

OX MO

Oxford Monitor of Forced Migration

Vol.7 No.2

oxmofm.com

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Foreword

Dear Reader,

On behalf of the editorial team, it is our great pleasure to welcome you to this issue of the *Oxford Monitor of Forced Migration*. This issue's articles explore a broad range of topics from around the world. The five sections aim to cover different approaches to forced migration as well as to engage authors and readers from a variety of different fields and disciplines.

The policy monitor offers a critical analysis of current policy practices or proposals. Steven Feldstein examines the ongoing human rights situation in Libya. He argues that Europe commits a moral failure as long as it determines the success of its policy based on whether or not fewer refugees arrive. Serena Sorrenti focusses on an entirely different set of the EU migration policy — readmission agreements. By exploring the readmission agreement between Afghanistan and Sweden, she demonstrates the unequal negotiation positions of the two countries as well as the decisive shift in Swedish migration policy.

The law monitor analyses laws, policies, as well as practices, and their possible implications for the rights of forced migrants. In this edition's law monitor, Jason Tucker assesses Sweden's temporary asylum law introduced in 2016 and the subsequent prolonged situations of statelessness that follow from the gaps in law and policy the author identifies. Additionally, in *Dropping the Anchor* authors Maegherman, Veldhuizen and Horselenberg address the lack of understanding of the plausibility concept commonly employed in the credibility assessment of asylum seeking cases.

In the field monitor, we hear from those who have had direct experience with forced migrants. Erik Amundson interviews refugees that were resettled in a rural area in the United States. He shows that refugees are confronted with the negative attitudes of the local population and argues that more contact might help overcome prejudice. Faten Ghosn and Alex Braithwaite come to a similar conclusion when presenting the results of a survey about attitudes toward refugees in Lebanon. Muhip Ege Çağlıdil focuses on those internally displaced and the specific challenges of their situation. The international community, he argues, has largely ignored the needs of internally displaced populations. Stacy Topouzova assesses the array of accommodation types for unaccompanied minors in Bulgaria and the challenges this poses to status determination.

We take special pride in the first-hand section that offers a platform for individuals with lived experiences of forced migration to offer their views and insights. In this issue, Wali Mohammad Kandiwal draws on his experiences as a refugee and researcher to explore the notion of truth in the everyday experiences and survival strategies of refugees and Internally Displaced Persons.

In this issue's academic article, Tara Kalaputi provides us with the insights of a comparative study of Serbia and Croatia. While both countries share a similar geographical position and legal framework, Kalaputi argues that the EU accession negotiations made Serbia adopt a more humanitarian approach towards refugees compared to Croatia where a shift towards securitisation occurred in light of political center-right tendencies.

We would like to express our gratitude to everyone that has made the publication of this issue possible. A big thank you goes to our authors, our editors, as well as the staff and faculty of the University of Oxford that support this publication. Lastly, dear Reader, we thank you for your interest. We hope that this issue will challenge you with new perspectives and ideas.

Sincerely,

Claudia Hartman and Klaudia Wegschaider

Co-Editors-in-Chief
Oxford Monitor of Forced Migration

Moral Failure in Libya

By Steven Feldstein

This essay examines the roots to the Libyan migration crisis and European culpability for documented human rights abuses. It argues that failed efforts to rebuild Libya following the 2011 humanitarian intervention combined with recent European policies to outsource responsibility for the migration crisis to Libya have created a perfect storm of exploitation, predation, and abuse.

The Situation

In early November, CNN broadcast shocking footage of dozens of migrants being sold in slave auctions in Libya (Elbagir et al. 2017). The video shows groups of migrants detained in cells or flanked by unknown men, as an auctioneer operating in a floodlit courtyard provides opening bids for the right to purchase another human being. He starts at \$400, then goes up to \$500, then \$600. Finally, the bidding stops at \$800 and a young man is sold to an undisclosed buyer. This appalling report may have finally spurred the international community to address gross human rights violations in Libya. Soon after, France called a special session of the UN Security Council where it pressed for international prosecutions and sanctions of the traffickers responsible for the auctions (Besheer 2017). Likewise, UN Secretary-General Antonio Guterres expressed his public horror of the footage and warned that this may constitute “crimes against humanity” (Independent 2017).

Slave auctions represent a dreadful new low for a situation that long ago ceased to shock. These violations are an inevitable outcome of a set of failed policies that have recklessly imperilled the lives of thousands of migrants, possibly in contravention of international law. Human rights groups have been sounding the alarm and documenting atrocious conditions for migrants in Libya for several years.

For example, Amnesty International reported in 2016 that migrants were being subjected to “sexual violence, killings, torture and religious persecution” by smugglers, traffickers, criminal gangs and armed militias in Libya (Amnesty International 2016). The UN Panel of Experts documented in its June 2017 report widespread abuses against migrants that included “executions, torture, and deprivation of food, water and access to sanitation” (Spittaels et al. 2017). German diplomats have gone so far as to describe Libyan facilities as “similar to concentration camps” (Der Spiegel 2017). International authorities estimate that between 400,000 and one million migrants are currently trapped in Libya (Tharoor 2017). This means that not only are some of the most egregious human rights atrocities in the world taking place on Europe’s doorstep, but they are affecting hundreds of thousands of people.

Europe’s treatment of the Libyan migration crisis represents a moral failure for several reasons. First, the roots of the current crisis are attributable to decisions taken by European and U.S. NATO coalition leaders in 2011, when the alliance deposed Libyan president Muammar Gaddafi without any real plan for the day after. While migration was a significant concern even

before 2011, averaging 80,000 annually during Gaddafi's later years, the post-2011 numbers are extraordinarily higher (Hamood 2008). As the international community painfully learned (yet again), undertaking an armed intervention in a country devoid of political institutions and seething with inter-communal conflict often leads to bad outcomes. Unsurprisingly, Libya sank into civil war and became a breeding ground for instability and terrorism. Professor Alan Kuperman (2015) observes: "Libya has not only failed to evolve into a democracy; it has devolved into a failed state. Violent deaths and other human rights abuses have increased severalfold."

While there were putative attempts by the international community to help rebuild the country and establish the basic workings of a functional government, these efforts suffered from a lack of leadership, resources, and willpower. For example, Europe's commitment proved inadequate with leaders like French president Nicholas Sarkozy and British prime minister David Cameron soon "distracted, by relation campaigns and economic worries" (Shane and Becker 2016). It was not until 2013 that NATO sent a small advisory team to Libya to advise on "defense institution building" (North Atlantic Treaty Organization 2013). The UN continued to maintain a limited political advisory mission; the Security Council chose not to authorize a formal peacekeeping mission. Meanwhile, the interim Libyan government passed a disastrous political isolation law and implemented an ineffectual electoral arrangement that "exacerbated tribal and regional divisions while making power-sharing even more difficult" (Hamid 2016). As a result, Libya deteriorated into a failed state, marked by rampant impunity and corruption. These factors created ripe conditions for exploitation, particularly as smugglers increasingly routed migrants through Libya to Europe (Al Jazeera 2017).

Second, not only did Western powers fail to adequately help Libya rebuild after Gaddafi's removal; they actively advanced policies that exacerbated conditions for migrants in the country. In particular, Italy's decision to "offshore" the migration problem to Libya has directly abetted shocking human rights violations. In 2016, after 180,000 migrants arrived by sea to Italy, which followed successive large-scale arrivals of 153,000 and 170,000 migrants to Italy in 2014 and 2015 respectively, the government decided it needed to take drastic action (International Organization for Migration 2017). The European Union had taken tentative steps to alleviate the burden on Italy by requesting that all member states take in a portion of Italy's asylum seekers, but it had been roundly rebuffed. For example, French police have blocked "hundreds of migrants" on the Italian border from entering the country and it is well below its quota for migrants (Dettmer 2017). In Austria, Foreign Minister Sebastian Kurz purportedly requested that Italy keep all new migrants on the Italian island of Lampedusa, and block them from setting foot on the European mainland (Euronews 2017).

Consequently, Italy struck a deal with Libya. Led by the interior minister and "former spymaster" Marco Minniti, the government began working with a variety of local officials and militias to curb the migrant trade. As the New York Times reports, "the turning point for Mr. Minniti's efforts came in July, after Italy persuaded the clan-based militias that control the migrant trade along with a stretch of the lawless Libyan coast, west of the capital, Tripoli, to keep their boats onshore" (Walsh & Horowitz 2017).

Here is where things become murky. The Italian government claims it is not paying militias to keep them from transporting migrants, but humanitarians claim otherwise (Walsh & Horowitz 2017). In an open letter in September, Mediciens Sans Frontieres head Joanne Liu decried a “thriving enterprise of kidnapping, torture, and extortion,” asserting that “European governments have chosen to contain people in this situation” (Liu 2017). Journalists report that not only are inmates in the migrant centers “routinely rented out” to local businesses, but the arrival of international funding “has created additional incentives for armed groups to seize control of DCIM [Department to Counter Illegal Migration] centers in search of money and legitimacy” (Howden 2017). It is probable that Italian money to train Libya’s coast guard and assist detention centers is purposely finding its way into the hands of smugglers. The additional \$225 million that the EU has committed to enforcing border controls and oversee detention centers are also likely lining the pockets of unsavory militias and strongmen who run these centers (Walsh & Horowitz 2017). In other words, while Europe may not be formally paying off militias in Libya, these represent de facto payoffs.

Of course, this raises a larger question about what the EU expected would happen when it decided to solve the migration crisis by giving several hundred million dollars to a barely functional government with a history of repression and instructed them to take care of the ‘refugee problem’. A combination of fungible money, a chaotic and lawless environment, and a desire by European governments to quickly rid themselves of the crisis have laid a solid groundwork for predation and abuse.

What Should Europe Do?

Europe finds itself in a morally precarious position. Its leaders cannot simply ignore reports of slave auctions, rampant torture, rape, and abuse, particularly given the degree to which its policies have abetted these very violations. Nor can European leaders afford to open up their borders to further migration over the Mediterranean Sea amid the continent’s fraught political environment. Nativist parties are gaining large shares of votes, with Germany’s AfD party the most recent beneficiary of this populist and nativist backlash. But there are certain steps Europe can take to alleviate the crisis and shore up its moral standing.

First, European leaders should recognize what the Libyan government is capable of accomplishing on its own and what it is not. The country is beset by two rival governments and scores of armed militia. Simply spending additional money to “improve” detention centre conditions will have little effect. Continuing to outsource border control and migrant protection to Libyan authorities is a morally hazardous path. Unless Europe is comfortable overlooking increasing levels of abuse – trading of slaves, sexual exploitation and other horrific acts – it must do more than simply admonish Libyan authorities to respect international law while otherwise turning a blind eye.

This leads to the second recommendation – stability and legitimate governance will not come to Libya unless Europe commits real diplomatic muscle to supporting the country’s tenuous

peace process. The political spadework necessary to rebuild the country should have taken place in 2012. Today, this effort is exceedingly more complicated, but it is even more urgent. A fragile two-year-old UN-led peace process is organizing national elections for later in the year, which represents Libya's best near-term chance of laying a foundation for political stability and peace. But the agreement is in danger of falling apart due to the obstructions of General Khalifa Haftar, who heads one of Libya's main militias. Haftar is increasingly playing a spoiler role, abetted by Russian arms and support (Becker & Schmitt 2018). As Issandr El Amrani from the International Crisis Group observes: "Given that successive efforts by international actors to engage with Haftar in pursuit of a negotiated political settlement have yet again met with his defiance, they should speak out more forcefully and condemn this latest attempt at undermining it." Amrani argues that while these reprimands may not convince Haftar to fall in line, they would signal to other Libyan actors that "the international community is intent on defending the [UN] process that Salamé and others have put in place, whose broad outlines have been accepted by a wide range of Libyans" (Amrani 2017). Europeans would be wise to back the UN process publicly and forcefully. They should warn potential spoilers that there would be consequences to pay if the accords break down and usher in a new devastating wave of violence. European efforts on their own will not bring about a diplomatic resolution, but if European leaders make stability in Libya a top priority, and if they use meaningful political capital to cajole the Americans into a more active role, then this could jump-start a moribund process and bring real results.

Third, European leaders must take moral and rhetorical responsibility for the crisis and the abuses experienced by migrants. Migrant populations are suffering and dying in part due to dangerously shortsighted policies from Brussels and other European capitals. Until policymakers recognize their own personal accountability for these violations, little will change. Unfortunately, many European politicians feel constrained about what they can say due to the same nativist forces that are toppling establishment political parties. Rather than engage in an honest conversation about the human rights impact of the crisis on migrants, they choose to mischaracterize or obfuscate. For example, Estonia's interior minister Andres Anvelt recently observed: "If we look at the flows of migrants across the Mediterranean a few months ago and now, the decrease in illegal migration has been big in numbers. We'll have a discussion about how to have this success story going on" (Baczynska 2017).

Therein lies the crux of the problem. If Europe continues to measure the success of its migration policy simply by whether fewer people are crossing the Mediterranean, this is a moral failure of the highest order. Likewise, if European leaders choose to appease populist resentment by outsourcing responsibility to Libyan militias rather than tackling these issues head-on, then the human cost of these policy choices will rise to even more shameful levels. It is imperative that leaders consider a new approach – a greater commitment to diplomacy and a more honest dialogue with their citizens. Otherwise, journalist accounts about slave auctions, mass executions, and rape will continue.

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The views in this article are those of the author alone and do not necessarily reflect the views of OxMo.

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Sending Back or Looking Forward? The Unbalanced Politics Behind European Agreements for the Return of Migrants to Afghanistan

By Serena Sorrenti

The unprecedented number of migrants and asylum seekers that reached the European Union (EU) by sea and land throughout 2015 and 2016 resulted in a number of questionable policy measures, among which there is the EU-Afghanistan Joint Way Forward on Migration Issues (JWF). More than one year after signing the JWF, this article sets out to analyse the inconsistency of the EU policy vis-à-vis its commitment to guide Afghanistan through its process of peace and stability. Following this policy document, other EU countries signed bilateral readmission agreements; this article highlights the particular case of Sweden. By drawing attention to the current socio-political environment in Sweden, reflecting a sentiment prevalent across the EU, this paper questions whether the approach embodied by such unbalanced readmission policies is genuinely addressing irregular migration, or else it is merely providing a quick fix to a major concern the EU is deliberately ignoring.

Policies and Politics

The Joint Way Forward (JWF) was sealed a few days prior to the Brussels conference on Afghanistan held on 5 October 2016, when the European Union (EU) committed to advancing the Afghan political process towards self-reliance and lasting peace. On this occasion the EU pledged US\$5.6 billion of the total US\$15.2 billion allocated by the international community, making up the most significant group of donors (European Council, 2016). The signing of the JWF paved the way for some EU member states, namely Finland, Germany and Sweden, to conclude bilateral agreements with Afghanistan reinforced by financial commitments (Bjelica 2016).

Despite the call for ‘solidarity, determination and collective efforts’ in the preamble (EEAS 2016:1), the readmission agreement intends to address and prevent irregular migration by returning an unlimited number of Afghan migrants staying in the EU without a legal basis. While readmission agreements do not constitute an obligation under international law, neither do they provide a legal basis for rejecting migrants. They create a juridical framework for forced returns that should take place in compliance with international and European legal obligations (Giuffrè 2013). However, during situations of emergency like the increased refugee arrivals in 2015, accelerated border control procedures and inadequate monitoring jeopardise access to protection mechanisms. Under such circumstances it may be arduous for asylum seekers to avail protection, intended as the right to *non-refoulement* (ibid). This principle stipulates that countries are forbidden from forcibly returning individuals in need of protection to the country where they would be in danger of persecution and/or death.

In instances of large arrivals of refugees and migrants, informal practices of border control may end up infringing international human rights and refugee law. Therefore, as a result of accelerated and inaccurate return procedures, *refoulement* may become the praxis. Once the claim for protection is considered invalid by the authorities, the illicit dimension of migration

becomes relevant for return; therefore, the principle of *non-refoulement* appears not to be violated and law applied.

Against the context outlined, this paper sets out to untangle overlooked implications and analyse the long-term impact of readmission agreements between the EU and Afghanistan, focusing on the case of the bilateral agreement with Sweden. Readmission agreements are generally conducted on the basis of reciprocity. However, ‘they are de facto founded on unbalanced reciprocities mostly biased in favor of the sending States’ interests’ (Giuffrè 2013:107) since the latter tends to have more advantageous conditions between the two contracting countries. The case of Sweden deserves further attention because it represents a peculiar example for the incoherence with its previous foreign policy towards Afghanistan. Sweden committed to implementing the JWF at the national level by signing the Memorandum of Understanding on Cooperation in the Field of Migration (MoU) on 21 October 2016, addressing deportation of rejected applicants who refuse to return voluntarily (Government Offices of Sweden 2016b).

The Afghan government, aware of the ‘unbalanced reciprocities’ (Giuffrè 2013), resolved to withdraw its signature from the Sweden-Afghanistan agreement on 30 November 2016 (Mederyd Hårdh 2016). Despite this, the MoU remains valid in compliance with the JWF stipulated at the EU level (Sveriges Radio 2016). The enforcement of the provisions contained in the MoU led to the first deportation round in the following month, amidst the reactions of Swedish citizens and civil society with rallies organized throughout the country (Urisman Otto 2016). Notwithstanding a document issued by the Swedish Migration Board (Migrationsverket 2017) stating that Afghanistan is currently not a safe place, the Swedish government has been implementing the resolution prescribed by the MoU since its enforcement. According to Eurostat, the number of people with Afghan citizenship returned from Sweden in 2016 reached 1025 of the total 9480 returned by the EU in the same year. This figure is 8 times higher than that of 125 Afghan citizens returned by Sweden in 2008. This makes Sweden the third-ranked country in terms of returns after Germany and Greece, with respectively 3440 and 1480 Afghans returned over the same time span (Eurostat 2017). With accelerated and inaccurate border control procedures in place, *refoulement* might have become a concrete possibility in this very context, which would, in turn, explain the exponential increase of returns from Sweden during 2016.

Recent developments relating to the economic and security situations in Afghanistan render the country particularly unsafe for return. During 2017 there was a significant 17 percent increase of civilian casualties caused by suicide and complex attacks compared to the previous year. Since the United Nations Assistance Mission in Afghanistan (UNAMA) began documenting in 2009, the year 2017 has recorded the highest number of civilian casualties induced by suicide and complex attacks rather than by ground fighting (UNAMA 2018). The situation is exacerbated by increasing unemployment rates and economic stagnation, which together put a strain particularly on youth (Ferrie 2016). Such circumstances, pointing at ‘forced economic migration’ (Schuster and Majidi 2013:225), highlight the complexity of the migration flow and the blurred distinction between migrant and refugee. For instance, a young

Afghan man living in a remote region of the country, where weakened state authority leaves room for fighting between rival insurgent groups, and where the economy has stalled, making it difficult to enter the labour market, may be compelled to flee to ensure a safe life for himself and a future with dignity. Such cases represent the intricate and multi-faceted realities of people who flee Afghanistan. Besides, the inaccurate border control procedures in place add further complexity to the refugee determination process, which more often than not ends up being skewed.

In light of this, the JWF is concerning due to the following reasons. First, the JWF pledges to respect the ‘safety, dignity and human rights’ (EEAS 2016:2) of returnees during the return process yet operates on the assumption that those individuals who have not yet been granted protection in the EU are all irregular migrants. By returning individuals to the country where they risk persecution, human rights violations or even death, the JWF manifestly violates the principle of *non-refoulement* enshrined in Article 33 of the 1951 Refugee Convention (UNHCR 2010). Secondly, the mass repatriation envisaged by the JWF infringes Article 4 of Protocol 4 of the European Convention on Human Rights, prohibiting the collective expulsion of aliens (ECHR 2017). Lastly, the JWF was negotiated bypassing the European Parliament, hence its validity should be questioned.

