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Managing migration flows at the European level: a dilemma between externalizing European borders and creating legal pathways.

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Introduction

Migration is a natural phenomenon, indeed, one could even say that it is a primary need, while the creation of borders is a bit of a stretch and should be interpreted as the need for a community to protect its interests. Therefore, migration has always been part of human history, both when it was linked to the need for survival and when it was due to trade, exchange and personal enrichment. This thesis aims at analyzing a specific form of migration, the one concerning international protection of people emigrating from countries affected by wars and persecutions due to ethnicity, faith professed, sexual or political orientation. This form of migration is the one that is currently undermining the system of protection of fundamental human rights at a global level. In fact, it could be argued that with an ever-growing need for human rights protection, there is no effective response from the international legal system.

The purpose of this thesis is to investigate the actions taken by the European Union in order to overcome the emergency situation caused by the migration wave that is affecting individual member states. It will be pointed out that because of the inability of the European Union to manage the wave of migration in a coordinated and effective way, the so-called right-wing populist parties have felt entitled to use the issue of immigration for their political purposes. This political manipulation has made the migration issue even more urgent without an effective response from individual countries. This thesis will draw attention to the EU's lack of interest and inability to regulate the flow of migration, by describing the various financial instruments and political agreements aiming at outsourcing European borders, which aims at denying migrants the right to seek international protection in a member state.

From the legal perspective, which is the focus of this thesis, the fact that the legislative system offered by sources of international and European law appears to be inadequate to the ever-increasing need for international protection will be first analyzed, and then explained. The inability of European and international legislation to regulate migration will be considered starting with the shortcomings and

the challenges in the Geneva Convention of 1951 and the New York Protocol of 1967. Individual legislative measures concerning the Common European Asylum System will also be examined. Special attention will be given to the Dublin Regulation and its amendments, as well as to the current general amendment of the Common European Asylum System. Despite various legislative interventions by the European Union and the Commission's proposal to amend the Common European Asylum System, to this day, a thorough review of the legislative instruments for the correct management of migratory flows is still necessary. Indeed, EU law regulates and establishes the actions that a member state is required to take after the entry of applicants for international protection on its territory, yet without regulating how they can legally access the EU in order to seek protection before moving to a member state. As a result, although guaranteed at the level of primary EU law, the right to asylum is doomed to remain essentially on paper.

Finally, the various permitted routes available to applicants for international protection in order to access an EU member state will be described. The creation of legal access routes to Europe is the most practical and safe way to guarantee the right to international protection, as well as a valuable tool to reduce the business of criminal organizations dedicated to smuggling and trafficking. However, research shows that EU member states are more interested in other aspects of migration policy, such as internal security and surveillance and strengthening of border control, with the result that the legal mobility options offered to applicants for international protection are still extremely limited.

Introduzione

La migrazione non è un fenomeno innaturale, si dovrebbe anzi affermare che è una necessità primordiale. Mentre la creazione delle frontiere dovrebbe essere intesa come una forzatura o necessità di una comunità per proteggere i propri interessi. Perciò la migrazione ha sempre fatto parte della storia umana, sia quando era legata a necessità di sopravvivenza, sia quando era dovuta a motivi di commercio, scambio e arricchimento personale. Questa tesi mira ad analizzare una precisa forma di migrazione: quella relativa alla protezione internazionale di persone che emigrano da paesi interessati da guerre, persecuzioni razziali dovute all'orientamento sessuale, all'etnia, alla fede professata e persecuzioni dovute all'orientamento politico. Questa forma di migrazione è quella che attualmente sta mettendo in crisi il sistema di protezione e tutela dei diritti fondamentali dell'uomo a livello globale. In effetti, si potrebbe affermare che di fronte ad una sempre più crescente necessità di tutela dei diritti umani non corrisponde una effettiva risposta da parte del sistema giuridico internazionale.

Lo scopo di questa tesi è quello di indagare sulle azioni intraprese dall'Unione Europea per superare la situazione di emergenza causata dall'ondata migratoria che sta interessando i singoli paesi membri. Si evidenzierà che, a causa dell'incapacità dell'Unione Europea di gestire l'ondata migratoria in modo coordinato ed efficace, i partiti della cosiddetta destra populista si sono sentiti autorizzati a utilizzare il tema dell'immigrazione per i loro fini politici. Una strumentalizzazione politica che ha reso la questione migratoria ancora più emergenziale e senza una effettiva risposta da parte dei singoli paesi.

L'incapacità e il disinteresse da parte dell'Unione Europea di regolare il flusso migratorio saranno messi in luce anche tramite la descrizione dei diversi strumenti finanziari e accordi politici volti alla esternalizzazione delle frontiere europee. Una strategia, quest'ultima, volta a negare ai migranti il diritto di chiedere protezione internazionale in un paese membro.

Per quanto concerne invece il profilo giuridico che interessa questa tesi di ricerca, sarà dapprima analizzata e poi motivata la circostanza che l'impianto legislativo offerto da fonti di diritto internazionale ed europeo risulta essere inadeguato alla sempre più numerosa necessità di protezione

internazionale. L'inadeguatezza della legislazione europea ed internazionale nella regolazione del fenomeno migratorio sarà presa in considerazione partendo dalle lacune e criticità che presentano la Convenzione di Ginevra del 1951 e il protocollo di New York del 1967. Saranno altresì esaminati i singoli provvedimenti legislativi concernenti il Sistema Comune Europeo di Asilo. In particolare sarà prestata attenzione al regolamento di Dublino e alle relative modifiche operate, oltre che all'attuale modifica generale del Sistema Comune Europeo di Asilo. Nonostante i diversi interventi legislativi da parte dell'unione europea e la proposta di modifica da parte della commissione del Sistema Comune Europeo di Asilo, ad oggi risulta ancora necessaria una profonda revisione degli strumenti legislativi per una corretta gestione dei flussi migratori. Infatti, il diritto dell'Unione disciplina e stabilisce le azioni che uno stato membro è tenuto a compiere dopo l'ingresso dei richiedenti protezione internazionale sul proprio territorio, senza, tuttavia, regolare come gli stessi possano, in modo legale, accedere all'UE per richiedere protezione prima di effettuare lo spostamento verso uno stato membro. Di conseguenza il diritto di asilo, sebbene garantito a livello di diritto primario dell'Unione, è destinato a rimanere essenzialmente solo sulla carta.

Infine, saranno descritte le diverse vie legali a disposizione dei richiedenti protezione internazionale per accedere ad un paese membro dell'Unione Europea. La creazione di vie legali di accesso all'Europa risulta essere lo strumento più pratico e sicuro per garantire il diritto di protezione internazionale, oltre che un valido strumento per ridurre gli affari delle organizzazioni criminali dedite al traffico e alla tratta di persone. Tuttavia, la ricerca dimostra che i paesi membri dell'unione europea sono più interessati ad altri profili di politica migratoria, quali la sorveglianza e il rafforzamento del controllo dei confini e la sicurezza interna, con la conseguenza che le opzioni di mobilità legale offerte ai richiedenti protezione internazionale restano ancora estremamente limitate.

Chapter one

Legal profiles and political implications in the management of migration flows at European level

1. State of the art

The world is facing an unprecedented displacement crisis: every year, millions of people are forced to flee their homes because of wars, persecutions and natural disasters. Forcibly displaced populations include internally displaced people, asylum seekers and refugees; the increasing number of forcibly displaced people worldwide led to the need for humanitarian assistance by the low-and middle-income countries where they usually find refuge¹.

Crossing the Mediterranean Sea is probably the world's deadliest journey for migrants, but however dangerous, it is often the only way for asylum seekers to reach Europe. Given the dramatic increase in migration flows and following the tragic events that took place off the coast of Lampedusa on 3 October 2013², when 366 migrants died in two boat incidents, the Mare Nostrum operation³ was launched by the Italian government on 18 October 2013 as a humanitarian and military operation aimed at tackling the emergency in the Strait of Sicily. Its purpose was safeguarding human lives at sea and bringing to justice migrant smugglers and human traffickers.

UNHCR, the UN Refugee Agency, repeatedly expressed concerns over the ending of the Mare Nostrum operation without the replacement with a similar European search-and-rescue operation⁴; it ended on 31 October 2014, and a new operation started on 1 November 2014: Frontex⁵ launched Joint Operation Triton⁶, which mainly focused on border control and surveillance and aimed at monitoring

¹ https://ec.europa.eu/echo/what-we-do/humanitarian-aid/refugees-and-internally-displaced-persons_en

² http://europa.eu/rapid/press-release_IP-15-4453_en.htm

³ <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>

⁴ <https://www.unhcr.org/news/press/2015/2/54dc80f89/unhcr-urges-europe-recreate-robust-search-rescue-operation-mediterranean.html?query=2013%20Mare%20Nostrum%20operation>

⁵ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/fact-sheets/docs/20161006/eu_operations_in_the_mediterranean_sea_en.pdf

⁶ <https://frontex.europa.eu/media-centre/focus/joint-operation-triton-italy--ekKaes>

migration flows, but also at fighting drug smuggling, illegal fishing and maritime pollution⁷. It had few resources, only some vessels, aircrafts and helicopters used by the Italian Coast Guard to assist migrants under the command of the Italian Ministry of Interior, even though 26 EU countries took part in the operation by deploying either technical equipment or border guards. Joint Operation Triton was limited to European territorial waters without the possibility to reach the Libyan coast, and search-and-rescue operations were only carried out if strictly necessary, thus increasing the number of incidents and deaths in the crossing of the Mediterranean Sea after the end of the Mare Nostrum operation.

According to the Missing Migrants Project led by IOM⁸ in the last few years, it is estimated that more than 8,000 people fleeing war, poverty or famine died attempting to reach European shores (3,784 in 2015, 5,143 in 2016, 3,139 in 2017, and 2,297 migrant deaths in the Mediterranean Sea in 2018) but, unfortunately, the number could even be higher as it is very difficult to know exactly how many people have drowned while crossing the Mediterranean Sea. Furthermore, this is what the “lucky” ones, meaning, the survivors, tell about their dramatic experiences⁹:

“Once in Tripoli, we were imprisoned by the Libyan police. They used to beat us every day. ... We ate once a day, some biscuits, and sometimes they suspended the feeding for a few days. We were something like 40 prisoners in a 4x4 [meter] room. We were forced to work outside the prison, and those who refused to work were just shot and killed. After one year, they took us to the coast and forced us to go on a boat. That was the beginning of our way to Italy. We did not have any idea of where we were going to”.

— Male migrant from Mali interviewed in Venice in January 2017 (MHub, 2017).

⁷ <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>

⁸ <https://missingmigrants.iom.int/>

⁹ International Organization for Migration, in *Fatal Journeys Volume 3, part 2, 2017, p. 10.*

In 2015, over 1 million people fled across the Mediterranean Sea in order to escape wars and persecutions and reach Europe, that's why 2015 is considered by UNHCR the year of Europe's refugee crisis¹⁰. In order to understand the true extent of this unfolding drama, here are some key events that happened that year, as reported by the UNHCR¹¹:

1. The flows of refugees to Europe reached upsetting new levels and thousands of lives were lost during the journey. In the Mediterranean Sea, hundreds of people drowned as their boat capsized in Libyan waters, near Italy's Lampedusa Island: only 50 people were saved during the Italian and Maltese rescue operation, and while expressing his shock at this tragedy, UN High Commissioner for Refugees Guterres urged European countries to create stronger rescue-at-sea operations.
2. The deadly Mediterranean crossing from Libya to Italy used to be the main route, but then it was replaced by the crossing from Turkey to Greek islands like Lesbos, only to be later proven to be even more dangerous. Indeed, a tragic event that triggered great attention by the media towards the management of refugees and touched millions of people worldwide was the image of a young Syrian boy who was trying to reach Greece with his family, whose body was found on a Turkish beach. After his death, the Head of UNHCR Guterres provided key guidelines that would help solve the refugee and migration crisis in Europe.
3. Under a European Union relocation scheme to respond to the refugee crisis in Europe, which outlined measures to resettle 160,000 refugees from Italy and Greece - Europe's first ports of entry - Eritrean asylum seekers were relocated from Italy to Sweden, while asylum seekers from Syria and Iraq were relocated from Greece to Luxembourg.
4. Austrian authorities discovered 71 bodies in a refrigeration truck abandoned near the border with Hungary; police declared the victims had been dead for one or two days. According to

¹⁰ <https://www.unhcr.org/news/stories/2015/12/56ec1ebde/2015-year-europes-refugee-crisis.html>

¹¹ *ibidem*

Fleming, Chief Spokesperson for UNHCR, that terrible event showed “the desperation of people seeking protection or a new life in Europe” and the need for stronger cooperation among international organizations, European police forces and intelligence agencies in order to “crack down on the smuggling trade while putting in place measures to protect and care for victims”¹².

The European decisions are not efficient: along the way, people are often abused and exploited by organized crime networks and by locals as well. Migrants are also usually placed in filthy prisons and tortured until they are forced to embark on precarious journeys on expensive rubber boats¹³. The lack of attention to migration issues at European level, as well as the inability to solve them, resulted in the reinforcement of populism.

2. Political implication

Populist parties see politics as a fight between the honest people and the dishonest elite¹⁴: they mainly focus on protecting the people and the nation, accusing migrants of weakening the national identity, both culturally and historically¹⁵.

Populism is not a new phenomenon¹⁶, but the last ten years have seen populist leaders gaining ground in many European countries, taking advantage of the “migration crisis” and arguing that borders are out of control, thus letting dangerous criminals enter Europe without appropriate screening. Such populist parties are anti-European: they blame Europe for the lack of job security, for the loss of identity and control over many issues, such as monetary policy leading to the economic crisis. They denounce a lack of security also because of a series of terrorist attacks perpetrated in Europe by

¹² *Ibidem*.

¹³ Piero Messina, *Limes*, n. 7, 2018.

¹⁴ Albertazzi, D. and McDonnell, D. (2008) *Twenty-First Century Populism – The Spectre of Western European Democracy*. London: Palgrave. 3. See also *Government and Opposition / Volume 48 / Issue 02 / April 2013*, p.151.

DOI: 10.1017/gov.2012.11, Published online: 17 December 2012.

¹⁵ <https://www.cambridge.org/core/books/populist-radical-right-parties-in-europe/244D86C50E6D1DC44C86C4D1D313F16D>

¹⁶ Bosco, David. "For the UN, a Rise in Populism Reveals an Old Challenge." *The Wilson Quarterly*, vol. 42, no. 4, 2018. Gale Academic Onefile, Accessed 4 Sept. 2019.

European citizens with immigrant backgrounds¹⁷. The French far-right party is even advocating the withdrawal of France from the Schengen area and from the European Union, while trying to put an end to migrants reception by playing on the fear of future attacks and also on ethnic and religious fears: the growing diversity in modern societies has brought to light what some European countries, such as France or Switzerland, see as controversial topics, for instance, the building of mosques¹⁸ or women wearing the *burqa*.

Migration has been “a salient issue in national elections in 2017 in Austria, France, Germany and the Netherlands, and contributed to the strong performances by anti-immigration political parties”¹⁹. The topic also took center stage in the campaigns for Italy’s and Sweden’s 2018 general elections.

Whether or not migration levels have reached “crisis” proportions could certainly be the subject of debate; what is undeniable, however, is that the salience of migration in political discourses has risen sharply in recent years in all EU Member States, and the public’s quantitative perception of migration is generally higher than the actual phenomenon²⁰.

On 3 June 2018, Salvini, the leader of the far-right League, while addressing crowds in Vicenza, declared that the new government would mean that “the party is over” for illegal migrants and that they should now “prepare their suitcases”²¹. Migration was at the heart of the manifesto of the government that emerged from the elections of 4 March 2018. Curbing migration was part of the 30-point program of the government contract signed by the two coalition partners, the League and Five Star Movement (M5S)²².

¹⁷Pfaff W. (2005) ‘A monster of our own making’, *The Guardian/The Observer*, 21.08.2012 (<http://www.guardian.co.uk/uk/2005/aug/21/july7.terrorism> – accessed 12.10.2012).

¹⁸ <http://www.lefigaro.fr/actualite-france/2019/03/25/01016-20190325ARTFIG00137--bergerac-un-projet-de-mosquee-cristallise-la-colere-des-riverains.php>. See also <https://www.repubblica.it/2009/11/sezioni/esteri/svizzera-referendum/svizzera-referendum/svizzera-referendum.html>

¹⁹Geddes A (2018) ‘The politics of European Union Migration Governance’, *Journal of Common Market Studies*, 56, Annual Review, 120-130, DOI: 10.1111/jcms.12763.

²⁰ Eurobarometer report no. 469/2018.

²¹ https://www.repubblica.it/politica/2018/06/02/news/governo_salvini_lega_migranti-198005208/

²² https://www.adnkronos.com/r/Pub/AdnKronos/Assets/PDF/contratto_governo_def.pdf

The election of Salvini in Italy²³, as well as the success of the AfD in Germany and the FPÖ in Austria, all deeply anti-immigrant, together with Sweden and Austria that put drastic restrictions on the reception of asylum seekers, are all clear examples of how the populist ideology influences national political agendas and priorities. Data²⁴ show that in the early 2000s, populist parties were mainly a peripheral power, accounting for merely 7% of ballots throughout Europe; since then, populism has increasingly grown, and nowadays, one in four votes cast is for a populist party.

3. Legal framework

3.1 The 1951 Geneva Convention and the 1967 New York Protocol

The management of migration flows is still anchored to the requirements of the Geneva Convention and to the senseless modifications of the various Dublin Regulations, which are not properly applied by States, so that each country still decides who can become a refugee and how, without respect for international treaties and universally recognized human rights. The right of asylum used to be a prerogative typically subject to the discretionary power of national sovereignty, but it has now become an international obligation as far as signatory states are concerned, within the meaning of the 1951 Geneva Convention relating to the protection of refugees. The Geneva Convention can still be considered as a relevant legal instrument for the protection of refugees at the universal level, even though it was conceived to meet the needs of the post-war period. Therefore, some of its provisions raise doubts as to its adaptability to the challenges that have arisen in the years following its adoption. For instance, Article 1 of the Geneva Convention establishes as a *conditio sine qua non* to be physically outside the borders of the country of which people are citizens in order to be able to apply for refugee status. Therefore, internally displaced people and civilians forced to flee from war or

²³ Hamann, J., Nič, M., & Puglierin, J. (2019). *Shaking Up the 2019 European Election: Macron, Salvini, Orbán, and the Fate of the European Party System. (DGAP-Analyse, 1)*. Berlin: Forschungsinstitut der Deutschen Gesellschaft für Auswärtige Politik e.V. <https://nbn-resolving.org/urn:nbn:de:0168-ssaar-61579-9>

²⁴ "Populist parties have more than tripled their support in Europe in the last 20 years, securing enough votes to put their leaders into government posts in 11 countries and challenging the established political order across the continent. The steady growth in support for European populist parties, particularly on the right, is revealed in a groundbreaking analysis of their performance in national elections in 31 European countries over two decades, conducted by the Guardian in conjunction with more than 30 leading political scientists": <https://www.theguardian.com/world/ng-interactive/2018/nov/20/revealed-one-in-four-europeans-vote-populist>

persecution, but who have not crossed an international border, remain excluded from the protection provided by the Convention.

The first steps towards the stipulation of the Convention came from the horrors of war Henri Dunant²⁵ witnessed during the battle of Solferino on 24 June 1859, which he described in his work “A Memory of Solferino”, written for the sovereigns of Europe. From 1864 to the present day, many Conventions of international human rights law have been signed: each one provides for the expansion and completion of the previous one, thus replacing it. The 1951 Geneva Convention and the 1967 New York Protocol regarding the status of refugees²⁶ are of great importance to this research. These two international instruments were adopted thanks to the intervention of the United Nations Organization: the Geneva Convention was adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (which entered into force on 22 April 1954). In the years that followed, with an increasing number of situations regarding the issue of refugees, the signatory states realized that they needed to extend the protection given by the Geneva Convention to new refugees as well. Therefore, the New York Protocol was adopted on 31 January 1967 by the United Nations General Assembly, in order to remove the deadline of 1 January 1951 set by the Convention as the time limit for potential events causing refugees, which entered into force on 4 October. This Protocol, an independent instrument to which States can accede without having adopted the Convention, provides for the elimination of both the geographical and the time limitations. However, it does not provide for any detailed definition of the procedures that need to be followed in order to be recognized refugee status, which is left to the discretion of the States. Indeed, there are two limitations in Article 1 of the Convention: a geographical limitation, which provides that only events occurring before 1 January 1951 in Europe shall be considered, and a time limitation, which limits the definition of refugee only to those who suffered persecution because of events prior

²⁵ <https://www.nobelprize.org/prizes/peace/1901/dunant/facts/>

²⁶ <https://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

to 1 January 1951; here, the objective of the signatory states was to limit their obligations only to people already recognized as refugees and to those who could become refugees as a result of events that had already taken place.

In Article 1 of the Geneva Convention, a key element is represented by the definition of the concept of refugee: it has universal importance, as it applies to anyone who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable or, owing to such fear, is unwilling to return to it”. In this definition, the concept of “well-founded fear of being persecuted” is essential, as it replaces the protection by categories used during the two world wars, according to which only people belonging to certain national groups could be assisted. This concept has both a subjective element²⁷, related to the individual and specific situation of the person who asks to be recognized as a refugee on the basis of fear of being persecuted, and an objective element to support it, that is, a factual situation. As for the determination of refugee status, there is no universal definition of “persecution” in international law. The reasons for persecution contained in Article 1, such as race, citizenship, religion or political view, have been interpreted in an increasingly flexible way with the evolution of international human rights law in the years following the adoption of the Convention: the definition of persecution has been extended to other kinds of violations of human rights. Therefore, actions that in themselves would not be considered as persecutory according to a rigid interpretation of the Convention, become persecutory in the light of the examination of the individual case.

One of the most important principles is certainly the one in the Article 33 of the Convention, that is, the principle of non-refoulement, according to which refugees cannot be rejected to the borders of

²⁷ <http://www.refugeelaidinformation.org/1951-convention>

territories where their life or freedom would be threatened on the basis of the reasons for persecution contained in Article 1²⁸.

Finally, in accordance with Article 1(F), the provisions of the Convention shall not apply to people who are suspected of having committed a crime against peace or humanity, a war crime or a serious crime against ordinary law before being admitted as a refugee, but also to people who are guilty of acts contrary to the purposes and principles of the United Nations²⁹.

3.2 The Common European Asylum System (CEAS)

In order to create a unitary asylum system within the borders of the European Union and to overcome the shortcomings of the Geneva Convention, the Common European Asylum System (CEAS) was established: it identifies common minimum standards within a legal framework covering all relevant aspects of the process of application for political asylum, from the assessment of asylum applications to the integration and minimum assistance of applicants. It was first proposed in 1999 by the Tampere European Council³⁰, when the first five-year work program of the European Union on Freedom, Security and Justice was launched. The prerequisites for its creation were approved a decade earlier, when the European Union did not exist yet. The signing of the Schengen Convention³¹ in 1990 regarding free movement within the former European Community, and more than that, the Dublin Convention³² regarding the determination of the State responsible for the assessment of an application for international protection, completely changed the approach of European states towards immigration and asylum. Then, with the Maastricht Treaties³³, the subject of immigration was included in the so-called “third pillar”, and both the Schengen and the Dublin Conventions were

²⁸ <https://www.unhcr.org/4d9486929.pdf>

²⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, 1 January 1992*, at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html> (hereafter: “UNHCR Handbook”).

³⁰ https://ec.europa.eu/anti-trafficking/eu-policy/tampere-council-conclusions-1999_en

³¹ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2802%29:EN:HTML>

³² https://ec.europa.eu/home-affairs/content/dublin-convention-0_en

³³ http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf

implemented. In 1997, the Treaty of Amsterdam transferred the issues of immigration and asylum to the first pillar of cooperation among Member States³⁴.

Since 2000, it has been strengthened by a number of directives and one of the first regulations on asylum was the former European Community Regulation No. 2725/2000, called Eurodac³⁵, that established an EU database for the collection asylum seekers' fingerprints, which allows all Member States to know which was their first country of entry. This instrument has been operational since 2003 and has been strengthened thanks to the new regulation currently in force, Regulation (EU) No. 603/2013³⁶: it imposed on Member States a reduction of time in the transmission of fingerprints, provided more protection of personal data collected as well as the use of the database in the fight against terrorism and organized crime. Indeed, Europol and law enforcement agencies of the EU Member States will be able to analyze and exchange the fingerprints contained in the Eurodac database order to carry out criminal investigations. Since the 1990s, the crisis of refugees fleeing civil wars - for instance in Rwanda and Yugoslavia - has led Europe to establish Directive 2001/55/EC, called the Temporary Protection Directive³⁷, and then a European Refugee Fund (ERF) was created and is renewed every five years.

The Common European Asylum System also regulates the period of time necessary for the refugee to be granted asylum status; indeed, Directive 2013/33/EU³⁸, amending the former Directive 2003/9/EC that established common rules on reception conditions, provides for minimum standards on the reception of asylum seekers in the Member States. This system guarantees health care, food and accommodation, while also facilitating the process of seeking employment, as a job must be granted within a maximum period of 9 months. This reception instrument has been strengthened by

³⁴ https://www.easo.europa.eu/sites/default/files/easo-introduction-to-ceas-ja_it.pdf

³⁵ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/eurodac_proposal_en.pdf

³⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0603>

³⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/temporary-protection/docs/executive_summary_evaluation_tpd_en.pdf

³⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

the new directive on detention of asylum seekers, which now provides more protection for vulnerable groups, such as unaccompanied minors and vulnerable people, as well as legal assistance against detention measures. The aim of the new directive is to reduce the possibility for EU Member States to carry out arbitrary practices detrimental to human rights.

Another important step forward in the creation of a common refugee management system was made thanks to the 2004 Qualification Directive: it recognized subsidiary protection and also provided the first definition of refugee at European level, which can be found in Article 2 of the current Qualification Directive No 2011/95/EU³⁹, which amended the previous legislation: “refugee” means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply”.

At the end of this system there is the Asylum Procedures Directive that was first issued in Directive 2005/85 /EC, with the aim of regulating the procedures for lodging an asylum application verifying it and assisting the applicant. However, even this directive was not applied homogeneously by several EU Member States, and it was amended through Directive 2013/32/EU⁴⁰. This reform has the merit of introducing clearer rules for asylum applications, as well as providing for accelerated procedures with the aim of streamlining the phase of verification of the requirements for granting refugee status.

One of the most important laws of the Common European Asylum System is the Dublin Regulation, which was incorporated into the legislative framework of the European Union in 2003 when the Treaty of Amsterdam came into force, by means of Regulation 2003/343/EC. Currently, the Dublin

³⁹ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>

⁴⁰ <https://eur-lex.europa.eu/legal-content/it/ALL/?uri=celex%3A32013L0032>

Regulation is in its third version, known as “Dublin III”, Regulation (EU) No 604/2013; no changes were made to the rule according to which the European country that played the greatest role in the entry is responsible for the examination of the asylum application. The criteria for establishing the state’s responsibility are organized in hierarchical order: from the applicant’s family connections within European borders to the recent possession of a visa or residence permit in one of the Member States, to the way the applicant entered the EU, that is, legally or irregularly.

Some of the most important changes made by Dublin III are the mandatory personal interview of the applicant and the strengthening of the right to family reunification and protection of minor asylum seekers. There is also a time limit for processing the asylum application, set at 11 months for taking charge of the applicant and no more than 9 months for their transfer. The extension of protection led to the recognition of the right to appeal against the transfer decision and the provision of free legal assistance. However, several EU Member States are still not complying with the Dublin Regulation, which delegates the issue of managing refugees to those countries that, because of their geographical position, are the first point of arrival of migrants, such as Italy, Malta and Greece.

The current migration and refugee crisis has revealed significant weaknesses in the implementation of both the Dublin regime and the CEAS: the Dublin III was not designed with the aim of ensuring shared responsibility for examining asylum applications, its main purpose since the beginning has been to assign responsibility to a single Member State; it identifies the responsibility by using a hierarchy of criteria, that is to say, family unity, possession of residence documents or visas, irregular entry or stay, and visa-waived entry. In fact, the most frequently applied criterion is the irregular entry, which means that the Member States through which the asylum seekers first entered the EU are responsible for examining their applications for asylum. Furthermore, the Dublin III was not designed with the aim of dealing with a lot of pressure or addressing a disproportionate distribution of applicants across the Member States; in some countries, this situation has become particularly noticeable: they have had some difficulties in applying the Regulation, especially with the registration

of asylum seekers and an insufficient internal capacity to punctually deal with them. The two most often applied criteria as a reason for relocation are those relating to documentation and entry (Articles 12 and 13), thus giving much of the responsibility to Member States at the external EU borders. This led to applicants avoiding being fingerprinted, thus contributing to secondary movements. Moreover, several Member States indicate that the interpretations of what authorities consider to be acceptable evidence in the receiving country place an unreasonable burden of proof on the sending country. While the data obtained through interviews are not considered sufficient evidence, those of Visa Information System (VIS) and Eurodac are accepted as evidence by almost all Member States and are the most often relied on when determining the country responsible for the processing of the application. The discretionary clause and provisions on dependent persons (Articles 16 and 17) dealing with humanitarian cases, with the exception of a limited number of countries, are rarely used, just like the criteria relating to family links, mainly because of the difficulty of obtaining evidence of family connections and tracing family members. As for the evidence accepted for these criteria, the Member States have different approaches, even though the main requirement is usually documentary evidence, for instance, providing birth or marriage certificate, which is often difficult for asylum seekers to do. All those differences make it difficult to determine responsibility, leading to lengthy procedures and secondary movements, with applicants who keep on travelling across countries.

On 6 April 2016, the Commission established its priorities for improving the Common European Asylum System in its Communication “Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe”⁴¹, and the need for reform has been acknowledged both by the European Parliament⁴² and by the European Council⁴³. The Commission stated that it would start working towards the reform of the existing Union framework on asylum, in order to establish a fair

⁴¹COM (2016) 197 final.

⁴² See for example European Parliament resolutions of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)); of 10 September 2015 on migration and refugees in Europe (2015/2833(RSP)).

⁴³EUCO 19.02.2016, SN 16/16

and sustainable system for determining the Member State responsible for examining asylum applications, and also to establish an enhanced mandate for the European Asylum Support Office (EASO), to prevent secondary movements, to achieve greater convergence in the asylum system and to reinforce the Eurodac.

On 4 May 2016, the European Commission presented a proposal for the reform of the Dublin system, which provided for the relocation of new applicants from countries receiving disproportionate numbers to other countries, and also for shorter time limits for forwarding transfer requests, receiving replies and carrying out relocations of asylum seekers between Member States. As regards the country responsible for examining the applications, a reference key was proposed in order to show the indicative total number of asylum applications that each Member State would receive if they were assigned according to the wealth and size of the population of the country, which are both equally important criteria. The application of a fairness mechanism was also proposed: once Member States find themselves with a disproportionate number of asylum applications, that is, above 150% of the reference number, all the new ones made after the automatic triggering of this mechanism would be relocated across the EU, and in the event that a State decided not to accept the asylum seekers from an overwhelmed country, a “solidarity contribution” of €250,000 per applicant would be made. New arrivals to Member States benefiting from the fairness mechanism would be relocated across the EU until the number of applications goes back below 150% of the reference number. The reform also provided an extension of the definition of “family members”, stronger guarantees for unaccompanied minors, and it aimed at discouraging secondary movements, thus obliging asylum seekers to stay in the Member State responsible for their claim.

On 19 October 2017, the LIBE Committee, to which the proposal was assigned, adopted a report on the reform and voted to start interinstitutional negotiations, and on 6 November 2017, the European Parliament confirmed a mandate for them. The main suggested amendments in the report are: dealing with family applications for international protection, while the applicant keeps the right to submit an

individual application; taking the population and economy of Member States as a reference point for the corrective allocation mechanism; keeping links with a specific country as the first criterion for relocation; creating a clear system of incentives and disincentives for asylum seekers in order to prevent them from escaping and the need to clearly defining the meaning of escaping; no relocation between Member States of asylum seekers who represent a security risk, don't need specific procedural guarantees and are unlikely to be considered international protection beneficiaries, while creating individual guarantees ad hoc for minor asylum seekers.

Unfortunately, on 4 December 2018, the Commission had to admit that it was impossible to reach an agreement, acknowledging the partial failure of the project to reform the CEAS⁴⁴. Moreover, it should be noted that, despite the important reforms made in 2013 to the Common European Asylum System, the difficulties that Europe had in managing the waves of refugees in 2015 and the continuous challenges that emerge every day in the control of migration flows, demonstrate the need for a comprehensive reform in the management of refugees at European level and for a regulation based on the principle of solidarity among the EU countries, in order to better manage migration flows in the medium and long term. A reform of the Dublin Regulation is necessary in order to put the principle of solidarity at the heart of the management of the migration crisis and to guarantee the compulsory redistribution of asylum seekers among the Member States so as to alleviate the pressure on the States that are most affected by the migration flows. Furthermore, it is essential to create legal and safe ways at European level for third country nationals to enter the common European area. Otherwise, the European Union won't get over the *impasse* in the management of the emergency and the unpredictability of migration flows, which led to heterogeneous solutions by the EU Member States, to the slave trade and to an increase in deaths at sea.

⁴⁴ <https://www.euractiv.com/section/justice-home-affairs/news/juncker-commission-gives-up-on-dublin-asylum-reform/>

3.3 Jurisprudence from the European Court on the Provisions of Protection of Asylum

The function of the Court of Justice of the European Union is to ensure that the law is interpreted correctly and applied in the right manner to serve its primary purpose without prejudicing any party seeking justice before the court. In fulfilling this role, the court is tasked with protecting migrants and asylum seekers by ensuring they get justice from the court and that treaties and laws pertaining to asylum and migration are interpreted and applied in the right manner. The court should ensure there is a uniform application of the law from one case to the other⁴⁵. The court has made different decisions regarding various provisions of the law on the protection of asylum. This section will analyze some of these cases.

In case number, C-652/16, the question before the court was the interpretation of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9) and of 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 (OJ 2013 L 180, p. 60)⁴⁶. The case was requested by a mother and her son and the deputy chairperson of the State Agency for refugees after they were denied the application for international protection for refugees applied by the mother. The court ruled that, in interpreting and applying Article 4 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, in assessing whether a person from a third country or a stateless person should be granted refugee and asylum protection, the provision must be interpreted to mean that the person is under serious threat of harm or persecution. There must be significant evidence to prove that the applicant is indeed under threat to be granted protection. Thus the court underpinned the meaning of

⁴⁵ <https://euaa.europa.eu/easo-annual-report-2018/12-jurisprudence-court-justice-eu>

⁴⁶ <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=519>

Article 4 of Directive 2011/95/EU to mean that protection is first granted to those who meet the requirements of the law. The court held that the applicants did not provide sufficient evidence to prove that they were under a threat of persecution or serious harm and thus could not be granted protection.

In interpreting and applying Directive 2011/95 and Directive 2013/32/EU, the court reasoned that the common procedure applied while assessing international protection applications must apply uniformly to international protection applied by different members of the same family⁴⁷. The applications are supposed to preclude such applications to the same assessment. These provisions thus assert that a person should not be solely denied international protection on the grounds that they have a family member applying simultaneously. The applications should be handled individually during the assessment to avoid such bias and ensure uniform application of the law. The court also held that one of such applications should not be prejudiced by being excluded or suspended from assessment until all the assessments are concluded. The jurisprudence developed here by the court is that all applications are to be subjected to the uniform application of the law and assessment without any discrimination or prejudice whatsoever. The same law and same procedures should apply equally to all international protection applications.

3.4 Definition of Legal issues emerging in the application of EU law in the field of immigration and asylum

3.4.1 Striking a balance between the national law of member states and EU law

Member states of European are required to harmonize their laws to ensure consistency with the European Union laws on refugee and asylum protection. Member states have their own migration laws that serve their own interest as well as those of their individuals. However, as a union, there must be unanimity so as to ensure uniform treatment of all refugees seeking international protection.

⁴⁷ <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=519>

However, the process of harmonization and mandatory application of EU law to member states has caused some complexities.

First, the European law may be clashing with the national laws on the same subject matter⁴⁸. A case to take into consideration here is the Dutch system of migration law. In the national laws, the Dutch system has the Aliens Act 200, which provides that refugees or asylum seekers be given residence permits for an indefinite period and fixed periods. However, the EU law was not consistent with these provisions. Thus, the Dutch were forced to push the provision for the length of residence permit to the background, thus causing a 'silent revolution' of the national migration system. In such a case where the EU law cannot marry successively with the national law. The national law is oppressed. Some countries may simply refuse to amend their domestic laws to form consistency with international laws. Such a situation may have political implications, or it may see some nations decide to pull away from the Union if their domestic laws are not being taken into account.

Secondly, there is an issue between the balance of rights of individual applicants and the interests of the Member States to control and restrict migration⁴⁹. In this instance, let us look into the Returns Directive and the Directive on Mutual recognition of Expulsion decisions on the one hand and the Family Reunification Directive and the Directive on Minimum standards for the reception of asylum seekers on the other. The first two legal instruments seek to protect Member States' interest in controlling migratory flows into their country by controlling who may return and who may be expelled from the state. From a literal sense, the latter provisions seem to protect the rights of individual third-country nationals. However, if you closely look into the latter provisions, you will notice that there is strive for a balance between individuals' and Member State's interests to control migratory flows. The Returns directive, for instance, provides for the principle of *non-refoulement*, right to family and the best interest of the child. This provision is seen as a way of protecting the

⁴⁸ <https://www.eustudies.org/conference/papers/download/109>

⁴⁹ <https://www.eustudies.org/conference/papers/download/109>

interest of individuals while still controlling migration. Some Member States at national levels tend to prefer a different balance to protect the rights of individuals and control migratory flows as opposed to that provided by EU laws.

