

2016

International Refugee Law

Olivia A. Loveland
Portland State University

Let us know how access to this document benefits you.

Follow this and additional works at: <https://pdxscholar.library.pdx.edu/honorsthesis>

Recommended Citation

Loveland, Olivia A., "International Refugee Law" (2016). *University Honors Theses*. Paper 282.

[10.15760/honors.280](https://pdxscholar.library.pdx.edu/honors/280)

This Thesis is brought to you for free and open access. It has been accepted for inclusion in University Honors Theses by an authorized administrator of PDXScholar. For more information, please contact pdxscholar@pdx.edu.

INTRODUCTION

We are currently seeing the largest influx of migrants in Europe since WWII. In 2014, we saw the largest increase of people fleeing conflict in a single year--8.3 million people according to UNHCR (UNHCR, 2015). While there may have been a larger overall number of refugees in Europe during WWII, today's refugee crisis is challenging in the rapid rate of migrants making their way to Europe. The fastest growing group of refugees are from the Arab Republic of Syria whose refugee population was below 10,000 at the end of 2010 and grew to 4.3 million by mid-2015 (UNHCR, 2015). Since mid-2014 Syrians have made up the largest groups of refugees worldwide, replacing Afghan refugees who held this position for three decades (UNHCR, 2015). While Syrian refugees account for the largest refugee group in Europe, the following largest refugee populations are from Afghanistan, Kosovo, Eritrea, Serbia, Pakistan, and Iraq (UNHCR, 2015). The majority of Arab refugees in Europe is another challenging aspect to today's refugee crisis as xenophobia in Europe seems to be growing with the amount of new asylum-seekers arriving. While it is easy to identify when an asylum-crisis is happening based on the number of people fleeing conflict, it is more difficult to pinpoint the crisis that is a result of how states have failed to adequately serve their international obligation to protect.

My analysis will focus on European policies for receiving asylum-seekers and how these policies have been created based on interpretations of the international law guiding international refugee protection. What is revealed is a trend throughout history for states to clamp down on providing protection during times when it is most needed. For example, in 1981, 20,000 people applied for asylum in France and 80% were accepted while in 1991, 30,000 applied and 80%

were rejected (Fassin, 2005). When states do not want to provide protection to a large amount of asylum-seekers, the subjectivity with which they can deny someone to asylum has allowed them to fluctuate on their standards when it is most convenient for them. The recent movement of migrants has been highly visible in the media and the dangerous journeys refugees make to reach Europe are not out of sight. We see the ways in which hundreds to thousands of refugees risk their lives trying to reach Greece by sea daily and the reports of refugees cramming into trucks or train lorries. Those who make it to the overcrowded, makeshift refugee camps in Europe arrive to horrific living conditions where they are detained for an indefinite period of time as they wait for their asylum application to be reviewed. The obstacles that asylum-seekers are forced to go through are not a new concept and in fact Hannah Arendt commented on this in 1951 when she made the statement “those whom persecution had called undesirable became the undesirables of Europe,” (Fassin, 2005). The number of people dying in the Aegean, trucks found with dead migrants inside, and other stories of perilous journeys made me wonder what the exact policies guiding international refugee law were and if there was any chance they were being broken. In modern times, why do those fleeing war have to resort to boarding dinghies and taking dangerous backroads while putting their lives in the hands of smugglers in order to reach a safe country. The aggressive actions by states such as Hungary toward asylum-seekers at their borders are an example of how once again, asylum-seekers have become the undesirables of Europe. By analyzing the development of various policies in Europe, such as the law which imposes fines on companies who transport undocumented aliens, the political motivations behind the creation of domestic and regional laws are revealed. In this example, placing fines on companies transporting migrants is one of many policies that points to a trend of deterring

asylum-seekers. Furthermore, analyzing laws at the domestic and regional levels show how states can create laws with dangerous outcomes because of the vagueness of international treaties guiding international refugee law, mainly the 1951 Convention relating to the Status of Refugees. This United Nations, multilateral treaty is the starting point for my analysis of the legal framework of the international refugee regime. I then move on to major regional policies in the European Union that affect refugees such as the Dublin Regulation followed by a close look of individual European State practices. By tracing the development of international refugee law, I found that gaps have existed in the international refugee regime for years but it is only during times of mass-influx that these gaps are revealed.

While in many cases European countries are not directly violation international refugee law, I argue that the moral intent of the 1951 Refugee Convention is not being followed and state practices are straying from the humanitarian spirit in which this treated was created. Due to how European countries were able to interpret broad language of the 1951 Refugee Convention to serve their bests interests, I found that in many cases EU practices do not technically violate this convention. With that said, I argue that there are recent cases where it is very likely that the law has been violated or where strong arguments could be made that the European Convention on Human Rights is being violated. I make this argument by analyzing international asylum cases that have come before the European Court of Human Rights that have addressed issues such as interception of migrants at sea, whether the principle of non-refoulement has been violated, and the living conditions of asylum-seekers as their applications pend for review. The cases I have highlighted, while they do not involve current Syrian asylum-seekers, provide important precedents whose legal reasonings I argue are applicable to many Syrian asylum-seekers as well

as other asylum-seekers in Europe today. These court cases are also important in analyzing the strength of supervisory mechanisms by the international community that are in place. The United Nations established the Office of the High Commissioner for Refugees to assist in the support of refugees with their role also ratified by states in the 1951 Refugee Convention. While their ability to supervise at the international level has proved to be weak in many aspects due to the fact that they rely on funds from governments, can only be present in a country at a government's' request, and overall have shown to be more reactionary than preventative, they have played a role in helping to provide evidence for legal cases. The UNHCR, in addition to various non-governmental agencies, has been helpful in providing on the ground reporting of how long it has taken applicants to apply for asylum, whether applicants are being detained and for how long, as well as the conditions they live in while being detained which are all possible violations of the Asylum Procedures Directorate in the European Union as well as human rights law. Having these on-the-ground reports have been useful in assessing the situation of asylum-seekers that States have failed to do themselves. The most successful court for bringing cases against violations of international refugee law has been in the European Court of Human Rights but with a backlog of 84,515 applications as of July 1, 2014 this proves to be a slow process for change (Registry of the European Court of Appeals, 2105). With decisions that have already been made, it is clear that the law is still being violated.

