UNIVERZA V LJUBLJANI

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Uporaba univerzalnih norm na regionalni ravni: primerjalna študija univerzalnega in režima Evropske unije za zaščito beguncev

Application of the universal norms at the regional level: a comparative study of the universal and European Union regimes for refugee protection

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Application of the universal norms at the regional level: a comparative study of the universal and European Union regimes for refugee protection

Concerns are raised about the increasingly restrictive tendencies of the regime for refugee protection that has been developing in the European Union (EU), which relies on the 1951 Convention relating to the Status of Refugees (1951 Convention) and the 1967 Protocol Relating to the Status of Refugees (1967 Protocol), as the foundations of the universal regime for refugee protection. In the attempt to address a possible contradiction between the universal norms and their implementation at the regional level, the thesis provides a comparative analysis of norms, but also of other elements of the two regimes for refugee protection, and in that way addresses its research question about the extent to which the EU followed universal principles and norms for refugee protection and its consequential reflection in the quality of refugees protection at the EU level. Within a theoretical framework of international regimes and other relevant theories, and with a reference to specific social, political and economic circumstances, the comparative analysis of both regimes reveals the extent to which the EU has followed universal norms, by showing that although the EU regime for refugee protection relies on the same fundamental norms as the universal regime for refugee protection, and even expands them, it also introduces a number of elements that limit degree and quality of refugee protection in the EU, and thereby endanger the foundational norms. These contradictories within the EU regime itself, further reveal the weakness of the regime, but also contradictory characteristics of its relationship with the universal regime.

Keywords: international regimes, international norms for refugee protection, the universal and European Union regimes for refugee protection; international regimes theories.

Uporaba univerzalnih norm na regionalni ravni: primerjalna študija univerzalnega in režima Evropske unije za zaščito beguncev

Vse bolj restriktivne težnje režima za zaščito beguncev, ki se razvija v Evropski uniji (EU) in ki se nanaša na Konvencijo o statusu beguncev iz leta 1951 (Konvencija 1951) in na Protokol o statusu beguncev iz leta 1967 (1967 Protokol) ter na temelje univerzalnega režima za zaščito beguncev dandanes vzbuja veliko zaskrbljenosti. V poskusu naslavljanja možnega nasprotovanja med univerzalnimi normami in njihovim izvajanjem na regionalni ravni magistrska naloga omogoča primerjalno analizo normativov ter drugih elementov teh dveh režimov za zaščito beguncev. Na ta način delo naslavlja raziskovalno vprašanje, v kolikšni meri je EU sledila univerzalnim načelom in normam za zaščito beguncev, ter posledično misel o kakovosti zaščite beguncev na ravni EU. V teoretičnem okviru mednarodnih režimov in drugih ustreznih teorij ter z omembo posebnih družbenih, političnih in gospodarskih okoliščin primerjalna analiza obeh režimov razkriva v kolikšni meri je EU upoštevala univerzalne norme, tako, da prikazuje, da čeprav se režim EU za zaščito beguncev zaupa istim temeljnim normam kot univerzalni režim za zaščito beguncev in jih celo razširja ter uvaja tudi številna pravila in standarde, ki omejujejo stopnjo in kakovost zaščite beguncev v EU in s tem ogrožajo temeljne norme. Ta nasprotovanja znotraj samega režima EU še bolj razkrivajo šibkost režima, pa tudi nasprotujoče značilnosti njegovega odnosa do univerzalnega režima za zaščito beguncev.

Ključne besede: mednarodni režimi, mednarodne norme za zaščito beguncev, univerzalni in režim EU za zaščito beguncev, teorije mednarodnih režimov.

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List of abbreviations

1951 Convention	1951 Convention relating to the Status of Refugees
1967 Protocol	1967 Protocol Relating to the Status of Refugees
Aznar Protocol	Protocol (No 24) on Asylum for Nationals of Member States of the European Union in the Consolidated Version of the TEU and the TFEU
CEAS	Common European Asylum System
CFR	Charter of Fundamental Rights of the European Union (2000)
DR II; DR III	Dublin Regulations (No 343/2003; No 604/2013)
EASO	European Asylum Support Office
ECRE	European Council on Refugees and Exiles
ERF	European Refugee Fund
IFA	Internal Flight Alternative
IOM	International Organization for Migration
IR	International Relations
PD	Procedures Directives
QD	Qualifications Directive
RCD	Receptions Directives
SEA	Single European Act (1987)
TEC	Treaty establishing the European Community (1957)
TEU	Treaty on European Union (1992)
TFEU	Treaty on the Functioning of the European Union (2007)
TPD	Directive on temporary protection (2001)
UNHCR	Office of the United Nations High Commissioner for Refugees

1 INTRODUCTION: INTERNATIONAL REFUGEE PROTECTION

The primary responsibility of states is for the human rights of their own citizens (Betts, 2015, p. 373), as well as for everyone in the territory of states. However, when that social contract fails, the international community is expected to provide "surrogate" protection (*ibid.*). In other words, states have a responsibility not to create refugees (Bauböck, 2018, p. 143). However, when they fail to meet this duty, by engaging in persecution or failing to protect their population from violence, famine and natural disasters, then other states have a "second-order responsibility" to admit the unprotected individuals as refugees who cannot be protected through external assistance (*ibid*.). Apart from the limited exception to the prohibition of *refoulement*, in cases when refugees are regarded as a danger to the country's security, states have a duty to offer, at the very least, temporary protection to refugees in their territories (Milner, 2016, p. 2). Therefore, according to international refugee law, the hosting and protection of refugees is the common responsibility of the entire international community (Balogh, 2015; Loprinzi, 2016).

Applying the widely acceptable definition of an international regime, created by Krasner (Krasner, 1982, p. 186), to the issue-area of refugees and refugee protection, it follows that the international refugee regime encompasses the principles, norms, rules, and decision-making procedures that govern states' responses and that establish acceptable behavior of states, as well as of other relevant actors, towards refugees (Betts, 2015, p. 363). The modern refugee regime emerged in the second half of the 20th century, as a reaction to the refugee crises of the interwar years and World War II (WWII) (International Justice Resource Center, 2008), when the European nations were initiating the development of international refugee law (McAdam, 2007, p. 255). Although characterized as being European in nature and origin (Van Selm, 2005, p. 6), the principles, norms and institutions radiated beyond Europe in the following decades (Durieux, 2013, p. 225). Therefore, the existence of the universal refugee protection regime within the United Nations (UN) framework and supervision is widely acknowledged (*ibid*.; Balogh, 2015, p. 2).

In general, norm-creating conventions serve as an instrument of the UN system for making international law (Weiner, 1998, p. 435). The 1951 Convention relating to the Status of

Refugees (1951 Convention) and the New York Protocol from 1967 (1967 Protocol),[1] together create the basis of international refugee law (Balogh, 2015, p. 3). Although the international community has changed significantly since the adoption of these two documents, the 1951 Convention remains an important guiding source regarding refugee protection (Betts, 2015, p. 373), as it has been endorsed by its 145 states parties (UN High Commissioner for Refugees, 2015).

Furthermore, the specificity of the universal refugee regime is also an international organization, namely the Office of the United Nations High Commissioner for Refugees (UNHCR) with the role of a supervisor and a guardian of the international refugee protection regime (Stavropoulou, 2008, p. 1). As such, the UNHCR has been entrusted to ensure that states meet their obligations towards refugees (Betts, 2015, p. 363). The UNHCR was created in 1950, mandated by the UN to lead and coordinate international action for the worldwide protection of refugees, as well as to oversee the implementation of the 1951 Convention (Loescher, 2009; Fiddian-Qasmiyeh *et al*., 2014, p. 217; UN High Commissioner for Refugees, n.d.-a). Its functions are defined in its Statute of 1950, but also in different Resolutions that have been adopted since then.[2] Since 2003, the UN's General Assembly extended the UNHCR's mandate to help until the refugee 'problem' is solved (Sundholm, n.d.). Importantly, international institutions established by the international community are norm-propagating institutions – i.e. they have a task to propagate norms laid down in the UN Charter and various conventions (Weiner, 1998, p. 435).[3] Accordingly, apart from providing assistance and protection to refugees, the UNHCR propagates the norms laid down in the 1951 Convention (*ibid*.).

UNHCR recognizes the importance of the European Union (EU) and its role in making asylum legislation and policies of its member states, and therefore works closely with a range of European institutions, with the aim of advocating a better protection within the region (UN High Commissioner for Refugees, n.d.-b). Since 1999, the EU has been developing its Common European Asylum System (CEAS) (European Commission, n.d.-a), which emerged after and in response to the universal refugee protection regime (Trauner, 2014, p. 8). In order to reduce disparities between EU member states, and thereby avoid refugee flows between the member states, the CEAS has established minimum standards for receiving and hosting refugees and asylum seekers (McAdam, 2007, p. 256), with a far-reaching mission to formulate a uniform

[1] Convention Relating to the Status of Refugees, signed 28 July 1951, in force since 22 April 1954; Protocol Relating to the Status of Refugees, signed 31 January 1967, in force since October 4, 1967.
[2] Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V).
[3] Charter of the United Nations, signed 26 June 1945, in force since 24 October 1945.

asylum policy across all member states (Sopariwalla, 2017, p. 135). The current legislative package for asylum encompasses the Receptions (RCD),[4] Qualifications (QD)[5] and Procedures Directives (PD)[6] as well as the Eurodac[7] and Dublin Regulations (DR II; DR III) (Trauner, 2016).[8] The Dublin System, i.e. the EU legislation that determines the responsibility of the member states for examining applications of asylum seekers, is often perceived as a 'cornerstone' of the CEAS (Guild *et al*., 2015, p. 8). Important to mention are also the Directive on temporary protection (TPD), although it is yet to be triggered, as well as the Council Directive on the right to family reunification.[9] Furthermore, since its creation in 2010, the European Asylum Support Office (EASO) has become one of the key players in the

[4] Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States, 6 February 2003, OJ L. 31/18–31/25; 6.2.2003, 2003/9/EC, in force since February 6, 2003, end of validity July 20, 2015; Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), 29 June 2013, OJ L. 180/96–105/32; 29.6.2013, 2013/33/EU; in force since July 19, 2013.

[5] Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, 30 September 2004, OJ L. 304/12–304/23; 30.9.2004, 2004/83/EC, in force since October 20, 2004, end of validity December 21, 2013; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, in force since January 2, 2012.

[6] Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 2 January 2006, OJ L 326; 13 December 2005, pp. 13–34, in force since January 2, 2006, end of validity July 20, 2015; Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60–180/95; 29.6.2013, 2013/32/EU, in force since July 19, 2013.

[7] Council Regulation (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, 11 December 2000, OJ L 316; 15 December 2000, pp. 1–10, in force since March 5, 2002, end of validity July 19, 2015; Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with 'Eurodac' data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), 29 June 2013, OJ L. 180/1–180/30; 29.6.2013, (EU)2003/86, in force since 20 July 2013.

[8] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 18 February 2003, OJ L. 50/1–50/10; 25.2.2003, (EC)No 343/2003, in force since March 17, 2003, end of validity July 18, 2013; Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31–180/59; 29.6.2013, (EU)No 604/2013, in force since July 19, 2013.

[9] Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001, OJ L.212/12–212/23; 7.8.2001, 2001/55/EC, in force since August 7, 2001; Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, 3 October 2003, OJ L. 251/12–251/18; 3.10.2003, 2003/86/EC, in force since October 3.

implementation and maintenance of the CEAS (European Council on Refugees and Exiles, 2017).[10]

During the so-called refugee crisis of 2015–2016 in particular, the EU was exposed to an unprecedented influx of refugees and migrants, when more than a million people, mostly fleeing the war in Syria and Afghanistan, as well as forced labour in Eritrea, arrived to Europe (Park, 2015; European Commission Directorate-General for Communication, 2017). The border-free Schengen zone, widely perceived as one of the key achievements of the EU, was starting to close down, when countries began to introduce controls at some of their internal European borders in order to stop immigration (Cenderowicz, 2016; Bossong and Etzold, 2018). This chaotic situation has revealed many shortcomings of the current asylum system in the EU, thus calling for its reform (Council of the European Union, 2018).

In May and July 2016, reform proposals were introduced regarding the Eurodac, EASO, the Regulation on establishing a common procedure for international protection, Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, and Directive laying down standards for the reception of applicants for international protection,[11] in order to address structural weaknesses in the EU's common asylum policy (Schneider and Graff, 2018). However, the reforms have been gridlocked, because of a lacking agreements between the Council and the European Parliament, particularly when it comes to the issues of solidarity between member states (Pollet, 2019).

After and in response to the universal refugee protection regime (Trauner, 2014, p. 8), the EU has applied universal norms for refugee protection and it has added its own policy tools for

[10] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, in force since June 18, 2010.

[11] Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast); COM(2016) 272 final 2016/0132 (COD); Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 COM/2016/0271 final - 2016/0131 (COD); Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU COM/2016/0467 final - 2016/0224 (COD); Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents COM/2016/0466 final - 2016/0223 (COD); Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) COM/2016/0465 final - 2016/0222 (COD).

refugee protection (Loprinzi, 2016, p. 11). In that way, the regime for refugee protection that the EU has developed, has shaped refugee protection in the EU, but it also tends to impact the international refugee protection and the construction of refugee identity in the world (Lambert, 2014, p. 9). In fact, the EU is largely perceived as a leading standard-setter in legal and normative terms (The Refugee Law Reader, 2015). Therefore, taking into account the normative power of Europe (Manners, 2002, p. 29), the regime for refugee protection of a major regional organization is "bound to exert considerable influence beyond Europe" (Lambert *et al*., 2013, p. 1).

However, it has been assessed that the emergence of unique regional regime for refugee protection indicates departures from the institutional and legal infrastructure built in the interwar and post–WWII period, and rises concerns about the deterioration of overall refugee protection (Lavenex and Uçarer, 2003, p. 16). The EU has created a refugee identity that is narrower in its scope than the refugee under the 1951 Convention (Lambert, 2014, p. 14), therefore blurring, marginalizing or ignoring the central character of a refugee (Durieux, 2013, p. 228),[12] and lowering rather than raising the level of protection provided by international standards (Lavenex and Uçarer, 2003, p. 49). In that sense, the UNHCR has warned that there is a pervasive danger related to the harmonization of European asylum policy, in a way that the sight of refugees' need for protection may be lost in the enforcement of restrictive measures (UN High Commissioner for Refugees, 2003, p. 171).

Therefore, on multiple grounds, it is important to analyze to what extent an integrated *sui generis* regional organization, characterized by its distinct principles, and supranational elements (Hlavac, 2010), managed to follow the universal principles and norms in the process of developing its own refugee regime at the regional level. Furthermore, by analyzing how the application of universal principles and norms for refugee protection played out in the EU, in comparison to the universal regime for refugee protection itself, it is important to find out how this particular application of the universal principles at the regional level, combined with the development of context specific policy tools, has reflected on the degree and quality of refugee protection.

[12] As Durieux (2013) notes, a refugee, as the central character of the universal regime based on the 1951 Convention, is however blurred, marginalized or ignored in the EU concept of asylum, such as through excluding the EU nationals, as well as focusing on processing rather than protection in the EU asylum law. In fact, the Dublin System of allocation focuses on the processing asylum applications rather than protecting asylum seekers, therefore hiding the human nature of an asylum seeker behind the application and procedure, which is the logic that has also been reinforced in the Procedures and Receptions Directives (*ibid*.).

In that sense, the research is guided by the following research question – To what extent has the EU managed to follow universal principles and norms for refugee protection and how is this reflected in the degree and quality of refugees protection at the EU level?

A comprehensive theoretical framework in Chapter 2,[13] derived from secondary sources, seeks to provide theoretical knowledge, necessary for the comparative analysis of two regimes for refugee protection, and later grasping possible contradictions between them. In that sense, the thesis informs a long-standing theoretical approach of International Relations (IR) and its firmly established subfield, the international regime theories (Hasenclever *et al*., 2000, p. 5), that also provide basic theoretical framework for the thesis within Subchapter 2.1.[14] Referring to the norms translation, the thesis also relies on a freshly emerged approach developed by Berger (2017) in Subchapter 2.2,[15] located inbetween theories of norm diffusion and norm localization.

Furthermore, contrary to the environment in which the refugee regime was established, we are witnessing the emergence of the refugee regime complex "in which different institutions overlap, exist in parallel to one another and are nested within one another in ways that shape States' responses towards refugees" (Betts, 2010. p. 13). In that sense, the regime complexity theory in Subchapter 2.3,[16] is useful for addressing the novel challenges that consequently arose within the field of refugee protection, and it will help to grasp the relationship between the two regimes for refugee protection, addressed in the thesis. The securitization theory (Buzan *et al*., 1998) in Subchapter 2.4,[17] serves for a better understanding of dynamics within a changing context, as related to the perception of migrants and refugees, within which the EU regime for refugee protection has been developing. Theories of international regimes, the norms translation approach, regime complexity theory, and securitization theories, are all explored through comprehensive analysis of a range of secondary sources, with a special attention to adapting the theoretical findings to the area of refugee protection in particular.

A contextualization of migration and refugee protection is provided in Chapter 3,[18] which is based on the analysis of secondary sources, while also analyzing relevant primary sources, in order to address socio-economic and political aspects that are important for understanding the migration and refugee protection, and analyzing developments within the two regimes, that are

[13] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.
[14] International regime theories.
[15] Norms translation.
[16] Regime complexity.
[17] The securitization debate.
[18] SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION.

relevant for their comparison. Within this Chapter, the universal and EU frameworks are more explicitly distinguished in Subchapter 3.1,[19] as the norms of refugee protection are going to be analyzed against these two different frameworks. Statistical findings, derived from Frontex reports, the database of EURODAC, Eurostat and relevant secondary sources, are used to numerically present trends and patterns in migration flows to the EU in Subchapter 3.2,[20] according to which a graph is created (Figure 3.1),[21] illustrating key peaks from 1992, when the first peak has occurred, to present.

Furthermore, a historical analysis provides periodization in Subchapter 3.2.1,[22] which defines different periods of migration flows and explains specific political and economic backgrounds, starting from the 1950s and 1960s, characterized by the bilateral labor migration agreements, followed by important developments within several periods up to the contemporary period, which is discussed in Subchapter 3.2.2,[23] and characterized by economic and financial crisis (Subchapter 3.2.2.1),[24] migration crisis (Subchapter 3.2.2.2),[25] deteriorating procedures and conditions (Subchapter 3.2.2.3),[26] and irregular migration (Subchapter 3.2.2.4).[27] In that sense, methodology on which Chapter 3 is based, involves historical analysis, with the aim of grasping manifest and latent events relevant for the understanding of migration and refugee protection,[28] available statistical analysis of migration flows, as well as the analysis of relevant primary and secondary sources.

The thesis tries to answer its research question through primarily normative perspective of regimes, by adopting the view according to which international regimes are institutions completely composed of norms, as all regime's elements (principles, norms, rules, and decision-making procedures) are norms in a wider sense (Gehring, 1994, p. 44). Accordingly, the thesis offers comparative analysis of the essential norms and other elements for refugee protection at both global and regional levels in Chapter 4,[29] derived from the UN and EU official documents, followed by the critical debate on them, as related to their effect on the degree and

[19] Understanding global & the European Union contexts.
[20] Knocking on Europe's door.
[21] Figure 3.1 Asylum applications in the European Union (total applications).
[22] Periodization.
[23] Contemporary context.
[24] Financial and economic crisis.
[25] Migration crisis.
[26] Deteriorating procedures and conditions.
[27] Irregular migration.
[28] Manifest events refer to basic information and well-known events, which contemporaries were aware of when they occurred, while latent events refer to events that contemporaries were not fully aware of when they happened, as they involve understanding of a bigger picture, as related to impacts or long cycles for example (Thies, 2002).
[29] ANALYZING THE ELEMENTS OF THE UNIVERSAL AND EUROPEAN UNION REGIMES FOR REFUGEE PROTECTION.

quality of refugee protection. In that sense, the analysis of the elements of the universal and EU's regimes for refugee protection, is based on the relevant primary sources (such as the Conventions, Protocols, Directives, Charters, Treaties, Regulations, Resolutions and Decisions) and relevant secondary sources that have discussed elements in question. In addition to analyzing relevant primary and secondary sources, methodology for comparative study of key elements of two regimes in Subchapter 4.1,[30] involves connecting and integrating the findings of the comparative study that points out to restrictive tendencies of the EU regime for refugee protection, with the key findings from the theoretical framework in Chapter 2,[31] as a way of building the arguments on regime weakness, inconsistency between regime's elements, contradictions between two regimes and changing nature of norms of refugee protection.

