SECURITY VERSUS HUMANITARIANISM: NORMATIVE CLASHES WITHIN THE COMMON EUROPEAN ASYLUM SYSTEM

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Submitted to
Central European University
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In partial fulfillment of the requirements for the degree of Master of Arts

Supervisor: Professor Boldizsár Nagy

Word Count: 16,814

Budapest, Hungary
2015

Abstract

The normative landscape of Europe is plagued with dilemmas of how to address the increasing humanitarian concerns, embodied by processes such as the continual influx of asylum seekers, and protect the law and order of the European Union through security measures. The Common European Asylum System was developed to ensure improved and harmonized protection standards for the incoming asylum seekers. Yet, this legislative package has been criticized for its deficiencies, suspect treatment of asylum seekers, and its overall inability to effectively address the rising number of asylum applications in the territory of the European Union. How do these defects emerge within the legislation intended to address humanitarian concerns? Given the extent of perceived security threats and the prevalence of security mechanisms, it has crept into most domestic and international policy schemes. Policy and legislation concerning asylum seekers, as this thesis will demonstrate in the European context, has not been an exception. The hypothesis of this thesis is that security mechanisms and humanitarian advocacy are not compatible processes within asylum legislation, and that this incompatibility manifests itself through normative clashes. Through document analysis comparing the first and second phase CEAS legislation, this thesis uncovers several considerable normative clashes. By focusing on the Eurodac Regulation recast, detailed analysis reveals that security norms are expanding at the cost for humanitarian norms. In addition to outlining the outcomes of these normative clashes, this thesis discusses implications these outcomes have on asylum seekers and humanitarian norm entrepreneurs.

Acknowledgements

The less we are free to decide who we are or to live as we like, the more we try to put up a front, to hide the facts, and to play roles.

Hannah Arendt, *"We Refugees,"* 1943.

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List of Abbreviations

Common European Asylum System (CEAS)

European Council on Refugees and Exiles (ECRE)

European Dactyloscopy (Eurodac)

European Union (EU)

Statistical Office of the European Union (Eurostat)

United Nations (UN)

United Nations High Commissioner for Refugees (UNHCR)

EU: Council Regulation (EC) No 2725/2000 – Eurodac Regulation (2000 original)

EU: Council Regulation (EC) No 343/2003 – Dublin II Regulation (2003)

EU: Council Directive 2005/85/EC   – Procedures Directive (2005 original)

EU: Council Directive 2004/83/EC   – Qualification Directive (2004 original)

EU: Council Directive 2003/9/EC   – Reception Conditions Directive (2003 original)

EU: Regulation (EU) No 603/2013   – Eurodac Regulation (2013 recast)

EU: Regulation (EU) No 604/2013   – Dublin III Regulation (2013)

EU: Directive 2013/32/EU   – Procedures Directive (2013 recast)

EU: Directive 2011/95/EU   – Qualification Directive (2011 recast)

EU: Directive 2013/33/EU   – Reception Conditions Directive (2013 recast)

Introduction

The normative landscape of Europe is plagued with dilemmas of how to address the increasing humanitarian concerns, embodied by processes such as the continual influx of asylum seekers, and protect the law and order of the Union through security measures. What kind of legal norms regulating asylum seeking emanate from these dilemmas? Quite a few authors have outlined the negative effects European security measures have on asylum seekers and third-country nationals in general (e.g. Bigo 2002, 2005, and 2010; Huysmans 1995, 2000, and 2006). Fundamentally basing their arguments on the theory of securitization, these works have shown how the identity of asylum seekers is treated and thus constructed as a security threat. This development implies that contemporary asylum claimants in Europe are faced with an extensive set of problems, mainly that their public visibility is dominated by the prevalent security measures. It also affects how they are treated both at the borders and within the territory, and both in the legal and in the social sphere. Along with the lives lost in the Mediterranean, the global stories of conflict forcing migration, and the ill treatment of refugees in certain countries, the rise in 'fake asylum seekers' or 'illegal immigrants' has gained extensive media coverage, and further strengthened the view of asylum seekers as security threats.

This continuing extension of security processes is one of the characteristics of the time we live in. The post 9/11 'war on terror' has weaved itself into Western political agendas, both domestic and international. The politics of asylum have not been an exception in the spread of

security concerns. Nonetheless, given that they were created to respond to humanitarian concerns, rather than security ones, it appears crucial to address whether the spread of security can in some manner hinder the original goals of granting asylum to those fleeing severe persecution or serious harm. Theoretically, this is a discussion on norms and the possibility of normative clashes. The European asylum legislation package is supposed to be focused on ensuring respect for asylum applicants' rights and well-being. Put simply, it is bound by humanitarian norms. The burgeoning security process on the other hand, with its abrupt penetration into contemporary politics, has a different normative agenda attached to it. The aim of this thesis is to explore these two sets of norms in the context of asylum politics in the European Union, and in the context of wider processes of humanitarianism and security.

Authors such as Bigo, Carrera, Guild, and Walker, have addressed the clashes between security and other processes, such as liberty, in the European context. Conversely, the relationship between security and humanitarianism seems undeservingly understudied. This is the theoretical gap this thesis aims to fill through the example of the two phases of the Common European Asylum System (CEAS). The first phase, completed in 2006, was marked by the introduction of five new legislative instruments aimed at harmonizing the protection standards across Member States. The second phase, mainly through the recasts of the previous legislative instruments, was aimed at improving the level of protection and further homogenizing the asylum procedures. My hypothesis is that, rather than complementing each other or harmoniously coexisting, humanitarian and security processes cause normative clashes within the second phase of CEAS. In order to test this hypothesis, this thesis will have to answer the following set of questions. What changes have been made in the second phase of CEAS legislation compared to the first one? How do humanitarian organizations and NGOs respond to the development of humanitarian norms within the new CEAS

legislation? How do these developments relate to security mechanisms within the recasts? Do norm-producing security mechanisms interfere with the production of humanitarian norms? Finally, how do the normative clashes between humanitarian and security norms play out in the Eurodac (European Dactyloscopy or fingerprint identification) Regulation? Rather than focusing on security actors, which have already been extensively covered in literature, but also due to space constraints, these questions will be answered from the perspective of humanitarian organizations and NGOs.

The fundamental question for testing the hypothesis is: how can the norms behind humanitarian and security processes be addressed in such a way as to identify the locus of interaction and to analyze the nature of their relationship? Given that there are three stages of norm evolution, namely, norm emergence, norm cascade, and norm internalization, my answer will be limited to the first stage. Norm emergence is the stage where the humanitarian norm entrepreneurs are faced with the most tangible challenges, when their advocacy for or against a particular norm clashes with European security mechanisms. In order to address normative clashes within this first stage of norm evolution, this thesis will utilize document analysis to compare the first phase and second phase legislation of the EU asylum *acquis*, in addition to relevant documents such as UNHCR reports related to this legislation. In the first part, the norms will be analyzed separately, identifying their expansion and retraction in particular transformations of the legislative documents. Shifts towards or away from humanitarianism will then be identified through observing the extent to which three humanitarian norm entrepreneurs: the UNHCR, ECRE, and Statewatch express agreement with the second phase of the CEAS. Shifts towards, or away from, security will be identified through the security mechanisms of restrictive policies, securitization,

and Foucauldian techniques of government. The second part of document analysis will focus on the intricacies of these normative clashes within the Eurodac Regulation recast.

I further argue the clashes of norms have policy relevance. CEAS has been criticized both for not answering to the needs of asylum seekers and for not being effective in terms of harmonizing asylum systems across EU member states.[1] As the EU faces a growing number of asylum claimants, it is necessary not only to readdress its policies, but also the norms which develop relative to them. Norms represent the manifestations of the fundamental ideas and goals behind each policy and looking at how the norms of security and humanitarianism converge or clash uncovers how the deficiencies within CEAS came into being in the first place. Therefore, the results of this research may help to understand better the fundamental problems of asylum politics in Europe, and the effects of security-related humanitarian controversies within the asylum legislation. My thesis argues that the interactions between the processes of humanitarianism and security result in normative clashes within EU asylum legislation. The main findings is that security mechanisms impose obstacles on the promotion of humanitarian legal norms and that, as a result, humanitarian advocacy fails to prevent the negative implications security norms have for asylum seekers. Additionally, the work of humanitarian advocates is exposed as insufficient given that it only manages to impose safeguards, rather than removing the damaging security norms such as detention. Finally, this thesis addresses the implications the normative clashes and security mechanisms' 'victories' have on asylum seekers and humanitarian organizations. While the former may abscond from the asylum procedure or openly protest their inadequate treatment, the advocacy of the latter is further limited once norms enter their second or third stage of evolution.

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[1] Albeit ECRE is just one of the organizations voicing their critique of CEAS, their 2013 report is one of the most representative in terms of outlining the deficiencies of the second phase asylum package. European Council on Refugees and Exiles, Not There Yet: An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System, 9 September 2013, available at: http://www.refworld.org/docid/52442af54.html [accessed 15 May 2015]

The first chapter gives a theoretical analysis of norms, normative clashes and the normative landscape of Europe. It is followed by a discussion of the processes of humanitarianism and security with regards to asylum legislation in the EU. The third chapter is devoted to the general analysis of the first and second phase CEAS legislation, while the fourth is focused on the normative clashes specific to the Eurodac Regulation recast. The final chapter addresses both the outcomes of the developments discovered through document analysis, and the implications these have for both asylum seekers and humanitarian organizations such as NGOs.

CHAPTER I

Norm evolution within the European Union

Norms are ideas which set the standards of what is accepted, expected, or simply 'normal' within a society. As Martha Finnemore and Kathryn Sikkink explain: "norms channel and regularize behavior; they often limit the range of choice and constrain actors."[2] As such, they manage the behavior of social actors. Given that states are social actors as well, norms are crucial when looking at international, regional, or domestic developments. Christian Kaunert emphasizes that norms "influence the definition of political problems, the search for policy alternatives, and finally the national preferences in the politics stream where decisions are taken."[3] The issues governments face are defined and dealt with in different ways, some can be accompanied by economic, other by humanitarianism or security framing. Methods of persuasion, bargaining, and EU power dynamics between different actors lead to the development of specific EU-wide norms. Certain framings win over others and decide in what ways related issues, such as reception of asylum seekers or the provision of subsidiary protection, will be dealt with. Thus, norms are conceptually crucial for understanding how asylum legislation emerges in the EU. As Eiko Thielemann points out: "the motivation for the attempt to find a common approach appears to have

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[2] Martha Finnemore and Kathryn Sikkink, "International norm dynamics and political change," *International organization* 52.04 (1998): 894.
[3] Christian Kaunert, "Liberty versus security? EU asylum policy and the European Commission," *Journal of contemporary European research* 5.2 (2009): 156.

been driven by both a 'cost-benefit' as well as a 'norm-based' logic."[4] How do these norms emerge within EU legislation?