Sweden’s Double Standard

Throughout the ‘refugee crisis’, Sweden’s migration policy has increasingly restricted its asylum benefits to the minimum standard. Thus, Sweden transitioned from having some of the most generous policies amongst EU countries to having significantly more hostile policies towards asylum seekers. This policy shift conforms to an attitude that has taken root across Europe, whereby migration-related policies are being recalibrated to more tightened ones. The latest migration law approved by the Swedish government in July 2016 foresees protection only on a temporary basis for applicants of all nationalities, as well as restricting rules for family reunification (Migrationsverket 2016). Despite the heightened control measures in place to reduce the number of arrivals, Afghans represent the second largest group of asylum seekers in Sweden. Throughout 2016, nearly 60 percent of the total number of asylum seekers in Sweden was granted the status of temporary protection. However, when it comes to asylum seekers from Afghanistan, the figures are reversed. Afghans represent 10 percent of the total number of asylum seekers. Only 24 percent qualified for protection, while the remaining 76 percent do not according to the migration authorities (Furusjö 2016). The numbers reveal a shift in the Swedish migration policy, further corroborated by the signing of the MoU.

Sweden appears to have adopted a double standard approach in the management of migration issues, hence marking a turning point in the coherence of its Afghanistan foreign policy. On the one hand, Afghanistan remains the largest recipient of Swedish aid (Government Offices of Sweden 2016a). On the other hand, the readmission agreement concluded with Afghan authorities shows the opposite stance in what it prescribes for the return of migrants supposedly staying in the territory without a legal basis. In light of the context in which it was signed, the MoU between Sweden and Afghanistan appears to have been used as a bargaining chip in

exchange for foreign aid. This reinforces the argument of ‘unbalanced reciprocities’ (Giuffrè 2013). The Afghan authorities might have felt pressured – as the event of the signature proves (Mederyd Hårdh 2016) – to commit to the readmission of rejected migrants, in order to obtain the aid essential to undertake the road to self-reliance.

The question of upholding international human rights and migration law appears to have fallen by the wayside at the expense of a merely opportunistic political move, made to keep content an electorate that across Europe has shifted to the right concerning migration-related matters (Banulescu-Bogdan 2016). Tightened measures in line with EU minimum standards are evidence of a stance that puts Sweden at odds with its former liberal standpoint. Therefore, the enactment of such policies indicates a populist strategy to secure votes. In this socio-political landscape, the anti-immigration party Swedish Democrats witnessed a steady increase of preference in the polls throughout the emergency period. The party subsequently lost few points as a result of stricter measures adopted by the government, such as the closing of borders with Denmark since January 2016, instrumental in regathering political consensus (Statistics Sweden 2016).

Sending back, looking forward

Empirical studies have extensively demonstrated that deportation is not an effective measure to halt migration flows. Forcibly returned people are likely to reattempt migration, especially if ‘there has been little or no structural improvement to security, the economy, the political situation, or their individual perspectives’ (Schuster and Majidi 2013:225). It has been observed that while communities provide support for social integration, the greatest obstacle that rejected migrants encounter upon return is the lack of employment, which represents one of the main reasons pushing them to undertake the journey again (ibid).

The strategy adopted by the EU and the Swedish government is one of narrow considerations, which could ultimately lead to the reverse effect of intensifying migration (Schuster and Majidi 2013) to Europe. Whereas in the short run return policies serve the purpose of maintaining the political *status quo*, they may not deliver the expected results in the long run. The mass repatriation envisaged by the JWF and the MoU would exacerbate insecurity, poverty, and unemployment. This is because Afghanistan lacks the capacity to reintegrate the large number of people to be returned in its economic and social structure (Oxfam, 2018). A failure to integrate as well as narrow opportunities for the large youth population could add up to further insecurity since some individuals might become recruitment targets of insurgent groups (Rasmussen 2016).

With the country largely dependent on foreign aid (Samim 2016), Afghan authorities did not seem to have had room for negotiation other than to accept the deal. During the 16 years of foreign intervention in Afghanistan, many of the enacted measures have *a posteriori* proved flawed (Farzam and Ali Seerat, 2016). Under the circumstances analysed so far, the JWF and the Sweden-Afghanistan agreement could become yet another one of those measures that will likely be reconsidered in the future for their dubious efficacy.

A true effort of solidarity would be for the EU to strengthen its commitment to address the root causes of migration and investing in durable solutions, which should be translated in practice and pragmatism, and not merely be part of the political discourse. Sealing the JWF and the MoU in the socio-political landscape so far examined, sheds light on a contradictory trend. With both approaches in place to solve a complex issue, the outcome, or the *status quo*, proves that a coherent response is lacking. Furthermore, the EU, in accordance with the principles it upholds, should support the Afghan government and its ministries to work together on sustainable responses. The ultimate goal should be to reestablish equilibrium within the country, for it to thrive and for its citizens to benefit from economic and political stability. Simultaneously, a double discourse that could have a reverse effect should be avoided by the EU and its member states. If the purpose of cooperation is peace and prosperity in both regions (as reiterated by parties to the agreement), the resolutions prescribed by the JWF and the Sweden-Afghanistan agreement should be questioned and law applied, in order to provide forward-looking solutions.

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The views in this article are those of the author alone and do not necessarily reflect the views of OxMo.

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Sweden's Temporary Asylum Law and the Indefinite Statelessness of Refugees

By Jason Tucker

This paper explores the law and policy related to the identification, assessment, and recording of the statelessness of refugees in the Swedish asylum procedure. It considers the gaps in law and policy that can lead to a stateless refugee remaining in a prolonged, or potentially, indefinite stateless situation and the impacts of the temporary asylum law introduced in 2016. The temporary law can be seen to undermine useful legislation that saw many stateless refugees receiving citizenship after four years. However, the new State discourse introduced full-time employment or completion of education as a requirement to acquire permanent residence, a prerequisite for citizenship. Therefore, these can be seen as new naturalisation criteria for certain migrants, which could mark a shift from Sweden's previous trend towards increasingly liberal access to citizenship since the 1950s.

Introduction

In 2016 it was reported that 37,449 stateless people resided in Sweden, the majority of whom were refugees (Statistics Sweden, 2017). The true scale of statelessness in Sweden is unknown as the authorities do not have a statelessness determination procedure through which to accurately identify statelessness. The definition of a stateless person under international law -, "... a person who is not considered as a national by any State under the operation of its law" (UN General Assembly, 1954: Article.1.1) – is not to be found in Swedish legislation.

Despite this gap, a large number of asylum seekers in Sweden have been identified as being stateless, or a variation thereof. In 2015 Sweden received 9,266 asylum seekers who were recorded as either "stateless", statslös, "stateless Palestinian", or "unknown citizenship" Okänt medborgarskap or citizenship "under investigation" Under utredning¹ – 5.7% of the total asylum applications (Statistics Sweden, 2017). This increased to 7.7% (2,240) of the total asylum applications in 2016, though the overall number of asylum claims fell to 28,939 (ibid).² Yet, the assessment of nationality or statelessness during the Swedish asylum procedure can only be seen as partial and has not been the subject of research.

¹ The lack of law and policy on determining statelessness in Sweden makes it challenging to know with certainty if those recorded as stateless actually are so. There is also the possibility that some stateless people may not have been recognised as such. This provides us with a challenge in terms of mapping the scale and scope of statelessness in the country. For this reason, nationality categorisations other than "stateless" statslös are included in this analysis, such as those refugees recorded as having "unknown citizenship" Okänt medborgarskap or citizenship "under investigation" Under utredning, as well as some Palestinians. These categories were also included in UNHCR's report Mapping Statelessness in Sweden as being under the organisation's statelessness mandate (UNHCR, 2016).

² [2] The statelessness of refugees is by no means a minor issue in either the statelessness or refugee fields. In 2014, the United Nations High Commissioner for Refugees (UNHCR) reported it had 14.4 million people under its refugee mandate, of which nearly one in ten (1.5 million) were stateless, (UNHCR, 2015; ISI, 2014: 125). If we were to include the Palestinians under UNRWA's mandate, then we this would be increased to one in four refugees. While not all stateless people are refugees, or all refugees are stateless, some people do fall into both categories. This is unsurprising given that statelessness can be both the cause or consequence of forced migration (NRC and Tilburg University, 2014).

This paper is an initial attempt to address this lack of understanding, by providing an analysis of the law and policy related to the identification, assessment, and recording of the statelessness of refugees in the Swedish asylum procedure. It considers the gaps in law and policy that can lead to a stateless refugee remaining in a prolonged, or possibly indefinite, stateless situation. It will also discuss the impacts of the temporary asylum law adopted in 2016 (Migrationsverket, 2016d) on stateless refugees. The analysis will be contextualised within Sweden's obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereafter 1951 Convention), specifically on the cessation of refugee status for stateless refugees (UN General Assembly, 1951: Article 1 C:2-3,6) and the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) (UN General Assembly, 1954).³

Statelessness Refugees Under International Law

Stateless refugees fall under several overlapping international law regimes, as Figure 1 illustrates. They are under the 1951 Convention and the 1954 Convention simultaneously (UN General Assembly, 1951 & UN General Assembly, 1954). It is not within the scope of this paper to detail these overlapping regimes; indeed, this is not necessary as it has been covered by other commentators (see Akram, 2002; Van Waas, 2008).

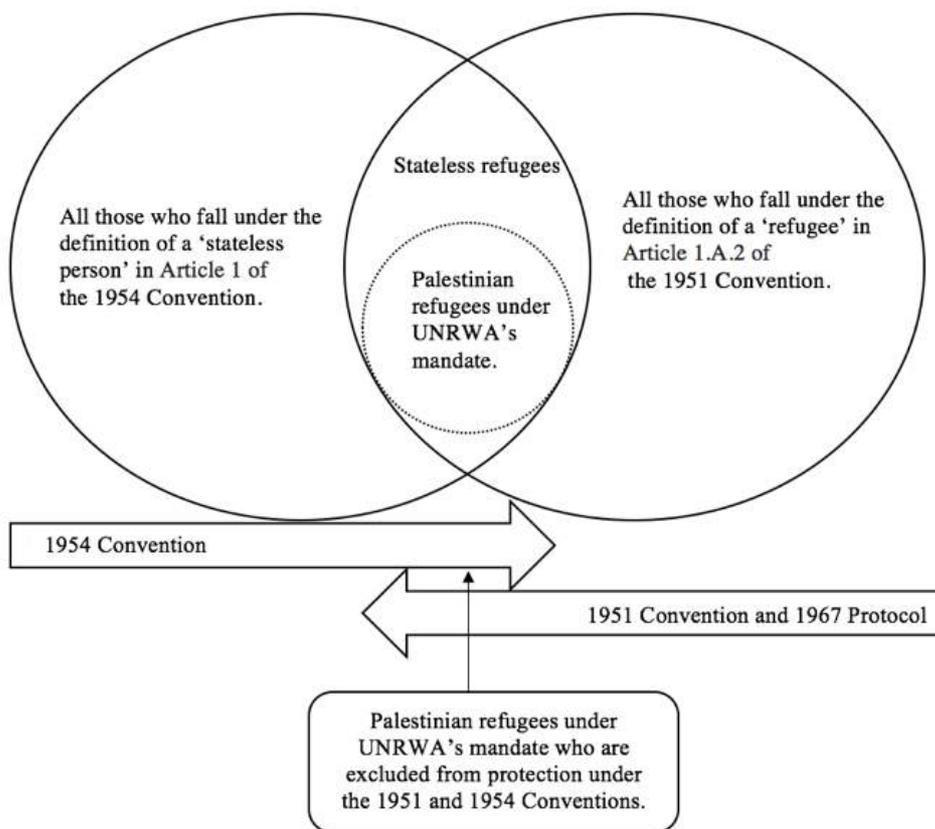


Figure 1: The International Law Regimes Covering Stateless Refugees

³ Sweden is a party to both the 1951 and 1954 Conventions.

In an attempt to clarify this relationship, UNHCR advises, '[a]lthough an individual can be both stateless as per the 1954 Convention and a refugee as per the 1951 Convention, at a minimum, a stateless refugee must benefit from the protection of the 1951 Convention and international refugee law' (UNHCR, 2014: 7). The possibility that a refugee may be stateless is recognised in the definition of a refugee in the 1951 Convention:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. [Emphasis added] (UN General Assembly, 1951: Article 1A(2)).

This recognition is important because for stateless refugees there are specific cessation provisions. These seek to ensure that stateless refugees, who no longer require protection from persecution, do not lose their refugee status unless specific criteria related to their statelessness are met⁴. To ensure that stateless refugees do not lose their refugee status, in contravention of the cessations provisions, the identification of statelessness amongst refugees is required. This is not to say that there should be two types of refugee status, one for stateless refugees and one for those who hold a citizenship. Instead, it is argued here that, in line with the demands of the 1951 Convention, as well as the reality that a refugee may be rendered stateless after they have acquired refugee status, the identification of statelessness, or risk thereof, should be built into asylum procedures at various stages.

States are, at a minimum, required to have identified statelessness prior to making a decision on cessation of refugee status. Therefore, an assessment would need to occur before this decision could be taken. It also seems prudent to undertake an assessment of statelessness, or risk thereof, during the asylum application stage, as, very worryingly, not identifying statelessness may negatively impact a refugee's ability to be recognised as such (Berényi, 2016; Khanna & Garlick, 2017).

With regard to the guidance from UNHCR they state that 'cessation practices should be developed in a manner consistent with the goal of durable solutions. Cessation should therefore not result in persons residing in a host State with an uncertain status' (UNHCR, 2003:3). Given that stateless refugees are under the mandate of the 1951 and 1954 Conventions simultaneously, with regard to cessation of refugee status, the 'ability to return' in Article 1(C) of the 1951 Convention should also be read in light of a state's obligations under the 1954 Convention. In this regard UNHCR (2014) has provided guidance on the standards states should follow in assessing whether a stateless

⁴ The 1951 Convention Article 1 C:2-3,6, states that the Convention will cease to apply to stateless refugees who: '... (2) Having lost his nationality, he has voluntarily reacquired it; or (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or... (6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.'

person⁵ can be returned to their country of previous habitual residence.⁶ If return is not possible due to the lack of issuance of permanent residence and granting of a full range of rights by the country of former habitual residence, UNHCR recommend that, following the object and the purpose of the 1954 Convention, states grant residency permits to stateless people based solely on their statelessness (ibid). Thus, even for those stateless refugees whose refugee status ceases in contravention of the 1951 Convention cessation provisions, a residency permit should be issued based on their statelessness alone.

I should also briefly refer to European Union (EU) law on the obligation to identify statelessness. The need to have identified the statelessness of refugees can be found within the laws of the Common European Asylum System (Spider, 2014).⁷ Vlieks (2014) makes an argument that the European Convention on Human Rights also obliges states to identify statelessness by drawing on the available case law. Despite these implied requirements, in reality, as Ermolaeva et al. (2017: 12) set out in their detailed analysis in *The Concept of 'Stateless Persons' in European Union Law*, '[w]hile the EU does refer to stateless persons in its legal instruments, it has a "very limited" involvement in effectively addressing the issue of statelessness'.

Defining Stateless Refugees in Sweden

As mentioned previously, Sweden has not adopted a definition of a stateless person within its national legislation. Nonetheless, given that the 1954 Convention does not permit reservations to the definition in Article 1(1), the definition is seen as binding on state parties (UNHCR, 2012). Therefore, for the purposes of this paper, the definition of a stateless person will be that of the 1954 Convention (UN General Assembly, 1954). The definition of a refugee will be that established under Chapter 4(1) of the Swedish Aliens Act (Regeringskansliet, 2010), which is in line with Article 1A(2) of the 1951 Convention (UN General Assembly, 1951).⁸ Similar to the 1951 Convention, the definition in the Swedish Aliens Act also acknowledges the possibility of a refugee being stateless (ibid).

⁵ This differs if the individual is stateless as a result of voluntary renunciation of nationality as a matter of convenience or choice.

⁶ UNHCR (2014: 55) note: 'As for an individual's ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted it upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that State. Permission to return to another country on a short-term basis would not suffice.'

⁷ For example, Article 36 of the Directive 2013/32/EU of 26 June 2013 *On common procedures for granting and withdrawing international protection* notes: '1. A third country designated as a safe country of origin in accordance with this Directive may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if: (a) he or she has the nationality of that country; or (b) he or she is a stateless person and was formerly habitually resident in that country...'

⁸ For the purposes of this analysis those who have been granted "Convention" status as refugees, as well as those who have been granted temporary protection status, following Sweden's legislative change in 2016, are to be included. However, those who have been granted protection on humanitarian grounds are not included as the focus of this article is on those people who are both refugees and stateless under international law. This distinction has been made for analytical purposes. It should not be read that stateless people who have been granted protection on humanitarian grounds do not face similar problems in having their statelessness accurately assessed, recorded or in finding solutions to their statelessness in Sweden.

The Identification of the Statelessness of Refugees in the Asylum Procedure

The Swedish Migration Agency, Migrationsverket, (hereafter SMA) is the authority responsible for establishing and assessing the identity (including nationality or statelessness) of refugees. UNHCR has reported that in Sweden ‘no comprehensive determination of an applicant’s potential statelessness takes place during the asylum procedure’ (UNHCR, 2016: 20). Due to the lack of law, policy, and guidance, in certain situations the SMA are not able to determine the citizenship or statelessness of the applicant, categorising some people as having “unknown citizenship” *Okänt medborgarskap* or citizenship “under investigation” *Under utredning*. Guidelines on how and when these classifications are to be used have not been produced (ibid). Despite the lack of clarity on the assessment of statelessness, the Migration Court of Appeal has previously recognised that while statelessness is not grounds in and of itself to grant refugee status, statelessness, understood as membership of a social group, can be considered alongside the asylum seeker’s other individual circumstances (Migrationsöverdomstolen, 2008b).

With regard to the asylum procedure, following a submission of an application for asylum, the SMA will conduct interviews. During these interviews, questions related to the applicant’s country of origin and/or citizenship are raised. This is part of a credibility assessment for the asylum claim, which includes determining where the applicant was born, their country of origin and which languages they speak (Migrationsverket, 2016g). These questions do not have the specific intention of determining a person’s citizenship or identifying their potential statelessness.

All SMA asylum caseworkers are expected to be able to determine the nationality or statelessness of asylum seekers, using relevant legal provisions related to nationality in the country of origin (UNHCR, 2016). However, a crucial part of determining statelessness is also to consider the operation of the nationality law. It is unclear to what extent this is taken into account by the caseworkers when they are making such assessments. As will be discussed below, no information or guidance on how the operation of the law can be assessed, in general, or for specific countries, is given in any of the sources on which the SMA caseworkers can draw.

In response to the limited guidance received by SMA caseworkers on the establishment of the identity including the nationality of applicants, the SMA adopted a legal position (*Rattling ställningstagande*) in March 2016 on examining and determining identity and citizenship of asylum seekers, followed by another in June 2016 on the concept of regular place of residence (*vanlig vistelseort*) for stateless applicants (UNHCR, 2016). While these provided some information to caseworkers on which country, or countries, a determination of a stateless asylum applicant’s claim should be made, they also reaffirmed that “[t]he one who claims to be stateless must make this probable” [emphasis added] (ibid: 38).

Stateless asylum seekers are thus expected to raise their statelessness during the interview and make their claim probable. This can be problematic, as not all stateless people can prove they are stateless, while others may not raise it for a variety of reasons, such as the fear that it would negatively affect their claim.⁹ The Swedish practice whereby applicants have to make their

⁹ It is not argued here that all asylum seekers should be considered stateless until proved otherwise. Rather, as UNHCR (2014) guidance on the coordination of refugee and statelessness determination procedures notes, it is

statelessness probable stands in contrast to UNHCR (2014: 35) guidance on the determination of statelessness, which emphasises that statelessness should only have to be established to a ‘reasonable degree’. The demand that the applicant makes their claim probable is compounded by the fact that the burden of proof lies, by and large, with the applicant themselves, in contrast to UNHCR guidance on the shared burden of proof in establishing statelessness.¹⁰

Increasing the barriers faced by some refugees in proving their statelessness in Sweden, the SMA place restrictions on the use of documentation issued by certain states or authorities. This includes documents from Afghanistan, Iraq, Somalia, Eritrea and those carried by ‘stateless Palestinians’ (Migrationsverket, 2016b). All of these are countries or authorities with known stateless populations or with nationality law, or the implementation thereof, which sees the creation and perpetuation of statelessness. It is unclear therefore how a stateless person from one of these states, even if they could provide documentation indicating they were stateless, would be able to make their statelessness probable.

