

RETHINKING AYLUM POLICIES IN THE EU: LESSONS FROM THE SYRIAN REFUGEE CRISIS

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ABSTRACT

The Syrian refugee crisis at the doorstep of the EU once more demonstrated the inadequacies of the EU member states as regards their commitments to asylum and international protection. While little progress has been achieved in terms of EU's aims to have a Common European Asylum System, it is observed that EU is more likely externalising its asylum practices towards non-member third countries in a securitized context which creates more challenges across a broad region including the EU's immediate neighbourhood. Externalisation that occurs in the form of mainly shifting and keeping asylum applications out of Europe creates significant negative externalities on non-member neighbouring countries that are left alone to host many asylum seekers and undertake the huge economic and social burden. Accordingly, the paper argues the EU's common practice of externalisation of asylum practices with reference to the case of the Syrian refugee crisis.

KEY WORDS: Asylum, Migration, EU, Syrian Refugee Crisis

Introduction

Issues about asylum and refugees have always represented a challenge for the EU, and many European governments now find themselves confronted with a massive inflow of asylum-seekers mainly from Syria in addition to a large number of displaced people coming through North Africa. According to Eurostat statistics (2015), in 2014 EU+ countries¹ received 661,960 applications for international protection, an unprecedented 42% increase from 2013, and Syrians with a share of 20 per cent ranked as the largest group of registered asylum applicants. These increasing numbers, along with the ongoing serious political crisis and conflicts developing along the EU's external borders, not only place a great deal of strain on the asylum and reception systems of member states but also demonstrate the failures and shortcomings of the EU as regards its commitments to asylum and international protection.

EU has been trying to create a Common European Asylum System (CEAS) since 1999 with an aim to achieve an area of protection and solidarity for the most vulnerable. Accordingly, the EU has been working to improve its legislative framework, provide better access to asylum procedures, ensure that people fearing persecution will not be returned in danger, and provide decent, dignified conditions both for people who apply for asylum and those who are granted international protection in the EU (European Commission, 2014). However, despite EU member states' commitment to a shared responsibility for refugees, little progress has been achieved and thus the joint approach to asylum remains vague in practice across the EU. It has been observed that in contrast to the goal of achieving a common asylum system within the borders of the EU, member states' efforts are more focused on externalising asylum practices to non-member third countries in a securitized context which creates more challenges across a broad region including the EU's immediate neighbourhood. Externalisation mainly occurs in the form of shifting and keeping asylum applications out of Europe, promoting regional protection programs and reception centres in non-member countries, encouraging the return to 'safe third country' and signing 'readmission agreements'. Additionally, non-entry practices and making access to asylum and appeal difficult are observed as the most prominent reasons for the relatively small number of registered asylum applications to the EU, and this is what keeps people in need of protection

outside EU borders and prevents them from seeking asylum rights within the EU.

The Syrian refugee crisis, which has taken place at the doorstep of Europe, has once more demonstrated the shortcomings of many EU member states' commitments on their asylum policies and practices. In fact, it is one of the evidences of the EU's increasing efforts to externalise its asylum policies to non-member countries through a securitized and burden-shifting approach rather than solidarity based burden-sharing approach. The response of European governments to the Syrian refugee crisis reveals that policy papers and practice strongly contradict in terms of the European asylum policy objectives that have been established. Furthermore, this situation has not only brought about serious humanitarian, economic and social challenges for European societies, but more significantly migration transit countries in the EU's neighbourhood have been facing a risk of being transformed into a 'dumping ground' or 'buffer zones' for the EU's unwanted refugees. In turn, this also increases the risk that these countries will become 'destination countries' for refugees.

Towards a Common European Asylum System?

The policy-making efforts of member states to develop and adopt a common set of rules on asylum practices have been incremental since 1999. In recognition of the common challenges faced across Europe with respect to asylum issues, member states indicated their dedication to create a 'Common European Asylum System' at the Tampere European Council in 1999. The Tampere Programme (1999-2004), as the first multi-annual instrument of CEAS, aimed mainly to develop common standards concerning asylum applications, the reception of asylum seekers and the approximation of rules about the recognition and content of refugee status in member states (Council of the EU 1999). Based on the full and inclusive application of the Geneva Convention, the Tampere Programme was dedicated to drawing up a uniform status for recognized refugees and persons benefiting from subsidiary protection. Following Tampere, the Hague Programme (2005-2009) set up a new and ambitious five-year course for the EU and aimed to complete the CEAS by 2010 (Council of the EU 2004). However, member states postponed the deadline to 2012, citing difficulties in reconciling the great disparities of asylum practices across the Union. Beyond its focus on new legislation and decision-making procedures concerning issues related to

borders, asylum and migration, emphasis on sharing responsibility and solidarity was also highlighted by including the establishment of three major financial framework programs. The Hague Programme re-envisaged the ultimate objective of the CEAS as establishing a common asylum procedure and a uniform status for persons in need of international protection that would be valid throughout the EU. Lastly, the Stockholm Programme (2010-14) reaffirmed the need to create an area of protection and solidarity within the EU, which was to be achieved by setting up the CEAS by 2012 (Official Journal of the EU 2010).

It is evident that these initiatives and contiguous multi-annual programs have brought about significant improvements and contributed to the creation of a European legislative context in the field of asylum. Efforts to harmonize member states' legal frameworks on the basis of common standards to ensure the equal and fair treatment of asylum seekers throughout the Union resulted in the adoption of several new EU laws and some significant pieces of legislation such as 'Qualification Directive', 'Long-Term Residents Directive', 'Reception Conditions Directive', 'Asylum Procedures Directive', 'Dublin Regulation' and the 'Eurodac Regulation'. In addition to legislative achievements, the EU has also been able to develop its own expertise and professional know-how through European agencies (such as FRONTEX, EUROPOL, EUROJUST, CEPOL, European Asylum Support Office and so on) which have reached respective operational maturity in their actions.

Despite the reaffirmed commitments for a joint harmonized European policy rather than cross-border policies for asylum seekers and refugees, a common asylum system in the EU has not yet been fully implemented and operational. The objective of establishing a common area of protection and solidarity based on a common asylum procedure and uniform status for those granted international protection still remains as a key policy objective of the EU. The figure below, which indicates the diverse types and levels of recognition, clearly illustrates the significant disparities that exist among state decisions. These have primarily been brought about by the structural differences in caseloads and the varying approaches implemented in member states, and different forms of protection under national law reported as being forms of humanitarian protection.