Firstly, relevant norms and other elements for refugee protection at the global level are introduced and analyzed in Subchapter 4.2,[32] which is followed by grasping normative basis of the EU in Subchapter 4.3,[33] in order to understand the special normative narrative of the EU, and after that introduction and analysis of the EU norms and other elements of refugee protection as compared to the universal ones in Subchapter 4.4.[34] In addition to essential norms for refugee protection at the global and EU levels, in Subchapter 4.5,[35] the thesis also adds to the analysis specific concepts, rules and principles, that are mainly characteristic of the EU regime for refugee protection. Aiming to grasp the comparative relationship between the aspects of universal and EU regimes for refugee protection and the possible contradictions of this relationship, the analysis focuses on their key similarities and differences, that further have implications on the degree and quality of refugee protection in the EU. In order to illustrate the analyzed elements, a Figure on the elements of the universal and EU regimes for refugee protection is created (Figure 4.1).[36]

The Key Observations in Chapter 5,[37] integrate theoretical framework, socio-economic and political context, with the comparative analysis, in order to form the concluding arguments and

[30] Methodology for analyzing the elements of the universal and European Union regimes for refugee protection.
[31] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.
[32] Universal norms and principles for refugee protection.
[33] Normative basis of the European Union.
[34] Application of universal norms and principles for refugee protection in the European Union.
[35] The European Union's specific norms, principles, concepts and rules for refugee protection.
[36] Figure 4.1 Fundamental and secondary elements of the universal and European Union regimes for refugee protection.
[37] KEY OBSERVATIONS ON THE EUROPEAN UNION REGIME FOR REFUGEE PROTECTION, AS RELATED TO THE UNIVERSAL FRAMEWORK.

lead to the Conclusion in Chapter 6.[38] It reflects on the key similarities, differences and contradictions between the two regimes for refugee protection, derived from the analysis of the elements within Chapter 4.[39] These findings are supported by theoretical arguments from the Chapter 2,[40] and as further explained in Subchapter 4.1,[41] which helps to make theoretically supported conclusions on the EU regime for refugee protection, as well as its relationship with the universal regime. In that way, profound analysis of developments of the elements in the two regimes for refugee protection, as well as their integration with theoretical arguments, provides the answers to the question *"*to what extent has the EU managed to follow universal principles and norms for refugee protection", while also answering the second part of the question "how is this reflected in the degree and quality of refugees protection at the EU level". The Key Observations are supported by two Figures, on the effects of elements of the EU regime for refugee protection (Figure 5.1),[42] as well as the Figure 5.2,[43] on the type of relationship of the EU regime of refugee protection and universal regime of refugee protection, and two Tables on elements of refugee protection regime in the EU (Tables 5.1 and 5.2),[44] both summarizing key findings from the analysis on norms and other elements of the EU regime for refugee protection, as compared to the universal regime.

Conclusion on the restrictive tendencies of the EU's regime for refugee protection in Chapter 6,[45] provides answers to the thesis research question. The question "to what extent has the EU managed to follow universal principles and norms for refugee protection and how is this reflected in the degree and quality of refugees protection at the EU level", may indicate to measuring the specific amount of the extent to which universal principles and norms for refugee protection are followed by the EU. However, as this is hardly possible, the answer demands pointing to a number of interrelated aspects: elements that have been reinforced and expended within the EU regime on the one hand, elements that have been narrowed in the EU regime on the other hand, introduction of elements that show restrictive tendencies of the EU regime, thus

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[38] CONCLUSION: RESTRICTIVE TENDENCIES OF THE EUROPEAN UNION REGIME FOR REFUGEE PROTECTION.
[39] ANALYZING THE ELEMENTS OF THE UNIVERSAL AND EUROPEAN UNION REGIMES FOR REFUGEE PROTECTION.
[40] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.
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posing a number of risks to refugee protection, elements that have conflicting consequences in practice, inconsistency and incoherence between the elements within the EU regime, contradictory aspects of the relationship between the universal and EU's regime and the EU regime potentially violating universal regime for refugee protection. In the end, the importance of abandoning the primarily migration-control perspective, and adopting rights-based approach towards refugee protection within the EU regime is stressed.

2 A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL

International refugee protection is a deeply complex issue that encompasses norms and their implementation, co-ordination among different actors, supervision of implementation, as well as competition between actors and the issue of context within which norms can be developed and within which they can be implemented. Such a complex set of issues requires a complex and comprehensive theoretical framework within which answers to specific research problems could be sought. The issue of comparison between two regimes for refugee protection, and answering if the EU's regime has consistently followed key elements within the universal regime on which it relies, thus requires a careful analysis of the existing theoretical knowledge regarding international regime theories, but also norms translation approach, regime complexity theory and the securitization theories.

2.1 International regime theories

International regimes are of a major interest to IR (Gehring, 1994, p. 15). International regime theories have developed in the late 1960s and early 1970s, within the criticism of realism, which was back than dominant in IR (Dowding, 2011, p. 560). In fact, international regimes emerged as a crucial element of the approach developed by Robert Keohane and Joseph Nye in 1977, namely the complex interdependence, which emphasized a pluralist perspective of power being dispersed among a number of different actors across different international issue areas, instead of being concentrated in the hands of a few major states (Verbeek, 2011, pp. 559–560). In this complex network, international regimes have the function of the governing structures regulating the interdependent relationships between the actors (*ibid*.).

International regime theories seek to define the regime in-between structure and organization, but neither as broad as international structure, nor as narrow as formal international organizations (Haggard and Simmons, 1987, p. 492). Moreover, in contrast to political realism, regime theories acknowledge the importance of norms in the decentralized international system (Gehring, 1994, p. 49). In fact, the debate on international regimes reintroduced norms and institutions as relevant subjects of analysis within the IR (*ibid*.). It has been further argued that the concept of international regimes refers to an attempt to overcome the dichotomy between

idealists, who believe in norms and institutions, and realists who deny their relevance in the international system (*ibid*.).

There are three distinguished approaches to international regimes, namely power-based realism, interest-based neo-liberalism and knowledge-based cognitivism (Gehring, 1994; Hasenclever *et al*., 1996, p. 178). The power-based approach is dealing with international regimes from the perspective of the distribution of power between the main actors, while the foundation, maintenance, change or abolishment of a regime is seen as conditioned by the most powerful actors and their readiness to comply (Dowding, 2011, p. 560).

Interest-based studies are described as the backbone of regime studies, contributing to the understanding of the effectiveness and continuity of regimes (*ibid*., pp. 560–561). Their focus is on long-term cooperation between the states that managed to maintain such a practice on the long-run (*ibid*.), while emphasizing the role that international regimes play in helping states realize common interests (Hasenclever *et al*., 1996, p. 183). In other words, at the center of attention are situations in which specific constellation of actors' interests determines that beneficial outcomes can be achieved only through institutionalized cooperation (Claes, 1999). Neoliberal or interest-based theories represent mainstream approach to analyzing international regimes, due to their ever-increasing influence (Hasenclever *et al*., 1996, pp. 178–179).

Furthermore, the knowledge-based approach acknowledges ability of states to learn from the effectiveness of a regime, and consequently, fundamentally change their preferences (Dowding, 2011, p. 561). Therefore, this approach offers an additional explanation of regimes' effectiveness and continuity, or their lack of (*ibid*.). In fact, the knowledge-based approach focuses on the preference formation of states, which differentiates it from two other approaches that take states' preferences as given and fixed (*ibid*.). Another important issue is that knowledge-based regime studies recognized the empowerment of new actors through regimes, such as nonstate actors, for example through inviting non-governmental organizations or intergovernmental organizations to conferences (*ibid*.).

Howsoever, regimes can be understood as "deliberately constructed, partial international orders on either a regional or global scale, which are intended to remove specific issue areas of international politics from the sphere of self-help behavior and", therefore, help states and other actors to cooperate (Hasenclever *et al*., 2000, p. 3). For the analysis that follows, the thesis relies on the most prominent definition of an international regime, which is given by Krasner: "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner, 1982,

p. 186). Furthermore, he defines principles as "beliefs of fact, causation, and rectitude", norms as "standards of behavior defined in terms of rights and obligations", rules as "specific prescriptions or proscriptions for action" and decision-making procedures as "prevailing practices for making and implementing collective choice" (*ibid*.). The conceptual richness of Krasner's definition has greatly contributed to its strength and was the reason why many scholars have defended the definition both on theoretical grounds and as a guide for empirical studies (Hasenclever *et al*., 1996, p. 180).

The key point, which is applicable in general way, is that regimes represent an embodiment of particular norms, principles, rules and procedures (Lawson, 1991, p. 4). According to Krasner, norms and principles are fundamental characteristics of regimes, while, on the contrary, rules and procedures are secondary to the norms and principles and therefore can change, provided that they stay consistent with the basic defining characteristics, i.e. the norms and principles (Krasner, 1983; Martin, 2014, p. 4). In other words, principles and norms are the heart of a regime (Goertz *et al*., 2003, pp. 18–19). Therefore, when it comes to regime change, changes in rules and decision-makings procedures represent changes within regimes, while the changes or abandonment of the principles and norms indicate the change of regimes (Lawson, 1991). However, it has been argued that boundary between the two elements, namely norms and rules, is to some extent arbitrary, which further reflects in arbitrary distinction between change within and of an international regime (Gehring, 1994, pp. 45–46). Also, incoherence between the regime's elements and inconsistency between the regime and actual behavior indicate regime weakening (Krasner, 1982, p. 189), which can also be a phase in regime change (Lawson, 1991, p. 4).

Three defining characteristics of an international regime are the international conventions and treaties, international organizations and models of interstate cooperation (Martin, 2014, p. 5). Firstly, through international conventions and treaties, states often establish the norms and principles to govern their behavior and their relationship with other states, but also the rights of individuals in relationship to state actors (*ibid*.). Secondly, the emergence of international organizations with related missions, such as migration-related missions, can be determined by the mandate within the international conventions, such as in the case of UNHCR, but can also occur when missions arise to meet specific needs, and over time develop a coherent program of activities, such as in the case of the International Organization for Migration (IOM) (*ibid*.). Thirdly, the models of interstate cooperation exist as mechanisms of coming to agreement about the norms, principles, rules and procedures, but also determine which other actors will matter

in the deliberations, including nongovernmental organizations, experts, the private sector and international organizations (*ibid*.).

According to widely used, aforementioned Krasner's definition, international regimes are institutions completely composed of norms (Gehring, 1994, p. 44). This conclusion comes from the view according to which all constituting components of international regimes (principles, norms, rules, and decision-making procedures) are norms in a wider sense, but with a different degree of specificity (*ibid*.). Indeed, there is a strong agreement among theorists that international regimes are systems of norms of different types (*ibid*). Therefore, considering that international regimes are perceived as more or less coherent normative systems, international regime theories imply a theory about norms (*ibid.*)

2.2 Norms translation

Norms are not isolated phenomena, as they tend to migrate through different contexts (Draude, 2017, p. 588). Social sciences usually describe this movement of norms from one socio-political context to another as a process of diffusion (Berger, 2017, p. 3). When it comes to the meaning and content of norms, they have been largely analyzed as stable, rigid or unchanging elements by IR scholars (Krook and True, 2012, p. 108; Berger and Esguerra, 2018, p. 11). This prevailing assumption has been challenged by different perspective, i.e. understanding of the complex changes in the content of norms, that take place when norms travel though different contexts (Berger and Esguerra, 2018, p. 11).

In the view of Berger (2017), when transnational norms travel between different contexts, they go through the process of translation. The central argument is that the meaning of norms changes as they move from one context to another (*ibid*.). In fact, Berger argues that when norms travel through contexts, a dual change occurs (*ibid*., p. 3). Firstly, the content of norms is changed and secondly, the socio-political dynamics within that context are altered (*ibid*.). Therefore, the translation perspective that Berger develops is the middle line of top-down and bottom-up approaches (*ibid*., p. 7). While top-down approaches rely on the static nature of norms, the bottom-up (localization) approaches only focus on changes that occur (*ibid*.). In that regards, they both neglect one of the crucial segments important for the analysis of norms and their movement (*ibid*.). On the other hand, translation perspective opens the new conceptual space (*ibid*.), a space for multidimensional interactions between universal norms and specific contexts.

However, while the theory of norm translation maintains that there is no such a thing as context-independent global universalism and that the international cannot be considered as universal but rather as only a particular context among many different contexts, which therefore cannot claim any primacy over any other context (*ibid*., p. 11), this is quite not the case with the universal regime for refugee protection based on 1951 Convention, existence of which has been widely acknowledged (Betts and Milner, 2019; Durieux, 2013). At the end of the day, the very basis of universal regime for refugee protection, the 1951 Convention, is binding on its 145 state parties, including all 28 EU member states (UN High Commissioner for Refugees, 2015).

2.3 Regime complexity

Contrary to the environment in which the refugee regime was established, we are witnessing the emergence of a refugee regime complex, "in which different institutions overlap, exist in parallel to one another and are nested within one another in ways that shape States' responses towards refugees" (Betts, 2010, p. 13). Increasingly interdependent and asymmetrical relations between the constellations of actors are characteristics of the international system, whose multilevel and multidimensional relationships make the system very complex (Freire, 2017, Abstract). Indeed, contemporary institutional proliferation influenced world politics, effects of which are both complementary and contradictory for international regimes (Betts, 2010, p. 13). These complex dynamics have posed new challenges to international refugee protection as well, thus creating a refugee regime complex in which the refugee regime overlaps with a range of other regimes (*ibid*., Abstract). The understanding of refugee regime complex relies on emerging literature in IR, which examines the regime complexity as the way in which two or more institutions intersect in terms of their scope and purpose (*ibid*., p. 13). The refugee regime complex, as illustrated by Betts, consists of the security regime, humanitarian regime, travel regime, human rights regime, labor migration regime and, of course, refugee regime having a central place in this complex (*ibid*., p. 22).

Creating complementary or contradictory implications for the regime, the institutions can intersect in three ways, they can be: nested (regional or issue-specific institutions may be part of wider multilateral framework), parallel (obligations in similar areas may or may not contradict one another) and overlapping (multiple institutions may have authority over the same issue) (*ibid*.). While nesting is a hierarchical relationship within an issue area, overlap is a nonhierarchical relation among regimes in multiple, otherwise separate issue areas, and parallelism refers to nonhierarchical relations among governance schemes working toward

more or less similar goals within a single issue area (Abbot and Snidal, 2006, p. 6). In fact, nesting refers to a situation where regional or issue-specific international institutions are part of multilateral framework, thus creating an effect of "Russian dolls" (Alter and Meunier, 2006, p. 3). Contrary to the situation of overlapping, when a conflict across agreements does not per se mean that one rule violates the other, when institutions are nested, "conflicting policies of the subsumed regime do constitute a violation of the more encompassing institution" (*ibid*., p. 4). However, it has been argued that due to the lack of hierarchy at the international level, "the nesting of international institutions creates a problem of overlapping jurisdictions with no hierarchy to resolve conflicts across regimes" (*ibid*., p. 6).

In the language of regime complexity theory, the EU has been perceived as "an institution increasingly nested within multilateral mechanisms" (*ibid*., Abstract). In addition to that, the EU itself has a nested nature, "in which every deal represents a complex bargain among states and European institutions made" (*ibid*., p. 7). Furthermore, it has been noted that it is possible to look at the CEAS as a regional system nested within the universal refugee regime (Lavenex and Uçarer, 2003, p. 16). In other words, the EU's efforts in asylum and refugee protection are nested in the broad global institutional framework (Uçarer, 2001, Abstract).

However, Durieux warns that representation of CEAS as a regional asylum system nested within the universal refugee regime can be misleading, as it misses the fact that member states did not consciously set out to create regional or supranational regional law (Durieux, 2013, pp. 226–227). In fact, the CEAS is part of a broader European integration project in which it was embedded, and therefore it has to be understood within the particular logic of European integration (*ibid*.). As Durieux notes, the CEAS, emerging as an afterthought and not as a primary motivation of the EU project, bears the legacy of integration efforts and the powerful logic underpinning these efforts (*ibid*., pp. 227–228). Therefore, the unique, gradually evolving supranational character of the EU (Goebel, 2013), adds additional layer in the interaction between the two regimes, i.e. the UN regime for refugee protection and the one of the EU. The unique context of the EU project, and its implications on refugee protection, are discussed within the Section 3.[46]

[46] SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION.

2.4 The securitization debate

Securitization is a stage in a spectrum of politicization, which ranges firstly from nonpoliticized, secondly through politicized to securitized as the final stage (Buzan *et al*., 1998, pp. 23–24). The first stage is out of state's interests, the second one is when the issue is politicized and becomes part of public policy, which includes government decisions and resource allocations, and the third, final one is securitization, when the issue is presented as an existential threat, and involves emergency measures and actions outside of the normal political procedure (*ibid*.). Furthermore, security has been described as a self-referential practice by the Copenhagen School (*ibid*.). Namely, it is not crucial if the issue is truly an existential threat in order to become securitized (*ibid*.). What is crucial instead is the presentation of the issue as an existential threat within the self-referential practice, i.e. a speech act capable of influencing decision-making, which is how an issue becomes a security one (*ibid*.; Santos, 2018, p. 229). In short, the Copenhagen School of Security Studies argues that securitization occurs when a political actor pushes an area of politics into the security field by using rhetoric of threat, with the aim of justifying the adoption of certain measures outside the formal and established procedures of politics (Karyotis, 2007, p. 3).

While the Copenhagen School has speech act approach, there are also sociological approach inspired by Foucault, and the inclusive security approach focused on human or common security (Fiddian-Qasmiyeh *et al*., 2014, p. 266). Sociological approach does not highlight the role of dramatic speeches as the Copenhagen School does, but instead explains securitization as a way of controlling population through government's bureaucratic procedures, surveillance and risk management (*ibid*., p. 267). While the Copenhagen School and sociological approach complement each other, both warning about adverse, exclusive, divisive and conflict-prone nature of securitization, the inclusive security approach offers the idea of positive securitization, associating the use of security language with increasing the sense of urgency, and therefore stronger cooperation and proactivity to resolve the causes of displacement (*ibid*.). All three approaches had significant influence on understanding the security dimensions of forced migration (*ibid*.).

Securitization debate is relevant for international regime theories, and for international regime for refugee protection in particular, as it has been noticed that there is a linkage between an increased securitization of migrants and refugees, and deterioration of the international refugee protection regime, based on 1951 Convention (*ibid*., p. 275). The international refugee protection regime is undermined in the name of security needs, as the migration becomes over-

securitized (Hammerstad, 2008, pp. 1–3). Similarly, it has been argued that securitization of refugees, or they construction as a threat, results in policies away from international refugee law (O'Driscoll, 2017, p. 2). Therefore, the securitization of refugees directly influences the way they are treated (*ibid*., p. 3).

Furthermore, as suggested within the theory of regime complexity, securitization of international travel regime and securitization of irregular migration, influenced the relationship between the travel regime and the refugee regime, leading to the increasing overlap between the two regimes, which significantly influenced the access to asylum channels (Betts, 2010, p. 25). This has been particularly evident in Europe, where new mechanisms of cooperation made it increasingly difficult for spontaneous arrival asylum-seekers to gain access to the territory in order to claim asylum (*ibid*.). In fact, the loophole is that the main legal and normative obligations of the refugee regime comes into effect only when an individual reaches the territory (jurisdiction) of the asylum State (*ibid*., p. 26). Therefore, the ability to control access to territory has allowed states to avoid obligations of the refugee regime (*ibid*.). For example, the EU border control agency, Frontex, has the mandate to intercept asylum seekers and migrants before they reach European shores and become able to make asylum claims (Fiddian-Qasmiyeh *et al*., 2014, pp. 222–223).

In the period after the WWII, migration was recognized as a useful tool for economic reconstruction of European economies, but following the oil crisis of 1973–1974 and the growth in unemployment rates, Western European governments started adopting more restrictive migration policies, while discursively constructing migration as a security threat, looking at migrants with a suspicion and fear (Karyotis, 2007, p. 3). Therefore, many studies have researched the security logic of EU policies on migration and asylum, serving as the legitimizing factor for adopting restrictive measures (*ibid*., Abstract).

The 9/11 terror attacks in the United States (US) in 2001 are perceived as a turning point in the Western security politics (Seilonen, 2016, p. 41), but also present the period when new debate has began in Europe, i.e. debate on minimum standards regarding the status, qualifications and reception conditions of asylum seekers, which has reflected in the greater emphasis on security, rather than human rights issues and obligations within the debate (d'Appollonia and Reich, 2008, p. 323). However, Baylis (2006, p. 18) argues that there is a crucial difference between the US and the EU, which is reflected in the fact that while in the US, the security threat posed by asylum seekers has been increasingly seen in the context of terrorism, in the EU, security and asylum are part of the context of migration, rather than terrorism, with a broader

understanding of security. In fact, the focus is on the threat that large scale migration is posing to European social, cultural and economic security and security from crime and criminal networks (*ibid*.). Therefore, asylum is not conceptualized as an aspect of war on terror, but rather within the context of migration policy, since the asylum legislation in the EU is largely focused on questions of coordination, harmonization and burden-sharing (*ibid*.).

In addition to that, the Eurodac database of asylum applicant fingerprints is intended to promote European security, in the context of overall effect of asylum seekers movements, and not security from terrorist attacks (*ibid*., p. 20). As stated by the European Commission in its annual report, Eurodac was established as an essential tool for a faster and efficient application of Dublin, as well as an indicator of the phenomenon of asylum shopping.[47] On the other hand, terrorism concerns are primarily addressed within a set of measures targeting specifically that phenomenon, rather than indirectly through the asylum system (*ibid*., p. 19). The perspective presented by Baylis makes the argument against the view that migration control policies have become securitized after the 9/11 and subsequent terror attacks (Seilonen, 2016, p. 42).

