

# ‘Us’ and ‘Them’. Europe’s Ambiguous Relationship with Refugeehood

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URL: <https://www.ifhv.de/publications/ifhv-working-papers/issues>

## **‘Us’ and ‘Them’**

Europe’s Ambiguous Relationship with Refugeehood

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### **Abstract**

In 2022, when Russia invaded Ukraine, the European Union (EU) triggered the Temporary Protection Directive (TPD) for the first time. This policy tool, aimed at providing immediate protection in case of a mass influx of displaced persons from non-EU countries, reduces the bureaucratic hurdles often associated with migration and thereby paved the way for timely and effective assistance to Ukrainians inside the EU. This paper explores the question of why the TPD was not also triggered in 2015 when people fled from countries such as Syria, Afghanistan, or Iraq. Considering the legal framework for asylum, the ramifications of political identity, as well as underlying geopolitical factors, it attempts to understand the EU's seemingly inconsistent stance on migration over the past years. Following the normative demands of providing protection for the displaced, it gives a descriptive analysis of why the international community has yet to arrive at a functional framework guiding its actions and provides a brief sketch of a potential alternative.

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# ‘Us’ and ‘Them’

## Europe’s Ambiguous Relationship with Refugeehood

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## List of Acronyms

AfD	Alternative für Deutschland ‘Alternative for Germany’
EU	European Union
TPD	Temporary Protection Directive (Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.” Official Journal of the European Union, L 212, 07/08/2001 P. 0012 – 0023)
UKIP	UK Independence Party
UK	United Kingdom
UNHCR	United Nations High Commissioner for Refugees

## I. Introduction

On 04 March 2022, in the aftermath of Putin’s invasion of Ukraine, the Council of the European Union (EU) triggered the Temporary Protection Directive (TPD) for the first time (“Council Implementing Decision (EU) 2022/382” 2022). Originally conceptualized as a tool allowing for low-bureaucracy processing of large amounts of simultaneously displaced persons in need of protection, the TPD built the legal basis on which millions of Ukrainians were able to seek shelter and receive assistance on European soil within a matter of days.

The decision, following over seven years of rather chaotic diplomatic efforts and policy-making on matters of refugee rights, inter European cooperation, and international securitization marked a step off the well-trodden path around ‘Fortress Europe.’ For years, refugees attempting to seek shelter in the EU had been met with a confusing conglomerate of physical, legal, and bureaucratic hurdles along the way, all but designed to disincentivize more people from following suit. Refugeehood, it seemed, had become the magnet pulling on Europe’s moral compass. Some called for more solidarity by trying to appeal to ‘our’ (European) shared humanity, others were worried about the long-term sustainability of taking in ever more foreigners, and still others saw the ‘2015 crisis’ as the herald of the decline of the West. Whatever the individual stance, however, the unintended consensus seemed to be that Europe had failed: failed to respect its values, and failed to live up to its ideals.

This paper explores the different approaches to refugee protection the EU has taken in recent years. While the implementation of the TPD in-practice is undoubtedly the right step to safeguard the lives of people fleeing the war in Ukraine, it raises serious questions about the EU’s past actions to safeguard the lives of people fleeing from violence and persecution in other countries. Why was the TPD not triggered in 2015? To approach an answer to these questions, the first chapter provides a brief outline of recent European refugee history: in turn, it considers the ‘2015 crisis’ and the events following the invasion of Ukraine. In chapter two, we explore our modern refugee regime in order to answer the questions of who can be considered a refugee, why states might care about refugees’ claims, and how, finally, seeking refuge differs from other forms of migration. Based on this, chapter three explores the interplay of communal identity and political decision-making by asking what role communal identity plays for political communities, what the political identity of the EU consists of, and how the Union’s self-perception shapes its understanding of the responsibilities it holds towards those beyond its borders. Drawing conclusions from the first three chapters, the fourth and final chapter provides a brief sketch of the kinds of changes our current refugee regime might benefit from.

## 2. Historic context

This section provides the historic backdrop against which the remainder of this paper is set. We will consider what has often been referred to as the ‘2015 European migration crisis’<sup>1</sup> and look at the status quo it has resulted in for many of the people having sought protection in Europe in recent years. Then, we will consider how the EU has responded to the influx of people fleeing the war in Ukraine. By way of comparison, two rather different approaches to refugee protection will emerge.

### 2.1. The ‘2015 crisis’

#### 2.1.1. Syria and beyond

Following events in Tunisia, Libya, and Egypt, the year of 2011 saw the Arab Spring’s pro-democracy spirit sweep across the Middle East and into Syria. Inspired by ideals of political freedom, anti-corruption, and regime change away from president Bashar al-Assad, protests in hope of recreating the kind of democratic victory seen in Tunisia two months prior erupted around the country. What followed, however, was not a steady emancipation away from the country’s previous ways but a complex, protracted civil war that has lasted for more than a decade so far. From the start, the Assad regime showed little tolerance for dissidents employing strategies of violent oppression which only paved the way for further escalation in the years to come. Varying foreign interests in the region, meanwhile, did little to appease the growing fractionalization, but only escalated tensions between increasingly hostile powers. Today, eleven years after the war broke out when security forces opened fire on protestors advocating for political freedom in the city of Deraa (“Middle East unrest” 2011), hundreds of thousands have died from the violence that ensued.<sup>2</sup>

With the situation growing increasingly precarious over the years, many Syrians saw no alternative but to flee. By the beginning of 2013, the United Nations High Commissioner for Refugees (UNHCR) had registered almost 350.000 refugees with the number climbing to over 2.3 million within the next year. By 2015, it was 3.7 million and by 2022 the number seemed to have mostly plateaued at around 5.7 million (UNHCR 2022a).<sup>3</sup>

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<sup>1</sup> Two separate notions make the use of the term ‘crisis’ problematic in this context: First, by means of association, the term implies a kind of ‘natural’ genealogy free of human intervention effectively ridding those enabling and escalating the crisis of their responsibility. As a ‘naturally developed’ crisis, the focus lies on its consequences rather than its causes which are often the political actions of the international community. Second, its generally Eurocentric application appears somewhat inappropriate considering that the majority of Syrians (both in the absolute and relative sense) seeking shelter from civil war ended up in countries outside the European Union (see Appendix I).

<sup>2</sup> While the BBC reports activists claiming a death toll of 380.000 in 2020 (“Syrian President Bashar al-Assad” 2020), the Syrian Observatory for Human Rights reports between 499.657 and 610.000 since the outbreak of the Syrian Revolution in 2022 (“Syrian Revolution 11 years on” 2022).

<sup>3</sup> It is worth pointing out that this number denotes Syrians who became refugees and not Syrians fleeing violence, or people in Syria fleeing violence: UNHCR states the overall number of internally displaced persons (IDPs) still in Syria to be around 6.7 million, and many people who have fled may simply not be registered as refugees. In 2018 the number of registered Syrian refugees in Jordan, for example, was 671,551 while the estimated total of Syrians in Jordan was 1,380,000 (UNHCR 2019). Additionally, Syria is also home to a sizeable population of foreign nationals hosting for example around 438.000 Palestinian refugees (UNRWA 2022).



Considering Syria’s location, most people initially made their way to the bordering countries of Iraq, Jordan, Lebanon, and Turkey with varying prospects for their lives ahead. Host countries’ humanitarian reception capabilities varied greatly and were generally not ready to handle the large influx of Syrian nationals arriving within a relatively short time span. Partially the result of bureaucratic hurdles, partially owed to the autonomy limiting nature of refugee camp residence, many Syrians therefore ended up settling in urban areas. Turkey, for example, home to about 3.6 million Syrians, hosted only about 50.000 people inside official camps in 2022. Most others resided within vast Syrian communities that had developed across the country with the largest one in the municipality of Istanbul consisting of over half a million people (Turkish Directorate of Migration Management 2022).

Yet, despite Turkey having become somewhat of a destination country over the years,<sup>4</sup> many Syrians initially found the prospect of life in Europe to best address the needs their displacement had left unmet.

Returning to Syria did not seem like a tangible option in the near future and with the humanitarian support in neighboring countries ranging from inaccessible to limited at best, longer-term economic subsistence became an important consideration. Turkey’s economy – while sizable – had been in decline at the time and seemed to be dwarfed by the majority of central European economies. Turkish efforts to grant Syrians access to the labor market by way of issuing work permits seemed promising but ultimately did not do much to sufficiently increase formal rates of employment.<sup>5</sup> Consequently, as the number of people seeking shelter rose, so too did the number of those hoping to make their way towards the EU. The previous years had already seen stories of refugees crossing the Mediterranean from Northern Africa to Italy and the distance between Turkey and Greece was even shorter.<sup>6</sup> From the Turkish shore, the Aegean islands of Lesbos, Samos, Chios, Leros, and Kos were practically within eyesight, making them the most tangible destination post-fencing of the Turkish-Greek land border.

At this point, it is important to consider that, as with any rendition of historic events, building the story of the ‘2015 crisis’ on the foundation of the Syrian civil war is a simplification. While the EU had already seen an increasing number of asylum claims in the years leading up to 2015, the Syrian exodus marked a turning point in that its sheer scale posed significant challenges to European reception capabilities. Yet, exclusively focusing on the story of Syrians after 2011 or even calling it the ‘Syrian refugee crisis’ introduces two related issues: a) it highlights the somewhat Eurocentric tendency to group

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<sup>4</sup> While empiric data suggests that Turkey may in fact be the migratory source and transit country it is often speculated to be, it also is a de facto destination country for many. Only 1.6% of refugees interviewed in a 2017 study considered leaving Istanbul in favor of traveling to the EU and around 67% of Syrians in all of Turkey indicated that they did not have any plans to move to a third country (Rottmann & Kaya 2021, 478).

<sup>5</sup> “According to official statistics, between 2016 and 2019, a total of 132,497 work permits were issued to Syrians registered in Turkey which includes renewals of already existing work permits. It is estimated that approximately 1 million Syrians are working informally without legal protections and rights and 45 percent of Syrians under temporary protection are living below the poverty line.” (DRC and Govt. Denmark 2021)

<sup>6</sup> While Turkey and Greece share a land border along the Evros river, construction on a border fence began in 2012 - effectively incentivizing people hoping to cross into Greece to find alternative and often more dangerous routes across the Aegean Sea.

all things foreign into a largely homogenous entity by overlooking the fact that less than 60% of those arriving in Greece by sea were actually Syrians,<sup>7</sup> and b) it plays into the far-spread and well-instrumentalized obfuscation of differentiating people seeking refuge from people seeking better opportunities.

Ironically, the reason the case of Syria is often used as a narrative vessel nonetheless is precisely to avoid this second issue. While 2015 saw the arrival of people not just from Syria, but also Afghanistan, Iraq, Pakistan, Iran, Somalia and Eritrea (among others), not all nationalities enjoyed the same treatment upon arrival. Recognition rates of Syrian asylum seekers have been consistently high over the years, but the same cannot be said for asylum seekers from other countries such as Afghanistan. Here, requests have often been denied on the basis that parts of the country are safe enough to take shelter in, thereby invalidating the basis of claims for asylum in the EU (Parusel 2018). To avoid questions of who qualifies as a refugee, and what we owe to refugees as opposed to other types of migrants, Syria has come to play an important narrative role. As the biggest refugee-producing country of our time, as the country whose emigration rates were the final straw for the EU's asylum system, and as the country whose nationals enjoy a consistently high rate of asylum claim recognition, Syria became emblematic of the '2015 crisis' as a whole.

### **2.1.2. The overburdened system**

The reason the Syrian exodus was able to bring the EU asylum system to its knees was threefold. To begin with, asylum claims are largely seen as an individual matter where a case-by-case investigation is expected to reveal a person's entitlement. Having arrived in Greece, asylum seekers can lodge their "application for international protection" which results in an interview to determine the validity of their claims. Where an application is rejected, an appeal can be lodged, resulting in a second examination (Hellenic Republic - Ministry of Migration and Asylum 2022).<sup>8</sup> Each step is tied to extensive waiting periods exacerbated by the already overburdened system.

Secondly, European geography means that not all European countries are equally likely to face large swells of asylum requests. Countries along the Union's borders experience greater exposure, which is why the large influx of people fleeing Middle Eastern countries predominantly affected Greece. Bulgaria could have faced a similar fate, had it not been for the fact that its land border was easily secured by the erection of a border fence – a feature only parts of the Turkish-Greek border could benefit from. Considering geography

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<sup>7</sup> A report covering January 2015 to February 2016 suggests that 24,7% of those arriving by sea were Afghan, 11,1% were Iraqi, and 2,8% were Pakistani - with Eritreans, Somalis, Iranians, and "Others" making up the remaining 6,5% (UNHCR 2016, 3). Considering monthly arrivals to Greece by sea, all respective nationalities follow a similar pattern (see Appendix II). However, the curve denoting arrivals from Syria appears to be ahead of that denoting arrivals from Afghanistan by between one and two months, and ahead of that denoting arrivals from Iraq by about four months. This may help explain why the story of specifically Syrian refugees became so dominant in public discourse.

<sup>8</sup> Interviews themselves appear to range from one hour to more than six hours depending on the case (Mobile Info Team, n.d.) which may be an indication for the scale of bureaucratic efforts going into Greece's asylum procedures.

alone, the mass-arrival of asylum seekers therefore was not as much a European problem as it was a Greek problem.

Further cementing this geographical difference was then, thirdly, the broad lack of willingness to make it a European problem. For many Union members, the geographical distribution of asylum requests was rather convenient and had, in fact, been legally codified in the past: the Dublin Regulation effectively stated that whichever European state was the first to register an asylum claim was also the one responsible for processing it. A person having officially entered the EU in Italy, for example, would therefore not be able to cross the Schengen area into Austria and lodge their asylum request there. Similarly, a person trying to claim asylum in Germany after having previously been registered in Greece could be legally returned to Greece.<sup>9</sup> While intended to curb practices of ‘asylum shopping’ and to provide an efficient way of determining responsibility for processing a request, the regulation only manifested the disproportionate burden the ‘2015 crisis’ had already placed on Europe’s border states.<sup>10</sup>

In light of this, it is no surprise that the ‘2015 crisis’ tested the Union’s political cohesion, too. While border countries were in most cases legally required to process asylum requests (whether lodged there or not), reality often looked rather different. In the case of Greece, reports prior to 2015 had highlighted a treatment of asylum seekers so dire that other EU member states suspended returns to the country believing that there was a serious risk of people’s fundamental rights being violated. While a corresponding amendment to the Dublin Regulation proposed by the EU Commission was ultimately not accepted – it would have legally codified such a suspension of returns – Greece did nonetheless implement “an ‘action plan on migration management’ [...] [which aimed] to modernize screening procedures; restructure the asylum procedure; increase reception capacity for children and vulnerable groups; and upgrade detention conditions and improve return procedures” (McDonough & Tsourdi 2012b, 67-74). Yet, by 2010, the number of arrivals had significantly increased. By the end of the year “about 90% of people detected irregularly entering the EU arrived first in Greece” (McDonough & Tsourdi 2012a, 3) posing significant challenges to the – albeit now improved – asylum system and its available resources. To accommodate and balance the ever-larger influx of people predominantly arriving to the Aegean islands, transfers to facilities on the mainland were arranged.<sup>11</sup> This, however, paved the way for onward movement: combined with migratory

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<sup>9</sup> Registration upon entry into the EU involves a person’s fingerprints being saved into a Union-wide database. If, upon registration, a set of prints is already present in the database, the person would be returned to the country the original prints were collected in. Unsurprisingly, this has created some rather perverse incentives: Even before 2015, reports of people purposefully mutilating their finger tips for a better chance at asylum are plenty (for example Grant & Domokos 2011).

<sup>10</sup> In a similar vein, the regulation has been criticized for failing asylum seekers: Not only does the added layer of bureaucracy necessary to determine responsibility for an asylum claim often add a lot of time to the process as a whole, the heterogeneous nature of member states’ reception capabilities also differs greatly. This means that asylum seekers may be returned to a country where - in contrast to the country they hope to claim asylum in - no adequate protection and support provisions are present or where the statistical acceptance rate for persons from their country is practically zero (ECRE 2008).

