

**DEPARTMENT OF INTERNATIONAL
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***Assessing the Disunity of the European Union Over the
Refugee Crisis***

Masters Research Report 2018

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ABSTRACT

The European Union claims to be more integrated than ever where there exists unity in certain areas through a common market, a common currency, a common border however, there is no common policy on asylum to address the current and evolving refugee crisis. Increased conflicts in the Middle East and Africa have led to the influx of refugees and asylum seekers to the European Union. In explaining the disunity over the refugee crisis in the European Union, it is necessary to explore the factors which influence states responses to the refugee crisis and applying these factors to case studies analyzing those states supporting the reallocation of refugees and those states against the reallocation of refugees. This can be attributed to member states interest and power which play a fundamental role in furthering disunity in the European Union.

Keywords; *European Union, Refugee Crisis, Disunity, Neofunctionalism, Liberal Intergovernmentalism, Burden Sharing, Human Rights.*

DECLARATION

I declare that all material presented for examination is my own work and has not been written for me, in whole or in part, by any other person(s). I also declare that any quotation or paraphrase from the published or unpublished work of another person has been duly acknowledged. The research report has been submitted for the Degree of Master of Arts in International Relations at the University of Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other University.

Natasha Agrizzi

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CHAPTER 1

INTRODUCTION

The effects of the increased conflicts in both the Middle East and Africa have sparked debate on the influx of refugees and asylum seekers to the European Union. The effects of these conflicts as seen in Syria are real and collectively felt since 2015's refugee crisis. It is thus an urgent threat facing the European Union. Research shows that historically, all crises which have faced the European Union have shown a common theme of disunity, where the European Union finds it difficult to act and respond as a collective to issues. While it can be argued that there exists disunity in the European Union, it is important for this research paper to analyse the disunity which exists between member states, thus, it is important to assess a specific case where this research will use the current refugee crisis.

The effects of refugee flows have brought together European state leaders to formulate policies aimed at addressing and mitigating these crises. The introduction of international laws regarding human rights as well as regulations such as the Dublin Regulation of 2003 have brought about mixed reactions in that not all member states have felt the effects of the refugee crisis to the same extent.

Given the urgent refugee crisis facing the European Union, stability continues to be threatened by the increase in conflicts throughout both Africa and the Middle, not showing any likely way for the European Union to appease these conflicts. It is therefore necessary to understand how the Commission, as an important institution of the European Union plays a role in trying to achieve unity, as well as how the Council, made up of member states, have failed in adopting and implementing coherent frameworks in providing a viable solution to the refugee crisis and further failed in creating a shared responsibility among its member states through a common asylum policy.

The purpose of this study will be to explore the disunity which can be seen throughout the European Union, specifically with regards to the current refugee crisis. This study seeks to understand the correlation between the interests of member states and disunity. Therefore, the basis of this research will be to focus on answering the following research question:

How can the disunity over the refugee crisis in the European Union be explained?

From this, this study seeks to find an outcome which is in support of the hypothesis that, member states' interest and power play a fundamental role in creating disunity in the European Union over the current refugee crisis.

Despite issues being very large and important, it would be expected for there to be enough pressure for states to agree on solutions. However, states have not done this. Thus, it brings into question why disunity can be seen throughout the European Union. The European Union claims to be more integrated than ever where there exists unity in certain areas through a common market, a common currency, a common border however, there is no common policy on asylum to address the refugee crisis. Thus, this research is necessary in that it forms part of a developing literature on the current issue facing the European Union. This can be seen as an empirical phenomenon from the perspective neofunctionalism, specifically pertaining to the notion of spillover as an important concept in explaining integration in the European Union.

1.1 OVERVIEW OF THEMES

A discussion of neofunctionalism is important to this research in that it plays an important role in the study of European integration and is considered to be the “most elaborate, ambitious and criticized theory of regional integration” (Tranholm-Mikkelsen 1991, 2). In the late 1950s and early 1960s, neofunctionalism developed as a theory in explaining European integration. While neofunctionalism covers a wide range of aspects, a full discussion would be too much for the purpose of this paper, thus only the foundational texts will be focused on.

Importantly, it focuses on the notion of spillover. This term refers to the idea that integration occurred as a process with integration in one sector ultimately leading to integration in another sector (Haas 1958, Lindberg 1963, Tranholm-Mikkelsen 1991, Bergmann and Nieman 2013). While integration had taken place in the European Union and led to a spillover into policy areas through having a common market, a common currency, and a common border, there failed to be the spillover into having a common policy on asylum seekers. Specifically, with regards to this policy area, there exists no unity among member states. Therefore, this can be explained through liberal intergovernmentalism (van Selm-Thorburn 1998).

Hence, liberal intergovernmentalism is necessary to this research. It developed as a theory in the 1990s as a response and criticism of neofunctionalism and is closely related to Andrew Moravcsik. Scholars have considered this theory to be one of the most important accounts of the European integration process (Cini 2016). In this, liberal intergovernmentalism is useful in trying to understand why states decide to cooperate in some policy areas but not in others. This cannot be understood separately from the historical background of the European Union in its integration.

The European Union emerged as a small and confined organisation with six member states. It has now expanded to becoming a large supranational organisation,

representing 28 independent, democratic states. It can be argued that states willingly join the EU due to the multitude of benefits as well as the fact that states can no longer act in isolation (Moravcsik 1993).

One of the fundamental criticisms of liberal intergovernmentalism is that it cannot fully understand the ways in which individuals and states construct their preferences (van Apeldoorn, Overbeek and Ryner 2003). Moreover, it does not focus on the role of important institutions such as the Commission (Rosamond 2000). It should be noted that the first 40 years of integration in the European Union took place step by step. However, integration has been seen as a process which is incomplete. This can be related to the fact that after each step of integration, there has seemed to be a following step.

A fundamental argument arises in that there exists disunity in the European Union over the current refugee crisis. It is important to consider the literature with regards to this issue. Maricut (2017) argues that the refugee crisis has been fundamental in showing the disunity between member states and institutions in the European Union.

Migrants application for asylum is subject to the Dublin Regulation of 2003, which includes registration and relocation of migrants and asylum seekers. In this regulation, if an asylum seeker has had their application turned down in one state and moves on in an attempt to apply in another country, their fingerprints stored on the database will show this (Niemann and Schmitter 2009). The second country can then refer the asylum seeker back to the first country to make a decision due to the fact that they have to handle the claim for asylum. In addition to this, states which had been impacted by the economic crisis, such as Greece and Italy, are also the countries at the external border of the European Union which makes them responsible for the handling of asylum seekers (Traunder 2016, Bordignon and Moriconi 2017). This brings in the issue of burden sharing.

This therefore includes reference to states experiencing integration differently due to differences between states, in that the way in which asylum is granted in the European Union varies from one state to another, as does the likelihood of being granted asylum. Here six countries deal with 75% of claims for asylum in the European Union. All rights

available to legal migrants are also available to refugees however, the extent of refugee aid varies widely across Europe. Moreover, member states fail to achieve a common asylum policy due to their differences in perception on migration as being either positive or negative depending on their geographical location (King 2012, Batchelor 2017, Bordignon and Mariconi 2017, Genschel and Markus 2017). In line with liberal intergovernmentalism, scholars argue that states are primarily concerned with benefits and gains in terms of power, thus, they are not likely to cooperate with one another (Maersheimer 2001, Marini 2015).

1.2. METHODOLOGICAL CONSIDERATIONS

As discussed earlier in this paper as well as in reviewing the literature, it became apparent that the purpose of this study will be to examine how the disunity over the refugee crisis in the European Union can be explained. From this, both the dependent and independent variables can be assessed. The dependent variable used in this research consists of the phenomenon of the disunity in the European Union while the independent variable is linked to the explanation of this phenomenon, which is outlined by member states interests and their power within the European Union.

From this, it is important to consider the operationalization and measurement of these variables. The operationalization of variables is considered to be the process used to define the variables in terms of observable properties. In this, the dependent variable of disunity can be operationalized in terms of defining it as well as in using process tracing. In this, disunity can further be measured by considering if there had been either an increase or decrease in state cooperation with one another.

According to David de Vaus (2001, 9), the purpose of research design is “to ensure that the evidence obtained enables us to answer the initial question as unambiguously as possible.” As such, the research design will be used to help identify the data that needs to be collected and how to best collect and analyse the data (de Vaus 2001).

This research is primarily qualitative in nature, whereby qualitative research seeks to capture a broader understanding of participant's perspectives, through which the researcher is able to explore and understand the meanings individuals or groups attribute to a social problem (Creswell, 2013). This research will benefit from employing qualitative research methods that aim to describe and determine a good understanding of a current issue such as the refugee crisis, which is useful as the study aims to generate an understanding of the impact of member states interests in creating disunity in the European Union.

In addition to this research being qualitative, it will also be inductive in that it will not be testing the theories of neofunctionalism or liberal intergovernmentalism, but rather, it aims to explain the outcome of disunity in the European Union as an empirical phenomenon which could be understood through them. Therefore, necessary to this would be process tracing, specifically with regards to the disunity. Process tracing is understood as an attempt to "identify and verify the observable within-case implications of causal mechanisms" (George and Bennett 2005, 138). Thus, while it contains both the dependent and independent variables, it aims to go beyond these in tracing the processes which led to the specific outcome. This is important for this study in that while the outcome of disunity in the European Union has become evident, and this phenomenon can be linked to aspects of liberal intergovernmentalism, it is necessary to trace the process that led to this outcome which may be linked to the national preferences. Furthermore, this process will be linked to the various factors which this paper finds to be important in determining how disunity arises between member states.

In order for this to be achieved, this study will focus on the collection of both primary as well as secondary research. This will include news interviews, press statements, statistical data compiled by international organisations as well as academic research such as journals and books.

Case selection has been guided by considering various criteria in terms of factors which may impact the responses of states regarding the relocation of refugees. These factors include but are not limited to the geographical location of the state, the

demographics of the state, the type of government of the state, the political ideologies of the state, populous movements, and the number of refugees.

While these factors can be applied to a universe of cases including all European Union member states, this paper has focused on a selection of cases. These cases have been selected according to the divide in the European Union over those supporting the relocation of refugees and those against the relocation of refugees. On the one hand, the cases selected for those states supporting the relocation of refugees include both Italy and Germany. Both Italy and Germany are important to this research in that they both take in high numbers of refugees. On the other hand, the cases selected for those states against the relocation of refugees include both Poland and Hungary. Poland and Hungary are important to this in that they both hold a strong national impetus and have not had high numbers of refugees.

In addition, cases included in this study will then form examples in evaluating where there had been efforts for unity and then in explaining why this had failed as well as how it had been justified at the level of the European Union. Finally, these cases are analyzed in the specific time period between 2015 – 2017.

1.3. OVERVIEW OF RESEARCH

This study therefore aims to investigate the disunity in the European Union regarding the refugee crisis by answering the research question; *How can the disunity over the refugee crisis in the European Union be explained?* It hypothesizes that liberal intergovernmentalism is useful in illustrating how member states interests have played a fundamental role in creating disunity in the European Union over the refugee crisis. This research is important in that while the European Union may be integrated in most areas, it fails to produce a common policy on asylum seekers which works due to conflicting interests of member states. Thus, process tracing proves helpful in

determining this empirical phenomenon. Therefore, this research report has been divided into six main chapters. This first chapter outlined the aims and objectives of this research study and introduced the research question that will guide this Masters Research Report. Furthermore, this chapter discussed why the research is important and details the rationale for the study. The second part of this chapter analysed the literature on the topic. The literature considered in this review looked at the important themes discussed throughout this research. These themes included theories of Neofunctionalism and Liberal Intergovernmentalism as well as the concept of the disunity in the European Union. This had been used to indicate the gaps in the literature as this topic is one which is recent and developing. The final part of this chapter described the methods that will be employed in this study. It discussed the methodology, the research design as well as the empirical research. This section included discussions on the dependent variable of disunity in the European Union as well as the independent variable of Liberal Intergovernmentalism. Furthermore, it justified the choice of using process tracing as a research method for this inductive qualitative research. Finally, it discusses the case selection as well as the collection of data. The second chapter will provide a detailed background to the topics discussed in the research paper, namely in discussing European Union integration as well as the refugee crisis. The third chapter focuses on the development of refugee protection with regards to both international as well as European Union frameworks relating to the rights of refugees. The fourth chapter discusses the main factors impacting the responses of states with regards to the refugee crisis. These factors include the geographical location, governments and institutions, political ideologies and demographics, and finally, populist movements. The fifth chapter will provide an analysis of the factors mentioned in chapter 4 in relation to the specific cases of Italy, Germany, Hungary as well as Poland. Finally, the last chapter will offer a concise summary of the findings that emerge out of the study. It will conclude by answering the initial research question “*How can the disunity over the refugee crisis in the European Union be explained?*”.

