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Safety Against the Odds

Analysis of the Safe Country of Origin Concept
at the European Level and Its Practice in
Norway

Master's thesis in European Studies

Trondheim, May 2015

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Table of Contents

Abbreviations

1.0 Introduction	4
1.1 Justification of the Study	5
1.2 Research Question	6
1.3 Previous Research	7
1.4 Sources and Thesis Roadmap	8
2.0 Safe Country of Origin Concept	11
2.1 Defining ‘Safe Country of Origin’	11
2.2 ‘Safe’ Countries- ‘In General, No Serious Risk of Persecution’	12
3.0 The Origins of the Safe Country of Origin Concept in Theories	14
3.1 Introduction of Safe Country of Origin in the European Union	17
4.0 Common European Asylum System: ‘asylum must not be a lottery’	22
4.1 Divergence vs. Convergence of SCO Practices from a Theoretical Perspective	23
4.1.1 ‘ <i>The Copycat Game</i> ’	24
4.1.2 ‘ <i>The Weakest Link</i> ’	25
4.1.3 ‘ <i>Ratio</i> ’	26
4.2 Amendments in the Recast Asylum Procedures Directive	27
4.3 Implementation of SCO Rules from the APD 2005	29
5.0 Safe Country of Origin Practice in Norway	30
5.1 Outside and Inside: Norway’s Asylum Policy in a European Perspective	31
5.1.1 <i>Schengen Agreement</i>	32
5.1.2 <i>Dublin Convention</i>	33
5.2 The 48-Hours Procedure and the Safeguards	34
5.2.1 <i>Accelerated Procedures- Article 31(8) APD 2013</i>	35
5.2.2 <i>Personal Interview- Article 14 APD 2013</i>	37
5.2.3 <i>The Right to an Affective Remedy- Article 46 APD 2013</i>	38
5.2.4 <i>An Additional Safeguard- Procedure Transfer</i>	39
5.3 Governance of the Safe List	40
5.3.1 <i>Rapid Change Management: Safe Country- Ukraine</i>	41

5.4 The List of Safe Countries	43
5.4.1 'Ratio'	45
5.4.2 ' <i>Psychological Deterrent</i> '	46
5.4.3 <i>Visa-Free Access</i>	49
6.0 Assessing SCO Practice: Is It 'Fair' and 'Effective'?	50
6.1 The Question of Fairness.....	51
6.2 The Question of Effectiveness	52
6.3 Concluding Remarks and Further Steps	53
7.0 Conclusion	55
Appendix	
Reference List	

Abbreviations

APD	Asylum Procedures Directive
CEAS	Common European Asylum System
EEA	European Economic Area
EU	European Union
ECRE	European Council for Refugees and Exiles
IOM	International Organization for Migration
Landinfo	The Norwegian Country of Origin Information Center
NOAS	Norwegian Organization for Asylum Seekers
NRC	Norwegian Refugee Council
OHCHR	Office of the High Commissioner for Human Rights
SCO	Safe Country of Origin
SEA	Single European Act
UDI	The Norwegian Directorate for Migration
UNE	The Immigration Appeals Board
UNHCR	The United Nations High Commissioner for Refugees

1.0 Introduction

“Unfortunately, however, finding safety in today’s world is becoming increasingly difficult. While developing countries least able to afford it host most of the world’s refugees, many industrialized nations continue to impose ever stricter controls on asylum. All of us bear a responsibility for ensuring that those in need of international protection receive it” (UNHCR, World Refugee Day 2005).

The Norwegian Refugee Council estimated the number of refugees, asylum seekers and internally displaced persons worldwide to be 51, 2 million in the beginning of 2014 (NRC, 2014). Syria for example represents the most dramatic refugee situation in recent history with 138,016 Syrian asylum applications registered in Europe during the course of 2014 (UNHCR, 2014). At the same time, the political situation in Europe has been changing as a response to the Russian annexation of Ukrainian- Crimea in March 2014. The Ukrainian conflict has deteriorated drastically during 2014, resulting in many casualties and over half a million persons seeking international protection abroad since February 2014 (UNHCR, 2015). Consequently, the French authorities decided to remove Ukraine from their list of Safe Country of Origin (SCO). This was not the case in all European countries. Some continued to categorize Ukraine as ‘safe’ for the purpose of asylum. However, if a country at war, like Syria today, is considered unsafe, meaning that a majority of Syrian asylum seekers qualify for protection in Europe, can any country truly be considered ‘safe’? Can nationality dictate whether a person qualifies for protection? Where can the line between a ‘safe’ and an ‘unsafe’ country be drawn?

In brief, SCO entails that applications for asylum from citizens of countries declared as ‘safe’ are considered to be ungrounded or ‘manifestly unfounded’ and can be dealt with in an accelerated procedure. The introductory stage of SCO began during the 1980s, as the number of applications for asylum in Europe rose dramatically, forcing the European Union (EU) ministers of the Council to seek cheaper and more efficient ways of assessing the asylum applications (Mårtenson & McCarthy, 1998). That was when the proposal to identify some countries as ‘safe’ was implemented, referred to as Safe Country of Origin (SCO). This together with a number of other measures has arguably contributed to the decline in the number of asylum applications filed in the EU during the first years of this century as it

helped to identify and deal with so-called ‘bogus’ claims in a much faster manner (Mårtenson & McCarthy, 1998).

Even though the SCO policies seem to provide efficiency in the asylum field today, their adherence to the international law is rather problematic (Engelmann, 2014). In fact, human rights groups have long stressed the fact that SCO policies are in breach of international law and fundamental human rights. This because SCO policies often do not provide individuals with the fundamental procedural safeguards and violate the prohibition of discrimination on the bases of nationality (UNHCR, 2014).

The use of SCO has come into conflict with the Universal Declaration on Human Rights, which the United Nations General Assembly adopted in 1948. In the aftermath of the Second World War, in response to the high number of displaced people, the Universal Declaration on Human Rights, stipulates that

“Everyone has the right to seek and to enjoy in other countries asylum from persecution” (The Universal Declaration on Human Rights, 1948).

It also conflicts with the Convention relating to the Status of Refugees, which the United Nations General Assembly, consisting of 145 states parties in 2015, concluded in 1951.

One of the intentions of the Convention was to guarantee that each application for asylum would be considered on individual merits (The Refugee Convention, 1951).

1.1 Justification of the Study

On the one hand, the SCO concept seems to be a straight forward tool used by states to streamline asylum assessment. On the other hand, however, it raises many questions of legality, compliance with international law and human rights-, an aspect that has been researched extensively, as we shall see in the next section. At the same time, however, SCO practices diverge greatly across European states, but an overview of the different practices has not been addressed to the same extent in the literature. Based on this gap in research, this

study aims to analyze the application of the SCO concept in a non-EU Member States, namely Norway, thus seeking to contribute to our knowledge of the SCO practice in Europe.

Another incentive for studying the Norwegian practice of SCO were the recent developments in the Ukraine and the question whether these influenced how Norway dealt with applications from the Ukraine, which was on the Norwegian ‘safe’ list. Earlier it was noted that the conflict in Ukraine unwrapped rapidly, resulting UNHCR in March 2014 to recommend

“states to remove Ukraine from ‘safe country of origin’ lists” (UNHCR, 2014).

France, for example, followed such recommendation immediately, while in Norway this was postponed until October 2014. Norway’s decision to keep Ukraine on the ‘safe’ list inevitably raises questions about its asylum practice. To clarify this issue an analysis of the SCO concept and its application in Norway will be provided.

1.2 Research Question

The SCO concept has been in practice in Norway for almost eleven years. From the outset, critics have emphasized the lack of debates concerning its application. Interestingly, criticism from NGOs has gradually faded away. It seems as if the NGOs have accepted the present practice by the Norwegian Directorate for Migration (UDI), instructed by the Ministry of Justice and Public Security. The SCO notion is now associated with a standard procedure for asylum applications from nationals on the ‘safe’ list. Due to the fact that no comprehensive overview of the Norwegian practice of SCO exists, this study will analyze the implementation of the SCO concept in Norway, from 2004 until 2014, in order to see how the safeguards and the aims of SCO are met domestically. The main research question this thesis aims to answer is:

What is the Safe Country of Origin (SCO) concept and how is it practiced in Norway?

Firstly, this research concentrates on the EU level and the development of SCO in Europe in general, while secondly the SCO practice in Norway will be analyzed in depth. Discussing the

SCO concept at European level provides an important first step for understanding how SCO came to Norway. I will examine the early development of SCO by national governments and track its introduction to the EU hard law. It will be argued that Member States, acting in accordance with their interests and preferences in asylum matters, were not only able to maintain SCO policies, but also to ‘upload’ them onto the EU level. This, despite controversy on their compliance with the international law and disagreements between Member States on which countries can be listed as ‘safe’. I then focus on the negotiation process for new SCO rules in the EU. Furthermore, I will argue that EU Member States ‘copied’ each other in the use of SCO policies, which is why eventually SCO was implemented in Norway. As for the Norwegian practice of SCO, the analysis shows strong presence of the safeguards, although the accelerated procedure under SCO is one of the fastest in Europe, only 48 hours, for which it has been criticized. Lastly, I will introduce and explain the additional safeguard of SCO in Norway and argue that it contributes to the Norwegian SCO practice being both ‘fair’ and ‘effective’.

1.3 Previous Research

The literature covering the Safe Country of Origin concept is not vast. What is characteristic for most of the literature that does exist is its context within a legal framework. Many scholars aimed to analyze the SCO concept in the light of international refugee law and human rights. Hunt, for example, questioned whether SCO practices in the EU can be human rights compliant (2014), while Rohl studied the scope of Article 3 of the European Convention on Human rights and states’ obligations under *non-refoulement* principle (2005). Moreover, Costello made a study on whether the commitments of ‘fair’ and ‘efficient’ are met by the Asylum Procedures Directive of which SCO is a part (2005).

Studies on national SCO application are, on the other hand, limited in numbers. The 1998 study by Mårtenson and McCarthy provided an analysis of SCO application in nine states. It concluded, amongst other, that ‘few safeguards exist against abuse of the SCO practice by the government bodies...’ (1998). Recently, Engelmann contributed to the analysis of SCO policies by providing an original dataset of the SCO designations for all EU Member States between 1990 and 2013 and tracked the development of SCO policies in depth to detect converging tendencies (2014).

There are also studies by UNHCR and the European Commission on national SCO practice under the Asylum Procedures Directive (APD). These studies revealed that the scope for divergent practice under the APD has been well utilized. Wide diversities have been identified in both assessment and procedures. The ability to rely on national legislation enacted prior to the adoption of the APD allowed Member States to use criteria which do not conform to Annex II in APD 2005. Moreover, significant variations in the content of national SCO lists were depicted. UNHCR found that only two Member States have detailed legislative provisions concerning the process for adopting a list and that arrangements for reviewing national lists are lacking.

It is clear that the scope of the previous research is limited. This study wishes to build on the previous research of the SCO concept at the European level and in the Member States and to extend it with an analysis of the SCO practice in a non-member state, namely Norway.

1.4 Methods and Thesis Roadmap

This study aims to undertake a qualitative analysis of the SCO concept and its implementation in a non-EU Member State, Norway. Both primary and secondary sources have been utilized in this thesis. Interviews represent the main source for the analysis. Since little research on the SCO practice in Norway has been done so far, interviews with the officials represent a very valuable source of information. It contributes with insight view of practitioners, which printed sources might not be able to give.

I conducted four interviews with representative of different bodies to highlight different positions and balance the information against each other. The main source of information about details in the Norwegian practice of SCO, was a semi-structured interview with the chief advisor from the Norwegian Directorate for Migration (UDI), Dag Bærvahr. In preparation for the interview, I made an open interview guide allowing the interviewee to share new ideas and facts. This gave me the opportunity to make additional questions along the way to get a broader picture of how the UDI works with the SCO cases. Since the SCO practice started in 2004, the chief adviser admitted to be unsure of the details in the first years of SCO. When I analyzed the interview I, therefore, compared the facts with information provided in the newspaper articles, official documents and interviews.

The second interview was conducted with a representative from the Ministry of Justice and Public Security, Karoline Gamre. This interview was based on a similar set of questions as with the UDI. I added some questions that were created under the interview with the UDI and adjusted some of them to address the Ministry's role, rather than the UDI's. A personal interview was initially planned, but had to be replaced by written answers that were sent by electronic mail due to interviewee's busy schedule.

The third and the fourth interviews were conducted in focus groups with the staff from the Norwegian Organization for Asylum Seekers, NOAS. This gave me the opportunity to observe the gain insight information on how SCO is perceived in NOAS and what opinions different staff members have on its practice.

The interviews have been supplemented by secondary sources such as books and scholarly and newspaper articles. At the same time, a set of primary documents such as notes, EU directives, instructions by the Ministry of Justice and Public Security and statistics by the UDI have been used for analyzing the debate and practice of SCO, both at the European and at Norwegian level. Much emphasis was given to the theoretical perspectives used by researchers at the EU level. I choose to apply the theory of intergovernmentalism as one of the grand theories of the European integration, at the same time as a reasonably new concept of Europeanization will be put to the test. For the main part of the study, however, various mechanisms, stemming from the literature, are applied: the theory of the 'copycat game', the 'pull-factors'-theory and 'ratio'.

The next chapter makes an introduction to the SCO concept by defining it. It breaks the concept into smaller parts and analyzes what is understood by 'safe' and 'safe country'. At the same time it presents two different sets of criteria at the EU level for the assessment of 'safeness' of a country that can be added to a 'safe' list.

Chapter three goes on to discussing the origins of the SCO concept. From a theoretical perspective of the concept of Europeanization and intergovernmentalism it argues that the SCO concept originated at the national level and was later 'uploaded' to the EU level. This provides an explanation for the limited competences of the EU in the asylum field generally and SCO specifically.

