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국제학석사학위논문

Switzerland's State Response on the  
European Refugee Crisis 2015

Identification of Restrictive Policy Measures

2015년 유럽 난민 사태에 대한 스위스 정부의  
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**Identification of Restrictive Policy Measures**

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# **Switzerland's State Response on the European Refugee Crisis 2015**

Identification of Restrictive Policy Measures

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## Abstract

# Switzerland's State Response on the European Refugee Crisis 2015 Identification of Restrictive Policy Measures

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During the year 2015, over 1.3 million asylum applications were filed in Europe, almost double the number of applications in 2014. Likewise, in Switzerland, the asylum applications doubled by 2015 and reached a high of 39,523. According to a broad literature body, such an increase of asylum applications can lead, in theory, to a more restrictive asylum policy. Therefore, this study evaluates the Swiss state response in terms of restrictiveness and deterrence measures. To accomplish this, Switzerland's actions concerning the refugee crisis are evaluated using Gibney and Hanson's (2003) theory on restrictive state measures. The findings show significant reactions in the categories of: legal changes, cooperation, and border protection. Breaking down the responses into restrictive and positive answers is less conducive however, since some of the categories contain both restrictive as well as positive measures. Overall, it can be observed that Switzerland's in-country measures are mostly positive measures - like the amendment of the asylum procedure - while the adopted pre-entry measures are restrictive. The latter includes a fortification of national as well as European border protection.

**Keywords:** Refugee Crisis, Europe, Switzerland, Asylum, Restrictive Asylum Policies, Deterrence Measures

**Student ID.:** 2016-25050

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## List of Abbreviations

|          |  |
|----------|--|
| AU AsylA | Austrian Asylum Act  |
| AsylA    | Asylum Act [Switzerland]   |
| APD      | Asylum Procedure Directives  |
| BMI      | Bundesministerium für Inneres [Austria]                              |
| EC       | European Commission  |
| ECHR     | European Convention on Human Rights                                  |
| ECtHR    | European Court of Human Rights                                       |
| EU       | European Union   |
| FDFA     | Federal Department of Foreign Affairs [Switzerland]                  |
| FDJP     | Federal Department of Justice and Police [Switzerland]               |
| FMA      | Free Movement Agreement  |
| FNA      | Federal Act on Foreign Nationals [Switzerland]                       |
| IOM      | International Organisation for Migration                             |
| JD       | Ministry of Justice and Public Security [Norway]                     |
| MENA     | Middle East and North Africa   |
| OHCHR    | Office of the High Commissioner for Human Rights<br>(United Nations) |
| RP       | Resettlement Program   |
| SDC      | Swiss Agency of Development and Cooperation                          |
| SEM      | State Secretariat for Migration [Switzerland]                        |
| SVP      | Swiss People's Party   |
| UDHR     | Universal Declaration of Human Rights                                |
| UNHCR    | United Nations High Commissioner for Refugees                        |

## **1. Introduction**

According to Eurostat (2017), the numbers of asylum applications in the EU-28 member states increased by more than 200 percent over the last ten years. This trend reached a new high in the year 2015, which challenged the European politicians enormously and which, subsequently, led to the name the ‘European refugee crisis’. In 2015, 911,000 refugees arrived at the European borders and estimations conducted by the United Nations High Commissioner for Refugee (UNHCR, 2015) assume 3,500 individuals to have lost their lives on the journey. Other sources even speak of 1.3 million asylum applications that have been filed in Europe in the year 2015 (Connor, 2017). Evidently, the amount of arrivals was the highest noted since the Second World War (WWII). Such numbers encouraged the public and political debate on the handling of the crisis among all European countries as well as on the level of the European Union (EU). Clearly, not all the countries in Europe have been affected by the crisis to the same degree. Whereas the number of asylum requests increased by 822 percent from 2014 to 2015 in Finland, Croatia registered a reduction of 63 percent in the same time period (Eurostat, 2016). In turn, in Switzerland the applications nearly doubled and in Austria the number tripled. However, the sudden influx of such an elevated number of refugees exerted high pressure on countries, as most of them were

relatively unprepared. A further challenge posed in this regard is the lack of a European solution, one which has not been decided on as of yet. This is despite the EU's attempts to harmonise the legislation among the member states for some years. Consequently, the reactions amongst and within the countries differ widely. Whilst the German chancellor Angela Merkel reacted with the controversial 'Wir schaffen das' speech and a 'refugees welcome' policy, other countries hit the headlines for more restrictive policies, as for example, countries such as Hungary or Poland who promoted a strict 'zero refugee' policy.

Overall, research has shown however, that there is a strong tendency towards more restrictive asylum policies which are implemented on a national level. This movement has been visible with actions such as the erection of fences, the reinstatement of border control, as well as the adoption of restrictive legal changes and the application of deterring measures. In this context, scholars argue that a mass refugee influx triggers such state reactions. Nevertheless, the factors that impact national policy decisions are multiple and intertwined. With regards to the state response on the crisis, the literature particularly focuses on striking examples such as Germany, Hungary and Greece. Furthermore, scholars tend to focus upon the asylum approaches on a EU level as well as the national level of the EU member states.

Contrariwise, relatively little information can be found on the response of non-EU member states, such as Switzerland for example. Yet, Switzerland, is after all a European country which is dependent on its neighbours as well as associated to different EU regulations and agreements; and has therefore to accept its share of responsibility. Furthermore, even as a non-EU member state, Switzerland's actions may impact a joint European asylum approach to a certain degree. Hence, it is of high interest to analyse how non-EU member states respond on a crisis such as the one in 2015.

## **1.1 Objective**

The general responses to the refugee crisis 2015 of the EU countries have been widely discussed, analysed and criticised. Therein, a tendency towards a more restrictive asylum procedure among the majority of the European countries has been identified. Due to a lack of literature, which grapples with implementations of non-EU member states such as Switzerland, this study aims to examine the state response of Switzerland in regard to the European refugee crisis in 2015, as well as to test the measures applied referring to a possible increase in restrictiveness.

The formulation of refugee rights and asylum policies is shaped by numerous factors and highly depends on the political scene of the nation and the way a country reacts to political pressure. Previous research has shown that the most common response to a high inflow of asylum seekers is sharp restrictions in refugee rights as well as the adoption of various deterrence measures. This paper is therefore interested in the question of: to what degree has Switzerland applied restrictive asylum policies in response to the crisis in 2015? Furthermore, the motivations and the aims of the possible changes within the asylum law will be analysed and put into the context of the crisis.

An end to the refugee flows is not in sight. The violent situation in the Middle East is not likely to be solved soon, neither is the war in Syria. Repressive governments in Africa have been in power for years and will not resign their power in the near future. Furthermore, the factor of climate change, and its resulting refugees, increases awareness and will surely be of concern to politicians in the years to come. Hailbronner (1998:198) summarises the future of the mass refugee movements as follows:

*“There is hardly any indication that the economic, social and political circumstances causing mass refugee movements will improve in the near future. In*

*all likelihood, demographic factors as well as political, religious and ethnic conflict will continue to create a massive danger of large refugee movements.”*

Therefore, it is essential to understand the mechanisms of policy making in the context of mass movements of refugees, in order to create an effective and humane approach to handle such crises. In this context, various authors have analysed the reaction to the refugee crisis by different EU member states and often criticised it heavily. Inter alia, a lack of solidarity and lack of willingness to cooperate was put forth. In a situation that required fast acting and collaboration, the EU member states focused on national interests instead, and were partly not willing to invest in the search for a common solution. Additionally, human rights organizations and refugee help organizations sharply criticised domestic refugee policies as well as the abusive treatment of asylum seekers. The European Union, as well as many other European countries, have a long humanitarian tradition. They present themselves as the representatives of human rights as well as role models for peaceful cooperation among countries. The management of the European refugee crisis in 2015 challenged both statements.

Hence, it seems central to conduct research in the field of state responses on a crisis, more precisely on a mass refugee influx, in order to eventually deduce an adequately humane and fair approach to cope with the occurrence of refugee crises and large refugee inflows.

## **1.2 Methodology**

After having discussed the relevance of the topic, the methodology of the study will be revealed in this section. In order to answer the research question elaborated in the previous section, there are two different approaches applied. As a first step, a literature review based on relevant secondary sources is conducted, in order to identify the policy changes of different sectors. Therefore, the theoretical framework of this paper is built on existing literature conducive to (1) domestic and international level state responses, and (2) factors that impact legal amendments and their consequences in response to crises. Due to its comprehensiveness and the relevance, the article of Gibney & Hansen (2003) is considered as central basis for this work.

In a second step, a normative analysis of Switzerland's asylum policy changes is conducted based on the Gibney & Hansen's theory on state responses (2003). Therefore, information is retrieved from national databases, legal documents and

official statements. By the means of the comparison of theory and implementations, policy changes are identified, which in turn, allows us to identify eventual restrictions or deterrence measures. To facilitate the classification of the restrictive character of changes, certain amendments will be compared to changes made by particular European countries.

The analysis of the policy changes is limited to the timeframe of mid-2015 until mid-2017. The beginning of this period was marked by a steep increase of asylum applications that lasted for a considerable time. Although in Switzerland the applications decreased during 2016, the total number was still higher than before, both in Switzerland as well as in Europe. Hatton (2004) emphasises that the application number of neighbouring countries can have an additional impact on asylum policies. Furthermore, the year of 2017 will be taken into account as policy enforcement and implementation may be subject to delays. Throughout the paper, the term *refugee crisis 2015* will refer to the European refugee crisis. Furthermore, the paper assumes the validity of the term for the Swiss context.

Out of non-EU member states, Switzerland is analysed because of its relatively high increase of asylum application and its geographical location in the centre of Europe. Compared to Norway for example, Switzerland received twice as many asylum applications during the years 2015 and 2016. Switzerland's position

situates it in the centre of the action and in direct proximity to popular immigration routes such as the Balkan or the Centre Mediterranean routes.

### **1.3 Outline**

To investigate the research questions, existing literature on the subject of policy decisions in response to mass refugee influxes are presented. Therein, a brief overview on the European asylum policy development and the identification of a trend is given. Subsequently, the factors impacting policy decisions as well as the implications of the restrictive asylum policy changes are discussed.

The third part of the paper focuses on the presentation of relevant terms and background knowledge, including legal terms as well as specific definitions applied in the paper. This includes the discussion of the origin and the course of the refugee crisis. Additionally, a historical outline of the refugee flows to Switzerland is given, and the development of the Swiss asylum policy is presented.

In order to evaluate the state response of Switzerland, in section four, the policy amendments are compared to the theoretical framework established previously. There, the main basis is established by Gibney & Hansen (2003). Finally, the findings will be concluded in section five.

## **2. Literature Review**

Existing and relevant literature in the context of asylum policies in Europe as well as state responses in crisis situations are collected and evaluated in this section. The analysis of the paper will be conducted based on this framework. Therefore, the factors which influence the asylum policy will be discussed as a first step. Secondly, a classification system indicating restrictive policy decisions is presented. Finally, the issues caused through the implantation of restrictive and deterring measures are revealed.

