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The Syrian Refugee Crisis and the European Union: A Case Study of Germany and Hungary

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FLORIDA INTERNATIONAL UNIVERSITY

Miami, Florida

THE SYRIAN REFUGEE CRISIS AND THE EUROPEAN UNION:

A CASE STUDY OF GERMANY AND HUNGARY

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the requirements for the degree of

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in

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by

Simone-Ariane Schelb

2017

To: Dean John F. Stack, Jr.
Green School of International and Public Affairs

This thesis, written by Simone-Ariane Schelb, and entitled The Syrian Refugee Crisis and the European Union: A Case Study of Germany and Hungary, having been approved in respect to style and intellectual content, is referred to you for judgment.

We have read this thesis and recommend that it be approved.

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Florida International University, 2017

DEDICATION

I dedicate this thesis to my husband. Your love, support, and belief in me have carried me further than I ever thought I could go.

ABSTRACT OF THE THESIS
THE SYRIAN REFUGEE CRISIS AND THE EUROPEAN UNION:
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by

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Florida International University, 2017

Miami, Florida

Professor Susanne Zwingel, Major Professor

This thesis explores the impact of the Syrian refugee crisis on the Common European Asylum System. It evaluates the extent to which the European Union was able to implement a common asylum system, identifies discrepancies between different European countries, primarily Germany and Hungary, and briefly examines the roots of these differences. To this end, the structure of the international refugee protection regime and the German and Hungarian asylum systems are analyzed. Furthermore, the thesis explores how the governments of the two countries perceive the rights of refugees and how their views have affected their handling of the crisis. The case studies of Germany and Hungary have revealed that the treatment of Syrian refugees varies enormously within the EU. Hence, the implementation of the Common European Asylum System has not been achieved, which can be attributed to the deficiencies within the system and the growing ideological rifts within the EU.

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ABBREVIATIONS AND ACRONYMS

AfD	Alternative for Germany
AFSJ	Area of Freedom, Security, and Justice
AMIF	Asylum, Migration, and Integration Fund
BAMF	Federal Office for Migration and Refugees (Germany) Bundesamt für Migration und Flüchtlinge
CAT	Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CJEU	Court of Justice of the European Union
CoE	Council of Europe
EASO	European Asylum Support Office
EATRR	European Agreement on Transfer of Responsibility for Refugees
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EU	European Union
EURODAC	European Asylum Dactyloscopy Database
Fidesz	Federation of Young Democrats–Hungarian Civic Alliance Fiatal Demokraták Szövetsége–Magyar Polgári Szövetség
GETZ	Joint Centre for Countering Extremism and Terrorism (Germany) Gemeinsames Extremismus- und Terrorismusabwehrzentrum
GTAZ	Joint Extremism and Counter-Terrorism Center (Germany) Gemeinsames Terrorismusabwehrzentrum

IAO	Immigration and Asylum Office (Hungary) Bevándorlási és Menekültügyi Hivatal
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICJ	International Court of Justice
ISIL	Islamic State of Iraq and the Levant
KDNP	Christian Democratic People's Party (Hungary) Kereszténydemokrata Néppárt
MILo	Migration Info Logistics system Migrations-Infologistik System
OPCW	Organization for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Cooperation in Europe
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

I. INTRODUCTION

The Syrian refugee crisis presents the largest refugee crisis of our time. Per the United Nations High Commissioner for Refugees (UNHCR), more than 5 million people have fled Syria (Syria Regional Refugee Response). While the majority of refugees have sought refuge in Syria's neighboring countries, with approximately 3 million in Turkey, 1 million in Lebanon, 650,000 in Jordan, 240,000 in Iraq, and 120,000 in Egypt, the number of asylum applications to countries of the European Union (EU) has risen close to 1 million (Syria Regional Refugee Response).¹

In 2007, the European Union established a Common European Asylum System (CEAS) in accordance with international refugee law and international human rights law, a measure resulting from the creation of a common market and the abolition of internal borders. It recognizes the right of refugees fleeing persecution or serious harm in their home country to seek asylum and considers the granting of asylum an international obligation. It, furthermore, establishes minimum standards for the treatment of refugees. Syrian refugees seeking asylum in the EU should, therefore, encounter similar rights and conditions in different member states. However, the facts on the ground portray a divided EU: while some countries have been welcoming refugees, others have been more reluctant to do so.

After analyzing the structure of the international refugee protection regime, primarily the 1951 Convention Relating to the Status of Refugees with its 1967 Protocol

¹ The official UNHCR figures are based on registered refugees. The actual number of refugees in Turkey, Lebanon, Jordan, Iraq, and Egypt is higher since many refugees do not register. The official UNHCR figures for first-time asylum applications in the EU are based on data provided by 28 EU member states plus Norway and Switzerland and are likely to include repeated applications.

and CEAS, and outlining the roots of the Syrian refugee crisis and the grounds for asylum for Syrians, this thesis will explore to which extent the European Union was able to implement a common asylum system. The objective is to, furthermore, identify discrepancies between different European countries in their interpretation of and adherence to the international and European refugee protection regime. To this end, the German government's as well as the Hungarian government's handling of the Syrian refugee crisis will be examined, more specifically the differences in their approaches to accept refugees and in their treatment of refugees. The focus will be on how these two European states perceive the rights of refugees and how their views affect their handling of Syrian refugees. In addition, the thesis will briefly explore which factors lay at the root of the differential treatment of Syrian refugees.

II. THE INTERNATIONAL REFUGEE PROTECTION REGIME

Refugees present a special class within international law. They form a group of people that need international protection, having experienced violations of their fundamental rights in their country of origin and lacking the necessary protection from their government. The international refugee protection regime provides the basis for their protection. "Refugee law nevertheless remains an incomplete legal regime of protection, imperfectly covering what ought to be a situation of exception" (Goodwin-Gill and McAdam 1).

II.a. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol

The massive refugee flows after World War I and World War II have led to the creation of the current international refugee regime. It is comprised of the 1951

Convention relating to the Status of Refugees, which defines refugees and their rights and was supplemented by a Protocol in 1967, and the Office of the United Nations High Commissioner for Refugees (UNHCR), established on 14 December 1950 and responsible for overseeing the implementation of the convention. “Ever since their entry into force, the 1951 Convention and the 1967 Protocol have formed the bedrock of refugee law and have, for good reason, frequently been referred to as the *magna carta* of refugees” (Zimmermann et al., “The 1951 Convention” v).

The 1951 Convention entered into force on 22 April 1954, consolidating other international instruments concerning refugees and providing “the most comprehensive codification of the rights of refugees at the international level” (Convention and Protocol 3). The 1951 Convention does not, though, require states to provide asylum and does not touch on reception conditions (O’Nions 9). As of April 2015, 148 state parties, including all member states of the European Union, have signed either the Convention or the Protocol or both (States Parties 1).

Article 1 of the 1951 Convention puts forth a definition of refugees that provides the foundation on which the granting, discontinuation, and denial of refugee protection is based. Article 1 A and B comprise inclusion clauses, which positively define the criteria a person must satisfy to be considered a refugee: anyone who

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

habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (Convention and Protocol 14)

Since the 1951 Convention was established as a post-WWII instrument, the term refugee was limited to persons escaping events occurring before 1 January 1951 within Europe. These temporal and geographic limitations were removed by the 1967 Protocol, giving the 1951 Convention universal coverage. The Convention still contains an option to retain the geographic limitation though. Congo, Madagascar, Monaco, and Turkey are the only states that have maintained this option (Status of Treaties).

The Convention is a status as well as a rights-based instrument, i.e. that the rights laid out in the Convention only apply to an individual for as long as she or he satisfies the Convention's definition of a refugee (Convention and Protocol 3). "Art.1 A does not constitute the refugee status of a person but merely declares the person concerned to be a refugee at the moment when he or she satisfies the definition, so that determination of status is declaratory, rather than constitutive" (Schmahl 251). Hence, a person does not become a refugee because of her or his formal recognition but is a refugee as soon as she or he fulfills the criteria. If the determination of status were constitutive, a person would only be a refugee if formally recognized as such. Since the determination of status is declaratory, the recognition as a refugee is irrelevant to a person's refugee status and the rights that the Convention lays out apply to the person even if she or he has not been formally recognized.

Article 1 C is composed of cessation clauses that define when the Convention ceases to regard a refugee as such: a person that has voluntarily re-availed herself or himself of the protection of her or his home country; a person that enjoys the same status

as nationals in her or his country of asylum; a person that benefits from the protection of a third country (e.g. through nationality) or United Nations (UN) agencies other than UNHCR; a person that has re-established herself or himself in the country she or he had left out of fear of persecution; or when the circumstances that are linked to her or his refugee status have ceased to exist.

Article 1 D to F contain exclusion clauses, which enumerate the conditions under which a person is excluded from the application of the Convention even though they meet the positive criteria of Article 1 A and B. Those conditions encompass having committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime prior to the seeking of refuge, or acts contrary to the purposes and principles of the United Nations. These exclusion clauses aim at denying perpetrators of heinous acts and serious common crimes protection under the 1951 Convention and at shielding the receiving country from criminals who present a threat to its national security (Note on the Exclusion Clauses). Besides, the protection of perpetrators of grave offenses would contradict the humanitarian nature of the concept of asylum.

The fundamental duties of refugees are laid out in Article 2: conformity to the laws and regulations of the host country and measures for the maintenance of public order. The fundamental rights of refugees in receiving countries set out by the 1951 Convention include access to courts (Article 16), to wage-earning employment (Article 17), to self-employment (Article 18), to primary education (Article 22), to public relief (Article 23), and to social security (Article 24), as well as freedom of movement (Article

26), and the provision for identity papers (Article 27), including a refugee travel document in passport form (Article 28)² (Convention and Protocol).

The fundamental principles that buttress the Convention are non-discrimination, non-penalization, and non-refoulement. The non-discrimination principle in Article 3 calls for the application of the Convention without discrimination as to race, religion, or country of origin. The non-penalization principle requires states to, first, recognize that refugees might have to break immigration laws to be able to seek asylum and, second, not penalize them for their illegal entry or stay (Article 31). “Prohibited penalties might include being charged with immigration or criminal offences relating to the seeking of asylum, or being arbitrarily detained purely on the basis of seeking asylum” (Convention and Protocol 3). The non-refoulement principle dictates that a refugee or asylum applicant shall not be expelled or returned to a territory against her or his will where she or he might face threats to life or freedom because of her or his race, religion, nationality, membership of a particular social group or political opinion (Article 33). Non-refoulement, though, is not an absolute principle. The Article provides for exceptions in case of national security or public order concerns.

Article 4 of the Convention requires states to grant refugees freedom of religion and religious education to the same degree that they are accorded to nationals. Furthermore, recommendations for family unity, access to suitable welfare services, and international cooperation regarding asylum and resettlement were added to the Convention by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons.

² The so-called Nansen passport, named after the first Commissioner for Refugees Fridtjof Nansen.

While the convention lays out a definition of refugees and their basic rights, as well as fundamental principles, many terms need to be interpreted. Treaties are not self-applying, and the meaning of words is not self-evident (Goodwin-Gill and McAdam 7). The interpretation of terms such as well-founded fear and persecution, for example, are crucial for the granting of asylum. Fear is a subjective “forward-looking expectation of risk” (Zimmermann et al., “Article 1A” 341). Qualified by the adjective well-founded, it can refer to either an objective situation, where the person has been an actual victim of persecution, or to a combined subjective and objective situation, where the person has good reasons to fear acts of persecution in the foreseeable future (Zimmermann et al., “Article 1A” 338). The objective approach focuses exclusively on the existence of objective evidence with the subjective fear being considered merely an additional factor that is not relevant to the assessment. The combined subjective and objective approach emphasizes the subjective element with the objective evidence being complementary and corroborative³. The question as to what degree of risk is sufficient to substantiate the existence of a well-founded fear of persecution and which reasons qualify as good reasons, though, is not touched upon in the 1951 Convention but is left to be decided by the contracting parties (Zimmermann et al., “Article 1A” 341).

Even though the term persecution is the key factor in determining the refugee status of a person, a definition of the term is neither included in the 1951 Convention nor elsewhere. The term originates from the Latin word *persequi*, i.e. to follow with hostile

³ The objective approach is implemented in French and New Zealand courts and is supported by a decision of the German Federal Administrative Court. The combined subjective and objective approach is favored by domestic courts in Australia, the USA, Ireland, the UK, Canada, and the Higher Administrative Court of Baden-Württemberg (Germany), as well as UNHCR (Zimmermann et al., “Article 1A” 338-341).

intent. A purely linguistic definition of the term is unsatisfactory since different dictionaries provide different definitions, leaving it up to the contracting parties and the international community to define it. Within the object and purpose of the 1951 Convention, the notion of persecution must be connected to the protection of human rights. A widely-accepted interpretation of persecution is, therefore, “the severe violation of human rights accompanied by a failure of the State to protect the individual” (Zimmermann et al., “Article 1A” 345).

The interpretation of the term social group also plays a significant role in defining refugees. A consensus over the necessity to limit the meaning of the term exists. Without such, the definition of a social group, and hence of a refugee, would be superfluous since it could encompass anyone. While the actual definition of the term is somewhat controversial, some prerequisites are commonly accepted. The defining characteristic of a social group, for example, may not be mutable or may only be altered by repudiating fundamental human rights. Such a characteristic can be of ethnic, cultural or linguistic nature, or based on education, family background, shared values or economic activity (Goodwin-Gill and McAdam 75). It must also result in either the self-perception or societal perception of the group as a unity (Aleinikoff 296). Furthermore, a social group must exist independently of the persecution inflicted upon members of the group, i.e. the defining immutable characteristic of the group cannot be the fear of persecution (Aleinikoff 286). Some groups have received considerable recognition as falling within the scope of a social group, e.g. women, lesbian and gay people, families, tribes, and occupational groups (Handbook and Guidelines 92). Under certain circumstances,

poverty and past social status have also been recognized as the defining characteristic of a social group.

The term non-refoulement provides another example of the ambiguity of terms in the 1951 Convention. It represents one of the most important principles of the Convention but is rather unclear concerning rejection at the border. While it is believed that non-refoulement initially was not meant to include protection at the border, the French term *refouler* does comprise the meaning rejection at the frontier (O’Nions 45). The interpretation of non-refoulement based on the language and the context, therefore, should lead to the inclusion of protection from refoulement at the border, i.e. non-refoulement includes non-return as well as non-rejection (Goodwin-Gill and McAdam 208). “The responsibility of the Contracting State for its own conduct and that of those acting under its umbrella is not limited to conduct occurring within its territory” but rather depends on whether refugees “were under the effective control of, or were affected by those acting on behalf of, the State in question” (Lauterpacht et al. 110).

Since a right to asylum is not contained in the 1951 Convention, states do not have to grant asylum but must adopt solutions that do not amount to refoulement, e.g. removal to a safe third country or temporary protection (Lauterpacht et al. 113). It is important to note, that Article 33 uses the expression “to the frontiers of territories,” i.e. the prohibition of refoulement does not only apply to the refugee’s country of origin but to any territory in which the refugee will be at risk of persecution (Lauterpacht et al. 122). Since any person who fulfills the criteria laid out in Article 1A of the Convention is a refugee regardless of whether she or he has been formally recognized by a country, the

principle of non-refoulement applies to all refugees, whether their status has been officially determined or not (Lauterpacht et al. 116).

Many varied forms of interpretation and implementation of the 1951 Convention exist. An international refugee court to serve as the final authority on matters of interpretation and implementation of the Convention has not been established as part of the international refugee regime, which means that no single interpretation or common international practice of the treaty exists (McAdam 77). At the same time, UNHCR can only issue recommendations on the interpretation of the 1951 Convention that are non-binding to states in its *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, since its mandate does not include authoritative rulings or opinions. Even though Article 38 of the 1951 Convention and Article IV of the 1967 Protocol state that disputes about the interpretation or application of the Convention and Protocol that cannot be resolved by other means are to be referred to the International Court of Justice (ICJ), no case has ever been referred to the court (McAdam 79). Hence, states enjoy a margin of discretion in their interpretation of the 1951 Convention as well as in its application, allowing them to make decisions that concur with current state policies (Joly et al. 12). Furthermore, the language adopted in the Convention is ambiguous by design, reflecting its nature of negotiations, compromises, and deliberate political limitations (McAdam 86). In practice, the potential differences of interpretation and application mean that refugees do not receive the same status or rights in all countries that are signatories to the convention.

The Convention's lack of a precise definition of terms can also be seen as an intention not to limit the meaning of key concepts in order to allow for the possibility of

encompassing future developments (Türk et al. 39). In this sense, the lack of precise definitions is a positive attribute since new phenomena and circumstances can be added to the Convention's scope. Hence, the 1951 Convention must be seen as a "living instrument", i.e. it must be interpreted in consideration of contemporary conditions and changes in national and international law (McAdam 103). In regard to persecution, for example, the Convention does not stipulate from whom it must originate, permitting the incorporation of non-state actors as agents of persecution. Moreover, gender is not listed as a reason for persecution in Article 1 of the Convention, nor as a prohibited motive for discrimination in Article 3. It has come to be recognized in most human rights instruments, though (McAdam 105). The best example is the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Regarding these changes in international law, it is reasonable to add gender to the reasons for persecution and prohibited motives for discrimination. An interpretation of the Convention that excludes a person who is persecuted due to her or his gender from being recognized as a refugee, solely because the reason is not listed in the Convention is, therefore, indefensible.

The general rules of interpretation of treaties, laid out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, stipulate that a treaty shall be interpreted in good faith and within its context. Hence, the 1951 Convention must be interpreted within the broader context that the refugee regime is situated in. A "refugee regime complex" has emerged, in which the refugee regime and several other regimes overlap (Betts 12). The human rights regime, humanitarian regime, labor migration regime, security regime, as well as the travel regime underpin the refugee regime. The human rights regime is a

useful tool in arriving at an interpretation of the 1951 Convention that reflects the Convention's fundamental purpose and its non-discriminatory nature, given that the Universal Declaration of Human Rights (UDHR) and its premise that human beings shall enjoy fundamental rights and freedoms without discrimination is referenced in Recital 1 of the Preamble of the Convention. Recital 5 of the Preamble of the Convention, moreover, emphasizes the social and humanitarian nature of the problem of refugees, calling on states to recognize the welcoming of refugees as a humanitarian act, not a political measure. "It is an act of the receiving State for the benefit of an individual person; the granting of asylum does not affect the legal relationship between the receiving State and the State of origin" (Alleweldt 238).

The human rights regime reinforces the norms of the refugee regime, with Article 14 of the UDHR directly asserting the right to seek and enjoy asylum from persecution. Human rights treaties and instruments, in general, provide "complementary protection", i.e. legal refugee protection outside of international refugee law (Betts 21). The principle of non-discrimination, for example, is enshrined in various international human rights treaties, such as the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the 1989 Convention on the Rights of the Child (Gorlick 122). The principle of non-refoulement is buttressed in Article 3 of the European Convention on Human Rights (ECHR), Article 7 of the ICCPR, and Article 3 of the Convention against Torture (CAT). These articles state that no person shall be subjected to torture or inhumane and degrading treatment and that no person shall be expelled, returned or extradited to a country where she or he may face torture. International human rights standards can be

used as practical as well as analytical instruments to improve the protection of refugees (Gorlick 177). It is important to note, though, that neither international human rights law nor international refugee law provides the right to enter a state, not even with the intention to seek asylum, which presents a significant protection gap for refugees. (O’Nions 52).

It must be acknowledged that the term ‘refugee’ is mutable, i.e. it has been defined and redefined for over 300 years (Marfleet 13). While the Convention’s definition draws a marked distinction between refugees and irregular migrants, such a clear-cut demarcation can rarely be made in real life due to the complexities of global movements (Marfleet 13). Restrictive interpretations of the 1951 Convention have increasingly gained traction, resulting in the exclusion of many individuals in need of international protection, which is attributable to the primacy of security concerns over protection needs (Feller, “Foreword” viii). People displaced by food insecurity, environmental catastrophes and natural disaster caused by climate change, and those affected by state fragility, civil wars, human trafficking, and terrorist violence do not meet the requirements for refugee status expounded in the 1951 Convention but are, nevertheless, vulnerable human beings in need of international protection. Hence, the term refugee in the 1951 Convention needs a more comprehensive and updated definition which is more in line with the current world situation. “Legal concepts are developed in response to recognized needs and not at an abstract level unrelated to actual reality” (Alborzi 174).

In dealing with refugees, the 1951 Convention focuses solely on individual refugees fleeing their country of origin for fear of persecution, omitting internally

displaced persons as well as collective flight on the grounds of generalized violence and war. Large-scale movements of refugees have not only become frequent occurrences in our time but also present severe humanitarian challenges to the international community. “The Convention’s focus on individual rights makes it ill-suited to serve as the basis of protection for massive refugee outflows, whose needs are of the most basic type, namely food, shelter, clean water, sanitation, group rights and protection from cruel, inhumane or degrading treatment” (Alborzi 181). The interpretation of mass movements as major security threats, the post 9/11 perception that security and refugee protection are mutually incompatible, and the criminalization of asylum have, moreover, reduced the willingness of states and of the public to welcome refugees (Smyth 11). A “politics of containment” has emerged, aimed at preventing undesirable asylum seekers from leaving their countries of origin or gaining access to the receiving countries (Alborzi 214).

The refusal to recognize refugees fleeing from civil war or generalized violence under the 1951 Convention is commonly based on the legal argument that government actions in times of civil war or generalized violence do not amount to personal persecution because they are not governed by race, religion, ethnic origin or political opinion (Alborzi 217). Hence, a person fleeing civil war or generalized harm does not flee persecution as defined in the 1951 Convention because she or he is not singled out and, therefore, does not fall within the definition of a refugee. Nevertheless, the argument that individuals fleeing war deserve the same protection as individuals fleeing persecution has been made, e.g. by German Chancellor Angela Merkel (Sommerpressekonferenz).

