

**WISSENSCHAFTLICHE BEITRÄGE  
AUS DEM TECTUM VERLAG**

Reihe Rechtswissenschaften



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Angelika C. Dankert

## **Europe under Pressure**

The Development of the European Union under the  
Influence of the Arab Spring, the Refugee Crisis and the  
Global Threat of Terrorism

Tectum Verlag

Angelika C. Dankert

Europe under Pressure. The Development of the European Union under the Influence of the Arab Spring, the Refugee Crisis and the Global Threat of Terrorism

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*Dedicated to*

*Dr. Ing. Eckart Dankert*  
*(† 2008)*

*whose passing away taught me the meaning of time.*



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Angelika C. Dankert





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## List of Abbreviations

ABL. EG L	Amtsblatt der Europäischen Union Ausgabe L (Rechtsvorschriften) (Official Journal of the European Union, Edition L) (Legal Regulations)
AEUV	Vertrag über die Arbeitsweise der Europäischen Union (Treaty on the Functioning of the European Union)
AfD	Alternative für Deutschland (Alternative for Germany)
AU	African Union
AufenthG	Aufenthaltsgesetz (Residence Act)
AsylVfG	Asylverfahrensgesetz (Asylum Procedure Law)
AsylbLG	Asylbewerberleistungsgesetz (Benefits for Asylum Seekers Act)
BAMF	Bundesamt für Migration und Flüchtlinge (Federal Agency of Migration and Refugees)
BGBL	Bundesgesetzblatt (Federal Law Gazette)
CDU	Christlich Demokratische Union (Christian Democratic Union)
CFR	Charter of Fundamental Rights of the European Union
CSU	Christlich-Soziale Union (Christian Social Union)
Easy	Erstverteilung von Asylbegehrenden (Initial Distribution of Asylum Seekers) ( <i>Project Name</i> )
EC	European Community
ECLI	European Case Law Identifier
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
ed	Editor
eds	Editors
EEC	European Economic Community
e.g.	Exempli gratia
EHRC	European Human Rights Convention
et seq.	Et sequentia

EU	European Union
EURODAC	European Dactyloscopy
EUV	Vertrag über die Europäische Union (Treaty on European Union)
FDI	Foreign Direct Investment
Feb.	February
Fig.	Figure
FPÖ	Freiheitliche Partei Österreichs (Freedom Party Austria)
GAM	Global Approach on Migration
GAMM	Global Approach on Migration and Mobility
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GG	Grundgesetz (German Constitution)
GMBL	Gemeinsames Ministerialblatt (Joint Ministerial Gazette)
GRC	Geneva Refugee Convention
H.R.H.	His Royal Highness
ID Card	Identification Card
IS	Islamic State
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Al Sham
IT	Information Technology
km	Kilometer
NL	The Netherlands
No.	Number
Nov.	November
NPD	Nationaldemokratische Partei Deutschland (National Democratic Party of Germany)
OJ	Official Journal
OJEU	Official Journal of the European Union
p.	Page
para.	Paragraph
Paula Go	Projekt Automation Ausländerwesen Grafische Oberfläche ( <i>Project Name</i> )
PiV	Prawo i Sprawiedliwość (Right and Justice Party)
PKK	Partiya Karkerên Kurdistanê (Kurdistan Workers' Party)

PVV	Partij voor de Vrijheid (Party of Freedom)
Q	Quarter
S.	Sentence
SA	Schengen Agreement
SBC	Schengen Borders Code
SC	Schengen Convention
SGB	Sozialgesetzbuch (Social Security Statute Book)
SIS	Schengen Information System
SPÖ	Sozialdemokratische Partei Österreichs (Social Democratic Party Austria)
Tab.	Table
TAK	Teyrêbazên Azadiya Kurdistan (Kurdistan Freedom Hawks)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
USD	US-Dollar
VG	Verwaltungsgericht (Administrative Court)
Vol.	Volume



*For the Europe of tomorrow,  
dedicated to the Europe of yesterday.  
As supporter of intercultural open-mindedness  
and  
opponent of stereotyping and prejudice.  
As European.*

*Angelika C. Dankert*



# 1 Introduction

The tragedy of World War II led to the creation of the European Union, still in its infancy in the 1950s, but throughout the years continuously developing to an economically and politically integrated supranational entity. In its construction, the Single Market is unique worldwide, offering its citizens free movement within a borderless Union. The European consciousness of being 'united in diversity' is based on common European roots, however, the effects of globalization impact the 'European district' as part of 21<sup>st</sup> century's 'global village.'

The consequences of the self-immolation of a Tunisian salesman in December 2010 were unpredictable. The incident, which was primarily seen as an isolated act of protest against local authorities after humiliating treatment and the interdiction to continue selling his vegetables on the market, can be declared as trigger for a movement referred to as 'Arab Spring,' leading to a massive spill-over effect within the Arab world. By questioning the legitimacy of the leading class, aspirations for freedom and democracy were embraced in the created unity of pan-Arab sentiments. The echo of protest roared across countries dominated by autocratic regimes, resulting in 'an end for the era of longstanding dictators like Zine El Abidine Ben Ali (Tunisia) and Muammar Al Gaddafi (Libya)' (Campante/Chor, 2012). The escalation and destabilization in Syria as result of the Arab Spring, the development of religious militant groups like the Islamic State of Iraq and the Levant, as well as the turmoil and ongoing conflict in the Arab World, are issues now omnipresent within the Single Market. Globalization has affected the rapidness of data exchange, and terrorist organizations have perfected psychological warfare using the media and plenty of their advantages to recruit online. The threat of religiously oriented terror, formerly perceived a 'Middle Eastern' issue, has now entered the Union's borders. The anonymity and perceived coincidence of this new conduct of war frightens a secular, pluralistic and open society founded on the ideals of peace and stability.

The last years, and especially 2015, were characterized by a massive influx of migrants crossing the Union's external borders seeking for asylum. The unpredictability and intensity of even secondary movements caused Europe's citizens' fear of getting swamped, resulting in member states' sealing off or reintroduced border controls. Striving for humanitarian aid, the EU is accused of neglecting the interests of its own citizens, which leads to gradually growing right-wing parties at the national level, inciting and provoking hatred between cultures, religions and ethnical backgrounds. Illegal migration, fear of unemployment, exploitation of social welfare systems, foreign infiltration and increased terrorist attacks shape the changed attitude towards foreigners, refugees and migrants in Europe. The European Union is on the move, and for predicting Europe's future, it is essential to evaluate the EU's handling of the cur-

rent situation and its probability to demonstrate closed unity in relation to the question of how to cope with the crisis. World and geopolitics are complicatedly intertwined, as conflicting interests of individuals, organizations and nations dominate and governmental decisions influence world citizens on an increasingly personal level. The current innovative digital era facilitates communication and exchange over large distances, yet it has no impact on global in-depth understanding of foreign cultures. Time shows that the created awareness of cross-cultural differences indicates the trend of a revival of own traditional values, and increasingly often the citizens' will demonstrates a reversion from previously favored 'global' or 'supranational' into 'national' orientation.

The paper is examining legal aspects as well as security and intercultural issues in order to provide an overall picture of the situation. It is necessary to profoundly understand the origin and development of the turmoil during the Arab Spring, its impact and influence on Europe as value community, continent and supranational entity. The ongoing crisis goes beyond the scope of humanitarian aid and responsibility for the life of the individual, as the impact of this crisis has far-reaching implications for the future of the Union as 'Europe of tomorrow.' Aiming to describe Europe's future path, the paper will identify challenges for selected topics and offer recommendations. Sensitive issues will be addressed, as these rough times demand honesty and straight forwardness in order to provide sustainable solutions.

Disclaimer: today's intermingled geopolitics requires the examination of multiple aspects in order to draw conclusions. Especially in a pluralistic society, every perspective has to be objectively illuminated without prejudice to culture, religion or ethnical origin. The role of the West should not be underestimated in the rise and fall of Middle Eastern regimes and also in the development of terrorist organizations pursuing anti-Western propaganda. This paper is not about the apportionment of blame nor about recriminations, but about a display of the causes and drivers of the Arab Spring with lasting impact on the European Union, as well as an analysis of challenges the EU is facing as result of the refugee crisis and the increasingly global threat of terrorism. The Arab perspective on backgrounds, supporters and financiers of militant groups in the Middle East including affiliates is left out, however, the content of the investigation is not one-sided, nor in favor of a certain perspective. In contrast, the author aims to illuminate the issue from all angles in order to facilitate the reader's understanding of the current topic. The research paper is not a political thesis, nor does it imply the expression of any opinion as political statement.

Angelika C. Dankert, 30 January 2017



## 2 Methodological Approach

This research paper aims to provide an overall picture of the development of the European Union under the influence of the Arab Spring, the refugee crisis and the global threat of terrorism by providing a selected analysis on legal, security and intercultural aspects. Challenges arise from external geopolitical affairs triggering e.g. security concerns as well as European citizens' fear of foreign infiltration and cultural struggle. The paper defines the multiple challenges across different areas, portrays how the EU is coping with the crisis and provides recommendations on major topics.

The Union is a supranational entity consisting of 28 member states. Covering all perspectives on legal codes, ongoing intercultural debates and challenges as well as in-depth analyses of political movements would go beyond the scope of this paper. For obvious reasons, the Federal Republic of Germany is therefore exemplarily used and examined according to the methodological approach explained below. The thesis is based on qualitative and quantitative data, however, exclusively secondary data has been used for the research.

The research paper is primarily built on two equivalent pillars, aiming to facilitate the reader's understanding of complex national and geopolitical processes by providing background knowledge on the 'European Union' and the 'Arab Spring' in chapters 3 and 4. The paper introduces the topic to the reader by explaining the structure, functioning and development of the EU, starting from its early beginnings and progress until today, reaching a high economic and political integration as supranational entity. Roles and tasks of European institutions are defined and the Union's goals are portrayed in order to comprehend the purpose of a united Europe. As second pillar, the paper illuminates the backgrounds and uprising of the Arab Spring, as well as the roots of pan-Arab sentiments, in order to understand the drivers of the movement. The spill-over effect of the Arab Spring is examined to create an in-depth understanding of the 'refugee crisis' and the ongoing turmoil, which is still causing people to flee. The examination demands further investigation of the role of international, religiously oriented terrorism as global threat and the significance of Western imperialism, root for ingrained anti-Western sentiments, yet often neglected in the overall portray.

In Chapter 5, the paper aims at identifying diverse challenges the EU is facing today, including the impact of globalization, a partially perceived heteronomy and the debate on compatibility of oriental and occidental value systems resulting in a shift to the political right across the European Union. In a time of globally acting terrorist organizations and citizens' increasing doubts about the Union's capability to guarantee internal security, the EU is challenged to balance supranational and national as well as

external and internal interests to sustainably guide and cope with the situation on the innate ground of European values.

Chapter 6 focuses on legal aspects by connecting the process of European integration to the development of the Schengen area and by defining the tasks of Frontex as European border management. Legal aspects concerning the refugee crisis are discussed by the exemplary portrayal of Germany's Aliens and Asylum Law. The chapter does not assert a claim to be exhaustive, as there are many more details and constellations that might be considered when discussing Asylum Law, but the overview provides the necessary background to understand the complexity and the difficulties during the ongoing crisis.

As result of the increased level of religiously motivated terrorism in the 21<sup>st</sup> century, chapter 7 defines 'terror' and what the author refers to as 'terror 2.0,' focusing on the unpredictability and anonymity of today's terrorism as global threat. An analysis of previous terrorist attacks and a demarcation from domestically acting groups striving for independence gives the reader an overall view of the current challenge the EU is facing with reference to ideologically motivated jihadist violent terror organizations operating across the Union including the lone wolf phenomenon.

Chapter 8 continues to point out challenges with focus on the intercultural perspective. Multiculturalism, intercultural compatibility and perceived threats arising from the fear of foreign infiltration prevail in some parts of the Union. The challenge is to understand one's own values and traditions before aiming to balance a variety of value systems and to find a sustainable solution for conflicting traditions and conduct, while sticking to the own roots and identity as value community and entity referred to as 'Europe.' Sensitive issues have to be addressed in order to provide an overall picture of the diverse parties involved in these debates.

Chapter 9 portrays the multiple repercussions the Union is suffering from e.g. emerging nationalism and electoral success of the right-wing, resulting in proposals for urgently needed development in order to improve the Union's ability to act and its efficiency. The paper concludes by giving a European outlook and by summing up the results in a final conclusion.

Note: the current crisis is referred to as 'refugee crisis,' however, the number of economic migrants and social welfare seekers, willingly abusing the humanitarian crisis in order to gain personal benefits from European social states, has to be kept in mind. Therefore, the crisis is also referred to as 'migrant crisis,' as not all individuals arriving in the Single Market are 'refugees' according to the definition of the Geneva Refugee Convention (Article 1 (A) GRC) or in accordance with Article 16 a (1) GG.

## 3 The European Union

### 3.1 Etymological Origin

Apart from the myth about the Phoenician princess 'Europa' abducted by Zeus and eponym of today's continent, the idea of a separated Europe did not evolve before the development of national identities. Before the Reformation, Europe was solely used as geographical term. A new awareness of Europe developed through the confrontation with the non-Christian world. Since the discovery of Asia in the 18<sup>th</sup> century and the awareness of cultural differences, the term was used to describe a demarcation from Asian cultures, languages and religions. There was growing urge for an external separation, whereby the term itself developed *ex negativo*, not describing Europe's affiliation but clearly defining what was not associated with it (Herz/Jetzspenger, 2008).

### 3.2 Historical Background

Europe's nations desired enduring peace after two perennially lasting World Wars within just the first half of the 20<sup>th</sup> century. In 1950, Europe was still struggling to overcome the devastation of World War II, which had ended in 1945. Dramatic political shifts, namely the strategic west-expansion of the Soviet Union, gave rise to a new level of mutual suspicion between the two blocks of the 'communistic East' and the 'capitalist West,' resulting in a period known as Cold War, which then dominated the continent for the following decades. In order not to be subjected to the arbitrariness of Soviet power, Western Europe understood the urgency of 'European integration' (see Glossary) (Homewood, 2014).

In the 'Schuman Declaration,' drafted by Jean Monnet (Kenealy/Peterson, 2015), the French foreign prime minister Robert Schuman proposed on 9 May 1950 to place the Franco-German production of coal and steel under a common High Authority of an organization open to the participation of other European countries (Schuman, 1950). This 'sectoral integration' (see Glossary) (Homewood, 2014) should be the base for lasting preservation of peace, as by pooling the industries 'on cooperation with shared institutions controlling war key resources' (Glencross, 2014: 51), a conflict should 'not [be] merely unthinkable, but materially impossible' (Schuman, 1950). Believing in unity, the Schuman Plan was the factual basis for the establishment of the 'European Coal and Steel Community,' set up in 1951 by the 'Treaty of Paris' and signed by the six founding members France, West Germany, the Netherlands, Italy, Luxembourg and Belgium. The ECSC Treaty defined the creation of an internal or common market regulated by four institutions including a High Authority endowed

with decision-making power (Homewood, 2014). Reflecting Schuman's vision, the integration should maintain peace, help to improve the living standard of workers in the coal and steel industry and increase stability. Further goals were defined, such as the development of the African continent and the promotion of peaceful achievements (Schuman, 1950).

### 3.3 Further Development of the Union

Starting with a sectoral integration by signing the Treaty of Paris or 'ECSC Treaty' in 1951, the EU developed to a 'European Economic Community' (1957) (Kenealy/Peterson, 2015) with the Treaties of Rome, referring to the 'EEC and Euratom Treaty,' incorporating a common external customs tariff for goods entering the EU and free movement of goods (Homewood, 2014). The Single European Act of 1986 was set up to remove the last remaining physical and technical barriers to trade (Staab, 2011) and restrictions on free competition until 1992 in the '1993 Objective' to complete the 'internal market' (see Glossary) (Homewood, 2014).

The Treaty of Maastricht, which is also referred to as 'Treaty on European Union' (acronym: TEU), actually created the EU (Hummer, 2010), as it was 'more than just an amending Treaty,' but the Union's economic integration (Homewood, 2014: 5) making the 'principle of subsidiarity' (see Glossary) more visible (Laursen, 2012) (see Annex A: Treaty of Maastricht). The 'European Community' was renamed to 'European Union,' 'reflecting the closer nature of member state's relationship with one another' (Staab, 2011: 21) and the lack of democratic credibility was complemented by numerous institutional innovations (Staab, 2011). The Treaty came into force in 1993 and changed the existing three-pillar structure (see Annex B: Three-Pillar Structure of the Union). The Treaty gave European citizens uniform rights and citizenship values (Staab, 2011). The TEU expanded the scope of European integration (Laursen, 2012) and underlined the strong relationship between Europe and its citizens by conferring free movement rights across the Union based on granted European citizenship to the member state's citizens in addition to national citizenship (Article 9 S. 2+3 TEU). EU-citizens got freedom to move, work and study anywhere in the internal market, which defines an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured (Article 26 (2) TFEU).

The Treaty of Amsterdam of 1997 strengthened EU citizens' rights even more, as the Union confirmed its devotion to democracy, freedom, respect for human rights and the rule of law (Schmidt, 2002). However, the Amsterdam Agenda was already partially pre-defined by choices made in Maastricht. Therefore, it is rather a consequence than a development and has to be seen as extension of Maastricht (Vanhoonacker, 2012). Asylum and immigration policy were shifted from an intergovernmental to a supranational level under the Treaty of Amsterdam, whereby this policy area was removed from the field of security policy (Naßmacher, 2013). In 2003, the Treaty of Nice entered into force, primarily designed to cope with the institutional

impact of a historical enlargement (Sbraiga, 2012) by the accession of new member states (Homewood, 2014).

The European political integration was reached in 2007 with the Treaty of Lisbon, renaming 'Community' to 'Union' and using the TEU and the 'Treaty on the Functioning of the European Union' (acronym: TFEU), including the Protocols and the 'Charter of Fundamental Rights of the EU' (adopted in 2007) (see Glossary), having the same legal value as the Treaties (Article 6 (1) TEU), as primary source of EU law, which was acknowledged in 2009 and written down in the Preamble. In total, EU law consists of primary law, secondary law including legislative acts (regulations (Article 288 para. 2 TFEU), directives (Article 288 para. 3 TFEU), decisions (Article 288 para. 4 TFEU) and recommendations (Article 288 para. 5 TFEU)) and non-legislative acts (Article 290 TFEU) as well as tertiary law, in fact the case law of the Court of Justice of the European Union. There is no EU constitution, but EU primary law is seen as 'quasi constitution,' since it is based on the rule of law. The member states voluntarily and democratically approve all actions and confer competences to the EU as 'Master of the Treaties' (Herdegen, 2015), determining the legal framework for EU institutions, empowered then to pass secondary law (Homewood, 2014). The Union's competences are limited, based on the 'principle of conferral' (Article 5 (1+2) TEU) (see Glossary). The use of transferred competences is governed by the principle of subsidiarity and the 'principle of proportionality' (see Glossary).

### 3.4 Process of Enlargement

Pursuing the idea that national states join the community in the process of 'enlargement' (see Glossary), which was already suggested by Schuman in 1950, the Union follows several principles for imposing requirements on candidate countries before the accession treaty is signed (Homewood, 2014).

In 1993, the Copenhagen European Council defined the accession criteria, known as 'Copenhagen Criteria' (see Glossary), which any country wishing to become a member state of the Union must meet for admission: political and economic criteria as well as the implementation of the *acquis* (European Commission, 2016a). Thereinafter, a potential candidate country must guarantee democracy, the rule of law, human rights, respect for and protection of minorities and a functioning market economy (Eur-Lex, 2016). The Copenhagen Criteria are used to double-check the country's potential to become a member state of the EU. As conditional the accession country also has to accept and integrate the '*acquis communautaire*' (see Glossary) in national law before the accession treaty is signed (Kenealy/Peterson, 2015). The term refers to the total set of obligations and rights that emerged and have been passed in the European legislation process since 1951, including for example Treaties, EU legislation and case law developed by the Court of Justice in national legislation (Staab, 2011).

### 3.5 Institutions of the European Union

The European Council is located in Brussels (European Union, 2014), defining the political direction and priorities (Article 15 (1) S. 1 TEU) as major policy-making organ (Lelieveldt/Princen, 2011). Its members are the 28 head of member states, the president of the European Council and the president of the European Commission (Article 15 (2) S. 1 TEU). The president of the European Council is representing the Union externally (Article 15 (6) (d) S. 2 TEU). The Council of Ministers represents the Union at European level (Lelieveldt/Princen, 2011), but does not exercise legislative functions (Article 15 (1) S. 2 TEU). The leaders define further steps for EU development in consensus when meeting on the summit twice every six months (European Union, 2014).

The European Parliament is seated in Strasbourg, although it works from Brussels and Luxembourg, too. The 751 Members of Parliament are directly elected by the citizens of all 28 member states (Article 14 (2) S. 1+2 TEU), whereby the seats are allocated according to their share of EU population (European Union, 2014). The Parliament is the only EU-institution directly elected, and as multinational parliament with significant powers it is unique in the world (Kenealy/Peterson, 2015). The institution exercises legislative and annual EU-budgetary functions jointly with the Council and influences EU-spending (Article 14 S. 1 TEU). The Parliament's approval is needed to appoint a new Commission, and the president of the Commission is elected by the Parliament (Article 14 (1) S. 3 TEU). Tasks are, *inter alia*, to examine citizens' petitions and to monitor the Council's work as 'voice of the people' through direct representation of EU citizens (Article 10 (2) TEU) (European Union, 2014).

The Council was developed as primary European decision-making body (Kenealy/Peterson, 2015), working from Brussels and Luxembourg (European Union, 2014), and shares legislative power and annual EU-budget planning with the European Parliament (Article 16 (1) S. 1 TEU). The institution represents the member states on a ministerial level consisting of officials, each representing an EU member state (Kenealy/Peterson, 2015). The Council is responsible for policy coordination of member states, defining and developing the common foreign and security policy further, as well as for concluding international agreements with non-EU countries and organizations (European Union, 2014).

The European Commission is a politically independent institution devoted exclusively towards the interests of the EU (Article 17 (1) S. 1 TEU). The 28 Commissioners, one from each member state, with independence beyond doubt (Article 17 (3) S. 2 TEU), work in Brussels (European Union, 2014) and are supposed to do their work independently (Article 17 (3) S. 3 TEU). The Commission, as 'Engine of the Union,' has the exclusive right to propose legislation to the Parliament and the Council to decide on and to enforce EU law as 'Guardian of the Treaties' jointly with the Court of Justice of the European Union (Lelieveldt/Princen, 2011). Supervision and implementation of policies are also part of the Commission's task (European Union, 2014). The institution represents the Union's general interests, which is referred to as

'Watchdog Function' (Glencross, 2014: 99), while also managing and negotiating international trade and cooperation agreements (Kenealy/Peterson, 2015).

The Court of Justice of the European Union is located in Luxembourg (European Union, 2014) and consists of 28 judges, one from each member state (Article 19 (2) S. 1 TEU). Assisted by eleven Advocates General (Article 19 (2) S. 2 TEU + Article 252 S. 1 TFEU with effect from 7 October 2015), the Court is responsible for ensuring the correct interpretation and application of EU legislation across the member states (Article 19 (1) S. 2 TEU). The Union's judicial branch's judges enjoy full independence in order to carry out their work properly (Lelieveldt/Princen, 2011). The legal institution includes the Court of Justice, which deals with preliminary rulings, the General Court ruling on inter alia actions for annulment and the Civil Service Tribunal, a specialized court dealing with disputes arising between civil servants and the EU (Lelieveldt/Princen, 2011). Besides setting diverse tasks, the areas of jurisdiction forming the core of the European Court's activities are reviewing the legality of acts, establishing infringements ((1) Article 258, 259 + 260 TFEU + Article 4 (3), 17 (1) S. 2+3 TEU (against a member state); (2) Article 263 + 265 TFEU (against an EU institution: annulment and failure to act)) and giving preliminary rulings (Article 19 (3) (b) TEU + 267 TFEU).

The European Central Bank is based in Frankfurt, managing the monetary policy and the Euro within the Euro area (European Union, 2014). It is modeled on the independent German Bundesbank and responsible for formulating the Union's monetary policy and setting interest rates (Kenealy/Peterson, 2015). Members are the central banks within the Euro area, neglecting e.g. Sweden and Denmark, as not all member states adopted the Euro as cash currency. The ECB's task is to maintain monetary stability by ensuring stable and low consumer price inflation. The institution decides independently, without taking instructions from governments or other bodies (European Union, 2014).

The European Court of Auditors, located in Luxembourg, is responsible for checking the correct use and application of EU funds and for improving the financial management of the EU. The 28 members, one from each member state, review the regularity of EU income and expenditure in order to keep the Union efficient and effective (European Union, 2014).





## 4 The Arab Spring

### 4.1 The Political Shift in the Arab World

Revolutions are vivid movements against the current status quo, not mechanical processes characterized by evident development, but a flow of highly unpredictable events. Causes are manifold, like unexpected transformation, refused change, surprising incidents, discontentment and stagnation (Kühnhardt, 2012). The beginning of a peaceful, as well as armed, but always national uprising against authoritarian rule in several Arab countries started in 2011 and is still ongoing in form of civil wars. These developments are prominent features of the 21<sup>st</sup> century, which is characterized by a high level of globalized elements.

The Arab Spring is considered a new phenomenon due to the revolution within the field of communication (Abdelbaki, 2013). Technology had an irrefutable role in shaping the political landscape of the Middle East by contributing to shift the information monopoly to a public sphere (DeVriese, 2013). Information and communication technologies left their mark, as broadcasting possibilities like blogs or chat via the World Wide Web facilitated to circumvent traditional censorship of state monopolies. Yet potential manipulation of data, doubts about the authenticity of information and regular filtration burden the relationship of hostile governments, opponents and the rest of the world, assailed by a flood of information aiming to draw conclusions (Benmamoun/Morris, 2012).

### 4.2 The Arab Spring – A Spill-Over Effect

The Arab Spring started in January 2011 in Tunisia, where Zine el-Abidine Ben Ali had ruled since 1987 (Gause, 2011). A series of incidents against the regime were triggered after Muhammad Bouazini had set himself on fire after being interdicted selling his vegetables in a demeaning way on a Tunisian market in December 2010 (Al-sharairi/Abubaker, 2016). Turmoil followed, and the Islamist party Nahda succeeded in first elections in October 2011 but had to resign in 2013. The political crisis was solved in January 2014, as a final constitution was approved by the parliament. In October 2014, Beji Caid Essebsi, leader of the election winning secular party Nida Tounes, became president (The Economist, 2016).

Demonstrations and protests followed in early February 2011, leading to a wave of turmoil spreading over to Libya, where the uprising against Muammar Al Gaddafi, who had ruled since 1969 (Gause, 2011), started in Benghazi. In August 2011, Tripoli was captured by rebels, and Al Gaddafi was killed shortly afterwards. First democratic

elections were held, but Islamists started to attack Benghazi and in October 2014 Derna was taken over by Jihadists. In February 2015, around the same time that Egypt started to attack the established terrorist group in Libya, IS took over the Libyan port Sirte (The Economist, 2016).

First protests in Cairo against President Hosni Mubarak, who had been ruling the country since 1981 (Gause, 2011), were held in January 2011 (The Economist, 2016). Political reforms, freedom and elections were demanded in a MENA country with one of the largest economies. After the resignation of Mubarak in February 2011 and the takeover of a military council (The Economist, 2016), first elections took place in November (Alsharairi/Abubaker, 2016). Muhammad Morsi, a candidate from the Muslim Brotherhood, was elected, but Morsi was overthrown by a military coup in June 2013 (The Economist, 2016). The Muslim Brotherhood was banned in September 2013. Abdel Fattah Al Sisi, former army chief, won the following presidential elections in May 2014 (The Economist, 2016).

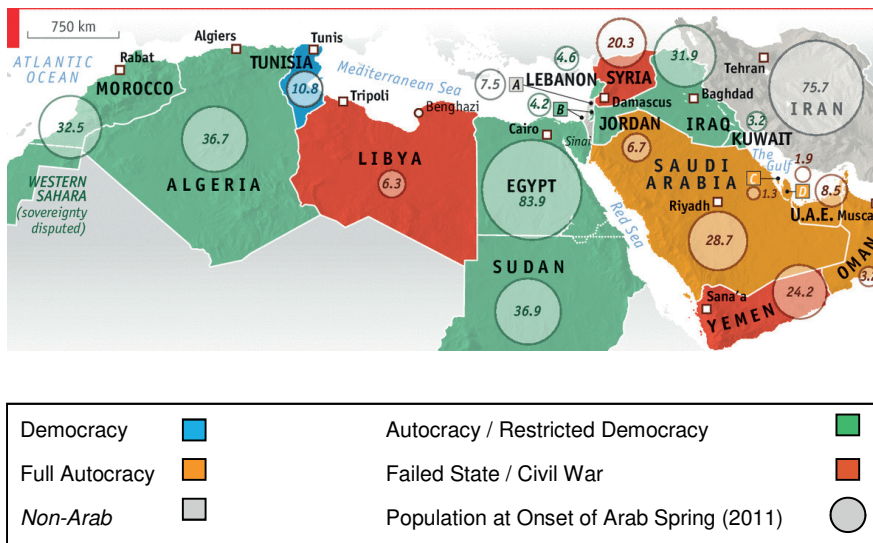
Further spill-over effects hit Yemen and affected the reign of president Ali Abdullah Saleh, formerly president of North Yemen, later united with South Yemen and in power since 1978 (Gause, 2011). Saleh promised not to seek re-election and left the country in November 2011. Al Quaida captured most of Yemen in March 2011, and after the Houthi Rebels increasingly gained power in late 2014 and IS bombers became more active, a Saudi-led coalition started a still ongoing intervention in March 2015 (The Economist, 2016).

In early March 2011, protests against the status quo started to rise in the military dominated political landscape of Syria, where the Al Assad family had ruled since 1970 (Gause, 2011). The Baath Party already gained absolute power under Hafez Al Assad, shifting power to the country's minority of Alawites, 'an anomaly in the Arab world' (Ajami, 2012). In February 2012, Jabhat fath Al Sham was set up in Syria, and a rebel-offensive aiming to take over Aleppo started, causing a first exodus of people seeking refuge elsewhere. The foundation of ISIS rendered the conflict even more intense, and an US-led coalition was initiated to intervene on spot in 2014. At that time, formal borders had already been removed by the self-named state. Russia and Britain have carried out air strikes since late 2015, therefore also participating in the ongoing offensive (The Economist, 2016).

After around five years of Arab Spring, the following figure provides an overview of the current status quo in the countries presented before as part of the Arab Spring. Neighboring countries like Algeria, Morocco, Tunisia and Sudan are also included, but the movement did not affect these countries in a similar way. The Republic of Algeria remained an exception, as untouched by the Arab Spring of 2011, although neighboring Libya. The country was still recovering from the experience made under a similar movement in 1988 when, as result of the first free elections in 1990, Islamists gained power long before this particular threat was even known to the West. The 'therapeutic coup d'état, of coup as cure from Islamism' became known for Algeria. Due to historical experience and fear of regaining Islamist dictatorship as well as 132 years of French presence, the country prevented the desired change by equating 'democracy' with 'chaos' (Daoud, 2015). In early 2011, Morocco experienced a slight

uprising of protesters demanding greater social justice, democracy and the restriction of royal powers under a constitutional monarchy (Bozonnet, 2015). As a consequence of the Arab Spring, Libya, Yemen and Syria are still settings for ongoing conflicts between rebels and local regimes, but Syria turned out to be the most internationalized conflict.

Fig. 4.1 Country Status at January 2016 Levels



Source: The Economist, 2016

The previous stability of the dictatorship led countries grounded on two pillars in the past: military security services and state control, both supporting the ruling regimes by putting down uprisings and civil wars. It was not foreseeable how military forces would react during the Arab Spring: siding with the protestors (e.g. Egypt and Tunisia) or backing the regime (e.g. Libya and Yemen) (Gause, 2011) (see Annex C: The Arab Spring – A detailed Overview of 2010 – 2016). The Arab Spring is characterized by high divergences from country to country, as there are divided societies ruled by regimes representing regional, ethnic or religious minorities like the ruling Alawite family in Sunni-dominated Syria (Gause, 2011). Examining the affected countries, it gets obvious that Arabs are not passively accepting authoritarian rule.

Generally, there are wide disparities between Arab countries, as ‘a homogeneous Arab world is a myth’ (Kühnhardt, 2012). The same applies to the assumption that Arab societies are stagnant and rather immobile. The reactions to the turmoil that had originally started in Tunisia are manifold, especially when it comes to criminal energy and legitimacy (Kühnhardt, 2012). The degree of mobilization has indeed a special meaning, as it demonstrates the awoken pan-Arab identification. This effect multiplied across the MENA region and expressed the insurgency aiming for democracy, although the echoed enthusiasm for revolution is limited and not universal with-

in the Arab world (Lynch, 2011). In contrast to the quest for democratic participation, voice and inclusion, a trend can be recognized. Countries with hereditary monarchies like the United Arab Emirates, Saudi Arabia, Oman and Kuwait have remained unaffected and stable so far. Power-based, traditional legitimacy continues to play a stabilizing role (Kühnhardt, 2012), but further explanations are not part of this paper.

### **4.3 Reasons for the Uprising Arab Spring**

Revolutions are never deterministic processes, so there is no guarantee if and which country might be affected next. Strategies to achieve economic growth and to raise performance through foreign direct investment have been developed long time ago to pursue employment, trade openness and further access to technology. FDI has risen with an increasing contribution to the GDP since 2000 and investment reform packages as well as free trade agreements have improved economic liberalization (Benmamoun/Lehnert, 2016).

The last decades were marked by expansion of schooling, yet the lack of opportunities for the increasingly educated youth best highlights the development of the Arab Spring. Instability was created, as the desire to participate in the decision-making process in order to shape the country's future was raised within the sophisticated social classes. A correlation between increased education and the likeliness of political change became apparent, yet corruption, nepotism, questionable press freedom, poor labor market prospects and GDP per capita were other determinants that triggered the wish to engage in political decision-making (Campante/Chor, 2012). The created turmoil, as consequence of the Arab Spring, reflects economic hardship and social dynamics (Anderson, 2011: 6). Arab countries are still divided into resource-rich and resource-poor countries, suffering from autocratic regimes and high unemployment rates, particularly in North Africa, where social development is still ongoing and where the Arab Spring can be seen as a wake-up call (Benmamoun/Lehnert, 2016) (see Annex D: Theory of 'Imagined Community' as Trigger for Pan-Arabism).

### **4.4 The Rise of IS and the Significance of Western Imperialism**

Several militant Sunni Islamist groups evolved across the region as result of the US-led invasion of Iraq that had started in March 2003 (Hanne/Flichy de la Neuville, 2015). In 2004, Abu Musab Al Zarqawi was setting up a local branch of Osama bin Laden's Al Quaida in Iraq (Said, 2014). Unlike bin Laden, the Jordanian Al Zarqawi followed the idea that Shiite Muslims, due to their belief, were renegades and should be eliminated. Several demands from bin Laden and his secretary Ayman Al Zawahiri to change Al Zarqawi's course failed (Melhem, 2015). In the following years Al Quaida founded an umbrella organization called 'Council of Mujahideen' grouping diverse Sunni resistance troops against the occupying forces (Said, 2014).

In 2006, the Al Quaida subsidiary in Iraq rebranded itself after Al Zarqawi's death in an US air strike as 'Islamic State' or 'Al Dawla' (English: *state*) under his successor, Umar Al Baghdadi (Melhem, 2015). The group aimed at territorial expansion and conquering terrain in order to create a base, founded on Al Zarqawi's idea and shared by the successor of Umar Al Baghdadi after his death in 2010. With increasing violence from the West, IS gained strength, but it was only in 2011 when the organization expanded its size and renamed itself again 'Islamic State of Iraq and Al Sham' (acronym: ISIS) (Melhem, 2015) or 'Islamic State of Iraq and the Levant' (acronym: ISIL) (Government UK, 2016).

Awwad Ibrahim Ali Al Badri Al Samarrai Al Qurashi alias Abu Bakr Al Baghdadi (Said, 2014), the new leader of the organization, announced the re-establishment of the Caliphate under his nom de guerre (Said, 2014) 'Al Baghdadi' as Caliph (Melhem, 2015) in the summer of 2014 (Hashim, 2014), after Islamic extremists took over control of Mosul and Tikrit, now occupying an area equal to the size of the UK (Melhem, 2015). 'Coming out of nowhere or rising from the ashes of Al Quaida' (Melhem, 2015), the previously in desert regions dominant violent group became one of the main threats to global security (Rekawek, 2015).

By 2015, the organization had around 30,000 armed members whereas half of them were, despite the name, neither Iraqi nor Syrian. The annual income is around 300 million USD, holding more than 2 billion USD in assets (Rekawek, 2015) and generating around 1 million USD through poll taxes and extortion daily (Melham, 2015). The Caliphate is likely to be the richest terrorist group ever. Foreign militants devote themselves to a purpose, searching for 'collective identity' (Rosiny, 2015), camaraderie or 'salvation' (Rosiny, 2015) by the profound belief in defending the Islamic State as state of God on earth (Melham, 2015).

## 4.5 Ideological Roots and IS Backgrounds

The Islamic State of Iraq and the Levant, as IS is also referred to, is an extremist Sunni Islamist terror organization pursuing jihad-ideology by following an extreme interpretation of Wahhabi Islamism, characterized by anti-Western slogans and the promotion of violence. The aim of the terror group is the creation of an independent state governed by sharia, imposing rules on people by applying violence and extortion (Government UK, 2016). The flexible patterns of these low hierarchical organizations referred to as 'katiba' (English: *independent task force*) are characterized by vassal structures, all connected to a single commander. Around 7,000 katibas are estimated to operate in Syria, but only IS became so internationally recognized by attaining questionable fame (Hanne/Flichy de la Neuville, 2015: 23).

The Caliphate is currently redefining the borders of the world map fixed back then in 1916 by the Sykes-Picot Agreement. Despite lacking international recognition, the attempt to define itself as 'state' highlights peculiarities which have to be outlined: apart from theological ideology, own administration, population and territory, the

group focuses on economic and political targets which separates the organization from other militant groups (Hanne/Flichy de la Neuville, 2015).

'Islam' as religion is not identical to the phenomenon of 'Islamism.' Islamism roots in the humiliating experience of the MENA region under the era of Western imperialism. The Arab world is still looking back to the glory of its empires, covering a huge part of the world back then. Starting in the 17<sup>th</sup> century, there had been regionally differing reactions to the state of siege: adoption, refusal and violent rebellion (Neumann, 2015). Jihadists deny Western-made borders, clustering the region into national states as human-made separation between Muslims, leading to perceived destabilization. The unification of Iraq and Syria is therefore an essential part of IS propaganda (Said, 2014). The Islamic State is aiming at a state formation, fostering an expansion strategy for world supremacy. Western democracy, claiming freedom but, according to IS, resulting in local quasi-powerlessness of governments, is accused. The feeling of never-ending oppression by geographical borders imposed by the major European forces in the early 20<sup>th</sup> century has awoken the desire under radical Sunnites since the 1950s for a renaissance of a Caliphate (Napoleoni, 2015).

The crucial role of the West in the development of ISIS cannot be neglected. The intervention in 2003 resulted in a decade of ethnical and religious conflicts. Depression and disillusion threw a shadow on the region. Boiling energy under the surface also derived from the feeling of being deceived by local regimes (Napoleoni, 2015). The attention should be turned towards the bogeyman, the institutions, governments and powerful private individuals providing logistical and financial support towards whichever kind of violent group (Rekawek, 2015). As geopolitical matters, enmeshed political and economic interests of leading nations and accusations of improvable charges are not necessary for the understanding of this paper, the issue is not argued further. Also the abuse of a religion for self-defined goals by uprooted meaning neglects the fact that all three monotheistic religions cannot fully be considered peaceful and that elements of violence and brutality are embedded in all sacred texts. It is about interpreting and understanding the roots of IS in Islamic tradition, yet these traditions are placed in a different historical era and deviating culture. The struggle is to define how and which of these traditions define religion and behavior in the future (Melham, 2015), but further religious investigation is also excluded from this paper.

The term 'Tauhid w Al Jihad' refers to monotheism and jihad (see Annex E: Differentiation between 'Jihad' and 'Holy War') under the assumption that there is no existence without God's reign. The re-establishment of a Caliphate refers to the five hundred years of suppression (see Annex F: History of Perceived Sunni Arab Humiliation and Suppression). The first Caliphate, created after the death of Prophet Muhammad, is seen as a perfect society led by God. The incarnation of the Caliphate today can therefore be understood as the return of the golden age of Islam in a time of regional destabilization and chaos (Napoleoni, 2015). The installment of a Caliph is a political action including religious legitimacy (Hanne/Flichy de la Neuville, 2015: 55). The title 'Caliph' supports motivation and is adherent to a role model and triggers inspiration linked to history (Hanne/Flichy de la Neuville, 2015: 50). The contrast to the pre-Islamic 'jahiliyya' (English: *ignorance*, the term refers to the pre-Islamic era that is

marked by the ignorance of the guidance of God, defined as ‘zindik,’ English: *Shia and non-Muslims as heretics*) is a Caliphate. A Caliph is defined as representative of the Prophet on earth and has religious (Arabic: *din*) and political authority (Arabic: *sultan*). The task of a Caliph is to fight ‘fitna’ (English: Islamic term denoting *hard times with increased apostasy and religious schism*, which refers e.g. to the U.S. and the Shia). The IS adherents and the population in IS-occupied territories are bound to the decisions of a Caliph by oath. Without delving deeply into religion, ‘obedience’ is essential, as according to the Qur’an, ‘disobedience triggers anarchy as synonym for the worst horror scenario for an Islamist regime’ (Hanne/Flichy de la Neuville, 2015: 55), but an in-depth explanation of this issue is irrelevant for this paper. The correlation between the establishment of the Caliphate and the threat of ISIS, to comprehend which kind of violent group actually threatens the Union by causing attacks and what driver is behind this ideology is essential for understanding the scope of this issue.

