Mass Influx and the Dublin System: A Critical Assessment of the EU Response to the Syrian Refugee Crisis

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Abstract

The mass influx of asylum seekers in 2015 exposed the Common European Asylum System (CEAS), especially the application of Dublin III Regulation. CEAS was rendered ineffective in the face of large-scale movements of asylum seekers. The bulk of academic explanation available falls short in pointing out tangible mechanisms within the European Union (EU) asylum system on how mass influx of asylum seekers can be effectively managed. This scholarly vacuum runs the danger of leaving serious questions unanswered, especially on how future influxes can be adequately managed. The study therefore examines the Syrian refugees' experiences with the application of CEAS at the peak of the refugee crisis of 2015. It points out the non-activation of Temporary Protection Directive (TPD) in the face of 2015 refugee crisis and how prima facie approach was not adopted in tackling the refugee crisis. It also acknowledges the growing influence of the far-right movement within the Union, with their anti-migrant rhetoric, that can possibly influence the asylum policy formulation at Union and MS levels. It assesses the impact of a mass influx of asylum seekers on the EU frontline states and examines the ineffectiveness of the EU asylum system in the face of a mass influx of asylum seekers. It further assesses the unilateral and collective responses of the EU to the Syrian refugee crisis. The study adopts a qualitative method, and a phenomenological approach, with interview and document analysis as the data collection tools. The data analysis focuses on the interviews conducted with the Syrian refugees in the UK, France, Germany, and Austria as well as European Asylum Support Office (EASO) and Frontex officials. It also reviews relevant jurisprudence; examines the evaluation report on the Dublin III Regulation, reviews the proposed Dublin IV Regulation, and proffers solutions concerning how similar influxes can be effectively managed in future.

Acronyms

Art	Article
APD	Asylum Procedures Directive
BAMF	German's Federal Office for Migration and Refugees
CCBE	Council of Bars and Law Societies of Europe
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CoE	Council of Europe
EASO	European Asylum Support Office
ECHR	European Convention of Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EC	European Commission
EP	European Parliament
EU	European Union
HRW	Human Rights Watch
MS	Member State
MSs	Member States
QD	Qualification Directive
RC	Refugee Convention
RCD	Reception Conditions Directive
RD	Relocation Decision
SAR	Search and Rescue Mission
TEU	The Treaty on European Union
TPD	Temporary Protection Directive
UK	The United Kingdom
US	United States of America
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
IRO	International Refugee Organisation
UNRRA	United Nations Relief and Rehabilitation Administration

Acknowledgements

Dedication

To the glory of God

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Diagrams

Introduction to Mass Influx and the Dublin System: A Critical Assessment of the EU Response to the Syrian Refugee Crisis

> The year 2015 has sorely tested the added value and legitimacy of the European Union in responding to the refugee crisis. The public outcry and unprecedented levels of political and media attention to the dramatic experiences and images of asylum-seekers arriving in the EU have put huge pressures on the European institutions and member state governments to show that they can meet the challenge.[1]

> People of Greece and Austria were nice to us; a lot of volunteers came out to help us with foods and blankets but Hungary and Macedonia treated us badly.[2]

Introduction

The conflicts in Syria brought about new waves of migration problems for the European Union (EU) in 2015, as the arrival of over a million asylum seekers put a strain on the EU asylum system (EC 2016:1).The EU asylum system failed to effectively manage the refugee crisis, as common standards became almost impossible to apply especially by frontline States. The arrival of large numbers of asylum seekers in the EU in 2015 put the Common European Asylum System (CEAS) to test and rendered it inefficient to some extent. Hence, there is need for a critical assessment of the EU response to the Syrian refugee crisis.

In comparison with the past influxes of asylum seekers in Europe, the Syrian refugee crisis was different in the sense that they came from outside the continent. The displacement of the millions of Europeans during and after WWI, WWII, the Hungarian revolution of 1956, and the Yugoslav wars of 1990s all came from within the continent and brought with it different challenges. Nonetheless, the European nations came up with different asylum laws and policies to tackle the crises.

The study reviews relevant jurisprudence of the supranational court, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR

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[1] Carrera, S., Blockmans, S., Gros, D. and Guild, E. (2015) The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities., available at http://aei.pitt.edu/70408/1/EU_Response_to_the_2015_Refugee_Crisis.pdf

[2] Excerpt from the interviews conducted in Austria on March 23, 2017.

and examines the role of the supranational court in positively shaping the EU asylum system. It assesses the Dublin III Regulation evaluation report, and reviews the proposed Dublin IV Regulation.The study also examines available mechanisms such as Temporary Protection Directive (TPD) that has been idle since inception, hence, it failed as a legal instrument to effectively manage mass influx of asylum seekers within the Union. It examines *prima facie* approach to status determination of asylum seekers. An approach that is arguably unpopular within the EU despite its acceptance and regular usage in the developing countries. It also examines the status quo Dublin system and its application within the selected MSs (hereafter Member States) in the face of the 2015 refugee crisis.

It assesses the unilateral efforts of the MSs in tackling the 2015 refugee crisis and evaluates some of the initiatives of the EU authorities to tackle the refugee crisis.
The 2015 Syrian refugee crisis exposed absence of tangible mechanisms to distribute high number of asylum applications among the MSs, as the EU frontline states gave in to pressure. For instance, Greece, a financially struggling EU frontline Member State (MS) at that time was used by virtually all the Syrian asylum seekers who passed through the Mediterranean Sea to reach Europe in 2015 (Adamopoulos 2015: no p). Germany and a few other European nations took the lead in tackling the crisis by unilaterally admitting Syrian asylum seekers in large numbers[3] (ESI 2017:6; Hall and Lichfield, 2015:1). However, some MSs responded negatively to the plight of the asylum seekers at the peak of the crisis, and some of them refused to participate in the refugee relocation scheme put forward by the EU; a system whereby some EU MSs agreed to relocate asylum seekers from the affected frontline MSs, Greece and Italy - a clear example of the solidarity and responsibility sharing that is not working (Patrick 2017:1).

The EU authorities have come up with certain initiatives as part of the efforts to tackle the refugee crisis, which include proposals to reform CEAS, the establishment

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[3] Germany took the lead in efforts to tackle the Syrian refugee crisis of 2015 by announcing that all Syrian refugees are welcome irrespective of the MS they had first entered. Independent: 24th August, 2015., available at http://www.independent.co.uk/news/world/europe/germany-opens-its-gates-berlin-says-all-syrian-asylum-seekers-are-welcome-to-remain-as-britain-is-10470062.html

of the controversial EU-Turkey Statement, the reformation of Frontex and EASO, the establishment of hotspots in Greece and Italy, and the refugee relocation scheme, among others.[4] The assessment of these initiatives and other efforts being made by the EU authorities and MSs shall be discussed in chapter three. While some of these initiatives could be seen as a step in the right direction, challenges remain, especially regarding the controversial EU-Turkey Statement, the unwillingness of some MSs to share responsibility, the human rights issues surrounding the operation of the hotspots; the time spent by the asylum seekers in camps while waiting to be relocated, and the terrible living conditions at some of the established hotspots.

Furthermore, the study employs a qualitative research method in order to accurately describe the Syrian refugee experience concerning the application of the CEAS in the face of the large-scale influx of asylum seekers in 2015. Qualitative research method makes meaning of the social world in which we live. It seeks to answer questions about "why people behave the way they do, how attitudes are formed, how people are affected by events that go on around them, and why cultures and practices have developed in the way they have" (Hancock et al., 2009:7). It also describes the application of *crisis management model (CMM)* that further interprets the analysis of the gathered data, the interviews conducted with Syrian refugees (in the UK, France, Germany, and Austria). It employs CMM to explain relevant data concerning the efforts of the EU to tackle the Syrian refugee crisis, while corroborating the data with the interviews conducted with the officials of Frontex and EASO.

There are three main stages of a crisis; pre-crisis prevention, crisis management, and *post-crisis* outcomes (Bundy et al., 2017:1664). The *pre-crisis* prevention stage highlights the level of preparedness of the organisation that could stop a potential crisis from happening. The crisis management model mirrors the three stages of crisis management as described above. CMM uses the pre-crisis prevention, crisis

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[4] On the 9th of September 2015, the European Commission came up with an 'Agenda on Migration" which include some of the above mentioned initiatives, as part of efforts to tackle the refugee crisis. Press Release Database., available at, http://www.independent.co.uk/news/world/europe/germany-opens-its-gates-berlin-says-all-syrian-asylum-seekers-are-welcome-to-remain-as-britain-is-10470062.html

management, and the post-crisis outcomes stages to explain the response of the EU to the 2015 Syrian refugee crisis, with special attention on the Dublin system. It should again be noted that this study combines interview and document analysis as data collection tools, a process known as triangulation. Triangulation combines methodologies in "the study of the same phenomenon" (Denzin, 1970:291).

The study also employs the securitisation theory as it relates to how the MSs responded to the 2015 Syrian refugee crisis amid the anti-migrant rhetoric of the identified far-rights politicians in selected MSs. It is important to note that the application of securitisation theory relates to the usage of CMM in the analysis of gathered data, especially the interviews conducted with Syrian refugees in the selected MSs. For instance, some of the interviewees believed that some MSs responded favourably, while other MSs like Hungary treated refugees badly as explained in Chapter Three. Therefore, the analysis of securitisation theory in Chapter Four will provide an insight into the influence of the anti-migrant rhetoric that prompted some MSs to treat asylum seekers badly during the crisis. In the same vein, and as explained in Chapter Four some of the MSs even came up with restrictive measures as part of their unilateral responses to the refugee crisis. Arguably such measures could have been influenced by the anti-migrant rhetoric of far-right politicians that were putting pressure on the political leaders at the national level.

The application of securitisation theory also helps to adequately describe Syrian refugees' experience in line with one of the objectives of the study. For example, one of the participants in Germany expressed fear of "pegida" (local far-right individuals) who were harassing and intimidating asylum seekers with their anti-migrant rhetoric. Chapter Four explains how such far-right individuals could have been influenced by anti-migrant rhetoric of far-right political leaders during their political campaign speeches. The application of securitisation theory has also helped in understanding why some MSs refused to help the frontline states of Italy and Greece in relocating asylum seekers as mapped out by the EU during the crisis. Hungary is one of the MSs that refused to participate in the EU refugee relocation scheme. The Hungarian Prime Minister Viktor Orban was one of the first political leaders to close their country's

borders against asylum seekers during the 2015 refugee crisis, translating his anti-migrant rhetoric to action in line with the theoretical perspective of this study.

Therefore, the study briefly explains the origin of the securitisation theory, examines the characteristics of a securitising actor and categorises the securitisation audience into physical and media. It uses the agenda setting theory to further explain the influence of the media content, especially live broadcast of political campaign speeches on the 'media audience' that arguably determine their voting decision in an election. It examines the securitisation theory, both the Copenhagen and Paris Schools and gives examples about the role of selected securitising actors within the EU through their 'speech acts', during the election campaigns that took place between 2016 and 2018.

Research Gap and Original Contribution to Knowledge

The existing literature revealed that there is a gap on how mass influx of asylum seekers can be effectively managed within the EU asylum system, especially with the existing mechanisms such as TPD, *prima facie*, and the status quo Dublin system. The scholarly views on the inability of the CEAS, especially the Dublin system, to adequately manage the 2015 refugee crisis failed to specifically proffer meaningful solutions that could effectively manage similar future influxes within the Union. For instance, Albin focused on the high cost of running the Dublin system, especially when the money spent cannot be justified. (Albin, 2015:30). Albin's contribution is well noted but failed to succinctly proffer direct solutions that would effectively manage such influxes within the Union in the future. Fratzke pointed out failure of the Dublin system over the years to stop asylum shopping and revealed how multiple asylum claims encouraged secondary movement within the Union (Fratzke, 2015:1-2). This assertion does not really provide a tailor made solution to how the EU can effectively manage future influxes however and notably a reformed Dublin system that is well implemented could possibly and adequately address the concern of secondary movement raised by the author.

Giacomo and Christof argued that the Dublin system put an unfair burden on the EU external border states, especially Greece and Italy (Giacomo and Christof, 2017:4). Such argument is understandable but it offers no direct solutions on how future influxes can be adequately managed, especially when the asylum seekers use another MS as a gateway like they used Greece in 2015. Ballegooji and Navarra identified gaps as part of their analysis concerning the ineffectiveness of the CEAS in the face of the 2015 refugee crisis. Their efforts however fell short on how future crisis could be practicably and specifically managed (Ballegooji and Navarra, 2018:24).

Roots also examined the challenges of the refugee relocation scheme (Roots, 2017), although it is acknowledged that the refugee relocation scheme is a positive step in the right direction, the scheme alone cannot solve the refugee crisis. It is part of the solutions and could be incorporated into a reformed Dublin system as part of the solidarity clause that will allow the MSs to participate on a voluntary basis. In the same vein, Lang argued that responsibility sharing is essential to solving the migration problem within the EU (Lang, 2013:9). The author however failed to point out that such solidarity could be incorporated into the Dublin system that will arguably help alongside other relevant provisions of the system, especially in the face of a mass influx of asylum seekers.

Georges and Wolleghem assessed the proposed Dublin IV but focused more on the hypothetical scenarios of what would have happened if the Dublin IV were in place during the 2015 refugee crisis (Georges and Wolleghem, 2018:17). The problem with such analysis is that of its rigidity in hypothetically using the proposed Dublin IV Regulation to tackle the 2015 refugee crisis. No two crises are the same. Besides, the proposed Dublin IV is now in stalemate as the MSs could not agree on the grey areas that need to be worked on (Peers, 2019: no p), therefore, it is not ideal to apply it hypothetically at this point. Nevertheless, they hypothesised that Greece would have been made to host the majority of the asylum seekers in 2015 if the proposed Dublin IV were to be used. Greece would have also received more Dublin transfer requests from other MSs under such circumstances. The reality is that it would not have worked that way simply because no MS would have been able to single-handedly host

the large number of asylum seekers that used Greece as a gateway in 2015. Few other MSs could have applied Art 19(1) of the proposed Dublin IV as Germany and few other MSs applied Art 17(1) at the peak of refugee crisis in 2015, to help thousands of asylum seekers.

Crokcroft and Provax focused on how national factors affect compliance in the face of mass influx, while using Spain and France as a case study, but failed to discuss clearly how such compliance can possibly manage mass influx of asylum seekers (Crokcroft and Provax, 2017:11). Tsourapas examined the foreign decision-making of host states, especially in the neighbouring countries of Jordan and Lebanon but no mention was made of legal mechanisms that could effectively manage the large-scale movement of asylum seekers within the Union (Tsourapas, 2019:1). Grigonis argued for prevention of human rights violations of the affected asylum seekers and refugees while calling for the EU to address the crisis through the introduction of major policy reform (Grigonis, 2016:93). Prevention of human rights violations is key but that alone would not solve the problem of mass influx. However, it is part of the solutions. Hence, putting the ideal mechanisms in place and properly implementing the newly initiated initiatives, such as the refugee relocation scheme, would help.

The list of the relevant literature is not by any means exhaustive. The scholarly vacuum however runs the danger of leaving serious questions unanswered especially on how similar influxes within the Union can be effectively managed. While critically assessing the EU response to the Syrian refugee crisis, the study discovered that TPD that was specifically designed to manage the mass influx of asylum seekers within the Union has not been triggered. The *prima facie* approach on the other hand was not even touted by the EU authorities in the face of the refugee crisis, and the Dublin III Regulation was not fit for purpose. Therefore, the study seeks to ascertain, through the analysis of the interviews conducted with the Syrian refugees, whether some of the provisions of the status quo Dublin system were applied by the selected MSs in the face of the mass influx of asylum seekers. It seeks to strengthen the debate concerning the role of the supranational courts in positively shaping the EU asylum system. It would assess the existing mechanisms in order to ascertain whether they

are fit for purpose, and examine whether the frontline states were given adequate support by other MSs during the crisis. It would describe the Syrian refugee experience and seek to reveal through the application of CMM whether the 2015 refugee crisis was well-managed.

Statement of Problem and Justification of the Research

The conflicts in Syria brought about new waves of migration problems for the MSs and the EU failed to adequately manage the Syrian refugee crisis in 2015, mainly because the available mechanisms were not fit for purpose. Therefore, there is need for a critical assessment of the EU response to the Syrian refugee crisis, and proffer solutions to how future influxes can be effectively managed within the Union

Research Question

How is the EU responding to the Syrian refugee crisis; what are the existing mechanisms; how effective is the European asylum system; and what would the post Dublin III Regulation *status quo* bring?

Research Aim

Research aim is seen as "the main goal or overarching purpose of a research project". This could be in form of sentences and they are usually "brief and to the point" (Thomas and Hodges, 2010:38). Noticeably, the bulk of academic explanation available fell short in pointing out the absence of tangible mechanisms within the EU asylum system, especially the Dublin system in tackling 2015 mass influx of asylum seekers. For instance, Maani described the Dublin system as a failed legal instrument that should be repealed (Maani, 2018). Outright abolishment of the Dublin system however would arguably be a step too far because a reformed Dublin system could provide the needed answers to managing future influxes. Collett and Coz examined the response of the EU to the 2015 refugee crisis but focused mainly on the weaknesses and strengths rather than the appropriate mechanisms that could have been used to effectively manage the crisis or that can be used to manage similar future influxes (Collett and Coz, 2018:6). Hassel and Wagner also examined the EU's migration crisis with special focus on the legal framework between the Schengen

Agreement and the Dublin system in the face of the mass influx of asylum seekers. However, there was no concrete explanation on how the Dublin system would have been used to adequately manage the crisis (Hassel and Wagner, 2016:61). Therefore, the aim of this study is to evaluate the current mechanisms and their application to the Syrian refugee crisis, and to proffer solutions by which similar future influxes can be effectively managed within improved EU asylum system.

Research Objectives

Research objectives "indicate in more detail the specific research topics or issues the project plans to investigate" (Thomas and Hodges, 2010:39). This study critically assesses the adequacy of the existing EU legal and policy framework in addressing the large-scale migration crisis in the light of the Syrian migration influx. In doing so, the research will strive to fulfil the following objectives:

1. Describe the Syrian refugees' experience regarding the EU asylum system
2. Examine the impact of relevant jurisprudence on the EU asylum system
3. Examine the unilateral efforts of the EU Member States in tackling the Syrian refugee crisis
4. Examine alternative routes to the Dublin III Regulation and critically assess the Dublin IV Commission proposal
5. Assess the collaborative efforts of the EU and other key actors (EASO and Frontex) in tackling the influx of Syrian asylum seekers
6. Examine the effect of a mass influx of asylum seekers on the EU external borders' countries
7. Appraise the effectiveness of the EU asylum system in response to the Syrian refugee crisis

Limitations

The limitations of this study centre around the inability of the researcher to easily access the research participants at the initial stage of the international fieldwork, the language barrier and limited financial resources. With respect to the language barrier, some of the Syrian refugees that were interviewed could not speak English properly,

therefore, the researcher had to rely on the help of interpreters throughout the whole process. In addition, the limited financial resources experienced by the researcher had a little effect on the research, especially in choosing the sample population. Although, the sample adopted was agreed upon by the researcher and the supervisory team, however, it could have added more value if similar interviews were carried out in more MSs, especially in Greece in order to obtain more relevant information. Nevertheless, the researcher was able to gather the information needed in the selected MSs.

Organisation of the Thesis

Chapter One explains the efforts made by the European nations in tackling the large-scale movement of asylum seekers within the continent in a historical perspective. It describes the development of the European refugee regime over the years, and examines the relief efforts that were carried out by the European governments and other charitable organisations in helping refugees, beginning with World War One (WWI). It also outlines various roles of relevant legal instruments concerning the EU refugee regime. It reviews the relevance of the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (the Charter). It gives an overview of the 1951 RC and its 1967 protocol, and also reviews the CEAS. It examines the Dublin system; its establishment and its ineffectiveness over the years.

Chapter Two examines the conceptual framework of the study. It explains the concept of mass influx and assesses the usefulness of the existing mechanisms to the 2015 refugee crisis. With special focus on legal instruments such as the Temporary Protection Directive (TPD), the *prima facie* approach to status determination, and the Dublin system. It reviews the criticisms of the Dublin system and further reviews relevant jurisprudence concerning the supranational courts' rulings on the Dublin system.

Chapter Three assesses the unilateral efforts of the MSs in tackling the 2015 refugee crisis. It specifically reviews the efforts of selected MSs, namely, Germany, the UK, Austria, Sweden, France, Denmark, Italy, and Greece. It also assesses the anti-

migrant approach of some of the MSs, especially the governments of Prime Minister Orban in Hungary and the far-right politicians in Italy. It assesses the collective efforts of the EU in tackling 2015 Syrian refugee crisis. It evaluates some of the initiatives of the EU authorities to tackle the refugee crisis. These initiatives include refugee relocation scheme, the EU-Turkey Statement, the proposed reformation of CEAS, and the establishment of hotspots in Greece and Italy among others. It also assesses the Dublin III Regulation evaluation report, and reviews the proposed Dublin IV Regulation.

Chapter Four examines the theoretical framework of the study. This reviews the securitisation theory as it relates to the current migration issues within the EU. It examines the characteristics of a securitising actor and categorises the securitisation audience into physical and media. It uses the agenda setting theory to further explain the influence of the media content, especially live broadcast of political campaign speeches on the 'media audience' that arguably determine their voting decision in an election. It examines the securitisation theory, both the Copenhagen and Paris Schools and gives examples about the role of selected securitising actors within the EU through their 'speech acts', during the election campaigns that took place between 2016 and 2018. This section also examines the role of the securitising actors and explains that both securitisation and agenda setting theories can be empirically measured. It reveals that securitisation theory can be measured through the political process. This can be done by using variables such as the audience voting pattern and the performances of the securitising audience as seen recently with the election results within the Union.

Chapter Five focuses on the research methodology and data sources, especially the research design, method and techniques. It explains the usefulness of interview and document analysis as data collection tools for this study. It also explains the preparation for fieldwork, the fieldwork proper, and the need for ethical considerations in research.

Chapter Six focuses on data analysis. It applies the *crisis management model* (hereafter CMM) to further interpret the analysis of the gathered data. It employs qualitative method, with phenomenological approach to analyse the interviews conducted with Syrian refugees (in the UK, France, Germany, and Austria). It examines relevant data concerning the efforts of the EU to tackle the Syrian refugee crisis, while corroborating the data with the interviews conducted with the officials of Frontex and EASO. Chapter seven concludes the thesis; it explains the key findings, and summarises the thesis.

Using Media Contents to Support Relevant Literature

The scale of the events at the peak of the crisis and beyond means that researchers and the public partly depend on the information obtained through the media to make sense of the developments on ground. Since the refugee crisis began in the summer of 2015 a lot has happened concerning the response of the EU to the crisis. There have been changes among the decision makers politically across the Union. For instance, some political leaders at the helm of affairs who made promises to help the asylum seekers are no longer in office. It is no longer the same government in Italy. There are also new political leaders in France, Austria, the Netherlands, Denmark, Sweden, and the UK to mention but a few. In addition, the Commission alongside the MSs had come up with different initiatives to manage the crisis as reviewed in the chapter three.

Therefore, it is pertinent to note that the media undoubtedly played a crucial role in informing the public about the 2015 refugee crisis. Media provided information about the asylum seekers, their arrivals at the peak of the crisis, and informed the public about the responses of the MSs towards the refugee crisis (Georgiou and Zaborowski, 2017: 4). Assessing the EU response to the Syrian refugee crisis therefore requires up-to-date information, which is sourced through press releases and factual news articles that are published in the media, as well as the official websites of the stakeholders. These stakeholders include ECRE, UNHCR and Human Rights Watch. The obtained information is used to support mainly relevant scholarly literature concerning the theoretical framework of this study in chapter four and the assessment of the unilateral and collective response of the MSs in chapter three. Using media content to

support academic literature therefore gives the researcher the opportunity to keep up-to-date with the latest information, especially the information that is not readily available through books or academic journals. In this case, the information is taken from reputable and reliable news media. The researcher therefore verified the authenticity of the information being used with at least three other reputable news media to ascertain its reliability and accuracy before its adoption.

Chapter One

This chapter explains the efforts made by the European nations in tackling the large-scale movement of asylum seekers within the continent in a historical perspective. It describes the development of the European refugee regime over the years, and examines the relief efforts that were carried out by the European governments and other charitable organisations in helping refugees, beginning with World War One (WWI). It explains how the asylum policies were developed after the wars; WWI, World War Two (WWII), the Hungarian Revolution of 1956, and the Yugoslav wars of the 1990s. It reviews the arrival of Syrian refugees in 2015 that exposed the weaknesses of the current EU asylum system. It describes the genesis of the crisis in Syria, the arrival of the Syrian refugees and the inability of the MSs to effectively apply Dublin system at the peak of the crisis in 2015, while pointing out the hostility of some MSs towards the Syrian refugees. It also outlines various roles of relevant legal instruments concerning the EU refugee regime. It reviews the relevance of the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (the Charter). It gives an overview of the 1951 RC and its 1967 protocol, and also reviews the CEAS. It examines the Dublin system; its establishment and its ineffectiveness over the years.

1.1 General Background

The conflicts in Syria heralded new waves of migration problems for the EU, and the MSs struggled to get control of the situation even though they operate under the CEAS rules, (Grigonis, 2016: no p). In 2015, the arrival of a large number of asylum seekers in the EU ignited public outcry and drew high levels of political and media attention. Their arrival was not without pain, as some of them were reported dead or missing at sea; this number included the little Syrian boy, Alan Kurdi, who was washed up on the coast of Bodrum in Turkey, and whose image was used by the media (Ensor 2016:1). Arguably, the media coverage of the crisis prompted the EU authorities and some MSs to be more active in finding solutions to the crisis. By the end of 2015, one million Syrian asylum-seekers were already within the EU; the majority of them arrived by sea, in search of international protection (UNHCR, 2015:7).

Despite the arrival of a large number of Syrian refugees in 2015, the vast majority of them are still being hosted in the neighbouring countries. For instance, as of December 2017, UNHCR has registered 5,564,569 Syrian refugees. This figure includes the two million Syrian refugees in Egypt, Iraq, Jordan and Lebanon, with another 3.4 million refugees registered by the Turkish government, and a further 30,000 Syrian refugees registered in North Africa as of June 2018 (UNHCR 2018:1). Conversely, in 2015, 1,015,078 asylum seekers or migrants arrived in the EU, conversely, 362,753 in 2016, and 172,301 in 2017 (UNHCR 2018:1). The total number of the asylum seekers that arrived in the EU from 2015 to 2017 was not up to 50% of Syrian refugees in Turkey alone.

The Syrian Arab Republic, (hereafter Syria) is situated in the Western Asia Region with Damascus as its capital; Syria joined the United Nations (UN) in 1945 (UNdata 2016: no p). In Syria, President Basher al-Assad came into power in 2000 following the death of his father, Hafez al-Assad. Basher al-Assad was elected, and he attempted to move on the conciliatory path, especially by allowing the Muslim Brotherhood to resume political activities (Polk 2013: no p). By March 2011, pro-democracy protests were carried out in the city of Deraa, in the Southern part of Syria, after some teenagers were arrested for painting revolutionary slogans on a school wall. Eventually, the security officers opened fire on the protesters and killed some of them (Rodgers et al., 2016:1). As a result of this, more protesters began to call for President Assad's resignation, but the government applied force continuously, which in turn angered more individuals, and over time, the demonstrators grew in number (Rodgers et al., 2016 1). The opposition began to take up arms in resistance to a perceived oppressive approach of the government security forces, and the protests eventually degenerated to full blown civil war (Rodgers et al., 2016:1).

As violence escalated in Syria, affected individuals fled to neighbouring countries of Lebanon, Jordan, Turkey, Iraq, and Egypt for safety where they stayed in camps for years, with the hope of returning to Syria as soon as the conflict is over (Fleming, 2015:1). Nonetheless, year after year and at the moment of writing of this thesis, the

conflict keeps mounting, erasing any hope of the displaced returning home anytime soon. After years of living in appalling conditions at various camps in the neighbouring countries, Egypt, Jordan, Lebanon, and Turkey with their families torn apart, and no hope of better future, it became apparent that some Syrian refugees had to look beyond "camp life", for a better future elsewhere (Fleming, 2015:1).

In Turkey some of the Syrian refugees moved to Izmir where they prepared to travel to the EU through Greece by boat (Warren, 2015:2). At Izmir, "criminal gangs" were charging the vulnerable individuals money as high as thousands of US dollars in order to transport them to Greece by sea, and in unseaworthy dinghies (Warren, 2015:2b). Some of these Syrian refugees arrived at Idomeni, Lesbos, Kos (Warren, 2015:3c), Chios, Lesvos, or Samos (Leadbeater, 2016:1). Consequently, those that were lucky enough to make it to the Greek Islands were received by the Greek authorities and transported to Athens as part of the process (Warren, 2015:3), with the hope that majority of the asylum seekers would travel onwards. At the peak of the crisis, the majority of the refugees continued the journey up north and away from Greece towards the city of Gevgelija on the border between Greece and the Former Yugoslav Republic of Macedonia (FYROM), taken the so called "Balkan route". The route includes a passage from Tabanovce on the Serbia-FYROM border. They moved from Serbia to Hungary or from Serbia to Croatia via Slovenia and on to the Western part of Europe (Warren, 2015:6). In terms of final destinations, some Syrian refugees travelled from Hungary to Austria, and some made it to Germany (Warren, 2015: 7-8), while others continued the journey from Germany to Denmark, Sweden and other places (Warren, 2015:9).

Within the Union, the Syrian refugees were also confronted with the application of the CEAS, arguably, the most advanced regional asylum system in the world. Unfortunately, CEAS could not effectively tackle the mass influx of asylum seekers. However, Germany decided to admit large number of the asylum seekers by way of derogation on Art 3(1) of the Dublin III Regulation, but mainly for the Syrian asylum seekers (Holehouse et al., 2015:1). Nonetheless, the journey to Germany is not without hurdles, as countries along the way were against such mass movement of

people. Eventually, the controversial EU-Turkey Statement of 2016 put a stop to the mass movement of the asylum seekers who were in search of international protection (EC 2016:1). The formation of the EU-Turkey Statement was finalised with the meeting between the EU Heads of State and Turkey on March 18, 2016. They agreed to try to control the irregular migration flows with this arrangement. Turkey's role is to strengthen the measures against people smuggling and cooperate to resettle and return asylum seekers as agreed. The EU will in turn support Turkey's efforts with financial assistance running into billions of Euros (EC 2018:1).

Under this arrangement, whoever crosses to Greece illegally after the set date will be sent back to Turkey, and another Syrian refugee in Turkey will be transferred to the EU. As a result of this, the number of refugees that can be accepted annually in Europe based on this policy was capped at 72,000 (EC 2016:1). The deal came into effect on March 21, 2016 and its impact was immediate as the number of arrivals decreased massively, from about 10,000 a day in 2015 to 80 daily as of the end of 2017 (EC, 2018:1). The EU-Turkey Statement is extensively discussed in chapter three as pointed out earlier. The journey from Syria to the EU is one experience for the Syrian refugees. The realisation that their asylum claims ought to be processed under the EU asylum system is also another experience for the Syrian refugees as analysed in chapter six.

1.1.1 Large-Scale Movement of Refugees within Europe: A Short History

Extensive academic attention has been given to the major conflicts or wars that led to the mass displacement of people in Europe, beginning with WWI. The historical aspects of this study point to the unilateral and collective efforts of the European nations in tackling large-scale movement of asylum seekers. This includes the relief efforts organised by governments and charitable organisations to help the affected individuals and the assembling of the much-needed legal framework for the European refugee regime via the League of Nations in the aftermath of WWI. These legal frameworks were subsequently built upon following other major influxes of refugees after WWII, the Hungarian Revolution of 1956, and the wars in the former Yugoslav republics in the 1990s.

The idea of building upon existing asylum policies led to the establishment of new agencies that handled refugee matters after WWII. The United Nations High Commissioner for Refugees (UNHCR), the 1951 Convention Relating to the Status of Refugees (hereafter 1951 Refugee Convention or 1951 RC), and the 1967 Protocol Relating to the Status of Refugees (1967 Protocol) were some of the initiatives adopted in the aftermath of WWII. It is pertinent to note that the 1951 RC was somewhat limited in scope as it was originally drafted to protect the refugees in Europe.[5]

However, the 1967 Protocol expanded the limited scope of the 1951 RC by removing the geographical and temporal restrictions, which turned the 1951 RC into a global legal instrument (UNHCR, 2016). The 1967 Protocol came years after the Hungarian Revolution of 1956, while the CEAS came a few years after the end of the Yugoslav wars in the 1990s[6], with Dublin Regulation as one of its five main legislative measures. In the light of the above, it became inevitable that the existing EU asylum law required reform with ineffective application of the Dublin III Regulation to the mass influx of asylum seekers in 2015.

1.1.2 WWI

WWI displaced millions of Europeans, especially civilians, beginning with the Russian occupation of East Prussia in August 1914 that forced one million Germans to flee their homes (Gatrell, 2014:1). The defeat of the Italian army at Caporetto in 1917 created about 500,000 displaced Italians, affected Frenchmen also fled the German invasion, and at the start of 1918 one million French were already displaced and in search of refuge (Gatrell, 2008:4). An estimated 70,000 Jewish refugees also fled to Austria due to the Russian occupation of Galicia and Bukovina in 1914 (Gatrell,

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[5] United Nations General Assembly: Convention Relating to the Status of Refugees., entered into force in 1954: 189 UNTS 137 – 1951

[6] European Council 'agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the (Refugee) Convention' and its Protocol - 1999 Tampere Conclusions.

2008:4). This was at the time Austria was already hosting thousands of refugees who came from the Russian-occupied eastern front (Ingert et al., 2012:1), and by May 1916 the number of refugees had already grown to 430,000 (Gatrell, 2008:5).

The Austrian invasion of Serbia in August 1914 led to the displacement of large numbers of civilians, which subsequently resulted in the death of a large number of Serbians, both soldiers and civilians, especially throughout the journey across Montenegro and Albania (Campbell, 2015:1). The aftermath of WWI brought great pain as the affected individuals made efforts to locate loved ones (Gatrell, 2014:1). In Europe, individual states responded to the displacement and the arrival of refugees in different ways as there was no common approach to dealing with such situations prior to the WWI era, even though human displacement had been in existence for centuries. By 1914-1915 a large number of Belgian refugees had arrived in Netherlands, UK, and France. The European States responded to this displacement the best way they could (Michael, 2015:1).

In the Netherlands, Belgian refugees were housed in the outskirts of towns, in places like Nunspeet, Gouda and Bergen op Zoom. The relief efforts were undertaken by the local authorities, and they helped set up makeshift camps, designated as "Belgian villages" (Gatrell, 2008:11). The arrival of Belgian refugees in England took a different turn because private philanthropists rallied round to help the Belgians with the donation of various items. The local authorities in Hull, Manchester, London, Bradford and Birmingham were also involved in the relief efforts. They helped Belgian refugees with accommodation in hostels and boarding houses (Gatrell, 2008:11). By 1916, about 2,500 local refugee committees were already in place in England to assist the refugees (Gatrell, 2014:1).

In Italy, the central government took control of the relief efforts to assist the refugees, when the local authorities began to complain of insufficient resources. The government had to partner with Catholic and other willing charitable organisations such as the Red Cross. In Austria, the refugees lacked the means to survive, and they suffered abuse from some locals, especially in the case of Jewish refugees (Gatrell,

2008:10). Jewish refugees were accused of bad manners and that their presence was making things worse for the country economically (Gatrell, 2008:11). Nevertheless, the Austrian government continued to help out by partnering with the religious groups and other social groups. The refugees were helped with basic needs and even soup kitchens were founded and other donations were made to alleviate their suffering. However, some of the refugees could not secure accommodation in the cities so they were sent to camps in Gmund and Leibniz where they lived in terrible conditions (Gatrell, 2008:12).

The coverage of the suffering of Serbian refugees by the media prompted some NGOs and humanitarian bodies to help the refugees. Slav committees in Russia, Scottish Women's Hospital, and the British Red Cross were some of the groups that helped (Gatrell, 2008:12). In addition, the Serbian Relief Fund was established. Volunteers distributed gifts and materials such as rice, clothes, flour and more to the affected refugees. Temporary accommodation was set up for the Serbian refugees in schools, railway stations, unused factories, hotels, barracks, cinemas, synagogues, and other places in Russia (Gatrell, 2008:12-13). Nevertheless, there was no common approach as regards the response of European nations to the refugee crisis after WWI, as each country unilaterally carried on with their own relief efforts. Nonetheless, the majority of the host countries employed humanitarian approach by partnering with charitable organisations to bring relief materials to the affected individuals who were desperately in need of assistance.

The first collective effort to help the affected refugees came through the League of Nations (Jaeger, 2001:728). Hathaway explained that in the aftermath of WWI, people fleeing persecution and in search of international protection were the first group of refugees to be addressed by the League of Nations (Hathaway, 1984: 350-352). Similarly, Holborn argued that violence and conflicts have influenced much of the development of international and European refugee law (Holborn, 1956:3). Therefore, within the existence of the League of Nations, and for the first time, different institutions were formed to help refugees. Some of these institutions are the High

Commissioner for Refugees 1931-1938, Office of the High Commissioner of the League of Nations for Refugees 1939-1947. These entities were established to help the refugees at different point in time, an equivalent of the UNHCR today (Jaeger, 2001: 729).

In the aftermath of WWI, necessary legal agreements were assembled to protect the asylum seekers and refugees of that era, part of these efforts was the provision of travel documents to some of the refugees by the office of the High Commissioner for Russian Refugees, headed by Dr. Fridtjof Nansen. This led to the introduction of the 'Nansen Passport'. His mandate was later expanded to include the Armenian refugees in 1924 and the Assyrian, Assyro-Chaldean and Turkish refugees in 1928. The first official definition of Armenian and Russian refugees was created on May 12, 1926 with the major aim of coming up with an identity for the refugees (Jaeger, 2001: 729-730). There were questions on certain legal matters for the refugees, for example the need for them to have unhindered access to education, accommodation, food, and healthcare. Ratification of the 1933 Refugee Convention was done by nine States including the UK and France, and it was through this Convention that the principle of *non refoulement* gained its international treaty law.[7]

The Treaty on the provisional arrangement concerning the status of refugees coming from Germany was signed on July 4, 1936 in Geneva, and the convention concerning the status of refugees coming from Germany was also signed on February 10, 1938 in Geneva (Jaeger, 2001: 729). The last two instruments were meant to provide protection mainly for refugees coming from Germany. The Intergovernmental Committee on Refugees (IGCR) was also formed on July 14, 1938 as another international legal instrument concerning refugees (Jaeger, 2001: 730-731). The common feature concerning the response of the European States to the plight of refugees during and after WWI is how some of the European nations and charitable

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[7] The conventions and treaties mentioned above have been superseded by the 1951 GC, which was adopted in July 28, 1951 at a Conference of Plenipotentiaries held in Geneva

organisations were willing to help the affected individuals. It is evident that different states, especially through local authorities formed partnership with charitable organisations and religious bodies to help the affected refugees before the existence of tangible legal instruments on refugee regime.

1.1.3 WWII

The aftermath of WWII also brought about mass displacement of people around Europe, with about 40 million people displaced in May 1945. These people were "uprooted", rendered "homeless", and were effectively "in flight" (Bundy,2016:1) Unlike the aftermath of WWI, there were established legal frameworks on the ground after WWII to address the plight of the refugees, therefore, millions of people who were affected by WWII were addressed based on the existing legal frameworks (Einarsen, 2011:12). By 1946 the world refugee regime was already building on the existence of other asylum legal instruments established after WWI. As a result of that and as part of the relief efforts aimed at the growing number of WWII refugees, the United Nations Relief and Rehabilitation Administration (UNRRA) was established in November 1943 to provide economic assistance to the European nations and help the affected refugees after the war. The body began rehabilitating refugees and the displaced people in 1944, even before the war ended. Its presence was established in various refugee camps around the world. About 37,000 refugees from Europe were placed in places like Palestine, Egypt and Syria, these refugees came from Yugoslavia, Italy, Greece, and Albania, and by the end of the year, UNRRA was already catering to the needs of about 74,000 refugees in various camps in Africa, Middle East, and the Mediterranean (Shoah Resource Centre, 2018:1).

In the aftermath of WWII, UNRRA faced an uphill task in helping the growing number of refugees which had increased to millions; these included internally displaced individuals, with families separated by wars and orphaned children (Shoah Resource Centre, 2018:2). Months after the war, the body became better organised and it was placed under military administration, especially in the US, France, and the UK. UNRRA helped millions of refugees with basic supplies, in various countries in Europe and elsewhere. In 1947, the role of UNRRA was gradually being faded out, especially when

the newly established Preparatory Commission for the International Refugee Organisation took charge of about 643,000 remaining displaced persons in Europe (Shoah Resource Centre, 2018:2).

The International Refugee Organisation (IRO) was established by Resolution 62 (I) of the United Nations General Assembly. At the initial stage, it worked as preparatory Commission from July 14, 1947 to August 20, 1948, and became the fully fledged IRO on August 1948 until February 28, 1952 (Jaeger, 2001: 732). IRO was set up to resettle refugees and displaced persons in the affected places after WWII; from central Europe to Australia, the USA, Western Europe, Canada, Israel and Latin America. Years after WWII ended, there was a need for new legal and institutional frameworks that could effectively tackle the phenomenon of the mass displacement of people and this led to the establishment of UNCHR, and the adoption of the 1951 RC (Bundy, 2016: 1). By December 3, 1949, the UN General Assembly chose to establish the High Commissioner's Office for Refugees, and the Statute of the Office of the UNHCR was adopted on December 14, 1951. The UNHCR has been administering the protection of world refugees since then (Jaeger, 2001: 736). Today, the 1951 RC is undoubtedly the cornerstone of the international refugee law as both national and regional refugee regimes attach much importance to it (Muller, 2016: no p). The 1951 RC set out criteria by which asylum seekers can be qualified as refugees. The Convention provides the most modern definition of refugee, which points out certain rights under which a refugee can be protected, spells out the obligation of refugees to the host country, and outlines the categories of people who do not qualify for such process (Holzer, 2012:3) It is pertinent to note that the existing legal frameworks as of the end of WWI aided the response of the European States after the WWII, while the policy makers came up with more relevant legal instruments to help the refugee regime within the continent.

1.1.4 The Hungarian Revolution of 1956

From 1945 and prior to the 1956 uprising, Hungarians were under the control of Russians (Trueman, 2018:1) The death of Stalin in Russia in 1953 brought hope that they might be free from Soviet rule, but Stalin's death could not weaken the grip the

Russians had on the Eastern Europeans (Trueman, 2018:1). Suffering from bad harvest, fuel shortage and a cold autumn, protesters comprising students and workers took to the street of Budapest, the capital city of Hungary on October 23, 1956 demanding for more food, removal of Russian control, removal of the secret police among others (Trueman, 2018:1). By early November 1956, Soviet tanks moved into the streets of Budapest killing thousands of people, while crushing the uprising (Ben, 2013:1). Hundreds of tanks were seen moving around Budapest killing about 30,000 people, while about 200,000 fled the uprising to other European nations for protection (Trueman, 2018:1). The Hungarian Revolution of 1956 occurred a few years after the adoption of the 1951 RC and the establishment of UNHCR. The conflict was seen as the deadliest since the WWII, and led to the displacement of a large number of Hungarians. As a result of the uprising, about 180,000 Hungarian refugees fled to Austria, while 20,000 of them fled to former Yugoslavia (Zieck, 2013:49).

The responses to the Hungarian 1956 refugee crisis were immediate, and by the November 5, the Austrian government was already asking for international assistance to tackle the mass arrival of Hungarian refugees. Nonetheless, Austria promised to admit some of the Hungarian refugees (Zieck, 2013:50). It was the first major test within Europe for the then newly adopted 1951 Refugee Convention (hereafter 1951 RC) and the UNHCR was just grappling with the relief efforts carried out and handed over by the defunct IRO after WWII. France, Belgium, Luxembourg, Portugal, Italy, Netherlands, Switzerland, Uruguay, UK, and US offered to help the Hungarian refugees. In total, about 36 States across the world helped Hungarian refugees (Zieck, 2013: 56-59). The UNHCR also worked with other charitable organisations to help the refugees, and its involvement was backed by the UNGA resolution 1006 of November 9, 1956. Within days the body began its operation in Austria (UNHCR 1998: 1). The UNHCR was also on ground in Belgrade to help the Hungarian refugees (UNHCR 1962:1), a new era in the history of the world refugee regime. The application of the existing legal framework on refugee after the WWII arguably help received the Hungarian refugees within and outside the continent. In fact, it was the first major

refugee crisis after the newly established UNHCR and the newly adopted 1951 RC, which were both put to test.

1.1.5 The Yugoslav Wars

Decades after the Hungarian refugee crisis, Europe witnessed another mass influx of asylum seekers as a result of the 1990s wars in the Balkans. Slovenia and Croatia declared independence from Yugoslavia in June 1991 but not without a fight as the national army of Yugoslavia, mainly Serbians, resisted the declaration (Morokvasic, 1992:3). Consequently, Slovenia was attacked militarily and the fight between the Serbians and Slovenians lasted for ten days when the Serbians withdrew (Bradshaw, 2010: no p).

Croatia also declared independence in June 1991, which led to the clashes between Serbians and the Croats. Croatia was invaded by Serbia killing hundreds of Croatian men, even the response from the international community could not deter the Serbians from carrying on with the military assaults (Wilde, 2017:1). The Serbians also attacked Sarajevo's market place at the capital city of Bosnia and Herzegovina killing at least 66 people and wounded about 200 others in response to the latter's declaration of independence in 1992 (Heinrich and Block, 1994: no p). The conflicts continued throughout 1993, and Bosnian Serbs continued to attack designated Safe Havens, killing more civilians. However, the US led a NATO military coalition confronted the Serbs in August 1995, which resulted in peace talks in Ohio in November 1995 (Wilde, 2017: no p). The Ohio peace talks, known as Dayton agreement arguably put an end to the conflict that claimed some 100,000 lives (Borger, 2015:1).

The response of the European States to the Yugoslav refugees came with some form of coordinated approach to prevent their admittance. Intergovernmental agreements were signed and some European countries negotiated new agreements that led to the establishment of Schengen II and the Dublin Convention (now an EU Regulation), which determines the MS responsible for examining an asylum application (Baratciski, 1994:32). This was done to give legal backing to the burden shifting approach to

helping refugees as the European nations began to look for other avenues to deal with their immigration issues. It was the first of its kind to be directed at the large influx of refugees within the continent. The aim was to be able to legally and systematically control the number of asylum seekers that could be granted refugee status within the continent to the extent that a MS could be fined for noncompliance (Baratciski, 1994:32:1).

Some European nations collectively came up with other measures to discourage the refugees from seeking asylum within the Union. The establishment of Dublin system is one of these measures. Even Hungary and Austria, some of the closest countries to Balkans had to reduce the intake of the affected refugees at some point. However, this did not last long as some of these unfriendly policies were relaxed with time, due to the increased level of media bombardment; the display of horrific images of the affected vulnerable individuals desperately in need of help (Baratciski, 1994:32-33). The borders of the MSs were not entirely closed, and as of December 31, 1993, about 300,000 former Yugoslavia refugees were already in Germany, 50,000 in Sweden, 74,000 in Austria, 32,000 in Italy, 20,000 in Turkey, 14,500 in Switzerland, 7,000 in France, and 6,600 in the United Kingdom (Baratciski, 1994:33). The UNHCR alongside certain social groups also played key roles in helping the refugees during and after the Yugoslav war of the 1990s (Young, 2001:781 and Cutts, 1999:4).

Unlike during and after the WWI and WWII, or the Hungarian refugee crisis when the European nations rallied round to help the affected refugees, the Yugoslav wars brought a new twist. The events prior to that time had led to the European nations coming up with restrictive measures on asylum. The application of these restrictive measures in the 1990s affected the refugees from the Balkans, although some of the European States later relaxed the restrictive asylum policies at certain points in time to help refugees as stated earlier. It is important therefore to note that history revealed the efforts of the European nations in tackling the influxes of refugees starting with WWI. Evidently, with the collaboration between different European nations and relevant charitable organisations in providing relief efforts to the affected refugees, the assembling of the necessary legal instruments in the aftermath

of WWI, and the formulation of more asylum policies over the years in order to effectively administer the European refugee regime.

The above literature revealed historically how the European nations came together to tackle large-scale movement of asylum seekers in the past and in particular how certain mechanisms were put in place to help establish a legally binding asylum system within the European continent decades ago. Therefore, it is important to note that the initial legal instruments of early last century have evolved and the next section reveals that there are various international legal instruments in place today to manage the EU asylum regime.

1.2 Overview of Relevant Legal Instruments

This section outlines various roles of relevant legal instruments concerning the EU refugee regime. It reviews the relevance of the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (the Charter). It gives an overview of the 1951 RC and its 1967 protocol, and also reviews the CEAS. It examines the Dublin system; its establishment, and its ineffectiveness over the years.

There are four main 'overlapping legal regimes' for the international protection of asylum seekers and refugees within the EU, which include the 1951 RC and its protocol, the EU law, 1984 United Nations Convention Against Torture (UNCAT), and the European Convention on Human Rights (ECHR) and its protocols (Mole and Meredith, 2010:7). These legal instruments are often applied to supplement the interpretation of the existing legal framework. MSs are bound by these legal instruments, through which Union asylum policies are implemented (Craig and De Burca, 2011:382-384). The EU asylum regime is not complete without referencing other similar international legal instruments that continuously interact with and sometimes shape the EU asylum system. It is therefore essential to reference legal instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the United Nations

Convention against Torture (CAT)[8] as stated above; the Convention on the Rights of the Child (CRC)[9]; and the Convention against Transnational Organized Crime (UNTOC).[10] Reference should also be made to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UNTOC[11]; Convention on the Rights of Person with Disabilities (CRPD)[12]; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children[13]; and the United Nations Law of the Sea Convention (UNCLOS)[14], and the Council of Europe Convention on Action against Trafficking in Human Beings.[15] The proper application of these treaties is crucial to having an effective refugee regime within the Union.

1.2.1 The Charter of the Fundamental Rights of the European Union (The Charter)

The Charter was originally announced in 2000 in Nice by the European Parliament, Council and the Commission, and it was "proclaimed" again in 2007 after it was amended (EP 2016:1). The Charter became legally binding in 2009, after the Treaty of Lisbon was adopted by the MSs (EP 2016:1). As a legally binding instrument, the Charter can be seen as the first document to provide for "right to asylum" after the

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[8] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment., adopted by resolution 39/46 of December 1984, available at https://www.ohchr.org/en/professionalinterest/pages/cat.aspx.

[9] Convention on the Rights of the Child., adopted by resolution 44/25 of 20 November 1989, available at https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

[10] United Nations Convention against Transnational Organised Crime., adopted by resolution 55/22 of 15 November 2000., available at https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html.

[11] Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime., adopted by resolution 55/22 of 2000., available at, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=_en.

[12] Convention on the Rights of Persons with Disabilities (CRPD) adopted in 2006 and available at https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html

[13] Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime., adopted by resolution 55/25 of 15 November 2000., avalaible at https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx

[14] United Nations Convention of the Law of the Sea., adopted on 10 December 1982., available at https://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm

[15] Council of Europe Convention on Action against Trafficking in Human Beings., adopted in 2005., available at https://rm.coe.int/168008371d

Universal Declaration of Human Rights - UDHR (McGoldrick, 2004: 83). The legal instrument was adopted to recognise and give visibility to place of fundamental rights within the EU legal order (EP 2016: no p). However, critics argued that Art 18 of the Charter which states that the "right to asylum will be guaranteed" in line with the 1951 RC and its 1967 protocol, and with the treaty that established the "European Community" is vague. The controversy is centered on the ambiguity of the phrase, as the wording makes it unclear how the right can be assigned (Öztürk, 2012:1). Therefore, Art 18 needs a straight-forward analysis (Gil-Bazo, 2008:37), simply because there is no clear definition of the "right to asylum" which the Art 18 stands to guarantee. Interestingly, even the 1951 RC does not give such right as Art 18 of the Charter portrays, but protects asylum seekers from *refoulement* and gives the right to seek but not the right to automatically be granted refugee status (Da Lomba, 2004:8-10). The wording of Art 78 (1) of the Treaty on the Functioning of the European Union (TFEU) carries a similar tone. However, the TFEU does not directly refer to the "right to asylum", but uses terms like "common policy", "system" or status (Battjes, 2006:113).

Furthermore, Art 19 of the Charter prohibits the removal or expulsion of individuals to a country where their life could be put at risk, in line with Art 33 of 1951 RC, the principle of *non-refoulement*. Art 4 of the Charter specifically prohibits torture and inhuman or degrading treatment or punishment, a mirror provision of Art 3 of ECHR. In the same vein, Art 2 of ECHR and the Charter safeguard the "right to life".

1.2.2 The Council of Europe (CoE) and the European Convention on Human Rights (ECHR)

Few years after WWII, some pro-European movements desired a political organisation that would prevent the return of the totalitarian regimes and bring about peace and democracy. After much deliberation on the proposals and amendments of those proposals, the signatories (France, Belgium, Luxembourg, the Netherlands, and the UK) to the Treaty of Brussels invited Denmark, Italy, Ireland, Sweden, and Norway to attend the conference that led to the establishment of the Council of Europe (CoE) which took place in London, May 1949. Consequently, the CoE came into force on

August 3, 1949 (CVCE 2016:1). Its objective is to achieve greater unity, understandably, due to the war that just ended, and it also aims to work towards the achievement of economic and social progress (CoE 1949:1). Today, the CoE has 47 Members States and it is a separate body from the EU, although all the MSs are also Member States of CoE.

The existence of the CoE made the adoption of the ECHR possible in 1950. The ECHR was influenced by the 1948 Universal Declaration on Human Rights (UDHR) which was signed in Rome in 1950 and came into force in 1953. The ECHR protects some rights which include the right to respect for family and private life (Art 8), and the freedom from torture (Art 3), and it was signed by the foreign ministers of the Member States in November 4, 1950 (CVCE 2018:1).

1.2.3 European Court on Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU)

The ECtHR was established as a judicial organ of CoE (Gani, 2014:1). Founded in 1959 and located in Strasbourg, the ECtHR has 47 judges one for each MS of the CoE. Protocol 11 made mandatory the right of individual petition, and this means that individuals whose rights are violated can now apply directly to the court. The ECtHR accepts complaints on broad-range of issues (Lobey, 2005:1). The Court does not look at asylum matters directly, but looks at asylum in the framework of the relevant ECHR Articles.

The CJEU was established in 1952 on the other hand to interpret and apply EU law the same way in all MSs, and ensure that MSs abide by the EU law. It is located in Luxembourg with one judge from each MS plus eleven advocates. The court also settles legal disputes between the EU institutions and the national governments, and in certain circumstances the CJEU is used by individuals, companies and organisations to take action against the EU institutions when they feel that their rights are violated. CJEU is composed of two courts, the Court of Justice which deals with the preliminary rulings from national courts and the General Court that deals with individuals, companies and in certain cases the EU governments (European Union 2018:1).

The CJEU gained jurisdiction in specific instances on asylum matters with the Amsterdam Treaty in 1999 (Sokolska, 2019: no p). With the Lisbon Treaty that came into force in December 2009, preliminary rulings could now be sought by any court in a MS, rather than just national courts of final instance. This allowed the CJEU to build up a larger body of case law in the field of asylum (Sokolska, 2019: no p).

1.3 Overview of the 1951 Refugee Convention

The 1951 RC is seen as the cornerstone of international refugee law (ICRC 2016: no p). Its provisions are aimed at the people meeting the criteria set out in its Art 1A, refugee definition (UNHCR 2007: 8). Art 1A defines the term refugee as a person:

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group or political opinion, is outside the 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 (UNGA 1951).

Art 3 deals with non-discrimination, articles 17-19 focus on employment, while Articles 20-24 deal with welfare. Art 32 of 1951 RC provides for expulsion of aliens, while Art 33(1) provides for *non-refoulement* of asylum seekers, and it states that "no contracting state shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of particular social group or political opinion" (UNGA 1951).

At the initial stage, the signatories to the 1951 RC were only 26 nations but today, 145 countries across the world have ratified the 1951 RC and its 1967 protocol (UNHCR 2015:1). However, the importance of this legal instrument is not just related to the number of the signatories or the states parties that have ratified it, but also to the state parties that are properly applying the letter of the 1951 RC. For instance, Kneebone argued that although the rights of refugees are defined in international law, but "these rights are still subject to state discretion as to their implementation in national legal system" (Kneebone, 2009:1). The reality therefore is that the

implementation of the provisions of 1951 RC is being carried out by some state parties in a way that deny the refugees of such rights that are due to them. The implementation of asylum law at national level often goes contrary to the provisions of the international refugee law, notwithstanding whether the state in question is a state party to the international legal instrument or not.

The relevance of 1951 RC in the modern day asylum regime has been a subject of debate over the years. Thus, critics believe that the existing EU asylum policy and the 1951 RC are inadequate to solve the problem facing modern day refugee issues (Dejevsky, 2016: no p). The CEAS is supposedly built upon the tenet of 1951 RC, which means that within the EU, the asylum seekers ought to seek refuge, in line with the refugee definition criteria as stated above and also abide by the EU asylum policy, especially the Dublin system. Therefore, critics of the 1951 RC are demanding a reform or an outright replacement of the 1951 RC (Dejevsky, 2016: no p), as the convention is seen as outdated and inefficient in tackling the challenges of modern day asylum system. It is also seen as 'overtly legalistic', inefficient and ambiguous to apply in the face of new challenges facing the world refugee regime (Goodwin-Gill, 2001:1). Critics argued that the refugee definition of 1951 RC as stated in its Art 1A is limited in scope and leaves out certain groups of people that would have ordinarily been granted asylum if the definition were to be drafted today (Dejevsky, 2016: no p).

Eduardo also opined that the convention refugee definition was narrowly drawn and this prompted Africa and Latin America to come up with different refugee definitions that suit their regions, the OAU 1969 Convention and the Cartagena Declaration of 1984 (Eduardo, 1991:187). The proponents of the 1951 RC however believe that its legal definition is as relevant as it was decades ago when it was drafted and even when the 1967 protocol extended its provisions worldwide. Hence, the proponents believe that the convention should be preserved and protected from being watered-down by any form of unnecessary reform (Achiron, 2001:5 and Muller, 2016:1). Nonetheless, critics argued that the 1951 RC left out certain groups of people such as the victims of serious natural disaster, climate change disaster, and as well as those

afflicted by gender persecution issues. The victims of climate change related disasters are generally referred to as "environmental refugees or climate refugees" (Curtis, 2017:1). Additionally, critics argued that the drafters of the convention did not put into consideration people that could suffer persecution by non-state agents, as reflected in the 1951 RC. Critics explained that 1951 RC refugee definition in itself mirrors the European historical background of totalitarianism by which refugees are seen as the victims of "predatory" states and its agents (Shacknove, 1985:276).