### **2.1 Factors Influencing the Asylum Policy**

Among scholars, there is a broad consensus that European countries adopted progressively restrictive policies and deterrence measures in the last thirty years (Hailbronner 1998; Joly 1996; Boswell 2000; Gibney & Hansen, 2003; Hatton 2004; Gammelton-Hanson 2014). Despite the variation in refugee and asylum policies across Europe, a pattern of restriction and suspicion can be recognised (Bloch & Levy, 1999). This movement arose in the 1980s with the increasing importance of asylum on the political agenda (Hatton, 2009).

The explanatory factor of the toughening asylum policies used by many researchers is a significant increase in number of asylum applications (Teitelbaum, 1984; Bloch & Levy 1999; Gibney & Hansen, 2003; Feller, 2006; Hatton, 2009). According to the data presented by Hatton (2009) the number of asylum applications in developed countries increased from less than 200,000 annually in the early 1980's, to over 850,000 by 1992. Against this background, he found evidence that this increase led states to respond with tightening the asylum procedures in order to reduce the number of asylum applications (ibid.).

In contrast, Ivarsflaten (2005) uses culture and identity concerns, in order to explain augmented restriction in refugee approaches and argues that these factors even preponderate economic concerns. Referring to her, the citizens are worried about disturbance of nation unity as well as preservation of the national language and the prevalence of religion and national traditions (ibid.). Such concerns are often enhanced by populist right-wing parties and their promotion of a restrictive immigration agenda (ibid.). Levy (2005) and Luedtke (2009) agree on the impact of right-wing parties in the asylum policy discussions. However, they link the concerns strongly to national security. Levy (2005) considers the far right to be able to use the threat and fear of terrorism, in order to pressure Europe into a restrictive, intolerant direction. Events such as 9/11 further facilitate those parties

in reaching their goal (ibid.). Also, for Feller (2006), the aspect of security gained progressively on importance in the context of shaping asylum policies and places the actual protection of refugees in the back seat. Apart from security concerns, she identifies three other factors connected to restrictive policies, namely, (1) national identity, (2) social harmony and (3) economic progress (Feller, 2006).

Undoubtedly, all of these factors are relevant as variables in the increased restrictiveness in the asylum policies. Nevertheless, their true impact is only induced in combination with a considerable inflow of refugees. In other words, a small group of refugees can neither threaten national identities nor the national economy. Reactions are triggered by large-scale arrivals of asylum seekers, which can be perceived as a “threat to political, economic or social stability” and therefore, may provoke a hostile and violent attitude in the host country (Feller, 2006:514). In that sense, Hatton (2004) describes deterring EU policies, as a defence strategy to minimize the number of asylum applications. Thielmann (2006) agrees and ascribes the asylum policy the function to regulate and limit the amount of arrivals.

## 2.2 Classification of Restrictive Policies

Having discussed the political mechanism in limiting the stay of refugees or preventing their arrival, this section attempts to conceive the notion of ‘restrictive’ in the context of asylum policy.

There is a broad consensus among researchers that in general the development of the common EU asylum policy yields to more restrictive asylum regulations within the EU member states (Joly, 1996; Hatton, 2004; Levy, 2005; Luedtke, 2009). However, while Luedtke (2009) finds that the EU immigration law provides its member states incentives to become more restrictive on a national level, Hatton (2004) argues that the EU agreements and resolutions themselves contain restrictive provisions, as it is for example, the London resolution (1992). By contrast, Kaunert & Leonard (2011:3) state that “[...] the EU asylum cooperation has led to an overall increase in protection standards for asylum-seekers and refugees”. They, however, fail to include important deterrent measures such as increased border protection.

Likewise, researchers identify a wide range of restricting and deterring measures on the national level. Therein, Gammeltoft-Hanson (2014) uses the terms *physical* and *legal* when referring to deterrence policies. According to him, legal

deterrence policies aim to restrict access, or to justify non-admission to asylum procedures (safe third country, safe country of origin). Furthermore, physical measures are applied to prevent asylum seekers from reaching the intended territory, such as border controls as well as the interception of migrant boats on the high sea (ibid.). For Böcker & Havinga (1998) two principle policy instruments exist: on the one hand, the *pre-entry* procedures or containments, which include visa controls, carrier sanctions and pre-flight checks in countries of origin or transit, and on the other hand, *in-country* asylum procedures or deterrence measures, which involve accelerated decision making, limited appeals procedures, detention and restricted access to welfare entitlements. The arguments of Koser (1997) are similar in regard to pre-entry and in-country measurements. However, according to him, the interplay of the policies and asylum seekers differ from the view given by Böcker & Havinga (1998). Herein, Koser (1997) describes the instruments as *direct* and *indirect* interactions, where the direct refer to the prevention of entry into the Country, and the indirect, to the post-entry deterrents.

The comprehensive classification is presented by Gibney & Hansen (2003) in the article *Asylum policy in the West: past trends, future possibilities*. The authors describe measures applied by states aiming to minimize and control the arrival of asylum seekers. The state responses are summarised in four main categories and thirteen subgroups, depicted in Table 1.

|   |   |
|---|---|
| Measures to prevent access to state territory | Carrier sanctions                         |
|   | Pre-inspection regimes                    |
|   | Interdiction to access national territory |
| Measures to deter arrivals                    | Limitations on employment                 |
|   | Limitations on welfare                    |
|   | Detention and restrictions on residency   |
| Measures to limit stay                        | Exclusion from the asylum process         |
|   | Speeding process of determination         |
|   | Restricting grants of permanent residence |
|   | Removals and deportation                  |
| Measures to manage arrival                    | Refugee decision-making                   |
|   | Resettlement programs                     |
|   | Burden (responsibility) sharing           |

**Table 1** - Source: Gibney & Hansen (2003); compiled by author

***Measures to prevent access to state territory:*** The first category consists of legal and physical preventative measures denying asylum seekers access to national territory. This includes carrier sanctions and pre-inspection regimes, both measures designed to prevent illegal migration. Carrier sanctions involve inter alia the penalties airlines face when transporting persons without entry

permission. Moreover, pre-inspection regimes encompass a variety of remote controls. These controls demand a pre-screening of persons in a foreign country, amongst others through the posting of domestic immigration gates abroad. Furthermore, the interdiction of entry is an important tool to avert access, for example via push backs and repulses of refugees.

***Measures to deter arrivals:*** The second category is an instrument applied to reduce the attractiveness of a country by decreasing the benefits linked to the refugee status. Limitations on employment and on welfare payments, as well as detention and restrictions on residency fall in this category. The latter obliges asylum seekers to live in assigned centres, often situated in less popular locations.

***Measures to limit stay:*** The goal of the third category is to return the refugees to another state or their country of origin as fast as possible. Therefore, states introduce concepts to exclude asylum seekers from the process. Through continuous reforms of the asylum system, determination procedures are accelerated. Additionally, the creation of a weaker form of the asylum status, the so-called “temporary” or “subsidiary” protection allows the time-wise limitation of residence permits of asylum seekers. Finally, legal regulations are introduced in order to facilitate the deportation of rejected asylum seekers.

*Measures to manage arrival:* The fourth category contains ‘positive’ measures - actions which fall under this category are not of restrictive nature, but, are rather part of an efficient solution approach. Among other goals, they either aim to improve the asylum procedures or to gain control over the number of asylum applications. The latter scenario may be applied in liaison with resettlement program participation or with cooperative behaviour such as burden sharing.

### **2.3 Problems of Restricting and Deterring Measures**

As discussed above, the aim of restricting asylum policies often includes the reduction of asylum applications within a country. However, the implications are ambiguous, and the mechanisms sophisticated, leading to multiple issues. Against this background, a close cooperation between the concerned states is suggested, in order to solve a refugee crisis successfully (Boswell, 2000; Langford, 2013). In this context, Thielmann & El-Enany (2010) criticise the adoption of restrictive policies by appraising it as an act of transferring the burden to other countries. Hence, they describe the increase of restrictiveness in asylum policies as highly non-solidary and uncooperative (ibid.).

A second issue commonly addressed is the increase of irregular immigration<sup>1</sup> as a consequence of restrictions in immigration policies. Koser (2000) identified a direct correlation between restrictions in asylum policies and trafficking. Moreover, the author refers to the threat of a vicious cycle triggered by the increase of restrictiveness in the asylum policy, which in turn causes the attractiveness of trafficking to rise (ibid.). This leads again to stricter border control and further restrictive measures (ibid.). Trafficking and smuggling becomes then the only possible way to reach Europe and to claim asylum, what exposes refugees to great danger (ibid.). Similarly, Feller (2006) argues that the increase in deterrence policies limits the chance for refugees to file an asylum application, which pushes them to turn to smugglers and traffickers.

Thirdly, scholars identified restrictive asylum policies often to be implemented at the expense of human rights and refugee protection (Kjaerum, 2002; Edwards, 2005; Levy, 2005; Feller, 2006; Lavenex, 2006). Kjaerum (2002), reaffirms that the practices of European states are directed towards deterrence measures. Moreover, the author finds that constraints were continuously imposed on the

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<sup>1</sup> Definition suggested by the International Organisation for Migration (IOM, 2011:77): “Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. [...] From the perspective of destination countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country.”

refugee law, a process that he defines as “clipping the wings of refugee law” and which he fears will soon be applied to human rights law as well (Kjaerum, 2002:535). Furthermore, he criticises Europe’s perception of the human rights and the refugee law as separated bodies and demands instead the use of both bodies as supplements. Likewise, Levy (2005) identifies situations in which the foundation of the 1951 Refugee Convention was challenged. Established concepts as well as rights and responsibilities related to refugees are becoming increasingly weakened and vague (Feller, 2006).

Conclusively, the literature in the field of asylum policies mainly holds the view that massive refugee influxes often prompt states to respond with an increase in restrictiveness in the national asylum policy. This mechanism attempts to reduce the overall number of asylum requests. Besides factors such as national identity, social harmony and economic progress that impact decisions on the revision of the asylum law, the scope of arrivals is clearly identified as a central aspect (Feller, 2006). Against this backdrop, one would expect that the European refugee crisis 2015, where asylum applications in Switzerland doubled, led to a toughening of the Swiss asylum policies. In order to validate the assumption, the next section aims to analyse the latest asylum policy changes implemented in Switzerland.

## **3. Background**

### **3.1 Legal Background**

#### **3.1.1 Important International Legal Documents**

##### *Universal Declaration of Human Rights*

The UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948. Its purpose is to establish a foundation of human rights and to oblige states to respect the same. Several legally binding treaties have originated based on the UDHR (OHCHR, 2017). As the title already suggests, the declaration is based on the principle of universality, meaning that it is valid for everyone (UDHR Art. 2). Its regulations announce, amongst others, that everyone has the right to life (Art. 3), to possess a nationality (Art. 15), of freedom of religion (Art. 18) and speech (Art. 19). The UDHR also claims that people have freedom of movement domestically and internationally (Art. 13). Additionally, the UDHR emphasises that everyone has the right to seek and receive asylum (Art. 14).

