicial cooperation (articles 67 and further of the Treaty on the Functioning of the EU (Rome Treaty) under Title V 'Area of freedom, security and justice'). The current European Commissioner of Justice, Fundamental Rights and Citizenship is responsible for policymaking on this area. The European Commission strives for a binding asylum mechanism to be set up before 2012 (Europees Parlement Bureau Nederland, "In 2010" section, para. 4). The introduction of the CEAS has been divided into two phases, the first one from 1999-2005 and the second phase from 2005-2012. How did the CEAS, that has to be completed by 2012, evolve?

3.3.1 Before 1999

Before the adoption of introducing a CEAS, there was already intergovernmental cooperation between the Member States, however, the agreements were limited. In the earlier mentioned Single European Act of 1986 several measures were taken to create an internal market in 1993. By creating an internal market, more agreements had to be made in order to control the movements of persons in this community. In 1990, the Schengen Convention (which supplemented the Schengen Agreement of 1985) arranged the practical implementation that was necessary due to faded internal borders. Discussed subjects in the Convention were, among other things, border control, visa and asylum and furthermore, it established the Schengen Information System which allowed national border control and judicial authorities of the Schengen countries to exchange information on persons or objects (EU, 2009, The Schengen area and cooperation, "Development of Schengen cooperation and extension of the Schengen area" section). This system was introduced to prevent Europe from becoming a potential paradise for drug criminals, terrorists and illegal immigrants, due to the disappearance of internal borders.

To control the foreigners who enter the EU, the Dublin Convention was established in 1990 (although it entered into force in 1997). The Dublin Convention is a mechanism that decides which EU Member State is responsible for examining the asylum application. The system determines that only one Member State can be responsible, i.e. the first country of arrival. This means that asylum seekers must apply for asylum in the first country they enter (Irish Refugee Council, 2002, "Fact Sheet on the Dublin Convention"). This might sound very uncomplicated, however, the reality is that many asylum seekers ignore this Convention and try to apply for asylum in another country.

In 1993, all the obstructions of an internal market were eliminated and by the Maastricht Treaty (also known as the Treaty of the EU), the internal market and free movement of persons, services, goods and capital between Member States was a fact. The Maastricht Treaty was also important for the structure of the EU, because it introduced the pillar structure. The European Economic Community was categorized under the first pillar, together with Euratom and the European

Coal and Steel Community. Moreover, it created two other pillars: one for Common Foreign and Security Policy (second pillar) and for Justice and Home Affairs (third pillar). On subjects classified under the first pillar decisions were mostly made on supranational level, the other two pillars used the intergovernmental procedure. Asylum and immigration were initially classified under the third pillar, but this was amended in 1999 with the Treaty of Amsterdam, which moved the policy area to the first pillar (EU, Glossary, "Pillars of the EU").

3.3.2 First phase 1999-2005

3.3.2.1 Treaty of Amsterdam

In 1999, the Treaty of Amsterdam entered into force. Cooperation on asylum changed from intergovernmental cooperation into minimum norms of harmonization. One of the most important changes relating to asylum and immigration policy was the integration into the framework of the first pillar. Decisions on asylum and immigration policy would be made by the supranational procedure instead of an intergovernmental unanimity (like under the third pillar), which resulted into a faster implementation of common measures. However, eurosceptics criticized that there was a lack of democratic control, because the European Parliament did only have a consultative role. This was changed during the second phase of the CEAS, where the co-decision procedure was applied to all asylum issues and the Council and the Parliament were on equal footing for the adoption of legislation on asylum (ECRE, "Asylum in Europe", p. 2).

Another amendment made by the Treaty of Amsterdam was the inclusion of the Schengen Agreement and Convention in the Member States of the EU, except the United Kingdom, Ireland and Denmark. These countries have all several opt-outs from articles in the established 'Area of freedom, security and justice', especially from articles of border control and police and judicial cooperation (Historia Siglo 20, "Freedom, security and justice" section, para. 6).