Looking at it the other way, Buonfino (2004, pp. 23–24) acknowledges that the border between security, terrorism, immigration and social fear has become very thin, as immigration has turned into one of the biggest security concerns of 21st century Europe. It has been noted that framing migration as security is associated with the decision of the Single European Act (SEA) to complete the internal market by 1992 and to realize the free movement of people (Karyotis, 2007, p. 4).[48] More precisely, the relaxing of internal borders emphasized the need to enhance security at external borders, with the free movement of people within the European Communities in parallel leading to increased attention to the movement of third-country nationals to the EU (*ibid*.). Therefore, deeper integration of the EU which brought free movement of EU citizens on an unprecedented scale, has been accompanied by increased securitization of migration (Nita *et al*., 2017, p. 21). In fact, in the EU, projects "Europe without borders" and "Fortress Europe" went together in package (*ibid*.). In the name of freedom of movement (Noll and Vedsted-Hansen, 1999, p. 362), which is the basic principle of the EU (McAdam, 2007, p. 272), internal borders are abolished at the expense of strengthening external borders (Noll and Vedsted-Hansen, 1999, p. 362). In that way, the EU is producing an

[47] Second annual report to the Council and the European Parliament on the activities of the EURODAC Central Unit, SEC(2005) 839, Commission staff working paper.
[48] Single European Act, signed February 1986, in force since July 1, 1987, O.J. L 169/1 (amending Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11).

"Orwellian paradox", i.e. integration is provided by exclusion, while freedom is achieved by control (*ibid*.).

It has been argued that the 1990 Convention Applying the Schengen Agreement of 1985 "directly connects immigration and asylum with terrorism, transnational crime and border control" (Talani, 2016, pp. 248–249), while allying the regulation of migration with the protection of internal security (Huysmans, 2000, p. 757). Huysmans (*ibid*., p. 760) explains the security continuum in terms of transferring the security dimension of terrorism, drug traffic and money-laundering to the area of migration. The argument is that migration is directly securitized by integrating migration policy into an internal security framework, while the negative politicization of immigrants, asylum-seekers and refugees connects migration to security-related problems such as crime and instability (Huysmans, 2006, p. 83). According to Huysmans (2000, p. 758), the securitization of migration in the EU is developed along three dimensions, namely internal security, cultural security and the crisis of the welfare state. Therefore, the 9/11 event only accelerated dynamics that were already rooted in the European internal security regime (Karyotis, 2007, pp. 12–13).

Huysmans (2000, p. 757) further emphasizes a clear difference between, on the one hand, framing immigrants, asylum seekers and refugees as security problem and, on the other hand, treating asylum as a human rights question. Similarly, Rudge (1989, p. 212) concludes already in 1989, in the overview of the European initiative on asylum, that the area of asylum is moving away from the traditional human rights and humanitarian field of policy-making, and is increasingly becoming a part of fora dealing with terrorism, drug trafficking and policing, as well as with the economic streamlining.

Nevertheless, it is important to emphasize that "the EU as well as its member states undertook through numerous sources of international law to respect and to protect human rights" (Lopes Da Cunha and Szlovik, 2015). In the context of relationship between the international human rights legal regime and the discourse of human security, it is essential to keep in mind that respect and protection of human rights is not a policy choice (Howard-Hassmann, 2012, p. 95). In other words, states are not entitled to choose which and whose rights to (not) protect or when to protect them, neither can they prioritize one right over another (*ibid*.). By the same logic, states may not use real or perceived security threats as an excuse to make such a selection (*ibid*.). As stated in the International Covenant on Civil and Political Rights (1966, Articles 4 and 7), during the state of emergency however, some human rights may be suspended, but this

is not the case for all of them, such as for the protection against torture, which may not be derogated from regardless of the situation.[49]

The Universal Declaration of Human Rights (1948, Article 13) defines the freedom of movement *inter alia* from one State to another (Lopes Da Cunha and Szlovik 2015, p. 10), stating that "everyone has the right to freedom of movement and residence within the borders of each state, and everyone has the right to leave any country, including his own, and to return to his country".[50] However, there are sources of international law that contains limitations to this right, such as the International Covenant on Civil and Political Rights (1966, Article 12) (*ibid*.), which establishes that:

> these rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

The fact that there is no common definition of national security, leaves space for States to develop their own interpretations, and even leads them to use all the sources (Da Chuna and Szlovik, 2015, p. 10). In that regards, it has been noted that there exists general asymmetry between the emigration which is recognized as a human right and the immigration which is considered as a question of national sovereignty (*ibid*., footnote). Therefore, as argued by Howard-Hassmann (2012, Abstract), the human security discourse and agenda could potentially undermine the international human rights regime.

[49] International Covenant on Civil and Political Rights, signed 16 December 1966, in force since March 23, 1976.
[50] Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

3 SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION

In order to comprehend *raison d'être* of the way refugee policies have been implemented at the EU level,[51] giving a specific socio-economic and political context is an inevitable step in analyzing the evolution of the EU regime for refugee protection. The post–WWII context is associated to the establishment of the modern refugee regime's foundations. Further, the EU's implementation of the principles of refugee protection created by the UN, accompanied with the introduction of its own policies by the EU, was conditioned by the changing context and new challenges that consequently arose. The EU has been facing high pressures to which it had to respond, the 2015 refugee crisis being the most notable but not the sole example. However, it has to be taken into account that this was not the one-way process. On the contrary, while the policy is an instrumental reaction to the problem, which has the aim of protecting the state and its society, in the same time, the policy and practices defined by it, affect social relations in return, giving the specific frame and context to the problem (Huysmans, 2000, p. 757).

3.1 Understanding global & the European Union contexts

3.1.1 Global context

The UN system, which is, among other things, responsible for making international law through the instrument of norm-creating conventions (Weiner, 1998, p. 435), as well as assuring the respect of international law (United Nations, n.d.), is the most important example of a universal organization, having almost all states of the world as its members (Chazournes, 2016, p. 5). An extremely dynamic environment of the UN, with a complex institutional structure and diverse tasks, extends from intergovernmental diplomacy to 'supranationalists' dimensions (Haas, 1961, p. 385). Some also distinguish between 'the first UN' and 'the second UN', the first being associated with state decision-making, while the second involves semi-autonomous intergovernmental secretariats and agencies (Kagan, 2012, p. 315).

It has been claimed that the awareness of the responsibility of international community for refugee protection can be traced back to the time of the League of Nations and the election of

[51] I use the EU as a common name for different phases of European integrations, including the European Coal and Steel Community in 1952 and European Economic Community and European Atomic Community in 1957.

Dr. Fridtjof Nansen as the first High Commissioner for Russian refugees in 1921 (Feller, 2001, p. 130). Before 1950, it was the League of Nations, and after that the UN (*ibid*.), that provided multilateral framework for setting the normative and institutional basis for the universal refugee protection.

I associate the universal framework for refugee protection with the 1951 Convention system, which relies on the 1951 Convention, 1967 Protocol, UNHCR, but also other international instruments, court processes and soft law, such as the conclusions of UNHCR's Executive Committee (Feller, 2001b, p. 582; Betts, 2008, p. 5). With the 1967 amendments and removal of time and geographical limitations, the universal character of the 1951 Convention was strengthened, and the 1951 Convention became a truly universal instrument for the protection of refugees (Nasr, 2016; Nicholson and Kumin, 2017, p. 16). The significance of 1951 Convention within the universal framework for refugee protection is unique and central, as it presents the binding universal instrument for refugee protection, the only one of its kind (Fiddian-Qasmiyeh *et al*., 2014; Nicholson and Kumin, 2017), and therefore provides a solid baseline for international refugee protection, the relevance of which is a long-lasting one (Feller, 2001b, pp. 582–585).

The significance of the 1951 Convention, adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons at Geneva,[52] is described as a triple one, namely a legal, political and an ethical significance (*ibid*., p. 582). The legal significance is reflected in providing the basic standards for refugee protection, the ethical, in the commitment of the 141 States Parties to protect the rights of refugees, and the political, in setting the universal framework for States' cooperation in refugee protection (*ibid*.). However, the 1951 Convention is not to be interpreted as a static instrument, but its interpretation has to take into account all the changes and trends that continuously occur in the present and future world (*ibid*. p. 594).

UNHCR's role of political facilitation in terms of assuring voluntary contributions by states, as well as its role of providing legal advice and surveillance of states' compliance with their 1951 Convention obligations (Betts, 2009a, p. 16), makes UNHCR a principal organization within the universal refugee regime (Fiddian-Qasmiyeh *et al*., 2014). Within its scope of protection, UNHCR now also deals with migrants that are not included in the 1951 Convention, such as internally displaced persons, asylum seekers, stateless persons, returnees, and persons

[52] Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

threatened with displacement (Barnett, 2002, p. 12).

Despite the UNHCR's broader interpretation of the 1951 Convention's definition of a refugee, those who do not meet the definition are not entitled to the same benefits and protection as refugees of the 1951 Convention, because national political and economic interests tend to prevent the broader refugee protection (*ibid*. pp. 11–12). In fact, refugee protection remains problematic step in an unfinished journey of global governance, as, at the end of the day, power of states to control their own borders has the supremacy over international efforts (*ibid*., p. 260). In fact, within the international refugee regime, states keep their position as the predominant actors (Fiddian-Qasmiyeh *et al*., 2014, p. 217).

3.1.2 The European Union

Started with the creation of the European Coal and Steel Community in 1952,[53] and continued with the European Economic Community (TEC) and European Atomic Community in 1957,[54] establishment of a common Commission and Council in 1967,[55] Enlargements in 1973, 1981, 1986, 1995, 2004, 2007 and 2013, European Monetary system in 1979, which is the forerunner of Economic and Monetary Union, the Single act from 1987, Treaty on European Union (TEU) in 1992,[56] Amsterdam Treaty in 1997,[57] Nice treaty in 2000,[58] and the EU's Constitution in 2004[59] (James, 2006; Parliament of Georgia, 2014; European Commission, 2017), the EU today is the outcome of the ongoing process that, for a comparison, began about the same time when the 1951 Convention was created. In fact, the establishment of the EU is associated with 1 November 1993, the date when Maastricht Treaty came into force (C. Salmon, 2013, p. 16). The Maastricht Treaty has also founded a three-pillar structure of the EU, namely the European Communities, the Common Foreign and Security Policy and the Justice and Home Affairs (Council of the European Union and General Secretariat, 2018, p. 10). This structure divided

[53] Treaty establishing the European Coal and Steel Community, signed April 18, 1951, in force since July 23, 1952.
[54] Treaty Establishing the European Community, signed 25 March 1957, in force since January 1, 1958. Treaty establishing the European Atomic Energy Community, signed March 25, 1957, in force since 1 January 1958.
[55] Treaty establishing a single Council and a single Commission of the European Communities, (Merger Treaty), signed 8 April 1965, in force since 1 July 1967.
[56] Treaty on European Union, Treaty of Maastricht, signed February 7, 1992, in force since November 1, 1993; Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on European Union - Protocols - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, Official Journal C 326 , 26/10/2012, signed December 13, in force since December 1, 2009.
[57] Treaty of Amsterdam amending the Treaty on European Union, signed October 2, 1997, in force since May 1, 1999.
[58] Treaty of Nice, Amending the Treaty on European Union, signed February 26, 2001, in force since April 1, 2003.
[59] Treaty Establishing a Constitution for Europe, signed October 29, 2004, not ratified by all 27 Member States.

the areas of competence between the Community institutions and intergovernmental cooperation (*ibid*.).

When it comes to asylum, together with immigration it was classified under the third pillar, which meant that jurisdiction and competences were exclusively in the hands of the member states (Bačić, 2012, p. 42). However, when Amsterdam Treaty came into force in 1999, asylum policy was shifted from third to first pillar (*ibid*., p. 46), therefore bringing asylum within the competence of the European Community (Chetail *et al*., 2016, pp. 9–10). Despite the pivotal transfer of asylum policy to the first pillar, the member states still had important powers in the field of asylum, as all member states had to approve a legislative act in order for an act to pass (Bačić, 2012, p. 48). The Tampere Conclusions of the Tampere Meeting of the European Council in 1999 introduced a further "communitarisation" of the asylum, by intending to create the CEAS, which would guarantee appropriate protection for all persons in need, and therefore meet the requirements of the 1951 Convention and other relevant international treaties (Bačić, 2012; Chetail *et al*., 2016). To that end, the EU has developed a number of legislative instruments regulating its asylum policy (Bačić, 2012, p. 74).

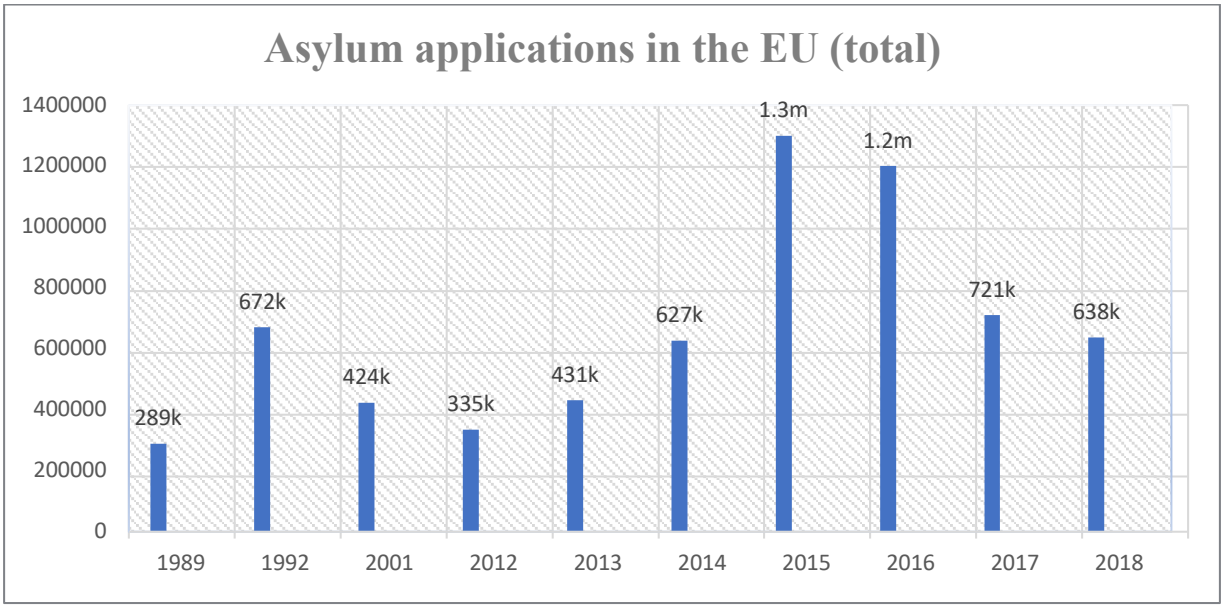
The EU's double-judicial check mechanism, including the Court of Justice of the European Union and the European Court of Human Rights, provides a unique safety mechanism for the application of law in the EU (Lambert, 2013, p. 258). Therefore, the liberal effect that this 'interpretation package' of the EU has on its norms that are constantly evolving, including the norms of refugee protection, cannot be neglected (*ibid*., p. 265).

However, it has been noted that the EU's norms for refugee protection, especially restrictive ones, have already spread beyond Europe and are likely to continue to spread, in that way influencing not only how a refugee is defined in the EU, but also the construction of refugee identity in the world (*ibid*., p. 262). Indeed, a regime covering twenty-four countries, some of them being the most developed and powerful in the world, is very likely to project considerable influence beyond Europe (*ibid*., p. 1). This normative power is also acknowledged by the UNHCR (2003, p. 179), which has recognized that the EU has been successful in exporting its standards and practices to third countries, especially in cases "where these are aimed at controlling entry and residence, reducing the admission of asylum-seekers, and limiting the options for local integration of refugees which are considered as a burden on the often fragile social fabric."

3.2 Knocking on Europe's door

The numbers of asylum applications in the EU are an important indicator for analyzing the trends and patterns in migration flows to the EU. Several peaks are to be mentioned, revealing increase in asylum seekers knocking on Europe's door, namely in 1992, 2001, 2013, 2014 and 2015. While in the 1989 there were 289,000 applications in the EU-15 (Eurostat, 1996), in 1992 the number more than doubled to 672,000 applicants in the EU-15, mostly originating from the former Yugoslavia (Seilonen, 2016, p. 2; Eurostat Statistics Explained, 2019). In 2001 there were 424,000 applications in the EU-27, in 2013 the number of asylum seekers was 431,000 in the EU-28, (for a comparison, in 2012 the number was 335,000 applications) and in 2014 the number rose to 627,000 (*ibid.*). In 2015, the year of well-known migration crisis, the number shockingly doubled to 1,3 million in the EU-28 (*ibid.*). In 2016, the number stays high as 1,2 million, while in 2017 it fell to 712,000 (Eurostat Statistics Explained, 2019). In 2018, the number further fell to 638,000 (*ibid.*). The numbers of asylum application in the EU are visually presented in the Figure 3.1 bellow. It is important to keep in mind that numbers do not provide complete picture because of the irregular unregistered immigrants (Seilonen, 2016, p. 2), as explained in Subchapter 3.2.2.4.[60]

Figure 3.1 Asylum applications in the European Union (total applications)



Sources: Eurostat, 1996 and Eurostat Statistics Explained, 2019.

[60] Irregular migration.

3.2.1 Periodization

Van Mol and de Valk (2016, p. 31) distinguish three periods illustrating the patterns of migrant settlements since the starting point in 1950s and 1960s, when the bilateral labor migration agreements were signed by several European countries. The three periods include (*ibid*.):

1) The period up to the oil crisis, which is the period characterized by steady economic growth, development of guest worker schemes, return from former colonies and refugee migration mainly from East to West;
2) The second period started with the oil crisis in 1973 and lasted up to the fall of the Iron Curtain in the late 1980s. This period is characterized by the increased asylum applications, migration to Southern Europe and increasingly restricted migration by the North-Western European Governments;
3) The third period starts with the fall of the Iron Curtain and lasts until today, with increasing EU influence and control over migration from third countries into the EU.

Garson and Loizillon (2003, pp. 2–5) distinguish four main migration periods:

1) "Employment-related migration and the reconstruction of Europe" – marked by immediate post–war return of ethnic citizens and *Trente Glorieuses* between 1945 and 1975;
2) "Economic crisis and new migration adjustments: increasing flows of family reunification and the permanent nature of migration" – marked by the economic crisis of the mid-1970s due to the oil price increase in 1973;
3) "Diversification of host and sending countries and the increase in the flows of asylum seekers, refugees and ethnic minorities" – begins in the late 1980s;
4) "The return of employment–related migration with a 'preference' for skilled workers and temporary migration" – characterized by the intensity of the late 1990s expansion phase and the development of information and communication technology, health and education.

Giving a background narrative to the figures, historical outlook is to be given starting from the post–WWII. The unforeseen growth took place in Europe after the WWII, for 30 years between 1945 and 1975, which is the period known as *Trente Glorieuses* (Garson and Loizillon, 2003, p. 2). Consequently leading to the labor demand, this period was also marked by the adoption of a *laissez-faire* policies, allowing immigrants to enter on a tourist visa, with the possibility to be granted residence and working right provided that they find a job (Seilonen, 2016, p. 20).

With migrations taking place mostly under bilateral agreements between sending and receiving countries, Northern and Western Europe recruited from their southern neighbors, but also from overseas, former colonies in Asia, Africa and the Caribbean, as well as from countries in the Middle East (Triandafyllidou, 2016, p. 9).

After the large number of workers was recruited as the needed extra labor in 1950's and 1960's, the oil crisis in 1973, and consequent rise in unemployment, marked the decisive moment when many European governments decided to end further labor migration (Seilonen, 2016, p. 21). While economic migration was not welcomed anymore, family reunification or family formation were the grounds on which most of the large destination countries, such as Germany, France and the United Kingdom, continued to receive tens of thousands of migrants per year (Triandafyllidou, 2016, p. 10). In 1980's, the reasons for migration were changing, and a significant number of immigrants came as asylum seekers and refugees, coming from former colonies, as well as from Asian and sub-Saharan African countries (Garson and Loizillon 2003, p. 4). Being back then under the communist rule, central Eastern European countries tightly controlled international movement, while immigrations that took place were planned by the state itself, involving citizens from communist countries in Asia, Latin America or Africa (Triandafyllidou, 2016, p. 10). Due to the prohibition of international travel in Central European communist countries, outflow of asylum seekers from Warsaw Pact to Western Europe in this period remains numerically small, but still continuous (*ibid*.).

The situation dramatically changed starting from 1989, the year known as the Europe's *Annus Mirabilis*, marking the end of the Soviet Empire in Central and Eastern Europe, as well as the end of the Cold War, which in the same time opened the door for the uniting of independent states in the EU (European Parliament, 2009). In 1991, the fall of the Berlin wall, followed by the collapse of communist regimes, brought migration flow from the Eastern Europe, while in the same time, migrants were entering Europe from the south (Seilonen, 2016, p. 30). As the end of communist regimes in central Eastern Europe was followed by the mass unemployment and the collapse of welfare systems in these countries, people were emigrating for economic reasons (Triandafyllidou, 2016, p. 11). In the same time, ethnic unrest in countries of the former Soviet Union forced ethnic and national minorities, such as ethnic Germans, Greeks, and Poles to seek refuge in Western or Southern Europe (*ibid*.).

The result was the largest influx of migrants and refugees in Europe since the WWII (Seilonen, 2016, p. 69). This is when the first peak occurred, with the asylum applications more than doubling between 1989 and 1992 (Hansen, 2003, p. 35). In the period of 15 years, the number

of foreign-born residents had more than doubled, rising from the 23 million in 1985, as estimated by UNHCR (1998, p. 1 in Penninx, 2013, p. 109), to 56 million in 2000, or in other words, 7,7 percent of the total European population (Penninx 2013, p. 109). In the same time, Europe was going through slow economic growth, with no particular need for immigrant workers (Triandafyllidou, 2016, p. 11). Nevertheless, positively for immigrant workers, service economies were experiencing expansion in Northern and Southern Europe, the participation of women in paid jobs was rising and creating demand within household, while tourism and catering provided low skill jobs (*ibid*.).