In their account of norm evolution, Finnemore and Sikkink explain that norm influence is characterized by three distinctive stages: norm emergence, norm acceptance, and finally norm cascade, when norms are internalized.[5] The first stage of norm evolution or, as it will be referred to in this thesis, norm emergence, is the one which is the theoretical focus of this thesis. Apart from being arguably the most understudied phase of norm evolution, the stage of norm emergence can uncover the fundamental normative dynamics in the creation of asylum legislation. They can expose which norms entered the acceptance stage, and which other norms they had to triumph over. In their explanation of successful norm building and emergence, Finnemore and Sikkink emphasize the importance of norm entrepreneurs and the organizational platforms these actors function on. Norm entrepreneurs are actors with a specific set of convictions and which are actively working on building and promoting their views as norms. They explain: "Norm entrepreneurs are critical for norm emergence because they call attention to issues or even 'create' issues by using language that names, interprets, and dramatizes them."[6] These norm entrepreneurs may be, for example, individuals, states, or NGOs.

The organizational platforms of norm entrepreneurs vary. They can be norm-specific, such as particular advocacy networks of NGOs like Médecins Sans Frontières or Statewatch, or institutions with extensive and branched out agenda structures, such as UNHCR, which is a part of the UN system. Organizational platforms affect the extent to which norm entrepreneurs can shape the content of the norms they promote, as Finnemore and Sikkink emphasize.[7] Therefore,

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[4] Eiko R. Thielemann, "Between Interests and Norms: Explaining Burden- Sharing in the European Union," *Journal of Refugee Studies* 16.3 (2003): 270.
[5] Finnemore and Sikkink, "International norm dynamics and political change," 895-909.
[6] Ibid., 897.
[7] Ibid., 899.

given its state-based structure, the autonomy of UNHCR could be more limited with regard to its policies and agenda than that of an NGO. Gil Loecher describes this as one of the organization's greatest defects: "although it characterizes itself as non-political, UNHCR is a highly political actor and is clearly shaped by the interests of major governments" because the organization is "often at the mercy of the donor countries."[8] Thus, organizational platforms are important for understanding norm building and emergence because they can, to various proportions, shape and guide the agendas of particular norm entrepreneurs.

Apart from the elements of norm entrepreneurs and organizational platforms, for the norm evolution to progress to the second stage (norm acceptance), it needs a tipping or threshold point. As the authors argue, in most cases, this point will be reached once the norm becomes "institutionalized in specific sets of international rules and organizations."[9] As Finnemore and Sikkink explain, this institutionalization can occur through international law and multilateral or bilateral treaties. The EU context is a particularly complex setting for analyzing norm emergence since there are variations in the type of actors involved, regional institutions, states, and organizations for example, and because norm emergence works on several levels: the regional, sub-regional, or domestic level. As an illustration, while Kaunert emphasizes the importance of the European Commission as a regional norm entrepreneur[10], Rosemary Byrne, Gregor Noll, and Jens Vested-Hansen emphasize the importance of states as sub-regional actors, claiming that "asylum norms are transformed in a constant interplay between domestic, sub-regional, and regional forces."[11] Due to the sheer complexity of EU norm emergence processes, this thesis will need to impose several limitations to its scope.

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[8] Gil, Loecher, "UNHCR and the Erosion of Refugee Protection," *Forced Migration Review* 10 (2001): 28.
[9] Finnemore and Sikkink, "International norm dynamics and political change," 900.
[10] Kaunert, "Liberty versus security? EU asylum policy and the European Commission," 156.
[11] Rosemary Byrne, Gregor Noll, and Jens Vedsted-Hansen, "Understanding refugee law in an enlarged European Union." *European Journal of International Law* 15.2 (2004): 377.

The first limitation in the research agenda is that this thesis will focus on the progression of norm evolution from its first phase to the second one, where the norm entrepreneurs manage to persuade enough actors in order to reach the threshold point of norm cascade. More specifically, I intend to address the process between norm emergence and the threshold point, which occurs when norms are institutionalized through EU asylum legislation. Since the thesis works within the context of two different processes, humanitarianism and security, I will also describe how norms which were propagated, defended, or attacked through these two processes interacted with each other. What occurs when different norm entrepreneurs are propagating diverging norms at the same time or what happens when a new norm threatens to expand at the cost of an older one? In order to provide adequate answers to this question, it is necessary to introduce the concept of normative clashes.

Normative Clashes and their variations

"New norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest."[12]

As discussed before, norms are an ideational phenomena which guide acceptable or appropriate behavior within a group. When two or more norms conflict within the normative space normative clashes occur. To introduce norms and normative clashes, I will first give examples of different types of norms, in order to illustrate a variety of ways in which norms effect asylum

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[12]Finnemore and Sikkink, "International norm dynamics and political change," 897.

policies. Finnermore and Sikkink, in their account of international norm dynamics, offer a tripartite typology of norms: regulative, constitutive, and evaluative.[13] These can be aptly illustrated through refugee and asylum policies. Regulative norms are those which constrain action. An example would be non-refoulement, or the prohibition of returning refugees to countries where they are under threat of persecution of serious harm. Constitutive norms, which create new categories of action are exemplified through the special provisions accorded to vulnerable refugees and asylum seekers such as torture victims. Evaluative norms are prescriptive, they encourage specific behavior, more of a guide than a control measure. In the context of refugees and asylum seekers, an example of an early prescriptive norm would be artistic and industrial property protective rights accorded by Article 14 of the 1951 Refugee Convention.

As far as normative clashes are concerned, they also come in different shapes and sizes. The normative space is one of continual change, given that new norms develop constantly, and interact with the existing ones. A new norm may conflict, complement or remain neutral in relation to existing norms. This former becomes clear if we observe, for example, how the emerging norm of legalizing same-sex marriage contradicted the view of marriage as a union between a man and a woman. When norms diverge in their regulative, constitutive, or prescriptive content, this can, as Myron Weiner argued in "The Clash of Norms: Dilemmas in Refugee Policies," lead to normative clashes. Focusing on the work of UNHCR and related NGOs, Weiner defined normative clashes as moral dilemmas forced upon humanitarian institutions.[14] These clashes can be caused by norms coming from within the institutions, or by powerful outside norms intervening into the normative framework of a specific organization. Giving the example of Liberia in mid-nineties, Weiner describes how the Liberian warlords withheld resources from the populations they

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[13]Finnemore and Sikkink, "International norm dynamics and political change," 891.
[14] Myron Weiner, "The clash of norms: dilemmas in refugee policies," *Journal of Refugee Studies* 11.4 (1998): 440.

controlled, in order to attract international aid donors, and so used the UNHCR and NGOs to amass food and medicine. This went against the allegedly non-political nature of humanitarian aid, and against the norm of non-intervention. The efforts to save lives through the provision of food and medicine thus went hand in hand with abetting warlords and prolonging the suffering of Liberians. In these types of situations, any result in the decision-making process is bound to be controversial, and preferring one norm over another sets a precedent for future normative developments.

Weiner's approach reveals only one variety of normative clashes, those between already established norms. Nonetheless, normative clashes can be found even within the norm emergence processes, when different norm entrepreneurs are proposing and promoting conflicting norms. Whose norm ends up institutionalized depends on various factors. Among the most important ones are the strength of the norm entrepreneurs and their organizational platforms. But, apart from these two aspects, we should also take into account that international normative space does not emerge in isolation, rather, it is shaped by various processes happening on a global (or regional) level. In the past the international normative space had been at times dominated by processes such as the abolition of slavery, women's suffrage, or decolonization. Today some of the important processes shaping normative spaces are the LGBTQ rights, democratization in certain regions, peacebuilding and conflict resolution; solving humanitarian crises such as those producing surges of refugees, and addressing security concerns which come out of terrorist attacks. How do the normative spaces created through these processes relate to each other? What happens if they collide?

European Norms and Their Contexts

"Framing refuge as a humanitarian question introduces different relations to refugees than framing it as a security question."[15]

Addressing the normative landscape of Europe is a necessary introduction into the processes which guide the emergence of new and the transformation of old norms. The normative space which exists within the regional confines of the European Union is a complex and inconsistent field. Here many players push for their norms and priorities and, given that different players have varying bargaining power levels, a normative hierarchy may arise. Each norm may be placed under the category of a specific process occurring at the regional or international level. Security and liberty have been the two processes most frequently addressed together in the context of scholarly work in social sciences focused on the EU. Didier Bigo, Elspeth Guild, and R.B.J. Walker, in their recent volume "The Changing Landscape of European Liberty and Security," address the critical misconception about security and liberty, namely that they can be balanced, and without significant detriment to one or the other. They claim such balancing act is merely a farce, and that the consistently expanding reach of security measures is a grave threat to the ever-fragmenting value of freedom. In their own words:

"it is necessary that liberty be fragmented and considered mainly in individualist terms while security is reunified, aggregated as safety, protection, security, survival, and considered in individual, collective, and even global terms. Under

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[15] Huysmans, *The politics of insecurity: fear, migration, and asylum in the EU*, xii.

these rhetorical conditions, it is not difficult to say that security must trump liberty. Security may even become freedom itself by being transformed into the first freedom, the freedom for life."[16]

Most relevant here is the dynamic of normative clashes. Not only does security take priority over liberty concerns, but it also leads to territorial and social exclusion of individuals. In the European context, and possibly even on the global normative landscape, the norm of security appears as a powerful opponent to other norms.

A similar endeavor to that of Bigo, Guild, and Walker, was undertaken by Kaunert. In his article on EU asylum policy, Kaunert focused on how the European Commission acted as a norm entrepreneur during the first phase of CEAS and interfered in the confrontation between liberty and security. His main argument is that, by working closely with civil society and NGOs, the Commission managed to push for adequate asylum solutions through "the continued insistence on international human rights standards after 9/11, despite shifts in rhetoric to accommodate the 'war on terror.'"[17] Although Kaunert provides a detailed account of the Commission's successful entrepreneurship and the role of inhibiting the expansion of securitizing processes in asylum legislation, his argument is lacking in three aspects. Firstly, Kaunert focuses on the dynamics of "liberty versus security," whereas the issues security threats may pose for asylum seekers are not limited solely to the inhibition of liberty, but also other altruistic concerns such as regard for their dignity and well-being. Liberty is definitely a central normative process, but in the case of asylum it is subsumed under a wider framework of humanitarian concerns. Secondly, Kaunert equates

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[16] Didier Bigo, Elspeth Guild, and R.B.J. Walker, "The Changing Landscape of European Liberty and Security," in *Europe's 21st Century Challenge,* ed. Didier Bigo et al. (Farnham: Ashgate Publishing Limited, 2010), 11.
[17] Kaunert, "Liberty versus security? EU asylum policy and the European Commission," 160.

security with only one possible security mechanism, namely securitization, whereas scholarly endeavors such as that of Bigo, Guild, and Walker utilize a wide array of security mechanisms. Thirdly, his approach to securitization is limited to the classical definition made under the framework of the Copenhagen School and fails to account for its deficiencies and conceptual improvements offered by additional literature (e.g. Wilkinson 2007; McDonald 2008). Finally, albeit not a limitation per se, Kaunert's findings were focused only on normative actors, and not on the processes leading to normative clashes.

