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The Dublin Regulation

→ Analysis of the Dublin System, perceived to cause a disproportionate burden to the expense of the external border countries of the EU and the reason for its continuous implementation despite persisting criticism

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Abbreviation List

CEAS – Common European Asylum System

CJEU – Court of Justice of the European Union

CRIS-MAP - Crisis Management Action Plan (phase three of the early warning mechanism)

DP Home Affairs - Department of Home Affairs of the European Commission

DR – Dublin Regulation

DR III – Dublin III Regulation

EASO - European Asylum Support Office

EBC – External Border Countries

EC – European Commission

ECRE – The European Council on Refugees and Exiles

ECHR - the European Court of Human rights

EDAL – European Database of Asylum Law

EP – European Parliament

EU – the European Union

EU MS – Member states of the European Union

HRW – Human Rights Watch

IOM – International Organization for Migration

JHA – Justice and Home Affairs

LI – Liberal intergovernmentalism

PAP – Preventive Action Plan

PD – The Prisoners' Dilemma

RSD - refugee status determination

SIA - the Schengen Implementing Agreement

SCO – Safe Country of Origin

UDHR - Universal Declaration of Human Rights

UN – The United Nations

UNHCR – the United Nations High Commissioner for Refugees

Abstract

The need for collective action between the EU member states in the area of asylum, against the background of European integration and given the current refugee patterns, has proven to be necessary in order to effectively enhance refugee protection in the European Union, to sustain national security and to maintain the freedom of movement.

Within this, the Dublin Regulation plays a vital role as the distribution mechanism of asylum requests filed in the EU. Dublin carries out a number of provisions, of which the *'principle of the first'* is the most predominant, meaning that the first country through which an asylum seeker enters the EU is also the state responsible for the handling of the subsequent asylum request. It specifically aims at providing a fair access to the asylum procedure, whilst at the same time preventing asylum seekers into applying for asylum simultaneously in more than one EU member state.

The regulation is controversial however, as it allegedly not reaches it goals, as well as causing a disproportionate asylum burden on those states located at the external borders of the EU. Countries such as Greece and Bulgaria have seen their asylum systems collapse due to their incapacity to properly address the influx enhanced by Dublin leading to, amongst others, the risk of refoulement.

The analysis explores whether or not Dublin enhances an imbalanced burden-sharing to the expense of the external border countries, and seeks to explain why those states disadvantaged by the regulation have still agreed on its implementation. The analysis addresses this from several points of view corresponding to a broad theoretical framework entailing neo-functionalism, liberal intergouvernmentalism and constructivism.

The paper offers an insight into the negotiation process of Dublin, the circumstances under which it was created and why alternatives to the regulation have, until now, been left aside. Based on the research results, it can be stated that the Dublin Regulation is fundamentally flawed due to the inability of defining and carrying out burden-sharing as an consistent element of the refugee protection regime. A distribution mechanism was necessary though, and its continuous implementation despite its deficiencies is arguably the result of the superior negotiation and bargaining power of certain member states, which are perceived not to suffer under the distribution effects of Dublin.

Introduction

In correspondence to the freedom of movement and the abolishment of the internal borders of the EU, the Dublin Regulation was created, a mechanism determining the responsible member state regarding the handling of asylum requests within the EU.

Dublin aims at preventing refugees from being subjected to the risk of refoulement, as well tackling asylum system abuses.

That said the implementation of Dublin is controversial and has not been without its problems: Dublin determines that the member state of first entry is predominantly responsible for the processing of the subsequent asylum request. This principle has assumedly resulted into a number of external border countries no longer being capable of properly addressing the influx, resulting into an increased risk of refoulement, a lack of humane reception conditions and consequently, into the collapse of the Greek and Bulgarian asylum systems after which Dublin transfers were suspended.

In 2013 the Dublin II Regulation has been revised. Nonetheless, critics still argue that the newest version of Dublin will still not succeed into tackling those issues as it still contains foundational deficiencies concerning burden-sharing.

From this problem area, I have derived a research question on which I have based my thesis:

Does the Dublin Regulation enhance a lack of burden-sharing between the member states to the expense of the external border countries and if so, why do these member states continue to accept its implementation?

In order to reach a conclusive answer to the problem question, a number of sub-questions will be addressed throughout the research:

1. Under what circumstances was the Dublin System initially created?
2. How has the Dublin System evolved over time, and what has fueled this particular evolution?
3. Why is Dublin criticized, and by which concerned actors?
4. Is this criticism justified? If so, why is it so difficult to address its deficiencies?
5. Given the fact that a number of member states do not favor the system, how did the other member states succeed in maintaining its implementation on EU-level?
6. Are there alternatives to the Dublin System? If so, why have these been left aside until now?

This issue-area is highly relevant to research since asylum, and with that the Dublin Regulation, is an increasingly prioritized and mediatized topic which has been dominating political and public debate and it affects many levels of society. Issues concerning Dublin are in linkage to other aspects of the

refugee protection regime, as well as to the process of European integration. This adds up to the fact that Dublin can be analyzed from a range of different perspectives, which is why the thesis is limited since it cannot take into account every point of view from which the controversy surrounding the Dublin System could be analyzed.

Methodology & Limitations

I have based my research and final thesis on a wide variety of sources, statements and approaches in order to reach a conclusive answer to the problem question without leaving out any significant opinion, statistic or element. I have also reached a number of conclusions based on presenting all available facts, in combination with opposite opinions from credible concerned actors, in order to gain a full understanding on the matter, taking into account all arguments and points of view instead of only analyzing from a limited scope.

During chapter 1 I have described the general historical context from which the Dublin System has occurred and has further evolved. This chapter is predominantly based on academic books and papers, as well as from documents derived from a range of EU databases tracking down the course of history concerning Dublin.

Chapter 2 addresses the foundations of the refugee protection regime, and as such of burden-sharing related to the difficulties of enhancing a sustainable reality of burden-sharing and solidarity. For this, I have mostly derived insights from two books written by Alexander Betts.

Finally, chapter 3 is the longest and entails the analysis on how Dublin was implemented and negotiated twice, through the theoretical lenses of liberal institutionalism, constructivism and rationalism in which the Prisoners' dilemma is a prominent aspect shedding a certain light on the nature and effects of Dublin. In order to be able to reconstruct and interpret the course, steps and nature of the negotiations, I have used public documents published by the EU institutions on their respective online databases, as well as the working paper written by Jonathan P. Aus.

To conclude, this research is built upon academic and interpretative research, based on a not on but several theories of IR. Central are the elements of European integration, the refugee protection regime and burden-sharing in linkage with the Dublin System.

Additionally, I have also conducted two interviews in order to gain insight into the role and opinion of NGO's and the European Parliament within the debate concerning the Dublin Regulation.

1. History and content of the Dublin System[1]

1.1. The Dublin System: Content

This chapter entails an overview of the historical circumstances from which the Dublin System has arisen, as well as a brief description of the content of the legislation which has remained unchanged from the Dublin Convention of 1990 (Dublin I) [2] up until the current recast implemented in 2013 (Dublin III). The legal status of the Dublin System has changed over time, but its core principles have remained unchanged and define the system.

As of 1 September 1997, The Dublin Convention determined which member state[3] is responsible for the handling of an asylum application within the European Union (EU).

(Marinho, 1998: 1) Due to the fact that a convention can only be implemented when all Member States pass it in their national parliaments and officially agree on it, it took seven years for the Dublin Convention to be fully ratified. (UK Refugee Council, 2002: 1) By then, it had become part of the EU acquis under pillar 1.

The System sets out a range of criteria through which the responsible member state is decided upon in terms of the processing of an asylum application in the EU. (Vink 2013: 1)

1.1.1. The Dublin Convention (1990/1997)

Under the Dublin Convention, a state is obliged to process an asylum application in case a direct member of the asylum seeker's family already received refugee status (Art. 4), if the country has previously issued a valid visa for the concerned individual (Art. 5) and when an illegal applicant has entered the EU through the member state's territory. (Art. 7) If these conditions do not apply, the state where the asylum seekers firstly requested asylum, is considered to be responsible. (Art 8.) From the moment an asylum seeker files his/her asylum application, a member state has six months to request another member state to take over the procedure. (Art 11.) The requested member state then has three months to respond. When a decision is made, the actual transfer of the asylum seeker has to be carried out within one month.

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[1] Within this thesis, 'the Dublin System' or shortly 'Dublin' refers to the entirety of the legislative framework meaning: the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, the Dublin II Regulation 2003/343/EC and the Dublin III Regulation (No 604/2013). Otherwise said, it is the legal content which all versions have in common, which was established in 1985 and that continues to be carried out until today under the Dublin III Regulation. (EUR-Lex, 1997: 1)

[2] Throughout this thesis, the three different versions of the Dublin System – The 1990 Dublin Convention, the 2003 Dublin II Regulation and the 2013 Dublin III Regulation- will be abbreviated, respectively, as Dublin I, Dublin II and Dublin III.

[3] Within this thesis, 'member states' refers to the countries who are a member of the European Union during the period of time applicable within the context, and that are subjected to the privileges and obligations of membership.

General core criteria of the Dublin System

These last rules were left unchanged after the transition to Dublin II and Dublin III; however an inconsistent implementation of the Dublin criteria was caused by the difficulty for states to track down asylum seekers who already filed an asylum request elsewhere in the EU[4].

Two criteria tend to be the predominant factors through which responsibility is mostly determined. The first criteria is 'family links': when asylum seekers have immediate family ties in a certain EU member state, his/her asylum procedure should technically take place in that member state. Otherwise said, responsibility can be determined on grounds of family reunification. (ECRE, 2014: 1) The second main criterion is geographically substantiated:

asylum seekers are required to apply for asylum in the member state through which they first entered the EU. (Miller, 2010: 1) This criterion is the foundation of the Dublin System, also called '*the principle of authorization*', meaning that the member state which authorizes the entry of an asylum seeker on EU territory is also responsible for dealing with the ensuing asylum procedure. (Hurwitz, 1999: 1)

1.1.2. The Dublin II Regulation (2003/2004)

The Dublin Regulations are the explicit successor of the Dublin Convention, both with the same core principles. However, there are significant differences to be noted in Dublin II. The regulation sets out certain additions and modifications to, amongst others, the hierarchy of criteria through which responsibility for an asylum claim is determined, as well as ensuring an accelerated procedure into transferring asylum seekers between the member states. (Peers, 2011: 360)

The standard core provision, namely 'the principle of authorization', remains. (Peers, 2011: 361) As for the specific changes, they are not influential or to a significant importance to the problem question, which is why they will not be further addressed. Important to know is that Dublin II enjoys a stronger legal status, and its efficiency is significantly increased with the introduction of Eurodac[5]. (ECRE, 2006: 10)

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[4] In order to resolve this difficulty, it was necessary to include a system to compare finger prints in order to be able to identify asylum seekers. The development of the system, later called European Dactyloscopy (EURODAC), was proposed in 1991, developed in 2000 and activated on the 15th of January 2003, which corresponded to the transition to Dublin II. EURODAC was not activated during the implementation of the Dublin convention. (EUR-Lex, 2008: 1)

[5] 'Dublin II enforces the fingerprinting of any alien irregularly entering any member state, with the collected fingerprints being stored up in the EURODAC database'. (ECRE, 2006: 10)

1.1.3. Goals of the Dublin System

The official goal of the Dublin System is to tackle '**asylum shopping'**, which happens when asylum seekers file applications in several member states in order to increase their chances of actually being granted asylum. (EUR-Lex, 2001: 1) This is something European countries are looking to avoid, since this phenomenon is generally perceived to cause a rise of irregular secondary movement[6] within Europe, as well as an imbalanced division of asylum applications amongst member states. (Marinho, 1998: 3)

The second aim of Dublin is to properly address the phenomenon of **'refugees in orbit'**, first used and defined by the UN Refugee Agency (UNHCR) in 1976:

"Refugees in orbit' refers to the plight of refugees who, while not being rejected or returned to the country where they fear persecution, are not granted asylum in any country to which they apply and are obliged to move from one country to another". (Hurwitz, 2009: 20)

In conclusion, the Dublin system was established to quickly identify the member state responsible for handling an asylum application, so to guarantee access to asylum in the EU and thus to ensure the right to seek and enjoy asylum, a right ensured by the Universal Declaration of Human Rights which has been signed by all EU member states. (the UN, 2014: Art. 14.1)

At this point, doubts about the workings of Dublin already crop up: it could be argued that Dublin does not compensate the abolition of the possibility to simultaneously apply for asylum, since the harmonization of all national asylum systems to common standards imposed by EU law has not been completed, which could continue to cause gaps in the system by which asylum seekers could end up finding themselves in legal limbo. (Troller, 2008: 98)

In addition, the Dublin System should not enhance an imbalanced division of the 'asylum burden' amongst member states but is still accused of doing so. (Ball, 2013: 242) This particular allegation will be discussed in chapter 2.

Within the context of the research question, it is important to state the Dublin System was never specifically meant as a tool to enhance a reality of equal burden-sharing between member states. However, it should not cause an imbalanced division, leading to the collapse of certain national asylum systems, either. (Filzwieser, 2006: 5) An important aspect within this research is effectively establishing whether or not Dublin truly does result into or contribute to a problematic lack of solidarity and burden-sharing between the member states. This will be analyzed during chapter 2.

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[6] Irregular Secondary Movement has been defined as the phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move on in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere. (ExCom Conclusion, 1989: No. 58 (XL))

1.2. The Dublin System: History and Evolution

In order to understand how the Dublin criteria came into existence and how it eventually has been shaped into the current Dublin III Regulation, it is necessary to set out the historical events preceding and leading to its implementation. In this section, I will first describe relevant historical elements of the European Union (EU)[7], and the process of integration through which the Dublin System came to be imposed.

The EU has gone through a significant political evolution since the early 1990's revolving around an increased regional integration[8] concerning a range of areas. What started out as an economic union, with the 1957 Treaty of Rome establishing the customs union as part of the European Community (Betts, 2009: 171), has evolved into the EU becoming a prominent example of regionalism and it is mentioned to having reached the highest level of regional integration worldwide to date. (Betts, 2009: 171) One of the areas which has been, and still is significantly subjected to EU integration, is asylum and immigration, visible through amongst others, the creation of the Common European Asylum System of which the Dublin III Regulation is the cornerstone.

However, The Dublin System did not initially arise as an element of the EU.

The first phase of Dublin, namely the Dublin Convention, was an intergovernmental agreement signed in 1990 and activated in 1997 amongst the Schengen countries during that period of time.[9] At the time, there were two main incentives for those states to create with a shared asylum application responsibility determination system: the earliest incentive for the creation of the Dublin Convention was the increasing influx of asylum seekers into Europe during the 1980's and well into the 1990's, mostly due to the collapsing Eastern European communist states and conflicts such as the Bosnian war and the conflict in Kosovo. As a result, the backlog of the handling of asylum applications within several European countries continued to persist. The continuous influx was perceived by many policy makers as a danger to nations' stability and security, as well as causing additional financial expenses. (Marinho, 1998: 1)

It was increasingly believed that the capacity of states to host refugees was insufficient which led to fear, objection and assumedly to increasing racist sentiments within the European host

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[7] Within this thesis, 'The European Union' or 'The EU' refers to the European political entity, with its political power being made up of both supranational and intergovernmental aspects.

[8] Regional integration is a sub-theory of regionalism. Within this context, Betts defines 'Regionalism' as patterns of interdependence and international cooperation within geographically contiguous areas of territory. (Betts, 2009: 164) Furthermore, as a part of that 'regional integration' is defined by Mattli as '*the process of providing common rules, regulations and policies for a region'*. (Mattli, 1999: 44)

[9] Belgium, Germany, France, Italy Luxembourg, The Netherlands, Denmark, Ireland, the United Kingdom, Greece, Spain and Portugal. (EUR-Lex 1997: 1) Later Austria, Sweden and Finland joined in.

communities.[10] Several national asylum services were indeed overwhelmed and this caused unacceptable delays of many asylum application decisions.

In order to address these tendencies, national governments started to, individually, establish additional administrative laws and policies containing increasingly restrictive elements towards asylum seekers.[11] (Marinho, 1998: 1)

After a while it became clear that these national policies were unsuccessful, and even negatively affecting neighboring countries: being confronted with high numbers of asylum applications, many countries started a 'competition', as it were, for policies that most successfully limited access to third country nationals resulting into the risk of states violating the right to apply for asylum and its international obligation i.e. the principle of non-refoulement. (Marinho, 1998: 1)

The second element adding to the importance for the Schengen countries to cooperate on asylum matters was the Schengen agreement of 1985[12] itself which abolished all internal borders between the twelve signatories and therefore challenged the internal security of the Schengen Area. (Vink, 2013: 1) It is in this light that a rule such as the Dublin System became relevant. (Thielemann & Armstrong, 2013: 148) The Dublin Convention was signed consistent with the Schengen Agreement of 1985 with the idea that, without accompanying measures such as Dublin, member states would never relinquish the power to control their national borders. (Vink, 2013: 1) Before the Dublin Convention was activated[13], the asylum chapter of the Schengen Agreement was used by the concerned member states to organize asylum and thus to decide on whether or not accepting an asylum application. It included the *'safe third country'* provision. (Marinho, 1998: 1)

From 1997, it was abolished and replaced by the much clearer Dublin Convention. The essential difference between the Schengen asylum chapter and the Dublin Convention is that Dublin sets out more precise criteria according to which a country is responsible for handling an asylum application within the Schengen area. (UK Refugee Council, 2002: 2)

Originally, the Schengen Agreement was not implemented on EU-level, even though it was initiated within this sphere. (Marinho, 1998: 1) The EU member states, who started to debate around the free

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[10] This can be concluded from the rise of extreme-right voting in Europe during the 1990s as stated by Lubbers, who also argues that extreme right parties gain votes as a result of favoring restrictive immigration policies. (Lubbers, 2002: 350)

[11] The adoption of the *'safe third country'* provisions can be considered as the most significant example of such restrictions implemented in the 1980s. Because of this, It became possible to deny someone access to the asylum procedure based on the assumption that, as literally mentioned by Thielemann, *'he/she could or should already have requested protection and, if qualified, would actually have been granted asylum in another country'*. These provisions, which were criticized by UNHCR and several NGOs, proved to be very effective in averting asylum seekers. (Thielemann, 2001: 16)

[12] Although only activated in 1995

[13] The Dublin Convention was signed in 1990, but only activated in 1997. Schengen was activated in 1997. For two years, the asylum chapter of Schengen existed in place of Dublin.

movement of persons, could not agree on how to distinguish freedom of movement between EU and non-EU nationals, which led to a political deadlock. Subsequently, twelve member states created the Schengen Agreement, and with that also the Dublin Convention, exclusively amongst themselves. (EU Legislation, 2009: 1) Dublin was exclusively meant to outline the responsibility determination criteria concerning the examination of asylum applications within the Schengen Area. However, in 1999 it eventually became part of the EU acquis[14]. (Marinho, 1998: 1)

An interesting view on how EU cooperation on asylum came to rise is the description of Betts, saying that *The EU integration process has evolved through a series of intergovernmental treaties, and the evolution of concern with asylum and immigration can be seen within the main treaties and summits that have taken place since the late 1980s. (*Betts, 2009:179)

Behind the background of a shift towards freedom of movement within the EU and amongst European countries, The Treaty of Maastricht arose in 1992. (Betts, 2009:179) This led to the first real steps towards a political union introducing a new structure under three pillars of integration, namely *The European Communities (EC), Common Foreign and Security Policy (CFSP), and police and judicial cooperation in criminal matters (JHA). The Treaty introduces, amongst others, the concept of European citizenship.* (EU Legislation, 2010:1)

The Treaty was described as 'a new stage in the process of European integration' (Lane, 1993:1). It encouraged member states to improve policy coordination in the field of border control, immigration and social affairs. (Grieco, 1995: 1) As Betts states, the focus on JHA especially arose from the assumption that *once intra-EU freedom of movement existed, there was a need for common responses to many of the challenges and consequences of free movement and a common border – including on policing, border security and asylum and migration.* (Betts, 2009:179)

The third pillar, Justice and Home Affairs (JHA) organized the intergovernmental cooperation that had been evolving since the 1970s and included asylum and immigration matters. (Council of the EU, 2005:8)

The first treaty updating Maastricht was the Treaty of Amsterdam (1999), which focused on introducing common minimum standards for asylum and immigration. (Betts, 2009:180) Amongst others, Amsterdam resulted into the activation of the Dublin Convention and the Schengen Agreement within the EU acquis. With that, the '*safe third country principle'* became the basis for determining responsibility for managing asylum claims within the EU. Amsterdam moved substantive areas, including asylum and immigration matters, from the third pillar (JHA) to the first

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[14] EU Acquis refers to a common foundation of rights and obligations, which binds together the Member States of the European Union. (Multilingual Thesaurus of the European Union)

pillar of the EU[15], increasing the power of the Union's institutions in the sense that under certain circumstances, the EU could overrule national governments within the decision-making process. (Hailbronner, 1998: 1) The Dublin Convention, as well as the Schengen Agreement, were subsequently transferred to pillar one, leading to a more powerful legal status given the transfer from intergovernmental to supranational level.[16] (Van Selm, 2003: 143)

With The Amsterdam Treaty, the direction towards the establishment of the Common European Asylum System, in which Dublin would occupy an important role, was thus decided. Negotiations regarding this topic peaked during the Tampere Summit of 1999. (ECRE, 2006:10) Immediately after the creation of the Amsterdam Treaty in 1997, The EU outlined in what way it would ensure compliance to the provisions of 'an area of freedom, security and justice' in two important documents. In 1998, the JHC Council presented the Vienna Action Plan[17] and additionally, the Council adopted the Tampere Programme in 1999[18]. These were meant to underline the need of tackling irregular migration, as well as the necessity to protect refugees through EU cooperation. (Cholewinski, 2011: 135) From this can be derived that maintaining national security[19], as well as freedom of movement and refugee protection are the regional collective goals at the heart of these developments.

