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Between insider and outsider strategies: Exploring professionalised NGO refugee advocacy in Switzerland

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p.o. Krshina Schaf

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Le doyen
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Abstract

This study investigates advocacy strategies of professionalised non-governmental organisations in the domain of asylum. To understand the strategies of this specific type of actor, it mobilises a theoretical framework that combines a variety of perspectives and concepts from political sociology and critical migration and refugee studies. Based on expert interviews with NGO professionals, observations and documents produced and published by the organisations, the thesis analyses the strategic mobilisation of the NGOs' and their professionals' resources to influence national asylum law, policy and their implementation in Switzerland. Focusing on two case studies, it shows how two professionalised advocacy organisations engage in insider and outsider strategies within the specific political opportunity structure of the Swiss political system of direct and consensus democracy. By analysing how NGO professionals interact with different actors and the resources that they mobilise in these contexts, the study sheds light on the central role that legal expertise and the mobilisation of its instrumental and symbolic dimensions play in the organisations' advocacy strategies. By doing so, it uncovers processes of depoliticisation in which the organisations engage through the mobilisation of their professionals' legal expertise and (self-)perceived expert status. In a context in which the issue of asylum is increasingly politicised, the juridification of claims by the NGOs presents the organisations' claims as politically neutral by defining issues linked to asylum in legal terms and by presenting themselves as consensus-favouring actors. More generally, the self-perception and representation as neutral experts are closely linked to credibility concerns that guide the organisations' advocacy strategies.

In terms of insider strategies targeting decision-makers within the federal administration and consisting in direct interaction with them, the law is mobilised as an instrument to assess evidence, construct generalised causes and argue for standardisation in the asylum procedure. As research driven actors, professionalised advocacy organisations do not only rely on the legal knowledge of their employees but also on information they gather through their network of actors working on the ground, their mandates and case work. Furthermore, it is the acknowledgement of their expert status that allows them to be invited to advisory groups and to play a role as intermediaries between the authorities and other actors in the asylum field.

In terms of outsider strategies referring to the mobilisation of the public, the self-perception as legal experts and linked credibility concerns with the authorities do not only guide the timing of publicly expressed critique but also the claims made in public campaigns and the campaigning coalitions with other actors in which the NGOs engage.

The second part of the thesis then analyses the specific frames mobilised in the NGOs' public advocacy discourse. In contrast to other studies that often oppose a human rights frame with a humanitarian

frame, this study shows how in two specific frames – the vulnerability and the responsibility frames – human rights and humanitarian arguments are combined.

Key words: refugee advocacy, professionalisation, NGO, expertise, legal mobilisation, juridification, insider and outsider strategies, frames, human rights, humanitarian reasoning

Résumé

Cette étude examine les stratégies de plaidoyer des organisations non gouvernementales (ONG) professionnalisées dans le domaine de l'asile. Pour comprendre les stratégies de ce type spécifique d'acteurs, elle mobilise un cadre théorique combinant diverses perspectives et concepts issus de la sociologie politique et des études critiques sur les migrations et les réfugiés. S'appuyant sur des entretiens experts avec des professionnels d'ONG, des observations, ainsi que des documents produits et publiés par ces organisations, la thèse analyse la mobilisation stratégique des ressources des ONG et de leurs professionnels pour influencer la législation, les politiques et leur mise en œuvre en matière d'asile en Suisse.

En se concentrant sur deux études de cas, elle montre comment deux organisations de plaidoyer professionnalisées adoptent des stratégies d'*insider* et d'*outsider* au sein de la structure d'opportunité politique spécifique du système politique suisse de démocratie directe et consensuelle. En analysant comment les professionnels des ONG interagissent avec différents acteurs et mobilisent leurs ressources dans ces contextes, l'étude met en lumière le rôle central que joue l'expertise juridique, ainsi que la mobilisation de ses dimensions instrumentales et symboliques, dans les stratégies de plaidoyer des organisations. Ce faisant, elle révèle les processus de dépolitisation dans lesquels les organisations s'engagent à travers la mobilisation de l'expertise juridique de leurs professionnels et de l'(auto)perception de leur statut d'experts. Dans un contexte où la question de l'asile est de plus en plus politisée, la juridicisation des revendications par les ONG présente ces dernières comme politiquement neutres en définissant les enjeux liés à l'asile en termes juridiques et en se présentant comme des acteurs favorisant le consensus. Plus généralement, la perception et la représentation de soi en tant qu'expert·e·s neutres sont étroitement liées à des préoccupations de crédibilité qui orientent les stratégies de plaidoyer des organisations.

En ce qui concerne les stratégies d'*insider* visant les décideurs au sein de l'administration fédérale et impliquant une interaction directe avec eux, le droit est mobilisé comme un instrument permettant d'évaluer les preuves, de construire des causes généralisées et d'argumenter en faveur de la standardisation de la procédure d'asile. En tant qu'acteurs guidés par la recherche, les organisations de plaidoyer professionnalisées ne s'appuient pas seulement sur les connaissances juridiques de leurs employés, mais également sur les informations qu'elles recueillent grâce à leur réseau d'acteurs de terrain, leurs mandats et leurs travaux sur des cas concrets. Par ailleurs, c'est la reconnaissance de leur statut d'expert qui leur permet d'être invitées à des groupes consultatifs et de jouer un rôle d'intermédiaires entre les autorités et d'autres acteurs du domaine de l'asile.

En ce qui concerne les stratégies d'*outsider*, la perception de soi comme expert·e·s juridiques et les préoccupations de crédibilité associées auprès des autorités influencent non seulement le moment

choisi pour exprimer publiquement une critique, mais aussi les revendications exprimées dans les campagnes publiques et les coalitions de plaidoyer avec d'autres acteurs dans lesquelles les ONG s'engagent.

La seconde partie de la thèse analyse les *frames* spécifiques mobilisés dans le discours public de plaidoyer des ONG. Contrairement à d'autres études qui opposent souvent un *frame* des droits humains à un *frame* humanitaire, cette étude montre comment, dans deux *frames* spécifiques – le *frame* de la vulnérabilité et le *frame* de la responsabilité – les arguments des droits humains et humanitaires sont combinés.

Mots-clés : plaidoyer en faveur des réfugié-e-s, professionnalisation, ONG, expertise, mobilisation du droit, juridicisation, stratégies d'insider et d'outsider, frames, droits humains, raison humanitaire

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Table of contents

List of tables xix

List of figures xix

Table of foci xix

List of abbreviations xxi

1 Introduction 1

1.1 Situating professionalised NGO refugee advocacy in the scientific debate 5

1.2 Research questions and objectives 16

PART I THEORETICAL APPROACHES AND CONCEPTS 21

2 Approaching NGO advocacy, expertise and logics of refugee support 21

2.1 Studying professionalised NGO advocacy: at the intersection of social movement and organisational theory 22

2.1.1 A social movement perspective: contentious politics, political opportunities and modes of action 22

2.1.2 Professionalised movement organisations as mobilising structures 27

2.1.3 A neo-institutionalist field approach to organisations 32

2.1.4 Claims-making and the concept of framing 34

2.1.5 Legal mobilisations 39

2.2 The political and (de)politicisation 42

2.2.1 Attempting a definition of the political 43

2.2.2 A narrow and an extensive understanding of (de)politicisation 45

2.3 A political sociology perspective on expertise 47

2.3.1 The relationship between expertise and the political 48

2.3.2 Political functions of expertise 50

2.4 Humanitarian reasoning and human rights: analytical perspectives and operational proximity 53

2.4.1 Humanitarian reasoning 53

2.4.2 Representation of suffering and moral sentiments 57

2.4.3 Vulnerability and deservingness 60

2.4.4 Differentiating humanitarian reasoning from a human rights perspective 62

2.4.5 Operational proximity of humanitarianism and human rights 65

PART II METHODS AND DATA 67

3 Research design, data, and approach of the analysis 67

3.1 A case studies research design 67

3.2 Negotiating access 69

3.2.1 The researcher's relationship with gatekeepers and authority of knowledge production 71

3.2.2 Alternative access to the organisations 75

3.2.3 Some reflections about what negotiating access says about the organisations in their contex 76

3.3 The data: a qualitative "puzzle" 78

3.4 Research ethics: Researching experts and anonymisation 87

3.5 Some reflections on the researcher's position 89

3.5.1 Identity, proximity and distance 91

3.5.2 Keeping an outsider status 91

3.6 Approach of the analysis 92

3.6.1 The techniques: coding and complementary case analysis 93

3.6.2 The units of analysis: interactions and frames 94

PART III SWISS ASYLUM GOVERNANCE AND REFUGEE SUPPORT IN CONTEXT 97

4 A historical overview of asylum governance and the involvement of civil society organisations in Switzerland 97

4.1 Transit principle, private refugee aid and centralisation of interests during the pre-war and second world war period 101

4.2 Development of a cooperative partnership around permanent asylum and cold war refugees (1944-1970) 111

4.3 (For) the codification of practice (1973 – 1981) 121

4.4 Politicisation of asylum, AsylA revisions and tensions around asylum practice (from the 1980s onward) 124

4.5 The political opportunity structure in Switzerland: consensus and direct democracy 128

4.5.1 Federalism, "militia" parliament and increasing polarisation of political parties 129

4.5.2 Direct democracy, social movements and the politicisation of migration and asylum 135

4.5.3 Political decision-making process and state-actors in the domain of asylum 138

4.5.4 2015 – 2019: the restructuring of the asylum sector, asylum practice, Dublin transfers and reception crisis 141
4.6 Civil society actors constituting the Swiss asylum support field 160
4.6.1 Division of tasks and changing roles in the context of restructuring 164
4.6.2 The Swiss Refugee Council (SRC): professionalised and specialised umbrella organisation and (state) mandates 170
4.6.3 The Swiss section of Amnesty International (AICH): professionalised human rights (campaigning) organisation and partial specialisation in asylum 175
PART IV SELF-PERCEPTION, RESOURCES AND POLITICAL POSITIONING OF THE NGOs 181
5 Legal expertise, professionalism and (political) neutrality 181
5.1 Self-perception as experts: neutrality and impartiality 181
5.1.1 Expert status – case 1: leadership role, "bridge" and (in)dependency 182
5.1.2 Expert status – case 2: moral authority and added value of the international perspective 186
5.1.3 The character of the expertise 188
5.2 The resources: staff, competences and network 191
5.2.1 The staff: legal knowledge, communication know-how and political follow-up 191
5.2.2 Sharing expertise and experience: the importance of the network 197
5.3 A moderate political positioning 206
5.3.1 "You should never be on the edges": radical flank effect and considerations of credibility 211
5.3.2 Between cooperation and confrontation with the authorities 217
PART V ADVOCACY STRATEGIES WITHIN (POLITICAL) OPPORTUNITIES 221
6 Acting on asylum practice: legal strategies from within 221
6.1 Legal expertise for fact-based decision-making in the asylum procedure and standardisation 222
6.2 Experts inside: expertise and evidence in insider strategies 225
6.2.1 Monitoring and the construction of generalised causes 227
6.2.2 Experts in advisory groups: technicity, reworking and consensus 232
6.2.3 Providing expertise in crisis situations 234
7 Acting on the law: juridification and the search for consensus 236
7.1 The juridification of claims 236

7.2 Symbolic functions of NGOs' expertise 241
7.2.1 A substantiating function 241
7.2.2 (Opportunities for) bargaining with the authorities: a legitimating function 244
7.3 "Make sure that the screw is not turned too much": dealing with party politics and the search for consensus in parliament 248
7.3.1 Weak presence of national refugee advocacy NGOs on the legislative venue 251
7.3.2 Information provider and alliances with left-wing parliamentarians 254
7.3.3 The delicate task of convincing centre politicians 257
8 Outsider strategies: mobilisation of courts and the public 261
8.1 A judicialisation strategy 262
8.1.1 Contesting and denouncing the administration's practice 262
8.1.2 An ambivalent relationship with the judiciary 265
8.2 Temporalities and dynamics of critique 269
8.3 Public campaigning activities 270
8.4 Campaigning coalitions and power relations in the asylum support field 279
8.4.1 Coalitions and field dynamics 279
8.4.2 Political divergences and unification of the support field 281
PART VI COGNITIVE FRAMES OF REFUGEE ADVOCACY CLAIMS 285
9 Politicised and depoliticised frames and their underlying logics of justice, need and deservingness 285
9.1 Fairness and efficiency: framing the asylum procedure 287
9.1.1 "Equality of arms": legal protection for asylum seekers and fairness of the procedure 288
9.1.2 Positioning on (the necessity of) return? Efficiency of the asylum procedure 290
9.2 The vulnerability frame: realignment within legal opportunities 292
9.2.1 Vulnerability in the asylum procedure: entanglement of assistance and protection 293
9.2.2 (De)politicising Dublin practice: exceptions, judicialisation of vulnerability and humanity 296
9.2.3 The lack of legal access ways for vulnerable persons 304
9.3 The responsibility frame 310
9.3.1 Politicising the EU's exclusionary policy 311

9.3.2 Irresponsible review of provisional admissions 315
9.3.3 Capacity, control and advantages of resettlement 317
PART VII DISCUSSION AND CONCLUSIONS 321
10 Discussion: (legal) expertise, political opportunities and advocacy strategies 321
11 Conclusions 325
References 327

List of tables

Table 1 - Overview of the data corpus 80

Table 2 – Overview of important historical developments in Swiss asylum policy and legislation 99

Table 3 - Positions of major political parties on asylum and their relative political power in Parliament and the government (2015/2019) 133

Table 4 - Overview of important events and (re)actions of the SRC and AICH 2013-2019 143

Table 5 – Overview of the legal projects linked to the restructuring of the asylum sector 147

Table 6 - Votes on popular initiatives and referendums affecting the asylum domain, 2013-2019 .. 271

Table 7 - Public campaigns, petitions and open letters by AICH and the SRC, 2015 - 2019 275

List of figures

Figure 1 – The asylum procedure in Switzerland since 1st March 2019. 149

Figure 2 - Asylum applications of the most important countries, 2014 – 2019 153

Figure 3 - Dublin transfers outgoing and incoming, 2014-2019 156

Figure 4 - Civil society actors in the Swiss asylum support field 163

Figure 5 - The SRC's organisational structure and domains of activity in 2019. 174

Figure 6 - AICH's organisational structure and domains of activity in 2019. 177

Figure 7 – The triangle of professionalised NGO refugee advocacy 193

Figure 8 – Number of FAC appeals against Dublin transfers. 264

Table of foci

Focus 1 - Social movement organisations, interest groups and advocacy organisations 29

Focus 2 - International developments after the second world war 115

Focus 3 - The historical roots of the Swiss section of Amnesty International (AICH) 123

Focus 4 - Resettlement programmes 243

Focus 5 - The issue of Dublin transfers to Italy and Hungary 297

List of abbreviations

AAC	Asylum appeal commission
ACAT	Action des chrétiens pour l'abolition de la torture
AI	Amnesty international
AICH	Swiss section of Amnesty international
AIG	Foreigner and Integration Act
ALC	Asylum Law commission
ANAG	Foreigner Act
AsylA	Asylum Act
CAT	Committee against torture
CEAS	Common European Asylum System
CFM	Commission for migration questions
CIMADE	Comité inter-Mouvement Auprès Des Evacués
Cfd	Christian Peace Service
CHF	Swiss franc
CFM	Federal Commission for Migration
COI	Country of origin information
CS	Council of States
Cst.	Swiss Constitution
CVP	Christ democratic party
DETEC	Federal Department of the Environment, Transport, Energy and Communications
DDPS	Federal Department of Defence, Civil Protection and Sport
EAER	Federal Department of Economic Affairs, Education and Research
ECHR	European convention for the protection of human rights and fundamental freedoms
ECtHR	European Court of Human Rights
ECRE	European council on refugees and exiles
EPC	Extra-parliamentarian commissions
EU	European Union
FAC	Swiss Federal administrative court
FC	Federal Council
FCh	Federal Chancellery
FCR	Federal Council resolution
FD	Federal decree

FDP	Liberal party
FDFA	Federal Department of Foreign Affairs
FDHA	Federal Department of Home Affairs
FFD	Federal finances department
FIZ	Fachstelle Frauenhandel und Frauenmigration (Specialist centre for trafficking of women and women's migration)
FJPD	Federal justice and police department
FMPA	Agreement on the Free Movement of Persons
FOM	Federal Office of Migration
FRONTEX	European border and coast guard agency
GC	Geneva Convention
GISTI for migrants)	Groupe d'information et de soutien des immigré·es (information and support group
GLP	Green-liberal Party
GPS	Green Party Switzerland
HEKS	Swiss ecclesiastical help committee for evangelic refugees
ICCP	International covenant on civil and political rights
ICI	Immigrant council of Ireland
IOM	International Organisation for Migration
IRO	International refugee organization
ISD	Internationaler Sozialdienst Schweiz (Internatoinal Social Service Switzerland)
LGBTI/LGBTQI	lesbian, gay, bisexual, transgender, queer, intersex
MERS	Menschenrechte Schweiz (Human Rights Switzerland)
MRCI	Migrants Rights Center of Ireland
MP	Member of Parliament
NA	National Action
NC	National Council
NCPT	National commission for the prevention of torture
NES	Non-entry into substance
NESD	Non-entry into substance decision
NGO	Non-governmental organisation
ODAE	Observatoire romand du droit d'asile et des étrangers (Romandie Observatory of asylum and immigration law)
RBS	Berner Rechtsberatungsstelle (Bernese legal counselling service)

SAH	Schweizerisches Arbeiterhilfswerk (Swiss Labour Relief Association)
SBAA	Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht (Swiss Observatory of asylum and immigration law)
SEM	State Secretariat of Migration
SHEK	Schweizerisches Hilfswerk für Emigrantenkinder (Swiss aid organisation for emigrant children)
SIS	Schengen information system
SMO	Social movement organisation
SOSF	Solidarité sans frontières
SP	Social democratic Party
SPK-N	State policy commissions of the National Council
SPK-S	State policy commissions of the Council of States
SPRAR	System for the protection of asylum seekers and refugees
SRC	Swiss Refugee Council
SRK	Schweizerisches Rote Kreuz (Swiss Red Cross)
SVP	Swiss People's Party
UDHR	Universal declaration of human rights
UN	United Nations
UNHCR	United nations high commissioner for refugees
VIS	Visa information system
VSJF	Verband Schweizerischer Jüdischer Fürsorgen (Jewish refugee aid)
VVWAL	Verordnung über den Vollzug der Weg- und Ausweisung sowie der Landesverweisung von ausländischen Personen (Ordinance on the Enforcement of Removal, Expulsion and Expulsion from the Country of Foreign Nationals).
ZBA	Zürcher Beratungsstelle für Asylsuchende (Zurich Counselling service for asylum seekers)
ZiAB	Zivilgesellschaft in Asylbundeszentren (Civil society in federal asylum centres)

1 Introduction

In May 2024, the European Union adopts the EU Pact on Asylum and Migration which consists in a reform of the Common European Asylum System (CEAS). The discussions about a reform had intensified in the context of the reception crisis in 2015 and 2016. These discussions were characterised by humanitarian considerations on the one hand and security concerns on the other hand. The result of these discussions, the EU Pact on Asylum and Migration, is strongly influenced by both logics. Even if Switzerland is not member of the European Union, the Swiss government has been involved in discussions leading to the EU Pact on Asylum and Migration and will implement provisions which concern the Dublin/Schengen acquis being as they are binding for Switzerland. At the occasion of the opening of the consultation procedure regarding the amendments to Swiss law, the Federal Council announces: "The aim of this reform is to continue to provide effective protection to those who are persecuted, while also improving the protection of the EU's external borders in order to reduce irregular migration to Europe. In addition, the European asylum system should become more crisis-resistant and demonstrate greater solidarity"[1]. This statement summarises the political discussions that have taken place over the last decades and it reflects the tension of the field in which the EU's as well as national asylum policies are situated. This is nothing new. As Noiriel notes, "[t]he entire history of the asylum law is traversed with the contradiction between the intangible principle of national sovereignty and the ideals of human rights" (Noiriel, 1991: 19f.[2]). Liberal democracies face the dilemma of sovereign self-determination on the one hand and the compliance with universal human rights principles on the other (Benhabib, 2011; Boswell, 2005). Switzerland, while having always excluded refugees as unwanted, the idea of a "humanitarian tradition" has always been a central component of the country's national identity (Achermann, 2022). Similar to what can be observed in other European countries, since the introduction of the first Swiss AsylA in 1981, the political debate is characterised by the perceived necessity to reduce Switzerland's attractivity for asylum seekers, to fight against abuse and "bogus" refugees.

The fight against abuse and the general suspicion towards asylum seekers that has been dominating public and political discourse in Switzerland as well as other European countries since the 1980s (Alpes/Spire, 2014; Fassin/D'Halluin, 2005) finds its expression in the AsylA where the granting of asylum relies on two elements: the refugee status (art. 3 al. 1 AsylA) which corresponds to the Geneva

[1] Das Portal der Schweizer Regierung, Bundesrat eröffnet Vernehmlassung zur Übernahme des europäischen Migrations- und Asylpakts, accessible at https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-102056.html (last accessed: 12.12.2024).

[2] This is my own translation (with the help of DeepL) from the French original. This applies to all quotes from texts originally written in German or French. To facilitate the lecture, in the following, I refrain from indicating each time when a quote has been translated.

Refugee Convention defined refugee status and the credibility of the asylum claim (art, 7 al. 2 AsylA). Both elements are evaluated in terms of probability which provides room for manoeuvre for decision-making state bureaucrats of the State Secretary of Migration (SEM) which is responsible for evaluating asylum applications. The credibility of an asylum claim is the condition on which lies the recognition of refugee status (Affolter, 2017: 151-154).

Attractivity concerns and the fight against abuse in the asylum domain has led to an increasing politicisation of asylum and a "legislative frenzy" (Piguet, 2009), a rapid succession of legislative reforms that have often tightened the conditions for granting asylum, under the influence of intense political debate and a climate of mistrust towards asylum seekers. The possibility to launch a referendum against a legal amendment and popular initiatives that Swiss direct democracy provides, has further contributed to the strong presence of the issue of asylum in public discourse and the polarisation of the Swiss population around the issue as the results of public votes on initiatives and referendums show (Skenderovic/D'Amato, 2008).

In this context, Miaz (2017) speaks of a sophistication of the law with a multiplication of legal texts and procedures followed by the authorities responsible for asylum seekers. The asylum domain more generally is characterised by an increasing juridification consisting in increasing legal complexity which is accompanied by an increasing judicialisation referring to an increasing number of court cases and influence of jurisprudence on the authorities' asylum practice, asylum politics and asylum law.

In Switzerland, as in other European countries, there are non-governmental organisations that invest an important part of their budgets in advocacy activities to counter the anti-refugee discourse and government tendencies to restrict access to asylum, and more recently access to the asylum procedure itself. More generally, they aim at influencing asylum policy and legislation and the implementation of these. Their advocacy practices take different forms: public campaigns, public communication, petitions, statements during consultation procedures, but also less visible practices such as direct contact with representatives of the authorities and politicians. They aim to influence the way in which members of Swiss society - politicians, government representatives and citizens - perceive refugees and asylum practices. Through investigating the advocacy practices of these organisations, this PhD thesis is situated within the field of research that aims to understand how civil society actors active in the asylum field encounter and try to influence asylum policymaking and legislation as well as their implementation by the administration. I focus on refugee advocacy strategies by professionalised NGOs in Switzerland. The focus on professionalised organisations has been motivated by mainly two aspects: first, it aims at investigating a type of actor of civil society engaged in the asylum field that has been investigated less than others like grassroots organisations and activist movements (Della Porta, 2018, 2020; Della Porta/Steinhilper, 2021; Agustin/Jorgensen, 2019, Monforte/D'Halluin, 2019; Monforte et al., 2021) or social and legal assistance organisations (Drahy, 2004; D'Halluin-Mabillot,

2012; Miaz, 2017). Second, from a social movement perspective, and here especially from a resource mobilisation perspective, which this research adopts, professionalised organisations present important mobilisation structures that carry "a set of opinions and beliefs […] which represents preferences for changing some elements of the social structure and/or reward distribution of a society" (McCarthy/Zald, 1977: 1217f.). They have this role because of their capacity to aggregate resources, in the form of money and labour, resources that are important for the emergence but also for the continuity of a movement (McCarthy/Zald, 1977). Regarding the resources that professionalised advocacy organisations have at their disposal to mobilise in their advocacy strategies, it is these which are the specific competences of the NGOs' professionals. As other researchers have shown (Lascoumes, 1994, Drahy, 2004; D'Halluin-Mabillot, 2012), support actors mobilise an increasingly specialised knowledge. As D'Halluin-Mabillot (ibid.: 21) notes referring to Foucault (1976), this specialised knowledge can bring about disciplining instruments which allow to govern populations more efficiently. But it can also be overturned to resist and contest the modalities of the government. In this context, several researchers have remarked an increasing mobilisation of the law among migrant defence actors (Drahy, 2004, D'Halluin-Mabillot, 2012, Israël, 2020; Marek, 2001). Legal knowledge does indeed present the central, though not the only, resource for the professionalised advocacy organisations whose strategies I investigate in my study. My aim is to understand how the NGOs mobilise these resources strategically in their advocacy work in the context of different (perceived) opportunities.

Here, the Swiss case is of special interest because its political system of direct democracy allows for challengers of the state to engage in politics through popular initiatives and referendums. Thus, the direct democracy system presents specific opportunities for outsider strategies. I understand outsider strategies as those that aim at the actors external to the executive and the legislative bodies. Additionally, with its consensus democracy, non-state actors are not only involved in consultation procedures regarding legal amendments, but especially strongly organised movement actors are further privileged counterparts of the administration allowing them to participate in the formulation and implementation of policies (Giugni/Passy, 1998).

As Switzerland is a small country, the number of professionalised organisations that focus (almost) exclusively on what I call "advocacy" is limited. In the asylum field, the most important advocacy organisation is the Swiss Refugee Council (SRC). It is the umbrella organisation of associations (mostly charities) who are operatively active in the asylum system, through legal advice and defence activities and/or reception tasks. Another advocacy organisation active in the asylum domain, even though not exclusively, is the Swiss section of Amnesty International (AICH). AICH is a member of the SRC since 2010 but, unlike the other members, not operationally active in the asylum system. Both organisations are investigated as case studies in the present research.

To describe the type of activities in which these organisations engage, I have chosen the term "refugee advocacy" in the beginning of the research project because it seemed useful in a heuristic sense to approach the activities of organisations targeting the legal and political frameworks as well its implementation in that these organisations refer to themselves as "in the interest of refugees". For the remainder of the thesis, I have decided to keep the term. I Refugee advocacy targets different aspects of the asylum system, from access to protection, to rights attached to asylum or another protection status, to questions of integration from social and legal perspectives. However, this research focusses specifically on advocacy for protection or more precisely for access to protection. While organisations such as the SRC include other aspects like rights that are linked to a protection status and social and legal aspects of integration in their advocacy work, the present study leaves these aspects aside and focusses exclusively on questions of access to protection.

Finally, to be clear about the use of the term "refugee" in the present work, I use this term not in a pre-defined way either and further interchangeably with "forced migrants" and "persons seeking protection". When I speak specifically about the legal category of refugees, I will use the term "recognised refugees". The same is the case for "asylum seekers". Otherwise, the term refugee will be used in its emic sense throughout this thesis: as the group of persons that the NGOs define as their constituency group whose interests in terms of access to protection they defend.

I have decided to focus on a relatively short period of time (2015-2019). First, this choice has been motivated by the consideration that the NGO professionals whom I interviewed mainly in 2019 in the context of my study might remember this (rather short) period and would have the chance to reflect on events that took place in it. Second, this period is interesting in regards to political debates and legislative developments that took place at the time. With the restructuring of the asylum sector accepted in a public vote on an amendment of the AsylA in Summer 2016, the period was characterised by a debate about the asylum procedure, its acceleration and the introduction of legal protection for asylum seekers in the procedure in which the NGOs actively engaged. The acceleration of the asylum procedure is a historically dominant discourse in Switzerland, and it leads to the adoption of a new accelerated asylum procedure in 2016. Furthermore, the restructuring of the asylum sector leads to a change of role for some asylum support actors which creates tensions in the field and the questioning of their "identity" in the case of certain actors. Thus, the period before the new asylum procedure comes into force in March 2019 is interesting regarding the dynamics within the asylum support field which I understand as constituted by non-profit actors active in the asylum domain. While the restructuring of the asylum sector that was adopted in an amendment of the AsylA by the Swiss Parliament in 2015 and confirmed by the population a year later was not directly linked to the European reception crisis, it might nevertheless be situated in the context of the rising number of asylum seekers since the beginning of the 2000s. What might also be mentioned is the fact that

focussing on the period between 2015 and 2019 signifies that the investigated period lies before the Russian attack on Ukraine which led to a consequent number of Ukrainian refugees obtaining a temporary protection status in Switzerland as in other European countries. Finally, one might note that this period lies before the Covid-19 crisis which arrived in Europe in the beginning of 2020. While both events led to great challenges for the asylum support field, they are however not considered in my study.

Furthermore, in the context of the reception crisis, this led to a debate about Dublin transfers in Switzerland and an increasing engagement of asylum support actors in politicising actions targeting the SEM's Dublin practice. Finally, also the reception crisis itself became a target of politicising actions like campaigns, petitions and open letters addressed at the Swiss government requesting it to engage actively in finding solutions on the European level and to engage in sea rescue missions in the Mediterranean.

My research aims at contributing insight into practices, discourse and their underlying logics, rationales and norms of a specific type of civil society actor carrying out what one could also call "defend and witness" (D'Halluin-Mabillot, 2012) activities. In the following, I propose to situate professionalised NGO refugee advocacy in the wider literature and scientific debate about civil society actors' engagement in the asylum field. Here, it seems helpful to focus not only on "defend and witness" actors but also on "welcome and support" actors which allow a wider understanding of the logics, rationales and norms present in the support field.

1.1 Situating professionalised NGO refugee advocacy in the scientific debate

My study is situated in the field of research that investigates civil society support actors in the asylum field. While social movement studies have gained increasing interest in pro-migrant movements, there is a growing number of anthropological and sociological research about social and legal assistance actors. Finally, though not civil society actors, research on international organisations like UNHCR and IOM are of interest for my study of professionalised NGO refugee advocacy. In this context but also more generally in research addressing actors and processes that shape contemporary migration and asylum government, one comes across the discussion about politicisation and depoliticisation of migration. These processes are addressed in studies on different support actors in varying degrees. Politicisation and depoliticisation are significant concepts in the context of asylum politics because they allow to illuminate ways in which actors frame, approach and contest issues linked to asylum. Although there are different definitions and understandings of both processes, politicisation generally refers to the process through which an issue becomes object to public debate and contestation. Further, it can also refer to a process through which "governments publicly accept direct

responsibility" (Burnham, 2001: 130) for situations and/or their solution. These two understandings of politicisation show that politicisation is shaped by different dimensions. So is its counterpart, depoliticisation. Depoliticisation refers to the "process of placing at one remove the political character of decision-making" (ibid.: 128) which signifies that decision-making about an issue is shifted into another arena than that where politicians decide. Framing issues as technical or administrative matters, as matters to be addressed by experts presents a way to depoliticise an issue. The concepts of politicisation and depoliticisation are helpful to understand the strategies of professionalised advocacy NGOs in the asylum domain because they might choose to depoliticise the asylum depending on their goals, the political opportunities they are confronted with and the audiences they target respectively mobilise to achieve their goals. Politicisation and depoliticisation may thus be consciously chosen strategies but they may also follow from the specific resources that professionalised NGOs mobilise in their advocacy strategies.

Solidarity movements: from grassroots, protest and activism to pro-migrant and refugee NGO advocacy

When I started this PhD research by consulting existing literature about civil society's engagement in the asylum field, I soon came across the social movement literature. With the so called "refugee crisis" or the "long summer of migration" in 2015 as it is also called in the literature (Della Porta, 2018, 2020; Della Porta/Steinhilper, 2021; Agustin/Jorgensen, 2019), a growing body of social movement research has developed that focuses especially on grassroots organisations, political protest and activism. Scholars have observed and analysed spontaneous forms of (political) activism, volunteer help and assistance initiatives in favour of asylum seekers and refugees on a national and international level. They illuminate a variety of dynamics and logics behind practices and instances of hospitality and solidarity (Darling, 2013). On the one hand, these studies identify moralising and humanitarianising forms of action (see Feinschmidt et al., 2019; Ataç et al., 2016; Ataç, 2016; De Jong/Ataç, 2017; Darling, 2013). In this context, the important body of literature that sheds light on the depoliticised character of humanitarian action and more generally humanitarian reasoning (Ticktin, 2017; Fassin, 2012, 2010a; Malkki, 2015) might be mentioned as well. On the other hand, scholars observe moments of protest and resistance that are also driven by a politicised discourse of injustice challenging the governmental control paradigm (Bader, 2018; Ruedin et al., 2017). In this context, Monforte differentiates between different frames mobilised by national advocacy organisations when they criticise EU asylum policies. While he identifies a "technical and de-politicised *Human rights frame*" he also notes "a more politicised and contentious *injustice frame*" (Monforte, 2014: 122, emphasis by the author). The present research will take up this debate around de- and (re)politicised frames of asylum (policy) and the role of humanitarian and human rights reasoning in this context.

Speaking of (de)politicisation, studies investigating the forms of action and frames mobilised by different types of organisations during the recent reception crisis show that when confronted with "austerity policies and the criminalization of solidarity following the rise of xenophobic politics and policies" one observes "a hybridization of social movement activism and volunteerism, with a transformation in action repertoires, organizational structures and collective framing" (Della Porta, 2020: 945). Concretely, studies by scholars like Della Porta (2013, 2018, 2020), Della Porta and Diani (2004) and Isin (2018) show for instance that organisations originally focussing on humanitarian support activities politicise their discourse and engage in more contentious modes of action when confronted with a context of crisis. Recently, Della Porta (2020) has proposed to "build bridges" between a social movement and a civil society perspective as she observes, on the one hand, "the hybridization of more established civil society organizations into social movement organizations, especially when facing politicization in times of crises and increasing criminalization of solidarity" and on the other hand, the "NGOization of social movements" (ibid.: 938). This observation brings together two theoretical perspectives on non-state actors' "participation oriented to the realization of the common good" (ibid.). Social movement studies focus on conflict in which social movements engage. From this perspective and as explained above, social movement organisations can be understood as carriers of the preferences of a social movement aiming at implementing the goals corresponding to these preferences (McCarthy/Zald, 1977: 1218). Social movement organisations as mobilising structures are "expressing the voice of the challengers" (Della Porta, 2020: 339, referring to Lipsky, 1965 and Tilly, 1978), putting pressure on the authorities and drawing the attention of the public to already identified problems. Civil society research, on the other hand, approaches and theorises civil society organisations as actors filling the gaps between the state and the market (Curbach, 2003). On a more practical level, the hybridisation of social movement and civil society organisations, mentioned above, becomes manifest in the participation of civil society organisations in protest campaigns, at times even taking over leadership in campaigns. At the same time, one can also observe social movement organisations engaging more in lobbying and opinion making than protest activities (Della Porta, 2020; 2013). While such a change in modes of action seems to go with a general moderation of frames and "a sort of depoliticization" (Della Porta, 2020: 944, based on Della Porta and Diani, 2004; Lofland, 1989), inversely, Della Porta (2020: 944) remarks that "[w]ith the closing down of opportunities for discrete interactions with state institutions in the forms of lobbying, or outsourcing services, some NGOs politicize their discourses, in particular in reaction to crises and repression". A social movement perspective on these developments and actors focusses on their political role through their engagement in conflict. Following Della Porta (2020: 946), this perspective is sensible as "[e]mpirical boundaries between social movement organizations and [civil society] associations are made more and more porous by what was dubbed the NGOization of social movements, and the

SMOization of NGOs faced with increasing retrenchment of the welfare state and the criminalization of solidarity activities".

These observations and theoretical reflections concerning links between civil society research and a social movement perspective are especially interesting for my study because they shed light on dynamics of politicisation and depoliticisation linked to changes in modes of action in which different types of actors engage when confronted with particular contexts respectively opportunities and constraints. Here, it is important to note that when Della Porta (2020) opposes civil society research to social movement studies, she opposes two perspectives on actors, that following a more general understanding of civil society, are both civil society actors, opposed to state actors and the market. What Della Porta (and others) calls civil society corresponds, in my sense, to what D'Halluin-Mabillot (2012) calls "welcome and support" actors as opposed to "witness and defend" actors. In the following, I will use this latter categorisation to differentiate between different types of civil society actors.

More generally, the focus of social movement studies on the interaction and interdependency of (political) context and activists, respectively their strategies, are of interest for the present research. In this context, however, studies that investigate specifically professionalised refugee advocacy practices that go beyond grassroots protest and "welcome and support" activities are relatively rare. Nevertheless, within a strand of the social and solidarity movement literature, selected studies do address practices of NGOs that are explicitly targeting policy making in the field of migration and asylum as part of their overall activities (Cullen, 2009; DeSantis, 2010; Dimitrov, 2006; Drahy, 2004; Kinlen, 2013; McGhee et al., 2016; Statham/Geddes, 2006). It is largely this strand of literature in which my PhD study is situated. These studies show that such advocacy activities take place in a context of complex entanglements with state authorities in which those NGOs are engaged through the provision of services as "state-funded organisations are prominent and central" (Statham/Geddes, 2006: 264) for civil society's engagement in migrant and refugee advocacy. With what Giugni calls "the rise of an area of civic participation and political action that has a private nature but a public aim" (Giugni, 2001: 241) social and solidarity movement scholars observe a growing entanglement of civil society and state actors that are mirrored in the strategies chosen by both sides. The example of the Irish context shows how organisations like the Migrants Rights Center of Ireland (MRCI) and the Immigrant Council of Ireland (ICI) operate in a context of "social partnerships", expression of "the state's neoliberal, third way approach to public sector services which has involved a mix of privatisation and a reliance on third sector or NGO service provision" (Cullen, 2009: 114). In concrete terms, this means that the state's relationship with civil society is managed through agreements by the NGOs "to provide services to the state in exchange for access to funding opportunities and participation in episodic corporatist policy deliberations" (ibid.: 111). From the state's side, the advantage of such agreements consists not only in the securing of needed services for the involvement of pro-migrant organisations in social

partnership committees is claimed by state bodies as a sign of their openness to civil society (Boucher, 2008). These engagements confront organisations with the question of independence from the authorities who fund them. While funded for service provisions, such as legal and social assistance in the asylum procedure, voluntary return programmes or education on migrants' rights, NGOs "navigate the constraints and opportunities of state funding and state sponsored consultative fora while seeking to avoid co-optation and remain accountable to their constituents" (Cullen, 2009: 104). The access to this alliance relationship with the state, due to the organisations' implication in the system of "social partnerships", does not go without critique within the NGOs themselves. The actual influence that the NGOs have through their cooperation with state bodies is perceived as limited. As stated by Cullen, "For pro-migrant NGOs the political contention surrounding immigration coupled with a lack of public support for a rights-based approach on immigration and asylum matters makes a system of "partnership" which provides a form of conditional consultation to NGO interests particularly problematic" (ibid.: 112). Grassroots and especially migrant-led organisations see this relationship as buckling to the "racial state" (Lentin, 2007 cited by Cullen, 2009: 102) and consistently question the independence of organisations that are engaged in such cooperation. These observations point not only to a complex relationship between professionalised NGOs and the state but also to complex interactions and tensions between different civil society actors who are engaged in asylum support and advocacy.

McGhee et al. (2016: 44) argue however that "debates in this field should move beyond the inevitability of co-option, dominance and the loss of independence". Similar to the above described "social partnerships" in the Irish migration sector, in the UK context, many refugee support organisations, of which important ones like Refugee Action and the Refugee Council, have engaged in "partnership arrangements" with the state. McGhee et al.'s (ibid.: 27) focus on the "'political space' of negotiation, resistance and contestation that exists between governments and civil society" highlights the role of state funded service delivery for the engaged NGOs' advocacy work. First, it provides the organisations with opportunities for negotiation with the authorities due to the fact that they are "within the system" (ibid.: 40). As stated by McGhee et al. they make use of these opportunities by "attempting to subtly influence the Home Office to make minor adjustments to asylum policy" (ibid.: 43). Within the political opportunity context of "social partnerships", senior civil servants as part of government departments' staff are often important access points for NGOs for alliance-building with state bodies. Their mobilisation in favour of specific policy changes can result in larger policy debates around migration (Cullen, 2009). Second, in these insider strategies (McGhee et al., 2016: 41, based on Milbourne and Cushman, 2015), NGOs like Refugee Action and the Refugee Council mobilise evidence that they gathered through their services funded by the Home Office. Third, the generated data is also used for "outsider" advocacy, meaning public campaigns against the Home Office. Cullen

(2009: 113) shows that information to state bodies is provided in the form of "a strategic combination of statistics and migrant testimony" based on their case management database and individual migrants' testimonies. Like in the case of Refugee Action and the UK Refugee Council, evidence and data are important for pro-migrant organisations' advocacy work. The organisations perceive themselves as research driven. Their reports are regularly cited in the media and the director of an Irish advocacy organisation also makes media appearances as an expert. This centrality of expertise has also been identified in the context of NGO advocacy on the European Union level. Robert (2010) observes that expert groups play an important role in European policy making as they are perceived as "the artisans of compromise" (ibid.: 23) due to the character of independence, neutrality and the practical orientation that is attributed to experts. Expertise allows for access to decision processes and the ability to acquire a form of legitimacy (Delmas, 2011: 47).

If the field of social and solidarity movement studies is a well-established field, research on organised migrant and refugee advocacy that aims at influencing migration and/or asylum policy, has as mentioned, only recently developed and has, with the exception of the above-mentioned research in national contexts, so far only been focusing on NGO refugee advocacy on the European Union level (see Geddes, 1998 and 2000; Hoffmann, 2012; Kaunert/Léonard/Hoffmann, 2013; Schwenken, 2007; Gray/Statham, 2005; Cullen, 2009; Monforte, 2009). These studies have been conducted especially since the 1990s, and in different disciplines, such as political sociology, international relations, political sciences and social sciences in general. As mentioned, an important observation of these studies is that NGOs who engage in coalitions on the EU level that aim at influencing EU policy through engaging with EU institutions present themselves as the top professionalised experts in the field and use technical and de-politicised forms of claims-making regarding the asylum issue (Monforte, 2009). Monforte (2009) shows that humanitarian "solution-oriented" rather than human rights "principle-oriented" organisations engage in those coalitions on the EU level.

Social and legal assistance organisations

The above-presented social and solidarity movement literature puts a special focus on structural elements of the interaction between a variety of civil society actors and the (political) context they are acting in, on forms of claims-making and mobilised frames. Next to these studies, there is also a growing body of social science literature in the field of (critical) migration and refugee studies and more recently in critical asylum geography, aiming to understand "welcoming" activities towards asylum seekers and refugees. In this field of research, there seems to be a tendency similar to what I observed within the social movement literature: while more radical activist actions and protest movements have been widely investigated, less work has addressed practices of "non-revolutionary activists" (Gill, 2016) who choose "tactical closeness and proximity to institutionalised centres of power" (Gill et al., 2014: 379). Nevertheless, there is a small but significant corpus of research on

support and assistance organisations that focuses on how NGOs are acting on administrative practices through their daily activities and how they are engaging with the public to raise awareness of the struggles of and acceptance for refugees and asylum seekers (D'Halluin-Mabillot, 2012; De Jong/Ataç, 2017; Drahy, 2004; Gill, 2016; Gill et al., 2014; Kalir/Wissink, 2016; Lepoutre, 2022; Pupavac, 2008). Drahy (2004) and D'Halluin-Mabillot (2012) in the French context and Gill (2016) and Gill et al. (2014) in the British context shed light on practices, logics and dynamics of refugee support in interaction with power holders and decision makers within the asylum system. In both contexts, they observe how refugee advocates mobilise specific knowledge and discourse to influence the bureaucratic practices of authorities and administrations rather than resisting the sorting system of asylum governance itself. Following Sparke (2008), Gill (2016: 168) describes this as "reworking", meaning the modification of internal system processes without questioning the overall power relations. Consequently, "institutional militants" (D'Halluin-Mabillot, 2012), or "non-revolutionary activists" (Gill, 2016) become themselves a wheel of asylum reception and selection policies. This happens through their enforcement of public policies through negotiation and compromise in their daily acting on administrative practices throughout the process of supporting people in the asylum field. In this context, Miaz (2017a, 2017b) presents an interesting observation of how legal support actors move boundaries between "those who can stay and those who must go" on the one hand and how they reproduce official categories on the other hand through engaging in an increasing juridification of asylum. The reproduction of administrative categories by asylum support actors has also been observed by Lepoutre (2022).

As Drahy (2004: 8) remarks, this increasing juridification of the issue of immigration has led to a correlative process of juridification of organisations engaging in the defence of migrants. As "watchdogs" of the respect of legal texts and their correct application, legal defence organisations participate in the implementation of the law. By mobilising the law, they internalise legal rationalities and situate themselves within the existing legal order. Formulating their claims in legal terms signifies that these claims need to be compatible with the logics underlying the existing order (ibid.: 11f.). Finally, Lepoutre (2022) observes that the specialisation of associations in migration and asylum law is part of more general transformations that include the employment of staff and a professionalisation of the organisations and their provided services. While in Switzerland like in other European countries legal and social support organisations rely on an important number of volunteers, in the Swiss case it may be noted that due to the restructuring of the asylum sector and the introduction of a new asylum procedure in March 2019, a further professionalisation of legal advice and defence organisations has taken place in the asylum domain. This has led to the employment of an important number of legal experts by organisations like Caritas and HEKS (among others on the federal and cantonal levels) who are mandated by the state for legal counselling and legal representation of asylum seekers in the

asylum procedure. While neither of the two organisations investigated as case studies in my research carry out such a legal protection mandate, they are nevertheless, deeply rooted in this field, supporting (and coordinating in the case of the SRC) the mandated organisations. Before the restructuring of the asylum sector, the SRC even had a state mandate itself for the coordination and training of charities assisting in asylum hearings as "neutral" observers. Considering this changing context, Drahy's (2004) reflections about the role of an organisation's "identity" – what I call "self-perception" – for the ways respectively the modes of action in which it mobilises the law is of interest for the present study. In his case study on the French support organisation CIMADE[3], Drahy (2004) qualifies the organisation's identity first of all as "humanitarian" which is importantly linked to its historically rooted logic of providing help to the victims of a policy perceived as too repressive. To fulfil this role, a relationship of confidence with the authorities is perceived as necessary (ibid.: 72-77) which limits the modes of action to cooperation rather than opposition. In this sense but different from the case of the CIMADE, Marek (2002) shows in her study of the GISTI[4] that based on a political heritage of the 1960s, it also uses the law as instrument to defend immigrants and human rights more generally, however in more confrontative modes of action it dissociates these "from all humanitarian logic" (ibid.: 41). The law is used as an instrument to challenge the authorities and to confront the state, in this way, with its own contradictions (ibid.: 39). Pärli (2024) identifies a similar mobilisation of the law in his study of the asylum movement in Switzerland in the period between 1973 and 2000.

Furthermore, studies on refugee support organisations have observed that organisations that interact regularly with administrations and state authorities, be it through daily support activities or contacts in institutional settings, tend to adapt themselves to their counterparts' bureaucratic and organisational *habitus* (Hély, 2009: 201; Bourdieu, 1990; Lepoutre, 2022). Kalir and Wissink (2016) observe similar dynamics with regard to support NGOs in the deportation sector in the Netherlands where the latter "adopt state categories and jargon" (Kalir/Wissink, 2016: 44). In this context, dependence on funding probably also plays a role as De Jong and Ataç (2017: 30) note for the situation in Austria where support services provided by NGOs "are often financed by federal and local governmental bodies". This dependence on direct or indirect state funding leads, according to De Jong and Ataç (2017: 31), to an "increasing susceptibility to co-optation". Thus, it is important to shed light on the complex entanglements that funding structures create between NGOs and the state as an important funding provider. The fact that funding plays a role in how the receiving organisations position themselves towards their funders may come without surprise. Models like the above-mentioned "social partnerships" in the Irish case, do not only define institutional access paths for NGOs

[3] CIMADE stands for "Comité Inter-Mouvements Auprès des Evacués".

[4] GISTI stands for "Groupe d'information et de soutien des immigrés".

but they also shape the concrete positions and political demands that organisations take and make. Lepoutre (2022: 73ff.) observes how different types of support organisations – mandated to fulfil public tasks, receiving subsidies or completely independent – mobilise different ideal-typical representations of asylum seekers. On the one hand, there is the valorisation of the "real" refugee which suggests indirectly the negative judgement of "fake" refugees. On the other hand, a less categorical and more humane perspective criticises the exclusive character of the categories of the asylum system and demands more inclusive practices for persons not entering the strict asylum categories.

Generally, under the roof of a refugee support organisation, a variety of daily practices of solidarity, like for example, medical assistance, language classes and legal advice are taking place (D'Halluin-Mabillot, 2012; De Jong/Ataç, 2017). NGOs have developed special knowledge through these activities which makes them recognised experts by authorities in the asylum sector. Here, authorities seem to prefer to interact with one central actor who represents different organisations (Belkis et al., 2004: 8). Legal expertise as well as other expert knowledge gained from other assistance activities like medical support, allows them to be included in public bodies, participate in parliamentary debates and even give trainings to state officials (Gill, 2016: 165; Kalir/Wissink, 2016: 44). This knowledge is connected to a variety of logics that are mobilised by refugee support organisations in their daily work which also translates in the organisations' discourse about who is a refugee and how the issue of asylum should be addressed. D'Halluin-Mabillot (2012) identifies different logics guiding refugee support organisations' socio-legal assistance: deservingness, credibility of the asylum seeker's narration and needs. Which logic is chosen is closely linked to power relations between state authorities and the support sector's actors (ibid.: 90). Around the question of deservingness, D'Halluin-Mabillot (2012) remarks that lately support actors have been focusing their attention increasingly on medical and health issues. While medical and health issues play a less important role in the Swiss asylum procedure, they are nevertheless important with regard to the obtention of a provisional admission status[5]. In this context, the notion of the "humanitarianisation" of asylum has gained influence among sociologists particularly to describe a process in which the figure of the refugee is depoliticised through a focus on "the intimate in recognising [asylum] claims" (Fassin, 2013: 49). Especially psychological consequences of experienced violence and, more generally, suffering are put forward and are summarised under the term of "psychological trauma". Also Gill (2016) identifies deservingness as a mobilised logic by civil society actors in so-called "compassion nurturing" activities that target authority representatives in the British asylum system. Gill states that, "The work to nurture compassion operates through

[5] A provisional admission is issued when a removal order following a negative asylum decision cannot be enforced due to illicity, inexigibility or impossiblity of the removal. Medical reasons or health status can render the enforcement of a removal order illicit or inexigible.

awareness raising and improving understanding of migrants among bureaucrats rather than through dissipation, evasion and trickery" (ibid.: 168). Following Nussbaum (2001), Gill states that compassion is a feeling that arises in the presence of undeserved misfortune. Compassion is thus based on logics of (un-)deservingness. In this context, Monforte and Maestri note, referring to Nussbaum (1996) that "values (and feelings) of compassion and empathy are often linked to processes of distinction, inclusion/exclusion and hierarchisation" (Monforte/Maestri, 2022: 12). To evoke compassion among state agents, activists "furnish those who are unfamiliar, poorly acquainted or misled about refugees and asylum seekers with rich and realistic accounts of refugees' experiences" (Gill, 2016: 159). With this focus on individual stories this "activism in the pursuit of compassion" aims at compassionate decision making by the latter and thus at humanising "the business of rule" (ibid.: 166). Following Foucault's distinction between sovereign and disciplinary power (Gill et al., 2014), it is the latter that "non-revolutionary activists" aim to modify while the former is not questioned. As Kalir and Wissink (2016: 44) note, this acceptance of the sovereign power of the state is generally expressed by a "terminology isomorphism" adopted by support NGOs which "transforms the juridical and political categories of state policies into an accepted currency". At the same time, "non-revolutionary activists" promote the "human interest angle" (Gill, 2016: 160) also in the media: first, by claiming that asylum seekers are seen and understood as individuals, everyone with his or her individual experiences and sufferings. Second, prejudiced discourses are changed to more individual and humanised narrations.

Effective "compassion nurturing" finds a balance between overcoming bureaucrats' distance respectively indifference towards migrants and not saturating them with trauma and suffering. Finally, Gill also acknowledges that compassion nurturing itself should "be taken as a barometer of how far the current administration of border control falls from a just system that is accountable in other, more reliable, ways" (ibid.: 173). According to Gill, many compassion nurturing activists are aware of how problematic this strategy is with its risks of co-optation by the system that they challenge and its disempowerment of refugees through the mingling of deservingness with vulnerability. Still, in Gill's words, they "feel as if this is the only realistic approach in the absence of more influence over the political system" (ibid.: 176).

The logic of need, contrary to the logic of deservingness, which is based on the evaluation of past actions, is oriented towards the present. The person who currently presents the lowest level of wellbeing should obtain support (D'Halluin-Mabillot, 2012: 114, following Elster, 1992). For asylum seekers this level of wellbeing is expressed in terms of their "humanitarian" condition of "vulnerability" (D'Halluin-Mabillot, 2012: 114, following Belkis et al., 2004). Like the deservingness logic, the needs-based logic and its vulnerability paradigm are also mobilised widely by state officials in the asylum procedure. In reaction to this, Miaz (2017: 511) observes that vulnerability (represented by women, families with children, sick persons, old persons, non-accompanied minors) is indeed a criterion that

favours the taking charge of a case by legal defence actors. Here, they follow the authorities' account for vulnerability in the asylum procedure. Furthermore, as several researchers have noted (Cullen, 2009; D'Halluin-Mabillot, 2012; Fassin, 2010a; Fassin/D'Halluin, 2007; Gill, 2016; Pupavac, 2008), the vulnerabilised refugee figure is mobilised to counter more generally the negative image of the "threatening" asylum seeker that dominates current asylum policies as well as media and societal asylum discourse. Further, in the context of the vulnerability paradigm and the above-mentioned health paradigm, it has been noted that trauma has gained increasing attention by asylum support actors (see D'Halluin-Mabillot, 2012). Trauma as a consequence of past suffering is linked to past experiences and might thus fit with a deservingness logic as described above. At the same time, however, it points to the current state of traumatised persons as still suffering and in need of help. The "trauma tag affirms suffering, but it also suggests impaired reason" and thus "an attribute of dysfunction" (Pupavac, 2008: 272, 279). Presenting traumatised people first and foremost in this way, that is as presently "dysfunctioning" beings makes them enter the category of vulnerable and helpless victims without agency. This differentiation between two ways of treating respectively presenting trauma and the traumatised shows that the same medical diagnosis can be mobilised by two different logics: deservingness or need. In the context of the latter, Pupavac (2008: 280) notes that the mobilisation of trauma by refugee advocates may be expressed through a language of solidarity but that, in reality, it is more a matter of "permissive empathy" in understanding the asylum seeker figure as a patient, which leads to an understanding of asylum as the solution to a welfare problem rather than a political one.

International organisations and their expertise

Finally, a third strand of literature dealing with refugee support and advocacy is worth mentioning here. Studies about international organisations like UNHCR and IOM have shown how these entities increasingly engage in practices and discourse that depoliticise migration and situate refugees and their protection in a migration management perspective. "Migration management refers to a situation in which the issue is not whether migration should happen or not, but how it should take place in order to be 'positive' (Pécoud, 2015: 89). While depoliticisation can also be observed as an effect of the above-presented needs, vulnerability and deservingness logics mobilised by social and legal assistance organisations research, like that of Scheel's and Ratfisch's (2014), Scalettaris' (2007), Fresia's (2012) and Pécoud's (2015; 2017), sheds light on how UNHCR's and the IOM's expertise, presented as neutral, and their expert status contributes to a depoliticisation of migrants as phenomenon to be managed.

UNHCR has been participating in the construction of the "refugee" category and has been encouraging states to develop asylum systems since its creation in 1950 (Fresia, 2012: 39). As a refugee advocate *per se* the agency's positionings and expertise are followed and used as reference by other organisations in the asylum field. UNHCR presents a recognised interlocutor not only for national

governments in terms of refugee expertise but is also a reference for civil society actors in the asylum sector, and for the wider public in general. It is precisely the organisation's expertise that legitimises its representatives to define the problems to be put on the international agenda as well as the solutions to these. In this context, UNHCR's refugee and refugee protection discourse does not only construct refugees as victims and their protection as a humanitarian act but it also indicates that this discourse is linked to a migration management rationale (Scheel/Ratfisch, 2014). UNHCR's "refugee" discourse is based on the fundamental distinction between "genuine refugees" and "irregular" migrants. This categorisation uses "policy-related labels" (Scalletaris, 2007: 37) with "refugee" originating from humanitarian policy and thus being "one of the most powerful labels that is currently in the repertoire of humanitarian concern" (Zetter, 1988: 1): While those in the first category are depicted as helpless victims in need of assistance and protection, for those in the second an "effective "return policy" is regarded as a necessary precondition for an effective refugee protection" (Scheel/Ratfisch, 2014: 932). Through the systematic invocation of a technical-legal argumentation, making reference to adopted international legal provisions in the past, UNHCR experts contribute to a depoliticisation of debates by excluding any other aspects, like geopolitical, cultural, or economic elements, from the discussion. Presenting their experts' technical-legal knowledge as objective, external and neutral, UNHCR works towards the depoliticisation and moralisation of questions that are profoundly political (Fresia, 2012: 51ff.).

In the case of IOM, Pécoud (2017) observes a similar depoliticisation of migration through expertise that ignores the consequences of migration policies in terms of principles, values, historical traditions or ideologies and that privileges a technical and managerial approach that focuses, through drawing on data and expertise, on the regulation of migration to maximise its consequences. The insights in the relation between (technical-legal) expertise and depoliticisation are of interest for the present study of professionalised NGO refugee advocacy in a national context (here Switzerland) which is similarly driven by legal expertise.

1.2 Research questions and objectives

The review of the literature given above showed that there are a variety of logics at work among asylum support actors when these provide either services for asylum seekers and refugees like legal advice and social aid or organise protest against state policies and practice. Professional advocacy organisations in the asylum domain are situated within this complex network of different support actors. Furthermore, they occupy an intermediary position between actors working on the ground in daily contact with persons in the asylum domain on the one and the authorities on the other hand. By studying these organisations, I propose to gain insights into the broader dynamics of asylum politics when civil society actors engage in policy and legislation processes. As professionalised organisations

can mobilise specific resources, in financial terms but also importantly in terms of human resources, this research is guided by the following question:

What is the role of professionals in the defence of the NGOs' causes and their strategic relationship with the resources that they mobilise within different (perceived) opportunities?

To understand the role of professionals and the strategic mobilisation of their resources in the NGOs' advocacy activities within different opportunities, I focus on interactions that they have with different state and non-state actors. When speaking of relations and interactions between civil society organisations and the state, I do not see the state as a monolithic entity. If I ask how advocacy NGOs interact with the state, I understand the state as expressed in bureaucracies, laws, policies (Gupta, 1995) and the norms and symbols that these produce that legitimate its authority and power (Geertz, 1980). This leads me to differentiate between insider and outsider strategies. While the insider strategies refer to direct contact with the authorities and policymakers, the outsider strategies refer to the mobilisation of third actors to obtain changes in asylum practice, policy or legislation. This leads to the first sub-question:

1) In interaction with what actors do NGO professionals mobilise what resources?

Thus, the first objective of the study is to observe through which activities and with what kind of actors the organisations interact in order to influence asylum policy, law and their implementation. The focus on interactions shall prevent a too limited focus on advocacy driven unidirectionally by (political) opportunities. Second, to understand the cognitive dimension of professionalised refugee advocacy, I will analyse the frames that the NGOs mobilise in their public communication. The cognitive dimension refers to how issues are perceived. The second sub-question will address this aspect of the NGOs' advocacy work.

2) How do professionalised NGOs frame their claims and by which logics, moral principles and values are these characterised?

The second objective then consists in identifying and analysing dominant frames that are mobilised in claims-making by professionalised advocacy organisations in the asylum field. I will focus on public documents like press releases, petitions, open letters and consultation responses to identify the frames.

To answer these questions, I chose a multiple-case study design (Yin, 2003). The Swiss Refugee Council (SRC) and the Swiss section of Amnesty International (AICH) were chosen in the beginning of my research and I focussed on these two organisations throughout the whole research process. I made myself familiar with these two professionalised advocacy organisations active in the asylum domain in Switzerland, including their inner structure, their staff members, their activities and their goals. While an immersion in the daily reality of the NGOs' professionals was not possible, I could however

interview some of them and observe some internal meetings between staff members. This ethnographic data has been complemented by public documents like press releases, consultation responses, reports and position statements that I collected on the organisations' websites. Thus, the data corpus is constituted by a variety of documents, transcripts from interviews as well as fieldnotes from observations of meetings. I understand the research process as guided by a grounded theory approach (Charmaz, 2006) which starts the analysis from the data and follows the social constructivist paradigm in qualitative research.

While I followed an inductive research methodology, I draw on a variety of theoretical perspectives and concepts to understand the role of NGO professionals and their resources in NGO advocacy activities. Approaching professionalised advocacy organisations from a social movement perspective, as actors acting within political opportunities and mobilising resources to achieve their goals, helped me focus on the strategic dimension of advocacy. As Drahy remarks referring to Siméant (1998: 67-72), a social movement perspective allows to go beyond the debates that oppose identity and strategy (Drahy, 2004: 86f.). Hence, adopting a social movement perspective "urges us not to allow ourselves to be trapped in a hyper-determinism that would turn the mobilised groups into mere automatic machines perpetuating traditions through habit" (ibid.: 87) but instead to understand their practices as guided by their "identity" as well as strategic considerations. As I identified legal expertise as a central resource of the organisations that is mobilised in different modes of action in insider as well as in outsider strategies, a political sociology perspective on expertise as well as a legal mobilisation perspective is additionally useful to understand the strategic use of expertise by the NGOs. This variety of theoretical perspectives allows me to shed light on the different dimensions of professionalised refugee advocacy in Switzerland. While the case studies design allows to get familiar with specific cases, it has of course its limits. Further, the organisations that I chose as case studies occupy specific roles in the asylum domain as I will show. And finally, I focus on a specific national context which is Switzerland with its direct and consensus-oriented democracy. Focussing on one national context presents always the risk of methodological nationalism (Wimmer/Glick-Schiller, 2002). Nevertheless, my study presents an attempt to contribute insights on a type of actor who has not been investigated much independently of the context in which they act. A reason for this might lie in the difficulty to obtain especially ethnographic data about activities that are highly strategic. Here lies an important limit to my study: While I could do some observations and some interviews, I did not have access to the NGO professionals' daily activities and interactions with actors outside the organisation. Hence, my study has kept an exploratory character until the end. It provides insight into the variety of strategies that professionalised advocacy organisations follow and the resources that they mobilise strategically to attain their goals without however pretending to completeness neither in terms of strategies, resources and modes of action discovered nor with regard to the analysis of these.

The thesis is structured as follows: The theoretical perspectives and concepts are presented in Part I of this thesis. Part II will present the methods used and the data collected and analysed in this research which is followed by Part III that provides a historical overview of civil society engagement in asylum governance in Switzerland as well as an overview of different civil society actors engaged in the asylum field today. This part also provides an overview of the political opportunity structure in Switzerland as well as information about the political and legal context by which the period between 2015 and 2019 at the centre of the analysis is characterised. Part IV will then, as the first part of the analysis, present the self-perception of NGO representatives', their resources and the political positioning of the organisations, followed by Part V analysing the different dimensions of their insider and outsider strategies. Part VI, the third part of the analysis will present the cognitive frames of refugee advocacy claims, their politicised or depoliticised approach of the issues addressed in claims and underlying logics, rationales and legal and moral principles. Part VII provides a discussion of the theoretical and empirical insights that my study provides and some conclusions.

PART I THEORETICAL APPROACHES AND CONCEPTS

2 Approaching NGO advocacy, expertise and logics of refugee support

A variety of theoretical perspectives and concepts are mobilised in this PhD thesis to grasp the type of actors investigated, its variety of advocacy strategies and the ways in which issues are presented to the public in order to raise awareness and gather support for the defended causes. First, I approach NGOs and their advocacy strategies from a social movement perspective. In social movement studies, there are two dominant approaches to explain collective action: On the one hand, the political opportunities approach understands social movement actors as interacting with their context. The repertoires of action that they use in their advocacy work are chosen considering this context. On the other hand, the resource mobilisation theory attributes a central importance to the resources that movements and movements actors (can) mobilise. Chapter 2.1 with its sub-chapters presents the social movement perspective with its opportunities and resource mobilisation approaches. I propose to complement the social movement perspective with a neo-institutionalist perspective on organisations, which focusses less on the movement and more on the actors, to shed light on relational dynamics between the organisations in the centre of this research with other actors in the asylum field. Finally, the last of the sub-chapters focusses on the concept of framing in reference to the ways in which social movements construct, and present issues to mobilise supporters and gain media attention for their causes. Frames concern thus the cognitive dimension of advocacy, the ways in which issues are perceived, defined and understood. The concept of framing will be especially helpful for the analysis of the NGOs' public claims-making. Understood as a strategic activity, the construction of frames considers aspects like the target audience, chances of success and the opportunities within which a certain framing takes place.

This chapter is followed by some theoretical reflections on the political, politicisation and depoliticisation (chap. 2.2), terms and processes that I identified as relevant to understand the character of the NGOs' strategies in relation to the political sphere that they target. Politicisation and depoliticisation are ambivalent and dynamic processes. While there is no unique definition of both concepts, I think that their value lies in their process character helping to understand how issues are moved out of the political debate, or on the contrary, how the same issues (or others) can be (re)situated within political and societal debate, challenging dominant discourse and/or institutionalised policies. A narrow and an extensive understanding of (de)politicisation shed light on different dimensions of those processes.

A third chapter (chap. 2.3) presents a political sociology perspective on expertise. This perspective is useful to analyse the NGOs' and their representatives' self-perception as legal experts, to understand

the functions of (their) expertise in policy processes and more generally their relationship with processes of political decision-making.

Finally, the legal register that is central in the NGOs' different modes of action, and here especially human rights, is complemented by humanitarian arguments which becomes specifically visible in the frames mobilised in public communication. A critical migration and refugee studies perspective on both registers, by mobilising the concept of humanitarian reasoning and a critical account of human rights sheds light on the logics that both strands of argumentation are based on. Chapter 2.4 presents the analytical differences between a human rights and a humanitarian reasoning but also explains their operational proximity which allows to understand how two seemingly opposing perspectives may indeed share a certain proximity when mobilised in the framing of issues in the asylum domain.

2.1 Studying professionalised NGO advocacy: at the intersection of social movement and organisational theory

Civil society engagement and more precisely (professionalised) NGO advocacy, which is at the centre of the present research, takes place in a context. Combining insights from organisational theory, especially its neo-institutionalist fields approach, with the social movement perspective guides the analysis of NGO advocacy in their context while drawing attention to dynamics, interactions and relationships in the organisational field in which the NGOs operate. Finally, a theoretical understanding of the mobilisation of the legal register is useful in the context of the present study as legal expertise presents an important resource for the studied NGOs.

2.1.1 A social movement perspective: contentious politics, political opportunities and modes of action

The social movement perspective and especially its political opportunity approach originally developed by McAdam in the 1980s, is of theoretical interest for my research as it provides a conceptual understanding of civil society as a distinctive political actor (see Curbach, 2003; Giugni, 2001; Koopmans/Statham, 1999; McAdam, 1982; McCarthy/Zald, 1977, Meyer/Tarrow, 1998; Tilly, 1978). Although there is no universal definition of what a social movement is, definitions of the term "typically have included both elements of preference and organized action for change" (McCarthy/Zald, 1977: 1219). Following Della Porta, "social movement studies point towards the fundamental role of conflict in society" (Della Porta, 2020: 339). This focus on conflict rather than on change has the advantage that it includes movements acting for change but also includes those aiming at preventing change. In this sense, a social movement corresponds to "a set of opinions and beliefs in a population which represents preferences for changing some elements of the social structure and/or reward distribution

of a society [or preventing change]" (McCarthy/Zald, 1977: 1217f.). The actors representing those opinions, beliefs and preferences constitute then "a group of challengers engage[d] in public claims-making addressed to the authorities with the aim of influencing their decisions and behaviors" (Giugni, 2001: 242). Here, claims-making designates "the conscious articulation of political demands in the public sphere" (Lindekilde, 2013: 1) whereby it includes two aspects: On the one hand, a specific content is formulated in the form of a political request and on the other hand, this claim is publicly enacted (Lindekilde, 2013). Through the politically enacted claims, social movement actors engage in contentious politics (Tilly/Tarrow, 2007). Contentious politics signifies the "interactive, collective making of claims that bear on other people's interests and involve governments as claimants, objects of claims, or third parties" (ibid.: 23). Thus, engaging in contentious politics means that claims-making takes place as an interactive process that considers other actors, importantly governments and their interests.

This interactive character of claims-making is also addressed by the political process theory, also known as political opportunity approach, which is based on the premise that claims-making by social movement actors always takes place in a context. Political process theorists like Tilly (1978), McAdam (1982) and Tarrow (1983) "firmly established the link between institutionalized politics and social movements/revolutions" (McAdam et al., 1996: 2), a link that has been further developed over the last decades and that differs from earlier collective behaviour theories focussing, from a social psychology perspective, on shared grievances and beliefs as main factors of mobilisation (see e.g. Gurr, 1970; Turner/Killian, 1972; Smelser, 1963). Contrary to the latter, Meyer, for example, affirms: "The wisdom, creativity, and outcomes of activists' choices – their agency – can only be understood and evaluated by looking at the political context and the rules of the games in which those choices are made" (Meyer, 2004: 128). This focus on the interaction between movements and institutionalised politics has been a guiding approach for scholars trying to explain the emergence of specific social movements as well as for scholars comparing the characteristics of movements in different national contexts. In both cases, the studies have been guided by the basic assumption that "social movements and revolutions are shaped by the broader set of political constraints and opportunities unique to the national context in which they are embedded" (McAdam et al., 1996: 3).

According to Caren (2007), one can summarise the dynamics that emerge between the characteristics of a movement and its larger context through five specific elements: political opportunities, contentious repertoires, mobilising structures, framing processes and protest cycles. While I will explain the concept of political opportunities and contentious repertoires in the following, I will turn to mobilising structures - and here, specifically the role of organisations – and framing processes in the subsequent chapters. The last of the above-mentioned five elements are protest cycles which can be understood as "historical periods of heightened contention across the political sphere" (Caren, 2007:

3). The concept of protest cycles is of less importance in the present study as it focusses on a relatively short period of time. Further, I follow Koopman's and Statham's (1999) proposed shift from protest to claims-making. Similar to Lindekilde (2013), they understand claims-making as "strategic demands made by collective actors within a specific contested issue field" (ibid.: 6). Claims-making and framing of the claims, and more generally the discursive dimension of the NGOs' activities, are closely linked, which is why I will turn to both aspects in more detail in a separate chapter.

Social movements and political opportunities

It is the notion of political opportunities that addresses the context in which actors of social movements act, in which they make specific claims and in which they decide how to express them. The concept of political opportunities points to interactions between movement actors and institutionalised politics (Meyer/Minkoff, 2004: 1458). Speaking of interactions, at this point, it might be worth underlining that in democracies political actors (in the institutional sense) and their challengers (here from civil society) are often not clearly separable and that overlapping coalitions exist between politicians and their challengers (Koopmans/Statham, 1999: 10). As Cullen points out, "[s]trategies of public authorities/policy makers interact in patterns of facilitation and/or repression of the strategies of NGO actors" (Cullen, 2009: 103). Investigating engagement of NGOs in the decision-making processes regarding asylum policy, legislation and practice means questioning more generally their relationship with state actors through a range of different activities. This is even more the case as organizations that act as representatives of refugees' interests generally do not only carry out direct lobbying; they also target asylum policy and law through a range of other advocacy activities such as public campaigns, reports, training for practitioners, and legal advice and might also be engaged in the provision of services mandated by the state. These activities are shaping and are shaped by a changing "degree of power inequality" (Caren, 2007: 2), an aspect of political opportunities.

The "structure of political opportunities" (Tarrow, 1994: 85) – or "exogenous factors" as they are called by Meyer and Minkoff (2004) – has an influence on whether and to what degree a mobilisation for specific interests takes place, which claims are made, which alliances are built, which strategies are chosen and if institutionalised policies are effectively influenced (Meyer, 2004: 126). Following Tilly and Tarrow (2007: 22), overall, it is the political opportunity structure that represents "[t]he major constraints and incentives for contentious politics" and these are mostly local and national. The authors acknowledge nevertheless that global problems may also influence framing and that contention may also target international institutions (ibid.). "While the nation-state has certainly not disappeared, it is now flanked by sub- and supranational entities which possess increasing powers" (Della Porta, 2013: 3). There are two categories of political opportunities or exogenous factors: first, issue-specific aspects and second, more general characteristics of the political system and the political environment overall in which social movement actors operate (Meyer/Minkoff, 2004; Giugni, 2009).

Overall, "[p]olitical opportunities are theorized as influencing action through relatively consistent and enduring aspects of the political structure" (Meyer/Minkoff, 2004: 1483). With regard to the general features of a state's political system, Kriesi et al. (1992) identify three fundamental aspects that influence social movements' choice of strategies: its formal institutional structure, informal processes and dominating strategies of the political actors as well as the dominating power relations. "The options for participation determine strategy – confrontational in response to blockage, assimilative in response to openness" (Meyer, 2004: 131). Linking the activities and strategies of movement actors and the contextual characteristics and structures, the mobilisation of the political opportunity approach allows to understand professionalised NGO refugee advocacy practices in their larger political, economic and societal context. Hereby, I do not so much intend to determine and evaluate the output of NGOs in terms of political influence, but it is rather a matter of understanding advocacy activities as interacting with and acting within a complex environment in which political decision-making takes place. In this sense, the "political environment provides a consistent set of opportunities and constraints for different forms of mobilization and for policy influence" (Meyer/Minkoff, 2004: 1482). So, following the political opportunities approach, the forms of mobilisation or, using Tilly's (1986, 2008) terminology, the repertoire of contention that social movement actors use, are linked to the political opportunities shaping the context social movement actors are confronted with.

Repertoires of action, political opportunities and strategy

So, it is through their contentious repertoire that social movement actors engage in contentious politics. "A repertoire of contention comprises what people know they can do when they want to oppose a public decision they consider unjust or threatening" (Della Porta, 2013: 1). This definition by Della Porta summarises the general idea behind the concept of a contentious repertoire of action. Della Porta bases this definition mainly on Tilly's (1986, 2008) and Tilly's and Tarrow's (2007) theoretical reflections on the "whole set of means [that a group] has for making claims of different types on different individuals" (Tilly, 1986: 2). The contentious repertoire of action includes thus all modes of action through which claims are expressed by social movement actors. Examples include public demonstrations, petitions, campaigns, but also direct lobbying of political decision-makers, the publication of position papers or legal litigation. Chapter 2.1.5 will focus specifically on the mobilisation of the legal register in more detail. Those modes of action, or "performances" as they are called by Tilly and Tarrow (2007), "cluster into repertoires of contention" (ibid.: 10). The repertoire of action can change over time, for example through innovation, and depending on the geographical, political, institutional and social context social movement actors are confronted with. More recently, Della Porta et al. (2006) have remarked, for example, new elements in the contentious repertoires of action of contemporary movements like the development of witnessing practices aiming at convincing rather than winning. More generally, following Tilly (1986), the modes of action that are employed by social

movement actors and that are thus part of their contentious repertoire are those which are considered to be feasible in the concrete context while other modes of action are excluded. Thus, political opportunities and the repertoire of action of a social movement (actor) are closely linked.

There are two main elements that characterise the modes of action, or "performances", of a contentious repertoire of action. First, they represent a form of action through which claims are expressed and second, as these claims are addressed at another actor – for example, at the government - these modes of action link at least two different actors with each other. As "[c]ontention always brings together subjects, objects, and claims" (Tilly/Tarrow, 2007: 5), the modes of action of a contentious repertoire apply to "claimant-object pairs" (ibid.: 16). Following the criticism of the "structural bias" of the political opportunity approach, expressed by several authors (Jasper, 1997, 2004; McAdam et al., 2001; Kriesi, 2008), the focus has increasingly been laid on the interaction between the different actors involved in contentious politics. In this context, Jasper (2004) proposes to add an agency and thus strategic dimension to the political opportunities approach defining opportunities and constraints as determining factors for the choice of movement actors' modes of action. "A strategic approach treats protest groups and other players symmetrically, instead of reducing the latter to the "environment" of the former – a structural trick that reduces the agency of all players except protestors" (ibid.: 5). Furthermore, investigating explicitly the agency and strategic considerations of social movement actors signifies to pay attention to "the subjective interpretations of the actors involved" (Kriesi, 2008: 77). While one may indeed have the impression that the political opportunity approach presents a strong structural bias, Kriesi (ibid.) remarks that McAdam stated already in his early reflections about the political process model that it is people who mediate between opportunity and action and that they attach subjective meanings to their situations (McAdam, 1982). Acknowledging the subjective meanings that persons who are involved in movements attach to their individual actions signifies to acknowledge their agency and consider the strategic considerations behind their actions.

When speaking about a social movement, strategy and agency are not only shaping the behaviour of individuals who are part of a movement but importantly of the whole movement leading to the mobilisation of certain repertoires of action as mentioned above. Further, between the micro and the macro levels of a movement are situated organisations as "meso-level groups" (McAdam et al., 1996: 3) who also act by following certain strategies. Social movement scholars attribute these movement organisations a central role for mobilisation and sustainment of collective action. "No matter how momentous a change appears in retrospect, it only becomes an "opportunity" when defined as such by a *group* of actors sufficiently well organised to act on this shared definition of the situation" (McAdam et al., 1996: 8, italic in the original). Social movements being characterised by collective action to promote or resist social change "operate as coalitions of organisations and individuals who

cooperate on some matters of concern, and simultaneously compete for support" (Meyer, 2004: 140). Hence, the importance of organisations as mobilising structures for social movements. Under the term of mobilising structures, McAdam et al. (1996: 3) summarise "those collective vehicles, informal as well as formal, through which people mobilize and engage in collective action". Here, the focus lies indeed on "meso-level groups, organizations, and informal networks" (ibid.). In their now well-known resource mobilisation theory, McCarthy and Zald (1973, 1977) identify early the important role of social movement organisations (SMOs) as "formal organisational manifestations" (McAdam et al., 1996: 3) of social movements for mobilisation processes of the latter. While there has been disagreement among social movement scholars about the centrality of formal organisations– with proponents of the political process model like Tilly (1986), McAdam (1982) or more recently Kriesi (2009) underlining the role of informal and grassroots structures for the mobilisation of social movements – there seems now to be a "growing awareness among movement scholars of the diversity of collective settings in which movements develop and organizational forms to which they give rise" (McAdam et al., 1996: 4). As the present study focusses on professionalised advocacy organisations, in the following chapter, I propose to present social movement scholars' reflections on the role of SMOs, their general characteristics and more recent theorisations of these types of entities. Hence, I understand professionalised advocacy NGOs as a specific form of "mobilising structures" enabling collective action, characterised by a certain degree of formalisation.

Furthermore, in this context, Della Porta's (2020) proposition to "build bridges" between theoretical strands focussing on social movement organisations on the one hand and on civil society organisations on the other, proves helpful to grasp the type of actors that are in the centre of the present study. These more general reflections about the role and structure of organisations will then lead to the importance of the professionalisation of these organisations, already seen as necessary by resource mobilisation theorists like McCarthy and Zald (1977).

2.1.2 Professionalised movement organisations as mobilising structures

As mentioned, especially among resource mobilisation theorists growing attention has been paid to specific organisational forms, "where social movements are regarded primarily as sets of organizations with similar, or at least compatible, goals, rather than as networks of interdependent actors" (Della Porta, 2020: 941). Further, McAdam et al. (1996: 17) observe that the focus of social movement researchers shifts over the life span of a movement. While in the beginning opportunities for the emergence of a movement are in the centre of interest, over time the movement itself, and thus "the SMOs that purport to speak for it" and who interact with other actors in the movement and outside it become more important. The present study focusses on the second aspect: Even though the historical overview in chapter 4 gives some information about the historical background of the contemporary

refugee support field in Switzerland, indeed I do not investigate the emergence of the refugee support movement in detail, but my focus lies rather on the contemporary practices and discourse of two organisations (AICH and the SRC) as concrete forms of mobilising structures carrying "a set of opinions and beliefs […] which represents preferences for changing some elements of the social structure and/or reward distribution of a society" (McCarthy/Zald, 1977: 1217f.).

A resource mobilisation perspective

While the above-presented approaches, especially the political process theory, focus on political opportunities as main factors for the emergence and mobilisation of social movements, a resource mobilisation perspective "emphasizes the variety and sources of resources" (McCarthy/Zald, 1977: 1212) of movements. These concern the relationship between a movement and a variety of other actors like the media and the authorities, and also interactions between different organisations within the movement. Overall, McCarthy and Zald (1977) differentiate between three levels: the social movement sector (SMS), the social movement industry (SMI) and the social movement organisation (SMO). To differentiate between these three components means to focus explicitly on the organisational aspect of movement activity and to recognise that a social movement is represented by a variety of SMOs. Following McCarthy and Zald, "[a] *social movement organisation* (SMO) is a complex, or formal, organization which identifies its goals with the preferences of a social movement or a countermovement and attempts to implement those goals" (ibid.: 1218, italic in the original). A *social movement industry* (SMI) is then constituted by all SMOs "that have as their goal the attainment of the broadest preferences of a social movement" (ibid.: 1219). Finally, the *social movement sector* (SMS) encompasses all SMOs existing in a society independently of the concrete social movement to which they are attached (ibid.: 1220). While the term "industry" may somewhat have a pejorative character, McCarthy and Zald (1977) use the term to draw analytical parallels with the concept of industry in economics in order to define the boundaries of a social movement industry and thus to decide which SMOs are part of a specific SMI. What this parallel finally shows is that SMOs may be part of several SMIs, some with broader and some with narrower goals. Thus, a human rights organisation will be part of the wider human rights movement industry while it may, at the same time, be part of the refugee support movement industry with its narrower goal of refugee protection. "Each SMO has a set of target goals, a set of preferred changes toward which it claims to be working" (ibid.: 1220). It is the (broad or narrow) goals of SMOs that define their conceptual link with specific social movements and SMIs.

First, McCarthy and Zald (ibid.: 1216) argue that the aggregation of resources, in the form of money as well as labour, are central to the emergence and the continuity of a movement. Second, the aggregation of these resources "requires some minimal form of organization" (ibid.). Hence, the importance of social movement organisations for the emergence and persistence of movement

activity. SMOs seek to aggregate and mobilise a variety of resources, not only human and financial but also moral and social (Edwards/McCarthy, 2004). Third, the aggregation of resources on which the success of a movement importantly relies, involves also actors outside the social movement (as potential supporters not only providing money but also labour). From this perspective, "social movement organizations have a number of strategic tasks" (McCarthy/Zald, 1977: 1217), such as the mobilisation of supporters, the neutralisation or transformation of the wider public in sympathisers in order to achieve their goals. As McCarthy and Zald (ibid.) point out, different choices of tactics respectively modes of action might collide in these processes. The organisations themselves are then shaped through the resources they have at their disposal, including funding, staff, expertise and technology. Further, within a SMI, different SMOs may compete for resources from different actors (individuals, state-actors), cooperate and/or engage in a division of tasks with other SMOs and/or provide financial or other forms of support for each other (Armstrong/Bartley, 2023: 3).

Regarding the relationship with other organisations in the movement, it is interesting to note that several scholars (see McCarthy and Zald, 1977; McAdam et al., 1996, referring to Barkan, 1979 and Haines, 1988) observe a "radical flank effect" when a movement includes "extremist" as well as more "moderate" SMOs. As McAdam et al. (1996: 14) summarise, "the presence of extremists encourages funding support for the moderates as a way of undercutting the influence of the radicals". Furthermore, and beyond funding support, a similar effect is observed regarding the relations between social movement organisations and the authorities. When responding to a movement, authority representatives focus on movement organisations and leaders as interlocutors speaking for the movement and here, they will focus rather on those "who are perceived to be reliable negotiating partners. In such a situation, the presence of groups deemed extremist can actually help legitimate and strengthen the bargaining hand of more moderate SMOs" (ibid.). Hence, other SMOs can function as important partners in coalitions, but they can also "serve" to strengthen a SMO's own legitimacy vis-à-vis the authorities and/or the wider public.

Focus 1 - Social movement organisations, interest groups and advocacy organisations

Beyond the rather general definition of a social movement organisation as "a complex, or formal organization which identifies its preferences with a social movement or a countermovement and attempts to implement those goals" (McCarthy/Zald, 1977: 1218), social movement scholars have not developed clear criteria to identify a SMO. In this context, it is interesting to note the proximity with the concept of interest groups which is more used by political scientists. Both, SMOs as well as interest groups "share the goal of expressing political demands and influencing politics" (Csiar, 2023: 1). One might nevertheless argue that there are some important differences that persist between SMOs and interest groups, first of all, due to the "different kinds of collectivities" (Snow, 2004: 7) they represent. SMOs identify with a cause that is common to a larger network of actors, all part of

a social movement. Even though the intensity with which a SMO identifies with this common cause may differ from other actors involved in the social movement (Diani, 2011: 226), SMOs are generally integrated in a larger network. An interest group, on the other hand, may be "free-standing" (Csiar, 2023: 3). Another aspect concerns the ways in which SMOs generally engage with politics that is as outsiders and institutional challengers contrary to interest groups and their insider position in the policy process.

Nevertheless, while for some time this difference in terms of perspective on the phenomenon of interest organisation focussing on the interest groups' insider position in the policy process opposed to the SMOs' outsider position (Burstein, 1999; Csiar, 2023) prevailed, at the end of the twentieth century this difference disappeared. In the context of the development of new social movements (e.g. environmental, feminist, pro-migrant movements), scholars observed that these movements respectively organisations attached to these were "as close to the decision-making process as (traditional) interest groups, such as trade unions" (Csiar, 2023: 3). As McCarthy and Zald (1977: 1218, referring to Lowi, 1971) remark, from the perspective of political scientists, a SMO which becomes this close with institutionalised politics constitutes, in fact, an interest group. However, the development seems to also go the other way around: As Csiar (2023: 3) points out, nowadays various actors use protest as a conventional mode of claim-making which becomes manifest for instance when institutionalised interest groups like trade unions sponsor protest events. Overall, "based on the level of incorporation and action repertoire, the distinction between the large part of SMOs and interest groups is no longer as pronounced as once argued" (ibid.).

Finally, in order to bring together social movement and interest group studies on a conceptual level, Andrews and Edwards (2004) propose a definition of the "advocacy organisation" that includes public interest groups, SMOs and more widely non-profit organisations while, however, excluding profit-oriented interest groups such as business and economic groups. While there is disagreement about the utility of the concept due to the latter aspect, in the context of my study of organisations aiming at influencing asylum policy and practice, this definition of the advocacy organisation provides some conceptual value even though I understand it rather as conceptual guidance than a clear-cut definition of the organisations that are in the centre of my research. Following Andrews and Edwards (2004: 481), advocacy organisations are groups that "make public interest claims either promoting or resisting change that, if implemented, would conflict with the social, cultural, political or economic interests or values of other constituencies or groups". As mentioned in the introductory part, I have used the term "advocacy" in a heuristic way throughout the research process and, in my view, this way does not collide with Andrews' and Edwards' (2004) definition of advocacy organisations – nor does it with the above-given definitions of social movement organisations. Both types of definitions do rather focus on the types of goals (make claims to resist or promote change)

than on specific respectively exclusive characteristics of the organisations or modes of action they use.

Overall, the above-presented reflections about social movement organisations and interest groups, leading, among other things, to alternative definitions respectively attempts to combine both perspectives, show how dynamic the field of interest organisation is. Furthermore, they also show that a strict *a priori* categorisation of and differentiation between organisations in social movement organisations, interest groups and advocacy organisations is not really adapted to understand their modes of action in a comprehensive way. Nevertheless, bringing the different perspectives together allows to shed light on important dynamics when non-state actors engage in contentious politics.

The professionalisation of SMOs

McCarthy and Zald (1977) do not only describe the role of organisations for the success of social movements but furthermore, they find that professionalisation is an important characteristic of persistent organisations: "The need for skills in lobbying, accounting, and fund raising leads to professionalization" (McCarthy/Zald, 1977: 1234). For a movement, professional organisations play an important role as "vehicles for coordinating contributions of time, money, and effort by activist constituents" (Walker, 2021: 6). Professional social movement organisations are characterised by two main aspects: paid staff members who make their career in the movement field and a certain formalisation of structures (McCarthy/Zald, 1973: 15). They are often structured with defined roles, hierarchies, and have systems in place for decision-making and coordination. They may have offices, and formal membership systems. Formalisation of social movement organisations' leadership contributes to their own maintenance even when leadership and environmental conditions change. "Formalized SMOs are more likely than informal SMOs to engage in activities that help to achieve organisational maintenance and expansion as well as influence on external targets" (Staggenborg, 1988: 599). McCarthy and Zald (1977) see professionalisation as a rational strategy to secure resources as paid staff can be expected to mobilise their skills to carry out fundraising activities in a routine manner; others are paid for permanent contact with the media. A formalised distribution of roles aims at ensuring that such maintenance tasks are continuously carried out and that the organisation can react to opportunities.

Here, the resource dependency theory from an organisation theoretical perspective can complement this understanding of the role of professionalised movement organisations by addressing the efforts of organisations "to manage their external resource dependencies" (Walker, 2021: 6). Paid staff, routines, and a division of labour allow them to maintain activities like legislative lobbying which require constant contact with stakeholders like politicians and representatives of administrations

(Staggenborg, 1988: 599). The regular and continuous presence of professional organisation members is, furthermore, suitable for the coordination of coalitions within a movement.

At the same time, formalisation and professional leadership affect the strategies and tactics of an organisation, favouring the institutionalisation of its activities. A formalised structure with a hierarchy of staff members and formalised procedures for decision-making signifies that activities need to be approved by leadership before they are carried out. This certainly serves the control of resources used for activities (Staggenborg, 1988: 597ff.) but is rather opposed to spontaneous actions – or reactions to environmental change. Furthermore, with the professionalisation of organisations' leadership and the importance that it attributes to the organisation's maintenance and thus to funding, a moderation in claims (Minkoff, 1993) may come to reach a large audience (Zald/Ash, 1966) and / or obtain state funding (Smith, 2007). Professionalisation may thus have an influence on the claims that organisations make but also the ways in which these claims are framed.

2.1.3 A neo-institutionalist field approach to organisations

Following Walker (2014) and Walker and Martin (2019), I propose to complement the social movement perspective on organisations by a neo-institutionalist field approach respectively to integrate both approaches in the analysis of social movement organisations. From the perspective of the "less movement-centric" field approach (Walker/Martin, 2019: 173), I propose to consider the organisations as units of action within which decisions are taken about how to make claims and the claims themselves that are made; in short, where strategies and thus the use of certain modes of action are decided. Compared to social movement scholars, organisational theorists adopt a "more actor-centric view" (Weber/King, 2015: 496) to "bring movements into being" (Roose, 2016: 123). They focus on "how the relational dynamics of SMOs shape SMO strategies and practices" (Walker/Martin, 2019: 173) and thus, understanding organisations as movement actors interact within a web of relationships with other actors within the social movement but also with a variety of other actors outside the movement. In the case of the present study, these are actors who are concerned with any aspect of the governance of asylum. In organisational theory, this "totality of relevant actors" (DiMaggio/Powell, 1983: 148) are interacting in an "organisational field". Where a variety of actors interact with each other around a common issue, different interest and claims and different ways respectively strategies of claims-making collide and interact (see Klandermans, 1992; Curtis/Zurcher, 1973). To emphasise this dynamic character of fields, Fligstein and McAdam (2012: 10) have developed the concept of "strategic action fields" designating "socially constructed arenas within which actors with varying resource endowments vie for advantage". Organisations are agents in this field structuring for themselves action, formulating claims, mobilising and organising resources.

The analytic shift from "movement" to "organisational field" (Koopmans/Statham, 1999) steers the focus to the organisational unit in which decisions about claims-making, and action more generally, are made. Following this approach, organisational theory, and especially a neo-institutionalist approach of organisations, provides us then with a deeper understanding of the organisation's behaviour in its environment. While the political opportunities approach links social movement actors' strategies primarily to the possibilities that their institutional environment in terms of political system and legal situation presents, from a neo-institutionalist perspective, decision-making in organisations about the actions that they take is also influenced importantly by considerations of internal and external legitimacy. Also contrary to the output-oriented rationalism that Weber (1968) defended as the principle logic that would guide organisations' decisions, strategies and behaviour more generally, a neo-institutionalist approach of social movement organisations starts from the observation that they have shown that they are legitimate actors in the field. With regard to this "need for legitimacy as a primary goal of organizations" (Roose, 2016: 117), it further "claims that organizational practices are to an important part inspired by institutionalized rules in the organizational field and may be unrelated or even counterproductive to achieving the movement's goal" (ibid.: 118). The importance of institutionalized rules might seem counterintuitive at first glance as social movements engage in conflict in a field. However, the neo-institutionalist focus on the importance of questions of legitimacy for movement organisations pushes us to understand NGOs' strategies as outcomes of much more complex processes than a "simple" rational actor model in which goal achievement and measures are always linked in a direct and linear way. As Meyer and Rowan (1977: 340) point out, "[o]rganizations are driven to incorporate the practices and procedures defined by prevailing rationalized concepts […] institutionalized in society. Organizations that do so increase their legitimacy and their survival prospects, independent of the immediate efficacy of the acquired practices and procedures". Obviously, this does not mean that rationality is completely absent from organisational action or their internal decision-making processes but from a neo-institutionalist perspective, "instead of output rationality, rational strategies for gaining legitimacy guide organizational practices" (Roose, 2016: 128). Thus, I understand the above-cited reflections rather as a hint towards the complex questions which organisations respectively their representatives consider when they decide about strategies and towards the importance of how their environment is shaped which goes beyond opportunities that the properties of the political system present. This environment, the organisational field, is also constituted by norms, generalized beliefs and established rules which are considered as valid in the field. A neo-institutionalist explanation of movement organisations' strategies would relate the organisations' uptake of those beliefs and rules to secure their legitimacy. This questions somewhat the view of social movement scholars that "the targeted field is institutionalized but the movement is not" (Armstrong, 2002: 13).

However, to avoid determinism[6] in the analysis of movement organisations, I propose, in following Roose, to turn the link between organisations' need for legitimacy and institutionalised norms into a question and to rather "ask which regulative, normative and cultural-cognitive institutions are regarded as valid, i.e., which legal rules are accepted or rejected, which norms are regarded as crucial, and which cognitive schemata guide the interpretation of the world by movement activists" (Roose, 2016: 123).

Finally, another point that should be specified when talking about questions of legitimacy and their role for organisations' strategies, relates to different "constituencies" of an organisation's practices. Organisations do not have to secure their legitimacy only towards external actors to get their claims heard but an organisation's sustainability and continued existence relies also very much on its own constituencies. These are other actors in the movement and the organisation's own individual members. In the case of professionalised NGOs, it relies on the loyalty of its employees which it might try to secure through following certain ideologies, internal procedures and rules (Brunsson, 1985: 18-21). As Roose points out, "[i]n many cases, there is a precise line to distinguish protest forms that are regarded as legitimate (though illegal) from other illegitimate forms" (Roose, 2016: 124) and organisations' members might expect organisational leaders to respect this line. The other way around, organisations who are part of a movement can also themselves repress other forms of movement action "through such tactics as firing activists, closing off spaces for activism through union-busting, and also through forms of "soft" repression such as public relations tactics or the facilitation of counter-movements" (Walker, 2012: 588) or action against those delegitimising their own position.

