Abstract

In this thesis, I set out to identify on what parameters the Refugee Convention is being criticized, including what changes of ideologies have occurred since it was adopted more than sixty years ago. This will help understand why such points of criticism has arisen, and their proportions. As I seek to explore how this critique is being expressed, I will examine how the debate has been approached from a political level in Denmark.

The methods I have applied for this thesis are based on a qualitative scientific approach, based on interviews with perspectives on the Refugee Convention. These are used in the context of a Danish political case, as this country have seen great debate over the nation's obligations towards the provisions of the Refugee Convention. All of which is analyzed through the use of the hermeneutic circle, which provides the basis for obtaining new knowledge progressively throughout the thesis process. The analysis is based on the theoretical ideologies cosmopolitanism and nationalism, which offers rather different perspectives, but form a cohesion, as they address similar challenges, yet, from rather different approaches.

In my analysis, I uncover the points of critique towards the Refugee Convention, which suggests national dissatisfactions with the requirements embedded in the convention. This therefore leads the nation-states to circumpass their commitment by adopting, something Thomas Gammeltoft-Hansen, research chief at Raoul Wallenberg Institute in Sweden, and Nikolas Feith Tan, PhD scholar and researcher at the Danish Institute for Human Rights, call the deterrence paradigm.

Through this analysis, it becomes evident that the different ideologies of cosmopolitanism and nationalism have had great influence from the time where the convention was adopted, to its contemporary critique, and has left the convention Conclusively, how we perceive the convention today, can arguably be considered to be the product of a cosmopolitan idea, produced through the machinery of nationalism, which underlines the infringements of the ideologies and the reality that we see today.

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1. Introduction

When the European highways a few years ago suddenly were turned into pathways for migrants, the European countries were left in awe. Completely paralyzed from what was happening, with no common response or systematization. The scenery had not been seen before. Even though mass-migrations historically have taken place, there was a different connotation to this event – something that was evident in the political despair of otherwise well-functioning democracies.

This clearly illustrated the shortcomings of the constitutional states, and for that matter, the fragility of the European Union, as it presented a whole new set of complex dilemmas. Little did we know at that time that this would come to dominate the following years' political debate in the western part of the world. While there is no dispute, as to whether or not the latest refugee flow has been a challenge for the nation-states, there is a lot more insecurity of how to deal with such flows in the future, especially from the points of view of legal and moral responsibility.

One of the key underlying issues of this discussion has been the ambiguity of the states' obligations towards the migrants, which is embedded in the various internationally agreed conventions. As a consequence of the recent events, these conventions have been greatly contested and divided the populations on the basis of their beliefs. The debate has been heavily politicized, and people want political action to distance the countries from their otherwise bound obligations. Some have sought to have a break with the international conventions, including the Refugee Convention, to have a more national say in the matter, while others are more keen on the protection of these international standards, and believes that the conventions play a large role in the solution to the challenge.

So, where does this leave us? These adversative positions have obviously put an immense pressure on the internationally agreed Refugee Convention, and for the involved countries to find a foothold in an extraordinary situation. The fact that the convention, which is constituted by nation states, is being contested, seems to suggest a development of an acute division between ideologies and world perceptions. Since the adoption of the

Refugee Convention in the aftermath of World War II (UNHCR 2011), there have been a common wish to protect people who were at risk of persecution in their home countries.

Yet, after the Refugee Convention has experienced intense pressure, we see political advances to neglect and disregard commitment to the common standards. This has also been the case in Denmark. Here, the Danish People's Party (Dansk Folkeparti), the second-largest mandate holder in the Danish parliament (Folketinget u.d.), has expressed a keen desire to break with several conventions, including the Refugee Convention (Kaae 2016). But while the party clearly has stated its critique of the obligations embedded in the Refugee Convention, other parties have not gone just as far. Some acknowledge a potential need for changing the Refugee Convention, while others would not touch it with a bargepole, which leaves an impression of a rather infected political debate. It also raises the questions of, what has changed since the adoption of the convention.

Simplified, this project will discuss whether the Refugee Convention is relevant or merely redundant. More expressly, the project will seek to answer the more underlying principles that are being contested, and to explain the shift we have seen in the support of the convention. It will clarify the points of critique, and investigate if these are justified. It aims to explore a possible shift in world views, and the change of the states' moral responsibility and obligations. As a result of these initial considerations and reflections, the problem statement of the thesis is as follow;

Why have respectively the Refugee Convention and the critique thereof been so heavily debated and politicized recently in a Danish political context, and how has a shift of ideologies been a conditionality for the Refugee Convention?

2. Methodology

In the following paragraphs, I will describe my methodological process for this thesis. Firstly, I will clarify my overall scientific research approach. Secondly, I will uncover my choice of theories and elaborate their employment in the thesis. Finally, I will explain potential omissions and delimitations of the project.

2.1 Scientific research method

In the following paragraphs, I will elaborate on the process of scientific research elements that I have utilized for this project.

2.1.1 Qualitative research method

This project is built on the basis of qualitative research, where interviews will act as the primary data for interpretation, and articles with statements from relevant actors are included in support of that. Svend Brinkmann notes that qualitative interviewing has for many become the central resource for social sciences to engage with issues and obtain knowledge (Brinkmann 2013, 1). Brinkmann argues that qualitative interviewing has a historic significance, as conversation for knowledge-producing purposes is as old as communication itself. (Brinkmann 2013, 6) This is also emphasized in the quote below.

> "*The fact that we can pose questions to others concerning thing about which we are unknowledgeable is a core capability of the human species*" (Brinkmann 2013, 6)

This underlines the direct link to the semantics of the word *research*, as it offers a path to investigate and explore the unknown.

For this thesis, I expect the interviews to contribute to an ever greater comprehension of various perspectives, experiences and perceptions from people with a certain link to a discussion of the Refugee Convention and the critique towards it. This will provide insight and allow the thesis to reach a higher level of credibility.

Specifically, I use face-to-face interviews that are semi-structured. The format of semi-structured interviews allows a certain leeway for dialogue. This is because the interviewer takes part as a knowledge-producing part, as it becomes possible to follow up on relevant answers and angles, which otherwise would not have been covered in a fully structured interview. (Brinkmann 2013, 21) This notion is pivotal when constructing the framework of the entire thesis, as the development of this data will allow me to interview my interviewees with non-fixed outcome, where it is the interviewees reflections and descriptions that form the knowledge produced by the project. They can literally push me, my questions, and ultimately the thesis in a different direction than originally intended. To fully secure a correct understanding of the interviewees opinions, I ask the participants to allow me further follow-up questions in case of any ambiguities.

2.1.2 Hermeneutic circle

I seek to deepen my knowledge of the chosen topic throughout the entire process of the thesis in an attempt to answer the problem statement sufficiently. Here, the hermeneutic circle is a suitable method, as it allows the progress to contribute to a more comprehensive project scope. Collin and Køppe suggests that the illustrative circular motion of the method is a way of continuously attaining additional knowledge from the point of departure to the conclusion. By following this approach, I will be able to cover several different angles, as they emerge from my preliminary findings. By reaching new understandings throughout the process, the project will progressively develop and present different perspectives. (Collin and Køppe 2012, 145)

In practice, this means that I initially had a preunderstanding of the topic before starting the project. Yet, the deeper I dive into the different perspectives, I will explore several new, interesting issues and questions that arise, which can be included in the project. Consequently, my starting point of covering and analyzing the critique towards the convention, leads me to further explore the Danish political aspects of the Refugee Convention, but not with a new preunderstanding. This will as a result be on a more knowledgeable background than beforehand, and provide me with a much more holistic understanding to answer the problem statement.

2.1.3 Source criticism

When gathering my qualitative data, I have sought to find interviewees that offers different, and some even opposing, opinions and attitudes towards the subject of my thesis. This, I believe, creates the basis for an objective and unbiased project. However, one of the main drawbacks of this thesis, is the lack of contributions from various political actors, as only one of my two political interviews was made possible. This could have provided that opposing view, yet this is something I try to compensate for, in the chapter 'Background and account of recent Danish political criticism', which allows me to draw on other political statements.

As the interviewees have of course been deliberately chosen, as they all have shown some insight to the scope of this project. Either they are very knowledgeable of the political spectrum of the issues of the Refugee Convention, or their competencies are more of a legal character. Yet, as I also explore a highly politicized matter, the interviewee, Holger K. Nielsen from the Socialist People's Party, is likely to present a significant predisposition to the matter, and is therefore highly biased in favor of his political stance, e.g. due to party lines. On the contrary, Nikolas Feith Tan of the Human Rights Institute would most take a political position, but as a legal representative contribute to a nuanced analysis.

The interviews are collected as first-hand information, whereas the articles included is second-hand material. As a consequence, I will naturally seek to distance myself from and be aware of potential pitfalls by using these articles, as the purpose of the articles could have ulterior motives that could derail the purpose of this project. However, they can prove important to explore the political landscape and motivations that forms the basis for debating the Refugee Convention.

2.2 Theoretical framework

The theories I have used for this thesis have been chosen due to their deeper focus on human rights, of which the Refugee Convention can be seen as a ramification, compared to many of the other contributors.

The use of cosmopolitanism and nationalism, I believe, is quite interesting to include in the entirety of the theoretical framework, as it brings the thesis' case of the Danish political approach to the Refugee Convention onto a higher level, thus creating a meta-discussion. Moreover, it can depict a more general condition for the Refugee Convention from ideological perspectives that have various clashing elements, thus providing a basis for a dynamic analysis. They also possess a certain cohesion, as they touch upon many of the same elements, but with rather different approaches. As you will see later, in the chapter 'Theoretical review', many have contemplated over these ideologies. Yet, as I seek to understand the development up until the challenges of contemporary time, I have sought to identify the most encompassing modern thinkers, as their theories are likely to have been influenced by the societal developments.

2.3 Case study

The choice of including Denmark as a case country derives from a qualitative indicator, namely due to several of country's political parties criticizing the Refugee Convention. Alan Bryman argues that this method can be applied to many situations, and is often used in a qualitative research strategy, (Bryman 2012, 67) which this thesis is based upon.

Bryman presents a typology of cases that varies greatly. One of them, is the *critical case*, in which the researcher has a well-developed theory which will be tested by examining the circumstances. Even though my intentions for this thesis prepare the grounds for such a case type, I believe Bryman's *exemplifying case* is more suitable. In this type, a case is supposed to exemplify a broader category of which it is a member. (Bryman 2012, 70) Considering that the current critique of the Refugee Convention come from several sides, as many countries are facing the same issues and are challenging it, analyzing the case of Denmark can epitomize my research questions, i.e. my problem statement, and thereby take the temperature of the opposition to the Refugee Convention on a more general note.