This relationship between the processes of humanitarianism and security does not appear any more problematized even by the practitioners themselves. At a semi-formal academic gathering I attended, a high ranking UNHCR official claimed humanitarianism and security are not in conflict on the EU normative landscape, but rather that they run parallel with each other. My thesis argues such lack of critical reflection hinders out ability to successfully address the legislation related to asylum seekers in the EU. Just like the previously addressed clashes between liberty and security, humanitarianism and security should be analyzed in relation to each other, and in relation to the normative clashes they create.

CHAPTER II

Humanitarianism and advocacy

Defining humanitarianism on the international or regional level is not an easy task, especially since it keeps expanding its international scope. However, as Michael Barnett and Thomas Weiss explained: "Humanitarianism has become institutionalized, internationalized, and prominent on the global agenda. It is an orienting feature of global social life that it is used to justify, legitimate, and galvanize action." [18] Taking this into consideration, I define the international process of humanitarianism as one which requires voluntary action directed towards improving the welfare of other individuals through material resources, such as financial aid, or non-material resources, such as insuring their rights through advocacy.

Approaches to humanitarian action can be rights-based and needs-based. According to Abby Stoddard, needs-based humanitarian action is about the provision of charity, while the rights-based approaches focus instead on international humanitarian law and the fundamental rights each individual is granted.[19] This does not preclude humanitarian organizations from utilizing both approaches. UNHCR, for example, may focus on right-based practice in its advocacy concerning EU legislation, and on a needs-based approach in regions undergoing conflict and violence, for

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[18] Barnett and Weiss, "Humanitarianism: a brief history of the present," 29.
[19] Abby Stoddard, "Humanitarian NGOs: Challenges and Trends," in *Humanitarian Action and the 'Global War on Terror': A Review of Trends and Issues*, ed. Joanna Macrae and Adele Harmer. HPG Report 14 (London: ODI, 2003), 32.

instance by setting up refugee camps. Taking this binary division into consideration, the focus of this thesis is on the rights-based side of humanitarian approaches. These approaches vary according to the humanitarian organization utilizing them. On the one hand, an organization such as UNHCR may have a significant amount of authority with regards to affecting asylum legislation or the way certain asylum related court cases unfold, and their approach will target official executive channels. On the other, NGOs can also organize to protest the treatment of asylum seekers and to promote their rights through critical analyses. Both of these advocacy efforts are embedded in the official reports produced by the organizations themselves. Both UNHCR and Statewatch produce commentaries, reports, and discussion papers on asylum-related EU legislation, jurisprudence, and domestic and regional trends. What all of these texts have in common is that they include some degree of advocacy by making recommendations for improvements, critiquing decisions, and providing alternatives.

We should of course consider a major caveat, namely that these organizations and humanitarianism itself, is not pure altruism divorced from politics. Consequently, it is not advised to view any organization with a humanitarian cause as non-political. As Mark Duffield emphasizes, "humanitarian actors are seen as political because they compete with other agencies for funds and operating space."[20] This was explained earlier through Loecher's critique of UNHCR and his view that the organization is subject to the power of major governments. But even NGOs face this issue of, as Stoddard refers to it, 'juggling competing loyalties.'[21] Whether it is about advocacy or providing material aid, NGOs must decide between the interests of their donors, the needs and rights of their beneficiaries, and the long-term goals of their organization. Humanitarianism is thus political due to the politics of funding and gaining operational resources,

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[20] Duffield, *Global Governance and the New Wars,* 95.
[21] Stoddard, "Humanitarian NGOs: Challenges and Trends," 34.

which is restrained by political actors who provide this material support. This thesis does not intend to idealize neither humanitarian norms nor humanitarian organizations and NGOs which act as norm entrepreneurs.

Finally, before moving to security, humanitarianism should be related to the context of asylum. As Eurostat statistics indicate, the number of asylum applications in 2014 has increased by around 195.000 compared to the previous year.[22] Being a major global humanitarian actor, the European Union provides over 50% of all development aid and serves as a humanitarian norm setter.[23] Consequently, its humanitarian principles are an important motivator for addressing the increasing number of asylum applicants on its own territory. To what extent will the humanitarian norms of EU result in providing protection to that vulnerable population fleeing persecution and serious harm? This depends on both the EU regulations and domestic application of its legislation, which is where the importance of norms reappears.

Going back to the language of norms, the section explaining their evolution within the EU context emphasized several limitations in this thesis. The first one was that the research focus will be on the progression from the first to the second phase of norm evolution, and on the normative clashes within them. The three additional limitations are related to the process of humanitarianism, its normative actors, and the level of norm emergence. Firstly, the process of norm emergence will be regarded at a regional rather than at a sub-regional or domestic level because the space constraints of this thesis are not suitable for looking at intricate relationships between each Member State. Secondly, rather norm entrepreneurs, the focal point will be the process of humanitarianism embodied in the mechanism of advocacy. Thus, norm entrepreneurs analysed in

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[22] "Asylum Statistics," Eurostat, last modified 21 May, 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.
[23] "Development and Cooperation," European Union, last modified 29 May, 2015, http://europa.eu/pol/dev/index_en.htm.

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this thesis, UNHCR, ECRE, and Statewatch will be approached with priority given as their advocacy efforts act as an embodiment of the process of a rights-based humanitarian action. Finally, the mechanism of advocacy, from the humanitarian perspective, will be juxtaposed with mechanisms of security. This leads us to a crucial question, how does security manifest itself in EU asylum politics? And how does the process of security create an atmosphere suitable for normative clashes?

Security and its mechanisms

Unlike humanitarian norms, security ones are harder to analyze in terms of their entrepreneurs. In their chapter "Mapping the European Field of Security Professionals," Didier Bigo, Philippe Bonditti, and Christian Olsson emphasize that the European internal security is marked by a high level of interdependence, solidarity, and common security practices. As the authors explain:

"It is hence important to understand the interdependencies between different professionals (police, military, customs, judges, prosecutors, magistrates, border-guards and so on), while not considering the field of security as a homogenous or unlimited social space. The field of the professionals of security is a fragmented social space that, in spite of its multiple lines of confrontation, can be analyzed as being characterized by a set of common beliefs, practices and technologies."[24]

CEU eTD Collection

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[24] Didier Bigo, Philippe Bonditti, and Christian Olsson, "Mapping the European Field of Security Professionals," in *Europe's 21st Century Challenge* ed. Didier Bigo et al. (Farnham: Ashgate Publishing Limited, 2010), 77-78.

Consequently, these authors argue that it is important to look at European institutions, Member States, and even private security actors. Given the word limits of this thesis, an endeavor to address all these actors is out of reach. On the other hand, it is possible to address their 'common set of beliefs, practices and technologies' subsumed under the mechanisms of the security process. Security mechanisms are a also complex field full of theoretical overlap and with an extensive range of effects on different individuals and populations. As Alessandro Dal Lago, Salvatore Palidda, and Federico Rahola argue, the contemporary world is characterized by blurring lines between national and foreign policy, a continuous state of war, and permanent state of emergency. Emanating from these is an extensive set of security measures such as harsher border controls, discriminatory security checks, doubtingly legal personal data collection, *et cetera.*[25] Since security is normatively ubiquitous, it is clear why it should be made a priority in the study of asylum policies in the EU. The foreigner, particularly one who comes from a conflict and violence-ridden, politically unstable area of the world, is made into a security question mark, a possible threat, a potential belligerent in humanitarian disguise. This is not because of the identity of asylum seekers as a group, rather, as Huysmans explains, "the driving existential question is not the threat that refugees and asylum seekers pose but the free movement of terrorists. Refugees and asylum seekers are drawn into this security debate because asylum procedures are an instrument of regulating free movement."[26] Consequently, in the context of immigrants, security concerns are bound to occur.

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[25] Alessandro Dal Lago, Salvatore Palidda, and Federico Rahola, "Effects of Exceptionalism on Social Cohesion in Europe and Beyond," in *Europe's 21st Century Challenge,* ed. Didier Bigo et al. (Farnham: Ashgate Publishing Limited, 2010), 191-192.
[26] Huysmans, *The Politics of Insecurity: Fear, Migration, and Asylum in the EU*, 64.

In a world where the state is the fundamental unit of organization, they are usually presented as "the other" and, in the post 9/11 world, as a potential terrorism threat as well. As immigrants, asylum seekers encounter mechanisms which seek to monitor or regulate their free movement. As asylum seekers, individuals fleeing politically volatile and conflict-ridden regions of the world, they are faced with a complex securitization processes and other controversial security mechanisms. What are these measures through which the EU addresses the influx of asylum seekers in its territory?

Some of the security measures, such as detention, are more controversial. These directly go against liberty concerns, because they infringe on personal freedom, and against humanitarianism, because they target a sensitive population. They may fall under what Elspeth Guild, Kees Groenendijk, and Sergio Carrera call 'illiberal practices of liberal states.'[27] Detention as an illiberal measure may be seen as a manifestation of more than one security mechanisms present within the EU, such as securitization or restrictive policies. Other measures targeting asylum seekers may relate to security in a more implicit manner. For example, the Reception Conditions recast, as per Article 20(1)(a) and (b), sets the rules for the withdrawal of material reception conditions if the applicant "abandons the place of residence determined by the competent authority without informing it, or, if requested, without permission," or "does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure period laid down in national law." I argue these rules fall under the Foucauldian principles of disciplining and governmentality, both of which will be addressed in depth in the following paragraphs. They are related to security in pointing to asylum seekers as

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[27] Elspeth Guild, Kees Groenendijk, and Sergio Carrera, "Understanding the Contest of Community: Illiberal Practices in the EU?" in *Illiberal Liberal States: Immigration, Citizenship, and Integration in the EU*. (Farnham: Ashgate Publishing Limited, 2009), 1-3.

subjects whose behavior and freedom of movement should be monitored and regulated. Detention and the grounds for withdrawal of material reception conditions are just some expressions of wider mechanisms applied under the process of expanding security. There are several mechanisms which fall in this category: restrictive policies, government techniques that Foucault categorized as sovereignty, discipline, and governmentality, and finally, the mechanism of securitization.

Restrictive policies

Restrictive policies will be defined in this thesis as all acts which in some manner restrict the liberty of asylum seekers in relation to movement, behavior, and certain aspects of personal decision-making. In terms of norms, restrictive policies are those which directly limit the liberty of asylum seekers in the name of security. In "Exceptionalism and its Impact on the Euro-Mediterranean Area," Cristina Fernández, Alejandra Manavella, Iñaki Rivera, and Gabriela Rodriguez, assert that there are two groups of controlled individuals within the EU. Namely, "the non-dangerous individuals, whose life as consumers is disciplined, and the masses of risks generators, whose existence is regulated."[28] They emphasize immigrants as a security issue, obviously falling within the second group. Given that asylum seekers fall within that category, they face institutionalized violence, which is originally designed to treat individuals who are security threats. That violence expresses itself through restrictive and discriminatory law and policy. In the case of asylum seekers, such policies are evident in EU asylum *acquis* provisions concerning detention or the withdrawal or reduction of material reception conditions.