2.1.4 Claims-making and the concept of framing

Taking into account the above described organisational-theoretical reflections about decision-making within organisations shall deepen the analysis of professionalised NGO refugee advocacy practices and discourse by approaching the organisations as situated in an organisational field where they manoeuvre, between, on the one hand, internal interests, expectations, ideologies and values and, on the other hand, external institutional, social and legal contexts and the variety of actors being present in the field. Having said that, practices and discourse need, of course, be considered together. If in a methodological sense it helps to distinguish between a level of practices and one of discourse,

[6] The link that neo-institutionalist theorists make between the importance of the need for legitimacy and the use of institutionalised generally valid rules and beliefs for organisations' strategies is closely linked to the observation of isomorphism among organisations in a field. While movement theorists focus on change, neo-institutional organisational theorists underline stability in a field and coherence among its actors. Again, to avoid any deterministic influence on my own analysis of NGO advocacy practices in the asylum field, I am somewhat prudent about using the term isomorphism. At the most, it might be formulated as an "Is there?" question.

analytical concepts like “framing” make obvious how both levels are closely connected. In this sense goes also Koopmans’ and Statham’s (1999: 3) proposition to shift the focus “from ‘protest’ to ‘political claims-making’”. Acts of claims-making express “conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action” (McAdam et al., 1996: 6). In processes of claims-making “mediating between the structural requirements of opportunity and organization are the emergent meanings and definitions – or frames – shared by the adherents of the burgeoning movement” (ibid.: 8). Framing aims at creating a specific understanding of a problem as well as at presenting the actors themselves as legitimate advocates (Snow et al., 1986; McAdam et al., 1996). The notion of frames respectively framing processes “emphasizes the more strategic decisions achieved at a higher organizational level as an ongoing, dynamic process” (Caren, 2007: 2). It designates thus a socially constructed process which is linked to, interacts with and takes place in the context of a contentious political field (Koopmans/Statham, 1999: 2-6). In concrete terms, “framing consists in selecting some aspects of perceived reality to enhance their salience, in such a way to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation” (Brusa, 2012: 86, citing Entman, 1993). Framing takes place in the discursive sphere of claims-making which is of relevance for the definition of political reality. This approach of claims-making follows from an understanding of discourse as “speech acts” having a productive force (Bourdieu, 1991). At the same time, “speech acts” are “constrained by the socially governed system of intelligibility. To speak is to appropriate a socially recognized style or idiom from the hierarchy of those idioms that are already existent in the social field” (Shapiro, 2002: 611, based on Bourdieu, 1991: 54). Drawing on this fundamental understanding of discursive acts as reality creating performances while constrained by dominating and socially recognised patterns allows to understand why the analysis of claims-making and framing of demands is of interest beyond the question of political uptaking respectively implementation of those claims.

The concept of framing which plays a central role in the study of social movements goes back to Goffman’s (1974) frame analysis. Following Goffman, individuals use frames – interpretative schemes – to understand, categorise and make sense of experiences and events. “Frames have the function to help audiences locate, perceive, identify and label the flow of information around them” (Goffman, 1974, 21). Taking up Goffman’s framing concept, Snow et al. (1986) as well as political process theorists like Tarrow (1983, 1989), Tilly (1978) and McAdam (1982, 1996) claim the “importance of more cognitive and ideational dimensions of collective action” (McAdam et al., 1996). Social movements – and thus the actors within organisational fields – are carriers of ideologies and conceptions. They participate actively in the construction and preservation of meaning for supporters, opponents and spectators in the contentious field (Brusa, 2012; Snow/Benford, 1988; Benford/Snow, 2000). In the case of the present study, discursive forms of public claims-making like campaigns, press releases or

responses to consultations participate in shaping perceptions of refugees through participating in negotiations about asylum governance. As Koopmans and Statham point out, "the public sphere is an important field where social problems are constructed, and political alternatives become defined" (1999: 1). Following Giugni (2009: 364), the mobilisation of particular frames in claims-making is linked to "a discursive side" of opportunities "relating to the public visibility and resonance as well as the political legitimacy of certain actors, identities and claims", defining the "extent to which their claims and identities relate to prevailing discourses in the public domain". This observation by Giugni points to the interaction of frames mobilised by social movement actors and frames that exist in the "organisational field". The question of resonance of certain frames is a central one in social movement studies. While my work, as mentioned above, does not aim at assessing the degree of effectiveness of the mobilized frames by organisations in the Swiss asylum field, the concept of resonance and especially its factors are of relevance. As interviewees told me, resonance respectively potential resonance of certain frames play an important role in the strategic decisions of their organisations.

Following Benford and Snow (2000: 619-622), two factors that interact with each other have an influence on the degree of resonance that a frame may have: the credibility of a frame and a frame's relative salience. Credibility requires, first of all, consistency - that is the absence of contradictions in discourses. Second, the credibility of claims relies on empirical evidence and third, also the perception of the claim-making actor plays a role for the credibility of his or her articulated frame. Here, status, knowledge and perceived expertise are elements that have an influence on persuasiveness of a certain frame and the claims linked to it (Benford/Snow, 2000: 621, referring to Hass, 1981; McGuire, 1985). In addition to credibility, the salience of a frame with regard to the targeted (groups of) persons is of importance. One aspect here is the centrality of the beliefs, values and ideas articulated through frames for the persons targeted by it. A second aspect relates to the personal experiences of the addressed persons. Thus, a frame is experientially commensurate if it is not too abstract but rather touching on real life experiences of these people. Finally, narrative fidelity is crucial for a frame's standing. Narrative fidelity refers to the frame's coherence with the targeted persons' "inherent ideology[7]" (Rudé, 1980) which I understand as basic assumptions in a field. In this sense, an inherent ideology in the migration and asylum field is for example the assumption that national borders are necessary, and that persons' border movement needs to be controlled. This brings us back to the above-mentioned role of "institutionalised scripts" in a field which influence organisations' strategies and thus framing activities.

[7] Benford and Snow (2000) note that several terms exist that refer to narrative fidelity of frames, such as "cultural resonance" (Campbell, 1988), "myths" (Campbell, 1988), "domain assumptions" (Gouldner, 1970). I prefer to use the term "inherent ideology" as ideology is largely understood as being constructed and as it does not contain any reference to the term "culture" which I do not find very helpful for analytical purposes.

The above-presented concept of framing with its different types shall help to understand public discursive practices by organisations in the Swiss asylum field as interacting within their context. By drawing on a political opportunities approach linked with the concept of framing, investigating claims-making and how claims are framed in the multi-organisational field of asylum signifies to consider these activities as outcomes of choices in a complex and entangled environment.

A specific form of social movements: the solidarity movement and (its) moral economy (framing)

Organisations that carry out refugee advocacy work do not primarily represent their own interests, but rather those of "others". Such actors and their activities are of special interest to solidarity movement studies as they represent an important non-governmental political actor in European countries. Solidarity movements are active in the field of human rights, antiracism, development aid and migration and asylum (Passy, 2001). I understand the NGOs that are at the centre of my study as solidarity movement actors, a characteristic that needs to be taken into account when investigating, for example, the framing of their claims. In the following, I aim at explaining how we can understand this link between the character of a solidarity movement and the general orientation of framing that is attached to this solidarity character of the movement.

As mentioned, actors of solidarity movements do not represent their own interests but "the beneficiary of the political goal of the organization differs from the constituency group that makes it" (Statham, 2001: 135). "Participants in the solidarity movement act collectively with a clear political aim, and their actions are pursued to the benefit of other people" (Passy, 2001: 7). In the case of refugee advocacy, organisations defend the interests of "outsiders" in the sense that the latter represent an "anomaly" to the "national order of things" (Malkki, 1995). Following the above-described political opportunities approach, interest representation of a specific group, a priori defined as "outsiders", considers the current political context and the characteristics of the approach of the State to this group. The dominant state political attitude towards those at the centre of a contentious issue is central to the framing of solidarity movements. Solidarity movement actors choose discursive strategies from which they expect a change in the definition of the interests they represent as a social common good. If organizations want to successfully defend the interests of refugees, they will seek to influence the dominant discourse in a way that defines asylum as "part of the common public good" (Statham, 2001: 136). Solidarity is based on a common interest which is the reason why the "outsiders'" interests need to be defined as "part of the common public good" so that the "outsiders" interests overlap with those of the "insiders'".

I propose to link solidarity movements, specifically in the context of Statham's reflection on the "public common good" to the concept of moral economy, which Götz sees "as a key concept of civil society research. […] If one concentrates on civil society, the focus of the moral economy will be shifted away from the destitute and towards those employing economic options in moral ways, that is, to the

economic supply side" (Götz, 2015: 158). From this perspective, the way in which the "supply" of asylum is claimed says more about the "supplying" society than about refugees. In the following, I propose to have a look at the concept's general elements and to relate moral economy to claims-making by solidarity movement actors in general that aim at defining interests of "outsiders" as "part of the common good". Moral economy links two aspects: The concept's second part "economy" refers to the question who is eligible for certain resources while the first term "moral" refers to the way in which who is eligible to these resources is defined. Thus, "[t]he term "moral economy" makes sense when claimants to a commodity can invoke non-monetary rights to that commodity, and third parties will act to support these claims (Tilly, cited in Thompson, 1991: 338). In this sense, a moral economy designates the production, dissemination, circulation and use of moral sentiments, feelings, values, norms and duties in social space. Moral sentiments play a central role in the public sphere whereby feelings are not separated from values and norms (Fassin, 2009: 1257-1260). Moral arguments invoked by civil society actors to claim and justify the protection of refugees address moral sentiments and moral principles thus presenting "alternative ways of "utility maximization" […] for economic transactions" (Götz, 2015: 147). In the context of asylum, I understand economic transactions as access to resources in terms of physical and social security via protection. Moral principles or, following Boswell (2005: 31), "ethical duty can shape national interests, so that it is simplistic to assume any clear separation of the two". Hence, the question is what kind of moral sentiments, values and norms are invoked by civil society actors and to which moral principles does asylum correspond to so that it can enter the definition of "the common public good" respectively national interests. Approaching solidarity claims with "outsiders" in terms of moral economy requires a historical and social contextualisation of the analysis. Moral economies are dynamic; the mobilisation of certain values and accounts of justice can change over time (Fassin, 2009; 2016).

But why do claims for solidarity with "outsiders" – in this case migrants - require this definition as contributing to the "common public good"? The answer lies, in my opinion, in a conceptual understanding of solidarity itself. Following Mathwig (2018), originally, solidarity is linked to an "us", a specific group which is responsible for its own members. Interestingly, vis-à-vis "outsiders" Mathwig speaks rather of "proxy solidarity", a hybrid construction which combines moral duties of help with universal imaginations of duties of justice. On the one hand, proxy solidarity draws on norms of justice based on an egalitarian and human rights foundation. On the other hand, norms of help are invoked which are based on a practice of difference by targeting persons in need. Hereby, the focus lies on the humaneness of the "other" while his or her place in society is ignored leaving the solidary "us" unaffected.

Linking the concept of proxy solidarity to Statham's (2001) reflections on the "common public good" allows to understand the logics of justice and/or help that underlie for example "compassion

nurturing" in the British asylum support sector, as described by Gill (2016; see also introductory part of this thesis). More generally, this understanding of solidarity and its differentiation from proxy solidarity sheds light on discursive strategies of how "outsiders" may become objects of solidarity. It certainly is helpful to trace the logics that lie behind the mobilisation of certain images of the refugee in refugee advocacy discourse carried out by organisations like the SRC and AICH. How do they represent refugees? And how do they present asylum respectively what kind of arguments do they advance in their claims regarding the treatment of refugees in the asylum system? Do they and if so, at what times do they mobilise norms of justice or norms of help? In this context, it is interesting to investigate the role of legal arguments and different legal frames. In France, D'Halluin-Mabillot (2012: 86) remarks for example, that since the 1990s, the activist asylum defence sector stands in clear opposition to the defence of sans-papiers. While the latter mobilises a human rights argumentation, the former is based on an exception discourse reducing asylum to a question of state sovereignty with reference to the Geneva Convention. The following chapter will provide some theoretical considerations regarding the mobilisation of the legal sphere by social movement actors.

2.1.5 Legal mobilisations

As we will see in detail further on, professionalised refugee advocacy organisations mobilise the legal register in a variety of practices and moments. While anthropological scholars have investigated legal support and defence practices often by following a street-level bureaucracy approach (Lipsky, 1980), studies that examine the mobilisation of the law by refugee support movements are relatively rare. Having identified legal expertise as a central resource for the advocacy work of the two professionalised organisations at the centre of the present PhD research, my study aims at addressing this gap by reflecting on the role of the observed mobilisation of the legal register by the SRC and AICH.

In order to fully grasp and analyse this set of legal mobilisation practices, I propose to draw on theoretical work on the "protesting use of the law" (Agrikoliansky, 2010; Israël, 2003, 2020) and specifically the legal mobilisation approach (McCann, 1991, 1994, 2006; Galanter, 1983; Zemans, 1983). A sociological understanding of the law as social activity, that being a system of potentials constituting the basis for a variety of practices of the mobilisation of rules (Lascoumes/Serverin, 1988) is the starting point. From this understanding of the law as a (set of) practice(s) comes its mobilization which is never neutral but has to be contextualised and analysed in connection with its practical conditions (Israël, 2020: 18). Within the Sociology of Law, this perspective lead to different conclusions about the role that law could play for contestation. As Israël points out, the ambivalence of the law as a motor for social change is, historically, a controversial question (Israël, 2020: 20). On the one hand, Critical Legal Studies scholars in the US concluded in the 1970-80s that the legal register could only be seen as partner of the politically and socially dominating and that legal professionals served in any case

the reproduction of existing hierarchies. The mobilisation of the law by social movements as a protesting practice was, according to this presumption, not a question at all. On the other hand, in France, scholars interested in the law from a sociological perspective engaged increasingly in interdisciplinary debates between legal and social sciences and in this context, the question of contestation through the legal register resp. the law as a mode of action of social movements arose in the scientific debate (Israël, 2020: 25, 31f.). Since then, sociological scholars have gained further interest in the role of law for social movements (Israël, 2001, 2003; Pélisse, 2005; Blévis, 2003; Agrikoliansky, 2002, 2010; Mouchard, 2003; Willemez, 2003; Latté, 2008). Finally, also in the Anglo-Saxon sociology, a strand of research has become interested in the mobilisation of the legal sphere by social movements (Handler, 1978; Milner, 1986; Scheingold, 1974, 1988; McCann, 1991, 1994, 2006; Morris, 1984; Mansbridge, 1986; Sarat/Scheingold, 2006). Zemans (1983: 690) defines "legal mobilization (invoking legal norms) as a form of political activity by which the citizenry uses public authority on its own behalf" and drawing on Lempert (1976) as "the process by which legal norms are invoked to regulate behaviour" (ibid.: 693). The legal mobilisation approach focuses on the strategic aspects of social movements' use of the law as "one among many constitutive and strategic dimensions of most social movements" (McCann, 2006: 8). On the one hand, there are different forms of mobilizing law that interact with each other in the form of a "dialectical relationship". Thus, formal legal action like litigation – which signifies the implication of official institutions like courts – can serve as a threat to strengthen informal legal action such as substantive claims-making of rights. On the other hand, McCann suggests that "[f]ormal actions typically are less significant in their direct impact than in their indirect interaction with other political tactics such as legislative lobbying, informal negotiation, collective bargaining, or mass demonstrations" (McCann, 2006: 19). In summary, not only formal and informal forms of legal action interact with each other, but legal action takes also place within a wider set of tactics and complex strategies of articulating legalist and confrontative forms of action which need to be considered in the analysis of legal mobilizations (Agrikoliansky, 2010: 240). In McCann's (2006: 22) words: The "legal mobilization approach emphasizes that even relatively successful legalistic leveraging strategies have been highly dependent on other political tactics and contextual factors". Agrikoliansky (2010: 240) speaks, in this context, about a "continuum" for identifying the place of law within the set of protesting actions.

Next to the interactive and interdependent nature of legal action with other forms of social movements' activities, scholars agree on the ambivalence of the law as resource but also as constraint (see Agrikoliansky, 2010; Israël, 2020; McCann, 2006). "The legal mobilization model envisions law as essentially neither just a resource nor a constraint for radical action, but rather encourages us to focus on how, when, and to what degree that legal practices can be both at the same time" (McCann, 2006: 27). In terms of resource, beyond its instrumental use as "threat" to mobilise third parties through a

judicial procedure, rights claims themselves have not only an informational but also a motivational character through their "moral" power when appealing to the conscience of power holders and to the general public for their judgement. In the latter case, "[l]egal rights advocacy holds the potential for simply expanding citizen awareness and understanding about social relations" (McCann, 2006: 12). Following Zemans (1983: 697), "[i]n many instances legal mobilization is generated not by the writing of new laws, but by changing social perceptions of the nature of a problem and the appropriateness of the intervention of state authority". Consequently, legal mobilisation seems to be more effective when it comes to the claiming of the application of the law rather than the obtention of new rights (Israël, 2020; Abel, 1998). The law has this potential to be mobilised for political goals because of its position in the centre of power relations and the definition of its legitimate exercise of power. Thus, through its mobilisation, the State's own language can be used against it (Israël, 2020: 18, 28).

At the same time, this mobilisation of the "State's language" points the constraints under which law as a resource is mobilized by social movements. If such mobilisation with and through the law (Agrikoliansky, 2010) is recognised by the State, this in turn signifies that the protesters acknowledge indirectly – through the form of their protest - the role of the State (Israël, 2020: 18). As mentioned above, Critical Legal Studies scholars have widely criticised the engagement of advocates and legal action in social movements (Agrikoliansky, 2010: 242, based on McCann/Silverstein, 1998) as co-opting and reproducing dominating power structures. However, as Agrikoliansky points out, the role that legal experts play for social movements depends on their positions within the organisations, a position that might change itself over time. Nevertheless, the implication of lawyers and of different forms of legal mobilisation more generally leads to the question to what extent they contribute to the juridification of social movements (Agrikoliansky, 2010: 242).

Indeed, the reformulation of claims in legal terms can have an impact on the dynamics of mobilisations themselves. Legal consciousness studies look specifically in those consequences of legal mobilisations. On the one hand, the universalizing abstraction of legal norms, like in the case of human rights, can serve as an important basis for revendications by and for minorities. On the other hand, Agrikoliansky highlights certain risks that are linked to the abstraction and technicised (in legal terms) description of injustices and claims linked to these. In this context, Galanter (1983) speaks about "radiating effects" meaning indirect consequences for the representation of victims of injustice and their capacity to protest publicly (Agrikoliansky, 2010: 228). As Bourdieu mentions, the law has a symbolic naming power which creates things and especially groups by giving them a name (ibid.: 231, citing Bourdieu, 1986a: 13). Pushing this thought further, one could probably say that Bourdieu refers to what is described nowadays as labelling. Interestingly, this process of abstraction that is inherent to the law is accompanied by a "tyranny of the individual" when it comes to the use of the law by the administration and legal defence actors. Thus, while the law has the capacity to protect an individual, it is less effective

with regard to a political generalisation of the cause. In order to have a chance to see their claims effectively received, protesters can only mobilise arguments that correspond to the individual register of exception which is contra-productive for their general political argumentation. Furthermore, it does not allow the victims to think about their situation in different terms than their individual private misfortune (Agrikoliansky, 2010: 234f.; Agrikoliansky, 2003).

A growing body of literature about legal support and formal legal defence practices in the asylum sector show that the above described dynamics of abstraction as well as the logic of exception effectively play a role for the ways in which asylum applications are written, how a file is elaborated and how a case is presented (see Ataç, 2017; Belkis et al., 2004; D'Halluin-Mabillot, 2012; Drahy, 2004; Eule, 2020; Miaz, 2017; Pette, 2012, 2014). As mentioned in the introductory part of this work, D'Halluin-Mabillot (2012) observes for example, that refugee support organisations in the French asylum sector adapt to the "tyranny of the individual" of the authorities by mobilising the principles of deservingness, credibility and need/vulnerability in their socio-legal assistance activities.

My research aims at complementing this strand of research by extending the focus on legal mobilisations beyond their forms of daily legal support and defence activities to forms of advocacy that aim at relegating problems encountered on the ground to the authorities. Thus, the present study focusses rather on other formal legal mobilisation practices like consultation responses but also on activities that mobilise law in an informal way, like lobbying and public campaigns and statements. Chapter 7 and 8 analyse specifically the legal strategies employed by the SRC and AICH. Finally, as mentioned above, legal mobilisation practices need to be analysed as part of the organisations' broader set of strategies, tactics and activities.

2.2 The political and (de)politicisation

Professionalised NGO refugee advocacy targets political decision-making processes and more widely, the political sphere in which asylum law and policy are decided. To understand the engagement of professional advocacy organisations defending causes in the domain of asylum, a conceptual understanding of the political and politics is helpful. Further, the concepts of politicisation and depoliticisation are helpful in two senses for the present study: On the one hand, as the analysis of the advocacy strategies will show, the organisations engage with the political sphere by mobilising either politicising or depoliticising repertoires of action. Further, they mobilise depoliticised as well as politicised frames to present issues in the public. De- and (re)politicisation are analytical concepts that shed light on relational processes through which an issue is situated within power struggles or moved away from those struggles. After having attempted to give a definition of the political to which I will

refer in this thesis, I will present the concepts of politicisation and depoliticisation and their different dimensions in more detail.

2.2.1 Attempting a definition of the political

For a general understanding of the term "political" I propose to take as point of departure Schmitt's conception of the political as concerned with how people order relations among themselves, or how Boswell (2020) formulates it: "politics is about who gets what, when and how". This understanding goes beyond institutional aspects, government and policies but focusses more generally on social and relational aspects (see Schmitt, 1932). The political is thus concerned with the organisation of relations and of power in society. Building on Schmitt, Mouffe (2005) underlines that it is through conflict and power struggles that social relations are organised. The political is the space within which these conflicts and struggles take place. From this perspective, politics can be understood as "the set of practices by which order is created and maintained" (Ticktin, 2011: 19). Following Schmitt and Mouffe, the political is fundamentally characterised by opposing ideas, by "a struggle between opposing hegemonic projects which can never be reconciled" (Mouffe, 2005: 11). With this opposition between the different ideas of how social relations should be organised and that "can never be reconciled", Mouffe takes up Rancière's understanding of the genuine political. Looking at Rancière's conception of the political and politics itself is useful because it adds a nuanced view of the political in the sense that Rancière differentiates between "genuine politics" and "para-politics". Similar to what has been explained above, he characterises genuine politics by dissensus, based on disagreement: "Political struggle is not a conflict between well-defined interest groups; it is an opposition of logics that count the parties and parts of the community in different ways" (Rancière, 2001: 19). For Rancière (1999), in this process, a fundamental equality of all human beings is expressed. Doing politics or being political signifies to challenge an established order of perception and thus the places attributed to members of society (and those defined as being situated outside). "Politics begins when those who have no share begin to have one" (Rancière, 1997: 3). The idea of the political as disruption of an established order is not new. Bourdieu's understanding of the political goes in this direction as well, stating that the political begins with the denunciation of the original adhesion to the established order. He points to the importance of the cognitive dimension of the political, stating that "the political subversion presupposes a cognitive subversion, a change of the view of the world" (Bourdieu, 1982: 150, own translation). However, this kind of politics – what Rancière calls genuine politics - "is and always was, rare, precarious and fleeting, but remains far preferable to the watered-down, self-satisfied politics of the middle ground that is in evidence today" (Gill et al., 2012: 510). It is here where I see the value of Rancière's conception of the genuine political compared to "watered-down politics of today", in his own words "para-politics". While genuine politics attempt to "rearrange what and how we perceive,

make us see something new or different" (May, 210: 40), para-politics are dominated by an underlying "police" order which is "built upon an assumption of inequality" (Chambers, 2012: 66). When Rancière speaks about the "police order", he concretely has neoliberal consensus democracy in mind that is characterised by logics of inequality, hierarchy, classification and ordering (see Chambers, 2012). To give a concrete example, "[p]ara-politics positions those seeking asylum as a presence to be governed and ordered, whilst disavowing their potential to count for more than simply their assigned and classified position as suspicious presences within the nation" (Darling, 2013: 77). As Chambers (2012: 70f.) points out, here we can find a link with Foucault's thoughts in the sense that the "police" distributes and orders bodies, attributing them places in the world. Here, it is important to understand that "[t]he police designates not an institution of power but a distribution of the sensible within which it becomes possible to define strategies and techniques of power" (Rancière, 2010: 95).

Whether or not the additional notion of the "police" that Rancière chooses is really useful for analytical purposes might be questionable (and it eventually was and continues to be questioned by many). However, its appearance with Rancière's critique of consensus politics as para-politics which he opposes to genuine politics, the latter challenging the former, bears analytical value as it allows to shed light on the genuine respectively para-political character of claims and struggles of different actors. From this perspective, a position respectively a claim that does not question this established order of perception of asylum seekers as to be governed, ordered and classified is not a genuine but a para-political position. The part "political" refers to the general understanding of political as concerned with how relations among people are ordered from which my reflections started in the beginning of this chapter. As also mentioned above, fundamental to this concern of politics about "who gets what and how" (Boswell, 2002) is dissensus and disagreement. Now, following Rancière, para-politics misses genuine dissensus and disagreement; para-politics even disavow the possibility that diverging logics of deciding about "who gets what and how" might legitimately be opposed in order to decide about policies. Again following Rancière, it is the" consensus on societal divisions and functions" (Olivier, 2015: 9) characterising contemporary para-politics which limits genuine political struggle through processes of depoliticisation.

Depoliticisation goes beyond the question of if a positioning is genuinely political – engaging in struggle against the "police", the established order of perception. Such a positioning disavows the possibility of dissensus about the issue/question at stake and delegitimises thus any other logic that might oppose the one that the depoliticised positioning supports. While Rancière's distinction between genuine political and para-political helps to understand if a claim is situated within neoliberal consensus politics or if, on the contrary, it challenges these, different forms of depoliticisation refer to ways in which the possibility of debate and dissensus about the issue at stake is limited. In my view, the value of the concept of depoliticisation lies in its focus on debate and dissensus respectively the processes that

limit these by disavowing the possibility of legitimate political dissensus. Depoliticisation is about foreclosing genuine political debate. In this way depoliticisation designates processes that can take different forms and thus there are different modes of depoliticisation. The following chapter presents the concept of depoliticisation in more detail by differentiating between a narrow and an extensive understanding, including also politicisation as its counterpart.

2.2.2 A narrow and an extensive understanding of (de)politicisation

As mentioned in the introductory part of this thesis, the concept of depoliticisation has increasingly gained importance especially in international relations and studies on international organisations. While Fassin (2010a) links the depoliticisation of refugees to humanitarianism and processes of humanitarianisation, Pécoud (2015: 125) describes "depoliticisation as reaction to the over-politicisation of the topic [of migration]", pointing thus to the ambivalence of politicisation and depoliticisation processes. There are different dimensions to depoliticisation and to understand these I propose to draw on two general approaches that characterise the theoretical discussions about depoliticisation. On the one hand, a "narrow" understanding of depoliticisation focusses on responsibilities and the *marge de manoeuvre* of decision-makers in the political sphere. Here, depoliticisation is understood as "the process of placing at one remove the political character of decision making" (Burnham, 2001: 128). In this process, the issue at stake is shifted to another arena of governance than the one of politics (Fawcett et al., 2017: 17). The narrow understanding of depoliticisation which "examines the withdrawal of politicians from the direct control of a vast range of functions, and the rise of technocratic forms of governance" (Wood/Flinders, 2014: 156) is interesting for the present study of non-state actors because it turns the gaze towards processes in which not only state actors are included. On the contrary, depoliticising modes like technocratisation, bureaucratisation, moralisation, or managerialism (Petiteville, 2017: 10) draw on the knowledge and capacities of actors who are not elected politicians. These modes engender processes that "close down the appearance of [the] issue as being political" (Wood, 2016: 524) by defining it increasingly in legal or other technical terms. Here, "the arena or process through which decisions are taken is altered" (Flinders/Buller, 2006: 296). Flinders and Buller (ibid.) propose therefore to describe depoliticisation as "arena-shifting". In linking this understanding of depoliticisation with Rancière's conception of genuine politics on the one hand and a "police order" on the other, we can understand depoliticisation as a process that situates an issue within a pre-defined (social) order (what Rancière calls "the police") while "seek[ing] to disavow political dissensus" (Darling, 2013: 73) about how to treat the issue. More precisely, "depoliticisation practices [may be understood] as socially meaningful patterns of action which deny or conceal contingency, choice and deliberation" (Louis/Maertens, 2021: 13). This link between "arena-shifting" and limiting debate and conflict at the same time is important to understand

the analytical value of the concept of "depoliticisation as a political process" (ibid.: 12) which can be characterised by different modes. In this sense, Darling (2013: 74) describes depoliticisation "as a set of ordering tendencies and alliances that produce and maintain particular perceptual orientations towards the contours and limits of political debate". In the British context, he observes such "traces of depoliticisation through promoting a response of regulatory, managerial and at times humanitarian procedure in place of political engagement and debate" (ibid.: 86).

Politicisation of an issue, on the other hand, situates the latter in the sphere of political decision-making (subjected to politics) but opens it also more widely to societal debate and genuine political struggle. Following Petiteville (2017: 115), I understand an issue as politicised "when it becomes exposed to debates, collective mobilisations, polarisations and cleavages, controverses and conflicts". The mobilisation of the public through public campaigns is, for example, an important mode of politicisation. Repoliticisation can be understood then as the "reactivation of the political origin of the social and thus expands the space for political conflict and deliberation" (Fawcett et al., 2017: 32). (Re)politicisation signifies thus that an issue is (re)situated in the political sphere and becomes subject to political debate. So, politicisation, like depoliticisation, is a process and an issue that can become politicised. Interestingly, as Darling (2013: 74) remarks, politicisation may take place without mobilising a "revolutionary framing" and even by mobilising a depoliticised discourse. To understand this interplay of modes of politicisation and depoliticisation, a more "extensive" approach of both processes is helpful. This more "extensive" understanding of depoliticisation/politicisation focusses on the discursive level and more specifically on "rhetorical strategies employed by various social actors" (Wood, 2016: 524). On a discursive level, Bourdieu (1982: 155) speaks about a "depoliticised political discourse" which is characterised by a "rhetoric of impartiality" and "the avoidance of most violent forms of polemics" (my translation). More generally, Wood and Flinders (2014: 152) define discursive depoliticisation as "'speech acts' of individuals in the private and the public arena that make certain issues appear to be "normal" or natural"". The discursive construction of impartiality or also a "strategy of neutrality" (Bourdieu, 1982: 155) needs to be understood as representing for itself a certain interpretation of reality, "impos[ing] a specific worldview" (Louis/Maertens, 2021: 10). When actors "position themselves as apolitical actors [they are] often silencing the political, economic, social and cultural complexity of the problems at stake" (ibid.: 17).

To conclude, both understandings – a "narrow" one focussing on the question of responsibility for decision-making as well as the "extensive" concept of depoliticisation as a rhetorical process employed by different actors – are of importance to understand dynamics of professionalised NGO advocacy for protection. The differentiation between both dimensions of depoliticisation allows to understand how politicisation of an issue (in its narrow sense) can be linked to a depoliticised view of the issue at stake (in an extensive sense) at the same time. In this sense, a depoliticised view of the existence of migration

(abstraction from the political context and causes in which it takes place) can be an important part of the politicisation of the question "what to do with it". The politicisation of asylum, fostered especially by the political right in Switzerland through popular anti-asylum initiatives draws on depoliticised images of asylum seekers. This example shows, the ambivalence of processes of politicisation and depoliticisation, an ambivalence that is also visible in professionalised NGO refugee advocacy practice, as I will try to show in the analysis part of this thesis.

Depoliticisation can take place through different modes of which one is the mobilisation of expertise. As expertise plays an important role for the two NGOs that are in the centre of this study (SRC and AICH), I propose in the following chapter not only to show the role of expertise for depoliticisation but more generally to understand the relationship between expertise and politics. A political sociology perspective on expertise focusses on this relationship.

2.3 A political sociology perspective on expertise

The professionalised NGOs at the centre of this research define themselves importantly as experts, the SRC as completely specialised in asylum and the AICH specialised in human rights with a partial specialisation on asylum. How can we approach this expertise? And how can we understand its relationship with the political? These questions touch upon theoretical debates about the relationship between knowledge and power, about how expertise gains its legitimacy and what social functions it has (Delmas, 2011).

Traditionally, and following a sociology of professions approach, expertise is often understood as a competence that has a professional character (Delmas, 2011: 9, based on Paradeise, 1985; Sarfatti Larson, 1988; Trépos, 1996). Expertise is defined as the implementation of specific knowledge in practice (Lascoumes, 2004). Thus, expertise is linked to knowledge but also to know-how or skills, the latter indicating its practical dimension. This practical, pragmatic orientation situates the expert between science and action, between knowledge and commitment. Based on his/her specific competences, the expert is attributed a status of exteriority regarding the situations on which s/he pronounces him/herself. S/he thus can play an observer role and act as "whistleblower" in times of crisis (Delmas, 2011: 67, referring to Chateauraynaud/Tomy, 1999). This exteriority is based on the association of the position of experts with a character of independence, neutrality and disinterest (Trépos, 1996) which again come from the specific knowledge of the expert. Here, we find the link between legitimacy and knowledge respectively competence, the latter constituting the resource of the former. From a constructivist perspective, the expert's competence is the result of social construction (Berger/Luckmann, 1966). This signifies that the value of the knowledge and competence on which an expert bases his/her legitimacy for intervening on political issues has become, at a certain

moment in history, recognised not only as such but moreover as being of value for specific topics and the resolution of specific types of problems (Delmas, 2011: 17). “Expertise is influenced or even determined by the structure of society and its power-relations” (Barbi, 2018: 92). Finally, it is this expertise that allows experts to intervene where non-specialists have no legitimacy to do so because they do not have the cognitive resources necessary for making arguments about the issue at stake (Israël, 2009). Delmas (2011: 18) concludes from this observation that expertise has at the same time a cognitive as well as a political dimension. Through the application of knowledge to political issues, it orients public policy. This attribution of power to experts vis-à-vis non-specialists brings us back to the above-mentioned question of the relation between knowledge and power.

To understand this relation, we need to differentiate between two distinct dimensions, even if they are interwoven with each other, of the relationship between expertise and politics (or more generally, knowledge and power). On the one hand, there is the question of the “neutral” character of expertise and what it signifies in terms of political positioning. Here, I understand the political in the above-presented general sense of ordering relations among people. On the other hand, expertise may have different functions in policy-making processes and may serve decision-makers for different purposes. Here, the question of the expertise’s political character is still present, however the focus lies on specific functions of expertise in decision processes about public policy. The following two sub-chapters will address these two dimensions of the relationship between expertise and the political, starting with the more general approach of expertise and its “perceived truth standing” (Barbi, 2018: 88) before turning to the functions of expertise in policy-making processes.

2.3.1 The relationship between expertise and the political

Aiming at understanding the relationship between expertise and the political signifies to question the “very epistemic standing of expertise within the political sphere” (Barbi, 2018: 77). In this context, it is interesting to draw on Hannah Arendt’s reflections on truth and the role it may play, if recognised as such, in politics. Following Arendt (2006: 236), “[c]onceptually, we may call truth what we cannot change”. Barbi (2018: 83) proposes to oppose expertise understood as “truth”, in Arendt’s sense, with politics understood as “the business of dealing with things we are free to change”. Experts know what cannot be changed; they know the constraints of the system within which they operate and so the solutions they propose to a problem take into consideration these constraints. As politics cannot change what is true – what is defined as true – expertise limits the *marge de manoeuvre* of politics, or in Rancière’s sense of genuine politics because once expertise is recognised as truth, it has “coercive validity” (Arendt, 1994: 340). “Once those ‘truths’ are politically accepted as truths they start delimiting the actual reach of political action” (Barbi, 2018: 89). This limitation of the political action

respectively of (genuine) politics, characterised by dissensus and disagreement, corresponds to depoliticisation in its narrow sense.

From this perspective, a discussion between experts is not an indicator for the absence of political issues but rather an indicator for the way in which the issue is treated. In this sense, Robert (2010) points to the importance to understand expertise not as contradictory to politics but as a modality of it. "The labels "technical" and "political" do not constitute intrinsic properties of public policy issues but indigenous qualifications, at the same time strategic and moving, and they refer only to the way in which an issue is treated" (ibid.: 20). In this sense, the expert discourse cannot only contribute to define the situation itself in which it intervenes (Robert, 2008) but expert reasoning like a legal one always contains implicit political conceptions (Robert, 2010: 21) or as Barbi (2018: 96) formulates it: "Expertise risks establishing privileged 'aspects' through which to view the world". This allows to understand the depoliticisation of politics through as neutral perceived expertise as a process of "arena-shifting" that does however not lead to an absence of (para-)political positions. The depoliticising effect of expertise for politics is based on "the promotion of a discourse demanding an attested neutrality" (Delmas, 2011: 81). Expertise (be it scientific, economic, financial, statistical, technical or legal) plays a central role for depoliticisation when it "disguises the political issues of the day as technical, rational questions that can transcend any political divide" (ibid.: 81f.). The role of expertise and its depoliticising effects for policymaking is of interest for the present study because NGOs and their representatives represent themselves as "professional experts", especially as legal experts. As we will see in more detail in the analysis part of this thesis, they do effectively provide (mostly legal) expertise on issues linked to asylum. The link between expertise and depoliticisation arises where expertise is perceived as neutralising political discourse through the presentation of mobilised knowledge as "objective" and thus independent of party-political positions. Following Delmas (2011: 17), "the expert defines himself in relation to the possession and use of a recognised skill from which he derives, at least in part, his legitimacy". Following Barbi (2018: 94), "[t]he depoliticisation becomes manifest when we start considering the expert's 'truth' as 'absolute truth'". The expertise itself needs to be recognised as valuable and significant to obtain the status of neutral truth. Finally, to avoid any misunderstanding, this does not mean that all expertise or even more general all knowledge is political. The above-presented reflections about expertise and the political concern the *relationship* between both when expertise is mobilised in the political sphere.

However, several authors point out the ambivalence of depoliticisation and politicisation processes in politics (Petiteville, 2017: 11). While expertise can depoliticise decision-making through its capacity of limiting the *marge de manoeuvre* of political decision-makers and/or by producing a political consensus based on principles presented as politically neutral, the other way around, expertise may also have political functions when politicians use it either in instrumental, sustaining, or legitimising

ways. In the context of his study of the IOM, Pécoud (2017: 93) remarks, for example, "the political efficacy of the depoliticised approach" of the organisation. Furthermore, especially on the EU level, several researchers have observed that expertise has also increasingly been playing a role for policy-making in liberal democracies (see Robert, 2010). Expertise can serve as important resource for interest groups (Bouwen, 2002; Saurugger, 2002) and expertise can play different roles in policy making processes where experts do not have formalised power but nevertheless fulfil different functions in a context of increasing complexification of the issues of contemporary public policy (Jasanoff, 2005). Especially neo-institutionalist studies focus on these functions of expertise in the policy process, and it is to these that the following chapter turns in more detail.

2.3.2 Political functions of expertise

The present study shows that providing expertise to policymakers is part of the NGOs' advocacy work aiming at influencing decision making processes in administrative agencies, governmental and legislative bodies – as well as influencing political discourse. Therefore, it seems helpful to me to understand, on a general level, what functions such expertise can have for policymakers in the policy process. This seems all the more important as such processes are increasingly shaped by technocratic modes of decision making which "essentially devolves to a consideration of what is "feasible" given the constraints of the system" (Fischer, 1990: 15). In this context, Boswell (2009) proposes a theory of the political uses of expert knowledge that goes beyond instrumentalist accounts of knowledge. The latter are based on the premise that policymakers make their decisions based on knowledge to assure for the quality of their decisions (Boswell, 2009: 29). This premise is mostly based on the Weberian perception of an ideal typical bureaucracy as a rational and efficient form of organisation based on the principles of rationalisation and the systematic execution of tasks (Weber, 1921). Following Weber, in such an organisation, decisions are the result of a rational process of adding up knowledge and preferences of its individual members. Such a rational view of organisational decision-making can be found also in Foucault's reflections about the relation between knowledge and power and especially "bio-power", a concept he developed in the context of "growing preoccupation of bureaucracies with collecting and systematizing data on social behaviour" (Boswell, 2009: 37). From this perspective, knowledge is instrumental to create control respectively power over citizens. However, the relation is not only one way. As Foucault (1980: 93) points out: "We are subjected to the production of truth through power, and we cannot exercise power except through the production of truth". So, knowledge has an empowering function as a consequence power relies on knowledge but, conversely, power can also create knowledge and structure it, and thus give more importance to one type of knowledge than to another.

To overcome the rationalist assumption of both Weberian and Foucauldian accounts of knowledge use in policymaking, Boswell (2009) draws on insights of organisational sociology that understand organisations as social systems embedded in an environment with which they interact and links them with political process theory. Doing so, she develops a neo-institutional theory of the use of knowledge in policy making processes which considers the environment in which administrative agencies, governmental and legislative bodies and representatives act and whose support they depend on more or less. This perspective leads to two more functions of knowledge which both have, in contrast to the above-described instrumental role, a rather symbolic character: the legitimising and the substantiating function. "Symbolic" means here that it is not the concrete content of the expertise that is important for a certain decision to be made. In the case of the legitimizing function of knowledge, the fact that the administration or another political body draws on expert knowledge in the decision-making process enhances its legitimacy. In this sense, on the EU level, Robert (2010) observes for example that expertise has the role of consensus production and of preventing opposition to decisions. It thus legitimates in advance the propositions made by the EU commission. Substantiating knowledge use, on the other hand, lends credibility to the preference for one policy over another. "[…] the aim is to garner support for a preferred course of action" (Boswell, 2009: 73). Experts are involved in policy making because of their scientific authority but also because of the interests they represent so that it might be useful to obtain them as allies. At the same time, while experts may be recruited as allies, and are thus recognised as representatives of a specific group of interests, a certain neutrality is nevertheless expected from them (Robert, 2010: 18-21). In this context, Brunsson's (2002) distinction between action and political organisations is interesting. While an action organisation's main goal is to generate successful policies, measurable by their concrete impact, political organisations are mostly concerned about legitimising their actions through their structures and procedures. Thus, political organisations are more likely to draw on expert knowledge for legitimising reasons than action organisations who are more likely to use knowledge in an instrumental way to make a policy decision on its basis.

Both, action as well as political organisations, may use expertise in a substantiating function when their decision-making is taking place in a contested policy field. "Its function is to help persuade waverers through rational and technocratic forms of argumentation, or at least to deploy evidence that renders opposition to their preferences less tenable" (Boswell, 2009: 73). Technocratic forms of argumentation, meaning the invocation of expertise, may serve in a substantiating function in different ways of dealing with a problem in a contested field. In the context of the present study on professionalised NGO advocacy which takes place in the contested field of asylum policy, and which consists partly if not most importantly in providing expertise to decision-makers in the field (such as administrative agencies, governmental and legislative bodies and representatives), I find especially

two modes of settling conflict helpful that mobilise technocratic forms of argumentation. Barry (1990) differentiates between bargaining on the one and argumentation on the other hand. While argumentation aims at convincing the other side to adopt one's own opinion, bargaining is understood as "any situation where one party offers another either some advantage or the removal of the threat of some disadvantage in return for the other party's performing some specific action" (Barry, 1990: 86). "Agreement reached by bargaining […] merely involves a recognition on the part of each side that it cannot hope to get more of what it wants than is represented by the settlement. But each side retains its wish for the solution it originally entertained" (Barry, 1990: 87).

Finally, technocratic modes of argumentation for or justification of a policy or more generally a decision to be taken or not taken may be used especially by administrative agencies due to the absence of a democratic mandate, which brings us back to the legitimizing function of expert knowledge. What is important here, is "that participants in political conflict agree on the validity of technocratic modes of settlement for the issue at hand" (Boswell, 2009: 78). Given the importance that NGOs like the SRC and AICH give to their – especially legal – expertise in their advocacy work, this seems to be the case for these actors as much as for the administrative agencies, like the SEM, with whom they try to settle conflicts.

To shed light on and understand the NGOs' advocacy practices which consist precisely in bringing their expertise in Swiss asylum policy process, I propose to link Boswell's reflections about the functions of expert knowledge in the policy process to a social movement perspective and more specifically to the political opportunities approach. This allows us to broaden the gaze from the uses that governmental bodies, legislative representatives or administrative agencies make of expertise in the policy process to encompass the relationship between these actors and the experts, of which such functions are linked respectively that provide expert knowledge. My analysis aims to go beyond the identification of political functions of the expertise provided by NGOs in Switzerland. I propose to investigate the relationships and interactions between NGO experts and their interlocutors and to identify the dynamics that are linked to these. After all, "[t]he relationship between knowledge and power is better understood as a two-way interaction, with knowledge in itself constituting interests" (Boswell, 2009: 38 citing Foucault, 1980). In the context of knowledge providing actors who are external to the body whose representatives draw on the knowledge to make their decisions (be it in an instrumental, legitimizing or substantiating way), I think it is important not only to think in terms of power but also to consider the access to the policy process itself that knowledge can create for its "owner" – which brings us back to the interactional dimension between policymakers, knowledge and experts.

From this focus on how expertise can give access to the policy process follows, in my opinion, that the above-presented functions of expert knowledge can also help to understand how NGOs themselves draw on expertise to decide on and make claims. Considering the political uses of knowledge by

policymakers in the analysis of expertise-based NGO refugee advocacy, allows, thus, for taking into account the complexity of and the entanglements with its environment in which NGO refugee advocacy takes place. Furthermore, it understands depoliticisation – here through expertise – as an ambivalent process.

2.4 Humanitarian reasoning and human rights: analytical perspectives and operational proximity

The analysis of the frames that the professionalised NGOs mobilise when making public claims are not only based on human rights arguments as one would assume with regard to the centrality of legal expertise in the context of their engagement with the asylum domain. Frames are also importantly shaped by a humanitarian reasoning. Therefore, I propose to present in the following some theoretical reflections on both logics.

Humanitarianism as well as human rights protection focus both on alleviating hence protecting people from suffering. While as the two following chapters will show, both approaches towards suffering are based on fundamentally different principles – inequality of lives in the case of humanitarianism and universal equality of human beings in the case of human rights – through their focus on suffering they have an operational proximity (Darcy, 2004). Likewise, humanitarian action as well as human rights doctrine have been encountered important criticism for their depoliticising effects. The third subchapter will present this criticism which will be especially helpful in the analysis of dominant frames of claims that the SRC and AICH make.

2.4.1 Humanitarian reasoning

Humanitarianism aims at saving life and at alleviating suffering, (Fassin, 2012). At first sight, humanitarianism concerns rescue abroad. The term humanitarianism englobes, in its general understanding, discourse as well as action. In analytical terms, I understand humanitarianism or more precisely humanitarian reasoning as specific logics and dynamics on which discourse and action are based. It is in these analytical terms that I propose to draw on the concept of humanitarian reasoning when analysing NGO refugee advocacy discourse that is (not only but) largely characterised by arguments of suffering and vulnerability. Along with other scholars (see f. ex., Fassin, 2005, 2007, 2013, 2016; D'Halluin-Mabillot, 2012; Malkki, 1996; Ticktin, 2016, 2017), I argue that humanitarian reasoning which following Fassin "is both a moral discourse (based on responsibility toward victims) and a political resource (serving specific interests) to justify action considered to be in favour of others exposed to a vital danger, action taken in the name of a shared humanity" (Fassin, 2010b: 239) plays a role in contemporary asylum and refugee discourse in Western countries, on the policy making level

as well as in civil society. “The lives in question are those of refugees and displaced persons in camps (over there), and the homeless and asylum seekers at accommodation centres (over here)” (Fassin, 2007: 512). By shedding light on how humanitarian reasoning shapes NGOs’ refugee advocacy discourse my research engages in the wider discussion about humanitarianism and asylum. In the following, I propose to highlight some general characteristics of humanitarian reasoning and its underlying logics which are helpful, in the following, to understand NGOs’ discursive construction of refugees as suffering victims in need of assistance and how this is furthermore entangled with claims for protection.

“Bare life” and inequality of lives

Humanitarian reasoning creates and defines a specific relation between people who are in need and those who have the agency to react to this need. This relation is based on the one hand on the principle of universal humanity and on the other hand on a “practice of difference”. The latter “is founded on an inequality of lives and hierarchies of humanity” (Fassin, 2010b: 239). Based on the universal principle of humanity which is understood as the global capacity to suffer (Ticktin, 2011, 2017), humanitarianism aims at assisting every human being who is suffering or whose life is endangered. The humanitarian “belief in the universality of suffering” (Ticktin, 2011: 3) is the basis for a focus on physical existence of individuals rather than in terms of their political status. Paradoxically, it is the universal principle of humanity itself – or rather, the essentialisation and focus on suffering through which it is mobilised by humanitarian reasoning – that forms the foundation of the humanitarian “inequality of lives.” The humanitarian figure is a human being who is reduced to his/her endangered physical existence in contrast to those who have the agency to help him/her. This is the expression of the “inequality of lives” inherent to humanitarian reasoning. It is this inequality that makes the claim, to save suffering existences, a moral one. Humanitarian figures of suffering victims “are not political subjects but moral objects” (Fassin, 2010b: 254). It is the need in terms of existence of these “moral objects” that humanitarianism addresses, solely the need to have one’s life protected and not their lack in rights – which would be linked to a political status. As Barnett points out, “[t]he relief community will nearly always privilege survival over freedom” (Barnett, 2005: 727) as suffering and endangered bodies need first and foremost physical safety.

The localization of humanitarian figures in the moral sphere is based on an “emotional movement towards others” (Fassin, 2013: 38) which is part of the processes through which humanitarianism creates an inequality of lives. As Wilkinson points out, “the spectacle of human misery excites moral sympathy” (Wilkinson, 2016: 67). I will turn to the question of suffering and the moral duty to react to it, on which humanitarianism is based in the next chapter. Before, however, I propose to reflect, on a more general level, on how to theorize the essentialization of human beings to their mere existence.

Following Fassin, the reduction of persons to their condition of suffering "is certainly necessary to justify humanitarianism, and it is also sufficient to it in that it has no need for the point of view of the person in question" (Fassin, 2007: 512). This process of essentialization is what Fassin (2007) calls an "ontology of inequality", and it can be found in Agamben's thoughts about humanitarianism as a form of assistance of the "bare life". Drawing on Arendt's (1951) distinction between the "zoe", corresponding to the passive human waiting for help, and the "bios", the active citizens providing it, humanitarian reasoning pushes humanitarian figures outside the political sphere as all that counts for them is their (biological) life to be saved. In Agamben's words, ""zoe" may be killed and yet not sacrificed" (Agamben, 1995: 8) which leads to the conclusion that saving those lives is not a question of rights contrary to a citizen's life. "Bare life" constitutes an exception to the order of citizens; it is "life captured in a zone of indiscernibility" (Rancière, 2004: 300) and as such placed outside the political sphere. It is in this sense that Agamben observes: "The separation between humanitarianism and politics that we are experiencing today is the extreme phase of the separation of the rights of man from the rights of citizen" (Agamben, 1995: 133). In more practical terms, this means that the humanitarian focus on "bare life" places him/her outside the sphere where the rights of the citizen apply. Thus, humanitarianism "appears to reinforce the domination and exclusion [of victims] by denying the possibility of a political life to those who are subjected" (Fassin, 2007: 509) to humanitarian aid. Here we find the fundamental inequality that humanitarian reasoning creates between lives.

Humanitarian action "is essentially an act of charity, which is not necessarily a guarantee of justice" (Cutts, 1998: 6). The aim of humanitarianism to save "bare life" (and nothing more) is reflected in the humanitarian principle of impartiality. "Humanitarianism provides relief; it offers to save individuals, but not to eliminate the underlying causes that placed them at risk" (Barnett, 2005: 724). Humanitarianism is not political in the sense that it does not condemn political regimes of states and that it does not aim at changing a political regime. From this perspective, "the refugee phenomenon [appears] as a non-political occurrence" (Nyers, 2006: 30). As Cutts points out, "causes of refugee flows are often treated as "political" issues, while the effects of these are seen as "humanitarian" issues" (Cutts, 1998: 3). When citizens are seen solely as victims, violence and violations of rights that they experienced are translated into terms of suffering. Focussing on immediate alleviation of physical and/or psychological suffering, "humanitarianism, by its logics of emergency, suspends both individual and collective times, biography and history" (Fassin, 2012: 46). Humanitarianism constructs a "victim without perpetrator – a sufferer, pure and simple, caught in a moment of urgent need" (Ticktin, 2011: 11). Treatment of suffering without asking for its causes does not address the political, social and historical context of refugees and leads thus to a depoliticization of their existence (Fassin, 2007, 2010b, 2013). "[B]are life … can only claim to stay alive" (Fassin, 2005: 367).

With reference to the above presented definition of politics and taking up Cutts' (1998) warning about the false dualism of politics and humanitarianism, however, it is important to understand that humanitarianism is a politics itself because it reproduces existing power relations when it distinguishes between the "human" to be saved and the "citizen" who has the power to decide on saving him/her. In this decision, a "politics of life" (Fassin, 2007) or in Ticktin's (2011) terms, a "politics of care" is enacted which "give[s] specific value and meaning to human life" (Fassin, 2007: 500) "reproducing inequalities and racial, gendered, and geopolitical hierarchies" (Ticktin, 2011: 5). Those in charge of assistance decide on whom to help based on their own conceptions of suffering and victimhood. In this process, a "complex ontology of inequality unfolds that differentiates in a hierarchical manner the values of human lives" (Fassin, 2007: 519), defining those to be taken care of. Hereby, humanitarian reasoning gives more value to suffering "bare life" than to victims of oppression (Agamben, 1995: 9, cited by Fassin, 2005: 371). As Cutts points out, "when one chooses to further one humanitarian principle or human right against another, one is basically making a political decision" (Cutts, 1998: 5). In summary, humanitarianism constitutes "a politics of life in that it takes as its object the defence of causes, which presupposes not only leaving other causes aside but also producing public representations of the human beings to be defended (e.g., by showing them as victims rather than combatants and by displaying their condition in terms of suffering rather than the geopolitical situation)" (Fassin, 2007: 501). Ticktin speaks in this context of humanitarianism as antipolitics rather than apolitical, meaning that it "works to reinforce the status quo, the established order" (Ticktin, 2011: 19). As mentioned above, humanitarian reasoning and action are not political in the sense that they do not aim to challenge existent hierarchies and power relations, or in short, the order of things. However, they represent a form of politics ordering relations between people in a certain way and based on certain criteria.

We will see that Swiss NGO refugee advocacy discourse reflects some elements of humanitarian reasoning with regard to the discursive representation of refugees. However, the analysis of such discourse needs to be nuanced and differentiated. It needs to go beyond descriptions of universalised suffering and must also question the types of reactions that such construction of suffering others may evoke in those who receive such discourse. As mentioned above, the humanitarian focus on the helplessness of the suffering "bare life" (the physical existence) places him/her in the moral sphere and calls for what Fassin (2010a) names "moral sentiments". Moral sentiments are feelings that lead us to the misfortunes of others and make us wish to correct them (ibid.: 7). However, as Williams points out, "politics of care upon which humanitarianism rests are also deeply influenced by cultural ideologies that shape how individuals are thought of as deserving or undeserving of care and sympathy" (Wilkinson, 2015: 14). This suggests that depending on how suffering is presented and perceived, moral sentiments may be expressed differently.

2.4.2 Representation of suffering and moral sentiments

As described above, humanitarian action aims at alleviating suffering. At the same time, suffering is also central to human rights protection and plays thus an important role in human rights organisations' discourse. It might thus not be surprising that suffering plays a central role also in Swiss NGO refugee advocacy discourse. How can we understand the relational space that appears between those who are (presented as) suffering and those who are confronted with suffering? First of all, following Fassin, suffering evokes moral sentiments. Drawing on Boltanski's (1999) reflections about the narration of distant suffering - suffering of persons who we do not know personally but of whom we get knowledge through intermediaries like the media and/or accounts of witnesses – it becomes apparent that distant suffering evokes, in particular, sentiments of pity. Boltanski observes that with the "[h]umanitarian construction of suffering others" (Fassin, 2010) the argument of pity is introduced in politics (Boltanski, 1999). This means that pity is used as an element defining how to create that is maintain order; more concretely: pity is used as an argument for deciding on who gets access to care. Focusing for example on the description of refugees as suffering human beings in third countries, from a constructivist perspective, sheds light on the relations that such descriptions create between those who suffer and those who receive the narratives of suffering. Furthermore, as we will see below, a politics of pity produces hierarchies within the group of suffering beings. It is from this perspective, that I deem relevant to the frame work of the present study a narrow analysis of how arguments and descriptions of suffering are mobilised in Swiss NGO refugee advocacy discourse.

First of all, a politics of pity is profoundly different from justice. Second, pity needs also to be differentiated from compassion. However, the desire to act created by pity can be influenced by attributes of justice or compassion and accordingly be expressed through different kinds of actions like accusation or acts of charity. To understand these processes which are based on certain relationships between those who suffer and those confronted with suffering of "distant others", I propose, first, to trace the conceptual differences between a politics of pity, compassion and justice and the ways in which they are linked to certain perceptions of suffering. Second, drawing further on Boltanski's (1999) reflections on distant suffering, I will turn to the above-mentioned types of actions that pity can induce when supported either by justice and/or by compassion.

When speaking about politics of pity in contrast to justice and to compassion, Boltanski (ibid.) describes how through these feelings, and more generally logics, the moral sphere finds entry in contemporary ways of representing and approaching suffering of "distant others". Following Boltanski (ibid.), reacting to suffering of others with a feeling of pity is fundamentally different from one of injustice. Both types of feelings (or sentiments) rely on fundamentally different approaches towards suffering. For this reason, it is analytically relevant to think of both together, the (construction of) suffering and the sentiments that such (presentation of) suffering addresses. Pity is linked to an

understanding of suffering as “simple” misfortune. A politics of pity files people in two categories: the lucky ones and the unlucky ones. It is thus based on a fundamental inequality between fortunate and unfortunate people, on “a system of representation resting on a subject-object kind of set up. […] The unfortunate who is the object or, as we say, the plaything of misfortune, is also the object of a realistic description in which mastery is distributed entirely on the side of the subject who is describing” (ibid.: 24). Based on the general distinction between the two groups of fortunate and misfortunate people, pity has a generalising effect. A politics of pity draws on representations of “the unfortunate together en masse” (ibid.: 4) and “generalises in order to deal with distance” (ibid.: 6). Examples of such generalised suffering figures are “recognizably gendered, sexualized and racialized bodies, this is women and children” (Ticktin, 2011: 18). At the same time, to touch the fortunate persons, a politics of pity “must convey […] a plurality of situations of misfortune, to constitute a kind of procession or imaginary demonstration of unfortunates brought together on the basis of both their singularity and what they have in common” (Boltanski, 1999: 12). This combination of hyper-singularity but at the same time exigence for exemplariness makes pity prone to disproportionality: “a suffering child fills our heart with sadness, but we greet the news of a terrible battle with indifference” (ibid.). Finally, pity does not ask if the misery in regards to the suffering of others is justified or not. The urgency to alleviate the suffering is seen more important than considerations of justice and the question of why. Pity is turned towards a suffering person “in need of help, rescue – not equal rights” (Ticktin, 2011: 4). So, pity is aroused by the lack of luck of the other which one confronts with his/her own fortune. “Pity passes through a state orientated towards the satisfaction of one’s own needs and a state in which the needs of someone else are considered” (Boltanski, 1999: 47).

The feeling of injustice, on the other hand, starts from the assumption that all human beings are subjected to a common understanding of fairness. There are no predefined groups of fortunate and misfortunate people but everyone should be subjected to the same chances in life. A politics of justice has “recourse to a convention of equivalence” (ibid.: 4). Suffering is thus not a question of misfortune, “not a status definitively attached to someone” (ibid.: 4) but from a justice perspective it claims justification. Because misfortune is not understood as a general condition, like it is in the context of pity, but must stand against principles that define the above-mentioned common understanding of fairness, people whose suffering is judged unfair become victims. As mentioned, the notion of the helpless victim denies the concerned person his/her agency which is part of the process of hierarchisation that is inherent to humanitarianism. In the context of a logic of justice, however, the notion of victim is anchored in the basic assumption of equivalence of all human beings. Therefore, it is important to pay attention to the ways in which “suffering victims” are described and to the logics that such descriptions follow when linked to claims of action.

As mentioned above, pity is also different from compassion. Even if the Oxford Dictionary of Languages (dictionaries of other languages do likewise) equates compassion with pity, from a sociological perspective, we need to differentiate between both. While pity sees misfortune as a fundamental condition which is translated in its generalising quality, compassion is directed towards individual beings. For Arendt "the principal characteristic of compassion is that it is directed towards particular individuals, particular suffering beings, without seeking to develop any "capacity for generalisation"" (Boltanski, 1999: 6 based on Arendt, 1990: 85-95). Acts of compassion have a local and a practical character (Boltanksi, 1999: 10). Compassion arises in the face of individual stories of suffering. Individuals are not merely recognised as part of a group or a category presenting a certain condition but "their experiences and sufferings are acknowledged on their own terms" (Gill, 2016: 162). This approach towards the individual suffering of a counterpart includes considerations of justice. Following Gill (2016: 158, based on Nussbaum, 2001), "[f]eelings of compassion entail a judgement that the misfortune that has befallen an individual is undeserved. […] Compassion embodies a feeling that injustice has occurred". In this context, justice is again understood in the above-presented sense of a common understanding of fairness and the assumption of equivalence of all human beings. However, with regard to asylum-seekers for example, Gill points out, that the link between justice and deservingness that exists within compassion leads nevertheless to a division in groups of deserving and undeserving people. Where pity starts from the assumption that a fundamental difference between unfortunate and fortunate groups exists, compassion differentiates between deserving and undeserving among the misfortunates.

As Boltanski (1999) mentions, for a politics of pity towards distant sufferers (like refugees) to translate into action (however shaped), the distance and the high level of generality that characterizes pity needs to be "closed". Justice or compassion can serve to "complement" pity transforming the raw emotion thus in an expressive act. Understanding such expressive acts like accusation or charity as the outcome of a transformation of pity allows us to understand how pity, compassion and justice appear easily entangled. More concretely, in the case of NGO refugee advocacy discourse, tracing these processes helps to shed light on logics behind discourses that draw, at times, on human rights arguments, at times on humanitarian imaginaries of suffering but that often cannot be clearly classified as one or the other. Boltanski's (1999: i) reflections on (the construction of) distant suffering and his questioning of "the morally acceptable responses to the sight of suffering" provide sociological understanding of how the argument of pity in politics – understood as the use of pity as argument for deciding on who gets access to care (in the case of the present study protection and/or social assistance) can translate in different forms of action that express one's pity with distant suffering, by drawing on the different sentiments and logics presented above.

When pity is complemented "by justice and, more precisely, by political constructions which establish the possibility of a just world and, in a style which can be called pamphleteering (since it has to combine both a reference to equivalence, necessary for the unmasking of injustice, and the expression of violence, in order to display the spectator's emotion)" (Boltanski, 1999: 48), it is transformed into indignation which is expressed through acts of denunciation and accusation. Indignation arises when one feels sympathy "with the unfortunate's feelings towards a persecutor (the unfortunate's resentment entailing the spectator's indignation)" (ibid.).

I propose to locate Boltanksi's (1999), Gill's (2016) and Nussbaum's (2001) understanding of compassion with its judgement about undeserved misfortune in a politics of care perspective. Pity as a political argument does not apply to all (types of) suffering in the same way. While the "concept of suffering pretends to universality" (Ticktin, 2017: 587), the decision about who is undeservingly unfortunate depends on more than suffering itself.

2.4.3 Vulnerability and deservingness

Several authors identified innocence and vulnerability as two such important attributes. As both – innocence in a less concrete way than vulnerability but equally present – play a role in Swiss NGO refugee advocacy discourse, I propose to look at a theoretical understanding of both notions from a perspective of politics of care and how these are linked with deservingness in the context of compassion. As Boltanski (1999) points out, to give a political meaning to pity, suffering beings need to be ranked. Not all suffering arouses pity to the same extent. In a politics of life (Fassin, 2012) that mobilises pity as an argument for "the distinction between lives that need to be saved (that should be cared for) and lives that do not have access to care" (Monforte/Maestri, 2022), Ticktin (2017) identifies, for example, innocence as an important characteristic defining deservingness of care. Another such characteristic is vulnerability (Monforte/Maestri, 2022; D'Halluin-Mabillot, 2012; Malkki, 2015; Ticktin, 2017). The following aims at explaining how, in a politics of care, innocence and vulnerability are mobilised for the "definition of victimhood and how it may determine eligibility for relief" (Götz, 2015: 157).

The concept of deservingness is generally turned to actions and events in the past (Elster, 1992). As mentioned in the introductory part of this thesis, in the context of the asylum procedure, D'Halluin-Mabillot (2012) notes that around the question of deservingness, support actors have lately been focusing growing attention towards medical and health issues. In a context where the decision about an asylum claim involves a search for physical and psychological traces like scars and wounds that are visible on the body or psychological states like trauma which are seen as consequences of suffering, "[t]he body has become the place that displays the evidence of truth" (Fassin/D'Halluin, 2005: 598).

Fassin and D'Halluin point out that "[t]he value granted to physical marks diminishes the principle of "fear of being persecuted" which, by definition, has no physical translation" (ibid.: 602). The body as a place displaying evidence of past suffering corresponds, to a logic of deservingness which is turned towards the past.

A humanitarian perspective, on the other hand, does not look for such evidence of the past but focusses, on the contrary, on the present, and more specifically, on the present needs of humanitarian subjects, as explained above. D'Halluin-Mabillot (2012) identifies such a needs-based logic also among asylum support actors in France when they need to prioritise demands for support. While it may seem logical to differentiate between a past focussed deservingness and a present focussed needs-based logic, the above-described reflections on pity and compassion shed light on ways in which vulnerability as a present state becomes linked to questions of deservingness. Drawing on a politics of care perspective, we will see that the mobilisation of vulnerability as criterion for deciding upon who should get access to care – with regard to refugees, who should get access to a form of assistance and/or protection – defines deservingness in terms of a general state of being that is linked to present needs. A needs-based approach towards suffering gets a moral character in this process and becomes thus a question of deservingness. Vulnerability playing a central role in Swiss NGO refugee advocacy discourse, this approach of vulnerability seems to me helpful for the present study because it allows to uncover the moral logics behind the construction of vulnerability as a pure state of need. In the same vein, likewise a general state of being that defines deservingness to care but somewhat on an even more general level, innocence plays an important role in humanitarian reasoning and a politics of care. In Boltanski's sense one could say that innocence distinguishes necessary from unnecessary, legitimate from illegitimate suffering and that innocence creates thus a ranking of suffering which is necessary to give it a political meaning. How can we understand the workings of innocence as a means to decide about who (especially/in priority) deserves alleviation of his/her suffering?

The answer to this question lies basically in the understanding (and construction) of innocence "as an ethico-moral concept" (Ticktin, 2017: 578) of an "ideal humanity" (Malkki, 2015: 99). Vulnerability, in turn, can be understood as a facet of innocence. As Ticktin points out, "[t]he concept of innocence helps […] as a way to grasp and measure vulnerability" (Ticktin, 2017: 581). It is in this sense that we can approach vulnerability beyond its meaning in terms of definition of need and question the links that it has with deservingness when mobilised in representations of persons seeking protection. In the following I propose thus, to explain shortly what innocence as ideal humanity which is to say as an elementary form of "our shared humanity" (Malkki, 2015: 101) signifies, what it characterises respectively in which forms it is expressed and how, in the process, it creates a distinction between deserving and undeserving suffering victims.

First of all, innocence is linked to purity and to goodness. Innocent sufferers are not responsible for their suffering. They are persons who endure the suffering without having done anything that might have triggered it. The innocent is thus in a negative state; an innocent suffering victim is represented as a person who has no agency and who, consequently, is "politically harmless and neutral" (Malkki, 2015: 79). Ticktin (2017) finds that classical innocent figures are children, refugees, trafficked victims and animals. Innocence implies not only the absence of responsibility and agency, but it is further linked to lack in a wider sense: lack in knowledge, in intention, in desire and in guilt. This leads to representations of innocent victims without any historical, cultural or biographical specificity, "outside time and place altogether" (Ticktin, 2017: 581, based on Ticktin, 2011). This absence of any specificity "cut[s] across cultural and political difference, when our intent is to address the very heart of our humanity" (Malkki, 1996: 388). At the same time, it ignores structural, political and historical reasons for suffering. The focus on the purity of the suffering victim essentializes his/her existence and depoliticizes it by ignoring structural inequalities (see Ticktin, 2016, 2017).

Following Ticktin, "[s]uch purity structures moral categories, filling out binary notions of deserving and undeserving, the innocent and the guilty, ultimately giving shape to different human kinds" (Ticktin, 2017: 579). Consequently, mobilising innocence to define deservingness has excluding effects: "Because innocence insists on purity and is coupled with guilt, and because our world is structured by these moral grammars, those who are not innocent are immediately deemed guilty: there is no space in between" (ibid.: 583). When specific characteristics like gender or age are described in terms of innocence, this creates, that is, reproduces not only unequal power relations between "sufferers" and "protectors", inherent to humanitarianism, but it contributes also to the creation of what Fassin calls hierarchies of humanity, introducing thus the element of deservingness in humanitarian politics of life.

Vulnerability as a criterion for care is closely connected to innocence, hence its link with deservingness. It is, however, less binary. "[V]ulnerability leaves room for negotiation – it allows room for degrees of powerlessness" (Ticktin, 2017: 588). Furthermore, it allows for relationality. Nevertheless, as suggested above, approaching vulnerability from a politics of care perspective makes visible its links with deservingness. The present study aims at shedding light on this link in Swiss NGO refugee advocacy discourse by investigating ways in which vulnerability is constructed and mobilised.

2.4.4 Differentiating humanitarian reasoning from a human rights perspective

Humanitarian discourse is different from a human rights based one. While the first is principally a "discourse of needs", the second is characterized rather by a rights-based language of entitlements (Barnett, 2011: 16). The aim of the present chapter is to present the main elements that make a humanitarian discourse focussing on human needs different from one that focusses on human rights

subsequently their violations. Having looked at those distinguishing elements from a theoretical perspective will then in a second step allow to shed light on processes through which humanitarian and human rights discourse have become conflated in practice, an observation that I also made in the case of NGO refugee advocacy discourse in Switzerland.

As we will see, humanitarianism and human rights, understood as two forms of social practices (Beitz, 2020: 72), are based on specific moral principles and ideas about humanity. The confrontation of humanitarianism and human rights in general terms and on a conceptual level is relevant for the present study for two main reasons. First, international human rights treaties like the UDHR or the ECHR play a central role for refugee protection. Human rights organisations like Amnesty International represent an illustrative example for how human rights arguments are mobilised in refugee and asylum discourse. However, because of human rights' centrality for refugee protection, human rights are mobilised more largely by refugee advocates, beyond human rights organisations. Second, I observed that NGO refugee advocacy discourse often mixes human rights and humanitarian types of arguments as this is often the case also in a broader public sense (Moyn, 2016: 5). Being aware of the differences in terms of moral principles and ways in which humanitarianism and human rights characterise relations between those they advocate for, and the rest of humanity is necessary to uncover processes of conflation and their consequences. In a first step and for analytical purposes however, Moyn points out: "Obviously, life is messy, and no set of distinctions is perfect, but it seems wiser to avoid conflation [of humanitarianism and human rights] and to err on the side of separation" (ibid.: 1). So where do the differences lie between humanitarian and human rights discourse? Following Barnett (2018), a starting point for answering this question lies in the different conceptualisations of suffering in humanitarian reasoning on the one hand and human rights logic on the other. While the first focusses on threats of basic life, in Agamben's terms "bare life", the second addresses "social suffering, the kind of suffering that society caused or conditioned" (Barnett, 2018: 325, citing Wilkinson, 2013) which translates in "a lack of entitlements and rights" (Barnett, 2018: 325). Hereby, humanity itself is approached differently by both logics. Humanitarianism sees the present distress of "bare lives" in the first place and engages in a temporality of emergency which addresses present suffering in the here and now. Human rights reasoning defines humanity beyond the "bare life" to be saved but in terms of freedom and capability for thriving. While the first is characterised by a logic of emergency to treat the ongoing precarity of lives, the second is forward looking as it aims at fostering freedom and flourishing (Barnett, 2018: 327).

As humanitarian and human rights reasonings define "suffering-induced humanity" (ibid.: 334) in different terms – threats of "bare life" opposed to a lack of entitlements and rights securing freedom and thriving – the reaction towards such suffering(s) is based on different principles. Where the causes of suffering are perceived differently, the answer it requires is different as well (Beitz, 2020: 73). While humanitarianism, as explained above, engages with moral sentiments of pity or compassion making of

humanitarian action an act of charity, intervention in the name of human rights follow a principle of justice. “Human rights relies on legal discourses and frameworks, whereas humanitarianism shifts attention to moral codes and sentiments” (Barnett, 2011: 16). If humanitarianism is a “politics of inequality” as stated by Fassin (2010a, b), human rights might be understood as a politics of equality because they are based on the claim that all human beings are entitled to the same fundamental rights. This translates in different status of a person who faces human rights abuses compared to that of a humanitarian victim. “One has a status as the object of a duty of justice that one generally does not have as a potential object of someone else’s beneficence” (Beitz, 2020: 82). Put simply, I can claim justice if my rights are violated but charity is “owned” by those who decide to “give” it to whomever they define as the right beneficiaries. Hence, human rights are connected with persons who have agency (Benhabib, 2013: 87).

In this context, one needs however to keep in mind the constructed character of the legal discourses and frameworks to which human rights discourse refers. International human rights standards emerged in a specific historical and political context. In this sense, human rights are not neutral or apolitical as human rights organisations often claim. Furthermore, there is a moral dimension to human rights and its underlying principle of justice. As Beitz points out, charity (or beneficence) on the one hand, and justice on the other, “are the two principal other-regarding virtues, or classes of duty, found in the history of ethics in the West and in the moral senses of many people today” (Beitz, 2020: 71). Following Habermas (2010: 464), the moral source of human rights lies in the central notion of human dignity. “Human dignity, which is one and the same everywhere and for everyone, grounds the indivisibility of all categories of human rights” (ibid.: 468). Further, he claims that human rights “are designed for an effective implementation of the core moral values of an egalitarian universalism” (ibid.: 464). Human dignity is linked to the social recognition of an individual’s status (ibid.) and even more: it is “protective of human status as such” (Benhabib, 2013: 87). While humanitarianism’s morality lies in the universal claim to save biological life, human rights’ morality, based on the concept of human dignity, is one of equal respect of self-determined subjects who are all entitled to fundamental rights because of their humanity. “[H]uman dignity forms the “portal” through which the egalitarian and universalistic substance of morality is imported into law” (Habermas, 2010: 469). From this follows that human dignity, expressed in terms of human rights, becomes a question of rights and justice. “Because the moral premise of equal respect for everybody is supposed to be cashed out in legal currency, human rights exhibit a Janus face turned simultaneously to morality and to law” (ibid.: 470, citing Lohmann, 1998). It is in the context of this understanding of human rights and their moral dimension that Barnett’s (2018) conceptualisation of humanitarianism as “moral minimalism” in contrast to human rights’ “moral maximalism” can be understood.

Interestingly, but probably somewhat unsurprisingly, these different moralities, understandings of humanity and of suffering are reflected in different types of practice when it comes to claims making by humanitarian actors or human rights defenders. In the case of humanitarianism, drawing on sentiments of compassion on the one hand goes with "humanitarian diplomacy" (Barnett, 2018: 329) of humanitarian professionals on the other. Human rights activists, on the contrary, following principles of rights and justice, follow a strategy of "naming and shaming" (ibid.: 329). While the former appeals to the goodwill of governments (compassion but no obligation) to accept for example asylum seekers, the latter bases its claims on an "existing normative structure that clearly distinguishes the legitimate from the illegitimate, the acceptable from the unacceptable, and the moral from the immoral" (ibid.: 329). Barnett observes that "what human rights might count as competence would count as incompetence if done by humanitarian organisations" (ibid.: 330).

2.4.5 Operational proximity of humanitarianism and human rights

In practice, the above-described differences between humanitarianism and human rights may not always be so clear; on the contrary, boundaries between humanitarianism and human rights often become blurred. Following Moyn, since the 1970s human rights have been "subordinated to a humanitarian optic" (Moyn, 2016: 4) in a process of "slow amalgamation of humanitarian concern for suffering with human rights" (Moyn, 2010: 220), a process that may be called a humanitarianisation of human rights. Moyn continues further: "(H)uman rights and humanitarianism (appear as) fused enterprises, with the former incorporating the latter and the latter justified in terms of the former" (ibid.: 221). Hence, conflation of humanitarianism and human rights is not a unidirectional process. Humanitarian actors may also, in their claim to save lives, refer to human rights. On a discursive level, such an incorporation of humanitarian elements in human rights becomes visible when human rights violations are described in terms of the suffering body. The centrality of suffering for both humanitarian and human rights reasoning can lead, depending on how it is formulated, to a process through which human rights appear as part of "the familiar script of empathy in the face of the spectacle of the body in pain" (Moyn, 2016: 41). In the context of the analysis of frames of claims made by professionalised NGOs the process of conflation helps, in my view, to understand how humanitarian and human rights arguments can be mobilised within one frame. This can be observed, for example, in the case of the vulnerability frame.

Both, humanitarianism as well as human rights defenders have been criticised for the ways in which they approach suffering and its alleviation respectively its prevention. The core of this criticism is the lack of capacity of both perspectives to challenge structural inequalities due to principles of neutrality and impartiality that lead in practice to the abstraction from the wider context in which human suffering and human rights violations take place.

As mentioned in the context of depoliticisation, the protection of refugees on the basis of human rights is problematic because the focus on human rights violations abstracts from social realities and the wider geopolitical and economic context (Malkki, 1995). This criticism regarding the abstracting character of human rights is more widely shared especially by Marxist (Brown, 1995; Zizek, 2005; Williams, 2010), feminist (Brown, 2002), post-colonialist (Matua, 2002; Asad, 2003) and historical (Moyn, 2010, 2014, 2018) scholars. Critics argue that human rights are depoliticising because individualising: Moyn (2014) criticises that the human rights movement is co-opted by neoliberal ideologies. From this perspective, "[t]hey are enabling the world to be made secure for neo-liberal global elites rather than ending the suffering of ordinary people" (Nash, 2015: 3). In this context, Moyn (ibid.) argues that the human rights movement has failed to meaningfully challenge or change global economic inequalities and unequal power relations between the global North and the global South. He argues that while human rights highlight and mitigate certain types of abuses, they have been less effective in addressing systemic global issues like poverty and economic disparity. In this sense, he sees human rights claims as depoliticising social struggles and issues of social justice. By framing injustices and social struggles primarily as legal issues, human rights advocates ignore structural inequalities. Thus, by focusing on protecting individuals from state abuses while neglecting the economic and geopolitical context, human rights, support, following Moyn, the *status quo* of global inequality.

PART II METHODS AND DATA

3 Research design, data, and approach of the analysis

Originally, this study of professionalised NGO refugee advocacy was constructed as an ethnographical study with intense fieldwork implying my "physical co-presence with(in) the phenomenon in real time and space" (Wacquant, 2014: 4). While the body of ethnographic data that is analysed in this thesis is relatively small in its final form due to restricted access especially to interviews with staff members of the NGOs and to observations of their activities, I still maintained an ethnographic perspective through the research process. Focussing on the NGOs as case studies meant collecting different types of data which assembled together in a kind of "puzzle" that would form a picture of each NGO. Comparing these pictures in a complementary rather than opposing way lead then to the identification of more general patterns in terms of actions and strategies. The ethnographic character of my research becomes furthermore apparent in the way in which I approached the public communication documents. Linking the analysis of the frames visible in these documents with the perceptions and strategic considerations of the NGO representatives allowed to understand different dimensions of insider and outsider strategies of the NGOs in their contexts and respective (perceived) opportunities.

The following chapter (chap. 3.1) will present the case study research design in more detail, the negotiation process that led to restricted access to data (chap. 3.2), the collected and analysed data (chap. 3.3), the research ethics applied and questions of anonymisation (chap. 3.4), reflections on my position as researcher (chap. 3.5) and the approach of the analysis chosen in terms of methodological techniques of coding and comparison as well as in terms of units of analysis (chap. 3.6).

3.1 A case studies research design

A case studies research design seemed appropriate due to the fact that my research question revolves around aiming to understand the role of professionals in the defence of the NGOs' causes and the strategic relationship between their resources and the (perceived) opportunities in which these are mobilised includes exploratory (what do professionalised NGOs do exactly in terms of refugee advocacy?) as well as descriptive (how do they do it within which (perceived) opportunities and through the mobilisation of what resources?) and explanatory (why do they do it in these ways?) aspects (Yin, 2003). Following Zittoun (2017: 171), "[a] case study is an in-depth study of, as the case be, a person, a phenomenon or a complex situation to such extent that the insights gained allow an understanding of the core dynamics at heart". In the case of the present research, the cases chosen for an in-depth study are professionalised non-governmental organisations that do refugee advocacy

work in Switzerland.[8] The choice of the Swiss Refugee Council (SRC) and the Swiss section of Amnesty International (AICH) as cases was furthermore motivated by what Ragin (1999) calls their common "outcome". I understand the latter in a broader sense. On the one hand, as the share of budget that both organisations invest in advocacy activities compared to other activities. On the other hand, as the degree to which I observed their presence in the public sphere and on the political scene (for example, through consultation responses, statements published in the media etc.). Finally, these two aspects lead to the choice of the cases of two organisations that are non-operational in the Swiss asylum system. They neither carry out individual legal advice for asylum seekers or recognised refugees (or only on an exceptional basis respectively to a small degree) nor are they involved in reception activities. These general observations in terms of "outcome" were then to be further concretised in the in-depth study of both NGOs. Limiting the number of cases to be studied to two cases was a deliberate (and pragmatic) choice made in the beginning of the project based on two considerations: On the one hand my own capacities in terms of time were restricted as I was the only researcher involved in the project. On the other hand, the two professionalised and non-operational organisations chosen do present the biggest advocacy organisations active in the asylum field in Switzerland. The choice to focus on a specific group of actors – that is professionalised and non-operational organisations – was overall motivated by the aim to contribute to the existent body of literature about grassroots organisations and their protest activities (which is increasingly present within social movements research) and about legal and social assistance organisations. From this perspective, I follow Yin's (2003: 10) understanding of the scientific value of "case studies […] as generalizable to theoretical propositions and not to populations or universes". Such a conceptual understanding of case studies implies that the two "cases" of professionalised NGOs and their activities in terms of refugee advocacy that are in the centre of the present research are not simply approached as examples of a bigger "population" of organisations. Rather, the in-depth study of their specific cases "as configurations of their properties" (Wagemann, 2014: 48) aims at contributing to the (theoretical) understanding of contemporary refugee advocacy, its logics and dynamics more generally, in a context where asylum government is driven by a migration management perspective and an increasing juridification of the field and where, following a political opportunities approach, refugee advocates' practices and discourse are linked to the opportunities that the environment in which they act present (see chap 2.1.1).

[8] Initially, the study had been designed as a multi-site study focussing not only on the Swiss but also on the British context. Due to external factors (independent to questions of access), most importantly the Covid-19 pandemic, field work in Great Britain could not be realised. Thus, this PhD thesis concentrates on the Swiss context with an in-depth analysis of data from two Swiss "case studies", that is two Swiss NGOs.

In retrospect, the centrality of legal expertise in the work of both organisations that became clear quite early in the research process might have been a criterion for the selection of the cases. In the case of AICH and the organisation's self-definition as a *Human Rights* organisation, the centrality of the (international) legal register might not come with surprise. Similarly, the SRC's observed "outcome" in terms of consultation responses and legal analyses, accessible on the organisation's website points also to the importance of legal expertise. However, I would argue that not defining the "outcome" in such precise or rather exclusive terms left space for an exploratory and inductive character of my research. Furthermore, in the literature, there is often a distinction between humanitarian oriented and human rights (and thus more politically oriented) organisations. I explicitly did not want to make this distinction in the beginning of the research but rather leave it open to the analysis of the data if one and/or the other tendency became visible. Again, in the case of AICH the centrality of human rights was of course somewhat obvious from the beginning. The inductive research process allowed, however, for a nuanced analysis that shows that also in the case of AICH, the discourse (on the individual level of AICH representatives as well as on the level of the organisation's official public discourse visible in public communication documents) is characterised by humanitarian elements (see Part VI). At the same time, the interviews led with representatives of the SRC and AICH also allowed to identify other patterns of argumentation – next to humanitarian and human rights arguments – mobilised vis-à-vis different actors (authorities, politicians, the general public, etc.).

In this context, as Yin (2003: 8) points out, the strength of a case studies research design as "a comprehensive research strategy" (ibid.: 10) is that it takes into account a diversity of data. To "understand […] the dynamics present within single settings" (Eisenhardt, 1989: 534), "the overall idea is to become intimately familiar with each case as a stand-alone entity" (ibid.: 540). In this process of familiarisation with a case and the dynamics that characterize it as a "setting", different types of data are useful, such as interviews, observations, archived material, and different types of public communication documents. I will give more details about the data that I collected and analysed during my study in chapter 3.3. The types and amount of data that I could collect and analyse in the context of the present study have been greatly influenced by issues of access. Therefore, I propose to describe the process of negotiating access and the constraints of access I was confronted with in the next chapter before giving an overview of the data itself.

3.2 Negotiating access

Taking advantage of a personal contact with a representative of the SRC, Thomas – we had made acquaintance in the context of an academic conference – I contacted him in Autumn 2017, and we met for an interview. During this first interview with Thomas, he mentioned that if I wanted to talk to other colleagues, I had to address an official request to the SRC's director, which I did in March 2019. I

attached a short description of my research project to the e-mail which included the aims and two rather descriptive research questions focussing on the activities of the organisations and their internal decision-making processes. At the same time, I approached AICH's director with a similar request to that of the SRC. While this first contact took place via e-mail in the case of the SRC, I took the occasion to approach the director of AICH at a conference held at the University of Geneva in May 2019. In both cases, my request was transferred to a staff member who became my main contact person for the period of my field work with the organisations. In the case of the SRC, this was Daniel and in the case of AICH, it was Karim. Both had a role as intermediary, or gate keeper, between myself respectively my requests linked to my research project and persons occupying higher positions in the hierarchy of each organisation. While the negotiation process did not go exactly the same way with both organisations, I encountered restrictions in terms of access to staff members, to observations of their activities and to internal documents in both cases to different degrees. The degree to which I had direct personal contact with gatekeepers did also vary between the organisations and intensified in the case of one of the organisations during the negotiation process. The negotiation processes were object to discussion with my supervisor during and after the field research. He became personally involved when my relationship with one of the gatekeepers became increasingly conflictive and had a written exchange with the person. Further, we discussed how to present the negotiation process in my thesis and came to the conclusion that a focus on the central elements of this process should be preferred to a detailed account of the negotiations that took place with each of the NGOs respectively with some of their representatives in their function as gatekeepers. The considerations behind this decision are essentially of a research ethics nature and contain mainly two aspects. On the one hand, a detailed account of the negotiation processes that took place with individual representatives of each organisation would expose specific persons when specifying their position and affiliation to the specific organisation. On the other hand, with regard to future research in the field, such an exposure could present the risk of contributing to even more closure of organisations to ethnographic research. Thus, in the following, I will focus and reflect more generally on two aspects that seem central to me in this process: the role of gatekeepers and the question of authority of knowledge production. Following Darmon's (2005) and Kalir et al.'s (2019) perspective that negotiating access and encountered constraints of access may nevertheless be taken into account as empirical data and provide insights on the cases under study, a second sub-chapter will reflect on what the ways in which I encountered these two issues may say more generally about the organisations. Especially given the uncertain context of the restructuring of the asylum sector in which I approached them.

3.2.1 The researcher's relationship with gatekeepers and authority of knowledge production

As Clark (2010: 488) pointedly says regarding the relationship between researchers and gatekeepers, "developing productive research relationships is crucial to obtaining credible data". In the social sciences, this is true for a variety of different research settings. The setting in which my research took place respectively on which my research focusses is a specific one, that of professionalised advocacy NGOs. These NGOs are characterised by a certain degree of hierarchy which leads to unequal power relations between the persons occupying positions at a higher level in the hierarchical and the persons occupying positions at a lower hierarchical level. It is in the context of this unequal power relation that the power of gatekeepers over access of researchers to employees on the lower hierarchical level can be understood. As the gatekeepers I encountered in my study were located within the organisations, they were part of "the 'researched' themselves" (Clark, 2010: 486) and not only kept the "gate" to their organisations in terms of employees, internal processes and documents but also, at the same time, to themselves as they occupied positions that were of interest to my research. Additionally, in settings in which different persons with different interests are present, each individual actor may have a veto power which can be used to "close the gate" to the whole setting. This happened, for example, in the case of the legal expert group to which I was denied access because individual participants of that group had expressed their opposition. In this group not only staff members of the SRC and AICH participate but also representatives from other organisations active in the asylum support field. In this setting, actors outside the two organisations had also a gatekeeper role. In the following, I propose to focus on the relationship between the researcher and gatekeepers and reflect more specifically on the relationships that I experienced with gatekeepers in the context of my research on professionalised NGO advocacy which involved employees of professionalised organisations. I will turn to the reasons that were communicated explicitly and implicitly to me in the negotiation process for limiting my access to NGO employees, internal meetings and documents and analyse them from a perspective of risks, as Clarks (2010) proposes. As mentioned above, I will not present the negotiations in a chronological order but I will analyse the encountered restrictions of access from a perspective of risks associated with my research by the gatekeepers which became apparent in the process of negotiation.

Based on what I just mentioned above regarding the different settings, the different gatekeepers that I encountered in the context of my research had, overall, the same role: They controlled my physical access (Cassell, 1988) to employees of their organisation, to the employees' activities as well as to internal documents. Their role was to "give permission to proceed and provide the necessary information for contact to be made" (Clark, 2010: 487). By refusing to let me observe meetings of the legal expert group, I was physically excluded from this setting and thus from the activities that took place within it. By receiving an explicit interdiction to contact more employees that I had been granted by the gatekeepers, in the case of one of the organisations, I was physically prevented to access them.

Here, the prevention of physical access can be understood in comparison to prevention of social access which refers to the social acceptance of the researcher by the researched (Cassell, 1988). While I encountered restrictions of physical access imposed by gatekeepers, I did not encounter issues of social access with the NGO representatives with whom I could conduct interviews. To be more concrete, the restrictions of physical access with which I was confronted had consequences for the overall number of interviews with NGO staff members (initially planned: 33 - conducted: 8), as well as for the extent and types of observations I could do (initially planned: different internal meetings[9], meetings between NGO representatives and external actors – conducted: 5 internal meetings) and for the extent and types of internal documents I could consult (initially planned: internal guidelines, meeting documents, non-public archived documents[10] – accessed: meeting documents of the 5 meetings I assisted).

As Clark (2010: 488) remarks, "[t]he researcher is often a relatively uncontrolled element in an otherwise highly structured environment". As external actor, not being part of internal hierarchies with a clear attribution of responsibilities to individuals in the organisation, the researcher has indeed this character of uncontrollability and thus unpredictability. His/her presence and access to information about the organisation's internal processes may present a risk as the researcher's interests and aims may not correspond to the "people and organisations who act as gatekeepers [who] have their own interests, aims and purposes in their wider social contexts" (Clark, 2010: 490). As Clark (2010: 497) further remarks, "[p]erception of risk is highly subjective". This is valid for the gatekeeper as well as for the researcher. It is true that it was mostly during the process of negotiation with different gatekeepers (and in exchange with other actors in the field about certain aspects of this process) that I perceived the risks that the gatekeepers implicitly or explicitly perceived in my research.

For gatekeepers within professionalised organisations that rely importantly on paid employees, like the SRC and AICH, an important aim is to make sure that human resources are used efficiently. From this perspective, a first risk that was certainly perceived by the gatekeepers from the moment they had knowledge of me reaching out to the organisations, consisted in the costs in terms of time and human resources they associated with my research and my requests of access linked to it. I base this analysis, on the long period (several months) until I got an answer from one of the organisations and on the fact that I was explicitly told that my research was time consuming for the NGOs' employees. When a gatekeeper told me, "I need to protect my employees" to explain why I was allowed to interview only a small number of the organisation's staff, it became clear that my research presented

[9] When starting the field work, I did not know how many different internal meetings took place nor how often staff members met external actors, and my aim was to discuss this with the staff members.

[10] The archived documents of the last thirty years are not publicly accessible due to the blocking period of thirty years.

an additional workload to the employees' already high workload (Munro et al., 2005) because interviews are indeed time consuming.

At the same time, I was also told "We cannot just let you look into everything" (words of a gatekeeper) implying that my access to meetings as well as internal documents had to be controlled and managed which again consumed time and labour. This leads to the second risk that I perceived as being present in the course of the negotiation of access with the gatekeepers, and it explains mostly the first risk (time and workload) which was perceived in connection with my research. This was the risk of intrusion which arises "when the gatekeeper in question perceives the focus of the research project to be entering into areas of interest that they also have an interest in protecting and managing" (Clark, 2010: 495). Focussing on the advocacy activities, strategies and resources of the organisations themselves, I aimed to investigate and make visible their internal processes, strategic considerations and relationships of the NGOs' variety of employees with each other and with external actors. The two following research questions that I presented in the description of my research project which I sent to the organisations when making contact in 2019, made clear that I aimed at not only investigating the publicly visible actions of the NGOs and their representatives but also importantly the inner functioning of the organisations:

1) What activities do professional NGOs engage in to advocate for refugees, and with which actors do their professionals interact in this context?
2) What goals, strategies, logics and considerations underpin the NGOs' advocacy activities and how are these negotiated and decided within the organisations?

However, especially the investigation of strategies and internal decision-making processes can collide with the aims of gatekeepers to keep these processes and considerations on which strategies are based, from the wider public. In retrospect, I probably used the term "strategies" too naively when approaching the NGOs and without considering that for their representatives speaking about strategies, involved important concerns of credibility and legitimacy. Indeed, as the analysis parts of this thesis will show, the two professionalised advocacy organisations at the centre of this study operate within a wide network of different state and non-state actors. Their work is shaped by different dependencies and by concerns of credibility and legitimacy towards different actors, importantly donors, member organisations in the case of the SRC and the authorities. And as advocacy organisations have political interests, so do their gatekeepers. As Clark describes "Where political representation is important to the gatekeeper, then the gatekeeper needs to be sure that the researcher and the research project can represent a reality that is congruent to the one held by the group in question" (ibid.: 494). It is in this context that I understand the above-quoted statement of the gatekeeper that "We cannot just give you everything". Giving me access to "everything" in terms of internal documents presented the risk that I might shed light on areas that from a point of view of

credibility and legitimacy towards external actors might be problematic and which furthermore might compromise the political representation of the organisation. This does not imply an active attempt to hide any specific area. It is rather the perception of the risk to "lose control of the representation of their reality" (ibid.: 495) that guides restrictions of access. In this context, it might also be noted that a gatekeeper can obviously not have knowledge about all processes within an organisation and cannot know the content of all produced documents. Here, seniority of a gatekeeper in the organisation may also play a role in the extent to which the risk "to lose control of the representation of their reality" (ibid.) is perceived by this gatekeeper. The longer a person has been present in an organisation, the better s/he knows the organisation's different employees, their activities and the documents that they produce.