2.4 Delimitation

As one of this project's primary focuses is the case of the Danish political position towards the Refugee Convention, there is a natural limitation of the scope of the project. Yet, I seek to compensate for this, by drawing on the more overriding issues of the Refugee Convention, almost on a political philosophical level.

This presents a new clear challenge, as my experience with political philosophy is limited. Therefore, I seek to use the national case of Denmark will be the contextual case, and make the discussion more earthed, and only, and carefully, include perspectives from the philosophical level to provide a more conceptual way of discussing the topical issue of international conventions, and in particular the Refugee Convention. Above all, I believe that the philosophical point of view can transcend and be applied to the social sciences, and thereby contribute to the understanding of the current tectonic political shift towards the Refugee Convention.

Moreover, the project could also benefit from more juridical expertise, as many of the underlying challenges for the Refugee Convention stem from quite legal predicaments. Yet, I intend to use the legal perspective to provide a basis for discussing the current state of the convention, rather than giving a juridical walkthrough of the gap between domestic and international law with regards to the convention. Even though the convention is the primary focus for this thesis, it is not the content of the convention I am exploring, per se, rather than it is its form and the exterior pressure. Therefore, I will take the liberty of including it when necessary, but will not go into details with each article and provision, as this would require a more juridical specialist approach.

I acknowledge that there are numerous international declarations and conventions regarding the safety of refugees. These include, for example, the Universal Declaration of Human Rights. I am likely to come across these during the process of the thesis, as they are so closely intertwined. Yet, due to the specific scope of my thesis, I will only include them as perspectives to the intended discussion about the Refugee Convention. You can find a brief overview of these relevant conventions and declarations on pages 13-15.

3. Empirical data

3.1 Interviews

  1) Nikolas Feith Tan, Danish Institute for Human Rights

My interview with Tan is based on the main perspectives of the critique towards the Refugee Convention, where he both clarifies the institute's stance on the matter and as an individual lawyer. The interview is conducted in continuance of another empirical data, namely the book *Kampen om Menneskerettighederne*, which is written by employees and researchers of the institute. The thesis will benefit highly from this interview, as Tan's insight into a more legal aspect of the Refugee Convention can give a politically unbiased, objective view on the Refugee Convention. This can therefore be compensatory for my own lack of expertise of the legal framework of the convention.

  2) Holger K. Nielsen, MP, the Socialist People's Party (SF) [1]

Holger K. Nielsen, former foreign minister and currently SF's spokesman on foreign affairs. Nielsen and SF are strong supporters of the international conventions, a position he elaborates in the interview. Having been member of the Danish parliament since 1981 (Folketinget u.d.) Nielsen can, moreover, provide an extensive political view of the current situation and how it has developed over a large period of time.

3.2 Books and articles

  3) *Kampen om Menneskerettighederne* by Anette Faye Jacobsen et al.

The book is written by employees of the Danish Institute for Human Rights in a reaction towards the growing resistance towards the human rights and international conventions. Here, they depict the current status of the Refugee Convention, and debate questions being raised towards human rights and the Refugee Convention, including its challenges of legitimacy in modern society and the potential it contains.

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[1] Hereinafter referred to as SF

4) *Hvordan løser vi flygtningekrisen* by Thomas Gammeltoft-Hansen

The author of this book has boiled down many of the elements of the refugee crisis, and while doing so, he questions the non-functioning global refugee system. He covers both the Danish and international approaches to the debate, and presents his suggestion to how he belief the dilemma could be tackled.

5) *Beyond the Deterrence Paradigm in Global Refugee Policy* by Thomas Gammeltoft-Hansen and Nik Feith Tan

In this article published in the Suffolk Transnational Law Review we are presented to the deterrence paradigm, which entails countries adopting national policies as a remedy to handle the strains of the refugee situation. It provides an extensive review of such policies, including from Danish politics, and puts them into the perspective of the critique towards the Refugee Convention and the challenges of overcoming these issues.

3.3   Online documents

6) *Convention and Protocol relating to the Status of Refugee*s by United Nations High Commissioner for Refugees

Source: http://www.unhcr.org/3b66c2aa10

The Convention and Protocol relating to the Status of Refugees is the official name of the Refugee Convention, and as it represents the focal point of my research, it is vital to the thesis. This will continuously be referred to, as it is the political, and to some extent the legal, substance regarding this convention that I seek to explore.

4. Explanatory list of terms

4.1 Convention Relating to the Status of Stateless Persons

This convention was adopted in 1954, after it initially was drafted in 1951 alongside the Convention Relating to the Status of Refugees. Its significance lies in it defining a stateless person as "one who is not considered as a national by any State under operation of its law". It includes some standards that the signatory states are obligated to follow in terms of their treatment of stateless persons, e.g. by securing freedom of movement, freedom of religion, etc. This was an effort towards particularly vulnerable people not considered to be in possession of a nationality "by any state under the operation of its law". (UNHCR u.d.)

4.2 Convention and Protocol Relating to the Status of Refugees

It is based on the article 14 of the Universal Declaration of Human Rights (see page 15) that secures the right for people risking persecution to seek asylum in the signatory countries. It is the center of attention for this thesis. This convention is the benchmark that we still today are pursuing in protecting refugees, and consists of 46 articles that specifies certain rights for the refugee, and the responsibilities of the host country.
As it was a direct response to World War II, originally, the convention was only targeted people fleeing the atrocities of the war, up until January 1, 1951, and only within Europe. This specific limitation was, however, abolished with the amendment of the protocol in 1967, which made time and place insignificant. The protocol was an addition of 11 article broadening the definition of a refugee, thus universally protecting humans on the run. (UNHCR 2011)

4.3 European Convention on Human Rights

Signed in Rome in 1950, this convention departed from the Universal Declaration of Human Rights, where it however, made the conditions binding in originally 18, against today's total of 59. By amending protocol 11 in 1998, it also came to include the establishment of the European Court of Human Rights, where any disputes of potential

breaches of the convention can be settled, holding the signatory countries accountable. This convention is comprehensive and wide-spread, having been added with several layers since its adoption. This has ultimately expanded the framework of the convention to include, for example, an end to the death penalty, and to toughen restrictions on discrimination. (European Court of Human Rights u.d.)

4.4 Migrant

Determining whether a person is to be considered a migrant or a refugee has caused some uncertainty in the debate, in particular in connection to the refugee influx due to the war in Syria. This is due to the fact that domestic law applies to migrants, rather than international law. Migrants are characterized by not fleeing any direct threat to their person. They may, however, seek to move to another country due to education, work, or even due to hardship in their native country. (UNHCR 2016)

4.5 Refugee

Contrary to migrants, refugees are the one protected by international law. This may be because of them being persecuted in their home country, where the government cannot make sure for their security. In such instance, the circumstances are so dire that the person's life is under threat. Therefore, it is not possible by international law for the nation-states to expel these persons to if their life and freedom is at risk, while the refugees have the right to fair asylum procedures, and generally the right to uphold their basic human rights and to live in safety. (UNHCR 2016)

4.6 Treaty of Westphalia

The treaty was a result of end of The Thirty Years War (1618-1648), where the Holy Roman Emperor of Bohemia, Ferdinand II, constrained the freedom of religion to the protestant classes. It offered a new idea of sovereignty that dispersed throughout Europe. Before this, the feudal system existed in many parts of Europe, with more or less respected sovereignty. Yet, the sovereignty of state territory was enforced by the treaty, as

it clarified the separation of states. Moreover, it brought a more secular system, where power was taken from the church and placed in exclusive authorities, the governments. (International Relations u.d.)

4.7 Universal Declaration of Human Rights

The UDHR can be seen as the predecessor to all the above mentioned conventions, and dates back to 1948, where it was adopted by representatives of the UN member countries in an effort to set common standards for people and nations to follow. These have been pinned out in 30 articles, among which, are requirements of considering all human beings as equals, ensuring a right to life and liberty, freedom of movement and freedom of religion and thought.

What is significant about this convention, except it being a milestone in the history of human rights, is that it aimed for a universal protection of human rights. Although the declaration is not legally binding for the signatory states, it formed the basis for later declarations and conventions, some of which have resulted in binding obligations and a system of rule of law, as for example seen in the European Convention on Human Rights. (United Nations u.d.)

5. Background and account of recent Danish political criticism

In this paragraph, I seek to clarify the elements of critique by the parties in the Danish parliament towards the Refugee Convention that has arisen the last couple of years, both in media and parliament. Such clarification will act as useful background information when analyzing the context of the Danish political statements regarding the Refugee Convention. Both whether the parties are supportive towards the convention, whether they would like it revised or even to withdraw from it entirely.

In the midst of the vast migration flow to Europe and Denmark during the summer of 2015, the right-wing parties the Liberal Party[2], the Conservative Party[3], Liberal Alliance (LA), and the Danish People's Party[4] declared the human rights conventions as being outdated in an article in the newspaper Berlingske on June 9, 2015. This was only few days before the Danish parliamentary election, and it became clear that the "convention regime", as they referred to it as, would be contested if they were to be at power after the election. This included the European Human Rights Convention, the Convention on Statelessness, and of course the Refugee Convention. (Holm 2015)

The spokesman on legal affairs from the Liberal Party, Karsten Lauritzen, stated that a new right-wing government would be willing to improve and update the conventions they believe are outdate, if these were considered to be an impediment for the government to pass laws on criminal foreigners, refugees and asylum seekers. He further notices that the critique towards the "convention regime" will only continue in the future. (Holm 2015)

Martin Henriksen, DF's spokesman on immigration and integration, expressed a desire for applying the Australian immigration model, which has been heavily disputed in international human rights fora, to Denmark, regardless of this would be feasible within the scope of the conventions. Even though he believes there is a possibility for the Australian

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[2] Venstre (V)
[3] Konservative Folkeparti (K)
[4] Dansk Folkeparti (DF)

model to be adopted by Denmark without violating the Refugee Convention, he is ready to renegotiate the terms of the Refugee Convention. (Holm 2015)

"Det er jo en lavpraktisk måde at gøre det på. Så kan vi både være med i konventionerne, som nogen jo synes er vældig gode, og samtidig have nogle nationale forhold, vi godt vil have taget hensyn til".

("*That is a simple way to do it. In that way, we can both be part of the conventions, which some believe to be very good, and at the same time have some national conditions that we would like to see be taken into consideration*") (Holm 2015)

In an ensuing article from June, 2015, when the influx of migrants was at its highest, the Red-Green Alliance[5] and the Socialist People's Party[6] was out and condemning the right-wing parties' intention to revise the convention. Both parties' chairwomen, Johanne Schmidt-Nielsen (EL) and Pia Olsen-Dyhr (SF), were out defending the convention after the announcement from the right-wing. (Ritzau 2015) Olsen-Dyhr urged for a continuation of support to the convention.

