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# The Relation Between Migrants and Crimes

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## **Abstract**

Different studies have been done into finding the existence of a link between crimes and migrants, however a final conclusion is not definitive. A special effect has the definition of crime itself. Thus, a division between crimes has been made. Researches and studies that has been done for this relation treat these cases in different ways as a result that situations differ from state to state. The behavior of refugees might be in connection with the way they are treated from the hosting state and some migrant groups can be prone to the criminal activity because they spend a great amount of time in refugee's camps and also taking in consideration that the way of permanent living can effect their psychological state which can cause or bring aggressive behavior. Other causes might be the geographical position, culture, the group of ethnicity they belong and other factors as well. In general, this paper will analyze different states, from the way they are dealing with these situations, is migration effecting in society, and how this phenomenon indicates the level of crimes and public order.

**Key words:** migrant, behavior, violent crimes, property crimes, society, public order

## **Introduction**

According to previous events, the big masses of refugees migrating from countries involved in war, such as Syria or Iraq, are creating unpredictable situations for European countries, because in these events hosting states should keep a balance for both parties, migrants- state. History and experience showed sometimes difficulty on handling such situations because from another hand there are unprotected persecuted people, and on the other hand there is a state who should be ready to handle the living of big masses of people and also to guarantee them the protection they deserve, but what's more important to keep the public order and these events not to change the citizens their way of living. Refugees and migrations are present any moment, from ancient times till now. Europe faced a lot of migrant's movements especially during 20<sup>th</sup> Century as a consequence of firstly World War I and World War II. Mediterranean Sea has also been the main route for African and Asians migrants to Europe,

while in these situations the distinction between two types of migrants (economic migrants and refugees) is difficult. This distinction is important because laws treat these categories in different ways. Refugees are those people who fear persecution (article 1 of the 1951 Convention). On the contrary, economic migrants are ones who want to skip poverty. Considering historical events of big masses of refugees migrating to more developed countries, there have been created conventions, treaties to establish and keep such events in a fair order to all the countries that are part of them. The UNHCR is designed and created to give protection to the people who can be considered refugees, but yet they don't have the status. In this convention the definition of refugee is given in the Article 1 paragraph 2 "Someone who owns a well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." No one can live under pressure of persecution or to an unsafe life. International law protects persecuted people by giving the right to seek asylum to a safer and to a more developed country. In the same time the migration and refugee laws are also under the competence of national States, by these it means that each country has the authority to examine every case and decide whether or not a refugee can gain the asylum. Despite that, people will always try to cross the borders into seeking a better and safer life. In cases of war this people are more prone to leave their country and to search residence in a developed and safer country, but moving of big masses of refugees brings difficulty and problems to the hosting countries. Different issues that such events bring to the hosting countries are the verification of identity of the refugees because often happens that refugees from other countries join the refugees that are in a greater need and in this situation their number increases or a part of refugees tend not to register and to be unregistered from the fear they get deported. While the population faces an increasing of number, certain states faced an increase in number of crimes, but other states do not experience such increase. This paper will study the connection between crime and migration (or refugees). (Elizabeth martin oxford dictionary)- The definition of crime itself can be considered any action or non action that consist as an action against public order and for this matter is punishable by the state authorities. Some criminal offences may be serious wrongs from moral nature others can

affect with the smooth operation of society.<sup>1</sup> For result, they can be divided also in two categories violent and non- violent crimes. Violent crimes are those who are committed under threatening or pressure and in use of violence such as murder or rape, for instance non- violent crimes which have a lighter weight, such as property crimes or theft. While another perspective by an economic study related with crimes showed that it is difficult and is needed a lot of methods to prevent crimes. For example murder, if we have the possibility on reducing crimes by 50 each year, it will cost a lot of amount to society because it will be needed a lot of resources on methods which could on the contrast be used for education, schooling, state health care. Meanwhile crime is a part of society. The question of if these methods are desired, may be arise.<sup>2</sup> The purpose of this research is the examination of any possible relation of refugees and crimes, both violent or not, and is there e direct or indirect link of the foreigners with the level of crimes and their impact in the society. As refugees migrate to more developed countries, firstly they face a lot of difficulties once arriving to destination. Poverty is one of the factors they want to escape but yet is difficult to find improvement in a short amount of time, this can be a factor that can lead these people to get involved in criminal activity. Poverty is also a result of poor labor market, because some states are actually facing difficulties on the number of unemployment and altogether with the increasing of population by refugees, the bars of unemployment gets higher, so as the result situation gets worst. At the same time for refugees that are facing high poverty also being part of a poor labor market can lead them to criminal acts in order to survive, and in other cases they do not. While different states have different experiences to this relation, migrants might or might not get involved in criminal acts. For a better analyze, these acts are going to be divided in two groups: violent crimes and property crimes.

Firstly, in this research is going to be studied if there is a link between migrants and violent crimes. The word crime itself has a broad meaning because it could be any act that is illegal while the act itself differs from its nature and its weight. The link between violent crimes and refugees had taken a connection from 2014 an on, as the data used in this part of research will show. While, the Swedish Crime Prevention Council's survey, claims that the number of

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<sup>1</sup> Elizabeth A. Martin. A Dictionary of Law, Fifth Edition, Oxford University Press

<sup>2</sup> Harold Winter (2005). The Economics of Crime, An introduction to rational crime analysis

swedes that become victims to crimes against individuals increased in number. This survey showed 15.6 percent of the Swedish population were subject to some or all of these types of crime in 2016, and this resulted as more than two percent higher than in the previous year, while years from 2005 till 2014 were stable.<sup>3</sup> Germany as another country that refugees and immigrants number are high have faced similar situation as Sweden. The Federal Criminal Office showed that approximately 300,000 cases were registered in 2016 while at least one immigrant was arrested on suspicion of committing a crime.<sup>4</sup> These countries of Europe have higher standards of living, or in other words, are wealthier countries and so refugees tend more to enter or even smuggle in. As these countries get overpopulated by refugees, it causes another issue to refugee's situations such as residential instability or temporary shelters. While a criminologist and justice minister of Lower Saxony, Christian Pffeifer suggested that behavior of refugees often depends on their possibilities of being accepted to stay as per result, some groups are more disposed to the criminal activity than others, but even those who have a good opportunity at staying often get involved in criminal activities if they are obliged on living with many people in temporary shelters. Furthermore, even with communities that they are in conflict with in their home countries.<sup>5</sup> Refugees deals with big pressure and critical conditions of living and such situations can direct them on being aggressive and involving themselves on criminal acts. Shelters and poor conditions they get by the hosting state as a permanent solution have bad impact in their state of mind. Bad conditions that refugees face can be for example small shelters and division of the place with a group of people, as a result migrant can also face human trafficking. Another study indicated that in cases of Smuggling of migrants by Albanian entrepreneurs, the undocumented migrants are brought to safe houses where they are housed in poor conditions. Furthermore, a price they paid included the costs for safe housing, which is why the traffickers tried to keep the costs down. As per result, the traffickers put as many people as possible into one small space and tried to transfer the people who had arrived on a transport as soon as possible to make space

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<sup>3</sup> The Swedish Crime Survey (2014). Concerning exposure to crime, insecurity and confidence

<sup>4</sup> Gopalakrishnan, M. (2017). Are refugees more criminal than the average German citizen?. [Blog] Available at: <http://www.dw.com/en/are-refugees-more-criminal-than-the-average-german-citizen/a-38371284> [Accessed 9 Feb. 2018].

<sup>5</sup> Gopalakrishnan, M. (2017). Are refugees more criminal than the average German citizen?. [Blog] Available at: <http://www.dw.com/en/are-refugees-more-criminal-than-the-average-german-citizen/a-38371284> [Accessed 9 Feb. 2018].

for new people.<sup>6</sup> These conditions may be unbearable by migrants and escaping these conditions it results they might as well involve in criminal activity. Another article the UK Telegraph suggested that the number of supposed crimes by refugees or asylum-seekers and illegal immigrants rose to 174,438 in 2016 that contains 52.7 per cent, according to the interior ministry.<sup>7</sup> Refugees differ from the countries they came from. For example, refugees coming from Syria or Iraq, countries that are involved in war, these refugees are less likely to commit crimes rather than refugees coming from other countries who have a rejected asylum status. Another fact is that often crimes are committed by repeated offenders which can be a small minority. Nonetheless Switzerland also was in front of similar situations. Further studies proposed that the proportion of non-Swiss offenders increased substantially, but more for nonresident often illegal migrants than for legal residents. Victims reports of offender's characteristics confirm the disproportionate crime involvement of immigrants, particularly in violent crime.<sup>8</sup>

Violent crimes include these categories of crime rape, assault and homicide. These categories indicate to be committed by aggressors, who in the same time are failed asylum seekers. A relation between violent crimes and migrants has been accurate only after 2014, when big masses or waves of migrants reached Europe. Another article by the Telegraph showed that in Germany, the rise accords with Mrs. Merkel's 2015 decision to open Germany's borders to refugees, and the study found asylum-seekers were responsible for more than 92 per cent of the increase, but it found that those whose asylum claims had been refused by the authorities were disproportionately frequent offenders. Further more those who come from Morocco, Algeria and Tunisia, who are usually refused the status by Germany because their origin countries are measured as safety places, responsible for less than 1 per cent of asylum-seekers

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<sup>6</sup> Leman, J. and Jansses, S. (2015). Human Trafficking and Migrant Smuggling in Southeast Europe and Russia. Leuven Institute of Criminology, KU Leuven, Belgium. Pp 69

<sup>7</sup> Huggler, J. (2017). Migrant crime in Germany rises by 50 per cent, new figures show. UK Telegraph. [online] Available at: <http://www.telegraph.co.uk/news/2017/04/25/migrant-crime-germany-rises-50-per-cent-new-figures-show/> [Accessed 9 Feb. 2018].

<sup>8</sup> Killias, M. (1997). Immigrants, Crime, and Criminal Justice in Switzerland. The University of Chicago Press.

in Lower Saxony, but more than 17 per cent of violent crimes.<sup>9</sup> While the risk for being deported exist, these “aggressors” still remain in attempting or even being part of criminal organizations. Even though the refugee convention has particular restrictions for crimes, they still intend to go for them. Basically on Article 1 paragraph F a refugee cannot gain this status if the person has committed a crime against humanity, or has committed a nonpolitical crime.<sup>10</sup> The poor economic way of living is the one of the key factors that leads refugees to commit crimes, because it is very difficult to access the labor market immediately in the short amount of time. Paolo Pinotti also found that in most European countries, refugees and asylum seekers cannot or face difficulties to access in the labor market for a certain period of time while they entry into the country. For result, the motivation behind such ban, which reaches one year in France and the United Kingdom, is to discourage economic migrants from entering the country hidden as asylum seekers. Furthermore, the evidence discussed above for such ban potentially increases the risk that asylum applicants turn to crime.<sup>11</sup> While Sweden experienced another phenomenon, first and second-generation immigrants have higher crime rates than local Swedes, but second generation immigrants have lower rates than first generation immigrants facing contradicting results in other countries. For instance, lower rates may be a consequence of Swedish social well-being policy and this offending pattern of second generation immigrants is similar to the pattern of native Swedes. Resulting that groups with a higher crime rate tend to have a relatively high crime rate in the second generation and otherwise.<sup>12</sup> This phenomenon indicates that first generation is more prone on committing crimes rather than second one, a reason may be also the will of getting economical improvement in an easy way rather then waiting on getting employed. Another (RT) survey, National Security Survey done by Swedish Crime Prevention Council showed the amount of victims of fraud went from 3 percent to 4.3 percent of the entire Swedish population, meanwhile the number of people who was part of harassment went from 4 percent to about 5.5 percent from 2014 to 2016. Furthermore, the victims that faced sexual offenses went from less than 1 percent to 2.5 percent. Young women between 16 and 24 are

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<sup>9</sup> Huggler, J. (2017). Migrant crime in Germany rises by 50 per cent, new figures show. UK Telegraph. [online] Available at: <http://www.telegraph.co.uk/news/2017/04/25/migrant-crime-germany-rises-50-per-cent-new-figures-show/> [Accessed 9 Feb. 2018].

<sup>10</sup> UNHCR, Article 1 paragraph F

<sup>11</sup> Bianchi, Milo, Paolo Buonanno, and Paolo Pinotti. 2009. Immigration and Crime: an Empirical. Analysis. Roma: Banca d'Italia.

<sup>12</sup> Martens, P. (1997). Immigrants, Crime, and Criminal Justice in Sweden. *Crime and Justice*, 21, 183-255. Retrieved from <http://www.jstor.org/stable/1147632>



more prone to suffer from sexual offenses, meanwhile 14 percent of young women declaring that they were victims of at least one such crime during 2016.<sup>13</sup> While this survey did not found an exclusive reason why these particular type of crime as sexual offence or harassment rose to this level but it needed to be done more analysis on finding the real reason. As it seems Germany and Sweden faced more problems on resolving violent crimes because actually, in these two countries the number of refugees and non registered asylum seekers is higher then other countries as a result, violent crimes were present. Another tragic event happened in Germany, while on celebrating New Years, in an article of DW states that Cologne police reported hundreds of North African men behaving in an aggressive manner at the city's central station. On New Year's Eve 2015 a big number of women were sexually harassed or even getting robbed by these mean which was believed to be of North African origin.<sup>14</sup> It seems that refugees that comes from states which are practically stable and their refugee status is not going to be accepted or given to them, tend to create more chaos. This kind of crimes may not be present in other countries that hosted refugees for years. Violent crimes have the worst impact on society because it creates instability, fear and as per result the citizens create a non trust relationship with the government or state. In Sweden, a survey resulted that a statement by the council showed that sexual offenses or provocation were the least reported offences as per result only 11 percent of those exposed to such criminal activity testified to the police.<sup>15</sup> In the same time a unit manager at Bra, Thomas Hvitfeldt suggested the purpose for not reporting the crime is that the victim does not feel secure that police will act.<sup>16</sup> Instability of citizens comes also from the fact that countries like Sweden or Germany were not prepared for the big wave of refugees and their lifestyle were safe and protected by government. In the short time the European countries were overpopulated by migrants and still there are situations yet not stabilized. Before recent events, in almost all other events

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<sup>13</sup> The Swedish Crime Survey. (2014). [online] Stockholm: The Swedish National Council for Crime Prevention. Available at: [https://bra.se/download/18.5e2a4a6b14ab1667599bd3/1423496794540/2015\\_Swedish\\_Crime\\_Survey\\_2014\\_summary.pdf](https://bra.se/download/18.5e2a4a6b14ab1667599bd3/1423496794540/2015_Swedish_Crime_Survey_2014_summary.pdf) [Accessed 9 Feb. 2018].

<sup>14</sup> Gopalakrishnan, M. (2017). Are refugees more criminal than the average German citizen?. [Blog] Available at: <http://www.dw.com/en/are-refugees-more-criminal-than-the-average-german-citizen/a-38371284> [Accessed 9 Feb. 2018].

<sup>15</sup> The Swedish Crime Survey. (2014). [online] Stockholm: The Swedish National Council for Crime Prevention. Available at: [https://bra.se/download/18.5e2a4a6b14ab1667599bd3/1423496794540/2015\\_Swedish\\_Crime\\_Survey\\_2014\\_summary.pdf](https://bra.se/download/18.5e2a4a6b14ab1667599bd3/1423496794540/2015_Swedish_Crime_Survey_2014_summary.pdf) [Accessed 9 Feb. 2018].

<sup>16</sup> Ibid.

migrants did not have a connection with violent crimes. Before refugee crises that was recently, in 20<sup>th</sup> Century events showed that actually there is not a connection of migrants and violent crimes. William McDonald suggested that recent immigration between 1980 and 1990 had a negative impact or was not associated with most results. Furthermore, immigration crushed in types of black homicide in Miami and it was not statistically meaningful in 10 examples. It resulted that was positively associated with two types of homicide, firstly drug associated homicide for blacks in San Diego and close partner homicide for Latinos in Miami. On the contrast, the expectations that immigration increases crime this result occurring 2 out of 16 multivariate models.<sup>17</sup> Nonetheless there are a lot studies and indicators that show that migration and violent crimes cannot back a link between them. Studies have found that contrary to theoretical expectations, immigration may not have a uniform influence on violence and also a relation. Per result as members of a particular ethnic group arrive with money-making job skills, it can be unreason to expect that their presence will be associated with high levels of violence.<sup>18</sup> While all the Europe faced enormous refugee movements from 20<sup>th</sup> century and now on, different states experienced other kinds of issues or crimes rather than violent crimes. For instance property crimes were most common.

Property crimes are more likely to be committed by refugees as a result of the poor conditions and incomes they might have. Another reason can be the distinguish of neighborhoods and the conditions of the way they live. Italy faced problems during the period from 1990 till 2003. A study showed that into the Italian provinces it is evaluates the showing that a one percent increased of the number of immigrants and it resulted the increase in property crimes by 0.1 percent. At the same time, the authors disaggregate across crime categories, they found out it is affectingly strong on property crimes or robberies and thefts.<sup>19</sup> Another cause that can lead refugees on committing property crimes is the fact that they can have lack of schooling or education, or cannot speak well the language in the new country.

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<sup>17</sup> McDonald, W. (2009). IMMIGRATION, CRIME AND JUSTICE. Georgetown University, Washington, DC.

<sup>18</sup> Stowell, J. I. (2007). Immigration and crime: the effects of immigration on criminal behavior. New York: LFB Scholarly Publishing LLC.

<sup>19</sup> Bianchi, M., P. Buonanno, and P. Pinotti. "Do immigrants cause crime?" *Journal of the European Economic Association* 10:6 (2012): 1318–1347. Online at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1542-4774.2012.01085.x/abstract>

While these two factors can be crucial on finding a job or even to be a competitor in the labor market, as a result working can become a difficulty and not a trusted option. Another research showed that the raising of number of immigrants it can result on the increasing of number of crimes too. As well as the participation in the labor market is a more relevant option for crimes to be motivated by financial gain. Also it is found that is more reasonable to expect an increase of the property crime rate, but not automatically the rate of violent crime.<sup>20</sup> Avoiding situations like property crimes the government should keep a fair balance between migrant workers and domestic employers. This is accurate according to a study that, migrant's movements from 90s to 2000 affected the incensement in property crime in the United Kingdom, meanwhile after 2004 movements of migrants from EU accession countries had no meaningful impact on crime. Of course, asylum seekers and new EU citizens may differ on a lot of ways. Nevertheless, this finding is in a direct line with the evidence on the main role of legitimate income opportunities in migrant's crimes. Furthermore, the duration of employment bans should remain as short as possible. Moreover, national and EU policies should support as possible as it can the match between migrant workers and domestic employers. While, the social payment of such policies may be considerable, also in terms of crime prevention.<sup>21</sup> Property crimes are faced all around Europe, while violent crimes are considered more disturbing and more problematic. Property crimes are not considered only housing theft but also theft. Stealing is a way of gaining money faster by people who suffers from poverty and it is found wherever there are big masses of refugees. Italy faced property crimes and other kind of crimes such as prostitution or illegal drug dealings, a study showed that with regarding on thefts or robberies this extensive progress was interrupted only in 1991. Meanwhile then the rate of theft increased up to 6 times than in 1968, and that of robbery increased more than 14 times. Moreover, thefts declined afterwards but since 2002 have faced an increase. Again robberies decreased until 1995 but then increased without stopping. As per result they have reached levels never known before. Accurately, now days the rate is 18 times higher that of 1970. Furthermore, the same trend is obvious for the proportion of immigrants among those charged with drug crimes. Also, between 1988 and

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<sup>20</sup> Spenkuch, J. L. (2010). Understanding the Impact of Immigration on Crime. SSRN Electronic Journal. doi:10.2139/ssrn.1612849

<sup>21</sup> Bell, B., S. Machin and F. Fasani (2013), "Crime and Immigration: Evidence from Large Immigrant Waves", *Review of Economics and Statistics* 95(4): 1278–1290

2007, it was increased from 3 to 30%.<sup>22</sup> Property crimes has a lot of impact in the society, it might not be considered a crime against individuals but still property is a fundamental right that any individual enjoys. Violating property crime in the same time is violating one of the most important right of an individual.

Despite the fact that violent crimes recently, or property crimes where present in main countries of Europe, there are examples and experiences of other countries which didn't face situations of crimes at all. One factor may be the geographical position, another cause may be the ethnicity, or origin, or even culture. The link from these causes to refugee behavior may be quite accurate. For example, United States of America have had other experiences from refugees in the moment they entered to this country. United States government have strict policies related to migrants, but still their number is quite big and yet the situation is quite stable. Further more an investigation done by the Federal Bureau of Investigations it showed a significant pattern that, rather the increasing of crimes, nine out of 10 of the communities actually became noticeably more safe, considered together their levels of violent and property crime. While, this included places like Southfield, Michigan, a community in a suburb of Detroit, where violent crime dropped by 77.1 percent. In accordance, Georgia that is also a suburb outside Atlanta, faced a 62.2 percent decline in violent crime.<sup>23</sup> Other factor can be the immigrant optimism, which consist with the fact that a lot of refugees or migrants choose to migrate for a better life, for better work conditions and also wealth. United States seems to have experienced this theory because based on geographical position the United States have as state neighbor South America and islands surrounding the territory. The population that came from this countries, who have faced poverty because these countries standards are not so high compared to the United States, they tend to be optimistic when migrating to USA because of better opportunities of working and life. Further more an article showed that America, same as Europe, was also followed by episodes that blamed migrants for crimes, but statistic researches show that in the United States immigrants are far more law-abiding

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<sup>22</sup> McDonald, W. (2009). IMMIGRATION, CRIME AND JUSTICE. Georgetown University, Washington, DC.

<sup>23</sup> "Gang Success Stories," FBI.gov, accessed February 6, 2017, <https://www2.fbi.gov/hq/cid/ngic/success.htm>.

than native born, nevertheless of race, education or wealth.<sup>24</sup> While this data has shown a different path as was discussed in the beginning of this research, US did not experienced a link between property crimes, either a link between refugees and violent crimes. Other researches showed that (criminology.oxfordre.com) the United States have pointed out that the urban crime problem is not caused by immigrants and that immigrants are not increasing crime rates. Nevertheless, socially disadvantaged neighborhoods may, however, make immigrant groups more vulnerable to crime victimization when social support networks are lacking.<sup>25</sup> In general US is has not faced high crime rates, although in many cases there have been a decreasing of crimes. This can be a result also of high border security, but as it was shown from these studies refugees who generally tend to migrate to US are for work purposes or for better conditions in life, which for US labor market has resulted positively. Furthermore, an article showed an economical line occurring to migration which is a report by Immigrant Legal Resource Center, estimates that denying the protections from Salvadorans, Hondurans and Haitians would deprive American Social Security and Medicare systems of about \$6.9 billion in contributions over a decade, and would shrink the gross domestic product by \$45.2 billion. Construction companies already are facing a nationwide labor shortage will have to replace workers from what industry executives said was a little pool, or turn down projects. Furthermore, the vice president of Shapiro and Duncan a heating and cooling firm, claimed that there are no Americans out there to take the jobs. Also, the company and its competitors have resorted poaching each other's project managers, engineers, welders and plumbers.<sup>26</sup> Immigrants and refugees tend to be hard workers for improving their lives. This was an economical approach, but it showed that in US immigrants and refugees have had a good impact in labor market, because they are willing to do every job to improve their lives. On another matter England and Wales also faced the same situation as US. (migrationobservatory.oc.uk) Further studies have found that there has been a continuous reduction in property crimes in England and Wales since 2002. Also, in this period has also seen a rise in the migration. Actually, it is found a negative correlation

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<sup>24</sup> Gladstone, R. (2016, January 13). Research Doesn't Back a Link Between Migrants and Crime in U.S. The New York Times. Retrieved from <https://www.nytimes.com/2016/01/14/world/europe/research-doesnt-back-a-link-between-migrants-and-crime-in-us.html>

<sup>25</sup> Bernat, F. (2017). Immigration and Crime. In *Criminology and Criminal Justice*.

<sup>26</sup> Yee, V., Robins, L. and Dickerson, C. (2018). U.S. employers brace for loss of immigrants. The New York Times, p.7.

between the level of property crimes and the migration.<sup>27</sup> Another indicator on finding a link or not between refugees and crimes is labor market. (migrationobservatory.oc.uk) Other studies has shown Bell et al. (2013) and Bianchi et al. (2012) and Spenkuch (2011) also, Italian evidence finds zero overall impact of migrants on either violent or property crime. Furthermore, the US study found no evidence of a causal link between migrants and violent crime too, but does indicate a significant positive link with property crime. Even, the approximations imply of a 10 percent of increase in the share of migrants in an area would raise the property crime rate by 1.2 percent. Furthermore it is argued that Mexican migrants in the US tend to have much poorer labor market outcomes than other groups, but this results also indicate that the impact of migrants on property crime in the USA is driven by Mexican migrants. It is also showed the importance of focusing on the labor market opportunities of different migrant groups.<sup>28</sup> A link between migrants and crimes might be still blurry, but overall these data showed that both situations are present. A link or indirect link may exist.

To conclude all the previous information that this research used and in the same time was based, migration movements had always been part of the human developing history. In present situations and events, migration is a way of life improvement and hope from societies who are facing difficulties as well as economical crisis, war and political instability. As migration occurs also the difficulties are present. Stability is hard to settle, from the problems migrants try to find solution, by moving from the origin country. As a result, there might or might not exist a relation, or phenomenon for a possible link between migrants and crimes. In data that this research used to analyze a possible link, it had been shown that in the relation with violent crimes refugees have not a direct link. Even though the circumstances migrants face during this faze, during 20<sup>th</sup> Century they had no impact on violent crimes in the society, and also in many cases the number of crimes either remained same or either were lower. A result can be the general purpose itself of migrants, the improvement and a better life. United States, United Kingdom, Wales were some of the countries that showed data of not a

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<sup>27</sup> Immigration and Crime: Evidence for the UK and Other Countries. (2013). The Migration Observatory At The University of Oxford. Available at: <http://www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-and-crime-evidence-for-the-uk-and-other-countries/> [Accessed 9 Feb. 2018].

<sup>28</sup> Bell, B. and S. Machin, "Immigrant Enclaves and Crime." *Journal of Regional Science* 53 (2013): 118-41.

correlation between migrants and crimes, safety and security were present in the society and migration did not have an impact in contrary at all. Nevertheless, in recent years from 2014 and on, European countries, for instance Germany, Sweden or Switzerland because of refugee crisis faced an increase on crimes as well as violent acts. An indicator occurs to be the enormous number of migrants that these countries are dealing, in the same time brings poor conditions of permeant living, or some of migrants have a failed to seek asylum status and these conditions brings violent acting until on committing crimes. While in general overview migration and violent crimes do not have a strong connection, property crimes and migration do. As property crimes are not considered crimes against individuals because they are not achieved by use of force, their nature is more easy gained from violent crimes. Property crimes tend to have a faster solution for migrants facing poverty, as per result they seem to have a relation between them. Some of the countries that seemed to face this issue are Italy, United Kingdom and other EU countries. Many migrants see as solution property crime because their lack of education, skills and poor language seem to keep them distant from labor market. Keeping this issue distant the government might find a solution on keeping a fair labor market between the migrants and native- born workers and also domestic employers. Countries like US, for example, that have free competition in labor market did not face an increasing in crimes, mainly violent crimes. Overall migration has impact in society such as, cohabitation with other cultures, and difficulties for migrants on adapting in new societies but in the same time these situations might or might not bring consequences as increasing the number of crimes. As the data that were used into this research showed both results link or no link of migrants and crimes. The experiences differ as per state, but the purpose of migration itself is to improve the qualities of life, for a better wealth and safety. Migration is part of history, present and future. It is a phenomenon that goes together with human development and evolution.

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# **Link between Migration and Terrorism**

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Paper in 'Refugee Law'

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**Abstract:**

This Research Paper explores any possibility or assumed link between migration and terrorism. They are two completely different phenomenon and separate studies, and usually are not analyzed in intersection with each other. However, there are many discussions that there might actually be a link between migrants and terrorism, depending on different sources and studies. On one hand, it is argued that the arrival of a huge number of refugees in a country can cause risks of terrorism, if not handled properly. On the other hand, it is argued that these two phenomenon don't share a link, predominantly due to the fact that most of refugees flee in order to escape war and terrorism happening in their own countries, so the chances of them to commit such crimes at the recipient country are considerably low.

This contribution reviews the current literature by critically analyzing any connection and link between migration and terrorism.

**Key words:** Migration, Terrorism, Crystallization of the 1951 Convention, Existence or Absence of Link, Radicalization

## 1.Introduction:

Migration, has, for many years, been a topic of considerable significance, and has taken even larger measures in the last decade. Many states have been struggling with finding the most efficient way to provide solutions for migration, each on their own ways and methods. The number of refugees is increasing considerably, about one in seven persons – almost one billion people – are migrants, in the sense that migrants are not only those who cross an international border, but also including intra-state migration.<sup>1</sup> According to Article 1 of the 1951 Convention Relating to the Status of Refugees, a refugee is someone who is being prosecuted for reasons such as race, nationality and religion and because of a well founded fear from prosecution, is unwilling or unable to return back or to avail himself of the protection of that country.<sup>2</sup>

The identification of a person's status as a refugee, doesn't make them as such, only ascertains that status. A person becomes a refugee when he meets the respective requirements, and is been granted asylum. "Asylum" means the legal permission to stay somewhere as a refugee, which brings certain rights and benefits. Not every asylum seeker will be recognized as a refugee, but every refugee is at first an asylum seeker.<sup>3</sup>

Also, it should be noted that there is a distinction between asylum seekers, migrants and illegal migrants. Asylum seekers are those people who by submitting their request, wait for their status of a migrant to be granted, while a migrant is someone who has had his request accepted and has been granted the rights conferred in the Convention. An illegal migrant, on the other hand, is someone whose application has been rejected, but they continue to stay in that country, even though illegally.