Finally, there is a third risk that gatekeepers may have perceived in my research which is the risk associated with the research methods that I chose to produce knowledge about the concerned organisations (ibid.: 493f.). I base this observation on the fact that in the case of one organisation, I was asked several times to rework my research description. In this context, I was especially asked to specify why exactly I wanted to talk to which specific employees. I was asked to specify my "expected insights"[11] for each specific interview I aimed to conduct. This request collided somewhat with my inductive research approach inspired by grounded theory because my broadly defined interest to understand what the professionals did in their day-to-day work, what resources they mobilised and on what considerations they based their actions, did not include specific expectations of outcome linked to each single interview I aimed to conduct. In the context of scarcity of time and high workload, I was allowed to conduct a limited number of interviews with persons who were informed about all important current matters and activities of the organisation's employees, as I was told. This decision can thus be seen as following an efficiency logic. Further, I was asked to clarify the notion of advocacy that I used. As I used this term in a heuristic way to approach the NGOs' activities, I could not (and did not want to) provide a concrete definition which was met with a lack of understanding from the gatekeepers. I find here a parallel with an observation that other researchers made in the context of their negotiations of access in the migration field. For example, Rosset and Achermann (2019: 50) describe negotiations of access to a unit of the State Secretary of Migration (SEM) as a process in which they "entered a competition over the legitimacy to claim knowledge and produce discourse about the field" (referring to Lézé, 2008). As Clark (2010: 493) notes, "gatekeepers will often value certain forms of knowledge over others". As the analysis part of this thesis will show, the SRC and AICH mobilise certain types of knowledge in their refugee advocacy work. They are used to certain methodologies,

[11] These are the terms used in an e-mail from one of my main contact persons (role of intermediary) who forwarded the gatekeepers' demand to specify my research description to me.

especially legal ones, to provide knowledge, for example, in the form of country-of-origin reports or reports based on legal analysis of a specific issue appearing in the asylum procedure (like questions linked to reception conditions or the asylum hearing). My methodology, compared to the methodologies used by the organisations respectively their staff, was dissimilar following a different aim. Linked to the risk of intrusion described above, the querying of my research questions, goals and methodology ultimately raised the issue of authority and of legitimacy of knowledge production (Rosset/Achermann, 2019) about the organisations I investigated. As Kalir et al. (2019: 12) mention, "[n]egotiating access almost always means that what is concomitantly being negotiated is the very possibility to know and to produce knowledge in a certain field".

In this context, I might also mention that I got access to the protocols of meetings of the legal expert group. However, I was confronted with heavy confidentiality constraints that, in the end, I decided not to use this data. These consisted not only in the request to not reflect the actors mentioned in these documents but furthermore to not reflect the issues discussed nor the arguments advanced by the participating actors in any publications. In this case, the possibility to know but not to produce communicable knowledge does also present a form of restricted access as it is ethically not possible to produce knowledge on this basis.

3.2.2 Alternative access to the organisations

The negotiation process was the object of several discussions with colleagues who had encountered similar, if even not more severe restrictions of access (see, f. ex. Rosset/Achermann, 2019) which was helpful to relativise the restrictions I faced and to focus on the data that I actually had access to. In this context, it is important to note that I have never been threatened with complete denial of access. The object of the negotiations of access was to what type of and to what extent I could get access. Further, reflecting on the reasons for gatekeepers to impose the constraints in terms of access described above, led me to understand that the organisations acted within a network of a variety of actors, and were most of all, in constant interaction with other non-profit organisations active in the asylum field in Switzerland. These organisations build together what I call the multi-organisational asylum support field. While the Swiss asylum field encompasses all actors, state and non-state, non-profit and for-profit actors, I understand the asylum support field as constituted by actors of civil society. Finally, the Swiss asylum sector encompasses all actors who carry out tasks in the legally defined structures of the asylum system (reception tasks and tasks linked to the asylum procedure in federal centres and on the cantonal level).

I decided to widen the scope a bit and to approach some of the actors in the asylum support field leading, to a limited extent, to a multi-perspective approach (Achermann, 2009) of the organisations.

This led to six more interviews with persons who were not staff members of the SRC or AICH at the moment I interviewed them. I had met these persons either personally or were put in contact with them through another person. They had either worked for the SRC or for AICH in the past or were currently otherwise professionally engaged in the support field. The idea was to broaden the sample of persons who could talk about the encounters that they have had with the SRC and/or the AICH in the asylum field. I did not plan to include those views in my research from the beginning. However, finally, these views from other actors of the support field added another point of view and also allowed to shed light on dynamics between different organisations within the support field.

Nevertheless, as the perceptions of the representatives of the SRC and AICH, their public self-presentation and their strategies are in the focus of this research, I decided not to widen the scope of my interviews to additional actors. While, if I had pursued this widening my research to other actors in the support field, the approach would have been more movement centred (Walker/Martin, 2019), I decided that I wanted to keep my perspective actor-centred (ibid.) with a focus on the perspective of the two organisations. Furthermore, having already invested a certain amount of time in the analysis of the public documents, contemporary as well as archived, of the organisations, and in view of the time and the funding that I still had for my PhD research, I did not want to reorient my research focus towards other actors. While this thesis provides some information about the asylum support field, its variety of actors and dynamics, the focus remains on the SRC and AICH as important professionalised organisations and their specific strategies.

3.2.3 Some reflections about what negotiating access says about the organisations in their context

The moment at which I contacted the SRC and AICH in 2019 coincided with the moment when the new asylum procedure came into force. This meant that some actors of the support field, among which member organisations of the SRC, had obtained mandates for legal advice and representation for asylum seekers in the asylum procedure while others had not. This led to tensions in the field as the mandates presented important financial resources for the organisations. Representatives of some of the organisations providing legal support tasks, importantly member organisations of the SRC, were members of the legal expert group (and are still today). The denial of access that I encountered regarding this group can be understood in the context of the tensions between members of organisations who had obtained a state mandate for legal advice and representation tasks in the new asylum procedure and others who had not. As Nathalie (AICH, 2019) explained later when I interviewed her, some of the participants of the legal expert group thought that the discussions led in this group were “too sensitive at the moment” (her words reproducing arguments from the group) for being heard by an outsider whom I represented. As she said, there was already so much unease among the

members of the group – many of them providing legal advice and representation tasks in the new asylum procedure – that my presence as an outsider was perceived as possibly contributing to further increase of the unease. Here, the contextual factors became explicit. While, as explained above, I do not interpret the constraints of access that gatekeepers imposed in terms of interviews with staff members of one of the organisations and in terms of access to internal documents and meetings as an attempt to hide specific information, denying me access to the legal expert group, however, presented an active attempt to hide discussions that took place within this group, from the eyes of outsiders. As Nathalie (AICH, 2019) explained, due to the tensions between some of its members, the legal expert group was "a fragile vessel" which risked to breakup under the observation from external actors.

Finally, and speaking of the tensions present in the support field, it might be worth mentioning that another (more experienced) researcher had gained access (see Eule, 2020), two years earlier, to meetings actors involved in legal advice. At this moment, in 2017, the restructuring of the asylum sector had been decided (the Swiss population had accepted the project in 2016) and Eule (2020: 2) describes the period following this decision as a "time of rupture" characterised by uncertainties for and tensions between legal advice actors in the refugee support field. The latter were also importantly linked to legal aid mandates, namely in the context of the test phase. While the SRC had obtained a mandate in the test phase, the Swiss Red Cross, a member organisation of the SRC, had not which led to the Swiss Red Cross abandoning its membership of the SRC (Eule, 2020: 6). Such tensions linked to competition about legal aid mandates were equally if not even more present in 2019 when the new asylum procedure was extended to all regions in Switzerland.

Hence, the ways in which the processes of negotiating access went in the context of my research may be importantly explained by the shifting and uncertain context of the restructuring of the asylum sector in which these negotiations took place. While the SRC was partly in competition with its own member organisations, AICH was not involved in this competition because the organisation does not carry out any mandates. However, also AICH representatives had an interest in continuing exchange between the different actors of the asylum support field. As I will explain in more detail in PART IV of this thesis, participating in exchange between support actors is crucial for AICH to obtain information that can be used as evidence in the organisation's advocacy activities with state bureaucrats. Negotiating access in a "time of rupture" (Eule, 2020: 2) has provided me with knowledge about dynamics within the asylum support field.

Repercussions of the Covid-19 crisis for access to data

When I started my PhD project in Autumn 2016, I elaborated a multi-site research design including case studies in two countries: Switzerland and Great Britain. The arrival of the Covid-19 virus in Europe at the beginning of 2020 with its consequences in terms of lockdowns and restrictions to international mobility presented me with obstacles in terms of access to NGOs in the UK. I arrived in the UK at the

end of February 2020 to start my stay as a visiting scholar at the University of Exeter. The plan was that I would stay there for eight months before moving for another research stay at the University of Leicester for a period of an additional six months. During that time, I had planned to do fieldwork with two professionalised advocacy organisations active in the asylum field in the UK, The British Refugee Council and the British section of Amnesty International. This fieldwork never took place for a number of reasons linked mainly to the Covid-19 crisis. First, my reaching out to the organisations in March 2020 (via e-mail and phone) after my arrival in the UK was not fruitful. Meeting staff members of the organisations personally at their offices in London was impossible due to lockdown restrictions. Furthermore, Covid-19 confronted the asylum support field with specific issues in terms of access to asylum seekers in reception centres and terms of procedural aspects. To tackle these issues, workload increased as did uncertainties about how the situation would evolve. In the context of the above-described risk of resources in terms of time and labour, with which the presence of a researcher is generally associated by the researched, I did not see another way to get engaged with the NGOs at this point in time. As the Covid-19 pandemic continued to expand in the world and with the uncertainties linked to its further evolution, similar to other colleagues who had lived abroad at the beginning of the Covid-19 pandemic, in June 2020, I decided to return to Switzerland, also importantly to escape social isolation that I had faced in the UK due to lockdown restrictions. As time passed and the Covid-19 continued to shape the life of societies worldwide, with more or less strict lockdowns from time to time, I decided to move on with my research and work with the data that I had collected so far in the Swiss context. Thus, the study lost its multi-site character which I regret, and I am very much looking forward to other studies which might look into professionalised NGO refugee advocacy in other national contexts.

However, a “positive” consequence of the arrival of Covid-19 in Europe was the fact that, even though being physically in the UK, I could participate in two more internal meetings of the SRC. As the first lockdown was imposed on the Swiss population at the end of February, a day after I had travelled to the UK, the staff members’ meetings took place online and I was allowed to assist in several. While my research does not provide a detailed account of the NGOs’ advocacy activities during the Covid-19 crisis, I observed them in the beginning of it.

3.3 The data: a qualitative “puzzle”

To generate in-depth knowledge about a case, in the case of the present research of professionalised advocacy organisations active in the asylum field, it is appropriate to collect and analyse a diversity of data. While some of the data that constitutes the corpus of data analysed in the context of the present study was planned since the beginning of the project, other types of data and/or their extent were (re)defined in the course of the research process due to the above-explained restrictions of access but

also because of the characteristics of each of the organisations studied. By choosing the word “puzzle” to describe the corpus of data that I collected and analysed in my study, I have consciously chosen a word which, in English, has a double meaning. This double meaning seems to fittingly describe the corpus of data constituted by a variety of puzzle pieces (interview transcripts, observation notes, a variety of public documents like press releases, reports and guidelines as well as publicly accessible archived documents). In a proverbial sense, this corpus of data presented me then with a puzzle that I had to solve by putting together the different pieces. This image of the puzzle guided me through the data collection and also the analysis. Regarding the data collection, I asked once and again: Do I have all pieces I could get and those that are important to complete the picture of an NGO or are there further pieces that I can obtain - within the possibilities keeping in mind constraints of access - to complete the picture? With regard to the analysis of the data the question was then: How to put the different pieces of the puzzle together? At times, this process was indeed challenging when pieces did not go together as I thought they would, when I moved back and forth between theory and pieces of data to make sense of what I had observed, heard and read. Table 1 gives an overview of the different pieces of data that I collected and analysed to draw a comprehensive “picture” of two professionalised advocacy organisations active in the asylum field: the SRC and AICH.

Table 1 - Overview of the data corpus

	Semi-directive interviews	Observations	Documents[12]	Archived documents (publicly accessible)
Swiss Refugee Council (SRC)	1 in 2017 3 in 2019	5 internal meetings, Nov.-Dec. 2019; March 2020	Publicly accessible: - Statutes 2016 - Portrait 2018 - Strategy 2017-2022 - 96 Press releases 2015-2019 - 13 Consultation responses - 3 Legal thematic papers - 5 Dublin country reports - 4 Position papers - 4 Petitions and open letters - 5 Annual Reports 2015-2019 - 20 Magazine Fluchtpunkt Internal: - documents linked to observed meetings	- 62 Annual reports 1938-2000 - Statutes 1936
Amnesty International, Swiss section (AICH)	5 in 2019		Publicly accessible: - Statutes 2018 - AI Statutes 2019 - 83 Press releases 2015-2019 - 2 Position statements - Human Rights in the Federal Palace. Legislature 2015-2019 - 11 Petitions and open letters - 5 Annual reports 2015-2019 - 20 (4 per year) AI Magazine of Human Rights Internal: - Asylum strategy	- 30 Annual reports 1970-2000 - Statutes 1974
Asylum support field	6 in 2019 (among which 3 informal)			
Overall	15 interviews	5 observations	279 documents	94 archived documents

The qualitative "puzzle" is constituted by four different types of data: interview transcripts, fieldnotes from observations, documents (mostly publicly accessible but also some internal) and publicly accessible archived documents. In the following, I will give some more information about these different types of data, their main target public as well as the ways in which they are produced by the organisations. I will start with a description of the variety of publicly accessible and internal documents

[12] The publicly accessible documents were accessed on the websites of the organisations. The references at the end of the thesis include a detailed account of the consulted documents.

that I collected before turning to the ethnographic data that I collected through interviews and observations.

Publicly accessible and internal documents

As the overview of the data in table 1 shows, to a great extent, the SRC and AICH produce and publish the same type of documents that inform, about the organisations' legal basis (statutes) and general goals (portrait, strategies, periodic goals) as well as their activities, positions on current issues and information about ongoing campaigns (press releases, position papers, statements, annual reports, consultation responses, petitions and open letters, Parliament newsletters and member/donor journals). Furthermore, the NGOs publish reports and thematic papers (i.e. country-of-origin reports, Dublin country reports, reports about the human rights situation in countries) that they produce and use in their advocacy work. This variety of documents are publicly accessible on the NGOs' websites[13] where I downloaded them. The public documents address different target publics. While documents like portraits, strategies, annual reports and member journals address mainly supporters of the organisations like donors and in AICH's case also activist bases, press releases are addressed to journalists to be taken up and reproduced in the media for the wider public's knowledge. Similarly, position statements published on the organisations' websites address journalists but also other persons, i.e. politicians, who might be interested in the NGOs' positions on specific topics. Regarding the communication of the organisations' positions on specific topics, it may be noted that AICH publishes so-called Parliament newsletters. These are addressed at the members of the National Council (NC) and the Council of States (CS) who constitute the two chambers of the Swiss parliament. At the beginning of each parliamentarian session, AICH sends these newsletters to each parliamentarian and publishes them, at the same time, as it does on its website. The newsletters contain AICH's positions on and recommendations for the upcoming treatment of law projects, parliamentarian motions and petitions in a parliamentary session. Additionally, in the beginning of each new legislature, AICH publishes recommendations also addressed at the members of parliament. This type of document targeting directly members of parliament is specific to AICH and lies in the responsibility of the organisation's chief lobbyist.

The second type of documents that both organisations produce and publish consist of reports about the human rights situation in countries around the world. These are mainly so-called country-of-origin reports and Dublin country reports. They are complemented by single legal thematic papers (in the case of the SRC) and thematic country reports (in the case of AICH) that focus on specific topics in a country or in the Swiss asylum procedure. As I will explain in the analysis parts of this thesis, these

[13] The SRC's website is accessible at https://www.fluechtlingshilfe.ch/ and AICH's website at https://action.amnesty.ch/. The links to the web pages where I accessed and downloaded the different types of documents can be found in the references.

documents are part of the advocacy strategies of the SRC and AICH. They are addressed, first of all, to actors in the asylum procedures like state bureaucrats making decisions on individual asylum claims, to legal aid actors to support asylum claims and to courts deciding on appeals against negative decisions on asylum claims or on appeals against a Dublin transfer decision made by the State Secretariat of Migration (SEM). I will address this aspect of the organisations' advocacy strategies in more detail in PART V of this thesis. In this context, it might be mentioned that the SRC also publishes the expert journal ASYL and handbooks of the asylum procedure. Both types of publication are addressed to a specialist public active in the asylum field. While they are part of the SRC's advocacy strategy to provide knowledge and guidance for actors in the asylum field, I did not proceed to an analysis of their content. For this reason, these two types of publication do not figure among the data presented in table 1 above. Also, the SRC's handbook served as a secondary source as it provides detailed information about the asylum procedure in Switzerland.

Finally, the third type of publicly accessible documents are documents that are used in public sensibilisation and mobilisation activities like petitions and open letters. They address the wider public with the aim to put public pressure on the authorities. These documents are published on the organisations' websites as well, either separately or in the context of a press release which informs about a specific campaign and petitions, open calls or open letters that are linked to it.

The ways in which the different types of documents are produced by the NGOs differs due to their structural characteristics. While in the case of the SRC, all documents mentioned above are produced by staff members of the organisation, in the case of AICH, the reports published on the organisation's website are produced by the international mother organisations Amnesty International with its international Secretariat in London. Staff members there do also prepare press releases which the Swiss section takes over, translates and adapts to the Swiss context if necessary. At the same time, the Swiss section is also free to write press releases concerning only the Swiss context. I will describe AICH's embeddedness in its international network in more detail in PART IV of this thesis.

Considering the diversity of documents which inform about different aspects of the organisations in terms of internal structure, resources, aims and self-representation as well as their activities allows also to shed light on different dimensions of the NGOs' advocacy work in the asylum domain. The analysis of documents like the annual reports, statutes and member journals enables in particular the identification of important resources that the NGOs mobilise in their advocacy work and sheds light on aspects that characterise the self-perception and public self-representation of the organisations and their employees. Especially the annual reports and the member journals provide information about the different activities in which the organisations respectively their staff members engage. The analysis presented in PART IV presenting the self-perception, resources and political positioning of the NGOs, and PART V presenting their strategies within political opportunities, draws in particular on the

content of these documents. In PART V I analyse insider (direct contact with the authorities) as well as outsider strategies (mobilisation of the public), documents like petitions, open calls and open letters will be considered in the context of the latter. The press releases and the above-mentioned public mobilisation documents will then be object to an in-depth analysis that is presented in PART VI with a focus on cognitive frames which are mobilised in these instruments of public communication, sensibilisation and mobilisation. Here, the publicly accessible documents taken into account are mainly those published in the period between 2015 and 2019.

While I had access to a variety of published documents on the organisations' respective websites, I had only limited access to internal documents due to the reasons explained in chapter 3.2. On the one hand, these consisted in documents linked to the meetings of SRC staff members in which I could participate as observer at the end of 2019 and in March 2020. On the other hand, I had access to some internal documents of AICH like the newly elaborated asylum strategy of the organisation and some communication guidelines developed by the International Secretariat to which AICH could or had to refer to in its public communication activities. I do not have permission to quote these internal documents; however, they provide important information about the organisation's inner functioning. The asylum strategy provides furthermore important insight into AICH's strategic objectives, priorities and types of activities in the asylum domain.

While these different types of documents provide important insights into the organisations' aims, resources, activities and strategic priorities, interviews with staff members of both NGOs were crucial to understand the variety of considerations lying behind the publicly visible actions. Furthermore, they provided information about activities that take place in the shadows, behind closed doors when NGO representatives engage directly with state bureaucrats and politicians. I will give more information about the type of interviews that I conducted in the following section.

Semi-directive expert interviews

Overall, I conducted 15 interviews with representatives of the SRC, AICH and other organisations in the asylum support field including one former staff member of the SRC. Some of the interviews took place in the localities of the SRC or AICH in Bern, others in public places like cafés. All interviews were recorded and afterwards transcribed. Each interview took between one and two hours.

Through the interviews that I did with a rather small number of representatives of the SRC and of AICH (see table 1) I aimed at grasping different levels of the NGO's advocacy work: the individual or *micro* level (of each interviewee), but also the *macro* level (the NGO as a whole), as well as finally the *meso* level respectively NGO internal processes, tensions, discussions etc. Following thus a multi-level perspective, my interview grid was divided in several parts: First, I asked about the interviewees' motivations and background, their view on the asylum system and then more specifically about their

tasks, responsibilities, daily and more or less regular activities and interactions with other actors inside and outside the organisation and how his/her role was perceived by him/herself. As it was not possible to accompany the staff of neither the SRC nor AICH at any of their professional activities – with the exception of the meetings at the SRC in which I could participate – I asked about these in the interviews. Thus, the interviews served to get an idea about the individual interviewee, his/her role in the organisation, tasks, responsibilities, and interactions with other actors inside and outside the organisation. Second, I asked what internal processes shaped the work of my respondents, who was involved in these processes and in which ways. Third, how did the interviewee perceive the tasks and the role of the organisation in the asylum field? What were important claims and goals and what were viable ways to achieve these and what obstacles did the interviewees, but also the organisation as a whole encounter? As I spoke with the persons in their professional role as employees of an NGO, the interviews had the specific form of expert interviews (Flick, 2009: 165). Indeed, expert interviews focus on the capacity of the interviewed person in his/her professional role.

Especially when turning to the discursive level which means more concretely the formulation of concrete claims and arguments, sometimes I received questions in return about how I saw a specific claim, argument or focus on specific groups for which claims were made. In particular, when speaking about the focus on vulnerable asylum seekers, several interviewees asked me if I saw this term and/or focus critically. As Papinot (2014) points out, interviews represent social situations and thus, the way in which these social situations take place depends not only on the questions asked unilaterally but on how their dynamics are shaped by all persons present. Designed as semi-directive, the form of the interviews allowed indeed not only for the interviewees to develop on aspects that appeared important to them and for me to ask for additional explanations in cases where it seemed interesting (Flick, 2009; Kaufmann, 2007) but allowed the setting to become more conversational.

In the five interviews with persons who were part of another organisation of the asylum support field than the SRC or AICH, I focussed my questions on their relationship and interactions with these two organisations. The former SRC representative whom I also interviewed spoke about his experience when he worked for the SRC and how he perceived the organisation today compared to earlier days.

Three of the six interviews with actors in the support field who were currently not working for either the SRC or AICH could not be recorded and the interviewees asked me not to quote them directly in any publications. They helped nevertheless to provide me with background information that I could use to validate certain interpretations and that helped me to understand certain relations and processes in the field.

Observations

The meetings of the internal working group at the SRC in which I could participate as an observer for three months took place every two weeks. The main aim of these meetings was the discussion and especially the decision of strategic and communication issues. In more concrete terms, the issues discussed concerned mostly requests of support for petitions from other civil society actors active in the asylum field, timing of public communication activities like press releases and the main position presented in these, the theme of the upcoming Refugee Day campaign, topics of planned meetings with other actors like the SEM or UNHCR, consultation responses and position papers.

A limited number of staff – between four and five people – participated in these meetings. I could participate in these meetings as an observer finally in November and December 2019 and again in March 2020. During the observations I took notes in a notebook. Further, after each meeting, I noted some spontaneous reflections in a memo. While I started the in-depth analysis after having concluded the observations, I added further reflections to the memos accompanying each observation. The fieldnotes from observations with their memos are complemented by meeting documents (meeting agenda, protocols of past meetings, and/or additional meeting documents regarding specific agenda points).

Publicly accessible archived documents

Finally, I take into account archived documents testifying to the organisations' activities that shed light on the organisations' historical activities and strategies since their foundation. I draw on these documents especially in the historical contextualisation part of this thesis (see chap. 4).

What I call refugee advocacy, that is the defence of interests of refugees that aims at improving their living conditions, as well as legal status, is historically linked to private aid organisations organising accommodation for refugees. To be able to take care of foreigners fleeing their home country for diverse reasons they need to convince the authorities that these refugees may stay in Switzerland. This historical fact is important to understand the position of one of the most central organisations in the asylum field today – that is the SRC. Before approaching representatives of this NGO and especially when I increasingly encountered difficulties in gaining access to employees "further down" the hierarchical latter of the organisation, I turned to the archived documents of the SRC to understand where the organisation historically "comes from". In several informal conversations that I had with experts of the support field, I was told that the SRC has a specific position within the Swiss asylum system. So, I wanted to understand how the organisation arrived in this position. The more I dived into the historical background of the organisation through the consultation of archived documents, the more I observed how practices evolved over time. This historicisation of practices and discourses of professionalised NGO refugee advocacy widens, in my view, the perspective on contemporary advocacy practices as I observed them in the context of my study. Historicisation signifying the

observance of how certain practices and discourses change over time and putting these changes in context, thus adding a historical dimension to the explanation of changing (or not changing) strategies.

For matters of coherence, I also include AICH's activities in the historical overview since the foundation of the organisation in 1970. Interestingly because contrary to what several representatives of different NGOs told me in the context of interviews, AICH has engaged with asylum politics since its early beginnings through campaigns as well as public actions but also through direct contact with the authorities and lobbying in Parliament.

The aim of the historical overview of the SRC's and AICH's involvement in the asylum field is not to provide a detailed analysis of but rather to provide some historical background knowledge about the organisations and to situate their current structures and practices in a wider historical perspective. To this aim, I consulted a specific type of archived documents of both organisations which are the organisations' annual reports. The SRC's archived documents are publicly accessible in the Swiss Archives for Contemporary History in Zurich[14]. AICH's archived documents are publicly accessible in the Swiss Social Archives, which is also situated in Zurich[15]. In both cases, most documents are subject to a thirty-year blocking period due to confidentiality issues, a restraint that obviously does not apply to annual reports as these documents that had been published at an earlier point in time.

It is true that annual reports do not give a detailed account of the organisations' activities, internal discussions or interactions with other actors. For an in-depth analysis, it would have been necessary to consult the archives of the SRC and the AICH in a more extensive way. There are single historical studies that have done this for certain historical periods either by focussing on one of the organisations (see Arnold, 1997 regarding the SRC) or by including the SRC's role in the more general analysis of Switzerland's history of refugee policy (see Ludwig, 1957; UEK, 2001; Lasserre, 1998). These studies focus especially on the period of the Second World War. The possibility to consult the annual reports of the SRC as well as AICH allowed me to trace their activities until the end of the 1990s. It was in the 1980s/90s that both organisations found their organisational forms that characterise them still today. Furthermore, as will be explained in detail in the historical contextualisation part of this thesis (see chap. 4), it is in the last decades of the last century that important tensions which still characterise the asylum field today find their origins. Here, Jonathan Pärli's research on the Swiss asylum movement is of particular interest (see Pärli, 2019, 2020, 2024). Before turning to the historical context of refugee support and the involvement of (organised) civil society I propose however to present the general approach of analysis on which the present work is based. Thus, the following chapter will give some

[14] Jahresberichte der Schweizerischen Flüchtlingslhilfe SFH, 1938-1994, SFH-Archiv A.1.2.1, Schweizerisches Archiv für Zeitgeschichte, Zürich.

[15] Jahresberichte der Schweizer Sektion von Amnesty International 1970/71, 1975/76-1995, Archiv Amnesty International Schweizer Sektion, SozArch K747, Schweizerisches Sozialarchiv, Zürich.

details regarding the methodological techniques employed in terms of coding and analysis of the data about the two "cases", followed by some precisions regarding the units of analysis, that is the analytical focus on interactions and frames to guide the analysis of the data presented above.

3.4 Research ethics: Researching experts and anonymisation

There are of course general research ethical aspects to be respected in social sciences research which I guaranteed my research subjects when making contact and negotiating access with them: First, respect and flexibility. I respected the work of my research subjects and affected their work as little as possible through my fieldwork. Second, information and consent. I informed the persons with whom I conducted interviews and whom I observed in meetings about the aims and methods of my research. The proposition to inform all staff members of the NGOs about my research was however refused due to lack of time (see the negotiation process described above). Finally, interviews were only recorded if the interviewee gave his/her consent. Third, anonymity and data protection. All personal data is treated in a confidential manner and all quoted persons are anonymised in a way that no conclusions can be drawn about their identity. Fourth, transparency. If interested, the anonymised research results will be presented to the management and staff of the organisations. They will receive a copy of the dissertation after the project is completed.

To guarantee as much anonymity as possible for the persons whom I interviewed in a context where each interviewee occupied a specific (unique) position within one of the NGOs in the centre of this research, I will not specify their positions. In the case of SRC representatives, I may nevertheless mention that the interviewed staff is situated on the middle hierarchical level within the secretariat and thus in regular contact with the director. In the case of AICH, the interviewed employees occupied either a coordination or communication-oriented position or a position linked to topics like migration or asylum. When quoted in the present work, I will only however indicate the organisation to which a person is affiliated but not his/her position. The indication of the specific organisation is important because of the substantial differences that characterise the SRC and AICH. For a complementary comparison being possible it was necessary to indicate when I was speaking about which organisation. Nevertheless, to prevent my interviewees from being recognised among their colleagues, I changed the gender of some of them.

It is also for anonymity reasons that I will not provide detailed information about the educational background of my interviewees. At a more general level, one can observe a great variety in the educational backgrounds (mostly tertiary level) of experts involved in professionalised advocacy organisations like the SRC and AICH. While a certain number of employees have a legal education – at the SRC they are more numerous than in the case of AICH – others have a social sciences or

communications background. The majority of the persons that I interviewed in the context of this study do not have a legal background. As mentioned above, I was explicitly asked to not contact any legal expert within the SRC's "Protection" department on the lower hierarchical level. When parts of additional interviews are quoted or my analysis is based on information from conversations that were not recorded, I will indicate "support field" in order to protect the interviewees' identities as much as possible. Some of them asked me, indeed, not to note the organisations to which they were affiliated. As we will see later in more detail, not only the asylum support field but the asylum field in Switzerland more generally (authorities included) is a field where people know each other. Furthermore, it is a field which is characterised by hierarchies, dependencies and tensions between different actors and different hierarchical levels. In this context, guaranteeing the anonymity to the persons who talked to me about these tensions (among other aspects characterising their work in the field) has, since the beginning, been an explicit condition for being able to conduct interviews and participate in internal meetings as an observer.

Beyond these usual general ethical concerns, I learned in the research process that researching experts confronts the researcher with specific ethical challenges in the process of knowledge production, which are linked to the "particularity of the experts as research subjects" (Obelene, 2009: 186). These challenges became apparent in the context of interviews with staff members of the SRC and AICH. In the beginning of each interview, I informed each of them that they could refuse the inclusion of the interview in this thesis at any moment. This was also specified in declarations of consent that I provided for and was signed by each interviewee. So far, none of the persons interviewed approached me to withdraw his/her statements. However, several persons explicitly asked to read the chapters of my thesis in which they were quoted before publication. They told me that this was the usual procedure with journalists, a procedure that they judged also appropriate in the context of academic research. With my supervisor we decided that this would happen after the conclusion of my thesis and its evaluation by academic experts as we understood the request by the interviewees to read the chapters in which I quoted them as a request to be informed rather than an attempt to influence my analysis. The latter would be inadmissible from the perspective of academic freedom. As Obelene (2009: 184) points out, "[t]he expert researcher has to manage relationships with powerful research subjects, and simultaneously he or she has to find a position of control in order to secure the purpose of scholarly investigation". To assure both, academic freedom as well as the possibility for the researched subjects to access and decide about the use of their data, I provided the possibility to adapt transcripts of interviews and the interviewees will be informed about the outcomes of my study before the public will see quotes from their interviews. However, I would not engage in a "discussion, emerging as each of us granted the other interpretative space and stretched to understand the other's perspective" (Borland, 1998: 331) leading to reinterpretation and reformulation of my analysis. This leads me to

reflect on the specificity of researching experts and the question about the specific power relations between the expert and the researcher which leads to ethical questions about the process of academic knowledge production about experts. The expert has an interest in seeing his/her interpretation of reality being the one made public. This is especially true in the context of the above-described interests in terms of political representation but also more generally with regard to strategic goals of the experts whom I interviewed. Researching professionalised NGO refugee advocacy signifies investigating a field of activity which is characterised by political interests of the actors engaged in this field who position themselves strategically to reach their goals. Exposing this strategic positioning and logics, considerations and processes behind it may make "experts […] themselves vulnerable to impacts a study may have" (Obelene, 2009: 185). The experts that I interviewed have, understandably, an interest not to be harmed by my study. It could be perceived as harmful, when I propose an interpretation different from their interpretation of reality. By shedding, for example, light on the constructed character of their self-perception as "neutral" experts, as I do in PART IV of this thesis, on tensions within the organisations, on certain (strategic) considerations behind decisions, on dilemmas, am I not creating (perceived) risks of harm for the experts? Then the challenge is to maintain a balance between academic freedom to produce knowledge as well as protect my research on the one hand, and to protect the experts and their strategic goals on the other. By providing them with the possibility of "informed consent", to check interview transcripts and to withdraw their statements made during the interview, I addressed this tension while aiming at keeping control of the process of knowledge production. Hence, the interviewees will read this thesis after its scientific validation by academic experts. This does certainly not completely resolve the tension between the researched experts and the researcher in the case of my study, but it is an attempt to navigate between the interviewed experts' interests to control their data and my interest in keeping academic freedom of knowledge production.

3.5 Some reflections on the researcher's position

The thesis concludes with the reflection on the researcher's position. It reflects the fact that I had a challenging position throughout the research process and in this context, it indicates the emotional involvement of the researcher with the field. Ethnographic research requires the researcher to dive into the field and to interact with her research subjects. In these interactions, the researcher is not neutral. The ethnographic data that I collected in interviews and through observations is highly relational and contextual. Another person at another time would have collected different data, would have asked different questions, would have received different answers and would have made different observations. Therefore, it is important to reflect on the researcher's position in the study in the

different phases of the research. In the following, I propose to reflect on my position as a researcher in this study.

As a social scientist I have been trained in interviewing persons about their perceptions, motivations, actions, networks etc. However, this field work was different compared to what I had done before. For my bachelor thesis, I had interviewed several persons with a background in migration with the aim to understand the resources they mobilised in their social integration processes and the obstacles that they encountered in these processes. During my master studies, in the context of a methods seminar, I talked to activists in order to identify their motivations and networks. Thus, my field experience was limited to the personal, that being the individual engagement of persons in different activities, leaving aside their professional activities. While I had developed a special interest in issues of migration control and management and particularly in the issue of governance of asylum in my master studies, I had so far focussed on the perspective of state actors and their rationalities reflected, for example, in parliamentarian debates. With my PhD project, I aimed to shed light on the actions and discourses of a type of actor who aimed at influencing legal and political decision-making processes regarding the issue of asylum and the implementation of policies and the law. By focussing on professionalised NGOs that do exactly this – what I summarise under the term "advocacy" - I began to investigate the professional world of non-state actors and thus the world of experts. My relation with these experts evolved throughout the research process and this made me increasingly reflect on my own position, the presence of my person in the field. The question of the position that I occupied and the role of my person in the research process became an increasingly important question when I started negotiating access.

Researching experts is a dialectical process through which authority of knowledge shifts. In the beginning, it is the expert who tells the unknowing researcher what s/he knows about reality and about the expert him/herself. Further on in the process, it is the researcher who produces knowledge about the expert. One might say that all research follows such a process being as the aim of research itself is the production of knowledge. What is different with professionals compared to private persons is the fact that their knowledge represents their professional capacities and has thus a legitimising function for them. Researching experts signifies that different types of knowledge – the researched expert's knowledge and the researcher's theoretical knowledge engage with each other to produce new knowledge, a process which corresponds in a way to Charmaz' (2006) co-construction grounded theory approach. Both, the experts whom I investigated and myself, mobilise a specific knowledge in our professional activities. This is an important characteristic that the expert and the researcher share (Delmas, 2011), a characteristic that may create proximity but also distance. It is mainly through the perspective of proximity and distance that I reflect on my position in this research.

3.5.1 Identity, proximity and distance

I have brought with me social, historical and geographical elements in this research that define my identity, who I think and feel I am but also elements that define how others perceive me. While I felt that some of these elements created proximity with the persons my research was interested in, I felt that others created distance between us. I cannot say with certainty how my interlocutors consciously or unconsciously perceived the different aspects of my identity that I brought in the field. Nevertheless, I propose to reflect on how they became manifest and how I perceived the dynamics they engendered in the research process. I engaged in the research project with the idea of a certain proximity with the professionals whose work I was interested in. This assumption was based on an assumed shared interest in the asylum issue and a critical position towards increasingly restrictive asylum policies. Further, I had a certain proximity with my research subjects regarding education and ethnicity. However, while I have done my university studies in Switzerland, I grew up in Germany. While this aspect remained invisible in the first e-mail exchanges with staff members of the organisations it became apparent once we had verbal contact. Speaking German but not Swiss German revealed me as not Swiss born in interactions with NGO staff. Though this is certainly not an aspect which influenced the negotiations of access and the data I could collect, it created nevertheless a feeling of distance on my side. I also wonder if my historical background has shaped the way in which I approached the analysis of the data. Having lived in different national contexts might have influenced the way I reflect on what I observed in the Swiss context on which my study focusses.

The feeling of distance was somewhat reduced when certain staff members suggested that we might address one another on a first name basis in our bilateral exchanges. These observations that I link to proximity and distance between the staff members and myself show that the (perceived) position of the researcher is dynamic and evolves throughout the research process. I thus navigated through the field accompanied by feelings of proximity and distance with my research subjects. While feeling an intellectual proximity and encountering a high degree of reflexivity of my interviewees, the different perspectives that we chose to approach the issue of our common interest – which is the government of asylum – was a factor of distance that remained throughout the research and which attributed me an outsider status.

3.5.2 Keeping an outsider status

This outsider status characterised my position throughout the research process which had important consequences for the data I collected and certainly shaped the ways in which I approached the analysis of this data. The fact that I would keep this status became increasingly clear during the access negotiations described above. This outsider status had different dimensions and manifested itself in

different forms. First, my research topic and the linked research questions determined my outsider status. While the NGOs entertain more or less close connections with academic researchers at several occasions, these connections have the goal of sustaining their causes. My presence as a researcher at their locations had a completely different goal as it focussed on the NGOs themselves and the activities, perceptions and reflections of their employees. Being investigated about their work touched easily on questions of legitimacy as I learned. This legitimacy is linked to the variety of their interdependencies with the authorities, with the wider public, with the member organisations in the case of the SRC and with other actors in the support field.

This outsider status also had a spatial dimension. Each time when I arrived at the office of one of the organisations, either to assist with an internal meeting or to meet with a staff member for an interview, I presented myself at the reception. After having told the receptionist my name and the reason why I was at the office, s/he let me wait in the entry area until a staff member appeared to accompany me to a meeting room. I clearly had an outsider position, and I kept this position through the research process. While on one occasion I had the opportunity to see a bit more of the office of one of the organisations when one of my interviewees showed me around after an interview, I could not move around on my own. In both cases, the offices were mostly organised as open spaces with several persons in a large room. I remember noting the radiating silence in both of these places, staff members seemingly concentrating on their tasks and respecting the silence to not disturb their colleagues. In this ambiance, I felt my presence all the more disturbing. These feelings and images have accompanied me through the analysis of the variety of data collected through ethnographic methods as well as through the analysis of the data I collected on the organisations' websites. They certainly have shaped this thesis. Not only is data collection contextual and relational but, consequentially, so is the analysis of the data.

3.6 Approach of the analysis

Starting from the data, the analysis presented in this PhD thesis is inspired by the ideas of grounded theory (Charmaz, 2000, 2006; Strauss/Corbin, 1996) and follows thus an inductive approach to the data. Chapter 3.6.1 will explain the techniques of coding used and steps of analysis that led to the results which are presented in detail in the Parts IV, V and VI of this thesis. Further, I will explain how the focus on interactions as units of analysis is linked to a specific mobilisation of the political opportunity approach presented above. This "dynamic" mobilisation of the political opportunity approach differs somewhat from a traditional use of the concept and allows thus to prevent reproducing some of the deterministic shortcomings for which the political opportunity approach has been criticised (see f. ex., Giugni, 2009).

3.6.1 The techniques: coding and complementary case analysis

The data presented above can be categorised in four different types: archived documents, public communication documents, internal documents and ethnographic data (interview transcriptions and field notes from observations). The analysis of these different types was done, in a preliminary step, separately. First, I analysed the publicly accessible documents like press releases, consultation responses and position papers of the SRC as well as of AICH. Second and mostly while waiting to conduct interviews and participant observations, I consulted the archive of both organisations and proceeded to a global analysis of the organisations' yearly reports. Here, contrary to the different steps of coding as part of a process of abstraction that I will describe in more detail regarding the analysis of public communication documents, interview transcripts and field notes, I opted for a less detailed analysis. Following the idea to retrace the activities and the interactions of the SRC and AICH with the authorities and the wider public in the asylum domain in the past, I did not proceed to a frames analysis but laid the focus rather on the relations between the different actors. Third, I proceeded to an in-depth analysis of the transcribed interviews and fieldnotes.

As I had to deal with a great number of written documents, I chose quite early in the research process to use the programme Atlas.ti as an instrument for coding. I had learned to use the programme in my Master studies and had learned to appreciate its help not only with coding of different documents but also the possibilities it offered to produce code networks which was especially helpful to create categories of codes from open codes. I also used Atlas.ti a to code the interview transcripts and field notes as well as meeting documents. However, during the process of triangulation (Flick, 1992; Olivier de Sardan, 1995), I switched to the paper version of the interview transcripts, which contained the code printed on the document and allowed for further annotation by hand. The combination of the programme-based and manual form of coding and the reorganisation of my data led to a dynamic process of moving back and forth between different data types and forms, between the data and the theory, which I used to approach my research object and analyse the data.

Following the method of grounded theory coding (Charmaz, 2006), I started with an open coding of the publicly accessible public communication documents before proceeding to a focused coding in a second step. As Flick notes, coding can be understood as "the operations by which data are broken down, conceptualised, and put back together in new ways" (Flick, 2009: 307). In this sense, in the phase of open coding, I used in vivo codes as well as more abstract words to summarise small text passages. As Charmaz puts it "During [open] coding, the goal is to remain open to all possible theoretical directions indicated by [the] readings of the data" (Charmaz, 2005: 46). Following this idea of remaining open "to all possible theoretical directions" I noted the issues addressed (asylum procedure, Dublin, access ways etc.), descriptions of refugees (needs, types of suffering, other attributes) and concrete claims made. In analytical memos I noted during the process of open coding reflections on

how codes could be linked to a more general category and from what theoretical perspectives these could be approached (Saldana, 2016: 281). The reflections that I noted in analytical memos during the process of open coding contributed then, in the following step of focussed coding, to the classification of the open codes in categories. Examples of those categories are “humanitarian suffering” or “human rights violations”. At the same time, this process of abstraction also allowed frames to emerge. The next chapter will provide more information about frames as units of analysis.

Regarding the coding process, methodologically, I proceeded similarly with the analysis of the ethnographic data. However, in addition to the elements of the interviewees' self-presentation, the focus here was on the activities, the interactions with other actors and the resources mobilised in these contexts that were mentioned in the interviews. The next chapter will also provide more information about the analysis of advocacy through the focus on interactions. What might be mentioned regarding the coding process and the interpretation of the data from the observations, the textual form of the data allowed to proceed to different steps of coding. Like in the case of the interviews, I based the analysis thus on the interpretation of written text. As Flick (2009: 75) points out, “[i]n each case you will find texts as the result of data collection and as the instrument for interpretation”.

Finally, what I call complementary case analysis includes both “within-case and cross-case analyses” (Eisenhardt, 1989: 533). First, I coded the data – interviews, observations, and publicly accessible communication documents – separately before, in a second step, I looked explicitly for similarities and differences. In practice, these two steps were of course not completely separated but I identified and noted similarities that I remarked, or also differences that struck me, during the process of open coding and later also during the process of categorising the codes.

3.6.2 The units of analysis: interactions and frames

As mentioned in the theoretical part of this thesis (see chap. 2), I draw on social movement theory and especially on the political opportunities approach not to verify pre-defined hypotheses regarding the influence of certain opportunities as variables on the practices of the NGOs but rather as guidance to ask which opportunities do emerge from the NGO representatives’ accounts of their advocacy work as well as how they perceive them and how they position themselves within these opportunities. From this perspective, interactions appear as the “appropriate unit of analysis” (Buechler, 1999) because interactions, while focussing on actors, always take place in a context. I situate the focus on interactions in McAdam et al.’s (2001) proposition to “move away from the search for the conditions that favour or prevent challengers to mobilize and focus instead on the processes and mechanisms underlying their mobilization” (Giugni, 2009: 365). In this sense, within interactions, one can identify processes and mechanisms like processes of the mobilisation of a specific knowledge. Finally, the focus

on interactions also allows the consideration of multiple levels: the microlevel (interactions of individuals), the mesolevel (inner NGO dynamics) and the macrolevel (interactions of an NGO as an entity with its environment) (Yin, 1984).

The second unit of analysis through which I approach professionalised refugee advocacy are frames. This constructivist perspective on the cognitive dimension of claims-making "is designed for discussing the social construction of grievances" (Buechler, 1999: 41). Social movement scholars differentiate between three types of framing: diagnostic, prognostic and motivational framing. Diagnostic framing refers to critiques of policies by first identifying a problem, by drawing attention to its causes and by determining who is responsible and thus to blame for these causes. Prognostic framing defines strategies and goals and puts forward concrete propositions to solve an identified problem with its causes. This includes, at the same time, to counteract on frames mobilised by opponents. Opposing framing can influence social movement actors' framings in two main ways: it can push movement actors in a defensive position, but it can also force them to develop their propositions more explicitly than they would have done without confrontation with an opposing frame (Benford/Snow, 2000: 616f.).

Finally, the third framing type, the so-called motivational framing, contains a "call to arms" that is justified by a strong normative logic. This third type of framing has a strong moralising dimension. "Moral appeals construct a normative image of the beneficiary by referring to values" (Statham, 2001: 150). Motivational framing is a particularly complex form of framing, as it goes beyond a proposal to solve an identified problem and underpins it with a value-laden rationale. Facts and situations that are presented as problems are judged by moral standards. This rationale and moral dimension is expressed through "the construction of appropriate vocabularies of motive" (Benford/Snow, 2000: 617) and visible, as with the other framing types, in terms, mottos and slogans, prejudicial pictures, information and sentences which convey a sum of facts and judgements which undergird a certain perspective (Brusa, 2012: 87). As Koopmans and Statham point out, "[t]he public sphere is an important field where social problems are constructed and political alternatives become defined" (Koopmans/Statham, 1999: 1). For this reason, I decided to proceed to a frames analysis of the discourse represented in press releases and documents associated with the public sensibilisation and mobilisation activities of the organisations. Here, the idea is to identify dominant patterns of defining issues in the public. Professionalised NGOs carrying out refugee advocacy target different publics directly and indirectly through insider and outsider strategies (see PART IV). The latter become visible in documents like press releases and campaigning documents like petitions and open letters.

PART III SWISS ASYLUM GOVERNANCE AND REFUGEE SUPPORT IN CONTEXT

4 A historical overview of asylum governance and the involvement of civil society organisations in Switzerland

The contextualisation of professionalised refugee advocacy that I propose in this part consists, in a first step, in a historical overview of the involvement of civil society organisations with asylum governance in Switzerland. Starting from the pre-second world war period when the Swiss Refugee Council (SRC) is founded as umbrella organisations of charities who are involved in refugee reception and assistance, the aim of this historical overview is two-fold: On the one hand, it aims at presenting the historical roots of the SRC, which is one of the organisations investigated in this research. On the other hand, with this historical overview I aim to shed light on the historically traceable entanglement of civil society organisations with the asylum system and how they have been involved in the institutionalisation of the latter.

The second organisation on whose advocacy activities in the asylum domain focusses, is the Swiss section of Amnesty International (AICH). As a national section of the international human rights organisation Amnesty International, the organisation has a completely different background than the SRC as umbrella organisation of aid organisations. Nevertheless, the historical overview will show how a collaboration around legal assistance of asylum seekers develops in the 1980s. While AICH as a campaigning organisation is more active in the public – for example through urgent actions – the yearly reports of both AICH as well as the SRC bear witness to a direct exchange with representatives of the authorities, especially regarding an increasingly restrictive asylum practice.

After this historical retrospect, chapter 5 will give an overview of different types of civil society actors active in the asylum field today. Following Efionayi et al. (2015), we can differentiate between individuals or groups, grassroot organisations and finally professionalised organisations. The two professionalised NGOs that have been chosen as “cases” for this research are then presented with a focus on their organisational structure, general objectives, resources and domains of activity.

What Alberti (2020: 47-58) calls the “political cycle” of reception, characterised by varying public private arrangements regarding the reception of refugees, may be seen as the context respectively framework in which the SRC’s refugee advocacy work takes place. However, this context does not only influence the ways in which the charities act, but the latter take part in shaping this “political cycle” themselves. Through their important role regarding the financing of refugee care as well as operative responsibilities, the aid organisations, represented through their umbrella organisation vis-à-vis the authorities, are involved in discussions not only about reception conditions but also in terms of

admission and status of their protégés. In this sense, Arnold (1997) describes the institutional and conceptual development of refugee support in Switzerland as the outcome of (socio)political negotiations between the Swiss authorities and the private charities gathered under the roof of the SRC. It is specifically because of its role as umbrella organisation of the charities carrying out operational reception tasks (accommodation, social work etc.) that the "political cycle" – in which the SRC is itself involved – is of importance to the organisation's advocacy work in terms of reception conditions but also regarding admission policy. As such, the SRC becomes the central contact point for the Swiss authorities regarding questions of refugee reception, a position that the organisation still has today, and which makes it of special interest to my study. Starting from the early 1930s, the aim of this chapter is to give a historical overview of the process that led to the institutionalisation of the Swiss asylum system. Hereby, a focus will be laid on positioning and activities of aid organisations and specifically the SRC in order to trace its presence in this process. I would argue that we need to be cautious about drawing direct (and too simple) parallels between historical and contemporary practices, but being aware of the historical roots and developments of the asylum system and of the actors involved in this process nevertheless deepens the understanding of contemporary practices.

Furthermore, beyond the direct scope of this study, the focus on the engagement of charities and their umbrella organisation in the Swiss asylum field aims at contributing the perspective respectively aims to shed light on the role of actors like charities to the numerous historical accounts of Swiss asylum and refugee policy that have been given by researchers in their respective studies (see for example Miaz, 2017; Parini/Gianni, 2005; Piguet, 2018; Stünzi, 2018). Regarding the involvement of private aid organisations and especially the SRC as their umbrella organisation, the period between the early 1930s until 1951 has extensively been analysed by the historian Jonas Arnold (1997) based on a detailed review of the SRC's archives accessible in the Archives of Contemporary History in Zurich. I consulted the SRC archives as well, however, in a less extensive way. For the following historical overview of the involvement of civil society organisations in asylum politics – with a focus on the role of the SRC as the umbrella organisation of private aid organisations – I draw especially on the SRC's yearly reports. Here, thanks to Arnold's detailed analysis of the period between the early 1930s until 1951, I will draw on his analysis of this period as well. Further information about the activities and the role of private aid organisations and their umbrella organisation during the period of the second world war is provided by Lasserre's (1995) overview of Switzerland's refugee policy during the second world war. Finally, two reports commissioned by the Federal Council (Ludwig, 1957 and UEK, 2001) provide some information of their role as well. The activities of the SRC in later periods are less well documented. Here, Jonathan Pärli's (2019) analysis of the asylum movement that develops in the 1980s and 1990s and that questions the legality of the authorities' restrictive asylum practice is of interest because it describes the importance of the legal register that characterises the movement.

Table 2 below gives a historical overview of important historical developments in Swiss asylum policy and legislation.

Table 2 – Overview of important historical developments in Swiss asylum policy and legislation (source: own compilation)

Year	Asylum policy and legislation
1931	Adoption of 1st AliensA (enforced: 1934)
1939	Rejection policy at the border (FC Resolution)
1942	Border closure
1944	Official end of discrimination of Jews
1947	Introduction of permanent asylum (FC Resolution)
1951	Abolition of the transit principle for WW II refugees (FC Decree)
1991	1st hardcore action
1955	Switzerland signs the Geneva Refugee Convention of 1951
1957	Ludwig Report about Swiss refugee policy since 1933 and "political maxim"
1956/57	Reception of 11'000 Hungarian refugees
1960/64	Reception of 1'000 Tibetan refugees
1968/69	Reception of 13'500 Czechoslovakian refugees
1970	Reception of 200 Indian refugees from Uganda (quota)
1970	Popular initiative "Against *Überfremdung*" (Schwarzenbach) (rejected)
1973	Reception of a quota of 250 Chilean refugees
1972	Foundation of the Asylum Law Commission (ALC)
1974	Popular initiative "Against *Überfremdung* and overpopulation" (rejected)
1977	4th popular initiative "Against *Überfremdung*" (rejected)
1979	Adoption of 1st AsylumA (enforced: 1981)
1979/82	Reception of 8'000 "boat people" (quota) from Vietnam and Cambodia
1981	Popular initiative "*Mitenand*-Initiative for a new asylum policy" (rejected)
1982	Reception of Polish refugees
1983	1st AsylumA revision: acceleration of the asylum procedure, abolition of the FC as second instance of appeal
1986	2nd AsylumA revision: appointment of the Refugee Delegate (Peter Arbenz),

1988	Popular initiative “To limit immigration”
1989	End of quota policy
1990	AsylumA revision: creation of the Asylum Appeal Commission (AAC) (starts work in 1992), non-entry into substance decisions (NESD) for asylum seekers from “safe countries”, introduction of collective admission, working ban for asylum seekers possible until 6 months
1990	Creation of the Federal Office of Refugees
1992	Action Bosnia (provisional admission)
1996	Popular initiative “Against illegal immigration”
1999	Collective provisional admission Kosovo
1995	AsylumA revision
1998	Total revision of the AsylumA: introduction of women specific asylum reasons, NESD for missing identity papers (without credible reasons)
2000	Popular initiative “For the regulation of immigration” (18%-Initiative)
2001	Bergier Report “Switzerland and the refugees during the period of national socialism”
2002	Popular initiative “Against asylum abuse”
2003	AsylumA revision: emergency aid for rejected asylum seekers with NESD
2005	Foundation of the Federal Office of Migration (FOM) AsylumA revision: extension of duration of detention, emergency aid for all rejected asylum seekers
2006	The AAC recognises persecution by non-state actors as reason for asylum
2007	Creation of the Federal Administrative Court (FAC)
2008	Dublin association of Switzerland
2012	AsylumA revision: abolition of embassy asylum, introduction of 48-hours procedure and fast-track procedure, test phase for an accelerated procedure
2013	Revival of resettlement policy
2015	The Federal Office of Migration becomes the State Secretariat for Migration (SEM)

The following sub-chapters will trace these historical developments and the involvement of civil society organisations in Swiss asylum governance with a special focus on the SRC as umbrella organisation of private charities involved in financing and operative tasks of refugee reception. The

aim is to shed light on ways in which civil society organisations are (more or less) involved in discussions and decision-making processes around policies and legislation, as well as their implementation.

4.1 Transit principle, private refugee aid and centralisation of interests during the pre-war and second world war period

Following Stünzi, between the two world wars, Switzerland's policies towards foreigners are characterised by a "political-cultural retreat" linked to the general assumption that foreigners are a security threat (Stünzi, 2018: 136). A so-called discourse of "overforeignisation" (*Überfremdung*) (Arlettaz, 1991) dominates the political discourse and is also reflected in the first Foreigners Act[16] which is adopted in 1931 and comes into force in 1934. At that time, there is no codification of refugee law. In 1921, the High Commissioner of the Society of Nations and the following Nansen Office is created for Russian refugees fleeing the revolution and is gradually extended towards Armenian, Assyrian, Assyro-Chaldean and Turkish refugees originated from the former Ottoman Empire. The Nansen Pass allows them to travel and makes it thus easier to find a place for permanent residence. Several international agreements define the Nansen mandate and Switzerland supports all of these. However, it refuses to sign an Agreement on the legal status of refugees of 28th October 1933 (UKE, 2001: 50ff.). As, during the 1930s, several international attempts to create a binding refugee status fail (Piguet, 2019), Switzerland is free to determine the admission criteria for persons seeking refuge on its territory. In this context, it should be noted that the Nansen mandate is limited to the above-mentioned groups of refugees and is not extended to those fleeing the Nazi regime in the 1930s. In this sense and while an individual right to asylum does not exist, art. 21 of the Foreigners Act allows the Federal Council, the Swiss government, to grant asylum as a sovereign act:

> The Federal Council may grant asylum to a foreign national who credibly claims to be seeking refuge from political persecution and who has been refused a permit by obliging a canton to tolerate him or her. S/he will obtain the canton's opinion before doing so (art. 21 Foreigners Act 1931).

From an international law perspective, there is no obligation to use a definition of refugee that would go beyond art. 21 Foreigners Act. Due to the restrictive definition of "political refugee", only persons who have been politically active and who therefore fear repression from their home country's authorities are seen as political refugees and can obtain asylum. While on the international level, a wider definition of refugees who should be protected exists, which includes victims of persecution for racial or religious reasons, the international debate has not much influence on Swiss internal

[16] Bundesgesetz vom 26. März 1931 über Aufenthalt und Niederlassung der Ausländer (ANAG) (AS 49 279).

discussions (Kälin, 1999: 49f.). Thus, the restrictive definition of "political refugees" is kept throughout the second world war period. In 1933, the persecution of Jews is explicitly not defined as political persecution[17]. Between 1933 and 1944, only 644 persons fleeing from the Nazi regime are considered political refugees and receive asylum in Switzerland (UEK, 2001: 23). These are mostly high functionaries and famous authors (Piguet, 2019: 48). Other and especially Jewish refugees are labelled as "civil refugees" and attributed the status of "emigrants" (art. 7 Foreigners Act 1931). They receive a temporary permit to stay which is delivered by the authorities, from the perspective of the transit principle that guides Swiss foreigners' policy and which derives from the above-mentioned fear of *Überfremdung*: Switzerland can only be a transit country for "unwanted" foreigners. Rather than detaining them, the tolerance permit shall allow them to prepare for an onward journey to another country (UEK, 2001: 24). Hence, the Jews who are persecuted "only because of their race" receive, especially when they have no valid identity papers, a tolerance permit for a short period linked to the requirement to leave the "waiting room Switzerland" (Arnold, 1997: 13) as "refugees in transit" as soon as possible.

In public discourse, the general term "refugees" is more generally used for both legal categories – political refugees and emigrants - and even for persons without a permit who have entered Switzerland often illegally but who cannot be expelled. They are interned either in a camp or another accommodation in an adjudged place (Kälin, 1999: 22-24). In the context of the fight against the presence of too many foreigners, the foreigners police gains importance since 1919 and finally in 1929, it is incorporated in the Police Division of the Federal Justice and Police Department (FJPD) (Stünzi, 2018: 137). While the cantons are responsible for delivering a tolerance permit, the FJPD's approval is nevertheless required, especially in cases of employment of emigrants. The delivery of a tolerance permit is bound to the payment of a deposit. Due to the absence of general legally binding rules regarding the conditions of the tolerance permit and the demand and management of the deposits, the cantons have an important *marge de manoeuvre* in the matter (UEK, 2001: 316). In most cases, the right to stay of those classified as emigrants depends on the engagement of charities who do not only organise housing and cover other costs of living but who also pay the deposits to the cantons. It is in this context that the aid organisations are in exchange with mainly two authorities: the cantonal Foreigners Police and the FJPD. Regarding the latter, their contact point for questions regarding the admission and the conditions of emigrants is, on the one hand, the Federal Counsellor at the head of the department and on the other hand, the head of the FJPD's Police Division. Emblematic figure of the period between the two world wars and of the second world war is Heinrich Rothmund, head of

[17] See Bundesratsbeschluss über die Behandlung der politischen Flüchtlinge vom 7. April 1933 (AS 49 207).

the FJPD's Police Division and convinced of the danger of *Überfremdung* that foreigners in general and Jews in particular would pose to Switzerland.

As mentioned and contrary to the "Nansen refugees", Jews and also sympathisers of leftist parties persecuted by the Nazis in Germany do not receive any support from the Swiss authorities and depend on private acts of charity. Hence, the first aid organisations founded to support them are initiated by the political left and the Jewish communities. The socialist party and the Swiss federation of trade unions found the Swiss Refugee Aid in Bern to whom are then attached further committees in other Swiss German cities like Basel and Zurich. Also, the Jewish refugee aid (VSJF) is organised in local sections. These help committees are complemented by further politically, religiously or socially oriented help committees like the Swiss worker's aid organisation, the Swiss aid organisation for emigrant children (SHEK), the Swiss ecclesiastical help committee for evangelic refugees (HEKS), the refugee aid of Caritas for catholic refugees or the *Comité pour le placement des intellectuels réfugiés*[18]. The charities are mostly led by representatives of cantonal governments, teachers or entrepreneurs. While the religiously oriented aid organisations like Caritas or HEKS represent a philanthropic idea of their refugee support activities, the aid organisations founded by the social democratic movement and by the trade unions claim already in 1934 financial contributions to their work from the State – which, however, the FJPD refuses (UEK, 2001: 80-88).

At this point, we can observe a great diversity of organisations and help committees that are engaged in supporting the arriving persons who are looking for refuge from the Nazi regime. On the one hand, there are spontaneously founded aid committees; on the other hand, already existing institutions of care extend their scope of action to refugees. Many of these organisations have their centre in Zurich. The biggest among them are organised as federations of independent groups or have cantonal and local sections with more or less autonomy (Lasserre, 1995: 96). Due to lacking financial support from the authorities, refugee aid is exclusively private which means that it relies on private funding resp. donations to the organisations[19] and committees and also importantly on volunteers. The arriving refugees seek mostly help with the organisations that they are close to in terms of religion, political affinity, or social status. The main activity of the diverse organisations is, next to organising accommodation[20], giving material and financial support, the organisation of onward journeys for their protégés.

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[18] This is not a complete list of all aid committees and organisations that are engaged in refugee aid in the 1930s and during the second world war. There are countless bigger or smaller help committees in cities and villages all over Switzerland with diverse orientations regarding the social, political or religious groups of refugees they aim to support as well as the type of activities that they offer.

[19] Regular money collections are organised by the aid organisations and committees.

[20] The charities and help committees look for so-called "*Freiplätze*" among the population, meaning citizens hosting refugees on a private basis.

These activities are based on two important aspects: first, a good relationship with the Swiss authorities and second, international contacts. The first may be explained by the above-described paradigm of *Überfremdung* that motivates the authorities' defensive refugee policy. When a delegation of charities demands, in 1935, for current refugees the same legal conditions that had been granted to refugees of the first world war nationally and internationally, these requests fall on deaf ears. While the Confederation spent almost six million CHF to assist victims of the Russian Revolution between 1918 and 1945 (UEK, 2001: 62), doing the same for refugees fleeing the Nazi regime is out of question as it seems to contradict fundamentally national interests – especially of the Swiss labour market in the context of the economic crisis. The Swiss authorities refuse any binding international commitment and hold on to the perception of Switzerland as a country of transit (Arnold, 1997: 15ff.). Consequently, the charities depend largely on the goodwill of the cantons and the FJPD who deliver the tolerance permit and who define the conditions of stay from the viewpoint of the transit principle. As Lasserre (1995: 87) summarises, the Confederation bases its management of refugees on three principles: register the foreigner as soon as possible when s/he enters the country, let private organisations take care of him/her and let them cover all costs and finally, accelerate his/her departure to another country.

In this context, the less costly solution for the refugee aid organisations is the organisation of onward journeys for the refugees. As the latter have no right to work and depend solely on private means to sustain their living, the refugee aid actors accept, in the period before the second world war, the authorities' maxim that the refugees could not stay in Switzerland but must move on. For the organisation of journeys to another country, international contacts are crucial. In 1933, the Jewish organisations install rapidly direct contacts with similar organs in London and Paris to prepare the remigration of Jewish refugees from Germany who have or would arrive in Switzerland (Lasserre, 1995: 89). This is also the case for example for organisations like Caritas and other charities who can rely on their international contacts. Furthermore, the *Aide aux Emigrés*, specialised on questions of onward migration, is an important contact partner for the aid organisations and committees (Arnold, 1997: 14).

The foundation of the Central Office for Refugee Aid (SRC[21]): centralisation of information and interests

The diversity of the refugee aid organisations and committees with their different structures, political, social or religious foundations and target groups make it difficult for them to appear as strong counterpart to the authorities and administrations. At the same time, Rothmund, still important

[21] The Central Office for Refugee Aid (in German, Schweizerische Zentralstelle für Flüchtlingshilfe) changed its name to Swiss Refugee Council (in German, Schweizerische Flüchtlingshilfe) in 1992. Throughout the whole thesis, the abbreviation SRC is used and refers to both names.

representative of the FJPD in 1936 (and further during the whole period of the second world war) complains about the absence of a central contact point on the side of the aid organisations (Lasserre, 1995: 97). In December 1935, the Swiss national conference for social work, an institution of the Swiss public benefit society, discusses this question. On this platform for the exchange between social work organisations, the wish is expressed to create a central contact point for international institutions regarding questions of refugee aid. The High Commissionaire of the League of Nations which has been created in 1933 for the Jewish refugees from Germany aims at collecting data about the German refugees and about placement and work possibilities in different countries. For this, the institution needs partners collecting and providing data in the States that host refugees. The other way around, a Swiss central office would have more legitimacy to participate in international meetings than single support organisations. At the same time, the Swiss national conference for social work sees in the creation of a central office for refugee aid a national platform for the diverse refugee aid organisations to discuss and to find solutions to problems in their day-to-day work. To counteract the growing fragmentation of and confusion about the actors involved in refugee support, such a national platform could serve to develop common goals and strategies. Speaking with one voice, rather than every organisation separately, could have more power when formulating postulates to the authorities (Arnold, 1997: 18f.).

However, as the mentioned fragmentation and diversity of the active organisations may suggest, there is disagreements among the organisations about mainly two aspects: first, about the tasks and goals of a central office of refugee aid and second, about the position that such an office should take towards the authorities and the official refugee policy. In this context, it is interesting to note that several organisations[22] refuse any collaboration with the Communist oriented organisation Red Aid which results in the exclusion of the latter from the Central Office for Refugee Aid (SRC) that is founded in 1936. This refusal of collaboration is important to note for two aspects: On the one hand, political orientations and the general hostility towards communist organisations clearly plays a role in this conflict. On the other hand, the Red Aid also supports refugees who stay illegally in Switzerland. This lack of collaboration with the authorities in terms of declaration of the presence of their protégés to the police in due time and the lack of assurance that "their" refugees would refrain from any political activity is not only seen as problematic by the authorities[23]. The refugee aid organisations who join forces under the SRC all collaborate with the authorities, declare the presence of "their" refugees, and comply with the conditions defined by the FJPD and the cantons. Excluding the Red Aid from the SRC strengthens the umbrella organisation's image as politically neutral actor (Arnold, 1997: 21). At the

[22] These are especially the Swiss trade union and the Swiss Socialist Party as well as Caritas.

[23] In 1936, the FJPD refuses any collaboration with the Red Aid and finally, in 1940, the organisation is completely prohibited when the Swiss Communist Party and all its connected organisations are banned (UEK, 2001: 83).

present point, I propose to focus on the historical roots of the SRC in the pre-second world war period and its involvement in the further historical development of refugee aid in Switzerland. In this context, it is especially the relationship between the authorities, particularly the FJPD, and private refugee aid organisations that will be of interest in the following.

On 17th June 1936, 13 founding members agree on statutes that define the tasks and goals of the SRC in relatively vague terms:

> I. Nature and mission.
>
> 1. The SRC is a working group of Swiss organisations that deal with refugee issues[24].
> 2. It represents the interests of refugee aid externally, insofar as they require a pooling of resources, and promotes organisational and financial cooperation between the institutions mentioned under 1 (SRC Statutes, 1936[25]).

While there is still disagreements among the members about which view of asylum to defend – further support of the transit principle or wider definition of the officially recognised "political refugees" - and about the methods to defend those, the collaboration with the authorities is not questioned in principle. If it is, the SRC's interim secretary makes it clear that this would lead nowhere:

> Individual organisations that are still behaving somewhat blatantly today are likely to be convinced by the course of negotiations with the federal authorities to date and in the future that an oppositional attitude will lead nowhere and can only damage our cause (Rickenbach[26], SRC, 1936: 4[27]).

Outcome of the negotiations between the aid organisations and the federal authorities, especially the FJPD and its prominent head Rothmund, is then that the former accept the latter's condition for being recognised as partner of the authorities and receiving Bern's support: the declaration to the authorities of all refugees. Further, the organisations are not allowed to provide work for the refugees. In turn, the SRC receives 20'000 CHF for the organisation of onward journeys, Rothmund asks the cantons to not demand deposits anymore for the delivery of tolerance permits and previously unannounced refugees do not receive any penalty. While Rothmund underlines the importance of a relationship of confidence between aid organisations and the authorities, mistrust continues to persist between both.

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[24] The founding members of the SRC are: Basel Refugee Aid (Basle), Central Charity Office (Geneva), Swiss Charity of Protestant Churches (SHEK) (Zurich), Aide aux émigrés (Geneva), Swiss section of the international relief association (Schaffhouse), Caritas (Lucerne), Swiss Refugee Aid (Bern), Swiss Committee for Freedom (Zurich), Swiss charity for German intellectuals (Zurich), Swiss conference for the Society of Nations (Lausanne), Swiss section of the women's international league for peace and freedom (Zurich), Information service for refugees (Geneva), Swiss Association of Jewish Care VSJF (Zurich) (Lasserre, 1995: 97).

[25] Satzungen der Schweizerischen Zentralstelle für Flüchtlingshilfe SZF, 17.06.1936, SRC Archive A.1.1.1.

[26] Rickenbach was secretary ad interim before Briner was elected first secretary of the SRC.

[27] Bericht an die Gemeinnützige Gesellschaft, 26.09.1936, SRC Archive A.1.1.1.

However, both sides need each other. As explained above, the aid organisations depend on the good will of the cantonal police, as well as the FJPD, often for individual cases, who decide about the right to stay – even if limited and temporary. The FJPD, in turn, can increase the humanitarian credibility of its measures by referring to its collaboration with the SRC and its member organisations. At the same time, the SRC serves also in practical matters the official refugee policy: The organisation provides the FJPD with information about the effectivity of its directives, the state of their care and onward migration support as well as about the character of the charities themselves. The central register in which the SRC collects data about the refugees taken care of by its member organisations presents the authorities with an economic possibility to get data about all refugees on Swiss territory – illegally staying persons included – and allows them thus to control their presence and departure (Lasserre, 1995: 96-101; Arnold, 1997: 25-28). As Arnold points out, the aid organisations risk becoming "Rothmund's most important information provider and extended arm" (Arnold, 1997: 28). In this vein, Rothmund refuses the proposition to create a consultative commission for the refugee problem. He rather counts on the SRC for assuring the link between authorities and private aid organisations. By refusing the creation of a third body the FJPD limits collaboration with other actors in the asylum field to practical questions and keeps control about political matters (Lasserre, 1995: 98). The SRC addresses Berne with political requests such as a harmonisation of refugee policy and the right to work for refugees. Following Arnold (1997: 29), the umbrella organisation leads a "cautious style of advocacy" and a strategy of "minimum claims". The motto is rather cooperation than confrontation (ibid.: 24).

In the following years, the SRC becomes an important information and negotiation platform for the authorities and aid organisations. In regular newsletters, it informs its member organisations about changes in the refugee policy and about upcoming conferences. Based on its central refugee register, it warns about potential cases of refugees who might abusively receive double support or whose case might not be credible. Member organisations bring single cases and also more general questions to the authorities through the SRC while they still can do so individually (Arnold, 1997: 29f.). At the same time, as explained above, the SRC also provides important information for the authorities.

At the international level, the SRC's membership of the *Comité de Liaison* is particularly important because it coordinates the work of the aid organisations with the High Commissioner. The SRC receives helpful information about possibilities of onward migration. Politically, the internationally proposed solutions have, however, a limited impact on Switzerland's refugee policy as Swiss authorities continue to refuse any binding regulations (ibid.: 23f.).

To summarise the period of the 1930s in which falls the foundation phase of the SRC as umbrella organisation of refugee aid organisations and central contact point for the authorities, we may retain two principal contextual factors: first, the general fear of foreign infiltration (*Überfremdungsangst*) present in Swiss society and politics and second, linked to this attitude towards foreigners, the transit

principle. The aid organisations support this idea of Switzerland as a transit country particularly for practical reasons. Without any financial support from the State, they have to cover the living costs of the refugees on their own. The yearly money collections that the SRC carries out are crucial for its members' activities but would not allow for long-term care for a growing number of refugees. It is in this context that can be understood the absence of opposition from the SRC and its member organisations when, in October 1938, the Swiss authorities introduce a visa requirement for German "nonarians", and when, in 1939, the SRC's secretary Briner[28] declares that the best strategy to deal with the current situation would be: "Protection of refugees here, humane treatment of illegal immigrants, continued external deterrence" (SRC, PV GA, 17.01.1939: 3-4[29]). International contacts prove crucial for finding definitive places for many but as the organisation of onward journeys becomes more and more difficult and the first common money collection of the aid organisations has less success than expected, the aid organisations are overwhelmed. They conduct a "cautious diplomacy" and "case-by-case advocacy"[30] (Arnold, 1997: 37) with the authorities while explicitly not aiming at a general public debate about Switzerland's asylum policy.

The refugee aid struggling for humanity during the 2nd World War

The period of the second world war is characterised by a harsh rejection policy at the border. The legal basis for this policy is the Federal Council resolution of 17th October 1939 and the Foreigners Act of 1931. While the Federal Council resolution of 17th October 1939 holds explicitly that political refugees, even if they have entered Switzerland illegally, should not be sent back to their country of origin, but that all other foreign persons, also Jews, who crossed the Swiss border illegally (generally called refugees), should be expulsed by the cantons (art. 9). If the expulsion of a refugee is not possible for practical or humanitarian reasons, there is the possibility to intern him/her. Refugees who dispose of financial means must contribute financially to aid organisations (art. 12). Following art. 14 al. 2 Foreigners Act, the internment of foreigners is also intended for emigrants who have entered Switzerland legally at a previous point but whose permit has expired and whose expulsion is not possible. Furthermore, the Federal Council resolution of 17th October 1939 orders the expulsion of emigrants (who are in possession of a tolerance permit) who do not comply with the interdiction to work, to be politically active, who do not try to remigrate to another country or who behave in any other way that is perceived as endangering Switzerland's neutrality (art. 15). Although onward

[28] Robert Briner who was the first ordinary secretary of the SRC was, at the same time, cantonal councilor of the canton of Zurich and director of the cantonal police. Also in later years it can be observed that the SRC's secretary had institutional links with executive authorities.

[29] Protokoll Generalversammlung der Schweizerischen Zentralstelle für Flüchtlingshilfe, 17.01.1939, Schweizerisches Archiv für Zeitgeschichte, Zürich, SFH-Archiv A.1.1.1.

[30] Arnold (1997) points out that this case-by-case advocacy strategy proved to be more successful with Rothmund while the latter reacted often dismissingly when confronted with more general claims.

migration is more and more difficult, Swiss authorities continue to adhere to the transit principle. If the expulsion of a foreigner is not possible, his/her internment could take place in a closed detention centre, a camp or through free accommodation at a predefined place of residence (Kälin, 1999: 22).

Historians do somewhat disagree upon the role that the SRC and its member organisations play during the second world war. While Lasserre (1995) points out that the organisations do keep their *marge de manoeuvre* and good relations with the authorities through the whole period, UEK (2001: 91) state that the aid organisations play a minor role for the FJPD's refugee policy. The latter assessment of the organisations' role is linked to the fact that with the outbreak of the second world war, in 1939, the Confederation takes over the costs for the elementary care of refugees in 1939 and a growing number of refugee camps are created. Several charities led homes have been opened before and a first camp is opened in the canton of St. Gall in 1938, which is internally managed by refugees themselves with the Swiss Red Cross covering the costs for material needs (Lasserre, 1995: 101) but these facilities do not have enough capacities for all incoming refugees. As also the army is increasingly requesting that refugees carry out war important work, on 12th March 1940, the Federal Council announces the opening of work camps[31], led by a central camp management who is under the control of the FJPD's police section. The Federal Council makes this decision based on a report which has been written collaboratively by the FJPD, the Federal Department of Public Economy and the SRC[32]. The SRC and its member organisations welcome the foundation of camps due to their own critical financial situation. As a consequence of the state led camps, the charities' expenses do indeed drop. While the Confederation has spent, between 1936 and 1939, 178'000 CHF linked to the presence of refugees on its territory – mostly for remigration and a smaller amount in 1938 and 1939 for the SRC – between 1939 and 1945, costs covered by the Confederation amount to 82'836'849 CHF, spent on the police division of the FJPD and the central management of homes and camps (Ludwig, 1957: 366). The aid organisations' request of direct funding is again refused by the Federal Council in 1940. However, there is a clear division of tasks between the central camp management, responsible for administrative tasks, and the charities who provide moral and psychological assistance to the camps' residents. Furthermore, charities pay for personnel equipment, like working cloths and tools of the refugees who stay in the camps and finally, they are also in charge of those leaving the camps and persons who are not compelled to stay in a camp like women, children, old, ill, and handicapped people. They stay either in a charity led home or are placed in private households. The charities' assistance duties are clearly

[31] This Federal Council resolution of 12th March 1940 is not accessible. It is mentioned here based on Kälin (1999: 177) and Lasserre (1995: 134).

[32] Furthermore, in a letter from 22nd December 1939, the SRC urges the FJPD to create employment and training opportunities (SRC, annual report 1940).

defined through official regulations (Lasserre, 1995: 135) and complement the basic state covered services.

At the same time, the aid organisations loose influence on the living and working conditions of the refugees who stay in the camps. Some organisations having the right to visit their proteges on weekends, can uncover grievances which lead to negotiations with the central camp management and the FJPD. They encounter, however, massive resistance from the authorities wherever the latter's cost-benefit calculation or their control over the discipline of the camps is questioned. The aid organisations and the SRC as their representative obtain only changes for individual single cases but no general improvement of living and/or working conditions. It is only in 1941/42 when the SRC's persisting claim for professional education for refugees is taken up by the FJPD considering the utility of re-education to fill the lack of Switzerland's workforce and in the perspective of onward migration (Arnold, 1997: 41-44).

The mainly used strategy of minimum demands that the SRC uses to obtain better conditions in camps for single cases is one that is also driven with regard to Switzerland's admission respectively rejection policy. Between 1940 and 1942, this policy is not really questioned by the SRC and its member organisations. Further, the charities continue to declare their illegally entered protégés and try to legalise their presence, be it through guarantees or humanitarian arguments (Arnold, 1997: 45).

When the FC decides to close the Swiss border completely on 4 August 1942, this provokes however strong resistance. In a meeting between Rothmund and representatives of the SRC and its member organisations the former is confronted with strong accusations and testimonies of deportations in France. Several charities threaten to break with their loyal collaboration with the authorities. Finally, a compromise is found which leads to the restoration of the *status quo ante* signifying the continued deterrence of refugees at the border and individual procedures for those who have already crossed the border (Arnold, 1997: 45-50; Ludwig, 1957: 211). As the same time, the aid organisations having no more capacities to support further refugees, call on the population to provide accommodation for refugees, a call which is indeed answered positively[33]. After some reticence from the cantons, the action can effectively be launched in 1943. Nevertheless, due to the increasing number of arrivals, the rejection policy is again restricted, and French Jews are rejected in general. In this context, the authorities try to exclude the SRC and the charities as much as possible from the rejection policy and practice by limiting the access of information. In this vein, refugees are for example not allowed to call an aid organisation on their arrival at the border. The authorities do not respond to any request of the SRC to loosen the rejection orders in practice at the border and the general lack of communication

[33] The so-called "free places" action (*Freiplatzaktion*) is launched by the pastor Paul Vogt.

between both parties persists until July 1944 when the discrimination of Jewish refugees officially ends. In the perspective of the end of the war and in the following years, the communication between the FJPD, its Police Division on the one hand and the SRC and the aid organisations is reinstalled and further institutionalised in several commissions as the following chapter will show.

4.2 Development of a cooperative partnership around permanent asylum and cold war refugees (1944-1970)

Contrary to the period of the second world war, the period after the second world war until the 1970s is characterised by a separation between immigration and asylum policy and an almost complete absence of security concerns in the context of a relatively generous admission of groups of refugees from Eastern European countries, especially from Hungary in 1956 and Czechoslovakia in 1968 (Stünzi, 2018: 145f.; Parini/Gianni, 2005; Efionayi-Mäder, 2003). This general characterisation needs however to be nuanced regarding the immediate post-war period. While from between the 1950s and the 1970s asylum policy is effectively separated from immigration policy, during the late 1940s the political developments around the question of (permanent) asylum and the issuance of permanent residence as well as work permits for second world war refugees are entangled with questions of the situation of the labour market and Switzerland's "capacities" to become a long-term home for immigrants – independently of the question if these are refugees or not. In this sense, permanent asylum, introduced in 1947 becomes available for persons with refugee status as well as for those with the status of emigrant.

1944 – 1951: advocating for permanent asylum and public financial support

The above-mentioned link between economic questions and the long as well as short term presence of refugees in Switzerland that is strongly present with the authorities, becomes visible in the SRC's documents of the immediate post-war period, notably in the annual reports. In this perspective, the immediate post-war period is characterised by questions of return and onward migration. A survey which is started in May 1944 among 500 refugees, and which is extended in March 1945 to 9220 refugees living in camps and later on to refugees living outside camps shows that departure is the most important topic in the view of most refugees. Furthermore, the refugees demand to be included in political decision processes especially regarding onward migration. While the Federal Councillor at the head of the FJPD von Steiger had mandated an expert commission comprising representatives of the authorities, of the aid organisations and of the Parliament in February 1944 with advisory functions for the authorities, three months later, refugees are included in the so-called leisure commission where they collaborate directly with aid organisations' representatives and representatives of the central management (Lasserre, 1995: 269-296). Finally, at the end of February and beginning of March

1945, a refugee conference takes place in Montreux in which representatives of the authorities and charities participate as well as refugees. At this conference, the authorities finally accept the representation of a self-elected refugee delegation in matters of return and onward migration. Regarding the latter, the so far valid transit principle is confirmed; only ill and old refugees may stay in Switzerland. However, the SRC's catalogue of propositions about how to proceed with departures are accepted by the authorities, consisting of in rather facilitating the refugees' preparations than pressure them to leave (Arnold, 1997: 81-83).

Afterwards, a mixed commission for "return and onward migration" is created with the participation of refugee representatives, representatives of the authorities and of the charities to exchange and elaborate solutions for practical questions of return and onward migration. As Arnold (1997: 85) points out, in this commission, numerous practical questions can be resolved "in largely partnership-based cooperation, so that the long-accumulated mistrust between authorities and refugees could be reduced overall". Nevertheless, while acknowledging the importance of giving a voice to the refugees themselves, the SRC and its member organisations request the refugee representatives "keep calm" and make less use of public mobilisation as they favour the "calm way of advocacy" with the authorities (ibid.: 86). In this sense, the former may be seen as mediators between the refugees and the authorities.

In this context of a continued policy of departures, the SRC expands its activities. Besides frequent contacts with the International Committee to obtain travel documents or financial support for emigrating refugees, the SRC creates an information service that publishes information regarding questions of return and onward migration for refugees. These include information about possible immigration countries but also legal aspects of onward migration. The latter gain importance more generally and a legal expert is employed who addresses laws and law projects affecting refugees in Switzerland but also in other countries. Another service created is the secretariat for medical doctors that aims at placing doctors in Switzerland as well as in other countries. The SRC becomes an active and central observer of international and national refugee law and administrative practice. Finally, the secretariat for young refugees, in collaboration with the central camp management and some of the SRC's member organisations, organises professional education, leisure activities and youth meetings. Retrospectively, this expansion of activities is described today as the beginning of a "professionalisation" phase by the SRC, "a phase of professionalisation lasting around four decades, during which the organisation developed expertise in refugee law and established itself as an internationally networked specialist organisation" (see "History" section on the SRC's website[34]).

[34] Schweizerische Flüchtlingshilfe, Geschichte, accessible at https://www.fluechtlingshilfe.ch/ueber-uns/geschichte (last accessed: 18.08.2023).

Nevertheless, the transit principle is increasingly questioned by the aid organisations as well as at the FJPD, the latter preparing a Federal Council Resolution (FCR) that should provide the FJPD with the possibility to make exceptions from the transit principle for certain refugees. The SRC getting knowledge about the preparations of this FCR through its presence in the mixed commission – originally, the authorities had not wanted to include the SRC in the FCR's preparation – makes a counterproposal which includes more "radical" propositions. Contrary to the FJPD's proposition of the possibility to make exceptions from the transit principle mostly for ill and old refugees, the SRC demands the creation of a legal basis for permanent asylum for all those who cannot move on to another country. Furthermore, the SRC demands that a person with permanent asylum should obtain a permanent residence permit. The expert commission for refugee matters supports the SRC's propositions and transmits them to the Federal Council. It follows a dispute between the SRC and the federal and cantonal authorities over several months with the SRC campaigning intensively also publicly and addressing several petitions at the Federal Council. While the SRC pleads for a humanitarian and open Switzerland, especially the cantons are opposed to the creation of permanent asylum because they fear the financial costs (Ludwig, 1957: 340f.; Arnold, 1997: 98f.). Finally, the FRC of 7th March 1947[35] provides the possibility to accord permanent asylum to refugees or emigrants due to their age, health or other special circumstances. However, the cantons are not obliged to deliver a permanent residence permit. The financial question, dominating the discussions especially on the side of the cantons, is then defined in the Federal Decree (FD) of 16th December 1947[36]: For destitute refugees with permanent asylum, 50% of the costs are covered by the Confederation and 50% by the charities, as before; for emigrants with permanent asylum, one third of the costs are covered by the aid organisations, the Confederation and the cantons each. Thus, the charities had committed themselves to co-financing permanent asylum (SRC annual report 1947: 2). In practice, the aid organisations also provide material aid to so-called "hardcases", emigrants who are too young for permanent asylum but too ill and/or too old to work (SRC annual report 1948: 4).

In the following, the SRC transmits applications for permanent asylum to the authorities (1600 cases in 1947) which allows the organisation at the same time to collect the cases in a central file and thus to get an overview of the state of the ongoing applications and the administration's practice. Furthermore, the SRC's legal counsellor assists in filing appeals (SRC annual report 1947: 3). During the validity of two years of the FRC of 7th March 1947, permanent asylum is granted to overall 1345 persons of which 561 refugees and 784 emigrants (Ludwig, 1957: 346). Of 109 appeals 22 are accepted (SRC

[35] Bundesratsbeschluss vom 7. März 1947 über Änderungen der fremdenpolizeilichen Regelung (AS 63 142).

[36] Botschaft des Bundesrates an die Bundesversammlung zum Bundesbeschlussentwurf über Beiträge des Bundes an die Unterstützung bedürftiger Emigranten und Flüchtlinge in der Schweiz vom 3. Oktober 1947 (BBl 1947 III 245).

annual report 1949: III). Even if less persons obtain a permanent residence status than the SRC had hoped, its campaign for permanent asylum in 1946/47 presents the first step to a fundamental reorientation of Swiss refugee policy. At the same time, it presents an important turning point in the SRC's development because the organisation as a whole questions, for the first time, the transit principle in a fundamental way (Arnold, 1997: 102).

In order to make permanent asylum a permanent provision, it needs to be integrated in the law. When the consultation procedure regarding the modification of the Foreigners Act starts in August 1947, the SRC demands the abandonment of the transit principle in general. This request is however withdrawn in the following because it appears far too radical in the present political context (ibid.: 109). At the same time, the expanded refugee notion proposed by the SRC is incorporated in the regulation to the new Foreigners Act[37] in art. 21:

> In any case, foreign nationals who are in danger to life and limb for political or other reasons and who have no alternative but to flee to Switzerland to escape this danger must be admitted as refugees, unless there are compelling public interests to the contrary.

Thus, a refugee is not only a person because of his/her personal political activity but also someone who is persecuted for religious, racial or social reasons – without being him/herself politically active. The first persons who benefit from this provision are "new" refugees from Eastern European countries. The aid organisations agree to assume a part of the costs for these "new" refugees in exchange for stronger involvement of the SRC in Switzerland's admission policy. Thus, the Federal Decree of 21st December 1948[38] states that 50% of the support costs for "new" destitute refugees are covered by the charities and the Confederation each. Furthermore, the decree allows the Confederation to make a yearly financial contribution directly to the SRC's administration costs. The transit principle is still valid for these "new" refugees. At the same time, many cantons are still hesitant regarding the issuance of work permits also for second world war refugees and emigrants so that the costs of the aid organisations increase importantly which leads to another request of financial contribution addressed at the state (SRC, 1949: II). Finally, with its Federal Decree of 26th April 1951[39], the Federal Council decides an extensive federal participation of 60% in the coverage of the costs of the aid organisations in charge of supporting refugees. Furthermore, the Confederation reimburses cantons and municipalities for supporting refugees if the latter are not cared for by a charity. The same applies in

[37] Bundesgesetz vom 26. März 1931 über den Aufenthalt und die Niederlassung der Ausländer (Stand: 8.10.1948) (AS 1949 I 221).

[38] Bundesbeschluss vom 21. Dezember 1948 über Beiträge des Bundes an die Flüchtlingshilfsorganisationen (AS 1948 1227).

[39] Bundesbeschluss vom 26. April 1951 über Beiträge des Bundes an die Unterstützung von Flüchtlingen (BBl 1951 II 21).

the case of emigrants under the condition that the canton has issued a permanent residence permit and a work permit. Finally, in the same decree, the Federal Council declares the abolition of the transit principle for refugees of the second world war. For the time being, it remains valid for new refugees but is then rapidly forgotten when Switzerland signs the Geneva Convention in 1954 (Arnold, 1997: 113.).

Focus 2 - International developments after the second world war

It is finally in the aftermath of the second World War, with millions of displaced persons due to the events in Europe, that the first binding international refugee protection regime is created. In its centre is the Convention relating to the status of refugees concluded in Geneva on 28 July 1951 which mandates the UNHCR, an agency created by the UN General Assembly in December 1950, with the monitoring of the application of the Convention. Initially devised to manage the situation of displaced persons due to "events occurring before 1 January 1951" (art. 1 A (2) GC 1951) in Europe, this geographical and temporal limit is abandoned with the additional protocol, signed in New York on 31 January 1967. According to article 1 of the Refugee Convention from 1951, a refugee is a person who,

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

This definition of the "refugee" represents two fundamental changes for the international treatment of refugees: On the one hand, the *ad hoc* approach is abandoned with the implementation of permanent instruments monitored by UNHCR. On the other hand, the collective approach is replaced by an individualist and universal conception of the refugee, somewhat abstract, and applicable eventually in every new political situation (Crépeau, 1995:74). This individualistic and universal approach is in line with the development and international promotion of a whole body of human rights regulations, such as the Universal Declaration of Human Rights (UDHR) adopted in 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) signed in 1950, and the International Covenant on Civil and Political Rights (ICCP) adopted in 1966. In the European context, the fundamentals of refugee protection and national asylum policies are the above cited Geneva Convention from 1951 with its definition of the "refugee" and the European Convention of Human Rights from 1948. Both include a principle of non-refoulement that prohibits states to send people (back) to a country where they risk to "be

subjected to torture or to inhuman or degrading treatment or punishment" (art. 3, ECHR). "No contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (art. 33 al. 1, GC).

The criterion of persecution or fear of persecution – together with the non-refoulement principle (art. 33 GC; art. 3, ECHR) - is the central characteristic of this individualistic and universal approach of refugees. One has to note that the general change from a collective to an individualistic and universal approach of refugees took place in a specific political context, that is the Cold War. The Geneva Convention is of an imminent political nature (Akoka, 2011: 13) as it reflects Western "liberal political values of non-discrimination, individual autonomy and rationality and excluded socialist socio-economic concerns" (Bhabha, 1996: 7). Socio-economic rights judged of greater importance in socialist states than civil and political rights, this vision contrasted sharply with the Western liberal individualistic conception of human rights. Following Bhabha, from a Western point of view which is expressed in the Geneva Convention, "[t]he refugee par excellence was someone heroically seeking to assert his (typically male) individuality against an oppressive state. The apparently neutral formulation of the refugee ensured that Soviet dissidents would qualify for international protection while Western vulnerability in the area of social and economic rights was excluded from scrutiny by the refugee regime" (ibid.: 8). This exclusion of social and economic aspects as criteria for the refugee quality is important to keep in mind with regard to contemporary discourse about refugees, especially when it comes to the discursive distinction between "genuine" refugees and "economic" migrants. The ideological conception of the refugee in the Geneva Convention promotes a liberal and democratic order while neglecting socio-economic injustices (Akoka, 2011: 11).

1950s – 1970s: Hardcore programmes and generous admission of refugees fleeing Communism

The 1951 decree lies the foundation for a close cooperation between the Confederation and the member organisations of the SRC. While the Confederation, with the increasing coverage of refugee support costs, declares the assistance of refugees as its task, it still depends on private aid organisations to perform social assistance tasks. When, in 1951, 250 so-called hardcore refugees[40]

[40] Hardcore refugees are old and ill refugees cared for by the IRO in Germany, Austria and Italy. As these countries are confronted with high damages from the war, the IRO calls on other countries, among which Switzerland, to admit hardcore refugees permanently, before the organisation is dissolved at the end of 1951. In the following, UNHCR continues such calls and Switzerland accepts further groups of hardcore refugees: in 1953 and 1954 groups of White-Russian refugees from Shanghai (SRC, 1953: 5; SRC, 1954), in 1956/57 100 further ill and old refugees from China, Turkey, Egypt, the Middle East, Greece, Italy and Austria (SRC, 1956: 2) and in the 1960s

arrive in Switzerland, the Confederation covers their costs of living, asks however the aid organisations to carry out assistance and cover additional costs (SRC annual report 1951). Next to the "new" refugees from Eastern European Communist states, each year, Switzerland admits groups of ill and old refugees who are mostly cared for in charity led homes. While most of the literature about the period of the 1950s, 1960s and 1970s focusses on refugees fleeing Communism, one may also note these (comparatively small) groups of hardcore refugees who are, if we use current terms, beneficiaries of resettlement due to their age and/or health condition and who get thus permanent asylum in Switzerland. Permanent asylum is, following its original conception, attributed first and foremost to persons who need care and social support due to their physical and/or psychological condition which is also the case for second world war refugees for whom it had not been possible to move on to another country in the immediate post-war period.

As several authors point out, the period between the 1950s and the 1970s could be interpreted as being influenced by the political wish to make up for mistakes of the Second World War in terms of refusal of refugees (Efionayi-Mäder, 2003, 2018; Parini/Gianni, 2005; Piguet, 2019; Stünzi, 2018) which leads, next to the admission of groups of hardcore refugees, to the relatively generous admission of refugees fleeing Communism. The latter obtain asylum after a simple procedure based on art. 49 Foreigners Act. The Refugee Convention with its refugee definition is interpreted generously in the sense that not only objectively identifiable facts are recognised as reasons for refugee status but also unbearable psychological pressure (Efionayi-Mäder, 2003: 2). This is the case for the overall 13'000 Hungarian refugees (SRC annual report 1957) who arrive in Switzerland in 1956 and 1957 and the overall 13'500 Czechoslovakian refugees in 1968 as well as the Tibetan refugees fleeing the Communist regime in China in 1962 and refugees from Uganda with Asian origins in 1972. In 1957, the Federal Council declares the admission of refugees even a "political maxim". The positive attitude of the Swiss authorities and population towards these two groups, aiming at their rapid integration in the Swiss labour market and society and the attribution of a definitive residence status needs to be seen also in the context of the cold war (next to the wish to make up for Swiss rejection policy during the second world war). Parini and Gianni (2005) speak of an *"effet guerre froide"* as the most important factor defining the generous admission of Eastern European refugees and the separation between a labour-oriented immigration policy and the refugee policy. In the public anti-Soviet opinion, the Hungarian and Czechoslovakian refugees represent fighters for freedom and human values so that the xenophobic right does not politicise the admission of these refugees as a problem of foreign infiltration (Parini/Gianni, 2005: 202f.).