"Danmark skal hjælpe til, når verden hærges af krige og overgreb på civile. Og vi skal stå ved de konventioner, vi har tilsluttet os"

("*Denmark must help when the world is racked by wars and abuse of civilians. And we must stand behind the conventions we are committed to.*") (Ritzau 2015)

On a later occasion, DF elaborated their critique in a question put to the minister for immigration and integration, Inger Støjberg (V) in an open session in the parliament on January 20, 2016. Here, MP Christian Langballe asked the minister for her view on Denmark possibly taking initiative for a renegotiation of the 1951 Refugee Convention, in order to make it more contemporary. Whilst doing so, he argues that the Refugee

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[5] Enhedslisten (EL)
[6] Socialistisk Folkeparti (SF)

Convention is often seen as being "sacred" by opposing political parties, and that he would very much like to denounce the convention, as he believes this is up to the nation state's self-determination in a democracy to decide for the legislation on such areas. (Folketinget 2016) Langballe also emphasized the restraints the Refugee Convention leaves on national sovereignty in the following quote:

"[…] *flygtningekonventionen jo determinerer hele vores flygtningepolitik og – mener jeg – binder og baster os på hænder og fødder, i forhold til hvad vi selv kan gøre, og hvad vi kan beslutte her i Folketinget*"

("[…] *the Refugee Convention determines our entire refugee policy, and I think it ties us on hands and feet, in terms of what we can do ourselves, and what we can decide here in parliament*") (Folketinget 2016)

In her answer, Støjberg stated that the government would comply with the international obligations they have agreed to. Yet, she underlined both the desire and success of revising national policies to the migration pressure, and to revise the Refugee Convention in collaboration with co-signatories, as the common international conventions are not inalterable or off limits in any way. Støjberg also argues that the convention dates back to before globalization, and draws the conclusion that much has changed since then, and with reference to the migration flow, the debate of whether or not the convention is outdated is legitimate. She additionally conveyed that the government would be willing to explore and challenge the convention. (Folketinget 2016)

The prime minister, Lars Løkke Rasmussen (V), had already the day before, on January 19, 2016, been asked about the Refugee Convention by the Conservatives. The chairman of the supporting party of the government, Søren Pape Poulsen, proposed a modernization of the Refugee Convention, as he believes it prevents Denmark to decide for themselves how many refugees the country will take in. In his answer, the prime minister emphasized that a revision of the Refugee Convention should not be the answer to the imminent migration flow in the short term, as he believes it would be difficult to reach

a consensus in both Europe and the UN, when in fact he sees a low level of unity in Europe. In a following answer, he also argues that even if the convention is revised, it would not mean the end of the massive migration flow. (Folketinget 2016)

This was a continuation of a debate Poulsen started December 15, 2015, where he also asked the prime minister about the Refugee Convention and the government's efforts on an asylum policy clamp-down. Prime minister Rasmussen replied that although he acknowledges the fact that the convention was adopted in a different time, it does not address the acute issue at hand. He then went on by stating that the government instead is focused on making certain national reservations to the migration challenge. (Folketinget 2015)

DF continued their storm against the Refugee Convention in a contribution to a debate in several local newspapers across Denmark. MP Hans-Kristian Skibby from the party advocated that the Refugee Convention should be retired after its 65 years of service. His emphasis was on the migrant influx from Africa and the Middle East, which he argued is a massive challenge for affluent Western countries. (Skibby 2016)

His chairman in DF, Kristian Thulesen Dahl, signaled an even more radical solution to the problem, when he stated that the party would be willing to abandon the international conventions if other countries would not agree to Denmark being granted certain reservations regarding the convention's interference. (Kaae 2016)

However, a few months after, the government was criticized by their supporting parties for retracting their plan to revise the convention. Neither the government nor the minister had any plans of withdrawing Denmark from the Refugee Convention, Støjberg asserted, and accounted for why the government had switched position on the matter.

"Det er regeringens holdning, at arbejdet med at sikre en bedre balance mellem beskyttelse af menneskerettigheder og vores mulighed for selv at bestemme, hvordan vi indretter vores samfund, skal centrere sig om EMRK (Den Europæiske Menneskerettighedskonvention, red.) og ikke Flygtningekonventionen […] Regeringen

mener ikke, at der i forhold til Flygtningekonventionen er tale om en fortolkning, der er kommet ud af trit med de oprindelige intentioner"

(*"It is the government's belief that the task of balancing protection of human rights and our opportunity for self-determination and the way society is should be focused on the ECHR (ed. European Convention on Human Rights) and not the Refugee Convention* […] *The government believes that with regards to the Refugee Convention, it is not a matter of an interpretation that has come out of step with the initial intentions."*) (Kristensen 2016)

Here, LA's spokeswoman on integration at the time, Christina Egelund, claimed that the Refugee Convention contravenes the intention to protect and aid refugees, and proposed a two-year suspension of Denmark's participation in the convention. Even though the Conservative's spokesman on integration, Naser Khader, acknowledged the difficulty of reopening the negotiations of the convention, he attacked the government for being too unclear about whether they would challenge the convention or not. (Kristensen 2016)

On the center-left, in opposition to the government and its supporting parties, there has generally been skepticism towards revising the convention. Yet, some parties have earlier expressed the desire to alter it, but fears that it will be a sliding slope, and the outcome would be much worse than with today's edition of the convention. Some of the parties, however, do not believe the convention is including enough, as they would like to see an expansion of who is covered by the convention's provisions. In late 2011, EL and the Social Liberal Party[7] both argued that climate-induced migrants ought to be considered rightful refugees, and thus protected by the Refugee Convention. This is the diametrical opposite of the right-wing parties, who wants the current regulations in the Refugee Conventions restricted rather than expanded. However, the major government party at the time and one their closest political allies, the Social Democrats[8], did not back that proposal, stating that people suffering from climate change should be aided with

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[7] Radikale Venstre (R)
[8] Socialdemokratiet (S)

restoration and resettlement, rather than being granted asylum in Denmark. (Fruensgaard 2011)

6. Theoretical review

In this review, I seek to clarify the theoretical basis for this thesis. I will present many of the theoretical views that are of relevance to this thesis in the following paragraph. This will allow me to demonstrate the process of selecting and deselecting the appropriate theoretical framework, while also reflecting my contemplations and foundation for each theoretical contribution. When discussing the matter of refugees in the gap between international and national justice, as the Refugee Convention essentially is concerning, one can draw on the work of an endless list of great thinkers and theorists. However, due to the immense magnitude of the theoretical work with relevance to the subject, I will as a consequence not be able to include them all in this review. Likewise, not all are equally relevant to sufficiently answer my problem statement. This theoretical review will therefore act as a pool, which will include several theoretical perspectives that I have come across in my research, and from where I select the most suitable to shed light on the exact scope of this thesis. These will later be elaborated more thoroughly in the chapter 'Account of theory'.

To examine the change from when Refugee Convention was signed to its more critical condition today, it might be very productive to take a closer look at some of the ideologies that are of relevance to analyze the attitude of society regarding the convention. The following paragraphs will therefore focus on the ideologies of cosmopolitanism and nationalism.

6.1 Cosmopolitanism

The idea of cosmopolitanism derives from ancient Greece, where it means 'citizen of the world'. In its most common version is believed to gather all human beings in one single community. This idea is often used to cultivate a universal community between the world's citizens, but differs greatly in terms of meaning and applicability, and has been contributed to through centuries.

During the enlightenment, Erasmus of Rotterdam saw cosmopolitanism as a way to create unity between people, thus fostering peace. Yet, critics believed that all people have individual aspirations, striving for self-preservation, which undercuts the idea of a universal community. This is often contested by natural law theorists, who argue that our fellow-feeling and sociability is unifying. Rather than being a philosophically used term at the time, cosmopolitanism was seen more as an attitude, where tolerance was a key characteristic in the cosmopolitan identity. Philosophers such as Voltaire and Montesquieu regarded themselves as cosmopolitans, being either well-traveled or not being subject to religion or political sides. Defenders of cosmopolitanism saw it as moral ideal to strive for with universal human community.

Cosmopolitanism soon became part of the political theory and international relations. Anarcharsis Cloots, political cosmopolitan, understood cosmopolitanism as a total elimination of nation states and the creation of one single world state constituted by a "republic of united individuals", where sovereignty was embedded only in one body, namely the human race.

In his book *Towards Perpetual Peace*, Immanuel Kant addresses cosmopolitanism as a path for keeping peace. Here, he argues that this is only possible through a voluntary cosmopolitan order, where nation states should maintain sovereignty and organize itself internally by republican principles, and external organization should be voluntary, namely in form of a league of nations. Furthermore, he presents certain conditionalities for peace, as he argues that the league of states should not possess coercive military powers and that the states ought to respect the human rights of both own citizens and foreigners. Kant added the concept of cosmopolitan law to the constitutional and international public law system. This entailed rights for both states and individuals, but with individuals as "citizens of the earth", rather than citizens of nation states. (Stanford University u.d.)

Cosmopolitanism, which evolved in the 19th and 20th century, also relies on the ideas of several others renowned and significant thinkers, including Karl Marx and Jürgen Habermas.

Marx and Engels interpreted cosmopolitanism as part of the capitalist development of globalization, as it broke with the conventional idea of the nation-state system with production and consumption moving across territorial borders. Yet, they were still aware and supportive of the idea of a united community between proletariats of all countries. (Stanford University u.d.) This form of cosmopolitanism could possibly be more significant in a matter of economic cosmopolitanism, focusing on money flows and globalization.

Habermas' interpretation of cosmopolitanism has developed over time. His basis was to provide a normative account of legitimate law. More recently, he argues for a cosmopolitan order to be based on political, juridical, institutional, transnational and democratic norms (Stanford University u.d.), which is evident in the quote below.

"Only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted."

(Stanford University u.d.)

Another part of earlier perceptions of cosmopolitanism is based on moral philosophers and moralists arguing for a duty to aid fellow humans with the beginning of international relief efforts, where neither nationality nor citizenship is decisive. This moral form of cosmopolitanism still plays a part in the contemporary notion of cosmopolitanism, which still has many varieties and distinctions, as it can be applied to several aspects, all with different emphasis and meaning. This includes both political and moral cosmopolitanisms. (Stanford University u.d.)

