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**RESPONDING TO THE 2015 EUROPEAN REFUGEE CRISIS:
THE INTERNATIONAL SYSTEM IN ACTION**

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ABSTRACT

In the last 70 years, Europe has encountered two major migration waves. The first one was the aftermath of Second World War when people were moving from the European continent. In 2015, however, Europe was once again faced by a large flow of people – this time they were moving to Europe. The legal framework for managing such situations was largely developed as a result of the first refugee crisis. In 2015, the biggest responsibility for resolving the crisis was put on the EU, the non-conventional political actor that is dominating Europe. The EU has based the majority of its policies for refugees on the most important part of the international legal framework for refugees – the 1951 Geneva Convention on Refugees. As time went by since the beginning of the latest crisis, it could be argued that the EU has not managed the situation well. This raises the question of what could be the reason for the EU's failed policies. Contributing to the multi-disciplinary debate on the institutionalisation of crisis management procedures and using both discourse analysis as a major pluralist qualitative method for its enquiry, this paper argues that the Refugee Convention can be considered outdated to efficiently handle the refugee crisis in modern Europe. This paper addresses one of the biggest obstacles the EU has encountered so far and provides an explanation as to why it has failed in efficiently managing it. In addition, the paper concludes that the Geneva Convention on Refugees has indeed hindered the management of the crisis and it would be worthwhile to examine it further.

Keywords: the European Union, refugee, crisis, international system, Geneva Convention on refugees.

INTRODUCTION

Human migration as a socio-political phenomenon is as old as humankind in itself. People have moved great distances to improve their living conditions and for the hope of a better future. Migration has become smaller in its dimensions while adopting a higher degree of complexity due to multiple attempts made by different international systems to institutionalise the phenomenon. The main achievement of those attempts has been in distinguishing the legal migration from the illegal. These days, since corresponding legal frameworks evolve and become more precise and detailed, the number of migrants who are affected by them also grows. According to the Office of the United Nations High Commissioner for Refugees, the number of displaced people in the world had doubled from 33.9 million in 1997 to 65.6 million in 2016. There are 22.5 million refugees among them. The number rose drastically between 2012 and 2015, with multiple conflicts in Syria and Yemen, alongside other conflicts in the Middle East and Africa. Due to the proximity of the European Union (EU) to the areas of disarray, many refugees chose to seek asylum in the EU. As the EU in its present form had never experienced such an immense refugee inflow before, it put the entity's Member States under strain. As many academics have argued (e.g., Trauner 2016; Costello *et al* 2015), the EU did not manage the migration crisis as well as it should have, which imposes a question on the reason why the failure occurred.

In the last few decades, the legal framework for asylum seekers and asylum policy within the EU have shifted their focus from protecting refugee rights to protecting the receiving state from the refugees themselves. This paper will focus on two major migration waves that affected Europe: one that occurred after the Second World War (WW2) and the migration crisis that started to be impossible to ignore from 2015. Analysing and comparing these two movements, will illustrate how the groundwork for migration policies in Europe was established and how it has affected the management of the crisis at hand.

The European Parliament, among many others, has named the current migration crisis Europe is facing to be the worst since the WW2 (Europe's Migration Crisis 2017). The then unprecedented migration that occurred during and after WW2 had a significant impact on the way immigration is

handled in Europe nowadays. This is illustrated by the emergence of numerous organisations and declarations that focused on managing, administrating and resolving problems regarding immigration, asylum seekers and refugees. The research question for this paper is whether the usage of instruments and regulations that have their roots in a time much different than ours has hindered the handling of the current European migration crisis. In the search for an answer, the focus is neither on specific elements that do not work with the modern concept of asylum nor is this paper attempting to suggest a right solution for the current crisis. This paper's intention is not trying to evoke a debate over the current legal frameworks in place. Having been conceptually widespread in the past variations of the political extreme, both racism and xenophobia are now integral part of the far-right politics for extreme right-wing politicians in modern Europe. The question of conservative politics regarding refugees is a highly discussed issue in Europe, however, due to its extensive scope, it is not one of the focuses of this research paper. Instead, the focus is on existing international system and its policies on refugees as well on those institutions, which are supposed to implement them. The main intention is to determine through discourse analysis, whether or not the policies the EU Member States are trying to develop, and apply are in conflict with the original legal framework, the Refugee Convention and how it has affected the management of the crisis.

Binneh Minteh (2016), a Professor of Global Affairs at Rutgers University-Newark, who settled in the USA as a refugee, reflected why the EU was not as effective in managing migration crises as it should have been. His main arguments were that the EU has not considered enough the fragility of the states of origin, such as Libya, Syria, and Iraq, which combined with the lack of international response mechanisms have failed the current crisis. He also argues that the current EU policies are more focused on regional security rather than humanitarian aid. Even though there are some arguments in Minteh's work, that this paper will also discuss, he has rather focused on external elements, which influence the EU's policies on migration and asylum seekers. This paper argues that the core problem comes from the fact that the nowadays policies are tied to regulations and institutionalised frameworks that are no longer applicable or compatible with the current situation, thus the inefficient policies are rather a result of it than a cause.

Christina Boswell (2000), a Director of Research for Social and Political Science in the University of Edinburgh, started a discussion on whether or not asylum policy should ever be defined by rights-based principles like the Geneva Refugee Convention. According to Boswell, the European values and identity have shifted in the more than 50 years since the Geneva Convention was adopted; thus, using the same model to define asylum policy is no longer feasible. This paper

builds on Boswell's set of broad arguments, but attempts to narrow the problem down to one specific document, the Refugee Convention, and how its usage or and sometimes lack of it has defined asylum policy and hindered the management of the refugee crisis.

This paper analyses refugee organisations' policies and documents such as the United Nations (UN), with focus on Geneva Convention Relating to the Status of Refugees of 1951 and its application and effect on modern Europe and its policies on refugees. Comparing the policies of the crises and their management will highlight the similarities and differences between the two, which in turn will show us how immigration in the 1940s and 1950s in Europe affected and differed from the contemporary concept of migration management and how it has influenced the handling of the current crisis.

The main research method of this paper is discourse analysis. Its basis is in the analysis of relevant primary and secondary sources including reports, declarations, and legislation, which are published in the corresponding time periods or which handle the time periods in question. In this paper, discourse analysis is used to examine the relations between the text, the Refugee Convention, and its context, both the political and the social environment and compare it to the current refugee policies in the EU. Discourse analysis also allows "to start with a specific outcome and demonstrate the preconditions for it happening" (Neumann 2008, 62-63). The first part of this paper uses the Refugee Convention as the outcome and tries to explain its preconditions in more detail to explain why the Convention was written and implemented the way it was. Even though discourse analysis can be argued to be too subjective, it has some benefits concerning international relations as an integral part of political science. It allows to bridge the qualitative-quantitative methods, which in turn makes otherwise abstract analysis more scientific. Discourse analysis is also justified by the fact that it enables social sciences to establish hypotheses, which can be either proved or disproved, similar to the way done by exact sciences (Klotz 2008, 1-5). The discourse analysis in this paper will research how the frameworks that were established in the post-WW2 period have affected the modern policies regarding refugee immigration and whether the current interpretations of the Refugee Convention are serving their purpose effectively. Some of the sources used were published in the late 1990s or early 2000s. It can be argued that they are not up to date and thus cannot be used to define the current refugee crisis. However, the usage of such sources is intentional and illustrates, how the concerns that have emerged in modern Europe were actually present in earlier works.

The paper briefly focuses on the different environments that accommodate the two crises. After WW2, there were parts of Europe that had no functioning local governments. Many cities were almost destroyed, a vast number of people were displaced from their homes, whereas many of them had no homes to return to. Some regions in Europe seemed to be no man's land. There was a matter of urgency for Europe to start rebuilding itself. The most effective way to do that was to give the task to a supranational organisation, such as the UN, which was created in 1945. The following policies and declarations were aimed mainly at restoring peace in Europe and returning people to the lives they previously had, before the outbreak of the war. Now, when we look at modern Europe, the environment has somewhat changed. Nationalism, something that was feared after the end of the war, has started to gain supporters again. The EU is the biggest influencer and political actor in Europe. Migrants, who are crossing the borders of European states, originate from countries that have very different political and cultural values than those of European states. All these elements influence the way laws and regulations are applied to people.