A last important fundamental amendment in the asylum policy was the exception of EU citizens to apply for asylum in another Member State of the EU. This Protocol on Asylum for Nationals of Member States would bar EU nationals from seeking asylum in other EU Member States. The protocol is often referred to as the 'Spanish Protocol' because it was Spain that urged other Member States to include legislation on this subject (UNHCR, 2007, EU Member States, para. 1). This notion originated from the accused members of the armed Basque nationalist and separatist movement ETA which had been granted asylum in Belgium. Belgium was also the only Member State that adopted a declaration in the Protocol, stating it would "carry out an individual examination of any asylum request made by a national of another Member State" (UNHCR, 2007, EU Member States, 'Belgium' section). All the other Member States had the confidence that in the EU does not exist a serious risk for European nationals to be individually persecuted, tortured or violated.

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3.3.2.2 Tampere Programme

The special meeting of the European Council which took place in the Finnish town Tampere in October 1999, was the first Council meeting only dedicated to European Justice and Home Affairs and resulted into a five year policy programme from 1999 till 2004. The policy programme did not contain new policy, but only determined the political direction and which measures would be taken. The Council was determined to create an area of freedom, security and justice, by making use of the possibilities the Treaty of Amsterdam offered. The aim of the Tampere European Council was to create a binding European asylum policy and to combat together cross border crime. In the longer term this should lead to a common procedure on asylum and a uniform refugee status, valid in the whole EU for people who are granted asylum (European Parliament, 1999, Tampere Presidency Conclusions). The European objectives on asylum seemed more ambitious than earlier made agreements, because they were more concrete. The Council also urged to finalize promptly its work on the establishment of Eurodac, which was finally adopted in December 2000 (Ferguson, 2007, p. 57).

> **Eurodac**
> In December 2000, the Council adopted a Regulation concerning the establishment of Eurodac. In this computerized central database are several data processed, like fingerprints of applicants for asylum, the Member State of origin, place and date of the application, etc. The Eurodac system was established supplementary to the Dublin Convention, to avoid multiple asylum applications in various countries (Ferguson, 2007, p. 57-58).

3.3.2.3 EU Legislation

The Treaty of Nice, signed in 2001, was an amendment treaty on the Treaty of Amsterdam. Referring to the asylum area, the Treaty of Nice stipulated that the Council should adopt various measures in order to make progress with the development of the CEAS (European Parliament, An area of freedom, security and justice, "Asylum Policy" section). This resulted in the following Directives:

  ➢ 'Temporary Protection Directive' (2001): a Council Directive 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;
  ➢ 'Reception Directive' (2003): a Council Directive on minimum standards on the reception of applicants for asylum in the Member States;
  ➢ 'Family Reunification Directive' (2003): a Council Directive on the right to family reunification;
  ➢ 'Directive on Long-Term Residents' (2003): a Council Directive concerning the status of third-country nationals who are long-term residents;

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> ➢ 'Qualification Directive' (2004): a Council Directive on minimum standards for the
>   qualification of third country nationals and stateless persons as refugees or as persons who
>   otherwise need international protection and the content of the protection granted;
> ➢ 'Asylum Procedures Directive' (2005): a Council Directive on minimum standards on
>   procedures in Member States for granting and withdrawing refugee status.

The introduction of these Directives was a positive step in the development of the CEAS, because
more concrete legislation had been established.

Besides the mentioned Directives, other important legislation had been introduced as well. In
2003, the Dublin Convention (Dublin I) was replaced by the Dublin Regulation. This Regulation, also
known as Dublin II, determined which state is responsible for examining the asylum application.
Dublin II is more focused on family reunification and furthermore, the time period in which the
Dublin investigation should be finished is shortened (VluchtelingenWerk België, Europees
Asielbeleid, para. 3). The Dublin Regulation is critically discussed. As the asylum seekers have to
apply in the first country of arrival, external border states have to process more applications than other
EU Member States, due to their location. This results in some complicated situations, especially at the
southern border of the EU. The consequences of the Dublin Regulation and the problems that occur in
the southern border countries will be discussed in chapter 4.3.