In chapter four, I focus on the development of SCO at the EU level. Firstly, I question why diversity in the SCO practices exists against the harmonization goal of the EUs Common

European Asylum System. I use the theoretical framework of the ‘copycat game’ and the ‘pull-factors’-theory to argue that Member States copied each other’s restrictive asylum policies to avoid being perceived by asylum seekers as ‘the weakest link’ and thus attract higher arrivals. Nevertheless, due to the fact that non-binding decisions were used by the Council until 2005, diversity in national practices persisted. Moreover, copying does not suggest that Member States copied every detail of the SCO policy. Rather, they copied the concept itself and occasionally the countries of the ‘safe’ list. This chapter will also look at how the EU tries to influence the SCO practices by providing revised rules on the application of the concept and examine the Member States’ implementation of the initial rules on SCO.

Chapter five analyses the Norwegian practice of SCO between 2004 and 2014. It starts by examining the Norwegian relationship with the EU’s asylum policy by focusing on the Schengen Agreement and the Dublin Convention. Furthermore, it analyzes, amongst other, the results of the interviews, official documents and statistical data in order to see how the Norwegian SCO practice answers the many concerns by human rights groups, voiced both at national and European level, and which criteria is applied when assigning ‘safe’ status to a country. It argues that Norway introduced the SCO concept into Norwegian asylum practice by following the same logic of ‘the copycat game’ as Member States did. It also discusses that ‘ratio’ is one of the main criteria for the assessment of safety. Moreover, ‘visa liberalization agreements’ are detected as a possible additional criterion.

Chapter six assesses ‘fairness’ and ‘effectiveness’ of the Norwegian practice of SCO. It argues that by means of the additional safeguard that allows asylum authorities to transfer cases between the accelerated SCO procedure and the normal procedure, that the requirements of ‘fair’ and ‘effective’ are present to a high degree.

2.0 Safe Country of Origin Concept

This study aims to analyze the SCO concept and uncover patterns in its practice in Norway. As a first step, it is, therefore, essential to get full understanding of the concept by defining it.

Within European law various concepts exist, which employ ‘safe country’ categorization, including that of SCO (Hunt, 2014). These are enforced in relation to asylum policy that generally determines whether an individual is permitted to reside on the territory of a state in the light of persecution (Engelmann, 2014). All these concepts share the overall intention to restrict access to substantive asylum procedures within the EU territory, albeit with diverging purpose and practices in the asylum process domestically (Hunt, 2014). Such concepts from the ‘safe country’ family besides SCO are , for instance, ‘safe third country’ and ‘super safe European country’, referring to the notion that protection is either available or has been granted elsewhere than the current state. This avoids consideration of the merits for asylum under, for instance, an individual interview (Costello, 2006). The SCO concept has different applications that will hereunder be explained.

2.1 Defining ‘Safe Country of Origin’

What is the ‘Safe Country of Origin’ policy and how does it work? SCO policies vary across Member States today, both in legal and practical terms. The more general definition and understanding of the notion of SCO, however, is similar. It is based on the assumption that certain countries can be assigned a ‘safe’ status and are therefore on the list of ‘safe countries of origin’. Procedurally, this means that applications from asylum seekers, who are citizens of one of the countries on the list, might be dealt with in an accelerated procedure based on the assumption that their claims are ‘manifestly unfounded’ and that the asylum seekers thus do not qualify for protection (Engelmann, 2014).

The United Nations High Commissioner for Refugees (UNHCR) was the first body to circulate and discuss information on ‘manifestly unfounded’ and ‘abusive’ asylum application

as early as in 1983 when the number of asylum seekers in Europe started to increase excessively (Engelmann, 2014). The term ‘abusive’ pointed to, for example, applications from claimants that used the asylum institute as an entrance to the labor market, meaning that the real aim was not to petition for protection, but rather to obtain a job (UNHCR, 1983). The UNHCRs statements helped bolster the acknowledgement amongst European states that there were some asylum applicants that did not have valid claim for asylum and could, therefore, be dealt with in an accelerated procedure to cut administrative costs and help asylum authorities to deal with the higher number of applicants (Engelmann, 2014).

Although, the UNHCR played a central role in directing focus to the so-called ‘abusive’ asylum applications in 1983, it does not suggest that the SCO concept originated from the UNHCR, since the SCO concept was not mentioned explicitly. I will return to the discussion of its origins in chapter three. The next subchapter will elaborate on the definition of ‘safe’.

2.2 ‘Safe’ Countries- ‘In General, No Serious Risk of Persecution’

What is understood under the term ‘safe’ and which country can be considered ‘safe country’ for the purpose of asylum? Defining these terms in the context of SCO has created debate throughout time and countries deploying the SCO concept have been criticized for breaching with international law. This subchapter will answer the question above and examine which criteria for assessing ‘safety’ of a country were set at European level.

According to the United Nations High Commissioner for Refugees, ‘safe country’ may refer to ‘countries which are determined either as being non-refugee-producing countries or as being countries in which refugees can enjoy asylum without any danger’ (UNHCR, 1991). Furthermore, in European law, namely the Asylum Procedures Directive (APD) of 2005, ‘safety’ of a country is defined by:

“generally and consistently no persecution as defined in Article 9 of Directive 2004/83/EC (Qualification Directive), no torture or inhumane or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict” (APD, 2005).

In addition to the definition of ‘safety’, Annex II of the Asylum Procedures Directive provided a set of criteria for the assessment of ‘safety’, such as legislation in the country of origin, observance of rights and freedoms laid down in the main human rights documents, respect of the *non-refoulement* principle, and a system of effective remedies against violations of these rights and freedoms (APD, 2005- AnnexII).

Another set of criteria was laid down in the London Resolution in 1992. It was the first European agreement on asylum-related issues and the first one where the EU Immigration Ministers formalized the concept of accelerated procedures and established the following criteria for assessment of ‘safe’ country:

- previous numbers of refugees and recognition rates;
- observance of human rights both in terms of formal obligations undertaken and how these are met in practice;
- existence of democratic institutions and the availability and effectiveness of an independent judiciary;
- stability of the country (Council Resolution, 1992)

On the account of the definition of ‘safe country’ above, several human rights organizations have criticized the SCO concept for breaching with Article 3 of the 1951 Refugee Convention, which stresses that access to asylum procedures must be provided without discrimination as to race, religion or country of origin (Mårtenson & McCarthy, 1998). At the same time, the assessment of ‘safeness’ of a country appeared problematic from several holds, especially human rights groups. In accordance with international asylum law, under the 1951 Refugee Convention, all signatory states have to comply with the principle of *non-refoulement*. It prohibits states from returning a refugee to his or her country of origin in case of possibility that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (The Refugee Convention, 1951).

Despite the criticism, the core definition of ‘safe’ in both national and European law shares a general assumption that the situation in the country of origin is sufficiently safe for an asylum seeker not to receive international protection in another country (Engelmann, 2014). What set

of criteria the Member States apply when considering adding a new country to the ‘safe’ list, is a question I will address in chapter four. In the first place, some background information on the SCO concept is required.

3.0 The Origins of the Safe Country of Origin Concept in Theories

Like many areas of European policy, disputes on the origin of SCO policies exist. For my analysis of the Norwegian SCO practice later on in the thesis, I find it important to clarify where the SCO notion originated, to better understand how it came to Norway. Two contesting views of its origin, the EU level versus sub regional level (Hunt, 2014) will be discussed from a theoretical perspective. Theories can help us understand the changing character of different phenomenon in the world. Applying theory to a set of empirical data contributes to a wider understanding of the issue at hand and helps draw far reaching lines (Rosamond, 2000). The use of theory may give a clearer understanding of the origins of the SCO concept. However, a single theory can rarely cover all the aspects of an issue, which is why I chose to test several theories in the subchapters that follow. In this subchapter, the concept of Europeanization will provide theoretical framework for the discussion.

Europeanization has not been characterized as theory, rather a concept or a process of domestic change in relation to the development of the EU policies and/or institutions (source). The following two definitions of Europeanization illustrate the differences in interpretation of the Europeanization process. Tanja A. Börzel & Thomas Risse describe Europeanization as:

‘Emergence and the development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem solving that formalizes interactions among the actors, and of policy networks specializing in the creation of authoritative European rules’ (Börzel & Risse, 2009).

Professor Claudio Radaelli, on the other hand, argues:

'Europeanization consists of processes of a) construction, b) diffuse on and c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures and public policies' (Radaelli, 2004).

The distinction between the two definitions lies firstly in the origin of the Europeanization process. While both authors acknowledge the existence of the two approaches, Risse explores Europeanization from the 'top-down' while Radaelli describes Europeanization as a 'bottom-up' process.

The 'top-down' approach recognizes domestic effects resulting from EU policy making and institutions, which in turn put pressure on national actors to adapt. For such 'adaptational pressure' (Börzel & Risse, 2009) to appear in the first place 'top-down' approaches recognize that policy and/or institutional 'misfit' between the EU and the domestic level must exist. The more 'misfit' there is between the two levels of governance, the greater the 'adaptational pressure' from the EU (Börzel & Risse, 2009). In other words, if a country's policy was initially corresponding to that of the EU, thus 'fitting', there would not be any such pressure to adapt. The policy misfit would typically occur over differences in rules, norms, policy goals, regulatory standards and techniques for adopting policy goals, to name a few. At the same time, the institutional 'misfit' is less direct as the policy 'misfit' and could be understood as granting of powers to the different actors. From the onset of the Economic and Monetary Union (EMU) in 1992, for example, Member States had to provide independent central banks. Germany complied with this condition and had thus higher degree of 'fit' than France with its state-controlled bank. Accordingly, the 'misfit' in France resulted in high 'adaptational pressure' in order to become a part of the EMU (Vale, 2011).

A 'bottom-up' approach focuses on the domestic, rather than the EU level, as the 'top-down' approach does. It is concerned with how the domestic policies are reflected at the EU level in the event of, for example, national ministers trying to pursue adaptation of their domestic policies in the EU. The reason for such behavior is that it will make it easier for the Member State to implement EU legislation if it is already based on the national policy. This process has also been referred to as 'uploading' and 'downloading' (Radaelli, 2004). Member states

try to ‘upload’ their national policies to the EU level in order to then ease the pressure to adapt when the time comes to ‘download’ these policies from the EU. Moreover, success in uploading national preferences to the EU level will consequently minimize the domestic implementation costs. However, the ability to upload will depend on the capacity of the national executive to participate at the EU level (Bache, 2005).

Upon applying the concept of Europeanization to the contesting views on the origin of the SCO notion, it could, on the one hand, be argued that the pressure to implement restrictive asylum procedures, such as SCO, stems from the EU. According to ‘top-down’ approach, it could be argued that national policy is often ‘based on formulae established at the European level’ (Stevens, 2004). The so-called London Resolutions of 1992 and the Asylum Procedures Directive of 2005, to which we shall return later, introduced the SCO notion in the EU. As the negotiations of SCO at the EU level took place in the beginning of 2000, it indirectly affected both old and new Member States. It could be said that the beginning of the negotiations itself created certain pressure on Member States to adopt. This can be attributed to two reasons. Firstly, the wish to bring asylum laws into line with European regulations was strong. Especially future Member States considered it essential for the accession. Secondly, it could be said that topics discussed at the EU level were perceived as belonging to every national system connected to the EU, thus any ‘misfit’ of national policy to that of the EU had to be tackled (Engelmann, 2014). Thus, when the SCO concept was formalized in the London Resolutions and was followed by the negotiations prior to the Asylum Procedures Directive, Member States felt the ‘adaptational pressure’ from the EU and introduced SCO into their national asylum practices. Moreover, by its very nature, the EU project targets regional integration which in turn provides channels for policy harmonization across Member States (Mårtenson & McCarthy, 1998). This could explain why most of the EU Member States employ the SCO policy today.

On the other hand, however, such assumptions are undermined by arguments that give more weight to the interplay between domestic, sub regional and regional levels (Hunt, 2014) or what can also be referred to as ‘bottom-up’ approach. In fact, it is not until Amsterdam Treaty in 1999 that the EU acquired competences in the asylum policy, as will be explained below. Prior to the treaty amendments during the 1990s, asylum was strictly a national matter of sovereignty that Member States guarded with their core (Engelmann, 2014). In doing so,

states performed as rational actors seeking to control and restrict asylum policy. Most importantly, the first implementation of the ‘safe third country’ policy occurred as early as 1986 in Denmark (Hunt, 2014), while the first application of the SCO principle can be traced back to 1990 in Switzerland and Belgium. Also, Austria, Finland, Germany, the Netherlands and Luxembourg introduced the SCO notion before the London Resolutions were adopted. Moreover, the majority of remaining Member States followed long before discussions at EU level picked up speed (Mårtenson & McCarthy, 1998).

These two contesting views on the origins of the SCO concept have shed some light on the introductory stage of SCO policies in Europe. I argued that despite the negotiations over the SCO principle at EU level, its origins and the foundation has previously been established by the domestic legislature. Then, if SCO originated at the national level, how did the EU obtain the power to incorporate the SCO notion in its hard law?

3. 1 Introduction of Safe Country of Origin in the European Union

From 2005 SCO was incorporated into EU hard law in the Asylum Procedures Directive, in spite of existing at the national level for more than a decade. How this has come about will be discussed in this subchapter. For this, widening of the scope is required, from a narrow SCO focus to the asylum field as a whole and how the EU expanded its competences. A lot of research exists on the European integration process, including theoretical approaches that explain why integration takes place. This subchapter will, therefore, test intergovernmentalist theory, but also the previously mentioned concept of Europeanization. It will be argued that due to rising number of asylum petitions that coexisted with the introduction of a ‘borderless Europe’ during 1980s, Member States benefited from cooperation at EU level to deal with asylum applications that now were a matter of collective responsibility. At the same time, seeing as the EU did not gain any decision-making power in justice and home affairs until the Amsterdam Treaty in 1999, I will argue that Member States deliberately used European arena to ‘upload’ preferential national policies and practices, such as SCO, which is how it became a EU asylum legislation.