Even though Europe as a geostrategic concept has evolved and improved its policies regarding refugees, they are still deeply rooted in the perception that was created by migration flows of post-war Europe. In the first part of this paper, the creation of the UN, specifically its sub-organisation for refugees will be analysed. This will provide an overview of how the United Nations High Commissioner for Refugees (UNHCR) came to be and how it gained its role as the protector of the refugees. The Geneva Refugee Convention of 1951 is also discussed and its effect on modern asylum policies analysed. The Refugee Convention is selected for analysis because it is the first international treaty, that directly addressed the issue of refugees and human rights and tied them together. The Refugee Convention is also important due to the fact that all of the EU Member States are signatories to the treaty and are legally bound to follow it. Thus, it should be essential for the EU to follow the Convention for its policies regarding refugees.

In the second and third part of this paper, the migration crisis of the WW2 and the 2015 European migration crisis will be handled separately, to give two distinct summaries, which can later be compared. The second part is rather descriptive than analytical. One of the reason is the lack of comprehensive reports and statistics at the time regarding the number of refugees and asylum seekers. The aim of the second chapter is to give an overall sense of the environment and events that influenced the regulations written at the time. In the third part, there will be an analysis of the regulations, policies, and programmes that are the key factors in modern EU migration and asylum policies.

The fourth part of this research paper will use the analysis conducted in the previous chapters and tie them all together as a conclusion. It will use the clusters previously created to compare the major differences and similarities between the crises and how these factors have affected the handling of the current crisis. Finally, the paper will come to its conclusion derived from the conducted analysis.

1. THE EVOLVEMENT OF MIGRATION MANAGEMENT ORGANISATIONS AND THE GENEVA CONVENTION RELATING TO THE STATUS OF REFUGEES

There have been many organisations created during and after the WW2 to facilitate the need for aid and management of refugees. Most of them were established explicitly for handling the migration crisis taking place in Europe. These organisations were usually terminated after their goals were accomplished or were amalgamated into other frameworks. The regulations and action plans created by these entities were universal and did not give much consideration to the compatibility of the regulations with a state's constitutional order. It was easier to create a very broad policy that, in general terms, would be implemented everywhere, as this was the most effective way to resolve migration issues on the European continent at contrasting times.

In this chapter, the two key factors – the creation of the post of the UN High Commissioner of Refugees (UNHCR) and the aforementioned Geneva Convention are to be described and analysed to give the reader some background information and an overview of the issues and topics discussed in the later chapters. The UNHCR and the Geneva Convention Relating to the Status of Refugees were chosen to be scrutinised by this analysis because they are two important factors that influence migration policy in Europe to this day. There were numerous organisations created and regulations drafted at the time, but very few of them had such an impact on asylum and migration policies. Most migration management methods in the Western world are rooted in the liberalist and human-rights oriented beliefs that originate from these two entities.

1.1. Organisations of migration management and their evolvement

The first attempt to deal with displaced people was the establishment of the UN Relief and Rehabilitation Administration (UNRRA) in 1943, by agreement of 44 nations. It is important to note that UNRRA was created prior to the establishment of what we know as the UN since the very notion 'United Nations' was already in use for some time. The UNRRA that was mostly

created and administered by Americans, focused on dealing with victims of war in any area, that is under the control of an Allied Power state. Its headquarters was located in Washington DC with a European Regional Office in London. After the creation of the UN, UNRRA's tasks were mostly delegated to other UN bodies and organisations. In 1946, UNRRA was largely replaced by the International Refugee Organisation (IRO), which was a UN specialised agency. UNRRA was officially terminated on 31 March 1949.

After five years of existence, the UN created a sub organisation UNHCR, which was established on 14 December 1950. In 1952, it took over the duties of the IRO, which ceased to exist. It was given a three-year mandate to help the displaced people of Europe, however, it has continued its work to this day. The UNHCR stepped up to help at a time, where many European national governments could not provide the basic needs for their own citizens, not to mention other nationals. The UNHCR has evolved from a temporary aid organisation to a world leader in overseeing international framework of refugees and laws that regulate it. The most important document for the UNHCR is the Geneva Convention Relating to the Status of Refugees, which is discussed and analysed in the next chapter. The UNHCR is also the only official body with the right interpret the document.

1.2. The Geneva Convention Relating to the Status of Refugees 1951 and its 1967 Protocol

The Geneva Convention Relating to the Status of Refugees is a United Nations treaty. As of now, it is ratified by 145 states. It is important to note that many states that were not dealing with a migration crisis participated in the Convention and helped to create it. Hence, states like Brazil, Venezuela, and Fiji helped to construct the rules to solve the migration crisis in Europe. Whereas occupied Eastern European states such as Belarus, Estonia, Latvia, Lithuania and Ukraine that were the origin countries for many of the migrants, did not have the opportunity and were not in the position to give their input (United Nations Treaty Collection 2017). Moreover, after the Convention was formally created, it still had to go through the ratification process in each country, so in reality these rules were taken into use at various times in different states. Not all the articles of the Convention are analysed in this paper. Rather, the articles that are most relevant today and have the most influence on the current migration policy in Europe are described and examined.

This Convention outlines criteria for defining refugee status. For example, the status of a refugee is not extended to individuals, who are receiving aid from other organisations besides the United

Nations or the UNHCR. Nor is it extended to people who have committed war crimes and people who have acquired a new nationality or are extended the same rights and obligations as the citizens of their host country. The refugee status is no longer extended to an individual if the circumstances that forced the person to flee their state in the first place have ceased to exist. The refugee has general obligations to comply with the host country's laws and regulations and to maintain public order.

It also sets out minimum requirements that a state, providing asylum to those in need, must meet. Initially, the convention was applicable only for refugees moving to, from or within Europe before 1 January 1951. In 1967, an additional protocol lifted these limitations so that the Convention became universal. The convention's principles are heavily based on Article 14 of the Universal Declaration of Human Rights of 1948:

“Everyone has the right to seek and enjoy in other countries asylum from persecution. This right may not be invoked in case of prosecutions genuinely arising from non-political crimes or acts from contrary to the purposes and principles of United Nations. “

The regulations the Convention has set out are mostly aimed towards protecting the refugees. The main perspective the regulations convey is that refugees need to be protected from their host state. Now, we have entered an era where the opposite situation must also be taken into consideration. The regulations gave refugees a lot of rights, but only one obligation – to report themselves to the local authorities. Whereas the host states have a lot of obligations, but almost no grounds for contesting a refugee entering the state.

Joan Fitzpatrick of University of Washington School of Law stated that she believes the Convention “...is not obsolete, but that it is incomplete, as it has been from the outset” (1996, 232). She believes that the international system has been able to effectively deal with refugee crises due to the recognition of extra-conventional norms, indicating that the Convention in itself does not provide them. According to her, the notion of the Convention being obsolete stems from four key factors: the vagueness of its provisions, the absence of a unified framework for determining a refugee, lack of ambiguity for cases where a person does not fit the requirements set out by the Convention to become a refugee and finally, gaps in burden-sharing and financing refugee prevention strategies (*Ibid*).

Atle Grahl-Madsen, who was a Special Consultant in the Office of the High Commissioner for Refugees from 1962 to 1963, wrote his Commentary on the Refugee Convention, where he prioritised legal analysis over social and political reasoning. In his work, he highlights the

discrepancies that occur in the Convention. His analysis also clarifies why the shortcomings that Fitzpatrick mentioned in her work, such as vagueness of some provisions, occurred.