The notion of moral cosmopolitanism often leads to political cosmopolitanism, due to its involvement in the advocacy of either a centralized world state, federal state or international political institutions. (Stanford University u.d.) The moral cosmopolitanism is substantiated in the following description.

"The most common cosmopolitanism — moral cosmopolitanism — does not always call itself such. But just as ancient cosmopolitanism was fundamentally a 'moral' commitment to helping human beings as such, much contemporary moral philosophy insists on the duty

to aid foreigners who are starving or otherwise suffering, or at least on the duty to respect and promote basic human rights and justice." (Stanford University u.d.)

Political cosmopolitanism is often contested as being impossible, as the current state-system is too rigid and uncompromising. Yet, as the United Nations is established and both the USA and EU exists, the critique is suggestively more suited towards the functionality of these institutions that are expressions of a cosmopolitan pursuit. This has led to a division between the political cosmopolitans, where one side argues for a strong world-state, whereas the other supports the idea of a loose voluntary federation. (Stanford University u.d.)

In a 2004 article in The Journal of Ethics, Charles R. Beitz, a Princeton professor of politics (Princeton University u.d.), presents a clear problematic relationship between the idea of cosmopolitanism and a wish for global justice.

Beitz initiates by arguing that the world face various challenges, which are not likely to be solved soon, or at all, if not handled by concerted international action. These challenges involve either controlling the pathologies of the state system or collective challenges, such as global warming. Some of these arise by the many humans suffering, either chronical or somewhat avoidable conditions. In continuation of this, Beitz argues that such development requires global attention.

"There is at the same time the emergence of a nascent global capacity to act. This capacity is fragmentary and heterogeneous. It expresses itself in the foreign policies of states, in an eclectic variety of intergovernmental organizations, in the institutions and regimes that organize global economic relations, and in humanitarian and human rights laws and series of largely improvised legal and political mechanisms of enforcement".
(Beitz 2005, 11)

This urgency led Beitz to include cosmopolitanism to contest two conceptions regarding global justice, namely political realism and the morality of states. As he sees it, political realism is a stringent dichotomous choice between state-ism and cosmopolitanism with no

single coherent position, and the morality of states, which he sees as being too vague, as the interpretations of this differs greatly, and lead to theories with different normative contents. (Beitz 2005, 15-16)

In continuation of Kant's perception of cosmopolitan, we find Seyla Benhabib. She has drawn highly on the Kantianism of the cosmopolitan idea, yet with a more contemporary thought of cosmopolitanism. In her book 'Another Cosmopolitanism', Benhabib discusses the idea of cosmopolitanism, its challenges, and its topicality in a modern view. She bases her approach on the era since the WWII, which have seen a massive increase in interconnectedness and the circulation of persons, money, information, etc., all across the world. This leads her to take up the question of global governance, politically and legally, and involve complex understandings of morality and ethics in a universalistic perspective. (Benhabib 2006, 1)

Benhabib draws significantly on Kant's doctrine of cosmopolitan rights, and his law of hospitality, which very much hits the spot behind the mindset of cosmopolitanism in regards to the dilemma of an "international rights regime" (Benhabib 2006, 3), as Benhabib refers to it as.

6.2 Nationalism

The use of the term 'nationalism' often derives from an understanding of either the attitude of members of a nation, when they care about their national identity or the actions of members of a nation, when seeking to achieve or sustain self-determination. The first understanding deals with national identity, e.g. ethnicity, cultural ties, and whether an individual's membership of a nation can be regarded as voluntary or non-voluntary, while the second is more relevant in understanding authority over domestic and international affairs. These notions make it critical to distinguish between a nation, with emphasis on ethnic and cultural community, and state, with emphasis on a sovereign aspect of the political entities. (Stanford University u.d.)

Either way of interpreting nationalism, the essence of the term is full sovereignty as the goal of political programs, which includes the traditionally defining element of state power; namely territorial sovereignty. (Stanford University u.d.)

Much like cosmopolitanism, nationalism is multi-faceted and is conceptualized in various ways, something the different definitions above also testify to. And due to constant revisions by philosophers and theorists, and the historic ring to it, nationalism has developed over time. In the following I seek to clarify this development, whilst exploring the different interpretations and contributions.

Unlike most philosophical world views, nationalism is by many not deemed to have its own 'grand' thinker. However, Max Weber, whom I will return to on a later note, is by many considered the most significant contributor to nationalism, which has also been heavily influenced by Edmund Burke, Karl Marx, etc. Even though many has contributed, none of the first rate thinkers has written a substantial theoretical text on nationalism.

It has its historic origin in the German Romantic thought in the late 18th and early 19th century, where philosophers extensively followed the path of Kant and Jean-Jacques Rousseau. (Özkirimli 2010, 11-12)

Rousseau's idea of 'self-determination' derives from his idea of 'general will'. He believed that the greatest danger to man is the possible "tyranny of will by his fellowmen". The 'general will' outweighs the selfish will. To put it differently, Rousseau wanted men to become citizens, putting his efforts in favor of the common good, rather than natural men, putting his efforts in favor of his own, which is also expressed in the following quote by Rousseau (Özkirimli 2010, 12):

"*Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole*" (Özkirimli 2010, 12)

German thinker, Johann Gottfried Herder, linked the enlightenment to the German Romanticism. He emphasized the uniqueness of national cultures, and with that language,

which he believed to "bear the stamp of the mind and character of a national group". (Özkirimli 2010, 13)

Between 1807 and 1808, Kant's mentee, Johann Gottlieb Fichte, saw the German people's unification as a model for the world to follow, in order to create the perfect state. This idea relied heavily on the notion of cultural cohesion between the Germans. (Özkirimli 2010, 15)

Such contributions formed a breeding ground for nationalism, whose historic significance became clear during the French Revolution, where equal citizenship was the outcome of the nation becoming the sovereign legitimate political power. (Özkirimli 2010, 16)

Marx and Engels' contribution was, similarly to their cosmopolitanism view, surrounding the protection of the proletariat from the bourgeoisie. They considered this a national issue, yet they saw a common interest between proletariats regardless of nationalities or citizenship.

John Stuart Mill saw nationalism develop through the commonalities between people, as illustrated in the following quote.

"[…] a portion of mankind may be said to constitute a nationality if they are united among themselves by common sympathies which do not exist between them and any others – which make them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves or a portion of themselves exclusively." (Özkirimli 2010, 25)

I now turn to Weber once again. His conceptualization of nationalism lied in shared values and on the role of politics. (Özkirimli 2010, 28) These values should be a guiding principle for politics and economics. Weber believed that this would permeate the citizenship of nations with patriotic feelings and participation. (Stanford University u.d.) His definition of a nation was based on the community feeling that would manifest itself in the shape of a state, "hence, a nation is a community which normally tends to produce a state of its own." (Özkirimli 2010, 28)

In a later period of time, namely in the early decades of the 20th century, historians, such as Carleton J. H. Hayes and Hans Kohn, were trying explain nationalism even further. Hayes argued that nationalism in terms of thought and action was such a commonality that it was taken for granted, and concurrent with Kohn, believed that the phenomenon 'nationalism', with civilized nationalities striving for unity and independence, did not date back to before the second half of the 18th century. (Özkirimli 2010, 32)

Nationalism could, according to Hayes, be subcategorized into a five form typology, which have all evolved and contributed to. 1) *Humanitarian nationalism*, which relied on natural law and thereby human progress. 2) *Jacobin nationalism*, being formed in the wake of war, focused on the security aspect with dependence on military hard power, where the concept of nationalism became self-reinforcing by each fight. 3) *Traditional nationalism* saw history and tradition as a pillar in nationalism, and had in some ways quite aristocratic tendencies. 4) *Liberal nationalism* relied in Jeremy Bentham, who in England proposed a narrower scope for government to rule. 5) *Integral nationalism* greatly opposed humanitarian and liberal nationalisms, as it was against any form of internationalism. Essentially, it focused on enforcing nationalism for the sake of the nation rather than for the people. (Özkirimli 2010, 33-34)

Kohn described two kinds of nationalism. One in England, France, and the US, where it was a political movement, and the in the Central and Eastern Europe and Asia, which he argued was influenced by inferiority that was compensated by an overconfidence. (Özkirimli 2010, 35-37) Craig Calhoun, interprets Kohn's two ideas of nationalism as 1) the evolution of nationalism over time, and 2) as to how each nationalism has contributed to different national ideas. (Calhoun, Nations Matter 2007, 130)

More recently, Calhoun himself offers a view on nationalism and the nation-state from a more discursive angle. The solidarity and integration between the nation-members is not sufficient to identify within a nation, as such ties can be achieved in sports teams, at a work place, etc., Calhoun argues. He therefore points to discourse to understand the creation of nationalism. (Özkirimli 2010, 187) He saw patterns of what nationalism was, and attempted to create almost a typology of ten nationalist characteristics. These include an aspect of territoriality, citizenship, ethnicity, sovereignty, culture, etc. (Calhoun, Nationalism 1997, 4-5)

7. Account of Theory

In the following paragraph, I seek to delve deeper into the chosen theories for this thesis, which have already been briefly mentioned in the literature review. It will therefore include a more extensive explanation of each of the chosen theoretical elements.

7.1 Cosmopolitanism

In the theoretical review of cosmopolitanism, Seyla Benhabib was included as a contemporary theorist on the matter of this particular ideology. She is professor of Political Science and Philosophy at Yale University. In the book, *Another Cosmopolitanism*, Benhabib depicts a prolongation of Kant's previous work on and conception of cosmopolitanism, and in which she seeks to form the basis idea of how political and legal instruments are to govern us all, as one single community. (Benhabib 2006, 1)

"The political need bounded communities – whether they be cities, regions, states, or transnational institutions – within which they can establish mechanisms of representation, accountability, participation, and deliberation" (Benhabib 2006, 1)

The notion of *bounded communities*, as we are presented to by Benhabib, is highly important. This is what the entire entity of cosmopolitanism is about and contest, sort of a recurring motif in her book, and in this thesis as well. Bounded communities carry the notion of a legitimate law within a walled forum, which we primarily see in national institutions, confined by state borders. Yet, this line of thought is what cosmopolitanism takes on. This also entails that the law lies within this bounded community. (Benhabib 2006, 2)

Benhabib argues that the adoption of the Universal Declaration of Human Rights in 1948 marked the entry of a new era, with a transition from *international* to *cosmopolitan* norms of justice. This is due to the declaration's focus on the individual actor and law understood as international public law, rather than on international laws based on treaties among states.

