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“The Common European Asylum System: Challenges and Opportunities
in Greece. A Case Study.”

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Abstract

This thesis aims to investigate decision-making and policy implementation in the European Union, specifically regarding the Common European Asylum System (CEAS) and to compare how the political intention corresponds to the reality of its implementation, using the example of Greece. Europe's ability to handle migration and refugee flows has been severely tested in recent years due to the large number of people fleeing wars in Central Asia and the Middle East.

The CEAS constitutes a fairly modern endeavor compared to other regional programs concerned with refugee protection but it has not yet made a significant improvement in how refugees are treated. At the same time, Greece has been in an acute socio-economic crisis since at least 2010.

European integration has traditionally been subject to theoretical analysis through Moravcsik's Liberal Intergovernmentalism and various forms of formalism. This thesis has tried to apply Historical Institutionalism to explain certain facets of the CEAS and the recent and on-going 'refugee' crisis. In combination with other theories, Institutionalism can contribute to an understanding of recent forces towards further integration and divergence in the European Union.

Key words: European Union, CEAS, Greece, asylum-seekers, liberal intergovernmentalism, historical institutionalism, neofunctionalism, refugee crisis

Word Count: 24,996.

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List of Abbreviations

AMIF Asylum Migration and Integration Fund

BC Border Control

CEAS Common European Asylum System

EASO European Asylum Support Office

ECHR European Convention of Human Rights

ECJ European Court of Justice

ECRE European Council on Refugees and Exiles

ECtHR European Court of Human Rights

EEC European Economic Community

ERF European Refugee Fund

EU European Union

HI Historical Institutionalism

LI Liberal Intergovernmentalism

NGO Non-governmental organization

TEC Treaty Establishing the European Community

TEU Treaty on European Union

SEA Single European Act

UNHCR United High Commissioner for Refugees

I. Introduction

Any person who feels persecuted or threatened has the right to request asylum. This is a concept that has come down to us from ancient times, when it was associated with the notion of sanctuary, as Thucydides writes that seeking refuge in a temple offered sacred protection in ancient Greece and everlasting shame accrued to those who violated such asylum (Thucydides and Finley, 1972). There are well over two thousand years separating Thucydides from today, but there is an undeniable thread of connection between the issues he described arising out of conflict of his time and today. The world may have undergone drastic changes since antiquity, yet, in many societies the concept of an asylum-seeker is still being refined and debated. Moreover, since the end of WWII, the right to asylum has depended on a country's willingness to provide asylum status, according to its legal system. Thus, to a large extent, the granting of asylum is a political game, one that affects and is affected by International/European relations.

People who request asylum are defined as asylum-seekers; having had to flee their homeland, they seek sanctuary in another country. However, even for those that do manage to reach a safer place, the ordeal is far from over. They must struggle with bureaucracies, often in crowded and unsanitary conditions, as they wait for their applications to be processed. With the Middle East, Afghanistan and other countries in turmoil since the events of September 11, 2001, the subsequent US-led invasions of Afghanistan and Iraq, and the aftermath of the Arab Spring, a large number of people fleeing war have sought asylum in Europe, hoping not just for a better life economically but for a life without threats to their well-being.

Meanwhile, Europe already faces numerous internal problems, such as financial crises in some of its Member States or the question of Brexit. The presence of so many asylum-seekers poses an additional challenge as it has affected the internal politics of many Member States, fueling the rise of right-wing parties.

This thesis aims to investigate decision-making and policy implementation in the European Union, specifically regarding the Common European Asylum System (CEAS) and to compare how the political intention corresponds to the reality of its implementation, using the example of Greece. Europe's ability to handle migration and refugee flows has been severely tested in recent years due to the large number of people

fleeing wars in Central Asia and the Middle East. The CEAS constitutes a fairly modern endeavor compared to other regional programs concerned with refugee protection but it has not yet made a significant improvement in how refugees are treated. At the same time, Greece has been in an acute socio-economic crisis since at least 2010, which has left many people unemployed and facing a bleak future. As a result, many Greeks are themselves forced to migrate to other countries in the European Union and beyond.

Moreover, according to the United Nations High Commissioner for Refugees, Greece is the main entry point for immigrants. “The latest figures compiled by UNHCR show the number of sea arrivals from 1 January to 14 August 2015 to be 158,456. During the same period, 1,716 refugees and migrants entered Greece through its land border with Turkey, bringing the total number of arrivals (sea and land) to 160,172” (Spindler, 2015). Examining this data, the first conclusion reached is that responsibilities for the refugees are unequally shared among EU countries. The solidarity principle of the European Union is not being upheld.

The entire EU system for dealing with migrants and asylum-seekers is functioning poorly and requires thorough reform, especially the Common European Asylum System. However, this statement requires an understanding of what the CEAS is, how it was created, how it has actually functioned under crisis. This thesis will examine these questions and try to answer them using both recent theoretical approaches and empirical findings.

1.1. Research Problem and Questions

The main questions that this paper explores are: What is the Common European Asylum System? What are its historical roots? Why is it functioning the way it is and why has it contributed so little to the mitigation of Europe’s refugee and migration problems? How can the theoretical approaches of Liberal Intergovernmentalism and Historical Institutionalism explain the functioning, or lack thereof, of the CEAS? Although these theories have been traditionally viewed as mutually exclusive and more suitable for integration analysis, recent research has applied Liberal Intergovernmentalism and Neofunctionalism to this issue with interesting results. This approach is similar to Historical Institutionalism. Indeed, some recent papers that

focused on Neofunctionalist analysis of the European response to the ‘refugee crisis’ found it necessary to invoke the influence of various institutions, further supporting this relatively novel choice of theoretical tool.

This paper will then examine the example of Greece and will particularly try to answer the following questions: To what extent has the EU been effective in dealing with the refugee crisis in Greece? How has Greece itself dealt so far with the refugee crisis? To what extent does the situation in Greece reflect the challenges faced by Brussels and to what extent does it contribute to them, keeping in mind the connection between domestic politics in the Member States and international politics at the European Union level? How do the answers to these questions fit the theoretical basis developed in the first part?

1.2 Aim, research and methodology

1.2.1 Research design, a qualitative approach

By gathering existing, secondary data from different sources this essay will try to provide answers using a qualitative method based on the literature and the chosen case study of Greece. This qualitative approach, as discussed by Alan Bryman, depends “more on words instead of numbers and becomes useful when examining research complications that are complex and include multiple sides” (Bryman, 2012, p.380). This qualitative method is, to a large extent, concerned with processes and the historical development of the subject matter. This is primarily an inductive approach though some deductive processes are also used.

1.2.2 Material and Methodology

One of the main resources is the book, *Reforming the Common European Asylum System*, edited by Vincent Chetail, Philippe De Bruycker, and Francesco Maiani (2016). Another resource is the European Union Agency for Fundamental Rights (FRA) and the reports of the European Council. Also central to this thesis was a Special Issue published by the *Journal of Common Market Studies* in January 2018 which examined

many of the theoretical and empirical implications discussed here, providing a concentrated reference to the latest research and theoretical developments in the field.

The approach adopted in this thesis is that of a qualitative comparative analysis based on two theories with opposing emphases, which is then applied to a case study. The main contrasting theories are Liberal Intergovernmentalism (LI) and Historical Institutionalism (HI). The primary works consulted for these two theories are Michelle Cini's article in *European Union Politics and Institutional Theory* by Jönsson & Tallberg, though other works were also consulted.

The results of the qualitative comparative analysis will then be applied to a single case study, that of Greece, in order to test the ability of the theoretical approaches to explain the reality on the ground as experienced by that country. Jupille et al. (2003, p.19) called this approach "competitive testing". This methodological approach aims to juxtapose the two approaches so as to highlight the commonalities and differences between them.

Input to a study field rests on the methodology and the design of the research used by its creator. Selecting the proper research methods obliges one to focus on the end result of the work. In this paper the main goal of the investigation is to examine all aspects of the Common European Asylum System and to discover the extent to which this system is unbiased and efficient.

This research aim makes it essential to explore the all-inclusive laws enshrined in the European Union's governance and its control over the diverse elements of international and national migration. To achieve this, I have attempted to provide a combination of qualitative and comparative analyses of theoretical approaches supplemented by the use of a case study. The two frameworks will be discussed in detail, questioned, explored and evaluated.

1.3 Theoretical considerations

In the same way that the natural sciences seek to understand and explain the world through observation, hypothesis, experiment, leading eventually to theory, so too the human sciences, including political science, aspire to develop theories that help make the world a more understandable place. However, the social sciences generally cannot run experiments and are limited to observation and the experiments that occur naturally. Political scientists develop theories and then test their predictive and explanatory powers against events in the political arena. International relations theories focus on “actors, structures, institutions, processes and particular episodes mainly, but not only, in the contemporary world” (Burchill, 2013, p.15). The employment of different theories implies that different results may be reached. The analysis of different forms of international policies should be accompanied by reflection so that one can learn from their mistakes, in order to shape the world into a better place.

Realism is an influential theory which continues to dominate the debate among International Relations scholars, as it is one of the oldest theories, if not the oldest. However, empirical theories can only do so much on their own. As Martin Wight quotes, “the truth about international relations will not be found in any one of the traditions but in the continuing dialogue and debate between them” (Burchill, 2013, p. 28); humanity is on a constant journey. “Political realism is a tradition of analysis that stresses the imperatives states employ to pursue a power politics of national interest” (Burchill, 2013, p. 29). There are different versions of realism but they all have in common the idea of the limitations on politics created by human selfishness and anarchy, given the absence of an international government. The model of International Relations today is the result of the actions of the different nations and states that have come together to form some kind of union, in order to avoid war and anarchy. The way in which egoism creates limitations is one of the explanations of why realism works, i.e. self-interest is not always harmful to others. Realism can be used to explain everything and is used in this paper as a simplifying principle.

Unfortunately, realism explains only few important concepts, and it fails to explain most of International Relations as it centers on anarchy, self-interest and the supply of skills that can explain only some aspects of International Relations. The rise of liberalism after the Cold War emphasized the importance of democracy and human rights. It can also explain the “influence in economics; specifically, the interdependency

theory, liberal institutionalism, and globalization impacts of non-state terrorism which contributes to international relations” (Burchill, 2013, p. 55).

To conclude, in order to get a better picture of International Relations, realism and liberalism must be considered as a starting point for theory analysis but it is best done in combination with additional theories, such as Liberal Intergovernmentalism and Historical Institutionalism. In order to explain and provide a balanced account of advantages and disadvantages of the CEAS and the example of Greece, realism and liberalism are considered, particularly with regard to the role they play in Intergovernmentalism and Historical Institutionalism. Essentially, the latter are extensions of those two basic theories and would have never been created without the above two theories.

1.3.1 Liberal Intergovernmentalism

Andrew Moravcsik was the first to introduce the theory of Liberal Intergovernmentalism in *The Choice for Europe* in 1998 (Cini, 2017). It represents a step forward from Intergovernmentalism, which highlights the part the state plays in integration. One of its main implications is that the state is not in danger of becoming outdated because of European integration.

Liberal Intergovernmentalism was the prevailing theory of European integration during the 1990s. A similar theory was that of Alan Milward who claimed that the governments of the states were the main players in the creation of European integration, and instead of being damaged by it, as some of their authority was relinquished to the EU, they instead grew stronger in the process (Cini, 2017).

The reason for this is that in some policy areas, it is in the states’ interest to pool sovereignty. Intergovernmentalists maintain that they can pinpoint times of radical adjustment in the EU, as when the benefits of states’ governments collapse and they have common aims, and phases of slower integration as when the governments’ desires differ and they cannot come to an agreement (Cini, 2017).

Proponents of Intergovernmentalism give emphasis to the position of state governments and the negotiations between them in the integration process. Similarly, Liberal Intergovernmentalists stress the role of national governments as the strategic players in the progress of integration. Nevertheless, the theory also includes the liberal ideal of choice foundation, in which governments have a solid idea of what their choices are and a desire to achieve them when negotiating with other states.

Liberal Intergovernmentalists argue that the negotiating authority of states is vital in the quest for integration, in the process of creating agreements. During this process deals and side benefits occur between nations. They also regard institutions as a means of making trustworthy guarantees for governments, a form of insurance that the governments that they negotiate with will be on their side. Additionally, Liberal Intergovernmentalists expect supranational institutions to have less importance in the integration process (Cini, 2017).

Robert Putnam said that international and domestic politics is like a two-level game engaged in by states. The first game is concerned with how states define their “policy preferences (or national interest)” (Cini, 2017, p.96) at their country’s borders, inside their national environment. The second game takes place on the “international stage and involves the striking of inter-state bargains” (Cini, 2017, p.96). National leaders such as politicians play on two boards at the same time and that is Putnam’s core point. Inside their country’s borders (national) they aim to gain support from among national groups. On the other hand, on the international board, the same people aim to bargain so that they can enrich their positions on the national level by meeting the demands of important domestic supporters. All Putnam’s work on the subject was intended to create a framework for analyzing the myriad tangles between the domestic and international interfaces.

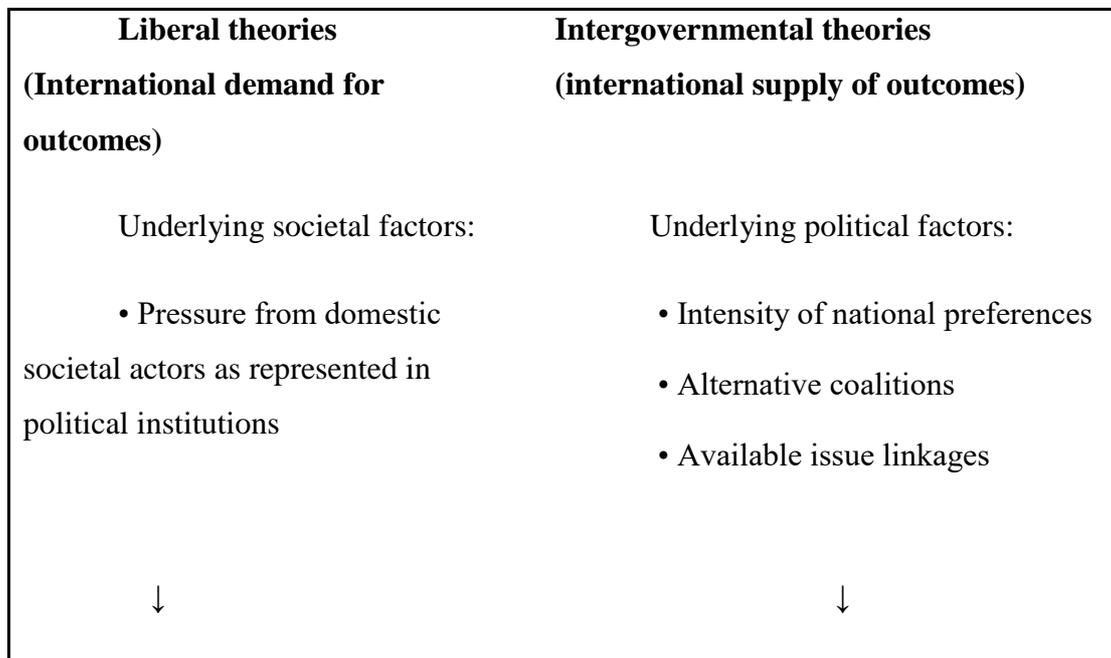
This is a start leading to the understanding of Moravcsik’s concept of Liberal Intergovernmentalism. Andrew Moravcsik's theory offers a theoretical approach which possesses both neo-liberal and realist elements. It aims directly at both the domestic and international politics of a state (Cini, 2017).