##### *The 1951 Refugee Convention*

Based on the UDHR Art. 14, the 1951 Refugee Convention was created. Alternatively known as the “Convention and Protocol relating to the Status of

Refugees”, this document is one of the most important international tools regulating the protection of refugees. It entered into force on April 22, 1954 and is ratified by 145 state parties (UN High Commissioner for Refugees (UNHCR), 2017). One of its most important articles is Art. 1 that states the definition of the term ‘refugee’, which subsequently was adopted by numerous countries as well as international organizations. Furthermore, the convention outlines different legal obligations for the state towards refugees, such as freedom in religion (Art. 4), access to courts (Art. 16), and freedom of movement (Art. 26). Important international principles such as non-discrimination (Art. 3) and non-refoulement (Art. 33) are also included. The latter, in particular, plays a vital role in the refugee law; states are not allowed to return a refugee to a territory where his/her life or freedom might be in danger (Art. 33).

### **3.1.2 Important EU Legal Documents**

#### *European Convention for Human Rights*

In dependence on the UDHR the Council of Europe adopted 1950 the European Convention for Human Rights (ECHR), which came into force on September 3, 1953 (European Court of Human Rights (ECtHR), 2017). Regarding its content, it is fairly similar to the UDHR - it protects the right to live, to seek asylum as well as freedom from torture, of expression, of movement etc. However, the

ECHR, an international treaty, is legally binding to its member states. Within this framework, the European Court of Human Rights was established in order to hear breaches against human rights regulated by the ECHR and to write advisory opinions.

### *Schengen Agreement*

The Schengen Agreement regulates the abolishment of internal border controls as well as the harmonisation of visa policies within a specific zone in Europe. Ratified first by only five states, it quickly rose in importance when it was transformed into a Convention in 1990, accumulating more member states until it was incorporated into EU law in 1998 (European Commission (EC), 2017c). As of 2017, it counted 26 member states, wherein six EU members (Bulgaria, Croatia, Cyprus, Romania, United Kingdom, Ireland) are not part of the agreement, while four non-EU members (Iceland, Norway, Switzerland, Liechtenstein) are part of it (Schengen Visa Info, n.d.). As mentioned above, one main function of the Schengen Agreement is to maintain a zone where border checking only applies at the European external border. Nevertheless, the Schengen Border Code defines situations (“serious threat to public policy or internal security”) whereby the reintroduction of internal border control is acceptable (Regulation (EC) No 562/2006, Art. 23-25).

### *Dublin III Regulation*

The original Dublin Convention has been amended several times, since it was put into force in 1997, and since 2013, it is known as the “Dublin III Regulation” (Reg. No 604/2013). All EU states are members of the regulation, with the addition of Iceland, Norway, Liechtenstein and Switzerland (Federal Department of Foreign Affairs (FDFA), 2017). The objective of the regulation is to make the asylum process more effective by clearly defining which state is responsible for which asylum application and by helping circumvent what is known as asylum shopping (applying for asylum in different member states). There are three main criteria in determining this responsibility: (1) state of residence of family members (Art. 8-11), (2) state that issued the visa/residence documents (Art 12), and (3) state of first entry (Art. 1) (Reg. No 604/2013). Although the states are supposed to follow this hierarchy in determining responsibility of the application, Langford (2013:225) asserted that in most cases the “state of first entry” principle prevails. The Dublin Regulation has encountered harsh criticism claiming that it favours unequal distribution and places disproportional burdens on Southern countries (Langford, 2013; Selanec, 2005). It also turned out that the Dublin Regulation was not fit to overcome or to find a solution in addressing the refugee crisis. Consequently, to improve the Dublin Regulation, a proposal for a reform has been submitted (EC, 2016a).

## **3.2 Swiss Asylum Law**

### **3.2.1 Development of Swiss Asylum Law**

Switzerland is known as a humanitarian country. An image, that according to Parini (1997) is not necessarily true when it comes to the asylum system. Over the last fifty years, Swiss asylum policies have been reformed multiple times, and in many cases, the policies have become more restrictive.

The refugee policies during the Second World War were characterized by the “The boat is full.” speech of the former federal council, Von Steiger, when in 1942 Switzerland closed its borders and refused entry to refugees (Independent Commission of Experts, 1999). Asylum for religious prosecution, namely for the Jewish people, was not recognized (ibid). Furthermore, a codified and organised asylum system did not exist, and the border guards received chaotic and contradictory orders on whom to give permission to enter (ibid.). The refolement policy was rather scandalizing for the so-called humanitarian Switzerland. By contrast, the following years were marked with the willingness to improve the image (ibid.). Within that framework, Switzerland ratified the 1951 Refugee Convention in 1955 and in the following decades, refugees – primarily anti-communists – were readily accommodated (D’Amato, 2008). Reasons for the

more tolerant and welcoming policies up to the 70s were, amongst others, the small number of refugees, the cultural similarities of the refugees to the Swiss people, and the context of the cold war (Parini, 1997).

In 1981, Switzerland codified for the first time an asylum law, which reflected more or less its generous customs (D'Amato, 2008). However, in the late 1980s and the following years, the atmosphere changed, and xenophobia emerged (Holzer, Schneider & Widmer, 2000). One major reason behind this was the drastically increasing number of asylum applications (ibid.). After a steady number of around 2,000 applications per year during the 1970s, in the 1980s this number started to augment, and it eventually reached a high of over 47,000 applications by 1999 (Parini, 1997; SEM, 2017d). The event responsible for this high number of asylum seekers in the 1990s was the Balkan war. As Switzerland was not yet part of the Dublin Agreement, a high number of asylum applications came from asylum seekers rejected by EU countries (SwissInfo, 2000).

Consequently, increases in applications led to recurrent revisions of the asylum law throughout the 1980s and following years towards a more restrictive approach. This approach included acceleration of the asylum procedures, implementation of return of asylum seekers, as well as deterrence policies

(Brochmann & Lavenex, 2002). In this context, the “safe origin country” regulation was introduced in 1990. Later, due to the arrival of many refugees fleeing the Kosovo war, a number of regulations had already entered into force in 1998 (Parini & Gianni, 2005). And by 1999, a comprehensive revision of the asylum law took place with the goal to obstruct access to the asylum policy. As part of this comprehensive revision, the concept of ‘temporary protection’ was introduced. In the following years, partial revisions have occurred on a regular basis. This includes the revision in 2006, that concluded that rejected asylum seekers are excluded from social service, the revision in 2009, which was voted and accepted by 2013 due to a referendum, contained many restrictive elements such as the limitation of access to asylum. Three years later, the asylum law revision 2016 was adopted, widely reforming the asylum procedures.

### **3.2.2 Important Notions of the Swiss Asylum Act 1998 (Status as of 1 October 2016)**

*Definition Refugee:* The definition of the term *refugee* in the Swiss asylum law is derived from the 1951 Refugee Convention; Persons, that (might) have to face disadvantages for reasons like “race, religion, nationality, membership of a particular social group or due to their political opinions.” (Asylum Act (AsylA))

Art. 3.1). Disadvantages are further defined as “threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure”. Furthermore, this provision takes into account criteria exclusive to the female gender (AsylA Art. 3.2). Specifically excluded from the term *refugee* are persons that (might) face disadvantages because of deserting or refusing to join the military service (AsylA Art. 3.3).

*Filing an Application:* An application for asylum does not require a specific form (AsylA Art. 18). However, a person has to be on Swiss grounds or at the Swiss border, in order to be able to file an application (AsylA Art. 19.1<sup>bis</sup>). Special procedures are applied for applications submitted at the airport with the applicant possibly having to stay within the confines of the transit zone (AsylA Art. 22). After filing an application, applicants are usually assigned to a reception and processing centre. The authorities will then check if they are responsible for the case (AsylA Art. 21). In a next step, the preparatory phase begins, where information is collected on the origin of the applicant, his/her motives for asylum and the travel itinerary (AsylA Art. 26).

*Non-responsible:* Switzerland will not examine an application if there is a safe third country the applicant can return to or move on to, because he/she holds either a visa from that country or is a resident, has close relationships in that

country, or the third country is responsible to conduct the procedure. However, the principle of non-refoulement must be respected in the third country (AsylA Art. 31a). Furthermore, Switzerland does not examine applications for which another Dublin state is responsible.

*Temporary Protection:* Switzerland does not have the subsidiary protection customary in other European countries. Instead, the concept of “temporary protection” is applied. In case of a “serious general danger” such as (civil) war or general violence, Switzerland can grant “temporary protection”, which can be withdrawn once the danger is over (AsylA Art. 4). The Federal Council decides on the criteria for temporary protection (AsylA Art. 66). People with a status of temporary protection usually enjoy less rights than people with asylum status (Aida, 2016).

*Dismissal:* In the case that an application has been rejected or dismissed, an applicant has to leave Switzerland (AsylA Art. 44).

*Family Unity:* The family asylum preserves family unity. Therefore, spouses/registered partners as well as minor children receive refugee status, if one family member is granted asylum (AsylA Art. 51.1). If family members are abroad, they have a right to enter Swiss territory (AsylA Art. 51.4).

*Exceptional Situation:* Switzerland has a special provision that allows to restrict asylum grants if Switzerland's capacity limits are reached, for example due to a large influx of asylum seekers (AsylA Art. 55).

### **3.3 Factual Background**

At the end of 2015, 65.3 million persons were forcibly displaced worldwide, a number that exceeds even the post-WWII number of refugees (UNHCR, 2016). One main trigger of the refugee crisis 2015 is said to be the Arab Spring. The Arab Spring occurred in 2011 and was the somewhat violent rise-up of the population against the government in countries of the Middle East and North Africa (MENA) region. The protests took different forms depending on the country and some are long subsided while others are still going on. The latter is the case in Syria, where the protests turned into a violent civil war. The Syrian war has so far produced over five million refugees as well as 6.3 million internally displaced persons (UNHCR, 2017b). Combined with Afghanistan and South Sudan, Syria accounted for 55 per cent of the refugees worldwide in 2016 (UNHCR, 2017b). Among the top ten refugee countries of origin were also Somalia, Sudan and the Democratic Republic of the Congo (ibid.).

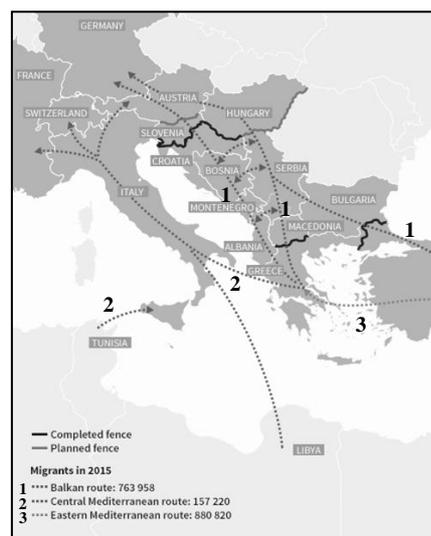
During the earlier stage of the refugee wave, people would seek refuge in neighbouring countries. As a result, Turkey, Pakistan, Lebanon, Iran, Ethiopia and Jordan, became the major refugee hosting countries (UNHCR, 2016). However, because of continuing flows of refugees, the refugee camps became crowded and consequently, the overall living standards worsened. Hosting countries' resources and infrastructure reached the capacity limit, as it was the case in Jordan (UNHCR, 2015b). In some countries refugee policies and rights are very restrictive, therefore, hindering integration into society and a way to move on (Norwegian Refugee Council, 2014). Against these circumstances, it is argued that the focus of many refugees shifted to Europe.