However, one of the proponents of 1951 RC argued that the 1951 RC was established in the 'spirit of empathy and humanitarianism' (Achiron, 2001:6), but the critics of 1951 RC opined that the exclusion of other categories of people in need of help reveals otherwise. Despite its presumed definition problem, the proponents of 1951 RC explained that the refugee definition is still relevant in solving the world refugee problem today (Muller, 2016:1). Evidently, the application of 1951 RC has helped millions of affected people across the world, with over 50 millions of such people assisted since its inception (UNHR 2001:9). The ultimate aim is to help the affected people that are left out by the 1951 RC refugee definition, and for years, this is being done on subsidiary or humanitarian grounds within the EU (EC 2008:3). Nonetheless, it would be a win-win approach if a separate convention can be conveyed in order to accommodate other categories of people that are perceived to be left out by the current 1951 RC refugee definition. Such a convention should be given adequate support, legal backing, and different name aside from refugee convention. This will enable the affected people in that category to legally access needed protection.

Critics further argued that the "right to asylum" was not included in the 1951 RC, unlike Art 14 of the UDHR and Art 18 of the Charter. However, Goodwin-Gill explained that an attempt to include word such as 'asylum' and 'admission' were seriously rejected during the negotiation stage of the 1951 RC (Goodwin-Gill, 1996:175). Nonetheless, while there is no 'right to asylum' under the 1951 RC, states are still bound by the principle of *non-refoulement* that does not permit them to return asylum seekers to where their life may be put in danger (UNGA 1951:30). Noticeably, since the 1990s states have found a way to shield the responsibility of directly

processing some of the asylum claims by creating more "safe third countries" by which they transfer the responsibility of directly processing asylum applications (Bryrne and Shacknove, 1996:9). The notion of "safe third countries" approach is not against the law as the 1951 RC does not specify details about asylum procedures or which state is responsible for status determination. Therefore, states could come up with any approach in terms of status determination as long as the *non-refoulement* principle is not violated. Nevertheless, even though the concept of "safe third countries" does not violate the letter of 1951 RC, it is still argued that the continuous application of the concept could lead to chain deportations which could violate the *non- refoulement* principle in the long run (EC 1990:425).

1.4 The Common European Asylum System (CEAS)

The harmonisation of MSs asylum systems was first pursued through intergovernmental cooperation under the 1992 Maastricht Treaty (Title VI on cooperation in the field of Justice and Home Affairs). The Maastricht Treaty came into force in November 1, 1993, and the Treaty of Amsterdam came into force in May 1999. The Treaty of Amsterdam provided the legal basis for the establishment of CEAS (EASO 2016:13). Art 63 (1) of the Treaty Establishing the European Community (TEC) provided that the Council was to adopt within five years a specific set of measures on asylum, refugees and displaced persons. Art 63 (2) of TEC also specified that such measures should be in line with the 1951 RC and "other relevant treaties" (EASO 2016:14). It is pertinent to note that all MSs are parties to the 1951 RC and its 1967 protocol.

Prior to the adoption of CEAS, the provision of asylum was predominantly in each state's prerogative, and in accordance with the 1951 RC and the domestic legal framework. In line with the 1951 RC, the MSs needed to be objective in balancing the provisions of the instrument while processing the claims of the people in need of international protection in a uniform way (Goodwin-Gill and McAdam, 2007:359). All MSs therefore recognise that 1951 RC is the bedrock of "the international legal regime for the protection of refugees as reflected in Art 63 of TEC (EASO 2016:14).

The 1999 European Council of Tampere was the turning point in harmonising the EU immigration and asylum policy in accordance with Title V of the TFEU, and the Area of Freedom, Security and Justice, AFSJ arrangement (Craig, 2008:137 and 142). During the summit in Tampere, Finland in October 1999, the MSs agreed to work together, they reaffirmed the importance of respecting the rights of individuals seeking asylum within the Union and decided to establish a CEAS (EP 1999: no p). The first phase of CEAS comprised five main legislative measures which include the Asylum Procedures Directive (APD)[16], the Reception Conditions Directive (RCD)[17]; Qualification Directive (QD)[18]; the Dublin Regulation[19], and the Eurodac Regulation (EC 2014;2-8; Peers, 2013:2).[20]

APD allows the MSs to grant and withdraw international protection within common procedures put in place for asylum-decision making. The chances for the asylum seekers gaining international protection greatly depend on the asylum procedure applied to access their claims. It confirms certain rights such as the right to receive information, interview, etc. RCD provides minimum standards of reception for the asylum seekers to ensure that basic necessities are provided that guarantee an adequate living standard within the Union (EC 2016: no p; Peers 2014:6).

QD defines who qualifies as a refugee within the Union and also points out various protections for the individuals that are at risk of being sent back to their country of origin. Its original goal is to ensure that people in need of international protection are identified and allowed to submit their claims in any of the MSs. The Dublin regulation

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[16] Council Directive 2005/85/EC of December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
[17] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
[18] Council Directive 2004/83/ EC OF 94 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or person who otherwise need international protection and content of the protection granted
[19] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member States responsible for examining an asylum application ledged in one of the Member States by a third-country national
[20] Council Directive (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin convention.

is sometimes referred to as the backbone of the CEAS. It has a core principle which is that the responsibility for examining claim lies primarily with the MS which played the greatest part in the applicant's entry or residence in the EU. Eurodac uses the fingerprinting database to identify asylum seekers on arrival within the Union (EC 2016: no p; Peers 2014:6). In addition, European Asylum Support Office (EASO) is an agency of the EU. It was created in 2008 in order to increase the cooperation among the MSs on asylum and to improve the application and implementation of the CEAS (EC 2016: no p; Peers 2014:6).

Furthermore, the first phase of CEAS is also based on harmonisation of internal legislation of the common standards, and the need to address its common problems. However, the first step was merely the beginning as the need for more effective harmonisation and large discrepancies in asylum standards led to the development of the second phase of CEAS (Toscano, 2013:7). The first and the second phases of the CEAS were between 2003 and 2015 when the "EU enacted directives and regulations that set common standards" as explained above (EC 2016: no p). The Treaty of Lisbon came into force in 2009 and since then the EU has agreed to develop common standards and thus deepen harmonisation efforts in accordance with Art 78 of the TFEU. The corresponding legal acts were also recast in 2011 and 2013. The directives that were recast in 2013 had been transposed to law at national level by the MSs as of July 2015, prior to the refugee crisis in the summer of 2015 (EC 2016: no p). The failure of the CEAS to effectively manage the 2015 refugee crisis therefore led to the adopted proposals to reform the EU asylum system in May 2016 by the Commission. The package of proposals include the proposal to reform the Dublin III Regulation, the proposal to amend Eurodac Regulation, and the proposal to establish an EU Asylum Agency that will replace EASO but this could not be done before the end of the eight legislature of the European Parliament. A resettlement Regulation was also proposed but it did not achieve the necessary support from the delegations in June 2018 (EP 2019: no p.)

1.5 The Dublin System: An Overview

The Dublin Regulation, popularly known as the Dublin system was first signed in June 1990 in Dublin, Ireland and came into force in September 1997. Dublin system arguably came into existence due to the difficulty of the European nations to adequately cope with the processing of asylum claims fuelled by the increase in number of asylum seekers in the 1990s, due to conflicts and wars in the Balkans as mentioned in the previous chapter. In order to address the backlog of asylum claims mainly because of the Balkans war, European states began to unilaterally introduce administrative laws and policies perceived to be restrictive and harsh on asylum seekers (Marinho, 1998:1). In the light of this, the Amsterdam Treaty of 1997 introduced common minimum standards for asylum and migration within the EU (Betts, 2009:180). Hence, the Amsterdam Treaty resulted in the activation of the Dublin Convention and Schengen within the EU acquis. It also set the direction towards the establishment of CEAS as stated earlier, and decided the role of the Dublin system - the cornerstone of the EU asylum system. The failure of the Dublin Convention to achieve its objectives led to the convention being turned into regulation within the hope of efficiency and effectiveness in its execution (Ball, 2013:89). The Regulation became binding in all MSs with the need to properly harmonise their domestic legislation to maximise its efficiency.

The improvements seen as a result of the introduction of Dublin II in place of the Dublin Convention was conspicuous in certain ways. Nevertheless, Dublin II in itself was ineffective in various ways and rippled with many court cases on human rights violations within the EU (EC 2016: no p). Dublin II also did not provide for an effective burden sharing mechanism that would have ensured that responsibilities are fairly shared among the MSs as against the much of burden being on the few MSs (EC 2016:no p). Generally, the failure of Dublin II to achieve its set out objectives led to its demise. The need for more effective harmonisation and the need to address discrepancies in asylum standards resulted in the establishment of Dublin III Regulation. Hence, Nicoletti summarised that in 2003, the 'Dublin II Regulation brought the Dublin Convention within the framework of EU treaty law', and by 2013, a

'recast' Dublin III Regulation was adopted, an improved version of the Dublin II Regulation (Nicoletti, 2014:8).

The Dublin III Regulation is binding on all EU Member States', including Switzerland, Iceland, Liechtenstein, and Norway. However, it is important to note that Denmark, Ireland and the UK 'opted out of the recast asylum procedures, reception conditions and qualification directives' (Nicoletti, 2014:9). The ineffectiveness and the inability of the Dublin III Regulation to effectively tackle the Syrian refugee crisis among others led to a proposed Dublin IV by the European Commission in 2016 that is now in stalemate as pointed out in the previous chapter (EC 2016:1).

In summary, on June 26, 2013 the recast Dublin III Regulation replaced Dublin II Regulation that was adopted on February 18, 2003 (UNHCR 2017:15). The Dublin III Regulation came into force in January 2014 and it is binding in all the MSs, as well as in Iceland, Norway, Switzerland, and Lichtenstein. Dublin III Regulation is complemented by Eurodac, Regulation (EU) No 603/2013 of September 2, 2003. It is also "supplemented by Regulation (EU) No 1560/2003 (Implementing Regulation) as amended by Regulation (EU) No 118/2014, which lays down rules for practical application of the Dublin III Regulation" (UNHCR 2017:15). For over two decades, the Dublin system has developed from Dublin Convention to Dublin III and now with a proposed reform that is in stalemate. Its application over the years is not without hurdles especially as the 2015 refugee crisis rendered it totally ineffective.

1.6 The Dublin System and the 2015 Syrian Refugee Crisis

The arrival of over a million asylum seekers and migrants in the summer of 2015 put a strain on CEAS (EC 2016:1). The EU asylum system failed repeatedly in the face of mass influx of asylum seekers, as common standards became almost impossible to apply especially by frontline States. As a result of this, the need to reform the EU asylum system became necessary (EC 2016:3). The number of arrivals during the refugee crisis in 2015, especially the asylum seekers that were concentrated in just one MS, Greece, was overwhelming. The current Dublin, Dublin III Regulation does not have the capability to tackle mass influx of asylum seekers (Robinson, 2016:1). The

Dublin Regulation as one of the legislative instruments of CEAS requires that asylum seekers must apply for asylum in the first MS they enter. However, Art 3(1) of the Dublin system could not hold as the frontline state of Greece became overwhelmed at the peak of 2015 refugee crisis (Cendrowicz and Wright, 2016:1). The refuge crisis put much pressure on the EU frontline states, with about a million migrants using Greece as the gateway to their destinations and it became practically impossible for Greece to process all the asylum seekers in line with Art 3(1) of the Dublin III Regulation (IOM 2016: no p).

The MSs used by the asylum seekers as transit places (passage areas) struggled to cope with the influx, and in the process, some of the asylum seekers allegedly suffered severe human rights violations on the way to their preferred destinations (HRW 2016: no p). The Hungarian police were allegedly "firing upon asylum seekers with tear gas and water canon" amid report the "refugees breached its border fence" security (Withnall, 2015:1). Women and children asylum seekers were left in the cold on the European shores, disgracing the continent that prides itself with arguably the most sophisticated regional asylum system in the world. Hungary's actions towards refugees at its borders were criticised by Dimitris Avramopoulos, the EU Migration Commissioner as "temporary solutions that increased tension" (Irish 2015:1).

Greece was overwhelmed in the face of the mass influx as asylum seekers and migrants arriving in thousands on daily basis to the Greek Islands at the peak of the refugee crisis. Consequently, Alexis Tsipras, the former Prime Minister of Greece, stresses that "we are experiencing the biggest refugee crisis since the WWII… the problem surpasses the powers of the country, the strength of a government and the innate weaknesses of the European Union" (Smith, 2016:1). Indeed, it would have been difficult to process the claims of thousands of Syrian refugees that passed through Greece in 2015 without the application of Art 17(1) by Germany. The crisis prompted Sebastian Kurz, the Chancellor of Austria to say that "this is a real disaster for the European Union and I think there is need to have more focus on this problem, not only on the route through Italy but also the Western Balkan route" (Holehouse et al., 2015:1). In 2015 alone, about 850,000 asylum seekers arrived in Greece, while

Italy received almost 200,000 asylum seekers and migrants (Robinson, 2016:1). The volume of applicants as well as the low standards of protection offered at the EU frontline states, combined with Greece's limited financial capacities as of 2015 prompted the EU authorities to come up with the proposals to reform CEAS, especially the Dublin system in 2016 among other initiatives.

In tackling the refugee crisis, the Commission believe that the Dublin Regulation, as the cornerstone of the EU asylum system is still relevant (EC 2016:1). Dimitris Avramopoulos, opined that "to better manage the flow of migrants and secure European borders, all Member States shall deliver on the commitments, strictly apply the European rules on asylum and border control and provide the necessary support to those Member States that are the most exposed" (EC 2016:1). In addition, the Commission First Vice-President, Frans Timmermans explained that "in the second half of 2015 unprecedented numbers of people have found their way into Europe by irregular means". Stressing that "those who need protection must apply for asylum in the first EU country they reach" (EC 2016:1). The problem with that statement was that the surge rendered Art 3(1) inapplicable as few MSs like Germany temporarily suspended it, by way of derogation, in line with Art 17(1) of the Dublin III Regulation. Nonetheless, if the Dublin system continues to be the first choice on how the EU responds to migratory pressures, a reformed Dublin system must also be ready to provide answers that will facilitate its effective application among the MSs even in the face of mass influx of asylum seekers.

1.7 Conclusion

This chapter examined the efforts made by the European nations in tackling the large-scale movement of asylum seekers within the continent in a historical perspective. It described the development of the European refugee regime over the years, and looked at the relief efforts that were carried out by European governments and other charitable organisations that helped the refugees, beginning with WWI. It explained how the asylum policies were built upon after the wars (WWII, the Hungarian Revolution of 1956, and the Yugoslav wars of the 1990s). It revealed how the arrival of Syrian refugees in 2015 exposed the weaknesses of the current EU asylum system,

and pointed out the hostility of some MSs towards the Syrian refugees. This chapter also outlined the various roles of relevant legal instruments concerning the EU asylum regime. It reviewed the relevance of the ECHR, the Charter, gave an overview of the 1951 RC and its 1967 protocol, and briefly explained the CEAS. It examined the application of the Dublin system over the years.

Chapter Two

Conceptual Framework

Some of the countries we passed through after we left Greece treated asylum seekers badly... UK and France are not doing enough to help, but Germany, Austria and Sweden are trying, given the number of refugees they have allowed into their countries since 2015.[21]

2.1 Introduction

This chapter focuses on the conceptual and theoretical framework of the thesis. It conceptualises mass influx as a phenomenon and examines possible mechanisms that could adequately manage future influxes within the Union. It examines a whole range of available mechanisms that could have been adequately applied in the face of the 2015 refugee crisis. It reviews Temporary Protection Directive (TPD) and concludes that it was not fit for purpose. It also reveals how the TPD has been idle since inception. Thus, TPD failed as a legal instrument to effectively manage mass influx of asylum seekers within the Union. Similarly, despite its acceptance and regular usage in the developing countries, *prima facie* is arguably unpopular within the EU mainly because of its group status determination approach. In the light of the above, the MSs are currently left with the Dublin system to effectively manage future influxes. Despite its failure to adequately manage the 2015 refugee crisis, a reformed Dublin system remains a viable option for future influxes. It reviews the criticisms of the Dublin system and further reviews relevant jurisprudence concerning the supranational courts' rulings on the Dublin system.

2.2 Conceptual Framework

Mass influx of asylum seekers has been a major issue as far back as the WWI era. It has however been characterised by the flows mainly from one developing country to another and in some cases a low percentage of the asylum seekers find their way to the developed countries. This is evident with the arrival of a large number of Syrian refugees to Greece in 2015, the majority of whom were in the neighbouring countries of Lebanon, Jordan, Turkey and even North Africa as explained in chapter one.

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[21] Excerpt from the interview conducted at Harrow Road, London, UK on April 27, 2017.

The concept of mass influx can be described as a "considerable number of persons arriving over an international border; a rapid rate of arrival; inadequate absorption or response capacity in host states, particularly during the emergency phase; and individual asylum procedures, where they exist, are unable to deal with the assessment of such large numbers" (Edwards, 2012:3). Mass influx can also be seen "from a purely demographic, sociological or even historic perspective, focusing in particular on the size/volume of the movement of displaced persons and their arrival on a given territory". The phrase mass influx has appeared more in the relevant documents of the UNHCR over the years, and it was first addressed by its 32nd session of its Executive Committee of 1981 (Edwards, 2012:2). The UNHCR also explained that mass influx of asylum seekers cannot be easily defined in numerical terms because some inflows of asylum seekers can be contained by states with financial resources but the same numbers could become a major problem to others with few resources or capacity to host them (Edwards, 2012:11).

European nations had also witnessed such influxes within the continent in the past, as explained in chapter one. Nevertheless, from the Middle East to Africa, from Asia to Latin America, mass influx or large-scale movement of asylum seekers has become a regular occurrence. Mass influx has also become a regular catchphrase of asylum discourse, arguably made more popular by the 2015 Syrian refugee crisis. Notwithstanding the terminology, the phrase mass influx itself is not present in the 1951 RC, its 1967 protocol or even the 1969 OAU Convention on refugees.

Managing the mass influx of asylum seekers has always been a huge issue across the globe, as nations always struggle to effectively cope in such a situation. It is often problematic even when there are agreed mechanisms on ground, let alone when mechanisms to tackle such an influx are non-existent. The chaotic scenes that occurred across the Union as a result of the refugee crisis in 2015 will not be forgotten easily. The disembarkation of asylum seekers on Greek Islands, "the muddy trails across the Western Balkans", the overcrowded trains in Budapest, Vienna, and Germany are clear examples of woeful and ineffective response of the EU to the Syrian refugee crisis (Collett and Coz, 2018:6).

Notably, Germany, Austria, and Sweden were the primary destinations of asylum seekers at the peak of the crisis in 2015 (Hassel and Wagner, 2016:62). The MSs were obviously caught unaware by the sudden arrival of large numbers of asylum seekers. The response of the MSs thereafter differ, as some of them were readily open to help, while some MSs were against admitting the asylum seekers. Some of the MSs increased security at the borders, while some applied discretionary clause, Art 17(1) to admit the asylum seekers into their territories (Hassel and Wagner, 2016:61).

In tackling the mass influx of asylum seekers in 2015, the EU authorities and the MSs failed to effectively apply the existing mechanisms. For instance, the EU authorities failed to activate the TPD, the idea of applying *prima facie* was not brought up, and the *status quo* of the Dublin system also failed to adequately manage the refugee crisis because it was not designed to do so. It is essential therefore to critically assess the response of the EU to the 2015 Syrian refugee crisis in line with the existing mechanisms and in a bid to discover better ways by which similar influxes can be effectively managed in future. Hence, the next section reviews the temporary protection arrangement, with special focus on TPD and the inability of the EU authorities to activate TPD even in the face of the 2015 refugee crisis. It examines the *prima facie* approach to managing refugee crisis, and reviews the ineffectiveness of the Dublin system in the face of 2015 refugee crisis.

2.3 Temporary Protection

There have been various debates in the form of consultations by stakeholders in the past as to the meaning and content of temporary protection. The first of its kind is dated back to 1981 with the UNHCR (Edwards, 2012:2). There were also other major consultations in 1997 and in 2001.[22] The view of UNHCR on the temporary protection approach in the face of a large-scale movement of asylum seekers is "best

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[22] The UNHCR organised a roundtable on temporary protection in July 2012. The aim of that roundtable was to "discuss the scope and meaning of temporary protection, and to examine what it is or should be, what it does or should guarantee, and in what situations it could apply" - Edwards, 2012:3.

conceptualised as a practical device for meeting urgent protection needs in situations of mass influx. Its value in ensuring protection from refoulement and basic minimum treatment in accordance with human rights without overburdening individual status determination procedures has been demonstrated" (Edwards, 2012:7).

Temporary protection is defined as a "protection of limited duration composed of admission to safety, protection against refoulement, respect for basic human rights and safe return (or another solution) when conditions permit to the country of origin". Some of the main features of temporary protection are limited duration or time limit as well as the reduction of rights that are usually accrued to Convention refugees, such rights are at best replaced with "basic levels of humanitarian assistance" (Edwards, 2012:8).

Touted regularly by the proponents as "an exceptional measure, pragmatic tool" that can be used to respond to large-scale movement of asylum seekers, however, critics see it as a failed instrument (Edwards, 2012:2). The approach has been in existence for decades as pointed out above. Irrespective of the long history of temporary protection as a concept of "international refugee law, its meaning and legal basis are far from well defined" (Edwards, 2012:2). Nevertheless, there is a consensus on what such an arrangement should look like beyond its legal basis. The UNHCR and ECRE agreed that temporary protection must be time bound, it must allow the asylum seekers to timely access the refugee determination process. The recipients of this status must have access to justice, family unity, identity documents, rights, employment and education; access to basic necessities like food, healthcare and shelter, but reality differs (Kerwin, 2014:47-48).

For the purpose of this study, the temporary protection arrangement shall be examined at EU level where the concept is known as the Temporary Protection Directive (TPD). It is also one of the initiatives that the policy makers believe could help in managing large-scale movement of asylum seekers within the Union. However, years after its adoption within the Union, TPD has not been activated or triggered by the EU authorities even in the face of 2015 mass influx of asylum seekers.

The idea of TPD was first touted in the nineties mainly to address a mass influx of asylum seekers that were fleeing the Yugoslav wars. The general practice across Europe at that time in managing such crises was to provide temporary protection status to the affected individuals but not on the level being proposed by TPD (Edwards, 2012: 4). Nonetheless, there were disparities in the administration and management of the implementation of temporary protection status among the MSs. The uncoordinated approach of the usual temporary protection arrangement led to the production of "undesired effects" such as "large-scale discrepancies between the numbers of people seeking refuge in different Member States". There was also an increase in the number of secondary movement of people across the nations (Edwards, 2012: 4). While the asylum seekers arrived in large numbers and moved through the EU's borders, some MSs were asking for measures that could stop the flows and others were throwing accusations at each other (Edwards, 2012: 5; Grigonis 2016:93).

The need to come up with a better approach in managing a uniform approach of asylum system among the MSs led to the adoption of a "Council Resolution in 1995 and a Council Decision in 1996" and the Commission also proposed a harmonised approach to the asylum system, "a Joint Action to harmonise temporary protection status" across the MSs in 1997 (Edwards, 2012:5). Nevertheless, no agreement was found among the MSs on how the proposal on a harmonised temporary protection status should be implemented. The Kosovo refugee crisis, with its large influx of asylum seekers within the European continent further revealed that the mechanisms on the ground fell short to effectively manage such a situation. The response of the MSs was not impressive and this led to accusations and counter-accusations among the MSs as mentioned earlier. It was uncoordinated and there was a belief that the asylum seekers were unevenly distributed or at best the number of applications in some of the MSs were a lot higher than others. This is partly because of their geographical locations which arguably shielded some MSs from responsibilities while placing huge burdens on others, especially the MSs neighbouring Kosovo (Edwards, 2012:7). Even the voluntary quota scheme adopted to manage the distribution of the asylum seekers

during the Kosovo crisis across the MSs did not effectively achieve its aim, as some of the MSs refused to participate (Edwards, 2012:7).

In order to put to bed the discrepancies engendered by these accusations relating to the uneven distribution of asylum seekers, the Amsterdam Treaty was introduced to harmonise the temporary protection status among the MSs and reduce the cases of secondary movement of asylum seekers. The introduction of the Amsterdam Treaty was in line with the goal to establish CEAS as mentioned in chapter two through 1999 Tampere Conclusions. TPD was "proposed to provide for a structured framework to help Member States act in a uniform, balanced and effective way, based on the principle of solidarity, with mass influx of displaced persons" (Edwards, 2012:5).

TPD is considered to be the first legislative instrument in the field of asylum and it is seen as a 'tool' in the operation of CEAS that was designed to enable its smooth operation in the face of large-scale movement of asylum seekers (Edwards, 2012: 8). TPD (2001/55/EC) has 34 articles and 9 chapters, while its Art 1 spells out the purpose of its establishment, Art 2 (a) of the TPD defines temporary protection:

> as a procedure of exceptional character to provide, in the event of mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection (EC 2016:15).

Its Art 2(b) also defines mass influx as "the arrival in the community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the community was spontaneous or aided, for example through an evacuation programme" (EC 2016:15).

Art 4 focuses on the duration of the temporary protection, while Art 5 deals with the determination of the existence of mass influx of displaced persons by Council through

a proposal from the Commission (Genc and Oner, 2018:6). Its two-fold aims were the establishment of "minimum standards for giving temporary protection in the event of mass influx of displaced persons from third countries" and the promotion of "balance of effort between Member States in receiving and bearing consequences of receiving such persons" (Edwards, 2012:8). Articles 8-16 centre on the obligations of states towards the beneficiaries of temporary protection. All MSs had already transposed TPD as of 2007, except Denmark that was not bound to do so under Recital 26 of TPD (Edwards, 2012:8). Ireland was also not bound to transpose TPD at first but it requested its application in 2003, however, it is yet to transpose the Directive.

Interestingly, the Directive has not been triggered or invoked since its inception, as mentioned earlier. The Directive was not activated even in the face of the increase in the number of asylum applications that were received from Tunisia asylum seekers during the Arab Spring of 2011. It is important to note that the inflows of asylum seekers from Tunisia to Malta and Italy during the Arab Spring led Malta to request that the TPD be activated, but this was to no avail (Edwards, 2012:13; Joannin, 2017:4). Its non-activation may also be linked to the complex legal and political processes of doing so as the activation requires "complex legal evaluations and a long, strenuous political process to reach a compromise between the Member States" (Genc and Oner, 2018:8). In response to the efforts of Malta to activate TPD, comments from the Justice and Home Affairs Council meeting in April 2011 through the then Commissioner Malmstrom was that it was still premature to activate TPD and that other options must first be employed (EC 2016:13; Notarbartolo di Sciara, 2015: no p).

Failure of the EU to invoke TPD so far could be linked to certain factors that were outlined in the report carried out by the European Commission in 2016. First, there seems to be lack of clear vision as to acceptable indicators on what constitutes mass influx, a bureaucratic strategic that resulted in strict interpretation underpinning the non-application of the Directive. For instance, one of the reasons the TPD was not activated during the Kosovo crisis is arguably because the affected MSs believe that the number of displaced people seeking refuge in Europe during the crisis was not large enough. One of the problems of implementing temporary protection therefore is

that there is no agreed minimum number in measuring what constitutes a mass influx of asylum seekers among the MSs. Second, the procedures involved in triggering TPD seem to be tedious, especially when considering the politics involved. It is usually a political decision from the top to approve such a request. The position of the Commission on this is seen as monopolistic concerning the issuance of a proposal to activate TPD. There is also a perception that activation of TPD leaves little detail on its requests as well as the procedures that lead to the examination of the activation. The third factor boils down to the low level of solidarity principle, either financial or physical, with unclear rules for distribution (EC 2016:14).

The above outlined factors concerning the non-activation of TPD is not by any means exhaustive, but based on these factors and the failure of the MSs to trigger TPD in the face of 2015 mass influx of asylum seekers, it is obvious that TPD is not fit for purpose. The reality is that its non-activation goes beyond the size of the people seeking protection at a particular point in time within the Union. It is surprising that TPD is yet to be activated even though the temporary mechanism, as "conceived and laid down in the Directive 2001/55/EC" was to specifically and adequately manage mass influx of asylum seekers within the Union (EC 201:16).

There is also a notion that some states, even outside the Union, may see temporary protection as a way of deviation from granting asylum to people that deserve it in line with the 1951 RC. There has always been fear from stakeholders that states would use temporary protection as an option to processing the claims of asylum seekers in line with the provisions of 1951 RC (Kerwin, 2014:46). Nonetheless, such states must be reminded that granting temporary protection should not be an excuse to ignore the provisions of the 1951 RC. In fact, there should not be any need for the implementation of temporary protection that arguably suspends the provisions of the 1951 RC. If a state could continue to cope in processing asylum claims of the affected individuals, then such state should carry on with it. Even Art 3(1) of TPD guides against using temporary protection to "prejudge" refugee status determination. Scholars are also sceptical about the implementation or application of temporary

protection, as this could be used as a direct option to 1951 RC and it could affect integration in the long run (Mansouri et al., 2009:135).

Temporary protection must not be used as a substitute to following the provisions of the 1951 RC. States must be reminded that stakeholders are well-aware that the beneficiaries of such protection do not have as many rights as the Convention refugees, which could become problematic in the long run. Evidently, an analysis of the application of temporary protection in some of the MSs, especially Germany and Denmark between 1999-2005 supports this notion. It reveals that the beneficiaries of the temporary protection "experienced social and financial difficulties; separation from family members; and a heightened sense of uncertainty and political exclusion" (Kerwin, 2014: 47). Additionally, NGOs in the aforementioned MSs complained of the difficulties faced in "meeting the needs" of the recipients of temporary protection status in terms of support services that are readily available to Convention refugees but not to the beneficiaries of temporary protection (Mansouri et al., 2009: 135).

The TPD may work for individuals that do not qualify as refugees under the 1951 RC, but it is not the best approach to helping individuals that are forced to flee persecution in their country of origin. The TPD at best remains temporary and the last thing people in need of international protection want is endless asylum procedures. Asylum seekers are individuals whose requests for refuge are yet to be processed. They flee their homes against their will because they fear for their lives (Kibreab, 2003:57). Asylum seekers are forced to flee persecution in their country of origin and formally applied for asylum in another country, but have not yet been legally recognised as refugees, because they are still waiting for decision to be made on their asylum applications. It is important to note that to be legally recognised as refugee, asylum seeker must meet the criteria set out in Art 1A of the 1951 RC, as explained in chapter one. Asylum seekers should be given a direct pathway to status determination in line with the 1951 RC and not through a temporary protection that arguably reduces their basic rights as Convention refugees. Asylum seekers must not be made to go through another form of temporary protection arrangement but be offered a clear pathway to the full international protection they deserve.

Furthermore, stakeholders such as UNHCR believe that international protection should have firm legal foundations, however, temporary protection arrangements are usually at the discretion of the executive and do not necessarily carry legal obligations which renders such arrangements to be *ad hoc* in nature (Kerwin, 2014: 47). The failure of the TPD may not be because of its legality but of what purpose it would serve if the MSs could find a way around it and could process the asylum claims of the affected individuals in line with the 1951 provision without further delays. 1951 RC is clear about the criteria of granting protection and most importantly that these criteria are to be assessed on an individual basis. Therefore, asylum claims must be treated on a case to case basis that will address the individual needs of the people in need of international protection (Seltzer, 1992:779). Other people that do not meet the criteria but have fears of being sent back to their places of habitual residence must be protected through other means (Martin et al., 1997:545). The failure of the TPD within the Union means that the focus of MSs is on giving humanitarian status to this category of people that fall outside the criteria of who a refugee is under the 1951 RC.

What the TPD does is to inform its MSs of the compatibility of the protection instrument to their international obligations which include the 1951 RC and the Treaty Establishing the European Community (Edwards, 2012:8). Recital 10 of the TPD also instructs that the temporary protection "must not prejudge recognition of refugee status under the Geneva Convention" as pointed out above. However, the reality is that the TPD was designed to suspend to a certain extent "not only the procedures for the determination of refugee status but also the Convention obligations to refugees" (Edwards, 2012:8). Whatever the case may be, "it is inadequate argument to permit Convention states from unilaterally suspending Convention rights to Convention refugees in a mass influx situation" (Edwards, 2012:3).

Furthermore, the non-activation of the TPD in the face of mass influx of asylum seekers is flawed in many ways. The *status quo* TPD is not the best mechanism to effectively manage similar influxes in the future. Other available options could be through a *prima facie* approach or through a reformed Dublin system. A reformed

Dublin system that takes into consideration the incorporation of the solidarity clause alongside other meaningful initiatives such as the refugee relocation scheme could provide needed solutions.

2.4 *Prima Facie* Status Determination of Refugees

Prima facie status determination of refugees unlike the temporary protection "does not denote a subsidiary category of refugee but is rather an evidentiary shortcut to recognition as a refugee" (Edwards, 2012:12). Consequently, the refugees under the *prima facie* status benefit from the rights attached to Convention refugees. It is important to note that a great number of the refugees around the world today, especially in the developing countries attained their refugee status through the *prima facie* approach (Albert, 2010:2). Despite its widespread usage around the world, its adoption remains relatively low within the Union, especially since the introduction of the Dublin system in the 1990s.

Prima facie is seen as one of the tested ways by which the mass influx of asylum seekers can be properly managed. The *Prima facie* approach applies a group determination of refugees by which a state gives refugee status to individuals affected in a circumstance where the reason for flight in the country of origin is already known and the refugees would have qualified even on one-to-one basis (Rutinwa, 2002:1). *Prima facie* has been used in virtually all regions around the world. It was used during the Hungarian refugee crisis in the 1950s, it was used in Africa before and after the 1969 OAU Convention, and it was also used in Asia after the fall of Saigon, precisely for the Vietnam refugees (Rutinwa, 2002:2). It is important to note that the top five refugee producing countries today are in developing countries in the Middle East, Asia, and Africa where *prima facie* is often used (Huber, 2018:1 and Eduardo, 1991:205).

Notwithstanding its popularity across the globe, its legal foundation remains questionable. This has impacted the beneficiaries' legal status as genuine Convention refugees especially in terms of what comes next with their status as a *prima facie* refugee. Ordinarily, status determination of refugees is meant to be determined

individually under the 1951 RC. Although, the 1951 RC is not against group determination on *prima facie* approach in tackling mass influx of asylum seekers that are in need of protection but such an approach comes with its challenges. The admittance of a large number of asylum seekers in groups often places a huge burden and responsibility on the receiving states, which are usually the neighbouring countries.

Therefore, critics believe that to a certain extent this legal limbo places the recipients of the *prima facie* approach into complex and "insecure" situations (Dryden-Peterson and Hovil, 2003:8). It also puts them in a "precarious" situation (Mecagni 2005: 48). This is so because a good number of the recipients do not even understand what it means to be a *prima facie* refugee (Kanere, 2009:2). The proponents however see the implementation of the *prima facie* approach in the face of mass influx of asylum seekers differently. One of the proponents explained that its meaning is not difficult to understand and that the critics are not being sincere about the true nature of what *prima facie* means. "The definition to which logically reference should be made is rarely formulated: it seems to be a suppressed, tacitly held, premise of the syllogistic reasoning involved" (Zieck, 2008:255).

Prima facie debate is seen as neither here nor there, a "mixed understanding" that greatly depends on how a scholar sees it (Van Beek, 2001:15). It is therefore important to understand the legal foundation of the *prima facie* approach to refugees for certain reasons. Some of these reasons are outlined as the clarification of rights that are afforded the refugees, the recipients of *prima facie*, a clear understanding of the procedures involved in such circumstances that warrant *prima facie*. This makes its implementation legally binding and helps to clarify the "limits and quality" of *prima facie* status determination (Albert, 2010:8). The question is how you determine a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" as spelt out in Art 1A of the 1951 RC for a group recognition of refugees. The solution, arguably, would be to lower the standard of evidence of proof when implementing *prima facie* status determination. In other forms of the status determination process of refugees, using

the 1951 RC as the yardstick, the decision-makers adopt objective information as a burden of proof to determine their asylum decision (Noll, 2005: 144). In the *prima facie* approach, the decision makers rely more on such information to be sure they are doing the right thing by giving refuge to only people that are deserving (Durieux, 2009:31).

It is imperative to point out whether the status determination approach in *prima facie* relies on what a group of people say or relies on the persecution story of one of them and uses it as an example to determine the status of others in the group or to assess the claims of the asylum seekers individually in order to make a decision on their claims. This is important because even the 1951 RC refers to "a person" when setting out the refugee criteria which means that such a refugee determination process focuses more on the individuality of the beneficiaries in the decision making process (Cuellar, 2006:19; Schrieier, 2008:13). The key element of an individualised refugee determination process must be seen as when each person affected had a form of interaction with the appropriate authority in charge of the decision making process and the status determination decision was based on the information supplied whether verbally or otherwise. The group determination could also occur when a more detailed account of an individual is used to grant refugee status to a few other asylum seekers that are grouped together because of their common background. Such common information includes but is not limited to the same country of origin, language, the general knowledge that is objectively in the public domain that these people are being persecuted, especially from their own government. There is also an argument that the basic information needed to group the asylum seekers can be obtained at the point of registration (Rutinwa, 2002:10).

Scholars are silent as to what group determination means, and that they "tend to merely juxtapose it with individual refugee determination status, the essential elements of which, in turn, are not explained" (Albert, 2010: 10). Whichever way one looks at it, be it individual status determination or *prima facie* status determination, it is the refugee qualities of the individual that is determined rather than the composition of the group under the *prima facie* approach (Albert, 2010:10; Durieux

and Hurwitz, 2005:118). Nonetheless, status determination under *prima facie* should be seen as a group determination approach (Rutinwa, 2002:1; Kanere, 2009:2).

Prima facie is a known and acceptable approach to tackling a mass influx of asylum seekers, especially in the developing countries as stated earlier. Its legal foundation can also be found in 1951 RC, OAU 1969 Convention, Cartagena Declaration of 1984 and some relevant legal instruments (Albert 2010: 18-24). In addition, the UNHCR's Handbook on Procedures and Criteria for Determining Refugees Status under 1951 Convention and 1967 Protocol relating to the Status of Refugees arguably gives legal backing to the concept of *prima facie*. The Handbook remained unchanged for its 1988 and 1992 editions. Its paragraph 44 states that:

> while refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been to "group determination" of refugee status, whereby each member of the group is regarded *prima facie*.[23]

Irrespective of whether this approach is compatible with existing asylum systems within the Union, there are benefits with the *prima facie* approach, and these benefits are for both states and the refugees. It is cost effective for the host state and it also helps the refugees to access legal documents required on time. By so doing the refugees have access to the benefits attached to the refugee status such as health care, shelter, food and other privileges that are available to Convention refugees (Durieux, 2009:1; Kagan, 2003:40-43; Kanere, 2009:1).

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[23] Handbook on Procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol – 1992., available at https://digitallibrary.un.org/record/239277?ln=en

Prima facie has been used over the years across the world as stated earlier. For instance, a *prima facie* approach was adopted in Kenya to admit the asylum seekers from Sudan and Somalia. In Kenya, the decision makers employed an individualised approach to grant the *prima facie* refugee status to the affected individual asylum seekers (Kegan, 2003:13; Odhiambo-Abuya, 2004: 194 and 198). In justifying the efforts put into the status determination under the *prima facie* approach, Rutinwa argued that it takes a lot of time to obtain the information needed from individual asylum seekers that are being considered as *prima facie* refugees. Tanzania's example also revealed how detailed and "lengthy" it is to determine refugee status under the *prima facie* approach (Rutinwa, 2002:9-10). In Tanzania, the asylum seekers were screened by the Eligibility Committee or UNHCR officials through an interview that lasted for about 45 minutes for each person, asking them the basic information about where they came from, bio data, and the reasons they left their country of origin (O'Neil et al., 2000:163).

Prima facie approach is rarely used in the EU, especially since the introduction of the Dublin Convention in 1990. It was hardly touted as one of the options to managing the 2015 Syrian refugee crisis, which shows that it is not considered as the best approach to adequately manage such influxes within the Union. Understandably, this approach is rather used when a host country asylum system lacks capacity to deal with the situation on an individual basis any longer (Okoth-Obbo, 2001: 119-120; Durieux, 2009:4). When a host country lacks the apparatus to adequately conduct determination status for fewer numbers of asylum seekers, then the arrival of hundreds of asylum seekers could justify the need for *prima facie* approach (Kagan, 2006:18). For instance, the application of the *prima facie* approach was applied to the arrival of about 4,500 Sudanese that arrived in Kenya in 2000. However, about twice the number of Sudanese also arrived in Egypt at the same period and Egypt did not use *prima facie* approach (Kagan, 2003:13). There is no gainsaying that the phrase *prima facie* is synonymous with mass influx of asylum seekers, the bottom line remains that it is mainly used when a host nation cannot cope with such influx of

asylum seekers with the usual status determination on an individual basis (Odhiambo-Abuya, 2007:87; Kagan, 2006:18).

The arrival of a large number of asylum seekers alone is not a justification to trigger the *prima facie* approach. This could be one of the reasons the EU authorities did not apply a *prima facie* approach in tackling the 2015 refugee crisis. The other reason is arguably because of the belief that the solutions to such a crisis could be found within the existing mechanisms such as the TPD or the Dublin system.

However, the TPD was not activated and the *status quo* of the Dublin system remains inadequate in tackling such refugee crises. Another possible reason the *prima facie* was not used could be the incompatible nature of group status determination to the existing individualised status determination among the MSs. The Dublin system is already in operation and this determines the first state responsible, with an emphasis on the individual status determination process. Although, individual MSs manage asylum issues domestically, it is still important to point out that the MSs are bound to implement Dublin system even when faced with large-scale movement of asylum seekers. With the Dublin system such influx of asylum seekers automatically becomes the responsibility of the entire MSs rather than the sole responsibility of the affected frontline state that could have determined whether *prima facie* should be applied at that point in time or not.

2.5 The Dublin system: A Preferred Instrument?

The current Dublin rules, with its shortcomings as pointed out in chapter one, and its failure to effectively manage the 2015 refugee crisis, obviously require a reformation in order to remain relevant in future. The large-scale movement of asylum seekers in 2015 undoubtedly exposed the weakness of the EU asylum system. The failure of the EU authorities to activate TPD and the inability of the Dublin III Regulation to effectively manage the 2015 refugee crisis therefore left the MSs with little or no other feasible ways in which such crisis could have been adequately tackled but through an improved Dublin system.

Fewer people will remember that the Dublin system has been around for about three decades, and its original aim was to prevent the refugee–in-orbit problem, that is, when asylum seekers failed to have a MS that is responsible for the processing of their claims. It was also aimed at solving the problem of asylum-shopping, which is when asylum seekers submit their applications in several MSs with the hope of increasing their "chances of success" (Georges and Wolleghem, 2018:1). The implementation of the Dublin system therefore was a huge achievement for the concerned European nations back then. There was no common asylum system among them prior to this time, although the Schengen Convention had only been put in place a few years earlier (Georges and Wolleghem, 2018:1).

In order to improve upon the Dublin system, there was Dublin II which was aimed at improving upon the Dublin Convention as explained in chapter one but it was not fit for purpose and this led to a reformation that brought about Dublin III. However, scholars argued that even the current Dublin III is not ambitious enough to foresee a need for a reform that would have included mechanisms that would adequately address large-scale movement of asylum seekers within the Union (Georges and Wolleghem, 2018:2). The third recast of the Dublin system has failed to implement the principle of solidarity in the management of frontline borders as provided by Art 80 of TFEU (Georges and Wolleghem, 2018:17). Notably, prior to the Syrian refugee crisis of 2015, there was Arab Spring of 2011 that led to a surge in Italy, Malta, and Spain. Nonetheless, from that time up until the 2015 refugee crisis there was no urgency for modification to the existing mechanisms that could have effectively managed mass influx of asylum seekers. Understandably, the belief that the existence of a legal document such as the Dublin system whereby responsibility for asylum determination can be assigned among the MSs made it difficult to come up with new options. Besides, "the Dublin principles were difficult to modify because of the vested interests of the majority of states whom they relieved from the burden of admitting asylum seekers who had already passed through another member state" (Baubock, 2017:11).

Critics see the solution of a failed legal instrument such as the Dublin III Regulation differently. Critics of the Dublin system argued that the system failed in managing the 2015 crisis, therefore, it is a threat to the Union, and must be repealed (Maani, 2018:97). This argument is based on the premise that there has to be "equitable distribution of burden of hosting refugees" among the MSs even if the crisis is not directly affecting some of the MSs due to geographical location. Critics further argued that the Dublin system should be repealed because the MSs are no longer fulfilling their obligations under the Dublin system. There is also an accusation that the frontline states of Italy and Greece allow the asylum seekers to move on indiscriminately to their preferred destinations. The other reason for such criticism is that when the asylum seekers are allowed to move this way to places like Germany, Austria, and Sweden, to mention but a few, the affected MSs may be forced to bring back border controls and this will not augur well with the Schengen Agreement (Maani, 2018:100-101).

On the contrary, repealing the entire Dublin system without a concrete alternative would be counter-productive as pointed out in chapter two. The way forward therefore is to focus on how to make it better in order to be able to effectively manage similar influxes in future. Critics also argued that instead of "increasing efficiency and mitigating the refugee crisis, the Dublin Regulation appears to be unfairly burdening smaller countries" (Maani, 2018:98).

Critics further opined that the MSs with more resources to admit refugees refused to do so and left the burden to the smaller MSs especially the frontline states (Maani, 2018:98). This assertion may not be totally true as the statistical analysis available does not support such argument as pointed out in the previous chapter. In pointing out the weaknesses and shortcomings of CEAS, especially its failure to adequately manage the 2015 refugee crisis, it must be noted that there are outlined gaps that militated against its efficiency in the face of large-scale influx of asylum seekers. Nine gaps were identified and two of them directly concerned the Dublin system. One of the gaps is that the Dublin system does not ensure solidarity and fair sharing of responsibility among MSs. The other identified gap is that the mechanism to

determine the MS responsible for the examination of asylum claims does not work (Ballegooji and Navarra, 2018:19).

However, there is a possible provision that will address the first identified gap, at least to certain extent, in the assessed proposed Dublin IV that is now in stalemate. The notion that the second identified gap does not work at all is debatable. No doubt, there is work to be done concerning the efficiency of the Dublin system, but it is not all that gloomy for the Regulation. For instance, the interview conducted with selected Syrian refugees in four MSs and analysed in chapter six revealed that there is uniformity in processing the asylum applications in line with the Dublin system by the MSs even in the face of mass influx of asylum seekers. A reformed Dublin system therefore will help to tackle future influxes.

Georges and Wolleghem also argued that if Dublin IV were to be operational during the 2015 refugee crisis, its proper implementation would have made a huge difference (Georges and Wolleghem, 2018:1). Based on this assertion, the proposed Dublin IV is a commendable effort in response to the Syrian refugee crisis, notwithstanding that it is now in stalemate, especially the introduction of an automatic corrective mechanism that leans towards possible solidarity among the MSs. The failure of the Commission's proposal intended to bring about an agreed quota system that will address such inflows of asylum seekers due to the opposition by some MSs must be put into consideration in deciding whether to make the corrective mechanism compulsory or voluntary in the spirit of solidarity. A reformed Dublin system that put into consideration some meaningful initiatives the EU authorities had come up with as part of the efforts to tackle refugee crises could provide needed solutions that would effectively manage similar influxes in future.

All in all, it is obvious that some of the existing mechanisms such as TPD cannot be relied upon to meaningfully manage the mass influx of asylum seekers within the Union. TPD has not been tested since its inception as explained earlier and this shows that it is not fit for purpose. Besides, an attempt by this study to explore the possibility of applying the *prima facie* approach to managing similar influxes within

the Union seems to be incompatible with the Dublin system. There is a likelihood that the implementation of the *prima facie* approach alongside the Dublin system could cause some frictions; bearing in mind that the *prima facie* focuses on a group status determination approach while the Dublin system is more of an individual approach to managing asylum. It is also unlikely that the *prima facie* alone could effectively manage similar influxes within the Union in future. The way forward is to make the CEAS work in the face of mass influx of asylum seekers.

2.6 Criticisms of the Dublin System

There have been a lot of criticisms of the Dublin system. The criticisms cover areas such as human rights violation (ill treatment asylum seekers), and costliness. It also touches its failure to effectively tackle the 2015 large-scale movement of asylum seekers within the Union. The adoption of Dublin II in early 2003 (EC 2016:5) came with high hope because the Dublin Convention that existed before then was ineffective in tackling secondary movement of asylum seekers. There were cases of "asylum shopping", multiple asylum claims encouraged by secondary movement within the EU (Fratzke, 2015: no p). Nevertheless, Dublin II was as ineffective as the Dublin Convention, and Dublin III is yet to provide the needed solutions to the EU migration problem.

One of the criticisms of the Dublin system is the demand for higher evidence thresholds for the family unity criteria, higher than an entry criterion and the failure to accept the information on family members at the later stage of the Dublin procedure is seen as another minus for the Dublin system (Mouzourakis, 2014:12-13). Critics also believe that Dublin system is ineffective and costly to maintain, and the cost of running Dublin system is contributing to its shortcomings especially when the money spent cannot be justified. For instance, in 2013, Sweden transferred 289 to Germany and Germany transferred 281 to Sweden, leaving out a small net balance of eight extra transfers (Albin, 2015:30). This is not encouraging in terms of human capital and other resources put into the entire process. It is seen as costly because by determining the MS responsible to process asylum claims the MS initiating request would have to take care of the situation pending the time the transfer process is

concluded. This includes accommodation, feeding, and other basics human needs. The irony of the situation is that even the provision of shelter and other basic human needs may not prevent some of the affected asylum seekers from embarking on secondary movement, especially if they have family ties elsewhere within the EU.

The Dublin system has failed to prevent secondary movement and "asylum shopping", and even the annual transfer rate of asylum seekers under the Dublin system is somewhat low (Williams, 2015:9). In fact, only 12% of the number of transfers under the Dublin system was accepted from 2008 to 2012, and the number of completed transfers is placed at 3% within the period (EASO 2013:30). Criticism of the ineffectiveness of the Dublin system also came from within, as the Commission argued that "when the Dublin system was designed, Europe was at a different stage of cooperation in the field of asylum. The inflows it was facing were of a different nature and scale" (EU COM 2015:13). Based on the submission, it appears that the current Dublin Regulation is no longer fit for the contemporary asylum system and should be improved upon. The Dublin system operates on the notion that the asylum systems of all the MSs are of the same standard, by which the asylum seekers who are granted refugee status in any of the MSs can benefit in the same manner. However, in practice, protection levels vary from one MS to another (UNHCR 2016:1). Similarly, the European Parliament in its evaluation of the Dublin system in 2008 pointed out that the Dublin system will continue to be unfair both to asylum seekers and to certain MSs. This opinion is rooted in the fact that the system appears to be shielding some MSs, while mounting pressure on others, especially the EU frontline states (UNHCR 2016:1). Furthermore, examples of human rights violations abound since the inception of the Dublin system. There are reported cases of ill-treatment of asylum seekers in some of the EU external border states. In both Bulgaria and Hungary for instance, there are various complaints about the ill treatment of asylum seekers on arrival by the law enforcement officers, the police (Andrew, 2016:2). False information is being spread to portray asylum seekers in bad light, and it seems that some of the police officers have resolved to make life harder for the asylum seekers at the ports of entry. The negative impact of the anti-migrant rhetoric is undoubtedly

reflecting on the actions of some police officers at the frontiers. It is now one of the many criticisms of the Dublin system, especially Dublin transfer. This in turn creates negative experience in the psyche of the affected asylum seekers. Consequently, when they are asked to be transferred back to places like Hungary and Bulgaria under the Dublin system, the asylum seekers try to resist such transfer by citing deficiencies of the asylum system in those MSs. In enforcing the Dublin system, the MSs must prioritise treating the asylum seekers with dignity. Failure to do so would amount to a clear violation of relevant international law and treaties. A situation whereby asylum seekers are sent back to a MS that is reportedly treating them badly while coming up with more restrictive measures that make life difficult for people in need of international protection is not acceptable.

No doubt, some of the EU external border states are facing undue pressure when forced to manage the arrival of large-scale movement of asylum seekers. In addition, some of the asylum seekers that travelled on to other MSs often get transferred back to the frontline state where they originally came through in line with the Dublin transfer, especially if they were registered and fingerprinted on arrival. Some frontline states see it as unfair that the geographical location of some MSs shields them away from such pressure. Hence, some of the frontline states create seemingly unfriendly atmosphere that discourages a would-be asylum seeker from coming back, especially through Dublin transfer. In turn, some of the asylum seekers often refuse such transfer to the perceived hostile MSs. In the light of the above, there are evidences of ill treatment of asylum seekers by the security personnel in some MSs, especially in Bulgaria.

The Dublin Regulation is not a solidarity instrument and this could be one of the reasons some of the MSs took a backseat in tackling the 2015 refugee crisis. Dublin system has also been criticised to be putting an unfair burden on the frontline states with about 90% of the take charge requests being sent to them annually (Giacomo and Christof, 2017:4). Treaty articles rely hugely on solidarity and responsibility sharing mainly in the area of asylum and migration, especially border control. This approach is based on Art 80 of the TFEU. The need for solidarity among the MSs is also evident

in the Tampere Conclusion, the 2004 Hague Programme, the 2008 European Pact on Immigration and Asylum, 2010 Stockholm Programme (Lang, 2013:8).

Art 4(3) of the Treaty on the European Union (TEU) highlights the need for States to "assist each other in carrying out tasks which flow from the Treaties" (Lang, 2013:8). Simply put, MSs ought to support one another whenever a MS experiences terror attacks or when a MS is struggling to cope with mass influx of asylum seekers. The inability of an individual MS to cope with such a surge requires other MSs to assist. It could also be in terms of a natural disaster occurring in one of the MSs that could be overwhelmingly unbearable, hence, the need to step in by other MSs and help out in the spirit of solidarity. This is in line with Art 222 of TFEU which obliges MSs to "act jointly in a spirit of solidarity if Member State is the object of a terrorist attack or the victim of a natural or man-made disaster". Interestingly, solidarity is applicable to both MSs and the EU institutions, but it is not an easy task to measure. The Treaty gives no clear guidance on what constitutes the concept of solidarity, as the threshold or benchmark to measure solidarity are not defined. Hence, the national interests of individual MS could be different from the interest of the EU institutions on certain issues. Nevertheless, responsibility sharing can be seen as one of the manifestations of solidarity by which MSs can willingly abide (Lang, 2013:9).

It is without a doubt that to effectively tackle the refugee crisis, there is a need for solidarity among the MSs. For instance, the arrival of millions of the Syrian refugees in 2015 put the EU frontline states under intense pressure, and the efficiency of the CEAS was questioned, as things became chaotic. It was the first major test of mass influx of that magnitude for the CEAS since its establishment. Greece, one of the EU frontline states was seriously caught up in the crisis to the extent that Alexis Tsipras, the former Prime Minister of Greece asked for assistance, and declared that "we are experiencing the biggest refugee crisis since the Second World War" (Smith, 2016:1). In addition, the European Commissioner for Home Affairs argued that, "there is no simple or single answer to the challenges posed by migration. And no single MS can effectively address migration issues alone. It is clear that we need this new, more European approach. We need collective courage to follow through on our

commitments" (EC 2015:1). Similarly, the United Nations High Commissioners for Refugees, Filippo Grandi opined that EU can deal with the refugee crisis "provided it acts in a spirit of solidarity and responsibility sharing", and the only way out is to work together to tackle the crisis (UNHCR 2016:1). Filippo Grandi also stated that "the participation of all Member States in a solution is critical to managing it effectively" and the responsibilities should not just be left to the frontline states of Italy and Greece alone (UNHCR 2016:1). It is pertinent to note that solidarity among the MSs or the EU institutions could take several forms, such as the financial assistance from the European Refugee Fund. It could be in kind, in terms of refugee relocation or resettlement scheme, and it could also be in form of joint processing of asylum seekers by which the EU institutions converge alongside government representatives at national level to attend to asylum claims of new arrivals (Lang, 2013:10). The establishment of hotspots in Greece and Italy has brought the latter to reality.

2.7 A Review of Selected Case Laws Concerning the Dublin system

The establishment of the Dublin system created great expectations from stakeholders on the protection of refugees, and people in need of international protection within the framework of international human rights law. Stakeholders were expectant of how the basic rights of the asylum seekers would be protected by the MSs, while operating the Dublin system. Arguably, the introduction of the Dublin Regulation was based on the premise that all MSs would operate on the same level of legal standards concerning asylum issues, but this assumption in practice is false. Reception conditions and the benefits of being a refugee in some of the MSs are different than in others. Even though the EU authorities advocate "an adequate standard of living for the applicants", the reality in some of the MSs differs. The benefits being received in terms of accommodation, access to free healthcare, and access to employment are not the same among MSs (Hodali and Prange, 2018: no p).

The founding fathers of the Dublin system were well aware of these disparities and they must have envisaged that complaints would arise at a certain point in time. It was not long after the introduction of the Dublin system that some of the MSs were

seen to be lagging behind concerning the provision of basic protection against human rights abuse (Dragan, 2017:87). Human rights violations occur at different stages of the asylum process, ranging from the arrival stage to when the asylum status has been granted, and beyond. Noticeably, literature revealed that some of the violations such as torture, degrading and inhuman treatment, unlawful detention, denial to seek legal remedy, and issues affecting family life are suffered at different stages. Consequently, some of the affected asylum seekers have been seeking legal redress in the courts of law. Asylum seekers and refugees have challenged and some are still challenging various alleged human rights abuses concerning the implementation of Dublin system in courts. There are also growing complaints of human rights violations, and the international human rights treaties in combination with the existing asylum law have helped the courts to adjudicate on these matters over the years (CoE 2019, no p). This section therefore reviews the role of the supranational courts through the rulings concerning the protection of the fundamental rights of asylum seekers in the application of the Dublin system. It reviews selected supranational courts' rulings on the alleged human rights violations under the Dublin system by some MSs.

An example of such a case is the ECtHR case of *MSS v Belgium and Greece* in which Belgium was held liable for breaching the ECHR by transferring an asylum seeker to Greece under the Dublin system. The judgment found that the Greek asylum system was operating below the minimum standards expected of the MSs at that time. Therefore, in the case of *M.S.S v Belgium and Greece*, the Court ruled that:

> it was in fact up to the Belgian authorities, faced with the situation described above, not merely to assume that the applicant would be treated in conformity with the Convention standards but, on the contrary, to first verify how the Greek authorities applied their legislation on asylum in practice. Had they done this, they would have seen that the risks the applicant faced were real and individual enough to fall within the scope of Article 3.[24]

This ruling was a major judgment that pointed out the inability of Belgium to spot the systemic deficiencies in the asylum system of Greece as well as its blind reliance on

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[24] ECtHR (2011). *M.S.S v. Belgium and Greece,* Appl. No. 30696/09

the Dublin systems false assumption of common minimum standards before requesting a transfer.

Less than a year after the landmark judgment in *M.S.S. v. Belgium and Greece*, the CJEU addressed a similar issue in the framework of the preliminary ruling procedure in the case of *N.S. v United Kingdom and ME v Ireland* case concerning the inappropriate Dublin transfer. In this case and within the framework of the preliminary reference mechanism, the CJEU ruled that:

> the Member States, including the national courts, may not transfer an asylum seeker to the Member State responsible within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.[25]

The ruling brought to light the need to address the systemic deficiencies among the MSs, even though arguably it took a step back from the strong wording on the same matter expressed by the ECtHR.

The *N.S. and M.E.* ruling pointed out that once there are substantial grounds for believing there are systemic deficiencies in a MS, the Dublin transfer to such MS must be put on hold to avoid human rights violations. Proceeding with the Dublin transfer, as seen in the past, could result in inhuman and degrading treatment, torture or other ways by which the fundamental rights of the asylum seekers and refugees can be abused.