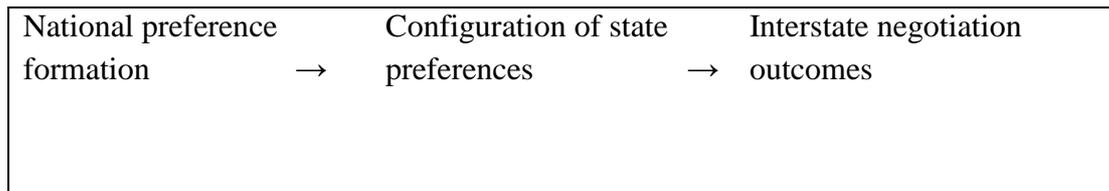
The European Union is recognized as an intergovernmental system created to accomplish financial interdependence by negotiating policy management.

Theoretically, politicians argue for solutions that will benefit their own state (though this is not always true), solutions that represent national policy preferences. All decisions taken by the EU are the results of negotiations among states. Agreements are often arrived at on the basis of the lowest-common-denominator. This places limits on the allocation of sovereignty to international actors. According to Moravcsik, European integration represents three issues: “arrangements of commercial gains, the relative negotiating power of stronger governments, and reasons to improve the authority of national commitment” (Cini, 2017, p.97). Integration occurs when there is an overlap of commercial and financial interests.

As in every basic economic theory it is a question of supply and demand. Liberal Intergovernmentalism shares this position. “The idea is both that the demand stands for cooperation, which develops from the national body politic, and that the supply stands for integration, which arises from international state negotiations, which are essential to understand European integration. We can understand the theory on three levels: power, financial interests and reliable commitments” (Cini, 2017, p.89).

“Figure 6.1. The liberal intergovernmentalist framework of analysis” (Cini, 2017, p.97).





Starting with national preference formation, and using a national politics approach, Moravcsik maintains that a country’s aims can be formed by internal forces and exchanges which are often conditioned by the limitations, interests and opportunities that come from financial interdependence (Cini, 2017).

Therefore, Moravcsik focuses on and highlights societal aspects that intensify an international demand for collaboration. Domestic political institutions are involved in countless collaborations from nationally-based groups, which create preferential development. National state policies are shaped by national-state bargaining, as factions contend with one another for the position of administrative leadership and provide motivations as to which strategy to use. In other words, policy questions at a domestic level are determined by the benefits accruing to the (usually financially) strongest factions within a society.

On the pluralistic level of national-society affairs, domestic governments are the ones that embody these policies in international settings. Consequently, Moravcsik views domestic interests as resulting from the national politics of the European Member States and not the “sovereign state's perception of its relative position in the states system” (Cini, 2017, p.98) concerning geopolitical matters.

Moving on, the supply-side aspect of Liberal Intergovernmentalism derives from intergovernmentalist theories of relations among states. European integration is thus a consequence of bargaining among governments, changes to treaties being a prime example (Cini, 2017). This aspect of Liberal Intergovernmentalism relies on theories of bargaining/negotiation as a basis for arguing that relative power between countries is formed most of all by irregular interdependence, which governs the relative value of arrangements to diverse administrations (Cini, 2017). This leads to the theory’s emphasis on the importance of strategic negotiating among countries and governmental administrators in domestic-state affairs.

At this point, countries are thought of as singular players, and universal institutions are thought to have a very slight effect on outcomes. In other words, the theory can be applied to the European Council. This is the result of a two-step process. The first step is that governments should fix the policy problems that challenge them, taking decisions to that end; the second is that they should try to formulate agreements on institutional mechanisms which will have the power to implement those decisions.

The way that states engage in inter-state decision making is crucial. Approaches and strategies, “coalitional alternatives to agreement” (Cini, 2017, p.98), have the ability to shape results. A negotiating window is created from the agreement on more than one mutually beneficial decision, with the concluding arrangements apportioning the wins and losses. This limits the number of integration possibilities. Even so, Moravcsik believes that national state negotiations can sometimes point towards positive results. This encourages the governments involved to work harder to gain a more advantageous position. The power of the state plays a large part in influencing which interests take precedence. This is why Moravcsik concentrates mostly on the preferences of the major EU states, such as Germany.

The third component of Liberal Intergovernmentalism is the “institutional.” The argument is that European institutions are established to promote the effectiveness of national state negotiations. “Thus, the European Institutions create linkages and compromises across issues, where decisions have been made under conditions of uncertainty, and where non-compliance would be a temptation” (Cini, 2017, p.98).

This shows the influence of Keohane’s view on the role of emphasizing the common interests between states in order to make deals. He sees no evidence that international institutions affect the results of decisions in directions antithetical to the interests of member states. Moravcsik, however, believes that all the above renders the efforts of high officials futile and counterproductive (Cini, 2017, p.98).

To conclude, these three steps, taken together, can bring about such integration commitments as a treaty change. Applying the theory to real cases of past European integration efforts, Moravcsik discovered three things: First, that the principal decisions made towards European integration were a mirror image of the preferences of the national governments and not of international ones. Second, he found that these

national preferences were derived from an equilibrium of national financial interests, and not from any political bias of representatives or domestic security issues. Third, the results reveal the relative negotiating power of the countries involved, and the allocation of authority to international institutions revealed the desire of governments to guarantee that promises given would be kept. He therefore argues that “European integration can best be explained as a series of rational choices made by national leaders” (Cini, 2017, p.99).

1.3.2 Institutional Theory and Historical Institutionalism

A contrasting set of theories to *Intergovernmentalism* of all kinds and particularly to *Liberal Intergovernmentalism*, is *Institutional Theory*. In general, *institutionalism* takes the view that institutions matter, both at the domestic level and at the international level. Simply put, a nation’s membership in the African Union or NATO or the Eurozone matters. One mechanism for this is that institutions create constituencies which then apply pressure domestically on behalf of the institution. Another mechanism is historical, while yet another is normative.

One of the primary institutions of international relations is *sovereignty* itself, which can be defined as institutionalized claims of authority (Jönsson and Tallberg, 2001, p.7). Rational choice institutionalism makes the distinction between various types of sovereignty: Domestic, interdependence, international legal, and Westphalian. The first refers to state authority within its borders and the second to the capability of the state to regulate the flow of people, commodities, concepts, and cash. The third connotes the recognition status of a state while the fourth relates to the absence of external influences on internal power structures (Jönsson and Tallberg, 2001, p.8). All of these various types of sovereignty come into play in the European Union and in the operation of the Common European Asylum System.

Another branch of Institutional Theory is *historical institutionalism*, which is in many respects similar to Neofunctionalism. The institutions of the international landscape have been establishing themselves for more than three centuries, with radical changes occurring within the last century. The legally absolute notion of sovereignty is relatively recent. Before the 19th century, privateers were legitimate and the East India

Company could sign treaties or make war, examples of behavior that would not countenanced in the modern era. Diplomats were a bit like football stars today, they could move from country to country without their loyalty being questioned by their new employers. The final dominance of nationalism, which triumphed in the 19th and 20th centuries made the sovereign nation-state the foundation of legitimacy in the international order.

In recent decades and especially since the end of the cold war, the tendency has been for democracy to supplant nationalism as the primary force for institutionalism. The League of Nations was one of the first efforts based on the notions of self-determination and of democracy. Since then, the United Nations, the various regional supranational institutions, and particularly, the European Union are culminations of this tendency towards the establishment and growth of international institutions.

The third branch of institutional theory is *normative institutionalism*, which is similar to constructivist theory. It posits that the state and the sovereignty combine to create institutionalism. We also talk of international regimes as institutions, indeed as *international institutionalism*. One of the fundamental areas of agreement between realist theories based on perceptions of power and neoliberal theories based on calculations of interest, is a commitment to a rationalist view of “states as self-interested, goal-seeking actors” (Jönsson and Tallberg, 2001, p.11). The two theories differ in that the former views states as self-centered rationalists, with no regard for others, while the latter regards the motivation for states as primarily positional and centered on their perception of relative power. In both cases, states assign value to institutions and regimes as that facilitates bargaining. Normative institutionalism, however, critiques these views and holds that regimes and membership in supranational institutions provides states with meaningful identities.

The most famous and special international institution/regime is, of course, the European Union. The EU is not a federal state, at least not yet; however, it is the most institutionalized international organization to be created thus far. Membership in the EU changes the nature of those states that become members, and seems likely to impose changes on any country which becomes an ex-member, as Britain seems likely to as of this writing. The existence of EU laws and courts provides individuals and

organizations within the EU with an extra layer of recourse against both each other and their own governments.

As Jönsson and Tallberg (2001, p.15) point out, the EU is possibly best understood as a *process*, a work in progress, deepening its institutionalization all the time, while still remaining a subject for institutional analysis. Most scholarship on the EU has been either intergovernmental or neofunctionalist, with institutional analysis being a fairly recent third way of looking at the European integration process. Rational choice institutionalism and intergovernmentalism are related, although they reach different conclusions, while neofunctionalism has correspondences with historical and normative institutionalism (Jönsson and Tallberg, 2001, p.16).

This paper will pay particular attention to historical institutionalism. One of the main distinguishing tenets of this strand of institutionalism is that it does not grant member-states and their representatives the omniscience to foresee and comprehend the consequences of everything they agree to. Instead, their very human inability to precisely foresee what their consent to various reforms and policies entails, can lead to unexpected and possibly even unwanted fundamental transformations of their positions and intentions. An aspect that this strand of the theory shares with neofunctionalism is the importance of path dependency, which can lead to policies that outlast their usefulness yet are resistant to reform. Four factors can be said to contribute to the loss of control by member states: pan-European institutions such as the Commission and the European Court of Justice, which have their own agenda and processes, including legal recourse, which can often reach within the nation state; the fact that national politicians often think on timescales that discount the consequences of their decision; the vast scope of EU activities and their interconnectedness, rendering outcomes difficult to predict; and last, changing governments or policies due to political learning curves, can lead to divergences between the policies pursued and those originally intended (Jönsson and Tallberg, 2001, p.18). Moreover, institutional theories contain mechanisms that can explain divergent outcomes as well as convergent or integrative ones. According to Martin and Simmons (Martin and Simmons, 1998, p.755) liberal countries are more likely to establish liberal supranational institutions and “liberal institutions will change the behavior of liberal states but not illiberal ones, leading to divergence of state behavior.” An analysis based on historical institutionalism can

integrate some of the most salient aspects of neofunctionalism while allowing a deeper and broader basis for the limits on national control of supranational bodies and European integration.

1.4 Limitations

Friedrich Kratochwil explains that “data should be understood as fact and concepts, not as facts,” (Kratochwil, 2008) and being Greek, I may be affected by unconscious bias even when I believe I am being objective. I have to ensure that my questions are not biased questions in order to achieve a balanced ontological perspective of my aim.

Critiques of Liberal Intergovernmentalism:

Liberal Intergovernmentalism is without question a useful theory to employ when organizing data or creating empirical studies. Like any other theory, it does possess some flaws, and some relate to models that attempt to clarify the progress of European integration.

According to Neill Nugent (Cini, 2017, p.100), a political professor who writes mostly about the European Union, Liberal Intergovernmentalism has an uncompromising framework which makes it incompatible with alternative theories of European Union politics and integration. The most common criticism of Liberal Intergovernmentalism is that it does not match the data. This conclusion is derived from empirical analyses and specific case studies on the policies of the European Union.

According to Nugent, Liberal Intergovernmentalism is too selective in its empirical positions when it seeks to establish legitimacy for the structure of the European Union (Cini, 2017). It seems to be selectively applied only to cases that will prove the theory to be correct. Using the theory to examine instances of intergovernmental cooperation, where financial integration is the primary focus and where decisions were taken by a unanimous vote by the Council, will almost always demonstrate Moravcsik’s assumptions.

Yet, in more difficult cases, where international discussions are not the main decision-making process, and where the majority vote applies, Liberal Intergovernmentalism will not lead to such clear-cut results as Moravcsik presumes. Liberal Intergovernmentalism is said to not be the best theory to explain how the European Union works in the sense of everyday politics.

Another common criticism is that Moravcsik has a very narrow idea of what the state is. Liberal Intergovernmentalists either tend not to concentrate on what constitutes a state, or they break it down into its component parts. A more focused analysis is needed for a true understanding of a government's preferences or positions during negotiations.

In the liberal view, too much emphasis is placed on the financial and economic preferences of a government, whereas others argue that there are many more factors that influence a government's behavior. This criticism makes the two-level game metaphor look more like a children's game since it does not reflect the European Union's everyday politics, and since there are many more than just two levels of polity. It is in fact a multi-level polity.

Another famous and important critique of this theory is that it undervalues the limitations confronted by important policy makers. To support this idea, the single market case is often cited. This is not as simple as it sounds, as there are several aspects to this criticism. The first step is that Moravcsik's supply model concentrates on domestic bargains, ignoring in a sense the effects of international players in the European assimilation.

The role of the European Commission, for example, is considered quite irrelevant as far as policy-making is concerned, since its strategy and composition do not concur with Moravcsik's ideas. The possible influence of international institutions on international results has been tested by several newer theories, which arrive at conclusions very different to Moravcsik's.

Another criticism comes from Wincott who claims that Liberal Intergovernmentalism is not truly a theory as it does not state the conditions under which it would not actually work, or fit (Cini, 2017, p.101). Wincott believes that Liberal Intergovernmentalism is only relevant to some specific types of disputes around

European integration, and should just be considered an approach to European integration and nothing more. Moravcsik however rejects all the above criticisms. He maintains that it assists in the development of preferences, intergovernmental negotiating, and institutional allocations by providing a theoretical framework which can be used in furthering European integration.

In conclusion, Andrew Moravcsik's ideas provide the foundation for the intergovernmentalist view in a way that marries Intergovernmentalism with neo-liberalism. In general, as a theory it has been proven to be adaptable to new challenges and new ideas facing the integration process.

Critiques of Institutional Theory:

Some of the limitations associated with institutional theory are that while it has evolved over the years, nevertheless it is not perfect as there are some problems that concern both the theory and its implementation. B. Guy Peters (2000) argues that one of the problems is properly defining the nature of contemporary institutional theory, which has several strands. Peters discusses four primary approaches to the application of Institutional Theory: the normative approach, the rational theory version, historical institutionalism, and empirical institutionalism. He finds that there is considerable overlap between them and that while there is enough of a core to the theory for it to be useful, it still suffers to a certain extent from potential conceptual confusion.

Apart from the question of what institutions actually are, that is, what counts as an institution, the other important issue is the matter of change in institutions. There are two aspects to this topic, which are of great significance to the theory. One is the degree of difficulty in effecting change in institutions and the other is the means of change. The various strands of institutional theory handle these questions in quite different ways. Advocates of the rational choice strand view institutions as being quite responsive to shifts in incentives, allowing fairly easy reprogramming, whereas historical institutionalists take it as axiomatic that change is difficult and that the law of unintended consequences is powerful and pervasive. Thus, these two strands contradict each other, with the first believing in the possibility of institutional design while the second finds the idea of institutional design to be a virtual non sequitur. The other strands that Peters examines are between these two versions in terms of how

controllable institutional change is, with the empiricists neglecting the subject while advocates of the normative approach view institutional change as quite challenging due to the need to alter entrenched values. However, this diversity can also be seen as a strength as the various strands can be used “as a set of lenses to illuminate different aspects of political structures and political behavior” (Peters, 2000, p.6).

He also identifies some vital empirical problems, such as the so-called ‘measurement problem’ and the difficulty in determining the differences between institutions. What counts as an institution and how to meaningfully measure it in a way that allows comparisons between them is a problem that is only beginning to be answered. However, he maintains that even in the absence of fully coherent theoretical foundation, it is worthwhile to begin measuring institutions in various forms in order to provide further evidence for the theories.

Peters (2000, p.14) arrives at the conclusion that the Institutional Theory can be useful, to a certain extent, as an analytical tool in explaining a number of political phenomena. Institutions do affect individual behavior and they do limit political volatility, thereby making predictions easier. Thus, the theory can be useful but for the time being it should not be relied on as a complete analytical framework. However, in conjunction with other theories, such as Liberal Intergovernmentalism, Institutional Theory can begin to provide a solid analytical foundation.