I will show how many of the problems with enforcing international refugee protection are problems inherent with enforcing law at the international level. International organizations such as the UN will always run up against the problem of state sovereignty. In this case, although states who are signatories to the 1951 Refugee Convention and its 1967 Protocol were able to

agree on certain international regulations, they left themselves many ways to get out of certain responsibilities by using vague language that could be left open for various interpretations. In this way, creating a compelling argument for violating international regulations is difficult and it is equally difficult to create effective supervisory mechanisms. Although international organizations cannot force states to adhere to certain policies, I believe that a strong argument can be made that states' practices are not in line with the humanitarian spirit of the international Refugee Convention. With the increasing strength of international human rights law, I believe using this line of argument will be one way in which international refugee protection can be addressed.

INTERNATIONAL LEGAL FRAMEWORK

The international legal framework guiding the protection of refugees is based on the legal instruments created after WWI and WWII. When there were 40 million displaced persons in Europe in 1945, few intergovernmental and international support existed for the assistance of refugees. However, with such a large crisis on hand, foundations for the legal framework we still rely on today were laid out. In 1950, the Office for the High Commissioner of Refugees was established as a United Nations agency mandated to assist refugees and in 1951 the Convention Relating to the Status of Refugees established the UN multilateral treaty that defines a refugee and outlines their basic rights. It is important to take a closer look not only at the Refugee Convention itself but also the preceding organizations that led to its creation in order to understand the obstacles in creating such a regime. Furthermore, certain articles of the Refugee

Convention are especially important in understanding the gaps that allowed states to create current policies based on language in this treaty.

The creation of Refugee Law began in Europe. When there were displaced persons in Europe after WWI, the issue of not having another nationality was solved by issuing travel documents to displaced persons in Europe. The Intergovernmental Committee on Refugees was established by the League of Nations and recognized the need for cooperation among states to resettle refugees. This was the first planned resettlement of refugees and was created specifically to resettle refugees from Nazi Germany. Resettlement was funded by member countries and was eventually expanded in 1943 to assist refugees in all of Europe. However, as the number of refugees in Europe increased after WWI and WWII, there was a need to create a broader framework for refugee assistance. The International Refugee Organization was created in 1946 and assisted in the first large-scale resettlement of one million refugees after WWII. From the language in the preamble of this document, the need for international protection of refugees is recognized as an “urgent problem,” (Goodwin-Gill, 1983). In order to address this problem, goals for resettlement and repatriation were outlined as well as recognizing the need for access to employment and basic rights while refugees waited for resettlement or until they could return to their home country. During the early stages of creating a protection regime for refugees, refugees were defined by specific conflicts of the time. The definition of a refugee grew out of recognizing someone as being outside of their country of nationality but also as being victims specifically of Nazi or fascist regimes during WWII, those who were fleeing the Spanish Republic, or those who had been considered a refugee after WWI. For a time it was possible to easily identify those who needed protection based on certain conflicts. It also seemed to be easier

to manage resettlement when it was mainly taking place in Europe. The International Refugee Organization was able to secure funding from member countries, one of the largest being the United States and had an annual budget of \$155 million. The end of the International Refugee Organization came about after being accused of political bias during the Cold War when “collaborators with the enemy were excluded from assistance” by the IRO (Holborn, 211). Since funding depended on states, the Western bias of states played a large role in which countries got funding. This established the need for an organization for protecting refugees that could get as far away from having a political bias as it could while also balancing the fact that it needed to rely on state assistance for its existence. The new regime for international refugee protection was created out of the United Nations.

The United Nations established the UN High Commissioner for Refugees as a supranational body whose intent was purely humanitarian-based. With the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948, the foundation for creating a refugee protection regime that was international and thus unbiased was laid. Now, protection of refugees was recognized by the UN as a human right. Articles 13, 14, and 15 help to establish an international basis for the protection of refugees:

Article 13: 1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14: 1. Everyone has the right to seek and to enjoy in other countries 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.

Article 15: 1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Following the Declaration of Human Rights, the General Assembly of the United Nations created the High Commissioner for Refugees (UNHCR). In the 1950 Statute of the Office of the United Nations High Commissioner for Refugees, it is specifically stated that:

The work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.

This statute also established how this international organization would work with individual states to help ensure the protection of refugees. Various ways in which the Statute calls upon governments to do this entail becoming parties to international conventions protecting refugees, admitting refugees to their territories, assisting in voluntary repatriation, promoting assimilation of refugees, and providing the High Commissioner with information such as the number of refugees in their territory, their condition, and laws individual states create concerning refugees.

These preceding developments in international refugee law and the establishment of a declaration of human rights all led to the 1951 Convention of the Status Relating to Refugees, also known as the 1951 Refugee Convention. This convention tied together elements of protection from preceding conventions as well as reiterated the role of the UNHCR as an international organization that would work with states to protect refugees. This convention was fundamental in providing a definition of a refugee that all signatories must accept. There are 46 articles outlining the proper treatment of refugees, states' obligations, the judicial status of refugees in international law and administration procedures. In the negotiation period of the

convention 26 countries were involved as well as the UNHCR although it wasn't allowed to vote on measures. The 1951 Refugee Convention also added a geographical and temporal limit to its definition of a refugee and countries could choose between two interpretations of, "events occurring before 1 January 1951" at the time of ratifying the treaty to either mean events in Europe before 1 January 1951, or "events occurring in Europe and elsewhere." However, in 1967 an amendment was added to the 1951 Refugee Convention to omit these two lines that established a limitation on the definition of a refugee. Due to the growing number of refugee crises, the protocol was created to make the Refugee Convention applicable to all countries and conflicts, not just those that occurred before 1951. Today, 145 states are parties to the 1951 Refugee Convention and 146 are also parties to the 1967 Protocol. Only four countries--Congo, Madagascar, Monaco, and Turkey--chose to adhere to the definition of a refugee that only applied to those in Europe. Turkey's adherence to the geographical limitation even after the creation of the 1967 Protocol has a large effect in the Syrian refugee crisis today.

As the refugee crisis grew beyond the borders of Europe and as it became evident that international cooperation was necessary in order to facilitate the transferring of refugees between states, legal instruments at the international level were created. The 1951 Refugee Convention and its 1967 Protocol have not been amended since their creation and continue to be the main authority on international refugee law. However, the vague language within the 46 articles have left wide gaps in the framework. States have been able to get around their international obligations by leaving themselves room for interpretation as well as the ability to deny protection for security reasons:

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. Article 33.2

Some important articles of the 1951 Refugee Convention to my analysis include Article 31 concerning how refugees arrive in the country they apply for asylum, Article 32 concerning expulsion and the right to a legal process to determine refugee status, and Article 33 which prohibits refoulement, or the return of a refugee to the country where they face a threat of persecution. The current working definition of a refugee as outlined in Article 1.2 of the 1951 Refugee Convention, save for the geographical and temporal limitations, will also be essential to my analysis and is included below:

...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.