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further groups of refugees living in camps in Italy and Austria are accepted by the FJPD and chosen on spot in collaboration with representatives of the SRC.

In this favourable political context, the reception of the refugees, their accommodation and placement in jobs is organised, following the agreed cooperation between the authorities and the aid organisations, by charities and the cantons with the coordination by the SRC. The SRC's annual reports of the period between the 1950s and the 1970s[41] underline the "close partnership" of the SRC with the authorities, especially with the FJPD's Police Division. Thus, the SRC coordinates hardcore and handicapped programmes and participates together with representatives of the FJPD and the charities and in coordination with UNHCR, in choosing the refugees who then are admitted to Switzerland. The SRC has also a coordination role in the case of the quotas of Eastern European and Tibetan refugees accepted by the Federal Council. When in 1972 200 refugees of Asian origin from Uganda are admitted in Switzerland, the SRC prepares, in collaboration with the Police Division, the Red Cross and its member organisations a reception concept for these refugees. While these refugees are perceived as culturally different from the Eastern European refugees, their rapid integration is observed in the following. A central refugee register that the SRC keeps since the arrival of the first Hungarian refugees shall also facilitate their integration *("Eingliederung"*) in the labour market and Swiss society, now a shared task of aid organisations, private initiatives and the authorities. While the definition of the social aid amounts for refugees lies in the responsibility of the Confederation, the SRC as a representative of its operational member organisations participates however in the negotiations of these amounts. Furthermore, the SRC organises meetings and conferences for representatives of the authorities and the charities who are involved in refugee reception in order to inform them about social and legal aspects of refugee reception. At these occasions practical questions of accommodation, social welfare and integration are discussed between all actors. At the same time, the SRC also increases its efforts regarding public communication and sensibilisation, runs an important campaign in 1959 and 1960 in the context of the HCR's declared worldwide Refugee Year and continues to encourage direct contact between refugees and the Swiss population. These activities are part of its role as a platform, information provider and bridge between different actors active in refugee reception, a position that the SRC will keep and consolidate over more than fifty years. In this sense, the SRC is not only one professionalised advocacy organisation among others in the asylum field, but it has been occupying a central position in the Swiss asylum system and has been playing a central role as representative of civil society in the asylum domain. It is of course difficult to know to which extent the authorities' decisions have been influenced at specific moments and more generally. What the present historical overview of Swiss refugee policy and asylum practice and the involvement

[41] See Schweizerische Zentralstelle für Flüchtlingshilfe SZF, Jahresberichte 1951 – 1982, Schweizerisches Archiv für Zeitgeschichte, Zürich, SFH-Archiv A.1.2.1.

of increasingly professionalised civil society actors like the SRC shows is that they are present and in continuous exchange with decisionmakers.

Looking back again at the period after the second world war, the SRC is also involved in decisions of the Police Division about asylum applications. In the case of negative decisions, the SRC's director is consulted before a final decision is made. Since 1968, representatives of the SRC's member organisations are present at asylum hearings, a responsibility that importantly characterises the SRC's and its members' role in the asylum system over the following fifty years. The SRC's legal service does also prepare appeals and provides legal counselling for persons with a negative asylum decision and for its member organisations on the matter. Finally, the Police Division consults the SRC regarding family reunion cases of refugees.

Politically, it is repeatedly mentioned in the yearly reports of the SRC of the 1960s that these are perceived as calm years, which may be seen in the context of the relatively rapid integration of the refugees from Eastern European countries. The SRC insists however on the importance to improve and clarify the legal status of refugees related to the Refugee Convention and advocates for equal treatment of refugees with Swiss citizens in terms of social insurance. The SRC's legal service elaborates thus propositions regarding social insurance for refugees which are included in a Federal Resolution in 1962[42] and intensive lobbying with members of Parliament leads to equality of refugees with Swiss citizens after five years of residence which was planned originally after 15 years of residence[43].

The political calm is somewhat disturbed when after Pinochet's putsch Chilean nationals seek refuge. The Federal Council hesitates before he finally accepts 200 Chileans after long debates who are chosen by a representative of the authorities in Chili. Even though the SRC communicates the willingness of its member organisations to care for the Chilean refugees, its request to admit another group of 300 persons is refused by the Federal Council. When some municipalities and private associations decide to welcome Chilian refugees under their own responsibility, the Confederation introduces a visa obligation for Chilian nationals and signals thus that the admission of refugees is the solely competence of the Confederation. In an economically less favourable context, a link between the Swiss economy's need of labour force and the number of foreign nationals, refugees included, appears, which leads to a convergence of immigration and asylum policy (Parini/Gianni, 2005: 203f.). Political initiatives, like

[42] Bundesbeschluss über die Rechtsstellung der Flüchtlinge und Staatenlosen in der Alters-, Hinterlassenen- und Invalidenversicherung vom 4. Oktober 1962 (AS 1963 37).

[43] See SRC annual report 1965. This change takes place in the context of the discussions in Parliament around the new Federal law on supplementary contributions of the Confederation to the cantons regarding old-age, survivors' and invalidity assurance (Bundesgesetz vom 19. März 1965 über Ergänzungsleistungen zur Alters-, Hinterlassenen- und Invalidenversicherung (AS 1965 537)).

the *Schwarzenbach* Initiative in 1970 (which is however refused by the population), that aim at limiting the number of foreigners in Switzerland do not (yet) target refugees. However, in the following years, the unemployment rate among the refugees increases; new refugees are confronted with increasing difficulties to find a job, but refugees are also dismissed from their employment more easily as the SRC remarks in its annual reports especially from 1974 onward. At the same time, the number of applications for asylum continue to increase and the origins of the refugees diversify. First refugees from Indochina arrive in Switzerland in 1975; others continue to come from Chili and other South American states, Eastern European countries, and South Asia (Cambodia, Vietnam). While the SRC observes in its annual report of the year 1979 regarding the refugees from Indochina that the support of the population is as big as in 1956 with Hungarian refugees and in 1968 with Czechoslovakian refugees, the situation of the labour market remains difficult.

In this context, it is interesting to note that the Swiss section of Amnesty International, recently founded (see Focus 2), engages with the Swiss asylum field since its early years of existence. In 1976, a delegation of AICH is received, for the first time, by the Federal Council to discuss the admission of a quota of refugees from Argentina. The Federal Council refuses such a quota, single cases may however be submitted to the Police Division (AICH annual report 1975/76). This exchange between the Federal Council and representatives of AICH seems worth mentioning in two respects: First, it reflects the relative openness of the Swiss authorities to exchange with civil society actors in the refugee field in the sense that they are not only aware of their existence but that a direct exchange is also possible – even though this does not necessarily mean an uptake of the latter's' requests. Second, the annual reports of AICH which are available since 1975/76 show that the organisation is active regarding Swiss refugee policy and asylum practice since its early years of existence.

As the present research focusses on the activities of two professionalised NGOs and especially their advocacy activities today, that is the SRC and AICH as two case studies, I propose, in the following, to include AICH in the historical overview where its activities target questions of refugee admission and reception in Switzerland. As in the case of the SRC, for this, I consulted a part of AICH's archived documents, that is the organisation's annual reports which are accessible in the Swiss social archive. Also as in the case of the SRC, my aim here is not a detailed historical analysis of AICH's practices and discourses but to trace its historical presence in the Swiss asylum field and to thus shed light on the historical engagement of (today professionalised) civil society actors with Swiss asylum politics and asylum practice. Finally, the aim of this historical overview of the engagement of AICH as well as the SRC is to understand the historical roots of the organisations and of their engagement in refugee advocacy. In this sense, the following chapters provide, as it was already the case of the last chapters, not only a historical contextualisation of the NGOs' development and activities but also a historical overview of the engagement of the organisations with this (political) context. While a detailed analysis

of this engagement would go beyond the scope of this thesis, with this historical *overview* I aim to provide some historical inside in the NGOs' presence in the asylum field.

4.3 (For) the codification of practice (1973 – 1981)

In terms of timing, the political impetus for the creation of an asylum law falls in the period of the Chilean refugees. However, as Stünzi (2018: 154) remarks, the parliamentary motion[44] as a consequence of which the Federal Council elaborates a proposal for an asylum law as well as the debates around the law proposal mention only rarely the reception of these refugees. The same is the case for arguments of foreign infiltration (*Überfremdung*) and its link with the situation of the labour market. Furthermore, the juridification of asylum that takes place in the following through the elaboration of a law is based on a consensus beyond political party boundaries. It reflects a willingnesss to conciliate domestic policy issues with international obligations in terms of asylum policy (Stünzi, 2018: 152; Parini/Gianni, 2005: 204).

The SRC is involved already early in the process[45] and supports, together with its member organisations, explicitly the codification of Swiss asylum practice on the basis of the Refugee Convention. In 1971, the organisation's director calls for a subjective right to asylum in the regularly published booklet "We and the refugees": "The right to asylum must become the right to asylum, a fundamental right enshrined in the Constitution" (SRC, 1971: 11[46]). The question about the contemporariness of the Constitution's art. 69ter that does not provide such a subjective right but rather provides a basis for the authorities to refuse a claim for asylum is raised in the Asylum Law Commission (ALC) that is founded in 1972 on the initiation of the SRC. This commission brings together legal scholars, parliamentarians, representatives of the federal police and justice department, of the federal commission for foreigners' questions and members of the SRC. It is intensively involved in the preparation of a pre-proposal of the Asylum Act that the Police Division of the FJPD prepares in 1975 and which contains the definitions of the term "asylum" (art. 2) and "refugee" (art. 3) as proposed by the ALC (see Statement of the SRC on the pre-proposal of the Asylum Act[47]). In the following two years, further consultations between the Police Division and the ALC take place before in 1977, the Federal Council submits a message and law proposal to the Parliament, the latter being accepted by both chambers in 1979.

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[44] The SVP politician Walther Hofer, member of the National Council submits a parliamentarian motion in 1973 which is accepted by both, the National Council as well as the Council of States and which is then transmitted to the Federal Council.

[45] See SRC annual reports 1972-1981.

[46] SZF (1971), Wir und die Flüchtlinge.

[47] Stellungnahme der SZF zum Vorentwurf des Asylgesetzes, März 1976.

The new AsylA summarises all provisions present so far in different legal texts (Constitution, Refugee Convention, Foreigners Act and linked regulations) and codifies the current asylum practice consisting in case-by-case examinations of asylum applications by the Police Division of the FJPD. The legislator does not create a subjective right to asylum; it lies in the administration's responsibility to grant asylum as a bureaucratic act which leaves the authorities with a *marge de manoeuvre* and makes tensions foreseeable between this *marge de manoeuvre* and the formal application of the law (Efionayi-Mäder, 2003: 5). The SRC nevertheless sees the AsylA as a success and welcomes especially the right to be heard in presence of a representative of the charities that is given to applicants for asylum before a negative decision (art. 16 AsylA) and the possibility to make a complaint against the withdrawal of asylum to the Federal Court (art. 40 AsylA). Finally, the law codifies also the partnership between the authorities and the charities (art. 29-38 AsylA). The Confederation is responsible for care and accommodation but may transfer the operational tasks to the private aid organisations as before. The Federal Council is authorised to contribute to the yearly costs that the SRC has in terms of administration (art. 37 AsylA). The new law comes into force in 1981; its first revision is undertaken already two years later, the first of a series of revisions that follow in the upcoming decades and that are object of controversial debates. While, as described above, the SRC is involved enthusiastically in the elaboration of the first AsylA, its representatives see the following revisions rather critically and observe with concern the changing attitude of the population and the political elite regarding refugees – or "asylum seekers" as they are now increasingly called. The following chapter gives an overview of the tensions in Switzerland that arise around the issue of asylum and characterise the field from the 1980s onward. A special focus lies on the period of the 1980s and 1990s where the "legislative frenzy" (Piguet, 2009) in the asylum domain finds its beginning, starting already in 1983 with the discussion about the first modification of the AsylA. It is also in this period that the suspicion of abuse towards asylum seekers becomes a dominant pattern, a characteristic that still dominates today's (political) debates around asylum (Leyvraz et al., 2020). At the same time, it is also in this period that the organisations that are at the centre of the present research consolidate their internal structures and the fields of activity that characterise them and their position in the asylum field until 2019[48]. Therefor and like in the past chapters, I propose to focus, in the following, not only on political and legal developments in the asylum field but to shed light on civil society actors' – especially the SRC's and AICH's – engagement with this changing context[49]. While I have given only little attention to the latter

[48] With the restructuring of the asylum sector, since March 2019, the role of the SRC has changed consistently. This is less the case for AICH. For more information about the restructuring of the asylum sector and the changes that it brings for the SRC, see chapter 5.2.1.

[49] The overview of the SRC's and AICH's engagement with asylum governance of this period are based on the organisations' annual reports. For the SRC, see SZF, Jahresberichte 1980-1999. For AICH, see Amnesty International, Schweizer Sektion, Tätigkeitsberichte 1975-1999.

– due to its appearance only in the late 1970s – the following chapter will provide some information about AICH's involvement in asylum politics. This involvement appears mainly in the form of formal statements regarding law projects, requests directly addressed at the authorities, like the above-mentioned case regarding refugees from Argentina, and public campaigns and so-called "urgent actions" against expulsions of rejected asylum seekers. The first "urgent action" of Amnesty International in Switzerland (in 1986) takes place precisely in the asylum field and may be placed in the wider context of the pro-asylum movement developing in the 1980s and entering into conflict with the authorities regarding the latter's asylum practice (Pärli, 2019).

Focus 3 - The historical roots of the Swiss section of Amnesty International (AICH)

The historical roots of the well-known international organisation Amnesty International goes back to an "Appeal for Amnesty" of the lawyer Peter Benson in a British newspaper. It is the first appeal for the liberation of prisoners of opinion that leads to an immense public support worldwide. Two months after the publication of the call, people from Great Britain, Ireland, France, Germany and Belgium come together to formally found Amnesty International with its headquarters in London. The organisation which understands itself as a movement for the defence of freedom of opinion uses mainly two forms of action: the adoption of prisoners of conscience and the writing of letters to put pressure on governments to liberate prisoners of conscience (AICH, 2001[50]). Founded in the period of the cold war, AI stands up for persons in the whole world, in Western countries as well as in Eastern bloc states and other parts of the world. Hopgood (2006: 8) characterises AI as incorporating a "religionless Christianity, giving it from the start symbols (such as the candle), organizational principles (non-violence), and operational mechanisms (witnessing) that at once resonated with early supporters […] all allied to a belief in moral equality and a concern with the alleviation of suffering". In the name of human rights, AI's initial focus on prisoners of consciences is rapidly extended to the fight against torture and arbitrary arrests, and in the 1970s AI also engages in a fight against extra-legal homicide and disappearances. In 1973, the AI delegates decide to engage in campaigning against death penalty. It is also in the 1970s that AI includes the protection of political refugees in its mandate.

On an organisational level it may be noted that already in at the end of the 1960s 19 paid staff members work at the International Secretariat, a rapidly growing number. At the same time, national AI sections and local AI groups are founded all over the world (150 in 2011). In 1964, AI obtains a consultative status with the United Nations (AICH, 2011: 4-6[51]). In Switzerland, the first AI group is founded in 1964 in Geneva. The main focus of the group lies on the liberation of three

[50] AICH (2001), Die Gründung von Amnesty International in der Schweiz. 1961-1970.

[51] AICH (2011), 50 Jahre Amnesty International, Amnesty Magazin der Menschenrechte.

prisoners of conscience as the International Secretariat attributes every group three individual prisoners for whose liberation a group works. In 1969, AI groups are also founded in Zurich and in Bern, unaware of the existence of the group in Geneva. Finally, one year later the Swiss section of Amnesty International is founded; a first staff member is employed in 1976 and four years later the first director as head of the Office in Bern with six additional staff members. While AICH experiences thus a growing professionalisation through a centralisation in the Office since its early existence, the latter relies importantly on its activist members and local groups for carrying out campaigns and letter actions (AICH, 2001).

4.4 Politicisation of asylum, AsylA revisions and tensions around asylum practice (from the 1980s onward)

The 1980s are characterised by a constantly increasing number of asylum applications and by a diversification of the countries of origin of asylum seekers. The majority of asylum seekers come from Turkey (Kurdish), Sri Lanka or African countries (especially Zaire, Angola, Ghana, Somalia, Nigeria). In the 1990s, the war in ex-Yugoslavia and later the Kosovo war generates an important number of refugees to Switzerland (Parini/Gianni, 2005: 212, 2015). As mentioned in the last chapter, asylum and the presence of refugees, and especially of asylum seekers, becomes politicised during the last decades of the twentieth century. More precisely, the political consensus of the "humanitarian maxim" towards all those who seek refuge is questioned by a growing part of Swiss society. While the political right continues to support the political "humanitarian maxim" for "real" refugees, it claims at the same time increasingly restrictive criteria to access the asylum procedure to decrease Switzerland's attractivity for asylum seekers and prevent "abuse" of the Swiss asylum system by "bogus" refugees and a strict expulsion policy. Abuse and attractivity concerns will also guide further revisions of the AsylA and discussions about asylum policy more generally (Leyvraz et al., 2020). The question of *"Überfremdung"* is still present and is increasingly politicised by the "hard" wing of the SVP since the end of the 1980s without distinguishing between refugees and immigrants anymore (Parini/Gianni, 2005: 213).

In this increasingly polarised context, the SRC and its member organisations lie, on the one hand, a focus on integration projects supporting refugees' rapid integration in the labour market and on the other hand, create occasions for contact and exchange between refugees and the Swiss population and promote understanding of the latter for the former. In 1981, the SRC organises, for example, its first Refugee Day consisting in a sensibilisation campaign and public event where refugees and Swiss citizens meet. This campaign and event take place every year since its first edition. AICH, also concerned about xenophobic tendencies in the Swiss public, adopts a resolution in 1984 which consists in a call on Swiss society "to constantly bear in mind the difficult fate of many refugees from all over

the world whose lives are at risk, to show understanding for their problems and to beware of unjustified general judgements" (AICH annual report 1984: 11). Further, the members of AICH call on the authorities to follow strictly the legal provisions of the asylum procedure and to respect the non-refoulement principle also for rejected asylum seekers. This call on the authorities to respect the law and the questioning of the legality of their decisions characterise the asylum movement that emerges in the 1980s (see Pärli, 2019) in the context of an increasing number of rejected asylum applications and expulsions. The first acts of resistance, notably by the organisation of numerous ecclesiastical refuges, appear against the expulsion of rejected Kurdish asylum seekers in 1981, the same year when the AsylA enters into force (Parini/Gianni, 2005: 213). While the asylum movement as described by Pärli (2019) expresses its accusation that the state was, in many cases of rejected asylum claims, acting contrary to its own laws through acts of civil disobedience, the SRC as well as AICH intensify their critical statements regarding the practice of the authorities, intervene with its Refugee Delegate (in place since 1986) and since 1990 with the Federal Office for Refugees[52] regarding numerous single cases of asylum seekers and those threatened with deportation. While the proposition of a "Global Solution" consisting in humanitarian residence permits for rejected asylum seekers who have been in Switzerland since several years and who are economically and socially integrated is finally refused by the cantons (though supported by the FC), the authorities are rather flexible regarding single cases (Parini/Gianni, 2005: 214).

The Refugee Delegate in turn represents the Confederation in the executive board of the SRC, assuring thus the direct link between the authorities and the charities. Contact partner for the SRC – and increasingly also AICH – is not only the Refugee Delegate but also the FJPD and its internal service that processes appeals against negative asylum decisions. When in 1992, the asylum appeal commission (AAC), created in the context of the third AsylA revision, starts its work, Walter Stöckli, long-standing lawyer at the SRC, is elected member of the commission. The AAC is based on a model proposed by the SRC and presents the first administration independent body for appeals.

To be able to process the numerous enquiries of (rejected) asylum seekers, in 1983, the SRC together with its member organisations and AICH open centralised legal counselling services. In 2000, the SRC will then carry out a Swiss wide coordination mandate for legal counselling services financed by the Confederation. The SRC and AICH themselves also continue to provide legal counselling and make appeals for selected cases. They concentrate however increasingly on elaborating and summarising more general information about the asylum law and about countries of origin of asylum seekers. The annual reports of both organisations mention, on the one hand, what one could summarise under the

[52] When the Federal Office for Refugees is created in the context of the third AsylA revision in 1990, the position of the Refugee Delegate is abandoned.

term “basic legal work”, important for the legal counselling services and the charities aiming to assure that the authorities make legally correct decisions. On the other hand, the annual reports also mention specifically the collaboration between the SRC and AICH regarding the provision of such legal expertise. While representatives of the SRC are, for example, members of AICH’s asylum and the legal experts commission, AICH’s refugee coordinator participates in the SRC’s magazine “Asyl”, a publication targeting experts active in the asylum domain since 1986. Speaking of publications, the number of the SRC’s publications increase in the following years, including not only statements at specific moments but also an asylum law manual, position papers and country reports describing and evaluating the situation in countries of origin of asylum seekers. Relying on other national sections, AICH does also provide such country-of-origin information next to its legal expertise. Compared to the SRC and its member organisations, as part and with the support of a worldwide campaigning organisation, AICH also focusses on public activist actions. As mentioned, the first internationally supported “urgent action” of Amnesty International in Switzerland concerns the asylum domain: In 1986, an “urgent action” demands the Swiss authorities to stop the repatriation of a Yugoslavian citizen. A year later, another “urgent action” concerns the forced return to Sri Lanka of a Tamil asylum seeker. Additional actions follow in the 1990s against the expulsion of Bosnian nationals. Petitions, resolutions, and urgent calls addressed at the FC and/or at the Federal Office for Refugees are further instruments to put pressure on the authorities regarding expulsion decisions that are judged to violate the non-refoulement principle. In this context, there is strong criticism not only from AICH but also from the SRC and the charities of the safe countries list which is introduced in 1990 as an instrument for the authorities to not process an asylum application at all if the applicant comes from a country on this list. The existence of the list itself and in the following its composition is a continued point of conflict between the authorities and the refugee support organisations. When, in 1991, Angola, India and Romania are put on the list, also the SRC now clearly questions if the Swiss asylum practice respects the rule of law and justice. The SRC’s legal service continues to ask for a more generous asylum practice and a comprehensive application of the refugee definition of the Geneva Convention.

The three partial modifications and the total revision of the AsylA adopted by the Parliament and confirmed by the population between 1983 and 1999, complemented by two (urgent) Federal Resolutions as well as a revision of the Foreigners Act regarding coercive measures targeting (presumably) criminal foreigners without residence permit all introduce progressively elements that either restrict the access to the asylum procedure (non-entry reasons like missing identity documents, safe countries list) or allow temporary but not permanent stay (Parini/Gianni, 2005). The progressive interdiction for asylum seekers to work may also be seen in the context of the aim to reduce Switzerland’s attractivity for potential asylum seekers.

The duration of the asylum procedure which leads to growing delays in the treatment of applications (Parini/Gianni, 2005: 212) is in the centre of the discussions around the first revision of the AsylA starting in 1983. Already this first revision evokes criticism from the SRC and AICH, especially of the planned introduction of reasons for non-entry on an asylum application. The SRC's annual reports reveal that in the case of the first AsylA revision, the SRC is reticent regarding the referendum taken against the legal modifications. In 1986, the SRC refuses the proposed modifications, chooses however not to support the referendum neither because the organisation's representatives fear that the referendum might question the asylum policy overall. The third AsylA revision, introducing the AAC, is then actively supported by the umbrella organisation. During the preparations of the law project, party and parliamentary group leaders of all four national political parties come together, following the invitation of the SRC, for debate and to find a basic consensus. Two years before, the SRC has contributed, through its active participation in the FJPD's strategic group for refugee and asylum policy of the 1990s. While the organisation continues to declare being partner of the authorities, the SRC will support actively all referendums against further legal revisions in the asylum domain. Its participation in the commission preparing the total revision of the AsylA does not change this. The SRC participates further in the steering group regarding return aid of the Federal Office for Refugees and is also represented in the Federal Commission for Refugee Questions. Also AICH has a seat in the latter. Thus, civil society organisations are constantly involved in the discussions about asylum law and policy and have the possibility to present their views in institutional settings in direct exchange with policymakers. AICH remarks in its annual reports of the 1990s that meetings with the FC to discuss questions regarding asylum are possible and that also the Federal Office for Refugees is open to views that the human rights organisation defends. Invitations by the Office to give presentations, for example about the topic of torture in 1994, seem to reflect this openness.

Nevertheless, this relative openness of the authorities to exchange with civil society organisations does not translate in an uptake of their positions, nor are referendums against the introduction of increasingly restrictive measures in the AsylA supported by the majority of the Swiss population. What becomes apparent in this historical overview of the activities of the SRC and AICH from the 1980s onward in a context of increasing politicisation of asylum, of increasing numbers of legal provisions that limit access to the asylum procedure and of an increasingly restrictive asylum practice, is the organisations' focus on legal action and the legal register more generally. While both organisations defend a limited number of individual cases themselves, they focus increasingly on supporting other legal advice actors through legal expertise and the elaboration of "basics". The introduction of a judiciary body – the creation of the AAC in 1992 and its integration in the FAC in 2007 – contributing to the juridification asylum is not only supported by the SRC and AICH but has, as explained above, been initiated by the SRC. This positioning in favour of the juridification of asylum, which is linked with

the centrality of legal expertise that characterises the advocacy work of the SRC and AICH in the asylum field, will guide the organisations' practices and discourse in the following decades, as the analysis of contemporary advocacy practices and discourse of the organisations proposes to show (Part IV, V and VI).The political opportunity structure in Switzerland and civil society engagement with asylum in the present

The next chapter with its subchapters gives, on the one hand, an overview of the different types of civil society actors that have been involved in the asylum sector in Switzerland either through "welcome and support" or through "witness and defend" activities (D'Halluin-Mabillot, 2012) in Switzerland. On the other hand, I propose to give an overview of the political and legal developments and circumstances that characterise the asylum domain in the period between 2015 and 2019 on which the present study focusses.

4.5 The political opportunity structure in Switzerland: consensus and direct democracy

Switzerland is one of the European states whose population is characterised by a certain heterogeneity, especially due to the presence of four language regions (German, French, Italian and Romanch). To explain the observed stability of political systems of states with pluralist societies – like the Netherlands, Belgium and also Switzerland – and to understand how political conflicts are managed in multicultural societies Lijphart (1977) has developed the theory of consociationalism. Following this theory, a consociational democracy is defined by the government of political elites who try to overcome the cultural fragmentation of society through cooperation. While Lijphart's consociationalist model focusses on the segmented character of societies which has been contested in the Swiss case (see Lehner, 1984), with its pluralist society, Swiss political elites are nevertheless obliged to make use of cooperative mechanisms as described by the consociationalist model (Kriesi, 1998: 344). "Consociationalism is the international label for what the Swiss call 'concordance', namely a defining feature of [Switzerland's] political culture" (Papadopoulos/Sager, 2024: 197). It describes the search for consensus and compromises that are most probable to be supported by the largest possible majority. This majority includes also interest groups and stakeholders who are relevant in the concerned policy domain (ibid.). These mechanisms are also an important element of the concept of consensus democracy that Lijphart (1984, 1999) developed as "the broader variant" (Vatter, 2008: 4) of the consociational democracy model and which he opposes to majoritarian democracy. The concept of consensus democracy may effectively serve to describe and understand contemporary Swiss democracy. Following Lijphart (1999: 249), consensus democracy is characterised by "extensive elements of power-sharing on both the horizontal and vertical levels" (Vatter, 2008: 1). In practice,

this translates importantly, among other structural aspects, in a multi-party government, more generally a multi-party system, the balance of power between executive and legislative bodies, a proportional electoral system, federalism, bicameralism and minority veto (ibid.: 4). Among political scientists it is disputed if Switzerland represents the extreme case or should rather be seen as "the best example" (Lijphart, 1999: 33) of consensus democracy. Either way, Switzerland's political system is characterised by the mentioned elements that characterise consensus democracies and are linked with mechanisms that favour consensus seeking processes.

As mentioned, a federalist structure is an important element of consensus democracy, and it is one of the two central characteristics of the Swiss political system. The second central characteristic is direct democracy. Switzerland is the only European state in which direct democracy plays a crucial role (Kriesi, 1998: 355). At first glance, and due to its character of unpredictability (Papadopoulos, 1997; Kriesi, 1998), direct democracy may seem contradictory to the consociational principle of cooperation and search for consensus. Following Neidhart (1970), this is however not the case. On the contrary, the risk that the voting population refuses a legal project adopted by Parliament in a referendum or the risk of popular initiatives would contribute to more intensive negotiation and use of consociational mechanisms by political decision-makers. In the following two sub-chapters I will focus on these two elements of Swiss consensus democracy – federalism and direct democracy – in more detail by paying attention to recent developments and how these have changed, following political science research, the general political opportunity structure in Switzerland, the framework in which professionalised advocacy NGOs like the SRC and AICH are active. From this perspective, the third sub-chapter will focus on the main steps of decision-making processes and the state-actors that play a role specifically in the asylum domain and that are targeted by the NGOs' advocacy activities in their different modes of action.

4.5.1 Federalism, "militia" parliament and increasing polarisation of political parties

As Vatter (2024: 140) notes, when the Swiss federation was founded in 1848, it "was characterised by multi-ethnic federalism, which stood in sharp contrast to the predominant nationalist integration strategy elsewhere in Europe at the time". The two main elements of the "multi-ethnic" Swiss population were the existence of four languages spoken in four different regions as well as Catholic and Protestant cantons. Federalism is linked to a territorial segmentation. As the language communities that characterise Switzerland's pluralistic society are indeed attached to a specific territory, the federal model of government seemed to be a suitable form to manage the cleavages between the regions (Kriesi, 1998: 345f.). More precisely, Swiss federalism is characterised by a strong autonomy of the 26 cantons and their political power on the federal level. Together with the principle of direct democracy respectively of popular sovereignty, this is a unique constellation of a political

system in Europe (Vatter et al., 2020). As a "horizontal" state structure (Kriesi, 1998: 349) based on the equality of the cantons, but also with a "division of power through the vertical separation of powers" (Vatter, 2024: 140), different mechanisms ensure the coordination between the different actors and levels. While on the horizontal level – between the cantons – there are several institutionalised structures that ensure the exchange between the cantons, regarding the vertical dimension, formalised institutions like the system of symmetric bicameralism, the criterion of double majority of the population and the cantons for changes of the Constitution (art. 142 par. 2 Cst.), the participation of the cantons in the consultation procedures regarding law projects as well as implementation federalism all make sure that the cantons participate in decision-making on the federal level. On the informal side, the federal government, which is represented by the Federal Council, is constituted based on the "magic formula" which ensures that all important political parties are represented. These different elements are oriented "towards the restriction of the rule of the majority" (Kriesi, 1998: 354, my translation), giving thus particular power to small cantons with a small population compared to cantons with higher population. As Vatter (2024: 145) remarks, "[t]he cantonal majority requirement remains a very efficient protection of the former *Sonderbund*[53] and mainly Catholic cantons of central and eastern Switzerland".

Regarding the Swiss Federal Assembly (parliament), which is named, in the Constitution, the "highest power" in the state (art. 148 par. 1 Cst.), the cantons' interests are represented in the Council of States while the National Council represents the people. While both chambers have the same powers and rights, they are constituted differently. The members of the National Council are elected by the Swiss population following a proportional representational system while the 46 seats of the Council of States are distributed equally among the 26 cantons (two delegates per canton, except six cantons who are represented by one delegate each) who appoint their representatives based on a majority system (except for the canton of Jura). Generally, the Council of States and the National Council are elected at the same time every four years. In terms of legislation, both chambers are involved to the same extent. "In case of differences between the two chambers, a 'shuttle' (*navette*) procedure takes place, in which the bill goes back and forth between the two chambers" (Sciarini, 2024: 452). Regarding the relationship between the parliament and the government, it is important to note that the parliament, and not the electorate, elects the Federal Council. The latter cannot oppose the parliament's decisions through a veto right. "Overall, the parliament has legal supremacy over the government" (Vatter, 2008: 10) as it has important information and petition rights as well as the right to initiate legislation. Thus, compared to other OECD countries, the Swiss parliament has a strong constitutionally defined position

[53] The Swiss *Sonderbund* was an alliance of seven Catholic-conservative cantons that was formed in Switzerland in 1845. These cantons – Lucerne, Uri, Schwyz, Obwalden, Nidwalden, Zug and Fribourg – formed the *Sonderbund* in response to growing political and religious tensions in Switzerland between liberal and conservative forces.

and extensive participation rights while the government has only weak control rights (ibid.: 11). At the same time, Kriesi (2001: 61) describes the Swiss parliament as "weak" due to its "militia" principle signifying that MPs are not professionalised politicians and that the parliament is more generally lacking human and infrastructure resources (Vatter, 2008: 12). In this context, Mach and Eichenberger (2024: 343) remark that "not least because of the importance of the "militia" principle and the weak professionalization of parliament, many MPs maintain close ties with interest groups". This is specifically true for economic interest groups which has led to dissensus among researchers about the (neo-)corporatist character of Swiss politics. In this context, it is interesting to note that art. 147 of the Swiss Constitution notes explicitly that not only the cantons are to be consulted during the consultation procedure in the pre-parliamentary phase but also "political parties and interested parties are invited to comment when important decrees and other far-reaching measures are being prepared and when important international treaties are being concluded". Thus, there is an institutional openness to interest groups and to involve them in policy processes in Switzerland.

Regarding the Swiss government to which corresponds the Federal Council with its seven members as the "supreme governing and executive authority of the Confederation" (art. 174 Cst.), the "magic formula" mentioned above and the collegial principle of the Federal Council ensure the "gradual implementation of the 'consociational' norm of power-sharing among the major political parties" (Papadopoulos/Sager, 2024: 195). The political parties that have been represented in the Federal Council since 1959 are the Social democratic Party (SP), the Liberal Party (FDP), the Christ democratic Party (CVP[54]) and the Swiss People's Party (SVP). This points to the important fragmentation of political parties in Switzerland, a typical element of consensus democracy (Vatter, 2008: 7). In international comparison, "Switzerland is one of the countries with the greatest number of parties" (ibid.). Recently, there have however been important changes in the political party system and specifically to the "magic formula" which are linked to an increasing polarisation of political parties. We will see that the issue of migration and specifically asylum plays a central role in this polarisation.

It is in the 1990s that the SVP increasingly gains electoral votes. In the three elections of the National Council between 1995 and 2007 the SVP experiences a rise which is unique in Swiss election history since the introduction of the proportional voting system in 1919 (Skenderovic, 2008: 120). When, in 2003, with 26.7% of the votes, the SVP becomes the party with the highest number of votes, the party demands a second seat in the Federal Council. It is the first time since 1959 that a change in the "magic formula" that defines the distribution of seats in the Federal Council is made. Instead of a re-election of the CVP Federal Councillor Ruth Metzler, the SVP member Christoph Blocher is elected as Federal

[54] In 2021, the CVP fused with the BDP (a small party founded by former SVP members after the election of the former SVP member Evelyne Widmer-Schlumpf as federal councillor) under the party name "Die Mitte" (The Centre).

Councillor. Thus, to the detriment of the CVP, the new "magic formula" (2 SVP, 2 SP, 2 FDP and 1 CVP) "plac[es] new importance on the principal of proportional division of power (arithmetical concordance)" (Vatter, 2008: 9). When in 2007, Christoph Blocher is not re-elected by the Parliament, but his party colleague Evelyne Widmer-Schlumpf takes his place in the Federal Council, the SVP party leaders declare that the SVP would from now on take on the role of the opposition, excluding both SVP Federal Councillors from the SVP faction. As Vatter (2008: 9) points out, "[t]he term 'opposition' [is] to this extent given a new meaning in Switzerland, since the largest party no longer [feels] that it belonged to the government. In the following years, the SVP skilfully plays its double role as governmental and opposition party (Skenderovic, 2008: 127), acting in the classic oppositional style as the most powerful party" (Vatter, 2008: 31).

The rise of the SVP in terms of electorate is linked to the party's transformation from an agrarian, conservative centre-right to an ideologically radicalised far-right party with strong socio-cultural positions and an important focus on migration (see Zollinger/Traber, 2024; Skenderovic, 2008). Claiming restrictive immigration policy and refusing Switzerland's integration in the European economic space, the SVP takes strong positions on "second dimension" issues like immigration, European integration, the protection of the environment or gender equality. It opposes thus the universalist political left which is incarnated especially by the Socialist party (SP). As Zollinger and Traber (2024: 122) remark, "[a]s early as the 1990s, polarization between the left and the far right over social issues (e.g. immigration, Europe) [is] already greater than that between the left and the centre right over economic ones (e.g. state intervention in the economy)". As mentioned in the historical overview (see chap. 4), the politicisation of first immigration and then asylum starts in the late 1970s in Switzerland and increasingly concerns, with the diversification of countries of origin of asylum seekers, the issue of asylum. With the uptake of these issues as central topics by the SVP in the 1990s, smaller right-wing parties disappear leading to a "decreasing fragmentation and increasing polarisation in the party system" (Vatter, 2008: 30). Especially regarding asylum policy, the SVP takes up the arguments and claims from small right-wing populist parties resulting in their displacement from a field that these parties have historically seen as a central element of their migration agenda. In the following decades, asylum remains a central issue on the SVP's political agenda. In this context, it may be noted that the SVP's first Federal popular initiative that the party launches in 1992, concerns the asylum domain. Its slogan "Against illegal immigration" reflects the SVP's perception of the Confederation's asylum policy as problematic because it would favour illegal immigration and not prevent the abuse of asylum by "economic refugees" (Skenderovic, 2008: 136ff.). Although this first asylum initiative is narrowly rejected, more initiatives demanding measures to effectively combat the abuse of asylum will follow. Table 3 below gives an overview of the major political parties' presence in the Federal Council (FC), the National Council (NC) as well as the Council of States (CS) after the

elections in 2015 and 2019. Further, it gives an overview of the parties' respective positions on the second dimension issue of asylum, showing the strong opposition between the SVP's position focussing on tightening, defence and isolation and the SP's position – supported also by the Green party – in favour of human dignity, the respect of human rights and an inclusive society. Finally, it also shows the third pole of Swiss politics, represented by the FDP and the CVP with more ambivalent positions, adopting a rather restrictive perspective but also emphasising the need to protect refugees. The Green Liberal party, which emerges on the federal level in 2007, also adopts a control perspective even though asylum does not have an important place at all in the party's political programme.

Table 3 - Positions of major political parties on asylum and their relative political power in Parliament and the government[55] (2015/2019)

Political party	**Position on asylum[56]**	**FC**	**NC**		**CS[57]**	
	2015/2019	**2015/ 2019**	**2015**	**2019**	**2015**	**2019**
SVP	**Tightening, defence, isolation**: Stop the asylum chaos Systematic border controls; strict implementation of Dublin Regulation; no asylum claim for entry from safe third countries; against free medical basic care and legal protection for asylum seekers	2	32.5 % (65)	26.5 % (53)	10.8 % (5)	13% (6)
SP	**Human dignity and inclusive society**: For an active and international solidarity asylum policy Less strict implementation of Dublin Regulation; higher resettlement quotas; more legal escape routes; active involvement in sea rescue	2	21.5 % (43)	19.5 % (39)	26% (12)	19.5 % (9)
FDP	**Restrictive asylum policy**: Protect refugees – repatriate economic migrants No blocking of asylum procedures due to excessive legal remedies; right of residence only for refugees fulfilling the GC refugee notion; more readmission agreements and development aid as leverage; no higher resettlement quotas; no involvement in sea rescue	2	15% (30)	14.5 % (29)	28.2 % (13)	26% (12)

[55] Source : own compilation based on numbers provided by the Federal Office of Statistics, n.d., Nationalratswahlen: Mandatsverteilung nach Parteien, accessible at https://www.bfs.admin.ch/bfs/de/home/statistiken/politik/wahlen.assetdetail.28765020.html (accessed: 26.10.2024) and Federal Office of Statistics, n.d., Ständeratswahlen: Mandatsverteilung nach Parteien, accessible at https://www.bfs.admin.ch/bfs/de/home/statistiken/politik/wahlen.assetdetail.28765043.html (accessed: 26.10.2024)

[56] This overview of the positions of the major political parties in Switzerland is based on the respective party programmes effective in 2015 and 2019 (see references). The general positions that are reflected here have not changed fundamentally between both of the years.

[57] As the cantonal representatives are elected through a majority vote, the indicated percentages do not correspond to the electoral strength but to the relative presence in the Council of States. For example, in 2015, the five seats the SVP occupies in the Council of States correspond to 10.8 % of all seats.

CVP	**Control; ambivalent position**: For a controlled asylum policy Reduce Switzerland's attractivity for asylum seekers; fair distribution of asylum seekers in Europe; more joint return with Frontex; development aid with focus on migration political goals	1	13.5 % (27)	12.5 % (25)	28.2 % (13)	28.2 % (13)
GPS	**Human rights and fundamental rights conformity**: For a humane migration and asylum policy Stronger consideration of sexual orientation, gender identity and women's discrimination as reasons for asylum; more legal escape routes; involvement in sea rescue; higher resettlement quotas; orient Dublin practice towards protection idea; distribution of refugees based on needs of refugees and reception countries	-	5.5% (11)	14,0 % (28)	2,1% (1)	18,8 % (5)
GLP	**Not a focus issue**: International solidarity and cooperation on asylum policy Rapid asylum procedure; combat abuse	-	3,5% (7)	8% (16)	-	-
Others		-	8,5% (17)	5% (10)	4,7% (1)	2% (1)
Total		7	100% (200)	100% (200)	100% (46)	100% (46)

While the SVP's electoral gains have increased, Liberal (FDP) and Christian Democratic (CVP) parties, historically dominant, have seen their electorate diminish, reflecting a weakening of the political middle in government and parliament while the left-wing and right-wing poles are strengthened. "Two electorally strong and clearly polarized left and far-right blocs have emerged over time, after an initial, transitory phase of party system fragmentation in Switzerland" (Zollinger/Traber, 2024: 128). The numbers in the table above reflect the tripolarity constituted by the left, the centre right and the radical right that characterises Switzerland's party system today. In relation with the positions that the SVP holds regarding migration and asylum policy, it becomes clear that the party has a pronounced opposition role in these domains. With regard to the polarisation of political parties and their electorates around issues like migration policy, Zollinger and Traber (ibid.: 117) point out, that "[t]he electorates of the parties situated at the left and right poles of the Swiss political system have consistently been more divided over such issues for the last three decades than over issues associated with the traditional "first" state-market dimension (classic conflicts over redistribution and state intervention in the economy)".

Concretely, the polarisation of the political party system in Switzerland also becomes visible when the SP or the SVP opposes a position of the Federal Council. All parties have the right to launch a referendum or a popular initiative defending a position contrary to that of the government and to mobilise their electorate. Overall, as Sciarini (2024: 464) observes, the number of popular votes in

which either the SP or the SVP opposed the position of the Federal Council has increased since the 1970s. In the period between 2011 and 2019, "the Federal Council can hardly go to a popular vote without facing opposition from at least one governmental party" (ibid.). In this sense, direct democracy has a polarising effect on Switzerland's party system (Ladner/Schwarz/Fivaz, 2024) supporting thus the perception of direct democracy as standing in opposition to consociationalism.

In light of the above, Zollinger and Traber conclude that "[t]he Swiss case stands out, due to the highly distinctive positions of parties at the opposing left versus far-right poles" (Zollinger/Traber, 2024: 127). Vatter (2008: 31) further concludes from these developments that "[i]t is apparent that at the beginning of the 21st century Switzerland is on the way to becoming an average consensus democracy, which, while it is increasingly subject to competitive democratic framework conditions, such as growing political polarisation and a more confrontational style of conflict, resolution in government and parliament, in essence still displays the central defining features of a consociational democracy, such as a multi-party government, developed regional autonomy, the crucial importance of the proportional division of power and a strong minority veto in the form of the Council of States and the double majority". Furthermore, direct democracy instruments continue to play an important role in Switzerland. As mentioned above, while some authors (see e.g. Papadopoulos, 1997; Ossipow, 1994) see direct democracy in opposition to a political system characterised by mechanisms that favour the search of consensus especially because of its unpredictability (Papadopoulos, 1997), others (see e.g. Neidhart, 1970; Kriesi, 1998) understand direct democracy as part of consensus democracy respectively as favouring consociational practices and the search of consensus to avoid the success of a referendum. To limit the unpredictability of direct democracy, the political elites are obliged to form large coalitions which include all political parties and interest groups who are capable to launch a referendum against a law project or to gain a referendum (Kriesi, 1998: 356). From this perspective, direct democracy has contributed to consensual mechanisms in Swiss politics. In this context, the question of the relationship between direct democracy and social movements is interesting to investigate. The following sub-chapter addresses this relationship with regard to right-wing as well as left-wing movements and here more specifically solidarity movements as a type of new social movements (Giugni, 2024) of which I consider the refugee support movement.

4.5.2 Direct democracy, social movements and the politicisation of migration and asylum

In the words of Mach and Eichenberger, "The use of direct democracy allows a political issue to be put on the agenda, either to challenge a parliamentary decision (optional referendum) or to promote a cause without going through the administrative or parliamentary arena (popular initiative)" (Mach/Eichenberger, 2024: 344). The optional referendum especially presents a possibility to "block government decisions and public policies" (Giugni, 2024: 356). As Kriesi and Wisler (1996) remark, in

German speaking Switzerland where less signatures are required to launch an optional referendum or a popular initiative than in the French speaking part, actors challenging public policies use instruments of direct democracy more frequently while in French speaking regions the actors use other more radical forms of action to protest against policies. More generally and from a Switzerland-wide perspective, Kriesi (1998) finds that direct democracy does not only present a supplementary channel for extra-parliamentarian actors like social movements to put forward the interests and positions they defend, but that the mobilisation of direct democracy moderates consequently their repertoire of action. Compared to other countries, for example like France, Kriesi et al. (1992, 1995) observe in Switzerland a high degree of mobilisation which is however characterised by moderate modes of action. Here, it is interesting to see how right-wing movements on the one hand and left-wing movements on the other are affected by this process of moderation in terms of their modes of action, a process which is not only but importantly linked to direct democracy.

Regarding radical right-wing movements, in Switzerland like in other European countries, one can observe an important presence of their positions in the public sphere. However, corresponding to Kriesi et al.'s (1992, 1995) observations mentioned above, while there are sometimes violent acts like attacks on places of asylum accommodation – mobilisation around the issue of asylum was especially high in the early 1990s (see Altermatt/Kriesi, 1995; Skenderovic/D'Amato, 2008) - "radical right-wing movements are not very mobilizing in the protest arena" (Giugni, 2024: 362). With the SVP becoming "the institutional populist right" (ibid.: 361) due to important gains of electoral votes, today one of the central issues of the radical right-wing movement, which is immigration, is politicised mainly by the SVP through institutional channels, in the parliamentary arena as well as through popular initiatives and optional referendums launched or widely supported by the SVP. Thus, according to Giugni, "the mere presence of an electorally strong far-right party tends to demobilise the extra-parliamentary radical rights, since these two strategic alternatives neutralize each other" (ibid.: 357, referring to Giugni et al., 2005). Finally, in Giugni's words, this means that "the mobilization of the radical right is mainly the preserve of parties rather than social movements" (ibid.: 365). As mentioned, the issue of immigration has become increasingly politicised since the 1970s leading to the first of many xenophobic popular initiatives launched by the political party "National Action" (NA) and further to a mixing of immigration and asylum issues and policy. Even though this initiative and the following ones are refused by the population, the NA and its demands to restrict immigration and the number of asylum seekers, are considered by policy-makers because the NA seems to destabilise the system (D'Amato, 2008: 212). What is different today, is the fact that the SVP has indeed a strong electorate behind it which allows the party to politicise immigration and asylum through other institutional channels beyond those of direct democracy. At the same time, the SVP is the most important far-right

populist actor using the direct democracy instruments of the optional referendum and the popular initiative and has thus become an “actual voting party” (Skenderovic, 2008: 129).

Similar to the demobilising effect of a strong far-right party on radical right-movements, Giugni (2024: 357) observes a demobilising effect of socialists’ presence in government for the mobilisation of solidarity movements. On the one hand, this is the case because they aim at forming alliances with parties on the political left to make their causes both heard and taken seriously by policymakers (Giugni, 2024: 357). On the other hand, strongly organised movement actors are especially privileged counterparts of the administration allowing them to participate in the formulation and implementation of policies (Giugni/Passy, 1998). As a consequence, following Giugni (2024: 359), solidarity movements “have undergone a strong process of institutionalisation” in Switzerland which can be understood in the context of the authorities’ general “inclusive strategy of negotiation, and the political system lean[ing] towards the consensual integration of conflicts” (ibid.: 356). Thus, similar to Mach’s and Eichengerger’s (2024) observations regarding interest groups (see above), Giugni (2024) also finds a certain institutional openness regarding social movements, here they are understood as less formalised forms and actors representing specific (political) interests. While Giugni (2024) as well as Mach and Eichenberger (2024) draw a clear line between interest groups on the one and social movements on the other hand, their observations regarding both types of actors are interesting in the context of the present study because the SRC as well as AICH have characteristics of both respectively engaging in practices that are typically attributed either to interest groups (f. ex. lobbying) or to social movements (f. ex. public campaigns and demonstrations). As explained in the theoretical part of this thesis, the social movement perspective is of interest to my study of professionalised NGO refugee advocacy because I do indeed understand the NGOs, in a wider sense, as social movement organisations. However, it is especially the social movement perspective’s focus on the interaction between context and advocacy that makes it a theoretical approach that is helpful for this research. Returning to the general question of the relationship between social movements and politics in Switzerland, Giugni concludes that “the structure of political opportunities in Switzerland favours the institutionalization of social movements” (Giugni, 2024: 366). As explained above, direct democracy as an important element of the political opportunity structure seems to contribute rather to the moderation of social movements’ repertoire of action than to its radicalisation (Kriesi, 1998). This is the case for right-wing as well as left-wing movements. Today, the politicisation of migration and asylum significantly takes place through institutional channels used by political parties with important electoral support. Direct democracy instruments like the popular initiative and the (optional) referendum present important types of these channels.

4.5.3 Political decision-making process and state-actors in the domain of asylum

The last chapters mentioned some phases that are generally part of the political decision-making process in Switzerland. As an important portion of the advocacy activities of the SRC and AICH aim at influencing legislation and policy processes, I propose to present briefly the different phases of those decision-making processes, and the main actors involved in these in the specific domain of asylum. This may aide in understanding the engagement of the NGOs with these actors in different phases of political decision-making processes. Regarding the state-actors involved in these processes, it may already be noted that next to the above-presented important roles of the Federal Council and the two chambers of the Parliament, a third crucial state-actor is the Federal Administration, responsible for the preparation of law proposals as well as for the implementation of adopted laws and policies. Thus, the Federal Administration plays an important "role in policy agenda-setting, decision-making and implementation and fulfils its purpose as an interface between politicians, interest groups, and citizens" (Varone/Giauque, 2024: 299). Each of the seven members of the Federal Council is the head of one federal department of the Federal Administration[58]. Migration and asylum policy falls under the responsibility of the Federal Department of Justice and Police (FDJP). In the period between 2015 and 2019, which the present research focusses on, two Federal Councillors have overseen the FDJP: Simonetta Sommaruga (SP) between 2010 and 2018 and Karin Keller-Sutter (FDP) between 2019 and 2022. Three federal offices are attached to the FDJP which are the Federal Office of Justice (FOJ), the Federal Office of Police (hearby called fedpol) and the State Secretariat for Migration (SEM). The latter has existed since 2015, the result of the transformation of the Federal Office of Migration into a State Secretariat in order to "take account of the growing importance of the SEM's work and its expanding range of tasks"[59] and further, in order to place the Office's director on the same level with representatives from other states in international negotiations[60].

In the following, I will explain the roles of the Federal Administration and other state-actors in the three general phases of the political decision-making process which are first, the initiation phase, second, the pre-parliamentary phase and third, *de* parliamentary decision phase. A fourth phase may

[58] The seven Federal Departments, which can be understood as ministries are: The Federal Department of Foreign Affairs (FDFA), the Federal Department of Home Affairs (FDHA), the Federal Department of Justice and Police (FDJP), the Federal Department of Defence, Civil Protection and Sport (DDPS), the Federal Department of Finance (FDF), the Federal Department of Economic Affairs, Education and Research (EAER) and the Federal Department of the Environment, Transport, Energy and Communications (DETEC). These seven Federal Departments are complemented by the Federal Chancellery (FCh), responsible for the coordination between the departments, the preparation of Federal Council meetings, and communications of the government and the organisation of public votes and elections.

[59] Staatssekretariat für Migration, Über uns, accessible at https://www.sem.admin.ch/sem/en/home/ueberuns/sem.html (last accessed: 3.11.2024).

[60] Das Portal der Schweizer Regierung, Bundesamt für Migration wird Staatssekretariat, accessible at https://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2014/2014-09-191.html (last accessed: 3.11.2024).

be added if a referendum is obligatory (in the case of a constitutional amendment) or if a facultative referendum is taken by one of the political parties or any other interest group.

A change of policy or the law can be initiated by different political actors. These can be federal state actors like the parliament (motion or a parliamentarian initiative), the government of the administration but also the cantons (cantonal initiative) or Swiss citizens (constitutional popular initiative). Finally, also international developments can define the Swiss agenda, when these are binding for Switzerland, or the Swiss government is involved in international negotiations. In the domain of asylum, because of its Dublin association, Switzerland is expected to take over changes of the Dublin acquis. This takeover needs the approval of the parliament. Generally, once an issue is set on the political agenda, the federal administration is in charge of the pre-parliamentary phase which consists importantly in the drafting of a preliminary legislative of policy proposal. Thus, according to Varone and Giauque, "[t]he public administration has a powerful role in policy-making. It contributes to framing collective problems and designing policy solutions in the drafting of legal and regulatory documents" (Varone/Giauque, 2024: 299). In this first step of the pre-parliamentary phase, the state officials generally rely on the support of external experts and collaborate with non-state actors. Permanent extra-parliamentary commissions, like the Federal Commission of Migration, constituted by representatives of the cantons, state agencies, interest groups and party representatives support the federal administration in further developing the proposal (Sciarini, 2024: 452). Next to these permanent commissions, the administration can also set up ad hoc expert commissions to closely support the development of a proposal. The second important stage of the pre-parliamentary phase consists then in a consultation procedure. As mentioned above, here, a diversity of actors is invited to express their opinions on the proposal in written form. Sciarini (ibid.: 457) remarks that "[i]nterest groups represent almost two-thirds of the actors who participate in consultation procedures". In Neidhart's (1970) sense, Kriesi (1998: 357) notes that, overall, the pre-parliamentarian procedures allow to form majorities without an explicit coalition agreement. Further, following Kriesi (ibid.), these procedures do not lead to consensual solutions but to compromises that are sufficiently supported so that that the system can function despite the great heterogeneity of interests and the risks of direct democracy. From this perspective, it might not surprise that several studies (e.g. Kriesi, 1980; Sciarini 2014) find that the pre-parliamentary phase – and here especially the preparatory phase where the administration drafts a first proposal in close collaboration with non-state actors – is seen as the most important phase of the political decision-making process.

Based on the outcomes of the expert commission and the consultation procedure, the administration – in the domain of asylum, this is the FDJP – finalises its draft proposal and submits it, together with a "message" explaining the aim, main content and financial aspects of the proposal, to the Federal Council. Once the Federal Council has adopted the proposal, message and proposal are submitted to

the parliament. The parliamentarian phase starts with the examination of the proposal by the commission of the first chamber that is specialised on certain political domains. In the case of proposals in the asylum domain, it is the Political Institutions Committee (PIC) that analyses the proposal and makes recommendations before it is discussed in the plenary session. Afterwards, the same procedure – first PIC, then plenary discussion – is repeated in the second chamber (Sciarini, 2024: 452). As mentioned above, if both chambers do not agree, a "shuttle" procedure takes place to resolve disagreements.

The referendum phase follows the adoption of a proposal by the parliament in cases where a law proposal consists in a change of the Constitution, in Switzerland's participation in an international organisation or in the case of urgent declared laws without constitutional basis and with a period of validity longer than one year[61]. In these cases, a referendum is obligatory. A facultative referendum can be requested in any other case of federal legislation (laws, as in urgent declared laws with constitutional basis, federal decrees, international treaties)[62]. The period before the public vote on a referendum, as well as in the case of a public vote on popular initiatives, is obviously shaped by campaigns of state and non-state actors supporting or rejecting the referendum respectively the popular initiative.

Finally, there are also decision-making processes regarding the implementation of the law and policies. Here, the administration "enjoys a certain degree of autonomy, enabling its political role while transgressing the classical dichotomy between political responsibility and the technical execution of policies" (Varone/Giauque, 2024: 299). As mentioned, in the domain of migration, the SEM is responsible for implementation and conducts, among other things, individual asylum procedures. In this context, the SEM, in consultation with the head of the FDJP, decides also about general practice changes, for example regarding certain groups of asylum seekers (like recently the granting of asylum to Afghan women or in 2017, the review of the provisional admission of Eritreans). Further, in the asylum domain, the SEM organises the accommodation of asylum seekers in collaboration with the cantons and organises also return of rejected asylum seekers.

A last type of state-actors who has not been mentioned yet but who are of course crucial in a democratic state is the judicial body. In Switzerland, the highest judicial institution is the Federal Court (FC). However, compared to other European states, there is no independent constitutional court in

[61] The Federal Assembly – the Swiss Parliament, accessible at https://www.parlament.ch/de/%C3%BCber-das-parlament/parlamentsw%C3%B6rterbuch/parlamentsw%C3%B6rterbuch-detail?WordId=270 (last accessed: 3.11.2024).

[62] The Federal Assembly – the Swiss Parliament, accessible at https://www.parlament.ch/en/%C3%BCber-das-parlament/parlamentsw%C3%B6rterbuch/parlamentsw%C3%B6rterbuch-detail?WordId=78 (last accessed: 3.11.2024).

Switzerland. The Federal Court cannot cancel laws that the parliament passed, but the court is rather asked to apply the laws (art. 191 Cst.). As Rothmayr (2001) notes, since 1991, the Federal Court has been reviewing the compatibility of federal laws with the ECHR. "This means that in the area of basic rights, a considerable degree of constitutional judicial review in fact exists with respect to federal laws, because the guarantees set forth in the ECHR overlap extensively with the basic rights anchored in the constitution (Vatter, 2008: 23). In the asylum domain, however, the Federal Administrative Court (FAC) "is the first, and simultaneously the last, appeal board in Switzerland" (Affolter, 2021: 60) since its creation in 2007, due to the asylum procedure's character as an administrative procedure. Asylum seekers can use "extraordinary legal remedies" which consist of an appeal to the FAC against a negative asylum decision of the SEM, based on art. 66 of the Federal Act on Administration Procedure (APA). If the appeal is refused, as a last resort, an appeal can be made to the European Court of Human Rights (ECtHR) (ibid.).

4.5.4 2015 – 2019: the restructuring of the asylum sector, asylum practice, Dublin transfers and reception crisis

The present study lays a special focus on the period between 2015 and 2019. Three main issues are characterized by this time period. First, in 2015, the Swiss parliament adopts a modification of the AsylA which implies the restructuring of the asylum sector with an accelerated asylum procedure in federal asylum centres and legal protection for asylum seekers. In 2016, the Swiss population accepts the modification of the AsylA in a public vote. Second, regarding Swiss asylum practice, in the period between 2015 and 2019 the SEM decides on some changes in its practice regarding Eritrean asylum seekers, changes on which the FAC also implements. Third, Swiss asylum practice is characterised by an important number of transfers of asylum seekers to other European countries based on the Dublin III Regulation. Also Dublin transfers are object to court rulings with consequences for Switzerland's practice in terms of Dublin transfers to certain countries like, for example, Italy. Fourth, in 2015/2016, a high number of persons arrive at Europe's borders, especially by travelling over the Mediterranean. This leads to intense discussion among European countries about the distribution of asylum seekers among European states and a politicisation of the question of access to the asylum procedure. The Swiss government participates in these discussions. Further, on the Swiss level, resettlement programmes are discussed and decided on between 2016 and 2018.

The table below gives an overview of the important events, the changes in legislation and the authorities' asylum practice in Switzerland as well as mentions major (re)actions and positions of the

SRC and AICH[63] in theses contexts which I will analyse in more detail as part of their advocacy strategies in PART IV, V and VI of this thesis.

[63] The links to the organisations' press releases, consultation responses, position statements and reports can be found in the references. In most cases of the public (re)actions of the SRC and AICH, noted in table 4, have been identified in press releases. Otherwise, the type of source containing a (re)action is specified (i.e. consultation response, position paper, monitoring report, petition, campaign).

Table 4 - Overview of important events and (re)actions of the SRC and AICH 2013-2019 (source: own compilation. The table does not provide a complete list of the developments in terms of legislation and policy nor regarding the published documents and positions by the SRC and AICH. For the number of consultation responses and position statements of the NGOs included in the analysis of their activities, see table 1 in the methodological part of this thesis. The consultation responses are generally prepared under the lead of the SRC with the consultation of its member organisations among which AICH.)

Year	Context	Public (re)actions of the SRC	Public (re)actions of AICH
2013	Facultative referendum against **urgent amendments of the AsylA**[64]: abolition of asylum claims in Swiss embassies, removal of desertion as reason for refugee quality (art. 3), centres for "recalcitrant" asylum seekers, test phases (referendum rejected by 78.4%)	Rejection of referendum	Support of referendum
2013-15	AsylumA: **restructuring of the asylum sector** (test phases, preparatory phase, legal protection for asylum seekers)	2 Consultation responses 1 Position paper	
2014	Problematic **reception conditions in IT**: ECtHR judgement[65]: guarantees for Dublin transfers of families to IT	Italy monitoring (1st monitoring report in 2017)	
2015/16	Rising deaths in the Mediterranean: **reception crisis** (Failing) EU relocation procedure (distribution key) HUMAK (resettlement of 2'000 Syrians)	"Stop transfers to Hungary!" Welcome of HUMAK	"SOS Europe" campaign #OpentoSyria campaign "I Welcome" campaign (2016-19)
2016	Facultative referendum against the **restructuring of the asylum sector** (AsylumA): Federal Asylum Centres, legal protection for asylum seekers (referendum rejected by 66.8%)	Rejection of referendum	
2016	EU-Turkey agreement	Criticism of EU-Turkey agreement	
2016	Tightened asylum practice for **Eritreans** (desertation =/ asylum reason)	Criticism of practice change	
2016	Border controls and blocking of asylum seekers in **Como/Chiasso**	"For clarity in Como/Chiasso!"; director, legal expert on site	
2016	Tightened expulsion practice to Sri Lanka	Criticism of practice change	
2016	Resettlement programme: 2'000 refugees Relocation: <350 persons arrived in CH	Claiming higher numbers	"Refugees – Switzerland can do more" petition
2017	FAC confirms the SEM's practice regarding **Eritreans**	Criticism of FAC/judgement	

[64] The referendum was launched by coalition of left parties and organisations.

[65] ECtHR judgement Affaire Tarakhel c. Suissse of 4th November 2014.

2017	Regulation adjustments[66]: implementation of restructuring, evaluation of transportability of persons to be expelled, accommodation, legal protection, return counselling, detention and monitoring, vulnerable persons	5 consultation responses	
2017	Insufficient **reception conditions in HU**	"Stop transfers to Hungary!"	
2017		Dublin Call	
2017/ 18	Modification of the status "Provisional Admission" (FC report, motion SPK-N[67]; motion SPK-S[68])	Consultation response Criticism of "mini reform"	
2018	Review of provisional admissions of **Eritreans**	Open letter against the annulation of provisional admission of Eritreans	
2018	Court rulings against Dublin transfers to IT; CAT decision that CH violates non-refoulement	2nd Italy monitoring report	
2018		Petition "Safe and legal escape routes to Switzerland"	
2018	Long-term **resettlement programme** (1'000 places per year)	More resettlement places needed A step in the right direction	
		participation in advisory group on resettlement	
2018	Attribution of legal protection mandates	Sub-contractor in 4 asylum regions: coordination, quality assurance	
2019	AliensA revision: travelling restrictions for asylum seekers and provisional admitted persons, modification of **status of provisional admission**	Consultation response (refusal of travelling restrictions, welcome of facilitated change of canton for PA)	
2019		Petition "Sea rescue in the Mediterranean"	
2019	Implementation of the **new asylum procedure** in Federal Asylum Centres	Minimum standards for the accommodation of asylum seekers Guidelines for LGBTQI asylum seekers	

[66] Regulation regarding the planning authorisation procedure in the area of asylum; in German: Verordnung über das Plangenehmigungsverfahren im Asylbereich (VPGA). Regulation regarding the enforcement of the expulsion and removal of foreign nationals; in German: Verordnung über den Vollzug der Aus- und Wegweisung von ausländischen Personen (VVWA). Regulation regarding the integration of foreigners; in German: Verordnung über die Integration von Ausländerinnen und Ausländern (VIAA). Regulation regarding the enforcement of the expulsion, removal and expatriation of foreign nationals (VVWAL); in German: Verordnung über den Vollzug der Weg- und Ausweisung sowie der Landesverweisung von ausländischen Personen (VVWAL).

[67] Motion 17.3270. Ersatz des Status der vorläufigen Aufnahme.

[68] Motion 18.3002. Punktuelle Anpassungen des Status der vorläufigen Aufnahme.

The restructuring of the asylum sector

The numerous revisions of the Swiss Asylum Act since its introduction in 1981 have been guided largely by two principal goals which guide also the political discussions leading to the restructuring of the asylum sector: reduce the attractivity of Switzerland as a destination country for asylum seekers and accelerate the asylum procedure. Since the introduction of Switzerland's first Asylum Act in 1981, these goals have been pursued with vigour by the political centre right, at the head of the FJPD, in several amendments of the law which were supported by a small majority of the population in the public votes on these amendments. The centre right had this important role for the elaboration of asylum policy and legislation because the Federal Counsellor at the head of the FJPD was from the centre right over the span of several decades. This changed, however, in 2010 when a socialist Federal Counsellor, Simonetta Sommaruga, became head of the FJPD. She occupied this position until 2019 when a liberal politician took over her seat. Thus, the period between 2015 and 2019, on which the present research focusses, represents an exceptional situation in Swiss politics. This is particularly important due to the strong influence of the FJPD's leadership on legislative revisions. Confronted with her centre right and liberal colleagues in the Federal Council as well as the power balance in parliament, one can observe the executive's tendency, here under Sommaruga's lead, to "securitise" or "desecuritise" asylum policy to form majority coalitions (Stünzi, 2018: 263). It might further be mentioned that Sommaruga presented the faction of the Socialist party that is strongly hesitant towards liberal migration policies (D'Amato, 2018). When taking over the head of the FJPD from her predecessor, Sommaruga decides to pursue the revision project of the Asylum Act (10.052) which was initiated in 2010. As Stünzi (2018: 268f.) describes in his detailed account of legislative changes of the relevant period, this revision intends to replace the non-entry into substance (NES) procedure by an accelerated material procedure, to eliminate the possibility to make a request for asylum in a Swiss embassy, to introduce criminal penalties for the encouragement and exercise of political activities in Switzerland to obtain refugee status after having left the country of origin and to deny refugee status to deserters and conscientious objectors. With the abolition of the possibility to make an asylum claim in a Swiss embassy, Switzerland follows a European trend. Pursuing the revision, Sommaruga adds an even more extensive project with the aim to restructure the whole asylum sector. The asylum procedure in other countries like Denmark and the Netherlands serve as model for the project of the restructuring of the asylum sector with an accelerated asylum procedure.

The overall goal is to accelerate the asylum procedure allowing persons who need protection to be rapidly integrated and removal orders to be consequently enforced. Further, incentives for unfounded asylum applications shall be decreased, the credibility of the asylum domain strengthened, and the reception structures shall be organised in an efficient manner (Arbeitsgruppe Neustrukturierung, 2014: 19).

Concretely, the project proposes, in addition to the changes enumerated before, to introduce a preparatory phase to the asylum procedure, independent legal advice and the possibility to conduct test phases before the definitive implementation of the new system. When the project is discussed in Parliament in 2012, certain of the proposed measures are extracted as “urgent measures” and come into force directly after having been accepted in Parliament on 28 September 2012. Part of these “urgent measures” include the abolition of the so-called embassy asylum, the refusal of refugee status to deserters, the test phases for a new asylum procedure with extensive free legal support for asylum seekers (art. 23 test phase regulation) and on the proposition of a member of the National Council, the introduction of special centres for “recalcitrant” asylum seekers. The referendum against the “urgent measures” is taken by a coalition of leftist associations which is rejected by the Swiss population in 2013 (78.4 % are in favour of the changes).

About a week after the approval of the “urgent measures” by the Swiss population, the Federal Council with Sommaruga in lead of the subject publishes a message regarding the restructuring of the asylum sector. The project is extensively discussed by an advisory group and between the Confederation and the cantons. Two national asylum conferences take place in 2013 respectively 2014 with the participation of cantons, cities and agglomerations as well as the FAC. Furthermore, civil society actors are consulted. Following these discussions and an evaluation of the test phase, which is taking place in Zürich, on 3 September 2014, the Federal Council publishes a new message regarding the restructuring of the asylum sector (14.063)[69]. In the modified law project, the procedural and opportunities consulting initially proposed in 2010 is substituted by more extensive legal protection. Finally, the project is accepted by the Parliament in September 2015 and confirmed by the Swiss population in June 2016 who rejects the referendum against the amendment of the Asylum Act (66.8% are in favour of the changes). After three years of preparation, the restructuring and with it the new asylum procedure come into force in March 2019. A major change consists in the centralisation of the asylum procedure and thus the assembly of all involved actors in federal asylum centres in six asylum regions. There are four types of Federal Asylum Centres. Next to the centres for “recalcitrant” asylum seekers and temporary centres, the two main types of centres are those with and those without procedural function, the latter aimed at hosting rejected asylum seekers until they leave Switzerland. Table 5 below gives an overview of the legal projects linked to the restructuring of the asylum sector.

[69] Botschaft zur Änderung des Asylgesetzes (Neustrukturierung des Asylbereichs) vom 3. September 2014 (BBl 2014 7991).

Table 5 – Overview of the legal projects linked to the restructuring of the asylum sector (source: own presentation, based on Stünzi, 2018)

Legislative project	**Main changes**	**Public vote/enforcement**
10.052 AsylumA 2010-2015	Project 1 - Substitution of the non-entry procedure by an accelerated material procedure - Abolition of asylum claims in Swiss embassies - criminal sanctions against the promotion and pursuit of political activities in Switzerland for the purpose of claiming refugee status after flight - Refusal to recognize deserters as refugees (art. 3 Asylum Act)	-
AsylumA 2012	Urgent measures - Abolition of asylum claims in Swiss embassies - Removal of desertion as reason for refugee quality (art. 3) - Centres for "recalcitrant" asylum seekers - Test phases	78.4% yes 09.06.2013
14.063 AsylumA 2014-2015	Project 2 (restructuring incl. project 1, without urgent measures already into force) - Test phases - Preparatory phase - Legal assistance	66.8% yes 05.06.2016 Enforced: 01.03.2019

In the old asylum procedure, after (ideally) a short stay in a reception centre, asylum seekers are transferred to the cantons where they are hosted during the remainder of the procedure. The asylum procedure consists of two hearings, a first to identify the asylum seeker's identity, travel route and reasons for the asylum request. If the SEM, based on the obtained information, decides that Switzerland is responsible for treating the application, a material examination of the asylum application takes place. Otherwise, the transferral of the asylum seeker to the European state through which s/he had travelled to come to Switzerland is requested. In this case, a NES decision is issued without a material examination of the reasons for the asylum application. If, on the contrary, Switzerland is responsible for treating the application, a second audition serves to obtain more detailed information about the reasons that motivate the asylum claim and especially to verify the credibility of these reasons. Only if they seem credible, the SEM examines if the stated reasons for flight correspond to the criteria of the refugee quality. During the hearings, a representative of an aid organisation is present as "neutral observer".

In the new asylum procedure, operative since March 2019, the asylum seeker submits his/her asylum claim directly in one of the six federal asylum centres where he/she will stay and where access to legal advice for the procedure is provided, first, during the preparation phase (10 to 21 days). Second, the

asylum seeker will also stay in the federal centre either during a Dublin procedure (max. 140 days) or an accelerated procedure (max. 100 days). During the asylum hearing in the accelerated procedure there is now a legal representative present and no longer a “neutral observer” like in the old procedure. This legal representative has the possibility to comment on a draft of the decision on the asylum claim before the final decision is issued. If the information obtained by the SEM in the accelerated procedure is, however, not sufficient to make a decision about the asylum claim, the asylum seeker is transferred to a canton where an extended procedure (max. 1 year) takes place. In the extended procedure, the asylum seeker has access to free legal advice for decisive steps. However, s/he has not an assigned legal representative during the whole procedure. Figure 1 shows the different steps of the asylum procedure implemented since 1st March 2019.

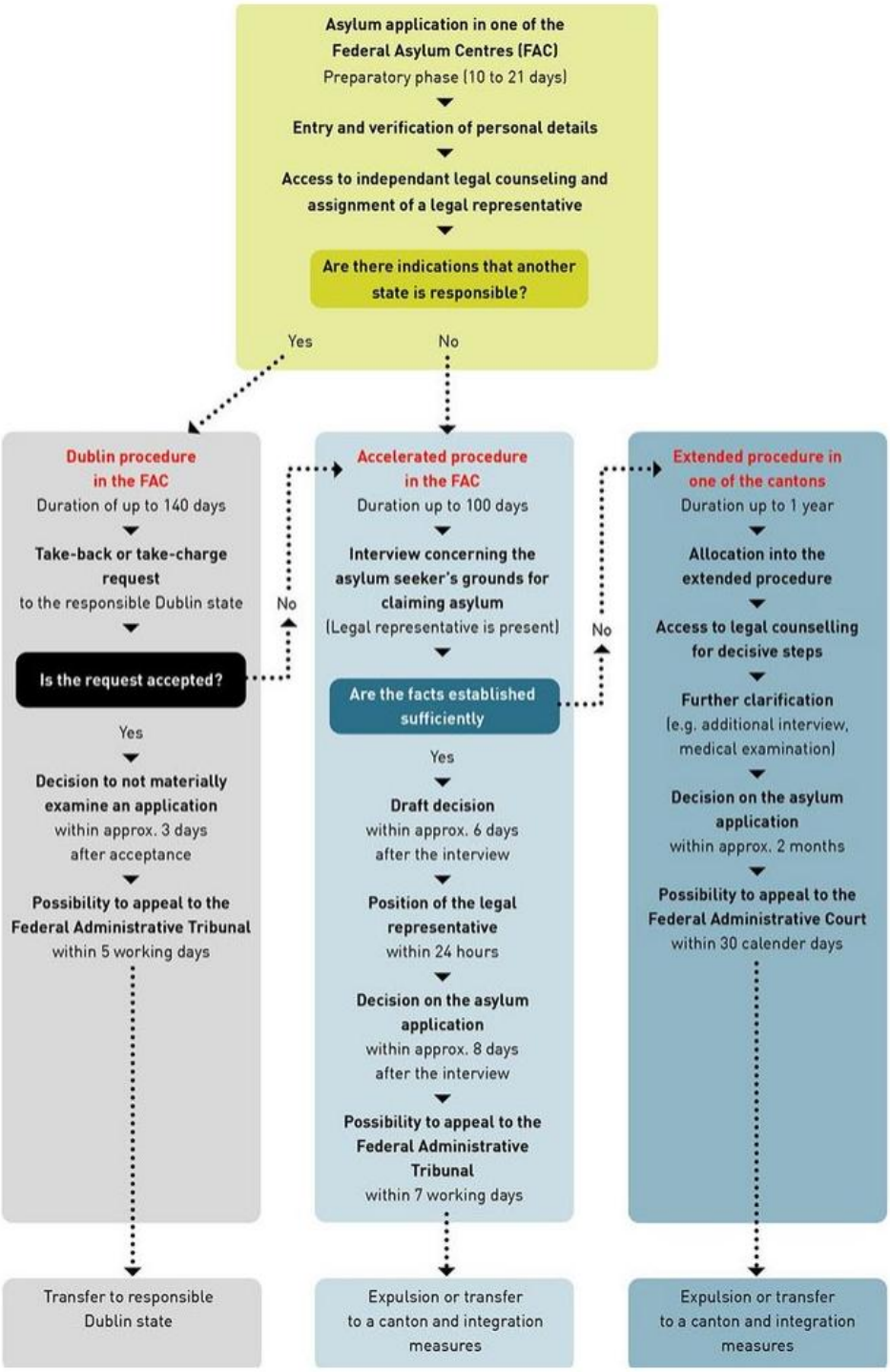

Figure 1 – The asylum procedure in Switzerland since 1st March 2019 (source: SRC[70]).

[70] Swiss Refugee Council, The asylum procedure, https://www.refugeecouncil.ch/topics/asylum-in-switzerland/the-asylum-procedure?_gl=1*1u040le*_gcl_aw*R0NMLjE3MjkwMDE2NTAuRUFJYUlRb2JDaE1JcXNxTmc4bVFpUU1WUW81b0NSM2t6Z0Q1RUFBWUFTQUFFZ0tVdl9EX0J3RQ..*_gcl_au*MTAyMDMyNTcxMC4xNzMxMzI0OTgy (last accessed: 29.11.2024).

What has not changed with the new asylum procedure compared to the procedure in place until March 2019, is the possibility to appeal to the Federal Administrative Court (FAC). This is the case for Dublin NES decisions as well as decisions made in the accelerated and the extended procedure. An appeal against a negative decision has to be filed to the FAC within 7 days in the case of the accelerated procedure and within 5 days in the Dublin procedure. Compared to the old procedure (of 30 days to make an appeal), deadlines are considerately reduced following the political aim of accelerating the procedure. It should further be noted that a legal representative must resign from a mandate to make an appeal if s/he estimates the chances of success for the appeal as low. Legal advice actors operate within the asylum centres. They are paid by the state so that asylum seekers have free access to these actors. The state mandate signifies for the legal protection actors that their legal advice has to be efficient, effective in terms of costs and has to be provided in a short period of time (Eule, 2020: 9).

NES decisions based on other reasons than having travelled through another European country do not exist anymore in the new asylum procedure because each asylum claim is processed in the accelerated procedure. The new asylum procedure becomes operational in the first quarter of 2019 and falls thus at the very end of the period that I analyse in the present study. The legislative process which leads to the restructuring of the asylum sector still strongly characterizes the period between 2015 and 2019. On the one hand, it is in 2015 that the parliament decides to adopt the proposed modification of the AsylA and in 2016, the Swiss population votes on this proposal. On the other hand, regulations specifying the different aspects of the new asylum procedure are discussed and adopted following the adoption of the revised AsylA in 2016. Here, important issues (among others) are the definition of deadlines in the asylum procedure and reception conditions.

As mentioned above, the organisation of the asylum procedure in other European countries like the Netherlands served importantly as model for the Swiss restructuring project. In this context, the initiation of the reform of the Swiss asylum system can also be seen in the European context and especially as response to the Qualification Directive 2011/95/EU requesting that asylum seekers have access to affordable legal advice (Eule, 2020: 6). As Switzerland is not a member of the European Union, the Qualification Directive is not directly applicable in Switzerland. However, Switzerland is part of the Schengen Area and the Dublin Regulation framework, which coordinates certain aspects of asylum procedures between the EU and associated countries. While Switzerland does not directly adopt EU asylum directives like the Qualification Directive or the Reception Conditions Directive, it often aligns its policies with EU standards for practical reasons, particularly in areas related to asylum and migration. In the context of alignment to European legal developments regarding the asylum procedure, a development regarding special procedural guarantees for specific groups of asylum seekers and their special needs in terms of reception conditions may also be mentioned. Following EU law, vulnerability needs to be considered by European states in their asylum procedures with regard

to procedural guarantees as well as regarding reception conditions. Thus, "[t]he EU asylum *acquis* requires Member States to assess within a reasonable period of time after an application is made whether the applicant is in need of special procedural guarantees" (AIDA, 2017: 21). For Switzerland as a participating member in the Dublin system, these rules are generally applicable. While the ECtHR in its case-law defends the view that asylum seekers are vulnerable *per se* this categorical view is not found in the EU asylum *acquis*. The recast Asylum Procedures Directive[71] acknowledges rather the vulnerability of particular applicants and defines, in art. 2(d), an "applicant in need of special procedural guarantees" in terms of his or her reduced ability to benefit from the rights and comply with the obligations under the Directive due to individual circumstances" (ibid.: 14). The Directive does not give an exhaustive list of persons being "in need of special procedural guarantees". However, in art. 24(3), the Directive mentions specifically "torture, rape or other serious forms of psychological, physical or sexual violence" as reasons the need of special procedural guarantees. Furthermore, it indirectly refers to age, gender, gender identity, sexual orientation, disability, illness or mental disorders. In art. 25, the Directive specifically names guarantees for unaccompanied minors and mentions the possibility to use medical examinations for age determination if the authorities "have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor" (art. 25 (5)). Age assessments shall be guided by the principle of the best interests of the child and the benefit of doubt. Switzerland is one of the countries that "continue to over-rely on medical methods for assessing the age of unaccompanied children, the reliability of which remains disputed" (AIDA, 2017: 35).

Regarding reception conditions of asylum seekers in European states, the recast Reception Conditions Directive[72] refers to "vulnerable persons" as "minors, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation" (art. 21)[73]. As the AIDA report on vulnerability points out, "European

[71] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (hereafter 'recast Asylum Procedures Directive').

[72] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (hereafter 'recast Reception Conditions Directive').

[73] It may be mentioned that in the 2020 amended Asylum Procedure Regulation as well as the proposed Reception Condition Directive which no longer include any references to "vulnerable persons". The newly proposed Screening Regulation, however, does mention vulnerability. In its art. 9.2, the Regulation asks member states "to check any "situations of vulnerability" of the migrant person, adding a reference to victims of torture, along with those who have special procedural or reception needs. The position of minors is also mentioned, and emphasis is placed on physical and mental health conditions" (De Stafani, 2022: 5). Both of the other two Regulations strengthen the focus on "special procedural needs" and "special reception needs".

countries do not seem to have taken a consistent approach to the procedural and reception guarantees required by vulnerable groups when transposing the Directives into national law" (ibid.: 16). As mentioned above, Switzerland is not bound to EU law and there is no definition in Swiss law of the term vulnerability[74] even if vulnerability of asylum seekers plays not only an increasingly important role in political discourse – and in civil society's discourse as we will see later in more detail - but needs to be considered in concrete terms in the asylum procedure. Next to the respect of international obligations, the AsylA and its regulations include certain procedural provisions, for example, for unaccompanied minor asylum seekers (art. 17 AsylA, art. 7 AsylR 1) like the prioritised treatment of their asylum claims and the assignment of a person of confidence in the procedure. Since 1998, the AsylA takes into account women-specific reasons for fleeing (art. 3 par. 2 AsylA). Further, the SEM's officials are asked to identify victims of trafficking in the asylum procedure (art. 26 AsylA).

In terms of special reception conditions, the postulate Feri[75] in 2016 led, for example, to changes in asylum centres to make them safer for women and girls. In asylum centres, unaccompanied minor asylum seekers are normally accommodated in rooms separated from adults. Families are accommodated in family rooms. For LGBTQI persons, on the other hand, special accommodation facilities are generally not provided. So, the Swiss asylum system provides some procedural provisions for and provisions regarding the accommodation of specific groups like unaccompanied minors, women and victims of trafficking. However, regarding other groups like LGBTQI persons, there are no such provisions. Those were however subject of discussions linked to the restructuring of the asylum procedure and are still part of ongoing discussions about procedural guarantees and special reception conditions for specific groups of persons who are summarised under the term "vulnerable" persons.

Developments of the SEM's asylum practice

The State Secretariat of Migration (SEM) states on individual asylum claims. Generally, the SEM defines its practice regarding specific countries in secondary implementation norms (Miaz, 2017). Country specific decisions for practice are taken based on information that the section "Analyses" of the SEM gathers then analyses. The section's employees are not involved in the assessment of asylum claims (Parak, 2020; Rosset, 2019). The period between 2015 and 2019 is characterised, for the SEM, by practice changes regarding Eritrean asylum seekers. Eritrea is the most important country in terms of asylum applications in Switzerland, followed by Syria and Afghanistan. Figure 2 shows the development of asylum applications from the countries with the highest number of applications in Switzerland between 2014 and 2019.

[74] Though Swiss law contains the obligation to identify victims of trafficking (see AIDA (2017), Country Report Switzerland).

[75] Postulat 16.3407 (Postulat Feri). Analyse von der Situation von Flüchtlingsfrauen.

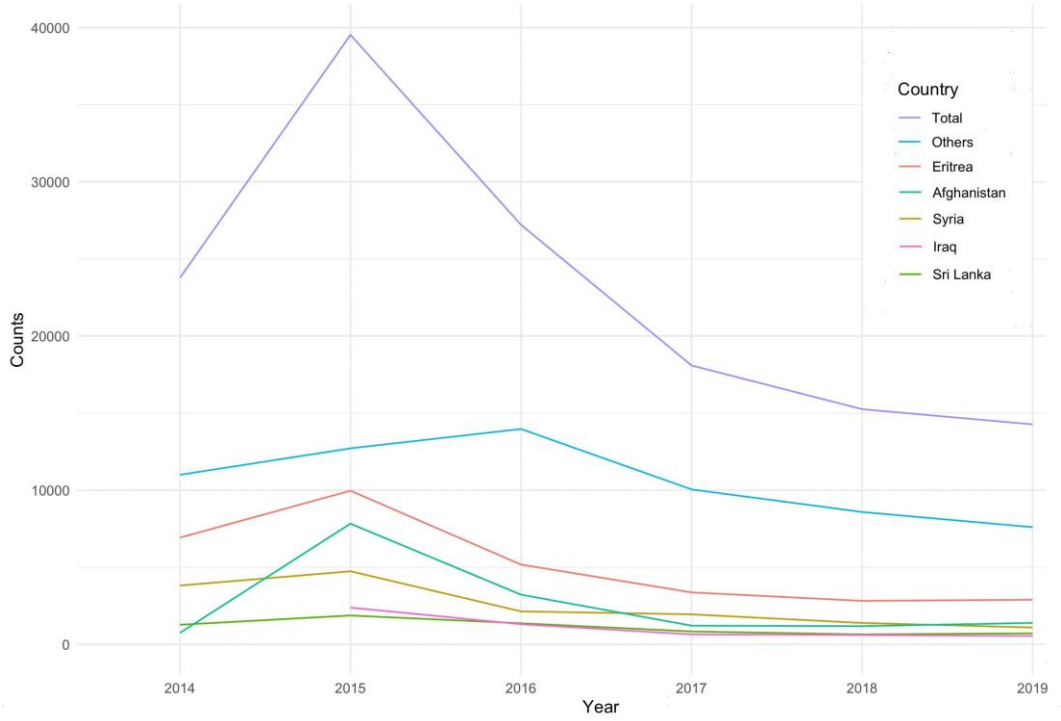

Figure 2 - Asylum applications of the most important countries, 2014 – 2019 (source: own compilation based on SEM asylum statistics 2014-2019)

Following political claims for a more restrictive decision practice regarding asylum applications from Eritrean nationals in the context of rising numbers of asylum claims in 2015, the SEM decides in June 2016 not to accord refugee status to persons who motivate their fear of persecution from Eritrean authorities solely by their illegal departure from Eritrea. If the asylum claim is rejected and there are no further obstacles to the removal, the latter is enforced. In August 2017, the Federal Administrative Court (FAC) judges the expulsion of rejected Eritrean asylum seekers reasonable[76] who had justified their asylum claim solely by their illegal departure from Eritrea. Thus, the court confirms the SEM's practice change from 2016 which consisted in not recognizing illegal departure from Eritrea anymore as a reason for refugee status. Several civil society organisations critically note that the FAC states in this judgement itself that little reliable information exists regarding the situation in Eritrea. In 2018, on instruction by the ECtHR, the FAC examines the question of if the obligatory national service in Eritrea corresponds to forced labour. In a landmark judgment the court states that Eritrean national service would not seriously violate the ban on forced labour under international law. The possibility to be obliged to national service on return would thus not present an obstacle to the admissibility of a removal to Eritrea[77]. As a consequence of the judgement and its confirmation of the SEM's asylum practice, the FJPD and the SEM decide, to proceed to the review of 3200 cases of provisional

[76] FAC judgment D-2311/2016 of 17th August 2017.

[77] FAC judgment E-5022/2017 of 10th July 2018.

admissions issued to Eritrean nationals (Parak, 2020: 6f.). These developments, in terms of the SEM's practice regarding Eritrean asylum seekers, show the importance that courts play in asylum practice. In Switzerland, Miaz (2017: 122) observes an increasing number of appeals in asylum matters to the FAC in the second half of the 1990s and the beginning of the 2000s with a stabilisation in the second half of the 2000s and 2010s. The period of time on which my research focusses is characterised by a decrease of appeals at the FAC in matters of asylum.

The FAC's jurisprudence addresses substantive questions which concern the granting of asylum, reasons for exclusion from asylum and the assessment of return. Further, the FAC addresses the right of proof and also questions related to the asylum procedure (the submission of the asylum claim, NES decisions, auditions, the right to be heard and other procedural aspects like questions regarding the re-examination of asylum claims, appeals and deadlines) (Miaz, 2017: 130). From 2019 on, a variety of new questions linked to the new asylum procedure were addressed by the FAC like, for instance, questions of free legal protection and the difference between the accelerated and the extended procedure, the scope of the power and the legitimacy of the legal representative, the disappearance of the client and the right of appeal of the legal representative, Dublin interviews, unaccompanied minor asylum seekers and appeals[78].

Over the last twenty years, important developments in terms of jurisprudence have taken place in Switzerland, some of them going in the direction of long-standing claims of the SRC and AICH. This is importantly the case in 2006 when the AAC decides in its last judgement[79], before the commission is integrated in the FAC, to follow the protection theory rather than the so far privileged imputability theory of causation. This signifies that persecution not only by state actors but also by non-state actors leads to the recognition of the refugee status in Switzerland. In so doing, the AAC finally follows other European countries and the ECtHR. As Stünzi (2018: 267) mentions, referring to Boswell's (2007) and Guiraudon's/Joppke's (2001) similar observations in other national contexts, today, the FAC follows mainly the jurisprudence of the ECtHR when deciding on appeals of rejected asylum seekers.

Further important developments in terms of jurisprudence with important repercussions on the SEM's decision practice on asylum claims concern gender-specific persecution. While reasons for fleeing specific to women, as mentioned in art. 3 par. 2 AsylA since 1998, or gender-specific persecution had been recognised by the administration as reasons for asylum through the notion of belonging to a specific social group, the jurisprudence offers an important lever for the development of the SEM's

[78] I base this overview of questions addressed by the FAC linked to the new asylum procedure since 2019 on a presentation given by Cesla Amarelle and Guillaume Bégert in the context of the 19th Swiss Migration Law Days on 30.08.2024 in Bern.

[79] EMARK 2006/32 of 8th June 2006.

practice in this domain. Finally, the jurisprudence of the FAC also precises procedural aspects like questions of evidence and the notion of credibility in the asylum procedure (Miaz, 2017: 138-142). As Miaz (ibid.: 145f.) also shows, since 2010, the overall number of appeals to the ECtHR against Switzerland has increased considerably. Among these cases, there is an important increase in cases concerning foreigners and asylum law. More precisely, these are questions of the (forced) return of foreigners, family reunification, entry authorisations on Swiss territory, residence permits and Dublin transfers. Cases that address the questions of forced return linked to the asylum procedure are less common from which it can be deduced that the ECtHR rarely finds Swiss authorities responsible for the violation of the non-refoulement principle when they refuse an asylum claim[80]. Thus, as the ECtHR constitutes the last resort for appeals, its jurisprudence has also direct effects for Swiss asylum practice, either through its decisions on individual appeals against decisions of the Swiss authorities – even if in number relatively limited[81] - or through landmark judgements. Hence, "the implementation of migration and asylum policy is not only an affair of national sovereignty" (Stünzi, 2018: 267). The court does play a significant role in matters related to the rights of refugees and asylum seekers under the European Convention on Human Rights as its primary function is to ensure that the rights defined in the Convention are respected by the member states. In cases involving refugees and asylum seekers, the court examines whether the treatment they receive in member states complies with the rights protected by the Convention[82].

Developments in terms of Dublin practice

While the restructuring is the most important and extensive revision of the Asylum Act in the period between 2013 and 2019, further smaller amendments of the Asylum Act and of related regulations occur due to changes in Dublin and Schengen regulations which require an uptake in the national legal framework. As Stünzi (2018: 264f.) points out, the "Europeanisation" of Swiss migration policy, starting with the Agreement on the Free Movement of Persons (FMPA) signed as part of the Bilateral Agreements I between Switzerland and the European Union in 1999, has importantly influenced Swiss political debate and policies in the domains of migration and asylum. With the abolition of border

[80] There are nevertheless recent cases like the ECtHR judgement which condemns Switzerland for the violation of the non-refoulement principle in the case of a rejected Sudanese asylum seeker.

[81] For a detailed overview of ECtHR rulings against Switzerland in the asylum domain, see Miaz 2017: 142-148, 705-708.

[82] Key areas of concern include: Prohibition of Torture and Inhumane Treatment (Article 3): The Court often rules on whether the deportation or extradition of a refugee or asylum seeker to their home country, where they may face torture or inhumane treatment, would violate Article 3 of the Convention. Right to Liberty and Security (Article 5): The Court examines cases concerning the detention of asylum seekers, evaluating whether such detention is lawful and non-arbitrary. Right to a Fair Trial (Article 6): This includes ensuring that asylum seekers have access to fair and transparent procedures when their asylum claims are assessed. Right to Respect for Private and Family Life (Article 8): The Court may consider whether the expulsion of a refugee or asylum seeker interferes with their right to family life. Prohibition of Discrimination (Article 14): The Court looks at whether refugees or asylum seekers are being discriminated against in comparison to other individuals.

controls between European countries it becomes even more important to restrict access to Swiss territory for persons from outside the EU. Signed by the Swiss government in 2004, the Schengen and Dublin agreements become applicable at the end of 2008. As a consequence, Switzerland is committed to take over developments in the Schengen and Dublin *acquis*. This concerns the determination of the European country responsible for treating an asylum claim and the participation in control measures and techniques which are also the object of the agreements. These are FRONTEX, a common visa regime, data bases of a Visa Information System (VIS), the Schengen Information System I and II (SIS) and Eurodac.

The Dublin agreement has strongly influenced the SEM's treatment of asylum applications since 2009. The SEM uses extensively the Dublin mechanism which results, in administrative terms in NES decisions linked to a Dublin transfer request to another European country. Based on the Dublin regulation, between 2014 and 2019, the SEM has transferred 18'795 asylum applications to another European country while receiving only 6'058 cases from other countries. Figure 3 illustrates the important difference between incoming and outgoing Dublin transfers. The country to which Switzerland transfers the most Dublin cases is Italy.

Figure 3 - Dublin transfers outgoing and incoming, 2014-2019 (source: own compilation based on SEM asylum statistics 2014 – 2019)

The SEM's intensive application of the Dublin regulation is, however, regularly subject to control by the Swiss Federal Administrative Court (FAC) and in the final instance by the European Court of Human Rights (ECtHR) when individual appeals against a Dublin decision are treated by these institutions. Overall, one can note that the question of human rights violations is increasingly addressed by the ECtHR regarding Dublin transfers. Here, ECtHR judgements either concern Switzerland directly or ECtHR judgements indirectly have consequence on Swiss asylum practice. An example, the first case is the Tarakhel versus Switzerland judgement in 2014[83] in which the ECtHR stated a violation of art. 3 ECHR by the Swiss authorities who had transferred an Afghan family to Italy. As a consequence, before transferring families to Italy based on the Dublin Regulation, Swiss authorities have the obligation to obtain guarantees from the Italian authorities that they provide child appropriate accommodation and that families are not separated[84]. A case where Switzerland's asylum practice is indirectly concerned is the M.S.S. versus Belgium judgement of 2011 which had as consequence that Dublin transfers to Greece were stopped from all other European countries. The jurisprudence of the ECtHR precises thus the missing legal criteria for the activation of the sovereignty clause of the Dublin Regulation (Miaz, 2017: 500ff.) which states:

> By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation (art. 17(1) Dublin III Regulation).