CHAPTER 2

BACKGROUND

2.1. UNDERSTANDING EUROPEAN INTEGRATION

2.1.1. THEORIES

The European Union emerged as a small and confined organisation with six member states, where states willingly joined and became members of the EU due to the multitude of benefits it provided as well as the fact that states can no longer act in isolation. Thus, the European Union has now expanded to becoming a large supranational organisation, representing 28 independent, democratic states. Importantly, the European Union can be traced back historically as emerging from the birth of the European Coal and Steel Community. In this, the European Union is “based on the rule of law... every action taken by the EU is founded in treaties that have been approved voluntarily and democratically by all EU countries. These treaties are negotiated and agreed by all Member States and then ratified by their parliaments or by referendum” (European Commission 2014, 3). Treaties important to integration include the Single European Act of 1987, the Treaty of the European Union of 1993,

the Treaty of Nice of 2003 as well as the Treaty of Lisbon 2009. The importance of these treaties is based on the fact that “treaties lay down the objectives of the European Union, the rules for EU institutions, how decisions are made and the relationship between the EU and its Member States” (European Commission 2014, 3).

Therefore, for the purpose of this paper, it is important to note that, the “EU has become the most highly institutionalized international organisation in history... Participation in the EU has, indeed, altered the nation-state itself” (March and Olsen 1998, 967-968). From this, the EU can be described as an international organisation, defined as “a body that promotes voluntary cooperation and coordination between or among its members” (McCormick 1999, 10). In this international organisation, the European Union is both partially an intergovernmental organisation and partially a supranational organisation. The European Union is intergovernmental in that member states cooperate when formulating a common foreign and security policy. However, decisions made are not enforceable and member states retain sovereignty over this aspect. The European Union is supranational in that member states delegate their sovereignty to an organisation where decisions are binding but lack proper enforcement mechanisms.

It should be noted that the first 40 years of integration in the European Union took place step by step. Nonetheless, integration has been seen as a process which is incomplete. This can be related to the fact that after each step of integration, there seemed to have been a following step. Primarily, states joined the European Union because of the economic benefits it produced. This was important in that after World War II, most states had been economically devastated. From this, it can be argued that organisations had been created mainly for rebuilding and changing the norms of the past. Thus, important to European Union integration are factors from theories such as neofunctionalism as well as liberal intergovernmentalism, where neofunctionalism differs from liberal intergovernmentalism in its focus on integration.

Neofunctionalism developed as a model to explain the growing level of European integration as well as the role of supranational bodies in the furtherance of this integration. It focused on how cooperation in specific economic policy sectors led to greater economic integration in Europe and then to wider political integration.

Furthermore, neofunctionalists see European integration as a self-sustaining process which culminates in the creation of a new polity. While the following section of this paper attempts to apply the theory of Neofunctionalism to the European Union's migration and asylum policy, it is important to first consider briefly the assumptions of Neofunctionalism.

For the purpose of this paper, it is important to outline a summary of the six main principles and assumptions of neofunctionalism as discussed by Schmitter (2005). The first and arguably most important assumption is that integration occurs as a spillover, where integration in one sector pushes states to integrate into other sectors. In this, "neofunctionalism's basic tenet [is that] integration leads to tensions, contradictions, and demands, which can only be resolved by taking further integrative actions" (Niemann and Schmitter 2009, 62). The second assumption made is that states are not the most important actors in regional or international systems. Rather, it is the state's decisions or actions which are determined by the national interests of sub-national groups and those groups within their state. This leads to the third assumption where neofunctionalism attaches importance to supranational organisations, which can then influence decisions and interests. Fourth, an assumption made is that because of the differences between states and actors, there would be differences in outcomes, thus each state would experience integration differently. The fifth assumption can be seen where the decisions and strategies of different actors overlap with one another. This arises from the idea that at first, actors would not have identical strategies and thus, because of these differences, they would pursue preferences that would benefit all. The final assumption made by neofunctionalism is that interests play an important role in driving integration. However, as integration occurs, these interests can change through the process of actors modifying their preferences, adopting common ideals and identities and the process of learning.

The internal market has been seen as the core of integration. Important to the internal market was having the same standards across borders. Jacques Delors was notable in the creation of the Single European Act of 1987. "A case illustrating strong functional pressure is the spillover from the internal market to the area justice and home affairs" (Niemann and Schmitter 2009, 57). This can be seen as the deepening of integration

into the same sphere, where migration and asylum are part of the single market. Here functional spillover can be understood as the economies of states being connected.

The Maastricht Treaty aimed to create integration into Justice and Home Affairs while states advocated for it to remain under the control of the Commission, the Parliament and the Court of Justice. While, the “communitarization of JHA has been largely driven by the need for common policies on internal security issues, such as immigration, asylum, or criminal prosecution and law enforcement” (Börzel 2005, 230).

Neofunctionalism’s second assumption could be contested regarding states not being the most important actor. While this remains true in part, it cannot be said that states have played no role in integration through the migrant and asylum policy. Here, political actors include national governments and institutions, political elites, non-state actors such as NGO’s, MNC’s and lobbyists. Neofunctionalism emphasizes elite decision making in that elites promote integration and they look for European solutions to solve their problems. However, with integration the problem arises whereby states feel they are losing their national identity. Here, Moravcsik (1993, 480) argues that three elements form the basis of liberal intergovernmentalism, namely, “the assumption of rational state behaviour, a liberal theory of national preference formation, and an intergovernmentalist analysis of interstate negotiation”.

2.1.2. SOVEREIGNTY

Sovereignty is important to integration in that states can no longer act in isolation. However, in democracies debates arise over who is sovereign – the state, the government, the president or the citizens? In most instances the citizens could be interpreted as being sovereign because they are the ones who decide on their political future through their right to vote. However, the citizens of a state cannot express themselves independently as one voice, thus they give up a portion of their sovereignty in order to be represented both nationally and internationally. Thus, in modern states, governments and institutions become sovereign. In order for this to be contextualized, it is important to examine the development of sovereignty.

The evolution of sovereignty was made possible through the Treaty of Westphalia in 1648 with states recognizing each other's right to sovereignty and equality, although, it is important to note that this notion of sovereignty had been formed during the time of monarchies. This traditional notion of sovereignty had primarily been about states not interfering in the internal affairs of other states, where states acted independently of one another and sovereignty was treated as a "matter of state-society relations occurring in an international vacuum" (Thomson 1995, 214). In part, this remains true as a modern conception of sovereignty through internal sovereignty where the state holds jurisdiction over its own internal domestic affairs. Here, "internal sovereignty means the existence of a single, stable and supreme state power structure inside the boundaries of a state" (Tokár 2001, 3).

A second notion of sovereignty is understood as external sovereignty where a "state is sovereign if it is action independently on the international scene and recognized by other states" (Tokár 2001, 2-3). In this, states recognize that all states are equal under international law. Therefore, sovereignty includes the idea that all states are equal despite differences in terms of territorial and population sizes. However, although states are legally equal, their influences in the international community differ.

Sovereignty is best understood as a social principle which has evolved over centuries and is still evolving today. Thus, sovereignty as independence, as seen in the traditional notion of sovereignty, has changed as a result of globalisation in that states have become more interdependent. In addition, sovereignty can be regarded as a highly-contested concept in that there has not been a set definition of sovereignty in international law. Therefore, for the purpose of this paper, sovereignty can be understood as the authority of a state. From this, Tokár (2001, 3) provides a fundamental argument regarding sovereignty where;

To be sovereign, a state must have supreme authority in some areas, almost certainly including defense, foreign policy, police and justice. But it cannot be determined what degree of state control over other fields, such as the economy is requested to treat a state as sovereign. States with state-controlled and liberal economies have both been deemed to be sovereign.

Sovereignty is thus considered as a basic right of every state, where states hold the right to govern their territories, with no authority higher than the state. However, it can be argued that no state has been able to exercise complete control over its territory thus no state is absolutely sovereign. This is due to the fact that in “the 21st century there can be no total national sovereignty in the face of global problems like terrorism or global warming” (Frigot, Bonadonna, and Robert Schuman Foundation 2016, 2). Furthermore, this includes the importance placed on human rights which places limits on what a state can do internally.

In joining the European Union, member states need to cooperate with one another because their actions can have an impact on other member states. Thus, states cannot act in their own capacity isolated from other states. Therefore, it can be argued that sovereignty is challenged in the sense that in joining the European Union, member states are expected to place a higher priority on the interests of the European Union as a whole rather than on their national interests. This becomes problematic in that member states often do not see European Union law as a function of their own legal system. It is therefore necessary to link the above discussions of decision-making to these claims, where the issue of sovereignty can be linked to the Council.

Fundamentally, a state cannot be prevented from giving up their sovereignty, “these transfers are not forced on the States, but they are based on the treaties and their acceptance/ membership” (Frigot, Bonadonna, and Robert Schuman Foundation 2016, 3). Moreover, when states willingly joined the European Union, it was necessary for them to accept existing treaties which allowed the law of the European Union to have effect on their law. The whole idea of the European Union is that it is a single supranational organisation – a single body of law that applies to all European Union member states. This presupposes that Union law is supreme in the event that individual member states have conflicting national laws, thus, there is a balancing of sovereignty through supranationalism. In addition, the Treaty of Lisbon reinforces sovereignty in that it provides the possibility for states to withdraw from the European Union at any point.

2.1.3. DECISION-MAKING

With the increase in the number of member states joining the European Union, decision-making needed to be adapted, therefore, becoming a “collective decision-making system with its own bargaining and decision-making norms” (Lewis 2000, 266). Important to this are the institutions involved in decision-making, notably the role of the Parliament, the Council and the Commission. The role of these institutions has been summarized by Kaeding and Selck (2005, 271) as;

The principal procedure for making decisions in the EU is quite clear: the Commission presents proposals; the Council and the European Parliament (EP) legislate; the member states have chief responsibility for implementing EU decisions; and the Commission adopts more detailed rules for the implementation of the fundamental rules adopted by the Council and the EP.

From the above discussion, it is important to consider the decision making in each of these institutions. First is the Parliament, the European Union’s first official institution and the world’s largest transnational democratic electorate. Furthermore, it is the European Union’s only directly elected body consisting of 751 members, headed by a president and 14 vice presidents, where Parliament is elected by citizens and represents citizens. In Parliament, seats are divided among member states proportionally to their population, this has often created the issue of smaller states being overrepresented. With Parliament’s election in 1979, it had limited powers with no power to veto decisions. The Maastricht Treaty in 1992, which established the adoption of the European Union, introduced Parliament’s right to co-decision and ultimately expanded Parliament’s power. However, with regards to decision-making, “as a rule the Parliament can only take decisions when at least one-third of the MEPs are present for a vote” (European Commission 2014, 11). Thus, in some cases, Parliament votes along simple majority lines, where a majority of the MEPs, present and voting, must vote in favour. An absolute majority is needed in cases of important decisions. Here a majority of the Parliament must vote in favour, regardless of who is there and who abstains from the vote. Thus, there needs to be at least 376 votes in favour for a decision to be passed. In this, Parliament’s role in decision-making is important in that all proposals for European Union laws must be checked by Parliament, where Parliament can choose to accept, amend or reject a proposal.

Secondly, the Council as an institution of the European Union is made up of 28 members who are either presidents or prime ministers and are elected to represent the national interests of their state. The President of the Council is elected by a qualified majority vote, “whereby at least half of the total number of European Union Member States, representing about two thirds of the population, must vote in favour. In some cases, unanimous voting is required in the Council” (European Commission 2014, 7). Furthermore, the European Union Council proposes a president for the Commission to Parliament. “If the proposed candidate is elected by Parliament, he then proposes 27 candidates for the other seats in the council for commissioners, which Parliament then chooses to elect. Important to the role of the Council, ministers of EU Member States meet to discuss EU matters, take decisions and pass laws. The ministers who attend these meetings have the authority to commit their government to the actions agreed in the Council meetings” (European Commission 2014, 14).

Finally, an important institution in the European Union is the Commission which is the only institution which can propose new laws, which the Council and Parliament may adopt. This is understood as the European Union’s standard decision-making procedure known as the ordinary legislative procedure or co-decision. Furthermore, the Commission is seen as the main executive body of the European Union consisting of 28 members, one from each member state, in which they agree to set their national interests aside in the interests of the whole community. In the Commission, decisions are usually made by full consensus unless in the case of a vote being required, they would then use a simple majority, with each commissioner having one vote regardless of their position. Although the President of the Commission gets only one vote, he plays a bigger role in that under European Union treaties, he defines the policy direction, assigns portfolios to each of the commissioners and at any time can change the shape or attribution of the portfolios. However, it is important to note that before proposing legislation, the Commission takes stock of existing laws and conducts an impact assessment to evaluate the potential economic, social and environmental consequences of any new initiative. New situations and issues developing in Europe are also taken into account.

