

# **THE ROLE OF POLITICAL RHETORIC IN UNDERMINING INTERNATIONAL PROTECTIONS**

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# Executive Summary

As part of their vehemently anti-immigrant positions in response to large populations of non-citizens arriving at their borders, the administrations of Hungarian Prime Minister Viktor Orbán and that of United States President Donald Trump, as well as certain actors of right-wing political organizations in Sweden, have begun to utilize the rhetoric of defense to effectively sidestep their obligations under international law. By examining political speeches and governmental actions in response to people claiming a fear of persecution during the recent migration crises, it becomes apparent that these actors have begun to re-frame the issue of international protection by referring to persons normally qualifying for protection as refugees or asylum seekers instead as “migrants,” “illegal aliens,” “foreign invaders,” and similar categories that have no international obligations attached to them by state parties to international statutes and render the protections outlined in treaties like the 1951 Refugee Convention meaningless and inapplicable. In addition to being legally undefined and having no international or domestic protections affiliated with them, the terms used by politicians in these states to address these populations are used derogatively and have served to effectively appeal to nationalist sentiments in driving the public support to turning vulnerable persons away, giving way to the unimpeded introduction of domestic laws and policies hostile to those claiming a fear of persecution. This has allowed these administrations to not only politically position themselves as defenders of sovereign borders but to evade a legal mandate to grant protection to persons seeking asylum and its attendant responsibilities, even at the expense of their international obligations, to which they argue they are not bound. This contradicts the spirit and intent of such protection conventions and jeopardizes hard-won human rights, as criticism from international and nongovernmental organizations demonstrates.

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# Chapter 1: Introduction and Overview

## 1.1 Introduction

Recent events like the ongoing conflicts in the Middle East and South and Central America have given rise to a humanitarian crisis that has resulted in some of the largest forced population flows in modern history and have called upon the long-held international agreements to provide refuge and asylum to those fleeing persecution and violence. This has tested the commitments to conventions that were put into place by international agreement in the years following World War II by those countries who have seen larger concentrations of people arriving at their borders as a vocal opposition has emerged among them that has seemingly balked at their obligation to provide asylum, with certain leaders taking the lead in repudiating such conventions and preventing refugees and asylees from entering their borders. This thesis examines the patterns of political speech that appear to be rejecting obligations under international conventions in three jurisdictions and their resulting laws and policies as well as the impact that has emerged as a consequence of rhetoric that seeks to recast persons who would otherwise qualify for international protection as migrants, criminals, illegal aliens, and invaders, a practice that I argue denies such persons their guaranteed human rights.

This thesis aims to analyze the pattern of political speech behavior in three states—Hungary, the United States, and Sweden—to demonstrate whether the language they use in reference to refugees and asylum seekers has a negating effect on their obligations towards them. It intends to prove the hypothesis that by referring to all immigrants arriving at the borders as “migrants” or “illegal aliens,” that is, persons to whom these states are not bound to provide protection to, and treating them as such, states normally bound by international and domestic instruments to provide such assistance participate in the deliberate erosion of

these protections, bypassing their obligations to those who fall under refugee and asylum-seeking laws and treaties. After an overview of the international protections that are currently in place for people claiming a fear of persecution as well as some notable academic examinations on how the deliberate mis-use of terminology works to evade responsibilities to provide protection to such populations, the next three chapters will discuss the key instances in the political spheres of Hungary, the United States, and Sweden where such patterns have been noted and utilized as well as an explanation of the developments in terms of policy and law that has emerged in those jurisdictions. An examination of speeches and other rhetorical acts and the subsequent actions as well as criticisms by relevant parties will be discussed and analyzed to determine whether the rhetoric was effective in undermining the legal obligations.

Analyzing the way in which states evade their legal responsibilities through selective rhetoric helps to understand the process and its effects, and may contribute to new, informed international policies, practices, and jurisprudence that can reinforce and strengthen the existing instruments giving protection to refugees and asylum seekers and can anticipate such opposition. By looking at specific issues created by creative interpretations of human rights terminology we can examine the problems that differing interpretations of clauses—such as the prohibition against *refoulement*—create within human rights regimes, and study the large-scale implications in terms of the future of human rights law.

For the most effective understanding of the issue, this thesis will use the phrase “people claiming a fear of persecution” to refer to refugees,<sup>1</sup> asylum seekers,<sup>2</sup> and those in

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<sup>1</sup> A refugee is “any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” United Nations High Commissioner for Refugees. “The 1951 Refugee Convention,” Chapter I, Article 1. UNHCR. <http://www.unhcr.org/1951-refugee-convention.html>.

<sup>2</sup> Standards for asylum seekers differ by country, but the UNHCR notes that “during mass movements of refugees, usually as a result of conflict or violence, it is not always possible or necessary to conduct individual

similar or multiple overlapping categories who qualify for international protection under one of more of the UN conventions or relevant domestic statutes.

## 1.2 Overview of existing laws/norms

The primary convention to be referred to in this thesis will be the principles outlined in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (henceforth “the Refugee Convention”), which all three countries are party to. Hungary and Sweden directly adhere to the Convention, while the US incorporated it into its Immigration and Nationality Act (INA) via the Refugee Act of 1980.<sup>3</sup> By acceding to the Refugee Convention and its 1967 Protocol, the state parties are bound to it and required to comply with its articles, including prohibitions against penalizing people claiming a fear of persecution from “illegal entry or presence,”<sup>4</sup> and the prohibition against *refoulement*, which according to certain experts has also become *jus cogens*.<sup>5</sup> The United Nations High Commissioner for Refugees (UNHCR), the body charged with overseeing the Refugee Convention, defines non-*refoulement* as “the core principle” of the Convention and holds that the prohibition against returning a refugee to a country that poses a threat of harm to him or her to be part of customary international law and allows no reservations or derogations from that principle.<sup>6</sup> The Convention’s introduction asserts it to be “both a status and rights-based instrument...underpinned by a number of fundamental principles, most notably non-

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interviews with every asylum seeker who crosses a border. These groups are often called ‘prima facie’ refugees.” United Nations High Commissioner for Refugees. “Asylum-Seekers.” UNHCR. Accessed November 28, 2018. <https://www.unhcr.org/asylum-seekers.html>.

<sup>3</sup> “American Courts and the U.N. High Commissioner for Refugees: A Need for Harmony in the Face of a Refugee Crisis.” *Harvard Law Review*, March 9, 2018. Accessed November 27, 2018. <https://harvardlawreview.org/2018/03/american-courts-and-the-u-n-high-commissioner-for-refugees-a-need-for-harmony-in-the-face-of-a-refugee-crisis/>.

<sup>4</sup> United Nations High Commissioner for Refugees. “The 1951 Refugee Convention.” Article 31. UNHCR, 1950. <http://www.unhcr.org/1951-refugee-convention.html>.

<sup>5</sup> Allain, Jean. “The *Jus Cogens* Nature of Non-Refoulement.” *International Journal of Refugee Law*, 2001, 533.

<sup>6</sup> “The 1951 Refugee Convention.”

discrimination, non-penalization and non-refoulement.”<sup>7</sup> This specifies that the imposition of criminal or immigration-related penalties or arbitrary detention of those who are seeking international protection are prohibited, and allows for no country to expel them. Hungary, Sweden, and the United States, to reiterate, are all parties to the full Convention.<sup>8</sup>

Professor Roger Zetter, Director of the Refugee Studies Center at Oxford University, has written that whereas previously “the objective of humanitarian labelling was the *inclusion* of refugees” we now see national moves utilizing “bureaucratic labelling to legitimize the *exclusion* and marginalization of refugees.”<sup>9</sup> The tension between giving protection to people claiming a fear of persecution existing between the UN and states has been traced to just after World War II. According to migration scholar Katy Long, with the Refugee Convention in place the UNHCR and its supporters “have broadly followed the line that ‘refugees are not migrants’ as a means of protecting asylum space,” but frequent overlap between the two categories has complicated this stance and played into an advantage utilized by states with restrictive immigration policies which has led to further encroachment on the kinds of protections that people are entitled to.<sup>10</sup>

The UNHCR itself addresses the conflation of the terms ‘refugee’ and ‘migrant’ by noting that despite wider trends in the interchanging use of these, there stands “a crucial legal difference between the two,” which can impact the ability of those seeking international protection status to obtain it by pervading public and political perception, namely due to the fact that there is no standard legal definition of the term ‘migrant,’ and the confusion of the two detracts from the legal protections that refugees are entitled to through a weakening of

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<sup>7</sup> *Ibid.*

<sup>8</sup> United Nations High Commissioner for Refugees. “States Parties to the 1951 Convention and Its 1967 Protocol.” UNHCR. <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>.

<sup>9</sup> Zetter, Roger. “More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization.” *Journal of Refugee Studies* 20 (2007): 189.

<sup>10</sup> Long, Katy. “When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection.” *Migration Studies* 1, no. 1 (March 1, 2013): 4. <https://doi.org/10.1093/migration/mns001>.

this status, which “can undermine public support for refugees and the institutions of asylum at a time when more refugees need such protections than ever before.”<sup>11</sup> This is a particular concern when it comes to states’ denial of access to benefits like non-*refoulement* and exemptions from immigration penalties imposed due to “illegal” border crossing. The confusion from the interchangeable use of the terms is a part of the difficulty in compelling states’ compliance with the Convention, which is seen by the UNHCR as the biggest issue arising out of the current crisis. For the organization, a comprehensive and effective domestic legislative regime aligned with the rights and guarantees outlined in the Convention is vital to the realization of the rights outlined therein, and a primary component of society’s ability to engage with refugees.<sup>12</sup>

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<sup>11</sup> United Nations High Commissioner for Refugees. “‘Refugees’ and ‘Migrants.’” Refworld, August 31, 2018. <http://www.refworld.org/docid/56e81c0d4.html>.

<sup>12</sup> Feller, Erika. “Refugees Are Not Migrants.” *Refugee Survey Quarterly* 24, no. 4 (January 1, 2005): 30. <https://doi.org/10.1093/rsq/hdi077>.



## Chapter 2: Political discourse and its effects on refugee and asylum status in Hungary

How do states that are party to the Convention and similar commitments work around their obligations to give refuge to people claiming a fear of persecution, as well disregard the prohibition of *refoulement* and strict provisions against criminalizing pursuit of asylum through penalization of those entering “illegally”? Utilizing the existing dichotomy in the protections offered to migrant and to refugee, states like Hungary and the US were noted to use the two interchangeably, confusedly, and, with time, synonymously. Similar patterns have been observed among emerging right-wing political actors in Sweden, too. This section will focus on the legal developments in Hungary that I argue came about as a result of the political rhetoric that undermined the plight of the people claiming a fear of persecution and sought to depict them as “migrants,” “illegal immigrants,” and “Muslim invaders.” This allows the Hungarian government to reject international obligations in favor of domestic laws that appeared to be designed to protect the sovereignty of the state, to deny human rights to refugees and asylum seekers, and to disenfranchise individuals and organizations working for their cause. As another feature of this process, immigration laws have been merged with criminal laws, contradicting international humanitarian norms and resulting in a penalization of persons seeking protection from persecution. The section concludes with observations and criticisms that followed by international organizations.

### 2.1. Hungarian response to the ‘European migration crisis’

In early 2015 Hungary, the arrival of a mass group of people at its borders claiming a fear of persecution and seeking protection was the beginning of what has widely become known as the ‘European migration crisis.’ This period saw the national discourse shift swiftly

away from that of stark humanitarian need and towards a state-led dialogue that emphasized a threat and the resultant need for securitization,<sup>13</sup> the militarization of borders and, under the guise of defending Hungarian sovereignty, an embrace of a fully nationalistic, nativist rhetoric. The rhetoric around the situation at its borders bypassed the arena of human rights and instead moved to one of concern for national security, then shortly transformed into a campaign for the preservation of sectarian values, resulting in elements of immigration and human rights law being folded into the domain of criminal law. This section traces the key moments in Hungarian political discourse that sought to address the situation and development of the crisis, from Prime Minister Viktor Orbán's early anti-immigration stance to the beginnings of the government's interchangeable use of the category 'refugee' and 'migrant' until changes made to the nation's laws seemingly began to disregard the differences altogether, leading to a breach to international statutes that is reiterated in the international criticism that has emerged.