For instance, in 2015, Romania, Hungary, Slovakia and the Czech Republic cast a vote against an order that required them to compulsorily admit refugees assigned to their relocation quotas⁵⁰. The Czech Republic, its defense, argued that they could not get out of their country at the risk of terrorist attacks by accepting a lot of refugees⁵¹.

3.4.2. Procedural issues

There have been questions as to whether international law regarding asylum and refugee protection fixes procedural parameters for the determination of international protection status. Jurisprudence is the subject matter that has shown that international law is responsible for providing the minimum procedural standard for applying refugee and asylum protection laws to guarantee protection. Each legal instrument on refugee protection sets its own minimum standards of procedure in a different way. The relationship between refugee law and human rights law sparks a discussion marred with controversies on which procedures should be followed between the two regimes. There have been arguments that the use of universal standards of the United Nations human rights systems has been detrimental to considering of relevant jurisprudence by regional human rights treaty bodies.

Human rights law contributes largely to refugee laws. Human rights have developed a broad, absolute, and non-derogable human rights-based principle of *non-refoulement*. It is important to note that most international treaties on human rights are silent on procedural parameters. This has made it difficult to set procedural parameters in applying human rights in refugee law. The refugee treaty laws have inferred procedural standards for determining refugee status and protection from human rights laws.

⁵⁰ <https://www.bbc.com/news/world-europe-42270239>

⁵¹ <https://www.bbc.com/news/world-europe-42270239>

3.4.3. Status Determination

Determination of refugee status is a procedural issue in the application of refugee and asylum law. It is a technical issue that gives the impression of being governed only marginally by international refugee law *stricto sensu*⁵². The discretion that states have to determine who is a refugee is owed to other member states rather than to the refugee. The Refugee Convention and its protocol provide the international law obligations owed by States Parties to any person who objectively fulfil the “refugee” definitions contained in these instruments⁵³. The principle of “effective implementation” is seen in treaties where states are required to adopt a minimum form of internal procedure for identifying refugees. Article 9 of the Refugee Convention requires the determination of a person's refugee status so as to fulfil a State's treaty obligation. However, despite Article 9, the appropriate form of procedures to determine refugee status lies within the discretion of each individual State. This is because the States have to ensure the international standard is consistent with their constitutional and administrative laws. This makes procedures vary from one member state to another, which makes it hard to identical hard procedures in the European Union countries impossible.

To have a consensus on refugee status determination among member states, there are common guidelines established under UNHCR in the EXCOM Conclusion No. 8 of 1977⁵⁴. These are:

- I. Every member state must have competent immigration officials at the border.
- II. Ensuring applicants receive the necessary guidelines on the correct procedure to use.
- III. Ensure there is a clear authority responsible for refugees. This makes it easier for them to identify the authority and thus expedites their recognition process.

⁵² <https://academic.oup.com/rsq/article/34/1/79/1579079>

⁵³ <https://academic.oup.com/rsq/article/34/1/79/1579079>

⁵⁴ <https://academic.oup.com/rsq/article/34/1/79/1579079>

- IV. Necessary facilities to ensure refugees are comfortable such as an interpreter to ensure once the process starts, it is not faced by procedural technicalities.
- V. Upon recognition, a person should be informed accordingly and given documents to certify he is a refugee. This will make the next steps easy and ensure his rights have warranted some protection.
- VI. If the recognition process is not successful, one should be given time to seek further formal reconsideration from a different or the same authority.
- VII. While recognition status is pending, and the process is underway, a person seeking refugee status should be allowed to stay in the country.

These guidelines ensure there is a bare minimum in ensuring “impartiality and objectivity” in the process of status recognition. These guidelines are non-binding. This means the member states do not have to entirely conform to them, but they can use them to act as a skeleton for their domestic law on refugee recognition.

3.4.4. Protection of rights of asylum seekers

A question that has arisen and requires the attention of expertise in asylum protection law is whether the European Union regime on refugees and asylum protection has achieved its goal to protect the rights of asylum seekers. The union has come a long way to protect these rights. There have been efforts in legal and institutional frameworks to offer asylum protection. However, the European Union regime has not been a hundred per cent in protecting the rights of asylum seekers. Some countries are more preferred by asylum seekers as opposed to others. Some refugees have been put at risk by the EU policies as opposed to granting them protection⁵⁵. This has been brought about by bad leadership, non-visionary policies and a lack of solidarity on human rights principles⁵⁶. These factor shave

⁵⁵ <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>

⁵⁶ <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>

contributed to migration challenges and violations of human rights. Below are instances that have arisen within the regime of the EU which have risked and violated the rights of refugees and asylum seekers.

In 2015, there was mismanagement and politicization of boat migration⁵⁷. This year, more than one million migrants and asylum seekers travelled by sea to the European Union. This created a humanitarian and political crisis prejudicing the rights of those who needed international protection.

The crisis was majorly created by EU policies that were designed to limit the arrivals of migrants and asylum seekers into the union. The policies are more inclined toward deterring rather than committing to the protection of human rights⁵⁸. Such policies include measures to punish asylum seekers who move from one country to another in the European Union and compulsory assessment to enable revoking of refugee status and international protection. For instance, one of the provisions of migration laws is family reunification. However, over the years, the European Asylum System has defied this provision by restricting bringing families together.

It may be argued that the European Asylum System has laws that provide for almost every situation that might challenge immigration and prevent the enjoyment of international protection. However, implementation and enforcement mechanisms are a problem. A good law without an effective enforcement mechanism just remains good law on paper. This might be the issue with the EU, where good laws are not brought to effect due to poor enforcement mechanisms. This is mostly contributed by political interests overshadowing the objective of the law.

The European Union is leaning more toward coming up with ways which will help them control the migration flows rather than protect and respect human rights⁵⁹. The European Union has policies in conjunction with Africa, Asia and the Middle East to prevent irregular migratory flows to Europe and

⁵⁷ <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>

⁵⁸ <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>

⁵⁹ <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>

remove those refugees and asylum seekers who had been rejected from the asylum protection system and remove irregular migrants from the territory of the union. Logically, it is important for the union to regulate and manage migratory flows better. However, the policies they have put in place are prejudicial to the human rights of asylum seekers, some of who had been given international protection before the policies came into place⁶⁰. The system, according to me, should not have regressive laws such as those policies seeking to remove asylum seekers who had already been granted asylum protection simply because they had been rejected or did it through irregular means.

3.4.5. The European Court of Human Rights Prioritizes State Sovereignty over Migrants' Rights

In the protection of human rights, the first principle should be respect for human rights. State sovereignty should be a second principle to consider⁶¹. However, the human rights courts consider the interest of the state first, thus undermining a human rights cause.

It is argued that the migrant case law took so long to develop in the ECtHR⁶². The European Convention of Human Rights was ratified in 1950, and it came into force seven years later⁶³. The convention was meant to protect all human rights, including migrants. Lawyers who represented migrants understood this and thus started lodging complaints and cases before the European Commission of Human Rights. However, they were not always successful; in fact, they were rarely successful. The Commission filtered the cases in high numbers. The commission declared that most complaints from migrants inadmissible for a very long time. This is why history has not recorded any complaints by migrants from the Commission. In 1985, the ECtHR adopted the first judgment in a migrant case which did not even give them victory.

⁶⁰ https://www.hrw.org/new_s/2016/11/23/EU-policies-put-refugees-risk

⁶¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303294

⁶² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303294

⁶³ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3303294

The obligation to protect the rights of migrants is often shouldered by the receiving state⁶⁴. The state is supposed to strike a balance between the interests of the state and state sovereignty and the rights of refugees⁶⁵. Migrants are vulnerable to human rights violations. This is because they are not actual citizens of the receiving state, and thus they are exposed to human rights violations. The law provides that human rights are inalienable and they should be granted and respected regardless of citizenship and residence status. However, states have the power to protect their borders and have their own domestic laws. Thus, they have the power to decide whether to admit refugees and asylum seekers or when to remove and expel them⁶⁶. Sometimes, state sovereignty tends to reign while the principle of protecting and promoting human rights is not adhered to.

Member states need to understand that unions developing international standards for immigration do not undermine state sovereignty⁶⁷. The aim of the international legal framework for immigration is to protect human rights. It is important for states to take note that international law does to compel or impose on states how to manage their migratory flows or dictate how the state will formulate their migration policies⁶⁸. The aim of international law on this subject matter is to create a sustainable basis for enabling long-term migration governance for individuals. The international standards lay a basis for states to form their own migratory policies⁶⁹. States need to understand that this does not undermine state sovereignty. It, in fact, enhances state sovereignty by giving states the choice to make their own domestic laws and policies on migration.

⁶⁴ <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>

⁶⁵ <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>

⁶⁶ <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>

⁶⁷ <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>

⁶⁸ <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>

⁶⁹ <https://www.un.org/en/chronicle/article/protection-migrants-rights-and-state-sovereignty>

4. CEAS Amendment Legislations

Europe is one of the target destinations for people seeking asylum from different regions around the world. In this case, the European Union serves as the protection area for those fleeing adverse situations, including abuse, war, hunger, and other situations that can harm the people. Asylum is one of the fundamental rights for refugee protection as an international mandate for countries as stipulated in the Geneva Convention of 1951. Seeking asylum is not an illegal act, and strict laws and regulations govern it. The countries under European Union usually support freedom of movement for people, including asylum seekers. However, in the recent years, managing migrants in the EU territory has been challenging⁷⁰.

Additionally, they have a common approach and the ideal of the fundamental value for facilitating quality standard refugee protection. In this case, the European countries should welcome the people seeking asylum in an honorable manner and ensure fair treatment. The individual cases of asylum seekers should be assessed equally guided by uniform standards. This approach guarantees equal outcomes regardless of where the application was made. There should also be high efficiency and fairness in the EU region without any form of abuse. However, regardless of these particular provisions, the flow of asylum varies significantly, and also there is no even distribution. To counter this trend, the EU formulated Common European Asylum System (CEAS). The report explores CEAS reforms and the proposed amendment legislations. The EU in 2020 proposed reforming the CEAS through a critical approach towards asylum and migration policies.

There are comprehensive sets of legislations critically developed for amending the CEAS from different prompts. Specifically, these changes are developed based on various main concepts, including asylum efficiency and returning procedures, fair sharing of responsibilities and solidarity, and strengthening partnerships or collaboration with third countries. The advancing crisis of migration significantly contributed to reforming the asylum rules used by the EU countries.

⁷⁰https://ec.europa.eu/info/sites/default/files/1_en_act_part1_v7_1.pdf

Nowadays, significant numbers from all over the world usually come to Europe in significant numbers. Due to the prevailing inequities, some asylum seekers usually feel that making applications accommodated in some countries will give them higher opportunities to access international protection than in other regions within the EU.

The main aims of making the amendments include enhancing the efficiency level of the system and boosting the level of resistance towards the pressure of migration, eliminating secondary movements and pull factors, formulating a rational and standard framework that facilitates management of migration and approaches asylum-seeking comprehensively as well as fighting cases of abuse and offering direct support to the countries which are most overwhelmed by the situation.⁷¹ The proposed amendments are based on nine different instruments, as discussed below.

4.1 The Screening Regulation

There is a formulation of a new proposal on the new regulations of screening. Quick identification for migrants is one of the main issues of concern when dealing with asylum seekers. The available data indicates that the arrival of migrants has changed from the people in need of international protection to the entry of individuals with mixed thoughts or intentions. This situation prompted the urgent need to formulate an effective process that supports advanced management of the mixed flow of migration into the EU territories. In this case, it is crucial to have effective means of identifying people who do not qualify to receive protection from the EU. It leverages enhancing asylum, border controls, and return procedures.

The new pact focuses on policy-making integration by incorporating policies in different areas, including protection of external border, migration, asylum, return, fight against the smuggling of migrants, and the third countries' relations. The specific principles should be directly applied to managing the migration process to control unauthorized movements and irregular entry of migrants.

⁷¹ <https://www.csis.org/analysis/deciphering-european-unions-new-pact-migration-and-asylum>

The proposal stipulates that there should be pre-entry screening for the people of other third-country nationalities who access the border without fulfilling entrance conditions or disembark after a successful search and rescue mission⁷².

The screening regulation proposal also includes the standard rules regarding the specific procedures which should be critically followed at the stage of pre-entry during the assessment of third-country nationals' personal needs as well as the uniform regulations on the timeframe for collecting the relevant details and information for identifying the relevant processes to be followed. Apart from facilitating the identification of a person, the screening process also supports other dynamics like understanding related security and health risks.

As proposed in the new system developments, the pre-entry screening is a comprehensive process that includes different undertakings, including the preliminary vulnerability and health checks, necessary identity checks based on the information stored in the European databases, and biometric data registration suitable databases. In Europe, the challenges involved in harmonizing international data on migration have been handled majorly through databases that can store information about the migrants. Also, there will be a security check using the queries of functional and recommended national and EU databases. In case of the third-country nationals' apprehension by the police officers, they are supposed to be subjected to the return procedures guided by the stipulated directives.

The screening change will significantly contribute to entry for the third-country nationals who don't have the requirements. This monitoring technique is based on adherence to the set fundamental rights during screening. Therefore, this proposal significantly provides a seamless link with all the migration processes and border control, enhancing overall efficiency.

Effective migration management should be beneficial to all entities involved, including the migrants, their origin country, and the destination country. In the proposed legislation, there is a provision to

⁷² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:612:FIN>

replace the Dublin system with new migration and asylum management system⁷³. This change aims to facilitate the better allocation of asylum applications amongst the member states through an advanced mechanism of solidarity. Additionally, it aims at ensuring that asylum applications are processed on time without possible delays. The currently functional Dublin system was first introduced in 1990 and underwent further updating in 2003 and 2013. The basis of this system is the identification of one EU member country to handle all the applications of asylum-seeking. This process is usually based on different concepts, including the criteria of the first country of entry. Practically, this situation means that only a few have been directly involved in the processing of asylum claims among the EU member states.

4.2 Comparison between Dublin II and III

The term ‘Dublin’ refers to the EU and member countries agreement regarding where the hearing and processing of asylum claims will be done. In this case, there is a shift in the UK from Dublin II to III. However, only a few changes were made between Dublin I and II as most of the previous regulations remained functional. The Dublin II under the council regulation number 343/2003 stipulated that only a single EU member country was legally bound to process the asylum applications. In this case, Dublin II proposed that the principle of uniting family was crucial, and an unaccompanied minor applied for asylum. There were relatives in the EU region, the State where they resided was responsible for processing the application⁷⁴. If the person seeking asylum had a valid Visa or other legally valid documents, the State of issuance was responsible for the application assessment. In a scenario of irregular border crossing by the asylum seeker into an EU Member State, that State was mandated to examine asylum applications.

Also, when the asylum seeker made the application in an EU state or its airport area of international transit, that member state was legible for processing. For humanitarian reasons, one State was legally

⁷³ https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en

⁷⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133153>

bound to accept asylum application examination from another EU State. Therefore, the designated EU member state responsible for facilitating asylum application under Dublin II provisions was supposed to be under the charge of the applicant and the application process. However, if one member state established that the other one was responsible for the asylum processing, a request was supposed to be made for such change and confirmation to establish the reality. The Dublin II was specifically based on these provisions for preventing possible asylum procedure abuse.

The Dublin III number 604/2013 regulation was introduced in 2013 as the replacement of Dublin II through some regulation on asylum processing. The new regulations applied to all the EU states except Denmark.⁷⁵ Most of the regulations were majorly based on Dublin II, and they don't vary greatly. As in the first Dublin, the standard principle was that the first EU member country where the asylum claim was first reported or where the initial fingerprints were taken and stored was accountable for facilitating the asylum processing. The EURODAC system, composed of databases for fingerprinting when handling the illegal migrants to the EU, remained functional.

In Dublin III, there were notable changes regarding how the information was handled for the asylum seekers. For instance, it was agreed that asylum seekers should be well informed before the commencement of the Dublin process. Also, under this provision, there should be a formal interviewer. If need be, the asylum seeker was supposed to be given an interpreter to attain the relevant facts regarding the process. Under Dublin III, information sharing was prioritized, and the asylum seekers attained the authority of appealing against the regulations. The legal right to appeal the Dublin transfer before implementation was a new provision. In Dublin II, appealing was not supported, but Dublin III even went a step ahead to include the possible reasons to be presented.

The detention of asylum seekers in Dublin III was also considered, and there was a guiding rule. It states that generally, people were not entitled to detention simply because there was a Dublin plan for

⁷⁵ <https://eur-lex.europa.eu/eli/reg/2013/604/oj>

transfer.⁷⁶ It was only if there was a possible threat of transfer absconding when detention was necessary. Therefore, with the appealing right in illegal detention, the asylum seekers attained the power of challenging such decisions. The other small change was based on the timeframe for placing the asylum application transfer to another member country which was set to three months. Also, if the main transfer issue was on matching fingerprints under the database of Eurodac, the duration was reduced and set at two months for Dublin III.

There was also a new development about the asylum seekers under the age of 18 years. The change was specially formulated to facilitate the welfare of those seeking asylum on their own, majorly referred to as unaccompanied minors. The main issue, in this case, was minimizing the need for transferring the minors. It will be better if they stayed in the member country they arrived immediately. Dublin III introduced the concept of making decisions based on what majorly suited the interests of unaccompanied minors' best. Therefore, the meaning of family was elevated in regards to the handling of the minors, and they were granted better terms like the freedom of being reunited with the other relatives if the decision suited them. To a great extent, this new policy suggested that the EU member countries should try and find the relative of unaccompanied minors. Both I and II Dublin affirm that the family unit is the main priority in facilitating the welfare of unaccompanied minorities.⁷⁷

Dublin I and II regulatory policies have been subject to continued criticism over their inefficiency in effectively facilitating the asylum application processing and inability to counter the flow of migrants to the EU member countries. The Dublin I is also linked with unfair workflow. Most of the asylum application processing took place in the first EU country where the migrants arrived, minimizing their chances of pursuing international protection in any other country. However, significant migrant populations usually apply for asylum in other different countries despite having such regulations

⁷⁶ <https://righttoremain.org.uk/third-country-cases-dublin-iii-regulations-compared-to-dublin-ii/>

⁷⁷ https://www.cidob.org/en/publications/publication_series/notes_internacionales/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work

rather than the first arrival destination. Also, inefficiency is reported in transferring the responsibility of asylum application processing to another country. The Dublin II and III have also been linked with abusing refugee rights. This outcome is linked to the ineffective assessment of the asylum application, as evident in all the EU member countries. Although some nations have been pushing for the idea of responsibility sharing in handling the asylum processing activities, some still focus on their national interests hence complicating how different functions are undertaken.⁷⁸ As evident in Dublin II and III, when specific policies don't achieve the target objectives, the newly introduced regulations do not vary. Hence, the main concern has been majorly on the poor implementation of the asylum processing policies.

The ongoing crisis of migration showcases the lapses in the current system of operation, which subjects a high burden to the member states on the frontline to process the applications. The legislation proposal of 2020 focuses on replacing the Dublin system with a new management system with different aims, including establishing effective governance to ensure better policy implementation and management in the EU.⁷⁹ It also aims at effectively establishing one EU member state that will undertake the examination of asylum applications. There is also the objective of ensuring fair means of sharing responsibilities among the EU member states guided by a new solidarity mechanism. Also, there is the aim of discouraging abuse and preventing secondary movement for the people making asylum applications in the EU.

The challenge of managing the issue of migration by identifying those legible for effective return and the individuals who should be granted the international protection should be handled by the EU collectively rather than by a single state. Given that currently there are no practical guidelines on responsibilities, a functional EU framework for managing the interdependence on decisions and policies of the member states is critically needed. The amendment proposal significantly considers

⁷⁸https://www.cidob.org/en/publications/publication_series/notes_internacionales/n1_135_por_que_dublin_no_funciona/why_dublin_doesn_t_work

⁷⁹ <https://www.consilium.europa.eu/en/policies/eu-migration-policy/eu-asylum-reform/>

migration dynamics, including the need for practical coordination efforts and the ever-increasing complexities.

To mitigate these issues, the amendment proposal includes means of strengthening the return formula for irregular migrants. This provision supports close cooperation between the EU member states and the third countries where the migrants originate. The cooperation will be extended such that the member countries will assist each other in returning the unauthorized immigrants through a solidarity partnership program.⁸⁰ This action plan includes all the undertakings procedures involved in returning the migrant, including counselling, policy discussions with third countries, and other relevant support mechanisms. There is also an aim of further supporting the return policies and framework by coordinating operations closely with the third countries. Through the solidarity forum, it will be easy for the member states to respond effectively to the increasing migration pressure.

Overall, the main changes made on the Dublin III include establishing an effective EU governance to ensure that there is better implementation and management of different policies. Additionally, there is a plan for creating effective ways of identifying the EU member state responsible for asylum processing. There is also a new mechanism of solidarity whereby the EU member countries will be entitled to sharing different responsibilities. The new policies will also focus on preventing secondary movements and preventing abuse of asylum seekers in the EU territory.

Generally, Dublin III was meant to be an improvement on Dublin II. Most of the rules in these two agreements stay the same, albeit with very minimal alterations. Even though there is so much criticism of Dublin III, some cases have been decided based on it, upholding its spirit.

One landmark case is the *European Commission v. Hungary*⁸¹. Hungary amended its laws and put in place regulations with provisions that added a further ground of inadmissibility for an application of

⁸⁰ <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1601291110635&uri=COM:2020:610:FIN>

⁸¹ European Union, Court of Justice of the European Union [CJEU], *European Commission v Hungary*, C-821/19, 16 November 2021 <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2109>

international protection and also criminalized activities that facilitated lodging asylum applications by persons not entitled to asylum under Hungarian law. The penalty for persons suspected of committing this offence was a forfeiture of their freedom. They would have their movement restricted. Hungary failed to honor the spirit of the Dublin agreement and reception conditions, and the European Commission brought an action for failure to fulfil its obligations before the Court of justice. The Court upheld most of the Commission's actions.

The Dublin III is still a work in progress, and some issues are still being sorted out as a matter of law. The council of state in the Netherlands has submitted a preliminary question to the Court of Justice of the European Union on the suspension of time for a transfer after an interim order in an asylum case⁸². The Administrative Jurisdiction Division of the Council of State of the Netherlands (Division) posed questions about a preliminary ruling to preliminary ruling to the CJEU in three cases about the time limit of a Dublin transfer. The issue for determination was whether the suspension of the time limit after the Division had issued an interim order at the request of the State Secretary is contrary to the Dublin III Regulation specifically, Articles 27(3) and 29. The request is still registered under the CJEU, and a ruling is being awaited.

4.3 Proposal on the Revision of Asylum Procedures Legislation

There are proposed changes of changing the asylum procedures, which will create a new face of migration. The set asylum procedures regulations critically explain the specific processes that the EU member states are supposed to critically follow to confirm or decline the right of accessing international protection. In this case, the proposed amendment is categorically based on formulating a regulation of having the standard procedures of facilitating international protection. The rules will specifically introduce simpler processes in the EU member countries, offer better protection to the

⁸² *Netherlands, Council of State [Afdeling Bestuursrechtspraak van de Raad van State], State Secretary for Justice and Security v Applicants, 202001503/1/V1, 202005113/3/V1 and 202102273/1/V1, 1 September 2021*
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2032>

vulnerable asylum seekers, and guarantee improved rights, prevention of abuse by introducing more strict rules and establishing a more specific basis for examining the applicants.

Additionally, the proposals aim to introduce new and more effective border procedures which will increase the efficiency of returns. In this case, there will be a closer link between asylum and the procedures of return. All the migrants seeking asylum and their application rejected will be served with a return decision. Appealing against the return decision and asylum processes will be resolved in the same tribunal or court. Therefore, such an action plan will ensure there is efficient judicial supervision of the process. Also, this amendment has unique tools for handling different unfounded applications of Asylum.

There is a crucial need for a seamless linkage between the return processes and asylum applications to mitigate many rejected applications, as evident in past situations. The new pact is developed based on the standard system of asylum in Europe, which was formulated in 2016. The EU member states must understand their joint responsibility and roles in facilitating the implementation of different asylum processing procedures without fail.

The new pact proposal cites that it is crucial to uphold the main principles and the critical fundamentals included in the EU framework to recognize all the international provisions regarding the fundamental rights for refugees. The interests of children are also supposed to be given priority.

⁸³Also, it is crucial to uphold the rights to accessing effective remedies. Further, the new pact states that all the possible impacts from the decision return will be revoked, especially whereby the asylum applicant is granted the opportunity to apply for international protection. The European Union Asylum Agency operations and mandate have been extended under the new pact to include the monitoring role and ensure adequate compliance with the stipulated regulations.

⁸³ <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1601291268538&uri=COM:2020:611:FIN>

The procedures at the border point have been made more flexible and efficient through accurate adaptation to migration flow. There is the provision of more grounds for utilization as a means of advancing the capability. The efficiency of border procedures will be achieved mainly if it is initiated from the entry point. In the process, an asylum applicant may also be referred to a third country deemed to be a suitable settlement site after a comprehensive assessment of the situation. For the first-time applicants of asylum, the procedures at the border in the new pact were allocated a timeframe of twelve weeks maximum. If the operational capacity is overwhelmed, there is an allowance for adopting temporary mechanisms to serve asylum seekers effectively.

The migrants who fail in the application should be settled outside the member country's borders unless there are exceptions like inadequate facilities within the territory. The border procedures are applicable whereby the migrant is a threat to the territory's security and reports of abuse. Also, the new pact does not support appealing against the outcomes of the asylum procedures. Therefore, there is a limitation to the automatic action plan of lodging an appeal in this regulation. The applicant is also entitled to an explanation as to why the application was rejected. The application of new border procedures will enhance efficiency and security and ensure satisfaction to the asylum seeker.

There are also proposals to expand the eligibility criteria for the asylum seekers granting immediate protection status and accompanying it with a predictable and effective solidarity mechanism⁸⁴. The eligibility criteria of beneficiaries of immediate protection status should be expanded in order to include refugees in line with the definition of the Geneva Convention as well as persons at serious risk of, or who have been victims of, systematic or generalized violations of their human rights (Article 10.1). Another proposal is to expunge procedural derogations and exceptions. Asylum crisis management procedure Articles 4 and 5 should both be deleted. Article 4 and 5 extend the possible use of the border procedures in crisis situations and give the Member States the option to extend the

⁸⁴ "The European Commission's Legislative Proposals In The New Pact On Migration And Asylum | Think Tank | European Parliament". [Europarl.europa.eu](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)697130), Last modified 2022. [https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2021\)697130](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2021)697130).

length of the asylum border procedure, which include an additional ground for presuming a risk of absconding, which risks leading to the systematic use of detention. This can lead to the violation of human rights.

4.4 The Eurodac Regulation

Specifically, Eurodac refers to the EU's database of fingerprints, which helps store related data and make comparisons for assessing asylum seeker identity. This technological competence is suitable for establishing whether an asylum seeker has already applied in another member state. The previous revision of Eurodac in 2016 significantly boosted its application scope through the advanced means of identifying irregular migrants. It has been highly reliable in implementing the Dublin regulations by determining the member country responsible for processing the application. The proposed policies aim to enhance the scope of obtaining and assessing the personal information of the migrants and easily capture those who rely on deceptive techniques to avoid recognition. The use of deceptive strategies to avoid identification is one of the main issues which have been complicating and frustrating the action plans of refugee identification.

The proposed changes focus on increasing personal data forms to be obtained and stored in the system⁸⁵. There is also the idea of increasing the period of detaining asylum seekers. In this case, other than the fingerprints, other forms of data to be collected as proposed include a facial image, full names, place, and date of birth, nationality, sex, travel information and the documentations used, member state allocated, and other related information including the date of transfer to the specified State.

Also, the proposed Eurodac regulations empower the EU member states and impose sanctions on the people who fail to comply with the asylum application procedure. Under such situations, there is also an allowance for detention as the last resolution for the national identification identity of the asylum

⁸⁵ <https://www.ecre.org/wp-content/uploads/2021/01/ECRE-Working-Paper-Transforming-Eurodac-from-2016-to-the-New-Pact-January-2021.pdf>

seeker. The new regulation significantly accommodates the welfare of children and upholds their fundamental rights. In this case, the children's threshold has been further reduced to six years. Children will be assisted in understanding the process of data collection by an adult or selected representative. Throughout this process, the integrity and dignity of children will be honored.

The period of retaining the illegal migrants was added up to five years. All the gathered data will be available for comparison. The idea of enhancing data efficiency aims at increasing the overall identification accuracy. There are strict means of data transfer to the third country, majorly for identification, return re-documentation, and readmission. Consent will be obtained from the asylum seeker before information transfer. Personal rights have been significantly enhanced by the new proposal, majorly by increasing access to information by being informed about every aspect of the process. There is also the provision of recording a formal complaint to the national supervisory authority in case of any concerns. In the situation of children, enforcement of supportive laws will be done based on the legal processes of the asylum application processing member state.

There are also specifications on the type of data that EU-LISA is supposed to be produced according to the Eurodac database records. This action plan will be undertaken based on different aspects, including apprehensions count and movement. In this case, the EU-LISA is ideal for establishing, implementing, and hosting the statistics and data in its highly technical sites⁸⁶. This regulation also accommodates the interests of the third-country nationals whose welfare had been abandoned in the monitoring radar of the EU. The Eurodac can be easily used as a means of implementing the administration as well as resettlement laws.

The proposed Eurodac regulations additionally stipulate that there is also the inclusion of authentic document inclusion like birth certificate, driving license, and marriage certificate among others to the type of documents stored in the Eurodac system. It is only the documents that have been authenticated

⁸⁶<https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1601295417610&uri=COM:2020:614:FIN>

that will be stored in the system. Overall, with the integration of personal data, the proposed Eurodac regulations will significantly help in effective law enforcement and re-conceptualize the Dublin regulations effectively and make them functional and reliable tools of migration regulation.

4.5 The Facilitators Directive

In the 2020 pact of migration, there is a provision of new guidance regarding the facilitator's directive. In recent years, there have been aggressive confrontations between the NGOs and other groups offering humanitarian assistance to the migrants, risking such groups' criminalization. The other related constraint has also been identifying legitimate groups offering humanitarian assistance and the smugglers who risk the lives of migrants and regional security. Hence, the core objective of the proposed facilitator's directive includes disrupting the criminal activities, which is a risk to the society's security stabilization and the lives of migrants. Additionally, the other main aim is preventing the criminalization of humanitarian service organizations⁸⁷. The risk of criminalizing humanitarian assistance has been linked to poor communication between the experts at the ground and the authorities.

There is substantial evidence on the implementation gap between the EU and international legal provisions and the United Nations framework regarding the criminalized act of people smuggling⁸⁸. Therefore, the facilitation drive cannot be developed in a risky way that will criminalize the delivery of humanitarian aid to the migrants. Under the new package, there is still a focus on imposing high penalties on individuals who facilitate illegal or irregular transit, entry, and residence to non-EU citizens. Through such an action plan, it will be possible to effectively fight the criminal networks involved in migrant smuggling. Most of the previous provisions will remain functional, and only a few specific changes have been introduced.

⁸⁷ [https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52020XC1001\(01\)](https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52020XC1001(01))

⁸⁸ [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU\(2016\)536490_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU(2016)536490_EN.pdf)

All the EU member states are mandated to implement this directive, including formulating other policies and legislation under the specified scope. As an organized criminal activity, the smuggling of migrants will be significantly tamed and controlled given the strengthening of the EU under the new protocol. However, the new proposal has certain exemptions whereby the idea of facilitating illegal entry may not be categorized as a criminal activity. This will be the case when the illegal entry into the EU was facilitated for humanitarian response. In the national legal practices, such occurrences are exceptional and will be accommodated by the law. The EU parliament is urging the member countries to transpose the exemption of humanitarian assistance on the migrants. Also, the member states have been given the obligation and mandate to distinguish between the specific activities regarding the smuggling of migrants and outline the humanitarian response undertakings.

4.6 New Resettlement Framework and Complementary Pathways

The resettlement and the complementary pathway majorly aim to actualize sustainable efforts ideal for providing and enhancing safe and legal solutions for the asylum seekers legible for international protection. The introduction of this permanent resettling program will be a replacement for the current EU ad hoc schemes of resettling asylum seekers. The core aims of this proposal are to manage the high risk of increased cases of irregular travels to the EU and come up with a long-lasting solution to this particular challenge. Also, there is the focus on creating standard rules for the humanitarian admissions and resettling of migrants. The proposal is also geared towards contributing to the global schemes of resettling asylum seekers and other initiatives of humanitarian admission. Notably, the framework aims to provide direct support to the third countries that accommodate large populations of people in need of international protection.

Precisely, the EU member states should formulate supporting legal pathways for the legal asylum seekers pursuing protection. In this case, international solidarity is crucial between different countries, including asylum applications and transit. Therefore, increasing the overall collaboration among

different states responsible for resettling the asylum seekers and humanitarian admissions will increase the chances of success.

There is also a focus on increasing the efforts of actualizing the previous resettlement action plans amid the advancing effects of the coronavirus pandemic. The proposed resettlement plans will be assessed based on the mid-term achievements. All the EU member states have set a target of resettling around 29500 migrants by the end of 2021. Given the pandemic prevalence, a joint action plan is highly recommended to adopt new and advanced means of resettling the large population of people in need of international protection.⁸⁹ Given the severe interruptions caused by the coronavirus pandemic, the member countries should set up new programs of resettling the migrants as a means of accommodating their increased population. Actualizing such action plans will ensure a significant population of migrants has been fully accommodated primarily through the collaboration of EU member countries.

The other main concern that has been a significant concern in resettlement is the quality of these programs, which has been adequately considered under the new asylum management proposal. The member states have been tasked with ensuring that all the specific resettlement activities are of high quality throughout the process. This function includes orientation in the pre-departure phase and all the related activities after the arrival. Hence, there should be the required standards of reception capabilities and even consider the personal concerns of asylum seekers like health stability. It is also required that the EU member countries develop effective support networks for the asylum, including formulation of social integration plans and programs. To ensure that these objectives are being achieved as planned, the member countries should conduct continuous monitoring to assess resettlement schemes' efficiency levels.

⁸⁹ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32020H1364>

The new provisions also dwell on enhancing humanitarian in the course of admission. The EU states should increase admissions in their respective territories, especially for the people with different vulnerabilities. They are also supposed to provide other forms of assistance, including legal opportunities ideal for accessing protection. Re-unification of family members should also be prioritized through action plans like programs of family re-unification. When designing the humanitarian admission models, it is crucial to consider and integrate the national priorities and also factor in the external policies and interests of the EU. The new policies further insist on joint operations with other entities like civil society organizations. In this way, it will be easy to expand the sponsorship schemes at the community level, which is a crucial pathway for humanitarian admissions.

To enhance the process efficiency level, it is crucial to have a functional criterion for choosing qualified people for international protection without possibilities of discrimination and guaranteeing transparency. Communication in the entire process and open channels of information exchange are ideal for ensuring close engagement and cooperation with the private sector stakeholders. This approach will ensure there is increased efficiency in the sponsorship schemes. The new pact also recommends the use of existing opportunities of co-funding to support the process.

It is also crucial to support the beneficial activities that will be mainly beneficial to the welfare of asylum seekers and enhance the quality of their lives, including accessibility to job and education opportunities. To ensure there are long-term achievements, the EU member states should ensure there is the facilitation of resettlement at the global scale and collaborating to boost their functional capacities. The new pact also supports the strategy of monitoring and ensuring humanitarian admission schemes are accurate and ensuring that the Commission is well informed about all the activities in the process. As a means of accelerating the resettlement program outcomes, the EU states should utilize the available opportunities of financial access to support their operations.

4.7 A new Crisis and Force Majeure Regulation

This proposal was announced in September 2019 and was presented by the European Commission on 23 September, 2020. Its purpose was to set the basis for regulating both the Council and European Parliament on matters concerning force majeure and crisis in the fields of asylum and migration based on specific reasons and objectives.⁹⁰

Its objective was to start a comprehensively broader skeleton approach to migration management, supporting and enhancing shared trust among the Member States.⁹¹ This newly proposed pact is grounded on fair responsibility sharing and principles of solidarity. It aims at bringing together policies regarding asylum, migration, return, third-country relations, and protection of the borders.

The new pact contains new elements meant to change the Common European Asylum System for the years 2016 and 2018. The new proposal components aim to establish a balance between the shared framework by incorporating integrated policies that have a more comprehensive, coherent approach to migration and asylum management for both internal and external components. The new approach will bring in diverse and continuous support to the third countries faced with pressure risks. It will also make the management systems for asylum and migration well-organized and efficient.

The crisis instrument addresses the exceptional situations of the large numbers of stateless persons or the nationals of the third country who arrive in any of the Member States. Due to their large numbers and nature, it becomes impossible for Common European Asylum and migration management systems to apply.

The solidarity mechanism provides a broader approach where the Member States can relocate or supports an approach where the Member States can assist each other to handle return as a return

⁹⁰[https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI\(2021\)659448#:~:text=In%20September%202020%2C%20the%20European,pact%20on%20asylum%20and%20migration.&text=The%20'EU%20Legislation%20in%20Progress,pact%20on%20asylum%20and%20migration](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2021)659448#:~:text=In%20September%202020%2C%20the%20European,pact%20on%20asylum%20and%20migration.&text=The%20'EU%20Legislation%20in%20Progress,pact%20on%20asylum%20and%20migration).