II.b. The Common European Asylum System

After World War II, asylum became a widely-accepted institution in Europe and an essential part of the European tradition (Klug 120). Asylum laws and practices, though, have differed significantly between EU member states, even though all are parties to the 1951 Convention and 1967 Protocol. To achieve more harmonization between the asylum systems of EU countries, the European Union and other regional institutions have gradually introduced conventions and agreements.

The Organization for Security and Cooperation in Europe (OSCE), the Council of Europe (CoE), and the EU are the three regional institutions that affect European asylum policy. While the OSCE is primarily focused on preventing circumstances that create refugees, the CoE has established the ECHR, which underpins the non-refoulement principle with the prohibition of torture in Article 3 and establishes human rights standards for the detention of refugees in Article 5 (Klug 120). It has also adopted the European Agreement on the Abolition of Visas for Refugees and the European Agreement on Transfer of Responsibility for Refugees (EATRR), which aim at facilitating the movement of refugees between CoE member states but are limited in influence due to their small number of state parties (Klug 122). The EU has introduced a range of instruments geared towards establishing a Common European Asylum System. “Its involvement in asylum policy setting was triggered by a purely utilitarian purpose, namely the need to remove obstacles against the creation of a Common Market and to mitigate secondary movements and safety deficits resulting from the abolition of internal borders” (Klug 127).

The Schengen agreement of 1985, which created the borderless Schengen area, and the Dublin Convention of 1990, which determined the state responsible for processing an application for asylum, were the first steps towards a common European asylum policy (Havlová et al. 85). In 1997, the Treaty of Amsterdam, which amended the Treaty on European Union (TEU) and the Treaty Establishing the European Community (TEC), called for the establishment of a common Area of Freedom, Security, and Justice (AFSJ), entailing the communitarization of the asylum regime (Smyth 9). The Tampere Program of 1999 and the Hague Program of 2004, adopted by the European Council, set out the measures for the implementation of the provisions of the treaty over the periods of 1999-2004 and 2004-2009 respectively. The treaty created a legal basis for a common asylum policy by calling for the creation of common minimum standards in the central areas of asylum law within five years in accordance with international human rights and refugee law (Treaty of Amsterdam 151). However, Protocol No. 24 on asylum for nationals of member states of the European Union⁴, which was annexed to the TEU in 1997, generally excludes EU nationals from EU asylum instruments and restricts the right to asylum within the EU to third-country nationals. It does so on the basis that human rights and basic freedoms are uniformly protected in all EU member states (Protocol (No 24) on Asylum). The limitation on who can apply for asylum in EU countries is contradicting the 1951 Convention, UDHR, and ECHR.

⁴ Also known as the Aznar Protocol, named after the Spanish Prime Minister, who pressed for it after Basques of Spanish nationality, whom the Spanish government labeled ETA terrorists, applied for political asylum in EU countries.

The Treaty of Lisbon, a further amendment to the TEU and TEC⁵ in 2007, provides for the establishment of CEAS. Guidelines for the implementation of the treaty's provision between 2010 and 2014 were set in the Stockholm Program, which was adopted by the European Council in December 2009. Article 63 of the treaty calls for a uniform status of asylum and subsidiary protection for nationals of third countries, common procedures for the granting and withdrawing of asylum or subsidiary protection, criteria and processes for determining which member state is responsible for considering an application, standards for reception conditions, and cooperation with third countries to manage inflows of applicants (Treaty of Lisbon). Article 6, furthermore, declares that the rights and freedoms laid out in ECHR constitute general principles of all European Union laws. The Treaty of Lisbon also converts the Charter of Fundamental Rights of the European Union, with its Article 18 guaranteeing the right to asylum per the 1951 Convention and its Article 19 prohibiting refoulement, into primary EU law. Hence, the EU Charter is legally binding to EU institutions and actions of member states ruled by EU law and has the same legal status as TEU and the Treaty on the Functioning of the European Union (TFEU) (Klug 129; Charter of Fundamental Rights).

Today, the Dublin III Regulation of 2013 and the EURODAC Regulation build the basis for the Common European Asylum System (CEAS). The Dublin III Regulation considers all EU member states as secure and ensures that each asylum application is assessed by only one member state, namely the first member state of arrival.

“International refugee law does not specifically require that a refugee applies for asylum in the first safe country of arrival, but European Union law now establishes this as a key

⁵ TEC was renamed Treaty on the Functioning of the European Union (TFEU) in the Treaty of Lisbon.

principle” (O’Nions 63). At the same time, the assumption that all EU states are safe is untenable, as the risk of refoulement and cases of inhumane and degrading treatment in Greece have demonstrated⁶ (O’Nions 103-105). The EURODAC Regulation sets up an EU-wide fingerprint database for identifying asylum seekers and refugees. The Receptions Condition Directive, the Asylum Procedures Directive, the Qualification Directive, and the Temporary Protection Directive are the central legislative regulations of CEAS that cover all aspects of the asylum process, while the European Asylum Support Office (EASO) assists in the implementation of the legal framework since 2011.

CEAS has been established in accord with UDHR and the 1951 Convention. It recognizes the granting of asylum as an obligation of the international community and the seeking of asylum as a fundamental right for refugees fleeing persecution or serious harm in their home country. It seeks to harmonize asylum laws and practices within the European Union and is, hence, built on three pillars: the harmonization of standards of protection through the alignment of asylum legislation, stronger and effective practical cooperation, and increased solidarity and responsibility among EU member states, e.g. financial solidarity in the form of the Asylum, Migration, and Integration Fund (AMIF)⁷ (Common European Asylum System).

The Reception Conditions Directive was adopted in 2013, replacing Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the

⁶ In 2008, for example, UNHCR recommended that EU member states cease removals to Greece because of a significant risk of refoulement. The 2011 ECtHR ruling in *MSS. v Belgium and Greece*, furthermore, concluded that Greece violated Article 3 ECHR that prohibits inhumane and degrading treatment.

⁷ The AMIF’s budget for 2014-2020 amounts to 3.137 billion Euros. These funds are allocated for the promotion and implementation of CEAS and the management of refugee flows within the EU (Havlová et al. 86).

reception of asylum seekers. It aims at protecting the fundamental rights of asylum applicants during the asylum process and ensuring humane reception conditions across the EU: “Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health” (Reception Conditions Directive Article 17).

In respect to housing, the Directive remains very vague, indicating only that states have to make sure that accommodations for applicants, whether they are collective accommodations, private houses, apartments, or hotels, protect family life, are suitable for the situation of vulnerable persons as well as gender and age-specific concerns, especially gender-based violence, and are accessible to family members, legal advisers, and representatives of UNHCR and other relevant national, international, and non-governmental organizations (Article 18). Article 18(9) allows states, where it is duly justified, to derogate from the material reception conditions when there is a housing shortage or when specific needs of an applicant need to be determined. Regarding health care, the Directive only stipulates that member states need to ensure that applicants, especially persons with special needs and vulnerable individuals, receive the necessary health care, including emergency care, mental health care, and essential treatment of illnesses (Articles 19 and 25).

The Directive, furthermore, allows states to require applicants who have sufficient resources to cover or contribute to living expenses and health care costs (Article 17). Article 20 provides that states can reduce or, in exceptional and duly justified cases, withdraw material reception conditions when an applicant vacates a place of residence without permission, does not comply with reporting duties, has lodged a subsequent

asylum application, or has concealed financial resources. Moreover, it stipulates that states can reduce material reception conditions if an applicant has not applied for international protection as soon as reasonably feasible after arriving in the country.

The Directive grants general freedom of movement to asylum seekers but allows states to decide on the residence of applicants on the grounds of public interest, public order, or the fast processing of claims (Article 7). It, moreover, denies states the right to hold applicants in detention for the sole reason of being an applicant. Detention may only be applied as a measure of last resort. An applicant may be detained if other less coercive measures are inadequate to protect public order and national security, to determine an applicant's identity or nationality, to verify information corroborating an application, or when the applicant is subject to return procedures (Article 8). However, the detention of asylum seekers in specialized detention facilities for administrative purposes has become common practice in many member states, e.g. Malta, the UK, and Hungary (O'Nions 141). In 2008, the ECtHR ruled in *Saadi v UK* that asylum applicants can be detained while their claim is processed because such detention falls within the exception of Article 5(1)f ECHR, i.e. unauthorized entry, even though the applicants in question had fully complied with UK authorities and were not subject to return procedures (O'Nions 69). "The EU's endorsement of administrative detention suggests that protection needs are secondary to administrative efficiency" (O'Nions 70).

Detention must be kept as short as possible and detention orders must be issued in writing by judicial or administrative authorities and state their legal basis (Article 9). A maximum time limit for detention is not provided. The Directive merely stipulates that detention should be for as short a period as possible and only as long as the grounds laid

out in Article 8 are applicable (Article 9). Applicants in detention are to be accommodated in specialized detention facilities, have access to outdoor spaces, and be able to communicate with family members, legal advisers, and representatives of UNHCR or other relevant non-governmental organizations (Article 10). In addition, families in detention are to be provided accommodations with adequate privacy, and the health of vulnerable persons is to be made a priority (Article 11). While many receiving countries have set up specialized detention centers, some countries also use regular prisons to detain refugees, due to the high influx. “In such cases, asylum seekers are generally subject to the same regime as other prisoners and are not segregated from criminals or other offenders” (Goodwin-Gill 187). The Directive also gives asylum applicants the right to access primary education (Article 14) and the labor market within nine months of applying for asylum (Article 15).

The Reception Conditions Directive remains vague and ambiguous, leaving a considerable degree of discretion to member states regarding the definition of an adequate standard of living and its achievement. Thus, standards provided to asylum applicants and the organization of reception systems vary tremendously between member states, failing to guarantee comparable humane reception conditions in the EU, and, in some member states, even failing to ensure dignified treatment of applicants (Proposal for a Directive 3). “Its standards remain minimal and it did not achieve harmonization in difficult areas. Furthermore, several Member States have still not fully implemented the Reception Directive [even though the deadline for implementation was 20 July 2015]. Reception standards in the EU, therefore, still vary widely” (Klug 134).

The mass influx of refugees in 2015 has severely undermined the fulfillment of the obligations laid out in the Directive. The EU's failure to adopt a common response to the refugee crisis has put most of the burden of receiving refugees on a small number of member states, causing wide-ranging administrative and financial strains. The influx of refugees has also revealed a general lack of preparedness on the part of the EU as well as its member states. The introduction of hot spots in Italy and Greece, for example, put refugees de facto in a state of detention, contrary to the Directive's specification of detention as a measure of last resort (Mouzourakis et al. 12-13). In addition, overcrowding and substandard reception conditions have become standard in many member states. Cyprus, for example, has experienced a shortage of material supplies in its main reception center Kofinou (Mouzourakis et al. 31). In Italy, the Lampedusa hotspot offers substandard living conditions due to unsanitary and unheated bathrooms, and overcrowded dormitories, and the Pozzallo hot spot exposes its residents to health risks due to bug infestation, water infiltration and dampness on the walls resulting from a lack of maintenance (Mouzourakis et al. 30). Furthermore, the identification of vulnerable individuals and persons with special needs and the provision of appropriate care have suffered. In France, unaccompanied minors were subjected to dreadful conditions in makeshift camps, while they have been kept in detention in Greece and Italy because of overwhelmed specialized child centers (Mouzourakis et al. 37-38). In regard to health care, Bulgaria and Greece offer insufficient access to general and specialized medical services, while France lacks proper mental health care for refugees (Mouzourakis et al. 38). Overall, the reception conditions in many EU member states are

in need of improvement concerning several issues in order to meet the obligation to provide adequate living standards.

The Asylum Procedures Directive was adopted in 2013 and repealed Council Directive 2005/85/CE on minimum standards on procedures in Member States for granting and withdrawing refugee status. The Directive aims at establishing common procedures for granting and revoking international protection, i.e. refugee status or subsidiary protection, and providing protection decisions that are fairer and faster. It requires member states to facilitate access to the asylum procedure for third-country nationals or stateless persons in detention facilities and border crossing zones (Article 8), to provide necessary support for applicants with special needs, especially unaccompanied minors and victims of torture and sexual violence (Articles 24 and 25), to process initial applications within six months (Article 31), to examine applications individually, objectively, and impartially (Article 10), and to inform applicants about the process in a language they can understand (Article 12).

It, furthermore, includes procedural guarantees, e.g. the right to remain in the member state for the duration of the application process (Article 9), the prohibition of time limits for submission of asylum applications (Article 10), the requirement to provide decisions and reasons for decisions, especially in case of rejection, in writing (Article 11), the right to legal assistance at all stages of the process and to mandatory free legal aid during the appeals procedure (Articles 20 and 22), the right to a personal interview (Article 14), and the right to make an appeal before a court or tribunal (Article 46). In addition, the Directive obligates applicants to cooperate with authorities in establishing their identity and corroborating information concerning their application (Article 13). Per

the Directive, member states can consider an application as inadmissible, if another member state has granted international protection or a non-member state is considered a first country of asylum or a safe third country for the applicant (Article 33).

The first country of asylum concept (Article 35) and safe third country concept (Article 38) are controversial due to their ambiguous definition. Article 35 only requires that an applicant has been recognized as a refugee and enjoys sufficient protection, especially from refoulement, in a country for that country to be a country of first asylum. The article, though, does not define sufficient protection, giving member states much discretion in recognizing a country as a country of first asylum.

Article 38 of the Directive stipulates that a previous country, in which an applicant could have applied for international protection, can be designated as a safe third country if life and liberty are not threatened, there is no risk of serious harm, and, in accordance with the 1951 Convention, the principle of non-refoulement is respected and the possibility of refugee protection exists. “These generalised presumptions of safety clearly challenge the fundamental building blocks of international refugee protection, particularly the need for individualised determination and fair procedures” (O’Nions 119). A country that is generally considered to be safe may not be safe for a particular individual or group. The article, furthermore, does not distinguish between recognizing these principles on paper and securing them de facto, an omission that has led to national lists of safe countries that differ markedly and countries with restrictive practices being designated as safe third countries (Ippolito 132). “Many of these concepts are not accompanied by necessary procedural safeguards. This not only elicits doubt as to the level of harmonization achieved but also as to whether these minimum standards can

guarantee a fair and efficient asylum procedure and, thus, compliance with the *non-refoulement* obligations of Member States” (Klug 135). Article 31 of the 1951 Convention, with its reference to refugees who access a state directly from a country where their life and freedom was threatened, is often seen to endorse the safe third country concept (Goodwin-Gill and McAdam 151). The argument here is that refugees who genuinely flee persecution would apply for asylum in the first safe country and that any further movement is to be considered migration since it is not for protection. International law, though, does not require refugees to seek asylum in the first safe country but gives refugees a choice, even though limited, as to where to seek asylum, e.g. to reunite with family members (Goodwin-Gill and McAdam 392).

The Qualification Directive of 2011 amends Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection. The Directive lays out common minimum standards for granting international protection, i.e. refugee status and subsidiary protection. Its articles on refugee status are based on the 1951 Convention and offer interpretive guidelines. The definition of refugees is equivalent to the definition provided in the 1951 Convention, apart from its limitation to third-country nationals and stateless persons. A person eligible for subsidiary protection is defined as a third-country national or stateless person

who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of

suffering serious harm . . . and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country. (Qualification Directive, Article 2f)

Per Article 15, the death penalty or execution, torture or inhuman or degrading treatment or punishment, or a serious and individual threat to a person because of indiscriminate violence in situations of international or internal armed conflict qualify as serious harm. By including victims of indiscriminate violence and armed conflict, the Qualification Directive recognizes their need for international protection, a need the 1951 Convention does not address. Recital 35, though, limits the extent of Article 15 by excluding risks to which a population is generally exposed to from qualifying as individual threats. Asylum seekers, therefore, must prove that they are personally at risk during times of indiscriminate violence, a notion that is counter-intuitive to the concept of random violence (Goodwin-Gill and McAdam 327).

The Directive, furthermore, deals with the assessment of facts and circumstances that substantiate an asylum application (Article 4), actors of persecution or serious harm (Article 6), acts of persecution and serious harm (Articles 9 and 15), reasons for persecution (Article 10), cessation of refugee status and subsidiary protection (Articles 11 and 16), and exclusion from refugee status and subsidiary protection following the exclusion clauses of the 1951 Convention (Articles 12 and 17) (Qualification Directive). It enshrines the principles of non-refoulement (Article 21), family unity (Article 23), and freedom of movement within the EU (Article 33). The Directive establishes rights for refugees and beneficiaries of subsidiary protection, i.e. the right to residence permits (Article 24) and travel documents (Article 25), as well as access to employment (Article

26), education (Article 27), procedures for the recognition of qualifications (Article 28), social welfare (Article 29), health care (Article 30), integration facilities (Article 34), and accommodation (Article 32).

Even though the Directive aims at approximating the rights of refugees and subsidiary protection beneficiaries, an equal status for international protection has not been achieved. While beneficiaries of refugee status are entitled to residence permits that are valid for at least three years, the residence permits of beneficiaries of subsidiary protection status only have to be valid for at least one year. The Directive, moreover, allows states to limit social assistance to core benefits for subsidiary protection beneficiaries.

The differentiation between refugee status and subsidiary protection sets the Qualification Directive and 1951 Convention apart. Other provisions of the Directive also go beyond the 1951 Convention and incorporate recent progress in international refugee law, such as the recognition of non-state persecution in Article 6 and the placing of persecution in a human rights context in Article 9 (Klug 131). Recital 30 of the Directive, furthermore, adds gender, gender identity and sexual orientation as a defining category of the persecution ground membership of a particular social group (Ippolito 122). Even though the Qualification Directive only applies to third-country nationals, all EU member states are bound to the obligations under the 1951 Convention that extends to all refugees without geographical limitation.

The language of the Qualification Directive reflects the member states' diverging interpretations of international refugee law, representing a compromise rather than harmonization. Although the Directive provides more interpretations of terms, such as

social group in Article 10, than the 1951 Convention, its text is still ambiguous enough to allow for multiple interpretations. In case of the term individual threat (Article 15), for example, the extent to which a person must be specifically targeted to be individually threatened and qualify for subsidiary protection remains undefined. “The considerable room for interpretation which is still left to Member States is the reason why wide variations in interpretation continue to exist after the implementation of the Qualification Directive” (Klug 132). These variations impact not only the EU’s harmonization goal negatively but also the rights of people in need of protection because they make the chance of being granted asylum dependent on the way the country, that processes the application, is interpreting and assessing the legal framework. Seeking refuge in the EU, therefore, resembles playing the lottery. The driver behind the ambiguity of the Directive is the complex political reality on the ground. The drafting history of the Directive, for example, shows that the individual threat limitation of Article 15 and the two-tier protection system were based on political rather than legal concerns (Goodwin-Gill and McAdam 329;333).

The Temporary Protection Directive is an exceptional measure in times of mass influx due to war, violence or human rights violations. It allows for the establishment of an immediate union-wide protection regime that is restricted from one year to a maximum of three years. The existence and expiration of a situation of mass influx of displaced people are to be established by the Council of the European Union. Its decision is binding to all member states. The Directive requires EU member states to provide residence permits valid for the full protection period and to grant access to employment,

education, suitable accommodation, social welfare, financial support, and health care (Temporary Protection Directive). This Directive, however, has never been invoked.

In July 2016, the European Commission presented proposals to reform CEAS through the revision of its Directives, with the goal of further harmonizing procedures and standards and reducing asylum shopping and secondary movements between member states. While the proposals do promote improvements concerning the rights of applicants, they also provide states with more tools to limit the movement of asylum seekers. The proposal to recast the Reception Conditions Directive, for example, removes the right of states to require applicants with sufficient resources to cover or contribute to health care costs, reduces the number of months within which an applicant should be granted access to the labor market to six months, and calls for equal treatment of applicants and nationals concerning working conditions, freedom of association, education, vocational training, recognition of diplomas, and social security. Most of the proposed changes, though, provide states with more options to disincentivize applicants from secondary movements and absconding within the EU. States are, for example, given the right to detain an applicant when there is a risk of absconding and to reduce or even withdraw daily allowances when an applicant has been sent back after having absconded to another member state. “The exclusion of applicants from reception conditions for reasons of absconding, as well as a range of preventive and punitive restrictions to the fundamental rights to free movement and liberty create strong tension with primary EU law as enshrined in the Charter” (ECRE Comments). If these proposals are to be accepted without achieving more conformity in reception conditions and standards, many asylum applicants will be forced to endure undignified treatment and inadequate living standards.

Even though member states recognize that collective refugee decision-making is indispensable, they are intent on avoiding high administrative costs caused by the implementation of new legislation. “References to national law, the ambiguity or even contradictory nature of certain provisions, the minimal binding force for some provisions, the possibility of exemptions and of options, and the discretionary competence, allowed States to preserve a substantial amount of discretion” (Klug 130). The use of ambiguous language and vague terms that lack concise definitions, such as public order and national security, give member states the necessary room to interpret the Directives of CEAS according to their interest, eclipsing the interest and needs of refugees. In practice, the treatment and recognition rates of asylum seekers vary widely among EU member states under the current system, a fact that is attributable to the considerable amount of discretion that member states enjoy concerning the application of the common EU rules (The Common European Asylum System (CEAS) - Factsheet).

Apart from the inefficiencies of the Directives, incomplete and mal-implementation on the part of member states continue to be among the major obstacles to creating a common asylum system. The differences in implementation among member states inhibit equal access to protection (El-Enany 875). A growing tendency toward a more restrictive approach concerning the scope and nature of state obligations under the international refugee regime and the prevention of refugee flows through complementary and temporary protection measures can be observed in Europe (Alborzi 177-178). “The EU’s asylum policy has never lost its close connection with immigration control objectives or the notion of what is referred to by critics as a ‘fortress Europe’ “(Klug 128). Asylum seekers are believed to make decisions based on pull factors, e.g. asylum

policies that are more favorable to refugees. By controlling these pull factors, the number of asylum applicants can be reduced (El-Enany 872). The increase in the number of people receiving subsidiary protection rather than refugee status that has been observed within the EU is an attempt to control pull factors (EU Policies Put Refugees at Risk). Interdiction, visa requirements, safe third country concepts, carrier sanctions, and security zones are further measures to reduce the number of refugees (Goodwin-Gill and McAdam 50). Hence, member states and the EU take part in a concerted effort to decrease the arrival of irregular migrants, including asylum seekers (El-Enany 888). A reduction in asylum seekers is not only perceived as advantageous for the national economy but also as beneficial for national security.