Relevant within the context of explaining the role of the current Dublin Regulation, also as part of the EU asylum legislation, is the then-approaching EU enlargement with which the EU was confronted in 2000 and that, according to Cholewinski , had never seen it's equal. No less than 13 applicant states were involved[20], making it a major future challenge into preventing irregular migration into the EU. (Cholewinski, 2011: 137) The commitment to European integration, of which Dublin is a part, was also underlined within the Tampere Programme, stating that *'as a consequence of the integration of the Schengen acquis into the Union, the candidate countries must accept in full that acquis and further measures building upon it'*. (European Parliament, 1999: 1)

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[15] The first pillar includes decisive legislative instruments, namely regulations, decisions and directives which are binding and in some cases even directly imposable by the EU onto the national governments. (Noll, 2000: 136)

[16] As literally described by Hailbronner, areas including external border control, asylum, immigration, rights of third country nationals, judicial cooperation in civil matters and administrative cooperation were, as a result of The Amsterdam Treaty, to be governed on supranational level. (Hailbronner, 1998: 1)

[17] Be consulted via: http://europa.eu/legislation_summaries/other/l33080_en.htm

[18] Be consulted via: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm

[19] The European Migration Network concludes that certain member states perceive irregular migration as a potential danger to national security. Subsequently, certain policies are shaped and influenced by this perception. (EMN, 2012: 6, 14, 15)

[20] Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic, Slovenia and Turkey. (Cholewinski, 2011: 137)

In line with the principles of the Amsterdam Treaty and the aim to evolve to a common European asylum system, it became necessary to replace the Dublin Convention with a Community instrument. (ECRE, 2006: 10) Additionally, it was confirmed by two working papers carried out by the Commission that the Dublin Convention had failed to reach its goals, adding to the importance of change. (Ball, 2013: 89) The Dublin Convention was thus adapted into The Dublin Regulation on 18 February 2003. (Coleman, 2009: 255) From that moment on, the Dublin System affected day to day life within the EU since Dublin turned into a Regulation as part of the EU's secondary legislation, making its principles directly binding in all member states and obliging national governments to immediately include Dublin into their national legislation. (Raitio, 2003: 83) This was preferred, given the necessity to apply the harmonized measures in all member states in order to reach a correct execution of the system.

The question as to why the Dublin II Regulation was eventually revised, is an important part of this research since is is directly linked to the criticism on the Regulation. The precise incentives from which Dublin III has been established will be thoroughly discussed during the analysis in chapter 3.

To summarize, the evolution and the role of the Dublin System within the European asylum system is complex, because it is an element of the complicated issue-area of asylum. Dublin started out as an agreement between a handful of member states, from the necessity of sustaining the right of free movement within the EU. Subsequently evolved into an integral part of the EU acquis and was eventually positioned as the cornerstone of the emerging Common European Asylum System. Otherwise said, one cannot detach Dublin from the course of the European integration process.

Despite the evolution and alterations that the Dublin System has gone through, criticism expressed by several NGOs, a range of organizations and a number of member states, has persisted. The main critique is that the system supposedly enhances an unequal distribution of asylum requests between the member states of the EU, specifically to the expense of the southern member states. This is a claim which will be investigated during this research, as it is a vital aspect within the problem area of this thesis. Important to derive from this chapter, is that '*no man is an island'*, and neither is Dublin because it should be analyzed as part of European integration, which helps to explain its creation as well as its evolution, right up until today. Its linkage to European integration plays a major role during the negotiations concerning Dublin's implementation, which will be further set out during chapter 3.

Despite opposition, all member states have agreed on implementing Dublin, even those whose asylum systems have been under a major pressure, arguably as a result of the Regulation. This aspect will also be further elaborated during the next chapters.

However, the precise content of Dublin cannot be explained purely out of European integration, as will become clear during chapter 2.

2. The roots of burden-sharing difficulties in linkage with Dublin

During this section, I will explain the concept of burden-sharing, which offers an explanation as to why it is difficult to realize and thus, why Dublin might entail aspects that supposedly block a balanced burden-sharing. If it is not understood how complex the element of burden-sharing is, it can not be understood why Dublin has been created as it is and why it continues to be an integral part of the EU acquis despite its deficiencies. Also, since the problem area and the analysis are constructed from the assumption that Dublin indeed does enhance unequal burden-sharing, it is vital to elaborate on this topic in order to prove the credibility of the research foundation.

The core of this research draws upon one of the main criticisms expressed about the Dublin System, namely that it enhances an imbalanced burden-sharing with a lack of solidarity amongst member states.

During the last chapter it was described where the Dublin System started from and how and why it evolved behind the background of European integration. Within this chapter, I will analyze the element of burden-sharing as a part of the refugee protection regime. Then, I will determine whether or not Dublin entails deficiencies concerning burden-sharing and if these are to the expense of the southern member states rather than to the expense of the northern member states. To reach a conclusion, I will connect the findings of this chapter with each other.

2.1. Burden-sharing as part of the refugee protection regime

I have used Betts as main source, whose explanation on burden-sharing is relevant into explaining the foundational difficulties of enhancing a fair division of asylum requests within the EU. Betts talks about burden-sharing behind the background of the international refugee protection regime, which is fully applicable on the situation of the EU and its' regional cooperation problems on asylum, as Betts himself argues: *'explanations of regional cooperation draw upon broader explanations of international cooperation within international relations'*. (Betts, 2009(1): 168) The European refugee protection system is not separate from the international refugee regime – it is a part of it.

Betts begins by stating that international cooperation is crucial and necessary in order to properly provide for refugee protection due to the fact that refugee protection is a public good: it is accumulated by all states, however the costs are borne by those countries who either open up their

borders to host refugees, who financially contribute to refugee protection outside of their territory who contribute to the prevention of situations that may cause refugee flows to occur. (Betts, 2009(2): 2) Because of this, states will only want to contribute to refugee protection when it is guaranteed that other countries will also make similar efforts in that area. If this guarantee is not present, a situation arises in which it is possible for states to free-ride to the expense of others who do contribute to the provision of the public good and this, on its turn, could eventually lead to collective action failure, in which no state ends up providing for refugee protection. Theoretically, this situation is called the Prisoners' Dilemma, which will be further elaborated on during the analysis of Dublin III.

It is essential to understand the conditions under which states will cooperate for the provision of refugee protection, and thus also to understand why states have decided to install a system such as Dublin. (Betts, 2009(2): 2)

In order to make refugee protection happen across borders, it was necessary to create an international regime which could coordinate and sustain international, as well as European cooperation in the field of refugee protection. (Betts, 2009(2): 2)

The foundation, on which the current refugee regime is built upon, is the 1951 Convention. The definition of a refugee and the rights connected to the refugee status are fixed within this Convention. In addition, there is the UN Refugee Agency (UNHCR), mandated to work on guaranteeing protection and to develop long-term solutions and improvement of the plight of refugees. UNHCR also carries the responsibility to make sure that countries fulfill their obligations towards refugee protection as prescribed by the 1951 Convention. (Betts, 2009(2): 2)

However, as good as the idea and goals of the international refugee protection regime may seem, it is structurally flawed: the regime consists of two core norms into the provision of refugee protection: *asylum* on one hand, which concerns the duty of states to offer protection to those who are in need of it and who have reached their national territory, and on the other hand *burden-sharing*, which refers to the obligation of countries to make contributions to protecting refugees located on a territory other than their own. (Betts, 2009(2): 2, 3) This is where the regime is majorly flawed leading to the foundational problem concerning burden-sharing of asylum claims within the EU: Whereas the norm of asylum is defined and stands on a solid basis of a legal and normative framework, the norm of burden-sharing is not. Burden-sharing remains a key element in the provision of refugee protection and its undefinable nature is causing problematic situations in, amongst others, the area of European refugee protection. (Betts, 2009(2): 3)

The reason why burden-sharing is difficult to define is because it is practically impossible to precisely measure. The granting of protection to refugees on national soil is measurable; however other burden-sharing elements such as resettlement, financial contributions and contributions

concerning prevention should also be included when attempting to measure the level of international cooperation and interstate solidarity concerning global refugee protection. (Betts, 2009(1): 87)

Linking to the above is the distinction made by Thielemann between two ways in which states can contribute to refugee protection: on one hand there is the proactive way, in which state actions aim to prevent refugee flows from happening in the first place through, amongst others, peace-keeping operations and development aid. On the other hand there is the reactive way, applicable when refugee flows have already occurred, and which entails providing protection for people who are outside their country of origin or habitual residence and on the run from persecution. (Thielemann & Dewan, 2006: 1) The contributions to the asylum element of the global refugee regime are always of a reactive nature, since these contributions aim to address issues arising when refugee flows have already taken place. To summarize, the totality of burden-sharing is made up of actions which can be both reactive and proactive. This adds up to the difficulty of defining burden-sharing, because it is practically impossible to measure this over time, whilst taking into account long-term and short-term results and predicting which preventive measure prevented what refugee crisis from happening. Financial contributions to refugee protection are also difficult to calculate.

From what is stated above, it could be argued that the burden-sharing effects enhances by Dublin are very narrow, since it does not take into account neither capacity, nor proactive contributions.

The difficulty of establishing equal contributions to refugee protection in Europe is linked to what has been stated above.

To continue, there is the assumption that asylum seekers are a burden[21]. In linkage to this, another difficulty in establishing an affective distribution mechanism is elaborated on by theories such as realism, liberal intergouvernmentalism and rational choice. They argue that states act according to their self-interest and they will only cooperate when this cooperation will lead them to better results than when they would have operated individually. Since asylum is a regional matter with regional consequences, EU cooperation on asylum had to be established, including finding a way to divide the asylum requests amongst them. This reasoning adds another difficult dimension to enhancing burden-sharing. What will be set out in the next section, is based on the assumption that states are rational and will act according to self-interest.

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[21] Several sources indicate that refugees and asylum seekers are mostly considered a burden within European societies. They are often linked to financial costs, a challenge to national security and integration systems. One of many examples *mirroring this perception: 'The number of asylum-seekers in Germany is growing rapidly and many towns and cities are struggling to house them. The country's interior minister is pushing for changes to the EU's refugee policies in an effort to share the burden across the continent'*. (Der Spiegel, 2014: 1)

Legally, states must offer access to an asylum procedure for asylum seekers reaching their territory, in order to identify and provide protection for refugees. This is a clearly defined responsibility locked into international law that states have to abide by, which therefore enhances the tendency of states attempting to keep away as many asylum seekers from their soil as possible, but only to the extent that they do not violate their humanitarian norms, values and the provision of public goods such as national security and refugee protection. Since the aspect of burden-sharing is not concretely defined - neither on legal level, nor on informal level- but asylum provision through regional cooperation still needed to be established, the EU member states needed to decide themselves how to specifically organize the division of asylum requests between the member states, without the treat of collective action failure. The EU needed to implement a distribution system whilst also trying to define burden-sharing in order to be able to create this distribution system.

Subsequently, those member states with the most bargaining power were able to install a system which entails a definition of burden-sharing rather to the advantage of the northern member states, than the southern member states. Again, this was only possible due to the fact that burden-sharing does not enjoy a clear legal or normative status and is therefore not clearly defined. In my view, and concluded from the latter, The Dublin System implicitly links burden-sharing to the element of geographic location, since the state through which an asylum seeker first enters the EU is also the state responsible for the handling of the subsequent asylum claim.

Within this respect, it is useful to explain why exactly the geographic based definition of burden-sharing became the core element of the Dublin System and why this is experienced as problematic for the external border countries[22]. For this, it is necessary to take into account the history of the European asylum system. As mentioned in chapter 1, the rising influx of asylum seekers into Europe during the 1980s and well into the 1990s led many European countries into changing their liberal asylum policies into a more restrictive ones resulting into, amongst others, the installment of the rule on '*safe third country*', the predecessor of what later would be known as the Dublin Convention. This combined with the Schengen Agreement, which led to the need for further cooperation on asylum as explained in chapter 1, resulted in the implementation of the asylum chapter and later into the Dublin Convention. The Schengen Area involved more and more countries, and since all countries entering Schengen were considered to be '*safe third countries'* to which asylum seekers could be sent back to under the asylum chapter, and later under the Dublin Convention, this created the geographical advantage enjoyed by those states, such as Germany, Sweden and The Netherlands,

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[22] Within this research, 'the external border countries', a.k.a. the southern member states, refers to those EU member states situated at the external frontiers of the Union and who oppose the implementation of the Dublin System because they experience difficulties in dealing with the influx of asylum seekers.

who ended up being surrounded by other additional Schengen members. (Kupiszewski, 2013: 16) Those states, previously experiencing a high influx of asylum seekers, now became geographically advantaged as opposed to the southern member states who do not enjoy this 'buffer zone' of other '*safe third countries*' around them. (Kupiszewski, 2013: 16)

In addition, another element adding to this geographic advantage are the changing refugee patterns. During the 1980s and after the fall of communism, many refugees migrated from East and Central Europe, whereas anno 2013-2014, the main countries of origin of asylum seekers in the EU are respectively Syria, Russia, Afghanistan, Serbia and Pakistan. (Eurostat, 2013: 1)

These changes in refugee patterns resulted into the frequent use of different migration routes, turning mainly the Mediterranean area[23] into the gateway of Europe concerning a large part of asylum seekers. (Dunkerley et. al, 2003: 86, 87) Thielemann relates to this reasoning by stating that *'those countries which are more closely situated in geographic terms to important countries of origin are the ones more likely to encounter a disproportionate share of asylum applications'*. (Thielemann, 2006: 9)

Several statistics indicate this trend, for example during 2013, 42 925 asylum seekers entered the EU irregularly by sea from North Africa, Greece and Turkey into Italy. (UNHCR, 2013: 1)

Another related source is an illustration created by Frontex[24], in which the major migration routes that were used to reach the European continent during the first half of 2014, are highlighted. (Appendix, figure 1)

Adding to this, in 2010 according to Human Rights Watch, an estimated 80% of irregular migrants entering the EU have done so through Greece. (HRW, 2011: 1)

The latter indicates that the influx has increased within the external border countries. The influx within the northern member states is also high, if not higher in absolute numbers; however there is the aspect of asylum system capacity, which is problematic for certain external border countries. Besides geographic disadvantage through the lack of other surrounding '*safe third countries*' and the current migration routes being directed towards southern Europe, is the lack of capacity of the national asylum systems of countries such as Italy, Greece and Spain. The reason for this lack of capacity, leading to problematic situations, should be sought within history: When these countries signed the Dublin Convention neither one of them disposed of an asylum system capable of handling an higher influx of asylum seekers than they were traditionally used to. (Zetter, 2003: 110, 125) Until

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[23] See Appendix, figure 1
[24] Frontex is *the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.' (EUR-Lex, 2004: 1)*

the late 1970s, states such as Italy and Greece were countries of migration, as opposed to other member states such as The UK, France and The Netherlands. When the influx from the African continent increased, their profiles changed into being countries of immigration, however without properly adapting their asylum policies to the predicted asylum challenges that come with changing into a host country. The inadequacy[25] and insufficient capacity of the national asylum systems of Italy, and especially Greece and Bulgaria, still remain as can be derived from a statement of the European Asylum Support Office (EASO): '*Italy and Bulgaria, as well as Greece, were among the MS which faced increased pressures in 2013 due to large numbers of arrivals and a significant volume of pending cases, respectively, which led to official requests that EASO provide operational support to those MS'*. (EASO, 2013: 8)

From this, I have concluded that the Dublin System is not the root cause of the high influx, but it is causing the southern member states into carrying a disproportionate part of the asylum requests within the EU.

The undefinable nature of burden-sharing is the foundational reason why it is so difficult to establish a distribution system based on solidarity from which every actor equally benefits and to which every actor fairly contributes. The disadvantaged geographic location of the external border countries, as well as the inability of their national asylum systems to deal with the current influx, are the reasons why the same external border countries are negatively affected by the Dublin System.

With the creation of Schengen, the need to find a way of dividing asylum claims, it was necessary for the Schengen countries to decide on this in order to be able to continue the process of cooperation. The Dublin System was later adopted on EU-level. This could be perceived as an argument in defense of Dublin: because a specific burden-sharing definition doesn't exists, politicians needed to construct one themselves, and therefore it is bound to cause imperfect results. However there are several scholars, organizations and other involved actors stressing the existence of alternative systems, based on different perceptions on burden-sharing. In this section, I will continue to argue whether or not Dublin enhances an imbalanced burden-sharing to the expense of the southern member states, followed by mentioning other ways of defining equal burden-sharing relevant to the regional cooperation within the EU.

When looking at the statistics of the number of asylum applications filed per member state, one could wonder if the burden truly does mostly lie on the external border countries, since statistics from the

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[25] In my view, asylum systems are inadequate when the national government can no longer cope with the influx of asylum seekers, in a way that it leads to protection gaps, inhumane reception conditions and/or the risk of refoulement.

year 2013 prove that the highest absolute number of applications were filed in respectively Germany (126 705), France (64 760), Sweden (54 270, the UK (29 855) and Italy (27 930).[26]

Four out of five are northern member states. A second element raising doubt about the imbalance of burden-sharing to the expense of the external border countries is the difference in Refugee Status Determination outcomes. In 2013, there were 112 730 positive decisions taken within the EU. Respectively Germany, Sweden, the UK, France and Italy are reported to generate the highest number of first instance decisions in 2013.[27] Again, apart from Italy, all of them are northern member states. Here, the difference in how unequal burden-sharing could be perceived becomes relevant. When looking at the provision of permanent protection, it seems to be that the heaviest burden is carried by the northern member states and Italy. However, one should take into account the capacity of the country to properly deal with the number of asylum applications that it is confronted with. Greece and Bulgaria have stated the influx to be overwhelming to their national asylum systems, linked to their economic situation apparently not being in the position of carrying the financial costs of the responsibility to deal with every single asylum request filed on their soil. (ECRE, 2013(3): 1) One could reason that the fact that they still face a high number of asylum applicants also means that there are few resources, or willingness left to also set up a proper integration system. This reality could therefore lead to the compensating response of limiting the number of positive asylum decisions. Even though the Refugee Status Determination procedure is implemented according to equal standards imposed on all member states by the EU, managing the implementation of the procedure is a national responsibility. The inability of the southern member states to cope with the influx, which is at least partly caused by the Dublin System, could enhance those governments to offer permanent protection to fewer asylum seekers than other member states who are able to cope, which could lead to certain people in need for protection to be unfairly dismissed from Europe[28]. Further enhancing this danger is the fact that certain actors claim that countries such as Greece and Italy have shown a certain reluctance to improve their national asylum systems because this means that more asylum seekers would be then sent back under Dublin, causing them of having to deal with a higher number of asylum requests. Additionally, rumor has it that some southern member states, such as Italy, do not consistently register all asylum seekers, allowing some to escape and move on

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[26] Dublin transfers are not taken into account within these statistics; however when do taking them into account, the order remains the same and the difference is trivial to the argument supported by the statistics. For example, in 2013, Germany carried out 4,741 Dublin transfers and received 1,904. (Aida, 2014: 1) France carried out 645 transfers, and received 834 transfers. Including these statistics, the number of effective asylum requests for Germany and France in 2013 is now respectively 123 868 and 64 949. (Aida, 2014(2): 1)

[27] Statistics derived from Eurostat, be consulted via: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics#Asylum_applicants

[28] This is a reasoning based on logics and statistics, I have not found full proof for the correlation between a high influx and low positive RSD decision. Due to the limited space in this thesis, I will not elaborate.

irregularly to other member states, resulting into an increase of illegal migration and possibly endangering national security. (NOAS, 2011: 1, 10, 13) As stated by ECRE: 'According to UNHCR, an increasing number of asylum seekers, including Syrians, 'avoid fingerprinting in Italy and try to reach other European countries in order to apply for asylum there, reportedly due to poor reception conditions and integration prospects in Italy'. (ECRE, 2013(3): 1)

We have now concluded that the external border countries generally do not face the highest absolute numbers of asylum seekers or asylum requests, but when it comes to their capacity, the southern member states do carry a disproportionate part of the burden[29], a point of view chosen in this research resulting into the relevance of analyzing the assumed burden-sharing deficiencies of Dublin.

It should be repeated that financial contribution is also an element taken into account when discussing burden-sharing. Thielemann brings up interesting elements concerning this. (Thielemann, 2006: 16) He states that countries can and do engage in *financial burden-sharing arrangements,* however he stresses that the motives behind these contributions can be complex and may not necessarily lead to equal burden-sharing, as will also be discussed during chapter 3. (Thielemann, 2006: 16) An example of weak attempts to create burden-sharing is the European Refugee Fund, created to provide support to states in the receiving of refugees and IDP's. The fund offers *an equal flat rate amount* to each member state part of the fund, with the remaining money spent in proportion to the number of non-EU citizens being offered protection in each member state. This system, however, does not enhance the best way of reaching equal burden-sharing since it does not hand out resources based on neither capacity, nor on the strength of the national economy or size of the country but only takes into account the absolute number of refugees within a state. (Thielemann, 2006: 16, 17)

Thielemann also assumes that member states will not feel more motivated into hosting more refugees through financial measures, since *it is above all the non-financial costs associated with refugees that countries often find problematic.* (Thielemann, 2006: 17) This could be an explanation on why the southern member states remain critical towards the Dublin System despite of financial and operational support from the EU. Often during occasions when the Dublin System ends up in the eye of the storm, additional financial and operational support are granted to the concerned member states rather than proposing to install a fundamentally different way of dividing asylum requests. For example, after the 2013 Lampedusa naval disaster[30], Italy blamed the EU and the lack of solidarity as

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[29] The statement that Bulgaria and Greece lack capacity to deal with the influx, is based on the fact that Dublin transfers to Greece and partly to Bulgaria are currently suspended due to protection gaps and the risk of refoulement. (ECRE, 2013(4): 1, 2)

[30] The Lampedusa boat tragedy occurred on 3 October 2013 during which approximately 360 migrants died when their boat sank near the coast of Lampedusa. (BBC, 2013: 1) The case evoked many indignant reactions from across

main cause. Commissioner for Home Affairs Cecilia Malmström responded by saying that the issues would be addressed through direct action in order to avoid future disasters of the sort:

"Today I have proposed to deploy an extensive FRONTEX search and rescue operation that will cover the Mediterranean from Cyprus to Spain. I have asked the Ministers to give their political support and to make the necessary resources available. Such an operation will help lead to quicker tracking, identifying and the rescuing of more vessels and boats. And therefore prevent the loss of lives at sea. The European Union will also benefit, as of December from the technology and information sharing tools available through the EUROSUR system." (EU Press, 2013: 1)

President of the European Commission José Manuel Barroso later granted an aid package of €30 million for Italy in order to properly deal with boat refugees and to accommodate all asylum seekers reaching Italy's shores. These newly implemented measures subsequently did result into many more refugees being saved from the Mediterranean, but not to a diminishing asylum pressure on Italy. To the contrary: according to Eurostat, Italy, as well as Bulgaria, have had more than double the amount of asylum requests during the first quarter of 2014 compared to the first quarter of 2013. (Eurostat, 2014: 2)

In addition, Thielemann mentions the physical sharing of people as a most effective way of equally contributing to refugee protection, however under Dublin this is mostly based on geographic grounds, and despite existing compromises through financial and operational contributions, is still leading to disproportionate burdens. Thielemann suggests other elements through which the division of asylum seekers could be established in a fairer way, namely the development of a *multi-factor distribution key*[31]. Such a system has been developed, proposed and subsequently rejected in 1994 because it could not find sufficient support in the Council. (Thielemann, 2006: 18) Recently, the system has gradually popped up again in the political debate in the wake of the persisting problematic asylum situations in Southern Europe. (Schneider et Al., 2013: 1) The *Sachverständigenrat deutscher Stiftungen für Integration und Migration* (SVR), in cooperation with the German Institute for International and Security Affairs, has developed an updated multi-factor model through which a fair asylum reception quota is calculated based on the combination of four elements: economic strength, total population, terrestrial area and the annual unemployment rate. (Schneider et Al., 2013: 6) Interestingly enough, according to the calculations of the multi-factor model, those countries handling more asylum requests than they should during the period of 2008 until 2012 are Sweden, Belgium, Greece, Austria, Cyprus and Malta with a deviation percentage

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Europe and the rest of the world, and revived the debates concerning the EU asylum situation. (Press Releases Database, 2013: 1)

[31] This system is based on '*the idea of a physical sharing of people between European states on the basis of a fixed distribution key that tries to take account of countries' relative protective capacities*'. (Thielemann, 2006: 17)

from fair quota of respectively 266,3%, 199%, 139%, 123,7%, 90,2% and 40,3%. Seen from this perspective, the assumption that Greece and Malta carry a disproportionate part of the burden based on their capacity still stands. However, Spain, Bulgaria and Italy did not handle the number of asylum requests that they, according to the multi-factor calculation, could have handled. (Schneider et Al., 2013: 8)

Nonetheless, given the complexity and different possible ways of defining and perceiving burden-sharing, within this research I have decided to define unequal burden-sharing through one specific approach, namely the element of capacity assessed from whether or not protection gaps occur and what the risk is of a national asylum crisis erupting, causing asylum seekers to suffer from this. From this point of view, the southern member states effectively do carry a disproportionate part of the burden, despite of financial contributions[32] from the EU and the fact that the northern member states also take in a high number of asylum seekers.