3.3.2.3 The Hague Programme
In November 2004, the European Council adopted 'The Hague Programme'. This five year policy
programme was the successor of the Tampere Programme and would last until 2009. It described the
adjustment of the decision procedure of the EU on asylum policy and set out the policy on asylum for
the next five years. The role of the European Parliament would become stronger, because they could
collaborate in the decision procedure and not only give advice like before. Influence of national
parliaments became less, nevertheless, on some subjects there would still exist a veto right. In the
period from 2004-2009 the Union would strive for the establishment of a harmonized European
asylum policy. So far, the harmonization only introduced some minimum standards on asylum, and
national policies still strongly differed from each other. In The Hague Programme, the Council
determined to have a common asylum procedure and a uniform refugee status by 2010, and a binding
common asylum system in 2012.

3.3.3 Second phase 2005-2012

3.3.3.1 The European Pact on Immigration and Asylum
After the completion of the first phase of the CEAS, it was necessary to reflect on the direction in
which it would further develop. In 2007, a Green Paper was published in which the public, NGOs,

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national governments, etc. could evaluate the implementation of the CEAS during the first phase. The Commission used these contributions and published in June 2008 a Policy Plan on Asylum (European Commission, Asylum, "General context section", para. 3). Based on this Policy Plan, in October 2008, the European Council adopted the European Pact on Immigration and Asylum. This pact contained the general political direction for immigration and asylum policy. Agreements were made for a common approach to legal and illegal migration, for example by stricter controls of migratory flows for developing countries and human rights of asylum seekers. Furthermore, it continued the Hague Programme direction with the development of the CEAS, aimed to be ready in 2012 and the establishment of a European Asylum Support Office which should be operative by 2010 (EurActiv, 2008, The European Pact on Immigration and Asylum).

3.3.3.2 Stockholm Programme

In December 2009, the European Council adopted under the Swedish presidency the Stockholm Programme, a new five year policy programme which followed up the Hague Programme that would expire at the end of 2009. This Stockholm Programme is focused on a more secure and more open Union, where the rights of individuals are protected: citizens are the central actor of this policy programme. The programme aims for the development of a flexible immigration policy, an internal security strategy and a better policy on the protection of personal data. These are some concrete examples to realize an area of freedom, security and justice for citizens. In general, the main priorities of the Stockholm Programme are to come up for the rights of citizens, to facilitate their lives, to protect them and to promote a more integrated society (Kenniscentrum Europa decentraal, 2010, Stockholm Programma). The asylum direction remains unchanged with the aim of establishing a CEAS by 2012. Moreover, the Union will intensify its cooperation with the UNHCR, for example with resettlement of asylum seekers (Swedish Ministry of Justice, 2009, 'The Stockholm Programme').

3.3.3.3 Lisbon Treaty

Since the entry into force of the Lisbon Treaty in 2009, many things have changed related to the European Union. The most important changes have been the single legal personality for the EU, the abolishment of the pillar structure that was introduced since the Maastricht Treaty, an extended scope of qualified majority voting system in the European Council, a more powerful role for the European Parliament and the introduction of a full-time President of the European Council and a High Representative of the Union for Foreign Affairs and Security Policy (General Secretariat of the EU Council, 2009, Treaty of Lisbon).

These changes also had consequences for the asylum policy, which would not be longer structured under one pillar. The European policy areas are divided in three categories, which regulate

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the competences of the Member States and the Union, i.e. 'Exclusive competence', 'Shared competence' and 'Supporting competence'(EUR-lex, 2007, Treaty of Lisbon, Title I "Categories and areas of Union competence). The area of freedom, security and justice is categorized under article 4 which regulates a shared competence between the Union and the Member States.