<sup>11</sup> In 2020, IOM reports a total of 32 sites on the Greek mainland many of which are either at or above their occupancy capacity (IOM 2020).

flows from other Balkan countries, the ‘Western Balkan Route’ saw over 700.000 people move towards central Europe in 2015 alone.<sup>12</sup>

While the Dublin Regulation would have seen the majority of asylum claims be processed in Greece, it evidently failed to anticipate the practical ramifications of its lopsided divisions of labor. Largely left to its own devices, Greece was unable to provide adequate levels of protection and assistance meaning that a) more and more people were incentivized to seek shelter elsewhere (mostly in other European countries), and b) that the EU would not be able to hold onto its explicitly enshrined set of values and inalienable rights were it to continue on its current path. A fair distribution of labor was necessary to rectify mistakes that had already been made and ensure the dignified (and legal) treatment of those yet to arrive at the Union’s doorsteps. The Greek problem had evidently become a European one.

No such distribution was introduced, however. While countries like Germany, Italy, and Malta supported the idea of asylum quotas to fairly spread the onus for protection across Union member states, others vehemently opposed it (“Mediterranean migrant crisis” 2015). In a way, the current system’s many shortcomings seemed to be dwarfed by its inherent convenience for those far from the Union’s border. The solution, it seemed, was not a value-driven embrace of European solidarity towards those in need of support, but securitization of the Union’s borders. Hungary, the initial gateway (back) into European territory for anybody embarking on the Western Balkan Route, quickly started erecting a fence alongside its Southern border effectively trapping those in Serbia who had hoped to cross from Serbia into Hungary. Similarly, Croatia, the closest neighbor to move from Serbia to the EU, introduced new entry rules creating additional bureaucratic hurdles (European Union 2016, 2) and subsidized them with what can only be described as a strategy of deterrence.<sup>13</sup> People and communities displaced in Serbia eventually attempted to make their way towards the EU via Bosnia and Herzegovina but were sooner or later met with similar hurdles.

### 2.1.3. Germany & the EU-Turkey deal

With the prospect of further border securitization already well on its way in the second half of 2015, Germany initiated the next step. Its history had arguably put it into a dilemma where maxims of rational self-interest were met with memories of those fleeing its own regime just a century past. Where the Greek sentiment towards displaced communities may have often been tainted by its rivalry with Turkey,<sup>14</sup> and where Viktor Orbán could

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<sup>12</sup> Frontex reported “766 038 detections of illegal border crossing” of predominantly Syrians and Afghans. Local migratory flows included people from Kosovo and Albania although especially the latter seem to have experienced consistently low asylum recognition rates: 4% in 2015, 5% in 2020 (Frontex 2016; EASO 2021, 204).

<sup>13</sup> The non-profit conglomerate ‘Border Violence Monitoring Network’ has compiled a searchable database of pushbacks from Croatia as well as other countries (BVMN 2022). Similarly, a joint investigation by “German public broadcaster ARD and several European media partners has uncovered evidence of brutal efforts to push back migrants along the border of Bosnia and Croatia.” (Rivkin 2021).

<sup>14</sup> Not only are Greece and Turkey engaged in active land disputes; the EU-Turkey deal has given Turkey significant extortive power when it comes to keeping displaced communities inside its territory. When this power is realized, Greece tends to be affected first, as was the case in early 2020 when Turkey decided to open its so-called “migrant floodgates” (Papadimas & Konstantinidis 2020).

rally anti-muslim narratives in support of his securitization efforts, the German narrative was very much influenced by “living down the past” (Betts & Collier 2017, 84).<sup>15</sup> “*Willkommenskultur*” (welcome culture) quickly established itself as a repurposed term encapsulating the open arms with which many Germans demonstratively greeted those arriving in their country.

In August 2015, chancellor Merkel announced that Germany would effectively cease to uphold the Dublin regulation: upon arrival, displaced persons would not be returned to their first point of entry into the EU, but would be allowed to remain inside the country. Compassion had won, it seemed, and despite the many challenges that came with the move, Germany and its chancellor largely felt that they “[could] do it”.<sup>16</sup> In hindsight, what followed was of little surprise. The number of arrivals to Germany grew exponentially with many seeing a significant chance in their move to the country: a chance to leave behind the dismal living conditions provided by Greek reception efforts, a chance to escape limbic conditions along the emerging Western Balkan route, a chance to escape violence in Syria, Afghanistan or elsewhere, or simply a chance to a better life as part of an advanced central European country. With Germany paving the way for comparatively easy entry,<sup>17</sup> flight and migration to the country were not only desirable but had become a reasonable possibility.

For Germany, and the EU at large, however, Merkel’s move quickly became a concern. 300.000 people arrived in the country the following month (Karnitschnig 2015). With the number climbing to 1.1 million by the end of the year (Kroet 2016). The will to welcome foreigners was strong but of little help in light of the immense bureaucratic toll the mass influx had on the country’s registration and reception capabilities. Less than half of those having arrived in 2015 were officially registered, and reports of chaotic conditions at refugee shelters seemed to pour in from all directions. Additionally, Merkel’s commitment to accept those yet to arrive was understood by many as an open invitation to not just those seeking shelter, but also those simply in pursuit of a better future in the German economy. Rightly or wrongly, the country started to face the question of how far its responsibility to respect the rights of those seeking mere economic opportunities was to extend. The winter months helped to hamper the number of arrivals, but Merkel’s approval ratings – often used as an indicator for the perseverance of the country’s “*Willkommenskultur*”<sup>18</sup> – started to dwindle. To avoid worse, Merkel had to change course.

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<sup>15</sup> Betts & Collier 2017, p.84. The authors convincingly illustrate the dilemma that Germany (and much of the West) has been facing when dealing with displaced communities as a battle between sentiment (“the headless heart”) and rationale (“the heartless head”).

<sup>16</sup> “*Wir schaffen das*” (EN: “We can do it!”) became an influential, although controversial, slogan for Merkel’s initial refugee politics during the ‘2015 crisis’. See Bundesregierung Dtl. 2015 for a transcript of the press conference the political slogan originated from.

<sup>17</sup> While entry into the country was comparatively easy from neighboring countries, the suspension of entry requirements did, of course, not make it easier for people who had not yet reached such a neighboring country. This meant that the most vulnerable were unlikely to benefit from Germany’s open arms approach.

<sup>18</sup> While the German society’s sentiment towards immigration certainly dipped in the years after 2015, it seems to have largely recovered to its ‘pre-crisis’ levels today (Kösemen & Wieland 2022). Similarly, Merkel (and her party) may have experienced a loss in approval ratings post-2015 – partially to the benefit of the country’s re-emerging right wing running on an anti-immigration platform – but this did not keep her from winning the re-election as chancellor in 2018.

What followed was the controversial “EU-Turkey deal”.<sup>19</sup> Packaged as a plan “to break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk” (European Council 2016), it was aimed at curbing irregular migration to the Union’s territory. Every person irregularly making their way to the Greek shores would be returned to Turkey, and for every Syrian national returned to Turkey another national would be relocated from Turkey to the EU. This mechanism, partially intended as a signal of deterrence to prospective arrivals, effectively allowed the EU to outsource its responsibility to a country that had proven to be surprisingly welcoming to refugees in the years leading up to the agreement. Turkey was the largest refugee-holding country at the time, and its increased efforts to stop people from crossing the Aegean Sea were expected to finally put Europe’s woes of increasing inward migration to rest. To sell the idea, Turkey was promised six billion euros to support its humanitarian relief efforts, reduced visa restrictions for Turkish citizens traveling to the Union’s territory, and a commitment to revitalize the conversation around Turkey’s potential accession to the EU.

#### **2.1.4. A change in Greek policy**

The deal achieved at least one of its desired goals: where 2015 saw the arrival of over 856.000 people on Greek shores, the number dropped by almost 80% in 2016 (to 173.000), and dipped to less than 30.000 in 2017. Turkey had, for the most part, held up its end of the bargain by keeping people from crossing the border. What did not go as planned was the return of people already in Greece. Some courts in the country had their doubts as to whether Turkey did in fact constitute a safe country and, combined with Turkey’s refusal to admit returns during the Covid-19 pandemic, only 2,140 people had in fact been returned to Turkey after the agreement’s adoption (International Rescue Committee 2022). On the Greek side, this had the unintended effect that a new policy for processing arrivals was necessary as the number of those embarking on the journey across the Aegean Sea had shrunk considerably but was not zero. A politics of containment was implemented under “the European Pact on Migration and Asylum which introduce[d] a ‘pre-entry phase consisting of screening and border procedures for asylum and return’”. According to the proposal, in this phase asylum seekers “shall not be authorised to enter the territory of the Member State” (Amnesty International et al. 2021). Instead, Greece started to detain new arrivals in ‘Reception and Identification Centers’ and ‘Closed Controlled Access Centers’ while their claims were being processed – much to the criticism of the people detained, local non-profit actors, and local communities questioning whether such centers were actually necessary.

Today, many of the EU’s actions regarding the protection of those having arrived in the wake of the Arab Spring’s unrest seem to have faded from memory. If contemporary news coverage is any indication, it is an issue no longer deserving of our attention as the pressures of inward migration have subsided and all that is left to do is to ensure the events of 2015 will not repeat themselves. As such, Greece’s detention politics are rather emblematic of the ‘2015 crisis’ as a whole: for many years the reception and identification center on Samos was a major point of contention. Located just across the street from the island’s capital Vathy, it housed a few thousand people, often exceeding its official capacity

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<sup>19</sup> Officially, the “EU-Turkey statement, 18 March 2016” (European Council 2016).

by a factor of 10 (Oxfam 2022, 3). Over time, areas around the hillside camp became draped with tents as more and more people arrived and communities began to form. People were stuck, and to pass the time the town of Vathy became a means of alleviating at least some of the boredom one would inevitably develop while being caught in the bureaucratic limbo of an overwhelmed asylum system. Samos and its involuntarily diverse population managed to retain a mostly peaceful coexistence<sup>20</sup> but as time moved on, locals became understandably concerned. Like on many of the islands, the Samian economy was greatly dependent on tourism bringing in revenue from the outside, and the wide-spread news of Greece’s struggle with migration had not been helpful advertising. A new ‘closed controlled access center’ was therefore not only meant to address the capacity and infrastructural shortcomings of the previous reception and identification center, it was also a chance to rid Vathy of its migration stigma by establishing a new site away from the island’s capital. In a rather ironic parallel to the Union’s unilateral shift of responsibilities to Greece, the country therefore decided to build its new structure in the Samian hills about 9 km away from town – out of sight, and out of mind.

## 2.2. The invasion of Ukraine

Where the humanitarian reading of migration patterns following the Arab spring was made difficult by its entangling of flight and voluntary migration, the invasion of Ukraine proved a more forthright case: Following the buildup of military forces along the Russian-Ukrainian border, Putin declared war on Ukraine on February 24<sup>th</sup>, 2022.<sup>21</sup> Much of the West was taken by surprise in spite of the warning signs during prior months, but even this lack of anticipation did not lead to the kind of bewildered response Putin had most likely hoped for. A first round of sanctions<sup>22</sup> targeting the export of software, equipment, and technology was announced the day of the invasion and consensus on the expulsion of certain Russian banks from the international banking system SWIFT was reached within a matter of days. Meanwhile, the war quickly presented its humanitarian toll: within a week a million people had fled Ukraine; by week two it was almost three times that. Many of the country’s borders were ineffective for seeking refuge, with Russia-backed Belarus marking off the Northern border, Russia itself invading from the North East and East, and much of the South of the country bordering the Black Sea, which meant that the majority of people fled westwards. Moldova, lying to the Southwest of the country, was one of the first steps along this route for some but in many cases only as a means of moving to

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<sup>20</sup> Many of the island populations struggled to sustain a migration-positive atmosphere over the past few years. This was arguably most felt when Turkey temporarily suspended the EU-Turkey Deal in early 2020. Both the coast guard as well as (some) local Greeks reportedly attempted to stop boats crossing the Aegean to land on the Greek shores and aid workers were targeted for their support - often believed to incentivize even more people to embark on the cross-border journey.

<sup>21</sup> Putin’s narrative famously painted his invasion as a “special military operation” aimed at Ukraine’s “demilitarisation and denazification” (Osborn & Nikolskaya 2022). However, given the unfoundedness of many of his claims, the invasion effectively constituted an armed conflict and was treated as such by much of the West.

<sup>22</sup> This was a first round of sanctions in the sense of these sanctions relating to the invasion of Ukraine. Many countries had already placed sanctions on Russia beforehand.

Romania. Besides Romania, Slovakia, and Hungary,<sup>23</sup> Poland quickly established itself as the European country taking in the largest number of people. About one and a half hours from Lviv, the largest city in Western Ukraine, the Polish border had recorded 3.7 million crossings by the start of July; with 1.1 million people deciding to remain inside the country while the rest either decided to move to another Schengen member state or eventually embarked on their return.

### 2.2.1. The Temporary Protection Directive

In a rather surprising move, considering its handling of the 2015 influx of refugees, the EU's political apparatus responded quickly: eight days after the start of the invasion, the Council unanimously triggered the Temporary Protection Directive (TPD) to allow for the efficient processing of those arriving from Ukraine. This policy tool, originally brought to life after the Yugoslav Wars, was in its essence aimed at allowing for the straightforward and low-bureaucracy processing of a "mass influx of displaced persons", in this case from Ukraine ("Council Implementing Decision (EU) 2022/382" 2022). When triggered, those covered under its scope do not need to have their claims assessed on an individual basis, but can instead simply claim the status of 'temporary protection' under the TPD's scope. Subsequently, they enjoy the right to a residence permit, access to employment, social welfare, accommodation, education, the right to claim asylum, and the ability to choose where inside the European Union they would like to reside (Directorate-General for Migration and Home Affairs n.d).

For people fleeing the war, the TPD proved vital. Thanks to visa liberalization efforts between the Union and Ukraine a few years prior (European Commission 2017), Ukrainians had already been able to enter the Union for up to 90 days without the need for separate papers. This undoubtedly aided efforts to minimize waiting times on the Ukrainian side of the border.<sup>24</sup> Thereby the TPD ensured chaos would not ensue once people had made it across. Where the situation for refugees arriving to the Aegean islands was marked by long, bureaucratically exhaustive periods of waiting, Ukrainians arriving in Poland were often able to cross and leave the border within a day. The inadvertently harmful ramifications of the Dublin regulation did not apply as processing times were short and persons covered by the TPD were free to choose where they wanted to reside.<sup>25</sup> 2022, it seemed, had finally spurred the Union's political will to care for the displaced.

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<sup>23</sup> It may be surprising that more people fled to Hungary than, for example, Slovakia, given Hungary's historically tough stance on asylum. But given the long waiting times for crossing borders, especially in the early days of the invasion, the fact that Hungary maintains quite a few more border checkpoints with Ukraine than Slovakia may have played an important role.

<sup>24</sup> Despite reports of 35 km long waiting lines at the border immediately after the attack (Komuves & Marshall 2022), efficient border processing procedures played an integral part in ensuring people's access to protection. In the span of just three months, Poland processed 3.7 million border crossings from Ukraine – more than in all of 2020 combined (Statistics Poland 2021, 20).

<sup>25</sup> While Ukrainian refugees' agency to choose their preferred place of residence undoubtedly feels like a step in the right direction, it also bears inherent risks: the uncoordinated approach taken by the TPD could incentivize member states to engage in a reception quality "race to the bottom" where, in an attempt to discourage refugees from coming to their territory, member states artificially lower their standards of protection and support (Dimitriadi & Lehmann 2022). A more thought-through and solidary version of the Dublin regulation could well help plan and deliver adequate levels of protection and support for all arriving; alas its adoption would require the kind of Union-wide buy-in seldom found on any political matter.