To conclude, the southern member states apparently do not have the capacity to cope with the current influx without causing refugee protection gaps or jeopardizing national security, which leans closely to the state of collective action failure.

It is clear that Greece, Bulgaria and Italy are affected by the lack of solidarity provisions in the Dublin Regulation. Subsequently, asylum seekers are subjected to a lack of adequate protection; they risk to be exposed to inhumane reception conditions and refoulement. (Amnesty International, 2010: 5)

From here on, I will further analyze the reason why the negotiations involving the implementation of Dublin II and Dublin III have lead to a further implementation of the system even though, because of reasons explained above, the southern member states are generally not in favor of the core elements that define Dublin.

3. The implementation of the Dublin System

During chapter 1 and 2, I have explained why Dublin was established, why its deficiencies are left unaddressed and that it is difficult to find a more efficient alternative in order to enhance burden-sharing concerning the distribution of asylum requests within the EU. However, it is still not explained why those states negatively affected by Dublin would agree on its implementation. During chapter 3 this will be addressed though analyzing the political process which has lead to the continuous implementation of the system. I will set out the decision-making procedure of the EU, since Dublin has been established as such. I will describe all concerned actors, set out the events

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[32] A concrete proof for this is UNHCR and ECRE calling for the suspension of Dublin transfers to Greece and Bulgaria. (ECRE, 2013(4): 1, 2)

leading up to the negotiations and highlight negotiation strategies that have lead to the outcome. Since Dublin was created behind the background of the European integration process, the latter will take in a prominent place throughout the analysis.

3.1. Limitations

As Heisenberg argues: *'Decision-making in the European Union (EU) is complex: not only does the legislative process seem to change with every treaty revision, but proposals are subject to very different requirements, depending on the issue area. It is difficult for all but the most committed analysts of the EU to fully understand the formal process by which the EU makes decisions'.* (Heisenberg, 2005: 1) Moreover, she stresses that EU negotiations are made up of two levels: formal rules and informal strategies, which can be applied in order to reach a certain agreement. (Heisenberg, 2005: 1, 2) Within this thesis, I have attempted to cover those elements of the EU decision-making process that have shaped the Dublin negotiations. Given the complexity of the matter, I have chosen a limited number of theoretical angles from which the outcome of the Dublin negotiations can be perceived

3.2. The EU decision-making process.

During this section I will analyze the implementation process of Dublin I, Dublin II and Dublin III in order to find out how the Dublin System continues to be implemented despite criticism and opposition amongst a number of concerned member states. Given the foreseen negative consequences for some actors, it is unlikely that intergovernmental agreements were reached purely by balancing out national interests. Within the area of asylum, national preferences amongst states differ in such a way that they could never be fully reconciled.

In order to understand the nature and course of the Dublin negotiations, I will first explicate the general decision-making structures of the EU, as well as the role of the concerned EU institutions, followed by the explanation of the theoretical framework from which the negotiation process of the Dublin System will be analyzed.

The three main EU institutions concerning EU legislation, and therefore also the main actors within the Dublin negotiations, are the Council of the European Union (EC), which represents the national governments of the member states, the European Parliament (EP), representing, and elected by the EU citizens, and the European Commission (ECo), which is mandated to draft legislation proposals that should have the best interest of the EU at heart. Each proposal, voted by the 28 Commissioners who are appointed by their home countries, needs a simple majority in order to be accepted. (ECo, 2012: 1) Subsequently, the EC and the EP handle the adoption of those proposals by deciding on

their implementation through negotiations. Accepted laws are then implemented by the ECo and the member states, whereupon the ECo safeguards compliance. (EU, 2014: 1)

Additionally, the relevant Council field within this research is Justice & Home Affairs, which, amongst others, deals with the issue-area of asylum and migration. Its' tasks are carried out by Council Working Parties, which entails staff from all member states who are specialized in asylum matters, and who first-handedly process the Commission proposals after which they send them to the Committee of Permanent Representatives (COREPER), a body that agrees on the draft proposal and prepares it for the negotiations with the parliament. (Bunyan, 2013: 4)

The treaties determine the rules on how an EU negotiation procedure should be organized. Every law proposal is built upon a certain legal basis, which decides what kind of decision-making procedure should be followed. The four main decision-making procedures within the EU are: consultation, co-decision, cooperation and assent. (Nugent, 2006: 244) Since within this research, cooperation and assent are not relevant I will only elaborate on consultation and co-decision.

The Dublin II negotiations were based on the consultation procedure (EUR-Lex, 2001(2): 1), whereas the negotiations involving Dublin III were held through a co-decision procedure. (Prelex, 2008: 1) The difference lies in the extent to which legislative power is granted to the European Parliament. Within a consultation procedure, the Council is not obligated to follow the position of the Parliament, it must only consult it. (Summaries of EU legislation, 2014(2): 1)

With the activation of the Treaty of Lisbon, the co-decision procedure became the most frequent decision-making procedure within the EU, also called '*the ordinary legislative procedure'*. Within co-decision, the EP and the EC share legislative power. (Hitiris, 2003: 40) As stated by the ECo, the principle of co-decision is equality: *'that neither institution (European Parliament or Council) may adopt legislation without the other's assent'*. (ECo, 2012: 1)

Qualified majority voting[33] within the Council is also an element which distinguishes the co-decision procedure from the consultation procedure and which was empowered through the activation of the Lisbon Treaty. Seen from the perspective of qualified majority voting, every member state holds voting power based on the number of citizens, which is beneficial to countries such as Germany, Italy and the UK. It has substituted unanimous voting[34] within issues such as asylum, external border control and agreements on international trade. A qualified majority is reached with 55% of the

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[33] As literally stated: *'A qualified majority (QM) is the number of votes required in the Council for a decision to be adopted when issues are being debated on the basis of Article 16 of the Treaty on European Union and Article 238 of the Treaty on the Functioning of the European Union. Under the ordinary legislative procedure, the Council acts by qualified majority, in co-decision with the European Parliament.'* (Summaries of EU legislation, 2014(1): 1)

[34] As literally stated: 'The term "unanimity" means the requirement for all the member states to be in agreement before a Council proposal can be adopted. (Summaries of EU legislation, 2014: 1)

member states, which represents at least 65% of all EU citizens. (Summaries of EU legislation, 2014(1): 1) The difference between the decision-making process of Dublin II and Dublin III is significant, since it entails a certain change of power and role of certain actors, which can influence the course of the negotiations.

The article '*Who Has the Power in the EU*' written by scholars Robert Thomson and Madeleine Hosli provides a reliable conclusion on the negotiation power balance between the Council, the Parliament and the Commission, which applies to the negotiation circumstances of Dublin. In a nutshell, they stated that *'the results indicate clearly that the Council-centric[35] view on the balance of power among the European Commission, Council and Parliament is the more accurate depiction of recent legislative decision-making. As such, the findings support accounts of the EU decision-making in which Member States' interests are seen as important in defining decision outcomes'. (Thomson & Hosli, 2006: 413)*

They continue by stressing the fact that the latter does not mean that other concerned actors are powerless and should not be taken into account:

'The Commission and Parliament - and also a range of other actors, including domestic and transnational interest groups - may affect the policy positions that governments advocate in negotiations within the Council, thereby exerting indirect influence on decision outcomes'. (Thomson & Hosli, 2006: 413)

The Commission, for example, holds the power of initiative and through this way it can influence the content of EU legislation. (Thomson & Hosli, 2006: 392) The Commission is bound by subsidiarity, meaning that when drafting a proposal, it must prove the necessity for common rules that have a goal which cannot be reached when member states would act individually. (Brans, 2012: 2) Since it was necessary to find a collective solution to the distribution of asylum requests within the EU, the Commission could therefore propose the Dublin System. Because the Commission is mandated to represent the interests of the EU in general, it is perceived as institution that strives towards an increase of European integration. As such, its' preferences, and subsequent law proposals, will most probably be founded on this element. (Hooghe, 2002: 146)

The balance of power between the negotiation actors is vital into understanding how the Dublin System continues to be implemented and this will be further discussed during the analysis.

In addition, not only the negotiation power of the actors is important to discuss and analyze, but also the way these actors use their power and certain strategies, in order to influence deciding on the course of the negotiations and eventually on their outcome. It should be said that there is a high

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[35] As literally stated: *'The Council-centric view attributes more power to the Council of Ministers than to the Commission and Parliament.* (Thomson & Hosli, 2006: 391)

degree of informality surrounding the decision-making process, in addition to the formal negotiation rules. (Heisenberg, 2005: 1) Furthermore, EU negotiations are characterized by '*modes*' aka, the nature and manner through which actors reach a joint decision. (Elgström & Jönsson, 2000: 1) The negotiation modes relevant within this respect are bargaining and problem-solving methods. Bargaining methods are used by actors in order to result into an outcome which leans the closest to their personal preferences. Problem-solving, on the other hand revolves around finding a solution to which every actor can relate. Elgström & Jönsson argue that *'the mode of negotiation to be found in the EU decision-making processes is contextually determined. Empirically it is demonstrated that day-to-day negotiations in the EU are to a large extent problem-solving exercises. Under certain circumstances, however, conflictual bargaining occurs. The pattern varies with, therefore, level of politicization and type of policy, and according to the stage in the decision-making processes*. (Elgström & Jönsson, 2000: 1)

The Dublin negotiations can also be viewed from both angles. Both points of view offer valuable insights into how the Dublin System is continuously implemented. During the analysis of the Dublin II negotiations, bargaining is highlighted as the main tool into reaching an agreement. Therefore, I have stated that there are clear winners and losers at the conclusion of the negotiations, since this is a way of perceiving the outcome according to bargaining.

As for the Dublin III negotiations, I have chosen to emphasize rather on the problem-solving strategy. The Dublin II negotiations were organized from the incentive of securing a responsibility determination mechanism of incoming asylum requests, and strengthening its' legal status. The Dublin III negotiations on the other hand, occurred from the conclusion that certain aspects of the Dublin System were problematic and needed to be revised. As such, the subject of both negotiation processes is identical, however the content and its' purposes are rather different. Although the southern member states continued to bring forward alternatives, the Dublin III negotiations mainly revolved around compromises and alterations of the existing regulation instead of substituting it with another system. One of the new elements that Dublin III brought with it is the Early Warning Mechanism which is considered to be a compromise towards the southern member states and their problems relating to Dublin. This will be further discussed in relation to the Dublin Recast.

The problem-solving strategy underlines those preferences that actors have in common, and from that tries to establish an outcome acceptable to all actors. This negotiation tool is called *'consensus'*. A consensus can, on its turn be reached through several ways such as vote trading[36] and the formation

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[36] Vote trading is a tool which is used within several international negotiations, including those of the EU. As Eldar mentions: '*There is evidence that countries trade votes amongst each other on a wide range of issues, including the*

of a coalition. (Brams, 2003: 189, 190) Consensus is an informal way of decision-making and it becomes more and more important within the EU, as Heisenberg states: '*consensus decision-making is the norm and voting rarely occurs except in a few areas where decisions could not be indefinitely delayed or postponed*'. (Heisenberg, 2005: 66) Within the EU, consensus has a unique clout stronger than in any other political context. The EU established a solid '*culture of consensus*', which resulted from '*40-year history of negotiations among the same partners and the acculturation of new members to those norms. This means that the negotiations are structured in a framework where, because of the iterated nature of the negotiations, trust is very high and reputation matters a great deal.*' (Heisenberg, 2005: 68) In this context, vote trading is a popular tool. Since the assurance that many more negotiations on several issues will follow within EU context, member states tend to trade in their votes within negotiations in which they have few interests to defend. It could also be assumed that states might feel pressured to give in on certain occasions, keeping in mind previous or future negotiations that are also of certain importance to them. Within the Dublin negotiations, this phenomenon has influenced the final outcome to a great extent, as will be further discussed during the analysis. In the following chapter, I will elaborate on the theoretical framework on which both the Dublin II and Dublin III negotiation analysis are based.

3.3. Analysis

3.3.1. Theoretical Framework

The four main theories of European integration are neo-functionalism, liberal intergouvernmentalism, constructivism and rational choice theory. Throughout the analysis of the negotiations of the Dublin System, all four will be applied in order to offer a full and broad insight into how Dublin was established and especially why it continues to be implemented despite persisting criticism from quite a few of member states. All four theories provide different elements and points of view. It should therefore be noted that the answer to the research question will not be a one-side simplistic conclusion but rather a presentation of several angles from which the implementation of Dublin could be perceived.

All theories, except for constructivism, are actor-centered and argue that behavior is based on rationalist reasoning.

I have based some of my foundational research on statements made by Alexander Betts in '*Forced Migration and Global Politics*' and in '*Protection by Persuasion: International Cooperation in the*

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use of force, trade issues, and elections of judges. Vote-trading in international institutions often involves deals between wealthy countries and poor countries'. (Eldar, 2008: 1)

Refugee Regime', since his explanation regarding the global refugee protection regime, of which the Dublin System is an element, in combination with theories of regional integration, a phenomenon of which Dublin also is an element, has offered insights valuable in explaining the creation, negotiations, implementation and continuous existence of the Dublin System. Adding to this, I have inserted additional scholars' views.

In order to reach a conclusive statement about the problem area, I have chosen to use neo-functionalism (NF), liberal intergovernmentalism (LI), constructivism and rational choice theory (RCT). These theories entail explanations on different elements of EU cooperation regarding asylum, and are thus highly relevant to explain Dublin. Important to note is that the analysis of this particular aspect of EU integration can be done from a number of approaches. As stated by Betts (Betts, 2009: 172), there are many political theories explaining European integration from different points of view which are built on a range of assumptions. This should be kept in mind when reflecting on the analysis, as the time and space limits of this thesis only offer room for a limited theoretical scope. I have chosen those theories which are relevant within analyzing Dublin from a burden-sharing perspective. One must also be aware of the changing relevance of different theories throughout time, which, in my view, certainly applies in the case of Dublin. For example, different theories are applied to explain EU cooperation during the Cold war, since EU integration back then happened against a geopolitical background, whilst current cooperation incentives are, amongst others, based on economic grounds. (Moravcsik, 2013 : 773-774)

3.3.2. The Dublin Convention: Analysis

During this section, I will explain the creation of Dublin I through neo-functionalism

Neo-functionalism is applied in order to explain the first stage of the Dublin System, namely the rise of the Dublin Convention in 1990, and its eventual activation in 1997. (EU Press, 1995: 1)

Philippe C. Schmitter states that neo-functionalism is a theory which stresses the central role of non-state actors, namely regional organizations such as the Schengen Countries and the EU in deciding upon the nature and evolvement of further integration. (Schmitter, 2002: 2, 3) Nonetheless, member states also fill in a central role in the neo-functionalist scheme: It is them who decide on the terms of the initial integration and who initiate the first step into cooperating as, without them, no regional power would be established in the first place. States do set the terms of the first agreement, however they do not solely decide upon neither the subsequent direction of the integration, nor the extent to which the process changes. (Schmitter, 2002: 3) The latter slightly touches upon the fact that the next step in the evolution of Dublin is no longer the result of the same incentives and negotiation process. The background against which Dublin further evolves also evolves on itself, partly due to the

changing roles and incentives of both concerned states and the concerned regional actor. Furthermore, according to Schmitter, regional actors are likely to act according to changeable self-interests and they pursue exploitation of subsequent spill-overs[37] and unplanned effects which arise when member states allow the activation of a supranational entity responsible for a number of tasks, which subsequently leads to the acknowledgment that this process influences other interdependent areas. As literally stated by Ben Rosamond in '*Theories of European Integration*': '*deepening economic integration will create the need for further European institutionalization. Political integration and supranational institutionalization are a therefore side-effects of economic integration*'. (Rosamond, 2000: 51,52) The Schengen Agreement, as well as the Single European Act of 1985[38], constituted the beginning of deepening economic integration. The theory confirms the logical step of going from economic cooperation in which internal borders are abolished, to a state in which a coherent asylum policy proves to be necessary, followed by a further extension of European integration in other interdependent fields. It can also lead to taking already occurred cooperation to another level, which eventually happened through the Dublin System, strengthening member states' entanglement in the area of asylum. Schmitter further explains elements of neo-functionalism relatable to the rise of the Dublin System.

He says that, under democratic and pluralistic circumstances, states will get more and more intertwined in regional influences and will result into passing on a higher level of authority to the regional entity that they themselves have established. This is applicable on the shift from Dublin Convention to Regulation, earning the Dublin System a higher legal status and clout and strengthening the position of the EU as the institution imposing the Dublin System on its' members. This situation will ultimately, according to Schmitter, lead to EU citizens expecting more and more from the Union and, taking this assumption into consideration, the chances of economic integration leading to political integration, aka spill-over, will rise. (Schmitter, 2002: 3)

To conclude, Betts argues similarly to Schmitter that the phenomenon of 'Technocratic spill-over from one issue-area to another' can explain the origins of Dublin. He states that neo-functionalism explains how the Area of Free Trade eventually led to a common EU asylum policy, otherwise said how economic integration has enabled cooperation and subsequent integration in the area of asylum (Betts, 2009: 181)

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[37] This happens when cooperation on one issue-area directly leads to cooperation in another issue-area. (Niemann & Schmitter, 2009: 6)

[38] The Single European Act was the result of the negotiations between the EU member states in order to create a free trade market. It was agreed one year after Schengen and entailed a program of the abolishment of trade barriers and the creation of economic liberation within the EU. (Dalton, 1993: 73)

The initial reasons to cooperate on asylum, and thus to establish the Dublin System between the concerned member states back then, are now clear.

To continue, Haas and Lindberg, who created the theory, consider integration to be a phenomenon occurring and fluctuating over time, it is not a goal on itself because it keeps changing as the circumstances and incentives of the concerned actors also change. (Niemann & Schmitter, 2009: 4)

As mentioned before, the central element within neo-functionalism is spill-over, which happens when cooperation on one issue-area directly leads to cooperation in another issue-area. (Niemann & Schmitter, 2009: 6)

According to neo-functionalism, actors are all self-interested and will act accordingly, however they tend to change their preferences in line with a change of reality and it is therefore a given that throughout the integration process, interests tend to shift. (Niemann & Schmitter, 2009: 5) This is a factor relevant to how and why Dublin I later evolves into Dublin II, due to a change in situation, additional actors and altered incentives. Additionally, neo-functionalism stresses that decisions are often made without a complete awareness of what they could cause, and as such it is likely that these unforeseen consequences provoke new decisions and agreements resulting into an increased level of integration. (Niemann & Schmitter, 2009: 6)   The theory also argues that decision-making within regional integration is a positive-sum game, which does agree with Dublin I since none of the twelve states experienced more or less advantages or disadvantages than another. However, when taking into account the main criticism on both Dublin II and Dublin III, this assumption is no longer applicable. (Niemann & Schmitter, 2009: 6)

Lindberg describes functional spillover which *"refers to a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and need for more action, and so forth"*. (Lindberg, 1963: 10) This part of theory is highly logical when discussing the introduction of Schengen, which provoked additional measures folowing the removal of internal borders, since this entailed risks for internal security and the provision of refugee protection.

The economic and political unity theory, including the focus on the supranational overarching actor, is useful in explaining the utmost original circumstances under which Dublin came to existence. However, when analyzing subsequent phases and motives behind the ensuing assigned role of the Dublin System as cornerstone of the Common European Asylum System, neo-functionalism is limited. Since neo-functionalism sees decision-making within an integration scheme as a positive-sum game, it fails to explain why certain member states accept the element of imbalanced burden-sharing caused by the implementation of Dublin II and Dublin III. Another limitation is that the theory does not take into account the way in which the aspect of sovereignty can slow down integration. Asylum in Europe is bound together by both national and European legislation, causing

certain gaps and malfunctions in the system. States still hold an important deal of national sovereignty in the field of asylum, such as the Refugee Status Determination procedure.

The bargaining principles introduced by Liberal Intergouvernmentalism become relevant into the analysis of the evolution of the Dublin System.

3.3.3. Dublin II Regulation: Analysis

Theoretical Framework

Within this section, I will find out why the southern member states have accepted the Dublin II Regulation. In order to reach a credible conclusion, I will analyze the outcome of the Dublin II negotiations through liberal intergovernmentalism (LI), which has been created and further developed by Moravcsik in respectively 1993 and 1998. LI is aimed at explaining certain aspects of European integration. (Moravcsik, 1993: 1) As Betts states, one grand theory explaining every element of European integration has not yet come into existence, and this causes a certain complexity when it comes to choosing and combining theories in order to correctly explain the evolution of the Dublin System. Moravcsiks' theory revolves around the preferences of states and the negotiations between them with international institutions serving as platforms of cooperation. Concretely, Moravcsik sees the continuous European integration as the result of a range of rational actions and choices undertaken and made by the national governments.

LI is based on two core assumptions.