Motivated by economic, social, political, and other important factors, the number of migrants is likely to increase drastically in the forthcoming years, including influence from factors

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<sup>1</sup> T. Nail, "The Figure of the Migrant", 2016; cit. K. Maddox. "DU Philosopher: We're In The Century of The Migrant", Colorado Public Radio, 5 February 2016 <http://www.cpr.org/news/story/du-philosopher-werecentury-migrant>

<sup>2</sup> Convention Relating to the Status of Refugees, 1951, Article 1

<sup>3</sup> Open Society Foundations. (2018). *The EU Has a Solidarity Crisis. Not a Refugee Crisis.* <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union>

such as climate change, as well as political instability and insecurity in their countries.<sup>4</sup> Civil war, collapsing governments, terrorism, are also the main factors that cause people to flee their countries and look for safer ones to resume their lives. This issue brings a number of questions concerning the number of migrants who escape their countries because of terrorism, and if this is the case, whether it is safe is for the receipting countries to accept major refugee flows. It was in fact Weiner<sup>5</sup>, who for the first time raised the question of how migration could affect states 'security'.<sup>6</sup>

Member States of the European Union, each have different opinions upon this issue, since it should be noted that it is one of the most travelled destinations from refugees and where migration is increasing drastically. In 2015 the member states of the European Union received about 1.9 million applications for asylum, from which nearly half a million of them were Syrians and another half a million were Afghanis, Iraqis, Pakistanis and Nigerians.<sup>7</sup>

On another note, in order to analyze any potential links between refugees and terrorism, one should also take in consideration the definition of terrorism. In fact, there is a lack of consensus between the States regarding a universal definition, which is accepted and used in an international level. There are in fact a lot of differences in defining the notion and States have various perspectives and approaches, all being analyzed even further before exploring its link with migration.

Many sources suggest that there is indeed a huge risk for the receipting countries to accept refugees, since there is a link between migration and terrorism.<sup>8</sup>

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<sup>4</sup> Werz, M. and Conley, L. (2012). *Climate Change, Migration, and Conflict*. Center For American Progress. Available at: [https://cdn.americanprogress.org/wp-content/uploads/issues/2012/01/pdf/climate\\_migration.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2012/01/pdf/climate_migration.pdf)

<sup>5</sup> Weiner, Myron. "International migration and security." (1993).

<sup>6</sup> Fauser, Margit. "Transnational Migration—A National Security Risk? Securitization of Migration Policies in Germany, Spain and the United Kingdom." Center for International Relations (2006).

<sup>7</sup>Institute for Economics & Peace, Global Terrorism Index 2015: Measuring and Understanding the Impact of Terrorism, p. 59, [www.visionofhumanity.org](http://www.visionofhumanity.org).

<sup>8</sup>Nowrasteh, A. (2016). *Terrorism and Immigration: A Risk Analysis*. Cato Institute. <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis> Daniel Milton, Megan Spencer, and Michael Findley, "Radicalism of the Hopeless: Refugee Flows and Transnational Problems," *International Interactions*

These statements are supported by the argument that terrorist can easily be disguised as refugees. Also, the arrival of huge flows can be risky and despite the fact that the number of terrorists in mass migration movements has been low, it is argued that terrorists often have a criminal background to begin with. This approach affects significantly in providing asylum seekers the assistance they need and are entitled to.

On the other hand, many suggest that there is an absence of link between refugees and migration. It is argued that even though terrorists have tried disguising as refugees before, it is very rare and their success, even rarer.<sup>9</sup>

Also, there have been events in the past, where terrorist attacks have been conducted by EU citizens, born and raised in the member states, rather than foreign migrants. Another argument used to support the theory is that one of the factors that cause refugees to flee their countries is terrorism in their own homes, so there is no reason for them to support and encourage it.

Nevertheless, both migration and terrorism trigger international conflict and raise worldwide issues. There are sources that hold arguments for both scenarios, and there might be cause for concern indeed, but there is always more to the story than it seems.

## **2. Definition of Terrorism**

There is no universal agreement, neither a legal nor an academic definition regarding the term “terrorism”.<sup>10</sup> It is difficult to accept a common definition of the notion, taking in consideration that there are many different legal and political approaches adopted by countries towards this phenomenon. Each country defines it given the types and levels of threats from terrorists.<sup>11</sup>

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<sup>9</sup>Byman, D. (2015). *Do Syrian refugees pose a terrorism threat?*. Brookings. <https://www.brookings.edu/blog/markaz/2015/10/27/do-syrian-refugees-pose-a-terrorism-threat/>

<sup>10</sup> Williamson, Myra (2009). *Terrorism, war and international law: the legality of the use of force against Afghanistan in 2001*. Ashgate Publishing. p. 38

<sup>11</sup> Rehman, Faiz Ur. “Essays on the Law & Economics of Terrorism in Pakistan.” Erasmus University Rotterdam, 2015.

There is also a distinction of terrorism, which are classified as domestic and transitional terrorism. Similarly, terrorist incidents are classified into two main groups, i.e., domestic and transnational terrorism.<sup>12</sup> Domestic terrorism is homegrown, involving victims, perpetrators, and targets from a single country, while transnational terrorism is a multi-country event involving victims, perpetrators, or targets from two or more countries.<sup>13</sup> In this case, since the focus of this paper concerns cases where migrants are the main actors of terrorism, it will be concentrating on transnational terrorism, rather than domestic. It will also discuss upon domestic terrorism, being one of the factors that drive refugees to flee their countries.

## **2.1 Different approaches by States**

States all over the world have been reluctant and hesitant to decide upon a universal definition of terrorism. These difficulties arise from the fact that the term is politically and emotionally charged.<sup>14</sup>

However, there have been many attempts that have resulted in multiple codifications of the definition of terrorism, mainly by adopting several conventions. Nevertheless, the definition of the term remains undetermined, since internationally, there is still no success in developing an accepted and unified definition.<sup>15</sup> During the 1970s and 1980s, the United Nations attempts to define the term failed mostly due to differentiations of opinions between member states about the use of violence in the context of conflicts over national liberation.<sup>16</sup> These differences have made it impossible to conclude a definition in a single convention on terrorism.

The European Union defines terrorism due to legal and official reasons, in Article 1 of the Framework Decision on Combating Terrorism.<sup>17</sup> This provides that terrorist acts are considered as criminal offences set out in a list consisting of serious offences against persons and property which:

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<sup>12</sup> Santifort et al. (2013) (Santifort, C., T. Sandler, and P. T. Brandt (2013). Terrorist Attack and Target Diversity Change- points and their Drivers. *Journal of Peace Research* 50(1), 75–90

<sup>13</sup> Ibid.,

<sup>14</sup> Hoffman (1998), p. 23, See the 1 Nov 1998 review by Raymond Bonner in the New York Times of Inside Terrorism.

<sup>15</sup> Angus Martyn, The Right of Self-Defense under International Law-the Response to the Terrorist Attacks of 11 September Archived April 29, 2009, at the Wayback Machine., Australian Law and Bills Digest Group, Parliament of Australia Web Site, 12 February 2002.

<sup>16</sup> Ibid.,

<sup>17</sup> The Framework Decision on Combating Terrorism (2000), Article 1



*“...given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.”*<sup>18</sup>

The current French definition of “acts of terrorism” is found in the French Penal Code, Article 421.

*“Acts of terrorism – provided they are intentional, connected to either an individual or a collective enterprise, and intended to gravely disturb the public order by way of intimidation or terror – are:*

- 1- deliberate assaults on life or on personal integrity; the hijacking of an airplane, ship or other means of transport;*
- 2- theft, extortion, destruction, degradation, deterioration; infractions on computerized information”*<sup>19</sup>

According to The United Kingdom’s Terrorism Act 2000 , an “Act of Terrorism” means the use or threat of action when it is intended to intimidate the government or the public, or when it is made for the purpose of developing even further a political or religious cause. It must involve serious violence and create a serious risk to the health and safety of the public.<sup>20</sup>

*(1) In this Act "terrorism" means the use or threat of action where:*

- (a) the action falls within subsection (2),*
- (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public and*
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.*

*(2) Action falls within this subsection if it:*

- (a) involves serious violence against a person,*
- (b) involves serious damage to property,*
- (c) endangers a person's life, other than that of the person committing the action,*

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<sup>18</sup> The Framework Decision on Combating Terrorism (2000)

<sup>19</sup>Code Pénal, France, Article 421, Section "Des actes de terrorisme." Legifrance, 2016

<sup>20</sup> United Kingdom Terrorism Act, Article 1, legislation.gov.uk, 2000.

*(d) creates a serious risk to the health or safety of the public or a section of the public or*

*(e) is designed seriously to interfere with or seriously to disrupt an electronic system*

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Another unique example is the case of the United States, references of which, regarding terrorism are made in various federal statutes and regulations. In the U.S Code, for instance, the term “terrorism” is defined as a well planned, politically motivated violence perpetrated against targets by sub national groups or clandestine agents.<sup>22</sup> In the U.S Code of Federal Regulations, the definition of terrorism is explained as "the unlawful use of force and violence against persons or property with the intention to intimidate a government, the public, or any part of political or social objectives".<sup>23</sup> Similarly, but in a more detailed way, this term is defined also in other Codes, such as in the U.S Department of Defense, U.S Federal Emergency Management Agency, U.S National Counterterrorism Center, Terrorism Risk Insurance Act, USA Patriot Act of 2001, and other various Regulations and Acts.

All these different definitions and approaches of each State only demonstrate the difficulty and struggle to find consensus on a universal definition. Each State defines the term according to its history, ideology, culture, past events, which means it can never be an objective term to be defined. In some cases even, such as in the case of the United States, the definition of terrorism is explained in several different ways, in various statutes and acts.

However, despite being differently explained or defined, these definitions have some general elements in common. An act of terrorism, according to almost all definitions, intentionally destroys and disturbs public order and national security, causes serious danger to civilians, properties and the government. Alex P. Schmid, a Researcher at the International Center for Counter-Terrorism, after collecting responses to a questionnaire from different scholars, found some components of terrorism, which are agreed by the majority of experts. Some of them include the fact that the incident must be intentional, must contain a considerable high level of violence, the act must be aimed at reaching a political, economic, social or religious goal and there must be proof of this intention to intimidate or convey a

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<sup>21</sup> UK Terrorism Act, Article 1

<sup>22</sup> 22 U.S. Code § 2656f - Annual country reports on terrorism". LII / Legal Information Institute.

<sup>23</sup> Code of Federal Regulations. Section 0.85

message to a larger audience than the victims.<sup>24</sup> This is one of the main sources of the terrorism database used in the empirical analysis of the dissertation.

Given the evidence and the analysis on the meaning of terrorism and the States' views as such, one shall explore its links with another problematic issue, which is the problem of migrants. In order to analyze whether there any link between refugees and terrorism, it should first be assessed whether there is a need for a special category of exception for acts of terrorism, except those described in Article 1(C) and 1(F) of the Convention and Protocol Relating to the Status of Refugees.

### **3. Crystallization of Article 1C and 1F of the Convention**

The Refugee Convention also makes provision for situations in which the status of refugee no longer exists or where it cannot be granted.<sup>25</sup> Article 1C explains a series of circumstances, all involving the re-establishment of links between the refugee and his or her country of nationality, in which the Convention shall cease to apply.<sup>26</sup> In this point in the article however, does not involve any criminal context, so it doesn't apply to terrorism. Article 1F, however, provides that where there are serious reasons for believing that a person has committed crimes of some significance, the Convention 'shall not apply'.<sup>27</sup>

One element that the three cases set out in Article 1F have in common is 'serious reasons for considering' that the circumstances exist. As far as terrorist acts are concerned, UNHCR, having acknowledged that suspicion on its own does not meet the standard recognized in Article 1F, has ruled that the clause will apply automatically, without need to examine the case on its individual merits.<sup>28</sup> Proof of conviction is not required for the clause to apply, in fact, the standard is lower, requiring only the existence of adequate proof to bring a criminal prosecution in a national court.<sup>29</sup>

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<sup>24</sup> Schmid, A. P. (2011). *The Routledge Handbook of Terrorism Research*. Taylor & Francis

<sup>25</sup> Cherubini, Francesco. *Asylum Law In The European Union*. London: Routledge, 2016.

<sup>26</sup> *ibid.*,

<sup>27</sup> *Ibid*, p.30

<sup>28</sup> UNHCR (2001d) *Addressing Security Concerns Without Undermining Refugee Protection – UNHCR's* [www.refworld.org](http://www.refworld.org)

<sup>29</sup> G. Gilbert (2003: 470). See, for a recent case, Upper Tribunal, Immigration and Asylum Chamber, decision of 5 August 2013, *AH v. Secretary of State for the Home Department*, available online at [www.refugeecaselaw.org](http://www.refugeecaselaw.org), para. 8.

Article 1F(a) lists in second place war crimes, so terrorist attacks may be included in the definition of war crimes, even though the matter is still under debate. It is argued that since the article clearly states that a person considered to have committed a war crime, or a crime against peace and humanity, it means that the receiving States do a very detailed, cautious background check before granting a person the status of migrant. This also suggests that the chance of a refugee being a terrorist, without a criminal background for the State to find, is actually rare.<sup>30</sup>

In conclusion, sources argue that there is no need to crystallize Article 1C and Article 1F, since they already include the respective provisions that exclude terrorists immediately from having a chance to be subject of the Convention. It is important to understand that international refugee law provides states with all the provisions they need to break any potential link between migration and terrorism. The Refugee Convention is thus an mechanism that is intended to strengthen and not to weaken the security of states and the safety of their citizens. At the same time, it provides an necessary means of offering protection and solutions to innocent civilians who would otherwise be in serious risk and danger.

#### **4. Existence of link between migration and terrorism**

Some sources suggest that there is indeed a link between refugees and terrorism and the risk of accepting huge masses of them at a time is dangerously high. Public discussions have been concentrating distinctively in the possibility of terrorists hiding in the number of mass refugee movements. This has caused many States to feel concerned and rather cautious about offering asylum seekers the assistance they are entitled to from countries which have signed and ratified the 1951 Convention and the 1967 United Nations Protocol Relating to the Status of Refugees.

Both in Europe and in the United States, there have been many debates about the issue of refugees and these discussions often focus on the question of terrorism. This question

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<sup>30</sup> UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, <http://www.refworld.org/docid/3f5857684.html>

concerns the dangerousness of admitting refugees from this part of the world, such as the Islamic State, which is committing serious crimes mainly in Iraq and Syria, considering the high possibility that it will open the door to more terrorism and violence in Europe.<sup>31</sup>

Furthermore, studies show that in 2015 the Islamic State threatened to flood Europe with half a million refugees through Libya.<sup>32</sup> Consequently, by December 2015, between one and two million people from Syria, Iraq and other countries, had fled to Western Europe through Libya and Turkey. Then, in early 2016 another 150,000 people crossed the Mediterranean, from which 40,000 came from Turkey to Greece and some 10,000 from Libya to Italy.<sup>33</sup>

Another problematic event that strengthened even further the idea of terrorism among refugees, is when the Schengen border control system broke down in 2015. Consequently, Greece and Italy were not be able to maintain an well-ordered system of those arriving from Turkey and Libya.<sup>34</sup> These circumstances allowed hundreds of thousands of asylum seekers, economic migrants, as well as others, mainly in countries such as Austria, Germany and Sweden, where the living standards were considerably high.<sup>35</sup> In many cases the true identities and motives of the migrants were not clear nor understandable. At one moment in 2015, only 25 to 30 percent of the refugees arriving in Germany were in possession of passports or any valid documents, thus the German police was able to acquire fingerprints from only a small part - about 10 percent - of the migrants.<sup>36</sup> In some cases even, a considerable number of the Syrian passports resulted stolen or false.<sup>37</sup>

Another argument used is the fact that refugees are vulnerable to radicalization and recruitment.<sup>38</sup> This vulnerability raises questions regarding the possibility of refugees being recruited by terrorists en route or even in asylum facilities, being that they are defenseless to radicalization. These are questions that indicate that refugees are of a vulnerable nature,

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<sup>31</sup> Byman, Daniel "Do Syrian Refugees Pose A Terrorism Threat?." Brookings. N.p., 2015.

<sup>32</sup> Koser, K. and A. Cunningham (2017) 'Migration, Violent Extremism and Social Exclusion' in IOM (2017) World Migration Report 2018, IOM: Geneva

<sup>33</sup> Koser, K and A. Cunningham (2017).

<sup>34</sup> Alex P. Schmid, p.8

<sup>35</sup> RAN (Radicalization Awareness Network), Impact on the refugee crisis on the risk of radicalization and consequences for prevention policies (Vienna, 14 April 2016), p.38.

<sup>36</sup> N.Sennels, "German Police: Only 10% of migrants are checked with terror databases", Jihad Watch, 25 December 2015.

<sup>37</sup> Ibid.,

<sup>38</sup> Danish Institute for International Studies. Europe's Refugee Crisis And The Threat Of Terrorism - An Extraordinary Threat?. Copenhagen, 2017.

making them easily subject of terrorists' plans for such acts. Studies have found that refugee camps are sometimes seen as targets by terrorists for potential radicalization and recruitment, but also to use them as bases from which to launch attacks.<sup>39</sup> Refugee camps and asylum centers, mostly in developing countries, including in Europe, have also become targets of terrorist attacks. For instance, the attacks which happened on asylum centers in Germany or Sweden, clearly have a communicative purpose and they are clearly considered as acts of terrorism.<sup>40</sup> The December 2016 Europol report, "Changes in Modus Operandi of IS", emphasizes the huge possibility of the Syrian diasporas becoming vulnerable to radicalization, mainly due to the harsh environment and conditions in Europe as 'a real and imminent danger'.<sup>41</sup>

Diasporas of people from countries experiencing oppression, civil war or terrorism at home can easily turn into places of conspiracy and plots of terrorist attacks. In the 1990s, for instance, London became a focal point for jihadist terrorists, which caused the French security officials to call it "Londonistan" for its terrorist scheming.<sup>42</sup> Some children of immigrants integrated into the West society, being trapped between two cultures. In a search for identity meaning and character building, they looked at jihadists as role models and as a result, thousands of them have migrated to Syria to become foreign fighters.<sup>43</sup>

In sum, research shows that terrorists could be disguised as migrants and, in turn, migrants could become terrorists. A few foreign fighters have been involved in acts of terrorism, upon migrating back to their home countries as part of mass refugee streams.<sup>44</sup> Furthermore, they could easily be posed as migrants trying to enter a country and their success depends on the inability of the States to background check every and each of one of the migrants that arrive at their borders, mainly due to their huge masses and arrivals. Migration influx increases significantly the risk of attacks and terrorism in the recipient country.<sup>45</sup> Also, it has been recognized that one of the Islamic State's main interest is to shed suspicion on migrants and worsen the refugee situation, with the intention of turning EU populations against refugees

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<sup>39</sup> Ibid.,.

<sup>40</sup> Alex P. Schmid, p. 40

<sup>41</sup> Europol. Changes In Modus Operandi Of Islamic State Terrorist Attacks. The Hague: N.p., 2016. Print. Europol Public Information.

<sup>42</sup> Alex P. Schmid, p. 4

<sup>43</sup> Ibid.,.

<sup>44</sup> Byman, Daniel, and Jeremy Shapiro. Be Afraid. Be A Little Afraid: The Threat Of Terrorism From Western Foreign Fighters In Syria And Iraq. 2014. Web. 17 Feb. 2018.

<sup>45</sup> Alex P. Schmid, p. 4

seeking asylum, creating this way, an environment of fear that could strengthen the possibility for radicalization and recruitment.<sup>46</sup>

## **5. Absence of link between migration and terrorism**

Many sources, extensive research and plenty of discussions suggests that, despite the fact that concerns about terrorism and refugees are legitimate and reasonable at some point, the fears and suspicions being voiced are usually exaggerated and the concerns raised are often the wrong ones.<sup>47</sup>

First of all, one must take in consideration the distinction made in the introduction, between those who have acquired the refugee status from asylum seekers and migrants. This division makes a big difference in terms of assessing the threat of terrorism that can be linked to migration. Studies show that those who have already gained their refugee status don't have any proof of involvement with terrorist attacks over the years. For instance, terrorist attacks committed by refugees from January 2016 to April 2017 were zero.<sup>48</sup> Taking into consideration attacks that happened in Europe during this period, it turns out that out of four terrorist events, four asylum-seekers were involved in the attacks, of whom three have had their requests rejected, but still no participation by refugees. As they have had their asylum request rejected, they cannot be considered as asylum seekers anymore, but strictly as irregular migrants. These evidences only show that the possibility of a link between migration and terrorism are low, and in fact it is the rejection of asylum that turns these individuals, not only into irregular migrants, but also to terrorists and criminals, mainly due to anger and disappointment. This means, that there is no general link between migration and terrorism, but only to a specific part of migrants, the irregular ones, which are more prone to be part of terrorist attackers.

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<sup>46</sup>Institute for Economics & Peace, Global Terrorism Index 2015: Measuring and Understanding the Impact of Terrorism (Sidney: IEP, 2015), p.59, [www.visionofhumanity.org](http://www.visionofhumanity.org)

<sup>47</sup>Brookings, 2015

<sup>48</sup> Danish Institute for International Studies, 2017, p. 17

Furthermore, investigations have shown that, behind the majority of attacks and responsible for most of the fatalities in Europe between 2015 and 2016, were in fact European citizens, rather than foreign migrants.<sup>49</sup>

Two of the perpetrators of the Paris terrorist attacks in 2015 carried Syrian passports, which led to speculation that terrorists were infiltrating refugee flows to the EU. In fact, a more problematic event is the fact that these passports were fake and the two terrorists were of EU citizenship. This event raises valid concerns about how well refugees are being identified at the European Union's borders. But the problem is a far larger one, and also involves EU citizens travelling to Syria and returning to perform terrorist attacks.<sup>50</sup> A detailed examination at the profiles of the attackers in Paris and their accomplices reveals a group of individuals with roots in Europe, many of whom had travelled to the Middle East as foreign fighters. One of them for instance, a Belgian national of Moroccan origin, grew up in the Brussels neighborhood of Molenbeek. He is believed to have connected with the Islamic State in 2013 and spent considerable time in Syria, before coming back to Europe.<sup>51</sup>

Similarly, all of the Bataclan concert hall attackers, were born and raised in France. Moreover, one of the Stade de France attackers, was a French national who lived in Belgium. The authorities had knowledge that he had travelled to Syria, but failed to detect his return.<sup>52</sup> This indicates that the majority of perpetrators were born and raised in Europe, rather than being part of the migration flows arriving at the Schengen area. According to a new study from the European University Institute, the main terrorist threat to Western countries does not come from arrived refugees, but from home-grown extremists."<sup>53</sup> Additionally, Australia's head of intelligence states that there is a lack of evidence to suggest that there is a connection between migration and terrorism, nor is there any verification of their children being radicalized.<sup>54</sup>

Another argument to support that there is no direct link between migration and terrorism, is the fact that the majority of migrants flee their countries in order to avoid and escape

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<sup>49</sup> Ibid, p. 21

<sup>50</sup> Funk, Marco, and Roderick Parkes. *Refugees Versus Terrorists*. European Union Institute for Security Studies, 2016.

<sup>51</sup> Ibid.,

<sup>52</sup> Funk, Marco and Roderick Parkes, (2016)

<sup>53</sup> Crisp, Jeff. "Refugees: The Trojan Horse Of Terrorism?." *OpenDemocracy*. N.p., 2017.

<sup>54</sup> Ibid.,



terrorism and violence already happening in their homes. Therefore, if they are trying to escape terrorism, by abandoning their homes, families and countries, there is no apparent reason for them to cause such violent act in the receiving countries in which they are entering.

The refugees themselves, escaping war and extremism, are not strong supporters of violent groups, if they were, they would have preferred staying in Iraq or Syria.<sup>55</sup> As the Islamic State states, most “good Muslims” travel to Iraq and Syria to fight in the name of the Islamic State and against its local enemies, not the other way around. The IS might call attacks in the West, but its money and fighters, including suicide bombers, are focused on defeating its enemies in the Middle East. Therefore, most of the migrants which escape their countries are subjects which fall under the definition in Article 1 of the 1951 Convention, that including, only persons either are running from prosecution or are unable to continue living in their countries due to this fear. Also, some other factors that push migrants to leave their countries include massive unemployment, poverty, natural disasters, overpopulation and so many other reasons, terrorism not being part of that list.

Therefore, it is argued that there could not be a direct link between these migrants that are forced to abandon their homes in search for better lives, and terrorism, which as mentioned, is more likely to be present in the group of irregular migrants, and not migrants as a general group.

## **5. Conclusion**

The present age has been called, with some exaggeration, the Age of Terrorism.<sup>56</sup> Simultaneously, it has also been called, hyperbolically, the Age of Migration.<sup>57</sup> These two phenomenon, even though not usually studied in conjunction with each other, have proven to have a certain link, the topic of which has been very frequent and common among researchers, different studies, and society in general.

First off, different countries have various perspectives and hold their own position regarding the definition of terrorism. This brings an issue on its own, since the absence of a

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<sup>55</sup> Brookings, 2015

<sup>56</sup>W. Laqueur, *The Age of Terrorism* (Boston:Little, Brown, 1897)

<sup>57</sup>S.Castles and M. J. Millar, *The Age of Migration – International Population Movements in the Modern World*, London, 2003)

unified definition with an international consensus, brings difficulties in assessing whether there is a correlation between terrorism and migration. The lack of a definition causes uncertainty in the identification of terrorism, let alone its links with migration.

However, there are theories that this link could, indeed, exist in some ways, being that migrants usually have a disadvantaged position in the countries they choose to settle, making it easier for terrorist groups to abuse with this situation due to their vulnerability to radicalization. Furthermore, taking in consideration that migrants usually come from countries which suffer severe violence and terrorism and crimes such as these occur frequently, the possibility of these events being mirrored in the receiving countries could be rather high.

On the other hand, scholars are of the idea that because these migrants originate from countries with a high percentage of terrorist attacks and violence in general, they wish to escape it, rather than imitate it or cause it in countries which could offer them a new start.

Similarly, evidence shows that the majority of attacks that have happened over the years, are committed by illegal migrants, rather than those lawfully residing in the receiving countries, or asylum seekers, which indicates the absence of general link between migration and terrorism, but only to a specific part of it.

In general, there might be casual relations between migration and terrorism, but they are very complex, mainly because of the sensitivity of the two phenomenon. There are different approaches held regarding this issue, each suggesting various scientific opinions, as well as political views on the subject, however, there is yet a lack of international understanding related to their correlation.

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## **THE CORRELATION BETWEEN CRIME RATES AND IMMIGRATION**

**By: XXXX**

**Supervisor:** Dr. Denard Veshi

**REFUGEE LAW RESEARCH PAPER**

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## ABSTRACT

Nowadays there exists a growing belief in many developed countries, that the large influx of migrant increases crime rates. This concern is causing a lot of public discussion, and the immigrant-crime relationship remains in the interest of academic research. This topic relevance increases after the migration crises that emerged between 2014 and 2015 when millions of refugees made their way through Europe, with over one million arriving in Germany alone. Yet, little we know about the impact of this flux on labor markets, crime, and voting behaviors. This paper identifies the causal links between immigration and crime using administrative data on refugee allocation, literature review and statistics from different Western European Countries, Canada and USA. While analyzing in depth these data the author will provide an evaluation of the short-run consequences of the migration inflow in crime rates. This paper distinguishes migrants by their legal status as refugees or illegal migrants and the period they went to the destination country. Two main patterns arise. First, new immigrants do not have a significant impact on the property or violent crime rate and second, estimations leads to the incorrect conclusion that immigration is the source the increase of crime rates.

**Keywords:** Immigrants, Refugees, Violent Crimes, Property Crimes

## INTRODUCTION

The goal of this research is to examine the impact of immigration on crime rates. More specifically, it aims to analyze the extent to which the migrant flux is associated with violence and crime rates in Europe, Canada and USA. By using a combination of US Census data, European administrative data, statistics of crime data, this paper will estimate the correlation of migrants and criminology. According to IOM, immigration is a process by which non-nationals

move into a country for the purpose of settlement. In the International Public Law concept, the term immigrant is divided based on the legal status of individuals into refugees granted the asylum and illegal migrants which are economic migrant without visa and refugees with a denied refugee status. These subjects of the society are the object of discussion on this research.

Criminological theories provide well-founded reasons to conclude that immigration and crimes rates are related, while others propose there is not a direct connection. The first chapter will situate this research within a broad theoretical context that will provide insight into some of the key questions addressed by this study, related to migration and crimes their categories and laws controlling them. Further, the author will describe the implications of immigration research, with respect to both current official data for the migration and crime rates and theories supporting the belief that there is a connection between migrants and crimes. In the other heading counterarguments claiming that there is no real connection and that this belief is an exaggeration will be states and analyzed. At the conclusion, it is important to highlight the unique contributions this research makes to our current understanding of the relationship between immigration and crime.

## **LEGAL QUALIFICATION OF MIGRANTS**

In the context of globalization, the twenty-first century had long been an era of the mass displacement of people, escaping as refugees from despotic regimes or war and migrants from who mostly escape from poverty hoping to acquire better civil protections, economic improvement and a better life in the developed world. In 2015, the numbers of international migrants' worldwide who are defined as people residing in a country other than their country of birth was the highest ever recorded, reaching 244 million. In 2015, Germany that is among the countries the author will focus on this research became the largest single recipient of asylum

claims in the world, with almost 442,000 applications by the end of the year<sup>1</sup>. This significant increase of migration in 2015 is largely due to higher numbers of asylum claims from Syrians, Afghans and Iraqis affected by the war and conflicts that continue in their States. As these data suggests Western Europe has been among the most affected regions from the refugee crisis. A particularly complex problem that arises from this mass movement of people is to distinguish the differences among immigrants since a very thick line divides them. According to International Organization for Migrants:

“a migrant is defined as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”<sup>2</sup>

Based on this definition and the International Public law immigrants are generally divided into refugees granted asylum and legal migrants from one side and illegal immigrants divided into economic migrants without visa or work permit and refugees whose refugee status was denied.