The coupling of refugees with national security has created a distinct discourse that allows for a welcome diversion from the economic uncertainty and rising unemployment that dominates European politics (O’Nions 20). Refugees are presented as threats to the state’s welfare system, the native workforce, and the national culture. The use of security language has, thus, turned the refugee crisis into an existential security threat, directing attention away from its human rights core (O’Nions 21). “The humanitarian story is simply lost within a security and deterrence rhetoric” (O’Nions 26).

II.c. State Sovereignty and Refugee Rights

The tension between state sovereignty and refugee rights poses a challenge to the international refugee regime. The power to control and protect borders, on the one hand, is an integral part of state sovereignty, i.e. states have the right to implement restrictive immigration policies. Refugee rights, on the other hand, put an obligation on states to

accept and protect persons who fall within the 1951 Convention's definition of a refugee, even if it contradicts their immigration policies. "The prevalence of the statist paradigm where the sovereign power to protect borders from intrusion is universally supported by state practice poses a significant obstacle when advancing refugee rights which directly challenge that paradigm" (O'Nions 10). The principle of non-refoulement, for example, encroaches on a state's territorial sovereignty. Refugee protection, therefore, can be perceived as a threat to state sovereignty. The limitations to the willingness of states to relinquish part of their sovereignty for the protection of refugees can be observed in the Directives of CEAS, where a considerable margin for maneuver is left to member states concerning their interpretation and implementation of the common asylum system.

"Theoretically speaking, refugees are a vivid expression of the tension between two constitutive principles of the modern state system: ... the principle of territorial sovereignty ... [and] the universality of human rights norms" (Lavenex 8). While states make a distinction between citizens and aliens, the refugee regime being embedded in human rights does not make such a distinction but includes all human beings across national boundaries. While these two principles are complementary on a national level, they are contradictory at the international scale. "The principle of national popular sovereignty presupposes the maintenance of a certain degree of exclusion" (Lavenex 9). At the same time, refugees, who have lost the protection of their country of origin, inevitably become an object of international interdependence since the world's exhaustive division into nation-states makes it impossible for refugees to leave one state without entering another (Lavenex 10). Hence, the refusal of protection by one state

necessarily shifts that responsibility to another. In this sense, the ability to control immigration becomes a protector and the concept of refugees a disrupter of sovereignty.

The dichotomy between particularism and universalism is at the heart of statist and humanitarian concerns regarding refugees. The division between the two cannot be resolved without giving primacy to either the state, i.e. the state has supreme authority, or the individual, i.e. the individual as the sovereign. The former is embodied in the realist perspective, where sovereign states are the principal actors in the international system that derive their authority from the social contract between the people and the state, specifying the state as guarantor of security. Since the international system is characterized by anarchy, there is no authority to control states or enforce international norms or principles. Human rights, therefore, fall under the authority of states and only apply to the state and its citizens, denying them their universal claim (Lavenex 12). Consequently, refugees fall into the same category as voluntary migrants and their unregulated influx threatens the social, political, and economic stability of the state. In this sense, refugees are viewed as a security threat.

The latter is embodied in the liberal perspective, where the individual, as a member of a universal community of humankind, is the central actor in the international system. This membership is defined by a common set of universal rights that is based on the equal worth of all human beings and applies to every person regardless of her or his membership in particular groups, cultures, or ideologies (Lavenex 14). The international system is characterized by “universal values, growing interdependence, and the increasing institutionalisation of common laws and regimes” (Lavenex 14). Hence, human rights are universal and based on a global responsibility that transcends national

boundaries. “Not only does mankind form a community of rights, but it also possesses a common responsibility for the protection of those rights” (Lavenex 14-15). Refugees are not to be equated with voluntary migrants because their fundamental rights have been violated and the provision of protection is the responsibility of the international community. In this regard, fundamental rights take precedence over national security concerns, and their protection must be unimpeachable (Lavenex 16). Political implications regarding refugees become significant only where the protection of the fundamental rights of refugees negatively impacts the basic rights of nationals. In practice, sovereignty and human rights limit and control each other, observable in the fact that states do recognize and adhere to the refugee regime but maintain a considerable margin to pursue their interests. Even though the tension between the two lies at the heart of the international refugee regime, neither the 1951 Convention nor CEAS deal with it directly.

This tension becomes even more complex with regard to the EU. Given that the EU is a liberal project that subordinates state sovereignty to cooperation and solidarity in many areas, e.g. border control, its inability to adopt a common response to the influx of refugees is somewhat surprising. Narrow national interests, instead of interstate solidarity and the adherence to universal human rights, dominate the EU’s handling of refugees, revealing deep underlying rifts that pose an existential threat to the whole project. The neglect of the Charter of Fundamental Rights of the European Union regarding the implementation of CEAS Directives, furthermore, shakes its foundation. So far, the EU’s incapability to provide a common response to the refugee crisis raises the question whether the European project of supranationalism has arrived at a point of failure. If

cooperation is achieved, though, the crisis can become an opportunity for the EU to emerge as a strong leader that guides the world toward a more sustainable global order, an opportunity that most member states do not seem to be aware of.

III. THE SYRIAN REFUGEE CRISIS

III.a. Roots of the Syrian Refugee Crisis

When Bashar al-Assad became president of Syria on 17 July 2000, he inherited a fascist state, in which “all organised political opposition had been crushed and civil society, where it existed, was co-opted and quiescent” (Yassin-Kassab et al. 15). His father, Hafez al-Assad, had come to power as a member of the Baathist Military Committee during the coup of March 1963. After further consolidating power in an internal coup called the Correctionist Movement in 1970, Hafez al-Assad built an absolutist regime that ruled through a combination of coercion and consent, i.e. relentlessly repressing the opposition, while winning the approval of the vast peasantry by land reform and the urban working and middle classes by subsidizing goods (Yassin-Kassab et al. 13). In his inauguration speech, Bashar al-Assad seemed to depart from his father’s trajectory, speaking of greater accountability, less corruption, and a Syrian version of democracy. Hopes to revive Syria’s public spaces arose, resulting in the so-called ‘Damascus Spring,’ i.e. the establishment of civil society organizations and fora, such as the Human Rights Association in Syria and the Committees for the Defense of Democratic Freedoms and Human Rights. “By autumn 2001, the Damascus Spring had turned to winter” (Yassin-Kassab et al. 20). Bashar al-Assad, like his father, used the security and police apparatuses to control civil society. Media censorship was intensified,

prominent figures of the movement were arrested, and torture was systematically inflicted. Despite these developments, Bashar al-Assad's popularity remained high among the population, in part due to his pro-Arab and anti-Western rhetoric. The 2003 US invasion and occupation of Iraq spurred fear of American imperialism among Syrians. In addition, Bashar al-Assad enjoyed considerable support from the West and the international community, reinforcing his position of power. Foreign governments and diplomats, among them France and the United States of America, commended Bashar al-Assad as a new type of leader after three decades of dictatorship (Kitfield).

The traditional opposition that had survived Hafez al-Assad's reign underground and was revived during the Damascus Spring had been unsuccessful in gaining widespread support, especially among the youth, due to its failure to add economic issues to its political agenda. Al-Assad's wide-ranging neoliberal reforms, combined with increased levels of corruption and nepotism and the dismantling of subsidies for the poor, led to widespread unemployment and poverty, alienating the vast peasantry and the urban working and middle classes. The severe drought in 2006 exacerbated the situation, causing massive internal displacements.

The regime's failure to fulfil a set of bargains – economic, political and national – set the scene for the uprising. When it came, the system proved itself incapable of containing and absorbing the dissent. The regime's immediate descent into barbarity would rapidly transform calls for reform into cries for revolution. (Yassin-Kassab et al. 34)

In light of the Arab Spring, peaceful protests and demonstrations sprung up around the country in 2011, asking for reforms. The regime's violent and repressive

response sparked outrage among Syrians, causing a rapid growth in protests. More than 1000 people died in the crackdown during the first months, with thousands injured and detained, and hundreds tortured (UN Chief Voices Alarm; Syria: Rampant Torture).

Bashar al-Assad's public response to the protests, i.e. resorting to conspiracy theories and refusing to acknowledge the existence of the popular movement, disillusioned many Syrians. Subsequently, the demand for the fall of the regime grew, and the opposition established horizontally organized coordination committees and councils. As the violence against protesters continued and the realization that civil disobedience and resistance was not enough to topple the regime settled in, the revolution slowly began to militarize. A vast number of mostly local militias, known under the umbrella term Free Syrian Army, sprung up, fighting for the destruction of the regime and the establishment of a democratic state. As the militias succeeded in liberating more and more areas of the country, Syria became a battlefield. The Assad regime was prepared to use brute force and extreme violence against its citizens, employing indiscriminate weapons, such as barrel bombs and chemical weapons, besieging liberated areas, destroying crucial infrastructure, and pursuing a scorched earth strategy. In the case of chemical weapons, for example, the Assad regime "has deployed them in a variety of ways over the past five years: in grenades and makeshift bombs dropped from helicopters; rockets fired from jets; and artillery rounds and custom made rockets fired from the ground" (Chulov). In August 2013, one attack killed more than 1,400 civilians, including at least 426 children in the rebel-held suburbs of Damascus (Branigin). Even though Assad's regime has agreed to surrender its chemical weapons stockpile to the Organization for the Prohibition of Chemical Weapons (OPCW) for removal and

destruction in late 2013, airstrikes with sarin have taken place in the opposition-held town of Khan Sheikhun as recently as 4 April 2017 (Chulov).

Today, 13.5 million Syrians need humanitarian assistance, 6.3 million are internally displaced, and 4.5 million live in besieged areas. More than 5 million people have sought refuge outside of Syria, leading to the largest refugee crisis of our time (Syria Emergency).

III.b. Grounds of Protection for Syrians

Syria's civil war has been raging for six years, turning liberated areas into "death zones", killing civilians in the thousands, and displacing large parts of the population (Yassin-Kassab et al. 106). The civil war, though, has not ravaged the whole country but only opposition-held territories in the West of Syria, such as parts of Aleppo, Homs, and Damascus. Just as in the early days of the Damascus Spring, Bashar Al-Assad's government has persecuted its political opponents with extreme measures, resulting in arbitrary arrests and prolonged periods of detention characterized by torture and inhumane and degrading treatment. "Since 2011, . . . the Syrian government's violations against detainees have increased drastically in magnitude and severity" (Human Slaughterhouse 5). Reports of people who are perceived to oppose the government being tortured and even killed in detention are widespread. Among those are not only members of the rebel groups but also peaceful opponents from all sectors of Syria's society, such as political dissidents, demonstrators, human rights defenders, humanitarian aid workers, journalists, and the family members of those considered to be disloyal to the government.

At Saydnaya Military Prison, for example, an estimated 5,000 to 13,000 people have been executed extrajudicially between September 2011 and December 2015, while repeated torture and sexual abuse, as well as the denial of food, water, medical care, and sanitation, amount to inhumane and degrading treatment (Human Slaughterhouse 6-7). “The authorities’ treatment of detainees in Saydnaya seems designed to inflict maximal physical and psychological suffering. Their apparent goal is to humiliate, degrade, dehumanize and to destroy any sense of dignity or hope” (Human Slaughterhouse 7).

Fear of political persecution does not only affect people in Syria but also individuals who have left Syria without official permission because the seeking of asylum, particularly in Western countries, is perceived as an anti-government disposition by the Assad regime. As stated in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as CEAS, the term refugee applies to any person fearing persecution for reason of political opinion. Persecution by the Assad regime for political views is rampant and indiscriminate, putting many Syrians, especially those from opposition-held territories, into the category of refugees.

The extreme circumstances in Syria, i.e. its volatile war-torn areas combined with poor economic conditions, allowed for the rise and expansion of Islamists. “Foreign armed support [in Syria’s civil war] from leading powers such as Russia, the US and Iran has only exacerbated the reality on the ground. Diplomatic efforts to end the crisis have also failed, paving the way for ISIL's temporary expansion in the region” (Najjar). In 2014, the Islamic State of Iraq and the Levant (ISIL) declared its ‘caliphate’, reaching from Aleppo to the Iraqi province of Diyala (Syria Profile). At its peak, the terrorist group controlled roughly 90,000mi² in Syria and Iraq (Najjar). ISIL is a religious and

political movement with the goal of empowering Sunni Muslims against anyone that does not share their religion and extremist ideology, including non-Muslims, people who believe in modern ideologies, Shi'ite Muslims and Sunni Muslims that disagree with them (Inside the Mind of ISIS 4-5). Non-believers are persecuted in the most atrocious and savage ways with the goal of eradicating them. Sunnis, Shi'ites, Kurds, Yazidis, and Christians have all fallen victim to the atrocities of ISIL.

[The] Islamic State has become synonymous with viciousness - beheadings, crucifixions, stonings, massacres, burying victims alive and religious and ethnic cleansing. ...IS adheres to a doctrine of total war without limits and constraints - [there is] no such thing, for instance, as arbitration or compromise when it comes to settling disputes with even Sunni Islamist rivals. (Islamic State: Can Its Savagery Be Explained)

On 4 February 2016, the European Parliament issued a resolution on the systematic mass murder of religious minorities by ISIL. It states that ISIL is deliberately targeting "Christians (Chaldeans/Syriacs/Assyrians, Melkites, Armenians), Yazidis, Turkmens, Shi'ites, Shabaks, Sabeans, Kaka'i and Sunnis" who disagree with its interpretation of Islam and is committing genocide against religious and ethnic minorities (Systematic Mass Murder).

In September 2014, approximately 130,000 Kurds fled from their homes in northern Syria across the border into Turkey when ISIL militants launched an offense against Kurdish villages (Letsch). Beheadings, stonings, and the incineration of entire Kurdish villages were among the atrocities committed by ISIL against Kurdish Syrians.

In 2016, the UN has released a report that illuminates the Yazidi genocide perpetrated by ISIL in Syria and Iraq. The report details the atrocities committed by ISIL against the Yazidi community: forced conversions, executions, human trafficking, (sexual) slavery, torture, inhuman and degrading treatment, forcible relocations resulting in severe bodily and mental harm, family separation, and forceful indoctrination of young boys in training camps (They Came to Destroy 1;3). Per the report, over 3,200 Yazidi women and children were held by ISIL, while thousands of men and boys were missing (They Came to Destroy 2).

The threat from Islamist extremists and jihadist militants has also forced thousands of Christian Syrians from their homes. In ISIL controlled territory, Christians have been forced to convert to Islam, pay jizya (a religious levy), or face execution (Syria's Beleaguered Christians). In February 2015, for example, almost 300 Assyrian Christians were kidnapped by ISIL in the Syrian province of Hassakeh (Islamic State: Fears Grow for Abducted Syrian Christians).

Per the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, as well as CEAS, the term refugee applies to any person in fear of persecution for reasons of religion and membership of a particular social group. ISIL is persecuting its enemies and anybody that does not agree with its ideology in the most barbaric ways. Syrians in ISIL controlled territory who belong to religious minorities or disagree with ISIL's ideology, therefore, fall into this category of refugees. It is important to note, though, that a comprehensive vetting of refugees fleeing ISIL is necessary since members of the terrorist group have been disguising as refugees to infiltrate Europe (Smale).

The grounds for protection above show that a large part of the Syrian population fulfills the criteria laid out in Article 1A of the 1951 Convention and CEAS and are, therefore, refugees. The narrative that Syrians, fleeing the civil war, do not satisfy the definition of a refugee is incorrect. Many German courts, for example, found that the fear of persecution of Syrians on return to Syria from Western countries after having left the country without the government's permission has merit (Syrien – Rechtsprechung). In addition, most cases that were brought by Christian and Kurdish Syrians in order to receive refugee recognition under the 1951 Convention because of fear of persecution by the Assad regime and ISIL have been successful (Knight). The recognition rates of the 28 EU member states show that more than half of Syrian asylum applicants have been granted refugee status in 2014 and 2016. In 2015 80% of Syrian asylum applicants received refugee status (First Instance Decisions).

IV. SYRIAN REFUGEES IN THE EUROPEAN UNION

Between 2011 and 2017, 952,511 Syrian refugees have sought asylum in the European Union⁸, a relatively small number compared to the overall number of Syrian refugees (Syria Regional Refugee Response). The low number can not only be ascribed to the geographic distance between Syria and Europe, but also to the increasingly difficult access to the EU. Legal channels to enter the EU have been closed almost completely: airport transit visas for Syrians are required by eleven countries in the Schengen area⁹, all

⁸ These numbers reflect first-time asylum applications in the 28 EU member states plus Norway and Switzerland.

⁹ Austria, Belgium, the Czech Republic, France, Germany, Hungary, Italy, the Netherlands, Spain, Switzerland, and the UK.

European embassies in Syria are closed, and protected entry procedures that allow for asylum applications through embassies in Syria's neighboring countries are not provided (Karageorgiou 201). Most of these "non-entrée mechanisms" take place before the refugee leaves her or his country of origin and, strictly speaking, do not interfere with the obligations under the 1951 Convention (O'Nions 59). The remaining traveling routes for Syrians to access Europe, the Balkans and the Mediterranean Sea, are dangerous and have cost many refugees their lives. "All these human losses . . . have become the symbol of the failure of EU migration policies that predominantly focus on stepping up border controls, leaving migrants and refugees no other option than to undertake life-threatening journeys in order to access protection" (Karageorgiou 201).

In addition, the EU has come to rely on an "external dimension of asylum", where buffer zones in countries bordering the EU have been established to offset the influx of refugees (Klug 128). These buffer zones are created through the financing of reception and detention centers, the funding of border surveillance equipment, the training of border and coast guards, and the establishment of information sharing networks (The Human Cost of Fortress Europe 5, 13). In 2016, the EU struck a refugee deal with Turkey that allows for all irregular Syrian refugees crossing from Turkey into Greece to be returned to Turkey (EU-Turkey Refugee Deal). It further stipulates that for every Syrian refugee sent back to Turkey, one Syrian refugee already in Turkey is to be resettled in the EU. While the EU's official rationale for the deal was to save lives by dissuading refugees from making the dangerous sea crossing and to put smuggler networks out of business (EU-Turkey Statement), UNHCR has voiced concerns over the deal's violations of the 1951 Convention and human rights concerning international prohibitions of

collective expulsion. With only 13,968 of the agreed 22,504 refugees resettled in the EU as of February 2017 (Relocation and Resettlement), the deal seems more like yet another measure to keep refugees from seeking asylum in the EU by externalizing protection duties to Turkey. “The pact does not offer a significant legal route for refugees to enter the EU, but rather functions as a cork to stop the refugee influx” (Mayer 8).

The EU’s emphasis is on control, reflected in the export of restrictive practices to third countries without necessary protection safeguards and the unilateral shift of the burden to states less equipped to handle the responsibility (Klug 128). In this sense, CEAS is subjected and subverted to the EU’s border control regime. “The illegal migration agenda has come to dominate the CEAS as asylum is viewed narrowly as a matter of immigration control and, perhaps more fundamentally, as a security concern” (O’Nions 76).

While all EU member states are signatories to the Convention and Protocol relating to the Status of Refugees and subject to CEAS, countries have taken different approaches to dealing with the influx of Syrian refugees. The supremacy of narrow government interests over sound policy responses to the refugee crisis has caused a protection gap (European Union: Refugee Response). Even though CEAS emphasizes solidarity, responsibility sharing, and burden sharing, the vast dissonance about evenly allocating asylum-related responsibilities and burdens among member states has cut into the guarantee for consistent protective standards across the EU and the compliance with international refugee and human rights laws (Karageorgiou 198). The failure of the EU to honor its international obligations will lead to a rise in global inequality and an escalation of irregular migration (O’Nions 37).

Over the course of the Syrian refugee crisis, it has become clear that the implementation of a common European asylum system has not yet succeeded. While some countries have welcomed refugees with open arms, others have been more than reluctant to take in refugees going as far as building border walls and forcibly returning asylum seekers (Denied Entry). The Dublin system has proven to be dysfunctional and inadequate for dealing with the massive influx of refugees by land and sea since it places the sole burden on EU border states¹⁰. However, the EU has failed to effectively remodel the system and agree on a new distribution key that ensures that burdens are shared equitably, and human rights standards and principles are upheld (Carrera et al. 2). For instance, the Temporary EU Relocation System, under which EU member states committed to resettling 160,000 asylum seekers from Greece and Italy by September 2017, failed due to the lack of political will and compliance of member states (Carrera et al. 5-6). The resolution for the resettlement of 40,000 asylum seekers was adopted in July 2015 and supplemented by a decision in September 2015 to relocate another 120,000 asylum seekers. By December 2015, only 54 asylum seekers from Greece and 130 from Italy were relocated to Finland, Sweden, Luxembourg, France, Spain, and Germany. By March 2017, only 13,546 asylum seekers were relocated, amounting to 8% of the total number legally foreseen (Boffey). By November 2017, 31,472 asylum seekers were relocated, i.e. less than 20% of the relocation commitment (Member States' Support). As the difficulty of implementing the Temporary EU Relocation System shows, the EU has so far failed to adopt a common response to the Syrian refugee crisis.

¹⁰ The Dublin III Regulation stipulates that the member state of first entry be responsible for assessing an asylum application.

In order to establish the extent to which EU member states diverge in their acceptance and treatment of refugees, the following sections will examine and compare the German government's and the Hungarian government's handling of the refugee crisis since these two countries stand out on opposite ends of the spectrum. While Germany has experienced a 56.4% overall increase in asylum applications in 2016, asylum applications in Hungary have decreased by 83.4% compared to the previous year (Das Bundesamt in Zahlen 28). Concerning Syrian refugees specifically, Germany has seen a 65.4% increase in 2016 compared to the previous year, while Hungary has seen a 92.3% decrease (Das Bundesamt in Zahlen 31).

