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NGOs' Position & Role in the Dublin II Discussion:

**A case study on the involvement of the advocacy
networks ECRE and Pro Asyl in the European
Asylum Policy**

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ABSTRACT

The situation for asylum seekers in the EU varies greatly depending on the country responsible for the individual asylum claim. Even though the EU Commission is working to harmonize the different member states asylum policy, great disparities still exist. Many NGOs have been criticizing the Common European Asylum System (CEAS), defining the Dublin Regulation as the responsible instrument for the malfunctioning of a common system. In 2008 and 2012, the EU Commission published two recast proposals, with the intention to modify Dublin II. Various NGOs have been commenting on the proposed amendments as insufficient. This case study is investigating two of the concrete comments published by ECRE (2009) and the Pro Asyl network (2013). The main question of the study is to explore the involvement of NGOs in EU asylum policy and their stand on the current Dublin system. The two sub-questions focus on the concrete critique raised and the different channels used by the NGO community. The Social Movement Theory provides the study with different tools in order to analyze the chosen documents and to gain a better understanding of NGOs' involvement in policy making. I conclude that NGOs working with asylum right issues are an important player when it comes to CEAS and to account governmental decisions. Through the description of different claims and suggestions, NGOs influence not only policy debates, but provide the civil society with alternative perspectives and frameworks.

Key Words: EU, asylum policy, Dublin II, NGO involvement, solidarity

LIST OF ABBREVIATIONS

CEAS Common European Asylum System

ECRE European Council on Refugees and Exiles

EU European Union

INGOs International Non-governmental Organizations

NGOs Non-governmental Organizations

POS Political Opportunity Structure

TANs Transnational advocacy networks

UNHCR United Nations High Commissioner for Refugees

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1. Introduction

Everyday people are trying to reach the European Union (EU) in need of asylum. Many of them put up with a dangerous journey, driven by the hope to be able to claim asylum in one of the EU member states. According to UNHCR there were 15.4 million refugees worldwide at the end of 2012¹ (UNHCR, Global Trends 2012). People are forced to flee their country for different reasons, but leaving one's own country without knowing if one will be granted international protection in a safe country is surely no easy decision. Many asylum seekers travel for many years, forced to take dangerous routes since they lack legal travel documents. According to the UNHCR's Global Trends Report 2012, an asylum seeker is someone who has left their country seeking protection but has yet not been recognized as a refugee (p.25). To come to Europe on legal means or with already granted refugee status is almost impossible². Even more as it is only some EU member states that accept a very small number of resettlement refugees every year (UNHCR, 2010). On the other hand it becomes more and more difficult for people fleeing from a developing and war driven country, to use legal travel routes in order to reach the EU. Visa regulations are very strict, and people fleeing persecution and armed conflicts often do not have access to valid travel documents. Therefore most refugees are forced to travel illegally to neighboring countries in hope of a safe place to stay. But many countries that asylum seekers travel through do not have any system that accepts refugees on legal grounds, and people are thus forced to travel further hoping to reach the EU where a just asylum system is portrayed.

Since 1999, the EU has tried to harmonize their member states' asylum policies, aiming to establish a Common European Asylum System (CEAS). The idea of CEAS is based on the objective that asylum seekers reaching the EU in need of international protection should be granted the same rights no matter in what member state the application is lodged. The core of the international refugee protection is grounded in Article 14 of the Universal Declaration of

¹ An average of 23,000 persons per day has been forced to leave their homes in 2012 and seek protection elsewhere and over 893,700 people submitted applications for asylum in 2012.

² United Nations quota refugees are people who have been identified by the United Nations High Commissioner for Refugees, as refugees overseas and are thus selected into resettlement programs.

Human Rights 1948, which defines the right of a person to seek asylum from persecution in other countries:

A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion (UNHCR Convention and Protocol, 1951:2).

In order to fulfill the international obligation of granting asylum to those who are in need, the European Union needs common definitions and regulations when it comes to the very practical asylum procedure. Since the breakup of EU's internal borders, states have to work together to find common solutions and rules in order to control and manage the migrations-influx. The EU proclaims and defines itself as an area of freedom, security and justice which includes that common values and rights should be accessible for all people in the Union (Summaries of EU legislation, n.d.: Justice, freedom and security). One of the most visible and highly valued rights of the EU is the free movement of persons. But even though the right of free movement is at the very heart of the EU constitutional project, it "also depend [sic] on the individual having the opportunity to realise those rights in practice and the right to remedies where Member States fail in their duty to secure them" (Baldaccini et al., 2007:6). A well-functioning asylum system of the EU is therefore important in order to comply with fundamental rights.

These rights imply that the different member states take care of arriving asylum seekers who should be thus able to access information about their rights and duties during the asylum procedure. But non-governmental organizations, both working on the ground as well as working connected transnationally, have been pointing out huge discrepancies between the different EU nation states and their asylum system. ECRE call these existing differences of the approved refugee quotes "Asylum Lottery". The figure in Appendix 1 illustrates the existence of crucial disparities of the asylum definition³ as well as violations against the principle of non-refoulement⁴. Whereas in Italy 84% of the application lodged by Iraqi nationals have been positive in the year 2009, 0% of the applications of refugees from Iraq filed in Greece have been received refugee status (ECRE- Asylum Lottery in Europe in 2009). The European Commissions' plan to establish a Common Asylum System has the main intention to guarantee that asylum procedures are fair and effective throughout the EU and furthermore impervious to abuse (European Commission, 2013: Asylum). But despite the EU's efforts to improve international protection through harmonization, considerable

³ The Qualification Directive clarifies the grounds for granting international protection (European Commission Home Affairs: 2013)

⁴ Non-refoulement is an important principle of refugee law that concerns the protection of refugees from being returned to places where their lives or freedoms could be threatened.

disparities remain between member States: “Unfortunately, until the EU Commission can eliminate such disparities, the current framework of the CEAS threatens to exclude persons genuinely in need of international protection from Europe” (Allard, 2010:296).

1.1 Purpose of Study

The purpose of this study is to investigate how NGOs and international networks take part in the EU-wide discussion about a Common Asylum System. Critique raised by several NGOs concerns mainly the so called Dublin II Regulation, which determines the responsible EU member state when it comes to arriving asylum seekers. After ten years of Dublin II practice and many difficulties to establish a just contribution system, the Regulation now stands under revision. In 2008 the European Union decided to amend the old Dublin II Regulation with the intention to address deficiencies, particularly in terms of practical application and efficiency. “Moreover, in line with the 2008 Policy Plan on Asylum, the proposal seeks to ease situations of particular pressure experienced by EU States reception facilities and asylum systems during a mass influx of refugees” (European Commission, 2013:Dublin). The latest changes on the EU proposals have been made in December 2012, but it is not yet decided when the final decision making of the revision will take place. I will not go into detail on how the EU Commission portrays the problems the Dublin System is facing, but I am more interested to explore how NGOs view the problem, how they formulate their critique and finally channel their claims.

The wider intention is to examine the role of the European NGO community when it comes to CEAS and more explicitly the Dublin II Regulation. This intention can be divided into two main points, which this study will investigate one after another. I will start to investigate NGOs position on Dublin II and their concrete critique in order to explore different channels used by NGOs to interfere in EU-policy and decision making processes. Human rights organizations as well as different local NGOs working with refugee issues have been criticizing European asylum practice since the very beginning of CEAS. My hypothesis is that NGO networks are important actors when it comes to policy recommendation but also functioning as agents between governments and civil society, in regard to opinion formation and alternative discourse. They are not only a voice for arriving asylum seekers, but play a significant role revealing human rights assaults, and thus affect the public discussion about

migration and asylum issues due to their publication of on-site findings in the different European member states.

Various asylum rights organizations have commented directly on the EU Commissions revision of the Dublin Regulation. Many refugee-assisting NGOs are not satisfied with the proposed changes and are further claiming that the adjustments are likely to fall short. ECRE, the European wide alliance for refugee-assisting NGOs, has published a variety of studies and position papers highlighting problems of CEAS as well as making concrete claims towards the EU Commission to change certain regulations in order to protect asylum seekers` rights. I decided to examine the following two position papers: Comments on the European Commissions proposal published by ECRE in April 2009 and the Memorandum of the German NGO network in 2013, which includes seven different working groups⁵. In the following, I will refer to the Memorandum, including the seven different agencies, as Pro Asyl network. This decision is made for the sake of convenience and due to the fact that Pro Asyl not only did the final editing of the Memorandum but could be also described as the umbrella organization of all German Asylum Rights NGOs. The two documents chosen were selected to investigate which role the NGO community is taking in the Dublin II discussion. Furthermore, the aim is to explore how and why ECRE and the Pro Asyl network are criticizing the EU proposal, but also to show alternative ideas raised by the NGO community. The two documents can be understood as summaries and core ideas of very influential groups in the asylum rights movement. The position papers furthermore investigate in detail how and with which arguments the transnational NGO community portrays their stand. The research questions which guide this study are:

- **How can NGO involvement in EU asylum policy be described and what is their stand on the current Dublin II regulation?**
- **Sub-questions are:**
 - (1) **What is the main critique raised by the NGO community when it comes to Dublin II?**
 - (2) **How are NGOs channeling their claims, trying to get involved in EU-policy and the decision making process?**

⁵ Published by: German Bar Association, AWO Workers` Welfare Association, Diakonia Germany, Pro Asyl-national working group for refugees, The PARITÄTISCHE Welfre Association, Neue Richtervereinigung and Jesuit Refugee Service.

1.2 Outline of Study

The study starts with an overview of CEAS and some background information. When describing the different treaties and regulations that are important for the process of CEAS, the focus lies on Dublin II, as the aim is to explore NGOs` positions of this particular Regulation. It is not only one of the oldest and most important Regulations, but it is also the Regulation which stands under essential critique to be responsible for EUs “asylum crisis”. The overview of previous research already done in the field will help to understand how this study can contribute to the current discussion on NGOs` influence on EU asylum policy. The theoretical background is Social Movement Theory, including the main ideas and concepts of transnational network agency, political opportunity structures and framing in order to explain NGOs` involvement and their particular role in EU policy making. The theoretical framework provides a foundation to explore how social movements, and more concretely NGOs, are important actors in EU Asylum Policy. The theory section is followed by a methodological approach, explaining the purpose of the case study model and how the Dublin Regulation can be understood as important issue approaching NGOs involvement in EU policy making. The two chosen documents will provide data to analyze and help approaching the research questions. In the analysis, theory and data merge in order to answer the research questions posed.

1.3 Limitations & Challenges of the Study

The measurement of policy influence is a highly complex field. According to Andreas Dür, a political scientist, at least three distinct problems hamper the measurement of influence: “the existence of different channels of influence, the occurrence of counteractive lobbying and the fact that influence can be wielded at different stages of the policy process” (Dür, 2008:561). Due to this complexity of studying the actual influence of NGOs, I decided to limit my study to the particular opinion and critique of the European asylum-right network towards the Dublin II Regulation, in order to find out how and which claims are formularized by the NGO community. I will not measure the actual influence of those documents chosen, due to the fact that the EU Commission has not decided yet on the final modifications of the Dublin II Regulation. Furthermore, different methodological tools would be needed to find

out how far NGOs` opinion and campaigns affected the EU Commissions` opinion to revise the Dublin Regulation in the first place and how NGOs` engagement further influenced the EU Commissions` suggestions for revision. Direct contact and the investigation of NGO practices over a longer period of time would be important to see changes in a particular issue. I am convinced that a case study on NGOs` position towards Dublin II is the right choice for my research paper; however, it would be important to find out how NGO involvement in EU asylum policy has actually influenced EU policy making. I hope that my thesis, even though I am not able to go into depth because of lack of time and resources, can be a contribution to develop theories in the area of NGOs` work with asylum issues and that in the future more people would be interested to explore the actual outcome NGOs have in specified areas of political decision making.

2. Background

2.1 Freedom and Protection vs. Security of Borders

The first step towards CEAS was the implementation and application of several legislative instruments. This led to the adoption of three major Directives, redevise in Asylum Procedures, Reception Conditions, and Qualification for Refugees and Subsidiary Protection Status. The first phase was assigned from 1999 - 2005, continued by the second one from 2005- 2012. CEAS was aimed to be established by the end of 2012, but this goal was not reached, and even though the time frame was extended to the end of 2013, the full establishment of CEAS stands under question (Human Rights Watch, World Report 2013). One common conclusion is that member states perform differently when it comes to compliance with EU responsibilities; the southern member states appear to perform significantly worse compared to the countries in the north (Falkner et al., 2005:202). However, there might be other components leading to the unequal situation since it is not clear whether the categorization used might refer to differing levels of compliance between countries or sectors “or if it is simply the result of a differing enforcement policy: the Commission might treat the typical latecomers more strictly, and policy priorities may guide its enforcement policy” (ibid.).

Despite efforts towards establishing CEAS by the end of 2012, migrants and asylum seekers continue to experience gaps in accessing asylum and poor reception and detention conditions. The European Comparative Report *Lives on hold* (ECRE, 2013) has shown that there are huge disparities when it comes to the EU member states` asylum policies and it is getting more and more visible that the asylum system cannot be “fixed” easily. It is mainly the countries in the South, as also the newer member states in the East, that are confronted with an growing amount of asylum seekers, which stresses their difficulties to comply with the asylum standards set by the EU Commission. The fact that most of the “spontaneous”⁶ asylum seekers are entering the EU through one of the southern countries⁷ clearly plays a significant role, as well as that most of those border countries are relatively poor, and thus do have difficulties to adjust to the minimum standards set by the EU Commission. In the face of a political and economic crisis in the European Union, protection of human rights was rarely a

⁶ The contrary of “recognized” asylum seekers who have been already granted protection status when arriving.

