Hacettepe University Graduate School of Social Sciences

Department of International Relations

REGIONAL REFUGEE PROTECTION: A COMPARISON OF EUROPE AND THE MIDDLE EAST

Petra Fruzsina CSORBA

Master's Thesis

Ankara, 2019

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ACCEPTANCE AND APPROVAL

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The jury finds that Petra Fruzsina CSORBA has on the date of 19 June 2019 successfully passed the defence examination and approves her thesis titled "Regional Refugee Protection: A Comparison of Europe and the Middle East".

Assoc. Prof. Dr. Gözde YILMAZ (Jury President)

Assoc. Prof. Dr. Mine Pınar GÖZEN ERCAN (Main Adviser)

Assoc. Prof. Dr. Murat ÖNSOY

In this thesis, Assistant Prof. Dr. Defne Günay has taken part as co-adviser.

I agree that the signatures above belong to the faculty members listed.

Prof. Musa Yaşar SAĞLAM

Graduate School Director

YAYIMLAMA VE FİKRİ MÜLKİYET HAKLARI BEYANI

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03/07/2019

Petra Fruzsina CSORBA

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ETİK BEYAN

ETİK BEYAN

Bu çalışmadaki bütün bilgi ve belgeleri akademik kurallar çerçevesinde elde ettiğimi, görsel, işitsel ve yazılı tüm bilgi ve sonuçları bilimsel ahlak kurallarına uygun olarak sunduğumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduğumu, tezimin kaynak gösterilen durumlar dışında özgün olduğunu, **Doç. Dr. Mine Pınar GÖZEN ERCAN** danışmanlığında tarafımdan üretildiğini ve Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Yazım Yönergesine göre yazıldığını beyan ederim.

Petra Fruzsina CSORBA

DEDICATION

This thesis is dedicated to all those who have been displaced by the conflict in Syria and especially to those whom I met during my travels across the country in 2006 and 2009 and whose faces are forever imprinted in my mind: the elderly man running a bakery in downtown Damascus who waived at us smilingly every time we passed by, the family from Aleppo at the archaeological site of Ebla who shared with us their deepest worries about the state of affairs in the country, and the young boy in the souk of Aleppo who refused to accept payment for the oranges he sold me.

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ABSTRACT

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By displacing more than half of the country's pre-war population, the conflict in the Syrian Arab Republic has become the catalyst for one of the biggest humanitarian and refugee crises of our time. The flow of more than 5.6 million people forced to leave their homeland has directly affected two regions: Europe and the Middle East. In order to enrich and fill certain gaps in the literature, this thesis provides an analysis of the legal framework of refugee protection from a regional perspective. By focusing on the case of people fleeing the Syrian Arab Republic, it evaluates the respective legal frameworks of the two regions and critically examines the legal grounds for protection therein. Moreover, by undertaking country case studies from both regions, this thesis also highlights the intricacies and shortcomings of the respective regional frameworks as reflected in the contradictory policies and stances of Germany, Hungary, Lebanon and Saudi Arabia toward refugees. It argues that the refugee protection frameworks of Europe and the Middle East are the antithesis of each other. In Europe, we can observe a well-developed and deep-rooted regional cooperation, more or less harmonised norms and institutions whereas the Middle East is characterised by the lack of legal foundations and norms of refugee protection with weak institutions and strong state sovereignty. However, in light of the protection outcomes for refugees fleeing the Syrian Arab Republic, both regions seem to have failed in terms of efficient responsibility sharing and adequate response to the needs of refugees.

Key Words

Asylum, Europe, Middle East, refugee law, refugee protection, regionalism, responsibility sharing

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ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ADHR	American Declaration on the Rights and Duties of Man
AHRD	ASEAN Human Rights Declaration
ALCC	Asian Legal Consultative Committee
AMIF	Asylum and Migration Fund
Art.	Article
ASEAN	Association of Southeast Asian Nations
AU	African Union
ca.	circa
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIREFCA	International Conference on Central American Refugees
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CPA	Comprehensive Plan of Action for Indochinese Refugees
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
ERF	European Refugee Fund
EU	European Union
ExCom	Executive Committee
FRA	Fundamental Rights Agency
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
GCC	Gulf Cooperation Council

ICARA	International Conferences on Assistance to Refugees in Africa
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IDP	Internally displaced person
IFRC	International Federation of the Red Cross and Red Crescent Societies
ILO	International Labour Organization
IOM	International Organization for Migration
IRO	International Refugee Organization
ISIL	Islamic State of Iraq and the Levant
JRP	Jordan Response Plan
LAS	League of Arab States
LCRP	Lebanon Crisis Response Plan
MENA	Middle East and North Africa
MoU	Memorandum of Understanding
NGO	Non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organization of Islamic Cooperation
PM	Prime Minister
RDPP	Regional Development and Protection Programme
RMRP	Regional Refugee and Migrant Response Plan
RPP	Regional Protection Programme
RRP	Regional Response Plan
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
3RP	Regional Refugee & Resilience Plan
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme

UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNKRA	United Nations Korean Reconstruction Agency
UNRRA	United Nations Relief and Rehabilitation Administration
UNRWA	United Nations Relief and Work Agency for Palestine Refugees in the Near East
UNSC	United Nations Security Council
V4	Visegrád Group
WFP	World Food Programme
WHO	World Health Organization

INTRODUCTION

> But Man is not a tree—he has no roots; he has feet, he walks. Since the time of *homo erectus* he has moved about in search of pastures, more benign climates, or places where he can seek shelter from inclement weather and the brutality of his fellow men.
>
> — Juan Goytisolo, *Metaphors of Migration*

The conflict in Syria—which has been going on for more than eight years now—has had severe economic, (geo)political, and social consequences, just to name a few. As the United Nations High Commissioner for Refugees, Filippo Grandi remarked, "Syria is the biggest humanitarian and refugee crisis of our time, a continuing cause of suffering for millions which should be garnering a groundswell of support around the world" (UNHCR, 2016a). The conflict, which started in March 2011 with peaceful protests in the southern city of Deraa, quickly expanded nationwide escalating into a civil war due to the Assad regime's violent crackdown on protesters. The emergence and rapid expansion of the Islamic State of Iraq and the Levant (ISIL) in Syria from 2013 onwards gave way to further deterioration of the situation with severe impacts on the civilian population in areas under its control.

The civil war in Syria has also had an enormous humanitarian cost. According to the latest statistics of the Office of the United Nations High Commissioner for Refugees (UNHCR), as of April 2019, there were approximately 6.6 million internally displaced persons in Syria while around 5.6 million people were forced to leave their homeland to seek refuge elsewhere (UNHCR, 2018a, 2019a). The civil war has thus displaced more than half of the country's pre-war population, which was estimated to 21 million (The World Bank, 2018), and produced the currently largest refugee population per country worldwide (UNHCR, 2018b). Mainly due to the international community's relative inaction and inability to share the responsibility of Syrian refugees and effectively respond to their needs, the situation quickly escalated into a refugee protection crisis.[1] The vast majority of Syrians fled to neighbouring countries, namely to Turkey (3.6 million),

[1] Contrary to the usage of the term "refugee crisis", which has become more or less established in the academic literature, media and the public, this thesis follows authors such as Susan Kneebone (2016), Eleni Karageorgiou (2016) and Başak Kale (2017) in systematically employing a more adequate term "refugee protection crisis" by acknowledging its ability to highlight the fact that the reason for the outbreak of the crisis in 2015 were not the refugees themselves but the international community being unable and/or unwilling to provide an adequate level of protection to them.

Lebanon (944 thousand), Jordan (660 thousand) and Iraq (253 thousand) (UNHCR, 2019a). However, due to reasons discussed in subsequent parts of this thesis, a considerable number of them have decided to undertake the long and often dangerous journey and sought asylum in Europe. According to the data of Eurostat published in April 2019, the total number of Syrian asylum applicants in the member states of the European Free Trade Association (EFTA) and the European Union (EU) between March 2011 and April 2019 can be estimated to 1.1 million (Eurostat, 2019). The Syrian refugee protection crisis has, thus, had a direct impact on two regions: Europe and the Middle East.

In this context, this thesis addresses the protection frameworks of Europe and the Middle East—namely, the regions which have been directly affected by the influx of refugees fleeing the Syrian Arab Republic. In so doing, it examines and compares the nature and extent of refugee protection provided by these frameworks. Apart from this general evaluation of the refugee protection frameworks of Europe and the Middle East, this thesis also assesses the nature of interregional cooperation on refugee protection between the two regions as well as the role UNHCR has played in the protection of refugees in Europe and especially in the Middle East. Furthermore, the responses of particular states within each region (Germany, Hungary, Lebanon and Saudi Arabia), as well as their (non)compliance with their respective regional protection frameworks are measured through country case studies. In this manner, this thesis aims to undertake research that merges and balances the law- and policy-oriented approaches to refugee protection at the regional and domestic levels.

For the sake of terminological consistency, it is important to shortly clarify some of the key terms used in this thesis. Regions may often be subject to debate—as well as the term "region" itself—but the Middle East is probably one of the most controversial and difficult regions in the world to define. While acknowledging the Eurocentric and strongly debated nature of the term, scholars traditionally agree that the region encompasses the territory of Egypt, the countries of the Arabian Peninsula (comprising of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen), the Levant (incorporating Lebanon, Syria, Jordan, and the Palestinian territories), as well as Cyprus, Israel, Iran, Iraq and Turkey (Davison, 1960, pp. 674–675; Keddie, 1973, p. 267). The term 'Greater

Middle East', on the other hand, incorporates a much larger area adding the Arabic speaking North African states, as well as Afghanistan and Pakistan to the aforementioned territory. Throughout this thesis, the former, more or less traditional and narrower definition of the Middle East is applied with the exclusion of Cyprus. Although the island's classification as part of the Middle East is in itself contestable, the basis for its treatment in this thesis as part of Europe is to a large extent due to the Republic of Cyprus's membership in the EU—considering the significant role assigned to regional organizations in the creation of regional protection frameworks for refugees. As for the term refugee[2], this thesis recognizes the usage of both its broader and narrower senses in the literature. Notwithstanding the legitimacy and appropriateness of the usage of the term in its broader sense, this thesis applies it in its narrower sense as defined in the 1951 Convention relating to the Status of Refugees (hereinafter the 1951 Convention)—unless stated otherwise.

Academic literature on refugee protection focuses mainly on the international legal perspective (see, for instance, Goodwin-Gill, 1996; Feller et al., 2003; Betts, 2010). The existing literature on international refugee law touches upon multitudinous aspects of the topic ranging from the right to asylum (Gil-Bazo, 2015), the rights of refugees (Hathaway 2005), the principle of *non-refoulement* (Allain, 2001; Karakaya, 2014; Molnár, 2016), the definition of the refugee (Worster, 2012), the scope and meaning of international protection (Stevens, 2013; Storey, 2016), the limits and means of burden-sharing (Kale, 2017; Hilpold, 2017) to international responsibility-sharing (Martin et al., 2018), just to name a few.

Unlike the abundance in scholarly studies on refugee protection at the international level, the literature on regional protection frameworks is scarcer and usually limited to the protection mechanisms of Europe which undoubtedly constitutes the most developed of all regional arrangements. However, a handful of niche monographs dealing with the question of regional refugee protection offer a comprehensive study of various policies, as well as legal aspects of this topic (Abass & Ippolito, 2014; Mathew & Harley, 2016). There appears to be a general agreement in the literature that regional cooperation may bring about more

[2] For a detailed examination of the term, see Chapters 1 and 2.

effective protection outcomes for refugees in comparison to the international one (Mathew & Harley, 2016, p. 250; Stein, 1997). It is justified among others with the argument that refugee movements usually affect a single region whose states—together with their region-specific knowledge—are better equipped to find an adequate solution to these movements and to respond to the needs of refugees (Mathew & Harley, 2016, pp. 60–63). Furthermore, as Mathew and Harley (2016) suggested, in contrast to the international legal framework which—due to the high number of parties participating in the initial negotiations—perfectly illustrates the acceptance of the "lowest common denominator", regional protection frameworks provide for a higher possibility of concluding an agreement with conditions suitable for each party (pp. 59–60). Nevertheless, not only advantages but also disadvantages of regional arrangements for refugee protection are voiced in the literature. Mathew and Harley (2016) noted that regional arrangements may create inconsistency in the level and nature of protection with the threat of undermining the universality of refugee rights protection (p. 63).

According to Stein (1997), regional cooperation on refugee protection comes into being when the region "either has rejected the solution advanced by the international community or when the international community has taken little or no action to achieve a solution". At first sight, this argument seems very much relevant in the case of the Middle East where the overwhelming majority of states are not party to the cornerstone instruments of international refugee law, namely the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Nonetheless, regional cooperation in refugee protection is almost non-existent in the region. Despite the neglected nature of regional arrangements and cooperation in the field of refugee protection in the literature, the few scholars who deal with these questions agree that regional agreements under the auspices of the League of Arab States (LAS) have clearly failed to have any impact due to the very limited number of ratifications (Dionigi, 2015; Stevens, p. 82; Zaiotti, 2006, p. 336). A handful of scholarly works available in the literature regarding the Middle Eastern refugee protection framework focus to a greater extent on the region's relationship with the international refugee regime and the reasons for its reluctance to accede to its main instruments. Authors generally cite the protracted and unresolved issue of Palestinian refugees and Middle Eastern host countries' insufficient resources available both domestically and regionally as the main reasons for their refusal to

accede to the 1951 Convention and its 1967 Protocol (Zaiotti, 2006, p. 344; Goddard, 2009, p. 505; Stevens, 2014, pp. 81–82; Mathew & Harley 2016, p. 55; Janmyr, 2017b, p. 443). One would come to the conclusion that with the unwillingness of states to become party to the 1951 Convention and its 1967 Protocol and the general lack of national legislation on refugees, "there is basically no refugee policy in the Middle East region, […] there are only refugee problems" (Kagan, 2012, pp. 318–319). Different terms have been employed in the literature to refer to the very same issue: Jones (2017), for instance, argued that the Middle East is an "extralegal region", a "zone of exception" claiming that "the absence of refugee law is not only the absence of the treaty defining refugee—but the absence of law" (p. 213). Nevertheless, despite the obvious problems regarding national and international legal standards for refugees in the Middle East, some authors posit that appearance might be deceiving since there does exist a system for refugees in the region which very much differs from the conventional thinking of international law and relies on individual states' cooperation with UN agencies such as the United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA) and UNHCR, as well as civil society and charity organizations (Kagan, 2012, p. 319; Stevens, 2014, p. 88). Adopting Kagan's (2012) terminology, states in the region which shift the responsibility of refugee protection and status determination to UNHCR are the best examples of a UN "surrogate state". Due to states' reluctance to accede to the 1951 Convention and its 1967 Protocol as well as the general lack of relevant regional or national legislation, scholars often stress the limited or almost non-existent status and protection of refugees in the region (Dionigi, 2015; Janmyr, 2016) and offer plausible solutions for the improvement of refugee protection in the region. Such proposals include a regional compact for refugee protection (Dionigi, 2015) or a shift from a "rights-based" language of protection to a "needs-based" one that would boost states' willingness to accede to the key instruments of international refugee law (Stevens, 2015).

In the case of the European refugee protection framework, there is a considerably larger amount of scholarly work available in the literature. Although a comprehensive evaluation of this extensive literature is beyond the scope of this short literature review, the main points of argument are summarized here. One of the key arguments common in the literature is that regionalism is probably most

deeply rooted in Europe, and the Common European Asylum System (CEAS) is one of the most developed regional refugee frameworks in the world. Nevertheless, considerable critique is voiced against certain aspects of the CEAS, especially the Dublin Regulation. The Dublin Regulation, which has now been updated to its third version, allocates almost full responsibility of admitting asylum seekers, processing their application, and hosting those who gain protection status to the first EU member state of entry. Thus, by imposing tremendous and unequal responsibility on states of first entry, this system renders fair responsibility sharing among member states almost impossible. For this reason, authors are in unanimous agreement that the Dublin Regulation is unsustainable in its present form and needs to be reconsidered (Mouzourakis, 2014; Karageorgiou, 2016, p. 205; Mathew & Harley, 2016, p. 191). Others like Bauböck (2018) go as far as to claim that it needs to be abandoned arguing that although Europe—without the Dublin Regulation—offers the most suitable conditions for an effective regional refugee protection framework, its failure to effectively and fairly share the burden of refugees is obvious (p. 142). His argument on such failure is threefold: the Dublin Regulation, the lack of norm sharing, and insufficient principles for a relocation scheme (Bauböck, 2018, pp. 152–153). Several other scholars share Bauböck's critique regarding the EU's failure to enhance fair responsibility sharing (Mathew & Harley, 2016, p. 216; Karageorgiou, 2016, p. 209). The CEAS has also received criticism on the ground that, by excluding EU nationals from the definition that sets out the criteria for qualifying for refugee and subsidiary protection status, it focuses solely on extra-regional refugees (Mathew & Harley, 2016, p. 196). Another aspect of the CEAS that has attracted considerable criticism is the externalisation of the EU asylum law and policy. It has often been argued that the CEAS focuses on containment and external burden-sharing by endorsing protection solutions for refugees and asylum seekers in their country or region of origin or in a third country instead of granting them protection in the EU. Gibney (2007) called the regionalism operating under the CEAS "engineered regionalism" which focuses on containment whereby the Global North keeps the Global South out (p. 57). Similarly, the point has been made by several authors that while the EU has long worked to establish the Schengen area and to keep its internal borders open, its approach with the Dublin Regulation is in sharp contrast with it providing a

legitimate basis for the term “Fortress Europe” (Mathew & Harley, 2016, p. 216; Bauböck, 2018). Moreover, Abass and Ippolito (2014) and Karageorgiou (2016) argue that despite the CEAS, there are still serious shortcomings regarding a common standard of refugee protection in the region since member states have been implementing the asylum law of the EU differently, and this negatively affects not only asylum seekers but also member states (p. 139; p. 210).

Although there is a general agreement in the literature that interregional cooperation is a key for an equitable responsibility-sharing (Mathew & Harley 2016), Abass and Ippolito (2014) stressed that it is still considered a rarity and has been manifested only in the form of cooperation between regions and individual states (p. 379). In their brief assessment regarding interregional cooperation between the EU and Middle Eastern countries, Biondi (2016) and Karageorgiou (2016) underlined that the EU is the leading donor in response to the Syrian crisis, and by establishing the Regional Protection Programmes (RPPs), it has contributed to the capacity-building in countries neighbouring Syria (p. 217; p. 208). However, authors are in agreement that such measures are nothing more but another tool to ensure the externalisation of the EU’s asylum policy.

This moderate review of scholarly works reveals certain obvious gaps in the literature. On the one hand, the Middle Eastern refugee protection framework constitutes an underexplored area. On the other hand, research providing a comparative analysis of the protection frameworks of the directly affected regions—namely Europe and the Middle East—in the context of people fleeing the Syrian Arab Republic is a relatively neglected area. Therefore, the main objective of this thesis is to contribute to the literature by providing a thorough analysis of the Middle Eastern refugee protection framework and comparing it with that of Europe. In so doing, it seeks to outline the existing refugee protection regimes in both regions and evaluate the role particular regional organizations—namely the EU, the Council of Europe (CoE), the LAS, the Organization of Islamic Cooperation (OIC) and the Gulf Cooperation Council (GCC)—have played in the creation of these frameworks. This thesis also attempts to critically analyse how these legal frameworks have been materialized in the context of the Syrian refugee protection crisis. Accordingly, it discusses the nature of refugee protection within the existing regional arrangements and examines how the

aforementioned regional institutions have dealt with the crisis. Apart from a discussion on interregional cooperation on refugee protection between Europe and the Middle East, as well as an evaluation on UNHCR's role in refugee protection in these two regions, country case studies from both regions are conducted in order to evaluate whether and how particular states—namely Germany, Hungary, Lebanon and Saudi Arabia—within a region have responded to this crisis and complied with the protection framework of their respective regions. To this end, the regional legal frameworks for the protection of refugees along with each state's main legislative acts relevant to asylum are analyzed. Countries were selected for case study in a way to maintain their representativeness for the different approaches of states within these two regions. In the case of Europe, Germany—with its often cited *Willkommenskultur*—offers an example of states in the region that are willing to share the responsibility for refugees—sometimes even at the expense of breaches of CEAS Directives. On the other hand, Hungary's approach represents the other end of the extreme with its increasingly restrictive policies on asylum seekers and the amendments of its asylum law since 2015 causing non-conformity with several CEAS Directives and Regulations. In the case of the Middle East, Lebanon—with the highest ratio of refugees per capita—is a perfect example of states in the region that, despite sharing the physical burden of refugees, apply extremely strict restrictions on them making it very hard for refugees to obtain legal status. Saudi Arabia, on the other hand, was selected as an example of Gulf States' unwillingness but otherwise ability to share the physical and financial burden of Syrian refugees.

In this context, this thesis attempts to find answers to the following questions: What are the current regional legal frameworks for refugee protection in Europe and the Middle East? What are the benefits and added value of regional arrangements to the global approach to refugee protection? In order to provide a comprehensive answer to the former question, this thesis also seeks to answer the following subquestions: What are the nature, extent and outcome of protection afforded to refugees in these two regions, and how do states cooperate at the regional level to achieve this goal? How have Germany, Hungary, Lebanon, and Saudi Arabia complied with the legal standards set by the protection frameworks of their respective regions in relation to people fleeing the Syrian Arab Republic?

What factors have affected their (non)compliance? How is the responsibility for refugees shared within Europe and the Middle East?

In light of these questions, the main argument underlying this thesis is that refugee protection frameworks in Europe and the Middle East are the antithesis of each other. In Europe, we can observe a well-developed and deeply rooted regional cooperation, more or less harmonised norms and institutions whereas the Middle East is characterised by the lack of legal foundations and norms of refugee protection with weak institutions and strong state sovereignty. Nevertheless, when looking at the protection outcomes for refugees fleeing the Syrian Arab Republic, both regions seem to have failed in terms of efficient responsibility sharing and adequate response to the needs of refugees.

In order to establish the theoretical foundation for a law- and, to a lesser extent, policy-oriented research, this thesis adopts a constructivist approach as its general theoretical framework, while building on the tenets of contestation research. International Relations (IR) theories fundamentally differ in their approach towards and treatment of international law. With reference to realism, liberalism, and constructivism, Armstrong et al. (2012) summarized these differences as follows:

> realists take a minimalist view of law as binding rules to which states have explicitly consented in treaties and tacitly consented in customary practice. In stark contrast, liberals have an enlarged view of international law, as encompassing core community values. Finally, constructivists see international law as a discourse of identity representation and norm enactment (pp. 111–112).

Constructivism's main merit and most significant contribution to the understanding of international relations lie in its focus on social structures—in contrast to traditional IR theories' sole reliance on material ones. Constructivists emphasise the possibility of change and maintain that ideas and beliefs "that inform the actors on the international scene as well as the shared understandings between them" are of crucial importance (Jackson & Sørensen, 2013, p. 209). At the same time, they demonstrate the significant role that rules, norms and language play at the social dimensions of international relations (Fierke, 2013, p. 189). Indeed, constructivism's focus on normative and ideational factors provides a fertile ground for dealing with aspects related to international law.

As Brunnée and Toope (2012) suggested, constructivism contributes to the understanding of international law in highlighting the social processes that compel the formation and functioning of as well as compliance with international law (pp. 137–139). Furthermore, it offers a sound explanation for certain concepts and fundamental principles of customary international law such as *jus cogens* and *non-refoulement*, and "highlights that legal norms can actually help create specific categories of actors, such as refugees" (Brunnée & Toope, 2012, pp. 129, 139). As Kneebone (2016) noted, constructivism can draw attention to the "ethical, political and legal norms of the international refugee protection regime and correct the perceived deficiencies of the Refugee Convention" (p. 154). Furthermore, she identifies the two core norms of the international protection regime as the right to asylum (i.e. freedom from *refoulement*) and burden sharing (Kneebone, 2016, p. 154).

Critical (or post-positivist) constructivism fundamentally differs from the conventional stream of constructivism in that it challenges conventional constructivists' stance on the possibility to make truth claims: according to their critique, it is not possible to claim that something is true as there is no neutral ground allowing us to make such an assessment (Jackson & Sorensen, 2013, pp. 214–215). Critical constructivists argue that since "[w]hat we call truth is always connected to different, more or less dominant, ways of thinking about the world", it is of key importance to reveal the relationship between truth and power (Jackson & Sørensen, 2013, p. 215). Meanwhile, contestation research in IR, an increasingly influential stream of critical constructivism, has emerged in the last decade with the ground-breaking work of Antje Wiener. Wiener (2014) defined contestation as a "social practice [that] entails objection to specific issues that matter to people" while adding that "[i]n international relations contestation by and large involves the range of social practices, which discursively express disapproval of norms" (p. 1). She distinguished two distinct meanings of contestation. On the one hand, contestation may refer to a "social practice of merely objecting to norms (principles, rules, or values) by rejecting them or refusing to implement them", and on the other, to a "mode of critique through critical engagement in a discourse about them" (Wiener, 2017, p. 109). Thus, contestation can be treated as both a social activity and a mode of critique. Wiener (2017) distinguished four typical contexts in international relations—courts;

regimes and international organizations; protest movements; and epistemic communities—as well as the dominant modes of contestation for each of these contexts—arbitration, deliberation, contention, and justification (p. 113). She argued that in an international setting, the recognition of norms is not inevitably shared that gives way to clashes about norms. On this ground, one of her main arguments is that norms are not stable and uniform in their interpretation but "evolve through interaction in context" (Wiener, 2008, p. 63). Wiener also put forward the following threefold typology of norms: fundamental norms operating at the macro, organizing principles constituted at the meso, and principles and standards at the micro level. According to her assessment, fundamental norms are likely to involve a rather low degree of contestation, "for their moral sway is widely accepted in principle". However, "at the implementing stage, the perception of standardised procedures and specific regulations is much more likely to be contested" (Wiener, 2014, p. 75). She highlighted that "[a]s long as diversity prevails in global society, in principle, all norms are contested at all times, unless iterated interaction has generated a sound basis for social recognition and therefore a disposition for norm following" (Wiener, 2017, p. 122).

The tenets of contestation theory can well be used in a research investigating states' approach to refugee protection as well as their compliance with international and regional refugee protection frameworks. As briefly outlined above, both regional protection frameworks examined in this thesis involve some degree of contestation by the states of the concerned regions. In order to illustrate this, the following preliminary observations can be made: in the case of Europe, the contested nature of the CEAS—and particularly, the Dublin Regulation—is evident when looking at the individual approaches and responses of states to the influx of Syrian refugees. The manifestation of the European protection framework in a number of very different national approaches is evidence not only of the dysfunctional nature of harmonization efforts but also of the contested nature of the refugee protection framework itself. As for the Middle East—given the lack of a regional protection framework in the traditional sense of the term, states' general unwillingness to accede to the main instruments of international refugee law and the lack of ratification of regional legal instruments on refugee protection—it can be argued that the very essence of regional and international cooperation for refugee protection is contested at the national level.

The research conducted in this thesis is, in essence, a qualitative analysis that combines the empirical study of the two regions in question with the law- and policy-oriented approaches to refugee protection at the regional and domestic levels. To achieve its goals, it uses both primary and secondary sources of data. In evaluating primary sources such as the main instruments of international law applicable to refugees, the legal foundations of the regional refugee protection frameworks discussed in this thesis as well as the relevant national legislations, it relies on the method of documentary analysis. This thesis also employs the method of case study at the regional and intra-regional level. As it compares and contrasts the cases of Europe and the Middle East by focusing on the cases of the two select countries from each region, the type of case study undertaken in this research can be classified as collective or multiple-case studies (Lune & Berg, 2017, p. 175). The case studies are complemented with the systematic comparison of cases in terms of their similarities and differences using the comparative method. As mentioned above, the core reason for choosing Europe and the Middle East as the focus of comparison is their high exposure to the surge of refugees from the Syrian Arab Republic. The main rationale underlying the selection of Germany and Hungary as case studies for Europe and Lebanon and Saudi Arabia as cases for the Middle East is their differing approaches to the Syrian refugee protection crisis as well as their varying degrees of affectedness by the flow of people—which might, to a certain extent, be seen as a consequence of their approaches. As mentioned above, the examination of the cases of Germany, Hungary, Lebanon and Saudi Arabia offers a chance to highlight the different approaches of states to the protection of Syrian refugees and their differing levels of compliance with the protection standards set by the relevant regional legal frameworks. In the case of Europe, Germany's willingness to share the responsibility for refugees and Hungary's increasingly restrictive policies as well as amendments to its asylum law since 2015 represent the antithetical approaches adopted by European states to the Syrian protection crisis. As for the Middle East, although states' approaches to the Syrian protection crisis can be regarded to a certain extent as similar to that of European states, they are in many ways crucially different from the former. At one extreme, Syria's neighbouring states such as Lebanon have been overwhelmed by the influx of Syrian refugees. Although they have generally shared the physical burden of the protection of

Syrian refugees, they have also applied harsh restrictions on them. On the contrary, Gulf States such as Saudi Arabia have been reluctant to share either the physical or the financial burden of refugee protection despite their obvious ability to contribute in a positive manner. By examining and comparing these seemingly different regional and national approaches to refugee protection, more complex and diverse research outcomes are to be expected. The final method used in this research is process tracing which—together with the comparative method—is widely regarded as a fundamental tool of qualitative analysis that involves case studies (Pennings et al., 2006, pp. 19–22; Collier, 2011, p. 823). Process tracing is a useful tool for drawing descriptive and causal inferences from the responses of states to the Syrian refugee protection crisis in both regions. It also has the advantage to reveal and describe any change in states' approach during the period since the outbreak of the refugee protection crisis. As a detailed description is a crucial part of any process tracing analysis, special attention is paid to the systematic description of each regional and national setting. Thus, by combining several research methods and strategies, this thesis undertakes the so-called "multi-method" approach or triangulation (Kohlbacher, 2005).

Accordingly, this thesis is organised as follows. In order to determine the foundations and building blocks of international refugee law and other forms of international protection, Chapter 1 canvasses the main instruments and concepts of the international legal framework for the protection of refugees. Besides, it provides an account of other forms of international protection incorporated in several other bodies of international law such as international human rights law, international humanitarian law and international criminal law. As international refugee law forms the basis of regional refugee protection frameworks, this chapter is essential for a further examination at the regional level. Chapter 2 provides a brief overview of the existent regional protection frameworks for refugees and regionalism in general in order to build the necessary background for the regional frameworks chosen for closer examination in this thesis. Chapters 3 and 4 examine and compare the refugee protection frameworks of Europe and the Middle East in order to evaluate the nature and extent of refugee protection in each region and to reveal the differences and similarities in protection outcomes for refugees. After describing and examining the legal foundations of these frameworks, the chapters move on to the analysis of the cases of Germany,

Hungary, Lebanon and Saudi Arabia in order to evaluate their individual approaches to the Syrian refugee protection crisis as well as their (non)compliance with the respective legal protection framework of the two regions.

CHAPTER 1
THE INTERNATIONAL LEGAL FRAMEWORK PROTECTING REFUGEES

> No one leaves home unless home is the mouth of a shark.
> — Warsan Shire, *Home*

This chapter aims to provide an overview of the international legal framework protecting refugees in order to understand the nature and extent of protection provided by international law—which in many ways underpins regional protection frameworks. To reach this goal, the chapter discusses the evolution and the main sources of international refugee law along with the central provisions therein. Furthermore, it offers an overview of the relevant legal sources and provisions incorporated in several other bodies of international law—international human rights law, international humanitarian law as well as international criminal law—and elaborates on their added value to the international legal framework of refugee protection. Last but not least, the chapter includes a section on UNHCR and other actors relevant to refugee protection.

1.1. INTERNATIONAL REFUGEE LAW

As is often underlined, the phenomena of refugees and flight are as old as mankind. Although the origins of the international refugee protection regime are generally traced back to the early 20th century, the earliest manifestations of protection and asylum can be found in several ancient written sources. For instance, the Kadesh Peace Treaty, which was concluded between Ramses II and Hatusil III in the 13th century BC and is regarded as the oldest known international treaty, includes some protection-related clauses (Gil-Bazo, 2015, p. 20). The traces of asylum can be found in a number of religious sources, as well. As Gil-Bazo (2015) pointed out, "[a]ll three monotheistic religions impose a duty of hospitality and protection to strangers, which constitutes the anthropological and historic [*sic*] background to the law and practice of asylum over time" (p. 18). Similarly, Elmadmad (2008) noted that "[a]ll three founders, Moses, Jesus Christ, and Muhammad, experienced exile and sought asylum in foreign communities"

and added that "[i]n the three monotheist religions, asylum represents an act of love of one's neighbour and of help to needy people" (p. 53). Early writers of international law, Grotius and de Vattel both acknowledged the right to reside and the right to asylum. According to Grotius, "a permanent residence [ought not] to be refused to foreigners, who, driven from their own country, seek a place of refuge" (cited in Gil-Bazo, 2015, p. 9). In a similar vein, de Vattel (2008) argued that "no nation can, without good reasons, refuse even a perpetual residence to a man driven from his country" (p. 227).