The Caliphate is built on several pillars. Ibn Taimiya (1263–1328), a medieval author of early ‘fatwas’ (English: *legal texts*) differentiated between good and bad Muslims. In his writings, he referred to Shia as even more dangerous enemy than Christians and Jews. Ibn Taimiya declared excommunication and outlawed them. Today the Caliphate uses Taimiya to justify actions against Shia and Syrian Shia-related Alawites (see Annex G: Islam and its Denominations). IS tries to provoke a governmental overreaction in order to create chaos and to present the organization as response to the crisis. This idea was already published by Abu Bajr Naji (\*1962) in 2004. The Egyptian Jihadist is referred to as well when it comes to strategic preparation and accounts to the path the IS stroke over the last years (Neumann, 2015).

The anachronistic organization currently covers the space from the Mediterranean coast of Syria to the heart of Iraq. The Taliban does not necessarily differ drastically when it comes to bans and imposing restrictions, yet the religious cleansing in this mission-led aggressiveness is new, not the medieval violence, which is also characteristic for Al Quaida and other armed groups. Despite its opinion and belief regarding the legal interpretation and way of life according to the time of the Prophet, the Caliphate is not per se backwards-looking. Globalization and information technology are the basis for its penetrating power, differentiating itself from other armed forces. It is an ‘online-state,’ knowing how to benefit from the advantages and effects of globalization. But apart from the heroic advertisement and bold distribution of apocalyptic messages, the leaders remain more or less mysterious and faceless to the outside (Napoleoni, 2015).

Despite the ‘world’s united efforts to abort IS,’ it turned to be a new model of government, as result of the wave of revolutions across the region. IS, as ‘brutal reproduction of previous autocratic regimes,’ has survived so far by emphasizing anti-centralization. The attraction of the Islamic State might derive from its establishment as ‘state’ with facilitated black-white philosophy, in which ‘local officials seek to regulate and tax commerce,’ all in contrast to previously known regimes owning the oil-industry and pushing hyper-centralization forward (The Economist, 2016). Despite the online mass campaigns attracting foreign jihadist fighters from around the globe volunteering for the Islamic State, it is an illusion to think that the increasing strength of IS

is more harmful than Al Quaida or Jabhat al Nusra (Waterbury, 2015) (see Annex H: Number of Terrorist Incidents caused by Major Terrorist Organizations in 2015).

#### **4.6 Criticism of Western Approaches**

The current events on spot go far beyond simple 'change,' but raise a deep-rooted conflict about the compatibility of religion and an adequate form of government, as well as whether a certain state form, namely the interpretation of 'Western democracy,' can successfully be applied everywhere, despite obvious differences in historical development and the witness of significant events, shaping the nation and marking its individual future. Traditional expectations, formed by the immediate culture, influence behavior, norms, values and beliefs. The desire for change and the ability to mobilize should not be misinterpreted with readiness or general susceptibility of a government form that worked well in an interculturally and historically different developed hemisphere (Gause, 2011).

Arab voices claim that 'the West only interferes when it serves its interest, not when it is simply about democracy' as the Israeli attacks of 2012 against Gaza are still freshly in mind. Back then, the incident did not trigger a Western alliance to protect the Palestinian civilians. This led to the assumption that the West had different approaches, depending on its interests: in Yemen, the threat of Al Quaida gaining power after a revolution determined the view of a 'terrorism aspect' causing an intervention. In Bahrain, it was more the 'Iranian aspect' that mattered. The US has its naval base near Manama, and the fear of Bahrain-based Shia groups having close relations to Teheran and their influence on swaying Iran endangered the States. The 'wait-and-see approach' in Syria at the beginning of the turmoil was seen negatively, as well as the military intervention later on, when it became obvious that Jabhat Al Nusra might take over control after a collapse of the Al Assad regime: a scenario threatening not only Israel's security, but also America's and Europe's representation of interests in the region. Discontent was created by the unsteady strategies of the West: interfering or remaining on the sidelines despite continuous human right violations in the respective countries (Metawe, 2013).

#### **4.7 Political Outlook**

Daring an outlook into the future should not be underestimated, although the ongoing turmoil created woe and conflict in one of the world's most heated regions, as imagined, real or exaggerated fear prowls around the Arab World. The West is challenged by balancing its national interest in the region, while defending human rights in ongoing spot-interventions. Local religious minorities fear constitutional change like the implementation of Islamic law under e.g. the Muslim Brotherhood in Egypt. The active use of sharia practice in IS-occupied territories caused a large number of heterodox persons to seek refuge elsewhere, including the ones referred to as 'econo-



mic migrants' and the ones striving for welfare benefits, thus involving Europe as a continent, entity and value community in an Arab conflict. The burden of the West is to take its responsibility from those times when the former colonial powers dominated several parts of the world, and to settle re-emerging disputes and conflicts with historical linkage. The Arab Spring turned out to face fanaticism, challenged by defending religious tolerance regarding the resurrection of a Caliphate. Not just the status of minorities is in debate but also the question of women's rights is omnipresent (El-Issawi, 2011), as some of the Islamic or secular drivers are 'far away from being less authoritarian than the regimes they battle in order to replace' (Hovsepian, 1995: 1).



## 5 EU – Challenge 2016

World War II triggered the common wish of former war opponents for lasting peace and stability. The idea of a so-called ‘political Catholicism’ developed in the 19<sup>th</sup> century, was harmonized across national borders and facilitated integration later. The nations, characterized by divergences, were seeking similarities by invoking their innate common ground, leading to a renaissance of Christianity. The universalistic approach of Christianity helped overcome the post-war discredited pigeon-hole national-state-border-thinking and resulted in the creation of the EU, which was, however, still in its infancy in 1950 (Herz/Jetzperger, 2008). Today the Union is economically and politically highly integrated (Haller, 2008), but there is still work to do: adopting measures, issuing frameworks and defining articles that leave too much leeway for interpretation – deliberately or not.

### 5.1 The Impact of Globalization and the Refugee Crisis

Philosophically spoken ‘change is the only constant’ (Heraclitus of Ephesus, 535 BC) and in today’s globalized world this is particularly true. The digital age is characterized by facilitated data exchange as information is spread around the globe within seconds. Yet abuse and questions on authenticity and credibility doubts mark the information era of the 21<sup>st</sup> century. There has always been war in the history of mankind, but today it is about its global impact, the far-reaching implications of decisions, governance claims and the influence of societies divided by disagreement. Turmoil has broader spill-over effects than possibly conceivable in the 20<sup>th</sup> century. There is no escape from the growing flood of information spreading around 24/7 including the regular updates on previously shared information. This decade prevents a retreat from current happenings for the individual. More than ever mankind is at the mercy of the effects of globalization: united in living in a global village. The European Union faces new challenges, as the complexity of world politics is complicatedly enmeshed, new threats arise, and globalization is a positively and negatively major responsible in the way information is perceived by European and world citizens.

The spill-over of the Arab Spring had a far-reaching impact, and the West did not remain unaffected by the recent developments in the Middle East. The situation for heterodox people in the region became critical, not just since the Mujahideen declared Shiites as most dangerous enemy for Muslims by comparing the Shia belief to an ‘axe destroying the pillars of Islam,’ according to Abu Muhammad Al Adani, IS spokesman (Said, 2014: 103). The fear of terror, violence and persecution resulted in turmoil of feelings. Insecurity through bans and torture dominated life on the ground

(Kingsley, 2016). The escalation and destabilization in the region of Syria and Iraq and the insecurity about a life between moments of silence and clashing airstrikes led to the biggest wave of migration since World War II, displacing 12 million people at December 2015 levels (DePillis/Saluja, 2015). The terrorist organization Islamic State has international and regional supporters, yet the majority of civilians rejects the ideology, acts and behavior of the self-declared state and lives in fear and angst itself. People turned their backs on home, land and country, hoping for a better future elsewhere. The first refugees from the region were registered late in 2011. Due to worldwide conflicts like the Ukrainian crisis, the Ebola epidemic and the intervention in Libya, the UN referred to donor fatigue when explaining the decreased European willingness to donate, stressing the accountability of Middle Eastern neighbors (see Annex I: GCC's Denied Access – Understanding the Importance of Cultural Sub-Clustering in the Effort to Integrate Sustainably). Despite the monetary contribution, the World Food Program had to shorten means further, which triggered a huge wave of refugees trying to organize traffickers and paying large sums hoping for a future in Europe (Gutschker, 2015).

The refugee crisis, as result of turmoil and destabilization of countries across the region, challenges the European Union in foreign and inner politics on a supranational and on a member states' level regarding legal, security and intercultural issues. Today the Union's task is to sustainably manage a high influx of people seeking refuge in the EU: to provide refuge, shelter, integrate and offer a future and to distinguish between persons in need and terrorists abusing an open-door policy. Several challenges arouse and the EU's path will be determined by its reaction to the crisis. Different angles have to be examined in order to fully understand the dimension of the task the EU and its member states are currently facing, especially as globalization prevents an individual sealing off on current issues, but demands governments to position by stating an opinion and acting thereupon, however disagreement prevails.

## **5.2 Perceived Heteronomy from Brussels and Isolation Attempts**

Europe as supranational entity is acting on the basis of the principle of conferral, whereby the member states transfer competences to the EU to act on behalf of their interests. The competences are transferred democratically and voluntarily. According to the 'doctrine of supremacy' (see Glossary), which is not expressed in the Treaty, EU law takes precedence over national law. The new legal order has been created in *Vand Gend en Loos (Case 26/62)* and is constituted on the basis of the member states' limiting their sovereignty, but the Union is still acting in limited fields, as only the transfer of competences creates the legal basis to act upon (Homewood, 2014).

Facing the high number of refugees in 2015, the EU decided to distribute at least 160,000 refugees according to a quota. The idea to distribute refugees across the Union, as Germany, Sweden and Austria were targeted as final destinations in most cases, aimed at relieving border countries like Greece and Italy (Löwenstein, 2016). Yet, since the beginning of the refugee crisis in Europe Hungary is continuously fight-

ing to contain the illegal and Muslim-migrant wave and found an increased number of supporters after the incident in Cologne on New Year's Eve 2015/16 in Germany. The country held a referendum in October 2016 proclaiming 'no' and 'don't risk anything' against the further influx of migrants and in particular against the quota distribution of refugees across the EU (Löwenstein, 2016). Despite the fact that the referendum failed, as only 40% had handed in a valid vote (Kingsley, 2016 a), Victor Orbán, Hungarian president, still aims at a refugee distribution according to majority vote (Löwenstein, 2016). Slovakia, another opponent of the idea to distribute refugees across Europe, aims for flexible solidarity, a concept of monetary support without taking in refugees (Unknown, 2016 a). The anti-Brussels attitude of some member states became apparent as the disagreement caused an inability to manage and effectively proceed further in the ongoing crisis. Hungary's anti-immigration policy and current political attitude as extreme EU-critic are classified as attempt for a Christian-nationalistic isolation. Orbán refers to the need to protect Hungary's values as EU values and urges to defend Europe's Christian identity (Flanagin, 2015).

The refugee matter is not solely an issue of humanitarian aid and welfare but could become the turning point of the Union's stability. Jean-Claude Juncker argued that solidarity between member states had to be demonstrated voluntarily and could not be forced (Löwenstein, 2016). The legal framework of the Union also refers to the importance to promote solidarity among member states as well as economic, social and territorial cohesion (Article 3 (3) S. 5 TEU), but several states feel exposed to the decision-making from far-away Brussels (see Annex J: Exclusive and Shared Responsibilities between the EU and its Member States), a term that defines the abstractness and impenetrability of the perceived exogenous strength. The question raised during these days is whether all or just some member states will have to accommodate refugees and also which number will be accepted as limit, referring to the discussed quota regulation. Financial support excluding the intake of refugees, distribution according to majority vote and quasi unlimited intake are scenarios partially present and partially discussed in the Union (Trenz/Klein, 2013), heating up the debate about foreign migrants.

The current situation demonstrates a lack of solidarity, and it has even caused a reversion to nationalism. The perceived deficit of democratic elements in the Union resulted in discontent among the citizens and generated a mobilization against the perceived heteronomy of Brussels triggering increased regionalism. This new phenomenon refers to local identity and calls for anti-European movements opposing the so-called anonymous institutions situated abroad. Creating lasting identity on a European level failed so far, as the desire for democratic local autonomy is particularly stressed by Europeans these days (Trenz/Klein, 2013).

Throughout the debate, the European population gets the impression that national and Union interests are conflicting. Combined with a lack of knowledge about the functioning and structure of the European Union, citizens these days tend to vote more 'regional,' by reverting to nationalism, which results in a radical renunciation of the EU. The growing right-wing across the Union, the Brexit referendum and the electoral success of the Republican Donald Trump (Hemmer, 2015) are examples of na-

tions turning back from globalization towards nationalization as result of increased nationalism. The anonymity, opacity and impenetrability of geopolitical connections don't seem to hit the zeitgeist anymore. Today's world of a global village literally increased the security threat, as the term refers to the connection, linkages and confused political landscape with pre-defined bogeyman, anticipating the idea of a 'village,' making people revert to their own values and traditions as a secure harbor of continuity and duration. Many feel left behind, suspended, and others directed by anonymous institutions not acting transparently, but empowered to make decisions for 28 member states simultaneously across national differences and cultures. The Union's challenge is to make the roots, initial idea, ideals and goals of the supranational entity accessible to the citizens, and to provide background knowledge about its work, functioning and structure. Education will prevent false assumptions and defeat radical movements as a consequence of the above explained.

### **5.3 Political Shift in the European Union**

As result of fear of the unknown, the continuously rising right-wing across Europe is not surprising. Several critical incidents with persons under the status 'recognized refugee' (e.g. rape and drowning of Student Maria L., Freiburg 2016 (Frank, 2016)) and terrorist attacks, undertaken by Sunni Islamist organizations referring to the holy book of a world religion to justify their acts, frighten the European population. Each critical incident supports the inflow of right-wing parties, which all proclaim nationalism, meaning against a united Europe and enjoy electoral success, as many people do not feel represented by the moderate center and left political parties anymore. Europe is split like never before, resulting in the current trend of reversion to nationalism and political right shift.

The community has to balance the interests of Union's citizens and the demand of those who have lost all and arrive in Europe hoping for a better future. It is comprehensibly hard to differentiate between the ones in need, demanding refuge, the free-riders, the forum shoppers (definition: asylum seekers particularly searching for countries granting generous reception conditions and recognition quota (Hailbronner/Thym, 2016)) and undercover terrorists, secretly entering Europe alongside so many others. The Union is struggling between the growing calls of EU citizens about being neglected in the face of the refugee crisis. Politically, this became apparent in several elections that already took place on member state level. Standing for their rights as EU citizens, frightened about the future of their country and awaiting an unpredictable, but potential change, the Union is split between EU supporters and EU opponents. Economic and cultural doubts arise from the fear regarding foreign infiltration, shortened retirement funds and e.g. the adaption of a foreign culture, leading to public restrictions and limitations of common freedom. Unknowingness of the oriental culture and religion is paired with extremists stressing behavioral attitude, using the Western tolerant society to pursue the enforcement of intolerant goals like the Sharia Police Patrol in Germany (The Guardian, 2016). Parallels to the Hisbah, the

police patrol in charge of morals and values, rooting in the times of the Abbasids and well established in IS occupied cities and regions (Hanne/Flichy de la Neuville, 2015: 84), should not be overseen.

The imaginary, real or exaggerated fear of a cultural clash between the Occident and the Orient within the borders of the Union are tools from dark forces aiming to weaken and split the EU. An ongoing debate apart from the general questions about (illegal) migration and refugees is the question about Muslim migrants. Countries like Hungary made it clear that they disliked the idea to let Muslim migrants settle in their country, and critical voices proclaim 'Europe to the Europeans.' Parallels should be drawn on time, leaving no scope for religiously as well as ethnically motivated hatred. In the effort to manage the ongoing crisis, while struggling to keep a unified Europe, the EU is facing a growing right-wing, which makes it hard to differentiate between trigger, driver and impact of the crisis.

#### **5.4 Security Concerns due to Terrorist Attacks Across Europe**

Facing the thousands of migrants as well as the illegal migrants crossing the border of the Union daily, EU citizens question, whether they still enjoy guaranteed safety, as one of Europe's priorities is to protect critical infrastructure and to keep a high quality of life (European Union, 2010: 9, 13) within the internal market. Many of the refugees started to seek refuge elsewhere due to the sharia concept of 'jizyah,' a poll tax on Christians and heterodox persons living permanently in Muslim territory but wishing to practice a religion, other than Islam, openly. The tax of around 60 USD has to be paid monthly and per person, and it created a large number of refugees from Raqqa, Erbil and Mosul under the 24 hours of a guaranteed advantage of escape from the threat of death under sharia (Hanne/Flichy de la Neuville, 2015: 79). However, a high number of persons under granted protection became apparent in abusing the tolerant and open society in Europe or in executing terrorist attacks. Union-opponents take incidents like Cologne on New Year's Eve 2016 as an example to claim an urgently demanded change in policies towards foreigners, migrants and refugees by distinguishing between abuse of granted security, asylum and humanitarian aid. Nowadays, Europe is exposed to a different kind of security threat. Unlike the previously known terrorist attacks of the separatist-national Basque 'Euskadi Ta Askatasuna' and the attacks happening in Turkey, initiated by the 'Partiya Karkerên Kurdistanê,' Europe now became the setting for a new threat of terrorism, which is detached from nationalist movements. The 'warriors of the Caliphate' want to destroy Western lifestyle under the broad definition of Western values. Terrorist attacks, uncoupled from the organization, but executed by radicalized individuals somewhere across the EU, disregarding nationality, are a fear that is difficult to handle, as unpredictability and anonymity prevail. Investigations into several incidents and terrorist attacks in Europe discovered the perpetrators' traceable refugee background, like the bomb attacker from Ansbach (Syrian refugee) in July 2016 (Meiritz, 2016).

Security issues are challenges that demand the Union to gain a profound understanding of goals and missions from religiously motivated terrorist violent organizations as global actors. It is essential to focus on understanding the source of the threat, rather than simply improving border management, while neglecting the clarification of motives and backgrounds of Jihadists as warriors of the Caliphate. An analysis of terrorist attacks with jihadist background and a gradation of radicalization are essential to understand the omnipresent threat of terror in the 21<sup>st</sup> century.

### **5.5 In the Cross Hairs of Critics – Which Approach to Choose?**

Apart from humanitarian aid and donations for human beings, countries refer to cultural compatibility as one of the main EU challenges. The historical conflict between the Orient and the Occident might experience a revival in the 21<sup>st</sup> century. Aside from crusades in Jerusalem, the metaphorical battleground is now within a Union that defines itself in terms of humanitarian values, which are based on the aim to prevent war. The dominance of religiously rooted conflicts nowadays has to be examined in order to understand Europe's change under the ongoing development as a result of the refugee crisis, displacing local conflicts rooting outside the Union. Politically, a right shift can be proven, and interculturally increased xenophobia and cultural isolation trigger nationalism in a century in which the world is referred to as 'global village.' This will probably cause lasting change in existing structures.

Legally, politically and interculturally: the Union is challenged on all levels. Fear, existing terror, the balancing act between humanitarian aid and proclaiming human rights, while hazarding the consequences of being slightly abused as a value system rather than as a Union, keep the EU busy. The high number of people crossing the Union's borders daily, including the illegal migrants and disagreement among the member states on how to deal with the issue led to the delayed ability to act as an entity. Criticized by third-nations on the discussion about limiting the influx of people, while being critically questioned by European citizens about increased security threats, fear of foreign infiltration and religion keep the Union on the go.

It is not legitimate to claim that all these challenges were easy to manage. Several conflicts of interests and different ideas about the development and organization of the Union and its future path are difficult to reconcile on a supranational level. The uncertainty, resulting from a wait-and-see approach, as well as the inability to act as an entity due to different aims in the refugee matter, caused some member states to initiate individual approaches by solely pursuing national interests. The EU's concept of dealing with the current situation has to be carefully overthought, especially when it comes to securing the external borders of the Single Market, the inner security and the prevention of terrorism. The Union is provoked to act fast by the chaos that has been created, however, understanding the roots of the crisis in order to find a sustainable path to manage and develop, while sticking to European values, might be the biggest challenge for the Union.

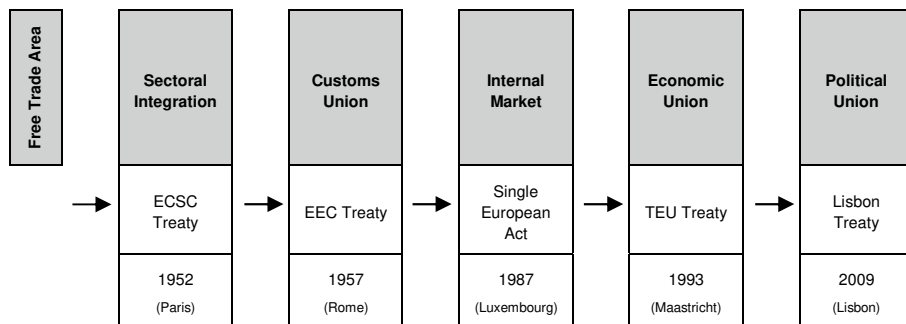


## 6 Legal Issues Concerning the Migrant Crisis

### 6.1 European Integration Process

The post-war alliance started with the attempt to become a military and political Union by signing the ECSC Treaty in order to confront the Soviet threat. This sectoral integration stage was followed by the creation of a customs union, as economic integration was pursued further, resulting in the legal framework of the EEC Treaty, which is based on four ‘fundamental freedoms’ (see Glossary). Aiming to create a single pan-European market, trading obstacles were gradually removed, like national legislation favoring or protecting certain industries. Europe’s endeavor for integration resulted in the completion of the Single Market, which is still developing further to an economic union after the post-Cold War era. The Treaty of Lisbon from 2009 finalized the integration process by turning the EU into a political union (Glencross, 2014). Today the Union is a supranational entity that is politically, financially and economically integrated (Juncker/Tusk, 2015: 4, 5). The European integration process is demonstrated in the figure below, showing the development over time including the respective treaties, years and places of signature as significant steps towards the achievement of European integration.

Tab. 6.1 *European Integration Process*



Source: Suder (2011: 18)

The European integration process brought plenty of advantages for European citizens. The abolition of internal and the unification of external tariffs, the removal of intra-European borders and the implementation of a single currency are just a few examples that underline the success of European integration as stage of the race to become global. The possibilities to study and work abroad (e.g. Bologna Process and Erasmus) and the facilitation of doing business in a borderless Union have led to a rise of living

standard, widened educational horizons and a gain in cross-cultural experience. The reasons to abandon borders within the so-called 'Schengen area' were mainly economic ones. Nevertheless, the pressure to speak with one voice will become even more intense in the years to come (Howorth, 2007). Globalization as key driver in this development urged the Union to evolve further. A borderless Union has many advantages as explained before, but security concerns arise by nature. The importance of keeping the Union's external borders safe, as internal borders have been removed, becomes essential in order to guarantee inner security, so migrants crossing the borders have to be properly controlled. In the following, the structure and functioning of the Schengen area will be explained as well as the importance and tasks of Frontex as European border management. Facing the current refugee crisis, an overview of Asylum Law and Aliens Law is given afterwards, aiming to deepen the understanding of the ongoing conflicts when it comes to refugees and conflicting supranational as well as national legislation and the trend to revert to nationalism resulting in a rejection of supranational law and lack of member states' solidarity.

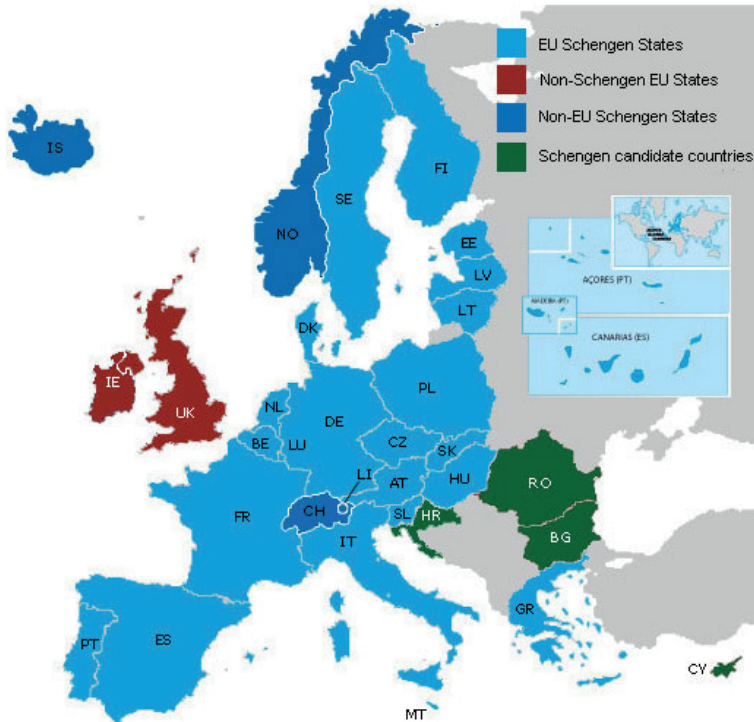
## 6.2 The Schengen Area

The 'Schengen Agreement,' signed in 1985 by France, Luxembourg, Belgium, Germany and the Netherlands, was pursued further by the 'Schengen Implementation Convention' of 1990 (Hummer, 2010) and came into effect in 1995 as 'Schengen Convention,' creating the Schengen area by effectively removing all border controls among the signatories. The Amsterdam Treaty integrated the Schengen acquis in the European Union (Kenealy/Peterson, 2015).

Including Schengen associated countries, but non-EU member states, like Switzerland, Iceland, Lichtenstein and Norway, the area comprises 26 countries excluding EU member states Ireland and the United Kingdom, Bulgaria, Romania, Croatia and Cyprus (European Commission, 2016 b). The Schengen area has 44,000 km of external sea borders and 9,000 km of land borders (Frontex, 2016 a). 500 million EU citizens enjoy their fundamental right to work, live and travel within the borderless Union without special formalities and border checks. The 'freedom of movement of persons,' as part of the four fundamental freedoms, is guaranteed by the EU for Union citizens irrespective of nationality. Also business-men, many non-EU nationals and tourists benefit from the facilitated internal movement under Schengen visas (European Commission, 2016 b).

As part of the compensatory measures for the removal of borders, the signatories agreed on enhanced border checks at the Union's external borders, the establishment of a uniform visa-regulation and the respective field of competences for asylum applications. It was decided to set up regulations concerning the travelling of third-country nationals within the Union and to increase police-coordination across the member states as well as to implement a union-wide investigation system, called 'Schengen Information System,' (SIS) (Hummer, 2010), which is defined in Article 92 et seq. Schengen Convention.

Fig. 6.1 The Schengen Area as of 1 July 2013



Source: European Commission, 2016 b

The creation of a borderless Europe is one of the biggest achievements of the Union and it is irreversible (European Commission, n.d.: 3). However, there is a security deficit resulting from the removal to exercise controls and identity checks of persons at the countries' borders. In order to decrease this particular risk, intensified police cooperation, cross-border surveillance and the SIS are emphasized across the Schengen territory. The computerized system collects data from all Schengen countries and supports by providing a huge database on individuals' information, but data protection is taken very seriously (e.g. the Schengen Convention contains rules on information relating to the identification of a person in the SIS (Article 93 SC)). In the absence of internal border controls, the Schengen states have to ensure security within the area, but referring to a 'fortress Europe' is unjustified. Efficiently controlling external borders is part of the Schengen states' responsibility to offset the effectively increased security risk and to maintain a high security level (European Commission, n.d.). Countries willing to be part of the Schengen area are responsible for maintaining a high level of security by controlling the external borders on behalf of other Schengen states properly and to issue Schengen visas in order to balance the deficit resulting from the internal border removal. The law enforcement and the application of Schengen acquis have to be ensured: systematic border checks are unlawful, but

spot checks regarding purpose and duration of stay, as well as the identification through competent national authorities, are justifiable. In case of serious threat to public policy or internal security, a Schengen country may temporarily reintroduce border controls at its internal borders. The European Parliament, the Commission and the public have to be informed (European Commission, 2016 b). The Commission may issue an opinion, but the temporarily reintroduction of border controls is a prerogative of the Schengen states, meaning no veto is possible (European Commission, 2016 c).

### **6.2.1 *The Schengen Convention***

The Schengen Convention of 19 June 1990 applies the Schengen Agreement of 14 June 1985 between the governments of the Benelux States, France and Germany on the gradual abolition of checks at their common borders. In the following, details of the Schengen Convention are described further focusing on the abolition of checks at internal borders and movement of persons: crossing internal and external frontiers (Chapter 1+2 Schengen Convention), conditions governing the movement of aliens (Chapter 4 SC), and the responsibility for the processing of applications for asylum (Chapter 7 SC).

According to Article 1 of the Schengen Convention (hereafter referred to as ‘Schengen Agreement’) from 1990, ‘internal borders’ are defined as common land borders of contracting parties including airports and sea-ports, within the territories of the contracting parties not calling at any ports outside those territories.’ ‘External borders’ mean the contracting parties’ land and sea borders as well as airports and sea ports provided that these are not internal borders (Article 1 Schengen Agreement). Internal border controls have been abolished, but there is a set of rules for external border controls via air, land, and sea supervision to secure the Union internally (European Commission, 2016 b). These pre-defined crossing points have been authorized by the competent authorities and are referred to as ‘border crossing points,’ permitting to cross the Schengen area’s external borders (Article 1 SA).

Internal borders can be crossed at any time and any point without checks on persons (Article 2 (1) SA), meaning EU citizens enjoy the full right to free movement across the Schengen area and the Union. The Union’s external frontiers are to be crossed at any border crossing point during fixed opening hours (Article 3 (1) S. 1 SA). Unauthorized border crossing at places other than the defined crossing points or at times other than the fixed opening hours lead to penalties (Article 3 (2) SA). The cross-border checks for ‘aliens’ (see Glossary) at external Schengen borders are undertaken by the competent authorities (Article 6 (1) S. 1 SA) and include the verification of travel documents and other conditions governing entry, residence, work and exit, but also checks to detect and prevent threats to national security and public policy to the contracting parties (Article 6 (2) (a) SA). Upon the alien’s exit, checks are also carried out according to Aliens Law and with respect to all persons other than those nationals of a member state of the European Community (Article 6 (2) (d) SA). The

surveillance and checks on external borders are undertaken by contracting parties (Article 6 (4) SA) and exercised on equivalent control levels (Article 6 (5) SA). In order to maintain effective surveillance and checks, close and constant cooperation is guaranteed (Article 7 SA). In addition to promoting uniform training, relevant information and data have to be exchanged, and instructions given to the authorities should be harmonized as far as possible (Article 7 SA).

Aliens are granted entry with the permission to stay and move within the Schengen territory up to three months under certain conditions, namely possessing a required valid visa, valid documents and those permitting border crossing (Article 5 (1) (a) SA). Additionally the alien must not be considered a threat to public policy or national security (Article 5 (1) (e) SA). Entry is refused in case the alien does not fulfill the list of criteria written down in Article 5 (1) SA (Article 5 (2) S. 1 SA). Exceptions are made if a member state considers the entry on humanitarian grounds, in national interest or because of international obligations (Article 5 (2) SA). Upon legally entering the Schengen area, the alien is obliged to declare himself to the competent authorities of the territory first entered (Article 22 (1) S. 1 SA in conjunction with Article 7 Regulation No. 604/2013).

Conditions governing the movement of aliens are laid down in Article 19 et seq. SA. In case individuals entered the external borders of a contracting member state legally and hold a uniform visa, free movement within the territory of the Schengen area throughout the period of validity of their visas is guaranteed (Article 19 (1) SA). Article 5 (1) (a, c-e) SA is a prerequisite and has to be fulfilled. The duration of free movement is limited to three months maximum from the date of first entry (Article 19 (2) SA). Aliens holding a residence permit or a provisional residence permit issued by one of the Schengen states are allowed to move freely across Schengen countries for a period of three months (Article 21 (1+2) SA). In case the conditions for a short visit are not fulfilled or not fulfilled anymore, the alien is supposed to leave the territory without delay (Article 23 (1) SA). Expulsion and arrest are caused in case of non-compliance, but asylum rights under national provisions of the Geneva Convention of 28 July 1951 relating to the Status of Refugees as amended by the New York Protocol of 31 January 1967, or of paragraph 2 of this Article or Article 33 (1) of the Schengen Convention are not precluded (Article 23 (4+5) SA).

The Schengen Agreement focuses on responsibilities for the processing of applications for asylum in Chapter 7 SC. The contracting parties of Schengen affirmed by the signature to the Schengen Agreement their obligation under the Geneva Convention of 28 July 1951 relating to the Status of Refugees as amended by the New York Protocol of 31 January 1967. Geographical restrictions were not made (Article 28 SA). Any application made for asylum has to be examined, but the country processing the application has the right to deny access (Article 29 (2) SA). Article 30 SA defines the processing of asylum applications in detail. The process is supposed to be finished as fast as possible (Article 31 SA).

In case an applicant for asylum is illegally within a Schengen country, other than the one processing the application for asylum, the applicant has to be taken back to that country (Article 33 (1) SA). The respective country is also bound to take the alien

back if the application for asylum has been rejected and the alien has entered another country without authorization (Article 34 (1) SA). The country granting refugee status and providing the right of residence is responsible for processing any further application for asylum made by family members of that individual (Article 35 (1) SA), which is defined in Article 35 (2) SA.

The Schengen Agreement points out the importance of data exchange and networking. If requested, information on an applicant for asylum shall be sent to another state in order to support the process of application for asylum (Article 38 (1) SA). In general, the communication on information exchange that might include e.g. identity, travel documents, residence permits and visas as well as location where the application for asylum was submitted (Article 38 (2) SA), has to be recorded (Article 38 (8) SA). However, the communication of data is supposed to be only preserved as long as necessary for the purpose exchanged (Article 38 (9) SA) and will be deleted afterwards.

### ***6.2.2 The Schengen Borders Code***

The Regulation (EC) No. 562/2006, 'Schengen Borders Code' of 15 March 2006, provides for the absence of border control of persons crossing the internal borders between the member states of the EU (Article 1 Schengen Borders Code). The established community code governs the movement of persons across borders. The Schengen Borders Code applies to any person crossing the internal or external borders of member states, without prejudice to the rights of persons enjoying the right of free movement or the rights of refugees and persons requesting e.g. international protection (Article 3 (a+b) SBC). The Code replaced Article 39 of the previously laid down provision concerning the border crossing of persons within the Single Market. As it remains the member states' responsibility to regulate border crossing, the European Council implemented the agency Frontex for operational support. The Borders Code is a 'legal framework to harmonize border control and border guard with regards to the principle of subsidiarity and the principle of proportionality' (Hummer, 2010: 172).

Article 23 et seq. SBC concern the temporary reintroduction of border control at internal borders (European Commission, 2016 e). A member state is entitled to exceptionally reintroduce border control at its internal borders in the event of serious threat to public policy or internal security for a limited period of no more than 30 days (Article 23 (1) S. 1 SBC). A prolongation is possible under Art. 23 (2) SBC referring to the same grounds that were expressed before in Article 23 (1) SBC. However, the total period of reintroduced border controls shall not exceed six months (European Commission, 2016 c).

It is distinguished between 'foreseeable events' (Article 24 SBC) and 'cases requiring urgent action' (Article 25 SBC). Reintroduced border controls concerning foreseeable events require the notification of the Commission and other member states (Article 24 (1) SBC). This notification has to be made without delay and according to de-

tails laid down in Article 24 (1) SBC. Information about reason, scope, date and duration as well as names of authorized crossing-points have to be transmitted (Article 24 (1) (a-d) SBC). It is possible to prolong border controls at internal borders in case of serious threat to public policy and internal security for a renewable period of up to 30 days in accordance with Article 26 SBC, referring to the procedure for prolonging border control at internal borders (Article 23 (2) SBC).

Cases requiring immediate action demand the member state to act fast. Whenever public policy or internal security are concerned, the member state may exceptionally reintroduce border controls at internal borders immediately (Article 25 (1) SBC) for a duration of 10 days without any prior notification according to Article 28 SBC (European Commission, 2016 d). The member state has to provide a report regarding the effectiveness of the reintroduced border control to the European Parliament, the Council and the Commission and has to confirm the date on which the border control is lifted (Article 29 SBC). The reintroduction of border controls has to be made in transparent manner, and the public has to be informed thereof, unless security reasons prevent from doing so (Article 30 SBC). Confidentiality on information supplied in connection with the reintroduction and prolongation of border controls has to be respected on the member state's request (Article 31 SBC).

### ***6.2.3 Recommendation of the Council of 12 May 2016***

The Council of the European Union issued a 'recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk' in May 2016. First identified in 2013, reports showed that the existing deficiencies of member states in carrying out external border controls were jeopardizing the guarantee of Schengen acquis (European Commission, 2016 c). Facing an unprecedented refugee crisis and an increase in mixed migration since 2015, the Union had difficulties ensuring efficient external border control in accordance with the Schengen acquis. Structural deficits became evident in hotspots like Greece, leading to secondary movements of irregular migratory pressure, causing serious threat to public policy and internal security in several member states (Recommendation of the Council, 2016).

Based on a proposal by the Commission, the Council may recommend the reintroduction of internal border controls at specific spots in exceptional circumstances, where the overall functioning of the Schengen area is put at risk as a result of serious deficiencies related to external border control, leading to threat to public policy or internal security. The measure aims at protecting the common interests of the Schengen area but should be used as last resort (European Commission, 2016 c). Striving for an adequate response to the identified threat to internal security, five Schengen countries, namely Austria, Germany, Sweden, Norway and Denmark, decided to carry out internal border controls due to the situational context of the refugee crisis and based on the Recommendation of the Council of May 2016. The approach to reintroduce internal border controls is considered necessary and proportionate for keeping up the

normal functioning of the Schengen area under the given circumstances (Recommendation of the Council, 2016) (see Annex K: Temporarily Reintroduced Border Controls at October and December 2016 levels). Pursuant to Article 25 et seq. of the SBC, these member states reintroduced border controls facing the massive rush of migrants 'putting the overall functioning of the Schengen area at risk' (European Commission, 2016 d).

As distinguished before, there is a difference between 'cases requiring urgent action' (Article 25 SBC) and 'foreseeable events' (Article 24 SBC). In the context of foreseeable events, Poland reintroduced border controls between 4 July and 2 September 2016 due to the NATO Summit, the 'World Youth Day' and a visit of the Pope. The French emergency state following the terrorist attacks in Paris was introduced on 13 November 2015. Foreseeable events like the 'Euro 2016' and the 'Tour de France' led to a prolongation of the emergency state, as well as the terrorist attack in Nice, which triggered the decision to keep controls at the French border until 26 January 2017 (European Commission, 2016 e).

The temporarily reintroduced border controls, which were already in place since the Recommendation of 12 May 2016, have been prolonged by additional three months, based on a recommendation of the European Commission and adopted by the European Council in October 2016, as the Commission aims to ensure 'proper reception conditions such as housing, education and health services.' The internal borders of Germany, Austria, Denmark, Sweden and Norway will therefore be maintained, as the exceptional circumstances leading to the adoption of the Recommendation, are still present (European Commission, 2016 f). The improvements in the border management of the Hellenic Republic and the EU-Turkey Statement, as well as the ongoing Frontex and NATO operations, have led to a decrease in migratory pressure (Recommendation of the Council, 2016), yet the situation in Greece remains difficult (European Commission, 2016 f). A high number of irregular migrants still challenge the member states additionally to the asylum seekers from the past years including their applications, which still have to be processed (European Commission, 2016 f). Secondary movement of (unregistered) irregular migrants remains a persistent risk to public policy and internal security, forcing member states to temporarily reintroduce internal border control, as the functioning of the Schengen area is put at risk (Recommendation of the Council, 2016). As mentioned above, the general border management, border surveillance and situational awareness have to be improved (Recommendation of the Council, 2016).

Circumstances constituting serious threat to public policy and internal security, jeopardizing the functioning of the Union's internal area, empower the Council to recommend border controls within the Union. As explained before, a prolongation of temporarily reintroduced border controls on the basis of Article 29 SBC is possible, but even under persisting exceptional circumstances the prolongation may not exceed two years in total. The Commission pointed out that the recommended prolongation was based on 'serious deficiencies identified in the external border management by Greece at the time,' clearly excluding potential migrant flows from e.g. Italy or the



overall migratory situation in the Union as causes of the implemented measure (European Commission, 2016 f).

