



UPPSALA
UNIVERSITET

Department of Law

European Master Degree in Human Rights and Democratisation

Stefania Barichello

**Towards a Common European Asylum System:
The Refugee Protection in the EU and the need for a more
comprehensive burden-sharing approach.**

Master Thesis

Supervisor:

Prof. Dr. Karin Åhman

Spring Term 2011

*To my family and
To my grandmothers, Maria and Neuza.*

Acknowledgements

First of all, I am deeply grateful to my beloved family, to my parents, Eugenia and Cesare, and my brother Bruno, who supported me unconditionally throughout the entire year, each in a very special way. Thank you for always letting me know that I can count on you, for being with me all the time even if we are far away from each other. This thesis would have never been written without the considerable help from you all. I love you! Special thanks goes to my mom who helped me immensely and read my whole thesis.

This thesis was written in the course of the European Master's Degree in Human Rights and Democratisation, in which I spent the first semester in Venice, Italy, and the second semester at Uppsala University, Sweden, where this Master's Thesis was composed.

Starting from the Uppsala period, directly related to this thesis, I would like to express my gratitude to:

My supervisor, Professor Karin Åhman, for challenging me and the constructive feedback as well as the valuable comments throughout this thesis project. It has been an honour and an inspiration being under your supervision when composing this thesis. Thanks for believing in me, and for allowing me opportunities to test my wings.

Professor Paul Levine for the amazing and inspiring lectures at Uppsala University.

Professor Markku Suksi and Professor Kristian Myntti for allowing me to participate of their amazing E.MA a field trip organized by the Åbo Akademi University to Inari and also for making sure everything was as pleasant as possible. It was an amazing experience.

My friend Aliandra Barlete, for being such good friend and for her wonderful support and effort in reading and commenting on my draft. All of your suggestions and comments have been essential for the construction of this thesis.

Antónia Barradas, Leonardo Alves, Nathalie Leyns, Erik Grönvall and Ismael Ibrahim for pressuring me to keep the 'right' focus and being my constant company

during our endless hours of confinement at the Juridiska Bibliotek or in our Master's room.

And special thanks to Paula Erickson for showing and teaching me so many special things about lovely Sweden.

Regarding to the Venice period I would like to give my thanks to:

Professor Fabrizio Marrella, for allowing students the experience of taking part of this great master programme, for his competent advice and help. In spite of his numberless commitments and tasks, he was always near the students, taking into consideration their suggestions and showing continually a high willingness to help.

All of our professors I have had the fortune of meeting during the E.MA Programme, for sharing their knowledge and passion for Human Rights.

Stefania Saccarola, the librarian of EIUC, for the support and help.

Thanks to everyone who helped me to feel at home in Venice and on whom I could always rely, specially to Aikaterini Chyta, Linda Zaiane, Giacomo Cremonesi, Meron Belay Alene, Krizstina Damjanovich, Eija Wellman, Tarja Miettinen, Andrea Frauscher, Hildur Boldt, Isabel Sofia Antunes, Isidore Djeuga and Matti Inkeroinen.

Special gratitude is also due to my dearest friends Aikaterini Chyta and Antónia Barradas for their essential role in my life during this year, for always having a kind word of encouragement and support. Always count on me!

Lastly, I wish to forward a warm thanks to everyone who contributed in making this unique programme become reality and to those who do the daily work to make Masterini life easier!

Abstract

The central object of this thesis is the Common European Asylum System (CEAS), which consists in the establishment of a common asylum procedure and a uniform status valid throughout the EU. Its main objective is to analyse the current state of the CEAS in order to find out what direction this System has been taking during its implementation, and visualise how the use of a more comprehensive burden-sharing approach influence on the CEAS second phase of implementation. Secondary objectives consist in providing a brief overview of the history of international recognition of refugees and analysing the gradual development of asylum matters at the EU level, by exploring how asylum law is formed, transformed and reformed in Europe. The study makes use of a qualitative approach and the method of case study, and is done by means of collection and analysis of relevant primary and secondary sources. This thesis is structured in six chapters, each chapter presenting a specific objective that will lead to the response to the research questions. The conclusions intend to summarise the main aspects and the outcome of this research and also provide views and expectations concerning the future direction of the Common European Asylum System.

Key-words: Common European Asylum System, Burden-sharing, Refugee protection, EU asylum law, EU asylum policy.

(Number of words: 27283)

List of Abbreviations

CEAS	Common European Asylum System
EEC Treaty	Treaty Establishing the European Community, Rome Treaty
EC	European Communities
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
ECOSOC	United Nation Economic and Social Council
EU	European Union
IRO	International Refugee Organization
UN	United Nations
UNHCR	United Nations High Commissioner on Refugees
UNRRA	United Nations Relief and Rehabilitation Administration
SEA	Single European Act

Table of contents

Acknowledgements	3
Abstract	5
List of Abbreviations	6
1. Introduction	9
1.1. Problem statement and analytical framework.....	9
1.2. Objectives.....	13
1.3. Research question	13
1.4. Delimitation.....	14
1.5. Methodology.....	14
1.6. Thesis structure.....	16
2. The refugee “as a pariah”: How the status of refugee was internationally recognised	17
2.1. Etymology and historical antecedents: from the ancient Greece to the French Revolution ...	17
2.2. The history of international recognition of refugees.	19
2.2.1. Juridical approach: 1920-1935.....	20
2.2.2. Social approach: 1935-1939.....	23
2.2.3. Individualist approach: 1938-1950	25
2.3. Convention Relating to the Status of Refugees (1951) and its Protocol (1967)	28
2.4. European Convention of Human Rights	33
3. How EU asylum law was formed: the advent of a restrictive European Asylum Policy	35
3.1. The White Paper and The Single European Act.....	36
3.2. The Schengen Agreement and its implementing Convention.....	39
3.3. The Dublin Convention.....	41
3.4. London resolutions.....	44
3.5. The Treaty of Maastricht	46
4. Transforming the EU asylum law: the communitarisation of the right of asylum and the launching of the Common European Asylum System.....	50
4.1. The right of asylum at EU level: communitarisation institutional framework	50
4.1.1. Treaty of Amsterdam: Art. 63 and the communitarisation	51
4.1.2. Tampere conclusions: The Tampere Programme and the launching of the Common European Asylum System.....	54
4.1.3. The Treaty of Nice	56
4.2. Towards a Common European Asylum System: harmonising legislation among EU Member States?	57
4.2.1. Dublin II Regulation (2003).....	57
4.2.2. Reception Conditions Directive (2003).....	62
4.2.3. Qualification Directive (2004)	64
4.2.4. Asylum Procedures Directive (2005).....	70
4.3. Related EU structure: European Refugee Fund.....	72
5. The Reform of EU asylum: integrating asylum policy.....	74
5.1. The Hague Programme	75
5.2. The Treaty of Lisbon.....	76

5.2.1.	<i>The Charter of Fundamental Rights</i>	78
5.3.	<i>EU policies on asylum</i>	79
5.3.1.	<i>Green Paper on the Future Common European Asylum System</i>	79
5.3.2.	<i>Policy Plan on Asylum</i>	80
5.3.3.	<i>European Pact on Immigration and Asylum</i>	81
5.3.4.	<i>Joint EU Resettlement Programme</i>	82
5.3.5.	<i>European Asylum Support Office</i>	84
5.4.	<i>Stockholm Programme</i>	85
5.5.	<i>Legislative recast proposals</i>	87
6.	Conclusions	89
6.1.	<i>Summary of observations</i>	89
6.2.	<i>The future of the CEAS and the need for a more comprehensive burden-sharing approach</i> ..	94
	Bibliography	99