Furthermore, the court not only defines the criteria for a *possible* application of the sovereignty clause by a state who is part of the Dublin system but as a consequence of judgements, like the above-mentioned M.S.S. ruling, the activation of the sovereignty clause becomes, in practice, an obligation because of the illegality of transfers of asylum seekers to a certain country. It should nevertheless be mentioned that so far Greece has been the only European country that the ECtHR has identified "systemic failings" of the asylum system and has stated that any transfer of asylum seekers to Greece would present a risk of human rights violations for every asylum seeker transferred there. It is thus the personal characteristics of the asylum seeker that play a role in being transferred under the Dublin Regulation. In judgements like the Tarakhel case, jurisprudence focusses on individual characteristics of asylum seekers rather than the systemic malfunctioning in European countries.

[83] ECtHR judgement Affaire Tarakhel c. Suissse of 4.11.2014.

[84] See press release SEM (27.11.2014), Italien und die Schweiz einigen sich auf Vorgehen bei Dublin-Rückführungen, accessible at https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-55402.html (last accessed: 21.11.2023).

While in the period between 2015 and 2019 there have been no further ECtHR rulings regarding Dublin transfers with important consequences for Switzerland, in 2017, it is the Swiss FAC that analyses the situation of asylum seekers in Hungary and identifies several deficiencies. Therefore, it requests the SEM to reconsider several cases of Dublin transferral decisions to Hungary[85] whereupon the SEM decides to treat the asylum applications of all cases itself (Parak, 2020: 149).

The high number of asylum seekers who are transferred from Switzerland to Italy in 2016 is linked to the context of the European reception crisis in 2015/16, as is also the issue of Dublin transfers to Hungary and other Balkan countries. As figure 2 shows, although Switzerland has no European external border, there is a peak in the number of asylum claims made in Switzerland in 2015 which corresponds to the high numbers of asylum seekers arriving in many European countries that year. Nevertheless, as I will recall in the following, Switzerland has been affected by the high number of refugees arriving in Europe to a much lesser extent than other countries like Italy, Greece, Hungary and also Germany. However, the topic dominates the federal elections in 2015 (Nguyen/Summermatter, 2015) and the Swiss government participates in political discussions on the EU level to coordinate measures to deal with the high number of arriving persons.

Reception crisis

As Guiraudon (2018: 151) notes, "immigration, asylum and border policies topped the EU agenda in the summer and fall of 2015". This is in reaction to overall around 850'000 asylum claims in European countries. More than half of the asylum seekers come from Syria, Iraq and Afghanistan (Nguyen/Summermatter, 2015). The asylum seekers come mainly either through the Mediterranean or the Balkan route. Reactions to the arrival of these people are polarised. "While humanitarians agonized about the plight of people at sea, state actors worried about the impact of arriving refugees" (Madokoro, 2022: 37). Thus, the EU decides on several "exceptional measures" to tackle what is seen as an unprecedented, urgent and extraordinary event (Calabrese et al., 2022). According to Madokoro, "The idea of "too many" was implicit in many of the discussions and it was a theme that was made explicit in Europe in 2015" (Madokoro, 2022: 37). In September 2015, European governments decided on a voluntary distribution key. The plan is to relocate 160'000 asylum seekers from camps in Italy and Greece to other European countries within two years, a plan that does not work at all. At the same time, European countries like Denmark and Sweden close their inner-European borders. Further, in Italy and Greece, "hot spots" are created to register fingerprints and subsequently choose migrants to be relocated. Thus, these "hot spots" serve to "sort likely to be refugees from 'economic migrants' that would be deported" (Guiraudon, 2018: 158). In 2016, an agreement with Turkey is concluded: for each Syrian sent back to Turkey, one Syrian is to be resettled from Turkey to Europe. Thus, Europe wants to

[85] FAC judgement D-7853/2015 of 31st May 2017.

choose who may enter. Legal scholars have pointed out that this agreement violates the Geneva Convention and the ECHR because Syrians cannot make an asylum claim in Turkey. Turkey has not signed the 1968 Protocol to the Geneva Convention and thus does not grant refugee status to persons from outside of Europe. Consequently, Turkey may not be considered a "safe third country" for Syrians (Peers, 2016).

As Guiraudon (2018: 155) remarks, "to understand how we got to the 2015 situation, we need to focus on the two cornerstone instruments of the policy that Schengen negotiations elaborated, inspired by US measures adopted in the early twentieth century: visas and carrier sanctions". Persons who cannot get a Schengen visa, turn to smugglers to reach Europe and encounter Frontex, the EU's external borders agency. In 2016, Frontex' budget is tripled and a year later its director accuses NGOs of encouraging human trafficking (ibid.: 157). Guiraudon observes that, "The crisis tautologically justified 'crisis measures'" (ibid.: 158). These "crisis measures" follow and legitimise at the same time a security approach of migration (Bigo, 1998) and with it several violations of fundamental rights of migrants (Calabrese et al., 2022: 14).

And what of Switzerland? In 2015, the number of asylum seekers arriving in Switzerland is about 10'000 higher than the year before but remains under 40'000 (see figure 2). These numbers are still below the 44'000 persons that Switzerland had admitted in 1999 in the context of the Kosovo war (Nguyen/Summermatter, 2015). The Swiss government also takes part in discussions on the EU level about the redistribution key and promises to take in 1'600 persons from Italy and Greece. In 2016, less than 350 asylum seekers have arrived in Switzerland. Further, in Summer 2016, migrants are stuck at the Italian/Swiss border between Como and Chiasso as border controls prevent them from crossing the border.

On the other hand, in 2015, the Federal Council decides to admit 2'000 Syrian refugees via a resettlement programme and in 2016, the FC decides again to admit 2'000 especially vulnerable persons in the framework of a UNHCR resettlement programme. Since 2013 Switzerland has again been participating in UNHCR resettlement programmes following the beginning of the Syrian conflict. Finally, in 2018, the FC decides on a long-term resettlement programme with the admission of 1'000 recognised refugees. UNHCR resettlement programmes are conceived almost entirely around the vulnerability of specific groups of refugees respectively their "special protection needs". In collaboration with UNHCR, SEM staff members choose refugees in third countries based on criteria signifying a special need of protection in order to come to Switzerland (SEM, 2016[86]). Furthermore,

[86] Staatssekretariat für Migration, Auswahlverfahren und Einreise in die Schweiz, accessible at https://www.sem.admin.ch/sem/de/home/asyl/resettlement/auswahlverfahren.html (last accessed: 14.08.2024).

between 2015 and 2018, Switzerland issues 501 humanitarian visas for family members of Syrians provisionally admitted to Switzerland.

Finally, the context of the increasing numbers of asylum seekers in 2015 has shaped the political debate about the restructuring project (see f. ex. CS debate on 15.06.2015[87]). The acceleration of the asylum procedure is seen as a way to reduce Switzerland's attractivity for unfounded asylum claims and to enforce removal orders for rejected asylum seekers more rapidly (Arbeitsgruppe Neustrukturierung, 2014).

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A variety of civil society actors are confronted with this context respectively the legal and political developments when carrying out different tasks, providing different services and organising different activities in the asylum field. The following chapter gives an overview of the main types of civil society actors engaged in the asylum field.

4.6 Civil society actors constituting the Swiss asylum support field

Like in other European countries (see Drahy, 2004; Lepoutre, 2022; D'Halluin-Mabillot, 2012; Gill et al., 2014; Statham/Geddes, 2006), a variety of civil society actors are engaged in the Swiss asylum field. These actors build together what I call the multi-organisational asylum support field. This chapter gives an overview of these actors by highlighting their characteristics in terms of organisational structure and fields of activity. As mentioned in the introductory part of this thesis, I understand civil society as a third sector between the state and the market that encompasses a variety of actors. While so-called civil society research focusses on different aspects than that of social movement studies in terms of the character and the aim of activities of non-state actors, I understand professionalised NGOs conducting refugee advocacy as civil society actors due to their character as non-state and non-profit actors. The social movement perspective on these actors and their advocacy activities presents an important theoretical perspective for my analysis of professionalised refugee advocacy in Switzerland in order to understand their "witness and defend" activities (D'Halluin-Mabillot, 2012). Approaching the two case studies (the SRC and AICH) on a conceptual level as social movement organisations allows to shed light on specific dynamics and generate a comprehensive understanding of the organisations' modes of action. However, describing them, in a first step as civil society actors situates them within a wider field of actors providing different types of support to persons in the asylum domain.

[87] Die Bundesversammlung – Das Schweizer Parlament, Amtliches Bulletin, Ständeratsdebatte vom 15.06.2017, accessible at https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?Subjec tId=34822 (last accessed: 12.11.2024).

While recently civil society actors engaging in protest against deportations and in support of rejected asylum seekers have increasingly gained the interest of social scientists (see Rosenberger et al., 2018 and especially Bader, 2018 and Bader/Probst, 2018; Ducommun, 2018), detailed studies of the different actors engaged in the asylum support field in Switzerland are relatively rare, with the exception of Alberti's (2020) study of private actors (some of them non-profit) who are mandated with the reception of asylum seekers, Miaz' (2017) study of legal defence actors in the asylum procedure and Eule's (2020) investigation of the Swiss asylum support community with a focus on legal advice and defence actors in the changing context of the restructuring of the Swiss asylum sector which became effective in March 2019. An overview of the asylum support field and the different types of civil society actors involved in it is given by Efionayi et al. (2015). Even though the latters' focus lies on volunteering, they give a good overview of the characteristics, activities, target groups and objectives of all the different principal actors involved in the asylum support field in Switzerland. They show that the engagement of civil society actors with asylum can take different forms, from individual engagement to more organised and more professionalised forms. Following Efionayi et al. (ibid.), three different types of actors can be identified based on their organisational structure, their degree of professionalisation, range of action, target groups and objectives. A first category comprises grassroots organisations who are characterised by a formalised commitment of volunteers. The second category of civil society actors active in the asylum field is constituted by aid organisations respectively charities and human rights organisations. According to Efionayi et al.,"[A]id organisations and human rights organisations [are] the best-known actors in civil society, which have helped shape the asylum system for decades and are sometimes important contacts for grassroots organisations" (ibid.: 34). It is this category of civil society actors that my research focuses on. Regarding their structural properties, these organisations are characterised by a high formalisation of their internal structures and activities. They are professionalised in the sense that representatives of these organisations are remunerated and occupy specific positions within the organisation. Within this category of professionalised non-profit oriented organisations, the fields of activity vary, especially between charities on the one side and human rights organisations on the other. Rather than differentiating between charities and human rights organisations, D'Halluin-Mabillot (2012: 18) proposes to differentiate between two types of activities in which civil society organisations engage in the asylum field: on the one hand, "welcome and support" and on the other hand "defend and witness". This differentiation between two *types of activities* is helpful for the present study because it allows to include different *types of organisations* (charities and human rights organisations) without predefining the type of organisation as the main criterion. In this sense and as figure 1 below shows, organisations engaging in "defend and witness" activities are not only human rights organisations like Amnesty International or MERS but also organisations like the SBAA and ODAE who focus on the implementation of the Swiss AsylA and AliensA with the aim to make public unlawful practices of the authorities (Efionayi et al., 2015: 26). Finally, also

the SRC, the umbrella organisation of charities – that are traditionally active in "welcome and support" activities in the asylum domain– is importantly engaging in "defend and witness" activities. Among the professionalised organisations who are part of the Swiss asylum support field, I identified the latter and the Swiss section of Amnesty International (AICH) as two central actors with regard to "defend and witness" activities in the field. The two case studies (SRC and AICH) chosen for the present study were based on the observation that both organisations invest the great majority of their financial resources in this type of activities. While AICH can clearly be identified as a human rights (campaigning) organisation, the SRC as the umbrella organisation of charities involved in "welcome and support" activities has a humanitarian background and a humanitarian orientation through its members. As the SRC invests however an important part of its resources in "defend and witness" activities it occupies a specific position in the Swiss asylum field that is historically rooted, as shown in the historical overview of organised civil society's engagement in asylum governance above (see chap. 4).

While Efionayi et al. (2015) add networking actors and key persons as a third category of civil society actors active in the asylum field to the two categories mentioned above (first, charities and human rights organisations and second, grassroots organisations), in my own representation of the types of actors (figure 4), focussing on the different degrees of professionalisation of civil society actors, I differentiate rather between informal volunteers (individuals or groups), grassroots organisations and professionalised organisations. As mentioned, we may rather speak of degrees of professionalisation than of a clear-cut difference between professionalised and not professionalised organisations. In this sense, some grassroots organisations may also be characterised by a certain degree of professionalisation. However, they generally have flat hierarchies, and if they do, they only have a very limited number of paid employees. Compared to informal volunteering of individuals or groups on the other hand, grassroots organisations also importantly depend on volunteers, but the commitment of the organisations' volunteers is generally formalised to a certain degree. Finally, considering D'Halluin-Mabillot's (2012) differentiation between actors focussing on either "welcome and support" or on "defend and witness" activities, Efionayi et al.'s (2015) proposed third category of actors – the networking and key actors – may be found among professionalised organisations as well as among grassroots organisations, among actors engaging in "welcome and support" as well as those engaging in "defence and witnessing". Hence, figure 1 shows three ideal types of civil society actors engaged in the Swiss asylum field, following partly Efionayi et al. (2015), and complemented by D'Halluin-Mabillot's (2012) typology of activities in the case of professionalised organisations on which lies the focus of the present research.

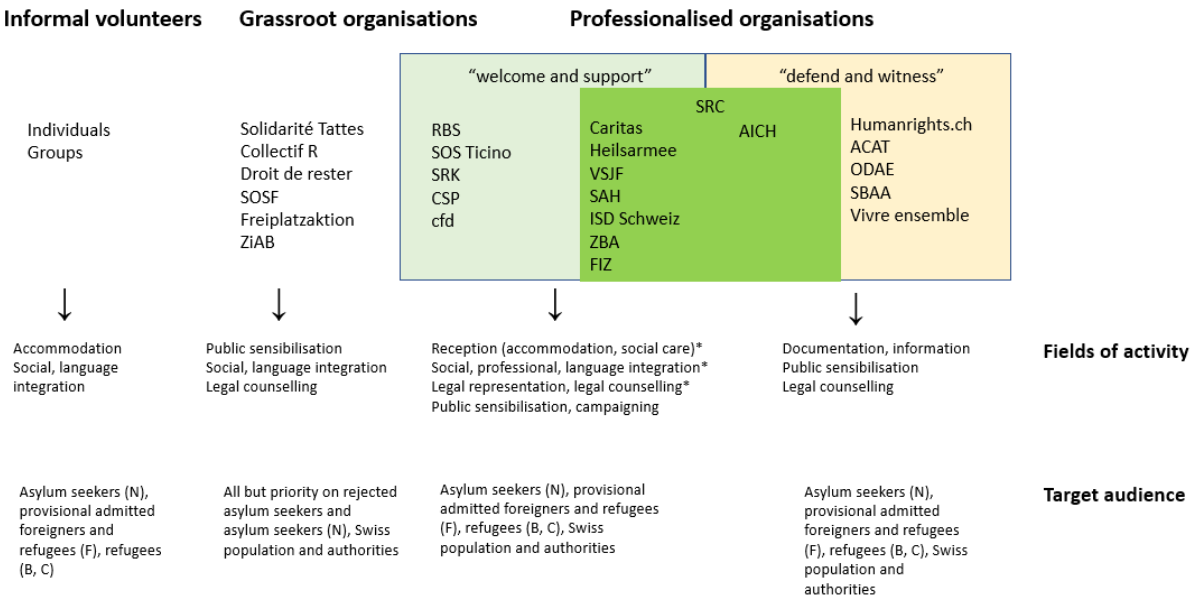

Figure 4 - Civil society actors in the Swiss asylum support field[88] (source: own representation based on organisational ideal types (Efionayi et al., 2015, see especially figure 3, p. 38, and the differentiation by types of activity (D'Halluin-Mabillot, 2012)). The organisations in the deep green rectangle are member organisations of the SRC in 2019. Like professionalised organisations, grassroots organisations are also active in the domains of "welcome and support" and "witness and defend". As the present study focusses on organisations that I identified as being characterised by a high degree of professionalisation, the figure provides more detail for this category of organisations and differentiates between "witness and defend" and "welcome and support" organisations while not indicating this categorisation for grassroots organisations. *These tasks can include state mandates.

While some of these actors focus on "welcome and support" activities, others focus on "witness and defend" activities (D'Halluin-Mabillot, 2012). Eule (2020) differentiates between the "'asylum movement' [advocating] for the radical demands for open borders" on the one hand and "'refugee assistance' under the umbrella of the SRC" on the other. While I find that the Swiss asylum support field is indeed characterised by two political currents – "radical demands for open borders" versus a

[88] Figure 4 does not present an exhaustive list or organisations. The Swiss asylum support field is characterised by a large number of civil society actors more or less organised. The here listed organisations are: Droit de rester (Right to stay); SOSF: Solidarité sans fronitères (Solidarity without borders); Freiplatzaktion (free places action); ZiAB: Zivilgesellschaft in Asyl-Bundeszentren (Civil society in federal asylum centres); RBS: Berner Rechtsberatungsstelle für Menschen in Not (Bernese legal counselling service for persons in need); SOS Ticino: Soccorso operaio svizzero (Swiss Workers Aid Organisation); SRK: Schweizerisches Rotes Kreuz (Swiss Red Cross); CSP: Centre social protestant (Social protestant centre); Heilsarmee (Salvation army); VSJF: Verband Schweizerischer Jüdischer Fürsorgen (Association of Swiss Jewish Refugee Aid and Welfare Organisations; SAH: Schweizerisches Arbeiterhilfswerk (Swiss Workers Aid Organisation); ISD Schweiz: Internationaler Sozialdienst Schweiz (Internatoinal Social Service Switzerland); ZBA: Zürcher Beratungsstelle für Asylsuchende (Zurich Counselling service for asylum seekers); FIZ: Fachstelle Frauenhandel und Frauenmigration (Centre of expertise for trafficking and migration of women); MERS: Menschenrechte Schweiz (Human Rights Switzerland); ACAT: Association pour un monde sans torture ni peine de mort (Association for a world without torture nor death penalty); ODAE: Observatoire romand du droit d'asile et des étrangers (Romandie Observatory of asylum and immigration law); SBAA: Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht (Swiss Observatory of asylum and immigration law); Vivre ensemble (Live together).

moderate political positioning - with regard to the different actors involved, Eule's clear-cut view of the Swiss asylum support field needs to be nuanced, especially in the context of the restructuring of the asylum sector and the new roles of civil society actors in the asylum procedure. In this context, not all refugee assistance (in social as well as in legal terms) is conducted under the umbrella of the SRC and those who do provide assistance services outside the SRC's range (i.e. the RBS[89]) are not necessarily supporting open border claims. Second, there are actors who do not engage in refugee assistance respectively in "welcome and support" activities but who do not support open border claims in their "witness and defend" activities either (i.e. SBAA, ODAE, humanrights.ch). Further, as I will show in the following chapter, "welcome and support" is also importantly provided by a great number of grassroots organisations who complement the services provided by the charities and who may follow a more collaborative or confrontative relationship with the authorities and/or asylum policies.

Nevertheless, in terms of positioning vis-à-vis the authorities, the Swiss asylum support field is indeed characterised by different poles as Miaz (2017) observes: on the one hand, there are the charity oriented (mostly Christian) organisations and on the other hand, there are the protest-oriented actors. These two are complemented by a third "institutional advocacy" pole. In the following, I will present the different actors of these three poles and the tasks that they fulfil in the asylum domain.

4.6.1 Division of tasks and changing roles in the context of restructuring

As figure 4 shows, one can observe a certain division of tasks between the different types of civil society actors as they perform different tasks in the asylum domain and focus on different target groups. As researchers have observed in other national contexts, some of them fulfil state mandates and operate thus for the state while others are less dependent or completely independent of state funding (see f. ex. Lepoutre (2022) for the French context). Further, while some actors are active on the local level, the range of actions of others does also include the federal level. Most of the organisations mentioned in figure 1 do target the federal level to some degree. The division of tasks is importantly linked to the actors' ideological orientations, self-perceptions, or to use Drahy's (2004) words, "identities". While professionalised civil society organisations engaging in "welcome and support" activities traditionally have a humanitarian background, human rights organisations adopt a universalist human rights perspective. Grassroots organisations may also base their activities on humanitarian goals, or they may follow a logic of compensation and denunciation of the authorities

[89] While Caritas, HEKS and SOS Ticino have mandated the SRC with quality assurance for their legal protection services, the RBS, also mandated with legal protection in federal centres (in the region of Bern89), does not collaborate with the SRC in this way. In 2024, the RBS has also been mandated for legal advice and representation of asylum seekers in the region North Western Switzerland taking thus over this mandate from HEKS who had been providing legal protection in this region before.

and public policies (Lepoutre, 2022: 66). Finally, individuals may also have, of course, a variety of motivations and follow diverse objectives with their engagement in the asylum domain. Individuals play a role in the asylum field through informal practices like punctual material or financial donations, engagement in circles of friends or their neighbourhood and also by participating in an informal way in events, organised by grassroots and/or professionalised organisations, to favour the contact between the local population and asylum seekers. The participation in programmes like the guest family programme organised by the SRC necessitates a certain formalisation of the engagement of individuals if they wish to provide accommodation for refugees. However, their engagement remains first and foremost on an individual level and individuals providing accommodation for refugees do not necessarily engage with the SRC's larger objectives. While these individual, mostly informal, forms of engagement in the asylum field are important especially regarding social integration and the creation of contacts between persons in the asylum domain and the local population, the following description will focus on more collectively organised types of actors, the tasks that these actors carry out, their underlying principles and logics, and how these complement and/or enter into confrontation with each other.

Among the highly professionalised organisations, the charities that are active in the Swiss asylum field generally are not only active in the asylum domain nor are they specialised exclusively on the issue of asylum. These Christian organisations are active in a variety of fields on the national and on the international level. Examples of the large thematic fields in which they are active include the fight against poverty, integration, health or development aid. Charities that are also active in the Swiss asylum field are for example Caritas, the Salvation Army (*Heilsarmee*), the Christian Peace Service (cfd), the Social Aid Organisation of the Protestant Churches (HEKS), the Swiss Workers Aid Organisation (SAH/SOS), the Association of Swiss Jewish Refugee Aid and Welfare Organisations (VSJF) and the Swiss Red Cross (SRK). Their engagement with the asylum field is based on humanitarian and/or Christian principles of charity and/or alleviation of suffering, principles that also motivate the organisations' activities in other fields. Charities follow the objective to arrange the asylum system for the concerned persons within the existing order in a way which is as humane as possible (Efionayi et al.,. 2015: 39).

In order not to completely depend on donations, charities carry out public mandates. In the asylum domain, they provide care and accommodation for asylum seekers through the management of asylum centres[90]. However, charities are not the only actors mandated with the reception of asylum seekers. They compete over those mandates with other private non-profit organisations, for-profit companies and public law institutions on the national as well as the subnational level (Alberti, 2020: 33f.). Further, charities provide also social, professional and linguistic integration activities. Until 1998, the charities

[90] For a detailed analysis of asylum reception by non-state actors, see Camilla Alberti's thesis (2020).

were specifically entrusted with the integration of persons with refugee status in Switzerland before the cantons took over the responsibility for integration (Efionayi et al., 2015: 34ff.). Finally, charities also provide legal advice to asylum seekers, provisional admitted persons and refugees. As Drahy (2004) observes in the French context, with the increasing juridification and judicialisation of asylum that Miaz (2017) also observes in the Swiss context, asylum support actors increasingly mobilise the legal register. Furthermore, when I started my research in 2016, next to the provision of legal advice in the cantons, several charities had public "observer" mandates within the asylum procedure. Representatives of HEKS, Caritas, the VSJF, SAH and the SRK attended asylum hearings to make sure that procedural requirements were respected. They could ask additional questions, suggest an additional hearing, intervene in problematic situations, note observations and suggestions like, for example, additional medical evaluations (SBAA, n.d.[91]). With the restructuring of the asylum system enforced in March 2019, they lost this role (apart from the continued processing of asylum claims made before 1st March 2019[92]). Nevertheless, some of these charities obtain again public mandates for legal advice and representation for asylum seekers in the new accelerated procedure in federal asylum centres (HEKS, Caritas, SAH) and/or for legal advice in the cantons in the extended procedure (Caritas, HEKS). On the federal level, RBS (not a member organisation of the SRC) has also obtained a mandate for legal advice and representation in the asylum procedure. On the cantonal level, further mandated actors are RBS (Bern) and cantonal advice services in the cantons of Basel, Zurich, Grisons, Shaffhouse and Valais (SEM, 2019[93]). Based on state mandates, they have an operational role in the asylum procedure, providing legal support for asylum seekers.

On the political level, it should be noted that charities also engage in public relations activities like campaigns or the publication of political statements, for example, in the form of position papers. While the SRC represents the charities as central representative of its member organisations, the charities may still publish their own statements and carry out their own campaigns. Nevertheless, collaborations with the SRC and/or other member organisations on these matters are common. The same is true for the consultation of charities in the context of legislative changes and the inclusion in expert groups or information events organised by the authorities. As public service providers, the charities' work is guided by clear legal rules and structures. Their public mandates are limited to asylum seekers in the procedure, to provisionally admitted persons and recognised refugees. Here, charities are often

[91] Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht, 50 Jahre Hilfswerksvertretung nehmen ein Ende, accessible at https://beobachtungsstelle.ch/news/50-jahre-hilfswerksvertretung-nehmen-ein-ende/ (last accessed: 11.11.2024).

[92] Since 1st November 2020, the SRC itself is present in hearings under the old legislation.

[93] Staatssekretariat für Migration, Liste der zugelassenen Rechtsberatungsstellen für das erweiterte erstinstanzliche Asylverfahren, accessible at https://www.sem.admin.ch/dam/data/sem/asyl/verfahren/liste-rechtsberatungsstellen-d.pdf (last accessed: 1.11.2024).

confronted with the question of to what extent they should fulfil public tasks that only partially correspond with their guiding values (Efionayi et al., 2015: 36f.).

However, another group of professionalised actors who are neither operationally active nor financed by public authorities are human rights organisations like AICH, ACAT or MERS with its internet platform humanrights.ch and other "defend and witness" actors like the SBAA and ODAE. These actors are confronted less with the challenges that charities encounter concerning the implementation of public mandates. Contrary to the charities, their focus does not lie on social or humanitarian aid but on public outreach and sensibilisation work as well as political lobbying. These organisations rely on a big base of volunteers but also have an important professionalised structure with a certain number of paid employees. In single cases, (some of) these organisations provide legal support to prevent the violation of the non-refoulement principle through Swiss authorities. Further, they regularly visit accommodation facilities for asylum seekers, publish reports and denunciate identified grievances in the asylum system, in regards to reception conditions as well as access to protection (Efionayi et al., 2015: 35ff.). While I also count the SRC in this category of professionalised organisations, the following chapters will show that the organisation has, due to its role as an umbrella organisation of charities and its (public) mandates, a special and historically rooted position (see chap. 4) in the Swiss asylum field. The above-mentioned organisations who are not operationally active in the asylum procedure but focus on public outreach and sensibilisation work present the institutional advocacy pole (Miaz, 2017: 455ff.) in the Swiss asylum support field.

As mentioned, also among grassroots organisations there are organisations that are active mainly in "welcome and support" activities and others focussing on "defend and witness" activities. While the first category of actors focusses on the creation of contacts and social moments, the second category of grassroots organizations focusses on organised demonstrations, media contacts, political statements and more unconventional forms of public sensibilisation like sit ins, occupations and other disruptive actions. However, as Efionayi et al. (2015: 42) point out, the delimitations are often not clear-cut and grassroots organizations engage, to different degrees, in both types of activities. Grassroots organisations are mainly active on the local level like Solidarité Tattes, Collectif R, Droit de rester who are present in different French speaking cantons or the solidarity networks (*Solinetze*) which are active in Eastern Switzerland and Zurich. ZiAB in particular is active on the federal level. These actors complement the services provided by the state and by the charities in terms of legal advice as well as social and language integration. Their priority lies first, on rejected asylum seekers and second, on asylum seekers in general. While professionalised "welcome and support" organisations focus traditionally on asylum seekers as well as recognised refugees, grassroots organisations also offer support to these groups but may prioritise rejected asylum seekers and asylum seekers (ibid.: 38). With the introduction of urgency aid for rejected asylum seekers with non-entry

into substance (NES) decisions in 2008 as well as for all rejected asylum seekers also in 2008, material and social support has become increasingly important for migrants without legal status. Grassroots organisations generally provide this aid based on humanitarian considerations to support the "most materially and socially vulnerable persons" (ibid.: 49). However, along with these humanitarian considerations comes the belief that these services should be provided by the state as an important element of a fair and humanitarian asylum system. Politically active grassroots organisations, like for example SOSF, often go even further with their harsh critique of the migration regime and seek a fundamental change of asylum and immigration policy or seek for open borders and the right to stay for all migrants, concepts linked to slogans like "No one is illegal" (ibid.: 41). Hence, they follow a more confrontative approach towards the authorities than the charities. Thus, grassroots organisations may either be part of the charity or of the protest pole of the Swiss asylum support field.

This however does not mean that the different poles and types of actors do not collaborate. In terms of public sensibilisation and campaigning, protest oriented grassroots organisations collaborate more easily with human rights organisations than with charities, the latter fears to lose their credibility by engaging with those more radical actors (ibid.: 36). Big organisations like AICH present important partners for campaigns in the asylum field because they have, among other things, the financial resources. Overall, the Swiss asylum support field works as a network whose members collaborate more or less closely, and collaborations can change over time. I will address these aspects in more detail later. What might be mentioned here from the perspective of a division of tasks between civil society actors especially with regard to support of asylum seekers, and more precisely legal assistance, the restructuring of the asylum sector approved by the voting population in 2016 and enforced in March 2019, has led to a change of roles for several charities and for their umbrella organisation, the SRC. As mentioned above, with the new asylum procedure, several charities change roles from neutral observers in the asylum procedure to legal protectors of asylum seekers. While the first role implies neutrality, the second is situated on the side of the asylum seekers. For the SRC this change implies two things: First, it loses its state mandate as coordinator and trainer of the neutral observers in the asylum procedure. Second, since 2019, the SRC is mandated by its member organisations who provide legal advice and defence in the asylum procedure (in the federal asylum centres as well as on the cantonal level) for training and quality assurance.

This research focusses on a specific type of actor of the presented Swiss refugee support field: professionalised organisations that focus on advocacy and thus "witness and defend" activities expressed in high visibility in the public space and continuous presence of positions in policymaking processes as well as continuous statements on asylum practice. As mentioned in the introductory portion, the choice to investigate professionalised civil society actors whose main activities are "witness and defend" activities – activities that I summarise under the term "advocacy" – was

motivated by the aim to complement studies on protest and activism on the one hand and about "welcoming and supporting" actors in the asylum field on the other hand. The following chapter will present the SRC and AICH, the two cases studies on which this research focuses, in terms of professionalisation and organisational structure. Furthermore, the chapter will give an overview of the fields of activity of each organisation.

Professionalisation is a rather fluid notion in the sense that organisations may be characterised by different degrees of professionalisation. The boundary between grassroots organisations and professionalised organisations, as presented in figure 1 are often not clear-cut. Rather than speaking of professionalised versus not professionalised organisations we might rather differentiate between more or less professionalised organisations. The organisations that are listed in the category of professionalised organisations in figure 1, are characterised by a high degree of professionalisation in the sense that the internal structure is characterised by a certain degree of formalisation translating in clear hierarchies and an operational centre which is constituted by a certain number of paid employees with defined tasks and responsibilities. While the organisational structure of the SRC and AICH correspond to a typical non-profit organisation with a General Assembly, an executive board, a director of an office – the operational centre – and a small number of departments with department and team leaders and staff, there are nevertheless important differences between both organisations in terms of division of tasks, responsibilities and internal procedures that I will present in the following in more detail. Furthermore, while the SRC addresses exclusively (with single exceptions) issues that are linked to the asylum domain, for the human rights organisation AICH, asylum presents only one among several issues that the organisation addresses from a human rights perspective. It is this part of the organisation's activities that are of interest in the context of the present research.

As mentioned in the introductory portion of this chapter, the choice to investigate professionalised civil society actors whose main activities are "witness and defend" activities – activities that I summarise under the term "advocacy" – was motivated by the aim to complement studies on protest and activism on the one hand and about "welcoming and supporting" actors in the asylum field on the other hand. Regarding the professionalisation of the organisations chosen, this characteristic signifies a certain degree of formalisation of their internal structures as well as paid staff with defined roles and hierarchies. Based on these criteria, a certain number of civil society organisations can be identified in the asylum field as presented in figure 4 above.

Next to the category of professionalisation the main criterion for the choice of the two case studies was an important engagement in "defend and witness" activities leading to a high visibility in the public space and continuous presence of positions in policymaking processes as well as continuous statements on asylum practice. The following two subchapters will give more detail about the internal structure of the SRC and AICH and their financial aspects, their general purpose, and objectives as well

as an overview of the domains of activity. While the SRC addresses exclusively (with single exceptions) issues that are linked to the asylum domain, for the human rights organisation AICH asylum presents only one among several issues that the organisation addresses from a human rights perspective. It is this part of the organisation's activities that are of interest in the context of the present research.

4.6.2 The Swiss Refugee Council (SRC): professionalised and specialised umbrella organisation and (state) mandates

As explained in the historical review of the involvement of civil society in asylum governance in Switzerland (see chap. 4), the SRC's roots go back to the period before the Second World War, with its foundation in 1936 as the umbrella organisation of private aid organisations taking care of refugees. Today, the SRC still has this role and its organisational structure has not changed fundamentally since its foundation. The SRC is still an umbrella organisation of several Swiss refugee assistance and human rights organisations. The SRC is organised as a non-profit organisation and following its statutes, the organisation pursues its objectives from the position of a politically and religiously independent umbrella organisation to which are linked different types of tasks:

> As an umbrella organisation, the Swiss Refugee Council coordinates the refugee assistance of its affiliated member organisations in Switzerland. It takes on common tasks and carries out the tasks entrusted to it under the Asylum Act. It is denominationally and party-politically independent and, as a professional organisation, committed to advocacy in the field of asylum and refugees. It represents the interests of asylum seekers and refugees, as well as those of the association, in public, in politics and with the authorities. It is committed to a humanitarian asylum and refugee policy in Switzerland that is based on the rule of law (Art. 3 SRC Statutes, 2016).

Following the restructuring of the asylum sector in 2019 and the change of role that it implies for the SRC, the organisation's statutes are modified in 2020. While still an umbrella organisation of charities and organisations active in the domain of asylum, the SRC no longer has tasks under the AsylumA. Thus, its goals and tasks are redefined:

> […] As a specialist organisation, centre of expertise and umbrella organisation for charities and organisations working in the field of asylum and refugees, the SRC aims to promote cooperation, develop expertise and provide a strong and united voice for its member organisations in the interests of refugees (art. 3 SRC Statutes, 2020).
>
> The SFH is religiously neutral, politically independent, rooted in civil society and connected with experts (art. 4 SRC Statutes, 2020).
>
> The main tasks of the SRC are:

a. to demand the rights and to strengthen the interests of refugees in politics, vis-à-vis the authorities and vis-à-vis associations

b. to raise awareness of their circumstances among the general public

c. to influence the political framework and asylum practice

d. to coordinate activities, to organise professional exchanges, to develop benchmarks for operational activities and to provide services for its member organisations

e. representing the association's interests

f. imparting knowledge and information and promoting professional competence

g. initiating innovations in the field of flight and asylum (art. 5 SRC Statutes, 2020).

What has changed in terms of tasks is noted especially in art. 4 lit. d of the new statutes: The SRC does now explicitly provide services for its member organisations who are mandated by the SEM for legal advice and defence in federal asylum centres in the context of the accelerated procedure and in the cantons in the context of the extended procedure. As a reminder, until March 2019 most of the member organisations are dealing with the accommodation and support of asylum seekers, refugees and provisionally admitted persons, and some of them are present in the asylum hearings as "neutral observers"[94]. The "tasks entrusted to it under the Asylum Act" (art. 3 SRC Statutes, 2016) refer to the coordination and training of representatives of aid organisations in asylum hearings for which the SRC is mandated by the Confederation until March 2019[95] (art. 94 Asylum Act[96]). Thus, for this specific coordination and training task, the SRC is paid by the state. Unlike its member organisations[97], the SRC does not perform such operational tasks. As confirmed by Thomas, a SRC representative whom I interviewed in 2017, "[t]he basic idea is that the SRC should not be operational because the charities are operational and because the umbrella organisation was founded for coordination and networking" (Thomas, SRC, 2017). Since March 2019, the SRC's services for legal assistance actors in the asylum procedure are paid by the organisations carrying out their legal assistance mandates. What does not change with the restructuring of the asylum sector in 2019 are the tasks of coordination and networking. The SRC still provides a platform for the coordination of its member and associated organisations, independently of being paid as a service provider by some of them, and for exchanges between these actors.

The SRC's guiding motto "Protecting refugees – upholding human dignity" points to the historically rooted humanitarian perspective of the organisation. It expresses the operational proximity of

[94] Conforming with art. 30 Asylum Act from 26th June 1998 (Stand: 1.01.2019) (SR 142.31).

[95] Ongoing asylum procedures were concluded following the old model after the change of the Asylum Act on 1st March 2019.

[96] Asylgesetz vom 26. Juni 1998 (Stand: 1.01.2019) (SR 142.31).

[97] With the exception of Amnesty International, an organisation who is not operationally active in the asylum procedure neither.

humanitarianism and human rights because the term "human dignity" has a legal as well as a moral dimension. Human dignity is a central part of fundamental and human rights, but it also refers more widely to the absence of suffering. In this context, it may be noted that the organisation's name in German (*Flüchtlingshilfe*) as well as in French (*Organisation d'aide aux réfugiés*) includes the word "aid". In this sense and following the SRC's statutes, the organisation's purpose is the following:

> The SRC stands for the protection of refugees and people in need of protection as well as for respect, openness and tolerance towards people seeking refuge in Switzerland. It is committed to the realisation of fundamental and human rights and the respect of the Geneva Refugee Convention. With its commitment, it wants to contribute to strengthening solidarity with all people in this world who are affected by flight, torture, expulsion, hardship and xenophobia (art. 2, SRC statutes, 2016).

To operationalise its motto "Protecting refugees – upholding human dignity" and to fulfil its purpose, the SRC defines its main mission as influencing the legal framework, legal practice (resp. implementation) and the public discourse in Switzerland regarding asylum, human and fundamental rights. More concretely, the "Portrait" and the "SRC Strategy 2017-2022" specify four main objectives with regard to the above-mentioned mission of influencing legislation, its implementation and public discourse:

> **Admission:** the guaranteed right to protection from persecution for all persons who request admission in Switzerland
> **Protection:** the respect of the Geneva Convention and human rights obligations by Switzerland
> **Procedure:** a fair asylum procedure for asylum-seekers
> **Integration:** inclusion of recognised refugees and provisionally admitted persons through equal opportunities and conditions for participating in society (SRC Strategy 2017-2022: 3, my emphasis).

In short, the SRC aims at ensuring that Switzerland respects its international obligations, that asylum seekers have access to a fair asylum procedure and that recognised refugees are successfully integrated in Swiss society. The mission and the objectives reflect the focus of the SRC on legal aspects of asylum government. As mentioned above, the majority of the SRC's staff members are indeed legal experts and their legal knowledge is central in the SRC's different advocacy strategies as I will show in the course of this thesis. On the one hand, their knowledge is mobilised to influence the authorities' practice by contrasting them with the law. On the other hand, the SRC aims at influencing the legal and political framework of asylum itself. It does thus not only mobilise the law (*agir par le droit*) to influence the authorities' practices but also aims at changing the law itself (*agir sur le droit*). Similar to refugee advocacy organisations in other national contexts, like the CIMADE in France, the SRC is thus involved in the production of the law as well as its mobilisation (Drahy, 2004: 25).

The executive board, constituted by representatives of member organisations and further independent persons active in the asylum field, decides on the strategic and political direction of the association. Furthermore, it defines the principles and types of activities of the SRC as well as the guidelines of the SRC's public relations work (art. 17 and 19, SRC Statutes, 2016). The operational management of the different tasks of the SRC is the responsibility of the office which is led by a director, and which is constituted by four departments: Protection, Communication, Education and Finances & Administration. Since 2019, an additional bridging position with the title "Head of asylum politics" complements the SRC's internal structure.

Financially, mandates play an important role for the SRC. Financial resources received through mandates and donations and legacies cover most of its costs. In the years 2015 to 2018, between 42.9% (2015) and 50.7% (2018) of its yearly income came from mandates, supplemented by between 31.0% (2017) and 45.4% (2015) from free donations and legacies[98]. In 2019, 39.2% of its budget still comes from mandates but now the SRC is mainly paid for quality assurance and training by its member organisations involved in legal protection in the new asylum procedure. This change of financial resources of mandates (from the Confederation to member organisations) and the connected change of role for the SRC importantly occupy the representatives of the SRC at the moment when I contacted them and when I conducted interviews with them. However, to what extent these changes have an impact of the organisation's overall advocacy practices and discourse is a question that I cannot answer in the present study. As explained in the methodological part of this thesis, the ongoing changes due to the restructuring probably played a role in my troubles to gain access to the SRC's employees. However, as the study focusses especially on the period 2015 to 2019, the practical respectively operational changes began only to take place at the end of the studied period.

Based on information about activities publicly available on the organisation's website as well as mentioned by SRC representatives in interviews in the context of this research, figure 5 gives an overview of the structure of the SRC. The office being responsible for operational tasks of the organisation, the present study focusses on the activities that employees carry out within its departments.

[98] Other income came from various activities; see SRC yearly reports 2015-2018.

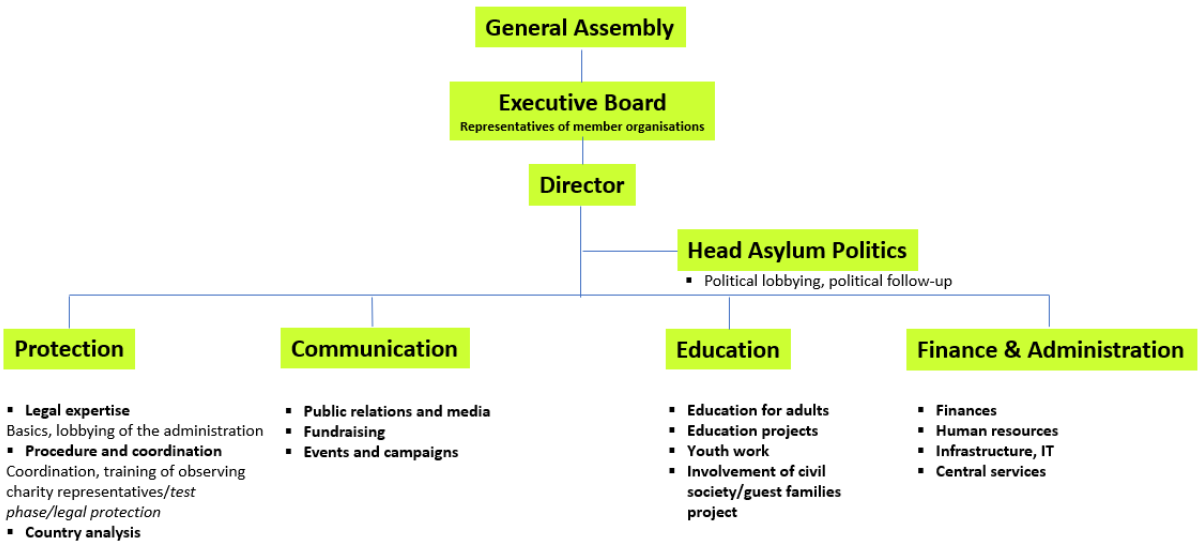

Figure 5 - The SRC's organisational structure and domains of activity in 2019 (source: adapted organigram based on SRC yearly reports 2015-2019; test phase mandate and new tasks since 1st March 2019 in *italic*).

The activities that are directly part of the SRC's advocacy work are mainly attached to the Protection and the Communication departments as well as to the position "Head of Asylum Politics", a position which is however only created in 2018. The Protection department is the "heart" of the SRC. Contrary to its member organisations, the SRC is specialised on the topic of asylum. Of the overall 55 employees working for the Office in Bern and in Lausanne[99], around thirty legal experts are located in the Protection department and elaborate so-called "basics". These refer to legal analyses and the elaboration of legally founded positions that support member organisations and other legal advice services in their operational work in the asylum procedure, and which build also the basis for lobbying purposes. As the legal expertise on which the SRC principally bases its advocacy work, be it in its insider or outsider strategies, is bundled in the Protection department, the SRC's Communication department works closely in consultation with this department.

A second important part of the activities that are located in the Protection department concern the different mandates in the old and the new asylum procedure. Some SRC employees of the Protection department are also active in a test phase of the new asylum procedure in Zurich and Boudry between January 2014 and December 2015. The experience of this test phase forms the basis for the nationwide introduction of the new asylum procedure, which comes into force on 1 March 2019. Finally, the SRC does also publish country reports which are elaborated by country analysts based on research in country of origins of asylum seekers.

[99] State: December 2019.

The described organisational structure in terms of hierarchies, paid staff and division of responsibilities and tasks between the different departments of the SRC's Office are important elements of the professionalisation of the organisation's advocacy work. Another aspect of the professionalisation of the SRC's activities are the predefined procedures in terms of decision-making as well as preparation of public communication documents like press releases. The aim of these procedures is two-fold. On the one hand, the respect of procedures serves the aim of efficiency. Time and human resources are scarce. Hence, the importance of using them efficiently. Second, respecting procedures signifying respecting decision responsibilities. Procedures like the procedure for the preparation and publication of press releases are adopted by an internal group of staff members of the higher hierarchical level. They decide the responsibilities and tasks in the context of the preparation of a press release, at what moment the director and the executive board need to be informed and/or asked for approval and who else needs to be informed before a press release is published. Further, the procedure is to be integrated in the handbook of the office. Every employee can consult the handbook and is thus informed about the procedures for the preparation of different documents, about decision processes and responsibilities. Listening to the discussion about the preparation procedure of press releases at an internal meeting reminds me of the bureaucratic functioning of administrations (fieldnotes, 2019).

Finally, as the staff members whom I could interview tell me, the coordination between the different departments as well as the coordination between staff members within each department is importantly ensured by regular meetings between staff members at different hierarchical levels. This again resembles the inner organisation of administrations.

4.6.3 The Swiss section of Amnesty International (AICH): professionalised human rights (campaigning) organisation and partial specialisation in asylum

The Swiss section of Amnesty International (AICH), as a national section of the global organisation Amnesty International, is first and foremost a human rights organisation and therefore does not exclusively defend the rights and interests of refugees. However, asylum represents an instrument of human rights protection and Amnesty International has increasingly engaged with the field. The point of departure for Amnesty International's engagement in advocacy activities in the asylum domain is the Geneva Convention and more precisely its non-refoulement principle. Through campaigning and lobbying AICH stands up for "a humane asylum law: AI Switzerland is committed to a Swiss asylum law that respects the provisions of the Geneva Convention and upholds human rights" (AICH website[100]).

[100] Amnesty International, Schweizer Sektion, So engagiert sich Amnesty Schweiz in Asylfragen, accessible at https://www.amnesty.ch/de/themen/asyl-und-migration/asylpolitik-schweiz/asylsuchende/so-engagiert-sich-die-schweizer-sektion-von-amnesty-in-asylfragen (last accessed: 27.08.2023).

The importance that the organisation attributes to its presence in the asylum field in Switzerland is expressed by its adherence to the SRC as a member organisation in 2005. As stated on AICH's website[101], "Amnesty International does not only campaign for the rights and dignity of refugees at the international level, but also in Switzerland and defends the right to asylum". In line with its objective of "campaigning for a world where human rights are enjoyed by all", Amnesty International fights for respect for human rights around the world. As mentioned in the historical overview (see chap. 4), in Switzerland, AICH has been campaigning for the rights and dignity of refugees and defending the right to asylum since 1970 (AICH, n.d.). Defending the rights of asylum seekers, recognised refugees and other migrants is part of the organisation's wider fight for respect for human rights.

AICH reports to AI's International Secretariat in London and to an international executive committee, which decides on the organisation's strategies, campaigns and lobbying of international organisations. These are then implemented by the national sections and adapted to the specific national contexts. Since 2001, the national sections have gained more autonomy, so that they can, for example, produce their own reports (Poinsot, 2004; Monforte, 2013). However, as I remarked by consulting AICH's published documents on its website, the organisation mostly publishes the reports commissioned by the International Secretariat. Like the SRC, AICH is a non-profit organisation and following its statutes, AICH is independent and impartial.

> Amnesty International sees itself as a global community of human rights defenders whose principles are international solidarity, effective action for individual victims, global action, universality and indivisibility of human rights, impartiality and independence, as well as democracy and mutual respect (art. 2 par. 3 AICH statutes, 2018).

This impartiality translates, among other things, in the refusal of state funding. Thus, in the period between 2015 and 2019, around 90% of AICH's financial resources come from free donations[102]. Other (minor) financial means come from purpose-oriented donations, contributions from the international mother organisation, Human Rights Relief and Human Rights Education, sold publications and promotion material.

The Swiss section of Amnesty International (AICH) is organised in a similar way as the SRC with a hierarchy including a General Assembly as its highest organ, an honorary executive committee and a director at the head of the office which is the operational heart of the organisation. The Office which is, like the SRC's Office, located Bern is structured in five departments. Amnesty International is known

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[101] Amnesty International, Schweizer Sektion, Asyl Schweiz, accessible at https://www.amnesty.ch/de/themen/asyl-und-migration/asylpolitik-schweiz (last accessed: 23.11.2023).

[102] See AICH yearly reports, 2015-2019.

as activist organisation and the Office relies indeed on an important activist basis whose actions are coordinated by employees of the Office. In the context of this PhD research, I did not however look at the activist component of AICH in detail but focussed more on other aspects of advocacy, especially defended positions and the interactions between the organisation's representatives (as members of the Office) with the authorities and other actors in the asylum field. Nevertheless, the activist basis presents an important instrument to create public pressure. Finally, the campaigning orientation of AICH is visible in the organisational structure where thematic and country specific work is located within Campaigning department.

As mentioned, asylum is only one issue among a variety of other topics addressed by AICH. Thus, AICH like its international mother organisation is partially specialised in asylum. Figure 6 gives an overview of the hierarchical structure of AICH (local activist groups excluded) and the organisation's domains of activities.

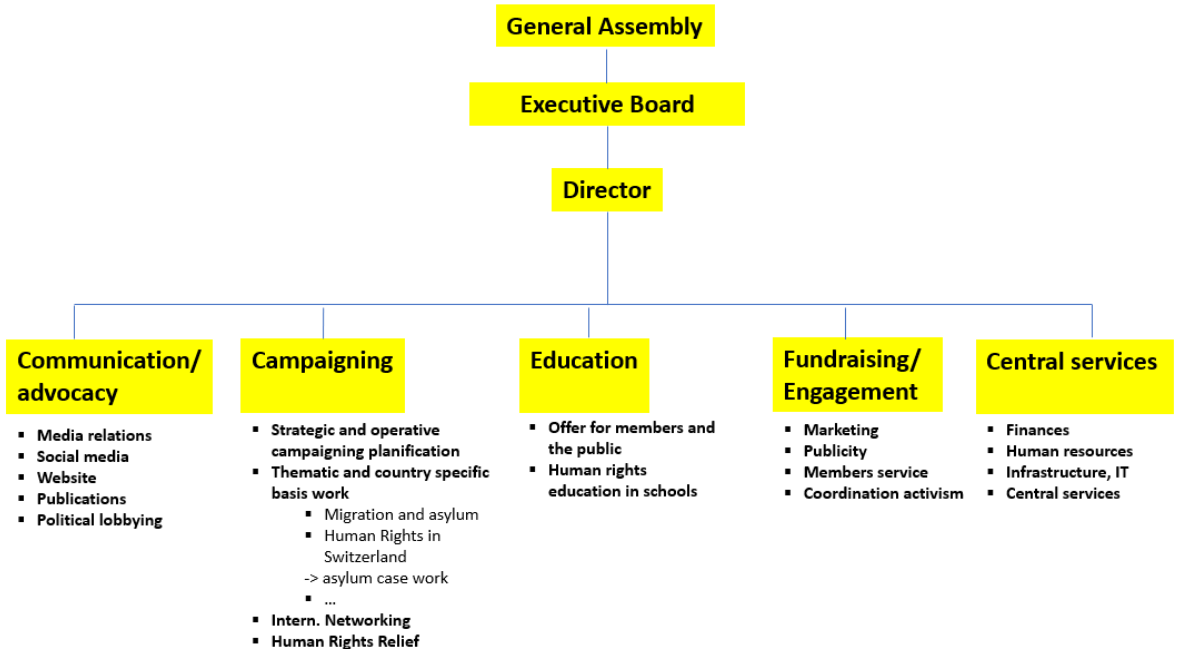

Figure 6 - AICH's organisational structure and domains of activity in 2019 (adapted organigram based on AICH's annual reports 2015-2019).

The international organisation's mission is "Investigating and campaigning for a world where all persons can enjoy their internationally codified rights". The operationalisation of the investigation dimension of the mission is organised at the international level which commissions AI researchers for investigating the human rights situation in specific countries. The operationalisation of campaigns, however, takes place in the national sections. Campaigns are in the centre of the national sections' advocacy work on different topics that raise human rights issues. This becomes visible in the organisational structure of the AICH. In the Campaigning department, so-called campaigners do

thematic and country specific basis work. As Marina, a staff member of AICH explains to me when I interview her in 2019, this does mean that campaigners prepare the content of campaigns and decide about the concrete instruments that are used in these campaigns (petitions, open calls, open letters, public demonstrations). While on the international level and also on the regional levels the general themes for campaigns are defined and adopted by the General Assembly, the concrete implementation of campaigns on the national level demands an adaption work to the concerned national context.

The topic of asylum is addressed by AICH in two ways. On the one hand, campaigns regarding asylum and more widely issues regarding refugee protection are part of the campaigning focus "Migration and asylum" and lie thus in the responsibility of a campaigner who prepares campaigns in this field. On the other hand, asylum is also attached to the focus "Human Rights in Switzerland". Here, a legal expert who is specifically specialised on asylum is responsible for all questions linked to asylum in Switzerland. This person is central for AICH's monitoring of Swiss asylum practice and reception conditions and AICH's commenting on Swiss asylum law and policy. Further, AICH's case work, also importantly managed by AICH's legal asylum expert, constitutes an important aspect of the organisation's advocacy work in the asylum domain. While AICH is not operationally engaged in the asylum procedure and does not take legal defence mandates, it provides legal advice for rejected asylum seekers or persons in the asylum procedure who are threatened with a negative decision. In specific cases, when the non-refoulement principle risks to be violated AICH does intervene with the authorities and/or transfers the case to a lawyer and/or provides the financial means to pay the lawyer. In specific cases, AICH also commissions expert assessments in favour of victims of sexual violence when their asylum claim has definitively been rejected to support a reconsideration request.

The fact that asylum represents an interest among a variety of other areas of operation of AICH is also visible in the small capacities in terms of human resources that the organisation provides for the topic of asylum. In the context of "legislative frenzy" (Piguet, 2009), the increasing judicialisation and the general juridification of asylum in Switzerland (as in other European countries), the fact that one legal expert is responsible for the issue of asylum presents a challenge for the organisation and of course for the legal expert him/herself. This is even more the case as this person is also responsible for answering other legal questions linked to human rights issues. This issue was raised by several staff members of AICH whom I interviewed in 2019. While until 2019 the legal expert has the support of an intern for the case work, in the following another staff member is instructed to support the legal expert with regard to the monitoring of the asylum system in Switzerland. These staff-related aspects need to be considered when analysing AICH's advocacy work in the asylum domain. With its merely partial specialisation in asylum and limited human resources for covering the topic, AICH relies importantly on its network. In this context, it can be noted that as member organisation of the SRC, AICH often

follows the SRC's statements and recommendations. Inversely, AICH participates in the elaboration of consultation responses and has a representative in the legal expert group organised by the SRC in which current legal issues are discussed, and positions are coordinated among member organisations of the SRC. Thus, the SRC does not only present an important partner for AICH's advocacy work in the asylum domain in Switzerland but provides important input that is taken up by AICH especially when making public statements regarding asylum legislation.

Like in the case of the SRC, important aspects of the professionalisation of AICH and its advocacy activities are the hierarchical organisational structure with different departments, paid employees who work in these departments and who have clearly defined tasks and responsibilities. Also similar to the case of the SRC, there are regular meetings between staff members, between the heads of departments as well as within departments. Further, there are clear procedures for the preparation of public communication documents like press releases as these request the collaboration of staff members from different departments. An important role that AICH's public communication plays is in establishing the guidelines of the International Secretariat of Amnesty International regarding positions adopted by AI and vocabulary to be used in public communication. As I will show throughout the following chapters of this thesis, these different dimensions of the professionalisation of AICH shape to different degrees the insider and outsider advocacy strategies of each organisation in the asylum domain.

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Legal knowledge is central for the self-perception and self-representation of the NGOs and their representatives. The following PART IV of this thesis will analyse this self-perception as legal experts in chap. 5.1. It will further investigate in more detail the variety of resources that are mobilised by the organisations in their advocacy work with a focus on the employees' competences and their professional networks (chap. 5.2). Finally, the (moderate) political positioning of both organisations will be addressed in chap. 5.3.

PART IV SELF-PERCEPTION, RESOURCES AND POLITICAL POSITIONING OF THE NGOs

5 Legal expertise, professionalism and (political) neutrality

By consulting the SRC's and AICH's public documents, one rapidly identifies three main properties that characterise the self-representation of the organisations. These are: legal expertise, professionalism and (political) neutrality. Also, the SRC and AICH representatives which I interviewed perceive themselves and their colleagues first and foremost as professional experts and they attach political neutrality to their expert role. In the following chapter, I propose to investigate this self-perception as experts and answer the question of what logics, functions and characteristics are attached to this self-perception as legal experts. Furthermore, the professionalism that characterises the organisations' advocacy work relies on important resources. These are, first of all, the competences of the staff working as professionals for the SRC and AICH. Additionally, their professional networks (as in the contacts they mobilise in their professional activities as staff members of the SRC or AICH) provide important resources that can be utilised in the organisations' insider and outsider strategies. Finally, I address the question of what consequences the self-perception as legal experts and the centrality that the NGOs attribute to the legal register when addressing issues linked to asylum and refugees have in terms of their political positioning. As mentioned above, the Swiss asylum support field is constituted by charity oriented as well as protest-oriented organisations. The SRC and AICH can be affiliated to a third category of actors who Miaz (2017) names as institutional advocates. How do these institutional advocates position themselves in relation to other actors of the asylum support field, especially the protest-oriented organisations? Chapter 5.3 will answer this question and will show that the answer does not only lie in the centrality of legal expertise but that, in the case of the SRC, its position and self-perception as a "bridge" and platform as well as its dependencies from and interconnections with other actors in the asylum field also play a role in the organisation's public positioning.

5.1 Self-perception as experts: neutrality and impartiality

Even though the SRC and AICH, in their advocacy strategies, mobilise the same types of resources, among which importantly but not exclusively legal knowledge, their self-perception as experts is shaped by slightly different dimensions and different understandings of the general functions their expert status has for each organisation. For this reason, I propose to present these different dimensions of the expert status of each organisation in a separate chapter. Here, I focus on the expert status of each organisation as an entity, showing how this self-perception as experts is displayed in the

organisations' public documents like annual reports and member journals. Obviously, these public documents are addressed to a specific public: members and donors of the NGOs. The image that the organisations convey of themselves in these publications aims at encouraging their supporters to further support them. Thus, the images that are conveyed in these publications do not represent a way to objectively describe the organisations' functions and roles. It is precisely the subjective self-perception and strategic self-representation of the NGOs as experts that I am interested in and that the following sub-chapters will present. In this perspective, I will also analyse the statements made by AICH and SRC staff members when I interviewed them in the context of the present study.

5.1.1 Expert status – case 1: leadership role, "bridge" and (in)dependency

As shown in the historical overview, the SRC had been founded as an umbrella organisation for charities operationally active, among other fields, in the asylum domain. The SRC still maintains this role today and with it a leadership role for its member organisations and other actors of the refugee support field. It also still has a self-conception as fulfilling a "bridge" function between different actors involved in the asylum domain in Switzerland. Furthermore, the state mandate as a coordinator and trainer of "neutral observers" (mostly its member organisations) in the asylum procedure that the SRC has between 1968 and until 2019 plays an important part in the organisation's self-perception, or what Drahy (2004) calls "identity". However, as mentioned, since March 2019, the SRC is not directly mandated by the Confederation anymore, but by the actors themselves mandated by the SEM for legal protection of asylum seekers in the asylum procedure. Reflections of SRC representatives about the new role linked to the restructuring of the asylum sector are insofar interesting in this context, as they are often formulated in comparison to the previous situation which helps to understand the latter, especially when it comes to questions of political and/or financial dependencies and questions of neutrality. Thus, this chapter also takes into account these reflections about the uncertainties that the time period on which my research focusses present. Finally, this signifies that the functions that the SRC attributes to its expert status (*Fachorganisation*) are not only based on the legal knowledge of its employees but that it is further closely related with the organisation's historical background and contextual factors.

Umbrella work, leadership role and recommendation function

With regard to support actors, most importantly those involved in the asylum procedure, gathering and centralising information through a strong network of operational actors and the diffusion of the collected knowledge is seen as a central role of an umbrella organisation. However, as Anna (SRC) explains, the specialisation of the SRC on asylum-related issues and generating expertise on these, the SRC has, in its staff members' view, a leadership role that is also recognised by its member organisations.

> We have the function - and the entire Executive Board is behind this - as a central player where the knowledge comes together, which ensures that the information is distributed. It's like a hub for all the expertise that comes together, and we make it all available. That is actually our main activity as an association. […] In this sense, as an umbrella organisation, we naturally have a professional leadership role. In some cases, the position has to be approved [by the Executive Board]. If it is something of major importance, but we also have a recommending function for our members, who of course do not have the specialised background that we have. The classic umbrella organisation work (Anna, SRC, 2019).

It is its specialisation and expert status that gives the SRC the legitimacy to not only coordinate its members and their positions and to secure the flow of information among them but also to make recommendations. The recommendation role and the superordinate "back-office services" for its members are thus based on the specialisation in legal aspects regarding asylum. Support actors, who are directly involved in the asylum procedure and who accompany asylum seekers, may seek advice from the SRC's legal experts regarding specific procedural questions or other legal aspects. It is this legal knowledge that gives the SRC the legitimacy to not only coordinate its members and their positions and to secure the flow of information among them but to make recommendations and moreover, to take its own stands. As a specialised umbrella organisation, the SRC has the role to speak as the central actor in the name of its members. In the case of consultation responses that the legal experts of the Protection department prepare, and which are generally discussed in the legal expert group between representatives of the SRC's member organisations, Anna (SRC, 2019) explains that "[n]ot everyone is always involved because they don't have the time or the capacity or they trust us to do it well anyway". This trust in the fact that the SRC's legal experts "do it well anyway" is linked to two aspects: first, the technical legal know-how that the analysis of law propositions requires in order to prepare a consultation response, and second, the SRC's experts know well how public policy works. They have the intellectual capacity to take into consideration the constraints of the policy process in which they engage (Robert, 2010: 23). These are the two main aspects that characterise the competences of specialised experts. While the member organisations do have legal experts, these are generally not specialised in the asylum domain (apart from staff who is employed for the legal assistance activities in the asylum procedure, but these are not involved in the elaboration of public statements on asylum practice, law and policy), with the exception of AICH. From a resource mobilisation perspective, in the context of increasing juridification of asylum politics and the increasing sophistication of asylum law (Miaz, 2017), the specialisation of actors like the SRC allows the development of a corresponding expertise (Lepoutre, 2022: 60) which acts as an important resource for the refugee support movement.

A "bridge" function between actors in the asylum field

As mentioned above, NGO representatives define the SRC's role first and foremost as defined by its form as an umbrella organisation of aid organisations with operational responsibilities within the asylum system. As an umbrella organisation, it has an important networking role for its members and aims at creating an exchange among them. However, this coordination and networking role goes beyond its own members and also beyond the support actors in the asylum field more widely. The SRC's aim is to make sure that all actors involved in the asylum field speak with each other. In this perspective, the SRC organises, in collaboration with UNHCR, the asylum symposium, a public exchange forum which takes place every two years. As Marc (SRC, 2019) explains, in this context, the SRC presents itself as an expert organisation facilitating exchange and dialogue among different actors involved in the asylum domain.

> The aim is to exchange expertise and to position us as an expert organisation that can facilitate intensive dialogue between experts in a wide variety of fields. [...] Be it authorities, be it political representatives, be it organisations, be it legal advisors, legal representatives, lawyers, attorneys, even authorities down to the cantons, national authorities. Simply all these people who are involved with asylum. [...] It is always ideal if you can also make a demand at this asylum symposium. But mostly it's simply about exchanging expertise and promoting understanding to bring people together who perhaps exchange ideas normally differently in a different setting, more in writing; to bring them together around a table (Marc, SRC, 2019).

To position the SRC as an expert organisation allows it to situate itself in the middle of the actors it aims to bring together. Here, the capacity of the expert to bring different actors "around a table" and to "facilitate intensive dialogue" has two different dimensions. On the one hand, as experts in the field, they do not only have legal knowledge, but with their practical focus they consider the perspectives of different actors in the field which grants them an intermediary position between refugee support actors and the authorities. On the other hand, there is a symbolic dimension to their expert status (Bourdieu, 1987). As an expert organisation, the SRC has a symbolic capital (ibid.) which goes with perceived integrity. Finally, it might also be noted that at the asylum symposium, science, politics and civil society representatives are invited to speak to the audience which is also generally constituted by "experts and interested persons from science, politics and civil society" (SRC, Fluchtpunkt n°72, 2016: 2). As experts with their practical focus on the one hand and their technical legal knowledge and intellectual activity on the other (Delmas, 2011: 65), the representatives of the SRC do not only occupy an intermediary position (ibid.) between legal defence and advice actors and the authorities, but also between science and political decision-makers. This intermediary position between practical purpose and scholarly activity (ibid.) is source of the SRC's legitimacy to bring these actors together. Their expertise thus plays a social role (ibid.: 10) not only by defining the situation in respectively the issue

on which s/he intervenes (Robert, 2008) but furthermore, the SRC mobilises its (perceived) expert role as symbolic capital to be perceived as a legitimate and credible facilitator of dialogue between different types of actors.

State mandate and the question of neutrality

In the interviews with representatives of the SRC, the role of the SRC as a "neutral observer" of the asylum procedure is mentioned at several points and it is put forward to explain the relation with the authorities. The role of the "neutral observer" relates to the position of the SRC as a mandated institution for coordination and training of aid organisations participating in asylum hearings as observers and of legal counselling services. Considering the previously given historical overview, we have already seen how entangled civil society's engagement in the asylum field has historically been with the asylum procedure itself. Some experts then indeed underline the importance of the historically defined role of the SRC as a "neutral observer" of the asylum procedure for understanding its contemporary role and their own perception of said role and the organisation's advocacy practice. Part of this is especially the fact that the organisation has been attributed its "neutral observer" position by the Confederation.

> An organisation that is included in the Asylum Ordinance as a coordination of state tasks and the neutrality of the procedure and deliberately not - and I believe this is a major process that will come - deliberately not on the side of the asylum seekers, the aid organisation representation is deliberately not organised in this way. In principle, it was introduced at a time when there was no appeals procedure in Switzerland, to guarantee the neutrality of the process. Neutrality means neutrality (Thomas, SRC, 2017).

What Thomas refers to when he says, "Neutrality is neutrality", is the non-positioning in favour of or against the authorities. As mandated for carrying out state tasks, the SRC cannot criticise its client. This is an understanding frequently mentioned by my interviewees. Following this reasoning, neutral means to not openly criticise the system in which the SRC is involved and which the authorities implement through their practice. What is perceived as a neutral position finally leads to a certain self-censorship (Drahy, 2004). From this perspective, neutrality is not linked to a position of independency as one would logically presume but, on the contrary, to a certain dependency, on the aid organisations that the SRC trains and coordinates on the one hand, and, on the other hand, from the authorities that mandate the organisation with the coordination of these "neutral observers". In view of the restructuring, there is the idea that a positioning against the authorities might be easier without state mandates and the corresponding financial dependencies.

> I feel it will be easier to some extent because you no longer have direct mandates, no direct federal funding. Previously, this dependence was stronger, in inverted commas. I think it will be easier [without the state mandate] (David, SRC, 2019).

This reflection from David shows that staff members are aware of the unequal power relations between the authorities and the SRC due to the mandate relationship with the Confederation until 2019. As McGhee et al. (2016: 31) note in the case of the funding relationship between the NGO Refugee Action and the Home Office, this funding relationship can come into conflict with the advocacy goals of the NGO. Such conflict is not directly mentioned in Thomas' explanation of the SRC's neutrality principle, but regarding the organisation's public political positioning this can lead to internal divergences among the NGO's staff members. I will address this aspect in more detail in chapter 5.3.

5.1.2 Expert status – case 2: moral authority and added value of the international perspective

Compared to the SRC, AICH has a quite different background and orientation, as it is a national section of the international organisation Amnesty International. As Monforte notes, "Amnesty International (AI) is probably the most important nongovernmental organization acting for human rights" (Monforte, 2013: 51). AICH's self-perception as human rights expert is thus tightly linked with AI's self-perception and public self-representation which I will present in the following before focussing on the self-perception of AICH's role in the Swiss asylum domain. "Amnesty International is a government independent international human rights organisation and a worldwide movement" (AICH annual report 2015: 4). There are three elements in this self-definition that require attention: first, independency; second, human rights; and third, movement. Regarding the first aspect, the independency from governments, what is also called impartiality, refers to the view of the organisation that "human rights abuses could be denounced without endorsing the political or ideological cause of those who were victims, and so without giving support to regimes which could also commit abuses" (Monforte, 2013: 51). From this perspective, human rights, the second and most central element, have a "moral authority" (Hopgood, 2006) over states, as they put individual rights above the state independently of the latter's political regime. Statements as the following reflect this view: "Human rights are universally valid, and the will of the stronger one must never triumph about the law" (AICH annual report 2016: 3). In addition, human rights standards are "principled norms" which means that they "are based on beliefs of right and wrong" (Clark, 2001: 11). AI's "loyalty to the moral principles of human rights" (ibid.) makes it to a "disinterested and autonomous 'third party' actor in the international system" on which is based its "diplomacy of conscience" (ibid.).

The third main aspect that characterises Amnesty International is its nature as a movement and the importance of public campaigns that are carried out by its important activist basis. Contrary to other

international human rights organisations like Human Rights Watch, AI does not only do research and publishes reports, but it importantly engages in advocacy activities through public campaigns, next to its letter-writing strategy. Its transnational nature is the organisation's force. As Clark notes, "Amnesty's combination of a public international membership and transnational activism is unique among non-governmental organizations concerned with human rights" (Clark, 2001: 9). Nevertheless, part of the mission to stop and prevent human rights violations are not only public campaigns but also mainly investigations (AICH annual reports 2015-2019). AI has developed techniques to identify (research) and to publicise (campaigns) "gaps between international human rights principles and practices" (Clark, 2001: 4). It is here that we identify an important element of the self-perception of AICH not only as an activist campaigning but at the same time also as an expert organisation in the domain of human rights. While "Amnesty International's strength is based on engagement of volunteers" (AICH annual report 2015: 3), not only are the campaigns conceptualised by staff members at the international secretariat in London and adapted and coordinated by staff members of national offices, but also the research, particularly the investigations are done by persons working for AI. This importance of investigations respectively research about the human rights situation in countries all over the world together with the legal knowledge regarding international law, which is important to evaluate the observed situations, constitute the expert character of Amnesty International. Amnesty International is an expert with regard to the evaluation of the human rights situation in countries around the world.

The point of departure for Amnesty International's engagement in advocacy activities in the asylum domain is the Geneva Convention and more precisely its non-refoulement principle. Through campaigning and lobbying, AICH stands up for "a humane asylum law: AI Switzerland is committed to a Swiss asylum law that respects the provisions of the Geneva Refugee Convention and upholds human rights" (AICH website[103]). To ensure that the AsylA and the Geneva Refugee Convention are respected by the Swiss authorities, AICH monitors the asylum procedure, the SEM's asylum practice as well as reception conditions of asylum seekers. AICH is thus a "watchdog of the respect of [legal] texts" and "a sort of symbolic control jurisdiction of the administration's practice" (Drahy, 2004: 140). AICH representatives see in their international legal perspective an added value in the national context. AICH's legal input from an international law perspective can support cases of asylum claims or appeals brought to AICH's legal expert by legal advice services.

[103] Amnesty International, Schweizer Sektion, So engagiert sich die Schweizer Sektion von Amnesty in Asylfragen, accessible at https://www.amnesty.ch/de/themen/asyl-und-migration/asylpolitik-schweiz/asylsuchende/so-engagiert-sich-die-schwei zer-sektion-von-amnesty-in-asylfragen (last accessed: 27.08.2023).

> And often in the legal advice centres, too, they don't think about the Convention on the Rights of the Child, they are only concerned with Swiss asylum law and that is usually what we can bring in and say 'why don't you argue with the best interests of the child?'. Things like that to make an appeal. That's like our added value, because you have the big picture of what applies internationally and not just Swiss asylum law. And that's how it often comes through in an appeal (Nathalie, AICH, 2019).

Relating to the "big picture" thus presents a resource which, following the observations from AICH representatives, is often not considered by legal advisers who focus on the Swiss Asylum Act in their argumentation. Furthermore, the international legal perspective is also described as a resource to influence national law and the authorities' practice by confronting it with international legal obligations. Finally, a third added value of the international legal perspective on issues linked to asylum is mentioned: Following activities and positions of international institutions like, the European Council, or UNHCR is also considered important for influencing how asylum government is shaped on the national level. "There are so many pieces of the puzzle", says Nathalie (AICH). With its focus on international law, AICH mobilises this knowledge in the asylum domain. However, as a principled organisation, AICH does not take mandates to defend individuals. The organisation's focus lies on the defence of the principles themselves, which becomes visible in its advocacy work in the asylum domain as I will show when analysing the NGO's advocacy strategies.

5.1.3 The character of the expertise

In the last chapters I have presented the self-perception of the SRC and AICH and their respective representatives as experts respectively expert organisations and the role in the asylum domain in Switzerland that they link to the expert status. In the present chapter I propose to focus on the expertise that AICH itself (or partly through its international mother organisation Amnesty International) produces and mobilises in its advocacy work as well as the expertise produced and mobilised by the SRC.

One of the most important activities of AI is to collect and document facts about human rights violations in countries around the world. These collection and documentation activities are labelled "Research" (see AICH annual reports 2015-2019) and the results of the research are generally published in reports that are then further used in campaigns and other public relations activities (press releases, social media). In AICH's annual reports and in the organisation's magazine, the need for objectivity and scientific character of the research is underlined by AI researchers: "The basis is always solid research" and "I need to look for hard facts" (AICH Magazine n° 83, 2015: 3), says an AI researcher in the AI Magazine. It is important to "keep objectivity", says another AI researcher doing research about the situation in Syria (AICH Magazine n° 90, 2017: 23) and further explains that the credibility

and authenticity of photos and videos that she receives from contact persons in Syria are verified by a technical specialist (ibid.). Another important resource of information present testimonials of the people on site. If local access is difficult, like for example in Eritrea, testimonials of refugees in neighbouring countries are used as an important (but not only) source of information (AICH Magazine n° 83, 2015: 31). Before the publication of a report about the research of local delegations the results are double-checked and "only ever […] verifie[d] information" (AICH Magazine n° 84, 2015: 17) is published. In Switzerland, a part of this research serves as country-of-origin information in the asylum procedure where it is used by legal defence actors, and also to some extent by the FAC when stating on appeals against a negative decision on an asylum claim. Similar to AICH, the SRC does also provide country-of-origin information as one of the "back-office services" that the umbrella organisation provides for its member organisations and especially legal defence actors. However, while AICH takes over the research results and reports from international AI researchers, the SRC draws on external contact persons of its international network. I will come back to this aspect when discussing the importance of the network in more detail in chapter 5.2.2. What AI produces in its reports on the human rights situation in a specific country and what the SRC produces in its country reports is a socio-legal expertise (Drahy, 2004). The observed situations "are assessed against a whole range of legal concepts" (Gill, 2018: 92).

AI does not only document and collect information about the situation in countries of origin of asylum seekers but AI researchers also investigate, among other situations, the reception conditions of asylum seekers in European countries. In 2016, AI researchers are, for example, present in refugee camps on Greek islands (AICH annual report 2016), in Hungary and the Balkans (AICH Magazine 2015). Here, similar to the research activities in countries like Syria or Libya, AI representatives do not intervene but observe, collect information and document the situation with a pretence to objectivity. Again, also the SRC collects information about the reception situation in other European countries. Either SRC staff members go to the countries themselves, like several times in the case of Italy (see SRC annual report 2016, 2017, 2018; Fluchtpunkt n° 76, 2017) or they rely on information provided by external contact persons of their network. Also, the principles of objectivity and non-intervention are important here.

Regarding the asylum procedure in Switzerland itself and the monitoring that both organisations do as part of their respective missions, it is interesting to note that the SRC legitimises its expertise through its practical experience as a "neutral observer" in the asylum procedure until 2019, its implication in the test phases of the new asylum procedure in Zurich and Boudry and then from 2019 onwards as coordinator and actor responsible for quality assurance of legal protection. AICH on the other hand, bases its legitimation to its more external status with its "whistleblower" capacity (Delmas, 2011). While not occupying an institutionalised position within the asylum procedure, staff members have nevertheless access to the dossiers of asylum seekers of the test phase for an evaluation and

furthermore, they regularly get information about problematic cases through their (limited) case work. Based on these cases, AICH builds causes which go beyond the "tyranny of the individual".

Finally, this more or less direct observations combined with the legal knowledge that experts of both organisations do have, flows into "basics" in the case of the SRC and statements, consultation responses or position papers of both organisations. Thus, the expertise provided "mixes legal knowledge and analysis of the social reality" (Drahy, 2004: 199). Mobilised in the different modes of action of the SRC and AICH, the law represents a strategic resource and an instrument of action (Drahy, 2004: 22). However, the legitimacy of the expertise is not only linked to the "pure" legal knowledge but also the practical experiences of both organisations in the asylum domain. So, the practical orientation of expertise (Delmas, 2011) is finally also linked to knowledge about the practice respectively practical experiences. The organisations define themselves as research-oriented.

A last element that might be mentioned to characterise the expertise on which the SRC and AICH base their advocacy work, is the consideration of and the contact with academic researchers. The latter are regularly invited at conferences and meetings like expert conferences and the asylum symposium that the SRC organises. Furthermore, they are also given a place in the publications of both organisations. In the case of AICH, the AI Magazine regularly publishes interviews with researchers at universities. Similarly, the SRC publishes contributions in its magazine *Fluchtpunkt* and manages a blog called "Facts instead of myths" until 2018[104] where contributions written by academics about issues linked to asylum are published. Finally, the *ASYL* journal publishes contributions from staff members who are legal experts but also from academics. The editorial committee is importantly constituted by academic researchers. These aspects show, from my point of view, that both organisations value a proximity with academic researchers. Regarding ASYL, a Swiss journal on asylum law which exists since 1986, Thomas explains:

> There was a group that said, 'You need scientific input into practice here'. [...] That's part of the advocacy work at the SRC and it fits naturally into this whole process. With it, you can set topics and that's a conscious point: which topics are important, what do you want to set. And at the same time, maintain the independence of the people who write, don't intervene, and don't make a pure lobbying paper. It is not a political party journal, it is not an SRC journal. There is someone from the SEM on the editorial board. Not consciously chosen, but the person changed function and remained on the editorial board, and that's a good thing, so that you simply have different perspectives, so as not to come across as a political left-wing journal in the guise of a scientific journal (Thomas, SRC, 2017).

[104] In 2018, the blog is stopped by the SRC due to lacking resources.

This quote shows two things. First, the proximity with academic researchers is part of the SRC's general advocacy strategy. "Scientific input" is seen a helpful resource for advocacy. Second, as Thomas points out, the editorial board of ASYL is not only constituted by academic researchers and members of the SRC but it is also open to persons working for the administration. Indeed, as he explains, this is apparently the case because the person was a member of the editorial board before starting to work for the SEM. Nevertheless, this precision shows the SRC's effort to be perceived as a neutral expert. At the same time, on needs to consider that as legal experts, most of the SRC's staff members do have a university education and thus probably a "natural" proximity with and an interest in the academic world.

5.2 The resources: staff, competences and network

The last chapters have already provided some information about the financial and human resources of the SRC and AICH and have also situated the organisations within a wider refugee support network. Furthermore, in terms of moral resources (Edwards/McCarthy, 2004; McCarthy, 2004), I have described the importance of the self-perception and self-representation of both organisations as legal experts for the construction of legitimacy vis-à-vis the authorities and the wider public. By adopting a resource mobilisation perspective that "emphasizes the variety and sources of resources" (McCarthy/Zald, 1977: 1212), the aim of the chapter, with its subchapters, is to look at the organisations' resources in more detail. As the aggregation of resources, most importantly in the form of money and labour are central to the continuous existence of a SMO (ibid.: 1216), first, I will look at the staff, the competences that they provide and how they interact with each other in the context of the organisations' advocacy work (chap. 5.2.1). Second, I will describe the social resources respectively the networks in which each NGO is embedded and the resources that these networks provide (chap. 5.2.2). Overall, the following subchapters aim at answering the following questions: What competences do the staff members provide for the organisations' advocacy work and how do the different competences relate within the organisations? What resources does the network concretely provide for the NGOs' own advocacy work?

5.2.1 The staff: legal knowledge, communication know-how and political follow-up

As professionalised organisations, both the SRC as well as AICH rely on a certain number of employees who can roughly be attributed to two categories. On the one hand, there are legal experts in the case of the SRC and issue experts in the case of AICH, among whom a legal expert, responsible for the asylum issue. On the other hand, there are communication specialists. Most of the employees have a university degree. While the SRC's legal experts, working in the "Protection" section, do indeed have

a legal education (apart from single exceptions), this is not the case at AICH where a great variety in terms of educational background can be observed ranging from social work to international relations, environmental sciences, social sciences and school teaching. Employees with a legal education background do represent a minority. Furthermore, regarding the educational background of the NGOs' employees, it might be mentioned that several among them have followed further education programmes either in international law or campaigning in the case of AICH or in project management in the case of the SRC. Regarding the staff members who are responsible for communication, we can also observe a diversity of educational backgrounds ranging from communication and media sciences to language studies, philosophy and history. Nevertheless, the persons in charge of public communication of the SRC or AICH do generally have extensive experience in public relations and communication and/or journalism.

Due to the small number of interviews that I conducted with representatives of the SRC and AICH I cannot provide a representative overview of the motivations of the organisations' employees. An aspect on which my research can, however, provide more insight concerning the collaboration between the different types of staff with their different types of competences and responsibilities within each organisation.

The triangle of professionalised NGO refugee advocacy

As mentioned above, legal expertise plays a central role in both the SRC's as well as AICH's advocacy work and more generally, for the self-perception of the staff members involved in advocacy in the asylum domain. As also mentioned, the staff members who elaborate and provide the expertise which is then used in different contexts and in interaction with different actors for advocacy purposes, are the centrepiece of the organisations. In the case of the SRC, these are staff members of the Protection department and in the case of AICH, these are staff members working on specific issues in the Campaigning department, as AICH is organised in terms of campaigning issues. As a reminder to the reader, the issue of asylum is situated within the campaigning issue "Human rights in Switzerland". So, this group of employees with their capacities to provide issue-specific expertise based on their specific competences build the backbone of the organisations and their advocacy work.

For the communication of this expertise, they collaborate with communication experts. Professionalised advocacy organisations active in the domain of asylum, like AICH and the SRC, rely importantly on staff with mainly two different types of competences: on the one hand, legal/issue knowledge and on the other, communication know-how. Complementing these two groups of staff members with their different competences, roles and responsibilities, there is a third type of staff who is closely connected to the director but at the same time also to the two other groups mentioned. In the case of AICH, this is the organisation's official chief lobbyist. In the case of the SRC, the position is entitled "head of asylum politics" and it is only created in 2018. According to the job description of the

open position, it is directly attached to the director and has a role of interface between the Protection and Communication departments. While historically the SRC had no lobbyist position, which changed somewhat with the new position created in 2018, this has been the case for AICH.

While the director has an important representative position in the case of both organisations and plays an essential role in internal decision-making processes, the core of the NGOs' advocacy work is constituted by the three staff groups mentioned above: legal/issue professionals, communication professionals and a lobbyist/head of asylum politics. These three groups work closely together in what I call "The triangle of professionalised advocacy" which is represented in figure 7 below.

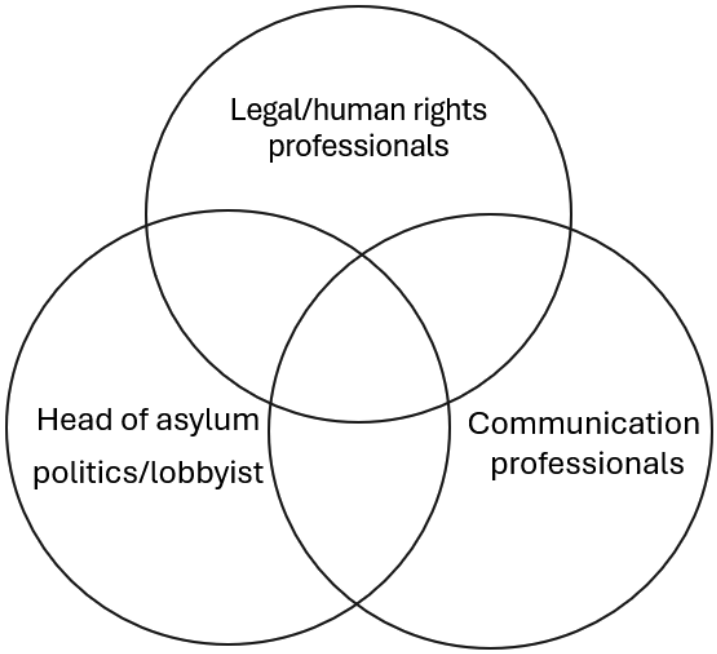

Figure 7 – The triangle of professionalised NGO refugee advocacy

In the case of AICH, this "triangle" constituted by three groups of employees, is obviously not only working in the asylum domain but more largely on human rights issues. Furthermore, as I will explain below, the way in which AICH's triangle works in the asylum domain is a bit different from other issues on which AICH works. Finally, figure 7 is not representative of the concrete degree to which the three groups of staff collaborate in their daily work. However, the overlapping circles illustrate the general close collaboration between the three staff groups, and I find this image especially helpful for the analysis of the NGOs' public communication work. As mentioned above, the legal (SRC) and the legal and human rights issue (AICH) experts constitute the core of the SRC and AICH in the sense that it is them who generate the expertise, positions and more generally content which is then used externally in various contexts for advocacy purposes. To understand how these three groups of staff are involved in the advocacy work of the organisations, I will focus, in a first step, on the competences, responsibilities and specific target groups in terms of advocacy that each group addresses in its work.

In a second step, the different moments and occasions of collaboration between the three groups are described. While both AICH as well as the SRC are characterised by this triangle of professionalised NGO advocacy, each organisation has its specificities in terms of the employees' capacities, their responsibilities and the types and occasions of collaboration to which I will draw attention in the following and which lead to certain challenges for the persons involved.

Legal respectively asylum experts have a specific knowledge. Generally, they do not only have knowledge about the AsylA but more widely about how the asylum system works, and they also have know-how (Drahy, 2004: 21) respectively competences in terms of writing a consultation response, country-of-origin and other issue-specific reports. The elements that characterise the expertise provided by the SRC and also by AICH have been described above. The competences that are necessary to elaborate and provide this expertise and positions that are based on it are mainly legal competences. In whatever manner information is collected, it is then evaluated in the light of the legal knowledge that the experts have.

Communication experts on the other hand are responsible for communicating the legal expertise and elaborated positions to different publics. Here, they have a double role. On the one hand, they are responsible for public sensibilisation as part of the NGO's advocacy work, and on the other hand, they are responsible for fundraising. Both goals are always present in the SRC's public communication.

> It is important that the organisation as a whole is always aware that communication is also always about creating incentives to generate donation […] We have to tell our stories in such a way that people develop compassion and feel motivated to donate. We have to present our commitment in such a way that we can show what the real, concrete benefits are, and these benefits must be truly understandable and motivate people to donate (Marc, SRC, 2019).

The presence of these different goals in public communication activities implies several things: First of all, public communication is a strategic task that considers importantly its target group(s). Moreover, to reach both goals, it will aim at reaching a large audience (Zald/Ash, 1966). Then different goals may collide (ibid.). More generally, the fact that public communication targets a wide public means that communication experts need to have the competence to present issues in a comprehensive way. Their target public are journalists and the wider public. The communication instruments that they are responsible for and that they use regularly are press releases, campaigns and the member journals. While the legal experts identify and approach issues from their legal technical perspective, communication experts are trained in transmitting clear messages to a lay public and to use a vocabulary that touches people. Hence, the challenge of public communication is to reconcile both perspectives, the legal and the communication ones. In the case of the SRC, at times, this challenge leads to tensions and misunderstandings between legal and communication experts. Press releases

are a typical case of a close collaboration between communication and legal/asylum experts. This is also the case for AICH. The initiation for a press release can come from either group – or also from the director or the head of asylum politics/the lobbyist. In the case of the SRC, press releases were, for example, regularly subject to discussion in the internal meetings that I observed and in which legal as well as communication experts participated. In this context, collaboration between these two groups of staff members is not always easy, disagreements and misunderstandings between both groups are not uncommon. On the one hand, the internal discussion frequently differs from what the SRC communicates in its press releases consequently some employees are dissatisfied with the "soft" public communication of their organisation. In these situations, an emotional discourse aiming at reaching the wider public collides with the legal technical perspective of the legal experts on the issue communicated. Another aspect that is mentioned to explain the dissatisfaction of some legal experts with what and how the SRC communicates publicly concerns the perceived misunderstanding between legal and communication experts when issues are legally too complex. An example of this type of internal misunderstanding with consequences for the publicly communicated position of the SRC is the Como/Chiasso case in Summer 2016. In press releases, a focus is laid on the unaccompanied minors blocked at the border between Italy and Switzerland. Internally, the legal experts are however convinced that the border controls leading to the blocking of migrants at the border represents, in fact, a violation of the law by the border guards. As Thomas explains, at the time, this position is too complex to explain to non-lawyer colleagues.

> I think in this specific case, it was actually impossible to explain it well, even internally, to non-lawyers. The legal experts were unable to make it clear internally that we really did consider it unlawful. So, there were internal discussions about it at the time, but it was considered normal to have controls in place. The legal argument was not understood. It is too complex (Thomas, SRC, 2017).

The collaboration between legal and communication experts in advocacy organisations thus may be challenging in situations of legal complexity. In the case of AICH and according to the staff members whom I interviewed, it can be noted that those tensions and misunderstandings between legal/asylum experts and communication experts does not seem to characterise the collaboration. A reason for this might lie in the existence of clear communication guidelines provided by the International Secretariat in London that define the positions that AICH is allowed to defend as national section of the worldwide movement as well as the ways in which these are communicated in terms of form and wording. What content and the ways in which it is communicated is predefined at the international level. While these guidelines seem to create some frustration on the side of the activists, and also in the context of cooperations with other organisations in the support field, as I will later show in more detail, they serve as common basis for the legal as well as for the communication experts.

Furthermore, in the case of the SRC, one can note that from 2018, the responsibility for press releases does not lie with the communication department anymore, especially with the media spokespersons, but with the head of asylum politics. The head of asylum politics is the third type of actor in the triangle of professionalised NGO refugee advocacy of the SRC. This person is responsible for following the political developments in the asylum domain. Furthermore, the person is responsible for lobbying activities targeting the Parliament and is also involved in the preparation of consultation responses in collaboration with legal experts. Whenever the SRC's documents address a public that includes political decision-makers, the head of asylum politics is involved. The head of asylum politics occupies a dynamic position between public sensibilisation, and the influence of institutionalised politics and the actors involved in it (administration as well as parliament). While this position is still not entitled lobbyist and conceived as a bridging position between the director on the on hand and the Protection and the Communication department on the other hand, the creation of this position hints to a reorientation of the organisation. The creation of the position is all the more interesting in the context of the restructuring of the asylum sector and the change of role that it implies for the SRC. Furthermore, it is interesting to note that with the creation of this position, the responsibility for a part of the organisation's advocacy is located outside the Protection department and thus does not directly rely on legal experts anymore as this was the case before. In the case of AICH, an opposite development can be observed. AICH's lobbyist is not active in the asylum domain due to the increasing complexification of asylum policy. Thus, the SRC's head of politics has a more central role than AICH's lobbyist has regarding advocacy in the asylum domain. When it comes to AICH, it is legal/asylum experts who address directly decision-makers in the administration as well as in Parliament. Here, it needs to be noted that they do so mostly either through the SRC or in close collaboration.

In conclusion, the explanations above have shown that although the concrete responsibilities of the organisations' staff members vary between the SRC and AICH and although they also vary within an organisation over time – when for example, a new position is created – the involvement of different groups of employees with their different competences and perspectives form an ensemble of resources that is mobilised in the advocacy work of both organisations. While communication experts play a less important part in insider advocacy strategies (direct contact with the administration), their competences and perspectives constitute all the more an important part in outsider strategies (public communication and mobilisation) which needs to be kept in mind when analysing these strategies.

Another important type of resources for the NGOs' advocacy work is their respective networks. The following sub-chapter will present the networks in which the SRC and AICH are situated from a resource perspective.

5.2.2 Sharing expertise and experience: the importance of the network

The SRC does not only provide networking services and support to its member organisations and for the support field in general, but the organisation does also need this network for its own advocacy work as a provider of information. As the SRC is not operationally active in the asylum procedure, it relies on the actors who are operationally active to provide information about how things work on the ground. The same is true for AICH. After having presented the different actors of the support field and the different tasks that they fulfil, in the present chapter, I will adopt a resource mobilisation perspective to look specifically into the resources that the network provides for the SRC and AICH and their respective advocacy work. On the one hand, the resource mobilisation perspective underlines the importance of organisations for the continuity of a movement, but on the other hand, it also draws attention to the aggregation of human, financial and social resources by the organisations themselves (Edwards/McCarthy, 2004; McCarthy, 2023). While I have presented the moral resources in chapter 6.1 (self-perception as experts), the financial resources in chapter 5.2 and the human resources with their variety of competences in the last chapter, in the following the focus lies on the social resources respectively the resources that the networks of the SRC and AICH provide. In the following, I aim to answer the question of what resources the "network functioning" (Drahy, 2004: 109) of the refugee support field provides the SRC and AICH with that the latter mobilise in their own advocacy work.

The networks of each of the two organisations can be characterised by three main dimensions: First, there is the national network of support actors who provide the SRC and AICH with information from the ground. Second, on an individual level, many staff members do have contacts in the asylum field in general, sometimes including civil servants, from former employment positions in other civil society organisations or with the authorities. Third, both organisations have important contacts at the international level. AICH's campaigning work in particular is importantly shaped by its worldwide mother organisation Amnesty International. For the SRC, ECRE presents an important opportunity for networking, exchange and coordination with other refugee support actors on the European level.