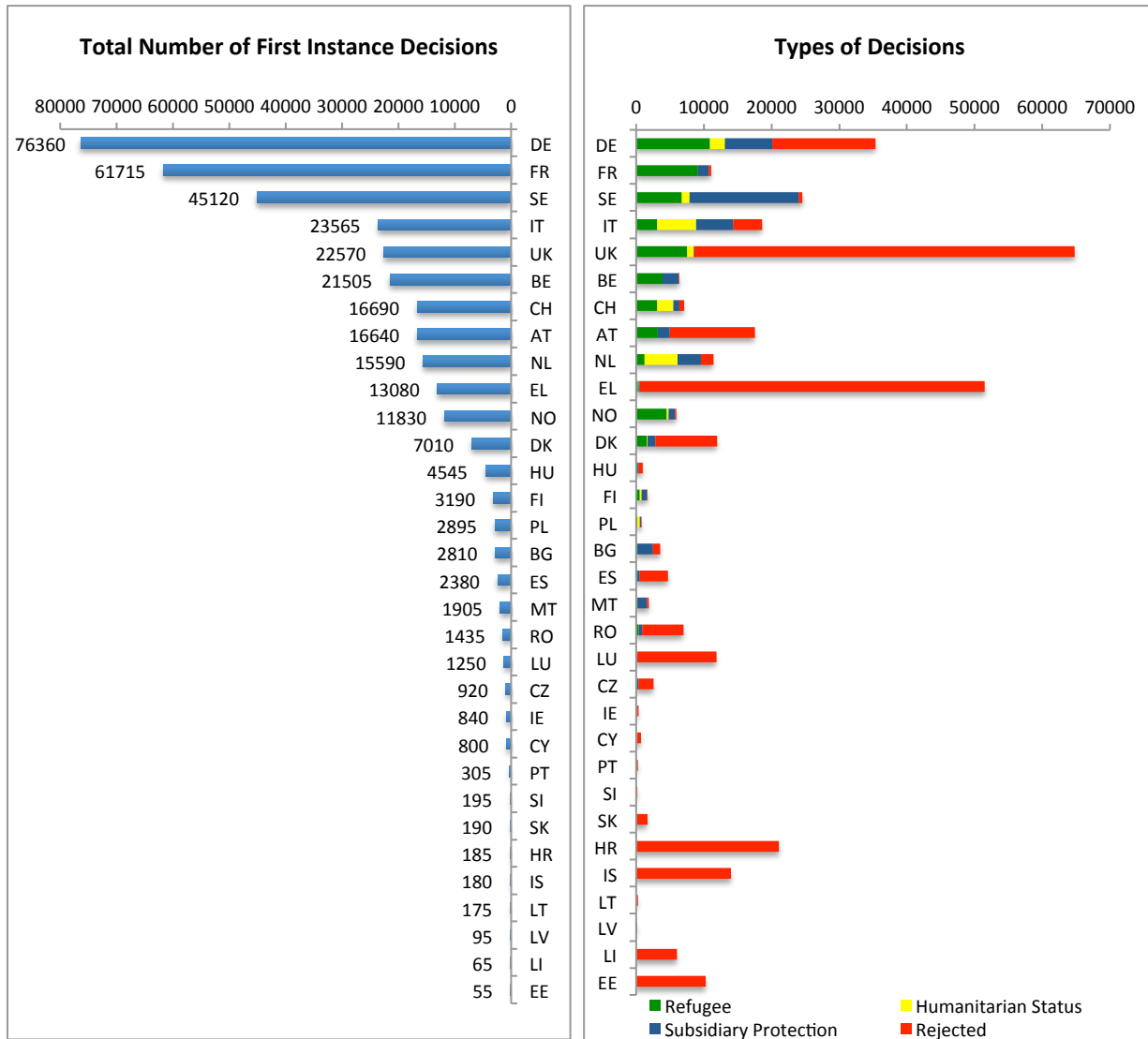


Figure 1: First Instance Decisions and Types of Decisions issued in the EU+, 2013
Source: Eurostat data as of 08.02.2015

Today, it is evident that the major achievements in legislation did not result in the desired outputs mainly because of member states' prevailing national interests and their lack of real incentives to adopt EU-wide asylum policies. There are still significant differences between member states in terms of refugee protection, reception and living conditions, length and quality of asylum processes, and recognition rates (SVR, 2013). Coherent implementation to improve convergence among national provisions, and disparities in asylum decisions and practices across the EU still remains as a challenge. As Cecilia Malmström (2014), European Commissioner for Home Affairs

between

2010-2014,

stated:

We were not fully satisfied with the outcome because these laws were in many ways a half-hearted effort. They were adopted by unanimity of member states, which meant that every member state could insist to have their specific provisions in. In the end, the laws became a ‘Christmas trees’, heavy with unwanted decorations. As you as practitioners well know, they were full of ambiguities and loopholes.

The failure to realize the principles of solidarity and fair sharing of responsibility as enshrined in Article 80 of Treaty on the Functioning of the EU (TFEU) is another issue that represents a major impediment to the creation of a mechanism of common cooperation among EU member states. One issue in this regard is the fact that asylum flows are not constant and they are not evenly distributed across the EU. Germany is the top receiving country of asylum applications (202,815), followed by Sweden (81,325), Italy (64,625) and France (64,310); in total these countries constitute where 62% of all asylum applications logged their claims in (Eurostat 2015). The discrepancies among European countries in terms of the uneven distribution of asylum applications are clearly evidenced below.