The Lisbon Treaty gave European Union institutions more power than they had historically. This formed to make decision-making more effective in European Union institutions. Therefore, for laws to come into existence, a member must first have an idea of a law, make a draft of the law, officially propose the law and then have it accepted. Notably however, the European Union cannot make laws in any areas, it can only make and pass laws where it has the necessary competence as outlined in the founding treaties. In some policy areas, “the decision-making competences are shared between the Union and the Member States. This means that if legislation is passed at EU level, then these laws have priority. However, if no legislation is adopted at EU level, then the individual Member States may legislate at national level” (European Commission 2014, 8). This can be linked to the fundamental argument of this paper as mentioned by Frigot, Bonadonna, and Robert Schuman Foundation (2016, 3);

Indeed a limited number of Europeans believe that the European Union intervenes too much, and at the same time it restricts the sovereignty of the States, which they believe would be better able to settle problems themselves. A much higher number also believe that the Union does not intervene enough. They therefore acknowledge that the Union should have a more important place at national and world levels, and criticise it when does not assume its role and seems unable to settle major problems.

This research can consider the argument that states view qualified majority voting as a threat to their sovereignty. “According to its founding Treaties, the EU can adopt measures that have the force of law in all member states. In particularly sensitive areas, these must be adopted unanimously but most measures are adopted under qualified majority voting rules. This means that members of the EU, just like regions within a nation, often end up enforcing laws that their governments opposed” (Kauppi, Widgrén, and Carrillo 2004, 223). It is from this that decision making in the Council is problematic in that it uses a qualified majority vote. A decision is reached if two conditions are met. Either 55% of member states must vote in favour or the proposal must be supported by member states representing at least 65% of the European Union population. Furthermore, there exists the possibility of blocking decisions, where proposals can be blocked by at least four member states, provided they represent more than 35% of the total European Union population.

The fact that states advocate for unanimity shows how states view qualified majority voting as a threat to sovereignty. However, unanimity in the Council does not mean that every state voted in favour because abstention does not prevent a unanimous decision. Moreover, in decision making, regulations as a type of law are considered to impact sovereignty. Regulations are similar to the national laws of states where governments set laws and define how to achieve them. Regulations in European Union laws are binding on all member states who accept the laws, and thus overrules existing national laws. These leave little room to national governments and therefore, are not a preferred type of law. This has been supported by Tokár (2001, 7) where “regulations... undermine the traditional notion of state sovereignty. In the case of regulations and directives it is those adopted by qualified majority voting in the Council, because these are applicable and binding on member states that voted against them”.

Furthermore, all member states “accept that the laws that they have agreed to make the EU function supersede prior national laws in those specific areas. If national courts are unable or unwilling to implement particular laws, the European Court of Justice (ECJ) then adjudicates to ensure that EU member states and the EU institutions abide by the rules they have collectively agreed” (Niblett 2016, 5). From this, member states are primarily responsible for the correct and timely application of European Union treaties and legislation. The Commission monitors the application of Union law and if it finds that a member state fails to properly incorporate directives into national law, or if a member state is suspected of breaching European Union law, the Commission can open formal infringement procedures. However, sovereignty remains unchallenged in that there lacks the physical enforcement of European Union law.

Decision making in the Council in certain cases require unanimity. These cases are considered to be at the heart of sovereignty, where member states prefer to keep these matters at a governmental level rather than handing its powers over to the European Union. Furthermore, the Council also tries to find unanimity in subjects which only require qualified majority, this showing the respect for the sovereignty of states. Lewis (2003, 116) provides an example of this regarding the decision to regulate the working hours of citizens:

On the eve of the Maastricht summit in December 1991, a sufficient, qualified majority existed to pass the working time directive by formal vote. Why negotiations continued for nearly another 2 years and why the others worked for so long to accommodate British reservations goes to the heart of the institutional and normative environment of daily EU decision making. Rather than push for a vote, or even raise the threat of isolation, the permanent representatives spent long hours trying to bring the British on board.

In line with this, the principle of subsidiarity plays a fundamental role in that it exists to ensure sovereignty of member states. In line with this, national parliaments are sent a draft of the proposed legislation. If they think that it goes against the principle of subsidiarity, they can stop it. They can object with the two votes given to every member state (European Commission 2014). Moreover, the principle of subsidiarity prevents the European Union from unnecessarily infringing on the national government's legislative power. If one-third of national governments object to the proposal, the proposal must be reviewed. Based on the review, the Commission may choose to amend or withdraw the proposal.

If more than half of national parliaments object, the proposal must be reviewed. The Commission must explain its position if it decides to keep the proposal without change. Thereafter, both Parliament and the Council must decide if they agree with the Commission or the national parliaments. If more than half of the Parliament or Council agree with the national governments, the proposal is dropped. Furthermore, it cannot be argued that decision-making within the European Union poses a challenge to sovereignty in that the European Union has been given its authority by the member states. This is not to say that the European Union disregards and acts in isolation from national governments, but rather involves national governments, where the European Commission (2014, 23) makes explicit that:

The EU institutions are encouraging the national parliaments to become more involved in the activities of the European Union. Since 2006, the Commission has been transmitting to national parliaments all new legislative proposals and has replied to their opinions. With the Lisbon Treaty from 2009, the rights and duties of national parliaments within the EU are clearly set. National parliaments can express their views

on draft legislative acts as well as on other matters which may be of particular interest to them.

In decision making, directives as a form of law, describe the goal of the law but it does not state how the goal should be achieved. Thus, national governments can use their autonomy to decide how to achieve the goals and what national laws are needed to do so. This gives member states more room to choose their own approach, where ways of achieving the goals can differ among member states with different laws per country. However, if it is found that a directive is not sufficient in achieving the goal, it can then switch to a regulation. Thus, directives are the preferred form of European Union legislation because of the arguments that the European Union should stay out of the business of member states as much as possible. Directives must be adopted by the Commission, Council and Parliament.

2.2. UNDERSTANDING THE REFUGEE CRISIS

In understanding the refugee crisis in Europe, it is necessary for this paper to note the difference between various concepts such as migrants, asylum seekers as well as refugees. Importantly, the concepts of migrants and refugees are often considered to have the same meaning and relate to the same people. However, there exist fundamental differences between the two concepts. For the purpose of this paper, a migrant refers to an individual who is moving either internally within a state or externally from one state to another. Here, migrants move primarily for economic reasons such as for better living standards or better working opportunities. In contrast, a refugee holds a different status. According to Article 1, Section A(2) of the United Nations Convention and Protocol Relating to the Status of Refugees a refugee can be defined as an individual who has a "...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” (UNHCR 2010, 14). In addition, asylum seekers are those who make attempts to move to another state, seeking refuge. Reasons for this are attributed to their feelings of their lives being in danger in their country of origin. These claims are legitimate where they face persecution or torture on accounts of their race, nationality or religion.

Moreover, if an individual is able to prove to the state in which it is applying for asylum that they are in danger of being persecuted then they cannot be turned back where as being a migrant, if there is no space for them then they can be deported, while a refugee holds the status of a refugee even after being granted access into the European Union. However, they have a more protected status than a migrant where the state has certain legal rights and responsibilities regarding the protection of refugees. Therefore, from these definitions, this crisis has often been referred to as the migrant crisis, while it has been made evident that this is not the case based on the notion that migrants choose to leave their homes for better employment opportunities. Refugees “are persons fleeing armed conflict or persecution. These are people for whom the denial of asylum has potentially deadly consequences” (UNHCR 2016). Thus, the main focus of this study is on refugees and asylum seekers pertaining to the refugee crisis as an important and relevant debate since the influx of refugees to Europe in 2015, where it is necessary to understand the root causes and events leading up to the refugee crisis.

In data available from the UN Refugee Agency, by 2018, approximately 68.5 million people are either internally displaced, an asylum seeker or a refugee. This represents a 60% increase from roughly 42.9 million in 2010. From this total of 68.5 million people, 25.4 are refugees with more than half being under the age of 18 and 3.1 million are asylum seekers. Additionally, three states produce around 57% of the total refugees. Namely, Syria producing 6.3 million, Afghanistan producing 2.6 million and South Sudan producing 2.4 million (UNHCR 2018). In a statement by António Guterres, the United Nations High Commissioner for Refugees, he argued that “the massive flow of people will not stop until the root causes of their plight are addressed” (Fleming 2015).

Instability in the Middle East and North Africa, regime change by the west which adds to political instability, the rise of ISIS and civil wars leading to humanitarian crises in states such as Syria, Afghanistan, Libya, and Iraq are some of the various factors which can be attributed to the refugee crisis. In this, instability emerges from military intervention in states by other states which have been supported by NATO forces. This was seen in Afghanistan, Iraq as well as in Syria, where these military interventions have often been a way for states to create regime change. In Africa, we see civil war in Sudan. While many governments are to blame by supporting and funding various groups and interventions, it can be argued that the refugee crisis is thus as a result of a humanitarian crisis.

In the case of instability in the Middle East, Syria in 2011 had a population of approximately 22.4 million people. From the civil war, many have been killed, most displaced, while others have left the country and become refugees. Numerous refugees are scattered throughout the Middle East with 1.1 million in Lebanon, making up 20% of Lebanon's population, 1 million in Iran, 700 000 in Jordan and 289 000 living in Egypt. All countries are underfunded because the UN Refugee Agencies do not have enough funds to deal with these large amounts of refugees. Although Arab states have pledged to provide financial support to refugees, they have accepted only a few thousand Syrian refugees into their territories despite their ability to do more. In contrast, the Arab states of the Gulf have accepted no refugees from Syria. An important case is Saudi Arabia, which by the end of 2017 had only taken in 155 refugees. Saudi Arabia holds the ability to host refugees in Mina, which has more than 100 000 air-conditioned tents with running water and bathrooms which provide brief accommodation to pilgrims, however, it is only used for a few weeks of the year. These reactions of states in the Middle East led to refugees seeking asylum elsewhere such as in Europe.

Europe has experienced the highest influx of refugees since the Second World War. On the one hand, Syria has become the largest source of refugees where the sudden rise of refugees had to do with the siege of Kobanî which forced almost 400 000 people from their homes onto Turkish soil. Turkey, which is home to approximately 3.5 million refugees, has been experiencing a steady economic decline since 2012, which saw the influx of Syrian refugees worsening the situation for the Turkish economy. This

forced Ankara to refuse to issue work permits to Syrians, creating conditions where refugees are unable to make a living, despite being educated. With little to no prospects in Turkey and the abolition of the migration policy the refugees moved on to Europe. European Union heads of states and governments would then try to seal off their state from refugees causing refugees to move onto another state. Refugees would then travel from Greece to Hungary who then erected a fence on its Serbian border which redirected refugees to Croatia thus, failing to address the root cause of the problem but rather pass it on to another state.

In addition to this Eastern European route for refugees to enter Europe, others made their way through the Mediterranean Sea where refugees would pay smugglers to help them travel across the sea to Europe. In 2014, approximately 170 000 people travelled across the Mediterranean Sea to reach Europe. These boats would travel from North Eastern African cities to Italy and Malta and enter into the European heartland. Of this, there had been an estimated 42 000 people who came from Syria. In 2015, the amount of people had been estimated to be about the same, while only 7 000 people were from Syria. This is because most Syrian refugees prefer to use the Eastern European route. It has been argued that “thousands of refugee parents are risking the lives of their children on unsafe smuggling boats primarily because they have no other choice” (Fleming 2015). Despite this unfavourable means of entering the European Union leading to a higher rate of deaths at sea, many refugees continue to make use of it because states have a legal responsibility to protect them.

While it can be argued that the European Union was not prepared for a refugee crisis on this scale, it cannot be said that it is a new phenomenon to the European Union. The flow of refugees is not a new phenomenon to Europe, this has taken place throughout history. Thielemann (2002, 16) argues that “Europe’s post-war asylum regime, until the early 1990s, was characterised by a remarkable degree of stability, despite migratory pressures. Attempts to counter these measures focused primarily on adjusting existing regulatory frameworks to speed up the asylum process, tightening visa requirements and introducing cuts in the social provisions for asylum seekers. At the same time, the principle of offering displaced persons arriving at a state’s borders the possibility to apply for asylum remained largely untouched”. However, a notable difference to the past historical migrations is where unprecedented

events carry with them economic and political repercussions which are shaking European states and their constitutional foundations. A further difference is the fact that refugees are from culturally different states such as Syria, Iraq and Afghanistan.

CHAPTER 3

DEVELOPMENT OF REFUGEE PROTECTION

3.1. INTERNATIONAL FRAMEWORKS

This section sets out the international legal framework on which refugee protection is built. The experiences of World War II had been an important turning point in the international community. It signified the need for a greater focus on human rights. Following the end of World War II and the first session of the General Assembly in 1946, the Economic and Social Council of the United Nations began working on a draft bill of international human rights. In 1947 a Commission of Human Rights had been established, consisting of 18 members from different backgrounds and different geographic locations, with the aim of drafting an International Bill of Rights. The draft later led to the United Nations General Assembly adopting the Universal Declaration of Human Rights on 10 December 1948.