According to article 1(2) of the 1951 Convention and Protocol relating to the status of refugees, a refugee is defined as:

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”<sup>3</sup>

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<sup>1</sup>IOM Releases Global Migration Trends 2015 Factsheet, April 2016

<sup>2</sup> IOM, Key Migration Terms

<sup>3</sup> 1951 Geneva Convention on the Status of Refugees

Besides the criteria that qualify someone for refugee, Geneva conventions of refugees in article 1(F) exclude from the right of protections as follows:

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”

Another category of immigrants that are excluded from the protection provided by the international law except individuals that committed harsh crimes and terrorism are economic migrants considering that their exclusive economic push factors do not constitute a direct prosecution. Regardless all the international conventions and treaties relates to immigrants, as an effort to control massive movements of people, to provide the necessary protection to the individuals who need it and to exclude from these protection the individuals who intent to abuse with it. Controlling massive displacement of people is a real struggle for the all the states, and more for those states who have hundreds of thousands of refugees legal and illegal migrant who are fussed with their society. As every phenomenon, migration and mostly migrations flux have their negative externalities, and the correlation of crimes with migration will be the focus of this research. Moreover being a closed tied matter to the States' sovereignty and to the regulation enforced by each country, it is difficult to establish common international standards to criminal matters and immigration.

## **CATEGORIES OF CRIME AND THE PREDISPOSAL FACTORS TO COMMIT A CRIME**

According to Oxford Dictionary, crime is defined as “An action or omission which constitutes an offence and is punishable by law”.<sup>4</sup> This paper will mostly focus on property crime and violent

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<sup>4</sup> Oxford Dictionary

crime. This distinguish between types of crime and the effects are important because the majority of the scholars believe that property crimes are more likely to be related with immigrants while violent, drugs and hatred crimes remain unaffected by the increase of immigration patterns. To begin with, individuals who are more likely to commit crimes, statistics show that men are more predisposed to commit crime compared to women. This could be explained by the sex role theory which argues that boys and girls are socialized differently, therefore resulting in boys becoming more delinquent. Edwin Sutherland (1949) stated that there are clear gender differences when it comes to socialization<sup>5</sup>. Firstly, girls are strictly supervised while boys are encouraged to take risks and to be tough and aggressive. Therefore, boys have more tendencies to commit crime. Despite the sex role theory, Gary Becker an American economist proposes an economic approach by comparing the decision to commit a crime with the concept of opportunity cost by assuming that a person commits an offense if the expected utility to him exceeds the utility he could get by using his time and other resources at other activities.<sup>6</sup> Some persons become "criminals," therefore, not because their motivation differs from that of others, but because their costs and benefits are different. This approach implies that there is a correlation between the number and type of crimes that someone commits with the probability of conviction, punishment, incomes and to other variables, such as the incomes from this crime and , the his willingness to commit it.

The discussion on immigration and crime is extensively accumulated in the United States and the Netherlands. In the United States, partly because the scholarly community of criminology and

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<sup>5</sup>Sutherland, H.E, White Collar Crime. (1949 ).Dryden Press

<sup>6</sup> (Becker 1968, p. 176)

criminal justice researchers is larger than in other countries and immigration because they are a hotly contested political subject since the late 1990s. While in Netherlands, this discussion is widespread because it is one of many European countries overwhelmed by anti-immigrant political and strong nationalist political movement (Buruma 2006). The presumption that immigration imply a rise in crime and growing social disruption is considered by some as a justification to construction non-friendly policies of asylum and migrants and from others a recipe for what Stan Cohen defined as moral panic (1972) and states of denial (2001). In addition to this belief of non correlation, Stephen Legomsky recognized the politicalization of immigration law when he noted, "Those features of the criminal justice model that can roughly be classified as enforcement have indeed been imported."<sup>7</sup> Furthermore, the scholars introduced the term crimmigration serving as an organizing tool for critical immigration research about immigration structures, processes, and norms giving rise to the criminalization of immigrants and immigration. Theoretically, there are several reasons to expect a correlation between immigration and crime. First, if immigrants and natives have different criminal laws and behaviors, immigration will directly affect crime rates. According to the economic theory of crime (Becker, 1968; Ehrlich, 1973), this may happen because immigrants and natives face different lawful income opportunities and different degrees of conviction. Moreover, the deteriorated working conditions that immigrants' mostly illegal migrants face in the labor market might result in a higher crime rates.<sup>8</sup> At the same time, Butcher and Piehl (2005) stress that the punishment immigrants beside imprisonment might also face risk of deportation from the host country and this risk may be a powerful determinant factor when it comes to their decision to commit a crime. Another argument to assume that there might not be a direct relation between crime and

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<sup>7</sup> (Legomsky 2007, p. 472).

<sup>8</sup> LaLonde and Topel (1991) and Borjas (1998)

migrants is their determination to continue to work in that country, to not be exposed to the authorities if they are illegal or to not lose the chance to obtain the refugee status in case they are asylum seekers. The overall direction of these different effects is often difficult to determine a priori, and it is relevant to identify the relationship between immigration and crime based on data and comparison between the pros and cons arguments provided by scholars who share a divided opinion on this matter.

## **THE CORRELATION BETWEEN CRIMES AND MIGRANTS**

An increase in the number of immigrants may affect crime rates through multiple mechanisms. The first one is a purely mechanical population effect. Since the expected per capita number of committed crimes is positive, an influx of immigrants increases the total number of crimes simply because it increases the population. However, this rather than being a tangible factor is merely statistical and hypothetical one.

In USA, immigrants are disproportionately male and between the ages of 15 and 35<sup>9</sup>, and these population groups are well known to be involved in criminal activity as the sex role theory mentioned above suggests. Therefore, just by influx of immigrants it could be expected an increase on crime rates even if the natives and immigrants have equal chances to commit crime. Furthermore, the majorities of refugees and migrants are less educated, have lower incomes, and in the majority of the cases, they are not proficient in the language of the host countries. These facts might suggest that immigrants earning from working on an average are lower than those of natives are. Thus, a need to ensure more income through other means might push them to get involved in small property crimes. Taking in consideration that illegal migrants work in the

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<sup>9</sup> 35 US Census Bureau 2009

“black market” and they like the participation in the formal insured labor market they are more motivated by financial gain than for “crimes of passion” or hatred crimes so it is reasonable to expect an increase in the property crime rate, but not the rate of violent crime. This premise is also applicable in the USA because the majority of the immigrants that arrive in the United States lack the qualities, which would allow them to compete equally for access to labor market, housing, social insurances, and having a lot of economic deprivation that might lead them to see crime as an escape. Another channel through which immigration may affect crime is spillover effects. Borjas, Grogger and Hanson (2010) argue that immigration in USA is caused by a decline in wages and employment among black men leading to an increase in their incarceration rate. Thus, immigration could cause an increase in crime rates, even if immigrants commit fewer crimes than those similar that natives do. However, immigration may produce positive “spillover effects”. For instance, immigrants might move into transitional areas and improve their neighborhoods by bringing social capital that is otherwise lacking (Putnam 2000).

The Becker-Ehrlich’s economic theory is mostly associated with property crimes, and they exclude the relation of migrants with violent crimes. Among few scholars who extended his research in violent crime, is (Grogger, 2000) through the connection of violence and drug crimes in the United States. The results have shown that violent crime were not associated to migrants but that they were more predisposed to commit property crimes this associated with low participation rates in labor force, high unemployment, and low wage levels. Using the economic model of crime to understand the links between immigrant inflows and crime also helps us to understand the evidence from the United States.

Furthermore it exist a difference when it comes to the correlation of refugees and crimes this affected by the level of economic protection they receive. Asylum seekers are forbidden to



work during the first six months since they applied for asylum. After this time, they are allowed to apply for work permit until the host State decides on their cases. Evidences from the Refugee Council (2005) show that nearly 10% of refugees waited less than six months for their asylum decision, while one third waited over two years to start working. In addition, the level of benefits paid to refugees is relatively lower to other welfare benefits that working individuals receive from their labor. In 2009, the weekly payment for refugees was 35.52 compared to £65.45 for employed individuals.<sup>10</sup>

To conclude different theory and mostly the economic theory of crime predicts that all else being equal, individuals with lower variety of earning options commit more crimes than natives have. Beside economic approach, this is also connected to their relatively lower level of education, lower wages, and low unemployment rates compared with natives.

## **NEGATIVE CORRELATION BETWEEN CRIMES AND MIGRATION RATES**

It has been for a long time now that media and public discussions suggest that there is a strong correlation between the flux of migrants and the crime rates. Although it can be argued that these discussions and reports are based on selected cases and may also be exaggerated. As accurate or not these reports may be they creates a certain perspective for citizens which is also reflected in the different statistics and data collected in the past.

More specifically, in a survey involving a handful of OECD states, it was reflected that the citizens of these states had a considerable fear that immigration increases crimes. Most notable is the case of Italy where the concern exceeds 60% of the public opinion. Although it is shown

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<sup>10</sup> Bell, Brian, Fasani, Francesco and Machin, Stephen (2013) Crime and immigration: evidence from large immigrant waves. The Review of Economics and Statistics, 95 (4). pp. 1278-1290.

from the data, on crimes reported and immigrant population, that this concern is not reflected in reality and is purely on the perception of the public opinion. From the data analysis it is shown that although the population of the immigrants in Italy has risen more than 5 times from 1990, the rate of crimes have remained the same. In UK the population of migrants has risen significantly since the late 90's and this may be attributed to the fall of communist regimes in the Eastern Europe and their membership to the EU, the wars in Yugoslavia and the wars in Afghanistan and Iraq.

In addition, in a national research, in England and Wales the correlation between migrant population increase and crimes committed was compared. The overall crimes peak around 2002 and 2003 when the population of the overall migrants was 2 million but in 2008 we see a decrease of overall crimes, decrease on property crimes and same levels of violent crimes with the year 2002 when the migrant population rose significantly from migration.

The data from European countries show that on average non-nationals are over represented, in proportion to their population, in property offenses only. The data seem to match on the rate of non-national in the prison population across all Europe states. This might be caused by the bias of the authorities towards these individuals, driven by recent terrorist attacks in Europe and the feeling of uncertainty by the nationals with the migration flux. This approach is reflected in the ruling of the ECtHR<sup>11</sup> in the Saadi case where the judges' stated:

“The detention of an asylum seeker was purely based on administrative grounds in violation of Article 5 ECHR and the provision safeguarding the right to personal liberty. It is noteworthy that seven judges wrote in a dissenting opinion to the judgment that they “fail[ed] to see what value or higher interest can justify the notion that [. . .] fundamental guarantees of individual

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<sup>11</sup> European Court of Human Rights

liberty in a State governed by the rule of law cannot or should not apply to the detention of asylum seekers”<sup>12</sup>

Although across Europe we have this phenomenon of non-national being over represented, sometimes caused by subjective grounds and not real breaches of law from the migrants the situation is not the same on the other side of Atlantic. In North America, we can observe a low crime rate for foreign-born populations in both USA and Canada. In USA, for the age group of 18-39<sup>13</sup>, we can see that that the prison population is up to 5 times higher for all natives compared to foreign born. The bias exist even in USA towards Hispanics, since they are among the most over represented non nationals in the prisons this making them prejudices by the politics and the American citizens.

## CONCLUSION

International Law frequently divides migrants' fluxes in two main categories, namely refugees and illegal economic immigrants. This division is relevant to the correlation with crimes because an economic migrant is most likely to commit a crime driven by the lack of equal access to labor market. This categorization can have many variations as to the legality and the legitimacy of the claims of migrants. There have been many economic and social theories that have tried to predict the correlation of the influx of migrants and the rise of crime rates. Berkley has argued that the bigger the gains from a crime are the bigger the probability is that a migrant will commit a crime. Committing a crime is a trade off decision by evaluating both the profits of

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<sup>12</sup>ECtHR - Saadi v. United Kingdom, Application No. 13229/03

<sup>13</sup> US Census 2009

doing and not doing it. In addition, others have speculated that because migrants are in a disadvantage compared to nationals there is a higher chance that they will commit a crime. A demographic and purely mathematical theory claims that the migration crises raise the share of the population and consequently the level of crime as well. The statistics have shown that migrants are frequently represented by a bigger male population of a certain age that is shown to have more aggressive behavior than the other groups.

In this paper, there are no findings to strongly support the previous mentioned theories and speculations. To the contrary, migrant population does not have a direct correlation with crime rates. In the paper it is shown that although the migrant population of Europe and North America has risen considerably the pervious decades, the crime rates have remained the same, or in the best case have decreased. What this research intended to show is similar to the personal belief of the author, that there is a consistent disbelief of the citizens towards the migrants and there is a constant bias, across the nations and authorities, that the migrants are related to criminal activities.

To conclude the correlation between crimes and migration is more likely to be only with small property crimes like theft and robbery and not in violent crimes. In a broad and general perspective the belief that migrants commit higher criminal activities compared to nationals are often exaggerated and are used by domestic nationalistic political movements, by media and public discussion as a mean of excluding non-nationals from protection and equal chances to their host societies.

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**‘THE DISTINCTION BETWEEN REFUGEE AND ECONOMIC MIGRANTS’**

By *XXXXX*

**Supervisor:** Dr. Denard Veshi

Paper in ‘Refugee Law’

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## Abstract

Migrants and refugee issues, not only a concern of ministries of labor or of immigration, but now a matter of high international politics, by engaging so the attention of the world leaders, heads of states and key ministries involved in defense, internal security, and external relations. To highlight the most dramatic high-political event involving international migration in recent years was the exodus of East Germans to Austria through Czechoslovakia and Hungary in July and August 1989 which led to the precipitation of the decision of the German Democratic Republic to open its western borders where a massive migration westward followed by the fall of the East German government marched and observed by the Federal Republic of Germany.

It was kind of flight that finally destroyed the East German state. Examples abound of migration flows-both of economic migrants are infinite and are primarily affected by the fluctuated differentials in employment opportunities and income. Among these examples stands the rise of right-wing anti-migrant political parties throughout Western Europe, the conflict between the United States and Great Britain over the obligatory repatriation of refugees from Hong Kong; the U.S. versus Israel for the settlement of Soviet Jews on the West Bank; the placement of Western migrants by Iraq at strategic locations in order to prevent air strikes; the tensions in Western Europe over a possible influx of migrants from Eastern Europe and the former Soviet Union; furthermore, a threat by Palestinian radicals that they would launch terrorist attacks against airlines that carried Soviet Jews to Israel; an invasion of Rwanda by armed Tutsi refugees in Uganda aimed at

overthrowing the Hutu-dominated government; the successful defeat of the Kabul regime, after thirteen years of warfare, by the Afghan mujahidin.

Let's rank closely three points: First, international migration does not show a sign of diminish. Later, with the end of the Cold War there has been a revival of violent movements that create refugee flows, while the existing barriers among the former Soviet Union and Eastern Europe have been smoothed.

The breakup of empires and countries into smaller units led to the creation of many minorities who now feel insecure and discriminated. Vast gaps in income and employment opportunities among countries distinctly exist, by providing so the push and pull that motivate economic migrants to move and seek other settlements. Among these, there also stand a number of certain causes such as; environmental degradation, droughts, floods, famines, and civil conflicts that compel people to flee across international new borders and seek opportunities for migration for better lifestyle. Second, more people want to leave their countries when there exist countries willing, capable and able of accepting them. So, the states' willingness to open their borders to all those who wish to enter is only part of the problem compared to the economic effects.

The constraints are as likely to be political, staying and hiding back of the concern that an influx of people belonging to another ethnic community may generate xenophobic sentiments, conflicts between natives and migrants, and the growth of anti-migrant right-wing parties. Third, it is necessary to note that while the news media are focused on South/North migration and East migration, this focus of spectrum still remains narrow and misleading. The migration and movement of migrant workers from North Africa to Western Europe, from Asia and Latin America to the United States and Canada, and the

growth in the number of people from the Third World countries and Eastern Europe pretending refugee status in the West, displays only one dimension of the global flows that are more and more becoming heavier. Only some percentage of the world's seventeen million refugees are in the industrial countries and only a small portion of global migration has flowed to Western Europe or to the United States. The mass movement has been from one developing country to another; as the world's largest refugee flows have been so far counted in Africa, Asia, Southeast Asia, and recently in the Persian Gulf. 35 to 40 million people have crossed international borders within the region in South Asia. Meanwhile in the Middle East, a large proportion of the population has flown from Iraq, Kuwait, Israel, Saudi Arabia, Iran, and Lebanon due to the wars and civil conflicts being constantly present. On the other side, civil wars and famines in African Continent have also produced a considerable number of populations to refugee and to spread all over in the world. Being in such a situation, high attention has been given by economists to the ways in which economic differentials between countries influence migration rates and according to some scientists, politicians and responsible country leaders some intermediate ways should be implemented so as conflicts within countries get lower and do not lead to bigger refugee flows. But compared to the bitter reality, little attention has been given to the ways how to stop these international population movements which create conflicts within and between states. And so the population flows as an independent rather than as a dependent one. A close study of these effects is necessary to be carried out so as to understand why these states and their citizens often have an aversion to international migration even when there exist economic benefits within the state.

**Key words:** economic integration, asylum seekers, migration,

## Introduction

A. This paper will focus on the main examination of the distinction between refugee and economic migrants.

Firstly, let's see closely the term of refugee and later the economic migrants. The primary definition of the term refugee as also mentioned in the Convention means; a person who is outside his home country because of a well-based fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. Meanwhile, an economic migrant means; somebody who emigrates from one place to another in seek for better life standards, for more improved conditions or even job opportunities when all these lack or are not sufficient in his home country. A synonym of this, in US version they call it migrant worker. Often, these two terms are easily confused but the second one means leaving country due to bad working and economic conditions, not due to the fear of any ethnicity or race persecution. Furthermore, economic migrants have the right to apply for asylum and this is granted only in cases when the economic status in their home country is bad and leads to violence or other public disorders. In this study we will also evaluate the adequacy of both definitions and their economic integration through a detailed analysis of various economic indicators.

By far, the most refugees that flee from their own country seek protection in the surrounding and neighborhood countries. There is only a small proportion that seeks refuge in further parts of the world such as: Europe, North America or Oceania.

To consider Europe here, it has received them from its close surroundings, for example; Yugoslavia, Turkey, North Caucasus and Transcaucasia.

Meanwhile, North America and Oceania have only received refugees from other continents. However, a scrutinized observation into the issue brings out the results that many Central American and Caribbean refugees sought asylum in North America, whereas the biggest number coming from South-east Asia was counted in Oceania. So, African and Asia countries almost received refugees from their own neighbors and within the same continent.

The framework presented lead to the subsequent choices such as; resettlement in one's own country, in neighboring countries or also overseas.

In the past few years, the situation of refugees and migrants in the Mediterranean shore has grown dramatically. Due to this phenomenon, the implementation of Schengen visa from EU was needed as it restricted somehow the entering procedures. Same was done with the required visa regulations for non EU countries, but on the other hand, irregular migration routes were not all stopped and especially from the African continent to Europe by crossing the Mediterranean Sea.

Here, I will display a study based on a combination of the empirical study of border regions and a legal anthropological approach. The time has come that EU has to apply some new schemes and parameters in order to strengthen the borders and power relations that operate between

border regions and EU. Also to make some more clearer policies that influence and change the overall refugee protection system of the EU.

Here we will see two main aspects of EU policy objectives and the two main pillars of the present and future European border policy so as to obstacle the illegal migration:

- 1) Intensifying co-operation with transit countries and countries deriving the origin of migrants
- 2) Strengthening joint border control missions and close inspection by the European border agency Frontex.

Except of the former Yugoslavia refugees which has the European Union as its neighbor, all the rest like North and West Europe is by far seen as the most important destinations for the overseas. Refugees who seek refuge in the abovementioned areas have to choose a specific country to asylum themselves, even though a considerable amount of seekers do not choose only a country but they also use the services of traffickers or human smugglers at least in one stage of their journey.

Many people think of traffickers as reckless criminals who do not care about the individuals they move. However, potential refugees often know the reputation of a trafficker and only take this risk with a reliable one. On the other side, traffickers are concerned and try to preserve their reputation, which goes word a mouth by the persons whom they trafficked in the past. Thus, we may state that the “choices” that traffickers make are somehow alike to those that an individual refugee would make. (Monheim, 2008).

## **I. BACKGROUND INFORMATION**

The dissolution of the former Soviet Union has had a great effect on the emergence of a considerable transit migration through the territories of the former USSR towards Western Europe. These movements have been started since 1992 where thousands of potential asylum-seekers entered the Russian Federation, Ukraine and Belarus in seek of an asylum country. Some of these persons reached Western and Northern European countries by illegal travel through the territory of Lithuania. Being at the crossroad of migratory processes, Lithuania has become a kind of 'host place' for hundreds of foreign nationals during their way to their final destination in the EU countries.

Because of this factor Lithuania had as the biggest aspiration to enter in the European Union as well as other central and eastern European countries. Nevertheless, adoption of refugee legislation was not so explicitly articulated in the EU codes and articles at that point in time. It was rather interpreted by legislators in terms of 'better earlier than later' as a prerequisite for fully-fledged participation in the life of the international community. The first official data on irregular transit migrants was obtained in Lithuania from mid-1992. Within only a few years, there was seen a significant increase in the number of irregular migrants detained in Lithuania or at its borders who come from developing countries outside the former Soviet Union such as Afghanistan, India, Pakistan, Sri Lanka and Bangladesh by culminating the figures of 87 per cent in 1995. Comparing to 1994 these number was tripled and around 369 migrants were expelled or detained between the Lithuanian-Polish border regions and Lithuanian-Belarus region. Taking into consideration what this country was facing, it gradually rose the interest of Lithuania to become an EU member which later even resulted in substantial financial assistance as a link to strengthen Lithuania's eastern border and improve the facilities for asylum seekers

within the Foreigners' Registration Centre of the State Border Protection Service.

However, EU did not show a clear official interest in monitoring and consolidating the refugees' policies and practices at that time in Lithuania.

### **Effects of migration**

Migration can have positive and negative effects on the areas that it exports and imports people. Below are given two tables explaining the positive and negative effects for both the country which is losing migrants, and the country which is gaining immigrants.

#### **For the country losing people:**

<b>Advantages</b>	<b>Disadvantages</b>
Fewer number of people to be fed and sheltered	Loss of youth and the most able people
More income are sent home	Loss of young men creates an unbalanced population structure
Reduces pressure on jobs and resources	Loss of labor force
	Loss of those most likely to follow education and skills
	Separation of families
	Elderly population remains, so there's a higher death



Advantages	Disadvantages
	rate

**For the country gaining people:**

Advantages	Disadvantages
Cheap labour force	Language problems
Helps overcome labour shortages	Racial / ethnic tensions
Immigrants are often prepared to do unskilled jobs	Jobs lost to incoming workers
Some immigrants are highly skilled	Loss of those most likely to have education and skills
Cultural diversity	Pressure on housing and services. Immigrants tend to be less healthy, placing strain on the health service, and they tend to live in low quality housing
	Limited skills/education in immigrant population

## **B. DATA AND METHODS**

The first analysis and data conducted in this concerned issue is an analysis on the distribution of the total number of asylum seekers over all Northern and Western European countries. Below in the table 3 there are presented the results and analysis of the total number of asylum seekers and their applications in Northern and Western EU countries.

Table 3 presents a negative effect into the unemployment number of asylum seekers because they are often seen as competitors at the bottom of the labor market. An increase in unemployment rate brings a large and disproportionate influence on the jobs vacancies at the bottom of the labor market. Therefore, even if many management jobs or good positions are downsized, also the employment situation at the bottom of the labor market gets deteriorated.

Therefore, an increase in unemployment rate may cause public resistance to migration. On the other side, displacement and also replacement of workers with little education achievements by those with a higher education background is the underlying mechanism behind this big dispute. This resistance can be seen as a determinant goal of the pressure on authorities to impose migration policy measures as soon as possible by finding an intermediate solution. So, downsides in the admission of this policy are the direct causes of impacts and changes in the distribution of asylum seekers over the European countries. It also exist the possibility that economic factors or good work opportunities have a direct impact on the choice of a certain country. This indicator of facilities for asylum seekers probably holds more for GDP per capita which provides a positive effect on the share of the total number of asylum seekers in Northern and Western Europe that a country

attracts in the model presented in table 3, than for unemployment which is shown by the indicator of the probability of obtaining a certain job. Nevertheless, the possibility of a paid job during the procedures where asylum seekers ask for settlement and shelter in that place may attract them as well.

Different from what was expected to be, another model finds out that a negative effect of the migrant flux is that the population of developed countries gets enlarged by them, meanwhile in developing countries is created the atmosphere that there is left only the amount of low skilled workers that the country can absorb in economic and social respect.

This phenomenon might result, for example, in a less positive attitude towards asylum seekers. However, how the matter stands in reality, remains still to be closely surveyed. It should be also taken into consideration that the population from Asia, Africa, Latin America, the former Soviet Union, the former Yugoslavia and Romania is somehow favored for the effects of migrant networks and institutional factors. The migrant stock number which derives from a certain sending country of asylum seekers probably is a much better indicator of these factors that occur. This led to the idea to estimate and study a model for one particular group of asylum seekers, as the example taken for the asylum seekers from the former Yugoslavia.

**Table 3 – Parameter estimates of a conditional logit model of the share of the total number of asylum applications in Northern and Western European countries, 1985-2005 (N x T = 252)**

	Coefficients	z-value
Constant <sup>i</sup>	-10.54	-
<i>Country-specific dummies</i>		
Austria	1.26 **	3.99
Belgium	1.03 **	6.61
Denmark	0.27	1.16
Finland	-0.58 *	-1.50
France	0.32 *	1.65
Germany	1.37 **	6.79
Irish Republic	-0.17	-0.55
The Netherlands	0.57 **	3.09
Norway	-0.42 *	-1.60
Sweden	1.02 **	7.20
Switzerland	0.78 **	2.70
UK (ref.)	-	-
<i>Policy dummies</i>		
Revision_Den_1987	-0.46	-0.36
RefAsia_Nor_1987	1.11 *	1.47
Fremdeng_Aut_1992	-0.95 *	-1.80
AsylumSys_Swi_1992	-1.06 **	-2.13
VisaYug_Nor_1992	0.52	0.86
RefYug_Swe_1993	0.83 **	3.12
AsylumCom_Net_1994	1.11 **	3.36
NewAliensAct_Net_2002-2005	-0.82 **	-2.68
AmendmentsAA_Den_2002-2005	-0.79 *	-1.42
<i>Socio-economic variables</i>		
GDP per capita / 1000	0.19 **	4.02
Unemployment	-0.14 **	-4.87
Migrant stock per capita	-0.01 **	-2.20

*Notes:*

<sup>i</sup> A constant is not a parameter under the multinomial assumption. Therefore, its z-value is not calculated.

\* significant p < 0.05 (one-sided test)

\*\* significant p < 0.01 (one-sided test)

From the data collection and analysis, let's see closely the table's results. All variables and policies have the sign as it was expected. Despite two insignificant coefficients, we may state that policy measures have a considerable impact on the distribution of asylum seekers in

Northern and Western European countries. The country-specific values are very significant. This means that

another important mechanism, which is not captured by the variables in the model, has a considerable impact on the distribution of asylum seekers in

Northern and Western Europe. For example, the country-specific people for Sweden and Germany, which had a reputation of being hospitable and tolerant towards refugees, are larger than expected average.

## Conclusion

All in all, to find a more practical solving policy and at the same time appealing and smooth, to be applied based upon the needs of immigrants and refugees, is more difficult to be drafted, harder to be implemented and legally and politically more stronger. But no policy, however strong and well constructed in terms of boundaries and sovereign states, can deal with the vast numbers of people who want to leave their country for better opportunities and life standards where the other country may offer to them.

It can be considered such a case of favoring those who fly and reducing the number of immigrants who acknowledge meeting the labor needs and taking families to reunite. But, this can be possible only in cases when countries have a ceiling on the number of people willing to admit and this first shall come for those persecuted or being in dangerous situations and have some places to go. But for the above mentioned reasons, there is only a shortage definition for what stands a refugee, on a case-by-case review, and will activate states to put a limit on the so-called unlimited flow of immigrants, that is nowadays primary concern.

As the number is significantly increasing in the flow of both refugees and unwanted illegal economic migrants, soon the governments of all these 'host' countries are expected to take some strict decisions of intervention in order to change these internal factors that push or urge people to leave their home country.

If people violate the boundaries of a neighboring country, then their government should take expect others to intervene in their internal affairs?

Aside the macro-economic developments and policies, migrant networks and institutional factors may affect the distribution of asylum seekers. We demonstrated and showed these potential determinants by including in the study of analysis the migrant population from Asia, Africa, Latin America, the former Soviet Union, the former Yugoslavia and Romania as independent variables on the total number of asylum seekers. But, this proved that the migrant stock from these countries even affected negatively on the distribution of the total number of asylum seekers according to this model.

However, we also found a positive effect of the migrant stock on the distribution of asylum seekers over individual countries when we concentrated the analysis on one specific group of asylum seekers, such as those from the former Yugoslavia. In the analysis we put the migrant stock from the former Yugoslavia as independent variable instead of the broad migrant population mentioned above.