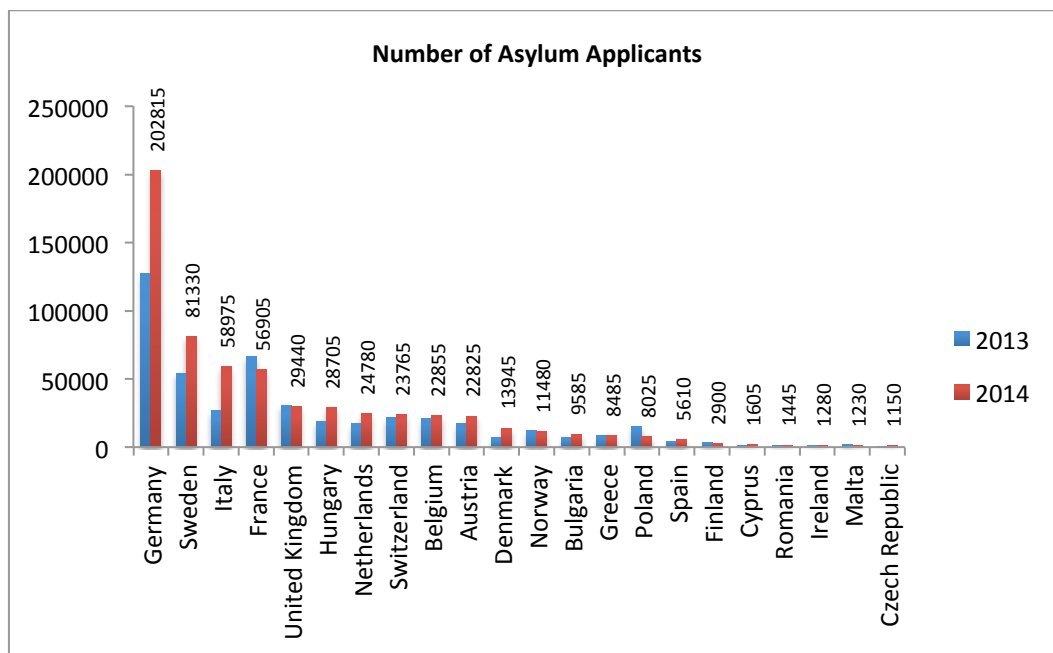


Figure 2: Number of Asylum Applications in the EU+, 2014

Source: Eurostat data as of 08.02.2015

By comparing total populations and the varying levels of welfare infrastructure, the following figure on depicting resettlement rates gives a clearer picture of the uneven share of responsibility and the low rate of Europe's contribution to global resettlement in terms of humanitarian protection. Sweden and Norway alone take in 48% of all resettled persons.

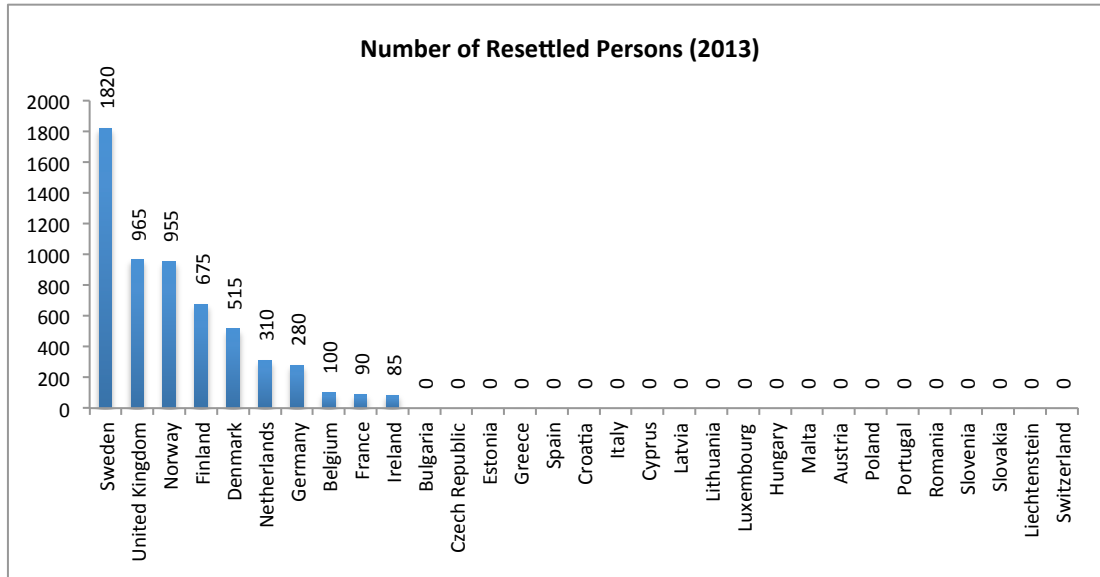


Figure 3: Number of Resettled Persons in the EU+, 2013

Source: Eurostat data as of 08.02.2015

Those countries at the Union's southern and southeastern frontiers, particularly Greece, Malta, Bulgaria and Cyprus, have been complaining that they are confronted with intense migration pressure and bear much of the burden as the first harbours of entry for asylum seekers. However, the numbers show that the burden is not concentrated exclusively on the EU's external borders. Indeed, Greece and Malta are not the desired actual destinations of new arrivals. Despite the high number of arrivals in their territories, only a few asylum-seekers apply for protection in Bulgaria or Greece due to being subjected to unpleasant conditions of reception, detention, difficult and lengthy asylum procedures, and insufficient assistance and integration practices. Such poor asylum conditions are often explained by citing the heavy burdens placed on these countries, but this does not relieve them of the responsibility of providing international protection.

Externalising the Asylum Policy Beyond EU Borders

The external dimension of asylum as a policy area was established by TFEU (2009) with reference to the partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum, subsidiarity or temporary protection. Asylum policy became an integral part of the EU's external relations mainly after the adoption in 2005 and then renewal of 'Global Approach to Migration and Mobility' (GAMM) in 2011 following the Arab Spring events (European Commission 2011). One of GAMM's four pillars is devoted to 'promoting international protection and enhancing the external dimension of asylum policy'. By shifting the focus from 'control' to 'protection,' it aimed to increase cooperation with non-EU countries in order to strengthen their asylum systems and national asylum legislation, and also to ensure compliance with international standards.