### **2.1.1: Presentation of rhetoric surrounding people seeking international protection**

A focus on security concerns and insistence on controlling borders as an expression of its national sovereignty superseded the obligations Hungary had to offer protection, it was argued, even more urgently so when facing a possible threat from the would-be refugees and asylees. Yet as a member of the European Union (EU) and the Council of Europe (CoE), and party to the Refugee Convention as well as the International Convention on the Elimination of All Forms of Racial Discrimination, the means by which Hungary could turn away refugees and asylum seekers from its borders were limited and most certainly had to stay

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<sup>13</sup> Nagy, Boldizsár. "Hungarian Asylum Law and Policy in 2015-2016: Securitization Instead of Loyal Cooperation Special Issue: Constitutional Dimensions of the Refugee Crisis." *German Law Journal* 17 (2016): 1041.

within the confines of not only the two UN conventions but the European Convention on Human Rights as well.

On September 4<sup>th</sup>, 2015, the Hungarian Parliament made a series of constitutional amendments that declared and in themselves developed a “crisis situation caused by mass immigration.”<sup>14</sup> According to Central European University International Relations Professor and refugee and migration scholar Boldizsár Nagy, the justification for the creation of this “crisis situation” in Hungary was the development of a national discourse that stressed that there is disorder, a constant hypervigilance for “any circumstance related to the migration situation directly endangering the public security, public order, or public health of any settlement, in particular the breakout of unrest or the occurrence of violent acts in the reception center or other facilities used for accommodating foreigners located within or in the outskirts of the settlement concerned.”<sup>15</sup> Dr. Nagy traces the origins of this rhetoric to the beginning of Fidesz rule in 2010, writing that the right-wing political party has maintained its grip on Hungarian government by “constructing enemies and then defeating them” as a pattern of its domination (he cites a July 24<sup>th</sup>, 2015 speech given by Prime Minister Viktor Orbán at Bálványos University, pointedly stating, “because after all, without evil, how could the good be victorious?”<sup>16</sup>).<sup>17</sup>

The move was anticipated when, in 2014, the turn inward was made apparent during a speech given by Prime Minister Viktor Orbán to a crowd of Hungarian ambassadors on August 25<sup>th</sup> where he took a very pronounced position against immigration in announcing a policy in which Hungary would no longer be open or receptive to immigrants.<sup>18</sup> The path to

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<sup>14</sup> *Ibid.*, 1047-1048.

<sup>15</sup> Nagy, 1048.

<sup>16</sup> “Prime Minister Viktor Orbán’s Speech at the 25th Bálványos Summer Free University and Student Camp.” Website of the Hungarian Government. <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp>.

<sup>17</sup> Nagy, 1043.

<sup>18</sup> *Ibid.*, 1053.

the realization of this strategy had to be nuanced by necessity as Hungary could not simply reject people claiming a fear of persecution, per its international obligations. In 2015 then, the distinction between “asylum seekers and ‘illegal’ migrants” began to disappear from Hungarian political conversation, and the two terms began to be used synonymously.<sup>19</sup> Nagy cites an interview with Orbán in January 2015 where the Prime Minister is quoted explaining the new stance by a desire not “to have significant minorities with different cultural traits and backgrounds” and the wish “to retain Hungary as Hungary.”<sup>20</sup> This demonstrates the existence of an incentive, at least on his part, to bar those who do not fit the predominantly European and Christian heritage that the country is mainly composed of, and appears to seek to exclude specifically those who are not white, Christian, or European from joining the population.

The next month, in the midst of one of the most substantial refugee crises of the century, Hungarian politicians debated immigration in Parliament during which they “constantly confused asylum seekers with irregularly entering persons without protection needs, as well as with regular migrants.”<sup>21</sup> In doing so, the rhetoric encompassed refugees, asylum seekers, migrants, and anyone else under the vague category “irregular entrants;” all appeared to be pressed into one group that stood to be addressed without distinction. To reiterate that point to a larger audience, at a press briefing on the topic of the country’s responsibilities under the Dublin Regulations to provide protection to individuals who had entered the EU through its borders, Hungarian Cabinet Minister Janos Lazar spoke “on behalf of the government that Hungary would not take back or take charge of a single asylum seeker” by referring to them as “‘illegal immigrants facing deportation to Hungary.’”<sup>22</sup> It is at this point that it became clear that the state had decided to approach those persons claiming a

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<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, 1068.

fear of persecution as if they were the same as any other immigrant—which, according to emerging political sentiments were a threat at its border and to whom international protection was not owed, at least not from Hungary.

### **2.1.2: Managing public discourse through the presentation of a threat**

On April 25<sup>th</sup>, 2015, a twelve-point questionnaire was sent out on behalf of the Hungarian government titled the “National Consultation on Immigration and Terrorism,” which was announced at an official press conference as “related to illegal border-crossers” and proposing to address “the issue of economic immigration.”<sup>23</sup> The survey, unprompted by any public inclinations of concern nor appearing to have arisen organically, linked the pressing question of international humanitarian obligations to an existential threat, seemingly to direct the discussion by its own terms. The content went on to graphically evoke the imagery of earlier terrorist attacks in Europe that had been attributed to ISIS, stating that “[i]n Paris the lives of innocent people were extinguished, in cold blood and with terrifying brutality” in the questionnaire’s introduction and correlating it directly to the EU’s refugee and asylum policy by writing that “this incomprehensible act of horror also demonstrated that Brussels and the European Union are unable to adequately deal with the issue of immigration.”<sup>24</sup> The questionnaire, ostensibly an unofficial referendum meant to gauge the public’s mood towards immigration policy, went on to state such unsubstantiated claims as that

[e]conomic migrants cross our borders illegally, and while they present themselves as asylum-seekers, in fact they are coming to enjoy our welfare systems and the employment opportunities our countries have to offer. In the last few months alone, in Hungary the number

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<sup>23</sup> “National Consultation on Immigration to Begin.” Website of the Hungarian Government. Accessed August 31, 2018. <http://www.kormany.hu/en/prime-minister-s-office/news/national-consultation-on-immigration-to-begin>.

<sup>24</sup> *Ibid*

of economic migrants has increased approximately twentyfold. *This represents a new type of threat—a threat which we must stop in its tracks.*<sup>25</sup>

This introduction concluded with the pronouncement of failure of Brussels to protect “European” values, insisting that “Hungary must follow its own path” at the risk that not doing so would “allow economic migrants to jeopardise the jobs and livelihoods of Hungarians,” and decidedly announcing that “[w]e must make a decision on how Hungary should defend itself against illegal immigrants. We must make a decision on how to limit rapidly rising economic immigration,” then signed by Prime Minister Viktor Orbán.<sup>26</sup>

The questionnaire included statements followed by leading questions such as number three, which said “There are some who think that mismanagement of the immigration question by Brussels may have something to do with increased terrorism. Do you agree with this view?” Other questions included factually unsubstantiated claims that appeared to be designed to heighten paranoia further by misinforming its readers about the situation at the borders, such as question four: “Did you know that economic migrants cross the Hungarian border illegally, and that recently the number of immigrants in Hungary has increased twentyfold?” Questions like number five (“We hear different views on the issue of immigration. There are some who think that economic migrants jeopardise the jobs and livelihoods of Hungarians. Do you agree?”) seemingly reiterated the introductory remarks and were instrumentalized to nudge the opinion to mirror its own.<sup>27</sup>

As Professor Nagy points out, at no point in the three-page document does the questionnaire refer to the word “refugee,” instead consistently tying up the terms “economic migrant” and “illegal” with the phrase “asylum-seekers.”<sup>28</sup> This demonstrates a pattern of deliberate mis-use of terms and language on the part of the Hungarian government in order to

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<sup>25</sup> *Ibid.* Emphasis added.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> Nagy, 1054.

take away sympathy from those seeking international humanitarian protection, those persons who constituted an actual presence at the borders, and to paint them as opportunistic, malicious, and threatening as well as possessing ulterior motives. As we will further see, this served to allow the government to take extra-ordinary measures in order to consolidate its authority and deny established protections enshrined in human rights instruments in the name of protecting itself from the security crisis at its border. To chime in with Zetter, the political rhetoric seen here “has been conveniently served by conceptual confusion in which the refugee label, and the larger number of less privileged sub-labels, have become a shorthand for any form of migrant and the vehicle for regulatory reaction.”<sup>29</sup>

In a radio interview prior to the dissemination of the questionnaire, Viktor Orbán more or less confirms this case, stating that

[t]he common European asylum policy norms, a system of law that we have developed, is more an obstacle than a help. It would be better if the Member States could decide on their own as per their specialities how they want to stop the refugee waves. Should we get this possibility, then we Hungarians would be able to solve our own problems as well.<sup>30</sup>

On November 16, 2015, the Prime Minister again alluded to the wave of refugees as part of the flow of “illegal immigration,” and referred to them as “these people” (“We know nothing about these people: where they really come from, who they are, what their intentions are, whether they have received any training, whether they have weapons, or whether they are members of any organisation. Furthermore, mass migration also increases crime rates.”<sup>31</sup>) during a speech to the Hungarian Parliament where a part of his address was a rejection of EU asylum policy and a call “to defend our culture.”<sup>32</sup> At one point, he referred to refugees as

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<sup>29</sup> Zetter, 186.

<sup>30</sup> Transcript of interview with Prime Minister Orbán by Radio Kossuth on 24 April 2015, available in Hungarian at <http://tinyurl.com/nqbdth2> as cited in United Nations High Commissioner for Refugees. “Hungary as a Country of Asylum.” Refworld, May 2016. <http://www.refworld.org/docid/57319d514.html>.

<sup>31</sup> Thorpe, Nick. “Hungary Denies Fuelling Intolerance.” *BBC News*, December 22, 2015.

<https://www.bbc.com/news/world-europe-35162515>.

<sup>32</sup> Nagy, 1055.

“Muslim invaders.”<sup>33</sup> By positing the persons in search of protection as a danger at the border, the threat of invasion is manufactured and an ethnic identity is tied to it as opposition. This demonstrates that he has a clear grasp of who the people seeking international protection are (“Muslim”) and utilizes the deliberate misuse of their designation in order to bypass the obligations that are Hungary’s towards them (“invaders.”). A further speech in March 2016 underscores this point, as Orbán seemingly appears to take on his own interpretation, stating that “we are not witnessing the arrival of refugees, but a Europe being threatened by mass migration,” making the accusation that the European Union is implementing “a planned, orchestrated campaign” to settle Hungarian land and erode its sovereignty.<sup>34</sup> He makes the statement that it is not that he is inaccurate in his categorization of such persons but that he is, in fact, the only voice of reason:

Europe it is forbidden to speak the truth...It is forbidden to say that those arriving are not refugees, but that Europe is threatened by migration. It is forbidden to say that tens of millions are ready to set out in our direction. It is forbidden to say that that immigration brings crime and terror to our countries. It is forbidden to point out that the masses arriving from other civilizations endanger our way of life, our culture, our customs, and our Christian traditions.<sup>35</sup>

According to Nagy, this demonstrates a deliberate act by the ruling political party in Hungary whereby it “constructed a full parallel reality.” He elaborates on this occurrence further by noting that

[w]ith all these moves, the government and Parliament intentionally replaced the figure of the refugee in need of protection with the (imagined) illegal migrant, who arrives in an unlawful manner and only has sinister intentions, against whom Hungary has to be defended. The reality on the ground was concealed behind a narratively constructed alternative, which according to the logic of securitization created an enemy figure threatening vital interests, against whom the whole nation has to defend itself, in part by criminalizing the actions of that undesired Other...Allies of that Other are also under attack; they are accused of being a vehicle of unfettered ‘immigration’ threatening the destruction of Europe.<sup>36</sup>

<sup>33</sup> “Interview mit Ungarns Ministerpräsident Viktor Orbán.” Bild, January 7, 2018. <https://www.bild.de/bild-plus/politik/ausland/viktor-orban/orban-interview-54403736.bild.html>.