With regard to the material available to SMA caseworkers in their decision making beyond what the applicant provides and their own knowledge, they can draw on several other sources. This includes country of origin information on the LIFOS database, other external sources and language analysis for the determination of country of origin. Caseworkers can also turn to either the Migration Handbook, produced and continuously updated by the SMA, legal positions made by the legal team of the SMA, or rulings by the Migration Court of Appeal.

The Migration Handbook, at the time of analysis, did not include a definition of a stateless person, a person with “unknown citizenship” or those whose citizenship was “under investigation” (Migrationsverket, 2015). In addition, as of October 2016, there were only twenty-seven legal positions with a reference to statelessness from the SMA available to caseworkers for guidance on statelessness assessment (LIFOS, 2016). While these detail law and policy positions on individual cases of stateless Syrian and Palestinian refugees, as well as how to record country of origin on stateless refugees’ applications for a residence permit, no actual detail regarding how statelessness, “unknown citizenship” or citizenship “under investigation” are to be identified or categorised was given. With regard to the past decisions of the Migration Court of Appeal, based on a review as of October 2016, this only related to individual cases and did not provide comprehensive guidance on how statelessness should be identified in the asylum procedure.

important for asylum seekers to be made aware that they should raise their statelessness, or their perceived risk of statelessness, during the application procedure. There are also practices in other states, such as Spain, where ex officio initiation of stateless determination occurs (see Gyulai, 2012). This could be useful in cases where the applicant is unaware that they are stateless, but through the information the applicant has provided, the SMA may identify that the applicant is at risk of statelessness and launch a determination.

¹⁰ The SMA note in their guidance to asylum seekers (which is similar for non-asylum migrants): ‘It is your responsibility to prove your identity. This means that you must present documents that prove what your name is, when you were born and your citizenship. This document must also include a photograph and be issued by an authorised authority’. [Emphasis added] (Migrationsverket, 2016f). Detailed guidance on how to implement a shared burden of proof has been set out by UNHCR (2014) and good and bad practices can be drawn on from other states who have implemented statelessness determination procedures. Essentially it is very similar to the shared burden of proof between the applicant and the authorities in establishing the need for protection as a refugee, and could easily be incorporated into the Swedish asylum procedure.

The LIFOS database in Sweden, which provides SMA caseworkers with information and guidance upon which to make better-informed decisions, only provides information on the major causes of statelessness in some states, including Syria, though this is not presented thematically (LIFOS, 2016). The information on statelessness found on LIFOS is far from comprehensive in terms of providing caseworkers with the information they need to be able to identify statelessness globally. Indeed, for some countries of origin, from which large numbers of asylum seekers arrive in Sweden, who have known and documented stateless populations, information on statelessness is not available. Further to this, research has suggested that the use of LIFOS by SMA caseworkers varies considerably, as discussed in Helge Flärd's (2006) report *The Use, Misuse and Non-Use of Country of Origin Information in the Swedish Asylum Process*.

If a stateless refugee in Sweden has their nationality incorrectly recorded, or their statelessness is not accepted by the SMA, they cannot appeal this (Migrationsverket, 2016a). However, when appealing the rejection of an asylum application, a re-evaluation of the statelessness of the applicant can occur if it is seen as relevant to establishing persecution. In the case of a stateless Bidoon from Kuwait who claimed asylum in Sweden, the Migration Board rejected the application as the individual had not provided sufficient documentary evidence to prove that he was an unregistered Bidoon, or provided a passport to prove when he had left Kuwait. There were also doubts about the claim that the persecution he faced was linked to his political involvement. Upon appealing the decision, the Migration Court found that the individual, as a Bidoon, was not issued identity documents and did not have the right to work or access to education or medical care. The Migration Court also stated that the evidence he had provided established that he was an unregistered Bidoon. As such, given that the individual had a well-founded fear of being subjected to further persecution as an unregistered Bidoon, he was granted permanent residence as a refugee (Migrationsöverdomstolen, 2011).

Due to the lack of law, policy or guidance that the SMA have to work with when identifying statelessness amongst refugees, it is likely that some stateless refugees have had their statelessness incorrectly assessed and have been unable to challenge this. UNHCR (2016) also note that this lack of law, policy, and standardisation of nationality statuses means that individuals can have different statuses recorded in the Migration Agency Register and the Population Register in Sweden. This can have negative consequences for an individual in their ability to prove their identity when they apply for naturalisation, as will be discussed below.

Criteria for Naturalisation: Resolving Statelessness

Bevelander and Pendakur (2012) describe the liberalisation of Sweden's citizenship policy over the last six decades. This liberalisation has seen a reduction in the residency requirement, the allowing of dual citizenship, the removal of language proficiency tests and the relaxation and eventual abolition of a subsistence requirement (ibid). This process began in the 1950s and the trend towards more liberal access to citizenship has continued until recently. The temporary asylum law can be seen as a temporary shift in this trend, one that is seeking to increase the criteria some refugees must meet in order to be able to acquire citizenship, through restricted access to permanent residence. Even before the implementation of the temporary asylum law, UNHCR's report *Mapping Statelessness in Sweden*, which did not differentiate between the naturalisation

of refugee and non-refugee stateless people, recognised that a relatively low number of people recorded as stateless managed to acquire Swedish citizenship (UNHCR, 2016).

The Act on Swedish Citizenship details the criteria by which a non-national can become a Swedish citizen, following the hemvist principle. This principle, which is specific to Sweden, implies that a person has a strict subjective purpose of continuous residence and is seeking regular employment and setting up a permanent home in Sweden (Brochmann & Seland, 2010). Section 11 of the Act on Swedish Citizenship sets out the naturalisation criteria, which require that the applicant has 1) established their identity, 2) is eighteen years old, 3) holds a permanent residence permit (or permanently resides legally) in Sweden, 4) has resided in Sweden for five years (four for refugees or stateless people)¹¹, and 5) has led and can be expected to lead a respectable life (Regeringskansliet, 2006). These provisions have been a useful means for ending individual's need for protection as both a refugee and as a stateless person. Previously refugees were granted permanent residence, which was effectively an automatic pathway to citizenship. However, if the individual has been in Sweden under an incorrect identity, or "impeded" their deportation, it may 'harm... the possibility of obtaining citizenship after three years' (ibid).

The Citizenship Unit of the SMA, the authority responsible for assessing naturalisation notifications and applications, can undertake an assessment of nationality or statelessness of an applicant. Yet, the Citizenship Unit 'does not follow any specific guidelines when determining statelessness, instead, each case officer is expected to be able to make the determination based on the available information regarding the applicant and the nationality laws of relevant countries' (UNHCR, 2016: 41). As mentioned previously, stateless people may face obstacles in proving their identity. This situation is exacerbated by the Citizenship Unit of the SMA not having law, policy or guidance to follow to ensure that their identity and credibility assessments are conducted accurately, fairly and transparently when determining nationality or statelessness. Further problematising this, the evidentiary benchmarks for proving ones' identity is also higher in the naturalisation procedure than during the asylum application (Bernitz, 2013).¹² Even where the law seeks to ostensibly facilitate access to citizenship for certain stateless people, the problem of establishing identity remains.¹³

¹¹ For those with permanent residence permits, they may be able to acquire Swedish citizenship after three years if they are married to, or in a registered partnership with, a Swedish citizen and have lived with them for two years (Migrationsverket, 2017).

¹² As Bernitz (2013: 2-3) details, 'As to the first naturalization requirement, that the applicant can prove his or her identity, there are rather strict guidelines in practice. The proof of identity requirement has been tightened up over the years. Exceptions are possible, but only in certain situations. The identity may be proven by showing the national passport in the original or showing an identity document in the original or, if that is not possible, a close relative attesting to the applicant's identity... Original driving licenses and birth certificates are not normally accepted as proof of identity.'

¹³ For example, those who can naturalise through a notification procedure, rather than through the application procedure, have to be 1) aged between 18 to 21 years old, 2) be stateless, 3) have been in Sweden since they were 15 and 4) hold a permanent residence permit (Migrationsverket, 2016e). The applicant must have held a permanent residence permit at the age of 15 to qualify. Therefore, if their identity had yet to be established at this time, they would not qualify for naturalisation by notification, and would have to go through the more demanding naturalisation by application procedure (ibid). Similarly, it is unclear how the applicant would prove they are stateless, given the lack of statelessness determination procedure in Sweden and the lack of mechanisms to appeal an incorrect assessment of nationality.

Section 12 of the Act on Swedish Citizenship foresees the potential barriers some people may face in proving their identity when applying for naturalisation, allowing for exceptions if the person has domiciled in Sweden for eight years and the information about their identity is credible (Regeringskansliet, 2006). However, any period of time the applicant has spent in Sweden with an incorrect identity is not counted towards the period of residency (Bernitz, 2013). Given that stateless refugees cannot appeal decisions about their identity, this can lead to a situation of prolonged statelessness if the SMA have incorrectly assessed the person's statelessness. The dangers of this lack of clarity on determining statelessness was highlighted in an Administrative Court Judgment which ruled, in a case where the Swedish Tax Agency and the SMA had not agreed upon whether a child born in Sweden to an unmarried Somali woman was stateless or not, the child could not acquire Swedish citizenship by notification as the statelessness of the child had not been established due to the authorities (both of whom have no law or policy upon which to accurately make such an assessment) not reaching a consensus (Förvaltningsrätten, 2012).

The Temporary Asylum Law and Naturalisation

Temporary restrictions on refugees being granted permanent residence permits in Sweden came into force in 2016. The law not only applied to new applicants but also those still waiting for a decision on their asylum claim. Previously anyone granted a residence permit as a refugee, a person in need of subsidiary protection or a person otherwise in need of protection, before the 20th of July 2016, received a permanent residence permit (Migrationsverket, 2016d). From this date, however, with some few exceptions,¹⁴ those in need of protection as refugees only receive temporary residence permits valid for three years.

With regard to the extension of these new temporary residence permits, the SMA stated that 'If the person still has grounds for protection when their residence permit expires, they can be granted an extension of their residence permit in Sweden. If the person can support him/herself, they can be granted a permanent residence permit' (ibid). The SMA have been explicit in what this means for these new arrivals ability to naturalise as Swedish citizens in the future. "This [temporary measure] means that the large number of asylum seekers who came to Sweden last autumn [2015] can only become Swedish citizens in a few years, providing they have permanent residence permits" (Migrationsverket, 2016c).

In the past, the requirement to hold a permanent residence permit in order to naturalise has been successfully challenged (Migrationsöverdomstolen, 2008a). In one case it was decided that the applicant, who had met the residency requirement by renewing his temporary residence repeatedly, had intended to permanently stay in Sweden from the date of application for asylum, even though the applicant only received temporary residence. This was because, at the time, an application for asylum was an application for permanent residence. Thus, it was successfully argued that it was always the applicant's intention to permanently reside in Sweden, and he thus met the hemvist principle. However, refugees who arrived after the temporary law was introduced are not applying for permanent residence. It remains unclear what impact the temporary asylum law

¹⁴ Unaccompanied minors and families with children under the age of 18 who were in need of protection were still granted permanent residence permits if they submitted an application for asylum before the 24th of November 2015.

will have on refugees' ability to acquire citizenship if they are unable to acquire a permanent residence permit though have met the residency requirement.

The temporary asylum law could put citizenship further out of reach for refugees granted this temporary status, eroding the usefulness of Section 11 of the Act on Swedish Citizenship which saw many refugees (stateless or otherwise) naturalised after four years (Regeringskansliet, 2006). Those with temporary residence permits now have certain criteria to meet to secure permanent residence, including self-sufficiency or educational attainment (Migrationsverket, 2016d). This has effectively introduced new naturalisation criteria specifically targeted at refugees who were issued residency after the 20th of July 2016.

This shift to more restrictive access to citizenship is not a breach of Sweden's international obligations, as there remains facilitated access to citizenship for stateless persons and refugees if they hold a permanent residence permit.¹⁵ Despite this, if the temporary asylum laws are not managed carefully and with sensitivity to the reality that some of those with this status are stateless, these new barriers could lead to some refugees being in a prolonged, or possibly indefinite stateless situation in Sweden.

The Temporary Asylum Law and Cessation of Refugee Status

While previously all refugees received permanent residence, now the authorities will have to begin to consider cessation of refugee status for some of those with temporary residence. This introduces new challenges. The first is ensuring that this procedure is conducted in line with the demands of the cessation provisions for stateless refugees in the 1951 Convention given the lack of law or policy to accurately and transparently identify the statelessness of refugees. Second, the wording of the SMA policy position on the extension of temporary protection only notes that an extension will be granted if there is continued 'grounds for protection' (Migrationsverket, 2016d). However, the authorities must also consider stateless refugees' ability to return to their country of previous habitual residence if Sweden is to meet its obligations under the 1951 Convention. In addition, if they do not consider the ability to return, then they will be faced with the situation of stateless refugees losing their refugee status though being undeportable as there is no country to which they can return.

A recent and comprehensive assessment of Swedish law, policy and case law by Lundberg and Tunbjer on (un)deportability of stateless people, amongst others, is a very useful resource (see Staten's Offentliga Utredningar, 2017). The assessment shows that there is a lack of consideration of Sweden's obligations under the 1954 Convention to grant a residency status to these people as well as UNHCR's (2014) guidance on the conditions under which the deportation of stateless people can occur. This case law is extremely enlightening as, if the cessation of refugee status for those with temporary residence is not managed carefully, stateless refugees could be left in legal and administrative limbo, with no status, being unable to return to their country of previous habitual

¹⁵ Article 32 of the 1954 Convention and Article 34 of the 1951 Convention mirror each other when they note that, 'The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons [refugees]. They shall, in particular, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings'. (UN General Assembly, 1954: Article. 32; UN General Assembly, 1951: Article.32).

residence and seeing very restricted access to social welfare and assistance (see Statens Offentliga Utredningar, 2017). This uncertain status, which UNHCR warns against, and the consequences of this, can be understood by referring to the literature on those who fall into the deportation gap in Sweden, unable to stay, but with the authorities not being able to enforce the deportation order (DeBono et al, 2015). The number of those in this deportation gap could increase dramatically if the statelessness of refugees is not identified and the cessation provisions of the 1951 Convention not followed.

Summary

A significant number of gaps that can result in some stateless refugees remaining indefinitely stateless in Sweden have been identified. These gaps have been widened with the adoption of the temporary asylum law. The discourse of the SMA surrounding the temporary asylum law is that it aims to restrict access to citizenship for newly arrived refugees. Legally, there remains a lack of clarity on the actual impacts of this in terms of access to citizenship. One particular area that requires further research is the issue of what constitutes a person permanently legally residing, and if a refugee who holds a temporary residence permit can naturalise after four years if they meet the hemvist principle. What is clear is that the impact of the temporary asylum law, which introduces the possibility of cessation of refugee status, when combined with the lack of statelessness determination procedure, means that Sweden will not be able to ensure that they are not contravening their obligations under the 1951 Convention when they assess the extension of protection for stateless refugees.

This is not the first time Sweden has introduced temporary asylum laws which saw the granting of temporary residence to refugees. Due to the large number of asylum seekers entering Sweden after the dissolution of the Soviet Union and wars in Bosnia-Herzegovina, Kosovo and the Middle East between 1989 and 1993, temporary asylum laws were put in place (Westin, 2006). Though, in June 1993 the government granted 40,000 Bosnian refugees permission to remain permanently in Sweden (Appelqvist, 2000: 89), thus reversing the temporary asylum policies and once again opening the pathway to Swedish citizenship.

This U-turn in policy meant that issues related to cessation of refugee status for stateless refugees with temporary residence were avoided. It is too soon to tell what direction Sweden will take, either concretising the temporary asylum law (or aspects of it) or reversing them as they have done in the past. Either way, the debate about whether to do so must include the acknowledgment that Sweden has specific obligations under the 1951 Convention with regard to the cessation of refugee status for stateless refugees. The temporary asylum laws have raised new challenges in this regard and have highlighted that there are substantial gaps in the law and policy on the identification, assessment, and recording of the statelessness of refugees in Sweden.

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The views in this article are those of the author alone and do not necessarily reflect the views of OxMo.

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Dropping the Anchor: The Use of Plausibility in Credibility Assessments

By Enide Maegherman, Tanja S. van Veldhuizen and Robert Horselenberg

Decisions in asylum seeking procedures tend to be based on a credibility assessment. This means that the story on which the asylum claim is based is probed. Four indicators are typically used to assess credibility, namely internal consistency, external consistency, sufficiency of detail and specificity, and plausibility. The relation between these indicators, and the problematic lack of understanding of the plausibility concept have been insufficiently addressed in previous research. According to the findings in this study, none of the indicators seem to be rated objectively or independently of each other. There appears to be an unconscious problem of subjectivity in the credibility assessment. This issue could arise from the use of the ill-defined plausibility indicator, or could be due to another factor influencing all four indicators. The limitations of this study point to the need for further research to elucidate the unidentified influences on the indicators used in the credibility assessment in asylum procedures.

Introduction

“Owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof” (R.C. v. Sweden: §50)

This position of the European Court of Human Rights in R.C. v. Sweden illustrates the challenging task that European immigration authorities face when processing requests for asylum. R.C. asserted to have been detained and tortured after having been arrested during a student demonstration criticising the lack of freedom in Iran. He was allegedly sentenced without a formal trial; instead, his conviction was upheld in a religious trial. The special situation to which the court refers is the general lack of documentation to support the applicant’s story (Consterdine et al. 2012). One can imagine the difficulties for the Swedish authorities in assessing objectively whether these assertions are true in the absence of an arrest warrant, conviction or other documentary evidence. Because of this lack of documentary evidence, authorities must often rely on an assessment of the credibility of the asylum seeker’s claims about identity, origin, and persecution to determine whether the applicant is genuinely in need of international protection (UNCHR 2013; Gyulai et al. 2013).

Realising this task presents a challenge for European immigration authorities, several organisations have taken steps towards more structured, objective, consistent and protection-oriented credibility assessment practices in asylum procedures (see e.g., EASO 2017; European Commission 2017; European Parliament 1999; and UNHCR 2013). As part of this structured and more objective approach, immigration authorities typically use similar indicators in their credibility assessment of asylum claims (UNHCR, 2013). Using the same gauges would make the assessment less dependent on the individual decision maker. These indicators are the focus of this study, whose primary aim is to study to what extent they can be used objectively and independently in the evaluation of oral statements, with a special focus on plausibility.

Specifically, we study whether plausibility is a unique concept or whether it is related to other concepts used in credibility assessments.

The four common credibility indicators are internal consistency, external consistency, sufficiency of detail and specificity, and plausibility (UNHCR, 2013). Determining consistency means considering the extent to which the information given by the applicant is in agreement. This includes information within a single statement and between statements (Vredeveltdt et al. 2014). In asylum cases, internal consistency can be defined as “a lack of discrepancies, contradictions, and variations in the material facts asserted by the applicant” (UNCHR 2013). External consistency requires a comparison of the applicant’s statement with information from other sources, especially known facts about the applicant’s country of origin (Gyulai et al. 2013). Thus, external consistency refers to the accuracy of the statements in light of other evidence. Alternatively, external consistency can also refer to consistency with other witnesses. For the criterion of sufficiency of detail and specificity, the decision-maker needs to determine whether the statement provided by the applicant contains the level and nature of detail that would reasonably be expected from someone describing a genuine personal experience, in the individual and contextual circumstances described by the applicant (UNCHR 2013).