Asylum practices and protection capacities in non-EU countries are supposed to be strengthened under 'Regional Protection Programmes'² (RPP) as a key instrument that focuses on building up protection capacity and asylum systems through durable solutions in regions from which many refugees originate or in areas through which they pass in transit (European Commission 2005). RPPs are a prominent issue of debate. The traditional asylum policies of European states focus on granting protection to refugees by admitting them to their territories and abstaining from expulsion. However, the EU's cooperation with third countries on asylum issues has brought about a significant shift in that European states have begun to designate foreign territories as primary places of protection during the processing of asylum applications and build protection capacities in regions of origin. The idea of processing asylum applications in third countries was suggested by the UK government as early as 2003 based on a proposal penned by Tony Blair titled 'New international approaches to asylum processing and protection' (UK Government 2003). One of the suggestions in the proposal was the establishment of 'protected zones' in third countries where asylum seekers could be transferred to have their claims processed. These centres would be located outside the EU on transit routes and would host people for processing. Additionally, it was hoped that these regional protection areas would host asylum seekers who had reached Europe but were deemed to not have a well-founded claim to refugee status and could be immediately returned to their countries of origin (UK Government 2003, 5). The proposal raised serious legal, practical and ethical concerns, and it was criticized by human rights

groups and refugee advocacy groups for aiming to create a bulwark around the EU via eastern European countries, Turkey, Morocco, Tunisia and Algeria. This attempt to create as many barriers to refugee movement across various countries and regions was roundly condemned, and it did not receive unanimous support from EU member states themselves.

Nevertheless, formal asylum procedures today are being ‘externalised’ in a manner that is very similar to the UK’s proposal through the fostering of RPPs to strengthen international protection and create so-called reception centres, which are similar to transit processing centres or protected zones where asylum seekers can be detained during the assessment of their claims. In these centres, depending on the outcome of asylum claims, one of three ‘durable solutions’ applies: repatriation to the home country (if there is no longer need for protection), local integration of refugees into the community of a host country, and resettlement in a third state in cases where neither of the first two options are possible (European Commission 2005). Indeed, within the framework of the externalisation of asylum policy, this represents a fundamental shift from the traditional system of refugee protection based on the individual responsibility of each asylum country towards a system of contracting protection out to less liberal and democratic third countries where the economic, social and political costs of granting refugee status are seen as being relatively lower (Betts 2003). Therefore, sending people back to these nations contradicts the discourse of ‘burden sharing’ because it merely increases the burden on developing countries, which are already coping with high number of refugees. These countries, especially those close to the regions of origin of refugee populations, host far greater numbers of refugees and asylum seekers than EU member states. Under these conditions, transferring refugee processing to those regions is inconsistent with the concept of international responsibility-sharing and the principle of international solidarity. Denying access to territories and shifting asylum-seekers to zones outside the EU where refugee protection is weak and unclear inevitably puts asylum seekers’ right to international protection at risk, and this is incompatible with the fundamental right to seek and enjoy asylum as enshrined in the Universal Declaration of Human Rights (1948) and the Charter of Fundamental Rights of the European Union (2000).

Another contested issue concerning the EU’s externalisation of asylum policies to non-members concerns the concept of ‘safe third countries’ for return. Accordingly, returns to third countries

can target not only the nationals of the country in question but also another third country that has been or could have been a 'country of first asylum' if this country had offered effective protection. The 'safe third country' concept allows member states to shift their responsibilities for asylum seekers to third countries without ensuring that these countries, which are thereby required to accept responsibility for refugees, have the capacity to do so. The EU's strategy of engaging these countries as part of a 'durable' solution for asylum seekers and refugees was severely criticized by the UNHCR since it can lead to violations of international law. Such practices of transferring responsibility for assessment were also condemned as a form of 'burden-shifting' that seriously undermines the international refugee protection regime.

Lastly, readmission agreements constitute an indispensable instrument of the EU's cooperation with third countries in asylum and migration. These agreements aim to control and facilitate the return of irregular migrants and rejected asylum seekers. The contracting parties agree to readmit their own nationals who have entered or stayed illegally in the other country, as well as nationals of non-contracting parties or stateless persons who have illegally crossed the shared frontier.³ It is clear that a significantly high number of irregular migrants and asylum seekers in Europe are nationals of neighbouring countries or transited from these countries. Thus, their return creates major difficulties for transit country authorities regarding personnel and administrative capacities because they often lack experience concerning return procedures and, more notably, are often untrained especially regarding human rights and respect for refugees and their needs. Other matters of concern include the extent of reintegration programs, assistance and job training and the size of detention facilities that are needed. Moreover, none of the transit countries have significant experience of readmitting third country nationals to their home countries, nor do they have readmission agreements with the countries of origin. There is also the risk of the return of readmission of third country nationals from the EU to neighbouring transit countries since a substantial number of these, including many irregular migrants, can apply for asylum, and most of these transit countries have weak asylum systems that have only recently come into existence. Transit countries are already experiencing numerous difficulties in providing the necessary services for asylum seekers, such as adhering to time limits, providing interpreting services, running shelters and accommodation for asylum seekers, and ensuring the local integration of

refugees, and due to the increasing number of applicants these countries may soon be overloaded and conditions may deteriorate even further.

The most criticized aspect of the readmission agreements relating to asylum-seekers is the *non-refoulement* principle because responsibility for the actual physical return of a person rests entirely with the competent authorities of member states. Serious concerns have been voiced on this matter because the authorities generally fail to consider the specific situation of individual asylum seekers, and their actions may entail serious risks of *refoulement* which may lead to violations of a person's customary right to seek and enjoy asylum from persecution. Most readmission agreements between EU member states and third countries do not contain any explicit reference to a 'safe third country' to secure each person's fair access to a refugee determination procedure in line with international standards. In fact, most transit countries are not 'safe third countries' of asylum according to UNHCR criteria. Thus, readmission policies have been criticized for shifting the burden of refugee protection and reception onto countries that lack adequate resources and facilities. Most of them lack the resources, administrative capacity, and procedures necessary for the processing of asylum claims in accordance with the standards required by the UNHCR (Trauner and Kruse 2008, 30). Consequently, transit countries are left with many uncertainties in dealing with substantial numbers of readmitted third country nationals who have the potential to become a serious social and economic burden.

Syrian Refugee Crisis: Assessment of the EU's Externalisation of Asylum Practices

An estimated 9 million Syrians have fled their homes since the outbreak of the civil war in Syria in 2011. The total number of Syrian refugees registered by the UNHCR is 3,9 million; 2,2 million of whom are registered in Egypt, Iraq, Jordan and Lebanon, and 1,7 million of whom have been registered by the government of Turkey; in addition, 24,055 are registered in north African countries (UNHCR 2015a). In response to one of the largest crisis of forced displacement in the world, the number of total asylum applications in EU+ countries registered between 2011 and 2015 is only 278,551 (UNHCR 2015b), approximately 7 per cent of all registered Syrian refugees. Germany and Sweden are the top two receiving countries with a total share of 51 per cent of all applications. Given the fact that nearly 2,8 million Syrian refugees are being hosted by

Turkey and Lebanon alone, the number that European countries are hosting is paltry, and far below the EU's capacity to handle them.