Firstly, states are the principal actors. International institutions, such as the EU, are perceived within this framework as international arena's established to coordinate economic interdependence[39] via negotiated policy coordination. (Moravcsik, 1993: 474) It is stated that national governments protect their individual goals and preferences through intergovernmental negotiation and bargaining. (Moravcsik, 1993: 480)

The latter should not be seen in a realist way, since the dominant motivation of national governments is not purely national security. The power of the state is not marked by coercive actions, the preferences of states are nor equal neither static and interstate organizations are far from trivial. (Moravcsik, 1993: 499)

Still, LI states that national governments do dispose of a high level of decision-making power, as well as political influence and authority. (Moravcsik, 1993: 515)

Secondly, LI carries out the assumption of rational state behavior. (Moravcsik, 1993: 481)

As literally stated by Moravcsik: *"State action at any particular moment is assumed to be minimally rational, in that it is purposively directed toward the achievement of a set of consistently ordered goals or objectives.[40] Governments evaluate alternative courses of action on the basis of a utility function."* (Moravcsik, 1993: 481) Because of this, collective outcomes that evolved from negotiations, result from aggregated individual actions emanated from the efficient pursuit of national preferences. Nevertheless, collective outcomes depend on the extent overarching entity with varying power; they do so because cooperation provides at least one benefit to all concerned states. Thus, the creation of international organizations should be understood as a collective outcome of interdependent rational state choices combined with intergovernmental negotiations. (Moravcsik and Schimmelfenning, 2009: 68)

Further on, Moravcsik describes the three essential elements within LI meant to explain state's decision to form an international arena through which they initiate cooperation, elements also relevant when explaining the outcome of the Dublin II negotiations. (Moravcsik, 1993: 480)

These three elements, or stages, form a framework through which interstate negotiation outcome can be explained by analyzing them in a fixed order each with separate accompanying theories.

The stages entail respectively **national preference formation**, which is generally fueled by geopolitical interests[41] as well as issue-specific interests that are mostly of an economic nature, **interstate bargaining**, which is either shaped by the manipulation of information or through intergovernmental bargaining starting from asymmetrical interdependence[42] – which applies to the actors involved in the Dublin II negotiations- and lastly **the choice of international institution** as arena in which cooperation takes place. It is the choice of institutions reflecting the ideology of federalism, the need for management of a technocratic[43] level or the need of ensuring the implementation of the reached agreement between states. This order is logical since states first need to define their preferences on which they will base their goals, followed by a bargaining process leading to substantive agreements and finally the actors need to create an institution in order to

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[40] As literally stated by Moravcsik : *"Such goals are best seen not as defined across alternative policies or strategies (e.g. a free trade regime, fixed exchange rates), but across alternative future states of the world (e.g. higher levels of economic transactions, exchange rate stability). Rational choices among policies and strategies must generally take into account the expected reactions of other states and the resulting strategic interactions among them, while preference across future states of the world do not. The latter are 'pre-strategic' preferences."* (Moravcsik, 1993: 481)

[41] As literally stated: *'geopolitical interests reflect perceived threats to national sovereignty or territorial integrity, whether military or ideological'.* (Moravcsik, 1998: 26)

[42] Asymmetrical interdependence means that, from a certain agreement, one state would benefit more than another, or as Moravcsik says, *'the uneven distribution of those gains derived from a specific agreement, compared to 'outside options' which are alternative or unilateral possibilities'* (Moravcsik & Schimmelfennig, 2009: 71)

[43] Management by experts, who are specialized in certain related issue-areas disposing over knowledge useful in leading an organization/state/company/institutions

secure and maintain the negotiation results keeping in mind the uncertainty of the future.[44] (Moravcsik & Schimmelfennig, 2009: 69)

In conclusion, Moravcsik's rationalist framework strives to answer three main questions crucial to the problem area of this research: "What determines national preferences?", "Taken into account national preferences, what explains the efficiency and distributional outcome of the Dublin II negotiations?" and "Why have the member states decided to transfer sovereignty concerning the change from the Dublin Convention into the Dublin II Regulation?" The latter is derived from key questions of Moravcsik's scheme described in '*The Choice for Europe: Social Purpose and State Power from Messina to Maastricht'*. (Moravcsik, 1998: 24)

Through Moravcsik, I will now explain the three steps important to clarify negotiation outcomes as a part of international cooperation. The three phases will be analyzed through, respectively, theories of preference, bargaining and institutionalism. (Moravcsik & Schimmelfennig, 2009: 69)

National Preference

Within LI, states are considered to be unitary entities, derived from the assumption that national political bargaining, national representation and diplomacy form a steady preference profile. Moravcsik (Moravcsik & Schimmelfennig, 2009: 69) underlines the influence of domestic elements on the preferences of a state. He argues that the goals of states' foreign policy tend to vary as a reaction to altering pressures coming from domestic entities whose preferences are represented and carried out by political institutions. In conclusion, the aims and purposes of states are neither static, nor systematic but domestically based.

State's preferences are constantly changing, tangible and because of this, they shift across time under the influence of interior institutions and issue-specific interdependence. (Moravcsik & Schimmelfennig, 2009: 69, 70) Additionally, state's preferences have predominantly been reflecting economic rather than security or ideological ideals. As literally quoted by Moravscsik (2009): *'Forces of economic globalization play an important role, yet in fully half geopolitics and ideology had an important secondary impact'*. (Moravcsik & Schimmelfennig, 2009: 70)

In '*The Choice for Europe: Social Purpose and State Power from Messina to Maastricht'* (1998), Moravcsik describes **five dimensions** to which national preferences formation is attributed: *'variation in preferences across nations and issues'* refers to the fact that preferences are different

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[44] As literally described by Moravcsik: *'Predicting the circumstances under which future contingencies will occur is often difficult and costly, sometimes impossible. Where member governments have shared goals, but are unable or unwilling to foresee all future contingencies involved in the realization of common goals, they may have an incentive to establish common decision-making procedures or to empower neutral agents to propose, mediate, implement, interpret and enforce agreements.'* (Moravcsik 1993: 509)

depending on the issue-area and depending on the state, *following the nature and intensity of economic incentives.* (Moracsvik, 1998: 49) For example, as the monetary policy has led to disagreements between countries with a strong and with weaker currency, the Dublin System on its turn leads to disagreeing preferences between the northern and southern member states due to geography. The second dimension entails '*the timing of preference changes'.* (Moravcsik, 1998: 50) For example the rise of influx of asylum seekers in the 1980s enhanced more cooperation on asylum between member states. Thirdly*, 'consistency with broader foreign policy'* refers to the fact that states are inclined to install policies consistent to each other. (Moravcsik, 1998: 50) For example, they tend to generate similar opinions on asylum on both on national as well as European level. '*Domestic actors and cleavages'*, the fourth dimension, simply refers to the cleavages dividing those states that are in favor of the regulation and those who are against. (Moravcsik, 1998: 50) An example is a left-right division within EU politics, also present in national politics of the member states. (Hosli, 2010: 5) Finally, the fifth dimension namely *'negotiating demands and concerns in domestic policy discourse'* means how the domestic policy discourse is positioned towards certain issue-areas. (Moravcsik, 1998: 50)

How these five dimensions can explains the positioning of states towards the Dublin System, which on its turn has influenced the negotiation course and outcome.

Interstate Bargaining

In order to explain the outcomes of international negotiation between those countries who have few or no common national preferences, LI carries out *a bargaining theory of international cooperation.* (Moravcsik, 1993: 71) States should overcome substandard results collectively and they must organize the type of cooperation or coordination that will lead them to a mutual gain, whilst simultaneously they must determine in what way this benefit should be divided between the concerned states, otherwise said in what way to reach equal distribution. Collective, as well as individual interests often stumble over hard bargaining on distributional gains which leads to the undermining of the ability and willingness of states to act collectively. (Moravcsik & Schimmelfennig, 2009: 71) Here, bargaining theory comes in, stating that the outcome of international negotiations is dependent from the relative bargaining power actors dispose of. On its turn, bargaining power within international politics results from several factors. LI suggests that within the context of the EU, asymmetrical interdependence and information availability regarding the preferences and agreements of states play a pivotal part. (Moravcsik & Schimmelfennig, 2009: 71)

As Moravcsik literally explains: '*the more interdependent a state is, the more intense its preference for a given outcome, the more power others potentially have over it; while the less a state wants something, the less a state cares about outcomes, the less intense its preferences, the less power others have over it'*. Ordinarily, those states least in want of a certain outcome are therefore in the best position to threaten other actors with sabotaging the cooperation and therefore best able to enforce compromises to their advantage. (Moravcsik, 2010: 5) Moravcsik also says that, when actors are divided about a certain matter, it is much more difficult to try to structurally change a status quo than to keep it or to make alterations to it. (Moravcsik, 1998: 61) Additionally, those actors disposing of better and more information concerning the preferences of other states and that know the workings of the involved international institutions; have an increased possibility to rig the outcome in their own favor. To conclude, LI strives to clarify bargaining efficiency and the distribution of benefits from substantive cooperation between states whose preferences have been set out. (Moravcsik & Schimmelfennig, 2009: 71) Otherwise said, it explains who are the winners and the losers of the negotiations, aka why the southern member states had no other option besides implementing Dublin.

In addition to this, Moravcsvik mentions about decentralized interstate negotiations in the EU, that the outcomes are usually proven to be efficient with little potential gains or alternatives *'left on the table'*. However, there are exceptions where supranational actors are necessary in order to reach efficient bargaining outcomes, such as during the 1986 European Single Act. (Moravcsik & Schimmelfennig, 2009: 71) Potential alternatives that were possibly left unexploited during the Dublin Negotiations will be mentioned during the discussion.

Within this respect, the supranational and the intergovernmental bargaining theory developed by Moravcsik should be mentioned. The Supranational theory states that supranational actors are necessary in order to reach efficient bargaining outcomes and to influence the distribution of benefits. (Moravcsvik, 1998: 52) Since within the Dublin II negotiations, the facilitators are the member states, the supranational theory is not relevant and I will solely focus on the Intergovernmental bargaining theory which will help in understanding the efficiency and distributive outcome. Within this theory, the facilitating role is left for the national governments, under the Council, and it will help us to understand why the external border countries have accepted the implementation of Dublin. According to intergovernmental bargaining theory, efficiency is not a problem since each state is able to defend that outcome which is most beneficial to them, therefore leaving nothing on the table when an agreement is made at the end of the negotiation. (Morascvnik, 1998: 52) This directs the focus solely on the distribution of gains, supposedly as the result of asymmetrical interdependence and thus a result of bargaining power. The theory underlines that he who has most to lose and cares most

about a certain outcome, increases its bargaining space and has less power to enhance an outcome which would be of more personal benefit to them.

Two summarize, within international bargaining, two dimensions are of high importance when analyzing Dublin II, namely *'the process of negotiation, and the pattern of outcomes'*. (Moravcsik, 1998: 54) It is necessary to find out which actors are the key players during the negotiation process. Derived from the intergovernmental bargaining theory, these key players are the states, since they are the facilitators. Additionally, within Dublin II there is a clear distinction between the northern and the southern member states each taking in opposite positions.

Furthermore, '*the pattern of outcomes'* refers to the predicted negotiation results being influenced by the distribution of power during the negotiation process. (Moravscik, 1998: 60) The way voting happens within the Dublin II negotiations is not through Qualified majority voting but through unanimous voting, which means that states have the ability to block agreements which would less beneficial to them than in the case of unilateral action. (Moravcsik, 1998: 60) However, Moravcsik emphasizes by stating that governments may accept an outcome worse than the status quo as long as the long-term, future outcome proves to be more beneficial than when acting unilaterally. (Moravcsik, 1998: 61) This assumption is applicable on the outcome of Dublin II, with the external border countries accepting the regulation.

Adding to this, Moravcsik states that: *'If the three core assumptions of intergovernmental bargaining theory hold - negotiations take place within a noncoercive, unanimous voting system, transaction costs are low, and asymmetrical interdependence defines relative power – then the negotiated outcome is likely to reflect three specific factor'*:

'(1) The value of unilateral alternatives relative to the status quo': unilateral alternatives could entail a significant danger of enhancing veto leading to the *'threat of nonagreement'*, in case states have domestic alternatives to reach their preferences in a, for them, better way than when cooperating. On the other hand, countries whose policy has little international impact and who dispose of weak unilateral alternatives, therefore also have less bargaining power which leads them to the position of having to make compromises. (Moravcsik, 1998: 63) The opposite is true for those states disposing of strong unilateral alternatives, thus to summarize: the higher the need of a state for the cooperation benefits, the more this state will be likely to have to give in towards the other concerned states. (Moravcsik, 1998: 64) When applying this to the Dublin II negotiations, it is clear that the external border countries are the weaker link in this scenario, leading them with a weaker bargaining position to the advantage of the northern member states.

'(2) the value of alternative coalitions': States do not only take into account possible unilateral alternatives, but they also screen possible beneficial outcomes that may come from alternative

coalitions. (Moravcsik, 1998: 64) The same principle applies: those states that have prospects of beneficial alternative coalitions gain more bargaining power as opposed to those who don't have coalitional options, since they are in fear of nonagreement, and maybe even worse: in fear of being excluded if other states ever make use of their coalition options. As Moravcsik literally states: *'Credible threats of exclusion can force a rational government to accept an agreement that leaves it worse off in absolute terms than would unilateral policy adjustment- although, of course, it still remains better off than if the feared alternative coalition were to form'.* Coalitional alternatives tend to be mostly reserved for the larger states, their participation is in most cases vital in order to reach feasible agreements. (Moravcsik, 1998: 64) *'(3) The opportunities for issue-linkage or side-payments':* issue-linkage is a tool linked to *cross-issue persuasion,* a strategy used by international organizations such as UNHCR, to lead states into addressing certain issues by convincing them that these issues are indirectly influencing other issue-areas of a great importance to them. (Betts, 2009(2): 4) Moravcsik describes issue-linkage as a central theme throughout the history of EC negotiations, having influenced the outcome on several occasions. (Moravcsik, 1998: 64) According to Moravcsik, *'linkages occur when governments have varying preference intensities across different issues, with marginal gains in some issue-areas more important to some than to others.'* (Moravcsik, 1998: 64) A related term to issue-linkage, and also linked to the continuous implementation of the Dublin System, is the 'financial side-payment', a tool reserved for the wealthier member states who have the ability of, as it were, buying out member states with opposing preferences to theirs, in different issue-areas from the topic of the negotiations thus linking unrelated issue-areas anyways[45]. (Moravcsik, 1998: 65) This could be one of the factors that determine the bargaining power of Germany and other northern member states during the Dublin negotiations, influencing the outcome to their advantage. As Thielemann mentions within this respect, *'the most prominent explanations for the emergence of redistributive regimes in the EU are linked to the ideas of side-payments/package deals, the 'veil of ignorance' and the notion of solidarity'.* (Thielemann, 2005: 809)

The intergovernmental bargaining theory within LI will prove to be useful when attempting to analyze the different actors and their clout within the Dublin II negotiations, leading to an outcome containing winners and losers.

Choice of international institution

When analyzing the choice, formation and structure of international institutions within the context of international cooperation, rational institutionalism brings forward Regime Theory, which argues that

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[45] *'Side-payments can be understood as offers of compensation – either through financial payments or material concessions on other issues - in an attempt to encourage concessions on a given issue. In the context of European integration, financial transfers can provide an avenue through which those countries desiring further integration can make side-payments to those opposed to it'.* (Thielemann, 2005: 810)

international organizations do hold a share of power and are able to influence or affect state's behavior. It assumes international institutions to be able to deal with the consequences of collective agreements and integration that are of a sudden, unexpected and unintended nature, often or not also unwanted. (Moravcsik & Schimmelfennig, 2009: 72) Concerning this, Morasvcsik describes three possible reasons why states are inclined to grant decision-making power to international institutions instead of keeping full authority themselves, namely *'credible commitments',* 'the need for a *'technocratic management'* and *'ideology'*.(Morasvcsik 1998, 68)

International actors are able to manage unexpected and unwanted consequences under *conditions of uncertainty*, which refers to the factor of *'credible commitments'* and which is an essential element of the regime theory. Additionally, international actors lead states towards the reduction of the transaction costs during further international negotiations, and improve collective acceptable outcomes through the provision of information in order to diminish states' uncertainty concerning each others' potentially forthcoming preferences and conduct, which refers to the *'technocratic management'* aspect. The third factor, ideology, is also relevant when explaining the final outcome of the Dublin II negotiations.

The fact whether or not member states are historically and traditionally in favor of the European Union and the integration that comes with it, significantly influences their behavior during negotiations. Being either federalist or rather nationalist will influence their willingness when it comes to handing over sovereignty to the EU, and it will also influence their negotiation behavior. Moravcsik argues that ideology is a more decisive factor than the predicted consequences of handing over sovereignty when deciding on whether or not to cooperate within this respect. (Moravcsik 1998, 69 & 70) This could explain why Italy has eventually agreed upon the Dublin System, since it is traditionally a pro-EU country. (Fabbrini & Piattoni, 2008: 5) Italy's ideology clashed with its' opposition towards the Dublin II Regulation. The opposition towards European integration, and thus the pooling of sovereignty, tends to differ across states rather than across issue-areas.

To conclude, the possible emergence of issue-specific cooperation problems caused by major distributional disputes, implementation-enforcement difficulties of the reached agreements and uncertainty concerning the preferences of other states require a certain institutional designs in order to be overcome. (Moravcsik & Schimmelfennig, 2009: 72) LI argues that countries are concerned about each other's future ability to correspond with the achieved substantive agreements, when it comes to strict compliance or subsequent elaboration of the bargain. This is the reason why they let

the delegation and pooling[46] of their sovereignty depend on the concerned issue-area. (Moravcsik & Schimmelfennig, 2009: 72)

Moravcsik adds that the majority of EU procedures are limited to offering recommendations and procedures to enhance more efficient bargaining and a diminished uncertainty about other states' preferences and behavior. (Moravcsik & Schimmelfennig, 2009: 72) All in all, reflecting on why and to which extent states pool or transfer sovereignty to international institutions is necessary in order to analyze the outcome of international negotiations. The reasons for handing over a part of state sovereignty voluntarily to an international institution as described above, is applicable to why EU member states have handed over a part of their sovereignty to the EU institutions. This has possibly contributed to the eventual outcome of the Dublin negotiations.

Limitations of LI

Ben Rosamond in '*Theories of European Integration'* (2000) describes LI to be '*a theory of integration rather than an analysis of EU governance'*. (Rosamond, 2000: 146) However, he also states that '*the EU and the processes of European integration are just too complex to be captured by a single theoretical prospectus*'. (Rosamond, 2000: 7) The last statement is confirmed through the fact that LI contains some limitations: among others, LI is not able to analyze everyday EU decision-making, as it is focused on negotiations in which the institutions play a rather small role compared to national governments. (Moravcsik & Schimmelfennig, 2009: 73) Within the case of Dublin II, this criticism is negligible since the leading actors within the negotiations are the member states which makes Dublin II part of the '*small sliver of EU policy-making'* analyzable through LI. (Moravcsik & Schimmelfennig, 2009: 73) Furthermore, Moravcsik bases his theoretical framework on negotiation processes which have already come to an end; therefore he already knows the actual outcome, creating a situation in which it is possible for him to make his theory 'fit in'. Adding to this, Moravcsik does not take coincidence into consideration since according to him; states are at all time rational actors making rational decisions. Based on this, historical institutionalists say that LI presents a misleading view on integration in general, and it is unclear *'to what extent LI accurately can account for European integrations as a whole, and where it reaches its limits'. (*Moravcsik & Schimmelfennig, 2009: 73) Within this section, however, I am not seeking to explain European integration as a whole. Instead, I focus on a small particle, namely the establishment of Dublin II in which LI as theoretical framework is sufficient. As literally stated by Moravcsik & Schimmelfennig:

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[46] As literally quoted: *'Constraints on sovereignty can be imposed in two ways: pooling or delegation of authoritative decision-making. Sovereignty is pooled when governments agree to decide future matters by voting procedures other than unanimity… Sovereignty is delegated when supranational actors are permitted to take certain autonomous decisions, without an intervening interstate vote or unilateral veto'.* (Rittberger, 2001: 187)

*'LI works best when decision-making is taking place in a decentralized settings under a unanimity requirement rather than in settings of delegated or pooled sovereignty under more complex and nuanced decision rules.' (*Moravcsik & Schimmelfennig, 2009: 74)

It should be added that every aspect concerning European integration is analyzable through a number of IR theories. This analysis would have been different if seen from another perspective, for example based on other explanations of where national preferences come from.

Nonetheless, I find LI to be the most relevant theory in order to explain why the Dublin II Regulation was accepted by the external border countries.

Analysis of the Dublin II Negotiations

Based on the reasoning of LI, the analysis strives to explain the underlying national preferences and, considering this, the interstate bargaining outcomes, specifically the distribution of gains and efficiency, as well as why the member states have decided to hand over a part of their sovereignty, concerning certain aspects of asylum, to the EU institutions. From this, it can be directly derived how and why the Dublin II Regulation was established despite the predicted negative impact on the southern member states. Throughout the analysis, I will use the three stages presented in the theory-section whilst emphasizing on what is relevant to understand the Dublin II negotiations.

It should be mentioned that the European Council is difficult to fully grasp as a main actor within any analysis, since it is a political body, acting mainly behind closed doors. (Klamer, 2014) The transparency of EU negotiations is limited, which is why I did not dispose over many sources to base my research on. The major source on which I have based my analysis of the Dublin II negotiations, are the Council documents and reports on the stages of the negotiation process, publicly available through the public register of the Council.[47] I have also inspired some of the structure of this section on the *'Logics of Decision-making on Community Asylum Policy',* written by Jonathan Aus and commissioned by the University of Oslo.

Within the Dublin II negotiations, two opposing groups arose as a result of the foreseen consequences of the implementation of Dublin, favoring generally the northern member states and, on the other hand, negatively affecting the southern member states for reasons which have been elaborated during chapter 2. Throughout this analysis, Germany and Italy will be mentioned as the two main opposing actors within the negotiations, since they are considered to be two of the leading

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[47] Available through http://www.consilium.europa.eu/documents/access-to-council-documents-public-register.aspx?lang=EN

EU member states[48] within the Dublin negotiations, as well as being traditionally federalist and thus overall in favor of European integration.[49] Germany, together with a number of other northern member states, were strongly in favor of the implementation of Dublin II, as opposed to Italy and other southern member states, being the external border countries expected to be negatively affected by the installment of Dublin II.

National Preferences

As literally quoted by Moravscsik (2009): *'Forces of economic globalization play an important role, yet in fully half geopolitics and ideology had an important secondary impact'*. (Moravcsik & Schimmelfennig, 2009: 70) This will be the angle from which the national preferences, which influenced the outcome of the Dublin II negotiations, will be analyzed. As I have already elaborated on the national preferences within the Dublin negotiations, I will only mention them shortly. Firstly, historical tendencies have had a significant influence on the evolvement of preferences with, for example Germany always having been one of the main host countries for asylum seekers within the EU right into the 1990's, resulting into the strong will of establishing a European distribution system of asylum requests, aka leading the the northern member states favoring Dublin.

Also, Germany was not surrounded by safe third countries at the time, adding to the interest of committing to cooperation concerning asylum in order to lessen the pressure caused by the increasing influx of asylum seekers. Here Moravcsik's second dimension of national preference formation becomes relevant, namely *'the timing of preference changes'*, (Moracsvik, 1998: 50) which relates to the changing circumstances that enhance certain policy decisions because the current policy cannot adequately address the subsequent consequences. In case of many EU member states, including Germany, the need for cooperation with respect to asylum.