### 2.2.2. The two faces of EU policy

While the triggering of the TPD marked a necessary step off the Union’s historic path, it also irrevocably exposed its double standards; and nowhere were these as visible as in Poland. As Lorenzo Tondo, a correspondent for The Guardian, wrote:

*I look on as the soldiers help Ukrainian women and children with their heavy luggage. I watch as they play with the children and caress their faces. As the scene unfolds, I can’t help but think that this is the same border force which, for months, a short distance north, along the same eastern border, has been violently pushing back asylum seekers from Syria, Iraq and Afghanistan who attempt to cross the frontier from Belarus.*

*It is the same border force which, instead of offering a caring touch and a comforting smile, brutally beat the refugees from Aleppo, who are also victims of Vladimir Putin’s bombardments. In Przemysl, the Ukrainians are served hot drinks. At the Belarusian border, at least 19 migrants have died in the frigid forests. (Tondo, 2022)*

While context is important to make sense of the dynamic along the Polish-Belarusian border – we will return to it further below –, it is difficult not to simply consider such differences to be the result of racism and xenophobia. Especially when looking at narratives and language employed to describe and report on the events in Ukraine, the picture seems to become uncomfortably clear: “These people are intelligent, they are educated people. [...] This is not the refugee wave we have been used to, people we were not sure about their identity, people with unclear pasts, who could have been even terrorists [...]”, Bulgarian Prime Minister Kiril Petkov is quoted to have told journalists at the beginning of the invasion (NPR 2022). Similarly, Victor Orbán introduced a somewhat unexpected reversal of Hungarian immigration politics: where in late 2021 he defied a ruling by the European Court of Justice relating to the country’s illegal pushbacks of asylum seekers reaffirming that “We won’t change it and we aren’t going to let anyone in”, Hungary opened its border to people fleeing the war in Ukraine with Orban proclaiming, “We’re letting everyone in”, just a few months later (Spike 2021 and Bathke 2022).<sup>26</sup> News coverage, too, displayed a vast array of controversial remarks regarding the appropriate classification and corresponding heft of the war. Charlie D’Agata, a correspondent for CBS News, explained that Kyiv “isn’t a place, with all due respect, like Iraq or Afghanistan, that has seen conflict raging for decades. This is a relatively civilized, relatively European – I have to choose those words carefully, too – city, one where you wouldn’t expect that, or hope that it’s going to happen” (Bayoumi 2022). Similarly, Lucy Watson, correspondent for ITV, stated: “Now the unthinkable has happened to them. This is not a developing third world nation. This is Europe.” (Ellison & Andrews 2022)

In light of such remarks and the signal sent by the late employment of the TPD, Europe, while undeniably heterogeneous, is left to recognize the superficial motives behind its actions. Somehow, there appears to be the idea that the two major EU-bound movements of refugees the last seven years have seen are fundamentally different and deserve, as such, to be engaged with in different ways. The first one, as seen on Greece’s border with Turkey, pits ‘them’ against ‘us’, and is often set to hinder any attempt of people even reaching the Union’s borders. The second, the result of an unjust invasion of a sovereign

<sup>26</sup> Interestingly, Hungary has since been accused of inflating the numbers of Ukrainian refugees it has admitted to the country in an attempt to request additional EU funding (Wallis 2022).

country, suggests that ‘we’ are all in this together, and is met with a unified display of solidarity and opposition to the exodus’ raison d’être. Even within the TPD itself, this difference manifests itself. Set to cover “Ukrainian nationals residing in Ukraine”, “nationals of third countries other than Ukraine [...] who were benefiting in Ukraine from refugee status or equivalent protection”, and “family members of those persons, where their families were already in, and residing in, Ukraine”, the directive does not simply cover everybody fleeing the war (Council Implementing Decision (EU) 2022/382” 2022). The admission of other groups, including that of people merely “legally residing in Ukraine”, remains a matter of state policy. European member states themselves can decide whether they want to grant TPD to non-Ukrainians who were unlucky enough to have been inside Ukraine at the time of the invasion, or whether they want to direct them towards an alternative, “appropriate procedure”.<sup>27</sup> In practice, this quickly led to a two-class system of people fleeing towards safety. Especially people from African countries residing in Ukraine reported discriminatory treatment at the border and on their way to it (Ovuorie 2022).<sup>28</sup>

Despite these shortcomings, the TPD and the EU’s corresponding proactiveness are a laudable step in the right direction. The TPD equips those fleeing violence in Ukraine with the tools necessary to continue their lives in Europe until an eventual return is possible. Yet, the question remains why it was not triggered when people fled Syria, Afghanistan, and Iraq over the past seven years. It seems that ‘they’ faced reasonably comparable threats to life, and so we ought to ask ourselves on what grounds ‘we’ would differentiate. On the one hand, public discourse around the topic often seems to hinge on ideas of communal identity, suggesting that perhaps Europe simply feels more connected to its Ukrainian neighbors than it does to people from the Middle East. On the other hand, external political factors appear to instrumentalize refugee protection for goals wholly unrelated to it. Still, we may feel that neither idea can be appropriate to explain what we have seen. After all, we would expect the weight of someone’s plea for safety to trump their perceived standing in the society this plea is directed at. Before considering the argument of political identity, we therefore must consider the demands of our modern refugee regime.

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<sup>27</sup> This approach is doubly problematic in that it a) creates hurdles for non-Ukrainians unable to benefit from EU visa liberalization to seek shelter across the border, and b) in that it creates a heterogeneous border policy where people of certain nationalities might only be able to seek protection after having crossed a *specific* border. By incentivizing movement towards specific borders, the regulation could therefore unnecessarily expose third country nationals to additional harm.

<sup>28</sup> Supporting the idea of a two-class system was the way in which some European member states allocated arrival shelter capacity: Where occupancy rates were high, some states decided to make place for Ukrainian refugees by way of relocating and evicting people who had previously arrived from, for example, Afghanistan. See, for example, Glinski 2022.

### 3. The Refugee Regime

#### 3.1. Who is a refugee

##### 3.1.1. The Geneva Convention

Most accounts of modern refugeehood start with the 1951 Geneva Convention. Building onto previous agreements relating to the status of refugees, the recent history of mass displacement following the Second World War, and the threat of looming Cold War,<sup>29</sup> it states that

*the term ‘refugee’ shall apply to any person who: [...] As a result of events occurring before 1 January 1951 and 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. (Convention relating to the Status of Refugees 1954, 1)*

Because the agreement was mostly meant to be understood and implemented in a context-specific manner, the Convention then goes on to elaborate and impose geographical and temporal limitations onto its content: in order for somebody to be considered a refugee, they need to have been displaced as a result of “events occurring in Europe before 1 January 1951”.<sup>30</sup> Although signatory states were given the option to expand the agreement’s remit to cover “Europe or elsewhere”,<sup>31</sup> the scope of the Convention was not intended to govern refugee politics in the decades to come. An additional protocol established in 1967 therefore sought to remove the geographical and temporal limitations allowing the agreement to retain its validity. Together with the original Convention, the prototype of today’s refugee regime was born and its contents ratified by countries around the globe. Incremental changes along the way aimed at addressing some of its gaps and at tailoring it to the specific needs of certain regions, but its central idea remained: refugees were people who had to leave their country owing to a well-founded fear of being persecuted.

##### 3.1.2. The Convention’s shortcomings

As time went on and as conflicts largely different from the context of post-war Europe formed, this understanding faced serious scrutiny. While the definition itself is widely accepted to be the guiding principle behind today’s refugee regime, various issues have emerged challenging its effectiveness and legitimacy. For the purposes of this paper, we will focus on four of them.

Firstly, interpreting the Convention’s explicit list of adequate reasons as to why somebody may fear persecution (“race, religion, nationality, membership of a particular social group or political opinion”) has proven challenging, particularly where there are reasons of persecution that may not have been considered at the time of its conception. In the case of persecution based on sexual orientation and/or gender identity, for example, only the Convention’s reason of “membership of a particular social group” can be interpreted to

<sup>29</sup> Betts & Collier suggest that the convention’s focus on “fear of persecution” is in part owed to the US delegation wanting to avoid repatriation to Communist countries (Betts & Collier 2017, 38).

<sup>30</sup> Emphasis added.

<sup>31</sup> Emphasis added.

apply, which is why protection standards for people belonging to such groups have historically varied. UNHCR (whose remit was also laid out in the 1951 Convention) aimed to fill such gaps with its *Handbook On Procedures And Criteria For Determining Refugee Status And Guidelines On International Protection*.<sup>32</sup> But while it provided guidance on the specific elements of the Convention's definition and their appropriate interpretation, it is of course not a legally binding document in the same way the Convention is.<sup>33</sup>

The second issue is a practical complication in that establishing whether or not somebody has fled their home country "owing to well-founded fear" requires judging the validity of an inherently subjective feeling. Fear itself cannot be objectified and while an analysis of a flight's circumstances may allow us to assess whether it was the result of fear developed on well-founded grounds, those too, are to a large degree subjective. Cultural and societal as well as ultimately personal dispositions play an integral role in why people seek shelter abroad, and, as such, there is an unavoidable interpretive barrier between those lodging asylum claims and those evaluating them.<sup>34</sup>

Thirdly, there is the issue of the term "persecution" itself. If the goal of a refugee regime is to provide shelter to those who need it, then building the evaluation of such need on the matter of persecution tends to be rather restrictive. It implicitly assumes the existence of an actor or entity engaging in persecutory actions which may, in the majority of cases, simply not exist. Considering the case of Ukraine, the arrival of an invading army surely satisfies the condition of persecution,<sup>35</sup> but in the case of civil war the matter becomes more complicated. After all, can anybody or anything be said to persecute in this case? Because the Convention's definition incorporates a fair amount of interpretive ambiguity in this regard, some more localized refugee regimes have attempted to expand their remit: both the 1969 Organization of African Unity's "Convention Governing the Specific Aspects of Refugee Problems in Africa" and the 1984 "Cartagena Declaration on Refugees" built on the Geneva Convention but extended its remit to cases where people are threatened by a serious lack of public order or general safety – persecution

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<sup>32</sup> The handbook has existed since 1979 but for its most recent edition see: UNHCR 2019b.

<sup>33</sup> While the UNHCR Handbook certainly does not enjoy a legal status comparable to that of the 1951 Convention or the 1967 Protocol, it seems to have influenced international case law. Hugo Storey (2012) shows how the Handbook's original version compelled the Canadian Federal Court of Appeal to suggest that a person fleeing civil war – which would not constitute persecution in the strict sense – may well be covered by the Convention if their fear of persecution was individual and not shared by all citizens of their country.

<sup>34</sup> In the case of Greece, where stretched reception capabilities result in long waiting times, this has led to asylum seekers practicing for their interview to ensure the telling of their story is as convincing as it can be.

<sup>35</sup> The condition is met by women and children fleeing persecution (or "threat to life", UNHCR 2019b, 21) through the invading army but the case of men proves more challenging: Storey argues that our sovereign state system granting states the right to defend themselves ultimately also means that "a compulsorily serving soldier cannot show a real risk of persecution simply on the basis that on return he would be exposed to a real risk of being killed – unless there are special circumstances." (Storey 2012, 12). An example of such special circumstances may be Eritrea: as its government forces the majority of its population into conscription, often indefinitely (see, for example, HRW 2019), people managing to flee the country cannot be reasonably returned without facing the risk of persecutory oppression – not necessarily by way of fending off an external aggressor, but by way of the country's leadership trapping them inside the country. The case of Ukraine, however, is unlikely to qualify as such a "special circumstance."

notwithstanding.<sup>36</sup> Even then, however, we can anticipate scenarios where people rely on protection abroad while not being covered by our definitions: the term ‘climate refugee’ quickly unveils itself as legally hollow in light of the Geneva Convention and its broader, regional counterparts. Climate does not persecute, and drought does not lead to a lack of public order (necessarily and by itself), but under the current regime a lack of means to care for oneself does not constitute a sufficient reason to claim asylum.

The fourth and in many ways most consequential part of the definition worth highlighting is the idea that a refugee is a person “outside the country of his nationality.” In order to claim asylum, a person has to leave their home country, cross its borders into a neighboring country, and state their intention to claim asylum once arrived. To a certain extent, as much seems reasonable: if a country cannot provide adequate protection for its citizens, it makes sense that these citizens would go somewhere else to claim their rights. However, it is worth considering that this not only places potentially insurmountable constraints on the most vulnerable of citizens, for example, those who do not have the physical strength or financial means to leave their country, it also renders the matter of asylum an inherently political one. The main reason the EU could absorb millions of Ukrainians in a matter of weeks was that Ukrainians already enjoyed visa-free entry into the Schengen area making the act of border-crossing itself a comparatively easy endeavor. Meanwhile, persons fleeing from countries that do not enjoy the same kind of political relation with the EU have effectively no way of legally entering. In fact, the Union has done much to construct additional hurdles and barriers for such persons, often branding them as ‘illegal’ entries where they manage to cross the border nonetheless.<sup>37</sup> The regime therefore penalizes those most in need of assistance in a twofold sense: it only allows them to claim asylum once they have left their home country as a result of their own efforts, and, in many cases, these efforts are actively hindered or made illegal.<sup>38</sup>

### 3.1.3. An alternative conception

Upon closer inspection, what is generally considered to be the bedrock of today’s refugee regime therefore quickly reveals itself to be rather issue-prone: significant questions in

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<sup>36</sup> The OAU Convention builds on the Geneva Convention by expanding its remit to also cover “every person who [flees], owing to external aggression, occupation, foreign domination, or events seriously disturbing public order”, while the Cartagena Declaration on Refugees does so by defining refugees as “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.” (Storey 2012, 7).

<sup>37</sup> In 2018, the EU Parliament proposed the establishment of a common European humanitarian visa to be applied for “directly, by electronic means or in writing, at any consulate or embassy of the Member States” (European Parliament 2018) in an attempt to address the issue of access. Humanitarian visas as such already existed at the time but responsibility for granting them was left to the individual member states; meaning they were vastly underused (Red Cross EU Office, 2017). However, as the Commission felt that its intended Union Resettlement Framework which “has the potential to [...] increase the overall number of person [sic] in need of international protection admitted by the Member States” (European Commission 2019) proved enough in the way of providing non-Europeans access to its territory, the proposal was not pursued.

<sup>38</sup> In many regards, the question of responsibility for the EU’s current migration regime entails the question of acts and omissions. Did the EU actively make border crossings illegal, or did it merely fail to provide a legal pathway where there was none in the past? Whatever one’s philosophical stance, the fact of the matter remains that much of the current regime is the result of deliberate contemplation in the Union’s favor.

the process of evaluating who counts as a refugee are left to the interpretive discretion of the receiving state. Additionally, the regime fails to provide safeguards for people unable to cross borders legally, but instead provides states with an effective tool to criminalize seeking refuge from countries they hold limited diplomatic relations with. At least in parts such ambiguities have often dominated the public debate and policy making efforts post 2015. The already blurry lines within which a claim to asylum could have been established were rendered even harder to grasp by the fact that not everybody would qualify for even a liberal interpretation of the refugee status. The issue of ‘economic migrants’ effectively tainted the debate in a way that removed all subtlety and quickly steered the conversation away from the needs of those seeking shelter to the rights of those wanting to protect themselves from unwanted and illegal migration. In the case of Ukraine, however, subtleties were unnecessary: everybody inside the country was fleeing from the same war and no debate was to be had about whether they would qualify for the Convention’s definition or not. Even if the Union had wanted to maintain a tighter grip on its immigration numbers, there would have been no way of doing so without seriously violating the principle of *non-refoulement*. Under this, refugees cannot be returned to the country they are fleeing from as this would make it impossible to ensure their protection (Convention relating to the Status of Refugees 1954, 33). While the geography of 2015 allowed the EU to claim that adequate protection could be provided outside its territory, for example, in Turkey, Lebanon, or Jordan, 2022 proved a different case. The only non-European country reachable by Ukrainians was Moldova and it would have been unable to care for all the people fleeing Ukraine by itself.