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[28] Cristina Fernández et al., "Exceptionalism and its Impact on the Euro-Mediterranean Area," in *Europe's 21st Century Challenge,* ed. Didier Bigo et al. (Farnham: Ashgate Publishing Limited, 2010), 207.

In my approach, restrictive policies as expression of security concerns represent tangible measures which may interfere with humanitarian concerns. Especially if we take restrictive policies to be an expression of institutional violence. As Fernández et al. claim, by targeting a group as potential enemies, institutional violence has the power to turn that very group into victims.[29] Restrictive measures, which target a particular group, also stigmatize it and make it an easy mark for discriminatory violence disguised as a security measure. I will explain the relationship between the two through an example. The Reception Conditions Directive recast determines the grounds for detention rather vaguely. Since the Directive applies to all asylum seekers, they are all potentially regarded as detainees, and thus prone to higher levels of institutional violence in comparison to non-stigmatized or "non-dangerous" groups, those falling within the category of disciplined consumers. In that way, restrictive measures systematically create victims within the asylum seekers' group, and thus go against the very idea of giving someone asylum. From one form of persecution, asylum seekers might be getting themselves into a systematic form of more implicit persecution based only on their "membership of particular social group."[30]

Even though I primarily focus on the norm of security as contained in the EU asylum *acquis*, restrictive policies targeting asylum seekers are extensively spreading into other areas of legislation. Restrictive policies are embedded into legislation concerning the movement of all non-EU individuals. For example, the demanding visa application processes can gravely hinder the legal mobility of asylum seekers. As Judit Tóth explains, "the more restrictive conditions for visa issuing and lawful entry are, the higher transaction costs and the greater risks are for ensuring the

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[29] Fernández et al., "Exceptionalism and its Impact on the Euro-Mediterranean Area," 206.
[30] UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html [accessed 21 April 2015]

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protection of asylum seekers."[31] Thus visa restrictions can function as effective deterrents for asylum seekers, but they are not the only EU measure with that affect. As the ECRE report emphasizes, reaching the EU is a tough endeavor given the "number of administrative and external border control measures that EU governments have put in place to prevent asylum seekers from entering the territory."[32] This extended scope of restrictive policies points to a constraint of this thesis, since it only addresses the security mechanisms embedded within the EU asylum legislation. However, even when limited only to legislation, restrictive policies are an important mechanism which might be employed to address asylum seekers as security concerns.

Foucauldian techniques of government

In Huysmans' accounts of Foucauldian theory of government, the contemporary state practices three techniques in order to assert its power upon the population and territory. These are sovereignty, discipline, and governmentality.[33] Since asylum seekers constitute a specific population, the EU will adapt its common government techniques to fit the perceived security needs involved with treating third-country nationals in general, and asylum seekers in particular. Albeit the EU is not a 'state' in the classical meaning of the term, Huysmans argues that it can be regarded as such under the Foucauldian interpretation of the 'state'. In such a framework, the EU emerges as a state "as both an outcome of techniques of government and as a principle that symbolically integrates these diverse governmental practices into a rendition of political

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[31] Judit Tóth, "Liberty, Security, and Enlargement," in *Europe's 21st Century Challenge,* ed. Didier Bigo et al. (Farnham: Ashgate Publishing Limited, 2010), 144.
[32] ECRE (2013), 8.
[33] Huysmans, "The Politics of Insecurity: Fear, Migration, and Asylum in the EU," 39.

community."[34] Thus the EU, as a political community using government techniques, becomes a domain where state mechanisms of sovereignty, discipline, and governmentality, are exercised.

The definition of sovereignty is, according to Huysmans, a form of state power which "governs by means of a rule of law and the coercive capacity of political, administrative, and judicial institutions."[35] Going more into theoretical depth, Huysmans argues that sovereignty is a decision, rather than a tool or reaction, through which a sovereign power asserts its authority to make decisions.[36] In the context of asylum, the EU may utilize its sovereignty by deciding who will enter its territory through visa policies, border patrols, or other measures. In the context of EU asylum *acquis*, this technique of power may express itself through the practice of detention.

The second Foucauldian technique of government is discipline which, in Huysmans interpretation, "governs by administering the location and movement of individuals through the imposition of grids."[37] This technique of government is apparent on multiple levels in CEAS legislation. Firstly, the Dublin III Regulation limits the asylum seeker to apply to only one Member State and, secondly, they limit this choice through a checklist. Another example of disciplining asylum seekers through constraints on their movement is the placement of asylum seekers into reception centers which they cannot leave for extended periods of time without a permission.

The most complex of these three techniques is governmentality, which Huysmans calls the "art of governing a population rather than a territory."[38] In Foucauldian terms, governmentality is about creating a self-disciplined subject. As an implicit and pervasive form of power in the European context, governmentality can express itself through legal measures which seek to

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[34] Huysmans, "The Politics of Insecurity: Fear, Migration, and Asylum in the EU," 41.
[35] Ibid., 39.
[36] Ibid., 137.
[37] Ibid., 39.
[38] Ibid., 98.

implicitly regulate the behavior of asylum seekers under the guise of liberal government. In brief, governmentality represents the "conduct of conduct."[39] I will demonstrate how governmentality functions within the asylum legislation through the Reception Conditions Directive recast. According to Article 20 of the Directive recast, Member States may reduce or withdraw material reception conditions on six grounds. These are related to circulation in and out of the place of residence, reporting duties and asylum procedure interviews, lodging a subsequent application, an unjustifiably late application, concealed financial resources, and violent and prohibited behavior in accommodation centres. Of these six, the first and the last are the most relevant in terms of governmentality. In Article 20(1)(a), if the asylum seeker "abandons the place of residence determined by the competent authority without informing it or, if requested, without permission," she or he may be denied material reception conditions. In paragraph (1)(b), "Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behavior." Both of these reveal the attempt to regulate the behavior of asylum seekers in such a way as to *conduct their conduct* into that of an individual who is so 'well-behaved' and obedient that they cannot become a security threat.

These Foucauldian techniques of sovereign power, discipline, and governmentality represent security mechanisms of the state apparatus. Even though they target both 'ordinary' citizens and third-country nationals, their approaches are constructed according to the population they address, as it was shown through the examples of asylum legislation. Additionally, these processes may overlap both with restrictive policies and securitization, and the latter will be addressed in the section below as the last security mechanism.

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[39] Michel Foucault, "The Subject and the Power," in *Michel Foucault: Beyond Structuralism and Hermeneutics,* ed. Hubert Dreyfus and Paul Rabinow, (Brighton: Harvester, 1982), 208-26.

Securitization

Huysmans (2000, 2006) defines securitization as a political choice made up of an array of practices, involving political, social, and professional actors, and having a structural effect on how immigrants are viewed in the EU.

"Securitization thus frames migration existentially in two interrelated ways: (1) migration is transfigured into events and developments that existentially endanger the independent identity and functional autonomy of a political unit, and (2) in endangering the community it asserts and re-iterates the very existence of the community as an autonomous unity. Securitizing immigration and refugee flows thus produces and reproduces a political community of insecurity."[40]

Under the Copenhagen School, securitization is defined as a 'speech act'. Scholarly work focusing on it has normally been based on analyzing security-related phrasing and policy discourse in order to understand the extent to which certain groups, such as asylum seekers, are being presented as a threat, a security issue, a belligerent, or a possible rule breaker. Such discourse where asylum seekers can be defined as a threat may serve to justify restrictive policies and violent security measures targeting the group. In this regard, even more advantageous are the more recent developments in the securitization theory. Clare Wilkinson, for example, argues that the relationship between speech and action is intricate and complex enough to make it hard to answer

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[40] Huysmans, "The Politics of Insecurity: Fear, Migration, and Asylum in the EU," 51.

what came first, the speech or the act?[41] Therefore, she recommends an approach to securitization which pays attention to both speech and action, and their relationship. Based on this expanded definition of securitization, this research can proceed to address how EU asylum policies treat asylum seekers as a security threat in both their discourse and their policies. A prime example of a securitizing practice is related to the Eurodac Regulation and the related rule of taking asylum seekers' fingerprints. Given that the process of taking someone's fingerprints is tied to criminal activity, this practice may affect both how asylum seekers define themselves and how others perceive them as a potential security threat. Securitizing discourse may appear when law authorities attempt to justify their usage of asylum data, or when legislators try to defend this provision.

The security mechanisms of restrictive policies, Foucauldian government techniques, and securitization have all been explained by now through asylum-related legislation in order to indicate how these mechanisms may interact with norms advocated by humanitarian organizations. The underlying question the rest of this thesis will attempt to addresses is the extent to which these security mechanisms interfere with the promotion done by humanitarian norm entrepreneurs.

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[41] Claire Wilkinson, "The Copenhagen School on Tour in Kyrgyzstan: Is Securitization Theory Useable Outside Europe?" Security Dialogue 38.1 (2007): 22.

Normative clashes, humanitarianism and security: a research agenda

"Politics has become the policy decisions that aid agencies make when faced with

hard ethnical questions."[42]

The security mechanisms described above are not only targeting asylum seekers. Other third-country nationals, minority groups, and even 'regular' European citizens may experience restrictive policies, sovereignty, discipline, governmentality, or securitization. These matter for the thesis because of how they are tailored to fit into the CEAS legislation and, more importantly, because these mechanisms, which address security concerns, interfere or clash with rights-based approaches of humanitarian organizations. The relationship between the mechanisms of security and humanitarian advocacy will be addressed by looking at normative clashes occurring during norm emergence.

This theory will be placed in the context of the first and second phase of the EU asylum legislation. Even though the thesis will address all the five pieces of legislation which changed in the second phase of CEAS, its main focus will be on the Eurodac Regulation, the 2000 original and the 2013 recast. The research question of the thesis is two-fold. Firstly, how do the processes of humanitarianism and security interact within the two phases of CEAS legislation? Secondly, what are the outcomes of such interactions, especially considering cases in which humanitarian organizations and NGOs encounter security mechanisms in their advocacy? The hypothesis is that the interaction of humanitarianism and security processes lead to normative clashes, and that outcomes are more likely to be adhering to security concerns, rather than enhancing the rights of

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[42] Duffield, *Global Governance and the New Wars,* 96.

asylum seekers. This expectation is inspired by earlier work of Bigo, Carrera, Guild, and Walker (2010). These authors observed how security presents a challenge for liberty in the context of contemporary Europe. My thesis develops in a dialogue with this line of study, in terms of looking at how certain normative processes within the EU conflict with the expanding mechanisms of security. However, this thesis differs from their work in two important aspects. It focuses on the process of humanitarianism, instead of liberty. Secondly, it focuses strictly on asylum seekers and asylum-related legislation. With this in mind, what are the methodological steps which should be taken to meet the needs of the outlined research agenda?