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[48] Concerning Germany's 'power' within the negotiations, as literally stated: '*The testimonies of European Council participants suggest that the first dimension of bargaining power is the most fundamental. The states most advantaged in structural terms – France, Germany, and the UK – also tend to exert the greatest influence in European Council negotiations, owing to their broader range of options, the resources they can commit to an issue, and the legitimacy of their claim to shape joint decisions. The threat of the veto, the control of the Presidency, and the personalities of chief executives matter as well, but are of secondary importance and mainly mediate the impact of structural power differentials.* (Tallberg, 2007: 7) Concerning Italy's 'power' within the EU, as literally stated: '*Often mentioned is the inability of Italy to translate its potential power. Despite a population and an economic strength at the level of France, Britain, and Germany, Italy is broadly seen as having suffered in European Council negotiations from the instability of its domestic political system'.* (Tallberg, 2007: 14)

[49] As stated by Moravcsik: '*At least three of the four geopolitical factors suggest that Germany should be consistently pro-European'.* (Moravcsik, 1998: 34) Additionally, Comelli confirms Italy's federalist ideology: '*Italians continue to trust European institutions significantly more than national ones and would like the EU to acquire more competences. In addition, the vocal anti-EU rhetoric of some political forces within the governing coalition is often not matched by deeds. Tellingly, the Treaty of Lisbon was speedily ratified by the Italian parliament by unanimous vote - something unthinkable in most EU countries.'* (Comelli, 2011: 1)

The changing historical context is also vital when explaining the position towards the Dublin System of the southern member states, including Italy. As mentioned in chapter 2, the southern states were less prepared for an increasing asylum influx due to the fact that their asylum systems were constructed to handle a lower number of asylum requests than they have come to deal with over time. (Zetter et. Al, 2003: 110) Also, limited financial means kept the southern member states from investing properly in their asylum systems. Upon joining Schengen, and thus subsequently joining the commitment of establishing a common EU asylum policy, southern member states such as Greece and Italy were not prepared to deal with the eventual influx of asylum seekers partly caused by the Dublin System. (Zetter et. Al, 2003: 115)

In the realm of economic integration and the changing refugee patterns, national preferences shifted and during the 90s asylum cooperation became a hot topic, corresponding with the fear of asylum shopping, a higher asylum influx and assumed threats towards national security. From this, Dublin I emerged as a restrictive tool addressing the evolving refugee patterns and consequences of economic integration, with also Germany developing an increased restrictive asylum policy. This development confirms that Moravcsiks' dimension of timing influences national preferences and explains the rise of Dublin II[50], as well as the position of both Germany and Italy towards the system. Keeping in mind that Germany used to carry out a liberal asylum policy before the 1990s, Moravcsiks' conviction that national preferences are changeable proves its applicability.

Chapter 1 also talks about the changing geographic advantage, due to the enlargement of the Schengen Area, since those countries in close proximity with the northern member states become, on their turn, '*safe third countries'*. The '*principle of first'*, an element locked into the Dublin System, became more beneficial to the northern member states due to their location, since changing refugee patterns caused different migration routes to be frequented. This shift in geographic advantage has directly influenced the opposing positions taken in by the northern and southern member states during the Dublin II negotiations.

To summarize, the capacity of nation's asylum systems, the expected increase of influx imposed on the southern member states through the implementation of Dublin, due to geographic location referring to the proximity to 'high profile' migration routes, are elements that have shaped national preferences concerning the Dublin II negotiations. Germany, as well as other northern member states, are keen on implementing Dublin and thus pushing the formation of a common EU asylum policy in a direction most advantageous to them. Italy, as well as other southern member states, find

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[50] Dublin I arose from spill-over (described by neo-functionalism) in combination with the dimension of timing, an element within LI.

themselves more exposed to the negative consequences should this system be installed. Being all members of Schengen, the northern as well as southern member states pay a great deal of attention to asylum cooperation on EU-level, however due to their opposing positions they have a very different view on how asylum issues should be organized.

As it happens, the two opposing entities within this discussion, namely the northern member states vs. the southern member states, are also each others' counterparts when it comes to power. It is difficult to exactly establish the amount of power each member state or each alliance holds within EU negotiations. Elements such as economy, size and number of inhabitants do tend to mainly decide upon the power balance.

Interstate bargaining

Now that national preferences, which have shaped the different positions towards Dublin II, have been cleared out, the next research topic explains efficiency and distributional outcomes of interstate bargaining. (Moravcsik, 1998: 24) Elements influencing this are a combination of the national preferences and bargaining power.

As mentioned before, distribution refers to which actor receives the highest benefit from the negotiation outcome, and efficiency concerns the extent to which alternatives to the eventual outcome have been explored and taken into account. I have based this section on EU documents, namely press releases derived from press release databases, as well as reports of Council sittings concerning Dublin II. I have also based the structure and some of the content on a report concerning the evolvement of the Dublin II Regulation published by the Centre for European Studies, a research department of the University of Oslo. Additionally, I have used information gained from a personal interview with the assistant of Cecilia Wikstrom, an MP involved in the negotiations of the Dublin Recast. This interview has been valuable in order to correctly estimate the role of the Parliament within the negotiations and the level of influence it has had on the eventual outcome.

The outcome is a result of the bargaining strategies used during the negotiations. (Moravcsik, 1998: 51) The outcome of the Dublin II negotiations links the closest to the position and preferences of Germany and differs greatly from the position of Italy. This leads to the conclusion that the northern member states have won the negotiations from the southern member states since they were able to push through their preferences the most, with implementing the Dublin System and the corresponding 'hierarchy of criteria'[51], within this thesis argued to benefit the northern member states rather than the southern member states.

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[51] As literally stated by ECRE: *'The Dublin II Regulation establishes a hierarchy of criteria for identifying the Member State responsible for examining an asylum application lodged in one of the states by a third country national, laid down in Chapter III of the Regulation. By order of priority, the criteria set out how responsibility is attributed to*

When addressing the element of 'efficiency', it is more complex to agree on whether or not certain alternatives to the outcome have not been examined or taken into account during the negotiations. The southern member states, as well as many NGO's, were - and still are - in favor of granting people freedom of choice concerning the state they wish to reside in (Amaral, 2014) based on the argument that, as ECRE literally states, '*there is a natural logic that refugees will integrate more easily and most naturally into those countries where they have extended family members, social networks, employment opportunities/good labor market conditions, and cultural or linguistic ties'.* (ECRE, 2006: 171) Thielemann confirms this by mentioning that '*differences in structural pull factors (i.e. non policy-related factors that make some host countries more attractive than others) have a very strong effect on the relative distribution of asylum seekers'.* (Thielemann, 2006: 8)

Course of the Dublin II negotiations

The negotiation process concerning the implementation of Dublin II started on 21 March 2000, from a Commission staff working paper confirming that the Dublin Convention was inefficient and that, in the wake of the Treaty of Amsterdam, it needed to be replaced by a Community instrument. (EC, 2000: 1) With stating that '*on the basis of the discussion which this document is intended to facilitate, and taking account of the results of further practical evaluation, the Commission will draw up a proposal for a Community legal instrument to replace the Dublin Convention',* this working paper called in the beginning of the process leading to the eventual implementation of Dublin II. About three years later, on the 18th February 2003 the Council formally adopted Dublin II and it entered into force 2 September 2003. (ECRE, 2006: 10)

The course of the negotiations will now be addressed through Moravcsiks' theoretical framework, in which the Dublin II negotiations are considered to have been shaped by interstate bargaining between two main opposing positions, determined by the previously described national preferences.

On one hand, there are the southern member states with Italy as leading actor; on the other hand there are the northern member states with Germany being their strongest representative, defending a status quo since the Commission proposal on Dublin II was already conform to their interests. As mentioned within the Commission working paper, there was a demand for the same asylum request responsibility determination principles as carried out by Dublin I, but this time applied in a more

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Member States as follows: a) a state in which the applicant has a family member (as defined in Article 2(i) of the Regulation) who has refugee status or whose application for asylum is being examined; b) A state which has provided the applicant with a residence permit or a visa or the border of which has been crossed illegally by the applicant; c) in case when the circumstances specified above do not take place, if the applicant enters the territory of a Member State in which the need for him/her to have a visa is waived, that state is responsible for examination of the application. ***In case none of the above criteria are applicable the first Member State with which the asylum application was lodged shall be responsible for examining it'.*** *(ECRE, 2006: 11)*

effective way, which is something the northern member states supported. (EC, 2000: 1) The southern member states on the other hand wanted a structural change/adjustment of the prevailing principle which predominantly decides upon the distribution of asylum requests within the EU, otherwise said they were striving for the abolition of '*the principle of first'*. As argued by Aus, the Commission further pushed for the *authorization principle*[52] and the *principle of first contact* into becoming the foundation of the upcoming Common European Asylum System. (Aus, 2009: 17) With this, the Commission suggested that the asylum processing burden shall be born by those member states located at the external border of the EU, rather than by member states enclosed by other member states. (Aus, 2009: 17) This fact became the main topic, engine and obstacle central throughout the negotiations and influenced the positions of the concerned member states. Relating to this, Truong & Gasper mention that the way asylum seekers reach the EU in order to apply for asylum is mostly irregularly, because they have few ways of accessing the EU legally; the Dublin Provisions thus enhance a disproportionate burden-shedding to the expense of the external border states of the EU, and this results into what Lavenex mentions as *'a redistribution of asylum seeker by default'*. Countries such as Italy have urged the EU to act against problematic asylum situations that they are facing, such as Lampedusa, since they argue that these issues are European problems rather than national problems.[53] However, as stated by Truong & Gasper, because of the Dublin Regulation these issues have 'reverted *to being clearly their national problem. In some senses this is paradoxical and counter-intuitive result of deepening European integration'*. (Truong & Gasper, 2011: 74) This assumption could also partly explain why Italy, traditionally always federalist and pro-EU, rejects this piece of European integration.

Nonetheless, the Commission presented this proposal, with enhancing the '*authorization principle',* as the foundation of the distribution mechanism of asylum requests by pointing out the responsibility of each member state:

'This provision is taken from the Dublin Convention and is based on the same underlying principle that the Member States are responsible to all the others for their actions regarding control of the entry and residence of third-country nationals'. (EUR-Lex, 2001: 1 - Art. 10)

As mentioned before, the Dublin II negotiation process was based on the decision-making procedure of consultation, including unanimous voting instead of qualified majority voting. The Commission's proposal required unanimous consent of 12 to 14 national governments (Aus, 2006: 18), since it dealt

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[52] As defined by UNHCR, the authorization principle refers to *'the State which provided the entry authorization a fact determinable in accordance with a hierarchy of explicit rules is normally the State which must accept responsibility for considering the asylum application'.* (UNHCR, 1991: 1)

[53] As quoted by Angelino Alfano, the deputy prime minister of Italy, in the aftermath of the Lampedusa naval disaster: '*We hope the EU realizes that this is not an Italian but a European disaster'*. (The Guardian, 2013: 1)

with a regulation proposal, this means that the outcome would be at once imposed on all member states, an aspect of the Dublin System perceived as being vital to its' workability. (EUR-Lex, 2001: 1 – part 5) The way Dublin perceived burden-sharing was not a popular aspect to the external border countries. Alternatives had been scrutinized but this lead to a dead end, which the Commission staff working paper describes:

'The Treaty of Amsterdam specifically introduced the objective of promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons. As a first step towards achieving this objective, the Commission has made a proposal for a Council decision creating a European Refugee Fund (ERF), *under which the Community would provide financial assistance to the Member States in proportion to the number of asylum applications which they receive and the number of refugees they recognize. The most pragmatic approach to the question of burden sharing would appear to be to address it further in the contexts mentioned above, and not to seek to replace the Dublin Convention with a mechanism for distributing asylum applicants between the Member States in proportion to each Member State's capacity to receive them, particularly since discussions on physical burden sharing according to factors such as each state's population, population density or GDP have not produced any concrete results'.* (EC, 2000: 11, 12) Through this explanation it becomes clear what the efficiency outcome of the Dublin II negotiations turned out to be. Substituting Dublin was opposed by those states traditionally attracting a high number of asylum seekers, such as Germany. Turning down suggested alternatives was supposedly compromised through the creation of the ERF. There was still a need for a different burden-sharing mechanism, since the Dublin Convention failed and lead to an imbalance of asylum request distribution within the EU with Germany, the UK and the Netherlands receiving the bulk of the asylum requests throughout the 90s. (Zetter, 2003: 2) The Dublin II proposal had the biggest chance of being accepted by a majority of national governments, which is one of the reasons the Commission went through with it. Within this respect, it should be mentioned that the Commission itself most probably also acted from the personal gain that the Dublin II regulation would imply, which Aus refers to as '*the Commission's institutional self-interest'.* (Aus, 2006: 18) Turning the Dublin Convention into a regulation entails an increase of the EU's power and involvement within the issue-area of asylum. Aus continues by mentioning that *'the Commission was only one step short of gaining the sole power of proposing Community legislation on asylum, subject to qualified majority voting in the Council and co-decision with the European Parliament'.* (Aus, 2006: 19) This will be further emphasized on during the analysis of the Dublin III negotiations given its' applicability to the difference in decision-making procedure.

The commission eventually officially passed on its Dublin II proposal to the Council on July 26 2001. (EUR-Lex, 2001: 1)

Start of the Council Negotiations

The Council negotiations were held under the Asylum Working Party, an EU committee established specifically to manage aspects within the issue-area of asylum.[54] The southern member states' position towards Dublin II and the hierarchy of criteria was clear from the beginning of the negotiation process during the Belgian presidency in 2001. The Italian government stated during the draft presentation on 2 October 2001[55] that '*member states' duty to guard their borders should not be confused with determining the member state responsible for examining an asylum application'.* (EC, 2001: 13)

The southern member states have continued to use this argument whenever defending an alternative to Dublin, such as in the aftermath of the Lampedusa naval disaster in 2013 stating that asylum issues such as this are a European problem, not a national problem.

Besides the national governments, the Commission and the Council, another actor should be brought up, namely NGO's such as the UN Refugee Agency (UNHCR), the European council on Refugees and Exiles (ECRE) and the Jesuit Refugee Service (JRS). The southern member states dispose of the support and advice of these organizations, and they regularly publish position papers on the matter as well as undertaking frequent lobbying activities in order to promote their position with national and European political institutions. These actions do have an influence, if not direct than indirect, for example during the M.S.S case in which the Belgian government was condemned for breaking the principle of non-refoulement after transferring an asylum seeker back to Greece, The European Court of Human Rights (ECHR) concluded that the Belgian authorities should have been aware of the risk of ill-treatment in Greece, given '*the wealth of NGOs and UNHCR reports on the situation in practice in Greece over a significant period of time.'* (International Commission of Jurists, 2011: 2)

UNHCR, as well as ECRE and JRS have expressed their favor of replacing the Dublin System with determining responsibility based on where the asylum claim was firstly filed.[56] However, directly, these allies turned out not to play a decisive role within the negotiations since the Dublin II

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[54] The Council runs on a number of working parties, each mandated within different issue-areas. Their task is mainly to prepare and assist meetings and negotiations of the Council. (information derived from the website of the Irish Council Presidency of 2013)

[55] Italy responded in particular to p13 of the Council document, accessible via: http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2012501%202001%20INIT

[56] This is derived from the position paper of ECRE (ECRE, 2006: 171) and the reflection paper of UNHCR (UNHCR, 2001: 1 (5). JRS's position has been confirmed during a personal interview with Philip Amaral, policy and advocacy officer of the Jesuit Refugee Service (JRS).

Regulation was eventually still implemented. The weak role of NGO's is applicable to Moravcsiks' theory, as mentioned before, and the fact that the negotiations are based on intergovernmental bargaining leaving the decisive roles to those member states with the most bargaining power.

With the ending of the Belgian Presidency of the Council in December 2001, no significant breakthrough had been reached during the negotiations. The Spanish presidency starting in 2002 brought with it a new turn of events.

Simultaneously with the EP's approval of the Commission's proposal, since there were no other feasible alternatives, the Spanish Presidency of 2002 attempted to change the course of the negotiations by bringing in a so-called 'compromise text'. (Aus, 2006: 20, 21) This text followed the reasoning of the southern member states and NGO's such as UNHCR by stating that the responsibility of an asylum request should be determined according to where a request is first filed. (EU Council, 2002: 13 – Art. 13) Despite this initiative being applauded by, amongst others, Greece and Italy, it was blocked by a number of northern member states, including Germany, The UK and The Netherlands. Subsequently, the latter countries urged the Spanish Presidency to reinstall the Dublin II provisions as originally proposed by the Commission. (EU Council, 2002 (2): 15 – Art. 10) The negotiations held under the Asylum Working Party had come to a standstill, to which the Spanish Presidency responded by accommodating the negotiations under a different political entity, namely the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)[57]. (Aus, 2006: 21) This however did not have the desired effect of breaking the political deadlock, as can be derived from an update paper composed by UNHCR regarding the Dublin II negotiation period of January-June 2002:

'The other asylum priority for the Spanish Presidency was to take the negotiations on the Dublin II Regulation further. Due to fundamental differences of opinion with Italy and Greece as regards the linkage of responsibility for examining asylum applications to monitoring the crossing of external borders, no agreement on the allocation criteria, their hierarchy and implementation could be reached. France, supported by Belgium, continued to express concern over the so-called "Sangatte" provisions (tolerating knowingly illegal stay). The Presidency submitted a number of pertinent questions to senior political level in an effort to break the deadlock yet to no avail'. (UNHCR, 2002: 1(1.7))

Under this '*senior political level*', namely SCIFA, the opposing parties drifted further and further away from each other and so the deadlock was not yet to be lifted: when states such as Italy and

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[57] SCIFA is *'the committee which establishes strategic guidelines for EU cooperation in the fields of immigration, frontier and asylum, establishes and discusses framework strategic recommendations for development of common migration and asylum policy. EU Member States are represented by higher-ranking officials at the meetings of the SCIFA'*. (Derived from the website of the Lithuanian Presidency of the Council of the European Union 2013)

Greece still kept arguing against the Dublin II hierarchy of criteria by stating that the EU should *'Avoid penalizing Member States due do their geographical situation'* (EU Council, 2002(3): 13 – Art. 10), the northern member states Germany and Austria meanwhile brought up the installment of EURODAC, in order to enhance an effective implementation of the Dublin II Regulation as originally proposed by the Commission. (Aus, 2006: 21) As such, the two opposing blocs moved further away from each other.

On 3 June 2002, the Spanish Presidency confirmed that, after discussing the matter in the Council Working Parties, no agreement had been reached. (EU Council, 2002(4): 2)

Within the same announcement, the Spanish government asked if the Council agreed on *'maintaining the special criterions of illegal borders crossing and the illegal presence in the territory to define the Member State which is responsible for examining the asylum application'.* (EU Council, 2002(4): 3) With that, th meeting moved the emphasis of the debates to the necessity of battling illegal immigration. (Aus, 2006: 23)

This turning point persisted during the Seville summit, in which the issue of illegal immigration gained more and more attention and the implementation of Dublin II was suggested as part of the solution.

It can be stated that the position of the southern states became weaker due to issue-linkage since, as literally derived from the Presidency Conclusions: *'In parallel with closer cooperation in combating illegal immigration, there is a need to press ahead with the examination of proposals under discussion. The European Council urges the Council to adopt', amongst others, 'by December 2002, the Dublin II Regulation'.* (EU Council, 2002(5): 12) The Dublin II Regulation was now integrally linked to the possibility of tackling irregular migration within the EU, which had a significant effect on the course of the negotiations. (Aus, 2006: 23)

Here, I want to point out that the bargaining space, a concept explained in Morascvik's theory, of the southern member states including Italy, becomes larger as the negotiation process moves further away from their preferences, and all the more towards the opposing party's preferences. Even though a specific agreement has not been reached so far, the negotiations are, at this point, evolving to the advantage of the status quo. Italy already disposed of less bargaining power than Germany: it has to attempt altering the status quo due to their opposing national preferences, the country already has the most at stake which lowers the bargaining power from the beginning and there is no way of threatening to leave the cooperation since no alternatives to Schengen exist. Adding up to this, emphasizing the role of Dublin II into battling illegal immigration increased the need to reach an agreement, and with that it also increased the political pressure on the southern member states to give

in to the existing dominant proposal. At this stage however, the southern member states including Italy, continued to resist. The reasons and outcome of this will be set out, revolving around the Danish Presidency during which a final agreement was finally enhanced.

Denmark's Presidency did not alter the situation to the advantage of Italy's national preferences, since the country itself demonstrated a significant preference towards the activation of a mechanism allowing them to send back asylum seekers to neighboring country Germany. (Aus, 2006: 26) It also expressed the will to reach a breakthrough, and after a couple of meetings, discussions and initiatives that led to nowhere[58], the Council assigned the Permanent Representatives Committee *'to pursue work in order to allow an agreement at the next JHA Council'* of 28 & 29 November 2002. (EU Council, 2002(6): 21)

Until that time, the southern member states including Italy and Greece kept resisting the Dublin II provisions as proposed by the Commission. (Aus, 2006: 28) Before the final Council meeting at the end of November, an in-between *political declaration* was presented by the COREPER, which described the principle of solidarity in which member state are requested to assist other member states, situated in the external border area of the EU, whose asylum systems turn out to be under pressure due to an increase of illegal immigration. (EU Council, 2002(7): 34) Until this day, the concept of solidarity mentioned within the Dublin System, has not been specifically defined nor financially, neither in any other aspect.[59] The only element which gets anywhere near a definition of solidarity, is the mentioning of a range of measures such as *'initiated common projects aiming at combating and deterring illegal migration'*, entailing, amongst others, a *'project on the control of the sea borders to provide joint operational action to combat illegal migration in the Mediterranean Sea - led by Greece, Italy, Spain and the UK'*. (EU Council, 2002(7): 35) The latter initiatives were presented in vain since the southern member states still did not budge, due to the fact that the solidarity measures as described in the political note were not legally binding and thus their implementation unsure, as opposed to distributional effect Dublin II.

Eventually, a final agreement was reached and the political deadlock was overcome with the final JHA council meeting during 28 November 2002. (EU Council, 2002(8): 27)

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[58] Initiatives such as the so-called *'safety clause',* based on the opt-out idea, as well as a new draft which was rejected for being too vague about the hierarchy of criteria. (Aus, 2006: 26, 27)

[59] There is the installment of the so-called Early Warning Mechanism following the 2013 Dublin Recast, which could be perceived as a solidarity mechanism. This will be further discussed during the analysis of the Dublin III negotiations.