The French and Venezuelan representatives to the Convention expressed their concern over the wording of Article 2 and Article 32, which both underline the duty of the refugee not to disrupt public order. Initially, the wording referred to political movements instead of public order, meaning that refugees had no right to interfere with the state's politics. However, the USA representative was in opposition to restricting political movements within the USA's territory. Thus, the wording was changed to much looser terms and ended up being defined as public order. Many other representatives, Swedish, Israeli and UK, were discontent with this wording, considering it to be too vague and not giving the state enough power. Nevertheless, it was important for the USA representative to sign the Convention, so the wording stayed as suggested by the USA. Interestingly enough, the USA has never ratified the original Convention but has signed its additional Protocol of 1967 (Atle Grahl-Madsen 1997). This case is an example of how a country that was not managing the situation itself had the power to force other countries to comply with its terms. The question of giving refugees political rights is still present today and if the wording of the Convention had left as it was originally, there would be much less confusion now.

Article 3 of the Convention forbids discrimination against refugees on the provisions that the Convention has defined. This would include race, religion or country of origin. However, a suggestion to add sex as an attribute that must not be discriminated against was removed from the Convention, as representatives felt that this is a question for each states' national legislation. Other features such as age, health, and political opinions were discussed as well, but the majority did not regard them as to be too important.

Article 31 states that the Contracting State may not punish the refugee for entering the state illegally, unless they are not coming directly from the state where their life is threatened or if they fail to present themselves to the state's authorities. In the EU, this creates a situation where periphery states will take the biggest responsibility when granting individuals the status of a refugee. In situations, where big masses of people are entering a state within a short period, it creates a bottleneck for states under pressure. It forces the governments to neglect or speed up important parts of the administration process of a refugee, for example, background checks. The EU's Dublin Regulation is also closely related to the subject but will be discussed later in the paper. This article also deems the alleged asylum seekers to have no liability when breaking the

law while crossing a state's border. While the benefit of such a regulation is understandable in case of an actual asylum seeker, it can in no way be immediately proven that seeking refuge is the main priority of the individual. Furthermore, it could be understood from the wording of this ruling that a state has the right to prosecute a refugee if they are entering its territory from a state where their life is not threatened. This would mean that refugees moving around in Europe and crossing states' borders, which is the situation now, could be formally indicted and expelled. But such behaviour is frowned upon by the international community, so such cases are avoided or obscured from the public.

Article 32 allows the host state to deport a refugee if they are a threat to the national security or public order. This gives a state room for different interpretations and allows a more case-by-case approach. However, a legal process is required, which also takes time. Even when a decision to deport an individual is adopted, the person will be given enough time to seek refuge in another country. During that time, a country is allowed to use any national measures they see as necessary to detain that person. Even though this is one of the points that gives the host state some leverage as regards to accepting and facilitating refugees, it is not very practical for huge groups of individuals or in situations where immediate action should be taken. Article 38 of the Convention allows the states to dispute interpretation and application of any of the other articles through the International Court of Justice (ICJ). Even though the opportunity is present, states have yet to use it. As there is no higher legal power to oversee the implementation of the given regulations, there is no need for states to dispute the rules they do not want to comply with, as there are no hard repercussions.

The importance of the Refugee Convention lies in the fact that these rulings are the base for refugee policies in Europe. With this document, human rights, migration, and refugees are so merged with each other, that they become almost inseparable. These are the ideas that European states and later, the EU have based their attitudes towards the admission of refugees. There has not been any other dominant enough approach to the refugee migration topic. Now, as European continent has entered a new era, it is becoming apparent that the groundwork, on which the union's legislation is built, might no longer be compatible with the present-day political environment.

2. MIGRATION IN EUROPE AFTER WW2

It is worthwhile considering that the data provided by UNHCR in this chapter does differentiate between asylum-seekers, internally displaced people or stateless persons. Thus, the data is fragmented and not as comprehensive as the data provided in the later chapters regarding the 2015 migration crisis. This is due to lack of proper tools, methodology and synchronised databases at the time.

According to the UNHCR population statistics database, by the end of 1951, there were 2,12 million persons of concern worldwide. Of those people 2,116 million were refugees. The states with greatest numbers of those people were mostly in Europe. In France, 290,000 people, in Germany, 265,000 people in the United Kingdom (UK), 208,000 people. Canada, the USA and Australia had around 699,000 people of concern combined. This meant that the relatively small territory of Europe had more than 700,000 people of concern compared to the combined territories of Canada, the USA and Australia (UNHCR Statistics).

Even though the official sources of the UN estimated the number of refugees to be around 2 million, there were more people who were not accounted for. Various other sources claim the number of displaced people in Europe after WW2 to be around 10-14 million. Hundreds of thousands of people from Eastern and Southern Europe left their homes in the hopes to get to North America (Wasserstein 2011). The fact that the UN managed to reach only 2 million of them illustrates how unmanaged the migration movements in Europe were. It also demonstrates how urgent the matter of displaced people and refugees was in Europe and how it needed a fast and an effective remedy.

By 1959, around 900,000 European refugees had been absorbed by Western European states. Around 461,000 had been admitted by the USA and another 523,000 by other countries. Thus, around 1,884,000 refugees migrated throughout Europe, with 984,000 of them leaving the continent. However, there were still many refugee camps scattered across Europe. As an effort, 1959-1960 was named to be World Refugee Year by the UNHCR, which was focused on closing all refugee camps in Europe. The project succeeded, thus officially ending the post-WW2 refugee

crisis in Europe (*Ibid*). The 1959-1960 campaign brought public awareness to the experiences of the refugees. Emphasis was on the fact of how poorly displaced people and refugees had been dealt with in the past, thus hoping to invoke feelings of guilt in the public (Gatrell 2009).

2.1. Emigration and labour shortages in post-WW2 Europe and their effect on immigration policy

Immigration was often seen as a solution for labour shortages in Western European countries (Kumer-Haukanõmm 2007). A considerable number of male workers were either killed or disabled during WW2, which created big gaps in the labour force of industrial Western European states. Setting up looser standards for refugees entering Europe was thus favourable and there was no need for strict monitoring. During and sometimes after WW2, countries admitting refugees were given the opportunity to select people from the refugee camps to put them to work on jobs that the local population did not wish to do. The receiving states gained a big influx of qualified labour force, who could be put to work on much lower salaries due to their refugee status. Thus, arriving refugees were often seen as an asset rather than a burden (*Ibid*).

According to Münz (1995), there were few factors designing immigration and asylum policy in the 1950s. First, there was the issue of displaced people due to ethnic cleansing and expulsion that took place during WW2. Around 12 million Germans were expelled from the Eastern parts of Germany during the Nazi regime. 1,5 million Poles were banished from their homes, alongside with thousands of Italians, Hungarian minorities, Belarussians, Estonians, Latvians, Lithuanians, Romanians, and Ukrainians to name a few, were deported from their home countries.

Secondly, migration was affected by the de-colonisation process by West European states such as France, the Netherlands, Italy, Belgium, Portugal and the UK. Even though people moving from colonies to the mother countries were not treated as refugees, it still forced the European states to reconsider their migration policies, which were previously affected by the emigration from Europe rather than immigration to Europe. New waves in the movement of people also established numerous multicultural communities, ethnic networks and new minority groups within Europe. Traditionally quite homogeneous European societies for the first time started to accommodate people with different cultural backgrounds. It was a turning point for the continent to start operating in a completely different environment and forced its leaders to change their perceptions of migration of people from different cultures in their countries (*Ibid*). The presence of different

cultural groups in Europe made it a desired destination for people seeking refuge, as it was easier to integrate into a new society with the help of fellow countrymen.

Between 1950 and 1955 Germany, the UK, Spain, Portugal, the Netherlands, Italy, Austria, Norway, and Finland all experienced emigration and loss of labour force. Even though migrants were coming into the European countries, net migration stayed negative because of emigration to the USA, Canada, Australia and New Zealand. France was the only European country to have notable positive net migration due to decolonisation (Migration Policy Institute 2017).

According to the official USA statistics of 1951-1960, 2,515 million European migrants entered the country (US Census Bureau 1999). In Canada, between the years of 1951 and 1960, 1,380 million migrants were accepted; over half of them came from Europe (Statistics Canada 2016). Over half of immigrants admitted to Australia originated from the European continent (Australian Government 2015). As emigration from Europe outweighed immigration to Europe, the Refugee Convention's focus was on the rights of the refugees rather than their obligations. Some national groups were stigmatised, for example, Italians and Irish in the USA. Nevertheless, the animosity slowly started to die down after the WW2. Moreover, the European migrants were not so different from the local people it was rather a question of social status. When we look at the refugees coming to Europe now, we see a big cultural difference between the locals and aliens. Thus, people felt the need to protect themselves from the unknown, which leads them to support stricter refugee policies.