1.5 Literature Review

The literature on the intersection of Liberal Intergovernmentalism, Institutional Theories and the Common European Asylum System is not enormously extensive. This is not surprising as the CEAS is relatively new, having been officially founded in 1999 and fully established only since 2005. However, the *Journal of Common Market Studies* published a Special Issue in January 2018 titled “EU Refugee Policies and Politics in Times of Crisis,” which significantly expanded the scholarship in the field, at least regarding Liberal Intergovernmentalism and the CEAS.

In her paper, “Theoretical framing to address the question of the Common European Asylum System in an Enlarged European Union”, Jolan Nisbet (2014)

examines the role of Liberal Intergovernmentalism and applies it to the interaction between Central European elites and the CEAS. She notes that among its limitations, LI underestimates the importance of institutions such as the European Commission and the European Court of Justice. However, she also stresses the significance of the rise of right-wing politics in the relatively new Central European Member States, which have strengthened the anti-integrationist pressures at work, at least as regards the CEAS. An important point here is the weakness of domestic institutions in the new Central European Member States, which limit the ability of civil society to create alliances with their counterparts in the EU.

Georgia Patrascu (2016), in her paper “The Common European Asylum System and the 2015 European refugee crisis”, examines the role of Liberal Intergovernmentalism in forming the CEAS. She then applies securitization theory to the actual implementation of the CEAS and concludes that security issues, which came to include the issues of migration and the handling of refugees after the events of September 11, 2001 and the Arab Spring, have overwhelmed the cooperative influences at work in the framework of the EU. Notably, she finds a portion of this securitization attributable to media reports of foreign fighters infiltrating Europe along with the refugees and irregular migrants. Thus, Liberal Intergovernmentalism is seen as being able to explain inter-state cooperation only in relatively benign political environments.

In her paper, “The Implementation of Common European Asylum Policy in Spain: A lesson in intergovernmental politics”, Sophie Stramm (2014) examines the implementation of the CEAS in Spain in the first part of this decade. She outlines the conflict between Intergovernmentalism and other theories that are close to Historical Institutionalism, such as Neofunctionalism, and finds that Intergovernmentalism better explains the evolution of European asylum policy. Specifically, she notes that the successful implementation of the CEAS has been undermined by intergovernmentalism. Stramm also finds that the media and right-wing parties have taken advantage of the conflation between immigration and security to place a check on further integration in the EU, particularly regarding the CEAS but also spilling over into other sectors.

Takis Pappas (2014) in his book *Populism and Crisis Politics in Greece*, discusses the development of institutions in Greece over the past half-century and the

very special case that the country represents. He argues that Greece is highly resistant to reform and more susceptible to left-wing than right-wing populism, as well as being governed by an elite that tried to minimize the growth of liberal institutions (Pappas, 2014, 6).

Anna Mratschkowski (2017), explores the institutional dynamics of the CEAS and its implementation in the book she edited, *Asylum Related Organizations in Europe*. To a large extent the book focuses on the theory of neo-institutionalism, which deals with the way that new institutions emerge, how they interact with other institutions and how they affect their surroundings. Some of the main findings reported in the book deal with the pressures institutions face which lead to a divergence between their officially stated goals and the actual implementation, the so-called talk-action gap, which is a primary feature of the performance of the CEAS in the on-going asylum crisis.

For the purposes of this thesis, the most important papers in the Special Issue of the *Journal of Common Market Studies* were “A Neofunctionalist Perspective on the ‘European Refugee Crisis’: The Case of the European Border and Coast Guard” by Arne Niemann and Johanna Speyer, and “States as Gatekeepers in EU Asylum Politics: Explaining the Non-adoption of a Refugee Quota System” by Natascha Zaun.

Niemann and Spayer examine the effects of the ‘European Refugee Crisis’ on the case of the European Border and Coast Guard (EBCG) from the Neofunctionalist perspective. They find that the Neofunctionalist theory can indeed help explain the establishment of the EBCG, and, importantly for Institutional Theory, particularly Historical Institutionalism, they find that “supranational agency, ‘socialized’ national civil servants, transnational NGOs and European business associations” (Niemann and Speyer, 2018, p.1) supported deeper integration to a significant extent.

Natascha Zaun (2018) builds on Moravcsik’s Liberal Intergovernmentalism to provide a rationale for the failure to adopt refugee quotas on a permanent basis. The existence of unequal stresses and asymmetrical interdependence is one of the primary causes of the asylum crisis, allowing local (national) politics, especially those practiced by right-wing populists, to influence EU level decisions.

Thus, a common refrain throughout this literature is the tension between the forces for integration, often acting through institutions and the normative influences they have on the political environment and international relations, and the forces which can oppose further integration and burden sharing, often by affecting national politics and influencing the behavior of governments, which in turn place limits at the European level. This tension can therefore be analyzed through the theoretical lenses of Liberal Intergovernmentalism and Historical Institutionalism.

II. CEAS

After the Second World War, which produced unprecedented refugee flows, the United Nations adopted the 1951 Refugee Convention, which granted certain minimal human rights to refugees and obliged states that were party to the convention to treat refugees in a more benign way. However, the 1951 Convention was limited in its application both in time and in place. These limitations lasted until the adoption of the 1967 Protocol made the Convention universal. As EU Member States are signatories to both the Convention and the Protocol, many of them had established national asylum systems which implemented their provisions. In 1999, the Treaty of Amsterdam recognized that the lack of internal borders necessitated a common policy regarding the EU's external borders. This led to the legal foundations for a Common European Asylum System in Article 63 of the treaty, which called for the European Council to adopt within five years measures for dealing with the status of refugees and the manner and means in which EU Member States would deal with them. However, the CEAS did not spring into being overnight. What follows is an in-depth examination of what the CEAS is currently, how it came to be, and the difficulties it faces.

2.1 What is the CEAS?

The Common European Asylum System (CEAS), is a joint effort of European Member States in order to protect their borders and provide asylum for people who flee their home countries because of persecution or serious danger and therefore are in need of international protection. (Commission, 2018)

The Common European Asylum System (CEAS) deals with people who flee their home countries because of persecution or serious danger and therefore are in need of international protection, which they seek in the European Union.

In comparative terms, the CEAS seems to have come to the international scene quite late, following regional efforts in Latin America and Africa. However, it is quite advanced compared to those programs. A possible explanation for the late creation of the CEAS is that there was relatively little demand earlier, i.e. there were relatively few people seeking asylum in the EU during the 1980s and 1990s. According to the United

Nations High Commissioner for Refugees (UNHCR), developing states actually host about 86 per cent of the refugees worldwide (Chetail, 2016, p.3).

Even though the CEAS has not contributed to handling the refugee crisis as well as it should up to now and has far to go before it lives up to expectations, it does reflect high aspirations. Its creators wanted to achieve a common system. “This presupposes by definition a comprehensive scheme articulating the different components of refugee protection in a cogent manner” (Chetail, 2016, p.3). Therefore, it is not restricted to the definition of refugee and legal status of those who qualify under the Geneva Convention (GC). It includes statutes related to investigating asylum requests, new procedures of protection and asylum processes.

Its provisions are at times a contradiction to other regional measures that have been created to execute and complement the Geneva Convention. The CEAS reflects its role as a way in which the European Union (EU) can compensate for the abolition of internal borders, as stated in the Treaty on European Union (TUE), Article 3(2): “The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (Chetail, 2016, p.4). In order to fully realize this border-free Schengen area, a common asylum system had first to be designed and established. Subsequently, the system shifted emphasis from national borders to those of the EU as a whole, making the control of criminality and the provision of asylum a common policy rather than a matter for the individual states. This constitutes the basis for understanding the advancement of the CEAS, as well as its progress and the restrictions on forming a unique joint system.

In order to understand how the European Union Asylum policy works, it is necessary to look at its roots and origins. Strange though it may seem, the Treaty of Rome, which brought about the European Economic Community in 1958, contained no provisions regarding immigration and asylum mechanisms. In fact, the integration of national legislation on these matters with the European Community did not occur until 1974, at the Paris Summit of European Heads of State (Chetail et al., 2016).

Important Dates in the Creation of the Common European Asylum System

Date	Important information
1958	The Treaty of Rome, which brought about the European Economic Community, did not mention immigration and asylum.
1974	Beginning of integration of national legislation, regarding immigration and asylum mechanisms.
1977	The Malangré Report issued.
1991	The European Council concluded that the Internal Market needed a detailed procedural set of standards for processing asylum requests.
1992(November)	The Justice and Interior ministries acted in response to unfounded applications for asylum which were not affected by the Maastricht Treaty and Treaty on the European Union.
1992 (December)	Dismantling of internal borders.
1997	The adoption of the Dublin Convention (which repressed the Schengen Implementing Convention.)
1999	CEAS introduced in the European Council's Tampere Conclusions. Common European Asylum policy created between 1999 and 2004, as per Article 63 of the Treaty Establishing the European Community.
2001	First Directive adopted, controlling the number of people seeking asylum in EU territory.
2004	Second Phase of the CEAS from 2004 to 2013, set up by the European Council under the Hague Programme.
2005	Final Directive on minimum standards and procedures in EU Member States approved.
2008	The first changes occurred with the revision of the Policy Plan on Asylum.
2013	The second phase of the CEAS ended as a new Qualification Directive, implemented and incorporating the provisions of all the other CEAS institutions.

The Schengen Agreement and the Single European Act (SEA) were an important turning point regulating the free movement of people, services, goods, and the dismantling of internal borders in December of 1992; these formed the basis of a common policy. In June of 1989, the Palma Document, drawn up by the European Council, had expressed the need for a common policy but was rejected in favor of inter-governmental tactics such as refusal of entry. With the adoption of the–Dublin Convention (which repressed the Schengen Implementing Convention) in 1997, refugees fleeing dangerous situations in their country of origin were permitted to seek asylum only in the Member State where they had entered EU territory, with no regard to their preferences. The first Member State to document the individual making the claim would be responsible for that person even if he or she traveled further into the EU (Chetail et al., 2016).

The Dublin Convention is only one plank in the greater asylum system. It introduces similar standards for Member States, provides a definition of what a refugee is, as well as stipulating uniform reception and asylum procedures. In 1991, the European Council concluded that the Internal Market needed to be equipped with a detailed procedural and substantive set of standards for processing asylum requests (European Council, 2017). The need for a better asylum policy was discussed on different occasions, such as when the European Parliament recognized the Malangré Report on human rights in 1977. The Malangré Report, however, failed because Member States acted on their own, refusing to accept its standards or to permit asylum-seekers in their own countries, in violation of the EU law of today.

Because the Malangré Report failed to harmonize general rules regarding the right to asylum, in November 1992 the Justice and Interior ministries (of the countries belonging to the European Parliament) took action in response to unfounded applications for asylum which were not affected by the Maastricht Treaty and Treaty on the European Union, and which made the word asylum and the word refugee a matter of common interest in the field of Justice and Home Affairs, under its Third Pillar (Druke, 1993). In effect, this changed the meaning of the word asylum.

There were of course some limits, such as lack of governmental determination and legal control over its functioning and measures to control it. The asylum question was considered a side issue and therefore under the Treaty of Amsterdam there was a

shift from the third pillar to the first pillar, which is about Community. This change made it look as if there would be an area for security and justice because Member States would work together to achieve it. The CEAS was not required by the Treaty of Amsterdam, but it was introduced in 1999 in the Tampere Conclusions by the European Council in 1999, which led to the desire to establish a truly common system. This objective may not be the best for the refugees because its basis is mainly political and aimed at getting EU Member States and institutions to work together (Chetail et al., 2016).

The first stage towards arriving at a Common European Asylum policy took place between 1999 and 2004, as Article 63 of the Treaty Establishing the European Community, which provided that all asylum measures should adhere to set minimum standards except for the Member State examining the asylum request. This would mean that the Member States could adopt new measures in accordance with their preferences as long as they incorporated the minimum standards.

Various instruments were approved by the European Council in order to create guidelines for an improved CEAS. To be exact four Directives and two regulations were approved in less than six years. These regulations are the main grounds which constitute the CEAS today; the first Directive was adopted in 2001 as a way of controlling the number of people seeking asylum in EU territory as a protection scheme (Chetail et al., 2016).

The role of the Temporary Protection Directive was to determine the origin of the asylum claim, where it was first made upon entering the EU territory. This was reinforced by the Eurodac Regulation, which compared fingerprints to trace the movements of any given asylum-seeker. The Dublin Mechanism was supported by three major EU Directives, one of them being the laying down of minimum standards for the reception of asylum-seekers, the Receptions Condition Directive, and the Qualification Directive. The final directive on minimum standards and procedures in EU Member States was approved in 2005 (Chetail et al., 2016).

The Second Phase of the CEAS took place from 2004 to 2013; it was designed to improve the first phase and ensure a common asylum policy. It was set up by the European Council under the Hague Programme of 2004. The European Commission

and Council adopted the Action Plan of the Hague Programme, which led to the Green Paper on the Future Common European Asylum System. The first changes occurred in 2008 with the revision of the Policy Plan on Asylum: An Integrated Approach across the EU. That same year the European Pact on Immigration and Asylum declared its objective that Europe would be open to asylum-seekers. Although many differences existed between Member States, the UNCHR and the European Council on Refugees and Exiles (ECRE) took note of these in different studies on how refugees are treated among the Member States (Chetail et al., 2016).

The Second Phase of the CEAS was established by the Treaty of Lisbon but did not come into effect until two years later. It marked the first instance of a European Asylum System that was actually common, as previous efforts had failed in 2005 with the referenda in France and the Netherlands.

In this Second Phase, the minimum standards have become primary: “According to Article 78 (2) of the Treaty on the Functioning of the European Union (TFUE), the CEAS has to include the following core components:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection (Chetail, 2016, p.20).

This marked the first time that there was partnership with third world countries, as made legally binding by the Treaty of Lisbon.

Finally, the Lisbon Treaty revised Article 6(1) of the TEU to make the European Charter of Fundamental Rights as valid legally as the EU constitutive treaties (Chetail et al., 2016).

Overall, this was a huge step toward forging a common policy applicable in all EU Member States. The second phase of the CEAS ended as a new Qualification Directive, implemented in 2013 and incorporating the provisions of all the other CEAS institutions.

2.2 Dublin regulation

The Dublin regulation provides that the individual Member States are accountable for asylum applications. There are several standards regarding how each Member State must view an applicant. For example: they are responsible for determining whether an applicant has any relatives in the country of entry (family consideration), if a residence permit has been issued, or if the applicant entered or exited legally or not (European Commission, 2016).

The Dublin System is the oldest component of the European Asylum Policy, having been established by the 1990 Dublin and Schengen Convention. Dublin III is the latest regulation, adopted in 2013 by the European Union. It was created in order to improve the previous Dublin Regulations. Is the Dublin Regulation the responsible administrative institution of the CEAS? Is it uniformly resourceful and fair for all Member States? (Chetail et al., 2016).

The three defining features of the Dublin System are: First, each application made by a non-EU foreign national applicant towards a European Member State must be inspected by that European Member State. The reason behind this is to safeguard the applicant's admission request, which is also the main goal of the European Court of Justice, validated by Article 18 of the Dublin System. Second, every request has to be inspected, and evaluated, by a single European Member State.

Precluding the inspection of applications made in more than one European Member State was intended to reduce the work needed by any one European State to handle submissions filed by non-EU foreign nationals. It also prevents non-EU foreign

nationals from pursuing consecutive applications. Third, the State in charge will be the one to uphold the criteria agreed upon in the Regulation on accountability. The criteria most of the time do not reflect the applicant's preferences as the criteria should be unbiased. However, these criteria are often used as diplomatic bargaining chips among Member States (Chetail et al., 2016).