Intergovernmentalism is one of the grand theories of European integration. From intergovernmental perspective it is assumed that the nation state, rather than individuals or institutions, is the main actor performing in accordance with its interests and preferences. Intergovernmentalists assign most weight to the negotiation and bargaining between states. Simon Bulmer claims that basically the bargaining occurs from the 'bottom up'. This entails that the states act according to domestic preferences and strive to achieve their goals thereafter (Rosamond, 2000). In addition, intergovernmentalism differentiates between 'high' and 'low' politics with which it intends to explain the likeliness of integration. While national states consider 'high politics' as they might jeopardize national interests, fields of 'low politics', such as economy, are open to cooperation (Rosamond, 2000).

Upon applying intergovernmentalist approach to the fact that cooperation in justice and home affairs has been institutionalized in the EU, one should look at the preferences of the Member States and how the situation changed. The idea of a common approach to immigration and asylum among Member States of the European Union (EU) has been in the air for quite some time (Staffans, 2012). The development has been gradual and at times slow, but the main shift from intergovernmental towards supranational decision-making at EU level has taken place.

Firstly, it has to be noted that Member States regarded asylum policy to be of specific relevance and importance to, for example, public security. They were, therefore, reluctant to share or to hand over some of these competences to the supranational or EU level. This is what intergovernmentalists refer to as 'high politics'. In fact, the Member States' sovereignty in justice and home matters was not curtailed by the European Economic Community (EEC). As the predecessor to the EU, the EEC was created by the Treaty of Rome in 1957 with the main aim to integrate participating European states economically, leaving policy areas such as migration and asylum in the hands of the national governments (Europa, 2010).

Nevertheless, intergovernmentalists argue that cooperation in 'high politics' is possible whenever states gain from it. Furthermore, intergovernmentalists claim that negotiation and bargaining is important for states, and is often in a 'bottom-up' approach to guard national interests. The Trevi Group- an intergovernmental network of national officials is perhaps one of the first examples of cooperation in matters relating to justice and home affairs in the EU. As early as 1975, the Ministers for Home Affairs met on an ad hoc basis to discuss the issues

of terrorism, police cooperation, immigration and asylum in the European Community (EC), then consisting of twelve Member States (Europa, n.d.). The access to the discussions was, however, limited to national ministers, surpassing the European institutions all together (Bunyan, 1993).

In 1992, under the Maastricht Treaty, the activity of the Trevi Group was formalized under the auspices of the EU in the so-called third pillar of the Treaty. While the community method was used in the policy matter of the first pillar, such as trade policy, involving all the EU institutions, the second and the third pillar were based on an intergovernmental basis. Interior Ministers from Member States were thus able to meet as the Council of Ministers where the negotiations were characterized by intergovernmental bargaining and non-binding decisions (Hunt, 2014). In 1992 the negotiations resulted in the London Resolutions that conveyed a message of openness towards harmonization of asylum procedures and possibility of accelerating process for a distinctive group of claimants. This was the first occasion where the SCO notion was discussed at EU level and the criteria for safety assessment of a country were put into place (Engelmann, 2014).

Hunt claims that the Danish language of safe countries and ‘manifestly unfounded’ applications could be found in the London Resolutions. He further stressed that SCO was initially appreciated at the sub-regional level and that the value of the SCO notion continued to grow in the minds of concerned policy makers. The nonbinding resolutions can, according to Hunt, demonstrate ‘the way safe country practices, developed first in one country, soon spread across the continent’ (2014). Furthermore, Costello argues that Member States were able ‘to use the guise of European cooperation to evade political and justice constraints’ and that the intergovernmental cooperative was able to justify the application of safe country practices as necessary to promote a ‘harmonized approach to applications from countries which give rise to a high proportion of clearly unfounded applications’ (Council Resolution, 1992).

In order to explain the sudden leap in justice and home affairs cooperation, one ought to consider the changes during the 1980s. While during most of the cold war period Member States were met with scarce influx of people, mostly from Eastern Europe, fleeing persecution

from the communist regimes, they were granted permanent political asylum by the individual Member State (Vevstad, 2006). During the 1980s, however, the situation worsened as the Soviet Union was approaching its collapse. One of the consequences was that the number of petitions for asylum to Member States grew rapidly, further enhanced by the new arrivals from the South and most importantly a number of conflicts in the former Yugoslavia in 1990s (BBC, 2011).

The rising number of asylum seekers was without a doubt a central reason for the national governments to transfer the issue of asylum onto the European level in an attempt to achieve tighter cooperation and coordination of national policies to be able to collectively share the burden of refugees. At the same time, it could be argued that conclusion of the Schengen Agreement in 1985 and the Single European Act (SEA) in 1986, played a crucial role in this development. While the Schengen Agreement marked the beginning of a borderless Europe, joining most of the old Member States with the non-EU members Iceland, Liechtenstein, Norway and Switzerland, the SEA was set out to create a single European market and to boost trade between Member States. The main goal guiding these agreements was to strengthen European economy on a global scale, especially in relation to the strong economies of the USA and Japan (Colombo, 2012). Besides working towards the main aim, these agreements also had an impact on other areas, such as asylum. The SEA introduced a new article 8a in which the free movement of persons became one of the main constituent elements of the single market, thus falling under the jurisprudence of the union (Europa, n.d). Asylum seekers inevitably became a matter of collective responsibility as the territory under common control expanded. From this point on Member States considered cooperation beneficial lifted certain aspects of asylum policy on to the common arena, the EU (Vevstad, 2006, 61).

In 1990 Member States agreed on the Dublin Convention that came into force in 1997. It superseded the seventh Schengen chapter and spelled out the rules for allocation of responsibility for examining an asylum application to avoid what was often referred to as ‘asylum shopping’ or ‘one-stop-shop’ and contribute to ‘burden sharing’ among states. The underlying principle was the consideration of the individual petition in one of the Member States, preferably the one of first entry to prevent the same applicant from traveling on and filing similar applications in other EU countries (Costello, 2014). Based on the assumption that the same treatment will be given no matter which Member State an asylum seeker chooses to lodge a claim, it also presupposed that all EU Member States comply with certain

procedural standards for protection in order to avoid ‘arbitrary differences’ (Vedsted-Hansen, 2012). Norway and Iceland, too, sought in 1999 association with the Dublin Convention and concluded an agreement with the EU in 2001 (L93/40, 2001).

It was not until the Amsterdam Treaty in 1999 that justice and home affairs appeared in the first pillar.

Gradually, by coming into force of the Amsterdam Treaty in 1999, the Nice Treaty in 2002 and the Lisbon Treaty in 2009, the decision-making process in asylum matters moved from intergovernmental to supranational. This entailed that the national governments were no longer solely in charge of the negotiation process concerning asylum legislation in the EU, providing more decision-making powers to the EU institutions besides the Council: the European Commission, the European Parliament and the European Court of Justice (ECJ).

This subchapter discussed how asylum policy became one of the competences of the EU. By means of intergovernmentalism, it was argued that Member States, considering immigration and asylum matters- ‘high politics’, were reluctant to share decision-making power with the supranational level. Nevertheless, cooperation at EU level was established due to rising number of asylum applications in a ‘borderless Europe’. The negotiations were carried out in an intergovernmental manner until the Treaty of Amsterdam in 1999, meaning that Member States practically speaking remained in control of the decision-making process and operated with non-binding decisions. This, it was argued, enabled Member States to ‘upload’ SCO notion onto European level and justify its application as necessary to promote harmonization. It was also shown that the EU acquired more decision-making power from 1999. The next subchapter will, therefore, continue to analyze the changes after 1999.

4.0 Common European Asylum System: ‘asylum must not be a lottery’

The development in the asylum field of the EU picked up speed after 1999. This subchapter will follow this development and focus on the prolonged negotiation process for new procedural rules in the EU. It will provide a general overview of SCO in different Member States and discuss why diversity in SCO practices exists in spite of the EU’s goal to harmonize procedures in Europe.

The Amsterdam Treaty introduced a new Article 63 that required full assumption of supranational competence over asylum policy within a five year period. It also provided a binding agreement that Member States agreed to consider each other and from 2002 also accession countries to the EU as safe countries of origin (See the Treaty). These were few of the first steps towards a Common European Asylum System (CEAS), on the basis of that:

“EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar” (Commission, 2014).

Procedural harmonization was thus one of the main goals in EUs asylum policy through CEAS. It was envisioned to be completed by 2012 in three phases often referred to as Tampere (1999), Hague (2004) and Stockholm (2009). The tools of CEAS were a set of rules agreed in the EU, such as the Asylum Procedures Directive, Reception Conditions Directive, Qualification Directive, Dublin Regulation and Eurodac Regulation. Regrettably, recent research shows that the goal of CEAS has not been reached, though more than fifteen years have already passed (Commission, 2014). In fact, differences between Member States are great and procedural harmonization is only at the beginning stage. Consider, for instance, the recognition rates for Syrian nationals that are at 51 percent in Italy, 60 percent in Greece and 99 percent in Germany. This is only one example that shows how the uniformity goal of CEAS is not met. It illustrates that a Syrian applicant would have better chances for protection in Germany than Italy (AIDA, 2015).

The SCO rules in the EU provided by the Asylum Procedures Directive that came into force in 2005. The scope of this chapter is therefore limited to the APD with special focus on the Articles concerning SCO. Scholars have argued for both diverging and converging tendencies amongst national SCO practices. I will provide a brief overview of how Member States have implemented the SCO rules from the APD 2005 at the end of this chapter. Firstly, however, an attempt will be made to explain why difference in SCO practices persists and why convergence is possible by providing further theoretical framework of several mechanisms that scholars used in the discussion of SCO, e. g. ‘copycat game’, ‘pull-factors’-theory and ‘ratio’.

4. 1 Divergence vs. Convergence of SCO Practices from a Theoretical Perspective

In chapter three I discussed the reasons behind slow development of asylum policy in the EU. It was argued that Member States, though introducing cooperation onto EU level, kept it strictly intergovernmental with non-binding decisions. This could be said to have been the reason for procedural diversity to prevail over harmonization. Member States had the ability to create their own national SCO practices as it fitted them, due to the fact that only minimum standards were required. In fact, the lack of agreement in the Council under the negotiations of Directive 2005/85/EC or Asylum Procedures Directive (APD), suggested that Member States were not enthusiastic about the proposed amendments. Some noted that Member States wished to ‘water-down’ the key provisions, justifying it by the need for more procedural efficiency (ECRE, 2011).

Interestingly, however, scholars have argued that in the areas concerning domestic asylum systems SCO policies have notably shown converging trends across Member States, albeit with such negative connotation as ‘procedural race to the bottom’ (Engelmann, 2014). Initially, on proposal from the Commission, the Council agreed in 2003 that Member States would be required to apply the SCO principle to a common list of countries deemed ‘safe’ (Art.29, APD, 2005). Besides the fact that Member States could not agree on a common list of ‘safe’ countries, some argued that the Council exceeded its competence of setting ‘minimum standards on procedures’. It made SCO mandatory as the result of Article 31(2) APD, stating

that claims from nationals of countries on the common list ‘shall’ be considered unfounded. As some Member States did not operate with the SCO procedures prior to the directive, it could be argued that ‘adaptational pressure’ was created, forcing Member States to lower their standards of protection in order to conform to EU law (Hunt, 2014). Nonetheless, Article 29 was in 2008 annulled by EU Court of Justice judgment. The provisions on SCO rules in the APD were thus applicable only to national governments choosing to employ SCO in their national lists (Hunt, 2014). The converging tendencies are thus better explained by the theory of ‘copycat game’.

4.1.1 ‘The Copycat Game’

In her research on SCO, Claudia Engelmann suggested that the ‘copycat game’ presented a more ‘convincing explanation for the spread of SCO policies across Europe’ than EU developments (Engelmann, 2014). This was also one of the theoretical tools she used to explain convergence. The same concept has been referred to as ‘imposition mechanism’, ‘lesson-drawing’ or horizontal ‘policy transfer’ (Engelmann, 2014). To find out whether the ‘copycat game’-concept holds up, Engelmann examined patterns in the existence of the SCO notion in domestic asylum law. She discovered that by 2006 almost all Member States had introduced ‘the possibility of designating countries as safe in their national asylum law’. While in 1991 only five Member States had SCO policies, in 2013 only four were left without it (Spain, Greece, Italy, Sweden). Moreover, she analyzed the content of the SCO list in several European countries to see whether one country’s designation to the ‘safe’ list is followed by similar designation in another country (Engelmann, 2014). She confirmed her theory by several examples. The Netherlands, for instance, declared Ghana and Senegal ‘safe’ only two years after the German government had put them on the SCO list. Engelmann concluded that SCO policies adopted at the domestic level ‘are becoming increasingly similar across EU Member States, especially with regards to certain regions (the Western Balkans and West Afrika)’ (Engelmann, 2014). If so, why do Member States engage in the ‘copycat game’?

4.1.2 'The Weakest Link'

Mårtenson and McCarthy (1998) have argued that Member States of the EU copy each other's lists of safe countries to avoid being perceived as the 'weakest link' in the asylum field. The ultimate goal of SCO is to speed up first instance determination procedures and to reduce the number of asylum applications from a specific country of origin (Hunt, 2014). Following this logic, governments believe that stricter national policies will result in asylum seekers choosing a different destination. This is often referred to as 'pull-factors'-theory that stresses the fact that asylum seekers act as 'rational law consumers' who aim to find the most generous asylum policy available (Hunt, 2014). Hunt refers to SCO as 'psychological deterrent' and claims that it discourages asylum seekers from petitioning for asylum rather than providing clear procedural gains to the Member States. This entails that by employing SCO policy a state sends out a message to individuals from certain countries that their claim may be considered unfounded in addition to being processed in an accelerated manner, which in turn is assumed to result in the same aim, namely to reduce the number of claims (Hunt, 2014). Engelmann argued that if the copying is the underlying mechanism in the SCO practice, 'it would lead to a race to the bottom, since no country wants to be the weakest point of entry: any SCO designation in one country would trigger similar policy changes in other countries' (2014).