<sup>34</sup> Nagy, 1056.

<sup>35</sup> Timmer, Andria, Joseph Sery, Sean Connable, and Jennifer Billinson. “A Tale of Two Paranoids: A Critical Analysis of the Use of the Paranoid Style and Public Secrecy by Donald Trump and Viktor Orbán.” *Secrecy and Society* 1, no. 2 (February 16, 2018). <https://scholarworks.sjsu.edu/secrecyandsociety/vol1/iss2/3>. p 38.

<sup>36</sup> Nagy, 1057.



He deems this “xenophobic propaganda” as a tool utilized to turn the Hungarian public inward, bringing them into a position of reliance on the authority for its interpretation of events and against vulnerable people seeking protection from persecution in their country.<sup>37</sup> As part of this campaign, those assisting refugees and asylum seekers are depicted “as agents of foreign powers” and the authorities use the means under their control such as state-controlled or government-allied media to “refer to Hungarian NGOs raising their voice in favour of the asylum seekers as liberal agents of foreign forces.”<sup>38</sup>

Such rhetoric has brought some of the Hungarian public around to the government’s way of thinking. In 2010, 2014, and again in 2018, Viktor Orbán’s Fidesz party has won re-election by taking majority of the votes. With regular and prevalent exposure to the threats that featured prominently in the Prime Minister’s party’s platform, many voters responded to the claims and seemed to be convinced that the government was there to look out for their interests and was exceptionally well-suited to take care of them in this situation. The rate of success of this campaign became apparent when a 2018 EU survey revealed that “only 10 percent of Hungarians said they would feel ‘totally comfortable’ having an immigrant as a friend. Fifty-five percent said they would feel ‘uncomfortable.’”<sup>39</sup> Hand-in-hand with this information are the results that show a sizable number of Hungarians to believe that their Prime Minister “prevented a Muslim ‘invasion’ of Europe in 2015.”<sup>40</sup>

### 2.1.3: Legal repercussions of anti-“migrant” campaign

When Hungary declared that it wouldn’t re-admit asylum-seekers returned from other states in the EU as part of the Dublin Regulations in June 2015, it argued that they were

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<sup>37</sup> *Ibid.*, 1060.

<sup>38</sup> *Ibid.*, 1061.

<sup>39</sup> “Hungary Has A Xenophobia Problem.” *NPR*, April 27, 2018.

<https://www.npr.org/sections/parallels/2018/04/27/602375067/hungary-has-a-xenophobia-problem>.

<sup>40</sup> *Ibid.*

justified due to the “total illegality” of the policy, which allowed them to override its implementation and to develop policies that barred entry of anyone falling under the categories that were defined by its government,<sup>41</sup> essentially allowing itself to reject rules it did not like. Following this assertion of its authority, the Hungarian government has undertaken a new strategy to nullify the effectiveness of the Dublin procedure by creating receptive conditions and taking legal measures that have kept other EU member states from sending refugees and asylum seekers to its territory, with courts refusing to allow transfers of such persons to Hungary out of a concern for their well-being.<sup>42</sup> This appears to part of a strategic plan where Hungary bypasses participation in the EU re-allocation and resettlement programs, but also avoids appearing to step out of synch with the EU, embracing the image of “a parallel reality in which those seeking access to EU territory are not forced migrants or others trying to enjoy a decent living, but potential or actual terrorists, abusers, threats—in short, the Others,”<sup>43</sup> which they have successfully kept out through their policies. To Nagy, this is a clear indication of a violation to Article 31 of the Refugee Convention against “punishing asylum seekers for having crossed the border irregularly.”<sup>44</sup> He refers to the UNHCR’s 2016 country report finding Hungary not to be upholding their end of the agreement,<sup>45</sup> concluding that “the government resorted to measures breaching both domestic and EU law to avoid performing duties stemming from the asylum *acquis* and from the Schengen *acquis*.”<sup>46</sup> He additionally found violations of domestic laws, and notes that those violations were disregarded and “eliminated by laws giving *ex tunc* waiver of them,” retroactively validating the breaking of existing laws.<sup>47</sup> Prior to the government ending a

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<sup>41</sup> Nagy, 1068-1069.

<sup>42</sup> *Ibid.*, 1069.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, 1075.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, 1079.

<sup>47</sup> *Ibid.*

policy of releasing statistics on such matters, the Hungarian Helsinki Committee estimated that even “a few years ago, Syrian asylum seekers had a 10 percent chance of being recognized as a refugee.”<sup>48</sup>

Disregarding existing protocol for refugee and asylum processing that are outlined in the international instruments that Hungary is party to, several amendments to the country’s Asylum Act were signed into law and came into force despite protests from human rights organizations that had been working both internally as well as on regional protections. How have these new laws that seemingly erase the distinction between refugees, asylum seekers, irregular migrants, and outright international criminals affected individuals seeking protection? In late 2015, then-Council of Europe Commissioner for Human Rights, Nils Muižnieks, urged CoE member states to “abide by their human rights obligations” in the face of “the current refugee movements across Europe” and singled out Hungary following a three-day country visit by the organization, noting that “a series of swift measures taken in recent months have rendered access to international protection extremely difficult and unjustifiably criminalised immigrants and asylum seekers.”<sup>49</sup> From the beginning of the Hungarian campaign, then, the Commissioner for Human Rights has flagged it as detrimentally affecting the rights of persons claiming a fear of persecution. Part of this was the curbing of safeguards by accelerating the asylum procedure for most applicants and later its swift expansion into “an extremely accelerated asylum procedure” which was found to be so inadequate that it led to frequent neglect of the merits of asylum application and claims were being examined and rejected in under a day before applicants are turned away.<sup>50</sup>

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<sup>48</sup> “Hungary Intentionally Denying Food To Asylum-Seekers, Watchdog Groups Say.” *NPR*, August 22, 2018. <https://www.npr.org/2018/08/22/640849555/hungary-intentionally-denying-food-to-asylum-seekers-watchdog-groups-say>.

<sup>49</sup> “Hungary’s Response to Refugee Challenge Falls Short on Human Rights.” Council of Europe Commission for Human Rights. [https://www.coe.int/en/web/commissioner/country-monitoring/hungary/-/asset\\_publisher/hKTqZqCwoY6P/content/hungary-s-response-to-refugee-challenge-falls-short-on-human-rights](https://www.coe.int/en/web/commissioner/country-monitoring/hungary/-/asset_publisher/hKTqZqCwoY6P/content/hungary-s-response-to-refugee-challenge-falls-short-on-human-rights).

<sup>50</sup> *Ibid.*.

Muižnieks drew a correlation between the government's "crisis situation" declaration from September enabling this process to come into play and the failure to abide "by a fully human-rights compliant asylum procedure," which included the introduction of criminal penalties applicable to migrants and asylum seekers who risked breaking new laws established to address border crossing and included a "fast-track criminal procedure" contrary to fair trial principles and specific prohibitions against such acts by treaties and human rights instruments, and giving rise to expressions of concern from the Commission not only on behalf of asylum-seekers but also "volunteers who provide humanitarian assistance to migrants," with the potential for "a chilling effect on action for solidarity."<sup>51</sup> The Commissioner requested a roll-back of laws criminalizing acts undertaken in the process of making protection claims, stating that "[m]igrants and asylum seekers are not criminals and should never be treated as such."<sup>52</sup>

In addition to the amendments to the Asylum Act easily passed through the Hungarian Parliament, Hungary has undertaken a set of legislative acts known as the "Stop Soros" laws criminalizing any act that can be construed as to be providing assistance to immigrants,<sup>53</sup> as well as rules penalizing nongovernmental organizations working on these issues with a heavy tax. This is a clear example of what scholars like Nando Sigona refer to as the campaign to delegitimize humanitarian organizations as part of an effort to criminalize "volunteers, activists and NGOs...to deter European civil society from getting involved, and to ultimately weaken and divide the last bastion against the EU's tough line on refugees and migrants that now prevails."<sup>54</sup> Such acts seek to prevent support for and undercut the efforts of the human

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<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> "Hungary Intentionally Denying Food To Asylum-Seekers, Watchdog Groups Say."

<sup>54</sup> Sigona, Nando. "The Contested Politics of Naming in Europe's 'Refugee Crisis.'" *Ethnic and Racial Studies* 41, no. 3 (February 19, 2018): 458. <https://doi.org/10.1080/01419870.2018.1388423>.

rights work that is necessary for the realization of the inherent human dignity that international instruments were put in place to protect.

In August 2018, the Hungarian government dug deeper in when it ceased providing food to eight individuals who were appealing their denied asylum claims and barred them from any attempts to purchase their own sustenance or receive donations from NGOs in what appeared to be an attempt to discourage them from continuing to pursue the appeals as well as an apparent push to force other asylum-seekers to abandon their applications and any other legal means of recourse “of their own accord,” according to advocates working for the Hungarian Helsinki Committee, an NGO providing legal assistance to refugees, as well as observers from Human Rights Watch.<sup>55</sup> The policy, having come into effect as part of the series of laws and amendments under the “Stop Soros” campaign in July 2018, “specifies that when an asylum claim is rejected, a would-be refugee in a transit zone is subject to ‘alien policing procedures,’ even if they’ve appealed their cases,” which include the end of any obligation to provide food while such asylum-seekers wait for a judge to review their case. According to the Hungarian International Communications Office’s statement to the US news outlet NPR, this is a practical application of legitimate laws that “stipulate that every migrant staying in the transit zone in the capacity of asylum seeker is entitled to and is provided with care...If, however, an asylum seeker’s application is refused, he or she must leave the transit zone;” the statement, it should be noted, makes the pronounced use of the terms ‘migrant’ and ‘asylum seeker’ to communicate the tangible relationship.<sup>56</sup> Despite such obfuscating communications on the part of the Hungarian government, the continuation of this policy has prompted the European Court of Human Rights to step in and order interim measures of

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<sup>55</sup> “Hungary Intentionally Denying Food To Asylum-Seekers, Watchdog Groups Say.”

<sup>56</sup> *Ibid.*

protection for at least four of the cases (as of the writing of this thesis), without which the rest of the individuals appear to be continued to be denied food.<sup>57</sup>

The UNHCR joined the Council of Europe and the Office for Democratic Institutions and Human Rights (ODIHR) in issuing a statement that warned that “[t]he Hungarian Government launched a new public campaign in December [2015], portraying those fleeing war and conflict as criminals, invaders and terrorists based on their religious beliefs and places of origin. Not the first of its kind in the country, this campaign also targets migrants and plans to run for two months through Christmas and into the new year in 2016” and urged the government to undertake steps recognizing and alleviate the human toll of the crisis on “those who have been forced out of their countries against their own will and choice and are currently seeking safety in Europe” as well as “to refrain from policies and practices that promote intolerance, fear and fuel xenophobia against refugees and migrants.”<sup>58,59</sup>

A 2016 report from the office of the UNHCR was issued in which its spokesman, William Spindler, unequivocally “told a press briefing in Geneva the new restrictions contravened EU and international law.”<sup>60</sup> It referred to the “expedited legislation” of 2015 that had been passed by Parliament, including the amendments to the Asylum Act which had been passed without any input by any international refugee agency.<sup>61</sup> It found the legislation to “have had the combined effect of limiting and deterring access to asylum in the country,” that criminal punishment was “at variance with the EU Return Directive” and was “imposed following fast-tracked trials of questionable fairness, and...not suspended in the event that

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<sup>57</sup> *Ibid.*

<sup>58</sup> United Nations High Commissioner for Refugees. “Hungary Urged to Refrain from Policies and Practices That Promote Intolerance and Hatred.” UNHCR, December 2015. <http://www.unhcr.org/news/press/2015/12/5677cf666/hungary-urged-refrain-policies-practices-promote-intolerance-hatred.html>.