⁷ Main entry point for asylum seekers (“irregular arrivals”) are Italy, Greece, Malta and Spain (UNHCR, 2011).

priority in the last years, according to the Human Rights Watch World Report 2013. All the more when those negatively affected were marginalized or unpopular groups, such as Roma, migrants, and asylum seekers (Human Rights Watch, 2013). Overall the situation in Greece has been clearly illustrating how refugees are exposed to human right mistreats in the EU. Many asylum seekers lack the access to an asylum process which is fair and transparent, but are often instead detained for an undefined time. Refugees are treated as criminals lacking access to a lawyer or any other information concerning their cases. Critiques, not only from NGOs but also the EU Commission and other EU member states, have become louder, demanding that the countries in the South have to comply with international human right standards, and take responsibility for the refugees who have been able to reach their ground. But very little solidary practice has been shown to relieve the countries from the increasing “burden” of migration influx.

The right to claim asylum stands in direct opposition to the security discourse the EU is more and more putting forward on their agenda. Amnesty International, ECRE and other NGOs have published different studies⁸ showing evidence of a large amount of human right assaults when it comes to refugees in European member states. “In recent years, European countries have stepped up border control measures in an attempt to prevent migrants and asylum-seekers from reaching Europe. Some of these measures have resulted in or contributed to serious human rights violations” (Amnesty International, 2013: Refugees and Migrants). These measures include that refugees are sent back to countries where they face human right abuses, but also direct human right mistreatments in some European countries where the basic needs of asylum seekers are not secured⁹. This stands in direct conflict with the EU’s self-presentation, as one of its main goals is to promote human rights both internally and around the world: “Human dignity, freedom, democracy, equality, the rule of law and respect for human rights: these are the core values of the EU” (European Union, n.d.: How the EU works). The Treaty of Lisbon was signed in 2009, and in the EU’s Charter of Fundamental Rights all of these rights are brought together in a single document, which are binding for all EU governments whenever they apply EU law. The Dublin Regulation is assigned as practical tool distributing responsibilities between member states, based on the principle of solidarity.

But theory and practice are often two different things, and people reaching the European Union are frequently treated as criminals because they are perceived as irregular migrants and can’t sufficiently prove their identity. Furthermore not all asylum seekers are in fact able to

⁸ See for example European Comparative Report “Lives on hold” (2013).

⁹ Minimum standards of reception conditions are access to housing, food, clothing and medical care, as well as the access to education for minor children and the right of family unity.

reach the EU, and thousands of people, trying to overcome the EU borders in the South, die every year in international waters¹⁰. Amnesty International claims that some of these deaths could be avoided, but that the desire of some European countries to prevent irregular migration has undermined safe and timely rescue at sea (Amnesty International, 2013). As these human rights assaults mainly concerns the southern European countries (Greece, Italy, Malta for example), the other member states are likely to shift responsibility towards those countries in order “to fix” their Asylum System. But those human rights assaults however concern all European member states as the external borders of the EU are shared and secured in a collective interest. The European Border Agency FRONTEX¹¹ came into force in 2004 and helps border authorities from different EU countries to work together. FRONTEX established a European Agency for the Management of Operational Cooperation at the External Borders of the Member States and aims to integrate management ensuring a uniform and high level of control and surveillance within the European Union (Baldaccini et al., 2007:368).

A changing point in the Dublin Regulation, defining the responsible country for the arriving asylum seeker, occurred in January 2011, when the Grand Chamber of the European Court of Human Rights came to the conclusion that Belgium had violated Article 3 and 13 of the European Convention of Human Rights by sending asylum seekers back to Greece under the Dublin Regulation. This case (Strasbourg Observers, 2011: M.S.S. v Belgium & Greece) was the first one stating on legal ground that member states which transfer asylum seekers to countries where deficiencies of an asylum procedure are occurring, are also guilty of exactly those human right violations (Council of Europe: European Court of Human Rights, 2011). Even though the Dublin Regulation has implemented a Sovereignty Clause¹² which aims to motivate nation states to take over cases of third countries, this rarely happens. Firstly each of the single EU member states are trying to decrease the amount of “irregular migrants”¹³ in their territory, an idea that stands in harsh contrast of taking more asylum seekers than “needed”, and secondly, it is only Greece which officially is excluded from the current Dublin Regulation. However, there are increasing objections against Italy, Malta and Hungary concerning minimum standards of the reception conditions, but member states disclaim responsibility with the argument that the EU Commission did not take any infringement

¹⁰ At least 1,500 people died attempting to cross the Mediterranean in 2011 (Amnesty International, 2013).

¹¹ Frontex promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management (Frontext, 2012).

¹² Dublin II Regulation 2003, Art. 3 (2)

¹³ Asylum seekers are often labeled as irregular migrants, since most of them lack valid travel documents and first have to reach the country by illegal means in order to claim asylum.

proceedings against those countries (ECRE, Dublin II Regulation Lives on Hold: Comparative Report 2013:48)¹⁴. Human Rights organizations are claiming that the Dublin Regulation has to be revised in order to guarantee an equal common system throughout the EU. UNHCR, ECRE and many local NGOs are calling for a more just and solidary distribution system in order to secure the right for asylum.

2.2 European Commission

The European Commission is the executive body of the EU, committed to work towards an increasing cooperation on cross-border issues, such as asylum, migration, border control, organized crime and terrorism (European Commission Home Affairs: Who we are). The European Commission represents the interest of the Union and is responsible to propose legislations, to implement decisions as well as to propose and enforce EU law. The 27 Commissioners, one from each EU country, are assigned for a specific policy area and provide together the Commission's political leadership for a 5-year term (European Union: European Commission). However, the representatives come from the different member states; they have been set by the Commission, swearing an allegiance to work for Europe as a whole, and not for national interests. The European Commission got implemented already in 1951 proposed by the French foreign minister Robert Schumann, but have undergone numerous changes in power and composition in the last decades. Each president gets proposed by the European Council, but has to be elected by the European Parliament. The current Commission President is José Manuel Durão Barroso from Portugal. The Commissions main target is to create an area of free movement where rights and security issues of both EU citizens and non-EU nationals are guaranteed. The Commission further states that asylum must not be a lottery, but that the "EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar". (European Commission Home Affairs: Common European Asylum System).

¹⁴ 5.1.3. Application of the sovereignty clause for reasons of general conditions in another Member State.

2.3 CEAS

Since 1999, the EU is trying to harmonize its Asylum Policies with the intention to establish a Common European Asylum System (CEAS) “that is fair and effective throughout the EU and impervious to abuse” (European Commission Home Affairs: Asylum). Based on the 1951 Geneva Convention which states that asylum should be granted to all people fleeing persecution or serious harm in their own country and therefore are in need of international protection (UNHCR Convention and Protocol), different directives and regulations have been passed trying to harmonize the nation states individual asylum policies. The goal to harmonize the asylum policies of 27 different member states is a huge project, even more as the majority of the countries have been joining the European Union later on. The discrepancy here is that even though all 27-member states are sharing the same external borders, refugees coming to the European Union cannot apply asylum in the Union, but the responsibility lies on one particular member state, whether to grant asylum or not. The history of CEAS goes back to the mid-1980s, when five EU Member States¹⁵ signed the Schengen Agreement that established common rules regarding visas, the right to asylum and checks at external borders (ECRE, History of CEAS). As a consequence of this agreement internal borders were abolished and external ones were reinforced and the EU institutions entered the first phase towards CEAS (Europa, Summaries on EU legislation: The Schengen area and cooperation). The external border of the EU needs to be protected from the outside in order to make the inside work: “The area of freedom, security and justice was created to ensure the free movement of persons and to offer a high level of protection to citizens. It covers policy areas that range from the management of the European Union’s external borders to judicial cooperation in civil and criminal matters” (Europa, Summaries of EU legislation: Justice, Freedom and Security). The creation of the area of freedom, security and justice is based on the Tampere (1999-04), Hague (2004-09) and Stockholm (2010-14) programs and includes asylum and immigration policies, police cooperation, and the fight against different kinds of crimes.

The main objective of CEAS is to harmonize the different nation states asylum systems. In order to do so different directives and regulations have been implemented along the way (European Commission Home Affairs: Common European Asylum System). The main intention of CEAS is that a refugee reaching the EU in order to claim asylum should be granted the same rights no matter in which country the application will be processed. But

¹⁵ Germany, France, the Netherlands, Belgium and Luxembourg.

many problems have been encountered during the years and the harmonization process was not able to accomplish in the set time frame. Many nation states do not comply with minimum standards and some directives are still defined and understood differently in various member states. Furthermore many European countries are encountering financial problems and as a consequence other issues seem more important as the promotion of equal asylum issues. After the failure of the initial plan to establish a Common European Asylum System by the end of 2012 (Europa Press Release Rapid: Statement by Cecilia Malmström) different studies have shown that there is still a huge disparity in how the 27- EU member states treat their asylum seekers, both concerning the *qualification directive* (definition of who is a refugee), *directive on asylum procedures* (fair and efficient procedure throughout the EU) and *directive on reception conditions* (provision of basic needs). According to Paragraph 13 of the Tampere Conclusions, the European Council reaffirms the importance that the Union and Member States attach to absolute respect of the right to seek asylum. “It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement” (Hans & Tamar Oppenheimer Chair in Public International Law, 2009). The principle of non-refoulement is the cornerstone of asylum and international refugee law and reflects the obligation of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. “These and other rights are threatened when a refugee is returned to persecution or danger” (UNHCR Note on the Principle of Non-Refoulement).

2.4 Dublin II

The general principle of the Dublin Convention is to distribute responsibility between the member states when it comes to the handling of asylum applications of refugees in the EU. On the homepage of ECRE one can find the following description of the Dublin Regulation:

The Dublin Regulation establishes a hierarchy of criteria for identifying the Member State responsible for the examination of an asylum claim in Europe. This is predominantly through the State, which the asylum seeker first enters, or the state responsible for their entry into the territory of the EU Member States, as Norway, Iceland and Switzerland (ECRE, Dublin Regulation).

The further aim of the regulation is to ensure that only one member state is responsible for the examination of an asylum application. Multiple asylum claims of one person should thereby be avoided and the effective access to an asylum procedure be guaranteed. The Dublin Regulation is one of the very first agreements of the EU Commission and was signed in Dublin, Ireland on 15 June 1990: the homonymous Dublin Convention. It came into force on 1 September 1997 (Dublin Convention 97/C 254/01) for the first twelve signatories¹⁶ and has been adopted and replaced in 2003 by the Dublin Regulation, also known as Dublin II. Today, the Dublin Regulation applies in 30 countries, including the current 27 EU member states plus Norway, Iceland and Switzerland who got members of the treaty in 2008 (Europa, Summaries of EU legislation), even though they are not members of the European Union. The Dublin Convention is further based on the definition of the first safe country, which means that the first safe country the refugee crosses after leaving her/his country of origin is responsible for the asylum assessment. In the case of the European Union, where responsibility to secure the external borders and thus show solidarity towards the member states should be the leading principle, this means that the country of entrance is most of the times determined to be responsible for the application, even though the principle of family reunion is another important criteria (Europa, Summaries of EU legislation: Dublin II Regulation). This creates a lot of pressure for the countries at the external borders as Greece, Italy and Malta which are the most common entry points for refugees and constitutes an inevitable conflict between border security of the EU and the responsibility to examine asylum claims in order to guarantee international protection. Indeed, most asylum seekers entering the European Union are irregular migrants as the application of asylum has to be done on the nation states territory and there is very little chance to apply for valid visa particular for those people fleeing persecution in developing countries. “Where the asylum seeker has irregularly crossed the border into a Member State, that Member State will be responsible for examining the asylum application” (Europa Summaries of EU legislation: Dublin II Regulation).

Another principle of the Dublin regulation determines that EU states are furthermore obligated to take back its applicants who may have moved to another EU country without permission of the authorities (European Commission, Country responsible for asylum application (Dublin)). An important tool helping to carry out the Dublin Regulations effectively is the so called EURODAC Regulation¹⁷, which got approved in December 2000. “By comparing fingerprints, EU countries can determine whether an asylum applicant or a

¹⁶ Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.

¹⁷ The EURODAC Regulation establishes an EU asylum fingerprint database.

foreign national found illegally present within an EU country has previously claimed asylum in another EU country or whether an asylum applicant entered the Union territory unlawfully” (Europe Summaries of EU legislation, Eurodac system). This has created a system where nation states are interchanging asylum seekers on a daily basis, sending the ones back where fingerprints in another member state have been detected and receiving the ones they are responsible for according to the Dublin Regulation. Many times the number of refugees sent back is equal to the ones received, which might question the system further, since it creates high travel costs. In 2010, Norway sent 458 requests to Sweden and received 482 requests back on average from Sweden (ECRE Lives on Hold, 2013).

The increasing critique against the Dublin system has also been visible in academia where several scholars are writing about the unjust system of burden-shifting: “Critics, however, argue that by shifting the responsibility to deal with asylum claims to the states on the external borders of Europe the Dublin system in effect is aimed more at burden-shifting than at burden-sharing” (Vink, M, 2012:1). Others are stating that the Dublin Regulation was established way too early which means that responsibility was allocated long before the member states had started to work towards a common system. Dublin II was indeed established as a binding tool, long before the other regulations towards a more harmonized asylum system came along. According to the latest European Comparative Report “Lives on Hold” published in February 2013 by the European Council of Refugees and Exiles (ECRE), the assumption of an already existing “common asylum system” in the EU is one of the main obstacles.

Over 15 years have passed since the first Dublin Convention entered into force and yet inconsistencies and problems remain in the operation of this system. This is both due to the intrinsically flawed premise that the Dublin system rests upon i.e. a level playing field across Europe with harmonized standards of protection as well as to deficiencies within the Regulation itself (ECRE, 2013:7).

Issues of responsibility- and burden-sharing have been discussed as one important tool to help those countries that have the highest amount of asylum seekers to be able to handle their cases in a just and reasonable way. Different proposed paths have been suggested by the NGO community during the last 10 years, two of them will be explored more in detail in the analysis part.