Resources of the Swiss support network: information from the ground

Next to their financial resources and staff with their competences the NGOs rely importantly on information about problematic issues in the asylum field in order to process these from their expert perspective and elaborate positions and claims vis-à-vis the authorities. As both, the SRC and the AICH, are not operationally active in the asylum procedure, they rely on other actors for transmitting such information. Through its role as umbrella organisation but also more closely through its mandates, the SRC is in regular contact with its members who are operationally active in the asylum procedure. Mandated by the Confederation with the training and coordination of "neutral observers" and legal advice services in the old procedure and for training and quality assurance by member organisations in the new procedure, allows SRC representatives to be informed about challenges that the operative

actors encounter in their daily work. AICH, likewise not directly involved in the asylum procedure, does also depend importantly on other actors to become aware of problematic situations encountered by actors working on the ground. As case work constitutes an important element of the organisation's "body of work" in the asylum field, it depends on being informed about individual asylum claims either by asylum seekers themselves or legal advice actors asking AICH for support for individual cases. In this respect, the new asylum procedure presents a challenge for AICH.

> The biggest problem is really that we have much less insight. People have someone to represent them [in the asylum procedure]. From that point of view, they don't go out [leave the asylum centres] at all and we are approached in fewer cases. Strangely enough, if there is no prospect of success, the cases have to be dismissed and not pursued [by the legal representatives]. It's a bit strange. But we don't get these cases. That's a problem for us at the moment. We don't get informed about cases (Daniel, AICH, 2019).

Thus, the fact that asylum seekers automatically obtain (and financed by the state) legal advice and legal representation in the asylum procedure has, as a consequence, the fact that not mandated actors like AICH are less approached by asylum seekers. This shows how the ways in which the asylum system is organised can influence to which degree organisations who are not directly involved in it have access to problematic cases.

In this context, occasions at which legal protection actors share their experiences with each other but also with those not directly involved in the procedure are all the more important. Hence, the SRC's – and to a smaller degree also AICH's – networking function has a double role. While providing knowledge diffusion for the network, professionalised advocacy organisations receive important information through the same network. From this perspective, the legal expert group, an institutionalised exchange setting which the SRC organises and in which mainly representatives of its member organisations but also some other support organisations like UNHCR regularly participate, does not only represent a vessel for exchange and coordination of positions. It also provides the SRC and AICH with experiences that their representatives do not make first hand, but which are necessary to identify general issues. This double role is also true for the meetings of legal advice actors that the SRC organises in the French and in the German speaking parts of Switzerland and more generally its networking role for these actors.

Overall, the variety of support actors active in the Swiss asylum field with whom the SRC and also AICH are in contact due to their respective networking roles and their roles as recognised contact points for the authorities present important information providers. The division of tasks among these various more or less professionalised actors, presented in chapter 5.2, and their focus on different target groups in the asylum domain leads to different field experiences and access to different information

by these actors. From this perspective, professionalised charities like Caritas or HEKS who have an "neutral observer" mandate in the old procedure and who have a legal protection mandate in the new procedure are as important as grassroots and their volunteers engaging in contact with asylum seekers.

An actor who is not a civil society actor but nevertheless a refugee support actor and important contact partner of both the SRC and AICH is UNHCR. UNHCR does not only participate in the legal expert group organised by the SRC but maintains a close dialogue in general with both organisations. Through its privileged access to the authorities, UNHCR occupies an important position between civil society and state actors. Exchange between UNHCR and the SRC and AICH takes place in formalised as well as in informal forms on different hierarchical levels, between the respective directors as well as between staff members. Regarding the latter, movement careers (McCarthy/Zald, 1977: 15) of staff members are not unusual so that SRC and AICH employees can draw on contacts with former colleagues in other organisations and more generally on a network build through former positions. In fact, such networks go easily beyond the support field and may also include the authorities. The Swiss asylum field is characterised by a relatively high permeability between the civil society sector and the authorities. Mario Gattiker, former state secretary of the SEM until 2021 is the best example illustrating this permeability. Having begun his career as legal adviser at Caritas he ended his career as head of the Swiss migration authority.

Movement careers and permeability of the asylum field

A characteristic of the Swiss asylum sector which is constituted by actors involved in the implementation of asylum law and policy is its permeability. This is especially the case for NGOs and the administration and here especially the SEM. As a representative of a refugee support organisation explains, several persons who nowadays work for AICH have worked for the SEM or the other way around like Mario Gattiker, head of the SEM between 2015 and 2021, who had started his career at the NGO Caritas. The person thus observed at a meeting between NGOs and SEM representatives about the Istanbul Protocol how several NGO representatives were on first-name basis with Mario Gattiker.

> [An AICH representative] is on first name basis with him [Mario Gattiker, the head of the SEM] They worked together because [the person] worked at the Migration Office at the time. [...] [The person] started the career at the Migration Office. That's the crux of the problem. I'm not questioning [the AICH representative's] integrity at all, she's really the epitome of super *kämpferisch* and all that. Mario Gattiker began his career in an NGO. It's all intertwined. NGOs are called NGOs, but in the end, most of them are very, very closely linked to the state. You can't really see them as a counter-power or anything like that. I think they're very critical and they do a lot of things, but in my opinion, when you look at the people involved, they're people

> who are going to get in with the state and then that's fine. But you just have to be aware of that. [...] There was a lady from the Red Cross because they also have a programme to train people in the Istanbul Protocol. She typically, apparently until two years ago, also worked at the SEM. She was also on first-name terms (Michael, support field, 2019).

This permeability of the asylum sector is a particularity of the Swiss context compared to Germany for example, where it would be unthinkable that a person who is first head of a legal advice office could later lead the SEM. While some see this permeability of the Swiss asylum sector in a critical way, as in the case of Michael (support field), others see it as an opportunity to facilitate exchange between the administration and the NGOs and it may be a factor of the general openness of the authorities that NGO representatives - at least those of recognised experts like the SRC and AICH - encounter.

Another favourable factor for permeability in the asylum sector and linked to this for the openness of for example the SEM for dialog might simply be the small size of Switzerland. Speaking of his experience as former SRC representative, Arno (2019) explains the absence of pronounced hierarchies in the administration also by Switzerland's small size. Where people in the field know each other, they are probably more open to engage in exchange with others. Again, compared to Germany, this characteristic of the Swiss administration seems to present certain opportunities for lobbying within the administration. Knowing the other and his/her *marge de manoeuvre* might help to place one own's position in a more targeted way. Even though hierarchies seem to be less pronounced in the Swiss than for example in the German administration, there are still some hierarchies that structure the exchange between professionalized NGOs like the SRC and AICH and the SEM or a federal counsellor. On the one hand, as Karim (AICH, 2019) explains,

> There are discussions at Federal Council level. For essentially hierarchical reasons, it's my director who has these contacts. I can accompany her. When there are meetings with a Federal Councillor, he's never on his own, there's always someone else, he's never alone in his office. There are one or two personal assistants behind him who know the dossier inside out, which is perfectly logical. My director is the same way. If she goes to see the Federal Councillor to discuss the situation in Myanmar, she will take with her the person in our organisation who is responsible, the post that works regularly on Myanmar, to answer any rather specific questions that may arise (Karim, AICH, 2019).

Respecting hierarchies in these highly formalised settings where federal counsellors are involved does not seem surprising. The same is true for administrative agencies like the SEM. It is the director of the SRC or the director of AICH who will meet the head of the SEM and who engages also in more informal exchange with him or her. Thus, the NGOs adapt to the formalized hierarchical structures of the administration. For specific questions, however, targeting lower hierarchy levels in the administration seems to be more efficient, as the following example shows.

> Let's say Dublin Unit: We are relatively specialised in Italy, Dublin return to Italy. We make fact-finding trips to Italy, where we explain all the reception conditions and how difficult it is. If this is then submitted to the head of the Dublin Unit at lower management level, it reaches the people in charge more quickly, who are the specialists who conduct the hearings. We hope that some of the information there will be more informal and ultimately have an impact on how a Dublin hearing is conducted and what is taken into account there (Anna, SRC, 2019).

Such targeting of officials on lower hierarchical levels in the administration will be done by representatives on the lower hierarchical level within the NGOs. The formalised structures which are part of the NGOs' professionalisation are similar to the structures of the administration thus facilitating exchange on different hierarchical levels. Overall, there are three levels of exchange: first, between the directors of an administrative agency and of an NGO, second, between heads of sections and third, between lower-level staff. Detailed technical discussions between legal experts take place on lower hierarchical levels between legal staff of the administration and the NGOs. Here, informality seems to be appreciated. As the quote above shows, to effectively cause changes in the administration's practice, informality on lower hierarchical levels is seen as helpful.

Finally, it is to note that even though AICH is a professionalized advocacy organisation with paid employees and formalized internal structures, the organisation is characterized by lower hierarchies, also due to the small number of staff which is especially true for the covering of the asylum issue by the organisation in terms of human resources. This fact somewhat blurs the hierarchy-oriented exchange between AICH representatives and the authorities. In general, AICH's staff members are in contact with counterparts in the administration by dossier. However, as there is only one legal employee at AICH who is specialised on asylum, the person takes care of different dossiers and is also present on different hierarchy levels when interacting with the administration.

The SRC and AICH are not only part of a national network of support actors who provide important resources to the organisations in terms of information and expertise, but they are also embedded in an international network. However, due to the different character of the organisations – the SRC as umbrella organisation of charities operative in the asylum sector and AICH as national section of a worldwide campaigning organisation - each organisation is embedded in a specific international network. There are different actors on the international level who provide the NGOs with information and expertise that these can mobilise in their advocacy work in Switzerland. On the one hand, these are contacts with persons occupying similar positions in organisations active in other countries. In the case of AICH, these are employees of other national sections of AI. In the context of the restructuring of the asylum sector, exchange with the Dutch section of AI is, for instance, especially helpful as the Dutch asylum system importantly served as a role model for the new Swiss asylum procedure. Observations from colleagues of the Dutch section in their national context can then be confronted

with observations in the Swiss context as part of the monitoring of the asylum procedure. The SRC has similar contacts with NGOs in other European countries. Here, its affiliation with ECRE is of importance.

On the other hand, regarding the country-of-origin that the SRC and also AICH provide, and which are importantly used by legal support actors in the asylum procedure as well as in appeals to the FAC, contacts with experts in these countries are crucial. Also in its case work, AICH relies importantly on information about the situation in countries of origin of asylum seekers to evaluate the risk of a violation of the non-refoulement principle in individual cases. The SRC maintains a network of contact persons in countries of origin while AICH specifically relies on international AI researchers assigned by the International Secretariat in London to do research in these countries. As Daniel (AICH, 2019) says, "We get a lot. All the fact-finding is international, the research". This reflects the importance of the worldwide mother organisation Amnesty International and its different components for the concrete advocacy work of national sections. Therefore, in the following, I will present the relationship between Amnesty International and AICH by focussing on the resources that the former provides for the latter and which need to be considered when analysing AICH's advocacy activities in Switzerland in the domain of asylum. Afterwards, I will turn to the SRC's European network and specifically its engagement with ECRE in order to shed light on the resources that this engagement provides for the SRC's advocacy work.

The relationship between Amnesty International and AICH

Not only is the collection of information about problematic human rights situations in countries all around the world coordinated by the International Secretariat, but furthermore, general positions are also defined on that level.

> For example, we could not, as the Swiss section, represent the demand "No one is illegal" as Amnesty. Amnesty does not have the position that all borders should be open. We would not represent that as the Swiss section either. Such positions must be coherent. Or also, when it comes to repatriation, for example. The Swiss section could not simply say regarding Ethiopia: We are against any repatriation to Ethiopia because the situation there makes repatriation unreasonable. We would have to discuss this in advance. It cannot be the case that London says the opposite of what we say here (Laura, AICH, 2019).

What may seem as a constraint in terms of positioning is rather appreciated by AICH representatives as an instrument that provides guidance for public statements. Not every publicly taken position needs to be authorised by the International Secretariat in London. In most cases, AICH employees know the international policies and also when they need to consult the International Secretariat before preparing a concrete position on a question that arises in the national context.

In terms of campaigning, the International Secretariat, in consultation with national sections and the activist basis, defines thematic priorities for worldwide campaigns above which AICH chooses the campaigns it wants to realise in Switzerland. On the European level, Amnesty International has an Amnesty International European Institutions Office (AI Europe) in Brussels. "Founded in 1992, the European Institutions Office of Amnesty International works to […] ensure that the European Institutions play their full role as human rights actors, at home and abroad".[105] It thus specifically targets the political decision-makers in the European Union and the Council of Europe. In practice, AI Europe coordinates the actions towards political decision-makers of EU institutions and the Council of Europe. AI Europe, similar to the International Secretariat, also proposes a list of priorities for campaigns targeting Europe and specifically the political decision-makers of the EU. While Switzerland is not a member of the European Union, AICH does however often take up petitions that are addressed at the European institutions and sends signatures from Switzerland. This has, for example, been the case for several petitions demanding sea rescue operations in the Mediterranean. Next to EU institutions and governments of European countries, the Swiss Federal Council is also addressed by these petitions. Regarding the concrete campaigns on the proposed topics on the worldwide and the European level, the national sections have increasing liberties to choose strategies and the concrete claims to be addressed at their national governments. This means that while the international level of AI provides overarching topics and strategic objectives for cross-national campaigns, the national sections are relatively free to choose where they lay the focus and how they organise their campaigns. In this context, it might be mentioned that not only communication experts but also the issue experts are involved in an exchange on the international level about communication in campaigns. In the migration field, recently AI has invested some resources to analyse the consequences of certain frames and narrations that Amnesty used in its campaigns (Marina, AICH, 2019). Hence, the conceptualisation and realisation of campaigns in national contexts are supported by wider reflections and strategic decisions in terms of communication on the international level. Regarding the chosen campaigns and made in the Swiss context, AICH is free to also conceive campaigns that are not embedded in larger cross-national campaigns. In the asylum domain, these consist mainly in referendum campaigns. Other campaigns are generally embedded in larger cross-national campaigns, like for instance the Dublin Call in 2018 that AICH defined as part of the worldwide campaign "I Welcome". While Amnesty International has "privileged the implementation of cross-national public campaigns" (Monforte, 2009: 412), the SRC has been actively involved in a more institutionalised form of cooperation with

[105] Amnesty International, About Us, accessible at https://www.amnesty.eu/who-we-are/ (last accessed: 03.11.2024).

other non-profit organisations active in different European countries which is the European Council of Refugees and Exiles (ECRE).

Coordination on the European level: The SRC's involvement in ECRE

As Kaunert et al. (2013: 179) remark, "NGOs have increasingly organised their advocacy work at the EU level in recent years". The SRC takes part in this organisation on the European level, importantly through its engagement in ECRE, "a pan-European alliance of NGOs assisting refugees" (ibid.: 184). "ECRE has sought to add a European dimension to national-level lobbying strategies and coordinates its activities with Amnesty, the UNHCR, Caritas, the Migration Policy Group and the EUMF" (Geddes, 2000: 640). Furthermore, "the ECRE-secretariat in Brussel coordinates the European Legal Network on Aslyum (ELENA) where the SRC is also represented" (SRC, Fluchtpunkt, 2016, n° 72: 8).

To some degree, one could probably see a parallel in ECRE which "serves as the umbrella organisation for national refugee councils and similar organizations" (Geddes, 2000: 640) on the EU level and the SRC as umbrella organisation on the Swiss level. Thus, it also presents a platform for its members to exchange about the situations in their respective countries. Especially regarding Dublin transfers, this exchange between representatives of organisations active in specific national contexts is important. In the context of the reception "crisis", the SRC is especially in close contact with organisations in Italy, Greece, Bulgaria and Hungary to obtain information about the reception conditions and the asylum procedure in these countries. Based on their experiences on the ground, they provide reports about the reception conditions in their respective countries. In the Swiss context, the reports can then be used by legal support actors as arguments in appeals against Dublin decisions. In 2016, for example, the contact with the Hungarian Helsinki Committee (HHC), an organisation that documents the problematic situation in Hungary (see SRC, Fluchtpunkt, 2016, n° 72: 8), is especially important. In its annual report of the year 2017, the SRC reports further that "[t]he Hungarian Helsinki Committee (HHC), a member organisation of the European Council on Refugees and Exiles (ECRE), regularly informs the SRC about the desperate conditions in the containers of the so-called transit zone on the Serbian border, where asylum seekers (with the exception of unaccompanied children under the age of 14) have been forced to stay since spring last year" (SRC, annual report 2017: 4). Based on this information on site, already in 2015, the SRC had claimed the stop of Dublin transfers of asylum seekers to Hungary and repeats this claim again in 2017.

At the same time, contacts with NGOs and lawyers in Italy also provide important information about the situation in the country. Regarding Italy, the SRC has further been collaborating closely with the Danish Refugee Council in terms of monitoring of the reception conditions of asylum seekers in Italy which leads to the publication of a first Italy report in February 2017 and a second report in December 2018. Italy presenting the European country with the highest number of transfers of asylum seekers from Switzerland based on the Dublin Regulation (see figure 3), the documentation of the problematic

reception conditions in Italy presents a priority of the SRC's engagement on the European level. The report "confirms the SRC's position that vulnerable persons should not be returned to Italy" (SRC, annual report 2017: 4). Finally, the contact with support organisations active in other European countries also more generally serves an exchange about challenges and also good practices.

Regarding the advocacy work that ECRE does on the EU level based on its “high level of expertise” (Monforte, 2009: 414), with the aim to influence EU policy making, it constitutes an important channel for the SRC to present its positions on the EU level. On the one hand, the importance that the SRC attributes to ECRE is visible in the fact that since 2019, the SRC has a representative in ECRE's board. On the other hand, as Switzerland is not a member of the EU, the SRC cannot receive money from ECRE for collaboration projects with other members but the SRC’s engagement constitutes a financial investment. ECRE has different working groups and the SRC is involved in the vision and Dublin working groups as well as in the asylum expert group. On the one hand “[a]s a member of the European Council on Refugees and Exiles (ECRE), the umbrella organisation of refugee organisations, the SRC is well connected at the European level and monitors discussions” (SRC, 2017 annual report : 4). On the other hand, in the asylum group, the members see ECRE’s statements in their preparation phase and can give themselves input before the statements are published which presents an important opportunity for the SRC to participate in the elaboration of ECRE’s positions.

Thus, through its membership of ECRE, the SRC participates in “a network of experts in order to provide legal expertise and analysis related to EU asylum policies” (Monforte, 2009: 414). Further ECRE subgroups in which SRC representatives participate are the Western Europe group, the Central Europe group and the so-called DACH meetings in which representatives from organisations from the German speaking countries Germany, Austria and Switzerland participate. Thomas explains that

> [w]e discuss things with them. We also try to say together what is going on in German-speaking countries, knowing that the authorities also have these so-called DACH meetings. We also have to make sure at the NGO level that we are at least coordinating to some extent (Thomas, SRC, 2017).

Therefore, these regional subgroups present an opportunity for coordination similar to the ways in which the authorities of the respective countries coordinate their policies. Hence, the organisations adapt their own modes of coordination on the European level to the modes of the authorities whose policies and practices in the field of asylum they aim to influence. In a sense, they adapt to the authorities’ bureaucratic and organisational *habitus* (Hély, 2009; Bourdieu, 1990) in order to coordinate their positions.

Following the “fundamental idea of an “action-oriented” agenda” (Monforte, 2009: 413), ECRE membership provides also the opportunity to collaborate on specific issues. Again referencing Thomas

(SRC, 2017), "[t]he SRC has a clear strategy of participating in EU projects with its own money, because you can't get money out of EU pots". An example of such projects in which the SRC has invested financial resources is the project on human trafficking.

> We have invested money in this human trafficking and asylum project to work with seven EU countries in this specific thematic area. That was a clear strategic decision two and a half years ago, when the topic was not yet such a hot topic (Thomas, SRC, 2017).

Thus, the participation in collaborations on specific issues offers the possibility to work proactively on topics, as in the case of human trafficking and asylum with "the aim to define "best practices" in the domains of asylum policy" (Monforte, 2009: 413). This way, engaging actively in ECRE does not only present an opportunity for the SRC to take part in agenda setting and advocacy on the EU level but furthermore, from a resource perspective, the outcomes from European projects in terms of data, reports and practice-oriented recommendations and best practices can be used in advocacy activities on the national level in Switzerland. Overall, the SRC – and also more indirectly AICH through the regional European AI group and the European office of Amnesty International – take part in a "Europeanization from below" (ibid.: 409) which does not only serve goals of venue-shopping but situates the NGOs also within important networks representing resources for their advocacy work on the national level in Switzerland in terms of information. Furthermore, in the case of AICH, its international AI network provides the Swiss section also with know-how in terms of communication, which is important for the conception and realisation of cross-national campaigns in the national Swiss context. Finally, the policy guidelines defined at the international level shape importantly the positions of AICH in Switzerland. As we will see in the following chapters, these guidelines importantly shape the political positioning of AICH on questions linked to the asylum domain. In terms of political positioning, a general agreement between AICH and the SRC can be observed.

5.3 A moderate political positioning

Following their goals to influence asylum law and policy as well as their implementation, the SRC and AICH participate in political debates about asylum-related topics by raising issues that they define as problematic and by influencing the juridico-political treatment of a problem once it has been put on the political agenda (Drahy, 2004: 151). The elaboration of a political discourse and of specific political positions requires that the members of an organisation agree on certain values and principles on which the positions will be based (ibid.: 159). The positions of both AICH and the SRC are guided by two main principles: the acceptance of the migration control by the state and the respect of human rights of individuals. For AICH, international law defines the state's right to verify if a person needs its protection.

> We are bound by international law and legal obligations, and it's a right that the state must be able to exercise, to analyse these requests [asylum claims] and take a stand. Is there a risk? Does this person really must be protected or not? We mustn't say to the State 'Now you have to give it [refugee status] to everyone!' (Daniel, AICH, 2019).

International law protects individuals who meet certain criteria, but it also situates the protection of refugees in an order of sovereign nation-states. A person's legal status depends on a "state-centric" international order in which refugees […] are labelled as such by state authorities (Benhabib, 2005). Further, "[a]s an object of classification, the refugee is trapped within the sovereign relation of the exception" (Nyers, 2006: XIII). The protection of refugees based on international law presents an exception to the control prerogative of sovereign nation-states. As Loescher remarks in this context, "[p]erhaps the most important distinction between the two groups of people on the move [refugees and migrants] is the fact that international law treats these two categories of people differently" (Loescher, 2021: 14). Daniel's statement above expresses the exceptional character of the refugee for the order of sovereign nation-states. Thus, it is the state's right to determine if, in individual cases, an exception should be made to its control monopole over migration. Additionally, the state is not obliged to grant asylum. International law protects individuals from persecution and human rights violations, as the non-refoulement principle prohibits states to send persons (back) to countries where their life is at risk, but the granting of asylum lies in the responsibility of states. Therefore, national asylum policies and their implementation are situated within a fundamental tension between the state's sovereign national interests to decide who should become a member of their polity and human rights obligations (i.e. Achermann, 2022; Gibney, 2004; Arar/FitzGerald, 2023). States have an interest in limiting access to asylum because "legally recognised refugees acquire rights that are denied to other migrants and *may* be granted preferential admission" (Arar/FitzGerald, 2023: 22, original emphasis).

Due to the acceptance of the situation of national asylum policies and their implementation in this inherent tension, AICH and the SRC "do not explicitly challenge the political ideologies and systems of border controls […], even while they contest specific governmental policies and practices" (Gill et al., 2014: 379). Their positions are constrained by the "established legal order" (Drahy: 2004: 188) described previously and the political positions that the organisations defend respect this order. This means that the organisations reject open border claims defended by other organisations in the asylum support field. As Marina (AICH, 2019) explains, those ideas "go too far" for AICH:

> In the field of asylum, many organisations have launched calls and petitions in Switzerland. And it's true that, in principle, small organisations go much further than Amnesty in their demands. Either it's just keep everyone in Switzerland, stop all deportations for example, or open the borders. Things like that or narratives that for us go too far. […] Their idea is that we really should keep everyone (Marina, AICH, 2019).

Here, Rancière's differentiation between genuine politics and para-politics is helpful to understand this rejection of positions that "go too far" by AICH representatives as a refusal of genuine political claims that do not respect the paradigm of migration control. While AICH's positions and claims are generally para-political, in the sense that they do not question the necessity to control migration to Switzerland and to decide about "who can stay and who has to leave" (Miaz, 2017), open border claims and the claim to cease forced return measures go beyond the para-political consensus on which asylum policies are based: the respect of human rights principles and the respect of the state's interest in migration control. These principles guide the definition of officially defended positions and claims. In the case of the SRC, I could observe how the question of what claims are admissible and what claims might be perceived as going too far guides the elaboration process of claims in the preparation of public campaigns. The search of a topic for the Refugee Day campaign is on the agenda of the internal meetings of SRC members to which I assisted at the end of 2019. Here, several topics linked to the wider theme of solidarity and refugee protection are discussed. Finally, the topic of family reunification and the right of children to a family is decided, linked with the two main claims to extend the notion of family and to give provisionally admitted persons the same right to family reunification as recognised refugees with asylum. In this context, the necessity to prepare positions for potential critical questions like that of "anchor children" – children sent alone to a European country whose parents would then take advantage of family reunification – are discussed. The staff members taking part in the meeting decide that the legal experts should prepare a clear legally founded position on this question which makes it clear that children have rights, but that this does not mean that the SRC supports the fact that parents sent their children as "anchor children" to Switzerland to circumvent migration control (fieldnotes, 2019). This observation shows how the SRC constructs its positions by considering the state's prerogative to control who enters and who stays on its territory while it must also respect the individuals' human rights.

This respect of the "legal established order" (Drahy, 2004: 288) does not only concern international law but also EU law which becomes apparent, for example, in the SRC's and also in AICH's position regarding the Dublin system and the question of Dublin transfers. Both support the system as such, but try to influence its inner functioning.

Finally, the tension between migration control and human rights obligations links asylum policy to the question of forced return. In Western states, this link has been present in political debates about asylum since the 1970s and has been increasingly significant in the context of the discourse about abuse and attractivity of asylum. As the Federal Council states in his message regarding the

modification of the AsylA in 2014[106], "the incentive to file obviously unfounded asylum applications should be reduced and the abuse of the asylum system should be combated; the credibility of the asylum system should be significantly strengthened". In this context, it is interesting to remark that AICH and the SRC follow different approaches in terms of positioning regarding the question of forced return. From its international law perspective, AICH's defends the position that forced removal measures must not violate international law. However, they can be accepted under strict conditions. As Marina explains in the quote above, AICH does not demand a stop to all deportations. Rather, with its focus on respecting human rights, the organisation demands the authorities to use forced removal measures only as *ultima ratio* and to make exceptions for the detention of families and family members.

> In the event of a negative asylum decision with the requirement to leave the country, the persons concerned must be informed in advance about the measures that will be imposed on them. They must have sufficient time to prepare their return in dignity and safety. […] Amnesty International urges the parliament to use administrative detention and forced expulsion only as a measure of last resort. […] The detention of families and family fathers must be excluded for the sake of the child (AICH, Human Rights in the Federal Palace, 2015).

This position reflects "a desire to act for the respect on human dignity" (Drahy, 2004: 170) but it also expresses the idea that the control of migration by the state implies the existence of certain structures encouraging the return of migrants to their country of origin (ibid.: 172). AICH's acceptance of forced return and detention centres as "last resort" can be understood as a positioning from an international law perspective which is again situated within the existing tension between sovereign nation-states' interests to control migration and human rights obligations.

The SRC has been choosing a position slightly different from AICH's as the organisation has so for chosen to remain silent regarding the question of forced return. While the SRC provides return counselling, the organisation does not follow AICH's "last resort" logic regarding measures of forced return. Thomas explains this positioning of the SRC as follows:

> The question is how much you emphasise that there are people who don't need protection. [...] UNHCR is talking more and more about the need to return those who do not have protection. I find that difficult and I also think it's a fundamentally wrong position. But I believe that the SRC will now also start doing this. I don't think you can do that. […] For me, the clear strategy has always been to say that protection has not been sufficiently implemented without saying who would still be excluded […]. But that doesn't mean that I as an organisation have to

[106] Botschaft zur Änderung des Asylgesetzes (Neustrukturierung des Asylbereichs) vom 3. September 2014 (BBl 2014 7991): 8010.

> be in favour of these people being returned. That's also a bit of what scares me in the current political debate. The fact that this is then the consequence and the logic, and indeed all the way to the left, that people then think this way: Yes, then I must also repatriate. The FDJP issued a media release in July in which it was stated: The credibility of the asylum system depends on returns. I can't go along with that and I don't think many people who are involved in this area can. You can accept that there are people who don't get protection, but in my view this issue must be kept quite separate from how returns are organised. That is why we have always insisted on this as the first question and have now also clearly insisted on a separation between legal advice and return counselling and the overall organisation of return […]. These are two different tasks and the SRC only stands for the protection task. […] we have stayed out of this area as SRC and I think that was the right decision (Thomas, SRC, 2017).

I think that these different stances on the question of forced return by the two organisations are linked to their different orientations. While both NGOs are advocating for the interests and rights of refugees, they do so from different perspectives and with different historical backgrounds. As a human rights organisation, AICH approaches public action from an international law perspective and asks if state action respects obligations of international law. The SRC, on the other hand, is the umbrella organisation of mainly operational charities in the asylum procedure and responsible for the care of refugees. With its specialisation on questions of refugee protection and on questions of the organisation of the asylum system on the national level in Switzerland to ensure that persons who need protection have access to it, its focus on (access to) protection explains the non-positioning of the SRC on the question of forced return. Following Monforte's (2009) differentiation between "action-oriented" and "principle-oriented" organisations, I understand the SRC as an "action-oriented" organisation that aims at influencing the conditions under its constituency group, who are asylum seekers and refugees, gains access to protection in Switzerland. The organisation thus focusses on access to the asylum procedure, the organisation of the asylum procedure itself, legal criteria for asylum and their interpretation in the administration's practice. AICH as a "principle-oriented" organisation focusses on the respect of international obligations in all state (and non-state) action which l also leads to the adoption of positionings for example regarding measures of forced return.

Overall, both their perspectives lead the organisations to focus on limiting introduced restrictions or on accentuating potential openings (Drahy, 2004: 151) rather than claiming fundamental changes in the asylum system. It is in this perspective that I understand Gill's (2013) notion of "non-revolutionary activists" and Sparke's (2008) notion of "reworking" aiming at creating change within the existing system rather than challenging the system and its underlying logics. This also signifies respecting EU law and specifically the application of the Dublin III Regulation. In the context of problematic reception conditions in countries like Italy, Greece and Hungary, the organisations do not ask the authorities to completely stop the application of the Dublin Regulation (apart from Greece), but rather to implement

it in a human way and one that respects human rights. As the SRC and AICH state in a common press release regarding the Dublin call that the NGOs address at the Swiss authorities in 2018, "[t]he Dublin Call calls neither for a change in the law nor a change in asylum policy, but merely for a change in the way the authorities apply the Dublin Regulation" (SRC/AICH press release, 20.11.2017). Here, the engagement for causes that are perceived as more moderated (Drahy, 2004: 172) is clearly expressed. As Drahy (2004: 189) remarks, the moderation of the political claims leads to the legitimation of these because they represent the "assignment of the political claims […] to one of the permitted and legitimate positions that political forces are allowed to assume" (Gill et al., 2012: 512). Positions that are allowed to be assumed, are positions that do not question the "existing legal order" (Drahy, 2004: 144), but that aim at creating change within the existing system (Sparke, 2008).

As mentioned, this moderate political positioning of the SRC and AICH accompanies a rejection of positions that fundamentally question the "existing legal order" (Drahy, 2004: 144) like open border claims do. The representatives whom I interviewed in the context of the present study actively distanced them and their respective organisations from such claims that they perceive as extreme. This distancing from such extreme perceived positions and from the actors who defend them can also be observed in the practices of the NGOs respectively their representatives when interacting with policymakers and the administration and the actors whose positions they perceive as extreme. In the latter case, such distancing has consequences for campaigning coalitions and the choice of organisations who are supported by AICH or the SRC. The following sub-chapter will address these two dimensions of the NGOs' political positioning.

5.3.1 "You should never be on the edges": radical flank effect and considerations of credibility

I again consider Rancière's concept of "para-politics" and "genuine" politics helpful for understanding the perceived necessity of the SRC and AICH to distance themselves from such extreme perceived positions. Representatives of the SRC as well as of the AICH tell me that this distancing from organisations defending positions perceived as too extreme (like open border claims) is necessary because they do not want to be themselves perceived as "extreme without foundation" as Marina says:

> We make constructive propositions, and we must be able to criticise because we are independent of the government. We have to be able to criticise, but we also don't want to be perceived extreme without foundation (Marina, AICH, 2019).

Thus, the extreme perceived positions are contrasted with the "constructive propositions" of the own organisation. In this process, the latter are delegitimised when opposed to the constructive propositions of the former. At the same time, the delegitimisation of positions that are labelled as

extreme serves to legitimise the own positions. What Marina means when she says that extreme positions are "without foundation" is that these positions go against the para-political consensus on which national asylum policies are based. They are seen as not constructive because they contradict the "existing legal order" (Drahy, 2004: 144). Any proposition challenging it is considered illegitimate of being considered in the (para-political) debate. "[Para]-politics is […] a situation where consensus has been reached, and certain arguments, voices, and concerns are considered illegitimate and outside the realms of acceptable discussion" (Gill et al., 2012: 512). From this perspective, claims and positions that are considered outside of the acceptable, are seen as unrealistic and not solution-oriented as Thomas (SRC) explains:

> Ultimately, the aim is not to present the SRC as somehow equivalent to *Solidarité sans frontières* or similar organisations that are less solution-oriented. The strategy is clear: to position ourselves as a solution-oriented organisation and *Solidarité* are by no means the ... they are simply the most hated. But all the left-wing influence groups, especially from French-speaking Switzerland, are not interested in solutions, but in opposition and against a state-managed asylum system. And the SRC is not against that. It is in favour of a reasonable protection system (Thomas, SRC, 2017).

What Marina (AICH, 2019) calls, from the perspective of a principle-oriented human rights organisation, "foundation", Thomas (SRC, 2017) calls "solution-oriented". Finally, both speak of the constraints of the "existing legal order" (Drahy, 2004: 144) on which is based the state-managed asylum system. We identify here the expert perspective which knows and takes into consideration the constraints of the system in which s/he makes propositions and claims (Robert, 2010: 67). Solidarité sans Frontière defends a clear position against Frontex and is very critical vis-à-vis the Dublin system[107]. These are positions that Thomas calls not "solution-oriented" because they question the current system and thus question the para-political consensus on which Swiss asylum policy is negotiated. This delegitimisation of positions that do not respect the constraints may be seen as a means of depoliticisation as it "seeks to disavow political dissensus" (Darling, 2013: 73) that goes beyond the restricted sphere of para-politics. Delegitimising genuine political claims aims at preventing "a change of the view of the world" (Bourdieu, 1982: 150) and "claims to political visibility are prevented from becoming universalised" (Darling, 2013: 73) by denying the legitimacy of their existence. With this delegitimisation of genuine political claims and of the actors that make them comes a legitimisation of the SRC's and AICH's own positions. In contrast to positions perceived as "without foundation", AICH's criticism is legally founded, based on legal texts and the expertise of the organisation's legal professionals. This legal foundation is important because it is recognised as a legitimate register

[107] Solidarité sans frontières, accessible at https://www.sosf.ch/ (last accessed: 2.11.2024).

respective “language” of the political (Drahy, 2004: 152). I will address the juridification of claims by professionalised NGO refugee advocacy, meaning the formulation of claims by mobilising the legal register, in more detail in a separate chapter (see chap. 7.1). Here, I would like to draw attention to the strategical dimension of the discursive distancing from positions and actors who are labelled as “extreme”, “going too far” and “without foundation” with regard to the relationship that the organisations have with policymakers and the role that the delegitimisation of extreme perceived positions and actors plays for the perception of them as legitimate actors.

The delegitimisation of genuine political claims serves as legitimisation of the SRC’s and AICH’s claims because it underlines their positioning within what is admissible within the range of the para-political consensus. From a social movement perspective, the strategic distancing from actors “on the edges”, as Thomas (SRC, 2019) calls them, may be understood as radical flank effects observed by social movement scholars like McCarthy and Zald (1977) and McAdam et al. (1996). As Thomas explains, the SRC’s role as point of contact for policymakers depends on the existence of less suited civil society actors due to their inadmissible positions.

> The SRC has a role that also depends on the fact that there are organisations that are further to the left. Without them, we would have no credibility at all. Then people talk to us, and I think that’s even better, of course. Nobody would talk to the far left anyway. Then you can also distance yourself. This distancing is important [...] in order to be able to influence the authorities. That’s why it’s also - and that’s the most difficult thing about this understanding of our role - to explain to people that we’re on the same side and that our goal is to get the best possible conditions for asylum seekers. But we also have to distance ourselves from the left. [...] I don’t find it - how can I put this now - reprehensible to do it this way, or wrong to do it this way. I believe that if you want to have political influence, you should never be on the edges. But you need someone on the edges, otherwise it [your own position] will be perceived as an extreme position. The problem with political lobbying in the area of asylum is actually that from a lobbying perspective in parliament, we are perceived as the far left. And in parliament we are perceived in the political arena as the *Radikalinskis* of the left. (Thomas, SRC, 2017).

Thomas’ statement reflects a “radical rank effect” in the sense that the credibility of the SRC is perceived as depending on actors “on the edges” who are perceived as less credible. As McAdam et al. (1996: 14) point out, “the presence of extremists encourages funding support for the moderates”. I would argue that this kind of dynamic does not only exist with regard to funding support but more generally with regard to the relationship between the authorities and civil society respectively social movement actors. When responding to a movement, authority representatives focus on movement organisations and leaders as interlocutors speaking for the movement and here, they will rather focus on those “who are perceived to be reliable negotiating partners. In such a situation, the presence of

groups deemed extremist can actually help legitimate and strengthen the bargaining hand of more moderate SMOs" (ibid.). Thus, the distancing from as extreme perceived actors like *Solidarité sans Frontière* serves to gain credibility with actors who refuse such extreme perceived positions. Hence, the radical flank effect for the SRC. Considering the Swiss consensus democracy which "emphasises the diffusion of power (power-sharing) through a multi-party government [and] balance of power between the executive and legislative" (Vatter, 2008: 4), to be perceived by all parties (with the exception of the SVP) as credible actor is all the more important. In a context where a variety of political parties are present in government – currently, two Liberal politicians, two Sociodemocrats, two from the SVP and one Centre politician – the SRC tries to position itself in a way that makes it be perceived as partners of consensus between this variety of party-political actors. The distancing from other actors of the asylum support field thus presents a strategy generating a radical flank effect.

In this regard, it is interesting to note that politicians of different political parties are quoted in the SRC's annual reports and its member journal Fluchtpunkt. Christian Levrat[108], at the time a member of the Council of States and president of the Socialdemocratic Party (SP), is quoted in the SRC's annual report as supporter of the SRC (SRC annual report 2016: 5). Next to two politicians who are members of the Swiss Green Party (GP) and who also state the importance of the SRC and the defence of the protection of refugees, there are also two members of the Liberal party (FDP) who express their support for the SRC. Kurt Fluri (FDP), member of the National Council says: "We need the SRC because always and especially nowadays many people are forced to leave their home because of war or natural disasters to save at least their lives" (ibid.: 14). This may be an anecdotal observation. It however symbolises the SRC's search for contact with politicians of different political parties while distancing itself from extreme perceived actors of the far left-wing political spectrum.

Again, AICH's positioning on the question is slightly different. As Marina's (AICH, 2019) statement quoted above shows, the organisation also distances itself from positions "without foundation". However, this rather refers to the organisation's focus on international obligations as basis for its own positions. To underline the importance of AICH's international law perspective, positions that contradict this perspective are consequently delegitimised, as explained above. Distancing from those positions is a question of credibility. Considerations of credibility are also at play when the SRC and AICH decide to support advocacy activities, especially petitions, of other actors of the asylum support field. Both organisations do often receive requests from other organisations to support their petitions addressed at the authorities. David (SRC, 2019) explains that those requests are evaluated by SRC employees based on three criteria: first, the relevance of the aim of a petition or letter, second, its

[108] It might be noted that Chistian Levrat is a former head of the Protection department. Thus, his publicly made support for the SRC may not be surprising.

congruence, meaning legal correctness, and their compliance with the SRC's positions and third, the credibility of the actor responsible of the petition. Regarding the latter, David explains:

> What is the composition of these third parties? Are these partners or potential partners serious, are they credible? How big are they or how broadly supported is the project? We are simply cautious here. If there are a lot of small groups and we, as a big player in this area, then act as a co-sponsor, the initiative or petition or whatever will be perceived as ours. That's why we're very careful there and make sure that the partners are either very broadly supported or are similar in size or importance. […] It's different when it comes from us, and we have an influence on the content. Then it's something else. If we have no influence on the content and then [...] have to read demands that are simply sloppily formulated, then ultimately our credibility and legitimacy are at stake. Hence this caution (David, SRC, 2019).

During my observations of internal SRC meetings where current affairs of the organisation are discussed, staff members discuss and decide, among other things requests for support of petitions initiated by other organisations. An example is a petition that the ACAT organisation launches in the context of its upcoming campaign "Eritrea: country without tomorrow"[109]. During the discussion it is mentioned that in terms of content, the position defended in the petition is in line with the SRC's position. However, there are reservations regarding the fulfilment of the other criteria for the support of a petition by the SRC [congruency and legal correctness, credibility of initiator]: the wording appears questionable and is not entirely coherent. The conditions are thus not cumulatively fulfilled. It is decided that the SRC will disseminate the petition via social media but will not officially support it as supporting organisation with its name (fieldnotes, 2019). Those discussions show that considerations of credibility vis-à-vis the authorities to whom the claims are addressed play an important role in decinding if the SRC supports a coalition as partner or not.

AICH faces similar questions. As a human rights organisation, terminological and legal correctness is crucial for AICH to support a petition which can lead – or does so often - to a refusal of support even if, in content terms, the claims of the petition in question are supported. Thus, the above-mentioned petition launched by ACAT is neither supported by the SRC nor by AICH for similar reasons.

> Take Eritreans, for example: there has just been an appeal by ATAC, which we were unable to sign for certain reasons because it referred to slavery. Amnesty has the international position that it is forced labour. That's different under international law. We can't sign it there - it may sound a bit hair-splitting, but it's important for Amnesty's credibility that it's consistent. [...] Of

[109] Schweizerische Beobachtungsstelle für Asyl- und Ausländerrecht, Petition für mehr Schutz für Asylsuchende aus Eritrea, accessible at https://beobachtungsstelle.ch/news/fuer-eine-menschliche-schweizer-politik-gegenueber-asylsuchenden-aus-eritrea/ (last accessed: 12.12.2024).

> course, it's relatively close, so to speak, but in international law it's something else. [...] But we could actually support many of the demands. But we can't, otherwise we would have problems internationally if we always said it was forced labour and then wrote something there that said slavery (Laura, AICH, 2019).

As a national section of a worldwide organisation, AICH has international guidelines to follow. These translate in practical constraints regarding the claims that AICH can publicly support with the organisation's name and how the claims need to be formulated. Here, AICH's focus on international law to define its positions does not only present a constraint in terms of the content of admissible positions. It is the form, respectively the precise terminology of the law that presents an obstacle to the support of claims that are not formulated in the same precise terms. As Miaz (2017: 505ff.) notes regarding considerations of credibility that guide legal defence actors, their work (making appeals against and/or requests of re-examination of rejected asylum claims) is guided by the concern of not going beyond the framework of the law in terms of content as well as in terms of form. The problems that the support of petitions that do not use the right terminology would create in terms of incoherence with AI's positions can be understood in the context of similar credibility concerns. Next to positions that are not admissible in terms of content because perceived as not solution-oriented, AICH and the SRC do not support petitions that do not respect the formal framework that the law defines. This is linked to the pragmatic concern of not being perceived as extreme nor incoherent and to be taken seriously in their work by the authorities. "Entering the game, agreeing to play the game, relying on the law to settle the conflict, means tacitly agreeing to adopt a mode of expression and discussion that involves renouncing physical violence and basic forms of symbolic violence, such as name-calling. It also, and above all, means recognising the specific requirements of the construction of the object of conflict" (Bourdieu, 1986a: 10). Similarly to legal defence actors' credibility considerations when writing an appeal or a request for examination "in the form prescribed by the law" (Miaz, 2017: 506), professionalised advocacy organisations like the SRC and AICH pay attention to the formulation of claims addressed to the authorities that they support. The question of credibility guiding the formulation of publicly made claims and the decision to support claims formulated by others is thus defined in relation with the authorities (ibid.) who are targeted by these claims. Here, the mobilisation of the law in the definition of claims enhances the credibility of the organisations vis-à-vis the authorities who receive said claims (ibid.: 508) because it uses their "language" (Drahy, 2004). The other way around, this signifies that claims which are not formulated in the precise legal terms are decredibilised and so are the actors formulating them. Hence the importance of legal and terminological correctness for the SRC and AICH in the formulation of claims that they support. Overall, the moderate political positioning of the SRC and AICH is closely linked with the mobilisation of the law as central register in the formulation of political claims. On the one hand, the content of claims

needs to be situated within the "existing legal order" (ibid.: 144). On the other hand, the ways in which claims are formulated need to respect the formal framework that the law defines. Distancing from actors who do not respect these two aspects and labelling them as "extreme" contributes to granting credibility to and to legitimise the own positions.

5.3.2 Between cooperation and confrontation with the authorities

Another dimension of the moderate political positioning which is also linked to considerations of credibility is the question of to what extent an organisation critically comments on the practices of the authorities. In other national contexts, researchers (for France, see Drahy, 2004 and for the UK, see McGhee et al., 2016) have observed that organisations that are involved in a funding partnership with the authorities are especially confronted with the struggle between cooperation and confrontation with the authorities. In Switzerland, one can observe similar struggles in the case of the SRC. In contrast, because AICH does not have any financial dependencies with the state, the organisation does not face this dilemma.

I base these observations mainly on statements of staff members of both organisations whom I interviewed and observations that I made at meetings of SRC staff members[110]. Further, the SRC's struggle between cooperation and confrontation was mentioned by persons of the support field to whom I spoke informally. There, the generally moderate positioning vis-à-vis, and especially the moderate criticism of the authorities, or what several persons call the "soft" communication of the SRC, is criticised. At the same time, it is understood by these persons as a consequence of the SRC's historical proximity with the authorities. For a long time, this proximity is associated with the "neutral observer" mandate of the SRC in the asylum procedure and the associated general pretension to neutrality because of this involvement in the asylum procedure which is mandated and thus financed by the Confederation. As a "high profile insider" (Grant, 1995) or "directly embedded" organisation (Lune/Oberstein, 2001) in the asylum system it is difficult to position itself against the funder. However, this position is not uncontested within the organisation. There are tensions around the question of how critical the SRC should and how critical the SRC can be towards the authorities and their practice.

> Internally, of course, there are also people who would like the SRC to be even more visible. And there are those who think that we shouldn't really be working publicly at all. We are an expert organisation. We do our expert work. We are there to support the aid organisations so

[110] Because of access constraints and the resulting small number of staff members whom I could interview in the context of my study, I lack data about how the different staff members, especially of the Protection department, perceive this struggle between cooperation and confrontation and how they deal with it internally.

> that they can do their legal advice work properly. There are somehow three positions: Some say 'Act more strongly', others say 'Act less strongly!' and thirds say 'Don't act at all!'. Internally, it is very different from one person to another (Thomas, SRC, 2017).

This quote from an interview with Thomas demonstrates, first of all, that the SRC is a "composite organisation" (Drahy, 2004: 103). Its staff members do not constitute a homogenous group. While not expressing their dissatisfaction with the SRC's moderate positioning publicly, there are internal divergences regarding the SRC's positioning vis-à-vis the authorities. Second, Thomas mentions the expert role of the SRC again as a reason for the moderate positioning of the SRC. The SRC's positioning on the authorities' practices seems thus to be guided by two aspects, which are however interrelated. On the one hand, the dependency on state funding and the involvement in the asylum procedure limits a political positioning. On the other hand, the expert status which allows for its involvement in the asylum procedure as "neutral observer" and as supporter of legal advice actors leads to a self-limitation in terms of criticism of the authorities. While the "neutral observer" status has changed with the restructuring of the asylum procedure to a service provider status for legal advice and defence actors in the asylum procedure, the question of how much criticism vis-à-vis the authorities is reasonable and possible continues to preoccupy the SRC's employees. I could observe this during a discussion between staff members about the programme of the asylum symposium planned in 2020. A staff member asks the question "How much criticism is allowed"? A colleague answers that one should be aware of the fact that such criticism and confrontation is not possible (fieldnotes, 2019). This discussion reflects the different expectations of staff members who work for the SRC regarding the possibility to publicly criticise the authorities. However, the concern of moderate criticism regarding the authorities goes beyond public events like the asylum symposium where the SRC navigates between the interests of different actors involved: UNHCR as co-organiser, the Federal Department of Foreign Affairs, the SEM with the Federal Councillor at the head of the FJPD as speaker and the public comprised of representatives of the authorities as well as different actors of the asylum support field. As David (SRC, 2019) says, "How much criticism can it take and where? That's a constant companion". As an organisation that defines itself as a platform for exchange between the various actors involved in the governance of asylum, the organisation "manoeuvres" between the expectations, characteristics and powers of its member organisations, associates and national and international partners, asylum seekers, refugees, the authorities and wider society. The SRC's strategy in order to be perceived as credible by all these actors seems to be a general moderate positioning justified internally and externally by its expert status.

This position leads to a constant struggle between cooperation and confrontation with the authorities, but it also leads to certain opportunities for advocacy, especially in terms of insider strategies. Professionalised advocacy organisations like the SRC and AICH function as intermediaries between

actors in direct contact with asylum seekers and refugees and the administration, the parliament and the public space (Miaz, 2017: 485). In their intermediary function they mobilise insider as well as outsider strategies. The following PART V will look into these strategies. Complying with McGhee et al.'s request that "[d]ebates in this field [research on the relationship between the state and non-profit service providers] should go beyond the inevitability of co-option, dominance and the loss of independence" (McGhee et al., 2016: 44), I will focus in the following parts of this thesis on the strategies that the SRC and AICH pursue to influence asylum law, policy and practice from the above-described positions and within the opportunities that these positions in the asylum field provide for the organisations.

Here, the focus lies on interactions with different state actors. From the interviews follows that the authorities, in particular the FJPD and the SEM, are the most important interlocutors and target group of the NGOs' advocacy work in the asylum field. The federal administration does not only play an important role for the implementation of asylum law and policy but has also a central role in policy and legislative processes regarding asylum. Because propositions for modifying the law are often initiated in the administration, contacts, and a relationship of confidence with officials are important to get access to information at an early point in the policy process. The Parliament, on the other hand, is indeed primarily a target for lobbying with regard to changes of the law. However, the SRC and AICH may also "activate" parliamentarians to question a certain practice of the authorities through parliamentarian instruments like postulates or motions.

Finally, chapter 8 describes outsider strategies within the opportunities that the Swiss political and legal system provides. Here, outsider strategies refer to the mobilisation of actors who are not part of executive or legislative bodies. On the one hand, these are courts of justice that the NGOs mobilise in their judicialisation strategy (chap. 9.1). On the other hand, professionalised advocacy organisations like the SRC and AICH mobilise the public through public campaigns, the launch of petitions and open letters addressed at the authorities. Finally, in the Swiss context, direct democracy provides opportunities for popular initiatives and facultative referendums against a modification of a law. While neither the SRC nor AICH initiate or support a popular initiative or a referendum, the referendum against the modification of the AsylA in 2016 presents, in a sense, an opportunity for coalition building for both organisations with other actors of the asylum support field. Furthermore, the context of the reception crisis, the administration's practice in terms of Dublin transfers and regarding the provisional admission of Eritreans give rise to public campaigns.

This overview of political opportunities for and settings in which professionalised NGO advocacy takes place through interactions with state officials as well as the analysis of the relationships and dynamics that can be observed in these settings is based on the statements of the NGO representatives that I interviewed. They thus reflect their perceptions of opportunities and settings, of interactions that they

see as more or less important for defending their point of view when it comes to the implementation of asylum law and policy as well as law and policymaking processes. The presentation of the following opportunities, settings and interactions between NGO representatives and state officials of governmental bodies, administrations and parliamentarians might thus not be exhaustive but reflects rather the importance that my interviewees attribute to them.

At this point, I would like to recall that the SRC and AICH have been chosen as case studies for the present research aiming for a "complementary comparison" to understand professionalized NGO refugee advocacy practice and discourse in the Swiss context. There are important differences between the two organisations due to their historical origins as well as their strategical and ideological orientations and goals. At the same time, there are similarities between them like their important degree of professionalisation and the role that legal expertise plays in their advocacy work. In the following, my aim is to do justice to both, differences as well as similarities, in order to get the bigger picture of professionalised NGO refugee advocacy in the contested field of asylum in Switzerland.

PART V ADVOCACY STRATEGIES WITHIN (POLITICAL) OPPORTUNITIES

6 Acting on asylum practice: legal strategies from within

Due to their central position in the Swiss asylum field and their fields of action linked to this position the SRC and AICH are to different degrees situated "within the system" (McGhee et al., 2016: 40). As a reminder, as umbrella organisation of charities operatively active in the Swiss asylum field, the SRC historically has a "bridge" role between legal and social support actors on the one hand and the authorities of the other. It has been serving as a central interlocuter for the authorities in the asylum domain. The state mandate for coordination and training of "neutral observers" in asylum hearings and for coordination of legal advice services until 2019 and its role as service provider in terms of coordination, training and quality assurance respectively basic work for legal protection actors in the asylum procedure since March 2019 are central for this role and the SRC's position "within the system". AICH, on the other hand, monitors the asylum domain from a more external position, but is nevertheless also involved in the system through its membership in the SRC and also through its case work and close connections with grassroots and other actors who are in direct contact with asylum seekers. Finally, the organisation's reputation and capacity to mobilise an important activist basis creates opportunities for AICH for direct exchange with the authorities behind closed doors. In this context, strategies from "within" can be understood in a double sense: The first refers to the "spaces" behind closed doors where direct interaction between NGO representatives and state officials takes place. Refering McGhee et al. (2016), strategies mobilised within these opportunities is what I call insider strategies in contrast to outsider strategies that refer to the mobilisation of the public through campaigning activities (including petitions or instruments of direct democracy). The second refers to the position of the NGOs within the asylum system. While until 2019, the SRC through its state mandate depends on the authorities in financial terms, AICH does not have such institutional dependence so that the organisation's role is not as entangled as the SRC's is with the authorities. Thus, its monitoring position clearly is a more independent one than the SRC's as AICH has no institutionalised role within the asylum system. To which extent the SRC's new role as service provider for legal protection actors (its own member organisations) leads to its disentanglement from the state and in this context to less opportunities for insider advocacy remains to be seen. In Automn 2019, when I carried out most of my interviews with the SRC representatives, they had not observed any changes so far in regard to the (perceived) opportunities for insider strategies.

The following chapters will present the different strategies that both organisations pursue within the asylum system to influence asylum practice. The questions that guide these chapters are: What resources do the NGOs mobilise in their different activities to influence actors who have a decision-

maker role in the asylum procedure? What opportunities do NGO representatives perceive and seize to mobilise these resources? As the most important resource in these strategies is the legal expertise of the NGO representatives, I will shed light on different dimensions of this expertise when it is mobilised within different opportunities for insider advocacy. In this context, I understand legal strategies as the mobilisation of the law in ways that are the result of a conscient choice from the NGOs' representatives based on considerations of the opportunities that they perceive for the mobilisation of the law, on their self-perception and the chances of success of these strategies. Concretely, chapter 6.1 presents the ways in which the SRC and AICH support legal defence and advice actors who are operative in the asylum procedure by providing evidence and legal expertise that can be used to support asylum applications and by propositions for standardisation.

Chapter 6.2 then focusses on the mobilisation of legal expertise in different contexts like advisory groups or formalised exchange bodies where NGO representatives are in direct contact with the administration's, mostly the SEM's, bureaucrats. I analyse specifically how general causes are constructed and defended vis-à-vis these actors, what role experts play in advisory groups addressing issues linked to asylum practice and what dimensions of the NGO representatives' expertise are strategically mobilised in crisis situations.

6.1 Legal expertise for fact-based decision-making in the asylum procedure and standardisation

Neither the SRC nor AICH take mandates for legal defence of asylum seekers in the asylum procedure. However, they provide legal expertise to legal advice and defence actors in different forms to influence the asylum procedure. Questions about how the asylum procedure should be organised and based on what information decisions on individual asylum claims should be made represent an important part of the organisations' advocacy work. The SRC provides legal advice and defence actors with a so-called "Asylwiki" which is a knowledge database containing legal analyses and also importantly country analyses. Furthermore, the SRC provides a telephone consultation twice a month for asylum seekers and legal advisers. The type of information that the SRC provides to support legal advice and defence actors has not fundamentally changed with its change of role due to the restructuring of the asylum sector. Before 2019, the SRC's observer mandate on the one hand and its coordination mandate for the legal advice services on the other allowed to finance the "basic work" (legal analyses) and the production of COI. Since, 2019, these services are part of the mandates that the SRC has a service provider for legal advice and defence actors in the federal asylum centres. Here, next to the provision of documents, SRC staff members provide two times per month legal advice for legal protection actors and country analyses in the asylum centres (see SRC annual report 2019: 4). The aim of these support

activities for legal advice and defence actors is to ensure "a fair and harmonised asylum procedure on the national level which meets high quality standards" (SRC annual report 2019: 4). Here, the technical perspective of the SRC on the asylum procedure becomes visible. Further, fairness, harmonisation and "high quality standards" reflect managerial ideals that are beneficial for all involved parties (Pécoud, 2017: 93).

Another important element of the support provided by the SRC to legal advice and defence actors in the asylum procedure, which embodies this technical approach, is the country-of-origin information provided by the SRC. As Rosset (2015: 6) remarks, "[t]he question of the situation prevailing in migrants' countries of origin can certainly be described as technical knowledge". The SRC invests many resources in the production of COI which constitutes a central part of the support the organisation provides for legal advice and defence actors. AICH also makes this type of information available, which is based on research from AI researchers around the world, to legal advice and defence actor. Furthermore, AICH's legal expert uses the information when evaluating individual cases in his/her case work. In the following, I will focus especially on the COI provided by the SRC as the organisation's annual report provides further information about the utility that the SRC sees in the provision of this information. Nevertheless, general rationales behind the mobilisation of COI in the asylum procedure may be observed independently from the specific actor who provides COI and mobilises it in the asylum procedure. Following the SRC,

> [t]he SRC country analyses allow legal advisers of asylum seekers to have access to comprehensive and detailed country-of-origin information which presents an important basis for decisions regarding refugee status, obstacles for deportations and credibility (SRC annual report 2019: 6).

This corresponds to the role that other state and non-state actors in the asylum field and importantly the SEM attributes to COI in the asylum procedure as "fundamental tool in refugee status determination" (Rosset, 2019b: 25). As researchers investigating the SEM's decision-making processes have shown (see Affolter, 2017, 2021; Miaz, 2017), the credibility of their narrations is importantly assessed in the light of contextual information about the country of origin and about transit countries. Further, COI is used to assess if an asylum seeker's fear of persecution (art. 1 GC) is well-founded. Providing COI presents the possibility to influence the outcome of the assessment processes of credibility and justifiability of persecution. Focussing on the situation in Syria and Iraq in terms of country analyses in 2015, the SRC states in its annual report of that year that:

> it turned out how important precise and detailed information about the mobilisation and recruitment practice of the Syrian army is for the asylum procedure of asylum seekers coming from these countries [Syria and Iraq] (SRC annual report 2015: 10).

In 2015, the number of asylum seekers coming from Syria rises to its highest level in Switzerland since the beginning of the Syrian war. The administration continues to examine asylum claims from Syrians in individual procedures. Coming from a region in Syria where fighting is taking place does not automatically lead to the recognition of refugee status. Regime critical activities, objection to military service and persecution by third actors are assessed on a case-by-case basis. Asylum is only granted if persecution can be established in a credible way (Parak, 2020: 120). Hence the importance of "precise and detailed information". The quotes above reflect the SRC's awareness of the importance of COI in both processes (assessment of justifiability of persecution and of credibility). The SRC provides COI to prove the credibility of an asylum seeker's narration. Consequently, the production of COI itself legitimises the administration's credibility paradigm and approach of suspicion towards asylum seekers' narrations. It presents a way to engage in the moral economy of asylum (Fassin, 2005). Thus, the mobilisation of COI is characterised by an ambivalence that Miaz (2017) observers more generally regarding the mobilisation of legal expertise respectively the law by legal defence in the asylum procedure: It can indeed be mobilised as a tool to support the credibility of asylum claims leading to the recognition of refugee status or a provisional admission in individual cases. Country reports can further be used to contest the SEM's practice regarding a certain country of origin presenting thus a lever to dispute the asylum policy (Agrikoliansky, 2010; Israël, 2003, 2009, 2020). At the same time, it contributes to legitimate the importance that the administration attributes to such fact-based information to verify the credibility of asylum seekers' claims and narrations.

As also mentioned in the first quote above, COI is not only an important information basis for decisions regarding refugee status but also regarding obstacles for deportations. Regarding the latter, one can note an increasing focus on issues of medical care in the SRC's country analyses[111]. In Switzerland, health conditions and insufficient medical care in the country of origin do not constitute reasons for asylum. However, they can indeed present an obstacle to deportations and lead to the issuance of a provisional admission. In this case, medical reasons make an expulsion illicit or ineligible. Since 2015, the SRC can rely on a network of local medical experts in Macedonia, Serbia and Kosovo to obtain information about the medical care situation in these countries (SRC annual report 2015: 10). In 2016 and 2017, the SRC has, for example, clarified the general situation in terms of medical care in Balkan countries like Kosovo[112] and Albania[113]. By lying this focus on the issue of medical care in countries of

[111] The SRC does not only define itself the countries and the issues to be investigated but it also does investigations on demand by private persons, legal advice and defence actors.

[112] Between 2015 and 2019, the SRC publishes overall 15 reports regarding different aspects of medical care in Kosovo. Reports accessible at https://www.fluechtlingshilfe.ch/publikationen/herkunftslaenderberichte (last accessed: 11.11. 2024)

[113] In 2017, the SRC publishes a report about the treatment of Hepatitis B in Albania. Report accessible at https://www.fluechtlingshilfe.ch/publikationen/herkunftslaenderberichte (last accessed: 11.11.2024).

origin of asylum seekers, the SRC anticipates the administration's categories (Miaz, 2017). It presents facts that correspond to a category of criteria based on which the illicity or ineligibility of expulsions is assessed. Thus, information about the medical care situation in a specific country can serve as an important instrument to prevent the expulsion of persons who do not fulfil the criteria for asylum.

Lastly, the SRC makes "efforts to establish quality standards" (Eule, 2020: 13) in the asylum procedure. Partly, in collaboration with AICH and/or other organisations, the SRC provides guidelines regarding procedural aspects as well as reception conditions for a variety of actors involved in the asylum procedure. In 2019, these are: Minimum standards for the accommodation of asylum seekers[114], Guidelines for legal representatives and advisers for the handling of asylum claims by LGBTQI+ persons[115] and an Information sheet for legal representatives, advisers and trusted third parties of unaccompanied minors regarding international regulations for age assessment[116]. These guidelines and minimum standards remind the involved parties, in a "concrete, pragmatic, down-to-earth manner" (Pécoud, 2015: 96), of the international legal norms that apply in the asylum procedure and make concrete propositions on how to implement these in the Swiss asylum system.

6.2 Experts inside: expertise and evidence in insider strategies

In different settings of exchange with the authorities, mostly the administration and here representatives of the SEM, the NGOs relegate to the state officials the problems with which actors on the ground, providing legal advice or defence and/or responsible for the reception of asylum seekers are confronted with in their daily work. Here, identified problems, proposed solutions and claims are directly transmitted to the authorities. This direct way of interaction with the authorities is what I refer to as insider advocacy. Following McGhee et al. (2016), I understand insider strategies as referring to the strategic use of the NGOs' resources in direct interactions with state officials as opposed to outsider strategies which refer to the mobilisation of actors outside the executive and the legislative like the wider public and the courts of justice to influence asylum practice, law and policy.

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[114] SRC (2019), Minimumstandards für die Unterbringung von Asylsuchenden, accessible at https://www.fluechtlingshilfe.ch/fileadmin/user_upload/Publikationen/Positionspapiere/190400-unterbringung-standards-sfh-de.pdf (last accessed: 15.11.2014).

[115] SRC/TGNS/Asile LGBT/AICH (2019), Asylgesuche aufgrund von sexueller Orientierung, Geschlechtsidentität, Geschlechtsausdruck und Geschlechtsmerkmalen (SOGIGAGM): ein Leitfaden für Rechtsvertretungen und -beratungen, accessible at https://www.fluechtlingshilfe.ch/fileadmin/user_upload/Publikationen/Juristische_Themenpapiere/190703-guidelines-lgbtqi-de.pdf (last accessed: 15.11.2014).

[116] ADEM/AICH/SSI/SRC/Terre des homme/unicef/UNHCR (2019), Internationale Richtlinien zur Alterseinschätzung. Ein Merkblatt für RechtsvertreterInnen, BeraterInnen und für Vertrauenspersonen von MNA., accessible at https://www.fluechtlingshilfe.ch/fileadmin/user_upload/Publikationen/ Juristische Themenpapiere/19 guidelines-age-assessment-de.pdf (last accessed: 15.11.2024).

Generally, insider advocacy involves a "tactical closeness and proximity to institutionalised centres of power" (Gill et al., 2014: 379). Hence, the SRC and also AICH interact regularly with the Federal Council and the Federal Administration, especially the Federal Justice and Police Department (FJPD) which is in charge of migration and asylum issues as well as the State Secretary of Migration (SEM), which belongs to the FJPD. When asked about their interactions with state officials, the SRC and AICH staff whom I interviewed mentioned different informal and formal forms and settings presenting opportunities for insider strategies. First, there are important bilateral contacts between representatives of the NGOs and state officials on lower hierarchical levels like the head of the SEM's Dublin unit or the person responsible for accommodation. As Anna (SRC, 2019) states, "We do not only have exchange on the level between directors. Sometimes it's even more fruitful than at the highest level. You can achieve more at the lower management level". There is the hope and sometimes also the observation that when a concern and/or request is addressed at these lower management levels, it reaches faster the specialists carrying out the concrete tasks like, for example, the asylum hearings.

Next to these important bilateral contacts, there are also regular formalised exchange settings between the administration and NGO staff. Thus, twice per year a formalised exchange takes place between the director of the SEM (accompanied by his/her legal assistants in charge of the asylum procedure) and the SRC's director (accompanied by the head of the Protection department) as well as the SRC's executive board constituted by representatives of the member organisations. A central subject of these meetings is the asylum procedure and the involvement of civil society representatives in it. However, these meetings also present the NGOs with the opportunity to discuss other issues. While in 2017, Thomas (SRC) tells me that Eritrea and Dublin transfers to Hungary were such important issues, "simply things where we have clear, manifest interests" (Thomas, SRC, 2019), in 2019, Anna (SRC) tells me that these are importantly the issue of sea rescue, the Dublin III Regulation and the issue of accommodation.

A second type of formalised exchange settings are administration led advisory groups in which NGO representatives participate on the invitation of the administration. These can be ad hoc or permanent advisory groups. An example of the first type is the advisory group on the postulate Feri[117] which asked the Federal Council to analyse reception conditions of women in the asylum domain. The advisory group on the issue of Dublin, created in 2017, as a consequence of the Dublin call, an open call addressed by AICH, the SRC and other NGOs demanding the stop of Dublin transfers of children and families, is a permanent group. Also the advisory group on resettlement is a permanent advisory group.

[117] Postulat 16.3407. Analyse der Situation von Flüchtlingsfrauen, accessible at https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20163407 (last accessed: 25.10.2024).

In these different settings which present opportunities for insider advocacy strategies, the NGOs, respectively their involved staff members mobilise certain resources to defend specific causes and justify their claims. These resources mostly consist in data respectively evidence for identified issues that they gather through their different activities in the asylum field. As McGhee et al. (2016) observe in the case of Refugee Action, an advocacy organisation active in the British asylum field and "delivering services for the Home Office" (ibid.: 42), similarly the SRC uses the data respectively evidence that it – not only but importantly - generates through its mandates (state mandate until March 2019 and mandates by member organisations afterwards). AICH not carrying out any mandates, generates such evidence mostly through its case work and other monitoring activities like visits in asylum centres and through its important network with grassroots and other actors in direct contact with asylum seekers. Thus, the evidence that both organisations use in their insider strategies comes from their "work of watching the state" (Gill et al., 2014: 376), as I will explain in more detail below.

This evidence serves the construction of generalised causes. The following sub-chapter will analyse in more detail the mobilisation of evidence collected in different monitoring activities and its use in insider strategies. The combination of evidence and legal knowledge is characterising the SRC's and AICH's insider strategies within different opportunities to different degrees. By assessing "[r]efugee experiences […] against a whole range of legal concepts" (Gill, 2018: 92), they construct generalised causes with which the authorities are confronted on occasions of direct interactions. I will explain these dynamics in chapter 6.3.1. At times, the evidence itself plays the most important role, at others it is the knowledge of legal experts or the presence of the expert him/herself that is important for insider strategies. In the latter case, the symbolic capital of legal experts (Bourdieu, 1987) becomes apparent. The sub-chapters 6.3.2 and 6.3.3 will analyse these dynamics when NGOs provide expertise in the context of a crisis situation or in advisory groups. AICH and the SRC are involved in these dynamics to varying degrees.

6.2.1 Monitoring and the construction of generalised causes

The SRC and AICH monitor different aspects of the asylum procedure in different ways. What they observe through these monitoring activities and the evidence that they gather serve as resources to ask the authorities to change certain practices. As Eule observes in the case of the SRC's advocacy strategies regarding Dublin transfers, its representatives "[try] to influence decision-making within the state ministry, thus seeking to avoid controversial deportations altogether" (Eule, 2020: 11). They engage in direct interactions with SEM bureaucrats in order to influence their practice in terms of Dublin transfers. Indeed, Dublin transfers are an important issue which the SRC aims to influence through insider strategies, i.e. the direct interaction with the SEM. In these direct interactions SRC representatives mobilised the outcomes of their monitoring activities. This is not only the case

regarding Dublin practice but also regarding the asylum procedure and reception conditions of asylum seekers. In the following, I will first describe the different monitoring activities of the SRC and also of AICH. Second, I will show how the observed "facts" are turned into evidence by holding the "facts" against legal principles in the construction process of generalised causes. Third, I will describe how these generalised causes are presented to the administration and what role evidence plays in this context.

The SRC monitors the asylum procedure mainly through its mandates, in the old system through its observer mandate respectively the coordination and training of observing charity representatives in the asylum procedure, and through its training and quality assurance mandate regarding legal advice and defence actors in the new procedure. As mentioned above, the legal expert group and the legal advice services meetings that the SRC both organises are also important settings for exchange with actors working operatively in the asylum procedure. In the context of the new asylum procedure, the SRC manages an interregional database containing data from the four asylum regions in which the organisation is mandated by legal protection actors.

> [The SRC] maintains an interregional database of asylum procedures for its partners. As part of these tasks, the processes can be evaluated, weaknesses in the new system identified and suggestions for improvement proposed in dialogue with the authorities. This is to ensure a standardised, fair and quick asylum procedure (SRC annual report 2019: 4).

Following the aim of standardisation and homogenisation of the asylum procedure between the regions, this database serves to identify problems that may appear at several places and may point to structural problems in the asylum procedure. As Anna (SRC, 2019) says, this database allows statistical analyses to be made. On the one hand, these analyses help to support the legal protection actors, for example, to keep track of the number of asylum claims treated or specific procedural obstacles encountered in their day-to-day work and for which a general strategic approach would be helpful. On the other hand, as the quote above mentions, the interregional database is seen as a tool by the SRC for making propositions of improvement "in dialogue with the authorities". The SRC's aim is to engage in a constructive dialogue with the authorities based on the evidence for "weaknesses" identified in the new system. Here, statistical analyses have an objectifying function for the presentation of identified issues and the proposed solutions by the SRC. The organisation lays a special focus on "the care and protection of persons with special rights (vulnerable groups)" (SRC strategy 2017-2022). This focus is also found in AICH's monitoring activities regarding procedural as well as reception conditions for asylum seekers with special needs (AICH strategy 2019-2014). As several of my interviews tell me, this is not a new focus in AICH's monitoring work. I will come back to this specific focus in chapter 9. In the following, I will rather focus on the types of monitoring activities that the SRC and AICH carry out.

Less directly involved in the asylum procedure, AICH's monitoring of the asylum system is based on different sources. On the one hand, AICH has access to asylum centres which allows staff members to talk to asylum seekers and staff there.

> The only ones who are always allowed to enter federal asylum centres are the UNHCR and the national commission for the prevention of torture, and other international bodies have free access. When I asked as Amnesty, that is, we, we also got permission. But when *Solidarité sans Frontières* asks, they don't get permission. I think it really has to do with the importance of the organisation (Nathalie, AICH, 2019).

As Nathalie explains here, AICH is one of few organisations who can access and visit asylum centres. AICH's "importance" which Nathalie mentions, refers to several elements that allows AICH to get access. It refers to the reputation of AICH as expert in the field of human rights but also to its presence in the asylum domain in Switzerland. Grassroot organisations like Solidarité sans Frontières do not have the same weight neither in the public nor with the authorities. As I will show below, evidence is central in the strategies of advocacy NGOs like AICH vis-à-vis the authorities. At the same time, to have access to information that can be used as evidence, the organisation must already occupy an important place in the asylum domain.

On the other hand, AICH's legal asylum expert has a lot of exchanges with a variety of actors, importantly members of grassroot organisations and volunteers around the asylum centres. These actors inform AICH about problems they encounter and/or observe when interacting with asylum seekers. Often it is also these actors who inform AICH about encountered issues that AICH takes up in its case work like the following example:

> We had an example with pregnant women. I mean, that also came from these pregnant women. [...] When you've heard it four times and the grassroots are saying it too, and then you go there and you're told, 'Yes, you're not even allowed to take an apple into your room after six o'clock', or the bottle is emptied in front of you, then it's confirmed (Daniel, AICH, 2019).

AICH does not pursue every case of an individual who had encountered an issue in the asylum procedure. From Daniel's statement it becomes clear that to become a case for AICH, an encountered problem needs to be of a particular magnitude like in the case of pregnant women in an asylum centre where they are not allowed to eat or after 6pm. AICH's legal asylum expert chooses cases to support that may indeed lead to court cases, but not necessarily. In some cases, an intervention with the administration can solve a problem encountered by asylum seekers.

Several researchers have analysed the criteria and logics that guide the choice of cases or their prioritisation by legal advice and defence actors of migrants in France (Agrikoliansky, 2003; Drahy,

2004; D'Halluin-Mabillot, 2012) and in Switzerland (Miaz, 2017) in a context of restricted resources but also based on other criteria like chances of success and credibility vis-à-vis the authorities. The criteria on which the choice of cases by AICH is based differ however from those of legal advice and defence actors to a certain degree because AICH's case work is part of its wider advocacy strategy in the asylum domain. While for strategic litigation cases before the ECtHR the special vulnerability of a person is central, as described above, in its case work, the choice of supporting a specific case by AICH includes further considerations that are linked to other elements of AICH's repertoire of action.

> We have to have individual cases, otherwise we are somehow passing by and completely out of touch with reality. We would be unconnected. And at the same time, so many individual cases come to us that may be completely banal from our point of view and that we cannot help with right now, for example, when a family has no window. Then we cannot help. But the problem is, we actually always want to take on individual cases if they are emblematic, if they help to create a systematic. The problem then is that you still have to look at each individual case and ask whether it is important or not, and that ties up resources. To be honest, we haven't yet figured out how to solve that so that it doesn't tie up so many resources. Anyone who calls and has any problem – you still have to listen to see if it is really a relevant problem for Amnesty (Daniel, AICH, 2019).

Due to resource constraints – financial and in terms of human resources with only one legal expert working on the asylum topic - AICH is confronted with the need to choose a limited number of cases that the organisation can support in the above-mentioned ways (through expertise and money).

Following Daniel, the main criterion for choosing to support a case is the question if the case presents "a relevant problem for Amnesty". A relevant problem represents a case of a rejected asylum seeker whose return to his/her country of origin would present the risk of violating the non-refoulement principle or any other violation of a person's human rights. In the first case, it seems clear to AICH's legal asylum expert that an asylum claim has been wrongly evaluated. Either the motifs or the credibility have been wrongly assessed by the SEM and/or the FAC. As Daniel (AICH, 2019) says, "There are also always cases where the wrong decision has been made". The second case can concern a variety of situations. Specifically, the rights of children can be a concern. Furthermore, reception conditions of asylum seekers can be an issue. The latter is only the case since 2000/2001 when Amnesty International has started to work also on economic and social rights. As Karim (AICH, 2019) explains, "In the asylum domain, it's much larger than the strict principle of non-refoulement which was originally the focus". As he explains further, the decision to broaden the focus had been taken on the international level by the global assembly of Amnesty International. The starting point of the process leading to the choice of a certain case is thus not the question of success of the case when thoroughly supported and defended by legal professionals but rather the case's compliance with the

organisation's focus in terms of the characteristics that it presents. Linked to this, the question if a case is emblematic signifies to move beyond the "tyranny of the individual" (Agrikoliansky, 2003) and to integrate the case in a wider "systematic" of cases illustrating the existence of a structural problem. This systematic is important for insider strategies in direct interactions with state officials as well as for outsider strategies respectively for the mobilisation of the public.

Finally, a third specific type of monitoring that is carried out by both organisations, is the Dublin monitoring. Here, AICH relies on research done by AI researchers in countries like Greece, Italy and Hungary and reports commissioned and published by the International Secretary in London based on the research. In 2016, AI has published, for instance, a report on the reception conditions in Italy[118] and another report about the situation in Hungary[119]. The SRC has started a specific project to monitor Dublin transfers to Italy in 2016 in collaboration with the Danish Refugee Council (DRC). Since 2019, the SRC has been continuing its monitoring activities in Italy on its own. This "Dublin Returnee Monitoring Project (DRMP)" aims "to collect more information about the actual information of families and vulnerable persons transferred to Italy" (SRC, Italy report, 2017: 5). Concretely, this consists in identifying individual cases of asylum seekers who have been sent back to Italy from Switzerland or other European states and who are ready to testify their experiences in Italy (ibid.). As in AICH's above-described case work, the Dublin cases in Italy are hold against legal principles, mainly the ECHR and EU law like the Reception Regulation but also against "the standards set out in Tarakhel v. Switzerland" (ibid.). From four case studies, the report concludes that

> [a]lthough it was a precondition for the decisions of the transferring Member States that the Italian authorities should be informed about any particular needs of the applicants, this obligation was not fulfilled. […] Consequently, it cannot be guaranteed that families and persons with specific reception needs who are being transferred to Italy under the Dublin III Regulation are being received adequately and in respect of their basic human rights. Therefore, these persons are at risk of violation of their rights according to Article 3 of the ECHR and Article 4 of the EU Charter. (SRC, Italy report 2017: 23).

Similar to the building of "systematics" by AICH, the SRC constructs general causes by holding concrete observations against legal principles. A general cause is thus constructed through a process of de-singularisation of individual cases (Drahy, 2004: 214) when these are reduced to legal categories

[118] Amnesty International (2016), Hotspot Italy. How EU's flagship approach leads to violations of refugee and migrant rights, accessible at https://www.amnesty.org/en/documents/eur30/5004/2016/en/ (last accessed: 24.11.2024).

[119] Amnesty International (2016), Stranded hope. Hungary's sustained attack on the rights of refugees and migrants, accessible at https://www.amnesty.org/en/documents/eur27/4864/2016/en/ (last accessed: 24.11.2024).

(Boltanski et al., 1984). The injustice of the administration's practice becomes apparent when its practice does not hold against its own legal principles. Thus, the evidence proving the administration wrong needs to correspond to the legal categories of the administration. Interestingly, there is also a process of re-singularisation of the cause when it is defended vis-à-vis the authorities. The individual cases provide important evidence for the actual presence of the generalised cause and make it credible. Thus, the "facts" or evidence that the NGOs gather through their different monitoring activities are crucial to defend their causes vis-à-vis the authorities. As Daniel (AICH, 2019) explains, in formal exchange settings with SEM representatives like the regular meetings between the SEM directory, the SRC and its member organisations, cases of observed problematic Dublin transfers are presented (anonymised) to justify the claim to stop Dublin transfers of vulnerable persons. The general (cause) is exemplified with the singular as the latter symbolically represents the general. This shows that the NGOs do not only use denunciation with its processes of de- and resingularisation (Boltanski et al., 1984) as an outsider strategy (as I will show in chapter 9) but also as an insider strategy with the administration. Central in this strategy is the linking of evidence ("the facts") with the NGO staff's legal knowledge to make a general cause credible. The evidence that the NGOs gather through their monitoring activities and their networks makes them, next to their legal knowledge, regular participants in expert and advisory groups on issues linked to the asylum domain. These advisory groups are generally organised by the SEM. The next chapter focusses on the participation of AICH and the SRC, represented through staff members, in groups addressing issues linked to asylum practice.

6.2.2 Experts in advisory groups: technicity, reworking and consensus

In the asylum domain, advisory groups are either related to questions of the administration's asylum practice like the group on Dublin practice, human trafficking and asylum, or they are related to policy questions like the group on resettlement. For the NGOs, these groups present specific opportunities for insider strategies as their invitation in these groups allows to be in direct contact with representatives of the administration and to provide directly input on the issues discussed in those groups. Generally, a variety of actors participate in so-called expert, working or advisory groups[120]. Next to representatives of the administration, generally, these are cantonal and/or local officials, academics, and representatives of civil society. There are advisory groups that require a more legal or technical knowledge while this is less the case for advisory groups on policy issues as David explains:

> Then the question on our side is: Who do we send there? What makes sense? There are questions or advisory groups that work more legally or technically, or where this knowledge is

[120] The name of these groups varies but interviewees told me that the designation as expert, working or advisory group does not change the composition or the goals of a specific group.

> more in demand. Then someone from Protection will go. Now with resettlement [it is] primarily a political question […] (David, SRC, 2019).

Since the SRC has created the position of a "head of asylum politics" in 2018, the question if an issue requires more a legally or politically oriented input from the SRC, is also answered in personnel terms. This is where the three points hint to in the quote above from my interview with David. If an advisory group addresses a policy question that requires the parliament's approval and/or falls in the competence of the Federal Council, this is understood as a political question which implies that the head of asylum politics participates in the advisory group. The fact that in these groups legal and technical knowledge is demanded points to the "technicisation" of the debates in these groups which signifies the use of scientific, and technical types of knowledge, argumentation and legitimisation (Robert, 2010: 12). Technical knowledge refers to the capacities of experts to apply their theoretical – here legal – knowledge on concrete questions and problems. This requires a certain practical experience from experts in the concerned domain (Delmas, 2011: 4). SRC and AICH legal and asylum experts have this kind of experience due to their above-presented involvement in the asylum system and their monitoring activities. Next to their legal knowledge it is also importantly their action-oriented competences that give them access to advisory groups. Finally, another aspect concerns the NGOs' interests that might be considered by the administration when inviting them to advisory groups. The expert group regarding the SEM's Dublin practice has, for instance, been created after several NGOs had launched the Dublin call and had publicly campaigned against Dublin transfers of vulnerable asylum seekers from Switzerland to another European country. The creation of the Dublin advisory group afterwards shows, on the one hand, that the NGOs' outsider strategies may lead to the creation of opportunities for insider strategies that advisory groups present. On the other hand, it shows that the administration may also consider including NGO representatives in their advisory groups to prevent future opposition to their practice.

In the following, I propose to focus on the technicised character of advisory groups that focus on issues linked to the implementation of asylum policy and legislation. In this context, Robert (ibid.) notes that the position of experts does generally not only require certified technical and scientific competences but furthermore the respect of an ensemble of, especially political, constraints. Indeed, the administration's practice is constrained by its political and legal framework. So is the work of advisory groups on issues of asylum practice. The technicisation of the issues discussed makes sure that the debate takes place within the political constraints. Thus, as Pécoud notes, the technicisation of questions of implementation of policies "empties the tackled issues of their political substance" (Pécoud, 2017: 83). The technical competences that NGO experts have allow them to take part in those technicisation processes. While they thus contribute to the depoliticisation (through technicisation) of issues like the Dublin system when discussing this issue from a technical perspective, the possibility of

engaging in those discussions through their participation in advisory groups presents NGO experts with opportunities for reworking. Reworking meaning to "alter the organisation but not the polarisation of power relations" (Sparke, 2008: 2) consists in ways of approaching a problem by "offer[ing] focused, often pragmatic, responses" (Katz, 2004: 27) to them. As Gill points out, "[r]eworking […] is neither revolutionary nor surreptitious" (Gill, 2016: 169). It does not question the power relations in place but aims at modifying the ways in which the system operates. The technical knowledge of NGO experts presents an important resource for them for engaging in opportunities for reworking that advisory groups of the administration present.

Another specific, but different type of opportunities for NGO experts' insider strategies present crisis situations. In the last chapters I have described strategies in which either the concrete expertise of NGO representatives in terms of legal knowledge combined with evidence is central or their capacity to engage in technicised discussions of issues linked to asylum practice. The following chapter will focus on another dimension of NGO experts' insider strategies which concerns rather the experts' status *per se* than the expertise they are able to provide based on their specific knowledge and practical experience. Crisis situations present a specific type of opportunities for the mobilisation of the expert status for insider strategies as the following chapter will show.

6.2.3 Providing expertise in crisis situations

Following Habermas (1988), one may differentiate between two types of crises which are system crises and identity crises. Here, I focus on system crises as the context that creates opportunities for experts' insider strategies. From this perspective, I understand crisis situations as "sudden events of disruption" (Bitschnau et al., 2021: 3865) which have a material character (ibid.: 3866). "Derived from medical vocabulary, it implies on the one hand an intense period which represents a break in the 'normal' course of things (there is always something 'pathological' about it), but at the same time implies a resolution, a 'way out of the crisis' which calls for solutions" (Calabrese et al., 2022: 9, referring to Veniard, 2013). This origin of the notion of crisis points to its constructed character which has largely been discussed in the literature (see i.e. Calabrese et al., 2022; Guiraudon, 2018; Beck, 1992; Habermas, 1975). My aim is however not to engage in this discussion, but to shed light on how professionalised advocacy NGOs mobilise their expert status in insider strategies in the context of a crisis situation understood as a "sudden event of disruption" (Bitschnau et al., 2021: 3865). For this, I will especially focus on the SRC's intervention with different actors involved in the "Como/Chiasso situation" that arises in Summer 2016 and which can be situated in the European reception crisis in the years 2015 and 2016 when the number of arriving migrants at Europe's border increases sharply.

A crisis situation implies that there are solutions for it and thus responsible actors who can implement measures to resolve the crisis situation. Therefore, designating a situation as a crisis always raises more or less the question of political responsibility (Calabrese et al., 2022: 18). The goal of advocacy NGOs in such situations is thus to persuade the responsible political actors to take their responsibility to solve the crisis. When in Summer 2016 migrants are blocked at the border between Italy (Como) and Switzerland (Chiasso) because the Swiss border guards do not let them enter Switzerland, the SRC is present on site and in direct contact with different actors involved.

> The SRC acted quickly and created a temporary position in Ticino. With a letter, the SRC contacted the concerned departments directly to contribute to the quick clarification of competence difficulties between the authorities on site. […] The legal expert Cinzia Chirayil has been providing advice and processing information material for people seeking protection at the southern border since 20 September 2016, takes care of networking with the Swiss and Italian authorities as well as the aid organisations and is responsible for communication and media work (SRC, Fluchtpunkt n°75 2016: 3, see also SRC annual report 2016: 5).

Thus, a legal expert is not only responsible for providing legal advice to asylum seekers at the border but furthermore, she is in charge of networking and therefore of building "bridges" between the different actors involved in the crisis situation in Como/Chiasso. This "bridge" function of the SRC between the authorities and civil society actors which has historical roots (see chap. 4) is activated in crisis situations as the Como/Chiasso case shows. Here, the status as legal expert of the person fulfilling "bridging" activities is an important resource as it presents a symbolic capital (Bourdieu, 1987) and thus authority that allows to interact with different actors. It is the status as legal expert that allows the intervention with the different actors in the crisis situation and to attribute political responsibilities to those who can solve the crisis. To be clear, it is not the crisis situation as such that allows insider strategies, but it is the legal expert status that is perceived as legitimising the "bridge" function in this context.

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In the last chapters, I have presented the different opportunities that representatives of AICH and the SRC perceive and seize to mobilise their legal expertise regarding issues linked to asylum practice in insider strategies targeting the asylum practice of the authorities. I have shown that the different dimensions of the legal expertise of the NGOs as a whole and their representatives present strategic resources in these strategies. The legal knowledge itself is often now enough but is combined with evidence obtained through different monitoring activities and actors of the organisations' networks, practical experience in the asylum domain and technical competences to apply the legal knowledge to concrete questions. Furthermore, evidence presented in COI that the NGOs produce is importantly mobilised in the asylum procedure to support legal advice actors in their tasks of justifying asylum

applications. Finally, the expert status itself is mobilised as a symbolic capital (Bourdieu, 1987) to build "bridges" and to attribute political responsibilities in crisis situations.

7 Acting on the law: juridification and the search for consensus

The last chapters focussed on strategies targeting the administration's asylum practice from within. In the following chapters, I will investigate the strategies that the SRC and AICH mobilise to act on the law. Here, the focus again lies on insider strategies referring to direct interaction between the organisations, more specifically their staff members, with state-actors involved in political decision-making. The first chapter (7.1) describes ways in which the organisations proceed to a juridification of their claims. Juridification signifies the mobilisation of the legal register to formulate political claims (Commaille et al., 2010). These juridificated claims are addressed to the administration and the legislator. The second chapter (7.2) focusses on the different functions that the involvement of NGO professionals can have in policy processes. Here, their expert status can have symbolic roles when substantiating and/or legitimating policies, proposals of the law and decisions by policymakers in general. Finally, the third chapter (7.3) focusses on the NGOs' lobbying activities in parliament and the roles of NGO professionals in this context. The aim of the next chapters is to give insight into the activities of the SRC's and AICH's professionals that target asylum law and actors involved in legislation and policymaking in the asylum domain. As I could not accompany the NGOs' professionals in their interactions with policymakers, I mainly draw on their statements and reflections expressed in the interviews that I conducted with some of them. Specifically, the juridification of political claims can be observed in consultation responses but also in other public documents like press releases and position statements.

7.1 The juridification of claims

The last chapters have shown that the mobilisation of the law is central in the SRC's and AICH's advocacy work aiming at the authorities' asylum practice. This is also true for the organisations' advocacy activities targeting the asylum law itself. The present chapter will examine the ways in which the organisations juridificate their claims when acting on the law. As Drahy (2004: 184) remarks, the juridification process of claims is an aspect sometimes neglected in the analysis of the influence of social movements even though the mobilisation of expert knowledge has become an obliged passage of social movements as Delmas (2011: 8) notes. However, "[i]nsofar as the law makes it possible to legitimise specific choices, values and conceptions of the social problems it is intended to address, participation in the mechanisms of normative production becomes an essential issue for players who wish to have their own vision of the world validated by the law" (Commaille et al., 2010: 16).

Understanding professionalised NGO advocacy organisations like the SRC and AICH as social movement organisations, I propose in the following to shed light on the juridification of claims to which both organisations proceed when engaging in policy and legislative processes.

When I talk to Thomas in 2017, he explains that the SRC historically has no chief lobbyist but that, on the one hand, the director has lobbying responsibilities and that, on the other hand, the head of the Protection department is also responsible for lobbying. In this context, lobbying means the direct targeting of decision-makers who are involved in legislative and policy making processes. These are members of parliament as well as administration representatives. As Thomas explains, the fact that the SRC does not have a chief lobbyist can be explained by the organisation's expert character:

> The SRC claims to be a specialist organisation. And that's why lobbying, the content-related part, is more or less the responsibility of the specialised unit [the Protection department] […]. The lobbying person is responsible for technical expertise and is therefore not in the communications department. The SRC does not have a chief lobbyist. There is a media spokesperson who is responsible for media contacts, but who is not somehow tasked with lobbying, because as an umbrella organisation, the SRC wanted to clearly position itself as expert. Traditionally, all SRC member organisations have lobbyists. Amnesty has a lobbyist, Caritas, HEKS, they all have someone who lobbies from a non-specialist perspective. […] It is always a question of whether an umbrella organisation also needs an explicit lobbyist. So far, the answer has been no (Thomas, SRC, 2017).

Thus, from the self-perception and self-representation as an expert organisation follows the way in which the SRC tries to influence legislative and policy processes corresponds to the competences of the majority of its staff members who are legal professionals and are specialised in legal technical issues linked to asylum. The fact that the SRC's member organisations lobby "from a non-specialist perspective" signifies that this task is not fulfilled by a professional, specialised on legal questions linked to asylum. By underlining the importance of technical expertise for the SRC's lobbying activities and by opposing these to the "non-specialist perspective" of lobbyists of the SRC's member organisations, Thomas differentiates two perspectives on the law. I have previously shown that the legal technical expertise of the SRC's legal professionals is perceived as neutral and this character of neutrality is also present in the way in which SRC representatives perceive their engagement in legislative processes. This not only becomes implicitly apparent in the opposition between the SRC's technical expertise-based lobbying and the non-specialist perspective of its member organisations. Additionally, SRC staff members explicitly differentiate between a legal and a political view on a legislative proposal, as David explains:

> A lawyer's view of a draft law is different from that of a politician. An introduction to a consultation procedure can be very legalistic or it can be political. The comments on individual

> articles of legislation can be purely legal, but they can also be underpinned by political aspects. Of course, in the end it is an interplay, but the view of the matter is different and therefore it makes sense to look at it from two angles. In this respect, it is separate. In fact, of course, it's teamwork. The main work is and remains the legal work (David, SRC, 2019).

Here, the differentiation between a legal or a political positioning on a legislative proposal is clearly expressed. This corresponds to what I observed while assisting to internal meetings at the SRC. In the beginning of the preparation of a consultation response, the present staff members generally decide if the response will be formulated in legal or in political terms. If the SRC lacks legal know-how on a specific legal question, such as, for example, aspects of data protection[121], the consultation response will be formulated in political terms (fieldnotes, 2019). This observation as well as the explicit differentiation by David between a legal and a political view of a question reflects the opinion of SRC staff members that the legal formulation of positions or claims has no political character which corresponds to the self-perception of SRC's legal professionals as neutral experts presented earlier. Differentiating between a legal and a political perspective signifies to "separate between judgements based upon the law and naïve intuitions of fairness" (Bourdieu, 1987: 817) of non-specialist lay people. According to Bourdieu (ibid.), "[t]he result of this separation is that the system of juridical norms seems […] totally independent of the power relations which such a system sustains and legitimises". Hence, the legal discourse functions as a legitimising instrument for social values when these are recognised by the law (Commaille et al., 2010: 15). Here lies the symbolic power of the law. More precisely, according to Bourdieu, the symbolic power of the law lies in the power of its form. It is through this form that the law's power is misrecognised as power and recognised and accepted instead through its appearance of universality (Bourdieu, 1986b: 43). When claims and positions are formulated in legal terms, they draw on this appearance of universality, which appears as unpolitical even though "[t]he legal is only a special formalised language of the political" (Drahy, 2004: 152). This view corresponds to Bourdieu's approach of the law as having a symbolic power through its form.