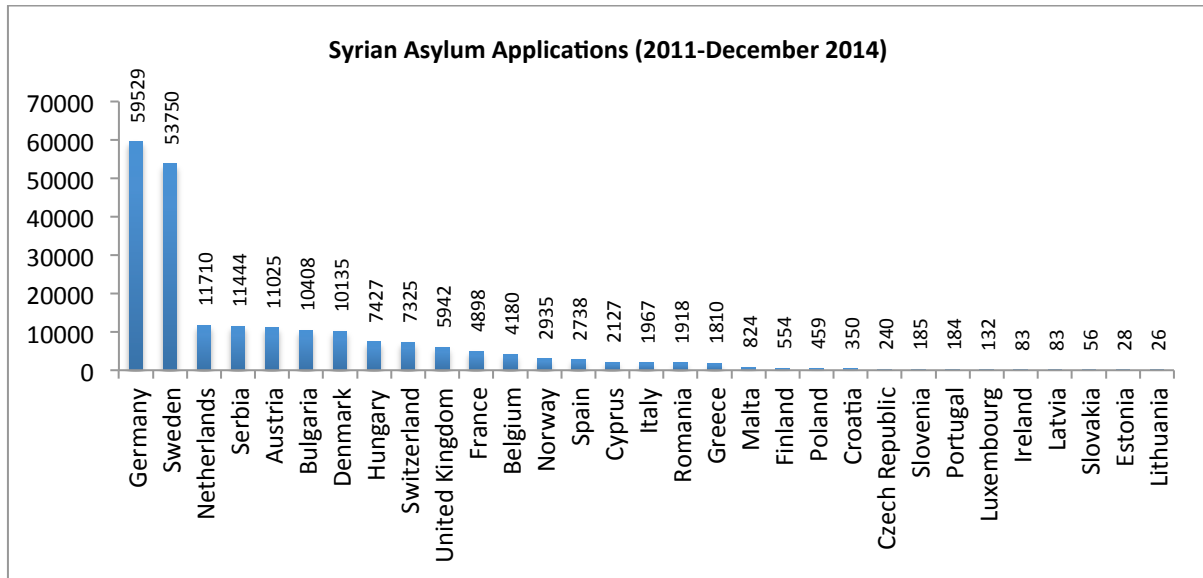


Figure 4: Total Number of Syrian Asylum Applications in EU+ Countries between 2011 and December 2014

Source: UNHCR, Syria Regional Refugee Response, 30.01.2015

The fact that currently there is 3,9 million registered Syrian refugees (as well as more awaiting registration at the doorstep of the EU) stands in stark contrast to the 278,551 asylum applications filed with European countries. This raises the question of why so few have applied. The key concern is not so much about the low resettlement or admission rates or why more Syrians haven't sought refuge in prosperous EU countries but rather if there are barriers that prevent them from obtaining proper and safe access to EU territory and apply for asylum. The response of most European countries to Syrian refugee crisis has been characterized by a number of gaps and worrisome practices. The UNHCR's study 'Syrian Refugees in Europe' (2014) emphasizes several reports concerning Syrians being prevented from reaching or entering the territory of EU countries across external borders and that they have been forcibly returned without being able to apply for international protection. The study also cites documented reports of 'pushbacks' that put refugees' lives at risk and underlines its concerns about troubling border closures, excessive use of detention, inadequate reception conditions, backlogs in asylum procedures, barriers to

family reunification, and the lack of mechanisms for identifying and assisting asylum seekers with vulnerabilities or specific needs.

Bulgaria is a case in point, and it is reported to have employed measures to restrict access to its territory. In June of 2013, Bulgarian authorities arrested 11,606 people making irregular crossings and an estimated number of 6,600 of them were Syrian nationals (UNHCR 2014, 8). Bulgaria has turned back many migrants at the Turkish border without giving them the chance to apply for asylum application and established a new containment plan indicating the deployment of additional 1,500 police officers at the border (HRW 2014). Recently, in addition to a fence 33 kilometres in length that was constructed last year along its 240-km southeastern border with Turkey, Bulgaria plans to extend a barbed wire fence by a further 130 km (Reuters 2015) which will not only restrict the access of the growing number of refugees, but also endanger more lives and increase the role of human traffickers. Bulgarian Prime Minister Boiko Borisov stated, ‘The defence facility will decrease the refugee pressure on Bulgaria by around seven times,’ a statement indicative of the unfortunate practices of some EU member states which seek to restrict asylum access and take an irresponsible stance regarding international protections. Similarly, denied entries and push-backs of Syrian refugees by Greek authorities to into Turkey, and closed border of Spain between Morocco and Melilla which have stopped 200 Syrians from reaching Spain in February 2014 have increased concerns about reinforced barriers aimed at preventing refugees from reaching EU territories and hence making it impossible for them to seek asylum (UNHCR 2014, 8).

As a result, the main issue is no longer about determining which of the EU member states or the first territories of EU member states are responsible for examining the applications of asylum seekers; rather, the problem is that access to asylum rights has been blocked, leading to take life-threatening journeys which result in large numbers of deaths. Barriers on borders, forced returns and closed borders have forced Syrians in need of protection to take irregular routes and turn to smugglers, and as a result many have died on the way. Through rescue operations known as ‘Mare Nostrum’ that were launched by Italy in the Mediterranean Sea, more than 100,000 people have been rescued in a single year (UNHCR 2015c). In short, it is evident that Syrian refugees have not been provided with easy access to apply for asylum in European countries. In this

context, focusing on and debating the Dublin Regulation about making it ‘possible to determine rapidly the member state responsible, so as to guarantee effective access to the procedures for determining refugee status’ is an exercise in futility as long as Article 18 of the Charter of Fundamental Rights on ensuring full observance of the right to asylum is not guaranteed and respected.