The Dublin System has flaws and one of them is that it allocates responsibility for application requests, and does not work as originally intended. "Statistical data suggest that, as reported by the European Asylum Support Office (EASO), asylum applications registered in the Dublin Area have risen about 12% since 2008. Of these requests 80% have been accepted and only 30% have been completed" (Maiani, 2016, p.107). From this one can conclude that the Dublin System is not doing its job adequately; this may be a result of lack of cooperation among Member States and a failure to consider the well-being of asylum-seekers and their desires. To add to its inefficiency, the application system is like a lottery, for applicants can only apply for asylum in the Member State where they first entered the EU. Many Member States simply transfer applicants to detention camps, thus increasing both the financial and psychological costs. This undermines the whole purpose of the system, resulting in applicants trying to escape the system in various ways, such as refusing to fill in applications.

Examining these failures more closely, one sees efforts by some Member States to shift the amount of work to other Member States, creating an absurd game that creates winners but also losers. The best-known example is that of the Mare Nostrum operation in Italy. It has been documented that during this operation the authorities methodically refused to fingerprint people detained. This meant a reduction in their permitted stay period due to the time limits involved. The reason behind this action was to escape the responsibility of having to examine refugees, leaving other Member States to do their work. This was a flagrant abuse of the Eurodac Regulation. Looking at the Dublin System, it was a predictable violation since Dublin was created with the idea of assigning responsibility according to geographic location. If there was a way to apply the standards of the Dublin System, there would be a different picture, in 2010 Greece received 52% of all agreed charges in the Dublin area; in 2013 Greece was severed from the Dublin System by the MSS judgment, in which Italy had to receive 40% of all

agreed charges (Maiani, 2016, p.112). This could be interpreted as clear sabotage of the Dublin System by certain Member States which is causing the CEAS as a whole to malfunction.

Giving the Dublin System a closer look, it seems that by accepting it as an instrument for shifting obligations among its Members, the EU institutions are giving up on the ability of the CEAS to function fairly and effectively. This makes it very difficult to envisage any political or intellectual innovations towards an improved and equitable CEAS. Progress may be achieved by amending the laws of the European Courts, which would require authorities and judges to abandon the Recast Regulation and promote a fair distribution of responsibilities.

Although the Dublin System was conceived as a means of controlling free movement between the borders of the Schengen Zone, it causes great misfortune to the refugees and their families who are exposed to the system. It is plainly not effective; few transfers are ever successfully implemented. Researching the claims of asylum-seekers is time consuming, but under the Dublin System the emphasis is on the Member State that is their point of entry. The time needed for both submitting and responding to transfer requests or even transfers which have been successful, should not be longer than nine months. Most Member States however fail to process them that quickly. Greece is one of these countries. Other countries such as Austria and Germany also present delays. The reason for this this is the sheer number of cases waiting for review. There is evidence that regulations are not being properly observed in Greece, Bulgaria, and other countries. In fact, the only example of the Dublin System working effectively was in Slovakia, where people seeking asylum were instantly admitted into the asylum procedure when they arrived at the borders (Garlick, 2016, p.176).

From this one can conclude that the faster the information travels around the Member States and the more informed the asylum-seekers are, the better the system's results. Regulations require Member States to provide information about the procedures to asylum-seekers in a written form, but do they? If this doesn't happen there is a risk of *refoulement*.

The European Council has cited practical cooperation as a vital element in the unity toolbox. More collaboration means: increased harmonization, more trust and

higher standards in order to pass better legislation which will lead to shared responsibilities and advantages among Member States. This was what the Hague Programme set out to do in 2004. The European Asylum Support Office (EASO) was designed to be an important contributor to the development of the CEAS, improving cooperation among the Member States.

The EASO was entrusted with support of the asylum system and ensuring that the various reception centers would work efficiently and without abusing any applicants. It has no power over decisions on asylum applications, which lie solely with the individual Member State. Its role in the system is to organize and facilitate the exchange of information by each Member State. Doing so creates data that can be gathered and analyzed in the future.

In February of 2011 EASO received a request for help from the Greek Government, in order to create a First Reception, new Asylum Service, Appeal Authority and deal with the large scale of claims (Garlick, 2016, p.188). Greece had already received funding and help from the UNHCR, European Refugee Fund (ERF), NGOs and the European Commission before reaching out to the EASO. For the first time the EASO established Asylum Support and brought “70 experts” (Garlick, 2016, p.189) to help organize support teams. The problem was that experts on asylum were also needed in their own countries and their absence was costly for all Member States, bringing into question once more the effectiveness of the system. Results show that the EASO focused on institutional procedures rather than Human Rights without providing short-term solutions.

To sum up, the Dublin System has not been effective in either theory or practice. Its efficiency is debatable considering the large amount of political time, economic and human resources spent on it for a small number of people. In addition, it does not ensure equal distribution of accountability for asylum claims. It is not clear if it allows asylum-seekers enough time for their claims to be fairly processed and assessed. Focusing on responsibility rather than the solution definitely distracts from the real problem and beleaguered national systems do not act efficiently. Lawyers and the courts should have a bigger role in order to prevent both breakdowns in the system and the hardships and human rights abuses experienced by asylum-seekers. Dublin is a big part of the CEAS and therefore should be improved as soon as possible. However, there are serious

theoretical impediments predicted by both LI and HI to any improvement. For LI the absence of a compelling economic motive for further integration in this area signals that it will have a relatively low priority for Member State governments. While HI would ordinarily predict that the European Council, European Parliament, and other institutions would find ways to by-pass that obstacle and proceed to improve Dublin in a low key way, this is hampered by the current high visibility of the asylum issue and the newly illiberal governments and parties in the Member States which are fueling divergent and even disintegrative policies.

2.3 Qualification Directive

Important Dates in the Formulation of the Qualification Directive

Date	Important Information
2004	The Directive regarding the qualification for international protection was meant to provide the minimum standards according to the Treaty on European Community as well as the TFEU.
2008	Minimum alignment level of harmonization achieved based on Policy plan on asylum.
2011	The Recast Qualification Directive falls short of meeting the objective of international protection.

The Qualification Directive is a recap of the rules and regulations that govern the international protection of persons who are regarded as citizens of third nations or individuals who are stateless such as refugees. The Qualification Directive aims at setting out the criteria for applicants to qualify for refugee status and expounds on the rights that should be afforded to such persons once they have acquired their new statuses. In this case, therefore, provisions on protections concerning travel documents, residence permits, access to education, access to healthcare and accommodation, access to employment, and social welfare are taken into consideration. Additionally, provisions for vulnerable individuals and children are included in the legislative document and establish guidelines for officials on how to handle such people. The following synopsis addresses the main points discussed in the Qualification Directive.

Based on the desired harmonization effect, the 2011 Recast Qualification Directive and related legal documents are deemed to fall short of meeting the objective of international protection. However, it has been effective in distinguishing between the aspects of qualification and the content of protection. In reference to Chapter Eight, the criteria for assessing needs for improvement include the level of harmonization, compliance with international provisions, and consistency with other European Union measures. If a proposed provision stipulates stricter rules than the previous one, then it is deemed to contribute to harmonization. Additionally, if the stricter rules are consistent with international standards, then they secure compliance in a more efficient way and if they are in accord with other EU measures, then they guarantee coherence. Establishing whether the Union legislation missed an opportunity is a difficult task and the missed opportunities in the 2011 Recast Qualification Directive have hindered further harmonization. Legislators have stated that it is difficult to address all the issues that might come up when implementing the laws for qualification for international protection in a directive. Various issues hinder the observance of international law and thus, the dynamic interpretation of the definition of whether a refugee or individual qualifies for international protection is not well established.

Provisions that may indirectly allow for lack of coherence or disharmony are not categorized as missed opportunities in the Qualification Directive. A Directive provision which implicitly authorizes a Member State to apply rules that fail to respect the international law is deemed ineffective in ensuring the protection of refugees. On previous occasions, the Court of Justice has ruled that Directives must allow Member States a margin of appreciation which is broad enough to enable them to apply the rules of the Directive in a manner consistent with international fundamental rights. Therefore, every Member country has a duty to ensure that all the rules are applied according to international requirements. For example, Member States should make sure that a sponsor or a family member of a refugee has the right to mount a legal challenge concerning specific issues such as when a residence permit is not reviewed and a person is denied permission to reunite with family. In instances where the Directive leaves a margin, EU law permits the state involved to use the margin in accordance with international provisions.

The 2004 Directive regarding the qualification for international protection was meant to provide the minimum standards according to the Treaty on European Community as well as the TFEU. The Commission maintained that a ‘minimum alignment’ level of harmonization was achieved based on its Policy plan on asylum of 2008 that focused on the recognition of protection needs of the applicants (Battjes, 2016, p.203). The provisions vary significantly between Member States, hence the need for amendments. The European Asylum Support Office was created to ensure that there was a practical cooperation between Member States in implementing the proposed amendments. A Green Paper was issued to help Member States deliberate on the most appropriate legislation. The 2008 Policy Plan outlines how the commission made amendments that ensured the protection of third parties. Although the proposal of the commission was accepted in 2011 as a guide to examine qualification, certain stipulated provisions were not followed.

In the 2011 Recast Qualification Directive, the international protection provision remained constant as in the previous versions where Member States had the freedom to deviate from standards to the benefit of the applicant, provided that this was compatible with the Directive. The definition of a refugee, one of the two types of persons eligible for protection, has remained unchanged according to Article 1 of the Refugee Convention. Additionally, the definition of people eligible for subsidiary protection has remained unchanged. The United Nations High Commissioner for Refugees (UNHCR) and other international organizations rallied for the introduction of a single status that covered both the subsidiary and refugee protection beneficiaries. However, the operating commission could not have implemented the provision because the TFEU requires that there should be a separate subsidiary protection status. This recently introduced definition does not include any major changes in the rules of qualification, but it is identical to other Common European Asylum Status standards which ensures increased coherence.

The Qualification Directive further expounds on the standard definition of family members and family member status. According to the Directive, certain family members, as international protection beneficiaries, are eligible for benefits such as residence permits. In Article 2 of the 2011 Recast Qualification Directive, a family member who is either a spouse or an unmarried partner is treated as if they were a

married couple. The children of such a couple, whether born in or out of wedlock, should be protected by the national law rather than the Qualification Directive legislation. The change was meant to bring coherence to the definition of a family member as indicated in the Reception Conditions Directive as well as the Dublin Regulation. This provision also guarantees respect for family life. One of the missed opportunities under the Family Reunification Directive is that a refugee's minor or adopted children should be eligible for family reunification, which is not included in Article 2 of the 2011 Recast Qualification Directive. Certain additional requirements such as residence permit are included in the Directive and are similar to those of the country of origin.

According to the Qualification Directive, an individual who is threatened with a serious risk to their life or persecution in their home country is neither a refugee nor eligible for subsidiary protection. Based on Article 7 of the 2004 Qualification Directive, the state and other parties such as international organizations could provide protection. The Recast version of the Directive adds that only the specified actors can play this role. The Human Court of Human Rights (ECtHR) contains several provisions that allow other actors such as clan militias to offer protection. Nevertheless, the Refugee Convention asserts that the protection of individuals should come from the states involved. Up to this point, it remains unclear whether international organizations can guarantee such protection. The protection against persecution or serious harm should be effective and permanent, a major clarification that leads to coherence. The recast of Article 7 of the Qualification Directive clarifies the concept of protection and hence ensures compliance with international law. However, the recast contains the clause that international organizations can provide protection, which is not compatible with the Refugee Convention. There is an elevated tension between paragraph 1 and 2 of the provision, leading to the conclusion that no international organization can offer protection such as that provided by the state. The level of tension can be eliminated by declaring that no organization should offer protection to the refugees.

Article 8 determines the conditions under which Member States may agree that an applicant does not need international protection when internal protection is available as an alternative. The 2011 Recast Qualification Directive has eliminated a section from the 2004 version which states that "internal protection exception may apply

notwithstanding any technical issues to return to the country of origin, and thus could deny the asylum because of an alternative protection that was not available for the applicant” (Battjes, 2016, p.210). The added requirement states that an individual can legally and safely travel to his country of origin and gain admittance, thus securing compliance with Article 3 ECHR as well as international law. Before determining the fate of an applicant, it is advisable to obtain up-to-date information from relevant authorities such as the UNHCR and the EASO on each individual case. Although the provision is not mentioned in the Recast Qualification Directive, it adds to compliance with international law but fails to increase the coherence of the CEAS. Article 9 expounds on acts of persecution and proposes a specific change as regards the nexus with the grounds of the Convention. Applicants remain in fear of being persecuted for a variety of reasons such as race, nationality, political opinion, and ethnicity. The Refugee Convention sets the terms under which an applicant could be persecuted and therefore enhances the function of protection. The Recast Qualification Directive includes a correction which states that there must be a connection between the reasons mentioned and the reasons outlined in Article 10. Ultimately, this eliminates nonconformity with the Refugee Convention and most likely increases compliance with international law.

The Recast Qualification Directive further addresses issues related to the gender of the affected social group. The amendment conclusively states that gender-related aspects should be taken into account and does not exclude the possibility that gender is sufficient for defining a certain social group. The claim increases conformity with the Convention on Refugees as well as compatibility with international law. Affiliation with certain social groups may lead to a genuine fear of persecution although an individual should not be compelled to renounce membership of a particular social group. With regard to the mandatory cessation of refugee or subsidiary protection status, the Recast Qualification Directive states that this should be obligatory. A burden of proof exists in such cessation cases and hence the Court of Justice addresses whether the applicant’s fear of being persecuted on the previously granted grounds was justified. A probability test should be carried out to determine whether an individual may be subject to persecution. For example, a person may fear persecution because of religious reasons, as in the case of Iraqi Christians. The Court of Justice is at variance with international law when it comes to the exclusion of specific groups of people. The

Recast Qualification Directive, therefore, addresses the exclusion and inclusion criteria which are controlled by the Refugee Convention in Article 1 (Battjes, 2016, p.215).

In conclusion, the 2011 Recast Qualification Directive has been instrumental in ensuring beneficiaries subsidiary protection. Most of the provisions that focused on international protection in the 2004 version have undergone amendments, with the aim of increasing compliance and coherence with international law. The limitations contained in the Recast Directive indicate the need for a further amendment to increase the level of protection in the European Union. In this case, people with complementary protection should be treated the same way as refugees are treated under the Refugee Convention. Successful integration indicates that people should have a degree of residential security which entitles them to a refugee status in the host country. Therefore, the Recast Qualification Directive has struggled to achieve better compliance and increased coherence with international law with the aim of safeguarding the rights of refugees. Increasing the level of assistance will ensure better integration in the host country. Both the Geneva Convention and the Qualification Directive have worked collaboratively to improve the protection of applicants.

2.4 The Reception Conditions Directive

Are the EU's Reception Conditions Directives sufficient to provide asylum-seekers a dignified standard of living? The Reception Conditions directive focuses on the various approaches used to protect the rights of refugees. A primary aim of the EU over the years has been to ensure that the rights of asylum-seekers are respected. Accordingly, Chetail, Bruycker & Maiani (2016) have reviewed the history of efforts by the EU Reception to protect refugee rights in recent decades, including the 1951 Refugee Convention. The rights developed over the years for asylum-seekers apply to all asylum-seekers, whether they are legally present in the country or not.

Moving on to the Implementation of the Recast Directive, most European policies on asylum were inspired by Article 63 of the Lisbon Treaty, the Treaty Establishing the European Community. Among the important measures to be implemented was the adoption of minimum standards related to the reception of refugees in the Member States. In a report documenting the application of the 2003

regulation, the Commission determined that various Member States had not revised their standards regarding the reception of asylum-seekers (Chetail et al., 2016). As a result, the Commission came up with a possible solution for addressing the problem in 2008. First, the Commission proposed improving the standards of living conditions for refugees. Moreover, the proposal also sought to reduce the prevalence of secondary migrations of asylum-seekers through national policies and legislation. However, various complications arose in the implementation of the laws regarding asylum-seekers. To overcome these complications, the Commission subsequently initiated an amended proposal in June 2011. Based on the new amendments, Member States would incorporate simplified concepts and information on managing the issues of asylum-seekers. However, while the new amendments introduced various updates to the regulations, they were still based on the same concepts.