<sup>59</sup> “Hungary as a Country of Asylum.”

<sup>60</sup> United Nations High Commissioner for Refugees. “UNHCR Concerned Hungary Pushing Asylum Seekers Back to Serbia.” UNHCR, July 2016. <http://www.unhcr.org/news/latest/2016/7/5788c85a4/unhcr-concerned-hungary-pushing-asylum-seekers-serbia.html>.

<sup>61</sup> “Hungary as a Country of Asylum.”

the concerned individual submits an asylum application,” contrary to Article 31 of the 1951 Convention.<sup>62</sup> Citing an Amnesty International report, the UNHCR concluded that “Hungarian authorities did not provide shelter, food, water or medical care to some 2,000 individuals waiting in front of the fence. Tensions escalated on both sides, but the Hungarian authorities did not take up an offer from UNHCR to mediate, and, on 16 September 2015, riot police responded to scenes of disorder with tear gas and water cannon.”<sup>63</sup> The report determined that Hungary ignored the Dublin Regulation procedures, instead placing asylum-seekers into “the admissibility examination, in which all applications were declared inadmissible” and in most cases “were declared inadmissible the same day that they were submitted, often within one or two hours of the individuals concerned entering the transit zone,” and that, further, the generic responses of these “suggests that there was no individual assessment of cases” which resulted in orders of expulsion that subjected applicants to one-to-two-year entry bans from the EU without being informed that their cases were subject to judicial review.<sup>64</sup>

Article 31 of the Refugee Convention was once again raised in the report in regard to the way in which Hungary handled asylum-seekers and its undertaking to prosecute those it accused of “unauthorized crossing of the border fence,” as it explicitly bars persecution of asylum-seekers and refugees:

on account of their illegal entry or illegal presence, provided they have ‘come directly’ to the country in which they claim asylum and present themselves without delay to authorities, and show good cause for their irregular entry or presence. This Article recognizes the realities of refugee flight, which mean that asylum-seekers and refugees are often compelled to arrive at, or enter, a territory without the requisite documents or prior authorization to enter. The term ‘directly’ should be understood not in a narrow temporal or geographical sense, and no strict time limit for the passage through or stop in another country can be applied to the concept.<sup>65</sup>

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<sup>62</sup> *Ibid.*

<sup>63</sup> Fenced Out: Hungary’s Violations of the Rights of Refugees and Migrants, 7 October 2015, pp. 24–25, <http://tinyurl.com/oasp4bj> as cited in United Nations High Commissioner for Refugees. “Hungary as a Country of Asylum.” Refworld. <http://www.refworld.org/docid/57319d514.html>.

<sup>64</sup> “Hungary as a Country of Asylum.”

<sup>65</sup> *Ibid.*

The CoE Commissioner for Human Rights also raised the alarm for “serious concern” of the potential “risk of *refoulement* to Serbia of asylum seekers and persons transferred to Hungary from other EU member states under the Dublin regulation...on the grounds of inadmissibility of their claims,” as the Hungarian government had designated Serbia as a safe third country, counter to the practice of the United Nations High Commissioner for Refugees, which has stated that this “constitutes a serious obstacle to international protection and creates a real risk of refoulement of asylum seekers in breach of European Convention on Human Rights and 1951 Refugee Convention requirements.”<sup>66</sup> Professor Nagy sees this to mean “that Hungary in fact wishes to avoid any deliberation of the protection claims on their merits” by designating applications from individuals who had travelled through Serbia as inadmissible.<sup>67</sup> Per his interpretation, if Serbia were indeed a safe third country then all asylum seekers that had entered Europe through it could be returned by the countries that have given them asylum.<sup>68</sup>

Hungary had introduced the safe third country concept in a November 2010 amendment to the Asylum Act, with the approach “that the concept should be applied on a case-by-case basis, as opposed to on the basis of a national list of safe third countries established by law.”<sup>69</sup> After an August 2012 call by the UNHCR to decline returning persons claiming a fear of persecution to Serbia due to its inability to adequately process their applications, Hungary continued to recognize it as a safe third country, although it temporarily suspended this designation from 2012 to 2015 until its Parliament passed an amendment to the Asylum Act declaring “all countries along the Western Balkans route” to be viable safe third countries, “notwithstanding the fact that UNHCR has urged states not to

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<sup>66</sup> “Hungary’s Response to Refugee Challenge Falls Short on Human Rights.”

<sup>67</sup> Nagy, 1062.

<sup>68</sup> *Ibid.*

<sup>69</sup> Act CXXXV of 22 November 2010 amending certain migration-related acts for the purpose of legal harmonization, which entered into force on 24 December 2010, available in Hungarian at <http://tinyurl.com/jnd6udt> as cited in “Hungary as a Country of Asylum.”



return asylum-seekers to those countries.”<sup>70</sup> The UNHCR report found that applications rejected on grounds of inadmissibility have been annulled even by Hungarian courts in those rare instances when judicial reviews have been granted, which internally reiterates “that Serbia is not a safe third country or argue that the administrative authority did not comply with its obligation to satisfy itself that the Serbian authorities will take over or back the applicant pursuant to...[the] Act on Asylum.”<sup>71</sup> The takeaway of this is that even its internal system largely disagrees on the dubious legal framework of these political acts.

The same report has determined that “[i]n failing to promptly take into account the court’s instructions,” the Hungarian immigration authorities denying admissibility of asylum applications based on the premise of Serbia being a safe third country “renders asylum-seekers’ right to effective remedy as set out in Article 47 on the Charter on Fundamental Rights [of the EU] as well as Article 13 of the European Convention on Human Rights ineffective.” Once again, this attests to the erosion of the rights of people claiming a fear of persecution to receive protection, as guaranteed in these statutes.

It is pertinent to note here that according to the UNHCR’s understanding,

A refugee does not cease to be a refugee or become a ‘migrant’ simply because they leave one host country to travel to another. A person is a refugee because of the lack of protection by their *country of origin*. Moving to a new country of asylum does not change this, so it does not affect a person’s status as a refugee. A person who meets the criteria for refugee status remains a refugee, regardless of the particular route they travel in search of protection or opportunities to rebuild their life, and regardless of the various stages involved in that journey.<sup>72</sup>

Because the prohibition against *refoulement* has at this point entered the realm of *jus cogens*, states are no longer permitted to turn away those who may qualify for refugee or asylum consideration. There is no such prohibition against preventing them from deterring them from coming to its borders. As one of the creative maneuvers Hungary has undertaken taken (and

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<sup>70</sup> “Hungary as a Country of Asylum.”

<sup>71</sup> *Ibid.*

<sup>72</sup> “‘Refugees’ and ‘Migrants.’”

one that many other states have rejected) it sees its only obligation as being not to return potential asylum-seekers to their country of origin, contrary to the wider practice that interpret non-refoulement to translate to “non-return and non-rejection at the border.”<sup>73</sup>

Muižnieks’ report additionally highlighted the breach of human rights standards in the Hungarian government’s growing propensity to holding asylum seekers and Dublin returnees in detention, seeing cause to conclude a neglect to provide an adequate “quality of judicial review of decisions on whether to detain persons seeking international protection,” and showing concern over “the very restrictive detention regime applied to these persons who should be treated in a more humane way and not as if they were criminals” in a lack of “a reliable system for identifying vulnerable applicants, such as victims of torture and human trafficking or those suffering from post-traumatic stress disorder in asylum detention” contrary to international principles exempting such vulnerable individuals from detention, especially in the face of the reality of “reports that some persons who were likely minors have been placed in detention as a result of highly questionable age-assessment tests” in the absence of a reliable system for determining and identifying those who require such attention, for the determination of which the Commissioner cited the standards and practices spelled out in the European Convention on Human Rights.<sup>74</sup> Thus, the UNHCR has expressed its serious concern over Hungary violating the Asylum Procedures Directive of the EU with the changes to its Asylum Act by failing to meet requirements of an effective remedy as well as the potential of these laws to “give rise to interference with standards of due process and procedural fairness and the right to an effective remedy” as guaranteed under the European Convention on Human Rights.<sup>75</sup>

<sup>73</sup> Goldenziel, Jill I. *When Law Migrates: Refugees in Comparative International Law*. New York: Oxford University Press, 2018. <https://doi.org/10.1093/oso/9780190697570.003.0019>. Pg. 399.

<sup>74</sup> “Hungary’s Response to Refugee Challenge Falls Short on Human Rights.”

<sup>75</sup> “Hungary as a Country of Asylum.”

The response of the United Nations Special Rapporteur on the Situation of Human Rights Defenders to the “Stop Soros” campaign and similar attacks on NGOs working with refugees found that, “[i]n the context of the refugee crisis and the excessively manipulated fear of the ‘other’ in society, defenders face public criticism by government officials, stigmatisation in the media, unwarranted inspections and reduction of state funding.”<sup>76</sup> This underscores the point that there is a deliberate move to delegitimize such work by depicting organizations and people engaged in these efforts as antagonistic and conspiratorial, which leads to barriers in their efforts to engage in assisting people claiming a fear of persecution.

In concluding his report, Muižnieks “stressed that in addition to the necessary review of recent changes of legislation applicable to immigrants, refugees and asylum-seekers, the government and political leaders should refrain from using xenophobic rhetoric linking migrants to social problems or security risks, thereby making the integration of the few migrants staying in the country even more problematic,” urging the elimination of “a discourse likely to fuel anti-migrant sentiment among the general public” and to instead implement assimilation programs to facilitate integration for the mutual benefit of all involved.<sup>77</sup>

Having looked at specific instances of political rhetorical approaches depicting people claiming a fear of persecution as “migrants,” “terrorists,” and “foreign invaders,” this section discussed the domestic and touched on international implications of such miscategorization by demonstrating that by labeling refugees and asylum seekers as unprotected groups the Hungarian government was able to make changes that frequently denied such persons entry into its territory. The section concluded with international human rights organizations’

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<sup>76</sup> Nagy, 1061.

<sup>77</sup> “Hungary’s Response to Refugee Challenge Falls Short on Human Rights.”

assessments and criticism of these events, which have overwhelmingly found clear violations of international (and occasionally even domestic) obligations.

## Chapter 3: Political discourse and its effects on refugee and asylum status in the US

As at the Hungarian border, a flow of refugees fleeing multiple humanitarian crises led to a steady increase in the number of individuals arriving in the US, both as refugees and as asylum-seekers who frequently appeared at the border that the US shares with Mexico. The discourse around “illegal immigration” and the threat it potentially posed to the population in the United States can be dated back to the mid-1970s, when Leonard Chapman became Commissioner of the Immigration and Naturalization Service (the precursor to Immigration and Customs Enforcement, or ICE) and worked to tighten US borders, closing a circular migration cycle which has subsequently resulted in a large population of undocumented people. Up until this point, the issue wasn’t in the public arena.<sup>78</sup> In contemporary American politics, however, it has become a major platform, particularly within the realm of the campaign and election of Donald Trump to the office of President in 2016, which this section will focus on.

### 3.1. The US’s response to an influx of people claiming a fear of persecution

This section will discuss President Trump’s anti-immigration statements and the position undertaken by his Administration casting doubt on the credibility of the international and domestic processes of asylum, continue to the enactment of policies that have been undertaken in order to bar entry of people claiming a fear of persecution, touch on administrative acts and press releases that undermine existing international protections for those seeking it, and conclude with criticism that has emerged, including legal outcomes in

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<sup>78</sup> Gladwell, Malcolm. *General Chapman’s Last Stand*. Revisionist History. <http://revisionisthistory.com/episodes/25-general-chapman’s-last-stand>.

the domestic court system. This section also addresses the legal repercussions seen in the United States federal system that has developed along with the political rhetoric denying the humanitarian needs of people claiming a fear of persecution. Focusing on administrative policies that have come out of the Trump Administration, it looks specifically at the executive orders affecting refugees, changes to the asylum application process at the US-Mexico border, and the merging of immigration law with criminal law.