Methodology

The hypothesis of this thesis will be tested through document analysis. I will largely use secondary legislation such as the regulations and directives related to asylum seekers and refugees. Besides that, I am analyzing UNHCR commentaries, NGO discussion papers, annual reports, and other official texts. Due to space constraints, the content of document analysis will be limited to asylum legislation and humanitarian organizations and NGOs' documents commenting on this legislation. The analysis will include a comparison of the second phase CEAS legislation to the first phase ones, thus putting the focus on: the Qualification Directive original[43] and its 2011

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[43] European Union: Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 30 September 2004, OJ L. 304/12-304/23; 30.9.2004, 2004/83/EC, available at: http://www.refworld.org/docid/4157e75e4.html [accessed 15 April 2015]

recast[44], the Reception Conditions Directive original[45] and its 2013 recast[46], the Dublin II

Regulation[47] and its 2013 recast[48], the Eurodac Regulation[49] original and its 2013 recast[50], and

finally the Procedures Directive[51] original and its 2013 recast[52]. The main benefit of such selection

is the abundance of documents which are commenting on the both phases of CEAS, but also their

novelty, considering that the second phase was completed only in 2013. Therefore, the main

approach to document analysis will be a comparative one, whether it is comparing the regulations

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[44] European Union: Council of the European Union, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, available at: http://www.refworld.org/docid/4f197df02.html [accessed 15 April 2015]

[45] European Union: Council of the European Union, Council Directive 2003/9/EC of 27 January 2003 Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States, 6 February 2003, OJ L. 31/18-31/25; 6.2.2003, 2003/9/EC, available at: http://www.refworld.org/docid/3ddcfda14.html [accessed 15 April 2015]

[46] European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: http://www.refworld.org/docid/51d29db54.html [accessed 15 April 2015]

[47] European Union: Council of the European Union, Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 18 February 2003, OJ L. 50/1-50/10; 25.2.2003, (EC)No 343/2003, available at: http://www.refworld.org/docid/3e5cf1c24.html [accessed 15 April 2015]

[48] European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU)No 604/2013, available at: http://www.refworld.org/docid/51d298f04.html [accessed 15 April 2015]

[49] European Union: Council of the European Union, *Council Regulation (EC) No 2725/2000 of 11 December 2000 Concerning the Establishment of 'Eurodac' for the Comparison of Fingerprints for the Effective Application of the Dublin Convention*, 11 December 2000, OJ L 316; 15 December 2000, pp.1-10, available at: http://www.refworld.org/docid/3f4e40434.html [accessed 15 April 2015]

[50] European Union: Council of the European Union, *Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)*, 29 June 2013, OJ L. 180/1-180/30; 29.6.2013, (EU)2003/86, available at: http://www.refworld.org/docid/51d296724.html [accessed 15 April 2015]

[51] European Union: Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, 2 January 2006, OJ L 326; 13 December 2005, pp. 13-34, available at: http://www.refworld.org/docid/4394203c4.html [accessed 15 April 2015]

[52] European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: http://www.refworld.org/docid/51d29b224.html [accessed 15 April 2015]

and directives of the first phase of CEAS with their second phase recasts, or UNHCR[53] comments on second phase legislation with those of Statewatch[54] and ECRE. The aim is to locate where the humanitarian advocacy efforts intersect with security mechanisms, how they relate, whether they clash, and, if they do, how their confrontation plays out.

In order to achieve these goals, the document analysis will be divided into two parts. The first part will provide an overview of the second phase legislation and compare it to the first phase one. This will be done from the humanitarian perspective of UNHCR, ECRE, and Statewatch commentaries. This section will also include an analysis of institutionalization of new humanitarian or security norms within the second phase of CEAS. The second part of document analysis will focus on the Eurodac Regulation original and its 2013 recast. This analysis will be two-fold, the first section will look at the norms promoted by humanitarian norm entrepreneurs, while the second will address the security mechanisms affecting the Eurodac recast. The evaluation will address the outcomes of these two forces working within the Eurodac recast by additionally focusing on ECRE, UNHCR[55], and Statewatch[56] critiques targeting the recast.

Before turning to document analysis, I will operationalize the processes of humanitarianism and security, as well as the concept of normative clashes, and thus explain how

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[53] UN High Commissioner for Refugees (UNHCR), Moving Further Toward a Common European Asylum System: UNHCR's statement on the EU asylum legislative package, June 2013, available at: http://www.refworld.org/docid/51de61304.html [accessed 15 May 2015]

[54] Steve Peers, "The second phase of the Common European Asylum System: A brave new world - or lipstick on a pig?" *Statewatch* analysis, 8 April, 2013. Accessed May 10, 2015. http://www.statewatch.org/analyses/no-220-ceas-second-phase.pdf

[55] UN High Commissioner for Refugees (UNHCR), *An efficient and protective Eurodac - UNHCR comments on the Commission's amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [/] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Recast version)*, November 2012, available at: http://www.refworld.org/docid/50ad01b72.html [accessed 21 April 2015]

[56] Chris Jones, "11 years of Eurodac." *Statewatch* analysis, January 16, 2014. Accessed May 8, 2015. http://www.statewatch.org/analyses/no-235-eurodac.pdf

they can be located within official texts. Concerning humanitarianism, the textual focus will be the extent to which the changes between the first and second phase of CEAS relate to UNHCR, ECRE, and Statewatch recommendations and comments. As the primary global actor ensuring the rights and well-being of refugees and asylum seekers, UNHCR is an agency epitomizing the norm of humanitarianism in this context. Even though it is vocal about its concerns related to CEAS and proliferous in producing official commentary on European asylum-related policies, looking solely at UNHCR would provide for a limited humanitarian perspective, since it is constrained by its structure and funding, and its brand of humanitarianism possibly affected by the international and regional power hierarchy. Therefore, it is necessary to supplement the analysis with documents from organizations with platforms less limited by states and their agendas, the European Council on Refugees and Exiles and Statewatch. Statewatch, being a non-profit voluntary group, does not depend financially on state actors as UNHCR does. ECRE, even though almost 50% of its funds come from the European Commission, is organized as an association of 76 NGOs. Additionally, they are geared towards transforming their fundraising infrastructure, moving away from the Commission's funding, and relying more on private sector philanthropy, as their strategic plan for the next two years states.[57] Using the texts of all three organizations should provide a balanced perspective of humanitarian norm entrepreneurs and their views on how their concerns and advocacy played out in the second phase of CEAS. Their comments are regarded as the embodiment of the humanitarian advocacy mechanisms.

Addressing the norms related to the security process requires a different approach, not based on actors but on security mechanisms prescribing the development of certain norms, and inhibiting others. As previously discussed, the norms of security are expressed through different

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[57] European Council of Refugees and Exiles Board of Directors, 2013, "Strategic Plan 2014-2016," ECRE. Accessed 20 May 2015. http://www.ecre.org/about/this-is-ecre/ecre-strategy.html

mechanisms: restrictive policies, securitization, governmentality, sovereignty, and discipline. These are not mutually exclusive, and certain developments within the CEAS legislation can fall into the framework of two or more mechanisms. This presents a methodological challenge since it may lead to conceptual convolution. Since the overlap between different security mechanisms cannot be avoided, whenever the analysis indicates that multiple mechanisms are at work, this will be openly addressed.

Furthermore, normative clashes will be identified by detecting points of intersection created when developments in the second phase legislation involve advocacy by UNHCR, Statewatch, and ECRE, and one or more of the security-related mechanisms. This will be conducted on a superficial level for all of the second phase recasts, and then followed by an analysis of how the norms related to humanitarian or security processes have developed from the first to the second phase legislation. A similar analysis will be conducted on a much more exhaustive level by focusing on the Eurodac Regulation recast.

There are reasons why detailed analysis is focused only on Eurodac, and not on all of the CEAS second phase legislation. Given the limitations in extent of this research, there is analytical space for addressing only one piece of CEAS legislation in depth. Eurodac was chosen because it contained one of the most controversial developments in the second CEAS phase, namely that access to Eurodac data will now be given to law enforcement agencies. Additionally, Eurodac is a unique Regulation both in its reliance on technology and in the fact that its existence is strictly tied to ensuring the functioning of the Dublin III Regulation. Finally, the author also recognizes the possible effect of her pro-refugee views and will put in effort to provide an analysis which is minimally tainted by personal views and prejudice.

CHAPTER III

The second phase of CEAS, a comprehensive transformation?

This section will provide a brief overview of the changes between the first and the second phase of CEAS, followed by a more detailed overview of the mechanisms of humanitarianism and security expressed through the changes within the second phase legislation. These are necessary steps for several reasons. Addressing the changes made through the five recasts will give a more tangible overview of the processes of humanitarianism and security and how they develop in EU asylum policies. Secondly, this overview will reveal general attitudes and perspectives of UNHCR, ECRE and Statewatch, as humanitarian organizations. This is important as it addresses whether and how normative clashes occur when the advocacy of humanitarian norm entrepreneurs encounters norms advanced through security mechanisms. Lastly, this overview will give the contextual background to the more in-depth analysis of the Eurodac Regulation.

This section is based on the analysis of three reports of humanitarian advocate organizations. The first text is UNHCR's statement regarding the new EU legislative package, "Moving further toward a Common European Asylum System." The second is Steve Peers' Statewatch analysis of the second phase of CEAS: "The second phase of the Common European Asylum System: a brave new world - or lipstick on a pig?" The last one is ECRE's annual report addressing the changes made in second phase of CEAS: "Not There Yet: An NGO Perspective on Challenges to a Fair and Effective Common European Asylum System." These three documents

reveal both the variety of views regarding the humanitarian progress made through the recasts, as well as consensus on certain issues. The analysis will now address each recast individually and briefly assess the most relevant changes made in comparison to the original directives and regulations.