Moving on, Chetail, Bruycker and Maiani focused on a total of six important aspects of the recast Reception Conditions Directive. In particular, there are sections where the Recast Directive introduced significant improvements compared to the 2003 Directive on Asylum-Seekers. Some of them include the scope of the application, territorial scope, personal scope, temporal scope and the provisions on detention.

According to the Recast Directive, making an application for International Protection should not cause one to be detained by the host state. EU law directs Member States to consider other alternatives before subjecting an asylum-seeker to detention. One of the main features of the Recast Directive is to provide a set of specific reasons for detention. The first step towards detention is to determine or verify the identity of the individual; the second to determine the unique nature of the application for international protection, that is whether a refugee has the right to gain access to a particular territory as mentioned by the ECHR and interpreted by the ECtHR. One example would be the *Saadi v UK* case, “where detention was applied to stop an unauthorized individual from gaining illegal access to the country” (Tsourdi, 2016, p.288).

The maximum permissible duration of detention is somewhat vague. However, according to EU regulations, applicants should be detained for the shortest amount of time possible. The only legal entities that can order detention are those with judicial and administrative jurisdiction. The recast Reception Conditions Directive also

stipulates various laws that relate to the sharing of information in a language that applicants can understand in addition to rules relating to the right to free legal representation in a court of law.

Another key issue addressed is access to the labor market. The approach that was implemented in the Reception Conditions Directive was to provide access to the labor market after a waiting period under specific conditions. The Directive also allows Member States to punish any form of deviant behavior demonstrated by asylum-seekers. Some of the punitive actions permitted include the reduction or even withdrawal of reception for lack of compliance with asylum-seeking rules and regulations (Chetail et al., 2016). Moreover, the Directive goes on to identify various types of circumstances in which detention would be deemed ethical. Some of these circumstances include approving reduction or withdrawal of reception for applicants. The Directive also addresses the minimum health care standards and general living standards to which the asylum-seeker is entitled.

As an overall assessment developed to focus on some critical issues, the Recast Directive evaluates the entire asylum-seeking system based on three key perspectives: adherence to fundamental rights, transparency in asylum systems, and the level of legal harmonization. When it comes to provision of fundamental rights, the Recast Directive introduces various improvements which will likely incorporate the changing jurisprudence of the Luxembourg and Strasbourg Courts. By considering this perspective, the Directive addresses various issues that apply to territorial waters and even transit zones, an important aspect that was missing from previous versions of the Directives on asylum seeking. Also, when it comes to addressing the level of harmonization, additional provisions were introduced. Some of these relate to the scope of instrument, ambiguities, procedural safeguards and detailed regulation of detention zones. Finally, coherence between the Recast Directive and various asylum instruments was improved in many ways. For instance, the asylum directive stipulations have been simplified so that they are easily understood when evaluated collectively.

In pursuit of Minimum Level Subsistence, despite various missed opportunities, the Recast Directive also represents a significant step towards promoting the ideal standard of living mandated for asylum-seekers. Such steps are important in the development of international rights law, and also promote the development of different

types of welfare systems. However, when it comes to addressing the issues of asylum-seekers, Member States in the EU are still resistant to integrating any asylum-seekers in their social assistance programs according to Chetail, De Bruycker and Maiani.

Asylum issues require a high degree of mutual trust. For instance, it is an important element in the assigning of roles in the evaluation of any International Protection applications by asylum-seekers between Member States. Second, mutual trust is presumed when addressing the confidence in the ability of Member States to gain access to requisite protection and to the individuals who need the protection. There is always room for improvement in Reception Conditions and Human Rights provisions.

The various complications the Dublin System has faced over the years have occurred because of inadequate implementation of the Common European Asylum System from one perspective: the EU has the primary goal of developing this system and the legal frameworks that surround it. On the other hand, the CEAS is also legitimized by mutual trust between Member States and the specific asylum systems. Furthermore, the concept of mutual trust is referred to as one of the bases of EU harmonization of policies and laws regarding the various types of asylum issues.

The Court of Justice places a significant amount of importance on the social status of the asylum-seeker, whether s/he belongs to an underprivileged or vulnerable population group requiring special protection. The efficiency of the Dublin System in establishing the obligations of Member States became clear as early as 2000. In particular, compatibility was exemplified in the *T.I. v UK* case, where the asylum-seeker believed that a return to Germany would expose him to issues such as indirect *refoulement*. In this case, he feared that he would be sent back to Sri Lanka, based on the migration directives. In summary, the court deemed the application as inconsistent, and the application as not legitimate.

The European Court of Human Rights (ECtHR) also demonstrated caution in different ways over nine years later regarding the Dublin System. The judicial assumptions found in the KRS decision in this particular case helped in concluding the judgments by the ECtHR in another famous asylum case referred to as *M.S.S. v Belgium and Greece*. The case noted that the responsibility for returning an asylum-seeker may

be associated with risk of indirect refoulement and serious discrepancies in social and legal conditions in the Member States. Although the *M.S.S.* judgment is generally classified as one of the notable rulings regarding the various consequences for the CEAS, the discussion, in this case, is limited to the approaches used by the ECtHR in addressing reception conditions.

Greece is not the only EU Member State that has faced issues in implementing asylum regulations and procedures identified by the ECtHR (Chetail et al., 2016). As a result, complications similar to those that were evaluated in the *M.S.S.* judgment have been discussed in other countries such as Italy. The identification of vulnerability is also essential in addressing the issues faced by asylum-seekers. The European Commission stipulates that the identification of vulnerable asylum-seekers is essential, and failure to do so compromises the legitimacy of any laws implemented to protect the rights of asylum-seekers. The protection of vulnerable persons or individuals came into focus back in 2010, in the Stockholm Programme of the EU.

Since the implementation of the Recast Asylum Procedures Directive more than two decades ago, it is also important to understand the reasons for its implementation in the first place. By addressing these specific reasons one can examine the most significant reasons behind harmonization. As concerns the issues associated with asylum procedures, the most common reason for implementing any new legislation is to protect the rights of refugees. Moreover, this also helps the adoption of fair procedures and prevents the marginalization of vulnerable groups.

On the other hand, the original Asylum Procedure Directive has significantly failed to meet these goals as initially agreed by the 15 national governments and has led to a Directive that is overly complicated, has low standards and a low success rate. It can, however, be said that it does accommodate the implementation of special procedures, which are mainly influenced by safe country concepts. The Recast Asylum Procedures Directive is the result of successive reforms in the fight for the protection of the rights of asylum-seekers. The Directive was developed with various goals in mind, such as improvements in the handling of issues associated with asylum-seekers.

With a view to the International Refugee world and the importance of Harmonizing Procedures, the development of various laws has been significant in addressing the issues of asylum-seekers. For instance, neither the 1951 Convention on the Status of Refugees nor the 1967 Protocol contained appropriate rules for determining who may be classified as a refugee (Chetail et al., 2016). The rules make various assumptions on the identifiability of any refugee and provide them with a specific set of rights. As a result, the harmonization of procedures is seen as necessary in the development of the appropriate legislation for handling refugee issues.

International human rights law now plays an important role in the laws applying to international refugees. The importance of these laws is now well established in developing links between human rights violations and provisions associated with persecution. One of the key features of the Recast Asylum Procedure development process relates to the influence of the Strasbourg case law, which had power over previous cases for asylum-seekers. The given aspects of the Asylum application process will include specific enhancements which were introduced to address the issues of asylum-seekers. That said, while the Recast Directive was developed to improve the plight of refugees, it still has a number of flaws. One of these is lack of legal assistance in addressing the issues of asylum applications. As a result, litigation issues may arise between Member States. Accordingly, to determine the rationales for procedure harmonization, it is important to evaluate the specific reasons why all the above legislation does not function properly.

The official issues affecting the CEAS demonstrate a set of goals regarding procedural harmonization. For example, the Stockholm Programme mentions that while the CEAS should work toward the protection of a refugee's rights, equal importance should be placed on effective and fair procedures to prevent marginalization. It is essential for asylum-seekers to be given equal rights regardless of the Member State in which the application has been made.

2.5 The Asylum Procedures Directive

Moving on to the First Asylum Procedures Directives, as discussed previously, the initial Asylum Procedures Directive was implemented by 15 countries and was

based on the concept of unanimity. However, this approach led to various types of non-beneficial results (Chetail et al., 2016). Some law professionals have criticized the Original Asylum Procedures Directive. Since its inception, organizations such as the UNHCR and other non-governmental organizations have intervened to ensure that it is withdrawn, since it contained regulations that would compromise other standing international legal agreements. Once the Asylum Directive was implemented, two rescue strategies were developed. The first had aimed at improving aspects of the asylum-seeking processes, expecting that the use of litigation techniques would help the European Court of Justice to interpret certain complicated laws. However, the implementation of the directive coincided with various complex issues, and it also compromised some procedure standards.

Some of the key aspects of the Recast Asylum Directive are: Guaranteeing access to asylum procedures for those who reach the EU often incurs various challenges. In some member countries, detention occurs upon arrival before the provision of any information on rights to asylum. Moreover, in some states, the asylum-seeker has to apply by physically visiting a particular office, making the process more difficult. The Asylum Procedures Directive (recast) contains significant improvements, clarifying the scope of application of some key topic areas. These include seeking to guarantee access for detained persons, specifying the authority in charge and introducing rules to address the registration of claims.

A detailed evaluation of the Directive provides a useful perspective for understanding the reasons for its ambivalent legislative outcome. The complexity of the Directive lies in that it considers the needs of both *abusive applicants* and *vulnerable applicants*. Both of these concepts allow one to see the differences in the stereotypes associated with the conventional asylum-seeker. Despite their differences, both stereotypes highlight the need for careful assessment of asylum applications. These assessments are supposedly important because they assume the most appropriate procedures will be applied (Chetail et al., 2016). At best, they might indicate an additional layer of complexity in the asylum-seeking process. At worst, they show that asylum claimants may be judged even before they have made any application for asylum. Also, the judging of such individuals may occur before an examination has determined which procedure would be the most applicable. A host of issues which are

compatible with vulnerability assessment are difficult to assess in asylum procedures where the applicant has the best support and trusts the state.

In conclusion, the equivocal evaluation of the Recast Asylum Directive can only be understood when it seeks to address the issues of both the *vulnerable* and the *abusive* asylum-seeker. Based on the detailed analysis presented, the Directive calls for improvements in procedural protections but it also provides for procedures that may undermine the integrity of the asylum-seeking application process.

As mentioned earlier, the Recast Asylum Procedures Directive contains a number of improvements on the previous regulations. However, the Directive is also compromised, as it consists of multiple values inherited from previous directives. Some of these compromised values include the tendency to make applications unnecessarily complex even before claims are evaluated. Past experience has shown that attempts to simplify procedures and reject claims are likely to lead to additional complications. Although the Recast Asylum Procedures Directive does not compromise the basis of accelerated procedures and insists on their compliance with institutional practices, it still retains the use of too many bureaucratic procedures. If anything, the Recast only increases the complexity of border procedures, introducing further complications to the asylum application process.

A significant portion of the permitted exceptions in the Asylum Procedures Directive have been eliminated or limited. The stipulations of the Recast Asylum Procedure Directive are well outlined. However, they are not always clear. To be specific, uncertainties surround the applications of people with special needs, unaccompanied children and the delays associated with appeals. These gray areas are deplorable since legal aid and the suspensions related to applications are now associated with the jurisprudence of the ECtHR. The lack of transparency in understanding these principles means that Member States are likely to continue to use approaches that compromise the rights of asylum-seekers by categorizing them according to the two stereotypical perceptions of them. Helping the vulnerable asylum-seeker, who has special needs, seems to be one of the primary goals of the EU. Nevertheless, some applicants get caught up in the hassles associated with abusive applicants.

The vulnerable asylum-seeker may be regarded as the exception to the stringent stipulations mentioned in the Directive. And yet, the theoretically improved provisions for asylum-seekers seem to have the opposite goal of reinforcing the harsh procedures of the Recast Directive. When procedural mechanisms are developed, various exceptions can be designed to address the needs of the vulnerable. Nevertheless, to activate these benefits, a set of specific procedures is essential. In most cases, they demand immense scrutiny and some proof that the applicant is not competent to navigate the process on their own.

The special needs technique seems to be susceptible to inefficiency, flawed by providing theoretical solutions that contain no practical approaches for addressing the needs of applicants. The definition of abuse is not clear, and protection may be easily compromised. Therefore, the efficiency and proper application of these procedures is questionable.

III. Challenges

This case study on the refugee crisis in Greece examines how the CEAS performed in actuality. The country's legal system on asylum is "based on the Geneva Convention of 1951 and its 1967 Protocol, and on European Union (EU) legislation on the Common European Asylum System. In 2011, the European Court of Human Rights and the Court of Justice of the EU found that Greece's asylum system suffers from 'systemic deficiencies,' including lack of reception centers, poor detention conditions, and the lack of an effective remedy" (Papademetriou, 2016). The European Commission closely follows Greece's adherence to EU asylum principles. Many problems were created by the 2015 migrant crisis. The country faces a heavy migratory burden due to its geographical location. Due to the imposition of border controls by some countries, the Schengen area has been put in danger.

3.1 Challenges that the CEAS has brought to Greece

Implementing CEAS regulations in the EU is a challenging endeavor. This is particularly true for some Member States, such as Greece and Italy which receive a very large number of refugees. The two countries border the Mediterranean Sea and, as such, are major entry points to Europe (Maroukis, 2013, p.225). Most of the refugees, and even migrants, come from North Africa, the Middle East and South Asia. Because of their geographical location, Greece and Italy have become the first countries of entry, an observation acknowledged by the Dublin Regulation. However, the Dublin Regulation requires European countries to return asylum-seekers whose asylum applications have been rejected at their first country of entry (Alderman and Prashant, 2016, p.5). Therefore, it becomes the responsibility of the first country of entry to process the asylum applications of refugees, as well as migrants, and decide whether to accept them or deport them to their countries of origin. Since 2015, Greece has been struggling to process the applications of thousands of immigrants both from European countries and other countries outside Europe (Topak, 2017, p.14). The process has been slow and often marred with claims of corruption and insufficient staffing. In 2017, more than 39,000 asylum-seekers were trapped in mainland Greece where they are waiting for the government to process their applications (Knott, 2018, p.351), while there were

more than 72,000 refugees and migrants in the whole country in early 2019, according to the UNHCR (2019b). The government is also holding more than 15,000 refugees and migrants on Greek islands such as Lesbos, Chios, Samos, and other eastern Aegean islands (UNHCR, 2019a).



