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EU MIGRATION AND ASYLUM POLICY

Background and Context

The asylum and migration policy of the European Union has transformed significantly since 1985 when the Schengen Agreement was created, which marked the beginning of the phasing out of the internal border checks of participating countries in Europe. The enhanced freedom of movement within the Schengen Area came with the need for a common approach to managing external borders in addition to a common asylum system. This need became more evident during the 2015-2016 migration crisis, during which more than 1.3 million individuals sought asylum within the EU, overstressing reception facilities to their limits and highlighting quite unequal degrees of application of EU policies among member states. The legal basis for the EU policy on migration and asylum is articulated in Articles 67(2), 78, and 79 of the Treaty on the Functioning of the European Union (TFEU), which determine the competence of the EU to adopt shared policies regarding asylum, immigration, and the control of external borders. These provisions aim at ensuring proper management of migratory flows, fair treatment of third-country nationals, and preventing irregular migration. Despite these common legal foundations, implementation varies significantly from one-member state to another, forming a patchwork of practice that has made it harder for the EU to respond coherently to migration challenges.

Key Aspects of EU Migration and Asylum Policy

The Common European Asylum System (CEAS) is the backbone of the EU's asylum policy. In 1999, it was created and since then has been reformed several times. The CEAS is established to align asylum policies between member countries through a set of directives and regulations. Major elements are the Dublin Regulation (identifying the member state to process asylum claims), the Eurodac Regulation (creating a fingerprint database for identifying asylum seekers), the Qualification Directive (laying down norms for recognizing refugees), the Asylum Procedures Directive (laying down common procedures for granting and withdrawing protection), and the Reception Conditions Directive (laying down norms for receiving asylum seekers). Border control is another important dimension of EU migration policy. The European Border and Coast Guard Agency (Frontex), which was created in 2004 and significantly reinforced in 2016 and 2019, brings together the efforts of member states to ensure the external borders of the EU are secure. Frontex's activities comprise border surveillance, search and

rescue, and return operations for illegal migrants. The Schengen Borders Code gives regulations on control of external borders, and the Visa Code gives rules on conditions for short-stay visas.

The EU's external migration policy has grown stronger in recent years, with the EU becoming increasingly interested in collaborating with countries of origin and transit. The EU Trust Fund for Africa, established in 2015, supports projects to cure the root causes of migration in African countries.

The 2016 EU-Turkey Statement is another significant external agreement, where Turkey committed to curbing irregular migration to Greece in exchange for economic support, visa liberalization, and the relocation of Syrian refugees to the EU.

Policy Analysis

The EU asylum and migration policy is one of ongoing balance between humanitarian involvement and security needs. On the one hand, the EU presents itself as a world leader in human rights and protection of refugees, with the right to asylum guaranteed in the EU Charter of Fundamental Rights. On the other hand, stopping irregular immigration and securing the borders have become top priorities since the 2015-2016 crisis. This tension is reflected in measures such as the EU-Turkey Statement, which has decreased irregular flows to Greece but has been denounced by human rights groups for potentially weakening the right to claim asylum and subjecting migrants to inhumane treatment in Turkey.

The doctrine of solidarity and equitable distribution of responsibility among member states, brought in by Article 80 TFEU, has been specifically difficult to enact. In the 2015-2016 crisis, resettlement efforts for asylum seekers from frontline states such as Greece and Italy to other EU nations by way of binding quotas were confronted with strong resistance from several member states, most notably those of Central and Eastern Europe. The Dublin system, traditionally allocating responsibility to process asylum claims to the state of first entry, has disproportionately fallen on border states. This has resulted in circumstances where these states have sometimes been reluctant or even incapable of applying EU standards, with the consequence of substandard reception conditions and slow asylum processes. The 2020 New Pact on Migration and Asylum is the European Commission's most recent effort to meet these challenges by reforming the EU migration and asylum system comprehensively. The Pact sets out a compulsory but adaptable solidarity tool, pre-entry checks, streamlined asylum procedures, and enhanced external partnerships. Nevertheless, differences among member states over compulsory relocations and responsibility-sharing persist to hinder progress towards implementing these reforms. The underlying issue of how to reconcile national

sovereignty in migration issues with the necessity for EU-level coordination continues to elude consensus, a function of deeper disagreements over European integration and identity.

Policy Appraisal

The EU's asylum and migration policy has had some impressive successes. The creation of common standards in the CEAS has raised the benchmark for refugee protection throughout the EU. Frontex has improved the coordination of border management operations and technical assistance to member states. External partnerships have assisted in lowering irregular arrivals, with figures declining from a high of more than 1.8 million irregular border crossings in 2015 to about 130,000 in 2020, though figures have picked up again more recently. But large gaps in implementation remain. Accounts from the European Union Agency for Fundamental Rights (FRA) and human rights groups still record discrepancies in the treatment of asylum seekers across the EU. Recognition rates for asylum seekers of the same nationalities still differ significantly between member states, implying that the prospects of an asylum seeker rely not only on their case but on where they seek it. For example, in 2021, recognition rates for Afghan asylum seekers varied from more than 90% in certain member states to less than 30% in others. Likewise, reception conditions are extremely varied, ranging from good accommodation and care in some states to overcrowded camps with inadequate services in others. The success of the Dublin system is still in doubt. Despite several reforms, the system still puts an unfair burden on states at the external borders of the EU. This has led to instances where such states might resort to pushbacks (returning migrants across a border without proper process) or let asylum seekers proceed to other member states without registration, compromising the integrity of the system. These secondary movements of asylum seekers within the EU continue, with numerous migrating to those countries where they feel more favorable prospects or have family ties, irrespective of Dublin regulations.