### **3.1.1: Presentation of rhetoric surrounding people seeking international protection**

During a campaign speech in October 2015, then-candidate Donald Trump was quoted by the BBC promising to expel Syrians that had already been granted refugee status and accepted by the US for resettlement should he be elected as President of the United States in 2016, describing them “as part of this mass migration” and pledging to return them to the warzones that they had fled.<sup>79</sup> At a high school rally in New Hampshire, he erroneously claimed that the US was planning to resettle 200,000 Syrian refugees instead of the 10,000 that had been accepted (not including the 1,500 that had already been resettled over a period of four years) and suggested that “they could be Isis [Islamic State],” and painted those fleeing civil war in Syria “as a ‘200,000-man army.’”<sup>80</sup> From the outset, Trump took on the rhetorical position that those people claiming a fear of persecution were ‘migrants,’ and that they posed a threat to the US population.

The following month, he again promised that under his presidency, “[a]nybody that’s brought into this country from the migration is going to be out,” referring to Syrian refugees

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<sup>79</sup> “Donald Trump: I Would Send Syrian Refugees Home.” *BBC News*, October 1, 2015. Accessed October 21, 2018. <https://www.bbc.com/news/world-us-canada-34397272>.

<sup>80</sup> *Ibid.*

as a “Trojan Horse” through which terrorists could enter the US.<sup>81</sup> In May 23, 2016, after becoming President, Trump appeared on a conservative talk show to discuss specifically banning Muslims—including Muslim refugees—from entering the US, stating that “there are already tens of thousands of terrorists coming into the country now,” and that

we are at war with these people, and they don't wear uniforms...It's not your traditional war where it's a war against Germany, Japan, or whoever. This is a war against people that are vicious, violent people, that we have no idea who they are, where they come from. We are allowing tens of thousands of them into our country now.<sup>82</sup>

Those words are almost identical to those that Prime Minister Orbán used in his November 2015 speech (“We know nothing about these people: where they really come from, who they are, what their intentions are, whether they have received any training, whether they have weapons, or whether they are members of any organisation. Furthermore, mass migration also increases crime rates.”<sup>83</sup>), and the course that President Trump appeared to be following was not a far stretch from that of his Hungarian counterpart.

### 3.1.2: Managing public discourse through the presentation of a threat

In keeping with his anti-immigration campaign stance, Trump oversaw his then-Attorney General, Jeff Sessions, taking the position that he believed that “many, if not most, asylum claims are fraudulent.”<sup>84</sup> In October 2017, without citing any concrete evidence or proof to accompany such claims, Sessions delivered remarks on behalf of the US Department of Justice proclaiming that the US asylum system “is being gamed,” that the application

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<sup>81</sup> “Donald Trump Promises to Deport Syrian Migrants Who Settle in the US.” *ABC News*, November 16, 2015. Accessed October 21, 2018. <https://abcnews.go.com/Politics/donald-trump-promises-deport-syrian-migrants-settle-us/story?id=35244275>.

<sup>82</sup> “President Trump Issues Executive Orders Suspending Refugee Program and Barring Entry by Individuals from Specified Countries.” *American Journal of International Law*, July 2017. Pg. 97. <https://doi.org/10.1017/ajil.2017.55>.

<sup>83</sup> Thorpe, Nick. “Hungary Denies Fuelling Intolerance.” *BBC News*, December 22, 2015. <https://www.bbc.com/news/world-europe-35162515>.

<sup>84</sup> Lind, Dara. “Trump Keeps Making It Harder for People to Seek Asylum Legally.” *Vox*, June 5, 2018. <https://www.vox.com/policy-and-politics/2018/6/5/17428640/border-families-asylum-illegal>.

process “has become an easy ticket to illegal entry into the United States,” and pointedly charged “dirty immigration lawyers” with “encouraging their otherwise unlawfully present clients to make false claims of asylum providing them with the magic words needed to trigger the credible fear process.”<sup>85</sup> He proceeded to use these claims as a catalyst for an overhaul of the asylum process that neatly followed the unsubstantiated claims made during President Trump’s anti-immigration campaign platform. In April 2018, Homeland Security Secretary Kirstjen Nielsen, another Trump Administration Cabinet appointee, echoed AG Sessions when she attributed an increase in the rise in asylum claims not to the reality of a humanitarian crisis arising from gang violence in Central America but to the exploitation of “loopholes” in the application process, stating, again without reference to proof, that the increase of claims were driven by individuals working the immigration system through false claims by “using ‘magic words’ when they claim ‘credible fear,’” and referring to the asylum application system as one “plagued” by “fraud.”<sup>86</sup> On June 24, 2018, referring to those entering the US without prior authorization and seeking asylum through its court system, a right guaranteed under Article 31 of the Refugee Convention and section 8 1253 of the US Code,<sup>87</sup> the President tweeted, “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came...”<sup>88, 89</sup> This is, essentially, a call to disregard all legal precedent and international human rights standards by evoking a vague, unproved threat by

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<sup>85</sup> “Attorney General Jeff Sessions Delivers Remarks to the Executive Office for Immigration Review,” The United States Department of Justice, October 12, 2017. <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review>.

<sup>86</sup> “What’s New for Asylum Seekers under the Trump Administration.” *America Magazine*, April 6, 2018. <https://www.americamagazine.org/politics-society/2018/04/06/whats-new-asylum-seekers-under-trump-administration>.

<sup>87</sup> “8 USC 1253: Penalties Related to Removal.” [http://uscode.house.gov/view.xhtml?req=\(title:8%20section:1253%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:8%20section:1253%20edition:prelim)).

<sup>88</sup> Donald Trump, Twitter post, June 24, 2018, 8:02 a.m., <https://twitter.com/realDonaldTrump/status/1010900865602019329>.

<sup>89</sup> “Analysis | President Trump’s Misconceptions about Immigration Courts and Law.” *The Washington Post*, June 26, 2018. Accessed October 31, 2018. <https://www.washingtonpost.com/news/fact-checker/wp/2018/06/26/president-trumps-misconceptions-about-immigration-courts-and-law/>.



miscategorizing people seeking protection as part of an ‘invasion.’ This misdirects the issue and calls for a protectionist approach from the government, risking the neglect of humanitarian aid to those who most need it by depicting them as a threat.

### 3.1.3: Legal repercussions of anti-“migrant” campaign and criticism

On January 27<sup>th</sup>, 2017, President Trump issued executive order number 13769, titled “Protecting the Nation From Terrorist Attacks by Foreign Nationals.”<sup>90</sup> In addition to barring citizens from seven countries with predominantly Muslim populations from entering the US, the directive also blocked all Syrian refugees who had been approved to be resettled, some of whom were detained in airports and prevented from entering the US indefinitely as “a first step towards re-establishing control over America’s borders and national security,” and became known as the “Muslim Ban.”<sup>91</sup> Although an emergency judicial injunction essentially voided the order, Trump revised and re-issued it as executive order 13780,<sup>92</sup> a more carefully-worded order instructing the Secretaries of State and Homeland Security and the Director of National Intelligence to “review the USRAP [United States Refugee Admissions Program] application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States”<sup>93</sup> and instructed that when USRAP was reinstated it would prioritize “refugees who were subject to religious prosecution, but only if they belonged to a

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<sup>90</sup> “Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States.” The White House. Accessed October 31, 2018. <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/>.

<sup>91</sup> Shear, Michael D., Nicholas Kulish, and Alan Feuer. “Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide.” *The New York Times*, January 20, 2018. <https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html>.

<sup>92</sup> “Executive Order Protecting The Nation From Foreign Terrorist Entry Into The United States.”

<sup>93</sup> Exec. Order No. 13,769, 82 Fed. Reg. 8979 (Jan. 27, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-02-01/pdf/2017-02281.pdf>.

minority religion within the country of origin” and barred Syrian refugees from the US pending the President’s satisfaction that the revamped program “is consistent with the national interest,” and that a 50,000-person annual cap is instituted for all refugees.<sup>94</sup> “This is the ‘Protection of the Nation from Foreign Terrorist Entry into the United States,’” he reiterated, “We all know what that means.” By calling it an order of protection, Trump sent the message that ‘refugees’ were potentially ‘terrorists,’ despite no evidence and already high levels of scrutiny for those undergoing the process.

More recently, the Trump administration has begun to utilize an already-existing system of detention which saw the confinement of individuals apprehended at the border or apprehended inside US territory without authorization in response to a border control “crisis,” which saw a subsequently expedition of such cases resulting in the eventual return of “planeloads of deportees back to their countries with no opportunity for a hearing” in violation of both US and international laws that protect those who claim a fear of persecution against “returning refugees with a well-founded fear of harm to their home country.”<sup>95</sup>

When they were not being detained, persons with fear of persecution claims are finding that entering even through official ports of entry can be blocked. In June 2018, the Houston Chronicle, a Texas newspaper, found people barred from entry into the US “because federal agents said there wasn’t room to process them,” leading people to seek alternate, “illegal” ways of entering the US and places them in dangerous situations such as being exploited or harmed by traffickers.<sup>96</sup> Even those that make it to the application process are blocked and discouraged by immigration officials who deliberately “obstruct lawyer’s

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<sup>94</sup> “President Trump Issues Executive Orders Suspending Refugee Program and Barring Entry by Individuals from Specified Countries.” American Journal of International Law, July 2017. <https://doi.org/10.1017/ajil.2017.55>. Pg 767.

<sup>95</sup> Milanich, Nara. “Dispatches from ‘Baby Jail’ in South Texas.” *NACLA Report on the Americas* 49, no. 2 (April 3, 2017): 160. <https://doi.org/10.1080/10714839.2017.1331812>.

<sup>96</sup> “New ‘Zero Tolerance’ Policy Overwhelms South Texas Courts - HoustonChronicle.Com,” June 9, 2018. <https://www.houstonchronicle.com/news/houston-texas/texas/article/New-zero-tolerance-policy-overwhelms-South-12981190.php>.

access” to them despite laws prohibiting denying access to legal counsel.<sup>97</sup> These practices have led to class-action lawsuits and a 2017 hearing before the Inter-American Commission on Human Rights that the US, “in an unprecedented move,” did not even attend despite being a signatory of the Charter of the Organization of American States and accountable to.<sup>98</sup>

The Trump Administration has made things difficult to make a claim for protection as well. On July 11<sup>th</sup>, 2018, new guidance was issued to UCSIS officers conducting interviews with persons with fears of persecution claims, including both asylum seekers and refugees applying from outside US borders. It instructs that “claims based on fear of gang and domestic violence will be immediately rejected,” that officers “should consider whether an immigrant crossed the border illegally and weigh that against their claim, potentially rejecting even legitimate fears of persecution if the immigrant crossed illegally,” that they are to consider the possibility of “ulterior motives” and “may find an applicant’s illegal entry, including any intentional evasion of US authorities, and including any conviction for illegal entry where the alien does not demonstrate good cause for the illegal entry, to weigh against a favorable exercise of discretion’ for asylum,” in direct contravention of the Refugee Convention and US law, heightening the risk that individuals seeking asylum are prevented from a court hearing to decide on their case.<sup>99</sup>

Until recently, the process of applying for asylum in the US was to petition within a year of arriving on its border, adherent to the Refugee Convention and the INA.<sup>100</sup> On May 7<sup>th</sup>, 2018, Attorney General Jeff Sessions introduced the administration’s “zero tolerance” policy that criminalized all “unauthorized access” of the US border from Mexico, stating that

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<sup>97</sup> Milanich, 160.

<sup>98</sup> *Ibid.*, 163. <https://doi.org/10.1080/10714839.2017.1331812>.

<sup>99</sup> “Trump Administration to Turn Away Far More Asylum Seekers at the Border - CNNPolitics.” Accessed October 21, 2018. <https://edition.cnn.com/2018/07/11/politics/border-immigrants-asylum-restrictions/index.html>.

<sup>100</sup> Lind, Dara. “Why Asylum’s so Important to the Migrant Crisis.” *Vox*, July 30, 2014. <https://www.vox.com/2014/7/30/5947909/asylum-children-border-refugees-apply-home-embassies-explain>.