### **3.3.1 Refugee Flows to Europe**

In 2015, an unexpected large number of over one million refugees arrived in Europe (Eurostat, 2016). 50 percent of the persons arriving were from Syria. Other nationalities included Afghanistan, Iraq, Eritrea, Pakistan, Iran, Nigeria, Somalia, Morocco, Sudan (UNHCR, 2015a). From spring onwards, the arrival numbers increased until they reached a high in October with over 200,000 arrivals within one month. Following this, the numbers decreased again - 856,700 asylum seekers landed during that year in Greece, 15,400 in Spain, 153,800 in

Italy (UNHCR, 2016). The chaotic situation, especially in Greece and Italy, led many refugees to make their way up towards Northern European countries. Two popular destination countries were Germany and Sweden. There are various reasons behind refugees' choices of specific destination countries, these include family members and network availability, knowledge of destination countries, migration policies etc. (Spinks, 2013).

To reach the Northern countries, irregular migration routes were established. The best-known route was the Western Balkan route that led through Eastern Europe to Germany (Figure 1:(1)). Over 700,000 persons pushed through this route in 2015. Not as prevalent, but also important was the Central Mediterranean route (Figure 1: (2)), which



**Figure 1** - Source: SwissInfo (2016)

was crossed by 150,000 people (Frontex, 2017). After the closure of the Balkan route, it was expected that new routes would establish or that the Central route would gain in significance. Although a certain pressure was noted on the Central route, overall the refugee flows towards Europe decreased after the closure of the Balkan route (Frankfurter Allgemeine Zeitung, 2016).

The actions taken by some of the European countries attracted international attention. “The Refugee crisis is Humanity’s crisis” writes the New York Times alluding to the controversial attitude of Europe towards refugees during the crisis (Evans & Baumann, 2016). Resulting from this attention, an increase in human rights and refugee rights violations were observed during the refugee flows. Reports show that some asylum seekers suffered under arbitrary arrests, were denied shelter, food, water and health care (Office of the High Commissioner of Human Rights, 2015). In fact, recurring reports of violation of the ECHR Art. 3<sup>2</sup> “inhuman or degrading treatment” especially in detention centers were recorded. This included overcrowded facilities, sexual, physical or verbal abuse, mistreatment, deprivation of liberty (ibid.). Different countries have been accused of neglecting the enhancements of detention centres, amongst others, in Greece, Italy, Czech Republic and Hungary (U.S. Department of State, 2016). Some countries such as Poland and Slovakia, claimed to only accept asylum applications from Christian applicants thereby violating UDHR Art 2<sup>3</sup> “non-

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<sup>2</sup> ECHR. Art 3. «No one shall be subjected to torture or to inhuman or degrading treatment or punishment.»

<sup>3</sup> UDHR. Art. 2. «Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. »

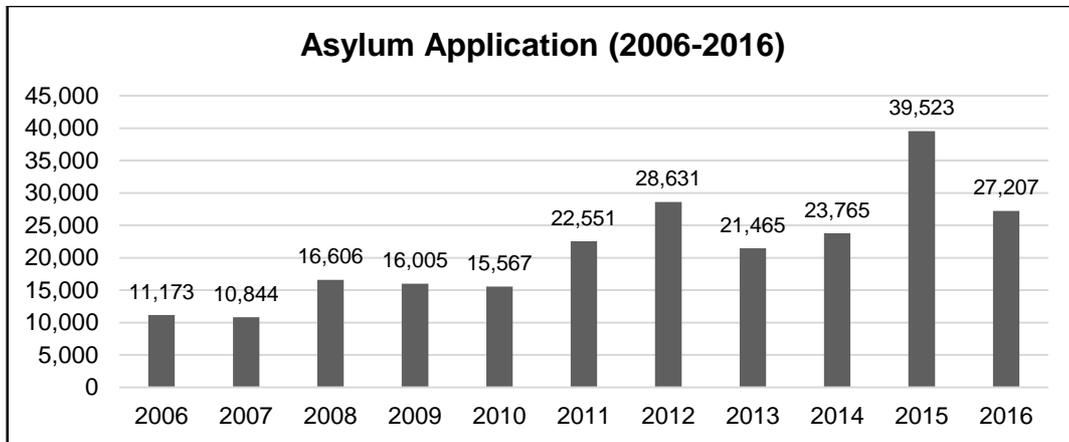
discrimination” and Art 14.1<sup>4</sup> “right to seek asylum” (Wasik & Foy, 2015). Other questionable actions on the part of European countries include for example the Czechs police former habitude to mark refugees with numbers on their skin, reminiscent of Nazi practices during the Second World War (Bilefsky, 2015) or Denmark’s adoption of the “Jewellery Law” which permits the seizure of refugees’ valuables and assets (Library of Congress, 2016).

### **3.3.2 Refugee Flows to Switzerland**

During the early 2000s, the refugee numbers were relatively low and amounted to between 10,000 and 17,000 applications per year, as Figure 2 shows. A sudden rise in applications occurred in 2011 and 2012 where a significant increase of especially North African applicants was noticed (SEM, 2011). The State Secretariat for Migration (SEM) forecasted, on the basis of insecurities created by the resurrections in the MENA region, that an increase in irregular migration would occur in the following years (SEM, 2011).

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<sup>4</sup> UDHR. Art. 14.1. «Everyone has the right to seek and to enjoy in other countries asylum from persecution.»



**Figure 2** – Source: SEM (2017b); compiled by author.

Yet, the number of applications remained stable for the following two years. In 2015, a new high since the Kosovo war in 1998 to 1999 was reached with almost 40,000 applications (SEM, 2016a). Especially from June 2015 onwards, the number of asylum applications increased sharply, until in November 2015 the highest monthly number with 5,691 applications was registered. The amount of applications decreased slowly during the following months. The SEM stated that although Switzerland was relatively “untouched” in comparison to other countries, it had also reached its capacity limits in autumn 2015 with 14,989 asylum applications (SEM, 2016a). Nevertheless, it was still possible to accommodate all applicants and register all new arrivals (ibid.). From a cumulative European perspective, Switzerland received 3 percent of total filed asylum applications across Europe (SEM, 2016b).

To reach Switzerland, the Central Mediterranean as well as the Balkan routes were used in similar proportions. Both paths have been crossed by between 12,000 to 14,500 persons in 2015 (SEM, 2016b). However, referring to the SEM (2016b), Switzerland was effectively a primary targeted destination country, only for persons using the Central Mediterranean route. In regard to the origin of the asylum seekers in 2015, Eritrea (9,966), Afghanistan (7,831), Syria (4,745), Iraq (2,388) and Sri Lanka (1,878) shaped the top five. Compared to the previous years, a drastic increase in applicants from Eritrea, Afghanistan and Iraq also took place (SEM, 2016a).

The average duration of applications handled in the first instance amounted to 278 days in 2015, compared to 401 days in 2014 and 258 days in 2013. Of 28,118 completed asylum applications, 53.1 per cent of the applicants received a positive answer, which in turn consists of asylum status (6,377) as well as temporary protection (7,787) (ibid.). 611 persons received the asylum status via a resettlement program (ibid.).

In 2016, the number of asylum applications dropped by 31 percent to 27,207. A remarkably high number of asylum applications were registered in January and February 2016. Pursuant to this, the monthly numbers decreased almost to the pre-crisis level. Switzerland's share of overall asylum applications filed in

Europe fell down to 2 percent (SEM, 2017b). This development is ascribed to the closure of the Balkan route during the end of 2015 and beginning 2016 as well as to the EU-Turkey agreement that stopped the refugee flows through Eastern Europe (ibid.). 31,299 asylum applications were processed in 2016. Thereof, 48.7 percent of the applicants received a positive decision (5,985 with an asylum status and 7,369 with temporary protection) (SEM, 2017g). 621 persons received the asylum status via a resettlement program (ibid.).

## **4. Analysis**

The aim of this section is to analyse the extent to which the refugee crisis in 2015 has led to an increase in restrictiveness in the asylum policy in Switzerland. Therefore, the changes in the Swiss asylum policy implemented since 2015 will be compared in reference to the Gibney & Hansen's (2003) theory on the State response. As discussed in chapter two, Gibney & Hansen (2003) identified four main measures, with thirteen sub-measures, which serve as basis for the evaluation. As a result of the appraisal, restrictive amendments and behaviour will be identified and evaluated. Please note, that sections in the Swiss asylum policies where no changes have been observed, or where the changes are irrelevant/minor, are not discussed in this chapter. The following table (*Table 2*) illustrates the relevant sections which will be observed in this study.

| Gibney & Hansen (2013)                        |  | Swiss Responses                                  |
|---|--|--|
| Measures to prevent access to state territory | Carrier sanctions                                | -  |
|   | Pre-inspection regimes                           | -  |
|   | <b>Interdiction to access national territory</b> | <b>Legal changes, Border protection measures</b> |
| Measures to deter arrivals                    | Limitations on employment                        | -  |
|   | Limitations on welfare                           | -  |
|   | Detention and restrictions on residency          | -  |
| Measures to limit stay                        | <b>Exclusion from the asylum process</b>         | <b>Legal changes</b>                             |
|   | <b>Speeding process of determination</b>         | <b>Legal changes</b>                             |
|   | Restricting grants of permanent residence        | -  |
|   | Removals and deportation                         | -  |
| Measures to manage arrival                    | <b>Refugee decision-making</b>                   | <b>Legal changes</b>                             |
|   | <b>Resettlement programmes</b>                   | <b>Participation resettlement programmes</b>     |
|   | <b>Burden (responsibility) sharing</b>           | <b>Participation burden sharing programmes</b>   |

Table 2 - Overview comparison theory with Swiss State responses

## 4.1 Measures to Prevent Access to State Territorial

### 4.1.1 Interdiction to Access Territory

*According to Gibney & Hansen (2003), states have introduced different measures in order to prevent asylum seekers from reaching national territory or waters. In case of breaching these measures, asylum seekers are sent back to their origin country, an off-shore territory or to a safe third country. Depending*

*on the case, a preliminary screening takes place, decreasing thereby the danger of breaching the non-refoulement principle (ibid.).*

As in many other countries as well, Switzerland has basic legal conditions under which an individual is allowed to enter the country. These conditions are combined in Article 5 (Entry requirements) of the Federal Act on Foreign Nationals (FNA) (FNA, 2017).