She argues that this endowment to individuals rather than states is the core of the human rights agreements since World War II, and that "cosmopolitan law [is] understood as international public law that binds and bends the will of sovereign nations". She further brushes aside the term 'globalization', which she believes does not justify the characteristic of cosmopolitan norms, but what is however used often in debates and in an economic context. (Benhabib 2006, 15-16)

7.1.1 Discourse
The discourse of moral justification is also addressed by Benhabib, as she predicts an inevitable tension between our moral obligations within the bounded community and those we must have towards other human beings.

"A discursive approach should place significant limitations on what can count as morally permissible practices of inclusion and exclusion within sovereign polities" (Benhabib 2006, 19)

She continues by pointing out the peculiarity of discourse theory in this matter, as "membership norms impact those who are not members precisely by distinguishing insiders from outsiders; citizens from noncitizens". The dilemma consisting in that the discourse theory either blindly accepts the exclusion as it is 'morally neutral', or that discourse theory is not pertinent to membership practices in bounded communities. (Benhabib 2006, 19)

7.1.2   Juridical rights and duty of hospitality
Some of the elements from Kant that Benhabib draws upon are the three levels of 'rights' in juridical senses of the term, namely 1) *Domestic law* - in accordance with a republican institution, 2) *sphere of rightful relations among nations* – resulting from treaty obligations among states, and 3) *cosmopolitan right* – concerns relations among civil persons to each other as well as to organized political entities. (Benhabib 2006, 21)

Kant explains the third right, cosmopolitan right, with reference to the duty of hospitality. This perception becomes relevant, as it involves the case of an individual coming into contact with an organized and bounded political entity. (Benhabib 2006, 21)

" […] hospitality is not to be understood as a virtue of sociability, as the kindness and generosity one may show to strangers who come to one's land or who become dependent on one's act of kindness through circumstances of nature or history; hospitality is a right that belongs to all human beings insofar as we view them as potential participants in a world republic." (Benhabib 2006, 22)

As Kant's view leaves an open question in regards to juridical consequences that lies within the right of hospitality, Benhabib sees a moral and juridical ambivalence in the matter of refuge, and she therefore raises the question; is the refuge rights reciprocal moral obligations based on our mutual humanity, or are they enforceable norms that places the sovereign states under laws they must obey, and can be forced to obey. By such, she also contends Kant's inclusion of a republican cosmopolitan order as the obligations of the receiving countries are anchored in such an order. This is due to the republican order not having a supreme executive law, she states, which therefore means that "the obligation to show hospitality to foreigners and strangers cannot be enforced". (Benhabib 2006, 22-23)

7.1.3 The human rights regime

In relation to the notion of duty of hospitality, Benhabib sees a development in human rights codes becoming generalizable norms, which is supposed to govern behavior of sovereign states. Something she considers a positive thing (Benhabib 2006, 27). From Benhabib's perspective, this development is occurring in the following three areas.

Firstly, it is evident in the concept of *crimes against humanity*, which implies that there is a protocol of norms to follow, and in this case, not to cross, for state officials and private individuals during war. This, for example, applies to cases of genocide and ethnic cleansing. (Benhabib 2006, 27-28)

Secondly, it is also occurring in *humanitarian interventions*, where a party or parties justify an intervention on the basis of a generalized moral obligation when a

"sovereign nation-state egregiously violates the basic human rights of a segment of its population on account of its religion, race, ethnicity, language, or culture". This is a clear example of the human rights norms trumping the state sovereignty. (Benhabib 2006, 29)

Lastly, and most importantly for this thesis, she sees this development in *transnational migration*, which concern the rights of individuals rather than their affiliation of bounded community. She refers to the 1951 Refugee Convention as being the second most important in that aspect, only surpassed by the UDHR (see page 15). Even though borders are obsolete to these rights, the UDHR upholds sovereign rights of states. The UDHR, however, does not entail obligations to grant entry to immigrants, neither does it a right for asylum, aspects which are clarified and included in the Refugee Convention. Here, she emphasizes that even though this convention has been adopted by several countries, the reality is that both signatory and non-signatory states can completely disregard the convention, and they are doing so, she notices. Immigration, refugee and asylum disputes are all areas being challenged by states in efforts to control and define its borders and national sovereignty. (Benhabib 2006, 29-31)

In the light of cosmopolitanism, this aspect is criticized, as some believe it to undermine a truly cosmopolitan international order, when the international conventions are upholding an "interstatal" order, as Benhabib calls it. (Benhabib 2006, 31)

Benhabib addresses one of the main contradictions of cosmopolitan law, and one of the main points of critique, as it is in fact the territorially bounded states who are to conform, yet they are the ones signing and later enforcing these laws and norms, which places the states in a predicament, as they and the modern state-system is caught between a rock and a hard place, namely between sovereignty and hospitality. (Benhabib 2006, 31)

7.2 Nationalism

Among many others, Craig Calhoun has contributed to a contemporary understanding of nationalism, focusing on the time from 1989 and onwards, which will form my theoretical use of the notion of nationalism. He is Professor of Social Science at New York University and President of the Social Science Research Council. In his book, *Nations Matter*, he

underlines that even though globalization has been a significant and influencing phenomenon, it is way too soon to leave nation-states out of the account. Calhoun ascribes the principle of independent sovereignty and mutual recognition, which became basic to the flourishing of nationalism, to the peace of Westphalia. (Calhoun, Nations Matter 2007, 31) He argues that nationalism is still well-existing in most democracies, just like he sees nationalism as creating the path for investments in public institutions and for providing a base for integration across ethnicity and other factors. On that account, he seeks to transform nationalism, rather than to fight it. (Calhoun, Nations Matter 2007, foreword)

Calhoun also gives nationalism credit for creating a social solidarity, with domestic inclusion and redistributive policies. In his mind, nationalism should not be dismissed even in the pursuit of a cosmopolitan world order, and argues that thinking otherwise is unrealistic. (Calhoun, Nations Matter 2007, 1)

From Calhoun's perspective, many ailments are being imputed to nationalism. On the contrary, nationalism is underestimated, as critics often tend to what positives follow from it. This includes "people's sense of belonging in the world and to particular states, and the methodological nationalism that leads historians to organize history as stories in or of nations and social scientists to approach comparative research with data sets in which the units are almost always nations". (Calhoun, Nations Matter 2007, 27) He calls nationalism pervasive, stating that it is used in many respects.

"it [ed. nationalism] is used in different projects – claiming or contesting the legitimacy of governments, demanding reorganization of educational curricula, promoting the elimination of ethnic minorities in the pursuit of cultural or racial purity. […] Nationalism matters because it is a vital part of collective projects that give shape to the modern world, transform the very units of social solidarity, identity, and legal recognition within it, and organize deadly conflicts." (Calhoun, Nations Matter 2007, 28-29)

As mentioned in the theoretical review on page 29, Calhoun comments on Kohn's two perceptions of nationalism, 1) the evolution of nationalism over time, and 2) as to how

each nationalism has contributed to different national ideas.

In Kohn's first perception, distinguishing between nationalism and nationality is essential, Calhoun points out, as nationalism is not an inevitable outcome of nationality. (Calhoun, Nations Matter 2007, 130) Kohn stresses that nationalism is a state of mind, which he makes clear in his book, *The Idea of Nationalism*, where he states that nationalism is rooted in the majority of a people, and man's loyalty therefore lies with his nationality, as his livelihood stem from the nation's welfare. (Kohn 1944, 16)

Kohn's second perception becomes very clear in the case of the American nation, which relied on a universal idea, which everyone could ascribe to, even though it "was [ed. also] a nation composed of all racial and linguistic strains". (Calhoun, Nations Matter 2007, 130)

7.2.1 Discourse

Calhoun ascribes much meaning to the discourse of nationalism throughout his book, as it molds the nations and ultimately the world, by permeating our way of thinking, writing and discussing some of the valuable content of a nation, i.e. culture, politics, and the sense of belonging. It is also pointed out that the term and notion of 'nations' could not even exist, had it not been for discourse. (Calhoun, Nations Matter 2007, 27)

In his book 'Nationalism' from 1997, he presents these ten possible rhetorical possible characteristics of nations as follows:

1. Boundaries, of territory and population, or both.
2. Indivisibility – the notion that the nation is an integral unit.
3. Sovereignty, or at least the aspiration to sovereignty, and thus formal equality with other nations, usually as an autonomous and putative self-sufficient state.
4. An 'ascending' notion of legitimacy – i.e. the idea that government is just only when supported by popular will or at least when it serves the interest of 'the people' or 'the nation'.
5. Popular participation in collective affairs – a population mobilized on the basis of national membership (whether for war of civic activities).

6. Direct membership, in which each individual is understood to be immediately a part of the nation and in that respect categorically equivalent to other members.

7. Culture, including some combination of language, shared beliefs and values, habitual practices.

8. Temporal depth – a notion of the nation as such existing through time, including past and future generations, and having a history.

9. Common descent or racial characteristics.

10. Special historical or even sacred relations to a certain territory. (Calhoun, Nationalism 1997, 4-5)

When presenting these characteristics, Calhoun concede that they are not by any means fixed, they are merely an attempt to provide a pattern of claims in his quest for the "ideal" nationalism. (Calhoun, Nationalism 1997, 5)

In European discursive formations, Calhoun sees nationalism as defining, as it allowed nations to set themselves apart from other nations, creating a nation identity and citizenship. (Calhoun, Nations Matter 2007, 33) In the European context, he notes three general theories of nationalism. The first states that the nations are relative equals, the second that nation and empire are highly incompatible, and the third that nations are ready "to be called forth in new mobilizations for action or discourses of legitimacy". (Calhoun, Nations Matter 2007, 30)

Taking on ethnic and civic nationalism, Calhoun also mentions two sides of discourse of nations, namely a common ethnicity, which is determined by culture and/or biological pedigree, and common membership of a state, which on the other hand is determined by behavior, norms, and generally attributions that can be adopted. (Calhoun, Nations Matter 2007, 41)

7.2.2 Human rights and refuge

He consents, however, that the idea of nation-states is in many perspectives harmful. This notion is due to it being a "recipe for conflicts both internal and external", as he says.