People fleeing the Syrian conflict have been seeking safety in neighbouring countries Turkey, Jordan, and Lebanon, all of which are under intense pressure as the inflow of refugees continues. Nearly 3,9 million refugees are being hosted in just five countries: Turkey, Lebanon, Jordan, Iraq and Egypt. 1,7 million Syrian refugees are registered in Turkey under the temporary protection regime.⁴ Lebanon, in contrast, as a country with a population of around 4,4 million that is already struggling with severe political problems and economic destabilization, is hosting nearly 1,1 million Syrians in addition to the 400,000 Palestinian refugees that Lebanon has hosted for decades. Syrian refugees has increased the population of Lebanon by 21 per cent, the largest proportionate increase experienced by any of the countries in the region affected by the crisis (UNHR 2013, 5). In Turkey, more than 250,000 Syrian refugees are currently sheltered in twenty-five camps in ten provinces (AFAD 2015a). The real number of Syrian refugees in Turkey is estimated to be around 2 million (Erdoğan 2015, 66) while more than nearly 1,7 million of them are living outside the camps dispersed in communities throughout the country. Unlike in Jordan, Iraq and Turkey, there are no refugee camps in Lebanon (Thibos 2014); instead the Syrian refugees are living in rented housing, nomadic camps, and informal tent settlements, or they are being hosted by families and local communities

The host countries have welcomed the Syrian refugees, showing them hospitality and trying their utmost to provide humanitarian aid, but the continuous inflow has placed substantial strain and socio-economic challenges on their systems and infrastructure. Regardless of whether or not they grant them ‘refugee’ status or if they are party to the Geneva Convention, they provided humanitarian protection and assistance by guaranteeing non-*refoulement* to the Syrian refugees. Although Jordan is not a signatory to the 1951 Refugee Convention, the government refers to the Syrians as refugees and they are granted access to services such as health and education. Turkey grants them ‘temporary protection’ status and after registering with the Turkish authorities,

Syrian refugees are granted access to health care, education and social assistance. The right to work within specific conditions is also now being considered by the relevant ministries. Turkey has been one of the most generous countries in terms of providing humanitarian protection and aid through an open border policy for the Syrians in the last five years, even when the numbers of refugees became overwhelming. In terms of costs, Turkey has already spent nearly 5 billion USD so far on humanitarian assistance to the Syrian refugees in the country (AFAD 2015b). The following figure illustrates the current number of Syrians in concern in Turkey, Lebanon, Jordan, Egypt and Iraq along with the UNHCR’s estimations about the total populations of people in concern including Syrians for December 2015.

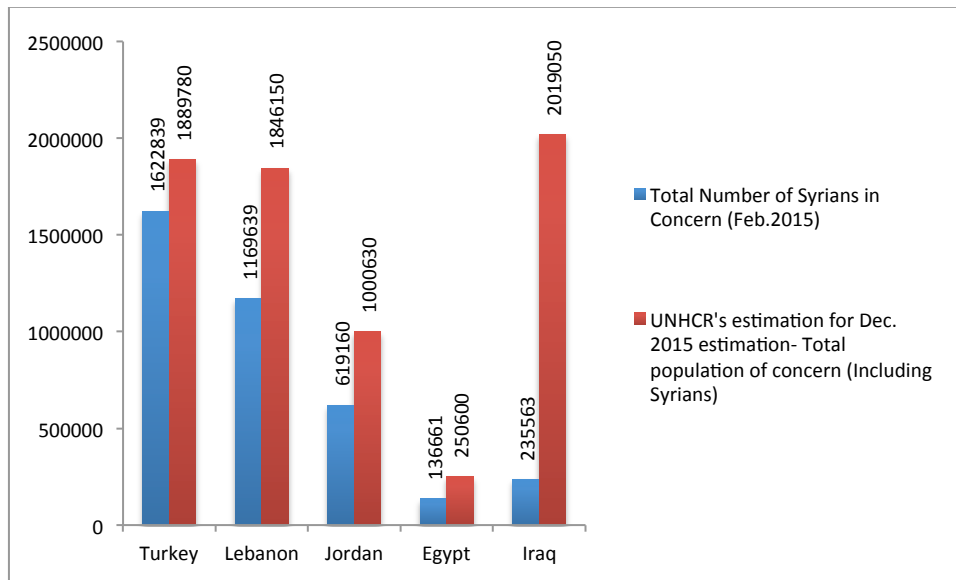


Figure 5 Total number of Syrians in Concern in Selected Countries

Source: UNHCR data

A comparison of these numbers with the 278,551 registered asylum applications in EU+ countries in the last four years indicates that many EU states are undertaking less than their fair share to absorb one of the world’s largest displacements of people. These numbers and practices demonstrate that Europe has done very little to actually open its doors in response to the Syrian crisis (Fargues and Fandrich 2012). According to a multi-factor model⁵ which takes into account the economic strength, population, size of territory and unemployment rate of individual EU countries through the calculation of a fair distribution of protection quotas, member states such as

Italy, the UK, Luxembourg, Denmark, Finland, Spain, and Portugal as well as new members like Hungary, Poland, the Czech Republic and Romania have accepted rather fewer asylum applications than they are capable of handling (SVR 2013). With the exception of some limited initiatives and humanitarian endeavours launched by Germany, the European approach to the refugee crisis has been one of containment in countries neighbouring Syria (Orchard and Miller 2014, 7)

The Syrian case demonstrates that the responsibility to protect is being shifted by the EU countries to non-member transit countries which are tasked with becoming de-facto 'safe third countries'. The UNHCR reports that many Syrians who have not yet applied for asylum have been returned, some after being detained, to EU and non-EU states through the implementation of safe third country principles and readmission agreements (UNHCR 2014, 17). The number of Syrian refugees assisted through resettlement, humanitarian aid and other forms of admission by EU+ countries stands at just 47,059 (UNHCR 2015d). Germany alone, with a share of 63 per cent, has led the way in admitting the applications of Syrian refugees; other European countries, however, have offered disturbingly very little in the way of assistance and protection. As the UNHCR has noted, many Syrians seeking international protection are likely to fulfil the requirements of the definition of refugees stipulated in the 1951 Convention, however most of the member states do not recognize Syrians as refugees but rather prefer to grant complementary forms of protection such as subsidiary protection. EU did not even activate its Temporary Protection Directive (2001) which is supposed to be implemented in case of mass influx of displaced persons. Such low numbers of resettlement and protection through other forms of admission in the Union indicate that by keeping most Syrian refugees out, the EU is placing the burden on non-member countries which have offered them shelter at the very least and hence have become de-facto 'safe third countries.'