The Danish Presidency reached this turning point through using the technique of the *silent procedure*[60], which is a tool mainly meant to enforce an agreement within difficult circumstances. Georgia Papagianni defines the silent procedure in '*Institutional and Policy Dynamics of Eu Migration Law'* as the *'tacit approval method: the Presidency submits, at Council level, a final package deal which delegations are invited to examine within a specific time-limit of one week. Were there no objection within the set deadline, it is considered that there is political agreement.'* (Papagianni, 2006: 228) This procedure is exactly what the Danish Presidency initiated in order to reach a final agreement on Dublin II, since this situation makes it hard for states to predict whether or not another state will effectively object to the proposal. Thus, unless the concerned topic would be of critical importance on national level, states are inclined to give in, in order to avoid being the 'bad apple' of the Union by continuing to block the, by then even more, much needed agreement. (Papagianni, 2006: 228, 229) Aus adds to this that not one state answered to the silent procedure proposal, something which the Danish Presidency counted on. With this, a final agreement was reached and the Dublin II negotiations came to an end. (Aus, 2006: 31) From this can be derived that the timing of the silent procedure was just right. After all, the negotiations did not bring with it significant changes of course, and the original proposal of the Commission had stayed put throughout the numerous meetings. The negotiations went on for months without any significant change of direction due to a consistent difference in opinion and bargaining power, leading the southern member states into finally giving in, partly influenced by the silent procedure.

The silent procedure eventually ended with the silence of all member states on 6 December 2002, as confirmed by an official Council Note which announced the official adoption of the Dublin II Regulation. (EU Council, 2003: 2) It was activated in March 2003. (Aus, 2006: 31)

Distribution of gains

Moravcsik argues within LI that non-compliance can both be a tool of expressing resistance against being outvoted during EU negotiations, as well as a state's preference. (Moravcsik, 1993: 512) Falkner confirms this by explaining that states that do not succeed in pushing through their preferences within EU decision-making outcomes are likely to engage in non-compliance out of protest or out of strategy. (Falkner, 2004: 2) As literally stated by Morascvnik: *'By taking the definition of compliance outside of the hands of national governments, a supranational legal system strengthens the credibility of national commitments to the institution'.* (Morascvnik, 1993: 512) It is

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[60]*' The Council having reached broad agreement on the text of the draft Regulation, the Presidency decided to launch a silent procedure in order to reach a political agreement on its compromise proposal as contained in document 14990/02 ASILE 75'.* (EU Council, 2002(9): 5)

this aspect missing from the implementation of the Dublin II Regulation. Despite of being a regulation immediately legally binding to all member states, the reality has proven that Dublin and elements connected to it are differently applied throughout the EU. The southern member states have found ways to avoid or lessen the negative consequences of the Dublin System, for example by not carrying out all Dublin transfers consequently or through compensating the influx through maintaining significantly lower Refugee Status Determination rates compared to many other member states. This non-compliance of Dublin II and of related elements concerning EU asylum, leads to the risk of non-refoulement and other protection deficiencies. (UNHCR, 2006: 1)

The non-compliance of Dublin II, which can be considered to have been caused by the exclusion of southern states' preferences, has eventually led to collective action failure, and so to the Dublin Recast, which will be analyzed further into the research.

This said, the question of the distribution of gains concerning the Dublin II negotiations has been answered and turns out more complex than expected, in fact the distribution of gains can be seen from several different points of view.

This does leave the element of efficiency unanswered, mentioned by Moravcsik as to whether or not alternatives are 'left on the table'. (Moravcsik, 1998: 51)

Throughout the negotiation analysis, several alternatives were mentioned such as the compromise brought forward during the Spanish Presidency and a couple of unsuccessful initiatives from the Danish presidency. The reason why every single alternative was shot down was due to being too blurry or too far-fetched compared to the status quo, which was protected by the bargaining power of the northern member states. The conclusion on efficiency is that within this context and keeping in mind all elements influencing the viability of each alternative, efficiency was reached due to the fact that all possible alternatives were treated within the negotiations. However, this does not necessarily mean that none of the alternatives could effectively have been a solution of a similar quality as the Dublin System if not blocked by, amongst other, the national preferences of those states with the most bargaining power. During an interview with the representative of MP Cecilia Wikström, the opinion was expressed that the Dublin system could possibly be substituted by a different mechanism, if the context allows this. (Klamer, 2014) If the negotiation analysis has proven anything, it is that much of the outcome of EU negotiations is the result of a range of certain historical, national and contextual elements. This statement is theoretically substantiated within *'The Logics of Action'*, namely that *'different phases follow different logics and the basis of action changes over time in a predictable way'*. (March & Olson, 2004: 22) However Aus adds to this that, *'more comparative studies are needed to validate such claims'*, (Aus, 2006: 36)

Choice of international institution

With the installment of the Dublin II Regulation, the role of the EU within asylum issues has gained in importance and power since regulations are directly imposable on all member states. It should be questioned why member states transfer a part of their sovereignty to the EU institutions, leading aspects of political policy under a certain extent of supranational governing.

The sovereignty-issue relating to the EU and its' member states is highly interesting, since as Betts states, *'the region with the greatest degree of integration is the EU'*. (Betts, 2009(1): 171) Moravcsik explains the choice of an international arena according to three elements namely ideology, the need for technocratic management to organize intergovernmental cooperation and finally the need for credible commitments in order to avoid non-compliance. (Moravcsik & Schimmelfennig, 2009: 69)

Within this context, the element of ideology applies the most since, as mentioned before, Italy's ideology of traditionally being a federalist state favoring European integration has partly influenced its' eventual acceptance of Dublin II. Concerning this, Moravcsik mentions three aspects through which ideology plays a significant role within negotiations, namely amongst others, '*the delegation and pooling of sovereignty across issues and countries'*. (Moravcsik, 1998: 70)

This refers to the assumption that the eagerness of handing over sovereignty to international actors differs across countries more than across issues. (Moravcsik, 1998: 70)

Whether or not ideology has influenced Italy and Germany in their tactics and behavior during the Dublin II negotiations should be derived from the comparison between their ideological profiles and in what way they have stayed true to this during the discussions.

Moravcsik confirms the two states being considered to be pro-European from the start, since they were part of the establishment of the 1951 European Coal and Steel Union. (Moravcsik, 1998: 86) Throughout time, Italy, as well as Germany have shown their federalist preference and commitment to European integration with, amongst others, the signing of the 1957 Treaty of Rome, the entry into the 1985 European Single Market and of course the commitment towards the EU Economic and Monetary Union. (Summaries of EU legislation, 2010: 1) When comparing their attitude towards the EU with that of Eurosceptic countries such as the UK and Hungary[61], it is safe to conclude that they are indeed inclined to transfer certain parts of their sovereignty willingly if it is within a logical, beneficial integrationist framework. This confirms the assumption that the eagerness of handing over sovereignty to international actors differs across countries rather than across issues.   From this can

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[61] The term 'Euroscepticism' could be defined as '*a sceptic opposition towards the European Union and its policies*'. (Apodaca, 2013: 2) Hungary and the UK are generally perceived as such. For example, they currently have the highest number of Eurosceptic MEPs compared to the other member states. (Flanagan, 2014: 1) Additionally, the Eurobarometer is also a useful source, in which a number of statements contribute to conclusion that the UK and Hungary are indeed rather Eurosceptic. (Eurobarometer, 2009: 91, 96, 114, 131)

be concluded that ideology partly influenced Italy into keeping from opposing to the Dublin II implementation during the silent procedure initiated by the Danish Presidency. Moravscik does argue that national preferences tend to be dominant in influencing the negotiation behavior of states, however due to the fact that in the case of Italy ideology was combined with additional factors such as an inferior bargaining power, Dublin II was still implemented. It could be argued that the element of ideology partly caused the success of the silent procedure.

As for Germany, its' national preferences corresponded perfectly to its' ideology, which added to the dominance of the negotiation position in which the state already found itself during the negotiations.

To conclude, it is now clear why the southern member states have accepted the continuous implementation and strengthened legal status of the Dublin II Regulation. During the next section, the Dublin Recast will be analyzed and additional related elements will be brought up concerning the notion of imbalanced burden-sharing connected to collective action failure.

3.3.4. Dublin III Regulation (recast): Analysis

During this section I will firstly describe the structure of Dublin III, followed by the circumstances which have lead to a revision of Dublin II. Related to this, I will briefly describe the course and outcome of the Dublin III negotiations through which it will become clear why the external border countries have again agreed on implementing Dublin. Lastly, I will reflect on whether or not Dublin III continues to enhance an imbalanced burden-sharing rather than burden-sharing. For this, I will reflect upon the new elements which have been introduced within the recast and that are described as a way to effectively enhance solidarity and burden-sharing between the member states.

Dublin III: General content and structure

On 3 December 2008, the European Commission proposed alterations to the Dublin II Regulation, thus initiating an opportunity for reform of the Dublin System into tackling certain problems that neither Dublin I nor Dublin II had successfully addressed. (European Commission, 2013: 2)

As a result, as of the 19th of July 2013 the Dublin III Regulation (No 604/2013) came into force. (EUR-Lex, 2013: 1) The key goal of the Dublin System remains unchanged, namely to prevent asylum shopping and orbiting refugees. (Poptcheva, 2013: 2)

It is based on the same core principles as the Dublin II Regulation, which have been addressed earlier in this research, although there are a number of significant alterations and additional aspects enforced by this recast as opposed to Dublin II.

Specifically, the new Regulation pleads for more rights for the asylum applicant regarding international protection, including the right of the asylum applicant to receive detailed information

about the content of the Dublin Regulation in preparation of his/her application and a personal interview, which needs to be timely and appropriate. Dublin III should also prioritize particular vulnerable groups such as dependent persons and unaccompanied minors, pursuing the reunification of the minors with their families and deciding upon the definition of relatives. (Council of the EU, 2013: 2)

The new alterations also foresee crisis management and an early warning mechanism in order to lighten the pressure on those EU states whose asylum system faces the risk of malfunctioning and when this risk cannot be averted by the national government. The mechanism is supposedly also meant to stimulate mutual trust and solidarity between the EU member states. Dublin III, supposedly more then its two predecessors, aims to reduce abuses carried out via the Dublin Regulation and it should ensure that disagreements between member states are decided upon faster and more efficient. Moreover, Dublin III foresees a framework of conditions relating to the detention of persons on the basis of "Dublin grounds". (Council of the EU, 2013: 2)

The need for a revision of Dublin II

In order to find out why a recast was initiated, one must be aware of the bigger framework of which Dublin is a part, namely the Common European Asylum System (CEAS)[62]. The Dublin II Regulation was further implemented in the context of continuous European integration in the area of asylum. It was therefore necessary to make Dublin work and it had to be disconnected from negative consequences such as refugee protection gaps due to the collapsing of asylum systems. The process of the Dublin recast started on the 6th of June 2007, with the Evaluation Report of the Commission that expressed concerns regarding the compliance and technical effectiveness of the system. (EUR-Lex, 2007: 1) As literally retrieved from the report:

'Member States consider the fulfilling of the political objectives of the system as very important, regardless of its financial implications. Nevertheless some concerns remain, both on the practical application and the effectiveness of the system. The Commission will, therefore, propose the

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[62] With the introduction of freedom of movement and open EU borders, keeping different asylum policies without any cooperation proved itself to be untenable and therefore the commitment of the EU member states to a Common European Asylum System became a fact in 1999. Since then the EU works on a collective approach to ensure the protection for refugees in a fair and effective way. (European Commission 2014: 1)
The establishment of a Common European Asylum system proves to be very difficult and complex given the great differences on economical, political and cultural basis between the EU member states. It could be stated that the biggest difficulty lies in corresponding national interests with the collective goal. Asylum cooperation remains very laborious since every state holds a high level of sovereignty, reluctant to let the EU fully direct the influx and plight of asylum seekers arriving into the EU. (Geddes, Andrew 2001: 1). Nonetheless, a number of rules and laws have been activated meant to improve the harmonization of the national asylum laws with the European standards, including minimum standards for asylum (Hatton, J. Timothy 2012: p10)

necessary measures in order to resolve these issues and further improve its effectiveness'. (EUR-Lex, 2007: 1)

The specific deficiencies of Dublin II, leading to a revision, are linked to the disproportionate burden carried by a number of southern member states. The national asylum systems of several external border countries are under a continuous pressure due to an influx which, as a result of their limited capacity, is not structurally and adequately addressed. This on its turn has lead to (risks of) non-refoulement and violation of human rights in general, leading to the suspension of Dublin transfers to Greece and Bulgaria. (ECRE, 2013(4): 1, 2) The latter could be perceived as a solution, but at the same time it undermines the purpose and *raison d'être* of the Dublin System. To conclude, it could be stated that the regulation did not uphold its own goals, as ECRE claims that '*cooperation between Member States is inconsistent leading to lengthy delays in identifying a responsible Member State or, in the worst case, identifying no Member State, thus perpetuating the situation of "asylum seekers in orbit". This report also shows that readmission agreements are sometimes implemented by Member States in a manner that results in evading obligations under the Dublin Regulation and under international human rights law, most notably the fundamental right to asylum'.* (ECRE, 2013(2): 117)

The immediate reason for altering Dublin II was the case of '*M.S.S. versus Belgium and Greece'*, in which the European Court of Human Rights (ECHR) intervened on a Dublin transfer decision of the Belgian government concerning an Afghan asylum seeker (nicknamed M.S.S) who was sent back to Greece in June 2009, leading Belgium to break the principle of non-refoulement. The court condemned Greece for detaining M.S.S in inhumane conditions and it condemned Belgium for violating his right to an effective remedy. (ECRE, 2011: 1) The Court also stated that *'the Dublin Regulation is an exacerbating factor in the inadequate reception conditions for asylum seekers in some EU Member States'*[63]*,* However, ECHR also stressed that this fact does not justify Greece neglecting its protection and reception obligations. (International Commission of Jurists, 2011: 1, 2) The case had major consequences for Dublin, because the shortcomings of the system could no longer be ignored. As student of Law Sassa Karakatsianis poetically describes it as: '*Greek tragedies tearing down the Dublin II Regulation'.* (Karakatsianis, 2013: 1)

Scholar Patricia Mallia confirms this by stating that *'the Court has asserted the fact that the premise upon which the Dublin Regulation is based is no longer tenable and has highlighted the ever-increasing need for a true European Union-wide spirit of solidarity on the part of all Member States'.* (Mallia, 2010: 1)

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[63] This statement could be interpreted as Dublin leading certain states into violating the rights of asylum seekers.

Once more, it is proven that the lack of definition of burden-sharing mentioned by Betts, and thus the indecisiveness about what solidarity should effectively entail, seems to be the foundational hindrance into reaching a solution from which all actors, northern and southern member states, as well as the asylum seekers themselves, benefit from.

Furthermore, several southern member states as well as NGO's such as ECRE and UNHCR urged the EU to revise its' asylum cornerstone, which eventually happened.

Recognizing certain flaws within Dublin II, the Commission's Evaluation Report, and the subsequent Commission Green Paper strived to identify those steps necessary to continue the development of the CEAS, in linkage with improving the Dublin System. (EUR-Lex, 2007(2): 1)

After a number of expert meetings, the Commission finally agreed on a proposal for a Dublin Recast on 3 December 2008. (EU Commission, 2008: 1) As mentioned before, the Dublin recast procedure is based on a co-decision framework in which the Council and the Parliament officially share the decision-making power.

Course of the Dublin III Negotiations

In the next section, the course of the Dublin III negotiations is described in order to find out why the Dublin System was carried on despite opposition, which changes were made and what these changes might inflict. As main source for the negotiation process, I have used 'Parltrack', a database website meant to increase transparency and clarity concerning EU legislative procedures. The complete dossier of the Dublin recast, including affiliated documents and reports on the negotiations, have been published online.[64]

It should be noted that the Dublin III negotiations addressed several topics involving the improvement of protection provision, the intention of increasing solidarity amongst the member states and improving the compliance of Dublin.

On the 5th of December 2008, the Commission sent its' proposal for a recast to the Council and the Parliament. The central emphasis within the Commission's recast proposal, centralizing those in need of protection, as well as enhancing solidarity amongst member states, was welcomed by NGO's such as UNHCR. (UNHCR, 2007: 2) It should be noted that in 2000, during which the negotiations of the Dublin II Regulation had taken of, the Commission suggested alternatives to the Dublin System:

'The Commission has stated previously that it is appropriate to use the opportunity provided by the transition to new treaty arrangements to consider whether a fundamentally different approach is

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[64] http://parltrack.euwiki.org/dossier/2008/0243(COD)

required to the question of responsibility for considering asylum applications'. (EU Commission, 2000: 17)

However, this suggestion was never really considered due to a lack of decisive support and this trend continued on to an even higher extent during the recast negotiations.

The recast was handled as a B-point[65] given its' difficulty to reach an agreement due to the opposing positions between the northern and the southern member states. This occurrence of *regionalization of opinion* amongst member states concerning asylum and migration since the last couple of years has been noted by Elizabeth Collett, Director of the Migration Policy Institute Europe. She states that, on one hand, there are the northern member states negotiating in favor of mainly technical and financial support, and on the other hand there is a southern member states bloc arguing for alternative relocation and distribution mechanism for asylum seekers, and thus for the enhancement of burden-sharing. (House of Lords, 2014: 28) Adding to this, these persisting divided opinions should intensify the discussion on managing asylum requests within the EU, rather than slowing it down, according to Dr. Philippe De Bruycker, Chair for European Law on Immigration and Asylum. (House of Lords, 2014: 28)

Throughout 2009 several reading, meetings and debates between the Council –under Belgian Presidency - and the Parliament were organized. (Parltrack, 2008/0243: Activities)

The second Council meeting on Dublin III mainly dealt with aspects relating to cost effectiveness and an increase of protection of those asylum seekers who fall under Dublin. (EU Council, 2009: 26) Later, a Presidency Note was published concerning the state of play of a ministerial conference organized by the Belgian Presidency. With regard to solidarity and burden-sharing, the Presidency Note states that these elements were indeed brought up: *'The conference succeeded in contributing to the discussions on some of the outstanding issues where negotiations are particularly difficult and in generating a broad debate on all aspects of intra- European solidarity'.* However, no specific mechanisms to enhance these were mentioned. (EU Council, 2010: 2) Through this it can be concluded that at that point, the enhancement of burden-sharing amongst member states concerning the distribution of asylum request was not prioritized. Rather a priority was stimulating the compliance of Dublin and the harmonization of the national asylum systems in order to offer a fair protection opportunity to all asylum seekers, as well as discouraging secondary movements and

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[65] A-points are issues on the Council agenda which have been agreed upon prior to the actual Council meetings, since most of the groundwork is finished by civil servants and diplomats. These issues only need to be formally approved of without debating about it. B-points are topics on which could not be agreed upon, and are therefore fully discussed during the Council meetings by the ministers after which they are approved of or rejected. (EU Commission, 2012: 1)

possible abuse of the system[66]. (EU Council, 2010: 2) In accordance with the latter were the discussion topics of the Council meeting on Home Affairs in October 2010, during which the member states agreed on the necessity for harmonized asylum systems and an increase of protection, however differing points of view could be noted regarding burden-sharing, and it could be argued that this was still not treated as a priority by the Council, and was still an issue of great discord. As mentioned within the press release of the Council meeting:

'Malta, Greece and Cyprus repeated their call for solidarity and support from the European Commission and other member states to help them cope with the large number of asylum requests with which they are confronted. The Dublin II regulation should, in their opinion, be reformed. Other member states, including Germany and Austria, maintained that the proper functioning of the Dublin II regulation was at the heart of any possible future Common European Asylum System. These countries and others, like the UK, also stressed the importance for more cooperation with third countries on issues such as readmission agreements and border controls. They also stressed that they were ready to provide practical support and cooperation in order to help those member states struggling with a greater burden to implement existing legislation.' (EU Council, 2010(2): 9)

From this, two significant developments indicate the lack of structural commitment to enhance burden-sharing, as requested by the southern member states. Firstly, there seems to be more willingness to establish agreements with third countries in order to limit the number of asylum requests than to initiate a more effective mechanism to distribute those asylum requests that effectively come in. An example underlining this reasoning is the Readmission Agreement between the EU and Turkey concluded in December 2013, meant to further prevent irregular migration into the Union. (EU Commission, 2013: 1) [67]

Secondly, the northern member states do mention ways of assisting those countries struggling to cope with the influx, however only in the sense of helping them when the implementation of the asylum laws is effectively at risk. Labeling this as a full-on burden-sharing initiative is up for discussion, which will be dealt with during the conclusion of this section.

The debates continued throughout 2010 and mainly dealt with topics such as family reunification, detention and unaccompanied minors. (Parltrack, 2008/0243: Activities) Specifically relevant to this

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[66] This could also be perceived as issue-linkage, since improving Dublin II is assumedly automatically linked to improving refugee protection. Whether or not actively used as a strategy to divert the attention from the issue of solidarity and burden-sharing, it does contribute to the stability of the Dublin provisions within the negotiations.

[67] The agreement entails requirements related to border management in order to prevent irregular migration into the EU, which Turkey has to commit to in exchange for discussions possibly paving the way towards visa liberalization for Turkish citizens. A return procedure is also included, through which third country nationals who are held at the border can be swiftly transferred back to Turkey. (EDAL, 2012: 1)

research are the debates concerning the '*asylum evaluation mechanism*'[68] - the prelude of what would eventually be implemented as the 'Early Warning Mechanism', an element which will be further emphasized on since it can be considered as the only legislative attempt for burden-sharing within Dublin III -, in combination with the '*emergency mechanism*'[69], presented during the Council meeting of 22 September 2011, in order to speed up the negotiation process. The idea of a crisis prevention tool was welcomed, whereas the corresponding emergency mechanism was shot down by the majority of the member states. (Parltrack, Summary 2011/09/22 Council Meeting)

The accepted Early Warning Mechanism is designed to detect the danger that certain national asylum systems could collapse, or to address a crisis already occurring with the national government no longer being able to properly deal with the situation[70].

The discussions concerning the formation of the Early Warning Mechanism were continued during the second half of 2012. (Parltrack, Summary 2012/03/08 Council Meeting)

I have neglected mentioning the European Parliament as actor within the negotiations in detail until now because, although within the co-decision procedure the EP holds an equal degree of power as the Council, in reality it has a role of rather influencing the negotiations than actually deciding on the core direction of it. (Klamer, 2014) I have used as a main source for this section the Parliament's Register of Documents, housing all reports concerning the activities of the EP during the Dublin III negotiation process. (EU Parliament, 2014)

The Parliament especially brought forward amendments[71] concerning higher standards of protection linked to family reunification and unaccompanied minors, as well as improved asylum procedure

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[68] '*Such an evaluation mechanism could be used as a tool for the prevention of asylum crises*'. (Parltrack, Summary 2011/09/22 Council Meeting)

[69] '*The 'emergency mechanism', strongly advocated by the Commission, would allow for the temporary suspension of transfers of asylum seekers to a particular Member State which found itself in a situation of strong and disproportionate pressure on its asylum system*'. (Parltrack, Summary 2011/09/22 Council Meeting)

[70] As stated by the Council of the European Union, 'a mechanism for early warning, preparedness and crisis management' is one of the core elements of the recast. In the same report, the DP Home Affairs describes the three main objectives:

First of all, the mechanism is meant to track down and to identify signs of the mall- functioning of the Dublin Regulation or of the danger of malfunctioning due to defects in the asylum systems of one or several EU Member States. The mechanism should also urge EU member states, whose systems are proven to show these signs of deficiency, to rapidly address the source of the problems and fix the situation. Otherwise said, it should strengthen the sense of responsibility of properly maintaining the Dublin system.