Nevertheless, according to studies conducted between 1998 and 2004, very little evidence exists in support of this theory (Zetter, Griffiths, Ferretti & Pearl, 2003). Moreover, whereas the number of asylum application differs from year to year, the studies show little correlation of these movements to restrictive practice in a host state. Empirical studies conducted in Sweden, for instance, concluded that there was a 'muted relationship between policy and impacts' (Zetter, Griffiths, Ferretti & Pearl, 2003), meaning that stricter SCO policies rarely result in fewer claims for protection. Costello argues that although considerable amount of evidence exist to suggest that SCO practices fail to provide the 'psychological deterrent', Member States continue 'manipulating' the asylum conditions in order to deter and prevent further arrivals (Costello, 2005), and to 'facilitate removals in as many instances as possible (Hunt, 2014).

Engelmann discussed another mechanism that, independently of the country of origin, plays an important role when designating 'safe' country, namely 'ratio' (2014). Previously, it was mentioned that one of the first criteria in the assessment of 'safeness' laid by the London Resolutions, was- 'previous numbers of refugees and recognition rates' that will hereunder be explained.

4.1.3 'Ratio'

Engelmann claimed that 'ratio' played a crucial role for national authorities in many European states under the consideration of taking SCO policies into use. The idea of this concept was to compare the number of asylum seekers coming from a certain country of origin to the actual acceptance rate in the host country, meaning how many applicants have been granted protection relative to the total number of applicants. For instance, the number of Serbian claimants receiving protection across Europe has in general been very low in the beginning of this century, but varied from 5 235 in 2009 to 17 715 in 2010. The sudden jump can be explained by the visa liberalization agreement between the EU and the Western Balkans in 2010. Nevertheless, as the acceptance rate showed consistency, namely remained very low, many states decided to designate Serbia to the 'safe' list in order to accelerate the assessment procedure for this group of asylum seekers (Engelmann, 2014).

Even prior to the London Resolutions, 'ratio' was applied at the national level to determine which countries can be considered 'safe'. Belgium and Switzerland were in 1990 the first to start listing countries as 'safe' referring to the presumption that asylum applications from nationals of these countries were 'unfounded'. Indeed, countries on these lists did not reflect an assessment of 'safe' as such, but rather referred to countries with generally low asylum acceptance rates (Mårtenson & McCarthy, 1998). This is an important finding, proving once again that the SCO policy was uploaded to European level from national. I will return to the discussion of 'ratio' and test this assumption in the Norwegian practice of SCO.

4.2 Amendments in the Recast Asylum Procedures Directive

In 2009, the European Commission proposed to recast the Asylum Procedure Directive on minimum standards on procedures in Member States for granting and withdrawing international protection. The recast process was long-lasting and strongly disputed amongst Member States, human rights groups and EU institutions (Staffans, 2012). This subchapter will analyze the amendments made to the Articles concerning SCO in the recast APD and briefly discuss how these amendments responded to concerns voiced by human rights groups about the SCO notion.

In 2013, a recast of the APD was signed, moving from the objective of ‘minimum standards’ towards ‘common standards’. In an interview with an official, representing the office of Member of the European Parliament (MEP) Sylvia Guillaume, the position of the European Parliament (EP) was described. According to the representative of MEP Guillaume, the EP proposed a ‘fundamental revision’ by deleting all provisions relating to the designation of national safe country lists, stressing that this was ‘absolutely vital, so as to provide an accessible, fair and effective procedure, as much in the interest of asylum seekers as in those of the Member States’ (Representative of the office of MEP Guillaume 2015). The idea of scrapping all national lists of safe countries in an attempt to create a common list for all Member States, was not a vision shared by other institutions. EU Home Affairs Commissioner Cecilia Malmström doubted early on that these amendments would be accepted by the Council (Commission, 2014). When the recast proposal was finished in 2011, it did not reflect the most ambitious plans by the EP, but kept national SCO lists untouched. At the same time, some changes were implemented that were welcomed by human rights groups.

Firstly, the annulment of Article 29 on a common list of safe countries of origin withstands, while recast article 37, similarly to Article 30 APD, maintains the Member States’ right to ‘retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin (...)’ (APD, 2013). What seems to be a substantial change in the APD of 2013 is the removal of the derogation clauses, which allowed Member States to designate SCOs on the lesser criteria than Annex II. Moreover, partial or group specific SCO designation has also been removed. Instead, a duty to ‘ensure a regular review’

of the situation in countries on the SCO lists and to notify the Commission of any such designation, has been imposed (APD, 2013). While this revision fails to provide mechanisms for tackling rapidly changing condition in a country of origin, it provides some consistency of SCO application (Hunt, 2014).

Another substantial change was the removal of Article 31(2), which required Member States to consider all SCO applications unfounded. In so doing, it responded to the criticism that the APD lowered national protection standards, what previously was discussed as ‘as procedural race to the bottom’. In fact, it could be said that recast Article 37 (1) was another response by the Commission to the criticism. It enables Member States to adopt SCO lists, but does not make it an obligation (Hunt, 2014).

An important improvement towards a fair asylum procedure is the guarantee of a personal interview to SCO applicants in recast Article 14. Previous Article 12 enabled states to omit the personal interview, taking away the most rudimentary opportunity to rebut the presumption of safety of an applicant’s country of origin (Hunt, 2014).

Lastly, recast Article 46 on the right to an effective remedy amends Article 39. It provides that appeals in asylum determination procedures will have ‘suspensive effect’, which means that whenever an applicant decides to appeal, he or she will be given the time until the outcome of the appeal is announced. Article 46 (6) further stipulates that, in case national legislation does not include ‘suspensive effect’, ‘a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory (...)’ (APD, 2013).

Amendment that did not answer the concerns of human rights groups was Article 23 (4) provisions on accelerated procedures, amended in recast Article 31 (8). The power of states to accelerate procedures under the SCO concept, however, has been maintained. Also recast Article 32 (2) retained the Member States’ ability to reject an application as ‘manifestly unfounded’, as long as the definition existed in the national legislation (APD, 2013). Human rights groups have expressed their concerns that these measures not only encouraged divergent practices across states, but also raise the risk of breaching the rights of refugees.

Clearly, the recast directive provides some essential improvements as to the safeguards of the SCO applicants. Yet, the EP and human rights groups remain concerned about the permission

to use national SCO lists, which present an obstacle to a true harmonization of procedures. The Red Cross demands both higher and more coherent standards, while UNHCR focuses on procedural guarantees (Hunt, 2014). Whether the recast APD will show successful implementation amongst Member States is too early to assess. Some say though that as long as Member States are committed to minimizing the economic burden of asylum, neither the guarantee of a personal interview nor ‘suspensive effect’ can ensure a fair asylum procedure (Hunt, 2014). The last subchapter provides an overview on the application SCO rules from Asylum Procedures Directive 2005 by the Member States.

4. 3 Implementation of SCO Rules from the APD 2005

In a report on the implementation of the original Asylum Procedures Directive across Member States, the Commission noted great diversion with respect to the provisions on accelerated procedures, safe country of origin, safe third country, personal interviews, legal assistance and access to effective remedy (Commission, 2010). A brief overview of SCO applications and accelerated procedures across Member States’ will be provided below. This is interesting for this study, firstly, because it will provide a clearer picture of the diversities in SCO practices, to which previous discussion has been devoted. Secondly, it is useful in order to put Norwegian SCO practice into more specific European perspective and give the reader an opportunity to draw lines between Member States and Norway in this matter.

Pursuant to Article 42 of the APD, the Commission reported in 2010 on the transposition and implementation of the APD in Member States. With respect to the SCO and related issues the report shows that no SCO notion has been implemented at the national level in Italy, Poland, Sweden and Belgium. At the same time, the report showed that in Sweden acceleration of manifestly unfounded cases takes place. In Ireland, certain application may be prioritized, while in Hungary and Germany no arrangements on accelerated procedures exist. The Commission also reported that the accelerated procedure ranges in time across Member States, from 48 hours in Lithuania up to three months (Commission, 2010).

The Commission further emphasized countries where SCO lists have actually been adopted: Austria, Germany, France, Luxembourg, Romania, Slovakia and the UK. However, the report stressed that SCO lists exist in national legislation in more countries (Commission, 2010).

Personal interview may be omitted if applicant comes from safe country of origin in Slovenia, Estonia and a bigger group of countries allows accelerated procedures to be conducted without offering the person the opportunity of personal interview, namely Cyprus, Estonia, France, Malta, Poland, Slovenia, the UK, Portugal and Greece (Commission, 2010).

Although the APD strives towards procedural harmonization the diverging practices suggest that a lot of discretion in the EU asylum law allows Member States to follow own practices. Procedural guarantees in SCO cases vary considerably especially with respect to the provisions on personal interview. What impact on SCO practices the recast APD 2013 and how Member States will succeed in transposing it into national asylum law, is too soon to assess. Also, the UK, Ireland and Denmark are not bound by the recast APD 2013.

5.0 The Safe Country of Origin Practice in Norway

How is the SCO concept practiced in Norway? It has remained relatively unchanged since it came into force in 2004; the accelerated procedure has had uniform application and the list of 'safe' countries has only had some countries being removed from the list, with a few being added. The analysis of the Norwegian practice of SCO in this chapter provides an in depth review of its development and implementation. It will discuss the main safeguards inherent in the SCO practice. Furthermore, it will examine the actors involved in its application and ask who has the decision-making power. Furthermore, a statistical analysis of data on claims from a particular group of countries on the 'safe' list will be provided to see whether governmental aims of SCO are met. Firstly, however, the degree of influence exercised by the EU and its Member States on Norwegian asylum policy will be examined by looking at the Schengen Agreement and the Dublin Convention. It will be argued that when Norway became a part of 'borderless Europe' it was exposed to similar issue of migration and thus inevitably was

influenced by asylum policies of the Member States. This resulted in the SCO that was copied from the Member States.

5.1 Outside and Inside: Norway's Asylum Policy in a European Perspective

The Norwegian Refugee Council (NRC) claimed in its report of 2004 that Norway is affected by the EU asylum policy, 'whether Norwegian authorities want it or not' (NRC, 2004). The NRC further stressed that Norway finds itself outside EUs asylum cooperation and Common European Asylum System. At the same time, however, there are strong bonds between the EU and Norway, which influence the Norwegian asylum practice (NRC, 2004). Minister Erna Solberg, in spite stressing Norwegian independence, also admitted that some indirect influence can be expected from the EU directives (NRC, 2004).

Gradually the Norwegian authorities' stance towards adaptation of European asylum policies has shifted from vague statements about Norway's affiliation with the EU asylum policy towards straightforward claims about its essentiality to 'a high degree' (NRK, 2010). In 2013, for example, the white paper on 'Norwegian refugee and migration policy in a European perspective' was released. It stressed the need for European cooperation and harmonization in the asylum field in order to deal with the challenges of refugees and migration. Keeping up to date with the development in the EU legislation was essential and one of the priorities for Norway, according to the white paper. Furthermore, it made clear that 'policy development in the EU will influence Norway and explained that new EU legislation will 'entail changes in the areas to which Norway is linked through the Schengen and the Dublin Cooperation' (White paper, 2013). The Schengen Agreement and the Dublin Convention will be discussed in relation to Norway. It will be argued that accession to the Schengen Area, initially guided by the fear to lose cooperation with Scandinavian neighbors, led to the Europeanization of Norwegian asylum policy, which in turn could be said to have resulted in the introduction of the SCO concept.

5.1.1 Schengen Agreement

In December 1996 Norway joined the Schengen system. As previously discussed, Schengen cooperation was established as early as 1985 by Belgium, Netherlands, Luxembourg, France and Germany. The main aim was to replace internal border checks with common external border controls together with a set of rules for issuing visas, working with asylum seekers and so on. The idea was to ease traveling between the participating states and gather common resources for combating transnational crime (Tanil, 2012).

Norway is not a member of the EU and was, therefore, not required to sign the Schengen Agreement. The agreement of the European Economic Area (EEA) that Norway, Liechtenstein and Iceland concluded with the EU in 1994, gave them access to the European single market with the four freedoms of movement of persons, goods, services and capital. The EEA thus represented the main pillar of Norwegian relations with the EU and was strongly devoted to 'low politics' or economic issues. However, when the EU integration project picked up speed in the late 1980s, early 1990s and evolved into political integration, as was discussed before, Norway was affected (NOU, 2012). Scholars of neo-functionalism attribute this development to a spillover effect, arguing that integration in one area will over time inevitably lead to integration in other areas (Haas, 1964).

Norway together with Sweden, Denmark, Finland and Iceland already had moved away from internal border controls before 1996 by setting up the Nordic Passport Union. When Sweden, Denmark and Finland joined the EU before 1996, they were also preparing to sign the Schengen Agreement that eventually would replace the Nordic Passport Union with the Schengen Area. Norway had to make fast decisions to avoid isolation from the rest of Europe. Scandinavian neighbors to Norway urged it to enter Schengen at the same time as them, which Norway did by signing the association agreement in 1996 (Tanil, 2012). In doing so, Norway implicitly yield to some of its rights in, for instance border controls and asylum, to the supranational level. Due to the fact that Norway from 1996 shared a common border with the EU, it had to adhere to a set of common rules and alter national asylum policy and practice accordingly. An example of that is the Dublin Convention.

5.1.2 Dublin Convention

When Member States established the Dublin Convention in order to put an end to ‘asylum shopping’ in Europe, Norway also wished to join. It meant that conform assessment of the needs for protection and procedural harmonization across all Member States would limit an asylum seeker’s opportunity to lodge an application in only one Member State. Norwegian authorities feared that:

‘As long as internal border controls in Europe are abandoned, Norway is, to a high degree, dependent to carry on an asylum policy that does not depart significantly from that at the EU level. Assuming that Norway would have a much more liberal asylum policy, it could result in a tremendous strain for Norway in terms of the number of applicants and increase the risk of abuse’ (Regjeringen, 2014) (own translation).