The fourth and final indicator is plausibility. Whereas the other three criteria mentioned have been clearly defined, UNCHR (2013: 176) acknowledges that “[i]n the context of the credibility assessment, the intended meaning of the term ‘plausible’ lacks clarity”. One possible definition uttered by the European Asylum Curriculum is that the facts alleged by the applicant should be “believable and consistent” (EASO 2014: Section 3.2). This definition renders plausibility a redundant indicator, as it would be a combination of the other indicators. An alternative definition of plausibility, in which plausibility is defined as a unique indicator, is the degree to which the events claimed by the applicant are “reasonable or likely” (UNHCR 2013). In the light of that definition, a statement is implausible if it is beyond human experience of possible occurrence.

Both judges and policy makers seem to endorse the latter definition, in which plausibility is a unique concept. For example, the International Association for Refugee Law Judges explicitly separates plausibility from the other indicators by stating that “decisions based solely on implausibility are likely to be less persuasive than those based on a wider range of criteria” (Mackey and Barnes 2013: 35). Moreover, in the UK policy brief on credibility assessments, plausibility is defined as follows: “The plausibility of an account is assessed on the basis of its apparent likelihood or truthfulness in the context of the general country information and/or the claimant’s own evidence about what happened to him or her” (Home Office 2015: section 5.6.4.). The Dutch Immigration and Naturalisation Service seems to define plausibility as the degree to which something is physically possible. They view something as implausible when the described order of events or actions are impossible according to reasonable standards (Kok 2016). These definitions contain a subjective element. The UK definition speaks of an “apparent likelihood” and the Dutch definition of “impossible according to reasonable standards”. For both definitions questions arise about who decides what is reasonable or likely. The same problem goes for the Swedish context, in which plausibility is equated with realism;

plausibility is operationalised as the extent to which a statement is “more or less realistic” (Granhag, Landström and Nordin 2017: 51). These elements allow for decision-makers to base their plausibility judgment on their own frame of reference, prior knowledge and experiences (Granhag, Landström and Nordin 2017: 51-52; UNHCR 2013).

This does not mean that a plausibility judgment is always subjective when using these definitions. If an asylum seeker claims to have jumped over a 10-meter wall, one can assume that this is implausible. However, sometimes what we deem unlikely or physically possible is also influenced by our prior experiences and knowledge. Take for example an asylum seeker who claims to have fled prison by jumping over a wall. We may implicitly assume that this wall was 10 meters high, because we imagine a Western prison system. Before concluding that this is implausible, however, one should verify what the alleged wall looked like (Van Veldhuizen 2017: 62-64). In line with this example, training manuals and policy documents warn for the subjective element in plausibility definitions, as plausibility in this sense is a culturally and personally determined concept (Gyulai 2013; Mackey and Barnes 2013; UNHCR 2013). As a result, the credibility assessment is at risk of becoming intuitive or subjective.

In conclusion, internal consistency, external consistency, and detail and specificity initially appear to be more objective indicators than plausibility, as they are clearly defined and can essentially be ‘counted’ in a statement.¹⁶ In contrast, plausibility at best seems a personally determined concept that is dependent on one’s personal knowledge and experiences, and at worst is merely a combination of other credibility indicators rather than an independent concept. The decision-maker must therefore always be aware of the assumptions on the basis of which they judge plausibility and adduce evidence to support their plausibility findings. This is most clearly stated in the EASO practical guide on evidence assessment, containing the following definition: “to be plausible the sequence of events has to have the quality of being likely and seemingly possible to a reasonable person” (EASO 2015: 12). The manual continues by stating that case officers should avoid speculation and subjective assumptions, and “a finding of implausibility must be based on reasonably drawn and objectively justifiable inferences and the case officer should give clearly articulate reasons for finding an account implausible”. It is questionable, however, whether they are also always able to do so, as legal decision making is often not as deliberate and objective as intended (Colwell 2005). Therefore, plausibility presents a potential obstacle to the requirement that asylum decisions must be made individually, objectively and impartially (Qualification Directive 2013).

This is also problematic because the possibility that the intuitive plausibility judgement influences the remaining three concepts cannot be excluded in light of literature which has established that a feeling or belief can undermine purported objectivity. This has been shown

¹⁶ However, these indicators are not always valid indicators of truthfulness in light of legal psychological research about human memory and strategies of truth-tellers and liars (see Van Veldhuizen 2017: chapter 2). Moreover, despite the clear definition and the fact that inconsistencies and details are in principle observable and countable, how much weight should be attached to a particular inconsistency or how much detail may be expected in light of the applicant’s background remains ambiguous.

in both investigators and decision makers in various contexts (e.g., Dror et al. 2006; Kassin et al. 2013). Adjudicators' initial beliefs about a case, can have a major influence on the interpretation of evidence and the reasoning in legal cases (Kassin et al. 2013; Burke 2005). The initial belief then functions as an anchor judgment, which influences all subsequent judgments and decisions in a case (Furnham and Boo 2011).

The question arises whether plausibility truly is a unique concept, as portrayed by policy documents. Also important is the relation between the four concepts used in the assessment of asylum claims. Is it possible to separate these concepts from each other? To objectively judge the quality of the statement for each of these indicators, without being influenced by the statement's context, or judgments of the other indicators (Dror et al. 2006; Kassin et al. 2013)? To investigate how plausibility is determined in relation to the other concepts used in credibility assessments, the current study made use of vignettes containing statements made in diverging contexts (i.e. asylum seeking procedure or criminal investigation) and by different characters (i.e. Eritrean asylum seeker, Syrian asylum seeker, child victim, adult witness, and adult suspect). The fictional statements were manipulated in such a way that there was equal internal consistency, external consistency, and specificity and detail within them. Participants were subsequently asked to rate these three concepts, as well as plausibility, for each of the vignettes. We expected that if plausibility indeed is a unique concept, ratings would differ due to the different contexts depicted in the vignettes. If plausibility, in contrast, would be related to consistency and detail, the ratings should be similar for the different vignettes. If the ratings for internal consistency, external consistency, and detail and specificity change across the different vignettes, this would suggest judgments of accounts according to these indicators are not as objective, or independent, as they are meant to be; the potentially subjective concept of plausibility may influence the remaining indicators or vice versa.

Methods

Participants

Participants for this study were lay-people recruited through advertisements on social media platforms, as well as through personal communication. 112 participants completed the study. Three participants who provided ratings outside two standard deviations on multiple indicators across vignettes were removed. On average, the 109 participants included in the analyses were 38.73 years old ($SD = 16.58$). About half of the participants were female (51.7%). Most of the participants had completed either a master's degree (49.2%) or a bachelor's degree (33.9%).

Design

The study made use of a mixed experimental design. All participants were presented with all five vignettes, in a random order, and rated them on the four credibility indicators (internal consistency, external consistency, plausibility, and sufficiency of detail and specificity). The measures for the different ratings were therefore repeated across all participants. To control for any possible order effects in the rating of the indicators, the order in which participants rated the credibility indicators was manipulated to create four separate conditions. Therefore, *order (of ratings)* was a grouping variable.

Materials

Ethical considerations

We used Qualtrics Online Survey Software to conduct the study. Participants were first informed about the study. Prior to agreeing to take part in this study, participants were told that they were free to withdraw from the study at any time. They were also informed that the collected data would be stored anonymously. The material used in the study was also designed in such a way that it would not be shocking to participants. Participants were provided with contact details of the researcher both prior to being presented with the material and after the debriefing. They were asked to contact the researcher in case of any questions or concerns. No concerns about the nature of the material were raised by any of the participants. They were also provided with a more detailed explanation of the purpose of the study at the debriefing stage, in which we clarified further that the fictional vignettes were based on how credibility is assessed in asylum procedures.

Definitions

After giving their consent, participants were told that they would be presented with statements made by five different people. Participants were then asked to assess the credibility of each of these statements using four indicators often used in credibility assessments. A fifth indicator used in credibility assessment, namely consistency with other witnesses, was not studied in the current research. The vignettes used did not lend themselves to the inclusion of this criterion. For instance, for the child victim vignette, including a witness would have made it less realistic. Participants were provided with the following terms and definitions. They were also able to view these definitions again throughout the survey by hovering over the term with their mouse cursor. The definitions were taken from sources on assessing credibility in asylum seeking procedures (UNCHR 2013; Gyulai et al. 2013).

Sufficiency of detail and specificity: refers to the level and nature of detail provided by an individual in an interview. The quality of a statement increases as the interviewee can provide ample and vivid details. Vague, minimal, or very brief explanations undermine the quality of the statement.

Internal consistency: refers to the extent to which the statements obtained within one interview – or in successive interviews with the same person – are coherent and do not contain serious contradictions or discrepancies.

Consistency with available external information: refers to the extent to which statements are in line with other evidence or known facts. Contradictions or discrepancies between the facts presented by the applicant and other evidence or knowledge about the case undermine the quality of the statement.

Plausibility: refers to the extent to which the information provided by the applicant seems reasonable or probable. The plausibility of a fact is assessed on the basis of its apparent likelihood in the context of the described situation.

Rating the vignettes

In the second section, participants were presented with the five vignettes containing statements made by different fictional characters. The vignettes represented different contexts and characters, and were presented to participants in a random order. The first character was an asylum seeker from Eritrea, whose statement concerned his life in Eritrea to support his origin claim. The second character was an asylum seeker from Syria, whose statement described the reason he had fled his home country to support his persecution claim. The third statement concerned an allegation of sexual abuse by a child and her mother. An eye-witness made the fourth pair of statements, who described a collision between two cars. The fifth character was a man who was a suspect in the investigation concerning drugs found in a garage box he owned. Following the reasoning that the indicators can be used to objectively judge statements, there should be no influence of the individual providing the statement, nor of the context of the statement.

Each of the vignettes included two subsequent statements. The second statement was given a week after the first statement. In four vignettes, both statements were given by the character. However, in cases of child abuse, the initial statement is normally not given by the child, but by an adult who suspects the abuse has taken place. To simulate this within the current study, the child victim vignette contained one statement made by the mother, and one statement made by the child. All vignettes also included a third section which described other evidence or information that had been obtained in relation to the case.

The statements were written in such a way that they were all equally (in)consistent. We used elements from the literature on the accuracy of statements to accomplish this (Smeets et al. 2004). Each vignette included one omission, one commission, and one contradiction. Hence, each of the vignettes should receive a similar rating for internal consistency. In addition, we also manipulated the external information which participants should use to rate external consistency; each vignette contained one element supported by the external information, one contradicting element, and one element about which the external information was inconclusive. The vignettes were intended to be equally detailed and specific. The vignettes were proofread and rated by two of the researchers who were not involved in writing the vignettes.

Thus, the three indicators which are clearly defined in the credibility assessment literature were manipulated to be equal across vignettes. Consequently, we expected that ratings for these indicators would not differ greatly across the different vignettes. As plausibility does not have a concrete definition, this could not be manipulated. The aim of using different characters and contexts was to introduce a subjective element. Subjective in the sense that existing attitudes about the general trustworthiness of the different characters could influence the credibility ratings.

For each of the five vignettes, participants had to rate the four indicators using a slider ranging from 0 (not at all) to 100 (very). The order in which the indicators were rated differed per condition. Participants were randomly assigned to one of the four conditions.

Intuition vs. Fact

After having rated the credibility of the vignettes, in the third section of the study, participants were asked to rate to what extent they had used their intuition to rate the various indicators. They were again provided with a slider which ranged from 0 to 100. A rating of zero meant they had given their previous ratings based purely on intuition, whereas a rating of 100 indicated they had only specific information. This question helped gain insight into people's awareness of what they believed influenced their ratings.

Demographics

In the final section of the study, participants were asked about their demographic information. Questions included the participant's age, sex, level of education, and topic of their educational background.

Results

Precluding order effects

For each vignette, a MANOVA analysis was conducted, using the credibility ratings as the dependent variables and order as the independent variable. That way, we tested for any differences between the independent conditions, in which the order of the credibility ratings had been changed. A Bonferonni correction was applied, resulting in an alpha level of $p = 0.01$. No significant differences between the conditions were found for any of the indicators across the different vignettes. Thus, the order in which participants rated the four indicators was not related to differences in the ratings they provided. The data from participants in the various independent conditions were therefore combined for the remainder of the analyses.

Correlations between credibility indicators

To determine whether plausibility is an independent concept, Pearson correlation analyses were conducted for each of the vignettes, using all four indicators. For each of the vignettes, the four credibility indicators were found to be significantly positively correlated. As can be seen in Table 1, the correlations ranged from medium (.388) to large (.709), suggesting the ratings for the different indicators were not independent of each other.

Table 1: Pearson's correlations between plausibility, internal consistency, external consistency, and sufficiency of detail and specificity

	Plausibility		Internal Consistency		External Consistency	
	<i>r</i>	<i>p</i>	<i>r</i>	<i>p</i>	<i>r</i>	<i>p</i>
<i>Asylum 1 (Eritrea)</i>						
Internal Consistency	.689	<.001				
External Consistency	.599	<.001	.618	<.001		
Detail and specificity	.566	<.001	.545	<.001	.547	<.001
<i>Asylum 2 (Syria)</i>						
Internal Consistency	.530	<.001				
External Consistency	.388	<.001	.556	<.001		
Detail and specificity	.510	<.001	.414	<.001	.437	<.001
<i>Victim (Child)</i>						
Internal Consistency	.709	<.001				
External Consistency	.534	<.001	.451	<.001		
Detail and specificity	.479	<.001	.496	<.001	.591	<.001
<i>Witness</i>						
Internal Consistency	.533	<.001				
External Consistency	.510	<.001	.559	<.001		
Detail and specificity	.577	<.001	.476	<.001	.511	<.001
<i>Suspect</i>						
Internal Consistency	.555	<.001				
External Consistency	.524	<.001	.602	<.001		
Detail and specificity	.435	<.001	.425	<.001	.385	<.001

Differences between credibility indicators for the different vignettes

Repeated measures ANOVAs were used to determine if there was a difference for each of the different indicators between the vignettes. The descriptive statistics for the indicators for each of the vignettes are presented in Table 2.

Table 2: Means and SDs (in parentheses) for the credibility indicators for all vignettes on a scale from 0 (not at all) to 100 (very much)

Vignette	Plausibility	Internal Consistency	External Consistency	Detail and specificity
Asylum 1 (Eritrea)	58.90 (25.33)	54.19 (24.14)	54.37 (23.21)	61.26 (23.94)
Asylum 2 (Syria)	79.14 (16.80)	68.94 (20.49)	75.16 (19.32)	72.32 (19.29)
Victim (Child)	68.86 (20.73)	59.93 (21.80)	62.07 (22.01)	58.13 (21.41)
Witness	65.43 (22.94)	46.39(24.45)	60.79 (25.28)	64.31 (20.30)
Suspect	56.41 (22.67)	57.28 (22.63)	57.61 (22.65)	57.86 (20.12)

Plausibility. A significant difference between the plausibility ratings given in response to the different vignettes was found ($F(4, 468) = 26.836, p < .001, \eta^2_{\text{partial}} = .187$). Post hoc Bonferroni pairwise comparisons revealed the statements made by the asylum seeker from Syria were rated as being significantly more plausible than the statements made by the Eritrean asylum seeker ($p < .001$), the child ($p < .001$), the witness ($p < .001$), and the suspect ($p < .001$). The vignette

concerning the child was rated as being significantly more plausible than the vignettes concerning the Eritrean asylum seeker ($p = .003$) and the suspect ($p < .001$). The vignette concerning the witness was also rated as being significantly more plausible than the vignette concerning the suspect ($p = .006$).

External Consistency. A significant difference was found between the ratings for external consistency for the different vignettes ($F(4, 468) = 20.748, p < .001, \eta^2_{\text{partial}} = .151$). Post hoc Bonferroni pairwise comparisons were used to explore this difference. The Syrian asylum seeker was found to be significantly more consistent with the external information than the Eritrean asylum seeker ($p < .001$), the child, ($p < .001$), the witness ($p < .001$), and the suspect ($p < .001$). The ratings for the child's external consistency were also significantly greater than those for the Eritrean asylum seeker's external consistency ($p = .027$).

Sufficiency of detail and specificity. A significant difference was found between the ratings given for the sufficiency of detail and specific for the different vignettes ($F(4, 468) = 14.066, p < .001, \eta^2_{\text{partial}} = .107$). Post hoc Bonferroni pairwise comparisons were used to explore this difference. The Syrian asylum seeker's statements were rated as being significantly more so than the statements made by the Eritrean asylum seeker ($p < .001$), the child ($p < .001$), the witness ($p = .011$) and the suspect ($p < .001$). The witness also received a significantly higher rating for sufficiency of detail and specificity than the suspect ($p = .038$).

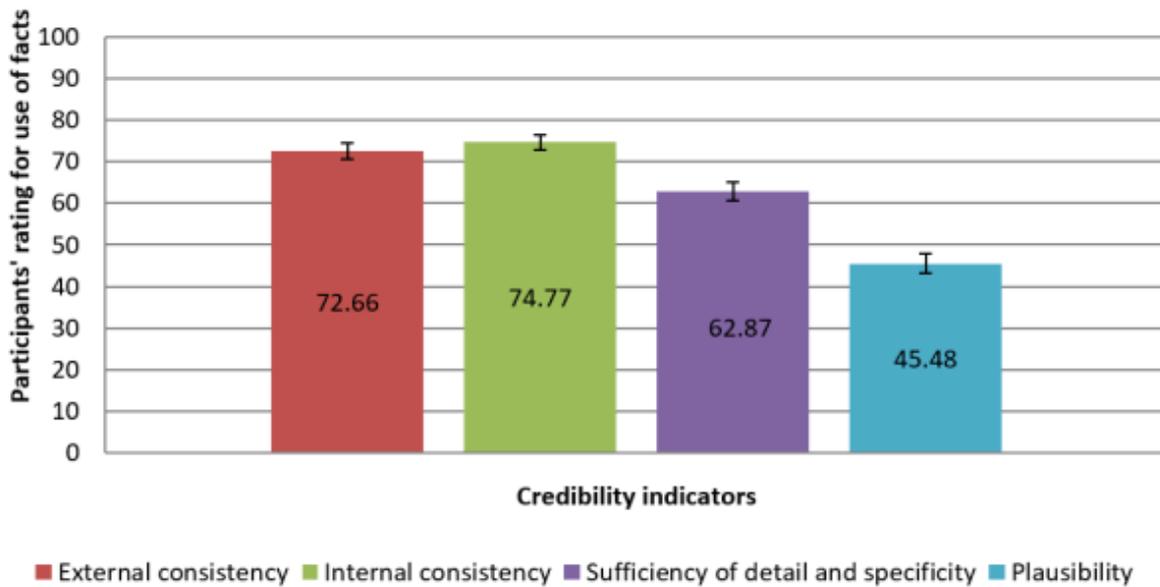
Internal Consistency. There was a significant difference between the ratings given to each of the vignettes for internal consistency between the two statements ($F(4, 468) = 20.812, p < .001, \eta^2_{\text{partial}} = .151$). Post hoc Bonferroni pairwise comparisons were used to explore this difference. The Syrian asylum seeker was considered to be significantly more consistent than the Eritrean asylum seeker ($p < .001$), the child ($p = .001$), the witness ($p < .001$), and the suspect ($p < .001$). The child was also considered to be significantly more consistent than the witness ($p < .001$). The suspect was also considered to be significantly more consistent than the witness ($p = .001$).

Facts vs. Intuition

After having rated the credibility indicators for each of the vignettes, participants were asked to which extent they had used intuition or facts to provide their ratings. To do so, they used a slider ranging from 0 (intuition) to 100 (facts). The descriptive statistics for these results are presented in Graph 1.

Graph 1: Descriptive statistics for the extent to which participants used intuition (0) or fact (100) to determine external consistency, internal consistency, sufficiency of detail and specificity, and plausibility. Error bars represent mean standard error.

Descriptive statistics for facts vs. intuition



A repeated measures ANOVA was conducted for the reported use of facts by participants for the different credibility indicators. The assumption of sphericity was violated for this analysis. As epsilon was $< .75$, the Greenhouse-Geisser correction was used. A significant difference was found ($F(2.019, 236.224) = 50.92, p < .001, \eta^2_{\text{partial}} = .303$). Simple planned contrasts were conducted. Participants' rating of the extent to which they used facts to make their decision was significantly lower for plausibility than for external consistency ($F(1, 117) = 72.66, p < .001, \eta^2_{\text{partial}} = .383$), for internal consistency ($F(1, 117) = 91.12, p < .001, \eta^2_{\text{partial}} = .438$), and for sufficiency of detail ($F(1, 117) = 52.01, p < .001, \eta^2_{\text{partial}} = .308$). Thus, participants reported relying more on intuition when rating plausibility than when rating the other three credibility indicators.