After the CJEU judgment *in N.S. v the United Kingdom and ME v Ireland* as well as the ECtHR judgment in *M.S.S v Belgium and Greece*, MSs have been trying to avoid similar errors of not checking the possibility of systemic deficiencies at the receiving MS. In transferring asylum seekers under the Dublin system, one of the first things to be considered in the aftermath of these landmark rulings is whether the MS responsible

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[25] CJEU (2011). *N.S. v. United Kingdom and M.E. v. Ireland*. Appl. No. C-411-10 and C-493-10

has the capacity to host the affected asylum seekers. If the answer is in affirmative, then transfer can be initiated but if otherwise, the MS requesting the transfer needs to find a way around it, as long as the actions would not result in asylum seekers being sent to where their fundamental rights would be violated.

Thus, in the cases of *Bundesrepublik Deutschland v. Kaveh Puid* and *Shamso Abdullahi v. Bundesasylamt*, the CJEU applied the presumption of fundamental rights respect by the MS concerned. In *Bundesrepublik Deutschland v. Kaveh Puid*, the CJEU ruled that:

> where the Member States cannot be unaware that systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible in accordance with the criteria set out in Chapter III of Council Regulation…provide substantial grounds for believing that the asylum seeker concerned would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union.[26]

It is the responsibility of the MS initiating the transfer process to make sure that the asylum system of the MS responsible to process the claims is in good condition. Similarly, an asylum seeker has a valid argument when he or she can prove, during a pending Dublin transfer that the MS where he or she is being transferred to will violate his or her fundamental rights based on the systemic deficiencies in the asylum system of such country. Nonetheless, pleading systemic deficiencies does not automatically qualify such an asylum seeker to be exempted from a Dublin transfer. It must be proven that transferring an asylum seeker to such an MS would violate some of his or her fundamental rights, especially when it involves inhuman or degrading treatment.

For instance, the court ruled in *Shamso Abdullahi v. Bundesasylamt* that:

> in such a situation, in which the Member State agrees to take charge of the applicant for asylum… the only way in which the applicant for asylum can call

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[26] CJEU (2013). *Bundesrepublik Deutschland v. Kaveh Puid*. Appl. No. C-4/11

into question the choice of that criterion is by pleading systemic deficiencies in the system procedure and in the conditions for reception of applicants for asylum in that latter Member State, which provides substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Art 4 of the Charter.[27]

Both *Bundesrepublik Deutschland v. Kaveh Puid* and *Shamso Abdullahi v. Bundesasylamt* placed emphasis on the need for the MS initiating the Dublin transfer process to display a thorough understanding of the asylum system of the MS responsible for the Dublin transfer. The emphasis is on the need to ensure that the system operates on, at least, minimum standards in order to prevent possible human rights violations. The MS must also provide an enabling environment that will not dehumanise asylum seekers in anyway whatsoever. Arguably the minimum standard required of each of the MSs is already setting the bar too low.

Some years after the M.S.S ruling, in the case of *Tarakhel v. Switzerland*, a widely known case by the ECtHR, the Court reaffirmed its M.S.S ruling that Dublin "does not exempt national authorities from carrying out a thorough and individualised examination of the situation of the person concerned and from suspending enforcement of the removal order should the risk of inhuman and degrading treatment be established".[28] The uniqueness of the *Tarakhel v Switzerland* ruling is the emphasis on setting a minimum standard by which children should be treated concerning where they can be accommodated. This ruling expanded the above-mentioned cases that were brought forward and argued on the treatment of adults in certain MSs. Thus, in *Tarakhel v Switzerland* it was stated that "reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not create… for them a situation of stress and anxiety, with particularly traumatic consequences". In addition, it was noted that:

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[27] CJEU (2013). *Shamso Abdullahi v. Bundesasylamt*. Appl. No. C-394/12
[28] ECtHR (2014). *Tarakhel v. Switzerland*. Appl. No. 29217/12

in the absence of detailed and reliable information concerning the specific facility in Bologna, where the applicants were to be supposedly accommodated, the physical reception conditions and the preservation of the family unity, the court considers that the Swiss authorities do not possess sufficient assurances that, if returned to Italy, the applicants would be taken charge of in a manner adapted to the age of the children.[29]

The ruling specifically pointed out that the reception facility of accommodation provided to asylum seekers by the MSs must be up to certain standards both for the children and the adults. This is despite the fact that the ruling did not categorically state that there was no systemic deficiency found in the Italian asylum system in this case. However, it is noteworthy that the Court in this particular scenario demanded specific assurances that the applicant family would be guaranteed adequate reception conditions, commensurate with their specific situation and would not be subjected to conditions amounting to inhuman treatment if transferred to Italy under the Dublin system.

The review of selected cases revealed that the judicial arm is taking a huge part in positively shaping the EU asylum system, especially on various rulings concerning human rights violations engendered partly through the implementation of restrictive measures on asylum system within the Union. The application and the enforcement of these policies has brought so many human rights issues and related cases have been adjudicated upon by courts over the years within the Union as seen above. Some of these courts' rulings are based on the proper interpretation of the human right treaties, especially Articles, 2, 3, 5, 8, and 13 of ECHR. It is therefore obvious that both the ECtHR and CJEU's rulings are making impact on the implementation of the EU asylum system in various ways. In fact, some MSs too are patronising the courts, mainly for opinions on application made by the EU authorities, as evident with the Eastern European countries that contested the mandatory quota concerning the EU refugee relocation scheme of 2015 (Roots, 2016:12). From the above analysis, it can

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[29] ECtHR (2014). *Tarakhel v. Switzerland.* Appl. No. 29217/12

be deduced that the CJEU and ECtHR's main rulings over the past years have contributed significantly in clarifying the legal standards within the Dublin Regulation. Any new measures adopted within the Dublin Regulation umbrella would therefore have to take into consideration and incorporate the progress of jurisprudence in order to prevent repetitive cases and safeguard the fundamental rights of the affected individuals.

2.8 Anti-migrant Rhetoric and Asylum Policy Formulation

There is a notion that the inability of the EU to adequately tackle the refugee crisis is due to poor management and coordination of the crisis. Other contributing factors are racism and xenophobia, as seen in some MSs that categorically refused to help asylum seekers, and mainly fuelled by the anti-migrant rhetoric of the far-right politicians across the Union. The influence of such anti-migrant rhetoric on the policy formulation concerning the asylum regime within the Union is the basis of the theoretical framework of this study. The increase in the number of people that are seeking asylum within the EU and the growing number of terrorist attacks within the Union in recent years (Europol 2017:1) have given some xenophobic individuals reasons to link such attacks with the arrival of the refugees in large numbers. Lowry explained that such criminalisation and securitisation is an approach that has its root in racism, a hangover of colonialism (Lowry, 2002:31). Such notions, along with the anti-migrant rhetoric across the Union are arguably having an impact on asylum policy formulation that have led to restrictive measures both at national and at Union levels. Restrictive refugee policies are also increasingly becoming common worldwide (Kibreab, 2003:57), especially in the aftermath of 9/11 terror attacks in the US, 7/7 in London and other recent terror attacks within the Union.

The number of displaced people around the globe today can only be compared to the aftermath of WWII. The UNHCR's Statistical Yearbooks of 2019 put the number of forcibly displaced people across the world at 70.8 million as of June 2019 (UNHCR 2019: no p). The breakdown of this figure reveals that 25.9 million of them are refugees, 3.5 million are asylum seekers, and 6.7 million are Syrian refugees (UNHCR

2019: no p). The growing number of people that are forcibly displaced across the globe deserves greater attention. Hence, there is need for state parties to the 1951 RC to honour their obligations by providing international protection to asylum seekers that need it. Unfortunately, the events of recent years, especially the growing anti-migrant activities of the far-right and the populist political parties across the EU and other parts of the world are making it harder for asylum seekers to easily gain access to the territory of a potential host nation.

Asylum seekers should be seen or recognised as victims of persecution rather than being labelled as a risk to national security (Edwards, 2009:784). They are victims of persecution who are in flight and seeking refuge, and they flee their homes against their will because they fear for their lives (Kibreab, 2003:57). However, asylum seekers often end up facing ill-treatment. For instance, during the Syrian refugee crisis in 2015, media displayed gory images of how the asylum seekers were treated at the borders of some of the MSs, especially Hungary. They were denied entry and made to sleep at the borders without basic amenities simply because they were already labelled as criminals and that their presence in the society will be disastrous. Hungary closed its external borders to asylum seekers. It mounted barb-wire at its borders and denied entry to the asylum seekers, while the Hungarian police were allegedly beating up the asylum seekers at the peak of the refugee crisis (Karnstschnig, 2015:no p). In fact, the Hungarian Prime Minister, Viktor Orban openly disclosed that the asylum seekers were not welcome in Hungary and that their religious background was not compatible with their Hungarian Christian values. Orban sees the asylum seekers as a threat to the Hungarian society, criminalising the asylum seekers even before they were allowed into the territory of a potential host MS like Hungary (Buchanan, 2015: 1; Karnstschnig, 2015: no p). The growing number of far-right activities in Europe that are openly campaigning against refugees being hosted by MSs is unfortunate. Interestingly, some of the members of the public, including the policy makers are arguably buying into the propaganda that some asylum seekers are terrorists or criminals, either subconsciously or otherwise (Edwards, 2009:777).

Furthermore, the Eurobarometer surveys conducted in the autumn and spring of 2017 and 2018 respectively place immigration at the top issues that are of important concern to the citizens of the EU and this is at the "core of EU policy priorities for the coming years" (Ballegooji and Navarra, 2018:19). The Eurobarometer surveys place immigration at about 40%, followed by other issues such as terrorism, economy, state's public finance, unemployment and EU's influence in the world (Ballegooji and Navarra, 2018:19). Placing immigration management at the top of the surveys mounts further pressure on the policy makers to come up with solutions that reflect what issues the public are most concerned about. It also arguably plays into the hands of the far-right politicians and could prompt them to increase the tempo concerning their anti-migrant rhetoric. Neither the formulation nor the implementation of these asylum policies are flawless. There are obvious cases of human rights violations confronting the implementation of these asylum policies within the Union, especially with the Dublin system, as examined in chapter one. The onus therefore is on the policy makers to put into consideration the plights of the asylum seekers when formulating asylum policies. The policy makers should endeavour to come up with asylum policies that would be less controversial irrespective of the pressure being mounted on them by the far-right politicians through their anti-migrant rhetoric.

2.9 Conclusion

This chapter conceptualised mass influx as a phenomenon. It examined possible mechanisms that could be adopted to manage future influxes within the Union. It examined a whole range of available mechanisms that could have been applied in the face of 2015 refugee crisis. It reviewed TPD and discovered that it was not fit for purpose. It revealed how TPD remained idle since its adoption. Not even the Kosovo crisis, the Arab spring with the arrival of some asylum seekers from Tunisia to mostly Italy and Malta, or the 2015 refugee crisis could prompt the EU authorities to activate TPD. It concluded that TPD failed as a legal instrument to effectively manage mass influx of asylum seekers within the Union. It also discovered that *prima facie* is arguably unpopular within the EU mainly because of its group status determination approach as the EU asylum regimes uses more of individualised approach. Therefore

prima facie is not a feasible option for the EU authorities to utilise. The MSs therefore are left with the Dublin system to effectively manage similar future influxes. Despite its failure to adequately manage 2015 refugee crisis, a reformed Dublin system remains a viable option to manage future influxes.

It also reviewed the criticisms and the cost involved in operating the Dublin system. It reviewed selected rulings of the supranational courts on the Dublin system, giving special consideration to the protection of the fundamental rights of asylum seekers as set out in the relevant international law and treaties. The jurisprudence review is mainly on Dublin transfer cases with a focus on 'systemic deficiencies', while citing court rulings in line with Art 3 of ECHR and Art 4 of the Charter. The review also pointed out some human rights violations by some of the MSs under the Dublin system. The jurisprudence review specifically addresses the second objective of the study.

The review of relevant literature in this chapter has revealed that the existing mechanisms like the TPD, *prima facie*, and the status quo Dublin system were not fit for purpose. It also revealed that the review of selected case laws concerning the Dublin system has strengthened the debate concerning the role of the supranational courts in positively shaping the EU asylum system.

Chapter Three

EU Response to the Refugee Crisis

> It is important that the EU Member States show, through collective action, that Europe is capable of engaging effectively and in a principled manner with refugee movements… drawing on its history of tolerance, openness and based on the protection principles, but also with a pragmatic and practical approach, history has demonstrated that Europe is stronger when it addresses its challenges together.[30]

3.1 Introduction

This chapter examines the efforts of the EU in tackling the 2015 Syrian refugee crisis. It specifically reviews the efforts of the selected MSs, such as Germany, Greece, Sweden, Austria, Hungary, France, Denmark, Italy, and the UK in managing their asylum system in the face of the 2015 mass influx of asylum seekers. The analysis focuses on the initiative of the EU authorities to relocate and resettle 160,000 refugees in 2016 (CEAR 2016:5). It reviews other drastic measures initiated by the Commission to stop the flows of asylum seekers that were coming to the EU in large numbers. The EU resolves to externalise the asylum process by signing a deal with Turkey in March 2016 (EU-Turkey Statement), in an effort, arguably, to keep the asylum seekers away from the Union (Squires, 2017:1). It examines the establishment of hotspots in Greece and Italy, and the level of policing activities at the external borders of the EU with the involvement of Frontex. Other initiatives of the EU are the proposed reformation of CEAS, the joint operations at sea to dismantle the people smuggling network, and EU refugee relocation scheme. This chapter further assesses the Dublin III Regulation evaluation report, and reviews the proposed Dublin IV Regulation.

3.2 Unilateral Response

In response to the arrival of large numbers of asylum seekers to the MSs in 2015, some EU residents were deeply concerned about how asylum seekers were received within the Union. Moved by the suffering of asylum seekers, there was outrage, anger, and bottled up emotion towards the EU authorities and the MSs for not doing enough to help the asylum seekers. In fact, Ifop (an international polling and market research

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[30] Filippo Grandi: UNHCR (2016) UNHCR Calls for stronger EU Action on Refugees., available at

https://www.unhcr.org/uk/news/press/2016/12/58453b614/unhcr-calls-stronger-eu-action-refugees.html

firm in France) carried out a poll in seven EU countries and discovered that majority of the participants in each of the seven countries believe that Europe has a duty to help asylum seekers (Nardelli, 2015: no p). It was considered by many that the refugee crisis exposed the inadequacy of the EU authorities to effectively tackle the 2015 large-scale movement of the asylum seekers. Nevertheless, some of the MSs unilaterally hosted the asylum seekers, some of them refused to help, and the EU authorities came up with an initiative to relocate and resettle 160,000 refugees in 2016, although its implementation hit a brick wall due to lack of solidarity among the MSs (CEAR 2016:5).

EU authorities also came up with other drastic measures mainly to stop the flows of asylum seekers that were coming to the EU in large numbers. The response of EU authorities to the 2015 Syrian refugee crisis is not without criticism from stakeholders and some NGOs. For instance, Human Rights Watch argued that the EU responded dismally due to 'lack of leadership, vision and solidarity based on human right principles' (HRW 2016:1). Similarly, Filippo Grandi pointed out that Europe has lost its sense of shared solidarity, and that some MSs are willing, but others are not interested in helping asylum seekers (Vincenti, 2018: no p).

In the following the unilateral responses of a selected EU member states are discussed briefly.

3.2.1 Unilateral Response of the UK

The establishment of CEAS in the 1990s brought a new twist to the UK asylum system and the rest of the MSs, and since then the UK has been operating its asylum system in line with the CEAS, especially the Dublin system. The UK has always been seen as one of the beneficiaries of the Dublin Regulation. Arguably, the geographical location of the UK within the Union plays to its advantage in terms of the number of asylum seekers that are able to access its territory in comparison with the external border states like Greece and Italy. On arrival in the UK, there is a possibility that the asylum seekers would be subjected to scrutiny concerning whether they registered and

fingerprinted in any of the MSs in line with Eurodac Regulation. Consequently, if such registration occurred this could lead to Dublin request and eventually Dublin transfer.

Prior to the EU referendum of 2016 the UK planned to lobby against the scrapping of the Dublin regulation, as it was earlier announced by the Commission that there would be changes to the current Dublin system (Rankin and Watt 2016: no p). Currently, the system is putting mounting pressure on Greece and Italy, as frontline EU states, leaving the UK and a few other MSs as beneficiaries, which made possible mainly by their geographical location within the Union (Swinford, 2016: no p). The influx of the Syrian asylum seekers in 2015 forced the EU to propose the redistribution of asylum seekers as a form of enhancing responsibility sharing within the Union. The Commission adopted the first implementation package in May 2015 with the aim of triggering, for the first time, Article 78 of the TFEU in order to relocate thousands of asylum seekers in solidarity with Italy and Greece (EC 2015:1). Later, the Commission increased the number to 160,000 and asked the MSs to participate in the compulsory resettlement of migrants from Greece and Italy (Patrick, 2015:1).

Moved by the outpouring of sympathy for the refugees, some MSs began to voluntarily announce their participation and the number of refugees they could host within a specified period of time (Patrick, 2015:1). Consequently, the UK pledged to take in 20,000 Syrian asylum seekers between 2015 and 2020 (Wintour, 2015: no p). However, the UK's pledge was purely for refugees arriving directly from the Syrian refugee camps in the Middle East, and not to those coming via other MSs, particularly Italy and Greece. The UK also hosted a summit of world leaders in London in February 2016 where $US 12 billion were pledged towards the humanitarian relief of Syrian refugees and the support of regional host countries like Jordan, Lebanon, Turkey, and Egypt (UNHCR 2016: no p).

The UK also pledged an additional £1.2 billion to support Syrian refugees at a conference in London co-hosted by Norway, UK, Germany, Kuwait and the United Nations (Adam, 2016: no p). According to the then Prime Minister, David Cameron, the contribution by the UK would be delivered over the next four years, which is from

2016 to 2020 (Adam, 2016: no p). However, although the former Oxfam UK chief executive, Mark Goldring commended the UK for the contribution, he pointed out that Britain should do more to take in its 'fair share' of Syrian refugees (Adam, 2016: no p). Nonetheless, only 1,000 Syrian refugees were brought into the UK directly from refugee camps in the Middle East under the Vulnerable People Scheme as of December 2015 (Mason, 2015:1). A proposal to take in an additional 3,000 'Syrian child refugees' from camps was rejected by Parliament in a very tight voting result (Mason, 2016:1). A few days later David Cameron promised to take in 'thousands of unaccompanied child refugees' that were stranded within the EU (Hope, 2016:1).

As of November 2017, over 8,000 Syrian refugees have arrived in the UK under the scheme since the announcement was made by the government to take in 20,000 Syrian refugees within five years (Bulman, 2017:1). A UNHCR report revealed that the Syrian refugees that were able to make it to the UK were grateful for the genuine welcome that they received. The UNHCR also urged the UK to do more especially in terms of housing and helping the refugees to learn English which will give them access to the job market (Bulman, 2017:1).

The decision to vote out of the EU (*Brexit*) is also seen as another way the UK responded to the mass influx of asylum seekers. The refugee crisis, coincidentally, occurred during the same period the campaign for the EU referendum was running. A poll revealed that almost 75% of the potential Leave Campaign voters cited immigration as the most important issue in the referendum (Richard, 2016:1). The environment was tense for asylum seekers during the campaign, to the extent that immediately after the results were announced some of the asylum seekers in the UK were hiding their status to avoid being discriminated against or even attacked on the streets (Richard, 2016: 1). For instance, months after the referendum election, there were reports of an unprecedented increase in the level of racial abuse across the country (Bulman, 2017:1). Some of the incidents that followed included a Muslim woman being dragged along the pavement by her hijab, some people of Polish descents being attacked on the streets of UK, and one Polish immigrant was killed in the process (Bulman, 2017:2).

Months after the EU referendum, a 17-year-old asylum seeker was brutally attacked in one of the boroughs in South London. Arguably, since the UK voted to leave the EU, some people have witnessed more hate related attacks in the UK (Bulman, 2017:2). During the campaign, the politician Nigel Farage came up with a controversial poster, as discussed in the previous chapter. He was accused of racism, but he argued that the purpose of the poster was to remind the UK public that 'Europe isn't working' and that the poster was not a lie because "something that is true can't be a scare" (Richard, 2016:2). The terror attacks in France months before the referendum election were considered another factor that influenced some voters to vote for *Brexit,* out of fear. A poll conducted a month after the attack reveals that 44% of Britons said the UK should close its borders to the refugees (Richard, 2016:2). These occurrences arguably influenced the decision of some people to vote "leave" in the referendum and are seen as part of the way some voters in the UK responded to the arrival of large number of asylum seekers in the EU.

The referendum result to leave the EU sent a clear message to Europe that the UK was determined to leave the Union. The outcome of the negotiations between the EU and the UK will define the ways in which the UK will relate with other MSs, especially in the areas of asylum and immigration, after the transition period, because the UK will no longer have the right to transfer applicants to other MSs presumed to be responsible for processing the asylum claims under the Dublin system (Guild et al., 2016:3). In addition, the UK asylum system without the Dublin system means that it will be the sole responsibility of the UK to process asylum claims of all asylum seekers that are able to submit their asylum claims in the country. There may not be an option of sending them back to the first MS they arrived in. For instance, if the UK ceases to operate within the CEAS and thousands of asylum seekers show up in the UK having successfully crossed the Channel Tunnel from France to Dover, through Ireland or any other routes, then the UK will have little choice but to process their asylum claims. This is because there will be no option of transfer under the Dublin system or access to Eurodac database anymore (Nielsen, 2016:1). Nevertheless, the situation is

greatly dependent on the outcome of the UK-EU *Brexit* negotiations with the EU. The ability to negotiate a good deal for the UK on the asylum matter will go a long way. It is not impossible for the UK to retain an aspect of the current EU asylum system. The UK negotiators can also choose to either collaborate with selected MSs or come up with some bilateral agreements on immigration, in the form of one to one relationships with individual MSs on asylum policy (Nielsen, 2016:1).

3.2.2 France

In September 2015, the then French president, Francois Hollande announced that France would be welcoming 24,000 refugees as part of the EU resettlement scheme (Taylor, 2015: no p). A couple of months later, brutal terror attacks occurred in Paris which left 130 people dead and hundreds injured (Sandhu, 2015: no p). Nevertheless, the president promised to take in 30,000 refugees, 6,000 more than he had promised earlier (Sandhu, 2015: no p). There were also attempts by the far-right politicians to link the November terror attacks in France to refugees from Syria and Iraq. However, President Hollande doused the tension by telling the public that he was aware that some people had tried to link the attacks to the arrival of large numbers of refugees, especially those from Iraq and Syria because of their proximity to the IS operations. President Hollande told the public after the terror attacks that life must go on as usual, that people should go about their daily activities without fear, and that the security of France was a top priority (Sandhu, 2015: no p).

France like few other MSs witnessed a high influx of asylum seekers in 2015 but the majority of them lived in appalling conditions at the demolished refugee camp in Calais. A contributory factor to these camps is that some of them refused to seek asylum in France and insisted on going to the UK for refuge for various personal reasons. Therefore, they were at Calais mainly to cross the channel tunnel over to the UK and claim asylum. These people turned Calais to a place of abode and continued to live terribly in one of the most developed countries in the world. There was a clampdown by the French government in 2016 as the Calais camp was demolished (Moseley, 2017:1). The demolition was carried out by French authorities with heavy

machinery and police presence, understandably, to restrain the asylum seekers from resistance of any form.

Over 6,000 migrants were living in the camp before the demolition and the French government appealed to them to register in France arguably in line with Art 17 (1) of the Dublin III Regulation. France did not transfer some of them that had register elsewhere within the Union in line with Art 3(1). Provision was made to send them across the country pending examination of their asylum claims (James, 2016:1). It is believed that some of the asylum seekers submitted claims in France afterwards, while others moved to other EU countries (Baylis, 2017:1). However, some of the asylum seekers were seen on the streets of Paris sleeping rough days after the demolition occurred with no accommodation or basic necessities, even food (Moseley, 2017:1). The failure of France to adequately accommodate the refugees has led to a new camp being built by some of the asylum seekers just 800 yards from the original demolished Calais camp (Matt, 2017:1). In total, 100,412 applicants submitted asylum claims in France in 2017 but only 13,020 were granted refugee status as of the end of 2017. In addition, 10,985 were granted subsidiary protection and 65,302 applications were rejected, putting the rejection rate at 73.2% (AIDA 2018:1). The series of terror attacks in France and the far-right rhetoric during the 2017 presidential election arguably contributed to the poor rate at which France has been responding to the 2015 refugee crisis.

3.2.3 Austria

Austria with a population of less than 9 million people had helped a lot of refugees in the past (Pongatz-Lippitt, 2016:1). It accepted Hungarian refugees during the Hungarian uprising in 1956, and the generosity of the Austrian people was acknowledged in James Michener's famous book, *The Bridge at Andau*, which says that "if am a refugee, I hope to make it to Austria". The country also opened its borders to thousands of Czechoslovakians during the Prague Spring of 1968, and to thousands of refugees fleeing the Balkan war in the 1990s (Pongratz-Lippitt, 2016:1). However, the influx of refugees in the summer of 2015 brought a general feeling of unease and scepticism among its public due to the large numbers that were being

allowed into the country. Nevertheless, the government and volunteers received the asylum seekers within a specified period and helped them in processing their claims for onward movement of thousands of refugees to Germany in line with Angela Merkel's open-door policy at the peak of the refugee crisis in 2015 (Pongratz-Lippitt, 2016:1). By the end of 2015, over 90,000 individuals had applied for asylum in Austria, about 1% of its population, while the then Austrian Chancellor, Werner Faymann continued to convince the public to give Germany's open-door policy on the refugees a chance. However, in no time Faymann was pressured to change his open-door policy and Austria placed a cap on the number of refugees that would be admitted on a yearly basis, beginning with 37,500 for 2016 (Pongratz-Lippitt, 2016:1).

Additionally, Austria refused to take in refugees under the EU relocation scheme, demanding an exemption from taking in more refugees. Austria argued that it had willingly taken in thousands of refugees since the crisis began in the summer of 2015 (Squires, 2017: no p). Although the European Commission granted Austria a temporary exemption because of the large number of refugees it had already received, this expired on March 11, 2017 when Austria was supposed to start the relocation of 1,900 refugees (Nielsen, 2017:1). Interestingly, the far-right political party in Austria exerted pressure on the ruling party regarding the immigration policy prior to the collapsed coalition government between the Conservative People's Party (OVP) and the far-right party, Austria's Freedom Party (FPO). The electoral gains of FPO, which was translated into power by forming the previous coalition government, were fought and won on anti-migrant and anti-Muslim rhetoric. During the election campaign, Heinz-Christian Strache, the then leader of FPO, and a former Vice-Chancellor of Austria told his audience that "Islam is not part of Austria" (Bell, 2017: no p).

FPO arguably translated its anti-migrant stance and rhetoric into reality. Herbert Kickl, a far-right member and the Austrian Interior Minister announced in December 2017 that there will be changes in immigration laws and its political party still wants a 'restrictive asylum policy' in Austria (Christian, 2018:1). Thus, the last coalition government announced changes in its immigration law by introducing financial

'sanctions' on immigrants who fail to integrate with the mainstream society in December 2017 (Stone, 2017:1). In addition, Sebastian Kurz, the Austrian Chancellor announced on June 8, 2018 that the government will be shutting down seven mosques in Austria. The decision was based on the 2015 law that prevents religious groups from receiving foreign funding and will result in more Muslims being expelled from the country. Nevertheless, the decision received criticisms from different quarters, especially the Turkish government (O'Grady, 2018:1).

3.2.4 Germany

Amid the chaos and confusion that occurred with the influx of large number of asylum seekers within the Union in the summer of 2015, Germany took the lead among the MSs to welcome asylum seekers in large numbers (Hall and Linchfield, 2015:1). It announced that the Syrian refugees are welcome in the country irrespective of the first country they arrived in, contrary to the application of Art 3(1) of the Dublin system, but in line with Art 17 (1) (Hall and Linchfield, 2015:1). Thus, the Art 3(1) of the Dublin system was unilaterally put on hold in order to allow more asylum seekers to be hosted unhindered by Germany after the German Federal Office for Migration and Refugees (BAMF) ratified a protocol to suspend the Dublin system, specifically for the Syrian refugees for few months at the peak of the crisis (Hall and Linchfield, 2015:1).

In Germany, the BAMF registered the arrival of a minimum of 890,000 refugees in 2015, and 280,000 in 2016 (Jefferson, 2018:1). In 2017 alone, 50,422 Syrian asylum seekers applied in Germany and 34,880 were granted refugee status at first instance (AIDA 2018:1). The decision to take in thousands of Syrian refugees in Germany is not without a fight especially with strong opposition coming from the far-right AfD political party, co-chaired by Alexander Gauland. AfD referred to the arrival of refugees in Germany as an invasion of foreigners and pledges to fight on. Gauland argued that the foreigners brought into Germany are taking 'a piece' of the country and that AfD will not allow this to happen (Stone, 2017:1). Consequently, because of what seems to be a negative reaction from some voters in Germany due to the government stance on asylum and immigration, Angela Merkel's political party, the

Christian Democratic Union of Germany (CDU) suffered humiliating losses to the far-right political party, AfD in three key states' local elections in 2016. Arguably, this was a first major test to the Chancellor's policy to admit refugees in large numbers into Germany in 2015 and 2016 (Paterson, 2016:1). AfD won 15.1% of the vote in Baden-Wuerttemberg, 12.5% in Rhineland-Palatinate, and 24% in Saxony-Anhalt (Paterson, 2016:1). The then three-year-old AfD as of 2017 was in a jubilant mood because it had made an inroad into the German political terrain, a new milestone made possible by their anti-migrant and anti-Islam rhetoric, displayed during election campaigns.

In fact, Alexander Gauland of AfD stated that 'Merkel's refugee policy has lost her party votes, and we have made it known from inception that we do not want those refugees in Germany' (Paterson, 2016:1). Germany witnessed anti-migrant demonstrations in August 2018 after a 35-year-old man was fatally stabbed in Chemnitz. A Syrian and Iraqi man were arrested in connection with the stabbing that prompted the far-right and the populist movement PEGIDA to organise protests and demonstrations against the foreigners in the city (Jefferson, 2018:1). However, a counter rally was also organised by those who oppose xenophobia and anti-migrant sentiment and it took the intervention of hundreds of police officers to disperse the demonstrators from both rallies (Jefferson, 2018:1). The anti-migrant demonstrations can be linked to the animosity being harboured by the far-right who are still arguing that Chancellor Merkel committed a grave error in admitting large numbers of refugees into the country in 2015 (Jefferson, 2018:3).

Despite criticisms from the far-right party leaders, Chancellor Merkel reiterated her stance on the acceptance of thousands of Syrian refugees. Merkel explained that it was the right thing to do and that she felt no guilt even in the face of a series of terror attacks in Germany since the arrival of the refugees. The Chancellor reminded her critics that she did not say it would be easy, but Germany can manage its history because 'Germany is a strong country' (Conolly, 2016:1). To support Angela Merkel's open-door policy on refugees, a research conducted in Germany in early 2017 by Bertelsmann Foundation revealed that 59% of Germans believed that refugees are

welcome to stay in Germany while 70% of them feel the same way about immigrants in general (Saeed, 2017:1).

3.2.5 Hungary

The response of Hungary to the Syrian refugee crisis is seen as appalling in many ways as it was characterised by assaults and abuse of asylum seekers, both at the borders and within the Hungarian territory. Following the announcement by Germany which welcomed the Syrian refugees to seek refuge in the country, thousands made their way to Germany from Greece and through FYROM, Hungary and Austria. They transited through these countries, and Hungary made a show of the situation. Early in September 2015, at the peak of the crisis, thousands of asylum seekers arrived in Hungary in the hope of making it to Western Europe by train, but to no avail. They were stranded as their arrival in large numbers caused the Hungarian government to close Budapest's main train station resulting in a face-off between the refugees and the security personnel for two days (Nolan and Graham-Harrison, 2015: no p).

After the end of the second day, the Hungarian authorities brought a train for them to be transported. The refugees boarded but later discovered that they were being hoodwinked as they were transported to a makeshift camp for registration. The Hungarian authorities tricked them to end the two-day stand-off at a train station in Budapest (Nolan and Graham-Harrison, 2015: no p). The asylum seekers believed they were being taken to Austria or Germany, but the train stopped at Bicske, a town outside the Hungarian capital. Upon discovery they were transported to a refugee camp, the asylum seekers refused to leave the train. A minimum of 500 of them stayed put, raising plate cards through the windows of the train with different inscriptions to pass their messages across to the onlookers, mainly media personnel. One inscription said, "it is better to die in Syria than in Hungary" (Nolan and Graham-Harrison, 2015: no p).

Still, at the borders between Hungary and Former Yugoslav Republic of Macedonia (FYROM), thousands of asylum seekers were denied entry by the Hungarian police at the peak of the crisis. The Hungarian Prime Minister Viktor Orban resolved to build a

new barrier across its borders because hundreds were making their way into the country. They were passing through Hungarian cornfields and other available places with the hope of making it to Austria and Germany (Simon, 2015:1). Nevertheless, Viktor Orban vowed to build much stronger barbed-wire fences that would stop the surge in case the EU-Turkey statement fails (Dearden, 2016:1). Orban, a right-wing politician is known for his anti-migrant stance and policies over the years. He once referred to the migrants as 'poison' and that they were a threat to people because they 'bring terrorism upon us' (Dearden, 2016:2). He also called for the need to strengthen the EU external borders, while announcing an additional 3,000 "border hunters" to police the Hungarian border fences (Dearden, 2016:2).

In addition, Hungary alongside some Eastern European MSs blatantly refused to participate in the EU refugee relocation scheme. In fact, Hungary held a referendum in 2016 to ask the public whether to participate or not in the EU refugee relocation scheme. The government of Orban eventually declared victory with the outcome of the referendum which is in favour of the government's decision not to participate, even though the election was characterised by a low turnout that technically renders the outcome meaningless (James et al., 2016:1). Similarly, Hungary alongside Slovakia took the EU to CJEU, vowing not to participate in the relocation scheme but the CJEU threw out the case in the summer of 2017. This was a great blow to their decision not to take part in the scheme, nevertheless, Hungary still refused to resettle refugees under the scheme (Rankin, 2016:1). Out of 3,397 asylum applications submitted in Hungary only 106 were granted refugee status. The breakdown of the figure shows that 577 Syrian asylum seekers applied but only 10 were granted refugee status as of the end of 2017 despite the high recognition rate of the Syrian asylum seekers within the Union (AIDA, 2018:1).

In another twist, Prime Minister Orban's Fidesz party introduced bills to parliament, which impose jail terms on people and jeopardise the efforts of NGOs and individuals who are trying to help refugees and migrants in Hungary. These controversial bills are known as 'Stop Soros' bill. The bills are named after the billionaire George Soros, a philanthropist who helps refugees, a gesture the Orban government detests. The laws

target people or organisations that help refugees or migrants in any physical way, providing food, transportation and more (Shaun, 2018:1). Consequently, Human Rights Watch (HRW) has called for Hungary to be expelled from the EU if the bills are passed into law. Similarly, UNHCR argued that, if passed, the bills would limit the help (aid and services) being received by people who are forced to flee their homes of habitual residence (Shaun, 2018: 2). Nevertheless, the Hungarian parliament passed the bills in June 2018 with majority votes (160) in favour and 18 opposing votes (Matthew, 2018:1).

Furthermore, in the summer of 2016, William Spinder, a UNHCR's spokesperson expressed concern about the Hungarian high-handedness on the refugees at the borders which contravened both EU and international law. Spinder pointed out that the 'push-backs' of asylum seekers especially at the Hungarian-Serbian border by the Hungarian police is disturbing (Balla, 2016:1). The Hungarian government has been deeply involved in the unlawful push-back of asylum seekers since the arrival of a large number of Syrian refugees in 2015. For instance, the Hungarian government set up transit zones at the Serbian-Hungarian border in the 2015. Consequently, third country nationals with no right to stay in Hungary are being 'escorted' to the Serbian side of the border, the other side of the Hungarian-Serbian border fence (OSCE 2018:1).

This exercise began in the summer of 2016 and the 'escorted' asylum seekers had no right to claim asylum in Hungary afterwards. However, no identification process involved, but registration of the third country nationals that have been 'escorted' to Serbia from Hungary within a given period. A total number of third nationals that suffered push-back as a result of this exercise from July 2016 to March 2017 is placed at 11, 269, and 8,027 from March 2017 to June 2018, as recorded by the police (OSCE 2018:1-2). Hungary legitimatised the push-back of the third country nationals, a step seen by stakeholders as a breach of Hungarian international human rights obligations towards asylum seekers. In addition to the illegal push-back of asylum seekers, Hungary has also engaged in detaining asylum seekers, except for unaccompanied minors under the age of 14, indefinitely in the established transit zones. (OSCE

2018:2). At the Hungarian-Serbian border, asylum seekers can only leave the transit zones once their claims have been processed. Aside from being made up of metal containers and surrounded by barb-wired fences, the zones have gates through which asylum seekers could choose to move to Serbian territory. However, leaving for Serbia through the gates would automatically terminate the asylum claims of an individual involved. This is seen as illegal by relevant stakeholders, as evident in the March 2017 court's ruling in the case of *Ilias and Ahmed v. Hungary*, which 'found, *inter alia,* that placement in the transit zone is in breach of Art 5 (1 and 4) of the ECHR' (OSCE 2018:2-3). Nonetheless, in November 2019 the grand chamber reversed the chamber one judgement as described above. The grand chamber found that Art 5 does not apply to the applicants' situation, as there had been no de facto deprivation of liberty in transit zone. However, the grand chamber found that Hungary "failed to discharge its procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision before removing the applicants from Hungary" (ECRE 2019: no p; ECHR 2019; Callewaert, 2019: no p).

Human Rights Watch (HRW) opined that the treatment of asylum seekers by Hungary is disgraceful, ranging from the appalling conditions and overcrowded camps to creating restrictive laws aimed at making life harder for already vulnerable people (Gall, 2016: no p). The hate speech has now become commonplace in Hungary especially among the right-wing top government officials led by the Prime Minister Orban. They had also referred to asylum seekers and refugees at the peak of the Syrian refugee crisis as 'intruders' and 'potential terrorists' (Gall, 2016: no p). In fact, Luxembourg's foreign minister, Jean Asselborn, had called on the EU to expel Hungary based on the latter's hostile approach to refugees, for treating asylum seekers 'worse than animals' (Matthew and Patrick, 2016:1).

3.2.6 Denmark

At the peak of the Syrian refugee crisis in 2015, Denmark drew controversy with its newspaper "advertisement" in a Lebanese newspaper, published both in Arabic and English that told the refugees how bad the country was for a would-be asylum seeker. The choice of a Lebanese newspaper was deliberate, to get the message directly to

the target audience – the Syrian refugees (Taylor, 2015:1). Denmark was known for its approach to helping refugees in the past, but since 1990s the country began to introduce stricter laws on immigration. It became harder for the asylum seekers especially since the centre-right Liberal Party formed a minority government in June 2015 (Taylor, 2015:1). The advertisement listed certain factors that are likely to discourage the asylum seekers from embarking on such a journey to Denmark. Some of the factors included the cut in refugee benefits of up to 50%, and the need for the asylum seekers to learn Danish as part of the requirements for permanent residency in Denmark (Taylor, 2015:1).

Similarly, in December 2016, the former Prime Minister of Denmark, Lars Lokke Ramussen suggested that the 1951 RC should be revised. Conversely, Denmark helped to draft the instrument and was one of the first countries that ratified the 1951 RC decades ago (Thomas and Helle, 2017:1). In the aftermath of 2015 refugee crisis, Denmark also passed a bill that would restrict access to family unification of Syrian refugees up to three years (Thomas and Helle, 2017:1). In addition, Denmark enacted another law in 2016 that would allow police to seize refugees' assets. Under this law, asylum seekers would be searched by Danish police on arrival in the country and essential items worth more than 10,000 Kroner, an equivalent of £1,000, would be seized (David and Patrick, 2016:1).

The law was first applied to five Iranian citizens who sought asylum in Denmark and a total of 79,000 kroner was confiscated from them (Agerholm, 2016:1). The United Nations has criticised this approach and argued that such a controversial law will "fuel fear and xenophobia". The UNHCR Northern Europe representative, Zoran Stevanovic urged Denmark not to apply this law. The Human Right Watch also argued that an idea of seizing assets from refugees is "despicable and vindictive" (Agerholm, 2016:2).

In addition, Denmark put on suspension the admittance of refugees under the UN resettlement programme as against its tradition of accepting 500 refugees each year under the scheme since 1989 (Olsen, 2017: no p). It is important to note that decades

ago the UN made a deal with certain countries to help resettle refugees every year, however, the arrival of the centre-right government in 2015 has put a stop to this arrangement in Denmark (Olsen, 2017:no p). In 2015, 21,000 asylum seekers submitted claims in Denmark, over 6,000 in 2016, and 3,458 in 2017 (Christian, 2018:1).

3.2.7 Sweden

Sweden, once the EU's most welcoming country for asylum seekers and refugees began to double down on its leading role in this aspect. Overwhelmed by the record breaking 163,000 people that applied for asylum in the country in 2015, Sweden has joined the likes of Denmark by introducing laws that limit the goodwill once enjoyed unhindered by asylum seekers in the country (Aamna, 2016: no p). Nonetheless, a poll conducted by a local newspaper, *Aftonbladet*, revealed that in 2015, 54% said they would 'definitely' help refugees, while 60% of the population wanted the government to take in asylum seekers in 2016 (Aamna, 2016: no p). Sweden with a population of 9.5 million people took in over 160,000 asylum seekers in 2015. Like other places in the EU, the far-right politicians are gaining momentum in Sweden (Bilefsky, 2016:1). Swedish far-right politicians are against migrants and their stance resonated with voters because they won 13% of the vote in the general elections in 2014 (Bilefsky, 2016:1). In a bid to appear tough on the asylum issues Swedish authorities began to introduce restrictive measures on asylum. Hence, a legislation enacted by the Social Democrat minority government would limit the number of people that can be granted residency and make it more difficult for family reunification (Bilefsky, 2016:1). Announcing the new legislation in 2016, Asa Romson, former Sweden's Deputy Prime Minister was reduced to tears stating that it is painful that Sweden cannot receive asylum seekers as they used to (Aamna, 2016: no p).

Sweden also introduced an incentive equivalent of 30,000 Kronor for a lone migrant and up to 75,000 for families that chooses to go back home voluntarily (Seales, 2017:2), and this led to a total number of 4,542 asylum seekers withdrawing their asylum applications and leaving Sweden in the first eight months of 2016 (England, 2016:1). Nevertheless, there have been various reactions to the series of new tough

laws on asylum seekers. Thousands of people took to the streets across the cities in Sweden to protest those restrictive measures on asylum seekers (Mortimer, 2016:1). However, at a meeting in New York, UN headquarters in September 2016, Sweden announced that agreement has been reached locally between the Social Democratic and Green Party government with the centre-right opposition party to increase its UN refugee resettlement quota from 1,800 to 5,000 per year until 2018 (Henrik, 2016:1).

Similarly, the country participated at the initial launch of the EU relocation scheme from Italy before it was given exemption until June 2017. Nevertheless, between September 2015 and December 2017, Sweden relocated 1,657 asylum seekers from Greece with special focus on the Syrian refugees and 1,388 from Italy (AIDA, 2018:1). According to the Swedish Migration Agency, Sweden received 162, 877 asylum applications in 2015, 28,939 in 2016, and 25, 666 in 2017 (Swedish Migration Agency, 2018:1). A once generous country towards asylum seekers, Sweden is gradually turning its back to their plight due to the arrival of the far-right politicians in government.

Interestingly, the result of the general elections in September 2018 in Sweden is a testimony to the fact that the far-right and populist political parties are gaining momentum across the Union. Even though the outcome of the election may not be as surprising as portrayed by the media, it cannot be denied that the far-right political party made significant gains. The Sweden's Democrats (SD), a far-right political party emerged as the biggest victor, with its share of the vote jumping from 12.9% in the previous election to 17.6% in the September 2018 election (Mudde, 2018:1). It was partly fuelled by the 2015 mass influx of asylum seekers, and the anti-migrant campaigns of the far-right and populist politicians in some MSs (Germany, Italy, Hungary, Sweden, and France) that are yielding results politically. Evidently, the outcome of the elections in Sweden in September 2018 can be seen as a rejection of liberal policies on refugees in the country and the EU in general, as the anti-migrant rhetoric has been on the rise since the refugee crisis of 2015 (Mudde, 2018:1).

3.2.8 Greece

The arrival of a large number of asylum seekers in Greece in 2015 was met with shock and disbelief by the Greek authorities. Arguably, Greece was the most affected MS, as the country was mainly used as a gateway by the asylum seekers and refugees. The Greek asylum system was put under immense pressure by the asylum seekers who used the country for the onward journey to their preferred destinations across the EU. Hence, the smugglers turned the Greek Islands to a 'gateway of humanitarian disaster' (Leadbeater, 2016:1). Prior to the refugee crisis of 2015, Greece had been placed on suspension from receiving asylum seekers from other MSs under the Dublin system following the supranational court ruling of 2011 which identifies 'systemic deficiencies' in its asylum system (Ardittis, 2016:1). The suspension makes it difficult for other MSs to transfer refugees back to Greece in line with the Dublin system. In fact, out of the 1,000,573 refugees and migrants that arrived in the Union in 2015, over 850,000 came through Greece and its islands, and 49% were Syrian refugees (EC, 2018:1). In the same vein, almost all the 857,000 asylum seekers and migrants that arrived in 2015 by sea transited through Greece and its islands for onward journey to other destinations within the EU, and over 173,000 arrived in 2016 (EC, 2018:1). Some of the Greek islands used as entry points by the Syrian refugees are Chios, Samos, Lesvos, Leros, Kalymnos, Kos, and others (Leadbeater, 2016:1). The local authorities in Greece reportedly helped the refugees on arrival but the situation appeared to be too much for what the country could unilaterally fix. Besides, Greece with its population of 11 million as of 2015 was struggling financially at that time, with a 25% unemployment rate and a national debt approaching 180% of the GDP as of the end of 2015 (Gideon, 2016:1).

Alexis Tsipras, the former Prime Minister of Greece, had to admit that Greece was not ready to handle a situation like that (Kerin and Andrew, 2016:1). In fact, as of the summer of 2015, Greece was in the process of securing another bailout fund from the EU. Interestingly, Germany, the main lender was also interested in putting a stop to the inflow of refugees into the EU, which must be done with the help of Greece. The realisation that Greece could help the EU cope with the refugee crisis made Germany

double-down on its initial stance (of not willing to help) on the bailout issue that Greece sought (Gideon, 2016:1).

At the height of the crisis, the Commission assisted Greek authorities in coordinating the arrivals and providing the asylum seekers with basic necessities through the European Civil Protection Mechanism. Over 200,000 gift items were offered to Greece in response to the crisis, including supplies such as blankets, water pumps, sleeping bags, beds, tents, power generators, hygiene kits and others (EC 2018:2). The Commission also supported Greece with cash under the EU Emergency Support Instrument, with the total allocation of 605.3 million Euros in response to the refugee situation in Greece (EC, 2018:1). The fund is contracted to humanitarian aid partners of the Commission like the UN bodies, the Red Cross and other relevant NGOs (EC 2018:1).

As part of the European Agenda on Migration, the 'hotspot approach' was introduced by the Commission in April 2015. The goal of setting up hotspots is to be able to better coordinate the efforts of the EU's agencies on 'initial reception, identification, registration, and fingerprinting of asylum seekers and migrants' at the EU external border, especially in Greece and Italy (EP 2018:2). Years after the establishment of the first hotspot in Greece, reception conditions remain a major concern as there are reports of overcrowding. Concerns have also been raised by stakeholders on the inadequate facilities at the hotspot, poor living conditions, especially for the vulnerable asylum seekers (EP 2018:2-5). The establishment of hotspots in both Greece and Italy is also aimed at supporting the external border state to adequately tackle a mass influx of asylum seekers and this shall be examined further in the next section.

After the closure of Greek/FYROM border, with the implementation of the EU-Turkey Statement, Greece registered 16,396 Syrian refugee claims in 2017, with 9,105 applications still pending as of the end of 2017. Out of the registered applicants, 4,806 with refugee status were granted with one subsidiary protection, and 20 rejections at first instance (AIDA 2018: 1). In Greece 13,195 asylum seekers submitted

their claims and 3,995 were granted refugee status at first instance; 51,092 asylum seekers submitted applications in 2016 and 2,712 of them were given a positive decision; and out of 58, 661 asylum applications in 2017, 10,364 were granted positive decisions at first instance (ESI, 2018:5).

3.2.9 Italy

Italy and Greece have been at the receiving end of the immense pressure brought by the arrival of asylum seekers in large numbers over the years. Vulnerable by its location in the EU, the asylum seekers use Italy, as they used Greece, as a gateway to their various and preferred destinations within the Union. Asylum seekers from Africa mainly use the Libya/Italy axis. The frontline states of the EU are often put under pressure with the arrival of large numbers of asylum seekers. Evidently, as Greece faced the mass influx of asylum seekers in 2015, Italy was also battling with the inflows of migrants from Africa, Asia and other places.

According to Webb, more than 174,000 people embarked on the dangerous journey to Italy by boat in 2016, with about 4,700 recorded dead or missing (Webb, 2016:1). An overwhelming majority of these people came through Sicily and the island of Lampedusa (Webb, 2016:1). There seems to be a drastic reduction in the flow of asylum seekers in Greece with the EU-Turkey Statement in place, but this has put more pressure on Italy. The surge is fuelled by political repression in the Gambia and some other countries in Africa; unrest in Libya, violence and conflicts in some parts of Nigeria, civil war in Sudan, and oppression in Eritrea to mention but a few. These are contributing factors to the large influx of asylum seekers in Italy (Webb, 2016: 2). From various places in Africa, migrants make their way to Libya, from where they liaise with the people smugglers who arrange for their boat journey to Italy (Webb, 2016:2).

Widespread abuse in Libya in recent years has also led to the surge in the number of asylum seekers and migrants trying to make their way to Italy without delay to avoid falling victim to this abuse. According to the Italian Interior Ministry, 180,000 asylum seekers and migrants arrived in Italy by boat in 2016 and as of May, 2017, over 45,000

migrants made the same journey (James, 2017:1). Through the multibillion-dollar smuggling business, thousands of asylum seekers and migrants transit through Libya to use the services of the people smugglers to cross to Italy. According to UNHCR, about 36,000 people arrived in Libya in 2016 from Nigeria, 20,000 from Eritrea, and 12,000 from Sudan (Webb, 2016: no p).

Italy may end up being a final destination for many of the asylum seekers landing on its soil due to the Dublin system. Therefore, even if some of them move on to other places within the EU, as long as they have been fingerprinted under the Eurodac Regulation, they often risk being sent back to Italy especially when the Dublin transfer is enforced. Financially, Italy has been struggling for the past few years, and understandably this is affecting its capability to host large numbers of asylum seekers despite the financial support received from the EU. The country has taken in over 600,000 asylum seekers in recent years and the supporters of the far-right politicians in Italy seem to be overwhelmed with the level of migrants being received on a yearly basis (Patrick, 2018:1).

The far-right politicians in Italy have capitalised on the weariness of the Italians in coping with the arrival of large numbers of asylum seekers alongside a gloomy economy. The 2018 election campaign was characterised by anti-migrant rhetoric in Italy. Matteo Salvini, the leader of the League, a far-right political party, known for his bluntness, was at the forefront of the anti-migrant rhetoric. At a rally in Rome, Salvini, echoed his anti-migrant tone that he is sick of seeing immigrants in the hotels, while Italians sleep in their cars, and his audience applauded (Patrick, 2018:1). Similarly, the Five Star Movement Populist Party is led by Luigi Di Maio, is also known for his anti-migrant rhetoric. Their political parties performed well in the 2018 general election in Italy and eventually both political parties formed a coalition government in June 2018 (Patrick, 2018:3), a government that eventually collapsed in the summer of 2019.

Salvini, the former Interior and Deputy Prime Minister of Italy promised to send a minimum of 500,000 undocumented immigrants home if elected and that has echoed

one of his campaign pledges that if elected, a minimum of 500,000 undocumented immigrants will be sent home and 100,000 of them will be sent home in the first year alone (Lloyd, 2018:2). Salvini has also expressed his desire to put an end to the refugee camp in Sicily. He argued that his stance on immigration is not 'hard line but common sense', and that deportation of the undocumented immigrants should be increased while limiting the arrival of new migrants (Pereire, 2018: no p). Interestingly, less than a month into his former role as the country's Interior Minister, Salvini caught the world's attention with his refusal to allow MS Aquarius, a ship carrying 629 rescued migrants, to dock in an Italian port on June 10, 2018 (Kirchgaessner et al., 2018:1). MS Aquarius was operated by a French-German charity known as SOS Mediterranee and Salvini insisted that the Maltese government should allow the ship to dock in Malta.

However, Malta argued that it had nothing to do with the rescue mission that was coordinated by 'Italian Coastguard in the waters off Libya' (Kirchgaessner et al., 2018:1). Eventually, Spanish Prime Minister, Pedro Sanchez, had to intervene, give permission for the ship to dock in the port of Valencia, and promised that Spain will welcome the people on board of MS Aquarius. Pedro Sanchez said that "it is our duty to avoid a humanitarian catastrophe and offer a secure port for these people" (Winfield, 2018:1). Salvini's actions were not without criticism from both within and outside Italy. In fact, the Mayor of Naples called him a 'heartless minister' while mayors of Palermo, Taranto, Messina, Reggio Calabria in a joint statement stated that "we have always welcomed rescued boats and vessels who save lives at sea. We will not stop now" (Galindo, 2018: no p).

Similarly, in June 2018, MV Lifeline, a German charity NGO was accused of conducting a rescue and search operation illegally on the coast of Libya. Therefore, Lifeline with 234 migrants on board was denied permission to dock by the former Italian Interior Ministry (Barry and Calleja, 2018:1). The Italian government accused the Captain of Lifeline of disobedience to the order of the Italian Coastguard during the rescue and search operations (hereafter SAR) in Libyan waters (ECRE 2018: no p). After being stranded at sea for almost a week the ship was given permission to dock by the

government of Malta. The permission came after Malta secured agreement with Ireland, France, Italy, Portugal, Luxembourg, Norway, the Netherlands, and Belgium to share the responsibility of receiving and processing the claims of the 234 migrants.

The above mentioned MSs are to take in a minimum of 15 to 25 migrants each (ECRE 2018: no p). Nevertheless, the French government berated the captain of MV Lifeline that NGOs like Lifeline 'play into the hands of people smugglers'. The vessel was also impounded at the port by the Maltese government (Barry and Calleja, 2018:1), while the Prime Minister of Malta ordered investigation into the conduct of the ship's captain who is alleged to have broken international maritime law (ECRE 2018: no p). The MV Lifeline captain, Claus-Peter Reisch was arraigned in court in July 2018 and charged with illegal entry into Maltese territorial water, without proper registration and license (Orland, 2018: no p). He was granted bail and ordered to deposit his international passport in court (Orland, 2018: no p). In May 2019, the German captain was found guilty of entering national waters without proper registration by Maltese court, and he was ordered to pay 10,000 Euros in fine (Lupi, 2019: no p). However, his conviction was overturned by a Maltese Appeal Court in January 2020; the appeal cleared captain Claus-Peter Reisch of all charges. The Appeal court found no criminal intent when captain Claus-Peter Reisch entered Maltese waters without licence after he had rescued over 200 at sea (ECRE 2020:no p).

The populist and far-right government in Italy ought to be reminded that there are numerous people out there suffering persecution and these individuals are seriously in need of international protection. The Italian government may also do well to focus more on its economy rather than politically demonising asylum seekers, as there seems to be uncertainty ahead for the country in an economic aspect (Patrick, 2018:1). Italy is burdened as of the end of 2018 with a 2.3 trillion Euros debt and a third of its young people under the age of 25 are unemployed, coupled with an economy that is still recovering (Patrick, 2018:1). Therefore, the last thing the country needs is alienation from the rest of the MSs based on its new-found hardline stance on immigration.

3.3 Influencing Factors

From all indications, the selected MSs responded differently to the Syrian refugee crisis notwithstanding their geographical location within the Union. Some of the political leaders cautiously admitted asylum seekers, possibly in order not to upset their political base. France and the UK fall into this category. Some MSs refused to help the affected asylum seekers because it was not a cause their political leaders believed in, as evident in the way Hungary and Italy responded to the arrival of large numbers of refugees. Additionally, some MSs actually admitted asylum seekers in large numbers at the peak of the refugee crisis mainly because their political leaders believed that this was the ideal thing to do, and Germany and Sweden fall into this category.

There are three main factors that influenced the unilateral response of the MSs to the Syrian refugee crisis. First, the decision to help the asylum seekers or not was based on the personal belief of some of the political leaders. Second, was the financial capability of the potential host country and the third factor was that the decision-making process on matters of asylum was mainly political in nature.

3.3.1 Personal Beliefs of the Political Leaders

Arguably, personal belief of the political leaders played a major role in admitting or helping asylum seekers during the 2015 refugee crisis. For example, by allowing large numbers of asylum seekers into her country at the peak of the crisis, Germany's Chancellor, Angela Merkel, strongly believed that it was the right thing to do. Therefore, despite a barrage of political opposition, she implemented the initiative that helped thousands of Syrian refugees gain refuge in Germany. This does not mean that everyone in Germany supported what Angela Merkel did, but the decision stood because she had the conviction and the political power to carry on with it. On the other hand, Hungary through its political leader, Prime Minister Orban refused to help the asylum seekers. His decision not to host a large number of asylum seekers can also be linked to his personal belief, which is in direct opposition to that of his German counterpart. It would, however, be wrong to assume that Hungarians as a whole were not inclined to help asylum seekers. In fact, Hungarians had indeed helped asylum

seekers in the past, especially during the Yugoslav war in the 1990s, as pointed out in chapter one.

Prime Minister Orban is not alone in his anti-migrant rhetoric, the former Italian Deputy Prime Minister, Matteo Salvini, won the election based on similar tactics. Salvini and his party capitalised on the fact that some asylum seekers use Italy as a gateway to reach other destinations within the Union. Consequently, Salvini and his far-right political party sprang into action in Italy almost immediately after they were sworn in to lead the country in 2018 as explained earlier. Consequently, some of the controversial initiatives were implemented in line with his anti-migrant political campaign speeches during the Italian general elections in 2018.

Another example of how personal belief of political leaders can greatly change a country's direction on asylum matters is that of President Trump in the US. Over the years the US has been at the forefront in helping asylum seekers. However, the implementation of the controversial initiatives under the current political leader in the US has altered the *status quo* as mentioned in previous chapter. Despite the growing opposition to some of the current asylum policies in the US, the US Homeland Security has carried on with the implementation of some of these controversial immigration and asylum policies. Key among these controversial initiatives are the proposed border wall, travel ban, and family separation policy.