⁹¹ <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1601295614020&uri=COM:2020:613:FIN>

sponsorship.⁹² There are derogations concerning the border procedures applicable to the third-country nationals concerning their applications if their European Union-wide first instance rate of recognition is 75% or below.

This proposal is consistent with the New Pact communication regarding Asylum and Migration and the guidelines that supplement it. These include the Regulations for Asylum and Migration Management and a proposal for setting Regulation Procedures for Screening and Asylum.

On Interactions with Article 78(3) of the Treaty on the Functioning of the European Union, the proposal has rules that allow broader coverage and faster procedures than the previous Asylum and Migration Management proposal regulations. This makes it efficient and effective to handle crises. It also has rules for solidarity for the Member States in crises without stereotyping and hence complies with the emergencies outlined in Article 78(3) TFEU.

The proposal consists of the broad spectrum of migration management as outlined in the Migration and Asylum New Pact. It will set migration policies that incorporate relations between the third countries, set effective roadmaps to the EU, incorporate the external border into the EU migration system, establish efficient and fair asylum and return procedures. Also, it sets up the basis for the Schengen system with confidential commands and dedicated policies to bring together the third-country nationals into the EU.

The proposal has several provisions aimed to give responsive protection in situations involving crisis. Hence, it is adopted from the points (c), (d), and (e) of the second paragraph in Article 78 and point (c) TFEU in the second paragraph of Article 79, which are reflective of the legal procedures of the legislature. The variable geometry of the proposal binds Ireland about the position of the United Kingdom and Ireland in the protocol, as appropriate to TEU and TFEU. Denmark is not inclusive in

⁹² <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1601295614020&uri=COM:2020:613:FIN>

the Council adoption as per Title V of the TFEU. However, Denmark is bound to the Dublin Regulation under the international agreement signed European Commission in 2006.

The proposal has factored in three agreements: The agreement concluded in 2001 that associates Iceland and Norway, the 28 February 2008 agreement that associates Switzerland. The protocol concluded on 7 March 2011 that associates Liechtenstein. It thus has a broader scope for the above agreements, and it will allow the countries of concern to accept Dublin or Eurodac acquis. The acceptance of these agreements would comply with Article 8 of this Regulation proposal.

On the issue of subsidiarity, the proposal provides guidelines with respect to Title V of TFEU on Area of Freedom, Justice, and Security that confers authority to the European Union on these aspects.

On proportionality, the proposal addresses specific crises brought by increased numbers of nationals from third-country that cross into Member States territory. The proposal is proportionate with the regulative safeguards set to establish a balance between the Member States' needs to handle crises with equality and legal certainty for all derogations. It also allows extensions for time limits set by this proposal in cases of force majeure.

On the choice of Instruments, the proposal is used to set rules for the Member States to enable them to handle situations of crisis that arise from the mass influx of nationals of the third country who enter into the territories of Member States. It is hence a regulation that sets derogations based on the asylum and returns procedures. It has directly applicable provisions that necessitate effectiveness and uniformity needed European Union application procedural rules on asylum for crises and force majeure.

4.8 A new migration preparedness and crisis blueprint

This new Migration Preparedness and Crisis Blueprint dated 23 September 2020 provides Commission Recommendations EU 2020/1366. The proposal gives recommendations for the

European Commission to the treaty on the European Union functioning based on Article 292 provisions.

The proposal aims to replace the existing Dublin Regulation and re-launches the Common European Asylum System (CEAS) reforms by establishing a common framework. The new proposal sets the basis for a more comprehensive framework and approach for the existing system to have a broad spectrum and coverage for the government approach. It aims at ensuring coherence and effectiveness of the European Union measures and actions it takes on its Member States. The proposal aims to establish a more comprehensive mechanism and approach that will support normal operations of the migration system to make the criteria effective, straightforward, and set efficient mechanisms for identifying the Member States responsible for internal protection application examination.⁹³ Thus, this proposal will incorporate a mechanism for pre-entry screening subject to all third-country nationals in the external border and have not met the entry conditions. Also, it addresses issues arising for these third-country nationals after disembarkation due to the search and rescue operation (SAR).

The proposal is adopted to establish efficiency in the migration management. This undertaking will be done by setting monitoring measures and foretelling the migration flows, establishing resilience and preparedness, initiating plans to counter migration crisis that involve the Member States, the Commission, the Council, the European External Action Service (EEAS), the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom. Also, other entities included are Security and Justice, the European Border and Coast Guard Agency (Frontex), the European Asylum Support Office (EASO), the European Union Agency for Law Enforcement Cooperation (Europol), and the European Union Agency for Fundamental Rights (FRA). They form the actors operating within the Migration Preparedness and Crisis Blueprint

⁹³ <https://www.statewatch.org/news/2020/september/eu-the-new-pact-on-migration-and-asylum-documentation-context-and-reactions/>

framework. The actors are to work within this network to support the implementation of the new broader framework of operation for more efficient and responsive migration management.

The proposal has two stages. In the first stage, the actors provide adequate and timely information to keep awareness of the migration situation, allowing them to have a better forecast for timely warning on any impending migration crisis types. The second stage is a continuation of the first stage. In this case, it should apply to all development or situations within the European Union or in its Member States and whose existence affects the Member States or exerts pressure on their asylum, border management system, migration, or ability to cause interruptions to its operations.⁹⁴ Thus, the second stage is composed of situations defined under Article 1(2) of the proposal, which outlines the situational crisis and force majeure under the migration and asylum or the stipulated situations under Article 2 (w) on Regulations for Asylum and Migration Management.

The proposal states that the actors should come up with a point of contact to have a steady and operational network among themselves. The point of contact will allow a steady flow of information on the Member States' situation and give reports on migration management for appropriate measures. The discussions are to be held within strategic and technical levels, probably within political levels of the Council or relevant preparatory bodies. The proposal stipulates that the points of contact set should keep communicating with other points of contact and responsively communicate to the point of contact of the Commission and provide the relevant information, give guidelines, and organize measures to embrace when responding to the crisis. The communication should be done through existing channels of communication. IPCR platform is given priority in this proposal as the preferred communication channel due to its functionalities about implementation guidelines. The annex of this proposal gives workflow and governance for the Migration Preparedness and Crisis Blueprint.

⁹⁴https://ec.europa.eu/info/sites/default/files/commission_recommendation_on_an_eu_mechanism_for_preparedness_and_management_of_crises_related_to_migration_migration_preparedness_and_crisis_blueprint_0.pdf

The proposal outlines principles of operation as timely reaction, anticipation, coordination, solidarity and fair responsibility sharing, and flexible allocation of resources. The main objectives under stage one are to ensure more coordination within the actors by sharing situational awareness that is common amongst each actor, developing timely warnings and forecasting systems for them to help establish effective resilience within the Member States in the events of the migration crisis. Under Stage Two, the proposal's objective is to necessitate a frequent, efficient, and organized response to the European Union to the migration crisis. This would be achieved through timely provision of updated information to the decision-makers at the European Union to set awareness on the operational situation and support monitoring, communication at the technical actor levels, and coordination at the ground.

4.9 A new Recommendation on Search and Rescue operations by private vessels

This proposal (EU) 2020/13 dated 23 September 2020 was presented in conjunction with other Member States operations undertaken by private-owned entities or vessels owned to sever the role of rescue and search activities. In this recommendation, the European Commission proposed the Member States should work together with each other with regard to activities that are carried out by vessel-owned or privately owned entities to meet the purposes of search and rescue activities (SRA)⁹⁵. This approach aimed to reduce the number of fatalities at sea, ensuring effectiveness in migration management with respect to the relevant legal obligations, and ensuring safety in navigation.

The proposal specifically outlined that the flag and coastal Member States share information amongst themselves at convenient and frequent times concerning the vessels involved in rescue activities and the firms that own or operate them based on the international and Union law. These regulatory policies are inclusive of the European Charter of Fundamental Rights and personal data protection. The recommendation outlines that the Member States should cooperate and work together through the Commission Contact Group while collaborating with the relevant stakeholders, among them being

⁹⁵ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32020H1365>

the private entities that operate or own the vessels for undertaking operations on search and rescue in the sea.

Besides, the recommendation holds that the Member States should work together in the approach of identifying the necessary actions and effective practices that guarantee increased levels of sea safety, and increased access to the source of information such as competent authorities for them to have adequate information for verifications and monitoring compliance with the sea safety standards and other relevant migration management rules. Additionally, the Member States should work together with the Commission and be reliable sources of any helpful information concerning this proposal's implementation by ensuring that they do this at least once in a year. Concerning this proposal, these recommendations aim to ensure increased safety in the sea, coordination among the Member States, liaising with relevant stakeholders, and communicating with the Commission to tighten and increase safety to reduce fatalities at sea.

The new proposed asylum pact of 2020 will significantly facilitate a positive in regards to how the welfare of migrants is handled in asylum application processing and all the procedures involved. Given the continued massive entry of migrants into the EU, which has been challenging to regulate for the member states, the pact will offer more comprehensive and clear guidance on managing the border points within the bloc effectively⁹⁶. This outcome will be attained mainly by integrating the external and internal policies of migration. As an effective action plan for managing the migration trends, the new pact will provide a basis for respecting the fundamental rights of migrants, securing the external borders, and even accommodating the welfare of the most vulnerable. All the processes are legally bound, and there is an allowance for filing official claims in case of dissatisfaction.

⁹⁶https://ec.europa.eu/info/sites/default/files/proposal_for_a_regulation_of_the_european_parliament_and_the_council_on_asylum_and_migration_management_and_amending_council_directive_concerning_the_status_of_third-country_nationals_who_are_long-term_residents.pdf

Chapter 2

European Borders Externalization

1. Introduction

People, wealth, and services are more mobile in today's globalized world, and the overwhelming majority sees this enhanced mobility of western populations as the greatest beneficial effect of globalization. Contrarily, while varied mobility flows across today's blurred boundaries, transnational risks also develop and put the Western world's well-being in jeopardy: organized crime and terrorism, as well as what Western authorities consider to be illegal or undesired migration, are among the many dangers that are frequently linked together. The increased dual role of contemporary borders in facilitating wanted mobility while also protecting their territory from the deviant other is highlighted by the collateralized debt obligations of border controls in an era where the capital, goods, and services are considered necessary for economic well-being in western societies. Western governments have led to an ever-increasing externalization of their borders by adopting applicable policies and synergies with neighboring countries or using new technology in border controls. According to current historical data, the European Union and its member states are a typical illustration of such methods applied even before the collapse of the Berlin Wall. With regards to EU policy on mobility, there are numerous conflicting perspectives in the scholarly literature⁹⁷.

Media and public opinion in EU member states have put pressure on the EU to establish definite rules for limiting and controlling the flow of migrants who want to seek a brighter future in the EU and seek refuge. Therefore, some claim that there is a significant discrepancy between the official policy texts and the real EU member states attitude to the perceived issue.

⁹⁷ Limam M. and Del Sarto R., 'Periphery under pressure: Morocco, Tunisia and the European Union's Mobility Partnership on Migration' (2015) European University Institute Working Paper RSCAS 2015/75 http://cadmus.eui.eu/bitstream/handle/1814/37521/RSCAS_2015_75.pdf?sequence=1&isAllowed=y

Proposals for the establishment of refugee receiving centers outside the EU Member States have been made in Europe⁹⁸. The EU institutions, individual Member States, non-EU nations, the United Nations High Commissioner for Refugees, and the International Organization for Migration all support this externalization of EU border control and the accompanying interest in halting the migration flow toward Europe. Military actions and financial aid are exchanged for assistance in the management of the migration influx in return for control of non-European territories. Migrants are prevented from entering the territory of a European country required to examine the application for international protection, their rights are not protected even in court, their entry or application for legal protection is substantially inadmissible, by national and supranational organizations with the support of public and private operators. Since 2003, the European Union has established several international protection agencies to delegate the administration of the migratory problem to nations outside the EU⁹⁹. Furthermore, each EU member state has the authority to designate some countries as safe passage countries, therefore offloading the responsibility of reviewing asylum petitions and welcoming them to other nations¹⁰⁰. In order to prevent the arrival of immigrants, they should be in charge of even those who are only passing through and not only those who truly plan to seek asylum in one of the EU nations. This causes third countries to tighten their border controls.

Externalizing European borders to control migrant flows is an established European policy strategy that can be traced back to the Valletta Summit on Migration in November 2015¹⁰¹, which was attended by 25 EU member states, as well as Norway and Switzerland, and which was outlined in the European

⁹⁸ Barlai M., Fähnrich B., Griessler C and Rhomberg M., *the Migrant Crisis: European Perspectives and National Discourses* (Hamburg, LIT Verlag 2017).

⁹⁹ Haferlach and Kurban 1760

¹⁰⁰ Bröckling U., Krasmann S., and Lemke T., *Governmentality: Current Issues and Future Challenges* (New York, Routledge 2010).

¹⁰¹ Ruhrmann H. and Fitzgerald D., *'The Externalization of Europe's Borders in the Refugee Crisis, 2015-2016'* (2016) Center for Comparative Immigration Studies Working Paper No. 194 https://ccis.ucsd.edu/_files/wp194.pdf

Agenda for Migration in May 2015¹⁰². As a result, the EU Emergency Trust Fund for Africa was formed¹⁰³, which has as one of its objectives to help Central Mediterranean countries limit migrant flows into Italy. For the most part, this is done through improving African border control systems so that migrants in transit may be more easily identified. That's why the European Commission set aside 1.8 billion euros for the Central Mediterranean route, primarily for countries like Libya, Mali, and Niger, as well as Ethiopia, Eritrea, and Somalia¹⁰⁴. As part of the European Agenda for Migration¹⁰⁵, the European Commission sent a Communication to the European Parliament, the European Council, and the European Investment Bank in 2016 seeking the establishment of a new cooperation framework with third countries¹⁰⁶. Central and Eastern Mediterranean migratory routes are addressed here, establishing the foundation for cooperation with the primary countries involved in both origin and transit. The European Union plans to use private investments in Africa to leverage tens of billions of euros in African investment facilities and assist African nations in participating in the global market for private investment¹⁰⁷. Africa's migratory flow-affected transit nations pledge to have the biometrics of their residents and to adopt a European passport as a tool to expedite repatriations, allowing for risky collective deportation processes that put hundreds of lives at risk.

A Joint Declaration of Paris¹⁰⁸ signed by the European Commission and the African Union in Paris based on the Valletta Summit¹⁰⁹ strengthened the EU's cooperation with African countries that served

¹⁰² Bröckling U., Krasmann S., and Lemke T., *Governmentality: Current Issues and Future Challenges* (New York, Routledge 2010).

Papagianni G., *Institutional and Policy Dynamics of EU Migration Law* (Leiden, Martinus Nijhoff Publishers 2006).

¹⁰³ European Commission, 'EU-Turkey Statement: Questions and Answers' (European Commission Press Release Database, 19 March 2016) http://europa.eu/rapid/press-release_MEMO-16-963_en.html

¹⁰⁵ European Commission, 200

¹⁰⁶ Amnesty International, 'A blueprint for despair: human rights impact of the EU-Turkey deal' (2017) <https://www.amnesty.org/en/documents/eur25/5664/2017/en/>

¹⁰⁷ Huysmans J., *the Politics of Insecurity: Fear, Migration, and Asylum in the EU* (London, New International Relations Series 2006).

¹⁰⁸ Bilgic A., Prince Claus Chair in Development and Equity, 'A Human Security Perspective on Migration: A compass in the perfect storm' (Speech at the International Institute of Social Studies, The Hague, 12 April 2018) <https://www.iss.nl/en/news/human-security-perspective-migration>

¹⁰⁹ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

as migratory transit points and emphasized the importance of working together to better control migratory phenomena. The EU High Representative for Foreign Affairs and Security Policy and the leaders of the governments of the Republic of Chad, Niger, and Libya signed the Declaration of Paris, which recalls the Valletta Summit statements made by the EU and the African Union and states that migration is "a transnational phenomenon that cannot be managed by one state"¹¹⁰. While the EU Emergency Trust Fund for Africa¹¹¹ was established to improve the living circumstances of people in Africa's most crisis-ridden regions, it has been abused to keep migrant flows under control as a transnational phenomenon. As stated at the Valletta Summit, "irregular migrants who cannot benefit from any kind of international protection must be returned to their country of origin in a safe, orderly and dignified manner, preferably voluntarily, taking into account national legislation and in compliance with international law"¹¹². As part of their commitment to aiding refugees and migrants in Libya, EU nations have pledged to give increased help to the International Organization for Migration and the United Nations High Commissioner for Refugees¹¹³. A goal of EU externalization is to restrict migrant flows from African nations by providing financial, military, and political assistance to Chad, Niger, and Libya with the aid of UNHCR or the International Organization for Migration. As it stands, the UNHCR is responsible for assessing applications. At the same time, the International Organization for Migration (IOM) manages assisted return programs for migrants who are not recognized as possible asylum seekers in transit countries¹¹⁴. The EU and Turkey achieved an agreement at the Brussels Summit in March 2016 on the closure of Europe's external borders in relation to the Balkan route's migratory flows¹¹⁵. In the event that the Greek authorities are unable or

¹¹⁰ Battjes and Ulusoy 15

¹¹¹ Amnesty International, 'Libya's dark web of collusion: Abuses against Europe-bound Refugees and Migrants' (2017) <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>

¹¹² Giuffrè M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

¹¹³ Isotalo R. and Fabos A., *Managing Muslim Mobilities: Between Spiritual Geographies and the Global Security Regime* (New York, Palgrave Macmillan 2014).

¹¹⁴ European Commission, 800

¹¹⁵ Amooore, 340

unwilling to identify those in need of international protection, the agreement calls for the repatriation of such migrants to Turkey. Each time a Syrian refugee is sent back to Turkey from the Greek islands, another is moved from Turkey to the EU¹¹⁶, with women and children given preference based on the UN's criteria.

2. Regulatory Measures Employed to Control and Limit Migratory Flow in Europe

2.1 A European Agenda on Migration

The EU Commission created the European Strategy on Migration in 2015 in response to the issue's many facets¹¹⁷. One of four main goals of EU migration policy is reduced incentives for irregular migration, as laid out in the Agenda for Change¹¹⁸, the other three are tighter border controls, an improved asylum system, and a new approach to legal migration. EU remote control plans in 2015 are part of a larger attempt to regulate the flow of refugees and other migrants before they reach EU borders, which dates back to the early 1990s¹¹⁹. The Commission uses many various strategies to decrease the incentives for illegal migration. Firstly, it promises to address the core reasons for migration, such as violent conflicts and structural poverty, in the countries of origin. While the Commission intends to increase its development program, it is unclear if current development programs are just being repackaged as measures to restrict immigration. Second, the Commission works with member states and important third countries to combat migrant smuggling and trafficking. Criminalization of migration flows and blurring of the distinction between smuggling and trafficking are hallmarks of the EU's migration control system¹²⁰. As a third goal, the European Commission wants to implement a stronger deportation procedure for illegal immigrants that EU nations deem to

¹¹⁶Franko Aas, K. (2007). *Analyzing a world in motion. Theoretical Criminology*, 11(2), 283-303. <http://dx.doi.org/10.1177/1362480607075852>

¹¹⁷Papagianni G., *Institutional and Policy Dynamics of EU Migration Law* (Leiden, Martinus Nijhoff Publishers 2006).

¹¹⁸ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹¹⁹ Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

¹²⁰ European Commission, 500

require international assistance¹²¹. As a key strategy, readmission arrangements with transit countries ensure that deportees may enter the transit countries when they are removed from the EU, thus providing transit nations with an incentive to restrict migration into the EU. Another EU priority is to secure the EU's external border management. Furthermore, EU border management standards will be established across all EU member states with external borders to enhance monitoring and risk analysis. Eastern, Central, and Western Mediterranean routes were the focus of FRONTEX's activities¹²².

CEAS implementation is a top priority to develop a single asylum policy, as the Commission has said¹²³. Several measures are being taken to achieve this goal, including a review of the Dublin system to encourage burden-sharing in the transfer of asylum seekers. Developing a list of countries from which asylum seekers are believed to be safe and whose people will not be given refuge is part of the general standards procedure Asylum paradox: a commitment to refugee status for refugees who reach EU territory and attempt to maintain them away from EU territory from whose rights they can benefit through the application of remote control policies is summarized in the following pages to demonstrate how European leaders have dealt with this all.

2.1 The United Nations Relief and Works Agency for Palestine Refugees (UNRWA)

The United Nations Relief and Works Agency for Palestine Refugees (UNRWA), hereinafter mentioned as UNRWA, was first established by United Nations General Assembly Resolution 302 (IV) of 8 December 1949 to grant protection to Palestine refugees¹²⁴. It is a regulatory framework that was established to regulate the flow of migrants from Palestine.

¹²¹ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹²² Triandafyllidou A. and Maroukis T., *Migrant smuggling: irregular migration from Asia and Africa to Europe* (New York, Palgrave MacMillan 2012).

¹²³ Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

¹²⁴ <https://www.unrwa.org/who-we-are>

The CJEU was faced with the question of the application of international protection by the UNRWA. This was in the case of *Serin Alheto (Palestine) v. Deputy Chairman of the State Agency for Refugees*¹²⁵. The court asserted that a person seeking to be granted international protection must first demonstrate that they are not receiving enough protection from the UNRWA agency. This is because if a person from a third country already has protection from the UNRWA agency and they proceed to apply for protection from the EU, they are denied refugee status. However, there is an exception to this general rule. One, they can be granted protection if they prove that their life is at serious risk and it is not possible for UNRWA to provide them with the protection they need and thus have been forced to leave UNRWA. Second, there is an exclusion where the principle of non-refoulement needs to be observed. The principle provides that no refugee should be returned to their home country if they are set to face torture, harm or degrading treatment. In such a case, the EU can admit a refugee from UNRWA and grant them refugee protection. The court ruled that a full and ex-nunc examination must be performed to determine the facts of the case and to determine whether a person is inadmissible to the EU international refugee protection. The court, in determining the case, held that a person seeking EU protection while under the protection of UNRWA must be given a fair hearing where he is given a chance to explain why his circumstances allow him to be granted EU international refugee protection¹²⁶.

The UNRWA controls migratory flows into the European Union by ensuring Palestine refugees have an option before thy option for EU protection. Again, it does so by ensuring a person already protected under UNRWA cannot seek refugee protection under the EU regime, as the law prohibits this. This is one of the effective ways through which the EU controls migratory flows into the Union. The institutional framework ensures that only people with special conditions can apply for EU international protection.

¹²⁵ <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=182>

¹²⁶ <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=182>

2.2 Safe Countries of Origin

Member states can designate a nation as safe for the purpose of the asylum procedure under the EU Asylum Procedures Directive¹²⁷. States must demonstrate that no condemnation, torture and threat by the justification of mass violence exist in the countries of origin by taking into consideration relevant laws and rights and freedoms as outlined by European Convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR), and the United Nations Convention Against Torture and the non-refoulement principle is respected, and remedies for rights breaches are in place¹²⁸. For this purpose, twelve member nations have formed lists of safe countries of origin (SCO), allowing the member states to expedite their asylum processes significantly¹²⁹. The SCO listings maintained by the various member nations, on the other hand, are not identical and are often updated.

The European Commission and the European Council agreed to harmonize which countries of origin would be deemed "safe" by all member states as part of the Agenda on Migration Reforms¹³⁰. On September 9, 2015¹³¹ the European Commission proposed a rule to create an EU unified list of safe countries of origin for the Asylum Procedures Directive 2013/32/EU objectives. Parliament's Civil Liberties Committee on July 7 endorsed the overall idea of an EU-wide safe country list and was ready to begin discussions with the Council before the summer ended¹³². There will be frequent Commission assessments and ordinary legislative process adjustments to the list's nations to guarantee flexibility. The Commission has consequently concluded that Albania, Bosnia & Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia, and

¹²⁷ European Commission, 400

¹²⁸ Vaughan-Williams N., *Europe's Border Crisis: Biopolitical Security and Beyond* (Oxford, Oxford University Press 2015).

¹²⁹ European Commission, 450

¹³⁰ Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

¹³¹ Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

¹³² Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

Turkey are safe countries of origin based on the existing SCO lists and relevant information from other international organizations¹³³.

The emphasis on Balkan nations has both a legal and a political foundation. "Asylum misuse by nationals of the visa-free nations in Western Balkans" was cited as an early 2015 Commission concern¹³⁴. When the number of asylum seekers from Western Balkan nations increased gradually after visa-free travel was introduced, the asylum recognition rate for these countries dropped. This is how the Commission explained its worries. Refugee petitions from Western Balkan nations were granted asylum at a rate ranging from 1% to 8.1% in 2013. In 2014, Western Balkan countries had the highest asylum recognition rate at 5.8%, before it plummeted to 2.6% in 2015¹³⁵. According to the European Commission, "a rise in baseless asylum claims by citizens of visa exempted Western Balkan countries" has been observed¹³⁶. EU member states' ministers stress that in 2000, the European Council identified all Western Balkan nations as possible candidates for EU membership¹³⁷. By the middle of 2016, it looked like the Western Balkan nations would be included in a list of safe countries for the EU as a whole. Proposals of the European Commission have been challenged for their general principles and for the selection of nations to be included. A country may be deemed "generally and consistently" free of persecution or serious harm by the European Council on Refugees and Exiles (ECRE)¹³⁸. However, minorities may still be persecuted because of their race, religious belief,

¹³³ Limam M. and Del Sarto R., 'Periphery under pressure: Morocco, Tunisia and the European Union's Mobility Partnership on Migration' (2015) European University Institute Working Paper RSCAS 2015/75 http://cadmus.eui.eu/bitstream/handle/1814/37521/RSCAS_2015_75.pdf?sequence=1&isAllowed=y

¹³⁴ Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

¹³⁵ Amore, 345

¹³⁶ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹³⁷ Den Heijer, M., 'Europe and extraterritorial asylum' (Thesis, Leiden University 2012)

Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

¹³⁸ The Netherlands Institute for Human Rights in collaboration with the Meijers Committee, 'Humans act or devil pact' (2017) Paper, the Netherlands Institute for Human Rights https://www.commissiemeijers.nl/sites/all/files/media/paper_human_act_or_devils_pact_eng_def_18.05.2017.pdf

nationality, or membership in a specific social group or political opinion. As Amnesty International puts it, "No place of origin can be deemed 'safe' as such"¹³⁹, and other human rights groups are concerned about this issue. The ECRE questions the selection of nations as safe since none of the listed countries appear on the SCO lists of all member states¹⁴⁰. The report says that ECtHR decisions or progress toward EU membership are also criticized as criteria for judging safety¹⁴¹.

Readmission Agreements and Capacity Building are official or informal memoranda of understanding in which a nation agrees to receive deported citizens. Migrant transit nations typically utilize the agreements as a means to incentivize the restriction of migration to Europe. Returned transit migrants, including unsuccessful asylum seekers, are the responsibility of the government of the nation with whom the readmission agreement was struck¹⁴². Migration to Europe will be hampered if transit nations with readmission agreements restrict entry, further expanding Europe's boundaries. Aid or technical assistance initiatives to build up the nation's migration control capability are frequently included with readmissions agreements, turning them into "buffer states".

2.3 Common Action Plan for Turkey

As a result of the continuous conflict in Syria and Iraq, Turkey has seen a significant rise in the number of refugees. As of 2016, it has registered approximately 2.7 million Syrian refugees, more than any other nation in the region and more than double the number of refugees registered in all of Europe combined¹⁴³. Its proximity to Syria's northern border and its status as a major host nation make Turkey the first stop for Syrian refugees on their approach to Europe and the most popular European neighboring countries of Sweden and Germany. To reach Germany or Sweden, Middle

¹³⁹ Den Broeder V., 'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis' (Thesis, Leiden University 2018)

¹⁴⁰ Franko Aas, 290

¹⁴¹ European Commission, 600

¹⁴² Broeders, D., & Hampshire, J. (2013). *Dreaming of Seamless Borders: ICTs and the Pre-Emptive Governance of Mobility in Europe*. *Journal of Ethnic and Migration Studies*, 39(8), 1201-1218. <http://dx.doi.org/10.1080/1369183x.2013.787512>

¹⁴³ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

Eastern refugees must first cross the Aegean Sea from Turkey to Greece (the Eastern Mediterranean route) and then trek across Macedonia, Serbia, Hungary, and Austria (the Western Balkan route). More than any other route, over 850,000 migrants arrived in the EU from Turkey through Greece in 2015¹⁴⁴. Turkey is an important partner for the EU in avoiding illegal border crossings and the movement of asylum seekers while also pushing policies based on human rights, which are part of the broad requirements for Turkey's EU membership. As a result, the EU expects Turkey to take in even more Syrian refugees to keep them from making their way to Europe.

As it became evident that EU member states were unable to agree on how to handle the influx of refugees and migrants, the EU's crisis management strategy began to shift toward working with buffer nations on the perimeter of Europe to "stamp out the flow". Increasingly urgent was the need to "intensify discussion with Turkey at all levels, to deepen our collaboration on halting and controlling the migratory flows," as refugee flows switch from the Central to Eastern Mediterranean¹⁴⁵. When the European Council endorsed the joint action plan on October 15, 2015, the collaboration with Turkey to control migration flows was established¹⁴⁶. As part of the joint action plan, the EU and Turkey aimed to send liaison agents to Turkey in an effort to increase collaboration in the fight against illegal migration by providing cash for capacity development and improving the living circumstances of Syrian refugees in Turkey. According to the Commission's initial joint action plan, the EU would provide "extra cash" to help Syrian refugees in Turkey who are now under temporary protection¹⁴⁷. Refugees would be registered and have access to social services due to Turkey's agreement. Even though most asylum seekers are denied access to the European Union, the EU has agreed to assist Turkey's Coast Guard and help it improve its capability for fighting smuggling. In addition, the EU

¹⁴⁴ Den Broeder V., *'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis'* (Thesis, Leiden University 2018)

¹⁴⁵ Cassarino, J. (2010). *Readmission Policy in the European Union*. Brussels: European Parliament

¹⁴⁶ Den Broeder V., *'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis'* (Thesis, Leiden University 2018)

¹⁴⁷ Den Broeder V., *'The EU-Turkey Refugee Deal and its Assumption of Turkey as a Safe Third Country: A Legal Analysis'* (Thesis, Leiden University 2018)

plans to improve information sharing by sending a FRONTEX liaison officer to Turkey and working together on joint return operations to accomplish this goal¹⁴⁸. As part of its commitment to stopping illegal migration through its land borders with Bulgaria and Greece, Turkey has pledged to strengthen the Turkish Coast Guard's interception capabilities. Furthermore, Turkey promised to engage with the EU, its member states, and FRONTEX to combat smuggling networks. EU-Turkey Readmission Agreement of 2013¹⁴⁹, which was signed in tandem with the EU-Turkey Visa Liberalization Dialogue¹⁵⁰, also mandated Turkey to expedite return proceedings "in accordance with existing bilateral readmission norms," which were referenced in the EU-Turkey Readmission Agreement of 2013¹⁵¹.

As part of a joint action plan that was implemented on November 29, 2015¹⁵², EU and Turkish leaders agreed to expedite visa liberalization, make the readmission deal "fully applicable" by June 2016, and give Turkey 3 billion euros¹⁵³. The European Stability Initiative (ESI), a European research tank with a focus on Southeast Europe, has criticized the agreement's reciprocal concessions as "inconsequential"¹⁵⁴. Since the visa liberalization debate commencement on December 16, 2013, the "Roadmap towards a visa-free regime with Turkey" has been based on 72 initial conditions, which are still related to Turkish nationals' ability to travel visa-free¹⁵⁵. Despite the deal, the European

¹⁴⁸European Commission, 650

¹⁴⁹ Nyers, 24
https://www.jstor.org/stable/3993444?seq=1#page_scan_tab_contents

¹⁵⁰ Pallister-Wilkins P., 'Hotspots and the geographies of humanitarianism' (2018) *Environment and Planning D - Society & Space*

<https://journals.sagepub.com/doi/full/10.1177/0263775818754884>

¹⁵¹ Desimpelaere, K. (2015). *The Dublin Regulation: Past, Present, Future (Postgraduate)*. Ghent University

¹⁵² Giuffrè M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

¹⁵³ The Netherlands Institute for Human Rights in collaboration with the Meijers Committee, 'Humans act or devil pact' (2017) Paper, the Netherlands Institute for Human Rights
https://www.commissiemeijers.nl/sites/all/files/media/paper_human_act_or_devils_pact_eng_def_18.05.2017.pdf

¹⁵⁴ Franko Aas, 300

¹⁵⁵ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org. Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

Council's heads of state acknowledged in February 2016 that "the flows of migrants coming in Greece from Turkey remain far too high"¹⁵⁶. Indeed, the number of migrants arriving by sea in Greece from autumn 2015 to February 2016 had not changed much¹⁵⁷. European Union citizens' right to freely migrate around the EU has been jeopardized due to member states' reactions to the refugee crisis. Following a rise in the number of Schengen countries re-instituting temporary internal border restrictions since autumn 2015, in March 2016, the Commission produced "Back to Schengen—A Roadmap" in response¹⁵⁸. The need to decrease the number of people entering the country via Turkey has grown. As a result, the EU-Turkey summits held on March 7 and 18, 2016, were tasked with "putting a stop to irregular migration from Turkey into the EU "¹⁵⁹. When a person does not seek for refuge in Greece or has his or her asylum application denied by Greek authorities, the agreement calls that person "irregular". In response to criticism, the article¹⁶⁰ states that no group expulsions in contravention of international law were to be carried out. In addition, the agreement stipulates that for every Syrian returned to Turkey from Greek islands, another Syrian will be granted refugee status from Turkey to the EU taking into account the UN Vulnerability Criteria¹⁶¹. This mechanism, however, was restricted to the relocation of around 72,000 migrants inside the EU¹⁶², with the understanding that it would be reconsidered or abandoned if the quota was achieved. Immediate

Papadopoulos A., Professor of Human Geography, 'from migration crisis to refugee crisis in Europe: Securitization priorities vs. what?' (Speech at the Hellenic Observatory London, 18 January 2016) <http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/CMS%20pdf/Events/2015-16/Hellenic-Observatory-LSE-Seminar-AGP-18-01-2016-final.pdf>¹⁵⁵

¹⁵⁶ Franko Aas, 298

¹⁵⁷ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹⁵⁸ Franko Aas, K. (2007). *Analyzing a world in motion. Theoretical Criminology*, 11(2), 283-303. <http://dx.doi.org/10.1177/1362480607075852>

¹⁵⁹ Franko Aas, 285

¹⁶⁰ The Netherlands Institute for Human Rights in collaboration with the Meijers Committee, 'Humans act or devil pact' (2017) Paper, the Netherlands Institute for Human Rights https://www.commissiemeijers.nl/sites/all/files/media/paper_human_act_or_devils_pact_eng_def_18.05.2017.pdf

¹⁶¹ Ruhrmann and Fitzgerald 194

¹⁶² Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

results were evident when the number of daily arrivals in Greece decreased from an average of 1968 arrivals in February before the deal was signed to only 122 arrivals in April, an 84% reduction¹⁶³.

After the agreement, Turkish Coast Guard apprehensions and interceptions dramatically declined. At least in the near term, the deterrent impact is due to various factors. First, the Turkish authorities were anticipated to step up their efforts to fight migrant smuggling to Greece due to the new return mechanism. Aegean Sea crossings are risky, and migrants may be put off by the threat of being deported back to Turkey. It must not be forgotten that most migrants prefer to register their asylum claims in countries like Germany or Sweden rather than Greece, which has served as a transit point on their journey. Migrants face arrest and deportation if they do not submit an interlocutory injunction with the Greek authorities now that the return mechanism is in place. Because of this, the number of migrants arriving in Greece from Turkey has decreased, which is reflected in the lower arrival figures. This has been slammed by the United Nations High Commissioner for Refugees, the Council of Europe's Commissioner for Human Rights, humanitarian aid organizations, and think tanks on both moral and legal grounds¹⁶⁴. To the organization's Director for Europe and Central Asia, John Dalhuisen, the EU "wilfully ignore(s) its international commitments" due to the EU-Turkey deal¹⁶⁵. In the EU-Turkey agreement, the question of whether Turkey can be regarded as "safe" for return operations and the risk of mass expulsions have been particularly contentious points. If Turkey may be deemed a "European safe third country" or a "first country of asylum" as defined by Article 33 (2) b)-c) of the Asylum Procedures Directive, a refugee's asylum claim in Greece is inadmissible, and the applicant is liable to deportation. A European safe third nation shall ratify and follow the requirements of the Geneva Convention even without geographical boundaries, according to Article

¹⁶³ Giuffr  M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

¹⁶⁴ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org. Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

¹⁶⁵ Broeders D. and Hampshire J., 'Dreaming of Seamless Borders: ICTs and the Pre-Emptive Governance of Mobility in Europe' (2013) 39 (8) *Journal of Ethnic and Migration Studies*

39 (2) a). Turkey accepted the 1951 Geneva Refugee Convention and the 1967 Protocol, but it is the only nation in the world to keep the 1951 convention's geographical restriction on the definition of refugees to Europeans¹⁶⁶. Turkey has never been included on a national list of safe countries of origin by any EU member state, with the sole exception of Bulgaria by notifying Secretary-General Thorbjørn Jagland¹⁶⁷ of its decision to temporarily suspend its obligations under the ECHR on July 21, 2016, Turkey has bolstered its already strong position. It is difficult to establish that Turkey is a European safe third nation. A first country of asylum must be able to provide asylum and adequate protection, including observing the principle of non-refoulement, to be considered as such. Human Rights Watch claims that Turkey does not meet these criteria and has documented Syrian refugees being rebuffed¹⁶⁸. The European Convention on Human Rights (ECHR) prohibits mass expulsions in Protocol 4 Article 477. Not all EU member states signed the Protocol 478 addendum¹⁶⁹. According to the International Covenant on Civil and Political Rights (ICCPR)¹⁷⁰, the restriction of arbitrary and discriminatory mass expulsions is binding on the international community as common law¹⁷¹. Furthermore, the ECtHR's Commissioner for Human Rights, Nils Muiniek, is concerned that automated processes may breach the procedural criteria for objectively assessing each case, which is part of international law¹⁷². As a result of the EU-Turkey deal, the United Nations High Commissioner for Refugees (UNHCR) has withdrawn from the Greek islands. All of these organizations agreed to halt their operations on the same day to "not allow (them) aid to be instrumentalized for a mass deportation

Papadopoulos A., Professor of Human Geography, 'from migration crisis to refugee crisis in Europe: Securitization priorities vs. what?' (Speech at the Hellenic Observatory London, 18 January 2016) <http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/CMS%20pdf/Events/2015-16/Hellenic-Observatory-LSE-Seminar-AGP-18-01-2016-final.pdf>¹⁶⁶

¹⁶⁷ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org. Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

¹⁶⁸ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org. Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

¹⁶⁹ Battle's and Ulusoy 15

¹⁷⁰ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹⁷¹ Kurowska, X., & Pawlak, P. (Eds.). (2014). *the politics of European security policies*. Routledge

¹⁷² Frelick B, Kysel I. and Podkul J., 'The Impact of Externalization of Migration Controls on the rights of Asylum Seekers and Other Migrants' (2016) 4 (4) *Journal on Migration and Human Security* <https://journals.sagepub.com/doi/abs/10.1177/233150241600400402>

operation," and they did so on the same day¹⁷³. Political turmoil in Turkey has been denounced by certain European Parliamentarians¹⁷⁴, including the alleged infringement of political freedoms and the suspension of a constitutional and basic right; among other things, EU lawmakers have expressed concern over Turkey's prospects for obtaining a visa-free system soon in view of the current state of affairs¹⁷⁵. Following the Turkish military coup in July 2016 and the establishment of martial rule, the long-term enforcement and repercussions of the EU-Turkey agreement became even more questionable.