The question this implicitly raises is whether there are any feasible alternatives to the definition of the Geneva Convention considering how much opportunism its application seems to afford its signatories. To this end, the remarks of David Miller seem promising, suggesting that refugees are “people whose human rights cannot be protected except by moving across a border, whether the reason is state persecution, state incapacity, or prolonged natural disasters.” (Miller 2016, 83)

While this clearly addresses three of the four issues outlined in relation to the definition given by the Geneva Conventions, the specificity for reasons of prosecution, the interpretation of a well-founded fear thereof, and the relevance of the persecution condition altogether, the mention of movement across borders might seem counterintuitive. Does this not introduce the same issue as brought forward against the Geneva Conventions? It does not. Ultimately, Miller’s definition suggests that a state’s primary responsibility is to protect the human rights of its citizens and that where that responsibility is not realized, people may need to cross borders. It does not, however, suggest that people only become refugees once they have actually done so: the *need* of someone to cross a border in order to ensure their rights be protected is enough to qualify as a refugee. Notice, however, that the definition does not specify which border is meant: “people whose human rights cannot be protected except by moving across *a* border”. Following the Geneva Conventions, we may intuitively assume that Miller’s border is one that places the refugee “outside the country of his nationality”, but this is not what the definition suggests. More likely, the border that needs crossing in order for a person to qualify as a refugee under Miller is deliberately left blank in order to lift the qualifying purpose, the protection of human rights, center stage. If a person leaves their country of

nationality in order to seek shelter from human rights violations but finds themselves in a country that cannot provide the necessary protection, a second border crossing may be necessary. In fact, many border crossings may be necessary, and for as long as a border needs to be crossed for the person’s human rights to be protected, they would qualify as a refugee.

What is less clear is what this definition has to say about the status of people who have reached an appropriate country. Miller is a defendant of localized refugee protection where protection efforts are centered on those safe countries that are closest to where refugees are fleeing from. On one reading, his definition could therefore suggest that if somebody has reached a country where their rights are adequately protected, their crossing another border would not automatically qualify them as a refugee in this new country. After all, a subsequent border crossing would not be necessary for the purposes of protection. At the same time, however, this seems to be at odds with his suggested approach to burden sharing: “distributing refugees between states in a way that roughly matches each state’s capacity to receive them” (Miller 2016, 86). If states relocated refugees amongst themselves to more evenly distribute their responsibility towards them, this would clearly require refugees to cross subsequent borders without simultaneously losing their status.

As we have seen, both the acting legal provision as well as more recent philosophical conceptions of what it means to be a refugee contain a certain degree of ambiguity. Ultimately, it seems to be a matter of individual states interpreting what exactly the Convention asks of them in a specific case which may, in turn, be the reason why we tend to see a fair amount of regional discrepancies.

Leaving aside this ambiguity, however, the idea of burden sharing hints at a related issue: enshrining a right to claim asylum, qualified in whatever way, will achieve very little if not upheld by the international community. The years following 2015 have shown the effects of states attempting to rid themselves of their protection onus and it seems unclear how responsibility for the claims of those seeking refuge is actually assigned. The next section therefore explores the state-level incentive structure to care for the displaced.

### 3.2. Why states may care about refugees

While we may be inclined to appeal to states’ sense of responsibility when contemplating their motivation to care for the displaced, reality rarely affords us such optimism.<sup>39</sup> States are entities inherently preoccupied with the care and protection of their own citizens<sup>40</sup> and, as such, tend to find arguments extending their remit to non-citizens less compelling. This section therefore explores two related ideas: that states predominantly care for the

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<sup>39</sup> This is not to say that individual states may not possess this sense of responsibility at all or that it may not influence or even dominate their policies. When trying to rally international support for transnational collaboration to migration challenges, however, the appeal of moral arguments as possible incentives seems, on average, to be rather limited.

<sup>40</sup> Whether or not one wants to support this idea may depend on one’s levels of moral aspiration. A more ambitious stance might suggest that states should not just care for their own citizens, but also consider the opportunities and wellbeing of non-citizens. See Singer & Singer 1988 for an elaboration on the Utilitarian principle of equal consideration of interests in this regard, and Owen 2016 for a reading of “the international refugee regime [...] as a legitimacy-repair mechanism”.

rights of refugees as a means to some other end, and that appealing to some universal, normative standard is unlikely to change that.

### 3.2.1. Proxy morals

The first mechanism incentivizing states to take seriously their commitment to safeguard the human rights of those beyond their borders stems from the nature of the international playing field itself. Because it is marked by extensive cooperation among states and because that cooperation has led to severe interdependence, states have good reasons to agree to a few basic rules of play. On a minimum level, these might include respecting each other's sovereignty and the rights of those they govern; on a more aspirational level, they might regulate cross-border trade or attempt to codify best practices to mitigate global challenges such as, for example, climate change. The Geneva Convention can be seen as part of this rulebook. While rules on this state-state level may lack the kind of enforceability we see in state-citizenship relationships where one party, rightly or wrongly, holds power over the other,<sup>41</sup> their being adhered to can be encouraged in another way. One must only think of Russia's economic isolation after its violation of international law by invading Ukraine, another sovereign country; countries breaking agreed-upon conduct face the looming risk of repercussions from the international community.<sup>42</sup> In the age of hyper-connected interdependence such repercussions can cut deep and therefore, at least *ex negativo*, there exists a natural incentive for compliance: avoiding sanctions.

In a similar vein, there are cases where taking in foreigners may actually be beneficial for host communities. The argument usually goes that especially in economies with limited human capital, or human capital that is inconveniently distributed, strangers could help fill societal gaps, perhaps because they bring with them a certain expertise or readiness to engage in a specific type of work. When considering our refugee regime, however, this idea falls well short of providing a reliable incentive to act. First, win-win cases like this depend on the coinciding of a specific demographic supply and demand, and are therefore the result of luck rather than political intention. While the idea of foreign workers boosting home economies may be the right tool to rally local support for refugee hosting *ex-post*, making it the main reason for which refugeehood is provided to begin with, is unlikely to work. States paradigmatically organize their economies in consideration of the relatively stable number of their constituents and planning for any unforeseeable overhead would not be economically feasible. Secondly, such an argument often comes with a somewhat carelessly employed mixing of refugeehood and migration which, while related, benefit from being viewed as separate issues. We will see how the conversation shifts when viewed through the lens of migration as compared to the lens of refugeehood further down, but, for now, let us say the following: refugeehood is a temporary status that is conceptually set to end with someone's return to their home country; and economic policy adopts a long-

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<sup>41</sup> This is not to say that the international playing field is void of power imbalances, it is merely to say that generally, states engage with one another as equals qua being states.

<sup>42</sup> Arguably, much of the Western response to the invasion of Ukraine was motivated by a commitment to the rights of sovereign nation states and not wanting to give rise to the idea that territorial annexation can be a legitimate political goal of our time - something the West had arguably communicated with its response to Russia's annexation of Crimea in 2014. The imposed sanctions therefore served a dual purpose: punishing Russia's leadership for not respecting international law and sending a signal to other countries that may harbor similar imperial tendencies.



term perspective that needs to assume some degree of rigidity regarding the workforce at its disposal. What tends to happen in such debates is that people are slowly removed from the special category of being refugees and placed into the much broader, divisive, and ultimately more difficult to govern category, of being migrants. Because migration is not subject to the same rules as refugeehood, whether in the political or moral sense, this often results in worse outcomes for those seeking shelter.

What might make us morally hesitant about such an argument then, is that it feels to be the wrong way round: no longer is what is at stake the respect for the inalienable rights of those in need of shelter but the aspirations of those hoping to provide it. The guiding question no longer asks how refugees can be supported in order to lighten their hardship, but how refugees can help us solve our economic issues. This may well be the reason why such arguments highlighting the potential benefits of hosting displaced communities generally only seem to enter the spotlight where skeptics need to be convinced: it is less the planning of the overall regime that these arguments are concerned with, than it is the provision of talking points against the overly restrictive.

Yet, despite the unease such points may cause, it is worth considering why we employ them at all: where (ambitious) moral arguments fail to enact their necessary persuasiveness, we seem to resort to framing the issue through a lens of self-interest. Where our values and convictions are not enough, we appeal to someone’s sense of what they stand to gain by joining our cause. But why would moral arguments for the support of refugees fail in the first place?

### 3.2.2. A duty to rescue

Beyond a fear of repercussions and a hope for potential gain, incentives to respect the rights of those from beyond the border are tied to state-level, moral convictions. These come in various shapes and forms but are likely to include some form of the following: that there exists some form of universal duty to rescue. What exactly this looks like will be subject to further discussion but the idea itself seems uncontroversial enough: where we encounter a person in serious distress, whose safety and wellbeing relies on our interfering, we ought to interfere.<sup>43</sup> How does this tie into refugee politics?

Let us consider the example of a hiker stranded in the wilderness.<sup>44</sup> Far from human settlement, they find themselves in a position without water and are likely going to suffer severe harm if left to their own devices. If I, by chance of hiking in the same region, come across them with water to spare, most people would agree that it is my responsibility to share my water. Practical as the example may be, however, real situations are hardly ever as clear and indeed navigating them becomes more difficult if additional variables are

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<sup>43</sup> A few ways of grounding such a duty are possible. Most commonly, it is suggested that if we assume some form of universal human right to life, such a right can only meaningfully exist if we accept a corresponding duty (or general responsibility we then need to translate into individual duties) to uphold it; after all, to be more than mere lip service, rights must be enforceable. Alternatively, one could also appeal to some notion of shared humanity which makes rescuing those in need a matter of being a virtuous human or hold that one will unlikely be able to avoid a life in contradiction if categorically rejecting the duty of rescue/support they hold towards others.

<sup>44</sup> Many versions of this example, such as Peter Singer’s child inside the shallow pond (Singer 1972), exist. The example of the stranded hiker was taken from David Miller (2016).

introduced. What if, for example, I do not have water to spare because I am equally dehydrated and would face serious risk to my own safety if I shared what little I had left? Most would agree that my duty towards others can only go as far as it does not stand in the way of my own safety and wellbeing. The term marginal utility, borrowed from the realm of economics, plots the resources we invest to engage in morally laudable behavior against the overall outcome we can expect from it. The inconvenience of needing to cut my trip short after having shared my water is negligible compared to the life I save by disregarding my plans. Conversely, if by sharing my water I severely endangered my own safety, for example because the next well is too far to reach on reduced supplies, I may be able to reject my duty towards the hiker.

In the context of refugee policy this idea has often been set in reference to questions of societal homogeneity and economic sustainability. If we hold that the primary objective of a state is to care for its citizens, we have good reason to ensure that our states will survive. The state apparatus needs to retain its position of comparative power over its people and the state's people need to retain their feeling of trust – both towards the state apparatus and their fellow citizens. Societal homogeneity holds that every member of a given society shares the same (or mostly the same) unique beliefs thereby giving rise to some form of shared, macro-level identity; and the concern for economic sustainability typically hinges on the idea that a state economy, including the job market, matters of social security, and welfare programs, tends to respond poorly to sudden and large-scale changes to one of its input parameters. The conclusion therefore is that while there may well be a universal duty to rescue non-citizens, this duty tends to be curtailed by a state's unique ability to realize it. The more strangers a society adopts, the more risk it faces to its communal identity and the systems it runs on. Just like in the example of the stranded hiker who I share my water with, states ought to take in refugees where possible; but if admitting them poses disproportionate risk to the state's own existence and/or wellbeing, it has good reasons to close off its borders. The inevitable follow-up question is whether the EU has actually ever reached said tipping point of marginal utility in regards to its refugee politics, or whether employing the argument allowed it to conveniently hide behind the fact that positive duties are notoriously difficult to define. As we will see, we have strong reasons to believe the latter.

A common point of contention regarding the example of the hiker is the question of whether my duty to share my water with them can be further qualified by the happenstance through which the hiker came to be stranded in the first place. If, for example, they find themselves in need of rescue as the result of their deliberate and repeated actions, we may feel our duty to rescue be subverted. After all, the hiker seems to be somewhat responsible for their own fate when intentionally and recklessly putting their life at risk over and over again. In the context of refugee migration such arguments have regularly been employed when discussing people attempting to cross the Mediterranean by boat. Often relying on unseaworthy vessels, the argument goes that people not only embark on these journeys fully realizing the dangers they might face and the costs that they induce on other states to incite their rescue; it is also suggested that by running rescue operations, more people are incentivized to put their lives at risk in order to reach European shores. Sea rescue, it is argued, acts as a pull factor for people to put their lives at risk, and stopping it would not only reduce the refugee burden on rescuing

states but would also benefit those whose lives are spared from risk in the first place. This view, alongside aforementioned narratives rebranding refugees as irregular or illegal migrants, has often been employed to dispel, or at least sharply reduce, the Union’s duty to rescue. It is, however, highly simplistic. In the first instance, it fails to appreciate the multifaceted nature of what motivates people to embark on an often-dangerous sea-crossing: While sea rescue may well factor into the decision-making, it is unlikely going to be the deciding factor for people to put their lives at risk.<sup>45</sup> In a second instance, it fails to recognize the EU’s responsibility in limiting access to alternatives. With many of the legal ways of crossing from Northern Africa into Europe being closed off for certain nationalities, “desperate journeys” across the Mediterranean Sea may seem to be the only choice for many.<sup>46</sup>

### 3.2.3. Collective action issues

On both, the reading of the Geneva Convention as well as on David Miller’s somewhat broader conception of who constitutes a refugee, the duty to rescue seems to apply. If somebody is fleeing persecution or is otherwise unable to have their human rights protected, we ought to help them where we can. There may be ways of dispelling said duty and we will need to explore further whether the EU had legitimate reasons to do so after 2015, but first, there is another lesson to be learnt from the example of the hiker: the convoluted dynamics of collective action.

Suppose it is not only me encountering the stranded hiker but some third person, bent on adventure, arrives at the scene at the same time. Who is responsible for sharing their water? Leaving aside any qualifying feature that might allow us to define our respective involvement, it is clear that the hiker needs help and that we, as a group, ought to establish how to proceed.<sup>47</sup> For a group of three, this may be easily done, but we can anticipate the difficulties introduced as the group grows. At a certain size, those arriving at the scene may start to feel that there are enough others to take care of the hiker and that they themselves are justified in prioritizing their own safety and wellbeing. Known in social psychology as the bystander effect, it appears that the more people are present to support the hiker, the less responsibility each one of them will feel to help them. To a certain degree, this picture is reminiscent of the events of 2015. Instead of developing a coordinated response, the politics of the time seemed plagued with deflection and efforts to outsource responsibility to others.

In order to overcome such moral gridlocks but remain able to morally ground our responsibility to support people seeking refuge, alternative strands of argumentation have been pursued. For example, instead of conceiving of it as a mostly humanitarian duty to rescue, James Souter suggests that certain cases may allow us to frame the responsibility we hold towards refugees as a “Reparation for Past Injustice” (Souter 201). Where a state’s actions are in some form causally linked to the plight faced by refugees, for instance

<sup>45</sup> See Balbon 2021 for a commentary of why sea rescue is unlikely to be the pull factor it is often said to be.

<sup>46</sup> “Desperate Journeys” is the name of a 2019 UNHCR report on “Refugees and migrants arriving in Europe and at Europe’s borders” (UNHCR 2019c).

<sup>47</sup> Georg Picht put this poignantly as “It is not the subject that sets their task, it is the task that constitutes the subject.” He, however, builds his argument on the concept of responsibility instead of duty (Picht 1967, 208, own translation).

because the state's foreign policy has negatively impacted regional economic stability, that state would have a special obligation towards rectifying the situation. The benefit, Souter argues, is that such arguments of reparation exert much stronger moral-psychological pressure than an often vaguely constructed duty to rescue. Reparation holds greater motivational potential and, *prima facie*, the case of Ukraine may well be seen to support this theory. Especially Germany has driven a rather lenient Russia policy in recent years assuming that Putin could slowly be turned to embrace the ways of the West by merely engaging him in mutual trade.<sup>48</sup> The country greatly benefited from Russia's expansive resource capacities, and so an interpretation of Germany's renewed welcome culture as a mainly shame-inspired act of reparation does not seem too far off. In fact, the country seems to undergo a long-due reckoning in the form of reevaluating its resource-dependency and corresponding foreign policy, especially in light of the 16 years long Merkel era having recently come to a close. Nonetheless, we can anticipate that partly reconceptualizing our refugee regime as "Reparation for Past Injustice" will ultimately do more harm than good. Assuming that states primarily care for their own citizens and are therefore less concerned with those not covered by their remit, repatriation will quickly become another tool in the kit to deflect responsibility towards others. It may well help to provide state-internal motivation but it will do little to support the inter-state process of mutually establishing responsibility for providing refuge. After all, why would a state realize their positive duty to support foreigners if it is generally accepted that another state has a special obligation to do the same?<sup>49</sup>

To summarize, states may, on a theoretical and, at times, practical level, well appreciate their normative duties towards refugees. At the same time, however, the fact that their primary responsibility is with their own has historically meant that they will attempt to shed these duties wherever possible: They may feel that other states are equally (or better) equipped to act on refugees' claims, hold that the cost of support would be disproportionate to its intended outcomes, or attempt to discredit the claims of those in search of protection altogether. All this is exacerbated by the fact that, especially in the EU, states seem to gain legitimacy for such a course of action from the fact that they are unlikely to be the only ones pursuing it.