3.3.2 Financial Capability of the Individual MS

Financial capability of some of these MSs to conveniently host large numbers of asylum seekers at the peak of the refugee crisis is another factor. This arguably influenced how some of the MSs responded to the Syrian refugee crisis. For instance, one of the reasons Austria, Germany, and Sweden were able to admit large number of refugees in 2015 could be linked to their financial capability to do so. Similarly, France, UK, Finland and other MSs also admitted asylum seekers under the relocation scheme. However, it was obvious that the number of people admitted by some of the aforementioned MSs was far below the minimum capacity they should have helped in the first place because they have the financial capability to do so.

On the other hand, one may argue that since these refugees came through Greece, and Greece is a safe country, why did the asylum seekers journey on to other destinations within the Union? No doubt, the Syrian refugees used Greece as the gateway in 2015 but notably the country was also struggling financially at the peak of the refugee crisis. Consequently, Greece lacked the financial capability at that time to admit a large number of asylum seekers. For instance, Greece with its population of 11 million as of 2015 was struggling financially at the peak of 2015 refugee crisis, with a 25% unemployment rate and a national debt approaching 180% of the GDP as of the end of 2015 as mentioned earlier (Gideon, 2016:1). In the same vein, Italy has been struggling financially for the past few years, and understandably this is affecting its capability to host large numbers of asylum seekers, thus, Italy seem to be overwhelmed with the level of migrants being received on a yearly basis (Patrick, 2018:1). Additionally, some of the Eastern European MSs did not seem to be financially buoyant enough to admit a large number of asylum seekers.

3.3.3 Politics

Politicising the asylum system or how to balance the political pressure at home in the face of the mass influx of asylum seekers is the third major factor that influenced the response of the MSs to the Syrian refugee crisis. It was obvious that some of the MSs had the means to host more asylum seekers at the peak of refugee crisis, but the leaders had to balance the political pressure at home. As a result of that they admitted far below their capability. For instance, at the peak of the refugee crisis, the politicians in the UK were campaigning to leave or remain in the EU. Hence, the far-right politicians, like Farage, capitalised on the arrival of the large number of asylum seekers in Greece. Farage warned the populace to vote leave in order for the UK to be able to unilaterally secure its borders. By also trying to balance or minimise the political pressure, the then Prime Minister, Cameron, announced that the UK would not admit refugees from within the EU but directly from the refugee camps in the neighbouring countries of Syria.

In addition to the usual political pressure being mounted on the ruling political parties, the rising level of the far-right anti-migrant rhetoric has become a force to be reckoned with. The far-right politicians in France led by Marine Le Pen also capitalised on the increase in the number of terror attacks in the country at the peak of the 2015 refugee crisis and tried to link this to the arrival of the large number of asylum seekers within the Union. Marine Le Pen used this to spread hatred and mounted political pressure on the then French President, Francois Hollande who had to announce that France would host a certain number of Syrian asylum seekers within a given period. Arguably, France could have done more to help the Syrian refugees in 2015 but for the political pressure being mounted mainly by the far-right politicians in the country. The far-right politicians also capitalised on the decision of the German Chancellor to admit large numbers of asylum seekers in 2015. They mounted political pressure on the government to the extent that Germany had to tighten up its asylum policies before and after the German general election in 2017. Therefore, categorising the response of the MSs based on the geographical divide alone would be insufficient. It is important to acknowledge the fact that there are other factors that would encourage or discourage a country from willingly hosting asylum seekers at a particular point in time, especially in the face of a mass influx of asylum seekers.

3.4 Collective Response

This section examines some of the initiatives of the EU authorities aimed at tackling the Syrian refugee crisis. It examines the mandatory EU relocation scheme, the EU-Turkey Statement, and Frontex led joint operations at sea to combat the activities of people smugglers at the EU external border states. This section also reviews the Dublin III Regulation evaluation report, and assesses the proposed Dublin IV.

3.4.1 EU Refugee Relocation Scheme

As part of the efforts to tackle the refugee crisis within the Union, the majority of MSs agreed in 2015 to ease pressure on Italy and Greece by relocating some of the asylum seekers to other MSs in the spirit of solidarity. The relocation scheme established by Council Decision 2015/1523 and 2015/1601 (Relocation Decision) was meant to assist two frontline MSs of Italy and Greece for a period of two years (AIDA

2018:4). Consequently, the majority of the MSs were committed to implementing the relocation scheme that was planned for a two-year period, from September 2015 to September 2017. However, Hungary and other Eastern European countries strongly opposed the relocation scheme (Rankin, 2016:1).

Initially, the number of refugees to be relocated was set at 160,000 within two years. The figure was later reduced to 98,253 (63,302 from Greece and 34,953 from Italy) after it was established that fewer refugees were eligible for relocation based on the set of criteria of eligibility (Dearden, 2017:1). Under the relocation scheme, only asylum seekers of nationalities with an average recognition rate of 75% or more were qualified for relocation. Only Syrians and Eritreans met this criterion (UNHCR 2017:1). However, the UNCHR appealed for the threshold to be lower so that more nationalities would be able to benefit from the scheme. Nonetheless, the MSs struggled to resettle the few that were eligible for relocation (UNHCR 2017:1). It seems therefore that the priority was erroneously placed on lowering the threshold when, in fact, more focus should have been placed on the practical implementation of the scheme.

There has been strong opposition from the Eastern European MSs as stated earlier and this undoubtedly undermined the effectiveness of the scheme. The Czech Republic, Slovakia, Romania and Hungary reportedly voted against the implementation of the scheme in September 2015, but their votes were not enough to stop it as the majority of MSs outvoted them to kick-start the programme (Strupczewski and Fioretti, 2015: no p). The then Slovak Prime Minister, Robert Fico referred to the quota system as nonsensical and vowed never to implement it during his time as the Prime Minister of Slovakia (Strupczewski and Fioretti, 2015: no p). In the same vein, the former Czech Interior Minister, Milan Chovanec tweeted that …'common sense lost today', following the decision of the EU to carry on with the implementation of the relocation scheme after the majority of MSs voted in favour of the scheme (Strupczewski and Fioretti, 2015: no p).

Nevertheless, the European Commission Vice President, Frans Timmermans asserted that he was aware that some MSs were not in favour of the relocation scheme but that MSs had voted in favour of the implementation of the programme and therefore the Commission was under an obligation to make sure that it was implemented (Strupczewski and Fioretti, 2015: no p). Since the arrival of the large number of asylum seekers in 2015, migration issues have been at the top of the EU agenda, and this has also been a tug of war between Brussels and the Hungarian Prime Minister. After several months of appeal and diplomacy to convince Hungary and other MSs to participate yielded no results, the EU decided to seek the way forward in court concerning the refugee relocation scheme.

Consequently, in the summer of 2017, the CJEU dismissed complaints by Hungary and Slovakia about the migration policy of the EU, a decision that stands as victory for the EU authorities on the relocation scheme (CJEU 2017). In the joint cases of the *Slovak Republic and Hungary v Council of the European Union*, the CJEU rejected all arguments and recalled that:

> the EU institutions must be allowed broad discretion when they adopt measures in areas which entail complex assessments, particularly of a political nature. In the case in question, the Council had relied on statistical data and had identified the scale of migration inflow, which would have disrupted any asylum system, even one without structural weaknesses (CJEU 2017; EDAL 2019:1).

The court ruled that the European Council acted lawfully concerning the relocation scheme (Rankin, 2017:1). The judges explained that the EU institutions were on firm legal ground when they agreed on certain measures as part of their efforts to tackle "an emergency situation characterised by a sudden inflow of displaced persons" (Rankin, 2017:1). The CJEU judgment coincides with the EU executive decision that dismissed Hungarian PM Orban's request for EU funds to build more barrier walls, and barbed-wire fences at the Hungarian borders against refugees. The former European Commission president, Jean-Claude Juncker, responded to the request in a letter that "Orban cannot cherry pick EU policies" as "solidarity is not an *a-la-carte* dish"

(Rankin, 2017:1). Juncker reminded the Hungarian Prime Minister of the financial support Hungary had received in managing the mass influx of asylum seekers. Juncker further argued that solidarity is a two-way street as there would be times when MSs would need support at EU level and at other times they must show solidarity in contributing towards a common goal in a collective manner (Rankin, 2017:1). Furthermore, in March 2020, the CJEU ruled that Poland, Hungary and the Czech Republic had broken European law with their refusal to admit their share of refugees in line with the EU refugee relocation scheme (Rankin, 2020: no p).

As mentioned earlier, Germany is one of the countries whose commendable efforts in hosting thousands of Syrian refugees deserve a mention. The country also contributed significantly to the EU refugee relocation scheme. Germany's contribution concerning the relocation scheme is still the highest among the MSs as of May 2018 when Germany had relocated 5,434 asylum seekers from Italy and 5,391 from Greece. Hungary, Poland and Iceland did not participate in the relocation scheme (EC 2018:2). Slovakia relocated no one from Italy but relocated only 16 asylum seekers from Greece, while the Czech Republic has relocated 12 people from Greece and no one from Italy. In total, 12,690 persons were relocated from Italy and 21,999 from Greece as of May 2018 (EC 2018:1).[31]

Implementation of the Relocation Scheme
A review of the AIDA report dated May 2018 concerning the relocation scheme revealed the views of the receiving MSs on the scheme. The review focuses on four identified areas, namely, rejection of the relocation candidates, the duration of the relocation procedures, registration of the relocation candidates, and the processing of the asylum claims of the relocation candidates.

3.4.2 Rejection of the Relocation Candidates
In line with the Relocation Decision (hereafter RD), MSs have the right to "refuse to relocate an applicant only where there are reasonable grounds for regarding him or

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[31] EU mandatory refugee relocation scheme lasted for two years, 2015 to 2017, and some of the MSs agreed on voluntary refugee relocation scheme in June 2018

her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions" of the recast QD (AIDA 2018:1). Hence, some of the rejections under the RD were indeed based on security reasons. The report did not disclose whether the security reasons were grounded in the exclusion clauses or that the affected asylum seekers did pose a threat of any kind whatsoever to the national security of a potential host MS.

Most of the countries involved; Spain, Switzerland, Germany, Belgium, Portugal, Sweden, Romania, Slovenia, Malta, Cyprus, Croatia, and Bulgaria, carried out security checks on the relocation candidates (asylum seekers) without conducting direct interviews in Greece and Italy (AIDA 2018:1). For example, the Dublin Unit for Aliens Office for security purposes screened these candidates in Belgium. In Bulgaria, document checks were done by the State Agency for National Security (SANS), while the Antiterrorism Coordination Unit (UCAT) performed security checks on the relocation candidates in collaboration with the "Working Group of the European Agenda for Migration that liaises with its members of the security community for background checks" (AIDA 2018:2). Arguably, the checks were being carried out in response to the anti-migrant rhetoric of the far-right politicians in accordance with the theoretical perspective of this study as explained in chapter four.

However, the Netherlands, Ireland, France, Norway, and Estonia interviewed the relocation candidates in both Greece and Italy prior to the approval of such relocation. Usually, some of the MSs stationed an individual each in Greece and Italy to conduct such interviews but 12 French officials from the French Refugees and Stateless Persons (OFPRA) were stationed in Greece alone (AIDA 2018:3). Once the Ministry of Interior receives the lists of relocation candidates from the local agents on ground in Greece, then the OFPRA would deploy these officials to conduct interviews with the asylum seekers that made the list and within 15 days a decision must be made on whether these relocation candidates were eligible to be relocated to France or not (AIDA 2018:3). The OFPRA also deployed a similar mission to Rome to conduct the interviews with the relocation candidates, in addition to the missions to Athens in 2016 and 2017 (AIDA 2018:4).

In the Netherlands, the Immigration and Naturalisation Service (IND) did the registration of the asylum seekers after a relocation request had been received. The acceptance of such a request means that the IND would work with relevant national agencies to conduct the security screening on the relocation candidates and deploy the official to Athens and Rome on a relocation mission to conduct the interviews. The official of the IND spent over an hour per relocation candidate concerning the interview session. The interviews covered areas such as national security, public order, and exclusion clauses. The Central Agency for the Reception of Asylum (COA) also trained the asylum seekers on a two-day training session that covered different areas such as geographical location of the country, Dutch lessons, more information on the relocation programme, rules and regulations, education, reception in the Netherlands, health care, norms and values, and information on flight and arrival in the Netherlands (AIDA 2018:4). Aside from the security reasons as specified in Art 5(7) of RD, some MSs rejected relocation candidates based on other grounds. For instance, Germany and Croatia rejected some of the relocation candidates based on polygamous marriages, as well as cases on child marriages for some of the relocation candidates for Germany. Spain and Slovenia also rejected some of the relocation candidates who did not merit the relocation due to the fact that their nationality fell outside the scope of the RD (AIDA, 2018:4). One of the highlights of the relocation process was that France, Estonia, the Netherlands and Ireland deployed more staff than other MSs to effectively treat the relocation requests in Greece while interviewing and training the affected asylum seekers.

3.4.3 Duration of the Relocation Procedures

The report also revealed the standard duration of the relocation procedures, a maximum of two months from the submission of a pledge by MSs to the actual relocation, but with a possibility of a two week extension. The extension occurred when a reply from Greece and Italy came late, towards the expiration of the deadline in most cases, and with another 4 weeks extension if there are genuine and serious obstacles militating against such transfer. Therefore, the relocation procedure was designed to be as fast as possible, with a total maximum period of over three months

even when an extension of up to 4 weeks occurred (AIDA 2018:4). Therefore, it was essential for MSs to strictly adhere to such deadlines partly to decongest the hotspots that were already housing more asylum seekers than the hotspots were originally built to accommodate.

Apparently, the time spent in relocating a batch of asylum seekers was not the same among the participating MSs, although, most countries were able to comply with the time limit. For instance, the average time it took Spain was a month, 2 to 3 months for Romania, 2 months for the Netherlands, 2 to 3 months for Germany, and 4 months each for both Croatia and Switzerland (AIDA 2018:4). In the case of Portugal, the Aliens and Borders Service (SEF) revealed that evaluation of communication as regards the decision making process on the relocation transfer was done within the time frame set in the RD but the actual transfer itself took much longer and exceeded the maximum deadline. Similarly in Slovenia, the Migration Office disclosed that the procedure ranges from 5 weeks to 5 months. In most cases, the delay occurred due to the Slovenia authorities approach of requesting that the asylum seekers be transferred in bit by bit. Switzerland also experienced delays concerning the time limit as set out in the RD (AIDA 2018:5). According to the State Secretariat for Migration (SEM) of Switzerland the delay was an average of three weeks more when relocating from Greece compared to Italy, due to the complex nature of the dossiers submitted by Greece on the asylum seekers, which required extra efforts to review (AIDA 2018:5).

3.4.4 Registration of the Relocation Candidates

The relocating candidates were treated differently on the territories of some of the countries that participated in the relocation scheme. For the purpose of identification and registration, the relocating candidates were directed to the Aliens Police office (AVIM-straat) by the COA in the Netherlands. The relocating candidates were sent to the Office for Asylum and Refugee (OAR) in Spain where they were able to submit their asylum applications. Identification and registration of these asylum seekers was carried out at the Kofinou reception centre in Cyprus after they were transferred from the airport by the Asylum Service (AIDA 2018:5).

In Germany, the asylum seekers involved were transferred to the 'waiting room' after their arrival at Munich airport. They stayed in the waiting room for a maximum of 72 hours, where their registration and medical examination took place. The relocated applicants were transferred to the reception centres in the Federal States in line with Germany's standard distribution system (*konigsteiner Schlussel*). Unaccompanied children were treated differently as they were not transferred to the 'waiting room' but directly to the reception centres at the Federal States where they had relatives. This rule applied to persons in need of urgent medical attention, they were made to skip the 'waiting room' procedure and were transferred to the reception centres at relevant Federal States (AIDA 2018:5). In Germany, no serious issues were reported concerning the identification and registration process of the unaccompanied children and the vulnerable people or persons with special needs according to BAMF (AIDA 2018:5).

Cases concerning the relocation procedure of the asylum seekers in France were a bit different because the process was faster in comparison with other receiving countries (AIDA 2018:5). Prefectures were assigned to identify and register the relocation applicants or candidates at designated locations in various French cities. Specific 'single desks' (*guichets uniques*) were established in Nantes, Bordeaux, Lyon, Metz, region of Ile de France, and Besancon (AIDA 2018:6). Therefore, the relocation candidates were not made to go through processes of moving from one point to another as part of the pre-registration phases such as 'orientation platform' (*plateforme d'accueil de demandeurs d'asile*) as seen in some other receiving countries (AIDA 2018:6).

3.4.5 Processing Asylum Claims
One major objective of the relocation scheme as spelt out in the RD is "to ensure, to the maximum extent possible that all applicants in clear need of international protection would be in a position to fully and swiftly enjoy their protection rights in the Member State of relocation". Thus, the majority of the receiving countries have resolved to process the asylum applications of the individuals involved as quickly as

possible; they were either placed on fast-track or prioritised procedures. According to AIDA report, the relocation candidates were given asylum status within a maximum of 15 days from arrival, except in exceptional cases with some more complex issues (AIDA 2018:7). It was a maximum of 15 days in Sweden in comparison with the normal asylum procedure of an average of 219 days for Eritrean nationals and 317 days for the Syrian asylum seekers in 2017 (AIDA 2018:7).

In the Netherlands, the relocation candidates were given residence permits within 24 hours of their arrival in the country, except in cases where their nationality was under questioning by the Dutch authorities. In such cases, the affected asylum seekers had to go through the regular 'eight-day procedure'. Portugal processed the asylum applications of the relocated asylum seekers from Eritrea and Syria under the fast-track category in 2015 and 2016 but this was no longer the case in 2017 due to the increase in the caseload before SEF. In 2017, the asylum claims of the relocated asylum seekers were processed on an average of one year as revealed by the Commission for Migration (ACM) in Portugal (AIDA 2018:7). It was different in Ireland because the Irish officials had already conducted screening for the relocation candidates in Greece and Italy as mentioned earlier. Therefore, their asylum claims were looked into at the Emergency Reception and Orientation Centre (EROC), which made it quicker in comparison with other asylum seekers that did not lodge their asylum claims under the relocation scheme.

In Romania, the decision whether to fast-track such claims or not lay solely in the hands of the regional authorities, "the Regional Centre for Accommodation and Procedures for Asylum Seekers" that handled such asylum claims (AIDA 2018:7). For instance, Regional Centres of Radauti and Galati processed the asylum claims of the asylum seekers that were brought in under the relocation scheme as normal, no special treatment in comparison with other asylum seekers that submitted applications in Romania. However, the Regional Centres of Somcuta Mare, Bucharest and Giurgiu did fast-track the asylum claims under the relocation cases. The Regional Centre of Timisoara did not admit asylum seekers under the relocation scheme let

alone fast-track their claims and this is due to the increase in the number of the Serbians that arrived in the region in 2017 (AIDA 2018:7).

In Slovenia, asylum claims submitted through the relocation scheme that "were subject to fast-track procedures" were concluded within a few months unlike the normal asylum process that usually take up to a year and more. Although, the Asylum Service of Cyprus had stated that asylum claims under the relocation procedures would be treated as priority, the reality was not the same as the affected asylum seekers waited for more than six months before receiving an asylum decision (AIDA 2018:7). In Croatia, the asylum claims of the relocated persons were placed on priority and decisions were obtained within one month. However, Croatia Law Centre represented the separated children that were relocated from Greece and their cases were not fast-tracked (AIDA 2018:7). On the other hand, Germany, Bulgaria, Belgium, Austria, Spain, and Switzerland did not fast-track or place the submitted asylum applications under the relocation scheme on priority procedures but treated all asylum applications in the same way (AIDA 2018:8).

Officially, the EU refugee relocation scheme came to an end in September 2017 but some of the MSs like Germany are still willingly relocating more asylum seekers from both Greece and Italy (ESI 2018: 9). In addition, UNHCR urged the Commission not to end its relocation scheme but to continue relocating eligible refugees from Greece and Italy beyond the originally planned two-year period (UNHCR 2017:1). Pascale Moreau, Director of UNHCR's Europe Bureau made the call in September 2017. Pascale pointed out the need for the MSs to carry on with the scheme while a workable policy is in place through a reformed Dublin system that will help manage the refugee crisis effectively (UNHCR 2017: no p). UNHCR saw the relocation scheme as a positive way of tackling the mass influx of asylum seekers that would ease the humanitarian situation in Greece and reduce pressure on Italy. A crucial gesture of solidarity that must not be neglected (UNHCR 2017: no p).

However, it comes as a surprise that the Eastern European countries voted against the scheme and refused to participate in such a seemingly positive initiative. Helping a

few hundred refugees based on the capability of the Eastern European MSs would have been the ideal thing to do. Surprised by the decision of the Eastern European MSs not to participate, Tony Bunyan, Statewatch Director opined that states that decided not to take part in the relocation scheme "deserve to be named and shamed and will go down in history for their inhumanity" (Statewatch, 2018:1). Based on the refusal of Hungary and a few other MSs to participate, Massimo D'Alema, former Italian Prime Minister, argued that the reasonable way to solve the refugee crisis is through solidarity and that the EU cannot tolerate countries that disrespect laws based on fundamental values (Wintour, 2017:1). Critics also expressed disappointment in the stance of the Eastern European MSs not to participate in the relocation scheme. They pointed out that even though those countries are always willing to accept economic benefits from the EU, including access to the single market, they still show no respect for 'humanitarian and political responsibilities' under the Union (Wintour, 2017:1). ECRE urged support for the scheme, which was seen as a positive gesture in tackling large-scale asylum movement within the Union and that MSs should work together in the spirit of solidarity (ECRE, 2017:4). ECRE also acknowledged that the scheme was a 'positive development' and that the "voluntary involvement of the Schengen Associated States means that the scheme can work where there is solidarity, political will and commitment" (ECRE 2017:3).

It is important to note that some MSs also engaged in bilateral relocation scheme. For instance, The Portuguese Ministry of Internal Administration revealed the agreement between Portugal and Greece to relocate asylum seekers from Greece to Portugal. Under this agreement, Portugal is expected to relocate 1,000 refugees before the end of 2019 (AIDA 2018:1). The affected asylum seekers would have to first submit their claims in Greece and would then be interviewed by Portuguese officials with the aim of granting them refugee status and relocating them to Portugal (AIDA 2018:1). Similarly, in April 2016 the UK announced that it would relocate 3,000 child refugees from the Middle East and North Africa under the Dubs Amendment. However, as of the end of 2018, only 20 unaccompanied children have been relocated (Townsend, 2018: 1).

3.4.6 Establishment of Hotspots in Greece and Italy

To cope with the large number of asylum seekers arriving in Europe in 2015, it became apparent that more facilities and personnel will be needed throughout the EU for the asylum claims to be rapidly assessed. Hotspots were established considering the several locations through which asylum seekers arrive. In the same vein, the introduction of the EU relocation scheme requires a form of coordination at the frontline states to ensure its effectiveness. Therefore, the EU set up hotspots in Greece and Italy to aid the MSs, especially the frontline states, in the face of a mass influx of asylum seekers (Lyneham, 2018:1). Interestingly, the hotspots became an important feature of the relocation scheme until the focus shifted to the EU-Turkey Statement (AIDA 2018:1; Lyneham, 2018:1).

The hotspot approach focuses on the establishment of EU-run reception centres at the external border states of the Union, mainly in Italy and Greece. It is described as providing "operational solutions for emergency situations" (AIDA 2018:1). Its existence helps with the identification of individual asylum seekers, finger-printing of the asylum seekers and the identification of those not requiring international protection, i.e. economic migrants that are to be returned. The EU agencies that are designated to ensure the successful running of those hotspots in both countries alongside the relevant local personnel are Frontex, EU Police Cooperation Agency (Europol), EU Judicial Cooperation Agency (Eurojust), and EASO (EP 2016:34).

Under the hotspot approach, UNHCR personnel that are present at the locations are to monitor the situation. EASO assists national authorities in the processing of asylum applications especially those that eventually lead to relocation. Frontex helps to identify, register and fingerprint new arrivals. It also assists in enforcing return decisions, collecting information on people smugglers and passing this on to Europol for further action (AIDA, 2018:1). Designated hotspots receive asylum seekers on arrival, and process or filter out people that are eligible to make claims and facilitate the return of those who can be returned. Identified hotspots in Italy that are in operation as of the end of February 2018 are found in Lampedusa, Pozzallo, Trapani,

Taranto, and Messina. In addition, there are also currently five hotspot locations in Greece including Lesvos, Chios, Samos, Leros, and Kos (FRA 2018:1).

Lampedusa has a total reception capacity of 500 people, with limited capacity of 300 persons in Pozzallo, 400 in Tarato, 400 in Trapani and 250 in Messina. The hotspot reception capacity in Greece is originally designed for 6,438 but it was already hosting 11,683 as of the end of 2018 (AIDA 2019:1). It is important to note that the UNHCR's involvement is in line with the scheme launched in December 2015 to provide an additional number of 20,000 reception places for asylum seekers in Greece. The EU authorities and the Commission were committed to providing €80 million from the 2016 EU budget to make this a reality (UNHCR 2015:1). However, one of the problems in managing the hotspots in the two countries is overcrowding. The hotspots are hosting more than their original capacity. In Greece, Lesvos was originally designed for 3,100 people but was already hosting 5,010 as of December 2018. Leros was designed for 860 and Kos 816 but were hosting 936 and 762, respectively as of December 31, 2018 (AIDA 2019:1). Similarly, Chios was hosting 1,252 as opposed to the 1,014 it was originally built for, and Samos was designed for 648 asylum seekers, but it was already hosting 3,723 as of the end of 2018 (AIDA 2019:1).

The progress report of the Commission submitted towards the end of 2017 revealed many areas that need further improvement for the hotspot approach to work efficiently. These areas include human rights violations, challenges facing the reception conditions at the hotspots, inadequate legal assistance and information, and the restriction in the movement of asylum seekers and their detention, tantamount to inhumane and degrading treatment that must be stopped (ECRE 2016:1). The European Court of Auditors believe that although more needs to be done, the establishment of the hotspots in Greece and Italy has helped the improvement in registering and identifying the asylum seekers (ECA 2018:no p). The report pointed out that thousands of migrants are still stranded on the islands and that there is a need to provide adequate facilities to accommodate asylum seekers and migrants, especially minors, in both Greece and Italy (ECA 2018:no p).

HRW argued that hotspots are unsafe, especially in Greece, where the police have failed to provide adequate protection. Selected HRW personnel also visited Samos, Lesbos and Chios in May 2016 and discovered that these hotspots were in a terrible condition, 'unsanitary and severely overcrowded'. There were shortages of basic human needs with 'filthy and unhygienic conditions' and the hotspots were referred to as the European version of refugee camps (HRW 2016:1). In addition, Amnesty International reported that the asylum seekers in Italy have complaints of the serious ill-treatment of migrants, including beating and electric shocks when they refuse to be fingerprinted at the hotspots, which may amount to inhumane or degrading treatment or punishment (AI 2016:1).

Despite all its shortcomings and criticism of lack of adequate capacity to accommodate asylum seekers and migrants, and the realisation that asylum seekers are spending more than four months at hotspots, ECRE still referred to it as the cornerstone of EU support to Italy and Greece (ECRE 2017:1). In this sense the hotspots are a solution – at least at concept level- for supporting the frontline states and facilitating the effectiveness in processing the asylum claims of the newly arrived people in both Italy and Greece. The practical implementation of the hotspot concept, of course, does have obvious shortcomings, some of the most striking being abuse and inadequate accommodation facilities, which still need to be improved upon (Nielsen, 2017:1). However, if the hotspots were better managed and the asylum seekers could be resettled fairly among the MSs, in the spirit of solidarity and fair sharing, this would be a step in the right direction towards tackling the large-scale movement of asylum seekers.

3.5   The EU-Turkey Statement

In a bid to tackle the Syrian refugee crisis, the EU came up with a political agreement with Turkey in early 2016 to end irregular migration by sea from Turkey to Greece (EC 2016:1). Under the initiative, all new irregular crossings from Turkey to Greece, effective from March 20, 2016 shall be returned to Turkey; for every person that is sent back to Turkey from Greece, a Syrian refugee will be resettled within the Union (EC 2016:2). Turkey is also obliged, among other things, to prevent new sea arrivals

from Turkey to Greece. There are incentives put in place for Turkey that include an initial disbursement of €3 billion for the refugees in Turkey and another €3 billion before the end of 2018 (Gogou, 2017:4). Notably under the EU-Turkey Statement, the Greek Asylum Service is expected to examine the asylum claims of vulnerable asylum seekers on a case by case basis in accordance with Articles 6 and 7 of the Charter (EC 2016:1). In processing the vulnerability cases, application of the inadmissibility procedure under Articles 55 and 56 of Law 4375/2016 (Art 33 of Directive 2013/32) to vulnerable applicant cases with a view to their possible return to Turkey shall be applied (EC 2016:1).

Irrespective of the controversy that characterised the above arrangement, the effect of the EU-Turkey Statement was immediate, as the number of asylum seekers coming to Greece through Turkey was drastically reduced. The average daily crossings decreased from 10,000 in 2015 to 80 as of early 2018, representing a 97% reduction.[32] The EU authorities are giving much credit to the Turkish authorities for dismantling the business model of the people smugglers and preventing the exploitation of migrants and innocent refugees planning to travel to the EU to seek asylum. Irrespective of the accolades by the Commission concerning the success of the EU-Turkey Statement, stakeholders see the arrangement differently. For instance, Pro Asyl referred to the EU-Turkey Statement as "a violation of the right to asylum" (DW 2016:1).

In the same vein, Amnesty International (AI) argued that the EU-Turkey Statement has left thousands of refugees stuck in limbo and in horrendous conditions while endlessly waiting for their cases to be dealt with' (AI UK 2016:1). According to Amnesty International, the UK Home Affairs Committee report points out that the EU-Turkey Statement is "arguably a first step towards a meaningful response" to the Syrian

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[32] Some people believe that the controversial EU-Turkey Statement is a success especially with the reduction in the number of people seeking asylum in the EU through the Turkey-Greece axis by about 97% in comparison to the peak of the refugee crisis in 2015, http://www.vocaleurope.eu/the-eu-turkey-statement-gauging-the-effects-nearly-two-years-on/

refugee crisis, but it is "highly controversial" according to the Committee's report (AI 2016:1). Additionally, Amnesty International, through its Director for Europe and central Asia, John Dalhuisen, argued that Turkey is not by any means a 'safe third country' for refugees or migrants and any attempt to make it so on paper will be morally and legally flawed (Al 2016:1).

The number of Syrian refugees that have been resettled from Turkey to the EU under the Statement between April 2016 and February 2018 is placed at 12,476 (EC 2018:1). The EU authorities have also been contributing to making a success of the agreement. In light of this, the first €3 billion earmarked for the support of Syrian refugees in Turkey for 2016 and 2017 has been disbursed. Its breakdown reveals €1 billion was taken from the EU budget and €2 billion as contributions by MSs (EC 2018:1). This money goes into various projects designed to help the host communities with 'education, health, municipal infrastructure, and social economic support'. The second €3 billion tranche of the amount was earmarked to be fully paid by the end of 2018. This is also a combination of €1 billion from the budget, plus the Commission following up on the MSs to contribute their share of the remaining €2 billion (EC 2018:1). However, this was not paid up as scheduled but as of July 19, 2019 the European Commission came up with new measures worth €1.41 billion as part of the second tranche of the Facility for Refugees in Turkey.[33] This new measure brings the total amount already paid to €5.6 billion out of 6 billion agreed in 2016, and the balance on the total amount is due to be allocated before the end of 2019 (EC 2019: no p).

The EU authorities seem to be so satisfied with the progress made thus far by the EU-Turkey statement, that they are considering a similar bilateral agreement with Libya. However, Amnesty International has warned that a replay of such controversial moves would be "dangerous" (Al 2016:1) due to the many criticisms levied against the

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[33] EC (2019) EU Facility for Refugees in Turkey: €5.6 Billion out of 6 billion now Allocated in Support of Refugees. Press Release., available at http://europa.eu/rapid/press-release_IP-19-4389_en.htm

agreement, especially regarding the very premise of the agreement, which is that Turkey is a safe third country. Critics have argued that some of the EU actions (in collaboration with Frontex), including the very formation of this arrangement, may lead to several human rights violations, especially the principle of *non-refoulement*. For instance, the German NGO, Pro Asyl argued that sending the rescued asylum seekers back to Turkey from the Aegean Sea would amount to a pure case of 'illegal push-back' (Sagener, 2016:1). Arguably, this means that asylum seekers are effectively prevented from gaining access to the shores of the EU, while the EU attempts to conceal its fight against migration behind a 'fight against smuggling' façade and collaborations with "safe" third countries (Sagener, 2016:1).

Human Right Watch (HRW) also disagreed with the notion that Turkey is a 'safe third country', based on its inability to protect some of the Syrian refugees in the past. HRW cited examples of 'push-backs' committed by Turkey against some Syrian refugees in the past. Turkey allegedly sent Syrian asylum seekers back to Syria at the Syrian-Turkish border, which amounted to a clear case of *refoulement* (HRW 2016:11). It is pertinent to note that Turkey does not qualify under Art 38 used alongside Art 35 of APD to return Syrian refugees from Greece to Turkey. HRW argued that Syrians are excluded from Turkey's 2013 Law that allows asylum seekers to be granted 'conditional refugee status' individually (HRW 2016:1). One year after the agreement was made with Turkey HRW pointed out that the EU-Turkey Statement has brought suffering to thousands of asylum seekers and refugees and it is now "a stain on the collective conscience of Europe" (Al 2017:1). Dalhusein also argued that the EU-Turkey Statement has turned the Greek islands into detention centres. In his view, they are overcrowded, to the extent that five refugees died on Lesvos due to squalid conditions caused by the long wait engendered by the EU-Turkey Statement (AI, 2017:1), and that sometimes the refugees have been victims of hate crimes.

The number of migrants that arrived in Greece by sea in 2015 is placed at 873,179, 174,605 in 2016 and 29,718 in 2017. From April 2016 to December 2016, 26,593 arrived in Greece by sea as opposed to 146,506 that arrived between January 1, 2016 and March 19, 2016, before the implementation of the EU-Turkey Statement. The

number of people that arrived in Greece by sea in the entirety of 2017 was 29,718 (ESI 2018:3). In total, 1,485 migrants were returned to Turkey under the EU-Turkey Statement from April 2016 to December 2017. The largest transfer occurred in the first month of the arrangement, April 2016 with 386 people, and no one was transferred in July 2016 (ESI 2018:6).

The vulnerable asylum seekers are being given priority concerning the process of returning asylum seekers under this scheme, but it appears that the efforts being made by the EASO in this regard remain insufficient. For instance, in written submissions on behalf of the Interveners in the case of *J.B. V Greece*, Vassilis Kerasiotis, Country Director of HIAS Greece pointed out some of the flaws that were recorded in the vulnerability assessments of asylum seekers under the EU-Turkey Statement. The Director also argued that despite the deployment of vulnerability experts under the supervision of the EASO to Greece to help out, many vulnerable asylum seekers remained unidentified (Asylumlawdatabase, 2017: no p). The Interveners also argued that "a return that exposes applicants to the risk of *refoulement*, and deprives them of rights guaranteed by international law, including the Refugee Convention in particular, clearly violates these principles, regardless of whether the third country is listed as a 'safe third country' or not" (Asylumlawdatabase, 2017: no p). Nonetheless, some people believe that the controversial EU-Turkey Statement is a success. This notion is based on reduction in the number of people seeking asylum in the EU through the Turkey-Greece axis by about 97% as mentioned earlier in comparison to the number of asylum seekers that arrived through Greece at the peak of the refugee crisis in 2015 (EC 2019: no p).

Notwithstanding the agreement reached in March 2016 by the EU and Turkey, the EU-Turkey statement took a new turn in late February 2020 with a fresh wave of asylum seekers trying to reach Greece from Turkey (Higginbottom, 2020: no p). The new border crossing began after the Turkish government opened its borders, and stated that it would no longer "restrain" Syrian refugees from crossing to the EU, citing lack of support from EU countries in the aftermath of an air strike that killed 33 Turkish soldiers in Idlib, Syria in February 2020 as a reason for its decision (Papadimas and

Kucukgocmen, 2020: no p). Consequently, convoys of asylum seekers immediately headed towards the Turkish-Greek border - reminiscent of the 2015 refugee crisis when thousands of Syrian refugees used Greece as the gateway to the EU (Papadimas and Kucukgocmen, 2020: no p).

However, in an attempt to prevent the border crossing, Greek police relentlessly fired tear gas to push back hundreds of asylum seekers at the border (Higginbottom, 2020: no p). Greece has become hostile to the plight of the new wave of asylum seekers. For instance, within 24 hours after the Turkish government allowed the refugees to journey onward to the Turkey-Greece border, the Greek government claimed that 150 people were arrested, and about 10,000 crossing attempts were "thwarted". By March 1, 2020 the Greek government had deployed some military officials to secure its border with Turkey, while the Greek Coast Guard were seen on video trying to capsize boats full of asylum seekers at sea (Daragahi, 2020: no p; Stevis-Gridneff, 2020: no p). In an attempt to justify the Greek high-handedness towards the asylum seekers, Stelios Pestas, the government spokesman in Greece responded that the push back was an effort to stop "an organised, mass and illegal attempt to violate its borders" (Papadimas, 2020: no p).

Nevertheless, within days the tension returned to the doorstep of the EU. Thousands of asylum seekers were seen trying to cross over to some of the Greek Islands using dinghies (Squires, 2020: no p). The first fatality of this new wave of migration was recorded when a migrant child was killed off the Island of Lesbos, when the boat capsized, on Monday March 2, 2020. On the same day a Syrian refugee who was trying to cross to Greece from Turkey was allegedly killed by a rubber bullet that was fired by the Greek Coast Guard (Daragahi, 2020: no p).The images of the Greek Coast Guard raining down tear gas on the asylum seekers, shooting into the air and water, hitting the asylum seekers with sticks at sea, while trying to capsize their dinghies are all clear cases of push back at frontiers. The Greek authorities' suspension of the asylum process for the newly arrived asylum seekers and the arbitrary return of asylum seekers to Turkey are at odds with the EU asylum and the relevant international law.

Greece also adopted certain measures in tackling the new wave of asylum seekers arriving in large numbers after the meeting of the Greek Government in early March. The Government Council for Foreign Affairs and Defence (KYSEA) decided to upgrade security at the border and suspend asylum applications for one month for the asylum seekers that were crossing from Turkey to Greece illegally. The Greek Parliament ratified the controversial emergency decree that suspended asylum procedures on March 26, 2020 despite the opposition from stakeholders (Stevis-Gridneff, 2020: no p). KYSEA also agreed to return the asylum seekers, if possible, to their state of origin, and requested for Frontex to get involved in guarding the Greek-Turkey border, while notifying the Council of Ministers of Foreign Affairs of the EU concerning Art 73(3) of TFEU.

Ursula von der Leyen, the European Commission President met with the Greek Prime Minister, Kyriakos Mitsotakis at the border town of Orestiada on Tuesday, March 3, 2020 where she pledged support for Greece. The EU Commission President explained that the Greek border to Turkey did not only belong to Greece but that it was also the external border of the EU and praised Greece for being the "shield" (Rankin, 2020: no p). Ursula von der Leyen also announced 700m Euros (609m pounds) in EU Funds for Greece, which included 350m Euros to be made available immediately to upgrade the infrastructure at the Greek-Turkey border. Frontex is scheduled to get involved with "a rapid intervention" comprising six coastal patrol boats, two helicopters, one aircraft, three thermal-vision vehicles, and 100 border guards in addition to the existing 530 Greek officers at its land and sea borders (Rankin, 2020: no p).

The UNHCR denounced the Greek government's actions towards the asylum seekers. The UNHCR argued that although "all states have a right to control their borders and manage irregular movements, they should refrain from the use of excessive or disproportionate force and maintain systems of handling asylum requests in an orderly manner" (UNHCR, 2020: no p). The UNHCR also opined that "neither the 1951 Convention Relating to the Status of Refugees nor EU refugee law provides any legal

basis for the suspension of the reception of asylum application" (UNHCR, 2020: no p; Rankin, 2020: no p).

In the same vein, a joint statement of stakeholders, 85 organisations within the Union, condemned the actions taken by Greece and the EU towards the asylum seekers that are trying to seek refuge in the EU through Greece. The joint statement includes organisations such as ECRE, Oxfam, ActionAid International, Amnesty International, Greek Forum of Refugees, Immigrant Council of Ireland, among others. The joint statement specifically oppose the

> "adoption of the Emergency Legislative Decree, which stipulates the suspension of the right to seek asylum for all people entering the country and their return without registration, to their countries of origin or transit. Applying such a regulatory provision is inhumane and illegal as it violates the fundamental principle of *non-refoulement*, incurs international responsibilities for Greece and endangers human lives. It is beyond dispute that Greece has the sovereign competence to control its borders and to manage any crossings there. Nevertheless, the right to seek asylum is a fundamental human right enshrined in the Universal Declaration of Human Rights and the EU Charter of Fundamental Rights" (ECRE, 2020: no p).

In addition, ECRE also called on "the people of Europe to mobilise in solidarity with refugees against heavy-handedness and illegal tactics" (ECRE 2020: no p). From all indications, it is obvious that the EU-Turkey statement cannot be a long-lasting solution to the EU refugee problems now that the Turkish government can no longer be relied upon to restrain the asylum seekers from crossing over to the EU through Greece. Therefore, the EU must work together in the spirit of solidarity and reform the status quo Dublin system that can effectively manage similar future influxes.

3.6 Collaborative Efforts at Sea

Asylum seekers journeying by sea usually face different kinds of obstacles, such as exploitation by the people smugglers, rejection at the frontier, and the risk of drowning in the Mediterranean Sea. For instance, in October 2013, a boat believed to

be carrying around 500 people caught fire and sank off the southern Italian island of Lampedusa, leaving about 300 dead, mainly Eritreans and Somalis (Pantaleone, 2013: no p). Another example can be traced back to the "Indochinese crisis" (Chetty, 2001:144), which prompted criticism from different bodies including the UNHCR. Similarly, in June 2018, the far-right government in Italy turned away rescue ship with 234 refugees as mentioned earlier. These are few examples of the difficulties some of the asylum seekers face at sea in search of international protection.

Asylum seekers often embark on journeys on unseaworthy dinghies in an effort to run away from persecution and reach their destination of preference. Some of the affected asylum seekers were arguably trying to reach Europe through the Mediterranean Sea in order to escape the appalling conditions in Libya. In 2015 alone 1,015,078 persons arrived in Europe by sea as mentioned in the previous chapter (UNHCR 2016:1), which was one of the largest numbers of people to have arrived in Europe in one year by sea. It is pertinent to note that the number of irregular border crossings detected by Frontex in 2015 through its Eastern Mediterranean route is placed at 885,386, with 153,946 in the central Mediterranean route, and 7,160 in the Western Mediterranean route (Sergio and Leonhard, 2016:7). In addition, an estimated 150,000 irregular crossings were recorded within the EU in 2018. This represents the lowest in recent years. It is now 92% below the number of irregular crossings recorded at the peak of the refugee crisis in 2015 (Smith-Spark, 2019:1).

The law of the sea legal framework, including for instance Art 98 of the United Nations Convention on the Law of the Sea, obliges State parties to save lives at sea. While the obligation to rescue those in distress at sea is clear under international law, the waters are muddier when it comes to the responsibility of accepting those rescued. In respect of disembarkation, UNHCR pointed out that "it is the humanitarian obligation of all coastal States to allow vessels in distress to seek haven in their waters and to grant asylum, or at least temporary refuge to persons on board wishing to seek asylum" (UNHCR 1979:18). The lack of clarity in the legal framework surrounding a concrete State obligation to receive those rescued can be seen in the case of the *Cap Anamur, German flag vessel*, which almost resulted in a serious legal

tussle between Germany, Italy and Malta, and highlighted the need of the EU "to adopt measures to ensure better burden-sharing among EU Member States" (UNHCR 2004:1).

Similarly, in the notorious case of the *MV Tampa*, the lack of cooperation by Australia with regard to disembarkation of those rescued by the Norwegian vessel was a driving force in revising the SAR Convention so as to include a – rather vague - obligation to cooperate, when it comes to disembarkation of the rescued (White 2004:101). More recently, the challenge in finding a port for disembarkation of those rescued was shown in the case of the MS Aquarius where the former Interior Minister of Italy, Matteo Salvini refused permission for the latter to dock in an Italian port in June 2018. MS Aquarius, a ship run by a non-profit SOS Mediteranee was carrying 629 migrants rescued in the Mediterranean. Malta was asked by Italy to accept the ship, but it refused, saying it was the responsibility of Italy to allow the ship to dock because the rescue operation was coordinated by the Italian Coastguard in the waters off Libya. The issue was resolved diplomatically with the intervention of Spain; Spain allowed the ship to access its port in the spirit of solidarity (Kirchgaessner et al., 2018:1). In the same vein, the Open Arms ship, Spanish NGO rescue ship carrying 83 migrants mainly from Africa was left stranded for nearly three weeks off the coast of Lampedusa in August, 2019. This is due to a prolonged stand-off between the government in Rome and the Spanish charity operating the boat. Italy, especially through its former Interior Minister, Salvini refused to let the ship dock. However, after 20 days with no solution in sight for the migrants, Luigi Patronaggio, an Italian public prosecutor ordered the ship to be seized but allowed the stranded migrants to disembark. (Pantaleone and Mangiapane, 2019: no p; Pacho and Gonzalez, 2019: no p).

There is growing criticism and opposition to the rescue efforts of these selected NGOs, especially from populist and far-right parties in Italy. These political parties want a crackdown on the NGOs activities at sea because they are alleged to be bringing in new migrants to Italy in the name of rescue mission. In fact, a prosecutor in Catania openly accused some of the NGOs of aiding and abetting crime by colluding

with the people smugglers to transport migrants into Italy. Nevertheless, the Italian Justice Minister, Frontex, and the Commission have distanced themselves from a call to investigate the activities of the NGOs at sea (Cusumano, 2017:1). This could be in acknowledgement of the crucial role being played by the NGOs to save lives at sea. Without a doubt, the people smugglers helped fuel the arrival of asylum seekers into the Union and took advantage of their vulnerability. Exploitation of this type often ends in death at sea as evident within the first eight months of 2016, when a record 3,166 died while crossing the Mediterranean Sea in search of international protection (UNHCR 2016:1). Therefore, it is becoming highly important for the EU to find solutions to the menace of people smugglers at sea, while rescuing everyone in distress, and ensuring that they can access asylum in line with international treaties and refugee law.

3.6.1 Operation Poseidon Rapid Intervention

In light of the intensity of the situation at sea, the EU authorities came up with different initiatives in response to the Syrian refugee crisis and one of them was collaborative efforts at sea. These efforts are to rescue those in distress and to disrupt or dismantle the people smuggling operations. The following is a review of some of the operations at sea led by Frontex in collaboration with state authorities and other relevant EU institutions. In response to the Syrian refugee crisis, the Commission unveiled a 'Border Package' in December 2015, with the aim of better securing the external borders of the EU (EC 2016:1). The proposal aimed at establishing a 'European Border and Coast Guard' to strengthen the mandate of Frontex. The package also includes 'a Voluntary Humanitarian Admission Scheme with Turkey for persons displaced by the conflict in Syria' (EC 2016:2).

Hence, Frontex announced its collaboration with the North Atlantic Treaty Organisation (hereafter NATO) in March 2016 (EC 2016:1). The goal of such collaboration is to participate in the international efforts that will stem the flow of the people smuggling, illegal trafficking, and illegal migration in the Aegean (Whithnall 2016:2). The operation was named 'Poseidon Rapid Intervention' (EC 2016:1), and one of the responsibilities of NATO was to provide 'real-time

information' to Frontex, Greek and Turkish Coast Guards about illegal crossings of migrants at the EU external borders (Garelli and Tazzioli 2016:1). In addition, NATO is billed "to conduct reconnaissance, monitoring and surveillance of illegal crossings in the stretch of sea between Turkey and Greece", especially the Turkish territorial waters where the EU authorities cannot operate. This strengthens "the outreach capacity of the EU border functions" (Garelli and Tazzioli 2016:1).

The operation revealed the five departure areas of asylum seekers and migrants from the North Africa axis to Libya with 136,714, Egypt with 10,980, Turkey with 2,210, Tunisia with 565, and Algeria with 309 in 2015 (Sergio and Leonhard, 2016: 8). The main nationalities of the asylum seekers are Eritrean (37,741), Nigerian (31,630), Somali (12,630), Sudanese (8,779), Gambian (8,152), Syrian (7,289), Senegalese (5,909), and Malian (5,841) in 2015. In total, 1,055 incidents relating to irregular migration occurred, 153, 987 irregular migrants were apprehended in 2015, and 455 people smugglers were arrested (Sergio and Leonhard, 2016:8). Welcoming the collaborative efforts, the Commission explained that "the decision of NATO to assist in the Aegean Sea is an important contribution to international efforts to tackle smuggling and irregular migration in the context of the refugee crisis" (EC 2016:1).

3.6.2 European Union Naval Force –Mediterranean (EUNAFOR-MED): Operation Sophia

In June 2015, Operation Sophia came into existence, and it was extended for another year (EC 2016:1). The Council further extended its mandate in July 2017 until December 31, 2018 (EC 2018:1). Operation Sophia's aim was to "disrupt the business model of human smuggling and trafficking networks in the Mediterranean", and "contribute to reducing further loss of lives at sea" (EC 2016:1). The operation covered 525,000 square nautical miles in the south-central Mediterranean (Garelli and Tazzioli 2016: 2) and was in four phases (EEAS 2016:1). Enrico Credendino, the Head of Operation Sophia, explained that it had a huge 'effect of deterrence' that has put off 'escapees' from journeying to Europe from Libya (Garelli and Tazzioli 2016:2). As a result of this, the central Mediterranean route recorded a decrease of about 9% in the migrant flow between September 2015 and April 2016 (Garelli and Tazzioli 2016:

2). In addition, about 13,000 people in distress had been rescued at sea within the first four months of 2016, and 28 smugglers were caught (Garelli and Tazzioli 2016:2).

This operation reported the main landing points of the asylum seekers in 2015 to be Lesvos (499,931), Chios (120,208), Samos (75,106), Kos (60,322), Leros (41,234), Agathonisi (31,527), Kalymnos (8,765), Rhodes (7,766), Symi (5,409) and Megisti (4,571). The number of people smugglers arrested within the period is placed at 466, while 6,993 incidents related to irregular migration occurred, and 859,165 irregular migrants were apprehended. A total of 476,651 of the asylum seekers and migrants were from Syria, 202,709 Afghanis, 91,355 Iraqis, 23,781 Iranians, 23,529 Pakistani, 7,704 Palestinians, 7,621 Moroccans, 4,442 Somalis, 3,907 Bangladeshi, and 2,463 Lebanese (Sergio and Leonhard, 2016:9).

The operation led to the arrest of 110 suspected smugglers and traffickers, neutralised 470 vessels and rescued close to 40,000 at sea as of February 2018 (EC 2018: 1). As of February 2018, the operation had also trained 136 Libyan Coastguard and Navy personnel, hailed over 650 ships, with 51 friendly approaches, 7 flag enquires and 3 inspections, all completed within the guidelines of the UN arms embargo on the high seas off the Libyan coast (EC 2018:1). Nevertheless, Operation Sophia was not without its critics, as it has been argued that the main aim of the EU is the containment of migration (Garelli and Tazzioli, 2016:1). However, the EU explained that Operation Sophia's ultimate goal was to protect people at sea. The politics of using military power to send back asylum seekers who fled violence in search of international protection ought to be addressed. The EU should be committed and more involved in helping people in distress at sea, in line with the International Convention for the Safety of Life at Sea[34] (SOLAS), and the United Nations Convention on the Law of the Sea (UNCLOS) (Garelli and Tazzioli, 2016:3).

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[34] International Convention for the Safety of Life at Sea (SOLAS) was adopted in December 10, 1982 and came into force in November 16, 1994

3.6.3 Operation Themis

Frontex launched operation Themis on February 1, 2018, and it replaced operation Triton that was launched in 2014. The main goal of Operation Themis is for a search and rescue mission (SAR) to be carried out by the European Border and Coast Guard Agency (EC 2018:1; Frontex 2018: no p). In addition to the rescue efforts at sea the new operation also focuses on the prevention of potential terrorists from reaching the Union through Italy. The operation is also designed to have "enhanced law enforcement focus" (Squires, 2018: 1).

In a review of similar operations preceding Themis, literature revealed that fewer numbers of suspected terrorists have been expelled since 2015. The Italian authorities disclosed that 243 people suspected of religious extremism were returned as of February 2018 and six of them were actually returned in 2018 (Squires, 2018:1). The operational area of Themis covered a substantial part of the Mediterranean that included waters off Algeria, Tunisia, Libya, Egypt and Albania, mainly the North Africa axis (Squires, 2018:1). Fabrice Leggeri, the Director of Frontex opined that in order to strengthen the internal security of the EU, there would be a need for the security personnel at the borders to be better equipped in order to detect the criminal groups while trying to enter through any of EU external borders (Squires, 2018:1). The Director of Frontex explained that Operation Themis is tailored to reflect the changing patterns of migration, while helping Italy in tracking down criminal activities such as smuggling and drug dealing "across the Adriatic" (Squires, 2018:1).

In the same vein, some NGOs are taking part in the SAR operation at sea, a step considered essential to fill the gap left by the inadequate efforts of frontline states and the EU authorities to conduct effective SAR missions at sea. According to the Italian Coast Guard, NGOs rescued a record number of 46,795 migrants in 2016 alone, more than the EU authorities' operations Triton and EUNAVFOR Med, led by Frontex, were able to rescue within the same period (Cusumano, 2017:1). An inquiry by the Italian Senate also revealed that NGOs vessels rescued 33,190 persons out of the entire 82,187 rescued at sea in the first six months of 2017. Throughout 2017 up until June 2018, NGOs vessels also rescued about 40% of all the people rescued at sea in

Italian territorial waters, according to the Italian Coast Guard (FRA, 2019:1). This section will not further analyse the extensive efforts made by the civil society to aid the SAR capacity of MSs and the EU. The surge in arrival of asylum seekers and migrants through the North Africa-Italy axis shows the increasingly aggressive and cruel approach being deployed by the smugglers, who ignore adverse weather conditions and 'force migrants on overcrowded rubber boats to squeeze a bigger profit out of every trip' (EC 2016:1). Human trafficking is one of the oldest crimes in the world and traffickers often act as if they run a legitimate business (Martin, 2016:1). It has been calculated that smugglers made an estimated 4 billion Euros for the year 2015 from their illicit trade (EC 2016:1). It is also important that Operation Themis will be focusing on the menace of people smuggling as well as its SAR mission at sea. The new focus on the people smuggling activities reveals that the EU authorities believe that this is fuelling the surge in the arrival of asylum seekers and migrants especially in Italy that requires tangible action to be taken. Therefore, the EU authorities through the Operation Themis should put in efforts to destroy the smugglers' network.

Aside from the 1951 RC framework, there are other international treaties or legal instruments regulating operations taking place in the territorial waters of coastal states. Thus, the collaborative efforts of the EU in tackling the influx of asylum seekers at sea must be in conformity with relevant international laws, irrespective of the route which the asylum seekers take. In this regard, some of the relevant and identified international instruments are as follows: The Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (UNODC);[35] United Nations Convention on Transnational Crime; and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.[36] These

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[35] Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (UNODC) was adopted in November 15, 2000
[36] United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted in 2000 and came into force December 25, 2003

international legal instruments and more are meant to guide EU agencies and other key actors in carrying out legitimate operations at sea.

3.7 The June 2018 Migration Summit of the EU Leaders

The activities of the far-right and populist political parties are having a huge impact on the political scene within the EU. This is notwithstanding the drastic reduction in the number of new arrivals of asylum seekers and migrants within the Union. For instance, only about 45,000 made it to the EU between January and June 2018 due to restrictive policies in comparison to over a million people that made the same journey in 2015 (Galindo, 2018:3). In fact, the EU believes that with certain initiatives that have been implemented to tackle the large-scale movement of asylum seekers since 2015, the number of detected illegal border crossings into the EU has declined by 95% since the height of the 2015 refugee crisis (EC 2018:1).

Nonetheless, the far-right political parties across the EU are keeping up the momentum with their anti-migrant rhetoric, while translating the rhetoric to actions. Debatably, some of the controversial steps taken so far by the populist governments in Hungary and under the previous government in Italy are fuelling a new debate on immigration that has put the issue back at the top of EU agenda. Hence, the June 2018 Summit of EU leaders focused on solutions to the migration row among the MSs, partly engineered by the previous government of Italy's approach to immigration that involves its refusal to grant some migrant rescue ships permission to dock at its ports. The MSs agreed to introduce regional disembarkation platforms for those who are saved in the SAR operations at sea. The operation of the disembarkation platforms will involve the coordination of the selected North Africa nations, the UNHCR, and the IOM (EC 2018:1).

On the EU territory, processing centres shall be set up to distinguish between those in need of protection and those that will be returned, and for the voluntary relocation of refugees among the MSs in the spirit of solidarity (EC 2018:1). A lot of tension could be felt in some of the exchanges that took place among the EU leaders during the summit, showing the significantly different vantage points of the Participants.

Nevertheless, the EU leaders concluded the negotiation on a positive note. Despite the accolades on the outcome of the summit by some EU leaders, stakeholders believed that the agreement falls short of adequately protecting human right values and could further drive away people in need of international protection. Amnesty International's Director for the European Office, Iverna McGowan, argued that "after days of bickering, EU leaders have signed off a raft of dangerous and self-serving policies which could expose men, women and children to serious abuse" (AI 2018:1). She expressed the view that the Summit was meant to solve "Europe's broken asylum system" by coming up with policies based on "fairness, effectiveness and compassion". However, the EU leaders chose to "pander to xenophobic governments" that decided to keep 'Europe closed and push more responsibility" on to countries that are not even part of the Union (AI 2018:1). ECRE argued that despite the fall in the arrivals of migrants into the Union, the extremist/nationalist parties and governments continue "to spout hysterically about terrorism and security and the end of the world" (ECRE 2018:7). ECRE also urged the EU leaders to disregard the extremist views being touted by the emergence of the political ideology of the far-right that portrays migrants as dangerous to society.

The new agreement is arguably a way by which the MSs shall unquestionably detain people who have come to the EU for refuge. The decision can be considered as contrary to the founding principles of solidarity within the EU regarding human rights protection. In addition, Charlie Yaxley, Media and Communications officer at UNHCR explained that "we welcome any outcome that leads to a more collaborative and harmonised approach to asylum, also one that has at its core and priority saving lives at sea" (Baczyaska et al., 2018:1). The response of the UNHCR is seen as cautious in the face of an agreement that could make life harder for the vulnerable asylum seekers in need of refuge. Some of the restrictive asylum measures can arguably be linked to the anti migrant rhetoric of the far-right politicians in line with the securitisation theory as explained in the next chapter.

ECRE urged the EU leaders to focus on the preservation of the right to asylum within the Union, defend the European values and uphold the EU law. ECRE also urged the

EU leaders not to succumb to the false notion of the far-right political parties that migration is the most serious threat to the EU, a political ideology that is promoting anti-migrants and anti-refugee attitudes (ECRE 2018:1). The first test for the new voluntary solidarity agreement came in mid-July 2018 when Italy approached other MSs to help with the relocation of a stranded military ship carrying 450 migrants at sea (Frances, 2018:no p). Interestingly and in the spirit of solidarity, Germany, France, Spain, Malta, and Portugal agreed to take in 50 migrants each (Frances, 2018: 1). However, the Czech Republic refused to accept any migrants as usual (Lazarova, 2018:1).