Discussion

The main aim of the current study was to elucidate how people judge the credibility of statements made in a legal context. Specifically, we assessed whether plausibility is an objective credibility indicator independent of internal consistency, external consistency and level of detail. We found that, despite the fact that in policy documents plausibility is often defined as a unique and independent concept, plausibility ratings were significantly correlated with the other three indicators. In addition, the other indicators, which had been manipulated to be equal across vignettes, were rated significantly differently for the various vignettes, and were also correlated with each other. Together, these findings suggest that all ratings were dependent on the character making the statement and the specific context. As such, none of the credibility indicators seem to be rated objectively and independently of each other. The participants, however, only reported relying more on intuition than on facts when rating plausibility compared to when rating internal consistency, external consistency, or sufficiency of detail and specificity.

Interpretation

A closer look at plausibility ratings teaches us that the suspect's statements are considered least plausible, followed by the Eritrean asylum seeker. Statements asserted by the victim, witness, and Syrian asylum seeker are deemed considerably more plausible. These findings may be explained by the Projected Motive Model (Levine et al. 2010), which postulates that people often rely on heuristics or simple decision rules to determine if they need to be concerned about possible deception. In light of this model, the plausibility ratings in the current study could be based on perceptions of general trustworthiness and deservingness of the character making the statements. For example, people generally would be less likely to believe suspects than alleged victims and witnesses of crimes, which reflects the differences we found. In addition, images of the war in Syria undoubtedly come to mind easily, whereas people are probably less aware of the political situation in Eritrea. As such, our participants may have implicitly regarded the Syrian asylum seeker more deserving than the Eritrean applicant. Indeed, media exposure has previously also been shown to have an unconscious prejudicial and biasing impact (Ogloff and Vidmar 1994). However, other biases, based on for example race or sex, cannot be excluded as individual attitudes towards the characters were not measured in the current study. Nevertheless, ratings of plausibility appear to have been based on factors other than a thorough assessment of the likelihood of claimed events.

A more informative finding is that plausibility ratings were correlated to ratings for the other credibility indicators, which suggests that plausibility is not a unique and independent indicator. Thus, even though in policy documents plausibility is defined as a unique indicator of credibility, in practice it seems difficult to distinguish the plausibility of a story from its consistency and level of detail. Thereby, the findings implicate support for the first definition of plausibility proposed in this article, namely that plausibility is a combination of the other indicators.

However, contrary to expectations, ratings for the other credibility indicators also seem to be influenced by the context of the statements under consideration. The significant difference between internal consistency, external consistency and sufficiency of detail ratings for the five vignettes suggests that these judgments are more subjective than intended. One possible explanation for this finding is that the seemingly intuitive determination of plausibility influenced the supposedly objective determinations of the other credibility indicators. This can also be explained using the phenomenon of tunnel vision, where an initial belief influences the following judgements (Kassin et al. 2013). Considering the fact that there was no difference between the conditions in which participants rated the indicators in different orders, such an initial belief may be formed immediately after reading the vignette, and therefore not influenced by which rating is given first. Instead of plausibility being the initial belief or anchor which influenced the other indicators, it is also possible that participants used one subjective strategy for all credibility indicators, including plausibility. For example, the snap-judgment about the trustworthiness of the character – possibly based on the projected motive for lying (Levine et al. 2010) – could have influenced all the determinations relating to the actual quality of the statements.

In both cases, participants seem to have been unaware of these intuitive decision-making processes, as they reported that their ratings for internal consistency, external consistency, and sufficiency of detail and specificity were based more on facts or specific utterances than on intuition. They only seemed to be aware of the rather intuitive nature of their plausibility ratings. Such a lack of awareness could threaten the process of a fair and objective credibility assessment to an even greater extent, as officials may not recognise the need to counteract subjective influences if they do not understand the extent of their impact. It has been argued that some form of motivation is needed in order to move away from intuitive reasoning (Alter et al. 2007).

Limitations and alternative explanations

A brief consideration of the limitations to the manipulation is in place. We aimed for equal consistency and detail across vignettes. However, internal consistency was manipulated according to the definitions of inconsistency within statements used in the literature (Smeets et al. 2004). These definitions are mainly conceptual, and may not be identical to the operational definitions used in the determination of the consistency of two statements. Furthermore, a distinction can also be made between the prevalence and the weight of inconsistencies. For instance, an inconsistency in peripheral details such as the colour of the perpetrator's shoes may not have the same impact as an inconsistent account about central details such as the perpetrator's gender. We tried to account for this in our design of the vignettes, and we asked the two researchers who reviewed the vignettes to pay specific attention to it as well. Therefore, we still feel confident that – objectively – the vignettes were roughly equally (in)consistent. Nevertheless, in future studies having a larger panel evaluating the vignettes would be advisable.

Another limitation of the current study is the use of lay people, who have no training or experience in the use of the credibility indicators. Although they were provided with definitions of the indicators taken from the literature on credibility assessment, their responses cannot be equated to those of trained officials who deal with credibility assessments on a regular basis. Experience may influence the assessment process. Therefore, future research should attempt to investigate whether the experience of officials tasked with credibility assessment in real life causes them to make different decisions than the average population.

Conclusion and implications

Despite the limitations, the results of the study do give rise to a debate about the objectivity of credibility assessment in European asylum procedures. First of all because the results strongly suggest that plausibility is neither a unique, nor an objective indicator. If plausibility judgements are indeed subjective, one could question whether it should be used as a credibility indicator at all, or whether it should be removed from all policy documents and other guidance documents for asylum officials. Yet, whether abandoning the plausibility indicator is sufficient, is also questionable. The other credibility indicators, despite being conceptually objective, appear to be subjective when applied. The current results imply that ratings for all the indicators are actually based on one anchor judgment. What exactly forms the anchor for the other ratings cannot be determined based on the current study. Considering that the order of rating the different indicators did not influence the results, it seems as though the anchor judgment is not necessarily based on

one of the existing credibility indicators. In fact, it seems as though the anchor judgment is based on a rather quick intuitive judgment about the case at hand.

Although it is important to realise that the use of the indicators may not be as objective as intended, merely recognising and naming the risks of intuitive assessments may not be enough to prevent intuitive assessments in the future. As was outlined in the introduction, both training manuals and policy documents already warn for subjectivity in credibility assessments (Granhag, Landström and Nordin 2017; Gyulai 2013; Mackey and Barnes 2013; UNHCR 2013). Yet, as the findings of this study imply, such warnings do not seem to be sufficient to warrant a deliberate decision. Considering that there is currently no alternative for credibility assessments of oral statements, abandoning the credibility indicators altogether is also not an option (Van Veldhuizen 2017: 66). Instead, we argue that policy makers, case workers, and courts together should search for ways to increase the validity of the current method for credibility assessments.

Specifically, we contend that policy guidance and training programs for case officers should include scenario thinking as a tool for deliberate credibility assessments (see Van Veldhuizen 2017: 191-194). With scenario thinking, a decision-maker is forced to consider different possible explanations for a negative credibility finding. Think again of the applicant claiming to have jumped over a prison wall. This statement would likely be considered implausible. When considering alternative scenarios, one scenario is that the statement is fabricated; a second scenario is that the statement is an embellishment or exaggeration of a true event, and that the wall in fact was much lower; a third scenario is that there is a cultural misconception about what a prison wall looks like. All these scenarios can be further assessed in the interview, and perhaps with additional evidence, and eventually will feed into the decision about the two broader scenarios in the case: the applicant either is lying about escaping prison or the applicant is truthful about escaping from prison. By explicating the possible scenarios and by explaining which scenario is supported and why – that is, on the basis of which inferences and evidence – the reasoning of the decision maker becomes both more deliberate and more transparent. Moreover, the method seems to align with the duty of the determining authority to assess each asylum claim individually, in light of country of origin information and personal position and circumstances of the applicant, as laid down in the Qualification Directive (2011: Article 4.3), as well as with the right to “appropriate notification of a decision and of the reasons for that decision in fact and in law” (Asylum Procedure Directive 2013: ‘whereas 25’).

Furthermore, courts are also a key player in preventing subjectivity in credibility assessments. Courts form the control mechanism to ensure that determining authorities function fairly, effectively, and efficiently. Part of a fair and effective asylum procedure is that decisions are made deliberately and are adequately motivated. Courts can play an active role by demanding that the decision of the administrative authority explicates different scenarios that were investigated, along with the reasons and evidence for dismissing specific scenarios while holding on to others. A motivation of this kind is also necessary to provide for a full and *ex nunc* examination of both facts and points of law (Asylum Procedure Directive 2013: Article 46.3).

In that sense, our advice is consistent with what the EASO practical guide states on findings of implausibility, namely that it “must be based on reasonably drawn and objectively justifiable

inferences and the case officer should give clearly articulate reasons for finding an account implausible” (EASO 2015: 12). Only we extend this recommendation to other negative credibility findings: case officers should give clear articulate reasons for findings of inconsistency, lack of detail, and implausibility. Courts should also demand such elaborate motivations. Moreover, policy makers should not only focus on what the desired state of affairs is – namely objective and deliberate assessments – and what potential risks are – for example intuitive decision making – but also on how these influences can be mitigated in practice.

As credibility assessments are at the heart of asylum cases, more knowledge about potential biases in credibility assessments in asylum cases is pivotal. The objectivity of this assessment should be safeguarded to ensure that every applicant receives a fair and deliberate assessment. A first step towards achieving this is to acknowledge that the credibility indicators may not be as objective as intended, and to raise awareness and instigate a discussion concerning this issue.

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The views expressed in this article are those of the authors and do not necessarily represent the position of OxMo.

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Appendix

Vignette 1 – Eritrean asylum seeker:

A man applies for asylum in Europe after fleeing his home-country. He claims to come from Eritrea. Therefore, the man is interviewed about his origin. During the first interview, he made the following statement:

In Eritrea, I lived in Gemilab in the Anseba region. It was a small village. The nearest large cities were Kerkebet, Olef, and Uague. To go to the school in Gemilab, I used to have to walk for about one hour every day. After passing through the town square, I would take the third turn left. I was also a member of the Eritrean Orthodox Church in my home-town.

One week later, the man was interviewed again. He then made the following statement:

Before I left Eritrea, I was living in the Anseba region, in a small village called Gemilab. The closest big town nearby was Uague. When I used to walk to school, I would first cross the town square, and then take the third turn right. I am a member of the Eritrean Orthodox Church. Because of my beliefs, I often take part in confession, which has to happen to a priest.

The following additional information has been obtained by the authorities:

The town of Gemilab is indeed in the Anseba region. The closest town is Kerkebet, with Olef and Uague being the 2nd and 3rd closest. The route the applicant would walk to the school he claims to have attended could not be confirmed. The Eritrean Orthodox Church does consider Confession as one of its core sacraments. Members of the religion are encouraged to confess to someone they are close to, known as a “soul father”.

Vignette 2 – Syrian asylum seeker:

A man applies for asylum in Europe. He is interviewed about his reasons for leaving his home-country Syria. During the first interview, he made the following statement:

I left my home in Aleppo because it was not safe for me and my family. After the fighting began, we were scared to leave the house. Our neighbour was attacked and abducted by supporters of Assad because he had told people about his support for the revolution. I don't know what happened to him. He was taken late at night by 3 men who wore masks. He didn't want to go, so they beat him until he lost consciousness. His wife saw all of this. She was also beaten because she was screaming. After this, we started preparing to leave, because I had also expressed my support for the revolution to acquaintances.

One week later, the man was interviewed again. He then made the following statement:

Living in Aleppo after the fighting started was very unsafe for us. We became scared to leave the house. My neighbour was abducted, and I don't know what happened to him. He was attacked because he had been sending photos to a press agency, I think in France. When he was taken, he protested so much they beat him until he was unconscious before they took him. His wife was also beaten because she was screaming. She saw her husband being abused. The masked men had guns with them, but they didn't shoot. My family was so scared after this we

decided to leave, because we were afraid that I would also be targeted due to my support for the revolution.

The following additional information has been obtained by the authorities:

The applicant gave an accurate description of Aleppo and records indicate fighting took place in his neighbourhood during the time he describes. No information could be found about reasons for the neighbour's arrest. The arrest described by the applicant does not contradict what is known about the way in which militant groups operate.

Vignette 3 – Victim:

A woman comes to the police station to report the alleged sexual abuse of her daughter. In her statement, she described the situation as follows:

I think my 7 year old daughter is being sexually abused by her teacher. She came home yesterday and was acting strange so I asked her what was wrong. At first she wouldn't tell me, but then she told me her teacher had kept her inside during break-time. He had asked her to take off her clothes and tried to kiss her. When I asked her when this happened, she said that it first happened right after the Christmas holidays and had happened once a week since then.

One week later, the child was interviewed. She described the situation as follows:

After we came back to school after the Christmas holidays, my teacher sometimes asked me to stay inside when the other kids went outside to play. When I had to stay inside, I had to take my clothes off. Once he also took pictures, but he wouldn't show them to me. I only had to stay inside with the teacher twice. I didn't like it when I had to stay inside, so I was upset. I told my mummy about it as well.

During the police investigation of the alleged abuse, the following information was collected:

During a medical examination, no signs of abuse were found. The teacher in question denies the allegations. The browsing history on the computer in his house showed he had searched child pornography on 3 separate occasions in the past year. No pictures were found on his phone, but the phone had recently been reset to factory settings.

Vignette 4 – Witness:

A man who witnessed a car accident was questioned about what he saw. He gave the following statement:

I was walking to the supermarket when I saw two cars hit each other at the cross roads. One car, the blue one, was coming from the High street, and crashed into the side of the black car. I think the black car ignored the red light. The black car then got pushed off the road and ended up on its side. The blue car swerved to the right and came to a stop. It was incredibly loud, so a lot of people turned up after it happened.

One week later, the man was again interviewed about what he saw. He then gave the following statement:

When I was on my way to the supermarket, I saw a car crash. It happened at the cross roads. The blue car crashed into the side of the black car, which then got pushed off the road. Both cars seemed to be exceeding the speed limit. The blue car swerved to the right before it stopped.

I think the blue car ignored the red light at the crossing. After it happened, a lot of people arrived at the scene. I think they must have heard the noise.

The police investigation of the car accident resulted in the following information:

A call to the emergency services described a collision of a blue and black vehicle at the High Street and St. John Street. Traces of blue paint were found on the side of the black car. No brake marks were found. There was some evidence of alcohol in the driver of the black car's blood, but his blood alcohol level was below the legal limit. No video footage could be obtained from the traffic cameras due to a technical malfunction.

Vignette 5 – Suspect:

Drugs were found in a rented garage box. The man who rents the garage box is a suspect in the investigation and made the following statement during the police interview:

I own the garage box behind the station, but I don't know anything about the drugs that were found in there. I only use it to store junk from around the house. I haven't visited the garage box in more than 2 months. Occasionally, I let my friends borrow my key to the garage box. For a while, I have suspected that there is a copy of the key somewhere. These friends are people I've known for a couple of years. I met them in a soccer team that I played in a while ago.

One week later, the suspect was questioned about the drugs again. He then made the following statement:

I only use the garage box behind the station to store old stuff from around the house, so I don't know anything about the drugs that were found there. I do own it, but the last time I was there was last month. I sometimes let my friends borrow the key. I've known these friends for several years. None of them have had problems with the police, and I have never seen them take drugs themselves. I first met them through a soccer team I was in a while ago.

The police investigation into the drugs that were found resulted in the following information:

The suspect was convicted for drug possession 10 years ago. The garage box also contained old furniture and other things that belonged to the suspect. None of the items found in the garage box belonged to anyone else. The person renting the garage box next to the suspect's garage box recognised one of the suspect's friends as someone he had seen around the garage box. This friend has previously been named in an investigation into drug dealing, but was not convicted.

Refugee Perspectives on the Resettlement Public Discourse in a Rural American State

By Erik Amundson

Refugee resettlement has been the subject of extensive scrutiny and political debate in the United States, with opinion polls showing increasingly negative attitudes toward migrants. As such, this paper examines how resettled refugees interpret this public discourse in a more isolated, rural part of the country with traditionally low immigration rates. Two sequential phases of fieldwork are used to collect data in this area, including a series of focus groups with refugees, followed by interviews with individual participants to discuss the responses in more depth. Findings show that resettled refugees feel that existing community members support isolationism, tend to conflate different migrant groups, and often have limited contact with refugees. However, purposeful efforts to bring resettled refugees and longtime residents together can help to reduce misinformation and allay public fears.

Background

This paper describes an ongoing effort in a rural American state by personnel at the federal department of Housing and Urban Development (HUD) to help eliminate misconceptions about refugees and to ultimately reduce prejudicial attitudes and negativity. For background, HUD is a cabinet-level agency in the United States that implements and oversees a variety of housing assistance programmes for lower-income families and individuals. As a HUD Field Office Director, I routinely engage with a wide range of migrants, including refugees and asylum seekers, who are seeking various types of government assistance as they are resettling in towns and cities across my state. An important part of HUD's mission is to create diverse, inclusive communities and to provide affordable homes for all. As such, we often assist refugees who arrive with little and need support from a variety of governmental agencies. However, my office is located in an isolated part of the country which generally has lower numbers of immigrants and resettled refugees. Consequently, this can often generate misinformation regarding perceived threats and negative stereotypes.

Rural areas and attitudes toward refugees

Many of the more remote, rural parts of the United States have not historically attracted large numbers of foreign-born individuals and have little previous experience in dealing with diversity. As a result, contentious political debates and public opinion polls in these areas have shown a concerning rise in anti-migrant sentiments and deep suspicion of refugees. As Temple and Moran (2006) point out, refugees can often find themselves isolated in these mostly homogenous areas with little history of multiculturalism, with longtime residents often unprepared and fearful of their arrival.

While concerns about refugee resettlement tend to generate strong emotions, the debate can often be polarized with misleading information. This is reflective of Collier's (2013) argument that migration is generally politicized before it is analyzed, thus reflecting a toxic content of high emotion and little knowledge. On one side, advocates argue that refugees are nonthreatening populations who pose little danger and are further victimized by negative public

attitudes. On the other side, opposition groups view refugees as potential terrorists who threaten national security interests and inner stability (Bollfrass et al. 2015). These perceptions have resulted in a xenophobic backlash in which sympathy for refugees has often been suspended by fear, mistrust, and prejudice.

This negativity can be explained by the basic premise of intergroup contact theory, which posits that prejudice and hostility result directly from generalisations and oversimplifications made about an entire group of people based on mistaken or incomplete information (Allport 1979). However, under certain conditions contact between groups can promote acceptance and tolerance, thus prejudice may be reduced as one learns more about a category of people. As a result of new appreciation and understanding, negativity, hostility, and discrimination should diminish.

Methods

In an effort to develop a more holistic understanding of how refugees currently residing in my state understand and counter this negativity, I first attended a number of events in 2016 designed to mobilize the general public against resettlement. These included three civic forums, two public rallies, a protest march, and a demonstration held at the state capitol building. After learning more about this strident opposition, I organised and facilitated a series of three focus groups with recently resettled refugees to explore how they interpret the public discourse on this issue. Participants were recruited with the assistance of staff at non-profit organisations who work with refugees and also by advertising in public buildings. The main topics of discussion at the focus groups included: community attitudes, commonly held perceptions, opposition to resettlement, and issues unique to rural states. All sessions were recorded and transcribed verbatim upon completion.