During these days, the contractually defined ‘borderless’ Union is questioned by the rest of the world. Credibility and seriousness are doubted and despite the fact that the model of a borderless Union is unique worldwide, some states condemn the European behavior and critically question its values targeting humanitarian responsibilities. Aiming to maintain high security standards for European citizens, while managing to fulfill and provide for those in need is difficult, as the Union’s task is challenged by those abusing the possibility to enter Europe, while focusing on weakening the member states’ unity through terrorist attacks, and as result, created threat. In the following, Frontex as European border management is introduced, including the various routes and trails used by refugees, asylum seekers and migrants to cross the external EU borders.

### **6.3 Frontex – European Border Management**

Frontex is a European agency created in 2004 as own legal personality (Hummer, 2010) coordinating border controls and ensuring the safety of the Schengen areas’ external borders for the EU and Schengen-associated countries (Kenealy/Peterson, 2015). The European Border and Coast Guard Agency (acronym: Frontex) has its legal basis on the Regulation (EU) No. 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) No. 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No. 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No. 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16 September 2016, p. 1), replacing the ‘European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union’ (Frontex, 2016 b). Internal border checks have been effectively removed in 1995 (European Commission, n.d.), so the European border management agency Frontex was a systematic consequence of the Schengen Agreement (Richter, 2015).

Schengen countries with external borders, including land, sea and international airports, have a lot of responsibility and must ensure effective surveillance and proper checks. The agency is responsible to harmonize border management standards, thus reducing border crime and facilitating a legitimate passage across external borders. The agency provides training for member states and supports by coordinating in areas under pressure by providing equipment (Frontex, 2016 c). Frontex was created to provide training to national border guards and support member states in migrant return operations. Organized control operations and the development of risk analyses are part of the agency’s work as well (Kenealy/Peterson, 2015).

The Guardia Civil in Madrid has a prime responsibility (Grupo Edefa, 2016) and works from the maritime surveillance center for coasts and borders as part of Frontex. The Guardia Civil is referred to as ‘bosom of the body of the EU for the control of

external borders' (Guardia Civil, 2016). The police leads call in Frontex operations Indalo and Hera, Triton and Poseidon (Grupo Edefa, 2016). Hera was one of the first Frontex operations, as the number of primarily West African illegal migrants trying to cross the Mediterranean Sea increased since early 2000, as the distance between the African continent and Europe, in particular the Canary Islands, is indeed very short (Richter, 2015).

The idea of Eurosur was implemented in December 2013 with a total cost of 244 million Euros under the umbrella of Frontex. Eurosur was set up to improve the co-operation between member states and to intensify border surveillance. Each member state is supposed to collect data on migratory movements and to release this information on a National Coordination Center to provide a common data platform for all member states (Richter, 2015).

### **6.3.1 Frontex Operations**

#### **6.3.1.1 Indalo and Joint Operation EPN Indalo**

'Indalo' was set up in 2011 'to combat and monitor illegal migration flows along the Mediterranean coast from North Africa and Sub-Saharan nations.' Participating states are Belgium, Finland, France, Germany, Iceland, Italy, Luxembourg, the Netherlands, Portugal and Slovakia (Frontex, 2016 d).

In 2015, the 'Joint Operation EPN Indalo' was established 'to implement coordinated operational activities at the external sea borders of the Western Mediterranean region in order to control irregular migration flows towards the territory of the EU and to tackle cross-border crime.' Participating countries are Belgium, Finland, France, Iceland, Italy, Norway, Poland, Portugal, Romania and Switzerland (Frontex, 2016 e).

#### **6.3.1.2 Poseidon Sea, Mare Nostrum and Triton**

Apart from 'Poseidon Sea,' 'Mare Nostrum' and 'Triton' are also operations under the umbrella of the European border management to sustainably safeguard the Single Market's external borders (Unknown, 2015 a).

'Triton' is the successor of Frontex operation 'Mare Nostrum.' The Italian government created the operation as a reaction to the tragedies that happened in the Mediterranean Sea in 2013. The budget was around 9 million Euros per month. Due to increasing refugee numbers over time, the state urged the Union to bear the costs (Unknown, 2015 a). 'Triton' was implemented in November 2014, focusing on surveillance and border control. The maritime patrol is active off the Italian coast to safeguard borders and prevent human trafficking with a monthly budget of just around 2.9 million Euros (Frontex, 2014).

### 6.3.1.3 Criticism on Frontex Operations

The complex monitoring system and bilateral agreements of Frontex with e.g. Algeria and Morocco led to comparatively low migrant numbers over time. But without third-state cooperation in form of agreements, Frontex could not manage the migratory flow as successfully as it does, but drug smuggling and trafficking of human beings still occurs (Richter, 2015).

The operation Triton, also referred to as ‘Frontex Plus,’ was implemented by Europe’s border management, replacing Mare Nostrum. Pro Asyl claims the restrictive focus on border control and defense. Problematic issues are due to several reasons. First, the budget is reduced to almost one third compared to Mare Nostrum, preventing an effective replacement under same conditions. Second, Frontex does not obtain individual technical resources but receives them on participating member states providing. Third, the operation focuses on patrols along the Italian coast, but the patrols of Mare Nostrum were including the Libyan waters near the island of Lampedusa. The last argument of Pro Asyl critics is the difference in perspective: as Mare Nostrum focused on sea rescue service operations, Triton was primarily set up for external border control and surveillance (Pro Asyl, 2014). Members of Human Rights Watch critically assess Frontex and its operations. It is said that Frontex does not improve the humanitarian crisis, but indirectly supports the trafficking industry. Human rights organizations refer to incidents at the Greek border, demonstrating the misbehavior of Frontex’s police as ‘accomplices of Greek authorities’ supporting ‘push back methods’ (see Glossary) which are not compatible with EU law (Richter, 2015: 95).

### 6.3.2 European Refugee Crisis – Migratory Routes

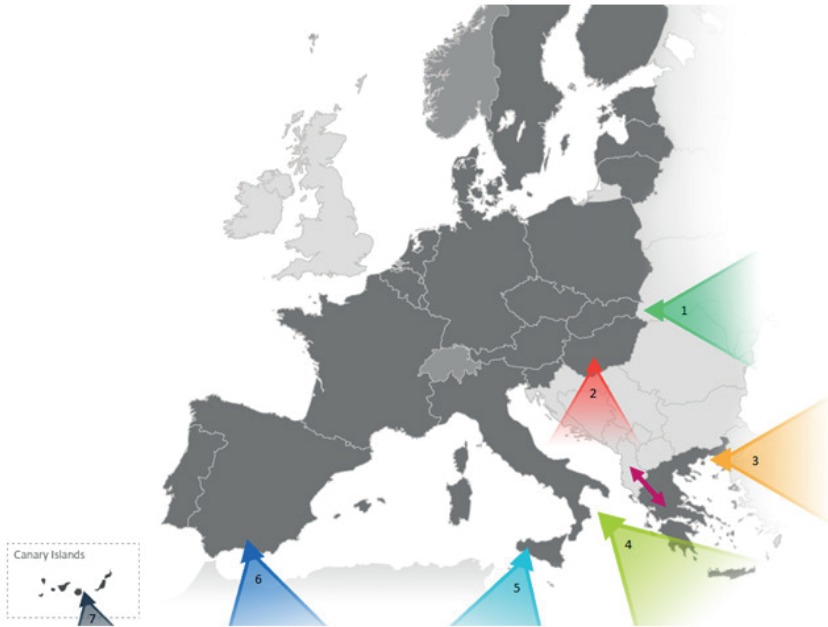
The current refugee crisis is characterized by an unprecedented influx of people predominantly from North Africa and the Middle East. The majority of illegally residing migrants in the EU entered the Single Market via international airports, holding valid travel documents and visa, and then simply overstayed the visa validity duration (Frontex, 2016f). The following table and figure provide an overview of the major routes that have been used to enter the Single Market. The number of illegal crossings in the first half of 2016 and the registered nationalities per route are stated in the table, the geographical map describes the seven main routes of migratory flows based on Frontex statistics to facilitate an understanding of the current crisis and to provide a visual and quantitative overview of migratory movements.

Tab. 6.2 Listed Illegal Crossings by Route (January – July 2016)

No.	Route (2016)	Illegal Crossings	Registered Nationalities
1	Eastern Borders	1,920	Vietnamese, Afghan, Ukrainian
2	Western Balkan	121,908	Not specified
3	Eastern Mediterranean	164,796	Syrian, Afghan, Iraqi
4	Apulia and Calabria	96,465	Nigerian, Eritrean, Gambian
5	Central Mediterranean		
6	Western Mediterranean	3,402	Guinean, Ivorian, Cameroonian
7	Western African	330	Guinean, Ivorian, Cameroonian

Source: Frontex, Migratory Routes Map, 2016 f

Fig. 6.2 Migratory Routes Map 2016



Source: Frontex, Migratory Routes Map, 2016 f, adopted by Dankert, 2016

The Eastern Borders Route covers 6,000 km of land borders between Belarus, Moldova, Ukraine, the Russian Federation and Eastern member states. Although the number of illegal crossings accounts for just 0.1% of the total, the states still struggle to secure their borders. The Arctic Route has developed in 2015 via Russia and Finland, and the borders still remain difficult to control (Frontex, 2016 g).

A 16-fold rise was registered in 2014 on the Western Balkan Route with a record number of 764,038 illegal border crossings. In order to reach Western Europe, the

Union was entered in Greece, then continued in Macedonia, Serbia and Hungary. The unprecedented number of migrants led Hungary to build a fence, aiming to stop the continuous influx of people (Frontex, 2016 h). On the Eastern Mediterranean Route, 885,386 illegal border crossings were registered in 2015, which is 17 times the number of 2014, a record year itself. In 2008, this route was used for 40% of all migrants arriving in the EU (Frontex, 2016 i). The popular Central Mediterranean Route remains under intense pressure with a well-established smuggler network in Libya, a collecting point for African migrants. Due to bilateral agreements between Italy and Libya, the flow of migrants was very low in 2009. The Arab Spring of 2011 renewed the rush and led to a record year 2014 with 170,760 illegal crossings (Frontex, 2016 j).

Although the Apulia and Calabria Route is not a major point of EU entry, the difficulty are travelers claiming to have lived in Greece for months or years before deciding to move within the Union. The decline in crossing numbers on this route is solely due to the migrant flow relocation via the overland Western Balkan Route (Frontex, 2016 k). The Western Mediterranean Route is characterized by fluctuating migrant numbers, also the likelihood of residence in Europe is increased through a departure from Libya, reached over land routes. 7,164 illegal migrants passed Europe's external border in Spain in 2015 (Frontex, 2016 l).

Bilateral Agreements between Spain, Senegal and Mauritania improved the situation on the West African Route through strengthened border controls. Characteristic of this route is the bad organization of smuggler networks that will eventually lead individuals to arrange the passage themselves (Frontex, 2016 m).

The possibilities of the EU to reduce and restrict migration are limited. Some researchers even state that it is impossible to limit migration or to effectively control migration. However, creating less favorable conditions for migrants, eliminating smuggler networks, or diplomatic endeavors to end the civil war in Syria, to actually reform the asylum system and to cooperate with nations of origin in order to remove causes of migration and allow readmission (Stern, 2015) might reduce the migration wave and separate those in need from forum shoppers and economic migrants. But the Union is devoted to the Geneva Convention: keeping migrants outside the 'fortress Europe,' as critics refer to the Union's approach to limit the migratory influx, is no option for the EU. Adequate protection is legally guaranteed. There are several legal frameworks on Migration and Mobility like the GAMM Framework or the Khartoum Process (see Annex L: Selected Legal Frameworks on Migration and Mobility). Despite the desire to pursue common goals, the lack of binding effects of agreements between the Union and third-countries effectively cause an inability to change the status quo. The signatories' implementation is mainly driven by individual national goals, which might contradict with the ones pursued by the EU. The voluntary approach facilitates engagement and results in an increased likelihood of cooperation, yet improved change and active support are lacking.

Like the Rabat Process, the Khartoum Process is a promising initiative designed to create a dialogue on migration, but transparent communication is incessant. Both parties, the EU and African states, pursue different goals, which makes it hard to achieve a common goal, especially if the declaration does not create legal rights under

international law. In order to retain its credibility, the EU must ensure to engage with third-nations, provided that human rights are maintained according to international standards. Aiming to abandon illegal migration, the initiative has to focus on establishing concrete projects to allow legal migration. However, critics in scientific research argue that legal migration was not addressed strongly enough (Stern, 2015).

## **6.4 Aliens Law in the European Union**

Due to the supremacy of Union law and the hierarchy that has been created in the milestone judgement *Costa vs. Enel* (C6/64), EU law always prevails. International agreements and European Community Law make up the two sides of EU law. National law ranks below EU law, but the immense overlapping and mixture of international and community-related as well as national rulings results in a difficult assessment in order to decide on the legal status of foreigners. It is distinguished between EU-citizen-foreigner and third-national-foreigner. A further differentiation can be made by clustering the group according to generation and integration-status, but this is not discussed further (Sieveking, 2007).

The legal status of a foreigner depends primarily on International Law, which consists of e.g. the Universal Declaration of Human Rights (1948), Multilateral International Agreements (Geneva Refugee Convention (1951), the Convention against the Discrimination of Races (1961) and the Convention on the Rights of the Child (1989)) and Bilateral International Agreements (Social Security Agreement) and the Convention and Agreement of International Employment Office (Sieveking, 2007). Despite the created hierarchy and the Europeanization of Law (see Annex M: Europeanization vs. European Integration – A short Scientific Demarcation), the member states remain sovereign about detailed aspects and forms of foreigner treatment. As covering all 28 member state perspectives on Aliens and Asylum Law would go beyond the scope of this paper, an illustration of the Federal Republic of Germany is exemplarily represented afterwards.

### ***6.4.1 German Aliens Law and Asylum Law***

The Aliens Law of the Federal Republic of Germany is based on EU law (EU treaties, regulations and directives, Schengen rules, settled case law and latest jurisprudence of the European Court of Justice and the associations law) as well as on international law. Due to the principle of supremacy that has been created in the landmark decision *Costa vs. Enel* (C6/64), EU law prevails over domestic German jurisdiction. German Aliens Law consists, inter alia, of the German Constitution, the Residence Act, the Freedom of Movement, the Asylum Procedure Law and the Benefits for Asylum Seekers Act, Integration Course and Employment Regulations and the Employment Procedure Ordinance and Regulations governing German Residence. People with immigration background have different rights that derive from their respective legal status,

whereby the purpose of stay is crucial in defining access to social benefits, education, labor market as well as societal and political participation (Tießler-Marenda, 2013).

Aliens Law governs e.g. the granting of visa, residence title, deportation and title of tolerance for foreigners. The Residence Act is valid norm for application on Aliens Law in the Federal Republic of Germany. The Refugee Law is the law governing the Aliens Law of foreign refugees regarding entry and stay. Asylum Law is part of Refugee Law and anchored in Article 16 a Grundgesetz (English: *German Constitution*): ‘politically persecuted enjoy the right on asylum.’ Thereinafter, Asylum is a basic right in the German constitution. How to treat the persecuted asylum seekers is defined in the Geneva Refugee Convention of 1951. Since 2002, people persecuted because of sexual orientation or gender are also granted the right of asylum in Germany. The European Charter of Human Rights prohibits the expulsion of individuals in case of ongoing severe human right violations in the individual’s country of origin, also if the individual has not received the right on asylum (Bittner, 2016). The Refugee Law distinguishes between ‘refugees’ by categorizing according to reason (e.g. natural catastrophe, poverty, illness and political persecution) and by comparing to the overall situation in the country of origin (Hildebrandt, 2016).

The political right on asylum is described in Article 14 of the Universal Declaration on Human Rights as restricted human right. A human is entitled to seek refuge in another country (Article 14 (1) UDHR), but the Article does not oblige a state to actually grant asylum to the politically persecuted individual. Therefore, Article 14 refers to the right on asylum as to the degree to which the individual states are willing to grant asylum. Asylum is not granted for the ones not in line with the principles of the United Nations (Article 14 (2) UDHR), so war criminals are excluded. The Geneva Refugee Convention added a restriction to send back refugees into their country of origin if political persecution is proven (Meisen, 2016).

In the following, the focus is on Asylum Law and derived rights for those defined as ‘refugees’ according to the Geneva Refugee Convention of 1951, (see Annex N: Definition ‘Refugee’ according to the Geneva Refugee Convention of 1951) ‘ratified by 149 state parties and outlining the rights of the displaced, as well as the legal obligations of states to protect them with focus on non-refoulement’ (UNHCR, 2016). Issues concerning late repatriates, displaced persons, as well as EU citizens using their freedom of movement within the Union to work, live and study abroad will be neglected, but general related aspects will be mentioned in order to portray the full scope of law.

The asylum procedure in Germany is performed according to the *Asylum Law* (1982), which has been renewed in 1993, 2013 and 2014 due to the Europeanization and the targeted European standardization. Before, Germany examined an application for asylum if the request was applied here. Due to the Europeanization of Asylum Law that introduced the ‘Principle of a safe country of origin,’ as well as the impact of the Treaty of Amsterdam (1997), Germany’s competence in examining locally applied requests ceased (Heinhold, 2015).

The *Treaty of Amsterdam* (1997) conferred the competency of ‘Visa, Asylum and Immigration’ to the Union. The EU migrant policy aimed at unified asylum politics

and fair treatment of third-state nationals. The Union targeted controlled immigration in order to fight illegal migrant flows. Therefore, it has to be verified, for example, whether Germany is the country responsible for handling the application, also in case the application was raised in the respective county.

Since borders have been effectively removed due to the Schengen Agreement, a first regulation to prevent ‘Asylum-tourism’ was implemented in 1997 (Dublin I, No. 360/1997), then progressed to Dublin II in 2003 (Rüssel, 2015). The *Dublin Agreement* (Date of effect: 1 September 1990) is an agreement to determine the EU member state that is responsible for examining an asylum application. The examination process undertaken by the Federal Agency of Migration and Refugees is called ‘Dublin Procedure.’ The Dublin III Regulation (No. 604/2013), or the ‘Regulation of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the member state which is responsible for examining an application for international protection provided by third-country nationals or stateless persons in a member state,’ has replaced the Dublin II Regulation (No. 343/2003). The Regulation has been directly applicable since 2014, with the result that the state, that the asylum seeker first entered, must perform the entire asylum procedure (Heinhold, 2015). If illegal entry in a second member state is proved, a transfer of the individual to the country of first contact is possible. EURODAC (Regulation No. 603/2013), a European automated system for comparing fingerprints of asylum seekers, was set up in 2013, to prevent the initializing of multiple asylum procedures across several member states simultaneously and to compare data (Rüssel, 2015).

The Federal Agency of Migration and Refugees (acronym: BAMF) is in charge to examine whether, and in case if, which reason of persecution exists. The recognized asylum procedure that is undertaken on an individual basis has binding effect for other authorities like the social welfare office paying benefits. The BAMF will decide on the right of asylum and whether the applicant in question qualifies according to § 3 AsylG and if subsidiary protection, meaning the existence of an expulsion prohibition, is present or not (Heinhold, 2015).

The German legal system is based on the rule of law and the sacrosanct human dignity (Article 1 (1+2), 19 (2) + 20 GG). Everyone is equal before the law (Article 3 (1) GG) and no one is discriminated or disadvantaged due to race, language, home or origin (Article 3 (3) GG). A differentiation is made between *nationals* and *nationals of other states* under the criteria ‘citizenship,’ leading to a separation between ‘Germans’ and ‘Non-Germans.’ Non-Germans cannot claim the right to freedom of movement (Article 11 (1) GG) or the right of free assembly (Article 9 (1) GG). Depending on the legal status, child benefits, as part of German social law, or unemployment benefits are not granted for some (Tießler-Marenda, 2013). It is distinguished between everyone’s basic rights, which can be appealed by foreigners and Germans, and rights that are primarily reserved for German nationals, e.g. ‘all Germans have the right to register clubs and associations’ (Art. 8 (1) GG).



### 6.4.2 The German Immigration Act

It is still controversial whether the Federal Republic of Germany is an immigration country (see Annex O: Brief Digression: Germany – An Immigration Country?), however, it is necessary to define basic rights that match the requirements of the constitution for a society with successors of foreigners in the second or third generation permanently living in the country (Sieveking, 2007).

The *German Immigration Act* has been released in 2005, called the ‘Law of control and directivity of immigration, regulation of entry and residence and the integration of Union citizens and foreigners.’ The Law is an omnibus act, meaning there is no German Immigration Law, but the Act aims at controlled immigration to prevent terrorism and improve the security policy with special focus on integration capacity in terms of the German economical and labor-related interests. Due to primacy of EU law, Foreigner and Asylum Law has been changed in accordance with the EU Directive of 2007 concerning asylum and stay and national law has been adopted to the EU Visa Code (2011) fighting forced marriage (Tießler-Marenda, 2013).

The legal components of the Immigration Act are defined below: the *Residence Act* governs the entry and residence of foreigners in Germany as well as the expulsion and deportation. Several acts and regulations complement the Residence Act, which is crucial for the work permit. The current *Citizenship Law* roots in the Reichs and Citizenship Law of 1913 based on ‘*ius sanguinis*’ (English: *right to citizenship based on parentage*). In 1999, the principle was broadened by adopting ‘*ius soli*’ (English: *right to citizenship based on place of birth*). Children of foreigners born in Germany would be granted the citizenship of their parents and the citizenship of Germany (§§ 4 (3), 40 (b) StAG). At the age of 18, it has to be decided between the two citizenships (§ 29 StAG). If no decision is taken until the age of 23, German citizenship would be automatically lost by virtue of law. In 2007, a citizenship test was introduced, but so far the participation is not compulsory.

The *Asylum Law* defines that Germany grants asylum to politically persecuted persons (Article 16 a (1) GG). On this legal basis, the constitution offers an enforceable right of protection for individuals, excluding persons from EU member states, as EU states are defined as secure countries of origin (§ 26 a (1+2) + Article 16 a (2) GG). Such an application will be refused as unfounded (§ 29 a (1+2) AsylVfG). Granting the right of asylum to those who are forced to or who voluntarily decide to migrate for reasons of war, natural catastrophes or archaic habits, is still unregulated and highly discussed. The term ‘political persecution’ is derived from the term ‘refugee’ under international law that has developed within the 20<sup>th</sup> century. People threatened on life, limb and asset by the political order in their own country because of their ethnical background, religion, nationality, their belonging to a minority or due to political conviction will be granted refuge in Germany in line with the Directive 2011/95/EU. The *Act on Affairs of Displaced Persons and Refugees* focuses on yet another immigration group, but this act will not be discussed further.

### **6.4.3 Legal Basis of German Immigration and Residence Law**

German Immigration and Residence Law is based on national and European directives, as well as on the Geneva Refugee Convention of 1951 and the European Convention on Human Rights of 1950. According to Article 1 (A) No. 2 S. 1 GRC, the term ‘refugee’ covers all those seeking refuge due to persecution of race, religion, nationality, belonging to a specific social group or political conviction. This definition is still used today but highly discussed, as the current inflow of people searching refuge is mainly triggered by civil wars (Tießler-Marenda, 2013).

The Geneva Convention has to be transferred into national law in order to take effect for the individual. The Universal Declaration of Human Rights adopted in 1948 grants the ‘right for each individual to seek asylum in another country,’ but, as mentioned before, there is no general duty for states to grant asylum. Asylum Law is still an individual law, as the accepting state is the authority to decide on asylum exclusively as part of its sovereignty. The right on asylum is therefore not part of general human rights. However, the right of entry is derived from the Geneva Convention, as it prohibits an individual to be expelled or returned (‘Prohibition of Refoulement,’ Article 33 GRC). The Geneva Convention is part of German law due to ratification and therefore applicable (Tießler-Marenda, 2013).

The European Human Rights Convention does also not directly grant the right of asylum. But in contrast to the Geneva Convention, the EHRC grants the right for the individual to sue at the European Court of Human Rights using an individual application. Germany has enforced the Convention by an act of assent, therefore it ranks equally with federal law (Tießler-Marenda, 2013).

Aliens Law is part of Police and Security Law, but Refugee and Asylum Law represents a (theoretical) exception, as they are based on Article 16 a GG (excluding the ones mentioned in § 16 a (2) S. 1 in conjunction with § 26 a AsylG) and on international law. Due to many links between Residence Law and Asylum Law, Refugee Law is one of the most complex issues in the field of Aliens Law. Aliens Law (aliens’ rights are derived from each state’s responsibility to protect individuals under international law (Kokott/Doehring, 2003)) applies to all non-Germans according to Article 116 (1) GG (Tießler-Marenda, 2013). German Asylum Law is shaped by Article 16 a GG, the Asylum Procedure Law (from 1993, amended in 1997) and the Regulation on Determination for the Responsibility of Asylum released in 1997. The Law on Measures under Humanitarian Aid Campaigns for Refugees (from 1980, amended in 1997) and the Law on Stateless Foreigners from 1951 are applied. Different laws also have to be considered at federal state level, e.g. guidelines for the accommodation of asylum seekers. Asylum seekers are under the protection of the Geneva Convention from 1951 including the additional protocols from 1967, as well as the Charter of Human Rights and the Directive 2011/95/EU. The Dublin Agreement (2003) and the Benefits for Asylum Seekers Act also influence German Asylum Law (Sieveking, 2007).

A German is defined as ‘German with German citizenship’ or ‘German without German citizenship,’ so-called Status-Germans (Article 116 (1) GG), referring to ethnic German-nationals like expellees or (late) emigrants from the former Soviet

Zone, 'DDR' or Poland (Sieveking, 2007). Foreigners are stateless persons and the ones possessing foreign citizenship, therefore they do not belong to the Status-Germans (Tiefßler-Marenda, 2013). Foreigners can be citizens of other EU states or citizens of third countries. Asylum seekers, persons entitled to asylum, bona fide refugees, convention refugees or de-facto refugees are also categorized as foreigners (Sieveking, 2007), but this will not be discussed further in this paper. Legal provisions determine whether a person is legally or illegally in Germany. Entry and stay are generally forbidden for third-state nationals, unless it is explicitly permitted. Each member state will decide about entry requirements as part of its sovereignty. Due to international obligations (e.g. Regulation No. 604/32013) and the German constitution, 'refugees,' as part of Asylum Law, portray an exception here. EU citizens obtain a special legal status due to the free movement right as part of the four freedoms within the Union that have been created for Union citizens (Tiefßler-Marenda, 2013).

#### 6.4.3.1 Entry and Residence Title

Generally, border crossing is only permitted at specified entry points (§ 13 (1) S. 1 AufenthG). Noncompliance will be avenged as an administrative offense and lead to a penalty (Tiefßler-Marenda, 2013). Entry in Germany is only legal under valid residence permit (§ 4 (1), § 14 (2) AufenthG). The residence permit is a limited residence title and depending on the purpose of stay (§ 4 (1) No. 2, § 7 AufenthG): work, study, or research-related as well as asylum, refugee according to the GRC definition, temporary protection, prohibition of deportation or victim of human trafficking are selected examples for granted residence titles that are categorized by purpose and determine the right to stay according to §§ 16 et. seq. (Tiefßler-Marenda, 2013).

Asylum seekers are granted a legal permit to stay (§ 55 (1) S. 1 AsylG, § 63 a (1) AsylG) for the duration of the asylum procedure. Entry-prerequisites like clearly defining the identity and citizenship of the foreigner (§ 5 (1) No. 1 a AufenthG) determine the issuing of a residence title. Recognized asylum seekers, GRC refugees and persons who have been granted subsidiary protection (§ 25 (3) AufenthG) benefit from a loosened and shortened procedure, as the conditions in order to get the residence title (passport, providing a sustainable livelihood and defining a clear identity) can be neglected (§ 5 (1)+(2) AufenthG). The entry prerequisites will be loosened for individuals granted a residence permit on the base of humanitarian reasons (§ 5 (3) AufenthG). Aiming to fight international terrorism and to prevent hazard, a residence permit can be refused in case of anti-constitutional activities, politically motivated violence, if considered a danger to the Federal Republic of Germany or by suspicion to be member of a terrorist organization (Tiefßler-Marenda, 2013).

A residence title can generally be granted for the purpose of training, like language courses and education (§ 16+17 AufenthG), for the purpose of paid employment (§ 18, 19+20 AufenthG), for the purpose of self-employment (§ 21 AufenthG) and on the basis of international, political or humanitarian reasons (§ 22–26 AufenthG). In the following, the focus is on granted residence permit to those of the group last-mentioned (Section 5 AufenthG) (Tiefßler-Marenda, 2013), but the list is not

complete, as e.g. hardship (§ 23 a AufenthG) and residence titles for well-integrated pupils and young adults are not portrayed here further.

#### **6.4.3.1.1 Granted Residence Title due to International Reasons (§ 22+23 AufenthG)**

An alien can be granted a residence permit on the basis of urgent humanitarian reasons according to § 22 S. 1 AufenthG. The higher state authorities can generally license a residence title for nationals from a pre-defined state or for certain groups of asylum seekers (§ 23 (1) AufenthG).

#### **6.4.3.1.2 Granted Residence Title for Temporary Protection (§ 24 AufenthG)**

On the basis of the Directive 2001/55/EG about ‘minimum standards for giving temporary protection in the event of a mass influx of displaced persons and measures promoting a balanced distribution of the burden associated with the recording of these people and the consequences of this recording on the member states,’ displaced persons can be granted temporary protection for one year (§ 24 (1) AufenthG in conjunction with Article 4, 6 and 25 of Directive 2001/55/EC), with the possibility to be renewed twice for half a year (Tießler-Marenda, 2013).

#### **6.4.3.1.3 Granted Residence Title on the Basis of Humanity (§ 25 AufenthG)**

##### *Granted Residence Title for Recognized Persons entitled to Asylum (§ 25 (1) AufenthG)*

Recognized asylum seekers, refugees and persons who have been granted subsidiary protection will be given a residence permit on the basis of humanitarian reasons (§ 25 AufenthG). The residence permit involves the admission for employment purpose (§ 25 (1) S. 4 AufenthG), which is limited to three years (Tießler-Marenda, 2013). Recognized asylum seekers are under the protection of expulsion: unlike in § 5 (1) No. 2 AufenthG, the mere existence of a deportation reason does not justify denying a residence permit, but in case of serious threat to public order and security, which leads to deportation, no residence title will be granted.

##### *Granted Residence Title for Convention-Refugees (§ 25 (2) AufenthG)*

Convention refugees are defined as refuge seekers because of gender or religious persecution. The religious subsistence level (Latin: *forum internum*) is protected and the freedom of public worship, as well as the public denial of religious acts. This type of refugee is recognized, if the home state cannot guarantee protection and if there are

no alternatives other than searching refuge elsewhere (Tießler-Marenda, 2013). A convention refugee is legally equated with the status of an Asylum seeker (§ 25 (2) S. 2, § 26 (3) AufenthaltG). In contrast to recognized asylum seekers, no special protection of expulsion is granted, but a convention refugee may benefit from tolerance (§ 60 a AufenthaltG) and is treated equally when it comes to claiming family reunion and access to the labor market. If a convention refugee constitutes danger to the community and the internal security of the Federal Republic of Germany, no residence permit will be granted (§ 60 (8) AufenthaltG).

*Residence Title in Case of Prohibition of Expulsion*  
(§ 25 (3) AufenthaltG)

Foreigners are granted protection of expulsion and are given a residence permit (§ 25 (3) AufenthaltG) in case of the existence of legal prohibition of deportation (§ 60 (2+3), (5), (7) AufenthaltG). Protection is valid for those who are expecting torture, death penalty or concrete danger to life, limb and freedom in case of deportation. The residence permit is granted for a minimum of one year. A residence permit is not granted if the respective person is a danger for the community and the security of the Federal Republic of Germany and in case the individual has committed severe crimes against humanity and peace or has committed war crimes (Tießler-Marenda, 2013).

*Residence Title due to Humanitarian and Personal Reasons*  
(§ 25 (4) AufenthaltG)

A temporary residence permit (§ 25 (4) S. 1 AufenthaltG) is granted to foreigners in case of urgent humanitarian or personal reasons, which have to be examined on an individual case basis. § 25 (4) S. 2 AufenthaltG denies a permanent residence permit, but allows a prolongation in case of exceptional hardness for the foreigner when leaving the country. The transferred title has to be of transient nature, like operation or studies. The residence permit is granted for a maximum of six months and can be prolonged, as long as the foreigner has not yet been within the German territory for a total period of 18 months (Tießler-Marenda, 2013).

*Residence Title due to Obstacles to Deportation*  
(§ 25 (5) AufenthaltG)

If the deportation is technically or legally impossible and the hindrance is expected to be continued for an incalculable period, the foreigner will be granted a permit to stay. After a maximum of 18 months, the deportation has to be achieved, if not, a residence title will be given in order to prevent tolerance cases. If the foreigner aims to get the residence title by masking his identity, no residence permit will be granted.

### 6.4.3.2 General Regimentation and Procedure for Residence Titles

After three years, the requirements for asylum or refugee seekers have to be reviewed in order to double-check, whether the conditions are still given to maintain the respective legal status (§ 73 (2 a) AsylG). The residence permit will be removed in case the prerequisites are not given anymore. If the requirements are still given, the foreigner can be granted a residence title on the basis of the previously mentioned scenarios or receive the ‘title of tolerance.’ The residence title on the legal base of humanitarian, international or political reasons is granted for a maximum of three years (§ 26 (1) AufenthG) but can be prolonged.

#### 6.4.3.2.1 Family Asylum, Reunion and Reunification of Spouses

There is no general right of family reunion on the legal basis of Article 6 GG, and differentiations are made between Germans, foreigners and persons entitled to asylum. Many different constellations have to be taken into account, and the likelihood to ensure the livelihood is important. However, an examination of applications made by family members of already recognized asylum entitled persons under international protection is not necessary (Article 26 AsylG), as e.g. spouses are equally recognized as asylum entitled persons, if the marriage was already concluded in the home country (§ 26 (1) No. 2 AsylG). The same holds true for minors of recognized asylum entitled persons (§ 26 (2) AsylG). Persons causing danger to the community, order and security of the Federal Republic of Germany or persons known for war crimes and crimes against humanity will not be granted family asylum or subsidiary protection (§ 26 (5) S. 3 in conjunction with § 4 (2) AsylG).

Asylum seekers and GRC refugees according to § 25 (1 or 2) AufenthG with residence permit according to § 26 AufenthG do not have to fulfill the prerequisites for a family reunion of § 5 AufenthG, like e.g. a secured livelihood (§ 5 (1) No. 1 AufenthG and clarified identity (§ 5 (1) No. 1 a AufenthG). Applicants under subsidiary protection according to § 24 (1) AsylVfG will be granted family reunion apart from § 5 (1) + § 27 (3) AsylVfG (§ 29 (4) AsylVfG) on the legal basis of § 36 AsylVfG. Foreigners having a residence permit on the legal base of § 22, 23 (1) or § 25 (3) AufenthG can only be granted family reunion because of humanitarian or international reasons (§ 29 (3) S. 1 AufenthG). Family reunion for foreigners having a residence permit on the basis of humanitarian, personal, legal or real reasons according to § 25 (4+4b+5), § 25 a (2), § 25 b (4), § 104 a (1) S. 1 + § 104 b AufenthG are excluded from the right of family reunion (§ 29 (3) S. 2 AufenthG). Parents of minors under valid residence permit according to § 23 (4), § 25 (1 or 2) AsylVfG have the right of family reunion, unless a parent entitled to custody is already in Germany (§ 36 (1) AufenthG).

Spouses of foreigners are granted family reunion in partial fulfillment of § 30 (1) AufenthG. Despite the defined legal requirements, language skills are not necessary for spouses of foreigners having a granted residence title according to § 23 (4), § 25 (1 or 2), § 26 (3) AufenthG. § 30 (1) AufenthG includes a list of exceptions and potential deviations for various constellations.

### 6.5.3.2.2 Termination of Residence and Expulsion

A withdrawal, recall, expulsion or longer absence from Germany results in the end of the residence permit, thereafter the foreigner has to leave the country (§ 51 No. 1–8 AufenthG). A withdrawal is given when the subsidiary protection of asylum entitled persons or recognized refugees is eliminated (§ 52 (1) No. 4+5 AufenthG).

‘Expulsion’ is defined as the compulsory enforcement of the obligation to leave the country. The regulatory law measure is declared when a foreigner poses a risk to public order and safety (§ 53 (1) AufenthG). The law measure aims to prevent further harm. However, several groups of foreigners are hard to expulse, unless a severe danger for public order and safety is given: as GRC refugees and asylum entitled persons are subject to special protection against non-refoulement (§ 60 AufenthG), the title of expulsion will then be transferred to a title of tolerance (§ 60a AufenthG) in form of an expulsion-stop for a maximum of three months (§ 60a (1) S. 1 AufenthG) or as tolerance on basis of humanitarian or personal reasons.

Several causes lead to expulsion, e.g. if a foreigner is leader of an organization supporting anti-constitutional practices (§ 54 (1) No. 3 AufenthG) or by endangering the free and democratic order of the Federal Republic of Germany (§ 54 (1) No. 2 AufenthG) or by calling out for hatred against religious or ethnical parts of the society (§ 54 No. 5 AufenthG). Expulsed foreigners underlie a re-entry ban (§ 11 (1) AufenthG), but the legal measure has only temporary effect (§ 11 (2) S. 1 AufenthG). There is no temporary but a permanent effect of expulsion if the foreigner was expelled due to war crimes or crimes against humanity (§ 11 (5) S. 1 AufenthG).

### 6.4.4 General Asylum Procedure in the Federal Republic of Germany

According to § 13 (1) AsylVfG an application for asylum is received, when a foreigner expresses the will to seek refuge in the federal territory of Germany. The foreigner has to appear in person (§ 22 (1) AsylG) to apply for asylum in a BAMF branch (§ 14 AsylVfG). Personal data will be recorded, fingerprints and a picture will be taken and all will be saved in the data room of EURODAC (Heinhold, 2015) (obvious gaps in this system are not discussed here). The fingerprint will ensure that the foreigner has not already applied for asylum in another EU country according to the EURODAC Regulation No. 603/2013. A person illegally entering the country or using a falsified passport can be sued (Heinhold, 2015). If a foreigner has escaped persecution in his country and has illegally entered Germany, but explains his case, he will not be sued according to Article 31 (1) GRC. The foreigner is prohibited to re-enter the country’s borders if expelled, but the expulsion has only temporary effect (§ 11 (1+2) AufenthG). An illegal re-entry will be sued with imprisonment of up to one year (§ 95 (2) No. 1 AufenthG).

After a successful application for asylum was made, the foreigner will be invited for a hearing, if the situational context and regulatory knowledge does not automatically grant the right of asylum, currently e.g. for Christians and Yazidis from Syria.

The BAMF uses several practices to be able to differentiate ‘real’ refugees from the ones trying to enter the country by claiming to have a certain nationality and origin for their personal benefit. The language-analysts raise questions to political and geographical features and discuss several topics in their mother tongue during a hearing session. Dialects and knowledge about specific parts of e.g. the city of Damascus, if indicated as home town, will help distinguish a person telling the truth from an untrustworthy person (Heinhold, 2015).

A person will be granted legal permit to stay for the time the application for asylum is examined (§ 55 (1) 1 AsylVfG, § 63 (1) AsylVfG). The residence permit is cancelled when e.g. the foreigner is expelled (§ 67 (1) No. 1+1 a AsylVfG) or if the foreigner has not officially applied for asylum within two weeks of staying in Germany (§ 67 (2) No. 2 AsylVfG). For the first six weeks, but for not longer than three months, the foreigner has to stay in the institution for first admittance (§ 47 AsylVfG) in the district of the respective administration (§ 56 (1) AsylVfG). After three months of stay within Germany, the territorial limitation ceases, however, travelling is still prohibited without prior authorization (§ 58 AsylVfG).

The monetary benefits Germany grants for asylum seekers are defined in § 3 AsylbLG. The height of these rates varies, depending on asylum seekers staying in an institution for first admittance (§ 3 (1) AsylbLG) or living externally (§ 3 (2) AsylbLG). Foreigners coming to Germany in order to solely receive benefits shall be avoided. Therefore, benefits are only granted to the ones defined in § 1 AsylbLG, like asylum entitled individuals (§ 1 No. 1 AsylbLG), the ones under the title of tolerance according to § 60 a AufenthG (§ 1 No. 4 AsylbLG) and the ones who are obligated to leave the country (enforceable title), but ‘threat of deportation’ cannot be performed anymore (§ 1 No. 5 AsylbLG). However, shortening benefits is extremely difficult and a highly delicate topic, as it contradicts with human dignity and the idea of a social state (Heinhold, 2015).

Asylum seekers are not allowed to take up work as long as they reside in an institution for first admittance (§ 61 (1) AsylVfG). After three months of stay within the federal territory of Germany, a work placement can be allowed in accordance with the Federal Labor Office. The prerequisite of the work placement is that no German national or EU worker is available for the specific work (§ 39 (2) AufenthG) at the respective time.