This is an important consideration in that refugee laws do not operate in isolation, rather, they are best understood in conjunction with other international documents such as the 1948 Universal Declaration of Human Rights, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees, as well as the 2016 New York Declaration for Refugees and Migrants. These international documents are similar in that they all call for the support of protecting the human rights of citizens and as well as protecting citizens from threats of mass atrocities and crimes against humanity such as genocide. However, in considering the similarities between these international documents, it has been stated in Chapter XVI, Article 103 of the United Nations Charter that, “[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail” (United Nations 1945, 19).

It should be noted that the Universal Declaration of Human Rights is in fact not a treaty governing states behaviour and therefore, it is neither binding nor enforceable on states. Rather, as stated in its Preamble, it serves as a “common standard of achievement for all peoples and all nations” (United Nations 1948, 3). Nonetheless, it sets out the shared values and practices agreed upon by states in the international community, with the aim of protecting refugees.

The rise in the number of refugees can be attributed to the rise in the number of human rights abuses. Importantly, the above international frameworks all share the same commitment to protecting and promoting human rights as outlined by Article 2 of the Universal Declaration of Human Rights in which the United Nations (1948, 6) states;

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Furthermore, Article 14 includes that “everyone has the right to seek and to seek and to enjoy in other countries asylum from persecution” (United Nations 1948, 30). These

principles outlined in the Universal Declaration of Human Rights have provided the guidelines under which the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees, have been built.

The international community has made it explicit that refugees must be given legitimate opportunities to survive when facing persecution, as emphasized after World War II. Important to this was the establishment of international laws concerning refugees and asylum seekers, most notably, the 1951 Convention which outlines the rights of refugees and serves as the foundation of international refugee law along with its 1967 Protocol. This had been important in establishing an international standard which outlines the rights of asylum seekers, where the “Convention protects the rights of people fleeing persecution on the grounds of race, religion, nationality or memberships of a particular social group or political opinion” (Thielemann 2002, 13). Moreover, the 1951 Refugee Convention established certain rights for refugees under international law. This includes the right not to be returned to their country of origin if their safety cannot be assured, their right to be penalized if entering the country illegally if they request asylum, and the rights to life, security, religious expression, primary education, free access to courts and equal treatment by taxing authorities.

The 1951 Convention provides the guidelines which a person must fulfil in order to be given refugee status, it had focused on “events occurring before 1 January 1951” (UNHCR 2010, 14) specifically in Europe. Thus, the establishment of the 1967 Protocol was necessary due to its limits with regards to time as well as location therefore, providing universal coverage. Therefore, “it has since been supplemented by refugee and subsidiary protection regimes in several regions, as well as via the progressive development of international human rights law” (UNHCR 2010, 2). Additionally, the 2016 New York Declaration for Refugees and Migrants states in section IV, point 65, that:

We reaffirm the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto as the foundation of the international refugee protection regime. We recognize the importance of their full and effective application by States parties and the values they embody. We note with satisfaction that 148 States are now parties to one or both instruments. We encourage States not parties to consider acceding to those instruments and States parties with reservations to give consideration to withdrawing them (United Nations General Assembly 2016, 12).

These international frameworks are necessary in that they require states to protect and house refugees without discrimination. Furthermore, refugee law has developed from international law into regional laws, which have importance and applicability to the European Union in that it has been signed and agreed to by all member states. Moreover, included in this binding legislation is the “principle of non-refoulement, that is the obligation on states not to send a refugee back to a persecuting country, [which] can be regarded as the centerpiece of refugee protection” (Thielemann 2002, 13). In line with this legislation, the European Union has adopted additional legislation with regards to policies on migration and asylum.

3.2. EUROPEAN UNION FRAMEWORKS

As a signatory to multiple United Nations human rights conventions, the European Union has an obligation to address refugees. Here the United Nations Universal Declaration of Human Rights forms the basis of the European Convention on Human Rights adopted in 1950 and later entered into force by 1953. In addition, Article 18 of the Charter of Fundamental Rights of the European Union states that “the right to asylum shall be guaranteed with due respect for the rules of the Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees” (Council of the European Union 2012, 399). Most importantly, the 1951 Convention and its 1967 Protocol introduced the notion of non-refoulement. Article 33 of the Convention and Protocol Relating to the Status of Refugees states that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (UNHCR 2010, 30). This is binding on states in that they “have preferred to accede to both the Convention and the Protocol. In doing so, they reaffirm that both treaties are central to the international refugee protection system” (Nicholson and Kumin 2017, 17).

Importantly, the notion of spillover is imperative to integration in the European Union where an important role was played by the “opening of borders within Europe, [which led] to the free movement of people from one state to another [meaning] it was crucial to establish standardization of asylum policy in the EU... the opening of national borders led to states’ realization that this was an area in which they are unable to stand alone” (van Selm-Thorburn 1998, 634). Therefore, with the establishment of the Schengen Agreement, there needed to be a common agreement between member states on the shared borders with one another and in developing common standards. This has led to the European Union adopting a Common European Asylum System. This attempts to harmonize asylum rules across the European Union and increases the chances that an asylum request is dealt with in the same way across Europe. Moreover, it aims to protect against abuses of the national asylum systems. This reiterates that the European Union “shall develop a common 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. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties” (European Union 2012, 76).

Finally, cross border transactions create a demand for community rules, which are then supplied by European Union institutions. However, in migration and asylum with regards to the department of Justice and Home Affairs, even though decision making is part of a community method of the ordinary legislative procedure, in every other policy area, laws can only be drafted and initiated by the Commission, but in Justice and Home Affairs, it can also be initiated by member states. It gives member states some say as to where the law should go and it is debated, i.e. member states can initiate it without going to the Commission first. Furthermore, the “sources of Community law and the declaration of their binding force can be found in Article 249 of the European Community Treaty. According to this article: “In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council and the Commission shall make regulations and issue

directives, take decisions, make recommendations or deliver opinions” (Tokár 2001, 6).

European Union law is constantly being revised. Thus, we see developments with regards to important frameworks in the European Union. Most notably those of the Dublin Regulation (1997, 2003, 2013) as well as the Asylum Procedures Directive (2005, 2013, 2016)

Arguably one of the most important frameworks in the European Union regarding refugee laws is the Dublin Regulation. The Dublin Convention had initially been adopted in June 1990 to replace the Schengen Agreement originally used by member states in determining asylum applications. The Dublin Convention was later ratified by all member states in August 1997. This was accepted by member states as a means of preventing numerous applications for asylum in different member states as well as a means of preventing abuse of the system by applicants. In line with international frameworks, Article 2 of the *Convention determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities* – also referred to as the Dublin Convention I – states that “Member States reaffirm their obligations under the Geneva Convention, as amended by the New York Protocol, with no geographic restriction of the scope of these instruments, and their commitment to co-operating with the services of the United Nations High Commissioner for Refugees in applying these instruments” (Council of the European Union 1997, 3). This shows that member states have reiterated their commitment to the 1951 Convention and its 1967 Protocol and further highlighting that there should be no geographic restrictions.

The Dublin Convention was an important step in refugee laws in the European Union. It was adjusted numerous times, with the latest Dublin III Regulation in effect since 2013. While differences exist between the three Dublin Regulations, important considerations in the convention referred to creating mechanisms in establishing which member state would be responsible for asylum applications. Important to this is Article 3, Section 2 and 3 which state, “2. That application shall be examined by a single Member State, which shall be determined in accordance with the criteria defined in this Convention. 3. That application shall be examined by that State in accordance

with its national laws and its international Obligations” (Council of the European Union 1997, 3). Therefore, its main aims are in deciding on which member state is responsible for deciding on asylum applications as well as in ensuring that only one member states processes each application.

From this, in considering laws in the European Union, the Dublin Regulation, as a regulation serves as a binding law among member states. Therefore, applications by refugees and asylum seekers are subject to the Dublin Regulation, which includes the registration of refugees and asylum seekers. In this regulation, if an asylum seeker has had their application turned down in one member state and then tries to apply in a different member states, fingerprints kept on databases would reflect this. The second member state is then required to return the asylum seeker back to the first member states to make a decision based on the fact that they are required to handle the claim for asylum. In addition to the constant changes, in December 2017, it had been argued for reform of the Dublin Regulation where Parliament had voted in favour of a report that proposes a radical rethink. It calls for a fair redistribution of all refugees across all member states where all member states have to take part. This will require states to consider existing family ties and integration. This resolution has not been passed yet due to the national interests of some of the governments of member states.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection – also referred to as the Asylum Procedures Directive – acts as an important framework in the European Union with regards to refugee law. While it serves as a directive, it acts as a goal and sets out the minimum standards required, allowing states the decisions on how to implement them. This assumes that states already have some form of national law in place regarding the policy. Furthermore, “governments cannot ignore international norms is the fact that such norms are protected by domestic institutions. European States have usually enshrined the right to asylum as a fundamental principle in their constitutions” (Thielemann 2002, 14). Therefore, it assumes that a member state’s national constitution already includes some form of policy regarding migration and asylum due to the fact that they are international laws. Similar to the Dublin Regulation, the Asylum Procedures Directive has changed over time. Initially it had

been adopted in December 2005 and then later reformed in June 2013 with proposed reforms to the directive being made in 2016.

Due to the effectiveness of the Dublin Regulation, specifically regarding the conditions of refugees, the Asylum Procedures Directive serves as an important framework whereby it sets out the process for asylum applications such as how to apply for asylum, how the application will be considered, what help the asylum seeker should be given as well as how to appeal decisions (European Commission 2013). Furthermore, the “main objective of this Directive is to further develop the standards for procedures in Member States for granting and withdrawing international protection with a view to establishing a common asylum procedure in the Union” (Council of the European Union 2013, 61). It had been necessary to develop a common system among member states in order to regulate the asylum process. This was due to the fact that the asylum process has varied between member states showing differences in the ways in which asylum had been granted as well as differences in the likelihood of asylum being granted among member states.

In addition to the Dublin Regulation as well as the Asylum Procedures Directive, this paper considers the various agencies involved in the asylum process. Following the establishment of a single market allowing the free movement of goods, services and people, the European Union created various agencies each with the aim of implementing various policies. Most notable to the topic of border management, refugees and asylum seekers, the European Union established agencies such as the European Policy Office (EUROPOL), FRONTEX, as well as the European Asylum Support Office (EASO).

The European Policy Office (EUROPOL) was established in July 1999 as the EU’s law enforcement agency as a response to transnational crime as a result of the single market. Most importantly, EUROPOL gathers and analyzes information about criminal activity and encourages cooperation with local institutions and local police forces. It also provides operational support to member states law enforcement. Following EUROPOL, the European Union needed to establish a central system in which all member states had access to information regarding asylum seekers applications. In 2003 the European Union had established the European Asylum Dactyloscopy

Database or EURODAC. This had the sole purpose of collecting fingerprints of asylum seekers in order for states to have a means of determining whether an application had been made previously as well as in determining which member state had been responsible for examining the application thus, in line with the Dublin Regulation. However, later in 2016, a new proposal was made regarding a reformed EURODAC Regulation in which the process of capturing fingerprints would be reinforced. This was necessary following the refugee crisis and the high influx of asylum applications. As a consequence, states found themselves unable to cope with the high numbers which resulted in states being unable to maintain the process. Thus, the proposal calls for the use of additional biometric identifiers such as digital photographs as well as facial recognition. Furthermore, EURODAC was important as it allows European Union law enforcement access to the fingerprint database “under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism” (European Commission 2013, 3).

In November 2005, the European Union established the European Border and Coast Guard Agency, or FRONTEX, which is controlled and regulated by the European Parliament. FRONTEX thus serves as a mechanism to contribute to facilitating and managing cooperation between member states on the European Union’s external borders, in which, the “Council welcomed the proposal to establish the agency, and argued that, whilst member states should be responsible for the management of external borders, there was a need for operational cooperation between member states and with third countries” (Ekelund 2013, 109). Furthermore, FRONTEX helps with issues of migration in that it monitors migration flows as well as provides assistance in screening, registration and identification of the asylum seekers. Moreover, when a state faces a sudden high influx of refugees, as seen during the refugee crisis, a member state can call on FRONTEX for both technical as well as operational support for a limited time period. This is in the form of Rapid Border Intervention Teams (RABITs), made up of border guards from other European Union member states.

Additionally, the European Asylum Support Office (EASO) had been established in 2011 as the primary agency in providing assistance to member states particularly in times of a high influx of refugees and asylum seekers, ultimately resulting in the

member state facing a high number of applications. However, it has been argued that FRONTEX and EASO are “fairly small, weak and intergovernmental in structure” (Genschel and Markus 2017, 5). While this is not to say that these institutions have not been successful, it remains that there exists a large number of migrants and asylum seekers who try to move to Europe through means of refugee smugglers. Aristotle (2017, 4) argues that this is true in that the “international community is yet to develop a system that would make what smugglers offer unnecessary and therefore irrelevant – a system that would stabilise populations, properly care for them and process their claims in a timely manner.” Thus, despite existing international and regional frameworks regarding the rights of refugees and the responsibility of states in the international community, the European Union continues to show disunity among its member states. This can then be traced to various factors as shall be discussed in the following chapter.