The Prime Minister of the Czech Republic, Andrej Babis, argued that such a request was against the agreement reached earlier on the issue. He shared the opinion that accepting more asylum seekers from Italy would only make the situation worse and that it would encourage the people smugglers to keep sending in more asylum seekers, thus increasing their profits. He also pointed out that taking in more asylum seekers from Italy would amount to "a road to hell" for Europe, and that "taking in more migrants is going the wrong way" (Frances, 2018: no p; Lazarova, 2018:1). Additionally, the Czech Republic Interim Minister, Jan Hamacek explained that its country could help Italy financially or through other means, stating that "we will offer other forms of aids, we are ready to help materially, financially and even send our police officers to Italy" (Lazarova, 2018:1). The summit showed some intention to collaborate and build a common response to sea migration, but this was undermined by state interest and xenophobia. In addition, the idea of having a sea platform raises serious questions as to jurisdiction and access to fair asylum procedures in line with Art 14 of the UDHR and 33 of 1951 RC.

It is acknowledged that the EU has taken steps to address the mass influx to a certain extent, but more needs to be done especially in terms of solidarity and responsibility sharing among the MSs. Despite the efforts and some progress made so far by the EU on this front, HRW opined that the crisis was not effectively managed, as the "EU struggled to develop an effective and principled response" to the Syrian refugee crisis

that prompted thousands of asylum seekers to embark on the dangerous sea journey, from Turkey to Greece and from North Africa axis to Italy (HRW 2016:1).

3.8 Assessment of the Dublin System

The failure of Dublin III, as the evaluation report revealed, especially in tackling the mass influx of asylum seekers in 2015, prompted the EU authorities to come up with a proposed Dublin IV as pointed out earlier.[37] One of the major identified changes to Dublin III is that the proposed reform would include a reference key to determine the next action to be taken if a MS can no longer cope with a surge in asylum flows due to pressure that is a fairness mechanism of sorts designed to tackle asylum pressure. It also includes a new automated system that will help monitor the number of asylum claims, and the number of people that will be adequately resettled by each MS (EC 2016:67-68). Other changes include the restriction on the time limit that a legal remedy can be lodged by applicants, especially under the Dublin transfer, restrictive measures on family unity, and restrictive measures on the guarantees for minors. Failure to comply with the proposed restriction on secondary movement within the Union could also attract punitive measures on asylum seekers as further explained in chapter six. The selected changes are relevant to tackling future influxes within the EU and the assessment focuses on the articles 5, 35, 37, and 44 of the proposed Dublin IV.

This section also reviews the report published by the DG Home Affairs in 2016 on the implementation of the Dublin III Regulation[38] with special focus on the selected articles that could arguably help in the face of mass influx if well-implemented. The selected articles are 3(access to procedure), 4(right to information), 5(personal interview), 6(guarantees for minors), 7(3) (family unity), 27 (remedies), and 33 (early warning, preparedness and crisis management system).

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[37] Proposed Dublin IV regulation, 2016., https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-270-EN-F1-1.PDF
[38] Evaluation of Dublin III, Report submitted in 2016., http://www.refworld.org/docid/466e5a082.html

3.8.1 A Review of the Evaluation of Dublin III Regulation

Art 4 of the Regulation states that the competent authority will provide necessary information to an applicant, as soon as his or her claim is submitted. The findings of the report reveal that although the information is provided but there is no uniformity concerning the department that gives out such information to applicants among the MSs. For instance, immigration authorities provide the information in some MSs, law enforcement disseminates such information in some other MSs, and the Dublin unit or local authorities supply such information in other MSs (EC 2016:9). In addition, Art 4(2) stipulates how the information should be provided, which could be in a written form and in a language that will be understood by the applicant. The information can also be given orally for the proper understanding by the applicant and this is done when necessary, and with the help of an interpreter. The evaluation report reveals that there has been a high level of compliance among the MSs concerning Art 4 (EC 2016:10).

The type of information that should be provided by MSs to asylum seekers is spelt out in Art 4(1) of the Regulation, but the report revealed that the majority of the MSs provide only general information concerning the asylum system and procedure. Legal representatives, lawyers, and NGOs usually help to bridge the gap either with the interpretation of some of the information or by giving out the necessary information to the asylum seekers (EC 2016:11). The information is considered satisfactory in some MSs by the NGOs and some legal representatives (EC 2016:12). In summary, the report revealed that MSs seem to be complying with Art 4, they are seen to be providing at least basic and necessary information to the asylum seekers once they have submitted their claims.

Concerning the personal interview provision, Art 5 requires that a MS should conduct an interview with the applicant as part of the asylum process. This is seen as a standard practice among the MSs. The findings revealed that MSs acknowledged that there may be exceptional circumstances where there will be no need for an interview, such as when an applicant absconded or when the authorities have already obtained the information needed that is enough to make decision on his or her case

(EC 2016:12). There are other grounds for exceptions, as the evaluation report reveals, and this could be when an applicant is not willing to cooperate. Denmark and Bulgaria will consider an exemption when a subsequent claim had been lodged. Estonia will accept an exception for family reunification interview, Malta will accept an exception for manifestly unfounded applications, and exceptions can be granted due to bad health in the UK, the Netherlands, and Slovakia (EC 2016:13). However, it was discovered that Greece and Italy, the frontline states that have witnessed more pressure due to the arrival of asylum seekers in large numbers hardly conduct any personal interviews due to capacity problems (Wintour, 2017: 1 and Banks, 2018: no p).

The aforementioned countries mainly conduct an interview to identify if there is another 'Eurodac hit' (which means the applicant has gone through or been fingerprinted in another MS) or to support humanitarian grounds of a case under Art 17, according to NGOs. Austria, Spain, Sweden, Cyprus, the Czech Republic, Finland, France, Latvia, Poland, and Portugal are taking the interview process seriously as revealed by the report (EC 2016:13).

Protection of minors under Art 6 is an essential part of the Dublin Regulation, as minors usually need extra support to process their claims under the EU asylum system. Findings revealed that many MSs do not receive such cases, that some MSs have had no such complaints concerning the asylum process for minors, while other MSs are overwhelmed due to staff shortages and there are delays in processing their claims (EC 2016:14). Art 6(3) stipulates the criteria by which the best interest of the child can be assessed. However, some MSs do not have special procedures on this as they rely on general international laws, conventions or treaties. Some of the relevant instruments are the CRC, the Handbook from the Fundamental Rights Agency (FRA), and the relevant jurisprudence of the supranational courts. Authorities in Germany and the UK disclosed that they usually consult experts in child welfare to guide them through (EC 2016:16).

Art 7(3) and 8 state the need to respect family unity which includes minors. While Art 7 (3) states how family unity can be protected in a broad manner, Art 8 specifically states how minors can be protected under the principle of family unity. The evaluation report revealed that in most of the MSs, family ties are used to determine the state responsible under the Dublin system to process asylum claims (EC 2016:27). Several MSs disclosed that they face serious challenges in tracing the family members or trying to establish family connections in determining the MS responsible, and this could be due to insufficient information on the part of the applicants. In fact, Luxembourg specifically states that it does not have capacity for the onerous task of family tracing but works with whatever information is received from the applicants concerning the whereabouts of his or her family members within the Union (EC 2016:28-29). NGOs and other legal representatives consulted explained that the family connections process is ineffective among some MSs, but NGOs in Romania, Poland, and the Slovak Republic observe a better process concerning family connections in those MSs (EC 2016:31).

Art 27 defines the conditions and modalities on which an applicant could challenge a decision made by a MS regarding a transfer procedure or any other legal redress. The evaluation report reveals that an applicant is entitled to legally challenge a Dublin transfer decision by all the MSs except the UK with the exception of when the case involves the violation of the applicants' ECHR rights (EC 2016:74). It was discovered that there is no uniformity in the type of courts that an appeal can be lodged in among the MSs, but an appeal can be made before an administrative court in a majority of the MSs. Only specialised courts in immigration and asylum law would entertain such appeals in places like Belgium, Romania and Sweden (EC 2016:75). It is essential to note that the appeal rate against a transfer decision in the majority of the MSs, especially in the Netherlands and Norway, is high, with Norway holding the highest proportion at 99% of appeal against its Dublin transfer decision within a given period. However, Romania recorded the lowest number of appeals with only six appeals recorded between 2009 and 2012. Romania and the Czech Republic revealed that the rate of appeals against their Dublin transfer decision has increased since the

Dublin III Regulation came into force (EC 2016:76). Therefore, a reformed Dublin system must take into consideration the need to ensure adequate provisions on the fundamental rights of asylum seekers, and if properly implemented this shall reduce the number of aggrieved asylum seekers and refugees that are seeking redress in the court of law.

Art 27(2) does not define the time limit by which affected applicants can exercise their right to effective remedy, but it provides that the applicant can appeal within 'a reasonable period of time'. Nevertheless, some MSs have set a time limit to lodge an appeal. In countries like Romania, Hungary, and Malta, this must be done within days, but in Italy it can be lodged within 60 days. Interestingly, the evaluation report revealed that in about half of the MSs, an appeal is lodged between 14 to 21 days, 30 days in Belgium, and 60 days in Finland and Latvia (EC 2016:76).

Art 33 focuses on an early warning mechanism, preparedness and crisis management system but it has never been triggered, even in the face of 2015 refugee crisis. Under Art 33, the EU Commission is duty bound to detect gradual deteriorations of the asylum system of a MS, a deterioration that could jeopardise the smooth running of the Dublin system if left unchecked. The mechanism involves two stages; the preparedness stage and how to manage the crisis. The EASO was originally designed to help the affected MSs to put its asylum system in order. In fact, the EASO developed its own guiding tool called Early Warning and Preparedness System (EPS) by which accurate information can be collected on the flows of asylum seekers within the Union and the capacity of a MS to manage the inflows (EC 2016:1). The findings of the report revealed that Art 33 has not been applied, even though frontline states like Greece, Italy, and Hungary experienced difficulties in coping with the influx of asylum seekers in the recent past. Prior to the 2015 refugee crisis and concerning the difficulty in processing a surge in asylum claims, some MSs had their fair share of pressure at national level but Art 33 was not triggered. For instance, Bulgaria experienced high pressure within its asylum system in 2013-2014, Germany since 2013, Greece since 2013, Italy and the Netherlands since 2014 (EC 2016:84).

The fact that some MSs had to suspend the Dublin system or applied Art 17(1) to be able to cope with the pressure exposed the redundancy of Art 33 of the Regulation. Debatably, its proper application could have helped the EU to cope better with the Syrian refugee crisis of 2015. However, the findings revealed that the failure to trigger article 33 may be due to the ambiguity in the wording or the political undertone the triggering might generate - it could lead to a policy of naming and shaming (EC 2016:85-86).

3.8.2 A Review of the Proposed Dublin IV

In May 2016, the Commission presented proposals to reform the CEAS to 'a fairer, more efficient and more sustainable system for allocating asylum applications among Member States' (EC 2016:1). With the proposed reform, the basic principle would remain unaffected, but EASO would become a fully-fledged EU Agency. The proposals include a reform of the Dublin Regulation, reinforcement of the Eurodac system, and additional responsibilities for EASO (EC 2016:1). The proposed Dublin IV includes an emergency mechanism which could be triggered when a MS faces urgent migration pressure (EC 2016:6).

The new proposal promises to "make the Dublin system more transparent and enhance its effectiveness, while providing a mechanism to deal with a situation of disproportionate pressure on Member States asylum systems" (EC 2016:5). The new components of the proposed Dublin System include: "a fairer system based on solidarity; a mechanism that also takes account of resettlement efforts; a more efficient system; discouraging abuses and secondary movement; and protecting the best interest of asylum seekers" (EC 2016:6). Interestingly, Hungary, Poland and Slovakia are already voicing their criticism of an aspect of the proposals, precisely the financial solidarity that carries a fine of 250,000 Euros for each refugee the MS refuses to accept (Gotev, 2018:1). The money will be given to any other MS that is willing to accept the refugee (EC 2016:6). Indicatively, Hungary characterised the new CEAS proposals as 'blackmail', while Poland called them a 'bad joke' (Dennison, 2016: no p).

Art 44 of the proposed Dublin IV established an automated system that will be in operation mainly for registration, monitoring and the allocation of mechanism. The proposed automated system appears to be a welcome idea in the age of rapid technological advancement. This new development shall include a centralised system by which the flows of asylum seekers can be monitored across the MSs. The competent authority of each state shall be given access to this database and this automated system shall be administered by the proposed European Union Agency for Asylum (EC 2016:71).

The proposed Dublin IV contains a reference number, a system that would establish when a MS is handling a disproportionate number of asylum applications by comparison to the overall number of the asylum claims made within the Union.

It is based on two criteria with equal weighting, the size of the population and the total GDP of a MS. The reference key indicates that as soon as a MS is receiving disproportionate number of asylum claims above and beyond that reference (placed at 150% threshold of the figure identified in the reference key), the fairness mechanism shall be triggered automatically and all fresh claims after this shall be allocated to other MSs (EC 2016:68). However, ECRE argues that there is no justification for a threshold of 150% as this is seen as an arbitrary decision which contradicts the general objective of the reform that focuses more on the fair sharing of responsibility among the MS. There is no basis for setting such a high threshold of 150% in the first place as this is against the spirit of solidarity, as set out under Art 80 TFEU. The corrective mechanism ought to be triggered as soon as it appears that the affected MS can no longer cope with the capacity of claims submitted for asylum irrespective of whether it is under or over 100%, let alone a 150% benchmark (ECRE 2016:34). Similarly, Amnesty International argued that the drafters of the proposals did not take into consideration what would happen to the applicants with family ties in the affected country after the corrective measure is triggered, as new applications ought to be distributed to other MSs. It concludes that this allocation is done without taking into consideration individual circumstances, people with special needs, their vulnerability and even ability of the MSs to effectively address this issue. Therefore, it

suggests that the threshold of 150% is too high and arbitrary and it should be reduced to below 100% (AI 2016:6-7).

Art 35 states that the reference key shall be applied by using the Eurostat figures. The application of a reference key is based on two criteria with equal 50% weighting, the population and the total GDP of a MS as mentioned earlier. A fairness mechanism is triggered in order to address and alleviate pressure being placed on the affected MS (EC 2017:17). If a MS is not willing to participate in the allocation of the asylum seekers due to the fairness mechanism that has been triggered, such a MS can make financial contribution in accordance with the proposed Art 37, financial solidarity. A MS that is willing to be exempted from the relocation scheme must pay EUR 250, 000 per applicant in line with its share of the entire allocation (EC 2016:68). Amnesty International argued that the idea of a MS opting for financial contribution rather than admitting its fair share of asylum seekers amount to a stain on the solidarity and responsibility sharing principle (AI 2016:4-6). It also argued that MSs should not be allowed to buy their way out, especially as this does not automatically result in more financial support for the external border states which are at the forefront of the pressure. It advocates for compulsory participation rather than trading this with money, which weakens the entire process and makes the solidarity principle totally irrelevant (AI 2016:6). ECRE referred to this arrangement as 'blanket buy-out' and that the idea is ill-founded because the wealthier MSs could decide to buy their way out. This is seen as a total contradiction to the spirit of solidarity that the corrective measure was trying to achieve in the first place (ECRE 2016:37).

The proposed Dublin IV reduces the number of days by which an appeal can be lodged by an applicant who needed to do so. It changes the 'reasonable period of time' enshrined in the Dublin III to a mere 7 days period within which an appeal must be lodged by the affected applicant. The current practice varies and as explained earlier in the evaluation report of the Dublin III, the time limit ranges from 14 to 21 days in some MSs to 30 days in Belgium and even 60 days in Italy and a few other places. Hence, Amnesty International argued that the right to effective remedy is a major principle of the EU and international human rights law and this will require a

reasonable time limit, as it were, for its proper application. In fact, the organisation recommended an immediate removal of the proposed 7 days, replacing this with 'the reasonable period' (AI 2016:5). Similarly, the UNHCR opined that the proposed shorter time is of great concern as it will amount to a 'significant limitation on the scope of appeals' (UNHCR 2016:5). ECRE also argued that the proposed 7 days' time limit for appeals against a Dublin transfer is without any justification and suggested that sufficient time is needed for an applicant to prepare for such appeal (ECRE 2016:28).

The proposed Art 5 of the Dublin IV focuses on the punishments that will be meted out to asylum seekers that engage in secondary movement within the Union, and the punitive measures are seen as a prevention mechanism. The proposal suggests that asylum seekers who fail to apply for asylum in the first state of entry shall be subjected to accelerated procedure. Those that violate this proposed Art 5 could forfeit all material reception rights except for emergency healthcare (EC 2016:40). Amnesty International pointed out that the punishment of asylum seekers for non - compliance is not justified, especially where there are systemic flaws in the state of first entry. The organisation argued that procedural rights are human rights and the decision to punish asylum seekers for non-compliance will result in many legal hurdles for the Commission in the long run. Amnesty International demanded a cancellation of the entire Article 5 (AI 2016:4), as this is totally irrelevant and could lead to human right violations.

Furthermore, UNHCR argued that a punitive measure alone is not the answer to reducing the secondary movement of asylum seekers and suggested that incentives should be introduced to encourage the asylum seekers that comply. It urged that if the Commission decides to carry on with the punishment for non-compliance, this should not affect effective access to protection and should be done in full compliance with 'the European standards and principles'. UNCHR also demanded that children and people with special needs are exempted from such punishments (UNHCR 2016:13). In addition, the Council of Bars and Law Societies of Europe (CCBE) opined that the proposed punitive measures for non-compliance are of great concern as this could lead to violations of the basic human rights of asylum seekers. CCBE pointed out

that the EU asylum system must not deviate from the standard set in terms of human rights protection as safeguarded in the 1951 RC, and there must be conformity with the relevant human rights treaties like the ECHR and the Charter (CCBE 2016:6). The CCBE also explained that the introduction of such harsh sanctions will not stop the secondary movement of asylum seekers and that it may further undermine the right to a fair trial and other relevant procedural guarantees as provided by Article 6 of ECHR.

Therefore, CCBE believed that the proposed punitive measures is totally unnecessary, especially in meeting the Commission's goal, and requests that an alternative approach should be adopted, a less coercive measure that will encourage asylum seekers to comply (CCBE 2016:7). Such a measure could give the asylum seekers the opportunity to choose from a provided list of preferred destinations, and it would arguably help to reduce the rate of secondary movement within the MSs, a goal the Commission has been trying to achieve since inception. Art 5 of the proposed Dublin IV is further examined in chapter six.

Notwithstanding, it is important to note that the proposed Dublin IV is at a stalemate as mentioned in chapter one. At the end of the eight legislature of the European Parliament no concrete progress was recorded concerning the reform, partly due to the difficulty in finding common ground among the MSs on the need for responsibility sharing (Peers, 2019: no p). Hence, it has been put to "unfinished business" in line with rule 229, the rule of procedures of the European Parliament, which means that at the end of the legislative all dossiers that have not been voted at the plenary shall be deemed to have lapsed (Peers, 2019: no p; Bertossi and Tardis, 2019: no p).

3.9 Conclusion

This chapter examined the unilateral efforts of the MSs in tackling the 2015 Syrian refugee crisis. It specifically reviewed the efforts of the selected MSs, such as Germany, Greece, Sweden, Austria, Hungary, France, Denmark, Italy, and the UK in managing the asylum system at national levels in the face of 2015 mass influx of asylum seekers. This revealed how individual MS responded to the mass influx of

asylum seekers in 2015, notwithstanding the growing activities of the far-right politicians. It explained that Germany took the lead at the peak of the crisis irrespective of the chaos brought about by the arrival of large number of asylum seekers.

Greece also became totally overwhelmed in the face of mass influx of asylum seekers. Austria assisted with the processing of the asylum seekers for onward journey, mainly to Germany at the peak of the crisis. Sweden also admitted a large number of the asylum seekers in 2015, in comparison with other MSs, excluding Germany. However, Sweden had to adjust its generous way of helping large number of asylum seekers by tightening up its asylum policy with the arrival of the far-right politicians in government. France, the UK and other MSs also pledged to take in a certain number of asylum seekers within a given period of time as part of the efforts to tackle the refugee crisis. The UK alongside some other MSs also hosted world leaders in February 2016 in London. This was done to raise funds for the Syrian refugees, especially those that were left behind in the neighbouring countries of Jordan, Turkey, Lebanon, and Egypt.

Some of the MSs, mainly the Eastern European countries on the other hand decided not to participate or help the refugees. Some MSs also came up with restrictive asylum policies and laws, mainly to discourage asylum seekers from seeking refuge in their countries. Denmark, Sweden, Austria, Hungary and more have since come up with different asylum laws at national level. Hungary and other Eastern European MSs have also refused to participate in the EU refugee relocation scheme that was introduced to tackle the refugee crisis. The relocation scheme is seen as a form of solidarity and responsibility sharing among the MSs, and mainly to reduce pressure on the EU frontline states of Greece and Italy.

Collectively, some MSs participated actively to relocated asylum seekers as agreed. The EU-Turkey Statement was also implemented mainly to stop the arrivals of the asylum seekers in large numbers to the Union. The establishment of hotspots in Greece and Italy, the proposed reformation of the CEAS, the reformation of Frontex,

the joint operation at sea, especially in Italy and Greece, were some of the initiatives to tackle the mass influx of asylum seekers. This chapter also reviewed the outcome of the June 2018 Migration Summit by the EU leaders where they agreed on how to further tighten the EU external borders, share responsibility in the form of solidarity, and voluntarily relocate asylum seekers from the proposed processing centres within the EU. The summit ended with suggestion on the establishment of disembarkation in North African countries, which is seen as part of the solutions to migration crisis. This chapter revealed that the MSs responded differently to the 2015 refugee crisis; while some of the MSs were willing to help the asylum seekers, other MSs refused to help. The assessment also revealed that the frontline states were not given adequate support by other MSs during the crisis

In reviewing the Dublin III evaluation report, the focus is placed on selected and relevant provisions of the status quo Dublin system. The review placed emphasis on Articles 3 (access to procedure), 4 (right to information), 5 (personal interview), 6 (guarantees for minors), 7(3) family unity, 27 (remedies), and 33 (early warning, preparedness and crisis management system). This chapter also reviewed the proposed Dublin IV regulation that is now in stalemate, with special attention on how the mass influx of asylum seekers can be managed within the Union in future. The analysis focused on the identified changes the proposed reform would bring. This includes a reference key to determine when a MS can no longer cope with a surge in asylum flows due to pressure, and a fairness mechanism that will tackle the pressure of a large number of applicants at the frontline MS. It also includes a new automated system that will help in monitoring the number of asylum claims, and the number of people that will be adequately resettled by each MS. Other changes include the restriction on the time limit that applicants, especially on Dublin transfer, family unity and guarantees for minors, can lodge legal remedy. In addition, the proposed reform introduces punitive measures against asylum seekers that fail to comply with certain asylum regulations in order to minimise secondary movement within the Union. The review of the Dublin evaluation report and the proposed Dublin IV address the fourth, sixth and seventh objectives of the study

Chapter Four

Theoretical Framework

The numbers of far right people are growing by the day here in Germany. They are known locally as Pegida and they are against foreigners, especially asylum seekers. They do not want us to settle in Germany and I am afraid for my safety. They display their displeasure publicly and police are not doing enough to stop them.[39]

4.1 Introduction

This chapter focuses on the theoretical framework of the thesis. It reviews the securitisation theory as it relates to the current migration issues within the EU. It examines the characteristics of a securitising actor and categorises the securitisation audience into physical and media. It uses the agenda setting theory to further explain the influence of the media contents, especially live broadcasts of political campaign speeches on the 'media audience' that arguably determine their voting decision in an election. It examines the securitisation theory, both the Copenhagen and Paris Schools, and gives examples about the role of selected securitising actors within the EU through their 'speech acts', during the election campaigns that took place between 2016 and 2018. It also examines the role of the securitising actors and explains that both securitisation and agenda setting theories can be empirically measured. It reveals that securitisation theory can be measured through the political process. This can be done by using variables such as the audience voting pattern and the performances of the securitising audience as seen recently with the election results within the Union.

4.2 Theoretical Framework

In the past few years, the issue of migration has given rise to serious political debates within the EU and this is linking socio-economic, political, cultural and religious problems, as well as social unrest, and terrorism, to the arrival of migrants and asylum seekers in recent years (Leonard, 2007:3). The activities of the far-right politicians do not go unnoticed within the EU political terrain, and for the purpose of

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[39] Excerpt from the interview conducted in Munich Germany on May 25, 2017

this study, the securitisation theory of the Copenhagen School is used to explain this phenomenon. The far-right politicians are conducting their activities openly by organising rallies and giving political campaign speeches across the EU. The outcome of the elections from France to Italy and Hungary to Germany revealed that their activities are already having impact on government policies, especially on asylum and immigration policy, both at national and EU levels.

The policy makers at EU level are aware of the dilemma of dealing with the populist and far-right political parties' hardline positions on various immigration issues. As a result, they have come up with certain initiatives to tackle the refugee crisis. Some of these initiatives are commendable while others are seen as forms of deterrence – means of keeping asylum seekers away from the Union. Ette and Faist argued that the idea of tightening the borders and designing restrictive policies that centre on security measures usually give the policy makers a little bit of satisfaction, possibly with the feeling that something tangible is being done to protect the borders (Ette and Faist, 2007:24). Similarly, Kicinger et al argued that "the fears of the policy makers obviously echo the EU-level securitisation of immigrant policy" (Kicinger et al., 2007:191). The introduction of such measures to tighten up the borders and scrutinise the flows of migration within the Union had caught the attention of the UNHCR which pointed out that from all indications, asylum issues within the EU have been securitised (UNHCR 2006:5).

Arguably, governments at national level are aware that the far-right politicians' *modus operandi* is to spread hatred in order to win more votes in elections and stay politically relevant within society. This is shown in their anti-immigrant and anti-Islam rhetoric especially during their political campaign speeches. Government officials at national level may want to be perceived as tough on immigration and that they can also protect the citizens from potential threats. Consequently, they come up with controversial and restrictive policies that negatively affect asylum seekers. For instance, in Austria, a restrictive measure on asylum was proposed in early 2018. The measure would allow Austrian authorities to seize refugees' cash and phones as well as speed up deportations of failed asylum seekers (DW 2018:1). A "paradigm shift" in

asylum law was also passed in early 2019 by the Danish Parliament with the aim of making it difficult for refugees to remain permanent in the country. Basically, the law seeks to shift focus from integration to repatriation (Whitehead, 2019:1).

This section focuses on the theoretical framework of the thesis. It reviews the securitisation theory as it relates to the current migration issues within the EU. It examines the characteristics of a securitising actor and categorises the securitisation audience into physical and media. It uses the agenda setting theory to further explain the influence of the media contents, especially live broadcast of political campaign speeches on the 'media audience' that arguably determine their voting decision in an election. It examines the securitisation theory, both the Copenhagen and Paris Schools and gives examples about the role of selected securitising actors within the EU through their 'speech acts', during the election campaigns that took place between 2016 and 2018. The section also examines the role of the securitising actors and explains that both theories can be empirically measured through the political process, which can be done by using variables such as the audience voting pattern and the performances of the securitising audience as seen with the election results within the Union in recent years.

Historically, the Copenhagen School began during the Cold War era with the conception of "security studies at the meeting point of strategic studies and peace research", but after the Cold War those studies focused more on   military matters (Guzzini, 2015: 4). The studies would not accept the underlining assumptions of the military definition of the context as they believed they were focusing more on Peace research. However, "the Copenhagen meeting of strategic and peace studies develops an original understanding of security" (Guzzini, 2015: 4). The end of the Cold War brought about a debate concerning the ideas behind security in international relations. The debate was mainly between the "narrowers" and the "wideners". The "narrowers" were more concerned with the security from the viewpoint of a state, with special focus on the analysis of the military and the stability (politically) between the US and the Soviet Union. The "wideners" on the other hand looked

beyond security as it related to the military, and expanded the security agenda including the concept of human and regional security (Eroukhmanoff, 2018: 1).

4.3 Securitisation Theory

Securitisation theory, a paradigm first developed by the Copenhagen School is well known today within academic circles and has made its way into the core security studies regarding the EU asylum system (Leonard, 2007:6). The theory originally rested on the idea of a military threat to the State but was later expanded horizontally by the Copenhagen School to include few other sectors like economic, political, environmental, and societal security. There are three elements of the Copenhagen School approach to security, with the first being the expansion of the sector beyond the military. The second approach is to look at a security issue on a regional scale as opposed to national level and the third one is the debate of "a social constructivist theoretical understanding of security" through securitisation theory (Charrett, 2009:9). Its vertical expansion is based on "referent objects" (Weaver 2004:9). The main idea behind the theory in line with the linguistic turn in International Relations theory is the notion that security is a "speech act" (Leonard, 2007:7).

The speech act is usually performed by an individual referred to as 'securitising actor', and he or she sells ideas through 'speech acts'. Weaver explained that it is important to note the way the argument or speech are made as the 'utterance itself becomes the act' (Weaver, 1995:55). Williams also argued that securitisation cannot just occur through a one-off speech act, but through a repeated process (Williams, 2003:521). Buzan *et al* opined that for an issue to become securitised, the audience must be in alignment by accepting that there are perceived threats concerning the 'referent object'. The speech act must be delivered by a securitising actor and accepted by the audience for an issue to be securitised (Buzan et al., 1998:25). In essence, the Copenhagen School believed that nothing constitutes a security threat unless it is painted as such by the securitising actor. The speech must have an undertone of an existential threat and be tagged dangerous. Also, a claim needs to be

made that if nothing is done to prevent this on time, something terrible will happen, nevertheless, the acceptance of such speech is a matter of choice (Sterkx, 2003:15).

Securitisation is defined as "the staging of existential issues in politics to lift them above politics" (Buzan et al., 1998:26). In security discourse, an issue is dramatised and presented as an issue of supreme priority; thus, by labelling it as security threat, an agent claims a need for and a right to treat it by extraordinary means (Buzan et al., 1998:26). The speech act fulfils both internal and external conditions. The internal conditions are more of the innate ability of the securitising actor. Securitising actor must possess persuasive power to convince their audience. Securitising speech must come with the right phrases and the key words must be in alignment with the issue at hand to drive home the point. The speech must include a plot of existential threats and demand for an action to stop it from happening. Grammar of security must be followed for an issue to be securitised, and the speech must be presented or portrayed in a manner that reveals existential threat and that something must be done to stop the potential threat (Leonard, 2007:8). Examples of the above description are seen with the activities of the selected securitising actors within the Union as reviewed later on in the chapter.

What is essential is how the message is passed across through the speech act (Weaver, 2004:9). The tone, gesticulation, and countenance of the securitising actor could contribute to the level of acceptance among the audience. On the other hand, the external condition means that the securitising actor must be in position of authority for his or her opinion to be properly heard. He or she must be someone that people are ready to listen to, usually someone that will command loyalty and respect among the audience.

Smith argued that the Copenhagen school is one of the most interesting developments in the contemporary study of security (Smith, 2005:37). However, securitisation theory is not without criticisms, with Emmers observing that empirically, the usefulness of the theory is yet to be greatly understood (Emmers, 2007:116). Williams also referred to the Copenhagen School of thought as 'politically irresponsible' in the

sense that thorough empirical evaluation of the claimed threat is non-existent (Williams, 2003:521). The conceptualisation of security reveals that the framework of the Copenhagen School securitisation theory is narrowly drawn in line with "traditional military political understanding" (Buzan et al., 1998:21).

Nevertheless, the application of such a narrow meaning could be a way of preventing the concept of security from being water down (Leonard, 2007:12). Critics also believe that the narrowly drawn concept of security as put forward by the Copenhagen School may affect the 'real life' security in other sectors aside from the military (Leonard, 2007:12). The difference between the narrowly drawn and the broader version is that the Copenhagen School fails to conceptualise securitisation as a process. Leonard argued that the Copenhagen School approach should be expanded beyond 'existential threat' through 'speech act'. Although the existential threat may not be abandoned, it will be part of the meaning rather than being the only meaningful thing in securitisation (Leonard, 2007:13). Another limitation of the securitisation theory as proposed by the Copenhagen School is that it focuses mainly on the 'speech act' at the expense of other non-discursive security practices. Conversely, there are instances where the logic of security is in motion without a speech being uttered in the public arena to back it up, and this could be seen in the activities of some of the state secret services that act based on the perceived threat to national security without engaging in speech act (Buzan et al., 1998:28). Situation where there are recurrent security threats, securitisation can become institutionalised and an institutionalised securitisation will not be identified if the focus is mainly on security discourses.

Therefore, Leornard opined that it will be ideal to extend this theory to include non-discursive acts such as "creation and functioning of bureaucracies, development of public policies, and the implementation of procedures" (Leonard, 2007:14), as these could be linked to an object and not only to the speech act (Bigo, 2000:194). For instance, if an issue revolves around illegal migration, the speech act will not be enough but with the formulation of the policy on the illegal migration and border control, and even the implementation of the policy. Policy and procedure on how to

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implement the initiatives on immigration, the type of equipment to be used to secure the borders, and the personnel needed, are part of the process of the non-discursive act (Leonard, 2007:15).

4.4 Categorisation of the Audience of Securitisation Theory

The securitisation theory does not specify the category of the audience but applies the word audience in general terms. Therefore, what constitutes the audience of the 'speech act' of securitisation theory is further expanded and separated into two categories by this study. The two categories are physical and media audiences. Understandably, speeches are usually delivered at various political rallies where the audience will be physically present to listen to the speeches being delivered by the securitising actor. In response, the physical audience often voice their opinion in the form of slogans and chants in affirmation of the acceptance of the issue being talked about. Physical audiences are the ones that are present at the venue when the speech is being made. On the other hand, the media audience follows through the media, usually live broadcast on television, radio, and through live stream on the internet which can be done via their various electronic gadgets. Today, the media audience could access live broadcast of political campaign speeches unlike decades ago when such things were non-existent. This also makes it possible for an individual far or near to become an audience of a political rally without being physically present at the venue. These political programmes can be watched and enjoyed in towns and villages across the country and the speeches could have similar effect on people that were physically present at such rallies.

The combination of the physical and media audiences helps the securitising actor to gain more support by winning more votes in an election. In politics, the number of votes a candidate is able to garner is of paramount importance, and more votes could help his or her party to win in an election. Therefore, the higher number of people that are convinced enough to vote for the securitising actor because of the campaign speeches delivered, the better for the candidate. Without a doubt, the media exposure helps a great deal in politics as the information can reach potential voters

far and near. Therefore, the contribution of the media audience to this discourse will be better understood with application of the agenda setting theory of media. The agenda setting theory explains the role of the media in influencing what the public thinks about at a given time. Agenda setting theory influences what public think about through the media contents, that is, what the media staff choose to broadcast (Cohen, 1963:13).

It is pertinent to note that the media played central role in providing information on the 2015 refugee crisis as pointed out earlier. Mainstream media "constitute key and trusted resources for officials and publics to make sense of and take action in the course of events" (Georgiou and Zaborowski, 2017:3). A research conducted by the London School of Economics in 2017 about the media coverage of the 2015 refugee crisis revealed that quality press sets agendas and it is read by the politicians and policy makers (Georgiou and Zaborowski, 2017:3). Therefore, agenda setting theory will explain how media contents influence public opinion, specifically the far-right anti-migrant rhetoric delivered through various political campaign speeches across the Union. The agenda setting theory was first published by McCombs Maxwell and Donald Shaw in 1972 in *Public Opinion Quarterly*. The theory suggests that the media set public agenda by giving audience what to think and talk about at a given point in time. In their first article, Maxwell and Shaw explained that editors and media staff play crucial part in 'shaping political reality' (McCombs and Valenzuela, 2007:1). McCombs and Valenzuela opined that readers or audience learn to recognise the part of the speech to attach more importance to. Therefore, "the mass media may well determine the important issues", and set agenda for the election campaign (McCombs and Valenzuela, 2007:1).

Agenda setting theory was first used in a 1968 presidential campaign in Chapel Hill, North Carolina where it was discovered that the "issue priorities of the news become the issue priorities of the public". Since then the agenda setting theory has been applied in hundreds of similar studies, even on media issues that are of not related to election (McCombs and Valenzuela, 2007:1). The core assumption of the agenda setting theory is that it creates public awareness and concern of salient issues by the

news media. Its two assumptions state that press and media do not reflect reality, but they filter and shape it. Secondly, the approach that media focus on a few issues will lead the public to see those issues as more important than others and the public may begin to think or talk more about those issues. Hence, Cohen explained that the press may not be successful in telling people what to think, but it is successful in telling its readers or audience what to think about (Cohen, 1963:13).

The agenda setting theory is not without criticisms. One of them is that the theory is too difficult to measure. It is perceived that the results generated by using survey method to measure the theory are usually regarded as too inflated, therefore, the outcomes are seen as inaccurate and irrelevant. Another criticism is that the theory was propounded when the media was still operating a one-way communication system but with the advancement of technology and the internet news and social media, the real relevance of the theory could be waning (Freeland, 2012:6-7). The criticism of the technological aspect of the theory is an area of interest to this study as the live broadcast of political campaigns could bypass the power of the editors and other media staff that could influence public opinion based on what they choose to broadcast more often. The introduction of live broadcast has left gatekeepers with little or no control over what audiences choose to attach importance to when a live political speech is being delivered by a securitising actor. This is important because the agenda setting theory was propounded upon the premise that mass media editors decide the topical issue, the salience point for the public to think about. Nevertheless, one may argue that even live broadcast cannot be aired without the approval of editors or other media staff. Consequently, the role of the media editor is still important in shaping public opinion and the media is still giving the public what to think about especially when it comes to deciding on whether to air the live programme or not.

Nonetheless, live broadcast of political campaign speaks directly to the media audience with little or no help from the editors. Because of this the audience could easily decide to align with the issues being raised by the securitising actor or not, and the decision to accept the content of the speech at face value means that

securitisation has occurred. The outcome of such process could result in additional votes for the securitising actor who just won another potential voter that believes in his or her speech act. Likewise, media audiences in small towns and villages that may not have the opportunity to be physically present at political rallies in the cities or other towns could be influenced through the media contents by the choice of television or radio stations they watch or listen to respectively, and therefore cast their votes for the securitising actor in an election. Once they have identified their candidates through a medium, a television station for instance, these people could stay loyal to the station because it is perceived to be giving more exposure to the political campaign of their securitising actors.

Fox News in the US is arguably an example of such media station where the supporters of the candidate Trump in 2016, now President Trump, seem to have found satisfaction with the type of news they wanted. Debatably, their thinking pattern is influenced, and this is likely to be favourable towards the securitising actor. Interestingly, researchers have used the 'Fox News Effect' to sum up the level of support the Republican candidate is likely to get over other candidates (Marco, 2017:1). Fox News is known to be controversially favourable to the political campaigns of candidate Trump during the 2016 US presidential campaign. In fact, a study released by Pew Research Centre pointed out that 40% of Trump's voters got their news about the election from Fox News, putting CNN at distant second of 8%, Facebook at 7%, NBC at 6%, and 5% for other local news (Marco, 2017:1). Thus, Fox News was more favourable to the republicans, especially candidate Trump and even favourable to him now as the President (Adam, 2017:1). Therefore, the audience of Fox news might have been influenced by the level of exposure to various anti-migrant, anti-Mexican, and anti-Muslim campaign speeches of the securitising actor, Trump, which could have prompted them to vote for him in the November2016 presidential election in the US.

4.4.1 Securitising Actors and their Anti-migrant Rhetoric

The objective of the Copenhagen School is "based on a clear idea of the nature of security with the aims to gain an increasingly precise understanding of who securitises

what issues (threats), for whom (referent objects), why, with what results and, not least, under what conditions (what explains when securitisation is successful)" (Buzan et al., 1998:32). Hence, the role of an analyst of securitisation process focuses on interpretation and observation, by examining whether certain actions of the actors 'fulfil security criteria'. The interpretation surrounds whether the actor was able to mobilise support, identify the audience, how the audience are likely to be influenced, and what the impact might be on a sector or society in the long run. Therefore, the aim of Copenhagen School is to understand why securitising actors securitises and not to judge their actions normatively (Buzan et al., 1998:33-35).

Contrary to the view of some scholars that the securitisation theory is hardly measured empirically, below is the attempt to quantify and describe how the theory can be empirically measured. The evaluation can be quantified through the measurement of the voting pattern of the audience and the outcome of the election itself. The possibility is based on the delivered speeches during the political rallies or campaigns. The effectiveness of such campaign speeches could influence or sway the audience voting pattern. In the same vein, the results of the election can be used as yardstick in measuring the effectiveness of the campaign speeches delivered by the securitising actors during the election campaigns. The final election results will determine the level of performance of the securitising actor.

Therefore, a review of some of the political campaign speeches of selected far-right political party leaders across the EU in the aftermath of the refugee crisis of 2015 is seen below. The review focuses mainly on the delivered election campaign speeches of the far-right political leaders in the UK, France, Germany, Austria, and the Netherlands. Issues in a typical election campaign are usually on unemployment, security, healthcare, immigration and many other areas depending on the MS involved. However, the mass influx of asylum seekers in 2015 with the series of terror attacks that followed has placed security and the immigration issues at the top of the EU political agenda as stated earlier. As a result of this, the rhetoric of the securitising actors across the Union within the reviewed period focused mainly on anti-immigration and anti-Islam rhetoric.

The 2016 EU referendum in the UK was fought and won, but the rhetoric that preceded the outcome will always be remembered.[40] A securitising actor behind this is a politician, Nigel Farage (hereafter Farage). Farage was the leader of UKIP, far-right political party in the UK. He is now the leader of *Brexit* party, another far-right political party in the UK as of the time of writing this thesis. He is also a member of the European Parliament, a controversial figure in the political scene of the UK and Brussels. Farage, a securitising actor, gave speeches during the EU referendum campaign. He campaigned on the side of the Vote Leave group, that is, the people that believe the UK should leave the EU.

At the peak of the refugee crisis in September 2015, Farage gave a speech that the people fleeing war-torn Syria for protection in Europe are not necessarily refugees. He also said that the problem is that Europe has opened its doors to millions and millions of refugees and asking how many more million refugees will Europe keep opening the door to (Stone, 2015:1). As the politician launched the campaign to leave the EU, he encouraged the UK to be tougher with border policing by making border crossing very difficult for illegal immigrants (Wilkinson, 2015:1). Farage also made controversial campaign posters, using images of asylum seekers as they travel up north from Greece at the peak of the refugee crisis in 2015 (Heather and Rowena, 2016:1). The posters showed large number of refugees moving along the borders within the EU. Arguably, Farage's goal as a securitising actor is to attach existential threat to the arrival of the asylum seekers in large numbers, and that the UK must leave the EU to effectively police its border and keep asylum seekers away.

The idea of putting asylum seekers on his campaign posters was however met with condemnation from human rights groups and the United Nations' Committee on the Elimination of Racial Discrimination, as Farage's decision to come up with such posters was seen as racist abuse (Stone, 2015:1). Similarly, Professor Tendayi

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[40] Farage was also accused of 'blatant scaremongering' during the referendum. Ashley Cowburn., https://www.independent.co.uk/news/uk/politics/nigel-farage-has-been-accused-of-outrageous-blatant-scaremongering-after-claiming-migrant-sex-a7066451.html

Achiume, a UN rapporteur, pointed out that *Brexit* has brought an increase in the level of racial discrimination and intolerance in UK society. The UN Rapporteur described the tense environment leading to the referendum, during and after the referendum to have made ethnic minorities more vulnerable to racial abuse (Damien, 2017:1). This means that extreme views on racism like that of Farage's during the election campaign have gained ground since the outcome of the EU referendum election was declared.

In France, the far-right political leader, Marine Le Pen, the leader of the Front National party (FN), told her supporters in one of her presidential campaign speeches that she will suspend all immigration to France, restore borders and protect the French people if elected as president[41] and the audience at the rally responded with a slogan that "this is our home" (Dearden, 2017:1). Earlier in her presidential campaign, Le Pen claimed that France is under threat of Islamic fundamentalism. She argued that "Islamic fundamentalism is attacking us at home" and compared Islamists settling in France to wolves in a henhouse. Le Pen vowed to close the places of Islamic preaching and expel propagators of hate if elected as president (Ferand, 2017:1). Similarly, Geert Wilders, a far-right political leader in the Netherlands, and a leader of the Party for Freedom (PVV), is known for his anti-immigration and anti-Islam rhetoric. As a securitising actor, he once compared the Quran to Hitler in one of his hate speeches. As a result, he was charged in court because of this but was acquitted in 2011 (Ash, 2016: no p). He campaigned to lead the Netherlands in the 2016 election but failed to win the final election. He called Islamic immigration 'an invasion' that will replace the people of the Netherlands and erase their culture if allowed. In fact, his party manifesto focused on 'de-Islamification' of the Netherlands in which he pledged to shut down all country's Islamic schools and close the borders to migrants from Islamic nations. He earned himself the nick-name of "Donald Trump of Europe" (Mckenzie, 2016: no p).

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[41]   Marine Le pen wining votes because of her rhetoric – Danniel Hannan, 2017, https://www.ibtimes.co.uk/marine-le-pen-winning-votes-by-pushing-rhetoric-that-caused-frances-problems-1605012

Furthermore, Norbert Hofer, a far-right presidential candidate on the platform of Freedom Party in 2016 presidential election in Austria is known for his anti-immigration rhetoric. He lost the presidential election to Alexander van der Bellen in 2016. In one of his campaign speeches, Hofer demanded immigration control, promised to curb further migration from third country nationals, and vowed to deport Muslims (Martin, 2016:1). Hofer securitised immigration by attaching security threat to it through his speech acts. In one of his campaign speeches, Hofer told his audience that immigrants from outside the continent, especially the Muslims, are a threat to the Austrians' way of life and the Austrian nation. He also advocated for guns as he was seen moving around with his 9mm Glock pistol on the campaign trail. He tried to link gun ownership to the uncertainties around the immigration situation in Austria, especially the arrival of asylum seekers in large numbers in 2015 (Martin, 2016:1). Hofer once said that "Islam has no place in Austria", based on the belief that a large number of the affected Syrian asylum seekers are Muslims (Connolly et al., 2016:1).

The situation is similar with the far-right politicians in Italy, Germany, Hungary, and even the US as revealed in the 2016 presidential campaign of candidate Trump. Arguably, the speeches of the far-right political candidates seem to be resonating more with the audience based on the outcome of the elections in those selected places since 2015. The securitising actors attached fear to issues of immigration and Islamic religion; they tried to convince the audience that the acceptance of more asylum seekers, especially Muslims, would make things worse for society. They encouraged the audience to vote for them and promised that if elected they would close the borders and make it difficult for the migrants to access the territory.

The securitising actors believe that by labelling immigrants and Muslims as 'referent objects' that constitute threat to the society, they will be able to gain more votes to make them politically relevant. Evidently, Marine Le Pen vowed to expel Muslims from France if voted in as president during the 2017 presidential election campaigns in France (Ferand, 2017:1). Nobert Hoffer of Austria told his audience that the Muslims are here to erase Austrian culture, and this must not be allowed, and they should vote

him in to stop it (Martin, 2016: no p). Geert Wilders asked for audience (voters') support, while attacking migrants, including the Moroccans in one of his racial attacks on immigrants which earned him a court conviction on hate crime (Gordon, 2016: no p). Similarly, Farage used the images of vulnerable asylum seekers to create fear among the audience of a non-existent invasion of asylum seekers into the Union (Heather and Rowena, 2016:1). He also used the image to persuade his audience to act by voting "Leave" in the EU referendum, in order to stop the asylum seekers from coming to the UK in large numbers, as seen in the posters.

4.4.2 Empirical Evidence through a Political Campaign Process

Both the securitisation theory of the Copenhagen School and the agenda setting theory can be measured empirically by using the political campaign process. The evaluation can be done via the political campaign process by examining the level of influence of the speech act on the voting decision of the audience on one hand, and the level of performance of the securitising actors through the final results of the election, on the other hand. The survey method can be used for the data collection on the audience, while the results of the elections can be content analysed. The yardstick for a meaningful measurement shall be the voting pattern of the audience and the level of performance of the securitising actors.

4.4.3 Level of Performance of the Securitising Actors

The level of performance of candidates in a political contest can be measured through the final results of the election. The knowledge or the information the audience gathered through political speeches of their candidates may have effect on their voting pattern which in turn reflects on the overall performance of their candidate and political party. Both theories can be measured with the final results of an election, hence, a brief summary of the level of performance of the selected securitising actors in their various elections at different points in time can be seen below.

In the case of Farage, even though he was not the only leading candidate in the Leave campaign during the EU referendum in 2016, his side won the election by 51.9% (FT,

2017:1). This is seen as a success which can be attributed to the effectiveness of his rhetoric during the election campaign. The impact of the speech acts therefore led Farage's physical and media audiences to vote in line with leaving the EU. Similarly, millions of people voted for Marine Le Pen in France during the French presidential election and her party won 34% of the votes as she came second in the final round of the elections (Adu, 2017:1). In fact, she claimed that the outcome of the election is a victory for her party, Front National (Loulla-Mae, 2017:1). Understandably, it is noteworthy for Marine Le pen's party to have achieved such a strong result. Therefore, the success can be measured through the final results of these elections which indicate that Le Pen's campaign speeches resonated in the minds of her audiences and arguably influenced their voting decision.

Geert Wilders' party took the second position and secured 20 members of the parliament's 150 seats in the 2016 election in the Netherlands, meaning that the party gained additional five seats at the national parliament (Graham, 2017:1). Arguably, this was a performance made possible by the physical and the media audiences that voted for the Freedom Party (PVV) based on Wilders' anti-migrant and anti-Islam rhetoric. Nobert Hofer lost the Austrian presidential elections, but his far-right party put up a strong performance that was not seen in years before 2016 in Austria. The final results placed Nobert Hofer and his party at 46.4% of the total election, leaving the winner with 53.5% (Osborne, 2016:1). The successful outing of Nobert Hofer in that election can be linked to his anti-immigration and anti-Islam rhetoric which arguably resonated with his physical and media audiences. In the same vein, the far-right political candidates in Germany performed beyond expectations in the 2017 German elections.

The AfD, a populist right party, came third with 12.6% of the total votes, and with a total gain of 7.9% (Clarke, 2017:1; Hawley, 2017:1). Conversely, the previous election results left the AfD with 4.7% when they fell short of the 5% threshold to win a seat in the Bundestag, the German national parliament (Stone, 2017:1). The 2017 election performance of AfD, which has given them a total of 94 seats in the parliament, is seen as a stunning success for the far-right in Germany (Wagstyl et al., 2017: no p).

AfD campaigned mainly with a focus on its anti-euro, anti-migrant and anti-Islam rhetoric.[42] In fact, their slogan says, 'Islam is not a part of Germany'. The party is known for its radical views and they vowed to ban 'mosques, minarets and face veil' and promised to take Angela Merkel to court for the admittance of too many refugees into Germany during the refugee crisis of 2015 (Stone, 2017:1). Without doubt, their campaign speeches resonated with their physical and media audiences who voted for them in that election. These few examples point to the fact that the theories can be empirically measured through the level of performance of the securitising actors and their political parties.

4.4.4 Audience Voting Pattern

The voting decisions of both physical and media audiences in an election will help researchers to empirically measure the success of the speech acts. The effectiveness of political campaign speeches can be measured with the number of votes the securitising actor secured in an election. A high vote for the securitising actor automatically depicts the success of their speech which made the audience vote for them and their party. For instance, in measuring the level of success concerning Farage's anti-immigration speeches during the EU referendum election, the evaluation could focus on the final outcome of the UK referendum election, which the Vote Leave Camp won (Asthana, 2016: 1). This clearly reveals the level of influence the speeches had on the voting decision of the audience. One may argue that Farage was not the only lead campaigner on the Vote Leave camp. Nonetheless, Farage's camp victory and the support of his audience must not be underestimated in the outcome of the EU referendum in the UK. Notably, the margin between the Leave and Remain sides was slim which means that Farage's audience and their contributions through their votes could have made the difference.

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[42] 'Floods of refugees', 'immigrants streaming' into the country, 'tsunami of foreigners'... 'a notion of threat of immediate danger to the nation'. These were some of the rhetoric of AfD during German 2017 elections.,https://www.independent.co.uk/news/uk/politics/nigel-farage-has-been-accused-of-outrageous-blatant-scaremongering-after-claiming-migrant-sex-a7066451.html

Similarly, Marine Le Pen's loss in the final presidential election in France was considered a success in comparison with the past performances of her party in French elections. Le Pen believed that the result of the elections is a success for her campaign even though she did not win the election (Henderson and Krol, 2017:1). This success can be attributed to the way the audience connected with her campaign speeches and voted in line with her anti-migrant and anti-Islam rhetoric. Additionally, Nobert Hoffer was a relatively unknown person on the Austrian political scene but his speeches during the presidential election of 2016 strongly resonated, and for some reasons, his audience aligned more with his opinions no matter how controversial his speeches might have been. Despite the fact that he lost the election, the level of support he received from the people that voted for his Freedom Party shows that his messages resonated well among his audience. Geert Wilders popularity soared during the 2016 election in the Netherlands, consequently, his party gained more followers to the extent that he was ahead in the polls for the better part of the election campaign of that year (Peter, 2016: 1). This development could be seen as a success in the sense that Wilders' audiences were able to connect with his political campaign speeches. This arguably influenced their voting decision that went in favour of Nobert Hoffer's political party.

Still, the 2017 general elections in Germany changed the political landscape and put the largest number of far-right politicians in the national parliament as stated earlier. The securitising actors took advantage of Chancellor Merkel's decision to take in more Syrian refugees in 2015. They came up with different anti-migrant and anti-Islam rhetoric during the election campaign in 2017. In the process AfD was able to gain 94 seats nationally (Wagstyl et al., 2017: no p). The case is similar in Italy and Hungary, and even in the US. Candidate Trump's 2016 presidential campaign was filled with anti-migrant and anti-Islam rhetoric but he still won the election, although not by popular votes but by Electoral College (Drehle, 2016: no p). Millions of people in America voted for Trump, a decision they must have made based on their ability to relate with his campaign speeches (Drehle, 2016: no p). This means that as a securitising actor, he successfully convinced his audience through the speech acts,

and the audience voted for him in turn. Understandably, all these elections took place during and after the Syrian refugee crisis of 2015, which could have contributed to the rise of the far-right political parties across the EU and beyond.

4.5 Paris School of Thought

The review of securitisation theory so far reveals that policy on national security does not come in isolation but it is a well-crafted exercise based on the issues that have been labelled security concerns in society. Politicians usually refer to these issues as extremely volatile, dangerous, alarming or threatening. For an issue to be securitised, a security concern must be articulated by the securitising actor and accepted by the audience. This is seen as the discursive aspect of securitisation. However, critics believe that this is being done at the expense of other legislative areas of the State which could include profiling of asylum seekers, risk assessment and more. Therefore, the Paris school of thought focuses on the non-discursive aspect of the securitisation theory.

The Paris School took a step further by expanding the ideas of the Copenhagen School beyond the speech act alone, and the discursive aspect. The Paris School came up with the idea that the policy makers are more interested in linking security matters with other social issues (Weaver, 2004:11). The Paris School does not believe that the securitisation of immigration and Islam can be done through the speech act alone. Partly because it is one thing for the politicians, securitising actors to be able to convince the audience effectively through the speech acts on immigration but it is another thing for the policy makers to be able to formulate policy in alignment with the referent object being securitised. The latter is done through administrative practices of conducting risk assessment in line with identified referent objects, which are immigration and Islam in this context.

The administrative practices of the policy makers could involve profiling, risk assessment, and statistical calculations. They in turn come up with restrictive measures to scrutinise the asylum seekers on arrival, especially by using technology at the borders. The application of such restrictive measures through finger-printing and

other forms of identification being indiscriminately carried out on the asylum seekers could be an attempt by the EU authorities to determine how free movement of people in Europe is governed (Huysmans, 2006:9). Some of the initiatives of the EU authorities came up with to tackle the 2015 refugee crisis fall under this category, particularly the EU-Turkey Statement. Another example is the restrictive measures being put up by the policy makers at national level. The method of the Paris School reveals the other side of securitisation as stretching beyond the speech act.

The Paris School approach focuses on the linkage of immigration and terrorism where its manifestation may occur through referent objects that are framed and implemented as 'working routine, administrative instruments' with emphasis on proper policing and defense (Huysmans, 2006:3-4). This is seen as the outcome of profiling or the statistical conceptualisation of migration. Therefore, in reviewing this approach, attention must be paid to discover the threats or emergency signs hidden in the political and institutional domain that labelled migration as a problem that needed to be worked on (Dijck, 2006:5). An identification of this institutional domain will require a closer look at the domain for the core signifiers to be found. In his study on securitisation of asylum and immigration in the EU, Schlentz identified three areas as politics, policy making and legislation; technological solutions; and institutional, administrative and operational set ups and practices (Schlentz, 2010:8). These three identified by Schlentz are the basis of the argument in this study, as they encompass both discursive and non-discursive aspects of securitisation theory as proposed by the Copenhagen and Paris Schools.

4.6 Linking Terrorism with Immigration

The securitising actors have attempted to link terrorism with asylum and immigration in recent years, especially with the frequent terror attacks across the EU in the past few years. Some scholars believe that the 9/11 attacks in the US prompted countries around the world to adopt new measures in policing their borders. However, there is a belief that securitisation of asylum and immigration pre-dates the September 11 terror attacks in the US. The war on terror in the aftermath of 9/11 is putting huge pressure on the immigration and asylum systems across the world (Crisp, 2003:9).

After the attacks the US immediately tightened border control, increased border inspections, and engaged in more discourse on 'cross-border flows' (Andreas, 2003:2). One of the major policies on immigration and asylum post 9/11 is the Security and Homeland Act of 2002. With its creation, immigration enforcement including the issuance of visa becomes 'screened through the lens of national security' (Hing, 2006:198). Nevertheless, some scholars opined that securitisation has been around as far back as the 1970s due to 'uncomfortable social change', economic problems such as recession and other problems in society that played an important role in the mass movement of people (Heisler and Layton-Henry, 1993:157). In addition, Bigo argued that the 9/11 attacks do not have any security effect on the world immigration and asylum system (Bigo, 2005:72).

In this line, it is observed that the securitising setting of asylum and immigration adopted is based on the political rhetoric that is linking crime and terrorism to immigration, which has been the pattern since the 1980s (Huysmans, 2001:1). Huysmans argued that the introduction of the Schengen area has brought the control of the EU external borders to the limelight of political and bureaucratic practice, especially when it comes to the politics of immigration (Huysmans, 2006:95). For instance, in Greece and Italy the establishment of hotspots means that the asylum seekers are made to go through extra security checks before they are allowed into the Union. In the same vein, Baldaccini explained that the 9/11 attacks had a major impact on how the EU has been shaping its asylum and immigration system in the aftermath (Baldaccini, 2008:31). Understandably, the policy makers are seen to be coming up with more restrictive measures based on the terror attacks within the Union in the past few years. This approach has become a common practice post 9/11, the Madrid bombing in 2004 (Murado, 2014: no p), and the 7/7 attack in London (MPI, 2006:1). As a result of these attacks, some countries around the world have been putting up physical barriers to discourage refugees from seeking protection in their countries (Tan, 2016:1).