2.2. Asylum policy as an ideological tool

Some researchers (for example, Boswell 2000) argue that the Convention was an effect of the Cold War and was an ideological tool to fight the communist Soviet bloc. Boswell argues that refugee policy at that time was influenced by the Nazi crimes and inability to protect Jewish refugees. Later on, resettlement became an important part of the protection granted to the refugees as many of them came from the Soviet Union, with no hopes of returning to their occupied home country. The number of refugees was not very big, as travelling outside the USSR was restricted and people managed to escape in smaller numbers. The opportunity for permanent resettlement was also an important symbol of power for the Western states as it illustrated their superiority and commitment to civil rights.

As emphasised by the World Refugee Year of 1959-1960, the UN and policymakers were hoping to pressure the public into feeling empathy towards the refugees and helping them was seen as an obligation of the citizens of the West. Interestingly enough, the project was declared to be non-political, the focus was not on the ideology of the Soviet bloc, but rather on the moral debt of the West for not doing enough during WW2. Admitting refugees was offered as atonement for the victims of WW2. For a state from the political West to reject such a notion, would have meant condemnation by the international community (Gatrell 2009).

The post-WW2 migration crisis shaped the European's conception of immigrants, both legal and illegal, and influenced the methods to manage similar situations. The migration crisis was followed by a period, where immigration to Europe was not seen as a problem. Thus, there was no need to expand or reform the Refugee Convention or overall refugee policies in Europe. It is a paradox, that the flaws in our methods are highlighted in a situation when we need them to work the most. Thus, it was not until the migration crisis of 2015 that the EU started to see an error in the way it has approached refugees, which ultimately started to hinder the management of the crisis itself.

3. IMMIGRATION IN EUROPE SINCE 2015

In the first half of the XX century, Europe was the provider of migrants, not the recipient. Throughout the years, during the 1960s and 1970s as the EU and the states themselves grew and became more prosperous, Europe became a more appealing destination for migrants. As follows, the number of migrants and among them, the number of asylum seekers started to grow.

The first time that an anomaly in the number of asylum seekers in Europe appeared, were the years after the fall of the Berlin Wall. By 1992, the number of asylum seekers had reached 697,000 which was highest it had been in decades. Most of them were first time applicants. After that, the number of asylum seekers fluctuated through the years but never reached as high of a point as it was in 1951 or 1992. Numbers started rising again in 2011, after the start of the Syrian conflict, reaching a high of 1,325,000 asylum seekers in 2015. In 2016, the number was 1,204,280, thus declining a bit (Eurostat Asylum statistics 2017). As of 20 September 2017, the number of asylum applicants in the EU was around 326,000, which is more than 50% decrease compared to the same time period in 2016. In 2015 and 2016 Germany, Greece and Italy received the biggest number of applicants. By 2016, Germany's share of processing EU's asylum applicants was 60%. Meanwhile, countries such as Sweden, Austria, Finland, Belgium, Denmark and the Netherlands reported a fall in asylum applications from 2015 to 2016. In 2017, Germany is still the biggest recipient of asylum applications, it is followed by Italy. In the third place is now France, while Greece has dropped to the fourth place. The UK stands in the fifth place. These five aforementioned countries hold the share of 80% of all EU asylum applications. In 2017, in the EU overall, the number of applications has fallen everywhere with Hungary reporting a decrease of 95% and Poland, Bulgaria and Germany receiving 80% fewer applications (Eurostat Asylum Quarterly Report 2017).

In 2015, the majority of applicants originated from Syria, more than 350,000 of them. In 2016, the number was a bit less – around 340,000. In the second place was Afghanistan, with around 175,000 applicants in 2015 and around 180,000 in 2016. In the third place was Iraq with 120,000 applicants in 2015 and 130,000 in 2016. In 2017, Syrian citizens are still in the first place when it comes to

applying for asylum in the EU. However, during the second quarter of 2017, Nigerians took the second place as an origin country, while Afghanistan dropped to the third place (Eurostat Asylum statistics 2017).

The numbers suggest that the crisis is receding, as there are fewer people crossing the EU borders with the intent of applying for asylum. Nevertheless, according to a 2017 report by the Pew Research Centre, more than half of the people, who applied for asylum between 2015 and 2016 in the EU, still have no idea whether their application will be accepted or rejected. 1,1 million people in Europe are still looking at an uncertain future. An important fact of these statistics is that more than 30% of the people who had no decision regarding their application, were appealing a previous rejection. It is an indicator of the intent of people to stay in Europe. Moreover, around 100,000 people whose applications for asylum were rejected, have disappeared within the EU, so it is very likely that they are staying illegally. Only around 75,000 applicants were deported from the EU, but in some cases, they were not sent to their home countries, but to states that border the EU, which means that they still had easy access to the EU. Approximately 885,000 people had their application approved between 2015 and 2016, which would make the overall EU acceptance rate around 40%. This means that the majority of applicants are actually yet to be dealt with and the work for the EU is far from over (Connor 2017).

In March 2016, the EU signed an *ad hoc* deal with Turkey to make the latter a buffer zone for the ongoing refugee crisis. The aim of the deal was for Turkey to secure its external borders to prevent refugees from leaving. In return, the EU agreed to provide Turkey with the financial aid of 6 billion Euros. As an incentive to maintain the deal, Turkey was promised visa-free travel for its citizens to Europe and restarting dialogue on Turkey's membership in the EU. There indeed was a drop in asylum applications after the deal entered into force. Human rights organisations such as Amnesty International and Human Rights Watch argued the deal was immoral and illegal (Greene; Kelemen 2016). Thus, it is unclear how much the EU policies and management have curtailed the number of asylum application compared to how many just have not reached the EU territory.

In addition, the status of an asylum seeker within the EU is temporary, meaning that the asylum seekers have no right to stay in Europe permanently, without going through a renewal process of their status. Their status is decided by many factors, a biggest of them being the political situation in their country of origin. If the EU deems the origin country of an asylum applicant to be safe enough to return to, the person under consideration is forced to leave the EU. This is directly linked to the Geneva Convention on Refugees, where it is clearly defined that if the circumstances, which

are the reason for a person to be considered as a refugee, have ceased to exist, the refugee will be able to return to their country of origin and will thus lose their refugee status. There are no instructions regarding the next steps taken in that situation. Most of the rulings of the Convention were written along these lines, without giving many details on a situation when a person loses his/her refugee status. The Convention was written with an assumption that the refugees would settle permanently somewhere outside of their home country. This is clearly not the assumption in Europe presently.

3.1. Migration and asylum regulations, policies and programmes in the EU

Protecting human rights and among them, the rights of asylum seekers are, according to Brouwer (2007, 57-83), essential for the legitimacy of the EU, as they are also one of the requirements of the EU membership through the Copenhagen criteria. The EU has evolved from cooperating in the legal framework for the sake of economic benefits to making cooperation in the field one of its priorities. In 1974, the European Court of Justice (ECJ) made a statement, regarding its decision on a human rights' case, that European Community's legal framework should be interpreted through international treaties protecting human rights. For this reason, most of the laws and policies for asylum-seeking refer to the Geneva Convention. In 1992, the importance of human rights in the European Community was constitutionalised with the Maastricht Treaty. The EU has made clear its commitment to protecting fundamental human rights. In the following chapter, documents that illustrate the approach the EU has taken towards asylum seekers and their rights, are examined. As most treaties have a point in them regarding asylum seeking, not all of them are discussed in this paper. The following agreements and programmes are chosen because they have had a significant impact on the handling of asylum procedures or their sole focus is on the same issue. The agreements are presented in a chronological order, so a clear development of the policies can be observed.

In the following subdivision of this paper, not all policies and documents that regulate migration and asylum applications in the EU are analysed. There are many other regulations that handle the subject, but they are either too new to be thoroughly analysed or they were never actually implemented. The following materials are chosen because they are either already established or tested and they represent a significant turning point in the EU policy-making.