1.1.1. The Evolution of the International Legal Framework Protecting Refugees

Notwithstanding these early manifestations of asylum and refugee protection, the first joint international efforts to create a legal framework of refugee protection date back to the early 20th century. The first initiatives were launched in the 1920s and 1930s under the auspices of the League of Nations. These early steps were compelled by the population flows arising from the collapse of the Austro-Hungarian, Ottoman and Russian Empires as well as the subsequent revolution and civil war in Russia. In order to address the issue of Russian refugees, the League of Nations created the Office of the High Commissioner for Russian Refugees in 1921. The High Commissioner, Fridtjof Nansen was entrusted with the task of securing employment opportunities and repatriation arrangements for refugees (UNHCR, 2005, p. 5). Nansen is probably most acclaimed for his efforts to provide refugees with identity and travel documents which subsequently became known as the "Nansen passports" (Labman, 2010, p. 3). The Nansen Passports were of crucial importance not only because most of the refugees did not have valid identity or travel documents but also because due to the lack of these documents, they could not move onward from the first countries of asylum (Hathaway, 2005, p. 84). Nansen's mandate was later extended to people displaced following the dissolution of the Ottoman Empire, namely to Armenians, Assyrians, Assyro-Chaldeans, Kurds, Syrians and Turks (Jaeger, 2001, p. 729). Following his death in 1930, the Nansen International Office for Refugees was created to continue and further his relief work.

A further initiative of the League of Nations was a response to the plight of

refugees who fled Nazi Germany in the early 1930s and was manifested in the establishment of the Office of the High Commissioner for Refugees coming from Germany in 1933. The High Commissioner, James McDonald, who was tasked with finding permanent homes for German refugees, resettled more than 80 thousand German refugees—mainly to Palestine (UNHCR, 2005, p. 5). In 1938, the Nansen International Office for Refugees and the High Commissioner for Refugees coming from Germany were joined under the umbrella of the High Commissioner for Refugees. The 1930s also saw the emergence of the first universal legal instruments of refugee law: the 1933 Convention Relating to the International Status of Refugees (1933 Convention) and the 1938 Convention Concerning the Status of Refugees Coming from Germany (1938 Convention). However, none of these treaties managed to live up to expectations. As Hathaway (2005) argued, "[i]n practice, […they] did not significantly expand refugee rights" and were ratified by only a handful of states. While the 1933 Convention had eight states parties, the 1938 Convention had three signatories (pp. 88–90). Nevertheless, despite the *ad hoc* nature of these solutions, the inter-war period is often described as unique in the history of refugee protection. According to Skran, it was "a time of great creativity and innovation and a time when millions of refugees were helped to begin their lives" (as cited in Labman, 2010, p. 8).

Although the dissolution of the League of Nations in 1946 resulted in the termination of these initiatives, the growing number of displacements caused by the Second World War created new challenges. As a response, the Allies founded the United Nations Relief and Rehabilitation Administration (UNRRA) to provide emergency aid to the millions of displaced in Europe during the war. In 1947, the United Nations (UN) established the International Refugee Organization (IRO), the first international agency tasked with the registration, status determination, repatriation and resettlement of refugees. The issue of resettlement played a crucial role in the work of the IRO since a large number of refugees were either unable or unwilling to return to their countries of origin. As Marrus pointed out, more than one million refugees were resettled between 1947 and 1951 under the auspices of the IRO "including 329,000 in the United States; 182,000 in Australia; 132,000 in Israel; 123,000 in Canada; and 170,000 in various European states" (cited in Gallagher, 1989, p. 579). In 1951, UNHCR, which is discussed in detail under Section 1.3, replaced the IRO.

1.1.2. Sources of International Refugee Law

Pursuant to Article 38(1) of the Statute of the International Court of Justice, the sources of international law fall into four main categories: international treaties, customs, general principles of law, as well as judicial decisions and "the teachings of the most highly qualified publicists" (UN, 1945). Owing to obvious space constraints, this chapter's evaluation of the main sources of international refugee law is limited to international conventions and customary international law while further attention is paid to the *travaux préparatoires* of the relevant treaties as well as soft law instruments where applicable.

1.1.2.1. Universal Treaties: The 1951 Convention and the 1967 Protocol relating to the Status of Refugees

Notwithstanding earlier attempts to create a legally binding instrument on refugee protection such as the 1933 Convention and the 1938 Convention, the first universally binding refugee protection instrument was the 1951 Convention relating to the Status of Refugees (1951 Convention), which—unlike the earlier attempts—managed to become widely ratified with its current 145 states parties. Along with its 1967 Protocol relating to the Status of Refugees (1967 Protocol), it is regarded as the foundation of the international legal framework of refugee protection.

The 1951 Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons on 28 July 1951 in Geneva and entered into force on 22 April 1954. As an instrument responding to the problem of millions of people who were forced to leave their countries of origin in the wake of the Second World War, it is limited to people who became refugees as a result of "events occurring in Europe or elsewhere before 1 January 1951" (UN General Assembly, 1951a, p. 154). Regarding the geographical scope of the Convention, Article 1B(1) permits states to restrict it solely to events occurring in Europe, or to use it adopting a more inclusive meaning covering events taking place in other areas as well.

The new challenges that arose throughout the world as a result of decolonization in the 1960s made the international community realize that the refugee

phenomenon has a universal nature both in time and space, and as such, requires a legal framework without any limitation in scope. To this end, the Protocol relating to the Status of Refugees was adopted on 31 January 1967, and the temporal and geographical limitation of the 1951 Convention was removed. Thus, states acceding to the Protocol consent to applying the main body (Articles 2–34) of the Convention to any refugee without the limited temporal and geographical scope found in the Convention's refugee definition. The only exceptions to this are the states that made geographical reservations under the 1951 Convention before adopting the 1967 Protocol. Accordingly, while Congo, Monaco and Turkey were allowed to maintain their restriction to European refugees, Hungary when acceding to both the Convention and the subsequent Protocol in 1989 had to withdraw its geographical reservation in 1998 (Hathaway, 2005, pp. 97–98).

As the name suggests, the 1951 Convention was mainly intended to address the question of the status of refugees, hence it includes the definition of refugee as well as their legal status (rights and duties) along with states' obligations to the Convention. Nevertheless, it remains silent on significant other issues such as solutions or causes. A crucial problem concerning both the 1951 Convention and its 1967 Protocol is the lack of an overarching and efficient enforcement mechanism. The only possibility provided by these treaties is to refer to the International Court of Justice (ICJ) in the case of disputes between state parties regarding the interpretation or application of the treaties. However, states parties to the Protocol can make reservations regarding this provision under Article VII(1). As of April 2015, the 1951 Convention obtained 145 states parties whereas the number of states that acceded to the 1967 Protocol reached 146, and there have been no changes since then (UNHCR, 2015a, p. 1).

1.1.2.1.1. Issues of Interpretation

There are a number of key terms in the Convention which are not provided a clear, if any, definition. As their meaning is not self-evident, several sources might provide guidance in their interpretation. First of all, Article 31(1) of the Vienna Convention on the Law of Treaties sets out that "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to terms of the treaty in their context and in the light of its object and purpose"

(United Nations, 1969, p. 12). As Goodwin-Gill and McAdam (2007) argued, in the context of the 1951 Convention, "this means interpretation by reference to the object and purpose of extending the protection of the international community to refugees, and assuring to »refugees the widest possible exercise of […] fundamental rights and freedoms«" (pp. 7–8). To find clearance on the problematic terms, many often avail themselves of the *travaux préparatoires* of the 1951 Convention. However, as Goodwin-Gill and McAdam (2007) argued, this can lead to rather mixed results and "clear statements of drafting intentions are rare" (p. 9).

The key terms in the Convention requiring further clearance in interpretation include "persecution", "well-founded fear" and "protection". Although some argue that it was a deliberate step to leave room for flexible interpretations and to enable the inclusion of possible future types of persecution, a crucial shortcoming of the 1951 Convention concerns the lack of a definition of this term. Nevertheless, persecution is generally understood as including "serious human rights abuses or other serious harm often, but not always, perpetrated in a systemic or repetitive way: […] death, torture, physical assault, unjustified imprisonment, and illegitimate restrictions on political or religious activities" (UNHCR, 2005, p. 56).

Under Article 1A(2) of the Convention, the fear of persecution is possible on the grounds of race, religion, nationality, membership of a particular social group or political opinion. Perpetrators of persecution can be both state authorities as well as non-state actors such as certain sections of the population. Well-founded fear, another significant aspect of the refugee definition, is argued to consist of a subjective and objective element (UNHCR, 2005, p. 56). The former is based on the asylum seeker's own perception of the situation while the latter necessitates an objective assessment of the conditions in the country of origin. Despite being one of the core norms of refugee law and "the *raison-d'être* of the international refugee regime", the meaning of the term "protection" is also unclear (Stevens, 2013, p. 233). Several authors such as Stevens (2013) and Storey (2016) have elaborated on the meaning of the term. According to the view of Helton (2003), protection in the context of international refugee law can be defined as follows:

> When we speak of 'protection', we mean *legal* protection. The concept must be associated with entitlements under law and, for effective redress of grievances, mechanisms to vindicate claims in respect of those entitlements. An inquiry, then, into whether a population has 'protection' is an examination of the fashion in which the pertinent authorities comply with the entitlements of individuals under international law, and the manner in which these legal precepts are implemented and respected (p. 20).

Nevertheless, even though the term is mentioned some fifteen times in the 1951 Convention, no definition is provided for it in the text of the Convention.

1.1.2.1.2. The Refugee Definition

One of the most significant contributions of the 1951 Convention to the international legal framework protecting refugees is its definition of refugee. The definition consists of inclusion, exclusion and cessation clauses. The inclusion clauses form the positive basis for determining whether and under what circumstances a person is eligible for refugee status. According to Article 1A(2) of the Convention, the term 'refugee' applies to any person who

> owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UN General Assembly, 1951a, p. 152).

The Convention's exclusion clauses define the circumstances under which persons can be denied refugee status. These circumstances fall into two groups. Refugee status can be denied on the ground that the person is not in need of international protection or does not deserve such status. Thus, pursuant to Article 1D, from the definition the Convention excludes "persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance" (UN General Assembly, 1951a, p. 156). During the presence of the United Nations Korean Reconstruction Agency (UNKRA), this applied to Korean displaced persons under the mandate of the UNKRA. Currently, this only refers to Palestinian refugees as long as they receive protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Furthermore, according to Article 1E, "a person who is recognized by the

competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country" falls outside the scope of the Convention (UN General Assembly, 1951a, p. 156). The Convention also excludes from the definition a person in the case of whom there are serious grounds for believing that

> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect to such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations (UN General Assembly, 1951a, p. 156).

The cessation clauses of the Convention define the circumstances under which refugee status comes to an end. Pursuant to Article 1C, it applies to a person if:

> (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
>
> (2) Having lost his nationality, he has voluntarily re-acquired it; or
>
> (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
>
> (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
>
> (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
>
> (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence (UN General Assembly, 1951a, p. 154).

The refugee definition of the Convention has frequently been criticised for being too narrow to include those who are forced to flee on grounds associated with climate change or extreme poverty. However, several legally binding as well as soft law instruments at the regional level such as the 1969 Convention on the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration effectively address such contemporary refugee movements by adopting a much broader definition than that of the 1951 Convention (see Chapter 2 for a detailed evaluation).

1.1.2.1.3. The Rights and Duties of Refugees under the 1951 Convention

Besides its definition as to who can qualify for refugee status, the 1951 Convention also outlines the rights and duties refugees are entitled to under the Convention. The substantive rights found in the 1951 Convention are argued to have originated from two main sources. The first is the 1933 Convention, whereas second is the 1948 Universal Declaration of Human Rights, which is explicitly mentioned in the Convention's Preamble (Hathaway, 2005, pp. 93–94). These substantive rights include the right to freedom of religion and religious education (Art. 4); the right of association (Art. 15); the right to access to courts (Art. 16); the right to work (Arts. 17–19); the right to housing (Art. 21); the right to public education (Art. 22); the right to public relief (Art. 23); the right to freedom of movement (Art. 26); the right to be issued identity and travel documents (Arts. 27 and 28); the right not to be punished for illegal entry into the territory of a contracting state (Art. 31); the right not to be expelled or returned, except under certain, strictly defined conditions (Arts. 32 and 33); and the right to naturalization (Art. 34) (UN General Assembly, 1951a, pp. 157–177). The 1951 Convention, however, lacks a significant right from the perspective a refugee, namely the right to asylum, since none of its provisions explicitly recognize asylum as a right of refugees.

Although some core rights are applicable to all refugees, there are two main criteria that need to be taken into account when deciding what rights a particular refugee is entitled to. First, the nature and duration of their attachment to the asylum state need to be clarified in order to define what additional rights apply to them under the Convention. According to Hathaway (2005), these can be summarized as follows:

> The most basic set of rights inheres as soon as a refugee comes under a state's de jure or de facto jurisdiction; a second set applies when he or she enters a state party's territory; other rights inhere only when the refugee is lawfully within the state's territory; some when the refugee is lawfully staying there; and a few rights accrue only upon satisfaction of a durable residency requirement (pp. 154–155).

To illustrate them with some concrete examples, the most basic rights include the right to public education (Art. 22) whereas the right to be issued identity papers (Art. 27) and the right to access to courts (Art. 16) apply when a refugee enters a

state party's territory; the right to freedom of movement (Art. 26) and the right to self-employment (Art. 18) can be accorded to a refugee lawfully in the territory of a state; the right to housing (Art. 21) and the right to wage-earning employment (Art. 17) apply when a refugee is lawfully staying in the territory of a state party; while artistic rights (Art. 14) inhere when a refugee satisfies the requirement of durable residency.

Second, the standard of treatment concerning the rights of refugees under the Convention is defined through what Hathaway (2005) called "a combination of absolute and contingent criteria" (p. 155). There are certain rights that apply to refugees absolutely which cannot be denied even if the host state does not guarantee them to its own citizens. These absolute rights include the right to administrative assistance, the right to access to courts, the right to be issued identity papers and travel documents, the right not be imposed of penalties for unauthorized entry, and the right not to be expelled or returned. As for the contingent rights, refugees can benefit from these entitlements on the standard of treatment either of citizens of the most favoured nation or the nationals of the asylum state itself. Unless no absolute or contingent standard of treatment is specified in the Convention, refugees are entitled to be granted a right on the same standard of treatment accorded to aliens generally, as provided in Article 7(1). However, as Hathaway (2005) pointed out, "[w]here refugee rights are guaranteed in the Convention only at the baseline level of assimilation to aliens generally […] the net value of the Refugee Convention may indeed be minimal" (p. 228).

The Convention's Chapter III on Gainful Employment illustrates these different standards of treatment very well. It contains provisions on wage-earning employment, self-employment and liberal professions. As a matter of fact, the importance of refugees' right to work was emphasized during the drafting of the 1951 Convention. Louis Henkin, delegate of the United States on the United Nations Ad Hoc Committee on Refugees and Stateless Persons argued that "without the right to work all other rights were meaningless" (UN Economic and Social Council, 1950). Article 17 of the Convention specifies that refugees are entitled to engage in wage-earning employment, and this right shall be accorded to them on the same standard of treatment applicable to "the most favourable treatment accorded to nationals of a foreign country" (UN General Assembly,

1951a, p. 164). Under Articles 18 and 19, refugees are entitled to the right to engage in self-employment and to practice liberal professions. However, the standard of treatment in the case of these two provisions is different from those attached to the right to wage-earning employment. Pursuant to Articles 18 and 19, the standard of treatment shall be "as favourable as possible and, in any event, not less favourable than that accorded to aliens generally" (UN General Assembly, 1951a, p. 166).

The Convention contains a single provision in relation to the obligations of refugees. Under Article 2, "[e]very refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order" (UN General Assembly, 1951a, p. 156). However, as Hathaway (2005) noted, the original draft of the Convention contained a whole chapter dealing with the duties of refugees including obedience to laws, paying taxes, as well as performing military and other civic services (p. 98). The legal anomaly and one of the main motives behind the drafters' move to reduce these duties to general obligations outlined above are best summarized by the words of Mr. Herment, delegate of Belgium at the UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons who claimed that since the Convention is an instrument which is concluded between states and to which beneficiaries, i.e., refugees, are not parties, it cannot impose any direct obligation on refugees (UN General Assembly, 1951b).

1.1.2.1.4. The Responsibilities of States under the 1951 Convention

Besides the rights and duties of refugees, the 1951 Convention also establishes the responsibilities of states under the Convention. Pursuant to Article 3, "Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin" (UN General Assembly, 1951a, p. 156). Furthermore, as mentioned above, under Article 7 states parties to the Convention are responsible for granting refugees the same treatment accorded to aliens in general—except where the Convention specifies more favourable provisions. Since the practice of determining the status of refugees is not set out in the Convention, it is left to individual states to develop. In line with Article 35,

states have the responsibility to cooperate with and provide UNHCR with information and statistical data regarding the "condition of refugees", "the implementation of this Convention", as well as "laws, regulations and decrees which are, or may hereafter be, in force relating to refugees" (UN General Assembly, 1951a, p. 177). Under Article 36, states are also responsible for informing the UN Secretary-General of the national laws and regulations they adopt in order to facilitate the application of the Convention. Although contracting states have an implicit responsibility to grant refugees the rights outlined in the Convention, pursuant to Article 42, they can make reservations to the articles of the Convention "other than to articles 1, 3, 4, 16(1), 33, 36–46 inclusive" (UN General Assembly, 1951a, p. 182). Thereby, the bulk of the rights granted to refugees under the Convention—except for the right to freedom of religion and religious education, the right to access to courts and the right not to be expelled or returned—might in principle be subject to reservations.

1.1.2.2. Customary International Law

Apart from international conventions, customary international law is another source worth examining when evaluating the international refugee regime. International customs are generally understood as bearing a sense of mutual obligation among states that arises from constant and universal state practice. Thus, in relation to international treaties, the main difference seems to be the medium of negotiation being "action rather than words" (Hathaway, 2005, p. 24). There is a general agreement that in (and outside) the framework of international refugee law, the principle of *non-refoulement* has acquired the status of a norm of customary international law.

1.1.2.2.1. The Principle of *Non-Refoulement*

It is widely accepted that the right of a refugee to not to be returned or *refouled* to a territory where his or her life would be threatened is the cornerstone of international refugee protection. As a matter of fact, at the 2001 Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, states parties jointly declared that *non-refoulement*, as

contained in the Convention, is a principle of customary international law (UNHCR, 2002).

Article 33(1) of the 1951 Convention defines the principle in the following way:

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (UN General Assembly, 1951a, p. 176).

While this wording might suggest that it is only refugees who are eligible for protection from *refoulement*, UNHCR Executive Committee clarified in its Conclusion No. 6 that the basis for entitlement is "irrespective of whether or not they have been formally recognized as refugees" (UNHCR, 2009, p. 8). In other words, it refers not only to refugees but also to asylum seekers. Furthermore, as widely argued, *non-refoulement* applies "from the moment that the person concerned *intends* to enter the border of another country" (Molnár, 2016, p. 56) and "wherever the State exercises its authority, including beyond its borders, for example when intercepting ships on the high seas" (UNHR, 2017a, p. 20).

Article 33(2) of the 1951 Convention contains two exceptions to this provision. *Non-refoulement* does not apply to refugees in the case of "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" (UN General Assembly, 1951a, p. 176). Since *non-refoulement* is accepted as a norm of customary international law, it is binding for all states—irrespective of their accession to the 1951 Convention or its 1967 Protocol.

The prohibition of *refoulement* is contained in several international instruments of human rights and humanitarian law. As a matter of fact, the first universal application of *non-refoulement* was its manifestation in the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Pursuant to Article 45, "[i]n no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs" (International Committee of the Red Cross, 1949, p. 184). Subsequent human rights instruments such as the 1966

International Covenant on Civil and Political Rights (ICCPR), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as well as regional human rights treaties further broadened the scope of the principle of *non-refoulement* by formulating it in a general human rights context. The CAT, the aforementioned 1949 Geneva Convention, as well as various regional refugee and human rights treaties such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the European Convention on Human Rights (ECHR) formulate an absolute ban on *refoulement*. Thus, under these provisions even individuals for whom there are reasonable grounds to believe that they pose a threat to the security or the community of their host country are protected from *refoulement*. Taking into account the two exceptions to the prohibition of *refoulement* under Article 33(2) of the 1951 Convention and the absolute ban found in the above instruments of human rights and humanitarian law, these conflicting provisions regarding *non-refoulement* gave way to frequent debates on the permissibility of derogations to the principle. In 1996, the Executive Committee of UNHCR attempted to resolve this discrepancy in its Conclusion No. 79 by clarifying "that the principle of *non-refoulement* is not subject to derogation" (UNHCR, 2009, p. 115).

1.2. OTHER FORMS OF INTERNATIONAL PROTECTION

The law applicable to refugees goes well beyond international refugee law. Several other bodies of international law—international human rights law, international humanitarian law as well as international criminal law—establish binding provisions related to refugees. In this vein, Betts (2010) argued that "it is no longer possible to speak of a compartmentalized refugee regime; rather, there is now a 'refugee regime complex'" (p. 12). Furthermore, as the Executive Committee of UNHCR stressed in its Conclusion No. 81, states thus need "to take all necessary measures to ensure that refugees are effectively protected, including through national legislation, and in compliance with their obligations under international human rights and humanitarian law instruments bearing directly on refugee protection" (UNHCR, 2009, p. 121). In this manner, relying on both hard and soft law instruments, this section evaluates the input of international human rights law, international humanitarian law and international criminal law to the protection of refugees.

1.2.1. International Human Rights Law

Since human rights law applies to all human beings regardless of their legal status, it is a helpful standard that complements the international refugee regime. The invocation of human rights in the context of refugee protection has several benefits. It provides an additional ground for "assessing the quality of the treatment that asylum countries offer to refugees and asylum seekers on their territories" (UNHCR, 2005, p. 31), determining the rights of refugees irrespective of those provided by 1951 Convention and "recognizing a more expansive range of reasons for flight" (Harley, 2015, p. 46). In fact, some authors claim that the general guarantees provided by human rights law may offer more protection than the specific regime of refugee law. Chetail (2014), for instance, argued that "[c]ontrary to the common belief of many humanitarian and refugee law specialists, the most specific norm is not always the most protective one. In fact, rather the contrary is true" (p. 703).

The tenets of human rights law in the context of refugee protection bear exceptional importance in the case of states that are not parties to the universal treaties of refugee law (the 1951 Convention and its 1967 Protocol) or relevant regional conventions (such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa). As Harley (2015) summarized, "refugees do not only benefit from the rights contained in the 1951 Convention, but like all those forcibly displaced, also exist within a global framework of human rights standards and institutions" (pp. 43–44).

Due to space limitations, this subsection clearly cannot examine each and every human rights instrument that can be invoked in refugee protection. Therefore, it only evaluates the most crucial ones for its purposes. The ICCPR, the CAT and the 1989 Convention on the Rights of the Child (CRC) are significant human rights treaties that provide various forms of supplementary protection to refugees, asylum seekers and displaced persons. Other human rights instruments such as the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) or the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) are further examples for the many ways the human rights regime can complement international refugee law. Although a non-binding instrument, the 1948 Universal Declaration of Human Rights (UDHR) is widely

regarded as a fundamental instrument and the most significant proclamation of human rights. The general scope and inclusiveness regarding its beneficiaries are apparent in its Preamble which states that "recognition of the inherent dignity and of the equal and inalienable rights of *all members of the human family* is the foundation of freedom, justice and peace in the world" (UN General Assembly, 1948). The provisions of Article 14 are of special interest to asylum seekers and refugees. By virtue of Article 14(1), "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution"; however Article 14(2) offers a limitation stating that "this right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations" (UN General Assembly, 1948). Other rights and freedoms that can be invoked in the context of refugees under the UDHR among many others include the freedom from discrimination (Art. 2); the right to life, liberty and personal security (Art. 3); the freedom from torture and degrading treatment (Art. 5); the right to recognition as a person before the law (Art. 6); as well as to a range of social and economic rights (Arts. 22, 23, 25, 26).

In 1966, contracting states agreed on creating two legally binding instruments to further promote human rights and fundamental freedoms. These were the ICCPR and the ICESCR. Along with the UDHR and the two optional protocols to the ICCPR, these treaties constitute the body of the so-called International Bill of Human Rights. The ICCPR extends the scope of civil rights to "all persons" and "everyone" (UN General Assembly, 1966). Therefore, it is a significant source of rights for refugees that supplements the 1951 Convention by providing rights and freedoms such as the right to life (Art. 6), the right not be subjected to torture, inhuman or degrading treatment or punishment and slavery (Arts. 7–8) or the freedom of expression (Art. 19), among others (UN General Assembly 1966). By virtue of Article 4(2), most of these rights are non-derogable meaning they must be provided and respected under all circumstances—including public emergencies.

The CAT also has the potential to play an important part in the context of refugee protection. On the one hand, in an absolute manner it prohibits states from *refoulement* "where there are substantive grounds for believing that he [/the person] would be in danger of being subjected to torture" (UN General Assembly,

1984). On the other hand, it offers a definition and strict prohibition of torture and other forms of ill-treatment which are among the main reasons for refugees' flight.

1.2.2. International Humanitarian Law

Besides human rights treaties, instruments of humanitarian law are additional sources of protection for refugees and asylum seekers. Predating human rights and refugee law, humanitarian law governs the means and methods of armed conflict and protects the persons who are not taking part in hostilities. As UNHCR (2005) argued, humanitarian law "is of clear significance in the protection of refugees as refugees are becoming increasingly targeted in wars" (p. 36), and more importantly, because the main cause of forced migration is armed conflicts. However, Chetail (2014) drew attention to the ambiguous nature of humanitarian law's input to the refugee protection regime by highlighting that humanitarian law's "primary function in the field of forced migration is a preventive one [as t]he explicit prohibition of forced displacement aims to prevent civilians from becoming refugees", and by adding that it, at the same time, "is relatively indifferent to the specific needs of refugees who are in the territory of a party to an armed conflict" (p. 704).

Although refugees who find themselves in the midst of an international armed conflict come under the general category of "protected persons", three provisions of the 1949 Geneva Conventions and the 1977 Additional Protocols—the core instruments of humanitarian law—deal explicitly with them. According to Article 44 of the Fourth Geneva Convention, "the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government" (International Committee of the Red Cross, 1949). Article 70 of the Fourth Geneva Convention outlines the relations between refugees in the asylum state and their state of origin when the former is under the occupation of the latter as follows:

> Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for

> offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace (International Committee of the Red Cross, 1949).

Furthermore, Article 73 of the Additional Protocol I provides that stateless persons and refugees who were recognized as such before the beginning of hostilities "shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction" (International Committee of the Red Cross, 1977, p. 36).

1.2.3. International Criminal Law

The final body of law examined in this section is international criminal law, which may complement refugee law in several ways. The 1998 Rome Statute of the International Criminal Court, as well as the judgements of the International Criminal Tribunals for the former Yugoslavia and Rwanda and the International Criminal Court (ICC) provide a solid basis for determining whether and when persons should be excluded from refugee status. On the other hand, relevant international agreements on human smuggling and trafficking—such as the 2000 United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air as well as the 2000 United Nations Protocol to Prevent, Suppress and Punish the Trafficking of Persons, Especially Women and Children—address various aspects of these issues which are extremely relevant in the case of refugees who often find themselves in the hands of smugglers. The two Protocols underline the importance of assisting victims of human trafficking and protecting the rights of smuggled migrants while stipulating that they should not be punished solely on the basis of having been subject to smuggling and trafficking. Moreover, in their final provisions, the Protocols make it clear that nothing contained in them

> shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein (UN General Assembly, 2000a, p. 11; 2000b, p. 8).

1.3. UN AGENCIES AND OTHER ACTORS RELEVANT TO INTERNATIONAL REFUGEE LAW

UN agencies such as UNHCR, the UNRWA, the International Organization for Migration (IOM), the United Nations Development Programme (UNDP) and the World Food Programme (WFP) are key actors in providing assistance and protection to refugees. Except for UNHCR and UNRWA, their work is not specifically related to refugees, but they do engage in certain protection-related work and closely collaborate with UNHCR. For reasons of brevity, this section solely focuses on the role of UN agencies and NGOs in refugee protection, and specifically UNHCR.

1.3.1. UNHCR

The Office of UNHCR was established to provide a form of supervisory mechanism for international refugee law. Not only the Statute of UNHCR but also the 1951 Convention and its 1967 Protocol assign UNHCR a supervisory role regarding states' implementation of instruments of international refugee law. The Office of UNHCR is operative since 1 January 1951 in line with Resolution 319 (IV) of the UN General Assembly. Until 2003, UNHCR's mandate had to be renewed every three years by the General Assembly; however, in 2003, its temporary mandate was extended by the General Assembly Resolution 58/153 "until the refugee problem is solved".

1.3.1.1. The Statute of UNHCR

The legal foundation of UNHCR is its Statute, adopted by the UN General Assembly on 14 December 1950, which lays down the functions and specifies the work of the High Commissioner. Accordingly, "the work of the High Commissioner is humanitarian and social and of an entirely non-political character" (UN General Assembly, 1950, p. 4). Pursuant to Paragraph 8 of the Statute, UNHCR's functions related to the protection of refugees are as follows:

> (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;

> (b) Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;
> (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
> (d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;
> (e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;
> (f) Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;
> (g) Keeping in close touch with the Governments and inter-governmental organizations concerned;
> (h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions;
> (i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.

UNHCR's mandate does not include refugees who were already receiving assistance from another United Nations agency when the Office of UNHCR was established. In this manner, people displaced by the Korean War falling under the mandate of the UNKRA, as well as Palestinian refugees receiving assistance from UNRWA are outside the scope of UNHCR. UNRWA's mandate does not, however, extend to all Palestinian refugees; therefore, Palestinian refugees outside UNRWA's area of operation who do not receive assistance from UNRWA might fall, in principle, under the mandate of UNHCR.

1.3.1.2. The Role of UNHCR in Refugee Protection

UNHCR's role in refugee protection has undergone substantial changes and developed into one of a quite diverse nature. Over time, its mandate has been extended to include persons of concern other than refugees such as stateless persons, internally displaced persons (IDPs) and returnees. UNHCR provides not only technical and operational assistance but also material aid for the basic needs of refugees in the form of "shelter, food, water, sanitation, medical care and education" (UNHCR, 2017a, p. 42). Furthermore, it plays a significant role in the registration and status determination of refugees in host countries which do not have sufficient capacity to undertake these functions on their own. With the help of special agreements such as Memorandum of Understanding (MoU), UNHCR enhances bilateral cooperation on protection-related issues with individual states as well as international organizations and agencies. As Chapter 3 demonstrates,

the status determination undertaken by UNHCR as well as the MoUs between UNHCR and countries in the region are of vital importance for the protection of refugees in Middle Eastern states such as Lebanon and Jordan. With the help of its initiatives such as the Refugee Response Plans tailored to address specific refugee situations, UNHCR also engages in inter-agency coordination to find an adequate response to large-scale refugee situations. Chapters 3 and 4 evaluate the tenets of UNHCR's Regional Refugee & Resilience Plans in the Middle East as well as its Regional Refugee and Migrant Response Plans for Europe in the context of Syrian refugees.

As mentioned above, UNHCR's supervisory role is set out in its Statute, the 1951 Convention and its 1967 Protocol. Paragraph 8(a) of the Statute of UNHCR authorizes UNHCR to supervise the application and implementation of international conventions on refugee protection and propose amendments thereto. Furthermore, pursuant to Article 35(1) of the 1951 Convention and Article II of the 1967 Protocol, contracting states "undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the [Convention and the Protocol]" (UN General Assembly, 1951a, p. 176; 1967, p. 270). Under Article 35(2) of the 1951 Convention, states are further responsible to inform UNHCR of the laws, regulations and decrees they adopt concerning refugees, the condition of refugees in their territory, as well as the implementation of the Convention.

1.3.1.3. Convention Plus: A Promising but Failed Initiative

Although the 1951 Convention and its 1967 Protocol contain a relatively wide range of rights, the international refugee regime falls short of providing efficient, if any, enforcement mechanisms. Summarizing the weaknesses of the 1951 Convention, Feller (2006) argues the following:

> Where is the 1951 Convention weak? It gives a voice and force to the rights of refugees. It does not, though, say how States should put it into practice. The Convention regime rests on notions of international solidarity and burden and responsibility sharing, but offers no agreed indicators, much less formulae, for such burden and responsibility sharing. […] In short, the Convention does not hold all the answers. If it is clear in terms of rights, it is

> close to silent about whose responsibility it actually is to protect them in the context of modern displacement situations and populations movements (p. 525).

Similarly, the international refugee regime was dubbed "half-complete" (Betts & Durieux, 2007, p. 511) and former High Commissioner Ruud Lubbers argued that although the "1951 Refugee Convention remains the cornerstone of the international refugee protection regime, […] it alone does not suffice" (cited in Labman, 2010, p. 15).

The missing link in the refugee protection regime was manifested in the form of UNHCR's Convention Plus initiative attempting to supplement the 1951 Convention and its Protocol. It was designed to narrow the gaps in the refugee regime and focused on the most acute problems such as burden sharing and resettlement. Furthermore, the initiative envisaged the development of multilateral agreements to reach these goals. As former High Commissioner Lubbers summarized:

> The "plus" concerns the development of special agreements or multilateral arrangements to ensure improved burden sharing, with countries in the North and South working together to find durable solutions for refugees. This includes comprehensive plans of action to deal with mass outflows, and arrangements on "secondary movements", whereby the roles and responsibilities of countries of origin, transit, and potential destination are better defined. It also includes agreements aimed at better targeting development assistance in refugees' regions of origin, and multilateral commitments for resettlement of refugees (UNHCR, 2003, p. 6).