2.5 Towards Dublin III- EU proposal

All the pitfalls and problems have put enormous pressure on the EU Commission to change the Dublin Regulations in order to make the system more transparent and just for the arriving asylum seekers. On 3rd December 2008 did the European Commission for the first time propose modifications to the Dublin Regulation, with the aim to reform the existing Dublin II. The latest version of the EU position paper on the Dublin regulation was published on 14th December 2012 (Council of the European Union 15605/12). Now in February the current Dublin Regulation (Dublin II) turned 10 years and even though the EU proposal is aiming to remedy defects as fast as possible, the EU Commission was not yet able to decide on a final submission for the Dublin III regulation¹⁸. But it is clear that Dublin III will be based on the same principles as the previous two, namely that it is the first Member State that should be responsible for examining a person's asylum application. Asylum seekers travelling further to another EU member state will according to the EURODAC Regulation be transferred to the first destination. However, there are some exceptions of family reunifications defined in the revised Dublin Regulations as well as it includes some more safeguards for asylum seekers: "A new clause has been introduced into the Dublin III-Regulations, saying that a Member State is not allowed to transfer a person to another Member State under the Dublin principle, if there is a risk that the person will be subjected to inhuman and degrading treatment [sic]" (Wikström, n.d.: Dublin III Regulation). That applies also to all transfers to Greece, which have been halted for two years, after a ruling from the European Court of Justice, but with this new paragraph the Member States will be obliged to make an assessment themselves, not waiting for a court decision (ibid.).

¹⁸ To be adopted, a duly revised text must receive joint approval from the EU Parliament and the EU Council.

3. Previous Research

Neither the Dublin II Regulation, nor the involvement of NGO's in European asylum policy seem to be a strong object of research so far and only little research has been done on the particular role NGO's are playing in EU asylum policy (CEAS). Studies about NGO involvement are rather dealing with a wider human rights movement which is mostly focused on rights violations outside the EU. But since the issue of arriving asylum seekers has increased in the last decades and it gets more and more obvious that the European Commission is struggling to promote a European wide asylum policy, it seems inevitable to explore how refugee rights organizations involvement in the current EU asylum system can be described, including their position and critique. The purpose of this paper is thus to remedy the lack of research in the field and to contribute to research on NGO engagement in EU asylum policies.

When it comes to research on the influence of interest groups on policy outcomes in the EU in general, have there not been a lot of studies either. Andreas Dür, a political scientist is one of the few who deals with the question "How much influence do interest groups have on policy outcomes in the European Union?". The lack of research in the field is according to Dür connected to various difficulties of measuring interest groups influence (Dür, 2008:559). Problems in measuring influence occur through different channels as interest groups can shape policy outcomes through direct lobbying of policy makers as well as outside lobbying, aiming to influence public opinion or even influence through the selection of decision-makers (p. 561). The initial interest of this study was to investigate the actual influence of NGOs engagement in asylum policy it was important to find out how this phenomenon could be studied best. Dür is quite critical when it comes to the methodological tools needed in order to be able to measure the complex involvement of different interest groups in policy making. According to Dür influence is generally understood as an actor's ability to shape a decision and this process is not linear, but rather implies "the existence of different channels of influence, the occurrence of counteractive lobbying and the fact that influence can be wielded at different stages of the policy process" (ibid.). From this follows that a study dealing with

the different channels of influence needs to be planned and carried out with a lot of time available, following the particular involvement of certain NGOs/activists over a wide time frame. Due to these difficulties probably only few studies have been attempted to measure the influence of interest groups.

The fact that it is mostly NGO's that have conducted studies around Dublin II, aiming to highlight its role and pitfalls, demonstrates that NGO's play an important role when it comes to the European Asylum System. Many NGO's that work with asylum issues dispose of special asylum rights and law expertise and are thus able to demonstrate different pitfalls in the system. Several studies on the nation states grounds have been carried out and thus theoretical claims and practical actions have been made. One might argue that the EU is certainly also conducting studies about whether certain policies are successful or not, but such studies are not directed to an external public, since investigations and policy discussion rather take part in closed EU settings. In my theory part, I will further explore how NGOs use their studies to raise awareness of political issues as well as spread their claims and promote alternative paths. Several international non-governmental organizations (INGOs) have worked together in publishing recommendations for the migration and asylum policies in the EU. The European Council of Refugees and Exiles (ECRE) is definitely one of the most important organizations observing if EU policies are complying with international rights and the responsibility to protect (Geneva Convention). Due to ten years of the Dublin II regulation ECRE published the Comparative Report "Lives on Hold" summarizing the regulations practices in different member states. The study was published in February 2013 and the objective of the ECRE is to enhance knowledge surrounding the technical application of this Regulation (Lives on Hold, 2013:7). The main findings are that asylum seekers are often left in a prolonged state of anxiety and uncertainty with their lives effectively on hold. Furthermore is the efficiency of the Dublin system questionable, since only limited number of outgoing requests result in implemented transfers (Lives on Hold, Executive Summary, 2013: 6). All the more as certain member states frequently exchange equivalent numbers of asylum seekers between themselves. The report also summarizes that the discretionary of the humanitarian and solidarity clause creates tremendous differences in the member states asylum procedure. Statistical findings show that due to the flexibility these provisions are rarely applied (ibid.).

Another document dealing with NGO-influence has been published by the Fundation Luis Vives in 2011 with the title: "What can an NGO do to influence European Migration

policy?”. The slogan in the end of the report is: “If you want a more social, just and united European Union: Get informed, express your opinion and take action” (Fundación Luis Vives, 2011:24). The paper reveals the different push and pull factors which make people decide to leave their country and also talks about the total amount of people living outside their country of birth. The purpose of this paper is to provide activist groups with essential information when it comes to CEAS and further to motivate NGOs to engage in debates which might change ideological defiles: “The main objective of this guide is to strengthen the knowledge of NGOs about how to influence EU migration policy, as a complement to the guides *Keys for Acting in the EU* and *Engaging with European Institutions* and *Strategies for Strengthening the Participation and Influence of European Union Social Action NGOs*”. The report further denotes that the position held by institutions, national governments, businesses as well as the civil society is crucial and have a direct influence on the types of laws and policies enacted (p. 4). NGO’s are furthermore trying to frame the problems and issues displayed in government agendas in a more human and social way in order to counterpart existing ideas and concepts and thus to give the wider population a voice. But this requires sound knowledge about EU policymaking and to be informed about current changes and discussions taking place in the European Commission. Due to the daily experience working with asylum seekers on the ground, most of the NGOs are familiar with particular difficulties and stereotypes people have to struggle with. “This is why their participation in consultations and political debates contributes to achieving a constructive balance between the interests of all social role-players” (p.14).

When it comes to literature focusing on CEAS and the Dublin Regulation it was much easier to access research papers dealing with those issues. There are several academic articles discussing the concept of burden sharing and a different distribution system of CEAS. Eiko Thielemann for instance is one of the scholars who co-published different articles discussing the efficiency of different EU policy as well as how the EU is coping with its common asylum policies. He discusses the concept of burden shifting, and how different member states rather try to shift the problems towards another country. This happens for instance when a country sends back asylum seekers to the first country of entrance without taking into consideration whether minimum standards are secured or not. Although Thielemann names certain defaults of CEAS, he also denotes positive impacts the implementation of common European asylum policies has on the different countries. “On the contrary, it can be shown that EU asylum legislation has had a significant rights-enhancing impact in both old and new Member States, a trend that one can expect to gain further strength in the post-Lisbon era” (Thielemann et al.,

2011:97). It seems important to also demonstrate the positive aspects CEAS has undergone the last two decades, but the system is far away from being “good enough”. Whereas political institutions might be focusing on the positive changes, NGOs capture their role of illustrating the constant and newly arising miseries in the European Asylum Policy.

Another interesting aspect raised by El-Enany & Thielemann (2011) is the argument of correlation between closing borders and rising asylum application. The security policy of the European Commission is trying to make it more difficult for people to enter the European Union, hoping for a decrease of unregulated migration. The phenomenon of border security has its roots in the 1970s economic crisis when the European states had difficulties to absorb the migration flow they previously had encouraged to occur. But in return, the increasing border security of the EU resulted not in a decrease of migration, but instead just changed the entry points. “The closing of legal immigration routes contributed to a rise in the number of asylum applications, which became the only route of entry to Western European countries” (p.101). The Dublin Convention, assigned in the 1990s, was a tool to secure that every asylum seeker could just hand in one application, which was processed in one responsible country. But El-Enany & Thielemann also claim that the Convention did start at the wrong end, since burden-sharing only works if all countries apply to the same rules and regulations when it comes to the asylum process. But as the opposed practice of deterring refugees to apply in certain countries, which mainly concerned the southern states with their high relative number of applicants, the European Commission decided to turn to policy harmonization which is binding for each member state.

4. Social Movement Theory

I will use Social Movement Theory as theoretical framework for this study. In the disciplines of political science and sociology a variety of theories and empirical research on social movements have been developed the last decades. One important target is to understand the connection between popular movements and the formation of new political parties as well as discussing the function of social movements in relation to agenda setting and policy influence. Political change is the most studied aspect of social movements and probably also the most contested one. Social movement theory is an interdisciplinary study within social sciences that generally seeks to explain why social mobilization occurs, the forms under which it manifests, as well as potential social, cultural, and political consequences. The political theory of social movements has its perspective firmly rooted in social constructivist ontology. According to Alfred Schütz (1953) there are no such thing as pure and simple facts: “All our knowledge of the world, in common-sense as well as in scientific thinking, involves constructs, namely, a set of abstractions, generalizations, formalizations, idealizations specific to the respective level of thought organization” (p.2). That means that the field of politics takes place in a certain setting which is not free, but rather continuously influenced by different players who are influencing opinions and discourses around different topics. Governmental representatives, as well as the opinion and statements of different expert organizations have an effect on how certain issues are portrayed and handled. But also the opinion of the civic society is an important force when it comes to opinion formation, as their demands certainly influence policy making. That means vice versa that non-governmental engagement can influence society and thus policy making, by the help of raising different issues.

One important researcher in Social Movement Theory is Donatella Della Porta. In the book *Social Movements- An Introduction* (2006), she gives together with Mario Diani a good overview about the main perspectives and describes also its historical background. Social Movement Theory has been yielded a lot of critic the last decades, but due to relevant incidences in the late 1960, the theory fast developed into a major area of research. Some examples responsible for the change are the American civil rights and antiwar movements, the

Mai 1968 revolt in France and the students protest in Germany, Britain and Mexico. These events have led to the development of Social Movement Theory, which today is a well-established field in Social Science. According to Della Porta & Diani social movements, protest actions, and more generally, political organizations unaligned with major political parties or trade unions have become a permanent component of Western democracies (p.1). Social movement dynamic happens when single episodes of collective action are components of longer-lasting action, rather than discrete events. The feeling of linkage and solidarity of those engaged is furthermore an important feature which can then lead to the creation of networks (p.23). In order to be consistent it needs the creation of networks where different organizations gather to make their claims stronger and internationally heard. But already back in the 1920's the phenomena of collective behavior have been discussed by some scholars, among them Robert E. Park & Ernest W. Burgess, who had stressed that collective phenomena do not simply reflect social crisis but rather produce new norms and new solidarities. The two scholars furthermore describe social movements as engines of change, primarily in relation to value systems (Della Porta & Diani, 2006:12). More recently, the study of social movements has been subsumed under the study of contentious politics, which was developed throughout the 1990s and into the 21st century by its most prominent scholars in the United States: Sidney Tarrow, Charles Tilly, and Doug McAdam. The historical sociologists Charles Tilly and Sidney Tarrow (2007) define contentious politics as interactions in which actors make claims bearing on someone else's interests or programs, in which governments appear either as targets, initiators of claims, or third parties. "Contentious politics thus brings together three familiar features of social life: contention, collective action, and politics" (p.4). The forms of contentious politics vary greatly ranging from more peaceful actions to disturb "normal politics", to riots and revolution actions. Contentious politics is an expression used as a major vehicle for ordinary people's participation in public politics contesting elite politics and making claims on state actors as well as formulating new alternatives.

When it comes to contentious politics, clear statements and claims have to be formulated by one actor to another. Claims always involve at least one subject reaching visibly towards at least one object and the simplest version possible is one party making claims to another, in which one party is acting as a subject, the maker of a claim, and the other as an object, the receiver of a claim. "Contentious performances are relatively familiar and standardized ways in which one set of political actors makes collective claims on some other set of political actors" (Tilly & Tarrow, 2007:11). Contentious politics are not limited to

governmental involvement, but furthermore can include religious groups or non-governmental and private actors who make claims on each other. Social movements interfere in elite politics and thereby create awareness of certain political issues and influence the main discourse. Even though social movements' power might seem often vague, their outcome is altogether real and affects policy reforms, political institutions, and cultural change. Tarrow defines a social movement as collective challenges by people with common purposes and solidarity in sustained interactions with elites, opponents and authorities. Examples for collective actions are football teams, churches and voluntary associations, but as long they are not interacting with governments they are not more than collective actions. "We enter the realm of politics when we interact with agents of governments, either dealing with them directly or engaging in activities bearing on governmental rights, regulations, and interest" (p.5). Nevertheless, the interaction with governmental institutions or its agents does not automatically lead to contentious politics. People's interaction with the state are indeed maintaining mostly the state's power through simple actions of showing the passport or filling in forms. This communication with the state is far away from contentious politics as no claims are formulated. Tilly and Tarrow denote further that not all episodes of contention action establish social movements, and on the other hand that not all social movements sustain (p.111).

Hank Johnston makes the connection between different state forms and how protest might change or develop in distinct settings. According to Johnston social movements always occur in the context of the state, which leads to the premise that the two have to be considered together. "Their targets are usually state authorities who are in position to make changes and reforms that answer protesters demands" (Johnston, 2011:1). Johnston indicates that social movements are politics by another means – people's politics and not elite politics. Social movements bring new ideas, new coalitions, and new interests into today's systems (p.3). Political engagement is based on a common believe and passion for a political topic which unify people. Their demands, grievances and claims challenge the position of elite groups and can as a result lead to structural changes. But it does not only rely on people's strategy and motivation to change politics, but also on the states relative openness to tolerate protest (p.31-32). How this can occur will be highlighted by the help of different concepts in Social Movement Theory, as for instance transnational advocacy networks, political opportunity structure and framing.