The increase of asylum seekers in the end of the 20th century, due to the geopolitical factors explained above, has framed the migration as a major issue in the European political context, as well as beyond (Martiniello, 2006, p. 317), which explains the increased efforts to harmonize the EU asylum policies (Seilonen, 2016, p. 31). This period is marked by more formalized cooperation in asylum matters, and entry, stay and movement of third country nationals in the EU, as well as by the work towards harmonization of asylum procedures (*ibid*., p. 32).

More specifically, aside from various cooperative settings, several developments were crucial for cooperation in asylum matters: the SEA was ratified in 1987, giving rise to debate at the EU level on the measures required for the achievement of a common migration policy (European Parliament, 2014), and leading to the gradual shift of the Justice and Home Affairs to the EU level; the Dublin Convention was created in 1990, which is seen as a concrete result of the influxes of migrants and one of the key asylum measures; also, Schengen area was established in 1995, when the Convention implementing Schengen Agreement came into force (Seilonen, 2016, p. 32).[61] For some, European cooperation in migration policy can be traced back to the Schengen Agreement from 1985 as the starting point (Faure *et al*., 2015, p. 10).[62] However, officially, in the view of European Commission, the 1999, when Amsterdam Treaty came into force, was the year that marked the work towards a common immigration policy for Europe, "when for the first time competence in this domain was clearly recognized",[63] as stated in the Communication from the Commission to the European Parliament, the Council, the European

[61] Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders ("Schengen Implementation Agreement"), signed 19 June 1990, in force since September 1993.
[62] Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen Agreement, signed 14 June 1985, in force since March 26, 1995.
[63] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Common Immigration Policy for Europe: Principles, actions and tools, COM(2008) 359 final, Brussels, June 17, 2008.

Economic and Social Committee and the Committee of the Regions.

3.2.2 Contemporary context

In the beginning of new millennium, migration became officially perceived as a central theme and defined as "a major strategic priority for the EU" by the European Commission in its Communication to the Council and the European Parliament.[64] This is not surprising, bearing in mind that since the beginning of the 21st century, the EU has been one of the main destinations of increased migration, while in the same time experiencing important migratory movements within its borders (Pachocka, 2015, pp. 531–532).

In this century, the EU was shaken by several crisis, namely the global financial and economic crisis in 2007/2008 (Bordo and Landon-Lane, 2010), followed by the European Debt Crisis (Eurozone crisis), which started with the crisis in Greece in 2009 (Nelson *et al*., 2012, Summary), and the European migrant crisis in 2015 (European Parliament, 2017). Crisis are generally viewed as a complex phenomenon, which brings deep shock to affected society, suddenly disrupting what had become normal order (Priestley, 2013, p. 466). Therefore, there is a widespread agreement that avoiding, containing and resolving crisis are desirable goals (Rycker and Zuraidah Mohd Don, 2013, p. 3).

3.2.2.1 Financial and economic crisis

Since 2008, the EU was severely hit by the global financial and economic crisis (*ibid*., p. 1), the causes of which are generally seen in "hasty deregulation of the financial sector, poor supervision, wrong incentives and erroneous monetary policy" (Koronowski, 2011, p. 87). The crisis has brought new challenges for the EU's unity and stability (Dornean and Sandu, 2013, p. 36), while the sustainability and functioning of the asylum systems and procedures have been threatened in some states, as they faced severe budgetary constraints (Trauner, 2016). Also, financial and economic crisis was followed by an increasing level of unemployment and decrease in the standard of living in certain member states, all leading to a rise in xenophobia, racism and violence against third-country nationals (*ibid*.).

The economic and financial crisis deepen disparities between member states, as some were severely hit by the crisis, especially Greece (*ibid*.). While some countries, largely in the South,

[64] Communication from the Commission to the Council and the European Parliament - Integrating migration issues in the European Union's relations with Third Countries - I. Migration and development - II. Report on the effectiveness of financial resources available at community level for repatriation of immigrants and rejected asylum seekers, for management of external borders and for asylum and migration projects in third countries /* COM/2002/0703 final */.

have been suffering long-term financial instability, high unemployment rates and worsening of living conditions, other countries, mainly in the North, have borne the crisis relatively well (Lafleur and Stanek, 2017, p. 1). In that sense, with the crisis, migration of EU citizens within the member states has been on the rise, with South-North migration of EU citizens significantly increasing (*ibid*., p. 6). This has been explained by the high unemployment in the Southern member states most affected by the crisis, but also by the changed labor market conditions offering bad prospects, cuts in wages and increased social exclusion (*ibid*.). Some of the reforms, however, have their roots prior to the crisis, such as the process of segmentation of the labor market, which was initiated long before, but has been seen accelerating with the crisis (*ibid*., p. 7). In the meantime, East-West migration within the EU, which was taking place before the crisis, did not significantly decrease, while at the same time, the migration of third country nationals to the EU continued, and needless to say, significantly increased in 2015 (*ibid*., p. 6).

Traditionally, economic crises are considered as 'opportunities' to implement restrictive immigration policies, as also seen in the cases of the Great Depression of the 1920s and the Oil Crisis of the 1970s (*ibid*., p. 3). The perception of migrants as a financial and societal burden started long before the financial and economic crisis in 2007/2008, dating back to 1980s and 1990s, when Western European states started focusing on perceived and real costs of refugee protection, thus abandoning the attitude from the beginning of the Cold War when refugees were welcomed in Western Europe, and adopting the perception of refugees and asylum seekers as a threat to stability and security in Europe (Lavenex, 2001, p. 857; Trauner, 2016). As Lafleur and Stanek (2017, p. 3) note, the connection between crises and stricter migration policies is not necessarily and obviously causal. In other words, bearing in mind that migration policies were already becoming stricter before crisis, it is not clear whether the reforms would go in the same direction regardless of the occurrence of the crisis (*ibid*.). However, it has been noted that the financial and economic crisis worsened the situation of the protection of refugees, as some member states found it more difficult to financially sustain the functioning of their asylum system (Trauner, 2016).

In addition to undeniably destructive effects of the financial and economic crisis, Trauner (2016) warns that if a government decides to spend more on pensions and social welfare than on receiving asylum seekers, than the weakness of asylum systems can be rather perceived as a political choice, potentially aimed at making the country less attractive for migrants.

3.2.2.2 Migration crisis

Political upheaval in the Middle East, Africa and South Asia brought a new trend in migration to Europe (Park, 2015). In the wake of the Arab Spring, in 2011, thousands of Tunisians started to arrive at the Italian island, Lampedusa (*ibid*.). In the same time, in 2011–2012, Sub-Saharan Africans fled unrest in post-Qaddaffi era (Council of the European Union, 2016). Therefore, the number of first time asylum applicants went up to 280,000 in 2012 (335,000 in total), while in 2013, total number of submitted asylum applications was 431,000, indicating the strong rise in comparison to the year of 2012 (de Lima *et al*., 2016, p. 14) (see Figure 3.1).[65] Already in 2014, one year before the notorious migration crisis, the number of first time asylum seekers rose to 560,000 (*ibid*.), or to put it differently, 627,000 of overall asylum applications, as presented in Figure 3.1.

Doubtlessly, the 2015 migration crisis, when more than 1.2 million people have applied for asylum in the EU (*ibid*., p. 7), is perceived as an eye-opening event for the EU, indicating the failure of the collective European immigration policy, thus calling for a new approach that would "combine external and internal policies to best effect", as stated in the European Commission's Communication the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.[66] The number of asylum seekers exploded and caused a trauma on the asylum system, placing uneven burden on south European countries, with thousands of refugees entering Europe through southern and eastern Mediterranean routes (Seilonen, 2016, pp. 29, 75), mostly fleeing the civil war in Syria and war with Taliban in Afghanistan, as well as the forced labor in Eritrea (Park, 2015). While the war in Syria, which started in 2011 (Crawley *et al*., 2016, p. 38), has caused massive refugee flows and has therefore been in the focus of attention, other conflicts, crises and persecutions contributed to the migrant influx, namely in Burundi, Iraqi, Libya, Niger, Nigeria, Afghanistan, the Central African Republic, the Democratic Republic of the Congo, South Sudan, Somalia, Yemen, Eritrea and Gambia (*ibid*., p. 13).

In the context of the 2015 refugee crisis, Kugiel (2016, p. 42) distinguishes three types of push factors, i.e. three types of reasons that made people leave their homes. First group includes wars, conflicts and persecution, with the war in Syria being the most important example, as Syrians constituted the majority of irregular migrants to the EU in 2015, and were the most

[65] Figure 3.1 Asylum applications in the European Union (total applications).
[66] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration (COM(2015) 240 final).

numerous among people who applied for asylum (*ibid*., p. 43). According to IOM data, about 82% of those arriving in Greece and Italy in 2015 originated from four countries, namely Syria, Afghanistan, Iraq and Eritrea (Crawley *et al*., 2016, p. 8; Kugiel, 2016, p. 38). Second type of push factors includes humanitarian crisis, as a consequence of wars and destabilization in the Middle East, that resulted in the massive displacement of people (Kugiel, 2016, p. 44). For example, a decline in living conditions was one of the main reasons for the wave of migration to Europe, as well as one of the main causes of secondary movements from countries in which refugee camps had been established, with numerous people deciding to move on because they were not able to make a living or access healthcare and education (Carwley *et al*., 2016, p. 8; Kugiel, 2016, pp. 44–45). Third group of push factors, according to Kugiel (2016, p. 46), include poverty and underdevelopment, and are associated to economic migrants, escaping poverty, stagnation and a future without prospects.

3.2.2.3 Deteriorating procedures and conditions

In December 2011, in relation to the judgment on the case of an Afghan asylum seeker (joined cases *C–410/10* and *C–493/10*),[67] the Court of Justice of the EU declared that member states may not transfer an asylum seeker to Greece, although the responsibility for this case laid with Greece (Trauner, 2016), because:

> they cannot be unaware that systemic deficiencies in the asylum procedures and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman and degrading treatment within the meaning of that provision.

Based on this ruling and similar ruling made by the European Court of Human Rights in January 2011 in *M.S.S vs. Belgium and Greece* case, Dublin regime based transfers of asylum seekers to Greece were temporary suspended. (*ibid*.).[68]

Apart from Greece, the failure of asylum system was noted in other member states, including Bulgaria, Hungary and Italy (*ibid*.). In 2012, and later again in 2017, the UNHCR recommended that member states should not send asylum seekers back to Hungary (the similar warning was issued in early 2014 for Bulgaria as well) (UN High Commissioner for Refugees, 2016, p. 14; "UN urges EU not to send asylum seekers back to Hungary", 2017), questioning the fairness of

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[67] *N. S. (C–411/10) v Secretary of State for the Home Department and M. E. and Others (C–493/10) v Refugee Applications Commissioner and Minister for Justice*, Judgment of the Court (Grand Chamber) of 21 December 2011, Equality and Law Reform.

[68] *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011.

asylum procedure for asylum seekers, as well as the conditions of the reception facilities (Trauner, 2016). However, the call for a temporary suspension of Dublin transfers was lifted by the UNHCR, as some of the concerns were addressed by the governments (*ibid*.).

3.2.2.4 Irregular migration

Numbers of irregular unregistered immigrants are an obstacle in creating a complete picture of migration flows to the EU (Silonen, 2016, p. 2). Although statistics on irregular migration in the EU are available from two key data sources, namely the Frontex reports and the EU–wide biometric database EURODAC (Blomfield and Morehouse, 2011, p. 7), it has to be taken into account that the methods for quantifying irregular migrations are by definition problematic, as they are dealing with the phenomenon outside of states' control (Vespe *et al*., 2017, p. 26). With most policy and media reports being based on guesstimates, the size and main characteristics of irregular migrant population of the EU remains under-researched (Triandafyllidou, 2016, p. 1), while the problem persists.

According to available data however, it has been estimated that in 2008, the number of unauthorized immigrants resided in the EU was ranging from 1.9 million to 3.8 million (Vogel, 2009, p. 4). This is a decrease comparing to estimated 3.1 million to 5.3 million unauthorized immigrants in the EU-15 in 2002 (*ibid*.; Orrenius and Zavodny, 2016, p. 5). Despite the increase in detected scope of irregular migration to Greece during 2010, the overall estimated scope of irregular migration in the EU declined between 2007 and 2010 (Blomfield and Morehouse, 2011, p. 14).

However, it has been noted that after the fell during the first decade of the 21st century, the unauthorized immigration has raised again (Orrenius and Zavodny, 2016, p. 22). According to official data from Frontex, in 2014 there were more than 283.5 thousand migrants who entered the EU irregularly between border crossing points (increase of 164 percent comparing to the previous year), among which immigrants from Syria were the top nationality (Pachocka, 2015, p. 543). Furthermore, Eurostat (2019) data reveal that 2.2 million people were found to be illegally present in the EU in 2015, while, based on the data from Frontex, 594,059 Syrians crossed EU external border irregularly in the same year (Kugiel, 2016, p. 43). Nevertheless, the newest Frontex data are pointing at a significant decrease in the number of detections of illegal border crossings, reaching the lowest level in 2018 in the period of five years, with the important fall to roughly 600,000 being already seen in 2017 (European Parliament, 2017; European Border and Coast Guard Agency, 2018; European Border and Coast Guard Agency, 2019).

While the pressure points for illegal entry into the EU are constantly changing, Frontex has identified seven main migratory routes to cross into the EU without authorization (Blomfield and Morehouse, 2011, p. 9):

1) "Central Mediterranean route – from Tunisia and Libya to Italy and Malta";
2) "Western Mediterranean route – from Morocco and Algeria to Spain";
3) "Western African route – from West African coast to the Canary Islands";
4) "Eastern borders route – from the countries across the EU's eastern external land borders in Eastern Europe into EU member states";
5) "Western Balkans route – from the non–EU countries in the Balkans into member states";
6) "Albania–Greece circular route – circular migration from Albania to Greece";
7) "Eastern Mediterranean route (sometimes called South Eastern European route) – largely from Turkey to Greece by land or sea, and to include future Schengen participants Cyprus and Bulgaria".

However, illegal border crossing is only one of eight principal ways of becoming an unauthorized migrant, other ways being (*ibid*., p. 4):

1) "entry using false documents";
2) "entry using legal documents but providing false information in those documents";
3) "overstaying a visa-free travel period or temporary residence permit";
4) "loss of status because of nonrenewal of permit for failing to meet residence requirements or breaching conditions of residence";
5) "being born into irregularity";
6) "absconding during the asylum procedure or failing to leave a host state after a negative decision";
7) "a state's failure to enforce a return decision for legal or practical reasons (toleration)".

4 ANALYZING THE ELEMENTS OF THE UNIVERSAL AND EUROPEAN UNION REGIMES FOR REFUGEE PROTECTION

Analyzing complex issue of international refugee protection requires breaking it down to specific components of analysis, or in this case specific elements of both the universal and EU regimes for refugee protection. What is needed is a qualitative methodology that thoughtfully integrates theoretical arguments and comparative norm analysis, aiming to comparatively address two regimes for refugee protection, and find out if the EU's regime has followed key elements of the universal regime, i.e. universal norms of refugee protection. After the way for addressing research problems is further elaborated and explained, elements of both regimes are analyzed separately, with a focus on key differences and similarities between the two regimes, primarily in normative sense.

4.1 Methodology for analyzing the elements of the universal and European Union regimes for refugee protection

As an international law, the 1951 Convention, on which the universal regime for refugee protection relies, is binding upon the EU member states (Sopariwalla, 2017, p. 133). However, on the refugee policies foundations built by the UN, the EU regime for refugee protection both applied universal norms and added its own policies (Loprinzi, 2016, p. 11). While rules, procedures and practices of the CEAS are continuously evolving through recast instruments and judicial interpretation, the key norms of the EU refugee law, that originated over 20 years ago and are now codified in the CEAS, mostly refer to who qualifies for asylum and under what conditions, while contributing to the definition of the refugee in the EU, as opposed to internationally (Lambert, 2014, pp. 7–9).

Therefore, my puzzle is to analyze to what extent the integrated regional organization followed the universal principles and norms in the process of developing its own refugee regime at the regional level. To this end, a comparative study of norms, principles and other elements of refugee protection of both universal and regional regimes is necessary for defining the points of similarities, differences or conflicts between two levels of refugee protection.

In order to answer its research question, the analysis relies on international regime theories, but also refers to the securitization theories, theory of regime complexity and norms translations.

Essential elements of an international regime can be derived from the international regime theories, namely the norms, principles, rules and decision-making procedures. Taking into account that theorists agree that, in a broader sense, international regimes are in fact systems of norms, one can not look at regimes without studying its norms. My focus on norms and principles in analyzing the interaction between universal and regional levels for refugee protection, has its basis in the international regime theories, that distinguish norms and principles as core characteristics of international regimes. As principles and norms enjoy the place of fundamental characteristics of a regime, and because analyzing all concepts would be beyond the scope of this research, a significant part of the analysis is devoted to the universal and the EU principles and norms for refugee protection, but also certain elements that are characteristic particularly for the EU regime for refugee protection.

It has been argued that although the Krasner's definition offers conceptual richness and carefully defined hierarchy of components, it is difficult to identify the precise boundary between the principles and norms, as principles shade off into norms (Lipson and Cohen, 1999, pp. 181–182). Therefore, there are strong disagreements between the analysts regarding the definition of principles and norms (*ibid*.). Furthermore, norms can not be easily distinguished from rules either (*ibid*.). However, the thesis relies on Krasner's definitions of the elements of an international regime, as provided within the Chapter 2.[69] Without going into conceptual discussion on the regime elements, attaching the term of norm, principle or other before the specific element of regime which will be analyzed, is going to be based on how they are commonly referred to in official documents and secondary sources.

International regime theories provide that secondary elements have to be consistent with key characteristics of a regime, i.e. its fundamental elements. In order to address this (in)consistency, as well as to identify constitutive elements of the EU regime for refugee protection, I will try to distinguish fundamental, as opposed to secondary elements of the EU regime for refugee protection, which will be followed by their analysis focusing on their reliance on, complement to or contradiction with the 1951 Convention. In that regards, the comparative norm analysis of these elements and the universal elements of refugee protection will reveal the common, as well as the conflicting points between the EU and universal regimes for refugee protection. Also, with the analysis, the (in)coherence of elements within the EU regime for refugee protection will become more apparent, as well as the (in)consistency

[69] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.

between these and actual behavior, which will further, according to the international regime theories, indicate the strength or weakness of the regime. Addressing the second part of the research question, i.e. how the extent to which the universal principles and norms for refugee protection were followed by the EU has reflected in the degree and quality of refugee protection in the EU, but also beyond the EU taking into account the normative power of the EU, I will try to distinguish different types of effects that elements of the EU regime have on refugee protection.

The application of universal norms at the EU level is relevant for the regime complexity theory, which explains how different institutions interact, and therefore create a complex system, or in this case, the complex system for refugee protection. However, the analysis puts aside matters of refugee regime interaction with a range of other regimes across different issue-areas within the regime complex. Instead, it focuses on interaction between two regimes, one at global and other at regional level, within the same issue area, i.e. refugee protection, as well as on the nature of a given interaction, which can be nested, parallel or overlapping, but also complementary or contradictory.

Furthermore, by looking for key similarities and differences between the universal and EU norms for refugee protection, the analysis presented in the thesis contributes to the studies of norms dynamics. Daring to borrow the translation perspective developed by Berger and put it in different framework, I argue that in the process of following universal principles and norms for refugee protection, the EU has changed their meaning by both implementing these principles and norms and adding its own policies. In the words of the novel theory of norms translation, what happened is that universal norms for refugee protection traveled to the specific context of the EU, and during this process, called translation, the changes in their meaning and content occurred, which I have tried to grasp by looking into specific legal acts. In fact, applying the language of norms translation approach, the change that occurred when universal norms for refugee protection were translated in the EU context was dual, as in addition to the meaning of norms, the social and political dynamics within the EU context were also altered in the process of translation.

Since the meaning of norms changes as they move from one context to another, it has to be taken into account that this process of translation has taken place in a political environment that is "suspicious of asylum seekers, that seeks restrictive entrance policies and that is wary of large numbers of refugees", which influenced the scope of the common asylum laws (McAdam, 2007, p. 259). This specific context in which the EU regime for refugee protection has been

developing, as opposed to the context in which the universal regime for refugee protection has emerged, has been grasped within Chapter 3,[70] but also theoretically discussed within securitization debate in Subchapter 2.4.[71] The universal regime for refugee protection has emerged in the specific historical context, the post–WWII. Since then, the social and political dynamics have gone through significant changes, relevant for the analysis of the development of refugee protection regime in the EU. Not only these dynamics influenced developments of refugee protection in the EU, but translation of universal norms in the EU context added new layers to social and political dynamics themselves. Therefore, this multidimensional interaction created new realities of refugee protection, which has further reflected on the degree and quality of refugees protection. The following Analysis seeks to identify exactly the changes that occurred when the universal norms for refugee protection were translated in the EU context, as well as their various implications on the EU's regime for refugee protection.