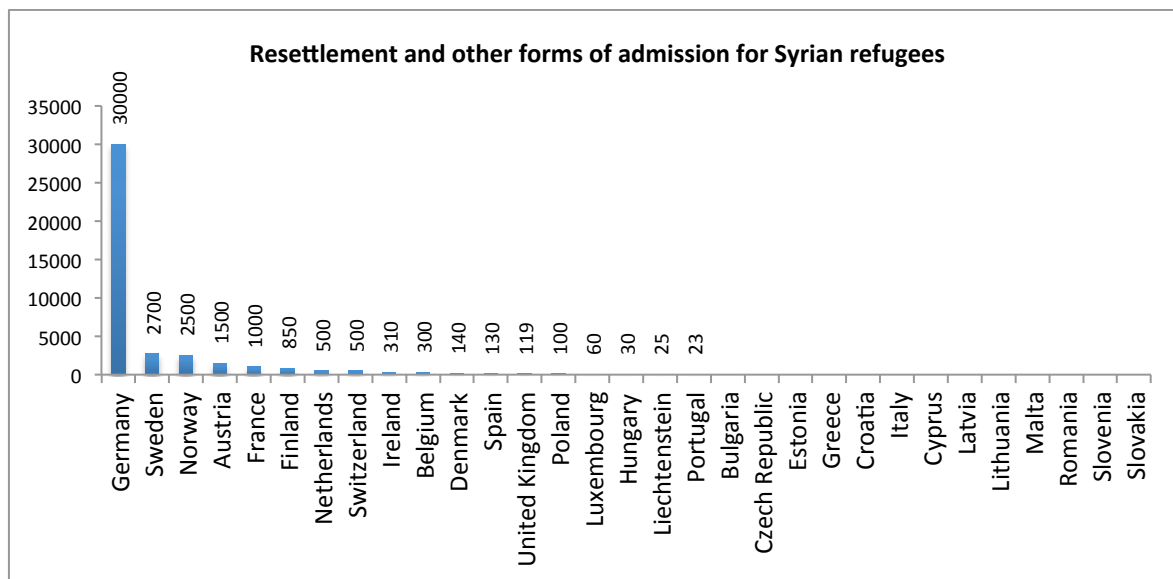


Figure 6 Total Number of Syrian Refugees Resettled or Provided other forms of admission as reported by EU+ Countries

Source: UNHCR, Syria Regional Refugee Response, 30.01.2015

In an act closely related to the ‘safe third country’ debate, the EU has established a three-year regional protection program for the Middle East addressing the issue of the Syrian refugees. The program, which was launched in July of 2014 with a total budget of 26 million Euro, aims to provide support to Jordan, Lebanon and Iraq by increasing their reception capacities and improving protections for the provision of humanitarian assistance, the return of displaced persons, integration and resettlement. In general, RPPs are thought to generate positive contributions in the improvement of conditions and facilities for refugees and also build upon the capacities of the authorities at the national level. However, resettlement accounted for a relatively small part of durable solutions as the number of refugees resettled in member states through RPPs has been quite low (Papadopoulou 2015). Thus, RPPs also run the risk of shifting member states’ responsibilities to offer protection to those regions, or to return persons in need of protection back to them.

EU readmission agreements represent another aspect of the externalisation of the EU’s asylum policies and practices. Turkey signed the long-awaited EU readmission agreement in December of 2013 and ratified it in 2014; the agreement foresees an arrangement in which Turkey would agree to take back its own nationals who are illegally present in the Schengen Area together with

irregular migrants who may have entered the EU after having transited through Turkey. Lebanon signed a readmission agreement with Bulgaria (2002) addressing the readmission of irregular nationals and transit. Lebanon also has readmission agreements with Romania (2000), Cyprus (2003), and Switzerland (2006) which address readmission of not only irregular nationals but also irregular third-country nationals. The EU-Lebanon Association Agreement (2006) also addresses EU member states, and Lebanon has agreed to readmit any of its nationals illegally present in their respective territories. Jordan and the EU signed a mobility partnership in 2014 which included the opening of negotiations for the readmission of irregular migrants. Considering the fact that these countries are already struggling with irregular migration flows in transit to the EU and also hosting a massive number of Syrians, the question raised by Kirişçi (2014) becomes more relevant not only for Turkey but also for Lebanon, Egypt and Jordan:

Will Turkey be able to cope with this influx of Syrians at a time when the EU has pretty much closed its doors to asylum-seekers, let alone to Syrians fleeing the civil war? What if Syrians in urban centres begin to try to make their way to EU member countries? How would that development impact on the implementation of the readmission agreement?

The Syria refugee crisis demonstrates that the externalisation of the EU's asylum practices in such a context creates serious economic, social and political challenges for non-member countries. One of the biggest challenges facing these hosting countries is the fact that the majority of refugees are trying to survive outside the camps, and they are struggling with 'negative coping mechanisms' such as economic hardship, housing problems and language differences. The UNHCR has been working closely with government authorities to provide protection and assistance as well as facilitate solutions for Syrian refugees. However, the burden of looking after them has fallen primarily on the hosting countries where over time socio-economic strains on them are becoming more visible. Since absorbing such large numbers of people is a challenge in itself, social tensions in local populations are likely to increase as regards the distribution of limited welfare and social services in an environment of increasing unemployment and poverty. According to World Bank assessment report (2013), the Syria crisis has driven 170,000 Lebanese into poverty and doubled the unemployment rate to 20 per cent. The report highlights the significant negative macro-economic impacts of the Syrian crisis on Lebanon in terms of large

losses in wages, profits, taxes, private consumption and investment. At the same time, Lebanese government expenditures have increased by 1,1 billion USD due to the increased demand for public services.