4.1 Transnational Advocacy Networks (TANs)

While the work of Margaret E. Keck and Kathryn Sikkink is not focusing explicitly on social movements, it gives an important insight how transnational advocacy networks (TANs) organize and interfere in elite politics. In the article “*Transnational advocacy networks in international and regional politics*” (1999) the two scholars define advocacy networks as transnationally, regionally and domestically significant: “A transnational advocacy network includes those actors working internationally on an issue who are bound together by shared values, a common discourse, and dense exchanges of information and service” (p.89). Advocacy networks are not only creating new links among different actors, they also multiply occasions for dialogue and exchange. Furthermore TANs are blurring the boundaries between states and civic society and transforming the practice of national sovereignty. The nation state is no longer the exclusive power when it comes to decision making and has to take responsibility for example when it comes to violation of international human rights. Not only inter-governmental organizations but also NGOs are carrying out their work more and more across borders. The EU is a good example when it comes to inter-state decision making, the formation of the Union needs new institutions and representatives in order to find solutions for all partners involved. Noah Shawki explains the rise of international organizations (IOs) through the accelerating pace of globalization which is directly connected to the increasing international integration. One major indicator for this has been the growth of IOs and NGOs and the emergence of different forms of transnational activism (Shawki, 2010:381).

The importance of TANs is not a new phenomenon; however scholars have been slow to recognize the rationality and significance of activist networks for a long time. Instead of material concerns TANs are motivated by values and shared solidarity towards a group or issue. The word advocate describes the causes of others; TANs are defending and standing up for certain groups and thus backing their claims (Keck & Sikkink, 1999:89). But TANs often reach beyond policy change and can in fact influence institutional norms. Since advocacy networks are not powerful in a traditional way, they are depending highly on strategies how to alter information and value contexts of state politics. Information and ideas are their strongest tools and through transnational campaigns TANs are trying to set major issues on the international agenda (Keck & Sikkink, 1998:16). Campaigns are set strategically and link members and their activities together. Those ties are commonly defined as targeting a common goal, or described in other words to find a common frame of meaning (p.6-7). Different resources such as information, leadership, and symbolic or material capital are

needed in order to make a campaign or certain position possible. As groups in a network share values and frequently exchange information and services this provides them with an interconnectedness which makes their claims stronger. NGOs are key components of any advocacy networks, which increase a broader trend in the number, size, and density of advocacy networks generally (p.10).

It is mainly the government that is the target of advocacy networks. That is not surprising as governments are the main “guarantors” of rights, but at the same time also the primary violators (Keck & Sikkink, 1998:12). When it comes to the question how TANs practically work, Keck and Sikkink explain it through the typology of tactics that networks use in order to persuade and pressure. This *tactics include information politics, symbolic politics, leverage politics and accountability politics*. Information is important when it comes to a common target and claim which need to be reasonable and well-founded. Information furthermore binds network members together and is important for network effectiveness (p.18). All the more non-state actors are important alternative sources available for the civic society when it comes to issues mainly portrayed by governments. It is not only facts which are important to circle and communicate to the wider social society, but also testimonies that have an impact on how issues are exposed. When it comes to asylum right issues, is it important to hear stories of those people whose lives have been affected directly by the criticized policies and regulations. It is not just a valid source to make the claim stronger, but gives in addition that background information that helps to understand the concrete outcome of certain policies.

Nevertheless TANs are aiming to work professionally which means that the stories told have to be reliable and well documented when using them in international campaigns. Nongovernmental networks have helped to legitimize testimonial information linked with technical and statistical information. State actors are rather not using individual stories and base their proposition instead on the phrasing of policy papers and the support of international declarations. This gives NGOs again an advantage; since they use the knowledge they have over certain policy claims and compare it with the actual outcome. According to Keck and Sikkink it is important to distinguish between policy change and change in behavior; official policies may predict nothing about how actors behave in reality. “We speak of stages of impact, and not merely types of impact, because we believe that increased attention and changes in discursive positions make governments more vulnerable to the claims these networks raise” (1999:98). A government claiming to protect certain human rights (for example a just and equal asylum process of refugees in Europe), is easy to charge and account

if those rights are endangered, compared to one that makes not such claims. That thought is directly connected to the theory of opportunity structure, which we will explore later on.

Symbolic politics is highly connected with the concept of framing which I will exemplify in more detail in the following chapter. Symbolic interpretation is part of the process of persuasion and an important tool of networks to raise awareness and create interest about certain issues. By identifying and providing convincing explanations for powerful symbolic events, as it was for instance during the coup in Chile in 1973 for the human rights community, those can develop into catalysts for the growth of networks (Keck & Sikkink, 1998:22). *Leverage Politics* is important in order to bring policy change. NGOs are only able to work effectively and thus change certain issues if they do persuade and pressurize more powerful actors, which in other words mean that they have to seek leverage over stronger counter players (Keck & Sikkink, 1999:97). Human rights organizations are mostly weak poles compared to their governments or international financial institutions and have to accumulate their material as well as moral power in order to influence state practice directly. Material leverage is not only about money, but also other kinds of goods as for example the rising prestige of an institution that is complying with human rights. “To make the issue negotiable, NGOs first had to raise its profile or salience, using information and symbolic politics” (p.97). This is somehow linked to the idea of moral leverage which is focusing on the *mobilization of shame*. When international prestige is an important issue for states, leverage politics can play a crucial role for NGOs and the fulfillment of their target. Examples can be different codes of conducts for products sold by private actors or advertised by governments, which gives them prestige over other elites.

Accountability Politics happens when network activists make use of comments and statements expressed by official spokesmen. It is important how people formulate beliefs and targets, but at the same time language is flexible and fluent which can be changing very fast. Furthermore language and the things said about an issue differ highly from the actual practice those actors are taking in order to actually change the situation. But discourse can be used to account a government for their statements, which then might lead to more concrete steps of action since moral leverage is being used. TANs are pretty good catching the core value of government representatives’ speeches and return the claim to the originator who in return has to take responsibility for their announcement. “Once a government has publicly committed itself to a principle – for example, in favour of human rights or democracy – networks can use those positions, and their command of information, to expose the distance between discourse and practice” (Keck & Sikkink, 1999:97-98). Indeed the differences

between discourse and practice are often embarrassing for governments, since they try to disclose problems they might have with certain policy implementations.

4.2 Political Opportunity Structure (POS)

The political opportunity framework is one of the central approaches in social movement theory. The overall thought is that contextual factors have an influence on how social mobilization varies and helps scholars to understand and analyze different strategies and outcomes (Shawki, 2010:383). The world outside the social movement is often described as the *structure of political opportunities*. This outside world is quite challenging for researchers, but at the same time crucial when trying to explain which external aspects affect the actual development of a social movement (Meyer & Minkoff, 2004:1459). External factors can either ease activists' engagement or hamper certain engagement in political issues. It is not just governments or juridical institutions that could have an impact on NGOs possibilities to engage in different areas, but surely do official politicians and spoke persons play a great role in how NGOs are able to take part in political issues as well as the whole political environment. One example is the rise of protest during the collapse of the former Soviet Union. It was the small cracks in the system that activists perceived as opportunities, just big enough to prompt mobilization (Crossley, 2002: 110). Small victories led to more opportunities, which motivated furthermore other activists to formulize claims and made the protest movement stronger. According to Sindy Tarrow (1998) political opportunity structure is composed of both opportunities and constraints, as defined in the following way:

By political opportunities, I mean consistent-but not necessarily formal, permanent or national – dimensions of the political struggle that encourage people to engage in contentious politics. By political constraints, I mean factors – like repression, but also like authorities' capacity to present a solid front to insurgents – that discourage contention (p.19-20).

The research of Peter Eisinger on the other hand is based on civil unrest, mainly among the black population in the USA in the late 1960s, and further driven by the interest of protest among minority and deprived groups. A main theme of his study is the relationship of protest to its immediate political environment, exemplified as "...such factors as the nature of the chief executive, the mode of aldermatic election, the distribution of social skills and status, and the degree of social disintegration...the climate of government responsiveness and the

level of community resources...” (Eisinger, 1973:11). The main question remaining is whether a system open towards some forms of protest or a restrictive system is more likely to generate protest. According to Eisinger is it important to consider two competing hypotheses. The first one is described as linear one, which indicates that protest is more likely in those cities where political structure is closed. The argument is based on the assumption that few opportunities for participation and exclusion are giving a better ground for uprisings (Crossley, 2002:106). The second hypotheses however envisage a curvilinear relationship between protest and opportunity. Based on the assumption that protest will be higher in cities where opportunity and constrains are highly counterbalanced. That means that protest will decrease both in places going towards a more open system as well as a more closed system. Eisinger denotes that repression will reduce protest since the cost of such action will be relatively high, and as the system is closed, protest might be ineffective anyway. In return complete openness removes the need of protest, so Eisinger (ibid.). These arguments might be quite negative, but Eisinger also gives some positive reasons why a mixed system is the best environment prospering protest. “Protest occurs in a mixed system because the pace of change does not keep up with expectations, even though change is occurring. As the political opportunity structure becomes more open, previously powerless groups begin to acquire influence” (Eisinger 1973:15). This idea predicts that protest activity becomes more likely in an *opening system* rather than an already *open system*.

Theorists in international relations have always been interested if changes in the international system have produced recognizable changes in NGO sectors’ methods, missions, and strategies. The EU with its different institutions and regulations is an interesting and prevailing example, as it changed and influenced national politics of the member states greatly. Many researchers have tried to investigate why and how similar social movements or campaigns had different outcomes, in order to see how particular circumstances might influence the success of TANs. One of them is Noha Shawki (2010) who did a comparison of two transnational advocacy networks to explore why one of them was successful and the other one not. In accordance with the other scholars she is basing her study on the concept of Political Opportunity Structure (POS) with the conviction that it provides a model which helps to gain a deeper understanding of the variation of outcomes. “The POS encompasses a range of structural features of political systems that can make them more or less insulated from civil society and more or less open to the demands of social movements” (p.384). According to her, the prospect whether social movement activities are successful or not,

depends highly on the international political environment conditions and is never independent of its context.

Jack Goldstone (2004) is talking about external relational fields instead of using POS, which views movements “as elements in a complex field of players in politics and society that are seeking advantages by using variety of tactics” (p.358). The difference to Political Opportunity Theory is that he acknowledges distinct players, instead of just separating into outside and inside world of social movements. Those actors can vary from counter movements, elites, political authorities and other groups who engage, compete and/or cooperate with social movements. Significant here, is that the relation of those actors differ from one social movement to another and thus can have very different influences concerning opportunities and constrains (Shawki, 2010:384). Shawki found out that if competing norms of counter actors, or issues as sovereignty and national security stand against the raised claims of a TAN, a successful campaign is unlikely. “Conflicts over values are particularly difficult to resolve in international negotiations and can significantly reduce the political opportunities of TANs” (p.403). When TANs are able to use the opportunities already created by other players, especially targets set by governmental agencies, TANs are more likely to have an influence on policy processes.

But also critique is rising when it comes to the concept of POS and social movement theorists are warning that the concept of political opportunity structure is in danger of becoming a sponge that soaks up every aspect of the social movement environment (Gamson & Meyer 1996:275). Gamson and Meyer further denote that POS is likely to function as an overall explanation when it comes to social movement influence. They indicate in return that activists are by disposition overly optimistic about opportunities and do not calculate or rely merely on an environment that makes their campaigns/mobilizations as successful as possible. NGOs instead follow their goal constantly and keep trying to reach a broader public, being more successful some times, and less other times. Even though opportunities open the way for political action, it is movements that also make opportunities (p.276). That means that the goal and campaigns carried out by NGOs do not rely on the opportunity structure but thus can change the outcome. Also David Meyer and Debra Minkoff (2004) are dealing with the issue of conceptualizing political opportunity denoting that the rise of social mobilization might be connected with the rise of policy change, which means that the independent role of protest becomes highly questionable. The risk here is to factor out the role of social protest at the one hand or ascribing all policy change to movement activism “without allowing for the influence of broader social changes that create the conditions for movements” (p.1462).

4.3 Framing

The concept of frame as used in the study of social movements is derived primarily from the work of Goffman (1974). For Goffman, frames denote “schemata of interpretation” that enable individuals “to locate, perceive, identify, and label” occurrences within their life space and the world at large (p.21). But it was through Snow and colleague’s (1986) that the *process of framing* got translated into the study of social movement. Motivated by the thought that frames help to render events or occurrences and thereby function to organize experience and thus guide action, framing processes now play a crucial role in social movement theory. According to Snow and Benford (2000) the term framing describes “an active, processual phenomenon that implies agency and contention at the level of reality construction” (p.614). This perspective of an active framing process is firmly rooted in the social constructivist ontology. Since social movements seek to remedy or change problematic situations or issues, it follows that action is directed to identify the source(s) of a culpable agent. That means that NGOs need to have expertise in order to understand not only the outcome, but also the reason of certain circumstances. This is done by directing blame and responsibility towards a concrete object (p.616).

Also Keck & Sikkink (1998) refer in their early work to the importance of how things are framed and describe framing as a conscious strategic efforts by groups of people to make special issues comprehensible and thus to motivate collective action. That is how network actors bring new ideas, norms and discourses into policy debates. But activists try not only to influence policy outcomes but also to transform the terms and nature of the debate in the long run (p.2). Through new ideas, norms and discourses networks get involved in policy debates and influence them through information and testimony. Certain claims activists make on behalf of their social movement *resonate* with audiences including media, elites, sympathetic allies, and potential recruits. Media is an important tool to channel knowledge and contest existing frames in a wider setting. Even though new frames and ideas of international advocacy networks might develop in internal meetings, as long as the message does not get shared to the outside world, common frames cannot be contested. “Movement activists may debate in coffeehouses, in bars, or in meeting halls, but they have to change and mobilize bystander publics, many of whom may only know of the movement and its issues as portrayed in various media” (Zald, 1996:270). Furthermore do successful frames draw upon shared cultural understandings, as for instance rights and morality. Also media is part of a larger cultural context and thus depending on the country and its presidential and representational

forms can the presentation of information highly differ. According to Mayer N. Zald media vary in their ability to convey information, evoke emotional response, dramatize events, and focus attention (ibid.).