Convention Plus ran between 2002 and 2005, and subsequently failed to meet its objectives. According to Labman (2010), the biggest shortcoming of the initiative was its lack of "substantial guidance on how refugees for resettlement are to be selected, how the number of refugees to be selected should be calculated, or on how, as a burden-sharing mechanism, such refugees should be geographically distributed" (pp. 21–22). The main reason for its failure can be attributed to the fact "that Western states are not yet prepared to translate their verbal commitments to responsibility sharing into normative frameworks on international burden sharing" (Gottwald, 2014, p. 526). However, there were some more optimistic voices among the commentators such as Betts and Durieux (2007) who argued that "the Convention Plus has helped to develop significant new ideas relating UNHCR's potential role in norm-creation within the refugee regime" (p. 509).

1.3.2. Other Actors Relevant to International Refugee Protection

UNHCR works in collaboration with a wide range of actors such as governments, international and UN organizations as well as NGOs. Their work in refugee protection is significant not only in their cooperation with UNHCR but also concerning their independent protection and humanitarian work. UNHCR's most significant UN sister organizations relevant to refugee protection and assistance are the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the UNDP, the WFP and the World Health Organization (WHO), just to name a few. Although the work of the IOM—established in 1951—is focused on migration management, its cooperation with UNHCR is also significant. This is clearly symbolized by the agreement in 2016 to establish a closer legal and working relationship with the UN as a related organization. Last but not least, UNHCR actively and closely cooperates with regional organizations such as the African Union (AU), the Organization of American States (OAS), the Council of Europe, the EU, the OIC and the LAS.

Other key actors in refugee protection include the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) which play a crucial role in providing humanitarian relief and protection. Moreover, the work of hundreds of NGOs—both at the international and national levels—is very important in delivering humanitarian aid to refugees, especially in the field. Due to capacity and funding shortages, their contribution might be relatively smaller than that of the aforementioned international agencies, but they seem to be faster in responding to the changing needs of refugees, especially in times of mass influxes. The Final Act of the United Nations Conference of the Plenipotentiaries on the Status of Refugees and Stateless Persons itself highlights the significance of NGOs by stating that "in the moral, legal and material spheres, refugees need the help of suitable welfare services, especially that of appropriate non-governmental organizations" and by recommending "Governments and inter-governmental bodies to facilitate, encourage and sustain the efforts of properly qualified organizations" (UN General Assembly, 1951d, pp. 8–9).

1.4. CONCLUSION

The current unprecedented number of refugees and asylum seekers since the Second World War is estimated to be 28.5 million (UNHCR, 2018b), and this sheds light to the continuing and increasing need for providing adequate protection to them. Despite the obvious shortcomings of the 1951 Convention—its protection gaps, the lack of durable solutions and developed burden sharing mechanisms—it remains a crucial source for providing protection to refugees. Although human rights instruments are important subsidiary sources of refugee rights, the wide range of rights provided under the Convention are in many instances much better suited for the special needs of refugees than the general entitlements under human rights instruments. To sum up with the optimistic words of Feller (2001), "[t]he 1951 Convention is fifty years-old, but not outdated; human rights principles are not weakened by age" (p. 137).

CHAPTER 2
REGIONAL PROTECTION FRAMEWORKS FOR REFUGEES

> I have heard it said we are the uninvited. We are the unwelcome. We should take our misfortune elsewhere. But I hear your mother's voice, over the tide, and she whispers in my ear, "Oh but if they saw, my darling. Even half of what you have. If only they saw. They would say kinder things surely."
>
> — Khaled Hosseini, *Sea Prayer*

This chapter's objectives are twofold. First, it aims to critically analyse the strengths and limits of regional refugee protection frameworks over the international one outlined in the previous chapter. Second, it evaluates the existing legal regimes region-by-region by examining the refugee protection frameworks of Africa, the Americas and Asia-Pacific, and by highlighting their potential input to the international refugee regime. In so doing, it evaluates the main regional refugee-specific and human rights instruments of both hard and soft law.

2.1. THE STRENGTHS AND LIMITS OF REGIONAL REFUGEE PROTECTION FRAMEWORKS

Regional approaches to the protection of refugees are important supplementary sources of refugee law. Their significance in attaining burden sharing and durable solutions for refugees was often underlined by the Executive Committee of the High Commissioner's Programme as well. In the Executive Committee's 2000 *Note on International Protection*, it is argued that

> [h]armonized regional protection approaches are an important means of strengthening the international refugee protection regime. UNHCR's active participation in the design of these regional approaches has sought to guarantee consistency with universal standards and to ensure burden sharing and international solidarity, while responding to specific regional concerns (UN General Assembly, 2000c, p. 13).

Similarly, several Conclusions of the Executive Committee highlighted the significance of regional arrangements. In its Conclusion No. 22, the Executive Committee proposed that "action should be taken bilaterally or multilaterally at the regional or at the universal levels" and "[p]rimary consideration should be given to the possibility of finding suitable solutions within the regional context" (UNHCR, 2009, p. 29). Likewise, Executive Committee Conclusion No. 81

recommended

> States and UNHCR to continue to promote, where relevant, regional initiatives for refugee protection and durable solutions, and to ensure that regional standards which are developed conform fully with universally recognized standards and respond to particular regional circumstances and protection needs (UNHCR, 2009, p. 122).

While regional arrangements for refugee protection have a relatively long history, their degree of development shows significant variation in each region. While the refugee protection frameworks of Europe, Africa and, to some extent, the Americas are relatively well-developed and deep-rooted, the Middle East and Asia-Pacific have shown only a very limited, if any, willingness to develop such regional approaches. The lack of binding regional instruments of refugee and human rights law in these two regions is especially salient.

As a matter of fact, the cornerstone of international refugee law, the 1951 Convention is itself argued by some to be a regional instrument as it was tailored to provide protection for refugees in Europe who were displaced during and following the Second World War (Kneebone & Rawlings-Sanaei, 2007, p. 4; Mathew & Harley, 2016, p. 28). Thus, as Mathew and Harley noted (2016), just like many areas of international law, "the 'universal law' has reflected a particular European experience" which does not necessarily "undermine the importance of the universal norms established […] given the widespread practice in conformity with it" (p. 29).

The growing spread of regional frameworks for refugee protection is argued to be the outcome of several factors including:

- the shift from colonial struggles to internal conflicts;
- the end of the cold war and the "use" of refugees as an element in the conflict;
- growing concern by industrialized countries to contain migration/refugee flows from the developing world;
- the refusal of regional actors to play previously assigned roles;
- the resistance of donor countries and asylum countries in the developing world to support continued burden-sharing; and
- the need of regional actors to respond when global action proves inadequate (Stein, 1997).

In line with Mathew and Harley's (2016) classification regarding regional refugee protection arrangements, there are three main ways an arrangement can be considered regional:

> The origin and impact of the refugee flow concerned may be largely confined to a particular geographical region of the globe; states in this region may participate in the arrangement; and the arrangement may be adopted under, or may otherwise involve a regional organization such as the European Union, the African Union or the Organization of American States (p. 23).

Naturally, regional arrangements are not necessarily limited to the cooperation of states from a particular region; states from other regions may also participate in these arrangements in the form of financial or physical burden sharing such as by providing durable solutions for refugees. This can take various forms including targeted resettlement programs, bilateral agreements or interregional cooperation.

Regional arrangements for refugee protection have some obvious advantages. As Mathew and Harley (2016) argued, they "may play a pivotal role in responding to refugee situations if they address the specific needs of refugees in the region, foster greater attention to these needs from states, and are developed in accordance with international human rights standards" (p. 16). When looking at the existing regional protection frameworks, it can be argued that regional instruments of refugee law have not only supplemented but also generally strengthened the international refugee regime. Regional instruments such as the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems of Africa (OAU Convention) and the 1984 Cartagena Declaration on Refugees not only significantly broadened the refugee definition of the 1951 Convention but also specifically urged states to become party to the universal instruments of refugee law such as the 1951 Convention and its 1967 Protocol. In a regional setting "specific particularities, mutuality of interest, cultural compatibility and social traditions" can all play an important role in achieving effective arrangement for refugee protection (De Andrade, 1998, p. 391). Furthermore, regional organizations can play a crucial role in coordinating and achieving such refugee protection arrangements. However, as Loescher (1996) and Stein (1997) observed, they are "often poorly equipped to respond effectively to conflicts and to humanitarian emergencies" and "may lack military, logistical and economic resources" (p. 190).

Nevertheless, there are some obvious limits as to what regional arrangements can achieve in terms of protection outcomes of refugees. Regionalism may bring along crucial differences in the treatment of refugees between different regions of

the globe and may also weaken the universal standards of refugee protection. At the same time, as Bidinger et al. (2014) noted regarding UNHCR's 2014 Syria Regional Response Plan, a regional arrangement of this kind which calls on states to engage in financial burden sharing "illustrates a containment paradigm that is unsustainable and dangerous, rather than an approach that more equitably shares the responsibility towards the individual refugees among the wider community of states outside the current host region" (p. 1). As this chapter and Chapter 4 below show, the tendency to contain refugee movements in their region of origin can be observed in the approach of several regions such as Europe and Africa.

Moreover, a closely related issue is the ever-growing tendency of refugees fleeing from and being hosted in the developing world. According to the latest statistics of UNHCR (2018c), around 85 per cent of the world's refugees were hosted in developing regions in 2017 (p. 2). In this respect, Kneebone and Sanaei (2007) argued that "in the industrialized North regionalism is often symptomatic of 'protectionism' and restrictive approaches as states within a region combine to erect barriers to entry (such as the EU)" and that "the policies of such states since the 1980s have been directed at 'containing' the problem in the regions of origin in the developing South" (p. 3). As countries in the developing world generally do not have sufficient resources and expertise to respond to the needs of refugees, this phenomenon not only imposes a huge burden on them that they are unable to handle but also results in refugees' struggle to receive adequate assistance. Therefore, cooperation in responsibility sharing between the Global North and the Global South is crucial in making a change.

2.1.1. Regionalism vs. Universalism

An evaluation of regional protection frameworks' input to the universal refugee regime necessitates a short assessment of the concept of regionalism. According to Mathew and Harley (2016), who developed their concept of regionalism in respect of refugee protection by adopting Louise Fawcett's definition,

> [r]egionalism may involve an imagined community, a geographical relationship or a degree of mutual independence between states. Thus regionalism is broader than the mere geographic reality of states sharing a common space on the globe. With respect to refugees, regional approaches have been developed in part, we suggest, because of the regional nature of refugee movements, and in part because of external factors such as shared

> impacts on, and interests among states, shared cultures and traditions, and the limitations of unilateral and global responses (p. 18).

The academic literature provides several arguments for the promotion of regional approaches in refugee protection over the universal regime. Since refugee movements are predominantly regional in origin and impact, countries in a region may be directly concerned in finding a solution for them. Furthermore, as Mathew and Harley (2016) pointed out, "regional actors may also be better equipped in some respects to respond because they have region-specific knowledge and could be more capable of coordinating and tailoring protection programmes to the particular needs of refugees" (p. 60). Therefore, it is much more possible to arrive at a uniform agreement between states at the regional level. In this vein, Mathew and Harley (2016) argued that "[i]n an international political environment where refugee rights are not yet universally accepted, let alone universally implemented, regional agreement might be a more realistic and achievable goal" (p. 60). Similarly, Stein (1997) noted that "[r]egional efforts, by regional international organizations and *ad hoc* groupings of regional actors, occur when the region either has rejected the solution advanced by the international community or when the international community has taken little or no action to achieve a solution". With their in-depth region-specific knowledge, states in a region are in a much more favourable and advanced position to collaborate in several areas. As for refugee protection, they can launch initiatives including "research and training development, institution and programme sharing, harmonized jurisprudence and combined efforts to tackle root causes of flight" (Mathew & Harley, 2016, p. 61). In line with their specific level of experience and capacity, states can thus allocate the particular protection tasks such as registration, status determination, local settlement, resettlement or financial support. As Mathew and Harley (2016) argued, such regional cooperation in assigning protection roles has advantages for both states and refugees (p. 61). States can benefit from the reduced financial costs, enhanced diplomatic relations and more efficient solutions to refugee flows. For refugees, in turn, such cooperation can allow for better and more adequate protection outcomes in the vicinity of their home countries.

Notwithstanding regionalism's strengths in refugee protection, the universal or global approach may also have some indisputable advantages. In contrast to the regional approach, under universalism states are bound by a common, universal

framework of refugee protection. Such a framework can ensure that contracting states all over the world undertake the very same obligations under universal standards of refugee protection. However, as Mathew and Harley (2016) suggested, due to the high number of parties participating in the initial negotiations, the international legal framework perfectly illustrates the acceptance of the "lowest common denominator" (p. 59). According to them, the 1951 Convention and its 1967 Protocol are such examples. Using the vivid analogy that Mr. Rees, representative of the Standing Conference of Voluntary Agencies, used during the drafting process of the 1951 Convention, "the draft Convention had at times been in danger of appearing to the refugees like the menu at an expensive restaurant, with every course crossed out except, perhaps, the soup, and a footnote to the effect that even the soup might not be served in certain circumstances" (UN General Assembly, 1951c).

2.2. THE EXISTING REGIONAL PROTECTION FRAMEWORKS

As mentioned above, regional refugee protection frameworks show a significant variation in their degree of development. While the refugee protection frameworks of Europe, Africa and, to some extent, the Americas are relatively well-developed and deep-rooted, the Middle East and Asia-Pacific have shown only a very limited, if any, willingness to develop such regional approaches. The lack of binding regional instruments of refugee and human rights law is an especially salient feature of these two regions. For reasons of space, this section can only evaluate the main legal instruments of regional refugee and human rights regimes in Africa, the Americas and Asia-Pacific. Thus, the analysis cannot cover some other important regional arrangements for refugees such as the International Conferences on Assistance to Refugees in Africa (ICARA), the International Conference on Central American Refugees (CIREFCA) or the Comprehensive Plan of Action for Indochinese Refugees (CPA). The regional refugee protection regimes of Europe and the Middle East are examined in detail in Chapters 3 and 4.

2.2.1. Africa

Today, the main regional organization in Africa is the African Union (AU) which was established on the ashes of the Organization of African Unity (OAS) in 2002.

The foundation of the OAS grew out of the Pan-African sentiments and decolonization movements in the 1960s. The OAS was a crucial player in the creation of a regional human rights system in Africa and in the drafting of the 1981 African Charter on Human and Peoples' Rights. Besides being the cornerstone of human rights promotion and protection in the region, the African Charter contains the right to seek and obtain asylum and several other rights that can be invoked in refugee protection.

In Africa, the main regional instrument of refugee law is the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) which has been widely praised for several of its provisions, most notably for its broad refugee definition. Another significant aspect of the OAU Convention is its focus on intra-regional burden sharing. As Beyani (2013) argued,

> [i]n the prevailing struggle for decolonisation in the 1960s, the causes of flight and the corresponding lack of protection were connected to the liberation struggle against colonial rule, with the result that commitment to the protection of refugees became a solid expression of solidarity between African states (p. 13).

Nevertheless, as Mathew and Harley (2016) noted, the burden sharing provision of the OAU Convention has not been adequately implemented (p. 45). In the 1980s, there was a regional attempt to involve the Global North in sharing the financial burden of refugees in the framework of the first and second International Conference on Assistance to Refugees in Africa (ICARA I and II); however, they failed to achieve significant, if any, success.

The human rights regime in Africa is a relatively developed one. Key regional instruments of human rights include the 1981 African Charter on Human and Peoples' Rights (ACHPR) and the 1990 African Charter on the Rights and Welfare of the Child. The promotion and enforcement of refugee and human rights law rest with the African Commission on Human and Peoples' Rights as well as the African Court on Human and Peoples Rights.

Africa is home to one of the largest numbers of internally displaced persons and refugees. Refugee flows in Africa have predominantly been intra-regional. In the aftermath of the decolonization era, there have been several internal struggles in

the region including the genocidal conflicts in Rwanda and Burundi leading to massive refugee flows. Mathew and Harley (2016) suggested that instead of an explanation limited to internal aspects, refugee flows in Africa need to be approached from a perspective focusing on external factors as well (p. 45). In their view, such an approach helps to explain the sharp change in the asylum policy of the region that transformed an overall generous policy to a highly restrictive one in the 1990s.

2.2.1.1. The 1969 OAU Convention

The 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems of Africa (OAU Convention) was a targeted response to the mass displacements following decolonization and independence movements in Africa. The drafting of the OAU Convention was a collective effort of both the OAU and UNHCR. The general willingness and determination of African states to create a legally binding instrument of this kind are clearly reflected by the number of state parties to the OAU Convention: all forty-one independent states in Africa became signatories to it in 1969. So far, forty-six of the fifty-five member states of the African Union (AU) have acceded to the OAU Convention.

As Kneebone and Rawlings-Sanaei (2007) pointed out, “the importance of the OAU Convention is its attempt to tailor protection to the particular issues raised in the region, and to provide for regional solutions” (p. 6). The main aim of the OAU Convention was to provide a legal basis for the protection of refugees in the region who clearly could not benefit from the provisions of the 1951 Convention due to its temporal and geographical limitations. As Rankin (2005) argued, the OAU Convention’s main objectives are threefold: “to balance Africa’s traditional hospitality toward strangers with the need to ensure security and peaceful relations among OAU member states”, “to create an effective regional complement to the 1951 Convention” and to produce “a convention that would meet the specific needs of African refugees” (pp. 408–409). This third goal is reflected in the refugee definition of the OAU Convention which has received much appreciation from UNHCR, NGOs as well as academicians, and served as a precedent for the refugee definition in subsequent regional instruments. Article

I(1) of the OAU Convention adopts the refugee definition of the 1951 Convention and complements it in Article I(2) the following way:

> The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (Organization of African Unity, 1969).

Thus, by extending the causes of flight found in the 1951 Convention (persecution "for reasons of race, religion, nationality, membership of a particular social group or political opinion") to "external aggression, occupation, foreign domination or events seriously disturbing the public order" the OAU Convention reflects the struggles for decolonization and independence of African countries. However, the OAU Convention does not address the issue of refugee status determination leaving it to states' discretion.

Unlike the 1951 Convention, the OAU Convention specifically mentions the right to asylum. According to Goodwin-Gill (2014), "the OAU Convention was among the first to give a measure of normative content to the discretionary competence of states to grant asylum"—the others being the African Charter on Human and Peoples' Rights and the American Convention on Human Rights (p. 5). Article II titled *Asylum* contains provisions not only on asylum itself but also on durable solutions and *non-refoulement*. Pursuant to Article II(2), the granting of asylum is "a peaceful and humanitarian act" (Organization of African Unity, 1969). Furthermore, under Article II(1), "Member States of the OAU shall use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality" (Organization of African Unity, 1969).

As mentioned above, the OAU Convention also includes the principle of non-*refoulement* in its Article II(3) under which no one shall be rejected or returned to a territory where "his life, physical integrity or liberty would be threatened for reasons set out in Article I, paragraphs 1 and 2" (Organization of African Unity, 1969). Articles II and V lay down some important provisions on durable solutions: Article II(1) deals with resettlement, Article 2(5) with temporary

protection and Article V with voluntary repatriation. As a matter of fact, the only formal reference to voluntary repatriation is argued to be found in the OAU Convention (Goodwin-Gill, 2014, p. 5). Most significantly, Article II(4) establishes the nature and extent of burden sharing by stating that

> [w]here a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum (Organization of African Unity, 1969).

Notwithstanding these inclusive provisions regarding the refugee definition, causes of flight, durable solutions and burden sharing in the OAU Convention, state practice points to a very different direction. On the one hand, the domestic legislation of most of the states in the region does not meet the standards set out in the OAU Convention. On the other hand, states such as Tanzania and Zaire clearly violated Article 2(1) of the OAU Convention and customary international law by "closing their respective borders to asylum seekers" and by mass deportation to countries of origin (Abass & Mystris, 2014, p. 24). Furthermore, as mentioned above, it has been suggested that there has been a marked shift in the refugee policies of African countries since the mid-1980s. As Rutinwa (2002) argued, "[t]he hallmarks of this shift were a preference for containment if refugees in countries of origin over the grant of asylum, the *refoulement* of refugees, a disregard of basic rights of refugees, and a retreat from durable solutions other than repatriation" (p. 20). Moreover, Abass and Mystris (2014) claimed that this shift is reflected in the OAU Convention itself which was motivated by political rather than legal reasons (p. 22). On this basis, some argue that "[t]he prevailing view is that it is time to revisit the OAU Convention and its implementations" (Kneebone & Rawlings-Sanaei 2007, p. 8).

2.2.1.2. The 1981 African Charter on Human and Peoples' Rights

The 1981 African Charter on Human and Peoples' Rights (ACHPR, also known as the Banjul Charter) is a further legal source that, despite being a human rights instrument, can well be invoked in refugee protection. Beside the 1990 African Charter on the Rights and Welfare of the Child, the ACHPR is the legal foundation of human rights in the African continent. It was drafted by the OAU

and has been ratified by fifty-four of the fifty-five member states of the AU—the only state that has not yet acceded to it is Morocco.

The ACHPR contains a wide range of civil, political, economic, social and cultural rights. One of the most innovative features of the ACHPR is that it recognizes not only individual but also group rights. Rights that can be invoked in refugee protection are the right to life (Art. 4), the right to human dignity (Art. 5), the right to liberty and security of the person (Art. 6), the right of access to judicial protection (Art. 7(1)) and the right to property (Art. 14). Furthermore, refugees can benefit from the principle of non-discrimination contained in Article 2 of ACHPR as well as the principle of *non-refoulement* under Articles 12(3) and 12(4). Most significantly for refugees and asylum seekers, under Article 12(3) the ACHPR clearly establishes the right to asylum by stating that "[e]very individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions" (Organization of African Unity, 1981). However, there are a number of provisions in the ACHPR that are subject to the domestic law of individual states: probably the most worrying of all relates to the expulsion of individuals from a state of asylum.

The regional legal framework of refugee protection in Africa has, thus, some obvious inputs to the international refugee regime. It significantly broadens the refugee definition and provides for durable solutions as well as a burden sharing mechanism. An encompassing definition of refugee can also be observed in the refugee protection framework of the Americas, with the sole difference that it is a non-binding regional instrument that contains the relevant provision there.

2.2.2. The Americas

Established in 1948, the Organization of American States (OAS) is one of the world's oldest regional organizations. Under its auspices, there developed a relatively deep-rooted regional human rights system based on several hard and soft law instruments including the OAS Charter, the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights. The Inter-American Commission and Court of Human Rights are the institutions established by the OAS to observe and enforce refugee and human rights in the

Americas. As Jubilut (2014) argued, “these bodies have carved out an important framework for the protection of asylum seekers and refugees through creative interpretation of the regional human rights framework developed by the OAS” (p. 269).

In Latin America, there is a deep-rooted tradition of political or diplomatic asylum which is based on the 1989 Montevideo Treaty on International Penal Law. Article 16 of the Montevideo Treaty stipulates that “[p]olitical refugees shall be afforded an inviolable asylum” (First South American Congress on Private International Law, 1989). Given the refugee crisis in Central America in the 1980s, a much more encompassing refugee concept was developed in the framework of the 1984 Cartagena Declaration on Refugees which marked an obvious departure from the tradition of political asylum.

Refugee flows in the Americas are generally intra-regional in nature. The most recent, large-scale refugee flow concerns the case of over 3 million Colombian refugees which “exemplifies the political divisions that have generated refugee flows in the Americas” (Mathew & Harley, 2016, p. 41). Nevertheless, American states’ commitment to refugee protection and asylum is clearly reflected in their accession to the 1951 Convention and its Protocol as well as various regional human rights instruments, and in the adoption of a broad refugee definition in the Cartagena Declaration

2.2.2.1. The 1984 Cartagena Declaration on Refugees

The main regional instrument created to ensure refugee protection in the Americas is the 1984 Cartagena Declaration on Refugees. Despite not being legally binding, it is an important soft law instrument for refugee protection in the region. It is assumed that the Cartagena Declaration was directly inspired by the OAU Convention (Kneebone & Rawlings-Sanaei, 2007, p. 8). However, in contrast to the OAU Convention, the Cartagena Declaration was not a result of the efforts of a regional organization but an *ad hoc* group of experts and ten Latin American governments (Belize, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Venezuela). Nevertheless, it was approved by the OAS in 1985 and has since been ratified by fourteen states. The Declaration grew out of an environment characterized by the mass influx of refugees

following the political and military instability in Central America in the 1970s and 1980s. As Kneebone (2016) pointed out, “almost two million people from El Salvador, Guatemala and Nicaragua were displaced during this period” (p. 156). In this respect, the Cartagena Declaration—just like the OAU Convention—mirrors the causes of displacement that specifically characterized the region. The key provisions contained in the Cartagena Declaration bring about significant changes to international refugee law and refugee protection in the region which resulted in it being regarded by Goodwin-Gill as “one of the most encompassing approaches to the refugee question” (as cited in Jubilut, 2014, p. 253).

The importance of regional refugee protection is underlined in the Declaration’s Paragraph I stating that the legal and humanitarian problems regarding refugees in the region “can only be tackled in the light of the necessary co-ordination and harmonization of universal and regional systems and national efforts” (Organization of American States, 1984). The need for harmonization is reinforced in the First Conclusion of the Declaration that calls for the “systematic harmonization of national legislation on refugees” (Organization of American States, 1984). In its Paragraph III, the Cartagena Declaration not only calls on states to accede to the 1951 Convention and its 1967 Protocol but also promotes “the adoption of national laws and regulations facilitating the application of the Convention and the Protocol” (Organization of American States, 1984). In this vein, Paragraph III(3) of the Cartagena Declaration adopts the refugee definition found in the 1951 Convention and complements it the following way: “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order” (Organization of American States, 1984).

By doing so, it clearly articulates that the main reason for this inclusive and enlarged definition is the specific nature of the causes of flight for refugees in the region. At the same time, the Cartagena Declaration states that the precedent for such an inclusive concept of refugee was the refugee definition found in Article I(2) of the OAU Convention as well as the “doctrine employed in the reports of the Inter-American Commission on Human Rights” (Organization of American States, 1984). However, by adopting a definition based on “generalized violence,

foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order" it even expands beyond the definition of the OAU Convention.

In its Fifth Conclusion, the Cartagena Declaration reiterates the significance of *non-refoulement* that it declares to be a rule of *jus cogens*. Furthermore, just like the OAU Convention, it states that the granting of asylum is a "humanitarian act". Paragraphs II(e), II(f), II(g), II(j), II(k), II(l), II(n) and II(o) highlight the importance of UNHCR by calling on states parties to support the work of the agency and to cooperate with it in various fields.

As Barichello (2015) argued, "since the 1984 Cartagena Declaration Latin American countries have developed mechanisms and concepts that have sensibly approached the contemporary refugee problems that exist in the region" (p. 191). These include a periodic review process that produced a wide range of regional protection arrangements such as the 1994 San José Declaration on Refugees and Displaced Persons, the 2004 Mexico Declaration and Plan of Action to Strengthening International Protection of Refugees in Latin America as well as the 2011 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas. These instruments reinforce the enduring validity of the provisions contained in the Cartagena Declaration and reaffirm that it continues to form the basis of refugee protection in the region. Finally, the success of the Declaration is illustrated by the fact that—irrespective of being a non-binding instrument—it has been transposed into the national legislation of fourteen states.

2.2.2.2. The 1969 American Convention on Human Rights

The 1969 American Convention on Human Rights (ACHR), also known as the Pact of San José, is an additional source of refugee protection in the region of the Americas. This legally binding instrument of human rights law was adopted in 1969 and came into force in 1978. It has been supplemented by two additional protocols: the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) adopted in 1988 and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty adopted in 1990. To date, the ACHR has been ratified by twenty-five of the thirty-five member states of the OAS; however,

Trinidad and Tobago, as well as Venezuela denounced it in 1998 and 2012, respectively.

The ACHR is argued to be inspired by the 1948 American Declaration on the Rights and Duties of Man (ADHR). The significance of the latter regional instrument is reflected by the fact that it was adopted several months prior to the Universal Declaration of Human Rights (UDHR). It is thus argued to lay out "the first set of comprehensive international standards in relation to human rights and duties" (Cantor & Barichello, 2014, p. 270).

The ACHR contains an extensive list of civil and political rights. Importantly for refugees and asylum seekers, the ACHR sets out the right to asylum as well as the principle of *non-refoulement*. Pursuant to Article 22(7) of the ACHR,

> [e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes (Organization of American States, 1969).

As for the prohibition of *refoulement*, the ACHR is argued to be "the only broad-based human rights treaty that expressly prohibits *refoulement* to a risk of human rights abuse" (Cantor & Barichello, 2014, p. 281). Under Article 22(8) of the ACHR, "[i]n no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions" (Organization of American States, 1969).

The regional framework of refugee protection in the Americas has some clear contributions to the international refugee regime, especially regarding its broad definition of refugee. It also has a relatively high ratio of state accession to the 1951 Convention and the 1967 Protocol. In stark contrast, the last region evaluated in this Chapter, the Asia Pacific is characterized by a general unwillingness of states to accede to the universal instruments of refugee law, the lack of a binding regional instrument of refugee and human rights law as well as the poor standards contained in the existing regional refugee and human rights instruments.

2.2.3. Asia-Pacific

The Asia-Pacific is the most diverse of all regions comprising of several sub-regions: Central Asia, East Asia, South Asia, Southwest Asia, Southeast Asia, and the Pacific. While countries in the region have long cooperated in the areas of economy and security, cooperation in the context of human rights evolved relatively late, that is in the 2010s, when the Association of Southeast Asian Nations (ASEAN) adopted the first regional human rights instrument in the form of the 2012 ASEAN Human Rights Declaration. The Declaration plays a significant role in the context of refugee protection as it includes several refugee rights-related provisions. However, as Mathew and Harley (2016) pointed out, the Declaration received some criticism on the grounds that it departed from universal human rights instruments and that NGOs were not included in the drafting process (p. 47).

The Asia-Pacific region is notorious for its intra-regional, large-scale refugee flows such as the 1975–1996 Indochinese refugee influx and the more recent surge of refugees including Burmese and Vietnamese minority groups, Filipinos, Hmong, Bangladeshis and Rohingya people. Apart from these refugee flows of regional origin, the Asia-Pacific region has hosted a large number of inter-regional refugees from the Middle East as well. Just like in the case of the Middle East, the most crucial problem pertaining to refugee protection in the Asia-Pacific is that the vast majority of states are not parties to the 1951 Convention and its Protocol. The situation is further aggravated by the fact that states hosting the largest number of refugees such as Bangladesh, India, Malaysia and Thailand did not accede to these fundamental instruments of refugee protection. In such an environment, the adoption of the non-binding Bangkok Principles on the Status and Treatment of Refugees in 1966 can undoubtedly be regarded as a huge step toward common legal standards of refugee protection. A significant feature of the Bangkok Principles lies in its extended refugee definition; however, several states entered reservations to this instrument. As a result, there is a general lack of status for refugees in the region putting them in a grave and highly vulnerable situation in the host countries. Nevertheless, the principle of *non-refoulement* as engraved in international customary law still applies in the Asia-Pacific and several states are bound by international human rights instruments. As Mathew and Harley

(2016) argued, "[f]ailure to recognize refugees does not avoid legal obligations owed to them as a matter of customary international law or under human rights treaties, while a policy of recognition can open up mechanisms of protection that do not require much additional activity by the state" (p. 49).

2.2.3.1. The 1966 Bangkok Principles

In 1966, the Asian-African Legal Consultative Organization (AALCO) adopted the Bangkok Principles on the Status and Treatment of Refugees in order to create a legal basis for refugee protection at the regional level. In 2001, the Bangkok Principles were reaffirmed, and this chapter refers to the 2001 final text of Principles.

As Kneebone (2014) noted, it is unclear whether the Bangkok Principles provided a source of inspiration for the OAU Convention or vice versa (p. 315). One of the strongest pieces of evidence that might support the former argument is the extended refugee definition contained in the Bangkok Principles. While Article I(1) adopts the refugee definition of the 1951 Convention, Article I(2) supplements it with the following definition:

> every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality (Asian-African Legal Consultative Organization, 1966).

In this vein, the Bangkok Principles extend the causes of flight contained in the 1951 Convention with "external aggression, occupation, foreign domination or events seriously disturbing public order".

Under Article II(1) of the Bangkok Principles, everyone is entitled to the right to asylum. Furthermore, Articles II(2) and II(3) set out that the granting of asylum is a "humanitarian, peaceful and non-political act" and states have a sovereign right to grant asylum "in accordance with [their] international obligations and national legislation" (Asian-African Legal Consultative Organization, 1966). Articles III and V reinforce the principle of *non-refoulement* whereas Articles VII and VIII contain important provisions on durable solutions for refugees such as voluntary repatriation, local settlement in the host country and resettlement in a third

country. Burden sharing is expressly mentioned and dealt with in Article X of the Bangkok Principles. The extent of burden sharing envisaged by the Bangkok Principles is set out in Article X(4) the following way:

> International solidarity and co-operation in burden sharing should be manifested whenever necessary, through effective concrete measures where major share be borne by developed countries in support of States requiring assistance, whether through financial or material aid (or) through resettlement opportunities (Asian-African Legal Consultative Organization, 1966).

As Kneebone (2016) argued, although the Bangkok Principles "constitute a progressive and respected set of principles on refugee protection within the region, […] these experiences did not leave a legacy of state-led protection norms" (p. 160).