#### ***6.4.5 Lacking Harmonization and Failure of Dublin III***

The Schengen Convention of 1990 resulted in the abolition of border controls within the Schengen area, so the cooperation on asylum began as a measure to compensate for the member states’ loss of control options. At the same time, the member states agreed on the Dublin Convention concerning asylum, which entered into force in 1997. ‘Forum shopping’ and the phenomenon of ‘refugees in orbit’ (definition: applicants are relegated from one member state to the other, without any state declaring to be responsible for examining the respective application due to the domestic safe third-



country ruling (Hailbronner/Thym, 2016)) should be prevented by the adoption of these measures. There was no substantive harmonization of asylum procedures in the Union, and the Treaty of Maastricht declared the issue of asylum an area of common interest that had to be realized through intergovernmental decision-making, but opt-out possibilities prevented a harmonized approach to asylum. The Treaty of Amsterdam created a supranational competence within the TFEU, but it was not before the Treaty of Lisbon until the supranationalization of asylum was achieved. Minimum standards in line with respective EU competences have been created in 1999 as the idea of a Common European Asylum System was issued as legally binding objective. Later on the minimum standards were replaced by a common set of rules, aiming to reduce disparities and to increase harmonization between member states (Hailbronner/Thym, 2016).

The Union's internal security has been a growth area over years: it was possible to identify a common migration and asylum policy, but harmonizing and covering all aspects of the policy remained impossible. Legal barriers complicated and prevented an effective cooperation between member states on internal security issues. Since 2000, EU law has covered asylum, irregular migration, family and labor migration and the right of migrants to be long-term residents in the Union.

The lack of commitment and cooperation between member states hampered the work of Frontex, which reported 'illegal stay and asylum record levels in the second half of the crisis year 2015 and a significantly higher level of irregular migration in Q2 2016' (Frontex Q2, 2016: 9). A lack of willingness to share responsibility in form of taking in refugees and the ignorance of newly developed structures to reinforce operational capacity only raised the question whether the new routes became increasingly dangerous for refugees but not how to decrease the influx of persons effectively. The member states' reluctance to pool internal security resources in order to increase the EU's capacity to deal with the crisis was accompanied by national governments' tendency to limit the scope of the Union's supranational legislation (Kenealy/Peterson, 2015).

An Europeanization, that is to say the transfer of competences of Asylum Law on Union level, has taken place in order to standardize and harmonize the legal treatment of foreigners and asylum seekers within the EU. The Hague Program of 10 May 2005 (Official Journal C 236 of 24 September 2005) was another step in order to harmonize the variety of asylum applications across the Union. The Dublin III Regulation, launched in 2013, was seen as further improvement, as it prevented the previously often used attempts of foreigners and refugees to seek asylum in more than one European member state in order to benefit from social payments and welfare systems (Heinhold, 2015). Despite the aim to harmonize Asylum Law across the Union, there is still no full standardization, and more work is needed to define a burden sharing, balanced and 'European' approach to migration.

Different decision-making processes and an inadequate implementation of procedures hinder a uniform treatment of foreigners. First, the protection quote typical of a specific country differs between the member states: it may be 10% in one and 70% in another country. Moreover, the living conditions for accepted refugees vary dramati-

cally: Germany provides integration courses and training for improved access to work placements and society, but other countries do not put much effort in these measures (see Annex P: Statistics on Asylum). The Union targets a harmonized asylum treatment, as expressed in Article 78 TFEU: 'guaranteeing equal treatment of refugees in all member states, resulting in a union-wide common asylum status.' However, the member states demonstrate actual non-compliance and non-performance as satisfactorily implementation is lacking, provoking legally and illegally onward migration and confirmatory applications elsewhere (Heinhold, 2015).

The Dublin III Regulation is criticized because refugee seekers do not tend to surrender their fate but refuse to apply for asylum in certain countries and illegally try to get to another one with better future opportunities, creating an imbalance. As long as there is no harmonization of standards, as originally declared in the EU Stockholm Program of 2010, refugees will not cease to prevent being crammed in barracks without receiving benefits to cover their subsistence level, thus triggering secondary movements and illegal border-crossings. The EU-Stockholm Program aimed at a harmonization of recognition criteria and residence conditions across the member states, and in case of acceptance the refugee should be granted the same rights as Union citizens have, referring to the freedom of movement, which is highly criticized by skeptics. So far, the freedom of movement is limited to the respective country. The Stockholm Agenda also aimed at a harmonization in terms of social law, meaning a unified welfare program to prevent the selective choosing of a state with the highest benefit (Heinhold, 2015). Member states would benefit from sharing the burden equally and by successfully demonstrating assistance in humanitarian matters.

Critics argue that the Dublin III Agreement and the common practice since 1997 to deport refugees to border countries as first contact countries, does not work anymore due to the lack of intra-European solidarity in asylum matters. This debate triggered the idea of 'Dublin vs. Quota,' referring to the equal distribution of refugees across the member states in order to release the Union's border countries (Ziedler, 2012). As the Dublin III Agreement requires asylum applications to be dealt with by the first country of entry (European Commission, 2015), defining the admission and deportation of refugees in the respective border countries where the first ground contact took place, Greece and Italy reached the limits to fulfill their obligation under the agreement to function successfully and to provide humanitarian aid on the ground (Ziedler, 2012). In 2012, a European capacity quota was already discussed due to the lack of intra-European solidarity in asylum matters. Germany applies an equivalent distribution key within the state called 'Königsberger Schlüssel,' to allocate refugees across the 16 federal states (see Annex Q: The Registration of Refugees portrayed exemplarily at the Federal Republic of Germany). The UK and Denmark do not participate in the European Asylum politics, and Greece, Italy and Hungary are freed of the quota. East European countries still defend the quota regulations (Schwarz, 2015), therefore Poland, the Czech Republic and Slovakia have not received any refugee seekers so far (Unknown, 2016 b).

On 22 September 2015, the European Commission released a fact sheet on the European Agenda on Migration adopted on 12 May 2015, aiming to coordinate and

develop a European response to the refugees and migration front. Concrete measures were proposed, like defining a common European list of safe countries of origin, an emergency relocation for people in clear need of international protection from Greece, Hungary and Italy and a crisis relocation mechanism to be inserted into the Dublin Regulation. Refugee support measures and an emergency trust fund for Africa, improved communication and addressing the external dimension of the refugee crisis were proposed as concrete steps in order to solve the crisis. According to the treaty, the UK and Ireland as well as Denmark have an 'opt-out' (see Glossary) possibility, but Ireland and Denmark opted in and announced to participate in the relocation efforts. The European Commission proposed a distribution key for all member states on the legal basis of Article 78 (3) TFEU, stating that 'in the event of one or more member states being confronted by an emergency situation, characterized by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the member state(s) concerned. It shall act after consulting the European Parliament.' In case a member state cannot take part in the emergency relocation, the state has to make a financial contribution of 0.002% of its GDP to support and finance efforts undertaken to cope with the crisis. Syrians and Iraqis are the nationals who are most likely to benefit from the relocation scheme, having an average EU-wide asylum recognition rate higher than 75%. The size of the population, the total GDP, the average number of asylum applicants per one million inhabitants and the unemployment rate are considered when calculating the distribution key for relocation across the member states. It shall be ensured that all applicants enjoy their right of protection as soon as possible and to prevent an unduly prolonged stay in the EU (European Commission, 2015). Current debates show the urgent need to finally define safe countries of origin to speed up deportation, but political disagreement hampers an effective implementation of the targeted measures.

The Union is not able to control events happening in potential refugees' countries of origin by nature, but these incidents trigger cross-border movements. The situation of the Union's external borders became subject to debates as more and more people tried to cross the Mediterranean Sea or the Eastern Mediterranean routes from Turkey to Greece. Secondary movements were triggered, as many of the rights granted to individuals under the European Directive 2011/95/EU (see Annex R: The Directive 2011/95/EU) and the status of refugee under international protection could not be accessed in EU border countries. The reality of Europe's borders varied from its manifestation (Richter, 2015) (see Annex S: Differentiation between Directive and Regulation). Human rights organizations reported daily from push back methods in Greece, Spain or Italy. The excessive demand in these countries, the flood of people arriving within a short time span, the inability to react accordingly on the spot and the resulting push back methods caused illegal secondary movements as well. Richter (2015: 208) claims that 'granting asylum is worthless if no perspective is provided.' Like in all sciences the answer to this question highly depends on the individual point of view and the 'perspective.' The Oxford Dictionary defines 'perspective' as 'particular attitude towards something as viewpoint.' Therefore, both points of view have to be

analyzed in order to conclude on this issue. European citizens enjoy e.g. the right of free speech, the right of assembly and the right to openly discuss political issues and express antipathy to the leading government as natural rights, yet these rights should not be seen as international standard but as exclusive rights granted to just a small part of the world. From the perspective of a foreigner under refugee status, the question turns out to be more philosophical, referring to living in a peaceful environment as equivalent to perspective, compared to the previous reality of state prosecution, serious harm and omnipresent war, causing danger to life and limb. Again, it has to be differentiated and terms have to be clearly defined.

As the individuals entering Europe's borders during the refugee crisis are not necessarily refugees according to the Geneva Refugee Convention but possibly also economic migrants and forum shoppers, a clear demarcation has to be drawn, as it is impossible to receive migrants as 'asylum seekers' from all countries with a lower GDP per capita than the European average. Moroccans or Algerians do not have high chances to get a European residence permit, so nationals of these countries disappear from the screen upon arrival, without being registered at all or registered in multiple places and countries once they have entered the Union. An improvement through system harmonization is urgently needed to treat all refugees equally and to prevent terrorists from masking their identity, as well as multiple registrations under different identities, nationalities and religions to improve asylum chances in the respective country.

The Union has to support countries of origin, the ones in need of development aid and the ones in civil war causing people to flee, but it has to be differentiated between actual support and imposing a ready-made structure of Western-style democracy on historically undemocratic countries. Countries like Germany need to implement an immigration act to cope with the influx of people (refugees and economic migrants) sustainably, now and in the future (Richter, 2015).

So far, the EU did not respond consistently, and skeptics refer to the Union as 'fortress Europe'. It is argued that the EU tries to prevent migrants from reaching the Union by taking too restrictive measures (Hailbronner/Thym, 2016). Skeptics also argue that alliances between states were temporary, and it is claimed that Europe's best days were most probably behind it. Despite the divided national opinions concerning e.g. the treatment of refugees, the Union still sticks together, and Euro-critics find it hard to explain this phenomenon. Tony Blair, then British prime minister, had already urged in 2000 that the Union should become a superpower but not a super state (Keeney/Peterson, 2015). As long as disrespecting the Union's decisions, like the quota distribution, is repelled by some member states, placing national interests before the common European good, it will be challenging for the Union to enforce lasting solutions. Controversies, blockades and permanent border closings are no reasonable solutions for people waiting outside these borders and the ones living behind the closed borders, suddenly deceived from their freedom of movement.

Humanitarian responsibility, driven by the passion for vividly living the Union's ideals in order to preserve European values, is the key to durable behavioral patterns, saving human lives and satisfying the Union's standard in aid possibilities. Critics ar-

gue that member states can redeem themselves easily, which does not result in the targeted improvement of intra-European solidarity. It is the refugee crisis that might trigger a lasting change in the Union, but it is on the member states cohesion to not fall apart in individual states but to stand together and develop a sustainable solution including the lessons learned, marking the turning point in the crisis towards a sustainable future in a united Europe.

## 6.5 Legal Recommendations

The economic development, the ongoing progress of increased mobility, technical improvements and cross-border communication possibilities as part of globalization resulted in the awareness that regulations limited to national borders are ineffective, as the Union requires unification and standardization. This idea is not new, and the Union has already worked to improve the situation, but during the current crisis the lack of harmonization and solidarity became dramatically evident regarding the asymmetry of asylum applications or the failure of e.g. the Greek asylum system, which was found not to be in compliance with human rights standards and EU legislation (Hailbronner/Thym, 2016).

In 2012, during the French election campaign, Nicolas Sarkozy criticized the Schengen area due to a lack of solidarity and missing political leadership, turning the idea of a borderless Union into an uncontrollable area of facilitated illegal migration and organized criminality. Despite recent regulations and developments, the Schengen area is said to have lost its effective functioning. A borderless Union without effective border controls is an idea driven ad absurdum (Winter, 2012). The TFEU defines that ‘the Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties’ (Article 26 (1) TFEU). The concept refers to secured external borders with improved border management and supported local authorities in the respective border countries to prevent illegal migration and comparable migration waves that Europe faced in late 2015 (Gillert, 2016).

New measures have to be adopted, especially in the field of data collection systems. Due to historical reasons, data protection is taken very seriously in Europe, yet the climaxed situation and tense political state facing the growing right-wing demands urgent change and flexible improvements. EURODAC turned out to not effectively meet the expected technical support. Although finger prints were saved in the system, follow-up examinations showed that ‘persons who threaten’ have been registered under diverse identities and nationalities somewhere across the Union. The welfare abuse by others also questions data synchronization and demands for urgently needed improvements. As European citizens are registered and have an identity card or passport with their biometrical data, the same should be demanded from ‘foreigners,’ despite their reason to enter the Union, thus including refugees under the definition of the Refugee Convention and the Directive 2011/95/EU. The common practice to neglect the collection of certain data (e.g. passport, defining a clear identity) for the

ones enjoying a shortened and loosened procedure, like GRC refugees, persons under subsidiary protection and recognized asylum seekers, should be suspended, facing the increased level of terrorism and the intentional abuse of social welfare systems under forged identity and multiple registration, again a hint at the non-functioning of respective databases and systems. Moreover, measures should be adopted in time to support the fast expulsion of individuals, as there are several groups of foreigners that are hard to expulse, even though they constitute danger and harm. For an effective security concept, the exclusive protection from non-refoulement for certain groups of foreigners should also be loosened. The title for tolerance should only be granted in exceptional cases to prevent further abuse of Europe as a value system.

Frontex operations outside the European borders are currently discussed, but the disagreement as to how to treat the refugees and how to deal with the situation splits the governments and challenges common decision-making (Bewarder/Gillert, 2016). It is questionable whether the Schengen area will remain in its known structure. So far, it can be said that the collaboration of Schengen countries has not worked sustainably in the crisis. An excessive demand, the lack of financial support, the denial of the crisis' true scope for too long, and a Union functioning rather on an individual basis than as supranational entity resulted in a debilitated effect causing security gaps and trouble. By discussing the crisis and the effects of closed borders for refugees, the debate leaves out Europeans and rather portrays a one-sided matter. The unique concept behind the Schengen area is worth to be preserved, and referring to the four freedoms Union citizens can benefit from, it is essential not to undermine the granted rights for Europeans in order to serve the common. The impetus for discussion should be about how to balance the interests and needs of Europeans while simultaneously meeting the demands of refugees regarding their rights under humanity and human dignity.

The refugee crisis showed that 'Dublin' has failed, but the Dublin Regulation has potentially also failed due to the refugee crisis. Since its implementation, the mass of migrants crossing Europe's border within a short time span has reached a peak now during the refugee crisis. The central European states are mostly the designated final destinations of refugees across various nationalities. Reaching these states without entering the Union's borders illegally was prevented through respective articles under Dublin, as the Regulation made the first country, in which a refugee arrives, responsible for proceeding the asylum claim, naturally the border countries Greece, Italy, Malta or Spain. Dublin failed, and the excessive attempts by refugees not to get registered in a country other than the central European states shows that Dublin has to be renewed. However, the imbalance created through destinations chosen under different prerequisites causes a burden for states like Germany and Sweden. A distribution per quota and a definite EU-wide limitation of intake per annum is useful and needed in order to realize integration, to provide accommodation and meet essential needs.

It is important to enhance EU-collaboration and the external border management, to harmonize registration systems across the Union and to show solidarity among the member states. In today's times of increased fear and prejudice, condensed in right parties' electoral success, triggering insecurity and one-sided accusations by scape-

goating, the Union is invited to implement mechanisms that can successfully hinder the development of xenophobia by using the competences transferred to efficiently work and function as a supranational entity, built in accordance on the shoulders of the member states. The Union is asked to demonstrate its functioning and working, and it is during these days that the European Union can show the world its unique model of consensus finding, working hand in hand to solve a crisis that affects all member states equally. Standing together in good times is easy, aiming to hold together in challenging times demonstrates the will and the ability of 28 nations, governments and people to jointly work for a sustainable future rooting in the Union-credo 'united in diversity.'

The EU considers itself an area of protection. Granting asylum is an international obligation, but the degree of granted asylum varies according to the states' willingness. The member states, sharing fundamental values, should feel similarly obliged to grant asylum and provide equal and fair procedures. It is stressed that the borderless Union has to apply a joint approach to guarantee high standards of refugee protection. Uniform standards and a similar outcome have to be ensured in order to prevent unilaterally advantageous treatment. 'The right of asylum' should rather be understood as mercy, not as an enforceable right, but the author's impulse is rather philosophical.

Since 1999, the EU has been working on a common European Asylum System to improve the legislative framework. Some harmonizing minimum standards for asylum have already been adopted, like the Refugee Fund and the Family Reunification Directive that applies to refugees as well. The EU is striving for more harmonization in terms of the standards of protection and to increase the level of cooperation and solidarity among the member states. To ensure that asylum seekers are treated equally across the Union in a fair and transparent procedure, the EU released common high standards on strong cooperation: the revised Asylum Procedure Directive for fairer and quicker asylum decisions, the revised Reception Conditions Directive ensuring the respect for fundamental rights of asylum seekers across the Union, and the revised Dublin Regulation detecting problems in national asylum systems. Nevertheless, the harmonization efforts seem far from being eventually implemented in the member states' practice or in the individual states' feeling of responsibility. These times demand for solidarity purely arising from intra-European understanding as unity and go far beyond the legal responsibilities and the simple performance of obligations. The Union can prove its actual coherence now, but it is most likely that the EU will split internally at the end of this crisis and be clustered in countries with strong striving for unity and the ones preferring a rather loosened approach. The crisis constitutes a major turning point and will determine the scope of future legal frameworks.





## 7 The Global Threat of Terrorism

### 7.1 Terror – Classification and Distinction

Linguistically, it has to be distinguished between ‘amok’ and ‘terror,’ as amok is psychologically and terror politically motivated. Amok is abbreviated from the Malayan word ‘amuk’ (English: *angry, furious*) and characterized by a lack of solid, organized planning. The act itself is rather spontaneous and random. The culprit is motivated by personal revenge, therefore an amok attacker is mostly acting alone (Seidler, 2016).

The draconian reign (French: *regime de la terreur*) of the Jacobins in France of 1793 is likely to be the origin of the term ‘terror,’ which is characterized by an ideology, political goals and violence (Seidler, 2016). Despite today’s negative connotation, terror was originally seen as instrument to re-establish order (Aubrey, 2004). A terrorist is motivated to change the state’s system and/or the society by spreading fear. Politicians can fight terrorism by releasing decrees to support existing safety measures and to take precautions like restricting access to special areas and improving control mechanisms on body and luggage checks. There is no universally accepted definition of terror, and the differentiation between ‘terrorist’ and ‘freedom fighter’ is controversial, as it is highly dependent on the perspective (Seidler, 2016).

### 7.2 Terrorist Organizations as Global Threat

There are different organizations causing attacks like e.g. Al Quaida, Al Shabaab, the Islamic State or the Taliban. All of them are classified as terrorist groups but vary regarding their degree to act globally. A new form of dangerous interruptions within settled states, as the EU can be referred to, became apparent over the last years: religiously oriented terrorism as dangerous omnipresent companion. In 2015, France, Greece, Italy, Denmark, Spain and the UK faced 211 failed, foiled and completed terrorist attacks. 151 people died and over 360 were injured. In total, 1,077 individuals were arrested and accused for terrorism-related offences, 424 in France alone. 94% of the arrested individuals were prosecuted for jihadist terrorism and found guilty (Europol, 2016 a). The following table provides a chronological overview of terrorist attacks in European countries over the last three years. There have been many additional terrorist attacks all over the world in the years between 2014 and 2016, yet the table focuses solely on religiously oriented attacks within the EU that were executed by globally acting terrorist organizations.

Tab. 7.1 *Terrorist Attacks across Europe between 2014 and 2016*

Year	Date	Country	City	Location
2014	24 May	Belgium	Brussels	Jewish museum
2015	7 January	France	Paris	'Charlie Hebdo'
	9 January	France	Porte de Vincennes	Hostage-taking
	27 April	Bosnia-Herzegovina	Zvornik	Police station
	20 July	Turkey	Suruç	Festival
	10 October	Turkey	Ankara	Peace demonstration
	13 November	France	Paris	Series of attacks
	18 November	Bosnia- Herzegovina	Sarajevo	Street, bus, authorities
2016	12 January	Turkey	Istanbul	Sultan-Ahmed place
	19 March	Turkey	Istanbul	Boulevard
	22 March	Belgium	Brussels	Airport, metro station
	13 June	France	Magnanville	Police officers
	28 June	Turkey	Istanbul	Airport attack
	14 July	France	Nice	Boulevard
	18 July	Germany	Würzburg	'Axe attack' in train
	24 July	Germany	Ansbach	Festival
	26 July	France	Saint-Etienne-du-Rouvray	Church attack
	6 August	Belgium	Charleroi	Police officers
	20 August	Turkey	Gaziantep	(Kurdish) wedding
	20 December	Germany	Berlin	Christmas market

Source: Global Terrorism Database, 2016

The PKK has neither roots in the Arab Spring nor is it a religiously oriented terrorist organization. Based on drivers and goals of the PKK, which are not explained further in this paper, the Kurdish organization is not considered a global threat, but a regional voice for Kurdish political autonomy, however, 'classified as terrorist organization' (Government UK, 2016). Therefore, attacks executed by the PKK in Turkey have not been included in the table. The terrorist attacks by the Kurdistan Freedom Hawks as militant organization and faction of the PKK in February, March and June 2016 are also not included in the table above, due to the explained reasons.

An US-led coalition against ISIS was set up in 2014 and includes 62 countries in total. Air support and other military equipment are provided by 20 out of 62 coalition partners. Excluding non-European partners of the alliance, inter alia, the UK, the Netherlands, Germany, France and Belgium are militarily involved in the fight against the Islamic State of Iraq and the Levant. Amongst others, Norway, Sweden and Austria focus on humanitarian aid, and Finland expresses support as ally (Freeman, 2014).

In 2014, Alan Henning, a British hostage, was executed on camera ‘in response to British air strikes against the positions of [IS] in Iraq’ (Mamoun, 2014). On video, Henning was supposed to refer his execution to the British parliament’s decision to attack the Islamic State. By directly referring to David Cameron and the British parliament, the British-originated Jihadi headman dismissed his burden from the action. Before, several videos of live-executions of e.g. ‘UK aid worker David Haines and two American Journalists, Steven Sotloff and James Foley, were released by the self-named state’ (Mamoun, 2014). The likelihood of terrorist attacks happening in Europe increased over the last couple of years. Moreover, a geographical concentration and an enhanced probability of terrorist attacks executed in countries that are involved in military intervention as partners of the anti-IS coalition can be identified (Freeman, 2014). The ‘Annex T: Terrorist Attacks’ provides an overview of worldwide terrorist attacks and best demonstrates the previously mentioned geographical concentration in major European states as anti-IS coalition partners, namely France and Germany. Generally, bombing and explosions can be identified as the most frequently used type of terrorist attack, followed by armed assaults and hostage-taking (compare Annex T). The number of injuries after an attack refers to the author’s cautious assumption that the terroristic focus nowadays is not on creating the most damage possible, despite the fact that every terror victim is a victim too many, but on frequency and the reality that an act of violence has actually happened. The lone wolfe phenomenon, which is explained further in Chapter 7.3, supports the assumption, as nowadays jihadist terrorism is dominated by a lack of deadlines and specified targets, which make it essentially difficult for police forces to trace and prevent such acts of violence.

### 7.3 Terror 2.0 – Unpredictable and Anonymous

Over the last years, the European Union has been exposed to a continuously growing level of overall security threats, including the danger and influence arising from politically unstable countries bordering the Single Market (e.g. Libya). Jihadist terrorism and foreign terrorist travelers are of main concern for the Union and its member states. Despite the fact that the majority of recent terror attacks were executed in the name of the Islamic State, Al Quaida and other violent (religious) militant groups still have to be considered active and dangerous (Europol, 2016 b).

On the first day of Ramadan, 29 June 2014, the Islamic State was symbolically re-established as Caliphate (Musharbash, 2014) but did not engage in terrorist attacks in Europe before August 2014 (Reuter, 2015). Within the first 18 months, ‘al-Dawla al-Islamiya fi al-Iraq w al-Sham’ (acronym: Daesh, English: *Islamic State of Iraq and Syria*) undertook 50 attacks in 18 countries causing 1,100 victims and leaving over 1,700 people injured. Analyzes showed that IS prefers soft targets, as it is more effective to inflict mass casualties on an urban population, aiming at well-publicized terror, than to attack military bases (Europol, 2016 b). The re-establishment of the Caliphate is also important, as referring to Ibn Abd al-Wahhab and his establishment of a small Wahhabi state in the 18<sup>th</sup> century, the loyal Qur’an interpretation in line with the con-

cept of 'tauhid' (English: *unity with God*) is a prerequisite and demands the active fight against 'shirk,' meaning all societal and religiously oriented practice, which does not root in the times of the Prophet (Hanne/Flichy de la Neuville, 2015: 112). It is essential to understand the drivers and goals of militant organizations to classify and categorize the existing danger and uncover unknown threats to the society, especially as the Western world is unfamiliar with the ideological background.

The World Wide Web as cause and trigger of globalization has influenced the communication process and data exchange of terrorist organizations as well. The change in the process of radicalization is characterized by facilitated access to information and speed of data exchange. Before, supporters and sympathizers passed training in a respective foreign country in so-called 'terror camps.' 'Being educated in different disciplines, the returnee was on call or directly instructed with a target' (Luther/Vu, 2016). Today, technology facilitates the radicalization process. The World Wide Web is huge, obscure and opaque, opening up doors for dangerous propaganda of shady organizations recruiting online. Despite the digital fingerprint, the anonymity of the internet provides a platform for the glorious presentation of an ideology, as holding specific recruiters accountable remains difficult. The key for the Online-Caliphate is physical independence, as there is no need to be at the same place due to online campaigns and advertisements. As result of the diversity regarding planning and executing possibilities, the in-depth understanding of attacks has to be modified by distinguishing between different typologies of attackers. Apart from specific training in terror camps, threats of previously unknown terror affiliates have emerged. First, 'lone wolves,' a phenomenon of unobtrusive individuals unknown to the police, self-radicalized via the internet without having personal contact to a particular terror organization. The lone wolf acts on behalf of the ideology, but not at the behest of a certain group and without previously arranged target. Despite this type of lone wolf, living partially secluded from society, research showed that there are confidants in around 60% of the cases. Second, there are lone wolves directly communicating with terrorist groups via chat rooms. Ideas regarding targets, implementation and realization are exchanged, but no direct instructions are given. The act itself would be incalculable and potentially spontaneous. A third type of lone wolf is communicating with so-called virtual planners supporting the lone wolf in choosing a target and in assisting in the technical planning without giving a specific order or deadline (Luther/Vu, 2016).

The actual threat, regarding what the author refers to as 'terror 2.0,' is caused by terror groups operating from far away, different types of lone wolves, and acts plotted by returnees, as so-called foreign terrorist travelers and women dedicating their life to the ideology of IS, willingly leaving their country to get married to an IS fighter, are referred to. The majority of foreign terrorist travelers is indeed female. Their role is not to neglect, as they have already volunteered as e.g. suicide bombers. Although the likelihood of women returning to their European home countries is marginal, a future security threat to the Union lies in the fact that the minors, born and grown up in the IS territory, get trained as next generation of IS fighters. Returnees have to be precisely monitored, not simply because of them initiating fundraising and improving re-

cruitment within the EU, but due to further radicalization activities, as they still hold strong bonds with the terrorist and militant organizations abroad (Europol, 2016b). Despite the absence of apocalyptic mysticism in Islam, the messianic return of a 'mahdi', a so-called infallible individual guided and selected as Imam by God, enjoys distribution across the World Wide Web and on online platforms advertising the IS. The concept is military-driven, and according to the prophecy it will take place in the region of Syria. The connection between the fascination for the hereafter and the resulted indifference regarding life in this world, is an ideological programming, which caused a new form of violent willingness the world has to cope with in the 21<sup>st</sup> century (Hanne/Flichy de la Neuville, 2015: 80, 81).

Although there are no concrete numbers of terrorists available to prove how many have abused the refugee wave to enter the external borders of the EU unnoticed, recent follow-up examination of attacks proved that it already happened (e.g. Berlin attacks, December 2016). The consequences of the uncontrolled migration cover the media and social debates and fuel right-wing extremism. Both perspectives are targeted: asylum seekers as well as the fear of European citizens to be played off security-wise, as border guards cannot sustainably distinguish between terrorists, civilians and refugees. In order to secure what people refer to as 'Union's task,' civilian street patrols have developed in form of vigilante justice and emerge particularly in Scandinavian countries (Europol, 2016b).

Founded in 1998, Europol is seated in The Hague as law enforcement agency. By identifying the major threats to the internal security of the Union, Europol helps detect criminal and terrorist networks in order to fight international crime including organized fraud, counterfeiting, smuggling and cybercrime, as well as trafficking human beings and terrorism (Europol, 2016c). For the security forces and police it remains challenging to discover sympathizers of IS ideology, keeping track of suspected individuals and to check on those, who might actually be able to perform violent acts. However, the number of arrests increased from 2014 to 2015, showing the intensity and effort to fight this new form of terrorism as global threat (Europol, 2016b).

## 7.4 Recommendations

Removing borders in order to create a Single Market results in obligations and rights for the joining member states. The registration of migrants entering the Union takes place in e.g. Greece, geographically located at the Union's eastern border. Disregarding the mass of influx of people, Athens refused help while failing to manage the registration for the wave of migrants arriving on the spot (Traynor, 2015). Aiming to maintain the same or even an improved security level for the individual states, the Union is responsible for an efficient external border management. Intensified cooperation, common solidarity and facilitated data exchange are prerequisites of a sustainable European Union facing security issues. The existing lack of harmonization in the field of networking and databases became apparent in the follow-up investigation into terrorist attacks, as stated before. The terrorists crossed the borders without difficulty,

despite them being known as terror suspects. After the attacks, politicians asked for a revision of the Schengen Borders Code, aiming at systematic controls of EU citizens and foreigners, focusing, *inter alia*, on the verification of biometrical data. The security gap that Europe faces today is driven by globalization including intermingled politics, as all countries are affected by geopolitical change and impact, but the refugee crisis also caused an increase of incidents over time due to the open border policy that was driven by humanitarian reasons. Recent events demonstrate great omissions that have been willingly accepted back then by allowing persons with unidentified identities to cross the Union's borders. Despite humanitarian aid and the respect for humanity, no country in the world can afford to create, willingly or naïvely, a security gap to this extent.

It is highly recommended to harmonize the refugee databases across the Union, as the current situation of fragile external borders, the potential risk of terrorist attacks and terrorist organizations aiming to harm the Western world are still present. The EU has to change and urgently to adapt its common practice: biometrical data and fingerprints have to be taken when the Union's external borders are crossed. Persons without valid papers have to be separated until their identity is proven. To prevent illegal means and multiple registrations, new measures have to be installed: Article 38 (9) of the Schengen Agreement states that the communication of data is supposed to be only preserved as long as necessary for the purpose exchanged and will be deleted afterwards. However, the recorded communication on information exchanged according to Article 38 (8) SA, which includes e.g. identity, travel documents and residence permits (Article 38 (2) (a-g) SA), should actually be preserved and saved in a database, justified on the basis of the current situation and overall security threat across the Union.

Moreover, it is essential to define a list of safe countries of origin, like e.g. Morocco, Algeria and Tunisia. Many critics of this practice argue with regard to human rights violations or limited press freedom, but the European standards in terms of human rights, freedoms and law enforcement mechanisms are higher than the common standards in many countries worldwide, so the comparison is unequal anyway. 'Arguing to safeguard those, who live below the European standard, means simultaneously accepting all persons whose countries of origin do not meet these somehow unique standards' (Durankiev, 2015). Due to, *inter alia*, the lack of women's rights, the repression of culture and religion, tyranny, corruption, violent suppression of protests by religious and militant extremists, Nigeria, Yemen, Myanmar, North Korea, Iraq, Afghanistan, Somalia, Pakistan, the Democratic Republic of Congo, Sudan and Syria are classified as the countries with the worst human rights violations at 2015 levels (Durankiev, 2015). Many individuals used the open door policy to access Europe due to economic reasons, referring to the EU social welfare systems. To avoid abuse of Europe as community, safe countries of origin have to be defined and entry refusals have to be pronounced at the Union's borders if individuals cannot be clearly categorized as 'refugees,' but as economically driven migrants. There is a legal demarcation between the term 'refugee' and 'migrant,' but the means to enforce the consequences lack in reality. The currently increased and obvious security threat was triggered by an

uncontrolled entry and the abuse of some, taking the chance to hide behind a forged identity, name and nationality, again, without prejudice and stereotypes on refugees or ethnicities.

The Arab Spring offered many with dubious past the possibility to start a new life abroad under false name, erasing the connection to potential previous convictions. The Union is challenged regarding the means of deportation in case the states of origin refuse to take back their national citizens, or in case the national is expecting death penalty in his home country but has entered the Union using a forged passport to hide the past. Problems occur, despite violent attacks, regarding falsified identities, challenging the entire process of deportation. Dublin failed, but the common practice of a detention and deportation duration of four days has to be modified as well: deportation has to be facilitated, especially when an affiliation with terrorism is proven or highly suspected. Countries of origin should not be allowed to refuse the taking back of a demonstrably national citizen, which simply prolongs the investigation and stresses diplomacy. International consequences and penalties should be implemented. It has to be classified between refugees and all kinds of drivers motivating individuals to move to Europe. But in case of verifiable criminal records, a disappearance from the screen should be prevented. The comparison of granted rights within Europe and abroad should be kept in mind to distinguish between humanity and naivety. A stricter policy has to be established in order not to be abused as value community.

The voluntary (European-originated) Daesh fighters (Germany: ~450 of 7,000 sympathizers joined IS so far (Hanne/Flichy de la Neuville, 2015: 46)) later returnees or fanatics on spot are instrumentalized and constitute a severe intra-EU security threat. The executed acts of violence by IS sympathizers or affiliates might be a distraction or a simple side effect of the IS-driven expansion policies. In both ways, the Caliphate welcomes to be named as reference to increase its area of influence. The European standard of data protection is very high, but due to the current situation an improvement and an adaption are needed. At the moment, there are 522 persons referred to as 'those who cause threat' and known by name to the competent authorities in Germany. 264 of them are living in Germany and 82 are currently arrested (Statista, 2016a). Competent police authorities should improve European coordination of data exchange and access to data (e.g. e-mail) should be facilitated. Skeptics refer to 'Big Brother is watching you' (Orwell, 2006: 8), but for the overall security it is essential to catch terror affiliates as early as possible and to detect networks and sympathizers. In the end, facilitated access to data and spot checks frightens only those who have to hide something. Standing up for common security and supporting the authorities in their task to fight terrorism, law enforcement mechanisms have to be improved to facilitate screening and early detection.

Other prevention mechanisms have to be implemented on the ground within the Union to effectively decrease the number of European Jihadists volunteering for IS. The established European Muslim community should raise this issue and prevent radicalization of individuals by means of educational work. There is indeed a lot of rationality in the so-called fanatic behavior of the IS, excluding mental absence and psychopathic behavior as possible excuses for the acts. The determination and firm con-

viction is driven by the concept of martyr, an ideology in which the hereafter succeeds this world. As this ideology is closely linked to and partially rooted in a world religion, the Muslim community has the responsibility to dissociate publicly and to implement training on the spot to prevent radicalization movements and in-depth convictions. This new form of terror roots in religion and religious ideology drives the terrorist acts. Neglecting the religious aspect in the 21<sup>st</sup> century's threat of global terror turns a blind eye on the roots of this conflict and on the army of religious fundamentalists.

There is no generally accepted definition of 'those who threaten,' but it is essential to define this term in order to establish prevention mechanisms. The current law has to be adopted slightly, as the security threat has caused a new status quo. Ankle monitors should be used intensely to spot and survey the location and routes of persons who pose a threat. As it is comprehensively hard to differentiate between the nuances of terror affiliates, financial means or staff shortage should not hinder efficient monitoring when a person potentially willing to execute an attack has finally been positively identified.

Olivier Hanne and Thomas Flichy de la Neuville (2015: 137) refer to the 'development of IS as accident of Islam and the Middle East, benefiting from a unique historical chance to evolve as small, yet prepared minority, using the weakened political status quo in Syria and Iraq' as result of the Arab Spring and of previous Western-led military interventions. The Islamic State is not just a group of criminals but has to be understood in connection with the Arab Spring and the resulting flow of migrants. The EU is challenged, as it guarantees security for European citizens, but struggles to implement sustainable policies, especially as the possibility to detect individuals, Union citizens and foreigners causing threat and danger, is hard to depict.

Increased cooperation and in-depth understanding of unity as 'we,' focusing on national topics as Union issues rather than individually targeting national subjects, is important. Challenging times demand solidarity and underline the necessity to stand together. In contrast, individual sealing-off and unilateralism are incompatible with a borderless Union that regards itself united as entity based on humanist values.



## **8 Interculturality, Multiculturalism, Cultural Relativism and Compatibility Issues**

The following part focuses on intercultural issues and highlights critical topics causing difficulties in the cohabitation of different cultures with diverse ethnical and religious backgrounds and different ways of thinking as a result of the refugee crisis and the high number of non-EU foreigners now residing in the Union. A lack of knowledge causes a gap between the respective cultures. It is essential to clearly define the meaning of words expressed and to scrutinize the etymological roots of terminology used. In the absence of a profound understanding, a frequent appearance of foreign terms triggers the feeling of familiarity, but knowledge of cross-cultural communication is not created by regular repetition without precisely defining the foregoing (see Annex U: The conflict of Islam and Democracy).

### **8.1 Europe's Values under Foreign Influence**

Today's global village causes increased interaction due to neighboring with people from foreign cultures and diverse ethnical backgrounds. The geographical decrease in distance implies an enhanced analysis of the respective culture including values, norms and beliefs. Culture has an impact on all aspects of life by influencing and determining the individual's way of thinking and acting. Hofstede (2005) refers to culture as 'programming of the mind,' as the individual is unaware of the process to actually be programmed to a certain culture. However, culture defines the scale for morality and sets the guideline for appropriate or socially not accepted behavior by e.g. tabooing certain topics. Culture and cultural heritage define the individual as successor of the inherited values, norms and rules (Dankert/Dekkiche, 2017). It is important to understand each individual's 'cultural backpack' (see Glossary) when referring to interculturality and compatibility of multiple religions across the range of cultures. Blinkered mindsets are out of place. Discussions on intercultural issues make it important to reflect the own value system and individual culture objectively by critically analyzing one's own behavior, morals and values while bearing in mind the historical development and considering linguistic and social aspects. Without open-mindedness and the ability to objectively evaluate 'culture' as determinant of thinking and behavior, it will not be possible to draw conclusions and to find sustainable solutions on questions about harmonious cohabitation.

In some debates, there is a subtle negative connotation when someone refers to 'Western values' or 'Western lifestyle.' However, these terms do not implicate something frightening, threatening or bad. It is only possible to understand the thinking

structures and patterns of a counterpart when understanding the individual cultural heritage and thus being able to reflect upon it. Terms are interpreted differently, words might be used in a different context, and the result is the feeling of insurmountable conflict of interests. The absence of a profound understanding of the counterparts' value system, which underlies e.g. religion and history, makes 'democracy,' as pillar of Western societies, a perceived evil trap for those entering Europe's borders and separates them from the European society by terminology issues. It is not per se a conflict of ideologies, but rather, despite criticism of this theory, a 'conflict of civilizations' (Huntington, 1993), as 'civilization' (see Glossary) is shaped by culture.

### ***8.1.1 Defining European Values according to the TEU***

The European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities (Article 2 S. 1 TEU). These values are common to the member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (Article 2 S. 2 TEU).

The objective of the Union is laid down in the treaties: promoting peace, its values and the well-being of its people (Article 3 (1) TEU), whereby the Union offers its citizens an area of freedom, security and justice without internal frontiers, in which the freedom of movement is ensured [...] with respect to external border controls, asylum, immigration and the prevention and combating of crime (Article 3 (2) TEU). The Union shall combat social exclusion and discrimination and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child (Article 3 (3) S. 4 TEU). The EU shall respect its rich cultural and linguistic diversity and shall ensure that Europe's cultural heritage is safeguarded and enhanced (Article 3 (3) S. 6 TEU). In its relation with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among people, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the Charter of the UN (Article 3 (5) TEU).

Skeptics argue that on top of the debt crisis, the terrorism crisis and the Brexit the migration crisis will be the trigger for the beginning crisis of values (Nixon, 2016). 'How will tomorrow be like?' is a question vehemently raised again during these days (Council of Europe, 1995: 49). European values are humanist values, but the constant influence of other religions, values, morals and norms caused by the refugee crisis and the resulting high influx of Muslim people entering the Union's borders seeking for asylum and permanent residence frighten the European society. The anticipated submission to a foreign culture is a predominant topic and is discussed by many intellectuals and experts in television shows, papers and multi-party talk shows. The question

behind xenophobia, racism and skepticism about people with an immigration background is whether European values brave foreign influence or, what is argued by skeptics, whether the mentality of constant solidarity and pure tolerance will irrevocably damage the ideals and freedoms the Union is built upon. This refers to Article 3 (3) S. 4 TEU, highlighting the Union's responsibility to 'combat social exclusion and discrimination,' triggering a slight conflict with Article 3 (3) S. 6 TEU, referring to the Union's accountability 'to respect [Europe's] rich cultural and linguistic diversity [in order to] ensure [the safeguarding and enhancement of] Europe's cultural heritage.' The question is whether safeguarding non-EU values and cultural heritage should be pursued as well, following the non-discriminatory approach and the protection of minorities (but it is not distinguished between local, originated European minorities and intra-EU minorities as a result of e.g. the refugee crisis), or whether it is about European values and cultural heritage exclusively, referring to the puzzle pieces of European identity. Is Europe actually allowed to focus on safeguarding and promoting European values exclusively to ensure the continued existence of what the Union is built upon? Or is Western and European attitude as 'tolerant and open society' by definition restricting the option to focus solely on something?