This is the definition that is accepted by 156 states and therefore is key to my analysis of international refugee law. The definition is broad in order to cover a wide range of possibilities. The addition of “a particular social group or political opinion” was added to encompass a wide range of people who may be targeted for certain political beliefs or orientations even if it is not a specific region. However, subjectivity of how to measure a “well-founded fear” leaves the interpretation open to states who can manipulate their measurement to their benefit. While appearing to be broad and all-encompassing, the vagueness can also lead to the creation of policies based on a narrow interpretation.

A large contribution to international refugee law comes from international human rights. Many of the protections outlined in the Refugee Convention such as Article 3 requiring states to

“apply the provisions of the Convention to refugees without discrimination as to race, religion or country of origin,” as well as Article 4 which requires states to respect the freedom to practice religion are ideas expressed in the Universal Declaration of Human Rights as well as the European Convention on Human Rights. The strong overlap of human rights with international refugee protection is important to note because the ability to bring cases against states violating rights of refugees tends to be stronger when based in human rights violations. This is evidenced in the amount of cases that have been decided on in the European Court of Human Rights. This court has been a major player in setting important precedents in cases such as *M.S.S. v. Belgium and Greece* and *Hirsi Jamaa and Others v. Italy* which have impacted protection in the European Union. The main articles used in these cases from the European Convention on Human Rights are Article 3 which prohibits torture stating: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” This violation tends to come up in relation to conditions at detention centers. Article 13 which provides for the right to an effective remedy states:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

This right is important for asylum-seekers who need to go through an appeal processes when they believe the process for determining the asylum was not carried out in accordance with the 1951 Refugee Convention. During the chaos of today’s mass-influx of refugees where there seem to be many flagrant violations of refugee’s rights, it has been these articles of the European Convention on Human Rights that have been able to hold states the most accountable for their actions.

The United Nations Convention of the Rights of the Child which became effective in 1990 has also helped shape how the international refugee regime takes into account special measures for children. All countries except the U.S. have ratified this treaty. Thus, Europe must adhere to Article 22.1:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

The European Convention on Human Rights devotes Article 8 to the respect for private and family life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

These articles help strengthen family unity when considering asylum status as well as giving exception rights to the child and have been used for legal reasoning in the *Tarakhel v.*

Switzerland case that I will discuss further on.

I have discussed legal instruments at the international level that shape international refugee protection including the 1951 Refugee Convention, the Universal Declaration of Human Rights, and the United Nations Convention of the Rights of the Child. The European Union Convention on Human Rights dictates human rights policies at the regional level and is based on international human rights law. Another important legal instrument at the regional level is the

Asylum Procedures Directives implemented in 2005. This creates guidelines Member states must adhere to when creating their individual processes for processing applications for asylum.

This is the bare structure of the international refugee law legal framework. It leaves many gaps to be filled by regional legal instruments and individual state policies. Looking at these obligations alone, many aspects of protection are covered. However, looking at today's crisis it appears as though some of these articles are being blatantly ignored, such as how long asylum-seekers are being detained waiting for their applications to be reviewed or states going to extreme measures to keep asylum-seekers out of their territories before they arrive there. The overwhelming number of asylum-seekers in the world today is challenging our duty to share the responsibility of protecting refugees. However, since the creation of the international refugee regime we have moved in a direction of deterring refugees rather than strengthening means for protection.

The fact that many cases involving the violation of refugee rights are tried in the European Court of Human Rights shows the weakness of International Refugee Law. Although human rights law is able to provide for the protection basic rights for refugees such as prohibiting their refoulement to the country they are fleeing or addressing inadequate living conditions, other specific principles that are outlined in the International Refugee Convention such as rights to gainful employment, housing, and public education are left out. While human rights law is one way we can address the refugee problem, it is still not enough to ensure the specific protections and assistance refugees need. It is still imperative that International Refugee Law is strengthened by being upheld by states in the way that their specific laws fill in the gaps of the Refugee Convention.

DEFINING A REFUGEE AND THE ROLE OF THE UNHCR

In order to understand the legal framework surrounding refugee protection, it is necessary to understand how a refugee is defined in international law. Goodwin-Gill sheds light on the difference between how refugees are thought of in everyday usage and how they have become to be defined in international law. He states:

In ordinary usage it has a broader, looser meaning signifying someone in flight seeking to escape conditions of personal circumstances found to be intolerable. Destination is not relevant--the flight is to freedom, to safety (Goodwin-Gill).

This concept of refugees that many of us may have in our minds is simplistic and broad in order to recognize that the condition of being a refugee should be considered a “situation of exception,” or a situation that undoubtedly requires assistance from the international community. However, in order to create a legal regime for refugee protection it is necessary for the term refugee to be further defined in order for states to come to an agreement. This task of defining adds another layer of complexity that can also hinder the protection process as Goodwin-Gill points out: “defining refugees may appear an unworthy exercise in legalism and semantics, obstructing a prompt response to the needs of people in distress.” Getting states to agree on a legal definition of refugee means creating a narrower definition. In the 1920s and 30s, in order to be considered a refugee two broad criteria were accepted: that someone was outside of their country of origin and lacking protection by the government of that country. The United Nations’ recognition of the “right to seek and to enjoy in other countries asylum from persecution,” in Article 14 of the Declaration of Human Rights, invokes a humanitarian response. However, the 1951 Refugee Convention which was ratified by states created a definition of a refugee that

included geographical and temporal limitations. It originally only referred to those in Europe and relating to events before January 1, 1951. Although the 1967 Protocol makes the geographical and temporal limitations optional, the main definition of a refugee used still “obstructs a prompt response” in the way in which an individualized definition calls for a case-by-case assessment (Goodwin-Gil). This proves difficult in times of mass-influxes.

Refugees began to be defined when their numbers rose after World War I and World War II. Previous legislation guiding people who were outside of their country of origin only concerned regular aliens. However, international organizations such as the UN recognized that the specific situation of the refugee which also included a lack of protection from their government, needed to be defined in order for proper assistance to be provided. This is when the League of Nations in the 1920s formalized the two key criteria defining a refugee as being outside one’s country of origin and lacking protection of the government of that state. In 1938, the specific case of those fleeing Germany was developed into a Convention and addressed those fleeing Germany who “do not enjoy, in law or fact, the protection of the German Government.” Protection was created for specific groups of people during specific political events. The constitution of the International Refugee Organization referred to specific groups of people as refugees such as victims of Nazi or Fascist regimes.