Additionally, I conducted follow up individual interviews with six refugees to examine the content of the focus group dialogue in more detail. Each interviewee was asked the same set of questions about the findings; however, some additional questions were generated based on the content of the responses (Creswell 2014). As with the focus group sessions, each interview was recorded and transcribed. After completing both parts of the data collection process, all transcripts were carefully read through in their entirety to look for common keywords and patterns in the data. Next, broad concepts were identified and further refined to generate meaningful categories, with the findings reported after similar themes repeatedly transpired. To ensure anonymity, interview participants were assured they would not be identified and that no key quotes could be attributed to any specific individual. Based on an analysis of the data collection during these two sequential phases, the following broad themes emerged: isolationism, conflation, and limited contact.

Key Findings

Support for isolationism

One of the most prominent discussion points that surfaced in the focus groups was the distinctive isolationist mentality prevalent among many of the existing residents. A common sentiment was that longtime community members cherished the area's remoteness and rural seclusion because it insulated them from the social problems associated with larger urban areas. Accordingly, many participants described feeling like unwanted outsiders who had difficulty finding acceptance in this distinctly homogenous culture. The following comments shared during the interview process highlight these viewpoints:

They are uncomfortable with us being here; they try to avoid us all the time. (Anon. 2016)
It feels like we are disturbing the peace...I get the impression people here want to be left alone. (Anon. 2016)

In analyzing the public discourse, this phenomenon was commonly masked as community preservation or maintaining the status quo. However, most conspicuously, this vantage point is used as a rationale for keeping outsiders away. Loewen and Friesen (2009) describe similar levels of anxiety and uneasiness towards different migrant groups during sequential waves of immigration in several smaller host communities in Canada's prairie interior. Consequently, isolationist attitudes are connected to support for immigration restrictions, thereby lowering the possibility that any refugees will be resettled in this area.

Conflation of immigrant groups

A second noticeable theme was the belief that residents tended to view migrants as a homogenous group, undifferentiated by country of origin. It is apparent that terminology such as immigrant, asylum seeker, and refugee are not fully understood by existing residents, which can result in attitudes that conflate several different issues. Particularly in regard to Muslim immigrants, there is little distinction between individuals who enter the country legally as refugees, or those with student, tourist, or marriage visas. Interview respondents frequently expressed concerns that they are perceived as potentially dangerous and could be associated with other extremists who committed acts of terrorism. As one refugee succinctly stated:

No, we aren't here to take over the place; to start a war. The locals just don't understand...we are not all the same. (Anon. 2016)

Disturbingly, the prevalent discourse at anti-refugee rallies was marked by xenophobia towards Muslims, including references to Sharia law, jihad, and terrorism, which ultimately breeds enmity towards refugee resettlement. As Timberlake and Williams (2012) hypothesize, these negative views of refugees and Middle Eastern immigrants are often reflective of the polarized debates about immigration policy at the national level. Interestingly, speakers at public rallies displayed the greatest levels of conflation, although this might have been done intentionally to deliver alarming messages in an attempt to garner further support. Rabrenovic (2007) warns that a lack of experience with ethnic and racial minorities gives supremacist groups an

opportunity to expand their membership base by promoting hatred and fear across isolated, rural smaller communities.

Limited contact influences worldviews

Furthermore, it appears that rather than actual encounters with refugees, the political rhetoric and image-framing activities of various anti-refugee groups have been relatively successful at influencing the attitudes of existing residents. Rather than basing their opinions on personal contact and individual experiences with migrants, refugees believed that community members generally rely on other sources of information to shape their views. Many focus group participants highlighted this lack of interaction with comments such as:

There are not many minority groups living here...people think that what see happening in Europe, with crime and terrorism and everything, will happen here. (Anon. 2016)

They fear us but don't know us. (Anon. 2016)

I don't think anyone here has actually met a Muslim before... (Anon. 2016)

Several scholarly studies have shown that views on migrants are heavily influenced by the media when audiences live in places that are not very diverse because other sources of information are absent. For example, Mahtani (2008) contends that residents who do not have face-to-face communication with newly arrived immigrants and refugees rely on what they read and hear in the popular media to understand immigration issues. This supports Crawley's (2005) seminal argument that media representations more strongly influence how people perceive refugees, rather than any form of direct contact or personal experience. Still, some resettled refugees mentioned they were able to develop personal connections within the community through local advocacy groups, churches, and other faith-based organisations, which helped them to counter many of the negative stereotypes and alleviate many of the fears expressed by the general public.

Conclusions

The findings of this study have implications for local approaches aimed at improving community attitudes toward refugees. It was found in this area that a lack of experience with ethnic and racial minorities means that efforts attempting to reduce misinformation regarding perceived threats and negative stereotypes can help lessen prejudicial attitudes and hostilities. Accordingly, opportunities to provide exposure and meaningful interactions between longtime residents and migrants might help to gradually improve public perceptions. Therefore, the HUD Field Office in which I serve has started coordinating several community events designed to bring resettled refugees and existing residents together to share in cultural activities and educational programmes. A few examples of these recent activities include: local resource fairs, neighbourhood roundtables, and community outreach meetings targeting people of similar ages and occupations. Our goal has been to open a dialogue between existing residents and newcomers by facilitating communication and reducing barriers to interaction. As a result,

these purposeful efforts to provide outreach and increase public exposure have already helped to reduce stereotypes and offer new perspectives on the predicaments faced by refugees every day.

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The views expressed in this article are those of the author and do not necessarily represent the official policy or position of the federal department of Housing and Urban Development, the United States government, or OxMo.

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Unheard Voices of the displaced people in Northern Iraq

By Muhip Ege Çağlıdil

Introduction

Syria's civil war poses one of the greatest challenges of our times. More than 11 million people have been killed or forced to flee their homes, urging the United Nations to label this as the worst humanitarian crisis since World War II (Staněk, 2017). There is an unprecedented attention on those people who have crossed an international border who are either struggling to make a new home in the neighboring countries or risking their lives on the way to Europe in the hope of finding acceptance. However, little attention has been paid to the Internally Displaced Persons (IDPs hereafter) and the unstable conditions in Iraq.

Based on the author's experience in the Duhok region of Northern Iraq, where he worked with the IDPs, the main aim of this article is to address the issue of internal displacement. While highlighting personal observations on the situation, the author uses data¹⁷ from a needs assessment¹⁸ study conducted in Northern Iraq in August 2016 which contains 10 semi-structured interviews and two focus groups discussions from two selected IDP camps in Duhok and Erbil. Furthermore, the author also presents the urging needs of the IDPs in Northern Iraq, which produce key recommendations to civil society and intergovernmental organisations that are eager to work with displaced populations in Iraq. Addressing and grasping the current IDP regime in Iraq is important because the special needs of IDPs appear to be very different from those of other war impacted populations. IDPs often have specific vulnerabilities that are not encountered by other civilians during armed conflict. They need medical assistance and shelter but may be unable to provide official papers, often facing problems of regaining their land and property that they left behind. Relatively many of the IDPs in Iraq may be forced to flee to the neighboring countries, especially to Turkey, in large irregular movements in the future.

Internally Displaced Persons versus Refugees

'All who must abandon their homes and are forced to live elsewhere suffer' (Lam 2015: 3).

According to the 1951 UN Convention, those who escape from the internal conflicts by fleeing abroad can at least qualify for refugee status. In contrast, those who are internally displaced often fare much worse, as they become truly dispossessed due to lack of international protection and intention. IDPs remain closer to zones of conflict, caught in the cross-fire and at risk of being used as human shields in armed insurgency (Lodi, 2016). 'Unlike refugees, IDPs remain citizens or habitual residents of their country and are entitled to protection and assistance on that basis alone' (Protecting Internally Displaced Persons: A Manual for Law and

¹⁷ This article relies on data collected mostly in August 2016, however as displacement crisis in Iraq continues sharply, numbers on displacement and sectoral needs have been updated by March 2018 based on IOM Displacement tracking findings.

¹⁸ Needs assessments is important to provide a holistic understanding of the situation and needs of people affected by a crisis. They give the necessary evidence-base to design and implement responses that save lives and restore people's livelihoods. This study is being carried out using combination of quantitative and qualitative methodologies.

Policymakers, 2008). They can invoke their right to protection under the rights listed in the Guiding Principles and contained in relevant international conventions because they are displaced and thus have specific needs, not because they are registered or formally recognized as IDP.

The primary problem is that the vital requirement to be considered as a refugee is about crossing an international border. People who are forcibly displaced from their homes, who cannot, or choose not to cross a border, thus are not considered as refugees, although they share many of the same conditions and challenges with the refugees. Unlike refugees, IDPs do not have a defined status in international law with rights specific to their situation. Only the International Humanitarian Law in scope of protecting civilians during the hostilities concerns the protection of forcibly displaced persons and ensures access for relief and humanitarian organisations to refugees and IDPs in situations of hostilities (Fourth Geneva Convention and Additional Protocol I /Article four, 1977). In contrast, beside non-obligatory principles, there is no legal obligation to protect IDPs or ensure their rights in international law.

A Snapshot to IDP Crisis in Northern Iraq

Current debates on displacement are concentrated mostly on Syrians and the fortress of Europe; the humanitarian crisis and needs of IDPs remain unquestioned. In Iraq, since 2014, more than one million Iraqis have been uprooted from their homes and displaced by violence (IOM Displacement Tracking Matrix, 2018). Over ten million people are estimated to need some form of humanitarian assistance as a direct consequence of violence, conflict linked to the fight against ISIS, and the counter-armed operation launched by the Iraqi government (IOM Displacement Tracking Matrix, 2018). Northern Iraq hosts one of the largest populations of Iraqi IDPs. Most Iraqi IDPs have been displaced by the conflict with ISIS (Ahmed and Holloway, 2017). Often, IDPs find themselves in a difficult position, where the need for proper papers and wariness of the authorities make it difficult to register. As highlighted in the focus group discussions in the Duhok IDP camp Domiz-1, most of the IDP's are unable to receive benefits ranging from pensions to health care, and to other social protection programs because of lack of documentation. Thus, Northern Iraq faces a complex and growing humanitarian crisis. Depending on the intensity of fighting and the scale of violence in the months ahead, 11 million Iraqis, perhaps even 12 million to 13 million, may need some form of humanitarian assistance by the end of 2018 (OCHA Humanitarian Needs Overview in Iraq, 2017). Within this context, access to the most vulnerable people remains a key challenge, limiting the provision of life-saving assistance. Our study reveals that as displacement prolongs and people exhaust their income and assets, they are in growing need of assistance to access basic services. As a result, Iraqi families who are unable to find the support and security they need are running out of options and possibly forced to be displaced, cross the border, first to Turkey, then to Europe.

IDPs targeted over violence and discrimination

Our field interviews find that IDPs often displace more than once in the last two years. Dramatically for a large number of Iraqi families, displacement has become a semi-permanent condition (Abbas, N. Razaq, Naosh, Appleby, 2018). As it has been highlighted by UNHCR annual displacement overview for the year of 2017, IDPs become primary targets, and their protection becomes imperative. In early August 2014, tens of thousands of Yazidis living in Sinjar district of Ninewa were displaced from their homes after ISIS has carried out a campaign of violence and subjugation against Yazidis and other religious minorities. The report on Humanitarian challenges by Minority Rights Group International (2017) suggests that vulnerability of IDPs is further exacerbated by restrictions on freedom of movement imposed by Iraqi and Kurdish security forces. ‘They routinely suffer discrimination on the basis of their ethnic or religious identity. Sunni IDPs, for example, are frequently denied entry to Baghdad on the assumption that their numbers may include ISIS sympathizers’ (Humanitarian Challenges Report, 2017) Ethnic and religious minorities in Iraq, women, and children in particular, often face discrimination, sexual harassment, arbitrary detention, destruction of property or are denied to access to their homes. Children have been used as suicide bombers and human shields and sold at markets. Women and girls have been enslaved and subjected to sexual violence (Humanitarian challenges report, 2017). Furthermore, ISIS is not the only factor contributing to the unsafe environment. The recent military offensive campaign by the Iraqi Army and Western Coalition against ISIS to take over the city of Mosul in December 2017 resulted in the displacement of thousands of additional IDPs (Farhat, Muhammed, Saim, Morton Defourny, 2017).

Multi-clusteral needs

While many IDPs are struggling because of lack of shelter arrangements, others are suffering from shortages in food supplies, and lack or non-durable humanitarian aid assistance. Over eight million people are in need of humanitarian assistance, where about 2.4 million people are in need of food assistance in Iraq (FAO Comprehensive Food Security and Vulnerability Analysis, 2017). Although non-governmental organisations and government funded humanitarian organisations are committed to doing everything possible to reach as many highly vulnerable people as possible, the humanitarian operation is constrained by limited access, insufficient funding and capacity gaps in Iraq. For example, as reported by local IDP camp administration in Duhok during our interview, the conflict in southeastern Turkey poses a great obstacle for accessing Northern Iraq from Turkey. Many vehicles of transportation, including humanitarian aid trucks that are entitled to carrying humanitarian aid to IDPs in Northern Iraq, are delayed to complete their operations. Thus, many food parcels that have been waiting to be sent to Northern Iraq are either expired or decayed. Therefore, there is an expected shortage in food aid supply to the IDPs. Considering the seasonal weather conditions, such a shortage would increase the vulnerabilities of the IDPs in the region. Most of the IDPs live in shelters that are not insulated, in informal settlements, unfinished or abandoned buildings. According to the site assessment reports of the International Blue Crescent (IBC), about 580,000 people

still live in critical shelter arrangements as well as empty schools or religious buildings¹⁹. As a result of these living conditions, many IDPs are also facing critical disease outbreaks, including cholera and other deadly diseases. Cholera is endemic in Iraq and the outbreak that was declared by the local authorities in late 2015 had impacted over 2,800 people across most Iraqi governorates as reported by World Health Organization's annual review on Iraq in 2016.

Mass Displacements and Economy of Iraq

Mass displacement in Iraq is impacting all aspects of Iraq's economy and society. An economic crisis is threatening both social reconciliation and economic development, where IDPs' needs are directly creating a burden on local authorities. According to a study conducted by the World Bank in 2015 to provide the Iraqi Government with an impact analysis of the current crisis at the regional level, around ninety percent of the IDPs are based in non-camp arrangements and are supported and hosted by local communities. However, tensions between host communities and displaced families are increasing due to resource scarcity. Our study highlights production and supply shortages and increases in local demand have amplified the cost of basic commodities such as food and other basic items. Duhok region in Northern Iraq received a mass IDP population and has been unable to cover basic needs relying on negative coping mechanisms. Moreover, as reported by the UN Humanitarian Overview on Iraq 2015, the debt burden has quadrupled in Dahuk, Diyala, Erbil, Ninewa, and Sulaymaniyah governorates since October 2014, leading an increase in child labor, early marriage, and/or families promoting dangerous journeys to leave Iraq.

Key Recommendations

With the emergence of ISIS, forced displacement became a common phenomenon in Iraq. However, worsening conditions may lead to further mass displacements in the near future, if the needs of the IDPs are not met. Thus far, the international community has failed to assist the internally displaced populations.

Based on field experience, we can re-assert the following key recommendations to the stakeholders for addressing the unheard voices of the displaced in Iraq:

- (1) Addressing the needs of displaced in Iraq: Recognize and support durable solutions for IDPs in Iraq as an essential element of effective transitions, conflict prevention, resilience building, and disaster risk reduction efforts.

- (2) Sharing the burden and assisting local authorities and host communities: Since the local authorities and host communities cannot cope with the responsibility alone, providing leadership in support of solutions to displacement, manifested in increased

¹⁹ International Blue Crescent Relief and Development Foundation, IBC is a registered and operational international non-governmental organisation, which addresses the mass displacements in Iraq, focusing on the primary needs of the displaced populations residing in Northern Iraq.

support for transition activities and durable solutions, including in terms of the integration of durable solutions into longer-term development and peacebuilding efforts in Iraq.

(3) Promoting regional equity in access to development assistance: Recognizing that IDPs often live and seek solutions in areas that do not necessarily attract significant levels of development support.

(4) Increasing intention efforts to reach the most vulnerable people in Iraq: minorities that are discriminated and suffered from lack of special assistance should be addressed and protected.

(5) Supporting non-camp based IDPs: Since most of the IDPs, especially those vulnerable minority groups are based in non-camp arrangements, special operations for targeting those in hard to reach areas need immediate support.

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Could Contact Stem the Rising Tide of Negative Attitudes Towards Hosting Syrian Refugees in Lebanon?

By Faten Ghosn and Alex Braithwaite

Based on a survey conducted in Lebanon between May 31 and August 31, 2017, public attitudes in Lebanon towards hosting Syrian refugees continue to worsen. However, levels of support varied slightly, by governorate, sect, gender, as well as income. More importantly, we find evidence that Lebanese who have Syrian friends in Lebanon or know displaced Syrians were also more likely to be supportive of hosting refugees, and less likely to see refugees as a threat to themselves or their family. Evidence suggests that encouraging greater contact between populations may ameliorate the negative trend.

Introduction

Understanding public attitudes towards refugees within their host communities has become of major interest for host governments, researchers, international agencies, as well as local institutions and/or organizations that work with refugees. Knowledge of such attitudes can help in building better policy responses that take into consideration important economic, cultural, and security concerns of local host communities (Dempster and Hargrave 2017).²⁰

Over the last six years, since the civil war in Syria began, the dynamics in the relationship between the Lebanese host community and the Syrian refugees residing in the country have worsened dramatically. At the beginning, many within Lebanon, especially the Lebanese Sunni community, were supportive of their “Syrian brethren” and in fact early on many refugees were housed by local families. However, as the refugee crisis dragged on and as the demand for resources increased, many began to talk about “compassion fatigue.” These increasingly negative attitudes arguably culminated in late June 2017 when five suicide attackers targeted the Lebanese military near Aarsal, a town close to the Syrian border.

In addition to 400,000 Palestinian refugees that have long resided in Lebanon, the country now hosts more than a million Syrian refugees and 40,000 Iraqi refugees (Trad and Frangieh 2007). In 2017, the UNHCR declared that Lebanon had the highest concentration of refugees in the world, with 1 out of 6 individuals in the country a refugee. It stands to reason, therefore, that Lebanon represents an important litmus test for evolving public attitudes towards hosting refugees. One cannot understand the attitudes of the Lebanese towards Syrian refugees without taking into consideration the charged past and current political and economic climate in Lebanon. Given the sectarian nature of the political system in Lebanon that splits political power equally between Christians and Muslims, whereby the majority of the power is held by three sects (Maronite, Sunni, and Shiite), the addition of over a million Sunni Syrian refugees in the country has triggered anxiety among the remaining sects.

²⁰ This article is the product of field research in Lebanon. The surveys were conducted in Lebanon between May 31 and August 31, 2017.

In order to explore these attitudes, we ran a survey in Lebanon during the summer of 2017. A major objective of our survey was to gauge the perception of the Lebanese community with regards to Syrian refugees, access to services, and perceived threats to local communities. We constrained our population of respondents to individuals who were old enough to have lived through the Lebanese civil war (40 years of age or older).²¹ We did so as we wanted to see how a segment of society who may themselves have experienced a bloody civil war might differ from the same generation of individuals who did not go through similar experiences. Two dominant concerns stood out among the Lebanese in our survey: security and the economy.

Before delving into these two issues, it is important to note that, in the aggregate, 57% of respondents disapproved of Lebanon hosting Syrian refugees, with only 33% supportive. However, levels of support varied slightly, most interestingly, by governorate, sect, gender, as well as income. In fact, Lebanese respondents residing in Bekaa/Baalbek-Hermel region were the most opposed to refugees (75% did not support vs 17% did support), followed by Akkar (71% did not support vs 17% did support). The most supportive region was Beirut (49% supported vs 44% did not support), followed by North Lebanon (38% supported vs 50% did not support). These attitudes map almost perfectly on to the geographical distribution of informal settlements of refugees (i.e., the presence of tents) throughout Lebanon. The three regions with the largest number of tents are Bekaa (102,706), Baalbek-Hermel (83,622) and Akkar (39,072) while Beirut has the lowest number (50). Given that the majority of the Syrian refugees are Sunni, it is perhaps no surprise that about 60% of Shiite and Maronite respondents were less supportive of hosting refugees. However, 54% of Sunnis also disagreed with supporting Syrian refugees. Women were also less likely to support hosting refugees than men (64% disagreed with hosting vs 54% respectively). Individuals that made less than minimum wage (less than \$500 per month) were less supportive than those who made more than \$1500 per month (62% disagreed with hosting vs 46% respectively).

