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EU asylum law
an advanced introduction

Lilian TSOURDI

European University Institute (EUI)

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Outline

❑ EU asylum policy in context

❑ Human rights issues at play

❑ EU asylum policy: content and administrative governance

❑ Researching EU migration and asylum law: tools and resources

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EU refugee crisis: statistics

☐ **Registered Syrian Refugees:** 4.957.907 (UNHCR: 16 Feb 2017)

☐ **EU (arrivals by sea)**: 1.000.573 in 2015 (UNHCR); 364.000 in 2016 (FRONTEX)

☐ **Dead/missing in Med**: 5,083 persons in 2016 and already 485 persons in 2017 (IOM)

☐ **Asylum applications in the EU28**: 1.26 mil asylum applicants in 2015 (EUROSTAT)

☐ **Registered Syrian refugees in the region**: 2.91 mil in Turkey; 1.01 mil. in Lebanon; 656.170 in Jordan (UNHCR: 16 Feb 2017)

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(¹) 2005–07: EU-27 and extra-EU-27.
(²) 2005–2013: not available.
Source: Eurostat (online data codes: migr_asyctz and migr_asyappctza)

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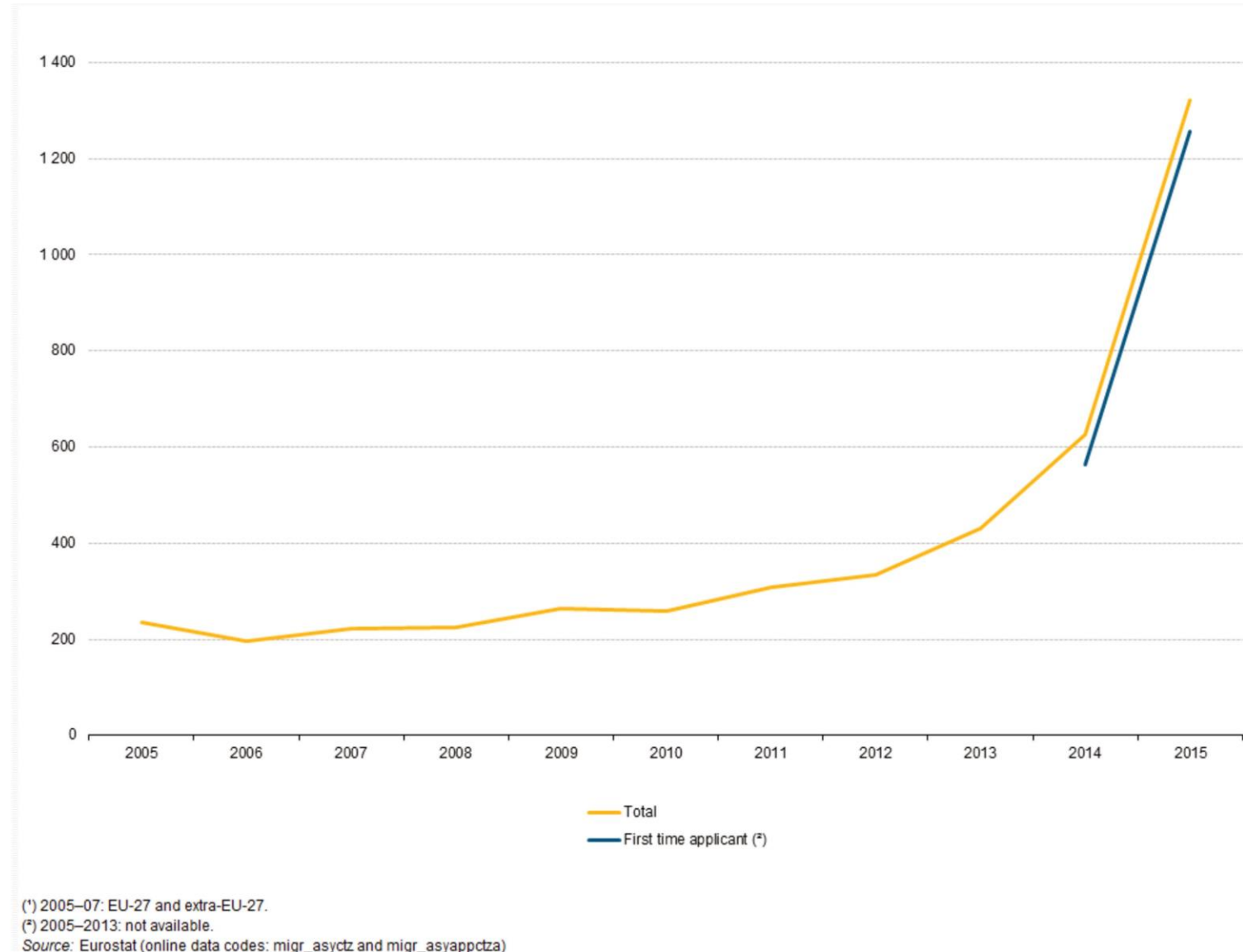
Human rights issues at play

◆ RIGHT TO ASYLUM

-No internationally agreed legal definition

-Right to asylum in the UDHR 1948

-A. Grahl Madsen

'right to live in the territory of the State granting asylum-not permanently but so long as may be necessary in order to escape persecution'

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Human rights issues at play

◆ REFUGEES

-1951 Refugee Convention and 1967 Protocol

-definition of the notion of refugee in Article 1(A)2

'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'

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Human rights issues at play

◆ PRINCIPLE OF NON-REFOULEMENT IN HUMAN RIGHTS LAW

-Prohibition of torture/inhuman or degrading treatment (Article 7 ICCPR; Article 3 ECHR)

-Due to the absolute nature the prohibition contains a *non-refoulement* component

-Absence of a clear framework of rights owed to those who are not to be returned

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EU asylum policy: an overview

❑ What is the CEAS??