When conducting the research into asylum implementation, we have to be aware of three confusing data issues such as:

First, pre-selection may be quite a big problem as some countries may have a stricter acceptance policy than others. Second, we have to deal with the problem of double counts in the case of lodging an appeal. And thirdly, some countries only register the main applicant and ignore their children. These confusing data issues affect the results of our analyses. It remains to be seen to what extent research into determinants of the distribution of asylum seekers in Northern and Western Europe covers precisely the impact of these determinants on asylum migration. It is not unbelievable that determinants in European countries also impact on the number of asylum seekers who prefer Europe instead of other 'host' areas. We may call this phenomenon as 'the generation of asylum seekers' throughout countries,

while the changing distribution of asylum seekers over European countries may be called as the substitution of these last ones.

Overall, this also means a decrease in the share in the total asylum flow to Western Europe of countries such as Germany and Austria. The economic crises had a relatively bigger impact on the Southern European countries than on the Northern and Western European countries and might have also had a negative impact on the job opportunities for illegal migrants in these countries. As already mentioned above, it is quite unthinkable that the position of Southern Europe in the European asylum seekers' system has been gradually changed from an alternative form of illegal labor migration for asylum migration in Northern and Western Europe to the position of a transit area. This might have contributed to an increase in the distribution of the total asylum flow number to West Europe and specifically in the countries like; France, Austria, Switzerland that are on border division with Italy and Spain. These developments like, the extension of the EU towards eastern part and the economic crisis on the other side made us limit the research period till the year of 2005.

Dublin Regulation policy is a mechanism was created to smooth these issues and it plays an important role in the above mentioned developments because these led to an influence on the distribution of asylum seekers through Northern and Western European countries. Even though, in these modern times with so many refugees arriving on the EU borders, the EU governments and other member countries have only put a partial implementation of the Dublin Regulation Policy. In 2015, this policy took place by many migrants who travelled through some of EU-countries before they sought an asylum application in another EU-country, especially Germany which occupies the first place. To conclude, the distribution

way of asylum seekers through Northern and Western European countries have maybe changed less than one it would be expected in these last ten years.

## **DISCUSSION**

It must be made clear from the viewpoint of this study that it states implication for resettlement policy and not admissions policy.

To continue with the social work values, these policies should further continue to get based on the humanitarian issues and not refugees' potential impact on the 'host' country economy. If the policy shall be resettled and reconsidered then for sure it would bring the advancement on the economy prosperity and together with the contribution of all refugees after arrival and settled there.

The results of this study, after scrutinized in details, show that a small economic integration is totally inadequate to describe the reality of economic situation for example of; Southeast Asian refugees in California, because according to evaluations it has resulted that 75 % of this population is economically well since they are not receiving any public assistance. Clearly, this reality does not mention the low employment rate, high poverty rate and low educational level. These statistics are captured based on first two criteria of economic integration which were: a) an adequate participation in the economy and b) an income which allows an acceptable standard of living'.

However, the study obviously brings out that the economic status of Southeast Asian refugees is much worse than any of the other minority groups. Combining the current



definitions with this finding, it immediately brings a combination and a new definition called ‘refugee economic integration’. Therefore, in order to consider a minimal economic integration of refugees, it should first start by measuring the poverty rates, employment, welfare utilization, home ownership, and any economic indicators to be equal to any of the native-born minority groups, and after this combination is reached we can fully say that the economic status of refugees is totally achieved.

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# Refugees in Ancient Time

By Joana Carciu

**Supervisor:** Dr. Denard Veshi

Paper in “Refugee Law”

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## **Abstract**

This research paper explain the status that exiles and refugees had in the ancient Greek (poleis) city-states, focusing on the later Classical period dating in (400-100 BC). It analyzes the main different form of protection and helps that were provided to displaced people that had left their resident cities because of wars or national disorders by Greek city-states. There is a main focus on the arguments and debates that ancient Greeks had based on the protection and help that would be provided to exiles and refugees. Displaced The help that Greeks provided to displaced people sometimes was guided or inspired by justice,law, freedom, and the ideal that they had the same identity. Otherwise, the aid to displaced people was provided inside of a political concept, that as a respecting unconditional ethical principle that ties all humans together, or all“citizen of the world”. This research argues that the division of practices and values of Greeks had reflection to the complex shape ideas that ancient Greeks had relating the city, citizenship, democracy, justice and freedom. Inside of this argument, the research reveal the connections and the differences that ancient Greeks have with the modern democratic ideologies, and the bond that they share relating ethical and political ideals.

**Key words:** Humanitarian, city-state, cosmopolitanism

## **Introduction**

In the ancient Greece city-state the exiles and refugees were very distinguished. Values, ideologies and debates that ancient Greeks of the cities raised about refuge, hospitality and aid to displaced outsiders is the main point on this sanction. A great importance have the three ideals which had a dominant role in the debate that ancient Greek arise about how and when have to grant refuge and asylum to people that were displaced, which keep on rising Western debates nowadays related to refugee status and asylum.

The ideal of 'Humanitarianism' and the meaning of it is going to be discussed here first. The philosophy and the practice of humanitarianism concept had influenced the modern society in different ways that in ancient Greece are not distantly applicable. Nevertheless, the ancient Greeks had a clear view of the basic, unifying ideal crucial to different forms of humanitarianism: the ideal of equality, unconditional empathetic concern for all fellow humans as humans, that have to be practiced, wherever is possible, to lessen severe human suffering or deprivation. Because this ideal calls on all humans to take a constant approach to all fellow humans, it can be described as 'universal', as well as 'humanitarian'.

Greeks thinking that, this moral ideal was often directly connected with the high merits of 'humanity' or 'love of humanity' (*philanthropia* in Greek). The focus that the Ancient

Greeks had was sometimes kinds of *philanthropies* that were exercised in certain communities. Aristotle the philosopher, however, was extrapolating<sup>1</sup> from the moral culture of his time, clearly he believed that *philanthropia* was a good feature that through it humans act in a solidier way with each other for the reason that they belong to the same kind. According to the Aristotle conception for *philanthropia* , all humans beings should have the same treatment, be defending the high merits of *humanitarian* ideal. Who was qualified as “human” was a question, and also who need humanitarian help, in ancient world was argumentative, as it is also in modern: Aristotle considered slaves as living tools or similar to animals<sup>2</sup> and he was known for his view.

The second ideal that would be discoursed in this paper is the concept and the idea of ‘state of refuge’ or ‘city of refuge’<sup>3</sup>. This concept is more related with a political ideal: a good city should have the principles of protection and support provided to displaced people, as a way to promote and define specific sets of interrelating values and interests. Also relating more with political thoughts, this ideal has more internal representation to realistic approach relating refuge: approaches were seen as opportunities for the well-run

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<sup>1</sup>Extend the application of (a method or conclusion) to an unknown situation by assuming that existing trends will continue or similar methods will be applicable.

<sup>2</sup>Compare Williams (1993: ch. 5).

<sup>3</sup>This expression derives ultimately from the Bible: certain books of the Old Testament represent ‘cities of refuge’, where those who had committed a homicide involuntarily could find refuge from blood vengeance (e.g. *Deuteronomy* 19; *Numbers* 35:24–8). Nonetheless, the ancient Greeks also formulated their own, quite separate concept of a ‘polis of refuge’ (see Aeschines 3.134, for Classical Athens: ἡ δ’ ἡμετέρα πόλις, ἡ κοινὴ καταφυγὴ τῶν Ἑλλήνων); that Greek usage is the inspiration for the use of the phrase here.

to provide refugee to people that were displaced, in order to change services from the past with new ones that were more advanced.

Cosmopolitanism is the third ideal that is going to be discussed in this paper. Once more, it is good to keep in mind that the philosophy and the practice of the cosmopolitan ideal has changed in a radical way from the ancient Greece period. However, the concept of cosmopolitanism such as the humanitarianism concept back then and nowadays share the same unifying ideal. In cosmopolitanism case, In the case of cosmopolitanism, the unifying ideal that characterized it is an ideal of citizenship and national equality that across the borders of the status that a human has and the territory, much that hordes have political duties to fellow cosmopolitans in difficulty. These kind duties overlap of sympathy for humans and the comfort terrible suffer, including and the more essential solidarity and interactions between citizens.

I present that the interaction that this different ideals had were very controversial in the debates that ancient Greek had about exiles and refugees: most of the time they were rivals and alternates, rather than same ideals. So, ancient Greek unveil more about the differences that displaced people had, and in modern times were raised many debates by historians related to ancient Greece “city-states” ideology and particularly about citizenship, political belongings and outsiders.<sup>4</sup>

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<sup>4</sup> Compare Lambert’s article, this volume, on medieval England.



## Refugees and supplicants in Ancient Greek Dramas

Before starting the analysis of the narrower discourse of ancient Greece, and the legacy that pass to modern world, it is worthy to make an examination of a couple of examples from Classical Athenian tragic drama. Tragic drama can be considered one of the richest sources of evidence of Athenian national ideology and also is one of the richest surviving sources of evidence for Athenian civic ideology and castrate moral reflection<sup>5</sup>. The example that I will provide come from Aeschylus dated in later 460s BC, (the first of the three major Athenian tragic playwrights), that direct issue the case of refugee assistance. The tragedy is named ( Aeschylus's *Suppliant Women*, which drew on the Greek myths about the Danaids, the 50 daughters of Danaus), that run away from Egypt because they did not want to marry with force their cousins, the sons of King Aegyptus. The plays that Aeschylus wrote were performed in festival that took place in public of Athens. Inside of this deep political concept we can understand why Athenians tragedies had a deep connection with national debates and political ideology.

Danaus and Danaids the main characters of Aeschylus's play seek for help to Pelasgus, the king of Argos, that was one of the most important cities in Greek mythology and also history. They beg Pelasgus: they start begging using one common Greek ritual named supplication, this ritual was a way to conjure the mercy of someone that is more omnipotent or secure.<sup>6</sup> In the tragedy, Danaus announce to the other refugees that the

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<sup>5</sup>The relationship between tragedy and Athenian ideology has been intensively and revealingly studied: see e.g. Vernant and Vidal-Naquet (1973); Goldhill (1987); Loraux (1993); Wilson (2000).

<sup>6</sup>See Gould (1973).

entreat was successful. Pelasgus has mentioned the case of Danaus in the assembly in front of Argives. The Argives by voting agreed to allow Danaids to live in their city, protected and without any restriction using the *asylia*<sup>7</sup>: ('inviolability' or 'safety' against physical threats). No one, could not harm them including Argive or alien, the person that would fail to protect the Danaids would lose his national rights that could exercise in the society. Significantly, Danaus reveals a clue of the successful agreement that Pelasgus had in the assembly: Argives would never try to provoke Zeus, who is the protector of suppliants<sup>8</sup>.

Aeschylus here portrays something that has some important characteristics with, the practice and ideology of asylum in the modern times<sup>9</sup>. The quasi-democratic state, Argos, in Aeschylus's tragedy, provides refuge, with formal legal assurances, to people that require it in a formal way when they need protection because they are persecuted from their community leaders. In this way, implemented by Zeus, the state recognized universal duties towards all humans that were in need. These duties are 'universal' because in this way is shown respect to the actual spirituality: from where the suppliant comes or the characteristics that he has do not play an important role, because all the people are same treated when they are in suffer.

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Territorial Inviolability in the Hellenistic World.

<sup>8</sup> Aeschylus's *Suppliant Women*, ll. 600–624; compare ll. 26–9.

<sup>9</sup> Compare Price (2009: 29–30).

There are, naturally, many different characteristics in the way that Aeschylus picture this situation, comparable with other tragic drama writers,<sup>10</sup> and present-day, post-1945 liberal ideology and law relating to asylum. The way that the voting for the asylum in Aeschylus drama do not have any relation with the way that is happening today. Nevertheless, Aeschylus's Argives tragedy do not discuss and vote as it was used to be done usually in Greek political debates. Instead, the voting process that they do was to accept and carry on a universal principle, even though this principle is related more to the religious than legal attachment; to take any other decision would mean to overtake a major taboo.<sup>11</sup>

## **Practical Differences Affecting Ancient Greek and Modern Liberal Approaches to Refugees**

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Some reasons that make the ancient Greek and modern liberal ideologies differ from each other are pragmatic. In contexts that overlap reality as in the tragedy of Aeschylus was not so difficult to imagine an powerful king such as King Aegyptus that his power go over his own borders. Nevertheless, the ancient Greek city-states was so different comparing to the reality. Athens, Sparta and Argos that were famous at this time were only some of the total of city-states. The amount of the city-states in the Classical period (c. 480–323 BC) were around 1,000 city-states around the Aegean and the broader Mediterranean<sup>12</sup>. After the siege of the Alexander the Great were founded much more

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<sup>10</sup>See especially Euripides's *Children of Heracles* (c. 430 BC), ll. 12–38, 236–249.

<sup>11</sup>Compare Xenophon *Hellenica* 2.3.52–3.

<sup>12</sup>For an inventory of the known city-states of the Archaic and Classical periods, see Hansen and Nielsen (2004).

city-states in the Near and Middle East as well as in ancient Greece. At times, one state become more powerful than the others, such as the case of Sparta like Sparta after its triumph in the famous fifth-century Peloponnesian War. In this situation, it is worthy to be reminded that opponents of the most powerful cities found protection to other cities<sup>13</sup>. In a broader sense, many different cities were in competition for much more power, that it was difficult for refugees to find a safe place to stay away from their persecutors.

The approach that the Greek cities had about the foreign residents was another practical reason that was not usual for the ancient Greece in general lines. In many city-states exists one category of foreign people that come in a city from another place and often were called metics, for example in Athens; the category that metics were part was in general equal with the category of free citizens so they could not be consider as slaves, but they did not enjoy the same civil rights that an Athenian citizen enjoy.<sup>14</sup> Metics were foreigners that came from another city or location with their own will and not because they were forced and were registered formally for long terms in a new city. The status of metics was essentially enriched with financial and military burdens, and the privileges that they had were relatively few<sup>15</sup>. So, the debates related foreign residents was not so usual as it is in the modern liberal democratic: the absence of a strong moral or political force for the integration of foreign residents to more privileged groups made cities to not worry about the contribution that the foreigners had in the civil life. This meant that the

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<sup>13</sup>E.g. Xenophon *Hellenica* 2.4.1; Plutarch *Pelopidas* 6.

<sup>14</sup> See e.g. Gauthier (2011).

<sup>15</sup> See above all Whitehead (1977).

considerable grant of help and privileges were more important for the ancient Greek city-states than the few resident rights that a foreigner would have, and that was advertised as a special service.<sup>16</sup>

## **The Classical Athenian ‘City of Refuge’: Patriotism, Reciprocity, Justice and Freedom**

Furthermore, it is necessary to add that except from the practical reasons why the humanitarian approach was not always guaranteed to refugees the ideological reasons played an important role too, in Classical Athens. The ideals of unconditional hospitality to strangers, and humanity to people that are weak and undefended is shown in ancient Greece, as well as in modern. Hospitality and guest-friendship are important elements in the Homeric poems. Also the practice of supplication was very important, as we mentioned above in the Aeschylus part, that was not necessarily limited to forced migrants. Furthermore, asylum was taken in a very serious way in the Greek sense: certain religious sites, especially temples and their altars, were inviolable<sup>17</sup>. People that entered those places and seek for refuge were protected from their enemies or state authorities: the punishment that they would take and their fate was not anymore in the hands of politics or law, but was decided by the Gods<sup>18</sup>. To seek Seeking asylum at an altar

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<sup>16</sup> For the links between economics and refuge policies, see (e.g.) Heather and Manasek, this volume.

<sup>17</sup>. See above all Rigsby (1997).

<sup>18</sup> Price (2009: 26–31), by contrast, argues that asylum in this technical sense was itself a deeply political matter in ancient Greece: in Price’s view, cities or their magistrates or priests frequently made decisions about whether to accept asylum seekers, with grave implications for their city’s relationship with the asylum seekers’ home state (cf. Aeschylus’ *Suppliant Women*). Priests and other authorities may well sometimes have scrutinized claims to asylum, with the power to reject those whose case they judged unjust (cf. Price (2009: 27–28)). This phenomenon is,

or temple has the same value either in one city-state or out of it: in cases of civil wars individuals or groups seek for asylum in temples to avoid violence.<sup>19</sup>

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However, although in Greek culture the ideals of ethic and religion were spread a lot, they had difficult time to integrate these people to political ideals and institutions that they had for refugees. The decisions related with refugees in ancient Greece were taken based on political and logical terms.<sup>20</sup> The politic nature in ancient Greece were complex and very debated. The nature of ancient Greek politics is obviously a very complex and debated issue.<sup>21</sup> In ancient Greece, the political deliberations made the calculation of interest a hard task, including in this the national interests.<sup>22</sup> The diplomacy and military actions were governed by some specific institutions created by the state, and also from regulations and norms, but also this institutions gave to each city-state a considerable

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however, not very well documented operating in practice (for the evidence situation, see Rigsby (1997: 10)). In any case, such authorities' role would simply have been to determine the gods' will. Political powers, such as civic assemblies, could not make any decision other than to respect claims to asylum in legitimate sacred places without offending the gods. Compare Xenophon *Hellenica* 2.3.52–3: the speaker, Theramenes, claims asylum at an altar, and implies that the inevitable decision of the incumbent Athenian regime, the oligarchic Thirty, to disregard his claim will expose their impiety towards the gods. In so far as the protection of the altar is conditional, it is conditional on the god's favour, rather than any human judgement (compare Price's examples from the orator Lycurgus: Price (2009: 27)). At least at the level of ideology, asylum at an altar was usually open to all, including those acknowledged to be criminals, regardless of the severity of their crime: all could opt to face divine rather than human justice.

<sup>19</sup> See Thucydides 3.75.3–5; Xenophon *Hellenica* 2.3.52–3.

<sup>20</sup> I therefore agree with this broad conclusion of Price's argument, which suggests that many ancient Greek practices prefigure the prominent modern Western conception of asylum as a distinctively political matter, which flourished in the Cold War era; cf. Price (2009: 26–31) (compare n. 33 above). Importantly, however, unlike Price, I locate the ancient Greek forerunners of this modern approach, not in ancient Greek approaches to technical *asylia*, but in ancient Greek cities' approaches to the broader question of whether to help the displaced.

<sup>21</sup> See recently Balot (2009); Azoulay (2014).

<sup>22</sup> Compare recently Harris (2013), on standards of truly political deliberation.

weight.<sup>23</sup> Ancient Greek political life was often a domain that had close relations with the patriotism and honor concepts.<sup>24</sup> Moreover, political life was a domain that is created based on strict Justice and national merits.<sup>25</sup>

These different political concepts brought many difficulties to the sphere of ethical and religious concepts that were related with the human interests.<sup>26</sup> We can see that the Athenian theater, that was an unusual place that Athenians were gathered with each other and exchange questions and opinions." In the theater, we can see that many times were raised conflicts between humanity and justice and also between politics and ethics. Modern thinkers have often seen Sophocles's *Antigone*, as an example of the clash that these different concepts had with each other.<sup>27</sup>

## Cosmopolitanism in Classical Athenian Exile Politics

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To conclude my argument so far, Classical Greek or Classical Athenian talked about refugee help that was symbolized as a competition that was not equal between alternative humanitarian ideal, supported by religious underpinned by religious regulations, and the more distinguished ideal of the just city of refuge, that discredited in

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<sup>23</sup> See Low (2007), with much further bibliography.

<sup>24</sup> Cf. Williams (1993).

<sup>25</sup> Compare (e.g.) Ober (1989); Christ (2006); Herman (2006).

<sup>26</sup> On the modern persistence of these tensions, see Gibney (2004), esp. ch. 7.

<sup>27</sup> For a similar picture of Euripides's political plays, see Mendelsohn (2002).

practical political rhetoric. The two ideas that were discussed before are in contrast with the third ideal that is going to be discussed: cosmopolitanism. This was a more borderline and turbulent ideal. So, the advocates of the cosmopolitan the original advocates of a cosmopolitan ideal were all the refugees who were treated in a barbarous way in the crack of official Athenian help.<sup>28</sup> The exiles that first supported the cosmopolitan ideology were members of the Cynic and Stoic philosophical schools of Athens, and two of the biggest supporters of this concept were the Cynic exiles Diogenes of Sipone and Crates of Thebes.

The Cynics considered themselves as exiles only by convention. As a matter of fact, they could never be exiled from their true ‘city’, the natural cosmopolis of all virtuous men who ‘live according to nature’.<sup>29</sup> This way of thinking rise a range of anecdotes relating to the approach that the Cynics had about exiles, that was to stance gave rise to a wide range of ethical anecdotes about the early Cynics their approach to exile, that was transcribed from later writers. Crates, for example, was later mentioned that have turned down the idea of rebuilt the Thebes by Alexander the Great. Crates is thought that they preferred to treat poverty and lack of fame as his ‘country’, as a ‘fellow citizen’ of Diogenes.<sup>30</sup>

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<sup>28</sup> Compare, for the modern world, some aspects of Agamben (1998).

<sup>29</sup> See esp. Diogenes Laertius 6.49, 63; also recently Murray (2004) and Richter (2011), developing ideas of Baldry (1965).

<sup>30</sup> Diogenes Laertius 6.93.



Cosmopolitanism is considered to be a radical attack on the ideas of some particular states and borders, and thus originated as a very radical attack on the very notion of particular states and borders, in advantage of the ideal of an all-including world polis. By rejecting some specific national associations, the early Cynic philosophers were implicitly rejecting the idea of Athenians relating the creation and support of isolated exiles groups, that each of them is dedicated to carry on strong relations with their home polis. Nevertheless, they go further: implicit in their debates was a rejection of the idea that can exist a relation between the refugee and the host, rather than between two 'citizens of the world'.

## **Conclusion**

The ideologies that ancient Greek had relating asylum and refugee were considered complex, antagonistic and conflicting. The ideological trio of humanitarianism, the city of refuge and cosmopolitanism were in rival positions in political debates of the Classical period. According to this ideas, the earlier, Classical Greek city-states surely knew of ideas of humanitarianism and universalism, but instead they reject or kept them in distance in favor of more particularist ideals. The history is, consequently, one of rival, conscious moral and political choices, rather than a historical cruel development of a growing Greek moral consciousness. Also the modern liberal ideals of asylum and refugee aid is characterized by the complexity and the conflicts that have their origin from the

ancient times, such as the complexity and conflicts that characterized the Classical dimension.

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XV  
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# The definition of refugees

By XXX

**Supervisor: Dr. Denard Veshi**

**Paper in “refugee law”**

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**Abstract :**

This paper focuses on the analysis of the difference between “economic migrants” and “refugees” since 2015 the “EU refugee crisis” has set about. This critical point has a negative bump on the national public budget, especially in the short-term. Thence, the differentiation and analogy within the general category of migrants – in particular, “economic migrants” and “refugees” – is fundamental because only refugees are eligible for international protection. This endeavor studies the international literature in addition to soft-law documents of international public bodies – such as United Nations High Commissioner for Refugees or Council of Europe – and legal decisions coming from national State – for instance, Germany and France– or, international courts, in particular, European Court of Human Rights. In the conclusions, this research shows the difficulties of a general and abstract classification between them.

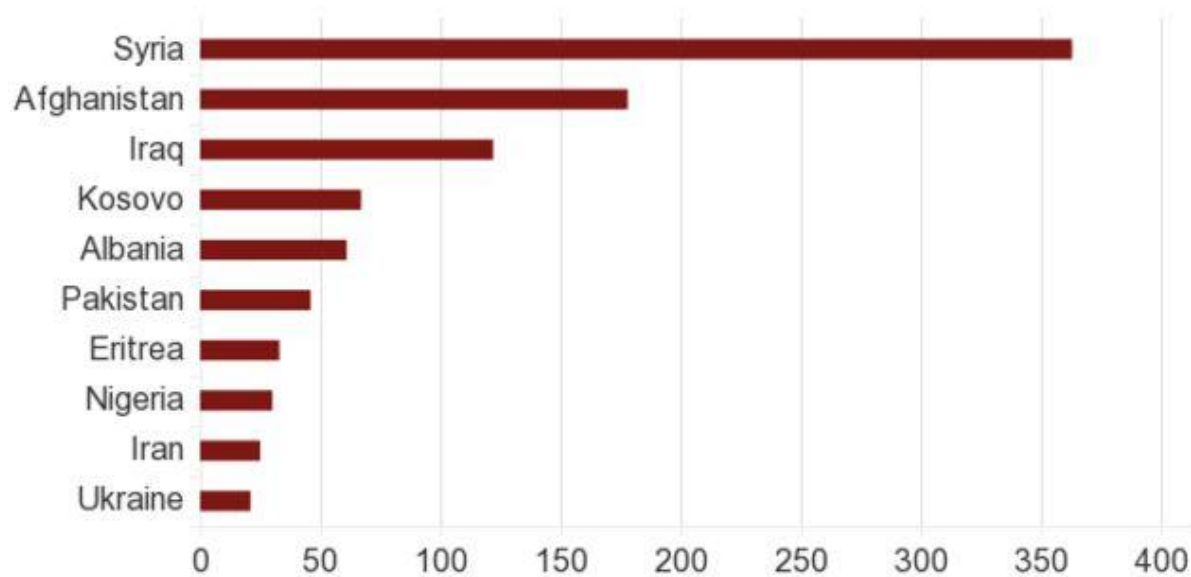
**Keywords:** economic migrant, refugee, European Court of Human Rights, Germany, France

## Introduction

In 2015 the “EU refugee crisis” started and more than a million migrants and refugees intersected into Europe in 2015, a crisis was coming about as countries were attempting to deal with the flow and incorporate corps in the EU over how best to deal with settling people. The biggest part arrived by sea and some others arrived by land at the place, mostly via Turkey and Albania. Winter was not a reason to prevent all these people to migrate- with 135,711 people arriving in Europe from the sea till the start of 2016, according to the UNHCR.

### Top 10 origins of people applying for asylum in the EU

First-time applications in 2015, in thousands



Source: Eurostat

This paper imbibes on the different characteristics between economic migrants and refugees since the protection of refugees has not a positive impact in the public expenditure, specifically in short terms. It is important to underline that the characteristics of refugees and migrants are



different in terms of demographics and skills, moreover the idea and motivation that they will find a better life by leaving their countries and the fact that they might stay forever in the country that they are going. In the short term, the macroeconomic effect from the refugee surge is going to have an increase in GDP growth, reflecting the financial growth related to guide to the asylum seekers, as well as the expansion in exertions supply because the beginners begin to input the hard work force. The effect of the refugees on medium and lengthy-time period growth relies upon on how they'll be included in the exertions marketplace

This paper applies a literature review in addition to critical examine international soft-law and case-law study. The States that this paper focuses on are France and Germany because they are both based on civil law. France is based on the Napoleonic code (code civil of 1804), which is still in use, while Germany is based on Germanic civil law The Burgerliches Gesetzbuch of 1900 ("BGB"). The BGB is influenced both by Roman and German law traditions.

Section 2 analysis the international literature regarding the duties that a persecuted person should have and for that reason to have international protection. Moreover, the other sections study the decisions legally taken coming from Germany, France and European Court of Human Rights (ECtHR). In the conclusion, this scientific research presents the difficulties to have a clear, general and abstract classification between these two categories.

## Section 2

A refugee and a migrant are two different things and below is an article by Adrian Edwards explaining the main difference between them

GENEVA, July eleven (UNHCR) – With more than sixty five million human beings forcibly displaced globally and boat crossings of the Mediterranean nevertheless often inside the headlines, the terms ‘refugee’ and ‘migrant’ are frequently used interchangeably in media and public discourse. However is there a distinction between the 2, and does it be counted?

Yes, there may be a difference, and it does count. The two phrases have awesome and specific meanings, and puzzling those ends in troubles for each populations. Here’s why:

Refugees are persons fleeing armed conflict or persecution. There have been 21.3 million of them global on the stop of 2015. Their scenario is frequently so perilous and insupportable that they go national borders to are trying to find safety in close by countries, and therefore become across the world recognized as "refugees" with get right of entry to to help from States, UNHCR, and other agencies. They’re so diagnosed exactly due to the fact it is too risky for them to return domestic, and they want sanctuary someplace else. These are people for whom denial of asylum has doubtlessly lethal outcomes.

Refugees are defined and protected in global law. The 1951 refugee conference and its 1967 Protocol in addition to other legal texts, inclusive of the 1969 OAU Refugee convention, remains the cornerstone of contemporary refugee safety. The legal concepts they enshrine have permeated into infinite other global, regional, and country wide legal guidelines and practices. The 1951 conference defines who's a refugee and outlines the simple rights which States must have enough money to refugees. One of the maximum fundamental standards laid down in

worldwide law is that refugees need to not be expelled or returned to situations in which their lifestyles and freedom might be beneath threat.

The safety of refugees has many components. these include protection from being returned to the dangers they have fled; get entry to asylum strategies which can be honest and efficient; and measures to make sure that their fundamental human rights are respected to permit them to live in dignity and protection while supporting them to find a longer-term solution. States bear the primary obligation for this protection. UNHCR consequently works intently with governments, advising and supporting them as needed to enforce their responsibilities.

Migrants pick to transport no longer because of a right away chance of persecution or demise, but specifically to improve their lives by means of locating work, or in some instances for training, circle of relatives reunion, or different motives. Unlike refugees who cannot accurately return domestic, migrants face no such obstacle to go back. if they pick to go back domestic, they'll retain to get hold of the safety of their authorities.

For individual governments, this difference is vital. Nations deal with migrants under their personal immigration legal guidelines and methods. Nations cope with refugees thru norms of refugee protection and asylum which might be defined in both national legislation and worldwide regulation. Countries have specific duties closer to anybody seeking asylum on their territories or at their borders. UNHCR helps international locations deal with their asylum and refugee safety responsibilities.