Lastly, the mechanism is created to stimulate and boost solidarity, also by supporting those EU member states whose asylum systems cannot cope with their share of asylum applications. (EC, 2013(2), 1, 2)

[71] '*Amendments are a key way to influence and change EU law. It is a statement adding to, revising or improving a proposal. It's a way for MEPs to bring into play the interests of voters, lobbyists, non-governmental organizations and other interest groups. Some proposals attract many hundreds of amendments. The aim of amendments is to*

elements such as the right to information. According to Caroline Klamer, the representative of Cecilia Wikström, the EP succeeded in enhancing a higher quality of protection and asylum procedure tools, however concerning its influence on solidarity it assumedly reached less satisfying results. The EP stated within its' Draft Report of 2 February 2009 that *'it is necessary to emphasize the necessity of putting forward binding instruments with the aim of ensuring a higher degree of solidarity between the Member States together with higher standards of protection'*. (EU Parliament, 2009: 6)

If the EP effectively did succeed in pushing this statement through into the eventual legislation, is up for discussion since this depends on how the Early Warning Mechanism is perceived.

Result Dublin III negotiations

As of the 19th of July 2013 the Dublin III Regulation (No 604/2013) came into force. It is based on the exact same principle: as quoted by the European Commission upon activation: '*that the first Member State where finger prints are stored or an asylum claim is lodged is responsible for a person's asylum claim'*.

Officially, the new text pleads for more rights for the asylum applicant regarding international protection, including the right of the asylum applicant to receive detailed information about the content of the Dublin Regulation in preparation of his/her application and a personal interview, which needs to be timely and appropriate. Dublin III should also prioritize particular vulnerable groups such as dependent persons and unaccompanied minors, pursuing the reunification of the minors with their families and deciding upon the definition of relatives. The new alterations also foresee crisis management and an early warning mechanism, meant to lighten the pressure on those EU states whose interior asylum system faces the risk of malfunctioning which cannot adequately be dealt with on national level, as well as to stimulate mutual trust and solidarity between the EU member states. Dublin III, supposedly more then its two predecessors, aims to reduce abuses carried out via the Dublin Regulation and it ensures that disagreements between member states are decided upon faster and more efficient. Moreover, Dublin III foresees a framework of conditions relating to the detention of persons on the basis of "Dublin grounds" (ECRE 2008: p9, 10).

Theoretical Framework

To summarize, the Dublin Recast negotiations revolved around different goals than the previous negotiations. Dublin II was enhanced from the incentive of making the Dublin Convention workable

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influence Parliament's and Council's position on future laws that have a direct impact on the everyday life of all EU citizens'. (EU Parliament, 2010: 1)

and enforceable, or otherwise said to legally strengthen the responsibility determination system created in order to deal with asylum requests within the EU. The Dublin recast however was initiated due to problematic issues enhanced by Dublin II, and on the other hand to address asylum crises and the corresponding occurrence of non-compliance of the Dublin System, as well as to improve refugee protection.

I have used a different theoretical approach, namely constructivism, as well as elements of rational choice theory. Dublin III is analyzable through Liberal intergovernmentalism; however I prefer to include an additional point of view in order to compromise the limitations of LI.

Liberal intergovernmentalism underlines the power differences between actors as predominantly fueling negotiation outcomes, and it perceives institutions merely as instruments used by actors in order to achieve their individual objectives. According to LI, integration is a two level game: '*The European level is the location where member states strategically bargain their interests, which are defined within domestic level negotiations'*. (Ujupan, 2000: 4) A reaction to LI is constructivism, which additionally takes into account the interactions between international institutions and its members, as well as the influence that membership of such an institution can have on national preferences, and therefore on negotiation outcomes. (Ujupan, 2000: 4) For example, constructivism argues that the interactions between the EU institutions and its member states have lead to the adoption of an EU normative framework. These European norms of human rights, democracy, solidarity and the rule of law are much represented within EU legislation. (Summaries of EU legislation, 2012(2): 1) Constructivism acknowledges the influence of EU values during decision-making procedures, which sheds a certain light on Dublin III. For example, The European Court of Human Rights, an institution enhancing EU norms, disposes of decision-making power as it can legally intervene, which adds up to the influence of the EU normative framework. This is an example of aspects overlooked by LI.

As within the Dublin II analysis, I will address the formation of national preferences, however this time including the constructivist assumption of ideas preceding and influencing them. As stated by Sabine Saurugger, Professor of Political Science at Sciences Po Grenoble: *'constructivists gather schematically around two puzzles: how ideas, norms and world views are established; and how and why they matter'*. (Saurugger, 2013: 1) Important to note is that the reasoning of LI is not rejected within the Dublin III analysis, to the contrary: constructivism complements LI within finding a conclusive insight on the problem area of this research. Additionally, I will include **an element of Game Theory, namely the Prisoner's Dilemma**, which seeks to explain the cooperation behavior of rational self-interested states, an approach which I will use in order to conclude whether or not Dublin effectively does lead to collective action failure due to the occurrence of free-riding.

As stated by Betts, Constructivism is another theory which can explain ongoing integration and elements resulted from it. (Betts, 2009 (1): 86) As opposed to neo-realism and liberal institutionalism, it starts from a knowledge-based approach: when aware of where state preferences come from, it is possible to influence them and therefore influence the state action that results from these preferences.

Constructivism thus argues that states' preferences are not solely the result of domestic negotiations, but rather a part of the system and that they are '*endogenously defined through their interactions*'. (Betts, 2009: 86) Hurd adds to this that the constructivist focus on the social construction of both interests and identities, mirrors the complicated and unfixed relationship between actors, institution and the environment in which cooperation takes place, and how this influences negotiation outcomes. (Hurd, 2008 : 304)

The variety of norms, which fueled the Dublin III negotiations, complicated the way towards a collective outcome.

During the recast negotiations, the Council accentuated the need to safeguard internal security, to address possible abuse of the asylum system and also the aim to reach cost-effectiveness. It strived towards an improved structural implementation of the Dublin System. The Council also highlighted the necessity to battle illegal immigration and the security of the external borders. With this, the Council leaned closely to the interests of the northern member states, with urging states that ask for solidarity measures to first guarantee their national asylum system to be harmonized and in compliance with the EU legislation. (Raspotnik et Al, 2012: 6)

Concerning the European Parliament, the norms it enhanced within the negotiations and which it used as a foundation to its' amendments, were of a different nature and premise than those of the Council. The EP underlined human rights and strived to push these through within the outcome of the negotiations. It mostly saw Dublin from the perspective of refugee protection and safeguarding fair provisions concerning family reunification and unaccompanied minors. The EP generally represented the European norms and used those in order to elicit improvements on the general asylum procedure, such as the right on information, a personal interview and legal assistance for asylum seekers. (Klamer, 2014) The EP was able to push through a certain share of EU values within the eventual outcome of the negotiations, since from the beginning the necessity of these norms were acknowledged and guaranteed to be a part of the finalized Dublin recast by the Commission and the council, given the issues from which the recast was initiated.

The southern member states corresponded to the EP's normative positioning, since they continuously stressed upon the need for solidarity between member states.

The environment, during which Dublin III was negotiated and established, should also be discussed. Within this respect, the constructivist idea that *agents and structures –man and society- are fundamentally co-constituted* becomes relevant. (Onuf, 2005: 268) This means that actors, and their actions, will always depend from the structures in which they are ingrained. This also goes the other way around, since these structures will in their turn depend from '*the ongoing day-to-day deeds or practices undertaken by the actors'.* (Onuf, 2005: 268) Onuf continues by concluding that '*individuals and societies make, construct or constitute each other'*. This reasoning can be applied on the Dublin III negotiations to help explaining the outcome because it is necessary to take into account the changing environmental elements the actors dealt with and which influenced their action concerning Dublin. On its' turn, their actions resulted in a particular outcome which is a part of shaping the current society in which those actors are embedded.

Such an environmental factor was the Eurozone crisis of 2009, of which the consequences affected several EU member states at the time of the negotiations, on its turn affecting the negotiation behavior of the concerned actors. In response to the crisis, and around the same time of the Dublin III negotiations, the EU installed the European Stability Mechanism, proposed in 2010 and activated in September 2012. It provides immediate financial support for those member states facing monetary, fiscal and/or economic difficulties on crisis level. (ESM, 2014: 1) The debt crisis mostly struck the southern member states who now not only struggled with increasing pressure on their national asylum systems, but also with additional economic difficulties. This meant that debates concerning financial solidarity and asylum solidarity amongst EU member states intersected and inevitably influenced each other. As the discussion paper of the Trans European Policy Studies Association (TEPSA) on EU solidarity argues, the Eurozone crisis brought with it the connotation of northern states bailing out and financially *'saving'* poorer southern states combined with the conviction that this was an opportunity for those states rather than a punishment, since the public and political debate assumedly centered around on the financial support rather then the subsequent austerity measures. Certain political leaders stressed that the debt crisis could have been prevented through a more strict economic policy coordination, and consequently *'countries-in-need were blamed, indicating that they failed to apply the coordination mechanism, and as such were considered to be cheaters'.* (Raspotnik et. al, 2012: 2)

From this could be assumed that the financial solidarity measures granted as a result of the debt crisis, put a strain on the call for solidarity measures in the field of asylum, since those countries 'benefitting' from these solidarity provisions would mostly be the same ones. This most probably did not increase the willingness of or the pressure on the northern member states of majorly giving into the call of solidarity from the southern member states, and it prossibly also lead the southern member

states to being more inclined of accepting the eventual outcome even though no specific solidarity measure, besides the Early Warning Mechanism, was included within Dublin III.

To summarize, the negotiation behavior of actors was at least partly influenced by the societal element of the debt crisis. Consequently, the Dublin III Regulation, also a part of the society structure, turned out to be as it did due to this negotiation behavior. It can therefore be concluded that this is a case of co-constitution.

Rational Choice Theory[72]

Another approach to define the nature of Dublin III is rational choice theory. Both rational choice and constructivism should be perceived as a general approach to social theory, linked to the analysis of human behaviors. Pollack states that '*Rational choice theories have made rapid inroads into the study of EU politics, most notably through the application of rational choice institutionalism to the study of EU decision-making'*. (Pollack, 2006: 1)

Thus, rational choice theory analyzes individual behavior and from that it attempts to explain intricate social realities. According to rational choice, action arises from a rational foundation and actors will consider costs and gains before undertaking any decision since they are self-interested. (Scott, 2000: 1) According to rational choice, the member states decide upon asylum policy from a rational approach. It is important to note that asylum is an issue-area belonging to the 'high politics' of the EU, since this is linked to the enhancement of a free area without internal borders. (Brein, 2008: 1) Following rational choice reasoning, the level of importance of asylum leads to the fact that cooperation within this respect is rather improbable, since member states will strive to push through their national interests. As confirmed by Brein, *'this area of high politics is in the core of the nation states, where the democratic state has a monopoly on the legitimate use of force',* which is a '*hindrance to cross-border cooperation and emitting state power at the expense of the EU-level'*. (Brein, 2008: 1)

Furthermore, according to rational choice theory, this will lead to states aiming for an outcome within inter-state cooperation which benefits them the most. During this process, they will use tools to enhance this goal, such as making us of their bargaining position or '*through connecting their voting positions on one issue to their respective positions on other issues'*. (Stokman & Van Oosten, 1994: 105) However, for reasons which have been previously discussed, the EU was established

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[72] For this section and elements related to its content, I have gained structural inspiration from '*the Consensus finding in the European Union - Negotiations and decision-making on the recast of the Dublin Regulation within the field of asylum policies'*, written by Vanessa Böse. Since this is a thesis, I have not used it as primary source, but merely as an inspiration in order to gain insight into theories relating to the Dublin III regulation negotiation process, on which I could base the section structure.

which currently has a status of self-contained international organization and political entity. To a certain level the EU disposes of supranational decision-making power, carried out from a rational approach and aiming for its' continuous *raison d'être* in which it seeks to increase its' power through transferring more responsibilities to its' institutions. This tendency manifests itself within the issue-area of asylum linked to the formation of the Common European Asylum System in which it places more elements under EU-ruling.

That said, explaining the Dublin III negotiations requires the introduction of '*mixed motive games'*, in which elements of conflict as well as cooperation are present: actors share the incentive of cooperation in order to reach a certain result, however they have conflicting preferences with respect to the eventual cooperation outcome. (Slantchev, 2003: 1) This situation is highly recognizable concerning Dublin III. The incentive to cooperate is present due to the aim of European integration and the provision of the collective goods of refugee protection, national security and external border control. The conflicting preferences exist from the previously explained division between the northern and the southern member states with regards to asylum, burden-sharing and external border enforcement. The member states act rationally within this respect since their economic and financial abilities and willingness to invest in these elements within the framework of inter-state cooperation are dependent from the personal benefits they can derive from the outcome. (Slantchev, 2003: 1) However, states have still agreed on cooperating and have reached certain agreements, as happened with Dublin III. This is assumedly due to the fact that providing effective refugee protection as well as national security, would not be as effective when done individually. Seen from rationalism, the Dublin III negotiations would have lead to free-riding on the part of all member states, leading to a collective action failure. In reality, the states did manage to come to a collective agreement including common asylum system provision as well as the commitment to strive towards cost effectiveness and an increased level of refugee protection. An explanation for this is that Dublin III has been perceived by the actors as one negotiation outcome preceding many, and also the element of consensus within the EU has sustained the willingness to cooperate.

The crucial difference between the two theories is that rational choice theory perceives states to pursue their personal interests by calculating costs and benefits, in order to find out which outcome is most advantageous, which shapes their negotiation behavior. Constructivism on the other hand focuses on *'the social and relational construction of what states are and what they want'.* (Hurd, 2008: 299)

However, there are also similarities between both, since constructivism mostly agrees with the rationalist assumption that states identify personal interests and subsequently act upon protecting those interests. What constructivism adds is that these state preferences or interests are triggered by

other ideas, and also that it is possible for different constructions of states to result into different state actions and behavior. Rational choice theory does not take these elements into account, as it perceives preferences as a given and claims that they originate from domestic negotiations. (Hurd, 2008: 310, 311)

The long and difficult negotiations of the Dublin System indicate that the principles of both constructivism and rational choice theory can be applied, through combining them. There is a contrast within the negotiation behavior of the concerned actors, which is reflected by the linkage of both theories. On one hand, it is clear that all actors act according to their personal preferences: The northern member states have debated towards an outcome which favors the implementation of Dublin, whereas the southern member states have tried to enhance the substitution of Dublin with a distribution system more advantageous to their situation. The EU institutions, on their turn, have emphasized the normative framework of the EU, namely humanitarian values such as refugee protection. According to rational choice, states will always perceive outcomes from the calculation of costs and benefits and will act accordingly during negotiations. However, constructivism becomes relevant to the point where a political deadlock was reached and certain states gave in due to the culture of consensus present within the EU, as explained before. It shows that during the process of negotiating Dublin, states indeed followed their national preferences, however at the end of the day the influence on these preferences through social interaction with other actors and EU institutions within the EU arena, became visible and left its mark on the eventual outcome. Consensus and the foreseen additional negotiations within the framework of European integration eventually prevailed.

Both theories centralize their reasoning around the influence of ideas on the behavior of actors during negotiations. As such, it is ideas which influence states' preferences and so their position within negotiations and which strategies they will use in order to defend their positions.

National identity, as well as the European identity has significantly shaped national preferences, a process linked to constructivism since preferences are constructed through certain ideas which result from interaction. This fits within a rationalist reasoning, given the position that actors take in are based on their individual interests, a phenomenon describes by rational choice theory. This is clear when mentioning the course of the negotiations: both sides kept holding on to the outcome which would be the most beneficial according to their personal interest, until the debates came to a standstill without further progress regarding finding a collective agreement. At this point, the pressure into reaching an agreement increased due to the EU culture of consensus.

Constructivist tools into influencing preferences and the course of negotiations, is communication and interaction. These tactics have been used by rational states during the Dublin negotiations. It can thus be concluded that the Dublin III negotiations can be theoretically perceived as being a

combination of the pursuit of rational preferences in which the course of the debates have been influences through the EU normative framework, the culture of consensus and interaction.

What does raise questions as the differing assumption of national preferences and ideas change during debates according to constructivist reasoning, whereas rational choice argues preferences to not only be a given, but also to be fixed and static throughout the negotiations. This clash serves as limitation to the theoretical framework.

In conclusion, the unconventional combination of rational choice theory and constructivism mirrors the difficulties of the Dublin negotiations, as it shows the contrasts of the situation. Strategic behavior, central within rational choice, and the influence of interaction on norms and national preferences as emphasized by constructivism, link to the reality of the negotiations resulting into the continuously implementation of the Dublin System. (Hurd, 2008: 310, 311)

Dublin III Negotiation Outcome: Analysis

When attempting to analyze the eventual recast negotiation outcome, an element within rational choice theory and game theory, could be used for this, namely the **Prisoner's Dilemma (PD)** in which a two-actor model is presented:

Each actor is aware of the advantages that come from cooperating; however there are four possible interactions with differing cooperation results, as literally explained by Betts:

'Each state may prefer mutual cooperation (CC) to mutual defection (DD), yet is even better off when the state can benefit from the unrequited cooperation of the other actor (DC). However, being the state which behaves cooperatively without a reciprocal response (CD) is the least desirable outcome. Consequently, the states' preference ordering will be DC>CC>DD>CD'. Ideally, states would cooperate leading to a situation from which both benefit (CC). Individually, the highest benefit would be reached through free-riding to the expense of the other actor (DC). Since both are aware of the risk that the other might defect, leading them to the least beneficial situation (CD) they most probably both end up doing so, leading to a state of mutual defection (DD), and therefore to collective action failure, a term coined by scholar Mancur Olson in 1965. (Betts, 2009: 84)

Within the field of the asylum, the member states have agreed on cooperation under the CEAS based on the reasoning that cooperation will lead to collective benefit: asylum seekers would be given the guarantee of access to the European asylum procedure with an increased level of protection

measures, whereas the member states enjoy cost efficiency of the asylum system, and external border security.

A certain view is that, despite the inclusion of improved protection provisions, the foundational nature of Dublin III still leans closer to the benefit of the northern member states compared to the southern member states, which will be set out through the Prisoners' Dilemma[73].

Within the context of Dublin, the danger that certain actors are to be subjected to the free-riding of others is very much present. From the negotiations, it can be derived that some northern member states assumedly feared the increase or status quo of the number of asylum requests, combined with additional financial costs as well as having to significantly contribute to securing the external border area. On the other hand, the external border countries such as Italy assumedly feared the consequences of '*the principle of the first*', in combination with not receiving any operational or financial help from the other member states when a domestic asylum crisis should occur. To summarize, the northern member states as well as the southern member states feared to end up in a CD-situation and faced the Prisoners' Dilemma. Whether or not this has been overcome with the Dublin Recast, is up for discussion. Linked to this is the equally difficult question of what burden-sharing really entails, combined with the difficulty of calculating costs and benefits of the regulation[74]. Therefore, it is practically impossible to precisely decide which actor contributes the most or how to organize this.

Therefore, the conclusion on whether or not the Prisoners' Dilemma has been overcome could be perceived as a matter of approach:

on one hand, it could be concluded that the PD has indeed been overcome through arguing that the negotiations have brought an acceptable agreement for both major parties through bargaining tools and the element of consensus, as well as the inclusion of the EU norms; the hierarchy of criteria has persisted, but this has been compromised by introducing the Early Warning Mechanism, meant to prevent and address asylum crises when member states can no longer handle the influx themselves.

On the other hand, one could reason that the PD has not been overcome in the sense that a beneficial outcome for both major parties has not been established: due to their bargaining positions, according to LI, the northern member states were able to sustain Dublin as an implicit way of free-riding to the expense of the external border countries without the danger of them also starting to free-ride, which according to the classic theory of the Prisoner's Dilemma is normally inevitable. It could be argued

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[73] It should be noted that this point of view is quite cynical and one-sided, and should at least be taken with a pinch of salt. It is solely meant to explore the variety of (theoretical) approaches to the Dublin System.

[74] '*Owing to the lack of precise data, it was not possible to evaluate one important element of the Dublin system, namely its cost*'. (EUR-Lex, 2007: 1)

that the Dublin Regulation enhances a system of burden-shedding within the EU; it is a regulation which every member state is obliged to implement, which leaves the southern states with no choice as to implement a policy that forces them to continue to contribute more than their actual capacity. In conclusion, it could be argued that the northern states have found a way to reach a situation in which they can keep benefitting from the unrequited contribution of the southern member states (DC). A normal reaction of the southern states would be to also free-ride, which would ultimately lead to a situation of mutual defection and as such, a collapse of the Dublin System due to collective action failure. But since the regulation is part of EU acquis, the southern member states are legally not able to defect.

Still, it can be argued that those states did find ways to partly avoid compliance. Within this respect, an element from LI becomes relevant with Moravcsik arguing that non-compliance can both be a tool of expressing resistance against being outvoted during EU negotiations, as well as a state's preference. (Moravcsik, 1993: 512) There are, for example, clues that, for example Italy, does not consistently register all incoming asylum seekers, assumedly resulting into an increase of irregular migration to other EU member states and refugee protection gaps. This reasoning is further substantiated by the following:

There is the suggestion that states with failing asylum systems do not make proper efforts into improving protection deficiencies because this would attract more asylum seekers. This is hinted through the Dublin transfers suspensions: Bulgaria and Greece would have had to deal with more asylum seekers if the transfers had not been temporarily suspended.

Still, the situation in both Bulgaria and Greece is gradually improving[75], which contradicts the previous suggestion. However, another clue is found concerning Italy, as published by the British Broadcasting Company:

'After an Italian warship rescued 206 survivors and retrieved 17 bodies from a migrant shipwreck this week, Interior Minister Angelino Alfano warned that his country would defy EU asylum rules if it did not get more help to patrol its maritime borders. "We'll just let them go," he said, referring to an EU agreement that migrants must remain in the country in which they arrive until their status as refugees is decided. "We want to clearly say to the EU that they either patrol the Mediterranean border with us or we will send all those who ask for asylum in Italy where they really want to go: that is, the rest of Europe, because they don't want to stay in Italy." (BBC World News, 2014: 1)

Adding to this, Philip Amaral of JRS stated during a personal interview that asylum seekers will continue their quest for protection in case the country of first arrival does not take its responsibility

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[75] In April 2014, UNHCR decided that a general suspension of all Dublin transfers to Bulgaria is no longer justified because it concluded that *'conditions in the centres have improved'*. (UNHCR, 2014: 1)

into properly hosting them. Naturally, people are always seeking to be located in countries where their chances of prosperity and well-being are the highest, where they have an affiliation with the language and where they already have family members living there or when there is a community of fellow countrymen. (Amaral, 2014) Statements by Thielemann indirectly support the latter: he claims not to have found evidence '*that countries with stricter asylum regimes are the ones which find themselves with relatively smaller burdens in comparison to those which (on average) have operated more lenient regimes. On the contrary, we find that some of the countries (such as Germany, Switzerland and Austria), despite having put in place some of the most restrictive asylum policy regimes, nonetheless are among the most popular destinations for asylum applicants'*. He speaks of this as a '*weak positive correlation between relative asylum burdens and policy related deterrence measures'*. (Thielemann, 2006: 9) This confirms that asylum seekers will most likely try to go to those countries where their future is perceived to be brighter.