4.2 Universal norms and principles for refugee protection

As noted by Betts, one of the core goals of the international refugee law is to create a set of norms obliging governments to a reciprocal commitment to protect refugees (Betts, 2015, p. 366). Universal norms and principles for refugee protection have emerged in 1951, with the creation of 1951 Convention. Going back to Chapter 3,[72] it has been learned that this was the period of steady economic growth, during which migration was characterized by post-war return of ethnic citizens, as well as the bilateral labor migration agreements and perception of migrants as needed extra labor.

The refugee protection norm is endorsed in the 1951 Convention (1951, Article 1), which clearly establishes criteria to determine who is a refugee (Roos and Zaun, 2014, p. 6). Furthermore, the 1951 Convention is grounded in the Universal Declaration of Human Rights (1948, Article 14), which recognizes that "everyone has the right to seek and to enjoy in other countries asylum from persecution".[73] The existing regime has a strongly institutionalized and widely accepted norm of asylum (*ibid*.). In fact, the norm of asylum is based on and governed

[70] SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION.
[71] The securitization debate.
[72] SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION.
[73] Asylum can be defined as "the obligation that states have toward refugees who reach their territory" (Betts, 2015, p. 363).

by a strong legal and normative framework, which is underpinned by the principle of *non-refoulement* (Betts, 2009b, p. 87).

A reciprocal commitment to the principle of *non-refoulement* is perceived as the fundamental ethos of the refugee regime (Betts, 2015, p. 363), which has the underlying value for the international refugee protection regime. Representing an essential foundation of international refugee law (Goodwin-Gill, 2014, p. 5), *non-refoulement* is the obligation "not to return a person to a country where she faces a well-founded fear of persecution" (Betts, 2015, p. 363). Requirement of *non-refoulement* certainly presents "the first exigency to be met" (Oudejans, 2014, p. 25). In fact, in its Introductory Note by the Office of the United Nations High Commissioner for Refugees, the 1951 Convention provides that the principle *of non-refoulement* is "so fundamental that no reservations or derogations may be made to it". Although the 1951 Convention explicitly prohibits sending refugees back to a country where their lives would be threatened (Gibney, 2016), the 1951 Convention (1951, Article 33) provides also limitation to the prohibition of expulsion or return (*refoulement*):

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

The 1951 Convention (1951, Article 33) also defines the grounds for the fear of persecution, namely reasons of race, religion, nationality, membership of a particular social group or political opinion. Furthermore, within the 1951 Convention (1951, Article 1), the *non-refoulement* principle refers to refugees, but also refugees that are not formally recognized, for example applicants for refugee status awaiting a final decision on the application (The UN Refugee Agency, 2007, pp. 2–3). In fact, the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (2011, paragraph 28) provides that:

> A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.

The principle of *non-refoulement* underpins the international human rights law (Gibney, 2016), which even encompasses broader perspective of *non-refoulement* than the international refugee law (European Asylum Support Office, 2018, p. 28). The international human rights law prohibits (*ibid*.):

> states from sending those seeking to apply for international protection and those who have made such application, to another state where there would be a real risk to his/her right to life, to freedom from torture or cruel, inhuman degrading treatment or punishment, and to liberty and security of person.

Contrary to the 1951 Convention (1951, Article 33), the *non-refoulement* principle in international human rights law is "absolute, protecting any individual from being returned to ill treatment, irrespective of their criminal record or the danger they may pose to the security of the host state" (European Asylum Support Office, 2018, pp. 27–28). Furthermore, prohibition of ill treatment within the international human rights law is not limited to treatment "on account of race, religion, nationality, membership of particular social group or political opinion" (*ibid*.). Nevertheless, both refugee law and human rights law provide protection from *refoulement* in case of any type of expulsion or return, including cases of deportation and extradition (*ibid*. p. 29).

The norm of *non-refoulement* is also enshrined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984, Article 3), establishing 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".[74] Apart from that, in its Concluding Observations, Views and General Comments number 20 and 31,[75] the Human Rights Committee has established the obligation of 167 party states to the 1966 International Covenant on Civil and Political Rights to not send someone to a place where his or her rights (under Articles 6 and 7 of the Covenant) risk being violated (Roos and Zaun, 2014, p. 7).

However, in contrast to the norm of asylum and the principle of *non-refoulemenet*, the principle of burden-sharing is governed by a weak normative and legal framework (Betts, 2009, p. 87). In fact, international law does not provide for a states' duty to engage in burden sharing (Loescher *et al*., 2009, p. 102), neither by custom nor by treaty (Milner, 2016, p. 2). Although the practice remains controversial, the principle of burden sharing, also referred to as international solidarity and responsibility sharing (*ibid*.), is widely agreed between states. This principle is particularly important in the EU and it has emerged as one of the core issues in the asylum politics in Europe (Byrne, 2003, p. 337), which is completely understandable, taking

[74] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed 10 December 1984, in force since June 26, 1987.
[75] UN Human Rights Committee, General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13; UN Human Rights Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992.

into account specific nature of the EU, characterized by deep integration and free movement between diverse member states, including the small countries.

While the traditional assumption is that the biggest responsibility is to be taken by neighboring countries, this "accident of geography" places the massive burden on these countries (Betts, 2015, p. 370). As expressed in the 1951 Convention (Preamble):

> Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.

When drafting the Convention, the drafters' Final Act has stated recommendation that "Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international cooperation in order that these refugees may find asylum and the possibility of resettlement."[76]

In 2001, in the Preamble of the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, representatives of States Parties to the 1951 Convention clearly emphasized the importance of the principle of burden-sharing, by stressing that: [77]

> respect by States for their protection responsibilities towards refugees is strengthened by international solidarity involving all members of the international community and that the refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and effective responsibility and burden-sharing among all States.

In addition to that, the Conclusions of UNHCR's Executive Committee (1994, h) stressed the importance of international solidarity and burden-sharing in reinforcing the protection of refugees, calling upon "all States to take an active part, in collaboration with UNHCR, in efforts to assist countries, in particular those with limited resources, that receive and care for large numbers of refugees and asylum – seekers."[78] Also, the UNHCR's Executive Committee (2001, f):[79]

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[76] UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 25 July 1951, A/CONF.2/108/Rev.1.

[77] Declaration of States Parties to the 1951 Convention and or its 1967 Protocol Relating to the Status of Refugees, Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the status of refugees, 12–13 December 2001.

[78] Executive Committee of the High Commissioner's Programme, General Conclusion on International Protection (1994) No. 74 (XLV). Executive Committee 45th session.

[79] Executive Committee of the High Commissioner's Programme, Conclusion on International Protection (2001) No. 90 (LII), 5 October 2001, No. 90 (LII)

> Reiterates its strong commitment to international solidarity, burden-sharing and international cooperation to share responsibilities; stresses also the national and international responsibilities of countries of origin; and reaffirms UNHCR's catalytic role in assisting and supporting countries receiving refugees, particularly developing countries, and in mobilizing assistance from the international community to address the impact of large-scale refugee populations.

Similar acknowledgments, calls, recognitions and reaffirmations regarding the principle of burden sharing were made also in other Conclusions of UNHCR's Executive Committee (UN High Commissioner for Refugees Division of International Protection, 2014).

Clearly, the principle of international cooperation has been acknowledged since the origins of the universal refugee regime, however, significant gaps have been recognized when it comes to the actual practice (Milner, 2016, p. 6). While various proposals have been made, a mechanism to allocate responsibilities between states at a global level, in systematical, equitable and predictable way, has not been agreed (Dowd and McAdam, 2017, Abstract). This results in significant gaps relating to the scope, scale and predictability of burden and responsibility sharing (Milner, 2016, p. 6).

In fact, the contradictory characteristic of the universal refugee regime, and in the same time its deficiency, is that while countries of first asylum have an international obligation not to forcibly return refugees to a country where they fear persecution (the principle of *non-refoulement*), there is no binding obligation on other states to share the costs of granting asylum (Loescher *et al*., 2009, p. 102; Milner, 2016, p. 1). Consequently, there is an uneven distribution of refugees between countries, with some of them bearing a disproportionate share of the refugee burden (Rutinwa, 1999, p. 6). In fact, the lack of burden sharing has been used by many states as an excuse or justification for placing limits on the quantity and quality of asylum they offer (Milner, 2016, p. 2). Therefore, it does not surprise that international cooperation and burden sharing have been identified as the most critical issues of global refugee policy (Hathaway and Neve, 1997, p. 189; Guterres, 2015; Milner, 2016).

4.3 Normative basis of the European Union

First of all, referring to the broad normative basis of the EU is an important step in analyzing the EU's norms for refugee protection more specifically. A number of declarations, treaties, policies, criteria and conditions have contributed to the development of the broad normative basis of the EU (Manners, 2002, p. 32). In that sense, what comes to the fore are "the long-standing commitments of the EU to peace, liberty, democracy, the rule of law, human rights,

and its aspirations to social solidarity, antidiscrimination, sustainable development and good governance" (Lambert, 2014, p. 13). Manners (2002, pp. 32–33) distinguishes core norms on the one hand, i.e. peace, liberty, democracy, rule of law and human rights, and minor norms on the other hand, i.e. social progress, combating discrimination, sustainable development, as well as the principle of good governance.

The norm of peace can be found in declarations, such as Robert Schuman in 1950,[80] as well as in the European Coal and Steel Treaty (1951, preambles), in the TEC (Manners, 2002, p. 32), and in the TEU (2012, Article 3). The norm of liberty is found both in the TEC (2002, preambles) and in the TEU (2012, preambles) (Manners, 2002, p. 32). Democracy, the rule of law, and respect for human rights and fundamental freedoms are expressed in the TEU (2012, preambles, Title V), in the TEC (2002, Article 177) as related to the development cooperation policy of the Community, and in the membership criteria adopted at the Copenhagen European Council in 1993 (Manners, 2002, p. 32).[81] The notion of social progress is found in the TEC (2002, preambles) and in the TEU (2012, Article 3, preambles), and it is the central focus of both the social policy and the Economic and Social Committee (Manners, 2002, p. 32–33). Norm of combating discrimination is found in the TEC (2002, Articles 12, 13), while sustainable development is enshrined in the TEU (2012, Article 3, preambles), and in the TEC (2002, Articles 2, 6) (Manners, 2002, p. 32–33). Finally, the principle of good governance is implicit in Copenhagen criteria and found in Commission papers on „EU Election Assistance and Observation",[82] and „European Governance,[83] as well as in Romano Prodi's inaugural speech to the European Parliament (Prodi, 2001; Manners, 2002, p. 32–33).

4.4 Application of universal norms and principles for refugee protection in the European Union

As learned in Chapter 3,[84] starting with the oil crisis in 1973, perception of migrants as desired extra labor was no longer present. In addition to that, an intention to profoundly integrate the

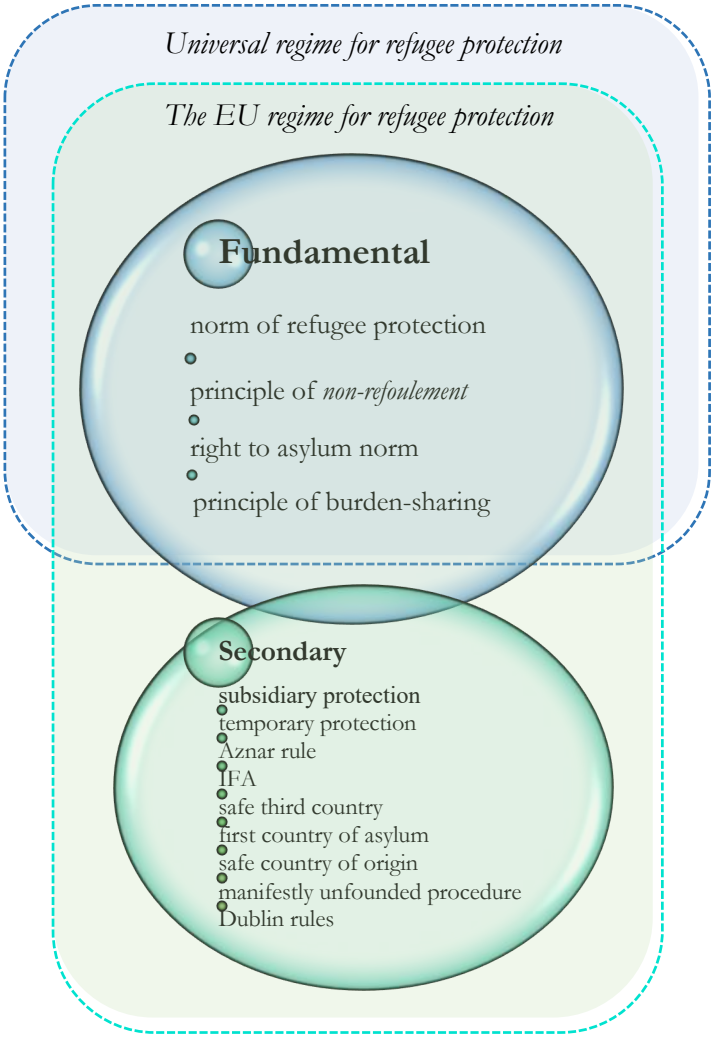
[80] Declaration of 9th may 1950 delivered by Robert Schuman, Foundation Robert Schuman, European Issue 204, 10th May 2011.
[81] Conclusions of the Presidency, European Council in Copenhagen, 21–22 JUNE 1993.
[82] Communication from the Commission on EU Election Assistance and Observation COM(2000) 191final.
[83] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on strategic objectives 2000–05, February 2000 — COM(2000) 154.
[84] SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION.

EU, manifested in SEA in 1986, and further steps taken in that direction, as discussed within Subchapter 2.4,[85] influenced perception of third-country nationals coming to the EU, in terms of the emphasized need to control these arrivals. However, Chapter 3 reveals that increased migration and refugee flows that started from the *Annus Mirabilis* of 1989 have, due to the combination of geopolitical factors, continued in different peaks and were accompanied by slow economic growth and no particular need for immigrant workers, while in the 21st century, the EU became perceived as the target destination of increasing migration. Therefore, the increasing migration flows clashed with the perceived need to tighten control of the arrivals of third-country nationals to the EU. It was against these backgrounds that the EU has shaped its regime for refugee protection, by applying universal norms, but also adding its own specific elements discussed in the following Subchapter 4.5.[86]

Going back to the international regime theories and principal definition of an international regime, I separate two categories of elements of the EU regime for refugee protection that are relevant for comparative norm analysis, i.e. fundamental and secondary elements (see Figure 4.1).[87] Furthermore, fundamental elements are something that two regimes have in common, which is illustrated in Figure 4.1. As learned in the Chapter 2,[88] norms and principles are fundamental elements of an international regime, while rules and procedures can take various forms and are characterized as secondary elements (Lawson, 1991, p. 4). Therefore, fundamental elements in this case include norm of refugee protection, principle of *non-refoulement*, right to asylum and principle of burden sharing, while secondary elements are subsidiary protection, temporary protection, Aznar rule, IFA, safe third country, first country of asylum, safe country of origin, manifestly unfounded procedure and Dublin rules. Although, due to the evolution of norms, subsidiary protection and temporary protection could be also considered as emerging fundamental norms, and are being referred to as such (Fullerton, 2013, p. 220; Chrisna, 2016), they are still disputed, at least in practice, and in that way remain in many ways secondary to the key norms of refugee protection, which is why I refer to them as secondary elements of the EU regime for refugee protection.

[85] The securitization debate.
[86] The European Union's specific norms, principles, concepts and rules for refugee protection.
[87] Figure 4.1 Fundamental and secondary elements of the universal and European Union regimes for refugee protection.
[88] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.

Figure 4.1 Fundamental and secondary elements of the universal and European Union regimes for refugee protection



First, I will look at the EU norms for refugee protection that are also present within the global framework. The norm of refugee protection, right to asylum, principle of *non-refoulement* and principle of burden-sharing (solidarity, responsibility sharing) make the normative basis of both the global, as discussed within the 4.2 Subchapter,[89] and the EU frameworks for refugee protection.

The application of universal norms for refugee protection at the EU level did not go without alterations of the norms applied. As translation perspective of norms movement explains, when norms travel between different contexts, they go through the process of translation, changing themselves, but also socio-political dynamics of the specific context. In that regards, the aim of

[89] Universal norms and principles for refugee protection.

this Subchapter is to understand ways in which the universal norms for refugee protection have been altered when the EU applied them. In order to address the changes, I will search for universal norms and principles for refugee protection within the EU framework, that can be found in the legal acts of the EU, such as the Directives, Charters, Treaties, Regulations, Resolutions and Decisions.

The EU has codified the norm of refugee protection in the QD (2011, Articles 9 and 10), defining acts of persecution and reasons of persecution (Roos and Zaun, 2014, p. 6); the right to asylum has been recognized in the Charter of Fundamental Rights of the European Union (CFR) (2000, Article 18);[90] the principle of *non-refoulment* is enshrined in the CFR (2000, Article 19(2)), the Treaty on the Functioning of the European Union (TFEU) (2012, Article 78)[91], the QD (2011, Article 21), the PD (2013, Recital (3) Article 9(3), Article 28(2), Article 35, Article 38(1)(c), Article 39(4), Article 41(1), Annex 1), and in the DR III (2013, Recital (3)) (European Asylum Support Office, 2018, p. 30); the principle of burden sharing (solidarity, responsibility sharing) is to be looked for in the TEU (2012, Article 3), the TFEU (2012, Article 80), the Amsterdam Treaty (1997, Article 73k(2)(b)), the 1995 Council Resolution on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, the 1996 Council Decision on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (Thielemann, 2003), the 2000 Council Decision establishing the European Refugee Fund (ERF),[92] and other financial instruments of the General programme Solidarity and Management of Migration Flows, namely the European Fund for the Integration of third-country nationals, the External Borders Fund and the European Return Fund (European Commission, n.d.-b), as well as in the Regulation establishing the Asylum, Migration and Integration Fund,[93] and Regulation on the EASO.

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[90] Charter of Fundamental Rights of the European Union, 2012/C 326/02, signed 26 October 2012, in force since December 1, 2009.
[91] Consolidated version of the Treaty on the Functioning of the European Union, signed 13 December 2007, in force since December 1, 2009.
[92] Council Decision of 28 September 2000 establishing a European Refugee Fund (2000/596/EC), in force since March 10, 2000, end of validity December 31, 2004; Council Decision of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010, in force since December 10, 2004, end of validity December 31, 2007; Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme Solidarity and Management of Migration Flows and repealing Council Decision 2004/904/EC, in force since June 7, 2007.
[93]Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC.

When it comes to the norms of refugee protection and right to asylum within the EU framework, they both strongly relay on the 1951 Convention, by explicitly referring to it, such as in the QD (2011, Article 9): "acts of persecution within the meaning of article 1 A of the Geneva Convention", and in the CFR (2000, Article 18): "the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention." Also, while the 1951 Convention makes a clear reference to human rights law and the Universal Declaration of Human Rights from 1948, similarly, QD (2011, Article 9) refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms and associates acts of persecution with "a severe violation of basic human rights".

Furthermore, the QD (2011, Article 9) expands on the norm of refugee protection by recognizing acts of gender specific or child specific persecution, as well as number of other acts, such as physical or mental violence; legal, administrative, police, and/or judicial measures; denial of judicial redress; disproportionate or discriminatory prosecution/punishment; prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2). Importantly, the QD (2011, Article 6) recognizes the victims of non-state persecution, providing that:

> Actors of persecution or serious harm include: a) the state; b) parties or organisations controlling the State or a substantial part of the territory of the State; c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.

The recognition of non-state actors of persecution in the EU's asylum legislation has positively changed the more restrictive interpretation of the Geneva Convention in some member states, that had previously recognized only refugees fleeing persecution by the State (Peers, 2014, p. 4). Also, the EU framework for refugee protection expands the norm of refugee protection by introducing subsidiary protection. In that regards, the QD (2011, Article 2) provides that "international protection means refugee status and subsidiary protection status as defined in points (e) and (g)." Furthermore, while the 1951 Convention defines specific grounds for the fear of persecution, the QD (2011, Article 10) provides that these grounds are irrelevant when assessing if an applicant has a well-founded fear of persecution, or in other words:

> It is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

The EU's principle of *non-refoulement* is also explicitly based on the global framework. For example, the TFEU (2007, Article 78) states that the EU's common policy on asylum has to ensure "compliance with the principle of non-refoulement", as well as that the policy must be "in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties", while the QD (2011, Article 21) refers to the international obligations by providing that "Member States shall respect the principle of non-refoulement in accordance with their internatonal obligatons."

As explained within the Subchapter 4.2,[94] the *non-refoulement* principle within the 1951 Convention refers also to the refugees that are yet not formally recognized (UN High Commissioner for Refugee*s*, 2007, pp. 2–3). Similarly, the QD (2011, recital 21) recognizes that "the recognition of refugee status is a declaratory act", and therefore the principle of *non-refoulement* is applicable within the EU to applicants for international protection pending a final decision on their application (European Asylum Support Office, 2018, pp. 29–30). However, unlike the 1951 Convention, the QD (2011, Article 20) provides that the protection from *non-refoulement* applies "both to refugees and persons eligible for subsidiary protection".

The CFR (2000, Article 18), which states that the right to asylum shall be guaranteed with due respect for the rules of the 1951 Convention and the 1967 Protocol, and in accordance with the TEC, has opened some essential questions. However, it has been claimed that the recognition of a right to asylum in the EU, goes beyond protection from *refoulement* (Lambert, 2014, p. 7). Question that arises is weather the right to asylum applies only to individuals who meet the criteria in the 1951 Convention, or rather to other categories of protected persons as well (Gil-Bazo, 2008, pp. 45–46). Gil-Bazo (*ibid*., p. 50) claims that asylum in the CFR refers to the protection to which all individuals with an international protection need are entitled, provided that their protection grounds are established by international law. In other words, it is not relevant whether their protection grounds are found in the 1951 Convention or in any other international human rights instrument (*ibid*.).