Politics has a manner of intervening in such debates. Conflating refugees and migrants ought to have excessive outcomes for the lives and protection of refugees. Blurring the 2 phrases takes hobby far from the particular prison protections refugees require. It may undermine public

manual for refugees and the institution of asylum at a time while more refugees want such protection than ever before. We want to cope with all human beings with apprehend and dignity. We need to ensure that the human rights of migrants are respected. At the identical time, we additionally want to provide the perfect criminal response for refugees, due to their particular dilemma.

So, returned to Europe and the huge numbers of people arriving in latest years by boats in Greece, Italy and somewhere else. Which are they? Refugees or migrants?

In fact, they manifest to be each. Most of the people of human beings arriving in Italy and Greece mainly had been from international locations mired in warfare or which in any other case is considered to be 'refugee-producing' and for whom worldwide protection is wanted. however, a smaller proportion is from someplace else, and for lots of those individuals, the time period 'migrant So, at UNHCR we say 'refugees and migrants' while relating to movements of human beings by means of sea or in other situations in which we suppose each agencies can be gift – boat movements in Southeast Asia are every other instance. We are saying 'refugees' when we imply people fleeing warfare or persecution across a global border. And we are saying 'migrants' when we imply humans shifting for motives no longer covered in the prison definition of a refugee. We hope that others will provide thought to doing the same. Picks about phrases do remember. (Adrian Edwards, Geneva)

Refugees fleeing law or persecution may be very susceptible. They haven't any safety from their own nation and it is regularly their personal government this is persecuting them. If different

nations do now not let them in or guard them they is probably condemned to an intolerable scenario, wherein their primary rights, safety or even their lives are in hazard.

those years the request from migrants soliciting for global protection had elevated plenty. The Geneva conference and its Protocol on refugees entitle them to not be back in their nations and they define them in restrictive manners, via apart from many others of them from the rights supplied by using international safety.

Refugees are a special elegance of migrants who beneath worldwide regulation deserve specific protection via their host nation. in line with Article 1 of the 1951 UN convention, as changed by way of the 1967 Protocol, a refugee is defined as a person who ‘as a result of properly-founded worry of being persecuted for motives of race, religion, nationality, membership of a particular social organization or political opinion, is outside the united states of America of his nationality and is not able or, due to such fear, is unwilling to avail himself of the protection of that. This definition implies that numerous qualifying situations practice to be taken into consideration a refugee: (1) presence outside domestic us of a; (2) nicely-based fear of persecution (being prone to damage is inadequate cause within the absence of discriminatory persecution); (3) incapacity to enjoy the safety of one’s personal kingdom from the persecution feared. The definition of refugees become really intended to exclude internally displaced individuals, economic migrants, sufferers of natural failures, and people fleeing violent battle however no longer concern to discrimination amounting to persecution.

Threats of serious abuse and violence are not unusual in LGBTI claims. Bodily, psychological and sexual violence, together with rape, might typically meet the brink stage required to set up persecution. Rape particularly has been recognized as a form of torture, leaving “deep mental

scars on the sufferer”. Rape has been recognized as being used for such purposes as “intimidation, degradation, humiliation, discrimination, punishment, control or destruction of the man or woman. Like torture, rape is a contravention of private dignity.” Many societies, for instance, continue to view homosexuality, bisexuality, and/or transgender behavior or men and women, as variously reflecting a sickness, an intellectual contamination or ethical failing, and they will hence set up diverse measures to attempt to exchange or adjust someone’s sexual orientation and/or gender identification. Efforts to trade a character’s sexual orientation or gender identification by using pressure or coercion can also constitute torture, or inhuman or degrading remedy, and implicate other serious human rights violations, such as the rights to liberty and protection of man or woman. Examples at the intense end and which on their face attain the edge of persecution consist of pressured institutionalization, pressured sex-reassignment surgical treatment, compelled electroshock remedy and pressured drug injection or hormonal remedy. Non-consensual scientific and medical experimentation is also explicitly diagnosed as a form of torture or inhuman or degrading treatment below the international Covenant on Civil and Political Rights. Some intersex individuals may be compelled to go through surgical treatment aimed toward “normalcy” and, wherein it will likely be carried out without their consent, this is in all likelihood to quantity to persecution. It is also essential to distinguish in those cases among surgical treatment vital to keep lifestyles or fitness and surgical procedure for cosmetic functions or social conformity. The evaluation wishes to cognizance on whether or not the surgical procedure or treatment changed into voluntary and occurred with the knowledgeable consent of the character. Detention, inclusive of in psychological or medical institutions, on the only foundation of sexual orientation and/or gender identification is taken into consideration in breach of the international prohibition towards the arbitrary deprivation of

liberty and might normally constitute persecution. furthermore, as noted by way of the United countries special Reporter on Torture and different merciless, Inhuman or Degrading remedy or Punishment, there is mostly a strict hierarchy in detention centers and those at the lowest of this hierarchy, consisting of LGBTI detainees, go through more than one discrimination. Male-to-woman transgender prisoners are at specific risk of physical and sexual abuse if located within the popular male jail populace. Administrative segregation, or solitary confinement, entirely due to the fact a person is LGBTI also can bring about severe mental damage. Social norms and values, which includes so-referred to as circle of relatives “honor”, are typically closely intertwined within the refugee claims of LGBTI individuals. Whilst “mere” disapproval from family or network wills now not quantity to persecution, it may be an essential element within the standard context of the claim.

The 5 conference grounds, that is, race, religion, nationality, club of a specific social organization and political opinion, aren't together exceptional and can overlap. multiple conference floor may be applicable in a given case. Refugee claims based totally on sexual orientation and/or gender identification are most usually recognized underneath the “club of a specific social organization” ground. Different grounds may additionally even though additionally be applicable relying at the political, spiritual and cultural context of the claim. For example, LGBTI activists and human rights defenders (or perceived activists/defenders) can also have either or each claims primarily based on political opinion or faith if, as an instance, their advocacy is visible as going towards triumphing political or spiritual perspectives and/or practices. People can be concern to persecution due to their real or perceived sexual orientation or gender identity. The opinion, perception or club can be attributed to the applicant through the nation or the non-kingdom agent of persecution, even if they may be no longer in reality LGBTI,

and primarily based on this perception they may be persecuted as a result. For example, males and females who do not in shape stereotype appearances and roles can be perceived as LGBTI. It isn't always required that they surely be LGBTI. Transgender individuals regularly experience damage based totally on imputed sexual orientation. Companions of transgender individuals can be perceived as homosexual or lesbian or absolutely as no longer conforming to everyday gender roles and behavior or associating themselves with transgender people.

Persecution is commonly related to action by using the government of a country. it could also emanate from sections of the populace that don't admire the standards established through the laws of the united states involved. A case in point may be non-secular intolerance, amounting to persecution, in a country otherwise secular, but where substantial fractions of the populace do no longer appreciate the religious beliefs in their friends. Where severe discriminatory or other offensive acts are dedicated by way of the local populace, they can be taken into consideration as persecution if they may be knowingly tolerated through the authorities, or if the government refuse, or show not able, to provide powerful safety.

Race for the functions of the refugee definition has been defined to include all varieties of ethnic agencies which can be called "races" in commonplace utilization. Persecution for motives of race can be expressed in specific approaches against men and women. For instance, the persecutor may pick out to break the ethnic identity and/or prosperity of a racial organization by means of killing, maiming or incarcerating the men, while the girls can be viewed as propagating the ethnic or racial identity and persecuted in a distinctive manner, along with through sexual violence or control of reproduction.



In sure States, the faith assigns precise roles or behavioral codes to ladies and men respectively. in which a lady does no longer satisfy her assigned function or refuses to abide by way of the codes, and is punished therefore, she may additionally have a well-based fear of being persecuted for reasons of religion. Failure to abide via such codes can be perceived as proof that a woman holds unacceptable religious evaluations no matter what she truly believes. A woman can also face damage for her specific spiritual beliefs or practices, or the ones attributed to her, such as her refusal to hold particular ideals, to exercise a prescribed faith or to conform her conduct according to the lessons of a prescribed faith.

Nationality isn't always to be understood simplest as “citizenship”. It also refers to club of an ethnic or linguistic group and can once in a while overlap with the time period “race”. Although persecution on the grounds of nationality (as with race) isn't always precise to ladies or men, in many instances the character of the persecution takes a gender-precise form, most generally that of sexual violence directed towards women and women.

Gender-associated claims have regularly been analyzed within the parameters of this floor, creating a right understanding of this time period of paramount significance. However, in some instances, the emphasis given to the social organization ground has supposed that different relevant grounds, together with religion or political opinion, have been over-appeared. Therefore, the interpretation given to this floor can't render the other four convention grounds superfluous.

### **Section 3:**

#### **Facts:**

The case concerns a Syrian military reservist who has requested to be granted refugee reputation. The initial courtroom of enchantment came to the realization that the sanctions for returning Syrian navy reservists, who had refrained from military carrier, are a punishment for an offense in opposition to general civic obligations. Therefore, the sanctions might now not have an effect on a person in a sphere applicable to asylum law. Consequently, the higher Administrative court docket Rhineland-Palatinate did now not provide refugee reputation.

The courtroom refused an onward attraction to the Federal Administrative court docket.

### **Decision & Reasoning:**

The court set out that for an onward attraction to the Federal Administrative court docket to be granted, there ought to be a criminal question of fundamental importance. Opposite to the preliminary enchantment court, a question truth that is essentially enormous isn't sufficient, even though the authentic findings of the case are applicable for a wide variety of instances. The courtroom explained that during evaluation to British procedural law, the German Federal Administrative court isn't always authorized to clarify essential authentic questions.

The judges talk over with the selection of the Federal Constitutional court docket from the 14th of November 2016 (2 BvR 31/14 – InfAuslR 2017, seventy five), confirming, that the Federal Administrative courtroom is bound to the fact findings of the primary degree courtroom of attraction. Divergent exams of a comparable real foundation also do now not factor towards a essential query regarding the translation and application of article 108 of the executive court docket Act.

The Federal Administrative court then went on to argue that a prison matter of essential significance additionally does not observe from the jurisprudence of the Bavarian Administrative

court, which became consulted inside the grievance (Bavarian Administrative court, twelfth December 2016 – 21 B sixteen.30372). The Bavarian Administrative court applies the equal criminal criterion because the preliminary appeal court within the present case to reply the query whether the complainant is at risk of persecution inside the feel of Article 3b of the Asylum Act on grounds of his army evasion.

in step with consistent jurisprudence of the Federal Administrative courtroom, sanctions imposed for draft evasion are most effective considered as a applicable persecution in phrases of refugee regulation, in the event that they affect the character in a sphere that is applicable to asylum (i.e. faith, political opinion, and other traits applicable to asylum). consequently, the sanction must be extra than a punishment for an offense towards general civic obligations.

The court presented the opinion of the Bavarian Administrative court docket, that returnees, who fled from a civil war scenario and refrained from military provider, are threatened by way of human rights violations (especially torture). That opinion relies on the assumption that the Syrian security forces do no longer sanction the returnees for violating a civic responsibility applying to all male residents, but alternatively accuse them of a disloyal and politically oppositional mind-set.

The court then continues by way of arguing that this end, which differs from the initial court of appeals ruling within the gift case, is based on a one-of-a-kind evaluation of the Syrian regime and its security forces. consequently, it's miles a question of truth and proof, which is reserved for the preliminary court docket of attraction. The court concludes that the claimant has not established that a query of fundamental importance in appreciate of a felony question, thereby

triggering the jurisdiction of the Federal Administrative courtroom, has been proven in this example.

**Outcome:**

The claimant's complaint against the rejection of an onward appeal to the FAC held by the Higher Administrative Court Rhineland-Palatinate is dismissed.

The claim for granting of legal aid is also declined.

**Case Law Cited:**

Germany - Federal Court of Justice: Bundesgerichtshof, 26 June 2014, Case V ZB 31/14)

Germany - Bavarian Administrative Court, 12th December 2016 – 21 B 16.30372

Germany - Higher Administrative Court Rhineland-Palatinate 01.03.2017 - 1 A 10977/16

The next case is a **ECtHR** case:

The applicant is an Afghan country wide who entered the au through Greece earlier than arriving in Belgium, where he carried out for asylum. According with the Dublin II regulation, the Belgian alien's office asked the Greek authorities to take duty for the asylum application. The applicant complained especially about the conditions of his detention and his dwelling situations in Greece, and alleged that he had no effective remedy in Greek law in respect of these proceedings. He further complained that Belgium had uncovered him to the dangers arising from the deficiencies within the asylum method in Greece and to the negative detention and living conditions to which asylum seekers were subjected there. He further maintained that there has

been no effective treatment below Belgian regulation in respect of these lawsuits. regarding specifically the applicant's transfer from Belgium to Greece, the court held, thinking about that reviews produced via international businesses and our bodies all gave similar money owed of the sensible difficulties raised by using the software of the Dublin gadget in Greece, and the United international locations excessive Commissioner for Refugees had warned the Belgian authorities about the situation there, that the Belgian authorities must had been aware about the deficiencies in the asylum system in Greece when the expulsion order against him were issued. Belgium had to begin with ordered the expulsion solely on the idea of a tacit agreement by using the Greek government, and had proceeded to enforce the degree without the Greek government having given any character assures whatsoever, whilst they might without difficulty have refused the transfer. The Belgian authorities should not genuinely have assumed that the applicant would be dealt with in conformity with the conference standards; they need to have confirmed how the Greek government carried out their asylum regulation in practice; however that they had no longer finished so. There had therefore been a violation by way of Belgium of Article three (prohibition degrading remedy) of the convention. As some distance as Belgium is considered, the court in addition observed a contravention of Article 13 (proper to an effective treatment) taken together with Article 3 of the conference due to the dearth of an powerful treatment towards the applicant's expulsion order. In recognize of Greece, the court docket determined a contravention of Article thirteen taken at the side of Article three of the convention due to the deficiencies in the Greek authorities' examination of the applicant's asylum software and the chance he confronted of being removed at once or not directly back to his united states of foundation with none severe examination of the deserves of his utility and without having had access to an powerful remedy. As a long way as Greece is concerned, the court docket in

addition held that there had been a violation of Article 3 (prohibition of degrading treatment) of the convention each due to the applicant's detention conditions and because of his living conditions in Greece. *M.S.S. v. Belgium and Greece* (no. 30696/09) 21 January 2011 (Grand Chamber judgment)

Final case law is regarding France:

**France – Rennes Administrative Tribunal, 5 January 2018, Application no. 1705747**

Country of application: Sudan

Country of decision: France

**Facts:**

The case concerns a countrywide of Sudan who had obtained a decision through the Prefect that he might be sent back to Italy, the country chargeable for his asylum utility, beneath the Dublin law. The applicant appeals this selection on grounds that he would be exposed to inhumane treatment in Italy, that his software for asylum would no longer be examined inside the usa in light of the memorandum of information between Italy and Sudan and that he might sooner or later be eliminated to his u . s . a . Of starting place in violation of Article 33 of the Geneva Convention.

**Decision & Reasoning:**

The Tribunal first states that Article 4 of the charter of essential Rights is to be interpreted as which means that Member States may not switch an applicant below the Dublin regulation where

they can't be unaware that systemic deficiencies in the asylum system and within the reception situations of asylum seekers in that Member nation quantity to big grounds for believing that the asylum seeker would face a real chance of being subjected to inhuman or degrading remedy.

Making use of this to the records of the case the Tribunal notes that Italy has registered, as of 1 September 2017, 100,000 asylum programs after the arrival of over 180,000 migrants in 2016. However the massive strain that this places on Italy, and different maritime frontier states, Italy can't absolve itself from its duties below Article three of the ECHR. The Tribunal notes the applicant's allegations as to the police brutality which he experienced in Italy ensuing in his fingerprints being taken by way of pressure. Those were showed by worldwide agencies, particularly the Swiss NGO OSAR which highlights that reception facilities are in reality detention centers for individuals up till their registration, that such detention lacks a prison basis in Italian regulation and that no assessment of vulnerabilities is undertaken by way of the Italian authorities.

The Tribunal ultimately assesses the situations that the applicant confronted in Italy, specifically in the Sicilian hotspot. While the applicant's live there was fantastically quick, the situations which he was exposed to would have brought to his preceding situations of lifestyles in Libya; emotions of arbitrariness, inferiority, anxiousness and an extreme violation to his dignity, ensuing in inhuman treatment for the time being of his arrival to Italy and the registering of his fingerprints. The Tribunal notes that the applicant's distress is accentuated by means of his inherent vulnerability as an asylum seeker which ends up from the traumatizing experiences he has lived. The applicant has shown that the reception capability in Italy is saturated to this type of point that an effective processing of asylum applications can't be assured.

Concluding, the Tribunal underlines that there are systemic deficiencies in the Italian asylum process and in its reception conditions for asylum applicants which amount to inhuman or degrading treatment.

**Outcome:**

The transfer decision to Italy is annulled and the Prefecture is obliged to allow the applicant to register his application in France and offer an acknowledgment of his application 3 days from the dated judgment.

**Conclusions:**

This contribution critically analyzed the difference between “economic migrants” and “refugee”, since this is fundamental in the current refugee crisis. In section 2 I give the definition of migrants and refugees and the difference between them by using an article of an Adrian Edwards, who explains that refugees are people persecuted and its dangerous for them to go back home, while migrants go to foreign countries because they chose to do so for a better life and if they go back in their place they are not in danger also they will have their state’s protection. Furthermore in section 2 I am analyzing who is eligible to be a refugee and under which situations he will be protected by international law. In section three I mentioned three cases and their decisions regarding the refugees in Germany, France and ECtHR case.



This paper shows the difficulties regarding the difference between “economic migrants” and “refugees” in concrete situation.

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# Integration challenges of refugees in Albania in light of international point of view

By XXX

**Supervisor: Dr. Denard Veshi**

**Paper in “refugee law”**

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## Abstract

An increasing number of refugees from the Middle East and Africa are aiming to arrive in the European Union, driven by fear of persecution and war in the respective states and for the hope of new opportunities. This journey from the countries of the East towards the West is usually done through the Balkan region, which since 2015 supplies Europe with a growing number of immigrants, refugees and asylum-seekers who transit through the so-called "Balkan way". Despite that their primary purpose is not to stay in transit states, some of them have applied for asylum in these countries. "As shown in Appendix A, between 1980 and 1999, twenty-two of the world's largest refugee populations were protracted ones, i.e. where refugee populations greater than 100,000 lived in host countries for more than ten years"(Jacobsen,2001).

The purpose of this publication is to summarize the main obstacles that refugees are facing in Albania and to suggest solutions that lead to their full integration in the host country. This document was prepared to serve as a reference for improvement for the most pressing problems of the refugee community in Albania.

## Introduction

Migration is a process and phenomenon that begins and determines the history of mankind and the way of its development. Consequently, it has had its impact on each area of social life. Human society itself has developed through a continuous migration process aiming to ensure a better living. In recent centuries, especially in the last decades of the twentieth century and in the 21st century, it has become an increasingly subject to detailed studies, the results of which have had a direct impact on the behavior and decisions taken by the governments of different countries. The majority of political force nowadays have a political program about migration and asylum seekers in all developed States.

“The main element of migration is the process of departure or leaving, a general term which comprises any form of movement for whatever reason. Some people leave their country not as voluntary migrants, because they are victims of human rights violations, wars or other wide scale catastrophes. These are refugees. We can thus deduce that every refugee is a migrant but not every migrant is a refugee.” (Ali, Rasha, 2006).

The reasons for their escape are more or less the same as those of refugees.

Historically, states have decided on their own or in agreement between them to handle large-scale refugees. However, the first international acts in this area belong to the beginning of the 30s of the last century, above all with the Constitution of the International Organization of

Refugees. After the Second World War, the main universal act for refugees is known as the 1981 Convention Relating to the Status of Refugees.

The Republic of Albania has ratified this Convention in 1992. Like most other international acts, this Convention has laid down the minimum standards for their treatment, leaving open the possibility for a more favorable treatment by the states that have this opportunity. In this respect, standards in the treatment of refugees recognized a new level, after the creation of the European Union, a union which aimed and aims at creating a space with the highest standards in the field of protection and realization of human rights.

The path of Albania's integration into the European Union, a common goal of all Albanians is complex and with many challenges. To reach these standards, Albania has made many steps forward. A list of actions to be undertaken started with the Stabilization and Association Agreement with the EU in 2003. There are 8 priorities (priority areas) in this agreement, one of which is asylum and migration. The proper fulfillment of these priorities will enable the transition to the status of candidate country.

This research paper focuses more on the challenges of integration of refugees in Albania, International Asylum and Migration Legislation, Essential Definitions of International Law, Analysis of the legal framework in Albania, achievements and gaps.

### International Asylum and Migration Legislation

The international legislation on migration and asylum today is one of the most developed areas of international law. This has come as a result of accepting the phenomenon of migration as an inevitable phenomenon, which occurs for various reasons, but remains a feature of human



behavior. Many of these reasons are wholly independent of the will of migratory individuals. Many others depend on their will, but anyway, placing them in a new place, introducing and integrating them into a host society, makes it necessary to regulate the legal status of the newly created legal state. This situation is different from the ordinary legal relation between an individual and the state of his nationality, but it is indispensable to lead, sooner or later, also in the creation or restoration of this bond, usually through the process of naturalization (becoming a citizen in one place due to long-term residence or conditions related to placement in this country).

The international regulation of the migration process (as far as it can be called regulated) has started with treaties and bilateral agreements between states, to reach today in a set of international conventions.

For the purpose of this paper, we will divide these international instruments into those related to refugees (those who move from their country for compulsory reasons) and those related to immigrants (those who move for non-compulsory reasons).

## 1. On refugees

- a. 1951 Convention Relating to the Status of Refugees.
- b. UNHCR Statute (United Nations High Commissioner for Refugees Office).
- c. Guiding Principles on Internally Displacement
- d. (partially) European Convention for the Protection of Human Rights and Fundamental Freedoms.
- e. Basic Freedoms of 1950.
- f. Universal Declaration of Human Rights.

g. (partially) International Covenant on Civil and Political Rights, 1966.

h. (partially) International Covenant on Economic, Social and cultural.

Rights

i. (partially) UN Convention on the Rights of the Child, 1989.

## **2. On migrants**

a. The International Convention on the Protection of Workers' Rights

b. UN Protocol against Smuggling of Migrants by the Sea, Land and Sea

Air, which is added to the UN Convention against Organized Crime

International, 2000.

c. (partially) International Covenant on Civil and Political Rights, 1966.

d. (partially) International Covenant on Economics, Social Rights and Culture.

## **Analysis of the legal framework in Albania**

According to a report published in 19 Jun 2001 by US committee by refugees and immigrants at the beginning of the twenty-first century more than 500 refugees were hosted in the Albanian territory. “ (Connelly, 2016) The Albanian asylum system has its beginnings since the signing and ratification of the 1951 Convention by Republic of Albania in 1992. Some preliminary provisions that paved the way for the subsequent development of this system were also envisaged in the 1995 Law on Migration. Later developments in the Balkans - especially the war in the former Yugoslavia, Albania's geographical position as an important point for the transit of foreigners to European Union countries and the need to raise and expand Albanian legislation at the required levels of the EU in cooperation with UNHCR, made Albania to adopt a special law on asylum on December 14, 1998. The purpose of this law was to establish on a clear

basis the obligations arising from the 1951 Convention and to recognize certain basic rights for refugees, asylum seekers and persons under subsidiary protection.

## **CHALLENGES IN INTEGRATION OF REFUGEES IN ALBANIA**

### **Education**

“With 75 million children aged 3-18 years living in 35 crisis-affected countries in need of educational support, we urgently require both new approaches and to scale up proven methods of providing children affected by crisis with quality learning opportunities.”(Joseph Nhan-O'Reilly,2017).Education is indispensable to facilitating the participation of refugees in the economic, social and cultural life of the host country of refugees. In the case of refugees and adolescent children, it reinforces the concept of everyday life and normality in their lives and is essential for their psychological and intellectual development. Ensuring the right to education and training significantly increases the chances of entering the labor market and finding a long-term job.

All children of refugees and asylum seekers in Albania are covered by the school system and are enrolled in the respective schools. The registration includes providing all the necessary documentation required for Albanian students, such as birth certificates, residence certificates, etc. Refugees who leave their countries for fear of the persecution risk, often do not carry documents with them. Lack of documents is the first obstacle faced by refugee children at the time of registration. Simplifying the procedures with regard to avoiding obstacles to documentation is necessary and applied in the Law on Integration in the case of family reunification procedures.

Assessment of the level of knowledge of refugees and asylum seekers in Albania is done through ad hoc commissions established by the Education Directorate, in schools where refugees and asylum children are admitted.

**School materials and uniforms.** The state offers textbooks (with a reduced price similar to that for Albanian children) but there is still a great need for school supplies and uniforms, as refugee children enter the less privileged social groups when discussing education.

### Gaps:

1. Lack of government decisions and sub-legal acts imposing compulsory school enrollment on refugees and asylum-seekers living in the area;
2. Simplifying the requirements for the documentation to be submitted by the candidate refugees and asylum seekers in schools;
3. Insufficient cost reduction of school materials and books for refugees and asylum seekers as a less privileged social group;
4. Incomplete legislation addressing refugees and asylum seekers aged 16-18 does not allow them to enter general schools.

### Language Courses

The language learning of the host country is a necessary condition for further integration, regardless of whether the person is recognized or denied the refugee status, and regardless of his/her short-term or long-term residence in the host country. The lessons must start from the beginning, after arrival in the host country, free of charge at the reception center, which will enable a higher participation rate, especially for mothers with young children.

In addition to language courses, refugees should be offered orientation and guidance that contains practical information about the asylum site, its institutions, services provided, and reference points.

### **Gaps:**

1. There are no free language courses for refugees and asylum seekers in Albania. Government lacks institutional structures for providing Albanian language. Existing ad hoc courses (always paid, offered by the Faculty of Foreign Languages) are not addressed to specific groups but are general.

### **Employment**

The EU Employment Quality Directive guarantees refugees an equal treatment in employment by ensuring that Member States combat any type of discrimination on grounds of religion or belief, ability to work, age or sexual orientation in terms of employment and profession.

Refugees who have acquired the refugee status in Albania have the right to work on equal terms with the locals. This right recognized in the Law on Integration and deriving from Article 24 of the Geneva Convention is rejoicing without time limits, but is limited by the rule of law in Albania. Referring to the Law on Integration, a refugee whose status has been recognized should be granted a work permit for a period of five years. However until now, the granted work permits have been 1 year, renewable 2 times, until the issuance of 5 years. The waiting time for granting a work permit is very long, and often the lack of documentation hampers employment, even where the refugee is allowed to work.

On the other hand, there is a high level of mistrust resulting from lack of knowledge on employers who often treat refugees as other legitimate aliens, or worse, illegal, and reluctant to employ them. Even the state administration employs only Albanian citizens.

#### **Gaps:**

1. The current division of documentation into residence and work permits causes delays and problems in the path of refugee integration.

#### **Local Integration**

The practice in EU countries proves that the social assistance is not enough for refugees to integrate. The more support for integration in the form of counseling, guidance and funds they receive, the better they can integrate.

The longer the integration time is, the greater the integration results. Integration does not necessarily mean financial assistance. Counseling should include career counseling, job search training, job vacancies advice, negotiation with employers, and generally changes of the attitude of all stakeholders involved.

#### **Gaps:**

1. Lack of special integration programs that include economic assistance, counseling etc.
2. Insufficient linkage between employers, landowners, local administration and refugees

#### **Health**

So far, all refugees have been provided with health booklets while providing the primary healthcare service covered by the government. The inclusion on the list of beneficiaries depends on the periodic correspondence sent to the Health Insurance Institute from the Directorate for

Citizenship and Refugees. There is no need for additional lists of eligible refugees, because the respective decision of the Council of Ministers entitles all persons with a residence permit the opportunity to benefit from the health system. The government's challenge is to effectively apply the Law on Integration to ensure full coverage and sustainability of health care for the people concerned.

Most health center staff members have not provided medical services to refugees or have not been cared for, because they were unaware of whether these services were covered by free medical help from the Ministry of Health.

#### **Gaps:**

1. Lack of self-knowledge of the health center staff throughout the country, focusing on where refugee presence is higher for the health of refugees and asylum seekers;
2. Insufficient information and support during the registration process for a health booklet at the Health Insurance Institute or other levels of the relevant bodies.

## **Conclusion**

A deeper knowledge of the field related to foreigners and refugees in Albania, dealing with these issues should become one of the main subjects in undergraduate schools. This will expand the field of specialists with knowledge in this area, that will fill in the ranks of officials of state institutions and those of the civil society dealing with this field.

Likewise, the teaching of the Albanian language, as part of the integration efforts of refugees in the company of the host country, the organization of Albanian courses from the bodies directly dealing with refugees, or by specialized educational institutions that can perform this function, should be put on an institutional basis.



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## THE CURRENT MIGRATION CRISIS: EXPLANATIONS OF DATA

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**February 2018**

**REFUGEE LAW**

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## ABSTRACT

Massive refugee displacement since 2015 is reshaping the international pattern of migration worldwide. Refugee crisis is an ever- growing phenomenon that has legal and social implications. This research will give an overview of the legal situation of migrants compared to the situation of the economic migrants in the International law and national constitutions of the Council of Europe States. This paper will conduct a comparative literature review, legal comparison of different national law and their compliance with international laws on immigration. The author will extensively analyze data of Eurostat and Frontex. Since many Western European states are also the largest recipients of migrants and asylum seekers these data will show how they reach these states, their legal status and the challenges each state faces to ensure their protection and their social integration. In the conclusion, this contribution will show the reasons behind these differences, the refusal of economic migrants and the necessity for better care and protection to contribute to the preserve the demographic balance since immigration is one of the key components of population changes in Europe.