3.1.1. The Dublin Regulation and its effect on burden sharing

The Dublin regulation, previously known as Dublin II Regulation and the Dublin Convention, is the EU law that determines which Member State of the EU is responsible for processing an asylum application. It declares that the state, through which an asylum seeker has first entered the territory of the EU, is the sole examiner of the asylum application. The Geneva Convention on Refugees and its 1967 Protocol are specifically mentioned in the act, emphasising, that all Member States must comply with the rulings of the Convention, especially with the rule of non-refoulement.

Under General Principles of the regulation, Article 3, paragraph 2, it is stated that a Member State can be asked to process an application by another Member State, even when they are not responsible for processing by the law of the Dublin Regulation. In theory, this would mean that it would be easier for the EU members to share the burden of the applications and it would also be easier to process family members together. However, a Member State that wishes to make another state responsible for the asylum application, must provide evidence and a statement from the asylum seeker, while the period for doing so should take up to 3 months (Council regulation No343/2003 art 3). In a situation, where there are thousands of applications coming in, within a short period of time, it is not feasible for a state to start a parallel procedure with the application processing, to determine which state is responsible for an asylum seeker, collect evidence and statements and then go through an up to 3-month waiting process to pass on its responsibility. Moreover, if the request for another state to process an application is submitted after three months starting from the date that the first application was lodged, the first state will be left with the responsibility. This clause again would expect a very fast application process, which is not the reality in the event of a crisis.

Each Member State also has the right to send an asylum seeker back to their home country, when it is in accordance with the state's national laws and the Convention. This poses a problem. The regulations in the Convention are at times vague and, as previously analysed, sometimes outdated. Each Member State has very different national legislation and its accordance with the Convention is occasionally lacking, which means that the reasons for sending an asylum seeker back to their country of origin or to a third country, vary greatly across the Member States. It is expected of states to construct their national laws in accordance with the Convention, but there is no higher body to oversee it. Nor are there any hard consequences for a state if it breaches any of the articles in the Convention. Thus, the fact that the Dublin Regulation is so heavily based on definitions and rules set out in the Convention, makes it very hard to comply with in the nowadays EU.

3.1.2. The Maastricht Treaty and common approach to asylum policy in the EU

The Treaty on the EU, also known as the Maastricht Treaty is best known for formally establishing the EU we know today. It laid down the basis for the common banking system, including a common currency, as well as common foreign and security policy. It set out the framework upon which to start building the Union. In the treaty, under Provisions on Cooperation in the Fields of Justice and Home Affairs, Article K.1 sets out asylum policy, rules governing the crossing of the external borders of the Member States and immigration policy, including immigration policy regarding non-EU nationals, as common interests of the Member States (Official Journal of the European Communities 1992).

Having a common approach towards asylum and migration policy could be described as a noble cause to integrate the Member States better, to deepen the ties and make the whole issue of migration policy more transparent throughout the union. However, Guiraudon (2000) has argued, that national policymakers prefer a supranational approach to asylum and immigration because it is much easier to apply restrictive policies. We assume that when something reaches international policy level, it has found full support back home. Nevertheless, we must consider the possibility that sometimes domestic actors sidestep the support building on the national level and head straight to the international level. In the national framework, there are different ministries, political movements, and migrant aid groups, whose opinions must be considered with. At the international level, it is easier to override someone on the national level, by asking them to sacrifice their beliefs for the greater good, without seeming selfish.

Guiraudon also argues that the common interest regarding the immigration policy in the EU originated from the liberalist ideas of providing immigrants equal treatment throughout the Union, but was rather a conglomerate of topics, which also included single market, a common currency and so on. As the unification was presented as a packaged deal, countries prioritised their interests and pursued them, rather than considering all the aspects together. For example, the UK was an avid supporter of the single market, but it was implied by the government of Margaret Thatcher and its policies that it had little to no intention to cooperate or comply on the topic of common migration policy (*Ibid*). Thatcher did not hide her dismay over the question of refugees and their resettlement in her country, as she was an avid supporter of strict policies. Furthermore, the question of immigration and refugees was one of the biggest pulling forces for Brexit. The realisation of Brexit is proof of how common approach to immigration and refugees was an

underdeveloped idea, which was added in as a good measure, rather than a thoroughly analysed policy.

The underlying problem of the Maastricht Treaty and the common approach towards asylum and immigration policy is the fact that this approach was implemented before asylum seekers and immigrants were labelled as a threat to national security rather than an inconvenience. The same argument can be used with the Geneva Convention on Refugees as well, as both treaties are built on liberalist ideas of intergovernmental cooperation. If a common approach were to be created now, more focus would be on the security aspect of the issue, rather the humanitarian one. Now, the forced common approach rather creates fear among the Member States than solidarity.

3.1.3. Tampere Council 1999 and the Seville Summit 2002 and shifting from internal to external asylum policy

In 1998, prior to the Tampere Council, a confidential strategy paper regarding refugee and asylum policy, was leaked. The paper was a collection of proposals by Austria, who held the EU Presidency at that time. The paper was very critical and shocked the international community. Many of the suggestions the paper offered contradicted the international standards in place for refugee protection. For example, it was stated that the Geneva Convention promotes permanent resettlement for the host country, even when a refugee has an opportunity later in time to return to their home country. An argument was made that it should be internationally possible and acceptable to return refugees to their countries of origin when the opportunity arises. Moreover, the paper suggested approaching the management of refugee flows to be viewed more as a political offer by the host country, rather than a forced legal process (Baldaccini; Toner 2007, 1-22).

In October of 1999, Member States gathered to discuss the creation and development of an area of freedom, security, and justice, among them the topic on asylum and immigration. The Council gathered after the adaption of the Amsterdam Treaty, which rectified some flaws that were found in the Maastricht Treaty. The Tampere Council once again emphasised the importance of creating a common asylum and immigration policy. The commitment to the Geneva Convention on Refugees was also confirmed, among other relevant human rights related documents. It is interesting that the Council chose to highlight the Geneva Convention specifically, as a human rights document, not the Universal Declaration of Human Rights, which the Convention is built on. This indicates the Council's focus on the asylum policy and regulating immigration specifically (Tampere European Council Presidency Conclusions 1999).

At Seville, Heads of Government started to focus more on external refugee policies. A proposal was made to start reducing development aid to countries that failed to cooperate with the EU regarding refugee flows. Thus, the focus started shifting from internal policies to external policies. The states started to recognise that for the refugee and immigration policies to work, they would have to expand their activities outside the EU borders. Work also started on minimum standards for return procedures (Baldaccini 2007).

The Seville Summit also expanded the concept of a safe third country, which is considered safe to send refugees from the EU, without putting the refugees in danger. Another concept is a safe country of origin. It allows categorising countries based on the EU's perception of how safe they are and whether accepting them would pose a threat to the Member States' national security. This directly contradicts the Geneva Convention's Article 3 of non-discrimination based on the country of origin (Costello 2006).

The Tampere and Seville Programmes are turning points for the EU refugee policies. Up until Tampere, the Member States were focused on creating a common recognition and admission framework for refugees. After Tampere, the European Community started focusing more on managing refugees before they reached the EU borders. The international community started to recognise the need to address the root causes of the refugee flows, a concept that was not present in the Geneva Convention.

3.1.4. Frontex and the Schengen Area as tools for deterring refugees

Since the Schengen Agreement entered into force in 1995, which revoked passport checks within internal borders of the EU, the Member States felt the need to counterbalance the freedom the agreement provided with increased security. After the Treaty of Amsterdam came into force in 1999, which incorporated the Schengen Area into the EU law, the European Council on Justice and Home Affairs has worked towards increasing security on the external borders of the Union. In 2004, the European Agency for the Management of the Operational Cooperation at the External Borders of the Member States of the European Union, also known as Frontex, was created. In 2016, a regulation was passed that established European Border and Coast Guard Agency, which essentially extended the previous organisations' mandate with a few improvements.