2.4 Africa: The Valetta Summit

The movement of people from Africa to Europe has risen significantly since the 1960s as a result of the regions' divergent growth paths¹⁷⁶. More than three times as many unlawful migrants entered the EU through the Western and Central Mediterranean routes in 2014 than the Eastern Mediterranean route, accounting for nearly 60% of all illegal crossings¹⁷⁷. On the Eastern Mediterranean route, the number of migrants has grown to outnumber those from Africa on the Eastern and Central Mediterranean routes 5:186 in 2015¹⁷⁸. Migration from Africa's major routes continues to be a challenge, however, despite their decreased usage, they remain the most hazardous. More migrants died in Central Mediterranean than on any other route in 2014 and 2015, making it the most dangerous migration route globally¹⁷⁹. Nearly the same number of migrants perished in a shipwreck off the coast of Libya on April 19, 2015, as there were in the whole Eastern Mediterranean route that year¹⁸⁰.

¹⁷³ Ruhrmann and Fitzgerald 194

https://ccis.ucsd.edu/_files/wp194.pdf

¹⁷⁴ Battle's and Ulusoy, 15

¹⁷⁵ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe

https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹⁷⁶ Broeders D. and Hampshire J., 'Dreaming of Seamless Borders: ICTs and the Pre-Emptive Governance of Mobility in Europe' (2013) 39 (8) *Journal of Ethnic and Migration Studies*

¹⁷⁷ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org.

Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

¹⁷⁸ Aradau C., 'Security and the democratic scene: DE securitization and emancipation' (2004) *Journal of International Relations and development* <https://link.springer.com/article/10.1057/palgrave.jird.1800030>

¹⁷⁹ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org.

Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

¹⁸⁰ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org.

Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

According to the most current estimates, the death toll for migrants traveling the Central Mediterranean route in 2016 has almost reached the entire number of migrants who died the previous year¹⁸¹. The EU's decision-makers continue to place a high value on limiting migration from Africa through the use of the Mediterranean Sea. An international conference was held in Valletta, Malta, on November 11-12, 2015 to address the rising issue of increased migratory flows over the Mediterranean Sea¹⁸². In a joint statement, European and African leaders said they would work together to improve the flow of migrants and refugees¹⁸³. Migrants and asylum seekers will be protected and cared for while on their journey, and they will cooperate on the return and reintegration of migrants and address the core causes of migration. A 1.8 billion euro "EU Emergency Trust Fund for security and tackling the fundamental causes of international migration and the displaced people in Africa" is part of the EU-Africa Action Plan's efforts to address the root causes of migration¹⁸⁴. State building, conflict avoidance, counterterrorism, and the betterment of vulnerable population groups and dislocated individuals are all expected to benefit from the increased economic potential, which is a lofty task for such a minimal investment. The Action Plan strives to strengthen the accessible regular channels of migration for entrepreneurial migrants, like students, researchers, in the domain of legal migration channels¹⁸⁵. It's not only short-term immigration programs and family reunions that the participants promise to help with. For migrants, the necessity of search and rescue efforts at sea, including the resettlement of long-term migrants and the supply of humanitarian aid,

¹⁸¹ European Commission, 'EU-Turkey Statement: Questions and Answers' (European Commission Press Release Database, 19 March 2016) http://europa.eu/rapid/press-release_MEMO-16-963_en.html

¹⁸² Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹⁸³ Broeders D. and Hampshire J., 'Dreaming of Seamless Borders: ICTs and the Pre-Emptive Governance of Mobility in Europe' (2013) 39 (8) *Journal of Ethnic and Migration Studies*

¹⁸⁴ Papadopoulos A., Professor of Human Geography, 'from migration crisis to refugee crisis in Europe: Securitization priorities vs. what?' (Speech at the Hellenic Observatory London, 18 January 2016) <http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/CMS%20pdf/Events/2015-16/Hellenic-Observatory-LSE-Seminar-AGP-18-01-2016-final.pdf>¹⁸⁴

¹⁸⁵ Barbulescu R., 'Still a Beacon of Human Rights? Considerations on the EU Response to the Refugee Crisis in the Mediterranean' (2017) 22 (2) *Mediterranean Politics* <https://www.tandfonline.com/doi/abs/10.1080/13629395.2016.1194546?journalCode=fmed20>

was highlighted. Continuous capacity development in African nations was the most critical approach in terms of establishing remote control. According to international law, these actions include helping the development of new legal or institutional frameworks aimed at ensuring the proper management of land, sea, and air borders. The European Union will provide Anti-trafficking training and equipment, and law enforcement agencies will exchange information. Migrants who are considered illegal are portrayed as victims who need to be rescued. By establishing standard procedures for providing consular assistance facilitating the return to the country of origin and giving assistance to local officials to provide psychological counseling for effective reintegration, the Action Plan seeks to strengthen efforts to protect trafficking victims. The countries of origin of potential migrants should be informed of the hazards of illegal migration and the legal options available to them. False wording in the agreement encourages people to believe that irregular migrants may travel lawfully when, in reality, there is no way for them to do so safely. One of the most significant sections of the Action Plan is devoted to returning and re-entering illegal immigrants¹⁸⁶. This document underlines the Cotonou Agreement of 2000, which stipulates in Article 13 that each EU Member State shall readmit its citizens who are unlawfully present on the territory of the African, Caribbean, and Pacific Group of States¹⁸⁷. With relation to travel documents, fingerprints, and readmission applications, the EU places particular emphasis on strengthening local authorities' bureaucratic skills¹⁸⁸. These issues have been important hurdles in deportation and return operations involving irregular African migrants.

African authorities had hoped for a greater number of authorized migration routes¹⁸⁹. A stronger commitment to readmission was expected from EU leaders, and some even advocated the establishment of transit centers or fast track processes, but this was rejected by African counterpart

¹⁸⁶Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe
https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹⁸⁷ Ruhrmann and Fitzgerald 194

¹⁸⁸ Broeders D. and Hampshire J., 'Dreaming of Seamless Borders: ICTs and the Pre-Emptive Governance of Mobility in Europe' (2013) 39 (8) *Journal of Ethnic and Migration Studies*

¹⁸⁹ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org.

Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

and was not included in the action plan¹⁹⁰. Furthermore, the participants differed on the advantages of the "more-for-more" approach to aiding migration management via development assistance. Human rights groups expressed¹⁹¹ alarm over the EU-Africa agenda well before the Valletta Summit. In reality, the Valletta conference is probable to occur in a one-sided border control contract disguised as a collaboration pact, as Amnesty International's European Institutions Office's Acting Director, Iverna McGowan, warned¹⁹². Negotiations were criticized by ECDPM for being dominated by European interests¹⁹³. It also slammed the bilateral accords that European leaders attempted to make at the same time as the united agenda, but which were independent of it. African leaders were able to get concessions from their European allies because of their skill and perseverance.

Interdiction operations in international seas and even the territorial waters of other nations have been carried out by European member states at least since 1997 in Albanian waters and 2004 in the waters of several African states¹⁹⁴. In 2006, FRONTEX started coordinating marine interdiction activities, starting with HERA off the coast of West Africa¹⁹⁵. EU Naval Force Med Operation Sophia, FRONTEX Operation Triton, and NATO's Standing Maritime Group 2 (SNMG2) were all deployed in the Mediterranean Sea in 2015, as was the EU Naval Force Med¹⁹⁶. These marine patrol efforts have been suggested to be coordinated in new ways¹⁹⁷.

¹⁹⁰ Barbulescu R., 'Still a Beacon of Human Rights? Considerations on the EU Response to the Refugee Crisis in the Mediterranean' (2017) 22 (2) *Mediterranean Politics*

<https://www.tandfonline.com/doi/abs/10.1080/13629395.2016.1194546?journalCode=fmed20>

¹⁹¹ Frelick B, Kysel I. and Podkul J., 'The Impact of Externalization of Migration Controls on the rights of Asylum Seekers and Other Migrants' (2016) 4 (4) *Journal on Migration and Human Security*
<https://journals.sagepub.com/doi/abs/10.1177/233150241600400402>

¹⁹² Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org. Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

¹⁹³ Broeders D. and Hampshire J., 'Dreaming of Seamless Borders: ICTs and the Pre-Emptive Governance of Mobility in Europe' (2013) 39 (8) *Journal of Ethnic and Migration Studies*

¹⁹⁴ Aradau C., 'Security and the democratic scene: DE securitization and emancipation' (2004) *Journal of International Relations and development* <https://link.springer.com/article/10.1057/palgrave.jird.1800030>

¹⁹⁵ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe
https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹⁹⁶ Campesi G., 'Hindering the deportation machine: An ethnography of power and resistance in immigration detention' (2015) 17 (4) *Punishment & Society*
<https://journals.sagepub.com/doi/abs/10.1177/1462474515603804?journalCode=puna>

¹⁹⁷ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe

2.5 European Border and Coast Guard (EBCG)

The European Commission proposed a European Border and Coast Guard in December 2015¹⁹⁸. European Border and Coast Guard Agency (EBCG), an upgraded FRONTEX, and national border authorities (NBAs) are all part of the EBCG responsible for European border control. New managerial, monitoring and operational functions are included in the Commission's initial proposal for the EBCG Agency¹⁹⁹. EBCG's proposed budget for 2016 and 2017 should be based on FRONTEX's 238 million euro budget and enhanced by 31.5 million euro. By the year 2020, the Agency expects to have 602 new employees²⁰⁰. The headquarters of the EBCG Agency will remain in Warsaw. On July 7, 2016, the EP formally adopted the draft regulation, and on September 14, 2016, the Council officially approved the final act²⁰¹. On October 6, 2016, the EBCG Regulation came into effect. FRONTEX's initial mission did not include the EBCG Agency's new supervisory function. Vulnerability evaluations of border management by the EBCG Agency will be required, focusing on member states' capabilities to deal with current and future threats. A member state with deficiencies in border control will be able to suggest to the EBCG Agency's Executive Director, in conjunction with that state, the required steps to be done within a certain period. The EBCG Agency's management board may issue a binding judgment if the member country fails to comply. Finally, if a Member State's non-compliance necessitates direct involvement by the EBCG Agency, the Council has the authority to do so²⁰². It is anticipated that the EBCG Agency's monitoring responsibilities will

https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

¹⁹⁸ Broeders D. and Hampshire J., 'Dreaming of Seamless Borders: ICTs and the Pre-Emptive Governance of Mobility in Europe' (2013) 39 (8) *Journal of Ethnic and Migration Studies*

¹⁹⁹ Haferlach L. and Kurban D., 'Lessons Learnt from the EU-Turkey Refugee Agreement in Guiding EU Migration Partnerships with Origin and Transit Countries' (2017) 8 (4) *Global Policy*
<https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12432>

²⁰⁰ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org.
Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

²⁰¹ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org.
Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

²⁰² Frelick B, Kysel I. and Podkul J., 'The Impact of Externalization of Migration Controls on the rights of Asylum Seekers and Other Migrants' (2016) 4 (4) *Journal on Migration and Human Security*
<https://journals.sagepub.com/doi/abs/10.1177/233150241600400402>

expand. The EBCG Agency will send liaison employees to member states to enhance collaboration and the necessary sharing of information related to its monitoring and supervisory responsibilities.

EBCG's operational responsibilities will also outpace those of FRONTEX's initial mission. It allows the EBCG Agency to act directly in a member state that is unable to regulate its borders. One reason for this is because the member state did not follow through on the remedial measures imposed after a "vulnerability assessment," or it might be due to an unusually high volume of migrant traffic. Rapid border interventions, deployment of European Border and Coast Guard Teams or technological devices, coordination of joint operations, and deportation planning may be authorized by an implementing decision. If a member state requests a fast border intervention, it must be approved by a qualified majority of the Council or the Commission to protect Schengen's territorial integrity²⁰³. In contrast to the Commission's initial plan, the Civil Liberties Committee of the EP and the Council's COREPER have voted to grant the Council control over executing decisions targeting the right audience instead of the Commission's²⁰⁴. Furthermore, internal border inspections may be implemented if a member state fails to comply with the Council's decision. Like the EBCG Agency, the EU's Commission will work with the Member States to assist in "hotspot" areas where migration management support teams are needed²⁰⁵. The EBCG Agency may help in screening and registering migrants, providing information to asylum seekers, and assisting in return operations to achieve this goal. In addition, the EBCG Agency will be tasked with additional duties relating to the repatriation of illegal migrants. The Civil Liberties Committee of the EP gives its blessing to the EBCG Agency's participation in repatriation efforts, but it issues a strong warning against repatriation to countries that are not deemed secure. With the use of joint operations, liaison officers, and return agreements, the

²⁰³ Giuffré M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

²⁰⁴ European Commission, 900

²⁰⁵ Haddad E., 'The External Dimension of EU Refugee Policy: A New Approach to Asylum?' (2008) 43 (2) *Government and Opposition* <https://www.cambridge.org/core/journals/government-and-opposition/article/external-dimension-of-eu-refugee-policy-a-new-approach-to-asylum/8F9BCA8A5DA6A5E920E8A4DF395DD52E>

EBCG Agency will promote operational collaboration between member states and other nations. EBCG will be permitted to operate in surrounding third nations as a result of this. In addition, the rule provides the EBCG Agency with new resources, such as a fast reserve pool of border control specialists, in order to execute its enlarged responsibilities. In contrast to FRONTEX, the EBCG Agency will have a permanent staff of national border guards under its command. To do this, the member nations are expected to provide a certain number of border guards to the EBCG Agency's fast response pool²⁰⁶. Additionally, the EBCG Agency will have access to a variety of technical resources, including a stockpile of equipment it may use as needed. There will still be a need for member nations to make equipment accessible to the agency when requested.

Some claim that the EBCG concept is too autonomous, while others contend that it is not independent enough²⁰⁷. Analysts have questioned²⁰⁸ if the idea violates member states' ultimate responsibilities to "maintain law and order and preserve domestic security" on the one hand (Article 72 TFEU). Article 4 (2) TEU stipulates that "important state tasks" include guaranteeing a state's integrity, maintaining law and order, and defending national security. This is a concern for several members' states²⁰⁹. A different view is held by CEPS²¹⁰, which claims that the EP and Council are required to adopt "any step" to accomplish integrated border control by virtue of Article 77 (2) (d) TFEU. More specifically, the CEPS points out that the plan doesn't go far enough in giving the European Border and Coast Guard (EBCG) autonomy since it doesn't have control over its own border guards. The European Council on Foreign Relations echoes this critique of permanent agency border guards (ECFR)²¹¹.

²⁰⁶ European Commission, 800

²⁰⁷ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org. Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

²⁰⁸ Frelick B, Kysel I. and Podkul J., 'The Impact of Externalization of Migration Controls on the rights of Asylum Seekers and Other Migrants' (2016) 4 (4) *Journal on Migration and Human Security* <https://journals.sagepub.com/doi/abs/10.1177/233150241600400402>

²⁰⁹ Haferlach L. and Kurban D., 'Lessons Learnt from the EU-Turkey Refugee Agreement in Guiding EU Migration Partnerships with Origin and Transit Countries' (2017) 8 (4) *Global Policy* <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12432>

²¹⁰ European Commission, 666

²¹¹ Haferlach L. and Kurban D., 'Lessons Learnt from the EU-Turkey Refugee Agreement in Guiding EU Migration Partnerships with Origin and Transit Countries' (2017) 8 (4) *Global Policy* <https://onlinelibrary.wiley.com/doi/full/10.1111/1758-5899.12432>

71% of EU citizens said²¹² they wanted to see greater EU actions in border protection at the external borders, which shows that EU citizens have high expectations for efficient border management.

"The proliferation of main actors in anti-submarine warfare and border controls means that governance of the external borders is increasingly blurry, which results to a lack of integrity to the detriment of victims of fundamental rights violations," the European Council on Foreign Relations states²¹³. An independent body outside the agency's management structure should be responsible for handling complaints about human rights violations, say ²¹⁴the International Commission of Jurists, Amnesty International, and European Commission on Human Rights²¹⁵.

2.6 Operation of FRONTEX in the Mediterranean Sea

FRONTEX created Triton in November 2014 to "manage irregular migrant flows into the territory of [EU] members and combat cross-border crime."²¹⁶ Border security and surveillance, as well as assistance in search and rescue operations and the gathering of knowledge on migrant smuggling via debriefing teams, are among the operational aims and concepts that underpin this effort²¹⁷. Triton began with a monthly operating budget of 2.9 million euros to meet its many responsibilities²¹⁸. They are primarily concerned with stopping the influx of people fleeing civil wars in Libya, Egypt, and Turkey into Italy and Malta. Italy served as the operation's host nation and collaborated with 16 EU members and Schengen-associated countries Norway, Switzerland, and Iceland (SAC)²¹⁹. When

²¹² European Commission, 750

²¹³ Nakache D., Pellerin H. and Veronis L., 'Migrants' myths and imaginaries: Understanding their role in migration movements and policies' (Policy Brief of Research University of Ottawa, 2015)

²¹⁴ Giuffrè M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

²¹⁵ Haddad E., 'The External Dimension of EU Refugee Policy: A New Approach to Asylum?' (2008) 43 (2) *Government and Opposition*; <https://www.cambridge.org/core/journals/government-and-opposition/article/external-dimension-of-eu-refugee-policy-a-new-approach-to-asylum/8F9BCA8A5DA6A5E920E8A4DF395DD52E>

²¹⁶ Battle's and Ulusoy 15

²¹⁷ Hess S. and Kasperek B., 'Under Control? Or Border (as) Conflict: Reflections on the European Border Regime' (2017) 5 (3) *Social Inclusion* <https://www.cogitatiopress.com/socialinclusion/article/view/1004>

²¹⁸ Battle's and Ulusoy No 15

²¹⁹ Giuffrè M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

conducting SAR operations, the International Coordination Centre (ICC) or the appropriate Rescue Coordination Centre (RCC) was responsible for coordinating all actions²²⁰.

Migrant deaths in the first months of 2015 surpassed 1800, with more than 800 of those deaths occurring in a shipwreck off Libya's coast on April 18, 2015²²¹. European Council financing for Triton's SAR capabilities was immediately quadrupled²²². Triton increased its operating range from 30 to 138 nautical miles off the coastlines of Italy and Malta a month later, adding more equipment, resources, and money to its coffers in the process. The number of EU member states backing the operation has risen to 25, including almost the whole EU and Schengen area²²³. In addition, Triton worked with EUNAVFOR Med, a naval mission stationed in the same operating region as Triton. In the four months before the enlargement, the mortality rate of migrants traversing the Mediterranean was 1 in 16; in the two months after that, it was 1 in 427.

In contrast to Triton, FRONTEX's Poseidon Sea has been patrolling in the Eastern Mediterranean region since 2012²²⁴. A total of 28 nations provides their assistance to Poseidon's hosting, comprising 24 EU member states, Norway and Iceland (as part of the Small Area Cooperation), as well as Albania and Ukraine²²⁵.

²²⁰ Gogou, K. (2017). *The EU-Turkey deal: Europe's year of shame*. Amnesty.org.

Retrieved 1 April 2018, from <https://www.amnesty.org/en/latest/news/2017/03/the->

²²¹ Haddad E., 'The External Dimension of EU Refugee Policy: A New Approach to Asylum?' (2008) 43 (2) *Government and Opposition*

<https://www.cambridge.org/core/journals/government-and-opposition/article/external-dimension-of-eu-refugee-policy-a-new-approach-to-asylum/8F9BCA8A5DA6A5E920E8A4DF395DD52E>

²²² Battle's and Ulusoy 15

²²³ Hess S. and Kasparek B., 'Under Control? Or Border (as) Conflict: Reflections on the European Border Regime' (2017) 5 (3) *Social Inclusion* <https://www.cogitatiopress.com/socialinclusion/article/view/1004>

²²⁴ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

²²⁵ Bilgic A., Prince Claus Chair in Development and Equity, 'A Human Security Perspective on Migration: A compass in the perfect storm' (Speech at the International Institute of Social Studies, The Hague, 12 April 2018) <https://www.iss.nl/en/news/human-security-perspective-migration>

RABIT²²⁶ was requested by Greece on December 3, 2015, to deal with the rising influx of migrants in the Eastern Mediterranean²²⁷. European Union member states are mandated under the RABIT mechanism to give emergency operational support if a member state requests it. Greece requested that FRONTEX replace Poseidon Sea with Poseidon Rapid Intervention on December 10, 2015, which effectively increased the number of officers and technical equipment available²²⁸. As part of the same area's NATO fleet, Poseidon Rapid Intervention works in concert with them.

The number of people migrating across the Western Mediterranean in the mid-2010s was much lower than the number of people migrating through the Central and Eastern Mediterranean²²⁹. But FRONTEX worked with the host nation of Spain on three joint operations in 2015: the Indalo, Hera, and Minerva missions²³⁰. One of the three, Operation Minerva, is by far the biggest²³¹. Thirteen countries lent their support to Spain, including 11 EU members and two non-EU nations: Norway and Switzerland. Indalo is the second-largest operation, with funding from seven EU nations plus Norway, Iceland, and Switzerland²³². A yearly budget of 1.5 million euros and the backing of two EU member states is all that Hera needs to run²³³.

²²⁶ European Commission, 550

²²⁷ Nakache D., Pellerin H. and Veronis L., 'Migrants' myths and imaginaries: Understanding their role in migration movements and policies' (Policy Brief of Research University of Ottawa, 2015)

²²⁸ Battle's and Ulusoy 15

²²⁹ Haddad E., 'The External Dimension of EU Refugee Policy: A New Approach to Asylum?' (2008) 43 (2) *Government and Opposition*

<https://www.cambridge.org/core/journals/government-and-opposition/article/external-dimension-of-eu-refugee-policy-a-new-approach-to-asylum/8F9BCA8A5DA6A5E920E8A4DF395DD52E>

²³⁰ Husymans J. and Buonfino A., 'Politics of Exception and Unease: Immigration, Asylum and Terrorism in Parliamentary Debates in the UK' (2008) 56 *Political Studies*

<https://journals.sagepub.com/doi/abs/10.1111/j.14679248.2008.00721.x?journalCode=p>

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²³¹ Bilgic A., Prince Claus Chair in Development and Equity, 'A Human Security Perspective on Migration: A compass in the perfect storm' (Speech at the International Institute of Social Studies, The Hague, 12 April 2018)

<https://www.iss.nl/en/news/human-security-perspective-migration>

²³² Nakache D., Pellerin H. and Veronis L., 'Migrants' myths and imaginaries: Understanding their role in migration movements and policies' (Policy Brief of Research University of Ottawa, 2015)

²³³ Isotalo R., 'Politicizing the Transnational: On implications for migrants, refugees and scholarship' (2009) 53 (3) *Social Analysis*

2.7 European Union Naval Force (EUNAVFOR Med)

One of the most important routes across the Mediterranean is via Libya and its waterways. European Union foreign policy and security policy chief Federica Mogherini requested the UN Security Council for collaboration and assistance for an EU naval campaign to fight the smuggling of migrants in the Mediterranean in May 2015²³⁴. With the goal of disrupting people smuggling and trafficking networks, the EU Foreign Affairs Council decided to launch EU Naval Force Med, a "military crisis management operation" in an operating region dubbed "Southern Central Mediterranean."²³⁵ A three-phase operation has been mandated. Smuggling vessels will be intercepted and destroyed in three phases, with the first two focusing on information gathering and patrolling. Taking any action within international waters or foreign territorial waters requires "applicable UN Security Council Resolution or acquiescence by the coastal State concerned," which implies cooperation with Libyan authorities. The Council formally started the 11.8-million-euro project on June 22, 2015²³⁶. One Italian aircraft carrier and two German ships, one British ship, and one Luxemburg aircraft were part of the force in Phase I. There were 3078 migrants rescued or detained and interviews with prisoners to acquire information, as the troops grew familiar with the usual marine trade²³⁷. It was dubbed "Operation Sophia" in honor of the baby delivered to a Somali woman and 453 other migrants who had been saved by a German warship earlier that year²³⁸. For one year beginning on October 9, 2015, the UN Security Council enacted a resolution granting member states the authority to examine boats

²³⁴ Giuffr  M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017)

<https://www.berghahnjournals.com/abstract/journals/socialanalysis/53/3/sa530304.xml>

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

²³⁵ Bilgic A., Prince Claus Chair in Development and Equity, 'A Human Security Perspective on Migration: A compass in the perfect storm' (Speech at the International Institute of Social Studies, The Hague, 12 April 2018)

<https://www.iss.nl/en/news/human-security-perspective-migration>

²³⁶ Lavenex S., 'Shifting Up and Out: The Foreign Policy of European Immigration Control' (2006) 29 (2) *West European Politics*

<https://www.tandfonline.com/doi/abs/10.1080/01402380500512684>

²³⁷ Nakache D., Pellerin H. and Veronis L., 'Migrants' myths and imaginaries: Understanding their role in migration movements and policies' (Policy Brief of Research University of Ottawa, 2015)

²³⁸ Nakache D., Pellerin H. and Veronis L., 'Migrants' myths and imaginaries: Understanding their role in migration movements and policies' (Policy Brief of Research University of Ottawa, 2015)

suspected of smuggling migrants off Libya's coast²³⁹. This resolution enhanced the legal foundation for this operation. Five ships from France, Spain, Belgium, and the United Kingdom were added to the EUNAVFOR Med force to help with the mission. "Near constant presence" was accomplished in various operations locations, migrant boats were destroyed, and 5258 people were rescued/detained²⁴⁰. Three British, French, and Belgian ships withdrew from the fleet during the winter.

As of this writing, a transfer to activities in Libyan territorial waters was hampered by two legal problems. The government of the National Accord is recognized as the "only legitimate government of Libya" by UN Security Council Resolution (2015)²⁴¹. A shift to the next stages of EUNAVFOR Med is thus contingent on the efficient execution of Libyan Negotiated Solution and the newly created, weak GNA crackdown on illegal migration. EUNAVFOR Med's mission was extended till July 27, 2017²⁴². When immediate action was not possible, it added the duty of coaching and building up the Libyan coastguard and navy.

The first EU operation with a "potentially publicly coercive mandate" is EUNAVFOR Med. A "qualitative shift" in EU security policy toward peace enforcement is recognized by the European Union Institute for Security Studies²⁴³. As the EUISS points out, Russia's unwillingness to make this adjustment has created tensions inside the UN Security Council²⁴⁴. Because of the present migration

²³⁹ Lavenex S., 'Shifting Up and Out: The Foreign Policy of European Immigration Control' (2006) 29 (2) *West European Politics*

<https://www.tandfonline.com/doi/abs/10.1080/01402380500512684>

²⁴⁰ Bilgic A., Prince Claus Chair in Development and Equity, 'A Human Security Perspective on Migration: A compass in the perfect storm' (Speech at the International Institute of Social Studies, The Hague, 12 April 2018) <https://www.iss.nl/en/news/human-security-perspective-migration>

²⁴¹ Giuffrè M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

²⁴² Menjivar C., 'Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 *Annual Review of Law and Social Science*

<https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110413-030842>

²⁴³ Lavenex S., 'Shifting Up and Out: The Foreign Policy of European Immigration Control' (2006) 29 (2) *West European Politics*

<https://www.tandfonline.com/doi/abs/10.1080/01402380500512684>

²⁴⁴ Battjes and Ulusoy 15

crisis, the EU has taken this step on migration management to show the urgency of EU policy in deterring migrants²⁴⁵. To achieve its goal to "prevent further loss of life at sea," EUISS believes that the mission can change migration choices and transition migration routes, which would not inevitably reduce flows but redirect them via land rather than sea routes and thus achieve its goal. Secretary-General Ban Ki-moon told the European Parliament that creating "safe alternatives for perilous trips" should be a part of the effort to combat the smuggling of migrants²⁴⁶. According to the Meijers Committee of independent EU legal experts, human rights abuses are notoriously difficult for joint operations²⁴⁷. EU foreign and security policy is not subject to EU jurisdiction, as stated in Article 24(1) TEU. Only the contributing member states may offer legal remedies to rights abuses.

2.8 Involvement of NATO in the Aegean Sea

On February 8, 2016, German Chancellor Angela Merkel and Turkish Prime Minister Ahmet Davutoglu declared their interest in obtaining the North Atlantic Treaty Organization (NATO) cooperation to fight migrant smuggling in the Eastern Mediterranean²⁴⁸. Since Turkey is a member of NATO but not of the EU, NATO possesses more advanced radars and other naval capabilities than the combined forces of EU member states. This allows Turkey to work with the EU. The Greek government first resisted NATO engagement in the Aegean Sea because it feared NATO would intrude on Greek territorial sovereignty²⁴⁹. Germany, Turkey, and Greece sent a letter to NATO asking for help for their respective initiatives in the Aegean Sea²⁵⁰. NATO's Supreme Allied

²⁴⁵Léonard S., 'EU border security and migration into the European Union: FRONTEX and securitization through practices' (2010) 19 (2) *European Security*

<https://www.tandfonline.com/doi/full/10.1080/09662839.2010.526937>

²⁴⁶Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

²⁴⁷Lavenex S., 'Shifting Up and Out: The Foreign Policy of European Immigration Control' (2006) 29 (2) *West European Politics*, <https://www.tandfonline.com/doi/abs/10.1080/01402380500512684>

²⁴⁸ *European Commission*, 250

²⁴⁹ Menjivar C., 'Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 *Annual Review of Law and Social Science*

<https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110413-030842>

²⁵⁰ Nakache D., Pellerin H. and Veronis L., 'Migrants' myths and imaginaries: Understanding their role in migration movements and policies' (Policy Brief of Research University of Ottawa, 2015)

Commander Europe dispatched the first ships to the Aegean Sea a day later. Participate (in) the worldwide efforts to halt the unlawful trade and migration in the Aegean, NATO Secretary-General Jens Stoltenberg officially declared on February 9-11, 2016²⁵¹.

Recon and surveillance missions were given to NATO's Standing Maritime Group 2²⁵², which was also tasked with saving and detaining individuals in trouble at sea. NATO is certain that recovered migrants who entered the country via Turkey would be returned to their home country. Many NATO members supported SNMG2's deployment in the Aegean by the summer of 2016²⁵³. Three frigates were donated by Greece, one each by the United States, Turkey, and Poland, the United Kingdom provided a landing ship dock, and Germany provided the flagship²⁵⁴. Canadian participation in the operation was short since the frigate departed the Aegean Sea on 30 March 2016 for temporary deployment in the Black Sea²⁵⁵. In March of that year, the Netherlands and France briefly joined the effort²⁵⁶. In early March 2016, the deployment's operating area was expanded from international seas to the waters of Greece and Turkey²⁵⁷. The SNMG2 ships, which are Turkish and Greek, exclusively operate inside their respective national seas to prevent conflict. Humanitarian and utilitarian concerns have been made regarding a military solution to the refugee and migrant crises and their deterrence

²⁵¹ Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

²⁵² Menjivar C., 'Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 Annual Review of Law and Social Science <https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110413-030842>

²⁵³ Hess S. and Kasperek B., 'Under Control? Or Border (as) Conflict: Reflections on the European Border Regime' (2017) 5 (3) Social Inclusion <https://www.cogitatiopress.com/socialinclusion/article/view/1004>

²⁵⁴ Léonard S., 'EU border security and migration into the European Union: FRONTEX and securitization through practices' (2010) 19 (2) European Security <https://www.tandfonline.com/doi/full/10.1080/09662839.2010.526937>

²⁵⁵ Menjivar C., 'Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 Annual Review of Law and Social Science <https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110413-030842>

²⁵⁶ Nanopoulos, E., 'Trust Issues and the Common European Asylum System: Finding the right balance' (2013) 72 (2) The Cambridge Law Journal

²⁵⁷ Nakache D., Pellerin H. and Veronis L., 'Migrants' myths and imaginaries: Understanding their role in migration movements and policies' (Policy Brief of Research University of Ottawa, 2015)

impact. NATO's deterrent impact on migrants is significant enough from a humanitarian standpoint, but from a utilitarian one, its effort is ineffective²⁵⁸.

There is concern that NATO ships could deter displaced people from leaving Turkish territorial waters or return them immediately to Turkey, which would not be considered an indefinite suspension because the refugees never left Turkish territory²⁵⁹. Human Rights Watch's Bill Frelick is one of those who fears this could happen²⁶⁰. According to the German human rights group Pro Asyl, pushbacks to Turkey breach the rule of non-refoulement since Turkey is arguably not a safe third country²⁶¹. Greek officials have expressed their displeasure with the mission's lack of impact²⁶². However, according to reports²⁶³ from Greece's official media, only a small percentage of the boats delivering migrants to the country were detected and diverted somewhere inside the country. UNHCR data shows that daily arrivals in Greece have steadily decreased since the NATO campaign was launched²⁶⁴. However, the mission's visible deterrent impact is indeed a fraction of what was seen in March 2016 after the EU-Turkey deal.

²⁵⁸ European Commission, 350

²⁵⁹ Menjivar C., 'Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 Annual Review of Law and Social Science

<https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110413-030842>

²⁶⁰ Nanopoulos, E., 'Trust Issues and the Common European Asylum System: Finding the right balance' (2013) 72 (2) The Cambridge Law Journal

[https://www.cambridge.org/core/journals/cambridge-law-journal/article/trust-issues-](https://www.cambridge.org/core/journals/cambridge-law-journal/article/trust-issues-and-the-European-common-asylum-system-finding-the-right)

[balance/2A9D732738149475E582112D5F51E90E](https://www.cambridge.org/core/journals/cambridge-law-journal/article/trust-issues-and-the-European-common-asylum-system-finding-the-right/balance/2A9D732738149475E582112D5F51E90E)

²⁶¹ Lavenex S., 'Shifting Up and Out: The Foreign Policy of European Immigration Control' (2006) 29 (2) West European Politics

<https://www.tandfonline.com/doi/abs/10.1080/01402380500512684>

²⁶² Vimont, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

²⁶³ European Commission, 18

²⁶⁴ Bertelsmann Stiftung, 'BTI 2018 Country Report — Libya' (Gutersloh: Bertelsmann Stiftung, 2018) https://www.btiproject.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018

[_Libya.pdf](#)

3. Current Decisions made by the European Union regarding the externalization of European borders

The EU's migration policies have been increasingly externalized in recent years, but many elements of their historical foundations, internal dynamics, and larger ramifications remain unexplored. This special issue examines the latest developments in EU immigration rules, such as the extra-territorial reach of EU immigration rules, the relations of power between the EU and third countries involved in EU migration policies, the overlap with key developmental studies and post-colonialism, the reproducibility of many Australian migration policies, and the influence of EU migration policies on third countries. Some indicate how policies covered here have far-reaching implications for the European Union's future and for its involvement in world affairs²⁶⁵.

3.1 The externalization of EU migration governance

Thousands of migrants have perished across the Mediterranean and in Europe in 2018 alone, as per the International Organization for Migration's (IOM) Missing Migrants program²⁶⁶. Over the previous four years, there have been close to 18,000 recorded migrant arrivals and fatalities²⁶⁷. These numbers confirm the humanitarian disaster at the EU border. The EU and its member states have failed to live up to its founding ideals of respect for dignity, freedom, democracy, equality, and human rights, especially the rights of those who identify as minorities. Data²⁶⁸ from national authorities and IOM offices shows that between January and November, a total of 133,489 migrants and refugees arrived

²⁶⁵ Nyers P., 'Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement' (2018) 24 (6) *Third World Quarterly*

htt Menjivar C., 'Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 *Annual Review of Law and Social Science*

<https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110413-030842>

ps://www.jstor.org/stable/3993444?seq=1#page_scan_tab_contents

²⁶⁷ Bertelsmann Stiftung, 'BTI 2018 Country Report — Libya' (Gutersloh: Bertelsmann Stiftung, 2018)

[https://www.btiproject.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018](https://www.btiproject.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018_Libya.pdf)

[_Libya.pdf](#)

²⁶⁸ Nanopoulos, E., 'Trust Issues and the Common European Asylum System: Finding the right balance' (2013) 72 (2) *The Cambridge Law Journal*

<https://www.cambridge.org/core/journals/cambridge-law-journal/article/trust-issues-and-the-European-common-asylum-system-finding-the-right>

<balance/2A9D732738149475E582112D5F51E90E>

in Europe, with 81% crossing the Mediterranean Sea mostly via the Western Mediterranean route, which mainly led to Spain, where 59,747 new immigrants were registered between January and November²⁶⁹. In March 2016, the EU and Turkey signed an agreement stating that “all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey”²⁷⁰. This alteration in the route is a direct outcome of this agreement.