*Art. 5 Entry requirements*

*1 Foreign nationals who wish to enter Switzerland:*

- a. must have a recognised identity document for crossing the border and a visa, if required;*
- b. must have the required financial means for the period of stay;*
- c. must not pose a threat to public security and order or to Switzerland's international relations; and*
- d. must not be subject to a measure banning them from entry or an order for expulsion from Switzerland under Article 66a or 66a<sup>bis</sup> of the Swiss Criminal Code (SCC) or Article 49a or 49a<sup>bis</sup> of the Military Criminal Code of 13 June 1927 (MCC).*

*2 They must provide a guarantee that they will leave Switzerland if only a temporary period of stay is planned.*

*3 ...*

*4 The Federal Council shall determine the recognised identity documents for crossing the border.*

Up until 2013, Switzerland offered the possibility to file an application for asylum without having to be able to fulfil the entry requirements. Asylum applications could be filed abroad in a Swiss embassy (AsylA (Status of 01.01.2011) Art. 19). Yet, this possibility was abolished with the adoption of the

asylum act revision in June 2016 and replaced by the weaker humanitarian visa<sup>5</sup>. The embassy asylum was introduced in the Swiss asylum law in 1979 and remained in force until 2012. In 2012, the parliament voted in favour of an asylum revision, which included the abolition of the embassy asylum. Due to a referendum that was rejected by a popular vote in 2013 with 78.45 percent, the abolition was temporarily limited (Federal Department of Justice and Police (FDJP), 2013). By 2016 however, the Swiss embassy asylum was definitively abolished. With it, applying for asylum in Switzerland is only possible if the application is filed on Swiss grounds (AsylA Art. 19). According to Gammeltord-Hanson (2014) such restrictions to the access on the asylum procedure can be summarised as *legal* restrictions. Furthermore, Switzerland applied *physical* measures to hinder irregular migration in the form of border protection. As Switzerland is a member of the EU Schengen Agreement since 2008, and for air traffic in 2009 respectively, national border controls have been drastically reduced, and mostly abolished. With the increase in irregular border crossings during the refugee crisis in 2015, border protection moved to the fore again. A

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<sup>5</sup> “A humanitarian visa can be issued if a person’s physical safety is directly, seriously and tangibly threatened in his/her home country or country of origin. [...] The SEM issues this kind of visa for humanitarian reasons for a duration of 90 days. During the 90-day stay, the person entering the country can apply for asylum in Switzerland or request for temporary admission from cantonal authorities.” (Humanrights.ch, 2017). According to Humanrights.ch (2017) the acceptance rate was 3.7% from 2012 to 2013.

fortification of the national border protection was implemented. The Swiss border guard was reinforced by an increase in personnel as well as by the use of mobile control units on demand (Swiss parliament, 2015). Technical build-up came into operation with an increased use of drones to locate and prevent irregular immigration. Around 50,000 people illegally entering Switzerland were detected during 2016 (Schmidli & Zehr, 2017).

Such drastic measures have been criticised by various non-governmental organisations (NGO) such as Amnesty International and The Swiss Refugee Council, which claimed that in summer 2016, asylum seekers were frequently deported to Italy (European Council on Refugees and Exiles, 2016). The accusations included that minors as well as adults were brought back to Italy without a preliminary screening procedure, which would have been their rights (Amnesty International, 2016). The Swiss authorities denied the allegations and stated that the Swiss frontier is open to asylum seekers and that persons with the intention to file an application for asylum were and are redirected to a SEM reception centre by all means (Eidgenössisches Finanzdepartement, 2016).

In addition, the Italian authorities complained as the Swiss authorities responsible for the Southern border in the Ticino closed the frontiers during the nights for a period of six months in 2017, without prior communication to the Italian border

guard. Even amongst the Swiss border guards, concerns arose on the measure applied on the Southern border being rather an instrument of suppressing the symptoms instead of an actual solution (Schäfer, 2017).

Pursuant to the protection of the national borders, Switzerland engaged in the securitisation of the European external borders in order to prevent irregular immigration. According to the data of Frontex (n.d.), the Swiss contribution to the operating organisation, which protected the borders, increased by more than 200 per cent within two years. While the average contribution initially amounted to around €3 million per year, it increased to an amount of €4.6 million per annum in 2015, and in 2016 to just under €10 million (Frontex, n.d.). Besides the financial support, Switzerland augmented the stock of staff, which for instance was deployed in the rapid reserve pool<sup>6</sup> (Federal Council, 2016).

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<sup>6</sup> The rapid reserve pool is an agency that is easily and quickly deployable in different countries that experience pressure due to irregular migration.

## **4.2 Measures to Limit Stay**

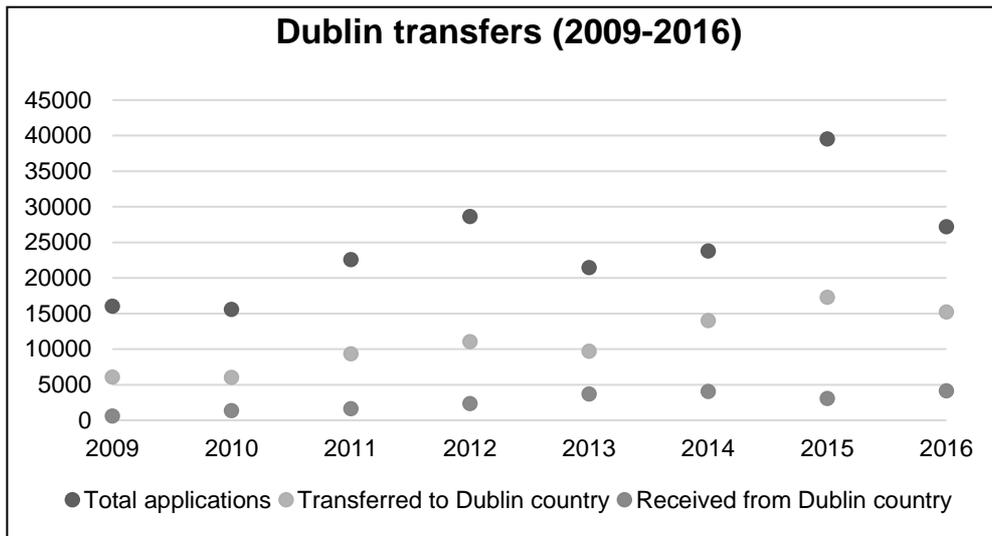
### **4.2.1 Exclusion from Asylum Process**

*By defining a range of conditions under which asylum seekers can be excluded from procedures for granting the right of asylum, states can expel these persons 'legitimately' (Gibney & Hansen, 2003). This includes the clause of the "safe third country" (ibid.). Another way is to refuse an application on grounds of deficits in technicality (ibid.).*

The concept of the *safe third country* mentioned by Gibney & Hansen (2003) describes that states may transfer refugees to a third country, if a set of conditions is fulfilled. These conditions include; firstly, refugee protection in the third country must be guaranteed. The refugee must be safe in regard to possible persecution, refoulment and treatment in violation of Article 3 ECHR (Asylum Procedure Directives: Directive 2013/32/EU (APD) Art. 38.1). Secondly, the refugee must have an existing connection to the third country and it has to be reasonable for him/her to go there (APD Art. 38.2).

In Switzerland, it is the Federal council that exercises discretion and thus decides whether a country is classified as safe third country or not (AsylA Art. 6a). Asylum seekers who entered Europe via a EU/EFTA member state, and/or have

also applied for asylum in one of the same, are subject to a special process under the Dublin regulation.



**Figure 3-** Source: SEM (2017d); compiled by author

Being simply surrounded by EU states, Switzerland greatly benefited of the Dublin regulation. This is reflected in the SEM (2017b) statistics from 2009 to 2016, Switzerland transferred 25'898 persons to other Dublin states, while it received only 4'443.

Before joining the Dublin association agreement in 2008, Switzerland was one of the few alternatives to the Dublin-area and registered a high number of asylum seekers refused by surrounding EU-countries accordingly. As depicted in Figure

3, Switzerland's requests to other states to accept asylum seekers increased over the timeframe. On average, 45 percent of asylum applications were categorised by Switzerland as being another Dublin state's responsibility. With the refugee crisis, this share raised, and reached a peak in 2016, wherein 55 percent of the applications were identified as another state's responsibility (SEM, 2017d).

The high number of transfer requests and the strict abidance of the Dublin regulation during the refugee crisis led to criticism of Switzerland (Amnesty International, 2017). Consecutively, in contrast to several other Dublin member states that temporarily suspended transfer requests towards countries that were under particular high distress due to the refugee influxes, Switzerland still partially transferred arrivals to Greece and Italy (EC, 2016). Accordingly, Italy had difficulties to absorb the deported persons from Switzerland between 2014 and 2015 (SEM, 2016b). However, Dublin transfers strictly continued, even in cases where asylum seekers were not officially registered in Italy (SEM, 2015a; Summermatter & Ngyuen, 2017).

Secondly, Switzerland attempted to increase exclusion from the asylum process through a constriction on the scope of interpretation of the term "refugee". This can be determined by looking at Article 3.3, implemented definitively in 2016, within the context of the asylum law revision.

Article 3.3 is comprised of:

*“Persons who are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages because they have refused to perform military service or have deserted are not refugees. The provisions of the Convention of 28 July 1951 relating to the Status of Refugees are reserved.”*

(AsylA Art. 3.3)

One can assume that the newly implemented article addresses the refugees entering Switzerland from Eritrea in particular, as the Eritrean asylum seekers have since 2007 been the group who filed the most applications (SEM, 2017d). In the year 2015, a quarter of the applications were requested from Eritrean nationals (ibid.). Eritrea is ruled by a repressive government that limits freedom of movement, speech and religion (Amnesty International, 2012; 2017). Furthermore, the country commands a mandatory military service with open-ended conscriptions. Several human rights violations were reported within the settings of the military service (ibid.). Subsequently, the State Secretary for Migration (2017e) mentioned human rights violations in addition to the military service as being the main reasons for emigration. In light of this background, the author assumes that the passing of Art. 3.3 to fall in line with the deterrence theory, aimed to discourage asylum seekers from specific countries to come to

Switzerland. These statistics in combination with the passing of the Art. 3.3 suggest that a deterrence effect was pursued as a goal. Furthermore, the ultimate usefulness of this article is debatable, since the prevailing 1951 Refugee Convention clearly defines the regulation, in cases of persecution, in Art. 3.2 (Pfeiffer, 2016).

#### **4.2.2 Speeding up the Asylum Process**

*Facing a high number of asylum claims, Western countries developed strategies to make the asylum procedure faster or to exclude persons from the procedures. These strategies, such as the so-called “fast track” procedures and concepts like “safe country of origins”- in most instances attempted to legally impede access to asylum procedures (Gibney & Hansen, 2003).*

Switzerland was the first country to apply the concept of a safe origin country in 1990 (Brochmann & Lavenex, 2002). Similar to the safe third country concept, the Federal Council also defines the safe origin countries (AsylA Art. 6a.2). Applications from asylum seekers whose native country is on the safe origin country list are examined in either a fast track procedure for non-European countries (Algeria, Gambia, Guinea, etc.), or a 48-hour procedure for a group of

European countries including amongst others, Albania, Macedonia, and Serbia (SEM, 2017f).