CHAPTER 4

FACTORS IMPACTING RESPONSES

While the European Union faced a refugee crisis from 2015, it is not to say that it is a new phenomenon. External migration is not new to the European Union, rather, it has existed throughout history. This had been seen following the end of World War II as well as in people moving due to historical colonial ties furthermore, it existed due to economic migration. While this is not new, migration has changed with regards to the fact that people are now less free to move freely from one place to another. International law places the obligation on states to act and uphold certain values of which the member states of the European Union have accepted and agreed to as moral citizens of the international community. However, while international law provides that a state may not refuse a refugee or asylum seeker, many European Union member states have had conflicting ideas and interests regarding refugees and asylum seekers with numerous member states making it difficult for refugees to arrive in Europe, with member states taking measures with the sole aim of reducing asylum flows to Europe (Stern 2016).

These differences in responses by member states can be traced back to various factors as having an impact on the responses given by states. Most notably there was

an incomplete process of integration in the European Union. Although integration led to the creation of the Single European Act and the free movement of people goods and services, a problem arose in that member states argued that with this they had agreed to the free movement of people that were European Union citizens. It can be argued that the European Union has one of the wealthiest economies in the world, with well-organized states, functioning social systems, infrastructure, democracy and huge industries and therefore, it would be able to handle the challenges of the refugee crisis if it wanted to – however, this too applies to the whole western world. Here, politics, economics and security go hand in hand whereby member states fail to establish cooperation between one another. As cited in Aristotle (2017, 3), Mr Ban Ki Moon, former Secretary General of the United Nations, argued that “the world is facing the biggest refugee and displacement crisis of our time. Above all, this is not just a crisis of numbers, it is also a crisis of solidarity.” In addition to this, Filippo Grandi, United Nations High Commissioner for Refugees, stated that “the willingness of nations to work together not just for refugees but for the collective human interest is what’s being tested today, and it’s this spirit of unity that badly needs to prevail” (Aristotle 2017, 3). Thus, while the European Union argues to be more integrated than ever, it failed to show unity between members through cooperation with one another regarding the refugee crisis based on a number of factors.

The issue of burden sharing is not a new phenomenon between member states in the European Union. Rather, it is a historical issue which came up during the first Balkan crisis in the early 1990s and brought about both financial and physical burden sharing. Initially, burden sharing was a reference to solidarity and fairness among states. However, the current refugee crisis has been characterized by the issue of burden sharing, where the differences in reception figures as well as conditions between member states in the European Union show that there exists an issue of burden sharing, where states have failed to achieve solidarity among one another, specifically with regards to the issue of asylum and migration. Here, the UNHCR (2004) states that “the refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and responsibility and burden sharing among all States”. Thus, burden sharing includes states obligations to do so, whereby states may need to implement policies which go against their own national interests but are in the interests of the whole region.

The Dublin Regulation has placed the responsibility on states to examine and process asylum applications based on the point of first entry. This has placed an uneven pressure on member states in that there exists an uneven distribution of asylum seekers throughout the European Union. The European Parliament (2018) has provided data on asylum applications per member state for the period of 2012 – 2017. From this data, it can be calculated that since 2012, only 5 out of the 28 member states have had to deal with a majority of the asylum applications. For the ‘pre-crisis’ period of 2012 – 2014, 5 member states – Germany, France, Sweden, Italy and Belgium – were faced with 68,8% of asylum applications. This trend continued during the ‘crisis’ period of 2015 – 2017, whereby 5 member states – Germany, Italy, France, Sweden and Hungary – were faced with 75,05% of asylum applications. Most notably, for 2017, there was a shift in states dealing with high numbers of asylum applications. In this, 4 of the 5 states dealing with the majority of asylum applications had been frontline states (Italy, France, Greece and Spain), which had been the most affected by the Dublin Regulation and thus, highlighting the need for burden sharing in the EU.

The notion of burden sharing, specifically regarding the current refugee crisis has brought about differences in opinions between member states in which there exists a divide primarily between member states in the north and south as well as between member states in the east and west. While member states are able to agree and acknowledge that frontline states, primarily in the south, have been impacted by the increase in frequency of refugees and asylum seekers arriving in their state, there exists a rhetoric that their burden has been accommodated for. This has been argued on the basis that those states which have been affected, have received funds and resources from the European Union as a means of support.

Providing funds to affected member states as a contribution to burden sharing has been seen in the European Union through the creation of various funds. Although the European Refugee Fund (ERF) is no longer practiced, it had been effective for a five-year period between 2000 – 2004, in which it states that “it is fair to allocate resources [from the ERF] proportionately to the burden on each Member State by reason of its efforts in receiving refugees and displaced persons” (Thielemann 2003, 262). This was followed by the creation of an Asylum, Migration and Integration Fund (AMIF) as well

as the Internal Security Fund (ISF) with the goal of addressing migration and security challenges in the European Union. According to these funds, for the period of 2014 – 2015, Italy, Spain and Greece were the top three recipients of the €76.5 million allocated to emergency funding (European Commission 2015a).

In addition to providing funding to affected member states, the European Union aims to provide operational support in helping member states with the examination and processing of asylum applications. This included support from European Union agencies such as Europol, Frontex as well as the European Asylum Support Office. Here, these agencies have played an important role in the establishment of hotspots in both Italy and Greece, with the goal of providing assistance to member states in ensuring those refugees and asylum seekers were identified, registered and fingerprinted. This process was argued to be effective in that “the hotspot approach has helped improve migration management in the two frontline Member States, under very challenging and constantly changing circumstances, by increasing their reception capacities, improving registration procedures, and by strengthening the coordination of support efforts” (European Court of Auditors 2017, 5). However, while providing both funds and operational support to member states in need has proved to be somewhat useful as a burden sharing mechanism, member states have argued that more needs to be done in alleviating the impact of the refugee crisis. Thus, bringing in the principle of relocation and resettlement.

4.1. GEOGRAPHICAL LOCATION

The location of a state has played a notable role in a state’s decisions and actions. States from a particular area join together and create a regional grouping which would help in achieving particular benefits and goals for the state. Furthermore, when a state joins a regional grouping it is essentially agreeing to look past its own national interests and rather focus on the common interests of the region. In return, the member states receive benefits from being part of the group as is the case with agreements on free

trade, collective defense, better integration of infrastructure, transport and movement of people. However, this can be linked to the notion of burden sharing which plays an instrumental role with regards to the geographical location of a state as a factor impacting states responses to the refugee crisis.

This issue relates back to both international and regional laws such as the 1951 Convention and its 1967 Protocol as well as the Dublin Regulation as a fundamental agreement leading to arguments of burden sharing among states and act as an important tool guaranteeing the rights of refugees as asylum seekers. The Dublin Regulation has been a mechanism through which states face legal obligations regarding the examination and processing of asylum seekers. It makes the claim that the country in which a refugee or asylum seeker finds themselves in first would be responsible for that particular person. According to this premise, the regulation puts the responsibility primarily on states at the borders of the European Union such as Greece, Italy and Spain. Thus, the legitimacy of the procedure should be considered in that it shows inequality among member states of the European Union. In addition, numerous states in eastern Europe have taken individual measures to reduce the flow of refugees and asylum seekers to their state due to legal obligations placed on states through the Dublin Regulation. Thus, rather than reducing the number, states have been redirecting the flow of refugees and asylum seekers into neighbouring states.

The actions taken by states in reintroducing temporary border fences or controls within Europe among both European Union and Schengen area members, goes against the idea of having a Schengen area in sharing a common border with member states as part of the agreement. Not to mention, in reintroducing these border control, states have created a domino effect among one another, which continues to add to the already existing disunity among member states and highlights incomplete integration in the European Union. The map below can be used as an important illustration in understanding the flow of refugees, the responses of member states as well as the fact that it shows that while some of the border fences and controls exist between states not part of the European Union or the Schengen area, a majority of these controls exist between states which are part of the European Union as well as the Schengen area. In this, "Austria, Belgium, Denmark, France, Germany, Hungary, Slovenia and Sweden reintroduced internal border controls to reduce refugee inflows

in 2015. Yet, all these measures were temporary” (Genschel and Markus 2017, 6). Therefore, 2015 saw itself as a start in the trend of building walls and fences as a response to high flows of refugees and asylum seekers. For many states this seemed to be an acceptable solution in that sovereignty plays an important role in allowing states to determine who to allow into their territory. However, in joining the European Union, member states had willingly agreed to the principles set out in various agreements whereby sovereignty would be given up and shared with the whole region, this added to establishing and extending the Schengen area.



Source: Tasch and Nudelman 2016

4.2. GOVERNMENTS AND INSTITUTIONS

Despite the fact that the creation of the Single European Act has led to integration in terms of the creation of the Nice, Amsterdam and the Maastricht Treaties, the “Maastricht Treaty introduced formalised intergovernmental cooperation on [Justice and Home Affairs]. When visa, asylum and immigration issues were transferred to the first pillar and came under the Community method at the Treaty of Amsterdam, the scope for cooperation changed fundamentally” (Ekelund 2013, 104). With regards to the refugee crisis, European governments want to make it as hard as possible for refugees to get to Europe because they benefit with having less refugees arriving to them. In this, European state leaders are trying to implement policies in attempts to cut off the European Union from refugees. Thus, the idea of solidarity is the major issue between European Union states.

Different actors working together in changing preferences for the common benefit is seen where states with common needs will work together. States can gain from cooperation, where they set up institutions at the cost of sovereignty, while being able to benefit from it. It can be seen as a means of promoting and sharing ideas in terms of other states preferences. In this, supranational bodies promote the benefits of further integration and support regional or domestic interest groups that promote further integration. Thus, cooperation in one sector cannot be achieved without integrating other sectors. “International regimes by no means substitute for bargaining; on the contrary, they authorize certain types of bargaining for certain purposes. Their most important function is to facilitate negotiations leading to mutually beneficial agreements among governments” (Keohane 1984, 107).

In 2015, the Commission created ‘hot-spots’ which put pressure onto states in getting them to register migrants and asylum seekers. European Commission President, Jean Claude Juncker, proposes that the European Union member states should relocate refugees from Italy, Greece and Hungary, in a call for member states to share the

burden of refugees. However, European governments disagree with his proposal because of the idea that it impacts on their sovereignty. Nonetheless, “governments relinquish their sole right of national sovereignty and decided to make legislation based on joint decision-making with other governments, while other tasks were delegated to European institutions” (Bache et al. 2014). However, Sinn (2012) argues that these collective decision-making bodies often abuse their power. There is a level of delegation from the state to the International Organisations. The fact that resources are given illustrates this, although, supranational organisations are the biggest and the most intrusive. However, the European Union has been designed in such a way that there is limited discretion between the state and the international organisation. From this, “institutions should be shaped according to the functions which they were actually intended to perform for (and that is, in the interest of) the actors concerned” (Gehring 1996, 229).

With national elites, there is a shift of loyalty from national to supranational bodies where, “domestic societal actors form preferences for cooperation or policy coordination at the EU level, partly as a result of their position in the international political economy. States aggregate societal interests and thereby demand some level of European cooperation” (Jupille and Caporaso 1999, 435). States want autonomy but at the same time they expect the European Union to intervene to help them with asylum seekers. In this, shared burden becomes important because states have pooled their sovereignty in certain policy areas. Once institutions are established, they can take on a life of their own, away from the control of those that created and established them. Thielemann (2002, 13) argues that “sovereign states are free to determine who they allow to enter their territory. However, it is clear that when making policy in the area of asylum, national authorities have always been constrained by both international and national institutions... International legal instruments such as the Geneva Convention and jurisprudence from international Courts, such as the European Court of Human Rights, constitute a set of widely recognised international institutions that affect national policies on asylum”. Here, these institutions such as the United Nations High Commissioner for Refugees or Amnesty International can pressure states into adhering to international laws, ultimately impacting on the status of the state in the international community. Furthermore, the European Court of

Human Rights monitors states and is able to pressure states into adhering to these laws, where states fear having a negative image in the international community.