There have been several terror attacks in the EU since 2015 refugee crisis. Terrorists have struck too many times within this period which arguably plays into the hands of

the far-right politicians in their attempts to link terrorism with immigration. A few of these ugly attacks shall be mentioned in order to strengthen the discourse. On January 7, 2015 two masked gunmen carried out a bloody attack on the Charlie Hebdo[43], a French satirical weekly which left 12 people dead at the Magazine's office in Paris, France (Gordon, 2015:1). The following day, another terrorist killed a policewoman, and by January 9, 2015, another terrorist killed four hostages at a Jewish supermarket in France (Foster, 2017: 38-42). On November 13, 2015, a series of terror attacks were carried out again in Paris and 130 people were killed, and this left hundreds others injured, this was believed to be the most deadly attack in France since WWII. On March 22, 2016, 32 people were killed in Brussels, Belgium and 300 others were injured in terror attacks; bombing at Brussels airport and at a Metro station in the capital (Foster, 2017: no p and Jamie, 2017:1).[44]

Another terrorist struck in Nice, France, and was later shot dead by the French police but he had terribly mowed down and killed 84 people with truck and left hundreds injured on July 14, 2016 (Chrisafis, 2016:1). Not long after a series of terror attacks occurred in Germany, 'an axe man hacked passengers on a train in Wurzburg', and on July 22, 2016 a gunman went on a 'deadly rampage' in Munich after being inspired by far-right killer, Anders Breivik (Foster, 2017: no p). By July 24, 2016 a man blew himself up in Ansbach and another man killed a pregnant woman with machete attack in Reutlingen, and July 26, 2016 a terrorist shot a doctor at Berlin Hospital in Germany. This series of terror attacks happened in Germany just over a week (Foster, 2017: no p).

Additionally, in Normandy church in France, two terrorists killed a priest and took several other people hostage (Willsher, 2016:1). On December 19, 2016 another

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[43] Charlie Hebdo attack: France's worst terrorist attack in a generation leaves 12 dead., https://www.telegraph.co.uk/news/worldnews/europe/france/11331902/Charlie-Hebdo-attack-Frances-worst-terrorist-attack-in-a-generation-leaves-12-dead.html , accessed May 13, 2018
[44] Terror attacks timeline: From Paris and Brussels terror to most recent in Europe. Sunday Express., https://www.express.co.uk/news/world/693421/Terror-attacks-timeline-France-Brussels-Europe-ISIS-killings-Germany-dates-terrorism, accessed April 15, 2018

attack occurred at a Christmas market in Berlin, Germany. Twelve people were killed and over 60 other people were injured. At Westminster in London, another terror attack killed four people and injured many others. Four people were killed in Stockholm terror attack on April 7, 2017 and fifteen people injured, when a man drove a truck down a busy shopping street (Foster, 2017: no p). Another attack killed a policeman in France and the gunman was later shot dead on April 20, 2017. At a concert in Manchester in England, 22 people were killed and 59 injured, on May 22, 2017. The London bridge terror attack occurred on June 3, 2017, eight people were killed, and many people were injured. On June 19, 2017, London witnessed another terror attacks at Finsbury Park when a van man mowed down Muslim worshippers, a man was killed and eight other people were injured. At Barcelona's Las Ramblas in August 17, 2017, another terror attack occurred and 13 people were killed and over hundred people were injured (Foster, 2017: no p). In addition, a suspected terrorist stabbed a man to death and injured four others in Paris, France on May 12, 2018 and was later shot dead by the police (David, 2018:1). Still, on May 29, 2018, Belgium witnessed another terror attacks when a man killed two police officers and a civilian in Liege, Belgium.

The review of the terror attacks in the EU between 2015 and 2018 sums up the attempts made by the far-right individuals to justify the assertion that mass influx of asylum seekers in 2015 influenced the terror attacks within the Union. The securitising actors have done this through their various speeches at the election campaign rallies across the EU which seems to be working for them based on the outcome of recent elections across the EU. Consequently, the rise of the far-right political parties across the EU could be seen as a result of the ability of the securitising actors to effectively capitalise on these terror attacks and link them to the arrival of mass influx of asylum seekers in 2015.

A research conducted by the Institute for the Study of War (ISW) during the refugee crisis reveals that a terrorist group, ISIS may be trying to expand their campaign in Europe. ISW however pointed out that there is no evidence to show that ISIS 'systematically' capitalised on the mass influx of asylum seekers in 2015 to smuggle

fighters into Europe or try to radicalise asylum seekers within the Union (Dearden, 2017:1). It was discovered through the 2017 EU Terrorism Situation and Trend Report that the extent to which ISIS is trying to involve migrants in their operations within the EU is unknown. The report reveals that the unknown situation makes the subject "susceptible to exaggeration and exploitation" especially by the populist factions and extreme right-wing political parties within the EU (Dearden, 2017:1).

Therefore, it is obvious that the securitising actors capitalised on these terror attacks to criminalised asylum seekers by linking the terror incidents with the large-scale movement of asylum seekers within the Union. In France, Germany, the UK, the Netherlands and other places, the far-right politicians carried on labelling asylum seekers in a bad light with their anti migrant and anti Islam rhetoric. Consequently, France and Netherlands came up with counterterrorism laws as part of the effort to tackle terror attacks within the Union (Chrisafis, 2017:2; Zeldin, 2017:1). Germany also came up with restrictive measures at latter stage as part of the strategies to cut down on the number of asylum seekers being admitted in the country, and this is further explained in the next chapter. The French government also put in place measure to combat terrorism by expanding the power of the security forces in 2017 (Rubin and Peltier, 2017: no p).

In the light of the above, the enactment is not without criticisms. The critics pointed out the inadequate judicial oversight, and that such power being handed over to the security personnel could lead to violations of individual rights by the executioners of the policies. It is essential to note that the UK, Germany and even the US have also tightened up their anti terrorism law mainly because of the series of terror attacks across the Union in recent years (Rubin and Peltier, 2017: no p).

4.7 Conclusion

This chapter examined the key tenets of the securitisation theory of the Copenhagen School, 'the speech act' of the securitising actors that are usually linked with existential threat. The success of such speech is determined by its acceptance by the audience. Securitisation theory is not without flaws as critics believe that it can

hardly be measured empirically. It was also observed that the audience of the securitising actor cannot be limited to those that were physically present at political rallies, but the mass media audience who observe political campaign speeches through the media.

The audience of the speech act is further expanded to includes both physical and media audiences. Through the media audience, the 'speech act' is supported by the agenda setting theory of the media with its perceived ability to influence public thinking or opinion. It is claimed that the public is "given" what to think about from the media. Thus, it was revealed that the securitising actors have the ability to influence the thinking of their followers and arguably shape government policies, especially the formulation of such asylum policies within the Union, through their political campaign speeches, especially the anti-migrant rhetoric. Therefore, the theoretical perspective of this study has strengthened the debate that asylum policies are not made in isolation.

Chapter Five

Methodology and Data Sources

5.1 Introduction

This chapter focuses on the research methodology of the thesis. It outlines the research design; research method and techniques. It describes the data analysis of the study in sections one and two of chapter six. It describes the application of *crisis management model (CMM)* that further interprets the analysis of the gathered data. The analysis describes the experiences the interviewed Syrian refugees had with the application of the EU asylum system by selected MSs at the peak of the crisis. The interviews with the Syrian refugees were conducted in four MSs, namely, the UK, Germany, France, and Austria. The analysis also concerns the efforts made by the MSs and the EU authorities in tackling the refugee crisis, while corroborating the findings with excerpts of the interviews conducted with the EASO and Frontex officials. This chapter further explains the preparation undertaken by the researcher for international fieldwork, and how the sample population was selected, including the efforts made in gaining access to the potential participants. It also reviews the international fieldwork proper and explains the need for ethical considerations in research.

5.2 Research Design

Research design is seen as a systematic plan to study a scientific problem. It is "an arrangement of conditions for the collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy and procedure" (Mukul and Deepa, 2011:32). It is the structure that has been created to answer the research questions. Research design "should be a reflexive process operating through every stage of a project"; from conceptualisation through the collection, to data analysis (Hammersley and Atkinson, 1995:24). A good research design allows the identified components of the research to work together in harmony. Research design explains what type of data is needed, what method should be used to gather and analyse the data, and how all of these will answer the research question (Kothari, 2010:13). In addition, Maxwell's *interactive model* of research design involves the

conceptual framework that explains the key concept of the research; the research question centres on the important question of what the research is set out to address; the method focuses on the techniques the research employs to gather and analyse the data; while validity confirms the authenticity of the study (Maxwell, 2005:216).

In a research design, the purpose of enquiry could be exploratory, descriptive, explanatory, and experimental or analytical. Exploratory research is a primary stage of research that strives to achieve new insights into phenomenon (Akhtar, 2016:73). Explanatory research "explores a new universe", one that has not been studied earlier. It is mainly concerned with causes (Akhtar, 2016:77). Experimental is used to test a research design of causal relationship in a controlled situation (Kothari, 2010:31). Descriptive design describes phenomenon as they exist. It is used to identify and obtain information on the characteristics of a particular issue like community, group or people, and to study the current situation (Akhtar, 2016:75). This study adopts the descriptive type of research design that describes the experience of selected Syrian refugees with the application of CEAS in the face of refugee crisis. Descriptive is used to obtain information on characteristics of a particular issue within a community or group of people. It describes social events, social situations and structure, and it is commonly used in the social sciences (Khanzode, 1995:35).

5.3 Crisis Management and Crisis Management Model

There are so many examples of organisational crisis and one of them is the BP'S gulf oil spill in 2010 that "harmed its financial performance and reputation and redefined its relationship with customers, employees, local communities, and governments" (Bundy et al., 2017:1661). For a long time, part of organisational research has been how to manage crisis; the prevention of potential crisis, managing the crisis itself and the implementation of lessons learnt in the aftermath of such crisis. It is part of the responsibilities of organisational leaders to prevent crisis from happening or to effectively manage crisis when it occurs.

Organisational crisis is seen as an event perceived by managers and stakeholders to be highly salient, unexpected, and potentially disruptive (Bundy et al., 2017: 1663).

Crisis management can be seen as "a low probability, high-impact situation that is perceived by critical stakeholders to threaten the viability of the organisation" (Pearson and Clair, 1998:66). A situation arguably becomes a crisis when a problem becomes greater than the capabilities of the affected organisation, institution, or community (Simpson, 2008:646). Crisis could also affect multiple organisations at the same time. For instance, crisis caused by natural disasters like flood or earthquake goes beyond an organisation, with no respect for boundaries and could affect organisations at the same time, even government institutions (Dobel, 2010:182).

There are four characteristics of crisis, (1) sources of uncertainty, disruptive, and change; (2) harmful or threatening for organisations and their stakeholders; (3) crises are behavioural phenomena; and (4) crises are parts of larger processes, rather than discrete events (Coombs, 2010:478; Bundy, 2017:1663; Kahn et al., 2013). There are also three types of crisis: "victim crises (weak crisis responsibility), accidental crises (moderate crisis responsibility), and preventable crises (strong crisis responsibility)" (Coombs and Holladay, 2004: Bundy et al., 2017:1674). Organisational research is being carried out to further understand why and how crises occur, and how such crises are being managed to reduce negativity (Kahn et al, 2013; Bundy et al., 2017:1662). Despite the increased level of research in crisis management, it is noted that more work needs to be done (Coombs, 2010:479). It is also essential to point out that research in crisis management has also been criticised for its lack of theoretical and empirical rigour based on the fact that many of its conclusions came from case studies (Seeger, 2013; Bundy et al., 2017:1662). Notably, there seems to be a lack of an interdisciplinary approach to researching and understanding crisis management (Kahn et al., 2013; Bundy et al., 2017:1662).

Crisis management captures the actions and communication of leaders of the affected organisation with the aim of reducing the likelihood of a crisis, as well as working to reduce harm from a crisis, while trying to restore order in the aftermath of the crisis (Bundy et al., 2017:1663). There are also crisis response strategies that are being applied by the affected organisations through a "set of coordinated communication and actions used to influence evaluators" (Bundy and Pfarrer, 2015:346). Response

strategies are seen in two ways; the organisation can either accept less responsibility or more responsibility. An organisation that accepts less responsibility with "denial, defiance, and scapegoating" is labeled as *defensive* (Bundy and Pfarrer, 2015:352). On the other hand, a response strategy that accepts more responsibility with apologies, expression of sympathy, and promises of corrective actions is tagged as accommodative (Bundy and Pfarrer, 2015:352; Bundy et al., 2017:1673).

There are three main stages of a crisis; pre-crisis prevention, crisis management, and *post-crisis* outcomes (Bundy et al., 2017:1664). The *pre-crisis* prevention stage highlights the level of preparedness of the organisation that could stop a potential crisis from happening. The crisis management stage focuses on how the organisation responds to the crisis - the actions taken in a bid to effectively manage the crisis. The *post-crisis* outcomes stage highlights the lessons learnt following the crisis and how such lessons can be put to use (Bundy et al., 2017:1664). Crisis management is synonymous with how organisations manage crisis. Nonetheless, in this context, the focus is on the EU concerning its ineffective pre-crisis prevention, and the abysmal response, especially at the peak of the 2015 refugee crisis. Therefore, the three main stages of crisis management as identified are applied to further interpret how the EU responded to the 2015 refugee crisis. Such application is made possible with a *crisis management model* (CMM), coined by the researcher, using the three main stages of crisis management.

Crisis Management Model (CMM)
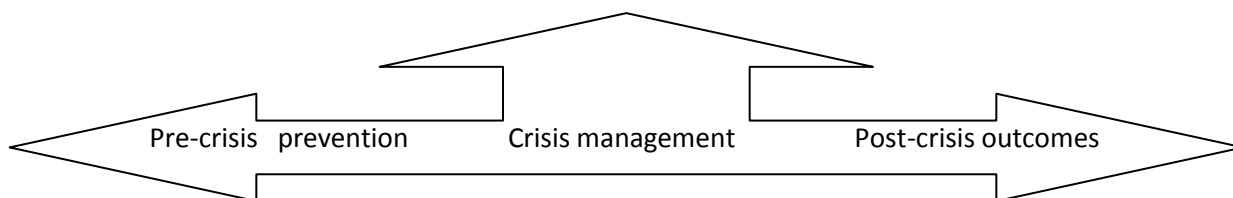
CMM uses the pre-crisis prevention, crisis management, and the post-crisis outcomes stages to explain the response of the EU to the Syrian refugee crisis, with special attention on the Dublin system. The interpretation focuses on how the 2015 refugee crisis could have been prevented or minimised, the responses of the MSs to the crisis,

and the need to put to use lessons learnt in order to be able to adequately manage similar influxes in the future.

5.4 Research Method and Techniques

The research method or technique is the approach or strategy used to implement the research design. It is defined as "the general approach the researcher takes in carrying out the research project" (Leedy and Ormrod, 2001:14). Three main research methods are the quantitative, qualitative and mixed method. The quantitative research design measures phenomenon in multiple grades, with the qualitative method, the suitability of a solution can be studied, while the mixed method combines both quantitative and qualitative research. Quantitative research involves the collection of data so that information can be quantified and subjected to statistical treatment in order to "alternate knowledge claims" (Creswell, 2003:153; William, 2007:66).

On the other hand, a qualitative approach is an holistic approach that involves discovery (Williams, 2007:67). It is seen as an unfolding model that occurs in a natural setting that allows the researcher to develop a level of detail from high involvement in the actual experience. One identifier of a qualitative research is the social phenomenon being investigated from participants' viewpoints. Qualitative research simply requires a broader and less restrictive concept of design, a flexible approach (Maxwell, 2005:215).The mixed method approach combines both quantitative and qualitative methods as mentioned earlier. It provides researchers with an option to combine both quantitative and qualitative research methods (Johnson and Onwuegbuzie, 2004:14).

This study employs a qualitative research method in order to accurately describe the Syrian refugee experience concerning the application of the CEAS in the face of the large-scale influx of asylum seekers in 2015. Qualitative research method makes meaning of the social world in which we live. It seeks to answer questions about "why people behave the way they do, how attitudes are formed, how people are affected by events that go on around them, and why cultures and practices have developed in

the way they have" (Hancock et al., 2009:7). Qualitative researchers study things in their natural settings, in an attempt to make sense of or to interpret phenomenon in terms of the meanings people bring to them (Denzin and Lincoln, 2000:3). Therefore, this study attempts to make sense of how similar influxes can be effectively managed in future based on the experience of the selected Syrian refugees (the participants) with CEAS during the 2015 refugee crisis.

Research methods have their merits and demerits, and one of the advantages of using qualitative research is that it is cost effective. It allows a smaller sample of the population to be used which costs less than using a larger sample size (Gaille, 2018: no p). This study employed a smaller sample size that produced high quality output as seen in chapter six. Ten Syrian refugees were interviewed in each of the four selected countries, and the findings of the gathered and analysed data proffers solutions to how similar future influxes can be effectively managed. Choosing a smaller sample size also helps to turn around the data and the subsequent outcome faster so that the beneficiaries (the institutions, individuals, or companies that will make use of the findings) can make quick and important decisions. In addition, using a smaller sample size is one of the best research options available when the researcher is faced with limited financial resources (Gaille, 2018: no p).

Qualitative research also helps the researcher to incorporate human experience. Human experience cannot be cast aside in qualitative research because two different people would often see or view the same event differently. This was evidenced in the research when the responses obtained from the interviewed Syrian refugees revealed that two different participants in the same MS described their experience with the CEAS differently. Qualitative research makes it "possible to incorporate the complexity of this type of data into the conclusions" and generate "more depth and accuracy" in favour of everyone (Gaille, 2018: no p; Ayres, 2015: no p). Another advantage of the qualitative research method is that it allows the researcher to apply open-ended interview questions. It makes it easier to obtain meaningful information from the participants, which is seen as the ability to "get underneath superficial

responses and rational thoughts to gather information from individuals involved" (Ayres, 2019: no p).

This study also adopts a semi-structured interview approach, by which relevant follow-up questions were asked, and this helped the researcher to collect more useful information that thoroughly described the Syrian refugees' experience with the CEAS at the peak of the 2015 refugee crisis. Noticeably, people have this "superficial response that is built from habit", but using the open-ended interview approach enables the researcher to get "underneath these habits to mine the actual data that someone can provide" (Gaille, 2018: no p).

The qualitative method is not without its critics. For instance, Mason echoed one of the criticisms of qualitative research that described it as "merely anecdotal or at best illustrative" and that "it is practiced in casual and unsystematic ways" (Mason, 2002: 1). However, the idea that qualitative research has such weakness "is based on a misunderstanding of the logic of qualitative enquiry" and a failure to see "strategic significance of context" (Mason, 2002: 1). Researchers could face some challenges when using qualitative research but it has a huge potential, with many positive characteristics as mentioned earlier. Another criticism of qualitative research is the inability of the researcher to generalise the findings to a larger population, nonetheless, one of its strengths is that it "engages with context" (Hancock et al., 2009:7). Although its practitioners, just like other research methods, could face some challenges, qualitative research "has a massive potential" but must be carried out in an effective manner in order for the researcher to be able to justify the claims or findings (Ospina, 2004:2).

There are different types of research designs that use the qualitative research technique to frame the research approach. These are case study, ethnography, grounded theory, phenomenological study, and content analysis. They have a dramatic effect on the research strategies explored (Williams, 2007:67). Case study allows the "researcher to explore in depth a program, an event, an activity, a process, or one or more individuals" (Creswell, 2003:15). Case study attempts to learn

"more about a little known or poorly understood situation", and it enables the insight-stimulating cases to be selected for special study (Leedy and Ormrod, 2001:149; Borwankar, 1995:45). Ethnography allows researcher to study an intact cultural group in a natural setting over a prolonged period of time by collecting, primarily, observational data (Creswell, 2003:14). Grounded theory is defined as the "researcher attempts to derive a general, abstract theory of a process, action, or interaction grounded in the views of participants in a study" (Creswell, 2003:14). It is a process of gathering and analysing data and repeating the process with a format called the constant comparative method (Williams, 2007:69). The focus of phenomenological study is "to understand an experience from the participants' points of view (Leedy and Ormrod, 2001:157). Content analysis is defined as "a detailed and systematic examination of the contents of a particular body of materials for the purpose of identifying patterns, themes, or biases" (Leedy and Ormrod, 2001:155). Each of them can be seen as "pivotal aspect that shapes the research question(s)", as well as the chosen data collection tool and how the data are analysed (Teharani et al., 2015:670).

In describing the experience of the Syrian refugees and the response of the EU to the 2015 refugee crisis, a phenomenological approach of qualitative research has been adopted by this study. A phenomenological approach is a type of qualitative research that describes an event or phenomenon and it uses a combination of data collection tools (Sauro, 2015: no p). "The phenomena" can include, but are not limited to, how people experience aspects of their lives, how individuals and/or groups behave, how organisations function, and how interaction shapes relationships (Teharani et al., 2015:669). Qualitative research centres on the events that occur and the outcome of such events mainly from the points of view of the participants, which in this case are the interviewed Syrian refugees.

The phenomenological approach combines data collection tools that allow this study to combine interview and document analysis as its data collection tools. Phenomenological study relies on "participants' own perspective to provide insight into their motivations". (Sauro, 2015: no p). A phenomenological approach of

qualitative research aims to develop a complete accurate, clear and articulate description and understanding of a particular human experience or experiential moment. One of its strengths lies in the richness of the description of human experiences, with real and factual findings. Its findings are not imposed but are allowed to emerge by the interviewer or researcher. However, one of its weaknesses is that of the inarticulate manner of some of the interviewees, which occurs sometimes (Denzin and Lincoln, 2003). Nevertheless, the interviewers ought to employ careful techniques in keeping the descriptions as faithful as possible to the experiential gathered data.

Qualitative research may be seen in any of three paradigms; positivist, interpretivist, and critical (Denzin and Lincoln, 2003). A paradigm can be described as "a structure or a set of suppositions and ideas that provide pathways to see what the world looks like…" (Khan, 2014:298). It is also a set of basic beliefs (or metaphysics) that deal with ultimate or first principles (Guba and Lincoln, 1994:107). It is essential for the researcher to use paradigms with the aim that this could help to "identify and illuminate a problem and further give some reasonable direction to solve" such issues or problems, which could in turn "provide results and justifications that are acceptable to the scientific community for further reference" (Khan, 2014: 299).

Selecting a right paradigm is essential as this will help the researcher to meaningfully and widely answer the research question(s), which would authenticate the findings of the research. The researcher is seen as the main data collection instrument in qualitative research because "the researcher examines why events occur, what happens, and what those events mean to the participants being studied" (Teharani, 2015:669). How the researcher views what he or she is about to study could arguably determine the best approach for such research. Therefore, the alignment between the belief system underpinning the research approach in itself, is a prerequisite for the rigorous application of qualitative research (Teharani et al., 2015:669). Thus, this study employs interpretative phenomenological analysis (hereafter IPA) of qualitative

research in the analysis of the data gathered via the interviews conducted in France, the UK, Germany, and Austria with the selected Syrian refugees.

IPA is employed in the analysis of the gathered data and it focuses on how the lived experience of participants can be understood and how the participants themselves make sense of their experiences. IPA is described as an approach by which the lived experiences of the participants are explored (Reid et al., 2005:20). IPA helps the researcher to make sense of the participants' lived experience through a process of interpretative activity. Interpretative analysis is adopted to describe the collected data, especially the interviews conducted in the selected MSs. This approach would help the researcher to make meaning of the participants' perspective of the existing EU asylum system drawn from their experience with the CEAS during the refugee crisis. The interpretative approach depends on both the participants' view and the researcher's view of reality (Denzin and Lincoln, 2003). By so doing, the researcher can "discover the significance and importance of an action or make it understandable and clear for others what this specific action means" (Khan, 2014:301). It is essential for such discoveries to be interpreted and deduced in a meaningful, simple and concise way that will enable other people to easily understand the submission.

5.5 Data Collection Tools (Interview and Document Analysis)

It should again be noted that this study combines interview and document analysis as data collection tools, a process known as triangulation. Triangulation combines methodologies in "the study of the same phenomenon" (Denzin, 1970:291). "The researcher attempts to provide a confluence of evidence that breeds credibility" as a way of triangulating data (Bowen, 2009:28; Eisner, 1991:110). This approach enables the researcher to "seek convergence and corroboration through the use of different data sources and methods" (Yin, 1994). Hence, section one of chapter five analyses the interviews conducted with the Syrian refugees in the selected countries. While section two applies document analysis as well as the analysis of the interview conducted with the officials of EASO and Frontex.

The method of interview is seen as "a conversation" that enables the interviewer to capture the phenomenon being described by the interviewee as regards the proper interpretation of the message being conveyed (Kvale, 1996:174). One of its objectives, usually, is to obtain meaningful information about the subject at hand. This is made possible through extended conversations between the interviewer and the interviewee (Schostak, 2006:54). It is advisable for an interview method to be used only when necessary in social research. Hence, Schostak argued that an interview "is not a simple tool with which to mine information. It is rather a place where opinions may clash, deceive, seduce, enchant. Its usage must be properly planned". (Schostak, 2006:92). Two key features of a qualitative interview are 1) it flows naturally and 2) it is rich in detail (Dornyei, 2007:140).

The use of an interview method has various advantages as it offers an opportunity to obtain information that is "probably not accessible using techniques such as questionnaire and observation" (Blaxter et al., 2006:172). There are also some disadvantages to using interview as a research method. Hermanowicz argued that while interviewing is among the most central, revealing and enjoyable method that one can use in a research, it is deceptively difficult, especially in terms of the processes involved and its application (Hermanowicz, 2002:498). In addition, Walford explained that "interviews alone are an insufficient form of data to study social life" (Walford, 2007:147). It has also been seen as a time consuming method of data collection, as the researcher spends a lot of time collecting and also analysing the data because after the interview is conducted, it will need to be transcribed and coded (Robson, 2002:94).

Additionally, document analysis "is a systematic procedure for reviewing or evaluating documents", and these documents could be print, electronic or both (Bowen, 2009:27). These documents are also "produced, shared and used in socially organised ways" (Atkinson and Coffey, 1997:47). Document analysis requires that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge" (Bowen, 2009:27). These documents are usually produced without the researcher's input and they may contain words and images that could

help the researcher to make meaning of the research. Bowen listed various forms of documents that may be used for "systemic evaluation" of a study, and pointed out where the documents can be found, for example libraries, newspapers, and online articles to mention but a few (Bowen, 2009:28).

Document analysis is not without its critics, and part of the criticisms is that the information in some of the documents may be inapplicable, out of date or contain insufficient information to make a meaningful analysis. It can also be time consuming to collect and review in cases where a lot of documents are involved, and sometimes, there may be "biased selectivity" (Yin, 1994:80). Nevertheless, documents can serve a variety of purposes. For instance, they can provide "data on the context within which research participants operate… they can also provide background information as well as historical insight" that can help the researcher to make meaning of the data. Documents can "provide supplementary research data as the information and insights" extracted from documents can be of great value, an added knowledge (Bowen, 2009:30). In summary, the study adopts interview and document analysis, a combine data collection tools, a triangulation approach. Thus, the first section of the data analysis focuses mainly on the interview approach, while the second section adopts both interview and document analysis approach.

5.6 Preparation for International Fieldwork

The preparation for international fieldwork came with mixed feelings. Personally, I like to plan ahead, so my preparation started early enough. It all began with networking with old friends and classmates that could help with my research in one way or the other. I informed a few of my friends about the likelihood of me carrying out my PhD research in their respective countries. I also asked my supervisors at certain points if they knew people in France, Germany, Austria or here in the UK that could help with the recruitment of research participants for my fieldwork.

One of the limitations of carrying out research of this magnitude, as a self-funded student, was the financial aspect. I began to calculate how much the international fieldwork would cost, taking into consideration the fact that the research could

extend to cities, towns and villages within the selected countries. Nevertheless, it was important to forge ahead with the international fieldwork, irrespective of the financial commitment. Another challenge I faced was the language barrier; the knowledge that the refugees may not be able to speak English or the local language where they live properly but may only speak Arabic prompted me to factor in the need to engage the services of interpreters. Although, I was well-aware that there were people within the general public in other MSs that could speak English very well and I considered using their help to get the job done. I also took into consideration the ability to navigate my way around the cities, towns and villages within the selected MSs.

I was concerned about the recruitment process and the need to employ the best approach for carrying out my research. I also decided to use non-purposive (non-probability) route for the sample selection. Sampling is a way of picking a group out of a particular population and the findings made from studying this selected group would then be generalised to the larger population. Sampling may or may not be necessary, depending on the adopted method (Picciano, 2018:1). Three sampling techniques are probability (random, stratified, cluster, and systematic sampling), non-probability (convenience, quota, and purposive), and judgmental sampling (Landreneau, 2018: no p and Picciano, 2018:1). The focus of this research was to apply purposive, "a non-probability sample based on characteristics of a population and the objective of the study" (Crossman, 2018:1). Therefore, ten participants were scheduled to participate in each country, using purposive sampling, which put the total number of participants at forty.

The recruitment process was another major task while preparing for the international fieldwork. Although, I had spoken with a few friends and refugee agencies in different countries, I was not impressed with the results I obtained at the initial stage concerning the recruitment of the participants. In addition, I ensured that necessary steps were followed in obtaining ethical approval from the University in order to conduct the research in the best way possible.

The process of obtaining ethical approval at London South Bank University (LSBU), especially for international research fieldwork, requires a thorough and meticulous approach. Therefore, the interview questions were constructed and consent forms obtained. I placed priority on the need to protect the privacy of participants. I took all deadlines seriously and made sure nothing was left undone in order to make a successful outing. I got the ethical approval I needed and I set out in my quest to conduct a successful research in the selected MSs. As I prepared to conduct the interviews, I bore in mind that the researcher must be extremely careful because any form of abuse of the research procedure could generate a negative reaction.

5.7 International Fieldwork: Access and Sample Frame

Having obtained ethical approval from the University, I made the necessary travel arrangements and prepared my notes and checklist. Prior to my departure for the international fieldwork, I had carried out a couple of interviews here in the UK and I was looking forward to conducting more interviews with zeal. I employed the semi-structured approach of interview with the aim of gathering substantial information that would enrich the study. Semi-structured interviews feature a series of open-ended questions and these questions are usually on the topic that is being researched. The questions cover all areas as regards the focus and topic of the research which gives the researcher flexibility to probe the interviewee to elaborate more on the original response. If the interviewee is having difficulty in answering a question, the researcher could help with clues to encourage them (Nigel et al., 2002:2). In order to encourage the participants, follow up questions were asked, and I did more of listening as well. Bearing in mind that a researcher must do more of listening than talking in order to get the best out of the interviewees, and that the researcher must 'always seek the particular' (Richard, 2003:53).

The success of a semi-structured interview requires thorough planning. Similarly, the interview schedule, and the process of conducting the interview and analysing the data require adequate planning and careful consideration (Nigel et al., 2002:3). Semi-structured interviews enjoy more flexibility in comparison with the structured interview. Semi-structure interviews allow depth to be achieved by providing the

"opportunity on the part of the interviewer to probe and expand the interviewees' responses" (Rubin and Rubin, 2005: 88). The checklist I prepared helped me during the interview sessions, I asked follow-up questions when needed and I made sure that nothing was left undone. This is in line with Berg's recommendation that researchers should make use of a basic checklist when carrying out semi-structured interviews that would "allow for in-depth probing while permitting the interviewer to keep the interview within the parameters traced out by the aim of the study" (Berg, 2007:39).

My first destination outside the UK was Munich, in Germany. I arrived there late in the evening. The next day I met with my contact person in Munich who promised to carry on with the recruitment of the participants, the Syrian refugees in Munich and its environs. Eventually, I left Munich a couple of days later and my next stop was Hannover where a friend, who was originally from Syria, is now a dentist and some of the Syrian refugees in Hannover patronise his practice. It was a long journey to Hannover from Munich by train, and my contact person was great in helping out. In fact, he had arranged a couple of interview sessions for me to start with as soon as I arrived in Hannover. Consequently, the interviews began as soon as I arrived at his place of work in Hanover. Even though I had a long day crossing from the southern to the northern part of Germany, I put on a warm face and we got talking before the interview proper. I was aware that in order for the interviewees to perform optimally, it is the duty of the interviewer to create an enabling environment for the person that is being interviewed. By so doing, the interviewees feel more at ease to express their feelings. Therefore, it is of paramount importance for the interviewees to be kept interested by the researcher to guide against boredom (Berg, 2007:210). Luckily, the Syrian refugees in Hannover were warm, friendly and willing to participate. I was also holding on to the words of Blaxter et al that interview is a natural way of interaction that could occur in different situations because it goes beyond a mere tool of data gathering (Blaxter et al., 2006:177).

The interview session in Hannover began with a warm exchange of greetings, followed by the process of obtaining consent from the participants after which the interviews were conducted. One of the main challenges during the interview sessions in Germany

was the length of time it took with each person because of the language barrier. The interviewer spoke in English to the interpreter and the interpreter spoke German to another interpreter who then spoke Arabic to the Syrian refugees and then the process was reversed to obtain the participant's responses. It was long and tedious, nevertheless, I obtained substantial information that I believe enriched the study. The process gave me the opportunity to elicit more information by asking more follow-up questions through the interpreters. According to Dornyei, this process gives an opportunity for the interviewer to rephrase the question for the better understanding of the interviewee and to enable the researcher to obtain accurate data through the right answers from the participants (Dornyei, 2007:143). It is important to extract accurate data because the answers from the interviewees can also be quoted while analysing the data as this could enrich the research by providing a useful and "invaluable interpretations" (Bechhofer and Paterson, 2000:160).

I left Hannover with great appreciation for the participants including my friend (the dentist) and his wife who took time off work to help me with the data collection process. I went back to Munich again after a successful fieldwork in Hannover to follow up with the recruitment process, while hoping for more interviewees to come on board. Therefore, on my first visit to Munich, I did not conduct interview but met with the gatekeeper who promised to help with the recruitment of participants. From Munich, I travelled to Vienna to carry on with the fieldwork. It was the end of my first trip to Germany concerning the international fieldwork and the beginning of the new one in Austria. I left Munich Hauptbahnhof on a Budapest bound train, with the hope of a favourable outing in Austria.

In Vienna, a friend helped out as gatekeeper. She was working with a refugee agency at that time in Vienna. Her involvement made my fieldwork experience in Austria easier in comparison with Germany and surprisingly the UK. Noticeably, the participants in Austria lived far from one another, but we were able to conduct the interviews unhindered. The participants had consented to participate before I arrived in Austria. The gatekeeper had arranged virtually everything including interpreters for each day of the fieldwork, and all we needed to do was to follow the procedure and

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dates of the interviews. We both planned this process through telephone conversations before my arrival in the country and the gatekeeper had done the background job ahead of the interview proper.

In Austria, it was another great experience meeting with the participants, the Syrian refugees. They were willing, warm, and surprisingly some of them were already speaking the local language fluently only a short period after their arrival in the country. It was impressive. The response of the refugees to the interview process was very similar to that of Germany, as described earlier. They were welcoming, warm, and friendly and every person we visited tried to entertain us with biscuits, pastries and soft drinks, especially the Syrian refuges that were visited at home.

After my first visit to Germany and Austria I came back to the UK to continue the fieldwork locally. I experienced hardship in gaining access to Syrian refugees in the UK at first and I kept going back to my supervisors for help and they encouraged me to keep trying. I was turned down by the refugee agencies I contacted for help in the UK, as well as other places. Their common excuse was that they do not help students with such requests anymore because of their workload. It was draining and tiresome but I carried on and decided to apply the "networking approach", whereby I tried to gain access to the participants through friends and colleagues. At one point, I began to ask colleagues and friends if they knew Syrian refugees anywhere in the UK. The new approach of networking paid off. One of my supervisors also introduced me to an individual who works with a refugee agency here in the UK and I was able to interview two Syrian refugees through the new contact. I followed up with the interviewees by asking the Syrian refugees that had participated if they had friends or family members that were willing to participate as well. Eventually, the new approach worked for me and I was able to interview the required number of Syrian refugees in the UK.

My next stop for the international fieldwork was Paris, France and I also went back to complete the fieldwork in Munich, Germany. The only contact I had in France, prior to my arrival at Charles de Gaulle airport, was my contact person in Vierzon, France who agreed to help as gatekeeper. Nevertheless, on the way to my hotel accommodation

somewhere in Paris I met this young man on the train and we got talking. Interestingly, he connected me with three Syrian refugees in Paris and I was able to interview them within days.

Day three in France, I left Paris for Vierzon where my friend, the gatekeeper, was glad to see me. We began the interviews with the Syrian refugees he had informed before I arrived, who came over to participate in the research. One highlight in France is the few refugees I met who were brought to France under the EU refugee relocation scheme. Apparently, they were given options to write down eight preferred destinations each when they were in the hotspots in Greece. In France, as in Germany, the language barrier was also an issue and I had to engage the services of interpreters. From France, my next destination was Munich, where arrangements had been made for me to interview the remaining Syrian refugees needed for my quota in Germany. On day two of my return journey to Munich, I met the contact person at Munich Central Station with two Syrian refugees who were in good spirits and willing to participate. The contact person could not speak English properly. He speaks the German language but the researcher could not speak that language, so I had to engage the services of an interpreter in order to carry on with the interview sessions. The next day I made a trip to a refugee camp in Munich, a big and ideal residential building in a serene location somewhere on the outskirts of Munich, where I interviewed more Syrian refugees. Eventually, I completed the number of interviews needed in Germany and came back to the UK, where I carried on with the fieldwork.

It is important to note that the interview sessions for both Frontex and EASO Officials were conducted online, using Skype after a series of correspondence between us. In all, two officials and forty Syrian refugees were interviewed; ten in each of the four selected countries, namely, France, Germany, Austria, and the UK.

5.7.1 Positionality Statement

Prior to carrying out this study, I had studied refugee studies (postgraduate level) at London South Bank University. Therefore, I could relate to a certain extent with what the refugees were going through concerning their persecution experience. I knew I

had to listen more, and avoid questions that could elicit emotional responses. The interview questions were designed to answer some of the provisions of the status quo Dublin system concerning whether these provisions were applied by the selected MSs in the face of the mass influx of asylum seekers in 2015. The interview questions were mainly on Syrian refugees' experience with the CEAS, especially the Dublin system. I avoided questions that are related to the conflicts in Syria in order to guard against emotional harm, as explained earlier. The interview questions were framed in a way that would make it easier for the participants to answer them. For instance, one of the questions asked, "in seeking asylum, which country did you first arrive in within the EU"? This is in line with Art 13 of the Dublin III Regulation (Entry and/ or Stay). The question was designed to indentify the MS responsible for the asylum process of the individual asylum seeker under normal circumstances. Another question asked was "were you interviewed personally about your asylum application"? This is also in line with Art 5 of the status quo Dublin system (Interview) that would determine whether the selected MSs conducted the interviews with the affected refugees as part of their status determination process.

I also had a friend with refugee status during my undergraduate studies. He was living by himself with no parents or family around. I used to ask him questions, concerning the process of asylum, and how he was able to cope financially. I also have a couple of friends with refugee status (not from Syria) here in London. Therefore, while I was interviewing the Syrian refugees in the selected MSs, even though I was meeting some of them for the first time, and we could not communicate in a common language, I could relate to them because my personal experience had prepared me for such an occasion.

My educational background also played a role in coming up with the topic that links the plight of refugees with how they were able to go through the process of status determination on arrival in line with the CEAS. In the same vein, I was particularly interested in the process because being an international student, I had to go through the immigration vetting in terms of submitting a visa application and awaiting a decision to be made on such application. Therefore, I am aware that there is a

process on the ground that takes care of the day-to-day asylum regime within the Union but I was particularly interested in how the EU could cope in the face of mass influx of asylum seekers.

5.8 Ethical Considerations

Ethics has become the yardstick on how research should be carried out, the backbone of research which places a spotlight on the researcher and the procedures that are chosen in conducting the research (Best and Kahn, 2006; Fisher, 2006). Ethics is a branch of philosophy that concerns itself with the conduct of people, and the guiding norms standardising the behaviour of people as they relate with one another. It is seen as "ways of life" and "social norms for conduct that distinguishes between acceptable and unacceptable behaviour" (Shah, 2011:205).

On ethical issue, I took seriously every aspect of it concerning this research, including the documents needed to secure approval from the University, which I had to put together. I also reminded myself about the need to protect the participants from any emotional harm. I am aware that the researcher ought to seriously consider that the research process must not be harmful to the participant in anyway whatsoever. Bearing in mind that the American Psychological Association (APA) put succinctly that "Psychologists must take reasonable steps to avoid harming their… research participants… and to minimise harm where it is foreseeable and unavoidable" (APA, 2010:6). The important thing is that research participants must be protected from any form of harm either physical or emotional, not just by psychologists but by all researchers.

Therefore, I was careful not to bring back any hurtful memories with my research questions. The questions were designed to answer the research objectives with a focus on the Syrian refugee experience with the EU asylum system. Hence, the participants did not have to tell me about their persecution experience in Syria. Basically, they were meant to answer questions concerning their experiences within the EU, beginning from when they arrived in the Union up until when they were granted refugee status and beyond. This was intentionally done to avoid emotional

stress, and since I was not trained to manage people that are distressed, I avoided those questions that could elicit emotional responses.

Consent is essential in research fieldwork, therefore, even after the gatekeepers had verbally secured the consent of the participants, I still collected written consent from the interviewees. I also let them know that they could withdraw their participation at any time. In addition, I explained to the Syrian refugees and the officials about how the collected data would be used. Consent in research is a way of seeking the approval from a potential participant who may choose to participate in the research or not. Arminger argued that this involves "a person knowingly, voluntarily, intelligently, and in a clear and manifest way giving his or her consent" (Arminger, 1997:330). The participant must be informed that he or she has the right to withdraw at anytime. The researcher must ensure that the participant has all the necessary information concerning the research; the purpose, the risks involved (if any), the methods and what is expected of the participant (Jones and Kottler, 2006). I complied with these principles; the gate keepers working on my behalf had already briefed the potential participants about the likely questions and I did the same prior to the interview with each participant.

In addition, privacy is of paramount importance in research and a major aspect of ethical considerations. The value attached to privacy varies individually and around the world but the western nations take seriously the importance of maintaining privacy in research. Different research programmes focus on different areas in protecting the privacy of participants. This could be done in the process of obtaining information about attitudes of a group of people, it could also be a research about their belief system, behaviour, or experience about certain issues. The researcher must stay clear of unnecessary invasion of a participants' privacy.

In research, irrespective of whether it is science based, educational or social sciences, as long as the researcher deals with individuals, protecting their privacy must be respected. In addition to the written form of letter to the participant that stated clearly how their privacy would be protected, I informed them verbally. I told

the participants about the fact that they would remain anonymous. Their names would not be used, and that this would make it difficult or impossible for the response to be traced to them individually. I also informed them how the gathered information would be stored. Additionally, the American Educational Research Association (AERA) explained the need to protect privacy in research by stating that "it is of paramount importance that educational researchers respect the rights, privacy, dignity, and sensitivities of their research populations and also the integrity of the institutions within which the research occurs" (AERA 2002:3). Therefore, it is highly important for the researcher irrespective of their field to obtain consent, protect from harm and ensure privacy (AERA 2002:5).

5.9 Conclusion

This chapter focused on the research methodology of the thesis. It outlined the research design; research method and techniques. It described the data analysis of the study in sections one and two of chapter six. It revealed the focus of the data analysis that described the experiences the interviewed Syrian refugees had with the application of the EU asylum system by the MSs at the peak of the crisis. This chapter further explained the preparation undertaken by the researcher for international fieldwork, and how the sample population was selected, including the efforts made in gaining access to the potential participants. It also reviewed the international fieldwork proper and explains the need for ethical considerations in research.

Chapter Six

Data Analysis

6.1 Introduction

This chapter focuses on the analysis of the gathered data that are divided into two sections as explained in chapter five. The first section centres on the analysis of the interviews conducted with selected Syrian refugees in four MSs mainly in line with how the MSs applied Dublin III Regulation in the face of 2015 refugee crisis. The second section focuses on the document analysis of some of the unilateral and collective efforts of the EU authorities and the MSs to tackle the mass influx. The second section corroborates the obtained documents with the excerpts of the interviews conducted with officials of the EASO and Frontex. It combines interview and document analysis as data collection tools, a triangulation approach. Therefore, this chapter addresses the first, third, fourth, fifth, sixth, and seventh objectives of the study. This chapter also connects the data analysis with the theoretical perspective of the study by referencing the role of the securitisation actors concerning their anti-migrant rhetoric that arguably influenced how the selected MSs responded to the crisis. It also applies the *crisis management model (CMM)* to further interpret the analysed data.

The study employs a qualitative method, "a form of systematic empirical inquiry into meaning" (Shank, 2002:5). It is also "an enquiry process of understanding based in distinct methodological traditions on inquiry that explore a social or human problem. Qualitative method enables the researcher "builds a complex, holistic picture, analyses words, reports details of informants, and conducts the study in a natural setting". (Creswell, 2007:15). Qualitative research engages us with things that matter, a rewarding activity (Mason, 2002:1). A wide array of dimensions can be explored through qualitative research, which includes "the texture and weave of everyday life, the understandings, experiences and imaginings of our research participants…" (Mason, 2002: 1). This makes the qualitative method ideal when trying to understand the experience of selected Syrian refugees concerning the EU asylum system in the face of the 2015 refugee crisis.

The goal is to obtain meaningful and relevant information from the participants in line with the application of the Dublin system at the peak of the crisis and to apply such experiences in tackling similar influxes in future. It is important to reiterate that the focus is not on the persecution experiences of the participants in Syria that could bring back unpleasant memories. Answering such persecution-related questions could lead to emotional stress for the interviewees, and the interviewer is not trained to manage such situations as mentioned in chapter five. To this effect, the interview questions were designed to answer key and relevant questions concerning the Syrian refugees' experience with the EU asylum system, mainly on the application of Dublin III Regulation during the 2015 refugee crisis. These questions helped to obtain relevant information that, when analysed and applied, could proffer solutions to similar influxes in future. The findings could also determine which relevant aspects of the Dublin III Regulation should be improved upon, with the hope that the identified areas can be incorporated in a reformed Dublin system.

The study also employs a phenomenological approach of qualitative research method to make meaning of the analysis of the gathered data. A phenomenological approach is a type of qualitative research that helps to describe events or phenomenon and it uses a combination of data collection tools as explained in chapter five (Sauro, 2015: no p). The process of combining these methods of data collection is known as triangulation. Triangulation helps the researcher to provide "a confluence of evidence that breeds credibility" (Eisner, 1991:110). It also helps researchers to minimise the level of possible bias that could occur in using a single technique of data collection in a study (Patton, 1990).

The study also employs IPA as explained in chapter three. IPA is seen as "a qualitative approach which aims to provide detailed examinations of personal lived experience" and produces an account of lived experience in its own terms (Smith and Osborn, 2015:1). Therefore, in order to make a meaning of the experience of the interviewed Syrian refugees in the selected countries, an interpretative approach is adopted to analyse their experience with the EU asylum system in the face of the 2015 refugee

crisis. Interpretative analysis is adopted as opposed to a narrative approach to describe the experience of the participants concerning the Dublin III Regulation. Although, narrative and interpretative analysis may be seen as overlapping in nature, the interpretative approach is more suitable for this study. Narrative focuses on the lives of individuals, often with specificity of the events that have occurred in their lives (Czarniawska-Joerges, 2004:7). Narrative can also be seen as an approach that is understood as a spoken or written text giving an account of a series of actions/events that are chronologically connected (Flick, 2002). However, it is incumbent upon the interviewer to encourage the interviewees to tell the story in line with the subject matter and the story events should be linked chronologically to make meaning of the findings (Flick, 2002).

On the other hand, the interpretative approach centres around a single event, the 2015 refugee crisis in this context, and not a series of events that occurred in their lives that may date back to their persecution experience in Syria. Secondly, while the analysis of such a story of events is required to be done chronologically for the narrative approach, chronological order does not add value in interpretative analysis. The onus is on the interviewer or researcher to make sense of a personal account of an event by the participant through the interpretative approach, and an interpretative approach is rich or grounded in example from the data (Reid et al., 2005:20).

Hence, in making meaning out of the experience of the interviewees with the Dublin system in the face of the 2015 refugee crisis, it is important to interpret the interviewees' views meaningfully. The aim is to improve upon the existing EU asylum system that could effectively withstand similar future influxes. Furthermore, CMM is used to further interpret the analysed data in this chapter. CMM, as explained in the previous chapter, uses the three stages of crisis management; the pre-crisis prevention stage, crisis management or response stage, and the post-crisis outcomes stage. Thus, the pre-crisis prevention stage is used before the data analysis in section one of this chapter, the crisis management stage comes immediately after section one, and the post-crisis outcomes stage is used after section two.

6.2 Pre-crisis Prevention Stage

In order to "prevent system breakdown" that could lead to serious crisis, organisations can prepare themselves through "changes in culture, design and structure" or in other areas they deem fit (Weick et al., 1999:37). Using the pre-crisis prevention stage of CMM, it is fair to say that the EU authorities did not prepare enough for the 2015 refugee crisis. The conceptual framework of this study in chapter two supports this assertion. The inability of the MSs to effectively apply any of the existing legal frameworks says it all. TPD was not activated and the Dublin III Regulation was not fit for purpose.

The 2015 refugee crisis did not occur in isolation; the conflict in Syria began in 2011, years before the 2015 refugee crisis. The EU authorities and the MSs were aware of the presence of the Syrian refugees at the refugee camps in the Middle East, while the stakeholders appealed for help to improve the living conditions of the refugees at the camps. However, the needed support was not provided and the situation degenerated. It is essential to note that stakeholders can be part of the "prevention thinking and process" and they can help to identify and mitigate the risks that could result in crisis (Coombs, 2015:107). However, a negative relationship between the leaders of the organisation and the stakeholders could also result in crisis (Mcdonnell and King, 2013).

The EU did not prepare enough for the refugee crisis, arguably because of the notion that they can easily control immigration with *status quo* mechanisms; by using 'individualised' day-to-day immigration control. Consequently, the EU struggled at the peak of the crisis to cope with the arrival of large numbers of asylum seekers, and it became obvious that more work needs to be done to effectively control immigration, especially in mass influx situations. The 2015 mass influx of asylum seekers came as a surprise and some of the MSs, especially Hungary and Bulgaria responded terribly at the peak of the refugee crisis.

It is important to note that millions of people face persecution across the world (Clayton 2014:412). Notwithstanding, the rights or responsibilities of a state to

control who comes into its territory, who can reside there, and who should be deported often come into conflict with international human rights laws. The link between the refugee and migration control has been "a point of confrontation between sovereign rights and international law" (Gammeltoft-Hansen, 2011:11). Without a doubt, states have the right to control their territories and immigration in alignment with their power of sovereignty (Altman and Wellman, 2009:158 and 187). Nonetheless, relevant international laws exist to check the possible abuse of state sovereignty that could lead to the ill treatment of asylum seekers at their entry points. Immigration control on the territory of a state in this regard can be viewed in two ways. A state may choose to deny access to an individual from stepping into its territory or return an alien who might have successfully crossed into its territory in the first place based on perceived criteria that are not met by the affected person (Anderson et al., 2011:547). However, immigration control by the state while exercising its sovereignty rights does have limitations, made possible by the principles and norms of the international refugee law, and international human rights law. Key among them is the principle of *non-refoulement* which forbids states from sending back asylum seekers when their life or other named liberties (depending on the legal provision in question) could be in danger.

Therefore, the failure of the EU authority to adequately prepare for the 2015 refugee crisis is partly and arguably because the focus was on the immigration control that does not take in cognisance mass influx of asylum seekers but on the individualised day-to-day immigration control. Noticeably, some MSs came up with restrictive measures in the face of the refugee crisis, arguably in response to the anti migrant rhetoric of the far-rights politicians. Nonetheless, it is imperative for the Union to put to use the lessons learnt in tackling 2015 refugee crisis and avoid similar influxes in future through adequate pre-crisis preparation.

6.3 Section One

Section one focuses on the interviews conducted with selected Syrian refugees in the UK, France, Germany, and Austria. The interview questions were specifically designed to address relevant Articles of the Dublin III Regulation regarding its application in the

face of a mass influx of asylum seekers. The Syrian refugees shared the experiences and the encounters they had with relevant agencies and government officials within the EU, starting from when they arrived in the Union. The analysis focuses on the interview questions that addressed the Syrian refugees' experience concerning Articles 5, 3, 13, 17, 18 and 33 of the Dublin III Regulations, as well as the assessment of Art 5 of the proposed Dublin IV.

6.3.1 Analysis of the Interviews Conducted with the Syrian Refugees

Interview, as one of the data collection tools for this study remains the most common data collection tool in qualitative research, a familiar and flexible way of asking people about their opinions and experiences (Moriarty, 2011:8). Considerable amount of data "can be generated from an interview lasting one or two hours..." (Moriarty, 2011:8). This section therefore focuses on the analysis of the interviews conducted with the Syrian refugees in Austria, Germany, France, and the UK. The interview questions were specifically designed to address relevant articles of the Dublin III Regulation regarding its application in the face of 2015 refugee crisis. The Syrian refugees shared the experiences and encounters they had with the application of the EU asylum system in the selected MSs.

There is no hierarchical order in which the provisions of the Dublin system are analysed below. The rationale behind the arrangement is to describe the Syrian refugee experience concerning how the MSs applied the selected provisions in the face of mass influx of asylum seekers in 2015. The analysis began with a review of questions relating to Art 17(1) of the Dublin III Regulation. The analysis also concerns Art 33 of the Dublin III Regulation, as the refugees were asked whether the 2015 refugee crisis was well-managed by the EU based on the encounter they had while seeking for refuge within the Union, followed by Art 3 (Access to the Procedure for Examining an Application for International Protection). The interview question on Art 7 was designed to find out the preferred destinations of the refugees within the Union. The refugees were also asked about their mode of transportation to the EU on arrival and the port of entry, in line with Art 13 (Entry and/or Stay) of the Dublin III regulation. Art 18 focuses on the obligations of the Member State responsible, under

which refugees were asked about whether the 'responsible MSs' registered them on arrival or not, and how their status determination was carried out. Under Art 5, (Interview) of the Dublin III Regulation, refugees were asked whether they were interviewed as part of their status determination process. This section also argued against Art 5 of the proposed Dublin IV (Consequences of non-compliance) that is now in stalemate. The interviews with the Syrian refugees in the selected MSs and the officials of EASO and Frontex were conducted in 2017. In the view of the limited sample size and the means of selecting them, the findings would not be generalised to the whole Syrian population in the selected countries. The findings are indicative rather than conclusive.

6.3.2 Article 17(1) of Dublin III Regulation

Art 17(1) of Dublin III Regulation allows a MS to examine an asylum claim mainly on family grounds even when this MS was not originally responsible for processing the claim. Art 17(1) states that:

> by way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person based on family grounds in relation to wider family not covered by Article 2(g), even if such examination is not its responsibility under the criteria laid down in this Regulation.[45]

This is now under chapter IV of the proposed Dublin IV, in its Art 19, which states that:

> by way of derogation from Article 3(1) and only as long as no Member State has been determined as responsible, each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person based on family grounds in relation to wider family not covered by Article 2(g), even if such examination is not its responsibility under the criteria laid down in this Regulation.

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[45] Regulation (EU) No 604/2013 of the European Parliament and the Council., adopted June 26, 2013

There are noticeable differences between the wording of Art 17(1) and Art 19(1), which indicate that the activation of the discretionary clause is conditional rather than leaving it open as it were. The changes state that "and only as long as no Member State has been determined as responsible". The changes to the wording of this clause in Art 19(1) of the proposed Dublin IV is unnecessary. The changes by way of interpretation restrict a MS from helping asylum seekers that have been registered and automatically become the responsibility of the MS that registered them in the first place. What this means is that MSs are not allowed to invoke this clause as long as the asylum seekers are registered with another MS in line with Art 3(1).

On the contrary, MSs should be allowed to invoke this clause as long as they are happy to process such asylum applications, especially in the face of a mass influx of asylum seekers. By so doing, this will reduce tension and burden on the frontline states. If a MS decides to take on the responsibility of asylum claims as part of a solidarity gesture, it should be allowed to do so without restriction. For instance, virtually all the Syrian refugees that participated in the research interviews for this study in Germany and other MSs explained that they were registered in Greece but Germany and other MSs admitted them anyway. Below are a few excerpts concerning the interviews in the selected MSs.

Three questions were asked in order to make a meaning of how the selected MSs apply the discretionary clause in Art 17(1). The first question asks, "when seeking asylum, which country did you first arrive in within the EU?" a female interviewee, who participated in Vienna, Austria on March 23, 2017, responded to the question as follows: *Greece*. Another interviewee who participated in Vienna, Austria on the same day, March 23, 2017, explained that *we arrived in Greece from Turkey*. Another interviewee, who participated in Vierzon, France on May 24, 2017, said that *the first EU country I arrived in is Greece*.

The second question says "did you register with government officials upon your arrival within the EU?" a female interviewee, who participated in Vienna, Austria on March

23, 2017, responded to the question that *yes, I registered in Greece*.[46] Another interviewee who participated in Vienna, Austria on the same day, March 23, 2017, explained that *yes, I registered in Greece as it was the practice*.[47] Another interviewee, who participated in Vierzon, France on May 24, 2017, said that *Yes, I registered with government officials in Greece*.[48]

The third question says, were you asked to go back to the first country you arrived in within the Union? In answering the questions one after the other, a female interviewee, who participated in Vienna, Austria on March 23, 2017, responded that *no, I was not told to go back to anywhere*.[49] Another interviewee who participated in Vienna, Austria on the same day, March 23, 2017, explained that *no, I was not told to go back*.[50] The interviewee, who participated in Vierzon, France on May 24, 2017, said that *no, I was not asked to go back*.[51]

In Germany, the experience is the same, the interviewee who participated in Hannover, Germany on March 21, 2017, responded to the three questions that *I journeyed through the Mediterranean Sea in a dinghy with 50 other people from Turkey to Greece… Yes, on arrival we were given a paper to register… I was not asked to go back, maybe because I registered but not fingerprinted*.[52]

With the application of the discretionary clause, Germany and a few other MSs decided to take on the responsibility of processing the claims of the asylum seekers even though they had registered in Greece. They were not asked to go back in line with Art 3(1). The majority of them benefitted from the decision of Germany to apply the discretionary clause from August to November 2015 in the face of the mass influx of asylum seekers. The asylum seekers were admitted by Germany even though some

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[46] Austria Interview D
[47] Austria Interview D
[48] France Interview B
[49] Austria Interview D
[50] Austria Interview D
[51] Austria Interview D
[52] Germany Interview C

of them were not seeking international protection based on family grounds, as specified in Art 17(1) (Rodrigues, 2018:191). This allowed Germany to take charge of their asylum claims and automatically become a state responsible under the Dublin system. The decision of Germany and even Austria to process the asylum applications of the Syrian refugees even though they had registered in Greece undoubtedly helped to reduce the burden on Greece at the peak of the crisis.

Therefore, the new conditional statement included in the proposed Art 19(1) of the Dublin IV as pointed out above may discourage more MSs from voluntarily applying the clause in future, especially if the affected asylum seekers had been registered on arrival by another MS. Although the proposed Dublin IV is in stalemate, a reformed Dublin system in future must take this seriously. The clause ought to be left as it were in Art 17(1) of the *status quo* Dublin Regulation for more MSs to be able to voluntarily invoke it with the aim of helping asylum seekers in need of protection in the face of mass influx of asylum seekers.