One of the main differences between the global and EU frameworks for refugee protection is that the application of the 1951 Convention in the QD, and therefore the norm of refugee protection, right to asylum and principle of *non-refoulement*, are limited to third-country nationals and stateless persons, which has important implications on regional, but also universal

[94] Universal norms and principles for refugee protection.

regime for refugee protection (McAdam, 2007, pp. 267–268), as it will be further discussed in the Chapter 5.[95]

The 1951 Convention clearly points out the importance of the principle of solidarity and burden-sharing, but does not have any article that defines the context and extent of international cooperation for refugee burden sharing among states (Kale, 2017, p. 59). However, the TFEU (2007, Article 80) provides that policies on Border checks, Asylum and Immigration are to be governed by the principle of solidarity and fair sharing of responsibility between the member states, explicitly stating that this also refers to its "financial implications".

The Amsterdam Treaty (1997, Article 73k) provided that the Council shall adopt measures on refugees and displaced persons within the area of "promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons". To this end, the ERF was established. The Council Decision establishing the European Refugee Fund (2000, paragraphs 2, 11, 21) points out in its that in order to achieve solidarity between the member states in implementation of a common policy on asylum, the mechanisms promoting a balance in the member states' efforts are required, and that "it is fair to allocate resources proportionately to the burden on each Member State by reason of its efforts in receiving refugees and displaced persons", as well that the Community has central role in achieving these objectives, as they "cannot be sufficiently achieved by the Member States". In addition to that, the European Court of Justice explicitly used the principle of solidarity as a general principle of European law in 1973, in the cases *Commission vs. Italy* and *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*.[96]

When it comes to the EASO's assistance and support in relocation of refugees for member states which are faced with specific and disproportionate pressures on their asylum and reception systems, the Regulation on EASO's establishment (2010, Paragraph 7, Article 5) provides that support to "the development of solidarity within the Union to promote a better relocation of beneficiaries of international protection between Member States" remains conditioned by the agreement "between Member States and with consent of the beneficiary of international protection concerned."

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[95] KEY OBSERVATIONS ON THE EUROPEAN UNION REGIME FOR REFUGEE PROTECTION, AS RELATED TO THE UNIVERSAL FRAMEWORK.

[96] *Commission of the European Communities v Italian Republic*. Judgment of the Court of 7 February 1973. - Premiums for slaughtering cows. - Case 39–72; *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, Judgment of the Court of 7 February 1979. -. - Tachographs. - Case 128/78.

Unlike the 1951 Convention, the TFEU (2007, Article 78) addresses emergency events of sudden inflows of nationals of third countries in one or more member states, by providing the possibility to "adopt provisional measures for the benefit of the Member State(s) concerned". Based on that, the emergency response mechanism was adopted for 160 000 persons from states with an average asylum recognition rate of above 75%, who arrived in 2015 in either Italy, Hungary or Greece (Lovec, 2017; European Parliament, 2019).

Also, the Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis offered a number of soft, non-binding, principles to guide states in the event of a mass influx of protection seekers, but with a very limited effect in practice (Thielemann, 2003, p. 260).[97]

While the balance of burdens emerged as one of the core issues in the asylum politics in Europe, a lack of political will required to develop a comprehensive mechanism for burden sharing was demonstrated by member states (Byrne, 2003, p. 337). Furthermore, it is not possible to claim that, when faced by the refugee crisis in 2015, Europe performed in the spirit of cooperation (Gibney, 2016). In fact, while on the one hand, countries such as Sweden and Germany were open for asylum seekers, on the other hand, countries like the Czech Republic, Hungary, Poland and Slovakia were acting in a particularly strict and closed manner (*ibid*.).

According to Noll, in addition to 'sharing people' (distributing asylum seekers) and 'sharing money' (relocating funds), 'sharing norms' (harmonizing refugee and asylum legislation) is one of three main approaches to promote cooperation in order to solve the unequal distribution of asylum seekers (Kneebone, 2017, p. 43). Member states have agreed to norm sharing through a set of EU directives (*ibid*., p. 153). Despite that, asylum seekers face unequal opportunities in terms of reception and public assistance, as well as the probability of gaining protection status (*ibid*., p. 151). These unequal opportunities are problematic since they provide incentives for asylum seekers to engage in choosing a destination countries according to the criteria of high recognition rates, and therefore sustain a negative competition between alternative destinations, in the same time creating incentives for states to tighten admission standards in order to divert asylum seekers to states with less restrictive ones (*ibid*., 151–153).

[97] Council Resolution of 25 September 1995 on burden- sharing with regard to the admission and residence of displaced persons on a temporary basis, Official Journal C 262 , 07/10/1995 P. 0001 – 0003, in force since September 25, 1995.

4.5 The European Union's specific norms, principles, concepts and rules for refugee protection

In addition to universal norms and principles for refugee protection that the EU has applied, there are also elements that are characteristic particularly for the EU framework for refugee protection, such as subsidiary protection, temporary protection, internal flight alternative (IFA), safe third country, first country of asylum, safe country of origin, manifestly unfounded applications, Aznar rule and Dublin rules (Lambert, 2014, pp. 7–8). Subsidiary protection has been codified in the QD (2011, Articles 2, 15, 16, 17, paragraphs 33, 39); temporary protection is codified with the TPD; IFA is introduced in the QD (2011, Article 8); safe third country is found in the DR III (2013, Article 3) and the PD (2013, Articles 38 and 39); first country of asylum is defined in the PD (2013, Articles 33 and 35) and the DR III (2013, Articles 3 and 20); safe country of origin is found in the PD (2013, Articles 36, 31, 37, Paragraphs 40, 42, Annex 1); manifestly unfunded applications are codified in the Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum; Aznar rule is codified in the Protocol (No 24) on Asylum for Nationals of Member States of the European Union in the Consolidated Version of the TEU and the TFEU (Aznar Protocol), while Dublin rules in general are found in DR II, DR III and Dublin Convention.[98]

4.5.1 Subsidiary protection

The EU refugee law includes codification of subsidiary protection in the QD (2011, Article 2), and therefore provides protection outside the scope of 1951 Convention, by offering protection to a third-country national or a stateless person who does not qualify as a refugee, but faces a real risk of suffering serious harm if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence. The QD (2011, Articles 15, 16, 17) defines qualification for subsidiary protection. As stated in the QD (2011, paragraph 33) "subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention." Furthermore, the QD (2011, paragraph 39) provides that "beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees under this Directive, and should be subject to the same conditions of eligibility."

[98] Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention"), signed15 June 1990, in force since September 1, 1990, end of validity March 16, 2003.

Paradoxically, while on the one hand it improves refugee protection, on the other hand, it may undermine refugee status determination (Chetail and Bauloz, 2014, p. 555). In fact, it has been noted that once it has been established that the subsidiary protection of the QD (2011, Article 15 (c)), in terms of "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict", applies to a certain region, the more demanding qualification for refugee status might be skipped (*ibid*.). Although the recast version of QD has reduced a gap between the 1951 Convention status of refugees on the one hand, and subsidiary protection on the other hand, certain differences still persist, such as the length of residence permit granted and limited social assistance to core benefits in certain cases (Fiddian-Qasmiyeh *et al*., 2014, p. 209). The UNHCR has warned that the applicability of the 1951 Convention and the 1967 Protocol must not be undermined by resorting to subsidiary forms of protection (UN High Commissioner for Refugees, 2005, p. 11). In fact, while it is clear that subsidiary protection can protect individuals who are not Convention refugees from *refoulement*, there is a worrying trend of using it as a substitute for refugee status (Durieux, 2013, p. 250).

4.5.2 Temporary protection

The EU refugee law also includes codification of temporary protection. Temporary protection is to be used by states to prevent the blocking of asylum systems, while also providing immediate protection to those in need (Beirens *et al*., 2016). Described as a "tool in the service of a common European asylum system", the TPD was the first legislative instrument in the field of asylum, which had an objective to provide smooth operating, while preventing a collapse under a mass influx (*ibid*.). TPD provides for an exceptional measure of temporary protection, in order to provide displaced persons from non-EU countries and unable to return to their country of origin, with immediate and temporary protection, "in particular when there is a risk that the standard asylum system is struggling to cope with demand stemming from a mass influx that risks having a negative impact on the processing of claims" (European Commission, n.d.-c). TPD (2001, Article 5 (1)) establishes a specific procedure for determining the existence of a mass influx and accordingly triggering the TPD (Nicolosi, 2017), by providing that a Council Decision on the existence of a mass influx shall be adopted by a qualified majority on a proposal from the Commission, as well as by defining the specific criteria on which the decision shall be based.

The TPD (2001, Chapter VI) has devoted a chapter to the issue of solidarity and provides that provision should be made for a solidarity mechanism in the event of a mass influx, consist of

two components, financial and the actual reception of persons (*ibid*., paragraph 20). Despite the pressure of some countries, such as Italy, Greece and Malta (Hatton, 2016, p. 10), the provisions within the TPD, based on solidarity between member states, have not been triggered so far (European Commission, n.d.-c).

Contrary to the 1951 Convention which is implemented based on individualized status determination, temporary protection is a group based protection (Beirens *et al*., 2016). The 1951 Convention, as an instrument for individualized refugee status determination, does not provide solution for mass influx situations, allowing for domestic or regional solutions instead (*ibid*.). Therefore, despite being an exceptional measure, temporary protection status has broadened the narrow understanding of a refugee in the 1951 Convention, as it is claimed in the European Commission's Study on the Temporary Protection Directive (*ibid*.). In fact, it has been agued that the exceptional nature of the temporary protection measure, i.e. in the event of mass influx, has prevented its formalization within international refugee law (Nicolosi, 2017).

On the other side of the coin, although it has been recognized as a norm of the EU refugee law that has a positive impact on refugee protection (Lambert, 2014, p. 7), it has been warned that the "temporary protection is a concept that can distract from the core content of international protection under the 1951 Convention" (Nicolosi, 2017), or that it can undermine the right to asylum (Van Selm, 2015). Namely, temporary protection regimes effectively offer only some of the rights provided by the 1951 Convention (Nicolosi, 2017). Therefore, it has been claimed that it is necessary to reexamine the goal of the temporary protection, as an alternative protection label, and to ensure that it does result in avoiding the need to recognize the 1951 Convention rights (*ibid*.).

4.5.3 Internal Flight Alternative

IFA was introduced as discretionary provision in the QD (Aldenhoff *et al*., 2014), and it is applicable when a claimant who otherwise meets all the elements of the refugee definition nevertheless is not a Convention refugee because he or she has an IFA in his or her home country (Immigration and Refugee Board of Canada, 2018). The QD (2011, Article 8) closer determines the internal protection as a part of the country of origin where an applicant "has no well-founded fear of being persecuted or is not at real risk of suffering serious harm", or where he or she "has access to protection against persecution or serious harm", provided that safe and legal travel to that part of the country is possible. Furthermore, it determines that general circumstances prevailing in that part of the country and the personal circumstances shall be taken into account (*ibid*.).

The IFA concept is absent from the 1951 Convention and the 1967 Protocol and it does not represent a principle of international law (UN High Commissioner for Refugees, 2012; Aldenhoff *et al*., 2014, p.17). UNHCR (2003, p. 2) reminds that "international law does not require threatened individuals to exhaust all options within their own country before seeking asylum". Therefore, it warns that the concept of IFA should not be invoked in a manner that would undermine the right to leave one's country, the right to seek asylum and protection against *refoulement* (*ibid*.), and provides in its research study that the application of the IFA concept depends on full consideration of all aspects of the refugee claim, because its inappropriate application may result in the improper denial of access to asylum procedures or *refoulement* and therefore harm people in need of international protection (Maczynska, 2012, p. 4).

Despite certain improvements that have been made, such as expanding the criteria for qualification as an IFA location, highlighting the role of UNHCR, elaborating more on a reasonableness condition and giving an explicit reference to Article 4 as a necessary criteria for taking decision on the application for international protection (*ibid*. p. 11), the IFA remains a complicated and demanding concept for a proper application, requiring both substantial evidence of conditions in the country of origin and consideration of the applicant's particular characteristics (Aldenhoff *et al*., 2014, p. 109). In fact, its improper, limiting, superficial, fragmentary, biased and overgeneralized application has been registered by the UNHCR (UN High Commissioner for Refugees, 2006, p. 13; Maczynska, 2012, pp. 4–18), but also by the European Council on Refugees and Exiles (ECRE), which warned that states were using the IFA to justify an increasingly restrictive global refugee policy (European Council on Refugees and Exiles, 1998, p. 69). Worryingly, the IFA concept still rises concerns in terms of being incompatible with human rights and refugee law standards, while its incorrect interpretation and use can adversely affect people's lives (Aldenhoff *et al*., 2014, p. 17).

4.5.4 Safe third country

The safe third country concept operates on the basis that the receiving state has the right to reject responsibility for the protection claim when "an applicant for international protection could have obtained it in another country" (European Council on Refugees and Exiles, 2017b, p. 1). The safe third country concept is mostly applied as a ground for declaring an application inadmissible and prohibiting applicants "from a full examination of the merits of their claim" (*ibid*.). PD (2013, Article 38) defines principles that have to be fulfilled in the third country concerned, in order for member states to be able to apply the safe third country concept:

> (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; there is no risk of serious harm as defined in Directive 2011/95/EU; (b) the principle of *non-refoulement* in accordance with the Geneva Convention is respected; (c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (c) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

The concept of safe third country has no clear legal basis in international refugee and human rights law (European Council on Refugees and Exiles, 2017, p. 2). Indeed, while the 1951 Convention does not provide the right of choice of the host state, neither it provides the obligation to apply in the first country reached (*ibid*.).

Non-governmental organizations, scholars and international organizations have all warned about the potential impact of safe third country rules on access to asylum and respect of the *non-refoulement* principle (Cortinovis, 2018, p. 8). In the words of Cortinovis (*ibid*., p. 9), if the adequate safeguards for applying the concept are lacking, the risk of *refoulement* may be substantial. In fact, this concept indirectly creates an obligation to seek asylum in the geographically closest safe state, while punishing non-compliance with forced removal (*ibid*., p. 7). Moreover, UNHCR (2012, pp. 29–30) explicitly questions the concept's utility and consistency with international refugee law, as it lacks minimum principles and guarantees, therefore creating a possibility that access to territory and to an asylum procedure may be denied to asylum seekers who may have protection needs.

Similarly, referring to the European Commission's proposal for an Asylum Procedures Regulation which suggests a mandatory application of the safe third country (and first country of asylum), ECRE (2017, p. 1) warns against the potential erosion of key principles underlying the international protection regime. Furthermore, taking into account the burden-shifting nature of the safe third country concept (Cortinovis, 2018, p. 10), ECRE (2017, p. 2) also argues that mandatory application of the safe third country concept would contrast with EU commitments at the global level, namely the commitment to the New York Declaration to "a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States".[99]

Similarly, UNHCR (2010a, pp. 5–6) has warned that the concept of the safe third country is based on the unilateral decision by a state to invoke the responsibility of another state to

[99] New York Declaration for Refugees and Migrants, 3 October 2016, resolution / adopted by the General Assembly, A/RES/71/1.

examine an asylum claim. This is contrary to the primary responsibility of the state where the claim is submitted to provide protection, while the transfer of responsibility for an asylum application might be envisaged "only between states with comparable protection systems, on the basis of an agreement which clearly outlines their respective responsibilities" (*ibid*.).

4.5.5 First country of asylum

The concept of first country of asylum allows for inadmissible decisions to be made in cases when applicants have already been recognized as refugees or given similar protection in third countries, as well as when they have applied or have the opportunity to apply for international protection in the first country of asylum (Home Office of the the United Kingdom, 2019, p. 13). Therefore, the concept of first country of asylum, defined in the PD (2013, Article 35), presents another ground for inadmissibility (Asylum Information Database, n.d.). Similar to the safe third country concept, the concept is a permissive provision, meaning that member states are not required to apply the concept of first country of asylum, but "a country can be considered to be a first country" (UN High Commissioner for Refugees, 2010b, p. 281). The requirement that the first country of asylum will readmit the applicant, represents an important safeguard ensuring that the first country of asylum concept does not create refugees 'in orbit', "who are denied admission and shuttled consecutively from one country to another" (*ibid.*).

The PD (2013, Article 35) indicates that in the application of first country of asylum, the application of Article 38 (1) is not obligatory, as it provides that in applying the concept of first country of asylum, member states "may" take into account Article 38(1), which sets the principles to be satisfied in the concerned country. Furthermore, suggesting the term "effective protection" as more appropriate, the UNHCR (2010b, p. 282) has warned that the term "sufficient protection" in Article 35(b) may not be adequate, because it does not precisely define principles that it includes, except for the right of *non-refoulment*. It should be clear, however, that individuals who qualify under the 1951 Convention acquire more than the right of *non-refoulement* (*ibid*.)

4.5.6 Safe country of origin

The PD (2013, Article 36(1), Paragraph 40, Annex 1) defines the concept of safe country of origin and its applicability. It also (*ibid*., Paragraph 42) excludes the application of the concept when "an applicant shows that there are valid reasons to consider the country not to be safe in his or her particular circumstances." In addition to that, the PD (*ibid*., Article 31(8)(b)) provides

the possibility for member states to use the concept of safe country of origin as a ground for accelerating the examination of asylum claims.

An attempt to reconcile the spirit of the 1951 Convention with the safe country of origin concept, which has been controversial since it has become part of the EU asylum acquis, is a difficult one (European Council on Refugees and Exiles, 2015, p. 4). While on the one hand, the 1951 Convention (1951, Article 3) sets the duty of non-discrimination based on a country of origin, race or religion, the PD allows the differentiation of asylum seekers according to different categories (European Council on Refugees and Exiles, 2015, p. 2). In fact, the 1951 Convention has particular regard to persons who due to their specific features may be at risk in their country of origin (reasons of race, religion, nationality, membership of a particular social group, or political opinion) (*ibid*., p. 4). Therefore, to designate a whole country safe with, as PD (2013, Annex I) provides, generally and consistently no persecution, risks to neglect certain minorities, such as ethnic, religious, sexual and other, who find themselves exposed to ill-treatment in the countries where nationals "generally" enjoy state protection (*ibid*.), examples of which can be found by not only looking outside the EU (AEDH, EuroMed Rights and FIDH, 2016, p. 7).

In addition to that, the safe country of origin concept places a higher burden of proof for nationals of listed countries as opposed to other asylum seekers, which has to be presented in a limited amount of time (European Council on Refugees and Exiles, 2015, p. 9).[100] ECRE (*ibid*., p. 10) further warns that where the safe country of origin concept is applied in an individual asylum procedure, thereby leading to the application of the accelerated procedure, "the likelihood of a grant of international protection is worryingly low." Similarly, it has been claimed that "specific 'accelerated' procedure and the prevailing presumption in the examination of asylum seekers' applications breach the principle of equality before the law" (AEDH, EuroMed Rights and FIDH, 2016, p. 3). Namely, the accelerated procedures applied to individuals from countries considered safe do not provide "adequate safeguards to ensure the examination of these individual circumstances" (*ibid*., p. 7). These controversial characteristics of safe countries of origin concept further imply less favorable procedural treatment for nationals of certain third countries (*ibid*. 2016, p. 2).

Furthermore, the fact that member states do recognize the existence of risks for a "significant number of persons originating from countries which are designated as generally and

[100] Burden of proof - the duty to produce evidence in order to prove alleged facts in support of refugee claims (Office of the United Nations High Commissioner for Refugees, 1998).

consistently free from persecution, calls into question the very rationale behind designating them as safe", as shown in the cases of Albania and Turkey (European Council on Refugees and Exiles, 2015, p. 8). The recognition rates for safe countries of origin, such as Albania and Turkey, reveal a gap between general presumptions of safety and the protection needs identified for the nationals of the countries concerned in practice (*ibid*., p. 10). Therefore, the ECRE evaluates the concept of safe country of origin as an unsafe concept in asylum procedures (*ibid.*).

4.5.7 Manifestly unfounded applications

Other situations can also trigger accelerated procedures with drastically shortened time limits, which is the case with manifestly unfunded applications (Cilevics, 1999). The underlining assumption of the Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum is that manifestly unfounded applications should be "singled out and rejected very quickly in a simplified procedure" (Noll, 2000, p. 215). Namely, instead of being rejected after full procedure, manifestly unfounded applications should be rejected at an initial stage, within one month or quicker (*ibid*.), when, as provided in the Resolution (1992, paragraphs 1, 6, 7, 8, 9 and 10) it is clear that it meets none of the substantive criteria under the 1951 Convention and New York Protocol, i.e. (*ibid*., paragraph 1) "when there is clearly no substance to the applicant's claim to fear persecution in his own country", or "the claim is based on deliberate deception or is an abuse of asylum procedures".[101] The Resolution (*ibid*., Paragraphs 7 and 8) includes the internal flight alternative concept and safe country of origin concept as grounds for regarding an application for asylum as manifestly unfounded.