2.2.3.2. The 2012 ASEAN Human Rights Declaration

Following a long period of hesitation among Asian states pertaining to the adoption of "a regional human rights mechanism because of potential interference with State interests and preferences", ASEAN adopted the first regional human rights instrument in 2012, in the form of the ASEAN Human Rights Declaration (AHRD) (Kneebone, 2014, p. 309). The AHRD contains several civil, political, economic, social and cultural rights some of which can be invoked in refugee protection such as the right to life (Art. 11), the right to freedom of movement (Art. 15), the right to freedom of thought, conscience and religion (Art. 22), the right to work (Art. 27(1)) or the right to education (Art. 31(1)) (Association of Southeast Asian Nations, 2012). Most importantly for refugees and asylum seekers, Paragraph 16 of the Declaration sets out the right to asylum by stating that "[e]very person has the right to seek and receive asylum in another State in accordance with the laws of such State and applicable international agreements" (Association of Southeast Asian Nations, 2012). Nevertheless, a peculiar characteristic of the AHRD is its lack of the principle of *non-refoulement.*

2.3. CONCLUSION

As this chapter attempted to show, regional frameworks for the protection of refugees have the theoretical potential to bring along more enhanced protection outcomes for refugees as long as they are consistent with the universal standards

of refugee law. Since their significance is often overseen with much more focus given to the international refugee regime, one of the underlying aims of this chapter was to bring them back into the discussion of refugee protection. As the protection frameworks examined in this chapter illustrate, the existing regional frameworks in Africa, the Americas and Asia-Pacific are very diverse and developed in different regional contexts. The regional settings in Africa and the Americas paved the way for rather well-developed legal frameworks with most of the states parties to the universal and regional instruments of refugee and human rights law, extended refugee definitions and significant provisions on regional responsibility sharing. In contrast, the Asia-Pacific region shows serious deficiencies with the majority of states unwilling to accede to the universal instruments of refugee law, the lack of a binding regional instrument of refugee law and the poor standards contained in the existing regional refugee and human rights instruments. The practice of states in these regions—with probably the sole exception of the Americas—may show some deviation from the provisions contained in these frameworks and the implementation as well as transposition of these provisions into the domestic legislation of states may be imperfect. However, as far as the same can be observed regarding the universal refugee regime, these arguments do not provide a well-founded basis against the *raison d'être* or potential significance of regional refugee protection frameworks.

CHAPTER 3
THE REGIONAL REFUGEE PROTECTION FRAMEWORK OF THE MIDDLE EAST

> Volcanoes cast forth stones, and revolutions men, so families are removed to distant places; human beings come to pass their lives far from their native homes; groups of relatives and friends disperse and decay; strange people fall, as it were, from the clouds […]. The people of the country view them with surprise and curiosity. Whence come these strange faces? Yonder mountain, smoking with revolutionary fires, casts them out. These barren aërolites, these famished and ruined people, these footballs of destiny, are known as refugees, émigrés, adventurers. If they sojourn among strangers, they are tolerated; if they depart, there is a feeling of relief.
>
> — Victor Hugo, *Toilers of the Sea*

This chapter aims to critically examine the refugee protection framework existing in the Middle East. First, it provides a general assessment of Middle Eastern states' relationship with the international and regional refugee regime, their relevant domestic legislation on refugees as well as the general situation and distribution of Syrian refugees in the region. It then evaluates the existing refugee and human rights instruments drafted by the three regional organizations (the League of Arab States, the Organization of Islamic Cooperation and the Gulf Cooperation Council). Furthermore, it assesses the regional arrangements of UNHCR in the Middle East in response to the Syrian crisis. Finally, the chapter aims to illustrate the differing approaches of states in the region toward refugees fleeing the Syrian Arab Republic by examining the cases of Lebanon and Saudi Arabia.

3.1. GENERAL ASSESSMENT OF THE REGION

The Middle Eastern region has long been home to refugee flows. The nature of refugee flows has generally been intra-regional including Palestinian, Afghan, Iraqi, and most recently, Syrian refugees. The causes of displacement in the Middle East have generally included "persecution of religious minorities as well as political persecution of dissidents, but outflows of refugees and other displaced persons have often involved large-scale foreign intervention" (Mathew & Harley, 2016, p. 54). As for the general treatment of refugees, Mathew and Harley (2016) argued that "in practice, many refugees have been sheltered and sometimes treated

very well by Middle Eastern states" and "the presence of […] refugees […] has often been tolerated and on a grand scale, but rights such as the right to work have not been recognized, leading to onward secondary movement to other regions" (p. 57). Middle Eastern states' approach to refugees displays some further common features. According to Kagan (2012), these can be summarized as follows:

> First, in general, Arab states are accustomed to hosting large numbers of foreigners but are not open to offering permanent integration to them absent exceptional political calculations. Second, shifting responsibility for refugee populations to UN agencies can provide a ready explanation for the otherwise contradictory facts of long-term residence and the non-integration of refugees in Arab states (p. 324).

States in the region have by and large maintained a relatively open-door policy—especially regarding refugees and asylum seekers coming from other Arab countries. However, as Zaiotti (2006) noted, "the admission of Arab nationals in the governments' perception does not amount *ipso facto* to the granting of asylum, but instead is meant to be a mere gesture of hospitality" (p. 338). Similarly, Mathew and Harley (2016) argued that "the lack of legal protection may correspond to the idea of pan-Arab hospitality" (p. 57). This might be the reason why refugees from other Arab states are generally treated and referred to as "guests" and "visitors" with the term "refugee" being reserved for Palestinians (Mason, 2011, p. 354). Deep-rooted cultural and religious roots are argued to offer another possible explanation for states' consideration of refugees as guests. Here, scholars often point to the Islamic tradition of granting protection to asylum seekers and refugees (Stevens, 2014, p. 19; see also Arnaout, 1987). Furthermore, as Stevens (2014) rightly suggested,

> [t]he term 'refugee' carries an apparent intrinsic power suggestive of enduring residence in the host state and, perhaps, an entitlement to the basic rights such as employment, housing, health and education. As such, it is a term that has tended to be avoided by states – preferred alternatives including 'guest', 'displaced', beneficiaries of temporary or subsidiary protection, while external bodies such as the UNHCR, NGOs and non-Middle Eastern countries have labelled those crossing borders *en masse* as 'refugees' (whether *prima facie* or group refugees)" (p. 25).

Another distinctive feature of Middle Eastern states' stance on the issue of refugees concerns the general hardship foreign nationals face in obtaining the citizenship of these countries. According to Parolin (2009), "[i]f not attributed by paternal descent, nationality in the Arab world is essentially closed" (p. 128). As the chances for local integration are thus highly restricted and—due to the

generally prolonged nature of conflicts—voluntary repatriation is often not a realistic option in the short or medium term, the only durable solution left is resettlement to a third country. Although in a relatively small number, refugees from the Middle East have been traditionally chosen to be resettled mainly to North America and Europe with the assistance of UNHCR.

3.1.1. Middle Eastern States and Refugee Law: An Extralegal Region?

In spite of the permanent existence of refugees in the region, relevant legislation on refugees and human rights is more or less non-existent in the Middle East. The general refugee and human rights situation in the region can be summarized as follows: the majority of states are not party to the universal treaties of international refugee law, regional legal instruments exist—although most of them are not in force—and domestic legislation regarding refugees is generally absent. Although the main universal human rights instruments are ratified by a relatively large number of states in the Middle East, their level of transposition into national law is disputed. As Zaiotti (2006) rightly summarized,

> [d]espite its importance, throughout their recent history Middle Eastern states have not paid much attention to the issue of forced migration. Apart from the Palestinian case, the question has maintained a low profile on their political agendas. No formal provision regulating the status of refugees has been devised, and few countries in the region have acceded to the main legal instruments defining the international refugee regime. Policies towards these individuals therefore have been formulated on an *ad hoc* basis. As a result, refugees have enjoyed few guarantees and minimal protection (p. 334).

A handful of states in the Middle East that acceded to both the 1951 Convention and the 1967 Protocol include Egypt (in 1981), Iran (in 1976), Israel (in 1954 and 1968), Turkey (in 1962 and 1968),[3] and Yemen (in 1980). This legal environment compelled Jones (2017) to argue that the Middle East is an "extralegal region" and a "zone of exception" (p. 213). As mentioned above, although accession to the universal treaties of international refugee law is a rare phenomenon in the region, instruments of international human rights law such as the CAT, the

[3] As mentioned briefly in Chapter 1, Turkey is one of the few states that made a geographical reservation to the 1951 Convention before acceding to the 1967 Protocol. Since it made the reservation before becoming a signatory to the latter instrument, it could maintain the reservation under the Protocol too. The geographical reservation limits the scope of beneficiaries of the 1951 Convention and the 1967 Protocol to people fleeing "events occurring in Europe". Thus, even though Turkey is party to both instruments, Syrian refugees in the country cannot enjoy the rights enshrined in the 1951 Convention and its 1967 Protocol.

ICCPR, and the ICESCR are ratified by a relatively large number of Middle Eastern states (Stevens, 2014, p. 15).

The rationale of states behind their non-accession to the core instruments of international refugee law has been subject to relatively extensive academic research. The protracted situation of Palestinian refugees is generally argued to be the most acute reason (Mathew & Harley, 2016, p. 55). According to Hanafi (2014), "Middle Eastern states […] were reluctant to ratify the 1951 Convention and its Protocol as they were afraid that UNHCR would promote the durable solutions of local integration or resettlement for Palestinians at the expense of Palestinians' right of return" (p. 587). Zaiotti (2006), for instance, suggested other possible reasons including "both domestic and regional constraints, such as the limited resources available and the economic burden newcomers would be to the host country, the need to maintain good relations with neighbouring countries and the fear of becoming a 'dumping ground' for rejected refugees from other countries in the area" (p. 344). According to Jones (2017), the unwillingness of states to accede to these instruments has further roots "in their post-colonial histories and is based upon the well-founded concerns about becoming a party in a region of non-parties" (p. 213). Possible other reasons may include the "opposition to integration", "concern about a lack of resources and capacity", "popular suspicion of refugees" and "national security concerns" (Hilal & Samy, 2008, pp. 66–67). Finally, according to Elmadmad (1991) Middle Eastern states' hesitation to become party to the 1951 Convention and its 1967 Protocol can be argued to have its roots in the fact that "the Convention did not take into consideration the traditions, laws and values relating to asylum and forced migration in […] parts of the world [other than Europe] and very few Moslem States participated in the drafting" (p. 473).

As an alternative for becoming party to the 1951 Convention and the 1967 Protocol, the governments of states in the Middle East hosting refugees have traditionally opted for negotiating MoUs with UNHCR. MoUs set out the main rights and duties of the particular state hosting refugees as well as UNHCR's relevant tasks. As Zaiotti (2006) noted, "although not binding, these agreements represent an intermediate stage towards access to the international refugee regime" (p. 336). According to Kagan (2012),

> the MOUs are negotiated directly with the individual state government and can thus be tailored to an individual state's concerns, including by recognizing fewer rights for refugees. Combined with the fact that it is not clear whether an MOU creates binding obligations on a state the way a treaty would, it is not surprising that MOUs are more attractive than the [1951] Convention for governments in the Middle East region (p. 327).

Moreover, UNHCR is argued to be "under considerable pressure to agree even to a heavily compromised version of refugee protection since otherwise there might be no legal mechanism at all to address the refoulement of refugees" (Kagan, 2012, p. 331). UNHCR—both in the presence and absence of an MoU—generally and traditionally undertakes the bulk of protection-related tasks such as the registration and documentation of refugees, refugee status determination, delivering assistance, managing refugee camps as well as seeking durable solutions for refugees. For this reason, it is argued that a state-to-UN responsibility shift has taken place in the Middle East with UNHCR acting as a "surrogate state" and the MoUs being the "primary legal codification" of this arrangement (Kagan, 2012, pp. 308–309 and p. 331). Kagan (2012) suggested that this responsibility shift from the state to the UN is not an ideal arrangement since "[t]here are some essential components of refugee protection that only a sovereign state may deliver" (p. 309). However, he also acknowledged that "there are many aspects of refugee protection that the UN can deliver more effectively, and sometimes with more high quality service and responsiveness, than many governments" (Kagan, 2012, p. 310). According to Kagan (2012), this state-to-UN responsibility shift is the basis for the systems for refugee protection in the Middle East:

> a refugee arriving in a major Arab state will not encounter a total vacuum. […] The systems that exist on the ground for refugees in the Middle East region are essentially off the radar screen of conventional thinking in the field of international law, primarily because they rely on shifting the responsibility from the sovereign state to the UN (p. 319).

Regional instruments on refugees have been drafted under the auspices of two regional organizations, namely the League of Arab States (LAS) and the Organization of Islamic Cooperation (OIC). As Section 3.2 below shows, the LAS has been relatively active in drafting various binding and non-binding regional instruments of human rights and refugee law. Although these instruments have certain deficiencies such as the general lack of a complaint mechanism and the inconsistency of several of their provisions with the standards of international

human rights and refugee law, they can be argued to provide a good basis for further regional cooperation in refugee and human rights protection. Nevertheless, due to the lack of insufficient ratifications, only one of these instruments is in force. Similarly, as Section 3.3 below illustrates, the OIC has also engaged in the drafting of several non-binding instruments of refugee and human rights but their impact in the approach of Middle Eastern states to refugee protection is highly contestable. The third and last regional organization present in the Middle East is the Gulf Cooperation Council (GCC) which was established in 1981 as an alliance of six states on the coast of the Persian (or Arabian) Gulf: Bahrain, Kuwait, Saudi Arabia, Oman, Qatar, and the United Arab Emirates. The GCC is based on political and economic cooperation and has, thus, not engaged in any regional initiative for cooperation in the field of refugee protection.

The domestic legislation of states regarding refugee protection is arguably more or less non-existent—with the sole exception of asylum, which is mentioned as a principle in most of the domestic legislation of Middle Eastern states. This is also true for the states which are signatories to the universal instruments of refugee law mentioned above. As for the case of Egypt, Zaiotti (2006) pointed out that "[t]he official position of the Egyptian Government is that adoption into national legislation of these provisions is unnecessary since the 1951 Convention is directly enforceable in national courts" (p. 336). Aside from some rare exceptions, states in the region have barely granted asylum. In such domestic legal settings, refugees fall under the legislation applicable to foreigners in general, namely under immigration laws.

3.1.2. Syrian Refugees in the Middle East

As it was shortly outlined in the Introduction, the vast majority of people fleeing the Syrian Arab Republic have been hosted in neighboring states. According to the latest statistics of UNHCR, as of April 2019, the number of registered Syrian refugees has reached 5.6 million (UNHCR, 2019a). Most of them (3.6 million) fled to Turkey, while 944 thousand of them sought refuge in Lebanon, 660 thousand in Jordan and 253 thousand in Iraq. Such large numbers of refugees has placed a serious burden on host counties, which were already struggling with internal turmoil and/or domestic obstacles. Diab (2016) summarized the effects of

the presence of Syrian refugees in these host countries as follows:

> within the countries of first asylum in the [Middle East], the crisis has not only deepened political fractures and gaps, but has moreover been a major catalyst for both social tension between the host communities and the refugees, and for a weakened grip upon the overall social order. The Crisis has disrupted economic activities, putting the countries, their populations, and the refugees at additional risks; pressured public services, such as infrastructure, schooling, healthcare, and housing, and triggered fear over national security (pp. 8–9).

At the same time, countries hosting Syrian refugees have generally high unemployment rates, and this is among the most significant factors fueling "growing host community fatigue as vulnerable host community members see the refugees as competitors for lower-skilled jobs and depleting limited resources (natural and financial) provided by the governments and international community" (UNHCR, 2017b, p. 7). Further difficulties faced by these countries include water scarcity—especially in the case of Jordan—and political instability. Against this backdrop, Syrian refugees in the Middle East are faced with several region-specific challenges such as "limited livelihoods opportunities, exhaustion of savings, and the adoption of negative coping mechanisms, which further exacerbates the residual protection risks they face" (UNHCR, 2017b, p. 7). Negative coping mechanisms for Syrian refugees in the region—which stem, to a great extent, from their inability to access the labor market—include child labor, child marriage, forced labor, as well as sexual and labor exploitation (Jordan INGO Forum, 2018, pp. 17–18; UNICEF & UNHCR & WFP, 2016, pp. 62–66).

For these reasons, there has been ever-increasing criticism that fellow states in the Middle East—especially the wealthy Gulf states, namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates—are not willing to take even the least part in sharing the burden of host states. As the Amnesty International (2016) stressed, "Gulf countries including Qatar, United Arab Emirates, Saudi Arabia, Kuwait, and Bahrain have offered zero resettlement places to Syrian refuges". Their unwillingness to host Syrian refugees has evolved despite the fact that they are "not only Arabic-speaking, but also possess both historical to Syria and are involved in the current crisis through their financial/arm[s] support of insurgent groups within Syria" (Diab, 2016, p. 4). Nevertheless, it is argued that Gulf states see Syrian refugees as a threat to their demographic stability and as a security threat (Norman, 2015).

As a matter of fact, there are several challenges in determining the exact number of Syrian refugees in the Gulf countries. The main difficulties arise not only from the lack of official and verifiable data but also from the fact that these people are considered guests rather than refugees. There are some who agree with the governments of Gulf states claiming that these states have indeed sheltered refugees while there is considerable objection as well, stressing that these numbers are biased and Syrians in Gulf countries are guest workers, most of whom had been working in the Gulf long before the outbreak of the Syrian conflict. De Bel-Air's (2015) assessment on Gulf countries' claims that they have sheltered millions of Syrian refugees showed that, due to the scarce data available on Syrians in these countries, it is not possible to verify these claims (p. 13). She further argued that what can be established from the limited data available is as follows:

> Gulf States 1) have continued attracting Syrian workers, and may have facilitated family reunions; 2) have enforced social protection and residency facilitation measures for Syrian residents, those who entered before 2011 and could not return, and those who entered since 2011, because of the conflict (De Bel-Air, 2015, p. 14).

Nevertheless, it is an established fact that Gulf countries such as Saudi Arabia and the United Arab Emirates have engaged in considerable financial aid to countries hosting the vast majority of Syrian refugees in the region such as Turkey, Lebanon and Jordan. Saudi Arabia itself is argued to have donated a total of USD 115 million to Syrian refugees in Jordan, Lebanon and Turkey, as well as to the IDPs in Syria (Diab, 2016, p. 4). The Gulf countries are also among the major donors of UNHCR: in 2018, Saudi Arabia, private donors in Qatar, Kuwait, and the United Arab Emirates ranked in the top twenty donors of the agency with a total contribution of USD 165 million (UNHCR, 2018d). This led Hitman (2019) to argue that the policy of Gulf states towards Syrian refugees is based on charity rather than hospitality (p. 81). Likewise, Qayyum (2014) noted that "[p]roviding aid from a distance simply keeps the problem at a distance".

What is certain is that the legal status of Syrian refugees is very problematic all over the Middle East. Since Middle Eastern states of asylum are not parties to the 1951 Convention and its 1967 Protocol, refugees cannot enjoy the rights set out in these instruments. Consequently, they have the rights applicable to foreigners in general in the region unless a government or an MoU set out otherwise.

3.2. THE LEAGUE OF ARAB STATES

The League of Arab States (LAS) was founded in 1945 by seven newly independent Arab states (Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan, and Yemen), thus becoming the first regional intergovernmental organization. Today, it has twenty-two member states, with Syria's membership suspended since 2011.

Among the regional organizations in the Middle East, the LAS has been the most active in creating a regional framework on the protection of refugees. Its framework composes of three main instruments, namely the 1992 Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World, the 1994 Arab Convention on Regulating Status of Refugees in the Arab Countries, as well as the 1965 Casablanca Protocol on the Treatment of Palestinian Refugees. Although the 1965 Casablanca Protocol is argued to be one of the first regional attempts on refugee protection it is claimed to have been revoked by LAS Resolution 5093 (Rishmawi & Rashmawi, 2016, p. 78). Since the Casablanca Protocol deals solely and specifically with Palestinian refugees, it is not discussed in detail in this chapter. A further regional legal source adopted by the LAS that can be invoked in the protection of refugees is the Arab Charter on Human Rights. Despite the efforts exerted by the LAS, only the latter instrument is in force today—due to the lack of sufficient ratifications. Although the attempts of the LAS to create a regional framework on refugee protection are to be appreciated—especially in such a regional environment—, the standard of these instruments undoubtedly results in narrower protection for refugees compared to the universal treaties of refugee law.

The LAS has been working in close cooperation with UNHCR to resolve the challenges faced by the region. In this context, they signed an MoU in 2017 with the aim of "establishing a global cooperation framework for an effective response to the needs of refugees in the Arab region and to facilitate better humanitarian access and emergency response" (UNHCR, 2017c).

3.2.1. The 1992 Cairo Declaration

The Cairo Declaration on the Protection of Refugees and Displaced Persons in the

Arab World (1992 Cairo Declaration) is the first element of the refugee protection framework of the Middle East. The Declaration is a non-binding instrument that was adopted by a group of experts in 1992. In its Preamble, the Declaration makes frequent reference to the "humanitarian principles deeply rooted in Islamic Arab traditions and values and the principles and rules of Moslem law (Islamic Sharia), particularly the principles of social solidarity and asylum", as well as to the "fact that universal respect for human rights and fundamental freedoms for all constitute an integral part of Arab values and of the principles and rules of Moslem law (Islamic Sharia)" (League of Arab States, 1992). The Preamble also stresses the political rights, the right of return and the right to self-determination to the Palestinian people. Furthermore, it recalls the significance of the 1951 Convention, its 1967 Protocol and regional instruments of refugee law such as the OAU Convention and the Cartagena Declaration. According to the Preamble, "the refugees' and displaced persons' problems must be addressed in all their aspects, in particular those relating to their causes, means of prevention and appropriate solutions" (League of Arab States, 1992).

The 1992 Cairo Declaration stresses that the granting of asylum is a friendly act (Art. 3) and encourages states in the Middle East to adhere to the 1951 Convention and the 1967 Protocol (Art. 4). The Declaration recommends states to adopt a broad definition of refugee and displaced person (Art. 6). As for the rights of refugees, it mentions the right to freedom of movement (Art. 1) and the principle of non-*refoulement* (Art. 2). In its Article 10, the 1992 Cairo Declaration stresses that the most vulnerable, namely women and children, who constitute the largest category of displaced persons, need to be provided special protection while highlighting the importance of family reunification. The Declaration calls on the LAS to "reinforce its efforts with a view to adopting an Arab Convention relating to refugees", that was manifested two years later in the adoption of the Arab Convention on Regulating Status of Refugees in the Arab Countries (League of Arab States, 1992).

One of the biggest shortcomings of the 1992 Cairo Declaration is that it does not even mention the issue of stateless persons. This is a serious gap in the Declaration considering the volume of statelessness across the Middle East. According to van Waas (2010), there are hundreds of thousands of Bidoon in the

Gulf states, two hundred thousand Kurds in Syria and Lebanon as well as several other smaller stateless groups across the region (p. 2). The problems pertaining to the legal status of stateless persons in the region are further exacerbated by the reluctance of states in the Middle East to accede to the UN Conventions on Statelessness—i.e., the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

3.2.2. The 1994 Arab Convention

A further regional attempt on refugee protection, the Arab Convention on Regulating Status of Refugees in the Arab Countries (1994 Arab Convention) was adopted by the LAS in 1994. Aside from the only signatory, Egypt, no state has ratified it; therefore, it is not in force. The 1994 Arab Convention is a slightly controversial instrument. On the one hand, it contains a broad refugee definition and a provision on burden sharing. On the other hand, it does not explicitly mention the rights of refugees and only implicitly contains some.

Following its Preamble, Article 1 of the 1994 Arab Convention provides a much broader definition of refugee than the one contained in the 1951 Convention. Accordingly, a refugee is defined as follows:

> Any person who is outside the country of his nationality or outside his habitual place of residence in case of not having a nationality and owing to well-grounded fear of being persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion, unable or unwilling to avail himself of the protection of or return to such country.
>
> Any person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part of thereof (League of Arab States, 1994a).

Thus, after incorporating the refugee definition of the 1951 Convention, the 1994 Arab Convention further includes occupation, foreign domination, events causing major disruption of public order as well as natural disasters as possible causes of refugees' flight. By adding natural disasters as a possible cause of displacement, the 1994 Arab Declaration surpasses even the inclusive definitions contained in the OAU Convention and the Cartagena Declaration. As Rishmawi and Rashmawi

(2016) posited, the 1994 Arab Convention is "considered the only international standard covering disaster-induced cross-border displacement" (p. 75).

Articles 2 and 4 contain the exclusion and cessation clauses. According to the exclusion clauses of Article 2, any person who committed "a war crime, a crime against humanity or a terrorist crime" and/or was convicted to a "serious non-political crime outside the country of refuge" shall be denied a refugee status (League of Arab States, 1994a). Apart from the inclusion of terrorist acts, the exclusion clauses are more or less in line with those contained in Article 1E(a–b) of the 1951 Convention. The cessation clauses of Article 4 of the 1994 Arab Convention do not show any departure from those contained in Article 1C of the 1951 Convention.

Article 6 of the 1994 Arab Convention provides that the granting of asylum is "a peaceful and humanitarian act" (League of Arab States, 1994a). As for the responsibilities of states parties under the Convention, Article 3 provides that they shall undertake "to exert every possible effort, within the limits of their respective national legislation, to accept refugees" while Article 7 sets out that they shall not discriminate "against refugees as to race, religion, gender and country of origin, political or social affiliation" and shall make sure "that refugees are accorded a level of treatment no less than that accorded to foreign residents in their territories" (Art. 5) (League of Arab States, 1994a).

The 1994 Arab Convention contains a slightly laconic provision on non-*refoulement* in its Article 8. In line with Article 32 of the 1951 Convention, Article 8(1) of the 1994 Arab Convention provides that "a refugee lawfully residing on the territory of a Contracting State shall not be expelled save on grounds of national security or public order" (League of Arab States, 1994a). Furthermore, Article 8(2) obliges states parties to "temporarily accept a refugee should his expulsion or return (refoulement) threaten his life or freedom" (League of Arab States, 1994a).

As mentioned above, the 1994 Arab Convention does not explicitly mention the rights of refugees. The sole exceptions are Articles 9 and 10 that provide for refugees' right to voluntary return and to be issued identity cards and travel documents. Provisions governing the duties of refugees are, in turn, more

numerous and explicit: accordingly, refugees shall abide by the laws and regulations of their host countries (Art. 11), shall refrain from "any terrorist or subversive activity" (Art. 12) and "in practicing [their] freedom of opinion and expression" they shall not attack any country and shall not express any opinion "that may create tension between the host country and other countries" (Art. 13) (League of Arab States, 1994a). As Rishmawi and Rashmawi (2016) noted, Article 12 on the prohibition of engaging in terrorist activities is "particularly alarming in light of the problematic nature of the definition of terrorism in the Arab Convention on Combating Terrorism, which is widely criticised" (p. 77).[4]

One of the most significant provisions of the 1994 Arab Convention is contained in its Article 14 and concerns the nature of burden sharing. Thus, pursuant to Article 14,

> [s]hould a Contracting State face difficulty in granting or continuing to grant right of asylum under this Convention because of sudden or mass influx or for any other compelling reasons, the rest of the Contracting States shall, at the request of such State, take such appropriate measures, severally or jointly as to alleviate the burden to the asylum-providing State (League of Arab States, 1994a).

A significant lacuna regarding the 1994 Arab Convention is the lack of a treaty body overseeing its implementation (Rishmawi & Rashmawi, 2016, p. 75). Article 15 only establishes that the Secretary-General of the LAS shall "monitor the implementation of this Convention" and to that end may ask the governments of signatory states to provide him with "copies of laws, regulations and decisions issued thereby in connection with refugees", as well as with "all information and details related to their living and residence conditions" (League of Arab States, 1994a).

Finally, Article 17 sets out that the Convention shall be put into force "thirty days from depositing with the General Secretariat of the League of Arab States

[4] The Arab Convention on Combating Terrorism—also called the Arab Convention for the Suppression of Terrorism—was adopted by the LAS in 1998 and entered into force in 1999. Article 1(2) of the Convention defines 'terrorism' as follows: "[a]ny act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty and security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize national resources" (League of Arab States, 1998). This definition has often been criticized for being too wide, thus opening the door to broad interpretations as well as possible abuses and human rights violations (Amnesty International, 2002).

ratification or accession instruments by one third of the member states of the League of Arab States" (League of Arab States, 1994a). However, since no member state has yet ratified the Convention has signed it, it is not yet in force. Moreover, in 2010, upon the initiative of the LAS Interim Arab Parliament, a revision process of the 1994 Arab Convention started (Rishmawi & Rashmawi, 2016, p. 76). According to Rishmawi and Rashmawi (2016), the new version of the Convention, which is yet to be adopted, does not deviate substantially from the original version (pp. 76–78).

3.2.3. The 2004 Arab Charter on Human Rights

The final legal instrument that can be regarded as a constitutive part of the refugee protection framework of the Middle East adopted by the LAS is the 2004 Arab Charter on Human Rights (2004 Arab Charter). The 2004 Arab Charter is the revised version of the original text adopted by the LAS in 1994. The redrafting process was made necessary by the fact that the 1994 version was "highly criticised at the time by many human rights organisations both within the region and beyond as failing to meet international human rights standards" (Rishmawi, 2005, p. 362). Upon a bilateral agreement between the Office of the High Commissioner for Human Rights (OHCHR) and the LAS, the 2004 Arab Charter was drafted by an independent group of Arab experts. Although the 2004 version made some progress relative to the original text of the Charter, it is still argued to not be fully in line with international standards (Rishmawi, 2005, p. 364). According to Rishmawi (2005), the main problems of the 2004 Arab Charter can be summarized as follows: "[f]irstly, some of its key provisions are actually at variance with [international] standards" and "[s]econdly, there are many important rights and freedoms recognized in international human rights law that are missing from the Charter" (p. 369). Moreover, the lack of any effective enforcement and complaints mechanisms in the original version is not sorted out in the revised version: Article 48 only establishes a monitoring mechanism based on an Arab Human Rights Committee. The 2004 Arab Charter requires seven ratifications to enter into force that was reached in 2008; as of 2011 and 2013 respectively, it was ratified by twelve and signed by eighteen member states of the LAS (University of Padova Human Rights Centre "Antonio Papisca", 2013).

The Preamble of the 2004 Arab Charter stresses, on the one hand, the significance of the "eternal principles" of Shariah and the humanitarian principles established therein. On the other hand, it refers to the principles and provisions included in universal and regional instruments such as the UN Charter, the UDHR, the ICCPR, the ICESCR and the 1990 Cairo Declaration on Human Rights in Islam adopted by the OIC.

Following its Preamble, the 2004 Arab Charter contains 53 articles. Article 1 establishes the main goals of the Charter as follows:

> 1. To place human rights at the centre of national preoccupation in the Arab States, to create great ideals for guiding the individual's will in these Arab States, and to help him improve his situation in accordance with the noblest human values.
> 2. To instill in the human being in the Arab States pride in his identity, to be faithful to his nation and to have a bond with his land, his history and common interests with all human beings in the Arab States. To encourage humane brotherhood, tolerance and open-mindedness in accordance with universal principles set out in human rights international instruments.
> 3. To prepare future generations in the Arab States to live free and responsible lives in a civil society united by a balance between consciousness of rights and respect for obligations, and governed by principles of equality, tolerance and moderation.
> 4. To establish the principle that all human rights are universal, indivisible, interdependent and indissoluble (Al-Midani & Cabanettes, 2006, pp. 150–151.

Article 2 concerns the rights of people such as the right to self-determination, the right to "live under national sovereignty and territorial unity" and the right to resist foreign occupation (Al-Midani & Cabanettes, 2006, p. 151). It also stresses that "racism, Zionism, occupation and foreign domination […] constitute a fundamental obstacle to the realization of the basic rights of peoples" (Al-Midani & Cabanettes, 2006, p. 151).

Subsequent rights contained in the 2004 Arab Charter can be divided into four major categories: individual rights (Arts. 5–10, 14, 18 and 20); rules of justice (Arts. 12–13, 15–17 and 19); civil and political rights (Arts. 21, 24–33); as well as economic, cultural and social rights (Arts. 34–37 and 41–42). Certain provisions of the Charter can be directly invoked in refugee protection. The most relevant of all is included in Article 28 which sets out that "[e]veryone shall have the right to seek political asylum in other countries to escape persecution. This right shall not be enjoyed by persons facing prosecution for an offense under ordinary criminal

law. Political refugees shall not be extraditable" (Al-Midani & Cabanettes, 2006, p. 156). Moreover, Article 27 provides that

> 1. No one shall be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of his country.
> 2. No one shall be expelled from his country or prevented from returning thereto (Al-Midani & Cabanettes, 2006, p. 156).

As mentioned above, several of the Charter's provisions are incompatible with universal standards of human rights. As Rishmawi and Rashmawi (2016) rightly observed, even though the 2004 Arab Charter prohibits discrimination "on grounds of race, color, sex, language, religion, opinion, thought, national or social origin, property, birth or physical or mental disability" (Art. 3(1)), a number of the rights contained in the Charter are restricted to citizens (p. 79; Al-Midani & Cabanettes, 2006, p. 151). Under Article 41, for instance, "every citizen has a right to education" (Al-Midani & Cabanettes, 2006, p. 160). However, this is in clear contradiction with Article 13 of the ICESCR as well as Article 28 of the CRC which establish that everyone and (every child) has the right to education, without any limitation as to nationality. In a similar vein, Article 34(1) of the 2004 Arab Charter restricts the right to work to citizens—inconsistent with Article 6(1) of the ICESCR. Furthermore, several provisions in the Charter allow for restrictions if in accordance with the domestic law of states. This is a serious shortcoming of the Charter since numerous national laws of states in the region are based, partially or completely, on Shariah which is notorious for its inconsistency with international human rights standards, for instance in the field of women's rights as well as regarding death penalty or corporal punishment. Articles 26 and 7(a) illustrate this point very well: while Article 26 sets out the "[e]very person lawfully within the territory of a State Party shall, within that territory, have the right to liberty of movement and freedom to choose his residence", it also adds that only "in accordance with applicable regulations" (Al-Midani & Cabanettes, 2006, p. 156). As Rishmawi (2005) pointed out, the domestic legislation of Saudi Arabia—which is completely grounded in Shariah—"restricts the freedom of movement of women […], [being] a clear case of discrimination in the realisation of women's rights" (p. 367). Article 7(a), on the other hand, provides that ["t]he death penalty shall not be inflicted on a person under 18 years of age"—unless provided otherwise by national laws (Al-Midani

& Cabanettes, 2006, p. 152). This provision is in clear violation of Article 37(a) of the CRC and Article 6(5) of the ICCPR that set out an absolute prohibition on death penalty in the case of minors.