As a more critical impact on third countries; the restrictions on access to EU territory for asylum applications and shifts in protection mechanisms outside the EU through the promotion of RPPs, the principle of the 'safe third country' and readmission agreements, have all increased the risk of non-member transit countries becoming 'destination countries' that must develop comprehensive long-term integration policies for asylum seekers. For decades these countries have already been struggling with a massive number of irregular migrants due to their geographic location on the transit route to Europe, and the increasing arrivals of asylum seekers from neighbouring regions torn by conflicts has increased this already overwhelming burden. As result of denied entry, push-backs and restricted access to the EU countries, most of the migrants, including asylum seekers, find themselves stuck on transit routes where they seek out protection. As long as they are deterred from reaching EU territories, kept in transit route countries at reception centres, or returned to these countries, a shift occurs as those countries themselves become destination countries and a hub for the EU's unwanted immigrants and refugees. This exacerbates the pressing need for the governments of transit countries to deal with an increased range of challenging policy issues, and they are compelled to develop long-term comprehensive policies that are protection and integration focused. Prompted by the Syrian crisis, Turkey and Lebanon must now start developing long-term integration policies for the ever-growing Syrian refugee population of millions that in the last five years has swelled those countries' existing populations. Since the Syrians will likely not return home anytime soon (Kirişçi 2014; Erdoğan 2015; İçduygu 2015), host countries must develop integration policies that not only address the refugees' various needs including education, health, housing, and employment but also the issues of social adaption and acceptance in the host society.

Conclusion

The EU is still far from having a common practice for asylum decisions, a uniform status for people granted international protection, and dignified reception and living conditions meeting minimum standards for refugees. Furthermore, an EU-wide mechanism that can ensure a more even distribution of responsibility for international protection has yet to be achieved. It is likely that these problems will persist as long as convergence remains limited on asylum practices and systemic deficiencies continue to exist in Europe and member states. For that reason, the development of a forward-looking and comprehensive common asylum policy based on solidarity and responsibility still remains as a key policy objective to be achieved for the Union.

As the EU tries to achieve a union-wide common asylum policy, it has more begun to increasingly designate foreign territories as primary places of protection for the processing of asylum applications and it has attempted to build up protection capacities in those regions. In contrast to the rhetoric, this practice indicates that rather than developing a protection-oriented and solidarity-based communitarised asylum approach among member states, the EU is tending to externalise its control-focused and security-oriented approach to non-member third countries, in effect shifting the burden of asylum outside its borders. The externalisation of asylum policies is occurring in a context of securitization through a process of seeking quick fixes and interim measures rather than pursuing a sustainable and manageable system guaranteeing appropriate solidarity-based international protection. There are several critical implications concerning the international protection of refugees and infringements of article 80 of TFEU which stipulates that the policies of the Union on border checks, asylum and immigration should be governed by the principle of solidarity and fair sharing of responsibility. However, current practices illustrate that engagement with third countries mainly involves intercepting boats carrying undocumented migrants on the high seas, training border guards, providing equipment for stricter border control, transferring asylum assessment procedures to third countries, promoting RPPs, shifting the reception of asylum seekers and refugees outside EU borders, focusing on return policies through

‘safe third country’ practices and fostering ‘readmission agreements.’

The Syrian refugee crisis provides evidence of the implications of externalisation of the EU’s asylum practices which entails the reconsideration of the EU’s asylum policy in the post-Stockholm period. Since the Syrian refugee crisis began in 2011, rather than pursuing a policy of admitting more Syrian refugees into the EU, member states have more or less closed their doors. The EU member states has mainly followed an approach of keeping Syrian refugees outside EU borders by providing financial and humanitarian assistance to the non-member countries that have been forced to deal with the challenges of hosting the vast majority of Syrians to ensure their humanitarian protection. Needless to say, the intensified concern and efforts of the EU to provide financial assistance and humanitarian aid to Syrian refugees and to develop the capacity of third countries to receive refugees in in line with international standards are highly appreciated. The EU remains the leading donor responding to the crisis and has provided around 3,1 billion Euros in relief and recovery assistance (European Commission 2015). However, these efforts should not serve an agenda of keeping asylum seekers outside the EU’s borders. In other words, financial support and capacity-building mechanisms in third countries are more likely to become instrumental in externalising the EU’s asylum policies which make no contribution whatsoever to a long-lasting and solidarity-based system. Solidarity and responsibility-sharing with the EU’s neighbouring countries should be based on the increased commitment of EU member states to resettle and integrate more refugees into their societies rather than keeping them out.

The outcome of the conflict in Syria is still unknown; Assad regime will fall from power or continue to rule Syria into the future, and it is unclear whether either scenario will guarantee a return to safety and stability in the region. Further violence, deteriorated conflict and occupation of northern Syria by the Islamic State in Iraq and Syria (ISIS) might lead to greater waves of refugees fleeing the country. Thus, European states should demonstrate international solidarity through an enhanced response to international protection by admitting more Syrian refugees rather than focusing on short-term practices which mainly shift the responsibility of protection to non-member neighbouring countries. Above all, the EU should ensure proper and safe access to its territory and applications for asylum in EU countries, as asylum is a fundamental right and

granting it is an international obligation. Analyses of the impact of the externalisation of asylum policies must also take into account the difficult challenges borne by third countries. In this context, the Syrian refugee crisis once more demonstrates that the EU's asylum policy should reconsider its enhanced cooperation with third countries in a broader and mutual context by taking into account the needs and possible consequences of asylum practices for all parties. International burden sharing must involve active and equitable policies of resettlement and admissions by introducing a coherent intra-EU relocation scheme for the beneficiaries of international protection.

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End Notes

¹ EU+ countries include the EU28 plus Switzerland and Norway.

² RPPs have so far been developed in Eastern Europe, the African Great Lakes Region, the Horn of Africa and North Africa. In addition, a new Regional Development and Protection Programme has been launched for refugees and host communities in Lebanon, Jordan and Iraq in response to the Syrian crisis (European Commission 2013).

³ The content of readmission agreements mainly covers procedural provisions regarding return procedures, transit return arrangements, responsibility criteria, standards of proof, time limits and cost distribution. However, the details and exact nature of these procedures vary significantly according to geographical conditions, political situations and the histories of signatory countries.

⁴ Turkey still maintains its ‘geographical limitation’ with regard to the Geneva Convention of 1951 and maintains ‘temporary protection’ status ensuring non-*refoulement* and assistance to all Syrians. Temporary protection is provided through the regulation issued per Article 91 of the Law on Foreigners and International Protection; it applies to Syrian nationals, as well as stateless persons and refugees from Syria. The rights applicable to Syrian refugees, whether they are residing in or outside of camps, are also enumerated within the temporary protection regulation issued in 2014.

⁵ The multi-factor model was proposed by the Policy Brief of the Expert Council’s Research Unit that was created in cooperation with the German Institute for International and Security Affairs (Stiftung Wissenschaft und Politik – SWP)