



EU asylum law an advanced introduction

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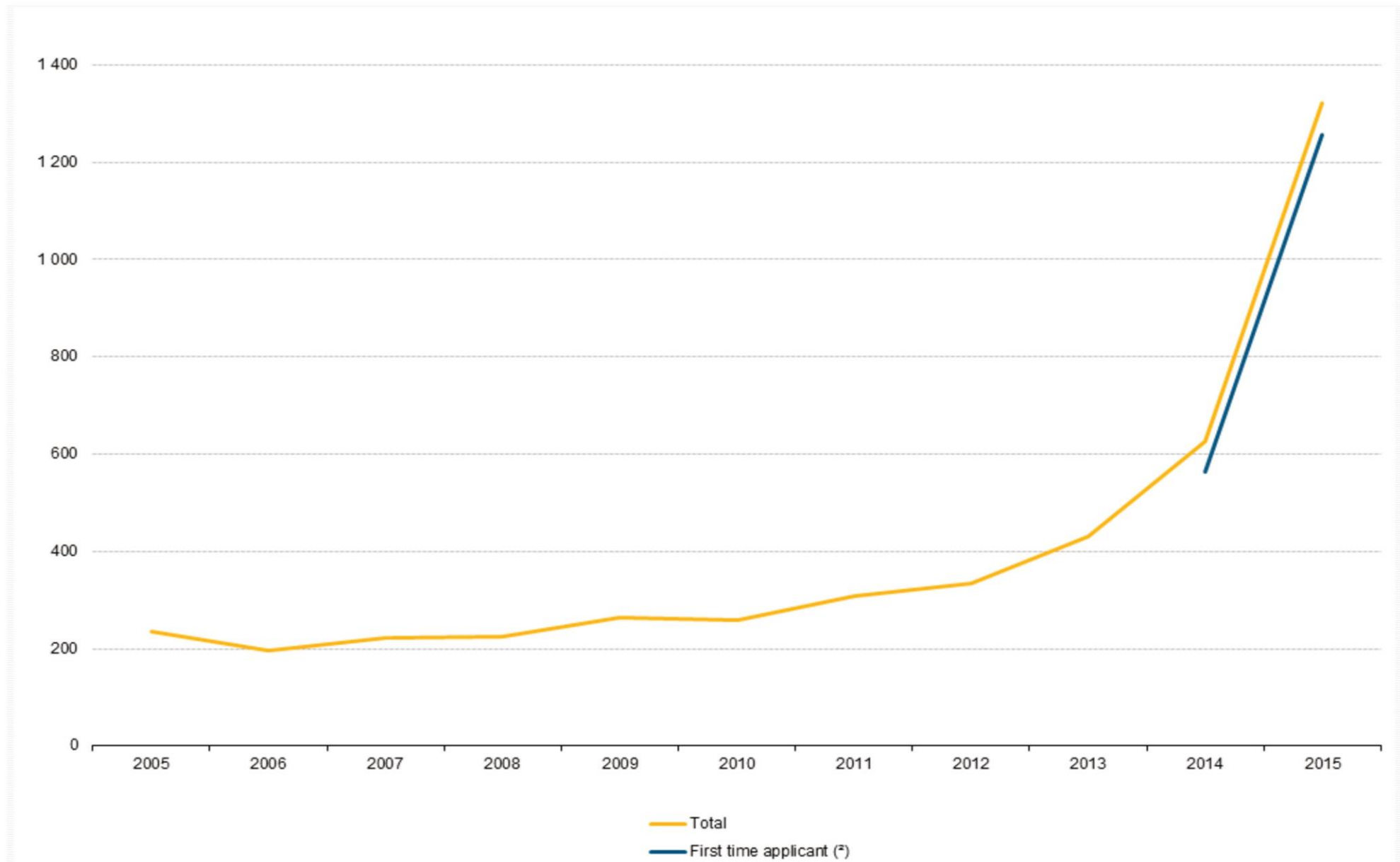
Outline

- 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



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)



(*) 2005–07: EU-27 and extra-EU-27.

(*) 2005–2013: not available.

Source: Eurostat (online data codes: migr_asyctz and migr_asyappctza)



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'



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’



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)



Implementation and responsibility-allocation: initial assumptions

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



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



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...





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 refugees 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



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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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>



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>



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>



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/flags-hip-publications/>
- Istituto Affari Internazionali (IAI)
<http://www.iai.it/en/pubblicazioni/lista/all/all>



Thank you for your attention!

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