3.3.3.4 Recast legislation

In 2009, the European Parliament adopted a package of measures for a more efficient European asylum system. To reach higher common standards, the Parliament amended the asylum directives related to the reception conditions, the procedures and the standards for qualification. By adopting the 439/2010 Directive, a European Asylum Support Office was established, which will be discussed more explicitly in paragraph 3.4.2. Furthermore, amendments were made to improve the solidarity among Member States. These amendments were an important step towards better protection norms for asylum seekers, a uniform treatment in the procedure and a more efficient and coherent European asylum system (Europa Decentraal, 2010, Justitie, vrijheid en veiligheid, para. 4). Step by step, the CEAS has been developing into a European binding mechanism on asylum, which should be completed by 2012.

3.4 EU assisting organizations on asylum

During the establishment of the CEAS, two important agencies have been set up in order to facilitate the cooperation on asylum between the EU's Member States. In this paragraph the agencies Frontex and the European Asylum Support Office (EASO) will be discussed.

3.4.1 Frontex

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU was established by the Council Directive 2007/2004 and started to operate in 2005. The EU agency is based in Warsaw, Poland and its activities consist of:

➢ Coordination of operational cooperation between Member States in the field of management of external borders;

➢ Assistance to Member States in the training of national border guards, including the establishment of common training standards;

➢ Carrying out risk analyses;

➢ Following up the development of research relevant for the control and surveillance of external borders;

➢ Assistance to Member States in circumstances requiring increased technical and operational assistance at external borders;

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- ➢ Providing Member States with the necessary support in organizing joint return operations (Frontex, More about Frontex, "Frontex Tasks" section).

Frontex coordinates and facilitates the operational cooperation between Member States relating to the management of the external borders, however, the control of the external borders remains the Member States' responsibility. A recent example of Frontex' support was the situation in Greece in November 2010. Greece asked Frontex for help because it has suffered an immense flow of illegal immigrants at the Greek-Turkish border. This year, 90% of the detected illegal border crossings to the EU took place in Greece. Frontex started its Joint Operation 'Poseidon' and sent Rapid Border Intervention Teams to help Greece protect the external border with specialized police and advanced electronic equipments. It was the first time that Frontex deployed the special trained Intervention Teams (Frontex, 2010, 'News Releases').

3.4.2 European Asylum Support Office

In May 2009, the European Parliament adopted the Directive 439/2010, that established a European Asylum Support Office (EASO). The EASO was founded to contribute to the development of the CEAS by improving practical cooperation between Member States. It will support Member States by investigating the possibilities to harmonize national asylum policy with the aim to create a common policy, which should be completed by 2012. The office was opened in July 2010, and is located in Valletta, Malta's capital. By the end of 2010, it should start operating, however, this will be postponed to the beginning of 2011. The EASO focuses on three main tasks:

- ➢ Support practical cooperation among Member States on asylum by facilitating exchange of information, and helping Member States with translation services and educating national asylum officials and civil servants;
- ➢ Support Member States which receive large numbers of asylum applications by setting up a warning system and specialized teams that should assist the Member States with the asylum requests and the reception facilities;
- ➢ Contribute to the implementation of the CEAS by collecting and exchanging information and monitoring the implementation of asylum related European directives and regulations.

(ECRE, The European Asylum Support Office, para. 1).

Establishments like Frontex and EASO are important improvements in the development of the CEAS, because they contribute to a better cooperation among the Member States of the EU. Nevertheless, there are also some complexities faced with the creation of the CEAS, which will be discussed in the next chapter.

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4. CEAS in EU's southern border countries

4.1 Introduction

The harmonization of national asylum policies comes along with some complexities. Not every Member State faces the same asylum problems. Countries situated at the southern external border of the EU are often the first country of arrival for asylum seekers coming from Africa and Asia. These southern border countries have to deal with big flows of asylum seekers and this results in some problematic situations. Not every Member State is able to give the minimum standards according to the European regulation, so some issues remain to be solved before completing the implementation of the CEAS.