The creation of the refugee regime developed out of laws concerning aliens. As the amount of refugees grew, their specific needs were defined as falling under humanitarian protection. Their needs went beyond states granting necessary travel and identity documents required to move to a new country, but also necessitated protection from being returned to their country of origin. At first treaties were created to address specific groups of refugees but as the

number of crisis in the world continued to grow resulting in more asylum-seekers, the regime expanded yet again. This led to a general international legal regime that could be applied to all asylum-seekers. The 1951 Refugee Convention brought the states who ratified the treaty under the scope of the international refugee law regime.

While the United Nations' definition of a refugee is able to be broad, the one agreed upon by states in the 1951 Refugee Convention is narrower. This is a conflict inherent to international law where in order to regulate protection at the international level, aspects of protection will be compromised because international organizations will always run up against the problem of state's sovereignty. Creating a definition for refugees is one way states can limit the amount of people to whom they provide assistance so it makes sense that they would agree on a definition that allows them room for interpretation as well as adds certain constraints. Without the confidence that they can get out of an obligation if it became too big of a burden, the Refugee Convention may never have been agreed upon. However, the United Nations made sure it was included in the Refugee Convention to remain a supervisory mechanism. The progression of defining the refugee in international law coincides with the progression of the UNHCR working with states to facilitate protection. Understanding the working definition of a refugee is necessary to understand the role the UNHCR plays in refugee protection.

With an abundance of refugees, the UN created a specific office to handle their needs. The United Nations High Commissioner for Refugees was established in 1950 by the UN General Assembly and its structure was defined in the UNHCR Statute containing 22 articles. In Article 6, criteria for who qualifies for the High Commissioner's assistance, or a definition of a

refugee is outlined. Under the UNHCR Statute a refugee is anyone who has been considered a refugee under previous treaties or conventions and adds:

Any person who, 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 or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, 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, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it. Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph. (UNHCR Statute Article 6).

The language in this statute provides a broad definition of a refugee and expands on the basic concept of a refugee by adding the notion that refugees are outside their country of origin due to a “well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion.” The Statute further outlines specific ways in which the UNHCR will facilitate protection of states:

- (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto
- (b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection
- (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities
- (d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States
- (e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement
- (f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them
- (g) Keeping in close touch with the Governments and inter-governmental organizations concerned

- (h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions
- (i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

Thus, the UN proves fundamental in shaping the concept of, and treatment of refugees.

However, in order for the UNHCR to carry out its mandate it is clear that cooperation with states is necessary. This is addressed in point *a* of the Statute where it states that part of the UNHCR's mandate is "promoting the conclusion and ratification of international conventions for the protection of refugees." This was carried out a year later when the most important International Convention Relating to the Status of Refugees was created and ratified by states. The UNHCR was successfully able to integrate itself into the protection of refugees by including Article 35 which outlined how states shall work with the UNHCR:

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
 - (a) The condition of refugees
 - (b) The implementation of this Convention, and
 - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

When the European Union created its Asylum Procedures Directive in 2005 to specify how European Member states were to carry out effective asylum procedures, the role of the UNHCR was further detailed. Article 21, sections 1, 2, and 5 have proven to be important functions of the UNHCR over time:

1. Member States shall allow the UNHCR:

- (a) to have access to applicants for asylum, including those in detention and in airport or port transit zones;
- (b) to have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees thereto;
- (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

2. Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of the UNHCR pursuant to an agreement with that Member State.

5. In the event of particular types of arrivals, or arrivals involving a large number of third country nationals or stateless persons lodging applications for asylum at the border or in a transit zone, which makes it practically impossible to apply there the provisions of paragraph 1 or the specific procedure set out in paragraphs 2 and 3, those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

As these rights became ratified by states at the international level, then clarified by regional instruments in this case at the EU level, the definition of refugee and duties of the UNHCR naturally become narrower. The definition of a refugee by the UN includes the phrase “owing to such fear or for reasons other than personal convenience” which gives the the asylum-seeker more agency in defining reasons for fleeing than the Refugee Convention does by clarifies reasons other than personal convenience specifically as “race, religion, nationality, membership of a particular social group or political opinion.” However, ultimately the UNHCR was successful in integrating itself as well as states into the legal framework for refugee protection. Although the UNHCR facilitated the creation of the 1967 Protocol in order to expand the definition of a refugee beyond the geographical and temporal limitation, countries were still

given the option to adhere to the more narrowing definition which limits them to provide full protection as outlined in the 1951 Convention and its 1967 Protocol to those who were considered refugees in Europe before January 1, 1951. Of the countries who opted for this alternative--Congo, Madagascar, Monaco, and Turkey--in today's crisis, Turkey's choice has large implications for the 2,541,352 refugees they host which include the largest population of Syrian refugees hosted by any country (unhcr.org). I will discuss this further in another section.

This is the background of how we arrived at the current working definition of a refugee as well as the basic obligations that 148 states have agreed to adhere to in their ratification of either the 1951 Refugee Convention, its 1967 Protocol, or both. There has not been another convention concerning refugees since 1951 and subsequent developments in the international refugee law framework have only come about in regional and municipal law. Since the convention was held during a time when protection for refugees was considered an important, urgent matter, I argue that this treaty represents the highest amount of cooperation between states on this matter. This treaty was created in high humanitarian spirit with the hope that laws at the regional municipal level would fill in specifications while still holding these basic principles at the core. In other words, if another convention were held today I do not believe a more specific treaty better addressing how states should protect refugees could be crafted. The extent to which international law can force states to follow through on international agreements is limited, thus the ways in which international refugee protection can be affected must be at the state level. How we view certain state practices, the actors that can hold states accountable for certain policies are important for improving the protection of refugees.

My analysis will now focus on how states have filled in the gaps of the International Refugee Convention with specific laws for handling the asylum-seeking to refugee status process. In this way, we can see how international protection has played out at the state level in concrete ways.

INTERDICTION AT SEA

It is easy to discern that the intent of the Refugee Convention was provide protection and based on core values of human dignity that was supported by the UNHCR. However, in recent events it seems as though we are allowing things to occur that are in direct opposition to human dignity. Thousands of Syrians have died at sea crossing from Turkey to Greece in rubber dinghies. More have died on perilous journeys to reach European countries through dangerous backroads, being smuggled in vans and train lorries. When and if Syrian, and other asylum-seekers, reach the borders of European countries their dignity is further stripped of them while they wait for days, weeks, months, on end in deplorable, make-shift refugee camp conditions as they wait for their asylum applications to be processed. This is if they're not received with tear-gas or being beaten back by border-control police. The current reports of how asylum-seekers are being received in Europe do not seem to be in compliance with the moral intention of the international refugee protection regime (Ghrainne; Hartmann; Peers). In order to understand how we came to these current norms I provide an analysis of how states have interpreted the Refugee Convention since its implementation to create laws that help them deter refugees from their borders rather than place refugee protection as a priority.