4.3. POLITICAL IDEOLOGIES AND DEMOGRAPHICS

Political ideologies and the demographics of a state can be seen as an important factor in having an impact on the response of a state towards the refugee crisis. Here, this can be translated into the national interests of states, which can be determined from both the benefits as well as risks that states are exposed to in accepting refugees and asylum seekers. One of the main arguments for migration relates to the demographic decline of states in Europe. As life expectancy in states in Europe improve, the fertility rate decreases thus, most European populations are aging and shrinking. The decline will eventually lead to a reduced workforce which will create financial issues for the European governments where they will be forced to spend more in pensions and health care. Therefore, immigration acts as a good solution to ease the demographic decline. Both France and the United Kingdom have some of the highest fertility rates in Europe. By 2050, both their populations are expected to increase by 10 million people. This means that they are in no need of any more people. As a result, they have made their policies for migration very difficult. France makes refugees wait at least 1 year before giving out work permits, thus making France a less attractive destination for refugees. Portugal and Greece also have low fertility rates but also high unemployment rates forcing the governments to refuse any extra immigrants.

Furthermore, “migration is important because of the way it shapes and re-shapes societies, making them more diverse and complex. But it also creates sharp divisions between those who accept the need for migrants and welcome the economic and cultural contributions they make, and those who oppose them” (King 2012, 6-7). Those fleeing death and destruction are no different from those in the European Union. By

accepting and integrating migrants into states, states are able to benefit. “Both short and long-term studies demonstrate people of refugee backgrounds have made and continue to make substantial economic and social contributions” (Aristotle 2017, 4). Thus, the differences in European governments migration policies make some states seem selfish and others generous, but in reality it is all based on the demographic and economic projections. Every European state is reacting according to their own national interests and needs. Even though refugees can help to sustain Europe’s aging population, it is only a short-term solution as fertility rates amongst immigrants and non-Europeans are also showing a decline. Finally, the national interests and “strategies of governments and oppositions have for years been dominated by a desire to generate electoral capital by presenting themselves as unwaveringly tough on border protection. This emphasis holds precedence over responding to the protection needs of asylum seekers and therefore compounds their situation and amplifies their suffering” (Aristotle 2017, 4).

4.4. POPULIST MOVEMENTS

The European Union was built on integration in various sectors by various states in Europe. While it was an important process, it was driven by interest groups within states which would play an important role in lobbying their government to integrate further. As outlined in the Universal Declaration of Human Rights in Article 21 (3), “the will of the people shall be the basis of the authority of government” (United Nations 1948, 44). Thus, domestic politics plays a bigger role now because of increased public interest in issues. The public has become increasingly aware of the consequences of issues on their welfare. An example of this is seen where, “the wider public became increasingly aware of irregular immigration and the suffering of the people involved through media coverage of events such as The Monica tragedy” (Ekelund 2013, 111). Furthermore, “governments in border and host states with high refugee arrivals were pressed by public opinion to extract more solidarity from the rest of Schengen. In

Eastern member states, by contrast, public opinion cringed at the notion of sharing the costs of Western multicultural sentimentality” (Genschel and Markus 2017, 8). Vilpišauskas (2013, 371) furthers this argument with regards to the growing public interest in the refugee crisis and the “potential solutions with their effects on the rest of the EU is becoming an important constraint in the day-to-day politics of the EU, with national leaders obliged to take popular opinion seriously when they gather in the EU summits for yet another attempt at calming down the financial markets with promises of centralized solutions.”

Therefore, it can be argued that support for refugees and asylum seekers has come mostly from citizens and not from politicians. However, in contrast, public opinion is linked to identity. In this, it has been argued that states have issues with migration on the basis that they feel that migrants are taking too many jobs and impacting upon their cultural identities, as well as the argument that migrants use European laws to their advantage. The western world has fears of Islam, high birth rates, crime and the collapse of the social systems. Even if the European Union alone were to accept all 4 million Syrian refugees and 100% of them were Muslim, the percentage of Muslims in the European Union would only rise from about 4% to about 5%, this would not make it a Muslim continent. Having a Muslim minority is not new nor is it a reason to turn away refugees. Birth rates in many parts of the western world are low, thus some fear asylum seekers might overtake the native population in a few decades. Studies have shown that even though birth rates are higher amongst Muslims in Europe, they drop and adjust as the standard of living and the level of education rises. Most Syrian refugees are already educated, and the birth rate in Syria prior to the civil war was not very high and the population was shrinking. The fear that refugees add to higher crime rates is a misconception because refugees who become immigrants are less likely to engage in crimes than the native population. When allowed to work they tend to start businesses and integrate themselves into the workforce and paying more into the social system. Syrians coming into Europe often offer professional services and are needed to sustain Europe’s aging population.

Moreover, “stereotypical images of Muslim women and patriarchal societies are repeatedly used in the media to spread this representation. In addition, the hijab is considered as a sign of their unwillingness to integrate into European society. On the

other hand, Muslims women consider the veiling to be a crucial practice in constructing their identity as Muslims in European non-Muslim countries” (La Barbera 2014, 6). Rather, governments and leaders can support and join the rhetoric of the citizens in that “they can convey the message that the response to refugee flows needs to be based on fundamental principles of humanity and human rights, including the right to seek and enjoy asylum from persecution. History has shown that doing the right thing for victims of war and persecution engenders goodwill and prosperity for generations, and fosters stability in the long run” (Nicholson and Kumin 2017, 11).

CHAPTER 5

SOURCES OF DISUNITY

In efforts to ease the burden placed on states following the rise in numbers of refugees and asylum seekers to the European Union in 2015, the European Union established a resettlement scheme aimed at resettling 20,000 displaced people in need of international protection from areas of the Middle East as well as North Africa in moving to Europe. In this, the “Council adopted conclusions on 20 July to resettle, through multilateral and national schemes, 22 504 displaced persons from outside the EU who are in clear need of international protection” (European Commission 2015a, 1). In attempts to reduce the high flows of refugees and the obligation placed on states from the Dublin Regulation, the European Union had proposed an agreement with Turkey.

Due to Turkey’s location, it faced high numbers of refugees and asylum seekers primarily from Syria and Iraq. As of 2015, Turkey was a host to over 2 million Syrian refugees and asylum seekers. Establishing an agreement between the European Union and Turkey proved necessary based on Turkey’s geographic location to the European Union in which it acted as a transit state for people who wanted to get to the European Union and increased the uncontrolled flow of migrants to the European Union. The Aegean Sea had become one of the main routes through which refugees would make use of in traveling and moving onto Greece as a means of applying for

asylum in the European Union. At its peak in October 2015, the European Union was receiving on average 7 000 people per day.

Therefore, in attempts to reduce these high flows of refugees and asylum seekers to the European Union, the European Union entered into an agreement with Turkey on 18 March 2016. An important aspect of the agreement was the European Union allocating funds to Turkey as a means of providing support for their efforts, as well as in providing services to refugees and asylum seekers. In this agreement, the European Union allocated €3 billion to help Turkey host large numbers of refugees and asylum seekers, of which these funds have gone to providing humanitarian support to Turkey through food, housing and healthcare. The agreement also included the resettlement of refugees from Turkey to European Union member states. In addition to reducing irregular flows, this had the aim of showing that there were legal means through which refugees and asylum seekers could arrive in the European Union rather than illegal crossings or using people smugglers. In return for the resettlement of refugees and asylum seekers from Turkey to the European Union, Turkey would need to ensure that there would be a significant decrease in the number of refugees and asylum seekers making their way to the European Union through Turkey.

This agreement was supported by Turkey on the basis that for each refugee and asylum seeker, who had tried to make the crossing illegally, and had been brought back to Turkey from the European Union, the European Union would resettle a Syrian refugee in Turkey to one of its member states, provided the refugee had not been involved in an irregular crossing. However, challenges to the agreement are found in that member states do not share the same commitment and support to the idea of the resettlement of refugees and asylum seekers. Protecting refugees and asylum seekers is not only about common rules, but also about solidarity between member states. Furthermore, it has been argued by the European Union advocacy director and director of Human Rights Watch, Lotte Leicht, that it is “important for the EU collectively to understand the only way forward is to bring order into the chaos and to advance what would be the safe and legal resettlement of people who are fleeing for a reason” (Morgan 2016, 3-4).

Despite the fact that the end of May 2016 had seen a significant decrease in the average number of refugees and asylum seekers arriving to the European Union from Turkey to a total of 47 per day (European Commission 2016), currently the agreement has not fulfilled its obligations to Turkey in terms of providing all allocated funds as well as the failure to implement visa free travel to the European Union for Turkish citizens.

First attempts at establishing a relocation system had been found in German law dating back to November 1992, providing an outline of a distributive key in which it makes provisions for member states where if “the numbers admitted by a Member State exceed its indicative figure... other Member States which have not yet reached their indicative figure... will accept persons from the first State” (Thielemann 2003, 260). However, despite their efforts, the proposal did not obtain support from member states. Following the high influx of refugees and asylum seekers in 2015 primarily to frontline states as well as Germany, the principle of relocation was brought back to the European Union as an important means of establishing and implementing burden sharing among member states. Here, the relocation of refugees was the main message of the state of the Union address in 2015, where the President of the European Commission, Jean Claude Juncker, reiterated the necessity of having the commitment of each member state to the relocation of refugees across the European Union. Thus, in line with the idea of burden sharing, “the Commission proposed a Council Decision for an emergency relocation mechanism to relocate 40,000 people in clear need of international protection from Italy and Greece. In July 2015, the Justice and Home Affairs Council adopted a decision to relocate 32 256 persons and adopted a resolution to this end. Ministers committed to agree on the distribution of the remaining 7 744 persons by the end of 2015.” (European Commission 2015a, 1).

The refugee crisis has highlighted disunity in the European Union in the reluctance of east European member states in supporting a relocation policy and further by states in reintroducing borders and border controls. Zalan (2017) argues that European Union member states are “stuck on asylum reform over discussions on how to share asylum seekers in case of another influx, due to strong opposition mainly from eastern and central European member states”. Therefore, as stated in Article 78(3) in the Treaty of the European Union, in order to implement a relocation policy, “the Council,

on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament” (European Union 2012, 77). Despite the failure of initial attempts, prior to 2015, aimed at establishing a binding relocation scheme, the Council had for the first time reached an agreement on a compulsory relocation scheme in September 2015. This agreement made provisions for a total of 160 000 refugees and asylum seekers to be relocated from both Italy and Greece by September 2017. Rather than providing a solution, the agreement caused division between member states in that in order to bring the relocation policy into effect, eastern European member states which were opposed to the policy, needed to be outvoted. Thus, the agreements on the relocation policy had been made under a majority vote, without the support of member states such as Poland, Hungary, the Czech Republic as well as Slovakia. However, even without their support, the agreement was nonetheless binding on all member states. This meant that under relocation, a refugee would be moved from one European Union member state to another European Union member state, in which they would be given a legal right to remain and live only in that state. Furthermore, it prohibits them from moving on to another European Union member state. This has led to arguments by states opposed to the relocation policy on the basis that they believe that it does not in fact solve the refugee crisis but rather it simply means that “for every refugee relocated out of one member state, there is a refugee more in another member state” (Genschel and Markus 2017, 8).

In this relocation policy, the European Union introduced a quota system based on various factors which states needed to fulfil. Based on the quota system, the weighting of the number of refugees that a member state should adopt is based on the following criteria: national GDP (40%), which reflects how well refugees would be integrated into the state; the size of the population (40%), in showing how well states would be able to absorb refugees; unemployment rates (10%) and the amount of asylum seekers already hosted (10%) (European Parliament 2017). This issue of the quota system can be argued to have failed in practice in that quota systems are unpopular among European states. This was seen where some states deliberately slowed down processing in attempts to take in less refugees and asylum seekers. In support of this, it has been noted that by July 2016, only 3 000 asylum seekers were relocated

(European Commission 2016), and by 2017 the Commission stated that 27 695 refugees and asylum seekers had been relocated from Italy and Greece (Zalan 2017).

However, this is in contrast to the idea of the relocation policy in which it describes the relocation scheme as being mandatory for all member states. Thus, as a possible solution, “the European Court of Human Rights (ECHR) can exert pressure on states by 'naming and shaming' violators through the publication of Court decisions and reports. Although the ECHR has no power to grant asylum or residence, the ECHR used Article 3 of the European Convention on Human Rights to effectively prevent signatory states from extraditing individuals who are threatened with torture or inhumane or degrading treatment in the country of return” (Thielemann 2002, 14). Moreover, a misunderstanding exists between member states with different views on the relocation policy. The relocation policy is not to create an even distribution of all persons arriving in Europe and seeking asylum. Rather, the total of 160 000 refugees and asylum seekers to be relocated make up only a portion of the total refugees and asylum seekers which had arrived in Europe and are those considered to be in need of international protection. Here, member states will be required to take in these refugees and asylum seekers while frontline states will continue to manage and process applications and will be responsible for returning those who do not qualify. Therefore, national governments need to commit to providing assistance to one another and further commit to the international norm of providing protection to those in need. These differences between member states can be examined through an analysis of main states such as Italy, Germany, Hungary as well as Poland in determining the responses of states to the refugee crisis.