In the context of EU migration policy, these changes are part of a larger trend: the externalization of EU migration management to neighboring countries to the south and east. The externalization of EU migration policy began in the 2000s as a push toward more centralization of EU migration policies in Brussels away from national capitals²⁷¹. Later, these policies needed an international component. There can now be seen the conclusion of this process in full display, as the most important EU migration control measures are being applied beyond EU borders. De-localized migration policy became more critical in 2015 as the number of migrants entering EU borders reached previously unheard-of levels²⁷². Europe's borders are protected today by nations like Libya, Niger, and Turkey because of the EU's regulatory structure. Even while EU migration policies' externalization is a major topic of debate, it's important to remember that these Mediterranean tragedies are merely a part of the larger issue of moral failing. EU foreign policy and external action are further strained by these measures²⁷³. There were other two ramifications of the EU's increased focus on international migration. Firstly, EU migration policies in Africa have been intertwined with EU policy priorities such as development assistance and counterterrorism. CSDP military deployments²⁷⁴, such as

²⁶⁹ *Lavenex 29*

²⁷¹ *Nyers P., 'Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement' (2018) 24 (6) Third World Quarterly*

https://www.jstor.org/stable/3993444?seq=1#page_scan_tab_contents

²⁷² *Ruhrmann and Fitzgerald 194*

²⁷³ *Pallister-Wilkins P., 'Hotspots and the geographies of humanitarianism' (2018) Environment and Planning D - Society & Space*

<https://journals.sagepub.com/doi/full/10.1177/0263775818754884>

²⁷⁴ *Menjivar C., 'Immigration Law beyond Borders: Externalizing and Internalizing Border Controls in an Era of Securitization' (2014) 10 Annual Review of Law and Social Science*

<https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110413-030842>

EUCAP Sahel Niger, have extended their duties to include "the fight against migratory flows and related criminal activity" (European External Action Service, 2018)²⁷⁵. The EU's migration policies have become more militarized over the last two decades, and this trend has now reached a new level. Secondly, high-tech borders are increasingly used to control EU-Africa, EU-Balkans, and EU-Turkey frontiers. To put it another way, a sophisticated socio-technological system using a variety of monitoring and control technologies has been put in place to keep tabs on border crossings and migration into the EU. According to recent reports²⁷⁶, EU Member States are unable or unwilling to work together effectively in the management of EU border crossings. Proliferating anti-migration measures have been introduced by European Union governments during the last four years, while key EU principles, like the Schengen Agreement and basic rights protection, have been systematically disregarded. While far-right parliamentary participation has progressively increased throughout Europe, new administrations with an anti-immigration agenda have been elected²⁷⁷. This has been accomplished at a high price: murders, moral relativism, and the spread of an unpleasant equivalency between migrants and security threats. Despite this, several EU initiatives have decreased the number of migrants entering the EU²⁷⁸. A cohesive political strategy for addressing long-term economic and social interests that may eventually diminish migration pressures is still far from being developed by EU Member States.

²⁷⁵ Léonard S., 'EU border security and migration into the European Union: FRONTEX and securitization through practices' (2010) 19 (2) *European Security*

<https://www.tandfonline.com/doi/full/10.1080/09662839.2010.526937>

²⁷⁶ Pallister-Wilkins P., 'Hotspots and the geographies of humanitarianism' (2018) *Environment and Planning D - Society & Space*

²⁷⁷ Bertelsmann Stiftung, 'BTI 2018 Country Report — Libya' (Gutersloh: Bertelsmann Stiftung, 2018)

https://www.btiproject.org/fileadmin/files/BTI/Downloads/Reports/2018/pdf/BTI_2018

[_Libya.pdf](#)

²⁷⁸ Paoletti E., 'Power Relations and International Migration: The Case of Italy and Libya' (2018) 59 (2) *Political Studies*

<https://journals.sagepub.com/doi/abs/10.1111/j.14679248.2010.00849.x?journalCode=p>

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3.2 Using third-party resources

Many of the articles²⁷⁹ analyzed look at how EU migration policies have changed recently and how they're becoming more global in scope. The EU's inability to resolve the issue domestically has resulted in an increase in externalization. Recently, migration policies have been more focused on border control, agreements with third parties, financial incentives for transit countries to hold migrants, and the relocation of processing centers for asylum claims outside the EU. This has been the trend in recent years. In contrast to beneficent interpretations of these policies, alternative readings²⁸⁰ stress behaviors that favor the transfer of responsibility to other nations, a lack of interest in finding people-centered solutions, and neo-colonialist behavior toward the southern Mediterranean countries. Studies on EU migration policies' extra-territorial reach, power relations with third-country participants in these policies, overlap with significant development studies and post-colonialism, and effects of the EU's externalization on third-country populations are among the topics covered here. An important finding from this study is that both the normative foundations and the real physical measurements of these policies migrate throughout the world. Unlike the militarization of many EU migration-related policies, the harsh restrictions imposed by Australia have been routinely duplicated and incorporated into the policy tool presented to control migration by the EU or individual member states.

However, as EU migration policies have been more externalized, other players have entered the political economy of migration and taken their place. Rescue and NGOs, local politicians, private security firms, technology developers, and the security and defense sectors coexist alongside civil society groups²⁸¹. The externalization of EU migration regulation raises basic questions about the

²⁷⁹ Nyers P., 'Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement' (2013) 24 (6) *Third World Quarterly*

https://www.jstor.org/stable/3993444?seq=1#page_scan_tab_contents

²⁸⁰ Pallister-Wilkins P., 'Hotspots and the geographies of humanitarianism' (2018) *Environment and Planning D - Society & Space*

<https://journals.sagepub.com/doi/full/10.1177/0263775818754884>

²⁸¹ Ruhrmann and Fitzgerald 194

EU's social relevance if it is to be formed as a continuous normative project, rather than just the growth of one particular policy domain or the global role of the EU.

3.3 Which normative basis?

It is vital to investigate the normative underpinning of EU migration policies in order to understand its current and future trajectory. In one way or another, many papers concentrate on the theories that enable this specific sector of EU administration²⁸², pointing out glaring contradictions that help us better comprehend a number of major issues. For instance, Emanuela Roman's paper²⁸³ considers what EU migration governance externalized to Tunisia entails from the standpoint of Tunisian civil society organizations (CSOs). This issue gives much-needed clarification on what is meant by EU-Tunisian migratory ties in this situation²⁸⁴. The core point of Roman's paper is that the level of CSO participation on the Tunisian side of the partnership indicates its stability since the potentially greater domestic costs of aiding the EU need society agreement whether they are to be tolerated in the long run. The author finds a widespread lack of understanding among Tunisian civil society organizations, most of which have sided with their government in muted resistance to EU demands, albeit at the price of local civil liberties. As a result, we're seeing a slow hollowing out of the public sphere, which grew in the wake of the Tunisian revolution and was crucial in enabling the country to create a functional democracy, notwithstanding terrorism and economic difficulties. The EU's migratory aims are in direct conflict with its other declared policy goals in the area by eroding Tunisia's democratic underpinnings.

²⁸² Frelick B, Kysel I. and Podkul J., 'The Impact of Externalization of Migration Controls on the rights of Asylum Seekers and Other Migrants'(2016) 4 (4) *Journal on Migration and Human Security* <https://journals.sagepub.com/doi/abs/10.1177/233150241600400402>

²⁸³ Nyers P., 'Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement' (2013) 24 (6) *Third World Quarterly* https://www.jstor.org/stable/3993444?seq=1#page_scan_tab_contents

²⁸⁴ Triandafyllidou A., 'Multi-leveilling and externalizing migration and asylum: lessons from the southern European islands' (2014) 9 (1) *Island Studies Journal* https://www.researchgate.net/publication/289319121_Multileveilling_and_externalizing_migration_and_asylum_Lessons_from_the_southern_European_islands

When it comes to its normative foundations, EU migration policies are very similar to Australia's externalization of migration, which is still a popular model for justifying contemporary EU trends²⁸⁵. Fabio Scarpello demonstrates in his article²⁸⁶ how headline statistics indicating Australian success in controlling migrant arrivals conceal a political time bomb, as the general dehumanization of migrants seems to include shifting migrant pressure to several Asian countries and the creation of alliances and weapons sales that have motivated dictatorial tendencies in countries such as Sri Lanka, Papua New Guinea, and Nauru. In other words, a short-term national policy triumph has the genuine risk of becoming a long-term regional disaster, which would further aggravate migratory pressure and have many more bad consequences. The establishment of a Best Immigration Detention Center in Nauru, a tiny island with a population of 13,000 people located more than 3000 kilometers away from Australian territory, demonstrates how far a democracy would go to keep unwanted migrants away from its territory²⁸⁷. It also emphasizes the temporal component, in which short-term benefits exceed the potential long-term costs, as such policies erode civil liberties in third-party governments²⁸⁸. A large set of more than 2000 documents leaked from Australia's immigration system and subjected by The Guardian in 2016 depict "every reportable 'incident' on the island," including "attempts at self-harm, sex offences, child abuse, hunger strikes, assaults and injuries," and unmask the harm caused by "prolonged detention in Australia's notorious offshore detention camps"²⁸⁹. Migration politics has transformed the interests-calculations of the dominant players in both Australia and the EU, to the

²⁸⁵ Vaughan-Williams N. and Little A., 'Stopping boats, saving lives, securing subjects: Humanitarian borders in Europe and Australia' (2017) 23 (3) *European Journal of International Relations* <https://journals.sagepub.com/doi/abs/10.1177/1354066116661227>

²⁸⁶ Paoletti E., 'Power Relations and International Migration: The Case of Italy and Libya' (2018) 59 (2) *Political Studies* <https://journals.sagepub.com/doi/abs/10.1111/j.14679248.2010.00849.x?journalCode=p>

sxa

²⁸⁷ Simsek D., 'Turkey as a "Safe Third Country"? The Impacts of the EU-Turkey Statement on Syrian refugees in Turkey' (2017) 22 (4) *Perceptions* <http://sam.gov.tr/wp-content/uploads/2018/06/161-182.pdf>

²⁸⁸ Ruhrmann and Fitzgerald 194

²⁸⁹ Giuffr  M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017)

point that current actions toward third-party states substantially undercut longer-held goals aimed at enhancing their normative regional dominance.

3.4 Tensions that are inherent

The contrast between initial statements and deeper reality comes out in this part, which may also be observed at a more general level in how the EU works with African governments in the sphere of migratory governance, as noted by Michael Strange and Bruno Oliveira Martins²⁹⁰. The externalization of EU migration governance to third African states is heavily reliant on an EU-Africa partnership framing process that extends beyond campaign debates to include the design of institutional forums that give the impression of a formal balance of decision-making power between actors on both sides of the Mediterranean²⁹¹. The partnership framework is present in all major political documents and declarations, as well as in the institutional frameworks that govern broader EU-Africa relations, including Joint Africa-EU Strategy²⁹², the AU-EU Civil Society Forum, the Euro-African Dialogue on Migration and Development²⁹³, the Rabat²⁹⁴ and Khartoum Procedures²⁹⁵ and some initiatives of the Joint Valletta Action Plan²⁹⁶. The fact that this conceals massive power imbalances is unsurprising, but what stands out is the importance of the frame of equivalence between the two sides in making the process viable and the fact that both African and European players uphold

²⁹⁰ Giuffr  M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

²⁹¹ Williams M., 'Words, Images, Enemies: Securitization and International Politics' (2013) (4) *International Studies Quarterly* https://www.jstor.org/stable/3693634?seq=1#page_scan_tab_contents

²⁹² Vaughan-Williams N. and Little A., 'Stopping boats, saving lives, securing subjects: Humanitarian borders in Europe and Australia' (2017) 23 (3) *European Journal of International Relations* <https://journals.sagepub.com/doi/abs/10.1177/1354066116661227>

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²⁹⁴ Giuffr  M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

²⁹⁵ Triandafyllidou A. and Maroukis T., *Migrant smuggling: irregular migration from Asia and Africa to Europe* (New York, Palgrave MacMillan 2012).

²⁹⁶ Limam M. and Del Sarto R., 'Periphery under pressure: Morocco, Tunisia and the European Union's Mobility Partnership on Migration' (2015) *European University Institute Working Paper RSCAS 2015/75* http://cadmus.eui.eu/bitstream/handle/1814/37521/RSCAS_2015_75.pdf?sequence=1&isAllowed=y

it. The normative underpinning for the externalization of EU migrant policy is riddled with contradictions²⁹⁷. Pedersen²⁹⁸ demonstrates some European politicians have claimed that EU efforts to prohibit people smuggling at sea were morally comparable to the naval interdictions that ended the institution of slavery in the 18th century, prompting his historical research. Securitization of movement patterns has been intertwined into the contemporary politics of humanitarianism, allowing actors to move easily between procedures of care and control, which is one of several paradoxes that characterize both the politics of slavery in the eighteenth and nineteenth centuries and modern-day migration from Africa²⁹⁹. The creation of camps in which rescued and freed slaves were imprisoned while awaiting deportation to the disembarkation zones of Sierra Leone and Liberia³⁰⁰, where many died soon after arrival, reveals many tensions that call into question a simple positive narrative of events but also highlight startling parallels with the modern world, like the formation of camps in which black slaves were imprisoned while awaiting deportation to the disembarkation zones. Research shows³⁰¹ how current crisis moments surrounding migration are part of a lengthier trend enabled by politicized narratives used to rationalize larger components of international political economy. Some hails the British emancipation proclamation as a cornerstone for universal human rights, but points out that it also resulted in new forms of oppression from the US, including between African states, and that it enabled the British-dominated "Scramble for Africa" by legitimizing increased European active participation in African states. This last argument is especially important since the externalization of EU migration governance entails a considerably higher degree of direct

²⁹⁷Wunderlich D., 'Implementing EU external migration policy: Security driven by default?' (2013) 11 (4) *Comparative European Politics* <https://link.springer.com/article/10.1057/cep.2012.22>

²⁹⁸ European Commission, 150

²⁹⁹ Ruhrmann and Fitzgerald 194

³⁰⁰ Triandafyllidou A. and Maroukis T., *Migrant smuggling: irregular migration from Asia and Africa to Europe* (New York, Palgrave MacMillan 2012).

³⁰¹ Wunderlich D., 'Implementing EU external migration policy: Security driven by default?' (2013) 11 (4) *Comparative European Politics* <https://link.springer.com/article/10.1057/cep.2012.22>

EU involvement in African domestic governance, which is not always in the best interests of those nations.

3.5 Good governance?

According to its most basic definition, externalization of EU migration governance refers to a set of interrelated policy efforts that aim at bringing outsiders into play in the EU's borders³⁰². As Strange and Martins describe in their article³⁰³, since the mid-2000s, researchers have paid close attention to this phenomenon. After the gradual development of an EU migration policy over time, Carrera et al.³⁰⁴ argue that EU external migration policies "have normally aimed at attempting to draw and convincing non-EU countries into agreements," "policy instruments, exchange of information, infrastructure improvements or effective improvement, and regional procedures on various migration-related issues."³⁰⁵

Sandra Lavenex³⁰⁶ has stated that the evolution of shared asylum and immigration policy is symptomatic of normative conflicts inherent in the EU's shift from a regulating polity towards a political Union. When it comes to the external impact of these policies, however, the conflicts between EU normative authority and the implications of its external migratory regulation might be highlighted even more strongly. External migration policies are examined in a wide range of contexts, ranging from historical studies of particular programs and broad work on externalization to crucial border studies and the role of these policies in EU's foreign policy, including strategic alliances³⁰⁷.

³⁰² Wunderlich D., 'Implementing EU external migration policy: Security driven by default?' (2013) 11 (4) *Comparative European Politics* <https://link.springer.com/article/10.1057/cep.2012.22>

³⁰³ Amore, 345

³⁰⁴ Giuffrè M. and Moreno-Lax V., 'The Raise of Consensual Containment: From Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows' (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331

³⁰⁵ Battle's and Ulusoy 15

³⁰⁶ Triandafyllidou A. and Maroukis T., *Migrant smuggling: irregular migration from Asia and Africa to Europe* (New York, Palgrave MacMillan 2012).

³⁰⁷ Amnesty International, 'Europe's Gatekeeper: Unlawful Detention and Deportation of Refugees from Turkey' (2015) <https://www.amnesty.org/en/documents/eur44/3022/2015/en/>

As Strange and Martins argue³⁰⁸, the EU's approach to Africa is part of a wider EU strategy to seek multipolarity, involve foreign players, and better handle particular globalization concerns via strategic alliances³⁰⁹. Suppose that EU external policies on immigration aim to enlist third countries in the fortification of EU borders. The ultimate measure of success of such policies would be the amount to which migration is restricted³¹⁰.

Fabio Scarpello's³¹¹ review of the Australian migration policy demonstrates that there are no simple criteria for success. Although it may be political "gold dust" for certain people, any short-term decrease in migrant numbers might have long-term ramifications that damage migration management in the long-term and endanger the normative foundation of European authority. As a result, applying good governance principles to the externalization of EU migration policy means looking beyond simplistic statistics and considering the entire scope of the consequences for both the EU and its member states while also taking third-party countries into account. The EU governance structure is a conceptual challenge for "conventional" analytical frameworks, as shown by Reslows study on whether the EU's external migration policies are effective or not³¹². EU external migration policies have yet to be proven effective, not only because of their influence on third parties but also over a longer period of time. A concern raised by Reslows is that, like many other countries, the EU's migration policy is not adequately supervised by the European Parliament. While the European Trust Fund for Africa is a key product of the Valletta Summit, and a key financial device whereby the European Commission wants to engage in supposedly migration-related projects, the European Parliament has been able to avoid many of the usual mechanisms through which it might otherwise

³⁰⁸ Viton, P., 'Migration in Europe: Bridging in Solidarity Gap' (2016) Paper, Carnegie Europe https://carnegieendowment.org/files/Vimont_Migration_fulltext.pdf

³⁰⁹ Frelick B, Kysel I. and Podkul J., 'The Impact of Externalization of Migration Controls on the rights of Asylum Seekers and Other Migrants'(2016) 4 (4) *Journal on Migration and Human Security* <https://journals.sagepub.com/doi/abs/10.1177/233150241600400402>

³¹⁰ Huysmans J., *the Politics of Insecurity: Fear, Migration and Asylum in the EU* (Londen, New International Relations Series 2006).

³¹¹ Ruhrmann and Fitzgerald 194

³¹² Amoore, 349

be able to hold such projects accountable³¹³. In order to apply principles of good governance to this situation, the externalization of EU external borders would have an uncertain outcome because it has removed an important set of policy mechanisms from normal scrutiny with uncertain consequences.³¹⁴

Externalization of EU migrant governance has therefore gone beyond its particular issue-area to implement a new kind of EU governance that abandons the premises on which it was founded. There is a reasonable basis to believe that the developments described are indicative of a longer-term phenomenon, which has implications for the future of Europe and the societies affected.

In his 2015 book on Europe's border issues, Nick Vaughan-Williams³¹⁵ questions why European compassionate border tactics frequently expose the same "irregular" migrants they are intended to protect to dehumanization and death. It's odd that this may harm the European project because the traditional assumption publicly defends these measures. It's too early to say how this paradox will play out, but many essays provide fresh insights into the roots of EU migration policy's externalization, its breadth, and its effect.

Conclusion

Aylan Kurdi, a three-year-old Syrian refugee, was discovered dead on a Turkish beach in September 2015. While attempting the voyage from Turkey to Greece to seek refuge in Canada, he tragically perished in an accident at sea. He and his family had no choice but to engage Turkish smugglers, who paid them 4000 euros for the privilege of floating across the Mediterranean on a rubber raft without the protection of a life jacket. The image of drowned youngsters rocked the whole continent and

³¹³ Frelick B, Kysel I. and Podkul J., 'The Impact of Externalization of Migration Controls on the rights of Asylum Seekers and Other Migrants'(2016) 4 (4) *Journal on Migration and Human Security* <https://journals.sagepub.com/doi/abs/10.1177/233150241600400402>

³¹⁴ Amnesty International, 'A blueprint for despair: human rights impact of the EU-Turkey deal (2017)' <https://www.amnesty.org/en/documents/eur25/5664/2017/en/>

³¹⁵ Whatever the articles in this series of *essays* show seem to be that not only has the EU embarked on policy initiatives that diminish the right to freedom for third-party citizens but that the externalization of the EU's migration governance has altered the foundations of European society through the externalization of EU migration management

painfully revealed the lethal effects of the asylum paradox: a mix of rules that protect refugees who arrive in EU territory and measures to hold them back from EU territory where they may enjoy those rights. In the EU's reaction to the political issue of the migrant crisis, some of the remote-control methods may have led to the sad death of Aylan Kurdi, while the rescue elements of marine operations could have avoided some other tragedies. The EU aims to reduce the number of people qualifying for asylum in Europe and prevent those trying to enter without satisfying legal protection requirements from arriving by establishing safe third-country arrangements and the EU common safe places of origin list. Some worry that these regulations may impede the rights of asylum seekers from so-called safe nations. Capacity development is an EU goal for countries of origin in Africa and transit countries such as Turkey in order to increase their ability to regulate their borders. There is a public perception that the EU is fighting criminal trafficking networks, yet illicit enterprises exist because EU regulations make it hard for asylum seekers and other migrants to secure the permits to reach Europe lawfully. There was a continuing clash between exercising sovereign control over the flow of people and upholding rights duties, and humanitarian principles as the EU developed new methods of externalizing its borders in 2015 and 2016. The freedom of any individual to leave their place of birth or any other country, or the right of anybody to seek refuge outside of their country, is threatened by laws, policies, and practices that externalize migration restrictions. Asylum seekers' human rights are also jeopardized when these actions have the impact of increasing the likelihood that theirs will be violated³¹⁶. There is a lot of room for countries that are either destinations or transit points to help in capacity development and migration management, including security screening and law enforcement, in accordance with international human rights legislation and norms. As a result, these reforms, laws, policies, and practices should be restructured to systematically and immediately incorporate constitutional protection measures into migration management (often by continuing to increase the

³¹⁶ Ruhrmann H. and Fitzgerald D., 'The Externalization of Europe's Borders in the Refugee Crisis, 2015-2016' (2016) Center for Comparative Immigration Studies Working Paper No. 194 <https://ccis.ucsd.edu/files/wp194.pdf>

protective ability of appropriate authorities in migratory control in third countries), as well as to condition vacation spot and transit-State funding and training. Parallel resources might be used to strengthen the capacity of all States along the migrant pathways, notably by providing extensive training for immigration and border security officers in human rights and refugee safeguards. Border guards, law enforcement officers, and other government workers who are not directly responsible for protecting migrants' human rights might benefit from lobbying and training initiatives to ensure that they are better equipped to safeguard the rights of all those they come into contact with. Governments and other donors might strengthen funding for civil society organizations that strive to safeguard the fundamental needs and rights of people fleeing their countries of origin or seeking asylum, including the right to humanitarian assistance. People in the immigrant and asylum seeker communities might be the focus of these campaigns. International human rights organizations and civil society groups should closely watch the externalization of border control. There are a number of methods to do this. To begin with, civil society organizations should share information on local government procedures. Government policies and regional dynamics should be accessed and disseminated via civil society platforms and networks as well as international and regional human rights organizations that monitor States' adherence to international and regional human rights legislation. To guarantee that the rights of migrants and asylum seekers are not infringed during criminal prosecutions, civil society organizations should work hand in hand with law enforcement. International human rights law can be incorporated into domestic law through the work of civil society groups, which can also bring legal battles to border externalization in domestic courts and regional and international human courts. Civil society groups can also document and monitor compliance with international law and standards. The below mentioned states should take note of the following policy suggestions.

Chapter 3

Regular pathways available to asylum seekers and refugees

Introduction

Migration has a profound influence on European society, culture, and economy. With proper management, migration can lead to growth, social dynamism, and innovation in Europe. However, migration comes with many challenges that have put the solidarity of the European Union member states to the test. As a result of the challenges posed by migration, the European Union states have placed some measures to regulate migration. In this chapter, we look at the policies that have been formulated to manage the entire migration issues in the countries and at all the pathways provided by the EU members to offer chances to asylum seekers and refugees. Many countries have their ways of accepting people who seek refuge or asylum in their countries. Most of the literature reviewed will cover the most recent decisions taken by the European Union to address migration issues.

The European Commission is proposing a new deal on migration and asylum, which will cover all the various elements required for a broad European approach to migration. The commission has set up faster and more advanced methods throughout the asylum and migration system³¹⁷. The procedures will balance the principles of equitable sharing of responsibilities and solidarity. The designs are instrumental in strengthening the trust between the European Union member states, and they will also boost the confidence in the ability of the European Union to manage migration issues. The new pact offers a fresh start to handle the task of migrations in the European Union countries. The refugee disaster between 2015 and 2016 uncovered major disadvantages and the complexity of dealing with a situation that affects different states in different ways³¹⁸. It revealed candid concerns and clarified the differences that need to be recognized and overcome.

³¹⁷ Lucarelli, S., 2021. *The EU Migration System and Global Justice: An Introduction*. In *The EU Migration System of Governance* (pp. 1-32). Palgrave Macmillan, Cham.

³¹⁸ de Boer, T. and Zieck, M., 2020. *The legal abyss of discretion in the resettlement of refugees: Cherry-picking and the lack of due process in the EU*. *International Journal of Refugee Law*, 32(1), pp.54-85.

The crisis also highlighted an ultimate truth integral in the European Union: every action has consequences for others. While member states continue to face challenges outside their borders, others have to endure immigration into their countries via the sea or land, and others still have the problem of dealing with high numbers of unauthorized migrants moving into their borders. Therefore, there is a considerable need for a new and long-lasting European framework to help manage the interdependence between the member states' guidelines and decisions³¹⁹. The framework will help offer a proper response to the challenges and opportunities in normal times, in pressure situations, and in times of crisis. It should be a framework that can offer clarity, certainty, and civilized conditions for the women, men, and children arriving in the European Union. It should be a pact that will allow the Europeans to trust migration management humanely, effectively, and according to European values.

The view of migration as a threat symbolizes a subject that has been lawmakers' central concern since the early 2000s. The refugee crisis of 2015 shifted the focus of migrations into the European Union states³²⁰. The situation presented migration as an existential risk by the European political leaders and the European Union officials and agencies. Nowadays, migrants are commonly given a threat to the national identity and economic wellbeing within the European Union. European internal security involves subsequent border management and immigration control to put the migration issue under control³²¹. By developing mandated institutions to manage migration, the European Union aims to support partner countries in establishing national and regional migration management procedures.

The migration management is in line with the international standards, which will improve the ability to curb irregular migration and prevent human trafficking and smuggling. The union will stimulate regional and economic development, skills and entrepreneurship, and knowledge exchange by

³¹⁹ Niemann, A. and Zaun, N., 2018. *EU refugee policies and politics in times of crisis: theoretical and empirical perspectives*. *JCMS: Journal of Common Market Studies*, 56(1), pp.3-22.

³²⁰ Geddes, A., 2018. *The politics of European Union migration governance*. *J. Common Mkt. Stud.*, 56, p.120.

³²¹ d'Appollonia, A.C., 2019. *EU migration policy and border controls: from chaotic to cohesive differentiation*. *Comparative European Politics*, 17(2), pp.192-208.

promoting legal migration. It will encourage good labor migration policies, help create administrative structures, protect the rights of migrants, and support skill management and identification of qualifications³²². There is a plan to fight against illegal employment and tackle human trafficking and forced labor. The administration is also vital in ensuring that the risk of prostitution is eliminated.

1. Resettlement

Resettlement is an essential protection device that can offer lasting solutions for refugees worldwide. Whenever people sit down to discuss refugee situations, many people suggest that resettlement should be encouraged and expanded. It offers a lifeline for those who need international protection and cannot get back to their countries of origin due to the persecutions. The European Union commission vowed to financially support the member states' collective pledge of over 30,000 resettlement places at the first refugee forum held in Geneva in 2020³²³. However, the implementation of the promise suffered a massive setback due to the Covid-19 pandemic outbreak. A significant factor influenced many European Union Member states, the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration, temporarily suspending resettlements. Resettlements focus specifically on vulnerable refugees who have already left their countries of origin and seek asylum in the land of refuge. The refugees do not have a prospect to stay in that country due to problematic conditions such as threats and human rights violations³²⁴. If a third country admits the refugees, they are transferred to that country with a vision of lasting incorporation. The settlement targets the provision of a lasting solution which will give the refugees a platform to integrate into the respective society³²⁵. However, states do not have any entire obligation to provide long-lasting

³²² Embiricos, A., 2020. *From refugee to entrepreneur? Challenges to refugee self-reliance in Berlin, Germany*. *Journal of Refugee Studies*, 33(1), pp.245-267.

³²³ Romano, A., 2020, November. *The External Dimension and Access to International Protection in the European Union: Resettlement and Humanitarian Visas*. In *The External Dimension of EU Migration and Asylum Policies* (pp. 97-120). Nomos Verlagsgesellschaft mbH & Co. KG.

³²⁴ Pejovic-Milovancevic, M., Klasen, H. and Anagnostopoulos, D., 2018. *ESCAP for mental health of child and adolescent refugees: facing the challenge together, reducing risk, and promoting healthy development*. *European child & adolescent psychiatry*, 27(2), pp.253-257.

³²⁵ Sahin Mencutek, Z., 2021. *Refugee community organisations: capabilities, interactions and limitations*. *Third World Quarterly*, 42(1), pp.181-199.

solutions to the refugees. It is somewhat left to their pleasure to get involved in the resettlement. However, if the states choose to conduct the resettlements, they have to comply with the international refugee laws and the international and regional human rights laws. The international refugee laws apply to all refugees irrespective of whether they arrived in an uncontrolled way, by resettlement, or in a controlled manner.

The question remains whether the latest voluntary resettlement nature justifies that countries may disrespect the international protection responsibilities towards refugees during the resettlement process. Refugee rights protection and finding lasting solutions for the refugees is an integral function of the UNHCR. According to UNHCR, resettlement includes the assortment and relocation of the refugees from a nation where they have sought safety to another state that has accepted to welcome them³²⁶. The acceptance should consider them permanent residents in the states who will agree to receive them. To make it possible for the commission to implement effective resettlement, the commission brought some recommendations to the member states. The commission proposed an increase in resettlement places for those seeking asylum in Europe. The establishment of a Union Resettlement Framework in 2016 aimed to discourage people from using irregular means to enter the European Union for protection³²⁷. The European Commission also highlighted that relocation should be the most favored means for the refugees to get protection.

The UNHCR is also a custodian of the 1951 refugee convention. In honoring this enactment, it is obliged to organize training and support of governments across the European region. Training helps all states that intend to resettle asylum seekers to comprehend and set standards of handling in the form of policies and regulations³²⁸. The whole exercise also strengthens partnerships and achieves maximum mechanisms to foster wide-ranging support from requisite stakeholders, mobilize

³²⁶ Carrera, S. and Cortinovis, R., 2019. *The EU's Role in Implementing the UN Global Compact on Refugees*. Article published by CEPS Paper in Liberty and Security in Europe, (2019-04).

³²⁷ Sinik, A.A., 2020. *Migration Policies of the European Union and Turkey with special Consideration of the 2016 Readmission Agreement*.

³²⁸ *United Refugees, 'Europe'* (UNHCR, 2022) <https://www.unhcr.org/europe.html> accessed 26 September 2022.

resources and suppress negative discourse³²⁹. Resettlement is important, and when coupled with some other aspects, it makes the whole process smoother. Such aspects, as vouched by UNHCR, include community sponsorship programs, family reunification, scholarships, and humanitarian visas. Most of the times, refugees need a spontaneous response, and refugee-hosting nations always have to go through a lot in such scenarios. With the UNHCR and humanitarian agencies, the burden becomes a little more bearable as inter-agency responses are often calculated and enforced in tandem with what nations do on their own³³⁰. The international conflict between Russia and Ukraine, which happened in early February of 2022, has been an event that really utilized the above-mentioned response. For security and safety responses, millions of refugees fled to different nations for asylum. Because of that mass displacement, humanitarian needs that were a result of it became many. Interagency responses are being championed, and the UNHCR expanded its presence in Ukraine and the neighboring nations that are creating asylum for these refugees³³¹. Things became even more difficult with the Covid-19 pandemic, which still lingers in the European region. A unique socioeconomic problem arose with the refugees, stateless people, and asylum seekers. Creative means had to be incorporated into the interventions, and efforts were made in the form of increased activity on social media, hotlines, and similar technological communication methods³³².

1.2 European Union Resettlement

Afore 2000, a few European nations were involved in settling refugees based on the national programs. However, the EU slowly got interested in the resettlement program and integrated it into their Regional Protection Programs, which were established to find long-lasting solutions for refugees in the chosen regions that held importance for the EU. As a motivation to provide resettlement, the European Refugee Fund (ERF) gave €4,000 to each member state for each resettled person falling in

³²⁹ *United Refugees, 'Europe' (UNHCR, 2022)* <https://www.unhcr.org/europe.html> accessed 26 September 2022.

³³⁰ *United Refugees, 'Europe' (UNHCR, 2022)* <https://www.unhcr.org/europe.html> accessed 26 September 2022.

³³¹ *United Refugees, 'Europe' (UNHCR, 2022)* <https://www.unhcr.org/europe.html> accessed 26 September 2022.

³³² *United Refugees, 'Europe' (UNHCR, 2022)* <https://www.unhcr.org/europe.html> accessed 26 September 2022.

a particular precedent group between 2008 and 2013³³³. This incentive is a positive indication that the European Union considered the position of refugees and asylum seekers who found their ways into the member states of the EU. The establishment of the Joint European Union Resettlement Program (JEURP) in 2009 indicated a low involvement in resettling refugees. The moves negatively impacted the European Union's ambition to champion humanitarian affairs.

In further developments to provide a smooth platform in offering refugees a chance, the Asylum, Migration and Integration Fund (AMIF) was formed in 2014³³⁴; it replaced the ERF, and it was operational between 2014 and 2020. The main aim of the AMIF is to give more support to the resettlement of refugees by the member states of the European Union. The fund also aims to maximize the strategic impacts of resettlements by targeting those who have the greatest need for resettlement. These goals can only be achieved by creating mutual resettlement priorities at the European Union level. According to article 17(3) of the regulation, the primacies for selection will include people from a region or country designated for implementing the program³³⁵. Secondly, any person from a country or region that has been under UNHCR's resettlement forecast and where the union's everyday actions will have a considerable impact on the fortification of needs. Finally, those persons belonging to a definite category within UNHCR resettlement standards.

The AMIF directive increases the amount for each resettled migrant who falls within the given priorities of vulnerable persons to €10,000. It also gives up to €6,000 for those who do not meet the set criteria in the act³³⁶. However, the amounts are only issued if the vulnerable persons have been resettled according to the following requirements as stated in the AMIF Regulation. First, the resettlement should occur at the request of the UNHCR. Secondly, the concerned person should be in valid need of international protection. Third, the resettled person must fall in one of the stated priority

³³³ de Boer, T. and Zieck, M., 2020. *The legal abyss of discretion in the resettlement of refugees: Cherry-picking and the lack of due process in the EU*. *International Journal of Refugee Law*, 32(1), pp.54-85.

³³⁴ *Ibid*

³³⁵ *Ibid*

³³⁶ Arnold, S., Ryan, C. and Quinn, E., 2018. *Ireland's response to recent trends in international protection applications*. *ESRI Research Series*, (72).

groups (this only applies to the more considerable lump sum). Finally, the person should be accorded a refugee position or auxiliary protection status as soon as they arrive in the resettlement nation. All the steps taken by the European Union to resettle the refugees and those people looking for asylum are indicators that encourage the migrants to follow legal procedures in their quests for finding safer states.

The deal between Turkey and the European Union was completed in March 2016. The value aimed to halt the improper flow of migrants from Turkey to the European Union³³⁷. The pact had a vision of ending the intermittent flow of refugees and replacing it with a legal method channel to enable proper resettlement. For each Syrian refugee that returned from Greece to Turkey, one refugee from Turkey would be resettled in the EU, a 1:1 ratio. The plot targeted 72,000 resettlement slots under the 1:1 ratio scheme³³⁸. However, the priority was given to those refugees who had never attempted to get into the EU illegally, but this provision was not included in the regulations that were set AMIF criteria. The EU-Turkey deal also did not mention anything about the rights of refugees who were involved in the entire process.

1.3 Individual Member States Selection Procedures

Most EU member states primarily rely on the UNHCR selection procedures for their selections. This does not mean that they cannot apply their selection criteria when selecting refugees for resettlement. The member states that have decided to make their selection on an operation basis will make their selection for resettlement using procedures done in person. The procedures can either be done in the country where the individual is seeking refuge or in the UNHCR Emergency Transit Facility (ETF) somewhere else. Some states might use their records or combine the documents and descents. Even

³³⁷ Léonard, S. and Kaunert, C., 2021. *De-centring the Securitisation of Asylum and Migration in the European Union: Securitisation, Vulnerability and the Role of Turkey*. *Geopolitics*, pp.1-23.