Thus, Norway bound itself voluntarily to a set of rules enshrined in the Dublin Convention (Dublin Regulations) adopted in 2003.

It could be argued that by association with the Schengen Agreement and opening of the national border to Europe, Norway became prone to accept further rules on asylum from the EU. This means that by binding itself to a certain amount of rules in the asylum field, Norway was inevitably influenced by other policies. Entering the Dublin Regulations was one of the consequences of ‘borderless Europe’. In a sort of spillover effect, new rules on asylum followed from European level and Norway often felt the need to implement these being a part of Schengen Area. For example, an advanced fingerprint database, Eurodac (European Dactyloscopy or fingerprint identification), was passed by the EU in 2000. The purpose of the Eurodac system was to assist Member States in determining the state responsible for an asylum application under the Dublin Convention. It obliged Member States to ‘promptly take the fingerprints of all fingers of every applicant for asylum of at least 14 years of age’ and to store it in the Central Unit database. Through the database Member States could access information on whether an asylum seeker has petitioned for protection in another Member State or, for instance, been apprehended by a Member State’s authorities, thus making the decision on which country was the first country of asylum and responsible for an asylum application, easier. Seeing as the Eurodac system became the cornerstone of the Dublin Regulations, Norway too had to implement it (Jones, 2014).

In addition, it could be argued that as the result of ‘borderless Europe’ and cooperation under the Dublin Agreement, Norway felt closer to its fellow European countries and sought to share expertise and practice. Therefore, when the number of asylum seekers from Eastern Europe skyrocketed during 2002-2003, Norway turned to, for example, the Netherlands and the UK to see how they were prepared to deal with the issue. The interviewees stressed that the Norwegian asylum authorities conducted research on the SCO concept in Europe and made visits to the Member States to learn how it is enforced in practice (Mrs. K. Gamre 2015, e-mail, 13 March & Mr. Bærvahr 2015, pers. comm., 2 March). In particular, the chief advisor in UDI recalled that it was the Dutch SCO practice that was copied in terms of time limits for the accelerated procedure, 48 hours (Mr. Bærvahr 2015, pers. comm., 2 March). Although the Netherlands does not operate with a ‘safe country list’, only SCO notion as such, and there is no evidence of the time limit of 48 hours (AIDA, 2015), the fact that Norwegian asylum authorities turned to Member States’ SCO practices confirms the theory of ‘copycat game’. This can also be viewed as a different version of the ‘bottom-up’ approach in Europeanization. It is as if Norway ‘uploaded’ different SCO practices from the Member States and then ‘downloaded’ a suitable version of it into national asylum practice by implementing it. The following subchapters will provide an in-depth analysis of the Norwegian practice of SCO.

5.2 The 48-Hours Procedure and the Safeguards

Similarly to other European countries, Norway employs a list of countries referred to as ‘trygge’ or ‘safe’. Much of the criticism of the SCO concept voiced by refugee and human rights organizations at European level has been associated with clear infringement of Article 3 of the 1951 Geneva Convention, which stipulates that refugees should have access to asylum procedures ‘without discrimination as to race, religion or country of origin’ (Mårtenson & McCarthy, 1998). In 1991, the UNHCR stated that it did not object to the use of SCO in principal, arguing that it:

‘does have a role in preventing or reducing backlogs and helping to identify cases for expedited treatment ... (But) where it results in serious inroads into procedural safeguards, it is to be strongly discouraged’ (UNHCR, 1991).

Does the Norwegian practice of SCO result in ‘serious inroads into procedural safeguards’ (UNHCR, 1991), in the sense that procedural safeguards are undermined by the use of SCO? According to the chief adviser in the Norwegian Directorate for Migration (UDI), a governmental body responsible for implementation of SCO, the 48-hours procedure, applicable to asylum seekers from countries on the ‘safe’ list, is not compatible to the European practice mainly due to strong presence of the safeguards (Mr. Bærvahr 2015, pers. comm., 2 March). He pointed out that every applicant, independently of the type of procedure, will, firstly, be registered as an asylum seeker by the police. Then, he or she will be provided with information by an NGO, the Norwegian Organization for Asylum Seekers (NOAS). Later, every applicant receives an individual interview under the auspices of UDI and finally has the right to appeal to the Immigration Appeals Board (UNE), in which case the necessary assistance from a lawyer will be given (Mr. Bærvahr 2015, pers. comm., 2 March).

This subchapter will discuss the procedural safeguards of the SCO practice in Norway, the so-called 48-hours procedure. Moreover, it will provide the necessary information on how the 48-hours procedure works and what it entails. In order to establish a link to the European legislation, the subchapter is further divided into smaller parts. The reason for emphasizing Article 31, 14 and 46 from the APD 2013 is that these represent central amendments to the original APD 2005, analyzed previously, and correspond to the concerns voiced by human rights groups at European level. That way, it is possible to assess how Norwegian practice answers these concerns.

5.2.1 Accelerated Procedures- Article 31(8) APD 2013

In Norway, claims for asylum by applicants from countries that are listed as safe are subject to an accelerated procedure called the 48-hours procedure. On the 1st January 2004 this procedure was put into place by the Ministry of Local Government and Modernization, at the time responsible for asylum and led by Minister Erna Solberg. Today, asylum falls under the responsibility of the Ministry of Justice and Public Security. The initiative for accelerated procedure was motivated by arrivals of numerous asylum seekers from Eastern European countries in 2002, 2003 (see graph 1 & 3), which had ‘manifestly unfounded’ applications. It refers to claims that do not qualify for protection. Minister Erna Solberg herself explained the situation leading to the setting up of the new procedure by arguing that:

‘In the past years there has been growing influx of asylum seekers to Norway who do not qualify for protection. In many cases these are people that have paid large sums of money to traffickers who promised them job opportunities and a permanent residency permit in Norway. In order to send a clear signal to these asylum seekers and traffickers, and to be able to spend the resources available on the cases with real claim for protection, the government has found these measures to be necessary’ (Regjeringen, 2004) (own translation).

What does the 48-hours procedure entail? In UDIs document or circular it is described as ‘a term for one of many procedures for evaluation of asylum claims. It is an accelerated procedure’ (UDI, 2014) (own translation). In other words, an applicant will have his or her claim assessed by the UDI within 48 hours. The chief adviser in the UDI claims that all the safeguards inherent in the normal asylum procedures are present here, the only difference being that the whole process is conducted in a much faster manner. According to the Ministry, acceleration of the application process is beneficial to the applicant in terms of shorter processing time. It allows the applicant to avoid prolongation of the uncertain situation conducive to prepare faster for either return or integration into the host society (Regjeringen, 2004).

Despite the fact that the Norwegian authorities present the 48-hours procedure as beneficial to the applicant, the fast-track element of the SCO practice in Norway has in fact been the most criticized. Immediately after coming into force, the Norwegian Bar Association, an interest group for lawyers in Norway, referred to the 48-hours procedure as ‘infringement of rights’. They claimed that the procedure was too short for an adequate evaluation and guidance from the lawyer. Mostly, however, they were concerned with the fact that the government vowed to remove legal assistance in the first instance, which has become standard practice today (Eraker, 2004). Another NGO for asylum seekers in Norway, NOAS, expressed its concerns about the 48-hours procedure. In its report from 2004, NOAS, too, highlighted the extremely short timeframe of the procedure, arguing that a ten-day procedure would be more appropriate to guarantee quality in the lawyers’ work (NOAS, 2004).

In addition, NOAS staff noted that in many cases the applicant, often accompanied by children and exhausted from a long journey, is rushed from the police registration directly to the NOAS office to receive vital information in preparation for the interview with the UDI, often scheduled for the next morning. In these cases, NOAS staff explained that the applicant

was not in the right state of mind and body to process all the information essential for presenting the claim in the best possible way to the UDI (NOAS, 2015).

We have previously seen that various national time limits for accelerated procedure exist in Europe, ranging from 48 hours to three month. In the EU, there is only one country, Lithuania, which adheres to the same time limits of 48 hours as Norway (Commission, 2010). We have also seen that the recast APD 2013 retained the accelerated procedure in spite of concerns by human rights groups.

5.2.2 Personal Interview- Article 14 APD 2013

The right to a personal interview, according to human rights groups such as ECRE (European Council on Refugees and Exiles), is an important part of a ‘fair asylum procedure’. We have previously seen that recast Article 14 of the Asylum Procedures Directive eliminated the possibility to omit the personal interview in SCO cases. This has been a great step in the European asylum law and is expected to be implemented by the Member States from July 2015 (Hunt, 2014).

In Norway, a personal interview has been an integral part of the 48-hours procedure. As noted before, the chief adviser in UDI stressed the presence of the main safeguards in the 48-hours procedure, an individual interview being one of them. Although conducted in a much faster manner and often the same day as an applicant’s registration at the police, the claimants are still entitled to a personal meeting with an official from the UDI. It gives the applicant the opportunity to amplify on his or her claim and put forward any proof of the need for protection (Mr. Bærvahr 2015, pers. comm., 2 March).

The guarantee of an individual interview by the UDI does not, however, eliminate the possibility of misconduct. NOAS, for example, voiced concerns about the fact that the individual’s country of origin plays a bigger role than the case itself and that the SCO practice thus carries “summarisk” or “en bloc” character (NOAS, 2004). Scholars have numerously addressed ‘en bloc’ decision-making. Hunt argues, for example, that the SCO concept is attractive to Member States particularly in virtue of its ability to ‘diminish the role of individual case by case assessment’ (Hunt, 2014). Others have argued that the burden of proof in SCO cases is usually reversed, which benefits the asylum authorities. This entails that the

applicant is 'presumed to have arrived from a safe country and he himself has to prove that this is not the case' (Engelmann, 2014). Individual NOAS employees have revealed that when it comes to SCO cases, they often get the feeling that even prior to the UDI interview the application is presumed to receive a negative outcome (NOAS, 2015). The fact of the matter is that the UDI officials, after receiving information about a new SCO registration from the police, often put in place the necessary steps to be able to deal with the application within 48 hours. This means, for example, that an interpreter and a lawyer are booked in advance to declare the negative decision and file the complaint immediately after the interview (NOAS, 2015). In response, the UDIs chief adviser claimed that this practice is in place merely as a routine to ensure that the case can be processed within 48 hours. He insisted that the interview provides the necessary safeguards that allow the applicant to rebut the presumed safety of his country of origin and to demonstrate the need for protection (Mr. Bærvahr 2015, pers. comm., 2 March).

5.2.3 The Right to an Affective Remedy- Article 46 APD 2013

Every asylum seeker has the right to appeal the first instance decision by the UDI. The applicant, who wishes to appeal, receives free legal help from a lawyer sponsored by the government for five hours in normal cases and three hours in SCO cases. The appeal is then processed by the Immigrant Appeals Board, UNE. Most of the claimants from safe countries have to leave the host country after the first negative decision has been announced. Within the same timeframe of 48 hours, the UDI considers the petition for deferred implementation. Such consideration takes place on demand of the applicant's lawyer during the appeal to ensure the claimant's right to remain in the country until the final decision has been made. Normally, the petition will not be granted unless UDI considers the application to fall outside the normal categorization as manifestly unfounded (UDI, 2014).

Previous chapters noted that at the EU level the recast APD removes the ability of national governments to legislate on suspensive effect in most cases, and stipulates that it should be given as a rule during appeals in asylum determination procedures. For asylum seekers this means that they will be given the right to reside on the territory of a state during the appeal. Yet, the article underlines that if national legislation does not include rules on suspensive effect, the national court or tribunal has to be given responsibility to decide. In Norway,

suspensive effect is not a rule. However, UDI does have the power to permit further residence on the territory until the final decision has been reached, although in reality these numbers are very low. The Norwegian Refugee Council stated that:

‘The right to appeal is there, but the fact that individual asylum seeker is not secured against deportation before the final decision is issued, legal safeguards could, according to the Norwegian Refugee Council, be harmed’ (NRC, 2004).

5.2.4 An Additional Safeguard- Procedure Transfer

In response to the criticism and concerns discussed above, it is necessary to mention another important safeguard inherent in the 48-hours procedure. The interviewees from both the UDI and the Ministry of Justice and Public Security underlined the possibility for each individual case to be transferred from the accelerated to the normal procedure. The officials interviewed insist that whenever any information conflicting with the conduct and presumptions of the accelerated procedure emerges, the individual case will immediately be transferred to normal time limits to ensure proper evaluation of the individual’s protection claim (Interview 1 and 2). Minister Erna Solberg also stressed this aspect of the 48-hours procedure and the SCO list, declaring that in cases where ‘the slightest doubt’ of applicant’s need for protection arises, the case will be considered under the normal procedure (Regjeringen, 2004). If the 48-hours procedure is in fact sensitive to details in each individual case, the critique of it being too fast, ‘en bloc’ or summary and without suspensive effect, no longer holds up, as the evaluation builds on individual evidence.

The safeguard of transferring cases from accelerated to normal procedure has evidently been used by the UDI on several occasions. Especially remarkable was the number of Ukrainian claims that were transferred during the course of 2014 before Ukraine was completely removed from the ‘safe’ list and the 48-hours procedure (NOAS, 2015). Another example where the additional safeguard is explicitly mentioned by the UDI is in the circular regarding asylum seekers from Albania with LGBT background (Lesbian Gay Bisexual and Transgender). These cases may qualify for transfer of procedures from accelerated to normal, although Albania is on the ‘safe’ list (UDI, 2015).

As a rule, no applicant under the 48-hours procedure can expect to be granted asylum. At the same time, the statistics show that, occasionally, asylum seekers from countries on the SCO list get refugee status or subsidiary protection in Norway. This means that the UDI utilizes the additional safeguard or procedure transfer, discussed above, and removes some SCO cases from the accelerated procedure. This in turn results in some claims being recognized.