5.1. GEOGRAPHICAL LOCATION

In the geographic location of a state, it has been discussed that the Dublin Regulation has placed obligations on states with regards to receiving and processing applications of asylum seekers. Here it was found that states predominantly on the front line of the

European Boarder found themselves to be in support of a relocation policy of refugees and asylum seekers due to the high numbers of refugees and asylum seekers arriving on their borders. Thus, the situation in Italy is of importance whereby Italian cities have been bearing the brunt of refugees and asylum seekers arriving from both the Middle East as well as North Africa.

In North Africa, most coastal cities in Morocco, Algeria, Tunisia, Libya and Egypt have served as a departure point for refugees and asylum seekers. Libya is noteworthy because of the ongoing civil war as well as the abuse and lack of the rule of law, and as a result, conditions arise where the prices of goods had increased. In this, the local fishing industry halted due to the increased price of fish and low demand. Thus, fishermen began lending out their boats to traffickers who would provide travel to those seeking asylum in Europe. In this, the European Union was pressing for cooperation from Tripoli in detaining human traffickers and preventing migration through the Mediterranean route. However, cooperation was slim while the European Union is “actively supporting the UN-led dialogue between Libyan parties in order to reach a peaceful settlement. The European Union confirmed many times its readiness to support a future government by all means” (European Commission 2015b, 11). However, this notion has backfired against Italy and the European Union. Both Italy and the European Union made military threats against Libya to take military action against traffickers who had set up bases throughout Libya. This resulted in more opposition from the Libyan government who argue that military action would only derail United Nations negotiations and further destabilize the already fractured political system and in turn result in more refugees and asylum seekers. Therefore, Italy has been a primary state in calling for more solidarity between member states in that it could no longer carry the burden of refugees and asylum seekers placed on it by the Dublin Regulation.

In addition to Italy, Germany has been seen as a state in support of the relocation of asylum seekers. This is notable in the location of Germany as an interior European Union member state supporting the relocation of refugees and asylum seekers. However, this response explains itself due to its change in policy whereby Germany announced that without exception it would prepare to take in 800 000 refugees and asylum seekers in its attempts to accept all Syrian refugees. Interestingly, the change

in policy resulted in a surge of refugees and asylum seekers arriving in Germany, which then saw itself reintroducing border controls and supporting the resettlement of refugees. In contrast, both Hungary and Poland have been against the relocation of refugees and asylum seekers.

Turkey, which is home to approximately 3.5 million refugees, has been experiencing a steady economic decline since 2012, which saw the influx of Syrian refugees worsening the situation for the Turkish economy. This forced Ankara to refuse to issue work permits to Syrians, thus creating conditions where refugees are unable to make a living, despite being educated. With little to no prospects in Turkey and the abolition of the migration policy the refugees moved on to Europe. European Union heads of states and governments would then try to seal off their state from refugees causing refugees to move onto another state. Refugees would then travel from Greece to Hungary who then erected a fence on its Serbian border which redirected refugees to Croatia thus, failing to address the root cause of the problem but rather divert and pass it on to another neighbouring state. In addition, eastern European member states were the strongest opposition to the issue of burden sharing and establishing a common policy whereby, the “Hungarian government of Viktor Orbán rejected the Commission’s perception of it being a ‘frontline state’ and opposed the idea of effectively hosting an EU refugee camp that registers and distributes newly arrived migrants” (Trauner 2016, 320).

5.2. GOVERNMENTS AND INSTUTIONS

Both institutions and the governments of a state have an impact on the response of a state to the refugee crisis. This illustrates the lack of solidarity between member states in that states with common needs and ideas tend to work together as seen where governments of states promote the establishment and adherence to institutions which suits their interests. These institutions then bargain on behalf of governments. European migration policy fails because member states are failing to show solidarity

and work with one another and with refugees. This relates to the fact that member states want to prevent secondary migration and therefore, they are not willing to work together with one another. Rather, they believe that if a state needs assistance, it should be given at the European Union level not at the state level. In this, it should be noted that while the Dublin Regulation had been important, it provides little incentive for member states to improve the conditions of refugees.

It has been noted that the type of government of a state plays a role in influencing the policies of a particular state with regards to issues such as the refugee crisis. In this, states recognize in their constitutions that there exists a right for asylum, however, states recognize this right differently. Firstly, both the Italian and Polish “constitutions recognize the right to seek and enjoy asylum but make it subject to laws and regulations in force... which might be interpreted as giving the legislature discretion to determine the content of the right” (Nicholson and Kumin 2017, 28). Furthermore, both Italy and Poland provide that “asylum is to be granted in accordance with international rules and treaties, thus including obligations under the 1951 Convention and international customary law standards” (Nicholson and Kumin 2017, 29). In comparison, the German constitution “recognizes a right to seek and enjoy asylum in a way that confers a right on an individual” (Nicholson and Kumin 2017, 28). In the Hungarian constitution “the relevant provision may be phrased as an obligation on the state” (Nicholson and Kumin 2017, 28). Furthermore, Hungary “define this right using language from the refugee definition contained in the 1951 Convention” (Nicholson and Kumin 2017, 29). Additionally, Hungary has “legislation specifically granting UNHCR access to individual files and decisions concerning asylum-seekers and refugees, generally subject to the consent of the individual concerned” (Nicholson and Kumin 2017, 45).

Importantly, the Italian constitution recognizes the right of refugees based on international laws and thus bases its response to the refugee crisis on various international laws and obligations as set out in various legislations in the European Union and thus claiming to be a victim of European Union policies. This claim stems from the notion that the European Union has failed to establish and implement a common standard regarding refugees and asylum seekers evenly throughout the European Union among all member states. This lack of support and solidarity from

European Union member states was reiterated by former Italian interior minister, Angelino Alfano, who “has openly threatened to release the migrants that Italy intercepts at high sea to other member states in non-compliance with EU rules if the country does not get more support and solidarity from its EU partners” (Trauner 2016, 315). However, this is not to argue that Italian governments disputed the assistance received by institutions set out by the European Union in providing assistance to affected member states. Notably, the Commission focused on establishing hotspots which would aid frontline member states in processing applications for asylum in order to ease the burden placed on these member states. Moreover, various stakeholders involved in the establishment and implementation of the hotspot approach had “agreed that the hotspot approach played an important role in improving the situation in Italy, not only by providing adequate infrastructure, but also by establishing standard procedures to be followed and by having a positive influence on practices in general” (European Court of Auditors 2017, 39). However, despite this, the Italian government maintains its argument that while there may exist support from institutions, there was still a “shortage of adequate facilities to accommodate and process unaccompanied minors in line with international standards, both in the hotspots and at the next level of reception” (European Court of Auditors 2017, 5).

Differences in perceptions based on both governments and institutions have been illustrated where the changes in rhetoric was seen from European Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, who had called for states to get tougher on migrants and ensure that they get deported where necessary. Previously, in 2016, he argued that the European Union should work harder to accept more asylum seekers. In a speech given, he stated, that it should be noted that “Europe already has the highest asylum standards in the world, and we have to uphold those and our commitment to protect those seeking protection” (Avramopoulos 2016). However, in 2017, we see a change which comes down to the European Union’s relocation policy for migrants and refugees. In a 2017 statement, Avramopoulos argued that “we need a stricter and more effective policy for deportation. Too few migrants are being deported, the European states have to do more” (Bosotti 2017).

The case of Germany is interesting in relation to changes in perceptions on the refugee crisis based on government’s interests in relation to institutions. Here, further

examples exist whereby Germany began closing their borders and returning refugees and asylum seekers back to Greece. This showed a change from 2011, where it was ruled by Germany's Constitutional Court that it did not have to adhere to the Dublin Regulation. Moreover, in 2015, Germany lifted the restriction on asylum seekers, allowing in Syrian refugees. It announced that it was willing to take in all Syrian refugees without exception. However, in 2017, Germany confirmed that 392 000 applicants will be sent back to Greece for processing under the Dublin Regulation, although, this will only affect those who arrived in Germany from mid-March 2017. Thus, Germany began to support the notion of solidarity through burden sharing among member states, where "Germany, backed the Commission's plans and promoted the relocation scheme. They were particularly interested in the measures accompanying the relocation mechanism, notably an enhanced commitment for national authorities" (Trauner 2016, 319).

In contrast to both Italy and Germany, Hungary and Poland have been firm in their positions in governments not supporting the idea of solidarity among member states with regards to the refugee crisis. Trauner (2016, 314) argues that it should be noted "that not all problems detected in the asylum systems of member states have related to the economic and financial crisis. Politicians have some room for manoeuvre even under budgetary constraints. To put it bluntly, if a government decides to spend more on issues such as pensions and social welfare than on receiving asylum seekers, the administrative weakness of reception centres and asylum systems is a political choice that may aim at making the country less attractive for this group of migrants". Here, states can choose to deliberately not allocate budgets to receiving asylum seekers in order to make it less attractive to asylum seekers. This was the case in Hungary and Poland. This also brings in the issue that there is no common asylum standard across the European Union, where both the conditions of being granted asylum and the possibilities of being granted asylum show differences between member states.

However, institutions have made attempts at creating unity among member states in trying to force states to comply with laws and regulations where, "Poland, along with the Czech Republic and Hungary, is under scrutiny from the commission for not taking in asylum seekers under the 2015 plan, and could face fines" (Zalan 2017). Furthermore, disagreements arise between governments and institutions in that

Donald Tusk being re-elected as the president of the European Council, led to disputes between the Polish government and the European Council. This is due to the fact that Tusk had previously been a prime minister of Poland and had been closely tied to the country's centrist opposition (Batchelor 2017). Similar to Germany, Hungary saw itself changing its rhetoric based on influence from political figures. In 2017, Hungarian Social and Democrats member, "Péter Niedermüller, the lead MEP responsible for Parliament's position on an increased role for EASO, stressed the central idea driving the agency: "The main idea behind the European Asylum Agency is that we have to work together, that we need a European solution. Not a member states solution but one common European solution" (European Parliament 2017).

5.3. POLITICAL IDEOLOGIES AND DEMOGRAPHICS

Political ideologies and demographics as factors impacting the responses of states to the refugee crisis have played an important role in Italy, Germany, Hungary and Poland in that they have shaped the preferences of states. These preferences were related to the national interests of states based on the benefits and risks associated with adopting a common asylum system across European Union member states. Most importantly, Germany was notable in using the refugee crisis to further its national interests in the international community. Pelgrom (2017, 9) has argued that in their response "to the refugee crisis, some countries adopted a 'welcoming culture' and expressed their willingness to offer protection for the people fleeing from warzones such as Syria". Important political figures supporting the notion of shared responsibility among European Union member states included German Chancellor, Angela Merkel, who often advocated for more solidarity among member states in assisting member states affected by the refugee crisis. Furthermore, in 2015, "Germany celebrated World Refugee Day for this first time, and German president Joachim Gauck argued that Germany had a "moral duty" to provide safe refuge because Germans were

refugees themselves after World War II” (Holmes and Castañeda 2016, 15). However, this brings in the principle of promoting national interests in that while Germany may have had an open-door policy on accepting refugees and asylum seekers, their reasoning for doing so would need to be considered. As mentioned above, these may have been for altruistic reasons, in being the humane response to the crisis or alternatively they may have been out of self-gain.

Examples of this are seen where, originally, migration was seen as being positive because a majority of the German population is aging, and they needed a younger workforce which could be covered by external migration. There is truth to this. Germany has one of the lowest fertility rates in the European Union. By 2050, it is expected that Germany’s population will shrink by 10 million people. This shows that they will need more people in order to have a sustainable future. In order to attract more refugees, they give out asylum approved work permits after 3 months, making Germany a preferred destination for asylum seekers. In support of this, it has been argued that “Germany’s response to the flow of people from Syria and Iraq was driven largely by humanitarian intent. However, it is also clear that they have received some of the most skilled professionals within that population due to the scale and timing of their response. While there has been significant political and social unrest arising from the size and pace of the movement into Germany, it is also true that some German politicians have argued for even more people in order to support an economy experiencing labour shortages and an aging population” (Aristotle 2017, 6).

In contrast, it has been argued that “human displacement and people movement comprise mixed flows of refugees, people fleeing for other humanitarian reasons and those seeking to move for economic and other migration purposes. The mixed nature of the flow complicates how they are perceived and is often utilised to justify unnecessarily harsh policies” (Aristotle 2017, 1). This shows how European governments predominantly in the east had negative responses to the refugee crisis whereby attempts by both Hungary and Poland to keep refugees out of their states are not only denying that Europe is multicultural and that Europe has a multicultural history but in turn also denying the international law that requires states to protect and house refugees and asylum seekers regardless of their cultural or religious beliefs. Here, the national interests of the state have been found to be against the notion of

shared burden in the idea of a common policy with all states accepting refugees and asylum seekers based on the imagined problem of having a majority of refugees and asylum seekers in their state.