³³⁸ Lampas, N., *European Studies at the American College of Greece, Deree*. His main research interests include American Foreign Policy, Middle East Politics, the nexus between terrorism and migration, and causes of prejudicial attitudes towards refugee. He has published articles in peer reviewed journals and his first book on.

though very little is known about the missions, it is evident that different nations may use other methods for their selections.

Taking the example of Romania, they rely so much on the in-country selection for refugees who qualify for resettlements. They carry out the selection missions to gauge the refugee's situation according to the pertinent resettlement selection principles. Sweden performs around 10-12 selection exercises to fill in the available slots, relying on the UNHCR's pre-Mission Questionnaires for Resettlement Interview Missions and Pre-Mission Checklists Interview Missions³³⁹. To achieve an acceptable range for selection, Sweden needs presentations of around 10% more people than those selected. The goal of the interviews, which are done individually, is to complement the information encompassed in the Resettlement Registration Form (RRF) that the UNHCR submits. It provides a reasonable basis for assessing and deciding on the qualified refugees for resettlement.

Finland also has a place for the UNHCR in its refugee selection process. First, the UNHCR suggests the potential people for selection for resettlement reasons. The individuals are later subjected to an interview by the representative officials of the Finnish government³⁴⁰. Those classified as emergency cases are usually chosen without any interview process. The people who fall in the emergency category typically form 10% of the quota. The process remains the same for all humanitarian migrations, which is the need for international protection. The Finnish Ministry for Interior requires that Finland prioritize the most vulnerable groups of people. The vulnerable people include entire families, children, and women in difficult situations like widows and single parents. Finland has had a policy that requires officials to develop individual incorporation plans for the new migrants³⁴¹. The plans should capture the migrants registered as unemployed or social assistance beneficiaries. An

³³⁹ Bejan, R., 2021. *The Integration of Refugees in Romania: A Non-Preferred Choice*. COMPAS Working Papers, University of Oxford.

³⁴⁰ Sacramento, O., Turtiainen, K. and Silva, P.G., 2019. *Policies of Refugee Settlement and Integration in Europe: the Cases of Portugal and Finland*. *European Journal of Migration and Law*, 21(4), pp.409-434.

³⁴¹ *Ibid*

individual's level of cooperation with the employment and migrant officials will determine how the integration plan is implemented.

The Netherlands also engrosses in the selection missions planned by their Immigration and Naturalization Service (IND). The refugees who the UNHCR has proposed for resettlement are interrogated by the IND, which finally makes the ultimate judgment on the individuals to be resettled³⁴². At the end of the procedure, the UNHCR is notified about the decisions made by the IND, and then the UNHCR conveys it to the concerned refugees. The Dutch integration Act of 2013 states that it is the responsibility of the refugee to settle, but the state is responsible for supporting their settlement. The civic integration law gives the municipalities the freedom to initiate fundamental Dutch values, with the needs of both the local people and the migrants³⁴³. Such kind of initiation of the refugees into the local communities of the countries they seek refuge in provides a comfortable environment where the migrants can settle in quickly.

The United Kingdom conducts interviews on all preselected refugees to select for resettlement. The government also takes the biometric data of the refugees for security screening and assesses the necessary medical requirements³⁴⁴. Like the Netherlands, the United Kingdom communicates its decisions to the UNHCR. Countries like the Czech Republic, France, Denmark, Finland, the Netherlands, Sweden, Portugal, Norway, and the United Kingdom do not offer any remedy against an undesirable decision³⁴⁵. However, the majority of states will give room for reassessment if a refugee presents new and more relevant information. It is another way of giving the refugees a second chance to prove their need to be granted the asylum they seek. With the confirmation of proper documents and the issuance of new and relevant information, they have another chance of being resettled. Since the operations follow the interviews that the UNHCR carries out, the refugees might

³⁴² van Liempt, I. and Mielle, S., 2021. *Being far away from what you need: the impact of dispersal on resettled refugees' homemaking and place attachment in small to medium-sized towns in the Netherlands*. *Journal of Ethnic and Migration Studies*, 47(11), pp.2377-2395.

³⁴³ *Ibid*

³⁴⁴ de Boer, T. and Zieck, M., 2020. *The legal abyss of discretion in the resettlement of refugees: Cherry-picking and the lack of due process in the EU*. *International Journal of Refugee Law*, 32(1), pp.54-85.

³⁴⁵ *Ibid*

encounter them several times, which may be pretty exhausting. However, minimal reference is made concerning refugee rights during the selection processes.

The application of criteria apart from the ones suggested by the UNHCR indicates that there is still a massive need for protection. The Netherlands have an inclination for cases with higher profiles in human rights and the pro-democracy associations. This means that submissions can include those who stood up for human rights and whose responsibilities in society had subjected them to danger. In Germany, the selection for resettlement includes even the preservation of family unity or other factors suitable for integration³⁴⁶. Factors such as education, work experience, occupational training, language talents, religious attachment, and the requisite for safeguarding are considered. The Czech Republic considers the priorities of the humanitarian aid policies, priorities in migration policy, and integration policies. The integration policies include factors such as the willingness of the refugee to be resettled in the Czech Republic. The elements are the major points to be scrutinized before being considered to have qualified for resettlement.

Even though individual member states have different selection procedures for the refugees, whenever they conduct such procedures without adhering to human rights and acceptable standards, the Court does not always take it lightly.

In the case of *O.M. and D.S v. Ukraine*³⁴⁷, the European Court of human rights ruled against a receiving state for violation of article 3 of the European Convention. There was the expulsion of asylum seekers from Ukraine to Kyrgyzstan without assessment of risks of ill-treatment, something which did not work well with the Court and set standards. The aggrieved parties, O.M and D.s, were Kyrgyz nationals but were residing in the Netherlands. Further, the two victims were related, O.M is D. S's mother. O.M, who was a native Ukrainian, was a journalist and former member of the Kyrgyz

³⁴⁶ de Boer, T. and Zieck, M., 2020. *The legal abyss of discretion in the resettlement of refugees: Cherry-picking and the lack of due process in the EU. International Journal of Refugee Law*, 32(1), pp.54-85.

³⁴⁷ *O.M. and D.S v Ukraine Council of Europe European Court of Human Rights [ECtHR] No 18603/12 decided 15/09/2022* <https://caselaw.euoa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2752&returnurl=/pages/digest.aspx>

parliament. However, following her husband's suspicious death, civil instability, and malicious charges connected to crime against her, these two applicants decided to flee to Kazakhstan.

They were eventually elected to seek asylum in Europe. Their problem was with their treatment at the Kyiv airport by state authorities; instead of the authorities providing protection, they took them to Georgia. They were eventually given asylum in the Netherlands on account of their fear of ill-treatment and unfair trial if taken back to Kyrgyzstan. The Court relying on several articles of the European Convention declared that the applicants had been unfairly treated. Based on article 5 on the right to liberty and security, article 13 on the right to an effective remedy, and article 34 on the right to an individual application as per the European Convention, the Court came to an inevitable conclusion that the applicants' complain, especially the one of their removal to Georgia, was a mere violation of the interim measure stated by the Court. The action by the authorities did not take into account risks that would have befallen the applicants if they returned to Kyrgyzstan. Furthermore, the applicants were subjected to humiliation by way of unlawful detention by Ukrainian border guards, which did not positively contribute to their required protection guidelines and support for asylum. Everything violated article 3 of the European Convention, and risk assessment ought to have been done before the expulsion of the applicants from Ukraine to Kyrgyzstan.

The state's selection procedures must at all times meet international standards. Failure to follow correct procedure is unacceptable, and states that do not follow set procedures always find themselves in hard places legally when brought forth.

A good example is the *European Commission v. Hungary*³⁴⁸. In this case, the CJEU ruled that Hungary failed to fulfill its obligations under reception conditions, Asylum procedures, and Return directives. The CJEU, in the press release, expounded on this, stating that Hungary failed to fulfill its mandate to ensure effective access to the procedure for granting international protection in so far as third-country nationals. Asylum seekers who wished to cross the Serbian-Hungarian Border were

³⁴⁸ *European Commission v Hungary* Court of Justice of the European Union [CJEU] C-808/18 Date of Decision 17/12/2020 <https://caselaw.eua.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1428>

pragmatically confronted with the virtual impossibility of making their application. This impossibility stemmed mainly from a combination of national legislation which required applications for international protection to be made only in one of the two transit zones as administrative practice. The law, which was championed and enforced by the Hungarian authorities, limited the number of applicants authorized to enter those zones each day. In giving the ruling, the Court relied on admissible evidence for the Commission through a number of international reports.

The Court restated that making an application for international protection before registration, submission, and verification is an essential step in granting asylum protection; therefore, member states are not allowed to deny it unjustifiably. Member states are, in fact, obligated to make sure that the persons concerned are enabled in making applications as soon as they make their intentions to do so clear. Applicants for international protection are also supposed to stay in one of the transit zones for the duration of their examination, and in case of detention, it should be within the boundaries of the reception directive. The actions of Hungary were outside the conditions of acceptable circumstances under European law. The applicants had guarantees when it came to this matter, but the state just oversaw them. Situations in which an applicant can be detained are listed exhaustively in the reception directive, and the Hungarian government wasn't covered by any of them.

The procedures and reception directives also require, among other things, that the specific reasons for detention be ordered in writing and with reasons. Special Needs of the applicants identifying them as vulnerable must also be taken into account so as to make them receive adequate support. Children are to be placed in detention as a last resort. Hungarian national legislation went against these provisions limiting the enjoyment of these guarantees by the applicants. The Hungarian government tried to justify its actions by arguing that it was allowed to act as it did pursuant to article 72 TFEU which derogated from the substantive and procedural safeguards established by the return directive. The Court rejected this line of interpretation in the first instance. Hungary did not respect rights conferred by the principles of the procedure directive, and when a crisis situation caused by mass

immigration would be declared, the Hungarian legislation would muzzle the guaranteed rights subject to detailed rules not in conformity with EU law.

These two cases are just but the tip of the iceberg on what is happening. Even though many states follow and value state selection procedures, some other states, such as Poland and the Czech Republic, join Hungary in ravaging them. Conformity to migration laws in good faith, especially when it comes to following the procedure, is still a challenge. Some states have the mentality that for as long as they are conducting selection, no further obligation is upon them to make sure that the process is done in the correct manner.

1.4 Human Rights and resettlement in the European Union

No right states anything about the resettlement of the refugees in the international refugee law or the international human rights law. It means that the refugees cannot claim any right to be given asylum or resettled by the state they seek refuge in. Even though it is not a personal right, it is an exaggeration to term resettlement as a favor done by the conditions that conduct it³⁴⁹. The beneficiaries of the resettlement are the refugees who have the entitlement of international protection. When the country of refuge declines to give it, it does not mean that the entitlement is extinguished. Therefore, as earlier indicated, resettlement should be re-evaluated as an exchange in terms of an unformed and imperfect right. Since the European Union seems to prefer resettlement as a substitute for asylum, it is appropriate to ask about the legal rights that the refugees involved can revoke.

The resettlement of refugees has more about protecting their human rights than any other factor. If there were nothing about protecting human rights, then there would be no reason at all to relocate them to a safer place where they feel more secure. Even though the provision of food, medicine, and shelter, among other things, is essential, the idea of legal protection has a clear focus³⁵⁰. Protection means using legal instruments, including treaties and national laws, to ensure that the refugees are

³⁴⁹ *Ibid*

³⁵⁰ Goodwin-Gill, G.S., 2014. *The international law of refugee protection. The Oxford handbook of refugee and forced migration studies*, pp.36-47.

not subjected to any oppression. The oppression, as mentioned here, may include factors like being penalized, expelled, or refouled. Such conditions will ensure that the refugees enjoy the total balance of rights and benefits that they deserve as refugees. Such standards exist in Europe that make many people fleeing from conflicts in their countries desire the states in Europe. Otherwise, they would just remain in their countries of origin and face the harsh situation irrespective of whether they would make it out or not. The resettlement of refugees in Europe offers them new hope of living and establishing themselves without the fear of being executed.

Human rights are inherent, but the European Union has faltered when too much pressure arises. Respect for the rule of law quickly becomes eroded in instances where it is needed the most. In 2022, Poland and Hungary came under continued scrutiny for attacks on the rights of LGBT people, judicial independence and media freedom, women's rights, and civil society groups, including women's rights defenders³⁵¹. Generally, EU nations showed little agreement on anything other than border sealing and externalizing responsibility at the expense of human rights, making little progress toward creating migration policies that respect human rights or allocating responsibility fairly for immigrants, asylum seekers, and refugees. Although thousands of Afghans were evacuated from Kabul in August by EU nations, they made resettlement commitments that fell short of the need and continued to work with nations like Libya despite evidence of significant abuses against migrants and refugees. Frontex, the EU border agency, defies calls for accountability despite mounting evidence of its involvement in abuses and lack of investigation.

Pushbacks were made by Croatia, Greece, Cyprus, Hungary, Slovenia, Spain, Lithuania, Latvia, and Poland, with the latter three modifying their respective national laws to make these illegal actions legitimate³⁵². Denmark established a hazardous precedent by abolishing the status of those from Damascus or the Damascus Countryside. It created a statute permitting it to send asylum applicants

³⁵¹ 'EU: Commitment To Rights Falters Under Stress' (Human Rights Watch, 2022) <https://www.hrw.org/news/2022/01/13/eu-commitment-rights-falters-under-stress> accessed 21 September 2022

³⁵² "EU: Commitment To Rights Falters Under Stress", Human Rights Watch, Last modified 2022, <https://www.hrw.org/news/2022/01/13/eu-commitment-rights-falters-under-stress>.

to another country for the evaluation of their claims. To discourage arrivals in Northern France, French authorities misguidedly treated migrants inhumanely at the UK-France border. In addition to other unfriendly environments, groups advocating the rights of migrants and refugees faced prosecution in Greece, Italy, and Cyprus³⁵³.

The human rights issue for asylum seekers is severe and needs a response. The European region has so much to catch up on for this particular role.

A survey of available case law from the European Court of Human Rights reveals that the European Court most at times privileges state sovereignty over migrants and their inherent rights. Because of that, migrants face a deficit in protection. The courts create historical and jurisprudential lines, which in time, result in intellectually logical but ethically objectionable findings and judgments. One landmark case of this nature was the case of *Al-Saadoon and Mufdhi v. The United Kingdom*³⁵⁴. An application was lodged against the United Kingdom of Great Britain and Northern Ireland under article 34 of the protection of Human Rights and Fundamental Freedoms by two Nationals of Iraqi origin. The two applicants claimed that they were detained by British Forces in Basra before being transferred into the custody of the Iraqi authorities, violating their rights under articles 2, 3, 6, 13, and 32 of the Convention and article 1 of protocol 13, together with protocol 6. Protocols number 6 and 13 of the European Union Convention have been ratified by numerous states of the Council of Europe. Very few members have not yet ratified them. The protocols highly contribute to the interpretation of article 2 of the Convention, which prohibits the death penalty in all circumstances. It exclusively bans the death penalty, which causes not only physical pain but also intense psychological suffering as a result of the foreknowledge of execution. In the case of *Al Saadon and Mufdhi v. the United*

³⁵³ "EU: Commitment To Rights Falters Under Stress", Human Rights Watch, Last modified 2022, <https://www.hrw.org/news/2022/01/13/eu-commitment-rights-falters-under-stress>.

³⁵⁴ *Al-Saadoon and Mufdhi V. The United Kingdom* Strasbourg European Court of Human Rights, Application no. 61498/08 [https://hudoc.echr.coe.int/enq#{%22itemid%22:\[%22001-97575%22\]}](https://hudoc.echr.coe.int/enq#{%22itemid%22:[%22001-97575%22]}) accessed 21 September 2022

*Kingdom*³⁵⁵, the Court found that article 1 of protocol 13 prohibits extradition or deportation of an individual to another state where substantial clear grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty. In this case, the applicants were handed over to the authorities of the United Kingdom operating in Iraq. They were Iraqi civilians who were handed over to Iraqi criminal circumstances where they faced capital charges that warranted the death penalty. The Court ruled that, indeed, article 3 was breached but what was saddening was that it did not consider it necessary to examine whether there was also a breach of article 2 of the Convention in tandem with article 1 of protocol 13.

Another scenario where the Court took the same action was the case of *Al-Nashiri v. Poland*³⁵⁶, which concerned the extraordinary rendition to the U.S. naval base in Guantanamo of a suspected terrorist facing the death penalty; the Court found that at the time of the applicant's transfer from Poland, there was a substantial and foreseeable risk that he could be subjected to the death penalty following his trial before a military commission. This was in breach of Articles 2 and 3 of the Convention, taken together with Article 1 of protocol number 6. Just like the Al Saadoon case, the Court stayed away from direct confrontation of state laws allowing for the death penalty. Sovereignty triumphs over human rights in these situations.

States are entities recognized by international law, and therefore their sovereignty must mean something within the confines of set laws. Going back to Hans Kelsen's doctrine of *non-liquet*, where no law applies, the concept of sovereign countries setting up laws within international limitations is repudiated. The conformity to international regulations by states is not satisfactory but stating that there is no effort would be unfair.

³⁵⁵ *Al-Saadoon and Mufdhi V. The United Kingdom* Strasbourg European Court of Human Rights, Application no. 61498/08 [https://hudoc.echr.coe.int/enq#{%22itemid%22:\[%22001-97575%22\]}](https://hudoc.echr.coe.int/enq#{%22itemid%22:[%22001-97575%22]}) accessed 21 September 2022

³⁵⁶ *AL NASHIRI v. POLAND* Court (Fourth Section) case number 28761/11 decided 24/07/2014 [https://hudoc.echr.coe.int/enq#{%22itemid%22:\[%22001-146044%22\]}](https://hudoc.echr.coe.int/enq#{%22itemid%22:[%22001-146044%22]})

The locus classicus explaining this is the Case of *J.K. And Others v. Sweden*³⁵⁷, which originated in application number 59166/12. Applicants are a family, a couple and their son of Iraqi origin. In the years 2010 and 2011, they tried to get asylum in Sweden for reasons that they were at risk of persecution in Iraq and Al-Qaeda because the first applicant partnered with American clients in business. He also was an agent in the U.S. armed forces base and had worked there for numerous years. The applicant, together with his family, faced serious threats and actual violence from the Al-Qaeda terrorist group from the year 2004 to around 2008. The applicants were living in fear for their lives since the first applicant had been wounded twice, his brother kidnapped in 2005, and his daughter murdered by shooting. For some time, the applicant had to stop his job and, together with his family, move to different locations in Baghdad. The applicant further had attacks on his business stocks, but since he moved a lot in Baghdad, he hadn't received personal threats since 2008.

The authorities in Sweden denied the family asylum, and their decision was later supported by the migration court because criminal acts by Al-Qaeda had been done several years before the application, and the applicant was no longer conducting business with the Americans. There was also the aspect of the will and capacity of the Iraqi authorities to protect the applicant in case of any threat or attacks.

In 2015, a chamber of the European Court held that enforcement of a deportation order against the applicants was not, in essence, a violation of article 3 of the European Convention. The applicant was not satisfied with this determination, and so he lodged an application which was referred to the Grand Chamber. This Court reiterated that although the matter of national security in Baghdad had really deteriorated there, the intensity of violent activity had not yet gotten to levels constituting real risks of treatment in violation of article 3. The Court then assessed whether the personal circumstances of

³⁵⁷ *J.K. and Others v. Sweden* European Court of Human Rights, Application no. [GC] - 59166/12 Judgment 23.8.2016 [GC] <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22mistreatment%20of%20refugees%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22002-11163%22%5D%7D> accessed 21 September 2022

the applicant posed a danger to him if expelled to Iraq. In doing this, the Court found that asylum seekers were the only people with information about personal experiences, and therefore the onus probandi was on them to provide all evidence relating to their individual circumstances. If their circumstances depicted grave danger, then they would be granted asylum. When asylum seekers alleged that they had been ill-treated in the past, such information was relevant in gauging the risk of facing similar misfortunes in the future. This Court considered the fact of past ill-treatment seriously and found it as an indicator of real future risk of conduct contrary to article 3. The applicant made a coherent and credible account of events consistent with information from reliable sources. The government was obligated to give evidence that would bring doubts about that risk.

The Court, in this case, found no reason to doubt the migration Agency's finding that the applicant's family had gone through serious forms of abuse by the al-Qaeda terrorist group from 2004 to 2008. Moreover, indirect threats to the family and attacks on the first applicant's business stock continued after 2008. They were forced into hiding because they couldn't avail themselves to the Iraqi authorities as they were also highly infiltrated by the Al-Qaeda group. Based on these facts, there was a strong indication that they would be at risk of facing attacks from non-state actors in Iraq. Various reports and objective sources supported this position through reports showing that persons who collaborated with authorities of occupying powers in Iraq never ceased to get attacked by al-Qaeda and such groups.

The first applicant had constantly been attacked because of his relations with the American forces, and even worse, his work premises were situated in the United States military base. It was clear that the applicants would face relentless attacks from non-state actors if taken back to Iraq. In regards to the ability of the Iraqi authorities' obligation to provide the applicants with protection, it was also very clear that the capacity of the state was greatly diminished. It was not to say that Iraqi authorities were not providing any protection to their citizens; it's just that people such as the applicants required extra protection as they were targeted. Iraqi authorities had historically failed at such mandates.

In declaring that deportation of the applicants back to Iraq was a violation of human rights, the Court stated that the applicant's personal circumstances and Iraqi authorities diminished protection ability were too serious. The human rights issue for asylum seekers is severe and needs a response. The European region has so much to catch up on for this particular role.

When it comes to rights that are not in the first generation, the problem becomes even bigger. In the case of *Chapman v. the United Kingdom*³⁵⁸, the Court stated that article 3 of the European Union could not be interpreted to mean that high contracting parties are obliged to provide all refugees within their jurisdiction with a home. The applicants were gypsies from five different families. One of them was granted land in the Green Belt area, but the government refused to give her planning permission when it was time to develop it. According to the state, there was no official site for gypsies. Two other applicants, who were a couple, alleged that they were forced to live in conventional housing from 1983 to 1987. An attempt by all the applicants to develop and enjoy the land without authorization made them get punitively fined. When brought to Court, it was held even though planning permissions limited the enjoyment of certain rights such as the right to housing and ethnic identity; those limitations were within the confines of acceptable laws.

Asylum seekers and refugees are vulnerable populations and have to be protected. When these people are not provided with places to stay, are forced to live on the streets for months without resources, or have limited access to sanitary facilities, it raises issues under article 3. This happened to five applicants seeking asylum in France but consequently forced to sleep in the streets for several months in the case of *N.H. and Others v. France*³⁵⁹. The relevant authorities failed in their duties towards the applicants as prescribed by both national and international laws. Their poor living conditions, in addition to their lack of appropriate response despite their frequent launching of concerns, exceeded

³⁵⁸ *Chapman v. the United Kingdom* United Kingdom [GC] 27238/95 decided 18/01/2001
<https://hudoc.echr.coe.int/enq?i=002-7098>

³⁵⁹ *N.H. and Others v. France* 28820/13, 75547/13 and 13114/15
<https://hudoc.echr.coe.int/enq#%22itemid%22:%22002-12897%22%22>

the severity threshold as given in article 3. The Court found France in violation of acceptable law and awarded pecuniary and non-pecuniary damages to the applicants.

After this precedence, countries have decided to offer accommodation services to asylum seekers just to conform to article 3 of the European Union Convention. The problem with this is that there is no threshold to show that what authorities are providing is indeed sufficient. Sometimes states do this for formality creating circumstances in which refugees have places to sleep and eat, but their lives still underscore miserable standards. A perfect example of this was the case of *N.T.P. and Others v. France*³⁶⁰. Applicants were nationals from the republic of Congo who were not satiated with the reception arrangements just before the asylum application was lodged. They claimed that their inability to obtain a place in a reception facility on account of the French authorities' refusal to register their asylum appeals exposed them to inhuman, degrading treatment. They claimed that the accommodation facilities granted were basic and unsuitable for small children. They further added that their family's private life was also interfered with. The Court, when giving its verdict, stated that there was no violation of article 3 of the European Convention on Human Rights, which prohibits torture, inhumane and degrading treatment. I.T. further declared inadmissible the complaint on article 8 on respect for privacy and family life. The rationale for the determination was that the family had been given night-time accommodation in a hostel financed by public resources. Apart from that, the children attended a nearby nursery school, and the whole family got access to publicly funded medical care. The family basically had the French government attend to its basic needs, which was very different from what would have been their fate. The threshold and level of severity requisite for the actions to fall within article 3 had not been attained.

³⁶⁰ *N.T.P. and Others v. France* (application no. 68862/13) 24.05.2018
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22003-6092422-7852138%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22003-6092422-7852138%22]})

2. Family Reunification

Families play a meaningful role in the lives of every human being, whether refugee or not. Many people value their family members and believe that family members will always give their uttermost support to any members. It is why many refugees will always want their families to be with them when they have been granted asylum or resettled in other nations³⁶¹. Family members have been an essential part of one's success and development in whatever they do. Many people that have found themselves running away from the persecution or conflicts in their countries get detached from their families. The individuals may have had to leave their families behind, the separation may have come as a result of losing their track at the time of their flight. Reunifying with family can be one of the most persistent worries for sanctuary seekers, refugees, and other people who need international protection³⁶². Integration of the resettled refugees can be more accessible when the refugees reunite with their family members than when they don't.

Family reunion in the state of asylum is habitually the only manner to ensure respect for the refugees' rights to family unity and family life. The conditions under which the refugees abandon their countries may contribute to separation from their families. A summary of the 2001 specialist committee on family unity arranged by UNHCR states that "state tradition proves that family reunion is commonly recognized concerning refugees and their families and that practical complexities related to its implementation do not lessen a state's obligation."³⁶³ Family reunification for refugees and other people who need international protection is crucial because they can't go back to their country of origin.

Reinstating family union is a core factor of fetching back more normalcy to the lives of the refugees and other people who require international protection. It can be instrumental in easing the sense of

³⁶¹ Welfens, N. and Bonjour, S., 2021. *Families first? The mobilization of family norms in refugee resettlement. International Political Sociology*, 15(2), pp.212-231.

³⁶² Illingworth, R., 2018, April. *Durable solutions: refugee status determination and the framework of international protection. In The Refugees Convention 50 Years On (pp. 91-108). Routledge.*

³⁶³ Kappel, S., Khatraoui, R., Strik, M.H.A. and Terlouw, A.B., 2019. *No Family torn apart. Challenges for refugees face securing family reunification in the Netherlands and recommendations for improvements.*

losses felt by the people who, apart from family, have lost their nation, network, and life as they knew it. In this sense, family backing supersedes any cultural and traditional understanding of a family, including those who depend and rely on each other. Bringing family members to join the refugees can be another way of ensuring they are safe and protected from danger. Additionally, family reunion plays a vital role in helping the refugees to re-establish their lives and offer much-needed support as they get used to their new environments³⁶⁴. It can profoundly upset their capacity to incorporate into their new environment and is also vital in the entire process of integration. Therefore, it is clear that family reunification can support more considerable economic and social cohesion. When the family reunification procedures are accessible, it is possible to uphold the legal and safe routes through which people can make the applications for their families to join them.

Family time and the family union is a right that pertains to every person, even those asylum seekers whose fate has not yet been concluded. While many states are not legally bound to pledge family reunification, it is a de facto human right to have their families close to them. Conditions associated with family reunification have long been subject to public debates in many European Union nations. However, the EU laws, notably the EU Directive on family reunions, offer a framework for managing this matter. The regulations have a lot of room for the EU member states to maneuver through the set regulations. Apart from the laws that govern the entire issue of family reunification, every nation has its unique way of dealing with the matter. Some European Union nations have started introducing measures that call for the refugees to prove that they can support their families financially³⁶⁵. There are some minimum income requirements that the labor migrants need to attain before being granted family reunion rights. However, the international models and EU statutes have encouraged countries that practice them to waive such necessities for refugees.

³⁶⁴ Slade, N. and Borovnik, M., 2018. 'Ageing out of place': Experiences of resettlement and belonging among older Bhutanese refugees in New Zealand. *New Zealand Geographer*, 74(2), pp.101-108

³⁶⁵ Menjivar, C. and Perreira, K.M., 2019. Undocumented and unaccompanied: children of migration in the European Union and the United States. *Journal of Ethnic and Migration Studies*, 45(2), pp.197-217.

The massive flow of immigrants into the European Union states has influenced different reactions from different countries. Given the economic challenges that some countries across Europe face, they decided to impose some measures to limit the number of families they could admit. Germany set a temporary suspension on the right to family reunification for the legatees of the international protection in 2016³⁶⁶. With the temporary ban, the country also shifted towards giving subsidiary protection to the refugees rather than issuing a full refugee status. However, they re-introduced the family reunification processes for refugees in 2018, but it came with the condition that would limit the number of families. The new cap introduced gave room for 1,000 family members per month, which has never been filled despite the high demand for family reunifications³⁶⁷. The move seems to give more room for the refugees who have been granted asylum to reunite with their family members. Even though Germany opted to re-open the family reunification procedures, Turkey made it impossible, especially for people from Syria. The complete closing and deployment of military on the land border with Syria in mid-2015 made it difficult for Turkey to admit refugees from Syria³⁶⁸. The Turkish government announced that any Syrian entering Turkey by air or sea had to produce their visa as a requirement. The move by Turkey to restrict Syrians into their territory exterminated the family reunion process for the Syrians who were in provisional protection in Turkey. The border restrictions by Turkey have made it more difficult for the family members who are already in Turkey to reunite with their family members³⁶⁹. This shows that even though the international standards require that refugees be granted the right to family reunification, some states can do the opposite. Such decisions may align with the country's security concerns about the refugees allowed into such nations.

³⁶⁶ Löbel, L.M. and Jacobsen, J., 2021. *Waiting for kin: a longitudinal study of family reunification and refugee mental health in Germany. Journal of Ethnic and Migration Studies*, pp.1-22.

³⁶⁷ *Ibid*

³⁶⁸ AKSOY, S.Z. and KILIÇ, S., 2019. *The Responsibility to Protect Policy of Turkey during the Syrian Crisis (2011-2015). Bilge Strateji*, 11(21).

³⁶⁹ *Ibid*

2.1 Directives for Family Reunification

Given the importance of families in the lives of the refugees, the European Union has adopted some directives that give its members a foundation on handling the family reunification issue. The family reunification for asylum seekers and refugees is guided by a legal structure, including the Family Reunification Directive (FRD)³⁷⁰. The FRD only plainly applies to conventional refugees. Another directive on family reunification is the Dublin Regulation, only applicable to asylum seekers. There is also the European Convention on Human Rights (ECHR) and the European Union Fundamental Rights. FRD gives a lot of discretion to the member states to formulate the national policies and practices. Subsequently, the rights and circumstances that govern family reunion differ according to one's legal status, country of destination, and some susceptibility procedures.

The Dublin regulation has set out a number of guidelines that should be followed when handling the family reunification issue. The code states that children should not be separated from their family members, including those that have made their way to the EU³⁷¹. The regulation allows the movement of children only when it is meant to reunite them with their families. The principle has the best interest of children who seek to be reunited with their parents. In most European Union Member States, beneficiaries of international protection are given similar favorable rights to get family reunions as refugees. All this includes the Netherlands, which offers both groups the same rights. The Council of Europe Commissioner for Human Rights has criticized any state that becomes unfair in providing the rights. The council requires that all refugees be given an equal opportunity to apply for the right to be reunited with their families without any discrimination.

2.2 Recommendations from the UNHCR for Family Reunification

To successfully conduct a family reunification process, there has to be a distinct definition of who can be categorized as family, but there is no universally accepted definition of what a family is

³⁷⁰ Danisi, C. and Ferreira, N., 2022. *Legal Violence and (In) Visible Families: How Law Shapes and Erases Family Life in SOGI Asylum in Europe*. *Human Rights Law Review*, 22(1), p.ngab020.

³⁷¹ Radjenovic, A., 2019. *Reform of the Dublin system*. European Parliamentary Research Service. Member's research service, 1.

supposed to be. This is the main reason why the UNHCR came up with a standardized definition of family to make it possible for nations to facilitate family reunification. According to UNHCR, a nuclear family will commonly be comprised of spouses, dependents or minors, unmarried children, and even minor siblings. It includes children who are adopted either legally or on a traditional basis, and also legally recognized partners and individuals engaged in marriage and who have been involved in traditional marriage³⁷². People who have established their relationships for long, including partners of the same sex, also fall in the category of spouses. Upon confirmation of the provided guidance by a refugee, the people mentioned above will qualify as family members as directed by the UNHCR. The UNHCR adopts Article 4(2) of the Family Reunification Directive on dependent family members, permitting reunification with an adult applicant's parents. It also allows for children who are not yet married but are dependent on the applicants³⁷³. Article 10(2) considers the specificity of refugee families by allowing their reunion with the other reliant family members. However, the UNHCR is very concerned about the member states that do not allow refugees to reunite with their dependent family members. That is why it calls for the specific member states to adopt the provisions of Article 4(2) and Article 10(2) to make it easier in facilitating family reunification of the dependent members of the family. UNHCR has also raised some concerns about members who do not offer an opportunity for the dependent members to reunite with their families. Such states apply a rigorous interpretation of the guidelines that makes it almost impossible to have family reunification. In addition to that, some states require very high levels of dependency to grant reunification opportunities. Even though there are variations in assessing the concept of dependency among the member states, UNHCR recommends using the guidelines for the proper assessment of dependency. Member states have a very narrow interpretation of family members, especially where reunification may include customary marriages or long-term relationships that can lead to marriage. There is a

³⁷² Welfens, N. and Bonjour, S., 2021. *Families first? The mobilization of family norms in refugee resettlement. International Political Sociology*, 15(2), pp.212-231.

³⁷³ Milios, G., 2021. *Family Unity and International Protection—EU Regulation and its Compatibility with the echr. Nordic Journal of International Law*, 90(2), pp.161-189.

massive regret that many member states do not grant a family reunification opportunity to people who are not yet married³⁷⁴. Some apply a very stringent definition of unmarried lovers and require that the partnership be formalized by registration. Some states even fail to use the more favorable clauses for refugees that exempt them from giving evidence of sickness, accommodation, and regular income for family reunification with their unmarried partners. It becomes difficult for the benefactors of international protection who are not yet married to reunite with their spouses. It can also prove impossible for the refugees to formalize their long-term relationships in nations where marriage certificates are not provided regularly. In such cases, the UNHCR will urge the member states to use the guidelines provided so that the refugees can get reunited with their partners and formalize their marriages.

Another area that raises a lot of concern is the lack of siblings in the definition of family members for family reunification. The absence makes some member states provide room for family reunification between siblings³⁷⁵. It makes it hard for the orphaned and unaccompanied minor children to get reunited with their brothers and sisters where it is in their finest interest. It can even prevent young people who acted as heads of their households in their countries of origin from getting reunited with their brothers and sisters who depended on them. However, some member states will provide for the reunification of siblings with dependency or medical reasons. The UNHCR appreciates such flexibilities and recommends the member states use every possibility that can allow refugees to reunite with their siblings and dependent relatives.

Apart from the case of siblings, UNHCR also considers the issue of migrant children who are unaccompanied by their elder relatives or parents. In Article 10(3) of the Family Reunification Directive, it is clear that solitary children should be allowed to reunite with their parents³⁷⁶. It states

³⁷⁴ Jaffe-Walter, R., 2020. *Integration and Immigration. In Coercive Concern (pp. 45-76). Stanford University Press.*

³⁷⁵ Chandler, H., Boothby, N., McNatt, Z., Berrigan, M., Zebib, L., Freels, P.E., Alshannaq, H., Majdalani, N., Mahmoud, A. and Majd, E., 2020. *Causes of family separation and barriers to reunification: Syrian refugees in Jordan. Journal of Refugee Studies, 33(2), pp.371-389.*

³⁷⁶ Milios, G., 2021. *Family Unity and International Protection—EU Regulation and its Compatibility with the echr. Nordic Journal of International Law, 90(2), pp.161-189.*

that in situations where the parents cannot be traced, the minors or children should be reunited with a guardian or other family member. Additionally, Article 5(5) of the ordinance mandates that member states consider the preeminent for unaccompanied children. It means that the states must give the children the best treatment to provide them with a bigger chance of being reunited with their family members. UNHCR appreciates that all member states offer opportunities for unattended minors to be reunited with their parents or guardians as directed by article 10(3)(a); however, UNHCR gives substantial attention to those states that might formulate policies that can make it difficult for children above 16 years of age.

The UNHCR encourages the EU member states to apply more favorable clauses for the beneficiaries of international protection. It suggests that all the member states should give the beneficiaries access to family reunification. The granted access should fall under the same favorable policies, just like those applied to refugees. Member States are also persuaded not to apply limits on favorable conditions given to the refugees to recognize their particular situation. The UNHCR has encouraged the member states to use generous criteria when identifying family members in defining family members. The move is meant to promote comprehensive family reunion, which includes extended family members when dependence is observed in such family members. The states should adopt a clear definition of dependency about the sponsor for family reunification. In the case of a family being formed after the beneficiary has entered into a member state, the people under international protection should be given the same treatment as the other people who are legally staying in the member states. Some exceptional cases will require a unique tracing of particular individuals. Tracing plays an essential role in the case of unaccompanied minors, and every effort must be utilized to trace their parents. If the parents cannot be traced, the minors' other relatives must be traced as soon as possible for the interest of the minors. UNHCR proposes that where time limits are used, they only apply to the primary application and will not include the time required to trace the minor's family members.³⁷⁷

³⁷⁷ Morgano, F., 2020. *Unaccompanied minors (UAMS) in the European Union*, "Osservatorio Nazionale sui minori stranieri non accompagnati", 4.