In addition to that, the Resolution on Manifestly Unfounded Applications for Asylum (*ibid*., Paragraph 1) refers to the Resolution on host countries,[102] which "sets out the requirements for a country to be determined safe so that an asylum seeker can be returned to it" (Cilevics, 1999). As stated by Cilevics (*ibid*.), by two intergovernmental memoranda, namely the Resolution on manifestly unfounded applications for asylum and the Resolution on a harmonized approach to questions concerning host third countries ('London Resolutions'), the member states agreed that:

[101] Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum ("London Resolution").
[102] Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries.

> wherever possible they would not apply the Dublin Convention to return an asylum-seeker to another member states if there were a third country through which the applicant had passed through to the EU and to which he or she could be returned.

In that regards, "the member states inserted the possibility that a well-founded application could be treated as manifestly unfounded if a third country exists to which the person can be returned" (*ibid*.). In this way, the underlying principle of the Dublin Convention, i.e. the first country of arrival of the asylum seeker is the country responsible for determining the application unless there are countervailing circumstances, has been extended to other countries, thus extending beyond the member states (*ibid*.).

Cilevics (*ibid*.) assesses that the manifestly unfounded procedure could be considered as the most obvious case of seriously endangering the right to have one's application considered in a fair manner. Furthermore, it has been argued that the concept of manifestly unfounded application "justifies the curtailing of the examination procedure, limits procedural rights and guarantees and can lead to the total refusal to grant refugee status" (Barbou Des Places, 2004, p. 82). In fact, determining the availability of IFA, as well as the lacking credibility of the application, listed in the paragraph 6(c) of the Manifestly Unfounded Applications for Asylum, are inappropriate to deal with in accelerated procedure, since both cases require substantial rather than a formal assessment (Noll, 2000, pp. 216–217), which is clearly stated in the UNHCR's Position on Manifestly Unfounded Applications for Asylum (1992).[103]

4.5.8 The Aznar rule

Confident that no member state will produce refugee, declared objective of the Aznar rule was to ensure that "no citizen of a member state would have access to an asylum procedure anywhere within the territory of the EU" (Durieux, 2013, p. 230). The Protocol on Asylum for Nationals of Member States of the European Union in the Consolidated Version of the TEU and the TFEU (2008),[104] provides that "asylum claims from nationals of member states should be considered manifestly unfounded". Furthermore, looking into the EU secondary law, namely the QD, PD and DR III, they all exclude the EU nationals from the definition of potential refugees (Graae, 2015, Abstract). Therefore, relying on the concept that EU countries are safe countries of origin, the concept of asylum in the EU is only relevant for third-country nationals and stateless persons, and in rare circumstances, laid out in the Aznar Protocol (a–d), for

[103] UNHCR's Position on Manifestly Unfounded Applications for Asylum. (December 1, 1992). UN High Commissioner for Refugees, 3 European Series 2, p. 397.
[104] Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 24) on asylum for nationals of Member States of the European Union, OJ C 115, 9.5.2008, p. 305–306.

nationals of MS (*ibid*., p. 9). In that regards, member states do not have an obligation to take into consideration or declare admissible an asylum application from a national of another member state in any other cases, except for those listed in the Aznar Protocol (*ibid*.).

It has been claimed that the purpose of the Aznar rule is to "radically reduce or to remove asylum possibilities within the EU for Union nationals", therefore violating the letter and the spirit of the 1951 Refugee Convention, as well as other human rights instruments and principles, because (Landgren, 1999, p. 13):

> It makes asylum decisions subject to a political process which includes the alleged violator state; it does not (as a general principle) examine the individual grounds for fear of persecution; it restricts access to any form of status determination procedures; it discriminates on the basis of nationality, and it evades international obligations through reliance on the obligations of another state.

Moreover, there is the evidence of groups severely discriminated in certain parts of Europe, such as the Roma (McAdam, 2007, Abstract; Hammarberg, 2010), which strongly questions the validity of considering asylum application from EU nationals as manifestly unfounded.

4.5.9 Dublin rules

In addition to DR, the Dublin System consists of Eurodac Regulation, which supplements the DR with introducing an obligation that all member states shall take the fingerprints of every applicant for international protection of at least 14 years of age, in order to find out whether the applicant has previously applied for asylum in another member state, as well as to check "individuals apprehended by a member state in connection with the irregular crossing of an external border or found illegally present in a Member State" (Seeberg, 2015, p. 56). In that way, the Dublin System provides that the first country in which a migrant is fingerprinted and documented is the 'country responsible' (Sopariwalla, 2017, p. 135), which is the purpose of the DR (2013, Article 1), i.e. to determine "the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Member State responsible')."

The DR (2013, Articles 7, 8, 9, 10, 11, 12, 13 and 14) provides Criteria for Determining the Member State Responsible in hierarchical order, i.e. Minors, Family members who are beneficiaries of international protection, Family members who are applicants for international protection, Family procedure, Issue of residence documents or visas, Entry and/or stay, Visa waived entry and Application in an international transit area of an airport. Also DR (2013, Article 3) provides that "the first Member State in which the application for international

protection was lodged shall be responsible for examining it", when no member state responsible can be designated on the basis of the criteria listed in the Regulation. However, DR (2013, Article 17) also provides discretionary clauses that provide member states with the possibility to take responsibility for an applicant anytime, beyond the 'hierarchy of criteria' (The UN Refugee Agency, 2017, p. 5; The European Council on Refugees and Exiles, 2018). Furthermore, each member state has the responsibility to evaluate conditions for applicants in the other MS before transferring a person (Seeberg, 2015, p. 51), and the DR (2013, Article 3) prohibits transfers to countries where there is a risk of inhuman or degrading treatment (European Council on Refugees and Exiles, 2018, p. 4)

In fact, Dublin establishes three principles (Garcés-Mascareñas, 2015, p. 2): "asylum seekers have only one opportunity to apply for asylum in the EU and, if the request is denied, this is recognized by all member states"; "the member state responsible for examining the application is established by the criteria set out in the Dublin Convention, rather than the preference of the applicants themselves"; and "asylum seekers may be 'transferred' to the member state to which they have been assigned".

In general the criticism and controversy regarding the Dublin, which is perceived as the cornerstone of the CEAS, is widely present. (Peers, 2014; European Council on Refugees and Exiles, 2018*)*. Firstly, it has been claimed that the Dublin does not work fairly due to the disproportionate responsibility it places on the border countries (Garcés-Mascareñas, 2015, p. 2). Namely, the most commonly used criteria is the first country of arrival, which means that asylum seeker is not able to seek asylum in other member state (*ibid*.). In practice, this results in the situation where the majority of asylum claims is placed on a small number of member states (European Commission, 2016). Secondly, the criticism is also present regarding Dublin's efficiency. Despite the first country of arrival rule exists, most applicants do seek asylum in country different to the first country of arrival (Garcés-Mascareñas, 2015, p. 2). As it is based on a false assumption that member states provide equal protection and equal criteria regarding the granting of asylum status, it encourages the avoidance of the Dublin by asylum seekers, thus pushing them towards criminal networks trying to reach a European country different from that of the country of their first arrival or that in which he or she is assigned (Cellini, 2017, pp. 950–952, 959). Thirdly, the Dublin threatens the rights of refugees, since the fair and efficient examination of asylum applications is not guaranteed in all member states (Garcés-Mascareñas, 2015, p. 3).

In fact, the underlying assumption of the Dublin is that there are common standards regarding the asylum laws and practices amongst the member states, which does not take place in reality, as asylum legislation and practice still vary from country to country, resulting in the different treatment of asylum-seekers across the EU (UN High Commissioner for Refugees, n.d.-c). The ECRE points out that successful appeals against Dublin transfers break the illusion of assumption that asylum claims are treated universally across the region (European Council on Refugees and Exiles, 2018, p. 3).

5 KEY OBSERVATIONS ON THE EUROPEAN UNION REGIME FOR REFUGEE PROTECTION, AS RELATED TO THE UNIVERSAL FRAMEWORK

In order to answer the research question, i.e. to what extent the EU managed to follow universal principles and norms for refugee protection and how does this reflect on the degree and quality of refugees protection, I apply combination of theories to the comparative norms analysis of the universal and EU regimes for refugee protection, namely international regime theories, international regime complexity, securitization theories and norms translation.

Certain basic norms, such as the norm of refugee protection, the right to asylum, principle of *non-refoulement* and principle of burden sharing are characteristics of both regimes for refuge protection, i.e. the EU and universal regimes for refugee protection (see Figure 4.1)[105], but as the previous Chapter has revealed,[106] there are differences between the two regimes in the scope and legislative codification of these norms. As translation perspective of norms explains, norms change when they travel through different contexts, and in this case, universal norms for refugee protection have changed in the process of their translation to the EU context.

The previous Chapter has shown that the norm of refugee protection was expended and further specified within the EU framework for refugee protection, by recognizing specific acts of persecution, such as gender-based persecution, and specific actors of persecution, such as non-state agents of persecution, as well as by introducing subsidiary protection and temporary protection. In that way, the norms of *non-refoulement* and refugee protection were both reinforced and expended within the EU context, therefore improving refugee protection (Lambert, 2014, pp. 7–8). Furthermore, it has been interpreted that the right to asylum within the EU framework includes protection grounds also outside the 1951 Convention, as long as they are established by international law.

However, while on the one hand expending these norms, the EU has in the same time significantly limited them to only third-country nationals and stateless persons. The argumentation in favor of this limitation is reflected in the fact that all member states have, as a condition of membership, accepted various human rights treaties, as well as that 'regional citizenship' provides a right to freedom of movement, thus eliminating a need for asylum to be

[105] Figure 4.1 Fundamental and secondary elements of the universal and European Union regimes for refugee protection.
[106] ANALYZING THE ELEMENTS OF THE UNIVERSAL AND EUROPEAN UNION REGIMES FOR REFUGEE PROTECTION.

granted (McAdam, 2007, pp. 257–258). Nevertheless, as McAdam notes (*ibid*.), "the right to residence in other EU countries is not as simple as having a right to free movement". Therefore, serious concerns have been expressed about this limitation, which can have global consequences, since the EU, as a major regional grouping, has adopted a regime limiting the scope of the 1951 Convention (House of Lords of the United Kingdom, Committee on European Union 2002).

Furthermore, the EU framework further elaborates on the principle of solidarity and burden sharing, importance of which is also evident within the global framework, which however, fails to define the scope of this principle more precisely, as well as to introduce the responsibility of solidarity and burden sharing. On the other hand, the EU envisages specific measures and financial implications, introduces concrete Funds, the responsibility of EASO, which is however conditioned, and the possibility of emergency responses and provisional measures. It should be noted however that despite the frequent reference to the norms of solidarity and equity in the EU's official documents and communications, there is little evidence that these norms have significantly shaped the member states' actual practice in moving towards a burden sharing regime in forced migration (Thielemann, 2003, p. 267), as it is discussed in the Subchapter 4.4.[107]

What distinguishes the process of translation of norms from other ways of transformation is the fine line of apparent continuity, which captures the tension of continuity and change (Berger, 2017, p. 6). By relying and expanding on norms of refugee protection, right to asylum, *non-refoulment* and burden sharing, it seems like this 'fine line' has been preserved in the process of translation of universal norms for refugee protection in the EU. However, as the analysis has shown, considerable differences have occurred, some of them having positive, but a significant number of them having negative effects on the scope and quality of refugee protection.

Not only the EU applied the universal norms and principles for refugee protection and exposed them to the process of translation, but the basic norms and principles for refugee protection were also affected by introducing the EU specific elements, as discussed in the Subchapter above.[108] The comparative analysis of the basic norms and principles for refugee protection of the universal and EU regimes for refugee protection, as well as the analysis of the EU specific standards and rules for refugee protection, reveal certain trends and patterns. Discussion above confirms that, despite certain unquestionable improvements of refugee protection, the EU's

[107] Application of universal norms and principles for refugee protection in the European Union.
[108] The European Union's specific norms, principles, concepts and rules for refugee protection.

specific standards and rules for refugee protection generally show tendency towards exceptions and derogations to established universal standards (Lambert, 2014, pp. 7–8).

Namely, due to its complicated nature, the IFA is subject to the improper application, which has been registered by the UNHCR, and which further implies *refoulement* or denied access to asylum procedures of people in need of international protection. Similarly, the lack of minimum principles and guarantees for the safe third country concept, creates the risk of *refoulement,* while the burden-shifting nature of this concept is contrary to the global commitments to burden sharing. Also, first country of asylum concept does not precisely define principles that are needed for providing effective refugee protection. The safe country of origin concept makes a difference in treating the asylum seekers according to their country of origin, while also placing a higher burden of proof for nationals of certain countries, which is contrary to the 1951 Convention, and risks neglecting the rights of minorities within the certain countries declared as generally safe.

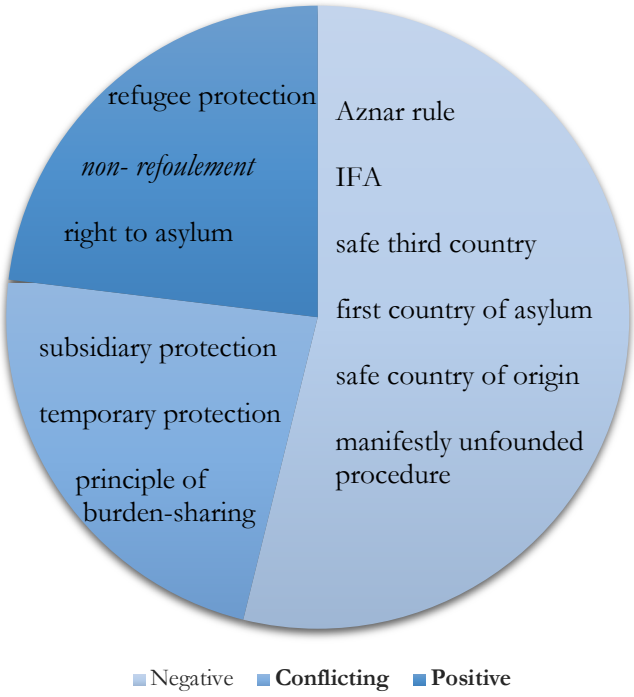
Further, manifestly unfounded application shortens the examination procedure and limits procedural rights and guarantees, leading to the refusal of the application. Aznar rule radically reduces asylum possibilities within the EU for EU nationals, while discriminating on the basis of nationality. Moreover, Dublin rules in general place higher responsibility on the border countries, threaten the rights of refugees by failing to guarantee the fair and efficient examination of asylum applications in all member states, and therefore incent their own avoidance, which results in asylum seekers reaching out to the criminal ways of reaching desired country for their protection. More detailed discussion of these elements is provided in the 4.5 Subchapter.[109]

These trends have also affected the degree and quality of refugee protection, which brings us to the second part of the research question. In order to grasp these effects, I distinguish three categories of developments of norms, standards, principles or rules within the EU regime for refugee protection, based on the analysis and according to the effects they have on refugee protection: positive, conflicting and negative (see Figure 5.1).[110] Positive effects mean that developments within these elements provide significant benefits for refugee protection, while negative, on the contrary, endanger it. Conflicting developments have the potential to produce either negative or positive effects, depending on how they are used and interpreted. Therefore, future developments within the 'conflicting' elements should be watched with particular

[109] The European Union's specific norms, principles, concepts and rules for refugee protection.
[110] Figure 5.1 Three categories of elements of the European Union regime for refugee protection.

attention, as they would more closely determine category of their effects on refugee protection, i.e. positive or negative. It should be noted however, that the Figure 5.1, represents an arbitrary illustration, rather than statistical evidence of the scope of the elements' representation within the regime, and serves solely for demonstration purposes.

Figure 5.1 Three categories of elements of the European Union regime for refugee protection



First, there is a positive development of norms for refugee protection, *non-refoulement* and rights to asylum within the EU regime, by increase in their scope and their further specification. Secondly, subsidiary protection and temporary protection principles are conflicting because on the one hand, they intend to improve and broaden refugee protection, but on the other hand, if not used properly, these concepts can also undermine it, as it has been discussed within Subchapter 4.5.[111] Although it is clearly a positive principle for refugee protection, I also place the principle of burden sharing in the second category, because, even though the EU regime for refugee protection provides more specified responsibilities and measures than the universal one, the practice of burden sharing within the EU casts doubt on references made in the official document. Thirdly, the Aznar rule, IFA, safe third country, first country of asylum, the safe country of origin, manifestly unfounded procedure and Dublin system in general, all clearly either "limit", "reduce", "violate", "discriminate", "undermine", create "risk of *refoulement*",

[111] The European Union's specific norms, principles, concepts and rules for refugee protection.

"threaten", "endanger" or "curtail" the refugee protection and people in need of it (see Subchapter 4.5).

All three categories are part of the same 'pie' (regime), and therefore it is expectable that they influence each other. Unfortunately, international regime theories do not precisely explain how different elements of an international regime (norms, principles, rules and procedures) can affect one another. My analysis however, reveals that elements in the EU regime for refugee protection are interlinked and affect each other, in a way that secondary elements negatively affect fundamental characteristics of the regime, as fundamental elements of refugee protection (norms of refugee protection, *non-refoulement* and right to asylum) are threatened by secondary elements, characterized as negative in the Figure 5.1,[112] and discussed in more detail within Subchapter 4.5.[113]

What international regime theories do clarify is that secondary elements can vary, but have to be consistent with fundamental elements, i.e. norms and principles, as learned in Chapter 2.[114] Nevertheless, the analysis has shown inconsistency of secondary elements with fundamental ones within the EU regime in normative sense, which indicates incoherence between the regime's elements (for the distinction between fundamental and secondary elements see the Figure 4.1)[115]. Therefore, according to the regime theories, it can be argued that we are witnessing weakening of the EU regime for refugee protection, which is characterized by incoherence between the regime's elements and inconsistency between actual practice and regime elements (Krasner, 1982, p. 189). First, incoherence is present between the refugee protection, *non-refoulement*, right to asylum and principle of burden-sharing on the one hand, and the Aznar rule, IFA, safe third country, first country of asylum, safe country of origin, manifestly unfounded procedure and Dublin rules on the other. Second, there is a gap between the actual practice of unequal opportunities and conditions, as well as unequal burden among members states, placed by Dublin rules, on the one hand, and principle of burden sharing and solidarity as the regime's fundamental element on the other hand. Also, the gap is clear between the endorsement of refugee protection norm and the actual refugee protection that refugees receive, reflected in the deteriorating procedures and conditions, as elaborated in Chapter 3,[116]

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[112] Figure 5.1 Three categories of elements of the European Union regime for refugee protection.
[113] The European Union's specific norms, principles, concepts and rules for refugee protection.
[114] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.
[115] Figure 4.1 Fundamental and secondary elements of the universal and European Union regimes for refugee protection.
[116] SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION.

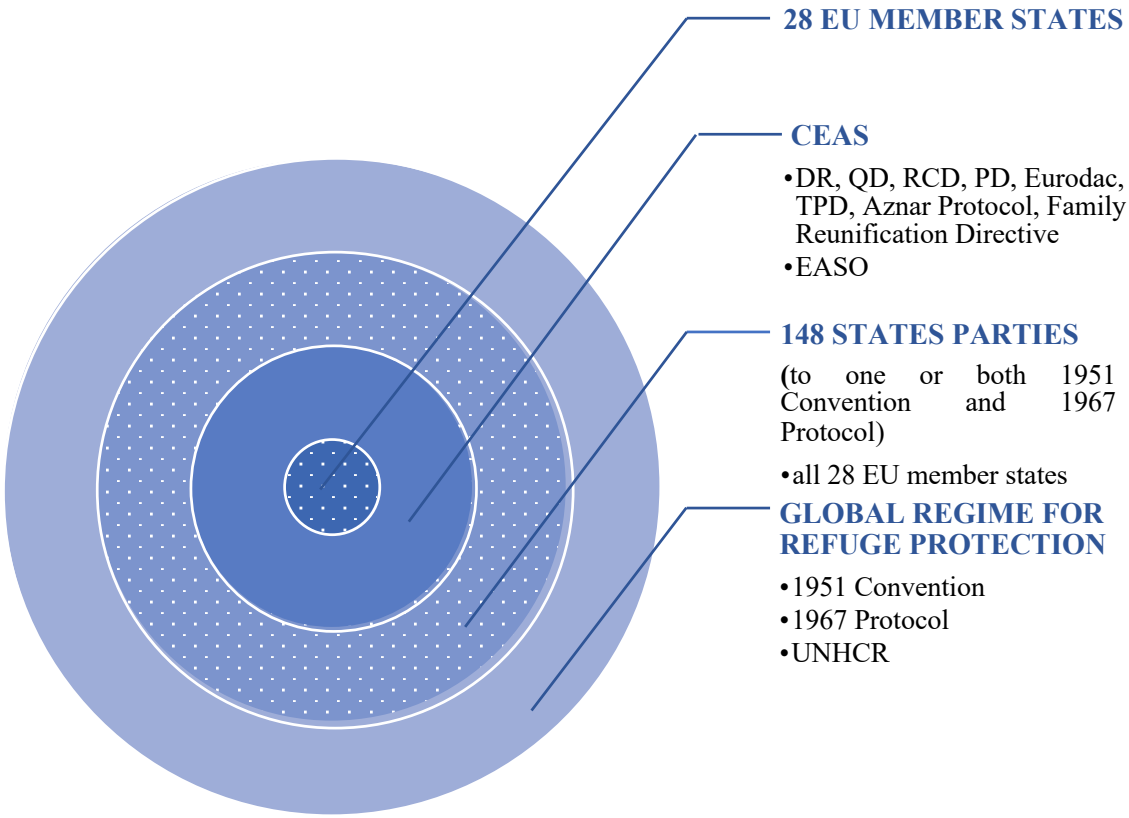
as well as in the fact the right to have an application fairly and effectively considered is endangered by applying the concepts of manifestly unfounded procedures, safe third country, IFA and other secondary elements previously listed.