IV.a. Germany

Article 16a of the Basic Law, Article 60 of the Residence Act, and the Asylum Act build the bedrock of the German asylum and refugee policy. Article 16a of the Basic Law grants people who are persecuted by state actors on political grounds the right of asylum but explicitly excludes persons that enter German territory from EU member states and third countries that adhere to the 1951 Convention and ECHR (Basic Law). Article 60 of the Residence Act prohibits refoulement per the 1951 Convention and ECHR. The 2008 Asylum Act, which regulates Germany's asylum procedure, transposes the 1951 Convention, as well as the Reception Conditions Directive, the Qualification Directive, and the Asylum Procedures Directive of CEAS into German law¹¹. It provides protection against political persecution under Article 16a of the Basic Law, as well as protection against persecution in accordance with the 1951 Convention and subsidiary

¹¹ The Asylum Procedures Directive and Reception Conditions Directive were transposed into German law on 20 October 2015, while the deadline for their transposition was 20 July 2015.

protection in accordance with the Qualification Directive. Section 3a of the Asylum Act identifies acts of persecution as acts that are “sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights” (Asylum Act). It also provides examples of such acts: physical or mental violence, including sexual violence, legal, administrative, police or judicial measures that are discriminatory in themselves or in their implementation, discriminatory prosecution or punishment, denial of legal redress leading to discriminatory punishment, prosecution or punishment for refusal to perform military service that would result in war crimes or crimes against humanity and violate the principles of the United Nations, and gender-specific acts and acts directed against children. The asylum procedure is put into effect by the Federal Office for Migration and Refugees (BAMF).

The German asylum procedure is divided into different stages (The Stages of the Asylum Procedure). Asylum seekers arriving in Germany must register with government agencies, either directly at the border with the border authorities or within the country with a law enforcement agency, an immigration authority, a central reception facility or an arrival center. Per Article 10 of the Asylum Procedures Directive, there is no time limit to register. Registration is carried out at PIK-stations (Personalization Infrastructure Component) and includes personal data, a photograph of all persons over the age of 14, and fingerprints. The data is saved in a central database accessible to all public agencies involved in the asylum procedure. Except for the age assessment process for unaccompanied children, a systematic procedure for the identification of vulnerable persons is not required by national law (Kalkmann 40). While asylum seekers usually undergo a medical examination shortly after registering, these examinations focus on

communicable diseases and do not specifically include screenings for vulnerabilities, violating Article 22 of the Reception Conditions Directive. After registering, asylum seekers receive a proof of arrival, which entitles them to stay in Germany, consistent with Article 9 of the Asylum Procedures Directive, and receive state benefits, e.g. housing, food, and medical care, in accordance with the Reception Conditions Directive.

Asylum seekers are then allocated to reception facilities throughout Germany according to capacities and their country of origin. Since the Länder¹² are responsible for the housing of asylum seekers and other social services, applicants are allocated per the EASY quota system, a procedure that ensures a fair allocation among the Länder by calculating the distribution quota per the Königsteiner Key, i.e. the tax revenue and population size of each Land. In line with Article 7 of the Reception Conditions Directive, asylum applicants are required to live in a reception center for up to six weeks but no longer than six months and have a residential obligation during this period, i.e. they must remain within the district of the responsible reception facility. Once the residential obligation ceases to apply, the residential area is expanded to the whole country. After the initial period in a reception facility, most applicants are distributed within the Land to either collective accommodations or apartments, depending on considerations of public interest as well as the preferences of the applicant. In respect to the geographic restriction, a distinction for asylum applicants from a safe country of origin is made. They must remain in a reception center until a decision on their asylum

¹² Länder is the terminology for the 16 German states (Bundesländer) per the official English version of the Basic Law for the Federal Republic of Germany. Land is the singular.

application has been reached and are, hence, subject to the territorial restriction for the duration of the asylum procedure.

Standards for reception centers are determined in State Reception Acts¹³ and regional regulations, which vary from Land to Land. A universal standard for all Länder does not exist. In line with Article 18 of the Reception Conditions Directive, policies to house single women and families in separate accommodations to guarantee privacy exist in most reception centers. Sanitary facilities are generally shared, common spaces are cleaned by cleaning companies, and food is usually provided in cafeterias, often with due regard to religious restrictions (Kalkmann 62-63).

The Asylum Seekers' Benefits Act regulates the goods and services that asylum seekers are entitled to receive in order to safeguard their basic needs. Benefits include food, housing, heating, clothing, health care, especially in case of illness and pregnancy, necessary household goods, and personal necessities (Asylbewerberleistungsgesetz). While most benefits are provided in kind, asylum seekers do receive monthly cash payments to meet their personal needs if benefits in kind are either unavailable or would incur unproportionate administrative expenses. In accordance with Article 17 of the Reception Conditions Directive, asylum applicants with income or capital are legally obliged to exhaust their resources before being eligible for benefits under the act, a provision that is seldom applied in practice (Kalkmann 54). The act, furthermore, requires asylum seekers to take up employment opportunities and participate in integration measures that reception facilities offer. However, asylum applicants cannot access the labor market for as long as they are required to stay in a reception center, i.e.

¹³ Landesaufnahmegesetz

most asylum seekers are granted access within weeks but asylum applicants from a safe country of origin are barred from taking up employment for the duration of the asylum procedure, which, in some cases, can conflict with the mandatory 9-month period provided in Article 15 of the Reception Conditions Directive. Asylum applicants are, furthermore, not allowed to be self-employed for the duration of the asylum procedure (Kalkmann 66).

With regards to education, the right and obligation to attend school apply to all children residing in Germany. The degree and quality of access to education vary throughout the Länder (Kalkmann 66-67). In some, the integration of refugee children into the education system has been successful, while in others the lack of access to language courses and schools, especially for asylum seekers over the age of 16¹⁴, violate the obligations under Article 14 of the Reception Conditions Directive. Consistent with Article 19 of the Reception Conditions Directive, health care for asylum applicants is restricted to acute diseases or pain, vaccinations, essential preventative check-ups, and pregnancy. To receive medical care, asylum applicants in reception centers receive health insurance vouchers. Once asylum applicants leave these facilities, they have to obtain vouchers from social welfare offices, a procedure that has led to the delay or denial of necessary treatment, violating Article 19 of the Reception Conditions Directive, and has caused significant administrative burdens. Some states have, therefore, introduced health insurance cards, permitting asylum applicants to receive medical care without having to seek permission from the authorities (Kalkmann 68). While treatment centers for victims of torture offer specialized care for torture victims in accordance with Article 25 of the

¹⁴ Compulsory education and, hence, the right to access education ends at the age of 16 in some Länder.

Reception Conditions Directive, the number of people these facilities can treat is limited, and access to therapy is, therefore, not guaranteed (Kalkmann 68).

After registering, asylum seekers must lodge their asylum application at a reception center or a branch office of BAMF in person and without delay or on a specific date determined by the authorities. Since March 2016, the failure to comply with this time limit is seen as an implicit withdrawal or abandonment of the asylum application, in line with Article 28 of the Asylum Procedures Directive (Kalkmann 17-18). During the filing process, the personal data of asylum seekers is verified and compared to the Central Register of Foreigners, the Federal Criminal Police Office, and EURODAC to determine whether the application is an initial, follow-up or secondary application as well as whether another EU member state is responsible for processing it under the Dublin Regulation. Cases, where the identity of an asylum seeker cannot be verified, are shared with the Joint Extremism and Counter-Terrorism Center (GTAZ) and the Joint Centre for Countering Extremism and Terrorism (GETZ)¹⁵ to avoid terrorists entering the country disguised as refugees¹⁶. Once the asylum application has been filed, BAMF provides information about the asylum procedure and the rights and obligations of asylum seekers to the applicant in a language she or he can reasonably understand, pursuant to Article 12 of the Asylum Procedures Directive.

The personal interview is an essential part of the asylum procedure, in line with Article 14 of the Asylum Procedures Directive. It gives asylum seekers the opportunity to

¹⁵ GTAZ and GETZ were established in 2004 and 2012 respectively. They are both cooperation and communication platforms for police and intelligence agencies as well as federal and Länder authorities.

¹⁶ If there are serious reasons to believe that an applicant falls under the criteria of Articles 12 and 17 of the Qualification Directive, the individual must be excluded from refugee and subsidiary protection.

present their case to the caseworkers at BAMF. With the help of interpreters, asylum seekers can describe their experiences in their country of origin, communicate their reasons for fearing and fleeing persecution, and present supporting evidence. Specialized caseworkers to deal with victims of gender-related violence, torture, and trauma are available upon request per Articles 24 and 25 of the Asylum Procedures Directive. Due to the vast influx of refugees in 2015 and 2016 and the opening of new arrival centers, a shortage of specialized caseworkers has occurred (Kalkmann 41). Facts and evidence that are not provided during the interview but at a later stage may not be considered during the decision-making process. Asylum seekers that have filed for asylum receive a permission to reside in Germany, which replaces the proof of arrival.

The decision as to whether an applicant is granted asylum, refugee protection, or subsidiary protection is given in writing, compliant with Article 11 of the Asylum Procedures Directive, after a general assessment of the circumstances in the country of origin and an examination of the supporting evidence. Databases, like BAMF's Migration Info Logistics system (MILo), provide information on international refugee crises as well as countries of origin and transit countries and, therefore, often inform the decision-making process. A time limit to decide on asylum applications is not set by law, violating Article 31 of the Asylum Procedures Directive that sets a limit of six months. The Asylum Act only requires BAMF to inform an applicant upon request when a decision is likely to be made if the examination of the asylum application exceeds six months. NGO's, furthermore, have criticized that more than 66% of decisions are not made by the caseworkers but by remote decision-makers, calling the quality of decisions into question (Kalkmann 11).

The entitlement to asylum is based on Article 16a of the Basic Law, while refugee protection is granted per Section 3 and subsidiary protection according to Section 4 of the Asylum Act. In accordance with Articles 24, 26, and 23 of the Qualification Directive, asylum applicants who are granted asylum or refugee protection receive a residence permit for three years, gain unrestricted access to the labor market, qualify for privileged family reunification¹⁷, and can apply for a settlement permit after three or five years given that certain conditions, such as proficiency in the German language and a stable income, are satisfied. They are, furthermore, entitled to social welfare, child benefits, and integration assistance in line with Articles 29 and 34 of the Qualification Directive (Asylum and Refugee Policy). Recipients of subsidiary protection receive a residence permit for one year, with the possibility of extensions for two more years, gain unrestricted access to the labor market, and can apply for a settlement permit after five years. Their entitlement to privileged family reunification has been suspended until March 2018. The suspension includes unaccompanied minors, a violation of Article 23 of the Reception Conditions Directive, which stipulates that the best interest of the child should be of primary concern regarding family reunification.

If an asylum application is rejected, court action against the decision can be taken within the timeframe provided on the notice of appeals, consistent with Article 46 of the Asylum Procedures Directive. Asylum applicants that decide to appeal do not only have access to the German court system but also to the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR). A negative decision is always

¹⁷ In contrast to other foreign nationals, refugees do not have to prove that they can provide for themselves and their families financially or that they can accommodate family members to be eligible for family reunification.

accompanied by a notice of intention to deport. If a simple rejection is issued, the applicant has 30 days to leave the country. If an application is determined to be manifestly unfounded, the applicant must leave the country within one week. At this point, asylum applicants might be detained for the purpose of removal. Detention pending deportation is usually the only form of detention asylum applicants experience in Germany (Kalkmann 72).

In accordance with Articles 11 and 16 of the Qualification Directive, the recognition of refugee status and subsidiary protection ceases when the recipient voluntarily avails herself or himself of the protection of the country of origin, obtains the nationality of a third country, or renounces the recognition of the status. Furthermore, refugee status and subsidiary protection are revoked when the information provided was incorrect or incomplete or the conditions on which it was based have ceased to exist, and the refugee can no longer refuse to avail herself or himself of the protection of the country of origin (Kalkmann 85-87).

The implementation of CEAS has been mostly successful in Germany. The elaboration of Germany's asylum procedure demonstrates that German asylum law overwhelmingly adheres to CEAS Directives. Non-conformity exists in regard to the Reception Conditions Directive concerning the identification of vulnerable individuals and the family reunification of unaccompanied minors receiving subsidiary protection, as well as access to education, the labor market, necessary health care, and specialized care for victims of torture. Furthermore, the German asylum law does not conform to the Asylum Procedures Directive concerning the six-month time limit for deciding on asylum applications.

Between 2011 and 2017, Germany has received 507,795 first-time asylum applications¹⁸ from Syrian refugees (Syria Regional Refugee Response). The number of first-time asylum applications per year increased from 2,634 in 2011 to 266,250 in 2016, making Syria the country of origin with the most first-time asylum applications from 2014 to 2016 (Das Bundesamt in Zahlen 19). In 2016, 36.9% of all first-time asylum applications to Germany were filed by Syrians (Das Bundesamt in Zahlen 20). Of the 266,250 first time asylum applications in 2016, 91.5% were filed by Muslim Syrian refugees, 2.6% were filed by Christian Syrian refugees, and 1.5% were filed by Yazidi Syrian refugees (Das Bundesamt in Zahlen 25). The approval rate of Syrian asylum applications in 2016, including first time and subsequent applications, was 99.3%, i.e. 1,980 of 290,965 applications were rejected. This approval rate is similar to those of the previous years, namely 97.6% in 2015 and 93.6% in 2014 (First Instance Decisions). Of the 288,985 first-time and subsequent asylum applications that were approved, 57.6% received refugee status¹⁹, and 42.1% were granted subsidiary protection (First Instance Decisions). The total number of approved Syrian asylum applications in Germany represent more than 70% of the EU-wide approved Syrian asylum applications in 2016 (Asylum Decisions in the EU).

The data on asylum applications in Germany reflects the German government's stance on the Syrian refugee crisis. In 2015, when the number of Syrian refugees

¹⁸ First-time asylum applications do not include follow-up or secondary applications.

¹⁹ This includes the entitlement to asylum based on Article 16a of the Basic Law and refugee protection based on Section 3 of the Asylum Act.

increased dramatically, Chancellor Angela Merkel declared “Wir schaffen das”²⁰, i.e. Germany can deal with the tremendous national challenge that has presented itself. In her summer press conference on 31 August 2015, she laid out fundamental principles of the Basic Law for dealing with the mass influx of refugees: humanitarianism and the respect for human dignity (Sommerpressekonferenz). A few days earlier a refugee disaster unfolded in Austria when 71 refugees from Syria, Iraq, and Afghanistan were found dead in the back of a small meat truck en route to Germany (Bell et al.). Among the victims were eight women and four children. Furthermore, the picture of the washed-up body of a three-year-old Syrian boy on a beach in Turkey, who drowned during his family’s desperate attempt to cross the Aegean Sea, went around the world, causing outrage and general awareness of the destitution of Syrian refugees. In light of these disasters, Chancellor Merkel emphasized the humanitarian dimension of the refugee crisis and declared that the right to asylum is inviolable and that people fleeing war deserve the same protection as people fleeing political persecution. In addition, she opposed those that stir up hate against and fuel fear of refugees. In response to a distressing spike in arson attacks on occupied and unoccupied refugee shelters in the country, the Chancellor stated that Germany would crack down on those who violently attack refugees and refugee shelters with the full might of the law (Blickle et al.). She declared that there would be no tolerance for those that question the human dignity of others. Nevertheless, out of 222 attacks on refugee shelters that injured 104 people in 2015, only four cases have resulted in convictions and charges in no more than eight cases have been filed (Blickle et al.).

²⁰ English translation: We can manage it.

In line with its prioritization of humanitarian principles, Germany has pursued an open-door refugee policy, even after all other European countries closed their borders, and has welcomed a higher number of asylum seekers than its European neighbors (Mayer 1;3). On 25 August 2015, BAMF announced that it would suspend the Dublin III Regulation for Syrians and process all Syrian asylum applications, waving the obligation to return refugees to the first country of entry (Germany Suspends 'Dublin Rules' for Syrians). This announcement was well received within the refugee community and caused many refugees to embark on dangerous journeys to reach Germany, refusing to register and remain in other EU countries along the route.

After Macedonia opened the Balkan route by allowing refugees to cross its borders to reach northern Europe in June 2015, Hungary experienced a vast influx of refugees. After Germany's announcement, most of these refugees refused to register and apply for asylum in Hungary with the hope of reaching Germany. After allowing unregistered refugees to pass through at first, the Hungarian government changed its stance on 1 September due to blowback from Austria and Germany (Nolan et al.). It denied refugees access to the Keleti Railway Station in Budapest in order to stop them from traveling to Austria and Germany, stranding hundreds of refugees in the square outside of the station (Iyengar). Even though Hungarian authorities reopened the station two days later, all trains to Western Europe remained canceled, resulting in refugees being forced to take up camp in the subterranean passages of the train station for days. With more refugees arriving each day and conditions deteriorating, the refugees started marching towards Austria and Germany. A trek of thousands of refugees walked the M1 highway from Budapest to Vienna in the so-called #marchofhope (Blume et al.). Afraid

of appearing to have lost control over the situation, Prime Minister Viktor Orbán decided to mobilize 100 busses on 4 September to transport the refugees from the Keleti Railway Station and the M1 highway to the Austrian border. Realizing that the marchers could only be stopped by force, i.e. with water guns, batons, and tear gas, a humanitarian crisis both Germany and Austria wanted to avoid at all cost, German Chancellor Angela Merkel and Austrian Chancellor Werner Faymann decided to open their borders in this exceptional case.

On 5 and 6 September over 17,500 refugees arrived in Germany²¹ (Blume et al.). When confronted with critics alleging that the decision to accept the refugees was a mistake because it has opened the floodgates for more refugees, the German government persisted that people in need must be helped and that Germany would continue to welcome refugees because of its humanitarian obligation as well as its obligations under EU law. At the same time, the government asserted that the mass influx of refugees was an exceptional situation (Blume et al.). This assertion proved to be wrong, with more than 20,000 refugees arriving in Munich the following weekend and tens of thousands of refugees arriving in the following weeks, unrestricted and unregistered. The number of Syrian refugees arriving in Germany increased from 39,330 in 2014 to 158,655 in 2015. Although weighing the option, Merkel's government decided against closing the borders. It did, however, decide to temporarily suspend the Schengen Agreement and introduce border controls to ensure an orderly registration of refugees, a measure that failed to gain control of the situation until December 2015 due to the sheer magnitude of the influx (Blume et al.).

²¹ These numbers include refugees of various nationalities, not only Syrians.

Many Länder struggled to provide adequate accommodations for the vast number of refugees, resorting to the use of emergency shelters, e.g. gymnasiums, warehouses, and containers. Hence, most Länder encountered difficulties to put policies, such as the separate accommodation of single women and families, into practice (Kalkmann 62). Moreover, BAMF proved to be unprepared for the high numbers of refugees, experiencing a backlog in the registration of asylum seekers, the filing of asylum claims and the processing of asylum applications. The delay in registrations in 2015 and early 2016 left many asylum seekers in a state of uncertainty regarding access to benefits because of a lack of clear regulations (Kalkmann 54). The number of pending asylum applications had reached 393,000 in February 2016, more than twice as high as in February 2015 (Mayer 7). Regarding protection status, Syrian asylum applicants were given a quasi-blanket classification as refugees under the 1951 Convention due to adjustments in BAMF's decision-making practices in 2014, caused by repeated rulings of Higher Administrative Courts to rescind subsidiary protection decisions and award refugee protection to Syrians²² (BAMF-Entscheidungspraxis geändert). In March 2016, case-by-case reviews for Syrian asylum seekers were reinstated and BAMF's decision-making practices were adjusted on the grounds that Syria had relaxed its passport rules issuing passports to citizens abroad, including refugees, without an intelligence service review and the Assad regime, therefore, did not perceive all returnees as critical of the regime. These changes have resulted in a jump in the granting of subsidiary protection to Syrian refugees. While 97.4% of Syrians received refugee status in 2015, only 57.2%

²² The courts based their rulings on the potential threat of political persecution by the Assad regime upon return due to a perceived anti-government disposition resulting from leaving the country without official authorization and seeking asylum in Western countries.

were granted refugee status in 2016, i.e. the subsidiary protection rate rose from 0.06% in 2015 to 41.8% in 2016 (First Instance Decisions). The success rate of upgrade-appeals in courts, i.e. appeals against the granting of subsidiary protection to gain refugee status, was greater than 75% in 2016²³ (Kalkmann 11).

While large parts of the population have shown their willingness to welcome and help refugees through volunteer work and donations, many Germans have perceived the massive influx as threatening, resulting in increased mistrust in German and EU institutions and allegations of loss of control on the part of the government. This sentiment was reinforced on 2015/2016 New Year's Eve when multiple sexual assaults on women were committed throughout Germany and in 2016 when Islamist attacks were perpetrated in Ansbach and Würzburg²⁴. Consequently, the approval rating of Chancellor Merkel has decreased and the right-wing party Alternative for Germany (AfD) has extended its appeal considerably, so much so that it has entered the German Bundestag as the third largest party with 12.6% after the election on 24 September 2017.

Even though Chancellor Merkel has held on to her credo "Wir schaffen das", i.e. that Germany can fulfill its humanitarian and historical obligations, the pressure her government has experienced since September 2015 has had a bearing on policy decisions. In October 2015, the first Asylum Package consisting of the Act on the Acceleration of Asylum Procedures and the Act to Improve the Housing, Care, and Treatment of Foreign

²³ Many courts do not agree with the BAMF's new assessment.

²⁴ While the perpetrators of the attacks in Ansbach and Würzburg were identified as refugees, only one of the perpetrators of the sexual assaults was identified and convicted, a 19-year-old Afghan. Even though there is no proof that refugees committed the assaults, they were readily attributed to refugees, which stirred anti-refugee sentiments.