The member states should make sure that the beneficiaries of international protection programs obtain correct information on family reunions early enough.

UNHCR also encourages the member states to facilitate the refugees' access to the family reunion by offering a possibility of the sponsor's application in their country of asylum³⁷⁸. Such states should avail application forms adapted to specific international protection requirements for family reunification. Providing such documents will make it easier for the beneficiaries of international protection to access family reunification procedures. It is also imperative to note that the UNHCR does not support the rejection of family reunification applications due to a lack of documents. Member states should make sure that all possible avenues are exhausted in trying to link the refugees with their families. Member states should establish family links and provide proper training to those who will be the decision-makers in such issues. The European Commission member states should implement UNHCR's guidelines on DNA testing as a sure means of documenting family ties.

Member states are encouraged to establish laws, practices, and alternative schemes when national travel credentials are unacceptable. It should include Convention Travel Documents or alternative ICRC travel documents. Family members who cannot obtain national travel documents should receive a one-way laissez-passer from the member state³⁷⁹. The family members of beneficiaries of international protection should be provided with visas in the country of asylum as soon as they present their valid travel documents. Another proposal concerning the travel documents and visas is that member states are encouraged to use the availability of consular presentations. The consular representation is provided by the European Union legislation to enable the states to issue visas to facilitate family reunification. It applies where the country of asylum does not have an embassy for the family member's country of origin.

³⁷⁸ Darling, E., 2019. *The rights to refugee family reunion*. In *Research Handbook on International Refugee Law*. Edward Elgar Publishing.

³⁷⁹ Cleton, L., 2021. *The time politics of migrant deportability: an intersectional analysis of deportation policy for non-citizen children in Belgium and the Netherlands*. *Journal of Ethnic and Migration Studies*, pp.1-19.

Member states should deliberate on cutting or abandoning administrative and visa costs for the beneficiaries of international protection. They should weigh if the costs play a part in preventing the refugees from accessing family reunification³⁸⁰. The prices of DNA tests for purposes of family reunification should be controlled. Member states should consider covering such costs on behalf of the beneficiaries of international protection upon confirming the family relationship. Generally, the EU member states should chip in and help in shouldering the financial costs on behalf of the beneficiaries of international protection, which may not have enough resources to pay the expenses. The member states should help integrate the reunited families into their new country. It can be done when the states facilitate a fast family reunification process. When the process is done quickly and without several delays, the families can be together within the shortest time possible. The member states should give the same statuses, rights, and integration privileges to family members just as those given to the beneficiaries of international protection. States should also ensure that they prevent issues like domestic violence and dependence between the family members by ensuring that the family member has a different residence from that of the sponsor.

2.3 Facilitating Family Reunification

Many people continue to seek safety in countries away from their countries of origin. Several people risk their lives trying to get to Europe by enduring long and dangerous voyages. Most of such people are running away from war, persecution, and conflict in their countries. The mixed migrations of unprecedented numbers of people from Sub-Saharan Africa, the Horn of Africa, and the Middle East form a considerable number of migrants. They try to get into Europe through Turkey, the North of Africa, and the Mediterranean³⁸¹. The irregular arrival of migrants by sea has increased, and many people have died during such travels.

³⁸⁰ Henrekson, M., Öner, Ö. and Sanandaji, T., 2020. *The Refugee Crisis and the Reinvigoration of the Nation-State: Does the European Union Have a Common Asylum Policy?*. In *The European Union and the Return of the Nation State* (pp. 83-110). Palgrave Macmillan, Cham.

³⁸¹ Crawley, H. and Blitz, B.K., 2019. *Common agenda or Europe's agenda? International protection, human rights and migration from the Horn of Africa*. *Journal of Ethnic and Migration Studies*, 45(12), pp.2258-2274.

Such dangers and deaths of migrants call for more legal ways of admitting and protecting vulnerable people. Such situations compelled UNHCR to be consistent in advocating for various measures that include the enhancement of family reunification³⁸². Programs to accept family members of those already living in the countries can grant an opportunity for family reunification. Such countries can utilize the procedures to facilitate family reunification in those nations or offer support in the states where the family members are located. The said support could include facilitating easy access to embassies, waivers on visa applications issuing humanitarian visas, or giving help required documentation.

The European Union states should prioritize ensuring that those who remain in the countries offered asylum or countries of origin can unite with their family members who live as beneficiaries of international protection. Such a feat can be achieved by facilitating family reunification programs via the directives given by the UNHCR. The nations should facilitate family reunification by streamlining and accelerating the entire process that has a human right in it. Additionally, the states should be flexible in their definition of family members as suggested by the UNHCR and help the family members to reunite with their loved ones. The member states should also pool their ability to process the family reunification cases and have a joint operation booth in the countries of asylum³⁸³. Such a program should include Regional development and Protection Program (RDPP) countries that can provide important information, counselling, and relevant referrals. Such a move may be helpful in instances where the corresponding EU member state embassy does not exist in a particular country of asylum.

Refugees who do not have the option of family reunification because they do not qualify for one reason or another can be admitted under programs such as resettlement, humanitarian visas, humanitarian admissions, or private sponsorship programs. A good example lies in countries such as

³⁸² Hennebray, J.L. and Petrozziello, A.J., 2019. *Closing the gap? Gender and the global compacts for migration and refugees. International Migration*, 57(6), pp.115-138.

³⁸³ Leuffen, D., 2021. *Integration and Differentiation in the European Union: Theory and Policies*.

Germany, Austria, Ireland, and Switzerland, which have given opportunities to Syrian relatives beyond the limits of the applicable legislation. The UNHCR would encourage other states to consider similar moves to enhance family reunions for the beneficiaries of international protection in their territories.

2.4 Provisions for Family Reunification across Different States in the EU

Using the UNHCR's guidelines as their reference point, different EU states have policies that guide family reunification. In Belgium, it is provided that the family members who are allowed to join the beneficiaries of transnational protection include their spouse, registered partner equal to marriage, or legal registration of a partner if the couple exceeds 21 years of age³⁸⁴. Unmarried minor children, adult children who are disabled and cannot fend for themselves, and their parents in the case of unaccompanied children. Other family members can apply for a humanitarian visa which might be given out on a flexible basis.

In Croatia, family members of refugees include their spouse, life partner as recognized by the Croatian law, their juvenile children, as well as adopted children who are minors and stepchildren, adult single children who cannot take care of their needs due to their health statuses, parents or any legal person who can stand as a representative for the minor, direct blood relative who lived or shared a household with the beneficiary for international protection³⁸⁵. It applies when it can be established that the person is dependent on the beneficiary of international security. In Denmark, the closest nuclear family members can reunify with a sponsor, such as a cohabiting partner or a spouse. Such people include unmarried children under 18 years, refugee minor siblings, adult dependent children, or other dependent family members.

Germany permits a refugee and any person who is a spouse over 18 years of age, unmarried children, and minors. Beyond the nuclear family, dependent members due to infirmities or severe illness, in a

³⁸⁴ *Refugee Family Reunification UNHCR's Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*. (n.d.). [online] Available at: <https://www.unhcr.org/4f54e3fb13.pdf> [Accessed 27 Jan. 2022].

³⁸⁵ *Ibid*

case where no other family member can care for the person. However, Germany may not offer family reunification if there is a possibility of reunifying the family in a third country where the family has exclusive links³⁸⁶. The unique links include a legal residence for the family, but it can be possible not under preferential conditions. Poland uses a very narrow interpretation of family to offer family reunification. In relation to the partner, the marriage must be accepted by Polish law, which excludes holy matrimony, same-sex marriages, polygamous marriages, or people who have been in long relationships. However, children have better conditions in Poland regarding family reunification. Accepted family members in Poland include minor children, including children who are adopted and depend on the beneficiary of international protection, such as stepchildren. The Polish policy accepts their parents, grandparents, or responsible persons for unaccompanied children.

Sweden allows wives, husbands, a registered partner, or a cohabiting partner of the beneficiary for international protection to get family unification. Other members include their minor children, and if the beneficiary for international protection is a child, their parents are accepted³⁸⁷. In Switzerland, beneficiaries were allowed to reunite with their family members in 2014. People with permission for family reunification include spouses, cohabiting or registered partners, and minor children. However, reunification can only be granted if the three-year anticipating period has elapsed. It can be proved that the family members will get enough accommodation and not depend on social help³⁸⁸. Other family members may gain access to family reunification under exceptional circumstances, as articulated in Article 8 of ECHR. The exceptional cases may include adult disabled children, adopted children, and any person who had a permanent stay with the applicant.

The United Kingdom provides that any adult with refugee status or humanitarian protection may join their direct family members. The immediate family members may include spouses above the age of 18, same-sex partners, or unmarried partners above 18 years of age, as long as they have been living

³⁸⁶ *Ibid*

³⁸⁷ *FAMILY REUNIFICATION IN EUROPE. (n.d.). Available at: <https://www.unhcr.org/56fa38fb6.pdf>.*

³⁸⁸ *Ibid*

together pending marriage or civil union for at least two years before the request, minor, dependent, or unmarried children. The family members mentioned must have formed part of the refugee's family before they fled to seek asylum. In the Czech Republic, people allowed for family reunions include partners or spouses, unmarried minor children, and parents of refugees under 18 years of age. Others may consist of adult dependent children, their minor children who are legal residents in the house of the spouse, direct relatives in the rising line of a minor who has been granted asylum. Lone people older than 65 and any foreign national who cannot provide for their needs are also within the group. The conditions are similar in different member states across the European Union territory. All the efforts laid to try and accommodate people who have fled inhuman conditions in their countries of origin are adequate. Together with the help of the UNHCR, many people have been granted a safer stay in the countries within the European Union. Such moves are essential in ensuring that refugees can get proper living standards even when living away from their home countries. The nations should do much better to eliminate irregular migration into the European Union territories.

Rights in 2014, *Mugenzi v. France*³⁸⁹ and *Tanda-Muzinga v. France*³⁹⁰, relating to Article 8 of the Convention and the family reunification process of refugee sponsors, the Court underlined that family unity is an essential right for refugees, and that family reunification is a fundamental precondition for allowing persons who have fled persecution to re-establish a normal life. The Court stated that family reunification procedures are grave and that they should be flexible, prompt and effective. The greater principle informs families of non-discrimination. The Court has recently recognized same-sex marriages, which are to be treated with the same kind of sanctity as normative families.

³⁸⁹ *Mugenzi v. France* (Application No. 52701/09), 10 July 2014 <https://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93mugenzi-v-france-application-no-5270109>

³⁹⁰ *Tanda-Muzinga c. France*, Requête no 2260/10, Council of Europe: European Court of Human Rights, 10 July 2014, available at: <https://www.refworld.org/cases,ECHR,53be80094.html>

In another case, *El Dernawi v. Libya*³⁹¹, a man from Libya received asylum in Switzerland³⁹². His wife and children, who remained in Libya, were allowed to be reunited with him, but they could not leave since the government had taken their passports. The HRC stated that the “definitive, and the only impediment to the family being reunited in Switzerland” was the conduct of the Libyan government. “A person awarded refugee status pursuant to the 1951 Convention on considering their current status as refugees, cannot be expected to return to their homeland.” The HRC determined that the author’s and his family’s rights under The ICCPR’s articles 17, 23, and 24 had been broken and violated³⁹³.

The case of *Gonzalez v. Guyana*³⁹⁴ also fed into this custom³⁹⁵. The HRC determined that the Guyanese government had violated Article 17, paragraph 1 of the ICCPR by refusing to give the wife’s Cuban husband a residence permit. The HRC emphasized that it was clear the couple couldn’t live together as they did not have access. They cohabitated in Cuba, and the state party had not suggested where else they could live together.

Families end up never being reunited with different applications of family reunification laws and procedures. With uniformity comes harmony and clarity on what is to happen. Different applications of laws are hectically inexplicable and confusing. It makes the asylum seekers have delayed justice or, in some instances, no justice at all.

Courts have always had a soft spot for minors, and the Court of justice of the European Union is not an exception. Minors are given priority even when they come of age during an application for

³⁹¹ *Farag El Dernawi v. Libya*, CCPR/C/90/D/1143/2002, UN Human Rights Committee (HRC), 31 August 2007, available at: <https://www.refworld.org/cases,HRC,5a0d63514.html>

³⁹² “Realising The Right To Family Reunification Of Refugees In Europe”, European Website On Integration, Last modified 2022, <https://ec.europa.eu/migrant-integration/library-document/realising-right-family-reunification-refugees-europe.en>.

³⁹³ “Realising The Right To Family Reunification Of Refugees In Europe”, European Website On Integration, Last modified 2022, <https://ec.europa.eu/migrant-integration/library-document/realising-right-family-reunification-refugees-europe.en>.

³⁹⁴ *Gonzalez v. Republic of Guyana*, CCPR/C/98/D/1246/2004, UN Human Rights Committee (HRC), 21 May 2010, available at: <https://www.refworld.org/cases,HRC,4c1895262.html> [accessed 21 September 2022]

³⁹⁵ “Realising The Right To Family Reunification Of Refugees In Europe”, European Website On Integration, Last modified 2022, <https://ec.europa.eu/migrant-integration/library-document/realising-right-family-reunification-refugees-europe.en>.

reunification. The precedent of *B.L., BC v Stadt Darmstadt*³⁹⁶ brings it out clearly. S.W., B.L., and B.C., who originated in Syria, requested national visas in Germany since their sons had obtained refugee status as well. Their request was immediately rejected since the German Embassy in Beirut found out that these sons had attained the age of majority at the time of application for the visa. In 2019, the Administrative Court of Berlin ordered the Federal Republic of Germany to issue visas to the applicants for the purpose of family reunification in accordance with paragraphs 6(3) and 36(1) of the Act on the Residence Employment and Integration of Foreigners in the Federal Republic of Germany. Their sons were therefore considered minors. Germany as a state appealed against the judgment on the point of the law, arguing that section 36(1) violation was not well interpreted by the Administrative Court as the applicants' sons did not meet the qualifications of minor refugees. The state argued that the remedy given to the applicants would only work if their sons were truly minors, as referred to in Article 10(3)(a) of directive 2003/86 together with article 2(f). Germany further alleged that the Court never clarified via a ruling if an entry and residence visa must be issued to parents of refugees who had already attained the age of majority. The question was referred to the CJEU, and the procedure remained until Directive 2003/86. The referring Court, by application of German national law, reached a finding that S.W., B.L., and B.C. were not entitled to a visa for the purpose of reunification with their sons. The CJEU stated that the main aim of Directive 2003/86 was to enable family reunification, offer protection to third-country nationals, and give special care to minors. The directive is to be applied with respect for the sanctity of the family and to ensure the best interests of the child. The Court stated that it is contrary to the objectives of the directory and to the European Union charter to take into account the date when the member state rules on a request to entry for family reunification as the date to refer to in determining the age of the applicant.

³⁹⁶ European Union, Court of Justice of the European Union [CJEU], *SW (C-273/20), BL, BC v Stadt Darmstadt (C-273/20), Stadt Chemnitz (C-355/20), Joined Cases C-273/20 and C-355/20*, ECLI:EU:C:2022:617, 01 August 2022. Link redirects to the English summary in the EUAA Case Law Database <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2645&returnurl=/pages/digest.aspx> accessed 21 September 2022.

The fact that a refugee is still a minor on the date of the decision on the application for entry and residence for family reunification does not constitute a condition within the meaning of Article 16(1), which provides that failure to comply allows member states to reject the application. Article 16 must be interpreted to mean that where the minor attained age of majority before the decision on an application for entry for reunification, a first-degree relationship in the direct ascending line is not sufficient. It is also not necessary for the child and sponsor parent to cohabit in a single household or cohabit under the same roof for the parents to qualify for family reunification. Occasional visits and regular contact may be sufficient to prove that the concerned persons are reconstructing personal and emotional relations. Lastly, it is not also a requirement that the sponsor and parent support each other financially.

Sometimes refugees and asylum seekers are not granted bare minimum rights like the country's citizens when they voice their desires and concerns on family reunions. It is common practice in different states, even though courts try so hard to bring order in the field. A case scenario where an immigrant was denied the natural justice right to be heard is the case of *State Secretary v. Applicant*³⁹⁷. The case reinforced the right to be heard based on the general Administrative Law Act. The applicant was a woman from Syria who submitted a family reunification application with her sponsor, who acted for her. The state secretary rejected the application on the grounds that the applicant failed to sufficiently demonstrate the relationship with the woman she wanted to reunite with the family and further that the sponsor had insufficient income. In the appeal at the Hague, the issue arising was whether the state secretary should have given the applicant a chance to be heard and submit an objection. It is a legal obligation under article 7.3, and the Court analyzed how the state officer applied it. Generally, the rule required that the more an applicant made efforts to obtain requisite information and communicated about their desire, it was rational to call them for a hearing.

³⁹⁷ *State Secretary v Applicant Netherlands Council of State [Afdeling Bestuursrechtspraak van de Raad van State] 202106513/1/V2*
<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2664&returnurl=/pages/digest.aspx> accessed 21 September 2022.

When all the circumstances to be taken into account amounted to a doubtful case, it was mandatory for the applicant to be hard because of what happened; the administrative Court gained jurisdiction over the case. Applicants were people with special circumstances which they could justify by evidence but were not given a chance. The sponsor, for instance, had Parkinson's disease, and it was difficult to obtain official documents from Syria. They applied for a platform to explain their situation in more detail. The council of state deliberated on this issue, and it was clear that the objection was unfounded. The applicants had concrete circumstances in place, which indicated great interest in being heard. The Hague decision was upheld, and it was affirmed that the state secretary wrongfully failed to underscore the doctrine of *Audi alterum partem* with the applicant.

3. Private Sponsorship

Private sponsorship has been rising in many countries across the European Union Member States. Refugee reception has been the work of the government across many states in the European Union. When the governments got overwhelmed by the arrival of refugees during the 2016 crisis, alternative avenues were sought to settle the refugees across Europe. Because people will always need to help others due to their human nature, there was a severe need to address the rising numbers of refugees³⁹⁸. The other methods of accommodating refugees, such as resettlements, had been overwhelmed due to many governments' financial constraints. They had to find ways to arrest the refugee situation before it got out of control for them.

Among the sought ways to ensure that the refugees were given food, Medicare, clothing, and shelter were the involvement of the community groups. The lawmakers across European nations brainstormed on the possible benefits of involving nearby communities settling the refugees. At this point, private sponsorship of refugees was conceived and born to try and settle the refugees and asylum seekers. The idea was new to many EU member states, but it had been going on for many years for Canada. Private sponsorship has three elements that have been adopted by different member

³⁹⁸ *Klasson, D., 2019. EU burden-sharing in the Refugee Crisis: A Strategic Game Perspective.*

states of the European Union³⁹⁹. The elements include the traditional private sponsorship as majorly adopted by Canada, Humanitarian corridors, private sponsorship and humanitarian visa programs experienced in Switzerland and Poland, and the Humanitarian Corridors Programs found in countries like Italy, France and Belgium.

3.1 Private Refugee Sponsorship in Canada

For many years, Canadian citizens have been raising funds and offering their time and energy to support several refugees in their country. More than 325,000 refugees came to Canada and got help through the Private Sponsorship for Refugees Program⁴⁰⁰. The program began during the arrival of refugees from Vietnam in 1979. The Canadian government facilitates three types of refugee resettlement, including the government-assisted refugees (GARs), Privately Sponsored Refugees (PSRs), and a new type of blended visa office-referred refugees (BVORs) which is partly financed by the government and partly by the private sponsors. Through these programs, Canadian citizens and other permanent residents can offer sponsorships to refugees abroad. 75% of sponsorships came from faith-based organizations in Canada before 2015⁴⁰¹. The BVOR sponsorship category was launched in 2013 to strengthen the selection of the UNHCR referrals. Under the program, the government provides income support for up to 6 months; private sponsors also offer six months of financial aid and one year of emotional and social support to the refugees.

The BVOR program aims to relieve the private sponsors from the heavy financial burdens and connect the refugees with their likely sponsors. The refugees associated with the sponsors have undergone interview and screening processes by the government and can be resettled as soon as possible. The BVOR fund was established in 2018 to encourage BVOR sponsorships. Humanitarian

³⁹⁹ *Models of Private Sponsorship: Past and Present Programs, and How the Private Sector Can Create Alternative & Complementary Pathways or Expand Resettlement for Refugees.* (2018). [online] Available at: <https://refugeerights.org/wp-content/uploads/2017/11/Private-Sponsorship-White-Paper-July-2018.pdf> [Accessed 27 Jan. 2022].

⁴⁰⁰ Hyndman, J., Reynolds, J., Yousuf, B., Purkey, A., Demoz, D. and Sherrell, K., 2021. *Sustaining the private sponsorship of resettled refugees in Canada.* *Frontiers in Human Dynamics*, 3, p.26.

⁴⁰¹ *Ibid*

leaders contributed a total of almost \$3.5 million towards the BVOR fund to help in sponsoring refugees. The sponsors can organize themselves and successfully sponsor refugees from such funds. For at least twelve months, the sponsored refugees get settlement support from their sponsors in terms of finances. Sponsorship groups can be formed in different ways as settled upon by the sponsors. Five or more citizens or permanent residents can come together, also known as a Group of Five, who can arrange to sponsor a particular refugee living abroad collectively. There can also be community sponsors like organizations, corporations, or associations that can work with a sponsorship agreement holder (SAH). They can also offer support to refugees or families in the communities where they have settled.

Private sponsorships to refugees have enabled them to settle down in their countries of asylum quickly. The sponsorships have made it easy for the refugees to acquire economic stability faster than the others who are not under such programs⁴⁰². It came in the wake of worrying situations for Canada where refugees arrived at their national borders. Many countries admit refugees on a humanitarian basis rather than economic reasons. Most of the refugees admitted in the receiving countries do not have sufficient post-secondary education or knowledge of the host country's language. Such situations make it very difficult for the refugees to integrate into their new countries socially and economically. At this point, the private sponsorships come in as a savior for them.

It can be understood that refugees tend to do less well in the countries that admit them in their initial days. To make them gain stability in their economic lives, the Canadian citizens and other permanent residents offer a lot of financial and moral support. The support comes from well-organized sponsorship programs that have been a virtue for many years. Under the sponsorship programs, private sponsors such as faith-based organizations, ethnic organizations, or groups of individuals take up refugees of their liking or those the visa officers have recommended. The sponsors provide

⁴⁰² Bond, J. and Kwadrans, A., 2019. *Resettling refugees through community sponsorship: A revolutionary operational approach built on traditional legal infrastructure. Refuge: Canada's Journal on Refugees/Refuge: revue canadienne sur les réfugiés*, 35(2), pp.86-108.

financial, material, and other personal support to the refugees during their first year in Canada. Such support can extend even until the refugees become self-reliant to depend on themselves to acquire their individual needs.

Financial and social support are vital factors that enable the refugees to integrate easily into their countries of asylum. However, in Canada, the significant discoveries about the refugees' economic integration were threefold⁴⁰³. Firstly, the economic conditions of the refugees during their preliminary settlement were comparable to those of family class migrants but much less favorable than the economic migrants. Secondly, despite the primary disadvantages, the refugees narrowed the financial gap concerning the other migrants in the previous years; it was reported that the refugees managed an increase of 7%-12% yearly in their median earning in their first ten years of stay in Canada. Thirdly, the employment outcomes as documented among the refugees differed significantly depending on the groups and metrics such as men or women.

According to research, it was found that male refugees with low education levels received more benefits from private sponsorship programs as compared to those with higher education levels. The study also estimated that refugees with lower education levels were more likely to be employed under the PSR programs⁴⁰⁴. In their first year after getting into Canada, people with less than a high school education level have a 19% high chance of employment than those in the GAR colleagues. However, the employment of the lower education level holders reduced by half their number in their third year after landing. It could be because, in their third year, the sponsorship programs might have been withdrawn or significantly reduced⁴⁰⁵. Another reason for the significant drop in PSR employment is that the PSR employment is much smaller and short-lived compared to the GAR program offered by the government.

⁴⁰³ Kaida, L., Hou, F. and Stick, M., 2020. *The Long-term Economic Outcomes of Refugee Private Sponsorship*. Statistics Canada= Statistique Canada.

⁴⁰⁴ Hynie, M., McGrath, S., Bridekirk, J., Oda, A., Ives, N., Hyndman, J., Arya, N., Shakya, Y.B., Hanley, J. and McKenzie, K., 2019. *What role does type of sponsorship play in early integration outcomes? Syrian refugees resettled in six Canadian cities*. *Refuge: Canada's Journal on Refugees/Refuge: revue canadienne sur les réfugiés*, 35(2), pp.36-52.

⁴⁰⁵ *Ibid*

The sponsorship programs are praised for giving equal opportunities for every refugee irrespective of their language proficiency. The study revealed that refugees with fewer skills in the official language benefited from the private sponsorship programs as much as those who had high skills in the official languages⁴⁰⁶. The equal treatment is attributed to those refugees with low skills in the official language to attend government-sponsored programs. However, the individuals under GAR programs had the advantage of being financed to attend the free language training since the government gave them financial support in their first year of resettlement. Another factor was that the GARs had a lower employment rate in their first year than the people under PSR programs.

In the 2018 financial year, there was a target to sponsor 18,000 refugees under the Private Sponsorship in Canada. There was also a target to admit 1,500 refugees under the blended-visa program⁴⁰⁷. Under these circumstances, sponsored asked to be linked with refugees who had already been cleared for resettlement by the UNHCR and approved by the Canadian Ministry of Immigration. The figures added to a target of 7,500 refugees absorbed into the government-assisted resettlement programs. The initiative to admit and support the settlement of refugees in the country is a positive indication of a humanitarian act by the people of Canada. Such programs have taken root all over Europe, with countries across the European Union implementing their programs. With the aid of the local citizens, the government can focus on other programs that would help in proper and quicker ways of settling the refugees into their new environments.

3.2 The Humanitarian Corridors as another PSR

Humanitarian corridors have proved to be more satisfactory for taking care of the refugees. From its name, it is a program that operates well in demilitarized zones, with a restricted time limit that allows for the transportation of humanitarian aid. Items such as food, medicine, and hospital services such as ambulances and clothes are among the essential things offered to the program's beneficiaries. It is

⁴⁰⁶ *Ibid*

⁴⁰⁷ Lenard, P.T., 2019. *How Do Sponsors Think about "Month 13"?. Refuge: Canada's Journal on Refugees/Refuge: revue canadienne sur les réfugiés, 35(2), pp.64-73.*

a kind of a neutralized itinerary that can only be applied in helping the non-combat civilians who are in need. Based on the description, it is strictly not for use in military operations, but there have been suggestions that they can be used to supply weapons to besieged forces. Areas considered humanitarian corridors can be described as no drive or fly zones. The Fourth Geneva Convention of 1949 inaugurated the safety zone concept that declared some specific areas off-limits for military combat⁴⁰⁸. Governments and armed personnel must ensure civilians' protection and give the civilians freedom to leave the regions affected by war.

The collaboration between the states and the civil societies introduced by the humanitarian corridors has created a good opportunity for refugees. The cooperation is characterized by the civil institutions offering direct support in cost carrying on behalf of the program's beneficiaries. This feature makes it easy for different governments to accept the humanitarian corridors programs in their territories compared to the other methods of refugee accommodation⁴⁰⁹. The program is replicable in many states since it does not entail high economic or political costs for the hosting country. The sponsoring associations in that state wholesomely cater to the refugees' reception. The actual implementation of the program is set aside for the project sponsors and the relevant operators on site. Other local, majorly institutional, are only sought to offer advice but are not involved in identifying beneficiaries. It comes as a mode to ensure conformity with the project in the country that is related. The main criteria include the objective aptness of likely beneficiaries concerning their characteristics and susceptibility conditions. Then there is a fundamental understanding of the humanitarian corridors' rules and their explicit consent by the chosen beneficiaries. The criteria mentioned are vital to helping in avoiding secondary movements once the legatees have reached their European destinations.

⁴⁰⁸ Neier, A., 2020. 5. *International Humanitarian Law*. In *The International Human Rights Movement* (pp. 117-137). Princeton University Press.

⁴⁰⁹ Župarić-Iljić, D. and Valenta, M., 2019. *Opportunistic humanitarianism and securitization discomfort along the Balkan Corridor: The Croatian experience*. In *Refugee protection and civil society in Europe* (pp. 129-160). Palgrave Macmillan, Cham.

Applications filed for admissions for the humanitarian corridors program by the refugees are submitted to the organizations that sponsor the project. The applications can be submitted through religious communities, international organizations, friends, or relatives in Europe. To respond to the applications sufficiently, the organizations sponsoring the project must utilize the other available legal means of admission. Such legal alternatives may include the procedures for family reunification, which is another way that refugees can be issued with an opportunity to get into the state in question. The following procedure is done after the responsible authorities have identified the potential beneficiaries. At least three interview sessions are conducted for each person, or family group identified⁴¹⁰. The rules use homes or temporary residences of the person concerned in the application for the humanitarian corridor program. Intercultural mediators usually play an essential role in the interviews and can be used at one or more interview sessions. In the interviews, the operators and coordinators explain to the potential beneficiaries the operating methods of the humanitarian corridors and about the right of asylum that the individuals are subjected to in the countries of destination⁴¹¹. The organizers and coordinators also answer questions asked by the beneficiaries and give them any helpful information they may need. The valuable information may include anything related to the culture, social and economic conditions of the country in which they are seeking asylum. During the interviews, the operators verify the documents presented by the beneficiaries, including their travel documents⁴¹². However, keen attention is paid to evaluating the motivational aspects which stimulate the interviewees to seek international protection. At the end of the interviews, a declaration of commitment is proposed for the signature of the interviewee. The declaration is documented in the beneficiary's mother tongue, highlighting the significant points of the program.

In step three, the operators evaluate and verify the personal information and history that the latent beneficiary has presented. The verification is meant to reveal the truth of the family's personal history

⁴¹⁰ Bianchini, K., 2020, March. Humanitarian admission to Italy through humanitarian visas and corridors. In *Humanitarian Admission to Europe* (pp. 155-198). Nomos Verlagsgesellschaft mbH & Co. KG.

⁴¹¹ *Ibid*

⁴¹² *Ibid*

as narrated by the potential beneficiaries. There is a careful analysis and evaluation conducted through different verification sources. The sources may include information from databases, the information obtained from other people in the region, fields and city, the entire verification process is entirely on the coordinators and operators of the program⁴¹³. Step four involves searching and assessing the personal judicial condition of the applicants of the humanitarian corridors program the verification is conducted by professional individuals and competent authorities in the countries of origin and destination. The process involves checks through criminal records to ascertain the absence of criminal records about the applicant. In process five, the operators create files relating to each beneficiary to evaluate their probable admission to the program and prepare all documentation. The remaining processes are the normal routine activities that include data collection, identification of the geographical locations, and accommodation details. The entire process is a detailed procedure that indicates how serious and dedicated the EU is to help the refugees.

After the Cold War, various kinds of humanitarian corridors have been recommended by warring parties or international organizations such as the United Nations. Such suggestions have proposed the creation of "corridors of tranquility", "safe-havens," or "protected zones"⁴¹⁴. The Syrian civil war saw a lot of utilization of the humanitarian corridors to host and protect refugees. At the end of 2015, there was a lot of difficulty for refugees to cross the EU national borders independently. Due to the Syrian Civil War, many people were vulnerable to execution and lack of basic human needs⁴¹⁵. Creating the humanitarian corridors was a good way of overcoming the *impasse* on the European Union relocation. The humanitarian corridors project was actualized by applying Article 25 of the Visa regulation (EC) no 810/2009 of 13th July 2009. The Article established the "community code on visas." The member states are provided with the possibility of issuing visas for humanitarian reasons or national interest.

⁴¹³ *Ibid*

⁴¹⁴ Kelly, L., 2019. *The role of UN humanitarian forums involving conflict parties in conflict situations.*

⁴¹⁵ Casella Colombeau, S., 2020. *Crisis of Schengen? The effect of two 'migrant crises'(2011 and 2015) on the free movement of people at an internal Schengen border. Journal of Ethnic and Migration Studies, 46(11), pp.2258-2274.*

It means that any person who meets at least one criteria of the United Nations for qualifying as a vulnerable person can be entitled to a visa with limited territorial validity⁴¹⁶. The validity overcomes the limited conditions provided in the Geneva Convention relating to the status refugees, which was designed in 1951. The draft only covered those who became refugees due to any event that occurred before 1st January 1951, only in Europe. The Geneva Convention still doesn't regulate the particular issue of granting asylum and refugee status. All this is decided by each state independently, and there is excellent divergence in the practices of the respective states.

It is possible to improve the instruments used in protecting the refugees and harmonize the European law to manage migration flow. Article (1) of the Geneva Convention states that for one to acquire refugee status, they are to be materially outside the country's borders in which the refugees are citizens. It means that the internally displaced persons are not included in the protection provided by the convention. Even though the internally displaced persons are also forced to flee from war or persecution, they have not crossed an international border. Additionally, the humanitarian corridor's projects also involve sending volunteers who contact the refugees within the countries involved in the program⁴¹⁷. The volunteers prepare a list of all latent beneficiaries transmitted to the consular authorities, which provide humanitarian visas with limited territorial validity after the control by the Ministry of Interior. Once they get into the countries that offer humanitarian corridors, the refugees have the freedom to apply for asylum.

The humanitarian corridors program is another sponsorship form adopted by countries like Italy, France, and Belgium. It represents a very flexible type of private sponsorship, which is different from the other models⁴¹⁸. The protocols signed with the government provide a list of the relevant parties'

⁴¹⁶ Gonzaga, J.A.C., 2018, April. *The role of the United Nations High Commissioner for Refugees and the refugee definition. In The Refugees Convention 50 Years On (pp. 233-250). Routledge.*

⁴¹⁷ Turtiainen, K. and Sapir, H., 2021. *Feasibility study on the potential of community-based sponsorship in Finland.*

⁴¹⁸ PRIVATE SPONSORSHIP FOR INTEGRATION: BUILDING A EUROPEAN MODEL *Private Sponsorship for Integration building a European model. (2020). [online] Available at: <https://www.eurodiaconia.org/wordpress/wp->*

responsibilities in integrating the refugees. In France, it is clear that the task must be done in coordination and collaboration with the public authorities. Under the programs, the sponsors must provide accommodation, assistance in accessing language training, and general support in boosting the refugees' skills and widespread social and cultural incorporation. In addition to that, the sponsors are required to take part in helping the refugees in the asylum application.

The Italian Corridors have been followed by Belgium, Andorra, San Marino, and France. In the next 18 months, France will welcome 500 Syrian and Iraqi migrants who are currently living in Lebanon. In this phase, the most vulnerable people will be considered for first positions. The beneficiaries will be welcomed by parishes, individuals, and communities. They will also have the opportunity to learn French as a means to integrate into the community. Furthermore, the agreement signed in France in March 2017 will give room for the opening of a new humanitarian corridor for the Syrian and Iraqi refugees in Lebanon. However, these refugees will not be offered humanitarian visas. The French program is quite different from the other programs with the same vision. For instance, the program does not use Article 25 of the Visa Regulation (EC) but offers the so-called “long term D visa,” which is only available for asylum and is unique to France. A former French president said that this initiative is proof that secular, public, and religious organizations can have a productive and beneficial partnership to support the project. He said these words during a ceremony where the agreement was signed.

Humanitarian corridors working in France and Italy are very flexible regarding the duration of the responsibilities carried by the sponsors. In Italy, the sponsor takes responsibility for a refugee for a maximum of two years after their resettlement date. Since the main objective of the sponsorship is to make sure that the refugees are properly integrated, the period may extend or reduce as deemed necessary. In France, according to the procedure, the duration is one year on paper, but in reality, the

sponsorship duration can extend up to nearly two years⁴¹⁹. Another essential feature of the private sponsorship programs in France and Italy is the additionality of instruments. It means that the refugees in the corridors must essentially be accepted in addition to the ones that enter through the government-supported programs. Therefore, humanitarian corridors in France and Italy should be complementary programs in resettling refugees and other admission missions.

France adopted the humanitarian corridors program to deliver safe and legal transferring and incorporating susceptible refugees. The program involved signing a memorandum of understanding between the French government and the Episcopal Conference of France, the Protestant Federation of France, Caritas France, and the Federation of Protestant Mutual to assist 500 Syrian refugees brought to France from Lebanon⁴²⁰. The French Institute of International Relations (IFRI) has been working closely with the people involved in the sponsorship programs in improving the refugee situation. They are working on factors such as designing advocacy and alertness on refugees. They also ensure that the private sponsorship programs do not substitute government responsibilities to receive and support asylum seekers. The IFRI provides mutual benefits with resettlement programs and reception centers for those seeking asylum in the country⁴²¹. They are also working on harmonizing the information received for its citizens and groups of volunteers who would wish to act as sponsors to the refugees. They are also responsible for developing and exchanging important information with the European and other international actors.

In Italy, the humanitarian corridors program allows legal and safer transferring and incorporating refugees. Like France, the program in Italy is due to an agreement signed in 2017 between the Italian government, the Italian Bishops' Conference, and the other three Non-Governmental Organizations. The NGOs involved in the deal include Caritas Italy, Migrantes, and the Sant' Egidio Community⁴²².

⁴¹⁹ *Ibid*

⁴²⁰ *Community and Private Sponsorship: Summary of the global State of Knowledge (2021)*. [online] Available at: <https://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/iris/2020/community-sponsorship-summary-global-state-of-knowledge.pdf>.