That leads us to the different concepts of frames, including the best known ones of culture, ideology, and strategic frames. Those conceptual clusters help us to identify the linkage between content and processes by which meaning is attached to objects and actions.

Roughly speaking, as we use the terms, culture is the shared beliefs and understandings, mediated by and constituted by symbols and language, of a group or society; ideology is the set of beliefs that are used to justify or challenge a given social-political order and are used to interpret the political world; frames are the specific metaphors, symbolic representations, and cognitive cues used to render or cast behavior and events in an evaluative mode and to suggest alternative modes of action (Zald, 1996:262).

The strategic frames connect back to the theory of opportunity structure, as even though certain things are controlled from the outside world, movements themselves are still an important actor when it comes to the creation of new opportunities. Whereas opportunities open the way for political action, movements also play an active part to actually make opportunities (p.276). Cultural breaks and contradictions provide often a new context for activists to change or add frames. But also other players are acting as moral entrepreneurs providing shorthand interpretations as well as attribute blame and define tactics. Social movements are involved in struggles over meaning with the goal to influence public policy. An essential task here is to frame social problems and injustices in a way that convinces a wide and diverse audience. According to John McCarthy et al. (1996), movement frames typically embody two essential components: “the diagnostic element, or the definition of the problem and its source; and the prognostic element, the identification of an appropriate strategy for redressing the problem” (p.291). As movements usually lack political and material resources, they have to mobilize third parties in order to raise the stakes in the conflict. These outside groups can contain both the mass public and reference elites, which strengthen the claims raised.

The theory chapter aims to give an elaborated overview about different concepts and tools used in Social Movement Theory. The concept of opportunity structure and framing are the main concept used in the analysis part, and will be helpful to explore how NGOs channel and portray their claims. But also the concept of TANs provides the study with practical tools as it is information politics, symbolic politics, leverage politics and accountability politics. Through the usage of these tactics NGOs accumulate power, able to channel alternative perspectives and suggestions.

5. Methodology & Data

5.1 Case study

The case study approach has been reinterpreted and is used by different traditions, which clearly poses strengths and weaknesses on the method at the same time. One of the strengths is the detailed insight in one case which helps to understand the bigger picture of one particular problem: “Acknowledging the impossibility of studying society as a whole, the case study has been seen as one answer to this question, offering a vantage point from which to draw broader conclusions about societal trends and developments” (May, 2011: 221). Based on the philosophical position that the world we live in is constructed through the meanings and interpretations given to it by different actors, case study becomes a method through which to describe and understand the rich, complex sets of interrelationships between different social interests (ibid). Case studies furthermore provide a detailed examination of an event which exhibits the operation of some identified general principle, which than can help to understand other cases (p. 223). Case study as a single, bounded unit may indicate generalizing or particularizing modes of interests and has also great potential for theoretical development. But it is not totalizing view which is the intended goal, but the aim to add knowledge and experience and thus contribute learning to the wider field of social sciences (p. 222).

Robert Stake, a well-known defender of case study holds that singularity is seen as a strength that enables a focus on the particularity and complexity of a single case. Case study is a practical method helping researchers to understand and connect a problem or puzzle with known things. Through the help of new connections the researcher hopes to make it comprehensible to others and thus locate a certain problem in a wider setting (Stake, 1995: 97). I will carry out a single case study with the intention to examine and shed light on the involvement of social movements in EU’s asylum policy, more detailed on the Dublin II Regulation. I will use an in-depths approach which aims to develop theory on NGO’s participation in CEAS by the help of the current Dublin II discussion. According to Stake, an entirely new understanding is rarely reached but refinement of understanding is. He also refers to minor generalizations in order to explain the generalizations that regularly occur along the way in case study (p. 7). Making usage of the Social Movement Theory, this study

aims to examine in detail why and how NGOs involvement in EU asylum policy making occurs and furthermore how it could be described. The Social Movement Theory provides the study with a sufficient blueprint, which requires theoretical propositions, noted by Sutton & Staw as “a (hypothetical) story about why acts, events, structure, and thoughts occur” (Yin, 2003: 29). According to Yin, the stated ideas will increasingly cover the questions, propositions, units of analysis, logic connecting data to propositions and criteria for interpretation which form the five components of the needed research design (ibid).

Even though I am aware of the fact that this study is only dealing with a small part of NGOs involvement in EU policy making, I am confident that this thesis can give a new insight in NGO’s involvement in EU policy making and thus contribute to new insight in social movement’s engagement in policy making. Through the help of the actual Dublin II Regulations, NGOs’ positions will be examined and located in a wider field. This includes questions of how NGOs make claims, how they might frame problems differently compared to state actor and which role that plays when it comes to policy making. According to Baxter and Jack case study provides an excellent opportunity for the novice research to gain tremendous insight into the chosen case. Furthermore, case study enables the researcher to gather data from a variety of sources and to converge the data to illuminate the particular case (Baxter & Jack, 2008: 556). Robert Yin further explains that case study is similar to the research strategy of an experiment, but without further control on the case. Case study thus is defined as “an empirical enquiry that investigates a contemporary phenomenon within its real life context, especially when the boundaries between phenomena and context are not clearly evident” (Yin, 1994: 13). My case, NGOs position on the current Dublin II Regulation can provide a broader understanding between policy implementation on the paper and in practice, showing how argumentation and different perspectives might change the discussion around one and the same issue. That is why the Regulation has been selected as current example to study NGOs involvement in EU asylum policy. As the EU Commission has published revision proposals of the current Dublin Regulation¹⁹ in 2008 and 2012, the final draft is a highly discussed issue at the moment, including also the wide responds from different NGOs.

The essence of a case study is to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result (Yin, 2003: 12). According to Yin a case study design should be considered when: (a) the focus of the study is to answer “how” and “why” questions; (b) you cannot manipulate the behavior of those involved in the

¹⁹ The EU Commission is trying to find an agreement on the third version of the Dublin Regulation, and aims to get a joint approval from the EU Parliament as soon as possible in order to implement Dublin III.

study; (c) you want to cover contextual conditions because you believe they are relevant to the phenomenon under study; or (d) the boundaries are not clear between the phenomenon and context (Yin, 2003: 18). Case study prefers to examine contemporary events, in those cases where relevant behaviors cannot be manipulated (p. 11). Even though the Dublin II regulation as such is not new, it is currently discussed and one of the main regulations in EU's asylum policy. It can be also argued that the boundaries between the Dublin II Regulation in theory and its actual outcome (practice) are hard to draw. The research questions include mainly How-questions which indicate further that the researchers' influence and control on NGOs position on the regulation is limited. Instead of a highly controlled experiment the study aims to interpret the material with the help of the Social Movement Theory. The case study's interpretive character, often used in qualitative studies, includes research questions that "typically orient to cases or phenomena, seeking patterns of unanticipated as well as expected relationships" (Stake, 1995: 41). This might lead to some critique when it comes to the issue of reliability. I am fully aware of the fact that I as researcher have some influence on the results, as I will not be able to be fully objective and already have some prior- experience and knowledge which can influence the study. Reliability refers to the demonstration that the operation of a study, such as the data collection procedure, can be repeated, with the same results on a later occasion (Yin, 2003: 34). The fact that the objects of the study, including the research questions are formulated in a clear way as well as the documents are public accessible for everyone, strengthen in return the study.

5.2 Documentary research

Almost every study makes use of some kind of data and studying documents follows the same logic than working with material gathered through interviews and observations. Documents thus can provide the researcher with further information that cannot be collected directly in the field. Documents help us to access information about events we were not present or help us to compare different interpretation of one and the same issue. According to Stake a researcher should thus keep in mind the pitfalls of documentary data, and not take plans and reports as the sole truth. "The plan seldom works, but having a plan can make the researcher more alert to setbacks and revelations" (Stake, 1995: 68). There are different ways how to use one and the same document, depending on how the issue is framed and the

research question is formulated. For some researchers a document might reflect reality and thus becomes a medium through which the researcher searches for a correspondence between its descriptions and the event to which it refers (May, 2011: 198). But that raises the question of whether a document can report social facts which exist independently of interpretation. May denotes that researchers utilize their “own cultural understandings in order to engage with meanings which are embedded in the document itself” (p. 199). A document must be approached in an engaged way, and cannot be read in a detached manner, which refers to the hermeneutic principle “theory and practice of interpretation” (p. 14). Documents clearly can give an insight in social events, decision making and processes if the researcher makes use of the document in an attached way, understanding it as just one tool of a problem. The combination of different sources and the researcher’s ability to locate the data and connect certain problems to a wider problem can thus create a new perspective on the issue. That means that researchers are fully aware of the fact that they play a crucial role in the social world they study and make use of this fact.

Moving away from the idea that a document independently reports social reality, or its production is yet another method by which people accomplish social order, we now utilize our own cultural understandings in order to *engage* with *meanings* which are embedded in the document in itself (May, 2011: 199).

According to Tim May, “documents, read as the sedimentations of social practices, have the potential to inform and structure the decision which people make on a daily and longer-term basis; they also constitute particular readings of social events” (May, 2011, 191-192). Sources of documents include historical documents, such as laws, declarations, statutes, statistics and people’s accounts of incidents or periods in which they were actually involved (p. 194). But also other written text as reports, novels, debates, political speeches and maps can be listed under the broad heading of documents. Another distinction can be made between public and private documents. Depending on the degree of their accessibility they may be closed, restricted, open-archival or open-published (p. 197). The internet clearly facilitates the access of public documents and people are easily able to channel their private documents to a wider public audience faster than ever before. That leads us to a further distinction: solicited and unsolicited documents. Whereas some documents might be produced aiming for further research from the beginning, others are just produced for personal use and interest. Locating the two documents chosen for this study, it can be said that the respond of the NGO network to the Dublin III proposal is an open-published document which aims to reach the EU Commission as well as the wider civic society. To create knowledge as well as to change the common discourse about CEAS and the Dublin Regulation can be described as one of the

main goals, with aims to motivate also for further investigations in the field. The documents are furthermore open and easy accessible by the wider public and one can download the document on the internet.

5.3 Selection of data

According to George and Bennett, the case study method is more effective if the research design includes a specification of the data to be obtained from the case or cases under study (George and Bennett, 2005: 86). I will therefore exemplify under which circumstances the decision for the two documents have been made. The data chosen for this study are “Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Dublin Regulation” published in April 2009 and the ”Memorandum Allocation of refugees in the European Union: for an equitable, solidarity-based system of sharing responsibility”, published in March 2013 by seven different German NGOs. The first document is a direct response to the European Commission’s Proposal for a recast on Dublin II in December 2008²⁰ and second one is commenting on the EU Commissions proposal published in December 2012²¹. I have chosen the two documents in order to give my study more essence. The fact that the NGO responses concern different EU Commission proposals can provide a better understanding on the question how “How NGO involvement in EU asylum policy can be described and what their stand on the current Dublin II Regulation is”. Having two documents of different NGO networks published with a time difference of four years, give me the possibility to explore common critiques, arguments and alternative suggestions which provides a deeper insight in the way the Asylum Movement channels its claims. Some changes have been done by the EU Commission proposal published in 2012 and so might be the comments of the two NGO networks slightly different. The two different position papers give further a broader insight in the way of NGO respond towards the EU Commissions official document. But as my interest lies on the common critique and suggestion of the NGO community, I will analyze the documents released in 2009 and 2013 in order to find shared statements of ECRE and PRO ASYL.

²⁰ Commission of the European Communities.

²¹ Council of the European Union.

The data used and analyzed in this study was collected with the help of the German Amnesty consultant of refugee and asylum issues Franziska Vilmar²². In an informal meeting in Berlin I had the possibility to ask questions and engage in a direct discussion about current issues of CEAS and thus a better understanding about the ongoing debate of the Dublin II Regulation could be achieved. Franziska Vilmar furthermore provided me with concrete data of the currently published Memorandum of the Pro Asyl network. The document helped me to formalize my aim and research question in a clearer way. Even though the document has been accessed by the help of a person working in the area of asylum and refugee consultant, the document is public and easily accessible for everyone on the internet²³. By the help of the first document, the second paper, ECRES respond to the EU Commissions first proposal²⁴, could be found. Both papers provide a closer insight in NGOs position on Dublin II and have been therefore chosen for the study. I am aware that the way I collected and decided on my documents can be criticized as being biased. Anyhow, the concrete suggestion of a refugee specialist working in the field of asylum rights helped me to define the purpose of the study and further to access the data needed. As knowledge is not a politically neutral product, “ethical decisions will depend upon the values of the researcher and their communities and will inform the negotiations which take place between the researcher, sponsors, research participants and those who control access to the information which the researcher seeks (gatekeepers)” (May, 2011: 61). Franziska Vilmar’s can be described thus as my gatekeeper, through her help it was possible to gain access to a currently (March 2013) published document, which I otherwise might not have been able to locate by myself. Michael Foucault argues that a critical project is not so concerned with the relationship between the author and the document, but the ways in which the use of a document is linked to the present as acts of historical writings are linked to current uses. That means that “a text must be approached in terms of the intentions of its author and the social context in which it was produced” (May, 2011: 200-201).

The documents furthermore can be described as core ideas of two very influential groups and portray thus the wider position of INGOs in the field. The response papers of the two networks can be understood as summaries of the European NGO opinion on Dublin II. ECRE and PRO ASYL summarize the main points raised by the asylum rights movement present in the EU. Both documents have been published shortly after the EU Commission’s announcement of the particular recast proposal, responding concretely to the revision plans of

²² The interviewed person gave her permission to be mentioned in this paper.

²³ http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/STARTSEITE/Memorandum_Dublin_engl.pdf.

²⁴ <http://www.ecre.org/topics/areas-of-work/introduction/133.html>.

the EU on Dublin II. It aims to “contribute to a wide debate on the questions of sharing responsibility for refugees in Europe” (Memorandum Allocation of refugees in the European Union) and include both critique and alternative suggestion. In the following section will I explain the organizational structure of the two NGO networks in order to locate them in the wider picture.