Furthermore, findings of the analysis have implications for the effects of the EU regime for refugee protection on the refugee regime complex. While Betts focuses on the refugee regime as related to regimes regulating other but related areas, my comparative analysis reveals that regime regulating the same issue area, i.e. refugee protection, but its regional model as compared to global, besides complementary implications on refugee regime complex, also has contradictory ones. On the one hand, the EU regime for refugee protection reinforces, further specifies and expands norms of refugee protection, *non-refoulement*, right to asylum and burden sharing, therefore complementing the universal regime for refugee protection. On the other hand however, by introducing limiting elements as listed above and presented in Figure 5.1,[117] it contradicts the basic universal norms for refugee protection, and therefore contradicts both the refugee regime complex and universal regime for refugee protection, which is in the center of this complex.

In the language of regime complexity theory, the EU is perceived as nested within multilateral framework, and the CEAS as nested within the universal refugee regime. In Figure 5.2,[118] I aim to illustrate nested nature of relationship between the universal and EU regimes for refugee protection. As learned in the Chapter 2,[119] the nesting nature of relationship between the two frameworks means that conflicting policies of the subsumed regional regime (in this case, the EU regime for refugee protection) constitute a violation of the more encompassing regime, or in this case, the universal regime for refugee protection. Applying this to the analysis, elements of the EU regime for refugee protection that limit and endanger refugee protection provided within the global framework, constitute violation of the universal regime for refugee protection.

[117] Figure 5.1 Three categories of elements of the European Union regime for refugee protection.
[118] Figure 5.2 Nesting of the European Union regime for refugee protection within the universal regime for refugee protection.
[119] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.

Figure 5.2 Nesting of the European Union regime for refugee protection within the universal regime for refugee protection



The trend of introducing elements that limit refugee protection can be better understood if we go back to securitization theory. As learned from the Subchapter 2.4,[120] deepening of the integration within the EU, has been achieved at the expense of third country nationals, whose arrival to the EU became increasingly controlled and securitized. In fact, the increasing perception of refugees as threats has served as a suitable precondition for adopting limiting standards and rules of refugee protection at the EU level.

As explained in the Subchapter 2.4, the construction of migration as a security threat can be traced back to the oil crisis of 1973–1974 and the growth in unemployment rates, while the 9/11 terror attacks in 2001 have accelerated the dynamics of securitizing migration. Furthermore, the increase of asylum seekers, which was occurring in different peaks in the end of the 20th

[120] The securitization debate.

century and beginning of 21st century, illustrated in Figure 3.1,[121] has significantly contributed to the framing of migration as a serious issue in Europe. For sure, financial and economic crisis, and after that migration crisis, that are discussed in Chapter 3,[122] were 'opportunities' to support restrictive trends. In fact, no matter if there is precisely a causal link between crises and stricter migration policies, securitization which involves the presentation of an issue as an existential threat and justifies the adoption of measures outside the formal and established procedures of politics, and crisis, that suddenly disrupt a normal order and impose deep shock, appear like a compatible phenomena. In addition to that, another important aspect to look at is the increased proliferation of institutions and emergence of regime complexity, i.e. refugee regime complex, which made it possible that securitization of other regimes within the refugee complex, such as international travel regime, has direct effect on access to asylum (see Chapter 2).[123]

Theory of norm translation emphasizes exactly different contexts, established by different background knowledge, between which norms travel and therefore go through the process of translation (Berger, 2017, p. 28). It is evident that the environment in which the basis of global framework of refugee protection were created (see Subchapter 3.2.1),[124] significantly differs from the constantly changing environment in which the EU has started and continues to shape its regime for refugee protection. Emphasizing the special context of EU regime for refugee protection, does not aim to justify derogations in any way, but helps to better understand how and in what kind of environment have these occurred. Rather than one aspect in particular, all these aspects above, combined together and to a different extent, have formed the environment suitable for the increase of limiting elements of refugee protection at the EU level.

As learned from theory of norms translation, in addition to changes in meaning and content of norms, the process of norms translation also change the social and political dynamics of the context in which the norms are translated. But have the changes of social and political dynamics in the EU, that occurred with the translation of universal norms of refugee protection, resulted in an encompassing, protection-oriented approach towards refugees? Quite the contrary, apart from several improvements that have been made, the analysis has shown that the refugee protection within the EU has been largely limited, while discriminating and threatening the rights of refugees. Therefore, it can be inferred that the elements of the EU regime for refugee

[121] Figure 3.1 Asylum applications in the European Union (total applications).
[122] SOCIO-ECONOMIC AND POLITICAL CONTEXT OF MIGRATION AND INTERNATIONAL REFUGEE PROTECTION.
[123] A THEORETICAL FRAMEWORK FOR ANALYZING NORMS APPLICATION AND IMPLEMENTATION TO THE REGIONAL LEVEL.
[124] Periodization.

protection have shaped and reinforced the context which is suspicious and control, rather than protection, oriented towards asylum seekers.

Some of the key findings that comparative norm analysis between the universal and EU elements of refugee protection has revealed about the characteristics of the EU regime for refugee protection, as compared to the universal regime, are listed in Table 5.1,[125] focusing on fundamental elements of refugee protection, and in Table 5.2,[126] presenting secondary elements of the EU regime for refugee protection. Asterisk (*) symbolizes limiting and adverse effects of these elements on the refugee protection.

Table 5.1 Fundamental elements of refugee protection regime in the European Union

refugee protection ***non-refoulement*** **right to asylum** Sources: McAdam (2007); Qualification Directive (2011, Articles 2, 6, 9, 10);	**burden-sharing** Sources: Thielemann (2003); Treaty on the Functioning of the European Union (2007, Articles 78, 80); Regulation on the establishment of European Asylum Support Office (2010, Article 5); Kneebone (2017); European Commission (n.d.-b)
* limited to third-country nationals and stateless persons	* unequal opportunities in terms of reception and public assistance, as well as the probability of gaining protection status
	includes financial implications and envisages measures to give effect to the principle

[125] Table 5.1 Fundamental elements of refugee protection regime in the European Union.
[126] Table 5.2 Secondary elements of the European Union regime for refugee protection.

recognizes acts of gender specific or child specific persecution; physical or mental violence; legal, administrative, police, and/or judicial measures; denial of judicial redress; disproportionate or discriminatory prosecution/punishment; prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2)	European Refugee Fund; European Fund for the Integration of third-country nationals; External Borders Fund; European Return Fund; Asylum, Migration and Integration Fund
recognizes three types of actors of persecution or serious harm include: a) the state; b) parties or organisations controlling the State or a substantial part of the territory of the State; c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7	EASO's assistance and support in relocation, conditioned by the agreement between MS and with consent of the beneficiary of international protection concerned
international protection means refugee plus subsidiary protection status	Possibility of the emergency response mechanism
specific grounds for the fear of persecution, as defined in the 1951 Convention, are irrelevant when assessing an application	soft, non-binding principles for event of a mass influx of protection seekers, but with limited effect in practice

Table 5.2 Secondary elements of the European Union regime for refugee protection

subsidiary protection Sources: Qualification Directive (2011, Article 2); Durieux (2013)	* worrying trend of using it as a substitute for refugee status, which is different in the length of residence permit granted and in social assistance to core benefits in certain cases	expands protection to third-country national or stateless person who does not qualify as a refugee, but who would face a real risk of suffering serious harm, and who should, as provided in QD, "be granted the same rights and benefits as those enjoyed by refugees"
temporary protection (never triggered so far) Sources: Directive on temporary protection (2001,	* offer only some of the rights provided by the Refugee Convention	provides immediate protection in the existence of a mass influx, defines mass influx and envisages solidarity mechanism, consisting of financial

paragraph 20); Beirens *et al*. (2016); Nicolosi (2017)		component and actual reception of persons
Aznar rule Sources: Landgren (1999); Graae (2015)	* prevents examining the individual grounds for fear of persecution, discriminates on the basis of nationality, evades international obligations through reliance on the obligations of another state, makes asylum decisions subject to a political process and restricts access to any form of status determination procedures	includes limited cases when application for asylum made by a national of a member state may be taken into consideration
IFA Sources: UN High Commissioner for Refugees (2006), Qualification Directive (2011, Article 8); Maczynska (2012), Aldenhoff *et al*. (2014);	* improper, limiting, superficial, fragmentary, biased and overgeneralized application, which is incompatible with human rights and refugee law standards	determines that the general circumstances prevailing in that part of the country (IFA) and the personal circumstances of the applicant in accordance with Article 4 shall be taken into account when determining that international protection is available, and therefore denying international protection
safe third country Sources: UN High Commissioner for Refugees (2012); Procedures Directive (2013, Article 38)	* lacks minimum principles and guarantees, risking denial of needed refugee protection	determines that the concept can be applied only where the competent authorities are satisfied that a person seeking international protection will be treated in accordance with principles specified
first country of asylum Sources: UN High Commissioner for Refugees (2010); Procedures Directive (2013, Article 35)	* does not precisely define principles that it includes, except for the right of *non-refoulment* and provides only for possibility, but not a requirement to take into account principles specified in Article 38(1)	includes requirement that the first country of asylum will readmit the applicant
safe country of origin Sources: Procedures Directive (2013, Annex I, Paragraph 42); European	* neglects certain minorities, such as ethnic, religious, sexual and other by declaring a whole country as generally safe	establishes the opportunity for an applicant to show that there are valid reasons to consider the country

Council on Refugees and Exiles (2015)	* places a higher burden of proof, includes accelerated procedure and breaches the principle of equality before the law	not to be safe in his or her particular circumstances
manifestly unfounded procedure Sources: Resolution on Manifestly Unfounded Applications for Asylum (1992); Cilevics (1999); Noll (2000); Barbou Des Places (2004)	* curtails the examination procedure, limits procedural rights and guarantees * accelerated procedure does not provide needed substantial assessment	refers to the Resolution on host countries, which sets out the requirements for a country to be determined safe so that an asylum seeker can be returned to it
Dublin rules Sources: Dublin Regulation (2013); Garcés-Mascareñas (2015); Cellini (2017)	* threatens the rights of refugees, since the fair and efficient examination of asylum applications is not guaranteed in all member states * places disproportionate responsibility on the border countries * based on a false assumption that MS provide equal protection and equal criteria	lay down the criteria and mechanisms for determining the member state responsible

6 CONCLUSION: RESTRICTIVE TENDENCIES OF THE EUROPEAN UNION REGIME FOR REFUGEE PROTECTION

A key puzzle of the thesis is to address a possible contradiction between the universal norms and principles of refugee protection, and their implementation at the regional level within the regime for refugee protection that has been developing in the EU, while relying on the 1951 Convention and the 1967 Protocol, as the foundations of the universal regime for refugee protection. In that sense, the research question that guides the thesis concerns the extent to which the EU managed to follow universal principles and norms for refugee protection and its consequential reflection in the degree and quality of refugees protection at the EU level.

The extent to which the EU followed universal principles and norms for refugee protection is revealed in the comparative analysis of norms and principles for refugee protection at both levels, the global and the EU, which shows that although it might look like a 'fine line' between the continuity and change has been kept, as universal fundamental norms for refugee protection were reinforced, expanded or further specified within the EU framework for refugee protection, the EU has in the same time narrowed protection to only third-country nationals, and introduced elements that are restricting and limiting protection for those in need within the EU regime for refugee protection, as compared to the universal regime. Namely, when applying these elements of the EU regime for refugee protection, that would be according to the regime theories characterized as secondary elements of the regime, such as the Aznar rule, IFA, safe third country, first country of asylum, safe country of origin, manifestly unfounded procedure and Dublin rules in general, the risk of denying protection to those in need is worryingly significant.

Further on, integration of theoretical framework, which strongly relies on the international regime theories, with the comparative norm analysis, provides significant insights into the relationships between different elements of the EU regime for refugee protection and relationships between these elements and the actual practice, as well as influence of these relationships on the regime and its strength, or, as it has been shown, its weakness.

The international regime theories are clear, secondary elements of a regime can take various forms, but have to be consistent with fundamental elements, i.e. norms and procedures. However, taking into account their adverse effect on the degree and quality of refugee protection, while creating the worrying possibility of denial of refugee protection to those in need, it can be hardly said that the secondary elements discussed are consistent with the norms

of refugee protection, right to asylum and *non-refoulement*, as defining characteristics of the EU regime for refugee protection. In addition to that, Dublin rules that are secondary elements of the EU regime for refugee protection, place disproportionate pressure on certain countries, and are therefore not consistent with the principle of burden sharing, as the defining characteristic of the EU regime for refugee protection.

Subsidiary protection and temporary protection concepts provide additional protection statuses to the refugee status, while positively including the persons outside of the 1951 Convention, but in the same time, create the possibility of avoiding the broader responsibilities that refugee status offers, by using these as substitute forms of protection. Having conflicting consequences in practice, the inconsistency between these secondary elements of the EU regime for refugee protection and actual behavior is, according to the international regime theories, a sign of regime weakness. Another sign of regime weakness is also associated to the fundamental characteristic of the regime, namely the principle of burden sharing, because it has not been consistent with the actual practice of burden sharing, which remains debatable, as it was particularly apparent during the so-called refugee crisis in 2015.

In addition to that, coherence between the elements of EU regime for refugee protection is hardly present, as on the one hand, fundamental elements strongly match the universal standards for refugee protection, and secondary elements on the other hand, in many ways restrict the refugee protection, right to asylum and *non-refoulement* in the EU. This is another indication of the weakness of the EU regime for refugee protection, as the international regime theories provide that exactly incoherence between the regime's elements indicate its weakness.

The theory of regime complexity offers useful insights and terminology for looking at the relationship between the two regimes, the universal regime for refugee protection and the EU regime for refugee protection. Namely, if we approach the relationship between the two regimes as the EU regime being nested within the universal regime for refugee protection, the conflicting characteristics of the EU regime, namely introduction of elements that create risk of *refoulement* and improper denial of protection, indicate violation of the broader, universal regime, which relies on strongly institutionalized and widely accepted norms of refugee protection, *non-refoulement* and right to asylum, while principle of burden sharing remains governed by a weak normative and legal framework within the universal regime for refugee protection.

What has to be taken into account is that the development of the EU regime for refugee protection, which brought restrictive trends, happened against particular background and logic,

namely the increasing construction of migration as a security, economic instabilities, the increase of asylum seekers, while in the same time the integration within the EU was deepening, and on the global level, the proliferation of institutions was creating regime complexes, which had various effects on international refugee protection. These complex social, political, economic and institutional realities are all important factors that have to be taken into account when assessing the refugee protection provided in the EU.

However, in spite of identified risks, the potential of the CEAS for the development of a coherent asylum policy with a consistent standard of protection to refugees throughout the Union is encouraging for the refugee protection harmonization on the long run (UN High Commissioner for Refugees, 2003, p. 171). But for this potential to be used, the EU cannot afford itself to fail in embracing the protection oriented perspective in addressing asylum. If rightly used, i.e. from a rights-based approach rather than a migration-control perspective, and provided that it is based on a high level of protection, this potential may in fact revitalize the international protection system (*ibid*., p. 179). In that sense, the thesis also aims to contribute in normative terms, to identifying some of the key obstacles to developing a rights-based regime for refugee protection in the EU, related to which a space and potential for further research is large.

7 SUMMARY OF THE THESIS IN SLOVENIAN LANGUAGE

Vse bolj restriktivne težnje režima za zaščito beguncev, ki se razvija v Evropski uniji (EU) in ki se nanaša na Konvencijo o statusu beguncev iz leta 1951 in na Protokol o statusu beguncev iz leta 1967 ter na temelje univerzalnega režima za zaščito beguncev dandanes vzbuja veliko zaskrbljenosti. V poskusu naslavljanja možnega nasprotovanja med univerzalnimi normami in njihovim izvajanjem na regionalni ravni magistrsko delo natančno preučuje dva režima za zaščito beguncev: univerzalni režim in režim Evropske unije. Skozi nalogo nas vodi raziskovalno vprašanje, v kolikšni meri je EU uspela slediti univerzalnim načelom in normam za zaščito beguncev in kako se to odraža v stopnji in kakovosti zaščite beguncev na ravni EU. Teoretična spoznanja v drugem poglavju se nanašajo predvsem na teorije mednarodnega režima, na podlagi katerih se razlikujejo sestavni elementi režima – temeljni in sekundarni elementi – ter razumevanje šibkosti režima in povezanost med izpeljanimi elementi režima. Poleg tega teorija sekuritizacije omogoča razumevanje pristopa k migrantom in beguncem, saj so predstavljeni kot grožnja, teorija kompleksnosti režimov daje vpogled v vrste odnosov med režimi znotraj režimskega kompleksa in teorija prevajanja normativov razlaga, kaj razlikuje prevajanje od drugih vrst transformacije normativov. Teorije mednarodnih režimov, pristop prevajanja normativov, teorija kompleksnosti režimov in teorija sekuritizacije se analizirajo skozi izčrpno razčlembo veliko sekundarnih virov s posebno pozornostjo pri prilagajanju teoretičnih ugotovitev, zlasti na področju zaščite beguncev. Ker sta se dva režima pojavila v različnih obdobjih, za katera so značilne različne socialne, politične in gospodarske okoliščine, je pred primerjalno analizo kontekstna diferenciacija v tretjem poglavju pomemben korak pri pristopu k dvema režimoma in naslavljanjo pomembnih socialno-ekonomskih in političnih stališč za razumevanje migracije in zaščite beguncev. V tem smislu je omogočena periodizacija migracijskih tokov, ki temelji na zgodovinski analizi, razpoložljivi statistični analizi ter analizi ustreznih primarnih in sekundarnih virov. V tem poglavju so obravnavani ključni zgodovinski dogodki, ki so vplivali na tokove in dojemanje migrantov, kot so konec druge svetovne vojne (1945), *Trente Glorieuses* (1945-1975), naftna kriza (1973), ratifikacija EEA (1987), *Annus Mirabilis* (1989), kar je privedlo v sodobni kontekst, v katerem je prišlo do ekonomske in gospodarske krize (2008), ki ji je sledila migracijska kriza (2015). Teoretična spoznanja iz drugega ter kontekstualno razumevanje migracije in zaščite beguncev iz tretjega poglavja se uporabljata za podporo primerjalni analizi obeh režimov v četrtem poglavju. S pridobivanjem ustreznih analiznih elementov iz primarnih virov, kot so konvencije, protokoli, direktive, listine, sporazumi, predpisi, resolucije in odločitve, pa tudi z analizo sekundarnih virov magistrska naloga omogoča primerjalno analizo

normativov ter drugih elementov teh dveh režimov za zaščito beguncev, kot sta načela in pravila. Cilj petega poglavja je sestaviti sklepne argumente in privesti do zaključka v šestem poglavju. To poglavje se odraža v ključnih podobnosti, razlikah in nasprotovanjih med dvema režimoma za zaščito beguncev, ki izhajajo iz analize elementov v četrtem poglavju, podkrepljenih s teoretičnimi argumenti iz drugega, z omembo kontekstualnih dejavnikov iz tretjega poglavja. V teoretičnem okviru mednarodnih režimov in drugih ustreznih teorij ter z omembo posebnih družbenih, političnih in gospodarskih okoliščin primerjalna analiza obeh režimov razkriva v kolikšni meri je EU upoštevala univerzalne norme, tako, da prikazuje, da čeprav se režim EU za zaščito beguncev zaupa istim temeljnim normam kot univerzalni režim za zaščito beguncev (norma zaščite beguncev, pravica do azila, načelo nevračanja in načelo delitve bremena) in jih celo razširja ter uvaja tudi številna pravila in standarde, ki omejujejo stopnjo in kakovost zaščite beguncev v EU in s tem ogrožajo temeljne norme in znižujejo stopnjo in kakovost zaščite beguncev v EU (Aznarjevo pravilo, Internal Flight Alternative (IFA), varna tretja država, prva država azila, varna izvorna država, manifestno neutemeljen postopek in Dublinska pravila). Poleg tega obstajajo neskladja med določenimi elementi, kot sta subsidiarna zaščita in načelo delitve bremena, ter njihove dejanske posledice v praksi s podobnim tveganjem, ki je lahko povezano tudi z začasno zaščito. Ta nasprotovanja znotraj samega režima EU še bolj razkrivajo šibkost režima, pa tudi nasprotujoče značilnosti njegovega odnosa do univerzalnega režima za zaščito beguncev. Zaključek o omejevalnih tendencah režima EU za zaščito beguncev v šestem poglavju povzema odgovore na raziskovalno vprašanje in opozarja na več medsebojno povezanih stališč: elementi, ki so bili na eni strani okrepljeni in razširjeni v režimu EU, elementi, ki so bili na drugi strani v režimu EU omejeni, uvedba elementov, ki kažejo omejevalne tendence režima EU in zato predstavljajo veliko nevarnosti za zaščito beguncev, elemente, ki imajo v praksi nasprotne posledice, nedoslednost in nepovezanost med elementi znotraj režima EU, nasprotna stališča odnosa med univerzalnim in režimom EU ter režim EU, ki potencialno krši univerzalni režim zaščite beguncev. Na koncu je poudarjena pomembnost opustitve predvsem perspektive nadzora nad migracijo in sprejetja pristopa, ki temelji na pravicah do zaščite beguncev znotraj režima EU.

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