Critics claim that the current refugee crisis will ring in the end of European values by simultaneously eroding the basis of the Union. Critics talk about 'no tolerance to the intolerant,' referring to the increased tension between Europeans and Foreigners (Kissler, 2015). The quotation roots in a debate about the building of mosques, the height of minarets regarding the protection of neighbor-rights and unacceptable impairment through, inter alia, calls to prayer, the legal admissibility and the general weighing of interests with focus on the principle of consideration and the statute that exotic architecture is not covered by infringed neighbor-rights (compare Administrative Court Arnsberg, resolution from 17 May 2011 – 14 L 218/11) and the academic career of women wearing hijab during e.g. the participation in official government bureaucracy. Reversely, the quotation refers to the limited freedoms, chances and possibilities for heterodox and potentially uncovered females in Islamic countries and to the level of tolerance that can be expected there, with special focus on the possibility to practice tradition, cultural heritage and religion. A tit for tat mentality is not compatible with European values but again many skeptics refer to the unlimited tolerance triggered by the non-discriminatory approach and criticize the created vicious cycle doomed to end the value community Europe.

### ***8.1.2 Female Islamic Covering – Compatibility with European Values***

Generally, it has to be differentiated between various female styles of Islamic veils as openly displayed symbol of belonging to the Muslim community: sheila, hijab, al amira, khimar, chador, dupatta, niqab and burka (Pew Research Center, 2016). The Afghani and Pakistani styled burka, favored by the Taliban, covers body and face including a grill across the eyes, permitting women to see without being seen by keeping the face totally concealed (Vyver, 2014). There are no statistical data about the

number of Muslim women actually wearing the burka in the European Union. The estimate in Germany is between 300 and 3,000, but no definite statistical number can be given for the respective country or for the member states in total (Löffelholz, 2016). Nonetheless, the number of women wearing burka is comparatively small. This paper is not focusing on female Islamic covering, but the ongoing debate about a burka ban is a discussion driven *ad absurdum*, facing the number of women actually wearing a burka. The lack of knowledge about Islamic clothing and covering and the danger of getting confused about burka and niqab mislead many giving an opinion on this issue. In contrast, the niqab is seen more often on the streets of Europe nowadays. The covering is a combination of abaya and a second veil covering the face but leaving the eyes visible. This form of covering is more popular and seen more often apart from the most common form of displayed veil, the hijab, as headscarf styled in combination with modest Western clothes. Daily conflicting situations between European regulations and the religiously founded convictions occur, and the discussion about the compatibility of European values with this form of covering becomes increasingly heated (e.g. incident to lift the veil in a bank in order to finalize a transaction (Friedmann/Hipp, 2016)).

Following Article 2 TEU and the respect for human dignity and minorities and Article 3 S. 4 TEU referring to combat social exclusion and discrimination, it has to be concluded that expressing religious beliefs by openly following a dress code as part of an intra-EU minority (again, no differentiation between originated or newly settled minorities is made) is an irrevocable right safeguarded by the Treaty on the EU. Article 2 TEU also implies the equality between women and men, and Article 3 S. 6 TEU obliges the Union to ensure that Europe's cultural heritage is secured and enhanced. It is said that the EU should uphold and promote its values and interests and contribute to the protection of its citizens. The conflict of interests gets obvious, as gender equality was not given anymore, as burka ban supporters argue, while opponents claim that women had never been more free. As previously stated, it is essential to define the terminology when discussing intercultural topics to ensure a common base with regard to the argumentation. The term 'free' is obviously defined differently in both societies, as critics of the burka ban argue that 'freedom' was not about exposing a naked body but supporters refer to the burka as deindividualization. Again, the perspective is crucial to the argumentation, and the cultural discrepancy in defining 'free' and interpreting the burka as material symbol of bondage creates a sheer insurmountable gap between the arguing parties.

The regulations on airports and in e.g. banks are an essential part of the security concept, and the implementation of separated women rooms in order to lift the veil in front of female employees, as demanded by a covered lady in a Sparkasse subsidiary (Friedmann/Hipp, 2016), causes an inevitable conflict about the degree of European tolerance and adaptability towards the counterpart. As many critics stress the urgent need of foreigners to adapt to local values by referring to the same adaptability of Westerners visiting Muslim countries, the sensitive debate is more a question about the consequences of actually implemented separated rooms in accordance with sharia-adopted separation between men and women, again conflicting with European values

and the equality approach. In contrast, the non-implementation will for sure lead to social separation of e.g. burka-women due to limited scope of action in parts of the daily life, but the philosophical question is about encroachment on religious freedom in a society claiming tolerance and religious freedom for the individual. Other issues remain open, like the unbalanced rules and regulations for (Muslim) foreigners and the local population referring to the scanning and natural undressing at airports for non-Muslims, but no such demand for those purely covered.

The discussion about the burka ban is still ongoing and it portrays the severe gap between opponents and supporters of Islamic covering in Europe. The question is about the compatibility with European values, referring to gender equality, freedom and democracy vs. supporting a dress code, which is a sign of Saudi Wahhabism associated with sharia and 'tit for tat' mentality, necessarily resulting in a clash with the ideals of a society based on the rule of law and developed security concepts. Nevertheless, the heated discussion about the burka ban seems media-driven and exaggerated, in the face of the small number of women actually wearing the Wahhabi-oriented full-covering in Europe. Moreover, a ban in e.g. Germany would require an amendment of the constitution, as such a ban would 'infringe on religious freedoms and cannot be justified without constitutional change' (Friedmann/Hipp, 2016).

Political correctness might refuse to open up a debate about a more popular Islamic covering as referred to before. Referring to the black cloth as statement against the European society and proclaiming a negative attitude towards European values, the debate has to address a far intensified sensitive issue, particularly because it affects a larger number of veiled women. When the argumentation is purely about the isolation from 'Europe' as value system and society through cloth and because of arising security concerns due to the opaque and non-see-through layers of black tulle (e.g. Kenya, incident in 2013 (Shute, 2013)), the discussion has to focus on e.g. the niqab, but further differentiation and demarcation are not part of this paper. However, if the argumentation in the fundamental debate about validity and uniform application of European values is taken seriously in order to defend 'Western values' (see Glossary), freedoms and the non-separation of women and men in public, the types of questions in debates have to be modified. Burka opponents refer to the inability to integrate into the society by building a defensive, visible wall of dark cloth between themselves and the immediate environment. The question is whether establishing contacts 'with the immediate environment' are actually desired, which has to be negated, but the paper will not focus on theological argumentation.

Supporters of a burka or niqab ban stress security issues. In an open society, it has to be possible to clearly identify the counterpart, also because of security issues, as explained before. The societal question refers to the conflict between the liberal co-habit and the face/eye-covering full veil. Interculturally seen it is important to shake hands in Western societies and to directly look into the eyes of the counterpart, which demonstrates honesty, competence and a good character (Nunez/Nunez Mahdi, 2007). A survey showed that pedestrians who were asked about their perception of burka often referred to fear. Social psychologists explain that mimic was a door to communicate efficiently with the counterpart. It is an essential part in keeping control

over a situation and in successfully evaluating the spoken word. A face veil inhibits the look behind, and the strong association of the burka with a foreign (and potentially unknown) culture, terror and Islamism prevails and results in fear and rejection (Wölflle, 2016). Critics argue that the burka was a symbol of suppression, but it is more a symbol of a patriarchic society and cultural heritage than religiously founded. There is no sura in the Qur'an referring to a full-covering including face veil and obligatory eye-grit, which define the burka, again demonstrating the culturally diverse interpretation of modest dressing and variations of veils, yet no further differentiation and interpretation of 'fatwas' (English: *legal texts*) is made in this paper.

There is no EU harmonized regulation concerning a burka ban in public. The member states treat this issue differently: since 2011, France has prohibited women to wear burka or niqab in public, willful violations result in a fine. Belgium introduced the burka prohibition in 2011 as well, but additionally to the payment of a fine, the state ordered imprisonment in case of willful violation. The Belgian court argued that freedom of religion was not absolute. The prohibition to cover is an essential element of equality between men and women, the societal life and public security. Tessin, a Swiss Canton, introduced the burka ban just recently, in 2016, and the Netherlands are about to decide on a law to ban the eye-veiling cloth out of governmental buildings, schools and hospitals based on public safety issues (Scherfig, 2016). According to Article 4 of the German Constitution, 'freedom of religion, freedom of conscience and freedom of religious and ideological commitment is invulnerable. The undisturbed practice of religion is ensured.' Germany as a state is ideologically neutral and holds a legal monopoly against religious communities. The constitution guarantees all citizens the undisturbed practice of religion on the basis of human dignity. The perception of religion is different from the perception in e.g. France, a country based on laicism and the strict separation of state and religion, declaring religion a private matter and thereupon justifying the burka ban.

Generally, legally forced covering for females can only be found in e.g. Saudi Arabia, Iran and Sudan, countries with a Muslim majority. A headscarf ban for female employees in public institutions and for state servants can also be found in other countries with a Muslim majority like e.g. Malaysia, Morocco, Albania and Turkey. Tunisia and Egypt applied the ban on headscarves as well until its re-establishment during the Arab Spring. Countries following the French laicism approach, like Belgium, parts of Switzerland and former French colonies like Syria, Cameroon, Chad and Niger, aim at separating state and religion, thus favoring a ban on Islamic covering, as explained before (Speer, 2016) (see Annex V: Concealment Worldwide: Selected Portray of Countries forcing or banning the Islamic Veil).

The fundamental question concerns the potential compatibility and harmonization of European values in the definition of the Treaties with e.g. burka and niqab. From a Western perspective, the full covering body veil is a symbol of female suppression as expression of a patriarchic society, hindering integration, threatening the society and causing safety issues. Wearing a burka in Europe is an openly demonstrated sign against Western society, as argued by skeptics. The wall, that is built between the covered women and the rest of the world separates her culturally, societally and elimi-

nates the possibility to get in contact with Europeans easily. The universality of European values is challenged by existing prejudices and arguments on this issue (Nikolaïdis, 2014). It is for sure a challenge for Europe to prove whether European values are indeed universal values. Nevertheless, the claim for universal European values simultaneously triggers anti-Western sentiments, again with focus on a perceived superiority. Applying European values and standards, grounded on traditions, universally to everyone in the Union results in the rejection of Western values as epitome of one-sided suppression and intolerance. The degree of argumentation is a balancing act, and both counterparts make it essentially hard to find consensus.

It has to be defined whether values should be interpreted differently depending on culture, region, context and persons applied to. Primarily, it has to be seen that values, norms and beliefs actually highly differ across the globe and strongly depend on the regional and cultural context. Therefore, if the answer is positive, meaning values and norms have to be interpreted differently, depending on culture and the person on which these norms are applied to, then Europe sacrifices itself by willingly entering the path that is criticized by Henryk Broder claiming 'critics to pure tolerance' (Broder, 2008). Broder (2008) argues that a tolerant society, supporting each individual to fully act out its own interests and beliefs, was denying the differentiation between good and bad, as each assessment was automatically anti-tolerant, causing the borders of tolerance to blur. If values are adoptable and changeable, depending on a particular context, Broder (2008) climaxes in a betrayal to Europe as value community. Values define the community and the sustainable and efficient living together. Abandoning the basis of European cohabitation means dispatching the underlying codex for 500 million European citizens across 28 member states by uprooting them from Europe as an institution and community. Therefore, the question has to be negated: values have to be constant to raise the claim for universal application to everyone and equally to both genders. Freedom of religion, as anchored in the TEU and the constitutions of the member states, is given, but freedom of religion and expression for some, while disturbing the freedom of others, is not sustainable and will cause disputes, incomprehension and hatred. European values are indeed universal, but it is up to the Europeans to apply them universally to secure a future of mutual agreement after finding consensus on this stony path and to reach a high level of integration by living together as neighbors in an inter-faith dialogue.

### ***8.1.3 Cultural Relativism Threatening the Project Europe***

The Union was designed to prevent war, therefore the European Project can be referred to as peace project, creating a united Europe. It is not just about peace, but also about the association of states committing themselves to common values, rejecting the authoritarian and intolerant ideologies known in Europe before (Scheppele, 2015).

Referring to equality of humans, freedom for the individual and humanity, it is Europe's challenge to face external cultural influence, while sticking to own values.

The roots of the Union and essentially its past are guides through a rough time of political unrest and turmoil, which is now affecting all member states that are catching up on equal footing. Europe's population feels neglected when it comes to its own interests and historical heritage and the fear to be restricted in its freedoms, which have been developed centuries ago and unite the Europeans in a common past. 'Liberté, Egalité, Fraternité,' as credo during the French Revolution in 1789, triggered movements all over Europe, like the Hambach Festival in 1832. Freedom of the person (Art. 2 GG), freedom of religion (Art. 4 GG), freedom of art/speech/science/education (Art. 5 GG), freedom of assembly (Art. 8 GG), freedom of association (Art. 9 GG), free career choice (Art. 12 GG) and the right to petition (Art. 17 GG) are some of the fundamental freedoms written down in the constitution of the Federal Republic of Germany. Most of the rights Germany roots on today have been developed during the age of enlightenment and the ideas of Immanuel Kant, who was philosophizing about the 'reason as source of morality.' The Hambach Festival was proclaiming freedom and democracy during the time of Restoration and at the beginning of the Vormärz era. These stages were essential parts in the development of Germany, yet the partially censored and cancelled German carnival celebrations in February 2016 in several cities raise doubts as to its factual application. Political correctness triggered censorship: not respect, but fear of unpredictable consequences that might follow a 'provocation,' previously part of freedom of expression and cultural heritage. The actual offensive and distasteful character of e.g. Prophet Muhammad caricatures by Charlie Hebdo in 2015 are not to be discussed further, as the thought-provoking impulse is about the double standards, not about the art itself.

There is no right or wrong when expressing an opinion, as it is not about the quality of the expressed opinion, which in most cases demonstrates the tolerance of a society. 'There is no need for debates if agreement prevails. Yet the end of a debate is the end of freedom if the applause does not cease' (Kissler, 2015: 29). Muslims easily criticize the West as anti-Muslim and accuse governments of being involved in a Jewish world conspiracy. However, it has to be objectively seen that the EU-citizens' fear, which might result in antipathy or even rejection, is not spurred on by mass propaganda but has its reasons. The instigations of violence, expressed just by a small minority of Muslims, yet so dramatically and justified on the basis of a world religion, makes it comprehensibly hard to distinguish between (Muslim) refugees and warriors of the Caliphate proclaiming these ideas. This minority that describes Christians as 'error, turned away from true faith' and proclaims their approach as universal Islam, indeed triggers anti-Muslim feelings across the Union. It is difficult for European citizens, heterodox and atheists, to separate the body of thinking, ideology, spiritual Islam and institutionalized as well as jihadist Islam and not to stereotype foreigners with Muslim background, when the ones executing terrorist attacks actually refer to a holy book of a world religion, claiming to be the most pious and devout by proceeding this way (Kissler, 2015). Granting tolerance is easy when unconcerned, but hereby it is essential to understand the difference from cultural relativism, meaning tolerance on the brink of the abyss and passive follower behavior regarding a form of violence legitimated as tradition and therefore worthy of acceptance (Broder, 2008). The con-



flict will be further explained in Chapter 8.7 under consequences of ‘Trinity of Multiculturalism.’

## 8.2 Islamisation of Europe or the Europeanization of Islam

Many Europeans benefit from the freedom of movement within the Union, deciding to live, work and study abroad. However, it has objectively to be kept in mind that refugees, apart from economic migrants and forum shoppers, were forced to leave their homes due to an existential fear. The immigration was neither planned long in advance nor voluntarily. For many, Europe is not the promised land in terms of living and working preferences, nor a desired role model for values, norms and beliefs. This factor is essentially important when it comes to Europe’s challenge regarding a sustainable and successful integration.

From the angle of intercultural science, it is apparently hard to give up behavior and thinking that have been shaped by the immediate cultural environment for generations. Therefore, it is ultimately important to understand each individual’s cultural backpack (Slawomir, 2005: 7), a reminiscence that cannot be removed before crossing a country’s border. There is no clash of cultures but a conflict between two civilizations with historical roots. Tibi (2008: 16) refers to the Cornell Project of 2002 that resulted in two options for the future of Europe: the Islamisation of Europe or the Europeanization of Islam.

Global Migration and especially the refugee crisis triggered a movement of people, refugees and immigrants as transmitter, introducing the politicization of religion and the religionizing of politics on the European continent, rooting in thoughts that originally developed outside of Europe (Tibi, 2008). Intellectuals often refer to the value system in the open, post-modern European society. Unlimited thought and articulation skills seem to be given and induce the tolerant society to open up for e.g. sharia, while simultaneously jeopardizing Europe’s future when making so-called ‘wrong tolerance’ respectable due to political correctness (Tibi, 2008). ‘Tolerance becomes a crime when applied to evil’ (Mann, 1952: 649), and as result the Union is indeed polarized (Nixon, 2016). Cultural, linguistic and religious aspects have to be examined carefully to create a sustainable environment for a harmonious blend of cultures. This issue also refers to the willingness and likelihood to give up and adopt certain structures, despite the fact that the move was rather forced than voluntarily, neither planned nor properly organized (see Annex W: Likelihood of Cultural Adoption – A Scientific Demarcation). The question refers to the compatibility of role models, values and thinking with so-called ‘Western lifestyle.’ Both sides have to be open-minded to adapt to the new situation. It is essential for the people arriving in Europe to internalize European values and to take over European identity. Both-sided tolerance and, in particular, unbiased both-sided cultural open-mindedness are essential for successful integration (Tibi, 2008).

### 8.3 Historical Fear of Foreign Infiltration with Changing Participants

History does not per se repeat itself, but it tends to leave marks that might lead to the assumption that history was likely to be repeated. Yet the surrounding and situational circumstances differ dramatically and cannot be superficially compared without removing blinkers. The current debate about Muslim migrants is a perceived threat the world has seen before, yet with changing participants throughout history. Looking backwards, the Irish-catholic immigrants in 19<sup>th</sup> century London were originally seen as a threat to the British. In the beginning, voices claimed that these folks were not to be integrated into the major population, but the actual rapidness and success of the immigration story became legendary. The Irish migrants were integrated within less than two generations and quickly seen as an enrichment to society (Saunders, 2012).

Still, history showed that tragic events and incidents dramatically influence the public awareness of a whole ethnical tribe, religion or language family by creating lasting preconceptions. It is undeniable that 11 September 2001 changed the perception of the rest of the world towards its Muslim neighbors. Suspicions and smoldering distrust characterized the following years. Different theories developed and ideas about 'conquering the Occident' and 'disloyalty towards host-states, due to pure loyalty towards religion' spread through the media and became popular debate topics for mainstream media. Different voices claimed that Islam prevented successful and sustainable integration and resulted in the destruction of Western freedom and tradition. In 1993, the theory of the 'clash of civilizations' (see Glossary) enjoyed a revival under Samuel Huntington. The author hereby defined the medieval image of rivaling empires, yet outmoded by cultural growing together and strong economic ties. In a second publication of 1993, Huntington argued more precisely about the change in conflict pattern over time. After medieval disputes, mainly due to economic and territorial expansion drivers, followed by clashes between nations, Huntington referred to ideological conflicts. Primarily, these conflicts took place between actors within the Western world. After the end of the Cold War, conflicts tended to take place between the frontiers of Western and non-Western civilizations, as non-Western civilizations revolted 'against the role of chessboard-figures on the game board of Western driven geopolitics' (Schwan, 2001: 12–15). Christopher Caldwell (2009) summarized the growing fear of infiltration and undermining of value by raising the question: 'can Europe be the same with different people in it?'

9/11 proved that the idea of monolithic, not compatible cultures creating a spiritual no-man's land culminating in the end of the Occident was generally conceivable by the public. These radical thoughts serve as a platform for e.g. Geert Wilders, the third most popular politician in the Netherlands. By encouraging electorates to deny tolerance for those who deny the *savoir vivre* of the Netherlander, Geert Wilders does not consequently speak out intolerance but justifies his paroles by consequence (Saunders, 2012). The likeliness, willingness and compatibility to integrate sustainably are questioned, and a differentiation has to be made between the ones willing to integrate, happily coexisting with other communities and religions, the ones favoring the concept of live and let live, without aiming for integration or valuing the benefits of a

merged society described as tolerant, and the intolerants. Whereas all have a right of existence, clashing body of thought causes trouble and disagreement on neighboring each other. Statistics on the percentage of Muslims preferring sharia in their home country varies dramatically from country and region, as well as the degree and extent of the actually favored application. The attitude towards Muslim law again highlights the integration efforts and the adjustments that have to be made. In case Islam is the officially favored religion in a country, the support of sharia is obviously significantly higher. Referring to the ones seeking refuge in Europe, it is important to question the probability to accept European law and law enforcement mechanisms with focus on the desire to apply sharia on spot (Pew Research Center, 2013) (see Annex X: Support for Sharia across 39 Muslim Countries).

America, Canada and Australia have been immigration countries for ages, but Europe has a different history, as it had been European migrants taking up residence there, not the other way round. The absence of an immigration act in Germany shows the situational context (compare Annex O): Germany finds it still difficult to accept migration as factor of a fast changing world. The country does not have a regulation on immigration based on qualification, national interests and economic needs like classical immigration countries (e.g. America, Canada, Australia), 'behaving like a country with irregular migration, neglecting its de facto regular migration for decades' (Falkowski, 2011: 83). Traditional non-immigration countries refer to refugees and 'non-EU-immigrants as foreign threat and the ultimate others' (Bauder, 2011: 22). The perception roots in the practice of 'national identity formation through the negation of immigrants' exist' (Bauder, 2011: 22). In the past, countries like e.g. France reacted to the diverse and partially conflicting interests of different cultures living in the country by banning signs of worship and excluding religion lessons from public schools, as secularization is high in France. An example of adaption is the UK, where sharia courts have settled conflicts since their establishment in the 1980s (Saunders, 2012).

Prejudice and wrong expectations on both sides are not conducive for the heated debate within the Union. The insecurity and vulnerability of a society offers platforms for politicians, lobbyists and private individuals all over Europe and fuels xenophobia. Geert Wilders is just one example of keeping up the crisis by re-establishing a way of thinking that has been dispelled from people's minds for the last six centuries (Saunders, 2012). In order to maintain Europe, built on common humanist values, the EU's task is to preserve an open-minded attitude, excluding stereotyping and condemning clustering bogeyman images across ethnicities.

## **8.4 Anti-Semitism and Legitimacy of Israel in Post-War Europe**

In the debate about migration and integration, issues like the embedded anti-Semitism in thinking, the acceptance of Israel as a state and the Palestine question have been neglected. However, these topics, which seem to be kept outside the discussions due to political correctness, as some critics argue, have the potential to actually

split society. Post-war Europe is sensitized to the topics referring to e.g. anti-Semitism, as especially Germany is working through its history, facing its responsibility as major European force next to e.g. France. A dangerous body of thinking might cause unpredictable movements in the already established right-wing across Europe and trigger a development that contradicts the post-war ideals and values the EU is built upon.

As the majority of refugees have their origin in countries where the regimes declare Israel and Judaism the cause of all evil (Brenner, 2015), it is in the responsibility of European governments to remove the misconception of a Jewish enemy and to replace it with practiced tolerance of parallel existences. Intolerance is a symptom, not the actual cause of totalitarianism, but for sure triggered by means of intolerance (Council of Europe, 1995). A targeted partnership is difficult to achieve when neither side is open for a coexistence. Nonetheless, urgent support and educational work have to be implemented in order to demonstrate the limits of a Western society. The specifically targeted attacks on Jews in Paris and Copenhagen, as well as e.g. the desecration of Jewish graves in France in 2015, have an impact on the Jewish community in Europe. Petr Papousek, vice president of the Jewish World Congress, declared that the increased anti-Semitism in Europe was a result of foreign Muslim migration condemning Judaism. Israel is actually awaiting a new wave of Jewish migrants over the next couple of years due to the increasing number of anti-Semitic incidents (Kusicko, 2015).

Prevention mechanisms have to be established for a sustainable and peaceful Europe, and it is important to critically question and ban arising stereotypes on both sides. There must be no leeway for a repetition of the past. Europe is challenged, as the lack of understanding the deeply religiously rooted perception is unknown and neglected in the debate. Humanitarian aid for those in need, but safeguarding those already living within the Union as neighbors and friends is a balancing act when it is not about an opinion, but about profound religious beliefs, which determine the body of thinking.

## **8.5 Conflict of Cultures – Jihad against McWorld**

Double standards and double morals have to be abandoned. It is claimed that the post-European society was tolerant, but still certain sensitive issues cannot be addressed publicly (Tibi, 2008). However, it is essential to debate openly about difficulties of combining the interests of neighboring civilizations (see Annex Y: Mutual Suspicion and Incrimination thwarting Impartiality). Neglecting existing inconsistencies due to political correctness or naïve thinking endangers Europe's future. The importance to maintain and defend pluralistic values becomes obvious when referring to e.g. 'Je suis Charlie.' The terrorist attack in 2015 on a French satire magazine, due to the publication of Prophet Muhammad caricatures, was not a single act against the caricaturists in charge but a violent statement against a society that defines itself as pluralistic, based on humanistic values and the ideals of free-thinking.

It is important to differentiate between Islam and Islamism, as the demarcation is between Islam as religion and Islam as cultural-political ideology and basis of identity policy, triggering world conflicts. Islamism is not per se an anti-globalization movement but the source of conflict between two civilizations. As transnational religion based on the idea to form the world according to Islam, Islamism can be seen as a movement of sacral revival. The Communist Manifest, as basis of internationalism and transnational movement during the 19<sup>th</sup> century, enjoys a parallel revolution on Sayyid Qutb's manifest from the mid-20<sup>th</sup> century, aiming at 'hakimiyyat Allah' (English: *theocracy*) and de-secularization. Islamist scholars argue that Europe failed as actor on the world stage and an oriental replacement was simply a natural development. Global migration and especially the refugee crisis trigger the movement of refugees and immigrants, as migrants introduce the politicization of religion and at the same time the religionization of politics on the European continent, yet the roots of these thoughts lie on the downside of Europe (Tibi, 2008).

These days, conflicts have a religious core, which is a cultural side effect of structural globalization, however running withershins. The 21<sup>st</sup> century marks the era of the global village, but the question is whether this 'village' is indeed as global as anticipated. Fear of the unknown is a culturally rooted fear, and especially during these rough times, the vicious cycle of reversion to traditions and the well-known triggers separation and drives the gap between ethnical groups, nations, countries and civilizations further. Despite advantages of globalization, the caused cultural fragmentation should not be overlooked. The reversion to the own culture and religion is a defensive answer to the somehow imposed trend of a global culture. The term 'Jihad vs. McWorld' (Barber, 1996) includes stereotypes but summarizes and describes the two opponents in the ongoing crisis. It is important to understand the Islamic resistance, euphemistically speaking, not as resistance against the Western world but as resistance against Western values, which have developed to universal values including a world order (Tibi, 2008).

The refugee crisis is the reason to discuss these issues, but as long as Europe does not understand which questions have to be raised, where political correctness is necessary and where self-imposed restrictions, due to regrets about colonial misconduct, is out of place, no sustainable measure can be undertaken in order to enlarge upon the situation. Disregard and ignorance towards relevant topics will result in Muslim enclaves and parallel societies, which are then, positively and negatively, referred to by the term multiculturalist society.

Another factor that is neglected in the discussion is the religiously founded 'da'wa,' a religious duty for travelling Muslims to spread Islam as Muhadjirun, meaning to actively missionize the heterodox as part of 'hidjra' (English: *migration*). Tibi (2008: 40) critically raises the question whether European tolerance, in its purest definition, will provide the ground for Islamic universalism, referring to the Muhammad caricatures that have caused the terrorist attack referred to as 'Je suis Charlie.' The professor for international relations argues from a perspective many Europeans skip, due to the lack of knowledge or what critics refer to as 'Euro-egoism' (see Glossary) and the idea to consider European body of thought as universalistic body of thought,

stereotyping humans despite cultural differences to think, argue and draw conclusions the very same way, based on e.g. humanistic values and the ideals of Immanuel Kant.

Tibi (2008) explains that the excitement about the caricatures of the Prophet is not due to simple tastelessness, but about the sharia-oriented censorship. A similar application of censorship for an infringement on e.g. Christian or heterodox emotions would not be legitimate and non-justifiable, as the authors' rights are secured under the freedom of expression and art. In a scenario of abused religious freedoms as part of an identity policy, Tibi expects step-to-step Islamisation of Europe. In the beginning of the 21<sup>st</sup> century, Europe provides the platform for a conflict of civilizations, not for a clash of civilizations.

Inclusion through Europeanization as e.g. the killing of heterodox persons is not and must not be covered by the 'freedom of religion' (Tibi, 2008), as e.g. a Belgian Court argued that 'religion is not absolute' (Scherfig, 2016). Excluding sharia and its practices is essential in order to maintain the rule of law and the constitutionally secured rights: policies are needed to provide lasting security for both communities (Tibi, 2008: 133). The conflicting contradictions in here result from the 'Trinity of Multiculturalism,' defined as differences, acknowledgement and cultural rights as fundamental rights (Tibi, 2008: 41). 'Sharia' as fundamental cultural right and thus as right to be acknowledged in a multicultural environment is the trigger for the vicious cycle, when arguing about pluralistic values, freedoms and tolerance towards an intra-EU minority (Article 2 S. 2 in conjunction with Article 3 No. 3 S. 4 TEU, but without precise definition of 'intra-EU minority' as purely domestic minority or as result of e.g. the refugee crisis). Human rights for the individual clash with sharia, multiculturalism as contrast to cultural pluralism remains an issue, but in the effort to de-religionize, Europe is confronted with an immensely religionized world (Tibi, 2008).

The challenge for the European Union is to understand that it is not the migrants who cause a conflict of civilizations but the kind of religious ideology that is introduced on the continent as result of the migrant crisis. It is essential for the people arriving in Europe to adapt to European values and to take over European identity. The difficulty is that in the discussion about arriving refugees many leave out the particularity that, according to Tibi (2008), it is not 'individuals [who] arrive on spot, but members of the Islamic diaspora.' Referring to the Muhammad caricatures causing the 'Je suis Charlie' terrorist attack in 2015, pluralistic values have to be maintained and defended. Before, the sea has been a natural border between Europe and 'dar al-Islam' (English: *house of Islam*). Immigration has to be closely linked to security, and due to the refugee crisis Europe has to deal with the development of the Middle East in a way beyond politics to understand the people crossing the Union's borders. Attempts to democratize the Islamic world in a time of Islamism will fail (Tibi, 2008). Europe, as a community of shared history and ideals, is founded on human dignity, not on a randomly created list of values as reference points (Hager, 2004). The tolerant society opens up for sharia while simultaneously jeopardizing Europe's future in implementing a so-called 'wrong tolerance' due to 'political correctness' as dangerous enemy to the 'island of freedom in an ocean of tyranny,' as Horkheimer (1968: XIII) refers to Europe. Tibi (2008) argues that it had to be differentiated between the Islam-

ic and Islamist challenge, meaning a challenge due to the religion of Islam and the challenge due to the political ideology of Islamism. Without clarification and demarcation, the spiritual Islam will be abused for a new form of totalitarianism (Tibi, 2008: 159–160). Islamisation, as claimed by Tibi (2008), does not fit to Europe, as there is no awareness of common values. Europe has to open up a dialogue without political correctness, research and differentiate, daring to address sensitive issues in order to thwart totalitarianism in the form of Islamism, regardless of peaceful institutional Islamism or violent Jihadism (Tibi, 2008: 134), and to prevent stereotyping by focusing on an enhanced understanding of religion as driver of 21<sup>st</sup> century conflicts.

## **8.6 Post-Review of Kuwaiti Official Fahad Al Shalami's Declaration in Connection with the European Cultural Integration Task**

Back in September 2015, Al Shalami's statement (compare Annex I) seemed superficial, two-faced and ignorant. Uttered at the swelling peak of the refugee crisis by an official representative of Kuwait demonstrating his point of view and excluding humanitarian responsibility, it may seem conflicting with the idea of a Muslim community united in pan-Arabism and, as often argued by Western critics, split in countries separated by artificial borders created by the imperialistic forces back then. Following this popular argument of Western critics, the understanding of the statement is even more important, as it clearly points out the differences and mixed perceived sense of Arab's belonging within the Arab world. Many Europeans and Westerners do stereotype an overall ethnical group referred to as 'the Arabs,' whereby 'ethnicity is defined in cultural and linguistic terms and in terms of descent from distant ancestors' (Barakat, 1993: 40). Cultural divergences and peculiarities are underestimated due to lack of information and knowledge. It is necessary to understand Al Shalami's statement in favor of cohabitation and coexistence in tomorrow's European Union.

Claiming to be united as Muslims, overriding national borders, but directly closing off behind these so disliked national borders when it comes to the question of taking in culturally close people in need, seems duplicitous. The statement of Al Shalami includes a second hint, which is essential to highlight in order to understand the intercultural difficulties Europe will face in the years to come. The backgrounds of a Kuwaiti, declaring Syrian refugees as 'culturally different,' are important to understand. It is an irrefutable fact that there is no community that can be referred to as 'the Arabs,' taking the prejudicial assumption that the created cluster is similar with regards to shared norms, values, beliefs, heritage and history. This paper is not about intercultural characteristics, cross-cultural differences and peculiarities, so in-depth explanations are kept out. However, the knowledge and understanding of existing cultural differences and various forms of practiced cultural heritage is crucial in order to prevent further stereotyping and false assumptions. There are indubitable local features, cultural distinctions and regional specifications that make it impossible to lump together 'the Arabs' as one huge clan. Iran as Shia-dominated Persia, as well as the North African states, are part of the so-called Muslim community and the Arabs as

well, but only in the broadest sense. Cultural clustering and sub-grouping is essential in understanding the divergences in order to manage sustainable future integration of refugees in Europe. Ignorance and stereotyping will cause long-lasting damage for a Union based on diversity and the understanding of a community made up of different ethnical, linguistic and cultural backgrounds. The author emphasizes to act now for the 'Europe of tomorrow' as key for a sustainable coexistence of a highly biased relationship between the Orient and the Occident, now meeting within the borders of the EU.

## **8.7 European Cultural Outlook**

The EU is on the move: it is simply a question of how deeply the supranational entity will have been influenced by the ongoing debates and incidents on all levels and how far-reaching, positively and negatively, the impact of the refugee crisis and the resulting intercultural and religious issues will be. It is up to the Union and the community, the Europeans themselves, to react and demonstrate lively the essence of European identity. It is undoubtedly a balancing act to combine value systems of the Orient and the Occident, and the Union for sure has enjoyed times less challenging. History has always been a guide for predicting the future and deriving recurring events. This time, it is on the Europeans and the EU to strive for a future that does not include partial remarks of the 1930s past. This task especially includes the Muslim Europeans with a major responsibility and refers to the well-established Islamic European communities' duty to prevent increased religious clustering and societal split. As long as terrorist attacks are executed in the name of Islam, the respective community bears responsibility and has to be held accountable. Silent conviction is disproportionate, in contrast, public demarcation and implementation of prevention measures are needed.

Today's special challenge results from the blurred line between individuals executing acts of violence and their religious belonging. Not despite, but because of their religious affiliation, terrorist attacks are devotedly performed and dedicated to a holy book. Xenophobia as a term generalizes on 'foreigners,' but turns to religious xenophobia in this crisis, inaugurating a turning point in today's perception of terror, as terrorist attacks are closely linked to and executed in the name of religion, thereupon urging the Muslim community to bear responsibility. The cruelty and frequency of attacks executed by individuals of a world religion referring their acts to Islam triggers a natural humane stereotyping. Demarcation is essential to prove cross-religious 'we' as unity, standing together at the same frontier against religiously rooted terror and to prevent the perception of a religious community silently in accordance with the executed acts of violence. Maintaining European ideals and values, especially the high standards of freedom and rights, demands a commitment and confession on Europe as collective in order to succeed and to demark terror and affiliation from the heterodox, neighboring our homes.

The fear of foreign infiltration is historically proven, but peculiarities have to be outlined: the Irish were culturally and linguistically not really 'foreign' to the British,



and even in terms of religion, both communities could refer to the common ground of Christianity. The differences to today's integration task are obvious, as religion, culture, tradition and language highly differ between the frontiers 'Europe' and 'new-comers,' having no common basis. Sustainable integration will be the major challenge in the years to come.

Defining 'freedom of religion' rather as 'freedom of faith,' thus excluding physical patterns, seems to be a likely secular approach but facilitates living together and cohabitation. Europe has to become aware of its values and realize their meaning and importance. Evaluating the consequences of decisions taken today and facing the accusation of pure tolerance, Europe has to define which values are worth to be kept and at which point tolerance actually restricts freedom and decide upon this assessment. Today, rights and freedom are taken for granted, but the number of generations enjoying these rights can still be counted easily. Naturally, appreciation is difficult without the need to cope with a challenge, but the refugee crisis impacts the roots of the European society in the long run and is indeed a major challenge to master. It is essential to understand European values as legacy, as back then people gave their lives while fighting for these rights. We owe it to ourselves, as successors of the ones paving the way for what is referred to today as innate European spirit, to not decrease the validity of European values including their application but, in contrast, to maintain a pluralistic and open society. The future is shaped by the decisions taken today, and each EU-citizen can contribute to Europe's future as spoke in the wheel: insignificant when acting individually, but powerful when part of a strong alliance. Repercussions are existing challenges but worth to be taken seriously. The Union has never experienced a similar situation with such a drastic impact on the innate value system before.

Time will witness the outcome of integration efforts and the future shape of the Union under the foreign influence. An approach has to be defined in order to integrate successfully: 'Europeanization,' 'multiculturalism' or by setting up a new pattern for sustainable integration. Understanding cultural exchange as benefit to personal development and broadening the horizon without stereotyping or prejudice will enable the EU to grow further. Concerns about cultural compatibility should be removed by actually living cultural diversity, following the Union's motto 'united in diversity,' yet broadening this diversity as result of the new cultural patterns in the Union. The question which should be raised during today's discussion on multiculturalism and assimilation is how to establish an environment of open-mindedness and interest on the European side and on that of the newcomers. 'Tolerance' is stressed in this debate, however, a differentiation has to be made between embracing cultural diversity and learning from different cultures to enhance together or by undermining one's own values, identity and historical heritage. It is important to include the citizens according to the principle of subsidiarity: acting as close as possible to the Europeans, for the citizens as the Union's residents, adding in this context the European responsibility to maintain cultural heritage and values. The citizens' responsibility is to safeguard the legacy of those who laid down the principles for what should become known and defined as European values later, as successors of the ones shaping the Union's spirit.

Despite the challenges and difficulties the EU is facing, national conflicts have to be overcome. Oppression and xenophobia do not belong into the 21<sup>st</sup> century, neither into the European Union, which is based on humanist values and freedoms. Without remaining true to its values and understanding its responsibility, the Union and the unique model of a supranational entity cannot persist. The EU has to prove its ability to change reasonably according to the zeitgeist, while sticking to its *raison d'être* and valuing its stages of development as reminiscent, including the source of today's cohabitation, rooting in revolutions and brave uprisings for what became the essential part of today's Europe. Nobody can predict the future, but it can be forecast that the Union will emerge changed after the end of this crisis and the sum of challenges faced.

## 9 Repercussions for the European Union

### 9.1 Emerging Nationalism – Backlash against a United Europe

Until 1918, 'nationalism' was closely linked to the formation of national states and was regarded as a component of national history. It was either class or national culture based including linguistic aspects. Afterwards, ethnical and philosophical matters, as basis for nationalism, were included in the theorization. Nationalism can be seen as 'primitive revival of tribalism on an enlarged artificial scale,' whereby sociology equates 'society' and 'nation' as simply differing in class, status and power (Gellner, 2008: XVII). Generally, nationalism is defined as loyalty and devotion towards a nation, whereby the sense of national consciousness often exalts the particular nation, including its culture, language and history, by putting the nations' interests above other nations' needs (Merriam-Webster, 2016).

'Patriotism' has to be differentiated from nationalism, as it emphasizes 'identity-forming' feelings and a strong sense of belonging to the respective country within a community, yet superiority is not included. The country or 'nation' refers to 'an ethnically homogenous historical group, associated with a particular territory' (Primoratz/Pavković, 2016: 203). 'Sectionalism,' another synonym that is used for nationalism, is a term describing a geopolitical group pursuing its own interests, whereby the group is rather small and does not compromise the entire nation (Merriam-Webster, 2016). By definition, there will be no sections before the creation of a national state has taken place (Finkelman/Kennon, 2008). 'Jingoism,' as another term differentiation, is always based on military aggressiveness as sort of belligerent nationalism (Winter, 2010) aiming to pursue ideas of cultural superiority (Merriam-Webster, 2016). The extreme patriotism results in an expressed hostility towards other nations (Winter, 2010).