"States bolstered by nationalist passion – and nationalist eager to gain state power – were behind many of the twentieth century's bloody wars" (Calhoun, Nations Matter 2007, 4)

Calhoun illustrates that the indignation of atrocities partly caused by nationalism formed a prosperous basis for the development of human rights, being embedded in both discussions and manifested by courts and treaties, and the development of humanitarian focus from governments and military, to academia, physicians and pacifists. What initially was voluntary-based aid, where turned into bureaucracy and career paths. (Calhoun, Nations Matter 2007, 4-5)

Whilst admitting the nation-state has played a negative part in conflicts and often linked to corruption, for example, Calhoun also sees the other side of the coin, where the weak nation-states have neglected their citizens, and crisis in strong nation-states often forge conflict. Consequently, he argues for a better nation-state to tackle such global challenges as pandemics, global crime, human rights abuses and forced migration. (Calhoun, Nations Matter 2007, 6)

In a discussion of a liberalist stance towards nationalism, Calhoun also comes across several interesting issues with relevance to refugees when he mentions, how many theorists have dismissed nationalism because of its illiberal virtues, placing collectivity over the individual, ethnic loyalty over human rights, and tradition over reason. Yet, Calhoun's response to those contestations is a critique of liberals, as they fail "to analyze why the population of any one country belonged there and why the state was entitled to keep others out", pointing out that liberals want all their values to exist within a society, but forget that the pillars of society rely on nationalism. (Calhoun, Nations Matter 2007, 126)

Calhoun addresses the "damages" that migration and multiculturalism has caused in an article from 2008, as he presents the question, of whether the nation-states have been heavily impacted by these influxes to such a degree, that the discussion of belonging to a certain nation has become almost obsolete in the pursuit of creating a worldwide solidarity. (Calhoun, Cosmopolitanism and Nationalism 2008, 209)

7.2.3 Cosmopolitanism and Nationalism

In the same article, Calhoun elaborates on the relationship between cosmopolitanism and

nationalism, and defines cosmopolitanism as "focusing on the world as a whole, rather than on particular locality or group within it" (Calhoun, Cosmopolitanism and Nationalism 2008, 210) Furthermore, he claims that cosmopolitanism often present the most ethical righteous perspective of the world. Calhoun also argues, that the relative low number of people standing up for the justification of governments, which "makes it hard to articulate the value of stronger public institutions". He therefore believes that the easiest position to take is the desire for a global order where the nation-states are circumpassed rather than being improved. (Calhoun, Cosmopolitanism and Nationalism 2008, 209)

The global development that have brought along a higher level of interconnectedness, which, he argues, has allowed cosmopolitanism to transcend from ethics to permeate the spheres of politics and social sciences. (Calhoun, Cosmopolitanism and Nationalism 2008, 211)

The Peace of Westphalia has, as also mentioned on page 14, contributed significantly to the understanding of nationalism, something Calhoun also acknowledges by stating that the last some 300 years have been an era based on the global order of nation-states. (Calhoun, Cosmopolitanism and Nationalism 2008, 226) Yet, nationalism is still not being accredited for setting the frame for our lives, something Calhoun touches upon in the quote below.

"*We need not embrace nationalism uncritically to see that the nation states still provide the contexts of everyday solidarities and most people's life projects; they still are the primary arenas for democratic public life.*" (Calhoun, Cosmopolitanism and Nationalism 2008, 227)

Calhoun notes how the idea of cosmopolitanism was alluring for many since 1989, with a sentiment of hybridity, porous boundaries, capacious identities, and the ethics of having obligations towards each other all over the world. All of which he dismisses as an elusive ideal. This leads him, in the very first chapter of *Nations Matter*, to explore if the concept of nationalism has changed character to fit for our period in time, as he takes on the term post-nationalism. (Calhoun, Nations Matter 2007, 11)

Yet, on a later note, he rejects that, that is the case. Contrary, really, he believes that nationalism is experiencing a resurrection, mainly due to the asymmetrical

globalization, where for example the United States and multinational corporations are having global power, which bears resemblances to imperialism, in the eyes of Calhoun. (Calhoun, Cosmopolitanism and Nationalism 2008, 231)

8. Account of Analysis

In the following paragraph, I seek to explore the conflictual ideologies cosmopolitan and nationalism, and how they have impacted the development of the Refugee Convention, before moving on to discussing the critique and how this is visible in Danish politics.

8.1 Part of a human rights era

In the opening line of the very first chapter in *Kampen om Menneskerettighederne* it is stated that the human rights have never been more important than today. (Jacobsen, et al. 2016, 7) This statement quite well sets the tone for this analysis of the Refugee Convention, which is part of the human rights system. As already mentioned, the Refugee Convention was adopted at a time heavily influenced by what had happened just years in advance, namely World War II. The nations were still licking their wounds from the many atrocities during this time, after which led to an increase of awareness towards the well-being of individuals fleeing persecution, due to a then unprecedented number of refugees. This is where the cosmopolitan idea come into play. Its focus on the morality in helping human beings can be said to be the essence of the Refugee Convention, yet, due to the implications it places on the nation states, it is highly relevant to dig deeper into the clash between cosmopolitanism and nationalism.

Nikolas Feith Tan argues in the interview that the good deed of protecting each other across borders was during the Cold War a common threshold to good global citizenship and politics, yet this is changing. (Appendix, 3, 10-13)[9] This is supported by Thomas Gammeltoft-Hansen, who in his contribution to the book, *Kampen om Menneskerettighederne*, notices that the Western side greatly supported the convention during the Cold War, as they could benefit from it.

"*De følgende årtier nød konventionen al tænkelig opbakning fra den vestlige blok, der kunne score ideologiske point ved at give asyl til flygtninge og afhoppere fra østlandene.*"

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[9] Appendix references hereinafter written as "(App. [page], [lines])"

("*The following decades, the convention enjoyed all the support possible from the Western bloc, who had easy ideological gains from offering asylum to refugees and defectors from the Eastern countries.*") (Jacobsen, et al. 2016, 39)

Tan and Gammeltoft-Hansen see not only a development from an altruistic perspective, they also note societal changes and their impact on the refugee agenda. This is mainly due to globalization, which have seen the movement of labor and significant amount of information disperse throughout the world, making accessibility to and knowledge about other societies instantly available. (Gammeltoft-Hansen og Tan, Beyond the Deterrence Paradigm in Global Refugee Policy 2016, 640) As a consequence of this and the 1980's proxy wars, the developed countries saw an even more intense refugee flow, thus shifting from great support to the convention to experiencing some of its strains. (Jacobsen, et al. 2016, 39) This is also evident in the modern hotch-potch-like migration flow, where not only single refugees are fleeing, but they are migrating by the dozen. This new kind of migration flow has during the last 30 years inclined the receiving, developed countries to implement certain precautionary measures in their domestic policies. (Gammeltoft-Hansen og Tan, Beyond the Deterrence Paradigm in Global Refugee Policy 2016, 640) How this is expressed, is something I will return to later in the analysis.

If we consider what the Refugee Convention contains and the values it stands for, and look at it through the lens of Benhabib's cosmopolitanism, it is clear to see some congruence. The Refugee Convention sought to act as a common standard of how to treat refugees, by both asserting their rights and clarifying what actions the host-country should take. Benhabib's cosmopolitan order suggests uniformity, where political and legal instruments should be collected in one singular community, thus making the common standards possible.

After the amendment of the protocol in 1967, the convention seeks to protect any person falling under the provisions of article 1, regardless of nationality and time (UNHCR u.d.), which therefore makes the convention universally applicable, meaning that the convention

can be taken into force by all individuals. This underlines that the focus in cosmopolitanism is on individuals rather than states, and it especially supports Benhabib's argument for a transition from an international to a cosmopolitan norm of justice, putting human beings at the forefront of norms of justice. As the Refugee Convention relies on such an order, it can be said that the convention is part of a cosmopolitan spirit. This, however, can seem quite contradictory, as it is nation-states themselves that have coined and agreed to the terms of the convention.

Both Benhabib and Calhoun pick up this notion and stresses the contradiction that the same nations that passed the conventions are now the ones being strained by the impact of their work, which can be said to be quite ironic. But has this aspiration towards a cosmopolitan world order failed? I will return to this notion later. For, as we can see in the chapter 'Background and account for recent Danish political criticism', it is quite clear that the Danish government, among others, are reconsidering their position towards the altruistic paradigm that is constituted by the Refugee Convention, among other entities.

Calhoun, however, addressed the schism of collectivity/individuality in his notion on the liberal critique towards nationalism. Here, the liberal critique was that, in nationalism, the well-being of the collective outweighed the well-being of the individual, ethnic loyalty outweighing human rights, and tradition outweighing reason. This is very much an incongruence with the spirit of the convention, and the division of emphasis, furthermore, contributes to a cosmopolitan representation of the Refugee Convention.

Gammeltoft-Hansen argues that the adoption of the Refugee Convention was not simply a sign of the humanitarian focus of the time, it was very much a solution to cope with the large challenge of distributing the millions of refugees in the wake of WWII. (Jacobsen, et al. 2016, 38) This testifies to the cosmopolitan order not being exclusively at the forefront of intentions with the passing of the Refugee Convention, but rather an outcome of realpolitik and its give and take negotiation.

8.2 Comprehending the critique

The proportion of contemporary critique seem to have escalated with the recent refugee flow, and where it could arguably be said that the nationalist way of thought seems to be making a reappearance. In connection to that, in Tan's personal opinion, quoted below, one of the sources of critique seems to derive from a reoccurrence of a more nationalist order.

"We are definitely in the middle of an illiberal turn, as I call it. As a nationalist back-flash, a re-rise of sovereignty. No question." (App. 7, 8-9)

Investigating the points of critique immediately turn one's focus towards the mere age of the convention. The development since 1951 has been tremendous, as Tan also stated, and elaborated that in his personal opinion, it seems foolish to compare 1951 to present time, yet points out that, that does not make the convention obsolete. (App, 2, 5-7) Thus he acknowledges the impact of a more globalized world.

If we turn to Holger K. Nielsen, former foreign minister for SF in Denmark, it is clear that his belief is concurrent, stating that the opinion of fellow solutions has shifted, even though this, in the wake of WWII, was the normative line of thought. The intention was to address issues in unity, and the mutual contestation had to end. (App. 13, 19-24) In continuation of that, he refers to an increased focus on aiding refugees, aiding developing countries, and having the UN as a decisive actor were all part of the desired international order at that time. Now he sees this collapsing, mainly due to the wealthy countries feeling pressured by the migration influx. (App. 13, 26-32)

He furthermore conveys that people are becoming more self-aware rather than being cosmopolitan, as was the tendency in the past. This development of a return to the a more self-centered vision, he believes, is due to the costs of ascribing to the cosmopolitan norms, which were not that high at that time. (App. 14, 16-20) In this sense, the costs are arguably the strains we see now, in terms of the pressure from the refugee flow headed for the Western developed countries.

Tan believes the criticism that has saturated the refugee debate over the last five to ten years derives highly from the Nordic countries.