**Keywords:** Refugees, Economic Migrants, 1951 Geneva Convention, Refugee status, Europe

## INTRODUCTION

Migration as a phenomenon comes as a direct effect of globalization worldwide influenced by economic, social and political factors. During 2015, 4.7 million people immigrated to one of the EU-28 Member States, while at least 2.8 million emigrants were reported to have left an EU Member State.<sup>1</sup> The public frequently use to hear ‘refugee’ and ‘migrant’ in public discourses, media and daily life. Based on the push factors and the legal status of the migrants they are divided into refugees and economic migrants, and these divisions with all their characteristics that follow are the main concern of the author’s paper. The author will analyze in depth the definition of these two concepts. So, United Nations High Commissioner for Refugees (UNHCR) by ‘refugees’ mean people fleeing war or persecution across an international border, and by ‘migrants’ mean people moving for any other reason beside those included in the legal definition of a refugee.<sup>2</sup>

According to Article 1(A) of the 1951 Convention and Protocol relating to the status of refugees:

“As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the state of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that state; or who,

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<sup>1</sup>Eurostat, March 2017

<sup>2</sup>UNHCR viewpoint: ‘Refugee’ or ‘migrant’ – Which is right? July, 2016

not having a nationality and being outside the state of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>3</sup>

Moreover, the official definition for the economic migrants given by UNHCR is that an economic migrant is a person who leaves his state *voluntarily* and *exclusively* due to economic motives.<sup>4</sup> Among the main push factors of economic migrants to leave their states are to improve their live standards, to find a work, or in some cases for education and family reunion. Contrary to refugees, for economic migrants is safe return home because they will continue to receive the protection of their governments.

in section 2, the paper will conduct an historical analysis by underlying the creation of UNHCR. In section 3, the author will emphasize the difficulties to find an abstract classification between ‘economic migrants’ and ‘refugees’ by also showing the different codifications of right to asylum in the Member State of Council of Europe. An important heading of this contribution will be a comparison between the legal rights entitled to the refugees and those that Economic migrants have in the International law. Moving from an international level, an annex will analyze and compare the right to asylum in the constitution of all member states of the Council of Europe. In the conclusions, this scientific paper will argue the importance of classification based on concrete cases. This paper will draw conclusions based on the statistics retrieved for refugees, by comparing the numbers of those who were granted asylum and those returned to their home states. The author will also provide a table comparing refugees and economic migrant’s legal definition, international protection, push factors, and treatment given as a reflection from this research.

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<sup>3</sup> Convention Relating to the Status of Refugees, 1951

<sup>4</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva, January 1992,

## HISTORICAL EVOLUTION

The concept of asylum might have its roots in the ancient Greece. The etymology of the word is the Ancient Greek particle “*a*”, denoting nonexistence, and the word “*sy’lon*”, from “*sy’lán*”, that indicates seizure by pirates. An ‘asylum’ was a place secure from danger.<sup>5</sup> The right of asylum also existed in Ancient Rome, but this institution in Rome was named *exilium* (exile), which gave any citizen who had received a capital sentence the option to avoid execution by choosing exile.<sup>6</sup> As in Ancient Greece, the principle of asylum according to the Christian Church can be based on the existence of places that might have been outside the control of the community, for religious bases. From the Ancient Greek concept of asylum as a secure place in case of danger, the right of asylum developed as a concept of international law. Indeed, only bodies of rules that effectively exercises control over a given territory, as international law, can control a complex institution like asylum. The history of International protection for refugee starts with the League of Nation in 1921 when the Office of High Commissioner was created. This was the first multilateral coordinating mechanism for dealing with refugees. Moreover, 12 years later, the League of Nations adopted the Convention Relating to the International Status of Refugees, where the principle of non-*refoulement* was recognized (Article 33).<sup>7</sup> Its initial goal was to deal with the refugee flow coming from Russia.

Towards the end of WWII, the Allies created the Supreme Headquarters Allied Expeditionary Force (SHAEF). Its aim was to coordinate the return of people to Eastern Europe and the Soviet

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<sup>5</sup> M. Gieri (1896: 778) and A. Quintano Ripollés (1951: 50)

<sup>6</sup> M. Gieri (1896: 778) and C. Perris (1937: 767)

<sup>7</sup> Article 33 of the *Convention Relating to the International Status of Refugees* states “Each of the Contracting Parties undertakes not to remove or keep from its territory by application of police measures, such as expulsions or non-admittance at the frontier (*refoulement*), refugees who have been authorized to reside there regularly, unless the said measures are dictated by reasons of national security or public order. It undertakes

Union because during the Cold War, the management of refugee influx was used as an argument against Communism. After the creation of the United Nations after WWII, SHAEF<sup>8</sup> was replaced by the United Nations Relief and Rehabilitation Agency (UNRRA). The US government was its main financial support and in 1946; the International Refugee Organization (IRO) replaced the UNRRA when US decided to withdraw its support. The IRO promoted the refugee rights by underlining the right not to be repatriated against one's personal will. Second, the fear from political persecution was recognized and in addition, there was a shift in the nature of refugee rights from a group right to individual right. In the late 1952, IRO<sup>9</sup> was replaced with the United Nations High Commissioner for Refugees (UNHCR), which remains even nowadays-permanent international organization protecting the rights of refugees. The 1951 Convention on the status of refugees was initially enacted to deal with the refugee and migration crises after WWII. In the recent years, a new refugee crisis called the 'European Refugee crises emerged in 2015, when a total of 4.7 million people immigrated to one of the EU-28 Member States. This massive displacement increased the cooperation of the UNHCR<sup>10</sup> with the EU and with European national governments.

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<sup>8</sup> Supreme Headquarters Allied Expeditionary Force

<sup>9</sup> International Refugee Organization

<sup>10</sup> United Nations High Commissioner for Refugees

## REFUGEES AND ECONOMIC MIGRANTS

Asylum is an international fundamental human right and it is enumerated as such in article 14 of the UDHR that provides:

“(1) everyone has the right to seek and to enjoy in other states asylum from persecution.  
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations”,

This provision guarantees to every persecuted person the right to seek protection in other states, which for the first time made right to asylum a fundamental human right by the UDHR in 1948. In the EU, states followed a common approach aiming to guarantee high standards of protection for asylum seekers and were committed to establish a Common European Asylum System. Asylum flows are not constant, and are not distributed equally across the EU. It is for this lack of proportionality that the EU Member States share the responsibility to accept asylum seekers, to ensure them fair treatment and due process for the evaluation of their Refugee status. Ever since 1999, the EU is working to create a Common European Asylum System (CEAS) for the improvement of the existing legislation.<sup>11</sup>

Latter on the European Refugee Fund was created to ensure a stronger financial support for refugees. In addition, the 2001 Temporary Protection Directive<sup>12</sup> made possible for a common EU response to a mass displacement of asylum seekers..After the massive refugee

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<sup>11</sup> European Commission, retrieved from [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en)

<sup>12</sup> Council Directive 2001/55/EC of 20 July 2001



crises that EU is facing from 2015 the necessity for new rules emerged to set out common high standards and stronger co-operation.

A refugee is defined according to article 1 A of the Geneva Convention and Protocol on Refugees as follows:

“As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the state of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that state; or who, not having a nationality and being outside the state of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>13</sup>

This definition sets a temporal restriction by addressing to all the events occurring before 1 January 1951 thus implying that this convention was a consequence of World War 2. The well-founded fear of persecution is the main difference on the core of what is a refugee compared to an economic migrant. A refugee fears discrimination, while an economic migrant seeks to escape poverty, hunger and the deterioration of his/her life conditions. Fear itself is a subjective element and it varies from one refugee to another, so it needs to be proven with objective means.<sup>14</sup>

Moreover, as the definition provides refugees fear the persecution for reasons of race, religion, nationality, membership of a particular social group, or their political opinion. These criteria in

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<sup>13</sup> Convention Relating to the Status of Refugees, 1951

<sup>14</sup> UNHCR (1992a:para.37).

appearance are similar to the fundamental human rights provided by ECHR and UDHR. However, not every violation of these human rights will constitute persecution but the judges will decide on their claim after ascertaining their *Ipso Jure* status as refugees. Economic migrants from the other side are not prosecuted directly for any of these reasons but they leave their state of nationality by free choice, based on purely and exclusively economic reasons. Their life is not endangered directly, and whenever they decide to return, they will keep receiving the protection of their national government.<sup>15</sup> The use of the word ‘exclusively’ indicates that a person flees his state only for economic motives or otherwise if economic reasons are not his or her exclusive reasons for fleeing their state they cannot be automatically denied to the classification as a refugee. If economic migrant can be immediately returned when their economic motives for migrating are discovered, European states and no other state who signed the 1951 Convention of Refugees cannot return refugees without first evaluating their cases individually. This obligation is based on the Principle of “*Non Refoulment*” in article 33 of the convention noting that:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>16</sup>

Accordingly, the legal instruments like the definition of refugees given by article 1A, the principle of *non-refoulment* and the European institution are created to provide better protection for asylum seekers since it is the obligation of every state to protect refugee’s rights. This “considerations” that the international law gives to a refugee that have increased the tendency of

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<sup>15</sup> UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (1992), para. 51

<sup>16</sup>United Nations Convention relating to the Status of refugees, which, Article 33(1), 1951

the refugees to abuse these rights, making the distinction between an economic migrant and a refugee very difficult. This is also ascertained by the vice-president of European Commission Frans Timmermans who claims that more than half of all migrants to Europe are motivated by “economic reasons” and are not fleeing war or persecution. Moreover, Timmermans said that, “More than half of the people now coming to Europe come from states where you can assume they have no reason whatsoever to ask for refugee status... more than half, 60 per cent.” In order to avoid abuses EU member states have introduced a wide range of procedures relating to the arrival, admission and entitlements of people wishing to claim refugee status on their territory. A legal dichotomy exists within migrants as voluntary economic migrants and refugees as involuntary political refugees.<sup>17</sup> However, nowadays, this legal distinction is not clear in practice because several economic migrants have fraudulently tried to be classified as refugees. This is because contrary to refugees, economic migrants are not protected by the international law because their motives are not considered constituting prosecution. The first two indicators of this immigration abuses have an economic nature. Economic migration models explain the decision to flee their state. First, the maximization of incomes, the employment opportunities, better living conditions and education for their children constitute important push factors for economic migrants to ask asylum camouflaged as refugees.<sup>18</sup> The relative number of asylum applications is correlated with states' prosperity ranking and its unemployment rates. The data suggests that states, which are relatively rich and have a favorable labor market opportunities, receive a significantly high numbers of asylum seekers. For an individual who fears political prosecution and having their life in danger will not have the luxury and the time to calculate and to organize as a displacement considering the economic level of the state or their unemployment rate. Their

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<sup>17</sup> Aristide R. Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989), p. 30.

immediate need is a safe state to ensure their life and receiving protection. These “selective migration trend” have pushed EU Members States to introduce restrictive procedures to control the access to refugee protection aiming “to have as few refugees as possible”. To achieve this aim, states have first enacted procedures preventing asylum seekers from obtaining refugee status by making extremely difficult the entry onto national territory. Extended visa requirements, the high fining of airlines and shipping companies transporting undocumented migrants, reinforcement of borders controls have created the idea of a Fortress Europe for economic migrants, making it difficult for political refugees as well.

## DATA ANALYSES

### *Territorial context on migration crisis*

A better understanding of the size, composition and grounds of the recent immigration inflows in Europe, might be necessary for EU to react in an adequate manner and to prepare long-term effective policies. This section of the paper navigates through different type of data retrieved from Eurostat, Frontex, Asylum Information Database, and UNHCR Statistical Online Population Database. In addition to that an extensive analyze will be conducted by the author by comparing the behavior of refugees and economic migrants by considering their push factors, states of origin, destination states and the number of individuals given asylum within EU. In author’s knowledge, these features might indirectly suggest to the public the real motives behind these worrying migration patterns towards Europe.

Firstly, several push factors are believed to have encouraged or forced people to leave their home states. They are mainly of political nature, related to a lack of security, notably the presence of war and death for states like Syria and Iraq and the security challenges in Afghanistan.

According to the UNHCR, displacement from wars, conflict, and persecution worldwide is at the

highest levels ever recorded with 60 million people in 2014.<sup>19</sup> Among states with the highest number of migrants leaving the state are Syria, who is in its seventh year of civil war, with 3.9 millions of migrant in 2014, followed by Afghanistan (2.6 millions) and Somalia (1.1 million). Moreover, in 2015, Eurostat data report that the main states of origin of refugees are again Syria, Afghanistan and Iraq, where lack of security, civil war and high death rate might be among the main push factors (figure 1). Other states from where a high number of refugees are coming are Albania, Kosovo, Pakistan and Eritrea.<sup>20</sup> Continuous statistics show that Syria remains the first in the list of origin state of asylum seeker in EU. Furthermore in 2016 UNHCR global trends show that more than half (55 per cent) of all refugees worldwide came from just three states: Syrian Arab Republic (5.5 million), Afghanistan (2.5 million), South Sudan (1.4 million).<sup>21</sup> Among the push factors of Syrian refugees are the feelings of uncertainty about the future, the miserable living conditions, causing them desperation and loss of hope, which is generated from the war. In states facing war like Syria, Iraq, the aid programs for refugees and host communities in the region have decreased by the shortages of funds. This statistics suggest that the migration flux was concentrated between 2012 and 2015, driven mainly by the conflicts in Syria, in Iraq and Yemen, as well as in sub-Saharan Africa and the Democratic Republic of Congo.

In conclusion, by the states of origin, and the definition of refugees under Article 1(A) of the Geneva Convention on Refugees these statistics could suggest that refugees coming from states like Syria, Iraq, Congo or Afghanistan are forced to flee war and prosecution. The wars, conflicts and the fear of life are among their push factors to leave their unsafe state. The same cannot be

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<sup>19</sup> UNHCR Statistical Online Population Database, available: <http://www.unhcr.org/statistics/state/45c06c662/unhcrstatistical-online-population-database-sources-methodsdata-considerations.html>

<sup>20</sup> EUROSTAT

<sup>21</sup> UNHCR > GLOBAL TRENDS 2016

said for asylum seekers coming from Albania, Kosovo after 2015, by considering that these states are considered safe counties by UNHCR where the human rights and the rule of law is respected.<sup>22</sup> Albania's emigration rates rank among the highest in the world in proportion to the population, with more than 1.25 million in 2014, according to UN Department of Economic and Social Affairs data. According to Migration Policy Institute, Albanians consider emigration as the only possibility to escape the state's low economic and chaotic political situation.<sup>23</sup>

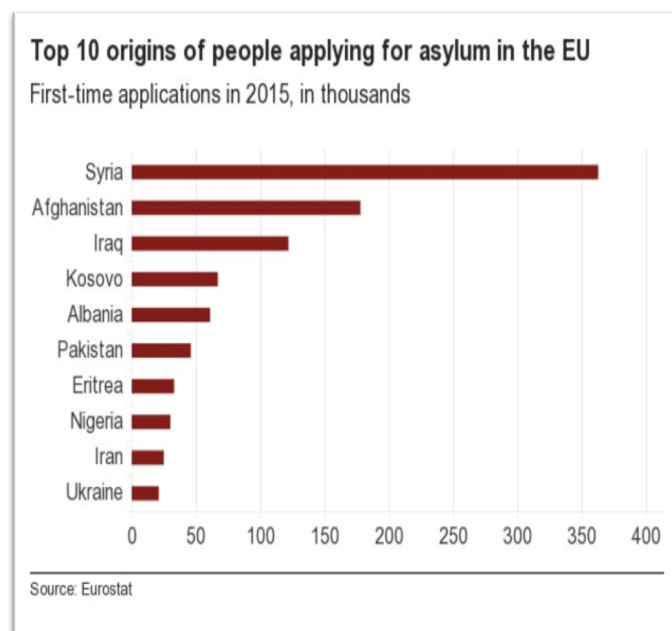


Figure 1

<sup>22</sup>UNHCR (1992) Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 protocol relating the Status of Refugees.

<sup>23</sup>Barjaba. K and Barjaba.J, "Embracing Emigration: The Migration-Development Nexus in Albania". 2015

### *Routes of Migration and Destination States*

These refugees fearing prosecution arrive to their destinations through difficult routes endangering their lives, and once they are, there some of them are, after the reception procedures, granted asylum or temporary protection. In the majority of the cases for them, it is impossible, and they are unwilling, to return to their state of origin for the main reasons that encouraged them to leave. According to Frontex, the European Boarder and Coast Guard Agency, main migratory routes into the European Union through land and sea are: Western African route; Western Mediterranean route; Central Mediterranean route; Apulia and Calabria route; Circular route from Albania to Greece; Western Balkan route; Eastern Mediterranean route Eastern Borders route ; Schengen area; Schengen associate states (figure 1).<sup>24</sup> The most problematic and most frequent routs are the Mediterranean Routes that connect African and Asian states with Italy and Greece since it is among the most flexible route used by human smugglers taking advantage of the EU member States obligation of non-refoulment in extraterritorial jurisdiction<sup>25</sup> (figure 1). Many refugees lose their life in their intent to escape prosecution, although fewer refugees have drowned in 2017 compared with 2016, mostly among those who come from the Libyan coast. According to IOM

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<sup>24</sup>Frontex, Main migratory routes in EU/ Land and Sea

<sup>25</sup> The Protocol against Smuggling of Migrants against Transnational Organized Crimes

<b>DEATHS IN THE MEDITERRANEAN(Source IOM)</b>	
<b>Year</b>	<b>Death</b>
<b>2014</b>	3279
<b>2015</b>	3784
<b>2016</b>	5143
<b>January 2017</b>	3262

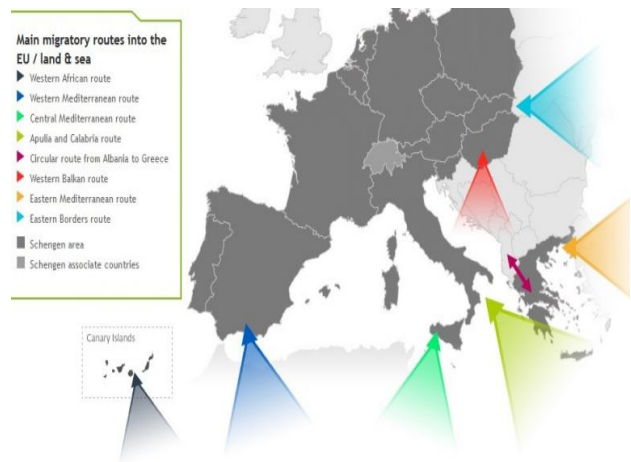
2,550 refugees and migrants died from January 1 to September 13, 2017, compared with 3,262 from the same period in 2016. The risk undertaken is high and a reasonable person would not take off for a route that might endanger his life and of his family. By considering this, we can see that people fleeing their countries are doing so because the fear for persecution is real and well funded and because the persecution is so severe that they are willing to risk their lives just to escape the conditions of their country of origin. Economic migrants from within Europe use the Schengen route by land and by air, which is a more

secure way. So if we consider their migratory routes through which they approach EU it might be implied that the routes they undertake in some cases reflect the seriousness of their motives to seeking asylum.

In addition, among the favorite destination States in EU are Germany, UK, Sweden and France because they provide high levels of protection and have proved to be the most “welcoming ” States by granting asylum to 292.540 Refugees in 2015 (figure 4). While in 2016 EU Member States granted protection to more than 700 000-asylum seekers from whom over half of the beneficiaries were Syrians. In addition, in 2016 among the nationalities that received the refugee status in the EU were Syrians (405 600 persons, or 57% of the total number of persons granted



protection status in the EU Member States), followed by citizens from Iraq(65 800 or 9%) and Afghanistan (61 800 or 9%)<sup>26</sup>.



Source: Frontex operational Figure 2

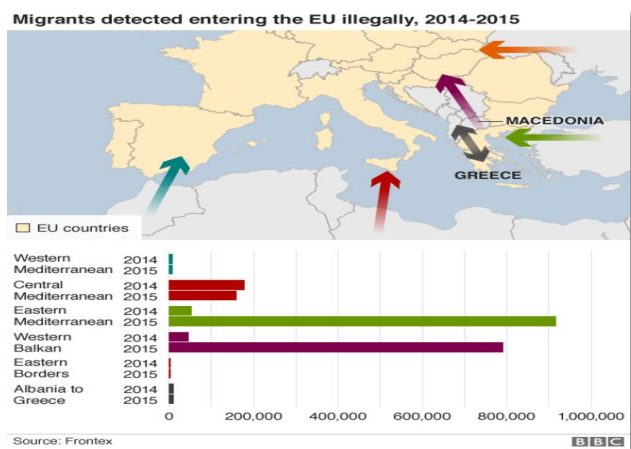


Figure 3

<sup>26</sup> EUROSTAT, 70/2017 - 26 April 2017

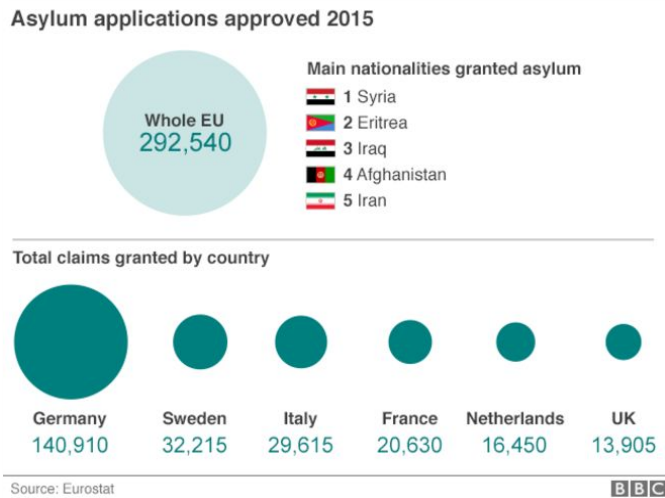


Figure 4

## RIGHT TO ASYLUM AS A CONSTITUTIONAL RIGHT

Asylum is the right of every individual, who fears persecution in his country of origin, to seek protection from a foreign state. Asylum is among the most important international law concepts. Asylum and refugee status are different categories since asylum is the institution for protection while refugees are the individuals who benefit this protection. This comparison underlines the importance of the right to asylum among national constitution of the states of the Council of Europe. The inclusion of asylum into the constitutions of these states gives the right to asylum a normative nature. The approval to sign UDHR, ECHR and the Geneva Convention of Refugees imposes an obligation to these states after their transposition into the national law. Since the right to asylum features in a considerable number of these states constitutions suggests that asylum constitutes a general principle of International law followed by all the states towards the individuals seeking protection. The author considers this comparison relevant since Europe is the focus of this paper, and since not all the states affected by refugee crises are EU members. To facilitate the comparison for the reader the author prepared a table composed by the Members

States where the “right to asylum” is included in the constitution and the Member States where it is not included in the constitution. Furthermore, being a CoE member state and having ECHR as governing legislation it is important to consider the importance they give to this right, since ECHR provides important concepts of indirect protection of refugees, in compliance with European Court of Human Right case law.

Germany who is the state who hosts the highest number of refugees, compared to all other states of the CoE<sup>27</sup>, the right to asylum is given only to persecuted individuals for political ideology<sup>28</sup>. Furthermore, the second paragraph of article 16/a/2 of German Basic Law provides as follows:

“Paragraph (1) of this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. The states outside the European Communities to which the criteria of the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat. In the cases specified in the first sentence of this paragraph, measures to terminate an applicant’s stay may be implemented without regard to any legal challenge that may have been instituted against them.”

While there are states like Italy that grants to asylum seekers a high protection of fundamental rights within CoE<sup>29</sup>, in article 10 it claims that Italian legislation is in conformity to the general principles of international law.<sup>30</sup> As such, the third paragraph of article 10 of Italian Constitution provides that:

“A foreigner who, in his home state, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence.”

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<sup>27</sup> Council of Europe

<sup>28</sup> *Germany: Basic Law for the Federal Republic of Germany*, Article 16a [Right of asylum] (1) “Persons persecuted on political grounds shall have the right of asylum.”

<sup>29</sup> Council of Europe

<sup>30</sup> Art. 10 “The Italian legal system conforms to the generally recognized principles of international law”. Italian Constitution

Moreover, the right to asylum is not only recognized for political grounds, but also as guarantee of the democratic constitutional freedoms in Italy. What might be interesting is that only Austrian constitution provides details of rulings that establish the Asylum Court, but nothing has been established regarding the ‘right to asylum’. Contrary to Austria, the Constitution of Spain in article 13 paragraph 4 rules that the law shall lay down the terms under which citizens from other states and stateless persons may enjoy the right to asylum.<sup>31</sup> The same approach is followed by Poland whose constitution provides that the right to asylum must be regulation by national statute in accordance with the international agreements signed by the State.

States like Albania, Montenegro, Macedonia, Russia, Serbia and Switzerland, which for different reasons are not EU member States, include the right of asylum into their constitution. Serbian constitution in article 57 provides a similar definition for refugees with that of the UNHCR Convention related to the Status of Refugees by claiming:

“Any foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the Republic of Serbia. The procedure for granting asylum shall be regulated by the law.”

While 25 States of the Council of Europe recognize the Right to asylum as a constitutional right, in accordance with its imperative nature as an international fundamental human right, there are 21 states, which do not include it at their constitution. Except United Kingdom’s absence of a central written constitution, states like Belgium, Cyprus, Denmark, Estonia, Greece, Finland, Ireland, Netherlands, Malta, Latvia, Lithuania, Luxemburg and Slovakia, the constitutional right for asylum is not granted in these states. The absence of right to asylum as a constitutional rule does not suggest that these states do not grant asylum to individuals who need their protection.

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<sup>31</sup>Section 13/4. “The law shall lay down the terms under which citizens from other states and stateless persons may enjoy the right to asylum in Spain”. Constitution of the Kingdom of Spain

Greece is reported to have received a total number of 51.019 applications for asylum in 2016.<sup>32</sup> Even though in Greece, the right to asylum is not included in the constitution. The main law relevant to asylum procedures dealing with the high number of application is the “Law 4375/2016 “Organization and functioning of the Asylum Service, Appeals Authority, Reception and Identification Service, establishment of General Secretariat for Reception”. This law complies with the EU “Directive 2013/32/EU of the European Parliament and of the Council ‘on common procedures for granting and withdrawing international protection’”.

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<sup>32</sup>Asylum Service, Statistical data, available at: [http://asylo.gov.gr/en/?page\\_id=370](http://asylo.gov.gr/en/?page_id=370).

<b>RIGHT TO ASYLUM AT COUNCIL OF EUROPE MEMBER STATES</b>	
<b><u>INCLUDED IN THE CONSTITUTION</u></b>	<b><u>NOT INCLUDED IN THE CONSTITUTION</u></b>
Albania(article 40)	Andorra
Armenia(article 55)	Belgium
Austria(article 129)	Cyprus
Azerbaijan(article 70)	Denmark
Bosnia & Herzegovina(article )	Estonia
Bulgaria(article 1/f)	Finland
Croatia (article 33)	Greece
France(article 53/1)	Ireland
Georgia(article 47)	Iceland
Hungary(article 15)	Latvia
Italy(article 10)	Liechtenstein
Czech Republic(article 43)	Lithuania
Moldova (article 19)	Luxembourg
Montenegro(article 44)	Malta
Poland(article 56)	Monaco
Portugal(article 33)	Norway
Romania (article 18)	Netherlands
Russia(article 63)	United Kingdom(No central/written constitution)
Saint Marino(article 1)	Slovakia
Serbia(article 57)	Sweden
Slovenia (article 48)	Turkey
Spain (article 43)	Ukraine
Germany (article 16)	
Macedonia(article 29)	
Switzerland(article 121)	

## CONCLUSION

In conclusion, we can see that refugees have existed as long as history, with evidences of asylum as an institution in Greece, Ancient Rome, and the protection under Christian Church. This protection has evolved, throughout the centuries and first became a fundamental human right provided by UDHR in 1949. Relying on article 14 UDHR in 1951 United Nations and UNHCR enforced the first international convention dedicated exclusively to refugees.

Article 1(A) of the 1951 Geneva Convention for Refugees, provides definition of who is classified as a refugee. Under this article an individual who flees his country of origin driven by a well founded fear of prosecution for reason of religious, race, nationality, social and political beliefs shall be granted the right of protection from all the states that have ratified the convention.

This convention provides international protection for refugees, but excludes from this right all the people fleeing their countries for exclusive economic reasons. Among their push factor are better living conditions, better job opportunities, and economic prosperity. Through the interpretation of their motivations, the author can deduct that they do not fear direct prosecution as political refugees do but nowadays drawing the line between a refugee and economic migrant has become increasingly difficult. Economic migrants that are driven to leave their countries by progressive government negligence this deriving to inhuman leaving condition and indirectly qualifying them as persecuted person.

The data retrieved from Eurostat and Frontex report worrying numbers of asylum application, which have exponentially increased in the last 5 years. The biggest numbers of asylum seekers are reported to be Syrian Nationals followed by Afghanistan and Iraq in 2015. Although the majority of asylum application are from countries facing war and conflicts, statistics show that a

significant number of application is coming by countries like Albania or Kosovo that are considered safe countries.

Moreover, the routes of migrations chosen frequently by the asylum seeker are the Mediterranean route by sea and the Schengen route by land and by air. Taking into consideration the level of danger that the Mediterranean route represents and the increasing number of deaths reported by IOM in this route we can understand that the migrants choosing this route are in a real fear for their lives in their country of origin that they are willing to risk their lives for reaching EU.

Among the favorite destinations to apply for asylum are Germany, France, Sweden and UK since they are among the countries who grant the highest number of refugee statuses in EU.