In this chapter the focus will be on the southern border countries like Italy, Greece, Malta and Spain, and the difficulties that come across with the implementation of the CEAS. By giving an example of the Spanish national policy, it will become clear how European legislation influences national legislation.

4.2 Southern border countries

Southern border states of the EU have been prominent countries for asylum seekers who try to obtain residence permits, in order to stay in Europe to build a new (better) life. In the 90ies, Spain and Italy were popular destinations. In Spain, the immigrants tried to reach the Canary Islands and the enclaves Ceuta and Melilla in Morocco. Italy received big flows of immigrants from Africa at the small island Lampedusa – situated in the Mediterranean Sea between Libya and Italy – just as Malta after its entrance in the European Union in 2004. Greece has been a gateway to the EU for immigrants mostly coming from Asia.

A lot of illegal immigrants try to reach these European southern border countries in barely seaworthy boats, full of hope to be admitted in an asylum procedure. Once they have arrived European territory they can apply for asylum according to the 1951 Geneva Convention. However, the flows of immigrants are big and the countries suffer a lot of problems with processing all the asylum procedures, especially in Greece and Malta. Local governments often do not dispose of sufficient resources to accomplish the common European conditions on reception of asylum seekers. Due to these big flows of immigrants, the asylum procedures accumulate and this results in long wait lists. The immigrants are accommodated in detention centers, where they have to wait for the outcomes of their procedures. The conditions of the detention centers are poor and the asylum seekers often do not receive the protection that they should receive according international and European law (UNHCR, 2010, UNHCR says asylum situation in Greece is a humanitarian crisis).

Thousands of immigrants, enormous wait lists and miserable accommodation conditions, it is obvious that the European southern Member States face serious problems. The first question that

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arises, is if this situation is the responsibility of the Member States or the Union? Since the Maastricht Treaty, immigration policy has become common interest and by implementing a common policy on asylum it can be seen as a European issue. All the Member States should cooperate on monitoring the external border of the Union of which they are part of. On the other hand, it can be considered as a national problem of the Member States, due to the insufficient development in national asylum policies and a lacking effort to solve the asylum problems that exist in their countries.

In September 2010, the UNHCR called the asylum situation in Greece 'a humanitarian crisis'. According to the UNHCR representative Adrian Edwards, there is a continued absence of a functioning asylum system, which has consequences for the European Union as well:

"The conditions for asylum seekers in Greece, which is among the principal entry points to the EU, are notoriously difficult. Most asylum seekers receive no assistance. Many live on the streets, including women and children. The refugee status determination system does not operate properly and as a result, persons needing international protection are not identified as such. This is a humanitarian crisis situation which should not exist in the European Union (Edwards, 2010, Press briefing)."

The UNHCR is not the only organization that is critical on the Greek asylum situation. According to Amnesty International the authorities do not meet their obligations on European law and international human rights (Amnesty International, 2008, No place for an asylum seeker in Greece, para. 1). Even the European Parliament is concerned about the situation in Greece after all the reports of the press and international organizations as ECRE, UNHCR and Amnesty International. Judith Sargentini, Member of the European Parliament and also Member of the Committee on Civil Liberties, Justice and Home Affairs, went to Greece in December 2010 to observe the situation personally. After her visit she declared that the situation of asylum seekers is "humiliating and intolerable", owing to, among other causes, the Greek government which does not put enough effort in the improvement of seeking a solution for the asylum situation. Beside this, the northern European Member States are also to blame because they would avoid their responsibility towards the southern Member States (Sargentini, 2010, "Omstandigheden asielzoekers in Griekenland").

Greece is not the only southern border state with problems on asylum. In the next paragraph will become clear that Malta also faces problems. While some countries dispose of a well developed asylum system, Malta has become an asylum seeker receiving country more recently and this leads to some problems concerning the implementation of the CEAS.