The differentiation is important in order to understand the ongoing political shift to the right across Europe and to prevent stereotyping or false assumptions about parties. Most terrorist groups can be described as purely jingoistic. The platform of Europe's right-wing parties is rather mixed, depending on the previous situation and context in the respective country, influenced by triggers like unemployment rate or discontent with the leading government.

### 9.2 Political Impact: European Parties' Shift to the Right

An excerpt from Muammar Al Gaddafi's live speech held in Timbuktu (2006) is currently heavily discussed and interpreted by some as meaningful prophecy. The Libyan ex-leader said that one day Europe would be a Muslim continent by simple immigra-

tion, ‘without swords, without guns, without conquest’ (Al Jazeera, 2006). The ongoing debate about migration and contingents is fueled by this quote, as some Europeans feel vindicated in their fear of foreign infiltration by referring to Al Gaddafi’s words. However, the phenomenon of political extremism has not solely developed due to the current refugee crisis that originated in the Arab Spring. Anti-system political parties, racist, anti-Semitic, xenophobic, anti-liberal and eurosceptical groups have been well-established across the Union before. Several factors have to be discussed in the analysis of the parties’ development and historical, social and economic parameters have to be considered in order to understand the whole picture.

Historical data show that bad economic conditions over a longer period (e.g. Great Depression (1930), Global Financial Crisis (2008)) facilitate the rise of authoritarianism, as people tend to become more radical. The year 2008 is considered a turning point regarding the boost of political extremism across Europe. High unemployment and economic stagnation over a significant period of time triggered political reactions and resulted in electoral success for far-right parties in the Netherlands, France, Austria, Hungary and Greece. Although the aims of these parties cannot be generalized, as their goals may slightly differ, they all have a common ground in the financial crisis, boosting their significant electoral success (Klapisis, 2015). The following table demonstrates a lineup of far-right political parties and their election results before and after the financial crisis in national and European Parliament elections.

*Tab. 9.1 EU Election Results before and after the Financial Crisis*

Country	Party	National Parliament Elections [%]			European Parliament Elections [%]		
		Year			Year		
		2006	2008	2013	2004	2009	2014
Austria	Freedom Party of Austria	11.04	17.54	20.51	6.31	12.71	19.72
		<b>2007</b>	<b>2010</b>	<b>2014</b>			
Belgium	Flemish Interest	11.99	7.76	3.67	14.34	9.85	4.26
		<b>2005</b>	<b>2009</b>	<b>2013</b>			
Bulgaria	Attack	8.14	9.36	7.30	14.20	11.96	2.96
		<b>2005</b>	<b>2007</b>	<b>2011</b>			
Denmark	Danish People’s Party	13.25	13.86	12.32	6.80	15.28	26.61
		<b>2003</b>	<b>2007</b>	<b>2011</b>			
Finland	The Finns	1.57	4.05	19.05	0.54	9.79	12.87
		<b>2002</b>	<b>2007</b>	<b>2012</b>			
France	National Front	11.34	4.29	13.60	9.81	6.34	24.86
		<b>2005</b>	<b>2009</b>	<b>2013</b>			
Germany	National Democratic Party of Germany	1.58	1.78	1.46	-	-	1.03
		<b>2009</b>	<b>2012</b>	<b>2012</b>			

Country	Party	National Parliament Elections [%]			European Parliament Elections [%]		
		Year			Year		
		2006	2008	2013	2004	2009	2014
Greece	Golden Dawn	0.29	6.97	6.92	-	0.46	9.39
		<b>2006</b>	<b>2010</b>	<b>2014</b>			
Hungary	Jobbik	2.20	16.67	20.54	-	14.77	14.67
		<b>2006</b>	<b>2008</b>	<b>2013</b>			
Italy	Northern League	4.58	8.30	4.08	4.96	10.21	6.15
		<b>2006</b>	<b>2010</b>	<b>2012</b>			
The NL	Party for Freedom	5.89	15.45	10.08	-	16.97	13.32
		<b>2006</b>	<b>2010</b>	<b>2012</b>			
Slovakia	Slovak National People's Party	11.68	5.08	4.56	2.02	5.56	3.61
		-	1.33	1.58	-	-	1.73
		<b>2002</b>	<b>2006</b>	<b>2010</b>			
Sweden	Swedish Democrats	1.44	2.93	5.70	1.13	3.27	9.70

Source: Klapsis, 2014

The national parliament electoral success in Hungary (20.54%, 2013), Austria (20.51%, 2013), Finland (19.05%, 2013) and France (13.60%, 2013) displays an undeniably rising right-wing across the Union. Some of the right parties display an open form of xenophobia by showing antagonism towards e.g. Muslim minorities and migrants, rather than a cultural or biological one, therefore they are considered cultural racist parties (e.g. Front National, France) but not classical racist parties (Ignazi, 2003). They have in common the wish to benefit from favorable situations, growing rapidly on the fertile ground of insecurity and fear, as extreme political situations ease the rise of extreme political leanings (Klapsis, 2014). The connection between critical economic situations and political change has been proven by researchers before: due to insecurity about the future, economic crises make people more susceptible for demagoguery and populism, which raises fears and anxieties. Today, the question is about political instability, though a weak economy is fueling the rise of political extremism, but is not the only trigger by far (see Annex Z: Performance of right-wing populist Parties in European Parliamentary Election). Examples are Sweden and Austria, two of the wealthiest and most prosperous countries in the Union, which yet show a significant rise in the right-wing (Klapsis, 2015).

The political landscape in Europe did not only begin to change because of the current crisis, as there have been political shifts to the right before, e.g. the *Front National* under Marine Le Pen in France. However, the terrorist attacks executed by undercover terrorists crossing the Union's borders by officially seeking refuge and local IS sympathizers caused anger and fear in the country, leading to garnered support within the population. Geert Wilders from the Netherlands' party *PVV* has been one of the most popular faces of the political right for years as well. Meanwhile, the party

is represented in the European Parliament due to a 13.32% electoral success. Another example is Austria, a country that has always been a stronghold of right national politics. The *FPÖ* in Austria has already celebrated an electoral success in 2000 with 26.9%. Hungary is known for the active *Jobbik*, a movement for 'a better Europe.' The country's president, Victor Orbán, supports the party, making Hungary a so-called brown spot within the Union. Up until now, Poland has been the only European country with an extreme radical right-wing government and has denied taking in refugees due to terrorist attacks in France before. The country is openly anti-European, claiming 'Poland first' under the paroles of the *PiS* party. Greece's right-wing has already discussed the introduction of landmines on popular migrant routes in 2002. Nikolaos Michaloliakos and his folks are known for violence. The Italian *Lega Nord* aimed at a separation from the economically weak South since 1990, now openly fomenting against migrants, as thousands pass the country's borders daily. Germany's right-wing under Frauke Petry (*AfD*) is still more insignificant in comparison to the European right party big players (Holzhauser, 2015).

The partially systematic abuse and misinterpretation of European legislation, referring to the minors sent on smuggling boats across the Mediterranean Sea or via the Balkan Route to benefit from the rights of the minor to get granted family reunion, have to be addressed. Moreover, when an obvious or attempted abuse of welfare systems becomes public, xenophobia and hatred are the natural consequence, causing suspicion, prejudice and stereotyping among European citizens and supporting dangerous right tendencies. The exploitation of welfare systems could be reduced by harmonized benefits and enhanced data collection systems among the member states. Enhanced collaboration and actual harmonization of registration systems would decrease the development of parallel societies made up of nationals from countries of origin declared as safe, who live in the Union under the scope of the screen, by detection again pushing the right-wing.

### 9.3 Europe accused of Rising Fascism – A Demarcation

In 2016, Europe is split into three sub-blocs: first, the North, centered around Germany including the Benelux States, Nordic and Baltic countries united in similar economic policies and the belief in tight financial budgets as well as – until very recently – tolerant immigration policies. Second, the South, sharing equal economic problems, desiring a relaxation of debt and deficit rules from the EU turning the Southern states into a kind of entity, and third, the Eastern states, comprising former communist countries, making up an entity because of a common past, less sophisticated democracies and more populist voters compared to the 'old' member states, as well as the fact that they are all in a worse financial position. Victor Orbán, Hungarian prime minister, referred to the Brexit as 'cultural counter-revolution' and aims to take the initiative for his country by stressing the governments' role in standing up for national identity. The Eastern countries are united in the idea of a decentralized Europe, against 'outsiders.' The unofficially created North and South alliances may also be ex-

plained by cultural differences, but further explanation is kept out. Europe's current challenge is the increased populist East and how to deal with the ongoing development of rising stereotyping and prejudice (Bershidsky, 2016).

Some critics claim that it was fascism that was now slowly rising in Europe, but this is a misinterpretation of the term fascism and an 'attempt to discredit the resurgence of nationalism, trying to defend the multinational systems that have prevailed in the West since World War II' (Friedman, 2016 a). As nationalism was part of the Enlightenment, referring to liberal democracy and human rights in order to determine and decide on national interests as citizens, tyranny was feared, and multinational empires dominating the area of today's Union were associated as epitomes of tyranny. During the national uprisings in Europe of 1848, as well as during the French and the American (liberal) revolutions, multinational systems were destroyed and replaced by national states. The main difference between fascism and nationalism is the electoral process, which might vary from country to country, but it is always based on the citizens' periodical selection of leaders (Friedman, 2016 a).

As the UK just recently decided to leave the Union and anti-immigration policies as well as protectionist features increased, again influenced by the high influx of non-EU foreigners entering the Union over a short period of time, critical voices claimed this was a sort of fascism. However, this is not fascism but choices taken by the people and executed by their elected authorities. Without judging the decisions as right and wrong, it has to be seen that these are expressions of liberal democracies, not dictating the way to go, but rather representing the citizens' view, without guarantee that the majority's view is wise and just. The rise of nationalism is a result of the European institutions' failure to function effectively, as the EU is still struggling with economic problems as a result of the financial crisis in 2008. The influx of migrants is the topic that has dominated the media for months, but it has just overshadowed the unresolved issues the Union still has to face, e.g. Greece's debt crisis. The nationalists raise the question whether internationalization was still beneficial and demand an urgent change, but the ongoing European nationalist movement must not be misinterpreted as fascism (Friedman, 2016 a).

The impact of the refugee crisis and the debates on reintroduced borders in a per se borderless Union demonstrate the degree of vulnerability in today's integrated Single Market. The possibility to remain separate and abstain was cut throughout the years and resulted in plenty of advantages for the member states, yet challenging times demand an intense confrontation with inconvenient but actually existing side effects of the integration process. Fear of the unknown, cultural issues and the general anxiety of foreign infiltration trigger vivid outcries, condemned in e.g. right parties' electoral success as perceived solution for current issues. It is not appropriate to cluster the right-wing affiliates per se as uneducated sympathizers with the former National Socialist regime, but one has to differentiate further and include the feeling of neglect, as the political representation of moderate parties is no longer perceived as adequate. Concerns have to be taken seriously, and the political debate has to remove its stereotyping on superiority by facing the fear of European citizens. Tabooing a politically represented wing is inadequate in a pluralist Union. Dealing with concerns

and opinions of valuable EU citizens in order to find a sustainable solution simultaneously combats xenophobia, hatred and the accusation of fascism, all rooted in the issue of non-EU foreigners arriving in Europe seeking refuge and the ones abusing the open-door policy built on the grounds of humanity.

#### **9.4 Brexit – Future Shape of the Union’s Structure**

Under the slogan ‘don’t be deceived again, vote leave,’ the British voted for Brexit in July 2016 (Friedman, 2016b) and are expected to be out in 2018 after the end of the exit negotiations (Rhodes, 2016). The Brexit, as narrow result of the British referendum, can be explained by the historically demonstrated anti-European attitude of the Brits (Kenealy/Peterson, 2015) including the impact of the refugee crisis. The results of the referendum, an expected renewed recession and weakened economy, polarized the already split nation further (Rhodes, 2016).

Opponents of a united Europe claimed the dysfunction of the common economy, as the Union is still struggling with the consequences of the financial crisis of 2008 (e.g. 20% unemployment rate in southern Europe). Remaining part of an entity that economically stagnates and the feeling of oppression and loss of control by being forced to follow external decision-making from Brussels additionally triggered the probability of an exit. The lack of sovereignty led to a rise in nationalism, not just in the UK but across European countries that are based on the belief that the institutions no longer served a purpose but take control away from the right of national self-determination. Another issue that triggered the Brexit vote was the immigration crisis and in particular the increased terrorist attacks across Europe (Friedman, 2016b). The rising religiously oriented extremism in Europe triggered the British exit, as many EU critics and Brexit supporters discussed the likelihood of a safer UK without Union membership, yet the UK has never been part of the Schengen area and is indeed constantly executing border checks (Swinford, 2016). Despite moral obligations to support refugees on the basis of humanity, opponents see the migration wave affecting the country’s internal status quo regarding culture, politics and economy too negatively (Friedman, 2016b).

The outcome of the referendum demonstrates people’s increased disbelief in multiculturalism, internationalism and cosmopolitanism. The vote was preliminary motivated by anti-immigration sentiments that were supported by those promoting the anti-liberal package. Nationalism, as trigger for the result of the referendum, has many reasons and should not be underestimated when discussing Europe’s future and the potential to remain an entity. Far-right nationalist parties across the Union feel vindicated in their aspiration for a decentralized Europe after the Brexit. Especially in Hungary and Poland as well as in France, the Scandinavian countries and Italy, the demands for an own ‘exit’ increased and became more likely, resulting in a partially fractious democratic breakdown. In the author’s opinion, the openly held discussion on xenophobia, as well as an increased racism against foreigners in general but against migrants in particular, is likely to be repeated in other countries when elec-



tions will take place. The result of the UK referendum fueled nationalist movements all over Europe. The discomfort with multiculturalism and the fear of changing social and cultural norms became obvious (Rhodes, 2016).

Euroskepticism, as ‘political ideology opposing European integration, is a complex phenomenon,’ which had already developed in the 1980s (Glencross, 2014: 267). These days, Euro-skeptics and Euro-critics across the left/right divide in European politics (Glencross, 2014: 271) primarily claim the Union’s top-down approach. Frustration is expressed as to how integration hampers ideological goals at both ends of the political systems (Glencross, 2014: 271). The outcome of the British referendum campaign demonstrates the citizens’ hostility against the ‘Brussels heteronomy’ processed in pre-electoral slogans like ‘*take back control*’ (Haughton, 2016) and ‘*let’s make Britain great again*,’ adopting Donald Trump’s campaign slogan post-Brexit on a journal’s front page. Intense bureaucracy, outdated administrative practices (Tömmel, 2014) and the tendency to centralize competences in Brussels striving for continuous harmonization (Heckmann, 2016) collide with a lack of transparency, causing the ordinary European citizen to feel ignored, passively directed by others and deceived about his domestically existing democratically defined rights to influence the political direction and the decision-making. The British Euro-skepticism was pushed by contestation of national political parties, being torn over how to respond to the citizens’ dissatisfaction and disagreement on how to cope with the refugee crisis (Glencross, 2014).

The Union was originally designed to be a constant entity, built on abandoned powers and shared competences by definition of ‘unity.’ The supranational entity underestimated the power of nationalism and the ‘attempt to retain nationality as cultural right’ (Friedman, 2016 a). After 2008, the decision-making process and the perceived externally imposed doctrine of Brussels became increasingly difficult to accept for some member states, resulting in the current situation of a shift to the political right and the support of anti-European ideas (Friedman, 2016 b) to prevent refugee distribution per quota. Europe has to be understood as post-modern society made up of national societies (Beck, 2012), which is mirrored best in the mosaic of cultural patterns across the Union. It is not that citizens lack the feeling of identity, but the stress ratio, created through the parallel existence of two identities, first, national state, and second, a higher set integration network, causes obvious identification issues (Beck, 2012: 61). Change, as result of adaptation and adjustment, as well as flexibility, are key capabilities to remain sustainable and constitute the essential steps the EU has to take in order to efficiently support the citizens’ interests, rather than sticking desperately to a model that turned out to be not suited to last persistently and that does not meet the perception it intends to create with its given structure.

## 9.5 EU-Turkey Statement – A Pragmatic Collaboration

It seems that the Union is struggling at all frontiers simultaneously these days. The migrant crisis caused the acknowledgement of admissions, yet some of them might be

repercussions of the idea of a united Europe with respect to its path of development and its profound values. The ‘Turkey Deal,’ as colloquially referred to, is an agreement between the EU and Turkey, released in March 2016 (Jacobsen, 2016). The EU acted pragmatically, out of the situational context and desperation, facing the humanitarian needs and the states’ inability to handle the ongoing events effectively and efficiently. The Union’s move to set up an agreement granting Turkey several benefits in return, which previously have been discussed rather critically, is best mirrored in the long-lasting negotiations on Turkey becoming a member state of the Union or not.

The agreement was initiated in order to stop the flow of migrants on the Aegean smuggling route landing in Greece, or precisely, within the Unions’ borders. Greece’s lack of capacity to process the mass of asylum applications was due to the country’s inability to handle the high number of migrants while still suffering from the effects of the financial crisis and other unresolved correlated issues. In return, Turkey was promised to receive facilitated EU visas for Turkish citizens and 6 billion Euros in financial aid for the refugees being stuck behind the Turkish border (Kingsley, 2016 b). The special clause that caused heavy criticism throughout the EU and across different national parties concerned in particular the accession negotiations between the two partners (Unknown, 2015 b). Critics claim that the deal breaks EU law and the UN Refugee Convention, as the convention clearly denies expelling asylum seekers without having previously examined the applications individually (Kingsley, 2016 b). The facilitated issuing of Schengen visas and the thereby linked possibility for Turkish citizens to benefit from the freedom of movement within the Union is seen very critically by many. Opponents of the arrangement feared a win-lose situation: a potential actual reduction of the refugee influx, but a simultaneous increase of impoverished Turkish nationals seeking welfare benefits in Central and Western Europe. Critics claim that the deal would trigger poverty migration, as ‘many shantytowns in Turkey resemble South American favelas’ (Hausner, 2016). It is expected that the 90 days of legal stay permit under the short-time visa of the Schengen area will be exploited by phasing out the permit in order to settle down permanently within the EU’s borders. Moreover, the constantly suppressed Kurdish nationals in Turkey might also take the possibility to escape via the newly created quasi legal entry, whereby the agreement would act as misleading door-opener to another wave of migration with unknown impact (Hausner, 2016).

Turkey has aimed to become a member state since 1999, and the official acceleration negotiations started in 2004 (Unknown, 2015 b). Critics argue that the country had never been part of the area of today’s EU, neither culturally nor geographically throughout history. Accepting Turkey as member state of the Union would trigger further negotiations about accepting Israel and the Maghreb states as future Union members, neglecting the idea of Europe as a geographical unity based on common historical and cultural origins (Schuster/Köppel, 2004). The fundamental EU values are, inter alia, democracy, the rule of law and the respect for human rights including the rights of persons belonging to minorities (Article 2 TEU). In direct comparison to EU member states, a data analysis shows that Turkey holds a marginal position in the European Values Survey 2000, demonstrating the reason why the accession negotia-

tions have not been settled for such a long time (Würmeling, 2007). Ongoing human right abuses, torture and questionable quasi freedoms conflict with EU-ideals and values, the European member states have committed themselves to (Schuster/Köppel, 2004).

Especially Austria and Bavaria critically questioned several clauses of the agreement. The parties claimed that the European accession negotiations would be taken ad absurdum when trying to negotiate about opening the door of Europe for a country publicly abusing human rights and suspending the rule of law so continuously and vehemently. The democratic standards of Turkey are far below the general guideline's expectation, and being aware of these facts while continuing accession negotiations means to willingly overrule fundamental European values (Unknown, 2015 b). Ongoing human right violations and the internal war against the Kurdish minority, as well as the AKP-Islamism and president Recep Erdoğan's neo-Ottoman striving for hegemony, are claimed by critics. Therefore, the EU-Turkey Statement is seen as fundamental betrayal of European values, as the EU's concession to hold out the prospect of accession conflicts too immensely, again highlighting the pragmatic politics under which the agreement was concluded (Göll, 2016).

The impact of the agreement is far-reaching: inspired by the Union's deal with Turkey, Sameh Shoukry, Egyptian foreign minister, just recently declared officially that his country would positively answer a potential deal with the Union as well. Shoukry denied the accusation of human right violations in Egypt and referred to several established integration measures. However, in October 2016, the Commission officially denied to enter into any further refugee-related agreement with African states similar to the one concluded with Turkey. Critics claim duplicity of the responsible EU authorities and demonstrate alertness regarding the impression that only selected states were worth concluding an agreement with (Unknown, 2016 c). Skeptics also argue that Erdoğan was the one to express power, abusing the Union's vulnerability, while openly demonstrating his ability to transfer refugees or block the routes to the EU. At the same time, Juncker is accusing 'part-time Europeans' as an additional reason for the entities' susceptibility, as he refers to member states deciding occasionally about showing solidarity and acting as part of the Union (Luther, 2016).

It is crucial to finally define roles: is the Union a petitioner, at the mercy of Turkey? Or is the Union meeting the country on equal footing as coalition partner in a humanitarian crisis? As long as no differentiation is made and the positioning of the two players is unclear, it will be easy to abuse the situational context for desired benefits that were not granted without, surrendering European values, leaving behind the initial idea at the beginning of the creation of the Union, but fighting these ensnared diplomatic battles on the people's backs, burdening Europeans and refugees.



# 10 European Outlook

## 10.1 Identification of a European Trend in a Globalized World

National interests in the post-war society caused states to pool their sovereignty in a supranational organization due to economic and strategic reasons. The close integration was initiated by national leaders who understood the importance of a united Europe as key to a sustainable future based on lasting peace and reconciliation (Kenealy/Peterson, 2015). Throughout history, there have been many attempts to organize the multitude of countries, cultures and linguistic groups into an entity, so the concept of a united Europe is not new, but the degree of today's autonomy and sovereignty mirrors a successful integration (Staab, 2011). Schuman opened the community for further participation when he invited other states, geographically located in Europe, to join the community in the process of enlargement (Homewood, 2014). Nonetheless, an EU-collapse was predicted by *The Economist*, referring to 'capax imperii nisi imperasset' (Latin: *thought capable of ruling until it actually tried*) since 1982 (McCormick, 2011), and skeptics compare the Union to an empire in a world where empires have already disappeared (Moore, 2016). The EU has developed into a supranational entity within some centuries, a model that is unique worldwide. The experiment of inclusion and harmonization across a variety of ethnical, linguistic and cultural backgrounds resulted in an integrated entity that 'produces far more collective action than any other system ever construed' (Kenealy/Peterson, 2015: 238).

Today's challenges and ongoing crises might introduce the Unions' turning point, as Europe is in a constant state of flux (McCormick, 2011). Citizens feel insufficiently consulted (McCormick, 2011), which results in frustration and contestation, causing 'Euro-skepticism' (see Glossary) and triggering change on domestic political levels, an evidence of the Europeanization of national politics (Glencross, 2014). The critical reality remains: Europeans know little about how the Union works and are little familiar with the functioning of the EU (McCormick, 2011). The perceived lack of transparency in the top-down approach of the EU's decision-making process including intense bureaucracy causes the feeling of being at the mercy of far-Brussels. The relationship between Europeans and EU-decision-makers is challenged further, as Euro-skepticism and Union-frustration caused anti-European movements and national averting like the Brexit campaign in 2016. Europeans feel deceived from a comparative right as ensured electoral power on national level, allowing change in political leadership, however, the distance to and the perceived heteronomy of the decision-makers in far-Brussels cause fear. Article 12 (2) of the Charta of Fundamental Rights refers to the obligation to represent the citizens' political will (Geiger/Khan, 2010: 59) on supranational level, but Europeans feel that work in Brussels goes on, despite or against public

opinion. Critics claim that citizens were too narrowly engaged in European business, despite the European Parliament (McCormick, 2011). Increasingly often the member states' political elite initiates short-term oriented change, condemned in shifts to the political right (Naßmacher, 2013), causing inability to act as Union, resulting in a relative lethargy of the so-called European experiment (McCormick, 2011).

The entity needs to grow further as political Union in order to sustain (Naßmacher, 2013), as 'the lack of political finality that is the absence of final integration' prevents from preceding further (Glencross, 2014: 228). The European integration shows that 'the EU as a whole is greater than the sum of its parts' (Fontaine, 2006: 7), but the current lack of inner-European cooperation and solidarity weakens the Union as a whole. It has to be recognized that a future in peace and stability is only achievable in a united Europe, as isolated states cannot compete in a globalized world. The scope of achievements in a European entity is way beyond the scope of achievements in individual national states. Despite perceived far decision-makers, the Union is founded on the shoulders of the national states and on the principle of conferral and subsidiarity. The European integration process is questioned: 'does more Europe necessarily mean less democracy?' (Naßmacher, 2013), and it is the Union's responsibility to respond to the skeptics' accusation. Europe in the world of tomorrow is still responsible for the decisions taken yesterday – it is now that the European model has to develop and to prove its consistency and universality by modernizing when needed, sticking to its values and demonstrating European solidarity, aiming to transfer a clear message, 'managing diversity, sustainability, peace, solidarity, welfare and democracy equally' (Falkowski, 2011: 18).

The Union can improve and enhance cooperation on all levels. Yet the vision of consensus-finding will actually differ from reality, due to the 'enormous diversity and pluralism across the Union' (Kenealy/Peterson, 2015: 243). From the intercultural perspective, an ankle that has to be detected early as issue in order to prevent long-term conflicts resulting in a cultural crisis between Occident and Orient, the refugee crisis has to be seen as challenge but also as chance for Europe. Juncker (2015: 6) refers to the 'imperative to act as Union' in the refugee matter. It is essential for the future of Europe to develop awareness as civilization, rather than a missionary consciousness. In this context it can be referred to an 'Islamic Challenge,' which cannot be managed with the claim to universal values alone. The European relativism of values versus the value collective of Muslim migrants striving for an expansion of dar al-Islam will result in incompatibility (Tibi, 2008). Self-defamation, as part of modern European attitude, causes censorship and avoids critical questions. These times urge to open up a discourse excluding political correctness in order to support the people, Europeans and newcomers. No one should turn a blind eye on difficult and sensitive issues, as it does not improve but does actually exacerbate the situation.

## 10.2 The EU as Global Player – Responsibility and Challenge

These days are characterized by change, and in the spirit of fast pace it gets immensely challenging to balance the interests of those striving towards the future and those wallowing in the past. A pro-active versus a cautious approach on change are two sides of the same European medal, mirroring the European citizens in their variety and cultural diversity, whereby ‘Brussels as multinational crossroad’ (Kenealy/Peterson, 2015: 237) features the cultural mix by its representatives’ best. Globalization has increased the feeling of vulnerability, as a shift towards a multipolar world has taken place over the last decades. New major players from emerging markets developed and the integration project, which developed into one of the world’s hugest trading blocs (Staab, 2011), has to prove its experience in terms of unity in order to remain competitive (Falkowski, 2011: 179). Also, globally acting violent terror organizations have not emerged from the darkness without harbingers, but they portray the intermingled political constructions in the 21<sup>st</sup> century. ‘The Islamic State can be seen as child of the war in Iraq’ (Todenhöfer, 2015: 9), and the West has its responsibility and burden on that. The development has taken place for years, and the circumstances have enhanced the rapidness of establishing this militant group now operating worldwide and clearly positioning its ideology from democratic elements and secularization (Todenhöfer, 2015: 111).

The future is integration but simultaneously fragmentation: European identity roots in its credo, but the lack of Europeans to identify themselves as European first and second as nationals of a member state stresses the importance to improve the perception of ‘Europe’ and identification as European citizens. The increased nationalism across EU member states triggers first attempts of protectionism. Structural, social and cultural issues cannot be solved without standing together in solidarity and accordance as unity. The member states must overcome disagreement and strive for consensus. ‘Europe’ is needed in a rapidly transforming and changing world (Falkowski, 2011: 11) as network, while globalization has triggered increased mutual dependencies. The member states have the potential to be part of a global power ‘in a world where economic and political size matters’ (Falkowski, 2011: 196). To perceive mutual agreement as societal enrichment (Council of Europe, 1995) based on the desire to profoundly understand the counterpart is urgently needed. The Single Market is continuously challenged by national interest and interests of the community, however, the borderless Union has developed to a global force in a multipolar world re-writing ‘think local, act global’ (Deresky, 2014: 154) to ‘think global, act European’ (Falkowski, 2011: 195). With the EU’s long experience in the field of sovereignty transfer, the Union has turned into a central player in the global network of power (Falkowski, 2011) as highly influential vehicle (Staab, 2011).

Europe is a continent of diversity, starting from flora and fauna to the definition of its identity by the diverse geographical, personal, linguistic and cultural variations that define the European society (Falkowski, 2011), not as melting pot but as juxtaposition of manifold differences (Hummer, 2010). Today, the individual and the community rely on national and global security forces due to new global security chal-

lenges. Internal security depends on how to externally secure the environment (Falkowski, 2011: 199). It is essential how the EU as lasting force for peace reacts to the crisis (Falkowski, 2011). The Union is also critically challenged by fundamentally different opinions (Staab, 2011) in the current crisis management, which makes it difficult to provide an outlook for the future of the EU. Jean-Claude Juncker argues that 'there is not enough Europe in this Union, and [that] there is not enough Union in this Union' (Juncker, 2015: 5). Core characteristics will resist change, but it is the community's burden to preserve the European identity and value system.

The merger of individual states, the removal of borders and the introduction of a single currency are milestones in the development of the supranational entity, making the Union something unique worldwide. Cultural and linguistic differences constitute its motto 'united in diversity' and simultaneously demonstrate the Union's discrepancy causing foreseeable disagreement. The inability to harmonize and speak with one voice on certain issues roots in the strong feeling of 'neighborhood' rather than 'unity', which again triggers the need to improve European cohesion and spirit. As long as there is no common attitude in the refugee matter, the crisis will remain a major challenge. It is essential to define a concept as to how to deal with the issue in order to prevent repercussions in the long run and to improve the force of a common European response.

### **10.3 The Future Path of Europe**

Unlike a classical sovereign state and also because of the intellectual and cultural movement of postmodernism involving the challenges about identities and states, the EU is referred to as postmodern state. Nikolaidis captured the Union as 'demoicracy' (Greek: *demos* 'people,' *demoi* 'peoples'), as the EU consists of multiple democratic communities instead of a single political community or 'demos' (Nikolaidis, 2004: 97–119). As result of European integration, the organizational vehicle aims to cover and represent all national identities and idiosyncrasies, but 'Europe is not the European Union and the European Union is not Europe' (Staab, 2011: 178). When the individual states do not feel the Union as contribution and supporter of national interests but rather as a burden, the rationale of existence and legitimacy is critically scrutinized. Researchers identified several options for the Union's future path, e.g. 'Free Trade Europe,' 'Constitutional Europe,' 'Multi Speed Europe' or 'United States of Europe.'

The model of a 'Free Trade Europe' is also referred to as 'British concept of European integration' (Staab, 2011: 178). The basis of this idea is to keep the intergovernmental structure and national vetoes and to politically enhance only if all member states are in accordance with the proposal, emphasizing the Single Market as free market without trading barriers (Staab, 2011). The concept of a 'Constitutional Europe' is predominantly supported by Greece, Spain and Italy, stressing the importance to update policies due to external and internal changes (Staab, 2011).



In the 1990s, Wolfgang Schäuble, German federal minister of finance, and Dominique Strauss-Kahn, former French foreign minister, referred to a 'Multi-Speed Europe' as inner core of states moving ahead with faster and closer integration (Staab, 2011). The European asymmetry, which is also mirrored in the differences on opinion about dealing with e.g. the refugee crisis today, might trigger a similar model to Multi-Regional Europe, whereby merged countries move ahead according to a common objective based on shared opinion, resulting in a new geographical and political definition of Europe, or at least causing regional sub-grouping. The 'core of inner countries,' which refers to Luxembourg, Germany, France, Belgium and the Netherlands, pursues common goals, striving for a 'Union within a Union' (e.g. fast progress and enhanced integration) (Staab, 2011). Critics express concerns regarding this 'core Europe,' a term defining the so-called 'dominant leading states' that drive the Union further but guide and direct the Union's path, according to EU-skeptics, by national interests. Critics refer to the Franco-German axis, balanced by the British entry, yet pushing the Union and triggering a debate about powerful European states potentially leading the supranational entity as 'directorate,' despite the principle of conferral (Della Sala, 2012).

A 'United States of Europe' with 'the Commission as government taking over supremacy and the European Parliament plus a senate of member states as two chambers, is supposed to prevent Euroskepticism, according to Viviane Reding, vice president of the European Commission. The proposal aims for a European 'super-state,' 'relegating national governments and parliaments to a minor political role' (Waterfield, 2014). Some argue that the idea of a United States of Europe is exactly where the Union is heading towards: further integration as trigger for improved cooperation in different fields as solution to the crises the EU has to face. The 'Bratislava Roadmap' refers to the 'Union' as 'best instrument we have for addressing new challenges. We need the EU not only to guarantee peace and democracy, but also the security of our people [...] and to benefit from rich European cultural heritage' (Bratislava Roadmap, 2016: 1).

Skeptics argue that the concept of pure unity was unachievable: national identity conflicts and implementation difficulties would still remain an obstacle. The limited number of personnel dealing with a number of highly complex tasks results in an institutional overload testing the Union's efficiency and effectiveness and causing manifold problems. Shifting more competences and power to the EU level could resolve this issue, but it is not likely that the member states are willing to do so, especially when faced with the unresolved financial crisis and the current refugee crisis. Skeptics refer to the Union's shell as superficially demonstrating efficiency, yet the multi-layered infrastructure and the complexity of policies discussed make it difficult to accurately decide on effectiveness and efficiency (Tömmel, 2014). In the debate, critics refer to the naturally pressured common language, culture and single nationality as prerequisites of a United States of Europe concept (Sinn, 2012), which again makes its translation into reality unlikely, as a dominant language could cause a perceived superiority. History has shown that countries can overcome conflict of interests and policy differences while aiming to cope with global challenges and those waiting just ahead

of Europe's borders. Increasing the Union's effectiveness is the EU's path to survive, while constantly striving to improve the Union's performance as international actor (Kenealy/Peterson, 2015).

#### 10.4 Outlook

Aiming to establish an integration culture for the non-EU newcomers and to provide a sustainable environment, Europeans have to understand 'Europe' and its fundamental concept. It is time to become aware of European values, something that was deemed to be given before. Human rights are not Western, nor European, but universal according to the definition of human dignity under Article 1 CFR in conjunction with ECtHR Judgement No. 35071/97 of 4 December 2003 para. 40 in the Commentary by Hans Jarass (2010: 39), 'separating humans as subjects from objects.' In contrast to the American 'e pluribus unum' (Latin: *out of many, one*), the European pendant 'in varietate concordia' (Latin: *united in diversity*), best describes the mosaic of cultures, ethnicities and languages the EU is made up of. After 70 years of fulminant evolution toward an economically and politically integrated supranational entity, it is time to finalize by feeling the European spirit and understanding European challenges as national challenges. Standing together in rough times shows the states' awareness of unity, which profoundly demonstrates true integration. Ideally, binding effects should not be forced but come naturally, as solidarity cannot be forced, which is best portrayed in the behavior of several member states facing the high influx of people as a result of the refugee crisis. Europe is not a separate continent but a district of global village in today's globalized world. Before discussing structural development, the European inner core has to be understood, valued and lively performed.

Niels Bohr, Danish physicist, once said: 'prediction is very difficult, especially about the future,' and so it is with the EU. The unpredictability, constant development and events make it hard to establish an idea about the future Union. In order to define the future shape of the EU, organizational, structural and societal-wise, inner disagreement and disunity have to be overcome. Facing the spill-over effects of revolutions, national uprisings and the condemnation of political decisions, Europe has to understand its vulnerability and focus on intensified cooperation and solidarity in times of need. The jurisdiction has to be adapted in order to respond adequately to changing needs. The Union remains a welcoming entity for those in need, but systematic abuse of value systems and of a favorable legal situation cannot be the basis for a sustainable living together.

Ibn Khaldun, Islamic philosopher from the 14<sup>th</sup> century, estimated the weaknesses and strengths of a civilization by its degree of 'asabiyya' (English: *bond, commitment*). Europe's challenge is to estimate whether nowadays pluralistic society will manage to integrate another civilization and to find out whether 'Europeans have a strong asabiyya' (Tibi, 2008). Geopolitically ensnared connections EU have to be understood to respond adequately and proportionately to the crisis. The European Union will surely change and not remain in its structure known today, but maintaining the

inherited core is essential for a future in diversity and harmonious agreement. The Europeans, as heart of the Union, can decisively influence the future, as the Europe of tomorrow is shaped by the decisions taken today. In the past, 'European integration was realized by law enforcements' (Oppermann, 2016: 100), but these times demand integration achievements above the legal order: Europeans by birth and maybe one day even by choice.



## 11 Conclusion

The European society moves closer together these days, not necessarily as Europeans but as nationals of a state, feeling the urgent need to defend local values, norms and beliefs due to fear of the unknown and the future. The political split and governmental disagreement about the treatment of foreigners, asylum seekers, refugees and economic migrants caused an increase in nationalism and invoke on local values, partially condensed in right-wing parties' electoral success. In these rough times, the commitment to European values, as core of the European Project, becomes increasingly important to maintain stability and continuity. The population needs a modernized Europe, an intensified unity and an enhanced solidarity in order to sustain and to be able to respond adequately to this crisis and the ones to come. Despite the Union's tremendous evolution, additional improvements and further developments can and have still to be made. Europe, as part of the globalization process, should therefore strive for enhanced cooperation and intensified de-localization in order to integrate and harmonize the Union further and to improve its decision-making ability as an entity. The EU cannot keep its existing structure and shape, there has to be an unbiased adaption to change, as it is not advisable to stick to a pre-defined path while neglecting a changing environment. The European Project should not be taken for granted, nor should the values and freedoms, which our society feels so naturally these days. Sticking to the roots of the founders' spirit while flexibly adapting to what has to be changed in order to remain, is essential for a lasting European entity.

The refugee crisis has proved the immense consequences of increasingly intermingled geopolitics and the dynamics of crises, especially the oriental epochal turning point of a 'spring' that turned towards an all-season effect. The global village, as the world of the 21<sup>st</sup> century is referred to, is not immune against movements and influential patterns crossing the geographical borders, not necessarily physically but through the developments of information technology. Technology, as cause and trigger of globalization, helped the world to come closer, positively and negatively. Previously, locally arising terror increased its scope and caused a new level of uncertainty within the Union, and especially the instrumentalization of religion jeopardizes Europe profoundly. The future has become less predictable, and the disagreement on the level of the member states challenges the concept of an entity, as in today's multipolar world international affairs are unmanageable for individual small national states. Again, improving coherence and solidarity to withstand new arising global challenges is the key in a fast changing world where the international agenda is set, discussed and evaluated by few major players.

The Arab Spring and the thereupon triggered refugee crisis, as well as militant organizations' anger that roots in former epochs but is also linked to the invasion of

Iraq, do not only affect but impact the Union. The supranational entity is confronted with plenty of challenges and has to balance humanity while fighting against the systematic abuse as value community rather than as a Union, with focus on an open-door policy and the resulting increased level of terrorism within EU's borders. The imbalance between Sunni-Arab revenge driven by jihad ideology, and the inability to define 'we', as closed unity on issues of refugees and compatibility, creates a vacuum on the Western side resulting in a disoriented society, which is unable to respond to the global threat of religiously driven jihadist terrorism, increased nationalism and populist right-wing factions. The unpredictability and vulnerability of terror acts cause the worst damage, as societal split arising from distrust is created. It is Europe's responsibility to stand together in rough times referring to Francois Mitterrand's words 'nationalisme, c'est la guerre' (English: *nationalism results in war*) (referendum campaign for the Treaty of Maastricht, 1992). Europe experiences a difficult learning process and the emotionalization of political debates causes misconception about the actual threat and danger. Depending on the issue, reaction, adaptability and resistance are key words for the Union's path.