It turned out to be impossible to obtain statistics on the number of asylum cases that have undergone the procedure transfer. It could have contributed to the investigation whether the additional safeguard truly comes to the rescue of those asylum seekers who have a substantial fear and need for protection.

5.3 Governance of the Safe List

Before we analyze what criteria Norwegian authorities use to designate country as ‘safe’, it is necessary to look at the actors involved. It has already been established that the UDI is the governmental body that is responsible for implementing the SCO list and the 48-hours procedure. Also, it was previously shown that the Ministry of Justice and Public Security is involved. This subchapter will investigate how the decision-making power is shared by the UDI and the Ministry of Justice and Public Security.

In the Commission report on the implementation of the APD 2005 by the Member States it was noted that some countries have chosen to include SCO policy into their national asylum legislation and make their lists of ‘safe’ countries available to the public, while other did not (Commission, 2010). Norway belongs to the latter group. Neither the SCO list nor the 48-hours procedure has entered national asylum legislation. Rather, Norwegian asylum authorities refer to it as one of the procedural ways of processing asylum petitions of nationals from ‘safe’ countries (UDI, 2014).

The procedure has been initiated and instructed by the Ministry of Justice and Public Security, which has tasked the UDI with the implementation. Until 2010, the UDI was by and large the sole governing body of the SCO practice. It compiled the list of ‘safe’ countries by using the country specific information on the conditions provided by the Norwegian Country of Origin Centre (Landinfo), which is a body within the Norwegian immigration authorities although

independent in its research and analysis, and other relevant reports such as those from the UNHCR. Moreover, the UDI decided which countries were added and removed from the 'safe' list. In 2010, however, an updated circular GI-22/2010 came into force. It subjected the UDI to so-called 'practice submissions' whenever significant amendments were planned in the asylum practice. From 2010, the UDI had to report all the changes and in some cases ask the Ministry of Justice and Public Security for permission to amend. The circular also emphasized that the Ministry:

'has the right to instruct UDI on the interpretation of the law and discretion (Immigration Act §76, second subsection). The purpose of the provision and this circular is to ensure a practice that is consistent with policy objectives' (Regjeringen, 2010) (own translation).

It can be argued that as the result of the updated circular, which requires the UDI to report the amendments to the Ministry prior to their application, the UDI has lost some of its power and that the Norwegian SCO practice has become more politicized. If so, the future SCO practice will to a larger extent be steered by the politicians according to the party conform views and preferences, instead of moving towards more influence from human rights organization. In order to analyze this aspect more closely the next part examines the interplay between the UDI and the Ministry in one specific SCO case- the Ukraine.

5.3.1 Rapid Change Management: Safe Country- Ukraine

On March 12th 2014, the UDI informed the Ministry about their ambitions to remove Ukraine from the list of 'safe' countries and consequently not to apply the 48-hours procedure to Ukrainian applicants for a period of time. This choice was reasoned by the deteriorating conditions in Ukraine and the UNHCRs report on it in March 2014 '*International Protection Considerations related to developments in Ukraine*' (Praksisforeleggelse UDI, 2014). In the letter, the UDI elaborated also on the economic consequences of changing procedure for all Ukrainian nationals. It argued that due to the persistently low number of applications, the financial burden would be minimal. Nonetheless, it stressed that transfer to the normal procedure would give Ukrainian asylum seekers extended rights, such as longer residence at the reception center, the right to apply for benefits from the International Organization for

Migration (IOM) for return to their home country and ordinary hearing by the Immigrant Appeals Board (UNE). The UDI wrote that they earlier had experienced reduction in the number of applications being lodged from one country as a result of that country becoming a part of the 'safe' list. The UDI expected the number of asylum seekers from the Ukraine to increase slightly, once the extension of the economic benefits to Ukrainian claimants following the procedural transfer had become known (UDI praksisforeleggelse, 2014).

According to NOAS, the UDI announced that Ukraine was removed from the 48-hours procedure on March 27th 2014. In the letter on April 9th 2014, however, the Ministry of Justice and Public Security ordered the UDI to keep Ukraine on the 'safe' list for the time being. At the same time it encouraged UDI to monitor further development of the conflict and to report to the Ministry (Ministry, 2014). Consequently, the UDI put Ukraine back on the 'safe' list, realizing that it acted without the permission of the Ministry.

On September 3rd, the UDI once again asked the Ministry to remove Ukraine from the list. This time, it presented findings from the new UNHCR report from July 2014 titled *International Protection Considerations Related to the Developments in Ukraine- Update I*. It specifically underlined an increase in the number of deaths and higher possibility of torture, and noted that armed groups were gaining power. It further stressed Russia's annexation of the Crimea and deteriorating human rights conditions. Also, the UDI leaned on the arguments in the report by the Office of the High Commissioner for Human Rights (OHCHR) - *Report on the human rights situation in Ukraine* (UDI orienteering, 2014).

The letter also informed that the majority of Ukrainian claims during the interview under the 48-hours procedure were being transferred to the normal procedure due to the severity of the conflict, thus the purpose of the accelerated procedure no longer applied (UDI orienteering, 2014). This time the Ministry answered affirmatively and Ukraine was officially removed from the 'safe' country list on October 6th (Ministry 2, 2014).

The above example shows how much power the Ministry has acquired since 2010 in regulating UDI's SCO practice. In the case of the Ukraine, the Ministry managed to postpone the removal from the 'safe' list from March to October 2014. On the basis of the fact that the UDI in both letters to the Ministry elaborated thoroughly on the economic consequences of suspending Ukraine from the 'safe' list, it could be argued that the assessment of the financial burden resulting from removing a country from the 'safe' list, plays a crucial role for the

Ministry's assessment. In April 2014, for example, it decided to keep Ukraine on the list. According to the interviewed representative from the Ministry, however, it is the conditions and the situation in the country as reported by, for instance, *Landinfo*, that are crucial in the decision over the type of procedure (Mrs. K. Gamre 2015, e-mail, 13 March). An additional explanation for why the Ministry demanded to keep Ukraine on the list until October, although both the UDI and UNHCR urged to do otherwise already in March, has not been given.

Another finding to support the assumption that prior to the updated circular the UDI had more power in the conduct of the SCO is the fact that the UDI removed Ukraine from the 48-hours procedure without awaiting the answer from the Ministry in March 2014 and had to undo it soon after. In the last letter regarding Ukraine, the Ministry commented on the UDIs wish to remain in charge of the decisions on the practice concerning SCO. The Ministry replied that it wished to be asked in cases where a country was scheduled to be removed from the 'safe' list, while in cases a country was added to the list, a briefing was sufficient (Ministry 2, 2014).

Lastly, an interesting finding from the analysis of the documents can confirm that Norway, similarly to the Member States, perceives the SCO practice to have certain qualities of the 'psychological deterrent'. It was noted above that in the first letter to the Ministry, UDI made a financial assessment. It further stressed that due to extension of the benefits inherent under the normal procedure, the result will be a slight increase in applications from Ukraine. This was explained by the fact that when Ukrainian citizens get hold of the information about the economic gains under the asylum procedure, more people would apply for asylum. Despite the fact that the 'pull-factors' theory has little empirical support, UDI in its letter writes explicitly that such previous experience of increase in applications from a country of origin which has been removed from the list, exists. In the next subchapter I will further investigate this point by examining statistics and see whether criteria put in place by Member States in the London Resolutions is applicable.

5.4 The List of Safe Countries

The 48-hours procedure is applied to asylum seekers, who come from 'safe' countries that UDI characterizes as compliant with international human rights obligations 'to an acceptable

degree'. The UDI in general considers asylum seekers from countries on SCO list as not being subject to persecution in their home country, thereby not fulfilling the criteria for protection under the Immigration Act §28 (UDI, 2014). The majority of asylum seekers from safe country of origin receive a negative decision. Nonetheless, according to the statistics, there is a number of applicants from 'safe' countries that have been granted residency permit throughout time. These are mostly subject to the Immigration Act §38, where residency permit is given on the grounds of 'strong humanitarian considerations or a particular connection with Norway' (Regjeringen, 2010).

The list of 'safe' countries in Norway today consists of 54 countries, of which 28 are the Member States of the EU, three belong to the EEA, five are candidate countries to the EU and two are potential candidates to the EU. Among the remaining 16 countries are, for example, the USA and Canada, as well as some countries in Eastern Europe and on the Balkan (see Annex 1 & 3).

It could be argued that one of the reasons for the Norwegian SCO list to be so long compared to other European countries is that, indeed, it incorporates all old and new EU Member States. It was mentioned before that in the EU the Amsterdam Treaty provided an agreement by which Member States were bound to consider each other and the accession states 'safe' from 2002, thus there were no need to enter these countries on the list. From the theoretical perspective of the 'copycat game' it could be said that Norwegian asylum authorities copied this aspect of the binding agreement by adding all Member States to the Norwegian list of 'safe' countries. Further analysis of countries on the Norwegian SCO list as compared to Member States is in this study absent due to its scope. Though, the fact that a pattern of copying countries on the list between Norway and Member States can exist, should not be ignored. An overview of countries that have been removed or added to the 'safe' list in Norway between 2004 and 2014 can be examined in the Annex 3.

The remaining part of this subchapter will analyze the statistics and interviews and test whether theoretical framework of 'ratio' can be confirmed. In addition, an attempt will be made to explain how visa- free agreements between Norway and a third country resulted in that country entering the 'safe' list.

Before discussing the data, two remarks on the scope of the dataset are necessary. Firstly, only the developments in the asylum claims from a smaller group of states from the list will

be analyzed. These are: Albania, Bosnia-Herzegovina, Macedonia, Croatia, Romania, Bulgaria and Ukraine. This group of countries provides substantial numbers of applications and variations by year, in addition to Serbia, Montenegro and Kosovo that have been omitted due to limitations in statistical data. Furthermore, these countries can be grouped in the ones that entered the ‘safe’ list in 2004 (Croatia, Romania, Bulgaria, Ukraine) and the ones that were added to the list in 2010 (Albania, Bosnia-Herzegovina, Macedonia). This will make the analysis and comparison clearer. As asylum applications from nationals of other countries on the list are very low, these will not be evaluated. Secondly, the data has been collected either from UDI or SSB (Statistics Norway). Some inconsistencies have been detected between the two sets of numbers. However, as the aim of the study is to see the general trends, smaller deviations will in this case not distort the overall picture.

5.4.1 ‘Ratio’

According to the chief advisor in UDI, there are no clear criteria for assigning of the ‘safe’ status to a country of origin. The assessment is based on a case to case evaluation using a combination of criteria (Mr. Bærvahr 2015, pers. comm., 2 March). He claimed that country specific information from *Landinfo* is an important source, but that the UDI also relies on updates from the UNHCR and the OHCHR.

Also, he pointed out that high number of applications lodged from one country of origin plays an important role when assessed in relation to low recognition rates (Mr. Bærvahr 2015, pers. comm., 2 March). Scholars refer to this phenomenon as ‘ratio’, which was introduced in detail in chapter four. It explains that when the number of applications from one country is much higher than the recognition rates, states tend to apply the SCO practice independently of the country of origin. This seems to be a common practice in many Member States, as was noted before. The table below gives an idea of ‘ratio’ and what is meant by very high and very low rates. Under ‘total’ column the number of all asylum applications received each year from a specific ‘safe’ country in Norway is provided, while the second column, under ‘accepted’, indicates the recognition rates or how many applicants received positive decision that same year. We can see that generally the recognition rates are very low for all the countries in the table, while the total amount of applications received varies from more than 800 to less than 20 for some years. For example, the total amount of 772 applications from Ukraine in 2002 is

very high, especially compared to only 7 applicants being accepted. Overall impression from the numbers provided in the table, confirms the concept of ‘ratio’, seeing as the acceptance rates are stably very low and often close to zero. Mårtenson and McCarthy argue, though, that politically, there is a need to ‘maintain the very low recognition rates from countries designated as safe to be able to retain the country on the list’ (1998). This study does not analyze this claim any further, only mentions it as it can explain why recognition rates are so low for all ‘safe’ countries over twelve years.

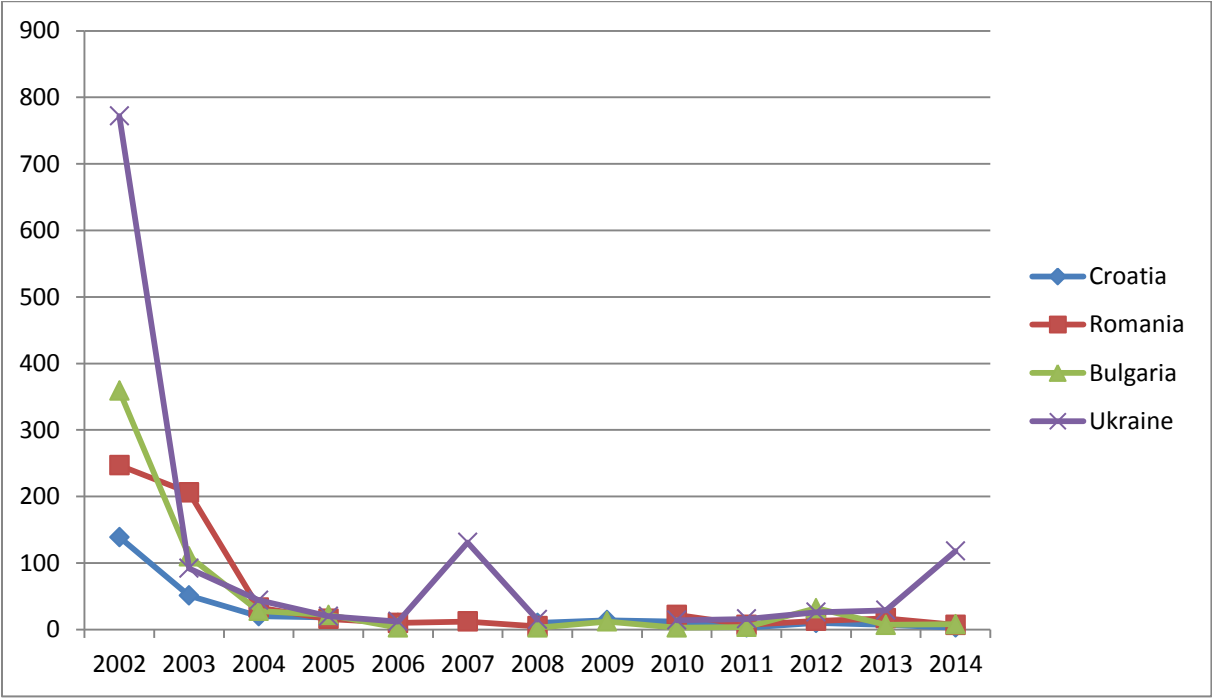
Year	Albania		Bosnia-Herzegovina		Croatia		Romania		Ukraine	
	Total	Accepted	Total	Accepted	Total	Accepted	Total	Accepted	Total	Accepted
2002	274	7	810	62	139	22	247		772	7
2003	239		657		51		206		92	
2004	113		119		20		33		44	
2005	79	7	52	2	18	2	16		20	0
2006	43	6	40	1	10	1	10		12	0
2007	31	0	18	0			12	3	131	
2008	52	2	17	1	10	0	5	0	15	0
2009	29	0	12		14			0		
2010	24	1	-	0	12	0	22	0	14	0
2011	43	0	33	0	3	0	7	1	16	1
2012	169	0	39	0	10	0	13	0	26	0
2013	181	0	51	0	7	0	17	1	29	5
2014	213	0	82	0	3	0	7	0	118	1

Table 1. Total amount of applications and recognitions rates between 2002 and 2014 for Albania, Bosnia-Herzegovina, Croatia, Romania and Ukraine (UDI).