➢ No definition per se in the TFEU

➢ Art. 78 § 1 TFEU " a common *policy* on asylum, subsidiary protection and temporary protection"

➢ Art. 78 § 2 TFEU " for the purpose of paragraph 1….shall adopt *measures for a common European asylum system*"

➢ A series of policy documents (Tampere, Hague and Stockholm 'programs', Policy Plan on asylum, recent Ypres Guidelines)

EU asylum policy: an overview

✧ Asylum policy based on 2 stages:
  ✧ **Minimum standards** around 5 instruments:
    ✧ Dublin regulation
    ✧ Reception conditions
    ✧ Qualification (status of refugee + subsidiary protection)
    ✧ Asylum procedures (guarantees and types)
    + Temporary protection

  ✧ **CEAS?** Not only legislative harmonisation but also:
    ✧ Practical cooperation
    ✧ Solidarity and fair-sharing of responsibility
    ✧ External dimension (RPP and resettlement)

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Implementation and responsibility-allocation: initial assumptions

Responsibility to implement	Primarily with each MS (human and financial resources)	Nationally valid determination outcome if positive; integration in same MS	EU-wide valid outcome if negative; return by same MS
Inter-state responsibility-allocation	Dublin as 'directly related flanking measure' to abolition of internal border controls	Only 1 MS responsible but 1 MS to be responsible (however possibility of S3C)	Hierarchy of criteria (mainly state considered 'responsible' for the presence of the asylum seeker)
Responsibility-sharing	Mainly through legal harmonisation (avoiding race to bottom between MS)	Eventual 'people-sharing' only in TPD; no freedom of movement rights	Small scale EU funding (top-up) and indicators based on absolute numbers

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CEAS: a unique regional protection system

☐ Detailed norms in areas that are not covered by the 1951 Refugee Convention, such as asylum procedures

☐ Concrete mechanism to allocate responsibility

☐ Court of Justice of the EU tasked with authoritatively interpreting the common norms

☐ Institutionalisation of practical cooperation efforts, through a dedicated EU agency

☐ Coordination of actions externally; capacity-building in third countries

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Refugee or governance crisis?

- ❑ Potential for uneven distribution of responsibilities without enough measures capable to offset imbalances

- ❑ Same MS charged with protection of external borders and potentially processing applications/providing protection

- ❑ Mixture of disincentives for implementation and inability to implement

- ❑ Several MS almost not 'touched' by asylum issues

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Enter the crisis...

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EU-Turkey agreement: False pretences or a fool's bargain?

EU/TURKEY "**AGREEMENT**" OF 18 MARCH

☐ Every irregular migrant to be returned to Turkey

☐ Resettlement of Syrian refuges 1/1 up to 72.000

☐ 3 bn 'Refugee Facility' for Turkey (1bn EU and 2 bn MS)

☐ Visa liberalisation/enlargement

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EU-Turkey agreement: False pretences or a fool's bargain?

LEGAL PROBLEMS

☐ Turkey as a safe third country (article 38 APD)

☐ Risk of collective expulsion (ECHR, Khlaifia v.

Italy)

☐ Problem with detention in hotspots contrary to

RCD

☐ What about the right to leave?

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Bottom-up salvation? Revamping EASO

❖ Establishment of EASO: but restrained through its budget, mandate and governance structures

❖ Ad-hoc mandate expansion: Hotspots and relocation

❖ More 'operational' role of deployed experts: mixed EASO-FRONTEX teams at border points (registration, identification and fingerprinting)

❖ New legislative framework in Greece adopted in April 2016: exceptions to the normal procedures in case of massive arrivals EASO experts can conduct admissibility interviews

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Voice your opinion !

- ✧ Are there collective responsibilities of Member States? In which areas?

- ✧ Should solidarity be linked with emergency/temporary responses or does the fair-sharing of responsibility point to the necessity of permanent mechanisms?

- ✧ Are you in favour or against more EU centralisation in managing external borders/providing international protection?

- ✧ What alternatives would you propose to the current responsibility allocation system?

- ✧ Do you believe that externalisation is a viable solution?

- ✧ Do we need to establish more legal entry channels, and if so, what would you propose?

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Researching EU migration and asylum law

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Accessing legislation and policy documents

- Central portal for all EU legislation: http://eur-lex.europa.eu/homepage.html

- DH HOME website (policies): https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration_en

- Parliament (LIBE Committee) http://www.europarl.europa.eu/committees/en/libe/home.html

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Accessing case-law

- Court of Justice of the European Union (CJEU)
  http://curia.europa.eu/jcms/jcms/j_6/en/

- European Court of Human Rights (ECtHR)
  http://hudoc.echr.coe.int/eng

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Blogs

➤ EU Immigration and Asylum Law and Policy Blog (Odysseus Academic Network) http://eumigrationlawblog.eu/list-of-articles/

➤ EU Law Analysis http://eulawanalysis.blogspot.it

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Researching EU migration law
think tanks and research centres

➢ Migration Policy Institute (MPI-Europe branch)
http://www.migrationpolicy.org/programs/mpi-europe

➢ Centre for European Policy Studies (CEPS)
https://www.ceps.eu/topics/migration

➢ Migration Policy Centre (MPC-EUI)
http://www.migrationpolicycentre.eu/publications/flagship-publications/

➢ Instituto Affairi Internazionali (IAI)
http://www.iai.it/en/pubblicazioni/lista/all/all

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Thank you for your attention!

liliantsourdi@gmail.com