5.4. POPULIST MOVEMENTS

A final factor impacting the perception of member states regarding their response to the refugee crisis as discussed previously is populist movements. Here, responses were driven by interest groups within member states based on the will of the people as well as groups lobbying governments. However, in this, with various groups within the state, there exist differences in perceptions of various groups. Initially, various groups in both Italy and Germany held positive perceptions with regards to their state in accepting refugees and asylum seekers. “In general, Syrian families are seen as deserving because they are understood to have been forced to flee by the ongoing civil war and the involvement in this war of its international protagonists, especially the United States and Russia” (Holmes and Castañeda 2016, 15).

The will of the people has been characterized as an important aspect with regards to democracy in various states. This allows for the governments to make and adjust policies and perceptions based on influence from its citizens. While it was noted that receiving refugees and asylum seekers into a state provided benefits to the state concerned, there was a shift in the perceptions of refugees and asylum seekers by European nationals in various states. Initially, both Italy and Germany showed a sense of welcoming and acceptance over refugees and asylum seekers and advocated for the government in providing support to those seeking protection. Ekelund (2013, 105) explains that in Italy, “the wider public became increasingly aware of irregular immigration and the suffering of the refugees involved due to incidents such as The Monica where nearly 1000 refugees had to be rescued at sea and taken to Sicily”.

However, this is not to disregard the differences in opinions of Italian citizens. Morgan (2016, 4) notes that although “having an influx of lot of young, motivated young people may be a real economic opportunity, there is also a risk of underemployment among resettled refugees.” This has led to a case whereby citizens in Italy were protesting the building of local refugee shelters for refugees and asylum seekers in Ventimiglia, Italy. They argued against this because of their fears to the safety of their community. They have based these claims on instances where there have been cases of refugees trying to steal from the locals. In addition, these citizens argue that migrants are given food, a place to stay and money but they believe that priority should be given to the citizens, in taking care of their own people first. In support of this, these views seem to be held constant across majority of the individuals throughout Italy. In research compiled in *Attitudes Towards National Identity, Immigration and Refugees in Italy*, it was found that 18% of the Italian population view receiving refugees positively while 57% “feel its impact overall has been negative. The concern about the negative economic impact of immigration is partly related to Italians’ view that migrants compete for jobs and suppress wages” (Dixon et al., 2018, 4).

Dixon et al. (2018, 5) further their study to find that similar to “other countries in Europe, Italians do not feel a strong sense of connection with Muslims. The concern that people from Islamic backgrounds may not integrate into Italian society is reflected in the view held by 40 per cent of Italians that Italian identity and Islam are incompatible.” This was reflected in that the influx of refugees produces political and social reactions among European societies. Unlike the past, the current refugee flows are chaotic and affects all European states in a different way. In Germany, Poland and Hungary, far right and nationalist groups are on the rise as they see the rise of Muslim refugees as a threat to the European culture.

The case of Germany was interesting based on the changes we have seen throughout on the perception of refugees and asylum seekers. It can be argued that initially, Germany had maintained its ‘culture of silence’ regarding people who are not German and specifically towards refugees and asylum seekers, largely influenced by their history of atrocities leading up to WWII. However, an instance in Cologne whereby German women were sexually assaulted allegedly by a group of refugee men, led to more German citizens being outspoken on their views of Germany taking in refugees

and asylum seekers. These views largely demonstrated that German nationals were opposed to Germany having an open-door policy towards refugees and asylum seekers. This, in addition to the large number of refugees and asylum seekers arriving in Germany, led to Germany imposing stricter measures to reduce the flow of refugees and asylum seekers to its border. In research conducted by Wilhelm (2018), it is argued that 78,1% of German citizens believe that Germany's history leading up to WWII has an impact on its response to refugees and asylum seekers. Furthermore, Wilhelm (2018) found that a majority of 50,5% of Germans believed that Germany should be taking in less refugees and asylum seekers than they currently do, while 38% believes the amount should remain the same and only 11,5% believe that Germany should be taking in more refugees and asylum seekers.

In line with these views, both Hungarian and Polish nationals argue against accepting refugees and asylum seekers into their state and fundamentally support the views adopted by their governments in restricting the flow of refugees and asylum seekers into their state. Most notably, this can be related to the fact that both Hungary and Poland are predominantly Catholic states, which has led to cases of social segregation between those who are citizens and those who are refugees and asylum seekers, which has led to anti-immigration groups being established. In Hungary, Balogh's (2015) research found that 79% of the Hungarian population want the government to introduce stricter policies aimed at reducing the number of refugees and asylum seekers entering Hungary. In comparison, in Poland, there have been "thousands of rallies in several Polish cities that included radical right-wing people protesting the relocation of refugees. In Warsaw, approximately 10,000 people were marching through the city while shouting "Poland, free of Islam" and "Today refugees, tomorrow terrorists" (Pelgrom 2017, 50). Furthermore, it is important to note that Rettman (2017) finds in his research that more than half of Polish nationals "would be happy to lose EU funds in return for keeping out Muslim migrants, while 51 percent would rather leave the EU than comply with the quotas". It can be argued that nationals have based these perceptions on the grounds that governments have played a role in influencing public perception in that terrorist attacks had been committed by 'migrants'. In addition to this, it should be noted that there exists an imagined fear that in accepting refugees and asylum seekers into the state, it would dissolve the national identity of the state and creating a 'Muslim Europe'.

CHAPTER 6

CONCLUSION

This research paper began with an *Introduction*, which set out how the research for this paper would be carried out. It set out the research question as *How can the disunity over the refugee crisis in the European Union be explained?* From this, it formed the hypothesis that liberal intergovernmentalism is an important theory in illustrating how member states interests had played a fundamental role in creating disunity in the European Union over the refugee crisis. Furthermore, the research detailed the importance of the paper in that it formed part of a developing literature in focusing on a current event illustrating disunity between member states. It then moved on to providing an overview of various themes in the existing literature on the topic. These themes included both the theories of Neofunctionalism and Liberal Intergovernmentalism as well as the concept of the disunity in the European Union. The final part of the first chapter provided a description of the methods which would be employed in this research paper.

The second chapter, *Background*, set out the background to the topic of this research paper. This chapter was divided into two main parts. The first part provided an understanding of European integration in which it was noted that various states in Europe had joined together to form the European Union. It then went on to discuss the importance of the theories of liberal intergovernmentalism as well as neofunctionalism

in explaining integration in the European Union as a spillover effect. In addition, the concept of sovereignty was discussed as an important notion in the integration of states. Moreover, it considered the decision-making processes which needed to be adapted to account for the growing number of member states. The final part of this chapter provided an overview of the refugee crisis.

Chapter 3, *Development of Refugee Protection*, provided a detailed analysis of both international frameworks as well as European Union frameworks with regards to the laws pertaining to refugees and asylum seekers. Firstly, the international frameworks noted included the 1948 Universal Declaration of Human Rights, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees as well as the 2016 New York Declaration for Refugees and Migrants. These international frameworks were important in illustrating the guidelines according to which states should find themselves acting with regards to the refugee crisis. Finally, the European Union frameworks discussed included, but were not limited to, the Charter of Fundamental Rights of the European Union as well as the Dublin Regulation (1997, 2003, 2013) and the Asylum Procedures Directive (2005, 2013, 2016). Most notably, the Dublin Regulations set out provisions for applications for asylum to be examined in the state of first entry. Furthermore, these European Union frameworks included the establishment of agencies such as EUROPOL, FRONTEX, as well as the EASO, as important agencies in implementing various policies regarding asylum.

The fourth chapter, *Factors Impacting Responses*, focused specifically on the factors which the paper found to be important in creating disunity in the European Union due to their impact on member states perceptions of refugees and asylum seekers. The chapter began with a discussion on the concept of burden sharing as important in attempts to achieve unity among member states in the European Union and ultimately establishing cooperation between member states. The first factor discussed as impacting the responses of member states had been the geographical location of the state in the European Union. It was discussed that the Dublin Regulation had placed obligations on states with regards to receiving and processing applications of asylum seekers. Here it was found that states predominantly on the front line of the European Boarder found themselves to be in support of a relocation policy of refugees and asylum seekers due to the high numbers of refugees and asylum seekers arriving on

their borders. The second factor of governments and institutions found that both institutions and the governments of a state have an impact on the response of a state to the refugee crisis. This further illustrated the lack of solidarity between member states in that states with common needs and ideas tend to work together as seen where governments of states promote the establishment and adherence to institutions which suits their interests. These institutions then bargain on behalf of governments. The third factor noted, political ideologies and demographics, was discussed as factors impacting the responses of states to the refugee crisis which had played an important role in Italy, Germany, Hungary and Poland in that they had shaped the preferences of states. These preferences were related to the national interests of states based on the benefits and risks associated with adopting a common asylum system across European Union member states. The fourth and final factor of populist movements, whereby, responses were driven by interest groups within member states based on the will of the people as well as groups lobbying governments. These factors were then applied to an evaluation provided in Chapter 5, in relation to the specific cases of Italy, Germany, Hungary as well as Poland.

From the above discussion, this research report is able to conclude that while the refugee crisis in Europe was mainly seen as a southern issue, it had in fact been and continues to be an issue which impacts the entire region. States cannot act in their own capacity isolated from other member states. This is based on the premise that in joining the European Union, member states had willingly given up a portion of their sovereignty in forming a 'united' Europe. Thus, states were expected to place a higher priority on the interests of the European Union as a whole, rather than on their own individual national interests. Despite the fact that states had agreed to share sovereignty, Inzetta (2012) makes an important argument that "member states often hesitate giving up control in policy areas that are directly related to national security and protection of its citizens". However, the notion of having a European Union translates into being a single supranational organisation – a single body of law which applies to all member states. This presupposes that union law is supreme in the event that individual member states hold conflicting national interests, as seen throughout the refugee crisis.

From the findings of this research paper, it has been shown that the European Union has failed with regards to establishing unity over the refugee crisis. Moreover, the European Union will remain divided as long as differences exist between member states, specifically regarding policies on migration and asylum. This disunity will remain a key point while cases exist whereby only a few member states are faced with the burden of carrying the effects of the crisis alone. In as long as some states refuse this burden sharing and maintain these differences, as clearly seen in reception figures and conditions of refugees and asylum seekers, integration in the European Union will remain a process which is incomplete. These differences will continue to divide the European Union, in which cases have shown the reversal of integration among member states, particularly through the reestablishment of physical borders and border controls between member states and ultimately impacting upon the functioning of the European Union. However, this has led to arguments that member states are responsible for the control of their external borders despite the fact that various agencies had been established with the aim of providing operational support to those frontline member states in need.

Integration in the European Union can be seen as incomplete in terms of the refugee crisis. This is partly due to the fact that states were not prepared for a refugee crisis on such a large scale. This is not to say that there was no integration in the case of migration. For this to be true, there would need to be the case that states have shown no cooperation with one another regarding policies relating to migration and asylum. Rather, as explored in this research paper, states have, to a certain degree, shown cooperation in establishing the various policies, regulations and agencies aimed at addressing the refugee crisis, although, they have failed to produce results. This has been argued to be due to the projection of the national interests of states in the European Union. Bomberg and Peterson (2000, 1) have provided the argument that “European integration shapes domestic policies, politics and polities, but member states also ‘project themselves’ by seeking to shape the trajectory of European integration in ways that suit national interests”.

While integration is seen as a process which takes place step by step, from one case to another, the European Union remains divided, lacking a common will to create unity among each member state. Here, the problem with neofunctionalism with regards to

integration is that it focused itself on the assumption that integration will take place as a spillover effect, and thus would be inevitable. However, it fails to take into account the importance of interests. In this, different states as well as different groups within states do not always share the same interests and goals, thus hindering interdependence between member states. It would therefore be necessary for neofunctionalism, as a theory of integration, to consider and account for interests as a limitation to integration, as highlighted by the refugee crisis. Moreover, it should be considered that while it makes sense that integration, according to neofunctionalism, may have been a spillover effect, it should be examined further if national interests had been the driving factor in integration, rather than as a step by step process.

This research has found that a combination of factors played a role in determining the responses of a member state to the refugee crisis, rather than being related to one single factor. It was found that while all factors were important, they could all be translated into furthering the national interests of individual member states in which it allowed for increased disunity between member states. Pelgrom (2017, 10) summarizes this as a situation whereby the “perceptions about how immigrants can contribute to the economy and culture of the country differs largely between the member states. While the continental and Nordic European societies hold more positive views towards immigrants, the central and eastern countries are overwhelmingly negative about the cultural impact of immigrants”. Throughout this research it has become evident that refugees and asylum seekers have unduly been perceived as threats to a state rather than as people facing threats. Therefore, from this, it is necessary to summarize the main finding of this paper as that in which member states interests and power have played a fundamental role in creating disunity in the EU over the refugee crisis. However, this is not to argue that member states should be united in every case facing the European Union. Rather, member states should maintain their differences in terms of national interests and the protection of their citizens in terms of the cultural characteristics of the states. Furthermore, this should not be at the expense of those seeking protection nor should it be against agreed upon international norms.

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