⁴²¹ *Ibid*

⁴²² *Ibid*

Under this program, the refugees are expected to apply for asylum after their arrival but are given a host family for one year minimum. However, during their stay with the host family, their support and integration process is sponsored by the faith-based organization. In Italy, the humanitarian corridor project is funded via the country's "8x1000" (Otto per mille) initiative⁴²³. The Italian taxpayers are forced to contribute 0.008% of their revenue to charity programs because of the initiative. However, the taxpayers have the freedom to choose the charity organizations that should receive their money. The move is encouraging because the taxpayers can forego some of their projects to help charity projects.

The agreements set up peculiar processes to ensure a protected entry of refugees and migrants into Italy. The protection involves the safety and legality of the arrivals of refugees from the countries they were located in at the expense of the religious organizations as provided in the MoU. The memoranda signed also stated that the reception of the refugees must ensure that they offer adequate support to allow for active socio-cultural incorporation for a while. The organizations must ensure that the refugees get enough stability in Italy through legal and financial assistance. The admission process must be done without any signs of rejection from anyone handling their transition. The Italian government may issue temporary visas to allow the beneficiaries of international protection to fly safely to Italy⁴²⁴. Upon the arrival of the refugees in Italy, the NGOs launch the reception and integration process that they have been given, which may last for at least one year.

The first beneficiaries of the humanitarian corridors were received at the Fiumicino airport in Rome on 4th February 2106. Until now, more than 791 people have been safely admitted to Italy under the humanitarian corridors program. Most of the refugees come from Syria (Aleppo, Horns, Marna, Damascus, and Tartous), and some also come from Iraq. The refugees usually spend three years in a Lebanon camp. To this point, 68 municipalities in 17 regions have given hospitality to the

⁴²³ Giorda, M. and Vanolo, A., 2021. *Religious diversity and inter-faith competition: the politics of camouflage in Italian cities. Territory, Politics, Governance*, 9(2), pp.222-240.

⁴²⁴ Ricci, C., 2020. *The necessity for alternative legal pathways: The best practice of humanitarian corridors opened by private sponsors in Italy. German Law Journal*, 21(2), pp.265-283.

beneficiaries of the humanitarian corridors program in Italy⁴²⁵. There has been an increase in the number of individuals willing to welcome Asylum seekers and help them integrate into the local community. Apart from giving people help upon arrival, children are also enrolled in schools to facilitate their incorporation in Italy. The procedure makes the model project replicable at the European level boosting its diffusion and the opportunity of saving human lives. Since the program kicked off, there have been positive results in reducing people who die at sea trying to access Europe. Another positive result that has been experienced is the change of the Italian society's attitude towards the migrants.

Notre Dame University has been participating in tracking and evaluating refugees' experiences during their integration into the Italian civilization since 2018. The programs undertaken by Notre Dame University assess the refugees' experience over five years. The study focused on the immediate admission of 500 refugees resettled under the humanitarian corridor program in 45 dioceses in Italy⁴²⁶. They also observed the entire process of the refugees' transition and integration into the community. They interviewed the refugees, volunteers, and organizations who had taken the responsibilities. According to the information provided in their website named Humanline, there are many positive responses from the refugees and the sponsoring organizations from the study conducted.

In Belgium, the humanitarian corridors project foresees the identification of refugees from different regions that are marred with conflicts. The program focuses on crisis-prone areas such as the Middle East, Africa, and Asia who can benefit from the program due to their vulnerability⁴²⁷. Most people who have high chances of being absorbed into the program include women, sick people, the elderly,

⁴²⁵ Gabrielli, G. and Impicciatore, R., 2021. *Breaking down the barriers: educational paths, labour market outcomes and wellbeing of children of immigrants*. *Journal of Ethnic and Migration Studies*, pp.1-19.

⁴²⁶ *Community and Private Sponsorship: Summary of the global State of Knowledge (2021)*. [online] Available at: <https://www.birmingham.ac.uk/Documents/college-social-sciences/social-policy/iris/2020/community-sponsorship-summary-global-state-of-knowledge.pdf>.

⁴²⁷ Bodart, S., 2020, March. *Humanitarian Admission to Belgium*. In *Humanitarian Admission to Europe* (pp. 225-238). Nomos Verlagsgesellschaft mbH & Co. KG.

and families with children. The characteristics of being a member of a minority group that faces threats and having some potential ties to Belgium are also to be considered⁴²⁸. If a refugee falls in the categories mentioned above, they are given humanitarian visas and are legally transported to Belgium. The process is entirely free for the people who become successful in the program because the involved organizations cover the costs.

After the beneficiaries of the humanitarian corridors in Belgium, the refugees need to apply for asylum in the country. Applying for asylum does not get any other government support apart from medical assistance. However, the costs related to the application for asylum are also covered by the religious communities in Belgium. After they get the internal protection, reception, and accompaniment, the refugees will have one year of attention to their integration process by the entities concerned. For proper implementation of the program, the Sant'Egidio community and other partners from other organizations and religious leaders will work with the cabinet of the Secretary of State of Belgium. Other people who will work closely with the team include the General Commissioner for Refugees and Stateless Person (CGRA) and the Office for Foreigners and Fedasil. The program's implementers will also have contacts with other international organizations such as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).

In 2017-2018, a comparable humanitarian corridor had been set up and gave room for 150 susceptible Syrian refugees to enter Belgium. They received a warm welcome and had been helped in their integration process by the religious societies in Belgium⁴²⁹. Even at the time, the refugees' spiritual connections played no role in their selection for the humanitarian corridors program. It is very encouraging to see every person getting a fair chance irrespective of religious affiliation. From the start, humanitarian corridors have represented complementary legal conduits for susceptible refugees

⁴²⁸ Lafleur, J.M., Marfouk, A., Devriendt, T., Kervyn, E., Leclipteur, L., Van Roeyen, P. and Verniers, E., 2019. *A common home. Migration and development in Belgium*. Caritas International.

⁴²⁹ Damianos, S.G., 2019. *Rethinking Refugee Mobility: Passports as Pathways to Protection*.

and the available resettlement projects within the United Nations. Recently, many participants on the international platform, including the European Commission, have demanded the unveiling of such initiatives. By introducing the new humanitarian corridors program, the Sant'Egidio community acknowledged the efforts of Belgium and the capacity of the Belgian government to answer this call. Belgium experienced the first case of corruption within the humanitarian corridors program. Melikan Kucam, a municipal councilor, was arrested on suspicion of selling humanitarian visas to refugees trying to flee Syria during the war⁴³⁰. He received considerable money and sold out the visas, which allowed the refugees to enter Belgium escaping persecution in their homeland. Together with the then secretary of state for asylum and migration, Theo Francken, he created a list of eligible people for humanitarian visas and mainly belonged to the Assyrian community of Iraqi and Syrian Christians, of which he is a member⁴³¹. Therefore, he was charged with fraud, human trafficking, criminal conspiracy, and extortion. However, he denied everything stating that large sums of money were not paid to him but probably to travel agencies who had to transfer people from Syria to Lebanon. Deputy Prime Minister Kris Peeters said that the entire delegation to a secretary of state without proper supervision leads to wrongdoings. He also stated that the government officials and the immigration minister must study how to reorganize such cases for the future.

Italian churches led to the humanitarian corridors program, and they still play a significant role in increasing opportunities for safe pathways to Europe. Beneficiaries of the program reported being thankful⁴³². They had escaped from Syria to Lebanon, then Lebanon to Italy, and were now thankful that they saw peace at last. Since it is a novelty, some of the beneficiaries also expressed skepticism. They wanted clarity on the terms of their sponsorship and the public social assistance available to them if the sponsorship ended. Beneficiaries had mixed feelings, especially on settling and integration. Not all of them quickly got used to what they were facing. Organizers also had their own

⁴³⁰ Wibault, T., 2020, March. *Making the Case X&X for the Humanitarian Visa. In Humanitarian Admission to Europe (pp. 271-282). Nomos Verlagsgesellschaft mbH & Co. KG.*

⁴³¹ *ibid*

⁴³² *ibid*

concerns. They found it difficult to strike a balance so as to promote self-sufficiency in the long term⁴³³. The whole notion and foundations of the humanitarian corridors is a new concept but all stake holders and parties affected are slowly getting to comprehend it.

3.3 Advantages of the humanitarian corridors program

The humanitarian corridors offer many advantages to the refugees who get absorbed into the program. The programs can be confirmed as among the best practices concerning refugee safety from their departure in their countries of origin, arrival in the countries of asylum, and the entire integration process⁴³⁴. The refugees can establish themselves in the host state with a positive attitude toward the future in the programs. The beneficiaries of the programs have a platform in developing a multi-cultural exchange while still keeping their original religious and cultural practices. The humanitarian corridors offer significant productivity and diverse social structure from the refugees during integration. As an ecumenical enterprise, the program delivers a platform for dialogue and cooperation among various religious and cultural associations.

As a result of the humanitarian corridor program, there is synergy between all the governmental and non-governmental organizations that identify participants and deliver reception and incorporation support⁴³⁵. Due to their role in helping refugees who come into the EU, the programs have received much political support. The political support has enabled the programs to be successfully implemented in different political environments. The programs have helped eliminate the fear of strangers among the members of their hosting communities. Therefore, awareness can be created about the importance of hosting asylum seekers within the hosting societies. The programs have massively contributed to social cohesion by incorporating the refugees with the local communities, as in the case of the French program.

⁴³³ *ibid*

⁴³⁴ *ibid*

⁴³⁵ *ibid*

Due to its flexible nature, the humanitarian corridors program can adapt to various national contexts and involve different organizations. Such flexibility creates a more prominent platform that can sponsor refugees without concentrating in a few countries that use it. The criteria used are very inclusive beyond the considerations of the 1951 Geneva Convention. It reflects the 21st-century geopolitical context⁴³⁶. The procedures used in the humanitarian corridors are quicker than those used to resettle refugees. Therefore, it can be very instrumental in handling cases that require urgent attention for admissions. Effective social cohesion can be achieved from the gradual integration procedures used in the humanitarian corridors of refugee sponsorship.

3.4 Other Sponsorship Programs in Europe

The United Kingdom implemented the Community Sponsorship Scheme (CSS) in 2016. The scheme allowed the local community groups to support the resettlement of refugees. The program drew its inspiration from the Canadian Private Sponsorship program. Since the conception of CSS, there have been almost 400 refugees who have been resettled in several locations across the UK. Statistics show that the United Kingdom has around 70 CSS groups that actively participate in the resettlement of refugees. In 2019, the UK government devoted itself to supporting the CSS for five more years⁴³⁷. The move aimed to ensure that the number of sponsored refugees was increased during that time. The UK government has broadened its focus from the refugees who flee Syria due to conflicts to a broader view of helping any vulnerable refugee fleeing conflicts globally. With the latest introduction of the Global Resettlement Scheme plan in 2020, the refugees settled under CSS will add to the national targets.

In Germany, the New Start with a team (NesT) initiative permits at least five individuals to support very vulnerable refugees to be resettled. The individuals are obligated to pay for the refugee's accommodation for two years and give practical support to the refugee for one year. The practical

⁴³⁶ *Ibid*

⁴³⁷ *Ibid page 5*

support includes helping them to find a language course, handling the paperwork, or enrolling them in the social security system. The NesT program was started in May 2019 to support up to 500 refugees in Germany. Like in the other sponsorship programs in the other states, NesT also takes refugees whom UNHCR has recommended for resettlement.

The European Union also launched the EU-FRANK program in January 2016 to facilitate admission and resettlement of refugees in Europe. The program is under the leadership of the Swedish Migration Agency in collaboration with countries like the Netherlands, Belgium, Italy, and Switzerland. Some international organizations and NGOs are also involved in rolling out the program to ensure refugee settlement. The program is co-funded by the Asylum, Migration, and Integration Fund (AMIF). The EU-FRANK program targets to give operational support to the EU member states to establish their resettlement capacity⁴³⁸. The EU member states will also get help in the implementation and resettlement programs that they carry out for refugees. The project develops the experiences and knowledge shared via the European Resettlement Network, the SHARE project, and others. The program involves a variety of activities that aim at improving the situation of refugee resettlement. This project has done many multilateral exchanges through peer-to-peer reviews of the existing systems. The program has also encouraged study visits and meetings between experts to bring together more experience in the team that handles the entire process of refugee resettlements. Such moves help boost the stakeholders' knowledge from different countries to manage the refugees competently.

Private sponsorship is just a way that complements initiatives that increase pathways for refugee admission. The New York declaration for refugees and Migrants, which was put in place by the United Nations General Assembly in the year 2016, is one of the steps that was used to express an intention of expanding the number and legal pathways for refugees to be settled and admitted in

⁴³⁸ *Ibid*

countries of asylum⁴³⁹. Apart from vouching for private sponsorship, the New York Declaration also vouched for scholarships, student visas, and humanitarian admission programs. With conformity to private sponsorship, discussions were held with conversations on how responsibilities between the state and the private actors in refugee admissions would be shared. The state of refugees changed in Europe during the wake of the 2015 crisis⁴⁴⁰. Even though the state is the normative actor responsible for receiving refugee arrivals, this changed during that period. Because these arrivals were just so many, thousands of ordinary people across Europe spontaneously responded, welcoming these newcomers with humanitarian assistance such as food, clothing, and shelter. All the private initiatives by volunteers improve public opinion about refugees leading to spending interactions and engagements. Community-based sponsorship is an important tool necessary for channeling the support of civil society actors and coordinating civil society engagement in expanding refugee admissions.

4. The Humanitarian Visa Programs

Humanitarian visa programs are instruments that the EU member states can use to offer refugees legal access to the states. The visas provide a quicker way of delivering family reunification avenues when the routine procedures seem to drag for too long. Increasing the use of humanitarian visas by EU member states can be a proper way of preventing migrants from using dangerous and deadly ways to access Europe by sea. Switzerland is one of the countries that introduced humanitarian visas by refugees who sought international protection. Such visas were applicable only to close family members of Syrians admitted to Switzerland. At the time of application, the applicants must have resided in Syria or without a permanent residence status in the neighboring Syria countries. Such a temporary stay must have resulted from the conflict experienced in Syria at that time.

⁴³⁹ (Icnc.net, 2022) <http://icmc.net/wp-content/uploads/2018/08/ERN-Private-Sponsorship-in-Europe-Expanding-complementary-pathways-for-refugee-resettlement.pdf> accessed 21 September 2022.

⁴⁴⁰ *ibid*

From the view of third-world nationals looking for humanitarian protection, the use of a humanitarian visa can be essential. The availability of application channels that refugees can use to apply for humanitarian visas from countries with conflicts can make it easy to acquire them. It would benefit those seeking asylum since they do not have to travel to Europe to apply for humanitarian visas.⁴⁴¹ The European Union Member states provide a more considerable number of humanitarian visas than when each state would work independently. One member state's issuance of humanitarian visas serves its interest and the other states that share the same interest.

The fact that many member states have been offering humanitarian visas nationally shows a common interest in issuing international protection to refugees. However, each member state only considers its benefits when deciding on humanitarian visas to refugees. The lack of a framework on the issuance of humanitarian visas bars the internalization of the favorable context, which affects the commitment of the member states in implementing it extensively. From a larger European Union perspective, the level of international protection for refugees from the issuance of humanitarian visas is lower than if all member states could have embraced the idea. For the member states who understand the need for humanitarian protection to third-country nationals, they need to provide more humanitarian visas for the benefit of the refugees.

It has been noted that the provision of humanitarian visas would significantly reduce the irregular migration of refugees into the European Union. People in need of international protection can travel directly from their countries of origin into the European Union member states rather than crossing the EU external borders illegally.⁴⁴² Massive reduction of irregular entrance into the EU will reduce people who risk their lives to get into the EU, and in turn, reduce cases of human trafficking and the smuggling of migrants by illegal human traffickers. As a result, the EU could free funds allocated to

⁴⁴¹ Backhaus, A., Barslund, M. and Nannerini, A., 2019. *A Union Humanitarian Visa Framework. Migration Policy Practice.*

⁴⁴² *Ibid*

protect the borders for other essential expenditures. Such measures will help to some extent in the reduction of the dangerous voyages taken by migrants in their quest to get into the EU.

In line with UNHCR recommendations of 2016 about the EU resettlement framework, the role of humanitarian visas is to offer protection but not to manage migration flows. The instruments for humanitarian visas should not affect the applications for asylum. Positive effects of the EU humanitarian visa system will be increased if all the member states agree to provide the visas jointly. A voluntary tactic should be applied to get the benefits of issuing humanitarian visas. It is important to note that adopting a framework on the allocation of humanitarian visas will boost the number of refugees who are legally resettled in the EU. A suggestion to adopt a resettlement framework for the Union Humanitarian Visa Framework is in place and would grant voluntary pledges and financial compensations. In the case of the framework, the European Commission foresees compensation of €10,000 for each resettled person from the union's budget.

The final application procedure for humanitarian visas will balance the objective of helping individuals who face the threat of persecution or severe harm. Such conditions are also articulated in the recommendations provided in the outcome of the European parliament.⁴⁴³ Even though the member states have a significant role in ensuring that refugees are given international protection, the refugees also have a role to play. They must prove a genuine fear of persecution and that issuing a humanitarian visa will help escape the pending persecution. Finding out such information can be done through interviews and security screening by the country willing to offer asylum. The process should not provide a complete status determination on whether the refugee can be given asylum or not.⁴⁴⁴ A fast and fair process will enable the refugee to reach out to the relevant authorities for proper guidance about the asylum. If the process is delayed and unfair, the refugee might turn to the agents of human smuggling and try entering the EU illegally.

⁴⁴³ *Ibid*

⁴⁴⁴ *Ibid*

It is important to emphasize that the screening procedures before granting a humanitarian visa must be detailed. This ensures that the successful applicants have a high chance of being granted asylum in the member state they applied to. Any less procedures would significantly undermine the purpose and legitimacy of the entire procedure. Member states have a lot of struggles in returning the rejected applicants to their home countries.⁴⁴⁵ Returning unsuccessful applicants who had entered the member state after being given a humanitarian visa might be due to the incompetency of the officers conducting the exercise. This is why the member states should come together and formulate a straightforward process that would guarantee issuance of visas genuinely.

The pieces of literature discussed in this review have shown the efforts made by European Union Member States to offer legal avenues into Europe. Even though there are still many attempts to get into the EU borders illegally, the measures are promising for asylum seekers. People should learn to try following the legal ways to avoid dangerous migration methods into Europe. The EU has seen the need for international protection in third-world countries and has put together very viable measures to make sure that refugees are legally admitted into Europe. The literature reveals essential statistics about the admission of asylum seekers and their families into the EU borders. However, it may take time before these measures become fully operational and the refugees and migrants stop endangering their lives. Proper mobilization should encourage the member states that have not embraced some set methods.

Many researchers have done a lot of study on the effectiveness of the legal mechanisms provided by the European Union to accommodate refugees. The results indicate that the EU is doing whatever it can to ensure the safety of the refugees and asylum seekers. It can be seen through the procedures laid down by various governments and organizations to make the process simpler and faster. It will be a big step when the laid guidelines are followed and adequately implemented by all concerned countries. The states must develop uniform procedures to ensure that there is an even ground for the

⁴⁴⁵ *Ibid*

applicants to be absorbed. However, the European Union should compel every state to apply the already existing protocols to accommodate more refugees. Given that the citizens of those nations have shown interest in helping out the refugees, many governments should embrace the idea of encouraging their citizens to give a helping hand. The countries that seem not to cooperate should be encouraged to join in establishing and expanding the program.

5. Conclusions

5.1 The criticalities of the Common European Asylum System

The Common European system is faced with a lot of critics. Cathryn and Mouzourakis assert that the system is neither a system nor common⁴⁴⁶. They support this argument by stating that there is a lack of legal access to the EU to seek asylum, a lot of tension at the borders, political interference in the processes, and a breach of human rights. Another criticality of the system is sharing of responsibilities. The current asylum limits responsibility sharing. Sharing responsibilities ensures member states treat refugees with dignity and fairly and that the process is carried out in all member states by uniform standards. With shared responsibility, refugees are guaranteed equal treatment in whichever member state they choose to seek asylum. The system limits sharing responsibilities making it difficult to have a good asylum system since refugees will prefer some countries over others⁴⁴⁷. The EU union has a problem in distributing responsibilities among member states⁴⁴⁸.

The Common European Asylum System lacks a gender perspective. There is a lot of discrimination in the process of recognizing refugee status, which exposes women to illegal choices. Women are mostly affected by a crisis such as war as they face gender-specific violence, and thus they must be prioritized during asylum granting. The system fails to understand that women go through more crises during displacement. It has, however, been argued that the issue of gender stems from the Geneva

⁴⁴⁶ Costello Minos Mouzourakis C and Mouzourakis M, *The Common European Asylum System – Where Did It All Go Wrong?* (2016)

⁴⁴⁷ “Common European Asylum System” (Migration and Home Affairs)

⁴⁴⁸ (Guild et al., *Enhancing the Common European Asylum System and alternatives to Dublin: Think tank: European parliament*)

Conventions, which do not consider gender issues as a reason to seek asylum. Article 1 of the Convention states that a refugee is a person who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"⁴⁴⁹. The article does not mention gender. In the contemporary world, gender issues such as rape during conflicts are severely affecting women; they might feel the need to seek asylum in other countries. This is a criticism on the system such that gender issues have been persistent, yet the law and regulations have not been amended to provide for gender issues. A correct model of management of migratory flows should promote equity and equal privileges for every refugee.

Another critique of the Common European Asylum System is the fact that some of the member states of the European Union are not ready to agree with the union's standards of asylum. They want to make their own decisions, and this poses a challenge to the efforts to harmonize asylum laws.

5.2 Migratory flows and Regulations employed by the European Union and why they failed

In 2015, Asylum seekers and refugees trooped into Europe in a manner never seen before. The irregular arrival of migrants in such high numbers required spontaneous response through policies and pragmatic implementation. To manage migration flows, the European Union put in place measures and reforms that tightened border security, shared responsibility and improved cooperation among the European Union member states. The illegal border crossing into the European Union in 2021 was even more than that reported in 2017, which means that the region needed even stricter measures to take care of the situation.

The first thing that the European Union settled on in terms of migration was dealing differently with regular and irregular migration⁴⁵⁰. With regular migration, the Union managed to regulate migrant flows by giving conditions for attaining legal entry and residence. Migration of this kind is an

⁴⁴⁹ (Sanz, *Women: The forgotten of the common european asylum system • eyes on Europe 2021*)

⁴⁵⁰ European Parliament, 'Migration In Europe | News | European Parliament' (Europarl.europa.eu, 2022) <https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78632/migration-in-europe> accessed 2 October 2022

investment that contributes to the economy and society in general. It goes to make European communities very cohesive and resilient. The rules of the European Union have been harmonized across European states on conditions for entry and residence. The entrance and residence, in this case, include that which is for work purposes and qualified workers. The regulation also extends to the rights of students and researchers, family reunification and long-term residence permit.

In 2011, the EU utilized technological advances and launched the EU immigration portal through qualified technicians⁴⁵¹. The website provided information for foreigners who wished to settle in the European region. It was also a platform which could be used by migrants who had already arrived in the European region and desired to move from one state to another. The site is well structured, providing practical information about procedures in all 27 European region states.

Integration is the main way the European Union tries to take care of legal migration flows. Successful integration forms part of successful migration and asylum policy. It is very important for social cohesion and economic success. State sovereignty, where states create and implement social policies, is the normative trend, and the European Union comes in to support these nations through funding, developing guidance and fostering partnerships. An action plan which can run from 2012-2027 on integration and inclusion has been put in place to promote the inclusion of all. Barriers that can hinder participation are addressed, and people with a migrant background are encouraged to mingle with citizens. It is, after all, something that thrives on the premise that both the person and host community must put an effort.

Family reunification, as mentioned earlier, is also a way the European Union manages migration flows. It is underpinned by the European Convention of Human Rights and the European Charter of Fundamental Rights. Through the Family reunification Directive, non-EU citizens have well laid out

⁴⁵¹ European Parliament, 'Migration in Europe | News | European Parliament' (Europarl.europa.eu, 2022) <https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78632/migration-in-europe> accessed 2 October 2022

rules and regulations to take their families to the EU country in which they settle. The best way that family reunification is made effective is through harmonization of rules, facilitation of integration of non-EU nationals, socio-cultural stability, and social and economic cohesion.

Migrants who meet requirements in their time of cohabitation are able to secure long-term residency. A stable and secure residence status with complete access to education, work and social security is essential in the integration of especially non-EU nationals. The Directive on the status of non-EU nationals who are long-term residents provides that people who have lived legally in one of the EU countries for five years and above could obtain the status of long-term residency. Upon application of special forms by the refugees and asylum seekers, they get a permit for permanent residency.

Illegal migrants who come to EU countries by wrongful means are handled by use of return policies and readmission agreements. Return policies are encoded in the return directives, which set transparent, equal, free rules for taking back illegally residing non-EU nationals. The return policies work in tandem with readmission agreements with other nations. These laws, just like their definition suggests, return people residing in EU member states illegally to their countries of origin. The European Council in 2019 proposed to make existing rules more effective.

The European Union has put in place laws to manage migration flows, but not all of these laws have worked. The same parliament has now proposed reforms to the European Union rules in 2017, together with initiatives to strengthen EU border controls. The pact on Migration and Asylum meant to have faster procedures on Asylum but a revision of Dublin regulation has not been formally declared by co-legislators⁴⁵². These rules have not yet found practical application, as many migrants still face admission processes stuck in the places where they seek refuge.

⁴⁵² European Parliament, 'Migration in Europe | News | European Parliament' (Europarl.europa.eu, 2022) <https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78632/migration-in-europe> accessed 2 October 2022

5.3 An Insight into a correct model of management of migratory flows

The European Asylum System has developed good laws over the years. However, the system seems to be good on paper only. Implementation and enforcement are one of the biggest challenges causing flaws in the system. Looking at the current regime of rules and regulations governing the immigration sector, there has been no success in implementing the Dublin regime and the CEAS. The European Parliament and the European Council have both agreed that there is a need to reform the regimes toward a better asylum system⁴⁵³. It is important to note that the 2013 reforms to the Common European Asylum System did not eradicate the challenges facing the systems. In 2015, challenges in managing migration flows underpinned the need for a comprehensive reform of the asylum system.

In a bid to actualize a correct model for managing migratory flows in the European Union, the European Asylum System has set up four main goals, which are reduced irregular migration, tighter border controls, a generally improved asylum system and a new approach to the legal system. These four approaches are the key to a correct model of management of migratory flows.

There is also a proposal to create legal and safe ways through which third-country nationals can enter the common European area. This will enhance better management of the migration flows by creating predictability of migration flows. A correct model of management of migratory flows should make sure there are efficient programs for resettlement and relocation of refugees. In 2015-2016, the common European Asylum System collapsed due to the surge in the number of people seeking international protection. A proper system for settling refugees is needed to guarantee fast and effective settlement, which will ensure people are not stranded⁴⁵⁴.

The European Asylum System deals with a fundamental human right, which is granting the right of asylum. Migration laws should be consistent with this fundamental right. A good legal system or a

⁴⁵³ EUCO 19.02.2016, SN 16/16

⁴⁵⁴ (Doliwa-Klepacka & Zdanowicz, *The European Union Current Asylum Policy: Selected Problems in the shadow of covid-19 2020*)

system that manages legal procedures has to be preceded by good laws and regulations. This is why the asylum procedures legislation calls for amendment. The amendments aim to simplify the processes of granting international protection to refugees. Amending the laws will ensure all member states of the EU have uniform laws that will grant the asylum system works as a union and not as individual member states. Sound and implementable legislation will form a basis for a good asylum system as legislation establishes a way of checking safe countries of origin, common laws for the EU to guarantee a uniform asylum regime, and running humanitarian visa programs and resettlement. Uniform legislation helps the member states of the EU to effect matters such as open borders and freedom of movement. This is done by the EU countries sharing the same fundamental values and a joint approach to ensure all refugees are treated with dignity and are granted asylum⁴⁵⁵.

The EU needs to work together rather than as a single state. In the current asylum system, there are no practical guidelines provided by the European Union, and member states individually handle granting international protection. The Common European Asylum System seeks to harmonize all national asylum laws and procedures. This asserts the need to develop a functional EU framework to oversee the making of interdependent decisions for the union.

It is true that the Common European Asylum System has become better in enhancing the protection of rights of people seeking international protection. Laws have been enacted, and implementation and enforcement mechanisms have been put in place. However, the system is not yet good, and there are a lot of loopholes that need looking at.

⁴⁵⁵ "Common European Asylum System" (Migration and Home Affairs) <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en> accessed September 21, 2022

There is a need to develop stringent laws that are not discriminatory in any nature. The laws should have proper laid down enforcement and implementation mechanisms. Failure of implementation mechanism often defies the need to have the system and the laws in the first place.

To ensure that laws are effective, there must be enforcement mechanisms; otherwise, laws would just be laws on paper. One of the major problems facing the European Asylum System is the enforcement mechanism. There is a shortage of international institutional frameworks. The institutional framework consists of institutions set up to grant the implementation of certain legal instruments. For instance, the European Commission on Human Rights and the European Court of Human Rights are institutions tasked with implementing and enforcing the European Human Rights Commission. The European Asylum regime lacks enough institutions to oversee that refugee laws are followed. There is a need for more institutions to be put up to ensure the rights of refugees and asylum seekers are protected, respected, and promoted.

There is a need for the system to strike a balance between state sovereignty and the protection of human rights. This has been established as one of the emerging issues in the application of asylum and refugee law. Human rights are indelible, and thus their protection should always be a priority. States have a tendency to give state sovereignty the first priority making the protection of human rights a second priority. They put their interest first, such as the fear of overpopulation and refugees being terrorists, among others, and thus fail to protect human rights adequately. The European Asylum System, while giving member states the right to form their own immigration domestic laws, should underpin the importance of protecting, respecting, and promoting human rights. The system should see that all states have fulfilled the obligation to protect and respect the rights of refugees and asylum seekers and treat them with humanity and courtesy.

It has been observed that there are procedural issues concerning the application of asylum and refugee law. There are no binding international standards regarding what procedure should be followed to recognize refugee status. The guidelines are not binding, thus they are at the discretion of the member

states. This jeopardizes the protection of refugee's rights as they are left vulnerable where there are no standard procedures, making the process long, tedious and ineffective. This is why refugees prefer some countries over others. In this case, the European Asylum Common System should make efforts to come up with binding bare minimum standards. These procedures should be followed by all member states granting the process of refugee status recognition is expeditious, effective, and easy for all refugees to follow. This will ensure that refugees are not stranded and can settle quickly.

Asylum seekers face numerous problems when it comes to protection from the state they desire to get residence in. The most common are poverty, isolation, destitution, hatred, and lots of waiting periods. The ones whose rights have already been infringed end up going through another cycle of inhumane treatment. When asylum applications take too long, the immigrants face poverty as they cannot get business permits or legally own property. As seen in the analysis of the issues above, there are also proposals to expand the eligibility criteria for asylum seekers granting immediate protection status and accompanying it with a predictable and effective solidarity mechanism. This would definitely solve the problem since the refugees and asylum seekers who had lost their homes and property would quickly resettle.

Many human rights issues have come to life when applications to settle are still underway. The most common one is the issue of living conditions, and states have taken advantage of it. Even though article 3 of the European Charter on Human rights prohibits torture, degrading or inhumane treatment, it does not set high standards of what really amounts to inhumane treatment. The result of this situation is that refugees and asylum seekers often fall victim to non-utilization of second and third-generation rights. States acknowledge that they have to provide them with anything so long as it can be proven in a court of law. With that, the refugees get to have very low living standards without remedy in the corridors of justice. Cases of detention, gross misconduct and deportation are also the norm when applications are still underway.

But even with that being said, the logic of the rediscovery of migrant human rights is still very much alive. Courts have been vigilant when it comes to the protection of refugees and asylum seekers. Some of them have been compensated, and correct administrative actions are taken towards them. The Court underlined that family unity is an essential right for refugees and that family reunification is a fundamental precondition for allowing persons who have fled persecution to re-establish a normal life. Family members admitted into the same state ought to be together even if it is not supposed to be under the same roof.

Furthermore, Courts have always had a soft spot for minors, and the Court of justice of the European Union is not an exception. Minors have always been given special care, and in cases of family reunifications with minors they are given priority. Children are vulnerable, and if they are, for some reason, separated from their parents, then it becomes essential that they be reunified with their guardians in the fastest way possible. The courts are lenient under these circumstances to the extent that even when minors come of age during the application, they are still accorded the same privileges.

A pressing issue that slows this process down is that sometimes refugees and asylum seekers are not granted bare minimum rights like the country's citizens when they voice their desires and concerns on family reunions. There have been cases where the right to be heard was denied by relevant authorities to the refugees. The right to be heard is among the rules of natural justice, and denying it to anybody is one of the worst forms of inequality. The Court, through review of administrative action, has tried to reduce these cases.

There are set standards and procedures for admission, and rights such as the right to be heard are grave and must be adhered to. When they are not, then the whole admission becomes null and void. Initiatives such as constant checks within institutions and by the courts of law have been put in place to make sure that the right thing happens. Refugees must be treated with utmost care and protection.

5.4 Recommended proposals to create legal ways of accessing the European Union

It has been proposed that better regulation can be a way of creating legal ways for refugees and asylum seekers to access the European Union. The Commission is usually tasked with proposing and preparing new European Union Laws and improving existing legislation to fill the gap⁴⁵⁶. The Commission has the Better Regulation as an agenda to design and evaluate the EU policies and legislation based on the evidence of their enforcement⁴⁵⁷. The proposal aims to make the laws simpler, easier to comply with and more targeted. This will align with the Commission's history of reducing regulatory burdens.

The European Commission has proposed to introduce a procedure for ensuring the screening of TCNs arriving at the EU borders⁴⁵⁸. The proposal asserts that the screening will help the border authorities establish the identity of the refugees and asylum seekers and any security risks they pose to the Union, among other factors. After the screening, the authorities will refer the TCNs to the appropriate procedure, whether it is asylum protection, return or refusal of entry⁴⁵⁹. This will ensure that all the Union's Member States adopt standardized border control practices. The Member States will use these practices to amend or come up with their refugee and asylum protection legislations which will enhance the achievement of the aim of the EU to develop a common policy on asylum⁴⁶⁰.

⁴⁵⁶European Commission, 'What The European Commission Does In Law' (European Commission - European Commission, 2022) https://ec.europa.eu/info/about-european-commission/what-european-commission-does/law_en#making-rules-for-implementation accessed 3 October 2022.

⁴⁵⁷ European Commission, 'Press Corner' (European Commission - European Commission, 2021) https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_1902 accessed 3 October 2022.

⁴⁵⁸Evelien Brouwer and others, *The European Commission's Legislative Proposals In The New Pact On Migration And Asylum* (European Union 2021) [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU\(2021\)697130_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf) accessed 2 October 2022.

⁴⁵⁹Evelien Brouwer and others, *The European Commission's Legislative Proposals In The New Pact On Migration And Asylum* (European Union 2021) [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU\(2021\)697130_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf) accessed 2 October 2022.

⁴⁶⁰ <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>

An Eurodac regulation has been proposed. Eurodac is the first Automated Fingerprint Identification System (AFIS) established at the EU level. The system has been in performance since 2003⁴⁶¹. It has been proposed that the regulation should be amended in order to provide extended protection to ‘irregular migrants’ based on the Protocol to the Eurodac Convention, and also to extend its objectives. The objectives that should be added are⁴⁶²:

- I. prevent Assisted Voluntary Return and Reintegration (AVRR);
- II. assist in the correct identification of TCNs pursuant to Article 20s of the Interoperability Regulation;
- III. support to the European Travel Information and Authorization System (ETIAS) objectives;
- IV. support to the Visa Information System (VIS) objectives.

These proposed amendments aim to guarantee common and smooth resettlement and reduce irregular migration. This will ensure migrants who enter the Union use legal and regular means, and also the widening of the common database to enhance the scope of searches on all categories of data; furthermore, it will aid in establishing and regular pattern of recognition⁴⁶³.

There have been proposals to amend asylum procedure regulations. There is a need to establish additional acceleration ground based on the applicant's recognition rate from third countries, which is lower than 20%. This is because the low recognition rate is against the principle of proportionality

⁴⁶¹ Evelien Brouwer and others, *The European Commission's Legislative Proposals In The New Pact On Migration And Asylum* (European Union 2021) [https://www.europarl.europa.eu/ReqData/etudes/STUD/2021/697130/IPOL_STU\(2021\)697130_EN.pdf](https://www.europarl.europa.eu/ReqData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf) accessed 2 October 2022.

⁴⁶² Evelien Brouwer and others, *The European Commission's Legislative Proposals In The New Pact On Migration And Asylum* (European Union 2021) [https://www.europarl.europa.eu/ReqData/etudes/STUD/2021/697130/IPOL_STU\(2021\)697130_EN.pdf](https://www.europarl.europa.eu/ReqData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf) accessed 2 October 2022.

⁴⁶³ Evelien Brouwer and others, *The European Commission's Legislative Proposals In The New Pact On Migration And Asylum* (European Union 2021) [https://www.europarl.europa.eu/ReqData/etudes/STUD/2021/697130/IPOL_STU\(2021\)697130_EN.pdf](https://www.europarl.europa.eu/ReqData/etudes/STUD/2021/697130/IPOL_STU(2021)697130_EN.pdf) accessed 2 October 2022.

and non-discrimination. The procedure should be amended to limit the use of detention and restrictions on freedom of movement in border procedures to what is strictly required.

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