Minors and Adolescents was adopted, improving but also tightening asylum rules. The Act on the Acceleration of Asylum Procedures entered into force on 20 October 2015 and amended the Asylum Act and the Asylum Seekers' Benefits Act among others (Gesley, Germany: Parliament Adopts). It aimed at accelerating the asylum process and reforming integration policies for refugees. Moreover, it substituted cash benefits with benefits in kind and vouchers wherever feasible, increased the obligation to reside in a reception center from three to six weeks, introduced an obligation for asylum applicants from a safe country of origin to remain in a reception center until a decision on their asylum application is reached, and extended the obligation to remain within a specific district to up to six months (Asylverfahrensbeschleunigungsgesetz). In addition, it designated Albania, Kosovo, and Montenegro as safe countries of origin, i.e. asylum applications from these countries are presumed to be without merit. The Act to Improve the Housing, Care, and Treatment of Foreign Minors and Adolescents aimed at improving the care of unaccompanied refugee minors by obliging all Länder to accommodate young unaccompanied refugees and raising the legal age for asylum procedures from 16 to 18 (Gesley, Germany: Parliament Adopts).

In February 2016, the Asylum Package II entered into force, further toughening Germany's asylum rules. The package aimed at accelerating the application process for asylum seekers with limited prospects and facilitating the deportation of asylum seekers with medical problems that are not serious or life-threatening (Gesley, Germany: Proposed Tightening of Asylum Rules). The package also established a Federal Police unit responsible for the procurement of replacement documents, given that asylum applicants without documents cannot be deported. In addition, it reduced the monthly

amount of cash benefits asylum applicants can receive by ten Euros and suspended family reunification for recipients of subsidiary protection, including minors, until March 2018. It stipulated that two violations of the residential obligation can lead to the rejection of an asylum application and that full benefits are only dispersed to refugees who have received their permission to reside in Germany from the reception facility they were allocated to (Schuler). The package further improved the protection of unaccompanied refugee minors in reception centers by obliging all employees to provide a detailed police record. Furthermore, the package added Algeria, Morocco, and Tunisia to the safe countries of origin list.

Since Chancellor Merkel has ruled out closing Germany's borders to refugees and implementing a refugee cap to reduce the influx, her government has resorted to tightening Germany's asylum laws to appease growing concerns among conservatives in the Christian Social Union, the sister party of Chancellor Merkel's Christian Democratic Union, and parts of the population. Critics, though, are not convinced that these measures are enough to prevent further mass influxes and dissuade refugees from picking Germany as their destination because of the relatively high living standard refugees enjoy in Germany, even after the tightening of asylum laws. Furthermore, these changes are more effective in dissuading refugees with low prospects of being granted asylum from making the journey to Germany, a group that by far does not constitute the majority of refugees arriving in Germany (Mayer 5). Chancellor Merkel and her critics do agree that the number of refugees coming into Germany needs to be reduced but disagree on how this should be done. While many critics believe that closing Germany's borders and introducing a refugee cap are the only way to control the flow of refugees, Chancellor

Merkel is convinced that a reduction in refugees can only be achieved by tackling the causes of forced migration, cooperating with third countries, and controlling the EU's external borders (Benner).

Hence, Chancellor Merkel's approach to the refugee crisis is not only based on humanitarianism but also on European solidarity. In her summer press conference, she professed that the EU must work together to solve the refugee crisis and that all member states must share the responsibility, a stance that reflects the fundamental principles of CEAS (Sommerpressekonferenz). Merkel's government, therefore, sees a fair system of quotas, based on mandatory pre-allocated percentages calculated by population size and economic performance of each member state, as a viable solution to resolve the problem of burden sharing (Sommerpressekonferenz, Havlová et al. 91). Germany, though, has found itself increasingly isolated in its welcoming stance towards refugees and its willingness to cooperate with EU member states. This isolation is reflected in the unwillingness of other EU member states to aid Germany after opening its border to refugees in Hungary (Blume et al.). The only EU member state to offer support was France, but its offer was nothing more than symbolic, revealing the belief among EU member states that a joint European solution to the refugee problem is utopian (Blume et al.).

In 2015, the German government welcomed an immense number of Syrian refugees on humanitarian grounds. Large parts of the population approved of the government's initial decision to take in the refugees, especially after the horrific pictures from Hungary had made their way into many German homes. However, as the influx of refugees did not cease and the occurrence of terrorist attacks in Europe increased, anti-

refugee sentiments among the population rose. Even though the German asylum law largely conforms with the CEAS Directives and the implementation of CEAS has been successful, Germany's asylum system was not capable of dealing with the large number of asylum seekers causing deficiencies and deviations in the system. With approval ratings dropping, the government was politically under pressure to introduce measures to curb the arrival of asylum seekers in Germany. At the same time, the asylum system's deficiencies needed to be addressed to maintain control of the situation. Chancellor Merkel, though, held on to her humanitarian stance, refusing to introduce measures that would drastically infringe on the human rights of refugees, a position that part of the German population continues to support.

The historical obligation and commitment to preserve human dignity and protect the most vulnerable play an essential role in Germany's stance on refugees. The firm belief in human rights and humanitarian principles stems from the legacy of World War II and the atrocities committed by the Nazi regime. In an attempt to reconcile with its past, Germany takes its obligation to uphold human rights very seriously. Additionally, the experience of being a refugee after World War II is still very much alive in the nation's conscience, generating empathy towards people fleeing war and political or religious persecution and creating the welcoming culture that is supported by many Germans (Havlová et al. 91). Poll numbers of 2017 show that 59% of Germans think that their fellow citizens welcome refugees within their communities and 73% believe that local government agencies welcome refugees (Willkommenskultur im "Stresstest" 8). However, the percentage of Germans who believe that more refugees should be admitted for humanitarian reasons has decreased from 51% in 2015 to 37% in 2017, while at the

same time the percentage of Germans who believe that Germany has reached its upper limit regarding the reception of refugees has increased from 40% in 2015 to 54% in 2017 (Willkommenskultur in “Stresstest” 12).

While humanitarian concerns are the main driving force behind the German government’s refugee policy, the country’s aging demographic and labor shortages must be considered as well. The prospect of refugees successfully integrating into Germany’s society and labor market on a long-term basis without considerable investments on the part of the government can be questioned, due to the tendency of refugees to return to their home country once the situation improves, the difficulty of entering the German labor market as a foreigner²⁵, and the lack of German language skills (Mayer 7).

However, recent changes in German asylum laws have included efforts to facilitate and improve the social and economic integration of refugees. The government’s willingness to invest in the integration of refugees into the German labor market shows that the arrival of refugees is regarded as an opportunity to lessen the impact of Germany’s demographic developments and a source for future growth, a lesson learned from the experience with Turkish migrant workers in the after-war years. One example of the facilitation of the integration into the labor market is the 2016 addendum to the Employment Regulation that suspends the priority review, i.e. the allocation of jobs according to residence status and qualifications, for asylum applicants with a work permit in 133 of 154 labor agency areas until 2019 (Kalkmann 66). In addition, the country’s low unemployment rate is another reason for the welcoming attitude of large parts of the population since refugees are not perceived as much of a threat to employment

²⁵ Foreign professional qualifications are often not recognized, and many professions require qualifications.

opportunities as they would be during times of high unemployment. A 2017 poll shows that 88% of Germans support an expeditious provision of work permits for refugees and 77% agree that the successful integration of refugees is important, while only 23% think that the integration of refugees is not necessary (Willkommenskultur im “Stresstest” 6). Moreover, 64% perceive immigration as an essential tool to counteract the impact of Germany’s aging population, and one out of three thinks that immigration is essential to overcoming the shortage of skilled labor (Willkommenskultur im “Stresstest” 7). Germany’s refugee policy, therefore, must be considered in relation to demographics and labor shortages.

Chancellor Merkel has held on to the belief that diversity within Germany and solidarity within the EU are necessary elements for Germany’s success in a globalized world (Hildebrandt et al.). This view explains why the influx of refugees is perceived as an opportunity rather than a threat by the German government and why a common response of EU member states to the refugee crisis is so critical. The unwillingness of member states to cooperate, share the burden, and find a joint resolution could capsize the European project, an outcome that needs to be avoided at all cost in Chancellor Merkel’s eyes. A 2016 poll shows that 72% of Germans agree with Chancellor Merkel and have a rather favorable view of diversity and 81% of Germans believe that the burden of taking in refugees should be shared equitably by all EU member states (Willkommenskultur in “Stresstest” 23; 12).

IV.b. Hungary

Hungary's asylum policy is anchored in Article XIV(3) of the Fundamental Law, Act II of 2007 on the Entry and Stay of Third-Country Nationals, and Act LXXX of 2007 on Asylum. Article XIV(3) of the Fundamental Law grants non-Hungarian citizens who fulfill the 1951 Convention's definition of a refugee the right of asylum (The Fundamental Law). Act II on the Entry and Stay of Third-Country Nationals stipulates that third-country nationals who seek asylum in Hungary are to be issued a residence permit on humanitarian grounds (Act II of 2007). Act LXXX on Asylum is Hungary's main asylum statute that regulates the asylum procedure and transposes the 1951 Convention as well as the Reception Conditions Directive, the Qualification Directive, and the Asylum Procedures Directive of CEAS into Hungarian law (Act LXXX). It stipulates the right of asylum to foreigners who fulfill the requirements of Article XIV(3) of the Fundamental Law, excluding individuals to whom Article 1 D, E, and F of the 1951 Convention apply, and subsidiary protection to foreigners who fulfill the requirements laid out in the Qualification Directive.

Due to the vast influx of refugees²⁶ that the country has experienced after Macedonia opened the Balkan route in June 2015, Hungary introduced extensive modifications to its asylum system. These adjustments served as legal and physical barriers to restrict access to the country's territory. In the summer of 2015, Hungary built an anti-migrant border fence along its southern borders with Serbia and Croatia. A second

²⁶ The number of first-time asylum applications in Hungary increased from 41,215 in 2014 to 174,435 in 2015, which represents a 323% increase (Asylum and First Time Asylum Applicants). These numbers represent all individuals who have filed first-time asylum applications but do not include the tens of thousands of refugees who transited through Hungary without registering.

fence along the border with Serbia, equipped with alarms and thermal imaging, was finished in the beginning of 2017 (Sandford). Act CXL of 2015 amended Act LXXX of 2007 on Asylum. Based on the declaration of a state of emergency due to mass immigration, the act authorized the use of police and military to support the Immigration and Asylum Office (IAO), introduced severe restrictions to regular entry, expedited border procedures in transit zones, restricted judicial overview of asylum decisions, and criminalized the irregular entry of refugees through the fence. The state of emergency was declared in September 2015. While it was originally limited to six southern counties, it was geographically extended to the whole country in March 2016 (Hungary as a Country of Asylum 6). The last temporal extension of the state of emergency was announced in August 2017, leaving it in effect until March 2018 (Government Decides to Extend).

The erecting of border fences to deny asylum seekers access to international protection in the EU, and the imposition of criminal sanctions on refugees crossing the borders violate the Schengen Rules. These measures, furthermore, do not comply with the fundamental principles of the EU laid out in Article 2 of TEU, namely the respect for human dignity, human rights, and the rule of law, as well as the principles of pluralism, non-discrimination, tolerance, and justice (Carrera et al. 16). Act CXXVII of 2015 introduced new grounds for detention as well as new grounds for the inadmissibility of asylum applications, including the transiting through a safe third country. At the same time, Government Decree 191/2015 adopted a national list of safe third countries, which comprised Serbia, a country neither UNHCR nor any other EU member state regards as a safe third country for asylum seekers. In 2016, Turkey was put on the safe third country

list. By adding Serbia and Turkey, the Hungarian government laid the basis for the quasi-systematic dismissal of Syrian asylum applications, which does not assess the risk of individual applicants and breaches Article 10 of the Asylum Procedures Directive. It is important to note that Serbia abandoned its readmission agreement with Hungary after the border closure in 2015 and is officially not receiving asylum seekers from Hungary (Stranded Hope 19). According to Article 38 of the Asylum Procedures Directive, an asylum applicant whose application has been deemed inadmissible on safe third country grounds is to be given access to an asylum procedure if the third country refuses to accept the return of the applicant. Since there is no time frame for the IAO to withdraw its decision and continue the procedure, asylum applicants who cannot be returned to Serbia are left in limbo (Hungary as a Country of Asylum 25).

Further amendments in 2016, in form of Act XXXIX of 2016 and Act XCIV of 2016, have significantly deteriorated the situation of international protection recipients in Hungary by limiting free housing in reception centers to one month after the approval of an asylum application, limiting the access to free health care to six months after the approval of an asylum application, and ending integration programs that grant access to language courses and employment counseling. In addition, they require the review of protection status after at least three years and terminate cash allowances to asylum seekers. In July 2016, the '8-km rule' has entered into force. It allows the Hungarian police to apprehend asylum seekers within 8 kilometers of the border with Serbia and Croatia and drive them back beyond the border fence without due process, consideration of their protection needs, or safeguards against refoulement. These push-backs violate international conventions, including Article 33 of the 1951 Convention prohibiting

refoulement and Article 4 of Protocol No. 4 of ECHR prohibiting the collective expulsion of aliens. Furthermore, the push-backs are in breach of EU legislation, e.g. the Schengen Borders Code and Articles 6 and 9 of the Asylum Procedures Directive. “The government’s programme of militarization, criminalization and isolation – that it touts as “Schengen 2.0” – has ushered in a set of measures which have resulted in violent push-backs at the border with Serbia, unlawful detentions inside the country and dire living conditions for those waiting at the border” (Stranded Hope 4). Most of these measures violate international human rights law, the 1951 Convention, as well as CEAS Directives.

According to the IAO, asylum in Hungary can be sought before entering the country at the border, or within the country (As a Refugee in Hungary). Before entering the country, asylum seekers can submit their application in border transit zones established at two border crossing points along the Serbian border located in Tompa and Rösztke and two border crossing zones along the Croatian border located in Beremend and Letenye. The number of asylum seekers allowed to enter each transit zone has decreased considerably from 185 per day in September 2015 to 10 per day in November 2015. As of January 2017, only five people are permitted to enter each transit zone per day, stranding at least 7,000 people in pre-transit zones, areas on both Hungarian and Serbian territory that are separated from the actual transit zones by fences (Dearden; Pardavi et al. 16). An overall lack of transparency in the decision-making process as to who gains access to the transit zones exists, with the time of arrival and vulnerability, i.e. unaccompanied minors and families with children are given priority over single men, being only general determining factors.

The long waiting time before asylum seekers are allowed to enter the transit zones to initiate their application is incompatible with Article 6 of the Asylum Procedures Directive. Since the pre-transit zones are not considered Hungarian territory by the Hungarian authorities, albeit being partially located on Hungarian soil, asylum seekers waiting to enter the transit zones are not provided with adequate accommodations or the necessary supplies to meet their basic human needs. This denial of services leaves them in inhumane conditions and utter desperation, violating their human rights and Article 43 of the Asylum Procedures Directive (Pardavi et al. 16). Refugees in pre-transit zones are mostly living in makeshift tents without adequate facilities to shower or prepare food. The only facilities Hungary has provided are water taps and sinks, while portable toilets were set up by Serbian authorities after months of advocacy by international organizations (Stranded Hope 15). Even though Hungary distributes food packages, most of the humanitarian relief is provided by UNHCR and Doctors without Borders. The conditions at Hungary's border with Serbia violate Article 17 of the Reception Conditions Directive. The responsibility of the Hungarian state is not limited to refugees within its territory but extends to refugees who are under the effective control of or affected by individuals acting on behalf of the state²⁷ (Lauterpacht et al. 110).

The first step upon entry into the transit zones is the establishment of the identity and background of the asylum seeker. In a second step, the admissibility of the application is determined. Within the transit zones, the movement of asylum seekers is restricted to containers and a little area outside. Asylum seekers do neither have access to

²⁷ Lauterpacht et al. refer to the principle of non-refoulement, but their assessment can also be applied to the obligation under Article 17 of the Reception Conditions Directive to ensure material reception conditions and provide an adequate standard of living for applicants.

information in their language nor to the outside world via internet or phone. Only after their application is ruled admissible can asylum applicants leave the transit zone to enter Hungary²⁸, a practice which is classified as detention by UNHCR and Amnesty International (Stranded Hope 16-17). The admissibility process should not exceed eight days, but if no decision is reached after 28 days, the asylum seeker must be allowed to enter Hungarian territory, per Article 43 of the Asylum Procedures Directive. Vulnerable individuals, such as families with underaged children, unaccompanied minors, elderly, and disabled persons, are exempt from the assessment of admissibility and are promptly transferred to accommodation centers inside the country. However, there are no screening and identification procedures for vulnerable people in place, resulting in the exclusive recognition of physically visible vulnerabilities (Pardavi et al. 36). The lack of an adequate identification mechanism violates Article 22 of the Reception Conditions Directive.

The border procedure is a special admissibility procedure, i.e. an applicant's need for international protection is not assessed. Asylum seekers, excluding vulnerable individuals, may be detained for up to four weeks during the assessment of admissibility. However, cases, in which an inadmissibility decision was delivered in less than an hour, have been reported, revealing deficiencies regarding the quality and individualization of the procedures in the transit zones (Pardavi et al. 36). Insufficiently individualized examinations breach Article 10 of the Asylum Procedures Directive. An entry ban for one to two years is usually issued after the decision on inadmissibility and the expulsion of

²⁸ Asylum seekers are free to return to Serbia at any time. Their leaving to Serbia is regarded as withdrawal of their asylum application.

the asylum seeker. The ban is entered into the Schengen Information System, which prohibits the asylum seeker from entering the Schengen area during the specified period²⁹.

Asylum seekers within Hungary must communicate their intent to seek asylum with the IAO. Since September 2015, though, irregular entry through the border fence is punishable by actual or suspended imprisonment of up to ten years and can lead to an expulsion order under Section 352/A of the Criminal Code (Hungary As a Country of Asylum 19). Between September 2015 and August 2016, 2,889 people were charged with irregular entry, of which 2,841 were found guilty. While most received expulsion orders, three people were sent to prison, and 41 individuals received suspended prison sentences (Stranded Hope 19). Despite the 1951 Convention's non-penalization principle, the criminal offense is pursued even when it is related to the seeking of asylum (Pardavi et al. 17). "Motions requesting suspension of the criminal proceedings that were submitted by the defendants' legal representatives were systematically rejected by the court on the grounds that eligibility for international protection was not a relevant issue to criminal liability" (Hungary as a Country of Asylum 23). The lack of formal recognition as a refugee and the entry from a territory where the life and freedom of the applicant were not threatened have been cited as grounds for the rejections by courts. Both reasons are at variance with widely accepted interpretations of the 1951 Convention, namely that determination of status is not constitutive but declaratory and that refugees are not

²⁹ The asylum seekers did not violate national regulations on the entry or residence of third-country nationals. Hence, entering an alert into the Schengen Information System does not comply with Article 24(3) of Regulation (EC) No 1987/2006 on the establishment, operation and use of the second-generation Schengen Information System (Hungary as a Country of Asylum 11).

required to seek asylum in the first safe country. While the enforcement of an expulsion order of asylum applicants cannot violate the principle of non-refoulement and a court can declare the expulsion non-enforceable according to Section 52 of Act II of 2007, the penal sentence and the conviction are not annulled by the prohibition of expulsion (Hungary as a Country of Asylum 23).

Since the introduction of the “8-km rule” in 2016, the criminalization of illegal entry has become of less relevance since most refugees are returned to Serbia rather than prosecuted. The rule has caused thousands of denials of entry and summary expulsions (Hungary: Access Denied). Between July and December 2016, 19,057 individuals were either prevented from crossing the border or pushed back over the border into Serbia (Pardavi et al. 11). Furthermore, reports of inhumane treatment and severe abuses of asylum seekers by soldiers, police officers, and special police action units nicknamed border hunters have become numerous, with humanitarian organizations declaring that the ill-treatment has become representative of Hungary’s refugee policy (Dearden; Bayer). In early 2017, for example, reports of border police pouring water over refugees in temperatures of -20°C and abandoning them without shoes or coats have emerged alongside frequent reports of excessive use of force and the use of tear gas. Doctors working with Doctors without Borders have treated injuries that refugees suffer at the hands of these forces on a daily basis (Pardavi et al. 18).

Asylum applications must be submitted to the IAO in person. The asylum procedure is divided into two stages: an administrative procedure carried out by the IAO and a legal procedure carried out by regional administrative and labor courts (Pardavi et al. 14). In the first step of the asylum procedure, the identity of asylum applicants and

their way of traveling is recorded. To ensure Hungary's national security and reduce the risk of terrorists entering the country, the Agency for Constitutional Protections and the Counter-Terrorism Center are consulted if needed (As a Refugee in Hungary).

Fingerprints of individuals over the age of 14 are entered into the EURODAC system to assess whether Hungary is responsible for processing the application under the Dublin III Regulation. If Hungary is not found responsible, a Dublin procedure is initiated, i.e. the applicant is returned to the country of first entry. If Hungary is found responsible, the IAO proceeds with an interview to assess whether the application is admissible or an accelerated procedure should take place, a decision that is to be made within 15 days.

The compulsory personal interview with the applicant is conducted by an asylum officer with the help of an interpreter if needed. A same-sex interviewer and interpreter are provided upon request if it does not interfere with the timely completion of the asylum process. If an applicant seeks asylum on the grounds of gender-based persecution, the fulfillment of such a request is officially required (Pardavi et al. 21). During the interview, biometric data is collected, and the applicant has the chance to present her or his case and recount the reasons for applying for asylum.

An application is ruled inadmissible if the applicant is an EU citizen, has received protection status from another EU member state or a third country which is willing to readmit her or him, or has stayed in or traveled through a safe third country and had the opportunity to request international protection. In practice, the safe third country concept is used as a ground for inadmissibility even when the individual did not have the opportunity to request international protection, e.g. when she or he was smuggled through the safe third country (Pardavi et al. 50). An inadmissibility decision on the grounds of

the safe third country concept can be appealed with the IAO within three days, whereby the burden of proof that international protection is not guaranteed in her or his case rests with the asylum seeker (Stranded Hope 18-19). Instances, in which the case officers did not accept declarations of asylum applicants unless they were written in English have been reported, leaving many applicants without a chance to defend their case given that free legal aid and interpreters are not readily available (Pardavi et al. 50). An accelerated procedure is initiated if the applicant comes from a safe third country, provides the authorities with inaccurate or contradicting information, files an application to delay or stop removal, refuses to provide fingerprints, or presents a risk to national security (Pardavi et al. 15). Once inadmissibility and an accelerated procedure are ruled out, the regular procedure is continued, where, per Article 31 of the Asylum Procedures Directive, a decision on the merits of the application is to be made within 60 days (Pardavi et al. 19). Due to the rise in asylum applications in 2015 and 2016, many decisions were not reached within 60 days.