With this in mind, the final part of this section explores the connection between refugeehood and other forms of migration. We have already seen how people's ability to migrate enables them to legally seek protection abroad and how, in contrast, someone's inability to migrate is used to brand their seeking shelter as illegal. Should we really hold onto the differentiation of refugeehood and migration?

### 3.3. Refugeehood & Migration

Extreme interpretations of the terms may see 'migration' as a movement of people from A to B that is done entirely voluntarily, whereas 'claiming refuge' would entail some form of non-voluntary motivation. Nobody 'wants' to seek shelter abroad, but people may well

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<sup>48</sup> See, for example, Moens 2022 for an elaboration on the EU foreign policy approach of "*Handel durch Wandel*" ("change through trade").

<sup>49</sup> Additionally, there is the issue that this approach may not work in cases where no causally-linked, past injustice can be found, for example in the civil, pre-proxy war phase in Syria.

‘want’ to migrate somewhere else for other purposes. This interpretation by itself, however, is somewhat problematic: firstly, the strictly binary distinction of voluntary and involuntary action perpetuates the idea that people claiming refuge lack the potential for agency. This has, historically, led to a rather paternalistic reading of what it means to deliver adequate humanitarian programs, and has done little to empower the people it aims to support. The camp policy the EU’s refugee regime has resulted in over the past decades has done little to equip its residents with adequate opportunities but has in fact often further manifested a victim narrative silencing the voices of those affected. Secondly, a strong reading of the terms may well continue to foster a black and white narrative of there being ‘real’ refugees and ‘fake’ refugees – some of which deserve our support, and some of which do not. While we, of course, need a way to differentiate and evaluate the claims different people may direct at us, we have already seen how much of this exercise is left up to our interpretive discretion. In many cases, it seems that seeking refuge cannot be lifted from more general forms of migration because of how our refugee regime allocates protection rights. For people whose countries cannot afford them with the kind of diplomatic relations that allow for easy migration, claiming asylum by illegally crossing a border may be the only way in which their rights can be protected.<sup>50</sup> The more we therefore focus on the dichotomy of ‘regular migration’ and ‘seeking refuge’, the more we may lose the necessary semantic sensitivity. Thirdly, by strictly differentiating migration from refugeehood, policy makers obtain a tool with which to artificially curb the number of asylum seekers arriving at their borders. As mentioned before, one of the main reasons why the EU could absorb millions of people fleeing from Ukraine was that Ukrainians already enjoyed visa-free entry into the Schengen area. Conversely, citizens from countries like Syria, Afghanistan, and Iraq must still apply for a visa before being admitted. Whoever is unable to obtain such a visa, either because they fail to meet the outlined requirements or because the situation in their home country means they cannot reach an embassy, can only claim asylum after having entered the Schengen area illegally. For the EU, this provided a convenient way of shifting the conversation away from needing to provide refuge to those arriving, that is, respecting their legally codified rights, to protecting its borders from irregular and illegal immigration.<sup>51</sup>

Another argument often employed against the terms’ strict differentiation is how they both relate to matters of (re)distributive global justice. Seeking refuge may well be seen as a special form of migration but this difference fades if both are viewed to be the result of global inequality. On such arguments, breakdowns of state-citizen relationships are the result of an international system that does not afford its members with equal

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<sup>50</sup> Another way of looking at how migration and seeking refuge are inextricably linked to one another would be to consider long-term correlations between migration rates and a country’s risk of becoming a refugee-producing country. Remittances have grown (mostly consistently) to \$605 billion in 2021 and thereby surpassed foreign direct investment and official aid flows to low- and middle-income countries (Ratha et al. 2022). Perhaps this can help create a kind of transnational equilibrium able to safeguard people’s rights even if they themselves do not migrate. On the basis of the Geneva Convention, this may be a somewhat difficult argument to make - correlations between levels of remittances and levels of persecution seem highly speculative, but it is fairly plausible if we assume that refugees are people who are unable to have their human rights protected such as the “right to an adequate standard of living” (“Universal Declaration of Human Rights” 1948, Art. 25.).

<sup>51</sup> A 2015 analysis of five European countries’ press coverage found that the appearance of “[a]rguments in favour of targeting people smugglers [...] reflected the greater attention paid to the issue by EU policy elites” (Berry et al. 2015, 9).

opportunities. States and peoples suffer because their share of globally available wealth is comparatively small and they consequently struggle to maintain both an adequate standard of living and the societal peace necessary to sustain it. Most Western countries, on the other hand, are said to utilize their hegemonic position to control the flow of people as well as goods and maintain the status quo. Both migration and seeking refuge are therefore seen as two sides of the same coin where Western states abuse their position of comparative power for personal gains at the expense of those unable to defy them.

Whether we choose to follow such trains of thought or not, is ultimately a matter of scope. There is no doubt that questions of refugeehood and migration are inextricably linked and that we cannot really consider the first without also considering the second. However, where the primary goal is to improve the protection of the most vulnerable, we would do well to limit ourselves to considering just the first. As the previous section has shown, states are likely to try to shed their responsibilities towards foreigners wherever possible and expanding the special claims of refugees to the more general matters of migration will do little to make states reconsider.<sup>52</sup> In fact, we have seen how the often dubiously debated link between migration and refugeehood post-2015 has led to more securitization and anti-migration sentiment. What the incentive structure of our current refugee regime leaves us with is a reason to limit our demands to the minimum of what we deem justified. To respect the rights of refugees, as opposed to fighting the global structure of inequality that may have created them, is the kind of minimal, moral commitment one can hardly negate. For this reason, it makes sense to consider refugeehood and migration as distinct, even if this necessitates additional discussions on where to draw the line.

Did the EU then fail to respect even this minimal commitment? This section began by asking whether there was any tangible difference between the people who arrived in Greece in 2015, and those who arrived in Poland in 2022. As we have seen now, this question is somewhat flawed in that it treats both groups as respectively homogeneous. The invasion of Ukraine made for an easy case of why protective measures were necessary because everybody fled the same conflict. But the same argument was difficult to make in the years before: most of those who arrived on Europe's shores did so for similar reasons as those fleeing Ukraine but not all managed to satisfy the conditions that were imposed by our refugee regime. Some qualified for refugee status while others did not. The Union's response, however, did not care for such subtleties, and it is its blanket approach of securing borders to curb *all* migratory flows from specific countries that deserves our criticism. Understandably, the 'crisis' of 2015 did not afford the Union with the time necessary to engage in ground-level debates on the adequacy and effectiveness of the regime it had followed since 1951; but one may have at least hoped for a more differentiated consideration of the claims of those asking for protection.

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<sup>52</sup> 'Vulnerable' as it is used here refers to the general refugee population, but it is worth pointing out that states may use a specific reading of the term to further differentiate. As Paola Pannia points out, "it has been observed that the UK applies the label of 'vulnerable' to refugees in order to [...] target the *most* vulnerable [for its resettlement programs]. [...] However, this may send the message that the general refugee population is either not vulnerable, or else not vulnerable 'enough' to deserve resettlement. Indeed, the approach favours the creation of two categories: the more deserving and the less deserving refugees." (Pannia 2021, 53, emphasis added).

In parts, this section has provided reasons as to why we did not see such a response. However, it is important to consider that explaining a circumstance is not the same as providing its justification. Even though there are many, often systemic reasons as to why responding to protection claims on the international level is unlikely to be straightforward, these reasons hardly justify the plight of the thousands of people left behind. There is no doubt that the Union failed them and instead chose to prioritize itself. What is not yet clear, however, is why it changed course in 2022. Physical proximity likely played an important role in that there was no other country bordering Ukraine that could have been expected to take on the onus of protection. Europe would have undoubtedly suffered immense reputational damage had it chosen to close its borders.<sup>53</sup> But at the same time, there seemed to be another factor at play. A kind of closeness that is not geographical but is built on correlations of culture and spirit. Ukrainians, the public narrative held, were much more akin to the European way of life than people fleeing from other countries before, and because of this they were seen as clearly deserving of the Union’s immediate help. Where the 2010s saw Europe create hurdles and erect barriers, 2022 saw the distance between ‘us’ and ‘them’ shrink to an almost negligible level.

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<sup>53</sup> While ultimately a point of speculation, it is striking how little backlash the EU faced for its handling of the ‘2015 crisis.’ Much of the Western media indeed seemed to support the narrative that it was a crisis for Europe more than it was a crisis for the people seeking shelter.

## 4. Us and Them

The dichotomy of ‘us’ and ‘them’ will mean different things to different people. On a neutral reading, it may allow us to differentiate those seeking shelter from those able to provide it. For a conservative the dichotomy may be the necessary cut-off point through which what is important can be preserved; a separation into distinct communities all best equipped to fend for themselves. The progressive may see in it a construct worth overcoming in an attempt to highlight the superficial nature of our societal categorizations. Some may see in it an invitation to engage in exchange, and yet others may worry about the change that ‘they’ might bring to ‘us’. This breadth of narratives is a reflection of the many roles community can play for human beings and is as such an inherent part of human discourse and the democratic process. What is alarming, however, is the apparent rise of restrictive, conservative, and nationalist sentiments the latter two have experienced in recent years.

One of the most drastic manifestations of this was the UK’s “Vote Leave” campaign running largely on the deliberately ambiguous slogan of “Take back control” (Gietel-Basten 2016). Partially lamenting the transfer of power from the British government to supranational institutions of the EU, partially building on the UK’s struggle with continuously high rates of inward-migration, the campaign ultimately helped sway public opinion towards leaving the EU in the 2016 referendum. Union-controlled migration, so the Leave movement, was not just a threat to the UK’s already precarious infrastructure, but also to the safety of the country as a whole (Vote Leave n.d.). Nigel Farage, for example, then-leader of the UK Independence Party (UKIP), centered part of his campaigning efforts around a poster titled “Breaking point: the EU has failed us all.” depicting a long queue of migrants at the Slovenian border (UKIP 2016). The EU, together with its prospective future members (Albania, Macedonia, Montenegro, Serbia and especially Turkey), was seen as a gateway to ever more migration, in particular from countries whose values, cultures, and prominent religions did not align with that of the UK. “I think perhaps one of the reasons the polls show an increasing level of concern is because people do see a fifth column living within our country, who hate us and want to kill us”, Farage said in an interview the year prior when talking about Muslim immigrants (Mason 2015).<sup>54</sup> These remarks undoubtedly placed him on the far end of the political spectrum and were as such not reflective of the Leave movement as a whole.<sup>55</sup> Nonetheless, they did reflect the underlying societal dispositions political parties could instrumentalize to gain votes and further their own agenda. Campaigners did not need to create fears of an ‘Other’ that, if left unchecked, could inflict serious harm; they simply needed to unearth and foster what had already lain dormant within society at the time.

Germany’s political landscape in the post-2015 era serves as another example in this regard. Faced with the influx of about one million Syrian refugees, the right-wing party *Alternative für Deutschland* (‘Alternative for Germany’ – AfD) managed to convince a

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<sup>54</sup> Mason 2015. Analyzing tweets from the week after the Brexit referendum, Giulia Evolvi found that while “[t]he decision to leave the EU is not directly connected with Islam, [...] many tweets praise Brexit for allegedly stopping the migration of Muslim individuals.” (Taylor 2019).

<sup>55</sup> The official Leave movement distanced itself from UKIP following controversy around the “Breaking Point” poster (Stewart & Mason 2016).



significant share of voters by veiling their anti-migration and anti-Islam rhetoric as a matter of crisis-aversion and cultural protectionism. Founded in response to the 2008 financial crisis, the party originally set out to advocate for the abolition of the Euro and the German emancipation away from the EU (Bitzl & Kurze 2021). However, with anti-Muslim sentiment already being firmly established in Germany at the time, the events of 2015 provided an opportunity to increase their voter base by shifting focus towards migration policy instead. Not only was public infrastructure severely affected by the large number of non-Germans being welcomed into the country, a series of terrorist attacks and assaults in the following years, often linked to individuals from North African and Arab countries as well as individuals pledging allegiance to Islamic extremism, proved to become influential talking points. Slogans such as “To keep Europe from becoming Eurabia – Europeans vote AfD” (Braun 2019), allowed the party to juxtapose the idea of a predominantly Christian occident with that of a dangerous, suppressive, overall backward, and entirely homogeneous orient. Islam had long lost its standing as one of the mere providers of religious comfort, and had instead been framed as an ideology and way of life regimenting its followers’ every move.<sup>56</sup> The AfD had to simply instrumentalize this narrative to gain voter support, and in 2017, it subsequently entered the German federal parliament.

While public discourse often grouped people fleeing North African and Middle Eastern countries into homogenous categories of religion, character, and foul motivation,<sup>57</sup> Ukrainians did not face such narrative obstacles. As pointed out above, their proximity in both geography as well as culture and appearance meant that many, including the media, considered them part of a spiritually extended Europe from the start. This meant not just that underlying racism and islamophobia did not play the same role, it also meant that Europe was less concerned about how to integrate this new wave of refugees. Historically, integration had been seen “as a dynamic, long-term, and continuous two-way process of mutual accommodation”, but as time went on this definition appeared to change (Gropas 2021 84). Countries like the UK and the Netherlands started to place the integration onus increasingly on the person wishing to become part of their society in order to qualify for certain rights and privileges (for example, by requiring them to learn the local language). As the EU did not have the legal authority to adopt a common integration framework, member states “shift[ed] from incentives to integrate to sanctions when requirements were not fulfilled” (Gropas 2021 84). Consequently, under this new narrative, people who were deemed too different from local customs were no longer able to receive the help they needed. As Slovakian ministry spokesman Ivan Netik explained:

*We want to choose people who really want to start a new life in Slovakia. Slovakia as a Christian country can really help Christians from Syria to find [a] new home in Slovakia [...]. In Slovakia we have [a] really tiny community of Muslims. We even don't have mosques. [...] We do not*

<sup>56</sup> See Backhaus 2017 for a comment on how the AfD is instrumentalizing the islamophobia already embedded in German society.

<sup>57</sup> A report by the collaborative project “Transnational solidarity at times of crisis” argues that “in spite of their common role as the best tool for spreading populism— [the media] cannot be held solely responsible for promoting anti-solidarity and anti-refugee feelings, frames, and positions.” In fact, an eight-country analysis of media coverage on solidarity for refugees post 2015 (and before April 2018) revealed that sentiments were, on average, more positive than negative. Despite solidarity being a contested topic in all 8 countries, the UK was the only one in which negative positions outweighed positive ones (TransSol 2018).

*discriminate against any religion, but it would be a false, insincere solidarity if we took people [...] who don't want to live in Slovakia [...]* ("Slovakia says it prefers Christian refugees" 2015)

Netik's remarks illustrate a challenging conundrum: on the one hand, it is a sign of pragmatic realism to be clear on the chances of a foreigner's potential to integrate and to admit the limits of what a society can and cannot provide. On the other hand, building this potential exclusively on the foreigner's character and intentions discharges any responsibility the host society might hold itself. Notwithstanding the fact that choice and preference are difficult matters in refugee migration to begin with, this painting of insurmountable differences between the host and the hosted suggests that there may simply not be anything that can be done for people from a certain background. Instead of a two-way process, integration is turned into a one-way street for those who fit the expectations of the host society, and the host society's expectations are, in turn, largely built on a *pars pro toto* idea of identity. Whether it is a specific nationality, subscription to religious belief, or the means by which somebody attempts their cross-border journey, the 'us' and 'them' narratives of the refugee migration discourse are rarely nuanced. Instead, a single feature is often taken to represent entire communities and ultimately decides who is eligible for support and who is not.