From the appearance of universality of the law follows that a specific law can only be banned if it contradicts higher legal principles like international human rights norms. Similar to Drahy's (2004: 195f.) observation regarding the CIMADE in France, this is logic is also mobilised by the SRC and by AICH to denounce existing legal rules or those in preparation.

> Amnesty has always acted on the basis of legal texts, saying: Switzerland, you can't do that because - this law you can't adopt because it's contrary to children's rights or contrary to Pact

[121] Questions of data protection arise, for example, in the context of the interoperability of EU databases in the context of the further development of the Schengen acquis of which the regulations must be implemented in in Switzerland presents such an issue. Lacking specific legal knowledge regarding data protection, it is decided that the SRC submits a political consultation response.

> II and so on. We have things like that. [...] I'm quite in favour of that. I think that means we're not open to attack. That's not our position, it's the Convention on the Rights of the Child. Switzerland has ratified this convention, it has ratified its additional protocol, it must apply it and that's that. It's the opposite, it's the same, this family of asylum seekers, putting the children in one place and the parents in another. Quite apart from the emotional arguments, I'd say that separating a four-year-old from his mother and father, etc., it is not only immoral, it's also against the law (Karim, AICH, 2019).

Thus, higher legal principles like codified human rights obligations serve as a resource when they contradict a national law. By arguing that "That's not our position, it's the Convention on the Rights of the Child", AICH engages in a process of "normalisation" of the legal rule (Lochak, 1983: 51-77). The normalisation process refers to the presentation of legal rules, here international law, as neutral and technical and the veiling of the political character of the mobilised norm itself as political issue, product and resource with its political effects (Commaille et al., 2010: 19).

Next to the reference to higher legal principles, another form of juridification of claims that has a depoliticising effect for the political debate that the NGOs target consists in the definition of an issue as a question for legal experts. Engaging in a debate that is political, as it addresses questions of "about who gets what, when and how" (Boswell, 2020), by defining an issue as a question for legal experts, depoliticises the question itself by attributing it a sphere other than the political one. For example, in its position that the SRC publishes regarding the announced motion of the SPK-S regarding the modification of the provisional admission status in 2017[122], the SRC states:

> It is important that the details regarding the new protection status are elaborated by an expert commission because the legal and factual questions relating to this topic are complex and specific knowledge and experiences are necessary to find effective solutions (SRC, 05.12.2017[123]: 1).

This definition of the modification of the status of provisional admission as an issue of experts corresponds to what Flinders and Buller (2006) call "arena-shifting". The issue is depoliticised by shifting it from the political sphere in the sphere of experts, a "process of placing at one remove the political character of decision making" (Burnham, 2001: 128). The responsibility for deciding about the modification of the provisional admission status or its replacement by a protection status is attributed to (legal) experts and thus removed from politicians. The aim is here "the withdrawal of politicians

[122] Motion 17.3270. Ersatz des Status der vorläufigen Aufnahme, accessible at https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20173270 (last accessed: 13.11.2022).

[123] Neuer Schutzstatus statt vorläufiger Aufnahme. Argumentarium der Schweizerischen Flüchtlingshilfe SFH im Hinblick auf die angekündigte Motion der SPK-S, 05.12.2017.

from the direct control" (Wood/Flinders, 2014: 156) over the future of the legal status of provisional admission and to guide the decision process with the knowledge and capacities of persons who are not politicians, but experts. Defining the issue as technically and legally complex – too complex for non-specialist politicians – "closes down the appearance of [the] issue as being political" (Wood, 2016: 524). Depoliticisation happens here through the redefinition of how the issue of the modification of the provisional admission status should be approached, hereby withdrawing politicians (as non-specialists) from the direct control over the question (Wood/Flinders, 2014: 156).

The above-presented dimensions of the juridification of claims to which the SRC and AICH proceed to influence the AsylA and linked regulations and more generally the mobilisation of the law in their advocacy strategies allows them to further be involved early in legislative and policy processes. The regular contacts with bureaucrats of the administration in the above-described settings (see chap. 6) as well as informal contacts with these presents NGO representatives with the opportunity to be informed early about upcoming proposals of legislative changes or a change in policy. To be able to get actively involved, especially in legal discussions within the administration, legal technical knowledge, which corresponds to the capabilities of the NGOs' legal professionals. As staff members of the SRC as well as of AICH told me, the most important attempts of the NGOs to influence law and policy making do not take place in the parliament but in the administration. Hence the importance to be informed about the ongoing discussions there.

> If you want to change it properly, then you're already working on the draft law and already know what's going to happen. By the time there is a consultation, the text has already been written and most people have been convinced. And I believe that this is also the greatest influence, that you can report problems to the administration, which may then be taken into account by the administration when the next ordinance is amended, if they can be convinced [...] And this is certainly the great strength of the SRC, because we are so close to the authorities that we are even aware of these processes (Thomas, SRC, 2017).

Beyond the opportunities that the SRC's proximity to the authorities presents for insider strategies, this quote also shows the role that legal professionals, with their legal knowledge and technical expertise, play for the organisation's strategy to mobilise the law in order to act on it. Legal professionals have a power that lay people do not, that is the power to influence the law at its early stages at the administration. As Bourdieu (1987: 834) notes, "[j]uridical institutions produce their own problems and their own solutions according to a hermetic logic unavailable to laypeople". The administration presenting such a juridical institution with its own legal professionals, the NGOs can engage in discussions with these thanks to their professional qualifications which thus serve as social capital (ibid.). While excluding "simple laypeople" from those discussions, the jurists of the SRC and AICH do have access to these. As David points out, "[o]n the technical level you are on the level of the

administration because the laws are made there". This means that the legal expertise of the NGOs' legal professionals is perceived as especially useful at the administration. As Drahy (2004: 185) notes, for claims to have a chance of being successful, they need to be formulated in legal terms. Through the juridification of claims, the SRC and AICH express their demands in a form that corresponds with the administration's language. Here, the power of the form of the law (Bourdieu, 1987) again plays a significant role. At the same time, this signifies that the SRC and AICH inscribe their demands in the normative order (Israël, 2009) of the administration, thus reproducing the order they aim to influence.

In this chapter, I have described the power of the form, *vis formae*, that legal professionals of NGOs can mobilise thanks to their "knowledge of formalisation" (Bourdieu, 1987: 850) to influence the law. Alongside this symbolic power of legal professional's expertise in legislative and policy processes, they can have further functions for the authorities in said processes that are linked to their status as experts and as representatives of actors with certain interests. I will turn to these substantiating and legitimising functions of NGOs' expertise in policy and legislative processes in the following chapter.

7.2 Symbolic functions of NGOs' expertise

Professionalised NGOs like the SRC and AICH have these substantiating and legitimising functions in policy and legislative processes especially for the government and its administration. Both types of functions have a symbolic character, as it is not the content of the expertise that serves in an instrumental way to define the content of a policy or a law. The substantiating function of NGOs' expertise refers to the credibility that it lends to a policy option preferred by the authorities over another. NGO expertise has a legitimising function through its presence in a policy process as part of the procedures that lead to a decision of political decision-makers to adopt a certain policy or law (see Boswell, 2009). The following reflections about the substantiating and legitimising functions of NGOs' expertise in policy and legislative processes is based on observations that the SRC's and AICH's staff members expressed when I interviewed them. On the one hand, their general reflections about the role that their criticism of policies and legal provisions might have for policymakers to justify certain choices and on the other hand, their reflections about the specific negotiations with the FJPD in view of the restructuring of the asylum sector may be theorised as substantiating and legitimising functions especially for the Federal Council and its administration.

7.2.1 A substantiating function

NGOs' expertise may have a substantiating function for policymakers' decisions when criticising these. What might seem contradictory becomes clear in a political context that is characterised by the polarisation of the asylum issue and a strong presence of the political far-right in public discourse. In a

context where the political far-right, represented by the SVP, continuously asks for a more restrictive asylum policy and legislation, criticism as too strict by recognised civil society actors like the SRC and AICH labelling these policies as too strict can have a substantiating function for these, as Karim explains:

> Our *leitmotif* is: we do advocacy work, we don't mince our words, also to criticise the authorities and the practice. The authorities are partly happy that we do this at all, also for political reasons, because it gives them certain arguments against other political initiatives, for example from the SVP [right-wing party] [...] that they can make a differentiation from the totally unworldly demands of the SVP, more in that sense (Karim, AICH, 2019).

Thus, by criticising a decision of the authorities, it substantiates it at the same time, as it allows the authorities to instrumentalise said criticism as argument for delegitimising criticism of the political far-right. Here, the criticism of organisations like AICH does not legitimise the criticised policy or legal provision itself but rather serves as an argument against demands of the SVP and their delegitimisation as "unworldly". The sustaining function of NGOs' expertise on which criticism of the authorities is based consists thus in rendering credible the choice of a certain policy or legal provision over a more restrictive one (Boswell, 2009: 73). Here, the symbolic character of NGOs' critical statements for policymakers and legislative bodies becomes apparent.

The substantiating function experts in policy and legislative processes can also be observed when NGO representatives participate as experts in policy advisory groups. While I have described the participation of the SRC's and AICH's legal professionals in advisory groups addressing issues linked to asylum practice above, there are some specificities to policy advisory groups. As Robert (2010) observes in the case of the European Union, policy advisory groups serve as a space where consensus is produced which may help to prevent important opposition in parliament and legitimate proposals made by the European Commission. Similar dynamics can also be observed on the Swiss level when advisory groups support a proposal that the Federal Council submits to the parliament, or a decision taken by the Federal Council. By engaging in the advisory group on resettlement, the SRC supports

> the Federal Council's resettlement decision, in particular. That it will then be supported by parliament and not be undermined. This was a long-standing concern that was ultimately successful. Not entirely successful either, because the original plan of the advisory group was to make decisions for four years at a time, i.e. the extensions would be in four-year increments and involve higher numbers. As always, a compromise was reached. So, it's not 100% successful, but it was certainly not bad (David, SRC, 2019).

What David explains here are two things. First, engaging in the advisory group generally means to engage in a process that aims at reaching a consensus – or compromise – among the participants of

the group. Second, while the Federal Council decides on resettlement programmes and their modalities (quota and the time frame), the parliament can challenge the decision of the Federal Council. Hence the importance of preventing opposition that advisory groups do have (Robert, 2010).

Focus 4 - Resettlement programmes

Resettlement is not a substitute for regular asylum procedures but an additional instrument of international refugee protection. It thus requires the political will of the receiving state to actively take in refugees (Parak, 2020: 154). Switzerland has participated in resettlement programmes under the lead of UNHCR since the 1950s. During the period of the Cold War, the Swiss government takes in refugees from communist countries and so-called hardcore refugees in the framework of a quota policy (for more details see chap. 4 historical overview). This policy is seen as expression of Switzerland's humanitarian tradition. In 1995, however, the quota policy is stopped as a reaction to the increase in asylum seekers from ex-Yugoslavia. The FJPD, according to the asylum act, nevertheless has the possibility to accept groups of refugees up to 100 persons in a situation of crisis. Thus, in 2005, a small group of refugees from Usbekistan arrive in Switzerland, in 2008 a group of Iraqis and in 2012, a group of Syrian refugees are admitted. Finally, in 2013, in the context of the Syrian conflict, the FC resumes its quota policy and decides in 2013 and again in 2015 (HUMAK), to take in 500 respectively 3'000 Syrians who have fled to third countries. These include refugees in Syrian neighbouring countries as well as relocation from Italy and Greece and also the issuance of humanitarian visas. In 2016 and 2018 two further decisions to take in refugee groups from conflict regions are taken by the FC, with the support of the Parliament (Parak, 2020: 154-57).

These time-limited actions are based on separate decisions of the FC and are not part of a long-term programme. The latter is strongly contested by the political right. A concept for such a programme is finally proposed by the FC at the end of 2018 and adopted against the protest of the SVP. Every two years, the FC decides about the quota of resettlement refugees that Switzerland shall take in in the two following years. In case of an important increase, ongoing resettlement programmes can, nevertheless, be suspended which, indeed happens in 2023.

Furthermore, in the Swiss context, advisory groups on a legislative issue may not only help to prevent oppositions in parliament but also prevent, in the case of a legislative change, a facultative referendum. Including a variety of state and non-state actors in pre-negotiations of legislative and policy projects may contribute to the considering of different opinions early in the process. Besides the possibility to participate in consultation procedures on legislative projects the involvement of civil society organisations like AICH and the SRC in those groups reflects the general openness of the federal administration to civil society input in policy and legislative processes (Giugni, 2024). The search for a

consensus that takes place in advisory groups and the participation of NGO professionals in this process, finally also has a legitimating function for the authorities. While they have a substantiating function when supporting the content of a policy or a law proposed by the Federal Council, advisory groups that are constituted by a variety of actors with their different interests also present a way to involve these different actors and consider their interests. This is an important dimension of the legitimating function of advisory groups and the actors who participate in them.

This legitimating function is obviously not linked to the participation in advisory groups. It rather is the fact that they are involved, in one or the other way, in policy and legislative processes. The next chapter will address a specific political context in which the legitimising function of the involvement of NGOs recognised as experts in political negotiations in the asylum domain becomes apparent. At the same time, this involvement presents the organisations themselves with the dilemma of cooperation of confrontation with the authorities. As the following chapter will demonstrate, this dilemma especially arises in a context where the Federal Councillor in charge of the asylum domain is a left-wing politician and when negotiations with him/her turn to bargaining.

7.2.2 (Opportunities for) bargaining with the authorities: a legitimating function

The political opportunity structure of the period that leads to the adoption of the amendment of the AsylA by the Swiss Parliament in 2015 and by the Swiss voting population in 2016 is a special one for Swiss standards because the Federal Councillor at the head of the FJPD is a Social democratic politician. Social movement researchers have noted that the presence of left-wing politicians in government is favourable for access of social movement actors to power (Kriesi, 1998: 296). A social democratic politician responsible for the asylum domain is more open to exchange with civil society organisations like the SRC and AICH. Staff members of both organisations confirm this and explain that the Federal Councillor Simonetta Sommaruga (SP), head of the FJPD between 2010 and 2019, is much more open to exchange with the NGOs than her successor Karin Keller-Sutter (FDP). If we understand political opportunity structure in Eisinger's sense "as a function of the degree to which groups are likely to be able to gain access to power and to manipulate the political system" (Eisinger, 1973: 25), the political opportunity structure between 2010 and 2019 is one that is favourable for the NGOs in terms of access to power holders regarding the asylum domain in Switzerland. While the present research focusses on the period between 2015 and 2019, in the following, I propose to look into the period during which the SRC and AICH are involved in negotiations especially with the Federal Councillor Sommaruga regarding the restructuring of the asylum sector. From a social movement perspective with its focus on political opportunities, this period is interesting, as it presents the organisations with access to power holders while, at the same time, this access only leads to limited success in terms of political goals of the organisations. I thus propose to nuance the observation made by other researchers that

"the presence of powerful allies is generally a factor facilitating social movement success" (Della Porta/Diani, 2006: 218) if we assume that left-wing politicians generally present such powerful allies. While the introduction of legal protection for asylum seekers in the asylum procedure does indeed present a success for asylum support actors as it responds to a longstanding claim, the success is limited because of the restrictive conditions under which the legal protection is provided and other restrictions that are introduced in the AsylA at the same time. Nathalie remembers the period leading to the restructuring of the asylum sector as follows:

> When the proposal came along, we were of course very shocked at first, because it's not ideal as it is. With this extended procedure, which then provided for poor legal protection. It was a real struggle. We are now in favour of it and are helping [legal defence actors]. Sommaruga [federal counsellor] also organised these many meetings to keep the NGOs in line *à la* we are working together. [...] That was Sommaruga. The mean thing, if I remember correctly, was that you had to make a decision. Sommaruga packed us in. You get the test in Zurich with legal protection, so to speak, and embassy asylum was abolished at the same time. If the referendum had been held and won, the restructuring would have been off the table. Perhaps the embassy asylum would have been preserved, although the chances were very slim. You lose things like that anyway. Or you say: We won't hold a referendum. We are in favour of the test in Zurich as a run-up to the restructuring and, how shall I put it, we throw in the towel and give up the embassy asylum. That was very bitter. She [Sommaruga] was also clever about it. We gave up one for the other (Nathalie, AICH, 2019).

First of all, this quote shows that, at the time, the NGOs are involved in negotiations with the Federal Councillor in charge of the FJPD and thus in charge of the amendment of the AsylA that leads to the restructuring of the asylum sector. It reveals the openness of the Social democratic politician's interest in involving members of civil society in political discussions. Involving organisations like the SRC and AICH, recognised as experts and as representatives of civil society's interests in the asylum field, has a legitimising function for the politician's proposal of the law that she submits for adoption to the parliament. The authorities have an interest in being able to demonstrate that civil society and especially experts in the field have been consulted in the revision process. "By being seen to draw on expert knowledge, an organization can enhance its legitimacy" (Boswell, 2009: 7). Following Brunsson's (2002) observation that it is important for political organisations to legitimate their actions and decisions through their procedures and structures, including external experts like those of the SRC or AICH, both renowned civil society organisations, in processes leading to proposed amendments of the law or to specific policies might be interpreted as an attempt to strengthen the legitimacy of their decisions. As Boswell points out, "[f]or knowledge to play a legitimizing function, it may suffice that an organization simply demonstrates that it does, in principle, have access to expert knowledge, or that it does, as a rule, consult expert knowledge in formulating policy" (Boswell, 2009: 80).

Second, Nathalie's statement also reflects the bargaining process in which organisations like the SRC and AICH are involved. The "advantage" that the federal counsellor and head of the FJPD at the time "offers" to the NGOs, to use Barry's words, is the test phase for a new asylum procedure as precursor of a restructuring of the asylum sector. In return, the NGOs must accept the suppression of the possibility for asylum seekers to make a request for asylum in a Swiss embassy. Neither AICH nor the SRC nor other asylum support actors for that matter, can be convinced of the necessity to suppress the so-called embassy asylum. In the end, the organisations agree not to contest the modification of the asylum law, as it also contains the introduction of legal protection for asylum seekers who receive a negative decision and promises the extension of legal protection for asylum seekers in general in the course of a more profound restructuring of the asylum sector. In retrospect, the outcome of the modification of the AsylumA that the Swiss Parliament accepts in October 2012, is perceived as a "trade-off" between an improvement – the introduction of legal protection – and a tightening of the law due to the suppression of the possibility to make an asylum claim in a Swiss embassy.

> It was a trade-off at the end. But this free legal protection in particular is a very old demand, a long-standing concern of the SRC, and the fact that this has now been achieved is actually a good thing. Other things had to be accepted that would otherwise not have been supported. [...] The revision of the Asylum Act, for example, also led to the abolition of embassy asylum. That's something we're not so keen on. There are aspects of this revision that are clearly more stringent than before. At the same time, it also brings improvements. Not only in terms of legal protection, but also the fact that those affected know earlier where they stand and that integration measures can be started earlier. That is also in the interests of those who come (David, SRC, 2019).

The authorities, personified in the federal counsellor Simonetta Sommaruga, cannot hope for an agreement in the matter of suppressing the embassy asylum but the introduction of legal protection, a "longstanding request" by the NGOs "convinces" the latter to first accept the proposition and then the modification of the asylum act itself. This outcome thus "merely involves a recognition on the part of each side that it cannot hope to get more of what it wants than is represented by the settlement. But each side retains its wish for the solution it originally entertained" (Barry, 1990: 87).

Even a representative of an organisation that is part of the asylum support field and that generally opposes any modifications of the asylum act if these do not consist in substantial improvements for asylum seekers and/or refugees admits that, at the time, it is impossible to find a better "deal" regarding the restructuring of the asylum system.

> Because in fact you had the choice between what Sommaruga was proposing or what the SVP was proposing. Frankly, it's not very credible to say no in a case like that. You know that the welfare of asylum seekers comes first, and the Sommaruga solution is better than the SVP

> solution. […] I'll tell you the truth, in the discussions we have sometimes, we feel we've reached a bit of a political impasse (Michael, support field, 2019).

In settings where defended positions are not only based on expertise but most importantly guided by (party) political considerations, argumentation, or "discussion of merits" as a successful mode of settling conflict (Barry, 1990) appears rather unlikely. For argumentation in this sense to take place, negotiations would consist in an exchange of arguments leading in the end to the adoption of the same viewpoint by all involved parties. Argumentation is thus about convincing in the matter itself, and this based on disputes that "revolve around different knowledge claims, or at least where knowledge is considered by the policy community to be a legitimate arbiter of disputes" (Boswell, 2009: 79). In the case where the NGOs would mobilise their legal expertise in a conflict with the authorities, and the latter are open to settle the disagreement through argumentation, both actors involved would agree on legal arguments as the "legitimate arbiter". If, however, other logics enter the dispute, discussion no longer takes the form of argumentation but shifts to bargaining as in the process described above. A reason why argumentation does not appear to be the dominant method for settling the conflict between the Federal Councillor and the asylum support sector might be that the authorities, most obviously governmental bodies like the FC, are political organisations that, following Brunsson (2002), draw on expert knowledge, wherever the input comes from, more for legitimising reasons than in an instrumental way. In cases where it appears important for the authorities to have civil society organisations like the SRC and AICH on board – the latter having an important capacity to mobilise public opposition and the former uniting several operational organisations in the asylum field under its roof – NGO representatives find themselves engaged in discussions that take the form of bargaining rather than argumentation. Unlike argumentation, bargaining does not aim to convince the other in the matter and to adopt one's point of view.

This bargaining process needs to be understood in the specific political context in which it takes place. While a Social democratic Federal Councillor at the head of the FJPD does indeed signify an openness to exchange with civil society actors, this involvement presents the concerned organisations with the dilemma from what others have described in other contexts as "mismatch between discourse and action when the Left is in power" (Alcalde/Portos, 2018: 169). In the case discussed here, this mismatch is linked, on the one hand, to the fact that Sommaruga presents the faction of the Socialist party that is strongly hesitant towards liberal migration policies (D'Amato, 2018) but also more generally to the power balance in parliament which is in favour of a conservative right-wing majority. Hence the legitimising function of NGOs' involvement in bargaining with left-wing policymakers for the law as result of this process.

In this chapter and sub-chapters, I have reflected on the substantiating and legitimising functions that NGO professionals may have when involved in policy and legislative processes either by participating

in advisory groups or by negotiations with the members of the federal government. The following chapter focusses on the NGOs' and their staff members' interactions with another type of actor involved in policy and legislative processes, that is members of the Swiss Parliament. How do NGO professionals mobilise their competences to influence decisions by the parliament? How do they perceive their role in this sphere? These are questions that the following chapter aims to answer.

7.3 "Make sure that the screw is not turned too much": dealing with party politics and the search for consensus in parliament

This chapter addresses the ways in which NGO representatives consider the political context in terms of party politics and power balance in parliament in the context of their advocacy practices and especially in the context of lobbying activities. On the one hand, the openness of the Federal Council to inputs from civil society depends generally on the Federal Councillor in charge of the asylum domain. This openness is often linked to the political party and thus the political orientation that s/he represents, with politicians from the political left more open than those from the right political spectrum. As the constitution of the Federal Council, in terms of political parties represented overall, is not determined by the power balance in parliament, the person who is in charge of the FJPD is a decisive figure regarding the extent to which NGOs can engage in discussion with the Federal Council. On the other hand, the Federal Council will take into account the power balance in parliament when making propositions in terms of policy and legislation. Finally, it is the members of parliament who vote on law proposals, hence their importance as targets of lobbyists.

Proximity to the authorities is rarely used by SRC or AICH representatives to bring in new ideas and a long-term vision. Their lobbying activities with the authorities and also with the parliament are mainly limited to reacting to a predefined political agenda as the following quote from an interview with an SRC representative shows. The strategy consists in identifying topics with regard to which opportunities for change seem to exist.

> You look at which topics are currently in a position to achieve something. [...] In other words, where you have the feeling that something is happening. To give you an example: At the moment there is a lot of discussion about minors and of course you then try to do something in this area. There are very few areas, such as recently, in the last two years, human trafficking and asylum, where we have actually said ourselves: We are tackling an issue that not everyone is aware of. But in other areas - Dublin, for example - the strategy is very clear: we must try to prevent the worst things from happening through the courts. That is also a strategy, but it is not geared towards a concrete result, but towards a status quo that is seen as unsatisfactory anyway (Thomas, SRC, 2017).

NGO representatives explain their reactivity to topics that are already present on the political agenda, on the one hand, by the general political climate, occasionally presenting an opening (Drahy, 2004: 151) for a specific topic, and the power balance in the executive and legislative bodies which have led, over the last few decades to a tightening of asylum legislation. On the other hand, factors related to the internal structure of the organisations themselves, like the resources dedicated to pro-active lobbying and the treatment of specific topics, are cited to explain weak efforts in terms of political agenda-setting. The general political polarisation around asylum since the 1980s makes it difficult to draw attention to issues that are not already discussed by the authorities or in the wider political arena. As an SRC representative points out, "[i]t is very difficult to interest the asylum sector in topics that are not already discussed" (Thomas, SRC, 2017). The strong presence of the political right in the asylum field makes it difficult to get out of reactivity because, in this context, the immediate goal is to contest restrictive legislative measures and practices proposed and implemented by the political right.

> Otherwise, it is often the case, as it has actually been since the 1990s if you are active in this area, that it is primarily about preventing tightening or not allowing tightening to go through to the extent that it is planned. From a historical perspective, this is the big change from a co-designing force in the 1940s, 1950s, 1960s and 1970s to a defensive one - defensive in the sense of working to prevent tightening. More and more advocacy and more of an endeavour to ensure that the screws are not turned too much. Now we are looking at this legislature to see if anything changes. My prediction is that not much will change. There has been a shift to the left in parliament, especially in the National Council, but practically nothing has changed in the Council of States and the second chamber will always have a braking effect on the first. So I'm not particularly confident that things will get much easier, but let's see (Thomas, SRC, 2017).

So, even with a growing number of left-wing members of parliament, political opportunities for pro-active agenda setting are limited. This is certainly also linked to the general weak position of the political left within the Swiss political system. On the one hand, as pointed out in the quote above, the second Chamber of Swiss Parliament (the cantons) can have a blocking role in legislative processes due to its centre-right majority. On the other hand, even in a situation in which a socialist Federal Councillor is at the head of the FJPD, as is the case between 2010 and 2019, the general power balance in government - two socialist representatives, two SVP, two Liberals and one Centre - and in the two Chambers of Parliament seem to make it impossible to reorient the process of tightening asylum legislation towards a different long-term vision. As described in chapter 5.3, the introduction of legal protection for asylum seekers in the asylum procedure is counterbalanced by other restrictive modifications like the abolition of embassy asylum. Furthermore, with its anti-immigrant and anti-asylum campaigns, the SVP dominates the public sphere which makes it difficult to generate visibility

for other political views and projects. The results of public votes like the one on the public initiative "Against mass immigration" in 2014, accepted with 50.3 % of the votes, show how polarized Swiss society is regarding migration. In this polarised context, it is difficult for the NGOs to actively set topics on the political agenda.

Regarding legislation, this leads to a general strategy that focusses on the identification and criticism of planned legal amendments. "Preventing the screw from being turned too far", implies engaging in legislative processes to prevent access to the asylum procedure, the reception conditions and the access to protection are less restricted than initially proposed by policymakers. Engaging in the discussion of those legislative projects by mobilising the legal register in the process, professionalised advocacy NGOs like the SRC and AICH acknowledge the general framework in which asylum is governed. Furthermore, by addressing the drafting of the law itself they contribute to a sophistication of the law. As mentioned by the interviewees above, in those processes, it is difficult to bring new topics on to the political, or even legislative, agenda. The "opportunity window" that opens with the takeover of the head of the FJPD by a socialist Federal Councillor between 2010 and 2019 and which allows for the introduction of legal protection for asylum seekers is nevertheless restricted by a persisting power balance dominated by the centre right and its claims for more restrictive measures. Where the introduction of new rights – the right to legal protection in the asylum procedure in this case – is counterbalanced by the restriction of access to the asylum procedure – by abolishing the possibility to make asylum claims in a Swiss embassy in this case – existing power relations are reproduced: The Swiss state, like other European states, decides about the conditions under which asylum seekers are permitted to access the asylum procedure. Supporting a law project because of the introduction of rights to the detriment of others reflects the ambivalent character of legal claims which can be a resource but also a constraint when confronted with a general context that leaves little *marge de manoeuvre*.

Finally, this little *marge de manoeuvre* is also influenced by the resources that the NGOs dispose of, as the following interview excerpt shows. When asked about topics that the SRC tries to put on the agenda, the question of resources comes up:

> In terms of setting our own topics at the legislative level, then it's not the case that nothing comes from us. But the political agenda inevitably sets topics and then it's a question of resources, what can you cover. You have to prioritise what's going on anyway. [...] I wouldn't say that it's only reactive. But of course, a lot of things are predetermined by the agenda. So, in that respect it's true (David, SRC, 2019).

Priority is "what is already in discussion". The financial and therefore also human resources are often not sufficient for the organization to be able to invest in "new" themes while monitoring the issues

already on the agenda. Thus, it seems logic to invest resources in topics and participate in an already ongoing discussion rather than taking the risk of working on a topic that no one may be interested in.

In the case of AICH, next to the above-mentioned generally critique oriented advocacy work, the little personal resources – one legal professional and since 2019 another asylum specialist – that are dedicated to the topic of refugees and asylum present certain limits. All the more important is the NGO's integration in the SRC and the discussions and exchange that take place with and among its member organisations.

To further understand the organisations' presence in the legislative arena, I looked at the list of binding interests declared by members of parliament. This list reflects a general weakness in, or absence of, NGOs who do refugee advocacy in terms of ties with parliamentarians. NGO representatives engage in other ways in "alliances" with left-wing politicians in particular. At the same time, the importance to convince centre politicians is underlined by NGO representatives. Especially in this context, being perceived as experts appears important for legitimacy reasons. The following subchapters will give more details about these aspects.

7.3.1 Weak presence of national refugee advocacy NGOs on the legislative venue

Eichenberger (2020) describes a rise of citizen groups within the administration and parliament in Switzerland. Regarding parliament, he observes a growing number of members of parliament's (MPs) ties with NGOs. These ties are visible in three forms: First, it means that the interests of a specific NGO are represented directly through MPs in the National Council and the Council of States. Those MPs will then represent these interests also in parliamentary commissions in which they have a seat. Second, Eichenberger also observes that a growing share of extra-parliamentarian commissions (EPC) seats are occupied by citizen group members. Finally, a third form of linking MPs and interest groups is the badge that MPs can attribute to a person and which guarantees access to the Federal Palace to that person.

In contrast with Eichenberger's general conclusions of the growing presence and thus influence of civil society groups on the legislative venue, a closer look at the organisations listed in the EPCs' member list[124], in the register of MPs' interest ties[125] and in the list of persons having obtained a badge[126] to the

[124] Wahlliste für Internet, Verwaltungskommissionen und Behördenkommissionen, 3.12.2015.

[125] Nationalrat, Register der Interessenbindungen, state: 1.04.2020 and Ständerat, Register der Interessenbindungen, state: 1.04.2020. The current state of MPs' interest ties of both the National Council and the Council of States can be consulted on the website of the Swiss Parliament: https://www.parlament.ch/centers/documents/de/interessen-nr.pdf and https://www.parlament.ch/centers/documents/de/interessen-sr.pdf (last accessed: 13.04.2020).

[126] Nationalrat, Register der Zutrittsberechtigten, state: 1.04.2020 and Ständerat, Register der Zutrittsberechtigten, state: 1.04.2020). The current state of both lists can be consulted on the website of the

Federal Palace leads to the observation that, among these citizen groups, national NGOs are under-represented. This is the case especially regarding MPs' ties and the badges obtained from MPs. If MPs declare interest ties with NGOs, most often locally active NGOs are concerned. Neither the SRC nor AICH figure in the register of MPs' interest ties which is also the case for the other member organizations of the SRC. However, both, the SRC and AICH, each have a seat in the Federal commission for migration questions (CFM), an extra-parliamentary commission engaged in questions of migration and asylum[127]. During the period between 2015 and 2019, both organisations have at least one badge from the Green and/or the Socialist party granting them unlimited access to the Federal Palace.

This relative absence from the legislative venue in terms of missing ties of the SRC and AICH with MPs in Swiss Parliament may come without surprise given the self-definition of the organisations' representatives as experts and the importance of political neutrality for the organisations' image. The presence of representatives of both NGOs in extra-parliamentary commissions like the CFM underlines this expert role. It would be interesting to know if this pattern of missing ties with MPs can also be observed with regard to professionalised national NGOs that are active in fields other than asylum and human rights.

Another aspect of the weak presence on the legislative venue consists in the human resources that the SRC and AICH dedicate to lobbying the parliament. In the case of AICH, one person is in charge of lobbying members of the National Council and the Council of States, and this concerns human rights issues overall. The SRC with its main focus on the authorities and especially the administration has, until 2018, not a single position which is dedicated to personal lobbying activities targeting the legislative venue. Besides his/her other responsibilities, the duty of addressing MPs lies with the head of the section "Protection" who has, generally, a badge which gives access to the Federal Palace alongside the SRC's director. This situation changes in 2018 with the creation of the position of a "responsible for asylum politics" whose area of responsibility covers "political" lobbying which comprises specifically contacts with MPs. Hereby, the SRC proceeds, at least in personal terms, to a decoupling of expertise and what SRC representatives call "political" lobbying in contrast to expertise guided administration lobbying (see chap. 6.1.2). Interestingly, AICH has not proceeded to such a decoupling in the asylum domain despite having a chief lobbyist. As a representative of AICH explains, the asylum legislation has become so complex that it is not feasible for the AICH's chief lobbyist to intervene in the field. This task falls within the area of responsibility of AICH's legal expert responsible for the asylum domain.

Swiss Parliament: https://www.parlament.ch/centers/documents/de/zutrittsberechtigte-nr.pdf and https://www.parlament.ch/centers/documents/de/zutrittsberechtigte-sr.pdf (last accessed: 13.04.2020).

[127] The CFM is an extra-parliamentarian commission of the administration which has a consulting function.

> There is the only in-house lobbyist, but he does not deal with asylum issues. The legislation on asylum and foreign nationals has become so complex that we have one person working 100% on it. The person has time to look into it. Because all the time, there are new ordinances, things that change etc. and this person is the one who deals with that and then who deals specifically with lobbying in the field of asylum. [...] At Amnesty, we've done very little direct lobbying of parliament, going ourselves to meet parliamentarians in the corridors of parliament. We did this relatively little because Amnesty is a member of the SRC and this work was done a lot at SRC level, to avoid duplicating things. It's like when there are consultation procedures. The Federal Council carries out a consultation like that, Amnesty rarely makes its own position statement in the field of asylum, but it's the SRC that drafts a position statement in the drafting of which [AICH's asylum lawyer] participated or before [his/her predecessor]. There was a group of lawyers in which [the AICH's asylum lawyer] worked. Amnesty took up the SRC's position (Daniel, AICH, 2019).

As this person also explains, in the asylum domain, AICH has not been very active with regard to direct contacts with MPs but has rather been relying on the SRC for the matter. Overall, we might distinguish three categories of lobbying activities that aim at influencing the (voting) behaviour of the parliament and in which SRC and AICH representatives engage. The first category comprises statements on legislative projects in the context of consultations and, in the case of AICH, also the Parliament Newsletter which is sent to all MPs at the beginning of each parliamentarian session. This kind of activities does not target MPs individually but represents rather a more general means of interest representation on the legislative venue. The second category comprises the provision of information to left-wing MPs, mostly politicians belonging to the Socialist and the Green Party who are generally interested in the NGOs' position and might draw on their support when carrying out their mandate. Finally, the third category involves lobbying activities that target directly MPs who are not already convinced or even interested in the SRC's or AICH's position. This concerns especially MPs belonging to parties of the political centre like the Centre Party, the Liberal Party (FDP) and the Green-Liberal Party (GLP).

While statements in the context of consultation procedures will be subject to further analysis in Part VII of this thesis, the next two subchapters will look, in more detail, into the second and the third category of what I summarize under the term "lobbying of the Parliament". Here, my aim is to retrace the types of interaction and the relationships between the NGOs' representatives and (different types of) MPs and to understand more generally the role that their positioning as legal experts plays in these contexts. Especially in the second subchapter which addresses "convincing" strategies regarding centre politicians, I will essentially draw on explanations by SRC representatives due to the, above mentioned, reduced parliament lobbying activities of AICH in the field of asylum compared to other political domains that touch upon questions of human rights.

7.3.2 Information provider and alliances with left-wing parliamentarians

As Cullen (2009: 113) notes, providing information produces "an opportunity to gain access and credibility with policy makers and politicians". In this sense, the SRC obtains two entry badges to the Federal Palace which allow for two persons to enter the Federal Palace whenever they wish. As mentioned above, generally, the SRC director receives a badge and since 2018, the responsible person for asylum politics and before 2018, the head of the section entitled "Protection". One of these badges comes from the Green Party, the other from the Socialist Party. In the case of AICH, generally, the director receives a badge as well from the Socialist Party, and the Greens give another badge to the organisation's chief lobbyist. However, as mentioned, these badges are rarely used for lobbying purposes regarding asylum issues. A badge can be used independently from the parliamentarian and the party that granted it. However, as SRC representatives explain, the badges are primarily perceived as expression of the Socialist and the Green party's interest in the asylum and refugee topic. Socialist and Green MPs know that they can obtain "valid information" from the person whom they issued a badge.

> The focus of the SRC was on trying to provide politicians from the SP and the Greens who are interested in the topic with valid information that they can then use themselves in the political arena. And that's what it was for ... the badge was mainly functional for me, so that people knew that I had a badge and that they could simply ask me because I was in charge of lobbying. That was very enquiry-oriented. And of course, when completely new proposals came up, we proactively sent things, but we didn't have to do that with the badge. I think it's more of an awareness, the badge creates a certain awareness in the party that these issues are important (Thomas, SRC, 2017).

In this sense, the badge issued to the SRC is a way of expressing general openness for inputs of the SRC and expresses, at the same time, the expectation to rely on an SRC representative to get useful information about a subject on the legislative agenda.

Despite the above-explained limited pro-active lobbying activities of AICH at the Federal Palace regarding the topic of asylum, AICH is nevertheless an important point of contact for politicians. Thus, AICH representatives perceive their knowledge as instrumental for MPs in their decision-making processes.

> Parliamentarians are sometimes interested in receiving input from Amnesty in order to position themselves. In part also technical questions. [...] Otherwise, we could be stripped of our badge again if nobody in parliament was interested in it (Laura, AICH, 2019).

So, those parliamentarians who are interested in the asylum topic and who are especially interested in inputs of NGOs like the SRC and AICH receive information either because they request it actively from the NGO representatives or because the latter approach them actively to give them an "update" which the following quote regarding lobbying during the parliamentarian phase of the restructuring project shows:

> Then, of course, we lobbied very strongly at the political level with the Greens, with the SP, with the parties where we had the feeling that they supported our concerns. Some of them don't have the same level of information as we do. They actively approach us themselves. They want information from us. We are also doing a lot of work there (Anna, SRC, 2019).

This provision of information, and furthermore arguments, for parliamentarians who support the SRC's and AICH's opinion on asylum matters is perceived as important because "parliamentarians are no specialists":

> When you do advocacy work, you mustn't forget to do advocacy with the people who support you. Not to convince them because they are already convinced, but often to give them arguments. Parliamentarians are not specialists. They are extremely versatile people. They will talk about asylum today and the military budget tomorrow. They'll be talking about health insurance tomorrow. They can't be specialists in everything. You have to give them arguments, you have to explain things to them (Karim, AICH, 2019).

Thus, as "non-specialists", MPs may not understand the subtilities and technicalities of the laws and policies they decide on. Therefore, they need experts who are able to "translate" legal language in to generally comprehensible terms.

> Fortunately, the SRC has now employed a lobbyist. For years we have been saying that a lobbyist should be employed. As lawyers, we can't do that. I think that requires completely different tools, including how to write something. I like to make legally sound statements. Everyone falls asleep, I don't care. That's what it takes, because I think it's a tool, but then you need the translation work and the marketing work, and that's what the experts have to do. That's why the SRC has this now and we also have it at Amnesty. These are the people who then push or sell in parliament or committees, and I think that's very important (Nathalie, AICH, 2019).

In their view, it is the recognised position as "experts" that gives SRC and AICH representatives the legitimacy to do this translation work. That is a position that appears to be politically neutral and independent because it is based on "serious legal work" as an SRC representative points out in the following quote.

> [The head of asylum politics] has now been present for about a year now and this often leads to questions about knowledge or just: Can you briefly document us or is that really the case? The questions don't just come from the left, but also from the centre-right, for example from the CVP and very occasionally from the FDP. [...] In the case of the centre-right, it is actually a case of collecting expertise. Then again, where [the head of politics] cannot do it himself, he falls back on Protection to get this expertise. There, and I think this is also important, I conclude that the standing is such that you are taken seriously as a specialist organisation and in this respect are also perceived as independent or not prescribed by party politics. This is actually ideal as a prerequisite for lobbying. As an aid organisation representative, you are always automatically placed in the left corner. The endeavour is to avoid this impression that you are so left-wing, but that the basis is actually serious legal work. I interpret the increasing number of enquiries from the centre parties as a success of this endeavour (David, SRC, 2019).

Similar patterns and dynamics can be found regarding the NGOs' interaction with the authorities. It is the position of "politically neutral" legal experts that gives the SRC as well as AICH legal-rational authority to participate in policy processes. The demarcation from the "extreme" left plays, in the context of party politics, an important role. The SRC representative in the quote above sees the interest of centre politicians in the SRC's expertise as sign of being perceived as an "expert organisation" that is doing "serious legal work". In the eyes of the SRC representative, this "neutral" and independent perspective on asylum represents a depoliticized engagement with the topic. From an analytical perspective, what this view of "serious legal work" ignores however is the fact that it may represent a party politically independent perspective, and nevertheless is *in fine* a form of political positioning vindicating a certain vision of society and principles for gaining access to and participating in society. As several authors (Agrikoliansky, 2010; Israël, 2020, 2009; MacCann, 2006) remark, the use of the legal register to contest or claim state action, is ambivalent in the sense that it presents a resource and constraint at the same time. As Israël summarises, the law is always a "constrained resource" (2009: 19). It is constrained by the normative order of which it is a part, so it cannot support claims going beyond that order. At the same time, it is a resource because it is at the centre of the definition of what legitimate political exercise is (Israël, 2009: 19f.). What makes legal expertise a resource for obtaining acknowledgement and consideration from centre politicians, is precisely its embeddedness in the existing normative order that constraints its scope at the same time. Nevertheless, left-wing parliamentarians are the most frequent interlocutors for SRC and AICH lobbyists. Besides pure information, coordination of strategies appears to be another aspect of interaction between both.

> Lobbying the left-wing parties is not really necessary. At most, it's about maintaining contacts and perhaps coordinating strategies depending on the situation. What would make sense to address or not to address at what point in time from our point of view. It's more along those lines (David, SRC, 2019).

Part of this coordination of strategies is the agreement on which issues to bring up in parliament and on the moment at which it would be opportune to do so. The SRC, as well as AICH, through its regular contacts with the administration and its monitoring activities in the asylum field, has not only access to ongoing internal discussions within the authorities but the NGOs' representatives probably have a better overview of the asylum domain altogether than MPs do. Therefore, strategic questions like the timing of interventions of MPs regarding a certain topic are also addressed by the lobbyists.

In a similar vein, the NGO lobbyists may build alliances with left-wing parliamentarians to criticize the authorities' practices. On the one hand, MPs can serve in a bridging function to obtain information from a governmental official that otherwise, would be obtainable in a confidential manner but not publicly. The possibility for MPs to make an interpellation or to ask a Federal Councillor to address a specific question in parliament provides the NGOs with the opportunity to obtain information publicly that they, in turn can use, in their public communication work. On the other hand, such a type of parliamentary intervention can indeed serve as instrument to engage with the government regarding a specific practice, like asking for a change in practice or even for the proposition of legal amendments.

7.3.3 The delicate task of convincing centre politicians

While mentioned in the last subchapter in the context of the SRC's and AICH's role as information provider for (mostly interested) parliamentarians, the present chapter looks at the role of centre parliamentarians as targets of lobbying activities that aim not only to inform but to convince individual persons to defend a specific position in the event of a legislative revision or a policy proposed by the Federal Council.

> Then there are very specific occasions where we try to prepare decisions in our favour by trying to persuade people to take a certain view, to act in a certain direction, in other words typical lobbying. Naturally, these are not the left-wing parties. [...] Lobbying in the sense of persuasion is mainly carried out by the centre parties, the CVP, the Centre Party, the Liberals but also to some extent by the SVP, because not everyone there has lost all of their hop and malt. But as they have very strong factional discipline, it is difficult to achieve anything there (David, SRC, 2019).

A concrete example of a policy that is proposed to the parliament for approval by the Federal Council at the end of 2018, is the resettlement concept. This concept is supported by the SRC who is present in the advisory groups that participated in its elaboration. As an SRC representative explains, it is necessary to convince parliamentarians to support the proposed project. The fact that the concept is not rejected completely, is seen as a success even if it is modified during the parliamentarian phase.

In accordance with the SRC's positioning as legal experts, the above-mentioned "translation work" of lobbyists is oriented towards legal or empirical facts rather than emotions, a register to which centre parliamentarians indeed respond. When I ask what kind of arguments he uses when confronted with centre MPs, a SCR representative explains that "matter-of-fact" and financial arguments are of importance and that the comparison with the legal situation in other European countries is always an important aspect in discussions about the introduction or abolition of legal provisions:

> It is simply not so clearly categorisable. If I had to categorise it, I would say that, in principle, you should play as little of the emotional keyboard as possible, but with factual arguments and often also with financial arguments. In other words, what are the financial consequences of doing or not doing something. That works relatively well with the centre parties. Another question is always the comparison with other countries. How do they do it? In other words, you always have to be prepared so that you can argue on the basis of experience, so to speak. If you can say: Germany and Austria do something like this. The Centre parties in particular are very strongly orientated towards this. If you know that it has already been tried and tested or that there is already experience. Unfortunately, this also has negative effects. It works there too. If you say, for example, checking mobile phones, there is already a legal regulation in Germany, in Austria too. It doesn't work, but there is a regulation. Then the argument is: yes, if they do it, we can do it too. It works both ways. But in preparation, it is always an important step not only to have the theoretical argument, so to speak, but also to be able to substantiate it empirically if possible and often in a European context (Anna, SRC, 2019).

The SRC representative realises that comparisons have their limits and can even be counter-productive in contexts where legal provisions are discussed with regard to the question of (legal) feasibility. Here, the ambivalence of the law (Agrikoliansky, 2010; Israël, 2009, 2020; McCann, 2006) again becomes visible. Furthermore, the risk that the comparison with other countries presents for legal provisions under discussion to be reduced to a question of legal feasibility ("If other countries can do it, we can too") adds to the depoliticization of the matters in question. This risk exists for cases of legal provisions that introduce rights for asylum seekers, like f. ex., legal protection (especially the Netherlands served as example for European comparison) as well as for cases of legal provisions that restrict their rights, like f. ex., the introduction of a legal provision allowing the authorities to control asylum seekers' mobile phones (like in Germany and Austria as mentioned in the above-quoted reflection of an SRC representative). As Anna explains, often it is a mix of arguments – legal, financial, empirical – that are used to convince (centre parties) politicians to support or on the contrary to oppose a legal provision.

While pointing out that the emotional register is not useful for convincing MPs of centre parties, on a strategical level, their connections to and proximity with church circles, however, are seen as an important factor for lobbying strategies. As some of the SRC's member organisations are historically

connected with national churches, like f. ex. HEKS with the Swiss evangelical protestant church, coordination with the member organisations' lobbyists can be helpful.

> Our contacts with the member organisations are then case-specific. Depending on the case, we coordinate our lobbying efforts if individual members of our organisation have better access to certain circles. I'm thinking of HEKS and church organisations, for example. Then it makes sense to liaise with them (David, SRC, 2019).

In this case, it is not so much the concrete arguments that "church circles" use when supporting or opposing a legislative project or a policy. As a representative of a support organisation explains, Christian federations are important targets of lobbying by organisations active in the asylum field. Here, it is an AICH representative who addresses Christian federations because of their influence on politicians of centre parties.

> We need to convince parliamentarians, but we're really convinced that to do that we need to convince a number of big organisations that are on a different level from us, even from Amnesty. For example, [an AICH representative] is doing a lot of work with Christian federations and things like that. [...] So that they take a public stance, even if it's not in our terms or anything else, but so that they take a public stance on this and then we'll use this kind of stance to convince Christian MPs from the CVP and FDP (Michael, support field, 2019).

This quote shows that organisations like AICH do not approve of the ecclesial discourse which is generally characterized by arguments of humanity and charity rather than of rights. However, for strategic reasons, Christian federations are addressed and mobilized to influence, in turn, politicians with affinities to them. While NGO lobbyists will rather abstain from using emotional or more widely moral arguments to convince centre politicians – we will see in Part VI that they do nevertheless use such discourse in other forms of advocacy – by mobilising big church organisations, they contribute however somewhat indirectly to giving such arguments room in the political arena.

The above-mentioned interview excerpt shows also that despite AICH's relative abstention from direct lobbying activities at the Federal Palace in the domain of asylum, mentioned in the beginning of this chapter, in cases where AICH has a great interest in a specific topic, AICH representatives do personally engage in lobbying MPs and eventually build coalitions with other organisations than the SRC in order to convince as many MPs as possible of their cause. A concrete example of this type of lobbying aimed at influencing the voting behaviour of specific MPs, mentioned in my interviews by AICH representatives and other involved organisations, is art. 116 Foreigners Act regarding so-called "solidarity crimes". The last quote refers to the vote of the parliament on art. 116 Foreigners Act and the question of "solidarity crimes" as well. The example of the legal provision condemning "solidarity crimes" is thus interesting for several reasons: First, it shows the importance that NGOs like the SRC

and AICH attribute to Christian organisations in the context of their endeavour to influence centre politicians' (voting) behaviour in parliament. Second, it is an example of a topic that AICH considers important to invest (human) resources in active lobbying and to coordinate with other organisations involved with the topic.

> On a common theme, we pool our strengths. For example, with the petition against the criminalisation of solidarity, they're probably going to vote in March on Lisa Mazzone's parliamentary initiative, and we've realised - in other words, the Socialist Party, the Greens, the Liberal Greens and the Evangelical Party all support it. So, we're twelve MPs short on the right to get the thing through. So, basically, we're working very closely with [a representative] from Amnesty. We're really going to divide up the guys we're going to try to convince. We're really going to coordinate our lobbying. But it's not something we do every day. It's really because with this petition we worked together and it was more effective to do it that way (Michael, support field, 2019).

Third and finally, the example of the discussion of "solidarity crimes" in parliament is also worth mentioning in the context of lobbying of the parliament from a more strategic perspective on lobbying and political processes. Important decisions regarding the content of a legal provision are made in parliamentarian commissions. Immigration and asylum related subjects are treated by the State Policy Commissions of the National Council (SPK-N) and of the Council of States (SPK-S) who pre-discuss legislative projects and formulate recommendations before they are discussed in the plenum. Thus, it is important to exchange with members of the commissions about the subject at stake before it is discussed in the SPK-N and the SPK-S.

Finally, in my opinion, this quote expresses quite clearly the different aspects of the political complexity that NGO lobbyists consider when trying to influence the (voting) behaviour of MPs. This is obviously not only the case in the asylum domain. Nevertheless, I think it is important to understand these contextual factors and institutional processes because advocacy activities are shaped by and interact with them. From a political opportunities perspective, social movement actors' choice of strategies is influenced by the formal institutional structure of the political system in which they operate, which includes informal processes of political actors and dominating power relations (Kriesi et al., 1992). The importance of centre politicians' (voting) behaviour on matters of asylum is linked, on the one hand, to the number of votes that they represent in parliament, a power balance that can change over time in the different bodies of the legislative venue (National Council, Council of States, parliamentarian commissions). SRC and AICH lobbyists adapt their strategies to this power balance. Adapting them to MPs from centre parties signifies the mobilising of a rhetoric register to which they are open to and also to take into account their formal and informal proximity with other actors, like church circles. As I reflected above, the mobilization of Christian federations and the cooperation with organisations

close to “church circles” contributes indirectly to giving room to arguments of humanity and charity, expressing a depoliticized vision of asylum. In the case of the SRC, it is notable that a generally proximity in respect to cooperation with “church circles” exists due to historical reasons. Some of the SRC’s member organisations like HEKS are closely connected to a national church.

Last but not least, the above-presented statements of representatives especially of the SRC express the important function of legal expertise and its “translation” for “non-specialist” MPs. This translation process, especially through its focus on “empirical” arguments and the comparison with the legal situation in other European countries has a depoliticising character as well because its focus lies on the legality and technical possibility of a legal provision rather than questioning the political logics and motivations behind it.

8 Outsider strategies: mobilisation of courts and the public

There are two different types of outsider strategies that the organisations pursue. Outsider strategies referring to the mobilisation of third actors outside the executive and legislative bodies to influence these bodies, they consist, on the one hand, in a judicialisation strategy and on the other hand, in the mobilisation of the public. Chapter 8.1 shows how the SRC and AICH engage in a judicialisation strategy and mobilise courts and jurisprudence to influence mainly asylum practice.

The two following chapters 8.2 and 8.3 turn then to the temporalities that shape public communication of the NGOs and their public campaigning activities with a special focus on the period between 2015 and 2019. The latter concerns the engagement with instruments of direct democracy which are the referendum and the popular initiative. Furthermore, two other instruments which are not directly linked to direct democracy are used by both organisations to a different extent: petitions and open letters. Contrary to the vote on a referendum and a popular initiative, petitions and open letters do not have a binding effect for the legislative or the executive power. They generate discussion in society and politics, create visibility for an issue and put pressure on the authorities. This is the case for public campaigns more generally which often include a petition. Here, the aim is, on the one hand, to present the general involvement of the SRC and AICH with these instruments and to trace the logics behind their choice to do so as explained by representatives of both NGOs. On the other hand, I propose to give an overview of the concrete topics that have been addressed and the claims made through the use of these different instruments between 2015 and 2019.

8.1 A judicialisation strategy

As Miaz (2017) observes, Swiss asylum policy is shaped by a process of judicialisation which influences asylum practice but also asylum policymaking and legislation. In following Pélisse (2009), I understand judicialisation as the increasingly frequent recourse to the courts to settle conflicts. In an institutional sense, in Switzerland, there are two legal opportunities to appeal a decision of the SEM on an asylum claim: The Federal Administrative Court (FAC) is the first and only appeal body on the national level. As Miaz (2017: 152) notes, asylum is one of the public policy domains in Switzerland that is the most judicialised with the FAC. The European Court of Human Rights (ECtHR) presents the second legal avenue for appeals against decisions by the Swiss administration and/or judiciary body linked to the asylum procedure. While not a member of the European Union, Switzerland is nevertheless affected by the Europeanisation of asylum policies and this is not only through the adoption of the Dublin Regulation but also in terms of judicialisation. Though the European Court of Justice does not present an appeal body for Switzerland, some judgements of that court can potentially have consequences for the interpretation of the asylum law and thus on asylum practice. This is especially the case regarding the Dublin *acquis*. As mentioned, the ECtHR presents a possible appeal body for Switzerland because of its signature on the European Convention of Human Rights (ECHR).

The following two sub-chapters will describe the ways in which AICH and the SRC engage with judicialisation of asylum and the relationship that the organisations have with the judiciary in the context of their advocacy work.

8.1.1 Contesting and denouncing the administration's practice

While neither the SRC nor AICH take legal protection mandates for asylum seekers and do not file individual appeals to the FAC or the ECtHR, they do nevertheless actively engage with the judicialisation of asylum and support legal protection actors in making appeals to the FAC and the ECtHR. Next to the general support of legal protection and support actors through the provision of COI, legal analyses and word modules (*Textbausteine*) "if a certain appeal strategy has proven successful in a number of similar cases" (Eule, 2020: 10), Eule also observes that "the SRC usually coordinates with different advice organisations until an 'ideal case' arises" (ibid.). For AICH, its case work presents an especially important part of its judicialisation strategy as a part of this case work consists in supporting appeals against negative asylum decisions. Here, AICH's legal expert supports individual appeals with legal expertise and in specific cases, AICH does provide the financial resources to mandate a lawyer. Furthermore, AICH does engage with strategic litigation when choosing individual cases to bring before the ECtHR (AICH Asylum strategy). Here again, AICH's legal expert does not defend a case him/herself but AICH has financial resources to support the case. Behind these

different kinds of engagement in the judicialisation of asylum lies the general idea to not only achieve positive decisions for individuals but to generate jurisprudence on a certain country or a specific group. In the best case, courts pass landmark judgements leading to a more general change of the administration's asylum practice.

As mentioned, both organisations provide country-of-origin information which legal support actors can use in the asylum procedure to support the credibility of an asylum seeker's narration vis-à-vis the SEM, as well as in appeals that they file to the FAC or even to the ECtHR against negative asylum decisions. Here, the aim is to "move the authorities' practice (SEM and FAC) based on a solid argument about the situation in the country" (Miaz, 2017: 452) and the "promotion of an alternative interpretation of specific facts" (ibid.: 453). In some cases, also the ECtHR quotes the SRC's and/or Amnesty International's COI reports. Regarding the FAC, it is clearly a strategy of the SRC that its COI reports are quoted in the court's judgements. When this does not happen, this is seen as a failure of the SRC's strategy.

> In the Eritrea case, […] we were unsuccessful because the Federal Administrative Court did not even quote the SRC information. They used some NZZ articles and whatever else was available for the situation. Then you have clearly done something wrong (Thomas, SRC, 2017).

Here, Thomas refers to the FAC's judgement from 23rd February 2017[128] regarding an Eritrean asylum seeker where the court concludes that the illegal departure from Eritrea does not justify the granting of asylum. As Rosset (2015: 2) remarks regarding the importance of COI in the asylum procedure and also court judgements in the asylum domain, "even if the legal rules define the criteria that decision-makers must apply, it is generally the facts and not the law that determine the direction of a decision". This is true for the administration's asylum decisions as well as for judges' decisions on appeals against negative asylum decisions of the SEM. By providing the "right" information, the NGOs aim at influencing the jurisprudence regarding specific countries.

Further, evolution of a jurisprudence regarding Dublin transfers has gained special importance for the judicialisation strategy of the organisations. AICH's asylum strategy defines appeals to the ECtHR against Dublin transfers of especially vulnerable persons as a specific strategic goal. The SRC "participates in court cases of paramount importance with regard to Dublin and contributes thus to the strengthening of the procedural rights of the persons concerned" (SRC strategy). In concrete terms, through the ELENA network, linked to ECRE, the SRC engages in strategic litigation before the ECtHR. Here, together with organisations in other European countries, the choice of cases is coordinated with the aim to generate landmark judgements by the ECtHR with regard to the activation of the

[128] FAC judgement D-632/2017 of 23rd February 2017.

sovereignty clause of the Dublin Regulation. Through these strategic coordination activities, the SRC as well as AICH engage in what I would call the judicialisation of vulnerability. On the European level, ECtHR judgements like the Tarakhel ruling in 2011 have shown that it is possible to make appeals against Dublin transfers even though the Dublin Regulation does not contain concrete criteria for the activation of the sovereignty clause allowing a member state to examine an asylum claim "sovereignly" even if the asylum seeker has travelled through another European country before. As Thomas (SRC, 2017) says, "With Dublin the strategy is very clear that we say that we must try to avoid the worst via the court". In these cases, it is the personal state of being of an asylum seeker that justifies the exceptional non-transfer of his/her person to another state. This state of being can impact the psychological and/or physical health status, children, gender, family status or any other "humanitarian reasons". As Miaz (2017: 501) describes regarding the practice of legal defence actors, "in absence of legal criteria on which an appeal can be based, the asylum seekers and their representatives must resort to emotional arguments in the hope of arousing the attention and good conscience of the officials or judges in charge of the case". Through strategic litigation, the SRC and AICH engage in this humanitarian and exceptional logic that characterises jurisprudence in terms of Dublin transfers. While the ECtHR's M.M.S. vs Belgium judgement declared the "systemic failing" of the Greek asylum system, its following judgements have been focussing rather on specific groups due to their state of being (health status, families, children etc.).

In Switzerland, FAC rulings have an influence on the administration's Dublin practice. As figure 8 below shows, the number of FAC judgements concerning Dublin transfers has especially increased in 2015 linked to the worsening reception conditions for asylum seekers in Hungary as well as in Italy.

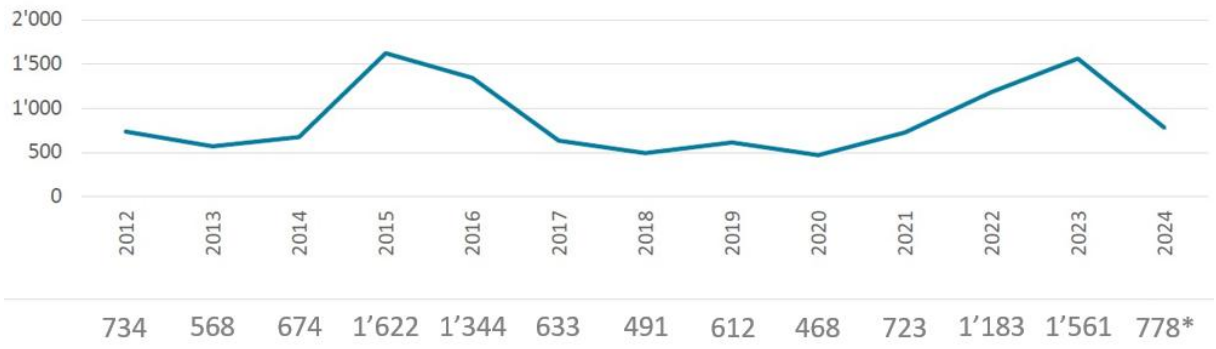

Figure 8 – Number of FAC appeals against Dublin transfers (source: Thierry Leibzig (2024), presentation in the context of the CAS Droit des migrations) *projection as of 29.10.2024.

Beyond questions of transfer deadlines, the FAC has made several rulings where it evaluates if a Dublin transfer is conforming with the unity of family principle stated in the Dublin Regulation III and/or if the

destination country would violate international or European human rights laws, especially art. 3 and 8 ECHR. Summarised under the term "humanitarian reasons", the FAC considers the following factors: medical situation, special vulnerability, situation in the country of destination, the best interest of the child, traumatic experiences, principle of family unity or the presence of someone close who can provide special support, as well as the duration of the presence in Switzerland (Monet, 2015: 359ff.). Further, in 2017, the FAC passes several judgements[129] in which it states the problematic situation for asylum seekers in Hungary. Following these judgements, the SEM stops Dublin transfers to Hungary and examines asylum claims itself from asylum seekers who have travelled through Hungary before arriving in Switzerland.

Finally, the SRC and AICH also use the jurisprudence of the FAC and the ECtHR in their advocacy work to put pressure on the administration and the Parliament. When they contribute to this judicialisation by supporting appeals through the provision of expertise and/or financial support of actors filing appeals and through strategic litigation, we might consider the SRC and AICH as indirectly being part of the "interdependent chain of public action" (Dumoulin/Roussel, 2010) whose actors are the administration, legal protection actors and courts (Miaz, 2017: 7). Understanding judicialisation as "increased recourse to the judicial institution to settle disputes" (Pélisse, 2009: 74), I see judicialisation as a form of depoliticisation of asylum practice in the sense that it limits the power of political decision-makers to define the asylum practice of the administration regarding a specific country and/or specific groups because it increases the weight of the judiciary in the "interdependent chain of public action" (Dumoulin/Roussel, 2010) as described by Miaz (2017). Through their control function of the administration's practice, courts influence the implementation of asylum law regarding a certain country or a specific group.

The advocacy NGOs have a strategic and at the same time ambivalent relationship with judges and their jurisprudence in several regards. In the following sub-chapter, I will analyse the strategic engagement of the SRC and AICH with the judiciary bodies in the wider context of their advocacy work.

8.1.2 An ambivalent relationship with the judiciary

The idea behind the judicialisation strategy, which the NGOs pursue through the above-described activities, is to foster jurisprudence influencing the administration's asylum practice. By trying "to avoid the worst via the court" (Thomas, SRC, 2017), the NGOs engage in the "tyranny of the individual" (Agrikoliansky, 2003) and thus use the control function of the judiciary of the administration's practice. In the best case, the court makes landmark judgements that lead to fundamental changes in the SEM's

[129] See f.ex. FAC judgement D-7853/2015 of 31st May 2017 and D-6096/2015 of 9th June 2017.

decisions about refugee status and the granting of asylum. Further, court judgements and the judges pronouncing the rulings have an instrumental function for the NGOs' advocacy work when they disagree with the SEM's asylum practice that is also criticised by the NGOs. In these cases, the judge represents not only a means to state the law but a medium of denunciation and thus a voice of the organisations (Drahy, 2004: 228). As Drahy (ibid.: 229) remarks, the judge has the force to demonstrate a moral infringement which does not only state the illegality of a practice of the administration but also its profound injustice which reinforces the denunciation character of those judgements. From this perspective, judgements denouncing the SEM's illegal and unmoral practice, reinforce the NGOs' denunciation of the same practice as they confirm its appropriateness. Thus, court judgements serve as an instrument in the NGOs' advocacy work to put pressure on the authorities. At the same time, by confirming the NGOs' criticism of a certain practice of the administration they support the expert character of the NGOs as "[a judge's] decisions accumulate in the eyes of the lay people the authority of the expert" (ibid.). So, court judgements and especially landmark decisions that denounce a certain practice of the administration have two different functions for the advocacy NGOs. On the one hand, they substantiate concrete claims for a practice change with the judge serving as voice of the NGOs. On the other hand, judgements also have a symbolic function supporting the legitimacy of the NGOs as experts making claims that are indeed confirmed by those (the judges) who have the highest expert authority in the legal field (Bourdieu, 1987).

However, as Miaz (2017: 150) remarks, in most cases the jurisprudence of the FAC confirms the decisions of the SEM. Thus, the NGOs have an ambivalent relationship with the judiciary and its case law. When serving as an instrument for denunciation and more generally to put pressure on the authorities to change a certain practice, court judgements serve as a resource. But they can also present a constraint for the NGOs when confirming the administration's practice and contradicting, at the same time, the NGOs' positions. As the law itself presents a resource with constraints (Agrikoliansky, 2010; Israël, 2020; McCann, 2006), the same is true for its interpretation through court rulings. In the period on which my research focusses (2015-2019), several FAC judgements were strongly criticised by the SRC and by AICH. This is, for example, the case of a ruling of the FAC on the 30th January 2017[130] that states that illegal departure from Eritrea does not represent a necessary reason for asylum. In a press release, the SRC does not only criticise the ruling but also the court itself and its decision-making process:

> **Negligent judgement against better judgement.** 'From our point of view, the ruling of the Federal Administrative Court is unacceptable. It itself notes how dangerous the situation in Eritrea continues to be, but bows to public pressure against its better judgement,' says Miriam

[130] FAC judgement D-7898/2015 of 30th January 2017.

> Behrens, director of the Swiss Refugee Council SRC. […] 'In the view of the SRC, the court has drawn the wrong conclusions from the available information. The judgment that an illegal departure does not constitute a sufficient reason for asylum is therefore to be regarded as negligent. It is fatal for those affected that this judgment (like judgments in the area of asylum in general) cannot be referred to the Federal Supreme Court. In this case, the FAC is no longer adequately fulfilling its mandate as an independent supervisory authority' (SRC press release, 3.02.2017).

Another ruling of the FAC which confirms the SEM's removal order regarding an Eritrean woman is also strongly criticised by the SRC:

> **The judgment is incomprehensible** – the Federal Administrative Court has ruled in favour of the deportation of an Eritrean woman. The FAC is willing to rule against the person concerned even though the facts of the case are highly uncertain. The SRC finds it highly questionable that the court has deviated from the principle of investigation and has thus effectively placed the burden of proof on the Eritrean woman concerned (SRC press release, 31.08.2017).

While in the first case, the FAC itself is criticised for having "bow[ed] to public pressure against its better judgement", the criticism of the second case focusses on the judgement itself. As Miaz (2017: 17) points out, there is an increasing interdependence between the judicial and the political sphere. In the asylum domain, this interdependence does on the one hand include the influence that jurisprudence has on politics and asylum practice, on the other hand, it also includes a certain politicisation of courts when the latter are involved in political controverses and encounter an anticipation of the judges' decisions by politicians (ibid.: 150). Without further entering the wider scientific discussion about the politicisation of courts, I would just like to note here that when criticising the FAC itself for a "negligent judgement against better judgement", the SRC engages in a discursive politicisation of the court's practice when it denounces its "bow[ing] to public pressure". For some SRC representatives, the politicisation of courts is "part of the game" and must thus be criticisable. As Arno, a former employee of the SRC remembers regarding the last judgement of the AAC in 2006 in which the commission decides to follow the protection theory rather than the so far privileged imputability theory of causation, the SRC had been involved in the discussions leading to this change in jurisprudence:

> Finally, it was a good result of lobbying because we knew the AAC did not dare to take a political stand. They needed signals from the political sphere. Then, at a discussion in Parliament about the modification of the AsylA, [a student] who wrote a master's thesis on this subject for us, took the floor and said that she assumed that those not persecuted by state actors would also be recognised in Switzerland, and no one objected. The AAC then quoted this […]. Then came the big change (Arno, former SRC, 2019).

Furthermore, what this quote shows, beyond the SRC's intensive engagement in advocacy for a change towards the adoption of the protection theory as guiding principle for the interpretation of the persecution criterion, is the view that landmark judgements of the FAC (and before the AAC) do always have a political character. In 2019, Anna (SRC) confirms: "Generally, it is the case that when the FAC makes landmark decisions, there is always a bit of politics involved. That's the way it is, it's part of the process". While "big changes" like in this case the recognition of persecution by non-state actors as reason for asylum[131] are welcome by the organisations, at other times, as mentioned above, judgements of the FAC are strongly criticised publicly because of the politics they are (presumably) based on. However, the public criticism of politics behind judgements of the FAC are not supported by all SRC staff members, like Thomas who sees a danger in this type of criticism of the FAC.

> Certain things went wrong […] like the court bashing. Can I bash a democratic institution that is one of the three powers, for larger considerations? Not because I would have approved of the Eritrea decision that has been so heavily criticised, but because I am playing the political right's game when I attack and delegitimise the court. Because they don't want that, they don't want a separation of powers. […] For me, this is clearly a question of the rule of law. It is no longer just about asylum. If I help to delegitimise the courts, I suddenly have the executive and the legislature without control. The control does not go far enough for me, that is quite clear. So, I think the court should be much stricter in many places. But I can't achieve that by saying that they have made some decision against their better judgement (Thomas, SRC, 2017).

While the judicialisation of politics with the FAC as a place where the content and the implementation of public policy is defined (Miaz, 2017: 149 referring to Ferejohn, 2002) is supported and seen as useful, the politicisation of the judicial sphere is categorically refused by Thomas (SRC). The reason for this lies in the fear that this politicisation creates an opening for positions supporting the abolition of the judicial control of the administration's practice and the legislator and thus the separation of powers in the state. The reason for the extensive quotation of both the SRC public statements and statements made by SRC representatives regarding criticism of courts of justice and their judgements above, which are of importance to the asylum domain, and the absence of AICH representatives' statements on the question lies in the fact that this is not a much-discussed question at AICH. The rule is relatively clear: judgements are discussed based on the interpretation of international law and on the information that AICH has about the situation in countries of origin.

[131] One may also note that Switzerland has not only followed a longstanding claim by the SRC and also UNHCR, but furthermore, the country finally followed the majority of the signatory states of the Geneva Refugee Convention and also aligned with European asylum law (Miaz, 2017: 136).

To conclude on the relationship between the NGOs and court judgements in the asylum domain, based on the descriptions above, this relationship seems to be characterised by an ambivalence in two senses. On the one hand, the NGOs' relationship with the jurisprudence of the ECtHR and the FAC is ambivalent because it can present a resource with an instrumental function of judges (Drahy, 2004: 224-229) as voices of the organisations when a judgement corresponds with the organisations' denunciation of a certain practice of the administration, or a constraint when judgements confirm the administration's practice which is denunciated by the NGOs. On the other hand, in the context of the politicisation of courts (Commaille et al., 2010), the question of the criticism of courts respectively their judges arises. As shown above, in the case of the SRC, there is no consolidated opinion on the matter.

8.2 Temporalities and dynamics of critique

Next to the judicialisation strategy described in the last chapter, AICH and the SRC engage further in advocacy outsider strategies through the mobilisation of the public and more generally public communication. The latter takes place essentially through press releases. As described above, both the SRC as well as AICH staff members have contacts and regular exchange with the administration's officials, especially with representatives of the SEM. The relation of confidence that they describe leads to certain dynamics characterising the interaction between NGO representatives and state officials, how conflicts are settled (or not) and how the relationship with the authorities is considered by NGO representatives for the communication with the wider public. Confidence signifies that the information that NGO representatives obtain through formal or informal channels from the administration needs to be kept confidential and must not be publicly communicated or passed on to other actors who could potentially do that. The confidence principle characterising the relationship between state officials and SRC representatives – and also the employees of the SRC's member organisation, in ricochet – is understood as part of the SRC's role in the asylum procedure which is consequently not one where "you are on the outside and independent", as Thomas (SRC, 2017) says. However, treating information confidentially is not only a question of dependency or independency on the information providers who are the authorities, especially the FJPD and the SEM in the present case. It is also a question of credibility:

> Public relations work is always difficult when you have an insight into the internal organisation [of the administration]. Because you can't go public with what you find out internally. Then I lose credibility [...] and that is an extremely important perception on the part of the authorities for this lobbying (Thomas, SRC, 2017).

Thus, credibility considerations not only concern the definition of officially communicated positions as claims as mentioned above regarding the general political positioning of the organisations, but

credibility considerations also have a temporal effect on the SRC's outsider strategies. Furthermore, Marc (SRC, 2019) points to the practical aspects of the mutual agreement with the SEM to inform each other about upcoming media communication which he describes as a "win-win situation".

AICH is not in the same situation of the SRC since it is financially and institutionally completely independent from Swiss authorities. However, the confidence principle is also something that is mentioned by AICH's representatives, and which goes beyond the confidentiality constraints that the organisation is bound to in accordance with its membership to the SRC. Admittedly, this might not be surprising as AICH representatives take part in many of the same exchange settings as the SRC. Nevertheless, from AICH representatives' point of view, the possibility to talk first to the administration before expressing critique towards their practice is seen primarily as a strategy to increase pressure on the authorities.

> It's a bit of a hierarchy. We start by asking the administration questions in private. If you're not happy with the answers - in the end, it's a way of gradually building up the pressure. You shouldn't empty the magazine of your revolver on the first day, you should keep cartridges in reserve (Karim, AICH, 2019).

This statement from Karim reflects a slightly different logic from the above-mentioned credibility concerns. Here, mobilising first insider strategies and in a second step outsider strategies is perceived as an approach to put pressure on the authorities. For this reason, in general, AICH representatives will reach out to officials first before turning to public protest instruments. At the same time, as a human rights *campaigning* organisation, AICH operates nevertheless continuously on the public protest level, not completely independent from insider strategies but in parallel. This is the case because AICH is part of a transnational campaigning network and implements campaigns that are defined at the international and/or European level. The overview of the public mobilisation work of the SRC and AICH given in the next chapter reflects this aspect of AICH as a continuously campaigning organisation.

8.3 Public campaigning activities

Above I have shown how the SRC and AICH engage in contentious politics (McAdam et al., 2001; Tilly/Tarrow, 2007) by following insider strategies which consist importantly of the mobilisation of legal knowledge in direct interaction with state actors. From a social movement perspective, the mobilisation of the public presents another central aspect of civil society actors' engagement in contentious politics. While I have presented above the NGOs' judicialisation strategy as part of their outsider strategies, the mobilisation of the public through means of public campaigns, demonstrations, petitions and open letters presents the second important part of outsider strategies of the

organisations. Here, outsider strategies refer to the ways in which conflict is carried into the public. Public mobilisation instruments are used to put pressure on state actors to change a certain practice, but they can also be used to gather support for or against a referendum against a modification of a law. In Switzerland, the AsylA has been object of a referendum many times since its introduction in 1981. In the period between 2013 and 2019, there is one vote on a modification of the AsylA, that is in 2016. I list start this list from 2013 because the first referendum linked to the restructuring takes place in 2013 (urgent amendments) The adoption of the amendment leads to the restructuring of the asylum sector. In the context of the restructuring, one may further note the public vote on the referendum against urgent amendments of the AsylA in 2013. With the rejection of the referendum, the test phase of a new asylum procedure is also introduced. The second opportunity, next to referendums, that Swiss direct democracy provides for the population to influence policy and lawmaking are popular initiatives. Table 6 gives an overview of the initiatives and referendums on which the Swiss population votes between 2013 and 2019 that concern migration and asylum.

Table 6 - Votes on popular initiatives and referendums affecting the asylum domain, 2013-2019

Date of vote	Subject	Initiative/Referendum	Position SRC, AICH	Vote
09.06.2013	Against urgent amendments of the Asylum Act	Facultative referendum (launched by coalition of left parties and organisations)	SRC: No (support of urgent measures) AICH: Yes	78.4% No
09.02.2014	Against mass migration	Popular initiative (launched by the SVP)	No	50.3% Yes
30.11.2014	Stop overpopulation - to safeguard the natural foundations of life (EcoPop)	Popular initiative (launched by a Swiss environmental organisation)	No	74.1% No
28.02.2016	On the enforcement of the deportation of criminal foreigners (enforcement initiative)	Popular initiative (launched by the SVP)	No	58.9% No
05.06.2016	Against the restructuring of the asylum sector (Asylum Act)	Facultative referendum (launched by the SVP)	No (support of restructuring)	66.8% No
25.11.2018	Swiss law instead of foreign judges (self-determination initiative)	Popular initiative (launched by the SVP)	No	66.3% No

This overview of public votes on migration issues which touch more or less on the asylum domain shows that popular initiatives are launched exclusively by the political right and aim at restricting migration to Switzerland in one way or another. Some of these like the initiative “Against mass migration” are accepted by the Swiss population and are presented before the Federal Council, still today, with problems regarding Switzerland’s bilateral relations with the EU. While the SVP does not

target the asylum domain specifically through popular initiatives in the period between 2013 and 2019 as several initiatives do in the 1970s, 1980s and 1990s, their overall aim to limit migration to Switzerland does not exclude the asylum domain. On the contrary, they express an amalgam between migration control and questions of asylum. The overview also shows that pro-migrant or refugee friendly initiatives are not launched. Refugee support actors focus rather on preventing "that the screw is turned too much", as Thomas (SRC, 2017) says. When using instruments of direct democracy, the SRC and AICH take the referendum against an amendment of the AsylA rather than launching proactively a popular initiative and campaigning for it.

If AICH and the SRC do engage in public campaigns, however they do so outside the opportunities that Swiss direct democracy presents. As Table 7 below shows, AICH is much more active regarding petitions, open letters and public campaigns than the SRC. The organisation regularly engages in protest campaigns, not only in the asylum field. Furthermore, the two open letters and two petitions for which the SRC signs responsible in the period between 2015 and 2019, are launched in cooperation with some of or all its member organisations. This small number of petitions and open letters over a period of five years aligns with the organisation's general strategy to create change through direct contact with the authorities rather than through the mobilisation of the public. This preference for exertion of influence through "tactical closeness and proximity to institutionalized centres of power" (Gill et al., 2014: 379) does not only guide the above-presented two-step communication strategy but is also reflected in the relatively small number of petitions and public campaigns that the SRC is responsible for. Traditionally, the organisation conducts one public campaign every year. The Refugee Day campaign which consists mainly in a Swiss wide poster and online campaign with a special website takes place every year in the month of June. It is linked to the Refugee Day, an event which is organised in several Swiss cities with the participation of the SEM as well as a variety of local and national actors of the asylum support field. Traditionally, the SRC's Refugee Day campaigns focus on aspects of integration which is also the case in 2015 and 2016 with the topics "Experiencing social integration together" and "Together 2016" as well as in 2018 with a campaign entitled "Land in sight? – Reaching out a hand for admission". This campaign focusses specifically on the integration of provisionally admitted persons in the labour market and the obstacles they are confronted with in this context. The focus of the campaign on provisionally admitted persons can be understood in the context of the discussions about a change of the legal status of the provisional admission that takes place in 2017 following a parliamentarian motion and which the Council of States refuses in August 2017. The aim of the campaign is to visualize the problems that provisionally admitted persons encounter in

Switzerland, especially with regard to the integration in the labour market[132]. The campaigns of 2017 and 2019 focus however on issues linked to the question of access to protection. In 2017, the campaign "Last minute – a flight is not a holiday trip" aims at raising attention to the difficult flight conditions of refugees. In the context of the campaign, the SRC demands that the Swiss authorities allow refugees to use more secure and legal flight ways, for example by issuing humanitarian visas.[133] This campaign as well as the campaign in 2019 entitled "Safe flight ways save lives" can be understood in the context of the reception crisis and the increasing number of deaths in the Mediterranean. Welcoming the FC's adoption of a resettlement programme in November 2018, the SRC demands nevertheless a higher number of resettlement places (than the 800 accepted by the FC) and furthermore the more extensive use of family reunification and humanitarian visas as secure and legal ways for persons seeking protection to come to Switzerland.[134]

In 2017, one can observe a change in the repertoire of action of the SRC in the sense that between 2017 and 2019, the organisation signs as responsible for two petitions and two open letters addressed either at the Federal Council or the Federal Councillor at the head of the FJPD while these instruments are only rarely used and not at all in the years 2015 and 2016. While civil society organisations have increasingly engaged in protest and solidarity actions in different European countries since 2015 (see f. ex., Agustin/Jorgensen, 2019; Della Porta, 2018), the SRC does not engage in public protest beyond critical statements in press releases until 2017. The SRC follows the situation at Europe's borders, comments, for example, critically on the summit of European leaders of government (SRC press release, 24.05.2015) as well as on the agreement between Turkey and the EU (SRC press release, 18.03.2016) and demands the Swiss government to engage proactively in finding solutions on the EU level (SRC press release, 24.05.2015). Finally, the SRC engages in public protest and campaigning when insider strategies are proven unfruitful. As Della Porta (2020: 944) notes, "[w]ith the closing down of opportunities for discrete interactions with state institutions in the forms of lobbying […], some NGOs politicise their discourses, in particular in reaction to crises and repression". I would argue that it is not only the opportunities for lobbying but importantly their effects that lead the SRC to mobilise public mobilisation instruments like petitions and open letters. The SRC's preference for insider strategies

[132] Schweizerische Flüchtlingshilfe, Land in Sicht – Hand reichen zur Aufnahme, accessible at https://www.fluechtlingshilfe.ch/medienmitteilungen/land-in-sicht-hand-reichen-zur-aufnahme (last accessed: 3.02.2021)

[133] Schweizerische Flüchtlingshilfe, Eine Flucht ist keine Ferienreise, accessible at https://www.fluechtlingshilfe.ch/medienmitteilungen/eine-flucht-ist-keine-ferienreise (last accessed: 5.02.2021).

[134] Schweizerische Flüchtlingshilfe, Sichere Fluchtwege retten Leben, accessible at https://www.fluechtlingshilfe.ch/medienmitteilungen/sichere-fluchtwege-retten-leben (last accessed: 3.02.2021).

leads to a relatively late politicisation of the organisation's modes of action in the context of the reception crisis.

Table 7 - Public campaigns, petitions and open letters by AICH and the SRC, 2015 - 2019

Year	Campaign	Type of campaign	Petition/open letter	Addressee	Responsible organisation
2015	SOS Europe – Protect humans before borders!	International/national campaign	SOS Europe – Protect humans before borders! (petition)	Federal Council, EU governments	AI/AICH
2015			Sea rescue in the Mediterranean: Europe must act to stop the deaths! (open letter)	Federal President Sommaruga	AICH
2015	#OpenToSyria	International/national action		Population, political decision-makers	AI/AICH
2015	Experiencing social integration together	National Refugee Day		Population	SRC
2016	Together2016	National Refugee Day		Population	SRC
2016-2019	I Welcome Refugees	International/national campaign		Population, political decision-makers	AI/AICH
2017			Humanitarian crisis on Greek islands. Help us. Now! (petition)	Federal Council, EU commission	AI/AICH
2016	I Welcome – Everything is better protected than humans on the run	International/national campaign	Refugees – Switzerland can do more (petition)	Federal Council	AI/AICH
2017	Last minute – an escape is not a holiday trip	National Refugee Day			SRC
2017			Dublin Call (petition)	Federal Council, cantonal governments	AICH, SRC, SOSF, Droit de rester NE, Collectif R, Solidarité Tattes
2017			No imprisonment and trade with refugees and migrants in Libya! (petition)	Libyan Prime Minister, EU commission president	AI/AICH
2017			Save human lives in the Mediterranean! (petition)	Federal Council, EU governments	AI/AICH

2018	Land in sight? Reaching out a hand for admission	National Refugee Day		Population, political decision-makers	SRC
2018			Call against the annulation of provisional admission of Eritreans (open letter)	Federal Councillor Sommaruga	SRC, SAH, HEKS, AICH, VSJF, Caritas
2018			For safe and legal escape ways to Switzerland (petition)	Federal Council	SRC, HEKS, supported by AICH
2019	FREE – Criminalisation of solidarity	International/national campaign	Solidarity is not a crime!	Members of Parliament	AI/AICH
2019	Safe escape routes save lives	National Refugee Day			SRC
2019			Swiss participation in sea rescue operations in the Mediterranean (open letter)	Federal Councillor Keller-Suter	SRC and members

AICH, on the other hand, launches overall five petitions and open calls between 2015 and 2017 and carries out different campaigns linked to the reception crisis. Petitions are an important instrument in the organisation's advocacy work which can be explained by the organisation's self-definition as a campaigning organisation. When I ask my interviewees about the role of petitions in the asylum domain in Switzerland, AICH representatives refer to the public pressure that these can put on the authorities. At the same time, petitions also present a "possibility for people to act", a possibility to say "loudly and clearly that you do not agree and that you want a change. It's easy. You can sign it quickly with one click" (Marina, AICH, 2019). From this perspective, as a campaigning tool, petitions generate visibility for a topic with regard to the authorities as well as the wider public. Finally, as a national section of a worldwide active organisation, AICH collects signatures for petitions that do not only address the Swiss government but also the EU commission and/or EU governments. These petitions are prepared on the international level of Amnesty International and are then distributed and adapted to national contexts. The petitions launched by AICH are mostly embedded in a larger campaign. Therefore, table 7 includes both, campaigns as well as petitions, sometimes linked to a campaign. Sometimes, several petitions are launched in the context of one campaign.

If we return to this table, we see that content wise, the issues addressed concern especially questions of access to protection or of access to the asylum procedure. Contrary to the SRC's traditional focus on integration issues in its yearly Refugee Day campaigns, issues related to assistance (accommodation, social aid for different status groups) and integration are not object of open letters and petitions nor of AICH's campaigns. AICH's campaign "SOS Europe – Protect humans before borders!" criticises "fortress Europe" and calls on governments to participate in sea rescue measures in the Mediterranean, to create secure and legal access ways to Europe, to guarantee access to the asylum procedure and not to cooperate with third countries regarding migration control if the human rights situation in these countries is problematic.[135] Another campaign conducted in 2015 focusses on Syrian refugees. The aim of the campaign "OpenToSyria" is to use public pressure to persuade wealthy countries to offer protection to more Syrian refugees through resettlement and humanitarian admission programmes.[136] Finally, "I Welcome" is the title of a worldwide AI campaign which focusses on different aspects of the situation of refugees. Within the general framework of this campaign, AICH launches two petitions asking for relocation of asylum seekers from Greek islands to Switzerland and

[135] Amnesty International, Schweizer Sektion, Europa. Die Kampagne SOS Europa, accessible at https://lab.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2015/die-kampagne-sos-europa (last accessed: 29.01.2021)

[136] Amnesty International, Schweizer Sektion, Flüchtlingskrise in Syrien. Es geht um menschliche Schicksale, accessible at https://www.amnesty.ch/de/laender/naher-osten-nordafrika/syrien/dok/2015/fluechtlingskrise-in-syrien-menschliche-schicksale (last accessed: 27.01.2021)

other European countries[137] and for the admission of refugees from Syria and of asylum seekers from Italy and Greece as the FC had decided in 2015[138]. In 2017, one petition calls on the Libyan Prime minister to stop imprisonment of migrants in Libya while a second one calls again on the Swiss and EU governments to engage in sea rescue missions[139]. In 2019, AICH conducts the campaign "FREE – Criminalisation of solidarity" and asks, in this context, the Swiss Parliament to modify article 116 AliensA which allows the Swiss authorities to penalise persons who have facilitated illegal entry, exit or residence[140]. AICH launches this petition together with SOSF.

Next to these campaigning activities and the regular use of petitions, AICH is part of the coalition between the SRC and other actors of the support field who launch the Dublin call in 2017. While AICH is used to launching petitions and public campaigns, for the SRC, this is an unusual action. As Della Porta (2020: 944) notes, "in a more challenging environment, NGOs are pushed, at times, to mobilize in contentious forms in defence of their beneficiaries". Similar to the reinforcement of public pressure in 2018 and 2019 in reaction to the authorities' unwillingness to respond to the organisation's requests to react to the reception crisis by providing legal access ways and to participate in sea rescue operations in the Mediterranean, the Dublin call reflects the unsuccessfulness of insider strategies to change the authorities' Dublin practice. It presents the last step of the SRC's "hierarchy of escalation", as Anna (SRC, 2019) says. The main claim of the Dublin call consists in a stop of Dublin transfers of children, families and other vulnerable asylum seekers. After unfruitful insider strategies, the petition is used to put public pressure on the authorities.

In 2018, the SRC proceeds similarly with an open letter addressed at Federal Councillor Sommaruga when the SEM proceeds to the annulation of the provisional admission status of several Eritreans. Again, this open letter is the consequence of former unsuccessful insider strategies. In the same year, the SRC in coalition with HEKS and the support of AICH addresses a petition at the Federal Council to demand safe and legal access ways to Switzerland[141]. This petition is the second one, after the Dublin call, that is situated in the context of the reception crisis. Finally, another open letter is sent to the

[137] Amnesty International, Schweizer Sektion, I Welcome. Die Petition "Helft uns. Jetzt!", accessible at https://lab.amnesty.ch/de/themen/asyl-und-migration/kampagne-i-welcome/kampagne-in-der-schweiz/die-petition-helft-uns-jetzt-ist-beendet (last accessed: 29.01.2021).

[138] Amnesty International, Schweizer Sektion, Menschen auf der Flucht – Die Schweiz kann mehr tun, accessible at https://extranet.amnesty.ch/de/aktiv-sein/petitionen/dok/2016/migration (last accessed: 29.01.2021).

[139] Amnesty International, Schweizer Sektion, Petition. Retten wir Menschenleben im Mittelmeer!, accessible at https://www.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2017/petition-retten-wir-leben-im-mittelmeer (last accessed: 1.02.2021).

[140] Amnesty International, Schweizer Sektion, Die Kampagne "Frei", accessible at https://frei.amnesty.ch/zu-helfen/ (last accessed: 1.02.2021).

[141] HEKS, Sichere Fluchtwege retten Leben, accessible at www.zuflucht.jetzt (last accessed: 21.11.2021).

Federal Councillor at the head of the FJPD in 2019 by the SRC and its members to call on the Swiss government to participate in sea rescue operation in the Mediterranean.

This overview of the campaigning and more generally public mobilisation activities of the SRC and AICH in the period between 2015 and 2019 reflects on the one hand, the different degrees to which both organisations use outsider strategies, though with the SRC generally preferring insider strategies. On the other hand, it shows that when using mobilisation instruments like petitions, the SRC does this generally not on its own but in coalition with other actors of the support field, mostly its member organisations but also with grassroots organisations like in the case of the Dublin call. The following chapter focusses on such coalitions which reveal the power relations between professionalised organisations like the SRC and AICH and other actors of the asylum support field, especially grassroots organisations. Furthermore, it addresses the role of professionalised organisations as unifying actors of the asylum support field which has traditionally been characterised by political divergences around the question of collaboration with the state.

8.4 Campaigning coalitions and power relations in the asylum support field

As the overview of the campaigning activities and the use of public mobilisation instruments by the SRC and AICH shows, both organisations engage in campaigning coalitions. As Della Porta (2018: 14) notes, power relations arise within refugee support networks as mobilisations need different kinds of capital, financial, social and cultural capital (ibid.). The following two sub-chapters will shed light on those power relations between the SRC and AICH and other actors of the asylum support field.

8.4.1 Coalitions and field dynamics

As I have shown in chapter 6.3, the SRC and AICH do only engage in coalitions with other organisations or support their public claims when these are coherent with the organisations' positions and correspond to standards in terms of legal and more general formal correctness. With other organisations, especially smaller grassroots organisations, this leads to frustration because, on the one hand, they depend on so-called "big players" like AICH to generate visibility for their cause. Interviews with representatives of organisations other than the SRC and AICH allowed me to capture the perspective of these actors on the (im)possibility to engage in coalitions with the SRC and AICH. In this context, it might be mentioned that both SRC and AICH staff members, as well as representatives of other support organisations, used the term "big players" to describe the role of the SRC and AICH in the asylum domain. To get them on board, signifies the adaptation to the mentioned constraints. In the case of AICH, an important constraint for supporting a petition is the question of the involvement of political parties. As a politically independent organisation, AICH cannot officially collaborate with a

political party. The frustration about this constraint and therefore the impossibility to work together is clearly expressed by Michael, a representative of a support organisation:

> It's always like that with the big organisations. They don't have a choice because the directives come from London. Basically, they say either you do what we want, or we don't. It's always like that with them. That's the way it's always been with them. For example, with Amnesty. […] Suddenly, after talking for two hours about the text we'd written together and everything else, they say, oh yes, but we can't sign the call if there are political parties signing it. We said it's not possible [to not include political parties], sorry. They couldn't sign the call, and, in the end, they didn't even take part in the demonstration [linked to the call]. They always have huge constraints that we don't accept. You either agree to work on their terms or you don't work with them. As a result, we can't really work together (Michael, support field, 2019).

This quote from an interview with Michael does not only reflect the obstacles to campaigning coalitions between AICH and smaller organisations but it also points to the power relations in the field between these. If organisations want to build a coalition with AICH, which helps them to gain visibility and financial support for their protest activities, they have to adapt to AICH's terms. As a national section of a worldwide organisation, AICH has international guidelines to follow. These translate in practical constraints regarding the claims that AICH can publicly support as well as the use of the organization's name and how the claims need to be formulated. While the quote above refers to an unsuccessful collaboration between AICH and a smaller grassroots organisation, the coalition of AICH and the SRC with other organisations around the Dublin call in 2017 is another example that sheds light on the power relations between the "big players" and the less professionalised organisations in the asylum support field. In the call, the organisations demand the authorities to refrain from Dublin transfers of vulnerable persons. As Michael points out, the focus on vulnerable asylum seekers creates tensions during the preparation of the Dublin Call between the co-initiators of the petition.

> In fact, before the Dublin campaign, we never used the term "vulnerable person" because we defend rights. Rights apply to everyone. Just because you're pregnant and disabled doesn't mean you should have that right. Young single men are vulnerable too. But in fact, that was imposed by Amnesty for the campaign. So, in fact it was like: we're just defending vulnerable people, otherwise it means we're questioning the very workings of Dublin, and they didn't agree with that. But we felt that this was a key moment when we needed to open up a Dublin loophole, so we agreed to go along with it. But normally we don't use vulnerable people because we defend rights, we defend all people (Michael, support field, 2019).

This is an example of tensions that can easily arise within coalitions of public campaigns. These tensions not only concern questions of wording as mentioned in chapter 8.3 but can, like in the case of the

Dublin problematic, even concern the centre of the claim that is publicly made. Due to the unequal power relations between the SRC and AICH on the one hand, and on the other hand smaller organisations with less resources, less visibility in the public space and less legitimacy vis-à-vis the authorities, the latter may adapt to the constraints imposed by the former. One may hypothetise that this is especially the case when issues appear as increasingly urgent. While those situations present opportunities for broad coalitions, they lead, at the same time, to the moderation of the claims of protest oriented grassroots organisations as the example of the Dublin call shows.