5.3.1 European Council of Refugees and Exiles (ECRE)

ECRE is a pan-European Alliance of refugee assisting non-governmental organizations, mainly concerned about the needs of all individuals seeking refuge and protection in Europe. The strong network between different European NGOs is the core of ECREs work and the alliance aims to promote the protection and integration of refugees in Europe based on the values of human dignity, human rights, and an ethic of solidarity (European Council of Refugees and Exiles: Our mission). ECRE describes itself as “a pan-European Alliance of refugee-assisting non-governmental organizations” which is concerned about the needs of all individuals who seek refuge and protection within Europe. (ECRE, In a nutshell: Our mission). Based on the values of human dignity, human rights, and an ethic of solidarity, ECRE aims to promote the protection and integration of refugees in Europe. ECRE seeks to achieve this aim by the consolidation of networks between refugee-assisting NGOs as well as the development of the institutional capacity of refugee-assisting NGOs in Europe. A strong network which works together is an important issue in order to reach the goal. A solid network helps to advocate a fair and humane European asylum policy and thus promotes the development of a comprehensive and coherent response by the international community towards refugee movements. ECRE can furthermore be understood as one of the most important organizations when it comes to research and a valid data base on refugee issues in Europe: “It aims to ensure that its ideas and positions are of high quality, legally accurate and representative of a wide range of knowledge, experience and best practice throughout Europe” (ibid).

5.3.2 Pro Asyl and signatories (Pro Asyl network)

PRO ASYL is a German organization, based in Frankfurt am Main, working for people seeking protection. Pro Asyl is functioning as a network, actively working with refugee issues in Germany but also throughout and outside of Europe. Pro Asyl is an independent foundation which has 16 Refugee Councils under its umbrella, each of them located in one of the different German federal states. Pro Asyl is a National Working group which was formed in 1986 due to significant restrictions introduced into German asylum law in the mid-80`s. People persecuted for political reasons, encountered great difficulties in securing lasting and reliable protection due to these changes. “The National Working Group, comprised of refugee councils, churches, unions as well as welfare and human rights organizations, have come together to protect refugees rights and to give voice to their concerns”. Pro Asyl not only takes part in panel-, radio- and TV-discussions, supports networks and initiatives or produces informative material for events and information desks, but also takes care of profound and competent information through material collections and books on specific issues as well as realizes nationwide campaigns in order to raise awareness to injustice, nuisances and undesirable political developments (Pro Asyl Der Einzelfall zählt: National Working Group for refugees). Pro Asyl can be further defined as the head of the German asylum right movement. Pro Asyl did the final editing on the *Memorandum Allocation of refugees in the European Union*. The other six signatories are the German Bar Association, AWO Workers Welfare Association, Diakonia Germany, The PARITÄTISCHE Welfare Association, Neue Richtervereinigung and Jesuit Refugee Service.

6. Analysis of Data

The Analysis is divided in two sections, following the logic of the research questions: First, what is the main critique raised by the NGO community when it comes to Dublin II? And second, how are NGOs channeling their claims, trying to get involved in EU-policy and the decision making process? With the help of the documents chosen and the usage of practical tools provided by the Social Movement Theory, the three categories of questions will be explored and answered one by one.

6.1 Critique of NGO Community

ECRE²⁵ and the Pro Asyl network²⁶ have formulated various points of critique, which stand in line with each other and comment directly on the EU Commissions recast proposal of the Dublin II Regulation. The main points of the critique can be summarized in three sub-categories: Uniform standards, irregular border crossing and principle of solidarity and integration.

6.1.1 Uniform Standards

The main critique formulized by ECRE and the Pro Asyl network is that the Commission's proposal fails to address the system's underlying flaws: "The Dublin system remains an impediment to an efficient, harmonised and humane Common European Asylum System (CEAS)" (E:2). This means that the Dublin Regulation itself is responsible for many barriers and problems CEAS is facing. Over 15 years have been passed since the Dublin

²⁵ Reference to the ECRE document will be marked in the following as just E + page number.

²⁶ Reference to the Pro Asyl network memorandum will be marked as just P + page number.

system, an automated intra-European application of the concept protection elsewhere, has been introduced. The system is based on the assumption that all member states provide adequate protection to those who need it. But uniform asylum standards are not a precondition yet and in the asylum procedure as well as in guaranteeing protection great discrepancies are visible (see Appendix 1). Both NGO networks argue that the underlying presumption of common European protection standards is inaccurate and run risk to lock asylum seekers into a dangerous “asylum lottery”. Examples given in the documents are Greece, Italy, Malta, Cyprus and Hungary, where the reception condition of refugees are violated on a daily bases. Many asylum seekers do not have a place to stay, or are in return detained and treated as criminals without even being able to apply for asylum. The Pro Asyl network states that these abuses are being cemented and even reinforced by the existing Dublin system as asylum seekers who left finger prints in one of these countries²⁷ are sent back to the country of entrance, ignoring the Solidarity Clause, which states that the 2nd country of entrance also holds some responsibility. But this responsibility and action of solidarity to take over single asylum cases are based solely on values and not implemented as a binding rule, so ECRE and the Pro Asyl network. The Dublin Regulation on the other hand is described as a well implemented instrument which makes it easy to ignore the solidarity aspect. This leads to numerous push backs of asylum seeker to the first country of entrance, no matter how the situation is there. The daily routine of deporting asylum seekers to the “responsible country” dismisses the possibility and duty of member states to take over cases where basic needs are not secured. ECRE as well as the Pro Asyl network claim, that given that the fundamental idea of CEAS is based on common values such as universal human rights and a common system of refugee protection, decision should be taken in the interest of the whole Union. But in contrast to interests, however, values have a hard time and the Dublin Regulation undermines these values further.

The Regulation does not contain any express provision on whether the member state being asked for protection is allowed to take the refugee back to the member state responsible, in the event of serious malfunctioning of the latter’s national asylum system involving severe human rights violations (P:13).

The NGO network holds that clearer definitions and rules should be enforced in order to guarantee and implement actions of solidarity when it comes to the responsibility sharing in the EU. The current Dublin Regulation is not grounded on such logic of shared solidarity based on a common understanding of responsibility towards asylum seekers in the EU. This has causes huge troubles for the Unions reliability, weakening EU states cooperation but even

²⁷ Except Greece, see Strasbourg Observers: CASE OF M.S.S. v. Belgium and Greece, Application no. 30696/09.

more effects to secure asylum seekers rights in the Union. As example, the Pro Asyl network refers to the definition of family connection and common needs of refugees: Different definitions in the EU cause tremendous inequalities across Europe (P:4). The decision making of asylum cases is too often left to the individual member states and their interpretation of EU law. ECRE argues that a fair and efficient operation of the Dublin system depends on a common system and in the absence of such harmonization processes, the Dublin system will continue to be unfair both to asylum seekers and to certain Member States (E:3).

6.1.2 Irregular Border Crossing

According to the Memorandum of the Pro Asyl network the weakness of the Dublin system is based on another central congenital defect: The criterion of irregular border crossing, which places a disproportionate burden on member states located on the EU borders. As the responsibility of examining the asylum claim, lies on the member state that “played the most important part in the entry of residence of the person concerned”, this stands in direct contrast to the idea of solidarity and integration. It is mostly the border countries that enter up being responsible for the individual asylum claim due to their “failure” to let the people enter their territory in the first place. Even though the member states located in the center of the EU deny this fact due to the argumentation of asylum statistics, the Pro Asyl network holds that asylum statistics do not give reliable information about the actual situation in the border states: “In 2011 over 55,000 refugees and migrants were detained in Greek detention camps in the area near the Greek-Turkish border, without this high figure appearing in the asylum statistics” (P:4). Even though most of the asylum applications have been lodged in Germany and France, an EU-wide comparison, linking the ration of asylum seekers to the whole population, puts Germany on the 14th place and Malta on top of the list (P:11). Reasons to mistrust the asylum statistics are based on the fact that the statistics do not consider for example the number of asylum seekers entering irregularly who do not file for asylum in their state of entry, or do move on from there (P:12).

ECRE as well as the Pro Asyl network have been arguing in their position papers that the EU’s proposal is failing short due to the definition of irregular border crossing. It is the failure of the EU to set up a solidarity-based system of sharing responsibility and this has dramatic consequences for the individual refugee. The present Dublin system does not as stated by the EU Commission regulate a solidary and just contribution of asylum seekers in

the EU, but instead places a disproportionate burden on the EU's border states. "The intended principle does not function properly simply because the route taken to enter the EU and the onward journey on EU territory frequently cannot be reconstructed afterwards" (P:12). As the main entrances of refugees are the border countries of the EU, merely the ones located on the Mediterranean Sea, it becomes a matter of whether fingerprints can be found or not in order to be able to assign the responsible member state. That results in the fact that EU's system of responsibility becomes purely a matter of accident as the place of irregular entry generally depends on the assistance of organized border-crossing services and cannot be influenced by the individual asylum seeker. Furthermore as the routes chosen to enter EU territory depend on those illegal entry points, due to decades of EU effort to prevent asylum seekers and refugees from gaining access to Europe. The Pro Asyl network further claims that an EU-wide asylum system should also take into consideration differing burdens of the individual member states. "In addition there are historical factors: the 27 member states were included in the European asylum system during very different time periods and with completely different resources, abilities, institutions, experiences and prior social burdens" (P:12). This leads to the argument that every member state has to deal with different difficulties and might need distinct assistance in order to cope with their migration influx.

A further critique raised by ECRE and the Pro Asyl network is that the Dublin Regulation not only relies on the definition of irregular border crossing but in addition creates irregular migration within the EU. Asylum seekers, who do not find acceptable standards in the state of entry, will continue their journey to another member state. A further reason for irregular migration in the EU is, that refugees are cut off from their cultural, social and family bonds they already might have in another member state. The Pro Asyl network states that "the Dublin system therefore runs counter to the political goal of reducing irregular secondary movement" (P:14). ECRE holds that a restrictive asylum policy is counterproductive as its goal is to limit access to asylum seekers with viable protection pretensions and thus has discouraged participation in formal migratory channels. "Mistrust of formal migratory channels promotes dangerous smuggling practices, and favours the creation of a statusless, destitute underclass within receiving communities" (E:4).

6.1.3 Principle of Solidarity and Integration

Third, there is the liability effect which runs counter to the principle of solidarity (Art. 80 AEUV²⁸). It is the member states that grants a residence permit or do not effectively check its borders, which are in the end responsible for the asylum refugees. According to Pro Asyl this involves the danger that the border states aim to build up stricter border controls with the goal to prevent the entrance from the beginning. In fact main entrance countries are specifically requested to do so by the other member states and EU institutions (P:14). Two examples of this prospect to prevent asylum seekers to reach the EU can be seen in the case of Greece and Italy. Greece has received enormous critique by other member states for not building the desired wall at its border with Turkey. Italy in return intercepted refugees at Mediterranean waters and sent them back to Libya without examining their asylum claims. “The consequence in practice has been frequent violations of the protection against refoulement enshrined in the 1951 Refugee Convention” (P:4). The refoulement prohibition states that no refugee may be forcibly returned to his or her country of origin.

This violation of the Refugee Convention furthermore causes an anti-refugee attitude and strengthens national and racist movements in the EU: “if mistakes during immigration controls lead to responsibility for receiving asylum seekers, society perceives refugees as a punishment for national failure” (P:15). This logic contravenes with the idea of solidarity and integration and if racist attitudes will determine asylum policy, the right of protection stands under crucial danger. The Pro Asyl network argues that it is due to the Dublin Systems failure that the basic principle of international law has been displaced by systemic logic and constrains of immigration controls. Migration control shifts migration defense, since every EU member state tries to decrease their admission on asylum seekers. But “legally well-founded responsibility and solidarity as required by EU law cannot be produced in this way” (P:15). A system where all member states share the responsibility of taking asylum seekers on an equal basis is needed in order to keep CEAS alive. That is why ECRE and the Pro Asyl network agree that the Dublin system’s harmful effects go beyond those caused by the currently imperfect CEAS and state that it must be dismantled and replaced by a system based on integration and solidarity (E:3). But the recent reformatory efforts, done by the European Commission “are not conducive to emerging from the crisis, because they cling to the present system, in particular to the designating of responsibility to the state of entry” (P:3). Even though it seems logical to define certain tools of responsibility determination, the current

²⁸ See “Treaty on the functioning of the European Union”.

Dublin Regulation has a crucial impact on human rights and needs to reassign responsibility on a new basis, other than border security.

Furthermore is the impact of the Dublin system on Member States difficult to measure, due to the deficiency of complete and reliable statistics on its application, which furthermore weakens the efficiency and trustworthiness of the regulation. Nevertheless, the available information suggests that “the system is expensive, inefficient and places disproportionate pressure on Member States that make up the EU’s external southern and eastern borders” (E:3). That is another point which questions the effectiveness of Dublin II, even more as the EU Commission claims to be as efficient as possible when it comes to the asylum procedure. The complicated and expensive system of Dublin II thus leaves asylum seekers with their asylum request unexamined. Many asylum seekers wait in limbo, too often in detention, lacking information or translation about their claim. The Dublin system extends and complicates the already difficult experience of many asylum seekers, which worsens the situation of the often already traumatized individuals. ECRE holds that the system has harsh consequences on asylum seekers with special needs (age, health or trauma). Furthermore, family connections across Europe are widely ignored, and integration thus constrained. ECRE welcomes the justifications suggested by the EU Commission, but does on the other hand agree with the Pro Asyl network that the those significant humanitarian reforms fall short since the Dublin system remains an impediment to an efficient, harmonised and humane CEAS due to its failure to define solidarity and integration as main tools of the system (E:13). ECRE regrets moreover that the Commission was unwilling to undertake a fundamental reassessment of the Dublin system.

6.2 NGOs channels of involvement

Even though the two concepts of opportunity structure and framing are used as main tools to highlight how ECRE and Pro Asyl channel their claims, the theory on TANs in addition provides the analyses with helpful tools to illustrate the involvement of the two NGO networks in EU-decision making.