Security Concerns

Public perceptions of risks associated with hosting refugees in Lebanon have worsened over recent years. According to a survey conducted in 2013, 25% of Lebanese surveyed felt unsafe by the presence of Syrian refugees.²² By 2015, the number of individuals who felt unsafe had risen to 46% and that number continued to rise to 47% in 2016 (Alsharabati and Nammour 2017). By the summer of 2017, when we carried out our survey, that percentage had reached 51%. Despite these intensifying sentiments, nearly all studies, including ours, show that there is individual and regional variation in the perception of safety.

Once again, regions that had the most informal settlements were more likely to say that they did not feel safe; 83% in Bekaa/Baalbek-Hermel, and 72% in Akkar. However, what is interesting is that 62% of residents in Beirut felt unsafe while only 46% in Mount Lebanon,

²¹ More details of the survey and some key findings are available in Faten Ghosn, Alex Braithwaite, and Tiffany Chu. 2017.

²² See International Alert February 2015 Report. http://www.international-alert.org/sites/default/files/Lebanon_SSRSyrianRefugees_EN_2015.pdf

47% in South Lebanon, and 45% in Nabatieh. Also, roughly 53% of residents in the North felt unsafe. One plausible explanation for this variation is the spillover of violence from the Syrian conflict into these areas. Akkar, Bekaa/Baalbek-Hermel, and Northern Lebanon are all geographically proximate to Syria. As for Beirut, it has witnessed several suicide attacks and bombings since the civil war in Syria began. In addition, those implicated in the attacks were connected to militant groups involved in the Syrian conflict.

When asked specifically about whether Syrian refugees were seen as a threat, 78% of respondents believed that Syrian refugees were a threat to them and their family, while 85% stated that they were a threat to their community and country. When asked whether Syrian rebels represent a threat, that number jumps to 85% of respondents viewing them as a threat to themselves and their family, and 89% see them as a threat to their community and country.

Economic Challenges

The economic challenges facing Lebanon are daunting. While the situation was not caused by the hosting of Syrian refugees, the Syrian civil war and the refugee crisis that it precipitated, have certainly exacerbated the problem. According to a 2015 International Labor Organization report, as a result of the Syrian refugee crisis, unemployment in Lebanon had doubled to around 20% and total economic losses incurred were believed to be around US \$7.5 billion. In 2016, the World Bank stated that the public debt had widened to 157% of the GDP.

Therefore, it is no surprise that 84% of the Lebanese believe that the refugees have had a negative effect on the Lebanese economy. In fact, when asked to choose four of the most important problems that have been affected by the Syrian refugees, 90% answered competition in the labor market, 64% higher rents, 50% security, and similarly, 50% said theft. However, respondents did not display universally negative attitudes. On the other hand, only 44% believed that scarcity of water was impacted, and just 40% stated that refugees have increased concerns related to infrastructure. As for other issues that have been raised in the Lebanese media and by politicians, only 34% believed that refugees have increased congestion in hospitals, while 33% stated that they perceive Syrian refugees had an impact on electricity supply.

Light At The End of Tunnel?

Our survey appears to confirm that Lebanese attitudes towards hosting Syrian refugees and the possible risks associated with doing so are, on balance, negative. Is there any light at the end of this tunnel? Under what conditions can this general trend be ameliorated or reversed? First, respondents to our survey offer relatively glowing praise of how political actors have been dealing with the crisis. 68% had a positive assessment of the Lebanese government's handling of refugee issues. An even greater proportion, 80%, were positive about the role of the UN and 87% believed that the civil society had a positive handle on refugee-related issues in Lebanon. When it came to the International Red Cross, 96% of the Lebanese respondents held a positive view of this organization and its handling of refugee-related issues.

Second, as noted earlier, regional variation is clearly important. Areas at a greater distance from Syria and with fewer temporary refugee settlements appear to hold more positive attitudes and lower perceptions of risk regarding hosting refugees. In other words, greater interaction with the crisis and potential security implications appear to harden attitudes against support. At the same time, however, our survey signals that individual-level contact with Syrian immigrants and refugees could serve to ameliorate these rising negative attitudes.

Specifically, we asked respondents whether they have Syrian friends in Lebanon and whether they have knowledge of any Syrians displaced by the current refugee crisis. 46% of respondents confirmed that they knew personally a Syrian who had been displaced, and among these 69% said they were acquaintances and 16% said they were friends. In fact, individuals with Syrian friends are 47% more likely to support hosting Syrian refugees than are individuals without any Syrian friends. Just as importantly, we see the percentage of Lebanese who see refugees as a threat to themselves and their family drop by 17% when they state that they have a Syrian friend. Individuals with Syrian friends were more supportive of accepting a Syrian refugee as a daughter/son-in-law (a percentage increase of 263%), more willing to have a Syrian refugee as a business partner (a percentage increase of 288%), to hire a refugee (a percentage increase of 158%), more willing to live next-door to a Syrian refugee (a percentage increase of 114%), as well as rent them their apartment (a percentage increase of 174%). This is encouraging because each finding suggests that Lebanese respondents are more tolerant of hosting refugees when they know personally or have contact with a Syrian.

Conclusion

In sum, the refugee crisis in Lebanon has worsened over the past six years and has resulted in unprecedented political, economic, and social challenges. It has led to real-world issues, be they higher rents and declining public services, or competition in the labor market and the spillover of violence. It is essential for international, regional, and local organizations to cooperate to support both the Syrian refugees as well as their host Lebanese communities. This is especially important given that the regions in Lebanon that are most impacted by the refugee crisis are themselves the poorest and most underdeveloped in the country. Successful projects will be ones that also allow Lebanese and Syrians to interact with one another. One example is the Employment Intensive Investment Programme (EIIP) that the International Labor Organization (ILO) initiated in Lebanon, and which focuses on projects that employ Lebanese and Syrian workers side by side. Working with the German Development Bank, ILO began its first project on January 31, 2017 (due to last until February 28, 2018) to create work opportunities for both the Syrian refugees and host communities through infrastructure improvement projects in Lebanon.[8] Our survey results suggest that projects of this kind ought to improve attitude towards hosting refugees and ameliorate perceptions of risks posed by doing so.

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Disparate Accommodation: A Significant Challenge to Accessing ‘Child-Sensitive’ Refugee Status Determination Procedures for Unaccompanied Minors Seeking Legal Protection

by Stacy Topouzova

Over the course of the past two years, there has been an acute focus on the challenges that unaccompanied minors encounter in accessing legal protection in Member States of the European Union.²³ At the gateway of the European Union, in Bulgaria, between 2013 and 2016, there had been a consistent increase in the number of unaccompanied minors applying for international legal protection, including refugee status and humanitarian protection status. The primary agency that holds legal competency to respond, the State Agency for Refugees, registered 2768 unaccompanied minors in 2016 (UNHCR, UNICEF & IOM 2017).

According to the *Law on the Asylum and the Refugees (LAR)*, the centrepiece of the Bulgarian asylum legal regime, when identified, an unaccompanied minor can be accommodated with ‘family members, a foster family, or a specialized institution in accordance with the *Law of the Protection of the Child*’.²⁴ In addition, the LAR stipulates that when considering where to accommodate the unaccompanied minor, ‘as much as possible, they are accommodated with siblings’.²⁵ This means that once identified, unaccompanied minors can be accommodated in a refugee registration and reception centre run by the State Agency for Refugees, a foster home run by a municipality, an orphanage run by a municipality, or in any other specialised institution run by the Child Protection Agency. In practice, however, this array of accommodation options, paradoxically, renders significant challenges for unaccompanied minors to access refugee status determination procedures and ultimately, international legal protection.

Accommodation in Refugee Registration and Reception Centres

From the outset, there are no standardised preliminary screening procedures by which members of the State Agency for Refugees can identify unaccompanied minors before initiating the refugee status determination process. As such, unaccompanied minors are accommodated by members of the State Agency for Refugees in one of four refugee registration and reception centres in the country alongside all other asylum seekers who are awaiting refugee status determination procedures.²⁶

In these reception centres, social workers from international organisations work closely with the residents and may be able to identify unaccompanied minors. However, these screenings are undertaken on an ad-hoc basis in consideration of the operations of the organisations that work in the centres. In many instances, social workers from these organisations conduct

²³ According to EUROSTAT (2017), in 2016, 63 300 unaccompanied minors applied for legal protection.

²⁴ Article 29 of The Law on the Asylum and the Refugees.

²⁵ Article 29 of The Law on the Asylum and the Refugees.

²⁶ The largest refugee registration and reception centre, Harmanli, is located near the southern Bulgarian-Turkish border, while the remaining three are located in or near the capital, Sofia.

preliminary needs assessments with the unaccompanied minors and use the information collected to advocate that the State Agency for Refugees undertake specific measures that ensure ‘the best interests’ of the minor. For example, with the assistance of social workers from Doctors of the World in February 2017, unaccompanied minors who were intercepted at the Bulgarian-Turkish border were accommodated in children’s homes in Varna.

In other instances, however, unaccompanied minors may be identified by a registrar from the State Agency for Refugees, who initiates the refugee status determination procedure by registering the unaccompanied minor’s claim for legal protection. During the registration of the claim, the registrar can also advocate that the State Agency for Refugees accommodate the unaccompanied minor in keeping with the legal provisions, with family members, a foster family, or a specialised institution in accordance with the *Law of the Protection of the Child*. In practice then, both members of international organisations and members of the State Agency for Refugees can recommend for an unaccompanied minor to be accommodated outside the refugee registration and reception centre. According to the State Agency for Refugees, 450 unaccompanied minors were accommodated in orphanages and children’s homes in 2016 while awaiting refugee status determination procedures.²⁷ This means that in practice, unaccompanied minors, if identified, can be accommodated in disparate institutions across the country.

Barriers to Refugee Status Determination Procedures

When accommodated outside the refugee registration and reception centres, however, a significant challenge emerges as members of the State Agency for Refugees report difficulties in communicating information concerning the refugee status determination process through the bureaucracy of the institution in which the unaccompanied minor is accommodated. Equally, they report not being able to visit unaccompanied minors who are accommodated in specialised homes or orphanages. Thus, paradoxically, the legal provisions within the *Law on the Asylum and the Refugees* that entrench a variety of accommodation options for unaccompanied minors pose significant challenges to members of the State Agency for Refugees in conducting refugee status determination procedures and in keeping with children’s ‘best interests’.²⁸

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²⁷ The statistics are published by the State Agency for Refugees: <http://www.aref.government.bg/index.php/bg/aktualna-informacia-i-spravki>.

²⁸ The Convention on the Rights of the Child, Article 3. It has been argued that the intersection of the United Nations Convention on the Rights of the Child (CRC) and the United Nations Refugee Convention and Optional Protocol (UNRC) constitutes a significant affirmation of the rights of unaccompanied minors seeking legal protection. The intersection between The Convention on the Rights of the Child and The Convention Relating to the Status of Refugees is examined in the work of Pobjoy (2017).

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What I observed when I was a refugee, and when I was conducting research on migration

By Wali Mohammad Kandiwal

Refugees and Internally Displaced Persons are not only forced to flee, but also to not say the truth.

I do not know the exact year, but in 1980s my family moved from Sheirzad district of Nangahar province of Afghanistan to Kurram Agency-FATA of Pakistan and settled there in a camp which was newly established.

Over that decade, millions of Afghans left the country because of the conflict which had erupted as a result of the invasion of the Soviet Union and the internal conflict between the supporters of the two extreme ideologies.²⁹ Eventually, the Afghan government and its foreign supporter had started searching operations and bombardment targeting their so-called enemies everywhere especially in the rural areas. Everyone felt that they were not safe anymore. Therefore, our elders decided to leave our homeland.

In order to get to Pakistan, we had to pass the mountains of Spin Ghar (White Mountain), located between Afghanistan and Kurram Agency. Some people, who were not extremely poor, had rented donkeys or mules for their children and elderly. However, young males and females had no choice but to walk. It was not easy to walk one and a half or even two days in the mountains in narrow ways for the first time, but this was the only option as the Afghan government did not allow any families to leave Afghanistan at that time.

The camp which we lived in for several years was located on the eastern part of the Sadaa Bazaar of Kurram Agency. There were four major tribes, namely Masuzi, Alisherzai, Bangash, and Fari, living in the surrounded areas. Turi (Shiites) left Sadaa after they fought with Sunni, but they still have lands and markets in Sadaa Bazaar. Our camp was located in a Dashta (desert), where there was nothing, not even clean drinking water. We would drink the rainwater from a pond which had small red worms in it. Then we started to bring water from a village of the host community located more than one kilometre away from the camp.

Life in the refugee camp was not easy, and we were faced with several challenges because we had left Afghanistan without taking anything with us, except the clothes we had worn. In order to get continuous assistance, we had to go through a system to obtain a Ration Pass. However, the assistance package of the Ration Pass could not cover all the needs of the refugees. As a result, the refugees were trying to get more of the same stuff, and they would sell them for their other needs. This could be made possible in two ways: first, to have more than one Ration Pass, and second, to have more people registered under one Ration Pass. To achieve the first method, people started to split one family into two or three families to get multiple Ration Passes. Likewise, to achieve the second method, they were claiming more children than they actually had, because a family that has more children would receive more material assistance.

²⁹ The supporter of Ekhwanizim ideology which was fuelled from Egypt, and later from Saudi Arab, and the ideology of communism fuelled by the Soviet Union.

In either of the above situations, a family needed more children to prove their claims. I still remember when I was a child, I was put into three different tents within a day to complete the number of the children that the family had claimed. These tents belonged to our relatives. That day, a delegation of the commissioners came to our camp and stood in front of each tent, counting the families and then the members of each family to check whether they have the same number of family members they had claimed in their Ration Passes. We, the children, would sit in front of one tent for counting, went out from the back side of the tent after counting, and run to another tent and sat there before the delegation arrived. The delegation would look at us and sometimes asked about our relationship, but we were well-trained enough to say what our elders told us to say. As a child, I was happily doing this and I think the rest of the children felt the same, because we thought we are doing something very right and helping our families by getting something. Everyone was trying to give better answers than the others if they were asked by the member of the delegation.

Recently, when I was conducting a research on the IDPs in Kabul, I found more or less the same story. I was at an informal settlement located on the eastern part of Kabul within the official border of police district eight. This informal settlement has three parts: the first part of the settlement is occupied by the people who claimed that they came from Helmand province because of the ongoing fighting; the second part were occupied by the Jogi or Changari people; and the third part had a mixed population of refugee returnees and IDPs from different parts of the country.

One day, I was sitting in the house of Majbor³⁰, an internally displaced person. Majbor belongs to the Arab tribe originally from the Baghlan province which is in the north of Afghanistan and a neighboring province of Kunduz, where the Taliban still have a stronghold. He was telling us his story of how and why he left Baghlan. Apart from complaining about his living condition in that informal settlement, Majbor also claimed that he did not receive any assistance neither from the Afghan government nor from the humanitarian organisations. He repeatedly told us that he had been displaced very recently, just 15 days ago. And when I asked whether the house he was living in was his own, he said yes. He added that he and his wife had constructed that house in less than 15 days. It was a mud contracted house with two rooms and surrounding walls, and it was built relatively well. However, to find such a place in an informal settlement in Kabul, and then to build such a house might take months, if not years. I was thinking and asking myself, so why would he say that he displaced very recently or more simply, why he would lie? I understood later that most of the humanitarian organisations have the extra criteria to help those who became IDPs recently, but not the ones who are protracted. Therefore, Majbor might have confused us with those organisations who would be able to help him if he was recently displaced. I have witnessed several times when the IDPs or returnees were not telling the truth, and I was feeling bad each time after hearing that, and sometimes I was not even interested to listen, because I considered that this was just a waste of time.

³⁰ This is a pseudonym to protect the person's identity.

Surely, none of the refugee or IDPs would like to lie, especially in front of their families and relatives. But they have to do this repeatedly because they are forced to do so. There could be a few reasons which forced them to do so: first, the assistance offered to them may not be what the refugees or IDPs need; or second, the assistance offered to them may not cover all of their needs, and third; the exclusion of refugees or IDPs because of some beneficiary selection criteria may force them to not tell the truth.

One may ask, so what is the solution, or what do the IDPs or refugee need or want the most when they get displaced? Or what should be changed in terms of policy or selection criteria? It is not possible to come up with a clear answer as to what exactly is the assistance they need because of the complexity of their displacement circumstances. However, a few points can be highlighted in this regard. First, the response should be as contextualised as possible. Second, instead of offering what the organisations can offer, the displaced population should be consulted for their needs, and therefore the humanitarian aids' assessment questions should be a bit more open. Third, deeper research needs to be conducted to critically review the beneficiary selection criteria which divide the displaced population into several categories, and shapes the response to them. In addition, research should reflect the voice of these different groups of displaced people to understand their thoughts regarding the response of the humanitarian organisation to displaced population.

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Responses to the Increased Migration Flows: A Comparative Study of Serbia and Croatia
By Tara Kalaputi

The increased migration flows in 2015/2016 demonstrated the incapability of the EU and countries along the Balkan Route to find a collective and adequate response to fulfilling their obligations towards people on the move. While Serbia and Croatia are similar in their geographical position and legal framework, they differ in their respective political approaches. This paper, therefore, explores the reasons for these differences through examining the legal framework and political environments by reviewing and analysing treaties, conventions, declarations as well as reports covering political responses to migration from both national and international levels. I hypothesise that Serbia adopted a more humanitarian approach towards refugees due to its legitimate self-interest of continuing negotiations for accession to the EU. Croatia, on the other hand, shifted from a humanitarian approach towards securitization due to the aftermath of the elections where the government manifested political centre-right tendencies.

Introduction

The refugee flow of 2015/2016 presented one of the major recent challenges in terms of finding appropriate responses in respect of the human rights of refugees. That has produced considerable political instability in the countries on the Balkan Route and the EU as a political, economic and security entity. Serbia and Croatia played an essential role primarily due to their geographical position as the gate to Western Europe – the final destination for many refugees. Even though Serbia has a candidate status and Croatia is a member state of the EU, both countries were transit, rather than destination countries. In addition, due to EU directives, both countries implemented a similar legal framework concerning migration and asylum. However, despite the similarities, both countries adopted different approaches towards the refugee increase. These differences are mostly the result of their respective political environments.

In this article, I elaborate on two relevant criteria shaping Serbia and Croatia's respective approaches towards the refugee crises of 2015/2016 – their legal frameworks concerning migration and asylum and their political environments. The study demanded the use of a qualitative method by consulting primary sources such as treaties, conventions, and resolutions concerning migration and asylum on both national and international level followed by secondary sources such as field reports and local and international NGO reports, online journals as well as watchdog organizations.

Thus, I address the following research question: Why are the Serbian and Croatian responses to the refugee arrivals of 2015/2016 different despite the countries' similar legal frameworks for migration and asylum and similar geographic position as transit countries? By focusing on the countries' respective political environments, this paper argues that Serbia's humanitarian approach was highly conditioned by attitudes of the EU in relation to its further accession negotiations, while Croatia's aftermath of the elections with the winning of center-

right party contributed to a change of the primarily altruistic approach to one adhering to securitization. The aim of this paper is to stimulate further academic debate challenging democratization when considering different approaches to the increased refugee arrivals of 2015/2016 by countries part of the Balkan Route and the EU.

First, I elaborate on the legal framework of Serbia and Croatia regarding migration and asylum, including their national legislation as mainly influenced by EU requirements. Second, by comparing their legal frameworks, I conclude that despite the fact that Serbia is not a member state unlike Croatia; both their legislations have been considerably moderated for the purpose of alignment with the EU *acquis*. Third, I present the political environments of both countries with the intention of highlighting how despite having the necessary legislation, their respective political interests do not coincide. Finally, I conclude their different political environments contribute to different resulting approaches when dealing with the refugee influx.