“People are not going to caravan or otherwise stampede our border.”<sup>101</sup> The policy directed the Department of Homeland Security to refer anyone caught crossing the border for criminal prosecution by the Justice Department. He justified this as being “necessary” by noting “massive increases in illegal crossings in recent months,” including triple increases in “border apprehensions” over the period of a year to what he called “the highest numbers in the world.”<sup>102</sup> Sessions acknowledged the “difficult situations” that many of those apprehended are fleeing, but concluded that the US “cannot take everyone on Earth who is in a difficult situation” and stated that “[c]itizens of other countries don’t get to violate our laws or rewrite them for us. People around the world have no right to demand entry in violation of our sovereignty.”<sup>103</sup> As a result, large numbers of people that include asylum seekers are being treated as criminals and prosecuted for illegal entry.<sup>104</sup> This is a direct breach of the 1951 Refugee Convention prohibiting “the detention of asylum seekers simply for the act of seeking asylum,” where it is “recognized that seeking asylum may require individuals to ‘breach immigration rules.’”<sup>105</sup> NGOs working with people seeking protection such as the Hope Border Institute of El Paso see this as a deliberate act meant to send the message to people claiming a fear of persecution that “the border is closed” to them, according to the organization’s executive director, Dylan Corbett.<sup>106</sup> “The administration justifies widescale prosecution of asylum seekers by saying it’s their fault for coming the ‘wrong way.’” In May 2018, Homeland Security Secretary Nielsen told a Senate committee that as an asylum

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<sup>101</sup> “Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration.” The United States Department of Justice, May 7, 2018. <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> Lind, Dara. “The Trump Administration’s Separation of Families at the Border, Explained.” *Vox*, June 11, 2018. <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

<sup>105</sup> “What’s New for Asylum Seekers under the Trump Administration.”

<sup>106</sup> *Ibid.*

seeker, “You have an option to go to a port of entry and not illegally cross into our country,” but even this is no longer true.<sup>107</sup>

Criminalizing border crossing has become a part of the broader policy to thwart “illegal” immigration, and a part of the policy includes discouraging people from seeking claims for protection. Individuals seeking asylum are separated from their children when they are placed in detention for breaking the law by crossing the border. Vox’s Dara Lind discovered instances where those separated from their families and detained include people asking for asylum at ports of entry, those points where the Trump administration has designated as the “legal” locations for entry for those seeking protection, which aligns with Session’s stated view “that he suspects many, if not most, asylum claims are fraudulent,” despite prohibitions against this in domestic and international laws and the condemnation of such practices by the UN and other human rights groups, and federal court rulings finding it “illegal to keep an immigrant in detention in the hopes of deterring others.”<sup>108</sup>

The INA grants the ability to apply for asylum to “[a]ny alien who is physically present in the United States or who arrives in the United States,” and has led to a lawsuit, *Al Otro Lado, Inc. v. Nielsen*, filed by the American Immigration Council in 2017 “challenging what it said was the Trump administration’s efforts to illegally thwart the efforts of asylum seekers.”<sup>109</sup> The claim includes accounts of Customs and Border Protection (CBP) officers “appearing to lie to asylum seekers to keep them from coming in,” stating “that the U.S. government was no longer granting asylum altogether, or to people from specific countries,” threatening to separate families unless they left the port of entry.<sup>110</sup> It “alleges that the government’s refusal to allow asylum seekers to pursue their claims violates the INA, the

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<sup>107</sup> “Trump Keeps Making It Harder for People to Seek Asylum Legally.”

<sup>108</sup> “The Trump Administration’s Separation of Families at the Border, Explained.”

<sup>109</sup> “Border Agents Are Using a New Weapon Against Asylum Seekers.” *Texas Monthly*, June 2, 2018. <https://www.texasmonthly.com/politics/immigrant-advocates-question-legality-of-latest-federal-tactics/>.

<sup>110</sup> “Trump Keeps Making It Harder for People to Seek Asylum Legally.”

Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and the doctrine of *non-refoulement* under international law.”<sup>111</sup> As of the writing of this thesis, the lawsuit is still proceeding through the US federal court system.

When confronted with these claims, CBP officials denied preventing individuals from asking for asylum, stating that “The number of inadmissible individuals CBP is able to process varies based upon case complexity; available resources; medical needs; translation requirements; holding/detention space; overall port volume; and ongoing enforcement actions”<sup>112</sup> and that “[n]o one is being denied the opportunity to make a claim of credible fear or seek asylum.”<sup>113</sup> Confirming that the law against denying asylum is apparent, this nevertheless puts into question whether it is effectively being upheld.

When the second executive order came before the Fourth District federal court shortly after being issued, the court found that there was

ample evidence that national security is not the true reason for [the second executive order], including, among other things, then-candidate Trump’s numerous campaign statements expressing animus towards the Islamic faith; his proposal to ban Muslims from entering the United States; his subsequent explanation that he would effectuate this ban by targeting “territories” instead of Muslims directly; the issuance of [the first executive order], which targeted certain majority-Muslim nations and included a preference for religious minorities; [and] an advisor’s statement that the President had asked him to find a way to ban Muslims in a legal way.<sup>114</sup>

It concluded that “Plaintiffs have more than plausibly alleged that [the second executive order’s] stated national security interest was provided in bad faith.”<sup>115</sup>

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<sup>111</sup> “Challenging Customs and Border Protection’s Unlawful Practice of Turning Away Asylum Seekers.” American Immigration Council, July 12, 2017.

<https://www.americanimmigrationcouncil.org/litigation/challenging-customs-and-border-protections-unlawful-practice-turning-away-asylum-seekers>.

<sup>112</sup> “Border Agents Are Using a New Weapon Against Asylum Seekers.”

<sup>112</sup> “Trump Keeps Making It Harder for People to Seek Asylum Legally.”

<sup>113</sup> *Ibid.*

<sup>114</sup> Conner, Timothy W. “The Decline of Civil Discourse and the Rise of Extremist Debate: Words Matter.” *Tennessee Journal of Law & Policy* 12, no. 2 (Winter 2018): 220.

<sup>115</sup> *Ibid.*

After more injunctions, this directive was partially upheld by the Supreme Court of the United States.<sup>116</sup> The ban on refugees was not lifted by President Trump until October 2017, when a new policy with “toucher vetting of applicants” resulted in a forty percent drop in admissions.<sup>117</sup> Data released by the State Department showed that the rate of Muslim refugees accepted for resettlement in the US fell from one fourth of all refugees to less than ten percent.<sup>118</sup> In response to this, the administration has made the claim that this “served to protect Americans from potential terrorist attacks.”<sup>119</sup>

Having examined how the Trump Administration and its officials undermine people claiming a fear of persecution by casting doubt on their intentions and enacting policies and guidance that seeks to contravene a well-established right to seek protection within its territory, this section concludes with the notion that a deliberate rhetoric has pushed the US to turn away from its international obligations to refugees and asylum seekers by claiming that they pose a threat to the domestic population and utilizing its authority to bar their entry.

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<sup>116</sup> “President Trump Issues Executive Orders Suspending Refugee Program and Barring Entry by Individuals from Specified Countries.” *American Journal of International Law*, July 2017. <https://doi.org/10.1017/ajil.2017.55>. 767.

<sup>117</sup> “Trump Lifts Refugee Ban, but Admissions Still Plummet, Data Shows.” *Reuters*, December 9, 2017. <https://www.reuters.com/article/us-trump-effect-refugees/trump-lifts-refugee-ban-but-admissions-still-plummet-data-shows-idUSKBN1E21CR>.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

## Chapter 4: Political discourse and its effects on refugee and asylum status in Sweden

Those same patterns that have developed in Hungarian and US rhetoric categorizing people seeking international protection as ‘migrants’ and ‘illegal aliens’ have recently been noted in Sweden, too. In this chapter, the emergence of a right-wing political party vying for seats in the country’s Parliament with anti-immigrant campaigns that appear to be conflating people claiming a fear of persecution with migrants, invaders and terrorists are examined. The presentation of this rhetoric in the Swedish context is noted and how such discourse affects immigration policies is discussed.

### 4.1. Sweden’s response to the ‘European migration crisis’

Sweden is used as a comparator to Hungary and the US for two important reasons. First, it has had historically generous immigration and asylum systems and has been welcoming to a large number of persons—refugees, asylum seekers, migrants, and immigrants. It has taken in one of the biggest numbers of people who had claimed a fear of persecution during the “migration crisis” that began in 2015—163,000 in that year alone, more than any other EU country at the time. Second, it has continued to offer asylum and protection to people in need of it despite the larger patterns of refugee quotas and tightening borders across the world. Nevertheless, Sweden, too, began to see a political discourse emerge that threatened to shift its politics right-ward as in Hungary and the US.

Until recently, Sweden has had an open immigration policy that was in certain ways exceptionally generous with providing temporary work visas to individuals who can be considered economic migrants as well as guest workers (similar to the circular migration policy of the US until the 1970s) as well as treating those seeking asylum “as its own citizens



whose human rights have to be respected,”<sup>120</sup> with wide and open support for immigrants prominent among the public and in the political arena. Despite being one of the top countries receiving asylum-seekers, Sweden has not turned away from its responsibilities to refugees.

#### **4.1.1: Presentation of rhetoric surrounding people seeking international protection**

It has not, however, escaped the anti-immigration rhetoric sweeping the two previously discussed countries in the midst of what is known as the “migration crisis,” but instead of militarizing its borders and criminalizing migration, Swedish politicians responded to the small but steadily growing support for right-wing anti-immigrant political parties in its elections by scaling back its previously generous asylum policy without system-wide dichotomization of refugee and migrant, but instead the country has updated its laws to meet the minimum asylum standards of the EU.<sup>121</sup>

This anti-immigrant rhetoric has grown along with the popularity of groups like the Sweden Democrats, a right-wing political party founded by members of nationalist, white supremacist groups, who have maintained an anti-refugee platform and have recently become the third-largest political party in the Swedish Parliament despite being affiliated with neo-Nazis and other far-right groups, although this growth precedes the 2015 “crisis,” as they officially “entered parliament in 2010,” five years after declaring themselves to no longer support or be allied with racists.<sup>122</sup> Here is where traces of the rhetoric one finds in Hungary and the US can be seen, as parties like the SD have been observed utilizing terms like “mass

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<sup>120</sup> Brljavac, Bedrudin. “Refugee Crisis in Europe: The Case Studies of Sweden and Slovakia.” *Journal of Liberty and International Affairs* 3, no. Supp. 1 (2017): 96.

<sup>121</sup> Widfeldt, Anders. “The Growth of the Radical Right in Nordic Countries: Observations from the Past 20 Years.” *Migration Policy*, June 26, 2018. <https://www.migrationpolicy.org/research/growth-radical-right-nordic-countries>.

<sup>122</sup> Savage, Maddy. “Nationalist Vote Set to Shatter Swedish Calm.” *BBC News*, September 5, 2018. <https://www.bbc.com/news/world-europe-45269773>.

immigration” to signal a threat as well as projecting images of Muslim invaders to capture national discontent with issues like economic status and crime rates and harnessing it to gain political power by portraying refugees as the culprits.<sup>123</sup>

#### 4.1.2: Managing public discourse through the presentation of a threat

A recent PBS NewsHour program showed SD head Jimmie Akesson attempting to evoke “an apocalyptic image of Sweden,” provoking anti-Muslim sentiments by stoking fears of a cultural “attack” by an organized invasion enabled by lenient asylum policies.<sup>124</sup> In an interview with BBC, Akesson made the claim that “the immigrants” had not yet integrated, and were segregating themselves in suburbs to “build parallel societies,” the solution to which was in the Sweden Democrats’ manifesto’s call to end asylum “and instead go for real aid for refugees,” which entailed a push to move people claiming a fear of persecution from Sweden and return them to their countries of origin, including places where violent conflict was still ongoing, such as Syria.<sup>125</sup> Another Sweden Democrat politician, Mattias Karlsson, attributed a growing unease in the country and the resulting popularity of his party because of an increase in crime, which he pinned on Muslim foreigners who had arrived as refugees or had been given asylum.<sup>126</sup> The discourse here is seen to be pivoting closer to what was seen in the speeches of politicians in Hungary and the US, where people claiming a fear of persecution were portrayed as a threat and an invasion on their sovereign territories.