4.3 Problems implementing CEAS in southern border countries
Analyzing the development of the CEAS, it can be stated that it is not a process without difficulties. Especially the southern Member States face problems with the European norms on asylum. One of the

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debate issues is the Dublin Regulation. According to the Dublin system, the first country of arrival is responsible for examining the asylum application. The consequence of this system is noticeable in the number of asylum applications in the Member States at the external border of the EU. They have to process a lot more applications (relatively) than other Member States, due to their geographical situation. This creates more pressure on these countries, which results in complex situations concerning reception, accommodation and application procedures. The European Parliament wants to make amendments to the Dublin Regulation by adding a 'Solidarity clause'. Northern EU-countries should take in asylum seekers from those countries that claim not to be able to provide appropriate international protection (Vucheva, 2009, MEPs back asylum rules overhaul, para. 7). Southern border countries are positive about the idea of amending the Regulation, however, Northern countries are quite critical and not really excited about the plan, because this clause would mean that the number of asylum seekers in the northern Member States would increase.

A southern border country as Malta, could be helped by the 'Solidarity clause'. In Malta, where only 400,000 inhabitants live, thousands of asylum seekers are stuck, waiting in the detention centers for their application outcome. Due to the Dublin Regulation, asylum seekers are obliged to apply for asylum in Malta. The number of asylum seekers accumulates and the Maltese government faces serious problems to accomplish the European regulation on reception conditions of asylum seekers. Malta has become a prominent European border country after entering the European Union in 2004. So far, the Mediterranean country had been a popular destination for tourists, but since 2004 it has become a popular destination for asylum seekers as well. Malta suddenly had to deal with a high number of asylum seekers and this has been a big challenge for the Maltese authorities. Although asylum and immigration legislation has been introduced, the EU is still concerned with the poor asylum conditions in Malta. According to a UN Working Group that visited Malta in 2009, the conditions in the detention centers are "appalling and detrimental to the health for those confined there". The applications take too long to be processed, some asylum seekers "are still waiting to be interviewed on their applications after six months in Malta" (Sammut, 2009, Immigrants in Malta). The immigrants would have a big influence on the Maltese society, as xenophobia, racism and violation of human rights are increasing.

Another subject that is faced, is the variety in national. In the execution of asylum procedures the national asylum policies of the European Member States differ widely. As in one Member State a refugee has a big change on being granted asylum, in others this chance is almost nil. Eurostat (the EU agency that provides detailed statistics on the EU and its Member States) published in June 2010 a News Report (appendix 1) with the decisions on asylum applications in 2009. The European Member States processed 317,505 applications in 2009, of which they granted 78,820 asylum seekers protection, 24.8% of all the applications. The three largest groups with a positive decision were citizens of Somalia (17.0%), Iraq (16.6%) and Afghanistan (9.0%). Remarkable is the rate of

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recognition in the Member States: e.g. in Malta 65.7% of the applicants were granted protection in first instance, in Greece this recognition rate was only 1.2% (Eurostat, 2010, Asylum decisions in the EU27). According to Eurostat this rate varies due to the differing citizenships of applicants in each Member State.

4.4 Amending national policy according European legislation (Spain)

Implementation of European legislation is a slow process. Once the European Council and Parliament have adopted legislation, it should be implemented in national regulation and this takes time. A regulation is directly binding legislation in the Member States, but in the case of a directive, Member States can decide by themselves in which way they implement the law, the only thing they have to keep to is the time period in which the directive should be implemented – normally a period of two years. As European law is superior to national law, sometimes national law has to be amended. This also happened in Spain relating to national asylum law. In order to correspond with the European legislation on asylum, Spain had to amend its national law.