6.2.1 Opportunity Structure

The focus in opportunity structure lies on the world outside of a social protest movement and how those outside circumstances simplify or complicate the activities and targets of NGOs. Based on the idea that the prospect whether social movement activities are successful depends highly on the international political environment conditions, it is never independent of its context. When it comes to the Dublin Regulation, the fact that the European Commission proposed to change the Regulation in 2008, opened up great opportunities for NGOs. Even though both ECRE and the Pro Asyl network have been discussing the problems of Dublin II already before 2008, the EU Commission's recast proposal opened up a new space for the NGO networks to be part of a wider discussion and to contribute with more concrete amendments as before. It became possible for the NGO networks to formulize and channel critique and claims in a more concrete way, thus reaching a broader public. Rising public awareness of the issue furthermore invites new actors to take part in the discussion including academia, media and the wider civic society. Public discussions of the importance to recast the Dublin Regulation due to serious human rights assaults, in return pressures the EU Commission to come up with a decision that deals with these issues. ECRE for instance uses a Parliament note in order to strengthen their standpoint: "Whatever the political obstacles to change, such a single-minded preference for the status quo could only be defensible on the premise that the Dublin system worked by and large satisfactorily". And ECRE affirms that:

This premise is not defensible: the system has extensive detrimental effects to Member States and asylum seekers. An alternate system based on integration accompanied by substantial solidarity measures is the only way to ensure a fair, efficient and humane CEAS (ECRE, 2009:13).

According to Keck and Sikkink (1999), is a government that claims itself to be a protector of human rights, easier to charge and account if those rights are in danger, compared to a government that makes not such claims (p.98). The EU Commission, acknowledging and proclaiming a just asylum process, thus becomes more vulnerable when problems in the system can be identified. And especially when problems and defaults are admitted by the governmental agencies itself, the opportunities of NGOs to operate rises. For the study on the Dublin II Regulation this means that the EU Commission opened up a discussion about the efficiency and equity of the regulation, when publishing the recast paper on Dublin II. The NGOs networks ECRE and Pro Asyl were then able to respond directly to the elite's suggestion for policy change, being able to channel alternative ideas to a wider public. "With

this memorandum, the signatory organisations would like to contribute to a wide debate on the question of sharing responsibility for refugees in Europe, and they offer a fundamentally new approach” (P:3). The EU Commission, otherwise a quite closed agency, opened up space to interact with the political elite. Even though it can be argued that this interaction might be one sided and not answered by the EU Commission itself, a wider public is able to gain insight in the policy debates. Through the publishing of the two recast proposals of Dublin II, the civic society is able to get an insight in the policy processes and thus to respond to different amendments strategies and furthermore to counterbalance them with different suggestions. A government which admits certain pitfalls in their system is in addition more vulnerable and open towards different channels of lobbying. The comments of the NGO networks show how the Commissions’ recast proposal opened up a new space for ECRE and the Pro Asyl network to take direct position on the amendments suggested. By taking up the EU position and answering or contesting the different issues, NGOs are able to show that they dispose over valid knowledge and actually provide different and alternative suggestion of how to change and better the system. This connects back to the idea of information politics, described in the theory chapter.

In order to make the target groups accountable, different tactics are used by TANs. For instance, the Pro Asyl network refers to the European Court of Human Rights decision on 21 January 2011 which states that both the treatment of asylum seekers in Greece and them being taken back there is violating the European Convention on Human Rights (P:3). By citing back to the European Court of Human Rights, the Pro Asyl network makes use of the opportunity structure already given and accumulates political resources which help to gain leverage over stronger players. Backing up their argument with the help of the European Court of Human Rights gives the NGO network better opportunities to influence the EU Commissions decision making. Also ECRE uses official statements of EU spokesmen in order to give their own argument more power. Based on recent studies showing that humane policies also tend to favour efficient, cost-effective and sustainable asylum systems, ECRE refers to a statement done by the former Director-General of Justice and Home Affairs of the European Commission: “The real answer to illegal immigration (and, incidentally, to the alleged abuse of the asylum system) lies in properly and lucidly managed legal migration” (E:4). ECRE furthermore appoints to recent studies that suggest that humane policies tend to favour efficient, cost-effective and sustainable asylum systems. Those concrete statements can be used to account a government, illustrating furthermore differences in political discourse and practice.

Connecting back to the system of the EU we can see some correlation how new opportunities can be explained: The EU Commission with all its institutions and representatives is relatively closed unit, not allowing the civic society to take part in discussions, but still portraying their aims and regulations to the civil society. As Eisinger (1973) denotes, it is a mixed system that is most likely to ease protest, which means that it is neither totally closed, nor totally open. The EU can be understood as such a mixed system, predominantly new and insecure in its outcomes, the CEAS can be describes as a pilot project. All the more, the EU is a good example of how different actors can influence a new system that faces some unknown difficulties and therefore creates new spaces for external actors. The recast proposal of the EU Commission opens up opportunities of NGOs engagement, giving an alternative perspective on the discussion about Dublin II. ECRE's and the Pro Asyl network's comments on the EU Commissions recast paper discuss pitfalls of the Dublin II system, but provide the civil society furthermore with new answers and solutions. The two proposals the EU Commission published during the last five years are leaving many questions open, even more as the undefined final decision weakens the EU commissions position. This creates a possible space for NGOs to step in and show expertise in asylum issues. NGOs are well informed about current events, and all the more possess of experience working directly with asylum seekers. NGOs are defining their targets in a clear way and are persistent with their statements, not aiming for a lame compromise, which provides them with further trustworthiness. Often organized as grassroots organizations, NGOs rely on testimonies of asylum seekers which provide them with evidences and data being able to proof how the Dublin system directly prevents a well-functioning CEAS.

6.2.2 Framing Process

NGOs are important actors when it comes to the framing process of different political issues. In terms of the European Asylum System, and more concretely the Dublin Convention, larger networks as for instance ECRE and the Pro Asyl network often provide master frames, which transnational agency movements can draw on (McCarthy et al., 1996: 269). Both of the asylum right networks frame the existing Dublin system as the main problem of the current CEAS. Referring to the responsibility definition of the Dublin II Regulation²⁹, ECRE states

²⁹ "the member state that played the most important part in the entry or residence of the person concerned".

that it is exactly this random administrative focus which disregards fundamental rights of asylum seekers and the need to base the CEAS on solidarity and integration (E:2-3). If the framework of the existing Dublin system is described as in overall fine with the aim to just achieve some humanitarian reforms, the outcome will be a different one compared to a framework where the Dublin system in total has been criticized as the matter of problem. ECRE and the Pro Asyl network challenge the EU Commissions perspective of the existing Dublin Regulation by naming various shortcomings created by the system itself. Questioning the EU Commissions recast proposal and the suggestion made, the NGO community contests the elite's discourse by giving new perspectives of the issue. By the help of their own expertise and concrete examples from the field, NGOs direct blame responsibility towards a concrete object: "These abuses are being cemented and even reinforced by the existing Dublin system" (P:4). As McCarthy et al. (1996) denotes, are the diagnostic as well as the prognostic element two important components when it comes to frames. Whereas the diagnostic frame refers to the definition and the source of the problem, the prognostic element stands for the identification of an appropriate strategy for redressing the problem (p.291).

The diagnostic element includes another potential of framing: to make complicated issues comprehensible to a wider public and thus motivate collective actions. As the CEAS and their different regulation are difficult to grasp for outsiders, NGOs try to explain and inform social society about different problems and circumstances and thus create an alternative perspective. Differently to the EU Commission itself, NGOs are interested to include the civic society and provides a platform for individuals who want to get involved in further campaigns. An essential task is therefore to frame social problems and injustices in a way that convinces a wide and diverse audience. In the concrete example of Dublin II, the aim is to interfere in the EU Commissions decision to recast the regulation. ECRE as well as Pro Asyl hold that the suggested amendments are insufficient; their direct response to the EU Commission's proposal shed light on the underlying flaws. The above named prognostic element describes the identification of a concrete strategy to resolve the problem (McCarthy, 1996:291). NGOs take part in policy debates through policy suggestion and thus demonstrate alternative perspectives and frames. "ECRE has previously outlined two alternatives to the Dublin system's reliance on arbitrary criteria for responsibility determination: (1) connection to a Member State and (2) free choice" (E:4). The proposal of alternative ideas establishes NGOs' positions, but also aims to change traditional discourses and political frames used by the government. The goal is to frame social problems and injustices in a way understandable for the wide civic society and to demonstrate the importance of action. ECRE's alternative

proposal is based on the description of the current inhumane Dublin system that “locks asylum seekers into a dangerous asylum lottery, where the outcome of their claims, and therefore their lives, depend on the route of flight” (p.3). Describing asylum seekers as victims of an inhumane system, underlines the necessity for collective action.

But according to Keck and Sikkink (1998), activists try not only to influence concrete policy outcomes, but aim to transform terms and nature of the debate in the long run (p.2). Exchange and share of information and believe of transnational advocacy networks, are an important tool in order to make the counter discourse as strong as possible. Furthermore, successful frames draw upon shared cultural understandings, as for instance rights and morality. “Asylum seekers who enter the European Union primarily through Greece are either detained there or forced to live in the streets for lack of accommodation” (P:3). Media, portraying individual stories of asylum seekers inhuman situation in the EU, achieve further awareness of the topic and can thus change existing opinions and frames. Media and civic society are important agents to contest existing frames as for instance “the asylum seekers as economic migrant”. Opinions about asylum seekers not really being in need of protection, but taking advantage of the EU’s asylum system, manifest a discourse where stricter policy decisions have to be implemented. It puts away the focus from the asylum seekers who are trapped by a harsh system, towards those who have been defined as “criminals” and therefore reinforces the need of a stricter asylum system. NGO networks often lack political or material resources and are in need of third parties in order to strengthen their perspectives and frames in the conflict. ECRE for instance makes use of the UNHCR High Commission, which can be described as third party: “[A] policy built on exclusion is not only morally reprehensible, it is also impractical: it will simply push all forms of migration, including refugees, further underground” (E:4). This statement of a Commissioner of the UNCHR provides ECRE with a good base to draw their own argument on: A restrictive asylum policy as being counterproductive.

NGOs are portraying a humane and fair asylum policy, claiming that the EU system stands for the contrary. Contesting the EU Commission’s intention to change the system into one that can be described as just and effective, ECRE and Pro Asyl illustrate how the political elite uses certain discourses, but fails to apply them into practice. When it comes to the EU and the security discourse, migration and asylum are often discussed as conflicting issues. Nevertheless, the EU Commission is trying to separate those two issues, discussing “genuine asylum seekers in need of protection” at the one side, and “illegal and criminal immigration” at the other side. The official discourse proclaims an open and just system of the EU where

people fleeing from persecution are able to find shelter. But the Pro Asyl network makes clear that these political goals definitively influence each other: “In the last three decades a policy pattern has developed in the EU of reacting to deficiencies in entry controls by stepping up measures at the borders” (P:11). Through NGO activism, the main discourse of government institutions becomes visible and thus contestable. NGOs can make use of conflicting goals in order to question the systems reliability. The difference in governmental statements and the lack of practical reforms provides NGOs with a common ground to draw their claims on. ECRE and the Pro Asyl network furthermore return to the key aspect of the CEAS, the need of cooperation in the EU in order build up a just system. By referring back to the Preamble of the Refugee Convention, NGOs are able to show that the cooperation of different EU member states is far away from functioning and that it is due to the failure of solidarity practices that the system is functioning. “The grant of asylum, cannot ... be achieved without international cooperation” (P:8).

Whereas the Preamble of the Refugee Convention provides the NGO network with a common ground to draw their claims for a more solidary asylum system on, the contradiction of policy objectives might cause some troubles when it comes to certain values. Activists have to take into consideration that the national governments are also driven by other goals, which might be economic interests and border security. According to Shawki (2010), conflicts over values are particularly difficult to resolve in international negotiations and can significantly reduce the political opportunities of TANs (p.403). This is an important point and makes clear how issues and problems might be framed differently depending on the main target of policy making. Different actors might have various perspectives on political questions and due their involvement change the common discourse. But in order to be able to criticize the non-reliability of official discourses, they first need to be entangled and visible for the wider society. That means that TANs have to be sensitive to different issues in order to achieve their goals. ECRE as well as the Pro Asyl network are highly systematic trying to connect their claims with issues discussed by the political elite using the opportunities already created by governmental agencies.

6.2.3 Alternative suggestions

Connecting back to the theory section of “TANs”, NGO’s role can be described as an important alternative source. All the more when issues are mainly portrayed by governments,

NGOs are important actors to circle and communicate an alternative perspective to the wider social society. When it comes to asylum right issues, the circulation of testimonies of people directly affected by certain policies and regulations are important. If more than one actor is taking up the discussion of Dublin II, the civic society gains access to a variety of perspectives and facts, which helps to form an opinion. One important role of the NGO Community can thus be described as the provision of alternative suggestions. Concrete statements of alternative proposals are both addressed to the social society as well as to the deciding institution and aim to change policy debates and decision making. New perspectives on highly debated issues further aims to challenge existing discourses and provide the political environment with new and marginal frames. This in return will open up further opportunity structures where claims for political change might become more successful. In the following some of the most important suggestions of ECRE and the Pro Asyl network are summarized.

The most important role of NGOs in the discussion of CEAS is that the networks provide alternative suggestions and thus challenges the existing Dublin System and the EU Commissions present proposal. Welcoming the amendments suggested by the EU Commission, ECRE and the Pro Asyl network state even more that they are not satisfied with those adjustments: "While the Commission's proposal would introduce significant humanitarian reforms, it fails to address the system's underlying flaws" (E:2). The Pro Asyl network describes its memorandum as an alternative which hopes to "set off a broad discussion about the parameters of a system of sharing responsibility in Europe based on solidarity and the needs of refugees" (P:3).