The first proposal of the Commission was to allow the new Frontex to interfere with national border patrol if it is deemed to be ineffective. The proposal was denied as the Member States wished to preserve their sovereignty in that area. The biggest change was the re-establishment of

the internal borders if a state fails to control its borders and migration. As the first organisation established in 2004, so did its successor in 2016 confirm its commitment to protect the rights of asylum seekers established in Universal Declaration of Human Rights and the Geneva Convention. Still, the 2017 draft budget for Frontex almost doubled compared to 2016, while European Asylum Support Office, an organisation dealing exclusively with asylum applications, received almost less than a half of the budget of Frontex (Segura 2016). While searching for articles handling the actions of Frontex, an interesting pattern occurred. Frontex and national coast guards were the main focus of articles that discussed the subject of refugee flow and its handling. However, organisations such as Refugee Council, European Asylum Support Office and national units of the Red Cross, who are aiding asylum seekers, were almost never mentioned aside from the use of statistics.

As of October 2017, 2,806 people are presumed dead or missing while crossing the Mediterranean while trying to reach Europe. In 2016, the number was 5,096 and, in 2015, it was 3,771. In 2015, over a million refugees used the route over the Mediterranean to apply for asylum in the EU. By 2016, the number had dropped to around 350,000 (Mediterranean Situation 2017). Italy and Greece have been the main recipients of these sea arrivals. As the boats are often overcrowded and not built for long journeys, they capsize. Italian and Greek coast guards, along with some NGOs have led rescue operations to save refugees on the open sea. When the crisis in Syria deepened and the number of arrivals started increasing daily, other Member States started pressuring Italy and Greece to decrease the number of people arriving to the EU by boat. Several NGOs, such as Médecins Sans Frontières (MSF) came under fire by right-wing politicians for cooperating with human smugglers. A report by Frontex stated that rescue missions near the Libyan coast were helping human smugglers to get people across the sea with minimum costs by using the rescue operations as means of transportation. The MSF operations manager of migration even went as far as to question whether the EU's resistance towards sea rescue operations was a cruel way to deter the migration flow (Dearden 2017).

Free movement of people and protecting human rights are one of the pillars of the EU and the basis of the Unions legitimacy. However, in February of 2016, an anonymous EU official leaked documents to the press. One of the most controversial proposals in the documents was to temporarily suspend the Schengen Agreement and restore passport checks on the internal borders of the EU. The reason for this was the inability of Greece to control its borders and the refugees crossing them (Antenore 2016). As of now, the Schengen Agreement still stands. However, France, Germany, Belgium, Luxembourg, Austria, Denmark, and Sweden have all resumed border

checks to different extents, most of them lasting until November of 2017. It is curious that three of the states that have re-established security checks in fear of its national security are not severely affected by the refugee influx. In countries such as Estonia and Lithuania, who received a combined number of 500 asylum applications in 2015, over half of the population would be willing to give up the Schengen Agreement to protect themselves from the threat of refugees (The Future of Schengen 2017). As the deadline of 11 November for ending passport checks at the border draws near, some countries are still opposed to abolishing them, regardless of the significant decrease in asylum applications. As of 25 November 2017, no official statement has been made on whether the passport checks at the borders will be ended. In August of 2017, Angela Merkel promised to apply for an extension of the border controls beyond November (Merkel calls for extension... 2017). In October, the Swedish Prime Minister Stefan Lofven stated the border checks to be a necessary evil, as the EU does not have a functioning migration policy (Kirby 2017). It seems that some Member States are not willing to give up one of the few security measures they have against refugees.

3.1.5. UNHCR: Convention Plus Programme of 2005, a failed attempt at reforming the Refugee Convention

The Convention Plus was a programme initiated by the UNHCR back in 2002 to create a normative legal framework for refugee problems. Even though it was not only EU-oriented, it was still significant for the EU policies. According to an official UNHCR progress report, the programme would unite cash donors, host states, states of origin and other involved parties. The focal point of the programme was creating a framework to resolve refugee crises, which need multilateral support (Progress Report: Convention Plus 2005). Zieck (2009) explains further that the attention was aimed at burden and responsibility sharing – one of the main problems in the EU now. The idea was to create two kinds of documents, which would both be legally binding. The first would be generic regulations that broadly describe legal processes. The other regulations would be case-specific, meaning they have concrete standards that would be legally binding only to the specific parties they were created for.

The programme ended in 2005, without creating any generic or case-specific agreements. The Convention Plus did not achieve any of the objectives it had set out to reach. The notion of case-specific agreements was abandoned, as they were too unfamiliar, even though similar agreements such as CIREFCA 1989 had been drawn up for refugee disputes in Latin America. Instead, the focus went from refugee-specific legal frameworks to regulations regarding development aid and

decreasing poverty. Zieck stated that the main weakness of the programme was that it intended to build on the Geneva Convention and its 1967 Protocol. The agreements that were drawn up just highlighted and established already existing responsibilities, when it should have focused on burden-sharing. Moreover, Zieck brings out that there is no notion of burden-sharing in the original Convention. The original document only acknowledges that some countries might carry a heavier burden with a bigger influx of refugees, but it encourages international solidarity among the states (*Ibid*). Thus, the idea to build on something that does not exist in the original document was set to fail from the beginning. The failure of the Convention Plus also indicates that there are some more fundamental problems with the original Convention that need to be addressed first before trying to build on it. Another assumption from the failure of the programme would be that states do not want to be legally bound to take responsibility for a refugee crisis out of pure solidarity.

4. DISCUSSION: COMPARISON OF THE CRISES

This chapter of the paper will briefly compare the two migration waves of Europe and their effect on modern asylum policy in the EU. As some of the analysis has been conducted in the previous chapters, the aim of this chapter is to once again examine the two crises, this time side by side to give a more wholesome understanding of the differences.

Many circumstances that influence asylum policy were very different during the two migration flows. Even though each element taken separately might not appear to be as important, then combining all of them illustrates how different the two situations were and how inadequate it is to use analogous approach for both of them. The objective of this chapter is not to take apart each element previously analysed in the paper, but to bring them all together, create clusters and briefly analyse these clusters and explain their effect on the current EU policies to asylum seeking.

4.1. Differences in number of refugees and net migration

One of the differences between the two migration waves in Europe was in the fact that after WW2, Europe's net migration was negative. Those, who migrated within or into Europe, were either Europeans themselves or people from the former colonies. Thus they had a strong claim for a right to permanently resettle in Europe. In 2016, the EU's net migration was positive, around 2,5 people per 1000 were emigrating to Member States (Index Mundi 2017). In the 1950s, people were rather leaving Europe than arriving.

Comparing the statistics for refugees back in the 1950s and from 2015 is somewhat difficult as the administration process and data are collected and saved quite differently. However, it is still worth to examine them as it will give a better overview of the two situations. In the end of 1951, UNHCR reported around 700,000 people of concern in Europe. Some less official sources assumed the number to be around 10 million. This is due to the newness of the Refugee Convention and the concept of a refugee. Many people leaving or arriving in Europe would have been considered to be a refugee in the modern sense, but were seen as migrants at the time.

By 2017, it is estimated that there are more than a million refugees on the territory of the EU. Less than half of them have been granted the refugee status. Thus, most of them are still waiting for a decision whether they will be given asylum or will be held accountable for illegally entering the EU. The number of refugees in the EU in 2017 is much smaller than the number of *de facto* refugees in 1950s. It would be common sense to expect the legal framework, in this case, the Refugee Convention, to take into consideration the big discrepancies in the number of people affected. An alternative would be to create a document that would fill this gap, which should be the responsibility of the EU in this particular case. It seems that neither proposal can be realised before the current crisis is resolved. Yet, it appears that the current crisis would be best managed when the legislation, either on the Refugee Convention or the EU's own side would be reformed.