A major goal of the asylum law revisions in 2016 was to accelerate the asylum procedures and to increase its efficiency. Between 2008 and 2010, asylum procedures (from application to final decision) lasted on average 413 days (FDJP, 2011). This span increases by 83 percent to 756 days, when considering only the procedures with appeals (ibid.). In this setting, the main amendment was to introduce a more centralised system with differentiated procedures and shorter deadlines. Moreover, the asylum law distinguishes newly between three variations of the procedure: (1) the Dublin procedure, (2) the accelerated, and (3) the extended procedure. The Dublin procedure applies in cases where other states are responsible for an asylum application. The accelerated procedure begins after the preparatory phase with a hearing. If, after the accelerated procedure, a decision is impossible, the extended procedure will be observed (AsylA 2017). Both the Dublin procedures as well as accelerated procedures are transacted by newly established Federal Centres which can accommodate up to 5'000 individuals (SEM, 2016c). The goal is that those cases, which according to the SEM sum up to approximately 60 per cent of the applications, are completed within 140 days. Persons, whose cases require an extended procedure will be

allocated to a canton. There, the procedure is supposed to be limited to one year (SEM, 2017c). Referring to the Federal Council (2016b), such an approach should result in the canton's relief and the simplification of the procedures, as the cases are now mostly being handled on one level.

### **4.3 Measures to Manage Arrival**

In contrast to the restrictive state responses, Gibney & Hansen (2003) identify more positive measures that can be adopted in order to make the asylum arrivals and procedures more just and efficient on a domestic level. However, they have noted difficulties in cooperation of managing refugee flows at the international level (ibid.).

#### **4.3.1 More Efficient Decision Making**

*One way of avoiding chaos in the asylum system as well as limitation of number of asylum seekers is to improve the asylum procedure by means of efficiency, quality and professionalism (Gibney & Hansen, 2003:15).*

An unambiguous allocation of the revision of the asylum act 2016 into the aforementioned categories of Gibney & Hansen (2003) is not possible. It can be

placed into the restrictive category due to change of speeding-up the asylum procedures. (Section 4.2.2) However, the long procedures constituted a main weakness of the asylum system. They induced high costs onto the state, and insecurity for the asylum seekers. The length of the processes can be ascribed to the fragmentation of responsible entities into numerous levels. Such tough procedures are particularly problematic in times of high refugee inflows. Therefore, the revision of the asylum act can be interpreted in a different way: making the system more efficient. This represents the category of positive response measures according to Gibney & Hansen's State response theory. (Section 4.3.1)

Within this framework, the Swiss revision of the asylum system was marked by the motto *fast but fair* (Federal Council, 2016a). As a result, the system was centralised, and the deadlines shortened. However, even with these adjustments, it was of utmost importance to uphold the level conducive to a *just* asylum procedure. This is supposed to be guaranteed with the provision of free legal advice and legal representation (AsylA Art. 102f). The legal counsel informs applicants of the procedure, the probability of being accepted, and ultimately participates in the hearings (AsylA Art. 102h)

### **4.3.2 Resettlement**

*Resettlement is the second point by which states try to organize and better manage asylum inflows. Gibney & Hansen (2003) differentiate therein between annual resettlement programmes and ad hoc programmes that are only applied in specific refugee crises. They recognise that EU member states mostly participate in ad hoc programmes, but that some have begun to progress towards annual programmes (ibid.).*

Before 2013, Switzerland did not have an annual resettlement program (RP), but regularly accepted refugees on an ad hoc basis. The number of resettlements was rather low (under 54 per year) compared to other countries such as Norway that resettled approximately 1'000 persons per annum. However, after the accession of the RP in 2013, the number of resettled persons to Switzerland increased (UNHCR, 2017d). With respect to the Syrian refugee crisis, Switzerland had already started various projects prior to 2015. The first was launched in 2013 in cooperation with the UNHCR, where until 2015, 503 persons in need of protection, more specifically, persons suffering from the consequences of the Syria war, were hosted. These persons formerly lived either in Syria or its neighbouring countries (SEM, 2016d). A second initiative was launched in 2013, where Switzerland facilitated visa issuing for family members of Syrians living

in Switzerland. After 4'700 visas being issued, this program was terminated (SEM, 2017). Thirdly, in March 2015, the Federal Council announced the decision to receive a further 3'000 Syrian refugees. Up to May 2017, 994 persons arrived in Switzerland under this program. Similarly, in December 2016, the Federal Council took a decision to accept 2'000 victims of the Syrian conflict, after which 110 persons arrived until April 2017 (SEM, 2017).

### **4.3.3 Burden-Sharing**

*In comparison to the positive measures governments implement in order to improve the asylum system on a domestic level, international attempts for the same are relatively underdeveloped, especially in terms of resettlement. In the EU, despite appropriate proposals, burden-sharing among member states is, according to Gibney & Hansen (2003), difficult to achieve.*

Indeed, one of the main points criticised on how the refugee crisis was handled in Europe was the lack of cooperation. Further to this, Zaun (2017) also argues that the EU had difficulties facing the high influx of refugees because member states were trying to minimise the arrival of refugees to their own territories and to alleviate their share onto other countries. Selanec (2015) explains this behaviour through the lack of common EU regulations that could be utilized in

emergency situations. In this context, the EU induced the countries to act unilaterally (ibid.). Langford (2013) highlights that the consequences of such behaviour are, amongst others, feared to violate refugees and human rights as well as to trigger severe tensions within the EU.

Even though Switzerland is not a EU member state, the government stresses on a solidary and cooperative collaboration with its neighbouring as well as the EU member states. The degree of importance of relations to the European Union is expressed through the willingness to participate, on a voluntary basis, in different programs such as the relocation program and the continuation of conformity to specific EU regulations.

Switzerland's cooperation efforts exceeded in some cases even the effort of certain EU member states. Contextually, the relocation program represents a significant example. The goal of the relocation program is to offer relief to Dublin countries that face a very high share of asylum arrivals, namely Italy and Greece. Therefore, refugees with a high probability of being accepted as asylum seekers will be reallocated to a different state. A specific formula<sup>7</sup> based on different factors was developed that should ensure a fair allocation process. Additionally,

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<sup>7</sup> Distribution key: 40% size of population, 40% GDP, corrective factors: average asylum applications per 1 million inhabitants and unemployment rate (EC, 2015)

this procedure is supposed to be a safe and legal alternative to smuggler routes (EC, 2017). A primary decision was taken in July 2015, putting in place a first relocation mechanism, where 40,000 persons from Greece and Italy were supposed to be relocated. The second decision was adopted in September 2015 concerning the relocation of an additional 120,000 persons (Council Decision 12098, 2015). EU-members are bound by these decisions to participate in the relocation program, with the exceptions of the United Kingdom, Ireland and Denmark who have the option to opt-out. However, both Ireland and Denmark later voluntarily announced their participation in the program, as did Switzerland and Norway (EC, 2015). Switzerland announced to accept 1,500 individuals in line with the first relocation program (SEM, 2017). The first group arrived in December 2015. Until mid-2017, 1,058 persons in need of protection arrived in Switzerland, 714 from Italy and 344 from Greece (SEM, 2017a).

Furthermore, Switzerland provides financial support and humanitarian aid to Syria as well as Syria's neighbouring countries, in particular, to Lebanon, Jordan, Iraq and Turkey. This includes direct actions, support of humanitarian partner organisations, providing expertise personnel, and engaging in the field of diplomacy, advocacy and political dialogue. From 2015 to 2017, Switzerland

contributed around € 172 million (CHF 200 million) to assist affected persons (Swiss Agency for Development and Cooperation, 2014; 2015; 2017).

#### **4.4 Evaluation**

Having compared the different categories of state responses, proposed by Gibney & Hansen (2003), with the policies entering in force during/after the refugee crisis 2015 in Switzerland, three main policy sections can be identified: legal changes, cooperation and border protection. However, as shown in Table 3, some of the categories contain both, positive and restrictive responses. Therefore, this section attempts to summarise the findings of the preceding analysis and to further associate the results with the theoretical framework discussed in chapter two. And conclusively, the evaluation provides an answer on the research question, whether or not the Swiss asylum policies became more restrictive in response to the European refugee crisis 2015.

|                    | <b>Legal Amendments<br/>(AsylA Revision)</b>   | <b>Cooperation</b>   | <b>Border protection</b>  |
|--------------------|--|--|---|
| <b>restrictive</b> | <i>Interdiction to Access Territory: Abolishment embassy asylum</i><br><i>Exclusion from Asylum Process: Strict abidance of Dublin Reg. and limitation of refugee definition</i> | <i>Cooperation</i> in order to secure European external borders  | <i>Interdiction to Access Territory: increased border control (national) and increased participation in external border control (Schengen Area)</i> |
| <b>positive</b>    | <i>More Efficient Decision Making: Amendment of Asylum Act 2016: reorganisation of the asylum to develop a fast and just asylum system</i>                                       | <i>Cooperation</i> in burden-sharing programs (resettlement and relocation) and financial/expert support | -   |

**Table 3** – Overview Swiss state responses (Section 4)

#### **4.4.1 Restrictions in the Legal System?**

Revisions of the legal system are crucial instruments in order to adopt measures that manage and restrict refugee flows. In this context, ten out of thirteen points of Gibney & Hansen’s (2003) state responses can be based on legal amendments. The amendment of the asylum act implemented in 2016 was an essential change to the Swiss asylum system. Taking into account the high rise in number of asylum applications in 2015 and Switzerland’s historical restrictive strategies in response to such increases, one would expect a much more limiting revision, than what was finally put into place.

As described in section 4.3.1, the main ambition of the revision encompassed the increase in efficiency of the asylum process. It can be argued, that the acceleration in asylum procedures is an instrument, per se, for deterrence (4.2.2 Speeding up the Asylum Process). However, it is also in the interest of the asylum seeker to receive a response to their application within a reasonable span of time, and the revision can thus be regarded as a positive implementation. Koser (2000:105) supports this argument by stating:

*“Most respondents displayed a surprisingly sanguine attitude when we discussed asylum policies. Where resentment did exist, it was directed towards the length of time, which they had spent, or expected to spend, awaiting an outcome on their asylum applications or appeals.”*

The realisation as well as the inducement of a policy revision is essential, in order to be able to classify the state response. In the case of the Swiss asylum law revision 2016, the official device has been defined as *fast but fair*. Hence, a standardised and centralised asylum procedure had priority, but with the aspect of fairness guaranteed through the provision of free legal advisors for all asylum seekers.

Secondly, the two components of the revision of the asylum law in 2016, which are identified as main elements responsible for a tightening of the asylum law,

were already implemented in 2013, thus before the European refugee crisis in 2015 (FDJP, 2013). In particular, these elements included the regulation on the definitive abolition of the embassy asylum and the introduction of the exclusion of deserters (ibid.).

Accordingly, the legal amendment in 2016 can be classified as an overall, positive measure. The revision of the law did not attempt to restrict the Swiss policy to asylum seekers predominantly and thus, opposes the main intention to reduce the attractiveness of a destination country as it is reasoned by Gibney & Hanson (2003).