What has been analyzed and stated above could indicate mutual defection. Nonetheless, the recently implemented Early Warning Mechanism is installed in order to quickly address those asylum systems in danger of collapsing in the future. It is difficult to currently state whether or not this Mechanism works, since it is too early into the process to draw conclusions on its functionality.

3.5. Discussion

It is difficult to reach a conclusive answer to the main problem questions because there are several angles from which the matter can be perceived. In order to explain this, I will divide the main problem question into two separate particles, subsequently address both after which I will link the findings together.

First of all, does Dublin enhance an imbalanced burden-sharing to the expense of the southern member states?

This question could be answered with both yes and no. Throughout this thesis, I have emphasized on the 'yes-part', rather than setting out the 'no-part', since I have argued and concluded that the southern member states indeed do carry a disproportionate burden as a direct cause of the Dublin Regulation, more specifically due to the '*authorization principle'* and '*the principle of first',* which enhance a higher influx of asylum request than would probably be the case were it not for the Dublin Regulation. The asylum systems of, amongst others, Greece, Bulgaria and Italy have shown signs of a persisting lack of capacity into properly addressing the consequences and responsibilities that come with the influx. This has led, and assumedly continuously leads, to the risk of refoulement, inadequate reception conditions, as well as asylum seekers possibly ending up in legal limbo. Additionally, substantiating this reasoning, is the fact that Italy for example, has become one of the major host countries of the EU, arguably purely as a result of the Dublin Regulation, which forces asylum seekers into requesting protection within the first country of entry even if they initially wanted to reach other member states. One could therefore argue that the southern member states have become the victim of the pull-factors of the more economic prosperous member states. This argument contributes to the reasoning that the southern member states are carrying a disproportionate burden as a result of Dublin.

In conclusion, the answer to the concerned problem question is that the Dublin System indeed enhances an imbalanced burden-sharing to the expense of the southern member states[76].

However, this statement should be nuanced in order to avoid a one-sided insight.

First of all, it is necessary to estimate the extent to which burden-sharing is imbalanced, as well as to explain why the northern member states hold on to Dublin even though it entails deficiencies.

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[76] Here, I have not taken into account the effects of the early warning mechanism because it has not been activated long enough in order to decide on its efficiency to tackle the negative consequences of the pressure on the external border countries' asylum systems.

The reasoning above indicates that the southern member states are the only ones affected by the lack of burden-sharing enhanced by Dublin. And this is true, however it does not mean that the northern member states do not experience any consequences of a lack of burden-sharing within the EU, caused by different elements, nor does it mean that they do not make any efforts whatsoever into attempting burden-sharing.

When looking at the negotiation process, we have seen that there is indeed a north-south division on Dublin. The reason why the northern member states are persistently in favor of Dublin is because it allows them to transfer a certain share of asylum seekers under Dublin back to countries such as Greece and Italy. As stated from an article published by The Guardian: *'Italy and Greece have accused Britain and its northern European neighbors of not sharing the responsibility for a crisis in migration that has left them struggling to cope'.* (The Guardian, 2011: 1) This indeed indicates a lack of burden-sharing enhanced by Dublin and left unaddressed by the northern member states. From this, it is easy to develop the tendency of putting the blame on the richer northern member states for neglecting to address these asylum crises. The article also quotes that '*David Cameron, whose government has promised to cut UK immigration to "tens of thousands", has backed the Dublin system. Other northern European states are reluctant to change it'.* (The Guardian, 2011: 1)

To a certain extent, the northern member states are rightfully accused since it is undeniable that Dublin, a policy sustained by the northern member states, has contributed to the collapse of the Greek and Bulgarian asylum systems. However, it is important to put things in perspective and explain why the northern member states hold on to the regulation, since this does not necessarily mean that the northern member states have not engaged in efforts towards an increased burden-sharing, neither does it mean that the southern member states are carrying the bulk of the burden.

Statistics published by Eurostat[77] show that the majority of asylum requests are handled by Germany, France, Sweden, The UK and Italy. The total number of asylum application filed within these six countries accounted for approximately three quarters of the EU-28 total in 2013. This leads to the conclusion that there is a burden-sharing problem affecting not only the southern member states, but also those states considered to be the most popular countries of destination to asylum seekers. Prior to the implementation of the Dublin System, countries such as Germany had to deal with an even higher influx due to pull-factors, such as stable economy and work opportunities. This is why the northern member states prefer to sustain Dublin despite its deficiencies. It is expected that, if allowing asylum seekers to choose the member state in which they apply for asylum, those states rich in pull-factors will be overwhelmed by an increasing influx.

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[77] Be consulted via: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics#Asylum_applicants

The statement that the northern member states could and should engage more when it comes to contributing to refugee protection and lightening the burden of the southern member states is also proven to be true to a certain extent since it is clear the southern member states do not have enough capacity to properly address the influx they are coping with, as it has previously led to refugee protection deficiencies.

It is here several approaches into answering this question are optional, and also add up to the complexity of the problem area.

Those states that do not suffer from an influx which they cannot handle domestically have made, to a certain extent, efforts into contributing to burden-sharing concerning the distribution of asylum requests:

First of all, they have done so through financial and operational help, mostly carried out by the European border management agency Frontex.

Secondly, the bulk of the asylum requests are actually processed by Germany, Sweden, The UK and France. It is true that their asylum systems have a higher capacity and have, up until now, successfully addressed the influx by keeping up high protection standards. However, it could be argued that these countries also feel a certain pressure on their societies due to the influx, which could serve as another nuance to the conclusion of this thesis. They might also be burdened, only in a different way than the southern member states:

Both in 2004 and again in 2010, Angela Merkel stated that '*the multi-cultural society had utterly failed*'. She was repeated by British PM David Cameron, as well as French president Nicolas Sarkozy. This mediatized incident boosted the already heavy debate on the continuation of the so-called mass-immigration into Europe. This, together with other recent political developments, indicates that some Western politicians have left '*the discourse of diversity*'. (Baudet, 2012: 170) Furthermore, Baudet mentions that at least two British MP's responded to Cameron by stating that the PM *'is attempting to drive a wedge between different communities by linking Britain's multicultural society with terrorism and national security'. They continued by stressing on their belief in the multicultural society, respect and solidarity.* (Baudet, 2012: 170)

That said, European leaders publicly proclaiming the failure of their integration and asylum policies indicate that a certain share of the public has its doubts, distrust and possibly even aversion towards the influx of asylum seekers and towards the national integration systems. This could be seen as a certain form of pressure enhanced by the influx of asylum seekers, dividing European societies and creating far-right sentiments. If this wouldn't be the case, those politicians would have never dared to

publically dismiss the current multi-cultural reality in their countries since they would never risk losing a great number of future votes as a result of expressing certain opinions.

Another example underpinning the assumption of northern member states struggling to properly deal with the influx of asylum seekers on social and integrationist level, are the far-right parties who have gained political territory during EU elections in May 2014 when high results were achieved by Eurosceptic far-right parties who will most likely strengthen their presence in the European Parliament prompting for further anti-immigration measures. Front National, for example, has become the biggest French party within the EP, as well as UKIP from United Kingdom. (CNN, 2014: 1)

Another example is that it has been statistically proven that Belgium, for example, employs the least migrants of all European Union members, and discrimination is mentioned as on of the main reasons for this. (De Standaard, 2013: 1) This is a sign that the national asylum policy is troubled, because it apparently fails to prevent xenophobic sentiments and discrimination.

To summarize, the level of pressure on the southern member states due to Dublin is surely high, and it is visible with asylum systems collapsing and asylum seekers exposed to inhumane reception conditions. Whilst this is not the case for the northern member states, it could be assumed that they still expose asylum seekers to situations in which they are socially and economically disadvantaged.

The management of the influx of asylum seekers comes with financial and operational responsibilities which the northern member states are able to carry out, however the influx could still put a strain on the social responsibilities that states have towards asylum seekers which are allowed to stay. This aspect could be a topic for further research.

I wanted to include this reasoning in the thesis because I find it vital to add nuance to the problem question conclusion of a disproportionate burden on the southern-member states, without mentioning the possible incentives of the northern member states to continue the implementation of the Dublin Regulation.

The fact is that the northern member states generally keep up high reception and integration standards, including state benefits and housing. Additionally, the Refugee Status Determination statistics are also different, as literally derived from Eurostat: '*in absolute terms, the highest numbers of positive asylum decisions (first instance and final decisions) in 2013 were recorded in Germany and Sweden (both just over 26 000). France (16 200), Italy (14 500), the United Kingdom (13 400)*

and the Netherlands (10 600) Altogether, these six Member States accounted for 79 % of the total number of positive decisions issued in the EU'. (Eurostat, 2014: 1)[78]

Handling a high number of asylum requests is one way of contributing to refugee protection, but so is granting the refugee status and permanently accepting asylum seekers.

To summarize, it could be concluded that there is a burden-sharing problem affecting not only the southern member states, but also those states considered to be more appealing to asylum seekers. It should be said though that this pressure on the northern member states is not caused by Dublin on itself, although the latter serves as a nuance to the problem question.

It should be added that there is a north-south division when it comes to Dublin. However, there is no north-south division on the conviction that burden-sharing in the area of asylum between the EU member states should improve. Sweden, for example, has just like Italy called for an increase of burden-sharing and solidarity concerning the distribution of asylum requests since it is noticing a strain on its asylum system. (The Wall Street Journal, 2014: 1)

Fact is that states are divided on the way burden-sharing should be achieved. On one hand, the southern member states believe the abolishment of Dublin to be necessary to pave the way towards a fair, efficient burden-sharing which excludes asylum crises from happening. The northern member states, on the other hand, see this differently as they put the emphasis on financial and operational contributions.

The southern member states equalize the continuous implementation of Dublin with a lack of burden-sharing, whereas the northern member states see the implementation of Dublin as a way of avoiding a lack of burden-sharing, since it would presumably lead more asylum seekers to those countries with the most pull-factors.

The difficulty concerning Dublin and the north-south division is that there is no clear answer to their differing positions because, taking into account all arguments, both views are the result of national preferences. As literally stated by Wolff, '*These debates between member states over burden-sharing and solidarity mirror the prevalence of domestic preferences, following a cost-benefit analysis'*. (Wolff, 2012: 132) Conclusively, Dublin is implemented because the northern member states remain the most powerful negotiators within this respect. Sweden, for example, does argue for an increase of burden-sharing, as does Italy, but when placing Dublin in this scenario, to Sweden its implementation is not linked to a lack of burden-sharing, as opposed to what Italy thinks.

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[78] Be consulted via: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics#Decisions_on_asylum_applications

From the latter it could be stated that letting the achievement of a balanced burden-sharing depend on whether or not implementing Dublin, will lead to nowhere as none of those options will lead to the extent of burden-sharing in which both blocs are equally benefitted and burdened.

In the next section, I will address the second problem question:

Why have the southern member states accepted the continuous implementation of the Dublin III Regulation?

From the analysis, it has become clear that the implementation of Dublin was the only possible outcome. First of all, due to the lack of legal structures defining the element of burden-sharing, a perfect policy in efficiently enhancing this simply hasn't been developed yet. Therefore, as a way of managing the distribution of asylum requests amongst the member states, Dublin was a fitting mechanism, since granting asylum seekers the choice of host country would have lead to an increasing influx into those states already dealing with a high number, such as Germany.

Secondly, Dublin occurred from Schengen and arose behind the background of European integration, a process much valued by all member states.

The southern member states will most likely not be able to reverse the implementation of the system due to their limited bargaining powers and the fact that the EU has presented Dublin as the cornerstone of a much wanted Common European Asylum System.

However, Over time, alternatives might be considered if the circumstances change and political willingness increases[79]. Also, this could happen in case the Dublin III Regulation fails to reach its goals, leading to negative consequences affecting also the northern member states which might lead them to rethinking the implementation of the Dublin System.

In conclusion, the main problem question of this thesis has been answered: taking into account certain nuances, the southern member states do carry a disproportionate burden as a result of Dublin and the regulation has been implemented according to the national preferences of those member states with the highest degree of bargaining power. Additionally, Dublin is the cornerstone of the CEAS and an element of European integration, which also explains its implementation.

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[79] as quoted by Ujupan and applicable to Dublin:
'In the EU, balances change. We have old members and new members, we have states gaining influence such as UK, Spain or Poland and we have states losing influence, like France. Even inside member states we have changes of governments, hence changes of priority. Since the definition of EU trajectory strongly depends on these internal shifts we cannot anticipate where EU will go, as we cannot anticipate where any other organization goes. It can only be stated that the EU structures will continuously adapt to the needs of its component interest groups and it will react to its external environment. It does not need a finalite'. (Ujupan, 2000: 4)

The content of Dublin has been shaped throughout history, behind the background of European integration and because there are currently no viable alternatives into managing the distribution of asylum requests within the EU.

Foundationally, the lack of legal structures defining burden-sharing within the global refugee protection regime has caused difficulties in reaching an equal burden-sharing amongst the EU member states. However, the recently implemented Dublin III Regulation, including the early warning mechanism and additional protection provisions, should improve this by fixing the asylum crises, assisting nations who cannot cope with the influx of asylum requests and by carrying out high standards of refugee protection. Otherwise said, Dublin III should have the capacity of evading collective action failure through enhancing the compliance of Dublin and through installing a solidarity and burden-sharing mechanism.

The subject of this thesis is relevant, since it addresses an issue-area that has many profound implications on human life, politics and society in general. It is vital to avoid collective action failure, as the European integration process has lead to an environment in which cooperation concerning asylum is pivotal into the provision of adequate and fair refugee protection, as well as sustaining the freedom of movement.

In my opinion, the Dublin Regulation lacks the realistic perception of people moving to those places which they have in mind, and which can offer them the best possible future. A quotation literally retrieved from The Wall Street Journal illustrates my statement:

"What I like about Sweden's approach is that you get support during the first years," said Mr. Rachit, who worked as a sales manager at an insurance company in Syria's largest city, Aleppo.

After a long planning period, he paid a smuggler €16,000 to get to Sweden.

"If I didn't have a family I would stay in Syria. But I have children. They need to go to school, they need to have medicines and vaccines...They need to have a normal life." (The Wall Street Journal, 2014: 1)

I therefore carefully state that the Dublin Regulation is not tenable in the long run and that when circumstances change, the EU member states might be ready to discuss alternatives.

Limitations

The complexity and linkage to several different elements within a framework of global refugee protection and European integration, made it difficult for me to decide which elements to elaborate on and which to leave aside in order to not drift of too much from the problem area. I feel like I could have elaborated more on the foundational solutions to refugee flows, namely investing in proactive

measures such as peacekeeping operations and development projects, as well as to include the European Neighborhood Policy and the alliances between the EU, the transfer countries and countries of origin. I could also have used more theories of IR relating to burden-sharing, which would have lead to additional insights and perspectives. If I would rewrite this thesis, I would focus more on the element of burden-sharing and less on the negotiation process of Dublin.

A topic which should definitely be researched in the future is the effectiveness and consequences of the implementation of the Dublin III Regulation.

Conclusion

It can be concluded that the southern member states do carry a disproportionate burden, when keeping into account the limited capacity of their asylum systems to address the influx.

Dublin was implemented due to the lack of dominant bargaining power of the member states opposing the regulation, as well as due to its vital role within the establishment of the Common European Asylum System. Dublin should be seen as a part of a bigger integrationist process, which partly explains why its deficiencies are tolerated. This is combined with the fact that burden-sharing is not legally defined, therefore difficult to foresee within political policies.

In addition to this, the need for an improved burden-sharing is not denied by the northern member states, however their view on how this should be reached is fundamentally different from the view of the southern member states, who link the abolishment of Dublin automatically to paving the way for increased burden-sharing, as opposed to the northern member states.

Concerning Dublin, I carry out the point of view of equating imbalanced burden-sharing to disregarding state capacity, leading to the risk of triggering collective action failure.

I perceive the prisoner's dilemma as the central theory to the research conclusion: Dublin is linked to collective action of the EU member states concerning refugee protection and safeguarding national security. At all times, there is the danger of free-riding because collective goods are non-excludable and non-rivalrous. It could be argued that to a certain extent, the northern member states free-ride to the expense of the southern member states when it comes to the distribution of asylum requests. The southern member states experience pressure on their asylum systems and this has lead to collective action failure, since irregular migration from those states into other member states occurred, as well as a lack of adequate refugee protection.

The Dublin III Regulation entails an early warning mechanism, meant to address (the risk of) asylum crises, and therefore it should prevent non-compliance and collective action failure. However, it has yet to be confirmed whether or not this mechanism will live up to the expectations. If not, there is a serious risk of repetitive collective action failure in which case alternatives to the Dublin System could be considered.

It should be noted that the approach of defining unequal burden-sharing based on whether or not a state's capacity is kept into account, is in this context a one-sided approach since it does not include other perspectives on burden-sharing and whether or not the northern member states do contribute to the provision of the above-mentioned public goods.

The research has proven that, to a certain extent and seen from a certain angle, Dublin enhances an imbalanced burden-sharing to the expense of the southern member states.

The fact is that this conclusion changes when the point of view changes.

Appendix

(Figure 1)

How migrants enter Europe, by land and sea
Figures for January-April 2014

Route	Number
Migration route	

How the routes compare
Numbers of migrants by route

Route	Number	Route	Number
C Med	25,650	Albania-Greece	1,370
E Med	5,800	Apulia & Calabria	660
W Balkan	3,780	E Europe	194
W Med	2,650	W Africa	40

Source:Frontex

Annex

1. **Question list Interview Caroline Klamer – assistant to MP Cecilia Wikström-**

The main criterion of the Dublin System is geographically based: the first member state through which asylum seekers enter the EU is also the country in which they have to apply for asylum.

- o Which alternative systems were represented during the negotiations?
- o Which countries/alliances represented those views? *(Is it correct to talk of two main views around which the negotiations revolved? Namely Germany vs. Italy, respectively defending the current hierarchy of criteria vs. asylum seekers' choice of asylum country)*

1. Apart from the EU institutions and the member states, were there other actors/key stakeholders, for ex. UNHCR, IOM, NGO-platforms such as ECRE, involved (in the decision-making process) during the Dublin II and Dublin III negotiations? Did these have any significant decision-power; did their lobby work have any concrete effects?

2. In your view, why did the alternative proposals lose? Did the differences in bargaining power between the member states play a crucial role? *(previous research has shown that gains and losses in these types of negotiations are relatively equally shared amongst the EU members, and that the influence of exogenous power resources—such as votes are more important than endogenous resources such as bargaining powers?)*

3. Criticism on the Dublin System is persisting: NGO's and governments of, amongst others, Italy and Greece, have stated that the external border countries carry a disproportionate burden of asylum requests in which they are not sufficiently supported by the EU. Due to the pressure, several NGO's also have warned for the risk of refoulement since those countries suffering under a high influx tend to maintain a low Refugee Status Determination-number:
   - o What do you think of this criticism?
   - o In your opinion, is the Early Warning Mechanism the best way to effectively tackle these issues?

4. The installment of the Early Warning Mechanism is described and presented by the EU as a way of assisting those states whose asylum system is (in danger of) collapsing and to avoid crises from happening. However, it could be perceived as a way of the northern member states to keep up the burden-shedding factor of Dublin, since it ensures the possibility of undertaking Dublin transfers to external border countries, a beneficial element to mostly the northern member states.
   - o Under which impulses did the Early Warning Mechanism arise? Which actors favored its implementation during the negotiations?

5. Overall, do you think that there is an equal burden-sharing amongst Member States when it comes to the entire spectrum of asylum? (Keeping into account refugee protection contributions, such as financial and operational support, as well as peace-keeping and capacity building initiatives in the countries of origin)

6. One of the solutions suggested by the Jesuit Refugee Service (JRS), is allowing asylum seekers to chose the country in which they apply for asylum. Another possible alternative is the multi-factor calculation in which supposedly fair refugee quota are calculated per member state, based on population, size of the country, GDP and unemployment rate, thus enhancing burden-sharing.
   o Could these alternatives realistically be an improved substitute of the Dublin III Regulation?

2. Question list Philip Amaral -Policy and Advocacy Officer Jesuit Refugee Service-Europe-

On Dublin III in general

- Do you see the improvements in the Dublin III legislation implemented in reality? In other words, is Dublin III a better version then Dublin II?

- What is your opinion on one of the main points of critique on Dublin III: "the countries on the external border of the EU suffer most under the influx of asylum seekers". Some dismiss this argument by pointing out that in actual numbers; Germany, Sweden, the UK and Belgium take in the majority of all asylum seekers in the EU. (for ex: '*Like Greece, Belgium receives thousands of asylum applications. In 2010, 19,941 immigrants applied for refugee status with a further 13,493 seeking asylum in Belgium in the first seven months of 2011 alone'*)

- Would Dublin III work if all EU member states had equally adequate asylum systems?

- What is your opinion on the creation of a Common European Asylum System? Do you think it is unrealistic, due to underlying political and economical elements working against it?

- Do you think the Dublin III Regulation is positive/negative/not impacting Romania's asylum situation? Or do you think Dublin III should not be decided upon on a country to country base, but should be looked upon through a bigger framework?

On Romania specifically

*Do you have any information available on the number of Dublin transfers to and from Romania? (Since the government does not publish these statistics)

* From an interview with CNRR – the Romanian National Council for Refugees- we understood that the situation in Bulgaria and Greece did not raise the number of asylum applications in Romania, putting no extra pressure on the Romanian asylum system.

- What is the reason for this? Since Romania shares a large border with Bulgaria, one might expect asylum seekers to flee to the nearest bordering country.
- Did JRS notice any increase of immigrants from Bulgaria and Ukraine given recent developments? Are there exact statistics available?

* In one of their reports, JRS identified the following situation as a problem in Romania: *An increased number of rejected asylum seekers who did not follow the entire RSD procedure and that had left the country, were finally rejected during their absconded and were retuned under Dublin II; upon return they were considered illegal migrants and ended up in detention;*

- From your experience, is this really a problem in Romania? Is there a theoretical possibility of Dublin returnees to be put in detention? Do such situations happen very often, even under Dublin III?
- Do you think the reason for this problematic situation, is the lack of information about The Dublin Regulation offered by the Romanian government to asylum seekers?

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