Source: (Nudelman, 2016) <http://uk.businessinsider.com/map-refugees-europe-migrants-2016-2>

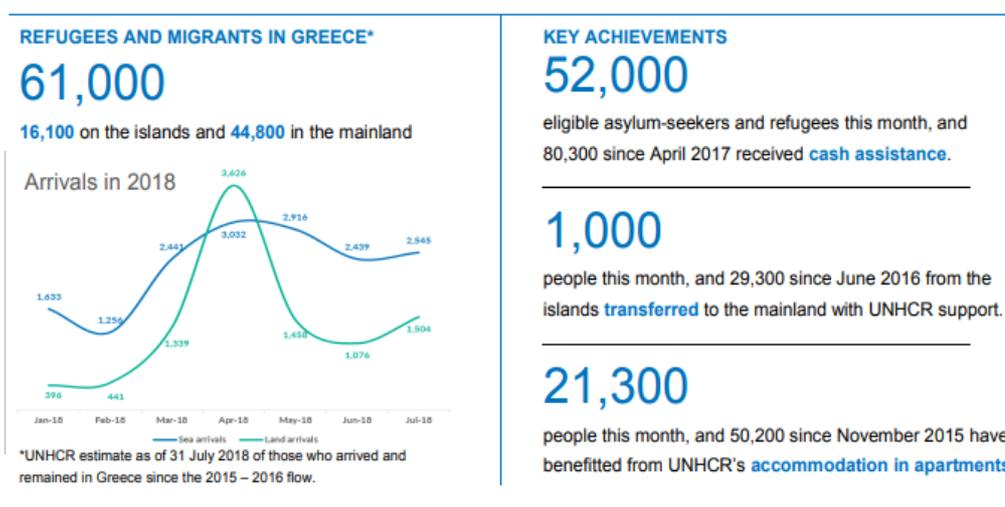
The main challenges facing Greece include inadequate reception centers, inadequate and poor detention facilities, delays in processing applications, rising levels of violence and lawlessness, and insufficient mitigation plans to address the influx of migrants and refugees entering the country (Papadopoulos and Fratsea, 2013, p.3). The challenges were also highlighted in the 2011 ruling of the case between Greece and Belgium. Although Greece is a first country of entry, the judges ruled that the country was ill-equipped to handle the increasing number of the asylum-seekers (Maroukis, 2013, p.227). Despite the ruling, many European countries as well as Turkey have been sending migrants and refugees back to Greece. The European Union has tried to intervene by providing financial assistance but the problem is far from being solved. Greece is also staring at other challenges such as rising unemployment rates exacerbated by the country's inability to handle immigrants effectively (Topak, 2017, p.15). Most of the challenges faced by Greece emerge from various regulations that were created to assist European countries to handle refugees but are not working effectively. These regulations include Article 10 of the Dublin II Regulation, the Eurodac Regulation and the European Refugee Fund. Most of these regulations have failed to support Greece in mitigating the various challenges facing the country.

3.2 How EU Legislation has Affected Greece: Article 10 of the Dublin II Regulation and the Influx of Asylum-Seekers

The current immigrant crisis in Greece regarding reception facilities has been partly influenced by Article 10 of the Dublin II Regulation. The Dublin II Regulations are part of the Common European Asylum System (Knott, 2018, p.353). The CEAS is based on the international agreement that asylum is a fundamental right and granting it is an international obligation. Under the *1951 Geneva Convention* to which Greece is a signatory, it was agreed that asylum should be given to people fleeing persecution or harm in their own nations (Çelik, 2014, p.419). Asylum is granted as a way of protecting life, which is a fundamental right. Since 2011, the waves of civil war and violence in parts of North Africa, the Middle East and South Asia have forced many people to flee their countries hoping for sanctuary in other countries. The war in Syria especially has forced more than 1 million people to abandon their homes and livelihoods in search of international protection (Menéndez, 2016, p.389). Some of the

Syrian refugees have ended up in America while others fled to European countries such as Germany, Italy, Turkey, and Greece.

Article 10 of the Dublin II Regulation requires the Member State whose border was first crossed by an asylum-seeker, either by sea, land or air, to examine his or her asylum application. Greece has been affected by this article because it has been an entry point for so many asylum-seekers (Mavrommatis, 2017, p.5). Once the refugees have crossed into Greece, most of them attempt to proceed to other European countries where they file for asylum status. However, the regulation allows the Member State where the application was filed to return the asylum-seeker back to Greece for an official examination of the asylum application (Knott, 2018, p.358). Since 2015, Greece has received thousands of asylum-seekers sent by other European nations. The number has been rising because it takes considerable time to process one application and make a responsible decision.



Source: (UNHCR, 2018)

<https://reliefweb.int/sites/reliefweb.int/files/resources/65145.pdf>

Therefore, Article 10 of the Dublin II Regulation violates the principle of solidarity and an equal distribution of responsibility among Member States. The article has created a scenario where some countries have thousands of refugees while others have relatively few refugees or none (Topak, 2017, p.5). Greece and Italy have been the biggest victims with both countries experiencing a significant influx in the number of refugees from other European countries, on top of those from outside the EU. In 2017 and part of 2018, Italy created a humanitarian crisis by refusing to accept some of

the refugees returned from other European countries (Papadopoulos and Fratsea, 2013, p.3). Greece, on the other hand, has continued to welcome the refugees even if they are from fellow European countries. The country has accepted to take responsibility by stretching its resources to the limits (Maroukis, 2013, p.224). For example, the influx of the refugees has created an acute shortage of reception centers. Other challenges associated with the regulation include overcrowding, rising unemployment rates, rising levels of violence and lawlessness, and insufficient mitigation plans.

Important dates regarding the development of the crisis in Greece

Date	Important Information
1951	Greece signs the Geneva Convention: asylum shall be given to people fleeing persecution or harm in their own nations.
2008	Global financial crisis exposes Greek debt overhang and precipitates a severe depression.
2011	Court ruling finds Greece incapable of handling large numbers of migrants.
2015	Greece receives thousands of asylum-seekers sent by other European nations.
2017	Greece continues to welcome refugees even from fellow European countries.
2018 (September-August)	Several protests held by the refugees to raise awareness about their living conditions. Government promises to ease congestion by reducing the number of migrants living in camps. Inadequate reception facilities constitute a challenge in urban centers. More than 39,000 asylum-seekers await status determination.

Inadequate Reception Centers. In 2015, Greece was holding more than 15,000 refugees on various islands because their application papers had not been fully processed (Lulle and Ungure, 2015, p.62). The country passed a law that prevents refugees from moving elsewhere in Greece until their asylum applications are processed. Since the country does not have sufficient reception centers, it has been forced to set up camps where the refugees must wait while their applications are being processed. The camps are located on islands in the Northeast Aegean, like Lesbos, Chios, and Samos (Topak, 2017, p.8). Currently, the biggest migrant camp is Moria where more than 9,000 people are being held under deplorable conditions

(Mavrommatis, 2017, p.5). Moria is located on Lesbos, a forested island very close to the Turkish coast. People living in the camp are not supplied with clean water or sufficient food to give their children. Children wash their faces and their mothers wash their clothes using dirty water. At night, it is difficult for children to go to the toilet because of the lack of lighting and fear of abuse. The place is overcrowded, with some tents hosting up to three or more families (Çelik, 2014, p.422). In August and September 2018, several protests were held by the refugees in a bid to raise awareness about their living conditions. As a response, the government promised to ease congestion by reducing the number of migrants living in the camp.

Inadequate reception facilities constitute a challenge in the urban centers where more than 39,000 asylum-seekers are awaiting their fate to be determined by the government. At the peak of the crisis many immigrants were living in the streets of Athens because the government lacked facilities where they could be hosted (Mavrommatis, 2017, p.8). The available tents were few and allocated mainly to migrants living in the hotspots. Small tents erected by the roadside were a common sight in many streets in major cities such as Athens, but this is no longer true. Instead refugees share single rooms in squats which can host up to three or more families (Maroukis, 2013, p.225) and at least one abandoned hotel. Again, homelessness has also led to an increasing rate of crime because most of the migrants are without any means of support. Many of them try to survive by taking odd jobs to get food. Without sufficient reception centers, Greece is likely to have more migrants living in the streets or crowded tents while they wait for verdicts on their asylum application.

Inadequate Detention Centers. More detention centers are needed by Greece to hold irregular economic migrants awaiting deportation. Any migrant who is in the country illegally is liable to detention until his or her case is reviewed by the government (Menéndez, 2016, p.413). However, the country does not possess sufficient detention facilities; all the existing ones are already full. Besides, every detention facility must be equipped with amenities to ensure that the inmates are safe and healthy (Papadopoulos and Fratsea, 2013, p.8). For instance, the government must provide food and medical services for the detainees. However, the current economic situation has left Greece in a position where it cannot provide for the needs of the detainees. The country's economy has been struggling since the financial crisis of 2008 (Maroukis,

2013, p.232). Its budget for the detainees is limited and cannot cover the needs of rising numbers of migrants.

The situation has forced Greece to create temporary structures where it can hold the detainees. For example, the Moria camp on Lesbos was created for the purpose of holding detainees until their applications are processed (Bagdonas, 2015, p.21). However, the place is overcrowded and lacks various provisions and services including food and toilets. The country has also created detention camps on other islands including Chios to ease the congestion. However, the increased flow of migrants into the country is stretching the country's resources to the limits. Organizations such as the UNHCR have been criticizing Greece's approach to handling asylum-seekers as inhumane and contrary to the *1951 Geneva Convention* (Papadopoulos and Fratsea, 2013, p.2). While Greece may be blamed for its handling of the migrants, the problem has been made much worse by the regulations that allow other countries to return migrants to Greece instead of processing them themselves. Even after the 2011 court ruling that found Greece incapable of handling large numbers of migrants, the European Union has not moved to solve the problem.

Rising unemployment rates. Greece is a country with high unemployment rates due to poor economic performance. The problem worsened in 2008 and 2009 when the country became a victim of economic recession (Topak, 2017, p.19). Prior to the recession, officials in the government had borrowed large sums of money in the name of investing in development projects. However, due to corruption, the borrowed funds were not used appropriately. Instead, some government officials ended up keeping the money in their personal bank accounts, contributing to the country's financial insolvency (Alderman and Prashant, 2016, p.7). During the global economic recession, Greece was worst hit because the country's debts had created a huge deficit that could not be filled by the revenue collected every fiscal year (Maroukis, 2013, p.233). Many companies ended up closing their doors as the economy shrank. Therefore, since 2008 many Greek citizens have been left without jobs or a stable source of income, and many young people have emigrated to other EU countries.

The migrants have escalated the problem because most of them do not have jobs. Most of the migrants that have settled in cities such as Athens try to support themselves by looking for jobs. However, the scarcity of employment opportunities has

complicated the situation, forcing many migrants to take odd jobs such as cleaning or setting up small-scale businesses (Menéndez, 2016, p.401). Besides, tensions have also been rising between Greek citizens and migrants over competition for jobs. Greek citizens have accused migrants of taking their jobs because they are willing to take lower wages. And the job market is such that many employers in Greece are looking for workers who are willing to take low wages (Knott, 2018, p.356), owing to their own slim profit margins. Therefore, the situation has intensified a natural competition between Greek citizens and migrants, in some cases leading to resentment that has bred hate crimes and violent attacks. The influx of migrants into the country worsens the situation because it raises the level of tensions between jobless foreigners and jobless Greeks (Maroukis, 2013, p.235). Most of the migrants come from countries such as Syria where they have left because of violence. Therefore, facing violence in Greece is likely to push many migrants into despair and depression.

Rising levels of violence and crime. Greece has also been facing a new wave of violent crimes from people living in the streets. The delay in the processing of asylum applications has created a desperate situation where some people try to survive by stealing from residents (Maroukis, 2013, p.228). Besides, the country does not have sufficient facilities to detain people who have entered illegally. Irregular migrants may either be attacked by Greek citizens or resort to violence themselves to obtain money and food. Addressing the issue of crime is a major challenge since most of the migrants do not have proper documents that can be used to hold them accountable (Mavrommatis, 2017, p.11). In Germany, there was an incident where a migrant from Tunisia drove a vehicle into a crowd killing some people and injuring others. The undocumented status of the suspect increased difficulties in his arrest and prosecution. Without documents, it was difficult for Tunisia to accept the suspect. On the other hand, charging the migrant in German courts was not easy because of the international regulations and procedures regarding the treatment of terrorists (Alderman and Prashant, 2016, p.5). Greece may also face similar challenges because a large proportion of the migrants within its borders are undocumented.

Difficulties in developing mitigation plans. With the sudden inflow of migrants, Greece has been caught in an awkward situation because the country has no mitigation plans. Most of the decisions and responses have been made based on

emergencies (Papadopoulos and Fratsea, 2013, p.4). For instance, the creation of hotspots was a decision aimed at preventing illegal migrants from entering mainland Greece. However, emergency decisions are not good in the long run because they lack legal support. Decisions made on an ad hoc basis in an emergency may also end up costing the country more to create detention facilities or controlled camps for prospective illegal migrants. However, if the number should suddenly decline, the country will find itself in possession of facilities that have no function (Alderman and Prashant, 2016, p.8). What Greece requires is a mitigation plan supported by its laws on immigration. Furthermore, the country needs strong laws on immigration to seal its borders and prevent the flow of migrants.

3.3 Eurodac Regulation and Delays in Processing Asylum Applications

In Greece, the Eurodac Regulations is one of the factors that has caused significant delays in the processing of asylum applications. The Eurodac Regulation requires Member States examining asylum applications to take fingerprints and submit them to the European database of refugees and migrants (Lulle and Ungure, 2015, p.72). The fingerprints are then processed to determine if the applicant has filed for similar applications in other countries. The regulation was adopted to streamline applications for asylum and avoid duplications arising from multiple applications (Knott, 2018, p.359). The fingerprints can also be used for enhancing security across Europe because the information may prevent migrants from committing crimes in European countries which they believe do not have their personal data.

In Greece, fingerprint processing has met with significant delays because the country is dealing with such a large number of migrants and refugees and does not possess enough machines (Papadopoulos and Fratsea, 2013, p.6) and staff to process the fingerprints. Additionally, these deficiencies cause delays and lead to overcrowded camps (Maroukis, 2013, p.229). For example, on the mainland, there are over 39,000 asylum-seekers awaiting their verdicts while living in difficult conditions. The country also has more than 15,000 applicants trapped on the islands (Bagdonas, 2015, p.22). The number of applicants awaiting processing would be lower if the country had sufficient fingerprint machines.

The current situation in Greece has prompted the European Parliament to propose amendments to the Eurodac Regulation to improve the fingerprinting system. One of the proposed amendments is to increase the number of fingerprinting machines in countries such as Greece, Malta, and Italy, which are experiencing high flow of migrants (Knott, 2018, p.362). The other proposal aims at increasing efficiency by creating control centers within Member States. The primary aim of the European Parliament is to reduce the burden on Member States by assuming the responsibility for processing the migrants. The control centers will be managed by the European Union with the help of the Member States where the centers are located (Menéndez, 2016, p.414). Once the burden has been minimized, countries like Greece, Malta, and Italy will be able to reduce the resources spent on processing migrants, releasing funds for other development projects. However, until the solution is implemented, Greece is likely to carry the burden of its migrants alone (Bagdonas, 2015, p.23). Most European countries have distanced themselves from taking responsibility by returning the migrants to Greece.

In a recent EU summit held in Brussels, Belgium, it was agreed that Member States will not be forced to carry the burden of a large number of migrants simply because they happen to be the country of first entry. The agreement was part of a compromise to make peace with countries such as Italy, Czech Republic, Poland, Hungary, and Slovakia that had strongly opposed the mandatory refugee relocation quotas in the European Union (Alderman and Prashant, 2016, p.7). The agreement has been criticized by those who believe that the European Union's difficulties in handling the refugee situation have occurred because most of its decisions are reactions to emergencies rather than being based on legal provisions, and they become unsustainable when the emergency ends. For instance, setting up control centers is meant to minimize the pressure on countries such as Greece to process asylum applications (Papadopoulos and Fratsea, 2013, p.5). However, with the declining number of immigrants, the control centers are likely to become unnecessary within the next five years. Italy made international headlines in 2017 and 2018 when the country refused to allow hundreds of refugees and migrants to enter its borders (Topak, 2017, p.20). Italy's move was strongly opposed by many countries including the UNHCR, which was displeased with the poor humanitarian response that resulted in some migrants losing their lives in the Mediterranean Sea.