Qualification Directive

Concerning the Qualification Directive, Statewatch identifies three-fold changes: general regulations of qualification for protection, including both refugee and subsidiary protection, enhancing the ease of acquiring asylum, and improved standards for those falling under subsidiary protection.[58] The first category of changes includes expanding the notion of 'family members,' a stricter definition of 'actors of protection', and a more rigorous approach to the 'internal flight alternative' argument. As for the second set of changes, the gender component of persecution within the Geneva Convention definition was reinforced, traumatized individuals are now allowed to retain their refugee status even if the state of their country of origin has been extensively ameliorated, and refugees are now allowed protection in cases where the country of origin authorities are not able to protect individuals from persecution conducted by non-state actors. Thirdly, individuals granted subsidiary protection, as opposed to the original Directive, now have a more equal status to that of refugees, at least in terms of family unity, travel documents, access to employment, healthcare, access to accommodation, and access to integration facilities. In its conclusion, Statewatch both commends the increased standards afforded to individuals under international protection, and suggests further amendments such as revising the rules of status

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[58] Statewatch (2013), 3.

exclusion and revocation and a better definition of subsidiary protection.[59] The UNHCR

assessment of the recast is revolving around Article 7(1)(b), which rules that actors of protection

from persecution or serious harm may be "parties or organizations, including international

organizations, controlling the State or a substantial part of the territory of the State." UNHCR

claims that this provision may lead to problems due to insufficient legal clarity.[60] ECRE echoes

UNHCR's concerns by stating that this provision is directly "at odds with the 1951 Refugee

Convention, such as with regard to the provisions on exclusion, the definition of particular social

group and non-state actors of protection."[61]

Reception Conditions Directive

Statewatch's underlying argument with regards to the recast of the Reception Conditions

Directive is that there are only minor improvements in terms of detention restrictions, such as

extending the list of vulnerable persons, providing healthcare to individuals with serious mental

illnesses, and slightly curtailing the waiting time for permitting access to employment. Overall

though, Statewatch's impressions of the recast appear rather bleak, as it summarizes them: "Put

simply, Member States will retain many possibilities to detain asylum seekers, provide them with

low levels of benefits, delay their access to employment and (due to limits on legal aid) make it

difficult in practice to challenge any of these decisions."[62] The ECRE report echoes similar

concerns, emphasizing their concerns that the grounds for detention "leave too much room for

maneuver to Member States."[63] On the other hand, the UNHCR welcomes the additional

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[59] Statewatch (2013), 4.
[60] UNHCR (2013), 4.
[61] ECRE (2013), 28.
[62] Statewatch (2013), 5.
[63] ECRE (2013), 23.

provisions on detention which constrain systematic detention, insert procedural safeguards, demand suitable conditions, and takes a completely different approach than ECRE and Statewatch regarding the new grounds for detention. In relation to this issue, UNHCR welcomes "the recognition that detention is an exceptional measure which can only be justified for a legitimate purpose on six defined grounds."[64] There seems to be a highly notable mismatch between how ECRE and Statewatch regard the new grounds for detention, as opposed to UNHCR. This may be attributed to UNHCR's compromise between its state-oriented structure and funding, and its humanitarian ideals.

Dublin Regulation

With regards to the Dublin recast, UNHCR commended the new obligation of requiring a personal interview in each asylum case subjected to the Regulation. This rule, embodied in Article 5 of the Regulation, is a major improvement since an interview increases the chances of making an appropriate decision, particularly in relation to family unity. Additionally, the UNHCR statement welcomed the suspensive effect of appeals, Article 27(3)(b), in relation to Dublin transfers. Regrettably, these changes in the Dublin recast are overshadowed by the fact that the "asylum lottery," as ECRE and others refer to it, remains unchanged as the main Dublin issue.[65] "Asylum lottery" has shifted the weight of increasing asylum claims to states without the capacities and resources to address them. Therefore, as Statewatch argues, the recast has failed to ameliorate the issues of the first phase regulation, and will continue to rely on courts for any notable changes,

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[64] UNHCR (2013), 2.
[65] "Asylum lottery in the EU in 2011," ECRE, accessed May 22, 2015,
http://www.ecre.org/component/content/article/56-ecre-actions/294-asylum-lottery-in-the-eu-in-2011.html.

such as the case of M.S.S. v. Belgium and Greece.[66] "On balance the overall scoreboard is modestly positive, but as regards the Dublin rules in particular there have only been cosmetic changes to the previous objectionable legislation. This legislation in particular deserves the description of being merely 'lipstick on a pig.'"[67] This opens up the question to what extent humanitarian norm entrepreneurs can advocate for fundamental changes to be made in the CEAS system.

Eurodac Regulation

Regarding the Eurodac Regulation recast, the transformation of the original is debatable. On the one hand, the time span of preserving fingerprint data acquired from individuals unlawfully crossing the EU borders has been reduced from two years to eighteen months, as accorded by Article 10(1). Nevertheless, Statewatch believes that storing fingerprints for longer than 12 months is "profoundly unprincipled."[68] On the other, the access to fingerprint data will now be made available for law enforcement purposes, albeit under certain conditions. Notwithstanding UNHCR welcoming the guarantees made to protect the data from being shared with, for example, third countries, as per the Article 27(5), all three organizations have heavily criticized the recast for the extension of data access for the purposes of policing. As ECRE warns, this development may "add to the general climate of "criminalization" of migrants and asylum seekers."[69]

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[66] This critical ruling discontinued all Dublin transfers to Greece. ECtHR, M.S.S. v. Belgium and Greece, Application No 30696/09, Judgment of 21 January 2011 and CJEU, Joined Cases C-411/10 and C-493/10, N.S. v. Secretary of State for the Home Department and M.E. and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform, Judgment of 21 December 2011.
[67] Statewatch(2013), 16.
[68] Ibid., 10.
[69] ECRE (2013), 47.

Procedures Directive

Finally, concerning the Procedures Directive, there have been several positive changes for asylum seekers, among which are: extending the scope of the directive through Article 3(1) to cases of subsidiary protection; provisions for properly trained responsible authorities in charge of Directive implementation as per Article 4(3) and (4); Article 31(2) and (3) restricts the time for completing the decision-making process on asylum applications to six months[70]; asylum seekers can now challenge the rules of 'safe third countries' and 'European safe third countries' according to Article 38(2)(c) and Article 39(3); the rule on providing an admissibility interview as guaranteed by Article 34; UNHCR has access to asylum seekers at the border as per Article 29; or that, according to Article 15(3)(b), interviewers will not be allowed to wear a military or law enforcement uniform. Statewatch's assessment is that the recast provides improvements on various issues such as access to the procedure or the right to stay on the territory, but that Member States "retain a good deal of flexibility to set fairly low standards as regards the special procedures and in a couple of respects."[71] It also emphasizes that the regulations regarding the provision of legal aid have regressed. The provision of legal aid is crucial because, as ECRE warns, "in view of the growing complexity of asylum procedures and the inherently disadvantaged position of asylum seekers in such procedure, in particular their capacity to represent themselves may be fundamentally undermined."[72] Thus, the Procedures Directive recast, just like the other legislation

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[70] Albeit this can be extended as per paragraphs 3 and 4 of Article 31; the maximum time for concluding the process being 21 months, in accordance with paragraphs 5.
[71] Statewatch (2013), 15.
[72] ECRE (2013), 40.

belonging to the second phase of CEAS, shows trends of both advance and regression of humanitarian norms.

Overall assessment of CEAS II

One could say there are discrepancies both in the changes made in the recasts and in the assessment of different actors. Concerning the former, it is certainly commendable that, according to Article 9(2)(f) of the Qualification Directive, acts of persecution may be determined through "acts of a gender-specific or child-specific nature," or that there are more substantive guarantees for unaccompanied minors and other vulnerable persons. Nonetheless, despite noticeable improvements in certain regards, all actors whose commentaries were analyzed pointed out several developments explicitly going against the humanitarian direction, such as the extension of Eurodac data access to law enforcement authorities. Additionally, as mentioned before the overall impressions of the second phase differ among the commentators.[73] On the one hand, UNHCR calls the ensemble of recasts an "achievement" and carefully "notes that some of the recast provisions may present challenges of interpretation and implementation."[74] As an alternative view, the Statewatch analysis judges the second phase of CEAS for being "modestly positive" in comparison to the first phase legislation. Namely, the argument is that it provides "very limited improvements as regards reception conditions, modest improvements as regards to procedures and qualification, no real improvement as regards to the Dublin rules and a significant reduction in standards as regards to Eurodac."[75]

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[73] An important observation to keep in mind is that UNHCR's 2013 statement on the whole asylum package of the second phase of CEAS is much less critical than its 2014 discussion paper targeting Dublin III and Eurodac.
[74] UNHCR (2013), 4.
[75] Statewatch (2013), 16.

The second phase of CEAS is, as the communication between the Commission and the European Parliament from 2008 reveals, "based on a three-pronged strategy that focuses on the harmonization of protection standards, practical cooperation, and solidarity."[76] Albeit the primary goal of the second phase legislation is to address the disparities between asylum policies of different Member States, the Commission also emphasizes the need to improve the protection standards of asylum seekers. When this goal is compared with the general comments of humanitarian actors, emphasizing that CEAS offers only 'modest' humanitarian improvements, it's important to question why the results of the second phase proved insufficient for humanitarian advocates. Following this deficient development of CEAS, it is now crucial to ask how this happened and whether this question can be answered by looking at security processes. Therefore, it is necessary to pinpoint places where security norms intersect with those of humanitarianism.

Tensions between security and humanitarianism

The brief analysis of the changes between the two phases of CEAS was not intended to address whether asylum seekers are now better or worse off. Its purpose was to demonstrate that changes in the CEAS are not automatically enhancing humanitarian norms. Humanitarian norms, such as extended guarantees for vulnerable persons and individuals under subsidiary protection, have expanded and intensified, but to what extent? The critical aspect of this intensification can be observed when humanitarian norms interact with those of security and when one norm cannot expand without encroaching on the territory of the other. As noted in the methodology section, it

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[76] European Union: European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum. An Integrated Approach to Protection Across the EU, 17 June 2008, COM(2008) 360, available at: http://www.refworld.org/docid/4860eee72.html [accessed 27 May 2015]

would be impossible to address every point of intersection between humanitarianism and security in the CEAS legislation. Taking this into consideration, this section will address the most contested changes emphasized by UNHCR, Statewatch, and ECRE.

Concerning the Dublin III EC's proposal, Peers' commentary on a major normative clash is worth quoting extensively:

> *"The Commission's proposal for a second-phase Dublin Regulation left the responsibility rules essentially unchanged and instead suggested a series of amendments with two main objectives: enhancing the efficiency of the system and improving the level of protection for asylum seekers within it. To some extent, these two objectives conflict with each other, and indeed, it proved much easier for Member States to agree to improve the efficiency of the system than to raise the standards of protection for asylum seekers within it."[77]*

The issue at hand here is that there is a clash between giving precedence to humanitarian norms and creating an efficient system. One the one hand, there are efforts to create an asylum system which provides personal interviews to potential Dublin transfers, applies detention only as a last resort, makes effort to recognize vulnerable applicants and ensure that they receive adequate treatment, assures access to legal aid, respects the right to information of each applicant, guarantees to assess and ensure the best interests of minors, ensures respect of family unity, allows for effective legal remedies to be available to the applicants, and generally provides high standards of protection. On the other hand, these goals require an increase in time and resources, and not

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[77] Statewatch (2013), 6.

efficiency. This normative clash aside, a lot of the changes made in the second phase of CEAS which were contested by UNHCR, Statewatch, and Eurodac, were in one way or another related to security mechanisms.

The fact that the fundamental fault of Dublin, the 'asylum lottery', has not been addressed could be indicative of two security mechanisms. Firstly, it is a restrictive policy which limits asylum seekers to apply to only one Member State for asylum. Secondly, it is a demonstration of the Foucauldian technique of discipline, given that the Dublin checklist is used to decide which Member State the asylum seeker can apply to, instead of looking at individual preferences. The fact that these mechanisms remain institutionalized through Dublin demonstrates that the norm proposed by humanitarian entrepreneurs of institutionalizing the freedom of choice of asylum country within the EU, cannot evolve due to security mechanisms.