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<sup>123</sup> “Europe’s Migration Crisis May Swing Sweden to the Right.” *PBS NewsHour*, September 8, 2018. <https://www.pbs.org/newshour/show/europes-migration-crisis-may-swing-sweden-to-the-right>.

<sup>124</sup> *Ibid.*

<sup>125</sup> “Sweden Democrats Tap into Immigration Fears.” *BBC News*, September 25, 2018. <https://www.bbc.com/news/world-europe-29202793>.

<sup>126</sup> Drew, Kevin, and Cajsa Collin. “Why Sweden Might Close Its Doors to Immigrants.” *US News & World Report*. <https://www.usnews.com/news/best-countries/articles/2017-07-10/immigration-forces-sweden-to-re-evaluate-its-welfare-state>.

### 4.1.3: Legal repercussions of anti-“migrant” campaign

Having taken in more asylum seekers per capita than any other country in the European Union in 2015 including people fleeing Syria and Iraq was not an easy feat for Sweden, and the issue of immigration was propelled to the top of political discourse.<sup>127</sup> At the end of 2016, the Arbetsförmedlingen, Sweden’s employment agency, issued a statement that nearly 65,000 immigrants would be need annually to fill in gaps in jobs if the country wanted to avoid a decline in economic growth from labor shortages that were predicted to increase yearly due to the low birth rates of the native population; it saw the influx of immigrants as “a long-term solution for the country’s economy.”<sup>128</sup> Throughout the developing crisis, the Swedish government has maintained its dedication to a “sustainable migration policy that safeguards the right to seek asylum and, within the framework of regulated immigration, facilitates mobility across borders, promotes demand-driven labor migration, harnesses and takes into account the effects of migration on development and deepens European and international cooperation” and maintained its stance on the benefits of immigration and the view that it “helps to revitalize the Swedish society, the labor market and the economy as immigrants bring new knowledge and experience from their countries of origin.”<sup>129</sup>

The government’s response to the arrival of previously unheard-of numbers of immigrants, some of whom were those who wished to take part of the welcome the country had historically extended not only to refugees but to economic migrants as well, was to approach the situation humanely and reasonably. Responding to demands that the country cease accepting refugees and providing asylum, such as those from the Swedish Democrats who saw the potential threat in it, Morgan Johansson, the Minister of Migration, made a

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<sup>127</sup> “Sweden Democrats Tap into Immigration Fears.”

<sup>128</sup> Brljavac, Bedrudin. “Refugee Crisis in Europe: The Case Studies of Sweden and Slovakia.” *Journal of Liberty and International Affairs* 3, no. Supp. 1 (2017): 98.

<sup>129</sup> Hofverberg, Elin. “Refugee Law and Policy: Sweden.” Library of Congress, March 2016. <https://www.loc.gov/law/help/refugee-law/sweden.php>.

statement compelling the public to have some compassion: “Just turn on your television set and see for yourself what these people are fleeing from.”<sup>130</sup> When Sweden closed its borders with Denmark and enacted stricter rules on the entry of refugees and asylum seekers to stem the heavy flow in 2015, “the deputy prime minister, Asa Romson, cried when announcing the move at a press conference.”<sup>131</sup>

Instead of turning people away at the borders or sending them to “safe third countries,” Sweden began to grant temporary residence permits instead of permanent ones as of November 24, 2015, changing a policy of automatically granting permanent residence to those arriving from Syria. As part of the policy change, the “persons in need of other protection” category has been eliminated as part of the alignment with EU asylum standards. Individuals meeting the standards of needing protection are still entitled to housing, healthcare and social services, and anyone who is qualified by the UNHCR as an asylum seeker or refugee is granted permanent residency permits.<sup>132</sup>

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<sup>130</sup> “Europe’s Migration Crisis May Swing Sweden to the Right.”

<sup>131</sup> “How Immigration Is Changing the Swedish Welfare State.” *The Economist*, June 23, 2017. <https://www.economist.com/the-economist-explains/2017/06/23/how-immigration-is-changing-the-swedish-welfare-state>.

<sup>132</sup> “Refugee Law and Policy: Sweden.”

## Chapter 5: Analysis

In the face of the large burden faced by countries seeing the largest waves of people arriving at their borders, there is a pattern of evading the previously embraced values of the Refugee Convention and a resolve to get out of having to fully comply.<sup>133</sup> Zetter describes the language appearing in these situations where vocabulary may vary but the unsaid point is the same in its implication: those persons are associated with “marginality, dishonesty, a threat, unwelcome,” the discussion is negative and seeks to convey the threat that must be controlled or and kept out.<sup>134</sup> This type of speech is an integrated part of political rhetoric pushing for new way of addressing the immigration and asylum question and simultaneously maintaining control over who is allowed in, resulting in a complex system of obtaining protection that is regulated to the point of being nearly unattainable: “Anyone has a right to claim refugee status; but claims to the refugee label are controlled by the draconian mix of deterrent measures and in-country policies and regulations.”<sup>135</sup>

Echoing Zetter’s research from nearly a decade earlier, it is clear that in Hungary the frequent and deliberately confused use of the terms ‘refugee’ or ‘asylum seeker’ with ‘economic migrant’ and similar categories that are unprotected by international human rights agreements by those authorities under “national interests”<sup>136</sup> has been prevalent, purposeful, and weaponized to the effect of eroding the human rights of people claiming a fear of persecution. This has enabled the conversation to turn away from helping those persons and instead has turned toward the threat of an “invasion” that seeks to overthrow state sovereignty and impose a different culture. This has been assisted by the consolidation and control of media in the state by the Prime Minister and his supporters, who have “created a single,

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<sup>133</sup> Goldenziel, Jill I. *When Law Migrates: Refugees in Comparative International Law*. New York: Oxford University Press, 2018. <https://doi.org/10.1093/oso/9780190697570.003.0019>. Pg. 399.

<sup>134</sup> Zetter, 184.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*, 182.

centralized media authority with a government appointed media official vested with ministerial-level powers such that media messages are filtered through the government,”<sup>137</sup> giving unparalleled advantage to those who control it to broadcast their message and bar criticism in order to shape the conversation, the power to determine how things are said and who has a say, which has resulted in extensive media campaigns featuring claims that “illegal migrants” were flooding Europe by the second, deliberately declining to leave out the word “refugees,” and emphasizing the threat being posed to “our culture” to a receptive national audience that has rewarded the party with increasing support.<sup>138</sup> In these as well as in other areas of political discourse, there is a constant, deliberate repetition of terms like “Christian,” “European,” and “illegal” used in these speeches which seek to amplify the otherness of the people at the borders, to utilize their differences and to depict them as a threat.

Such misdirection has allowed Hungary to evade its responsibility, to declare international obligations as being “illegal,” to pair it with the threat of terrorism, which it has sought to associate with the ISIS specifically and with Islam in a general. By claiming that it is being attacked and invaded, the country has evaded its duties under the various statutes to give asylum and accept refugees despite their clear obligations to do so, which have been reiterated by the European Court of Human Rights<sup>139</sup> and the UNHCR. The UNHCR’s report has concluded that “Hungary has been progressively limiting access to its territory and deterring asylum-seekers from applying for protection,” contrary to the country’s international and EU obligations.<sup>140</sup> This is part of the assertion that UNHCR Director of Protection Erika Fuller makes that such political rhetoric deliberately blurs the lines between

<sup>137</sup> Timmer, Andria, Joseph Sery, Sean Connable, and Jennifer Billinson. “A Tale of Two Paranoids: A Critical Analysis of the Use of the Paranoid Style and Public Secrecy by Donald Trump and Viktor Orbán.” *Secrecy and Society* 1, no. 2 (February 16, 2018). <https://scholarworks.sjsu.edu/secrecyandsociety/vol1/iss2/3>. p 23.

<sup>138</sup> Thorpe, Nick. “Hungary Denies Fuelling Intolerance.” *BBC News*, December 22, 2015. <https://www.bbc.com/news/world-europe-35162515>.

<sup>139</sup> “Ilias and Ahmed v. Hungary.” HUDOC. Accessed November 24, 2018. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-172091%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-172091%22]}).

<sup>140</sup> “Hungary as a Country of Asylum.”

what each term entails, turning all immigrants into the same target of public attention and “vehicle for regulatory reaction.”<sup>141</sup>

It has succeeded in closing off its borders almost entirely by utilizing the policies and laws that were a product of the rhetorical campaign to build a process hostile to people claiming a fear of persecution, despite criticism from the UNHCR and a series of successful ECtHR interim measures that have sought to restore rights to those individuals who claim them.

In the United States, both President Trump and his Administration officials have taken the clear stance that people claiming a fear of persecution qualifying for international protection pose a threat to the security of the country either by being “terrorists” or “economic migrants” who are exploiting the international protection system in order to enter the country and have presented these as “illegal” ‘migrants’ in order to stoke public paranoia to effectively implement restrictive policies that harm those that are legitimately claiming a fear of persecution, in the process bypassing international obligations that have become part of the US domestic law.

According to observers, Donald Trump utilizes the vast amounts of available information resources to evoke confusion and discord. He does this by using his exceptionally public position to make accusatory claims against the “legitimacy” of certain news sources and facts that contradict his positions, “deeming certain outlets ‘fake news,’ and maligning the mainstream news enemy through his Twitter account and endorsing those sites, channels, and organization that paint him in a favorable light” and disparaging those that do not as “fake and conspiratorial.”<sup>142</sup> Timmer *et al.* cite tweets like the following:

‘The fake news media is going crazy with their conspiracy theories and blind hatred. @MSNBC & @CNN are unwatchable. @foxandfriends is great!’ (@realDonaldTrump, February 15, 2017)

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<sup>141</sup> Zetter, 186.

<sup>142</sup> Timmer, *et. al.*, 22.

To them, it is a demonstration of the President sowing discord in an environment with “a populace already divided not just politically, but in terms of reality and facts. He has deepened the chasm through Twitter,” resulting in the addition of “fuel to the fire, more information to submerge actual fact beneath the ever-present cacophony of media stories.”<sup>143</sup>

When criticism of his administration’s family separation and detention policies mounted, he again took to Twitter to falsely blame a law he attributed to Democrats that forced him to uphold these practices in the wake of Congressional inaction:

Separating families at the Border is the fault of bad legislation passed by the Democrats. Border Security laws should be changed but the Dems can’t get their act together! Started the Wall.

— Donald J. Trump (@realDonaldTrump) June 5, 2018.