Art 17(1) is designed to be invoked based on family grounds but it can be extended to asylum seekers that are not making their claims to join family members. Therefore, the wording should be worked on to enable all asylum seekers to benefit from its activation by more MSs in the face of mass influx. Noticeably, the clause had been used under different circumstances in the past. It was used by France to accommodate the affected asylum seekers from the demolished Calais camp in 2016 (Weil and Auriel, 2018:12). It was also used to accommodate a large number of asylum seekers in 2015 by Germany at the peak of the crisis in 2015 as pointed out earlier. Germany chose to share the burden with the frontline state of Greece that would have been responsible under Art 3(1). Art 17(1) can also be invoked alongside Art 3, especially in the face of large-scale movement of asylum seekers, the affected frontline state can carry on admitting asylum seekers in line with Art 3, while other MSs that are willing to assist in the spirit of solidarity can invoke Art 17(1) in order to reduce the burden on the frontline state. Art 17(1) can be invoked when there are systemic deficiencies in the reception conditions and asylum system of a MS (UNHCR 2017:122). Art 17(1) can also be invoked to support the implementation of the

proposed solidarity clause in the form of voluntary refugee relocation. By so doing, it would be easier to reduce the burden on the affected frontline state in the spirit of solidarity.

It should be to the advantage of the Union that more MSs are willing to apply the clause, especially in the face of a large-scale movement of asylum seekers. To invoke Art 17(1) in such a situation would be entirely guided by the same law – EU law. Therefore, when a MS invokes Art 17(1) in addition to other available mechanisms by which such crisis can be managed, the said MS is still operating within the EU law and should not be discouraged to do so. The difference between the MS that is willing to invoke Art 17(1) in the face of mass influx and the affected frontline state that apply Art 3(1) therefore is that one MS uses Art 17(1) while the other uses Art 3(1), but they are both helping to process the claims of the asylum seekers. What matters most in such a situation is to help the asylum seekers that are seriously in need of international protection. To invoke Art 17(1) therefore in the face of mass influx will surely bring succor and reduce tension associated with tackling large-scale movement of asylum seekers (Weil and Auriel, 2018:12).

6.3.3 Article 3(1) of Dublin III Regulation

Article 3(1) focuses on the "access to the procedure for examining an application for international protection".[53] It allows the MSs to examine the application for international protection submitted by the third-country national, the affected Syrian refugees in this context. Such asylum claim is examined usually by the first MS of arrival for the asylum seekers. However, the frontline MSs struggled to apply Art 3(1) in the face of 2015 refugee crisis as explained earlier. Therefore, the interview question focuses on the choices made by the asylum seekers on where to seek refuge in the face of mass influx in 2015. During the interviews for this study, the participants were asked to reveal the preferred destinations they had in minds when they arrived newly through Greece that should have been the MS responsible in line with Art 3(1).

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[53] Regulation (EU) No 604/2013 of the European Parliament and of the Council., adopted June 26, 2013

In responding to the question concerning the preferred destination, one of the male participants who took part in the interview in Vienna on March 23, 2017 responded that *my wife was already in Austria so my aim was to join her here so that we can live together again as a family.*[54] In France, 8 out of 10 interviewees revealed that they made it to France by chance and if they were allowed to journey on, they would have preferred the UK. This is evident in the number of people that have tried to cross the Channel Tunnel (from France to the UK) over the years and the number of asylum seekers that are still crossing the English Channel in hazardous conditions. For instance, one of the male Syrian refugees that took part in the interviews in Vierzon, France on May 24, 2017, explained that:

> *the United Kingdom is my preferred destination, but I couldn't make it there, I couldn't cross the border like some of my friends did. Consequently, I had to seek asylum in France. I was at Calais for eight months and I tried several times to cross over to the UK side of the border but to no avail.*[55]

In Austria, 6 out of 10 interviewees preferred to stay in the country, while 3 of them were just looking for a safe place of refuge in the first place.

In Germany only 4 out of 10 interviewees believe that they are in their preferred destination, possibly due to ties elsewhere or simply because Germany was the first MS that allowed the asylum seekers to seek refuge in the country at the peak of the crisis in 2015. On the other hand, 9 out of the 10 interviewees in the UK preferred the place to other MSs. A response from some of the refugees reveals that they could adapt easily to the way of life in the UK, especially because of the language and existing family ties that would help them to settle in quickly. A male interviewee who participated in the UK at Southwark station area in London on March 10, 2017 explained that *England has always been on my mind, it was my first choice because of my family link here and because of the language. I studied English as my first*

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[54] Austria Interview D
[55] France Interview B

degree in Syria.[56] Another male interviewee in Harrow Road, London took part on April 29, 2017 and he also explained that:

> *I have brothers here in England and I believe it would be better for me to join them. This is the reason I made up my mind from the start to seek asylum here in the UK. I am glad I made it. The fact that I am reunited with my brothers again gives me hope, especially after the death of my father and my uncle who were killed by the security personnel in Syria*.[57]

These are some of the reasons why asylum seekers prefer one MS to another. The interviewees were also happy to share their experiences and were encouraged to do so, bearing in mind that two key features of a qualitative interview involve its natural flow and the richness of its detail (Dornyei, 2007:140). Thus, the majority of the participants were passionate in sharing their experience with the interviewer thereby contributing immensely to the richness of the gathered and analysed data.

6.3.4 Article 5 of Dublin III Regulation

Art 5(1) states that "in order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article".[58] Therefore, based on the provision of this Art, MSs are meant to conduct a personal interview as part of refugee status determination process. According to UNHCR, status determination is "a legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law" (UNHCR 2019: no p). It is seen as a crucial process in assisting the refugees to "realise their rights under international law" (UNHCR 2019: no p). Therefore, based on Art 5 of the Dublin III Regulation (Interview), one of the interview questions concerns whether the participants were personally interviewed by government officials at each selected MS as part of the processes involved in treating their asylum claims. The findings reveal an element of coherence in the application of

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[56] UK Interview A
[57] UK Interview A
[58] Regulation (EU) No 604/2013 of the European Parliament and of the Council., adopted June 26, 2013

Art 5, as regards the interview aspect of status determination in line with the Dublin III Regulation. For instance, a male interviewee who participated in the UK at Southwark station area in London on March 10, 2017 responded that:

> *yes, the first interview I had is the 'screening interview', this was done by the police officer after I declared myself to them at one of their stations here in the UK… The second interview was at the Home Office building in Beddington, six months after the first interview.*[59]

Similarly, another male interviewee, who participated in Vienna, Austria on March 23, 2017 responded to the question that *yes, I was interviewed by the police on arrival and by the immigration officers 10 months later.*[60] The findings also revealed that the selected MSs took the interview process for asylum seekers seriously, bearing in mind that interview as a task "is an integral part of many functions performed by staff concerned with protecting and assisting refugees" (UNHCR 1995: no p). Virtually all the participants went through the interview process in line with the Dublin system. The evaluation report as assessed in the previous chapter also shows that MSs adhered strictly to conducting such interviews for the affected asylum seekers as part of their status determination process. The participants, apart from two in Germany, disclosed that they were interviewed as part of the process of submitting their asylum claims. The selected Syrian refugees went through the interview process in Austria, France, and the UK, but two of the participants were exempted in Germany, and one of them arrived in Germany legally through a spouse visa.

One of the participants in Germany was granted a spouse visa in Turkey, and while she was processing this visa, she went through the interview process in Turkey. In Hannover, Germany, the interview was conducted on March 21, 2017 and the female interviewee responded to the question that:

> *I was interviewed in Turkey when I applied for the spouse visa to join my husband, who had been granted asylum in Germany. When I got here, the authorities were aware of the necessary information needed for me to make a*

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[59] UK Interview A
[60] Austria Interview D

successful asylum application. I believe that this is why they did not bother to interview me further.[61]

The information needed to decide her claim was already in the German immigration database, and this explains why the German authorities did not go through another round of the asylum interview process with her in line with the Dublin system. Virtually all the Syrian refugees that participated in this research went through the interview process in all the selected MSs as mentioned earlier and this shows that to a certain extent MSs are complying with this particular legal standard in accordance with Art 5 of the Dublin III Regulation even in the face of mass influx of asylum seekers.

6.3.5 Article 18 of Dublin III Regulation

Art 18 focuses on State responsibilities as regards asylum processes. Part of the obligations of the MSs is to register the asylum seekers on arrival and eventually process their asylum claims. Therefore, the experiences of the asylum seekers concerning the status determination and the registration at the peak of the crisis in the selected host countries are examined. First is the status registration process. "The process of registration enables the early identification of individuals with specific needs within a population and their referral to an available protection response" (UNHCR 2019: no p). "Registration and identification of refugees is key for the people concerned, as well as for States to know who has arrived, and facilitate access to basic assistance and protection" (UNHCR 2019: no p). The procedure and the evidence supplied by the affected individuals would determine whether such asylum seekers would be granted refugee status or not. Therefore, the analysis concerning Art 18 focuses on the registration of the asylum seekers by host countries during the 2015 refugee crisis and their status determination procedure.

When asked if the asylum seekers registered with the government officials on arrival, and if not, where did they register? 9 out of 10 interviewees in the UK and Austria said they were registered on arrival. For instance, an interviewee, a male Syrian refugee

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[61] Interview C

in Austria who participated in Vienna on March 23, 2017 explained that *I did the normal registration just like other asylum seekers were doing in Greece and we were given a paper called Cartier, and this enabled us to travel within the country and to continue our journey away from Greece*.[62] In the same vein, a male participant that was interviewed at Southwark Station in London on March 10, 2017 responded that *I registered in Greece on arrival and I was given a paper called Cartier which allowed us to move within the country or continue the journey, away from Greece*.[63] However, one of the participants in the UK came directly through a visa and did not need to register like other asylum seekers. Similarly, an interviewee in Austria arrived in the country in 2014 before the mass influx of asylum seekers in the summer of 2015. He was interviewed on March 24, 2017 in Lower Austria, Vienna, and he said that:

> *I came through Italy, and I journeyed to Austria by road. I did not register with the government officials as an asylum seeker in Italy nor on my arrival in Austria. So when I told the police of my persecution story on arrival in Vienna, they did not believe me. They did not believe that I am a Syrian seeking asylum, probably because there were few Syrian asylum seekers in Austria when I arrived in* 2014.[64]

The individual is one of the few Syrian refugees that did not arrive through the usual channel. Understandably, he arrived before the mass influx of asylum seekers in 2015.

In France 7 out of 10 interviewees registered on arrival. Similarly, in Germany 7 out of 10 interviewees registered on arrival in the country. Interestingly, 2 out of the 10 interviewees in Germany did not go through the process of asylum registration on arrival because they came on a different visa category but later claimed asylum when their visa expired. On March 22, 2017, one of the interviewees that participated in Hannover, Germany said that *I did not journey through different countries and my case had already been decided before I embarked upon the journey to this place from Turkey... I applied in Turkey to come to Germany directly as a spouse of a refugee*

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[62] Austrian Interview D
[63] UK Interview A
[64] Austria Interview D

residing in Germany.[65] A few of the refugees that participated had a similar experience of arriving directly, by air. Similarly, in Germany two of the participants came on a visiting visa and it was not until after the visa expired that they realised they needed to regularise their status in the country as refugees. It was obvious that they could not go back to their homes which had been destroyed by the ongoing wars in Syria. Apparently, they were helped by a charitable organisation to put their claims together, as explained by one of the asylum seekers in Hannover, Germany. The interview took place on March 22, 2017, and the female interviewee explained that:

> *we came in legally so there was no need to register on arrival, but we later declared our situation to Caritas, a non-governmental organisation here in Germany that took it upon itself to help us out by giving us necessary information on what to do and how to go about the asylum applications.*[66]

This shows that a small number of the refugees arrived in the Union legally and not all of them came via the Mediterranean Sea. What it also means is that some of them did not need to register on arrival, as seen above, unlike the people that came originally as asylum seekers.

On the status determination process at the peak of the refugee crisis, the interview question concerns whether their asylum applications got rejected at any point, if yes, did they appeal or seek remedy in a court of law. The findings revealed that virtually all the Syrian refugees that participated in this research, except for one in Austria, were granted refugee status without appeal. This shows that in the face of a mass influx of asylum seekers, especially when the MSs are aware that the affected individuals are genuinely fleeing persecution, there is a tendency for them to be granted asylum status at a high rate. All the interviewees in the UK were granted refugee status without appeal. Nevertheless, an individual who arrived in Germany some time in 2017 told the German authorities that he would prefer to seek asylum in Austria, he was finger-printed in line with the CEAS by German officials but was later asked to go back to Austria, which was his preference. He went back to Austria, but

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[65] Germany Interview C
[66] Germany Interview C

the Austrian authorities rejected his application because he had already been finger-printed in Germany. He later moved back to Germany where he was eventually granted refugee status. The interview took place on May 25, 2017 in Munich, when he explained that:

> *on arrival in Germany, I requested to go to Austria, but German officials persuaded me to give my finger print which I did. Afterwards, they told me that I could go to Austria if I still wanted to go. I left Germany and I went to Austria despite the fact that they knew I would be sent back to Germany because of the fact that I had been finger-printed, but I did not know… I went to Austria (from Germany) where I applied for asylum, but I was sent back to Germany because my finger print had already been taken in Germany.*[67]

One of the participants in Austria was not as fortunate as others in terms of his status determination process, partly because he arrived in Austria before the mass influx of Syrian refugees in the summer of 2015, as mentioned earlier. He was interviewed in Lower Austria on March 24, 2017 where he shared his ordeal concerning the rejection he suffered. He explained that:

> *my application was rejected twice. The personnel of Caritas, an NGO helped me to make an appeal, but the appeal was rejected. After the second rejection, I approached a lawyer who told me to get visual evidences as a member of the opposition party to the Syrian regime, I gave him the evidences such as pictures, and he filed another appeal on my behalf and I was granted asylum by the Austrian government.*[68]

Status determination is seen as a crucial process in assisting the refugees to "realise their rights under international law" (UNHCR 2019: no p). It is "a legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law" (UNHCR 2019: no p). Therefore, it is seen as the key moment in the decision making process concerning whether or not the affected asylum seekers would be granted the international protection needed. It is commendable that some of the

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[67] Germany Interview C
[68] Austria Interview D

MSs were able to follow through in processing the claims of the asylum seekers in line with the Dublin system even at the peak of the refugee crisis of 2015. Hence, a reformed of Dublin system if well-implemented could possibly and adequately address similar influxes in future.

6.3.6 Article 13 of Dublin III Regulation

Art 13 states that "where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013, that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place".[69] Concerning Art 13 of the Dublin III Regulation (Entry and Stay), one of the interview questions was designed to know how the asylum seekers arrived in the Union, with emphasis on the mode of transportation used. In line with Art 13, the means of conveyance and the first state of arrival are revealed with a few excerpts from the interviews conducted with the participants in the selected MSs. When answering the question, a male interviewee that participated in Vienna, Austria on March 23, 2017 explained that *from Turkey, I travelled to Greece by sea in a dinghy with about 30 other people*.[70] Another interviewee participated in Vierzon, France on May 24, 2017, and he responded that *I left Syria for Lebanon, then Turkey and from Turkey to the Greek island of Kios by sea in a dinghy with about 10 other people and the journey was less than three hours*.[71] In the same vein, a male interviewee who participated in Hannover, Germany on March 21, 2017 said that *I travelled through the Mediterranean Sea in a dinghy with about 50 people from Turkey to Greece*.[72]

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[69] Regulation (EU) No 604/2013 of the European Parliament and of the Council., adopted June 26, 2013
[70] Austria Interview D
[71] France Interview B
[72] Germany Interview C

The findings reveal that 9 out of 10 interviewees in Austria arrived in the EU by sea and only 1 person arrived through other means. Similarly, 8 out of 10 participants in the UK initially arrived in the EU by sea, while 2 of the interviewees came directly, by air. In France and Germany, 7 and 6 out of 10 interviewees came by sea respectively. In addition, another interview question centres on the places of first arrival of the interviewed Syrian asylum seekers within the EU during the 2015 mass influx of asylum seekers. This had already been answered with the few excerpts as pointed out with Art 17(1). The findings reveal that the majority of the interviewees came by sea through Greece. Evidently, 9 out of 10 interviewees in Austria initially arrived in Greece via sea, 8 out of the 10 interviewees in the UK, 7 out of the 10 interviewees in France, and 6 out of the 10 interviewees in Germany also arrived in Greece by sea.

On the other hand, only 2 out of all the 40 interviewees in the four selected MSs arrived through Spain, and 2 out of 40 interviewees came through Italy and Bulgaria, one each, while 7 interviewees out of the 40 participants arrived at their destinations directly. This shows how difficult it would have been to apply the Dublin regulation in the face of the mass influx of asylum seekers within the Union during the crisis in 2015. For instance, if the Dublin regulation were to be applied with the above statistical analysis and the Dublin returns to Greece were not suspended, Greece would have been made to automatically bear the numerical burden of the majority of the asylum seekers that arrived via the country in 2015. Therefore, the evidence appears to back a suggestion which ensures an even and equitable distribution of the numbers of asylum seekers arriving in the Union, among the MSs.

6.3.7 Article 5 of the Proposed Dublin IV

It is important to examine this new provision of the proposed Dublin IV particularly on the punitive measures outlined in Art 5 (1-4) concerning secondary movement and hypothetically link it to the 2015 refugee crisis. Notwithstanding that the proposed Dublin IV is in stalemate. Art 5 of the proposed Dublin IV spells out the consequences of non-compliance concerning the asylum seekers on secondary movement. The issue of secondary movement has been of huge concern and importance to the EU

authorities over the years and the establishment of the Dublin system has not been able to eradicate this. This explains the inclusion of punitive measures on asylum seekers who fail to comply with the proposed Dublin IV provisions. The proposed Art 5 of Dublin IV (consequences of non-compliance) is questionable because there is no uniformity in the standards in which the MSs receive asylum seekers. In reality, the process varies from one MS to another (Breekke and Brochmann, 2013:145-146), and asylum seekers are well aware of this. They have knowledge of the disparity in the asylum systems of the MSs, especially in terms of benefits and opportunities to integrate, and some of them are somewhat determined to reach their preferred destinations. Therefore, punishing asylum seekers for non-compliance could do little to achieve the main goal of reducing secondary movement and it may create more legal hurdles for the EU authorities, especially on human rights issues.

The Dublin system makes it compulsory for asylum seekers to seek refuge in their first country of arrival within the Union. This is reasonable enough, but the first country of arrival could be influenced by the people smuggling network and this may not be the preferred destination of the affected asylum seeker. Oftentimes the smugglers determine the first country of arrival of the asylum seekers. For instance, some excerpts of the interviews conducted reveal the first place the asylum seekers arrived in within the EU was not their preferred destinations. Two questions were asked in order to make a meaning of how asylum seekers are usually placed on a journey to the first available country rather than the preferred destinations. The interview question asks, when seeking asylum which country did you first arrive in within the EU? In answering the question, one interviewee, that participated in Vienna, Austria on March 23, 2017, responded that the first country for her was *Greece*.[73] Another interviewee who participated in Vierzon, France on May 24, 2017, said that *the first EU country I arrived in is Greece*.[74] In Germany, the experience is the same, the interviewee participated in Hannover, Germany on March 21, 2017. She responded that *I journeyed through the Mediterranean Sea in a dinghy with 50 other people*

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[73] Austria Interview D
[74] France Interview B

from Turkey to Greece.[75] Noticeably, even though the three interviewees mentioned above arrived through Greece, they had to move on to other MSs because Greece was already overwhelmed with the arrival of asylum seekers in large numbers. This is why the affected asylum seekers should be helped rather than being unduly punished in the face of mass influx.

Understandably, secondary movements, especially in the light of a mass influx of asylum seekers, could have a negative effect on the receiving state, as it could put huge pressure on the chosen country's asylum process (EP 2017:1). Hence, some countries have tried to prevent such movement especially when it involves large-scale movement of asylum seekers in controversial ways. The prevention of asylum seekers from gaining access to Bulgaria in the face of refugee crisis as explained in chapter two is one example. The prevention of large-scale movement of asylum seekers by Hungary during the refugee crisis in 2015 is another example. Hungary unilaterally built barb-wired fences to stop the asylum seekers at the peak of the refugee crisis in 2015, however the walls, the prolonged detention, and increased border policing was met with criticisms from stakeholders (EP 2017:1). Nevertheless, Hungary believes its hostile approach towards refugees and asylum seekers is part of the solution just as the EU authorities believe that punitive measures could stop secondary movement.

CCBE suggested a less coercive measure as one of the ways of reducing the rate of secondary movement of asylum seekers within the EU. Allowing asylum seekers to choose their preferred destinations from a given list of MSs that are willing to host them at a point in time could be one of the ways forward. Literature revealed that the decision to journey to a better place does not only depend on the irregularity in the asylum process of the MS but on a combination of factors, mainly influenced by the hope of a better future in a preferred destination. Usually, a majority of the asylum seekers seek protection close to their home countries, but some are compelled to move on either by external circumstances or a personal decision to seek

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[75] Germany Interview C

refuge elsewhere, and there are several factors at play when making this decision. Family ties, language, material resources, costs and benefits, cultural ties or historical ties to specific countries, and a network of friends are some of the factors that could influence their decisions on the preferred destinations (EP 2017:1).

In the light of the above, an individual asylum seeker should be allowed to seek refuge wherever is convenient, be it a neighbouring country or far away from the place of origin, mainly in the face of mass influx. It is essential for the refugees' opinions to be heard, especially in choosing a preferred host MS. Prevention of secondary movement is important, but this ought to be done in a humane way as the asylum seekers were already suffering persecution before they arrived. Therefore, it should not be forgotten that it was persecution that forced them to seek international protection in Europe in the first place.

6.3.8 Article 33 of the Dublin III Regulation

Art 33(1) states that:

> where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation (EU) No 439/2010, the Commission establishes that the application of this Regulation may be jeopardised due either to a substantiated risk of particular pressure being placed on a Member State asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO make recommendations to that Member State, inviting it to draw up a preventive action plan.[76]

Art 33 centres on a mechanism for early warning, preparedness and crisis management, and the analysis on this section focuses on the crisis management aspect of the mass influx of asylum seekers in 2015. Thus, the Syrian refugees were asked to voice their opinions on whether the refugee crisis of 2015 was well-managed by the MSs in accordance with their practical experience with the EU asylum system. The further interpretation of the analysis using CMM and the evidence obtained show

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[76] Regulation (EU) No 604/2013 of the European Parliament and of the Council., adopted June 26, 2013

that the interviewed Syrian refugees believe that the refugee crisis was not well-managed.

In Austria and France 8 out of 10 interviewees thought that the crisis was not well-managed. In Germany, 3 out of 10 interviewees could not comment because they arrived at their destinations before the crisis escalated, while 2 out of 10 interviewees in Austria and France respectively could not comment on a personal level. For instance, a Syrian refugee in Lower Austria in Vienna was interviewed on March 24, 2017. He responded that:

> *I was already here when it happened, but I met some Syrian refugees who went through the ordeal and their stories are not good at all. I believe some of these European countries can do better in treating asylum seekers well. Asylum seekers and refugees are human beings and should be treated as such. Obviously, the European countries were not prepared to see such a huge number of people coming over like that in 2015.*[77]

Another Syrian refugee in Munich, Germany took part in the research on May 25, 2017 and he explained that:

> *the situation was not well-managed. Although I was already in Germany by then, I believe the European countries can still do more in helping out. I understand it caught them (MSs) unaware, some of them were shocked in seeing such a large number of people coming in at the same time. Nevertheless, Germany and few other countries in Europe tried but a country like Hungary did not treat refugees well, it was horrible.*[78]

One of the interviewees participated in the interviews in Vienna, Austria on March 23, 2017. She explained that:

> *it was not well-managed at all because some European countries were not ready to help the asylum seekers, and some countries especially Hungary and Bulgaria were treating us like animals. It would have been better if they had helped the refugees that came in 2015 and gave them a fresh start.*

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[77] Austria Interview D
[78] Germany Interview C

Nevertheless, few countries assisted the refugees and here I am today in Austria with my husband and children.[79]

Another Syrian refugee took part in the interviews in Vierzon, France on May 24, 2017 and he explained that the refugee crisis "was terribly managed". According to him, *some Syrian refugee friends told us about what they went through, especially on their way to their various locations within Europe... Don't forget, I was not allowed to cross the North Macedonian border, where I stayed for eight months. It was horrible.*[80] A male interviewee in Augsburg, Germany also participated on May 26, 2017 and he explained that *the EU countries were shocked, and the whole process was chaotic, they were not expecting such a thing (mass influx) to happen...* He further explained that *even here in Germany, some states were more stressed out than others. They were completely overwhelmed by the number of people seeking asylum, all at the same time.*[81]

In the same vein, a male interviewee who participated in London, at Southwark station on March 10, 2017 explained that:

I do not think that they (MSs) are doing enough to help. Some of the countries we passed through after we left Greece treated asylum seekers badly. I also believe that the UK and France are not doing enough to help, although Germany, Austria and Sweden are helping asylum seekers, given the number of refugees they have allowed into their countries since 2015. In fact, in all the countries within the EU, the UK remains the hardest place to reach and apply for asylum.[82]

It is important to note that the internal perspective of the crisis management stage "involves the coordination of the organisational structure"; the ability to make available precaution necessary mechanisms to guide against a potential crisis, limit

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[79] Austria Interview D
[80] Austria Interview D
[81] Germany Interview C
[82] UK Interview A

the effect, and learn from the crisis (Bundy, 2017:1664). Thus, the crisis was not well-managed mainly because the pre-crisis prevention was non-existent in this context, and the response stage was abysmal. The above excerpts are just a few out of many similar views of the participants. The ability to obtain meaningful and relevant information was made possible through extended conversations between the interviewer and the interviewees (Schostak, 2006:54).

6.4 Crisis management or the Response Stage

Away from the pre-crisis prevention stage is the crisis management itself, the response stage as described above. Traditional models of crisis management are rooted in a classic engineering mandate: identify and fix the problems in inputs and operations that led to ineffective outputs" (Kahn et al., 2013:377). The emphasis here is on how the problem can and should be fixed. The focus is on the importance of the "crisis handler" as well as the tactics being used by the management during the crisis and on what should be done in the pre-crisis prevention and post-crisis outcomes stages (Jame et al., 2011:458).

The response stage takes into consideration how the EU authorities and the MSs reacted to the 2015 refugee crisis. Noticeably, the response was slow at the initial stage of the crisis until Germany took the lead. Germany applied Art 17(1) and admitted a large number of asylum seekers as a way of derogation to Art 3(1) as analysed above. The analysis also revealed that the EU authority failed to trigger the appropriate provisions such as Art 33 of the status quo Dublin Regulation. The analysis concerning Art 18 revealed how selected MSs carried out refugee status determination in line with the status quo Dublin system in the face of the refugee crisis. The analysis also revealed how the Eastern European MSs were rejecting asylum seekers at the frontiers. The asylum seekers were rejected and subjected to inhumane behaviour in their quest for international protection, especially at the Bulgarian and Hungarian borders.

Concerning the rejection of these asylum seekers at the frontiers, the 1951 RC has helped to protect asylum seekers through its Art 33 on *non-refoulement*, but the

pertinent question is whether *non-refoulement* applies to rejection of asylum seekers at the frontiers. The intention of the drafters of the 1951 RC was to make *non-refoulement* applicable to individuals who are already within the territory of the host country (Grahl-Madsen, 1997:229). Nonetheless, Louis Henkin, a US delegate to the 1951 RC drafting conference explained that:

> whether it was a question of closing the frontier to a refugee who asked for admittance, or of turning him back after he had crossed the frontier, or even of expelling him after he had been admitted to residence in the territory, the problem was more or less the same... whatever the case might be... he must not be turned back to a country where his life or freedom could be threatened. No consideration of public order should be allowed to overrule that guarantee, for if the state concerned wished to get rid of the refugee at all costs, it could send him to another country or place him in international camp" (Hathaway, 2005:316).

Non -refoulement includes non-rejection at the frontier (Goodwin-Gill, 1996: 123-124). However, Hungary and Bulgaria rejected the asylum seekers at the frontiers in the peak of the 2015 refugee as mentioned earlier. Asylum seeker must be seen as someone who is already within the territory of a potential host nation, as long as he or she presents himself or herself at the territorial boundaries of a MS. Consequently, states' action should be regulated to ensure compliance, whether the asylum seeker has already gained access to its territory, is still at the border or is with a representative of a state outside its jurisdiction (Goodwin-Gill, 2007:248).

Some states however argued that non-admittance of asylum seekers at the frontier does not necessarily mean *refoulement*. Evidently, the infamous Supreme Court ruling in the US in 1993 (*INT v. Haitians Centres Council*) affirms this position, that the principle applies only to refugees within the state. The problem with such conclusion is how to ascertain whether rejection at the frontier would lead to *refoulement* or not. There are debates on what constitutes rejection at the frontiers, and there are cases of rejection at the frontiers around the world in recent times. For instance, on the Italy-Libya axis, Human Right Watch argued that some of the EU asylum policies

are preventing asylum seekers from gaining access to the EU while causing automatic returns of asylum seekers to Libya (HRW 2019:1).

The response stage is further analysed in figures 3, 4,5,6,7, and 8 below. Figures 6, 7 and 8 focus on the implementation of the controversial EU-Turkey statement. The EU-Turkey statement is seen as an initiative that allows asylum seekers to be returned to Turkey arbitrarily. Therefore, the implementation of the EU-Turkey statement is seen to be preventing asylum seekers from accessing international protection within the Union by returning them to Turkey arbitrarily. The analysis of Art 13 above also revealed how some asylum seekers in 2015 were not allowed to seek asylum in some of the MSs, particularly in Hungary and Bulgaria. The security personnel engaged in the arbitrary return of asylum seekers to Serbia at the peak of the crisis as pointed out in chapter two, even before the implementation of the EU-Turkey Statement.

The core element of *non-refoulement* is the prohibition of return in any manner whatsoever of refugees to countries where they may face persecution. The scope and application of the rule is determined by this essential purpose, thereby, "regulating state action wherever it takes place, whether internally, at the border, or through its agents outside territorial jurisdiction" (Leonard, 2017:579; Goodwin-Gill, 2007:248). State parties are bound by Art 33 of the 1951 RC concerning the principle of *non-refoulement,* which says that no refugee should be sent back to any country "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (IPU 2001:14).

Therefore, states ought to take responsibility in sorting out individuals that cannot be sent back without due process or risk violating international law, bearing in mind that *non refoulement* is recognised as part of customary international law (Lauterpacht and Bethlehem, 2003:149). Art 33(1) of the 1951 RC does not limit the scope of the application of *non-refoulement* to only individuals that have already been granted permission to reside on the territory of the host country but also to the affected individuals that are awaiting status determination procedures to be carried out. Therefore "as a matter of fact, anyone presenting themselves at a frontier post, port

or airport will already be within State territory and jurisdiction" (Breau, 2016:75). Hence, returning asylum seekers that are already at the border to seek refuge would be seen as a step too far, especially if the rejection put the life of the affected individual at risk. The fact that no rights exist for the asylum seekers to be granted asylum willy-nilly does not mean that the affected asylum seekers should be returned arbitrarily.

The provisions in Art 33(1) of the 1951 RC amount to a *de facto* obligation for state to allow the asylum seeker to remain on its territory if his or her application is rejected, until a safe place is found for such an individual. Therefore, the *non-refoulement* is applicable to both 'non-return and non-rejection' (Goodwin-Gill, 1996:124). The inclusion of the *non-refoulement* principle in some other international legal instruments further affirms its importance in protecting asylum seekers from being sent back arbitrarily. Aside from Art 33 of the 1951 RC and its 1967 protocol, Art 3 of UNCAT stipulates that 'No state party shall expel, return ("refouler") or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture'. Similarly, Art 3 of ECHR states that 'No one shall be subjected to torture or inhuman or degrading treatment or punishment'. Some of the other international instruments with *non- refoulement* provision are Art 22(8) of the American Convention on Human Rights, Art II (3) of the OAU 1969, Art 12(3) of the African Charter of Human and Peoples' Rights, and Art 3 of the Caracas Convention of Territorial Asylum.

Furthermore, the response of the EU to the Syrian refugee crisis is partly seen in the theoretical framework of this study in chapter four. It pointed out the negative responses of the far-right individuals within the society, especially at the peak of the crisis. These individuals arguably do not want their governments at national level to help the asylum seekers or immigrants. By so doing, they engaged in anti-migrant rhetoric, the form of 'speech acts' (of securitisation theory) that usually translate into policy formulation which bring about restrictive asylum policies both at MS and EU levels. Noticeably, some of the MSs came up with certain restrictive measures as part of the response to the 2015 refugee crisis.

The far-right individuals have reinforced anti-migrant rhetoric attacks on migrants through their political campaign speeches since the 2015 refugee crisis as mentioned in chapter four. Anti-migrant rhetoric is becoming a huge threat to the world asylum regime. As a result of this, some of the asylum seekers are having difficulty in gaining access to the territories of the developed countries across the globe. The implementation of the EU-Turkey Statement is arguably one of the examples of such measures. The MSs, from Hungary to Italy, Austria to Germany, are also coming up with different asylum policies at a national level after the large scale influx of asylum seekers in 2015. For instance, at one point Germany decided to tighten its entry policies, evidently in 2018, Angela Merkel agreed to tighten border controls "and set up closed holding centres to allow the speedy processing of asylum seekers and the repatriation of rejected applicants" (Macdougall, 2018: no p). Similarly, the lower house of Germany's parliament voted overwhelmingly in early 2019 to classify Algeria, Tunisia, Morocco, and Georgia as 'safe' for refugee returns (Chase, 2019: no p). The proposed punitive measure in the abandoned Dublin IV as analysed above is arguably another example of restrictive measures of asylum policy, notwithstanding that the proposed Dublin IV is now in stalemate.

6.5 Section Two

Section two focuses on the analysis of selected data obtained through Eurostat, EU Home Affairs, European Commission, Pew Research, UNHCR and the interviews conducted with the EASO and Frontex officials. The data concerns the EU mandatory refugee relocation scheme, general arrivals and the sea arrivals of the asylum seekers under the EU-Turkey Statement. The analysis also centres on the number of refugees that have been resettled from Turkey to the MSs under the EU-Turkey Statement. It reveals the recognition rate for the refugees by citizenship, unilateral efforts of the MSs concerning the EU relocation scheme, total capacity and occupancy at hotspots in Greece, and a look at the number of Syrian refugees being hosted around the world, especially the Middle East. It also incorporates excerpts of the interviews conducted with the EASO and Frontex officials. Hence, section two combines both interview and

document analysis in the general analysis and addresses the first, third, fourth, fifth, sixth and seventh objectives of the study.

6.5.1 Review of Relevant Documents

This section combines interview and document analysis, and here is a reminder that document analysis is a "systematic procedure for reviewing or evaluating documents" (Bowen, 2009:28). It is also a way of gathering data by analysing existing documents. Document analysis is also seen as "relatively inexpensive", a good source of background information, and unobtrusive; the approach could bring up issues not noted by other means. The analysis includes the interviews conducted with the EASO and Frontex officials, as well as the document analysis of some of the initiatives the EU authorities had come up with in tackling the 2015 refugee crisis as explained in the previous chapters. Document analysis also provides a wider coverage, and gives exactness in terms of accuracy with names, referencing, and the details of events being reviewed (Bowen, 2009:31).

These documents could be in print or electronic form, and may be in the form of reports, newsletters, proposals, and performance ratings. The documents lined up for review or analysis in this section are mainly electronically sourced, and these documents were sourced or obtained through Eurostat, EU Home Affairs, European Commission, Pew Research, the UNHCR, and supported with the excerpts from the interviews conducted with the EASO and Frontex officials. The analysis involves evaluating or making sense of data contained in such documents. The review of these documents often yields excerpts or quotations that can be arranged into various categories, with quality output (Bowen, 2009:28). The documents concern the demographic (gender) of the Syrian refugees around the world, resettled refugees from Turkey under the EU-Turkey Statement, and the number of resettled refugees from Turkey among the MSs. It also focuses on the general arrivals and the sea arrivals of the asylum seekers under the EU-Turkey Statement. The analysis also centres on the recognition rates for the refugees by citizenship, the establishment of hotspots in Greece, unilateral efforts of the MSs concerning the EU relocation scheme, and a look at the number of Syrian refugees being hosted around the world. The analysis in this

section is further categorised under the demographic of the Syrian refugees, the EU refugee relocation scheme, the establishment of hotspots in Greece, the EU-Turkey statement, and the recognition rates of the asylum seekers among the MSs.

6.5.2 Demographic (Figures 1 and 2)

Fig. 1: Demographic of Syrian Refugees as of 2016 – During the refugee crisis
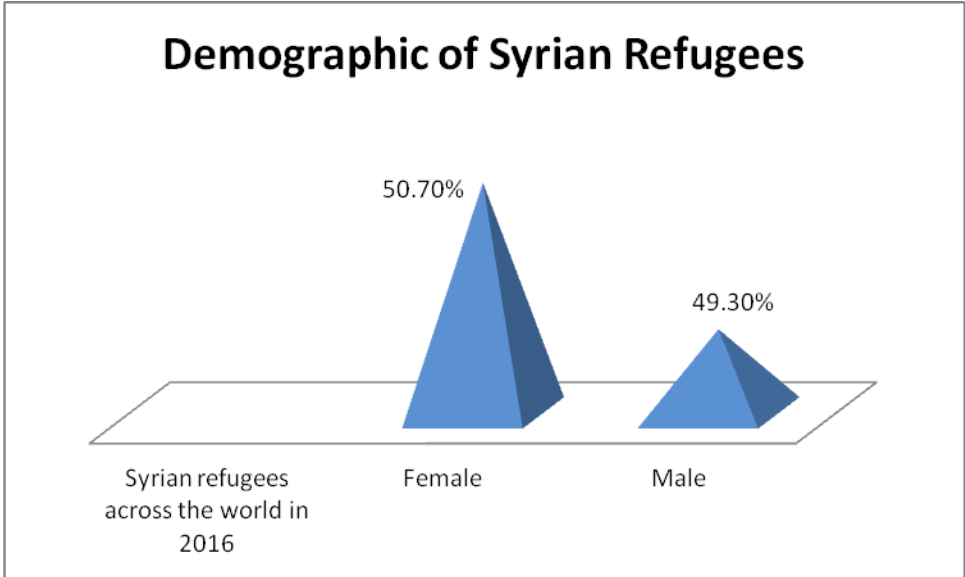
Source: UNHCR[83]

Demographics are applied in research to draw comparisons among the participants (Cara, 2007:15), although "some studies report to have asked their participants for demographic data, but do not use them in their report papers (Beel et al, 2013:1). This study employed a smaller sample size, which means that the findings cannot be generalised. Nevertheless, the large sample obtained through secondary sources could give an insight into the number of Syrian refugees affected as of 2016. Fig. 1 shows that 50.7% of the displaced Syrian refugees around the world as of May 2016 were female, while 49.3% were male. The breakdown of this figure reveals that as of 2016, 2.1 million Syrian refugees were already registered by the UNHCR in Egypt, Iraq, Jordan, and Lebanon. Turkish authorities also registered about 1.9 million of the

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[83] UNHCR in Bukowski (2016) *Are Refugees overwhelmingly Young and Male?,* available at https://www.snopes.com/fact-check/refugee-invaders-meme/, accessed May 10, 2019

refugees, while over 28,000 refugees were registered in North Africa within the period.

Fig. 2: Syrian Refugees around the World as of 2017

Syrian Refugees Around the World - As of November 2017

- USA: 33,000
- Austria: 50,000
- Canada: 54,000
- Sweden: 110,000
- Egypt: 130,000
- Irag: 250,000
- Germany: 530,000
- Jordan: 660,000
- Lebanon: 1,000,000
- Turkey: 3,400,000
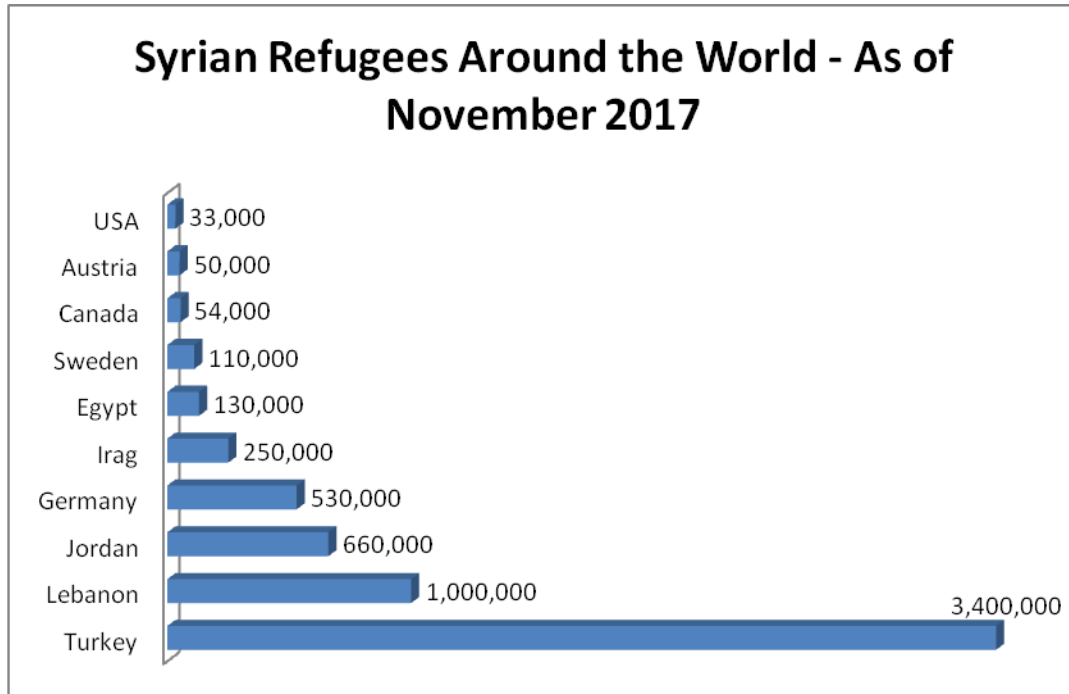
Source: Pew research[84]

Fig. 2 shows some of the countries around the world where over 6 million Syrian refugees were being hosted as of the end of 2017, according to Pew Research. Fig. 2 also reveals that the majority of the Syrian refugees are in the neighbouring countries of Turkey, with 3,400,000 of them, followed by Lebanon with 1,000,000, Jordan with 660,000, Iraq and Egypt with 250,000 and 130,000 respectively. Remarkably, 530,000 Syrian refugees were being hosted in Germany as of November 2017, the highest outside the neighbouring countries of Syria, followed by Sweden and Austria with 110,000 and 50,000 respectively.

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[84] Connor (2017) Most displaced Syrians are in the Middle East, and about a million are in Europe., available at https://www.pewresearch.org/fact-tank/2018/01/29/where-displaced-syrians-have-resettled/

6.5.3 EU Refugee Relocation Scheme - Figures 3 and 4

Fig. 3: Relocated Refugees from Italy and Greece – 2015 to 2017
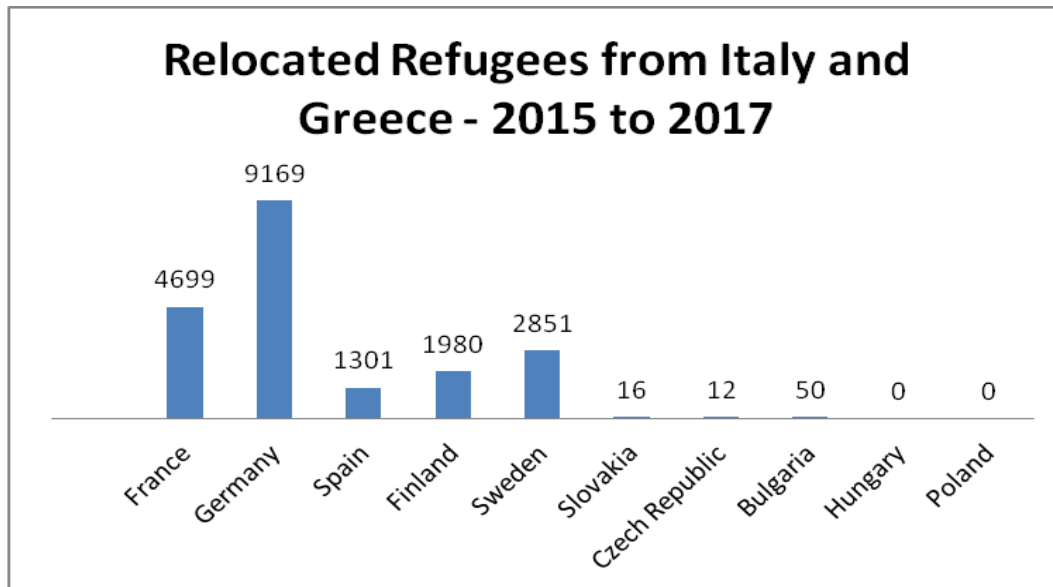
Source: EU Home Affairs[85]

Fig. 3 reveals that although some MSs helped in relocating refugees in line with the EU refugee relocation scheme between 2015 and 2017, few other MSs refused to take part in the scheme. For instance, Germany relocated 9,169 from both Italy and Greece within the specified period but Hungary did not relocate a single refugee from either Italy or Greece. France and Finland relocated 4,699 and 1,980 respectively but Poland, just like Hungary did not participate in the scheme. Sweden also relocated 2,851 from both Italy and Greece, but Slovakia and Czech Republic relocated 16 and 12 from Greece respectively within the specified period. The refusal of some of the MSs to participate in the scheme is seen as a huge concern on how the EU could effectively tackle such influxes in the spirit of solidarity in future. This was extensively discussed in chapter three.

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[85] EC (2017) EU Solidarity between Member States., available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171114_relocation_eu_solidarity_between_member_states_en.pdf

Fig. 4: Relocation Scheme: - 2015 to 2018

Relocation Scheme: 2015-2018
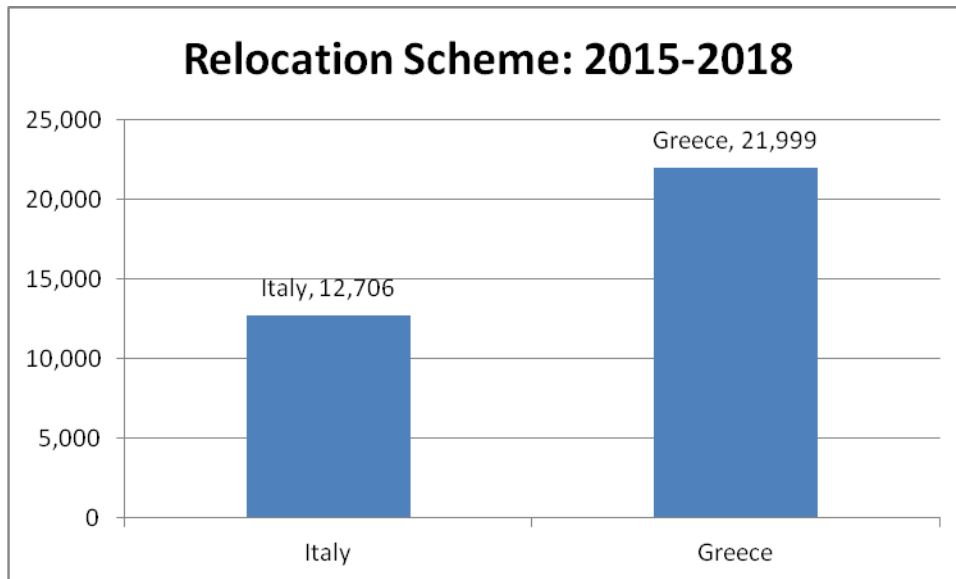
Source: EU Home Affairs[86]

Fig. 4 focuses on the mandatory relocation scheme agreed upon by the EU authorities and the MSs in 2015 and how the frontline states of Greece and Italy benefited from the scheme. The breakdown of the figures shows that as of October 30, 2018, 12,706 refugees have been relocated from Italy while 21,999 refugees have been relocated from Greece under the scheme. Germany took the lead with 5,446 from Italy and 5,391 from Greece, while France relocated 636 from Italy and 4,394 from Greece. Sweden relocated 1,392 from Italy and 1,656 from Greece. Liechtenstein and Slovakia relocated 10 and 16 respectively from Greece, and the Czech Republic also relocated 12 refugees from Greece within the same period. Nevertheless, some MSs like Poland and Hungary are yet to relocate any refugees under the scheme.

On whether the MSs are doing enough with the relocation scheme, an EASO official was interviewed via Skype here in London on August 3, 2017. A Senior Policy Officer at the EASO spoke to the researcher from Valletta in Malta. He explained that:

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[86] *Member States' Support to Emergency Relocation Mechanism., available at* 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 May 25 May, 2018

looking at the number of the Syrian refugees taken in the EU so far, you might want to say it is little. Possibly this could be due to the approach of some MSs who are sceptical about the asylum seekers coming into their countries, as there is no uniformity in the numbers of asylum seekers being accepted by these countries… Some EU countries are trying while some have refused to participate in the process.[87]

The EASO official further pointed out that:

some of these EU countries were initially open to helping refugees but as time went by, they started placing limitations in order to cut down on the number of asylum seekers they can allow in. Notwithstanding the fact that the Commission is helping out in some other ways like giving the qualified countries financial support (6000 Euros per refugee), helping with the relocation process, taking Syrian refugees from Turkey to their respective places, helping with settlement, and more.[88]

Unilaterally, there is no uniformity in the number of asylum seekers that were admitted by the MSs, even though an individual MS has the power to admit as many as possible. For instance, the EASO official explained that the choice to take in more asylum seekers is usually determined at national level:

the EASO supports the MSs by sending in our experts who work together with the local authorities. We do not dictate to them, but we offer our opinions on certain issues. A good example of that is the admissibility procedure that we carried out in Greece which left the final decision for Greece to make. We support the relocation system in Greece and Italy, we support the Dublin process to be followed, we provide workshops and trainings and work with other agencies like Frontex in order to better-manage the EU asylum system.[89]

Irrespective of the response of the interviewee (the EASO official) concerning the claim that the EASO does not dictate to the MSs on how to run their asylum systems at national level, Greece and some other MSs hardly object to EASO's recommendations.

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[87] Interview conducted with the EASO official who participated via Skype on August 3, 2017

[88] Excerpts of the interview conducted with the EASO official who participated on August 3, 2017

[89] Excerpts of the interview conducted with the EASO official who participated on August 3, 2017

Evidently, the submission written by the interveners in the *J.B v Greece* revealed that the EASO activities concerning the hotspots include "the operational decision-making as to the interview methodology… and decision-making process on the final admissibility recommendation" (ECHtR 2017:10). The recommendation that usually influences the decision-making process of the MS involved. One would expect that some of the assistance or incentives rendered by the EU authorities would encourage a few other MSs to participate in the relocation scheme. However, some of the MSs have refused to take part in the relocation scheme, while others have reservations in participating fully as explained in the previous chapter. It seems that the way forward, considering the above analysis, would entail more interstate dialogue, including more incentives for participation in a similar scheme in the future. A reformed Dublin system could address some of the issues with previous system failures, if properly implemented.

6.5.4 Establishment of Hotspots in Greece

Fig. 5: Hotspots in Greece: Total Capacity and Occupancy as of May 2018
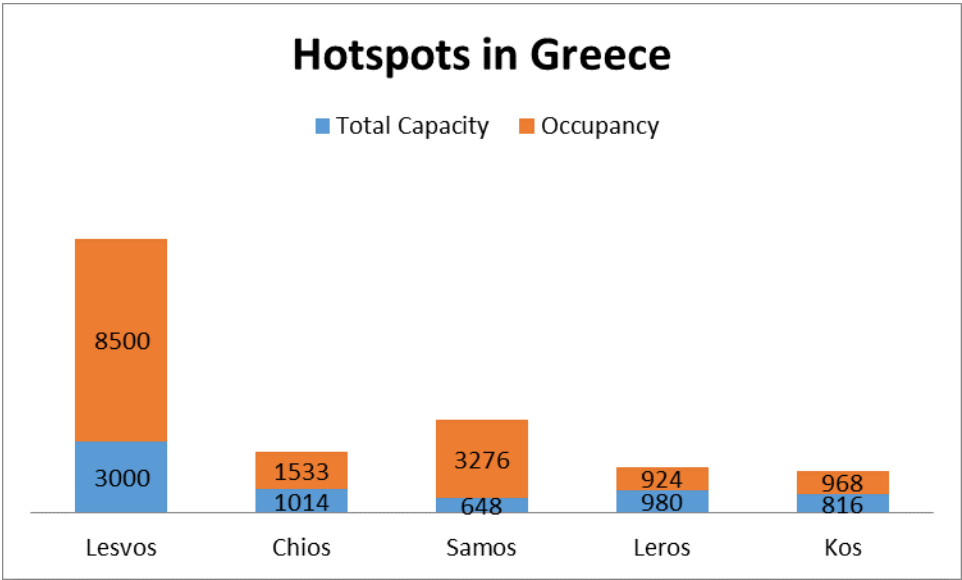
European Commission[90]

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[90] European Commission - Hotspots at the EU External Borders: State of Play., available at http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf

Fig. 5 confirms the overcrowded condition of living at the hotspots in Greece. The stakeholders also argued about the terrible living conditions at the hotspots in Greece as pointed out in the previous chapter. Fig. 5 reveals that the level of occupancy far outweighed the total capacity in virtually all locations. For instance, Lesbos's total capacity is 3000 but the occupancy is placed at 8500 as of May 2018. In Samos the total capacity is 648 but with 3276 occupancy. The total capacity of Chios hotspot is 1014 but with 1533 occupancy as of the same period. In all the identified five hotspots in Greece as shown above, the total capacity is 6458, while the occupancy is placed at 15201 as of May 2018.

The occupancy is over 100% more than the approved capacity at the hotspots, which makes the living conditions in those places unimaginable. The establishment of a hotspot may be a welcome idea especially in the face of mass influx but the high occupancy levels being experienced makes it inhabitable for the asylum seekers as pointed out in the previous chapter. The EU authorities therefore, should look into how these hotspots can be made better for the occupants no matter how limited a time they live there.

The EASO coordinates activities at the hotspot by "initiating, promoting, and facilitating the EU Member States sychronised efforts to support the registration and further processing of applications for international protection in the operational Host Member States" (EC 2019: no p). It is obvious that the EASO have the power to influence the decision-making process through its recommendations on the admissibility of asylum seekers at the hotspots. However, the EASO was not seen to be doing enough in helping the affected MSs concerning its primary responsibilities at the hotspots. For instance, at the hotspot in Samos island, Boyle who researched the establishment of hotspots in Greece explained that the EASO was meant to interview the asylum seekers before making a recommendation but the EASO team at the peak of the refugee crisis in 2016 "was not up to full strength", however, there was an improvement with the EASO's involvement as time went by (Boyle, 2016: no p).

6.5.5 EU-Turkey Statement (Figures 6, 7, 8 and 9)

Fig. 6: EU-Turkey Statement: Arrivals

EU/Turkey Statement: Arrivals

561,067

24,885   29,439

6 months before cut off   2016 Arrivals   2017 Arrivals
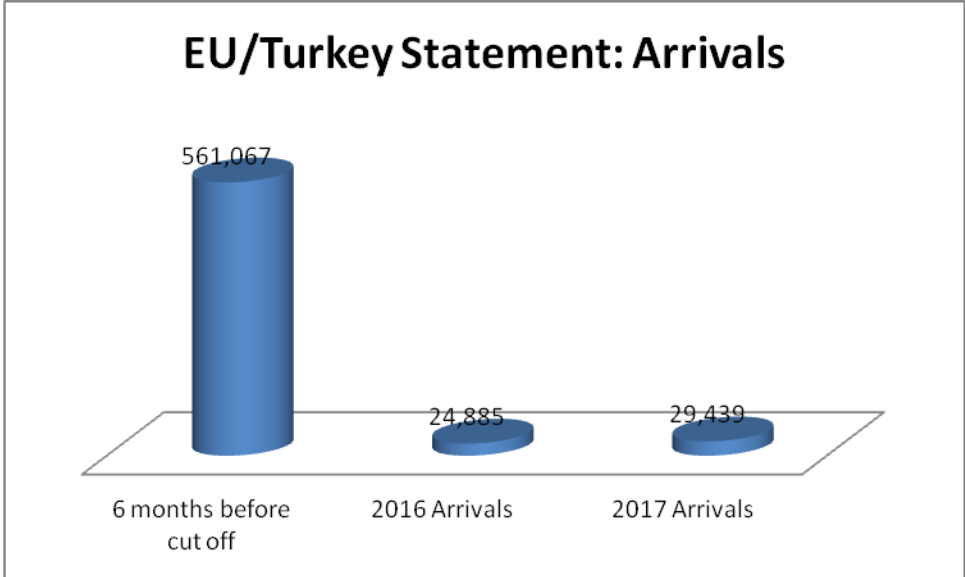
Source: European Commission[91]

Fig. 6 reveals that as controversial as the EU-Turkey Statement is, it was able to reduce the arrival of a large number of asylum seekers to the Union by up to 97% in 2016. For instance, in the 6 months before the cut-off date of March 21, 2016, 561,067 refugees had arrived in the EU by sea. However, after the cut-off date only 24,885 and 29,439 asylum seekers arrived in 2016 and 2017 respectively. Despite the beliefs in some quarters that the EU-Turkey Statement has been effective in preventing a further influx of asylum seekers from reaching the Union, some stakeholders believe that the deal is a disaster. For example, in 2017, the European Deputy Director of Amnesty International, Gauri van Gulik argued that "it is disingenuous in the extreme that European leaders are touting the EU-Turkey deal as a success, while closing their eyes to the unbearably high cost to those suffering the
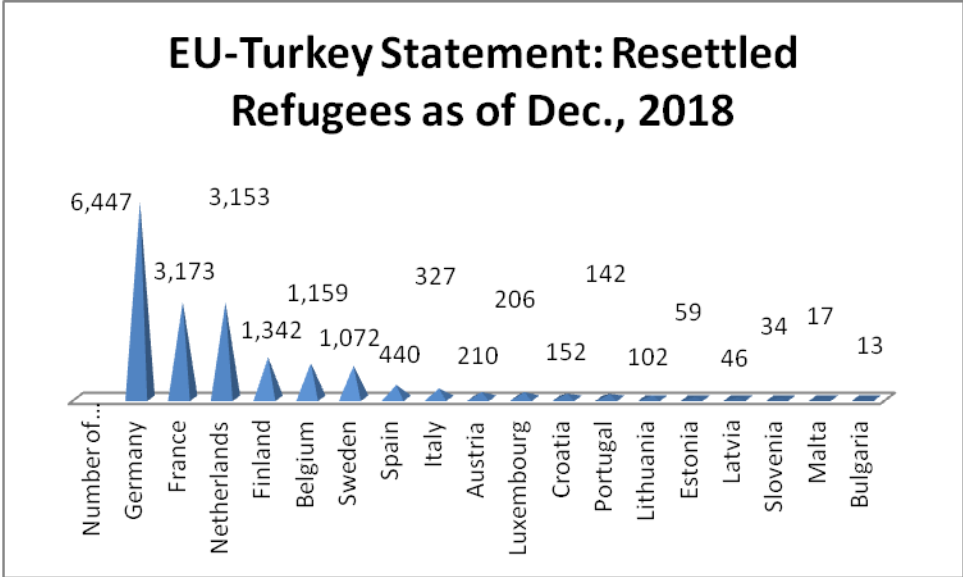
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[91] European Commission., available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180314_eu-turkey-two-years-on_en.pdf, accessed May 25, 2018.

consequences". Gulik added that "the EU-Turkey deal has been a disaster for the thousands who have been left stranded in a dangerous, desperate and seemingly endless limbo on the Greek islands" (DW 2017: no p). Human Rights Watch (HRW) also sees the EU-Turkey statement as "a message that protection for refugees could be commodified, outsourced, and blocked" (HRW 2016: no p).