Where an asylum applicant is accommodated and whether she or he is placed in an open center or a detention facility is decided by the IAO. The IAO oversees Hungary's four reception centers, three asylum detention facilities, and one childcare facility. While the movement of asylum seekers in open reception centers is not restricted geographically within the country, absences of more than 24 hours must be permitted by the authorities of the reception facility, and some centers have introduced curfews. Family members and NGOs must submit a written request to the reception center before they can visit residents. In accordance with Article 18 of the Reception Conditions Directive, the requests are usually granted.

A lack of access to information about the asylum procedure and the rights and obligations of asylum seekers in a language the applicant can reasonably understand is common in reception centers, breaching Article 12 of the Asylum Procedures Directive (Stranded Hope 24). Written information is usually only available in Hungarian or English. Furthermore, applicants in asylum centers frequently encounter difficulties in communicating with authorities and staff outside of formal hearings, given that most employees do not speak foreign languages and that interpreters are not stationed at the centers (Stranded Hope 24). It is, therefore, difficult for applicants to receive the support they need with their applications. Reception conditions in most of the open accommodation centers are adequate, i.e. reception centers are regularly cleaned, meals are offered three times a day respecting religious restrictions, and recreational facilities are available (Pardavi et al. 60-62). In 2015, the capacities of reception centers were overwhelmed due to the vast influx of refugees, with rates varying between 150% and 250% (Pardavi et al. 60). In Budapest, the vast influx of refugees caused a severe shortage of accommodations, food, and water. During this time, conditions in reception centers deteriorated significantly.

First-time asylum applicants are entitled to material reception conditions, e.g. housing and food, immediately after submitting their asylum claim for the duration of the procedure. Since 2016, asylum applicants are not entitled to receive benefits in cash anymore, although some reception facilities still offer an option to receive financial allowances instead of benefits in kind (Pardavi et al. 57). The Act on Asylum stipulates that only destitute asylum seekers are to receive free material reception conditions. Consistent with Article 17 of the Reception Conditions Directive, asylum applicants with

financial resources can be obliged to contribute to or pay for housing, food, and health care. Reception conditions can be reduced or withdrawn on the grounds of false statements regarding financial resources, consistent with Article 20 of the Reception Conditions Directive (Pardavi et al. 56). Further reasons for the reduction or withdrawal of reception conditions are the vacation of designated housing and the failure to comply with reporting obligations. Asylum seekers can work at reception centers without a work permit. In accordance with Article 15 of the Reception Conditions Directive, access to the labor market is granted after nine months but is limited to jobs that cannot be filled with Hungarians or citizens of the European Economic Area. Additional barriers to the labor market are the Hungarian language, the non-recognition of foreign professional qualifications, and Hungary's high unemployment rate (Pardavi et al. 62).

Regarding education, the Public Education Act specifies that education is compulsory for all children under the age of 16. The integration of asylum-seeking children into public schools is limited. Special language courses for asylum-seeking children have been introduced in public schools to teach them Hungarian and facilitate their integration into regular classes. However, only a small number of public schools are able and willing to offer programs in line with the specific needs of asylum-seeking children (Pardavi et al. 63). In addition, many Hungarian parents have expressed their objection to the enrollment of asylum-seeking children and their integration into regular classes. Overall, the availability of classroom spaces for asylum-seeking children under the age of 16 is limited. Asylum-seeking children over the age of 16 do not have access to education until they are granted protection status, a violation of Article 14 of the Reception Conditions Directive.

Free health care is part of the material reception conditions (Pardavi et al. 64-65). In accordance with Article 19 of the Reception Conditions Directive, asylum applicants are entitled to essential medical services, i.e. care given by general practitioners in reception centers. Free specialized care is only provided in emergencies or if ordered by a general practitioner. Asylum applicants with special needs are entitled to free specialized health care services, e.g. mental health care. However, most service providers lack experience with torture and trauma survivors, reducing the capacity of providing care. Another limiting factor for access to adequate care is the language barrier. Only a few doctors and experts speak foreign languages and interpreters are not always provided by the IAO. Asylum applicants who live in private accommodations are entitled to receive care at the local general practice. Many local practitioners, though, systematically block asylum applicants from accessing services citing their lack of health insurance cards, even though, according to the IAO, the humanitarian residency card is considered to be sufficient to receive medical care (Pardavi et al. 65).

Detention during the asylum procedure has become a regular rather than an exceptional measure in Hungary (Pardavi et al. 68). In 2015, 257 detentions were ordered for Syrian asylum seekers (Immigration and Asylum Office Statistics 2015-2016). In 2016, the number was 153. Grounds for detention are laid out in Section 31/A (1) of the Act on Asylum, e.g. the determination of identity or nationality, the establishment of facts during an asylum procedure that cannot be substantiated without detention, the protection of national security and public order, and when there is a risk of absconding. The latter is the most frequently cited reason for detention orders. The assessment of whether an asylum applicant presents a flight risk is rather arbitrary, given that detention

orders have been issued merely because the applicant did not name Hungary as their destination country (Pardavi et al. 70). After the criminalization of irregular entry, asylum seekers convicted of entering the country illegally were systematically held in detention on the grounds of public safety, i.e. no individualized assessments took place since everybody caught crossing the border fence was perceived as a public threat. “Decisions ordering and upholding asylum detention are schematic, lack individualised reasoning with regard to the lawfulness and proportionality of detention, and fail to consider the individual circumstances (including vulnerabilities) of the person concerned” (Pardavi et al. 71). Besides, less coercive alternatives to detention are not automatically examined or considered. Detention measures in Hungary violate Article 8 of the Reception Conditions Directive and Section 31/A of the Act on Asylum, which conforms with the Directive that detention should be a measure of last resort.

Even though most of the individuals in detention facilities are male, any asylum seeker who falls within the grounds of detention can be detained. Unaccompanied minors are the only vulnerable group of asylum seekers who are explicitly excluded from detention. In 2016, the number of individuals in detention often surpassed the number of individuals in open reception centers. Overall, a total of 8.9% of asylum applicants were detained, including 54 families (Pardavi et al. 68). Hungary’s three asylum detention facilities, Kiskunhalas, Nyírbátor, and Békéscsaba, often operate at maximum capacity. (Pardavi et al. 68).

The IAO can order detention for 72 hours. Any extension beyond that must be reviewed and ordered by a district court. Extensions, for a maximum of 60 days, can be ordered repeatedly but may not exceed six months or 30 days for families with minors

(Act LXXX of 2007 on Asylum). Even though asylum applicants in detention have the right to free legal representation, they do not receive adequate legal aid in practice. In addition, the judicial review of asylum detention has been deemed ineffectual because of its lack of individualized assessments of cases as well as deficiencies in the verification of the use of detention as a last resort (Pardavi et al. 82). Furthermore, the 60-day interval for judicial reviews does not allow for the use of detention for as short a period as possible and only as long as detention grounds are applicable since circumstances may change right after an extension is ordered, violating Article 9 of the Reception Conditions Directive. Detention is commonly ordered during the identification process and extended throughout the asylum procedure.

In detention centers, men and women, except spouses, must be held separately and families with children must be accommodated apart from other detainees. The minimum requirements for detention facilities are access to open air, recreational facilities, the internet, phones, and social workers, as well as freedom of movement, which are mostly met. The health care provided in detention centers is basic, with specialized care only available in emergencies (Pardavi et al. 77). The quality of health care is severely diminished due to the language barrier, as interpreters are rarely provided. Mental health care is generally inaccessible for detainees, including victims of torture, rape, or other serious acts of violence, violating Article 11 of the Reception Conditions Directive and Section 31/F of the Act on Asylum. The most common complaints about detention reference a lack of privacy, inadequate heating, a shortage of clothes, and inadequate health care. In addition, physical ill-treatment by security guards has been reported (Pardavi et al. 77). In accordance with Article 10 of the Reception

Conditions Directive, lawyers and NGOs generally receive access to detention centers after obtaining permission from the authorities.

Eligibility officers within the IAO decide whether an asylum applicant is recognized as a refugee, granted subsidiary protection, or does not receive protection status (Pardavi et al. 20). Decisions must be communicated orally and in writing. While the oral communication must be provided in a language that the asylum applicant can understand, it is sufficient for the written communication to be in Hungarian. Asylum applicants that are granted refugee protection receive a residence permit for three years, after which their status is reexamined and they can apply for citizenship. Recipients of subsidiary protection also receive a residence permit for three years, after which their status is reexamined. They can apply for citizenship after eight years. Individuals with refugee status are exempt from the strict material requirements for family reunification, a preferential treatment that recipients of subsidiary protection do not receive.

Asylum applicants can appeal negative decisions in regular asylum procedures through a single instance judicial review from the regional Administrative and Labor Court within eight days. Judicial reviews of Dublin decisions must be requested within three days, appeals of inadmissibility decisions within seven days. Combined with the general lack of access to information about the asylum procedure, the short deadlines may leave asylum applicants without access to an adequate remedy, violating Article 46 of the Asylum Procedures Directive (Pardavi et al. 22). The three-day time-limit, furthermore, “does not appear to reflect the ‘reasonable’ deadline for appeal under Article 27(2) of the Dublin III Regulation or the right to an effective remedy under Article 13 ECHR” (Pardavi et al. 28). Court decisions in judicial reviews of regular asylum

procedures are to be reached within 60 days and can either uphold the previous decision or annul it and order a new procedure. Court decisions in judicial reviews of inadmissibility or accelerated procedures must be reached within eight days, violating Article 46 of the Asylum Procedures Directive given that in most cases eight days are not enough time for judges to conduct a full and ex nunc examination of the facts and the law. In accordance with Article 20 of the Asylum Procedures Directive, asylum seekers are entitled to free legal aid during the appeals process. Few asylum seekers, though, have made use of this right, due to a lack of information about its existence and the costs of interpretation which the asylum applicant must cover (Pardavi et al. 24).

Refugee status and subsidiary protection cease if the beneficiary obtains Hungarian citizenship or her or his status is revoked by the IAO (Pardavi et al. 87). A revocation is issued if the recipient voluntarily avails herself or himself of the protection of the country of origin, obtains the nationality of a third country, the conditions on which the status was based have ceased to exist, she or he renounces the recognition of the status in writing, the information provided was incorrect or incomplete, or the recipient is convicted of a crime punishable by imprisonment of at least five years. In 2016, the IAO revoked four refugee statuses and 69 subsidiary protections (Pardavi et al. 89).

In March 2017, the Hungarian parliament passed Act XX of 2017, an act that severely reduces the rights and conditions of asylum applicants (Hungary: Law on Automatic Detention). According to the act, every individual who stays in Hungary unlawfully and is encountered by the police can be pushed back across the border fence from anywhere in the country, even if she or he wishes to seek asylum, extending the 8-

km rule to the whole country. Legal remedies to challenge the push-backs are not provided. The act, furthermore, stipulates that asylum applications can only be submitted in transit zones and that all asylum seekers are to be detained within transit zones for the duration of the asylum procedure without legal remedies. Asylum seekers whose application is currently under review in one of the country's open reception centers also fall under the detention order. They are to be transferred to the transit zones and held in detention until a decision in their case is reached. In all, automatic detention is to be applied to every asylum seekers, including vulnerable persons and unaccompanied minors over the age of 14. In April 2017, the capacities of Hungary's two transit zones at the Serbian border were expanded to hold 250 individuals each (Hungary: Turbulent 50 Days 1). The conditions in transit zones have deteriorated since the act came into effect. "Despite government statements, there are still insufficient services provided to vulnerable asylum-seekers in the transit zones and children still have no access to education. Applicants requiring emergency or advanced medical assistance are transported to local hospitals hand-cuffed and escorted by armed guards" (Hungary: Turbulent 50 Days 1-2). As of May 2017, no transfers from open reception centers to the transit zones have been undertaken (Hungary: Turbulent 50 Days 1).

The elaboration of Hungary's asylum procedure demonstrates that the Hungarian asylum law does not conform with CEAS Directives on a multitude of issues. In general, Hungary's asylum system lacks the guarantees and effective remedies required by the CEAS Directives. On 10 December 2015, the European Commission opened an infringement procedure against Hungary on the grounds that the country has failed to completely transpose and implement the European Asylum System (Commission Opens

Infringement Procedure). The Commission expressed specific concerns regarding the appeals process and the lack of access to interpreters. On 17 May 2017, the European Commission followed up on the infringement procedure, concluding that the amendments of 2017 do not comply with the Asylum Procedures Directive, the Reception Conditions Directive, or the Charter of Fundamental Rights. Incompatibilities include the ineffective access to asylum procedures within its territory, the systematic and indefinite detention of asylum seekers, and the lack of adequate material reception conditions (Commission Follows Up on Infringement Procedure). In addition, UNHCR and the European Council on Refugees and Exiles have called on EU member states to suspend Dublin transfers to Hungary (Hungary: Calls for Suspension). Germany, the country with the highest number of Dublin requests and transfers to Hungary, followed the call and suspended the procedure. Other EU member states had already suspended transfers in 2015, e.g. Finland and Switzerland, while courts in Germany, Sweden, and England had ruled against individual transfers (Stranded Hope 10).

Between 2011 and 2017, Hungary has received 77,056 first-time asylum applications from Syrian refugees (Syria Regional Refugee Response). The number of Syrian first-time asylum applications per year increased from 935 in 2013 to 64,080 in 2015 (Asylum and First Time Asylum Applicants). In 2016, the number dropped to 4,875 first-time asylum applications, representing 17.3% of the total number of first-time asylum applications filed in Hungary (Asylum and First Time Asylum Applicants). Compared to 2015, where Syrian asylum applications represented 36.7% of the total number of first-time applications submitted in Hungary, the percentage of Syrians among all asylum applicants has dropped significantly (Asylum and First Time Asylum

Applicants). The approval rate of Syrian asylum applications, including first time and subsequent applications, dropped from 69.2% in 2014 to 59.3% in 2015 to 9.5% in 2016 (First Instance Decisions). Of the 270 decisions on Syrian asylum applications in 2015, 160 were positive, and 110 were rejected. Of the 160 positive decisions, 12.5% granted refugee status and 87.5% accorded subsidiary protection. In total, 7.4% of all decisions made on Syrian asylum applications in 2015 granted refugee protection and 51.9% awarded subsidiary protection, while 40.7% of all decisions were negative. In 2016, 95 out of 1000 decisions were positive, i.e. 9.5% of the decisions did not grant international protection to Syrian asylum applicants. 10.5% of all positive decisions granted refugee protection, and 89.5% accorded subsidiary protection. Out of the total number of decisions made on Syrian asylum applications in 2016, only 1% awarded refugee status and 8.5% granted subsidiary protection.

The Hungarian government's stance on the Syrian refugee crisis is reflected in the country's asylum laws as well as in the data on asylum applications in Hungary. Hungarian Prime Minister Viktor Orbán's right-wing government has pursued a "zero refugee strategy" (Bayer). The government's rhetoric has demonized refugees and portrayed them as enemies of the Hungarian culture and people, fanning fear and xenophobia. In May 2015, the government launched a National Consultation on Migration and Terrorism, sending out questionnaires that equated asylum seekers to economic migrants and depicted them as individuals who enter Hungary illegally to take advantage of Europe's welfare systems and economic opportunities (Hungary as a Country of Asylum 5). Asylum seekers were, furthermore, portrayed as a threat that must be stopped in its tracks. The national consultation was combined with an anti-immigrant

campaign that featured billboards with slogans in Hungarian stating “If you come to Hungary, you cannot take away Hungarians’ jobs” or “The people have decided: The country must be protected!” (Hungary as a Country of Asylum 6). Further messages in the public campaign read “Did you know? Since the beginning of the immigration crisis, the number of sexual assaults on women has exponentially increased” or “Did you know? Since the beginning of the immigration crisis, over 300 people have died in terror attacks”, linking refugees to violent crimes and conflating the concepts of migration and terrorism (Stranded Hope 8). Prime Minister Orbán reinforced these messages with statements such as “Every single migrant poses a public security and terror risk . . . For us migration is not a solution but a problem ... not medicine but a poison, we don’t need it and won’t swallow it” or “The reality is that Europe is threatened by a mass inflow of people. Many tens of millions of people could come to Europe . . . All of a sudden we will see that we are in a minority in our own continent” (Hungarian Prime Minister; Witte).

In his “war on refugees”, Prime Minister Orbán focuses primarily on asylum seekers of Muslim origin, calling for the preservation of Hungary’s ethnic and cultural homogeneity and Europe’s Christian heritage (Haraszti). The propagation of sharp rhetoric against refugees by the Prime Minister’s government has created an anti-refugee climate within Hungary that promotes intolerance and hatred and is reflected in the unwelcoming treatment of refugees (Bayer). According to poll results from 2015, the percentage of people considering immigration to be one of the most critical issues for Hungary jumped from 13% in the spring to 65% in the fall (Juhász et al.17). Even though the government’s anti-refugee rhetoric has resonated with large parts of the population,

pockets of resistance within Hungary exist. Civil society initiatives have launched campaigns to counter the government's narrative. The Two-Tailed Dog Party, for example, is spreading messages such as "Did you know that the average Hungarian sees more UFOs than refugees in a lifetime?" to highlight the government's unscrupulous refugee-baiting and fear-mongering (Gall). Furthermore, all opposition parties, except Jobbik, have condemned the harsh anti-refugee rhetoric and accused the government of exploiting the refugee crisis for political gains by deliberately inciting xenophobia and hatred, conflating terrorism with immigration, and fueling fear. According to the opposition, "Fidesz [is] using the darkest, lowest political propaganda and uninhibited manipulation, confusing real figures with public fears based on semi-truths and obvious, crude lies" (Juhász et al. 27).

The government's anti-immigrant campaign has been directed at galvanizing public support for the increasingly harsh asylum policies and consolidating Prime Minister Orbán's power. In addition, broad public support was sought to strengthen the government's legitimacy in its adversarial stance against EU efforts and agreements concerning a common solution to the refugee crisis. "The Hungarian authorities continue to intentionally undermine any agreement that could protect the rights of refugees and migrants to safely and legally arrive in the European Union, be treated with dignity, and have a fair and individual opportunity to make their cases heard" (Stranded Hope 5). The Hungarian government's vehement opposition to a quota system serves as an example. Hungary refused to participate in the Temporary EU Relocation System of September 2015, which provided for the relocation of refugees from Greece and Italy, even though it was mandatory to all EU member states. In November 2015, the Hungarian parliament

adopted Act CLXXV of 2015, which called for the initiation of proceedings against the relocation system at the Court of Justice of the European Union (CJEU) and declared the compulsory quota system a danger to Hungary's security and culture as well as an infringement on its national sovereignty (Groenendijk et al.). A media campaign against the quota system was launched, with slogans such as "The quota increases the terror threat!" and "An illegal immigrant arrives in Europe on average every 12 seconds." (Hungary Sues EU). In December 2015, the Hungarian government filed a case with the CJEU, which the court rejected in September 2017. In reaction to the court's decision, Hungary's Foreign Minister Peter Szijjarto stated at a news conference: "The Hungarian government considers today's decision by the European court to be appalling and irresponsible . . . This decision jeopardises the security and future of all of Europe . . . Politics has raped European law and values" (Szakacs).

Party politics play a significant role in the government's stance on refugees and its demonization of Muslim asylum seekers. "Hungary's current wave of Islamophobia can be explained by the sociopolitical developments that have occurred over the last three years and the Hungarian Right's discursive shifts" (Pall et al.). Prime Minister Orbán's right-wing Federation of Young Democrats–Hungarian Civic Alliance (Fidesz) and its coalition partner, the Christian Democratic People's Party (KDNP), have been the driving force behind the country's anti-Islamic discourse. They have been promoting a Christian-nationalist ideology that identifies Islam as the enemy of Christianity and a threat to the European nation states to widen their base and win the support of young academics and professionals who view Christianity as the most important part of their identity. The adoption of anti-Islamic sentiments, furthermore, allowed Fidesz to distinguish itself

from the far-right Jobbik party, which has been sympathetic towards Islam and Muslims due to its anti-Semitic ideology and the belief that Muslims, especially Palestinians, support its anti-Israel cause.

Throughout Hungary's history, Islamophobia was not a prevailing sentiment, albeit the country's unpleasant encounters with Islamic forces. While the Ottoman era has been collectively remembered as a foreign occupation rather than a religious conflict³⁰, governmentally supported public campaigns have been spreading a populist reinterpretation equating the current influx of Muslim refugees with the Muslim hordes from the Ottoman empire trying to conquer Europe and destroy Christianity, where Hungary serves as a bulwark against the invaders, now as then (Pall et al.). Combined with the pictures of terrorist attacks in Europe and the vast influx of mostly Muslim refugees into Hungary in 2015, the anti-Islamic discourse radicalized large parts of the Hungarian population and increased the public support for Prime Minister Orbán's agenda as well as his ratings.

According to a poll in 2016, 76% of Hungarians believe that refugees will increase the likelihood of terrorism in Hungary and 69% perceive the large numbers of refugees from Syria as a major threat (Manevich). Furthermore, the country's slow economic recovery from the financial crisis in 2008, which influenced Prime Minister Orbán's ratings negatively, has instilled a fear of unemployment in the population, a sentiment the Hungarian government has made use of in its public campaign against refugees. In 2016, 82% of Hungarians perceived refugees as a threat to jobs and a burden

³⁰ The Ottomans have been perceived in the same light as the Catholic Austrians or the Soviets. Since conversion to Islam was not forced upon the Hungarian population, the occupation was viewed in political terms (Pall et al.).

on social benefits (Manevich). Hence, the harsh stance against refugees has become a vehicle for Prime Minister Orbán to regain popularity and consolidate his power.