3.3. THE ORGANIZATION OF ISLAMIC COOPERATION

The second intergovernmental organization that has exerted efforts in establishing a framework protecting refugees in the Middle East is the Organization of Islamic Cooperation (OIC). It was founded in 1969 and is composed of fifty-seven member states. The OIC adopted two non-binding instruments which are relevant to refugee protection: the 2012 Ashgabat Declaration of the International Ministerial Conference of the Organization of Islamic Cooperation on Refugees in the Muslim World and the 1990 Cairo Declaration on Human Rights in Islam.

3.3.1. The 2012 Ashgabat Declaration

The relatively compact text of the Ashgabat Declaration of the International Ministerial Conference of the Organization of Islamic Cooperation on Refugees in the Muslim World (2012 Ashgabat Declaration) was adopted by the OIC in 2012. It makes frequent reference to the cause and situation of refugees in the world recalling that "most of them are hosted by OIC Member States" who live, predominantly, in protracted situations (Organization of Islamic Cooperation, 2012). It commends UNHCR for its leadership and ongoing efforts in refugee protection and sets out that the universal treaties of refugee law, namely the 1951 Convention and its 1967 Protocol, "have enduring value and relevance in the twenty-first century" (Organization of Islamic Cooperation, 2012). Furthermore, it stresses the need to address the issue of refugees by solving its root causes. The 2012 Ashgabat Declaration also sets out that voluntary repatriation has to remain the most favorable of all durable solutions. It also notes that there is a "wide gap between resettlement needs and resettlement availabilities" and calls on the international community to share the burden of host countries:

> We call upon the international community, in cooperation with UNHCR and other relevant international organizations, to provide more resources to support and assist States which host refugees in line with the principle of international solidarity, cooperation and burden-sharing. We also reiterate that States, which are faced with a large-scale refugee influx, should receive assistance from the international community in accordance with the

> principles of equitable burden sharing (Organization of Islamic Cooperation, 2012).

Finally, the Declaration expresses its gratitude to member states which host refugees "in spite of their limited economic resources, in affirmation of their noble Islamic values" and acknowledges the financial contributions of donor member states to the cause of refugees. In this regard, it makes a sole reference to Saudi Arabia and commends its "humanitarian efforts and sustainable support […] to the issues of refugees worldwide and in the Islamic world in particular, and to the organizations concerned with refugees" (Organization of Islamic Cooperation, 2012).

3.3.2. The 1990 Cairo Declaration

The Cairo Declaration on Human Rights in Islam (1990 Cairo Declaration) was adopted by the OIC in 1990 and is argued to be a "major compromise on human rights" (Rishmawi, 2005, p. 367). It makes frequent reference to Islam and Shariah: Article 10, for instance, begins with the statement that "Islam is the religion of unspoiled nature". It not only refers to Islam and Shariah but is also deeply grounded in them—inciting wide criticism for reasons mentioned above in the case of the 2004 Arab Charter, as well. Articles 2(a) and 2(d), for instance, guarantee the right to life and "safety from bodily harm" while permitting their breach for a "Shari'a-prescribed reason" (Organization of Islamic Cooperation, 1990). Thus, as Rishmawi (2005) noted, they open the door "to torture, and cruel, inhuman or degrading punishment as well as the death penalty" (p. 367). The 1990 Cairo Declaration also includes provisions which are clearly incompatible with the international standard of women's rights. Article 6 sets out that "[w]oman is equal to man in human dignity, and has rights to enjoy as well as duties to perform" and that "[t]he husband is responsible for the support and welfare of the family" (Organization of Islamic Cooperation, 1990). Another example is provided by Article 12 which establishes that "[e]very man [*sic*] shall have the right, within the framework of Shari'a, to free movement and to select his place of residence" (Organization of Islamic Cooperation, 1990). According to Rishmawi (2005), this provision "could possibly be used to justify restrictions on a woman's freedom of movement by her closest male relative (*mahram*), as required by some interpretations of Shari'ah" (p. 367). To make things even more

problematic from a human rights perspective, Articles 24 and 25 set out that "[a]ll rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'a" which is "the only source of reference for the explanation or classification of any of the articles of this Declaration" (Organization of Islamic Cooperation, 1990).

Following its Preamble, the 1990 Cairo Declaration contains 25 articles. The articles can be divided into four main groups: individual rights (Arts. 2, 4, 11, 18, and 20); civil and political rights (Arts. 1, 5, 6, 8, 12, 19, and 22); economic, cultural and social rights (Arts. 7, 9, 10, 13, and 15–17), as well as rules of armed conflict (Art. 3). A provision that can be directly invoked in refugee protection is contained in Article 12 of the Declaration which establishes not only the right to freedom of movement but also the right to seek asylum as follows:

> [e]very man [*sic*] shall have the right, within the framework of Shari'a, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'a regards as a crime (Organization of Islamic Cooperation, 1990).

In other words, the 1990 Cairo Declaration establishes for the right to seek asylum but only as far as the asylum seeker flees to a country on a ground that is not considered a crime by Shariah. Furthermore, as Shariah is argued to not make any distinction between asylum seekers on the basis of religion, Muslims, non-Muslims as well as so-called *zimmi*s (non-Muslims permanently residing in a Muslim state) can all benefit from the right to asylum (Abou-El-Wafa, 2009, p. 238).

3.4. UNHCR

UNHCR plays a key role in refugee protection in the Middle East. Beyond its protection-related tasks such as refugee status determination, registration, as well as delivering assistance and humanitarian aid, it is an active player in implementing coordinated response plans to the influx of Syrian refugees in the region. In this framework, the agency has adopted its Regional Response Plans, and since 2015 has been publishing its Regional Refugee & Resilience Plans on a yearly basis. Although this chapter focuses mainly on the legal framework of

refugee protection in the Middle East, these plans, which are in essence part of a refugee crisis response, occupy a significant place in the refugee protection framework of the region, and as such are worth discussing even briefly.

3.4.1. The Regional Response and Refugee & Resilience Plans

UNHCR adopted its first Regional Response Plan (RRP) for the Syrian crisis in 2012. The RRP, updated each year, developed into "one of the largest plans for dealing with displaced persons since the Second World War" (Mathew & Harley, 2016, pp. 2–3). The RRP brought together hundreds of NGOs, UN agencies, governments and international donors to implement a coordinated response to the surge of Syrian refugees in the countries of first asylum: Egypt, Iraq, Jordan, Lebanon and Turkey. It was aimed at enhancing the protection and assistance needs of refugees in these countries. However, with the sharp increase in the number of refugees, host countries started to struggle with providing assistance and protection to them and introduced restrictive measure on them. Further difficulties faced by the RRP included a shortage of funding and resettlement places. Despite the innovative objectives of the RRP, it faced some criticism, as well. Mathew and Harley (2016) argued that it fell short of enhancing responsibility sharing (p. 3), while Bidinger et al. (2014) claimed that the RRP is not more than a tool for containing refugees in the first countries of asylum:

> […] like the majority of reports and requests to the international community of states and donors, [it] focuses on funneling financial resources into the countries hosting the refugees from Syria. While this aid is certainly important, we believe that it illustrates a containment paradigm that is unsustainable and dangerous, rather than an approach that more equitably shares the responsibility towards the individual refugees among the wider community of states outside the current host region. António Guterres, the UN's High Commissioner for Refugees, has emphasized the critical need to change the paradigm, saying: "it is not only financial, economic, and technical support to these States which is needed. […] It also includes […] resettlement, humanitarian admission, family reunification, or similar mechanisms [for] refugees who are today in the neighboring countries but who cannot find a solution outside the region" (pp. 1–2).

In 2015, the RRP was replaced by the Regional Refugee & Resilience Plan (3RP). In contrast to the RRP, the 3RP is mainly a country-led plan supported by UN agencies and NGOs. According to UNHCR (2017b), the 3RP represented a "paradigm shift in the response to the [Syrian] crisis by combining humanitarian and development capacities, innovation and resources" (p. 46). In 2015, the first

country-led Lebanon Crisis Response Plan (LCPR) and Jordan Response Plan (JRP) were released which were incorporated in the 3RP. One of the main objectives of the 3RP is to "further integrate humanitarian assistance, resilience and development into a nationally owned, but regionally coherent plan that meets protection and basic needs, while building resilience and enhancing national capacities" (UNHCR, 2017b, p. 8). The 3RP not only enhances the protection of Syrian refugees in host countries but also focuses on the development of host communities. It consists of two main components: the 3RP refugee protection and humanitarian component, and the 3RP resilience/stabilization-based development component (UNHCR, 2017b, p. 9). Furthermore, it has the following strategic directions: strong national leadership, regional protection framework, building on the Dead Sea Resilience Agenda, enhancing economic opportunities, No Lost Generation initiative, continued outreach and partnerships, enhanced accountability mechanisms, and durable solutions for Syrian refugees. The strategic directions are intended "to enhance the protection of vulnerable persons and to create the conditions and opportunities for dignified lives and better futures for refugees and host communities" (UNHCR, 2017b, p. 9).

3.5. COUNTRY CASE STUDIES

The select cases of the region, namely that of Lebanon and Saudi Arabia, are intended to highlight the diversity of the level of affectedness, experiences and responses of states to the plight of Syrian refugees in the Middle East. As it was observed in Subsection 3.1.2, states in the region can be roughly divided into two main groups according to their level of affectedness by, as well as their approaches towards the flight of Syrian refugees. The case of Lebanon is intended to demonstrate the approach of neighboring countries to Syria directly affected by the flow of Syrian refugees while Saudi Arabia is selected as an example for the unwillingness but otherwise ability of Gulf states to host and resettle refugees fleeing Syria.

3.5.1. Lebanon

As mentioned above, Lebanon currently hosts 944 thousand Syrian refugees registered by UNHCR (UNHCR, 2019a). This number is estimated to be even

higher with the presence of unregistered refugees. The country is also home to a relatively high number of Palestinian refugees, Palestinian refugees from Syria, as well as Ethiopian, Iraqi and Sudanese refugees. The case of Palestinian refugees is considered to be a highly sensitive one both politically and socially. Two-thirds of the estimated two hundred seventy thousand Palestinian refugees live in UNRWA-installed camp settings. It is argued that Lebanese feel considerable distrust towards Palestinian refugees holding them responsible for the outbreak of the Lebanese Civil War (Hanafi, 2014, p. 591). As a matter of fact, the 15-year long civil war has been so deeply engraved on the collective memory of the Lebanese that there is a general fear that another civil war might spill over from Syria, or the influx of Syrian refugees might disrupt the already sensitive political and sectarian balance of the country. This is indeed one of the reasons why Lebanon has tried to hinder the local integration of refugees by imposing strict restrictions on them.

Lebanon, as the vast majority of states in the region, is not party to the 1951 Convention and its 1967 Protocol despite the fact that it is one of the founders and current members of UNHCR's Executive Committee and that it participated in the drafting committee of the UDHR as well as in the UN General Assembly-appointed committee that led to the foundation of the IRO (Janmyr, 2017b, p. 463). Furthermore, it ratified several human rights treaties such as the CAT, the CCPR, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the ICESCR and the CRC. As for regional human rights instruments, Lebanon ratified the 2004 Arab Charter on Human Rights. However, it has no domestic legislation on refugees. Since Lebanon does not legally recognize refugee status. Hence, refugees stay in Lebanon is regulated under immigration laws. Relevant domestic legislation includes the Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country (Law of Entry and Exit) adopted in 1962 which contains six articles on asylum (Arts. 26–31). Article 26 of the Law of Entry and Exit sets out that the right of asylum is granted in the following cases: persecution or conviction by a non-Lebanese authority for a political crime, or if one's life or freedom is threatened for political reasons (Government of Lebanon, 1962). Article 31 includes non-*refoulement* for former political refugees while Article 27 sets out

the process of granting asylum. As a matter of fact, Lebanon granted asylum only once, in 2001, to a Japanese citizen (Zaiotti, 2006, p. 337).

Due to the lack of relevant domestic legislation and Lebanon's rejection of the 1951 Convention and the 1967 Protocol, in the case of Lebanon third parties—in particular UNHCR—bear most of the responsibility to protect the rights of refugees as well as to provide assistance to them. As a matter of fact, UNHCR has been present in Lebanon since 1963 following a gentlemen's agreement between the Lebanese government and UNHCR (Frangieh, 2016, p. 38), and has been considered by the Lebanese government as a "useful tool in dealing with the country's non-Palestinian refugees" (Janmyr, 2017a, p. 2). It was only in 2003 that UNHCR's presence in Lebanon became more formalized when an MoU was reached between UNHCR and Lebanon's General Security Office. Although the MoU was welcomed as a first step to provide protection to refugees, it was criticized for avoiding the principle of non-*refoulement*, as well as for restricting its scope to asylum seekers "who register with UNHCR within two months of their illegal entry to Lebanon" (Frangieh, 2016, p. 38). The MoU clearly states that "Lebanon does not consider itself an asylum country" and stresses that an "asylum-seeker" stands for "a person seeking asylum in a country other than Lebanon" (Janmyr, 2017b, p. 453). It also defines the role of UNHCR in Lebanon with regards to the registration of refugees and the provision of services.

One of the most complicated aspects of the issue of Syrian refugees in Lebanon—similarly to other countries in the region—is a terminological problem. For more than 50 years, the term 'refugee' has had a strong political connotation in Lebanon, and it has been established that only Palestinians can be officially referred to as refugees in the region (Janmyr, 2017a, pp. 5–6). According to Janmyr (2017a), the reasons for Lebanon's tendency to avoid the term stems from the fear that "doing so would not only entail the permanency of refugees on Lebanese territory, but also trigger the application of the international refugee law regime" (p. 6.). This terminological problem remained a source of disagreement between the Lebanese government and UNHCR in the drafting process of the LCRP 2015–16. The final document attempts to find a common ground for their conflicting views by stating on the one hand that the Lebanese government refers to individuals who fled from Syria to Lebanon after March 2011 as 'displaced'.

On the other hand, it clearly specifies that "the United Nations characterises the flight of civilians from Syria as a 'refugee movement', and considers that most of these Syrians are seeking international protection and are likely to meet the refugee definition" (Government of Lebanon & UN, 2014). According to a brief clarification in the LCRP, the document uses the following terminologies to refer to persons who have fled from Syria after March 2011: "persons displaced from Syria", "persons registered with UNHCR as refugees", and "*de facto* refugees" (Government of Lebanon & UN, 2014). The LCRP 2017–2020 upholds the same terminologies with a slight amendment: individuals who fled from Syria to Lebanon after March 2011 are no longer referred to solely as "displaced persons" but as "temporarily displaced individuals" (Government of Lebanon & UN, 2018, p. 4).

In the first few years after the outbreak of the Syrian Civil War, the country gained wide international appreciation for its open-door policy that enabled Syrians to cross the border without any kind of control and without identifying the specific nature of displacement (Dionigi, 2016, p. 11). This was facilitated mainly through the Treaty of Brotherhood, Cooperation and Coordination between Syria and Lebanon as well as through the Agreement for Economic and Social Cooperation and Coordination between the two countries. As a result of Lebanon's highly sensitive political and demographic/sectarian (im)balance, Lebanese political parties struggled to find a common ground in handling the situation.[5] In 2014, with the formation of a new government and the arrival of the one-millionth Syrian refugee, Lebanon's initial neutral stance—and more specifically, its open-door policy—changed completely culminating, *inter alia*, in the adoption of the 2015 regulations. One of the first initiatives of the new government was to close down eighteen unofficial border crossing points followed by a decision to cooperate with the UN to develop a Lebanon Crisis Response Plan (LCRP). In the same year, the Council of Ministers approved a "Policy Paper on Syrian Refugee Displacement" whose obvious goal was to decrease the number of Syrians in the country. The 2015 regulations are aimed at

[5] With the March 8 Alliance (including, among others, the Free Patriotic Movement, the Amal Movement and Hezbollah) supporting the Assad regime and the March 14 Alliance (composed of the Future Movement, the Lebanese Forces and the Progressive Socialist Party, among others) more or less openly opposing that, the Lebanese government eventually agreed to adopt a neutral stance regarding the Syrian conflict (Dionigi, 2016, p. 18; Janmyr, 2017a, p. 3).

controlling not only the access of Syrian refugees to Lebanon but also their residence in the country. In line with the regulations, Syrians who wish to enter Lebanon are required to provide the necessary documents under one of the seven categories which are specified as follows:

> Category one is for tourism, shopping, business, landlords, and tenants; category two is for studying; category three is for transiting to a third country; category four is for those displaced; category five for medical treatment; category six for embassy appointment; and category seven for those entering with a pledge of responsibility (a Lebanese sponsor). (Amnesty International, 2015a, p. 10)

The 2015 regulations' list of categories for entry obviously lacks a category for those fleeing to Lebanon from armed conflicts, violence or persecution. As Janmyr (2016) pointed out, category four for displaced persons "in fact requires compliance with one of the other categories, or with the Government's 'humanitarian exceptions criteria'" (p. 67). Thus, under this category, Syrians are allowed to enter only in exceptional cases specified in the humanitarian criteria. The criteria solely cover "unaccompanied and/or separated children with a parent already registered in Lebanon; persons living with disabilities with a relative already registered in Lebanon; persons with urgent medical needs for whom treatment in Syria is unavailable; persons who will be resettled to third countries" (Amnesty International, 2015a, p. 11).

As many observed, due to the fact that the new regulations' categories exclude the vast majority of those fleeing the Syrian conflict, Lebanon is in breach of its obligations under the principle of *non-refoulement*. Despite the fact that Lebanon did not ratify the main instruments of international refugee law, under international customary law, as well as under the International Covenant on Civil and Political Rights, and the Convention against Torture, it is clearly bound by the principle of *non-refoulement* (Amnesty International, 2015a, p. 10). As the Amnesty International (2015a) observed, "closing the borders to those in need of asylum is a violation of the principle of *non-refoulement*, and making conditions in the host country extremely difficult for refugees to the point where they have no choice but to leave, can also amount to *refoulement*" (p. 10).

The 2015 regulations contain implications not only for entry requirements but also for renewing and maintaining residency of Syrians in Lebanon. Until 2014, Syrian refugees were required to renew their residence permit after one year in Lebanon

by paying USD 200 (Janmyr, 2016, p. 68). However, under the new regulations, the renewal of residence permits needs to take place every six months for the same amount of money. Lebanese authorities divide applications for residence permit renewals into two categories. The first category encompasses applicants registered with UNHCR while the second covers those not registered. Applications of both categories need to be supported by a housing commitment, a certified attestation from a *mukhtar* declaring that the landlord owns the property, a valid identity document or passport, an entry slip and a return card (Janmyr, 2016, p. 68). Syrians who fall into the first category are also required to provide "a 'pledge not to work', signed in the presence of a notary, which states that they will not work in Lebanon" (Amnesty International, 2015a, p. 14), a UNHCR registration certificate, as well as "proof of their financial means or of the support they receive" (UNHCR, 2015a). Applications for refugees not registered with UNHCR, on the other hand, must include a "'pledge of responsibility'—essentially a sponsorship—made by a Lebanese national who commits to obtain work permit for the Syrian individual or group of Syrians, or to sponsor and host a family" (Amnesty International, 2015a, p. 14).

Lebanese regulations concerning Syrian refugees—especially those implemented in early 2015—have been widely criticized for creating extremely difficult circumstances and requirements for Syrians leaving them only with the following two options: "they either leave Lebanon or stay and accept exploitation, which in some cases may amount to forced labour and human trafficking" (Janmyr, 2016, p. 71). Since the implementation of these regulations, UNHCR has reported a sharp, 75% drop in monthly registrations of refugees in the first three months of 2015, compared to the same period in 2014 (UNHCR, 2015a). This drop suggests that the new regulations and restrictions prevented Syrians from seeking refuge in Lebanon. The difficulties arising from renewing residence permits under the 2015 regulations have resulted in a radical increase in the number of Syrian refugees without valid legal status in Lebanon. According to Human Rights Watch (2018), an estimated 74 per cent of around one million registered Syrian refugees in Lebanon now lack legal status as the vast majority of them have not been able to meet the requirements of strict residency regulations that Lebanon imposed in 2015. Likewise, a survey conducted by Alsharabati and Nammour (2015) shows that an estimated 70 per cent of Syrian refugees in Lebanon lack legal residence

papers (p. 12). Another study reveals an even higher percentage: according to the Lebanese Center for Human Rights (2016), 86 per cent of the interviewed did not have a legal residence permit (p. 17). The lack of residence permit also means that refugees are considered to be in breach of Lebanese law, and can, in line with the Law on Entry and Exit, be detained and forcibly returned to Syria (Janmyr, 2016, p. 72).

Syrian refugees' legal status also implies that they cannot enjoy basic rights given to legal residents in Lebanon, such as enrolment in public schools, opening a bank account, or acquiring lawful employment (Janmyr, 2016, p. 73). Furthermore, they face serious difficulties in finding work and earning a living resulting in at least 76 per cent of them living below the poverty line (UNHCR, 2017b, p. 7). Moreover, obtaining birth certificates also requires valid legal status that might well explain the high number of refugee children who were born in Lebanon and lack an official birth certificate: according to a 2014 sample survey carried out by UNHCR (2015c), up to 72 per cent of them do not have birth certificates (p. 4). The situation of Syrian children born in Lebanon clearly contravenes Article 7(1) of the CRC, ratified by Lebanon, which states that "the child shall be registered immediately after birth and shall have the right from birth to name, the right to acquire a nationality and, as far as possible, the right to know and be cared by his or her parents" (UN General Assembly, 1989). A survey of the Norwegian Refugee Council (2014) found that 74 per cent of Syrian refugees with limited legal status face restrictions on their freedom of movement and challenges accessing healthcare services (p. 15).

As mentioned above, refugees registered with UNHCR are required to provide, among other documents, a pledge not to work when applying for renewing their residence permits. However, this pledge entails not only that they become completely reliant on aid assistance but also that they have to face the risk of being hindered from accessing work opportunities (Inter-Agency Coordination Lebanon, 2015). Furthermore, it can expose them to informal and exploitative labor. The sponsorship system or *kefala* also bears similar risks like those of the pledge. It entails, as Janmyr (2016) points out, that Syrian refugees find themselves facing "government-sanctioned exploitation" (p. 75). With the analogy of Kagan (2012), the legal relationship between employer and employee in this

system is “most analogous to a parent and child, or alternatively, master and slave or servant” (p. 322).

3.5.2. Saudi Arabia

The case of Saudi Arabia differs from that of Lebanon in many ways. As mentioned in the previous subsection, Lebanon hosts the biggest number of Syrian refugees per capita while the number of Syrian residents in Saudi Arabia is highly disputable. Lebanon bearing the physical burden of almost one million Syrian is stretched to its limits in an already unstable domestic political environment with high unemployment rates struggling to provide even the most basic services to its citizens. Saudi Arabia, on the other hand, has received increasing criticism for its unwillingness to share the physical burden of Syrian refugees in spite of its obvious ability to do so due to its financial and operational resources. Nevertheless, it is one of the leading donors of UNHCR and supports countries in the region hosting the biggest number of refugees; thus, engaging in financial burden sharing. The only thing that connects and underpins the two countries’ approach to Syrian refugees is that neither is state party to the universal treaties of international refugee law and has any domestic legislation on refugees. As a result, the legal status of a refugee is practically absent in both countries and Syrians in both countries fall under the legislation applicable to immigrants.

As briefly noted above, Saudi Arabia is not party to the 1951 Convention and its 1967 Protocol. Although it ratified several universal human rights instruments such as the CAT, the CEDAW, the ICERD, the CRC, and the Convention on the Rights of Persons with Disabilities (CRPD), it also entered a considerable number of reservations to these treaties. The reservations generally refer to Islamic norms and the Shariah which, along with the Quran and the Sunnah, practically serves as Saudi Arabia’s constitution. As for regional instruments of refugee and human rights law, the country only ratified the 2004 Arab Charter on Human Rights in 2009. Saudi Arabia has no specific domestic legislation on refugees; however, its 1992 Basic Law of Governance contains a provision on asylum. Article 42 thus sets out that “[t]he State shall grant political asylum if public interest so dictates” (The Embassy of the Kingdom of Saudi Arabia, 1992, p. 7). Nonetheless, it is argued that Saudi Arabia “has no legislation implementing this provision and the

Government allows only those with residence permits to apply for asylum [while excluding] those who entered illegally or overstayed on pilgrimage visas from ever receiving asylum" (United States Committee for Refugees and Immigrants, 2009).

Saudi Arabia is home to a considerable number of stateless Bidoon whose number is estimated to seventy thousand. They live in especially grave circumstances having "no access to basic services, healthcare and employment" and unable to "travel abroad and seek better opportunities because they are denied passports and travel documents" (Zahra, 2013, p. 4). Furthermore, there is an estimated two hundred forty thousand Palestinians residing in Saudi Arabia who are not registered as refugees as well as Rohingya, Somali and Sudanese communities (Zahra, 2013, p. 4; De Bel-Air, 2015, p. 7). However, as De Bel-Air (2015) pointed out, "these populations fleeing conflicts generally used the employment channels, or overstayed pilgrimage, visit to relatives, or tourist visas" and were not hosted as asylum seekers or refugees (p. 7). Nonetheless, following the First Gulf War, Saudi Arabia—for the first time in its history—signed an MoU with UNHCR to resettle some thirty-five thousand Iraqi refugees in the Rafha camp.

As for refugees fleeing the Syrian Arab Republic, their exact number in Saudi Arabia is highly disputable. Upon increasing criticism regarding the country's unwillingness to host Syrian refugees, the Saudi government claimed in 2015 that it has received two and a half million refugees from Syria and its "the public school system has accepted more than 100,000 Syrian students" (Al Arabiya News, 2015). However, as De Bel-Air (2015) posited, these statements are very hard to verify from the available official statistics (p. 8). One of the underlying reasons is that statistical data on the entry and exit of foreigners broken down according to country of citizenship is available only until 2013. Nevertheless, from the available data, she established that the number of Syrians in Saudi Arabia can be estimated to four hundred twenty thousand, at the minimum (De Bel-Air, 2015, p. 5). This number is, however, argued to be constituted to a large extent by migrant workers and those joining their family members in the country (Democratic Progress Institute, 2016, p. 83). Syrians who wish to travel to Saudi Arabia either as tourists, migrant workers or to visit family members need to apply for a visa before entering the country. Since the Embassy of Saudi Arabia in

Damascus has been closed since 2012, they can only obtain visa form any other Saudi embassy abroad. However, as these embassies do not publish any data regarding visas issued, it is not possible to determine even the number of Syrians who entered Saudi Arabia as workers or tourists (De Bel-Air, 2015, p. 5). Syrians—just like any other foreign nationals—willing to work in Saudi Arabia are subject to the sponsorship or *kefala* system—a practice examined above in the case of Lebanon. As the United States Committee for Refugees and Immigrants (2009) observed, the most common consequences of this system for foreign workers in Saudi Arabia are as follows:

> According to the [1970] Residence Regulations, employers can cancel residence sponsorship for 'legitimate reasons' and have their workers detained and deported. Foreigners cannot change jobs without their sponsor's permission or without finding a new sponsor. Although prohibited by Saudi law, most employers keep foreigners' passports. The sponsorship relationship sometimes leads to involuntary servitude, nonpayment, debt bondage, intimidation, and other abuse.

The net migration figures of Syrians to Saudi Arabia display a drop after 2010 which led De Bel-Air (2015) to suggest that "the entry of Syrians to Saudi Arabia has become, all in all, more difficult since 2011" (p. 6). This may indeed support the argument that Saudi authorities introduced several restrictions on the entry of Syrians in early 2013 by terminating the issuance of "family visas, and at times opening it for certain jobs like medicine and only if the Syrian is going to a certain city like Riyadh" (as cited in De Bel-Air, 2015, p. 6). It is also argued that Syrians have been denied visas for performing the Hajj for seven years (Middle East Monitor, 2018). Paradoxically, the Saudi government claims to have taken several protective measures on Syrians since 2012: Syrian children are thus argued to be allowed to study in Saudi schools, all Syrians have access to free medical treatment and are allowed to work in the private sector (Arab News, 2015). Furthermore, it is argued that since the outbreak of the civil war Saudi authorities have turned a blind eye on Syrians violating labor or residency regulations and have not initiated their deportation (Arab News, 2013). Whether Saudi Arabia has accepted two and a half million Syrians since 2011 or not remains an open question. However, what is certain is that even if it did, it has not hosted them as refugees but as immigrants—or with the term often employed by Saudi officials, as "brothers and sisters". The Saudi authorities also stressed that they have

deliberately refused to treat Syrians as refugees or host them in refugee camps in order to "preserve their dignity and safety" (Reuters, 2015).

While it is highly questionable whether Saudi Arabia has shared the physical burden of Syrian refugees, it is a verifiable fact that the country has financially supported UNHCR as well as countries hosting the biggest number of Syrian refugees in the region—Jordan, Lebanon and Turkey—thus sharing the financial burden of refugees. It is argued to have donated a total of USD 115 million to Syrian refugees in Jordan, Lebanon and Turkey, as well as to the IDPs in Syria (Diab, 2016, p. 4). At the same time, the country is the twelfth biggest contributor to the budget of UNHCR with USD 47 million solely in the year 2018 (UNHCR, 2018d). Additionally, Saudi Arabia and UNHCR signed an MoU in 2018 under which the country undertook to support the improvement of housing conditions of Syrian IDPs with USD 5 million (Emirates News Agency, 2018). Apart from this financial aid, Saudi Arabia has also engaged in providing humanitarian aid to Syrian refugees as well as the displaced inside Syria in the framework of fifty-seven relief programs and projects (Diab, 2016, p. 4). Thus, it can be argued that by engaging in financial but not physical burden sharing Saudi Arabia tries to contain Syrian refugees in the first countries of asylum—as far as possible from its own territory.

Saudi Arabia, a country that positions itself as a great power and regional leader in the Middle East actively supporting and supplying the Syrian opposition forces financially and in terms of arms—thus, indirectly contributing to the displacement of Syrians—probably has more moral responsibility towards the displaced than most countries in the region. It also has a clear ability, both financially and operationally to host these people. As Ghosh argued, "with Saudi Arabia's expertise of hosting millions of visitors for the Hajj, combined with Gulf states' plethora of construction companies, they are in fact rather better equipped than many other states" (as cited in Norman, 2015). It is generally argued that one of the reasons for the reluctance of Saudi Arabia to host Syrian refugees is grounded in security concerns. With its active involvement in the Syrian Civil War, Saudi Arabia is claimed to have fears that supporters of Assad might infiltrate the country (Norman, 2015). These concerns have become even stronger with the expansion of ISIL in Syria. Nevertheless, in close cooperation with UNHCR,

these concerns could be easily overcome, for instance in the framework of an MoU between the agency and Saudi Arabia—similar to that signed in 1993 regarding the resettlement of Iraqi refugees.

3.6. CONCLUSION

Refugees fleeing the Syrian Arab Republic are facing a legal paradox in the Middle East (Democratic Progress Institute, 2016, p. 56). Even though they obviously fulfil the criteria set out in the 1951 Convention and its 1967 Protocol to qualify as refugees, they cannot exercise the respective rights due to the fact that most of Middle Eastern host states are not signatories to these treaties. The regional legal framework of refugee protection is very fragile and weak, especially considering the fact that only one of the relevant instruments adopted by regional organizations is in force. They nonetheless provide a prospective basis for developing possible future legal instruments.

As the cases of Lebanon and Saudi Arabia attempted to illustrate, countries in the region are affected by the influx of Syrian refugees to different extents. Countries such as Iraq, Jordan, Lebanon and Turkey bear the physical burden of refugees while wealthy Gulf states tend to avoid offering resettlement places and only engage in financial burden sharing. The fact that host states in the Middle East are stretched to their limits to keep up with such high numbers of refugees—together with refugees' general limited legal status and its consequences in the region—is a clear evidence that without sufficient engagement from other states in and outside the Middle East to provide resettlement places, both host states and refugees will continue to suffer.

CHAPTER 4
THE REGIONAL REFUGEE PROTECTION FRAMEWORK OF EUROPE

> This was worse than Aleppo. Worse than bombs falling and soldiers shooting and drones buzzing overhead. In Aleppo, at least, he could run. Hide. Here he was at the mercy of nature, an invisible brown speck in an invisible black rubber dinghy in the middle of a great black sea.
>
> — Alan Gratz, *Refugee*

This chapter is divided into four main parts. First, it provides a general assessment of Europe in terms of refugee law and refugee protection as well as regarding the case of Syrian refugees in the region. Second, it evaluates the existing regional legal framework protecting refugees by critically examining the refugee and human rights-related instruments adopted by regional intergovernmental organizations such as the Council of Europe, the European Union and the Organization for Security and Co-operation in Europe. At the same time, it evaluates the regional arrangements of UNHCR in Europe. Third, the chapter examines the case of interregional cooperation between Europe and the Middle East in terms of refugee protection. Finally, it aims to illustrate the differing approaches of states in the region toward refugees fleeing the Syrian Arab Republic by examining the cases of Germany and Hungary.