Policy Gaps

One of the fundamental weaknesses of the EU's immigration policy is that there are not enough adequate legal migration pathways. The EU has programs for high-skilled migrants, seasonal workers, and students, but they are of too limited a duration to absorb labour market requirements and migratory pressures. Due to inadequate legal avenues, individuals who are seeking better economic opportunities or reunification with relatives might resort to illegal migration or misuse of the asylum procedure.

This emphasis on deterrence and the privatization of border control has given rise to serious human rights issues. Critics believe that collaboration with such states as Libya could bring

about the severe imprisonment of migrants. Increased border security has directed migrants to use increasingly perilous channels, with an attendant risk of death in the Mediterranean and Atlantic. According to the International Organization for Migration (IOM), more than 25,000 migrants have died or vanished at sea in the Mediterranean since 2014. These experiences reveal the humanitarian implications of policy concerns centred predominantly on lowering irregular numbers over secure migration. The EU asylum system is also challenged in responding to new types of displacement not explicitly covered by the 1951 Refugee Convention, including those displaced by the impacts of climate change or generalized violence as opposed to individual persecution. The lack of options for those who do not meet the criteria for refugee status but who might still have strong humanitarian grounds not to be returned to their countries of origin is another policy gap.

Broader Context

The EU's migration policy has to be understood against the global trends of international migration and the politics of the continent. Through mid-2022, the UNHCR estimated an excess of 100 million forcibly displaced individuals worldwide, a record. Conflict, political turmoil, economic disequilibria, and environmental degradation continue to motivate migrants towards Europe, which suggests migration pressures will remain despite EU policy.

Migration is now a very politicized topic in Europe, with anti-immigration parties becoming mainstream. Restrictive policies are generally considered voter-friendly, making it difficult to implement more balanced approaches. The COVID-19 pandemic resulted in travel restrictions, which reduced the entry of asylum seekers into Europe while highlighting Europe's dependence on migrant labor in crucial sectors.

Case Study: The Evolution of Migration Routes and Responses in the Central Mediterranean

The Central Mediterranean migration route, mainly from Tunisia and Libya to Malta and Italy, provides an insightful example of how EU migration policies have changed and their effects on migration trends and human experiences.

Background and Context

The Central Mediterranean has historically been a principal migration pathway to Europe, specifically for Sub-Saharan Africans and, to a lesser degree, migrants from the Middle East and Asia. Italy witnessed considerable arrivals through this route even before the 2015 crisis, with serious humanitarian crises taking place in 2013 and 2014. The failure of the Libyan state

after the 2011 intervention produced circumstances where human trafficking networks might thrive, taking advantage of desperate migrants seeking to enter Europe. Before 2014, Italy had its sea rescue mission named "Mare Nostrum," which was initiated in response to the October 2013 Lampedusa shipwreck in which more than 360 migrants perished off the Italian island. Mare Nostrum rescued thousands of lives but was criticized by some EU nations for reportedly generating a "pull factor" that induced greater numbers of migrants to try to make the perilous journey. A lack of EU assistance and budget restrictions led Italy to close Mare Nostrum in October 2014.

EU Policy Response

The EU's initial reaction was to substitute Mare Nostrum with Operation Triton, which was commanded by Frontex.

Although with a smaller operation area and budget, Triton allocated more resources to border control than search and rescue. The change coincided with a sharp increase in drownings in the first six months of 2015, which was condemned by humanitarian groups.

With more immigration, the EU took a more holistic approach. The main factors were:

1. Increased search and rescue capabilities: After the devastating shipwrecks in April 2015, the resources for Operation Triton were enhanced. A new operation was initiated by the military (EUNAVFOR MED, later renamed Operation Sophia) aimed at disrupting the smuggling networks.
2. The EU has trained the Libyan Coast Guard to intercept and bring back migrant vessels to Libya. Human rights groups have documented serious abuses in EU-backed prison camps in Libya, even as conditions were claimed to be improving.
3. Interaction with origin and transit countries: The EU Trust Fund for Africa financed projects in Niger, Chad, and Ethiopia to respond to migratory challenges and enhance border control.
4. Internal measures: The EU attempted to relocate asylum seekers from Italy to other member states by using regional relocation as a temporary mechanism set up in 2015. But action lagged behind objectives because of resistance from many member states.

Impact and Outcomes

These policies have generated mixed outcomes. The Central Mediterranean route witnessed a sharp decrease in arrivals between 181,000 in 2016 and 11,500 in 2018 but has since increased again. However, humanitarian issues have continued. While routes became riskier and rescue capacity decreased, the fatality rate per attempted crossing increased. The UN and human rights groups have documented extensive human rights abuses in Libyan detention camps, such as torture, rape, and forced labour. The policy of supporting Libyan interceptions has been

particularly controversial. In 2021, the Libyan Coast Guard brought back more than 32,000 migrants to Libya, where they were held in poor conditions. Legal challenges have been lodged with the European Court of Human Rights, arguing that EU support for these repatriations violates the principle of non-refoulement, which prohibits expelling people to places where they are subject to persecution or substantial harm.

Conclusion

The EU's migration policy aims at a common response to intricate migration issues, including common standards, border management, and external cooperation. However, uneven application, political differences, and the conflict between security and humanitarian interests heavily undermine its effectiveness.

Future challenges are to adjust to changing migration flows (climate change, demography), address causes in development and conflict prevention (calling for long-term commitment), and ensure security vs. human rights commitments. The actions of the EU have international implications, affecting international governance of migration and refugee protection; successful management could positively affect Europe demographically and economically, while failure could erode its cohesion and global reputation. Astonishing success depends largely on public and political support for a well-balanced solution that recognizes the challenges as well as the opportunities. The EU has to manage these nuances in order to develop a sustainable and humane migration system.