The recommendations of ECRE and the Pro Asyl network stand in line with each other. Both NGO networks aim to adjust the ground for determining the responsible member states. "ECRE has previously outlined two alternatives to the Dublin system's arbitrary criteria for responsibility determination: (1) connection to a Member State and (2) free choice (E:4). The Pro Asyl network as well claims that if asylum seekers would have the possibility to choose the EU member state where to apply for asylum, the irregular migration of refugees in the EU could be avoided to a great extent: "In this Memorandum we therefore propose abandoning the responsibility-defining criterion of "irregular border crossing" and replacing it by the principle of "free choice of member state" (P:5). The principle of "free choice of the member state" has already been taken up by the Executive Committee for the UNHCR programme in 1979 and the NGO network are basing their argument on the fact that such a principle would broadly correspond to the individual interest of asylum seekers. The Pro Asyl network assume

“that refugees seek reception in their cultural, social and family networks and are therefore highly motivated to enter the member state of their choice as soon as possible and to apply for asylum there” (ibid.). And also ECRE holds that “a system based on an applicant’s familial, linguistic, cultural and educational connections to a Member State would favour integration (thereby promoting productive contributions to the host community), reduce dependence on the State, and would discourage irregular onward movement” (E:4). The different forms of social capital could help arriving asylum seekers to integrate better in the new country and thus take some burden from the responsible state, since people would be able to rely further on the financial as well as practical help of their kin. Irregular migration can best be combated by not keeping asylum seekers in the state of entry against their will and thereby permanently cutting them off from their cultural, social and family bonds, so the Pro Asyl network (P:14).

A system based on the applicants free choice, would further eliminate the need for a complex and expensive determination procedure, the EURODAC database, ensuring that only one Member State would examine each claim (E:4). ECRE claims that Dublin II furthermore creates enormous costs as asylum seekers are send back to the first country receiving the refugee, member states are exchanging huge amount of asylum seekers every year, instead of taking responsibility for the ones already being in the country. Another reason aiming for the free choice of asylum seekers is the high costs created by sending back asylum seekers to the first country of entrance. Furthermore, the alternative suggestion would reduce the amount of detained refugees: The Pro Asyl network holds that it is unacceptable that asylum seekers are detained solely for the purpose of transferring: “This detention practice has been excessively expanded in the last few years solely on grounds of efficiency, to guarantee that the transferal takes place” (P:18). Both networks argue that only if the criterion of “irregular border crossing” be abandoned and replaced by the responsibility criterion of free choice of member states, the CEAS can gain on stability in the long run.

Mainly the countries in the central or northern part of the EU are worrying that the implementation of a free choice of the member state might create a higher pressure of their asylum system as many refugees might decide for a country where the minimum standard is secured. ECRE holds that the free choice of member states should be linked to a financial compensation fund. “While the European Refugee Fund’s³⁰ was earmarked as a burden sharing instrument, its redistribution mechanism does not sufficiently take account of relative development of an pressures on Member States’ asylum systems, it compensates States

³⁰ The ERF (EUR 630 million over the period 2008-13) supports EU countries’ efforts in receiving refugees and displaced persons and in guaranteeing access to consistent, fair and effective asylum procedures.

according to according to absolute number rather than relative burdens” (E:5). A more effective and solidary version of the already existing Refugee Fund would be important to be able to share the disproportionate burden of some member states. The Pro Asyl network agrees and welcomes a “more simple and flexible asylum and migration fund planned for 2014” (P:24). The distributed money should be allocated to support asylum seekers and be used thus to heighten the living conditions in those countries where minimum standards not reached yet. That would further lead to a more harmonized asylum system throughout the Europe, which delimits the need to travel further. The Pro Asyl network also states that the integration of asylum seekers in their desired receiving country would take

But ECRE further claims that the responsibility-sharing of the EU should encompass more than financial redistribution: “A cohesive CEAS requires free movement of beneficiaries of protection, well-resourced integration and return funds, and significant administrative cooperation to ensure consistent, high quality decision making across Europe” (E:5).

7. Conclusion

This case study has examined the role NGOs play in the European Asylum Policy. More explicitly the aim was to investigate how two major NGO networks take part in the discussion about the Dublin II Regulation. After the European Commission decided to modify the Regulation in 2008, NGOs have been publishing different comments on the proposed amendments. The study has concretely investigated two proposals, one published by ECRE and the other published by the Pro Asyl network. Those two asylum right networks can be described as two important players, and thus give a good overview about NGO's involvement in policy making.

The study derived from the Theory of Social Movements, explaining the main thoughts of the theory. Different concepts and tools described in the theory chapter helped to explore how the NGO networks channeled and portrayed their critique, claims and suggestions regarding the Dublin II Regulation. The investigation of the data has been divided into three categories. The first part describes the problems and critique raised by the NGO community, which can be summarized into three sub-items: Uniform Standards, Irregular Border Crossing and the Principle of Solidarity. All of those three points portray the common critique of the Dublin system, explaining why the NGO community is not satisfied with the proposed amendments of the EU Commission. The main critiques raised by the international community of NGO's against Dublin II are: determining responsible member states without establishing a common system yet. The next category of the analysis deals with the different channels used by the two NGO networks to interfere in EU-policy and decision making processes. By the help of the concept of TANS, Political Opportunity Structure and Framing different tools and methods used were able to highlight the involvement of the NGO community. The last chapter of the analysis deals with the role of the NGO community in regard to CEAS. As this study deals with two concrete comments of the NGO networks, the main target of NGOs' activity can be described as source of alternative suggestions.

My hypothesis in the beginning of the paper assumes that NGO networks are important actors when it comes to policy recommendation but also function as agents between governments and civil society, in regard to opinion formation and alternative discourse. Due

to the investigation of the two policy recommendations of ECRE and the Pro Asyl network, it has been possible to show that NGOs are important actors when it comes to the provision of alternative frames and thus involve and shape the official discussion about asylum issues in the EU. Through their concrete comments on the EU Commission's recast proposal, the two NGO networks make use of an opportunity structure which helps them to circulate their claims and alternative suggestions towards an equitable and solidarity-based asylum system. Even though the two memorandums are directed to the EU Commission itself, it goes further and invites the broader civic society to take part in the discussion. By providing reliable data and basing their claims on field studies and statistics, NGOs are able to give their arguments further ground. The alternative frames, provided by ECRE and the Pro Asyl network, serve as master frames for activists and smaller NGOs and are an important source for individuals' opinion making when it comes to CEAS. NGOs are furthermore an important voice in order to make asylum seekers' stories heard and play a significant role revealing human rights assaults, accounting the EU Commission and the EU member states for their mistreatment of different principles and regulations.

An interesting question that arises is how the EU itself receives and negotiates the objectives and critiques raised by NGOs. Although this question has not been brought up in the essay, it aims to motivate for further research in the area. As the final decision of the EU Commission in regard to Dublin II still is open, concrete lobbying and influence on frames and policy formulations could be an interesting area of study. An insight study in the concrete processes and outcomes of NGOs' policy as well as the EU Commission's reaction to those alternative suggestions would be needed in order to develop to what extent the viewpoints of civil society are taken into account by the EU. A further research question could be formulated as: What viewpoints are being taken into account and why? In order to achieve good results, the study should include a fieldwork study, which means direct contact with EU representatives working with Dublin II. This study could thus serve as background information as it summarizes and analyses NGO's position on Dublin II and their concrete suggestions.

7.1 Note

On the 6th of June 2013 has the EU Court decided that unaccompanied minor aged asylum seekers have the possibility to get their asylum claim proofed in the country where the last asylum request has been made. Unaccompanied minor means in this regard an unmarried person below the age of eighteen who arrive in the territory of the member states unaccompanied by an adult responsible for them. This decision is based on the child's best interest and aims to prevent the deportation of unaccompanied children to the first country of entrance. The judgment of the Court states that the unaccompanied minor aged asylum seeker has the right to get its asylum claim proofed in the last country of residence if she/he do not has any family connection in one of the other EU member states an asylum claim have been lodged. The case involved three unaccompanied asylum seekers who appealed against a decision by the Home Office to transfer them to the first EU country they claimed asylum in after they later made a claim for asylum in the UK.

On those grounds, the Court (Fourth Chamber) hereby rules:

Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum (InfoCuria - Case-law of the Court of Justice, June 2013).

This amendment can be described as right-enforcing element in the Dublin II Regulation. The decision of the EU Court have been made after the research part of this study have been finished and is thus not included in the study.

8. Executive Summary

The Dublin Regulation is one of the most important regulations when it comes to CEAS as it assigns which country is responsible for the individual asylum assessment. After ten years of Dublin II, the Regulation now stands under revision. Asylum right NGOs and the civil society have been claiming for a change in the responsibility definition since the very beginning. The comparative study “Lives on Hold” (ECRE, 2013) as well as different research of scholars like Baldaccini (2007) and Thielemann (2011), discuss different aspects of EU asylum law and their concrete impact on asylum seekers. The main critique against Dublin II, which got implemented in 2003, is the unjust contribution system which leaves many asylum seekers in a situation where their right of “international protection” cannot be achieved. As legal migration routes to the EU has become more and more difficult to reach for refugees, international protection depends highly on their travel route and the ability to reach one of the border countries without being detected. ECRE compares the Dublin system with an “Asylum Lottery”, where the individual asylum claim depends on the individuals’ fortune and the system of the country responsible. Since the implementation of the Dublin II Regulation the EU Commission is aiming to harmonize the different EU member states asylum policy. But great disparities are still remaining and the outcome of an individual asylum claim depends highly on the country responsible. Even though asylum claims have to be handled individually, the principle of non-refoulement should be the common ground for an asylum assessment in each country. The principle refers directly to refugee law and states that refugees may not be returned to places where their lives or freedoms could be threatened. Figure 1 in the Appendices illustrates the existing disparities when it comes to the refugee definition. Whereas 84 % of the Iraqis have been granted asylum in Italy and 77% in Germany not one refugee from Iraq have been received a positive decision for their asylum claim in Greece in 2009.

The fact that the Dublin II Regulations is based on the definition that the first country of entrance is the responsible one leaves many asylum seekers “on hold”. Once applied for asylum in for instance Malta, asylum seekers are bound to the country and are not allowed to apply in another EU member state, even though the possibilities to get their claim approved

are more likely. Many of the EU border countries have been judged for tremendous human right violations, which puts further pressure on the EU Commission to revise the current Dublin II Regulation. The example of Greece, who got excluded from the Dublin Regulation in January 2011, shows that the system of sharing responsibility and solidarity facing great difficulties and the harmonization process is far away from being completed. In 2008 and 2012, the EU Commissions published two recast proposals which are under revision at the moment. The publicity around the issue created new opportunities for NGOs to make their claims and alternative suggestions heard, and many organizations distributed direct responses to the proposed amendments. In this study, two of those responses are examined in order to highlight the NGOs opinion about Dublin II. Since the EU Commissions recast proposals so far do not touch the essence of the responsibility issue: First country of entrance equal responsible country, the critique of the NGO community describes the proposed adjustments as “insufficient”. The chosen documents in this study are published by ECRE, the European Council of Refugees and Exiles published in 2009 and by the Pro Asyl network, Germany’s biggest asylum right network, including seven different organizations that signed the memorandum. Nevertheless, these two position papers cannot be summarized as the common NGO position; it thus gives a good overview about main critiques and suggestions proclaimed by the asylum right community working on European ground. ECRE and Pro Asyl are publishing regularly field studies about asylum seekers’ situation in Europe as well as taking part in panels and policy debates when it comes to different regulations and laws concerning refugee’s right.

The aim of the study is to highlight NGOs involvement when it comes to CEAS, and more concretely to the currently debated Dublin II Regulation. The research question of the study is: How can NGO involvement in EU asylum policy be described and what is their stand on the current Dublin II regulation? Two sub-questions are guiding more concretely through the analysis of the study, helping to explore NGOs involvement in EU policy making: (1) What is the main critique raised by the NGO community when it comes to Dublin II? and (2) How are NGOs channeling their claims, trying to get involved in EU-policy and the decision making process? On theoretical grounds, I argue that the Social Movement Theory has been useful to identify NGO involvement in EU policy. Different tools used by the NGO community are described in the theory chapter by means of Opportunity Structure and Framing. The paper claims that the EU Commissions recast proposal opened up new opportunities for NGOs to take part in the discussion reaching a wider public. Concrete critique towards the amendments proposed as well as the underlying flaws of the Dublin

System are not only accounting the EU Commission, but provide new frames for the civil society, thus challenging the common discourse about asylum issues in the EU.

By the help of alternative suggestions, ECRE and the Pro Asyl network return to the very essence of refugee law, claiming for a system based on a common and solidary system throughout the EU. Only if all countries base their asylum assessment on common grounds, including the same definition of the given directives and regulations, CEAS can be achieved. The application of the Solidarity Clause should be an important tool to take the obligation of granting asylum to those in need as a common EU responsibility. ECRE and the Pro Asyl network suggest the “free choice” of the member state as one instrument to prevent that asylum seekers end up in situations where they are “trapped into illegal migration”. Based on the assumption that the individual asylum seeker will choose the country depending on the existence of family and cultural ties, the integration process will be more successful. The tremendous cost of sending back asylum seekers to the responsibility country (first entrance) will be further eliminated and the money can be invested into a better functioning system of the already existing Refugee Fund. The idea is that those countries receiving more asylum claims will receive further financial aid in order to cope with the demand and to uphold minimum standards for the arriving asylum seekers. The NGO network denotes that CEAS can only be established if it is based on a just distribution system, based on solidarity and a common responsibility of the EU member states.

Even though this study is not able to deal with the actual influence NGOs have on the Dublin II debate, the paper gives an established insight into the current discussion. It portrays NGOs position of the Dublin system, its concrete critiques towards the Regulation and alternative suggestions. Furthermore, different channels of involvement are highlighted throughout the paper in order to show how NGOs make usage of existing opportunities, formulize their claims and use field studies and testimonies in order to back up their demands. NGO activities and position papers do not only have an impact on the EU Commission itself, but provide civil society with alternative perspectives and frames which thus change how political representatives can display the issue of CEAS. The paper moreover aims to motivate for further research in the area of NGO influence in EU asylum policy.

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Appendices

Documents used for analysis

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Figure 1



Source: UNHCR, 2009 Global Trends, 15 June 2010. Available at: http://www.unhcr.org/globaltrends/2009-Global-Trends-annex_v2_external.zip
Methodology : rates are included only for the European countries in which 100 or more applications were lodged during 2009.