Contradicting the above case, we can explore the actions taken by Austria as an example. In late 2015, the Austrian ministry of the Interior presented an alteration to the existing asylum law, which was then accepted by the two chambers of the parliament in April and May 2016 respectively, and entered in force as of June, 2016 (Austrian Parliament, 2016). The Austrian asylum law included three main areas of change: (1) the introduction of a *state of emergency*, (2) *restrictions on the right of family reunion*, as well as (3) the introduction of the *asylum on time* (ibid.). Firstly, in case of a nationwide threat of order or security, such as a large influx of refugees or other migratory movements, the government is now entitled to declare the *state of emergency*. This declaration allows the reinstatement of border controls. Asylum seekers without the necessary entry permission, have to

file their application personally with a security organ at a border control (Austrian Asylum Act (AU AsylA), Art.38). Even during the asylum procedure, the asylum seekers are not entitled to enter the country. Permission to entry is only granted to individuals who receive the status of asylum seeker or subsidiary protection (ibid.). Secondly, *restrictions on family reunion* have been introduced for asylum seekers as well as persons with subsidiary protection. In other words, a set of conditions must be fulfilled, in order to be authorized for a family reunion. Consecutively, family members of an approved asylum seeker have a time limit of three months to follow to Austria after the initial approval of the asylum seeker, otherwise a certain set of conditions have to be fulfilled to allow for family reunion (the person has an apartment, insurance, income etc.) (AU AsylA Art. 35 and Art. 60.2 Z1-3). In turn, persons under subsidiary protection are only allowed to file for a family reunion after having lived in Austria for at least three years, instead of only one year. Similar to the asylum seekers, a number of conditions are imposed (AU AsylA Art. 35.2). The third major change encompasses the introduction of the concept, *asylum on time*. This time restriction amounts to three years (AU AsylA Art. 3.4). After this period, a re-evaluation of the asylum status is necessary (ibid.). Additionally, the Federal Office is obligated to issue reports on the situation of the five major asylum origin countries on a yearly basis (AU AsylA Art. 3.4a). If according to the reports, the

situation in a country has ameliorated, it can lead to an asylum-withdrawal procedure for the nationals from those specific countries (AU AsylA Art. 7.2a). The controversial alterations were criticised not only by parliament members, legal practitioners, but also by different NGO's (Austrian Parliament, 2016a; Austrian Bar association, 2015; Caritas, 2015; Ammer & Sax, 2015). According to Rohrhofer & Weissensteiner (2015) the revision aims clearly to send a signal effect. In comparison to Switzerland, the motivation of the legislation amendment adverts to the reduction of the attractiveness of Austria. Thus, the legal state response of Austria in form of revisions to the asylum policy can be identified as restrictive instruments in deterring asylum seekers.

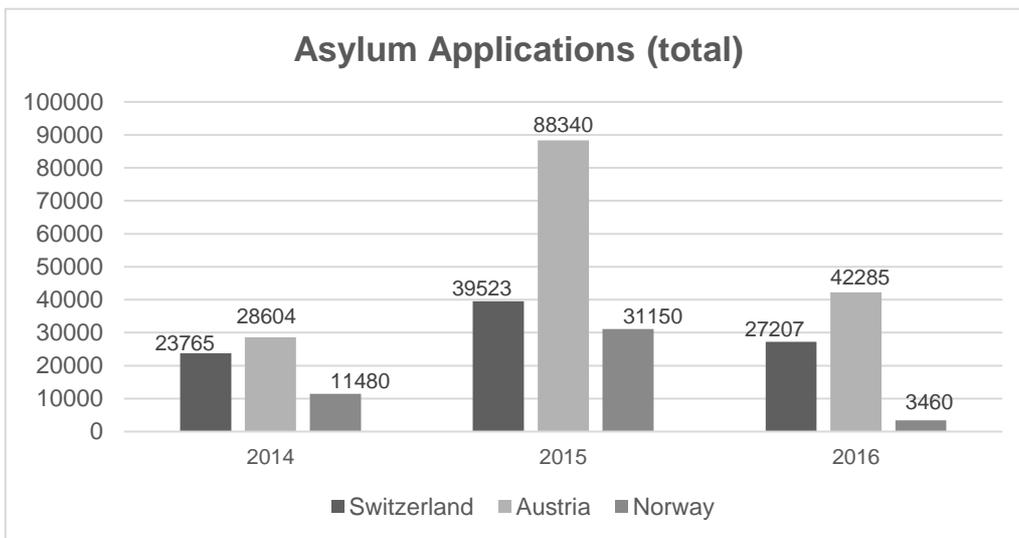
Another similar case of restrictive legal amendments took place in Norway. In contrast to Austria, Norway is, like Switzerland, not a member of the European Union. In December 2015, the Norwegian Ministry of Justice and Public Security (JD) published the article "Measures to Address the Refugee Crisis" in response of the European refugee crisis (JD, 2015). These measures consisted of the tightening of asylum regulations, which were then adopted by the Norwegian parliament in 2016. The intentions behind these measures were to "[...] make it less attractive for people to seek asylum in Norway" (JD, 2015). The amendments include inter alia: (1) *restriction on access to asylum*, (2) *restrictions on family reunification*, as well as (3) *limitations on stay* (ibid.).

Firstly, Norway would now have the option of refusing refugees entry on national territory. Furthermore, the refugee concept was narrowed down so that persons from countries where, parts of the country are safe, are not recognised as refugees anymore (JD, 2016). Secondly, according to Listhaug, the Norwegian Minister of Migration and Integration, family unification accounted for a major part of immigration and therefore encountered especially strict limitations (Lilleås, 2015). The conditions for family unification became tougher and the authorities were enabled to refuse family unification in certain cases. This may apply in cases where a family has strong attachments to a third country (Grønningsæter & Brekke, 2017). Finally, persons under subsidiary protection can only apply for permanent residence after six years, instead of a previous four. Additionally, the deadline for appeals for rejected asylum applications were shortened from three to one week (JD, 2016). Other propositions, such as to detain rejected asylum seekers in closed detention centres were not adopted (The Local, 2017).

Norway's legal changes were quite similar to the ones in Austria. Both countries introduced the possibility to refuse entry on national territory, restricted the concept of family unity and implemented measures to limit the stay.

This comparison leads to the question why Switzerland's legal changes in response to the European refugee crisis were relatively less restrictive, compared

to other European countries. One explanation might be sought in the difference in numbers of persons arriving. For instance, Austria received twice as many asylum applications in 2015 (88,340) as did Switzerland (39,523) (see Figure 4).



**Figure 4** - Source: SEM (2017b), BMI (n.d.); UDI (n.d). ; compiled by author

This fact may lead to the state deciding on more restrictive policies. However, when looking at Norway’s total asylum applications for 2016, the country received 22 per cent less than Switzerland, only 31,150.<sup>8</sup> Hence, this leads to the assumption that the national reaction to a refugee crisis cannot be measured solely by referring to the amount of arrivals, as mentioned by Hatton (2004).

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<sup>8</sup> Using per capita numbers leads to a similar conclusion.

Even though, the number of asylum applicants indicates the scope of the problem, further factors such as the policy development of other countries and the national economic situation need to be considered (ibid.). A further vital aspect seems to be the initial position of a country regarding the existing asylum policies. To that end, Switzerland had already a very restrictive asylum act before the refugee crisis occurred - a major curtailment of the refugee rights was already implemented by the means of a referendum in 2013. Several restrictive amendments implemented by Austria and Norway had already existed in Switzerland at the time. For instance, conditional family unity; which in turn is even stricter on persons under temporary protection (FNA Art. 44; AsylA Art. 85.7), as well as a clause similar to the “emergency clause” (AsylA Art. 55). This reality accentuates Hatton’s (2004) statement that countries adopt similar national policies even if time-displaced.

Ivarsflaten (2005), Levis (2005) and Luedtke (2009) emphasize on the amplifying effect of right-wing parties on restrictive asylum policies. The cases of Switzerland, Norway, and Austria can all portray the impact of the political orientation of policy makers. While the Swiss justice minister responsible for asylum issues, Federal Council Sommaruga, belongs to a left-wing party, both the Austrian ministers (Mikl-Leitner to 2016, Sobotka from 2016) as well as the

Norwegian minister Listhaug are members of right-wing parties, namely the Austrian People's Party and the Norwegian Progress Party, respectively.

#### **4.4.2 A Role-model Regarding Cooperative Behaviour?**

As in many other European countries as well, the public opinions on how to approach the refugee situation were divided in Switzerland: some advocated for a strict "welcome refugee policy" while at the same time others demanded the closure of the Swiss border. In one point however, everyone conceded: cooperation on the European level is indispensable, in order to find an appropriate solution. Consequently, the Swiss government displayed a strong willingness to cooperate on an international as well as a European level. The Federal Council clearly positioned Switzerland on the international stage regarding the refugee crisis. It recognised the heavy burden other countries had to bear. In this context, it conveyed its high respects and gratefulness to Syria's neighbouring countries (Federal Council, 2016d). Furthermore, it acknowledged the challenges faced by arrival-countries as it were, Italy and Greece, as well as the main destination countries such as Germany and Sweden (Federal Council, 2015a). The Federal Council repeatedly claimed to recognize Switzerland's share of responsibility, but also emphasised the importance of a common solution

approach and the role that Switzerland must take in finding a solution. In this regard, the Federal Council stated that while Switzerland will not be able to handle the crisis on its own, the Federal Council will not wait for the other countries to make their move first, but to initiate action whenever necessary. Doing so, they called on other countries to follow Switzerland's example (Federal Council, 2015).

When it comes to international support, the Federal Council had two main domains: a domestic and an abroad program. On the one hand, the program abroad included humanitarian and political assistance (Federal Council, 2016c). Through expertise and financial means, Switzerland provided humanitarian assistance to Syria as well as its neighbouring countries. The political assistance is meant to help to find a political solution of the Syrian war through mediation and peace talks. The domestic program, on the other hand, focuses on the reception of people forced to flee, their accommodation and sustenance (Federal Council, 2015). These special measures are in line with Switzerland's humanitarian tradition that includes development aid, the promotion of peace building efforts, human rights, international humanitarian law and the rule of law (FDFA, 2017a).

On the European level, Switzerland made an effort to act in line with the European regulations and to coordinate with its neighbouring countries. By contrast, Austria was known to take decisions unilaterally, claiming that the EU was not able to present an adequate solution fast enough. Following the example of Hungary, a fence was built on the border to Slovenia in November 2015 (The Guardian, 2015). In February 2016, the Austrian government announced the introduction of a limit on the daily refugee numbers (80 asylum claims, 3200 territory entries) as well as a maximal number of 37,500 asylum applications per year (Bundesministerium für Inneres (BMI), 2016; 2016a). Austria was sharply criticised for taking these measures without consultation, and especially, for designating the numbers unilaterally. The criticism increased further, when shortly after the introduction of quotas, Austria closed its borders triggering a chain reaction that led to the closure of the Balkan route (Schareika, 2016).

A second issue was the pronounced opposition to the EU relocation plan by certain countries. The Czech Republic, Slovakia and Hungary were among the countries that had made objections and are also the countries with the lowest relocations rates (BBC, 2015). As of October 2017, Poland and Hungary have fulfilled 0 percent of their legally foreseen share, the Czech Republic 0.44 percent,

Austria 0.76 percent and Slovakia 1.77 per cent (EC, 2017a). In comparison, Switzerland has finalized 93 percent of the formally pledged share (ibid.).