The beginning of restrictive policies by states were in reaction to an increase of refugee flows during the 1970s. There was a doubling of refugees in Europe from 676,200 in 1984 and 1,213,300 in 1989 (Hurwitz, 2009). The increase of asylum seekers was due to factors such as new technology making transportation easier and more accessible (Hurwitz, 2009). European countries began to become more concerned about who was receiving protection and more aware of asylum-seekers who intentionally destroyed travel documents or forged identity documents in order to receive asylum. This was the beginning of states becoming more suspicious of refugees. They began to restrict how refugees could arrive in their territories and the asylum process began to place a larger burden on refugees to prove their case for asylum.

The first restrictive policy I will discuss is interdiction at sea. The main reason why asylum-seekers have to take perilous journeys to reach safe countries even in the age of modern technology and transportation means is the imposition of fines on companies transporting undocumented aliens and making it difficult for nationals from refugee producing countries to receive visas. One common way refugees have reached southern European countries is crossing the Mediterranean by boat. It was common practice for states such as Italy, to intercept what they would refer to as ‘boat people’ and return them to the country they left from. This was in reaction to Article 31 of the Refugee Convention. Italy knew that once they reached their territory, whether it was legal or not, states were obligated to process their applications for asylum. This was addressed in a case before the European Court of Human Rights in 2012: *Hirsi Jamaa and Others v Italy*. In this case, 11 Somali and 13 Eritrean citizens who were among a group of about 200 migrants brought about a case when their ship heading towards Italy from Libya was intercepted by Italian authorities who returned everyone back to Tripoli, Libya

(EDAL, 2012). Numerous violations were found by the court. The applicants, even though they hadn't touched down on Italian soil, were found to be within the jurisdiction of Italy since it was a military ship flying Italian flags and thus were to be treated as asylum-seekers. Italy was found to have violated Article 3 of the Refugee Convention by exposing asylum-seekers to risk of ill-treatment in Libya and repatriation to Somalia or Eritrea. Furthermore, Article 4 of Protocol No. 4 of the European Constitution of Human Rights which prohibits collective expulsion, was breached. The court was able to make this ruling because the situation was "well-known and easy to verify at the material time, the Italian authorities had or should have known, when removing the Applicants, that they would be exposed to treatment in breach of the Convention," (EDAL, 2012). Even though Libya and Italy had a bilateral anti-immigration cooperation agreement in effect during the time of this event in 2009, the case brought to the court's attention the illegality of this agreement under international law because of the fact that, "as unwanted migrants in Libya, many of them faced a real risk of torture, physical violence, rape, indefinite detention in overcrowded and unhygienic conditions, as well as further expulsion," (Messineo, 2012). Aside from European states from allowing ships full of migrants to reach their shores, there was also the issue of these ships sinking at sea, prompting a moral dilemma. There are many provisions under international law concerning the duty to assist those in distress, even on the high seas, (Art. 98 1982 UN Convention on the Law of the Sea; 1974 SOLAS; 1979 SAR). The obligation of non-refoulement on the high seas established in *Hirsi Jamaa and Others v. Italy*, combined with the obligation under international law to rescue ships at sea created, "a perverse incentive for States not to conduct proactive search and rescue operations on the high seas," (Hartmann and Papanicolopulu, 2012). Some analysts have addressed the hypothetical

question of whether states would be more willing to save lives at sea if there wasn't the principle of non-refoulement however this would mean migrants would be returned to the country they had already risked their lives to flee causing the author to state, "If 'saving' has to be given its ordinary meaning, then it should mean really saving life, not just postponing death," (Hartmann and Papanicolopulu, 2012).

The background of this aspect of refugee law explains why Syrian refugees, like many refugees, rely on smugglers who force them into dinghies with a couple hundred of people and why there isn't more rescue-at-sea operations on the part of European countries. In 2014, 200,000 people were estimated to have used the Mediterranean crossing as their route into Europe. In 2015, this number was estimated to be more than 300,000 in August of that year. At this time, some 2,500 were estimated to have died during this crossing. Many European countries refrain from rescuing asylum-seekers in order to deter them from travelling to Europe and relieve them of the burden of hosting refugees. The fact that the number of Syrian refugees crossing the Mediterranean is still increasing shows that it takes a lot more to deter them and perhaps should be an indicator of the severity of the persecution they are fleeing.

THE DUBLIN REGULATION AND THE PRINCIPLE OF NON-REFOULEMENT

The Dublin Regulation is an example of an EU policy that attempts to make the asylum-application process more efficient by harmonizing procedures among member states but has instead made the process more convoluted and poses a threat of leading to human rights violations. Each European Member state has their own procedures, facilities, and designated authorities in place to carry out the asylum-application process in accordance with the Asylum

Procedures Directive. Since states created their own varying processes and didn't necessarily need to coordinate with one another. If a problem arose and an asylum-seeker's application needed to be processed elsewhere, an ad hoc committee was set up as a temporary means to address this. However, the Schengen Convention implemented in 1990 abolished internal borders between European Member states and created a common visa policy. With no internal border controls, it would be easier for asylum-seekers to move between countries. Leaders decided to create a regulation that common practice among the region of Europe and a way to manage the number of asylum-applications filed in each country. The first version of the Dublin Regulation was implemented in 1997 and underwent two revision process that led to the current Dublin Regulation III which came into force July 30 2013, and applies to all European Union countries except Denmark who chose not to participate. I would further like to clarify that if an asylum-seeker is granted asylum in a European country that is part of the Schengen zone, they do not have the same rights as other European citizens to travel throughout these zones freely. I will discuss the basics of the Dublin Regulation and then show how it fails to carry out its stated purposes of "swift access to protection and streamlining asylum procedures," as well as how it poses risks to violating the principle of *refoulement* in international refugee law (Balogh, 2015). I will then discuss a few cases to demonstrate the possible violations of human rights law and refugee law that the Dublin regulation poses.

The Dublin Regulation, a European Law pertaining to asylum seekers in the European Union, was created to determine where an asylum-seeker needed to file an application as well as to ensure that asylum would be granted in at least one Member State if protection was necessary. This was in order to reduce the amount of applications overall so that multiple Member states

weren't reviewing the same application for asylum. Another reason for creating the Dublin Regulation was to reduce the amount of 'Secondary Movements,' or when asylum-seekers moved to different states applying for asylum either because they were perceived as 'shopping' among countries for the best asylum benefits or because they were rejected in one country and wanted to try applying for asylum in another country. This situation was also referred to as the "refugees in orbit" problem which emphasized the fact that refugees were simply moving from one place to another rather than being able to settle in one country (Hurwitz). The Dublin Regulation determined that it was the responsibility of the first European Union country an asylum-seeker entered to process their application.