In its strong stance against the EU and emphasis on national sovereignty, the Hungarian government has made use of the country's history of foreign occupation. The Ottoman occupation, for example, lasted more than a century and was followed by the foreign rule of the Habsburg Monarchy. After World War I the country was split up by the Entente powers, while Germany overran Hungary during World War II and the Soviets took control of it after the war. This turbulent history is still present in the nation's conscience, allowing Prime Minister Orbán's government to depict the European Union as another foreign entity that wants to undermine Hungary's sovereignty and force its will upon the Hungarian people. At a ceremony marking the 60th anniversary of a 1956 anti-Communist uprising, Prime Minister Orbán warned the Hungarian people against the "Sovietization" of the EU. The stance against the EU is not as readily absorbed by the Hungarian population, with three quarters still being in favor of EU membership. "Convincing these voters that the government is not fighting against the EU but for a better EU (read: a Europe without liberal delusions), could yet prove to be Orbán's biggest challenge" (Schweitzer).

Prime Minister Orbán perceives multiculturalism as a threat to Hungary and other European countries. In his view, the ingredients for a prosperous future are cultural homogeneity and Christian values. A 2016 poll shows that 41% of Hungarians agree with Prime Minister Orbán's negative stance on multiculturalism, while 17% believe that multiculturalism makes Hungary a better place to live (Wike et al.). With regards to the EU, Prime Minister Orbán prefers strong nation-states over strong EU institutions.

Hence, the EU's approach to the refugee crisis does not focus enough on deterring refugees from entering the EU and does not give individual member states enough autonomy. This belief explains why the influx of refugees is portrayed as a threat by the Hungarian government and why it consistently tries to undermine proposals that call for member states to cooperate and share responsibilities concerning the distribution of asylum seekers.

V. CONCLUSION

The elaboration of the degree to which CEAS has been implemented in Germany and Hungary shows that a common asylum system has not been achieved in the EU. While Germany has overwhelmingly transposed the CEAS Directives into German law, the amendments to Hungary's asylum law since 2015 have mostly caused greater non-conformity with CEAS Directives. The examination of each case highlights different reasons for the failure to achieve a common asylum system and leads to different conclusions.

Germany's most severe breaches with CEAS Directives concern the Asylum Procedures Directive and the Reception Conditions Directive, e.g. the lack of a time limit to conclude asylum applications for the former and the lack of a systematic procedure for the identification of vulnerable persons as well as the lack of a maximum time limit to access the labor market for the latter. Some non-conformity issues arise from conflicts with Länder law, e.g. the lack of access to education for asylum-seeking minors over the age of 16, while others stem from inadequate implementation on the regional level, e.g. the varying degrees of access to education and essential health care. Most of the

violations of the CEAS Directives, though, result from the vast influx of refugees, e.g. insufficient access to a timely registration, lodging, and processing of asylum applications, specialized caseworkers to deal with victims of torture and trauma, specialized care for torture victims, and adequate accommodations.

In the case of Germany, it becomes clear that most of the nonconformities with the CEAS Directives do not stem from a lack of transposition into national law or implementation on the ground but from its asylum system's incapability of dealing with such a sudden increase in the number of refugees. It can, therefore, be concluded that the CEAS system is not adequate for dealing with situations of mass influx. The primary focus on individual rights lies at the root of this inadequacy, a focus that CEAS shares with the 1951 Convention. Even though the Qualification Directive deviates from the 1951 Convention by granting protection status to people fleeing situations of indiscriminate violence caused by international or internal armed conflict, the mechanisms for granting protection under the Asylum Procedures Directive and safeguarding the human rights of refugees under the Reception Conditions Directive remain focused on individuals, rendering them ill-suited to serve as a basis of protection for large-scale movements of refugees. While the common asylum system does have a mechanism for times of mass influx, namely the Temporary Protection Directive, the Directive has not been triggered by the Council of the European Union. The failure to invoke the Directive further demonstrates the shortcomings of CEAS during situations of mass influx of refugees. Given that large-scale movements of refugees have become frequent occurrences that present serious humanitarian challenges, it is imperative for the EU to re-examine its asylum system. It is crucial for the EU to establish a system that

ensures the equal distribution of burdens and shifts the focus away from individual state interests towards the common interest of all EU member states, a difficult undertaking that is explicitly opposed by the Visegrád group³¹. Such a system would enable the EU to absorb more refugees than have arrived during the Syrian refugee crisis without overburdening individual state systems and violating the human rights of refugees. As with all asylum systems, the rights and interests of refugees need to be protected and balanced against the interests of EU member states. The latest modifications to CEAS Directives, which have increasingly been aimed at deterring refugees from entering the EU, are in line with a politics of containment designed to prevent refugees from gaining access to the EU at the expense of third countries and refugees.

The direction the EU has taken is not sustainable in the long term since it does not focus enough on resolving the causes of the current refugee crises. Attempting to mitigate the effects instead of tackling the causes is the wrong strategy. In order to combat forced migration successfully, the EU should focus its resources primarily on pacifying areas of conflict by assisting in the socioeconomic development of countries of origin. A correlation between socioeconomic development, cultural changes, and democratization has been established (Inglehart et al. 21). Sustained economic growth generally leads to a diversification of human interactions as well as greater human autonomy and freedom of choice concerning gender roles, religious orientation, and political organization (Inglehart et al. 19; 3; 9). Hence, socioeconomic development can reduce persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion by increasing self-expression values, i.e. emphasizing freedom, tolerance, and political

³¹ Czech Republic, Hungary, Poland, and Slovakia.

activism. Furthermore, a growing correlation between development cooperation and the refugee regime has to be taken into account, considering the increasing impact of climate change on the world population, e.g. natural disasters and food insecurity, and the mitigating effects new technologies can have on environmental catastrophes. While the EU will not be able to bring about these changes by itself, it can become a driving force in the international arena for sustainable development and humanitarianism.

Since 2015, Hungary has continuously reversed the transposition of CEAS Directives and increased gaps in their implementation. Many instances of nonconformity exist regarding the Asylum Procedures Directive. Access to Hungary's asylum procedure is severely restricted due to the 8-km rule and its extension to the whole country as well as the extremely limited acceptance into transit zones. The right to stay in the territory of Hungary during the assessment of the asylum application, as well as the obligation to identify vulnerable persons and provide them with special procedural guarantees have been violated with the introduction of automatic detention in transit zones. The individualization of asylum procedures is almost nonexistent due to the quasi-systematic dismissal of Syrian asylum applications based on the designation of Serbia and Turkey as safe third countries. The right to effective legal remedies, which had been diminished by the short time limits for launching appeals and reviewing appeals, has been abolished regarding push-backs and detention. Regarding the Reception Conditions Directive, Hungary violates the use of detention as a last resort and for as short a period as possible, the right to access adequate health care, especially concerning vulnerable persons, and the right to education for minors with the introduction of automatic detention for all asylum applicants. The extreme nonconformities of Hungary's asylum laws with CEAS

Directives cannot be ascribed to the asylum system's incapability of dealing with the mass influx of refugees but must be imputed to the government's anti-refugee and anti-Muslim stance.

The case of Hungary shows that the difficulties of creating a common European asylum system do not only stem from procedural hurdles but also from ideological rifts. While Angela Merkel's worldview is based on liberal values and the belief that multiculturalism strengthens Germany and the EU, Viktor Orbán champions the narrative that liberal values and multiculturalism have ruined the West and that Hungary's strength lies in cultural homogeneity and ethnic nationalism. In a speech to his party in 2015, Prime Minister Orbán stated his position: "Today the European spirit and its people believe in superficial and secondary things: in human rights, progress, openness, new kinds of family and tolerance . . . [Europe] does not believe in Christianity, it does not believe in common sense, it does not believe in military virtues, and it does not believe in national pride" (Juhász et al. 5).

The divide between the two ideologies is sharp. Even though it remains unclear whether the government's ideological stance reflects Prime Minister Orbán's worldview or is overwhelmingly utilized as an opportune means to distract from his government's shortcomings and galvanize public support to stay in power, large parts of Hungary's population have bought into the government's rhetoric about the dangers of liberal ideals and multiculturalism. Hungarians are not the only EU citizens who show a growing tendency toward illiberalism and populist nationalism. While this tendency is stronger in eastern European states, Western European countries have also experienced a surge of right-wing populism, e.g. the rise of the AfD in Germany. This surge has caused a shift in

the political landscape of the EU and has chipped away at the values the EU was founded upon.

While values such as democracy, the rule of law, freedom, equality, and respect for human dignity and universal human rights have been unifying principles within the EU, discord over these values seems to be at the core of the EU's internal division regarding the refugee crisis. A common European asylum system cannot be achieved if EU member states do not hold the same basic values. The impact of the Hungarian government's illiberal ideology on the transposition of CEAS Directives into Hungary's national law serves as an example. Hence, it is important for the EU to preserve its values by actively fighting illiberalism and making it abundantly clear that violations of these values will not be tolerated. French President Emmanuel Macron expressed precisely that when he stated: "Europe isn't a supermarket. Europe is a common destiny. It is weakened when it accepts its principles being rejected. The countries in Europe that don't respect the rules should have to face the political consequences. And that's not just an East-West debate." (King).

The Syrian refugee crisis shows that many EU member states are not living up to Europe's liberal principles regarding refugees. The Temporary EU Relocation System of September 2015 serves as an example, where most EU states formally pledged to relocate fewer refugees than the legally foreseen commitment in the Council Decision, and none has relocated its pledged number of refugees as of 3 November 2017 (Member States' Support). While nine states, namely Estonia, Finland, Ireland, Latvia, Lithuania, Malta, Portugal, Slovenia, and Sweden, have pledged to relocate more refugees than legally foreseen, only Ireland and Malta have relocated more refugees than legally foreseen

(Member States' Support). Hungary and Poland have denied participation, while the UK and Denmark have opted out. In light of the substandard living conditions that refugees have to endure and their de facto status of detention in Greece and Italy, these statistics show that most member states do not prioritize the human dignity and human rights of refugees or the rule of law, as these conditions violate the standards laid out in CEAS Directives. Hence, many EU member states need to reevaluate their commitment to the EU's fundamental values, and the EU has to reinforce its principles. In the end, the adherence to the liberal values the EU is founded upon is not only essential to establish a common European asylum system but also to guarantee that the human dignity and human rights of refugees are not violated within such a system.

BIBLIOGRAPHY

- “Act II of 2007 on the Entry and Stay of Third-Country Nationals.” *UNHCR Refworld*, 1 July 2007, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3ed4ba334&skip=0&query=Act%20II%20of%202007%20on%20the%20Entry%20and%20Stay%20of%20Third-Country%20Nationals&coi=HUN>. Accessed 5 Oct. 2017.
- “Act LXXX of 2007 on Asylum.” *UNHCR Refworld*, 1 Jan. 2008, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4979cc072&skip=0&query=Act%20LXXX%20of%202007%20on%20Asylum&coi=HUN>. Accessed 5 Oct. 2017.
- Alborzi, M R. *Evaluating the Effectiveness of International Refugee Law: The Protection of Iraqi Refugees*. Martinus Nijhoff Publishers, 2006.
- Aleinikoff, T. Alexander. “Protected Characteristics and Social Perceptions: An Analysis of the Meaning of ‘Membership of a Particular Social Group’.” Feller, Türk, and Nicholson, pp. 263-311.
- Alleweldt, Ralf. “Preamble 1951 Convention.” Zimmermann, Dörschner, and Machts, pp. 225-240.
- “As a Refugee in Hungary: Asylum Procedure.” *Immigration and Asylum Office*, 5 Sept. 2017, http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=521&Itemid=728&lang=en#asylum_procedure. Accessed 5 Oct. 2017.
- “Asylbewerberleistungsgesetz.” *Federal Ministry of Justice and Consumer Protection*, 23 Dec. 2016, <http://www.gesetze-im-internet.de/asylblg/>. Accessed 24 Sep. 2017.
- “Asylum Act.” *Federal Ministry of Justice and Consumer Protection*, 11 March 2016, https://www.gesetze-im-internet.de/englisch_asylvfg/index.html. Accessed 24 Sep. 2017.

- “Asylum and First Time Asylum Applicants by Citizenship, Age and Sex Annual Aggregated Data.” *Eurostat*, 4 Oct. 2017, http://ec.europa.eu/eurostat/data/database?p_p_id=NavTreeportletprod_WAR_NavTreeportletprod_INSTANCE_nPqeVbPXRmWQ&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-2&p_p_col_count=1. Accessed 10 Oct. 2017.
- “Asylum and Refugee Policy.” *Federal Ministry of the Interior*, <https://www.bmi.bund.de/EN/topics/migration/asylum-refugee-protection/asylum-refugee-policy-germany/asylum-refugee-policy-node.html>. Accessed 26 Oct. 2017.
- “Asylum Decisions in the EU: EU Member States Granted Protection to More Than 700 000 Asylum Seekers in 2016.” *Eurostat*, 26 April 2017, http://ec.europa.eu/eurostat/search?p_auth=cDVlwOMR&p_p_id=estatsearchportlet_WAR_estatsearchportlet&p_p_lifecycle=1&p_p_state=maximized&p_p_mode=view&estatsearchportlet_WAR_estatsearchportlet_action=search&text=EU+Member+States+granted+protection+to+more+than+700+000+asylum+seekers+in+2016. Accessed 28 Sep. 2017.
- “Asylum Procedures Directive.” *EUR-Lex*, 26 June 2013, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0032>. Accessed 19 Aug. 2017.
- “Asylverfahrensbeschleunigungsgesetz.” *Bundesgesetzblatt Online*, 20 Oct. 2015, https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl115s1722.pdf#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl115s1722.pdf%27%5D_1507132316283. Accessed 30 Sep. 2017.
- “BAMF-Entscheidungspraxis geändert: Für immer mehr SyrerInnen wird der Familiennachzug ausgesetzt.” *ProAsyl*, 23 May 2016, https://www.proasyl.de/wp-content/uploads/2015/12/Rechtspolitisches-Papier_Familiennachzug_aktuell_final.pdf. Accessed 15 Oct. 2017.
- “Basic Law for the Federal Republic of Germany.” *Deutscher Bundestag*, 23 Dec. 2014, <https://www.bundestag.de/en/documents/legal>. Accessed 24 Sep. 2017.

- Bayer, Lili. "Hungary's 'Zero Refugee' Strategy." *Politico*, 20 Sep 2016, <http://www.politico.eu/article/hungary-zero-refugee-strategy-viktor-orban-europe-migration-crisis/>. Accessed 8 June 2016.
- Bell, Bethany, Nick Thorpe. "Austria's Migrant Disaster: Why Did 71 Die?" *BBC News*, 25 Aug. 2016, <http://www.bbc.com/news/world-europe-37163217>. Accessed 29 Sep. 2017.
- Benner, Thorsten. "'Control' Is the New Core of Germany's Refugee Policy." *Aljazeera*, 2 March 2017, <http://www.aljazeera.com/indepth/opinion/2017/03/core-germany-refugee-policy-170302073029337.html>. Accessed 28 Sep. 2017.
- Betts, Alexander. "The Refugee Regime Complex." *Refugee Survey Quarterly*, vol. 29, no. 1, 2010, pp. 12-37. *Oxford Journals Current Collection*, doi:10.1093/rsq/hdq009. Accessed 15 Feb. 2017.
- Blickle, Paul, Kai Biermann, Philip Faigle, et al. "Violence against Refugees: Germany in Flames." *Zeit Online*, 4 Dec. 2015, <http://www.zeit.de/politik/deutschland/2015-11/anti-immigrant-violence-germany>. Accessed 29 Sep. 2017.
- Blume, Georg, Marc Brost, Tina Hildebrandt, et al. "Grenzöffnung für Flüchtlinge: Was geschah wirklich?" *Zeit Online*, 22 Aug. 2016, <http://www.zeit.de/2016/35/grenzoeffnung-fluechtlinge-september-2015-wochenende-angela-merkel-ungarn-oesterreich>. Accessed 29 Sep. 2017.
- Boffey, Daniel. "European Countries Have Carried Out 8% of Promised Refugee Relocations." *The Guardian*, 2 March 2017, <https://www.theguardian.com/world/2017/mar/02/european-countries-have-carried-out-8-per-cent-promised-refugee-relocations>. Accessed 30 Sep. 2017.
- Branigin, William. "Last of Syria's Chemical Weapons Handed Over for Destruction, International Body Says." *The Washington Post*, 23 June 2014, https://www.washingtonpost.com/world/middle_east/agency-last-of-syrias-chemical-weapons-handed-over-for-destruction/2014/06/23/4eb9a138-fad9-11e3-8176-f2c941cf35f1_story.html?utm_term=.75399fbfae5c. Accessed 15 Aug. 2017.

- Carrera, Sergio, Steven Blockmans, Daniel Gros and Elspeth Guild. "The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities." *Brussels: Centre for European Policy Studies*, vol. 20, 2015. <http://hdl.handle.net/11245/1.510730>. Accessed 30 Sep. 2017.
- "Charter of Fundamental Rights of the European Union." *EUR-Lex*, 7 Dec. 2000, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>. Accessed 20 Aug. 2017.
- Chulov, Martin. "What Do We Know About the Regime's Use of Chemical Weapons in Syria?" *The Guardian*, 30 June 2017, <https://www.theguardian.com/world/2017/jun/27/assad-regime-chemical-weapons-syria>. Accessed 15 Aug. 2017.
- "Commission Follows Up on Infringement Procedure against Hungary Concerning Its Asylum Law." *European Commission*, 17 May 2017, http://europa.eu/rapid/press-release_IP-17-1285_en.htm. Accessed 10 Oct. 2017.
- "Commission Opens Infringement Procedure against Hungary Concerning Its Asylum Law." *European Commission*, 10 Dec. 2015, http://europa.eu/rapid/press-release_IP-15-6228_en.htm. Accessed 10 Oct. 2017.
- "Common European Asylum System." *European Commission*, https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en. Accessed 2 April 2017.
- "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." *OHCHR*, 26 June 1987, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>. Accessed 2 April 2017.
- "Convention and Protocol relating to the Status of Refugees." *UNHCR*, 31 Jan. 1967, <http://www.unhcr.org/en-us/1951-refugee-convention.html>. Accessed 2 April 2017.

- “Convention on the Elimination of all Forms of Discrimination Against Women.” *OHCHR*, 18 Dec. 1979, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>. Accessed 19 Aug. 2017.
- “Convention on the Rights of the Child.” *OHCHR*, 20 Nov. 1989, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>. Accessed 19 Aug. 2017.
- “Das Bundesamt in Zahlen 2016 – Asyl, Migration und Integration.” *Federal Office for Migration and Refugees*, 21 March 2017, <http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2016.html?nn=1367528>. Accessed 27 Sep. 2017.
- Dearden, Lizzie. “Hungarian Border Guards 'Taking Selfies with Beaten Migrants' as Crack Down against Refugees Intensifies.” *Independent*, 4 March 2017, <http://www.independent.co.uk/news/world/europe/refugee-crisis-hungary-border-police-guards-fence-beating-asylum-seekers-migrants-serbia-push-back-a7610411.html>. Accessed 8 Oct. 2017.
- “Denied Entry and Pushed Back: Syrian Refugees Trying to Reach the EU.” *UNHCR*, 15 Nov. 2013, <http://www.unhcr.org/en-us/news/briefing/2013/11/528618159/denied-entry-pushed-syrian-refugees-trying-reach-eu.html>. Accessed 3 April 2017.
- “Dublin III Regulation.” *EUR-Lex*, 26 June 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0604&qid=1503439231764>. Accessed 19 Aug. 2017.
- “ECRE Comments on Reception Conditions Directive Recast Proposal.” *European Council on Refugees and Exiles*, 6 Oct. 2016, <https://www.ecre.org/ecre-comments-on-reception-conditions-directive-recast-proposal/>. Accessed 26 Aug. 2017.
- El-Enany, Nadine. “EU Asylum and Immigration Law under the Area of Freedom, Security, and Justice.” *The Oxford Handbook of European Union Law*, edited by Anthony Arnall and Damian Chalmers, Oxford University Press, 2015, pp. 867-891.

- “EU Policies Put Refugees at Risk.” *Human Rights Watch*, 23 Nov. 2016, <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>. Accessed 28 Aug. 2017.
- “EURODAC Regulation.” *European Commission*, 26 June 2013, https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en. Accessed 19 Aug. 2017.
- “European Agreement on the Abolition of Visas for Refugees.” *CoE*, 4 Sep. 1960, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/031>. Accessed 19 Aug. 2017.
- “European Agreement on Transfer of Responsibility for Refugees.” *CoE*, 1 Dec. 1980, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/107>. Accessed 19 Aug. 2017.
- “European Convention on Human Rights.” *ECHR*, 4 Nov. 1950, <http://www.echr.coe.int/pages/home.aspx?p=basictexts>. Accessed 2 April 2017.
- “European Union: Refugee Response Falls Short.” *Human Rights Watch*, 27 Jan. 2017, <https://www.hrw.org/news/2016/01/27/european-union-refugee-response-falls-short>. Accessed 2 April 2017.
- “EU-Turkey Refugee Deal – Q&A.” *The Guardian*, 8 March 2016, <https://www.theguardian.com/world/2016/mar/08/eu-turkey-refugee-deal-qa>. Accessed 3 April 2017.
- “EU-Turkey Statement: Questions and Answers.” *European Commission*, 19 March 2016, http://europa.eu/rapid/press-release_MEMO-16-963_en.htm. Accessed 3 April 2017.
- Feller, Erika. “Foreword.” Zimmermann, Dörschner, and Machts, pp. vii-viii.
- Feller, Erika, Volker Türk, and Frances Nicholson, editors. *Refugee Protection in International Law: UNHCR’s Global Consultation on International Protection*. Cambridge University Press, 2003.