4.1. GENERAL ASSESSMENT OF THE REGION

Europe is often argued to be the birthplace of international refugee law; a region that gave rise to the drafting of universal treaties of refugee law such as the 1951 Convention and its 1967 Protocol (Mathew & Harley, 2016, p. 35). Furthermore, the refugee definition as contained in the 1951 Convention and the fact that it was drafted in response to European experiences are widely claimed to illustrate their Eurocentric nature (Davies, 2006, pp. 566 and 570). As outlined in Chapter 1, the interwar period and the Second World War saw the surge of intra-regional refugees in Europe, mainly from Germany. Since then, refugee flows have been predominantly intra-regional resulting from the dissolution of Yugoslavia as well as subsequent wars and conflicts in Bosnia, Kosovo, and Ukraine. The Hungarian refugee crisis following the 1956 Hungarian Revolution—another example for

intra-regional refugee flows—is widely accepted to have been one of the most successfully addressed ones in terms of relocation (Biondi, 2016, p. 210; Cellini, 2017, pp. 6–8). More recently, the mixed movement of refugees and migrants from several subregions of Africa—North Africa, Sub-Saharan Africa as well as the Horn of Africa—and from the Middle East that gained momentum in 2015 changed this course resulting in the influx of inter-regional asylum seekers. However, this mixed movement also included migrants from Balkan states such as Albania, Kosovo and Serbia.

4.1.1. European States and Refugee Law

In terms of refugee law, European states have a generally good standing. All member states of the EU and the CoE are party to the universal treaties of refugee law, the 1951 Convention and its 1967 Protocol. As a matter of fact, the 2009 Stockholm Programme of the Council of the European Union put forth that the EU as a supranational organization "should seek accession to the [1951] Geneva Convention and its 1967 Protocol" (Council of the European Union, 2009). Such a step is argued to have the prospect of "establishing a direct link between the Union institutions and the international refugee protection system, as well as strengthening institutional ties between UNHCR and the EU ensuring compliance with the Convention at all levels of EU action on asylum" (Velluti, 2014, p. 154). Furthermore, there is a high ratio of accession to the main instruments of international human rights law among states in the region.

The regional legal framework of refugee protection is undoubtedly the most developed and complex in the world. As a matter of fact, regionalism itself is argued to be well-entrenched in the region continuing to affect the protection of refugees (Mathew & Harley, 2016, p. 36). The European refugee protection framework mainly rests with two regional intergovernmental organizations, the EU and the CoE. The Organization for Security and Co-operation in Europe (OSCE) is a third but less active European regional organization in the field of refugee or human rights protection. By focussing on cooperation in the fields of democracy, peace and security, it is more active in preventing circumstances that could result in displacement. In the framework of the Common European Asylum System (CEAS), the EU developed a regional system for refugee protection with

the aim of harmonizing member states' asylum law and relevant policies. As illustrated below, the present level of harmonization is highly contestable. The CEAS is a comprehensive system that governs asylum from the moment the asylum seeker enters the EU until s/he leaves. A distinctive feature of the CEAS is its sole focus on "third-country nationals", thus asylum seekers from beyond the EU. The basis for that is the consideration that all member states are safe countries of origin. As Mathew and Harley (2016) argue, this consideration is untrue given the case of the Roma who are "theoretically EU citizens [but] face many forms of discrimination and even persecution" (p. 38). Similarly, all member states are considered to be safe countries of asylum which turned out to be untenable in the light of numerous instances of maltreatment in EU member states in the course of the mass influx of refugees and migrants that reached its peak in 2015. Another distinctive feature of the CEAS which has been criticized is the Dublin Regulation which establishes the rule that it is the first country of entry that is responsible for registering and determining the refugee or subsidiary protection status of asylum seekers. This regulation is argued to be the biggest burden on equitable responsibility sharing in the region.

Domestic legislation on refugees is relatively thorough and well-developed in European countries. Due to the fact that all states are signatories to the main instruments of international refugee law, domestic legislation is generally in line with the 1951 Convention and its Protocol. Furthermore, EU member states' national legislation on refugees, by and large, reflects the regulations under the CEAS as they have to be transposed into the domestic law of member states. However, as the 2015 influx of refugees and migrants demonstrated, the harmonization of the domestic legislation pertaining to asylum and the treatment of asylum seekers in member states have not been achieved. As the case studies on Germany and Hungary below illustrate, member states not only failed to adopt a common stance towards asylum seekers but also breached certain provisions of international refugee law and the CEAS. Moreover, the Hungarian case is a perfect illustration for how amendments in the national legislation can cause non-conformity with the CEAS.

4.1.2. Syrian Refugees in Europe

As Chapter 3 examined in detail, refugees fleeing the Syrian Arab Republic have predominantly sought asylum in neighbouring states such as Iraq, Jordan, Lebanon and Turkey. The general protracted situation of Syrian refugees in these countries was the main reason that forced them to move forward and seek asylum in Europe. As the Democratic Progress Institute (2016) summarized,

> [g]iven the challenges experienced by refugees in Lebanon, Jordan, and Turkey, it is unsurprising that the exodus resulting from the current crisis in Syria cannot be contained in the Middle East. This is evident by the thousands risking their lives to undertake perilous boat journeys in desperate attempts to reach Europe, and hundreds of thousands more undertaking arduous migration routes through the Balkans to reach Northern Europe (p. 73).

Similarly, Kale (2017) observed that "not being able to work or have a livelihood in the host countries caused Syrians living in the neighbouring countries to search for better opportunities in Western European countries" (p. 67). Land and sea routes used by Syrian refugees to reach Europe have been the Western Balkan, Eastern Borders and Eastern Mediterranean Routes (FRONTEX, 2019). The latter have been, by far, the most dangerous as illustrated by the unprecedented death tolls. According to IOM's Missing Migrants Project (2019), the number of asylum seekers who lost their lives while crossing the Mediterranean through the Eastern Mediterranean Route only is estimated to 803 in 2015 and 434 in 2016. The death rates get even more shocking when examined in the context of all three Mediterranean routes—namely, the Central, Eastern and Western Mediterranean Routes—together: alone in 2016, the total number of deaths in the Mediterranean is estimated to 5,143 (Missing Migrants Project, 2019). These unprecedented numbers can be attributed to the tragic collusion of several factors including the condition, size and over crowdedness of rubber boats or dinghies, the carelessness of smugglers, harsh weather conditions in the winter, the rocky coasts of the Mediterranean as well as the EU's rigorous border protection policy. As Karageorgiou (2016) argued,

> [a]ll these human losses prove the Mediterranean route into Europe as one of the most dangerous and lethal in the world and have become the symbol of the failure of EU migration policies that predominantly focus on stepping up border controls, leaving migrants and refugees no other option than to undertake life-threatening journeys in order to access protection (p. 201).

Compared to the number of Syrian refugees in the Middle East, the number of Syrians seeking asylum in Europe remains low, being roughly equal to the number of Syrians hosted by Lebanon alone. According to the statistics of Eurostat, the total number of Syrian asylum applicants in the member states of the EFTA and the EU between March 2011 and April 2019 can be estimated to 1.1 million (Eurostat, 2019). As for what these more than 1 million Syrian refugees were faced in Europe, Stevens (2017) aptly observes the following:

> As the cordon sanitaire was breached, and desperate people made their way across European territory, the true face of EU asylum refugee protection emerged: the CEAS was not common; solidarity was not universal; mistrust rather than mutual trust triumphed; EU values could be ignored at will; a Directive specifically designed to offer temporary protection in situations of 'mass influx' was ignored. Instead, panicking Member States and EU institutions scrambled to find a politically palatable solution; the outcome: the European Agenda on Migration and the EU-Turkey Statement; the clear aim: putting an end to inward migration (p. 4).

The mass influx of Syrian refugees—together with asylum seekers from other countries of origin—from 2011 onwards has revealed not only the discrepancies in member states' handling of the 'crisis' but also the shortcomings of a regional protection framework that is often argued to be the most developed one. These shortcomings include the uneven burden placed on member states constituting the external borders of the EU due to the Dublin Regulation, the ignorance of the Temporary Protection Directive, and the divergences in the protection status granted to asylum seekers, to name just a few. Regarding the latter issue, Syrian asylum seekers were initially granted refugee status in EU member states; a practice that is argued to have changed in April 2012 with the granting of subsidiary protection status becoming the norm (Karageorgiou, 2016, p. 202).[6] As it is demonstrated in subsequent parts of this chapter, beneficiaries of refugee and subsidiary protection enjoy different rights under the CEAS. Therefore, the legal status granted to an asylum seeker entails serious consequences for his or her rights and freedoms.

[6] UNHCR considers all asylum applicants from Syria to qualify for refugee status "fulfilling the requirements of the refugee definition contained in Article 1A(2) of the 1951 Convention" (UNHCR, 2017e, p. 5).

4.2. THE COUNCIL OF EUROPE

The CoE is the first interregional organization in Europe that needs to be examined in the context of the regional refugee protection framework of Europe. It was founded in 1949 with the aim of upholding and advocating human rights, the rule of law and democracy in Europe. The CoE is argued to be "part of a European movement after the Second World War to secure peace and prevent recurrence of the war's atrocities" (Clayton, 2014, p. 191). Currently, it has forty-seven member states.

Given the Organization's emphasis on the protection of human rights, it is not surprising that the CoE has been active in adopting human rights instruments. The European Convention on Human Rights adopted in 1950 is the first and most significant of all. The relatively excessive body of human rights law of the CoE includes several other human rights instruments that can be taken into account when assessing the legal framework of refugee protection in Europe such as the 1961 European Social Charter, the 1992 Convention on the Participation of Foreigners in Public Life at Local Level and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. Instruments of the CoE that more directly address various aspects of refugee protection include the 1959 European Agreement on the Abolition of Visas for Refugees, the 1977 Declaration on Territorial Asylum, the 1980 European Agreement on Transfer of Responsibility for Refugees and the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Despite being part of the CoE's policy rather than legal framework of refugee protection, the adoption of the Action Plan on Protecting Refugee and Migrant Children in Europe can be regarded an important regional step towards the protection of refugee and migrant children.

4.2.1. Instruments of Refugee Law

The extensive legal framework of the CoE has several instruments that are directly related to asylum and refugee protection. The European Agreement on the Abolition of Visas for Refugees is a relatively early refugee-related legal source at the regional level which was adopted in 1959 and entered into force in 1960. It currently has twenty-three ratifications. Article 1(1) sets out that, in case they

possess a valid travel document and the duration of their visit does not exceed three months, "[r]efugees lawfully resident in the territory of a Contracting Party shall be exempt, under the terms of this Agreement and subject to reciprocity, from the obligation to obtain visas for entering or leaving the territory of another Party by any frontier" (Council of Europe, 1959). The 1959 Agreement thus establishes the free movement of refugees between states parties to the Agreement within its constraints. However, if the duration of their stay exceeds three months, or they take up gainful employment in another contracting party, refugees may be required to apply for a visa as set out in Article 1(2).

The 1977 Declaration on Territorial Asylum—despite being a non-binding instrument—is an important regional legal source regarding asylum. The Declaration establishes the right to grant asylum as follows:

> The member states of the Council of Europe, parties to the 1951 Convention relating to the Status of Refugees, reaffirm their right to grant asylum to any person who, having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, also fulfils the other conditions of eligibility for the benefits of that convention, as well as to any other person they consider worthy of receiving asylum for humanitarian reasons (Council of Europe, 1977).

Moreover, it sets out that CoE member states maintain their "liberal attitude with regard to persons seeking asylum on their territory" and that the granting of asylum is a "peaceful and humanitarian act" (Council of Europe, 1977).

The Agreement on Transfer of Responsibility for Refugees was adopted in 1980 by the CoE and came into force the same year. It is ratified by thirteen states. The 1980 Agreement determines, "in a liberal and humanitarian spirit", the conditions for transferring responsibility for issuing travel documents for refugees from one contracting party to another (Council of Europe, 1980). Accordingly, Article 2(1) establishes that "[r]esponsibility shall be considered to be transferred on the expiry of a period of two years of actual and continuous stay in the second State with the agreement of its authorities or earlier if the second State has permitted the refugee to remain in its territory either on a permanent basis or for a period exceeding the validity of the travel document" (Council of Europe, 1980).

Pursuant to Article 2(2), stays for educational, medical and training purposes or the duration of imprisonment, among others, shall not be calculated into the two-

year period. Under Article 6 of the 1980 Agreement, from the date of the transfer of responsibility, the "second State shall, in the interest of family reunification, and for humanitarian reasons, facilitate the admission to its territory of the refugee's spouse and minor or dependent children" (Council or Europe, 1980).

4.2.2. Human Rights Instruments Protecting Refugees

There are a number of other binding and non-binding human rights instruments adopted by the CoE which can be relevant in the context of refugee protection. These include the 1961 European Social Charter, the 1992 Convention on the Participation of Foreigners in Public Life at Local Level and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

The 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) is a further human rights instrument adopted by the CoE that is of key importance in the protection of refugees in the region. Chapter VII of the Istanbul Convention deals with questions related to asylum and migration. While Article 59 contains several provisions regarding residence status, Article 60 addresses the issue of gender-based asylum claims. Article 60(1) calls on states parties to the Convention to "ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention […] and as a form of serious harm giving rise to complementary/subsidiary protection" (Council of Europe, 2011). Article 60(2) stresses the importance of a gender-sensitive interpretation of the Convention and sets forth that states parties shall do their best to grant refugee status on the ground of well-founded fear of persecution for the reason of gender-based violence against women, as well. Pursuant to Article 60(3), states parties shall also ensure the development of gender-sensitive reception and asylum procedures. Furthermore, Article 61 of the Istanbul Convention underlines the importance of the principle of *non-refoulement* and specifically calls on states to make sure that "victims of violence against women" are not returned "to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment" (Council of Europe, 2011).

4.2.2.1. The 1950 European Convention on Human Rights

The ECHR, also known as the European Convention for the Protection of Human Rights and Fundamental Freedoms, was adopted by the CoE in 1950 as a "vehicle by which the Council sought to realize aspirations for stronger inter-State cooperation and the protection of individuals against oppression" (Clayton, 2014, p. 191). It came into force in 1953 and, to date, has forty-seven signatories. The accession of the EU to the ECHR has been under discussion since the 1970s. Article 6(2) of the Treaty on European Union (TEU), as amended by the Treaty of Lisbon, includes a legal obligation for the EU to accede to the ECHR by establishing that the "Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties" (European Union, 2012b). In 2013, a draft Accession Agreement was reached between the member states of the CoE and the EU. However, when the European Commission asked the ECJ of its opinion regarding the compatibility of the draft agreement with EU law, it ruled a negative opinion (for the text of the relevant opinion, see European Court of Justice, 2014). Therefore, the accession of the EU to the ECHR remains a question mark.

The ECHR has sixteen Additional Protocols. Furthermore, the European Court of Human Rights (ECtHR) has the power to rule on the rights and provisions under the ECHR. As Clayton (2014) pointed out, "although the treatment of the stranger who might present themselves at the gates of […] Europe was not high on the agenda [of the drafters], the *travaux preparatoires* show that the focus on Europe was not based on excluding others" (p. 192). Therefore, drafters stressed that the rights as contained in the Convention are universal and not restricted to nationals of a member state. In this sense, ECHR protects asylum seekers as well "by virtue of their humanity not their nationality" (Clayton, 2014, p. 192). In its present form—as amended by Protocol No 11—the ECHR is divided into three sections. The main body of rights and freedoms are contained in Section I (Arts. 2–18), while Section II sets up the European Court of Human Rights (ECtHR) and Section III contains several miscellaneous provisions. Rights and freedoms enshrined in the ECHR include the right to life (Art. 2), the prohibition of slavery and forced labour (Art. 4), the right to liberty and security (Art. 5), the right to

free trial (Art. 6), freedom of thought, conscience and religion (Art. 9), freedom of expression (Art. 10) and the prohibition from discrimination (Art. 14), among others. Article 3 on the prohibition of torture is one of the key provisions that can be directly invoked in refugee protection. It enshrines the prohibition of torture by stating that "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment" (Council of Europe, 1950). Article 3 is absolute; thus, no derogations, exceptions or limitations are permitted. Although it is not self-evident whether this provision includes the obligation of *non-refoulement*, the ECtHR, "(following the earlier approach adopted by the European Commission on Human Rights), interprets Article 3 to include a prohibition on return in prescribed circumstances" (Harvey, 2014, p. 172). However, the case law of the ECtHR shows that the Court "has carefully and intentionally delimited the scope of protection" under this provision. Unlike Article 14 of the UDHR or Article 18 of the Charter of Fundamental Rights of the European Union, the ECHR does not enshrine the right to asylum.

4.2.3. The Council of Europe Action Plan

As a response to the mass influx of people seeking asylum in Europe, the CoE prepared an Action Plan on Protecting Refugee and Migrant Children in Europe. The Action Plan for 2017–2019 recalls that all member states are "affected by the refugee/migration flows, either directly or indirectly, as countries of origin, transit, destination or resettlement" and sets forth that the CoE is "committed to playing a key role in assisting its member States in building strategies to respond to the many problems affecting refugee and migrant children, with special focus on those who are unaccompanied or have been separated from their families" (Council of Europe, 2017, p. 5). The Action Plan has three major objectives such as facilitating access to rights and child-friendly procedures, providing effective protection and enhancing the integration of children who would remain in Europe. Under the first objective, special emphasis is placed on ensuring that every child has nationality in order to eliminate statelessness. In line with the second objective, fields of action include establishing an effective guardianship system, ensuring appropriate shelter for children and their families during emergency and mass influx situations, supporting family reunification, eliminating the deprivation of children's liberty due to their migration status as well as ensuring the protection

of children from violence. Finally, regarding the objective to improve the integration of children, the Action Plan focuses on providing refugee and migrant children with education and training opportunities as well as opportunities enhancing their integration in society. In implementing the Action Plan, the CoE works in close cooperation with the EU, the UN and NGOs.

4.3. THE EUROPEAN UNION

The EU is undoubtedly one of the world's most successful examples of regional integration which is argued to offer "the best conditions that can be assumed under real world circumstances for an effective regional refugee protection regime" (Bauböck, 2018, p. 142). The EU evolved gradually from the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community. Eventually, the Maastricht Treaty established the European Union in 1992. Following several enlargement processes, the EU is currently a regional supranational organization of twenty-eight member states.

In line with the 1985 Schengen Agreement, the internal borders of the EU (then, European Communities) were gradually abolished facilitating the free movement of persons. The abolition of internal borders necessitates the more extended and strict control of external borders. With more pressure thus placed on the external borders, member states agreed to give up some of their sovereignty in order to create common rules and standards on the control of external borders as well as on visa, immigration and asylum policies. As Mathew and Harley (2016) summarized, "as the EU's internal borders were dismantled, the external border was fortified and it thus became more difficult to reach Europe lawfully" (p. 235). At the same time, it became widespread to talk about the EU in the context of "Fortress Europe".

The EU *acquis* is divided into two main groups: primary and secondary legislation. The primary legislation includes instruments of treaty-nature such as the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) while secondary legislation comprises the Directives and Regulations of the EU. The refugee protection framework of the EU is based, on the one hand, on human rights instruments of primary legislation such as the

Charter of Fundamental Rights of the European Union. On the other hand, the EU adopted several Directives and Regulations constituting the Common European Asylum System (CEAS) that fall under the category of secondary legislation.

The European Council, at its meeting in Tampere in 1999, agreed not only on the establishing of the CEAS but also to work towards a "comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit" (European Council, 1999). Article 78(2) of the TFEU sets out that the EU shall create a common system and policy on "asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement" (European Union, 2012a). It is established that the EU asylum law and policy thus consists of an internal and external dimension (Velluti, 2014, p. 145). The internal dimension includes the respective Directives and Regulations of the CEAS while the external aspect consists of the various policy tools such as the Global Approach to Migration and Mobility, the Regional Protection Programmes as well as the Regional Development and Protection Programme.

The EU has several asylum-related independent agencies such as EASO, the Asylum, Migration and Integration Fund (AMIF), the Fundamental Rights Agency (FRA) as well as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). The EASO was established in 2011 in order to support member states in developing their asylum system. The activities of the EASO include "organizing meetings and workshops on asylum policy and country of origin information (COI), publishing COI reports, training, quality improvement […], data analysis, and operational support to countries under pressure" (Mathew & Harley, 2016, p. 198). The AMIF—replacing the European Refugee Fund (ERF)—has been operational since 2014 with the objective to share financial resources related to refugee protection among member states.

4.3.1. The Common European Asylum System

The Common European Asylum System (CEAS) is the source of secondary EU legislation on asylum. It is argued to be "one of the most thoroughly developed

regional arrangement for refugees" with "human rights standards [being] front and centre in the harmonization aspect of this arrangement" (Mathew & Harley, 2016, pp. 189, 236). The CEAS regulates the asylum process in its entirety from determining the member state responsible for examining an asylum application, setting common standards for the reception conditions of asylum seekers and for the asylum procedures to establishing the rights of refugees and beneficiaries of subsidiary protection. Especially in setting out and detailing the means and common standards for status determination, asylum procedure and reception conditions, it closes a significant gap in the 1951 Convention that left these issues to individual states to develop. The CEAS is composed of the following Directives and Regulations: the Dublin Regulation, the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Eurodac Regulation as well as the Temporary Protection Directive. Except for the latter, these legal acts were revised in the past few years and their recast versions were adopted in 2011 and 2013, respectively.[7] According to Peers' (2013) assessment on the revised versions of the above legislative acts,

> the second-phase legislation provides for very limited improvements as regards to reception conditions, modest improvements as regards procedures and qualification, no real improvement as regards the Dublin rules and a significant reduction in standards as regards Eurodac. On balance the overall scoreboard is modestly positive, but as regards the Dublin rules in particular there have only been cosmetic changes to the previous objectionable legislation. This legislation in particular deserves the description of being merely "lipstick on a pig" (p. 16).

Nevertheless, the CEAS is currently under review following the proposals by the European Commission in 2016 to reform the respective legislative acts as well as the mandate of the European Asylum Support Office (EASO).

From a legal point of view, there is a small but significant difference between a directive and a regulation. While regulations are binding on member states in their entirety immediately after their entry into force, directives only set the main goals that need to be transposed into the national legislation of members leaving it to

[7] The recast system in EU legislation is essentially based on amending the existing legal act. According to the definition provided by the European Parliament, the Council of the European Union and the Commission of the European Communities (2001), recasting refers to "the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act".

member states to choose the respective measures they undertake to achieve those goals.

The Court of Justice of the European Union (CJEU) has the power to enforce the instruments of the CEAS, thus, “to the extent these instruments conform to the Refugee Convention’s standards, there is an active system for enforcing the Convention” (Mathew & Harley, 2016, p. 37).

The CEAS has been faced with considerable criticism for serving as “Fortress Europe”—in sharp contrast with the abolition of internal borders of the EU, the idea of free movement of EU citizens as well as the internal market’s slogan, “Europe without frontiers” (Mathew & Harley, 2016, p. 216). It has also been criticized for its sole focus on extra-regional refuges while the regionalism operating in the CEAS was also described as “engineered regionalism” (Gibney, 2007, p. 57; Mathew & Harley, 2016, p. 196).

4.3.1.1. The Dublin Regulation

The Dublin Regulation is the oldest element of the CEAS. It first evolved with the adoption of the Dublin Convention in 1990 and was replaced with the Dublin II Regulation in 2003. The revised version of the Regulation—the current Dublin III Regulation (Regulation (EU) No 604/2013)—was adopted in 2013. It sets out the mechanisms and criteria for establishing the member state responsible for examining the application of an asylum seeker and aims to ensure that one asylum application is processed by one member state. The main objective underlying the Dublin Regulation is to eliminate and prevent the so-called ‘asylum shopping’ or ‘forum shopping’ of asylum seekers—i.e., the lodging of multiple applications by the same asylum seeker “in an effort to seek asylum in the country offering the most attractive regime of protection”—as well as the phenomenon of ‘refugees in orbit’, namely the situation when refugees who, “although not returned directly to a country where they may be persecuted, are denied asylum or unable to find a State willing to examine their request, and are shuttled from one country to another in a constant search for asylum” (Ippolito, 2014, p. 124; Mouzourakis, 2014, p. 20; Mathew & Harley, 2016, p. 189; UNHCR, 2019b).

By employing a hierarchy of responsibility criteria, Article 13 of the Dublin Regulation assigns the responsibility of examining an asylum application of irregular entry to the first EU country of entry. However, this responsibility ceases one year after the irregular entry took place. Moreover, in line with Article 13(2), this responsibility falls on another member state if the asylum applicant has been living there or in other member states for more than five months. Further criteria for allocating responsibility include considerations regarding family reunification (Arts. 8–11 and 16) and lawful residence (Art. 12). The discretionary clauses of the Regulation (Art. 17) that allows states to depart from the hierarchy criteria have been used on rare instances (Mathew & Harley, 2016, p. 190). Pursuant to Article 3(3), the Regulation also permits states to send an applicant back to a third country as long as it is in line with the relevant provisions of the Asylum Procedures Directive (i.e., if it is considered a safe third country).

The Dublin Regulation is perhaps the most controversial element of the CEAS. It has received widespread criticism for the unequal burden it places on the first EU countries of entry which also has consequences for the protection asylum seekers receive (Mathew & Harley, 2016, p. 191). As a matter of fact, this practice is inconsistent with the EU's focus on solidarity and responsibility sharing set out in Article 80 of the TFEU as follows: "the policies of the Union […] shall be governed by the principle of solidarity and fair sharing of responsibility" (European Union, 2012a). The Dublin Regulation was thus criticized for diminishing rather than facilitating solidarity among EU member states by shifting responsibility "for the examination of asylum claims to front-line Member States" (Karageorgiou, 2016, p. 205). Against this backdrop, Karageorgiou (2016) suggested that the Dublin Regulation "needs to be reconsidered since solidarity seems to be negatively affected in both fronts, *interstate* and *state-refugee*" (p. 205).

4.3.1.2. The Asylum Procedures Directive

The revised Asylum Procedures Directive (Directive 2013/32/EU) was adopted in 2013 with the aim of correcting certain flaws in the preceding Directive (Council Directive 2005/85/EC). It sets out the common standards and procedures for a fair

system of “granting and withdrawing international protection” (European Parliament & Council of the European Union, 2013a).

After an application for international protection was lodged in the member state responsible for examining that application, the registration of the application must normally take place in three working days (Art. 6). Applicants whose application is pending have the right to information “in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities [as well as] of the decision by the determining authority on their application”, the right to counselling and interpretation as well as the right to remain in the member state (Arts. 8–9 and 12) (European Parliament & Council of the European Union, 2013a). Before a decision is taken, the asylum seeker must be given the opportunity to explain and present his or her case in a personal interview. The provisions relating to the right to personal interview are outlined in Articles 14–17 of the Directive. With lessons learned from the shortcomings of the 2005 Directive, the recast Asylum Procedures Directive refines and supplements the previous version’s provisions regarding the personal interview with the possibility to request that interviewers and interpreters are of the same sex as the applicant (Art. 15(3)(b)–(c)), the guarantee that interviews with minors are carried out “in a child-appropriate manner” (Article 15(3)(e)), the guarantee that the applicant is given the opportunity to “present elements needed to substantiate the application” (Art. 16) as well as the guarantee that a factual report or a transcript is made of all interviews (Art. 17) (European Parliament & Council of the European Union, 2013a). The Directive also contains the right of applicants to legal assistance and representation at all stage of the asylum procedure (Art. 22) including free legal assistance and representation in appeals procedures (Art. 20). The examination procedure normally cannot last longer than six months after the application was lodged; however, member states are permitted to extend this period with nine and further three months in exceptional cases specified in Article 31(3).

The Asylum Procedures Directive also provides for the criteria under which member states can designate a third country as safe.[8] As for the concept of safe country of origin, Articles 36 and 37 set out that safe countries of origin shall be designated on the basis of up-to-date country of origin information attained from other member states, the CoE, the EASO, UNHCR as well as other relevant organizations. The Directive does not provide further rules or guidance on the safe country of origin concept, leaving no room for doubt that it is left to member states to develop.

The concept of safe third country is regulated by Article 38. It sets out that a third country must comply with several requirements including where "life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion", where "the possibility exists to request refugee status and […] to receive protection in accordance with the Geneva Convention" and where "the principle of *non-refoulement* in accordance with the Geneva Convention is respected" in order to be a safe third country (European Parliament & Council of the European Union, 2013a). Similarly, in order for a European country to be labelled a safe third country, it must meet the following criteria under Article 39: "it has ratified and observes the provisions of the Geneva Convention without any geographical reservation", "it has in place an asylum procedure prescribed by law" and "it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies" (European Parliament & Council of the European Union, 2013a). These provisions are significant given the possibility of member states to send back asylum seekers who seek to enter or entered illegally into its territory from a third country. Against this backdrop, it is argued that the burden of granting asylum is "implicitly transferred to these countries" (Velluti, 2014, p. 146). As a matter of fact, the safe third country concept has received considerable criticism given member states' obligations under international law and regarding the principle of *non-refoulement* (Kjaergaard, 1994, p. 654; Costello, 2005, p. 64).

[8] It is left to member states' discretion to develop their own national list of safe countries. As a matter of fact, President of the European Commission, Jean-Claude Juncker, proposed a regulation establishing a common EU-wide list of safe countries of origin in 2015 that included Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Montenegro, Serbia and Turkey. However, the proposal is currently on hold due to the Council's suspension of negotiations on this issue.

4.3.1.3. The Reception Conditions Directive

The recast Reception Conditions Directive (Directive 2013/33/EU) was adopted in 2013. It sets out common standards for the reception of applicants for international protection in member states in order to "ensure them a dignified standard of living and comparable living conditions in all Member States" as well as to "limit the secondary movements of applicants influenced by the variety of conditions for their reception" (European Parliament & Council of the European Union, 2013b). It was, and still remains, a significant objective to reach taking into account the considerable differences between the reception conditions in member states that lead to the secondary movement of asylum seekers within the EU.

In line with Article 18(1) of the Directive, asylum applicants can be accommodated in "premises used for the purpose of housing", "accommodation centres" as well as "private houses, flats, hotels or other premises adapted for housing applicants". In accommodating applicants, member states need to take into consideration the age and gender of applicants as well as the situation of vulnerable persons. Furthermore, member states need to ensure that applicants have access to health care (Art. 19), education (Art. 14), vocational training (Art. 16) and employment (Art. 15).

One of the most significant provisions of the Directive concerns the detention of asylum seekers. Pursuant to Article 8(1), the sole reason of being an applicant cannot amount to detention. Detention of applicants is only possible if "other less coercive alternative measures cannot be applied effectively" and solely in order to "determine or verify his or her identity or nationality", "when protection of national security or public order so requires", and in order to "decide […] on the applicant's right to enter the territory", among others (European Parliament & Council of the European Union, 2013b). Under Article 10, applicants can only be detained in special detention facilities. However, if such facilities are not available, member states can also resort to accommodate them in prisons, given that they are held separately from ordinary prisoners and the detention conditions as specified in the Directive are met. Accordingly, applicants shall have access to "open-air spaces", "information which explains the rules applied in the facility and sets out their rights and obligation in a language which they understand" as

well as the guarantee that representatives of the UNHCR, family members, legal advisors, counsellors and representatives of NGOs have the possibility to visit and communicate with them (European Parliament & Council of the European Union, 2013b). The Directive has been criticized for permitting the detention of the most vulnerable such as minors, unaccompanied minors and female applicants; even if it can only take place under relatively strict terms. Furthermore, Ippolito (2014) argued that the grounds for detention "are so broadly defined that they risk encouraging the systematic detention of asylum seekers instead of making the practice truly exceptional" (p. 133).

4.3.1.4. The Qualification Directive

The recast Qualification Directive (Directive 2011/95/EU) was adopted in 2011. It sets out the criteria under which an asylum applicant qualifies as beneficiary for refugee as well as subsidiary protection status. The latter status ensures protection for those who would otherwise fall outside the criteria of qualifying as refugees and who would face the risk of serious harm when returned to their country of origin. Thus, the Directive became the first "supranational instrument to apply a distinct status to extra-Convention refugees" (Ippolito, 2014, p. 117). Pursuant to Article 2(d), an asylum applicant qualifies as a refugee if he or she is a third country national who,

> owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself to the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply (European Parliament & Council of the European Union, 2011).

Actors of persecution under Article 6 can be both state and non-state actors as well as "parties or organizations controlling the State or substantial part of the territory of the State" (European Parliament & Council of the European Union, 2011). Acts of persecution include acts that are

> sufficiently serious by [their] nature or repetition as to constitute a severe violation of basic human rights, in particular rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or [are] an accumulation of various measures, including violations of human rights

> which is sufficiently severe as to affect an individual in a similar manner as mentioned [above] (European Parliament & Council of the European Union, 2011).

They can take several forms including "acts of physical or mental violence including acts of sexual violence", "prosecution or punishment which is disproportionate or discriminatory" and acts of a gender-specific or child-specific nature" (European Parliament & Council of the European Union, 2011).

The definition of a beneficiary of subsidiary protection is, under Article 2(f) as follows:

> a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, is unwilling to avail himself or herself of the protection of that country (European Parliament & Council of the European Union, 2011).