Background

The migration flows along the Balkan Route were not a novelty for either Serbia or Croatia considering their strategic geographical position as a gate to Western Europe. However, large movements and a dire need for implementation and improvement of migration and asylum policies both on national and international level led to a unique development of a formalized corridor in June 2015 by organizing public transport from Northern Greece to Western Europe within two days. Both Serbia and Croatia have established their asylum systems in the framework of their EU enlargement so as to bring them in line with the EU *acquis*. Thus, the EU has shown significant commitment by shaping the legislative framework in Serbia which undoubtedly had a beneficial impact on their negotiations for accession to the EU. As a member state, Croatia also had to further improve its legislative system, particularly concerning integration policies so as to comply with the newly established EU directives concerning migration and asylum.

However, despite having adopted relevant legislative measures concerning migration and asylum, Serbia and Croatia developed different responses towards the increased refugee arrivals. The government of Serbia aspired to a humanitarian approach toward refugees to simultaneously gain “political points” in its accession negotiations with the EU. In Croatia, on the other hand, the growing ideological clash between the political center-left and political center-right and its aftermath changed the initially humanitarian approach towards that of securitization.

Legal Framework

To comprehend the measures taken by Serbia and Croatia, it is useful to enquire into their national as well as international legislative measures.

Serbia

Serbia has signed numerous international treaties concerning asylum, including the 1951 UN Convention relating to the status of refugees, including its 1967 Protocol. Moreover, Article 57 of the Serbian Constitution guarantees the right to asylum. This right is mainly regulated in national legislation, consisting of the 2008 *Law on Asylum and Foreigners and the Law on State Border Protection*, the 2012 *Law on Migration Management*, and the 2014 *Law on the Employment of Foreigners*. Migration management responsibilities are divided between several state institutions, while the Asylum Office, a separate unit in the Ministry of Interior, is the asylum determining authority. Regarding its status as a candidate country for the EU, Serbia's legislation has been identified as partially compliant with the EU acquis (European Commission Screening Report Serbia, 2014). Thus, there has been a gradual incorporation of the EU's wider migration control agenda in its national institutions and policy through several legislative reforms. First, several EU directives concerning asylum were introduced: Directive 2011/95, which provides the right to asylum to third-country nationals and stateless persons as well as standards concerning the status of a refugee, Directive 2013/32 stating the procedure of recognition and withdrawal of asylum, Directive 2013/33 providing standards for reception of asylum-seekers, and Directive 2011/55 regulating the institution providing protection (European Parliament Briefing, 2016). The massive migration flow in 2015 stressed the need that Serbia should further harmonize its national legislation within the EU directives, which according to their Stabilization and Association Agreement (SAA) is imperative for starting the negotiations for accession after the opening of Chapter 24 (Justice, Freedom and Security).

For that reason, in 2014, Serbia adopted a *National Program for the Adoption of the Acquis* (NPAA) covering the period from 2014 until 2018, identifying the weaknesses of the national asylum system and envisaging measures to improve them. They included the provision of adequate financial resources and administrative capacities, sufficient accommodation for asylum seekers and implementation of adequate procedures of integration (European Integration Office, 2014). In relation to that, the developed *Action Plan for Chapter 24* as stated in itself "will be given primacy", which was positively assessed by European Officials. Thus, Serbia has five permanent reception centers for asylum seekers with a capacity of 5340 beds and three centers hosting unaccompanied minors with a capacity of 30 beds. However, in its progress report of 2016, the EU Commission stresses its concern by the facilities' susceptibility to infiltration by smugglers and other criminal activities, as well as the lack of cooperation between institutions (Commission Staff Working Document, Serbia 2016).

Finally, the *New Draft for Asylum Law* (proposed by the Ministry of Interior in 2014 and adopted in March 2018) contains significant improvements: linguistic refinements avoiding contradictions, introduction of higher standards in terms of protection of asylum seekers, refinement of deadlines and acceleration of procedures, introduction of the gender dimension, improvement of acceptance of unaccompanied minors etc. *The Draft* also introduces equality of treatment of refugees and persons under subsidiary protection, granting *de facto* uniform status for all persons seeking international protection. However, Serbia has failed to implement these laws and the United Nations High Commissioner for Refugees (UNHCR) have expressed

their concern regarding aggravation of the situation in Serbia concerning refugees waiting in the open due to lack of resources, poor conditions in the reception centers and mistreatment by administration officials (Murray, 2015).

Additionally, Serbia has participated in bilateral and international agreements with countries on the Balkan Route. Initially, after the closure of the Hungarian border, relations between Serbia and Croatia were deteriorating resulting in interruption of traffic between the two, but were soon re-established due to the need for legal movement of refugees to EU countries, provided by the *17-point plan* (European Commission Press Release Database), which forecasts the distribution of refugees along the route, and calls for the implementation of re-admission agreements with regard to third-country nationals. Consequently, in February 2016, the police directors of Serbia, Croatia, Austria, Slovenia and Macedonia established the *Joint Declaration* restricting the flow of migration in the Western Balkans, allowing entry primarily to those who have the appropriate identification documents. That followed the *Declaration of Joint Border Management*, by representatives of the Ministries of Internal Affairs of the same countries, once again confirming the dominance of security issues, especially border security.

Croatia

The migration and asylum system in Croatia is based on the Constitution of Croatia, the 1951 UN Convention relating to the status of refugees and its 1967 Protocol, the EU *acquis* in the field of asylum, and the *Asylum Act* with accompanying subordinate legislation. The *Asylum Act* came into force in 2008 and was amended in 2010 and 2013 as the *Law on International and Temporary Protection* to be fully aligned with the EU *acquis*. It provided accelerated asylum procedure by the Service for Foreigners and Asylum and the Ministry of Interior, as well as four regional administrative courts (Zagreb, Rijeka, Osijek and Split) dealing with asylum appeals.^[xiii] Moreover, since its accession to the EU in 2013, Croatia became part of the Dublin Regulation which determines the state responsible for examining an asylum application – normally, the State where the asylum applicant first entered the EU. However, the Commissioner of Human Rights by the Council of Europe Nils Muizhnieks states in his April 2016 report that only 10% of the asylum seekers who transited through Croatia were fingerprinted there and reported to the EU Asylum fingerprint database (EURODAC). In November 2015, Croatia adopted the national *Human Rights Structures Joint Declaration* on the protection and promotion of the human rights of refugees and migrants. Additionally, the *Draft Law on Amendments to the Alien's Law* contains a significant positive provision, as it contains an expanded list of alternatives to detention and broadens the scope of vulnerable persons (Niels, 2016).

Another significant improvement is the amendments to the *Asylum Act* of 2015 which ensure integration of refugees and persons under subsidiary protection, guaranteeing their right to accommodation, work, health protection, education, legal aid, social welfare, family unification, freedom of religion and assistance in integrating into society. In relation to that, there are two reception centers in Zagreb and Kutina with a capacity of 700 places, where legal aid, psychological assistance, and language courses are provided. However, the Commissioner

of Human Rights by the Council of Europe reported a lack of legal aid and insufficient language courses. Moreover, there is one detention center in Jezhevo with a capacity of 140 persons, where legal aid and medical assistance is provided. However, authorities tend to prolong the stay of detainees and continuously practice obliging them to pay for their accommodation and removal according to the 2001 *Aliens Law*. Regarding unaccompanied minors, there was a *Migration Policy 2013-2015* for the appointment for special guardians for unaccompanied children. However, it has been reported that they lack the necessary training and the criteria of appointment are unclear, and centers face continuous disappearance of children (Niels, 2016). Regarding integration, the Migrant Integration Policy Index (MIPEX) 2015 ranked Croatia 30th out of 38 countries. This means that newcomers to Croatia face barely half-way favorable policies for their integration. There is a strong need for work-related language courses, access to vocational training, targeted educational support for children, health access and political participation.” Integration is seen as a key component to be regulated as under the EU resettlement and relocation programs Croatia is to accept 1618 refugees (European Commission, 2015).

Comparison

The legal framework concerning migration and asylum in Croatia is different than the one in Serbia due to its responsibility to examine the *Dublin Criteria* and to carry out transfers to another member state. Thus, in 2015, 30 out of 162 applications succeeded in refugee status, 7 in subsidiary protection, and 115 were rejected (Asylum Information Database, 2017). Serbia’s *Draft Asylum Act* introduces the concept of a “safe third country” with which an asylum seeker will be allowed access to the asylum procedure in Serbia if they have been denied asylum for having passed through a safe third country prior to Serbia. Thus, in 2015, 579 518 people expressed an intention to seek asylum, but only 586 lodged an application: 16 received refugee status, 14 subsidiary protection, and 40 were rejected. In both countries, the procedure often was suspended because the applicant was no longer present in the country (European Commission, 2016). In addition, Serbia has shown considerably more preparedness in its capacities – holding five permanent reception centers with a total capacity of 5340 beds, while Croatia holds two with a capacity of 700 beds total. Both countries, however, faced criticism from the EU in terms of coordination between institutions and lack of professional capacities.

Furthermore, Serbia and Croatia participated in international agreements dealing with the restriction of the refugee flow. However, the *17-point plan* being the only document from the EU that includes all Western Balkan countries does not include clear indications for border control. Countries are asked to “discourage” the refugee flow and “look for financial support from international institutions” that would deepen their borrowing. Additionally, *The Joint Declaration* reaffirms the possibility of the recognition of refugee status according to the nationality of the applicant, which is contrary to the definition of a refugee under the Convention relating to the Status of Refugees. Another discrepancy is that the determination of the nationality of the asylum seeker is left to interpreters and their language skills. Lastly, this declaration denies the right to family unity which is guaranteed by international and European law. Serbia and Croatia’s role in bilateral and international agreements outside the

jurisdiction of the EU shows their commitment to finding common solutions. However, it also shows their dedication to broadening their security agenda by which the so-called “refugee crisis” was slowly turned into a security threat.

Political Environment

Serbia

To comprehend how the political environment in Serbia influenced its approach and motivations towards the refugee influx from 2015 to 2016, it is essential that two factors are mentioned: the government’s aspiration towards EU accession and its political disputes with Kosovo.

Predominantly, Serbia has been perceived as the country whose government has offered the most humanitarian approach towards refugees alongside the Western Balkan route (Senada, 2016). As negotiations with Serbia officially took place in January 2014 when an unprecedented refugee flow was initializing, its government showed a legitimate self-interest by allowing the EU to intervene in its migration policy. That contributed to the successful finalization of the action plan required for the opening of *Chapter 24 on Justice, Freedom and Security*. Consequently, the Commission’s *2015 Progress Report* highly encouraged Serbia to establish a constructive approach towards the weakening asylum system due to the increased mixed migration in close cooperation with EU and other member states.^[viii] In the following year, The Commission adopted an even more favorable tone due to Serbia’s consistent upgrading of capacities when dealing with migratory flows:

Some progress was made in areas such as reform of the police, border controls and organized crime with the adoption in December 2015 with the first serious and organized crime threat assessment (SOCTA) in line with Europol requirements. Serbia has been affected by the refugee and migration crisis, during which it has played an active and constructive role and cooperated with neighboring countries and Member States while managing mixed migration flows (European Commission, 2016).

However, the report also emphasizes the importance of further efforts to tackle the phenomenon of unfounded asylum applications lodged by Serbia’s nationals in EU Member States after its visa liberalization. Even though debates about the suspension of the visa-free regime were eventually replaced by debates on the refugee flows, it demonstrated the desire for cooperation between the government of Serbia and the EU in tackling irregular migration. Furthermore, the Prime Minister of Serbia Aleksandar Vuchich adopted a highly humanistic rhetoric and approach when addressing the refugee increase, himself visiting refugees in Belgrade parks and distributing humanitarian help.

Nevertheless, Serbia’s role in managing the increased refugee flows was not as challenging as the one by the member states in Western Europe, as it was solely a transit country. It is highly significant therefore to contrast the government’s altruistic approach towards the refugees with

the unsympathetic approach towards the dispute with Kosovo. Since Kosovo's declaration of independence in 2008 against the will of Serbia, Serbia has been resisting to the integration of Kosovo into regional and international institutions (European Commission, 2016). In addition, the Serbian Constitution designates that Kosovo is an "integral part" of its territory, not recognizing its independence until the present day and maintaining parallel structures in the Serb-populated north. Resolving the deep-seated rivalries has been placed as priority conditions for both of the counties' shared goal of EU entry. Consequently, there have been numerous agreements between Serbia and Kosovo¹ that contributed to the EU granting Serbia a candidate status in 2012 and signing SAA with Kosovo in 2015. However, their long-lasting tensions persist. The political rhetoric adopted by politicians tends to be nationalistic and conflicts continue to mount.

Croatia

Croatia's approach to the refugee flows was predominantly influenced by the parliamentary election in November 2015 followed by the presidential election in January 2015, as well as its role on the Balkan Route as a member state of the EU.

In 2015, Croatia continued to be governed by a center-left coalition government – Social Democratic Party (SDP) in alliance with People's Coalition, led by Prime Minister Zoran Milanovic (Petak et al, 2015). During the parliamentary election, he was challenged by the center-right Patriotic Coalition led by the Croatian Democratic Union (Hrvatska Demokratska Zajednica, HDZ). SDP framed the refugee increase as a need to both be humane, but also to attend to the country's dependency on Germany (Senada, 2016). In addition, the Minister of the Interior Ostojic travelled to the field briefing journalists and foreign officials daily (Ostojic, 2016). As elections were up-coming, the government engaged significantly in taking a constructive approach towards the migratory flow which, if not successful, could undoubtedly be exploited by the opposition. Thus, in a press release by the political opponents HDZ, it was stated: "We are asking the Croatian government clear responses and concrete security measures with regards to the growing wave of emigrants from Arab countries" (Mulalic, 2016, translation). In response, SDP stressed the need of Croatia to provide safe passage to refugees without posing security threats by an abundance of migrants staying. In their discourse, political opponents differed in their rhetoric – the social democrats referred to "refugees" while the conservatives referred to "(economic) migrants" (Jakesevic and Tatlovic, 2016). Unlike the parliament, the new President of Croatia, Kolinda Grabar- Kitarovic, frequently demanded urgent meetings of the National Security Council, highlighting the use of the army to protect the borders (Senada, 2016). Eventually, securitization sought implementation through several legislative amendments to the *State Border Protection Act* and the *Defense Act* by which the army would provide border protection (Hina, 2016).

In relation to providing a rapid and effective passageway to refugees to Western Europe assisting with humanitarian aid as well as securing its national interests, Croatia was the first country to provide state-funded train service through the newly established transit centers until the Slovenian border (Larsen, 2016). However, the local population did not have contact with the refugees and the media was their only source of information on this issue. The media had

adopted a more reserved tone after the change of the social democratic government to the more national conservative. Political rhetoric focused on regulation of migration by the EU and securitization. As a result, in June 2016 Croatia erected a fence on the Serbian border in Batina to deter migrants and stop irregular migration (Milekic, 2016).

Surely, the EU played a more pressuring role for Croatia during the “refugee crisis” considering its status as a member state, particularly showing discontent with its exploitation of Serbia. The first intervention of the EU towards Croatia was due to its inability to manage the sudden massive migration flow after the closure of the Hungarian border in September 2015, after which the authorities halted all cargo traffic and close its border crossings with Serbia. In response, the Serbians imposed a counter-blockade, which was highly criticized by UN officials as a “clear breach of the free trade agreement by which Croatia is bound by its SAA (Weber, 2016) which eventually brought to normalization of the relations and lifting the bans. However, tensions reappeared when in April 2016, at a meeting in the EU Council, Croatia put a veto on Serbia’s accession talks for *Chapter 23* dealing with the judiciary and human rights (Anastasjevic, 2016). After pressure from the EU and dire dissatisfaction of Serbia’s government, in June 2016 it lifted the veto and enabled Serbia to continue negotiations for accession. Finally, the EU showed its concern at Croatia’s decision to erect a fence on the Serbian border the same month, thus once more causing tension.

Comparison

Although Serbia and Croatia share the same geographical importance in that they are both part of the Balkan Route and transit countries, their respective political environments have greatly influenced their approaches towards the increased refugee flows.

While Serbia’s prevailing attitude was welcoming all throughout until the official closure of the Balkan Route, Croatia presented a shift of humanitarian towards more reserved stance aiming at securitization. The reason for that are the countries’ respective national interests. The Serbian government’s amiability and the introduction of migration policy compatible with the EU were largely influenced by its political needs due to the EU acquisition negotiations. Nevertheless, it is indeed questionable whether Serbia would adopt the same opinion if it was a destination, rather than a transit country. Itself having one of the highest immigration rates in Europe^{xiii}, and an ever-lasting dispute with Kosovo that reveals nationalistic tendencies, its performance in accepting and integrating refugees from the current refugee flows is disputable. On the other hand, Croatia’s initial humanitarian approach by SDP had different incentives. Firstly, in the domestic political domain, they wished to pursue their interest within the liberal part of the electorate prior to parliamentary elections. Secondly, Croatia tried to get the support of Germany in terms of foreign policy, in order to strengthen its foreign political position. When HDZ came to power, however, there were many strong tendencies towards securitization that brought into existence the *State Border Protection Act* and the *Defense Act* by which the army would provide border protection. It is, therefore, questionable whether securitization would have been more stern if Croatia had been expected to receive and give international protection to a larger number of refugees within its borders.

Concerning the political relations between the two countries, there have been continuous attempts to normalize the tensions followed by further provocations. Putting a veto on *Chapter 23* for Serbia's negotiations, Croatia pointed out that a Serbian law giving its courts universal jurisdiction on war crimes could be used against Croatian nationals, and that Serbia was not protecting minority rights satisfactorily which is incompatible with the EU values. Even though the veto was lifted, the same month a fence was erected by Croatia to prevent irregular migration which was highly criticized by Serbian Authorities and the EU. Certainly, Serbia and Croatia found it hard to devise a common approach and take coordinated measures in dealing with the refugee increase mainly due to their different relations with the EU as well as existing past conflicts.

Conclusion

The increased refugee flows of 2015/2016 have shown considerable weaknesses both in individual approaches from different countries alongside the Balkan Route, and the functioning of the EU as a political and economic body. Serbia and Croatia are two countries with similar roles along the route due to their geographical position and legislative framework concerning migration and asylum but adopted different responses to the refugee influx particularly because of their political environments.

Serbia, in pursuit of its goal to become an EU member state, agreed to facilitate the transformation of its national legislation concerning migration and asylum to conform to the demands of the EU. It opted for policies that would appeal to the EU as humanitarian, strategically paving its way towards further negotiations for accession. However, implementation was partially applied due to lack of cooperation between institutions, lack of resources and inadequate conditions at reception centers. Croatia had similar approach towards amending existing laws in accordance with the EU *acquis*, though implementation of the integration policy was hardly executed due to lack of resources and political will. Even though a member state of the EU, Croatia, similarly was perceived as a transit country by the refugees. However, both have shown considerable devotion in broadening their security agenda by participating in international agreements so as to restrict the flow of the refugees, thus shaping it into a security threat.

Additionally, what structured the differences in the approaches of Serbia and Croatia when dealing with the increased refugee flows were the different political environments. Serbia's government has generally been perceived to offer the most humanitarian approach along the route. However, having in mind its relations to Kosovo, the question remains whether Serbia would have adopted such an altruistic tone had it already been a member state or had an obligation to integrate refugees. In Croatia, the aftermath of the elections bringing to power the center-right party HDZ has shifted its previous humanitarian approach towards one that calls for securitization and protection of national interests. Yet, whether the current or the previous government would have adopted a more humanitarian approach had Croatia been a destination country—is contentious. Additionally, clashes between its sovereign right to control its borders and its humanitarian obligation to help people in need contributed to tensions with Serbia

resulting initially in traffic ban, further to veto on Serbia on its accession talks for *Chapter 23* and ending with building a fence on the Serbian border.

In conclusion, Serbia and Croatia's approaches to the refugee flows of 2015/2016 alter due to the different aspiring political interests. The incapability to find a common coordinated solution between the EU and the countries along the Balkan Route inevitably challenges the ethical standards and democratic values they are made upon.

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