Another contested issue in the second phase were the expanded grounds for detention within the Reception Conditions Directive recast. As a security measure, detention can be defined as an expression of state sovereignty, a disciplining technique, or a securitizing measure. As an expression of state sovereignty, detention presents a coercive measure through which the state asserts its authority over asylum seekers as 'the other' entering its territory. As another Foucauldian technique, discipline is about regulating the movement of asylum seekers, which the measure of detention clearly does. Lastly, detention evokes thoughts of criminal behavior which contributes to the process of securitization, whereas detention may occur in order to, according to Article 8(3)(a), "determine or verify his or her identity or nationality." Thus, the expansion of detention is the expansion of security mechanisms over the humanitarian ideas propagated by UNHCR, Statewatch and ECRE.

The Eurodac recast developments also demonstrate the expansion of security mechanisms through securitization. Allowing data access to law enforcement agencies is a securitizing measure which may interact with efforts of humanitarian norm entrepreneurs to protect the data privacy of asylum seekers, and especially efforts to fight against their stigmatization within the EU. Out of the five pieces of legislation which changed in the second phase, the Eurodac Regulation recast seems as the most fertile ground for looking at normative clashes between humanitarianism and security concerns. As explained in the methodology section, one of the most controversial developments in the second phase of CEAS was the granting of Eurodac data access to law enforcement agencies. Additionally, Eurodac's reliance on technology is an interesting characteristic of security mechanisms and it would be fruitful to look at the effect technology as security has on humanitarian norms. The next chapter will try to problematize the relationship between security and humanitarianism norm emergence within Eurodac recast developments. The focus will be on identifying which norms evolved enough to be institutionalized in the recast, and whether their growth was at the cost of other norms.

CHAPTER IV

Eurodac: humanitarianism

This section will compare the Eurodac Regulation 2013 recast with its 2000 original. This analysis will be shaped again through the perspectives of three different humanitarian norm entrepreneurs, namely UNHCR, Statewatch, and ECRE. The purpose is to demonstrate the extent to which humanitarian norm entrepreneurs find the specific developments in Eurodac as going against their advocacy efforts and the norms they are trying to institutionalize.

With regard to extending the rights of law enforcement agencies, UNHCR critiques this development for several reasons. First, it is outside the framework of the original purpose of Eurodac. As the UNHCR commentary emphasizes, "the proportionality, necessity, and utility of this proposal for combating terrorism and other serious crime should be examined and confirmed before it can be agreed."[78] Second, the collection and sharing of such data could get into the hands of and be abused by countries of origin. Third, it may lead to stigmatization by associating asylum seekers with an action normally symbolizing criminal acts. Finally, the technology of collecting fingerprints has a margin of error which must not be overlooked.[79] UNHCR finishes off its commentary with a meek appeal for using Eurodac only for its original purpose, namely to facilitate the execution of Dublin II, and with a few safeguards. Namely, UNHCR merely "suggests deleting the possibility to search 'Eurodac' data based on later fingerprints from Article 2(1)(I)

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[78] UNHCR (2013), 4.
[79] As UNHCR explains, there is a possibility for error to occur in matching fingerprints, which implies that there is also a possibility to unfairly criminally implicate asylum seekers.

until independent technical expert opinions are available confirming that the risk of error of matching between latent fingerprints and fingerprints stored in 'Eurodac' is eliminated to the greatest extent possible."[80] Concerning the safeguards, UNHCR called for addressing the risk of error in using latent fingerprints (fingerprints taken from a surface at a crime scene), further addressing protection of data to prevent it from reaching third countries, evaluating the stigmatizing aspect of taking fingerprints, limiting the cases where law enforcement agencies can acquire data, and informing the asylum applicant how her or his data might be used by the authorities.

Statewatch takes a more adamant approach when it comes to its critique of Eurodac. As the analyst Chris Jones warns in relation to data law enforcement agencies can access, "this vast amount of data will likely present an increasingly tempting repository for law enforcement authorities who, having already obtained some limited access, may be inclined to seek less stringent rules for access."[81] Jones also expresses a fear that the police is exhibiting an increasing tendency of using data for non-policing objectives. In light of this, the Statewatch analysis characterizes these Eurodac features as a "dangerous precedent" which is turning a migration database into a policing one.[82] ECRE's annual report exhibits a similar level of harsh critique and skepticism towards the Regulation recast, calling the recast "concerning" and "disappointing" because it fails to consider the already increasing levels of racism and xenophobia against asylum seekers and migrants.[83]

Thus, all three humanitarian actors find the developments in Eurodac as going against two specific humanitarian norms. The first is the norm of ensuring the well-being of asylum seekers

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[80] UNHCR (2013), 6.
[81] Statewatch (2014), 7.
[82] Ibid., 1-5.
[83] ECRE (2013), 34.

fleeing persecution and serious harm is endangered since the Eurodac data might go into the hands

of third countries. Even though Article 35 of the recast prohibits the transfer of asylum seeker data

to third countries, international organizations, and private entities, ECRE warns that "the recast

Eurodac Regulation does not define what information may be shared among law enforcement

agencies following a Eurodac hit and therefore it is subject to the rules in EU instruments on

information sharing between law enforcement agencies."[84] What invokes peril is that these EU

instruments do not address or prohibit the sharing of sensitive data with third countries in the same

manner as Eurodac. The second issue is the stigmatization of asylum seekers which arises from

the recast. It goes against enduring humanitarian advocacy to protect asylum seekers from racism,

xenophobia, or physical attacks, based solely on their identity. To what extent have the endangered

norms addressed in this section been affected by increasing security-related norms embodied in

security mechanisms?

Eurodac: security

"On 15 January 2003 Eurodac, the EU-wide database of asylum-seekers and
irregular migrants' fingerprints, came into use. Eleven years on, it holds the
personal data of nearly 2.3 million individuals and has been transformed into a
policing as well as migration database."[85]

The Eurodac and its regulation demonstrate a strong case of intensification of security

measures. By allowing access to Eurodac data to law enforcement agencies, a specific norm is

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[84] Ibid., 47.
[85] Statewatch (2014), 1.

being pushed through the mechanism of securitization, namely, increased policing of asylum seekers. Before going into the details of how policing affects the identity of asylum seekers, it is necessary to address the general character of Eurodac. As Elspeth Guild, Sergio Carrera, and Thierry Balzacq, write in "The Changing Dynamics of Security in an Enlarged European Union," there are three important security-related process happening within the EU, namely: securitization, technology reliance, and intergovernmentalism.[86]

> *"Europeanization processes are fostering the belief that technology is the most plausible tool to face any imagined insecurity, without duly considering that it could engender more insecurity in terms of data protection, fundamental rights and liberty."[87]*

Looking at Eurodac in these terms, it becomes clear that its technology reliance is problematic. The effect, albeit implicit, is present and two-fold. Firstly, technology reliance may result in severe issues concerning the protection of sensitive data of asylum seekers. Secondly, because of the high level of investments in technology, humanitarianism can arguably be regarded as the opportunity cost of security. As Tóth writes:

> *"Stricter refugee authorization is being imposed and better equipped surveillance services are being implemented as general panacea instead of a comprehensive set*

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[86] Elspeth Guild, Sergio Carrera, and Thierry Balzacq, "The Changing Dynamics of Security in an Enlarged European Union," in *Europe's 21st Century Challenge,* ed. Didier Bigo et al. (Farnham: Ashgate Publishing Limited, 2010), 32.
[87] Guild, Carrera, and Balzacq, "The Changing Dynamics of Security in an Enlarged European Union," 34.

of measures on burden sharing including resettlement, family reunification, voluntary repatriation, and flexible employment of migrants."[88]

Thus, as this line of argument goes, instead of investing in better asylum conditions, better-trained personnel which can respond to asylum seekers' needs, and other much-needed humanitarian measures, the EU is investing in surveillance technology, restrictive border controls, and other costly security services. Put simply, security expands at a material cost for humanitarianism. This cost would be hard to quantify, but even as a qualitative indicator it serves its purpose, by showing that security and humanitarianism clash, and who comes out of that confrontation victorious. In this case humanitarian norms are endangered both because technology reliance poses problems for ensuring the safety of asylum seekers and their data, and because material investments go into data collection software and other technologies, instead of investing in humanitarian norms, their entrepreneurs, and improved conditions for asylum seekers.

As previously mentioned, using asylum data for policing unveils the process of securitization. Through this practice, asylum seekers are constructed as either false claimants, thus illegal immigrants, or as possible criminals. As UNHCR emphasizes in their official commentary "An Efficient and Protective Eurodac," the extended access of the Eurodac fingerprint database to law enforcement authorities may "result in stigmatization of asylum-seekers as a group by associating them with criminal activity."[89] So, simply by virtue of law enforcement authorities having access to their fingerprints, asylum seekers are tied to the imagery of criminal action. This directly goes against their humanitarian status. Coming from the Greek word *asulon,* asylum is meant to mean refuge or freedom from seizure. With Eurodac and similar measures, asylum has

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[88] Tóth, "Liberty, Security, and Enlargement," 151.
[89] UNHCR (2012), 4.

gained the meaning of 'possible right to seizure' rather than freedom from it. As Peers reminds us in his analysis of the second phase of asylum legislation, "it is profoundly contradictory simultaneously to strengthen the rights of refugees and asylum seekers while risking their stigmatization as assumed criminals pursuant to the changes in the Eurodac rules."[90]

Allowing data access to law enforcement agencies is alarming, as it sets a standard for further norms that go in the same direction, either by giving more access or increasing the connection between policing and asylum. This possibility is opened because of a specific quality in how norm entrepreneurs engage with international law, which is addressed by Finnemore and Sikkink. In the process of persuasion occurring in the stage of norm emergence, as the authors argue, "the persuasiveness of a normative claim in law is explicitly tied to the 'fit' of that claim within existing normative frameworks; legal arguments are persuasive when they are grounded in a precedent."[91] Thus, this newly extended Eurodac data access opens the door for similar securitizing measures. Overall, what the expansion of the securitization mechanism within the Eurodac recast demonstrates is how the creation of security norms comes at a cost for humanitarian norm entrepreneurs and their advocacy efforts. What are the actual outcomes of the expansion of security mechanisms and the ensuing normative clashes, and what implications do they have for asylum seekers and humanitarian organizations?

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[90] Statewatch (2013), 16.
[91] Finnemore and Sikkink, "International norm dynamics and political change," 914-915.

The outcomes of normative clashes

The analysis of the Eurodac Regulation recast also shows that the norms which fall under humanitarian or security processes do not automatically complement or act neutral in relation to one another. Rather, as the analysis points to, they are prone to normative clashes, even in the first stage of norm evolution. These normative clashes arise when security mechanisms expand at the cost of humanitarian efforts, as voiced by humanitarian norm entrepreneurs.