Despite such narratives' potential for harm and lack of factuality, however, they have played an integral role in forming public opinion for migration and refugee policy in recent years. But why are these ideas of communal identity so important to us in the first place? What defines the European identity that appears to be at stake when confronted with an 'other' that does not share its values and customs? And how have these ideas influenced our response to the refugee movement of 2015 as opposed to that of 2022? The following section examines these questions in turn.

#### **4.1. The need for shared identity**

From a humanitarian point of view, state identities getting in the way of people receiving the assistance they need seems utterly unnecessary. Surely, on a level of humans engaging with fellow humans, our differences cannot be so big as to justify the thousands of deaths the Mediterranean Sea has seen in recent years. On such a reading, it is easy to suspect our excessive focus on contrasting 'us' from 'them' to be a mere byproduct of xenophobia and racism. But despite Europe having not reached the end of its postcolonial development path, much can be said in defense of its protection of communal identity. To begin with, communities and their common sense of self are key staples in forming functional societies. The debate gets heated, however, when we ask how rigid these communities must be in order to allow for their survival, or to what extent they can be expanded to accommodate the needs of outsiders. To approach an understanding of why we tend to err on the side of caution in this regard, two steps will be necessary: a first, rather philosophical one, outlining the necessity of identity conceptions and differentiation for human life in general, and a second, more tangible one, asserting the benefit of functional state communities and their necessary reliance on maintaining admission procedures.

#### 4.1.1. A need for difference

As individual humans, we are deeply reliant on a sense of self. Whether purely in connection to our own existence or whether considering our interaction with others, we need identity and identity-based categorization to make sense of the world around us. Very little of our existence, in fact, is the result of purely intrinsic intention, and most of the convictions we hold and values we care for are the result of interactions with fellow humans. The development of our sense of self is more often than not a positioning of ourselves in respect to the people around us and the experiences we have with them than it is the result of isolated contemplation.<sup>58</sup> I may care for certain values because I felt connected to somebody who cared for them before me, or because I was appalled by the lack of care I experienced in a certain situation. For political communities, the same holds true. Especially where they are in conflict, what it means to belong to one nation tends to be set as a mere response to what it does not mean to belong to the other. One nation’s claim to nobility, wisdom, and wealth is tied to and built on another nation’s perceived lack of these same attributes. What it means to be us is inherently tied to what it means to (not) be them.

What is a lot more difficult is building such identities proactively and without reference to an ‘other’. The European Union, arguably, was such an attempt and whether or not it was successful depends on the lens one chooses to look through. On the one hand, it managed to overcome centuries worth of national rivalry by uniting various states around the same goals and values. But on the other hand, the modern EU still very much needs to place itself on the international playing field and does so, more often than not, in contrast to what it is not. Being European often also means opposing Russian imperialism, Chinese socialism, and American libertarianism,<sup>59</sup> and it is precisely through this opposition that Europe’s own values, goals, and principles are usually reinforced.

#### 4.1.2. A need for community

What all of this shows is that contrasting us from them is a common phenomenon. It is an inherent feature of how identities are formed and, as such, not immediately a reason for concern. But at the same time there seems to be a limit to how far contrasting narratives should be allowed to go, and especially where people’s lives are at stake, it feels that this limit is being reached. The next question therefore is how such communal identities affect the formation and survival of political communities as well as to what extent my claim that they are inextricably linked actually holds up.

The basis of such a question is our modern state system including its many distinct political communities. While seemingly arbitrary from a humanitarian point of view, these communities afford their members with a certain set of rights and privileges: the

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<sup>58</sup> On a more fundamental level, our entire sense of self depends on the experience of an ‘other’. A subject needs an ‘other’ whose sole relevant quality is simply that it is not the subject itself in order to direct its epistemic apparatus at something and to be able to perceive. Only then, by means of contrast, can it gain a sense of self. The subject is whatever the things it perceives are not.

<sup>59</sup> A 2020 poll across nine European countries found that support for further European integration was rising in part due to the idea of building “strategic sovereignty” as a counterweight to China and the US (Krastev & Leonard 2020, 3).

right for self-determination, the privilege of participating in a spiritually likeminded community, and the option to establish safety mechanisms against the unpredictability of life. Humans have benefited from cooperation since the dawn of their species, and the emergence of political communities is a type of formal institutionalization of such behavior. But what is often contentious (especially when considering matters of forced migration) is communities' right to maintain admission procedures. Like clubs, states can choose whom to welcome amongst their flock and whom to reject (Walzer 1983, 35ff). In fact, like clubs, states need to choose. Only members with congruent values, beliefs, and dispositions are going to be able to maintain the club's mission and trajectory, and will ensure its overall persistence into the future. But what is even more contentious than the question of whether or not states have the right to select their members are the criteria they use to do so. Broadly speaking, such criteria can be of an either quantitative or qualitative nature.

Quantitative arguments for membership selection are surprisingly straightforward: state institutions are designed to accommodate the needs and wants of a largely stable number of people and any major change to that number is likely going to overburden the system in one way or another. Poland serves as a recent example: having welcomed the majority of people fleeing from Ukraine, the population of Warsaw rose by 15% while the cities of Kraków and Gdańsk saw an increase of 23% and 34% respectively (Wanat 2022). Unsurprisingly, this created immense pressure on the local housing market which had already been strained prior to the invasion (Jackson 2022). Neither local Poles nor newly-arrived Ukrainians were able to find affordable rental units and the local government, meanwhile, saw itself faced with an issue that even the swiftest of policymaking was unable to address immediately. It is admirable that the undoubtedly expected prospect of this did not sway the Union from triggering the TPD. One can see, however, why it is so bent on maintaining strict membership admission procedures everywhere else. The local consequences of a large and unplanned influx of people are immense and unlikely to affect only the housing market: jobs and welfare, too, would face a similar fate and both locals as well as those having arrived only recently would suffer the consequences.

Where the number of arrivals plays less of a role, however, there is also a qualitative argument for membership admission: state institutions need some degree of societal buy-in or acceptance to work effectively, which, in turn, requires a fair degree of trust. Community members need to trust that institutions will function in a manner that can be anticipated and planned for, and that this predictability will not break down on the next occasion. Those in power need to know that their policy efforts can gather significant public support and that, despite an often rich and diverse culture of political opinion, their efforts stand a chance of surpassing the current legislative period. Similarly, those governed benefit from having a general idea of the direction their community is headed in despite the day-to-day political issues that may arise and temporarily take hold of the

public debate.<sup>60</sup> Conversely, the idea of political self-determination seems to dissipate where political identities are missing. To quote David Miller:

*Without citizenship, nationality cannot fulfil the activist idea of a community of people determining its own future; it is at risk of becoming a merely traditional form of association in which received ways of doing things are continued without critical scrutiny. Nationality gives people the common identity that makes it possible for them to conceive of shaping their world together. Citizenship gives them the practical means of doing so. (Miller 1990, 245)*

The need to maintain some degree of demographic and cultural homogeneity for a community’s institutions to function effectively therefore justifies a community’s need to maintain admission procedures. This does not yet tell us anything about the way in which such procedures should be designed in order to be just, but it at least suggests that border protection is not a categorical mistake.

This is especially important in regards to the matter of organizing and providing asylum. One of the more creative solutions proposed to address the many shortcomings of our current refugee regime is that of ‘open borders’. The argument generally goes that instead of holding on to the categories of ‘us’ and ‘them’, instead of protecting our countries’ territories with guards and guns, and instead of generally failing those seeking refuge, the matter could be a lot simpler if we had open borders. If it was not for tightly controlled immigration, people could move across borders without hassle, making it easier (or simply possible in the first place) for the rights of refugees to remain respected and protected.<sup>61</sup> The criticism goes that by holding onto tightly-controlled borders instead, people’s rights are unprotected or outright violated. By considering what it takes to maintain functional political communities, however, we see why states insist on the idea of closed borders nonetheless. Leaving aside the issue of conflicting migration with refugeehood, there are both quantitative and qualitative reasons as to why societies able to provide a safe haven in the first place risk collapse if unable to administer their memberships. This means that, in the worst case, neither host communities nor people in need of protection are any better off than when we have closed borders.<sup>62</sup>

To reiterate, what this shows is a categorical matter more than anything else: the often-employed narrative around sustainable migration, and by extension the sustainable provision of asylum, is reasonable in that there are limits to how many outsiders a community can take in before it runs into trouble. It is another question, however, where exactly this threshold is, and whether the EU was ever at risk of reaching it. Any argument that the ‘2015 crisis’ stretched the quantitative capacities of how many people the Union

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<sup>60</sup> On the other hand, following Benedict Anderson, a state-citizen relationship that cannot produce sufficient levels of mutual trust may become a breeding ground for sub-national sentiment. Where people do not feel part of a bigger whole, what separates them from the rest may become a defining feature of their self-image such as in the case of early European settlers of the Americas emancipating themselves from their transcontinental empires (Anderson 2006, Chapter IV).

<sup>61</sup> While some see in the “open borders” arguments a legitimate political agenda worth pursuing, Joseph Carens suggests it may just serve as a helpful, if currently utopian, thinking exercise: “Even if we must take deeply rooted social arrangements as givens for purposes of immediate action in a particular context, we should never forget about our assessment of their fundamental character.” (Carens 2013, 229).

<sup>62</sup> Michael Walzer poignantly suggests that our need to “make[...] a selection among would-be members” is so strong that a state without borders would simply see the development of more localized, closed-off communities: “To tear down the walls of the state is not [...] to create a world without walls, but rather to create a thousand petty fortresses.” (Walzer 1983, 38f).

can realistically take in has now safely lost its footing after the triggering of the TPD: if millions of people can be accommodated in 2022, the same would have been true in 2015. The only arguments left in the Union's defense are therefore arguments relating to qualitative factors defining how likely those taken in were to be integrated into host communities. To better judge their merit, we therefore need to ask what forms the European identity in the first place.

#### 4.2. Unionized Identity

The roots of modern European identity lie in the post-war desire for sustained continental peace. Conceptualized as an antidote for the hyper-nationalism of the 20th century, European integration was expected to unite rivaling nation states under some form of pan-European umbrella. Over four decades worth of political groundwork, including various treaties, allegiances, and proto-alliances, ultimately culminated in the 1992 Maastricht Treaty and the 2007 Treaty of Lisbon codifying the majority of the European political system of today. Building on the idea that its respective member states are positioned best to cater for their citizens' needs, the Union's foundation attempted to bridge the gap between mostly sovereign nation states and a supranational structure that would allow for gradual, further integration. Initially, this was done through a focus on the economic gains awaiting those ready to surrender a degree of authority, but goals furthering social cohesion and solidarity among member states received greater attention over time.<sup>63</sup>

Measures to support the development of a common European identity started with the establishment of a common European citizenship, the removal of border controls between countries,<sup>64</sup> and the gradual introduction of the Euro as a unified European currency. As I have argued, identity construction inherently depends on a subject's contrasting itself from an 'other' and for the European project to work, this 'other' could no longer be one's neighboring state. Citizenship, currency, and border controls were palpable institutions typically perceived to be prominent differences on the national level and would therefore stand in the way of a pan-European sense of self. By removing them, the 'other' needed for identity formation was suddenly not one's direct neighbor but the blocs and countries lying beyond the Union's frontiers.<sup>65</sup>

Despite what is implied here, however, a communal sense of self relies less on commonly held characteristics than on shared convictions: citizenship, open borders, and a common currency were mere vehicles for the idea that those benefiting from them belong to one another in a non-transitory and non-instrumental way (Miller 1990, 238f.). The European

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<sup>63</sup> See "Treaty On European Union" 1992 vs "Consolidated Version of The Treaty on European Union" 2012.

<sup>64</sup> At the time, plans for consolidated economic efforts may well have trumped the desire for an anti-nationalist, pan-European identity making it a matter of speculation whether specific measures were implemented for gains in economy or in social cohesion. The Schengen agreement establishing the Schengen area was originally signed by Belgium, Germany, France, Luxembourg, and the Netherlands in 1985 and did not necessarily consider the wider European project. As time went on, the spirit of Schengen carried over into the modern EU, however, and the concern for a common European identity started to receive considerably more attention.

<sup>65</sup> Interestingly, the only context in which the 1992 Treaty on the European Union references "identity" is in response to the international field: Article B sets one of the Union's objectives to be "to assert its *identity* on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence" ("Treaty On European Union" 1992, Art. B, emphasis added).

community did not emerge as a direct result of reduced thresholds, but because these reduced thresholds allowed people to develop and adopt shared beliefs about themselves: beliefs about belonging, about loyalty, and about a greater unity that they were now part of. As an “imagined community”, being part of such a common narrative regarding the European project allowed for the development of “horizontal comradeship” across the continent – even though most people would never meet the majority of their fellow community members (Anderson 2016, 7). Specific characteristics necessarily played a secondary role in that a common framework for the culturally diverse European continent could not single out individual traits. What it means to be European needed to be specific enough for people to identify with but general enough for people to not feel excluded. To this end, the declaration of values from the Treaty On the European Union can act as a starting point:

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. (“Consolidated Version of The Treaty on European Union” 2012, 2)*

In theory, these core beliefs are set to be the common denominator amongst member states upon which more regionally-specific identities can be constructed and maintained. In practice, however, the story of their adoption is a different matter. On the one hand, member states have increasingly struggled to rally around such core beliefs and Europe has seen a stark rise in support for right wing narratives with even the rule of law coming under attack in some countries.<sup>66</sup> In a first instance, this poses an obvious risk to the project of a strong European identity in that the institutions intended to safeguard its values are seen to be easily undermined by efforts on the national level. In a second instance, this can also be a chance in that where a state’s people are already subscribed to liberal, democratic ideals, they can turn to their supranational community for support when such ideals are under attack. On the other hand, however, the majority of citizens does not seem to draw a great amount of political identity from the Union in the first place with respective national identities often continuing to exert much stronger force.<sup>67</sup> Because the Union does not intend to be a single federation of states, but, by means of remaining a union, affords its members with a fair degree of self-determination, this is a gap it is unlikely to bridge. Decisions on the national level appear to affect citizens much more than those on the supranational level, and so the national community will likely remain the prevalent narrative.<sup>68</sup>

<sup>66</sup> “In Slovenia, the government withheld funding from the independent Slovenian Press Agency and targeted the financing of nongovernmental organizations as part of a broader effort to silence its critics. In Hungary, the parliament dealt a blow to the rights of LGBT+ people by adopting legislation that bans the portrayal or promotion of homosexuality to minors in media content and schools. [...] The Polish government continued its assault on judicial independence, in part by defying an order from the European Court of Justice to disband a flawed new disciplinary chamber in Poland’s Supreme Court” (Repucci & Slipowitz 2022, 24).

<sup>67</sup> While a 2020 survey carried out in 27 EU Member States found that 64% of the respondents state a high level of agreement with European values, only 30% of them strongly identified with the idea of “being European” (European Union 2021).

<sup>68</sup> Even where supranational regulations have an effect, however, they are usually viewed through a national lens. As Benedict Anderson puts it: “the very conception of the newspaper implies the refraction of even ‘world events’ into a specific imagined world of vernacular readers” (Anderson, 2006, 63).

What this rather minimal reading of the European value basis makes clear, is that there can hardly be *prima facie* grounds on which to exclude foreigners for reasons of character. Unless somebody specifically negates liberal, democratic ideals, the values of the Union are simply too broad and inclusive to allow for exclusion. In fact, arguments to the contrary would quickly run counter to the ideals of “pluralism, non-discrimination, [and] tolerance” (“Consolidated Version of The Treaty on European Union” 2012, 2) – effectively rendering them cases of selective, utilitarian hypocrisy.