This assertion was vehemently denied by a Frontex official in an interview conducted via Skype on October 26, 2017 here in London. The senior Frontex official responded to the questions from the Frontex office in Warsaw, Poland. When asked about the allegation of push-back at sea, she responded that:

> *we are well aware of the non-refoulement principle and other relevant laws. We conduct our operations in line with safeguarding the rights of individuals. Do not forget that Frontex is an agency of the EU and the EU takes seriously the protection of human rights at all times. We do not intercept to 'push-back' but to safeguard them. Once we intercept the migrants, we seize the unseaworthy vessels and escort the individuals to safety. We provide assistance to the MSs in that axis and we do not do this alone but in conjunction with the coast guard of the MS or its national agency that is empowered to do the job.*[92]

Despite the outright denial by the Frontex official concerning the agency's involvement in the push-back at sea, there have been arguments that the EU-Turkey Statement encourages 'push-backs', spearheaded by some of the EU agencies, especially Frontex (Gerson, 2018:1). Noticeably, push-back is still a common practice in the territorial waters of the MSs where the coast guard operations are being coordinated by Frontex, despite the fact that coast guard operations are legally banned from indirect push-backs at high sea (Bilgic, 2017: no p). The Euro-Mediterranean Human Rights Network (EMHRN) revealed that there are various examples of push-backs that occur between the Italy-Libya axis, and the Greece-Turkey axis. Some NGOs like ProAsyl and Amnesty International also published reports

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[92] Interview conducted with the Frontex official who participated via Skype on October 26, 2017

"based on the extensive field research" of the existence of such push-backs (EMHRN 2014:18).

Fig 7: Resettled Refugees under the EU-Turkey Statement
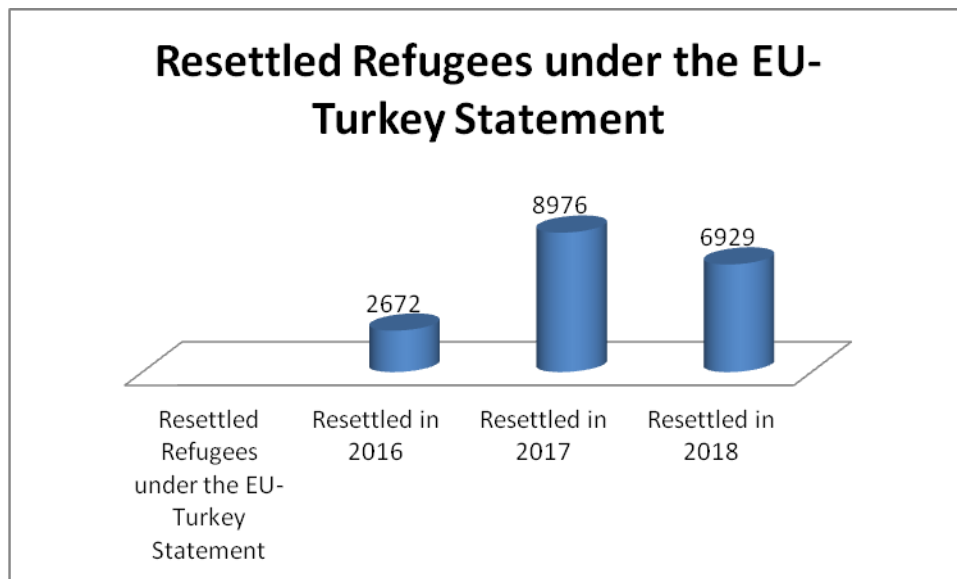
Source: European Commission[93]

Fig. 7 reveals the number of refugees that the MSs have resettled from Turkey to the EU as of December 2018 under the EU-Turkey Statement. The figures show that 2,672 persons were resettled under this scheme in 2016, 8,972 in 2017, and 6,929 in 2018. The EU authorities believe that as one of the collaborative efforts, the EU-Turkey Statement has been effective in tackling the mass influx of asylum seekers. Additionally, the EASO official explained that *the collaborative efforts are yielding tangible results especially in Greece and Italy, we know it is not perfect, we are not there yet, but it can be improved upon because of many challenges out there*.[94] Nonetheless, it has been observed that even though the EU-Turkey Statement is seen as effective in keeping away further asylum seekers from the Union, it may not be the best way to tackle such crises in the future.

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[93] European Commission., available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190318_eu-turkey-three-years-on_en.pdf, accessed May 25, 2019.

[94] Interview conducted with the EASO official who participated via Skype on August 3, 2017

Clearly, the EU-Turkey Statement needs some improvements, especially by increasing the number of qualified asylum seekers that could be relocated under this initiative within a specified period. The Statement seems to be effective in preventing asylum seekers from gaining access to the territory of the EU. However, it is not the best practice because it prevents more genuine asylum seekers from seeking protection as enshrined in the relevant international law and treaties. In addition, Turkey would not be able to give them the international protection they seek by virtue of its position; Turkey does not permit non-Europeans to be granted refugee status in the country due to the geographical limitation concerning the 1951 RC.

One of the criticisms of the EU-Turkey Statement is that the EU recognises Turkey as "a safe third country" (Simsek, 2017:164). HRW argued that the EU-Turkey Statement "rests on the flawed premise that Greece and the EU need not evaluate the protection needs of those arriving via the Aegean Sea on the ground that Turkey is "a safe third country" (HRW 2016: no p). Despite the concern that Turkey does not meet the five criteria set out by the EU for a country to be seen as safe for the purpose, the EU went ahead with the establishment of the EU-Turkey Statement by which asylum seekers are being returned from the EU to Turkey. Turkey does not recognise "the rights of refugees mentioned in the Convention" (Simsek, 2017:164). Consequently, Syrian asylum seekers in Turkey are not recognised as refugees under the 1951 RC, which serves as a barrier to their permanent settlement in Turkey. It also curtails their access to the rights "provided to refugees", such as good education, employment, and health care (Simsek, 2017: 178). Thus, the EU-Turkey Statement must be redesigned to accommodate the safe arrival of individuals fleeing genuine persecution.

Fig. 8: EU-Turkey Statement: Resettled Refugees as of December 2018

EU-Turkey Statement: Resettled Refugees as of Dec., 2018

6,447   3,153
3,173
1,342   1,159   327   142
1,072   206   59   34   17
440   210   152   102   46   13

Number of...
Germany
France
Netherlands
Finland
Belgium
Sweden
Spain
Italy
Austria
Luxembourg
Croatia
Portugal
Lithuania
Estonia
Latvia
Slovenia
Malta
Bulgaria

Source: European Stability Initiative (ESI)[95]

Fig. 8 shows the number of resettled refugees from Turkey to the EU under the EU-Turkey Statement as of December, 2018. Germany took the lead again with 6,447 resettled refugees from Turkey, followed by France and Netherlands with 3,173 and 3,153 respectively. Three of the MSs that recorded lowest number of resettled refugees are Slovenia with 34, Malta and Bulgaria with 17 and 13 respectively. In total, over 18,000 refugees were resettled within the stated period. Nonetheless, the UK, Denmark, Cyprus, Czech Republic, Hungary, Ireland, Greece, Poland, Romania, and Slovenia had not resettled refugees under the EU-Turkey Statement as of December, 2018.

Fig. 9: Sea and Land Arrivals

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[95] ESI (2019) *The EU-Turkey Statement Three Years On.*, available at https://www.esiweb.org/pdf/ESI%20core%20facts%20-%20EU-Turkey%20Statement%20three%20years%20on%20-%2015%20April%202019.pdf, accessed June 11, 2019

Sea and Land Arrivals in EU

■ Sea and Land Arrivals ■ Dead and Missing

	2015	2016	2017	2018
Sea and Land Arrivals	1,032,408	373,652	185,139	141,472
Dead and Missing	3,771	5,096	3,139	2,277
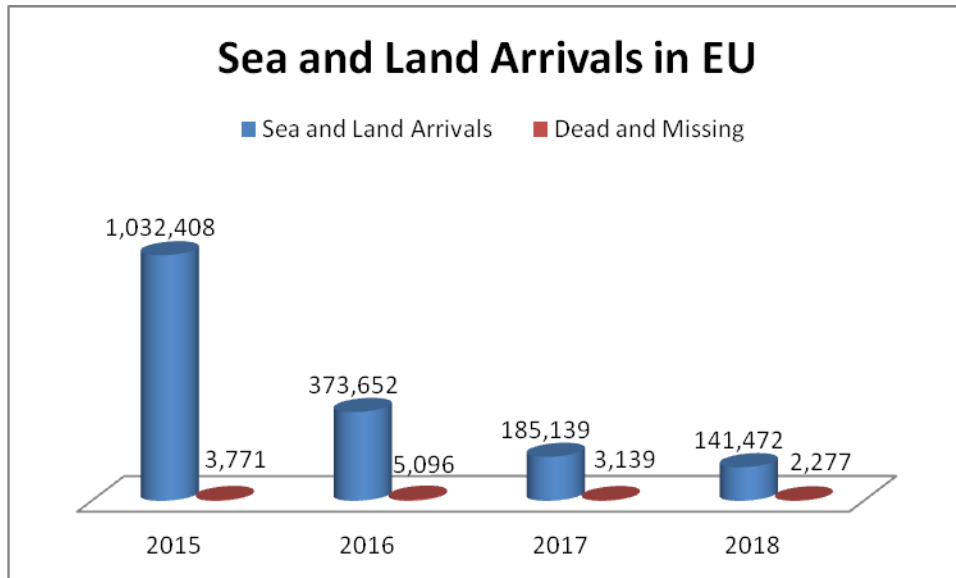
Source: UNHCR[96]

Fig. 9 includes sea arrivals to Italy, Malta, Cyprus, and both sea and land arrivals to Greece and Spain. It focuses on the number of asylum seekers that arrived in the Union mainly through the Mediterranean Sea. Understandably, over a million asylum seekers came through the EU external border states, and the majority of them arrived by sea through Greece in 2015. There was a decrease in the following year, 2016, with 373,652 asylum seekers arriving by sea and land. By 2017, this number further decreased to 185,139 and took another downward slope in 2018 with 141,472 sea and land arrivals as shown above. This could be attributed to the activities of the EU agencies in trying to secure the external borders through the implementation of the initiatives like the EU-Turkey Statement to tackle the large scale influx of asylum seekers.

As pointed out by the EASO official, *the collaborative efforts of the MSs, including the EU-Turkey Statement are yielding tangible results. For instance, there is a reduction in the number of people coming over to seek asylum, especially those that travel through the dangerous routes - via sea.* However, in 2019 the number of

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[96]UNHCR (2019) Mediterranean Sea and Land Arrivals., available at https://data2.unhcr.org/en/situations/mediterranean

asylum claims in the EU went up 13% in comparison with 2018 and it was the first year-on-year increase since the 2015 refugee crisis. 714,200 asylum claims were lodged within the Union in 2019 (EASO 2020: no p). However, detected asylum seekers at the external borders were five times lower than the overall applications submitted for the entirety of 2019 (EASO 2020: no p). Understandably, the bulk of the applications came from the Latin American countries, especially Venezuela, with visa-free entry to the Schengen area (Visa-Liberalised Countries (VLC). In fact, Venezuela alongside Syria, and Afghanistan recorded the highest number of asylum claims within the EU for 2019 (EASO 2020: no p).

Nonetheless, despite the decrease in the number of sea arrivals as shown above, the number of dead and missing was on the rise. For instance, the number of dead and missing in 2016 was placed at 5,096 as opposed to 3,771 in 2015. Hence, there is the possibility that the high-handedness of the EU authorities, and the clear case of push-back, the prevention of the asylum seekers from reaching the EU in order to seek refuge, is driving the asylum seekers to travel through more dangerous routes in the Mediterranean Sea.

Despite the assertion of the EASO official that the EU-Turkey statement is yielding tangible results alongside other initiatives of the EU, the stakeholders see EU-Turkey statement differently. The EU-Turkey Statement is seen by the stakeholders as a form of agreement put together to prevent genuine asylum seekers from seeking refuge within the Union. This is seen as an arrangement that prevented asylum seekers from gaining access to the EU, especially on the Turkey/Greece axis, but permitted the return of the affected individuals to Turkey under the pretense that Turkey is safe enough to host the asylum seekers. The German Foreign Ministry has reported "torture and execution in migrant camps" (UNHCR 2017:2). In the same vein, the Council of Europe (CoE) condemned the deal with Turkey by raising some concerns about human rights violations in terms of likelihood of denying the affected asylum seekers access to legal remedy and arbitrary detention (Rankin, 2016:1). The UNHCR sees this arrangement as a way of deflecting the responsibility of the asylum process to Turkey, which is already hosting over 3 million asylum seekers (UNHCR 2017:1-2).

The return of asylum seekers to Turkey in line with the EU-Turkey Statement has come under scrutiny in certain quarters as examined in the previous chapter. There is also a possibility that the EU-Turkey Statement as controversial as it is could be replicated with Libya. This would amount to a clear case of *refoulement* if Libya is made a safe third country in a bid to prevent asylum seekers from reaching the EU. UNHCR also sees Libya as a country that is considered unsafe for asylum seekers. Similarly, Dimitris Christopoulos, head of the International Federation for Human Rights (FIDH) argued that the deal makes a mockery of the 1951 RC. Dimitris explained that the deal does not respect the principle of *non refoulement* as asylum seekers are being sent back to Turkey irrespective of whether the place is safe or not (Alfred and Howden, 2018: no p).

Furthermore, on how the asylum seekers were treated, especially the people that arrived in the EU by sea, the interviewed Frontex official argued that:

> *we are very much in compliance with the relevant human rights law in carrying out our various operations at sea. Our operations are strictly in line with the international law, be it non-refoulement or others. In fact, we have a director who must sign off before we can commence any operation. Basically, her role is to ensure that we comply with relevant international law when discharging our duties as a body.*[97]

The Frontex official also explained that the focus is more on rescue efforts and that:

> *the primary responsibility is to rescue people at sea, to save life and this is what we do. In fact, the people smugglers know that we rescue migrants, and this is why they push them out to the sea in unworthy sea vessels for us to help out and it will be unethical for us to allow them to perish at sea.*[98]

Nonetheless, the Frontex official pointed out that *there is no doubt that the smugglers profit from the vulnerability of the people. They run a profitable criminal*

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[97] Interview conducted with the EASO official who participated via Skype on August 3, 2017

[98] Excerpts of the interview conducted with the Frontex official who participated on October 20, 2017

business running into 4 to 6 billion Euros in 2015, and that such *smuggling network must be dismantled*.[99] The reality is that systemic push-backs of refugees and persons in need of protection among the frontline MSs is still ongoing as pointed out in the previous chapter. The hostile attitude of some MSs towards the refugees was thoroughly examined in chapter five and this is seen as one of the ways by which these MSs try to avoid their obligations in line with the 1951 RC (EMHRN 2014:17).

6.5.6 Recognition Rates of the Refugees among the MSs (Figures 10 and 11)

Fig. 10: Recognition Rates for the Refugees by Citizenship in 2016
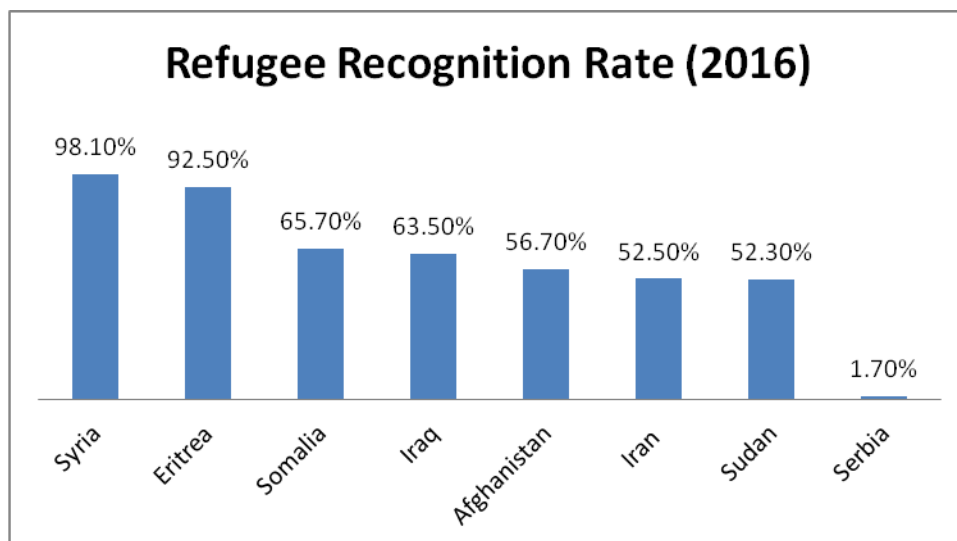
Source: Eurostat[100]

Fig. 10 shows the refugee recognition rates among the six different affected nations for the year 2016. Understandably, Syrian asylum seekers enjoyed high rates of recognition among the MSs at 98%. The Eritreans also recorded a high recognition rate at 92.5%, while Somalia, Iraq and Afghanistan recorded a recognition rate of 65.7%, 63.5%, and 56.7% respectively in 2016 within the EU. Understandably, Syrian and Eritrean refugees enjoy high recognition rates within the Union because of the full knowledge of their circumstances; the clear case of persecution they suffered back in

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[99] Interview conducted with the Frontex official who participated via Skype on October 20, 2017
[100] Eurostat: (2016) EU Member States Granted Protection to More than 700, 000 Asylum Seekers in 2016., available at https://ec.europa.eu/eurostat/documents/2995521/8001715/3-26042017-AP-EN.pdf/05e315db-1fe3-49d1-94ff-06f7e995580e

their countries of origins. Hence, the recognition rate for both Syrian and Eritrean asylum seekers is placed at 86% and 80% respectively as of June, 2019 (EASO 2019: no p), which means there is no genuine excuse for a MSs such as Hungary not to help.

Fig. 11: Refugee Recognition Rates, 2017
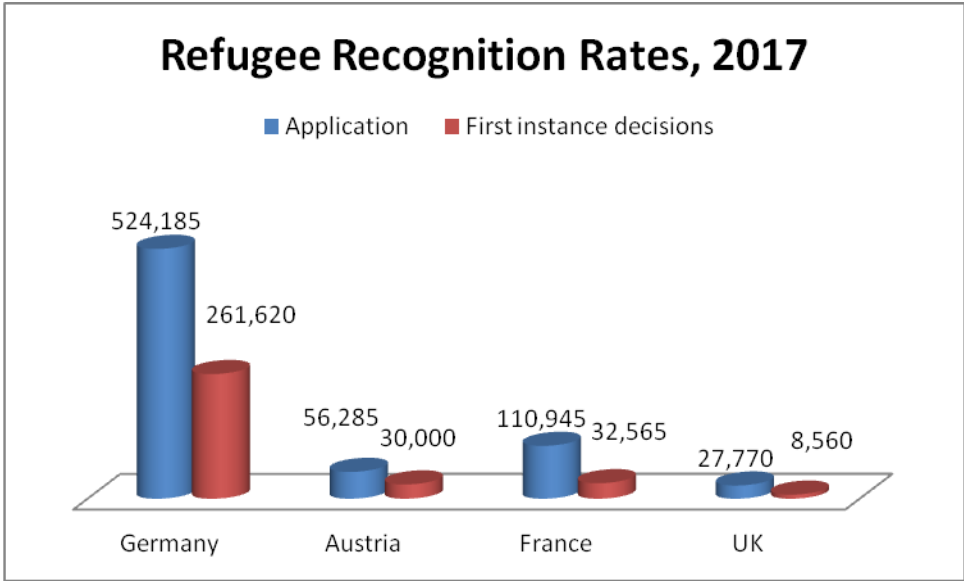
Source: Eurostat[101]

Fig. 11 reveals the number of asylum claims submitted in the four selected MSs in 2017 and the first instance decisions on those applications. In Germany, 524,185 applied for refugee status and 261,620 received decisions at first instance. In France, 110, 945 applied for asylum and 32,565 of them received first instance decisions. In Austria and the UK, 56,285 and 27,770 applied respectively with 30,000 first instance decisions in Austria and 8,500 first instance decisions in the UK.

The above analysis (in both section one and two) provides an indicative summary of some of the opinions heard on this matter during the interviews conducted with both the participants; the Syrian refugees in Austria, Germany, France, and the UK, and

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[101] Eurostat: (2018) EU Member States Granted Protection to More than Half a Million Asylum Seekers in 2017., available at https://ec.europa.eu/eurostat/documents/2995521/8817675/3-19042018-AP-EN.pdf/748e8fae-2cfb-4e75-a388-f06f6ce8ff58

the EASO and Frontex officials. It also focuses on the findings of the interviews that corroborate the document analysis as part of the assessment of the EU response to the 2015 Syrian refugee crisis of 2015. It is therefore important to examine the validity of the analysed data. Bearing in mind that in validating research that involves IPA, it is not possible to fully understand the interviewees' experiences or their words based on the unavoidable biases concerning interpretation of their experiences (Willig, 2001). In using IPA therefore, validity cannot be attained through the conventional quantitative and qualitative methods (Vignoles et al., 2004). Hence, a friend of the researcher, a professional in the field of social sciences with a Masters' Degree in Refugee Studies read through the transcript, especially the selected quotes, in order to conventionally validate the data. In addition, a triangulation approach was employed, by which some relevant documents were analysed alongside the interviews conducted with the officials. The validity of the study is seen mainly in the cited examples of the experiences of the participants with CEAS in the face of the 2015 refugee crisis. Notably, "validity is established by the persuasiveness, by grounding examples which applied through inspection of interpretation and data", and this is seen through the interpretation of the analysed data (Milton, 2004b:287).

The process of the interpretation started with when the interviews conducted with the Syrian refugees and the EASO and Frontex officials were transcribed verbatim. The comments were transcribed in line with the questions, while using the guidelines for IPA analysis (Smith et al.,1999: 224-225). The first transcript was read through several times by the researcher, quotes were recorded to help the analysis of this study due to the interpretative nature of the analysis. These quotes, as seen in section one, are some of the descriptions of the experience of the interviewees with CEAS in the face of the refugee crisis of 2015. These quotes were then categorised under the selected articles of the Dublin III Regulation in section one. The relevant excerpts of the interviews conducted with officials that were also used to corroborate the findings in section two.

6.6 Post-crisis Outcomes Stage

It is imperative for the Union to put to use the lessons learnt in tackling the 2015 refugee crisis and avoid similar influxes in future. Factors associated with the pre-crisis prevention and crisis management stages can also be applied in the post-crisis outcomes stage (Bundy et al., 2017:1677). At post-crisis stage there is a learning process by which the affected organisation strives to discover what went wrong and what should be done to prevent similar crisis in future. "Crisis can increase motivation and probabilistic search for causes and solutions" (Bundy et al., 2017:1677). Although such learning processes can be subjective to certain conditions and could influence the manner of lessons learnt and to what extent the lessons can be put to use in the post-crisis outcomes stage (Lampel et al., 2009:835; Bundy et al., 2017:1678). The post-crisis outcomes stage is often important because it helps the affected organisation, and in this case the Union, to learn from what went wrong and to highlight the need to come up with various initiatives and strategies that would guide against similar occurrences in the future. One of the lessons that was learnt is that the status quo Dublin system is not fit for purpose and needs to be reformed. The reform must put in place provisions that will take seriously the need for solidarity among the MSs; initiatives such as the EU refugee relocation scheme and the hotspots should be improved upon and applied in future when such crises occur. The post-crisis outcomes stage must also take seriously the obligations of MSs towards the asylum seekers and refugees in line with the 1951 RC.

It should also be noted that in carrying out its obligation towards refugees, a state ought to individually assess submitted claims of asylum seekers to ascertain the degree by which they have suffered persecution (Goodwin-Gill, 1996:69). States believe that asylum is a privilege and not a right. It does not really matter to some of the potential host countries if Art 14 of the UDHR and Art 18 of the Charter affirm the right to asylum, especially for people suffering from persecution. It is one thing to have the right to asylum, but it is another thing to be granted asylum by a potential host country. The creation of the Charter gives the individual the right to apply for asylum and this could be seen as the right to be granted asylum. However, no

automatic right exists yet for asylum to be granted randomly (Gil Bazo, 2008: 33-52). Even Art 33(1) of the 1951 RC does not give an automatic right to asylum, but states have now realised that *non-refoulement* applies the moment the asylum seeker presents himself or herself for entry (Goodwin-Gill, 1996: 123). Although, admittance to territory of asylum seekers is not the main focus of the principle of *non-refoulement*, it provides the necessary balance in the sense that it guides against an indiscriminate return of individuals to where their lives could be put at risk. Debatably, the combination of Articles 1A and 33 of the 1951 RC puts the onus on states to grant access to asylum seekers. Therefore, access to asylum procedures is seen as a right on its own, the absence of which could jeopardise the status determination process. Although asylum seekers retain the right to seek refuge, the decision to grant refugee status stays mainly with the state as it is not restrained by relevant international instruments to make objective decisions concerning status determination (Goodwin-Gill, 1996:202-203). For a state that is willing to help, status determination should be carried out so that the people who are eligible to be granted asylum can be spotted as well as those that are at risk of being returned. Therefore, for a state to deny the people suffering from persecution such access to its territory could be tantamount to denying the person a right to status determination procedure.

Similarly, if an asylum seeker suffers a rejection, it is important for such an individual to be given the right of appeal and legal assistance for the purpose of objectivity. These processes are usually carried out within the territorial boundary of the state, which is another reason why access should be granted, to give asylum seekers the chance to share their persecution stories. Hearing from the asylum seeker is essential because the burden of proof lies with the individual who is making the application. It will also be fair for the state to provide an interpreter where one is needed, as this will give the asylum seeker an opportunity to effectively tell his or her persecution story (UNHCR, 1979:4).

There is a notion that the traditional way of welcoming asylum seekers (by receiving and processing their claims) by the potential host country has collapsed (Lazarova, 2018:1). No doubt, some of the MSs are willing to help but some MSs, especially the

Eastern European ones, blatantly refused to host refugees during the 2015 refugee crisis. It is however essential for the MSs to embrace solidarity in order to be able to adequately manage future influxes (Lazarova, 2018:1). In light of the above, Amnesty International described the EU response of some of its MSs to the Syrian refugee crisis as shameful (Gauri, 2015: no p). It is therefore important for the European nations to accept responsibility, provide protection to more asylum seekers and help people that are urgently in need of international protection (Gauri, 2015: no p).

The status quo Dublin system lacks solidarity and responsibility sharing mechanisms, and this arguably contributed to the abysmal way in which the MSs responded to the 2015 refugee crisis, especially at the peak of the crisis. Consequently, the post-crisis outcomes stage requires solidarity clauses to be included in a potential reformed Dublin system that will enable the EU to effectively manage future influxes.

Chapter Seven

Conclusion

7.1 Key Findings

The objectives of this study have been thoroughly assessed through the analysis of the interviews conducted with some Syrian refugees in selected MSs and the officials of EASO and Frontex. It has also been assessed through the content analysis of relevant documents; analysis of the Dublin III evaluation report and the proposed Dublin IV, as well as the review of relevant jurisprudence. Below are some key findings in accordance with the objectives of the study.

In addressing objective one, the description of the Syrian refugees' experience regarding the EU asylum system, the analysis of the interviews conducted with the Syrian refugees in four selected MSs revealed a rather detailed depiction of the Syrian refugees' experiences. It described Syrian refugees' experiences in accordance with Art 13 of Dublin III Regulation (Entry and Stay), and how the Syrian refugees were received and treated by selected MSs. It looked at the port of entry and the mode of transport used by the Syrian refugees on arrival in the EU. The analysis described the efforts made by the asylum seekers while transiting through some MSs to their preferred destinations in 2015. The large-scale movement of the asylum seekers exposed the inability of the MSs to effectively apply the Dublin III Regulation in the face of a mass influx of asylum seekers. In 2015, the crisis temporarily rendered Art 3 (Access to the Procedure for Examining an Application for International Protection) redundant in some of the MSs at the peak of the refugee crisis. It was also difficult for other MSs to send the refugee back to the MS responsible under the Dublin III Regulation.

The Syrian refugee's experience was also described in line with Art 18 of the Dublin III Regulation (Obligations of the Member States), with particular regard to the registration and status determination process during the crisis. In determining their refugee status, the Syrian asylum seekers also went through the interview process conducted by each MS in line with Art 5 (Interview) of the Dublin regulation. The

interviews conducted for this study also sought the opinions of the participants on whether they believed that the EU had effectively managed the refugee crisis. Using the CMM, the findings revealed that the 2015 refugee crisis was not well managed by the EU in line with Art 33 of Dublin III Regulation, mechanism for early warning, preparedness and crisis management.

In addressing objective two, the impact of relevant jurisprudence on the EU asylum system, the study reviewed the effect of relevant international human rights laws and treaties on the EU asylum system. It also justified the place of the judiciary in bringing about a robust asylum system within the Union. In addition, chapter two extensively reviewed the impact of the supranational courts' rulings on the EU asylum system over the years. To this effect, a few examples of the courts' rulings were mentioned, and it was discovered that the implementation of the relevant supranational court rulings has arguably led to further improvements of the CEAS. The review of jurisprudence was mainly on the rulings concerning the Dublin Regulation on human rights violations, and with special focus on the Dublin transfer. The findings revealed that these rulings have had a meaningful impact on the application of the Dublin system among the MSs.

In examining objective three, the unilateral efforts of the EU MSs in tackling the Syrian refugee crisis, chapter three revealed the efforts made by some MSs in tackling the 2015 refugee crisis. It reviewed how the Syrian refugees were received or rejected during the crisis by the MSs. It pointed out the enactment of new restrictive measures on asylum by some MSs at a national level mainly to discourage asylum seekers from seeking international protection in such places. Chapter three also revealed that some of the MSs refused to host or admit asylum seekers at the peak of the crisis. It revealed that in determining their refugee status, virtually all the interviewed Syrian refugees as analysed in chapter six went through the interview process for the status determination procedure as set out in Art 5 of the Dublin III Regulation in the selected MSs.

Similarly, section two of the data analysis in chapter six revealed the absence of solidarity among the MSs in tackling the refugee crisis. Noticeably, some of the MSs were willing to take in asylum seekers while others rigidly opposed to helping the affected asylum seekers. The Eastern European countries vehemently kicked against helping the asylum seekers and the Hungarian Prime Minister, Viktor Orban continued to use anti-migrant rhetoric in justifying his hostile position towards the asylum seekers. In addition, and as pointed out in chapter four the growing activities of the far-right politicians in the UK, France, Germany, Austria, Hungary, Italy, Spain, the Netherlands and the few other MSs arguably created a hostile environment for the asylum seekers.

The review of both the Dublin III Regulation and the proposed Dublin IV in chapters three and six revealed that objective four has been thoroughly assessed - Examine alternative routes to the Dublin III Regulation and critically assess the Dublin IV Commission proposal. The proposed Dublin IV is meant to correct the errors or ineffectiveness of the Dublin III Regulation, especially in the face of a mass influx of asylum seekers. Nevertheless, there are some proposed sections that require further improvements as argued by relevant stakeholders. The review of the published evaluation report on Dublin III Regulation in chapter three focuses on Articles 3(access to procedure), 4(right to information), 5(personal interview), 6(guarantees for minors), 7(3) family unity, 27 (remedies), and 33 (early warning, preparedness and crisis management system). In line with Art 4 of the Dublin III Regulation, some of the Syrian refugees during their interviews revealed that they were given appropriate information by government officials on arrival, in particular on how to put together necessary information concerning their asylum claims. This was similar to the published evaluation report on Dublin III Regulation, which revealed that most of the MSs provided such information to the asylum seekers.

Similarly, the findings of the report on the Art 5 of Dublin III Regulation (Interview process) are in line with the findings of the interviews conducted with the Syrian refugees in the four selected MSs. It was discovered that the majority of the asylum

seekers went through the interview process as part of their status determination procedure even at the peak of the refugee crisis in 2015.

The application of Art 17(1) by Germany and few other MSs at the peak of the crisis is acknowledged in chapter six. The gesture is seen as a positive step that should be adopted by more MSs and encouraged as part of the efforts to manage future influxes. Art 33 of Dublin III Regulation on the early warning mechanism however stayed idle even in the face of the 2015 Syrian refugee crisis. In accordance with the published evaluation report, Art 33 of Dublin III Regulation has never been triggered. In the same vein, and based on the CMM, most of the Syrian refugees believe that the crisis was not well-managed by the EU. In fact, some of the participants shared the view that the crisis caught the EU by surprise. Nevertheless, the EU authorities have tried to correct the laxity with the proposed Art 44, but this is seen as another controversial way of tackling the problem. The proposed Art 44 of the Dublin IV focuses on reference key number with a 150% benchmark, was designed to be triggered in the face of a mass influx of asylum seekers. Relevant stakeholders like ECRE and Amnesty International have criticised the 150% benchmark as being too high and insisted that it should be reduced accordingly. Furthermore, the proposed Art 5 of Dublin IV centres on the establishment of punitive measures for asylum seekers who embark on a secondary movement within the Union seems to be another wrong move by the EU. The asylum reception standards are not the same in all the MSs and in most cases, asylum seekers seek international protection in a MS based on other factors that are beneficial. These include family ties, language barriers, general prospects for the future, to mention a few.

Section two of the data analysis in chapter six addressed objective five. It assessed the collaborative efforts of the EU and other key actors (the EASO and Frontex) in tackling the influx of Syrian asylum seekers. Chapter three extensively assessed the collaborative efforts of the EU in tackling the Syrian crisis. For instance, the EU authorities came up with certain initiatives such as the refugee relocation scheme, the EU-Turkey Statement, the establishment and the implementation of hotspots, the

reformation of CEAS, and the collaborative efforts at sea, especially in Greece and Italy.

It is also acknowledged in chapter three that Frontex has been at the forefront in coordinating alongside other EU agencies in order to effectively secure the EU external borders. Chapters three and six also gave an insight into the involvement of Frontex, alongside the EASO and other relevant agencies in tackling the Syrian refugee crisis. Specifically, through the review in chapter three and the excerpts on the interviews conducted with the officials of EASO and Frontex that corroborate the aforementioned initiatives in chapter six. Interestingly, some of these initiatives, as imperfect as they are, could provide needed answers, the necessary solutions that would tackle future influxes of asylum seekers within the Union. A good example of this is the EU refugee relocation scheme that, if given a chance in the spirit of solidarity among the MSs, could help in effectively managing similar crises in the future.

The effect of the mass influx on the external borders of Greece was immediate in the summer of 2015. Greece became overwhelmed with the arrival of large numbers of asylum seekers in search of international protection. Thus, to thoroughly address objective six, examine the effect of a mass influx of asylum seekers on the EU external borders' countries, chapter three reviewed some of the practical steps being taken by the EU authorities in securing the external border areas of the EU. The collective efforts of the EU, such as the collaborative efforts at sea concerning the various operations launched over the years to combat dangerous and illegal crossing. Analysis of the interviews conducted with the EASO and Frontex officials also revealed that these government agencies are helping the EU to tackle such illegal activities across the external borders of the EU, especially in Italy and Greece.

No doubt, the external border states of Greece and Italy need the support of other MSs to be able to withstand the pressure. For instance, the Greek authorities struggled to cope with almost a million asylum seekers that arrived in 2015 as Greece was amidst an economic recession at the peak of the crisis. Although Germany applied

Art 17(1) to reduce the tension at the peak of the crisis, but that was not enough to support the affected frontline states. Therefore, the EU authorities ought to come up with a more holistic approach such as improved hotspots and build on the successes recorded with the EU refugee relocation scheme, which could help in tackling future influxes. EU authorities should also help the external border states with more financial aid when the need arises. By so doing, those MSs would be able to cope with the new arrivals, while speedily processing asylum claims of those that are already within the Union to seek refuge. Far-right politicians are also capitalising on the seeming inability of the EU to effectively safeguard its external borders prior to and during the crisis until the implementation of the EU-Turkey Statement. Arguably, their anti-migrant and anti-Islam rhetoric are now becoming reality with the presence of the far-right politicians in government in Hungary, for example. Consequently, the Hungarian government is now implementing some of the anti-migrant rhetoric they promised during the election campaigns which is making it harder for the asylum seekers to seek refuge in Hungary and few other places as pointed out in chapter four.

In addressing objective seven, appraise the effectiveness of the EU asylum system in response to the Syrian refugee crisis, findings revealed that the CEAS was not effective in tackling the large-scale movement of Syrian asylum seekers in 2015, mainly because it was not designed to do so. Hence, the arrival of many asylum seekers in 2015 exposed the EU asylum system. The TPD stayed idle as pointed out in chapter two. The existing mechanisms like TPD, *prima facie*, and the Dublin system failed. The Dublin system was not designed to accommodate mass influx of asylum seekers, especially with the absence of solidarity clause in the *status quo* Dublin system. The review of the EU response in chapter three, the analysis of the Syrian refugees' experience with the CEAS, and the excerpts of the interviews conducted with the EASO and Frontex officials in chapter six revealed how some of the provisions of the Dublin system were not applied by the affected MSs at the peak of the crisis.

Additionally, the analysis in chapter six revealed the inability of the MSs to effectively apply the Dublin system in the face of the large-scale movement of asylum seekers in

2015, especially with regard to Articles 3 and 33 of the Dublin III Regulation. Therefore, the majority of the participants explained that the crisis was not well-managed by the EU and that some of the MSs were caught unaware, which is the reason the MSs struggled to contain the situation. Similarly, the analysis of the interviews conducted with the EASO and the Frontex officials revealed that the arrival of thousands of asylum seekers took the EU by surprise. Nevertheless, the EU authorities and the MSs have been trying since then to find long-lasting solutions to the refugee crisis.

7.2 Summary

The war in Syria rages on; years of violence and unrest have left many dead and have destroyed cities, towns and villages. The war has led to the displacement of the Syrian people and has forced many residents to flee in search of international protection. The displacement took a new turn in the summer of 2015 when over a million Syrian refugees arrived in the EU seeking international protection as pointed out in chapter one. Chapter one also revealed how European states responded, both unilaterally and collectively, to various refugee crises in the post WWI and WWII era. Arguably, such responses led to the formation of various asylum policies, both at national and regional levels. The outcome of these responses also led to the establishment of various institutions that manage asylum matters within the EU and around the world today. For instance, the collective efforts of the European and World leaders after WWII led to the establishment of UNHCR, 1951 RC and its 1967 protocol. Similarly, chapter one revealed that the CEAS came into existence as part of the efforts of some European nations to find solutions to the issues affecting immigration or asylum problems within the continent.

The role of the judiciary in shaping the EU asylum system was pointed out in chapter one. Noticeably, the judiciary has been ruling on various cases within the Union on matters relating to asylum and asylum seekers, particularly since the establishment of the CEAS. This is done with the help of international refugee law, and the relevant international human rights laws and treaties that exist to curb the excesses of some MSs, especially whenever they appear to be operating below the set standards on the

implementation of the CEAS. The relevant international laws and treaties undoubtedly remind the MSs of their obligations towards the asylum seekers and refugees. The study reviewed relevant international legal instruments such as the Charter, ECHR, 1951 RC and its 1967 protocol, as well as the roles of the ECtHR and CJEU in the EU asylum system. It also reviewed the relevance of the Charter and the ECHR in the application of the CEAS within the Union. It reviewed the Dublin system, its application in the face of a large influx of asylum seekers.

Chapter two focused mainly on the conceptual framework of the study. The conceptual aspect focused on the concept of mass influx, the usefulness of the existing mechanisms like TPD, *prima facie*, and the Dublin system in the face of mass influx of asylum seekers. It revealed the non-activation of the TPD since inception and concluded that it is not fit for purpose. The *prima facie* approach remains unpopular within the Union despite the fact that it is being used around the world, especially in the developing countries. Its group determination approach seems to be a direct opposite of how the MSs process asylum claims in line with the Dublin system. A reformed Dublin system therefore, would possibly provide the needed solutions to tackling future influxes within the Union. It reviewed some of the criticisms of the Dublin system over the years, and further reviewed relevant jurisprudence concerning the supranational courts' rulings on the Dublin system.

Chapter three reviewed the unilateral and collective response of MSs to the 2015 refugee crisis. It specifically focused on how the UK, France, Germany, Austria, Hungary, Denmark, Greece, Italy, and Sweden responded to the refugee crisis. The review of the unilateral efforts of the MSs revealed that some of the MSs admitted asylum seekers at the peak of the crisis but gradually withdrew from rendering further help a few months later. In fact, some of the MSs came up with restrictive measures on their asylum systems that would discourage potential asylum seekers from seeking refuge in those places. Political pressure on some of the political leaders in places likes Germany, Sweden, Austria, and France, to mention a few, has undoubtedly resulted in the reduction of the number of asylum seekers that are being admitted by the individual MS. Nevertheless, Germany took the lead in 2015 when it admitted a

large number of asylum seekers at the peak of the refugee crisis in 2015, followed by Sweden, as pointed out in chapter five. Other MSs, such as Austria, France, the UK helped and are still helping Syrian refugees. However, some of the MSs in the Central and Eastern Europe refused to take in asylum seekers, let alone process their applications, not even with the EU refugee relocation scheme that is seen by the stakeholders as one of the positive efforts in tackling the mass influx of asylum seekers in 2015.

It is essential to note that the EU authorities in a bid to tackle the 2015 influx of asylum seekers also came up with certain initiatives that were addressed in chapter three. The EU-Turkey Statement, the mandatory EU refugee relocation scheme, the establishment of hotspots in both Greece and Italy, and the reformation of the CEAS are some of these initiatives. It is acknowledged in chapter three that the implementation of the EU-Turkey Statement brought a significant reduction in the number of the new arrivals by sea. Nevertheless, the EU-Turkey Statement is seen by some stakeholders as controversial in nature – a form of push-back tactic that discourages asylum seekers from seeking refuge within the Union.

However, the EU refugee relocation scheme is viewed differently by relevant stakeholders. It is seen as one of the ideal ways in tackling the mass influx of asylum seekers. As reviewed in chapter three, the EU refugee relocation scheme was originally scheduled to last for two years and it officially ended in September 2017, nevertheless, some MSs have chosen to carry on with it. The establishment of hotspots is not without criticisms, especially as it relates to the living conditions of the asylum seekers in those places. The operation of these hotspots has brought together relevant EU agencies (Frontex, Europol, EASO, and more) mainly to process asylum claims (identification and registration of asylum seekers) submitted by the affected asylum seekers, while processing their onward transfer to the MSs that are willing to host them. Operation Poseidon Rapid Intervention, Operation Sophia, and Operation Themis are some of the collaborative efforts employed by the EU authorities to secure the external borders, while disrupting the activities of smugglers at sea. Chapter three also reviewed the evaluation report on the implementation of Dublin III

Regulation among the MSs and assessed the proposed Dublin IV that is now in stalemate.

The theoretical aspect of the study focused mainly on securitisation theory in chapter four, with emphasis on how the far-rights politicians, the 'securitising actors' and the MSs responded to the 2015 refugee crisis through their anti-migrant rhetoric. It reviewed the roles of selected securitisation actors within the Union in line with the Copenhagen School of thought that capitalised on the refugee crisis through their political campaign speeches, with hatred towards the asylum seekers and refugees. The Paris School of thought also revealed the roles some government officials play within the Union, either consciously or otherwise, in coming up with hostile asylum policies - The non-discursive act of the securitisation theory. These policies are deemed to originate from the knowledge of discontent from certain groups of people in the public, e.g. far-right politicians. This sums up the argument that anti-migrant rhetoric alone cannot prevent refugees from seeking asylum within the Union, but the manifestation of the pressure generated with political speech that could negatively impact the formulation of new asylum policy. The non-discursive act of the Paris School of thought revealed that the speech act of the Copenhagen School is not enough to prevent the asylum seekers from seeking refuge within the Union. However, other government policies could have negative effect on the ability of the asylum seekers to seek refuge within the Union. Therefore, the enactment of hostile asylum policies resulting from the pressure or impact generated with anti-migrant rhetoric of the far-right politicians are arguably preventing asylum seekers from seeking refuge within the Union.

Chapter four also revealed that the anti-migrant and anti-Islam rhetoric of the far-right politicians are not in any way favourable in ameliorating the plight of the asylum seekers. Evidently, one of the 'securitising actors', Farage took it upon himself to warn the populace with his anti migrant rhetoric that the UK needed to leave the EU, otherwise the arrival of asylum seekers in large numbers would eventually be extended to the UK. Similarly, Marine Le Pen ran relatively effective but negative political campaigns in France during the French general election in 2017. Her

campaign was based on anti-migrant and anti-Islam rhetoric, as mentioned in chapter four. The German AfD also made a significant electoral in-road in Germany in 2017 following the political campaign that was mainly based on anti-migrant rhetoric. It was discovered that AfD capitalised on the perceived generosity of Chancellor Merkel in hosting a large number of refugees during the Syrian refugee crisis of 2015. The former Italian Deputy Prime Minister Salvini and others in Italy also used anti-migrant rhetoric during the 2018 general election. Today, the response to the institution of asylum is the same within far-right groups in Sweden, Austria, Spain, Bulgaria, and the Netherlands, and particularly in Hungary where the far-right politicians are now running the government.

Furthermore, Chapter five outlined the research methodology; the research design, method and techniques, preparation for fieldwork, the international fieldwork, and the need for ethical considerations.

The study has revealed, through the analysis of the interviews conducted with the Syrian refugees, that some of the provisions of the status quo Dublin system were applied by the selected MSs in the face of the mass influx of asylum seekers. It has also strengthened the debate concerning the role of the supranational courts in positively shaping the EU asylum system. It has revealed that the existing mechanisms were not fit for purpose, and that the frontline states were not given adequate support by other MSs during the crisis. It has described the Syrian refugee experience and revealed through the application of CMM that the crisis was not well-managed.

7.3 Future Possibilities

In order to effectively manage future influxes within the EU, a reform Dublin system is highly needed. The TPD is no longer a realistic option in tackling mass influx as its application continues to hang in the balance. Its non-activation over the years speaks volumes. The *prima facie* approach on the other hand remains unpopular and may not be needed with an improved Dublin system. Therefore, a reformed Dublin system alongside other meaningful initiatives like improved hotspots would help the MSs to adequately manage similar future influxes. The established hotspots should be

improved upon by making them more habitable in line with the principle of human dignity for the asylum seekers. The time the asylum seekers spend at the hotspots before they are relocated should be drastically reduced to make room for new arrivals and avoid overcrowded accommodation. The EU refugee relocation scheme, although not perfect, could also be part of the solutions that will adequately tackle large-scale movement of asylum seekers if properly implemented. In fact, some of the relevant stakeholders that are usually critical of the EU asylum system are in support of leveraging on the successes of the scheme as pointed out in chapter three.

Similarly, other MSs, especially the Eastern European countries, must be encouraged either through dialogue or by giving incentives to MSs that are willing to help with refugee relocation. No MS should be forced to participate in the relocation scheme. Solidarity should take centre stage and the EU authorities should help to coordinate the financial incentives for the willing participants. For instance, by setting up a special fund that would specifically take care of the large-scale movement of asylum seekers, irrespective of which location the mass influx uses as a gateway, could strengthen the spirit of solidarity among the MSs. This special fund will primarily support the would-be host nation to cater to the need of a certain number of asylum seekers that would be admitted. The fund can also be used to tackle the root causes of such a movement, and legitimately prevent such crises in line with the pre-crisis prevention stage of CMM. Individuals, institutions, organisations or countries should be allowed to donate towards this cause annually.

The EU external border states should receive more support, possibly with the help of Frontex in executing the on-going operations at sea or the new ones they may deem fit in future. The external border states would also need financial help to effectively and humanely tackle future influxes of asylum seekers. In discouraging the secondary movement, the original aim of setting up the Dublin Regulation, the EU authorities should give the asylum seekers an opportunity to choose a destination from a list of the MSs willing to admit them at a particular point in time. This could help with tackling the mass influx and eventually minimise secondary movement. For instance, some of the refugees who participated in this research in France explained that they

were given such an opportunity to choose where they would like to seek asylum and France was one of the countries they chose. Today, some of them are glad they made it to France.

Similarly, at the peak of the refugee crisis in 2015, the asylum seekers could go to their preferred destinations with the application of Art 17(1) by Germany and there was no serious problem of secondary movement afterwards. Asylum seekers should not be severely punished because they move to another state based on certain factors like family unity, especially in the face of mass influx. Therefore, allowing asylum seekers to choose out of a given list available at a particular time at various hotspots, would surely reduce the way they move from one MS to another.

Additionally, the relevant supranational courts' rulings must continually be put into consideration by applying these rulings to the reformation of the CEAS from time to time, in order to avoid legal crises with the asylum process. Otherwise, such legal crises would lead to possible violations of the fundamental rights of the affected asylum seekers and refugees. The rise of the far-right politicians and their rhetoric on migrants within the EU must be viewed as a formidable force militating against the *status quo* of the institution of asylum on the continent. This must not be swept under the carpet. If the growing influence of the far-right group is left unchecked, it could drastically and negatively affect the future of the EU asylum system. For instance, in places like Hungary and Italy, the asylum seekers are already feeling the pressure as far-right and populist politicians are now in control of governments. The politicians in power, especially in Hungary are now enacting laws that reflect the anti-migrant rhetoric used during their political campaigns. Evidently, in Hungary, the actions of Prime Minister Orban concerning asylum policy are already making life difficult for the asylum seekers and refugees.

It would be interesting to research more on the growing activities of the far-right politicians and the impact of their anti-migrant rhetoric on the EU asylum system. It would also be interesting to research asylum in the face of regional or global health

emergency, as well as avoidable conflicts and mass displacement of people: the role of the developed nations.

Additionally, to effectively tackle the mass influx of asylum seekers, the EU authorities must jettison some of the initiatives concerning asylum seekers that are seen as controversial in nature. The EU-Turkey Statement is one of them. Some stakeholders believe that the Statement is controversial in nature, as pointed out earlier and that it should be improved upon. Its critics do not think Turkey is a safe place for asylum seekers, given various reports of abuse in the past. Therefore, the stakeholders and some immigration experts believe that the EU-Turkey Statement is encouraging 'push backs'. There is also an ongoing debate on whether replication of the initiative would work on the Libya-Italy axis, but stakeholders believe that the Libyan Human Rights record is discouraging. Given the negative reports coming from Libya regarding the treatment of asylum seekers, the country is not safe for such replication. Hence, a similar initiative should not be made with Libya or any other countries with a questionable record on human rights.

In summary:

- The frontline states need the unwavering support of the EU authorities and other MSs, both financial and participatory, in relocating asylum seekers to other MSs that have pledged to relocate a certain number of asylum seekers within a given period. To this effect, the refugee relocation scheme should be voluntary among the MSs and its implementation must be improved upon in various ways as identified in chapter three.
- The hotspots approach is also a welcome idea but its operations must be improved upon. For instance, the issue of overcrowding must be urgently addressed and the living conditions must be up to minimum standards, taking into consideration the need to protect the health, sanitary, and human rights of the affected asylum seekers.
- From all indications, the support of the EU agencies such as the EASO and Frontex in the identification and registration process of asylum seekers

alongside the affected frontline states is commendable and should be improved upon, which will help the MSs to effectively tackle future influxes.

- The failure of TPD, an instrument specifically designed to manage mass influx of asylum seekers within the Union must be looked into for future purposes.

- The growing momentum of the far-right politicians and their anti migrant rhetoric must not be ignored. Efforts must be made from time to time to remind and sensitise EU citizens and residents on the beauty of helping people that are in need of international protection.

- The judiciary has been playing a crucial role in pointing out the excesses of some of the MSs, especially when they appear to be operating below the set standards on the implementation of the CEAS. Therefore, the EU authorities should endeavour to incorporate relevant courts' rulings in the reformation of the CEAS accordingly.

- The reformation of the current Dublin system is highly needed in order to effectively manage future influxes. Therefore, making the solidarity clause voluntary rather than mandatory would break the impasse being faced on the reformation of the Dublin III Regulation. Dublin system should not be repealed as being advocated by some scholars but improved upon to be able to address its many lapses, especially in the face of mass influx of asylum seekers.

- The affected asylum seekers should be allowed to write out their preferred places of asylum out of a given list of the MSs that have pledged to relocate a certain number of asylum seekers. This would arguably help to reduce secondary movement in the long run.

- The EU-Turkey Statement is seen by stakeholders as controversial in nature. Thus, the EU-Turkey Statement must be redesigned to accommodate the safe arrival of individuals fleeing genuine persecution.

- No individual MS can effectively manage large-scale movements of asylum seekers alone, therefore, MSs should rally round to help any other MS that might be under pressure due to mass inflows of asylum seekers. The spirit of togetherness and the spirit of solidarity should take centre stage among the MSs.

The response of the EU to the Syrian refugee crisis of 2015 has been critically assessed by this study. The findings revealed that the EU responded terribly to the 2015 Syrian refugee crisis. The various initiatives came up short of providing long-lasting solutions. The establishment of the hotspots in Greece and Italy is a welcome idea, but the appalling living conditions at the over-crowded hotspots in the frontline MSs must be worked on. Similarly, the failure of some of the MSs to participate in the EU refugee relocation scheme must be addressed. With the new wave of migration problem in 2020 at the Greek-Turkey border, it is obvious that the controversial EU-Turkey statement is not the solution to the EU refugee problems. Turkey cannot be relied upon to restrain the asylum seekers from crossing over from Turkey to Greece. Evidently, the recent political game being played by the Turkish government in using asylum seekers as pawns to gain support from Europe concerning its intervention in the ongoing Syrian conflict speaks volumes. Therefore, the EU should focus more on how the status quo Dublin system can be reformed with emphasis on the need for solidarity among the MSs rather than its reinforced military approach (through Frontex) and its blanket support for illegality that is being carried out by Greece at the Greek-Turkey border and in the Aegean Sea. Noticeably, the MSs can do better with the spirit of solidarity in tackling large-scale movements of asylum seekers in the future. The same solidarity arguably led to the establishment of the 1951 RC and its 1967 Protocol decades ago and brought the European leaders together in the aftermath of WWI and WWII with one thing in mind, catering to the needs of the refugees who were seriously in need of help at that time. This spirit of solidarity also led other European nations to selflessly help the Hungarian refugees and the refugees from the Balkans in 1956 and the 1990s respectively, as pointed out in chapter one. Therefore, this spirit of solidarity should be incorporated into the reformation of the Dublin III Regulation. By so doing, MSs can work together to adequately manage similar future influxes within the Union.

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Appendix

Interview Questions (Syrian Refugees)

1. How old are you?
2. Where in Syria did you come from?
3. Did you leave Syria because of the war that started in 2011, and how did you journey to Europe?
4. In seeking asylum, which country did you first arrive in within the EU and where was your preferred destination?
5. Did you register with the government officials upon your arrival, if no, when did you register?
6. Were you detained by government officials at any point in time within the EU, if yes, how long?
7. Were you told about how to apply for refugee status within the EU, if yes, who told you?
8. Did you apply to become a refugee in any other country within the EU other than this place?
9. Were you asked to go back to the first country you arrived in within the EU in order for your asylum application to be processed?
10. Did you receive information by the State authorities about asylum procedures within the EU?
11. Were you interviewed personally about your asylum application?
12. Did your application get rejected at any point, if yes, did you appeal or seek remedy in court of law?
13. What are your views about the processes and procedures of the EU asylum system?
14. Do you think the 2015 refugee crisis was well-managed by the EU countries?
15. How will you describe your refugee experience in this country?

Interview Questions (EASO)

1. Are the EU Member States doing enough to tackle the Syrian refugee crisis?

2. Are the collaborative efforts of the EU and other key actors in tackling the refugee crisis at sea yielding tangible results?

3. How effective is the EU asylum system in tackling mass influx of asylum seekers?

4. How is EASO assisting the EU frontline States in tackling the mass influx of asylum seekers?

5. Will the establishment of hotspots within the Union and in safe third countries reduce the mass influx of asylum seekers?

6. Should the commission establish new partnership framework with third countries to better manage migration flows?

7. Will the proposed reformation of Dublin III Regulation solve the problems of large flows of migration to the EU?

8. Would a reformed EASO bring about efficiency in tackling mass influx of asylum seekers?

9. What are your views on the proposed application of reference key (article 35 of the proposed Dublin IV) in tackling mass influx of asylum seekers?

10. Will the financial "solidarity contribution" clause in the proposed Dublin IV encourage Member States to accept asylum seekers in the face of mass influx?

Interview Questions (Frontex)

1. What are your views about the recent reformation of Frontex?
2. How can the mass influx of asylum seekers be minimised, especially at the EU Border States?
3. Are the human smuggling activities in the Mediterranean Sea fueling large flows of migration?
4. How can the people smuggling activities in the Mediterranean Sea be reduced?
5. In combating people smuggling network at sea, are your operations in line with relevant international human rights law?
6. In tackling the refugee crisis at sea, are the collaborative efforts of Frontex and other agencies yielding tangible results?
7. Is the interception of asylum seekers at sea in conformity with the principle of non refoulement?
8. Is your organisation putting the fundamental rights of asylum seekers at the forefront?
9. Are the recent terror attacks within the EU affecting the way asylum seekers are being received across the EU?
10. Will financial solidarity among the EU Member States help in tackling mass influx of asylum seekers?
11. Should the EU partner third countries as part of solutions to minimising large flows of asylum seekers?
12. Will the proposed centralised system of the EU asylum system solve the problem of asylum shopping?
13. Are the EU Border States receiving needed assistance in tackling mass influx of asylum seekers?
14. What are your views on the EU-Turkey Agreement?

Research Project Consent Form

Full title of Project: Mass Influx and the Dublin System: A Critical Assessment of the EU Response to the Syrian Refugee Crisis

Ethics approval registration Number: LSSEP165

Name: Olawale A. Joseph

Researcher Position: PhD Candidate

Contact details of Researcher: josepho3@lsbu.ac.uk

Taking part (please tick the box that applies)	Yes	No
I confirm that I have read and understood the information sheet/project brief and/or the student has explained the above study. I have had the opportunity to ask questions.	☐	☐
I understand that my participation is voluntary and that I am free to withdraw at any time, without providing a reason.	☐	☐
I agree to take part in the above study.	☐	☐

Use of my information (please tick the box that applies)	Yes	No
I understand my personal details such as phone number and address will not be revealed to people outside the project.	☐	☐
I understand that my data/words may be quoted in publications, reports, posters, web pages, and other research outputs.	☐	☐
I would like my real name to be used in the above.	☐	☐
I agree for the data I provide to be stored (after it has been anonymised) in a specialist data centre and I understand it may be used for future research.	☐	☐
I agree to the interview/….being audio recorded.	☐	☐
I agree to the interview/… being video recorded.	☐	☐
I agree to the use of anonymised quotes in publications.	☐	☐
I agree to assign the copyright I hold in any materials related to this project	☐	☐

to Olawale A. Joseph		

_____
Name of Participant   _____   _____
Date   Signature

_____
Name of Researcher   _____   _____
Date   Signature