Serious harm is defined in Article 15 as including "death penalty or execution", "torture or inhuman or degrading treatment or punishment of an applicant in the country of origin" or "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" (European Parliament & Council of the European Union, 2011). The exclusion and cessation clauses for refugee and subsidiary protection status are contained in Articles 11–12 as well as Articles 16–17 and do not substantially differ from those found in the 1951 Convention.

The Qualifications Directive contains several rights that both beneficiaries of refugee and subsidiary protection can invoke such as the rights to access to employment (Art. 26), to access to education (Art. 27), to access to procedures for recognition of qualifications (Art. 28), to social welfare (Art. 29), to health care (Art. 30), to access to housing (Art. 32), to freedom of movement within the Member State (Art. 33) and to access to integration facilities (Art. 34). It also includes the right to obtain a residence permit (Art. 24) and a travel document (Art. 25); however, provisions in these two cases are different for beneficiaries of refugee and subsidiary protection. The Directive further contains the principle of *non-refoulement* in Article 21.

The Qualification Directive, and thus the entire CEAS, is criticized for providing international protection—either in the form of refugee, subsidiary or temporary protection—only to third-country nationals and stateless persons. This restriction stipulates that nationals of EU member states would not need such protection as they enjoy the full protection of their country of origin. However, this is proved unfounded given the problematic situation of several ethnic groups such as the Roma in certain member states (Mathew & Harley, 2016, p. 38). The CEAS is thus criticized for focusing exclusively on extra-regional refugees (Mathew & Harley, 2016, p. 196).

4.3.1.5. The Eurodac Regulation

The recast Eurodac Regulation (Regulation (EU) No 603/2013) was adopted in 2013 replacing Council Regulation (EC) No 2725/2000. The latter Regulation established the Eurodac, an electronic fingerprint database for asylum seekers, with the purpose of assisting in "determining which Member State is to be responsible […] for examining an application for international protection lodged in a Member State by a third-country national or a stateless person" (European Parliament & Council of the European Union, 2013d). Pursuant to Article 9 of the recast Regulation, member states have an obligation to take the fingerprints of all asylum applicants who have reached the age of 14 and transmit them to the Central System of Eurodac together with certain other pieces of information 72 hours their application was lodged.

Until 2003, the Eurodac system could only be used for asylum-related purposes. However, the recast Regulation established the criteria under which "Member States' designated authorities and the European Police Office (Europol) may request the comparison of fingerprint data with those stored in the Central System for law enforcement purposes" (European Parliament & Council of the European Union, 2013d). Accordingly, the Eurodac can be accessed by the Europol only for the purpose of "preventing, detecting or investigating terrorist offences or other serious criminal offences" (European Parliament & Council of the European Union, 2013d).

4.3.1.6. The Temporary Protection Directive

The Temporary Protection Directive (Council Directive 2001/55/EC) was adopted in 2001 in the wake of the displacement of people after the dissolution of former Yugoslavia. The main objective of the Directive is to "establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their territory of origin and to promote balance of effort between Member States in receiving and bearing the consequences of receiving such persons" (Council of the European Union, 2001). In Article 2(d), it defines mass influx as the "arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme" (Council of the European Union, 2001).

Article 5 of the Temporary Protection Directive sets forth that it is the Council that can establish the existence of a mass influx through a Council Decision adopted by "a qualified majority on a proposal from the Commission" (Council of the European Union, 2001). Pursuant to Article 4, the duration of temporary protection is one year with possible extension by six months for maximum one year. The rights of the beneficiaries of temporary protection include the right to information (Art. 9), the right to be issued a residence permit (Art. 8), the right to employment (Art. 12), the right to housing (Art. 13), the right to education (Art. 14) as well as the right to access the asylum procedure (Art. 17).

The Temporary Protection Directive has not yet been applied despite the fact that several mass displacements have obviously met the criteria for mass influx as set out in the Directive. Such mass influx situations include the displacement following the Kosovo War in 1999 and the mass movement of asylum seekers from North Africa, Syria and Afghanistan, among others, that gained momentum in 2015. The Directive is the only legislative act of the CEAS that was not revised in the early 2010s, however, it is argued to be currently under review (Mathew & Harley, 2016, p. 204).

4.3.2. Human Rights Instruments

Although several human rights-related provisions are found in the instruments of the EU's primary legislation such as the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), the 2000 Charter of Fundamental Rights of the European Union can still be regarded as the organization's key human rights instrument.

4.3.2.1. The 2000 Charter of Fundamental Rights of the European Union

The human rights *acquis* of the EU is based to a great extent on the Charter of Fundamental Rights of the European Union. The Charter was adopted in 2000 and became legally binding with the entry into force of the Treaty of Lisbon in 2009. Despite not fulfilling the requirements of a treaty as set out in the Vienna Convention on the Law of Treaties on the ground that it is neither an agreement between states, nor was it signed or ratified by them, Article 6(1) of the TEU—as amended by the Treaty of Lisbon—establishes that the Charter "shall have the same legal value as the Treaties" (European Union, 2012b). Thus, it establishes that the Charter acquires "the rank of primary legislation within the Union's legal order, and accordingly, compliance with the Charter […] [is] a requirement for the validity and legality of the Union's secondary legislation" (Gil-Bazo, 2008, p. 34).

The rights and freedoms enshrined in the Charter can be divided into four main groups including civil, political, social and economic rights. In addition to provisions contained in other international and regional human rights treaties, the Charter enshrines some innovative provisions such as the prohibition on reproductive human cloning (Art. 3(2)) or the right to the protection of personal data (Art. 8). At the same time, it lacks several key rights such as the rights of minorities. Following its Preamble, the Charter's provisions are grouped into the following six chapters: Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. Chapter VII, on the other hand, contains some general provisions. The first chapter contains some core fundamental rights and freedoms such as the right to life (Art. 2), the right to the integrity of the person (Art. 3), the prohibition of torture and inhuman or degrading treatment or punishment (Art. 4), and the prohibition of slavery and forced labour (Art. 5). The second chapter enshrines some fundamental social and political liberties also contained in the ECHR and

several further significant social rights such as the right to asylum (Art. 18) and the right to education (Art. 14). Furthermore, it also enshrines the freedom from *refoulement* (Art. 19). Chapter III contains provisions such as equality before the law (Art. 20), the prohibition of discrimination (Art. 21), gender equality (Art. 23), rights of the child (Art. 24), rights of the elderly and the disabled (Arts. 25–26). The fourth chapter on solidarity enshrines labour rights as well as provisions pertaining to social security and health care; however, some of these provisions have been subject to criticism due to the reference to national legislation. Chapter V contains the rights of EU citizens; thus, these rights are not universal but refer only to nationals of EU member states. These enshrine the right to vote and to stand as a candidate at the European Parliament elections (Art. 39), the right to good administration (Art. 41), the right to refer to the Ombudsman of the EU (Art. 43), the right to petition (Art. 44), and the freedom of movement and of residence within the territory of EU member states (Art. 45). Finally, Chapter VI titled *Justice* enshrines the right to effective remedy and to fair trial (Art. 47) and the right of defence (Art. 48), among others.

Provisions of the Charter that can be directly invoked in refugee protection include the right to asylum (Art 18), the protection from *refoulement* (Art. 19), and the prohibition of torture (Art. 4). Furthermore, as Article 45(2) sets out, not only citizens of the EU but also nationals of third countries "legally resident in the territory of a Member State" can benefit from the freedom of movement and residence (European Union, 2012c). The right to asylum is enshrined in Article 18 of the Charter as follows: "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union" (European Union, 2012c).

The reference to the 1951 Convention and its 1967 Protocol is highly curious as none of these instruments enshrines the right to asylum. A further problem pertaining to Article 18 is that since this provision does not have any explicit subject, it is not clear whether it refers to states' right to grant or individuals' right to be granted asylum. As Gil-Bazo observed (2008), "[w]hile the right of States to grant asylum to individuals is well established as a matter of international law, the

right of individuals to be granted asylum is not explicitly enshrined in any international instruments of universal scope" (p. 37). However, she also pointed out that individuals' right to seek and be granted asylum is found in several legally-binding regional instruments such as the ACHR (Art. 22(7)) and the ACHPR (Art. 12(3)), non-binding human rights instruments such as the UDHR (Art. 14) as well as several states' constitutions (Gil-Bazo, 2008, pp. 37–39, 47). Since all the provisions of the Charter refer to individual rights, Gil-Bazo (2008) suggested that the right to asylum is to be understood in the same manner—i.e., as the right to be granted asylum (p. 41). Against this backdrop, it is argued that the Charter "brings Europe into line with other regional developments that recognize not only the right to seek, but also to be granted, asylum" (Gil-Bazo, 2008, p. 52).

As for the principle of *non-refoulement*, the Charter sets out in its Article 19 that "[n]o one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment" (European Union, 2000).

As Gil-Bazo (2008) argued, the Charter is a unique instrument of human rights by its "comprehensive character as a catalogue of human rights, its limited scope of application, and its treaty-binding nature (despite not being a treaty)" (p. 36). As for the Charter's scope of application, she pointed out that in contrast to other instruments of human rights law, the Charter "does not bind [member states] to guarantee the rights it enshrines to everyone in their territory and under their jurisdiction in an unqualified manner, but rather, by its very nature as an instrument of Union law, its scope of application is limited to the areas of State activity ruled by Union law itself" (Gil-Bazo, 2008, p. 36).

4.3.3. The External Dimension of EU Asylum and Immigration Policy

The external dimension of the immigration and asylum policy of the EU first emerged with the European Council meeting in 1999 in Tampere. The Tampere European Council agreed not only on the establishing of the CEAS but also to work towards a "comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit" (European Council, 1999). Subsequently, Article 78(2)(g) of the TFEU established a legal obligation to work "in partnership and cooperation with third

countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection" (European Union, 2012a). The external dimension consists of three policy tools, namely the Global Approach to Migration and Mobility, the Regional Protection Programmes as well as the Regional Development and Protection Programme. It is argued that there are two underlying objectives of the external dimension of the EU's asylum policy: "one which attempts to restrict access to asylum systems by externalizing traditional domestic or EU migration control measures and […] one which aims at addressing the root causes of migration and refugee flows thus providing refugees with access to protection in regions of refugee origin" (Velluti, 2014, p. 146).

The EU among the world's leading donors to the cause of refugees hosted in regions of origin not only through the above-mentioned policy tools but also through its financial support to UNHCR and the UNRWA. In 2018, it was the second biggest donor to the budget of UNHCR with a contribution of USD 444 million while it ranked first among the top contributors to the budget of the UNRWA with USD 178 million (UNHCR, 2018d; UNRWA, 2018). Furthermore, since the outbreak of the civil war in Syria, the EU has financially supported and provided humanitarian aid to the countries in the Middle East hosting the largest number of Syrian refugees. Since 2011, its contribution to Iraq, Jordan, Lebanon and Turkey has amounted to EUR 420 million, 2.1 billion, 1.7 billion and 2.09 billion, respectively. The EU also created the Regional Trust Fund in Response to the Syrian Crisis in 2014 in order to share financial resources with countries outside the EU hosting Syrian refugees.

4.3.3.1. The Global Approach to Migration and Mobility

The Global Approach to Migration (GAM) was initiated in 2005 with the aim of addressing "the root causes of migration and prioritise the rights of migrants instead of the security concerns of the Member States" (Strik, 2017, p. 316). In 2011, the name of the GAM was supplemented with the term 'Mobility' thus launching the Global Approach to Migration and Mobility (GAMM). As Strik (2017) argued the "M of 'Mobility' was added to connect the GAM with the EU visa policy for short stays and national policies concerning long stays" (p. 317).

The GAMM is a framework of policy, legal and financial instruments serving as a tool for furthering cooperation with third countries in the areas of migration and development. It is based on four "equally important" pillars such as "organising and facilitating legal migration and mobility; preventing and reducing irregular migration and trafficking in human beings; promoting international protection and enhancing the external dimension of asylum policy; maximising the development impact of migration an mobility" (European Commission, 2011). All four pillars are underpinned by the principles of mutually beneficial partnerships with third countries as well as migrant-centeredness since "the migrant is at the core of the analysis and all action and must be empowered to gain access to safe mobility" (European Commission, 2011). In this vein, the human rights of migrants are emphasized in the GAMM in order to strengthen "respect for fundamental rights and the human rights of migrants in source, transit and destination countries alike" (European Commission, 2011).

The GAMM has gained considerable criticism throughout the years for its overemphasis on border controls and irregular migration as well as for the lack of prioritisation of migrants' rights despite the fact that it aimed at becoming a migrant-centred approach (Strik, 2017, pp. 326–327). The GAMM was also criticized by the United Nations Special Rapporteur on Human Rights who perfectly summarized the main anomalies and shortcomings of the Approach:

> many agreements reached in the framework of the Approach have weak standing within international law and generally lack monitoring and accountability measures, which allow for power imbalances between countries and for the politics of the day to determine implementation. Nonetheless, the European Union has continued to use the Approach to promote greater 'security'. There are few signs that mobility partnerships have resulted in additional human rights or development benefits, as projects have unclear specifications and outcomes. The overall focus on security and the lack of policy coherence within the Approach as a whole creates a risk that any benefits arising from human rights and development projects will be overshadowed by the secondary effects of more security-focused policies (UN Human Rights Council, 2015).

4.3.3.2. The Regional Protection Programmes and the Regional Development and Protection Programme

The Regional Protection Programmes (RPPs) of the EU developed parallel to the GAMM. The first set of RPPs was initiated in 2005; since then, several

subregions such as Eastern Europe (Belarus, Moldova, Ukraine), East Africa (Tanzania), the Horn of Africa (Djibouti, Kenya, Yemen) and North Africa (Egypt, Libya, Tunisia) were selected for the RPPs. The RPPs were mainly implemented by UNHCR and several NGOs. The Programmes were designed to serve as so-called 'policy toolboxes' with the aim of facilitating "the protection capacity of the regions involved" on the one hand and improving refugee protection through durable solutions" on the other (Papadopoulou, 2015, p. 7). In 2012, the RPPs were integrated into the GAMM.

As Garlick (2011) argued, the RPPs were from the perspective of UNHCR "an overall positive contribution, as they provided additional funding which helped improve knowledge and abilities of local institutions, and the conditions and facilities available for refugees" (cited in Papadopoulou, 2015, p. 15). Nevertheless, the Programmes are argued to have a number of weaknesses such as their extensive scope of activities, insufficient coordination with development and humanitarian aid policies in host countries and their characteristic of being "UNHCR 'heavy'"(Papadopoulou, 2015, pp. 15–16). Furthermore, Papadopoulou (2015) suggested that it is misleading to call the Programmes 'regional' since they "demonstrated a predominance of national level projects funded by the EU and implemented by the UNHCR" (p. 16). A further criticism regarding RPPs is that they are tools of containment whose aim is to "confine people to regions on the periphery of the EU" (Mathew & Harley, 2016, pp. 27 and 212).

The Regional Protection and Development Programme (RDPP) can be considered an improved version of the RPPs specifically tailored for the Middle East as a response to the displacement of Syrian refugees. It was implemented in 2014 as a four-year-long programme designed to enhance protection and development in countries such as Lebanon, Jordan and Iraq. Under the umbrella of the RDPP, the EU works in close cooperation with governments, UN agencies, NGOs and the civil society. The RDPP is funded by eight European donors: Denmark, Ireland, Norway, Switzerland, the Czech Republic, the European Commission, the Netherlands and the United Kingdom. The main objectives of the RDPP are the following: "to ensure that refugees are fully able to avail themselves of a durable solution [and t]o support socio-economic development in host countries that will benefit both the host populations and refugees" (European External Action

Service, 2016). Compared to RRPs, the main difference of RDPP is that it joins humanitarian and development funds to reach its above goals

4.4. UNHCR

Since 2015, UNHCR has implemented regional response plans for the protection of refugees and migrants in Europe. Similar to the RRP and the 3RP in the case of the Middle East, the Regional Refugee and Migrant Response Plan for Europe (RMRP) addresses the special needs and situation characteristic of refugees as well as migrants in the region. Furthermore, the RMRP is aimed at complementing the existing response plans of UNHCR regarding other regions, "seeking synergies while avoiding overlaps" (UNHCR, 2016b, p. 14).

4.4.1. The Regional Refugee and Migrant Response Plans for Europe

The RMRP is a regional response initiated by the UNHCR following the mass influx of migrants and refugees into Europe in 2015. The latest version of the RMRP was initiated for the year 2017. In the framework of the 2017 RMRP, the UNHCR closely cooperated with national governments, refugees, migrants and seventy-four partner organizations including the European Convention, relevant agencies of the EU such as FRONTEX and the EASO as well as the IOM. The 2017 RMRP has eight key strategic goals including designing and implementing a "response that supports and builds existing government capacity to ensure effective and safe access to asylum, protection and human rights-based solutions", strengthening "national and local capacities and protection systems, with a particular emphasis on child protection systems" as well as reinvigorating "support for an open civil society space, including protection and promotion of human rights defenders and humanitarian actors providing assistance to refugees and migrants" (UNHCR, 2016b, p. 13).

The 2017 RMRP specifically addresses countries that face a relatively high influx of refugees and migrants in Europe. As such, it has specific strategies and plans for Greece, North Macedonia, Serbia and Turkey.[9] Furthermore, it also

[9] As mentioned in Subsection 3.4.1 of the previous chapter, Turkey is also included in UNHCR's regional protection plans for the Middle East—the RRP and the 3RP. However, in order to reduce overlaps to a minimum the 3RP and the RMRP cover different fields of action regarding refugee protection in Turkey: the 3RP specifically focuses on "protection and assistance with a focus on

encompasses less-affected countries in Central, Northern, South Eastern, Southern and Western Europe.

4.5. COUNTRY CASE STUDIES

The mass influx of asylum seekers to Europe that gained momentum in 2015 has triggered different, sometimes completely antithetic, responses from states in the region. Not only the response but also the affectedness of states has varied within the region. Due to member states' obligations under the Dublin Regulation, member states on the external border of the EU such as Greece, Hungary and Italy have been overwhelmed by the high number of asylum applications they received. However, the vast majority of asylum seekers have preferred to move further and be hosted in certain member states in Western Europe, primarily in Germany. This can be attributed to a number of factors including differences in reception conditions and detention treatment, as well as governments' overall stance towards asylum seekers.

The two countries selected as case studies, namely Germany and Hungary, are intended to highlight the diversity of the level of affectedness, experiences and responses of states to the recent influx of asylum seekers to Europe. Focussing on Syrian refugees, the case of Hungary is intended to demonstrate the approach of states on the external border of the EU receiving record number of asylum applicants while at the same time leaving no stone unturned in order to prevent them from being granted asylum through legal amendments—even at the expense of breaches in its obligations under international law and discrepancies with the CEAS. On the other hand, Germany is selected as an example for states in the region showing unprecedented solidarity and humanity towards asylum seekers at its best.

4.5.1. Hungary

The mass influx of asylum seekers to Hungary can be argued to have begun in 2013 when a total of 18,900 people arriving predominantly from Kosovo,

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Syrian refugees in Turkey" while the RMRP covers different target groups such as "people intercepted, rescued and apprehended; people on the move transiting through Turkey; refugees, migrants and asylum seekers already in Turkey, people readmitted to Turkey from Greece; and Syrian refugees to be resettled to the EU" (UNHCR, 2016b, p. 14).

Pakistan and Afghanistan arrived in the country (Immigration and Asylum Office, 2018). This number grew to 42,777 in 2014 and culminated with a total of 177,135 applications lodged in 2015 (Immigration and Asylum Office, 2018). The 2015 application rates indeed signified a record high number that was nearly unprecedented in modern Hungarian history. Since the 1989 regime change that brought Communism in Hungary to an end, the country has not experienced a refugee flow on such a large scale. The sole exception was the influx of refugees from the territory of former Yugoslavia during and after the Yugoslav Wars in the early 1990s. However, even in that case the number of asylum seekers only reached several tens of thousands. A vivid illustration of the 2015 numbers was provided by Juhász et. al. (2015) who argued that "between 1990 and 2014 the number of refugees travelling through Hungary never matched the number produced by Hungary alone after [the 1956 Hungarian Revolution]" (p. 9). Similarly, as Juhász and Molnár (2016) argued, the number of asylum applications lodged in Hungary solely in 2015 exceeded the total number of applications in the preceding 23 years (p. 264). Due to various restrictive measures undertaken by the Hungarian government in 2015 such as the building of fences along the Hungarian-Serbian and Hungarian-Croatian borders as well as several legal amendments, this number significantly dropped in the following years. In 2016, 29,432 asylum applications were lodged while this number further decreased to 3,397 and 671 in 2017 and 2018, respectively (Immigration and Asylum Office, 2018). Nevertheless, Hungary has not become a destination but remained a transit country for asylum seekers since 2015 as only a small proportion actually stayed longer in its territory. It is argued that those staying in the country over a longer period of time amounted to a few thousands while several tens of thousands of refugees remained permanently in Hungary during and after the Yugoslav Wars (Juhász & Molnár, 2016, p. 265).[10]

[10] Traditionally, the country cannot be considered a destination country for immigrants. Aside from a relatively large Chinese population, the majority of immigrants since the 1989 regime change have been ethnic Hungarians from neighbouring countries such as Romania, Serbia, Slovakia and Ukraine (Juhász et. al., 2015, p. 9). As a result—since the signing of the Treaty of Trianon in 1920 that resulted in the country losing nearly two thirds of its territory and one third of its population—Hungarians in general do not have considerable experience in co-existing with other nationalities in a heterogeneous, multinational or multi-ethnic society that can be considered to be one of the main components providing fertile ground for the relative wide social approval of the Hungarian government's hostility towards asylum seekers. Possible further reasons include the country's tumultuous history filled with foreign rules and occupations (by the Ottoman Empire, the Habsburgs, Nazi Germany, and the Soviets) and the relatively high xenophobia rate.

A similar pattern can be observed in the statistics regarding the number of Syrian asylum applicants in Hungary. Between 2011 and 2013, their number was relatively low not exceeding one thousand per year (Immigration and Asylum Office, 2018). In 2014, their number increased to nearly seven thousand while in 2015, Syrians made up 36.74 per cent of total asylum applicants (ca. 65.000). In the following years, this number significantly dropped—with 4,979,577 and 48 applications lodged in the years between 2016 and 2018. The approval rate of Syrian asylum seekers has been very low in Hungary. From nearly 70 per cent in 2014, it dropped to 59.3% in 2015 and further decreased to 9.5% in 2016 (Immigration and Asylum Office, 2018). As a matter of fact, in most cases, applications were deemed inadmissible due to the applicants' onward movement to another state.

There is a variation regarding the protection status granted to asylum seekers. While refugee status was granted to the majority of asylum seekers until 2014, it changed in 2015 with the granting of subsidiary protection status becoming the norm (Immigration and Asylum Office, 2018). The status granted to asylum seekers is significant as it establishes the protection and the rights granted to applicants. As it was mentioned above in Subsection 4.3.1.4, the recast Qualification Directive's provisions on the rights granted to beneficiaries of refugee and subsidiary protection differ regarding the right to be issued residence and travel documents. However, since June 2016, there are only minor differences between the rights granted to beneficiaries of refugees and subsidiary protection under the domestic legislation of Hungary. One of them relates to the issue of naturalization. While Section 4(2) of the Citizenship Act provides preferential treatment to refugees, beneficiaries of subsidiary protection fall under the general rule of 8-year-long previous residence in Hungary.

Since the beginning of 2015, the Hungarian government has taken an increasingly security-oriented and overtly hostile stance toward asylum seekers (Amnesty International, 2015b, p. 5). This stance has received considerable criticism from both domestic and international state and non-state actors. As Juhász et. al. (2015) summarized, "[t]he example of Hungary is extreme in many ways. We have not yet seen such a systemic, ideological, and programmatic attempt to close the EU's external borders by building a fence in order to keep refugees out, to deny basic

European values, including human rights, and to refuse to fulfil humanitarian obligations" (p. 5).

Prime Minister Viktor Orbán and the ruling Fidesz-KDNP Party Alliance have systematically referred to asylum seekers as immigrants using specific attributes including "illegal", "economic" and "subsistence". Since 2015, the government is argued to have utilized the topic in order to gain more public support and popularity as well as to deter the attention from other domestic issues. A systematic campaign has thus commenced against an enemy identified as the "migrant" and, later on, against the European Union—mainly on the basis of its common asylum policies and the proposed refugee quota system.[11] In the first half of 2015, the government initiated the so-called "National Consultation on Immigration and Terrorism" and an anti-immigration billboard campaign. The National Consultation took the form of a survey attached to a letter by Orbán. However, as Juhász et al. (2015) argued, most questions of the survey were introduced by a "statement echoing the Government's anti-immigration rhetoric and PM Orbán's statements in the letter" (p. 25). Similarly, the billboard campaign not only drew a direct link between immigration and unemployment, but also suggested that asylum seekers do not respect Hungarian culture and laws.[12]

The year 2015 also saw the erection of a barbed wire fence along the 175-km-long border with Serbia. The physical border closure prompted asylum seekers to proceed to Croatia in order to access the territory of the EU. Between September and October 2015, an estimated 200,000 asylum seekers are claimed to have entered Hungary from Croatia without any registration or asylum procedures who were immediately transferred to the Austrian border under the instruction of the

[11] The mandatory quota system for the relocation of asylum seekers from countries receiving the largest amount of applications such as Greece, Hungary and Italy was proposed in 2015 by the European Commission. It was initially set to facilitate the relocation of 120,000 asylum seekers based on special redistribution criteria (Zaun, 2018, p. 44). While the proposal was accepted and supported by both the European Parliament and the Council, it has been largely unsuccessful due to internal tensions in the EU at the state level with Austria, Germany and Sweden backing and several other countries—most importantly the V4 (Hungary, Poland, Slovakia and the Czech Republic)—opposing it.

[12] The billboard campaign included the following messages: "If you come to Hungary, you have to respect our culture"; "If you come to Hungary, you have to respect our laws"; "If you come to Hungary, you cannot take away Hungarians' jobs" (Thorpe, 2015). Although the text of the billboards was worded in second-person singular, the fact that they were only displayed in Hungary and in Hungarian language makes it clear that their true addressee was the Hungarian public and thus they served domestic political goals.

Hungarian government (Hungarian Helsinki Committee, 2017, p. 8). Shortly after the construction of the fence along the Hungarian-Serbian border, a 40-km-long razor wire fence was also built along the Hungarian-Croatian border. Responding to widespread international and domestic criticism, Orbán defended the erection of the fence by arguing that the "old Iron Curtain was built against us, this one was built for us" (cited in Thorpe, 2018). In September 2015, with Government Decree No 269/2015 (IX. 15), the government declared a quasi-state of emergency called "crisis situation caused by mass immigration" in two counties which was later extended to four counties (Government of Hungary, 2015a). In the following year, Government Decree No 41/2016 (III. 9) ordered the crisis situation to be extended to the whole country which is, due to the latest 6-month-long extension in March 2019, still in force at the time of writing (Government of Hungary, 2016). In 2016, the Hungarian government proceeded with a further anti-immigration billboard campaign in order to prepare the ground for a referendum. The billboards were filled with messages linking immigration to terrorism and crime while criticizing the EU's proposed quota system to share the physical burden of refugees.[13] The referendum on the quota system was held on 2 October 2016.[14] Even though the result of the referendum was invalid due to the low turnout and the relatively high number of invalid votes, the government celebrated it as a victory stressing that 98 per cent of the valid votes rejected the quotas. After the results had been announced Orbán remarked: "We have achieved an outstanding result, because we have surpassed the outcome of the [EU] accession referendum" (cited in Than & Szakács, 2016).[15]

As for the legal framework of refugee protection in Hungary, the country ratified both the 1951 Convention and its 1967 Protocol in 1989 without reservations. It is

[13] The billboards were filled with the following rhetorical questions: "Did you know that the Paris terror attacks were carried out by immigrants?" or "Did you know that since the immigration crisis, harassment of women has increased in Europe?". In addition, a series of billboards carried the following message: "Let's send a message to Brussels so that they understand" with the inscription above: "Referendum 2016 against the compulsory relocation scheme" (Zalán, 2016).

[14] The question of the referendum was the following: "Do you want the European Union to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly?" According to the official results of the referendum, the voter turnout was 44.04 per cent. 41.32 per cent of the voters casted valid votes, while around 6 per cent of the voters casted invalid ballots (National Election Office, 2016). Of the valid votes cast, 98 per cent answered with "no" thus rejecting the proposed quota system.

[15] In fact, this is only partially true. The voter turnout was slightly higher in the 2003 referendum on the accession to the EU (45.62%) although a smaller percentage (83.76%) of valid ballots was in favour of the accession (National Election Office, 2003).

also party to the main international and regional instruments of human rights—with the exception of the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. In terms of regional instruments on asylum and refugee protection, Hungary as a member of the EU is directly bound by the CEAS Regulations. The transposition of several recast Directives of the CEAS has, however, not yet fully taken place.

Domestic legislation relating to refugees includes, among others, Act LXXX of 2007 on Asylum (Asylum Act), Act II of 2007 on the Entry and Stay of Third-Country Nationals as well as the 2011 Fundamental Law of Hungary. Section XIV(3) of the Fundamental Law of Hungary contains the right to freedom from *refoulement* while Section XIV(4) enshrines the right to be granted asylum to those fulfilling the criteria set in the 1951 Convention as follows:

> Hungary shall, upon request, grant asylum to non-Hungarian nationals who are persecuted in their country or in the country of their habitual residence for reasons of race, nationality, the membership of a particular social group, religious or political beliefs, or have a well-founded reason to fear direct persecution if they do not receive protection from their country of origin, nor from any other country. A non-Hungarian national shall not be entitled to asylum if he or she arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution (Government of Hungary, 2011).

Act LXXX/2007 on Asylum (Asylum Act) is the main domestic legal source regulating asylum and issues related to the beneficiaries of international protection. Relevant provisions of the 1951 Convention as well as the recast Asylum Procedures Directive, the recast Qualifications Directive and the recast Reception Conditions are transposed into the Hungarian domestic law through the Asylum Act. However, the extent of transposition differs. Although the Qualifications Directive was transposed in its entirety by 1 August 2015, the transposition of certain provisions of both the recast Asylum Procedures Directive and the recast Reception Conditions Directive has not yet taken place (Pardavi et al., 2018, p. 193).

As mentioned above, the Hungarian government made several amendments to its domestic legislation relating to asylum including the Asylum Act, the Criminal Code and the Criminal Procedure Act. The amendment of the relevant legislative acts were enabled through the two-thirds majority of the governing Fidesz-KDNP Party Alliance in the Hungarian National Assembly that it has almost

continuously held since 2010. Although the Alliance lost its two-thirds majority in early 2015 as a result of a by-election, the support of the far-right Jobbik Movement paved the way for the legal amendments in 2015 and 2016. The amendments rendered it almost impossible for asylum seekers to be granted international protection status in Hungary. In addition, it affected related issues such as detentions, the so-called "push-backs" and the national lists of safe third-countries and safe countries of origin.

Key amendments in the Asylum Act concern the national lists of safe third-countries and safe countries of origin. Government Decree 191/2015 (VII. 21) amended the above lists with identifying EU candidate countries as safe third-countries and safe countries of origin thus classifying, among others, Serbia and Turkey as safe third-countries (Government of Hungary, 2015b). Taking into account Section 51(2)(e) of the Asylum Act, an application for asylum shall be considered as inadmissible if the applicant's country of origin is a safe country or "for the applicant, there is a third country qualifying as a safe third country for him/her" (Government of Hungary, 2007). In other words, if an asylum applicant entered the territory of Hungary from a country designated as a safe third-country or originates from a safe country, his or her application for asylum is automatically deemed inadmissible as the applicant had the possibility to apply for and receive protection there.[16]

The amendments relating to the national list of safe third-countries—especially in the case of Serbia—have been widely criticized on the basis that it contradicts not only the recommendations of the UNHCR but also the practice of EU member states. Furthermore, Amnesty International (2015b) argued that the "situation in Serbia exposes refugees and asylum-seekers to a risk of human rights violations" and that the "asylum system in Serbia is ineffective and fails to guarantee access to international protection to even *prima facie* refugees, including Syrian nationals, who make up the majority of applicants" (p. 16). The situation even worsened due to Serbia's abandonment of the bilateral readmission agreement it signed with the European Community in 2007 resulting in a situation where

[16] The sole exception to this rule was former Prime Minister of North Macedonia, Nikola Gruevski who was granted asylum only within a few days in 2018 in spite of the fact that his country of origin is an EU candidate country and, as such, is regarded a safe country of origin by Hungary.

asylum seekers were “left in a limbo” and might be exposed to chain-*refoulement* (Schelb, 2017, p. 69).

Part of the 2015 legal amendments was the concept of the so-called transit zones that was introduced as a measure to facilitate an effective response to the above-mentioned crisis situation declared in September 2015. Transit zones serve as facilities at the border for the processing of asylum applications. As Amnesty International (2015b) posited, the Hungarian government “considers the ‘transit zones’ to have a special status in relation to the country’s territory. Although they are established on its territory, persons held there ‘will have *access* to Hungarian territory’ only if their application for asylum is deemed admissible” (p. 19). Hence, Hungary considers the transit zones to be in “no man’s land” (Pardavi et al., 2018, p. 18). The ECtHR voiced its criticism as to the position that transit zones are outside the territory or jurisdiction of a state. In the case of *Amuur v. France*, the Court declared that “[d]espite its name, the international zone does not have extraterritorial status” (European Court of Human Rights, 1996). As Amnesty International (2015b) argued,

> [a]sylum-seekers entering the “transit zone” are under the jurisdiction of Hungary, as they are “under power and effective control” of Hungarian authorities carrying out the asylum procedure. Hungary has therefore the same obligations towards asylum-seekers entering the “transit zones” as the obligations towards asylum-seekers in the rest of its territory, including providing safeguards against *refoulement* (p. 19).