Finally, this paper provides the reader with a comparative annex of the right to asylum in the 47 constitutions of the Member States of Council of Europe. The table shows the states, which have reserved in their constitution the right to asylum and those that do not include it. This comparison shows that Italy is among the CoE State that gives the highest degree of protection to asylum seekers while Germany recognizes this right to political refugees. Contrary to them, Greece is among the states where the right to asylum is not a constitutional right but it receives some of the highest number of refugees in Europe, and ensures their protection in line with all the international treaties it has ratified as an EU and CoE Member State.

To conclude, in the author's opinion even though the difference between refugees and economic migrant is difficult to distinguish and many individuals are abusing with the European States' obligation to provide international protection for refugees. It is required that the instruments to control and effectively check all the asylum claims should be more strict in their requirements and more extensive in the research of evidences to proof the motives of asylum claims. By



doing so the refugees who are fleeing persecution and a well founded fear for their life will receive the protection they are entitled by the Geneva Convention of Refugees and the individuals who abuse driven by exclusive economic reasons to be excluded from this protection. All these restrictive measures are necessary to ensure a sustainable development of the demography of Europe and the states of origin that are suffering massive loss of their citizens. To make it evident the key differences between economic migrants and refugees consult with the table provided below by the author.

REFUGEES	ECONOMIC MIGRANTS
Article 1(A) Geneva Convention on Refugees	No legal definition
Well founded fear of Persecution	person who voluntarily leaves his state
Race/religion/nationality/membership of a social group/ political opinion	Exclusively economic reasons
unable / unwilling to return to it	Not willing to return
Life uncertainty/lose of hope/ Low living conditions/death	Economic improvement/Improve their lives/finding work/ better education
Outside the state of nationality	States with high level of prosperity/ low unemployment rate
By sea, Mediterranean Routes	By land, by air, Schengen route
YES international Protection	NO international Protection
Prohibition of Non-Refoulement	Immediate return
Cannot safely return home	Safely return home/protected by government
Yes constitutional Right	No constitutional right

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# The Correlation between Terrorism and Refugees

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By XXXX

**Supervisor:** Dr. Denard Veshi

Paper in 'Refugee Law'

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## **1. Abstract**

This paper will analyze different theories of relation between refugees and terrorism. First of all, the concept of terrorism is elaborated referencing international conventions as well as in the light of the 1951 Refugee Convention by assessing how allegations of terrorism and exclusion are related. Most important, the exclusion clauses are of an exceptional nature and need to be applied restrictively. A connection between refugees and terrorism is presumed because first, there is much possibility that terrorists use refugee flows and route to enter into the European Union borders. Second, refugees are prone to radicalization and recruitment due to their refugee experience and the hardships they experience even in their host country. The refugee experience matches the preconditions of terrorism, with the same trends being threat of violence, inability to protect human rights, geographic isolation and lack of integration, which contribute seriously to the extreme poverty of refugees. Due to these hardships, refugees experience in camps, there is an increase in possibility of harboring resentment towards their host country, thus enabling them to participate in terrorist activities.

**2. Key words:** Refugees, Asylum Seekers, Refugee experience, Terrorism, Exclusion clauses,



### 3.Introduction

The aftermath of the terrorist attacks of 9/11 left the world with feelings of vulnerability, given the perception that the hijackers exploited open and liberal societies to commit their heinous acts. This has been used in the name of security to further limit an already restrictive climate for refugees and asylum seekers. After 11 September, the Security Council resolved that 'any' act of international terrorism constitutes a threat to international peace and security.<sup>1</sup> This word formulation indicates that, in the aftermath of such terrorist disaster, the Council hardened its attitude in response to terrorism. Previously, the Council had only found that such acts 'may' or 'could' threaten peace and security,<sup>2</sup> thus reserving to itself the discretion to characterize some terrorist acts as international threats and others as not so serious. After this Resolution, there is a clear indication of general international shift towards militarized responses to terrorism, although the Council did not expressly authorize the use of force against terrorism even after 11 September.

In immigration law, definitions of terrorism may permit non-citizens suspected of terrorist activities to be indefinitely detained in circumstances where deportation is not possible.<sup>3</sup> There has also been a drift towards the automatic exclusion of terrorists from refugee status, even though terrorist offences have not been defined and may not always amount to serious crimes within the meaning of refugee law.<sup>4</sup>

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<sup>1</sup> UNSC Res. 1368 (2001), para. 1.

<sup>2</sup> UNSC Res. 1269 (1999), para. 1.

<sup>3</sup> Anti-Terrorism, Crime and Security Act 2001 (UK), ss. 21-33; *A v. Secretary of State for the Home Department* [2002] EWCA Civ 1502, (2002) 99(46) LSG 33, (2002) 146 SJLB 246. For instance, as a result of the international prohibition on returning a person to a place of torture.

<sup>4</sup> See European Council on Refugees and Exiles (ECRE), 'Comments on the Commission Working Document on the relationship between safeguarding internal security and complying with international protection obligations and instruments' (London 2002); UNHCR, (Department of International Protection). 'Preliminary Observations:

Although no refugees or asylum seekers were among the 19 hijackers, the attacks have fuelled public perceptions of refugees as criminals and undesirable elements in society.<sup>5</sup> But, on the contrary, according to Ruud Lubbers, it is the refugee who is often the first victim of persecution and terror. The principle of asylum is one of the cornerstones of a democratic society, thus creating a difficult challenge for governments to apply it, while at the same time taking measures which are necessary to protect citizens and institutions. Recent months have seen an increasing tendency to link refugees and asylum seekers with acts of terrorism. UN Security Council Resolution 1373<sup>6</sup> (adopted on 28 September 2001), the foundation of the international community's response to the terrorism threat in the aftermath of 11 September, twice makes explicit reference to the need to safeguard the system of international refugee protection from abuse by terrorists. This reinforces the perception that the institution of asylum is somehow a terrorist's refuge.<sup>7</sup> It has, in turn, generated a wave of new and restrictive laws and regulations at a national level.

#### **4. Terrorism Definition**

As has often been stated, 'one man's terrorist is another man's freedom fighter'. While the international community was united in its condemnation of the events of 11 September as the worst form of terrorism, its aftermath has seen the re-ignition of the debate as to what precisely constitutes terrorism.

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European Commission Proposal for a Council Framework Decision on Combating Terrorism' (Geneva 2001), para. 2.

<sup>5</sup> Zard, M. (2002) 'Exclusion, terrorism and the refugee convention', *Forced Migration Review*, (13), 32-34.

<sup>6</sup> This follows a line of earlier resolutions, most notably a 1996 Resolution by the General Assembly on Measures to Eliminate International Terrorism and its annex, a Declaration to supplement the 1994 Declaration on Measures to Eliminate International Terrorism A/Res/51/210 of 17 December 1996.

<sup>7</sup> M. Zard (2002), cited above.

There has been considerable pressure to exclude terrorists from asylum, which can be interpreted to originate from different declarations of UN bodies and even the UNCHR.<sup>8</sup> To carry out this task, one should first define terrorism, which in turn is very problematic, as there is no internationally accepted legal definition of terrorism. Moreover, terrorism is not one of the grounds of exclusion listed in Article 1(F) of the 1951 Refugee Convention.<sup>9</sup> Instead, the international community has taken a functional approach, by listing specific acts which can amount to terrorism.<sup>10</sup> These specific acts include hijacking, hostage taking, bombing and financing terrorist offences.<sup>11</sup> For these acts, the motives of the perpetrators are irrelevant for the purposes of the conventions.<sup>12</sup> The functional approach to defining terrorism reveals the difficulty of addressing its root complexities.

#### **4.1 Terrorism in International Conventions**

A connection between terrorism and refugees has been made by United Nations resolutions and directives. In 1997, the General Assembly passed a declaration that expressly linked terrorism to refugees, by urging states to take measures in order to identify if the claimant had participated in terrorists acts before granting him refugee status or asylum.<sup>13</sup> The same can be seen in the Security Council's Resolution 1373 on 28 September 2001, which urged states to ensure an abuse of the refugee status is not used by the perpetrators, organizers or facilitators of terrorist

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<sup>8</sup> B. Saul, 'Exclusion of Suspected Terrorists from Asylum: Trends in International and European Refugee Law', IIS Discussion Paper No. 26, July 2004.

<sup>9</sup> The 1946 Constitution of the International Refugee Organization excluded 'persons who participated in any terrorist organization'. As Saul points out, the drafters of the 1951 Convention decided not to explicitly exclude terrorists

<sup>10</sup> S. Aiken, 'Of Gods and Monsters: National Security and Canadian Refugee Policy' (2001) 14 *RQD Int'l* 7, 15.

<sup>11</sup> Asha Kaushal and Catherine Dauvergne, *The Growing Culture of Exclusion: Trends in Canadian Refugee Exclusions*, 2011, *International Journal of Refugee Law*, Oxford University Press

<sup>12</sup> P. J. van Krieken, 'Introduction' in P. J. van Krieken (ed.), *Refugee Law in Context: the Exclusion Clause* (The Hague: TMC Asser Press, 1999), n. 15, 37, n. 55

<sup>13</sup> Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, 49/60 of 9 Dec. 1994, annexed to General Assembly Resolution 51/210 (A/RES/51/210, 17 Dec. 1996), para. 3. See also, SC res. 1269 (S/RES/1269, 19 Oct. 1999).

acts.<sup>14</sup> Less than two months later, the Security Council reiterated that any form of support for terrorism is contrary to the purposes and principles of the Charter of the United Nations.<sup>15</sup>

Even though a relationship was alluded between terrorism and refugees, no definition of terrorism was provided. One can even argue that these resolutions only reinforced the perception that ‘the institution of asylum is somehow a terrorist’s refuge’.<sup>16</sup> This doesn’t make much sense, as it would not be the most obvious choice for a terrorist to apply for asylum or refugee status because of the degree of scrutiny they would have to go through.<sup>17</sup> Having no definition on terrorism consequently can fit it into any category of exclusion. This international lacuna means that legislation that has been adopted at the national level has tended to employ broad and far-reaching definitions of terrorism. Such measures create the potential for bona fide refugees to find themselves unable to access international refugee protection. The ambiguity of such terminology holds open the possibility that asylum seekers may find themselves labeled as terrorist on account of their political, ethnic or religious affiliations or ties. As one commentator has noted, “... the contemporary definition of terrorism or threat to national security can mean everything or nothing...”<sup>18</sup>

## **4.2 Terrorism and the 1951 Refugee Convention**

Even though there is no mention of terrorism as one of the causes of exclusion, most often in this cases, article 1F(a) for ‘crime against humanity’<sup>19</sup> or 1F(c) for committing acts contrary to the

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<sup>14</sup> SC res. 1373 (S/RES/1373, 28 Sept. 2001).

<sup>15</sup> SC res. 1377 (S/RES/1377, 12 Nov. 2001).

<sup>16</sup> M. Zard, 2002, pg. 32.

<sup>17</sup> C. Dauvergne, ‘Evaluating Canada’s New Immigration Act’ (2003) 41 *Alta. L. Rev.* 725

<sup>18</sup> Memorandum Submitted by Nicholas Blake QC to the Select Committee on Home Affairs of the House of Commons, 15 November 2001 at para 13.

<sup>19</sup> Article 1F(a) of the 1951 Refugee Convention: The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a

purposes and principles of the UN<sup>20</sup>, are invoked. Given the general nature of these provisions, the UNHCR has advised that these articles are restrictively interpreted.<sup>21</sup> The adoption in November 2002 of Security Council Resolution 1377, which notes that acts of international terrorism are contrary to the purposes and principles of the UN Charter, is likely to lead to a significant expansion in the use of this clause to exclude refugees accused of terrorism.<sup>22</sup>

The exclusion clause which has traditionally been of most relevance in the battle against terrorism is Article 1F(b) which bars from the protection of international refugee law those who have committed serious nonpolitical crimes outside the country of asylum.<sup>23</sup>

Interpreting and applying this provision is one of the most complex challenges facing decision makers today, while trying to respect one of the central objective of the Refugee Convention which is the protection of those politically persecuted. In determining whether an offence is 'political' and therefore exempt from exclusion, all the elements of a case are considered, including the grounds for inclusion as well the grounds for exclusion.<sup>24</sup> A comprehensive examination of all the circumstances of an asylum claim allows the decision maker to place any allegations of criminal conduct and accusations of terrorism in full context. This approach was most recently reaffirmed by the Global Consultations process, which asserted the need for a holistic approach to the application of the exclusion clauses.<sup>25</sup>

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war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

<sup>20</sup> Article 1F(c) of the 1951 Refugee Convention: (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

<sup>21</sup> UNHCR 'Note on the Principle of Non-refoulement,' UN doc. EC/SCP/2, August 1997.

<sup>22</sup> Security Council Resolution 1377 (S/RES/1377, 12 Nov. 2001).

<sup>23</sup> M. Zard, 2002, pg. 34.

<sup>24</sup> B. Saul, 'International Terrorism as a European Crime: The Policy Rationale for Criminalization', *European Journal of Crime, Criminal Law and Criminal Justice Volume 11, Issue 4*, Research Article, 2003

<sup>25</sup> See Summary Conclusions of Lisbon Expert Roundtable of 3-4 May 2001, 30 May 2001 EC/GC/01/2track/1.

An EU Commission Working Document of December 2001<sup>26</sup> foreshadowed a linkage between the definition of terrorism in the EU Framework Decision and the application and interpretation of the exclusion from asylum clauses in the 1951 Refugee Convention.<sup>27</sup> Basically, the Document provided no avenue in the territory of the EU MS for those supporting or committing terrorist acts.<sup>28</sup> The Commission argued for a more rigorous application of the exclusion clauses when giving asylum status, even though it accepted that terrorists are more likely to pursue illegal migration channels rather than using asylum procedures.

Crucially, the Working Document notes that a common EU definition of terrorist offences 'may be a basis for relying on Article 1(F)(b)' as well as being 'a helpful way of illuminating UN standards of ... "terrorist acts", and hence serve as an interpretative aid to application of Article 1(F)(a) or 1(F)(c)'.<sup>29</sup> The standard of proof in exclusion procedures is lower than in criminal proceedings, since a State need only show that there are 'serious reasons for considering' that a person has committed terrorist crimes."<sup>30</sup>

The linkage of terrorist offences to the grounds for exclusion under the Refugee Convention may also affect the re-examination and cancellation of refugee status after it has been granted.<sup>31</sup> This may have implications for the treatment of suspected terrorists, who may subsequently be

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<sup>26</sup> EC Commission, Working Document: The relationship between safeguarding internal security and complying with international protection obligations and instruments, Brussels, 5 December 2001, COM(2001) 743 final. The Working Document was issued in response to Conclusion 29 of the Extraordinary Justice and Home Affairs Council Meeting of 20 September 2001, a meeting following the 11 September 2001 terrorist attacks on the US. In that Conclusion the Council asked the Commission 'to examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments'.

<sup>27</sup> Convention relating to the Status of Refugees (189 UNTS 137, adopted 28 July 1951, entered into force 22 April 1954), Arts. 1(F)(a)-(c).

<sup>28</sup> EC Commission, Communication on the Common Asylum Policy, *loc. cit.*, para. G.

<sup>29</sup> Commission Working Document, *loc. cit.*, para. 1.1.2.

<sup>30</sup> Commission Working Document, *loc. cit.*, para. 1.4.4.

<sup>31</sup> Commission Working Document, *loc. cit.*, paras. 1.2, 1.2.1.

detained, prosecuted or extradited.<sup>32</sup> Further, where a refugee has committed a terrorist act which amounts to a serious crime on the territory of the country of refuge, the protection against refoulement may be withdrawn<sup>33</sup>.<sup>126</sup> Article 32(1) of the Refugee Convention permits States to lawfully expel refugees from their territory on grounds of national security or public order. Article 33 (2) provides that the benefit of non-refoulement 'may not, however, be claimed by a refugee for whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country'.

The European Council on Refugees and Exiles and the UNCHR have similarly argued that the exclusion clauses are of an exceptional nature and they need to be applied restrictively so they do not become another avenue by which deserving cases are denied access to international protection'.<sup>34</sup>

## **5. Europe's Refugee Crisis and the Threat of Terrorism**

There are two main views on the complex intersection between Europe's refugee situation and terrorism. Firstly, there are those who consider refugees as the Islamic State's 'psychological weapon' that argue the closure of the borders is a necessity for Europe to be safer from terrorism.<sup>35</sup> On the other hand, such claims are opposed by the international humanitarian organizations by emphasizing the fact that refugees themselves are trying to flee from terrorism

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<sup>32</sup>Commission Working Document, *loc. cit.*, paras. 1.6, 2.1, 15 2.4.

<sup>33</sup> Commission Working Document, *loc. cit.*, para. 1.3.

<sup>34</sup>M. Zard, 2002, pg. 32.

<sup>35</sup> Europe's Refugee Crisis and the Threat of Terrorism – An Extraordinary Threat?, (2017), *Danish Institute for International Studies*

rather than engaging with it. A report of the United Nations Special Rapporteur<sup>36</sup> on counter-terrorism and human rights in 2016 concluded that not only was there no evidence that migration leads to increased terrorist activity, but this perception could produce policies that can in turn violate human rights and create conditions conducive to terrorism. This could cause a growing resentment of migrants towards their receiving country, which combined with the attempts of Islamic extremists to infiltrate refugees and asylum- seekers, can create an environment of fear that could strengthen the potential for radicalization and recruitment of migrants in terrorist organizations.<sup>37</sup> Despite this potential relation of refugees and terrorism, there is also the possibility that not refugees themselves engage in terrorist acts, but rather that their routes and migration flow is used by terrorist to enter undetected in the EU.

## **5.1 Refugees prone to radicalization and recruitment**

According to the Danish Institute of International Studies report on Europe's Refugee Crisis <sup>38</sup>, in 2015, the EU received almost 1.3 million asylum applications, of which nearly half a million were from Syrian citizens and the other half from citizens from Iraq, Afghanistan, Nigeria and Pakistan. Since in 2015, the most part of deaths from terrorist attacks took place in these countries of origin, a clear connection can be made between the activities of terrorist organizations and the EU's refugee situation. The December 2016 Europol report, *Changes in Modus Operandi* of IS revisited, presented the possibility of elements of the Syrian diaspora becoming vulnerable to radicalization through hostile conditions in Europe as 'a real and imminent danger'.<sup>39</sup> Although the ability of terrorist organizations to recruit and weaponize

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<sup>36</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/71/384), para.10.

<sup>37</sup> Le Galès, Patrick and Desmond King, *Reconfiguring European States in Crisis*, Oxford University Press, 2017.

<sup>38</sup> Europe's Refugee Crisis and the Threat of Terrorism – An Extraordinary Threat?, page 14-15

<sup>39</sup> Europol, 2016, 'Changes I Modus Operandi of Islamic State Revisited', page 9.



refugees should not be underestimated, it doesn't pose as much as a real threat as it poses a range of exploitable opportunities for the terrorist organizations to provoke political and social polarization.<sup>40</sup> The idea that refugees constitute 'a Trojan horse' of potential terrorists appears exaggerated, if not completely unfounded. Rather, it was European citizens who had joined IS or al Qaeda in Syria who were responsible for the majority of attacks and casualties in Europe in 2015 and 2016.<sup>41</sup>

## **5.2. Refugee flow as a back door to EU**

As the refugee crisis was becoming more severe in 2015 in Europe, chaotic conditions and a lack of capacity to process asylum seekers at the EU's external borders could provide terrorists with an opportunity to use the refugee flow as a way to enter undetected in the EU. This was confirmed when it was discovered that a large number of the November 2015 Paris attackers had entered the EU using false papers to register as asylum-seekers.<sup>42</sup> Moreover, recent revelations indicate that foreign fighters<sup>43</sup> exploited irregular migration routes to return to Europe undetected.<sup>44</sup> This posits a link between migration flows and terrorism. However this doesn't mean that increased refugee intakes equals an increased risk of terrorism, rather than a lack of officials' capacity to detect foreign fighters or terrorists and to separate them from genuine refugees.

The fact that foreign fighters and potential terrorists use the refugee flows to enter into Europe can make a dangerous link between terrorism and refugees, which would instead risk introducing

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<sup>40</sup> Europe's Refugee Crisis and the Threat of Terrorism, cited above, page 20.

<sup>41</sup> Database of materialized Islamist terrorplots in the West, 2002-2017, *Danish Institute for International Studies*

<sup>42</sup> Jean-Charles Brisard and Kevin Jackson(2016), 'The Islamic State's External Operation and the French-Belgian Nexus', CTC Sentinel, November/ December

<sup>43</sup> A person who has traveled or migrated to another country to fight

<sup>44</sup> Europe's Refugee Crisis and the Threat of Terrorism, page 26.

extraordinary measures that place too much trust in the effectiveness of border control<sup>45</sup>. It could also result in the using of the exclusion clauses dangerously and affecting refugees who are themselves trying to escape the problematic situation of their home country. A key vulnerability in relation to terrorist suspects appears to be a lack of technological capacity to use and cross-check suspects with information-sharing resources within the EU. These vulnerabilities can be overcome by the investment in the ordinary and operational management of external borders as a joint rather than a national project.<sup>46</sup> Not only will they be beneficial in identifying potential terrorist or returning foreign fighters, but they will also help in never compromising the protection of refugees in need.

## **6. The Effect of the Refugee Experience on Terrorist Activity**

Despite the theory that links refugees to terrorists as the latter exploit refugee migration flow and routes to enter into the EU and the fact that refugees can be prone to radicalization and recruitment due to their problematic situation, there are other correlations that can be made between the two. According to a Study on the Effect of the Refugee Experience on Terrorist Activity<sup>47</sup>, the preconditions of terrorism match those of the refugee experience in camps. These preconditions, according to Crenshaw, include a set of “concrete grievances” amongst an isolated sub-group within society, as well as a lack of opportunities for political participation available to a population.<sup>48</sup> Both of these factors would be considered relevant to the refugee experience, whose common trends are threat of violence, inability to protect human rights, geographic

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<sup>45</sup> ‘Border management’ is a broad term, covering state, EU and private guards. It matters who the border agents are, as accountability is more difficult when control functions are outsourced by state authorities to private companies. Cf. Thomas Gammeltoft- Hansen and Ninna Nyeberg Sorensen (2013), *The Migration Industry and the Commercialization of Internal Migration*, Oxford: Routledge

<sup>46</sup> Europe's Refugee Crisis and the Threat of Terrorism, page 43.

<sup>47</sup> Ekey, A. (2008). The Effect of the Refugee Experience On Terrorist Activity. *Journal of Politics & International Affairs*, pages 4-11

<sup>48</sup> Crenshaw, Martha. “The Causes of Terrorism.” *Comparative Politics* 13 July 1981 397-399

isolation and lack of integration, which contribute seriously to the extreme poverty of refugees.<sup>49</sup>

Refugees living in camps have little access to jobs and are commonly entirely dependent on aid from agencies such as the UNHCR.<sup>50</sup> Using this theoretical framework of preconditions, it can be argued that the refugee experience can “precondition” terrorism.

The low rate of successful integration of refugees in the social structure of their country can as well make them prone to terrorist recruitment. The UNHCR has declared that refugees in only 6 of the 38 non-Palestinian conflicts have integrated into the economic fabric of the country of asylum.<sup>51</sup> This is most likely a result of hostility towards large refugee populations from residents of the asylum country, as well as refugees’ restriction to camps, where access to job markets and the domestic economy is very limited.<sup>52</sup> It is not unreasonable to assume that such physical, cultural, social and economic alienation and desperation would create an environment conducive to terrorist activity, especially when we consider Crenshaw’s preconditions. The Standing Committee on Protracted Refugee<sup>53</sup> situations substantiates that claim when they acknowledged in their 2004 report that:

“a consequence of protracted refugee situations is that they can serve as incubators for future problems... Large, disaffected and alienated populations relying on subsistence-level handouts are prime targets for recruitment into armed groups. And the frustration of being a refugee- of living in squalor and obscurity, and of feeling that injustice continues in

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<sup>49</sup> Crisp, Jeff. “No Solutions in Sight: the Problem of Protracted Refugee Situations in Africa”. Working Paper No. 75 Evaluation and Policy Analysis Unit, UNHCR, Geneva, 2003; Crisp, Jeff. “Refugees and the Global Politics of Asylum.” Evaluation and Policy Analysis Unit, UNHCR, Geneva, 2003; Executive Committee of the High Commissioner’s Programme. “Protracted Refugee Situations, Agenda for Protection.” EC/54/SC/CRP.14 (2004)

<sup>50</sup> Crisp, Jeff. “Refugees and the Global Politics of Asylum.”, cited above

<sup>51</sup> Executive Committee for the High Commissioner’s Programme 2004

<sup>52</sup> Crisp, Jeff. “Refugees and the Global Politics of Asylum.”,

<sup>53</sup> Ekey, A. (2008), cited above, page 15

one's homeland-can lead persons to commit dramatic actions that draw attention to a cause".

The study concluded that an increase in the number of refugees a country hosts leads to an increase in the activities of terrorist groups based in that country, a connection that is weakened when refugee populations receive aid from international humanitarian organizations. The results of this study decisively showed that the world's refugees are an extremely important part of our global community, and that the hardship that almost 25 million people are experiencing around the world today has dangerous implications outside of the humanitarian impact on those populations, which must be mitigated.

## **7. Conclusion**

Many years after the 9/11 attacks, it is much harder for a terrorist to enter the border of the US or EU than it used to be. It is also much harder for everyone else. The near-term security against terrorist attacks has been strengthened, but the longer-term security, which relies on a vibrant economy and on strong relations with the rest of the world, has been compromised. There is a serious risk that, in the name of protecting the country against another terrorist attack, the economic advantage will continue to weaken, damage its diplomacy, and ultimately harm its national security.

Immigration and terrorism have become intertwined to the point where it has become almost impossible to separate them, not only in the political debate but also in the actual policies being implemented. Immigration or refugee law have been governments' preferred weapon, because of the nearly unlimited powers it gave them to keep suspicious people out of the country and to arrest and detain without criminal charge those who were already living here. Managing the risk

of terrorism means exactly what it says, which is accepting that there are risks and that the consequences of trying to eliminate all those risks are worse than learning how to live with them. State's sovereignty is limited when dealing with refugees and immigrants because they are bounded by international law and international Conventions such as the 1951 Refugee Convention. Nevertheless, even the international instruments have started to be applied in a restrictive manner, by using the exclusion clauses of the 1951 Convention to deny asylum or refugee status to everyone who might be a potential terrorist, concerning the general situation more than the individual circumstances.

According to many reports or studies mentioned above, there are correlations to be made between refugees and terrorism, but none of them to clearly indicate that refugees are de facto criminals, therefore being undesired elements in society. It is most important to conclude that refugees are being used by terrorist, being easier to recruit or radicalize due to their experience, or being used as a way to enter borders undetected, rather than refugees themselves being part of terrorist organizations.

Refugee law operates as surrogate human rights protection. It is available to those whose home states will not, or cannot, protect them. As surrogate protection it is not robust: some human rights abuses will not qualify as 'persecution' within refugee law. The protection of refugee law aims at the most serious and discriminatory human rights infringements. To exclude an individual from this 'back up' protection system is a serious step indeed. It amounts to banishment from the community of the 'human' as defined by human rights.

In conclusion, while it is important to acknowledge that States have a legitimate security interest in ensuring that terrorists and other criminals do not take advantage of the system of international protection, it is vital that any measures taken do not undermine the very system itself. The 1951

Convention provides States with the tools through which to ensure that their security interests are reconciled with the interests of those fleeing persecution and terror. Fifty years of refugee law and a proud tradition of providing asylum to those in need, should not be bypassed or short circuited by responses to the events of 11 September.

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# **Balancing national security and protection of the rights of refugees**

By *XXXX*

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Paper in 'Refugee Law'

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## **Abstract**

This research paper focuses on how measures to preserve National Security affect the protection of the rights of refugees in the 21<sup>st</sup> century. Following the recent refugee influx which States found themselves unprepared to address, as well as several terrorist attacks and criminal offenses committed by refugees, refugees are now perceived as a threat to National and Global Security. States and international bodies such as the European Union are undertaking securitization measures to conserve national security from threats it may be subjected to, measures which also serve to the international “war on terror”. These measures sometimes overlap the rights that refugees are granted by international conventions such as the 1951 Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights. In the conclusions, this study aims to present through an analysis of international legal instruments and international literature to what extent National Security and protection of the rights of refugees are balanced.

**Key words:** Refugee, National Security, Global Security, “war on terror”, securitization measures.

## Introduction

The world and the new environment of security have undergone radical changes in the twenty-first century.<sup>1</sup> Recent terrorist attacks have shaken the sense of safety among peoples and thus governments have adopted securitizing policies to preserve national security. The association or engagement of refugees or asylum seekers in these attacks has made them be regarded as a threat to national security by both governments and people.

A refugee is defined as any person 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”.<sup>2</sup> As to national security, no unified definition exists up to date.<sup>3</sup> However, scholars generally agree that national security aims at protecting people and state institutions from military and non-military threats.<sup>4</sup>

The methodology used to address the topic consists of an analysis of written sources. The selected sources comprise international legal documents, peer-reviewed legal, political science and

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<sup>1</sup> Center for Security Studies. (2006). Emerging Threats in the 21st Century: The Changing Threat Environment and Its Implications for Strategic Warning. *Global Futures Council* (p. 10). Zurich: Center for Security Studies. Retrieved from <https://www.files.ethz.ch/isn/28419/EmergingThreatsInThe21stCentury.pdf>.

<sup>2</sup> Paragraph 2 of article 1 of the 1951 Geneva Convention Relating to the Status of Refugees, amended by the 1967 Protocol.

<sup>3</sup> Osisanya, S. (n.d.). *National Security versus Global Security*. Retrieved February 10, 2018, from UN Chronicle: <https://unchronicle.un.org/article/national-security-versus-global-security>.