- “First Instance Decisions on Applications by Citizenship, Age and Sex Annual Aggregated Data (rounded).” *Eurostat*, 20 Sep. 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>. Accessed 26 Sep. 2017.
- Gall, Lydia. “Hungary’s War on Refugees.” *Human Rights Watch*, 16 Sep. 2016, <https://www.hrw.org/news/2016/09/16/hungarys-war-refugees>. Accessed 17 Oct. 2017.
- “Germany Suspends 'Dublin Rules' for Syrians.” *Deutsche Welle*, 25 Aug. 2015, <http://www.dw.com/en/germany-suspends-dublin-rules-for-syrians/a-18671698>. Accessed 29 Sep. 2017.
- Gesley, Jenny. “Germany: Parliament Adopts Legislative Package on Asylum and Refugees.” *Library of Congress*, 2 Nov. 2015, <http://www.loc.gov/law/foreign-news/article/germany-parliament-adopts-legislative-package-on-asylum-and-refugees/>. Accessed 30 Sep. 2017.
- Gesley, Jenny. “Germany: Proposed Tightening of Asylum Rules.” *Library of Congress*, 8 Feb. 2016, <http://www.loc.gov/law/foreign-news/article/germany-proposed-tightening-of-asylum-rules/>. Accessed 30 Sep. 2017.
- Goodwin-Gill, Guy S. “Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection.” Feller, Türk, and Nicholson, pp. 185-252.
- Goodwin-Gill, Guy S., and Jane McAdam. *The Refugee in International Law*. 3rd ed., Oxford University Press, 2007.
- Gorlick, Brian. “Human Rights and Refugees: Enhancing Protection through International Human Rights Law.” *Nordic Journal of International Law*, vol.69, no.2, 2000, pp. 117-178. *Business Source Complete*, doi:10.1163/15718100020296224. Accessed 2 April 2017.

- “Government Decides to Extend State of Emergency with Relation to Immigration.”
Website of the Hungarian Government, 30 Aug. 2017,
<http://www.kormany.hu/en/government-spokesperson/news/government-decides-to-extend-state-of-emergency-with-relation-to-immigration>.
 Accessed 10 Oct. 2017.
- Groenendijk, Kees, Boldizsar Nagy. “Hungary’s Appeal Against Relocation to the CJEU: Upfront Attack or Rear Guard Battle?”. *EU Immigration and Asylum Law and Policy*, 16 Dec. 2016, <http://eumigrationlawblog.eu/hungarys-appeal-against-relocation-to-the-cjeu-upfront-attack-or-rear-guard-battle/>. Accessed 10 Oct. 2017.
- “Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status.”
UNHCR, Dec. 2011, <http://www.unhcr.org/en-us/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>. Accessed 3 Oct. 2017.
- Haraszti, Miklós. “Behind Viktor Orbán’s War on Refugees in Hungary.”
Huffington Post, https://www.huffingtonpost.com/miklos-haraszti/viktor-orban-hungary-refugees_b_8100906.html. Accessed 10 Oct. 2017.
- Havlová, Radka, and Kristýna Tamchynová. “The Uncertain Role of the EU Countries in the Syrian Refugee Crisis.” *Insight Turkey*, vol.18, no.2, 2016, pp. 85-106.
ABI/INFORM Collection; Social Science Premium Collection,
<http://www.ezproxy.fiu.edu/login?url=http://search.proquest.com.ezproxy.fiu.edu/docview/1820268416?accountid=10901>. Accessed 15 Feb. 2017.
- Hildebrandt, Tina, Bernd Ulrich “Angela Merkel: Im Auge des Orkan.” *Zeit Online*,
 20 Sep. 2015, <http://www.zeit.de/2015/38/angela-merkel-fluechtlinge-krisenkanzlerin>. Accessed 30 Sep. 2017.
- “Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison, Syria.”
Amnesty International, 7 Feb 2017,
<https://www.amnesty.org/en/documents/mde24/5415/2017/en/>.
 Accessed 17 Sep 2017.
- “Hungarian Prime Minister Says Migrants Are Poison and Not Needed.” *The Guardian*,
 26 July 2016, <https://www.theguardian.com/world/2016/jul/26/hungarian-prime-minister-viktor-orban-praises-donald-trump>. Accessed 10 Oct. 2017.

- “Hungary: Access Denied.” *Hungarian Helsinki Committee*, 14 July 2016, <http://www.helsinki.hu/en/hungary-access-denied/>. Accessed 8 Oct. 2017.
- “Hungary As a Country of Asylum.” *UNHCR*, May 2016, <http://www.refworld.org/docid/57319d514.html>. Accessed 7 Oct. 2017.
- “Hungary: Calls for Suspension of Dublin Transfers and Policy Shift by Germany.” *Asylum Information Database*, 12 April 2017, <http://www.asylumineurope.org/news/10-05-2017/hungary-calls-suspension-dublin-transfers-and-policy-shift-germany>. Accessed 10 Oct. 2017.
- “Hungary: Law on Automatic Detention of All Asylum Seekers in Border Transit Zones Enters into Force, Despite Breaching Human Rights and EU Law.” *Hungarian Helsinki Committee*, 28 March 2017, <http://www.helsinki.hu/en/hungary-law-on-automatic-detention-of-all-asylum-seekers-in-border-transit-zones-enters-into-force-despite-breaching-human-rights-and-eu-law/>. Accessed 10 Oct. 2017.
- “Hungary Sues EU at European Court of Justice Over Migrant Quotas.” *Deutsche Welle*, 3 Dec. 2016, <http://www.dw.com/en/hungary-sues-eu-at-european-court-of-justice-over-migrant-quotas/a-18892790>. Accessed 10 Oct. 2017.
- “Hungary: Turbulent 50 Days – An Update on the Hungarian Asylum Situation.” *Hungarian Helsinki Committee*, 22 May 2017, <http://www.helsinki.hu/en/turbulent-50-days-an-update-on-the-hungarian-asylum-situation/>. Accessed 10 Oct. 2017.
- “Immigration and Asylum Office Statistics 2015-2016.” *Immigration and Asylum Office*, 26 Jan. 2017, http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=492&Itemid=1259&lang=en#. Accessed 10 Oct. 2017.
- Inglehart, Ronald, and Christian Welzel. *Modernization, Cultural Change, and Democracy: The Human Development Sequence*. Cambridge University Press, 2005.

- “Inside the Mind of ISIS: Understanding Its Goals and Ideology to Better Protect the Homeland.” *Committee on Homeland Security and Governmental Affairs, United States Senate, One Hundred Fourteenth Congress, Second Session*, 20 Jan. 2016, <http://www.fdsys.gov/>. Accessed 16 Aug. 2017.
- “International Covenant on Civil and Political Rights.” *OHCHR*, 16 Dec. 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. Accessed 19 Aug. 2017.
- “International Covenant on Economic, Social and Cultural Rights.” *OHCHR*, 16 Dec. 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Accessed 19 Aug. 2017.
- Ippolito, Francesca. “Establishing the Common European Asylum System.” *Regional Approaches to the Protection of Asylum Seekers: An International Legal Perspective*, edited by Ademola Abass and Francesca Ippolito, Ashgate, 2014, pp. 113-144.
- “Islamic State: Can Its Savagery Be Explained?” *BBC News*, 9 Sep. 2014, <http://www.bbc.com/news/world-middle-east-29123528>. Accessed 16 Aug. 2017.
- “Islamic State: Fears Grow for Abducted Syrian Christians.” *BBC News*, 25 Feb. 2015, <http://www.bbc.com/news/world-middle-east-31622883>. Accessed 16 Aug. 2017.
- Iyengar, Rishi. “Hungary Reopens Budapest Train Station to Stranded Refugees after Two Days.” *Time*, 3 Sep. 2015, <http://time.com/4021070/europe-migrant-hungary-keleti-train-station/>. Accessed 29 Sep. 2017.
- Joly, Danièle, Clive Nettleton, and Hugh Poulton. *Refugees: Asylum in Europe?* Westview Press, 1992.
- Juhász, Attila, Bulcsú Hunyadi, and Edit Zgut. “Focus on Hungary: Refugees, Asylum and Migration.” *Heinrich-Böll-Stiftung*, 14 Feb. 2016, <https://www.boell.de/en/2016/06/14/focus-hungary-refugees-asylum-and-migration>. Accessed 17 Oct. 2017.

Kalkmann, Michael. "Country Report: Germany." *Asylum Information Database of the European Council on Refugees and Exiles*, 31 Dec. 2016, <http://www.asylumineurope.org/reports/country/germany>. Accessed 5 Oct. 2017.

Karageorgiou, Eleni. "Solidarity and Sharing in the Common European Asylum System: The Case of Syrian Refugees." *European Politics and Society*, vol. 17, no. 2, 2016, pp. 196-214. doi:10.1080/23745118.2016.1121007.

King, Esther. "Emmanuel Macron: Europe is Not a Supermarket." *Politico*, 22 June 2017, <http://www.politico.eu/article/emmanuel-macron-europe-is-not-a-supermarket/>. Accessed 17 Oct. 2017.

Kitfield, James. "Bashar al-Assad: A Tyrant in Full." *National Journal Daily*, 9 Sept. 2013. *Academic OneFile*, <http://www.ezproxy.fiu.edu/login?url=http://go.galegroup.com.ezproxy.fiu.edu/ps/i.do?p=AONE&sw=w&u=miam11506&v=2.1&it=r&id=GALE%7CA342473136&asid=de6a7cb7e3b98225846293392b10d1fa>. Accessed 15 Aug. 2017.

Klug, Anja. "Regional Developments: Europe." Zimmermann, Dörschner, and Machts, pp. 117-144.

Knight, Ben. "German Court Rules Syrian Refugees Not Entitled to Full Asylum Status." *Deutsche Welle*, 24 Nov. 2016, <http://www.dw.com/en/german-court-rules-syrian-refugees-not-entitled-to-full-asylum-status/a-36511284>. Accessed 27 Aug. 2017.

Lauterpacht, Sir Elihu, and Daniel Bethlehem. "The Scope and Content of the Principle of Non-Refoulement: Opinion." Feller, Türk, and Nicholson, pp. 87-177.

Lavenex, Sandra. *The Europeanisation of Refugee Policies: Between Human Rights and Internal Security*. Ashgate, 2001.

Letsch, Constanze. "Isis Onslaught against Kurds in Syria Brings 'Man-Made Disaster' into Turkey." *The Guardian*, 22 Sept. 2014, <https://www.theguardian.com/world/2014/sep/22/isis-onslaught-kurds-syria-disaster-turkey-refugees>. Accessed 16 Aug. 2017.

- Manevich, Dorothy. "Hungarians Share Europe's Embrace of Democratic Principles But Are Less Tolerant of Refugees, Minorities." Pew Research Center, 30 Sep. 2016, <http://www.pewresearch.org/fact-tank/2016/09/30/hungarians-share-europes-embrace-of-democratic-principles-but-are-less-tolerant-of-refugees-minorities/>. Accessed 5 Nov. 2017.
- Marfleet, Philip. *Refugees in a Global Era*. Palgrave Macmillan, 2006.
- Mayer, Matthias. "Germany's Response to the Refugee Situation: Remarkable Leadership or Fait Accompli?" *Bertelsmann Foundation*, May 2016, <http://www.bfna.org/publication/newpolitik/germanys-response-to-the-refugee-situation-remarkable-leadership-or-fait-accomplis>. Accessed 26 Sep. 2017.
- McAdam, Jane. "Interpretation of the 1951 Convention." Zimmermann, Dörschner, and Machts, pp. 75-115.
- "Member States' Support to Emergency Relocation Mechanism." *European Commission*, 3 Nov. 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf. Accessed 5 Nov. 2017.
- Mouzourakis, Minos, Amanda Taylor. "Wrong Counts and Closing Doors: The Reception of Refugees and Asylum Seekers in Europe." *Asylum Information Database of the European Council on Refugees and Exiles*, 31 March 2016, <http://www.asylumineurope.org/2016>. Accessed 4 Oct. 2017.
- Najjar, Farah. "As ISIL's 'Caliphate' Crumbles, Its Ideology Remains." *Aljazeera*, 28 June 2017, <http://www.aljazeera.com/indepth/features/2017/06/isil-caliphate-crumbles-ideology-remains-170628093014443.html>. Accessed 15 Aug. 2017.
- Nolan, Daniel, Kate Connolly. "Hungary Closes Main Budapest Station to Refugees." *The Guardian*, 1 Sep. 2015, <https://www.theguardian.com/world/2015/sep/01/migrant-crisis-hungary-closes-main-budapest-station>. Accessed 26 Sep. 2017.
- "Note on the Exclusion Clauses." *UNHCR*, 30 May 1997, <http://www.unhcr.org/en-us/excom/standcom/3ae68cf68/note-exclusion-clauses.html>. Accessed 17 Aug. 2017.

- O’Nions, Helen. *Asylum – A Right Denied: A Critical Analysis of European Asylum Policy*. Ashgate, 2014.
- Pall, Zoltan, Omar Sayfo. “Why an Anti-Islam Campaign Has Taken Root in Hungary, a Country with Few Muslims.” *V4 Revue*, 14 Sep. 2016, <http://visegradrevue.eu/why-an-anti-islam-campaign-has-taken-root-in-hungary-a-country-with-few-muslims/#>. Accessed 10 Oct. 2017.
- Pardavi, Márta, Gruša Matevžič, Júlia Iván, and Anikó Bakonyi. “Country Report: Hungary.” *Asylum Information Database of the European Council on Refugees and Exiles*, 31 Dec. 2016, <http://www.asylumineurope.org/reports/country/hungary>. Accessed 6 Sep. 2017.
- “Proposal for a Directive of the European Parliament and of the Council Laying Down Standards for the Reception of Applicants for International Protection.” *EUR-Lex*, 13 July 2016, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0465&qid=1503787415437>. Accessed 26 Aug. 2017.
- “Protocol (No 24) on Asylum for Nationals of Member States of the European Union.” *EUR-Lex*, 9 May 2008, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008E/PRO/24>. Accessed 21 Aug. 2017.
- “Qualification Directive.” *EUR-Lex*, 13 Dec. 2011, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>. Accessed 19 Aug. 2017.
- “Reception Conditions Directive.” *EUR-Lex*, 26 June 2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>. Accessed 19 Aug. 2017.
- “Relocation and Resettlement: Member States Need to Build on Encouraging Results.” *European Commission*, 8 Feb. 2017, http://europa.eu/rapid/press-release_IP-17-218_en.htm. Accessed 25 Sep. 2017.

- “Residence Act.” *Federal Ministry of Justice and Consumer Protection*, 11 March 2016, https://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0908. Accessed 24 Sep. 2017.
- Sandford, Alasdair. “Hungary Completes New Anti-Migrant Border Fence with Serbia.” *Euronews*, 28 April 2017, <http://www.euronews.com/2017/04/28/hungary-completes-new-anti-migrant-border-fence-with-serbia>. Accessed 6 Oct. 2017.
- “Schengen Borders Code.” *EUR-Lex*, 15 March 2006, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A114514>. Accessed 6 Oct. 2017.
- Schmahl, Stefanie. “Article 1 A, para. 1.” Zimmermann, Dörschner, and Machts, pp. 247-279.
- Schuler, Katharina. “Asylpaket II: Viel Härte, wenig Wirkung.” *Zeit Online*, 25 Feb. 2016, <http://www.zeit.de/politik/deutschland/2016-02/asylpaket-ii-abschiebungen-familiennachzug>. Accessed 29 Sep. 2017.
- Schweitzer, Andras. “Why Viktor Orbán Has a Problem Turning His Country Against Immigrants.” *The Guardian*, 8 Sep. 2017, <https://www.theguardian.com/commentisfree/2017/sep/08/viktor-orban-immigrants-hungary-immigration-fears-pro-eu>. Accessed 17 Oct. 2017.
- Smale, Alison. “Terrorism Suspects Are Posing as Refugees, Germany Says.” *The New York Times*, 5 Feb 2016, <https://www.nytimes.com/2016/02/06/world/europe/germany-refugees-isis.html?mcubz=0>. Accessed 17 Sep 2017.
- Smyth, Ciara. *European Asylum Law and the Rights of the Child*. Routledge, 2014.
- “Sommerpressekonferenz von Bundeskanzlerin Merkel.” *The Federal Government*, 31 Aug. 2015, <https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2015/08/2015-08-31-pk-merkel.html>. Accessed 28 Sep. 2017.

- “States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.” *UNHCR*, April 2015, <http://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>. Accessed 2 April 2017.
- “Status of Treaties Chapter V: Convention Relating to the Status of Refugees.” *United Nations Treaty Collection*, 5 Sep. 2017, https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en. Accessed 5 Sep. 2017.
- “Stranded Hope: Hungary’s Sustained Attack on the Rights of Refugees and Migrants.” *Amnesty International*, 27 Sep. 2016, <https://www.amnesty.org/en/documents/eur27/4864/2016/en/>. Accessed 8 Oct. 2017.
- “Syria Emergency.” *UNHCR*, <http://www.unhcr.org/en-us/syria-emergency.html>. Accessed 2 Oct. 2017.
- “Syria Profile – Timeline.” *BBC News*, 1 March 2017, <http://www.bbc.com/news/world-middle-east-14703995>. Accessed 2 April 2017.
- “Syria: Rampant Torture of Protesters.” *Human Rights Watch*, 15 April 2011, <https://www.hrw.org/news/2011/04/15/syria-rampant-torture-protesters>. Accessed 2 April 2017.
- “Syria Regional Refugee Response.” *UNHCR*, 19 Oct. 2017, <http://data.unhcr.org/syrianrefugees/regional.php>. Accessed 30 Oct. 2017.
- “Syria’s Beleaguered Christians.” *BBC News*, 25 Feb. 2015, <http://www.bbc.com/news/world-middle-east-2227045>. Accessed 15 Aug. 2017.
- “Syrien – Rechtsprechung.” *Informationsverbund Asyl und Migration*, http://www.asyl.net/laender/rechtsprechung.html?no_cache=1. Accessed 15 Aug. 2017.

- “Systematic Mass Murder of Religious Minorities by ISIS.” *European Parliament Resolution*, 4 Feb. 2016, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0051+0+DOC+XML+V0//EN>. Accessed 16 Aug. 2017.
- Szakacs, Gergely. “Hungary Calls EU Court's Refugee Ruling Appalling.” *Reuters*, 6 Sep. 2017, <https://www.reuters.com/article/europe-migrants-hungary-minister/hungary-calls-eu-courts-refugee-ruling-appalling-idUSL8N1LN1QF>. Accessed 10 Oct. 2017.
- “Temporary Protection Directive.” *EUR-Lex*, 20 July 2001, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:133124>. Accessed 22 Aug. 2017.
- “The Common European Asylum System (CEAS) - Factsheet.” *European Commission*, 13 July 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160713/factsheet_the_common_european_asylum_system_en.pdf. Accessed 19 Aug. 2017.
- “The Fundamental Law of Hungary.” *UNHCR Refworld*, 25 April 2011, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=53df98964&skip=0&query=fundamental%20law&coi=HUN>. Accessed 5 Oct. 2017.
- “The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe’s Border.” *Amnesty International*, 9 July 2014, <https://www.amnesty.org/en/documents/EUR05/001/2014/en/>. Accessed 3 April 2017.
- “The Schengen Acquis.” *EUR-Lex*, 14 June 1985, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:42000A0922\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:42000A0922(01)). Accessed 19 Aug. 2017.
- “The Stages of the Asylum Procedure.” *Federal Office for Migration and Refugees*, <http://www.bamf.de/EN/Fluechtlingsschutz/AblaufAsylv/ablauf-des-asylverfahrens-node.html>. Accessed 24 Sep 2017.

“They Came to Destroy: ISIS Crimes Against the Yazidis.” *UN Human Rights Council*, 15 June 2016, <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/IndependentInternationalCommission.aspx>. Accessed 16 Aug. 2017.

“Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts.” *UK Treaties Online*, 2 Oct. 1997, <http://treaties.fco.gov.uk/treaties/treatyrecord.htm?tid=1491>. Accessed 19 Aug. 2017.

“Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community.” *EUR-Lex*, 13 Dec. 2007, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12007L%2FTXT>. Accessed 22 Aug. 2017.

Türk, Volker and Frances Nicholson. “Refugee Protection in International Law: An Overall Perspective.” Feller, Türk, and Nicholson, pp. 3-45.

“UN Chief Voices Alarm at Escalation of Violence in Syria.” *UN News Center*, 3 June 2011, <http://www.un.org/apps/news/story.asp?NewsID=38606#.WOJRLqJFfiU>. Accessed 2 April 2017.

“Universal Declaration of Human Rights.” *United Nations*, 10 Dec. 1948, <http://www.un.org/en/universal-declaration-human-rights/>. Accessed 19 Aug. 2017.

“Vienna Convention on the Law of Treaties.” *United Nations*, 23 May 1969, https://treaties.un.org/Pages/Treaties.aspx?id=23&subid=A&clang=_en. Accessed 30 Aug. 2017.

Wike, Richard, Bruce Stokes, and Katie Simmons. “Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs.” *Pew Research Center*, 11 July 2016, <http://www.pewglobal.org/2016/07/11/europeans-not-convinced-growing-diversity-is-a-good-thing-divided-on-what-determines-national-identity/>. Accessed 5 Nov. 2017.

- “Willkommenskultur im “Stresstest”.” *Bertelsmann Stiftung*, April 2017,
<https://www.bertelsmann-stiftung.de/de/publikationen/publikation/did/willkommenskultur-im-stresstest/>.
Accessed 5 Nov. 2017.
- Witte, Griff, Michael Birnbaum. “Hungary Begins Busing Migrants to Austrian Border.”
The Washington Post, 5 Sep. 2015,
https://www.washingtonpost.com/world/europe/fearful-of-refugees-hungarian-leader-says-europeans-may-soon-be-overrun/2015/09/04/84fe55ea-5271-11e5-b225-90edbd49f362_story.html?utm_term=.cb0e9f4561b1.
Accessed 10 Oct. 2017.
- Yassin-Kassab, Robin, and Leila Al-Shami. *Burning Country: Syrians in Revolution and War*. Pluto Press, 2016.
- Zimmermann, Andreas, and Claudia Mahler. “Article 1A, para. 2.” Zimmermann, Dörschner, and Machts, pp. 281-465.
- Zimmermann, Andreas, Jonas Dörschner, and Felix Machts, editors. *The 1951 Convention Relating to the Status of Refugee and its 1967 Protocol: A Commentary*. Oxford University Press, 2011.