What may be said in the Union’s defense is that, while its identity as a collective whole surely is rather minimal, the reality on the regional, state level is not: member states have their own culture, customs, and beliefs that go beyond a mere reference to liberal, democratic ideals, and that may, as such, provide the kind of qualitative factors against which would-be members’ potential for integration can be evaluated. There is a common core to what it means to be Greek, Slovakian, or Dutch, but there are also regional peculiarities that go beyond it. In light of this, the idea of qualitative factors contributing to membership admission seems to become a lot more defensible. Such arguments have in fact been used to suggest that countries may only want to take in refugees who share specific cultural traits, but, in the case of the European collective, they can hardly hold up. At first glance, the argument may be made that too many people unfamiliar with the host community’s values and beliefs pose a threat to its functioning by endangering societal homogeneity; in this case we can point towards Germany for having taken in about a million Syrian refugees who, despite their cultural differences, had no lasting, negative effect on German society.<sup>69</sup> On the second reading, the argument may be made that refugees themselves will have a harder time integrating if their values and beliefs are too distant from those of the host society. But while this can indeed pose issues on the state level, it is important to consider that it does not remove the onus to provide protection to those in need altogether. After all, the EU is not a state. Therefore, the real failing is member states’ being unable to develop a common distribution mechanism safeguarding the rights of refugees while also accounting for their potential for integration. Even if specific member states consider themselves categorically unable to provide refugees with adequate chances to a decent life, the same argument cannot hold for all of the EU. In fact, the earlier mentioned idea of a burden sharing mechanism should be entirely feasible in this case. The bystander effect plaguing the distribution of protection responsibilities on the international level is offset for European member states by way of being accountable to the supranational institutions of the EU. Individual member states cannot shed their responsibility to host refugees completely as they are part of a bigger collective which, as a whole, is well-equipped for the task. It is up to them to reach agreements with other

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<sup>69</sup> While the intake has evidently led to a rise in right-wing sentiment, it has not produced consequences detrimental to the country as a whole, which, in order for the argument to work, would need to be the case.



states that take into account their own preferences while, above all, respecting the entirely manageable demands of those in search of shelter.<sup>70</sup>

What this means is that, while the EU has a right to administer membership in the same way as any other political community, many of the arguments as to why it can limit (or only selectively allow) the taking in of refugees from certain countries will inevitably fail. In the special case of refugeehood, the rights of those seeking shelter are simply too strong to be dismissed by one of the most resourceful political communities of our day and age.

There is, however, a final class of arguments that needs to be examined in order to obtain a full picture: geopolitical pressures. As a political unit, the EU finds itself faced with the power dynamics on the international playing field and is as such exposed to varying foreign interests. For both the influx of refugees in 2015 as well as the triggering of the TPD this plays a vital role.

### 4.3. Geopolitical authenticity

To better understand the geopolitical extent of the EU’s refugee politics in recent years, two factors that have only been mentioned in passing so far need to be examined: geography and scope. How do they affect our reading of the Union’s actions?

#### 4.3.1. Geography

Building on the earlier question of whether those having reached a safe haven should be able to claim asylum elsewhere, let us consider the geographical limitations of somebody forced to flee their home. In the case of Ukraine, the country’s borders with Russia and Belarus (as well as the Black Sea to the South) meant that directions of travel were severely limited with merely the West and South of the country remaining. Realistically, there were only a few countries people fleeing the invasion could turn to, which put these countries into a significant position of power and responsibility. Denying entry to those arriving would not only have been a violation of the Geneva Convention, it would have also jeopardized their health and safety by being sent back to a country descending into war. As a minimal provision against being locked into a territory one sees itself threatened in, the Convention therefore places significant obligations on those whose borders need to be crossed in order to reach safety. For Ukrainians these were the countries of Moldova, and the Eastern European states of Poland, Slovakia, Hungary, and Romania. For people fleeing Syria, it was Lebanon, Jordan, and Turkey. What is less clear, however, is what scope these obligations take when people traverse through countries offering sufficient protection in order to claim asylum in another country. Are the obligations on the receiving state the same in both cases? Siding with the idea of the EU-Turkey deal, we may for example hold that while Syrians needed to cross the border to Turkey in order for their

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<sup>70</sup> The attribution of responsibilities between the supranational body and its member states is further complicated by the often-cumbersome political process the Union is built around. Factors like consensus voting inside the Council yield immense power to the individual state thereby further amplifying regional differences into the political process. The point is, however, that the responsibility to respect and safeguard the rights of those in need of protection is a given that cannot be negotiated. In cases where the EU is in fact responsible for supporting displaced communities, the challenges along the way do not justify its failing to do so.

rights to be protected, the same cannot be said for their crossing into Greece. Turkey is generally considered a safe country, and so the reasons as to why somebody may have fled Syria would not apply there. For most, there is unlikely going to be a “well-founded fear of being persecuted” (“Convention relating to the Status of Refugees” 1954, 1) inside Turkey which would reduce the heft of claims to asylum in Greece.

This phenomenon of asylum seekers’ ‘secondary’ or ‘irregular’ movement from a country they could have already enjoyed protection in is, in fact, subject to much debate. From the point of view of those providing asylum, multiple applications being lodged in different places will likely introduce unnecessary costs and inefficiencies which may, in turn, spark public backlash against refugee-supportive policies (UNHCR 2015, 1). But from an asylum-seekers point of view, onward movement may be necessary because of “limits on [the] availability and standards of protection, such as restricted access to humanitarian assistance or other means of survival; family separation; obstacles to the means of securing documentation; and [...] barriers to access to legal and administrative processes” (UNHCR 2015, 2). To make matters worse, the Geneva Convention offers little in terms of guidance on the matter. The basic provision in the form of the principle of *non-refoulement* holds that asylum-seekers cannot be returned to countries where they face a well-founded fear of persecution, but does not take into account any of the well-justified reasons for onward movement that may go beyond that. The Convention recognizes that some countries may end up facing a larger protection burden than others, but makes it a matter of mere intent to organize cross-country support in the form of international cooperation.<sup>71</sup> Following the lack of more specific provisions, UNHCR therefore concluded in 1975 that “asylum should not be refused solely on the ground that it could be sought from another State” and that “[t]he intentions of the asylum-seeker as regards the country in which he [or she] wishes to request asylum should as far as possible be taken into account” (UNHCR 2017, 34). However, while the UNHCR is certainly considered a reputable voice, its remarks are not legally binding. Instead, our refugee regime comprises the Geneva Convention and its protocol which act as the legal baseline against which further provisions can be measured, but which are, by nature of being an international baseline, rather minimal in their extent.

In light of this, the controversy around the EU-Turkey deal becomes clear: on the one hand, it fails to respect the needs and desires of individual asylum seekers by providing a blanket policy of returning everybody who traveled from Turkey to the Aegean islands irregularly. On the other hand, it is an at least semi-functional example of international cooperation responding to a mass-influx of asylum seekers. But despite the EU’s financial support for Syrian refugees in Turkey, Jordan, and Lebanon painting the picture of a Union concerned for the greater public, considering the EU-Turkey deal a mere attempt at international cooperation seems rather generous. After all, the deal was announced after the arrival of thousands of Syrian refugees to Germany had started to sway public opinion to the right. Initially, the German leadership was ready to allow for secondary movement but swiftly changed its mind as a result of gradually developing public backlash. As such,

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<sup>71</sup> “The HIGH CONTRACTING PARTIES, [...] CONSIDERING that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation [...] HAVE AGREED as follows”. (“Convention relating to the Status of Refugees” 1954, Preamble).

the deal seemed to be a mitigation strategy for internal matters more than a plan to address the needs of millions of people involuntarily stranded in Turkey.

What it illustrates, however, is the way in which geography can shape the political options states find at their disposal when responding to international challenges. While the EU also supported Moldova with funds allocated for humanitarian purposes, a deal comparable to that struck with Turkey would not have been feasible. As the country could not have been the sole receptor for people fleeing Ukraine, the EU was left with no choice but to keep its doors open. For people fleeing from Syria, Afghanistan, and Iraq, on the other hand, the EU’s geography allowed it to appeal to ideals of international burden sharing. This way, it could hold onto its goal of further border securitization by encouraging and supporting the hosting and protection of refugees elsewhere.<sup>72</sup>

#### 4.3.2. Geopolitical scope

Building onto the geographical extent of both movements is the second factor routinely used to make sense of the Union’s response: geopolitical scope. In a first sense, this played a role in the post-2015 era when concerns for the political ramifications of a seemingly ever-increasing number of new arrivals were used to justify restrictive policies; and in a second sense, it played a role in the response of 2022, where taking in people in-flight was as much humanitarian action as it was taking a political stance against Russian imperialism.

Despite the Union’s efforts to disguise much of its foreign politics as charitable benevolence, the post-2015 era seemed to be marked by fear more than by compassion. Building on the idea that every (political) community has a natural limit to the number of outsiders it can take in, the plethora of people and nationalities arriving at the Union’s borders seemed to create an atmosphere of angst. For a while, reported numbers of those arriving seemed to only increase and the mixture of people searching for protection and people searching for better opportunities slowly dismantled public support for a European culture that presented itself as all too welcoming. If not stopped, some feared, there would be no telling how large the number could get; and the protection of those in serious need was considered to be guaranteed in Turkey either way. The EU-Turkey deal therefore pursued a twofold goal: on the one hand, it was a practical step towards limiting the number of those laying claims to admission; on the other hand, it was a signal to deter people further away from considering the journey to the Union in the first place.

Europe’s fears were not lost on its neighbors, however. Even before Turkey was promised financial compensation and political concessions in exchange for its tighter grip on border controls, it had already found itself enjoying significant bargaining power over the EU (“Turkey’s Erdogan threatened to flood Europe with migrants” 2016). Europe did not want refugees and migrants to arrive on its shores and its plea to enlist Turkey’s help in

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<sup>72</sup> How well this worked is, of course, another question. One could argue that even generous geography and humanitarian programs abroad cannot absolve the Union from its responsibility for people enjoying insufficient levels of protection elsewhere. However, even then, the argument would hold that the EU has two ways of responding: either increasing the number of people it admits to its territory, or increasing the scope of its humanitarian programs under some mechanism of international burden sharing.

managing the recent influx was testament to how desperate it had become. Turkey had inadvertently gained leverage and its president Recep Tayyip Erdoğan did not intend to let it go unused. Ultimately, and after years of threatening to do so, Turkey (temporarily) opened its borders with Greece in early 2020. Suggesting that the EU had failed to meet the country's demands originally agreed-upon in their 2016 deal,<sup>73</sup> this meant that whoever wanted to cross from Turkey into Greece would no longer be stopped from doing so. The display of force quickly showed effects with the Union bolstering Greece as a "shield" (Rankin 2020) from the unwanted influx and entering into diplomatic negotiations with Erdoğan. But, despite the Union's best efforts, a precedent had already been set. One and a half years later, Belarus implemented a similar strategy supporting transfers of refugees and migrants to its border with the EU (Rankin 2021). This time, however, instead of cooperation, the EU opted to impose sanctions, with Poland doing everything in its power to keep its border shut. As a result of the incident, at least 22 people lost their lives (IOM 2022). Whether the EU's fears of out-of-control immigration to its territory are justified or not, its larger fear of losing control over managing its borders, even for humanitarian purposes, arguably is. Belarus' instrumentalization of migration for personal gains in 2021 posed a horrible dilemma: following humanitarian reason, the EU would have done well to assess the claims of those at its borders but would thereby have inadvertently run the risk of creating a new migration route via Belarus.<sup>74</sup> But to avoid a repetition of the events from the Greek-Turkish border, it was necessary to instrumentalize the people already at the Belarussian border for a cause they did not ask to be a part of by denying them entry and support. At the time, Poland's Prime Minister Mateusz Morawiecki spoke of Belarus waging a "hybrid war" against the EU where "migrants are weapons" ("Poland: Belarus crisis" 2021). While this narrative certainly does well to disguise the Union's own failures in regards to its migration policies, it illustrates the way in which matters of migration can be affected by political factors only partially related to it.

The idea of migration taking on further political meaning became even clearer in the aftermath of Putin's invasion of Ukraine. From the start, analysts suggested that while the invasion was *prima facie* an aggression against a single, sovereign state, it was impossible not to see it as more than that: a blow against the concept of sovereignty as such, a negation of liberal democratic ideals, or even a full-on war against the West. The EU, too, concluded that Putin's actions ultimately sought "to undermine European and global security and stability" ("Council Implementing Decision (EU) 2022/382" 2022) and was quick to take collective action by triggering the TPD and introducing multiple rounds of sanctions against the Russian regime and its supporters. How exactly the EU overcame its decision fatigue to allow for its swift response has been subject of much debate but arguments generally seem to fall into two categories: either there is a spirit of kinship between the EU and Ukraine where support is a matter of almost expected solidarity; or the EU merely

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<sup>74</sup> The reason a new migration route via Belarus was worth avoiding rests on the assumption that not everybody *en route* would have qualified for admission to the Union's territory. All those denied would have been returned to a country that was already deeply divided over the status of refugees and migrants which may in turn have caused the displaced more harm long-term. This is, however, not to excuse the EU's failure to open up alternative migratory pathways such as a decentralized approach involving humanitarian visas available at embassies outside the Union.

opposes Russian (foreign) politics and sees in its support for Ukraine a way of taking a stance and protecting itself. While the answer will arguably lie somewhere in between, both strands of argumentation fit the idea of identity-inspired action that I have elaborated above. If Europeans feel that the Ukrainian people, culture, and values are comparable with their own, there may well exist a sense of transnational group identity. In this way, the weight of any political difference between the Union and Ukraine is reduced by the spiritual similarity that exists. Granting asylum (or Temporary Protection) is still a matter of admitting foreigners, but compared to other nationalities, their being foreign feels like a formality more than a divisive feature. Even if prior to the invasion this group identity did not exist, the presence of an external actor against which both the EU and Ukraine position themselves collectively has surely helped create it. Putin seemed to anticipate an international response struggling to find common ground, but inadvertently caused the opposite when starting his invasion: a set of states united against his imperial politics. Where previous years saw member states shift responsibility and blame to one another, 2022 saw them unite against Putin as the common enemy. In this sense, the EU's support for Ukraine may be the consequence of geopolitical calculation more than the expression of intrinsic compassion, albeit with the same result. Solidarity would then not stem from the good character of the Union but be a mere byproduct of effectively aligning interests. Especially considering the possibility of Russian imperialism aiming beyond Ukraine, the protection of (and support for) Ukrainians could then be seen as a mere byproduct of mitigating European security concerns.

As mentioned, the reality is probably to be found somewhere between both poles. The continent of Europe did unite against Russian aggression, but it certainly helped that the character of those involved was already somewhat alike. Beyond that, it is a matter of speculation to decipher to what extent the EU is acting on a sense of ‘shared self’ extending across the border to its Ukrainian neighbor, or whether its acts of solidarity are purely coinciding with its wider geopolitical goals. What is clear, however, is that the situation of 2015 did not provide similar kinds of geopolitical incentives that could have bridged the evident gaps in solidarity.

As with the majority of this paper, the argument here is not to justify the Union's rationale or behavior. If anything, my remarks thus far have aimed at providing a descriptive analysis of the reasoning the EU currently employs when admitting the displaced. Only once we appreciate the subtleties and difficulties going into political processes such as the fortification of the post-2015 era or the triggering of the TPD, can we begin to position ourselves towards them. Do we agree? Are the explanations enough to ameliorate our discontent? Where do we go from here? While this paper certainly cannot answer all of these questions exhaustively, the following and final section will provide an outline of what a way forward might look like.

## 5. Considering the road ahead

It is the great irony of liberal democracy to see those one wholeheartedly disagrees with having their voice be heard: ‘Where do we go from here?’ is at least a challenging question considering that there may not actually be a ‘we’ to act. While the majority of this paper argued that the dichotomy of ‘us’ and ‘them’ lies somewhere between the EU and its opposing countries on the international field, exploring the Union’s ambiguous relationship with refugeehood has exposed similar narratives within itself. Rarely could the union of states be seen to act in full accordance and even where it tried to, the authority of its respective member states often remained the more powerful force. A fair degree of optimism is therefore needed when contemplating changes to the Union’s refugee regime, and, as recent history has shown, it is not clear whether such optimism is actually appropriate.