<sup>4</sup> See for example Williams, P. D. (2008). *Security Studies: An Introduction*. London: Routledge; Makinda, S. M. (1998). Sovereignty and Global Security. *Security Dialogue*, 29(3), 281-292; Human Security Unit. (2009). *Human Security in Theory and Practice*. United Nations Office for the Coordination of Humanitarian Affairs. United Nations. Retrieved from [http://hdr.undp.org/en/media/HS\\_Handbook\\_2009.pdf](http://hdr.undp.org/en/media/HS_Handbook_2009.pdf); and Beres, L. R. (1979). *Terrorism and Global Security: The Nuclear Threat*. Boulder: Westview Press Inc.

sociological articles, as well as reports by governmental institutions and non-governmental organizations.

In addition to the introduction, this research paper consists of five sections. In the first section, I shall attempt to analyze how the concept of security has evolved and the stances adopted by the two major school of thought on this concept. The second section presents the main reasons why refugees are perceived as a threat to national security, while the third section attempts to demonstrate the measures undertaken by states to preserve and protect national security from the said refugee “threat”. Perceived or not as a threat, refugees enjoy rights and protection emanating by several international instruments such as the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol and the Universal Declaration of Human Rights. The fourth section attempts to analyze where the protection of these rights stands as opposed to preservation of national security and which one prevails. Lastly, the conclusion section shall shortly reiterate the findings of this research, as well as present some consideration resulting from the conducted research.

# 1. The evolution of the concept of security and the stances of different schools of thought

The concept of security has been treated by different political science schools of thought, the most prominent of which being the realistic and idealistic doctrines. Among the researchers of international relations that support the realistic approach and those that support the idealistic one has existed a century-long debate regarding the concept of Global Security.<sup>5</sup> After the end of World War I, the idealistic approach was widespread as a result of its support in the creation of the League of Nations, which rose great hopes in the creation of a new order and new international security. Prior to World War II, Global Security was conceptualized almost entirely in connection to matters of war, peace, and armed conflicts.<sup>6</sup> National security included the protection of the nation and its territory from outside attacks or from internal turbulence.<sup>7</sup> Whereas, after World War II, during the forty-five year period of the Cold War, the realist school of thought triumphed, which supported the theory of balancing the power between the United States and the USSR as a method for the administration of power and insecurity. According to the realist approach, if one of the parties attempted to raise its military power, the other party had to counteract with the same action, thus, maintaining a relative equilibrium in a sense.

The end of the ideological, political and military confrontation between the East and the West gave rise to a new vision on security and global peace. The end of the Cold War was not only a kind of renaissance but also a victory for the international liberalism as a consequence of the

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<sup>5</sup> Strohmer, C. (2011). Realism & Idealism. *International Relations* 101, 2. Retrieved February 2, 2018, from [http://www.charlesstrohmer.com/international-relations/international-relations-101/realism-idealism/?upm\\_export=pdf](http://www.charlesstrohmer.com/international-relations/international-relations-101/realism-idealism/?upm_export=pdf).

<sup>6</sup> Bilgin, P., & Williams, P. D. (2010). Global Security. In P. Bilgin, & P. D. Williams, *Global Security and International Political Economy* (p. 7). Paris: Encyclopedia of Life Support Systems.

<sup>7</sup> Mingst, A. K. (2008). *Bazat e Marredhenieve Nderkombetare*. Tirana: AIIS.



universalization of liberal democracy as the best form of human governing.<sup>8</sup> According to this optimistic vision, war and inter-state violence were now relics of the past which would be gradually substituted by a new era of cooperation among state and non-state agents in the guarantee of Global Security.<sup>9</sup>

For many researchers of the field, security is an attestable concept, because, although they agree that security in its essence concerns quarantining threats presented towards the fundamental individual and collective values, they depart in the level of its addressing, in case security is individual, national or international.<sup>10</sup> In the context of the Cold War, security was mainly treated as National Security in the empowerment of the state from a military spectrum in order to guarantee the balancing of power in a bipolar system.<sup>11</sup>

Nowadays, this concept of security has been criticized as highly ethnocentric and limited. Contemporary researchers argue the extension of the concept of National Security as to include environmental, economic, societal and political matter as factors that influence the improvement of peace and stability in both a local and a global context. *Buzan* argues for a vision of security that includes political, economic, societal, environmental and military terms, which must be included in the political agenda of Global Security. According to this vision, national security had to be re-dimensioned in accordance with the dynamics of the changes of the early 90s.<sup>12</sup>

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<sup>8</sup> Fukuyama, F. (1989). *The End of History?* New York: Free Press.

<sup>9</sup> Oatley, C. (2008). *The Changing Security Paradigm: The Post-Cold War World, Globalisation, Ethno-Nationalism and the Effect on Australia's Security*. Sydney: Royal Australian Air Force.

<sup>10</sup> See for example Sorensen, G. (1996). Individual Security and National Security: The State Remains the Principal Problem. *Security Dialogue*, 27(4), 371-386; Signer, P. W. (2001/02). Corporate Warriors: The Rise of the Privatized Military Industry and Its Ramifications for International Security. *International Security*, 26(3), 186-220; and Gleick, P. H. (1993). Water and Conflict: Fresh Water Resources and International Security. *International Security*, 18(1), 78-112.

<sup>11</sup> Leffler, M. P. (1984). The American Conception of National Security and the Beginnings of the Cold War, 1945-48. *The American Historical Review*, 89(2), 346-381; Yergin, D. (1978). *Shattered Peace: The Origins of the Cold War and the National Security State*. Boston.

<sup>12</sup> Buzan, B. (1983). *Peoples, States and Fear*. London: ECPR Press.

The end of the 20<sup>th</sup> century brought deep geopolitical and geostrategic changes. Firstly, the commencement of a fast-paced integration process of the states of Central and Eastern Europe in the structures of NATO and EU demanded that these countries rapidly met the political and economic standards at a macro level. Secondly, the dissemination of the USSR and Yugoslavia introduced new borders, minority and ideological issues, with the ultra-nationalist ideology prevailing, accompanied by interethnic tensions which endangered the regional stability. These processes of deep changes that the world faced after the Cold War raised the attention on the concept of Societal Security, focused not only on the societies affected from the process of dissemination of the nation-state, but also on the embryonic creation of a global society.<sup>13</sup>

The process of globalization was accompanied by new risks towards security at a global level, such as international monetary system crisis, international terrorism, etc. Therefore, in the 21<sup>st</sup> century, the debate is focused on National and International Security as a result of big changes in global policies under the influence of the process of globalization. There exists a general thought that in order to face this dynamic of changes, a new common agenda on Global Security needs to be reached among state and non-state actors. This common multilateral agenda inflicted by globalization is regarded to help in the facilitation of dialogue among the decision-making elites at a national level in adopting objectives that are in line with those aiming at Global Security.<sup>14</sup>

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<sup>13</sup> Baylis, J. (2011). *Globalisation of World Politics*. Oxford: Oxford University Press.

<sup>14</sup> Waever, O. B. (1993). *Identity, Migration and the New Security Agenda in Europe*. London: Pinter.

## 2. The perception of refugees as a threat to national security

One of the most imminent threats to national security nowadays is perceived to be asylum seekers and irregular migrants.<sup>15</sup> This perception was initially conceived after the fall of the Berlin Wall, which inflicted an overflow of asylum seekers originating from the Eastern Bloc towards Western Countries. The said asylum seekers were generally either a part of a persecuted minority created as a result of the breakup of federations,<sup>16</sup> or strata suffering from unemployment due to the collapse of financial systems of the newly established countries.<sup>17</sup> This overflow was used by many politicians such as Helmut Kohl to gain support in their campaigns, using the factor of fear only to later create a false sense of being capable of providing security to their citizens against the "refugee" risk. Manipulation of refugee numbers as to make them seem higher was common.<sup>18</sup>

The "fear" from refugees did not cease to exist even after the decline in the popularity of far-right politicians. Most politicians consider and openly propagate their perception of refugees as a great problem for internal security and stability.<sup>19</sup> One of such declarations at EU level include the statement that refugee flow "*constitutes a threat to public security and would require concerted action by all States concerned in a spirit of international solidarity and genuine mutual interest,*

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<sup>15</sup> Weiner, M. (1992). Security, stability and international migration. *International Security*, 17(3), 91-126; Lohrmann, R. (2000). Migrants, refugees and insecurity: current threats to peace? *International Migration*, 38(4), 3-22; *Supra* note 11.

<sup>16</sup> Buchanan, A. (1991). *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Boulder: Westview Press.; Dowty, A. (1987). *Closed Borders: The Contemporary Assault on Freedom of Movement*. New Haven: Yale University Press.

<sup>17</sup> See *supra* note 12 'Weiner' at p. 92; Jacobson, J. L. (1988). *Environmental Refugees: A Yardstick of Habitability*. Washington, D.C.: Worldwatch Institute.

<sup>18</sup> Thraenhardt, D. (1998). European Migration from East to West: The Present and the Future. In A. e. Boecker, *Regulation of Migration: International Experiences* (pp. 259-264). Amsterdam: Het Spinhuis.

<sup>19</sup> Nadig, A. (2002). Human Smuggling, National Security, and Refugee Protection. *Journal of Refugee Studies*, 1(25), 5-6; De mensensmokkelaars van Aladdin 2. (1999, 02 27). *Vrij Nederland*, p. 8.

*as co-operation on matters relating to internal security reinforces stability at the regional level”*.<sup>20</sup>

As a result, a spirit of unwelcoming reigned over the populations.<sup>21</sup>

There are several reasons why refugees are nowadays deemed to constitute a threat to national security. Masses consider the plausibility of armed attacks by refugees or a diminution of the values enshrined in their societies. On the other hand, governments are scared that they might create undermine political stability and that they might be faced with a “floodgate” effect: receiving more applications than they are objectively ready to accept.<sup>22</sup> A concern that is shared both by people and government is the economic burden that refugees might inflict on their countries, due to welfare services they receive free of charge,<sup>23</sup> especially in short and medium terms. However, it is noticed that these feelings of fear tend to decrease if the refugees share a common identity with that of the receiving state, such as race or religion.<sup>24</sup> The aforementioned might indicate that the perceived threat might not be real in many cases and that xenophobia, racial discrimination and political propaganda might be a prominent actor in creating the paranoia and anxiety related to refugees.

On the other side, it is true that refugees might cause political tensions, especially internationally. A refugee is classified as a person “*with a well-founded fear of persecution*” from his own country of origin.<sup>25</sup> Based on this definition, accepting refugees might imply that the host country aligns with the refugee in condemning the country of origin on persecution, which might

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<sup>20</sup>Migration Policy Group. (2000). *Migration News Sheet* (p. 3). Brussels: MPG.

<sup>21</sup> See *supra* note 12 at p. 95.

<sup>22</sup> The Would-be Europeans. (1990, 08 04). *The Economist*, p. 15; *Supra* note 12, at pp. 116-117.

<sup>23</sup> See *supra* note 12, at p. 114.

<sup>24</sup> See *supra* note 12, at pp. 103-105.

<sup>25</sup> 1951 United Nations Convention Relating to the Status of Refugees, modified by the 1967 Protocol.

create an antagonistic environment. In this regard, the UNHCR firmly stated that granting refugee status should not be regarded as to imply criticism on the regime of the sending country.<sup>26</sup>

Additionally, although inflated as to appear much bigger of an issue that it actually is, violent acts among refugees are not uncommon. For instance, the granting of entry permit to the shah of Iran by the United States in order for the former to be cured was understood by the Iranian revolutionaries as a grant of asylum, who counteracted by taking hostage several American citizens.<sup>27</sup> Terrorist attacks, arm and drug trafficking and violent manifestations against the policies of host entities are other offenses adding fuel to the reluctance of admitting refugees. Therefore, asylum seekers such as Kurds, Sikhs, Northern Irish, etc., are normally investigated by intelligence services and their applications are evaluated both to establish whether they have a well-founded fear of persecution and whether they have the potential to constitute a threat to the society. This double-check is not unfounded especially considering the recent prominence of terrorist attacks.<sup>28</sup>

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<sup>26</sup> Gordenker, L. (1987). *Refugees in International Politics*. New York: Columbia University Press.

<sup>27</sup> See *supra* note 12, at p. 107.

<sup>28</sup> See *supra* note 12, at pp. 109-110.

### 3.State measures aiming to ‘protect’ national security from the refugee ‘threat’

In the frame of this perceived imminent threat, States are exercising their sovereignty to pass border measures that control migration. This was especially regarded to be a factor in the fight against terrorism following the 9/11 terrorist attacks.<sup>29</sup> However, this might not be so adequate when it comes to refugees and human smuggling. The more barriers installed, the more possible the violation of the human right of refugees to seek protection emanating from the Geneva Convention is.<sup>30</sup> However, with the refugee influx and improvement of human smuggling techniques, border control is not as easy as it used to be.<sup>31</sup> For instance, although the Netherlands has established "mobile surveillance units" across the border, irregular entries are higher than they used to be before the Schengen border abolition.<sup>32</sup> However, UK asylum applications and subsequent granting of refugee status have reached an all-time low of 4%.<sup>33</sup> The UK is even proposing a deportation program according to which full-status refugees would be deported in case they were suspected of having committed serious crimes after having been granted their refugee status.<sup>34</sup> Anti-immigrant political parties have also had a considerable influence in these stringent measures in several countries. For example, in Denmark the Danish People’s Party requested an

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<sup>29</sup> Monar, J. (2005). The European Union’s ‘integrated management’ of external borders. In J. DeBardeleben, *Soft or Hard Borders? Managing the divide in an enlarged Europe* (p. 147). Aldershot: Ashgate; Mitsilegas, V. (2007). Border security in the European Union: towards centralized controls and maximum surveillance. In A. Baldaccini, E. Guild, & H. Toner, *Whose freedom, security and justice? EU immigration and asylum law and policy* (p. 362). Oxford: Hart; Leonard, S. (2010). The use and effectiveness of migration controls as a counter-terrorism instrument in the European Union. *Central European Journal of International and Security Studies*, 4(1), 32-50.

<sup>30</sup> See *supra* note 10 at p. 2.

<sup>31</sup> See *supra* note 11 at p. 156.

<sup>32</sup> Godfroid, D. J., & Vinckx, Y. (1999). *Mensensmnokkel*. Amsterdam: Meulenhoff.

<sup>33</sup> Home Office. (2004). *Asylum Statistics, fourth quarter*. London: Home Office; Fekete, L. (2005). The deportation machine: Europe, asylum and human rights. *Race & class*, 47(64), 68.

<sup>34</sup> (2004, November 8). *The Guardian*.

increase in the return of Iraqi refugees, threatening that they would otherwise vote against the state budget and the involvement of the Danish army in Iraq.<sup>35</sup> All the aforementioned measures have not been without effects on refugee influx. According to a UNHCR report, the first half of 2004 saw a decrease by 22% in asylum applications as opposed to the first six months of the previous years. Furthermore, asylum applications had been the lowest that western countries had seen in almost two decades.<sup>36</sup>

In addition to States, this era of securitization of asylum and migration has permeated the EU as well, commencing with its first legislative restrictions in the '90s.<sup>37</sup> These measures would include the Conference of Ministers on the Prevention of Illegal Migration,<sup>38</sup> and the Intergovernmental Consultation on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC),<sup>39</sup> which both aim at controlling migration by introducing more rigid policy measures. Another mutual EU measure working towards this aim was Europol, or as otherwise know “the European police” and Eurodac, the fingerprint database of Europe, which in addition to detecting crime offenders, was used to compare asylum seekers' fingerprints to ensure that they had not applied multiple times.<sup>40</sup>

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<sup>35</sup> Leonard, S. (2010). EU border security and migration into the European Union: FRONTEX and securitization through practices. *European Security*, 19(2), 232.

<sup>36</sup> See *supra* note 24 at p. 65.

<sup>37</sup> Brower, E., & Catz, P. (2003). Terrorism and the struggle for competence in community law. In E. Brower, P. Catz, & E. Guild, *Immigration, asylum and terrorism: a changing dynamic in European law*. Nijmegen: Instituut voor Rechts sociologie/Centrum voor Migratierecht, KU Nijmegen; Baldaccini, A., & Guild, E. (2007). *Terrorism and the foreigner: a decade of tension around the rule of law in Europe*. Leiden: Martinus Nijhoff; Chebel d'Appollonia, A., & Reich, S. (2008). *Immigration, integration, and security: America and Europe in comparative perspective*. Pittsburgh: University of Pittsburgh Press; Guild, E. (2009). *Security and migration in the 21st century*. Cambridge: Polity.

<sup>38</sup> Prague, October 1997.

<sup>39</sup> Geneva, 1985.

<sup>40</sup> Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration (COM/2001/0672 final).

Another measure taken by the EU Member States was the establishment of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, which goes by the acronym of FRONTEX.<sup>41</sup> The 2005 and 2006 Work Programs of FRONTEX further proved the determination of EU countries to combat irregular migration by stating that the “*focus [of FRONTEX] will be on fighting irregular migration and trafficking of human beings and on supporting the activities against international terrorism by means of border control*”.<sup>42</sup> This activity FRONTEX has been undertaking since 2005 is not legally unfounded. On the contrary, its legitimacy is derived from what is known as “the Third Pillar of the European Union”, namely Police and Judicial Cooperation on Criminal Matters. The aforementioned pillar has a statutory character and is contained in Title VI of the Treaty on the European Union on “Provisions on Police and Judicial Cooperation in Criminal Matters”. Part of this chapter are provisions concerning trafficking of human beings and international terrorism combat. In this sense, FRONTEX also embodies the principles of international cooperation, which facilitates cooperation in an operational dimension between the EU Member States on the one hand, and third countries on the other.<sup>43</sup>

Although the EU is not a state, anti-refugee declarations by member states such as that of the UK which condemned Iraqi nationals as a threat to their national security have come to identify the EU with an anti-refugee stance.<sup>44</sup> Balzacq argued the role that the counter-terrorism policy of

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<sup>41</sup> See *supra* note 26 at p. 232.

<sup>42</sup> European Agency for the Management of Operational Cooperation at the External Borders of the Members States of the European Union. (2005). *Decision of the Management Board on the Work Programme of the Agency for 2006* (p. 4). Warsaw: FRONTEX.

<sup>43</sup> Council of the European Union. (2006). *FRONTEX Work-programmes 2005 and 2006*. Brussels: EU; Carrera, S. (2007, March). FRONTEX and the Challenges of Irregular Immigration in the Canary Islands. *CEPS Working Document No. 261*, 17-18. Retrieved from <http://www.ceps.eu>.

<sup>44</sup> Roe, P. (2008). Actor, audience(s) and emergency measures: securitization and the UK’s decision to invade Iraq. *Security Dialogue*, 39(6), 615-635.



the EU has on refugee policies by stating that “*securitization changes in scope and scale, for example, a new threat is identified in the absence of a discursive articulation*”.<sup>45</sup> Therefore, he was of the opinion that securitization processes study approach should move from “*discourse and towards the ‘empirical referents of policy’ policy tools or instruments that the EU utilizes to alleviate public problems defined as threats*”.<sup>46</sup> The logical step to take would be to find empirical criteria that would justify the securitizing practices the EU has been engaged in. These empirical criteria would first and foremost include the identification of an existent rather than perceived threat, which, at the moment that it became evident, would give governments and the EU as a whole the legitimacy to undertake counteracting measures to annul this threat. Some security threats that would certainly not only legitimize but call for action include armed attacks and terrorism. However, there is a thin line between a “real” and “a perceived threat”, which states should be very cautious of. A simple military equipment deployment could be very easily construed as to imply that the deploying country is planning an armed attack, especially if it is a country that masses are particularly antagonistic to.<sup>47</sup> While analyzing securitization practices in the field of asylum and migration, *Balzacq* identified two characteristics that they had to have in order to be deemed legally legitimate; firstly, they had to come as a response to issues regarded by and large as security issues and secondly, they had to be of an extraordinary measure. It must be noted that “extraordinary” does not mean exceptional, but rather understood in the more literal meaning of the word, as “out of the ordinary”, meaning that they are infrequent and rare in the way how issues related to asylum are addressed in the EU and/or its member states.<sup>48</sup> However, the

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<sup>45</sup> Balzacq, T. (2008). The policy tools of securitization: information exchange, EU foreign and interior policies. *Journal of common market studies*, 46(1), p. 76.

<sup>46</sup> Ibid.

<sup>47</sup> See *supra* note 26 at p. 238.

<sup>48</sup> *ibid.*

actual situation heavily departs from these characteristics, while globally identified security threats would normally be the likes of terrorism and drug trafficking, nowadays a mere refugee influx is considered a security threat by the EU, and whereas securitizing practices had to be the exception, they are now becoming the rule.

In this regard, FRONTEX has also been highly engaged. While it is in its mandate to provide technical and operational assistance to member states in case *‘one or more Member States [is] confronted with circumstances requiring increased technical and operational assistance’*,<sup>49</sup> the year 2007 brought an amendment to this provision by widening their scope of activity. This was achieved through the establishment of Rapid Border Intervention Teams (known by the acronym RABITs), defined as teams of *‘specially trained experts from the other Member States’ that can be deployed on the territory of a Member State requiring assistance ‘for a limited period of time [...] in exceptional and urgent situations’*.<sup>50</sup> RABITs functions are considerably different from those that FRONTEX originally had, which only concerned support in the form of organization or cooperation among different member states. The rationale behind the establishment of RABITs was that *‘[the] current possibilities for providing efficient practical assistance [...] at European level are not considered sufficient, in particular where the Member States are faced with the*

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<sup>49</sup> Article 8 of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union:

*“1. Without prejudice to Article 64(2) of the Treaty, one or more Member States confronted with circumstances requiring increased technical and operational assistance when implementing their obligations with regard to control and surveillance of external borders may request the Agency for assistance. The Agency can organize the appropriate technical and operational assistance for the requesting Member State(s).*

*2. Under the circumstances referred to in paragraph 1, the Agency can:*

*(a) assist on matters of coordination between two or more Member States with a view to tackling the problems encountered at external borders;*

*(b) deploy its experts to support the competent national authorities of the Member State(s) involved for the appropriate duration.*

*3. The Agency may acquire technical equipment for control and surveillance of external borders to be used by its experts for the duration of the deployment in the Member State(s) in question”.*

<sup>50</sup> Recitals 6 and 7 of Regulation EC 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of RABITs; See *supra* note 26 at p. 245.

*arrival of large numbers of third-country nationals trying to enter the territory of the Member States illegally*'.<sup>51</sup> Such rationale – especially given that the EU Member States already had the aid of FRONTEX – ultimately coined the status of refugee influx as a security threat. This is why many scholars argue that EU has now shifted from protecting refugees to protecting states, depicted by a policy that aims at decreasing asylum application and increasing deportation of unsuccessful ones.<sup>52</sup>

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<sup>51</sup> Recital 5 of Regulation EC 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of RABITs.

<sup>52</sup> See *supra* note 24 at p. 65.

#### 4. ‘National security v. Refugee Rights’: Which prevails?

However, deportation acts might violate the principle of *non-refoulement* as sanctioned by the 1951 Geneva Convention in case the deported individual will be at risk of persecution when going back to the country of origin.<sup>53</sup>

The exercise of state sovereignty while engaging in this push-back of refugees takes the lead when compared to regional cooperation. This is especially concerning as international cooperation is proven to be more effective when combatting human smuggling and resonates a check-and-balance system in regard of guaranteeing the abidance with the obligations deriving from human right conventions, such as 1951 Geneva Convention and the European Convention on Human Rights.<sup>54</sup> Additionally, while human smuggling needs to necessarily be addressed, most states seem to not take into consideration that there is a second victim of human smuggling: smuggled refugees themselves. Adopting stringent policies towards this category, especially towards political refugees who are the most determined to seek asylum, might cause serious human rights violations. In his study,<sup>55</sup> *Kjaerum* claims that this particular subcategory of refugees is the one that is most commonly denied the protection granted by article 14 of the Universal Declaration of Human Rights (right to seek and enjoy asylum).<sup>56</sup> Whereas most of these limitations are

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<sup>53</sup> Article 33 of the 1951 Convention Relating to the Status of Refugees:

*“Prohibition of expulsion or return (“refoulement”)*

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”.

<sup>54</sup> See *supra* note 10 at p. 9.

<sup>55</sup> Kjaerum, M. (1992). Article 14. In E. e. Asbjorn, *The Universal Declaration of Human Rights: A Commentary* (pp. 217-228). Oslo: Scandinavian University Press.

<sup>56</sup> Article 14 of the Universal Declaration of Human Rights states:

*“(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

internationally justified by the “war on terror”, there is an undeclared “war on refugees” going on which witnesses erroneous illegal actions and which undermines the 1951 Geneva Convention and international human right conventions condemning torture and inhuman or degrading treatment, which are more often than not treatments that are present during collective deportations of refugees.<sup>57</sup> Use of force during deportations is an imminent issue which is not being yet resolved. The way how deportations are carried out has been frequently regarded as to institutionalize brutality, with many asylum seekers dying from suffocation or asphyxiation or suffering from brain damage and blindness.<sup>58</sup> Asylum seekers undergoing expulsion or deportation have also reported being discriminated against and being subjected to degrading use of language based on race.<sup>59</sup> Condemnation of such practices by international bodies such as the Committee for the Prevention of Torture of Council of Europe clearly has not helped eradicate these practices,<sup>60</sup> therefore more concrete steps might need to be taken.

What is even more disturbing is that the concept of what constitutes a hosting entity able to grant protection has been legally mutilated as to include what can be called ‘protectorates’ through the 2004 EU Qualification Directive.<sup>61</sup> While the Geneva Convention explicitly establishes that states are the entities capable of granting protection, the Qualification Directive provides that not only states but also “*parties or organizations, including international organizations [...] which*

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(2) *This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations”.*

<sup>57</sup> See *supra* note 24 at pp. 64-65.

<sup>58</sup> Amnesty International. (2004, January 14). *Germany: Back in the spotlight. Allegations of police ill-treatment and excessive use of force in Germany*. Retrieved 02 08, 2018, from Amnesty International: <https://www.amnesty.org/en/documents/eur23/001/2004/en/>. .

<sup>59</sup> (2004, November 25). *Le Monde*.

<sup>60</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). (1998). *8th General Report on the CPT's activities covering the period 1 January to 31 December 1997*. Strasbourg: Council of Europe.

<sup>61</sup> European Council Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection, 2004.

*control a region or a larger area within the territory of the State*” can do so. This provision causes two major problems: firstly, refugees are stripped off their right to further seek asylum when confined in the camps of the so-called protectorates located within their countries of origins, and secondly, states or organizations such as the UN establishing protectorates are simply challenging the sovereignty of the states in which they are located, which is very problematic in terms of international relations from a political science point of view, as it is under a state’s sovereignty to protect its citizens and people under their jurisdiction. The protectorates are taking a role which does not belong to them and simply cannot be exercised in a state where they do not enjoy the necessary jurisdiction.<sup>62</sup> This again indicates that western countries, including EU member states, are abandoning the humanitarian rationale that guided them when addressing refugees and are trying to push refugees as far as they can from their countries.<sup>63</sup> Data also shows that the number of refugees or migrants and social security issues may not necessarily be correlated: for example while Switzerland does not seem to have any problems although almost 20% of its residents are non-Swiss, Finland has displayed many problems at a minute 1% of foreigners.<sup>64</sup>

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<sup>62</sup> See *supra* note 24 at p. 67.

<sup>63</sup> See *supra* note 24 at p. 65.

<sup>64</sup> See *supra* note 10 at p. 15.

## Conclusion

In the conclusion, this research shows that the concepts of National and Global Security have changed diametrically during years until they became how we consider nowadays, changes which have been inflicted by wars, creation of new nations and societal changes, among others.<sup>65</sup> Whereas the beginning of the 21<sup>st</sup> century found policy-makers discussing on the creation of a common agenda to establish Global Security, we are experiencing a shift to preservation of national security, one of the major threats to which are now considered to be refugees, be that due to the increase in terrorist attacks, an influx which western States were not ready to support or cultural differences they have from their hosting communities. Securitization measures such as deportations not always carried out responsibly have often jeopardized the rights of refugees, such as the right to claim asylum and the right to not be subjected to torture or inhuman and degrading treatment.<sup>66</sup>

While preservation of national and international security is paramount for the achievement of international cooperation and world peace, such preservation should be done without causing harm to disadvantaged strata of the society that the international community has vowed to protect through various legal instruments and legal undertakings. The status of refugees has been constantly shifting from that of a group we should protect to that of a group we should be protected against. Although it is true that several terrorist attacks or criminal offenses in the field of drug trafficking have been committed by asylum seekers, collective condemnation of all refugees goes against the values policy makers have aimed to protect.<sup>67</sup> The principles of the right to claim

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<sup>65</sup> See section 1 of this paper.

<sup>66</sup> See section 4 of this paper.

<sup>67</sup> Roberts, B., Murphy, A., & McKee, M. (2016). Europe's collective failure to address the refugee crisis. *Public Health Reviews*, 37(1), 1-5, p. 2.

asylum,<sup>68</sup> prohibition of torture, or inhuman and degrading treatment,<sup>69</sup> and non-*refoulement*<sup>70</sup> are being fundamentally challenged by state actions legitimized in the name of the “war on terror” which has become more and more of a sort of “war on refugees”. The balance between protection of national security and protection of refugees is in jeopardy and unless States start cooperating with each other to refine this balance which seems to have been lost during the last decade, we might see States departing from the humanitarian causes which led them to protect refugees in the first place.

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<sup>68</sup> Article 14 of the Universal Declaration of Human Rights.

<sup>69</sup> Among others, article 3 of the European Convention on Human Rights.

<sup>70</sup> Article 33 of the 1951 Geneva Convention.



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