Both Italy and Greece have passed laws that prevent migrants from crossing their borders until their status is fully processed. Theoretically, it should take only a few hours to process an immigrant and decide whether to deport or to admit them based on the legality of their status (Papadopoulos and Fratsea, 2013, p.8). The International Organization of Immigration allows countries to deport irregular economic migrants to their countries of origin. For example, those who cross borders into Europe in search of jobs should be deported to their countries of origin if they do not have legal documents (Knott, 2018, p.365). Most of the migrants come to Europe in search of jobs and business opportunities because of various economic issues in their home countries. A good example is the case of Africans migrating from countries such as Mali to look for jobs in Europe (Lulle and Ungure, 2015, p.68). If the migrants do not have proper documents, international law allows deportation under proper humanitarian conditions. However, refugees who are fleeing from political persecution in their countries should be given protection under the asylum protection policies. The resettlement of asylum-seekers in the European Union is meant to be a collective responsibility (Menéndez, 2016, p.415). In the case of Greece, the solidarity has not been sufficient and the country is struggling to process the applications of the asylum-seekers.

The European Union can assist Greece by making changes to the Eurodac Regulation which has become arbitrary and difficult to implement. It is evident that processing thousands of asylum applications has been a difficult task for countries like Greece (Bagdonas, 2015, p.24), which needs more money to hire staff and purchase more fingerprinting machines. Moreover, some countries should show solidarity by processing asylum applications instead of returning them to Greece. Dividing the responsibility for processing fingerprints would ensure maximum cooperation and make fingerprinting data more effective (Alderman and Prashant, 2016, p.5). The Eurodac Regulation has good intentions but it is difficult to implement because some countries are not willing to play their part. Besides, the mandatory refugee relocation quotas give some countries more authority to reject asylum applications and send migrants back to the countries of first entry. Unless the law is revised, the mandatory refugee relocation system will continue to present difficulties in the processing of the asylum applications (Topak, 2017, p.18). Moreover, it also creates more room for blame-games and allows countries to avoid taking responsibilities.

Apart from the Eurodac Regulation, delays in examining and clearing migrants have been caused by difficulties in enforcing returns. Statistics indicate that only 39% of the returns have been completed successfully (Alabed, 2017, p.101). After being released, many third world nationals remain in the host country. In most cases, they are given a choice of returning to their countries voluntarily or facing deportation. Since most of them do not have sufficient income to travel voluntarily, they await deportation (Knott, 2018, p.355). However, deportation faces challenges because many migrants do not have passports, identity cards or any other document that can prove their country of origin. Without documents, the investigators have to rely on individual testimonies or narratives to determine their nationality. Besides, many migrants are rejected by their countries of origin because they lack proper documents.

The absence of documents also presents challenges in justifying the granting of asylum. For asylum to be granted, the migrant has to prove that he or she was facing persecution in the home country (Lulle and Ungure, 2015, p.69). Without proof, the investigators have to rely on personal narratives which are difficult to verify. The assessment of the validity of claims made by migrants is likely to be time consuming because several people have to be consulted (Mavrommatis, 2017, p.13). Even if the application is refused based on insufficient evidence, the migrants have a right to appeal the decisions, which causes further delays in processing the asylum request. Trafficked persons and minors present even bigger challenges because the host country is under obligation to offer them maximum protection. In situations where there are language barriers, it may take even longer for the government to process asylum status for minors and trafficked persons. According to Alderman and Prashant, human traffickers always ensure they destroy documents that can assist authorities to determine the nationality of the victims (2016, p.6). Thus, the delays in processing asylum status emerge not just from the legal standpoint but also because of various underlying issues, including documentation.

3.4 European Refugee Fund

The European Union receives more than 250,000 asylum applications every year. However, applications are not evenly distributed because some countries receive

more applications than others (Menéndez, 2016, p.405). A country like Greece receives more applications because it constitutes the EU's frontier closest to the conflict zones and because it is almost impossible to police the maritime border in the Aegean Sea. The unequal distribution of applicants puts countries like Greece at a disadvantage and requires it to spend more resources in processing asylum applications than most other European countries (Alderman and Prashant, 2016, p.3). The European Refugee Fund was created to show solidarity with the affected countries and assist them in processing asylum applications without depleting their resources (Bagdonas, 2015, p.12). Although Greece has been receiving money from the Refugee Fund, it has not been sufficient to solve the problem. The country receives more applicants per year than its resources can handle.

Greece is one of the countries that were severely hit by the financial crisis of 2008. The financial crisis brought the country's economy to its knees. With the help of the European Union and international lenders such as the IMF, Greece has managed to recover from the economic downturn by repaying some of its debts (Stone, 2018, p.235). The country has also managed to create jobs by convincing international businesses to invest in the country. However, the country has not fully recovered because the ratio of its debts to gross domestic product (GDP) is relatively high. The influx of migrants is an additional challenge that the country cannot address effectively (Topak, 2017, p.20). Greece requires financial assistance to create more reception centers where migrants can have their applications processed quickly. The current reception facilities are poorly equipped and cannot handle the large number of migrants. Besides, the country requires more fingerprinting machines to minimize delays in the processing of asylum applications (Lulle and Ungure, 2015, p.86). The delays in the processing of applications have been the reason why the available reception facilities are so overcrowded. Therefore, because the European Refugee Fund has not assisted Greece sufficiently in meeting its challenges, the country needs more funds to reduce the backlog, especially to handle the 15,000 migrants who are trapped on its islands.

3.5 Conclusion to case study

The challenges facing Greece have been partly influenced by the Common European Asylum System. Under the system, several regulations have been created to streamline the process of assessing and approving asylum applications from migrants. For example, article 10 of the Dublin II Regulation requires asylum protection to be granted by the first country of entry. If the migrant succeeds in crossing the border to another European country, the law allows the host country to return the migrant to the first country of entry. Based on this regulation, thousands of migrants have been returned to Greece for processing. Most of the migrants do not have proper documents and thus more time is required for processing. As a result, the country has experienced a significant increase in the number of migrants stranded in the country. The large number of migrants has presented Greece with several challenges such as inadequate reception centers, poor detention facilities, rising rates of unemployment, and insufficient mitigation measures. Most of the decisions made by the country are ad hoc, based on confronting emergencies. For example, Greece passed a law that prevents migrants from leaving the place where they landed until their asylum or refugee status applications are fully processed. Based on this law, Greece is holding more than 15,000 migrants awaiting processing on its islands. The situation has raised humanitarian concerns because the migrants are living under difficult conditions.

IV. Opportunities

4. Evaluating the CEAS and the EASO

The European Asylum Support Office began functioning in 2011. At 15.7 million euros its budget was one sixth the size of the Frontex budget in 2015 (De Bruycker and Tsourdi, 2016, p.488). In the years since, the EASO budget has grown to 91 million euros, while the Frontex budget has skyrocketed to 320 million (Angelescu and Trauner, 2018, p.2). The EASO does not just offer support services to Member States, it also develops activities that are more appropriate for the EU level, taking advantage of economies of scale. One of the main activities that EASO engages in is training the Member State trainers, who in turn instruct the officers in their respective national agencies. The EASO is also involved in determining and sharing best practices that it finds among the national efforts and generally improving quality among the Member States. Until 2015 the EASO had extremely limited budgetary means to deal with external actions and the Office was essentially side-lined by European Commission initiatives.

However, Article 8 of the EASO regulation calls for support to be provided to Member States “subject to particular pressure which places exceptionally heavy and urgent demands on their reception facilities and asylum systems” (De Bruycker and Tsourdi, 2016, p.491) such as that caused by heavy flows of asylum-seekers and/or the geographical location of the Member State. As one of the countries facing the heaviest and most sustained pressure, Greece received three support plans between 2011 and 2015, which involved the deployment of more than a hundred experts and the training of more than five hundred officials and the accreditation of dozens of trainers.

The EASO Regulation also calls for the Office to assist in the development of the CEAS in two ways. It is meant to collect and share data about the asylum *acquis*, but had done relatively little in this regard up to 2015.

In evaluating the CEAS, the main conclusion is that the idea is good but the implementation has been lacking. One of the primary impediments to its proper functioning is that it is unfair; it leaves winners and losers. The most powerful states have been able to dictate to the weaker states and certainly the front-line Member States have received a bad deal. Greece, in particular, suffering from its own dysfunctions,

has not fared well under the stress of the increased refugee and asylum-seeker flows of recent years. The CEAS certainly needs improvement.

One of the things that could be changed is a rebalancing of the burden, to make it fairer to smaller, frontline states, such as Greece. However, more money does not seem to be a very effective mechanism to accomplish this. The rules need to be enforced and Member States should be deterred from taking unilateral decisions. Perhaps the most important change would be a renegotiation in depth of the Common European Asylum System. Dublin in particular needs to revise the way that migrants are welcomed.

According to Article 67(2) TFEU, solidarity is regarded as a foundation on which the European Union must guarantee the “absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals” (De Bruycker and Tsourdi, 2016, p.499). Next, Article 80 TFEU states that “[t]he policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle” (De Bruycker and Tsourdi, 2016, p.499). Unfortunately, there is no explanation regarding the difference between fair responsibilities and solidarity. Article 80 TFEU obliges the EU to include applicable measures in legislation regarding asylum in order to contribute positive outcomes. However, the principle of solidarity is being forsaken by both the EU and its Member States. The Commission, instead of following article 80 of TFEU, created an “evolving and flexible toolbox” (De Bruycker and Tsourdi, 2016, p.500). This toolbox has four important parts: “Financial solidarity, practical cooperation, allocation of responsibilities and improving governance through mutual trust” (De Bruycker and Tsourdi, 2016, p.500). It is irresponsible if not underhanded to promote the existing ‘Dublin system’ of responsibility-allocation as an example of solidarity implementation when the previous Policy Plan on Asylum has expressly noted that it is no such thing.

Practical cooperation coordinated by the EASO, with no clarification or explanation of what should be prevented, makes allocation of responsibility a lost term

and there is no clear direction regarding mutual trust and solidarity. Financial solidarity is presented with a framework for periods 2014-20 but with no further details. More measures have been inserted that try to link solidarity with relocation but again they lack solid meaning/explanation. Two measures, in fact, even avoid recourse to solidarity as an objective in relation to asylum. Solidarity in emergency situations is under the jurisdiction of Frontex. While one urges “solidarity through strengthened cooperation with key countries of transit, origin and first countries of asylum,” the other states that “solidarity in the area of returns is not part of the asylum policy, despite its closed links with it” (De Bruycker and Tsourdi, 2016, p.501).

Putting all this information together it is apparent that the Council is trying to devise measures connected vaguely to solidarity in order to avoid the main issue. There are four main ways of sharing that are used by the European Union but not to the same extent. These types of sharing are normative, financial, physical, and operational.

To begin with, normative sharing means to share “legal norms regulating the asylum policy” (De Bruycker and Tsourdi, 2016, p.501), which is possible through legal instruments. On the one hand, there is the Qualification Directive which is a high level of harmonization and provides a definition of protected persons. Lower harmonization with the rights of asylum-seekers or, as it is known, the Reception Conditions Directive, is where harmonization is stalled by the different levels of EU members. Lastly, the Asylum Procedure Directive is at the lowest level, as there is almost no harmonization among the states regarding the asylum procedures that were supposed to have been agreed beforehand.

Solidarity still remains a problem despite some advances towards harmonization. Different EU members lack solidarity because harmonization is not the key component governing the distribution of asylum-seekers among the Member States (Thielemann, 2004). Implementation of common rules differs in degree as do the reasons behind the destination preferences of asylum-seekers, which are determined by such factors as geography or diaspora networks; even though the elimination of internal border controls around the Schengen area mitigated the importance of the former. This is one example of where the Dublin system determined the desired asylum country only in theory and not in practice as it did not take into account the destination preference of the asylum-seekers (De Bruycker and Tsourdi, 2016, p.502).

Then there is the financial burden sharing that was created with the ERF. It was established in 2000, and was due to the common asylum policy. “It should be based on solidarity between Member States and requires the existence of mechanisms intended to promote a balance in the efforts made by Member States in receiving and bearing the consequences of receiving refugees and displaced persons” (De Bruycker and Tsourdi, 2016, p.502).

The money was distributed the following way: “65% according to the number of asylum-seekers and 35% according to the number of protected persons in each of the Member States” (De Bruycker and Tsourdi, 2016, p.503). As a result, more populous states have profited disproportionately over other countries because they have a bigger economy, that is a larger Gross Domestic Product. The Asylum Migration and Integration Fund (AMIF) has not changed its criteria since the creation of the ERF. This shows that responsibility sharing does not correspond to the budget of Article 3(2) and the 2% of the amount spent for asylum in 2007 by the EU. Even though the AMIF has received more funding than in the past, this funding is kept for emergency situations, and one can only say that AMIF is simply a symbolic pretense of burden sharing which makes it unfair to most countries.

The third form of solidarity is operational sharing. This is the support and assistance that a Member State may require in order to implement its own asylum system. It becomes the responsibility of the EASO, which attempts to apportion the burden of refugee sharing among them. Operational support is funded by the budget of the European Union, so that it has a financial as well as organizational aspect.

Solidarity, in the sense of asylum policy, refers to European inner borders rather than external borders, which come under Frontex. The salaries of the European Border Guards are paid by the Member State they originate from. However, funds are allocated for their salaries not from the EASO, but from the EU budget. The EASO does not have decision-making powers over the asylum authorities of any Member State regarding applications for international protection, while the European Border Guard Teams have been granted the use of power “at the external borders of a Member State, other than their own” (De Bruycker and Tsourdi, 2016, p.505).

The last type of solidarity is physical sharing; this is the least established form even though it is considered the oldest. The Temporary Protection Directive from 2001 was supposed to include provisions for physical sharing but as yet nothing has been implemented. Under EU law physical sharing is presumed to occur through relocation. “As underlined in Article 5 of the EASO Regulation, the goal is to alleviate the burden of EU Member States ‘faced with specific and disproportionate pressures on their asylum and reception systems due in particular to their geographical or demographic situation’” (De Bruycker and Tsourdi, 2016, p.506). This statement is found in the section of the Regulation dedicated to practical support, and *not* in the Regulation describing solidarity. Member States have relocation schemes for asylum-seekers in order to avoid overburdening particular areas within their country.

In 2007 relocation was found eligible for funding from the European Refugee Fund. This created an interest in responsibility sharing by Greece, Italy and other Mediterranean Member States. The subsequent dispute between the European Parliament and the Council about whether relocation would be included in the EASO Regulation on a mandatory or a voluntary basis resulted in a victory for the Council. Thus, the final text of the Regulation calls for relocation subject to the consent of the receiving state. However, given that the Regulation applies solely to EASO activities, the debate resurfaced during the Asylum Migration and Integration Fund negotiations. Here again the idea of relocation was reduced to the mere mention of “a ‘transfer of beneficiaries of international protection’, for which a lump sum of maximum 6000 € is foreseen for each transferred person” (De Bruycker and Tsourdi, 2016, p.506). In these cases, the institutions were not able to shift the debate away from the priorities of the governments involved, which had strong political motivations not to accept mandatory relocation, vindicating the LI point of view.

The EASO unfortunately has not done enough to promote relocation, falling victim to the belief that there is insufficient political agreement between members to reach collaboration on this sensitive issue. Thoughts about relocation depend on the target group of people, for sometimes political agreement can be reached in the case of relocating individuals in need of international protection but this does not apply to asylum-seekers. Member States must not create deterrents for other members contemplating an investment in their protection system, as they may devise an asylum

policy that aspires to get people who have been given international protection to exit their country as quickly as it can be arranged. In other words, states should be encouraged to invest in their own protection systems in order to provide an even playing field for all.

The second aspect regarding relocation that can be considered open to debate is the “voluntary or mandatory character for the Member States of destination, as well as for the concerned person. Member States logically prefer to avoid creating an obligation to relocate a specific” number of people (De Bruycker and Tsourdi, 2016, p.507). In order to ensure a fair distribution of asylum expenses among EU Member States, physical relocation rather than monetary contribution is the most significant type of distribution. In this way expenses of Member States and human costs will decrease, but asylum-seekers should be able to relocate voluntarily. There should be also improvements in the financial sharing of internal relocation within the EU so that the burdens of the asylum system are redistributed efficiently and equitably.