This final chapter will consequently do three things: summarize what to make of the comparative approach we have taken thus far, outline what changes to the refugee regime would significantly improve its efficacy, and consider more localized solutions for where such proposed changes are unlikely to bear fruit.

### 5.1. Learning from the past

This paper began with the observation that the EU’s asylum politics can hardly be considered consistent: after years of border securitization and growing right-wing narratives, the uniform political will with which the invasion of Ukraine was met seemed to not just surprise the Russian regime but also exceeded expectations one might have developed following a humanitarian perspective on recent years. The ‘2015 crisis’ had painted a picture of migration being a threat to not just host societies but ultimately also to the lives of many of those embarking on their journey towards ‘Fortress Europe’. Building on narratives centered around illegal migration, it seemed unlikely for the Union to ever change course. And when it did in 2022, this prompted questions: What had changed? Were there fundamental differences between the two movements of people?

Despite valid criticisms, there are a few possible arguments as to why the EU’s actions may not be as inconsistent as they *prima facie* appear to be. To begin with – and leaving aside moral expectations and aspirations – the legal framework governing refugeehood is by design rather minimal. As consent is difficult to obtain on a global scale, provisions we may want others to adopt need to retain their fundamental form in order not to be dismissed as excessive. In this case, this led to a rather narrow conception of what it means to be a refugee as well as very little protocol for how the international community would establish potential humanitarian cooperation. Because individual political communities are, at their core, responsible for their own members, a game of standing by and shifting responsibility to others has consequently ensued.

In the 2010s, such a shift saw the EU (eventually) bolster reception capacities of countries like Turkey, Lebanon, and Jordan, while at the same time fortifying its own borders by

reducing the ways in which people could cross them.<sup>75</sup> The EU was after all not a direct neighbor of those seeking shelter, and so it could hide behind the fact that others had a *prima facie* larger responsibility to provide the necessary protection. Conveniently, and as time went on, it was not just refugees arriving at its doorsteps but also people migrating for other reasons as well as people who, one way or the other, were helped by smugglers along their ways. This allowed for the narrative to slowly move away from the EU needing to establish a plan to support refugees, to needing to defend itself from a spiraling number of people with no claim to its territory or support: no longer was the EU failing its humanitarian duties, it was now protecting itself and protecting the displaced by cracking down on illegal migration.<sup>76</sup>

Generally, the Union enjoys the same right to administer membership as every other political community. There are good reasons as to why a community may want or need to impose criteria in regard to how many and which people it can admit to its territory, but many of the arguments regularly employed to justify the Union’s stance against people fleeing from countries other than Ukraine are flawed. Firstly, the prominent fear of too many people arriving, lodging claims against the EU, and subsequently overburdening its systems seems to be largely void in light of the millions of Ukrainians the Union was able to admit in 2022. Secondly, cultural arguments pertaining to difficulties in integrating foreign nationals, while certainly not baseless, need to account for the roughly one million Syrian refugees having found shelter in Germany without causing large-scale repercussions.

The only argument that may bear some weight is that of opposing international extortion. Arguably, the artificially induced border incidents between the EU and Turkey as well as the EU and Belarus could have easily set the wrong precedent if the Union had presented itself as too lenient on its border protocols. Even then, however, it is worth considering that the only reason the EU could be pressured like this was its prominent fear of migration and consequent anti-migration stance. Had there been alternative pathways for people to legally seek shelter or apply for visas within the EU, Belarus and Turkey may not have enjoyed the same kind of leverage. Conversely, it might have hampered their plans of utilizing migration as a means of pressuring the EU into taking certain actions.

In the end, one of the Union’s biggest failures may have well been that it did not manage to develop a functional asylum framework that all of its members are subscribed to. Provisions such as the Dublin regulation have done little but increase tensions among member states by disproportionately shifting admission responsibility onto those unlucky enough to be located along the border. Even where attempts were made, such as with the Common European Asylum System, those too did not seem to enjoy the necessary support or create the necessary homogeneity regarding standardized reception procedures (Beirens 2018). But is there a way to turn things around?

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<sup>75</sup> Partially, this was done through physical means on European soil (for example, through the erection of border fences), partially it happened through agreements with other countries taking on border protection for the EU (Jakob & Schlindwein 2017).

<sup>76</sup> While the topic of smugglers in this context is complex, it is worth pointing out that even search and rescue activities have been at risk of becoming criminalized as has become evident through the case of Sarah Mardini and Seán Binder who may face up to 25 years in prison for their time volunteering in a search and rescue capacity on Lesbos (Amnesty International 2021).

## 5.2. The unlikely ideal

When it comes to the EU, collective responsibility is a double-edged sword. It is safe to say that the Union had a responsibility towards those asking for admission to its territory and it is equally safe to say that it failed to adequately realize it. What is more difficult to grasp, however, is how this abstract responsibility we see with the EU as a whole translates into individual institutions and actors making decisions. It is not just that the EU as a supranational conglomerate is inherently complex comprising a multi-dimensional array of sub-entities; it is also rather loosely constructed by design. There are legal agreements codifying much of its inner workings but its member states ultimately retain a fair degree of self-sufficiency and local authority. There may well be areas where local power is transferred in favor of a common, supranational approach, but those areas have naturally grown out of multilateral consensus – something that does not seem to exist for the realm of migration. Many of the collective action issues we observe within the international sphere therefore also seem to apply when it comes to the EU and its supranational setup. This does not rid it of its responsibilities, but it suggests that caution is advised when contemplating the kinds of policy efforts we can expect it to consider or implement within a reasonable amount of time.

That said, addressing the EU's ambiguous relationship with refugeehood would likely start with a revision of the wider regime governing our modern understanding of what it means to be a refugee. For reasons outlined above, I believe seeking asylum should be differentiated from other forms of migration, but the way in which this is currently done does not seem satisfactory. In fact, it appears that the debate around who qualifies for the special category of 'asylum' seems to have directly impacted public support for the matter altogether. A revised definition would not only consider the many faces of global inequality and suffering we already know today, it would also pave the way for a future that is likely going to see ever higher numbers of people seeking the grounds on which they can build their lives. With climate change well on its way to destroy much of human habitat in the coming decades, it is unlikely that our current understanding of who deserves international protection is going to be appropriate.

Connected to this would then be the hope for increased awareness of the collectively international scope asylum needs to take. While it tends to be individual countries facing the onus of protecting those whose states have failed them, cross-country collaboration bears significant potential. Not only is it the only way to ensure adequate levels of protection (especially where the number of asylum seekers is high), it would also significantly reduce the asylum burden on individual states. Instead of every country fending for itself hoping for the natural lottery of geography and regional unrest to spare it, a collective approach would engage each one of them in an equitable and minimal way. Those unlikely to receive many asylum requests would support the common cause financially, while those with territories to which refugees arrive would use the common pool of money to bolster their reception capacities (Betts & Collier 2017 207f). Additional



systems of relocation could be implemented,<sup>77</sup> but the main point is that every country would need to contribute.

Considering, however, that even the modestly numbered members of the EU could not gather around the same table to develop a common and effective asylum system, the hope for a substantial rework of our global refugee regime seems rather utopian. Instead, perhaps we ought to take for granted the collective action problems plaguing international cooperation and incorporate them into any future approach we might want to advocate for.

### 5.3. The likely compromise

When tackling modern asylum policy, there is reason to doubt the EU will take a leading role considering the intra-European hurdles and roadblocks it has faced in recent years. Individual member states retained a large degree of border authority, and so tangible suggestions as to how our refugee regime can be improved would do well to take into consideration the EU’s limited, homogeneous political will. Instead of a common response, it will likely be up to individual states to shoulder their respective share of asylum requests, and, as such, local political agendas will define local levels of protection and support. To address this, a revised approach would likely need to provide incentives for states primarily concerned with their own well-being. A helpful narrative would stress that providing refuge does not need to be a zero-sum endeavor but can in fact be an opportunity for those seeking shelter as well as for those providing it.<sup>78</sup>

Jordan can act as a good example in this regard. With 6% of its population being Syrian refugees,<sup>79</sup> the country has faced significant challenges in recent years. The economics of providing ongoing protection for a large number of foreigners have meant that outside investment was a key factor in not only increasing the country’s reception capacity but also in maintaining its economy for local Jordanians.<sup>80</sup> Through the ‘Jordan Compact’, Jordan, the World Bank and the EU agreed to a series of principles marrying traditional humanitarian approaches with a more long-term development vision. Jordan was to open its labor market to 200,000 Syrian refugees by issuing the appropriate work permits and in return it was promised \$700 million in annual grants as well as \$1.9 billion in concessional loans. Additionally, the EU agreed to relax trade regulations in an attempt to bolster exports from Jordan and incentivize investments into the Jordanian economy (Barbelet et al. 2018). With this agreement, all parties stood to gain something from cooperating on the matter of providing shelter for people fleeing Syria, and,

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<sup>77</sup> Some authors argue that tradable admission quotas could ensure adequate protection levels at minimum costs (for example, Dustmann et al. 2017, 532).

<sup>78</sup> As outlined in Chapter II, there are certain challenges with and arguments against an approach building incentives to care for the displaced on the self-centered interests of individual states. But despite these, approaches like the ‘Jordan Compact’, provide a promising alternative to the refugee protection approaches of recent decades by combining the interests of multiple stakeholders.

<sup>79</sup> See Appendix I. It is worth pointing out that the 6% comprises only registered Syrians and that the actual number has been estimated to be around 1,380,000 (UNHCR 2019).

<sup>80</sup> The relationship between Jordanians and Syrians is of course complex, but it seems that “a passive acceptance has endured partly because of longstanding kinship ties that predate the conflict” (Betts et al. 2017, 12). This means that while Syrians might be blamed for economic challenges inside the country, violence seems to be rare and Jordanians seem to generally tolerate the presence of their Syrian neighbours.

unsurprisingly, it was a mere matter of months for the Compact to reach its final agreed-upon form. Syrians benefitted from better levels of protection and access to the Jordanian labor market, Jordanians could hope for long term economic growth by attracting foreign investment and utilizing the Syrian labor force, and the EU stood to benefit from cheaper goods produced in a country whose cost of labor was significantly lower than its own.

What this ultimately suggests is that advocating for changes to the way we handle asylum may require a thorough change in mindset. While a human rights centered narrative is what has informed policymaking for decades, the inherent ambiguity of the refugee regime itself as well as the geopolitical context influencing its application have failed to produce sufficient results. The triggering of the TPD in 2022 was a welcome step off the EU's historic path but, as we have seen, it may well have been the result of two related factors: A lack of alternative migratory routes meant that the EU had a special obligation towards people fleeing Ukraine, and, coincidentally, their support happened to align with its geopolitical goals. It is highly unlikely, however, that the majority of future streams of refugees will benefit from a similar incentive structure which is why agreements like the Jordan Compact are so promising. Here, appropriate asylum provisions are not the result of individual states' interpretation of their respective responsibilities but can build on the collaboration of states incentivized by their natural tendency to prioritize gains for their own people. We may be morally apprehensive to reframe humanitarian duties as opportunities for personal gain, but if a simple change in narrative can rally greater support and engagement, it may well be worth the bitter aftertaste.

#### 5.4. Conclusion

Why was the TPD not triggered in 2015? In the end, it seems that the EU lacked the necessary political will and dexterity. 'Us' and 'them' categorizations are an inherent feature of navigating the human social fabric and even a union of states built on inclusivity and respect is not immune to their effect. Whether justified or not, the topic of migration continues to exert strong emotions, which, in turn, make it difficult to find wider societal consensus on how to approach the matter of arranging a common, dignified asylum system. As a predominantly economic project, the EU may simply not enjoy the necessary societal buy-in for large numbers of foreigners to be admitted where their protection can, in theory, be arranged elsewhere. Both intra-European dynamics among member states, as well as the perceived differences between Europeans and non-Europeans seem to have played a role in how the EU responded to each movement.

For the future, one can hope for more political agility on the supranational level. Perhaps the inevitable migratory ramifications of climate change will do what the Russian regime has done to Europe in 2022 and be the defining force against which individual states manage to unite. Like migration, climate change, too, can only be tackled through widespread consensus and extensive collaboration, but, unlike migration, its effects will become evident on a global scale. Even within Europe, the effects on coastal cities such as Amsterdam will be felt in the coming decades and perhaps give rise to a change of heart when it comes to what it means to seek shelter in a country that is not one's own.

Where this is not the case, however, individual, multilateral agreements on the basis of the 'Compact Model' seem to be a promising alternative. As cooperation within the

international sphere is inherently difficult, appealing to individual states' sense of opportunity may help bridge the gap between principle and action.

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## 7. Annex

### 7.1. Syrian Refugees Abroad

	Country of asylum	Refugees Under UNHCR's mandate	Asylum - seekers	Combined Total	Country population	Percentage Refugees & Asylum-Seekers vs. Country Population	Ranked By Percentage
1	Turkey	3641370	0	3641370	84,339,067	4.32%	3
2	Lebanon	865300	0	865300	6,825,445	12.68%	1
3	Jordan	662790	0	662790	10,203,134	6.50%	2
4	Germany	605338	37219	642557	83,783,942	0.77%	5
5	Iraq	242163	0	242163	40,222,493	0.60%	7
6	Egypt	130577	0	130577	102,334,404	0.13%	10
7	Sweden	114609	1544	116153	10,099,265	1.15%	4
8	Sudan	93498	0	93498	43,849,260	0.21%	9
9	Austria	54903	2820	57723	9,006,398	0.64%	6
10	Greece	36448	5965	42413	10,423,054	0.41%	8

Countries with the highest number of registered Syrian refugees in 2020

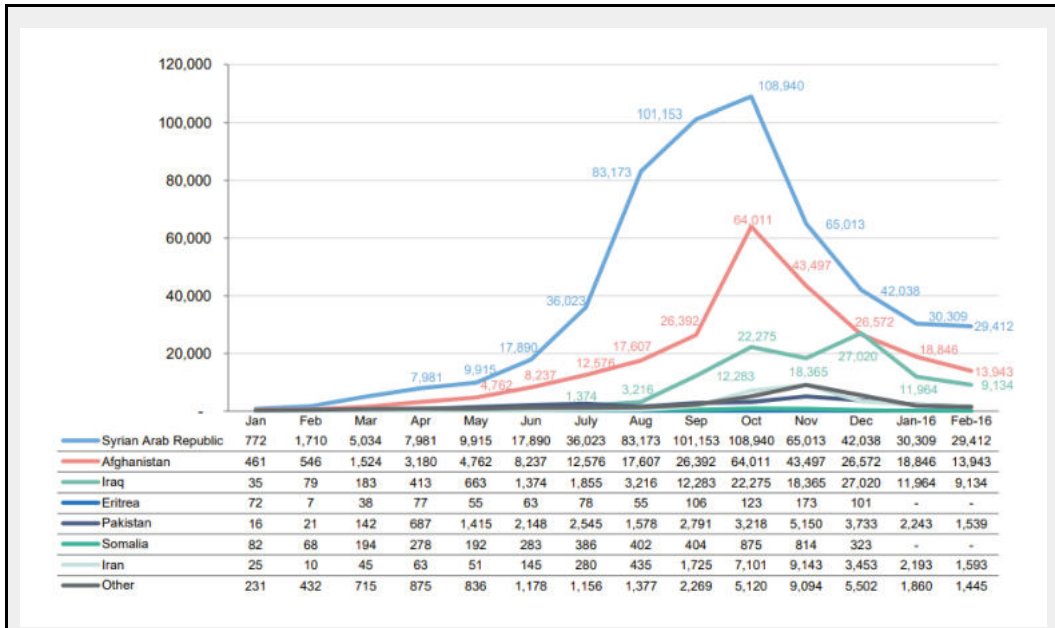
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7.2. Sea Arrivals



Trend of monthly sea arrivals to Greece, Italy And Spain by nationality

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The IFHV carries out research and teaching on the problems of peace and armed conflict from an inter-disciplinary perspective. Based on its strong international humanitarian law tradition, the IFHV is the only institute in Germany, and one of very few in Europe and the world, which is dedicated to the discipline of humanitarian studies. The IFHV combines its strong emphasis on international humanitarian law, the law of peace and human rights law with sociological and political perspectives on humanitarian crises, actors and activities.

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