"[…] this meaning of the dynamic of having a relatively homogenous society in Denmark, ethnically, culturally, religiously, coupled with a very old well-fare state that supports all citizens and permanent residents, with a relatively high number – or at least, a perception of a high number – of non-Danish immigration, non-European immigration, who also create a burden on the social well-fare net or system. So, I can understand how that has created a political concern" (App, 3, 28-32)

This statement by Tan clearly reflects some of the main virtues of Calhoun's nationalism, as it relies on the social solidarity of the welfare state – and particularly the homogeneity. Thus, the sense of collectivity and feel of belonging, which Calhoun ascribes greatly to nationalism, become challenged by the cosmopolitan agenda, where rights within a domestic territory is being granted for outsiders, i.e. noncitizens, due to a convention 'regime', as Benhabib calls it, that trumps the sovereignty and self-determination of the nation-state.

In terms of value-based politics, the refugee question also poses several dilemmas. Refugee policies are, according to Gammeltoft-Hansen, also influenced by values and identities, as these are often steering the political debate. That is because the question of refugees is not only regarding distributive politics. It also pervades the roots in the community and the collective identity. (Gammeltoft-Hansen 2016, 42) This also connects quite well with the differences of the cosmopolitan and nationalist ideologies, as Calhoun's comprehension of nationalism emphasizes direct membership and cultural values as being essential within the nation's territory, which Benhabib counters by arguing for a morally weighted inclusion or exclusion policies within the bounded community.

In a brief review of some of the points of critique, Jacobsen states that, to some, human rights are the fundamental goal and thus raised above politics and populist reason. (Jacobsen, et al. 2016, 9) That notion, however, is in direct contradiction to one of Calhoun's discourse characterizations of nations, namely the third, in which he underlines

that sovereignty lies within the autonomous state. The Refugee Convention noticeably contests that by having a non-domestic instrument superseding the sovereign power of nations.

Some argue that the convention is way too encompassing in the way that it imposes certain constraints on nation-states, while others criticize its vague language, leaving to much leeway for interpretation among the states. The wording should be seen as an outcome of compromises during the negotiation processes in the 1950s. Largely, the convention was a pragmatic solution. (Jacobsen, et al. 2016, 38) This is something Nielsen sees as an unavoidable outcome of international agreements. He emphasizes that the use of vague formulations can be seen as the means to an end, which then is interpretable. (App. 14, 28-29) Considering Calhoun's notion of collectivity embedded in nationalism, then having nation-states agreeing to first a convention and later the comprehensive amendment of the protocol suggests that the nations' self-interests is likely to have been a key challenge during the process. Therefore, the ambiguity that lies within the loosely articulated language and the limited scope of the convention could be seen as an expression of a compromise between a cosmopolitan ideal and a nationalist reality.

Gammeltoft-Hansen addresses the claim that the convention is too narrow-sighted, is behind times in terms of political development, and does not sufficiently protect the kind of refugees we see today, whose reason of fleeing is not included in the convention provisions, for example climate-induced migrants, which will be elaborated later on page 58. Yet, Gammeltoft-Hansen comes to the conclusion that, although the convention has been subject to an increasing political resistance, it has developed. (Jacobsen, et al. 2016, 31)

This notion, however, is something Tan also sees as both a legitimate target, yet also one of the strengths of the convention. Tan argues that with the convention being open-textured, it has come to protect even more social groups than initially intended. As an example, he points to homosexuals, who in the 1950s were not a social group that the authors of the convention were envisioning to protect. Yet, because of the vague language in the text, the convention has come to protect an even wider group of people, thus being quite dynamic. (App. 2, 9-18) As an example of this, Gammeltoft-Hansen points to the fact

that homosexuality has become a significant political factor in Africa, where it is considered illegal in 33 countries, thus obstructing these persons from living live in freedom and putting them at risk of being persecuted. (Gammeltoft-Hansen 2016)

On a more democratic note, Nielsen also notices how the lack of strong political leadership have influenced the current situation, as politics are now to a greater extent being led by a populistic agenda. As consequence to this lack of strong leadership, he says, decisions that perhaps could be unpopular are simply not being made. (App. 16, 12-15) Decisions, which he believes to be fundamental for dealing with issues such as the refugee crisis. (App. 16, 28-31)

"Den nationale politik er blevet det afgørende for de fleste politikere. Det er også derfor EU har haft det så svært, for der er altid […] *et nationalvalg lige om hjørnet, og så bliver det vigtigere for politikerne.* […] Tilsvarende betyder det jo også, at de nationale prioriteter bliver jo mere fremtrædende end de internationale prioriteringer"*

("*National politics have become decisive for most politicians. That is why the EU has had a tough time, because there is always* […] *a national election waiting around the corner, and then that becomes more important for politicians.* […] *Similarly does the national priorities also become more dominant than international priorities.*") (App. 17, 13-18)

This view is also briefly dealt with by Gammeltoft-Hansen, who argues that the refugees have come to personify the challenges of the nation-state, which therefore makes for an easy target for political action. This, he says, makes the political use of border controls and a general rejection of refugees seem as a legit mean to an end of reclaiming some of the national sovereignty, which has been progressively dispersed through time. (Gammeltoft-Hansen 2016, 43)

Jacobsen, however, notes that when there are troublesome or controversial single issues, then not only conventions are being criticized, rather the entire human rights system is confronted, and becomes the scapegoat for influencing structural changes on both international and national levels, which has been the case with the refugee crisis.

This confrontation with human rights leaves Jacobsen puzzled, as this only seeks to protect freedom and justice for human beings. (Jacobsen, et al. 2016, 9-10)

Arguably, this critical discursive formation can also be seen from DF on page 19, where the chairman, Thulesen Dahl, stressed that the party was ready to completely withdraw from international convention, referring to both the Refugee Convention, the European Convention on Human Rights and the Convention Relating to the Status of Stateless Persons.

These points of critique may only scratch the surface, yet they all portray serious challenges for convention's maneuverability in the gap between cosmopolitanism and nationalism, in the sense that it seems to be influenced by both the pursuit of a universalistic human rights regime and the pursuit of nation-states' efforts to increase their self-determination.

8.3 Deterrence paradigm and Danish politics

It can also pose a democratic threat, when nation-states are being undermined by international law, as it can inhibit nation-states from passing laws on the basis of the population's desire (Jacobsen, et al. 2016, 9). This dilemma has become clear in Denmark. Here, the right-wing parties, including the government parties, have all been willing to tighten domestic law, but is to some degree giving the impression of holding back, due to its internationally sworn obligations (see pages 16-21). This became evident in the chapter 'Background and account of recent criticism in Danish politics'. This creates great pressure on the Refugee Convention and the entire human rights system, and perfectly illustrates the pickle in which the member states of the convention are situated.

It moreover bears witness to the challenges of forcing a universalistic regulation – at least intended to be – to suit every nation despite their differences. This is also visible in Calhoun's seventh discursive characterization of nations, in which he emphasizes the importance of culture, in all its shapes and sizes.

Because, as the idea of cosmopolitanism would suggest, and what Benhabib saw in terms of the legitimate law within the bounded territories is what the convention is challenging.

Yet, the common standards that Benhabib proposes in a cosmopolitan order are not exactly what we are seeing. Far from it actually. Due to nation-states' self-interests and desire for self-determination, the Refugee Convention has been subject to many gambols on the domestic scene.

According to Gammeltoft-Hansen and Tan, this situation has led to *deterrence paradigm* among developed nation-states. As Tan is seeing a tendency, where Northern European countries are moving away from merely accepting what the provisions of the convention, towards a more critically-founded position, (App. 4, 15-19) which can be said to deter the human rights 'regime'.

Gammeltoft-Hansen and Tan elaborates on the deterrence paradigm in the Suffolk Transnational Law article. Here, they state that several refugees are encountering several obstacles – obstacles which the host, or potential, host country has implemented. These deterrent mechanisms are adopted by domestic law, with the objective to keep refugees from arriving in the developed states, in which they will have the right to seek asylum. They argue that it has particularly been the case with the recent Syrian refugee crisis, where several nations implemented such deterrence mechanisms domestically. In that way, it becomes possible for nation-states to bypass their obligations constituted by the Refugee Convention, as it only applies territorially. (Gammeltoft-Hansen og Tan, Beyond the Deterrence Paradigm in Global Refugee Policy 2016, 638) This predicament is very much aligned with Calhoun's idea of nationalism, given that his first characterization of nationalism stresses the importance of territory.

That shortcoming of the convention was also commented by Tan, as he concurs that there is a possible threat for one state of being flooded by refugees, if they have a looser refugee policy.

"That is another big failing of the convention. That it does not spell out how states should share responsibility for refugees. That is a massive problem. […] If you look at the 1970 declaration on territorial asylum, the hope there was that there would be a burden-sharing treaty produced. It failed, and became a soft-law instrument. You can read that 1970-declaration as an attempt by the international community of states to come back and solve this problem of territoriality." (App. 7, 15-23)

This notion of a failed burden-sharing policy suggestively carries the main responsibility of the current deterrence paradigm we see, where the underlying reasoning seems to rely on a desire to be isolated from, or evading, taking on the responsibility of refugee protection. Therefore, Gammeltoft-Hansen and Tan also states that there is an "incongruence between deterrence policies and the original aspirations of the modern refugee regime". (Gammeltoft-Hansen og Tan, Beyond the Deterrence Paradigm in Global Refugee Policy 2016, 641)

The international refugee law comprised of the common set of rules is in the

Even though several countries, predominantly developed countries, have installed measurements to control the immigration, few has challenged the Refugee Convention or taken steps towards an abandonment of the conventions. Yet, both the Danish and Australian prime ministers have openly stated that the convention should be renegotiated

The debate has been very pertinent in Denmark since the recent migration flow. Consequently, Denmark has not only taken precautionary measures in domestic policies, such as implementing an increased border control in the wake of Sweden doing likewise (Gammeltoft-Hansen 2016, 16), it has also seen heavy critique of the entire human rights system. In fact, recently, the Danish Minister on immigration and integration, Støjberg, was facing 24 petitions from the European Council. Among these were the right for the Danish state to seize personal belongings of a certain value, and a tightening of family reunification regulations (Ritzau 2017). However, the critique was not new, as the council and the United Nations had already on two previous occasions, in August 2015 and January 2016, emphasized that Denmark were walking a slippery slope with its adoption of a stricter allowance policy for refugees (Ritzau 2015) and were intending to change selection-processes of mandate refugees to be based on potential of integration in Denmark (Therkildsen 2016).

Yet, despite these warnings from internationally accredited human rights protectors, the Minister have no intentions of complying with these appeals.