Europe is challenged in multiple ways and most likely to change, as the crisis has already left its mark. A multicultural and more diverse neighborhood is the likely future of Europe as result of the ongoing refugee crisis. Therefore, it is essential to create a concept to transform, while keeping the innate basis in order to develop a sustainable and peaceful future, based on humanistic values. As Europeans, for diversity, dignity of the individual, human rights and freedom: the Union's citizens can prove their actual awareness of unity, despite their fear due to unfamiliarity with foreign traditions and values. The current crisis and its effect will remain a major challenge in the years to come, especially in the area of integration and interculturality as well as in cross-cultural communication issues. It is not populist to talk about limiting immigration, nor is it anti-humane. In contrast, the regulation and organization of immigration is an essential part for inner-state functioning and cohabitation as well as for intra-European stability in the form of burden sharing. As written down in e.g. the Constitution of Germany, there is a 'responsibility before humankind,' referring to future generations and it is naïve to gamble away the future by neglecting this fact. Cross-border solidarity by understanding the crisis as common responsibility is essential. First, Europe has to decide which integration approach to choose for the ones in need seeking refuge, then legal enforcement has to support the implementation of what is needed in order to finalize the target. Safeguarding Europe's values and taking an equivocal stand, while being open-minded, flexible and not insensitive about foreign values and beliefs, is the key to a future in mutual agreement. It is not about organizational restructuring and the inability to separate political goals but about societal reality misleading and shattering the foundation the EU is built upon. The Union has to establish a second concept for those, not driven by educational or work motives in line with the European freedom of movement, but third-country nationals and Eastern Europeans heading towards Western Europe as 'refugees,' hiding the economic drivers for migration and benefiting from an open-door policy. The jurisdiction has to be adapted and member states' devotion as spiritual part of the Union should

ideally be condensed into a compulsory, not a voluntary participation. The border management and Frontex' autonomous power to intervene have to be supported. Moreover, the asylum applications have to be processed faster, yet in more detailed and integrated form on a harmonized, uniform platform like EURODAC, but enhanced, as gaps became apparent in several post-investigations. The database does obviously not work as expected or the access possibilities are restricted, constituting dangerous gaps not just for welfare abuse, but for terrorists. Family reunion has to be suspended to decrease the likelihood of minors being sent on dangerous routes in order to claim family reunion on the spot, and facilitated deportation of individuals from countries of origin declared as safe should be a selected measure to be dealt with as a priority. Time has witnessed that asylum seekers do not comply with the governmental enforcement on distribution, thus causing immense bureaucratic work for the competent authorities to register and de-register and to separate files of the individually displaced persons from others. Yet disagreement and political dispute still hinder the implementation of efficient law enforcement mechanisms to effectively prevent the foregoing.

Increasing nationalism as sign of the citizens' wish to regain control over political decisions and to feel closer to the decision-making process causes even more vulnerability in times when the EU needs strong bonds and, most of all, unity. Leadership is demanded in order to respond to the crisis. The EU's structure has to be overthought, and politicians have to include the European citizens' opinions on deciding about a future path: an intensified or a rather loosened member states network? A classification and delimitation of common member states' targets has to be made, therefore a bundled decision-making power to respond uniformly and fast to crises might be the most likely future of Europe.

Enhanced cooperation across the member states to fight terrorism and to diminish the probability of attacks within the Union's borders, marking an area of pluralist and humanist values, has to be established in time. The screening of terror affiliates and sympathizers remains challenging, but financial means and staff shortage should not hamper effective monitoring of those likely to execute an attack against Europe as entity and value community. In order to avoid the abuse of European asylum policy and welfare systems, monetary benefits, asylum standards, procedures and data access have to be harmonized across the EU. Thinking more European implies the development of a European solution: a European limitation on asylum seekers, not a country-wise defined quota. Aiming to sustainably integrate and provide for those in need, while separating them from the ones aiming to benefit from a humanitarian crisis, the member states have to define a clear structure and stand together closely, as this crisis revealed that Europe cannot afford to continuously discuss issues on a political level, without fast implementation and visible progress: indeed, action is needed. Globalization has fundamentally changed the world, but human standards remain. Europe is a synonym for diversity and for a society based on the dignity of the individual. The refugee crisis is a challenge on a supranational and on a civil level, but it is also a chance. Populist rhetoric has to be out of place, debates have to be led more transparently and they also have to address sensitive topics to be able to respond adequately.

It is the major responsibility of the already established Muslim community in Europe to condemn acts of violence in the name of Islam, to establish a prevention mechanism and to enlighten potentially radicalized sympathizers, as well as to publicly separate from ideological drivers of jihadist terrorism. Demanding Christians to gain in-depth understanding of Islam is disproportionate, but indeed profound theological understanding is necessary, as the targets and plotted crimes go far beyond political motives but root in religious ideology. As long as these acts of violence and militant terror are executed in the name of and linked to a world religion, it is indeed the responsibility of the respective religious community to denounce and convict. Europe, as entity, comprises diverse ethnical backgrounds and cultures defined in the credo 'united in diversity.' Everyone committed to European values, apart from *ius soli* and *ius sanguinis*, should feel the European spirit. Going further, the author suggests an ideal development of a philosophical '*ius Europa*:' embracing individuals with diverse third-country backgrounds, joining the community in the feeling of unity on the common basis of respect for EU values and innate ideals. Regardless of national belonging, we are all united on this continent, defined as community and in order to provide a sustainable future in lasting peace and unity, it is an essential task for the Muslim population to separate and condemn the drivers of societal gaps. Dark forces benefit from distrust: banning these triggers of hatred from our society, by creating a cross-religious and cross-societal unity, does not immediately solve the issue but strengthens the European spirit in the long run. Despite the various challenges on all levels, the intercultural challenge and overall security threat is likely to be the biggest geopolitical challenge in the 21<sup>st</sup> century. The Union lived humanitarian responsibility when circumstances demanded it, and a salute is to be given to the citizens demonstrating fraternity in times of need. This is what can be referred to as European identity and living European values. The future of Europe is depending on the degree of true devotion to Europe as community and entity, rather than continuing a nationalistic prioritization. Defining the European citizenship as responsibility and chance for the individual, neglecting national belonging and overcoming disagreement by referring to the innate common grounds of the EU facilitates the establishment of European *asabiyya* as strong awareness of Europe as value community. The refugee crisis and the Arab Spring have for sure changed the Union by impact and will remain a challenge in the years to come.

Knowing where we come from facilitates the understanding of the present and eases the steps to be taken in order to shape the future. Being able to understand the development of the Union, including the lessons from the past and the affiliation and devotion to a unique peace project based on human rights by keeping in mind all those, who lost their lives during the last centuries for the rights and freedoms taken for granted so naturally these days, demands an urgent preservation of the cultural legacy: to welcome newcomers, yet not to undermine heritage, custom and cultural belonging as bequest of what defines us today, as society and European community.



## Glossary

### *Acquis Communautaire*

The term denotes rights and obligations derived from EU Treaties, laws and court rulings. Member states joining the Union have to accept and implement the entire *acquis* before the accession treaty is signed (Kenealy/Peterson, 2015: 249).

### *Alien*

The Schengen Borders Code refers to an alien as ‘third-country national,’ meaning any person other than a national of a member state of the European Union according to Article 17 (1) TEU and someone who is not covered by point 5 of this Article (Point 6 SBC).

### *Charter of Fundamental Rights*

As several member states refused the establishment of an EU constitution, the Charter of Fundamental Rights was established as not legally binding guide and was proclaimed in 2000 (Geiger/Khan, 2010: 39) at the Nice Summit (Kenealy/Peterson, 2015: 249). The Charter includes fundamental rights and principles, but only fundamental rights obtain a legal claim (Geiger/Khan, 2010: 40). As part of primary law, the Union is bound to the Charter (Geiger/Khan, 2010: 40), which aims to strengthen and promote fundamental human rights of Europeans (Kenealy/Peterson, 2015: 249).

### *Civilization (according to Huntington, 1993)*

A ‘civilization’ is defined as a cultural unity. Cities, regions, nationalities, religious and ethnical groups differ regarding their heterogeneous cultural features. The term marks the greatest possible cultural merger of humans on the level of identity, which is based on subjective self-identification, common language, history, religion, values, traditions and norms. The European civilization is heterogeneous among its 28 member states but differs most from non-European civilizations. Huntington identified eight civilizations in total and gives reasons for the clash of civilizations, which is supposed to be triggered by cultural conflicts (Schwan, 2001), but no further explanation is given in this paper.

### *Clash of Civilizations*

The theory defines the peoples’ cultural and religious identities as primary source of conflict in the post-Cold War era (Schwan, 2001).

### *Copenhagen Criteria*

The criteria are fundamental conditions regarding economic readiness, institutions and human rights, aspiring states have to meet before being able to join the Union (Lelieveldt/Princen, 2011: 299).

### *Cultural Backpack*

Culture is assumed to be a survival kit, carried by members of a society in a so-called cultural backpack (e.g. cultural software, social psychology, sociology and linguistics as well as cultural anthropology and socio-linguistics) (Slawomir, 2005: 7, 8). Cultural differences result from variations in norms, values, beliefs and communication style (Sorrells, 2013).

### *Direct Effect*

A major legal principle in the Union's law, established in 1963 due to Van Gend en Loos (C26/62) (Kenealy/Peterson, 2015: 251), holding that individuals can directly invoke EU legislation in cases before national courts (Lelieveldt/Princen, 2011: 300). Under the 'direct effect,' community law applies directly to individuals and national courts have to enforce it (Kenealy/Peterson, 2015: 251).

### *Doctrine/Principle of Supremacy*

The term defines a fundamental legal principle and doctrine, established in *Costa v. Enel* (C6/64) (Glencross, 2014: 109), stating that in case national legislation conflicts with EU law, Union law always prevails (Lelieveldt/Princen, 2011).

### *Enlargement*

Term defining the process whereby national states apply to become member states of the European Union, resulting in 28 member states in 2016 (Homewood, 2014).

### *Euro-egoism*

The term refers to Europe's exclusive concentration on its own interests and difficulties (Council of Europe, 1999: 8).

### *European Convention on Human Rights*

The term describes an international treaty drafted in 1950 by the Council of Europe. An individual can appeal to the European Court of Human Rights in case the individual feels his rights have been violated by a state. All judgements are binding to the respective state (Kenealy/Peterson, 2015: 251).

### *Europeanization*

The term defines a (top-down) process, whereby national systems adopt EU policies, while shaping the body of the European Union (Kenealy/Peterson, 2015).

### *European Integration*

The process of European integration is defined as the process of creating 'Europe,' resulting in economic, political and social interconnections between the created unity called member states of the Union. The basis for integration is the accordance with the concept of common fundamental values (Naßmacher, 2013).

### *Euroskepticism*

The political ideology opposes European integration as complex phenomenon whereby the term originates in Margaret Thatcher's Bruges speech of 1988. It is a pan-European affair, manifested in e.g. political parties (Glencross, 2014: 280).

### *Fundamental Freedoms*

The Treaty on the Functioning of the European Union defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured (Article 26 (2) TFEU). The four fundamental freedoms are defined further in Article 28, 45, 56 and 63 TFEU.

### *Internal Market*

The term refers to an area without internal frontiers in which free movement of goods, services, persons and capital is ensured (Article 26 (2) TFEU).

### *Measures having equivalent effect*

Measures having equivalent effect to quantitative restrictions are harder to identify than quantitative restrictions but also part of non-tariff barriers. The term covers health and safety requirements, packaging requirements and the composition and marketing of goods (Homewood, 2014: 98).

### *Opting-out*

Member states were given the possibility of exemption from implementing several provisions of the Treaty. The states may fundamentally agree with the Union's decision, but may determine how to implement it. The UK and Denmark made use of the opt-out during the implementation of the Euro currency (Falkowski, 2011: 47).

### *Principle of Conferral*

The principle sets limits to the power of the supranational entity. According to Article 5 (2) TEU, 'the Union shall act only within the limits of the competences transferred

upon it by the member states in the Treaties,' meaning member states confer competences to attain objectives they have in common (Article 1 para. 1 TEU). In order to exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions (Article 288 para. 1 TFEU). As result of the Principle of Conferral, the Union may legislate and adopt legally binding acts through the transfer of respective competences (Article 2 (1) TFEU), whereby the member states democratically and voluntarily give part of their sovereignty to the Union (Homewood, 2014). In case of conflict of law, EU law prevails, highlighting the created hierarchy, which has already been emphasized by the court in *Van Gend en Loos* (C26/62, 'direct effect' (see Glossary)) and described as 'new legal order.' The primacy of European Union law was exposed in *Costa vs. Enel* (C6/64) and is written down in the Declaration No. 17 of 2007.

#### *Principle of Proportionality*

The principle in Article 5 (4) TEU defines that neither the content nor the form of the Union action shall exceed what is necessary in order to achieve the objectives of the Treaty.

#### *Principle of Subsidiarity*

Areas outside the exclusive jurisdiction of the Union shall be governed by the member states at a central, regional or local level. Unless the member states cannot sufficiently achieve the objectives of the proposed action, the Union shall not act under the principle of subsidiarity (Article 5 (3) TEU). The principle was developed in the Treaty of Maastricht, pointing out Europe's people-orientation, which is contrary to a centralistic approach (Schmidt, 2002). Decisions and actions should be taken at the most efficient level of governance and as close as possible to the European citizens (Kenealy/Peterson, 2015: 255). The intention is to prevent unnecessary accretion of power at Union-level (Glencross, 2014).

#### *Push Back Methods*

The term refers to the unlawful turning down of refugees near the border. Pushing back asylum seekers is a measure not in line with international and EU law (Richter, 2015: 69).

#### *Quantitative Restrictions*

Quantitative restrictions are part of non-tariff barriers, yet generally easily recognized. It is distinguished between quota and ban. Article 34 TFEU prohibits quantitative restrictions (Homewood, 2014: 98).

*Sectoral Integration*

The term refers to the process whereby new policy areas are partially or exclusively regulated on the EU level. New policy areas or sectors are increasingly regulated at EU level (Schimmelfennig/Rittberger, 2006: 74).

*Supranational Institutions*

All those EU-institutions that are devoted to represent the interests of the Union are referred to as supranational institutions (Lelieveldt/Princen, 2011: 303).

*Western Values*

The term refers to a set of principles established by the 'Western Civilization,' including rationalism, the rule of law, the separation of church and state, human rights, self-criticism, the disinterested search for truth, equality before the law, freedom of conscience and expression and liberal democracy (Warraq, 2011).



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# Annex

## Annex A Treaty of Maastricht

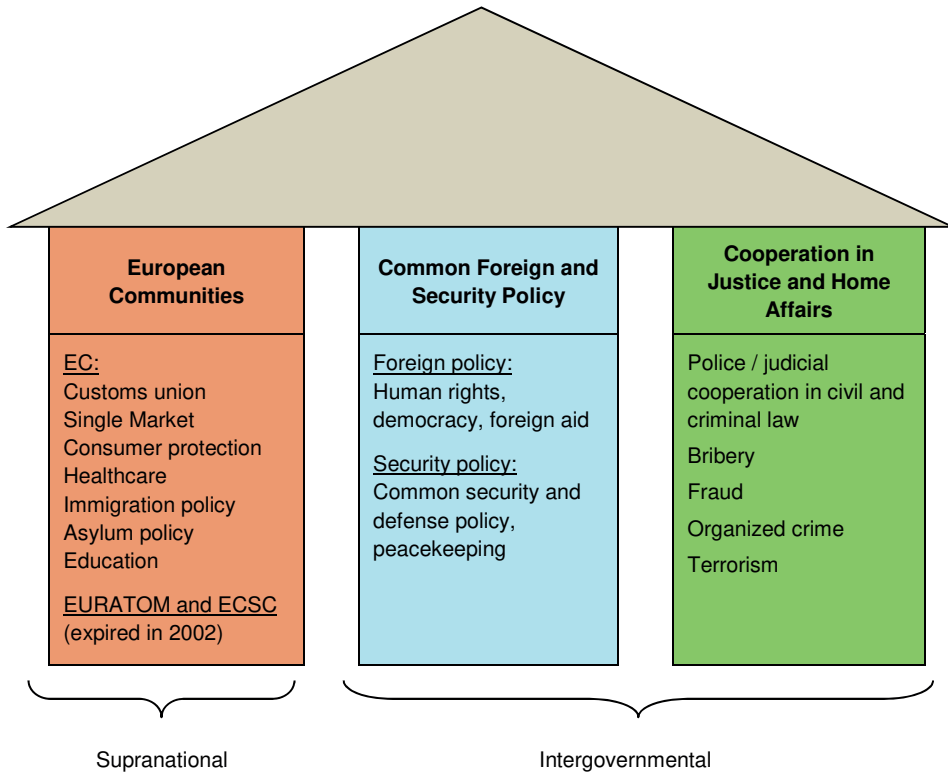
The Treaty of Maastricht is also referred to as ‘Treaty on European Union’ and entered into force in 1993. The Treaty establishing the European Economic Union was amended in order to create a European Community. The term ‘European Economic Community’ was therefore replaced by ‘European Community.’ The Treaty created legal mechanisms in order to act more widely on a global level on the basis of intergovernmentalism, what can be described as external dimension to European integration (Glencross, 2014). Beyond economic goals, the Union pursued also political motives in the creation of the Treaty of Maastricht, mainly striving for five key-objectives: strengthening the legitimacy and improving the effectiveness of its institutions, establishing an economic and monetary union, developing the social dimension further and developing a common foreign and security policy (Eur-Lex, 2010).

To give a short overview of the Treaty: the TEU literally created the EU (Article 1 para. 3 S. 1 TEU), which points out its enormous importance for the development of the Union ‘as new stage in the process of creating an ever closer Union among the people of Europe’ (Article 1 para. 2 TEU). Article 9 S. 2 TEU in conjunction with Article 20 (1) S. 1 TFEU established ‘European citizenship,’ stating that every person holding the nationality of a European member state should be citizen of the Union. The citizenship is additional, not replacing the national one (Article 9 S. 3 TEU). Moreover, the citizens can benefit from an area of freedom, security and justice (Article 3 (2) TEU) where social exclusion and discrimination shall be combated (Article 3 (3) S. 4 TEU). The Union shall establish an internal market (Article 3 (3) S. 1 TEU), defined further in Article 26 TFEU. Additional rights were granted to European citizens, e.g. the right to petition (Article 227 TFEU).

## Annex B Three-Pillar Structure of the Union

The figure below portrays the ‘Three-Pillar Structure of the European Union.’ A detailed description of the development, change and shift of competences is left out, as it is not necessary for the understanding of this paper.

*Fig. B1 Three-Pillar Structure of the European Union*



Source: Homewood (2014: 6) in conjunction with Treaty of Amsterdam



## **Annex D Theory of 'Imagined Community' as Trigger for Pan-Arabism**

Three geographical clusters define the Middle East: Southwest Asia including the Arabian Persian Gulf, the Fertile Crescent and North Africa (Hovsepian, 1995). Due to inter-Arab rivalry, two forms of nationalism have been developed: 'state nationalism' and 'pan-Arab nationalism.' Pan-Arab nationalism cannot hold in strong governments, as it contradicts the desire to center citizens' affiliation to the national state (Amaney, 2004). Therefore, pan-Arab unionism is the result of regional regime instability (Tibi, 2008), although it had never been political reality but rather a symbol when it comes to the Palestinian question as example (Barzilai, 1999).

Benedict Anderson developed a theory on 'imagined community,' whereby the community as a whole is opaque for the individual, yet all are sharing the image of an association. Again, the media play a fundamental role in defining national identity by reflecting and driving public opinion. The Arab Spring benefits from the created awareness and the awoken sentiment regarding Arab consciousness and identity definition as Muslim first, Arab second, and member of a national state third (Pintak, 2009), showing opposed forces: religion and secularity (Hovsepian, 1995). The Arab Spring as movement is the result of created pan-Arabism, whereby the Arab Spring combines values, myths and symbols, not distinguishing between nationalities, but linked by habit and language (Pintak, 2009).

## Annex E Differentiation between 'Jihad' and 'Holy War'

The reference of 'jihad' to 'Holy War' is a remnant of the past era of crusades. In the Western world, the term 'jihad' is mainly associated with terror and violence. Yet jihad also means striving for personal development in order to improve (Ali, 2003). 'Jihad' (English: *effort, endeavor*) is split in 'jihad akbar' and 'jihad athim,' the big and the small jihad. With the big jihad, the individual aims daily at moral perfection, constantly improving inner purification using prayers and repentance. The small jihad refers to sole defense of the Muslim community (Napoleoni, 2015).

Jihad akbar remained unchanged over the centuries, whereas jihad athim changed under the influence of imperialism and developed to a defensive and offensive power. The defensive jihad is about protecting Islam against malicious attacks, but the offensive jihad is about the violent spreading of Islam. Historically speaking, only the Caliph, as religious leader, was empowered to call out for the offensive jihad. Today, the jihad led by the Islamic phoenix shares part of both meanings (Napoleoni, 2015). The re-establishment of the Caliphate under a Caliph refers to the legitimate call for offensive jihad in today's world and therefore important to mention in order to understand the implementation in the context and to comprehend this meaningful reawakening of past times.

## **Annex F History of Perceived Sunni Arab Humiliation and Suppression**

The fall of the Caliphate in Bagdad in 1258 resulted in the end of the predominant Sunni Arab hegemony. In the 13<sup>th</sup> century, the political guidance of the Islamic world was shifted to the Turkish Seljuk, the Mongol Ilkhanate and the Mamluks and later to the Ottoman Empire in the 16<sup>th</sup> century ruling the Islamic territories. At the end of the medieval times, the Sunni Arab world had even lost its predominance in trade and shipping. In contrast, Persia remained independent and an economical driver in the region. A second humiliation was the suppression of the Ottomans as first colonial power. In the Sykes-Picot Agreement of 1916, France and Britain defined the geographical borders as part of their spheres of influence as second phase of colonial dominance, replacing the Ottomans. The new political order separated economic and social networks as well as tribal areas known for centuries in the Levante (Hanne/Flichy de la Neuville, 2015: 61).

The Islamic State does not recognize the separation caused by the West back then. Historically, Iraq and Syria have been one territory characterized by a linguistic, religious and political entity. The IS does not neglect the happenings throughout history, but refers to the perceived humiliation in its whole action plan (Hanne/Flichy de la Neuville, 2015: 62). Even the expansion strategy is similar to the Muslim expansion strategy in history: the Arabian Peninsula, Persia and finally Rome (Hanne/Flichy de la Neuville, 2015: 56). 'No man-made border is eternal and no man-made organization will remain,' therefore the grouping under a common flag fights primarily the post-colonial borders. The perceived humiliation of Sunni Muslims has continued during the 20<sup>th</sup> century through e.g. the Alawite minority ruling in Syria, economic frustration and Western-driven exploitation of natural resources. The lack of modernity in the region (author's note: whereby 'modernity' was defined by the West), triggered resentment and anger. The development of Islamism during the 1990s can be seen as attempt to retain pride and to take revenge for the historical humiliation (Hanne/Flichy de la Neuville, 2015: 63).

## Annex G Islam and its Denominations

Tab. G1 Denominations of Islam – Overview

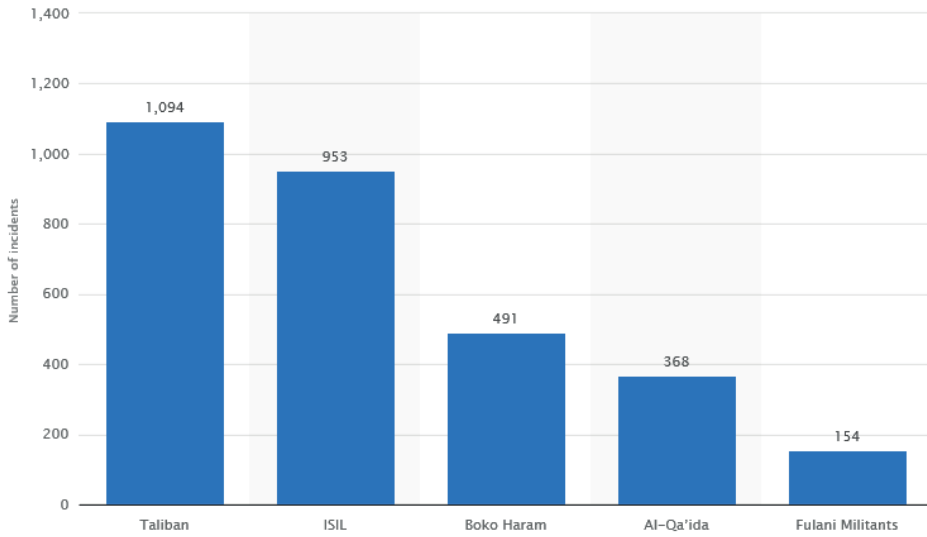
<b>Sunni</b>	1,371 – 1,471 Mio. constituting the Muslim majority of 85 – 90% Mainly in Asia and Africa	
<b>Shia</b>	Religious separation created as result from the Ali affiliates' split Today around 154 – 200 Mio. Shia Muslims	
	Imamah	Constitute around 90% of Shias today Mainly in Bahrain, Iran, Iraq, Pakistan, Lebanon, Azerbaijan and Afghanistan
	Alevi	Mainly in Turkey
	Zaidiyyah	Mainly in Yemen
	Ismaili	Mainly in Yemen, India, Central Asia and East Africa
	Druze	Mainly in Israel, Lebanon and Syria
	Alawite	Mainly in Syria and Turkey
<b>Ibadi</b>	Today around 2 Mio. constituting the Muslim minority Mainly in Algeria, Oman, Tunisia and Zanzibar	

Source: Fürtig/Bank, 2016: 13

## Annex H Number of Terrorist Incidents caused by Major Terrorist Organizations in 2015

The following figure shows the approximate incidents caused by major terrorist groups in 2015 and underlines the ongoing threat from all present terrorist organizations. Despite the medial omnipresence of the Islamic State, other violent, militant groups like e.g. Taliban or Al Quaida still cause active threat.

Fig. H1 Number of Incidents caused by Major Terrorist Groups in 2015



Source: Statista, 2016 b



## **Annex I GCC's Denied Access – Understanding the Importance of Cultural Sub-Clustering in the Effort to Integrate Sustainably**

On 2 September 2015, Fahad al Shalami, a Kuwaiti official, declared that his country and the GCC states would not accept refugees as they exposed them to the risk of terrorism. Al Shalami stressed that people suffering from stress and trauma were not welcome in Kuwait and argued that the region was too valuable and too expensive for refugees to settle down in terms of living costs. The official declared that GCC countries only fit for workers but that 'it is not right to accept people who are different' from their domestic [Kuwaiti] culture (France 24, 2015).

The GCC countries have been criticized for not taking in refugees despite their financial capabilities and cultural (closer) proximity to the respective ethnical group seeking refuge (Fathalla, 2015). The countries on the Arabian Peninsula argued that taking in refugees would expose the GCC to a safety risk, as terrorists could hide under the influx of people, so the countries that rank among the richest in the world according to the GDP started to donate financial aid to fund refugee camps externally, e.g. in Jordan or Lebanon (Edmunds, 2015). The regional media discussed this issue, and several statements portrayed the various opinions across the GCC population on this off-sealing behavior. Some cynically asked 'how the ones declared as infidels (=the Westerners) can take more responsibility of refugees than their Muslim brothers?' (Fathalla, 2015).

The Saudi Makkah Newspaper published a cartoon in 2015: the man on the right, dressed in traditional Gulf-dress resembling Khandoura and Ghoutra, claims, 'why don't you let them in, you discourteous people?!,' while his own door is barricaded with a barbed wire fence, witness of attempted entry, dotted with the remnants of cloth scraps. The door on the left side is designed in the colors of the European Union flag, symbolizing the door to Europe. Behind the door peephole, a man is eying his demanding door neighbor critically while a covered woman (here: reference to Muslim refugees through hijab and link to perceived obvious cultural proximity to Muslim countries) dressed in ragged clothes kneels in front of the door holding a child in her arms, both seeking refuge. The ambivalence and sarcasm of this cartoon made it to one of the most widely shared ones in social media underlying the discrepancy between those arguing in favor of changing the law and taking in people and others refusing to help by taking in refugees, yet compensating externally by donation.

Fig. I1 The Cartoon 'Let them in'



Source: Saudi Makkah Newspaper, 2015

Sarah Leah Whitson, executive director of Human Rights Watch for the Middle East and North Africa, refers to the 'check-signing attitude of GCC countries in order to let someone else deal with it.' Although cartoons and articles portray some critical voices within the population and question the procedure, Michael Stephens, head of the Royal United Services Institute in Qatar, refers to 'the paradigm in which the West is continuously stepping in to solve the problem.' Stephens argues that the West did not step in on time for once, so 'this has left many people looking at the shattered vase on the floor and pointing fingers' (Hubbard, 2015).

On 25 August 2015, the BAMF tweeted that the Dublin III Procedure would not be applied to Syrians, which meant that Syrian nationals would not be sent back to the European member state where the first registration had taken place. This statement was (mis)interpreted as right to stay in Germany without fearing deportation when holding a Syrian passport. However, it has to be pointed out that Dublin III had failed long before, it was just this day that the BAMF made it 'public,' an act that is important to know in the chronology of the happenings during the following weeks (Faigle/Polke-Majewski, 2016).

### *5 September 2015 – A major Turning Point in the Refugee Crisis from a German Perspective*

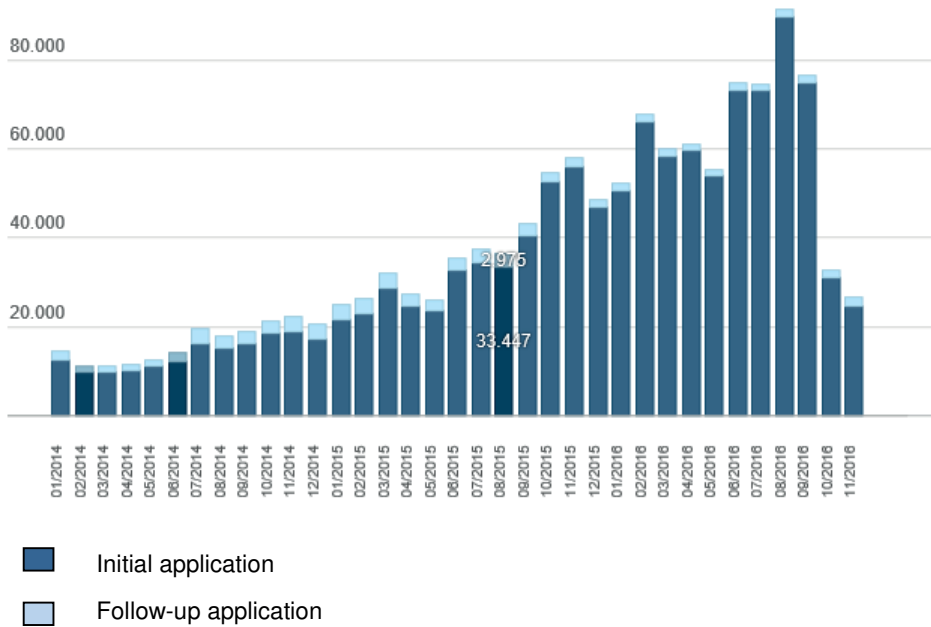
The night of 4/5 September 2015 will be remembered as sidereal hour of glory for humanity and the epitome of the 'Willkommenskultur' referring to the act of Angela Merkel, chancellor of the Federal Republic of Germany, to open Germany's borders

for refugees. However, her wording and act have been subject to heavy criticism for Merkel opponents and foreign governments when e.g. Hungary's president Victor Orbán declared 'the refugee crisis a German matter' (Noviny, 2015). Due to the tense situation at the station in Hungary, where hundreds of refugees had been waiting to make their way to Austria, the competent authorities were expecting an escalation.

Werner Faymann, Austrian chancellor, wanted to open the Austrian border to let in refugees waiting directly behind the Austrian-Hungarian border: uncontrolled and without any bureaucracy in an exceptional time to relieve Hungary and to take some burden off the tense situation (Unknown, 2016 d). Merkel and Faymann wanted to prevent panic and to disburden Hungary. The politicians were sure that the people blocking the station while waiting for their chance to enter West Europe could only be stopped by force – which both denied (Rothenberg, 2016). In accordance with Merkel, Faymann released the breaking news on Saturday, 0.42 a.m., by declaring that 'the refugees waiting in Hungary can enter Austria and Germany.' However, that weekend around 20,000 people arrived in Munich, despite the expected number of 4,000–6,000 people (Unknown, 2016 d). Merkel's slogan 'we can make it' became the trigger for what is known as 'Willkommenskultur,' when the refugees had been awaited at the stations by singing, hugging German citizens, handing over flowers to the newly-arrived ones. On this 'trail of hope,' an effusive description of Europe's highways, hundred thousands more entered the Union on their way to the center of Europe, striving for a better future (Faigle/Polke-Majewski, 2016).

The 'Merkel Effect,' which defines a significant rise in numbers of persons seeking refuge in Germany after the decision of 4 September 2015, is correct in so far as the number of refugee seekers back then almost doubled from 30,000 to 60,000 refugees per week. However, the wave of migration has to be analyzed: many had already been on their route before the decision to open the borders was even made. Merkel's decision might have motivated others to start migrating or to resettle to Germany, if already within the Union. But the people waiting in Hungary had been on their way for quite some time and did not expect an invitation, so the wave of migration has not initially been triggered by Merkel's decision, as was argued by many critics later. The search engine 'Google' analyzed search requests with the word combination 'asylum in Germany' in Arab language. It could be proven that the search intensity immensely grew as of August 2015, yet not everyone searching for information on this matter would actually become a refugee. The data analysis also showed that Merkel's slogan, which was later interpreted as unlimited invitation, had not directly increased the number of asylum seekers. The Google analysis underlines that many had already been on their way before or even thought about searching for refuge in Europe (Faigle/Polke-Majewski, 2016).

Fig. I2 Number of Asylum Applications in Germany (2014 – 2016)



Source: Bundeszentrale für politische Bildung, 2016

The general attitude towards foreigners and also the German ‘Willkommenskultur’ changed due to several incidents with persons under granted refugee status across the European Union. Angela Merkel’s decision including her slogan ‘we can make it’ was openly post-discussed and questioned by skeptics of the refugee matter and by anti-immigration supporters.

## Annex J Exclusive and Shared Responsibilities between the EU and its Member States

The following tables provide an overview of (1) the exclusive responsibilities of the Union, (2) the Member States' exclusive responsibilities and (3) shared ones. The ranking does not imply priority, and the responsibilities mentioned are selected examples.

*Tab. J1 Exclusive EU Responsibilities (Article 3 (1) (a-e) + (2) TFEU)*

Exclusive Responsibilities	Customs union
	Rules on competition within the Single Market
	Monetary policy for member states using the Euro as currency
	Marine biological resources under common fisheries policy
	Common commercial policy
	Concluding international agreements

Source: Fontaine, 2006: 36

*Tab. J2 Shared Responsibilities between the EU and its Member States (Article 4 (1) + (2) (a-k) + (3) + (4) TFEU)*

Shared Responsibilities	Single Market
	Social policy
	Economic and social cohesion
	Agriculture and fisheries ( <i>except the ones named under exclusive EU responsibilities</i> )
	Environment
	Creating an area of freedom, justice and security
	Consumer protection
	Transport
	Energy
	Research, technological development and space
	Humanitarian aid

Source: Fontaine, 2006: 36

*Tab. J3 Member States' Responsibilities with Potential Support of EU  
(Article 6 (a-g) TFEU)*

Member States' Responsibilities	Education, vocational training
	Civil protection
	Culture
	Tourism
	Human health
	Youth and sport
	Industry

Source: Fontaine, 2006: 36

## Annex K Temporarily Reintroduced Border Controls at October and December 2016 levels

The following tables show countries that have decided in favor of temporarily reintroduced border controls in May 2016. All data are taken from the online release by the European Commission. The time of research for this paper covered the end of the reintroduced border controls in November 2016 and the decision to prolong border checks, which led to an update of the website. Therefore, the same source is stated but with updated information.

*Tab. K1 Temporarily Reintroduced Border Controls (October 2016 levels)*

Country	Duration of Reintroduced Border Controls	Location
Germany	12 May – 12 November 2016	Land border to Austria
Austria	16 May – 12 November 2016	Land border with Slovenia and Hungary
Denmark	1 June – 12 November 2016	Danish-German land border, Danish ports with ferry connection to Germany
Sweden	8 June – 11 November 2016	Several Swedish ports
Norway	10 June – 11 November 2016	Norwegian ports with ferry connections to Germany, Denmark and Sweden

Source: European Commission, 2016 e

*Tab. K2 Temporarily Reintroduced Border Controls (December 2016 levels)*

Country	Duration of Reintroduced Border Controls	Location
Germany	12 November 2016 – 12 February 2017	Land border with Austria
Austria	12 November 2016 – 12 February 2017	Land border with Slovenia and Hungary
Denmark	12 November 2016 – 12 February 2017	Danish ports with ferry connections to Germany, Danish-German land border
Sweden	12 November 2016 – 11 February 2017	Swedish harbors in the police region South and West, Oresund bridge
Norway	12 November 2016 – 12 February 2017	Norwegian ports with ferry connections to Denmark, Germany and Sweden

Source: European Commission, 2016 e

Due to the massive number of persons seeking international protection (e.g. Germany, Austria), the unexpected migratory flow (e.g. Denmark, Norway) and the unprecedented influx of persons (e.g. Sweden), border controls have been reintroduced and prolonged for the European member states listed in the tables before.

A detailed list on member states' notification of reintroduction of border controls at internal borders pursuant Article 25 et seq. of the Schengen Borders Code is not included in this paper, but the European Commission provides the updated list on the following website:

*[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/index_en.htm)*



## Annex L Selected Legal Frameworks on Migration and Mobility

L1

### *GAMM Framework*

The European Union's 'Global Approach on Migration and Mobility' (acronym: GAMM) is an overall framework on migration, implemented as 'Global Approach on Migration' (acronym: GAM) in 2005, as comprehensive strategy to address irregular migration and human trafficking and to manage migration and asylum by intensified cooperation with third-nations (Stern, 2015).

GAMM includes frameworks on various levels, e.g. the Rabat Process of 2005, the Khartoum Process of 2014 and bilateral agreements with e.g. Cape Verde and Tunisia. The Rabat Process is referred to as model for the Khartoum Process under the GAMM legal framework (Stern, 2015). In the following the paper focuses on the Khartoum Process, but a comparison and depiction between the two legal frameworks will not be discussed.

L2

### *The Khartoum Process*

The ministers of Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Djibouti, Egypt, Eritrea, Estonia, Ethiopia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Kenya, Lithuania, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Somalia, South Sudan, Spain, Sudan, Sweden, Tunisia and the United Kingdom and the European and African Union Commissioners in charge of migration and development, as well as the EU High Representative / vice president of the European Commission, met in the presence of Switzerland and Norway on 28 November 2014 in Rome to sign the 'EU-Horn of Africa Migration Route Initiative,' also referred to as Khartoum Process (Declaration of the Ministerial Conference, 2014).

The Khartoum Process is a framework between the member states of the EU and countries of the Horn of Africa aiming at concrete projects in the field of migration. The initiative was inspired by the 'Rabat Process of the EU with West African States' in 2005. However it differs as it includes Sudan and Eritrea, both generally 'considered outlaws in the international community' (Stern, 2015: 1). The initiative focuses on fighting illegal migration within countries of origin and transit and on preventing migrants from using illegal transportation. Root causes of irregular migration ought to be removed through increased development aid, but the Declaration does not include ways to establish legal migration channels further (Stern, 2015).

The regional dialogue on migration and mobility reflects challenges posed by mixed migratory flows of irregular migrants, refugees and asylum seekers between the Horn of Africa and Europe. Concerns were raised regarding the human and social impact of mixed migratory flows and the number of endangered lives due to journeys across e.g. the Mediterranean Sea. The prosecution of smugglers, traffickers and others organizing these journeys, were addressed as well. The states agreed on the impor-

tance to ratify and implement the ‘Palermo Convention and its Protocols,’ a UN Convention against Transnational Organized Crime and the Protocols against Smuggling of Migrants and Trafficking in Persons, supplementing the UN Convention against Transnational Organized Crime (Declaration of the Ministerial Conference, 2014).

By launching the ‘EU-Horn of Africa Migration Route Initiative,’ it was agreed to undertake concrete actions to prevent e.g. human trafficking and smuggling of migrants in a partnership of shared responsibility. Further cooperation should be in the area of bilateral and regional development to improve the national migration management. Moreover, horizontal cooperation should be strengthened in order to assist migrants in vulnerable situations. Criminal law frameworks and the ratification of the Palermo Convention were also considered effective measures fostering a well-managed mobility, including intra and inter-regional labor mobility, addressing irregular migration and assisting the national capacity on migration management (e.g. voluntary return and readmission in accordance with the relevant international conventions and the Geneva Convention (Declaration of the Ministerial Conference, 2014).

The Declaration is a balancing act between the conflicting interests of the participating nations. First, it is not sure whether the Khartoum Process will be effective in actually reducing the number of illegal migrants. Second, the shift of responsibility towards the supranational level caused distrust and antipathy across the European population, as it reduces accountability. It will be difficult to oversee supranational action on a domestic level (Stern, 2015). The fact that the initiative includes autocratic regimes is seen critical, especially as many of these states caused circumstances, which later on led people to seek refuge elsewhere. The European Union risks its reputation and credibility by dealing with these regimes, causing the impression that the Union supports human right violations and legitimizes the respective states as business and cooperation partners (Stern, 2015).

The ‘EU-Horn of Africa Migration Route Initiative’ lacks binding effects for the participating states, as the initiative launched is on voluntary basis ‘without prejudice to the sovereignty of the participating states.’ The Khartoum Declaration does not create legal rights under international law (Declaration of the Ministerial Conference, 2014).

In the absence of the creation of legal rights, the initiative seems inappropriate to provide assets regarding the current challenges. Despite the focus on human trafficking and the impact of migration flows, no concrete measures are defined, as it is upon the individual states to apply the initiative voluntarily. Before concluding an agreement, Europe should weigh up the risk of losing reputation against the actual outcome, not the desired one. These undertakings will lower the EU’s possibility to claim certain standards and cause long-term effects with unknown outcomes in case of being a future potential political victim or if beaten a trick.