The criteria that the Dublin Regulation created for determining which country an application for asylum is filed is based on the "safe third country" concept. The legal basis for the "safe third country" is based on the interpretation of the word "directly" in Article 31.1 of the 1951 Refugee Convention: "Contracting states shall not pose penalties on refugees who come *directly* from a territory where their life or freedom was threatened. . ." Asylum-seekers in Europe are not usually coming directly from the country they are fleeing. By the time asylum-seekers reach Europe, they have usually already travelled through multiple countries the first of which are those with refugee camps usually near their country of origin and provides basic necessities such as water, food, and shelter as a temporary response. Since many refugees are not able to return to their countries of origin for much longer periods of time, ranging from years to decades, many seek asylum in yet another country. The regulation states that the first country an asylum-seeker reaches that is considered "safe" is the first place they must apply for

asylum. Furthermore, another application cannot be filed in another European country until their application is fully processed.

When an asylum-seeker arrives in a European Country, they are fingerprinted with EURODAC regulation that created a fingerprinting database for the European Union. This way, countries can identify if an applicant has already been in a country that could have potentially provided them asylum. Member states can file a request for another state to “take-charge” of an asylum-seeker’s application if it has been determined that the asylum seeker has already been to another Member State that could have potentially provided asylum. This could be a Member State whose border they crossed irregularly, proven through fingerprinting or other interviews, as well as states where they were already issued a visa or work-permit. If an asylum-seeker has already started an application in one country but withdraws it or is denied, they cannot apply in another country. In this case, a Member State would request a “take back” of an application to the appropriate state. Time limits are set for when requests can be proposed and accepted. A proposal has to be made within three months and the requested country has two months to verify the request and either deny or accept it. Once a request is accepted, the transfer of the applicant must be completed within six months. There are many criticisms to the structure of the Dublin Regulation that call into question its actual effectiveness in reducing the time taken to process an application as well as the costs and logistics associated with transferring applicants between countries.

Southern, border states of the European Union immediately saw the Dublin Regulation as being biased towards Northern states. Since asylum-seekers were most likely to arrive by boat to countries such as Italy, Greece, and Spain these states would be responsible for the burden of

refugees. It would be clear that any asylum-seeker who reached an interior state had to cross a bordering state to arrive there. The Northern states such as Germany, France, and Scandinavian countries were afraid that without this regulation they would receive the majority of applications because of their favorable policies towards asylum-seekers. A recent analysis of the number of transfers between states showed that states received similar amounts of transfers that they send creating a circulation of transfers among states (Fratzke, 2015). Additionally, for all the time spent considering where an asylum-seeker should be sent to have their application completed, few are actually sent to the appropriate country. For example in 2013, out of 76,358 take-backs and take-charge requests, only 15,938 were actually carried out or only 28% of asylum-seekers were actually transported to a different country based on findings from EURODAC that they entered Europe in a different country (Fratzke, 2015). While Member States argue low transfer rates are due to asylum-seekers simply refusing to leave, evaluations by advocacy groups have instead shown that applicants do not leave because of illness, trauma, or the decision to voluntarily return to their country of origin rather than be forced to apply for asylum in a different European country (Fratzke, 2015). The inefficiency of the Dublin Regulation unnecessarily subjects asylum-seekers to a risk for greater hardship and human rights violations as they wait for a decision to be made as to where they need to apply for asylum, and then if they are relocated to that country, must wait for that country to look at their application. I argue that the most severe consequence of the inefficiencies of the Dublin Regulation is the toll it takes on asylum-seekers well being. If one also wanted to make an argument that appealed more to states' interests, one could argue that the fact that states exchange a similar number of applicants show that it is futile to spend resources determining where a specific asylum-seeker should apply for

asylum if overall the number of asylum-seekers in each country tend to stay the same. In this way, the Dublin regulation produces unnecessary costs while states must pay for the longer detainment asylum-seekers while it is determined where their application should be processed and furthermore the costs associated with transporting the asylum-seekers to that appropriate country.

If the Dublin Regulation was created in order to, “prevent lengthy disputes over responsibility,” I would argue that it has only created more complicating factors (Fratzke, 2015). Although the study showed that states received a similar number of applicants, the author noted that, “if fingerprinting mechanisms were more effectively implemented, there would be a greater number of transfers to border states,” (Fratzke, 2015). This, in addition to states rejecting take-back requests if there wasn’t enough formal evidence, such as EURODAC information, shows a continued inability to prevent abuse of the system. Instead of providing protection, states are more concerned with placing the burden of protection elsewhere or being wary of asylum-seekers the view as trying to scam the system.

The legal concept that creates the basis for the Dublin Regulation also raises questions to many analysts. Some legal analysts have argued the legitimacy of the “safe third country” principle under international law. As I mentioned before, it was created based on a loose interpretation of the word “directly” in Article 33.1. This type of interpretation is referred to as *a contrario* meaning it was argued to be legal because the law cannot disprove it. These types of arguments are often used when a legal system doesn’t have laws in place covering a certain problem. This is an example of the European Union filling in the gaps left by the 1951 Refugee Convention. While some analysts may go as far to argue that the concept of first safe country is

“seriously challenging international refugee law,” and thus “does not form a real part of international law,” (Balogh, 2015). I would argue that however weak the concept may be, and however many potential risks it may pose, the concept itself hasn’t been challenged in an international court. . What has had success in international courts are legal reasonings based on human rights violations and violations of the principle of refoulement.

The Dublin Regulation was backed by states who received a large amount of asylum applications such as Germany. In 2013, Germany received more than 130,000 applications for asylum which is more than twice as many as the next four most popular countries for asylum combined: Italy, Poland, Belgium, and Spain (Fratzke, 2015). Germany and Sweden have remained one of the top five destinations for applicants since 2008 (Fratzke, 2015). In terms of numbers alone, this would refute claims by southern states that they experience an unfair burden. However, what isn’t taken into account are countries’ individual abilities to process large numbers of asylum applications. Serious concerns have been raised about human rights conditions in Italy and Greece. This would affect their status as a “safe” country and prevent other States from transferring applicants there even if it was the first country of entry. In order for the Dublin Regulation to work efficiently as the creators intended, a list of countries presumed to be safe are relied upon. In recent years, this has caused several cases to be brought to the European Court of Human Rights. The first case I will discuss brought charges against both Belgium and Greece and set an important precedent often serving as case law in subsequent similar cases. Italy remained under heavy scrutiny and despite receiving nearly one quarter of all take-charge and take-back requests in 2013, another report showed deficiencies in asylum-procedures had not changed. These issues will be illustrated further in my discussion of

the *M.S.S. v. Belgium and Greece* was brought against Italy in *Tarakhel v. Switzerland*, (EDAL, 2014).