How do humanitarian norm entrepreneurs cope with these clashes? On the one hand, ECRE and Statewatch seem to rely on voicing their disagreements with the developments in asylum legislation and advocating for change. UNHCR, on the other, as an actor with the most capacity for influencing legislation, appears to opt for compromise. Instead of calling for a dismissal of norms which themselves institutionalize security mechanisms such as securitization, UNHCR advocates for introducing safeguards to constrain and regulate these security norms. The ensuing proliferation of safeguards, as are those put in place regarding detention or data access to law enforcement agencies, fails to address the fundamental problems. As the safeguards continue piling up, asylum seekers suffer from the stigmatizing effects of securitization or indirectly because the investments in their well-being serve as an opportunity cost to those security measures investing in new technologies.

While the Eurodac safeguards might be useful in protecting the data of asylum seekers, providing them with more information about how they are individually affected by Eurodac, and other provisions placed into the 2013 recast, these regulatory tools cannot compensate for the securitizing features embedded in Eurodac. The data access granted to law enforcement agencies has a serious stigmatizing effect which will, no matter how many safeguards are put into place,

always remain a part of the process of securitization. The clashes between security mechanisms and humanitarian norm entrepreneurs, or the clashes between two types of norms produced, should be scrutinized because they come at a cost for both asylum seekers and those in charge of protecting their well-being. Who pays for the cost of these normative clashes?

Implications for asylum seekers and humanitarian organizations

The outcomes of normative clashes have an effect both on asylum seekers and the NGOs advancing their rights. The following two sections will address each of these two groups and briefly outline the challenges normative clashes present. Firstly, the implications of the new legislation and their effect on the overall treatment of asylum seekers in Europe will be discussed along with the variety of responses and protest asylum seekers express regarding these developments. Secondly, the implications will be viewed from the perspective of NGOs and other humanitarian organizations, in an attempt to point out the specific challenges they confront.

What do these normative clashes and their outcomes mean for asylum seekers?

This analysis has touched upon the various ways in which asylum seekers benefit or are aggrieved by the developments in the second phase of CEAS legislation. This portrayal of CEAS thus focused on elite actors such as states and NGOs, without addressing the agency of asylum seekers and the measures in which they handle issues posed by EU asylum legislation, and the ways in which they may express discontent, protest, or break the rules to suit their needs. The

purpose of this section is to emphasize the importance of acknowledging agency asylum seekers can and should have.

As the 2013 ECRE report pointed out, asylum seekers and migrants in general in the EU are faced with and victimized by racism, discrimination, xenophobia, and even physical violence.[92] "Contrary to misleading perceptions created by certain media and political forces, asylum seekers arriving in the EU after difficult and dangerous journeys in many cases are not finding their El Dorado but can be confronted with an increasingly hostile environment and conditions inciting them to undertake desperate actions."[93] As the report further emphasizes, in certain countries such as Greece, they are at a higher "risk of arbitrary deprivation of liberty."[94] These issues have caused the number of hunger strikes and other forms of protests among asylum seekers to emerge in countries such as Greece[95], Austria[96], the United Kingdom[97], Germany[98], and the Netherlands.[99] As previously discussed, through securitization processes, asylum seekers are defined by authorities as threats and their identity can be tied to criminal activity. As UNHCR comments: "this increased exposure of asylum seekers to investigation, simply because their fingerprints are in an accessible database, could fuel misperceptions that there is a link between asylum-seekers and crime, and feed xenophobia and racism."[100] Thus, if the process of securitization continues its

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[92] ECRE (2013), 23.
[93] Ibid., 23.
[94] Ibid., 23.
[95] "Syrian refugees stage hunger strike outside Greek parliament," *Al Jazeera,* November 24, 2014, accessed May 25, 2015, http://stream.aljazeera.com/story/201411242103-0024374.
[96] "Austria: Asylum seekers take protest to church," *Euronews,* January 2, 2013, accessed May 25, 2015, http://www.euronews.com/2013/01/02/austria-asylum-seekers-take-protest-to-church/.
[97] Chris Green, "Harmondsworth: Asylum seekers' hunger strike spreads to second centre," *The Independent*, March 10, 2015, accessed May 25, 2015, http://www.independent.co.uk/news/uk/politics/harmondsworth-asylum-seekers-hunger-strike-spreads-to-second-centre-10099111.html.
[98] Philip Oltermann, "Asylum seekers in standoff with police at Berlin protest," *The Guardian*, June 30, 2014, accessed May 25, 2015, http://www.theguardian.com/world/2014/jun/30/berlin-protest-asylum-seekers-kreuzberg-police-standoff.
[99] "Detained asylum seekers go on hunger strike at Schiphol airport," *The Amsterdam Herald*, May 6, 2013, accessed May 25, 2015, http://www.amsterdamherald.com/index.php/rss/820-20130506-detained-asylum-seekers-hunger-strike-schiphol-airport-refugees-politics-pvda-netherlands-dutch-immigration.
[100] UNHCR (2012), 10.

expansion as it has in the second phase of CEAS, this may contribute to the already prevailing issues of racism and xenophobia asylum seekers are faced with. This also brings out the question of what other ways of response, apart from hunger strikes and demonstrations, do asylum seekers have?

This is an appropriate moment to go back to Hannah Arendt's quote from the very beginning: "The less we are free to decide who we are or to live as we like, the more we try to put up a front, to hide the facts, and to play roles."[101] The data suggests that the asylum absconding rates in various EU border Member States indicate that a lot of asylum seekers are willing to move on through Europe as undocumented immigrants than they are willing to stay and await for their asylum case decision.[102] Focusing on Arendt's quote, limitations to asylum seekers' liberty in the second phase legislation are leading to their dismissal of the option of claiming refugee status, and instead taking on the roles of undocumented immigrants.

What challenges do these normative clashes and their outcomes pose for humanitarian organizations?

Humanitarian institutions such as NGOs and UNHCR act as the main norm entrepreneurs regarding norms intended to extend the rules awarding asylum seekers with proper rights and standards of well-being. Each normative battle lost may have severe implications for further norm entrepreneurship these actors undertake. If these normative processes and clashes proceed unchecked, the asylum system risks developments such as the asylum seekers' fingerprints access

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[101]Arendt, "We refugees," 115.
[102] Jesuit Refugee Service, Protection Interrupted: The Dublin Regulation's Impact on Asylum seekers' Protection (The DIASP project), 5 June 2013, available at: http://www.refworld.org/docid/51d152174.html [accessed 20 May 2015]

for policing being internalized as norms. As Finnemore and Sikkink explained, "at the far end of the norm cascade, norm internalization occurs; norms acquire a taken-for-granted quality and are no longer a matter of broad public debate."[103] This is dangerous because internalization of norms may lead to a cessation of problematizing its effects on the lives of asylum seekers.

The prime example are the changes made in detention rules in the second phase. While detention conditions may have been improved, and regulations limiting the practice of detainment may have been enforced, the practice of detention was expanded because five more grounds for it were placed in the Reception Conditions Directive recast. Thus, since detention seems to have been internalized in the second phase, it will be even harder to remove it from the asylum system in the long term. This has repercussions for other controversial developments within the CEAS. The fact that access to Eurodac data has been allowed to law enforcement agencies through legislation means that this norm has entered its second stage. According to Finnemore and Sikkink, while the first stage is focused on persuasion, the second stage is characterized by three dominant mechanisms: socialization, institutionalization, and demonstration. If this norm proceeds through the second stage and to the third one through these mechanisms, it may normalize the said practice and make the access of law enforcement agencies more extensive in the long term. The fact that it has already been institutionalized through the second phase legislation means that internalization might not be far off.

Once a practice like that is normalized, it may be easier to extend its scope. More specifically, once the norm is in place through the third stage of internationalization, the related practice is normalized and the path opened for its expansion. In general, norm internalization is a neutral process. However, in this context, it is a serious issue for NGOs because it is a process of

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[103] Finnemore and Sikkink, "International norm dynamics and political change," 895.

cementing norms which go against their humanitarian goals. At its best, this makes it much harder

for NGOs to change these internalized norms. At its worst, this leaves NGOs only with the option

of pushing for safeguards against the securitizing measures embedded in the legislation.

Conclusions

Norms do not appear in isolation to their surroundings. Accordingly, norm entrepreneurs align themselves with more extensive processes such as humanitarianism, security, liberalization, *et cetera.* Thus, each norm being endorsed by these entrepreneurs on a global, regional, or national level, belongs to a certain process. In the context of the European asylum system, previous literature has addressed security, liberty, and the connection between these two processes. On the other hand, intersections between humanitarianism and security appear to have been overlooked in scholarly literature on the subject of EU migration in general, and asylum policies in particular. This thesis has tried to fill this gap by addressing the normative clashes which occur when the two aforementioned processes intersect. Through document analysis, this thesis attempted to address these controversial developments in CEAS in general, and in the case of Eurodac Regulation recast in particular.

Rather than focusing on norm entrepreneurs and organizational platforms they function on, this thesis targeted the contexts or processes each norm belongs to. Document analysis showed that when different norms clash, those embodying security mechanisms tend to push out the norms propagated by humanitarian advocates. In the case of Eurodac, humanitarian norm entrepreneurs such as UNHCR, ECRE, and Statewatch, condemned the development of giving law enforcement agency access to sensitive data of asylum seekers. Nonetheless, these developments were not prevented from occurring, and the only thing left for humanitarian norm entrepreneurs was to call for the implementation of a series of safeguards. It is doubtful that safeguards recommended by UNHCR for example, can actually prevent security mechanisms from undermining the development of humanitarian norms. Albeit the power of norm entrepreneurs was not under

question in this thesis, the results of document analysis demonstrated that normative clashes caused by wider processes on the EU level, do pose significant obstacles for future humanitarian normative efforts.

If humanitarianism, as Barnett and Weiss claim, symbolizes the "world's superego," then obtrusive security measures would be its id, forcing the unreasonable aggression and fearful impulses to prevail over reasonable humanitarian aspirations.[104] If the EU Member States and state actors working in asylum-related fields are constantly faced with decisions on whether to give preference, in terms of material resources and policy, to humanitarian or security concerns, this is bound to continue producing normative clashes. The result of these clashes will be a proliferation of articles and paragraphs, directly guaranteeing rights, but indirectly securitizing, disciplining, restricting or governing asylum seekers. The original Eurodac contained 27 Articles, the 2013 recast went up to 46 articles, which demonstrates the increasing complexity of EU asylum legislation. This is an even more serious development if provisions of legal aid are not considerably extended. As ECRE pointed out, the EU asylum legislation is already complex enough that it is hard for asylum seekers to be aware of their rights and know how to access them.[105]

Therefore, one of the overall trends in the second phase of CEAS is that some rights are accorded, in order to hide the facts of other rights being taken away. As such, CEAS legislation will be increasingly inaccessible to the asylum seekers and its normative clashes will continue to be covered up by articles and paragraphs which do not address the real issues at hand. If this thesis were summed up into one simple question, it would be: *are humanitarianism and security harmoniously compatible processes with the Common European Asylum System*? The answer would be a simple *no*.

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[104] Barnett and Weiss, "Humanitarianism in Question: Power, Politics, Ethics," 6.
[105] ECRE (2013), 40.

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