Transit zones received criticism from UN High Commissioner for Refugees, Filippo Grandi, as well. During his visit to Hungary in 2017, he called on the Hungarian government to “do away with its so-called ‘transit zones’ which he said are in effect detention centres” (cited in UNHCR, 2017d).

Since 2015, several amendments have been made to Act C of 2012 to the Criminal Code as well as to Act XIX of 1998 on Criminal Proceedings. With the amendments, various new types of criminal offences were included in the Criminal Code such as “unauthorized” entry into the territory of Hungary through the border fence, “damaging of the border fence”, “hampering the construction work of the border barrier” and helping “another person crossing the state border” in an illegal way (Government of Hungary, 2002). Punishment for the above offences varies. However, irregular entry through the border fence is punishable

with up to ten years in prison (Pardavi et al., 2018, p. 19). In addition, the penalties regarding people smuggling were tightened. The amendments to the Criminal Code are clearly inconsistent with Article 31 of the 1951 Convention that sets out that no penalty shall be imposed on refugees for the sole reason of illegally entering the territory of a country. As Amnesty International (2015b) pointed out, "[i]n the absence of safe and legal routes for the majority of refugees to reach EU countries, most have no choice but to enter the EU irregularly at its external borders" (p. 20). The amendments to the Act on Criminal Proceedings ensure the prioritization of criminal proceedings in relation to the above crimes. As a result, proceedings regarding other criminal offences may be delayed or take more time than usual.

In 2015, the Hungarian Parliament passed a legislative act amending Act XXXIV of 1994 on the Police. The amendment enabled the deployment of the military in the case of a "crisis situation caused by mass immigration" in order to help the police in securing the country's territory and borders (Government of Hungary, 1994). It also allows the police and military forces to use various physical coercive measures such as rubber bullets, pyrotechnical devices and tear gas. As Amnesty International (2015b) aptly summarized,

> [the] use [of] 'all available measures' could open the way to excessive use of force with the risk of causing serious injury and even death. This would be in clear violation of Hungary's international legal obligations to respect and protect the rights to life and to security of the person, including bodily and mental integrity, and the right not to be subjected to cruel, inhuman or degrading treatment (p. 22).

In July 2016, another legal amendment legalized the so-called "push-back" of asylum seekers to the other side of the border or border fence—without any legal proceedings or remedies. According to the practice—which is in clear breach of international and regional refugee law, most importantly regarding the prohibition of *refoulement*—asylum seekers who are apprehended 8 kilometres within the border have to be "accompanied" back to the Southern side of the border without the possibility of registration or due process. According to Pardavi et al. (2018), as a result of push-backs, "in the period of 5 July and 31 December 2016, 19,057 migrants were denied access (prevented from entering and escorted back to the border) at the Hungarian-Serbian border" (p. 19). By extending the "8-km rule",

legal amendments in 2017 facilitated the push-back of irregular asylum seekers from any part of Hungary to Serbia in the crisis situations.

As a result of further legal amendments to the Asylum Act in 2017, asylum seekers are denied the right to employment during a crisis situation. However, this is in clear violation of Article 15 of the recast Reception Conditions Directive. Access to education is provided to asylum seekers under the age of 16 while all asylum seekers have access to basic health care. In early 2018, another legal amendment to the Asylum Act entered into force which extended the grounds for exclusion from refugee status. Under Section 8(5), a person sentenced by a court's enforceable resolution for having committed a crime punishable by at least 5-year imprisonment shall not be recognized as a refugee. As Pardavi et al. (2018) underlined, the provision is in breach of "Article 1(F)(b) of the Geneva Convention since it prescribes that only those are excluded from refugee status who had committed a crime 'outside the country of refuge prior to his or her admission to that country as a refugee'" (p. 109).

With the systematic sealing off of the borders with Serbia and Croatia, asylum seekers using the Western Balkan Route can only enter Hungary through and lodge their asylum applications in the transit zones. During the examination period of asylum applications, asylum seekers—with the exception of unaccompanied minors under the age of fourteen—have to remain in the transit zones. There are four transit zones: those along the Serbian border are located in Tompa and Röszke while the ones along the Croatian borders, Beremend and Letenye, have not been operational. Asylum seekers are allowed to enter the transit zones according to a very low daily entry quota which is argued to play a part in the significant drop in the numbers of asylum seekers arriving in the country (Pardavi et al., 2018, p. 17). The registration, fingerprinting and interviewing of asylum seekers take place, more or less, in line with the CEAS. Currently, there are two operating reception centres in Hungary—in Balassagyarmat and Vámosszabadi—but their occupancy has been very limited due to the dramatic drop in asylum applications. Unaccompanied children under the age of 14 are not placed in reception centres or transit zones but are accommodated in a children's home in Fót.

Detention conditions in Hungary have raised further concerns. The period of asylum detention is maximised to six months; however, as Pardavi et al. (2018) posited, "[*d*]*e facto* detention in the transit zones has no maximum time limit" (p. 88). Since the year 2013, special detention facilities in Kiskunhalas, Nyírbátor and Békéscsaba have been used for the detention of asylum seekers. Currently, the only operational detention facility is in Nyírbátor. As Juhász (2017) argued, "[e]ven before the current crisis and the amendments to the Criminal Code and the Criminal Proceedings Act, the UNHCR had observed that Hungary was treating asylum seekers like criminals, using detention as a standard rather than an exceptional measure for those who crossed the border irregularly" (p. 47). A widely criticized issue regarding asylum detention is that detained asylum seekers included families with minors and vulnerable persons (Juhász, 2017, p. 47). Further concern was raised due to the overcrowded nature of detention facilities as well as the lack of psychosocial support to those detained.

In December 2015, the European Commission opened an infringement procedure against Hungary on the basis of its asylum legislation. Three years later, in July 2018, the Commission referred Hungary to the CJEU. The reason behind the referral was Hungary's non-compliance with the Charter of Fundamental Rights of the EU as well as several Directives of the CEAS such as the Asylum Procedures and Reception Conditions Directives. The ground for non-conformity with the Reception Conditions Directive included the "indefinite detention of asylum seekers in transit zones without respecting the applicable procedural guarantees" (European Commission, 2018). Breaches of the Asylum Procedures Directive were based on the fact that Hungary's border procedure, on the one hand, "fails to provide effective access to asylum procedures" and, on the other hand, "does not respect the maximum duration of 4 weeks in which someone can be held in a transit centre and fails to provide special guarantees to vulnerable applicants" (European Commission, 2018).

4.5.2. Germany

Germany's response to and level of affectedness by the influx of Syrian refugees differs from that of Hungary in many ways. The difference in both respects is so crucial that it may lead one to assess that the two countries responses are, more or

less, the exact antithesis of each other. While Hungary remained a transit country for asylum seekers, Germany has been one of the key destination countries. Considering the total number of asylum applications since 2011, a gradual increase can be observed until 2016. While the number of applications amounted to 53,347 in 2011, this number increased to 745,545 in 2016 (Federal Office for Migration and Refugees, 2019, p. 9). In 2017, the total number of applications significantly dropped to 222,683 and further decreased to 185,583 in 2018.

From 2014 onwards, Syrians have been the primary applicants for asylum in Germany in terms of applications per nationality. Their number displayed a pattern similar to the total number outlined above. It increased gradually from 2,634 in 2011 to 266,250 in 2016, and subsequently dropped to 48,974 in 2017 as well as 44,167 in 2018 (Federal Office for Migration and Refugees, 2019, p. 17). The numbers thus suggest that despite the Dublin Regulation, Germany has received a significantly higher number of asylum applications than Hungary. The approval rate of Syrian asylum seekers has been high. More than 90 per cent of Syrian asylum applicants have received a positive evaluation since 2011. As it was observed in the case of Hungary, there is diversification as to the protection status granted to Syrians in Germany, as well. While refugee status was prevalent over subsidiary protection status until 2016, this pattern changed in 2017 with the dominance of subsidiary protection status. According to Schelb (2017), this change can be traced back to the fact that in 2016, “Syria had relaxed its passport rules issuing passports to citizens abroad, including refugees, without intelligence service review and the Assad regime, therefore, did not perceive all returnees as critical of the regime” (p. 59). As a matter of fact, this change in the protection status granted coincided with a policy change at the Federal Office for Migration and Refugees (BAMF) that “coincided with a legislative change in March 2016, according to which family reunification was suspended for beneficiaries of subsidiary protection until March 2018” (Kalkmann, 2018, p. 65). Since August 2016, family reunification is again available for beneficiaries of subsidiary protection, however, it is subject to a monthly quota of 1,000 visas for family members (Kalkmann, 2018, p. 65).

Germany’s history is relatively rich in hosting refugees and immigrants. Hence, its relevant experience is hardly comparable to that of Hungary. According to the

latest statistics of DESTATIS (2019), the current population with an immigration background in Germany amounts to 19.3 million. The five most frequent countries of origin include Afghanistan, North African countries (Algeria, Egypt, Libya and Tunisia), Bosnia-Herzegovina, Bulgaria and China (DESTATIS, 2017). Germany also has a relatively great wealth of experience in relocation programmes. Although until 2012 relocation of refugees was undertaken on an *ad hoc* basis,[17] the country launched a Permanent Relocation Programme in December 2011 that operates on a yearly quota (Tometten, 2018, pp. 4–6). Moreover, three humanitarian admission programmes were initiated in 2013 and 2014 for the resettlement of Syrian refugees hosted in neighbouring countries to Syria. At the same time, the Federal States with the exception of Bavaria launched their own humanitarian admission programmes for resettling Syrian refugees. According to the assessment of Tometten (2018),

> [t]hese multi-pronged policies suggest that, although Germany's resettlement and admission programmes for Syrian refugees are quite generous, the ways in which they are designed and implemented deserve criticism. They fall short of providing beneficiaries with the same status, rights, and guarantees as refugees who are granted asylum in an ordinary asylum procedure […], even though they generally meet the Refugee Convention criteria (p. 6).

In stark contrast to the Hungarian government's hostile attitude towards asylum seekers, Germany has taken a welcoming stance towards them. Chancellor Angela Merkel initiated an open-door policy in 2015 when the "refugee crisis" reached the external borders of the EU. In August 2015, the Federal Government of Germany unilaterally suspended the Dublin Regulation regarding Syrian refugees in order to halt their deportation to the respective first EU country of entry. Even though it contradicts the rules set out in the Dublin Regulation, the move was welcomed by the European Commission for being an "act of European solidarity" (Dernbach, 2015). In the following month, Germany agreed with Austria to allow refugees coming from Hungary to proceed to its territory. The decision was widely praised by civil society organizations, NGOs and UNHCR for being an act of "political leadership based on humanitarian values" (UNHCR, 2015d). Responding to growing domestic criticism regarding the country's open-door policy, Merkel stressed that "*wir schaffen das*" ('we can do it')—a slogan that

[17] Relocations before 2012 concerned the case of Hungarian refugees after the 1956 Revolution, the so-called "boat people from Vietnam", refugees from Albania, Bosnia-Herzegovina, Kosovo as well as Iraqi refugees from Syria and Jordan (Tometten, 2018, pp. 4–5).

became the trademark of the country's asylum policy. The overall asylum policy of Germany since 2015, which is often labelled as *Willkommenskultur*, has played a significant part in creating promising and compelling conditions for asylum seekers regarded as so-called "pull factors". This is again in stark contrast with the "push factors" in Hungary's asylum policy which is argued to have played an important role in creating conditions for asylum seekers' treatment of the former as a destination and the latter as a transit country.

Germany, traditionally displaying strong commitment to regional cooperation, has been a frontrunner in advocating a European-level solution that included an EU-wide quota system on a fair and equal burden sharing among member states. It has also been a leading actor in concluding an agreement between the EU and Turkey—the so-called "EU-Turkey Deal"—that was signed in March 2016. Under the Deal, it was established that "[f]or every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria" (European Council & Council of the EU, 2016). Furthermore, a visa liberalization process for Turkish citizens was initiated with EUR 3 billion allocated under the Facility for Refugees in Turkey. Even though the Deal has raised widespread criticism as to its ethical and legal aspects,[18] it has proved effective in "reducing the pressure on the Eastern route to Central Europe" (Bordignon & Moriconi, 2017, p. 2).

Following various "scandals" regarding the BAMF, nearly 200,000 asylum decisions were revoked and re-examined in 2018. The scandals broke out on suspicion of corruption and mishandling of asylum applications after office employees "allegedly gave approvals to 1,200 refugee applications between 2013 and 2016 that should not have been granted" (Lanig & Engel, 2018). The available results of the re-examination suggest that the allegations had been exaggerated as "out of 43,298 cases which were re-examined in the first half of 2018, only 309 (0.7%) resulted in a revocation of a protection status, while the original decision taken by the BAMF was confirmed in more than 99% of cases"

[18] Critics pointed out that the Deal violates international refugee law regarding the right to seek asylum, the probation of collective deportations as well as the fact that "there is insufficient guarantee that refugees returned to Turkey will be protected from return to Syria, constituting a violation of *non-refoulement*" (Democratic Progress Institute, 2016, p. 77; Gayle, 2016). Furthermore, it was criticized for transforming "resettlement from a mechanism of protection into an instrument of containment" (Tometten, 2018, p. 4),

(Kalkmann, 2018, p. 20). The BAMF scandals included the case of a German soldier who, disguised as a Syrian asylum applicant, lodged an application for asylum in Germany and was later granted subsidiary protection status without even speaking Arabic (Winter, 2017). His case was a clear indication for the gaps in the asylum process of the BAMF.

Following internal political tensions between the members of the ruling Grand Coalition of CDU, CSU and SPD—which led to a government crisis[19] in June 2018—a new procedure was introduced at the German-Austrian border. This facilitates the Federal Police's refusal of entry for asylum seekers entering Germany from Austria if it can establish within 48 hours that they have already applied for asylum in another member state. The objective of the border procedure is to enable the immediate removal of "Dublin cases" to the first EU country of entry (Kalkmann, 2018, p. 11). As Kalkmann (2018) underlined, "these returns are taking place without a Dublin procedure, as they are not based on the Dublin Regulation but on refusal of entry implemented through administrative arrangements with other EU Member States" (p. 11). Currently, three bilateral agreements have been concluded—with Greece, Portugal and Spain (ECRE, 2018, p. 3). Nevertheless, the agreements have received some criticism on the ground that "[w]hile some agreements adhere to and operate within the EU legal framework, others bypass the rules set out in the Dublin system, with the aim of quickly carrying out transfers" (ECRE, 2018, p. 3).

In terms of the respective legal framework of refugee protection of Germany, the country is party to the fundamental treaties of international refugee law. It ratified the 1951 Convention and its 1967 Protocol in 1953 and 1969, without reservations. Germany is also party to the main international and regional instruments of human right. As for the regional instruments on asylum and refugee protection, Germany as a member of the EU is directly bound by the CEAS Regulations. The transposition of the recast Qualification Directive took place by December 2013 while the transposition of the recast Asylum Procedures and Reception Conditions Directives has been partial (Kalkmann, 2018, p. 124).

[19] The political tension was mainly fuelled by the CSU's opposition to Merkel's open-door asylum policy. It led to a major rift between the CDU and its sister party, the CSU, culminating in Internal Minister Horst Seehofer's threat to resign unless a more restrictive border policy is introduced at the German-Austrian border.

Domestic legislation regarding asylum and refugee protection is grounded in the Asylum Act, the Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act), the Asylum Seekers' Benefits Act as well as the Basic Law, the constitution of Germany. Article 16(a) of the Basic Law enshrines the right to asylum for "persons persecuted on political grounds" (Government of Germany, 1949). Section 18(2) of the Asylum Act and Sections 14–15 of the Residence Act set out that an asylum applicant shall be refused entry if he or she lacks the necessary documents for legally entering the country and if an immediate removal to a safe third country is possible. Furthermore, Section 29(1) explicitly mentions the Dublin Regulation as a ground for inadmissibility along with relevant other international or regional legal instruments. The concepts of safe country of origin and safe third country are incorporated in Article 16a(2–3) of the Basic Law and further elaborated in the Asylum Act. Pursuant to Article 16a(3) of the Basic Law, countries of origin shall be regarded as safe "in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists" (Government of Germany, 1949). Safe countries of origin are member states of the EU, as well as the following countries: Albania, Bosnia-Herzegovina, Ghana, Kosovo, Montenegro, North Macedonia, Senegal and Serbia. Section 26a and Annex I of the Asylum Act sets out the list of safe third countries including EU member states as well as, currently, Norway and Switzerland. Pursuant to Section 3(1) of the Asylum Act, persons meeting the criteria under the 1951 Convention shall qualify as beneficiaries of refugee status. Sections 3(a) and (b) include provisions on the acts of and grounds for persecution in line with the recast Qualification Directive. Section 4(1) sets out the criteria for qualifying as beneficiary of subsidiary protection status in line with the Qualification Directive. Under German domestic law, asylum seekers can be granted a third kind of international protection status—i.e., humanitarian or national protection status. This status applies to persons who do not qualify as refugees or beneficiaries of subsidiary protection but in relation to whom a prohibition of deportation shall be issued under the grounds set out in Section 60 of the Residence Act. Sections 60(5) and 60(7) thus establish that asylum seekers, who, if returned to a state, would face "a substantial concrete danger to [their] life and limb or liberty" shall

be granted humanitarian protection status (Government of Germany, 2008b). Furthermore, persons whose return is inadmissible under the ECHR fall under this provision. Under German law, beneficiaries of refugee status, as well as subsidiary and humanitarian protection status, enjoy slightly different rights. For instance, according to Section 26(1) of the Residence Act, the duration of temporary residence permits issued for the three groups varies as follows: three years for persons with refugee status, one year for beneficiaries of subsidiary protection and at least one year for beneficiaries of humanitarian protection (Government of Germany, 2008b). Moreover, beneficiaries of humanitarian protection are not entitled to family reunification. Beneficiaries of both refugee and subsidiary protection status have the right to employment, access to education, social welfare and health care under the same conditions as German citizens (Kalkmann, 2018, pp. 122–123).

Asylum applicants are placed in initial reception centres for a maximum of six months during the first stage of their asylum application. Applications from safe countries of origin are, on the other hand, required to stay in the reception centres for the whole duration of the asylum procedure (Kalkmann, 2018, p. 15). In 2018, so-called “arrival, decision and return” (AnkER) centres were established with the purpose of centralizing all activities under one roof and shortening the asylum procedure. As of the end of 2018, only the Federal States of Bavaria, Saxony and Saarland agreed to establish AnkER centres (Kalkmann, 2018, p. 15). Asylum seekers have the right to access the labour market. However, it is generally limited to three months (Section 61(2) of the Asylum Act). Furthermore, under Section 61(1) of the Asylum Act, asylum applicants are exempt from this right until their obligatory stay in initial reception centres. Unaccompanied children are placed in youth welfare offices. Detention of asylum seekers is governed by the Residence Act. Detention of asylum seekers with pending application is only allowed for applicants lodging an asylum application who are already detained in pre-trial detention, prison or detention pending deportation. Section 62(3) sets out the grounds for detention pending deportation including cases when the foreigner is required to leave Germany because s/he entered its territory unlawfully or has evaded deportation for reasons defined therein. Pursuant to Section 62(1) of the Residence Act, minors and families with minors “may be taken into detention awaiting deportation only in exceptional cases and only for as long as it is

adequate concerning the well-being of the child" (Government of Germany, 2008b). Detentions awaiting deportation can last 6 months with a possibility of extension to a maximum of eighteen months in total. With these provisions in effect, the reception and detention conditions applicable to asylum seekers in Germany can be argued to be relatively strictly governed at the domestic level—more or less in line with the relevant instruments of the CEAS.

4.6. CONCLUSION

The EU, with its relatively powerful supranational institutions, offers optimal conditions for establishing an effective asylum system based on common standards of protection and fair burden sharing among its member states. In addition, regional instruments provide a relatively high standard of human rights protection while it would not be an exaggeration to claim that the CEAS is the most developed regional system of asylum and refugee protection worldwide which fills some of the gaps in the 1951 Convention. Nonetheless, the EU has clearly failed to realize its potential during the Syrian "refugee crisis". Due to the incomplete harmonization of norms and common standards of reception conditions and asylum procedures among member states as well as the conflict of the open borders in the Schengen area and the Dublin Regulation's provisions, member states of first entry and destination countries have been placed highly disproportionate burden. This perfectly illustrates that the homogenization of legislative acts under the CEAS is yet to be accomplished as the EU's response to the crisis has been highly fragmented and heterogeneous manifesting in 28 different policies. With very few exceptions including the exemplary humane and solidarity-based approach of Germany, the main objective of European states has been to contain the crisis in Syria's neighbouring countries, to focus on security rather than solidarity and to consolidate the external borders. As a result, despite the region's as well as the regional legal framework's obvious potentials, the European refugee regime has fallen short of providing adequate protection to refugees.

CONCLUSION

We are all migrants through time.
— Mohsin Hamid, *Exit West*

Focusing on the case of Syrian refugees, this thesis addressed the regional protection frameworks of Europe and the Middle East—namely, the regions which have been directly affected by the influx of refugees fleeing the Syrian Arab Republic. In so doing, it critically examined and compared the nature, extent and outcome of refugee protection provided by these frameworks. The thesis illustrated that the refugee protection frameworks in Europe and the Middle East are in many ways the antithesis of each other. When compared to other regions, Europe demonstrates a relatively well-developed and deep-rooted regional cooperation, more or less harmonized norms and institutions, as well as a regional refugee protection framework that, in principle, supplements and fills several protection gaps in the international refugee regime. In contrast, the Middle East is characterised by the lack of legal foundations and norms of refugee protection with weak institutions and strong state sovereignty. Nevertheless, when looking at the protection outcomes for refugees fleeing the Syrian Arab Republic, both regions seem to have failed in terms of efficient responsibility sharing and adequate response to the needs of refugees. The vast majority of them are stranded in neighbouring states to Syria without effective protection as well as minimal rights and legal guarantees while a relatively small portion seeking asylum in the European Union have had to face with closed borders, restrictive policies and thus restricted rights in several member states highlighting the fragmented nature of a "common" European asylum system. The comparative method undertaken in this thesis was thus a useful tool for establishing that seemingly higher legal standards of protection at the regional level may not directly be a safeguard for better protection outcomes for refugees and higher level of cooperation among states in a region.

In order to build a conceptual background to the main topic of this thesis, Chapter 1 outlined the international legal regime of refugee protection. On the basis of the protection gaps observed in the universal treaties of refugee and human rights law such as the lack of mechanisms for burden sharing, a relatively narrow refugee

definition, durable solutions for refugees as well as established standards for reception conditions and refugee status determination, the thesis moved on to the examination of regional protection frameworks.

In this vein, Chapter 2 evaluated the protection frameworks of Africa, the Americas and Asia-Pacific, and critically analysed the merits of regional arrangements for refugee protection vis-à-vis the universal approach. It found that regional protection frameworks do have the potential to bring along more enhanced protection outcomes for refugees as long as they are consistent with the universal standards of refugee law and fill the gaps of international refugee law. Regional cooperation may bring about more effective protection outcomes for refugees in comparison to the international one. Refugee movements usually affect single regions whose states—together with their region-specific knowledge—are better equipped to find an adequate solution to these movements and to respond to the needs of refugees. Furthermore, in contrast to the international legal framework which—due to the high number of parties participating in the initial negotiations—perfectly illustrates the acceptance of the "lowest common denominator", regional protection frameworks provide for a higher possibility of concluding an agreement with conditions suitable for each party. Given the fact that the significance of a regional approach is often overseen in the academic literature of refugee protection, with much more focus given to the international refugee regime, one of the main underlying aims of this thesis was to bring them back into the discussion of refugee protection.

With the potential of regional arrangements in mind, Chapters 3 and 4 examined and compared the refugee protection frameworks of Europe and the Middle East in order to evaluate the nature and extent of refugee protection in each region and reveal the differences and similarities in protection outcomes for refugees. Given the general neglect of the Middle Eastern legal framework of refugee protection in the academic literature as well as the lack of research conducted on Syrian refugees in the context of both regions directly affected by their flow, this thesis' main objective was to fill this gap. Thus, after critically examining the legal framework of refugee protection in the Middle East, Chapter 3 revealed that people fleeing the Syrian Arab Republic are facing a legal paradox in the Middle East. Even though they obviously fulfil the criteria set out in the 1951 Convention

and its 1967 Protocol to qualify as refugees, they cannot exercise the respective rights due to the fact that most of Middle Eastern host states are not signatories to these treaties. The region is characterized by the lack of strong institutions, common standards of refugee protection as well as the overemphasis of state sovereignty. As a result, the regional legal framework of refugee protection in the Middle East is very fragile and weak, especially considering the fact that only one of the relevant instruments adopted by regional organizations is in force. Nonetheless, they provide a prospective basis for developing possible future legal instruments. The situation is further complicated by the fact that domestic legislation on refugees is generally absent throughout the region. The case studies of Lebanon and Saudi Arabia provided a perfect basis for illustrating the highly unequal burden shouldered by neighbouring states to Syria on the one hand and the various attempts of Gulf states to contain refugees in those states on the other. The fact that host states in the Middle East are stretched to their limits to keep up with such high numbers of refugees—together with refugees' general limited legal status and its consequences in the region—is a clear evidence that without sufficient engagement from other states in and outside the region to provide resettlement places, both host states and refugees will continue to suffer. Gulf states'—and also the EU's—active engagement in sharing the financial burden of refugees by providing humanitarian aid and financial contributions to Middle Eastern host states is obviously nothing else but another tool of containment which has left the vast majority of Syrian refugees stranded in states incapable of meeting their needs.

Chapter 4 on the regional protection framework of Europe revealed that the European context—more precisely, the EU, with its relatively powerful supranational institutions and shared norms—offers optimal conditions for the establishment of an effective asylum system based on common standards of protection and fair burden sharing among its members. In addition, regional instruments provide a relatively high standard of human rights protection while the CEAS is undoubtedly the most developed regional system of asylum and refugee protection worldwide filling some of the gaps in the 1951 Convention. Nonetheless, the EU has clearly failed to realize its potential during the Syrian "refugee crisis". The country cases of Germany and Hungary perfectly illustrated that the homogenization of legislative acts under the CEAS is yet to be achieved

as the EU's response to the crisis has been highly fragmented and heterogeneous manifesting in 28 different policies. With very few exceptions including the exemplary humane and solidarity-based approach of Germany, the main objective of European states—illustrated by the example of Hungary in this thesis—has been to contain the crisis in Syria's neighbouring countries, to focus on security rather than solidarity and to consolidate the EU's external borders. As a result, despite the region's as well as the regional legal framework's obvious potentials, the European refugee regime has fallen short of providing adequate protection to refugees.

In the framework of this thesis, only a very limited number of countries providing the most extreme examples were selected for case study per region. Hence, further research is needed on individual countries in both regions in order to produce more representative and more nuanced results as well as to place the implications of the results achieved by this thesis into a wider or even fully comprehensive perspective.

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APPENDIX 1: ETHICS BOARD WAIVER FORM

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
TEZ ÇALIŞMASI ETİK KOMİSYON MUAFİYETİ FORMU

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞI'NA

Tarih: 02/07/2019

Tez Başlığı: BÖLGESEL MÜLTECİ KORUMA: AVRUPA İLE ORTADOĞU'NUN KARŞILAŞTIRILMASI

Yukarıda başlığı gösterilen tez çalışmam:

1. İnsan ve hayvan üzerinde deney niteliği taşımamaktadır,
2. Biyolojik materyal (kan, idrar vb. biyolojik sıvılar ve numuneler) kullanılmasını gerektirmemektedir.
3. Beden bütünlüğüne müdahale içermemektedir.
4. Gözlemsel ve betimsel araştırma (anket, mülakat, ölçek/skala çalışmaları, dosya taramaları, veri kaynakları taraması, sistem-model geliştirme çalışmaları) niteliğinde değildir.

Hacettepe Üniversitesi Etik Kurullar ve Komisyonlarının Yönergelerini inceledim ve bunlara göre tez çalışmamın yürütülebilmesi için herhangi bir Etik Kurul/Komisyon'dan izin alınmasına gerek olmadığını; aksi durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

04/07/2019
Tarih ve İmza

Adı Soyadı: Petra Fruzsina CSORBA
Öğrenci No: N15124821
Anabilim Dalı: Uluslararası İlişkiler
Programı: Uluslararası İlişkiler Yüksek Lisans
Statüsü: ☒ Yüksek Lisans ☐ Doktora ☐ Bütünleşik Doktora

DANIŞMAN GÖRÜŞÜ VE ONAYI

Bu tez etik kurul izni gerektirecek bir çalışma içermemektedir. Bu nedenle etik kurul izninden muaf tutulması uygundur.

Doç. Dr. Mine Pınar GÖZEN ERCAN
(Unvan, Ad Soyad, İmza)

Telefon: 0-312-2976860 **Detaylı Bilgi:** http://www.sosyalbilimler.hacettepe.edu.tr **Faks:** 0-3122992147 **E-posta:** sosyalbilimler@hacettepe.edu.tr

HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
ETHICS COMMISSION FORM FOR THESIS

HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
DEPARTMENT OF INTERNATIONAL RELATIONS

Date: 04/07/2019

Thesis Title: REGIONAL REFUGEE PROTECTION: A COMPARISON OF EUROPE AND THE MIDDLE EAST

My thesis work related to the title above:

1. Does not perform experimentation on animals or people.
2. Does not necessitate the use of biological material (blood, urine, biological fluids and samples, etc.).
3. Does not involve any interference of the body's integrity.
4. Is not based on observational and descriptive research (survey, interview, measures/scales, data scanning, system-model development).

I declare, I have carefully read Hacettepe University's Ethics Regulations and the Commission's Guidelines, and in order to proceed with my thesis according to these regulations I do not have to get permission from the Ethics Board/Commission for anything; in any infringement of the regulations I accept all legal responsibility and I declare that all the information I have provided is true.

I respectfully submit this for approval.

04/07/2019
Date and Signature

Name Surname: Petra Fruzsina CSORBA
Student No: N15124821
Department: International Relations
Program: International Relations Graduate Program
Status: ☒ MA ☐ Ph.D. ☐ Combined MA/ Ph.D.

ADVISER COMMENTS AND APPROVAL

Within the scope of this thesis, no activities/experiments that would require an ethics board decision will be performed. Hence, I approve the waiver of an ethics board decision.

Assoc. Prof. Dr. Mine Pınar GÖZEN ERCAN
(Title, Name Surname, Signature)

APPENDIX 2: ORIGINALITY REPORT

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
YÜKSEK LİSANS TEZ ÇALIŞMASI ORİJİNALLİK RAPORU

HACETTEPE ÜNİVERSİTESİ
SOSYAL BİLİMLER ENSTİTÜSÜ
ULUSLARARASI İLİŞKİLER ANABİLİM DALI BAŞKANLIĞI'NA

Tarih: 02/07/2019

Tez Başlığı : REGIONAL REFUGEE PROTECTION: A COMPARISON OF EUROPE AND THE MIDDLE EAST

Yukarıda başlığı gösterilen tez çalışmamın a) Kapak sayfası, b) Giriş, c) Ana bölümler ve d) Sonuç kısımlarından oluşan toplam 176 sayfalık kısmına ilişkin, 02/07/2019 tarihinde tez danışmanım tarafından Turnitin adlı intihal tespit programından aşağıda işaretlenmiş filtrelemeler uygulanarak alınmış olan orijinallik raporuna göre, tezimin benzerlik oranı %7'dir.

Uygulanan filtrelemeler:

1- ☐ Kabul/Onay ve Bildirim sayfaları hariç
2- ☐ Kaynakça hariç
3- ☐ Alıntılar hariç
4- ☒ Alıntılar dâhil
5- ☒ 5 kelimeden daha az örtüşme içeren metin kısımları hariç

Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Çalışması Orijinallik Raporu Alınması ve Kullanılması Uygulama Esasları'nı inceledim ve bu Uygulama Esasları'nda belirtilen azami benzerlik oranlarına göre tez çalışmamın herhangi bir intihal içermediğini; aksinin tespit edileceği muhtemel durumda doğabilecek her türlü hukuki sorumluluğu kabul ettiğimi ve yukarıda vermiş olduğum bilgilerin doğru olduğunu beyan ederim.

Gereğini saygılarımla arz ederim.

04/07/2019
Tarih ve İmza

Adı Soyadı: Petra Fruzsina CSORBA
Öğrenci No: N15124821
Anabilim Dalı: Uluslararası İlişkiler
Programı: Uluslararası İlişkiler

DANIŞMAN ONAYI

UYGUNDUR.

Doç. Dr. Mine Pınar Gözen Ercan

(Unvan, Ad Soyad, İmza)

HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
MASTER'S THESIS ORIGINALITY REPORT

HACETTEPE UNIVERSITY
GRADUATE SCHOOL OF SOCIAL SCIENCES
INTERNATIONAL RELATIONS DEPARTMENT

Date: 02/07/2019

Thesis Title : REGIONAL REFUGEE PROTECTION: A COMPARISON OF EUROPE AND THE MIDDLE EAST

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I respectfully submit this for approval.

04/07/2019
Date and Signature

Name Surname: Petra Fruzsina CSORBA
Student No: N15124821
Department: International Relations
Program: International Relations

ADVISOR APPROVAL

APPROVED.

Assoc. Prof. Dr. Mine Pinar Gözen Ercan

(Title, Name Surname, Signature)