4.2. Political environment and role of the UNHCR

When comparing the political environment of 1950s Europe and Europe of the XX century, there are two major changes that have occurred since then. One of them is the end of a polarised world, which completely changed the ideological battle lines and power distribution in the world. The other is the EU, a non-conventional political actor, which is dominating Europe. These drastic changes have not been accounted for in the Convention. The Convention was drawn in a bipolar world, described by the East-West dichotomy. Even though not created entirely on political ideologies at that time, it is certain that the emerging Cold War had an effect on the Convention's regulations. Due to the creation, expansion, and evolvement of the EU, its Member States are closely intertwined, which means that actions of one member can affect the union as a whole, especially when it comes to migration flows. The Member States need more precise and resolute policies to ensure solidarity among them regarding asylum seekers. This could either mean an additional protocol for the Convention or a completely independent treaty for the EU. It must also be taken into consideration, that during and after WW2, Europe had been the heart of the conflict and its aftermath, thus it had a direct responsibility to deal with its consequences, refugees among them. Now, the conflicts that generate the refugee flows are not within Europe itself, thus the European states have less incentive to aid the arriving refugees. This argument is not meant to undermine the importance of solidarity and the responsibility to provide humanitarian aid to those who need it. It is rather to argue that after WW2, European states had much more to gain from resolving the migration crisis than they do now.

Support for resettlement policies in the 1950s and opposition to it now has to be understood in two different contexts. In the 1950s, when the world was recovering from the war, the resettlement provided a quick, yet permanent solution for the refugee problem. Now, Europe needs a quick, yet temporary solution for the same problem, but with different magnitudes. Permanent resettlement is not favoured by the Member States of the EU and an argument in favour of this is provided by the Refugee Convention itself. It gives the host state a right to send back a refugee to their state of origin if it has been proved that the returnee would face no threat to their life. In the context of the Convention, this rule is an additional provision, rather than the main plan. There is hope that the conflicts in the Middle East would be solved, so the refugees could return home. However, this also creates a situation, where the receiving state has no strong incentive to invest in people, who are staying in a country temporarily. Neither is the person, who has been granted asylum, ardent on building up a life and assimilating to a society, where they may only be for a limited time. This creates resentment to submit to either sides' requirements. Furthermore, the rise of extreme right-wing politics in Europe can, according to Black (2003) be seen as the overall dissatisfaction with the application of the Refugee Convention and the inefficient policies.

The function of the UNHCR has also changed in the past 60 years, due to the political shifts in Europe. In the 1950s, UNHCR was the only entity with the capacity and resources to solve the migration crisis in Europe. It was the result of merging many organisations with the same objectives, thus making it more equipped and comprehensive than any national government at that time. The states partly transferred the responsibility of resolving the crisis to a supranational body to focus on re-establishing order within their own borders. After the Maastricht Treaty and the creation of the common approach towards migration and asylum, this role has been transferred to the EU and the UNHCR's role has been reduced to a bystander rather than the organiser. Now, with the migration crisis of 2015, we see a tendency of the Member States to require and expect more sovereignty in the matters of migration and asylum seeking. The EU's inability and the Member States reluctance to legally tie themselves to a treaty that would ensure burden-sharing and equal responsibility has greatly hindered the management of the migration crisis. However, it has become clear that the Refugee Convention itself does not have the capacity to account for the new problems arising in the modern multipolar world. Nor has the UNHCR proved its role as the guardian of the Convention by pressuring the EU's Member States to comply with it.

4.3. The Geneva Convention Relating to the Status of Refugees 1951 and the EU's external refugee policy

As established by analysis of regulations and policies regarding asylum seekers in the previous chapter, it has become evident, that the aim of these documents is inconsistent with the objective of the Refugee Convention. The Dublin Regulation and establishment of a common approach to migration and asylum policy by the Maastricht Treaty indicated that the Member States wish to supplement the Refugee Convention with their own regulations.

The Dublin Regulation's objective is to regulate application processing in the Member States in a fair way by eliminating the question of which state should legally be responsible for processing an application. However, in a crisis, this would put the most pressure on the Member States that establish the EU's external borders, meaning that it would almost be impossible to pressure internal states of the EU to take on any asylum applications. Thus, the Dublin Regulation unintentionally impedes burden-sharing within the EU. The fact, that the Refugee Convention does not legally bind any states to share the burden, further deepens the problem. As argued before, the Maastricht Treaty's weakness regarding asylum policy is the fact that it was a broad treaty, which established the main pillars of the EU. The importance of common migration and asylum policy was downplayed by the presence of other important topics such as common currency and joining criteria for future members. Furthermore, no notable progress has been made in the common approach to asylum policies. This can be because there have been more important issues to address first or because the Member States do not wish to integrate themselves on this topic.

The Dublin Regulation and the Maastricht Treaty were quite rudimentary in their handling of asylum policy. Arguably, some progress was made with the Tampere Council and the Seville Summit. The importance of common approach was again emphasised, but in a different context. With the leaking of the Austrian Presidency papers, it became evident that some countries do not fully agree with the Refugee Convention's regulations, especially with the non-refoulement clause. It seems to be a turning point for the Member States from helping the refugees internally, within the EU, to moving their focus to external policy, before the refugees reach the EU's borders. With the Seville Summit, Heads of State made clear their intentions for focusing on external policies to manage refugee flows. The main drawback here is that there is no such notion of external policies

in the Refugee Convention. Thus, there is no international legal basis for external policy-making in that area. Addressing the root cause of refugee flows is seen as providing humanitarian aid and is not legally binding.

The actions of Frontex and scepticism of the Schengen Area show the combative standpoint of the Member States towards asylum seekers. Before the events in Syria in 2014, the question of refugees was not as urgent as it came to be in 2015. The fast development of the crisis and large numbers of refugees quickly highlighted the shortcomings of the EU's refugee policies. Rather than reforming or developing the policies, the EU states chose to establish countermeasures, such as Frontex, to block the refugees from reaching the EU's territory. Additionally, rather than working on the issues collectively, states started to distance themselves from their responsibilities and accusing other states of not meeting their responsibilities. In this point, it can be argued that the lack of solidarity among the Member States is not connected to the Refugee Convention. On the other hand, the states' dissatisfaction with the Refugee Convention and its compatibility with the reality can be the reason for their retreat.

4.4. Future the Geneva Convention Relating to the Status of Refugees 1951 and its 1967 Protocol

As the previous chapters have emphasised, the EU's asylum and migration policies and their involvement are controversial to the human-rights approach Europe claims to support. The failure of the Convention Plus Programme showed the reluctance of the signature states to make adjustments to the Convention to favour the asylum seekers. During the Austrian presidency of the EU, a strategic paper on immigration and asylum policy was published. The Geneva Convention was found to be somewhat unsuitable for dealing with asylum problems already existing. The paper also challenged the European Commission for not dealing with burden-sharing between EU Member States in crisis situations. The Convention was called to be reformed to account for developments since the first implementation of the treaty (Strategy Paper...1998).

Ferracioli (2014, 123-144) explains that it is highly unlikely for the Refugee Convention to be reformed because it seems that states would now favour more restrictive regulations and would narrow the criteria of people protected by it. States have no incentive to take on more obligations to admit and aid refugees. Even though states feel morally obligated to assist refugees, they do not wish to do it at a high cost. Thus, reforming such a sensitive document in a political environment that does not favour the fundamental beliefs the document conveys would be ignorant. However,

Ferracioli acknowledges, that eventual legal reform of the Convention is needed. She also describes three objectives she believes are fundamental to the new Convention and also highlights the shortcomings of the old one. First, the criteria for qualifying as a refugee are to be inclusive, which would also include a new definition for a refugee. A refugee is someone who cannot protect their fundamental rights without migrating. Secondly, a state's legal responsibility should be both to refugees and its citizens, meaning that a state should have the right to refuse to admit new refugees if it means irrational costs to its own people. Finally, she emphasised the need to identify whether a refugee can be helped without migration in their home country (Ferracioli 2014).

Phillip Cole, an expert on refugee and migration at the University of the West of England, believes a new convention is needed. The contemporary conception of a refugee, as someone who is fleeing violence, is not actually the original definition of a refugee. A person was to be directly targeted to be considered a refugee. Most people claiming the need for asylum are trying to escape violence that is not directed at them, which makes them unfit for the official definition of a refugee. Persecution due to sexual orientation is also not covered by the Convention, even though some states recognise it as a legitimate reason for asylum (Would a new UN Convention help refugees? 2016)

However, Cathryn Costello and Guy Goodwin-Gill, both professors in Refugee Law at Oxford University, argue that there is no need for a new treaty. Costello believes it is rather a question of burden-sharing and solidarity which needs to be focused on. The international community has worked together to resolve similar crises. She describes the case of 1956 Hungary, where 200,000 people fled the country and were relocated in a few months. Goodwin-Gill argues that the danger of starting a new convention is losing everything that has been achieved so far. The solution might be in informal agreements between states to agree on burden-sharing, rather than binding them together legally (Would a new UN Convention help refugees? 2016).