## **Annex M Europeanization vs. European Integration – A short Scientific Demarcation**

The adaptive process of ‘re-orienting the direction and shape of politics to the degree that political and economic dynamics become part of the organizational logic of national politics and policy-making’ defines ‘Europeanization’ (see Glossary) according to Robert Ladrech (1994: 17) (Bulmer/Lequesne, 2013: 16). The innovative feature of Europeanization captured in this definition refers to the continuously changing European environment (Bulmer/Lequesne, 2013) and the impact the EU exerts on national states (Sedelmeier, 2012). In a scientific study, Ladrech empirically investigated French institutions and how they had been affected by the increasingly dominant role of European ‘supranational institutions’ (see Glossary). As the definition of Europeanization differs from ‘European integration,’ a term referring to e.g. political integration and a loyalty shift to the European level, the first expression is associated with a top-down approach, constituting the second phase of research on the EU (Sedelmeier, 2012). In order to study Europeanization, according to Maarten Vink and Paolo Graziano (2007: 3–20), it is essential ‘to start investigating at a domestic level and to detect, whether policies or institutions formed at EU level determine political challenges and pressures by the diffusion of European integration at the respective domestic level’ (Bulmer/Lequesne, 2013: 18).

Following Claudio Radaelli (2003: 27–56), as a consequence of European integration, ‘Europeanization is not convergence,’ as ‘it has to be distinguished between a process and its consequences.’ Harmonization is set as goal, but Caporaso and Jupille (2001: 21–43) argue that e.g. directives leave too much room for continued national diversity due to the non-direct applicability of directives, resulting in unexpected deviations at the domestic level (Bulmer/Lequesne, 2013).

## **Annex N Definition of 'Refugee' according to the Geneva Refugee Convention of 1951 (Article 1 GRC)**

**A.** For the purposes of the present Convention, the term 'refugee' shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfill the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

**B.**

(1) For the purposes of this Convention, the words 'events occurring before 1 January 1951' in Article 1, section A, shall be understood to mean either:

(a) 'events occurring in Europe before 1 January 1951'; or

(b) 'events occurring in Europe or elsewhere before 1 January 1951,' and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

**C.** This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

**D.**

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

**E.**

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

**F.**

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Author's short digression: according to Article 16 a (I) GG, Germany grants asylum to those who are politically persecuted. Thereinafter, asylum is a basic right in the German constitution. How to treat the persecuted asylum seekers is defined in the Geneva Refugee Convention of 1951. Since 2002, people persecuted because of sexual orientation or due to gender are also granted the right of asylum in Germany. The European Charter of Human Rights prohibits the expulsion of individuals in case of ongoing severe human rights violations in the individual's country of origin, even if the individual has not received the right of asylum due to several reasons (Bittner, 2016).

Historically speaking, Article 16 a GG was defined in 1949, after the end of World War II. 'We' was actually interpreted differently than today: Foreigners were e.g. Spaniards or Russians, but actually the Article was primarily created for Germans. In its first formulation, Article 16 a referred to the right of asylum for any German who was politically persecuted because of his engagement in democracy, unity, social welfare etc. It was changed, as 'foreigners' should also be granted asylum in case of their engagement in the previously mentioned activities and the ideal that asylum cannot just be granted to those who are culturally close to Germans (Bittner, 2016).

## **Annex O Brief Digression: Germany – An Immigration Country?**

The following background information is summarized and exclusively taken from Karl-Heinz Meier-Braun (2013) in order to facilitate the understanding of the reader on the progress of German development concerning this matter with regards to today's refugee crisis and the lack of an immigration act.

The first stage of Germany's alien policy took place between 1952 and 1973 when many migrant workers, dominantly from Italy, followed the invitation to work under profitable conditions in Germany. Back then, it was expected that the migrant workers' stay was temporarily, but as it became obvious that many settled down permanently in Germany, politicians started to discuss the advantages and disadvantages of keeping migrant workers during the second stage (1973–1979). The fear of intercultural and social conflicts led to a politically decided migrant-work-flow-stop in November 1973. This measure caused the remaining families to follow in order to prevent separation. The number of foreigners rose from 686,000 (1960) to 4.4 million (1980). Lothar Späth, prime minister of Baden Württemberg, officially declared Germany an immigration country in 1979 by referring to prior guest workers as migrants now.

The third stage can be described as development phase and implementation of integration concepts. The Kühn Report of 1980 already demanded an urgent social and political change and the final recognition of Germany as an immigration country in order to prevent unpredictable challenges arising from social developments, heated by potential intercultural conflicts. The influx of migrants, asylum seekers and economic migrants frightened the domestic population, as it was suddenly surrounded by people with different European, Asian and African roots. It was not just a phenomenon in selected metropolises anymore but turned out to be a common image in smaller cities as well. A breaking point was expected: at a foreign population share of 4.65 million, different strategies to handle the situation should be initiated at the time.

The fourth stage (1981–1990) in the process finally introduced a change to alien politics. Integration concepts were replaced by measures to limit foreign growth. Different means were debated (e.g. immigration stop in case the foreign share of e.g. the city of Frankfurt am Main would rise above 30%), while fear of social conflicts dominated and influenced the political decision-making. Thus, disagreement and continuous political denial for the urgent need to establish an immigration act prevailed and resulted in a social-political change towards xenophobia, whereby the fear of foreign infiltration prevailed. Debates triggered the common assumption that willingness and likelihood of foreign immigrants to assimilate and integrate would be rather unlikely. In this context, Franz-Joseph Strauß, Bavarian prime minister, introduced the concept of a 'Prosperity-Asylum-Epidemic.' The term refers to the impossibility to take in everyone around the world whose prosperity is below the German level. The tension climaxed in the elections of the federal state parliament in 1980. The NPD declared 'Germany for Germans,' and the question of the compatibility of celebrating Christian festivals in e.g. a kindergarten with a Muslim majority of minors aroused. Politicians promised to reduce the number of foreigners living in Germany. Yet during the reign

of chancellor Helmut Kohl (1982–1998) the foreign population actually increased from 4.6 million (1982) to 7.3 million (1998).

In the fifth stage (1990–1998), late repatriates and asylum seekers dominated the political sphere, while guest worker issues were neglected. Germany was confronted with a massive influx of foreigners from the previously named categories. Debates about Asylum Law continued, and the adoption of ‘asylum’ as basic right was implemented in the German constitution. In 1992, a report for the Ministry of Social Affairs of North Rhine-Westphalia showed the increased number of conflicts between refugees, late repatriates from the former Soviet Union and locals. A boy of Turkish descent but born in Germany claimed late repatriates for receiving the German passport and declaring themselves Germans, without even speaking the German language. The government supported late repatriates, mainly from Russia, by re-integration offers, like e.g. language courses free of charge, but missed the chance to do so with other immigrant groups, too. The situation climaxed as the conflict potential grew rapidly. The use of violence on the basis of xenophobia was driven by the extreme right-wing and increased especially in the new federal states in the early 1990s. In 1998, the parliamentary pre-election campaign demonstrated the split opinion about Germany being an immigration country or not.

During the sixth stage, the political parties declared that an irreversible immigration process had taken place. The demographic development was one of the political parties’ drivers to formulate an immigration and integration concept in order to handle future immigration. The thesis paper presented by the CSU in Bayreuth declared that ‘Germany was not a classical immigration country.’ Facing around 4 million unemployed people, the population questioned the previously defined consensus that Germany needed immigrants for its economy. The terrorist attacks of 9/11 also changed the perception of the foreigner-debate, as it was not an attack against New York but against the West, which negatively affected the generally positive attitude towards regulated immigration. Edmund Stoiber, prime minister of Bavaria, declared that Germany was still not an immigration country (2001). Stoiber did not deny that immigration was taking place, but he referred to humanitarian aid as the reason for the existing immigration. The same day, Petra Müller, head of the Commission for Immigration, declared that Germany was indeed an immigration country. Sigmar Gabriel, minister for economic affairs and energy, criticized the unregulated immigration of late repatriates from the previous Soviet Union and referred to statistics identifying this particular migrant group as the largest one – and the one with a high share of causing conflicts. Gabriel requested late repatriates and prospective migrants to prove persecution in the countries of origin to systematically reduce the number of late repatriates entering Germany.

The politicization of Aliens and Asylum Law, which had been abused for political party profiling before, dominated the political landscape again. Heiner Geißler, CDU general secretary, stressed the importance to condemn excessive nationalism. In the post-war history, the Aliens and Asylum Law became a focus of domestic political topics. Today, around 16 million people living in Germany (population: 82 million) have an immigration background, representing 19.6% of the population. The majority



is from Turkey (~3 million), Poland (~1.5 million), Russia (~ 1.2 million), Kazakhstan (~0.9 million) and Italy (~0.8 million).

The fact that immigration is taking place has already been noticed in the 1960s, but the lack of concrete concepts and the failure to take decisions in advance to influence the overall societal political scene in order to reach sustainable integration demonstrated again the persistent negation and neglect of immigration as factor. Article 73 (1) No. 2 GG issues that immigration is a federal task, however, the government officially denied that Germany was an immigration country and the concept of temporarily staying guest workers prevailed for centuries. Today, the refugee crisis challenges not only Europe's but also Germany's legal basis. In 2006 Wolfgang Schäuble, federal minister of the interior, declared that 'Islam is part of Germany and part of Europe.' In 2010, Christian Wulff, federal president, stressed the pun of a 'Bunte Republik Deutschland' (English: *Federal State of Germany*), replacing the term 'federal' with 'colourful,' referring to the different ethnical and cultural backgrounds of families living in Germany. Later in 2011, the new federal minister of the interior, Hans-Peter Friedrich, dissociated himself from Schäuble's words but did not deny that 'Muslim people living in Germany are part of Germany, however, historically seen Islam has no roots in Germany.' A study of the Institution of Labor Market and Occupational Research in Nürnberg revealed in 2010 that xenophobia has increased in the politically moderate societal layer. The polling institute TNS Emnid at the University of Münster discovered that 40% of the population actually feared foreign infiltration. Due to the intensive focus on integration policies over the last years, asylum and refugee politics were not developed further, which became obvious in 2012 when the first wave of refugees entered the federal territory of Germany as a result of the Arab Spring.

## Annex P Statistics on Asylum








Germany received 702,293 initial asylum applications in 2016, which is a plus of 79% compared to 2015 (392,028 initial asylum applications). The number of follow-up applications decreased to 20,535, resulting in a total amount of asylum applications of 723,027 in 2016, which equals a total increase of 70.1% compared to 2015. The total protection rate of all countries of origin is at 63.3% (BAMF, 2016: 2)

*Tab. P1 Overview of Initial Applications and Protection Rate in Germany (2016)*

Country	Initial Applications	Percentage of all Initial Applications	Protection Rate
Syria	262,268	27.3%	98.1%
Afghanistan	124,909	17.8%	55.5%
Iraq	94,251	13.4%	70.3%

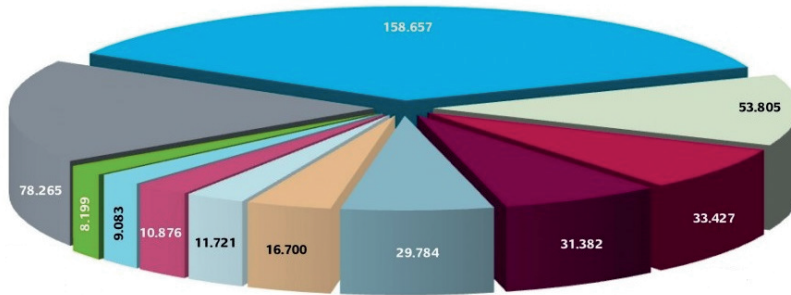
Source: BAMF, 2016

*Tab. P2 Asylum Applications in the Union and in selected Member States (January – September 2016)*

Germany	723,027	
Italy	67,555	
France	63,310	
Sweden	57,395	
Austria	29,065	
The Netherlands	24,175	
Greece	7,610	

Source: Eurostat, 2016

Fig. P1 Share of Countries of Origin for Initial Applications in Germany (2015)



- Syria (35.9%)
- Albania (12.2%)
- Kosovo (7.3%)
- Afghanistan (7.1%)
- Iraq (6.7%)
- Serbia (3.8%)
- Unidentified (2.7%)
- Eritrea (2.5%)
- Macedonia (2.1%)
- Pakistan (1.9%)
- Others (17.5%)

Source: BAMF, 2015

## **Annex Q The Registration of Refugees portrayed exemplarily at the Federal Republic of Germany**

The number of reports about multiple registration of refugees and the simultaneous collection of benefits from various social welfare systems by using different identities is not surprising by critically analyzing the current status quo. In the absence of law harmonization and the lack of centralization, the member states use different systems for registration, causing secondary illegal migration and triggering social frauds committed under diverse identities (Unknown, 2016 e). The Federal Republic of Germany is used as an example to underline the importance to harmonize standard procedures and systems within first, a country, and second, among the member states on a supra-national-level.

Refugees arriving in Germany are primarily registered via the tracking system 'Easy' and are distributed to the 16 federal states on the basis of an allocation key called 'Königssteiner Schlüssel,' which is based on quotas including the income and the number of population. However, the system does not register any personal data (e.g. names, fingerprints) or criminal history, and in case of an allocation to e.g. Bavaria, the refugee might still decide individually against the official guidelines and move to e.g. Berlin. The right to move freely within a member state is granted to an individual recognized under international protection (Article 33 of the Directive 2011/95/EU). As no personal data are registered, the competent authorities in Berlin will most likely grant new papers to the individual, as they cannot check on the identity or on potential prior registration, especially if a new name and a new identity are stated. In 2015, around 13% of the registered and allocated refugees never reached their target place but disappeared from the screen. The federal states also differ e.g. when it comes to granting a health care card, accommodation and to providing integration courses. The benefits also vary in height and in the form they are issued. So far, only Bavaria sticks to granting benefits in voucher form and performance in kind, other federal states like Hesse or Saxony-Anhalt hand out monetary means in cash but rethink this measure now in order to prevent improper spending (Fischer/Gathmann, 2016).

Not all federal states use the IT application Easy. Hamburg, as an example, uses 'Paula Go' (Stadt Hamburg, 2016). The fact that Germany uses different systems for registering refugees on the national level makes the application of various systems across Europe not surprising. The lack of harmonization leads to the inability to exchange data and besides to the fact that e.g. Easy does not save fingerprints or personal data at all (Aust/Bewarder, 2015). In case of terrorism and prevention mechanisms, the registration systems were heavily criticized, as e.g. the attackers from Paris in 2015 were traced to have entered the Union via the Balkan Route with forged Syrian passports (Diehl/Reimann, 2015). The inability of competent authorities and police forces to collect sustainable evidence in time is the result of a lack of knowledge about the individuals' past or criminal history. Additionally, Frontex cannot access the databases of Europol and Interpol. It is extremely difficult to differentiate between forged

passports and real ones (Aust/Bewarder, 2015), but data synchronization would reduce the existing security risk.

Every German national holds an ID Card, which is uniform and equally valid in all 16 federal states. Yet, in many cases, refugees arrive without passport or identification documents, because of loss or because it enhances the chances to stay under a different identity and a misstated nationality. However, the residence title, which is granted after successful recognition as refugee, has not been uniform. Multiple registrations, time-consuming procedures and the exchange between BAMF, Federal Labor Office, Federal Police Force and other authorities slow down the entire process. It was not before April 2016 that North Rhine-Westphalia, as first of the 16 German federal states, introduced a new proof of arrival on the federal government's decision (Stawowy, 2015) by starting to collect biometrical data from newly arriving refugees to avoid the abuse of multiple registrations. The idea was to create a nationwide database for the authorities to compare biometric data and to double-check potential prior registrations before handing out final documents (N24, 2016). Without a valid prior registration, neither an application for asylum nor (monetary) benefits should be granted. The implementation of the new proof of arrival aims at faster processing periods resulting in a facilitated procedure (Stawowy, 2015). Nevertheless, the process of implementation is time-consuming and allows many to still benefit from the fragmented application systems.

## Annex R The Directive 2011/95/EU

The Directive 2011/95/EU of the European Parliament and the Council 'on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted' was issued on 13 December 2011. The purpose was in defining 'standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted' (Article 1).

According to Article 5 (1), 'a well-founded fear of being persecuted or a real risk of suffering serious harm may be based on 'events, which have taken place since the applicant left the country of origin,' or 'on activities, which the applicant has been engaged in since he or she left the country of origin' (Article 5 (2)). Actors of persecution include the state (Article 6 (a)), parties or organizations (Article 6 (b)) and non-state actors (Article 6 (c)).

Member States would not grant international protection, if 'in a part of the country of origin, the individual had no well-founded fear of being persecuted or is not at real risk of suffering serious harm (Article 8 (1) (a)) or had access to protection against persecution or serious harm (Article 8 (1) (b)). This means that the individual 'can safely and legally travel to [...] that part of the country and can reasonably be expected to settle there.' In order to decide on granting international protection, the Member States should ensure the cooperation with the United Nations High Commissioner for Refugees and the European Asylum Support Office to get information on the general circumstances prevailing in that part of the country and on the personal circumstances of the applicant (Article 8 (2)). The Directive provides a list with qualifications for being a refugee in accordance with Article 1 (A) of the Geneva Convention by naming acts of persecutions (Article 9), e.g. violation of basic human rights (Article 9 (1) (a)), violations of human rights (Article 9 (1) (b)) and by qualifying the form of persecution, e.g. acts of physical or mental violence, including acts of sexual violence (Article 9 (2) (a)), legal, administrative, police and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner (Article 9 (2) (b)), prosecution or punishment which is disproportionate or discriminatory (Article 9 (2) (c)), denial of judicial redress resulting in a disproportionate or discriminatory punishment (Article 9 (2) (d)) or acts of a gender-specific or child-specific nature (Article 9 (2) (f)). In order to obtain international protection, one of the reasons written down in the list in Article 10 and Article 9 (1) must be fulfilled (Article 9 (3)).

Reasons for persecution include, inter alia, race, color, descent or membership of a particular ethnic group (Article 10 (1) (a)), religion or holding of theistic, non-theistic and atheistic beliefs, including e.g. the participation in, or the abstention from formal worship in private or public (Article 10 (1) (b)) and political opinion (Article 10 (1) (e)).

A third-country national or a stateless person is excluded from the definition 'refugee' according to the Geneva Convention if considered under scope of Article 1 (D) of the Geneva Convention 'relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees' (Article 12 (1) (a)). A person is also excluded from the status refugee, if the individual has committed, inter alia, war crime or crime against humanity (Article 12 (2) (a)). However, every individual, qualified as refugee under the Directive (Chapter II+III), shall be granted international protection under refugee status by the Member States (Article 13). In accordance with the rights laid down in the Geneva Convention, Article 21 refers to the protection from refoulement, as Member States have to respect the principle of non-refoulement in accordance with their international obligations according to Article 21 (1). Article 33 of the Geneva Refugee Convention refers to the principle of non-refoulement as prohibition to return or expel a refugee. No contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (Article 33 I GC), as was explained by the Committee: 'the turning back of a refugee to the frontiers of a country where his life or freedom would be threatened on account of his race, religion, nationality or political opinion, would be tantamount to delivering him into the hands of his persecutors.'

The Directive defines access to employment (Article 26), access to education (Article 27), access to procedures for recognition of qualifications (Article 28), access to social welfare (Article 29), healthcare (Article 30) and access to accommodation (Article 32) for an individual under the status of a refugee according to the Geneva Convention. Additionally, Freedom of Movement within the territory of a Member State is granted to 'beneficiaries of international protection, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories' (Article 33).

The Directive is important, as it highlights that every individual defined as refugee is granted international protection within the European Union and refers to the principle of non-refoulement in accordance with the Geneva Convention of 1951. It is a directive, not a regulation, but it still binds the member states at least to a common ground, yet, as discussed in the paper, the actual usage, implementation and solidarity among the member states are lacking on this matter.

## **Annex S Differentiation between Directive and Regulation**

The legal basis for a regulation is laid down in Article 288 para. 2 TFEU. Thereinafter, a regulation has general application, as it is binding in its entirety and directly applicable in all member states.

In contrast, a directive is governed by Article 288 para. 3 TFEU, stating that a directive 'shall be binding upon each member state to which it is addressed, but shall leave to the national authorities the choice of form and methods.' A directive is not directly applicable but needs to be implemented on national level. A union-wide harmonization cannot be achieved by releasing a directive, but the actual accordance and acceptance is improved, as the member states are free to achieve the directive's end regarding form and method (Kenealy/Peterson, 2015).

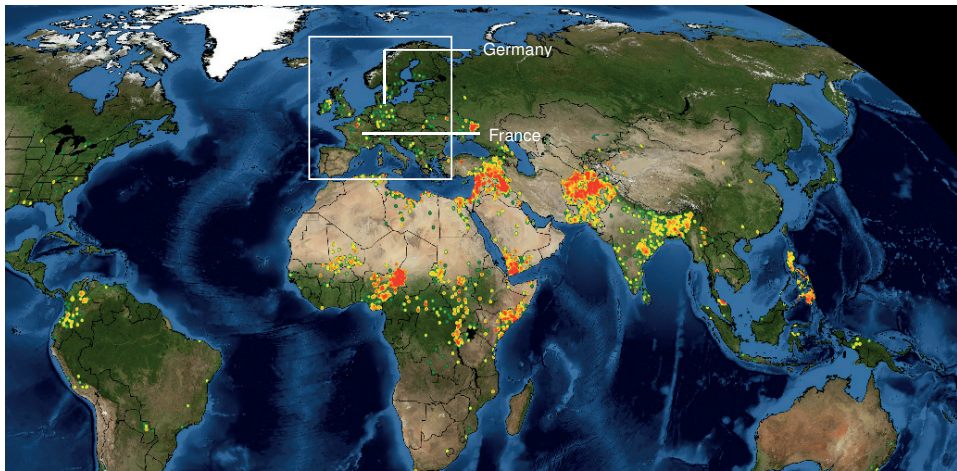


## Annex T Terrorist Attacks

### *Terrorist Attacks Worldwide (2015)*

The following figure provides an overview of the terrorist attacks executed in 2015. With focus on Europe, a geographical concentration becomes obvious in Germany and France. Other areas on the world map and potential geographical concentrations of attacks are not argued further.

*Fig. T1 Terrorist Attacks (2015)*

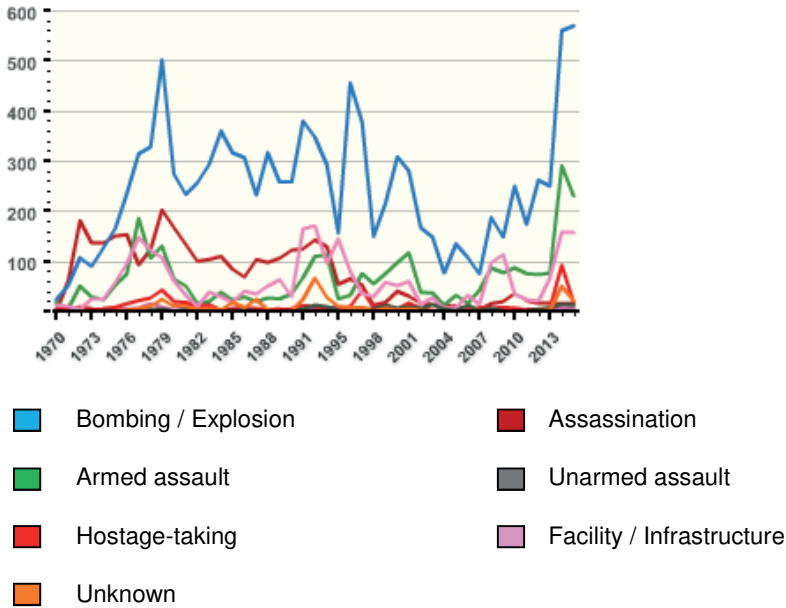


- High
- Intensity value is a combination of incidents (fatalities and injuries)
- Low

Source: Global Terrorism Database, 2016 b, adopted by Dankert, 2017

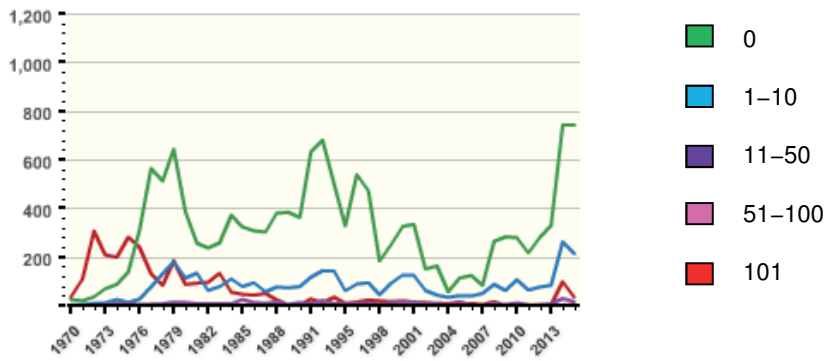
*Terrorist Attacks in Detail*

*Fig. T2 Types of Terrorist Attacks in Europe*



Source: Global Terrorism Database, 2016 a

*Fig. T3 Number of Injuries in Terrorist Attacks*



Source: Global Terrorism Database, 2016 a

## Annex U The Conflict of Islam and Democracy

The lack of democratic governments in the Arab world is not because Arabs are per se afraid of democracy, although many do not have access to literature to understand the term in its full meaning. The separation of secular humanism and the isolation from developing a bourgeois society which, back then, enabled the freedom of thought, the right of self-determination, tolerance and the right of taking initiative in the West, is lacking. So far, no Muslim state, apart from Turkey, has declared itself secular (Mernissi, 2002).

Democracy (Arabic: *dimukratia*) refers to fear of the unknown, as it enables everyone to read, think and behave in any possible way. Many other words have been adopted in the Arab language like e.g. car (Arabic: *sayyara*, *automobile*) or telephone (Arabic: *telifun*). Nevertheless, no other adopted word is as intensely debated as the term 'democracy', which is derived from the Greek. The autocratic regimes refer their legitimacy out of religion, the ones demanding democracy are called 'kafir' (English: *non-believers*). The translation reveals that the term democracy is not only foreign to the culture, but it also raises a conflict of interests. Supporting democracy means supporting the unbelievers. The Arabic word for 'West,' which refers to Europe but also to America and Canada, is '*garb*,' literally meaning *darkness* or *the inconceivable*. It is the literal area of the strange, the unknown (Arabic: *al Garib*), which includes everything that is frightening and elusive. Islamists argue that a secular state will remove the memory of the Prophet Muhammad and will lead to the renunciation of God, triggering hubris resulting in nihilism as part of what is considered and feared as 'Western aggressive consume culture' (Mernissi, 2002).

Contrary to Judaism and Christianity, 'Islam' does not root in a tribe or person but in a relationship, as it literally means *submission*, *surrender* or *the laying down of arms to finish the state of war*. 'Istislam at-tasallum' means *ceasefire* or *interruption of hostility*. Looking at the year 8/630, Mekka was a city in pagan Arabia with a multitude of more than 360 gods. The daily lives back then were characterized by violence and fear, which can be summarized as 'shirk' (English: *merge*). The year 8/630 refers to the date of conquest of Mecca through Muhammad by literally overthrowing the diversity of gods from the throne and replacing them by monotheism. Islam changed the status quo as it guaranteed peace, so the people abjured the freedom of thought and religion in return (Mernissi, 2002).

The reference text for democracy is the Charter of the United Nations. After World War II, Muslim territories had been transferred to quasi parliamentary democracies on paper. The majority of the Arab states signed the Charter, but their actual reference text remained the Qur'an. Despite the signature, incompatibilities between the Charter of the United Nations and the Muslim states appeared. As this paper does not focus on a juxtaposition of religious norms and articles of the Charter, some examples are provided afterwards just to get an idea about the conflicting situation.

Article 1 (3) UN Charter describes the purpose of the Charter in achieving 'international cooperation [...] in promoting and encouraging respect for human rights

and for fundamental freedoms for all without distinction as to race, sex, language and religion.’ The Charter refers to ‘equal rights and self-determination of people’ and highlights the universal respect for human rights and fundamental freedoms for all without distinction as to race, sex, language of religion (Mernissi, 2002). The equality of men and women is laid down in Article 8 UN Charter and in the determination of the signatories on page 2 UN Charter. Mernissi (2002) refers to Article 8 as anti-discriminatory fundamental right versus practiced sharia. Article 18 UN Charter refers to the definition of ‘jahilyya’ (English: *ignorance*), meaning to revert to the status quo of the year 0/622, as Mernissi connects the article to the freedom of conscience. The concept of ‘voting,’ as depicted in the article, supports the claim for freedom of conscience and freedom of thought, although the article is about the General Assembly. The presidential electoral reality in many states is to be elected for a lifetime (Mernissi, 2002) like e.g. Mahmud Abbas, Jassir Arafat or Ali Abdullah Saleh. In 2011, Saleh, president of Yemen, had to step down after 32 years of presidency, as the opposition claimed the lack of democratic elections in the country during the Arab Spring in Yemen (Borgstede, 2011).

H.R.H. Amir Faisal Ibn Abdul Aziz, viceroy of the Hejaz and minister for foreign affairs and chairman of the delegation from Saudi Arabia, officially signed the United Nations Charter at the San Francisco Conference in June 1945 (United Nations, 1945). Mernissi (2002) points out that Saudi Arabia, including other Muslim states as signatories, never opened up to further debates about the relationship of religion and state in the respective countries. The Charter of the United Nations awakes the Muslim idea of ‘shirk,’ which etymologically means *to merge, to join* and which is seen negatively, as it is heavily interwoven with the time of chaos and confusion. The question of democratizing Muslim countries triggers a conflict between Islam and ‘shirk,’ which is seen as synonym for freedom and pluralism. Islam replaced individuality by including the single individual in a community (Arabic: *umma*) in order to create uniformity and equality. Thus, individualism is exchanged for lasting peace (Mernissi, 2002).

From a Muslim perspective, the term ‘party’ is associated with a rather negative connotation, meaning ‘*hizb*’ and ‘*si’a*,’ referring to a group of people having different opinions. The term has a sectarian character, causing a split, as it refers to the so-called ‘army of non-believers’ (Arabic: *djunud al-kuffar*). Historically, the army of non-believers, as the Quraish tribal people favoring polytheism were called, were the ones combating Muhammad during his siege of Mecca. Their polytheism is seen as synonym for the variety and diversity of gods and at a subtle level, it can be referred to the freedom of opinion, resulting in pluralism (Mernissi, 2002).

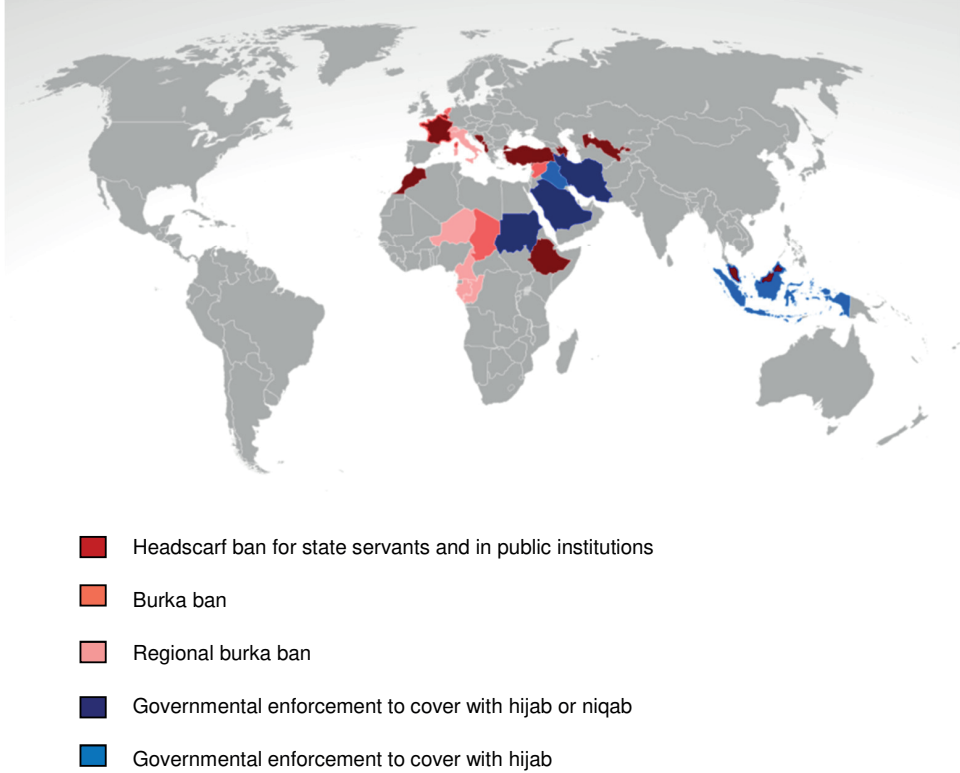
Some researchers refer to the importance to provide development aid in countries of origin and to undertake military interventions to establish democracy in autocratic states of Middle Eastern regimes. But the conflicts between the Charter of the United Nations and the idea of democratization in Muslim countries arise by name. The term ‘democracy’ refers to one of the pillars of Western societies. However, it was declared a Western illness by many regimes before, mainly to keep the civilians calm. During the peace walks of 1991 on the ongoing Gulf War in Bagdad, people first expressed

their wish for political change by openly claiming: 'Ma sa'luna! Ma sa'luna! Al-qarar qararuna!' (English: *we haven't been asked! The decision is at us!*) (Mernissi, 2002).

Undoubtedly there is a movement across Arab countries, supported by those striving for change. Despite the terror of violent organizations, it can be said that even these formatted violent groups strive for change, despite their backwards orientation (Mernissi, 2002).

## Annex V Concealment Worldwide: Selected Portray of Countries forcing or banning the Islamic Veil

Fig. V1 *Concealment Worldwide*



Source: Speer, 2016

## **Annex W Likelihood of Cultural Adoption – A Scientific Demarcation**

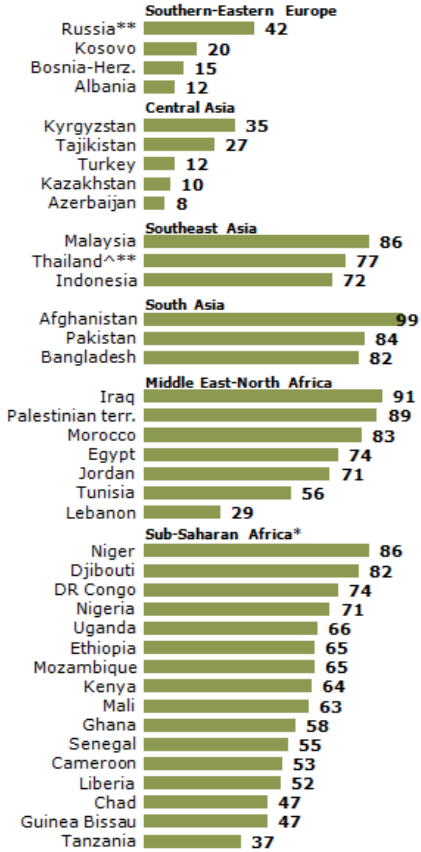
Scientifically speaking, there are four categories of immigrants adopting a local culture: *assimilation* (= adopting local culture, while continuing to practice the original culture), *integration* (= maintaining original culture and adopting local culture), *separation* (= maintaining original culture and failing to adapt to local culture) and *marginalization* (= failing to adapt to local culture and failing to maintain the original one) (Ghorbani, 2011).

The differentiation equals the degree of migrants' willingness to give up or stick to the original culture. Depending on the multi-religion and multi-ethnic societies of host-countries, people and governments vary regarding their acceptance of newcomers. Typical immigration countries like America employ a 'melting pot' policy, which is referred to as 'Americanization' (Ghorbani, 2011) or 'Civil Integration' (Mouritsen/Faas, 2015). The local culture rejects the immigrants' practices as intolerable, fearing to lose control, so the newcomers' culture is not appreciated as addition to the domestic one. Melting pot societies encourage immigrants to think like locals and aim to integrate them as adapted members of the domestic culture including values, attitude, behavior and practice (Ghorbani, 2011).

In contrast, multicultural societies embrace the mixture of cultures as addition to the local community (Ghorbani, 2011). 'Multiculturalism' as term was first used in 1971 in educational literature and became popular as Canada adopted the expression to label its policy on linguistic differences and cultural diversity (Bryson, 2002). Differences in terms of cultural values are part of this ethno-cultural merger, where cultures co-exist within a society, enriched by individual cultural additions (Saunders, 2012) based on respect, integrity and tolerance. Multiculturalism as paradigm of pluralism (Henry, 2002) increases the likelihood of a successful integration. In contrast, the melting pot policy leads to assimilation, marginalization or separation (Ghorbani, 2011).

## Annex X Support for Sharia across 39 Muslim Countries

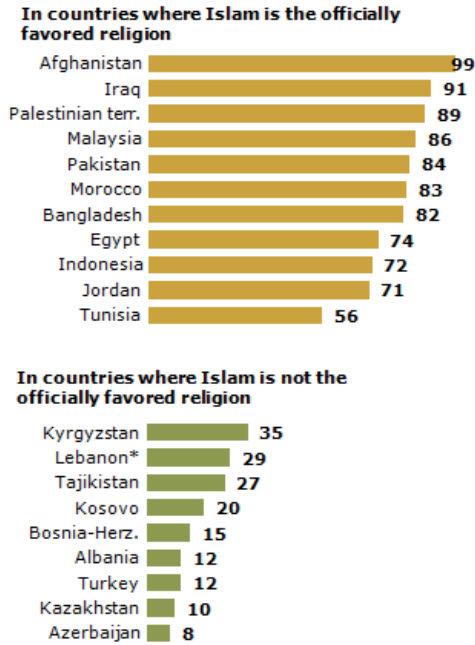
Fig. X1 Support for Sharia  
(Percentage of Muslims who favor to make sharia the official law in the country)



Source: Pew Research Center, 2013



Fig. X2 Higher Support for Sharia where Islam is the officially favored Religion



Source: Pew Research Center, 2013

The data are important and have to be understood as background information, relating to the number of nationals seeking refuge in the Union and the percentage of affiliation of certain nationalities with Islamic law. The paper will not focus on this issue further, but the actual non-compliance with the rule of law, and Islamic law as thought-impulse should be given here, referring to the integration task as challenge for the European Union in the years to come. The consequences of a conflict of profound interests between the sharia and the rule of law should not be underestimated.

## **Annex Y Mutual Suspicion and Incrimination thwarting Impartiality**

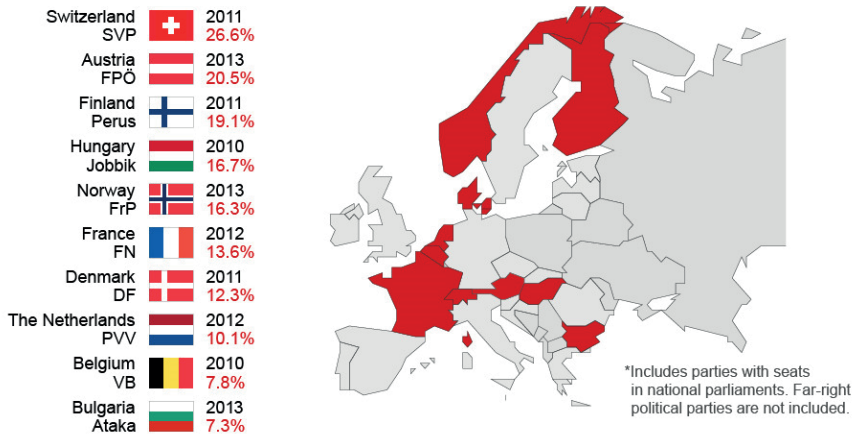
Missing will and failure of international endeavors to solve issues increased the divergence of value systems between the Orient and the Occident. The Orient interprets the Western demand for freedom and democracy in Arab countries as hidden enforcement of Western interests, like access to natural resources. Since the early 1980s, religion has constantly been displacing the development of a modern civil society by commencing on common values on the basis of religious conviction. Both sides make a bogeyman out of the counterpart. Not political interests but religious belief marks the boundary along the longitudinal side where the conflicts are dealt with. Members of other religions are murdered, not because of their belief primarily but due to their belonging to a certain culture, creating a paradox situation. In the Western society, Islam is seen as disruptive factor in the development of a global society, as Islamic states and Islam in general are equated with a lacking ability to change. In contrast, the Orient fears the Western submission in order to control and exploit mineral deposits. The situation is paradox and portrays the deep crisis of confidence whereby the gap is increased by every religious minority searching refugee in the West. The suspicion becomes obvious, as it is claimed the West had no interest in exporting democracy but did so due to several other interests (Tilgner, 2006), which are not explained further.

Many Arab intellectuals see the elimination of e.g. Saddam Hussein as an attempt to weaken the Arab world with the aim to access oil resources. The increased discrepancy between ideological claims of the regime and the corruption, repression and incompetence of authorities triggers the wish for codetermination supporting rule of law and accountability of the respective rulers. The media fuels the created bogeyman by limiting the reporting to a non-differentiated image of the oriental society, e.g. Iran. Despite its complexity, Iran is portrayed as center of radical Shia Islamism. The possibilities to engage in a dialogue are limited, as the imposed perception removes the complexity and existing differences within the oriental society (Tilgner, 2006).

## Annex Z Performance of Right-Wing Populist Parties in European Parliamentary Election

The following figure provides an additional graphical overview of the performance of right-wing populist parties in European Parliamentary Elections with voting share in percentage.

Fig. Z1 *Europe drifts to the Right*



Source: McCarthy, 2016



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