With regard to coalitions, as the central position of the SRC and AICH in the asylum domain both organisations can further play a role as unifier of the support field in the context of amendments of the AsylA. The following sub-chapter sheds light on this role in the context of the restructuring of the asylum sector and the referendum against the connected legal amendment.

8.4.2 Political divergences and unification of the support field

The debate around the restructuring of the asylum sector initiated with a test phase in 2013 leads to important divergences regarding the question of cooperation or confrontation with the authorities in the asylum support field. The restructuring of the asylum sector with legal protection mandates paid by the Confederation raises the question of the independency of the legal defence actors. As Eule observes, “from a radical perspective, entertaining any kind of relationship with the state might be seen to be going too far, because it risks reproducing the state’s (il)legalisation regime” (Eule, 2020: 8). This perspective is defended by a portion of the actors in the asylum support field. Beyond the competition over the legal advice and defence mandates that I have described in the context of struggles to gain access to the legal expert group organised by the SRC (see chap. 3.2.) the restructuring deepens trenches between “a more radical ‘asylum movement’ and a more pragmatic asylum advice wing” (ibid.: 11). The former caution against the risk of co-option that the legal protection mandates could pose due to the limited financial resources provided by the Confederation for these and the conditions of an accelerated procedure with short deadlines. Being part of such a system would serve the interests of the authorities’ managerialism rather than those of asylum seekers. The latter emphasise the importance of the provision of legal defence and advice for asylum seekers in the asylum procedure.

However, this fragmentation of the Swiss asylum support field around the restructuring issue is not stable over time but characterised by moving boundaries. Actors of the support field like AICH and SOSF initiate a referendum against the urgent amendments of the AsylA in 2013 that leads to the abolition of the possibility to make an asylum claim in a Swiss embassy and at the same time to the introduction of a test phase of a new asylum procedure with legal protection. The initiators of the

referendum in 2013 emphasise the tightening character of the amendment – their campaign has the title “No more scaremongering! No to further tightening of the asylum law”. Other actors like the SRC and its member organisations (without AICH) accept the introduced restrictions to obtain legal protection for asylum seekers and the restructuring of the asylum sector. In this case, one can observe a relative clear boundary between, the position of “solution-oriented” organisations like the SRC and the majority of its member organisations and, the position of “principle-oriented” organisations like AICH. In 2016, when it is the SVP who launches a referendum against the restructuring of the asylum sector, the boundaries of the fragmentation shift. Organisations like AICH and organisations who generally follow a confrontative approach towards the authorities support the project next to the SRC and its member organisations. Michael describes the situation at the time as follows:

> There was a great division between the left and the defenders of asylum on this issue. On the one hand, you had people who were perhaps even more radical than us, who were very upset that [my organisation] ended up recommending a yes vote, but we did it because the SVP had launched a referendum. Given that the left was divided on the issue, it wasn't possible for us to launch a referendum. We knew very well what was going to happen. If the SVP had won six months later, they would have come back with their own plan and things would have been worse. I don’t know if we did the right thing (Michael, support field, 2019).

This quote reflects the divergences characterising the asylum support field in the context of the referendums in 2013 and 2019 against amendments of the AsylA. Furthermore, it reflects the dilemma that support actors face when confronted with the threat of the political far right to prevent even the smallest improvements in terms of rights of asylum seekers. Such threat seems again to contribute to the moderation of claims by more “radical” organisations. As mentioned, this is also the case for AICH. Together with the SRC, AICH makes efforts to unify the asylum support field to gather support against the referendum in 2016.

> When it came to this legal representation – which is, above all, new in the restructuring – there were some very left-wing circles that were against it. We did a lot of persuading there, because we said we support it, we have to. And the SEM thanked us at the end for being so active (Daniel, AICH, 2019).

This quote shows that organisations like the SRC and AICH have not only a role as carriers of “a set of opinions and beliefs” (McCarthy/Zald, 1977: 1217) shared by a movement respectively a variety of actors in a field, but they can also use their resources to influence actors in the support field and their political positioning in order to engage them in a campaigning coalition in favour of amendment of the AsylA as is the case in 2016. As an important actor in the Swiss asylum domain because of its reputation and its contacts with a variety of other actors in the support field, AICH has the power to gather other

more protest-oriented organisations behind it. Here, AICH's reputation serves as resource to gather support within the support field.

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The last chapters have focussed on the outsider strategies that the SRC and AICH follow to influence asylum practice but also the law. Here, two main strategies may be differentiated. On the one hand, the SRC and AICH engage in a judicialisation strategy which consists in the mobilisation of courts for advocacy goals through the generation of jurisprudence and the instrumentalisation of judges for means of denunciation of the authorities' asylum practice. On the other hand, the NGOs put pressure on the authorities through public communication and the mobilisation of the public using instruments like petitions and open letters and public campaigns more generally. Finally, I have also shed light on power relations between professionalised organisations like the SRC and AICH and other actors of the support field that become especially visible in the context of campaigning coalitions.

The following Part VI will turn to the ways in which the SRC and AICH frame their publicly defended claims.

PART VI COGNITIVE FRAMES OF REFUGEE ADVOCACY CLAIMS

9 Politicised and depoliticised frames and their underlying logics of justice, need and deservingness

In the last chapters, I addressed the insider and outsider strategies of AICH and the SRC and therefore the question of what repertoires of action they employ and why they use these within (perceived) opportunities. Thus, I answered questions such as why using COI? Why engaging in legal litigation? Why do monitoring and how is the monitoring connected to insider strategies?

This chapter will address the cognitive dimension of professionalised NGO refugee advocacy. This means that I will delve into the content of the claims that the NGOs make regarding asylum practice and its legal and political framework, as well as ask how these are framed. I understand a frame as a way of defining a "reality" which induces the need to change this "reality". The notion of frame as a definition of "reality" provides inside into the different aspects and from an analytical perspective, on the different logics that are mobilised to define this "reality". Thus, cognitive frames refer to the ways in which an issue is constructed, defined and presented. Understanding a frame as "promot[ing] a particular problem definition" (Brusa, 2012: 86) not static but dynamic and constructed in interaction with its context (Gamson, 1992: 111), a frame may include a combination of types of argumentation. Framing is a central element of advocacy because it helps define the organisations' demands by taking into consideration their strategies and goals. Analysing cognitive frames involves the understanding of the ways in which meaning is constructed as a strategic process. In this process, the self-conception of an organisation, its goals as well as the public at which claims are directly and indirectly addressed are at interplay. As mentioned, I follow Entman's (1993) understanding of framing as a process in which certain aspects of the perceived reality are selected in order to define a problem in a specific way. As also mentioned earlier, from a political opportunity perspective, framing does not take place "in a vacuum" but in a context. Furthermore, following a neo-institutionalist approach of organisations, the latter consider questions of internal and external legitimacy within this context of decision-making processes about claims and frames (Roose, 2016). This means to take into account "prevailing rationalised concepts" (Meyer/Rowan, 1977: 340) in the field.

Analysing cognitive frames in public documents, as I propose to do in the following, does mean considering the target audience of this document. Frames thus do have to dimensions: On the one hand, there is the dimension of content. How is an issue understood? For example, why is the administration's Dublin practice problematic? On the other hand, there is the communication component. How is the issue communicated, and to whom? Both dimensions are closely

interconnected in public communication and mobilisation activities of the NGOs. The public expression of cognitive frames, the ways in which an issue is constructed, is the outcome of a collaboration between legal/ asylum experts and communication experts with their respective competences.

As mentioned previously at several points, both organisations, AICH as well as the SRC, mobilise importantly the legal register in their work. However, as we will see in more detail later, this legal register is often combined with other types of argumentation such as a moral one, characterised by humanitarian reasoning. In this context, I would argue that these different types of argumentation do not each present different frames but that they are conjointly mobilised within frames. The aim of the following sub-chapters is to present frames that I identified as important in the organisations' public communication and how, through the mobilisation of legal and moral registers, different claims are framed. An object of this frames analysis is primarily public discourse – reflected in in press releases, reports, position statements and consultation responses – but I will also include statements from interviews with SRC and AICH representatives to shed light on considerations lying behind those public frames, where possible and useful. The overall aim of the following chapters is to give an account of dominant frames of the asylum issue, or more precisely, of how issues identified by the organisations and the solutions proposed and claimed are framed. What are the problems are identified and on what logics are these descriptions of problematic reality based? What solutions are claimed and/or proposed and on what types of argumentations and logics are these based?

The main frames that I identified in the SRC's and AICH's public communication are first, what I call the "responsibility frame", which is mobilised to accuse the EU's and also Switzerland's politics of exclusion of being responsible for the suffering of persons seeking protection in the Mediterranean or/and in third countries. Second, the vulnerability frame is mobilised for the definition of problems like Dublin transfers and a lack of legal access ways as a problem for persons seeking protection who are labelled as "vulnerable". Third, the asylum procedure presenting an important issue in the period of analysis due to the restructuring of the asylum sector approved by the Swiss population in 2016 and entered into force in March 2019, a specific framing of the asylum procedure can be identified especially in the SRC's communication. This frame characterises the issue of the asylum procedure as a matter of fairness and efficiency. While the fairness and efficiency framing is importantly shaped by a technical-legal argumentation and an understanding of fairness as procedural justice, the vulnerability and responsibility frame are importantly constructed by focussing on descriptions of suffering either by mobilising a humanitarian logic or in terms of human rights, mostly through a combination of both logics. Regarding the former, the above-presented theoretical reflections of humanitarian reasoning, politics of care and the relation between need, pity, compassion, justice and deservingness and in this context also Boltanski's (1999) reflections about "distant suffering" will be helpful.

9.1 Fairness and efficiency: framing the asylum procedure

The modification of the AsylA on which the Swiss population votes in 2016, is the result of a bargaining process between a variety of actors. In the end, free state-funded legal protection for asylum seekers is introduced, a longstanding claim by NGOs like the SRC and its member organisations among which AICH. While legal protection is seen as especially important for vulnerable persons, an aspect that chapter 10.2.1 will address in more detail, the NGOs frame the asylum procedure more generally as an issue of fairness and efficiency to which, as they state, legal protection importantly contributes.

At the same time, the urgent measures decided in 2012 (suppression of embassy asylum and of desertion as reason for asylum (art. 3 AsylA) are confirmed for the long run. While acknowledging these restrictions and the limited scope of legal protection[142] and short deadlines in the procedure, the SRC supports the project and welcomes the positive vote by the Swiss population in June 2016.

> **A reasonable political compromise**. The bill is the result of a long legislative process and is a good, broad-based compromise that reflects the nature of consensus-based Swiss democracy. The political consensus reached would be called into question by a "no" vote on 5 June 2016. Given the current parliamentary majority, the improvements mentioned above would be blocked for years to come (SRC short argumentarium[143] 4.05.2016, emphasis in the original).

In the short argumentarium in favour of the asylum law revision, it is thus clearly stated that the latter corresponds to a political consensus. Voting against this political consensus would prevent any improvement of the Asylum Act for years. In the context of the tensions that arised in the asylum support field during the law revision process, I interpret this clear expression of political considerations in the SRC's public statement on the revision of the law as having two dimensions. On the one hand, it expresses the SRC's aim to promote understanding among those who focus on the restrictive elements of the revision. On the other hand, it is also a way of signalling to the authorities that the SRC recognises the "political consensus" as legitimate outcome. Overall, the SRC publicly defends the new organisation of the asylum procedure, envisaged by the revision of the Asylum Act. This support is based on several key factors: the fairness that legal protection would provide, transparency that would arise through better information of asylum seekers, efficiency because of a qualitative good procedure, better protection of children and vulnerable persons, easier integration because of an accelerated

[142] In particular, the legal advice centres in the cantons that are authorised to represent clients in the extended procedure are not provided with funding for a possible appeal. Furthermore, procedures related to the asylum procedure, such as applications for family reunification or the referral of vulnerable persons to medical and social networks, are also not provided for. Finally, no free legal protection is provided for persons whose asylum application has been rejected, who have not left Switzerland and who receive emergency aid.

[143] Am 5. Juni stimmt das Volk über die Änderungen des Asylgesetzes ab. Kurzargumentarium der Schweizerischen Flüchtlingshilfe SFH. Sieben Gründe für ein JA zur Asylgesetzrevision, 4.05.2016.

procedure and finally decreasing costs due to the acceleration of the procedure (SRC short argumentarium "Seven good reasons for a yes to the revision of the Asylum Act", 4.05.2016). AICH shares the compromise assessment, pointing out that the proposed restructuring project presents the "lesser evil" compared to the current situation.

> Supporting the revised asylum law is therefore the lesser of two evils. Although the price to be paid for systematic legal representation is high, the status quo is not an alternative (AICH statement on the referendum against the Asylum Act, 23.03.2016[144]).

Overall, it would present more advantages than disadvantages for asylum seekers, especially because of the introduction of legal counselling and legal representation of the latter. During the revision process, one finds relatively little public statements of AICH. As AICH representatives explain during interviews (2019), this is due to the fact that AICH is a member of the SRC as an umbrella organisation. The statements that the SRC submits in the context of consultations are mainly elaborated by its legal experts. However, they are discussed by representatives of its member organisations so that their opinions on the matter can be considered. Furthermore, as a human rights organisation, AICH focusses on the respect for rights in the procedure as well as in the decisions to which they lead. Here, the organisation communicates on its own rather than indirectly through the channels of the SRC. In the case of the revision process regarding the restructuring, it publishes a detailed position in favour of the revision of the Asylum Act. As mentioned above, for AICH as well as the SRC, the main improvement through the revision lies in legal protection for asylum seekers in the asylum procedure being an important aspect guaranteeing the fairness of the procedure. I propose in the following to trace how the aspect of fairness is defined and the other logics to which it is linked. In this context, efficiency appears as an important argument.

9.1.1 "Equality of arms": legal protection for asylum seekers and fairness of the procedure

As mentioned, free, meaning state financed, legal protection for asylum seekers in the asylum procedure is defined as the most important element of a fair and efficient asylum procedure by organisations like the SRC and AICH.

[144] Referendum gegen das Asylgesetz: Stellungnahme der Schweizer Sektion von Amnesty International, 23.03.2016.

> Free, extended legal protection is an indispensable element of the new asylum procedure. This legal protection makes an essential contribution to guaranteeing both the fairness and efficiency of the procedure (SRC consultation response, 20.11.2014[145]).

Rawls (1958) locates the notion of fairness in the context of processes in which several parties – individuals and groups – are involved. Referencing Rawls (1958: 178), "a practice will strike the parties as fair if none feels that, by participating in it, they or any of the others are taken advantage of, or forced to give in to claims which they do not regard as legitimate". From the NGOs' perspective, legal protection is seen as a means to assure that no asylum seeker is "forced to give in" to a decision on his/her asylum claim that is not legitimate. Legal protection would lead to an "equality of arms" between the authorities and the asylum seekers.

> The revision project recognises that asylum seekers, as people who are unfamiliar with the language and the law, require special support in order to go through the procedure well. This decision represents a milestone in the Swiss asylum system towards more equality of arms in the procedure. The SRC is convinced that this step will also have a positive impact on the course of the procedure (SRC consultation response, 20.09.2013[146]).

In this sense, fairness (as well as efficiency as we will see below) are presented as neutral principles having the capacity to produce a political consensus (Petiteville, 2017: 12, based on Hassenteufel, 2011: 182f.). With its "neutral" character, fairness has a legitimising function for the outcome of the procedure. The legitimacy of a decision depends, in this logic, on the procedure rather than on the actual correctness of the outcome. This conception of fairness could also be understood as imperfect procedural justice in the sense that it refers to a procedure that leads, most likely but not surely, to a just outcome (Miller, 2021). In this understanding, fairness legitimises the decision at the end of the procedure. Here lies the force of fairness as a consensus creating argument.

At the same time, those who defend the introduction of legal protection in the asylum procedure nevertheless assume that the chances of a right decision grow with an increasing fairness of the procedure itself. I think that this longstanding claim of (at least) imperfect procedural justice of the asylum procedure can be interpreted again in the restrictive political and legislative context as well as the implementation of policies and legislation. In a context where legal revisions tendentially introduce provisions limiting access to asylum, like the suppression of military desertion as asylum reason (art. 3 AsylA) in 2012, and where the refugee notion is tendentially interpreted in a restrictive sense, the focus

[145] Neustrukturierung des Asylbereichs (Vorlage 2). Position der Schweizerischen Flüchtlingshilfe SFH, 20.11.2014.

[146] Entwurf zur Änderung des Asylgesetzes, Neustrukturierung des Asylbereichs. Stellungnahme der Schweizerischen Flüchtlingshilfe SFH im Rahmen des Vernehmlassungsverfahrens, 20.09.2013.

on the procedure itself presents a possibility to stretch the boundaries of the restrictive framework from within. Providing asylum seekers with "arms" in the form of legal protection contributes to a juridification of asylum decisions, a process in which boundaries are reinforced but may also be moved (Miaz, 2017). As Miaz (2017: 5) shows, following Fischer (2009), "associations that run legal advice services play an important role in the differential management of asylum through their use of the law". The provision of free legal protection for all asylum seekers would thus reinforce this role through the increased presence of legal advisers and representatives.

As the first quote of this chapter also shows, legal protection is not only presented as leading to a fair procedure but also importantly to efficient proceedings. In a first step, efficiency refers to the duration of the asylum procedure. The acceleration of the asylum procedure presenting a main goal of revisions of the AsylA since its first modifications in the late 1980s, efficiency thus refers to a goal on which a political consensus also exists. However, the understanding of efficiency and how it is mobilised as an argument for the introduction of legal protection goes beyond the duration of the asylum procedure: Efficiency is also understood in terms of acceptance of negative decisions by rejected asylum seekers. The next subchapter will address this latter aspect of efficiency in more detail.

9.1.2 Positioning on (the necessity of) return? Efficiency of the asylum procedure

As mentioned in PART IV regarding the political positioning of the NGOs, the issue of return respectively of the necessity of return is disputed, especially among staff members of the SRC. As Thomas (SRC) explains in 2017, he is afraid of a development towards a clear positioning of his organisation regarding the necessity of return similar to UNHCR's positions on the matter. The analysis of the public discourse of the SRC regarding the asylum procedure, visible in the organisation's consultation responses and press releases, shows however that this positioning in favour of the necessity of enforcing returns of rejected asylum seekers is already present at least since 2013. It is indirectly stated as goal of fair asylum procedures and interpreted as an indicator of efficiency. Thus, in its statements regarding the (project of) the new asylum procedure the SRC states explicitly that a fair procedure would have a legitimating effect for its outcome in terms of decision about asylum applications. From this it is concluded that negative decisions would be accepted by asylum seekers facilitating their removal.

> Return: Negative asylum decisions are better accepted by asylum seekers because they have experienced that their application has been examined seriously and fairly. This, together with the short length of stay in Switzerland thanks to the rapid procedures and good return counselling and assistance, facilitates return and reduces the enforcement problems we know today (SRC press release, 21.01.2013).

Overall, the acceleration of the procedure which could be achieved through increased fairness and efficiency would thus present a "win-win" situation for all parties involved.

> The acceleration brings advantages for everyone: those who are allowed to stay can integrate more quickly into society and the economy. Those who are sent back find out more quickly and understand the reasons why (SRC press release, 3.05.2016).

What those simplified "common-sense" statements leave aside are the power imbalances (Pécoud, 2015: 96) between the authorities and the asylum seekers which persist even if legal protection might provide some kind of "equality of arms" within the profoundly unequal order. We can observe here how such discourse of efficiency (and fairness) is linked to a migration management rationale. Both quotes reflect the position that an "effective "return" policy" is regarded as […] necessary" (Scheel/Ratfisch, 2014: 932). Such a position situates the asylum system and here especially the asylum procedure within a perspective of migration management. Presenting a certain organisation of the asylum procedure as efficient in terms of enforcing removal orders, the procedure becomes a part of the migration management system, the latter becoming depoliticised as "sovereign nation-states [are presumed] as unquestioned and pregiven facts" (Scheel/Ratfisch, 2014: 937).

Here, we can observe a similarity with the positioning of other professionalised refugee support actors on the international level like UNHCR who engages actively in border controls through the training of border guards in order to support the exclusion of "illegal" migrants from UNHCR's assistance (Scheel/Ratfisch, 2014). The SRC does not make statements that imply explicitly the need to combat irregular migration in order to effectively provide protection for refugees. And I would also add that the above-quoted excerpts from press releases regarding the new asylum procedure and its efficiency in terms of return may be seen in the context of the political debate around the modification of the AsylA. The modification including the introduction of legal protection, the SRC and its member organisations support the law project and mobilise thus arguments to mobilise as many people as possible to vote against the referendum of the revised law (and in favour of it).

While AICH requests the authorities to use forced deportation only within strict limits, in the context of the issue of return, it can be noted that AICH underlines the importance of return counselling and welcomes thus that the modification of the AsylA, submitted to a popular vote in 2016 introduces systematic return counselling from the beginning of the asylum procedure.

> Systematic return counselling has been introduced since the start of the procedure. Amnesty International has always insisted on the importance of sustainable return programmes that allow for a real reintegration in the country of origin. Projects that can give both returnees and those who have remained in the country a perspective for the future (such as the Tunisian

project) should be further promoted (AICH statement on the referendum against the Asylum Act 23.03.2016).

While both, AICH as well as the SRC, underline the importance to separate legal advice and representation in the asylum procedure on the one hand and return counselling on the other, with their positioning on the necessity of return programmes they scrape nevertheless the issue of return. While refusing forced expulsions, statements like the one quoted above express nevertheless a normalised view of the differentiation between those "who can stay and those who have to leave" based on the geographical origin of persons. Proposing rather return *counselling* than *forced* return may be interpreted as a form of "reworking" (Gill, 2016) of the system of migration control that does not aim at challenging the whole system but rather targets the ways in which the latter is implemented.

Another frame present in the SRC's and AICH's public advocacy discourse that has a "reworking" dimension is the vulnerability frame. This frame plays also a role for claims regarding the asylum procedure but it is also mobilised in the presentation of other "realities" as problematic, like the lack of legal and secure access ways to Switzerland and Dublin transfers. The following chapter with its three subchapters will analyse the vulnerability frame in more detail.

9.2 The vulnerability frame: realignment within legal opportunities

Vulnerability is a term that is strongly present in the SRC's and AICH's advocacy discourse. Asylum practice, especially Dublin practice, is seen as problematic because it does not consider (enough) the vulnerability of some asylum-seekers. Legal and secure access ways to Switzerland for people seeking protection are also claimed (not only but importantly) as a necessity especially for vulnerable persons. Finally, the asylum procedure should also take special needs and rights of vulnerable asylum seekers into account. This focus on vulnerability in the context of different aspects of asylum policy and practice will be analysed in more detail in the following three sub-chapters. My aim is to shed light on deeper logics behind the "vulnerability paradigm" characterising the diagnostic framing of claims regarding the asylum procedure, Dublin practice and access to the asylum procedure respectively legal access ways to Switzerland. The vulnerability frame constructs the asylum procedure as problematic for vulnerable asylum seekers, it describes Dublin practice as problematic in the case of vulnerable asylum seekers and the lack of legal access ways to Switzerland and to the asylum procedure as especially problematic for vulnerable asylum seekers.

How is vulnerability defined in these contexts? What kind of needs are attached to vulnerable persons seeking protection? And what solutions are proposed/requested to meet these needs? The following chapters will demonstrate that vulnerability is a multi-facetted term that is attributed to a variety of human conditions like gender, sexual orientation, physical and psychological medical conditions, age,

disability or family situation. The following analysis of the vulnerability frame will further show that the vulnerability attached needs lead to the mobilisation of vulnerability as a criterion for assistance and/or protection. The entanglement of vulnerability as a norm of assistance and as a norm of protection appears in different degrees in different contexts. The theoretical approach of politics of care (Ticktin, 2017) and in this context the capacity of vulnerability as a present state of need to define deservingness of assistance is particularly helpful regarding the framing of Dublin transfers and the lack of legal access ways to Switzerland as especially problematic for vulnerable persons seeking protection. The first subchapter (9.2.1) will however rather show how present needs of assistance get entangled with presumed needs of international protection when vulnerability is not only defined as a present state of being but also as a sign of past suffering. This is the case of the state and medical condition of trauma.

9.2.1 Vulnerability in the asylum procedure: entanglement of assistance and protection

An important claim that the NGOs repeatedly make during the discussions leading to the restructuring of the asylum sector which includes a new organisation of the asylum procedure as well as the implementation of the new procedure, is that the special needs of vulnerable asylum seekers should be taken into account during the procedure.

As I will explain in more detail in this chapter, vulnerability represents a norm of assistance – linked to special reception needs – as well as a norm of protection – linked to presumed special procedural needs and needs of protection. While the entanglement of needs of assistance and needs of protection is not present for all categories seen as vulnerable persons, it becomes especially apparent in the case of traumatised asylum seekers.

Special reception needs, special protection needs

The NGOs repeatedly underline the necessity to respond to special reception needs especially of families, children and persons in need of medical aid, for victims of trafficking and for LGBTQI persons. In this sense, the SRC welcomes, for example, the reform of the asylum procedure as an opportunity to assure a correct care for unaccompanied minors.

> The comprehensive reform of the asylum procedure offers the opportunity to completely redesign the care, support and representation of unaccompanied minors. At the heart of this new concept is the protection of the best interests of the child, so that Switzerland can fulfil its

> obligations arising from the Convention on the Rights of the Child in all areas of child protection (SRC statement, 20.11.2014[147]).

AICH also supports the new asylum procedure because

> it introduces a legal obligation to take into account the specific needs of unaccompanied minors, families with children and other persons with specific care needs. Today, there are too many people with specific needs who are given too little or no consideration. Unaccompanied minors and children are often not adequately protected in federal centres today. They have no protected space. Access to medical care is also sometimes inadequate (AICH statement on the referendum against the Asylum Act, 23.03.2016).

While in both statements the word "protection" is used, it clearly does not refer to the question of international protection. Children need a "protected space" in reception centres, persons with health issues need "access to medical care". Furthermore, with regard to the asylum procedure, the NGOs underline the necessity of full legal representation of unaccompanied minors in the procedure. While procedural needs are concerned here, there is again no link made with a presumed need for international protection. This is different in the case of traumatised persons who are, following the SRC's and AICH' public communication, vulnerable persons.

The ambivalent state of trauma

The restructuring of the asylum sector introduces legal protection for asylum seekers in the asylum procedure. Legal protection – as well as a certain temporality of the asylum procedure - is seen as especially important for traumatised persons, those with the highest probability to be effectively in need of protection. Statements like the following ones are examples of how this assumption is expressed in the SRC's and AICH's focus on the consideration of the needs of traumatised asylum seekers in the asylum procedure.

> Could it be that the hearing is being conducted too quickly for certain categories? For example, traumatised persons should be considered, and it can be assumed that there are more traumatised persons, especially in cases requiring protection (SRC statement, 19.03.2013[148]).

> The legal representation plays a key role in ensuring that the facts of the case are fully established. They supplement the dossiers with country information, medical certificates,

[147] Neustrukturierung des Asylbereichs (Vorlage 2). Position der Schweizerischen Flüchtlingshilfe SFH, 20.11.2014.

[148] Verordnungsanpassungen der Umsetzung der dringlichen Änderungen des Asylgesetzes vom 28. September 2012 (Vorlage 3). Stellungnahme der Schweizerischen Flüchtlingshilfe SFH im Rahmen der Vernehmlassung, 19.03.2013).

> which are particularly important for traumatised persons, and other documents that substantiate the asylum seeker's statements. In this way, legal protection in first-instance proceedings can minimise the risk of tortured persons receiving a negative asylum decision and having to fight for their rights for years, which has unfortunately often happened in the past (AICH press release, 5.06.2016).

The SRC and AICH demand that the asylum procedure be adapted to the specific procedural needs of traumatised persons. Interpreted as a state of psychological dysfunction, special measures should be taken to ensure the uncovering of the "facts of the case". We draw here a parallel with D'Halluin-Mabillot's (2012) observation in France that support actors have increasingly been focussing on medical and health issues and their traceability in asylum applications. A medical certificate attesting the psychological state of trauma can serve, in this perspective, to "substantiate the asylum seeker's statements" about his/her need of protection. Trauma has this "capacity" because it is generally seen as consequence of past suffering. Fassin and D'Halluin (2005: 602) conclude in this context that "[t]he body has become the place that displays the evidence of truth". Legal representatives of traumatised asylum seekers can help to uncover this evidence. It is in this context that a direct relation between trauma as a present state of need in terms of reception and especially of procedural measures with a presumed need of protection becomes apparent in the SRC's and AICH's framing of the asylum procedure as problematic for a specific category of vulnerable asylum seekers that is traumatised persons. This focus on trauma may be understood within the broader context in which the authorities – in the Swiss case, especially employees of the SEM – approach asylum seekers and their narrations on which the latter base their claims for asylum with general suspicion that is expressed in a search for truth. This search for truth focusses on specific types of evidence: there is a search for traces of violence such as torture on the body. "The body has become the object of scrutiny in the search for scars attesting to the violence exerted" (Fassin, 2013: 58). This can be physical wounds (Fassin/D'Halluin, 2005) and scars but also psychological traces (Fassin/D'Halluin, 2007). Regarding the latter, the diagnosis of psychic trauma has gained importance as evidence for endured violence. "The legitimacy of the suffering body has become greater than that of the threatened body" (Fassin, 2005: 371). In this sense, trauma is seen as a general state that conveys veracity: that of having suffered violence. This way of constructing trauma as evidence, makes it "a legitimate category for understanding misfortune" (Fassin/D'Halluin, 2007: 306). In this process, it is the general psychic state auf trauma that takes precedence in an asylum claim rather than the individual experiences of the asylum seeker. In the search of truth, experts are asked to objectify the asylum seeker's words and traces of suffering on his/her body. Thus, expert knowledge and evaluation of the evidence, f. ex. in the form of medical certificates, substitute the asylum seeker's accounts of what s/he endured. While the asylum seeker's words are doubted and his/her body is questioned in order to find the truth, the

expert's objectification of words and body are given credit as they are seen as neutral (see Fassin, 2010a; Fassin/D'Halluin, 2005). What experts look for on the individual's body are marks that can be classified in general categories, like trauma, that are generally recognised as evidence for deserving asylum. The focus on the intimate sphere of asylum seekers – on their suffering bodies, minds and fundamental states of being – and therefore away from the question of the persecutor, humanitarianises asylum (Fassin, 2016) and thus depoliticises the existence of refugees. While medical certificates have not playing a central role in the Swiss asylum procedure so far, the quote above shows that advocacy actors increasingly lie a focus on this element. It remains to be seen if the authorities follow the tendencies of other countries like France in this matter. Finally, in Switzerland, health reasons and thus medical certificates that attest these present important obstacles to the enforcement of a removal order and thus for the issuance of a provisional admission.

Identification of vulnerability

Based on the above-described importance that support actors like the SRC and AICH attribute to consideration of trauma in the asylum procedure, the NGOs criticise a general lack of identification of vulnerable asylum seekers by the authorities in the asylum procedure. Contrary to EU law, the SEM would not consequently check if an asylum seeker is vulnerable and thus has special needs in terms of reception and procedure.

> It is defined at EU level. It's only this proactive recognition of the vulnerable that Switzerland does - they say they do it, but we don't have the guidance that they do it, not even when it comes to accommodation. That they identify them, whether they are LGBTI or children or single women or victims of torture. [...] And even in the case of Dublin, those who are refugees, they should actually be identified. But Switzerland is more concerned with who is Dublin and who is not. Those who are Dublin are transferred. We don't care whether there are vulnerable people among them, if I paint it a bit in black and white. They don't approach them proactively, [...] they don't try to find out with a concept (Nathalie, AICH, 2019).

From this perspective, the identification of vulnerability is a technical question. Vulnerability is seen as a "natural" characteristic of individuals which needs to and can be identified if one uses the right "detection mechanism for vulnerable" (Nathalie, AICH, 2019). The criticism of Swiss authorities for not identifying vulnerability of asylum seekers in the asylum procedure corresponds to the difficulty to those identification processes that the authorities of other European countries encounter similarly.

9.2.2 (De)politicising Dublin practice: exceptions, judicialisation of vulnerability and humanity

The Dublin procedure and, in this context, the identification and non-transfer of vulnerable asylum-seekers to other EU countries where the needs of this category of people are not met, are a central

issue for the SRC and AICH in interactions with the SEM around the asylum procedure. The Dublin practice is especially criticised in public discourse and described as problematic regarding vulnerable asylum seekers. In the period between 2015 and 2019, transfers of asylum seekers to Italy and Hungary are especially criticised.

I will argue that on the one hand, the NGOs politicise Dublin practice by challenging the ways in which the authorities implement the Dublin Regulation and by making it subject to public debate. On the other hand, the analysis of the framing of Dublin practice as a problem for vulnerable asylum seekers will reveal a depoliticised approach of the Dublin system, "normalising" the very existence of the system itself. Dublin is not challenged but the practice within this "order" is demanded to be modified for exceptions, the latter based on "natural" characteristics of some asylum-seekers who need to be individually identified. This claim is supported by a compassionate discourse around the demand to make exceptions for vulnerable asylum seekers rather than to cease Dublin transfers in general.

Focus 5 - The issue of Dublin transfers to Italy and Hungary

In 2014, the ECtHR judges the transfer of an Afghan asylum-seeking family from Switzerland to Italy as a violation art. 3 ECHR[149] (ruling *Tarakhel* vs. Switzerland). The court is of the opinion that the Italian authorities do not provide appropriate reception conditions for asylum-seeking families with children. Following this judgement, Swiss authorities are obliged to obtain guarantees from the Italian authorities regarding appropriate accommodation for children and about the preservation of the family unit. However, the judgement does not prohibit all transfers nor does it prohibit all transfers of families to Italy.

In 2019, the UN Committee against Torture (CAT) condemns Switzerland for violation of non-refoulement in the case of a traumatised Ethiopian asylum seeker who had been transferred to Italy. Because it was clear that the man was not receiving adequate care there, the SEM violated the Convention against Torture, according to the CAT.

The second country to which Dublin transfers from Switzerland create a commotion in the asylum domain is Hungary. In 2017, the Swiss FAC analyses the situation of asylum-seekers in Hungary and observes several insufficiencies. The court asks the SEM to clarify the situation in Hungary in order to verify if transfers of asylum-seekers to Hungary were permissible regarding the legal as well as humanitarian situation in Hungary[150] (Parak, 2020: 149).

[149] Art. 3 ECHR states "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

[150] FAC judgement D-7853/2015 of 31st May of 2017.

Needs and rights

While AICH and the SRC criticise Switzerland's *restrictive* Dublin practice in general throughout the whole period and regarding Italy specifically in 2017 and 2018, as well as regarding transfers to Hungary in 2015 and 2017 specifically, a special focus is laid on vulnerable asylum seekers. In the case of Hungary, the public criticism is supported by several rulings of the ECtHR condemning Dublin transfers from other European countries to Hungary due to indecent reception conditions and missing access to a fair asylum procedure there and national courts questioning the situation of Hungary for asylum seekers. Criticism towards Dublin transfers from Switzerland to Italy are also importantly founded on jurisprudence. The SRC regularly refers to the *Tarakhel* ruling in the context of statements on Switzerland's Dublin practice concerning families and more generally vulnerable asylum seekers to Italy. A report that the SRC publishes together with the Danish Refugee Council in 2017 in the context of their monitoring activities in Italy, concludes that neither families nor vulnerable persons find appropriate reception conditions in Italy accordingly to the criteria of the ECtHR's *Tarakhel* ruling.

> The report published today "Is mutual trust enough? The reception of persons with special needs in Italy" contains six current exemplary cases. It clearly shows that there are substantial difficulties for people who are transferred to Italy. It depends on chance how families and vulnerable persons are received by the Italian authorities. The experiences of those involved show that in none of the six cases were the Italian authorities able to guarantee reception in accordance with the requirements set out in the *Tarakhel* v. Switzerland judgement (SRC press release, 9.02.2017).

Here, the criticism of Dublin transfers to Italy is based on a judicialisation of Dublin practice through an increasing number of court judgements on the matter. The latter thus serve as a "resource" and argument for the claim to stop Dublin transfers to specific countries when the observations fail to meet "the requirements set out in the *Tarakhel* v. Switzerland judgement".

For AICH, as a human rights organisation, vulnerability can be formulated in terms of fundamental rights and, in the case of children, in terms of the children's rights. From this perspective, the Dublin system as such does not violate human rights, but a Dublin transfer can violate the rights of a child or fundamental rights of other categories of persons like those with medical problems if they do not receive appropriate treatment in the country they are transferred to. This perspective follows the ECtHR jurisprudence regarding Dublin transfers. The following two quotes from two interviews with employees of AICH demonstrate this point of view and the importance of international obligations in AICH's discourse regarding Dublin transfers.

> There are 40 of them in rooms designed for ten people. If it's a young African, a 22-year-old Congolese in good health, OK, he's been to Italy and he has to be sent back. But if it's a family

> with three children, one of whom is nursing, a sick wife, and a disabled grandfather in the back. These are what we call vulnerable groups, and I think that's something we insist on a lot. That's why we talk a lot about vulnerability. Because ultimately, sending someone back to Italy under the Dublin system is not in itself a violation of human rights. It's an agreement that was made between the Member States (Karim, AICH, 2019).

> It is of course particularly bad when a child's rights are violated, what this also means for the future and for society. They usually have their own category of binding treaties at UN level, where you can argue again (Nathalie, AICH, 2019).

What these quotes also reflect is the "normalisation" and thus depoliticisation of the Dublin system. Here, the internationally codified rights have the capacity to protect an individual against the insufficient reception conditions; however, the legal register is less suitable to question the whole system. As Pécoud (2015: 121) remarks, "[t]he human rights, or humanitarian, sensitivity could support a broad criticism of the socioeconomic and political context that makes these abuses possible". However, by approaching Dublin transfers from the perspective of individuals' rights in the above-described way, the focus lies on the "individual's private misfortune" (Agrikoliansky, 2010: 234) rather than on the general situation. We can observe here the operational proximity (Darcy, 2004) that exists between a humanitarian and a human rights perspective. From a human rights perspective, the claim to refrain from a Dublin transfer in individual cases is based on a logic of exception linked to individual rights. The necessity of making exceptions is based on the observation that certain categories of persons are "particularly vulnerable" and would thus need to be protected against insufficient reception conditions. While from a humanitarian perspective need is enough to justify action, from a human rights perspective this need is translated into entitlements.

> That's just the reality. If you read the UN report - I think it was the UN report - it says that at least 60% of all asylum seekers are traumatised, then they are particularly vulnerable. The fact that many unaccompanied minors and women are travelling alone or with children. So, the reality is that the majority of asylum seekers are particularly vulnerable. This is because they also have special needs. If you look at the Dublin cases, when they are transferred, the accommodation and care requirements are even greater in other countries, as are the demands placed on them. That's why it has to be emphasised again and again (Anna, SRC, 2019).

Vulnerability is thus understood as a present state of being from which stem needs – and from a human rights perspective, further rights. While, as mentioned in the last chapter about the role of vulnerability in the asylum procedure, trauma is an ambivalent notion, in the context of Dublin transfers, it appears primarily as a present state of dysfunction to which are linked special needs. As present states of being,

trauma as well as being an unaccompanied or accompanied child or a woman implies that these persons have special needs – compared to other persons – which have to be considered by the authorities before sending them to another country.

In November 2017, a "Dublin Call against the stubborn application of the Dublin Regulation" demanding Swiss authorities to "protect the rights of children and of vulnerable refugees" and to "apply the Dublin Regulation in a more humane way" (SRC/AICH press release, 20.11.2017) is launched by the SRC and AICH, together with a coalition of grassroot organisations[151]. Following the above-mentioned logic of need, this public call places families and vulnerable persons in the centre. The main problem of the Dublin practice is seen in its consequences for certain categories of asylum seekers.

> In the name of the Dublin Regulation, families are separated, sick people are transferred to a country where their medical care is not guaranteed, children are torn out of their school class in the middle of the year, mothers of small children are transferred to Italy while the children's father has to stay in Switzerland or vice versa (Dublin Call, 2017).

This problematisation of Dublin practice for specific categories of persons reflects two different dimensions of suffering that are considered as problematic. On the one hand, it is referred to the concrete reception conditions in European countries hosting asylum seekers. On the other hand, the act of the transfer itself separates families and "[tear] children out of their school class in the middle of the year". In the first case, generally bad reception conditions create suffering for a person due to his/her condition. In the second case, it is the practice of the transfer itself that imposes suffering on families and children. What both categories have in common is the focus on the fundamental state of being of the concerned persons. To avoid the suffering that is linked with Dublin transfers, the practice as such is not questioned, but the public call demands the authorities to refrain from transfers precisely in the case of asylum seekers who

- are responsible for young children or children attending school,
- have medical problems requiring regular monitoring,
- have family members living in Switzerland,
- are in other exceptional situations, in particular on humanitarian grounds and/or are seeking compassionate treatment (Dublin Call, 2017)

These are thus the criteria proposed to define in which individual cases the SEM should consider an asylum application even if the asylum seeker had travelled through another European country to come

[151] Responsible initiators or the Dublin Call are, next to the SRC and AICH, Solidarité Tattes, Solidarité sans Frontières, Droit de rester Neuchâtel and Collectif R.

to Switzerland. They all relate to human states of being to "determine eligibility of relief" (Götz, 2015: 157). In this view, the Dublin system which is object of tensions between European states is presented as ordinary reality that just needs to be managed correctly (Pécoud, 2017: 98) which means allowing exceptions for individual cases of asylum seekers corresponding to the mentioned categories. To avoid any misunderstanding, AICH and the SRC explicitly point out that the Dublin Call does not aim at a complete change of the asylum system (see also PART I).

> The Dublin Call calls neither for a change in the law nor a change in asylum policy, but merely for a change in the way the authorities apply the Dublin Regulation. It is an appeal to common sense - it is about better protection of vulnerable persons as provided for in the Regulation (SRC/AICH press release, 20.11.2017).

As in the case of this quote from a press release, even if the term "vulnerability" itself does not appear in the Dublin Call, it nevertheless is used in the public communication around it. Furthermore, as the quotes from interviews with representatives of the SRC and AICH show, the term is largely used in the field. In this context, it may be mentioned that an acknowledged reason for the focus on vulnerable asylum seekers – and not on all of them– also lies importantly, following SRC as well as AICH representatives, in the opportunity structure in the context in which the vulnerability framing of the Dublin practice is situated. This is, on the one hand, the Dublin Regulation and more specifically the room for manoeuvre that it provides for states to refrain from a Dublin transfer and to process asylum applications in individual cases themselves[152]. The NGOs demand that the Swiss authorities use this room for manoeuvre and to make exceptions in cases of asylum seekers who fall into one of the above-mentioned categories. On the other hand, this opportunity structure in legal terms that the Dublin Regulation provides is restricted by political decisionmakers not willing to use this room for manoeuvre.

> We cannot generally demand: Dublin - we should process ourselves. We also have to ask ourselves what is problematic, what chance we have at all. We now go to the weakest and say that we should at least do something there. But if you then demand that we take in all Dublin people ourselves and process their asylum applications ourselves, there's no chance of that happening (Anna, SRC, 2019).

So, the focus on vulnerable asylum seekers seems more reasonable than demanding to cease all Dublin transfers even to countries where the reception conditions are generally considered as insufficient.

[152] The Regulation (EU) No 604/2013 (Dublin Regulation III), art. 17 par. 1 states: "By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation".

Furthermore, as mentioned in the last chapter as well as in quotes from interviews above, the concept of vulnerability, even if described in a variety of terms, may be seen as a "prevailing rationalised concept" (Meyer/Rowan, 1977: 340) that can be found in EU Regulations as well as in guidelines of the SEM. The claim to refrain from Dublin transfers in the case of vulnerable persons is made in a context of an increasing juridification of vulnerability through its legal codification as well as an increasing body of jurisprudence addressing the matter in the context of Dublin transfers from a human rights perspective. NGOs like the SRC and AICH welcome this tendency and, as mentioned above, actively contribute to it.

A compassionate discourse: appeal for humanity

While human rights as well as children rights are mobilised to justify exceptions from Dublin transfers and thus make the issue a question of legally defined justice, the public call as well as the public communication around it and Switzerland's Dublin practice more generally also reflect an underlying humanitarian reasoning. On the one hand, this humanitarian dimension is explicitly expressed in the criterion of "on humanitarian grounds" and "seeking compassionate treatment" mentioned in the Dublin Call. On the other hand, the authorities are asked to generally show more humanity regarding their Dublin practice.

> Appeal for more humanity in Dublin enforcement. The situation is similar with families: They are often torn apart by a literal application, although the Dublin Regulation explicitly contains a humanitarian clause for these cases. [...] The SRC is therefore calling on the Federal Council to ensure that Switzerland itself increasingly takes action on asylum applications in cases of hardship and/or for humanitarian reasons in order to avoid human tragedies such as the one in the canton of Zug[153] (SRC press release, 16.05.2017).

I interpret this claim for humanity as an attempt of "reworking" (Gill, 2016) of the Dublin system. Similarly, to the human rights-based argumentation described above, the call for humanity does not question the Dublin system overall. On the contrary, it depoliticises its consequences – "human tragedies" – and reproduces its underlying logics of control and management which remain generally applicable.

Furthermore, I propose to situate this claim for humanity in a perspective of humanitarian reasoning as "a moral discourse (based on responsibility towards victims) […] to justify action considered to be in favour of others […], action taken in the name of a shared humanity" (Fassin, 2010b: 239). Contrary

[153] The "human tragedy" that took place in the canton of Zug to which this excerpt of an SRC press release refers, consisted in a case of an Afghan family where the parents were put into detention because they did not want to follow the SEM's decision to be transferred back to Norway where they risked being returned back to Afghanistan. As a consequence, their children were separated from the parents (SRC press release, 16.05.2017).

to the above-presented human rights perspective on Dublin transfers, the claim for humanity is based on a fundamentally unequal relationship between concerned asylum seekers and the authorities who decide about their "destiny". Here, the concerned persons are neither rights holders nor "political subjects but moral objects" (Fassin, 2010b: 254). However, this humanity is not invoked towards all Dublin "cases" but again focusses on asylum seekers identified as vulnerable which gives this discourse, in my view, a compassionate character. Compassion "entail[s] a judgement that the misfortune that has befallen an individual is undeserved" (Gill, 2016: 158). The feeling of injustice that arises as part of compassion is thus linked to the judgement that suffering is undeserved. In line with Ticktin (2017, 2021), innocence and vulnerability, if attributed to persons, have the capacity to define deservingness of care in a context where the Dublin system in general is not questioned. While a young man would receive, at the best, pity, a child (innocent) or also a person with medical problems (vulnerable) would receive, in this logic, compassion as their suffering is judged undeserved due to their individual state of being (vulnerability and/or innocence).

"Vulnerability" is not undisputed

Finally, while some employees of the SRC as well as of AICH are convinced by the necessity to focus on vulnerable persons, others are aware of shortcomings of this approach to the Dublin procedure. The focus on certain categories of asylum seekers rather than on the reception conditions for all, independently of the individual background and characteristics of an asylum seeker, is not undisputed among SRC and AICH employees. There is awareness of problematic consequences linked to the vulnerability focus. What seems to appear as a problem for SRC employees is not however the differentiation between different categories of asylum seekers, but the term "vulnerability" itself. Internal discussions have seemingly triggered an awareness of the logic of inequalities of lives that is expressed in the description of vulnerable persons. From this perspective, the special rights attached to the state of vulnerability should be underlined rather than the state of vulnerability itself.

> This is a much-discussed term. We are moving away from the term more and more. We always talk about people with special rights instead of vulnerable people. That's because if you're vulnerable, the term already diminishes the person, as if they were worth less. It's almost a bit judgemental. But when you talk about people with special rights, you're paying more attention to the legal situation of the people who are with us. That's why we talk more and more about people with special rights instead of the vulnerable. That's something that's changing a bit at the moment. It's very much under discussion at the moment. We also try to draw attention to this when we are at the SEM - they talk a lot about vulnerable people and we talk more about people with special rights. It's also important to talk about this in public, in the media, in articles, in interviews and so on, to draw attention to it. The term "persons with special rights" has always existed, but people are now increasingly trying to shift the term away from

> vulnerability, because it actually has something discriminatory about it per se. [...] There are always isolated discussions about it. Internally, we have now found that we prefer to talk about people with special rights (Anna, SRC, 2019).

Nevertheless, I would argue that even if a shift of terminology from "vulnerability" to "special needs" or even to "special rights" would effectively change the character of the concerned persons from victims to rights holders, the deservingness and comparative logic that differentiates between different categories of asylum seekers based on their state of being remains. Deserving decent reception conditions is thus based on the individual's characteristics on which the person him/herself has, in the end, no influence nor does the wider context. It is true that the claim to refrain from Dublin transfers exceptionally in the case of vulnerable asylum seekers appears in the context of degrading reception conditions. However, the focus on personal characteristics of individual asylum seekers, as expressed in the Dublin Call, is linked to a depoliticised view of this context through the legal as well as moral logics on which the claim is based.

To summarise, the framing of Dublin practice as problematic for vulnerable asylum seekers and the linked claim to refrain from Dublin transfers in exceptional cases of individual asylum seekers who have certain characteristics which can fall under the term "vulnerability" is based on two main strands of argumentation. On the one hand, in the context of and fostering themselves a judicialisation of vulnerability through an increasing body of jurisprudence (especially generated by the ECtHR), the issue is presented as a matter of human rights protection. On the other hand, the claim to refrain from Dublin transfers in the case of asylum seekers identified as vulnerable due to their human condition in terms of health, age or family relations is framed as a matter of humanity which, in my sense, may be interpreted as a form of politics of care.

9.2.3 The lack of legal access ways for vulnerable persons

Vulnerability also plays a central part in the organisations' criticism of the lack of legal and secure access ways to Switzerland (like to European countries in general) and the request addressed at the authorities to use alternative instruments that would allow particularly vulnerable persons to come to Switzerland. This request is explicitly made in a petition that AICH, the SRC and HEKS launch together in 2018:

> Due to the increasing isolation of Europe, however, this [making an asylum claim] is becoming more and more difficult. It is often the most vulnerable who have no opportunity to reach a safe country unharmed and apply for asylum there. In order to protect those in need of protection, safe and legal access routes are needed for refugees from crisis regions to Switzerland, especially for women with small children, unaccompanied minors, sick, disabled

> or elderly persons. We are all responsible for this - legally and morally (SRC/HEKS/AICH petition "For legal and secure access ways to Switzerland, 2018).

While the absence of legal access ways for people seeking protection is seen as a general problem because it means a restriction of the right to make an asylum claim in general, the fact that "the weakest" are the most affected by this restriction is presented as even more problematic. In descriptions, "the weakest" and their suffering when fleeing from their home countries, in third countries and also in camps in European bordering countries like Greece, humanitarian images of suffering are mobilised conveying the moral unacceptability of this suffering. Such humanitarian images of suffering are present in AICH's public communication in 2015 especially in the context of the campaign "OpenToSyria" but also in the following years regarding claims for relocation from European bordering states like Greece. In the SRC's public communication, the issue of legal access ways and with it the focus on vulnerable persons seeking protection is increasingly present since 2017. The title of the Refugee Day campaign of that year is precisely "Last minute – an escape is not a holiday trip". In 2019, the Refugee Day campaign carries the title "Secure access ways save lives".

Vulnerability and hierarchy of need

As stated in the quote of the 2018 petition, figures of "the most vulnerable" or "the weakest" are women, accompanied and unaccompanied children, sick, old and disabled persons. These categories of persons are presented as having generally "the lowest level of well-being" (Elster, 1992: 18) among all persons seeking protection. As mentioned, AICH mobilises those "figures" explicitly in the context of its campaign "OpenToSyria".

> A […] Syrian family has fled to a refugee camp in the Kurdish part of Iraq and is now struggling to get medical treatment for their son Elias. He was diagnosed with cancer in 2012. "Life here is very difficult. Elias needs medication and medical treatment. We have done everything we can to get him treated," says Elias' father Maher. He is now desperately hoping to be accepted in a European country where his son can receive appropriate treatment (AI/AICH press release regarding its campaign "OpenToSyria", 4.02 2015).

This description of a suffering family with a seriously ill child is, in my sense, an example of innocent (child) and vulnerable (sick) "distant suffering" (Boltanski, 1999) as "human being caught up in this or that "humanitarian" description which highlights his/her "vulnerable" condition" (Belkis et al., 2004: 111). As D'Halluin-Mabillot (2012: 116f.) remarks, the child in danger, women on their own and the sick are three vulnerable figures that are commonly represented in social welfare policies in Western countries. Thus, to leave a sick child in need of medical help without care is morally intolerable. Among all the misfortunate fleeing from Syrian war, the vulnerable and innocent persons' suffering is judged as especially undeserved. The above-quoted excerpt of AI/AICH's press release in the context of their

campaign “OpenToSyria” launch is an example of how the organisation uses testimonies and narrations of individual cases in a way that combines hyper-singularity and exemplariness (Boltanski, 1999: 112). The humanitarian image of the vulnerable and suffering “bare life” that is expressed in narrations like the above-quoted example, evoke pity that motivates the claim to act “in the name of shared humanity” (Fassin, 2010b: 239), a humanity that is reduced to an endangered physical existence.

A politics of care perspective helps to identify the specific role of vulnerability and innocence as criteria allowing to identify undeserved suffering. However, I think that, contrary to the process in which refraining from a Dublin transfer in the case of a vulnerable asylum seeker, the moral logic behind the claim for access ways for vulnerable persons seeking protection is not one that lets the latter appear as an act of compassion. Rather, “the emotional movement towards others” (Fassin, 2013: 38) that is caused in the face of suffering is one of pity. In this context of Dublin transfers, vulnerability has a singularising effect leading to a judgement of (un)deservingness. Compassion arises when suffering is deemed undeserved and when the individual with his/her experiences and sufferings is acknowledged “on [his/her] own terms” (Gill, 2016). In this logic, refraining from Dublin transfers to prevent suffering in the case of a family who might be separated in the process presents the outcome of compassion based on considerations of deservingness.

In the case of the framing of the lack of legal and secure access ways as problematic for vulnerable persons seeking protection, vulnerability introduces a hierarchy of need among the suffering distant “mass” of people. Here, vulnerability serves again to identify undeserved suffering. However, I would argue that in this context, it has less a singularising capacity (as in the case of non-execution of Dublin transfers) than a comparative function allowing to rank suffering beings (Boltanski, 1999). So, in this process, I would argue that vulnerability creates a hierarchy of need. Vulnerability operates as a differentiation between groups of unfortunates that ranks their need of assistance.

Finally, in this process, like in the context of Dublin transfers, defining the absence of legal and secure access ways to Switzerland as a problem especially for vulnerable persons seeking protection depoliticises, in my view and based on the above-described observations and reflections, the refugee’s existence – and this being in a double sense. On the one hand, the political reasons for which refugees leave their country-of-origin fade into the background. The focus on the refugee’s human condition and the description of their suffering on a humanitarian level does not consider the (geo)political, social and historical context in which these essentialised forms of being appear. It is these depoliticising effects of the focus on “bare life” and suffering (without asking for the reasons) that critical accounts of humanitarianism focus on (Fassin, 2010b; Ticktin, 2017; Barnett, 2005 among others).

In a context where places in resettlement programmes and relocation places are limited, the focus on vulnerable persons serves as a sorting criterion and it justifies, at the same time, the use of those instruments. It is exactly in this context of limited "places" that I propose to interpret the focus on vulnerable persons in the NGOs' claim for legal and secure access ways to Switzerland. NGO representatives confirm this comparative or "ranking" function of the vulnerability focus in a restrictive political context like the following quote shows.

> This naturally creates a kind of hierarchy of need for protection, which can of course be questioned. It is perhaps also due to the instrument of resettlement. There is little room for manoeuvre at the moment because it is illusory that many more people will be taken in by Switzerland and other European countries. This inevitably leads to a very narrow focus. [...] But I don't quite see the alternatives that would really be viable. It is difficult to bring up a completely new asylum system in the current situation, let alone implement it. Vulnerability is then perhaps also a bit of making stitches[154]. Then at least something will have been achieved for the particularly vulnerable (Nathalie, AICH, 2019).

In this sense, the focus on vulnerable people is adapted to the opportunity structure in terms of legal access instruments that do exist to admit a limited and pre-defined number of persons from countries of origin and third countries to Switzerland based on fixed criteria. One of the four criteria defined by the SEM for resettlement is "a special need for protection that cannot be met in the first asylum country"[155]. Vulnerability as a present state of need corresponds to this criterion making the claim to provide more resettlement places reasonable given the existence of an increasing share of people with a "special need". While this special need is defined as a special need of *protection* in the SEM's criterion, vulnerability is clearly mobilised as a norm of assistance in the humanitarian discourse of the NGOs which corresponds with the more general claim addressed at the Swiss authorities to use humanitarian instruments as legal access ways for persons in precarious situations abroad. These are private sponsorship programmes, humanitarian visa, extended family reunification and student scholarships. Finally, as is reflected in the interview quote above, vulnerability as a norm of assistance and as a norm of protection get easily entangled. This is particularly visible in the claim to use resettlement more extensively. By putting on the frontline a need of assistance (medical care, social security etc.), the existence of refugees is humanitarianized and thus depoliticised because the political context in which persons become refugees in the first place is moved to the background. In this

[154] In the original German version, the interviewee uses the pictorial word "*Flästerlipolitik*".

[155] The other three criteria are: recognition of refugee status by UNHCR, willingness to integrate in Switzerland, absence of exclusion criteria (see SEM (9.12.2016), Resettlement. Selection procedure and entry into Switzerland, accessible at https://www.sem.admin.ch/sem/en/home/asyl/resettlement/auswahlverfahren.html last accessed: 12.11.2023).

context, it should be noted that this focus on the refugees' state of being and need of assistance does not reflect a humanitarian conception of asylum that would widen the traditional "political" conception of asylum and refugee status with its focus on persecution and state-actor inflicted violence. Thus, regarding claims for a more extensive use of legal instruments like resettlement, it is often pointed out that the people seeking protection are effectively fleeing from persecution, violence or war.

> Millions of people risk their lives fleeing war, violence and persecution or are stuck in underfunded camps with no prospects in precarious conditions. Such humanitarian disasters can be prevented with legal and safe escape routes - they protect refugees from violence, misery and death (SRC Refugee Day campaign text, 2019).

While in a first step those needing legal and secure access ways are presented as "political" refugees, the focus on their vulnerability in the above-presented terms depoliticises their existence. Understanding this process from a politics of care perspective uncovers the underlying logic of deservingness finally allowing to rank refugees, not based on their need of *protection* but their need of *assistance*. However, this needs to be nuanced, as the "vulnerable" category subsumes, in the NGOs' claim for legal and secure access ways, a diversity of human conditions.

Vulnerability, social suffering and justice

The above-described figures of humanitarian suffering are indeed not the only ones in the category of the vulnerable persons seeking protection whose suffering is judged as being wrong and for whom legal access ways are defined as especially necessary. Another category of persons on which the focus lies in the context of the claim for a more intense use of humanitarian instrument like resettlement and humanitarian visa are women and homosexual persons. When gender and sexual orientation lead to suffering, I would argue, that the underlying logic that leads to the assessment that these persons have a special need for protection is different from the deservingness logic apparent in the case of suffering children, families, sick and handicapped persons. Again, in AICH's public communication, we find the most pictorial descriptions of women who are exploited and homosexual persons who suffer violence and discrimination. The SRC classifies gender and sexual orientation as characteristics leading to vulnerability as a present state linked with special needs of protection as well. However, the organisation's public discourse does not rely on testimonies and hyper-singularisation as the AICH's, like in the following example.

> Hamood, a young homosexual de Dera'a in the South of Syria now lives in Jordan, where he is threatened and regularly harassed on the streets. He told Amnesty International that his brother had tried to kill him because of his sexual orientation and that he had been raped by six men. On the one hand, he wishes he could return to his home country, but on the other

> hand, "there is nothing but death in Syria". He hopes to be accepted in a European country where he can live openly as a homosexual without fear of harassment and where he can fulfil his dream of finding a job and a partner. "If I could go to Europe, it would be like a new life for me", says Hamood" (AI/AICH press release regarding its campaign "OpenToSyria, 4.02.2015).

Here, it is social suffering (Barnett, 2018; Wilkinson, 2013) that generates a sentiment of injustice with the observer. While in the case of a sick child, "the victim [is] without a perpetrator – a sufferer, pure and simple, caught in a moment of urgent need" (Ticktin, 2011: 11), the identification of victims of discrimination is based on the simple assumption equality between all human beings. In terms of opportunity structure, the focus on gender and sexual orientation when NGOs argue for legal access ways like resettlement may be situated in the general increase in importance of gender and sexual orientation as categories for being granted refugee status and asylum. With the end of the Cold War, and the "archetype refugee" (Akoka, 2011) persecuted by the Communist regime, other categories of defenders of liberal and democratic values appear. As Bhabha (1996, 2002) mentions, gender violence against women and/or against gay or lesbian persons is recognised as a reason for asylum in Western states, thus expanding the typically male figure of the sufferer of persecution to other categories. This group mostly cited regarding the "social group" criterion of the Geneva Convention (Fassin, 2010b; Hathaway, 2014). In this sense, Fassin (2013: 49) observes that "[t]oday one is more legitimate claiming to be the victim of cruel treatments on the basis of gender and sexuality than of political engagement, religious belief, or ethnic belonging". Along with this shift from the latter to the former, a "shift in moral hierarchies, with certain human rights violations becoming more valued than others" (Fassin, 2016: 7) has taken place. This "shift in moral hierarchies" is especially visible in AICH's claim for legal and secure access ways for refugees who live in another (extra-European) country[156].

In this sense, the special need of women and homosexual persons is indeed presented as a requirement for protection. While in the above-mentioned example of the sick child, its innocence and vulnerability are mobilised as norm of assistance, in the case of gender and sexual orientation being the cause for social suffering, vulnerability serves as a norm of protection. Thus, framing the lack of legal access ways to Switzerland as specifically being a problem for "the weakest" and by including in this category of "the weakest" and the "most vulnerable" different fundamental human conditions, vulnerability is mobilised as a norm of assistance as well as a norm of protection. The first is linked to considerations of deservingness while the second appears as a question of justice.

[156] In the SRC's public communication around the claim for legal access ways and especially resettlement, both violence and discrimination against women and homosexual persons are much less present than in AICH's advocacy discourse. However, the SRC underlines the special needs in terms of reception conditions during the asylum procedure.

Finally, in the context of the claim for legal and secure access ways, we can observe a convergence of the vulnerability frame with a responsibility frame respectively a combination of both when the lack of those access ways is presented as irresponsible of the authorities regarding vulnerable refugees. While the vulnerability frame's central focus lies on the definition of people seeking protection, the host countries, more specifically their authorities and societies, are in the centre of the responsibility frame. The following chapter will analyse the responsibility frame itself in more detail.

9.3 The responsibility frame

Through the mobilisation of the responsibility frame, the focus is shifted from the "victim without perpetrator" (Ticktin, 2011: 11) raising pity or compassion, or the victim of human rights violations demanding justice, to the actor responsible for the suffering. The analysis of the public communication of the SRC and AICH during the period between 2015 and 2019 shows that this shift of focus and the mobilisation of the responsibility frame in general becomes especially visible in the context of defining of two "realities" as problematic. On the one hand, the EU's migration policy and thus European governments are accused of being responsible for humanitarian suffering outside European territory as well as at its borders. On the other hand, the review of the provisional admission status of Eritrean nationals to which the SEM proceeds in 2018 is harshly publicly criticised and considered irresponsible of the authorities. After internal discussions between the NGOs' and the SEM's representatives the latter proceed nevertheless to the review.

The responsibility frame represents a politicising character and a motivational dimension. When it is mobilised to denounce the EU's exclusionary migration policy and also the review of provisional admissions of Eritrean citizens the (in)action of the Swiss authorities is politicised in both contexts – criticised and put to political and societal debate. However, in the case of the criticism of the EU's exclusionary policy and Switzerland's co-responsibility for the consequences of these, I would argue that through the ways in which the consequences are described, the frame also contains a depoliticising element.

Finally, the claim for a more extensive use of resettlement is also framed through a responsibility perspective. While the vulnerability framing of resettlement and generally legal and secure access ways focusses on the conditions and needs of refugees, the responsibility frame focusses on Swiss society and on what it means to act responsibly. The following three subchapters will analyse the different elements of the responsibility frame in the context of the three mentioned claims.

9.3.1 Politicising the EU's exclusionary policy

The responsibility frame is used by the NGOs to problematise the EU's policy of exclusion and Switzerland's participation in these. It is characterised by the attribution of responsibility to European governments for the suffering in the Mediterranean, third countries and at Europe's borders in countries like Italy and Greece where people are trying to reach European territory. While AI(CH) mobilises the responsibility frame in combination with the vulnerability frame following its general "naming and shaming" orientation with a focus on descriptions of suffering during the whole analysed period (2015 – 2019) and especially during the "long summer of migration" in 2015, the SRC increasingly engages in the responsibility framing since 2017 and mostly linked to the claim for legal and secure access ways mentioned earlier.

In 2019, the SRC and its member organisations, among which AICH, publish an open letter addressed to the Federal Councillor Karin Keller-Suter in charge of the FJPD in 2019. The main claim of the letter consists in a participation of Switzerland in sea rescue missions in the Mediterranean. As mentioned at the end of the last chapter, there is a combination of the vulnerability and the responsibility frame in the NGOs' discourse. This convergence of frames appears when human rights violations and "thousands of deaths" are described as consequences of "the EU's current migration policy".

> The EU's current migration policy is designed to prevent people from fleeing to Europe. It is increasingly focussing on isolation and deterrence - and is willingly accepting violence, human rights violations and thousands of deaths. It is with great concern that we observe the devastating conditions in Libya and the untenable situation in the Mediterranean, where Europe is allowing people to drown who have sought protection and a humane future for themselves and their families. Switzerland shares responsibility for this humanitarian catastrophe. It supports this policy, is reluctant to participate in solutions and does not create enough legal and safe escape routes in Switzerland (SRC and member organisations/SRK Open letter, 29.08.2019[157]).

Here, the frame's motivational character becomes noticeable when the "EU's current migration policy […] is *willingly* accepting violence, human rights violations and thousands of deaths" and when Switzerland "is *reluctant* to participate in solutions".

Through the accusation of indirectly being responsible for "violence, human rights violations and thousands of deaths", the EU's exclusionary migration policy becomes politicised, implying that the "distant suffering" and "distant human rights violations" do not only ask for pity towards the

[157] Schweizer Beteiligung an der Seenotrettung im Mittelmeer, Open letter signed by the SRC, SAH, HEKS, AICH, Caritas Switzerland, SRK, Heilsarmee, VSJF.

endangered "bare life" (Agamben, 1995) or justice for the individual whose rights are violated. By attributing responsibility to the European governments for "this humanitarian catastrophe", pity for those suffering from the consequences of the EU's migration policy is transformed into accusation (Boltanski, 1999). Thus, the responsibility frame does not only focus on the needs and rights of the lives at risk but it importantly identifies causes and responsibilities for these. This naming of causes and responsibilities allows for the politicisation of measures aiming at the exclusion of persons trying to reach European territory. These measures are perceived as wrong because of the suffering to which they (indirectly) lead. In this context, it might be noted that in AI(CH)'s public communication the moral indignation about the EU's responsibility for "distant suffering" and human rights violations is enhanced by underlining that among the suffering persons in third countries, in the Mediterranean and in camps at Europe's borders there is an important share of "refugees". AI(CH) often uses the phrase "refugees and migrants" which, at first glance seems inclusive, but finally expresses a "narrative of two kinds of people" (Carling, 2017: 3) which corresponds to the residualist conception of migrants that "sees migrants as people who have moved to another country for any reason other than to seek international protection as refugees" (ibid.: 2). The mobilisation of this residualist view of migrants in the context of refugee advocacy creates, as a consequence, a moral hierarchy among those who suffer from the exclusionary measures of European states. Morally the presence of refugees among the persons suffering from the EU's exclusionary measures appears even more unbearable than if the people were "only" migrants. This dichotomy between migrants/refugees is characterising the responsibility frame overall, not only in the context of the situation in the Mediterranean. As Carling (2017) notes, such a "black-and-white" picture of "refugees are not migrants" further ignores the fact that many of those who make an asylum claim in a European country are not recognised as refugees but can nevertheless not return to their country of origin. Temporary forms of protection are the consequence.

A case of "proxy solidarity"

While AI(CH)'s use of the responsibility frame is mostly entangled with either generalised and essentialised – and often vulnerabilised (see above) - images of suffering lives or testimonies and condemnation of human rights violations, or as Wilkinson (2016: 67) pointedly formulates it, "the spectacle of human misery", the SRC's construction and mobilisation of the responsibility frame is further if not more importantly characterised by a focus on Switzerland's responsibility to comply with its own values and legal and moral duties. This focus is again expressed in the open letter of 2019.

> This policy costs human lives, undermines trust in the rule of law and jeopardises our own humanity and dignity. Switzerland must therefore no longer stand on the sidelines. It must play an active role in finding a solution (SRC and member organisations/SRK Open letter, 29.08.2019).

While the moral economy of humanitarianism is based on the movement towards the other's misfortune (Fassin, 2013: 38), I would argue that in the focus on Switzerland's compliance with its own principles like the rule of law, humanity and dignity might also be understood as a mobilisation of a form of moral economy that shifts the focus "away from the destitute and towards those employing […] options in moral ways" (Götz, 2015: 158). In a context where policies deliberately aim at the exclusion of migrants from European territory, the "inclusion" of migrants needs to be presented as "part of the public common good" (Statham, 2001: 136). By mobilising general legal and moral principles like the rule of law, humanity and dignity, the claim to engage in rescuing "outsiders" in need does not only represent a moral duty to help those who suffer in a humanitarian reasoning but combines it with universal principles of justice. In this sense, saving migrants in the Mediterranean becomes a duty of justice towards "us". This form of reasoning corresponds to what Mathwig calls "proxy solidarity", a discursive construction of the responsibility towards "others" as part of a duty of justice towards "oneself".

"Switzerland doing its share: emergencies and ordered procedures"

What follows from the framing of EU's migration policy – and Switzerland's involvement in these – as responsible for suffering, however termed, is the demand for compensatory measures. First of all, this means active engagement in sea rescue operations in the Mediterranean but also further measures to "manage" the high number of migrants arriving at Europe's border are requested. By holding the government responsible for the consequences of the EU's exclusionary policy, the aim is to put pressure on decisionmakers to engage in solutions preventing and/or alleviating these consequences.

> The current example of sea rescue is the ad hoc distribution of people stranded in Italy, for example, or in Greece or Malta and so on. What is happening there? We are trying to get our authorities to take responsibility for doing their part, for Switzerland doing its part. There is not yet a distribution key for asylum seekers in Europe - this is also part of the whole Dublin Regulation. There are big discussions about this: What should it look like? This is a big question within the EU, and one that is not yet very clear - we are simply calling for other solutions. At the moment, the geographically exposed countries are still being flooded, not registering some of them and allowing them to travel through. Then they go to third countries. Then the Dublin Regulation is applied. Then they go back again and so on. This is actually an unsatisfactory system at the moment (Anna, SRC, 2019).

What becomes apparent in this quote from an interview with a representative of the SRC is the idea that order needs to be brought into the situation of "humanitarian crisis". While holding European governments, among which Switzerland, responsible for the consequences of their exclusionary migration policy transforms into the responsibility frame an instrument through which migration control is repoliticised, the solutions proposed respectively requested by the SRC and its member

organisations reflect however a depoliticised approach towards migration with their focus on an "emergency mechanism" and "ordered procedures", as also this excerpt from the open letter from 2019 shows.

> **Switzerland as a safe haven**: Switzerland recognises that sea rescue in accordance with international law is a state responsibility. It is committed at bilateral and multilateral level to an immediate European emergency mechanism for the distribution of refugees rescued from distress at sea. In addition to the existing resettlement programmes, Switzerland is actively participating in the coalition of willing states that no longer want to stand idly by and watch people die in the Mediterranean. Together with other Dublin member states such as Germany, France, Finland and Portugal that are willing to accept asylum seekers, Switzerland takes in asylum seekers who have been rescued from distress at sea in the central Mediterranean in an orderly procedure and grants them a fair asylum procedure and the necessary protection (SRC/member organisations/SRK Open letter, 2019, emphasis in the original).

From this perspective, dealing with the consequences of the EU's exclusionary migration policy is a technical question which needs a technical solution like a "European emergency mechanism for the distribution of refugees rescued from distress at sea". Here, one can observe another depoliticising dimension of the responsibility frame when the presence of migrants is approached as lives to be managed and movements to be ordered. The exceptional character that is inherent to the "emergency mechanism" as well as to the "humanitarian catastrophes" that the latter shall help to deal with contributes to this depoliticisation. An exceptional situation asking for an exceptional "emergency mechanism" does leave aside the structural causes underlying "humanitarian catastrophes". AI(CH) reinforces the image of emergency and exception in public campaigns like "Protect people, not borders" (2015) on whose posters one can see a man with an urgency blanket. Also the SRC, although less present visually with campaign posters in the public space, mobilises this emergency and exception image like, for example, on its Refugee Day campaign poster in 2017[158], representing a mother with a small girl running away from bombs falling on houses around them. In the context of the responsibility frame, this image reinforces the idea that the consequences of the EU's exclusionary migration policy are "humanitarian catastrophes" and thus exceptions and emergency situations and should be addressed as such.

Finally, it should however be noted that the SRC and AICH demand, in the letter in 2019 but also more generally, legal and secure access ways in the form of instruments like resettlement and humanitarian visa (as mentioned above) in order to prevent people seeking protection to engage in live threatening

[158] The theme of the campaign is "Last minute – an escape is not a holiday trip".

journeys like the one through the Mediterranean. Nevertheless, the analysis presented above sheds light on how all these solutions aim at dealing with the consequences of Europe's exclusionary migration policy. By addressing the consequences rather than the (political) causes, they contribute to a depoliticised view of migration and "naturalise" its management (Pécoud, 2015).

9.3.2 Irresponsible review of provisional admissions

As described in Part V, the SRC's as well as AICH's advocacy work is mainly in response to the political agenda of Parliament and government as well as to the authorities' practice. Thus, claims visible in the NGOs' public discourse that address the authorities' practice regarding refugee status determination, granting of asylum and other protection status are mostly made in the context of practice changes enforced by the SEM. Furthermore, jurisprudence of the FAC or the ECtHR present occasions at which the SRC and/or the AICH comment on aspects of asylum practice in Switzerland. A group that is affected by several practice changes between 2016 and 2019 decided by the FJPD and enforced by the SEM are Eritrean asylum seekers (see Focus 5). The number of asylum claims from Eritrean nationals reaches a peak point in 2015. Consequently, the political claim to restrict access to asylum for Eritreans and to enforce removal orders of rejected Eritrean asylum seekers arises. This claim is intensely criticised by civil society actors.

A clear human rights language

AICH and the SRC, among other civil society organisations, criticise this claim by pointing to the dictatorship, its national service obligation and militarisation of Eritrean society, even of children. The diagnostic framing of the practice change as problematic is mostly based on descriptions of the human rights situation in Eritrea as being problematic like in the following excerpt of an AICH press release.

> Recruitment for 'national service' is carried out on the one hand through arbitrary selection, and on the other hand all pupils must spend the last year of secondary school in a military 'national training centre' in Sawa. People suspected of refusing to serve and/or who are caught leaving the country must regularly spend several months in detention before being transferred to a training camp - in secret locations, without a court judgement and without contact with the outside world. The detention conditions in the often underground dungeons or in shipping containers are disastrous, with torture and ill-treatment commonplace (AICH press release 1.12.2015).

When the SEM proceeds nevertheless to a practice change regarding refugee status of persons motivating their fear of persecution solely by their illegal departure from Eritrea and the FAC confirms the correctness of this change, the SRC and AICH severely criticise these decisions. The claim to not enforce removal orders and to issue at least a provisional admission for Eritrean asylum seekers that

is made in reaction to the practice changes that affect the SEM's asylum as well as removal practice is mostly motivated, not exclusively but importantly, by the indication of missing reliable information about the concrete situation in Eritrea. For this statement, as well as for descriptions of forced military recruitment (like above) and forced labour that persons returning to Eritrea would risk facing, the SRC draws on the knowledge of its country analysis experts, who themselves underline the importance of "internationally binding Country of Origin Information (COI)" to assure the quality of the information on which asylum and removal decisions are based.

Unreasonable "disadvantages"

When the SEM does not change its decision to review provisional admissions of Eritreans, first 250 in a pilot project followed by 2800 further provisional admissions, the SRC and its member organisations address an open letter at Federal Councillor Simonetta Sommaruga. Lack of reliable information about the situation in Eritrea is again invoked in the letter justifying the claim to cease the review of provisional admissions. Furthermore, the authors of the letter point out that this "new practice does not bring solutions". On the contrary, persons whose provisional admission is cancelled are pushed into precarious living conditions.

> **New practice does not provide a solution**. At present, no forced returns to Eritrea are possible; only 'voluntary' returnees are accepted by Eritrea. By cancelling provisional admission, the people concerned are therefore deliberately being forced into emergency aid. The signing aid organisations only recognise disadvantages in this approach. People from Eritrea, who previously participated independently and autonomously in our society, are forced by the new practice to live in precariousness, dependent on the state and without any prospects - they have no legal means of supporting themselves. This unsatisfactory situation is neither in the interests of the people concerned nor in the interests of the Swiss population or the authorities (SRC et al. open letter, 18.04.2018[159], emphasis in the original).

While the irresponsibility of the practice change has been framed as a clear act of injustice due to the human rights situation in Eritrea, here, the practice change of the authorities is further denounced as irresponsible because it creates rather problems than solutions for all involved actors. Here, on the one hand, Eritrean persons are presented as "entrepreneurial actors" contributing to society (Monforte et al., 2019: 19) as independent active persons. From this perspective, the precarity to which the cancellation of their status of provisional admission would lead for them appears as an injustice and thus as irresponsible. Having contributed to Swiss society, they deserve to remain

[159] Open letter "Appeal against the cancellation of provisional admission for Eritreans", signed by the SRC, SAH, HEKS, AICH, VSJF, Caritas Switzerland, Heilsarmee, addressed at Federal Councilor Simonetta Sommaruga, 18.04.2018.

members of society and not a passive life in precarious living conditions. It appears morally wrong to take this possibility of contribution away from them.

On the other hand, there is also the financial burden argument which unmasks the practice change not only as unfair respectively morally wrong for the affected persons but also as contrary to the interest of the Swiss state. In the context of the discussions about costs of the asylum system and the recurrent political call to reduce these, from a rational perspective, this argument seems difficult to ignore. Nevertheless, the FJPD and the SEM adhere to the review of finally 3000 provisional admissions which leads, at the SRC to another stage of escalation in terms of public communication.

> But Switzerland cannot send them back. They are thus forced into the misery of emergency aid and illegality. The SRC strongly criticises this absurd and inhumane practice. The federal government is giving in to domestic political pressure instead of looking for solutions. [...] The people remain in Switzerland - trapped in the undignified misery of emergency aid, without access to integration and the labour market. 'The federal government's hard line is not a solution, but political showmanship', says Peter Meier, Head of Asylum Policy at the SRC: 'As long as the conditions in Eritrea do not improve sustainably and allow for a return, the federal government should make it easier for those affected to enter the world of work instead of forcing them into emergency aid and leaving them to fend for themselves'. [...] 'The Department of Justice is giving in to domestic political pressure and focussing on deterrence', says Peter Meier: 'It is pursuing a dangerous symbolic policy on the backs of Eritrean asylum seekers that helps no one' (SRC press release 3.09.2018).

In this motivational framing of the problems that the cancellation of provisional admissions creates, affected Eritreans become victims of unfair treatment by the authorities. The causes of this treatment are clearly identified as political - "domestic political pressure" and "political gimmickry" – and lie exclusively with the authorities.

9.3.3 Capacity, control and advantages of resettlement

Additionally, the claim for a more extensive use of resettlement is framed through a responsibility perspective. While the vulnerability framing of resettlement and more generally legal and secure access ways focusses on the conditions and needs of refugees, the responsibility frame focusses on Swiss society and on what it means to act responsibly in the perspective of Switzerland's capacities. Low numbers of asylum seekers are specifically mobilised as argument justifying a more extensive use of resettlement in a logic that is different from the above-described logics of need focussing on the state of being of qualifying for resettlement. Low numbers of asylum seekers as an argument for Switzerland's capability to accept higher numbers of refugees via resettlement is part of a capacity

logic that is expressed in AICH's and the SRC's resettlement claims[160]. They thus take up the question of "capacities" which is dominating the asylum domain, and which finally underlies the logic of sorting that characterises the asylum procedure and asylum politics in general.

> The number of asylum applications in Switzerland is currently below average. The possibilities and capacities to take in more asylum seekers in Switzerland are therefore available, especially as the structures of the new asylum system are geared towards 24,000 applications per year. Many Swiss cities and cantons as well as civil society are also willing to lend a hand and participate in finding a solution (SRC and member organisations/SRK Open letter, 29.08.2019).

Adapting the numbers of refugees that may benefit from resettlement to Switzerland to the country's own capacities basically corresponds to a conception of resettlement as an act of beneficence in the sense that "one give only provided that one can do so without excessive risk or loss to oneself" (Rawls, 1999: 98). In a context of limited resources, taking up the capacity logic can serve as argument for the extension of resettlement practice in times of low asylum seeker numbers as in the above-quoted excerpt of an open letter addressed to the Federal Council in 2019. However, taking up this logic can also have the contrary effect, as it also works the other way round. In times of higher numbers of asylum seekers, capacities for accepting further persons via resettlement will logically drop. What is basically an economical perspective, is, at the same time, an expression of the control that resettlement as an instrument offers to the Swiss government to adapt the number of admitted persons to its own interests. The NGOs refer to this consideration in their claims in favour of more extensive use of resettlement as an instrument to provide protection – in a planned way.

> Setting quotas allows the Confederation and cantons to plan to a certain extent. By participating in the UNHCR's resettlement programme, for example, Switzerland knows in advance who is coming into the country, when and with what resources. Even before they enter the country, refugees are checked for security concerns and prepared for their new home SRC/HEKS Argumentarium for secure and legal access ways 2018).

Pointing out this advantage of resettlement for the Swiss state in terms of control, the NGOs adopt the point of view of Swiss authorities who represent, far and foremost, national interests of sovereign nation-states that consist in limiting access for foreigners to their territory. Presenting resettlement as an instrument that allows to keep control of how many and which individuals come to Switzerland, integrates it in the logic of migration control. Taking up the control and management paradigm that has been dominating Switzerland's asylum policy since the 1970s thus allows to connect to prevailing

[160] Here, it might be pointed out again that the period analysed in the present study was before the Russian aggression on Ukraine.

political discourse. Adopting the control perspective resonates with the dominating attitude of centre-right and liberal politicians who form the political majority in government and Parliament as well as with the support of this approach in the population, as expressed in several popular votes in the past decades.

PART VII DISCUSSION AND CONCLUSIONS

10 Discussion: (legal) expertise, political opportunities and advocacy strategies

The analysis of the strategies used by the two NGOs that are the focus of my research has shown how their professionals mobilise different resources to which they have access to defend their interests. The mobilisation of legal knowledge is central to the various strategies. My analysis has emphasised the various dimensions of this knowledge. I have shown the professional perspective that the legal experts of the SRC and AICH have and that they apply in their insider strategies in direct contact with the authorities and in their activities to support the actors involved in the legal defence of asylum seekers. The research-oriented nature of their expertise becomes visible in these activities. Legal knowledge is mobilised in the generation of socio-legal expertise so that it can represent an advantage for those involved in legal defence. This is created in a process in which evidence is "assessed against a whole range of legal concepts" (Gill, 2018: 92). This expertise, for example, in assessing the situation in asylum seekers' countries of origin is intended to correspond to the criteria and categories used by the authorities in assessing asylum applications. Above all, it serves to prove the plausibility of asylum seekers' narratives. As other researchers have shown, those involved in the legal defence of asylum seekers reproduce the administrative categories and logics (Miaz, 2017; Lepoutre, 2022) that they aim to influence.

Similarly, NGO monitoring of the asylum procedure and reception conditions in other European countries serves to obtain knowledge that can be used to build causes through a process of de-singularisation and to defend this cause through a process of re-singularisation (Drahy, 2004: 214f.). NGOs can fulfil their role as "watchdog of the respect of [legal] texts" (Drahy, 2004: 140) as they have access to information that can be assessed in the light of the texts. This centrality of evidence in advocacy work with the administration, and also in public mobilisation campaigns, has been shown by other researchers in other national contexts (McGhee et al., 2016; Gill et al., 2014; DeSantis, 2010; Cullen, 2009). In this context, the importance of service providing for the state has been emphasised by some (McGhee et al., 2016; Cullen, 2009) in order to have access to evidence that can be mobilised in advocacy strategies, but also in the idea of a "tactical closeness and proximity to institutionalized centers of power" (Gill et al., 2014: 379). The focus of my research on two advocacy organisations highlighted the importance of the network in which these organisations are located for access to evidence. Even though AICH is not involved in the asylum procedure in the same way as SRC through its various state mandates (in the old procedure) and service provision (in the new procedure), its

network with actors active in the field means that it is informed of what is happening and can use this information in its advocacy activities.

Legal knowledge and evidence therefore represent two important resources that are mobilised by NGOs in insider strategies in direct contact with the authorities. Following on from legal strategies, these two resources are also mobilised in outsider strategies as the organisations engage in a judicialisation strategy that involves mobilising the courts in order to influence the authorities' asylum practices. On the one hand, expertise on countries of origin is intended to be used by judges in their assessment of appeals. On the other hand, on the basis of their experience in the field of asylum law, the SRC's legal experts are coordinating those involved in legal defence in order to present an "ideal case" to the ECtHR with a view to achieving rulings in principle. AICH is pursuing a similar strategy.

As we have seen, the expertise of NGO legal experts also makes it possible to juridificate their claims. Having read Drahy's (2004: 184) remark that this process of juridification of claims is an aspect that is sometimes neglected when analysing the influence of social movements, I have devoted part of my analysis of SRC's and AICH's advocacy strategies to the juridification of their claims, which can in fact be observed in their official speeches communicated through press releases and especially in their positions taken in the context of consultation procedures. In this context, the NGO professionals I interviewed expressed the important distinction they made between the legal and the political when drafting position papers. By opposing the legal to the political and identifying with the former, they depoliticise their own positions on political issues. At the same time, the juridification of claims is a way of depoliticising political debate. The juridification of claims makes it possible to move a problem into an area other than the political area (Flinders/Buller, 2006) when the problem is defined as a complex legal issue whose treatment requires specific competences that non-specialist politicians do not possess.

Finally, the legal knowledge as well as the practical experience of NGO experts mean that they can be invited to take part in expert groups organised by the authorities on issues relating to their asylum practice or with a view to preparing a draft policy or legislation. As has been observed in other contexts, such as at European Union level (Robert, 2010), the participation of experts in the development of public action leads to a technicalisation of debates in the sense of using scientific and technical forms of knowledge, argumentation and legitimisation. Technical knowledge therefore enables NGO professionals to participate in the development and, above all, the pre-negotiation of public policies. In this way, they take part in consensus-building, which aims to prevent potential conflict in the parliamentary sphere (Robert, 2010). This ability and willingness to participate in consensus-building points to the symbolic power of the law (Bourdieu, 1987) and of the experts who master it and know how to mobilise it. The aim here is to understand the representations associated with the mobilisation

of the law and with legal experts themselves. As Drahy (2004: 186) points out, if organisations' demands are to have any chance of success, they must be formulated in legal terms. Respect for the form of the law lends credibility to claims, and therefore to the actors who make them, in the eyes of the authorities to whom they are addressed. Under its appearance of universality (Bourdieu, 1986b), the law expresses what is legal, permissible and acceptable (Commaille et al., 2010: 20) and is therefore part of the existing legal order (Drahy, 2004: 144). By formulating their demands in legal terms, NGOs are able to appear credible to the state, whose action they aim to influence. Speaking "the language of the state" (ibid.: 185) also moderates the political positioning of the organisations, which further strengthens their legitimacy in the eyes of the authorities. It is a political positioning that respects what Rancière calls the para-political consensus.

The appearance of universality of the law gives it an appearance of neutrality. This neutrality is a central element in the definition of the expert status of NGO experts and is put forward in order to be able to interact with politicians of all political views and to contribute to finding a consensus between them. In this context, it would be interesting to compare advocacy strategies in different national contexts to find out whether this commitment to consensus-building is indeed an aspect specific to the Swiss system with its political culture of consensus.

These observations show that, in terms of insider strategies, the opportunities that NGO professionals perceive and use are closely linked to their status as experts and the resources they have at their disposal to mobilise in these strategies. Finally, we come back to the question of credibility vis-à-vis the state actors they aim to influence. The symbolic capital that legal knowledge represents for NGO professionals, with its legitimising role with regard to the authorities, also plays a role in some of the outsider strategies. These are strategies that take advantage of the legal opportunities presented by the existence of courts of justice. Here, I have shown that the judge can be instrumentalised not only to denounce a practice of the authorities, but also to legitimise criticisms previously made by the organisations.

It is true that I have devoted more time to analysing insider strategies than outsider strategies at SRC and AICH in this thesis. On the one hand, this is due to SRC's emphasis on insider strategies. As a campaign organisation, this is different in the case of AICH. On the other hand, as the overview of campaigns and petitions launched by the organisation between 2015 and 2019 has shown, in the majority of cases the organisation takes up campaign themes and petitions defined at European level that are not specifically or solely aimed at the Swiss context. Nevertheless, I would like to highlight a few aspects that stand out from the (limited) analysis of the use of public mobilisation instruments by SRC and AICH. Firstly, these outsider strategies run contrary to the logic of insider strategies, which are characterised more by a depoliticisation of positioning and by a technical and therefore depoliticised

approach to asylum linked to a perception of oneself as a politically neutral expert. Mobilising the public, on the other hand, is an instrument for politicising identified problems. Several times during the period observed, when insider strategies were unsuccessful, the organisations moved on to public protest actions. In the context of these shifts to public protest, I have been able to observe, through interviews with professionals of the SRC and AICH as well as people involved in other asylum support organisations, certain dynamics within NGOs and also between different organisations in the field. Within NGOs, we can see not only divergent points of view but also the influence of different competences on the way an organisation is able to communicate its positions publicly.

Regarding relations between different NGOs, we have seen that coalitions can change according to circumstances. On the one hand, the threat from the political right to remove every slight advance in asylum legislation seems to have the effect of moderating the claims as well as reducing the opposition from actors of a protest nature. Here, we have seen that professionalised organisations such as the SRC and AICH can play a unifying role in the support field. On the other hand, more protest-oriented actors may moderate their positions in order to be able to collaborate with organisations defending more moderate positions. Examples such as the Dublin call in 2017 show that grassroot organisations adapt their demands to the more moderate demands of 'big players' such as SRC and AICH so that their actions have a real effect on the authorities' practices. In this case, they not only benefit from the resources that professional organisations have at their disposal to run campaigns, but also from their visibility and recognition in the public sphere and with the authorities.

Finally, the two processes of depoliticisation and (re)politicisation that characterise the insider and outsider strategies of the two organisations are also visible in the ways in which NGOs frame their claims. The frames mobilised in the public communication of positions and claims are the result of collaborative work between legal and communication professionals. One exception is consultation responses that are prepared by legal professionals. If we want to understand the strategic dimensions of frames, the different perspectives of the two groups of professionals involved in their construction need to be considered. How this collaboration works in practice would be an interesting aspect to explore beyond the organisations involved in the asylum field.

With regard to the frames that I have identified by analysing mainly press releases, petitions and open letters and position statements in the context of consultation or referendum procedures, it is necessary to take into account the type of document in which I have identified them as well as the audience they address. Nevertheless, all three frames are present in the different types of documents, except for the absence of the fairness and efficiency frame in petitions and open letters as this frame concerns specifically the asylum procedure. The technical-legal approach of professionalised NGOs of asylum mentioned in the context of interactions with the authorities shapes the frames that NGOs

mobilise when making claims and depoliticises the issue at stake in this context. This is the case for the framing of the asylum procedure as a matter of fairness and efficiency. The two other dominant frames mobilised by the SRC and AICH to define problematic "reality" are mostly constructed by the combination of humanitarian and human rights logics with descriptions of suffering playing an important role. Disentangling the entanglement of humanitarian and human rights discourse in these frames allowed to shed light on how logics of need, deservingness and justice are at play within these frames.

11 Conclusions

Starting from the observation that the two professionalised advocacy organisations' central resource is legal expertise provided by legal professionals working as employees for an NGO, this PhD research investigated the modes through which this legal expertise is mobilised in the organisations' advocacy strategies. Hence, this research joins the ranks of studies which focus on the increasing juridification of social movements (Drahy, 2004). Throughout this thesis, the notion of strategy has referred to the agency of NGO professionals to make choices about the modes of action they engage. "A strategic approach treats protest groups and other players symmetrically, instead of reducing the latter to the "environment" of the former" (Jasper, 2004: 5).

From a social movement perspective, the legal expertise can be understood as a repertoire of action (Delmas, 2011: 47) which is constituted by relatively codified forms of protest. Expertise allows to access decision processes and to obtain legitimacy with the authorities. Therefore, expertise presents for the NGOs an important resource that is mobilised in their advocacy strategies in response to certain (political) opportunities. At the same time, this is not a unidirectional process; legal expertise itself creates opportunities for such strategies as well. The strategic relationship between the legal expertise of NGO professionals and the opportunities in which the expertise is mobilised, is expressed in the different dimensions of this expertise that are at play in insider and outsider strategies. Even though contentious politics understood as "interactive, collective making of claims that bear on other people's interests and involve governments as claimants, objects of claims, or third parties" (Tilly/Tarrow, 2007: 23) involve insider as well as outsider strategies, traditionally, social movement studies have given more attention to public forms of protest. My investigation of the mobilisation of legal expertise as central resource in the SRC's and AICH's advocacy strategies has finally led to a more important focus on insider strategies even though this expertise also plays a central role in the organisations' outsider strategies regarding the definition and formulation of claims and for the engagement in campaigning coalitions. As Agrikoliansky (2010: 240) notes, the mobilisation of the law cannot be analysed independently from the totality of forms of action that are available to contesting actors (here, the

NGOs) and the complex strategies through which the legal and other forms of action are articulated. However, following my observations of how the organisations navigate between insider and outsider strategies, I would readapt the focus by saying that the totality of the organisation's forms of action needs to be understood in the context of the centrality that the organisation attributes to the mobilisation of the law and its expert status which derives from it.

This study has kept its exploratory character until the end. I have given an account of the strategies and activities of two professionalised advocacy organisations active in the asylum domain in Switzerland, however without claiming completeness. Due to access constraints, the ethnographic approach of this study had its limits. This leaves room for future research about the interactions and negotiations about positions take place within advocacy organisations. It also implies to further investigate the question of how NGO professionals deal with divergences within the organisation. Regarding their insider strategies, the involvement of NGO professionals in advisory groups and more generally the role of these groups in policy processes would merit further investigation. Specifically with regard to the issue of asylum, I have not investigated the advocacy work that the SRC does with regard to integration. This aspect of the organisation's advocacy work remained in the shadow. Finally, another aspect that my study did not address was the use of social media in the organisations' work.

Last, the adoption of a resource mobilisation perspective has shed light on the importance of the organisations' network for their advocacy work. This raises the question of collaboration of advocacy organisations on the European and international level. While there has been some research (Monforte, 2009; Schwenken, 2007) on that question, it might be interesting to further investigate how organisations from non-EU member states like Switzerland engage in coalitions on the European level.

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