There is no doubt of fact that there is a lack of solidarity in the international community when it comes to admitting refugees, especially in the current European migration and refugee crisis. Since the Convention does not expand on the topic of burden-sharing other than requesting states to support each other, it should be the responsibility of the UNHCR to pressure states. However, the task is taken over by other human rights' organisations. Amnesty International started a campaign to bring awareness to the EU's refugee crisis and to pressure the EU leaders into addressing the problem more efficiently. Human Rights Watch issued a statement that the EU should maintain their rescue missions on the Mediterranean and ensure equal treatment to all refugees in its

territory. UNHCR has issued reports describing the reality in Europe and highlighting shortcomings in the process. It has acknowledged, that there are problems in the EU with handling the crisis at hand, but there has been no solid action taken to urge the EU and its members to change their ways. Nevertheless, it is the obligation of the UNHCR, as the official guardian of the Convention to ensure its correct and equal enforcement.

CONCLUSION

As the world population is increasing at a rapid speed, refugee migration needs a more permanent and advanced solution than the one offered by the Refugee Convention. It is becoming a constant responsibility of the international community to ensure a just and efficient management of refugees across all regions of the world, including the developed ones. As illustrated throughout this paper, the EU and its Member States seem to be creating and supporting policies that are not consistent with the general approach supported by the Refugee Convention. This had led many scholars to believe that an adjustment for current policies is needed. This paper was to argue that the Refugee Convention in itself needs reforming, as the overall ideology and methods of the Convention are outdated and, to a greater extent, no longer comply with the reality. The Convention is set out to protect the rights of the refugees, in which it is successful. However, it has failed to regulate and ensure its application in the signatory states. Evidently, the EU also needs to re-evaluate its policies and their consistency with the Refugee Convention's values.

The current paper has a very broad approach to the causes of the Refugee Convention's failure for providing tools to manage the crisis. In the future, deeper analysis could be conducted on, for example, the different political ideologies in the 1950s and in modern Europe, with a focus on the rise of right-wing politics. Another option would be to debate whether a new treaty should be drawn up for the protection of the refugees or it would be better to continue with the original one. A more fundamental question would be whether the Member States should strive towards a common approach to irregular migration or would it be more effective to increase the states' autonomy in that area.

A general agreement stands that the EU has not handled the refugee crisis appropriately enough. Opinions on who is responsible for this outcome vary greatly. The argument for this research paper is not that the Refugee Convention is the sole culprit for the mishandling of the crisis. It has rather tried to justify the need to examine the Refugee Convention in more detail and analyse its effect on the management of the current crisis. For doing this, different clusters were created and compared for the post-WW2 and the 2015 European migration crisis. Analysing them, first

separately and then side by side, has created two comparable frameworks, which in return has enabled the paper to draw conclusions.

The first cluster to be compared were the official statistics of the two crises. The number of people concerned in the post-WW2 crisis was much greater than the number of people involved in the EU refugee crisis. Another big difference was the net migration of Europe in the two situations. In the first case, Europe was experiencing emigration, compared to nowadays EU, which is a destination for many immigrants, among them refugees. The political and social environment of Europe in the 1950s was also reflected in the Refugee Convention, which was aimed at solving the problem of displaced people and irregular migration in Europe. The only similarity in the two cases of migration in Europe was the fact that a large number of people were crossing the borders of European states. It is odd to expect a legal framework created for a specific situation to work in the same way when employed in a completely different environment.

The next cluster to be analysed was the political environment of the two crises. The first migration crisis took place in a state of chaos for Europe. Alongside dealing with displaced people and refugees, the governments of Europe, some of them newly established, needed to provide basic securities for their citizens, alongside refugees. The most efficient way to resolve the crisis was to give the task to a supranational body, such as the UN and UNHCR, where states, who were not directly involved in the migration crisis, could provide aid as well. Now, the leading role in resolving the current crisis has been given to the EU itself. Even though also a supranational body, the EU is much more complex in its policies, as its areas of interest expand further and deeper than the UN's. It should also be the responsibility of the UNHCR, as the guardian of the Refugee Convention, to oversee its correct implementation. Yet, it seems that the task of safeguarding refugees and their rights has been overtaken by other human rights organisations, while the UNHCR has remained relatively neutral about the handling of the crisis. These shifts in the political surroundings are not accounted for in the Refugee Convention and thus have hindered the management of the current crisis.

The last to be compared were the internal and external methods used at different times. In the 1950s, the only way to solve the crisis was to use internal methods, such as regulating refugee's rights when they had already crossed a host state's borders. In fact, according to the Refugee Convention, the only way for a person seeking asylum, to obtain an official refugee status, is to leave its home country. A host country is only obligated to administer a person and provide aid when the person has crossed its border. This was a logical clause for the Refugee Convention, as

the people of concern did not arrive in Europe, but were already present. Now, the Member States are trying to find ways to deter refugees from crossing their borders. As an alternative, the notion of a safe third country was introduced, which allows Member States to send people to a state outside of the EU, where asylum seekers' applications are reviewed. This allows the potential host state to assess an asylum application without the additional pressure of also guarding and providing aid for the applicant. In case an application is rejected, the EU state would not have to extradite the person themselves. The best example for this would be the EU's deal with Turkey, which is often frowned upon by the international community. It would seem, that this deal contradicts the general idea of the Refugee Convention, which assumes for the host state to accommodate asylum seekers themselves. It seems that the EU-Turkey deal did bring some relief to the crisis on the EU's side as the number of asylum applications started dropping. However, there is no clause in the Refugee Convention that would support such an arrangement, which is why it is difficult to prove the legality of such arrangement within the international legal framework. Therefore, the agreement with Turkey is considered to be questionable by the international community.

The main fear of the EU Member States seems to be coming from the assumption that the refugees, whether their justification for seeking refuge is well-founded or not, would rather illegally enter the country and remain undocumented than follow the legal process of becoming a refugee. Thus, the Member States try to discourage the asylum seekers by implementing strict requirements for their entering, which in return makes the asylum seekers more desperate in their methods for entering the EU. It seems to have created a never-ending circle of implementing increasingly restricting policies that force the refugees to find new ways to avoid and overcome them. The Refugee Convention was created based on the trigger points for the international community after the WW2. The triggers were negative net migration, loss of labour force, the ideological battle between the newly emerged world powers, as well as the liability of the international community to amend the outcome of WW2. Now, the trigger points are quite different for the EU. The constant threat of terrorism and fear of extremists recruiting among EU's own nationals led the Union to distrust refugees, who already have a sense of illegality around them. Fear of the unknown has led the Member States to isolate themselves from the crisis.

The handling of the 2015 crisis by the EU has highlighted the need to re-evaluate the EU's own policies regarding refugees. Most importantly, it has shown the distrust the Member States have towards the Refugee Convention. This is demonstrated by the creation of policies, whose compatibility with the Refugee Convention is questionable and sometimes outright controversial. The Convention has failed to encourage cooperation and solidarity among the states. It has not

accounted for a situation where there is a reluctance to share responsibility, the rules set out are too optimistic and have no regulation in that regard. The methods set out are largely internal, without giving the receiving states the responsibility to aid refugees, who have not crossed their borders. However, it would be an exaggeration to say that the Convention has proved to be unnecessary. It is the most important and extensive treaty in the world that protects the rights of refugees. It is the cornerstone for protecting basic human rights of people who are at their most vulnerable state. Now, it would be the time to bring it up to date with the modern world, while doing it with the care and respect it deserves. One of the strongest arguments for the need to reform the Convention is the fact that the EU, which highly values cooperation, solidarity, and liberalism, has failed to use the Convention to effectively handle a crisis.

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