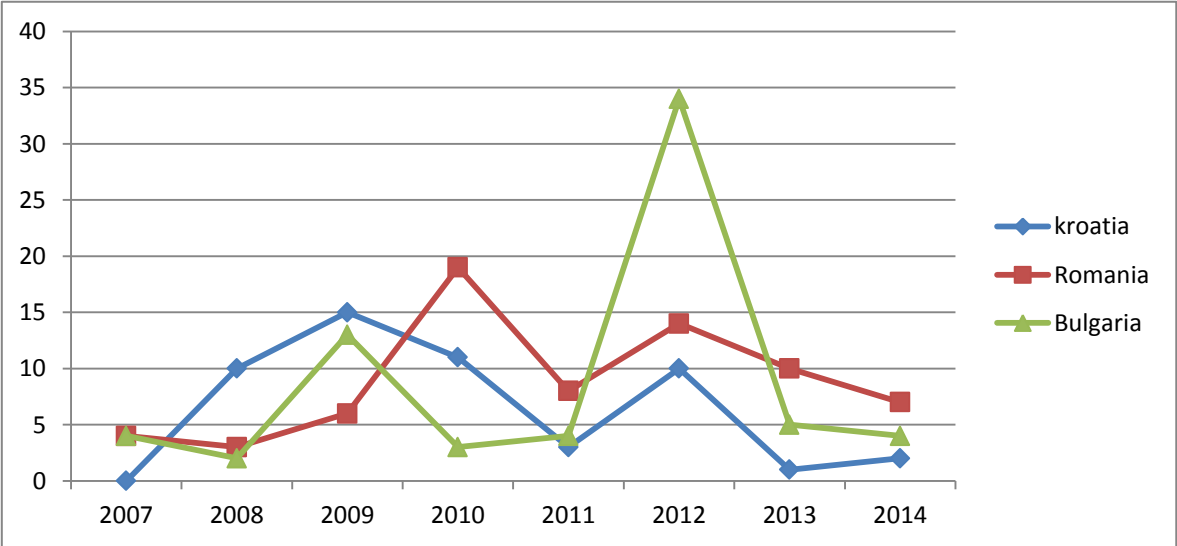
5.4.2 ‘Psychological Deterrent’

One of the aims of SCO is to reduce the number of asylum seekers with ‘manifestly unfounded’ claims. By looking at the total amount of asylum seekers from ‘safe’ countries over a period of time, I will attempt to trace the UDI’s claim that SCO results in overall reduction in the numbers of applications. At first glance, graph 1 seems to provide the necessary proof to the claim. The number of claims for protection from Croatia, Romania, Bulgaria and Ukraine skyrocketed during the years 2001 to 2003, but stayed relatively low in the years after the 48-hours procedure came into force for these countries in 2004 (see graph 1). Although, some variation existed after 2004, for example from 5 applications from Bulgaria in 2011 as opposed to 35 in 2012 (see graph 2), this variation was minimum and can

be attributed to natural flows in migration. The jump in Ukrainian applications, on the other hand, from 29 in 2013 to 118 in 2014, undermines the claim of ‘psychological deterrent’. More Ukrainian individuals applied for asylum as the result of the Ukrainian conflict, despite the fact that Ukraine was on the ‘safe’ list in Norway most of the year 2014.



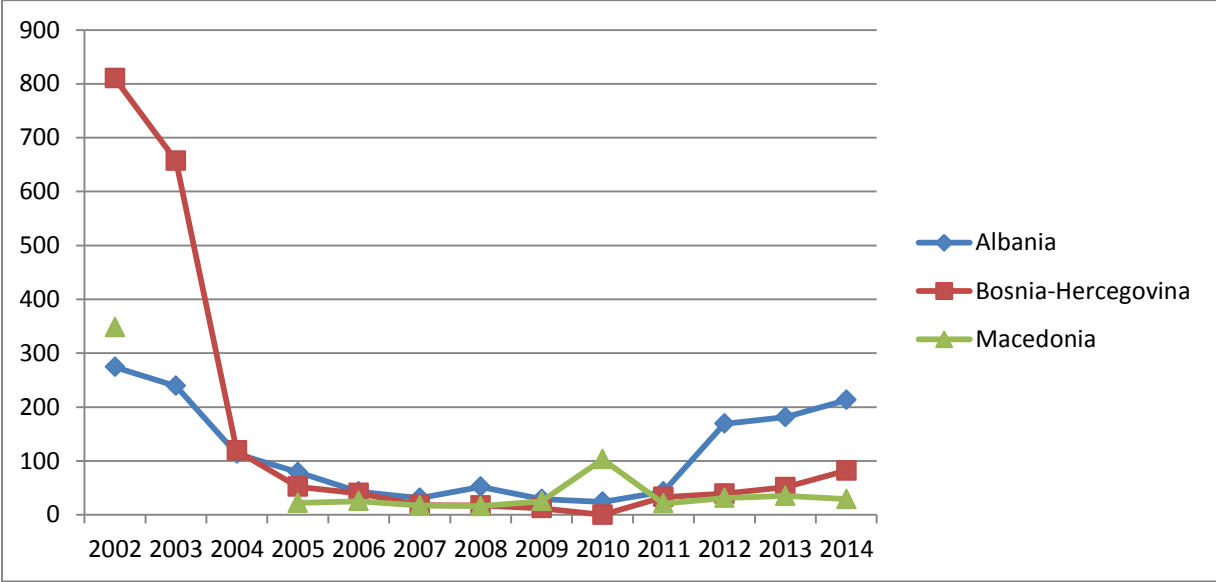
Graph 1. Total number of applications lodged in Norway by year from Croatia, Romania and Bulgaria (UDI).



Graph 2. Total number of applications lodged in Norway by year from Croatia, Romania and Bulgaria (UDI).

In addition, by looking at the numbers depicted in Graph 3 for Albania, Bosnia-Hercegovina and Macedonia, which were added to the SCO list in 2010, a slight upward slope can be seen. If one could argue that drastic reduction in the number of applications originating from the first group of countries, analyzed above, can be attributed to the SCO practices because the number remained relatively low after these countries were added to the SCO list in 2004, the argument does not hold for the results in the second group of countries. In fact, after Albania was added to the SCO list in 2010, the number of applications rose noticeably. This finding suggests that there were other reasons for the amount of claims to be reduced drastically by 2004 or for them to be so high during 2002 and 2003. Perhaps it correlated with the third enlargement of the EU by ten new Member States and consequent visa-free access to the Schengen Area, to which I will return below.

Furthermore, the reasons for Albanian asylum seekers to increase from 2011 could be many. It could be argued that the consequences of the economic crisis in 2008, forced many Albanian individuals to search for better economic conditions elsewhere in Europe. The Asylum institute could be said to have been used only as an entrance to the labor market. Another reason for the sudden increase could be the conclusion of the visa-free agreement.



Graph 3. Total number of applications lodged in Norway by year from Albania and Bosnia Hercegovina (UDI).

5.4.3 Visa-Free Access

The UDI claimed that visa-free access given to Eastern European countries to the Schengen Area contributes to higher number of arrivals. It makes it easier for individuals to travel to another European country without having to contemplate on the way of obtaining a visa. On January 1st 2002, for example, Romanian citizens obtained visa-free access to the Schengen Area. The UDI therefore prepared for higher arrivals, claiming that over 3000 bus tickets to Norway have already been sold (NOAS, 2002). Additionally, the Norwegian asylum authorities visited Romania with the aim to inform and spread information on low recognition rates of asylum seekers from Romania. They vowed to avoid ‘the same situation as in the summer, when 1000 Bulgarians returned home, poorer than they were before coming to Norway’ (NOAS, 2002) (own translation).

The table below indicates the year when countries, under the analysis of this study, obtained visa-free access to the Schengen Area compared to the year that they were added to the SCO list. It shows that UDI, guided by the experiences with Bulgaria and Romania, automatically added, amongst others, Albania, Bosnia-Herzegovina and Macedonia to the SCO list in the light of visa-free access, to make sure the situation would not repeat itself.

Safe Country of Origin	Visa-free access to the Schengen Area	Entered SCO list
Albania	December 2010	December 2010
Bosnia-Herzegovina	December 2010	December 2010
Macedonia	December 2009	March 2010
Croatia	April 2001	2004
Romania	January 2002	2004
Bulgaria	April 2001	2004
Ukraine	Visa is still required	2004

Table 1. The year of visa-free agreement and SCO list for Albania, Bosnia-Herzegovina, Macedonia, Croatia, Romania, Bulgaria and Ukraine (UDI).

The analysis in this chapter provided clarity and attempted to systemize the reasons or criteria for countries on the Norwegian SCO list. Only a smaller group of countries from the list was examined, which makes generalization for the entire list less suitable. However, it was shown that ‘ratio’ plays an important role in the designation process. This criterion is clearly borrowed from the Member States that in 1991 ‘uploaded’ it onto the EU level under the London Resolutions. Recognition rates for all the countries on the SCO list are generally very low or zero. Application rates, on the other hand, are not as crucial in the Norwegian practice

as the concept of ‘ratio’ sets them to be, because even countries with very low application rates, like Canada, are still on the list.

Furthermore, it was established that Norwegian asylum authorities put reasonable amount of weight on SCO as a ‘psychological deterrent’. It was shown that UDI entered Eastern European countries with low recognition rates on the SCO list following visa liberalization agreements. This was done to discourage them from abusing the asylum institute when their real aim was to obtain job. The data provided in this study can, nevertheless, neither proof nor disproof this claim fully. It does show, however, that in spite of a country being considered ‘safe’, asylum seekers will continue arriving and the number of applications might rise drastically as the result of the economic crisis or a political conflict like the one in Ukraine.

6.0 Assessing SCO Practice: Is it ‘Fair’ and ‘Effective’?

One of the ambitions of Common European Asylum System noted in the Tampere Conclusions by the European Council in 1999 was to develop ‘common standards for fair and efficient asylum procedure’ (source). Mårtenson and McCarthy (1998), analyzed the different SCO practices in nine Member States on the grounds of ‘fairness’ and ‘effectiveness’, while, for instance, Costello (2006) analyzed whether this commitment has been met in the APD. The analysis by Mårtenson and McCarthy will in this chapter be used as a basis to assess whether the SCO practice in Norway is ‘fair’ and ‘effective’. The assessment will conclude the analysis of the Norwegian SCO practice by answering the following questions:

- Is the Norwegian SCO practice fair?
- Is the Norwegian SCO practice effective?

According to Mårtenson and McCarthy, ‘fair’ can be understood in terms of the existing safeguards. They have investigated if the right of an asylum seeker to an individual hearing is upheld, and whether the asylum procedure is subject to public and parliamentary scrutiny. In order to establish if an asylum procedure is ‘effective’, they ask whether SCO really contributes to a more ‘expeditious asylum procedure’ and whether that is ‘conducive to good management of asylum applications’ (Mårtenson & McCarthy, 1998).

Other scholars provided similar definitions. Costello, for example, referred to 'fairness' in a general sense as impartiality and adequate hearing. 'Efficiency', on the other hand, she interpreted as 'the minimization of the costs of providing protection' by the Member States (Costello, 2006). The Tampere commitment implies that the two terms must be mutually reinforcing. By the definition, however, the two seem mutually exclusive seeing as state-centric claim for efficiency undermines the idea of fairness (Costello, 2006).

In this chapter, it will be argued that the Norwegian practice of SCO with the so-called 48-hours procedure, to a great extent meet the requirements of both 'fair' and 'effective'.

6.1 The Question of Fairness

This subchapter aims to assess 'fairness' of the Norwegian SCO practice based on Mårtenson and McCarthy's survey of nine European countries.

Firstly, the authors argue that the summary treatment of asylum seekers by citizenship, which is characteristic for the SCO concept, is unfortunate and fails to recognize minorities within a country. They claim that such categorization of asylum seekers carries the risk that genuine claims are overlooked due to 'insufficient consideration of their situation' (Mårtenson & McCarthy, 1998). In fact, there exist several minorities that could be persecuted in countries that are on the SCO list. According to Amnesty International Norway, Serbs in Croatia are, for example, not guaranteed safety after the conflicts in the former Yugoslavia. In Bulgaria and Romania, gypsies are persecuted and are subject to torture. Moreover, the Hungarian population in Romania has great problems. Also, a report from the USA shows the living conditions for gypsies in Romania. Based on this, NOAS claimed that it was wrong to address the Romanian asylum seekers as 'economic refugees' (NOAS, 2002).