The ruling in the 2011 case *M.S.S. v. Belgium and Greece*, shows how the Dublin Regulation has the potential to violate international law. This case was brought in front of the European Court of Human Rights (ECtHR) and concerned an Afghan man who entered the European Union through Greece then travelled to Belgium where he applied for asylum. However, Belgium transferred him to Greece which was the responsible Member State for examination of his asylum application according to the Dublin Regulation. When he was transferred in 2009, he was detained in “insalubrious conditions” before “living on the streets without any material support,” (EDAL App No. 30696/09). Both Belgium and Greece were found in violation of the European Convention on Human Rights. The Greek government was found in violation of Article 3 ECHR which prohibits “inhuman or degrading treatment or punishment” due to the “insalubrious” living conditions and the fact that he was detained. Greece was additionally found in violation of Article 13 ECHR concerning the right to “an effective remedy” due to the fact that his asylum procedure was carried out inadequately and was denied asylum, “without any serious examination of the merits of his asylum application and without any access to an effective remedy,” (EDAL). By being denied and having to return to Afghanistan, Greece was violating the principle of non-refoulement. The court argued that Belgium should have been aware or should have checked that the conditions in Greece were adequate for processing applicants. Belgium was also found in violation of Article 3 ECHR for sending him back to Greece where he was exposed to inhumane living conditions. Additionally, since the high risk of refoulement in Greece should have been known by Belgium, Belgium was

also found responsible for his risk to refoulement. This is referred to as “chain refoulement” where returning him to Greece would then likely lead to his eventual return to Afghanistan. This case highlights the risk in assuming all countries in Europe have adequate conditions for handling asylum seekers. The fact that human rights violations in Greece were so flagrant that the court’s stance was that Belgium should have known that by sending him there he was being posed to substantial risk to refoulement, shows that states are less concerned with providing protection as they are with assigning responsibility for applications. If states are aware that certain countries are not safe enough to return asylum-seekers to but simply ignore this then are they acting in accordance with the Dublin Regulation? Furthermore, other countries’ safety for asylum-seekers are also being questioned in recent events such as Serbia, Bulgaria, and Hungary in addition to continuing concerns over Italy and Greece. If so many countries are found unfit to be considered “safe-third-countries” at what point could the European Court of Human Rights force a revision of the Dublin Regulation? If the ECHR is continuously being violated by the Dublin Regulation it would be important to consider if the ECtHR is in a position to force changes to the Dublin Regulation. Otherwise, states will continue to put more resources into handing off asylum-seekers to other countries rather than assuring that they are provided with basic human rights protections.

The Dublin Regulation is an example of a policy that hesitates to address the fundamental issue of protection and instead focuses on deciding upon rigid criteria “which do not take sufficient account of the intention and specific circumstances of each asylum seeker,” (Hurwitz). These observations about the Dublin Regulation were made before the recent refugee crisis. While inefficient under stable rates of migrant flows, with today’s mass-influx the Dublin

Regulation is crumbling under pressure. It is no longer a couple of countries struggling with a large amount of migrants but almost all countries to some extent. The UNHCR recently suspended transfers to Bulgaria due to similar fears of chain refoulement to Serbia. More recently, a Finnish court ordered that all transfers from Finland to Hungary would be stopped due to the likelihood of being rejected at the border to Serbia where a high risk of refoulement exists (EDAL, 2016). This unprecedented mass-influx of asylum seekers is further exposing the deficiencies of the Dublin Regulation. For this reason I argue that changes to the Dublin Regulation would be futile in trying to solve the root problem of sharing the burden of protection among Member states because it is based on principles that are only in the interest of states.

During this time in Europe courts have supported asylum-seekers rights. The *Tarakhel v. Switzerland* is another case similar to the *M.S.S.* judgement in that it aims to prevent chain-refoulement . This case also upholds the European Union's commitment to upholding the UN Convention on the Rights of the Child. In this case, a family was appealing to the European Court of Human Rights that they should not be sent back to Italy, their first country of entry, from where they were applying for asylum in Switzerland because of the inhumane conditions of Italy's reception centers. The UN Convention on the Rights of the Child state that whether a child is accompanied by family or not, special consideration should be given when deciding whether they should receive asylum. Their appeal was granted and further action waits to be taken.

Although it takes time for court cases to make an impact, important precedents for the future can be set. The same legal reasoning that was used in *M.S.S. v Belgium and Greece* could be used to argue against returning Syrian refugees to Greece. Greece has become so

overwhelmed with asylum-seekers that the EU negotiated a deal with Turkey that would return all migrants arriving in Greece after March 20, 2016 back to Turkey as a “temporary and extraordinary measure which is necessary to end the human suffering and restore public order,” (Peers). The EU said it is not committing a mass-expulsion which is prohibited under the Refugee Convention because it will give those who arrive an opportunity to apply for asylum. Only those whose applications are denied will be sent back to Turkey. Asylum-seekers who risked their lives and paid large sums of money to smugglers to reach Greece are now going to be sent back to Turkey. Turkey has agreed to this deal because they will receive a sum of money from the EU to be used for the increase in asylum-seekers and because of promises to expand visa commonalities to Turkey (Peers). However, how Turkey uses this money will not be regulated or go through aid organization. Even if the money was used to improve asylum-facilities, it may not directly improve facilities for those who are returned. In the midst of the largest refugee crisis in Europe since World War II, Europe continues to handle the mass-influx of asylum-seekers by externalizing the problem to bordering states outside of the EU.

We should be asking if this is the direction we want refugee protection to go. This regulation challenges the supervisory mechanism of the UNHCR who, however discouraging it was of the Dublin Regulation, could not prevent its implementation because it technically has legal basis. The UNHCR did state at the time that it “prefers not to refer to the safe country or host third country notion as a principle.” A principle in international law could lead to a customary principle which would strengthen it under international law, allowing more policies to be created on this basis (Int’l Law Textbook). It is clear that while the UNHCR may not have

had the power to stop the Dublin Regulation, it clearly does not want it to become a widely accepted practice. There is a strong argument that the intent of the Dublin Regulation is to “act as a deterrent and limit the freedom of asylum seekers to choose the country in which they will apply for asylum, without guaranteeing that their application will be examined by one of the States,” (Hurwitz). Ways in which the UNHCR has been able to address recent issues with the Dublin Regulation is by providing legal assistance to applicants and investigating conditions of asylum facilities. However this role may be diminished as their funding continues to be stretched.