Per journalist Dara Lind, “There is no law that requires immigrant families to be separated. The decision to charge everyone crossing the border with illegal entry—and the decision to charge asylum seekers in criminal court rather than waiting to see if they qualify for asylum—are both decisions the Trump administration has made...”<sup>144</sup>

In Sweden, the appearance of right-wing parties holding anti-immigrant positions despite historically being open to both migration and those seeking asylum shows a significant shift in politics. The minority Sweden Democrats party appears to be cautiously taking on a somewhat unpopular stance rejecting semi-porous borders. While majority party politicians appear to be rejecting such ideas, not everyone in the public appears to be following. The anti-immigration rhetoric that has also appeared in Sweden is described as existing out of the mainstream and popping up in blogs, forums, and other social media and the discourse is not so nuanced or backed up by statistics and growth projections. Refugees and asylees are discussed there in the sense of being “a burden on the welfare state, and as a

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<sup>143</sup> *Ibid.*

<sup>144</sup> “The Trump Administration’s Separation of Families at the Border, Explained.”



threat to social cohesion,” with blame laid on the government who are accused of misleading the Swedish public and prioritizing immigrants at the expense of working-class Swedes and retirees.<sup>145</sup> While the mainstream appears to have largely rejected such rhetoric, it is still important to observe its appearance outside these vacuums and, significantly, watch its steady creep into the larger public and political stage, as Sweden Democrats claiming nearly thirteen percent of the votes in the 2018 election.<sup>146</sup>

Migration studies experts Heaven Crawley and Dimitris Skleparis write that the establishment of the Refugee Convention in 1951 gave those who fell under the definition of ‘refugee’ a very clear, legally binding status for the first time, making it distinct and separate from other terms (such as ‘migrant’ or ‘undocumented alien’) in order to provide a meaningful legal definition, and this has codified internationally-accepted protections for the persecuted. Despite this legal recognition and its near-universal adoption, the issues inevitably have arisen when the laws incorporating the terminology are implemented in each country, as implementation “takes place at the national level reflecting national interests and priorities which change over time.”<sup>147</sup> Outside of the ambitious declarations of the text, in the domestic spheres of its signatories,

the seemingly neutral and objective category of ‘refugee’ is in fact being constantly formed, transformed and reformed in response to shift in political allegiances or interests on the part of refugee-receiving countries and the evolution of policy and law. In other words, policy and legal categories may appear fixed, neutral or objective even but are, in fact, constantly subject to challenge across different national and regional contexts as lawyers, advocates and academics push at the boundaries of international law.<sup>148</sup>

Crawley and Skleparis argue that such definitions remain vulnerable to reinterpretation and open to political manipulation, and are ultimately inadequate in the face of widespread

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<sup>145</sup> Parusel, Bernd. “Country Profile: Sweden.” Institute for Migration Research and Intercultural Studies of the University of Osnabrück, November 2015.

<sup>146</sup> “Swedish Election: Deadlock for Main Parties as Far Right Makes Gains.” The Guardian. Accessed November 24, 2018. <https://www.theguardian.com/world/live/2018/sep/09/sweden-election-live>.

<sup>147</sup> Crawley, *et. al.*, 51.

<sup>148</sup> *Ibid.*

disagreement and discord currently seen in the discourse on immigration and migration, as noted in Hungary, the US, and Sweden. They ascribe the deliberate misuse of labels such as ‘migrant’ and ‘refugee’ to the machinations of political agendas and note the ease with which such categorization lends itself to such misuse, noting that “there is nothing ‘natural’ or ‘fixed’ about the legal and policy categories associated with international migration: rather these categories are in a constant state of change, renegotiation and redefinition. The categories ‘refugee’ and ‘migrant’ do not simply exist but rather are made,” and fall into the use of political actors.<sup>149</sup>

Zetter places the beginning of loosening of interpretation of the Convention and states’ reluctance to step up to their obligations at the arrival of large waves of refugees on European and North American continents in recent decades, observing that with their influx the promise of international protection began to diminish as more states began to enact laws and develop policies to qualify who could obtain such protection and circumscribe the situations under which it could be obtained, resulting eventually in the introduction of a variety of special measures of relief.<sup>150</sup> This deliberate restriction of refugee status entailed the creation of a series of domestic laws, special agreements, and policies (which Zetter notes as being uncannily alike to one another throughout the world) that not only fractioned the kinds of protections that asylum seekers could qualify for through a barrage of checks meant to deter and restrict access to legal status at each step (naming, as examples, safe third country rules, special transit zones, and border control administrators, in addition to other such practices that all have no international legal basis<sup>151</sup>) but communicated a very clear resolve to turn away those who seek protection status. We have seen examples of how Hungary and the US have adapted these practices with the help of discourse that alters

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<sup>149</sup> *Ibid.*, 52.

<sup>150</sup> Zetter, 177.

<sup>151</sup> *Ibid.*, 181.

people's protection status and how Sweden has potentially taken steps to follow a similar path.

The research shows that through deliberate bureaucratic processes that are used to deny people full protection status, they are filtered towards lesser-protected categories that leave them inadequately protected and vulnerable to de facto penalties through “fast track appeals and deportation, limited judicial review, more detention, so called white lists of countries presumed not to persecute, European conventions preventing multiple applications in EU Member States,” and so on.<sup>152</sup> These methods are specifically undertaken in order to control the refugee influx and to ultimately to deny people this status. The result, then, is a noticeable decline in the numbers of refugees, as persons fall under categories with less protection and are not guaranteed international legal standing. Those who are due these human rights are hence systematically denied their rights while states merely maintain what Zetter refers to as the “illusion” of international compliance and effective domestic immigration control simultaneously while upholding nationalistic, anti-immigrant political agenda and codifying new social and policy norms that are a part of this practice.<sup>153</sup>

Feller, of the UNHCR, outlines the predicament by explaining that the makeup of incoming populations are complex compositions of those forcibly displaced by many different situations, including the conflicts referenced in the Convention but also those that are not.<sup>154</sup> She underlines the danger of using the terms ‘refugee’ and ‘migrant’ interchangeably in noting the ease with which the Convention rights are held back and individuals seeking asylum face criminal liability as they are characterized as “illegal migrants” instead of rightfully being considered the internationally-accepted “independent legal personality” that they actually are.<sup>155</sup> She contends that not only is it disingenuous to

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<sup>152</sup> *Ibid.*, 181-182.

<sup>153</sup> *Ibid.*, 184-185.

<sup>154</sup> Feller, 28.

<sup>155</sup> *Ibid.*, 27.

conflate the terminology of international legal protection with that of one with wider immigration ambiguity, the resulting shift in public discourse and politicization of the protection regimes are very serious consequences for refugees' ability to obtain their rights and the protections may become unobtainable.<sup>156</sup> As it becomes easy to mislabel a refugee as a migrant, states nullify the strength of the instruments and walk away from their positive obligations. According to her, the description and categorization of people seeking international protection has direct influence on the receiving states as well as how they are seen by the public.<sup>157</sup>

The extent of the effect that the politicization of the terms 'migrant' and 'illegal immigrant' has been juxtaposed with refugees has made some outside observers reconsider their impact. Notably, the Associated Press announced in 2013 that it was changing its Stylebook, the reference guide used by its journalists and editors as well as other media professions, to end the use of the term 'illegal' in describing people, writing that this word "should describe only an action, such as living in or immigrating to a country illegally," noting that the decision was undertaken in the view that despite the use of such words being widespread and common they lacked accuracy.<sup>158</sup> As part of this, the updated entry in the Stylebook instructs writers that "[p]eople who were brought into the country as children should not be described as having immigrated illegally."<sup>159</sup> In 2015, Salah Negm, the director of news at Al Jazeera, took a stance against using the word 'migrant' in writing about the crisis, writing of his decision that

[w]hen we in the media do this, when we apply reductive terminology to people, we help to create an environment in which a British foreign minister can refer to "marauding migrants," and in which hate speech and thinly veiled racism can fester. We become the enablers of

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<sup>156</sup> *Ibid.*

<sup>157</sup> Sigona, 457.

<sup>158</sup> Colford, Paul. "AP Definitive Source | 'Illegal Immigrant' No More." *The Associated Press*, April 2, 2013. <https://blog.ap.org/announcements/illegal-immigrant-no-more>.

<sup>159</sup> *Ibid.*

governments who have political reasons for not calling those drowning in the Mediterranean what the majority of them are: refugees.<sup>160</sup>

Adding that by perpetuating the term that authorities with very clear political agenda prefer to use, the media confirms this agenda for an otherwise uninformed public and advantages the views of “those who want only to see economic migrants,” blurring the forcibly displaced with the desperate despite irrefutable proof that the majority of the persons arriving are those whose human rights have been forfeited, who deserve to be seen and treated as refugees.

“Migrant is a word that strips suffering people of voice. Substituting refugee for it is – in the smallest way – an attempt to give some back.”<sup>161</sup>

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<sup>160</sup> “Why Al Jazeera Will Not Say Mediterranean ‘Migrants.’” *Al Jazeera*.  
<https://www.aljazeera.com/blogs/editors-blog/2015/08/al-jazeera-mediterranean-migrants-150820082226309.html>.

<sup>161</sup> *Ibid.*

## Chapter 6: Conclusion

Hungary, the United States, and Sweden are all parties to the Refugee Convention. As of 2015, all three countries had begun to demonstrate opposition to their obligations to provide protection to people claiming a fear of persecution in varying degrees. Politicians have embraced rhetoric that positions refugees and asylum seekers as ‘migrants’ and even “terrorists,” a threat and an invasion. Emerging sectors in Sweden have echoed these ideas. Hungary and the US have moved to enact policies that close their borders and asylum processes in order to protect their borders and defend their sovereignty, a tactic that appears to be working to bar entry to those who seek protection.

States have used border control programs that intercept and turn away those attempting to seek protection in order to avoid their legal responsibilities towards those seeking refugee status or asylum despite the conflict of these practices with the Refugee Convention’s prohibition against *refoulement*, knowing that the only exemption that the Convention allows from this prohibition is “when individual refugees present threats to national security or public order, or when an asylum seeker has been involved in war crimes or criminal acts.”<sup>162</sup> To that effect, when they are presented “with immense numbers of people wishing to enter, wealthier states have increasingly restricted their borders to protect national security,” and the role of finding balance between border control and international human rights obligations is given to the courts.<sup>163</sup> Fuller concurs, noting that “[w]here refugees are seen as little more than a sub-group of irregular migrants, the control of their movement is likely to take precedence over meeting their protection needs,” which can be

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<sup>162</sup> United Nations High Commissioner for Refugees. “The 1951 Refugee Convention.” UNHCR. <http://www.unhcr.org/1951-refugee-convention.html>, at arts. 1(F)(a)– (b), as cited in Goldenziel, Jill I. *When Law Migrates: Refugees in Comparative International Law*. New York: Oxford University Press, 2018. <https://doi.org/10.1093/oso/9780190697570.003.0019>. 398.

<sup>163</sup> Goldenziel, 398.

harnessed by authorities with an interest in doing so.<sup>164</sup> Once the confusion is sown over who is who, their protection is at the discretion of the state authorities, who, if it so suits their agenda, may deny them protection by not granting them legal refugee status and instead depict them as invaders, terrorists, saboteurs, a threat to stability, national borders, and “the ethnic balance,” which justifies what by any other words is *refoulement*.<sup>165</sup>

The human rights landscape can be seen changing here, too, as NGOs shift their responsibilities and the roles that they play in the scheme. Whereas they had previously served as “the prime mediators of refugee integration,” they have shifted into working on the front lines, fulfilling “the essentially defensive and immediate tasks of advocacy, protecting basic rights, supporting asylum claims, and filling the increasingly large void left by the withdrawal of state support, not for longer-term settlement.”<sup>166</sup>

To go back once more to Fuller, the UNHCR Director of International Protection:

powerful actors establish and use categories, and the labels with which they are associated, to understand and frame a problem which in turn reflects how issues are – and are not – represented in policy debates and discourse. In Europe, as elsewhere, ‘the almost arbitrary categorisation of who constitutes a ‘refugee’...leads not only to a gross violation of rights but to the systematic exclusion of large groups of people who would like to see themselves as ‘refugees.’<sup>167</sup>

Violations of the Convention are to be referred to the International Court of Justice, although this has not happened. Regional instruments like the European Court of Human Rights have ruled in favor of upholding human rights guarantees not only for refugees but migrants as well, in cases like the *Hirsi* decision reiterating the prohibition of *refoulement* by European Convention of Human Rights signatories. Nevertheless, we continue to see the proliferation of “creative policies” adopted by states dealing with unprecedented asylum and migration demands in order to evade their obligations,<sup>168</sup> resulting not only in breaches of fundamental

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<sup>164</sup> Feller, 28.

<sup>165</sup> *Ibid.*

<sup>166</sup> Zetter, 187.

<sup>167</sup> Crawley, *et. al.*, 59.

<sup>168</sup> Goldenziel, 417.

human rights but a shift in social attitudes that re-aligns the way that society views and approaches those who are most vulnerable among us.



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