In Norway, the application of the 48-hours procedure does indeed make the categorization by nationality due to the existence of the list of countries that are considered 'safe'. Thus, the danger of some minorities to be overlooked is, to a certain degree, present. Only in the case of Kosovo are ethnic minorities currently exempt from the accelerated procedure. However, as was noted in the analysis of the safeguards in the Norwegian practice of SCO, every claimant is provided with an individual interview. Before the recast APD was negotiated, a personal interview by the asylum authorities was not a requirement to the Member States. In Norway,

this safeguard has been applied since the SCO was implemented in 2004. It could thus be argued that the UDI has the necessary tool to identify such minorities and their need for protection.

Secondly, Mårtenson and McCarthy highlight that the fast-track approach presents the ‘real danger’ to an asylum seeker. They argue that the short procedure undermines an asylum seeker’s chance of success and instead generates higher refusal rates. They further claim that low recognition rates are used to justify the fact that a country is on the ‘safe’ list. Thus, the low recognition rates and not the human rights situation determine whether a country is put on the ‘safe’ list or not, according to Mårtenson and McCarthy (1998).

Previously, I discussed the time limits of the 48-hours procedure and pointed out the vast criticism that it had received. The fast-track approach in Norway is, in fact, one of the fastest in Europe. It could be argued that individual assessment suffers under such short time limits reserved for it. An asylum seeker has simply not enough time to proof his claim. Nonetheless, I have earlier argued that the additional safeguard of procedure transfer can bring remedy to this end.

6.2 The Question of Effectiveness

In the assessment of effectiveness, Mårtenson and McCarthy point to the ‘en bloc’ decision-making. It diminishes the resources spend on the individual case assessment as all the applications from nationals of countries on the ‘safe’ list are initially assumed to be ‘manifestly unfounded’.

Although, according to the interviewees, every claimant is assessed by his or her individual case, we have seen that NOAS expressed the fear that petitions from the SCO nationals are doomed to a negative outcome from the start, which the UDI justifies by the short time limits.

Goodwin-Gill has argued that the same effect, namely reduced expenses on case by case assessment, could be achieved with a reverse SCO practice (Mårtenson & McCarthy, 1998). If some countries were identified as ‘truly safe’, the same type of ‘en bloc’ or summary decision-making could be applied as in the case with the list of ‘safe’ countries, only difference being that one would avoid sending claimants to uncertain conditions. Amnesty

International in Brussels also recognized the necessity of accelerated procedures, but welcomed the idea of a reverse SCO practice as opposed to the one that exists today (Amnesty International, 2006).

Furthermore, Mårtenson and McCarthy argued that it is not the SCO in itself as a list of countries that are considered to be ‘safe’ which contributes to effectiveness, but rather when it is used in conjunction with the accelerated procedure. At the same time, they stressed what Hailbronner referred to as ‘psychological deterrent’ (Mårtenson & McCarthy, 1998). The intention of governments resorting to SCO is to lower the number of applications from specific countries. The effectiveness is, therefore, often contributed to the ‘psychological deterrent’ that discourages asylum seekers from seeking asylum in countries with SCO policy, rather than direct procedural gains.

The limitations of the accelerated procedure to 48 hours, compared to three month in some countries, might be expected to provide procedural gains for Norway. However, assessment of that requires data that was not available in this study. Nevertheless, from the findings in the document analysis, it was shown that the UDI indeed relies on the fact that keeping a country on the list will lower the number of applicants. The data in the previous chapter could not fully cover this claim.

6.3 Concluding Remarks and Further Steps

On the account of ‘fairness’ it could be said that the Norwegian practice scores high due to presence of the individual assessment and the additional safeguard when a case can be transferred from accelerated to normal procedure. At the same time, ‘fairness’ is endangered by the fact that the accelerated procedure is one of the fastest in Europe and that the decision-making can easily be likened to ‘en bloc’ decisions, where the applicant’s nationality represents the main criteria for the decision.

The aspects of SCO practice that contribute to ‘effectiveness’ are, in many ways, similar to those that undermine ‘fairness’. It is the accelerated procedure and ‘en bloc’ decision-making that strengthens the effectiveness of the SCO notion. Nevertheless, this study does not assess procedural gains as such and the data provides only some proof of the gains from SCO as ‘psychological deterrent’. At the same time, by considering the assessment of ‘fair’ and

‘effective’ together in light of the additional safeguard or ‘procedural transfer’, it could be said that the Norwegian SCO practice meets the requirements of ‘fair’ and ‘effective’ to a high degree.

In order to conclude this analysis, a set of steps further will be provided. It has become evident that the Norwegian SCO practice lacks proper public debate for several reasons. Firstly, due to the fact that SCO was not included in the national legislation, there was no ordinary hearing or discussion of it coming into force in 2004. Secondly, although the list of ‘safe’ countries is available on UDI internet site, it is difficult to find, not to mention the difficulty associated with tracing the changes in the list. It is desirable to increase transparency of this practice and, as also Mårtenson and McCarthy noted in their research, to open a proper debate on the inclusion of countries on the SCO list.

In addition, since the UDI could not provide any clear criteria for addition or removal of countries on the list, these should be established for predictability and consistency in the SCO practice. Moreover, Mårtenson and McCarthy’s suggestion that legislation should ensure that it is difficult to add a country to the list rather than suspend or remove it all together, should apply in Norway. It will prevent adding of a country against poor evidence and enable an immediate response to upheaval and rapidly changing situation in the country of origin, like the situation in Ukraine since 2014. Suspension should be automatic if there is any significant political change of which Germany’s practice of suspension is a good example (Mårtenson & McCarthy, 1998).

Today’s practice of SCO in Norway suggests the opposite. It is easy to add rather than remove a country from the ‘safe’ list. I illustrated this with the example of Ukraine and noted that the UDIs ability to act fast in case of conflict has been undermined by the Ministry of Justice and Public Security in 2010.

Lastly, the expertise of the NGOs should be utilized in SCO practice to ensure safeguards against hasty and poor decision making, as it is in Danish Refugee Council, for example (Mårtenson & McCarthy, 1998).

7.0 Conclusion

This thesis has discussed European and national developments regarding Safe Country of Origin notion with special focus on Norway. The SCO notion was put in place by national governments as a tool to deal with large influxes of asylum seekers with so-called ‘abusive’ or ‘manifestly unfounded’ claims in the beginning of the 1990s. It allowed states to consider certain countries as ‘safe’ for the purpose of asylum and deal with their claims in an accelerated procedure. The overall aim of SCO policies together with a number of related concepts, such as ‘safe third country’ and ‘super safe European country’, was to restrict access to substantive asylum procedures. The SCO policies spread relatively fast across Member States and had an early introduction onto the EU level with intergovernmental cooperation, although vast criticism on their breach with international law existed.

This study aims to contribute to the existing literature on SCO by analyzing the development of the SCO concept at the European level. At the same time it provides an in depth analysis of one of its practices at the national level that hitherto has been underresearched, namely the Norwegian practice of SCO. The theoretical perspective chosen for the analysis was, therefore, twofold, covering both the supranational and the national level.

Intergovernmentalism as one of the grand theories of the European integration process was applied to the development of the SCO notion at the European level. This in combination with relatively new concept of Europeanization. This unique theoretical combination allowed the thesis to provide a wider picture on the origins of the SCO notion and the development of EUs asylum policy as a whole. Member States were determined to retain their national SCO policies, but also acknowledged the need to adopt a common approach to avoid endless variations of SCO practices in a ‘borderless Europe’. The former concern was resolved by ‘uploading’ SCO onto the EU level, while the latter commitment did not follow cooperation. The EU Member States have largely remained in power of the SCO policy, although the EU has made a new attempt to change that in a set of rules on SCO in the Asylum Procedures Directive. These rules have to be implemented by the Member States by July 2015.

The discussion of SCO concept in Europe provided an essential backdrop to the SCO practice in Norway. An interesting finding, that not many were aware of, is that the Norwegian asylum authorities copied the concept itself and many of its aspects from the EU Member States. It could be portrayed using the terms of Europeanization, as if Norway ‘uploaded’ the different

SCO practices and then ‘downloaded’ a suitable version of it into the national asylum practice.

In the analysis of the Norwegian practice of SCO, several theoretical mechanisms were tested. The theory of the ‘copycat game’, the ‘pull-factors’-theory and the concept of ‘ratio’ together gave a broader picture to the findings from both the interviews and the statistical data. These mechanisms provided important tools for understanding how SCO was introduced in Norway, how it developed and how it works. In addition, the study emphasized visa liberalization processes as an important variable in the application of the Norwegian SCO, which other theoretical mechanisms did not cover.

Based on the analysis, I have made an assessment of ‘fairness’ and ‘effectiveness’ of the Norwegian SCO practice. It illustrated that both aspects are covered to a high degree, but that improvements can be made. Three suggestions were made for better conduct of the SCO practice in the future: more transparency, clear criteria for assessment of which countries can be considered ‘safe’ and higher degree of involvement from the NGOs with their specific expertise.

I have analyzed the SCO practice in Norway and provided an overview of its development, safeguards and effectiveness. This analysis expands the amount of information available on the SCO practice in Europe. Moreover, it sheds light on an asylum practice that has received limited attention in Norway. This study puts new focus on old practices and wishes to help Norwegian NGOs to influence this practice in the future. The Ukrainian conflict showed that the Norwegian SCO practice needs adjustments, especially to rapid changes in the ‘safe’ countries, while this study uncovered several other point that need attention.

Lastly, there has been a development and the latest update from the UDI is disturbing. It suggests that those asylum seekers that explicitly mention economic reasons for applying for protection, without giving a clear indication of other needs being present under the registration at the police, will be deprived of the right to an individual interview with the UDI. The analysis explicitly showed that an interview with the issuing authorities is the most important safeguard in the SCO practice. Even the EU directive, concerning SCO, eliminated Member States’ ability to omit personal interviews. If the Norwegian asylum authorities chose to implement this practice, it would be a huge setback. How far can the tightening of the asylum policy go before it is merely a theoretical possibility?

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Annex I

(List of 'safe' countries in Norway)

ALB Albania

ARG Argentina

AUS Australia

AUT Østerrike

BIH Bosnia-Hercegovina

BLE Belgia

BGR Bulgaria

BRB Barbados

CAN Canada

CHE Sveits

CHL Chile

CRI Costa Rica

CYP Kypros (gresk del)

CZE Tsjekkia

DEU Tyskland, forbundsrepublikken

DNK Danmark

ESP Spania

EST Estland

FIN Finland

FRA Frankrike

FRO Færøyene

GBR Storbritannia

GEO Georgia

GRC Hellas

HRV Kroatia
HUN Ungarn
IRL Irland
ISL Island
ISR Israel
ITA Italia
JPN Japan
LIE Liechtenstein
LTU Litauen
LUX Luxembourg
LVA Latvia
MKD Makedonia
MCO Monaco
MDA Moldova
MLT Malta
MNE Montenegro
MNG Mongolia
NLD Nederland
NZL New Zealand
POL Polen
PRT Portugal
ROM Romania
SRB Serbia
SVK Slovakia
SVN Slovenia
SWE Sverige
USA USA, de forente stater
VAT Vatikanstaten (Pavestolen)
XXK Kosovo (unntatt minoriteter fra Kosovo)

Annex II

(Criteria for assessment of safety in the APD 2005)

Designation of safe countries of origin for the purposes of Articles 29 and 30(1)

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2004/83/EC, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

- (a) the relevant laws and regulations of the country and the manner in which they are applied;
- (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
- (c) respect of the non-refoulement principle according to the Geneva Convention;
- (d) provision for a system of effective remedies against violations of these rights and freedoms.

Annex III

(Developments of the Norwegian safe list)

2004	2015	Removed	Added
Andorra	Albania	Andorra	Bosnia 01.12.2010
Argentina	Argentina	Falklandsøyene	Kypros
Australia	Australia	Gibraltar	Georgia 31.05.2013
Barbados	Barbados	Grønland	Makedonia 04.03.2010
Belgia	Belgia	Tsjekkoslovakia	Montenegro 04.03.2010
Bulgaria (2007)	Bosnia	Ukraina	Serbia 04.03.2010
Canada	Bulgaria		Østerrike
Chile	Canada		
Costa Rica	Chile		
Danmark	Costa Rica		
Estland	Kypros (gresk del)		
Falklandsøyene	Danmark		
Finland	Estland		
Frankrike	Finland		
Færøyene	Frankrike		
Gibraltar	Færøyene		
Grønland	Georgia		
Hellas	Hellas		
Irland	Irland		
Island	Island		
Israel	Israel		
Italia	Italia		
Japan	Japan		
Kroatia (2013)	Kroatia		
Latvia	Latvia		
Liechtenstein	Liechtenstein		
Litauen	Litauen		
Lux	Luxembourg		
Malta	Moldova		
Moldova	Makedonia		
Monaco	Malta		
Mongolia	Monaco		
Nederland	Mongolia		
New Zealand	Montenegro		

Polen	Nederland		
Portugal	New Zealand		
Romania (2007)	Polen		
Slovakia	Portugal		
Slovenia	Romania		
Spania	Serbia		
Storbritannia	Slovakia		
Sveits	Slovenia		
Sverige	Spania		
Sør-Afrika	Storbritannia		
Tsjekia	Sveits		
Tsjekkoslovakia	Sverige		
Tyskland	Sør-Afrika		
Ukraina	Tsjekia		
Ungarn	Tyskland		
USA	Ungarn		
Vatikanstaten	USA		
	Vatikanstaten		
	Østerrike		
	Kosovo (kun kosovoalbanere) (fra 02.12.13)		

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