During difficult times, states will resort to dismissing applications and continuing to use flawed regulations. After making a long, dangerous journey asylum-seekers are shuffled between different countries prolonging the time it takes for their application to be assessed and increasing the amount of time spent waiting in inhumane conditions. While the Asylum Procedures Directive requires states to provide information to applicants in their native language, with stretched resources they may be failing to provide these services. De Jong sums up the attitude toward the Dublin Regulation and states’ unwillingness to provide protection, “Member States with long external borders prefer a dysfunctional system to one which would make them bear the burden of most asylum seekers arriving irregularly in the EU” (Hurwitz).

CONCLUSION

Today’s refugee crisis brings to light many problems inherent to establishing an international protection regime. Creating a general legal framework for protecting refugees has led to assessing asylum applications individually instead of assessing asylum-seekers as groups

from specific wars such as after World War II. Does it make sense to individually assess applications for asylum when there is a clear threat of persecution in a war-torn country such as Syria? Or when it involves a group of people whose prosecution is known to be based on religion such as the Yazidis who were one of the first peoples to be targeted by ISIL? The conflict of creating a definition for a refugee can be described from the viewpoint of trying to create a permanent regime for an issue whose causes are changing. An analysis on the idea of temporariness in international law states that “on the one hand there is the need to create a stable, long term rule of law regarding the way the issues are tackled, and on the other hand the legal response with respect to those issues needs to constantly catch-up with the fast paced developments on the ground” (Ali, 2016). These analysts call for a temporariness in international law in order to be able to adapt to crises whose nature are constantly changing.

Creating categories of refugees such as “economic migrants” is another way states have taken advantage of institutions to limit the number of asylum-seekers they accept. Today many refugees are accused of being economic migrants however if one looks at the top 10 countries of origin of asylum-seekers arriving in Europe, there are legitimate conflicts in each one. The problem then, is figuring out how the 60 million refugees in the world today be provided the protection of asylum. Instead of addressing this question from an economic, pragmatic standpoint, countries and politicians are choosing instead to play to the darkest side of humanity and fear. Are we deciding to close our borders? This is the message that our current actions send. If we continue in this direction, it will lead to chaos and I don’t believe that is a viable option.

Works Cited

- Ali, Nathaneal T. "Temporary Problems and Temporary Responses in International Law." Website. *EJIL: Talk!*. 25 Sep 2015. Web.
- Balogh, Cintia (2015). "International Refugee Law and the European Union's Refugee Protection Protocol: A Study on the Ius Cogens Norm of Non-Refoulement" *Institute for International Political Economy*. Berlin.
- Bubb, Ryan, Michael Kremer and David I. Levine. "The Economics of International Refugee Law." *The Journal of Legal Studies*. 40.2(2011): 367-404.
- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)
- European Database of Asylum Law (EDAL). 2014. ECtHR - Tarakhel v. Switzerland, Application no. 29217/12.
- European Database of Asylum Law (EDAL). 2012. Hirsi Jamaa and Others v. Italy, Application No. 27765/09.
- Fassin, Didier. (2005). "Compassion and Repression: The Moral Economy of Immigration Policies in France." *Cultural Anthropology*. 20(3): 362-387. *American Anthropological Association*.
- Fratzke, Susan. (2015). "Not Adding Up: The Fading Promise of Europe's Dublin System." *Migration Policy Institute*.
- Ghráinne, B. N. (2015) Hungary's Actions: Past the Borderline of International Law. <<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/09/hungary's-actions>> (Accessed 29 Nov 2015)

- Goodwin-Gill, Guy S. (2001). "Refugees: Challenges to Protection." *The Center for Migration Studies of New York*. 35(1): 130-142.
- Goodwin-Gill, Guy S. (1983). *The Refugee in International Law*. Oxford: Clarendon Press.
- Hartmann, Jacques and Irini Papanicoloplu. (2015). "Are Human Rights Hurting Migrants at Sea?" *EJIL: Talk!* April 5.
- Hartmann, Jacques and Nikolas Feith T. "The Danish Law on Seizing Asylum Seekers' Assets." Website. *EJIL: Talk!*. 27 Jan 2016. 1 Feb 2016.
- Holborn, Louise Wilhelmine (1956). *The International Refugee Organization: A Specialized Agency of the UN, Its History and Work, 1946-1952*. Oxford University Press.
- Hurwitz, Agnes (2009). Supervision at the Level of the European Union, *The Collective Responsibility of States to Protect Refugees* (223-250). New York: Oxford University Press.
- Lambert, Helene. "The Next Frontier: Expanding Protection in Europe for Victims of Armed Conflict and Indiscriminate Violence." *International Journal of Refugee Law*. 25.2(2013): 207-234.
- Lehmann, Julian. "Up the Creek Without the Law: What is at Stake in Refugee Responsibility Sharing?" Website. *EJIL: Talk!*. 2 Nov 2015. Web. 4 Feb 2016.
- Messineo, Francesco. (2012). "Yet another mala figura: Italy breached non-refoulement obligations by intercepting migrants' boats at sea, says ECtHR." *EJIL: Talk!* February 24.
- M.S.S. v. Belgium and Greece, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011.

Peers, Steve. "Relocation of Asylum-Seekers in the EU: Law and Policy." Website. *EU Law Analysis*. Steve Peers, 24 Sep. 2015.

Peers, Steve and Emanuela Roman. "The EU, Turkey and the Refugee Crisis: What could possibly go wrong?" Website. *EU Law Analysis*. 5 Feb 2016. 8 Mar 2016.

Pizzutelli, Francesca. "The Human Rights of Migrants as Limitations on States' Control Over Entry and Stay in Their Territory." *EJIL: Talk!*. 21 May 2015. 26 Feb 2016.

Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol)

Registry of the European Court of Appeals Rights. 2015. Annual Report 2014.

Saliba, Susan. "Non-Refoulement, Push-Backs and the EU Response to Irregular Migration." Website. *European Parliamentary Research Service Blog*. 13 May 2015. 1 Mar 2016.

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR)

UN High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at:
<http://www.unhcr.org/4d9486929.pdf>

UNHCR. (2015). "Crossings of Mediterranean Sea exceed 300,000, including 200,000 to Greece." *UNHCR News*. August 28.

UNHCR (2015). "Global Trends Forced Displacement 2014." *UNHCR News* (1-56). Web 5 Nov. 2015.

Worster, William T. (2012) "The Evolving Definition of the Refugee in Contemporary International Law." *Berkeley Journal of International Law*. 30.1: 94-160.