Solidarity and responsibility for the equitable sharing of asylum-seekers (which is mentioned in Article 80 TFEU) are the most important feature of the CEAS, but they have been the least emphasized up to now. A lot of money has been wasted while policies and legislative instruments have not contributed any concrete results. The Dublin system shares the blame for this failure, as it does not address the issue of sharing and it forms a major part of the CEAS. It is also true that the EASO also takes no position on the issue of solidarity, and has accomplished nothing with regard to relocation. Because the European Parliament wanted to make EU institutions more inclined towards solidarity, they proposed to make Article 80 TFEU a legal basis for the AMIF Regulation, but the European Council rejected the proposal.

Only when people die is there any response from the Commission, as for example when 360 people lost their lives near Lampedusa in 2013. Then the Commission invited the European External Action Service, as well as other agencies to formulate preventive measures that would entail solidarity and protection. The European Parliament, on the other hand, considered this a more important issue and tried to find a solution for states that receive the most asylum-seekers. Prioritizing the relocating of asylum-seekers is the closest thing to solidarity and responsibility sharing

and therefore more focus should be placed on this issue. In December 2013, the Task Force Mediterranean Team listed five areas of action for Member States under the most pressure. Solidarity and relocation were included on the list but once again without being assigned a priority. Intra-EU relocation was encouraged but no actual measures were created to ensure that it took place. In May 2014 the Commission announced that 50 million Euros had been designated for Italy, Cyprus Germany, France and other Member States but no clear provisions were given for sharing the money between them (De Bruycker and Tsourdi, 2016).

While these actions took place on the international stage, much more development was occurring at the national level, as Italy took the initiative to undertake a rescue operation, Mare Nostrum. Carried out by the Italian Navy, it managed to save in one year more than 150,000 lives (De Bruycker and Tsourdi, 2016). Another operation called Triton, which was a collaborative effort between Italy and Frontex, involved search and rescue activities in a smaller geographical area. It represented a massive policy switch, as in the past Italy had tried to block the migration flows from Libya, flouting international law regarding freedom of movement and the obligation to rescue ships in distress.

The EU's passive response to the failure of the systems of shared responsibility and refugee allocation has been subject to numerous debates among the Member States, creating sharp lines of division. To date, no agreement has been reached on a definition of what fair sharing would look like, so a Member State that is under tremendous pressure cannot find justice in the system, and fears are generated among others that they will have to accept refugees themselves and share the burden, which is anathema to some regimes. The situation has degenerated into a "dialogue of the deaf" as roughly half the Member States call on the others to adhere to EU law, especially the Eurodac fingerprinting regulations, and the external border states avoid doing so because they fear it will trap the migrants and asylum-seekers within their borders (De Bruycker and Tsourdi, 2016, pp.510–511).

There are two situations where a Member State can be said to fail to fulfill its responsibilities even though fair sharing of responsibility (and solidarity) is not clearly defined under Article 80 TFEU. One is when it has received more third country

nationals in need of international protection than it can handle. And second when a Member State may not possess adequate facilities to offer protection (De Bruycker & Tsourdi, 2016). In the first situation, support is justified under the concept of solidarity, while in the second, support is not justified in the idea of fair sharing of responsibility. In the first case, support is justified because the biased sharing of responsibility is in play; in the second case, if solidarity is mandatory regardless of the negligence of the Member State, it should be restricted to the time required for that Member to be prepared to accept its just portion of responsibility by making its asylum policy work perfectly. It is sad though that when a Member State uses the words ‘inability to comply’ they actually mean ‘unwillingness to comply’. This explains why the tension created between Members occurs over the sharing of responsibility. The debate on what constitutes fair sharing has not been answered correctly as no serious data on the subject exist.

One of the requirements of Article 29(2) of the Recast Reception Conditions Directive and Article 4(1) of the Asylum Procedures Directive (De Bruycker and Tsourdi, 2016, p.511) is to make public the calculations of a Member State’s capacity to receive asylum-seekers and process their applications. The question of external borders should have been included in these calculations as it seems to be creating many problems and tensions among EU Members as they are interlinked. Once again a definition of solidarity and fair sharing would have been an ideal approach to providing a solution that would make accountable those countries that are not been loyal to the idea of the EU. Only the Dublin Regulation contains a provision for solidarity, but it seems to be envisaged solely as a mechanism to employ in emergency situations, in the form of short-term financial aid. Financial funding for a Member in need, emergency loans from the European Commission, seems to be what European solidarity amounts to. This lack of foresight and this tendency to patch things up fails to address the fundamental imbalances of the CEAS.

5. Theoretical implications and discussion

Liberal Intergovernmentalism and Historical Institutionalism both explain to a certain extent the failures of the CEAS. Although the various strands of Institutional Theory have done a fairly good job of explaining how the European Union managed to integrate as much as it did beyond the narrow interests of the Member States, it has not

been able to prevent the centrifugal and reactionary politics sweeping the continent from adversely affecting the implementation of common immigration and asylum policies. This suggests that any deeper integration of European policies on these issues may well have to wait until the international environment is more congenial. For example, an end to the war in Syria would immediately lift a great deal of the pressure being placed on the CEAS and on European political integration in general. However, refugee and migrant flows are likely to increase in the future due to climate change and other environmental and population stresses, so getting the CEAS right would be hugely important. Unfortunately, these stresses are also likely to be accompanied by increased political turbulence of the kind that has already reduced the effectiveness of the CEAS. It is therefore going to be an existential issue for the European Union and the ability of political science theories to analyze and predict events will be at a premium.

Although the conventional wisdom is that the crisis was rooted in the dramatic increase of asylum applications, it could be argued that it simply exposed the flaws that were already present in the Common European Asylum System. Thus, the refugee crisis can actually be called a CEAS crisis (Niemann and Zaun, 2018, p.1). While most observers agree that systemic factors rather than the increased inflow of asylum-seekers caused the crisis, the terms used by various scholars differ. For example, some commentators speak of the “Syrian refugee crisis”, focusing on the ongoing Syrian war and humanitarian crisis. While this crisis is the main reason for increasing asylum applications in Europe, the crisis is located in Syria and not in Europe. Others use the term “refugee crisis”, which is the term most commonly used in public debates. A minority of researchers refer to the crisis as the “migration crisis” for similar reasons, yet, highlighting that, from the perspective of states, migrants usually only become refugees once they receive official refugee status.

As mentioned above in Material and Methodology, a Special Issue on “EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives” published by the *Journal of Common Market Studies* in January 2018 proved to be of immense value in the drafting of this thesis. It contains several papers that discuss the refugee crisis and the application of one of the theories examined herein and others that are similar or related to the other. While the whole issue has important

material, three of the papers are most germane to this thesis. One of these papers is “A Neofunctionalist Perspective on the ‘European Refugee Crisis’: The Case of the European Border and Coast Guard” by Arne Niemann and Johanna Speyer. Another one is “States as Gatekeepers in EU Asylum Politics: Explaining the Non-adoption of a Refugee Quota System” by Natascha Zaun, while a third one is “From Market Integration to Core State Powers: The Eurozone Crisis, the Refugee Crisis and Integration Theory” by Philipp Genschel and Markus Jachtenfuchs.

Niemann and Speyer (2018) argue that Neofunctionalism, which they identify as possibly the most prominent theory on European integration, can actually explain, to a significant extent, the EU’s responses to the “refugee crisis”. Their analysis is of interest to this paper due to the fact that Neofunctionalism and Historical Institutionalism are related, allowing the possibility that a case regarding implementation can be analyzed through either theory even though they might be regarded as decision-making theories. Niemann and Speyer agree that the Neofunctionalist emphasis on the dynamics of integration might not seem to be the most promising choice and they note the doubts that have been raised as to the suitability of the theory to explain matters that touch upon national sovereignty. However, they arrive at the counterintuitive finding that Neofunctionalism can offer crucial insights on central facets of the European Union’s crisis response.

Niemann and Speyer (2018) base their analysis on the European Border and Coast Guard (EBCG, the new Frontex) as one of the most tangible legislative results of the crisis. As a case it provides support to theories such as Historical Institutionalism and Neofunctionalism as it involves the loss of sovereignty in a policy area directly connected to national security. Although the negotiations to create the new EBCG had been predicted to last for years amid strong reluctance from various Member States fearful of ceding sovereignty in a such a crucial area, it came into being in 2016. Indeed, theories such as Liberal Intergovernmentalism would have predicted that Member States would stand their ground on this issue and retain control of the sensitive area of border control. However, the high sunk costs and the political and economic threat of allowing Schengen to collapse led to the outcome predicted by Neofunctionalism and by Historical Institutionalism.

Niemann and Speyer (2018) dedicate a significant amount of attention to the role played by some of the most important institutional actors in the European Union, the European Commission, the Presidency and the European Parliament. The Commission acted in a competent and well-organized way. In essence, the Commission took advantage of the crisis to prioritize its agenda and to push through an ambitious aim. One of the significant ways that the Commission was able to achieve its goals was by steering “the debate away from sovereignty issues” (Niemann and Speyer, 2018, p.33), reframing the negotiations as an exercise in problem solving. Additionally, the Commission was able to bring its expertise to bear in the negotiations, which helped alleviate the concerns that national delegations had, through the expedient of essentially drowning them in details about how things would work and why it was necessary. Another way that the Commission was able to promote its agenda was by acting as a promotional broker in the three-way dialogue between the Council and the European Parliament. Niemann and Speyer (2018, p.34) give the specific example of the search-and-rescue-debate. Many Member States were reluctant to allow the new border agency to undertake such missions as they infringe on national competencies, but the European Parliament, which has traditionally had concerns about human rights, sided with the Commission to confirm a much more ambitious mandate for search and rescue than the Council had originally wanted.

Along with the Eurozone crisis, the “refugee crisis” constitutes an existential threat to the European project. The failure of Member States to adopt effective cooperation led several EU Member States, including Germany, to unilaterally suspend Schengen, thereby threatening the idea of freedom of movement in Europe. Such moves adversely affect trade among Member States but also shake the very foundations of the European project, as freedom of movement is fundamental to the enterprise of *ever closer union*.

As detailed above, Dublin III has not been successful and the EU has not yet been able to come to an agreement regarding how to distribute the refugees equitably. When the refugee inflows were at their highest in September 2015, the European Commission, with the support of the European Parliament, made a proposal to distribute more than a hundred thousand asylum-seekers from the front-line states. This proposal also called for a permanent quota system to take effect in future crises.

However, in this case the pressure from institutions was not able to overcome the resistance of the Central European Visegrad group, which either have right-wing governments or face strong challenges from right-wing parties opposed to accepting any further refugees. The Central European counterproposal was that any redistribution of refugees must be on a voluntary basis only and that Member States could meet their burden-sharing obligations through financial contributions and by providing expertise.

Zaun (2018) discusses the failure of the EU to adopt a permanent quota system for refugees using Liberal Intergovernmentalism and asymmetrical interdependence. She extends Moravcsik and Nicolaidis' work, in particular their 1999 findings that variations in the number of asylum-seekers Member States absorbed and their capacity for border control determined on the support for pooling during the Amsterdam Treaty negotiations. She also examines the "black box of preference formation" among EU members which is dependent to a large extent on national politics, particularly in relation to issues such as asylum politics. In this way she extends the argument of Liberal Intergovernmentalism that voters cannot be ignored given the motivation of governments to remain in power and the sensitivity that electorates display to matters of immigration. She finds that Liberal Intergovernmentalism can be applied to everyday decision-making at the EU level, even though it had originally been developed for treaty-level analysis. A significant aspect of her paper deals with "non-decisions", which are both understudied and of enormous importance in understanding the functioning of the EU during crisis periods.

Neofunctionalism largely depends on the concept of "spillover": functional, political and cultivated. While all three are important to that theory, the one that is most closely related to Historical Institutionalism is the idea of "cultivated spillover". This refers to the tendency of institutions to grow. For international institutions, the path to growth and increased power runs through deeper integration, which they cultivate, actively pushing for such outcomes and create conditions that are conducive to them. After a certain point it becomes hard for the establishing states to control such institutions as they develop an internal logic and motivation of their own. The Commission, for example, although generally composed of former high-ranking officials from Member State governments, has an agenda of its own to increase integration. It is an example of the "where you stand depends on where you sit"

principle (Miles, 1978, p.399) in which the aim of the bureaucracy determines the policies that its officials propose.

Genschel and Jachtenfuchs (2018) discuss the limits of integrationist theories such as Neofunctionalism and liberal intergovernmentalism, and by extension all forms of institutional theory, in trying to account for the European Union's response to the crises in the Eurozone and the refugee crisis. They point out that the great challenges to further integration in the EU have emerged during attempts to integrate core state powers rather than the market. Both areas were subject to the same integrationist forces but the former faced much greater limits on the availability of negotiating space.

The European Union faces a range of choices going forward, according to Genschel and Jachtenfuchs (2018). The first option is to continue with its past practice of 'muddling through' and tackling problems as they come up, which may be possible if the political and policy environments become less hostile. The second option is to abandon the dream of ever deeper union and remain a common market. However, as Britain is finding out, pulling out of the *acquis* can be very painful and during the debt crisis Greece buckled to pressure rather than leave the Eurozone.

Applying all of the above to the case study of Greece, it is evident that the country's interaction with the CEAS during the peak of the crisis, and even now, rests on a combination of factors, which can indeed be analyzed, to a certain extent, through the perspectives of liberal intergovernmentalism and historical institutionalism, although the case is highly complex. Greece's own institutions suffer from weaknesses that were exacerbated by the combination of the global financial crisis, the country's own debt crisis, and the legitimacy crisis of its political system, which led to the rise of a populist government composed of a combination far-left and far-right parties staffed by inexperienced politicians. However, the government that came to power in Greece in 2015 was co-opted by both the European institutions that it had thought it was rebelling against and by the powerful governments of the EU core. Eventually, its performance on the migration issue and that of the CEAS in the Greek context has been gradually improving, particularly after the EU agreement with Turkey which drastically reduced the flow of asylum-seekers and other migrants across the Aegean.

Right-wing populism fueled by xenophobia led to a change in policies in both the core EU countries and in the new Eastern European countries, showing that voters cannot be ignored, as intergovernmentalism would have predicted. The borders were closed, trapping more refugees and migrants in Greece and deepening the challenges faced by the country's already inadequate facilities and procedures. However, integrationist forces led to a stronger Frontex, including naval patrols in the Aegean Sea, an outcome that Greece has long desired. Additionally, other institutions, apart from the ones at the European Union level, have also been strengthened during the crisis.

Conclusions

This thesis aimed to examine the Common European Asylum System, its history, implementation, and its performance under crisis conditions since the flows of refugees and migrants intensified due to the wars in Afghanistan, Iraq, and especially Syria. It also aimed to examine the theoretical basis for its performance through the lenses of Liberal Intergovernmentalism and Historical Institutionalism after a close look at a case study of a country facing a double crisis, Greece.

The first question that this thesis posed was: what is the Common European Asylum System. The answer is that the CEAS is more an aspiration than an actual entity. It is an attempt at harmonization of the procedures for handling refugees and asylum-seekers across a continent that is highly unequal in terms of the places asylum-seekers arrive at and where they want to go. The roots for seeking to create such a system arise out of the ashes of the Second World War, when the international community first defined human and refugee rights. The reasons that the CEAS has not been as effective as its drafters intended are that the actual implementation of the rules remains in the jurisdiction of the Member States.

The two theories investigated in this thesis, Liberal Intergovernmentalism and Historical Institutionalism have, to a certain extent, been able to illuminate certain facets of the way that the CEAS functions and the European Union's overall response to the crisis. Member States try to retain control of European institutions and there is no doubt that domestic politics, particularly as aggravated by xenophobia and right-

wing populism have affected events. However, the institutions do matter and they do affect decision-making and implementation beyond what the Member States might wish. There are limits to the explicatory power of these two theories, particularly as Europe attempts to integrate further, but there is still a great deal of useful insight to be gained through analysis using them as prisms.

V. References

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