As a non-member, Switzerland has a complex relationship to the EU. To analyse the mechanisms of the Swiss strategy on EU policies would go beyond the scope of the paper, however, regarding the immigration policies, one incident stood out. In 2014, the immigration referendum “against mass immigration” was approved by the Swiss population. It involved the insertion of Article 121 into the Swiss constitution which would determine quota provisions and quantitative limits on the number of residence permits as well as employment opportunities for immigrants (Federal Constitution, Art 121.1 and 121.2). Furthermore, Article 121 requires the prioritization of Swiss economic interests as well as Swiss citizens (Federal Constitution, Art. 121.3). The clause is in violation of the free movement agreement (FMA), which is part of the ‘bilateral agreements’ - a set of market access agreements between the EU and Switzerland. The FMA states that Swiss as well as EU citizens can freely choose in which member state they would like to work, as long as a work contract is provided. Preferential treatment for nationals is not allowed. From the perspective of the EU, a cancellation of one agreement within the set of agreements, leads to the resolution of the whole treaty. This caused, especially in regard to immigration policies, hardened fronts

between Switzerland and the EU. Consecutive to this incident, Switzerland's commendable cooperative behaviour with the EU during the refugee crisis can be identified as an attempt to reassure Switzerland's willingness to maintain its collaboration with the EU concerning immigration concerns. Sharing similar interests with the European Union, Switzerland indicates its interest in the European refugee strategy without necessarily formulating an accession. In this context, Switzerland's cooperative approach towards the EU refugee crisis reaffirms their commitment to EU refugee concerns and developments. Despite not being a member EU state, Switzerland has it in its own interest to be part of the EU refugee solution.

#### **4.4.3 Physical Deterrence – Interdiction to Access National Territory?**

As stated by Trianafyllidou & Dimitriadi (2014), an important part of deterring strategies includes the physical restriction of access to national territory by way of fences or elaborate border controls. The analysis based on the model of Gibney & Hansen (2003) in section 4.1.1 made evident that Switzerland applied instruments of deterrence in the form of an increase in border protection as well as the prevention of irregular migration. In a European context, Switzerland's level of applied deterring measures were rather low in comparison to several

EU member states such as Austria, Hungary and Slovenia who also applied deterring measures in order to protect the national borders from refugee influxes through re-introducing border controls, building fences along border parts or even by closing the border (UNHCR, 2017c).

However, on multiple occasions there have been public concerns raised for such implementations. For example, the right-wing party Swiss People's Party (SVP) demanded the implementation of systematic border controls, if necessary, with the support of the army. The claim has been rejected by the parliament and the Federal Council by way of invoking the Schengen legal codex conformity. This states that Switzerland is only allowed to pass the codex in case of national threat of order and security (Swiss Parliament, 2015). In addition to this, the SVP filed a motion demanding an immediate asylum moratorium, which was also then rejected (Swiss Parliament, 2015a). Despite declining radical demands for prevention of refugees' access, Switzerland implemented several intensifying provisions on the national borders, especially the Southern border; including the reinforcement of border guard personnel, intensified use of drones, more controls and the nightly closure of certain border crossings (Section 4.1.1). This severe protection of the national border, combined with the strict application of the Dublin regulation, suggests that this part of Switzerland's asylum policy

approach aimed to prevent and restrain refugee immigration and decrease the refugee arrival.

Additionally, Switzerland attaches great importance to the protection of Europe's external borders. By reinforcing the support for the amplification of these borders, the country encourages the construction of "Fortress Europe". This concept refers to Europe's isolation measures and deterrence of immigrants with a two-folded approach: on the one hand, by applying physical control (fences, walls, border guards) and on the other hand, by reinforcing legal policies (identifying illegal immigrants, reducing attractiveness of immigration to Europe, implementation of deportation and repatriation policies, punishment for illegal immigrants as well as smugglers) (Albrecht, 2002).

The reinforcement of the external borders gained in significance following the expansion of the Schengen Agreement and the consequent dissolution of the internal border. As a result, Frontex, the EU's border agency was established in 2005. Its main agenda comprised of ensuring strict regulation and surveillance of border controls (clause 1), implementing the return of illegal immigrants (clause 5), and facilitating operational cooperation between member states and third countries (clause 12) (Council Regulation (EC) No 2007/2004). The subsequent

methods of the EU border protection were increasingly subjected to heavy criticism. Cetti (2010:8) writes thereto “[...] Europe’s external borders increasingly represent a defensive barrier against the global movements of the dispossessed and displaced.” Trianafyllidou & Dimitriadi (2014:3,5) criticise the “extensive surveillance and aggressive deterrence measures” as well as “the imbalance between deterrence and protection [of migrants]”. Different human rights organizations find faults in the treatment and strategies of the border agencies and highlight the increased restrictive policies (Amnesty International, 2014).

In accordance with the deterrence theories, Europe’s goal is easily discernible: the 1951 Convention simply obliges the protection of asylum seekers if they are on a state’s territory. Pushing them back to the neighbouring countries such as Libya, Morocco and Turkey, exempts Europe from its obligations. The support for a strong European border guard is consistent with the Swiss national protection policies. As the Federal Council Sommaruga stated: “Switzerland has 1900km of borders. No one believes that we can somehow close these borders.”<sup>9</sup> (Swiss Parliament 2015b). In Switzerland’s strategy to prevent irregular

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<sup>9</sup> Translated from German: «Die Schweiz hat 1900 Kilometer Grenze. Niemand glaubt, dass wir diese Grenze irgendwie abschliessen können.»

migration, and eventually the immigration of refugees therein, the idea of fortified external European borders is fundamental. Accordingly, the Swiss state increased the financial support to Frontex by more than 200 percent, to almost €10 million` since 2014 (Frontex, n.d.). In comparison, Norway's contribution augmented from 2014 to 2016 by around 160 per cent from €2,157 million to €5,645 million annually (Ibid.). An important explanatory factor is hereby Switzerland's geographical location: its proximity to first arrival countries like Italy and the fact that it is an actual part of the central Mediterranean route.

## 5. Conclusion

In 2015, over one million refugees and migrants crossed into Europe. Those movements resulted in high pressure on host countries and pushed absorption capabilities to their limits. Most countries replied by adopting deterring measures and implementing more restrictive asylum policies. Despite careful and comprehensive analyses regarding the reactions of EU member states as well as the EU, relevant non-EU member states were often excluded from similar studies. Therefore, this study aimed to examine Switzerland's response to the refugee crisis. Switzerland experienced an almost 100 per cent increase in refugees from 2014 to 2015, with a slight decrease in number of asylum applications in 2016. According to a broad literature body, such an increase of asylum applications leads, in theory, to a more restrictive asylum policy. Therefore, the study deals with the restrictive dimension of the Swiss response specifically. Switzerland's reaction to the refugee crisis was analysed on the basis of Gibney & Hansen's (2003) state response theory. As a result, three relevant categories of responses were identified: legal changes, cooperation, and interdiction to access. A rather positive approach can be found regarding *in-country* measures. Firstly, legislation revisions are a popular means to realize more restrictive asylum policies. Switzerland amended its asylum act, more

importantly however, the amendments were not aimed at creating a more restrictive asylum system, but rather, a more efficient one. A great deal of importance was placed on maintaining a just and fair system for asylum seekers. Secondly, and to a high degree, the country demonstrated a willingness to cooperate with the EU in finding a joint solution and relieving the predominantly impacted host countries through participation in relocation and resettlement programs.

The Swiss response is in contrast to actions taken by some European countries which saw the implementation of highly restrictive legal amendments, adoption of deterrence measures, and/or the refusal to participate in burden-sharing programs. There are various reasons which could explain Switzerland's choices: the fact that Switzerland already has one of the toughest regional asylum systems, the temporary prevalence of the left wing party regarding asylum politics, their humanitarian traditions, and the complex relationship it has with the EU. In fact, it seems as though the EU provokes an indirect pressure on non-EU members to collaborate as well.

However, Switzerland also adopted restrictive measures. Evidence shows a special concentration on preventative measures (*pre-entry*) that interdict asylum seekers in accessing national territory. Therein, Switzerland utilises the interpretation of the 1951 Geneva Convention clause asserting that a state is only

responsible for asylum seekers, on its territory. Along these lines, the country heavily invested in border securitization, both domestically and externally.

Fortifying measures lead to a number of issues: Firstly, it endangers respect for human rights as well as the concept of non-refoulement (push-backs without prior screening). Secondly, the strengthening of Europe's external borders without creating a legal way to reach Europe leads to an increase in smuggling and trafficking acts. Asylum seekers are therefore exposed to the high risks involved with illegal border crossing. And thirdly, cooperation that is focused only on the fortification of Europe can induce a repetition of the refugee crisis. Only that this time, refugee responsibilities are not re-shuffled to other European countries, but rather to countries bordering Europe, such as North African countries - meaning countries with weaker infrastructure, less spare resources and less refugee protection provisions.

Refugee flows are not expected to decrease in the following years. Continuous civil wars and internal instabilities in the Middle East will further push persons to leave their home countries. Additionally, a concern for 'environmental refugees' is on the rise. In such a setting, the impact of refugee crises may gain renewed attention as it grows more important for society, and in turn, demands a high priority on the political agenda on a national, European and international

level. Therefore, EU member states as well as non-EU member states are advised to cooperate in order to define a new system that manages the refugee crisis efficiently, without impinging upon human and refugee's rights. Furthermore, a fair burden sharing system may also solve the continuous restrictions in legislation which aim to decrease the country's appeal to asylum seekers. However, it is also vital that a solution approach is not limited to the EU. Rather, it should take into account the neighbouring countries in order to avoid a further re-shuffling of responsibilities. For Switzerland in particular, this means especially a review of their current border policies. The application of such problematic deterrence measures is not consistent with Switzerland's humanitarian traditions. Instead, the (re)introduction of legal immigration platforms for asylum seekers should be elaborated on, and the resettlement program extended.

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국문 초록

## 2015년 유럽 난민 사태에 대한 스위스 정부의 대응

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2015년 한 해, 유럽에서 130 만의 망명 신청 건이 있었으며, 이는 작년 대비 두 배에 가깝다. 동일하게, 스위스에서도 약 두 배 가까이 증가되었으며, 그 수는 39,523 건에 달하며 최고치에 달했다. 대부분의 학자들이 동의하는 바로는 이론적으로, 이와 같은 큰 폭의 증가는 제한적인 망명 규제로 귀결 될 수 있다. 이에, 본 연구는 스위스 연방의 제한적 조치와 억제적 조치에 관하여 평가하고자 한다.

위와 같은 연구를 수행하고자 Gibney and Hanson's (2003)의 제한적 조치에 관한 이론에 근거하여 난민 사태에 대한 스위스 자국 조치를 평가하였다. 조사 결과는 법적 규제 변화, 협력 그리고 통관 보호 조치 분야에서 괄목할 만한 반응을 보였다.

그러나 반응을 제한적 혹은 긍정적인 조치로 나누는 것은 쉽지 않다.

이는 몇 가지 분류가 제한적, 긍정적인 조치를 모두 함의 하기 때문이다.

종합적으로, Switzerland's in-country measures 는 망명 과정 개정을 예로 들 수 있듯 대체적으로 긍정적이었던 것으로 보여진다 — 반면 적용된 입국 조치는 제한적이었다. 후자는 국경강화뿐만 아니라 유럽인들의 국경 보호에 포함된다.

주제어: 난민사태, 유럽, 스위스, 망명, 제한적 망명 정책, 억제적 조치

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