The new Asylum Law ('Nueva Ley de Asilo') was adopted in October 2009 to correspond to European standards on asylum. The new Law was set up to transpose the important EU Directives on Reception Conditions, Qualification and Asylum Procedures into national legislation. To complete the first and second phase of the CEAS, these Directives should be implemented in national regulation. So far, Spanish asylum legislation was based on article 13 of the Spanish constitution, which recognizes the right to asylum, and the Law on the Right to Asylum and Refugee Status, passed in 1984, and amended in 1994. Besides, important international human right treaties were signed and ratified (eight out of nine core conventions[1]), as well as the 1951 Convention Relating to the Status of Refugees and its Protocol of 1967. All these forms of international protection are included in the new Asylum Law (UNHCR, 2009, Universal Periodic Review – Spain, pp. 1-2).

The new Asylum Law 12/2009 entered into force 20 November 2009 and it governs the right of asylum and subsidiary protection. It consists of six Titles, completed with eight additional provisions, two transitory provisions, one revoked provision and four final provisions. The structure of the Law is as follows:

- ➢ Preamble;
- ➢ Preliminary Title: establishes the objective and aim of the Law;
- ➢ Title I: regulates the conditions of international and subsidiary protection;

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[1] The nine core human rights treaties address economic, social and cultural rights, civil and political rights, the elimination of racial and gender discrimination, protection against torture and forced disappearance and the rights of women, children, migrants and persons with disabilities (CESR, The nine core human rights treaties). The only Convention that Spain have not signed, is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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- ➢ Title II: consists of procedure regulation, divided in six chapters on the application procedure, proceedings procedure, reception conditions, intervention of ACNUR, effects of the resolution and the possibility to apply for asylum at embassies and consulates;
- ➢ Title III: regulates family unity;
- ➢ Title IV: regulates cease and revocation of international protection;
- ➢ Title V: regulates protection of minors and other vulnerable persons;
- ➢ Additional Provisions;
- ➢ Transitory Provisions;
- ➢ Revoked Provision;
- ➢ Final Provisions.

The reform of the 1984 Asylum Law sets minimum reception standards for asylum seekers, defines the beneficiaries of international protection, the procedures for recognition and the content of international protection (UNHCR, 2009, Universal Periodic Review – Spain, p. 2). It improves the protection of women, children, persons with disabilities and people fleeing from persecution of their sexual orientation or gender identity. None of these groups were explicitly recognized in earlier asylum legislation.

       The cooperation with NGOs is also appointed in the 'Nueva Ley de Asilo'. Article 34 and 35 are dedicated to ACNUR and its role in the asylum application procedure. ACNUR must be informed on every application in Spain and will be involved in every stage of the procedure. ACNUR can attend the hearings of the asylum seekers and is able to have contact with the asylum seekers in the detention centers. Moreover, it has to publish reports which will be used during the examination of the application (Boletín Oficial del Estado, 2009, Ley 12/2009, article 34-35). Despite the fact that ACNUR has a voice, it has no right to vote on cases. The Inter-Ministerial Commission for Asylum and Refuge, composed of representatives of the Ministries of Foreign Affairs, Justice, Labor and Immigration, Home Affairs and Equality study the individual asylum applications and decide on the concession or rejection of the application (ACNUR, La protección internacional de los refugiados, para. 3).

       Furthermore, in the additional provisions the basis for a resettlement program has been established. The resettlement program is a protection program for the people who have fled their home countries from persecution, but whose safety cannot be guaranteed in the first country where they were received. In the EU there are ten Member States that 'resettle' refugees, and with the introduction of the new Asylum Law, Spain is the eleventh country that joins in this resettlement program. There is no European obligation for Member States to take part in resettlement, nevertheless, it is stimulated by the EU with the aim of showing solidarity to other Member States and to solve the refugee problem communally.

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Despite the positive aspects and improvements, there are also negative comments on the new Asylum Law. NGOs like Amnesty International and the Spanish Commission for Refugee Aid are not satisfied with the new Law and express several fears. The accessibility to international protection will become more difficult and there is an augmentation of exclusion clauses (Web Islam, 2009, Aprobada definitivamente la nueva ley de asilo). The NGOs fear for a further decrease of asylum applications, while worldwide the number of persons seeking international protection increases. In 2009, just over 3,000 people sought asylum in Spain, a decline of 33% in relation to 2008 and the lowest figure to date (CEAR, 2010, La situación de las personas refugiadas en España, p. 328).

Critics are also concerned regarding the exclusion for EU citizens to request international protection in Spain. The first article of the new Law states that "non-EU nationals and stateless persons may request and enjoy international protection" (Boletín Oficial del Estado, 2009, Ley 12/2009, article 1). This means that nationals of EU Member States are not able to apply for asylum in Spain. According the UNHCR this is contrary to international law:

> "Such dispositions are contrary to the Universal Declaration of Human Rights, article 14 on the right to seek asylum, the 1951 Geneva Convention, article 3 on non-discrimination and its 1967 Protocol, article 1.3 on the lifting of the geographical limitations of the Convention" (UNHCR, 2009, Universal Periodic Review – Spain, p. 4).

Nevertheless, in the European Protocol on Asylum for Nationals of Member States that was signed with the Treaty of Amsterdam, the EU Member States agreed on the principle of mutual confidence and the lack of serious risks for European nationals to be persecuted individually. This would mean that the new Asylum Law is in accordance with European legislation. Even though, the NGOs are disappointed in the exclusion clause and doubt the statement that in Europe there would be no individual persecution for race or sexual orientation (Nueva Ley de Asilo y protección subsidiaria, 2009, para. 6).

By reforming the 1984 Asylum Law, Spain has not only made progress in national legislation, but it has also implemented the EU legislation. By this new Law, the EU Directives on Reception Conditions, Asylum Procedures and Qualification are transposed into national Spanish regulation. The new Asylum Law completed the first phase and part of the second phase of the CEAS, wherein the EU adopted a series of measures on the reception conditions, the asylum procedures and standards for the qualification of refugees.

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Conclusion

In this dissertation the development of the Common European Asylum System in the EU has been investigated and what consequences the introduction has had in the Member States.

It can be stated that the implementation of the CEAS has had a lot of consequences in the Member States. Member States had to implement European legislation on asylum (like the Dublin Regulation, Directives on Reception Conditions, Asylum Procedures, Qualification, etc.). By harmonizing national policies, the European Union is developing a binding asylum system which should be completed in 2012.

The implementation of the CEAS has been a long process. The first official step towards the CEAS was taken in 1999 at the Tampere Council meeting. In the past eleven years, a lot of improvements have been made. Regulations and Directives have been introduced, institutions have been established and the Member States have amended national legislation in accordance with European law. But looking at the current situation, it can be concluded that there are still some problems to solve, before the CEAS can be completed. Obviously, the second phase has not finished yet, so some improvements can still be made. However, there are still obstacles that have to be eliminated before a common well-functioning asylum system can operate that provides asylum seekers the same conditions in every Member State of the EU.

Despite the common set of rules, there are still a lot of differences between the EU countries on asylum. Some countries have a well developed system and have received asylum seekers for many years, others just started to receive asylum seekers and never developed a very detailed asylum policy. This is noticeable in the differences between country's reception conditions, asylum procedures and recognition rate of persons being granted international protection. Looking at southern border countries as Greece and Malta, it is obvious that they need help in order to tackle its asylum seeker problem. The other EU Member States could show more solidarity by helping out Member States that face problems with asylum seekers and applications.

After analyzing the development of the CEAS, it has become clear that the EU has made big progress on asylum over a number of years. The CEAS has not completed yet, but after its completion in 2012, the European Union will dispose of a common asylum system with the same rules, conditions and procedures in every EU Member State. Nonetheless, there are still some complications that need to be eliminated. If the European Union wants to have a binding European mechanism that regulates asylum policy, the existing legislation needs to be strengthened and the solidarity among the Member States will need to increase.

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Appendices

Appendix 1: "Eurostat publication of asylum decisions in the EU27"