"De sidder som konger uden land og kloger sig på, hvilken politik vi skal føre. Derfor kommer vi overhovedet ikke til at rette in efter det. […] *Vi står i en ekstremt presset situation i Europa. På grund af det meget store antal flygtninge og migranter. Derfor bliver landene nødt til at føre en politik, som kan dæmme op for asylansøgere"*

("*They* [ed. the European Council] *are acting like Kings without a country and want to decide, what line of policy we lead. Therefore, we are not remotely going to comply with that.*" […] *We are in an extremely strained situation in Europe. Because of the large number of refugees and migrants. That is why the countries need to lead a policy that can contain the asylum seekers."*) (Ritzau 2017)

This testifies to a continued commitment to the deterrence policies from the Danish government, rather than complying with the international guidelines, which they probably would have done previously, according to Tan, and supports the paradigm we are presented to. In an attempt to explain the paradigm, Gammeltoft-Hansen notices that several governments read the conventions as the devil reads the Bible in order to provide themselves with sufficient space for creative political action on behalf of the nation-state, making it seem less attractive for refugees to choose as the end station of their displacement. (Jacobsen, et al. 2016, 39)

Contrary to Støjberg, SF's Nielsen, does not see the limitations of the Refugee Convention as an unfavorable evil. He rather sees the convention as being protective of the refugees' legal position in cases where the Danish right-wing seeks to implement policies that SF disagrees with. (App. 14-15, 30-2)

In Australia, we have seen similar policies being adopted. Here, they have turned the number of refugees from 20,587 in 2013 to zero in 2015 by "outsourcing" the process to an offshore island. This appears to have been effective of keeping national strains to a minimum. (Gammeltoft-Hansen og Tan, Beyond the Deterrence Paradigm in Global Refugee Policy 2016, 647) Nevertheless, such deterrence policies, i.a. in Denmark and Australia, is in great incongruence with the aspirations of a cosmopolitan order, as it not only forces other countries to maintain and even clarify their territorial boundaries, but also

to some degree disregards the refugees as individuals with the right to life. In these instances, the endowment seems to go to the nation-states rather than the individuals, which Benhabib, however, claimed would be the consequence of moving towards cosmopolitan norms of justice.

The question of rejecting refugees, pushing them towards other countries, has also become a matter of foreign politics rather than being confined to immigration politics. This is evident, Gammeltoft-Hansen argues, in the fact that the EU, USA and Australia all have created sort of 'proxies' for receiving refugees. Through their foreign politics, they have made agreements with other countries on migration policies, including by making countries reinforce their own borders. This has also been the case of the agreement between the EU and Turkey, where Turkey are to reinforce their border control to Greece in exchange for, for example, economic support and a reopening of the accession negotiations for Turkey to enter the EU. (Gammeltoft-Hansen 2016, 31) In the perspectives of Calhoun, taking such steps suggest a substantial asymmetrical power relation between the nation states, which bears resemblances to an imperial order.

  The Australian model, which some DF politicians noted as an example for Denmark to follow, has also both been subject to criticism by the international community and a ruling from the Australian courts that disallowed parts of the practice, just as it disallowed Australia's possible agreement with Malaysia, as they did not consider Malaysia to be a safe third-country. (Gammeltoft-Hansen 2016, 34) This notion of 'safe third-countries' has also inclined protests towards the EU's deal with Turkey, as many believe not to be a safe country due to flaws and deficiencies of the Turkish asylum system, something Gammeltoft-Hansen also predicts could become the position of the Court of Justice of the European Union and the European Convention on Human Rights. (Gammeltoft-Hansen 2016, 35)

As a consequence of this paradigm, the notion of territoriality becomes highly important, due to the nation-states asserting their territorial sovereignty to push the migration flow away. Therefore, the countries are increasingly moving the controlling entity away from the borders and into international waters, where no one claim responsibility for the refugees.

When several countries follow the deterrence tendencies, it literally drives the refugees back to sea, where their fate remain uncertain, and the potential host countries avoid putting the Refugee Convention provisions into effect.

The notion that the developed countries are politically attempting to dodge obligations of offering refuge, can be seen as Benhabib's *bounded communities* being carried into effect. When speaking of the Refugee Convention, the nation-states act as the bounded communities, which are the signatories passing the convention. Yet, as Benhabib points out as part of the cosmopolitan discourse, is that there are foreseeable tensions between our moral obligations to others within and outside our own bounded community.

> "*Danmark og andre vestlige lande har et grundlæggende skizofrent forhold til Flygtningekonventionen. På den ene side bakker Danmark officielt op om Konventionen […] På den anden side gør Danmark alt, hvad man kan, for at minimere adgangen til at søge asyl herhjemme.*"

> ("*Denmark and other Western countries basically have a schizophrenic relationship to the Refugee Convention. On one hand, Denmark officially support the convention […] On the other hand, Denmark is doing everything possible to minimize the access to seek asylum in this country.*") (Jacobsen, et al. 2016, 40)

This clearly testifies to a convention that truly leaves the nation-states in quite a predicament, and the refugees likewise. The rather blurred situation where countries are joggling its domestic interests while also complying with their commitment to international law, seems to be untenable, as they nations are merely pushing the pressure towards its neighbors, which ultimately can obstruct the refugees' possibility to flee their home country, where they are being persecuted, and thus making the Refugee Convention completely redundant. Putting this into a sort of chain of causality, one can argue that it is the open-textured model of the convention that allows for it to become subject to politicization. This leeway then causes some national creative interpretations that suits the

respective nation-state, which then spreads like a wildfire across border, thus forming the deterrence paradigm. This is illustrated in the model below.

Figure 1

This illustration shows how the refugee situation becomes a highly political agenda, where it presents a schism between the liberal values, which form the foundation of most Western democracies, and the political reality, where nations are increasingly adopting a tougher approach in an attempt to circumvent the refugee flow.

8.4 Institutionalization of the convention

An overall examination of the Refugee Convention proves that its legal foundation is not all that solid. Gammeltoft-Hansen argues that the institutional framework for the convention is rather weak, and the United Nation High Commissioner for Refugees do not have a sufficient mandate to secure a consistent homogenous interpretation of the convention. (Jacobsen, et al. 2016, 38) However, the commitment to the Refugee Convention does not simply rely on good intention. There is in fact some hard-law instruments that may be applied to make the nation-states comply. Gammeltoft-Hansen argues that the human rights institutions and courts have been granted a more authoritarian power, which he exemplifies by mentioning that several countries, including Denmark, have been subject to court rulings, which compel them to change their foreign policies. Rulings that Tan notices that the nations largely have been accepting. (App. 5, 28-31) Such cases can increasingly be seen in both the European Court of Human Rights and lately also the in the Court of Justice of the European Union. (Jacobsen, et al. 2016, 8) This has become normal practice in Denmark, Jacobsen argues, as the Danish courts more often refer to the European Convention on Human Rights than they do to the Danish constitution

(Jacobsen, et al. 2016, 7), which implies that Danish legislation is to some degree molded by its international commitments. This also reflects Benhabib's notion of institutions within the walled forum of bounded communities, which in this instance can be seen as breaking those walled forums.

Arguably, there are two possible reasons for this situation. On one hand, either the human rights system has developed so much and been adopted to such a degree by nation-states that it has simply become an inevitable and integrated part of international law. On the other hand, it can be interpreted as if the nation-states have not been able to rise to the occasion of ensuring an appropriate protection of human rights and refugees, which therefore demands a supranational entity to settle any disputes. The latter could then, moreover, be perceived as a scenario where the flighty cosmopolitan convention exists in a reality of nation-state world order, thus capturing the legal position of refugees in between two ideologies.

Such development has naturally seen noteworthy resistance, as the sovereignty of the nation-state is suddenly passed on to an international apparatus, which may not have its domestic interests at heart. Jacobsen provides to opposing opinions of this scenario. The first, where idealists are skeptic of the cynicism of realpolitik among the political leaders, and the second, where people are resisting this increase of surrendering authority to international courts, arguing that things the development has been taken a step too far in depriving the nation-states of its sovereignty. (Jacobsen, et al. 2016, 8) Therefore, from the theoretical gap between cosmopolitanism and nationalism, it is probably safe to say that such institutionalization also contradicts with Calhoun's aspiration of the nation-state's sovereignty.

Conclusively, in the sense of duty of hospitality, the Refugee Convention is centered around enforceable norms that nation-states must obey, according to Benhabib's distinctions of juridical consequences on page 32.

8.5 Possible alternatives for the convention?

Bearing in mind all of the abovementioned parts of analysis, then why is the Refugee Convention not just amended additionally? If there are so many difficulties attached to the current convention, and the signatories are taking gambols to avoid executing their obligations, surely a better outcome would be possible if the convention was to be renegotiated, or perhaps even abandoned, now that we know what is being contested? These are some of the questions which the following discussion seeks to elucidate.

The latter question from above is at least what the right-wing of Danish politics is considering turning into reality. Here, we saw both the government parties address the possibility of initiating a renegotiation process, which was greatly supported by DF, who were ready to withdraw Denmark from the convention, if such renegotiations were not productive. Yet, that view is far from shared on the left-wing party SF. Here, Nielsen warns that even a slight change will open up a Pandora's box, which will significantly weaken the legal position of refugees in the future, both in the case of a renegotiation or a complete abandonment. (App. 12, 7-13)

However, some of SF's closest party allies on the foreign policy, EL and RV, did not show the same concern of renegotiating the terms of the convention in order to have climate-induced migrants to enjoy the benefits from refugee protection by international law (see background page 20). Tan agrees with Nielsen, and worries that the outcome may put refugees worse off.

"If states were to renegotiate the Refugee Convention, that would go against […] the human rights of refugees. In my personal opinion, I can see that, that is a risk-assertive approach. A conservative approach." (App. 11, 8-12)

Gammeltoft-Hansen continues on Tan's quite reluctant stance and stresses that he

As mentioned earlier in the analysis, other fear a further politicization of the matter, as they regard the human rights system as superior to national politics, therefore, they will not accommodate the critique of the conventions, as these are the embodiment of human rights progresses. This position is probably what DF's Langballe on pages 17-18 notes as

the conventions being "sacred" to some, and can perhaps to some degree be converted into a notion of cosmopolitanism, where Kant's notion of a *sphere of rightful relations among nations* in this instance supersedes the domestic law.

If Denmark and other critics were to either renegotiate or abandon the Refugee Convention, it could have severe impact on many lives. As both Nielsen and Tan previously stated, they feared a renegotiation would be a slippery slope that ultimately would worsen the conditions and legal status for refugees, thus resulting in less protection.

This, however, does not seem to concern DF particularly, given the fact that they have underlined their demand for changes of the conventions. The government parties on the other hand, are perhaps less willing, as they, and in particular the Liberal Party, states that a negotiation of the convention alone does not solve the problem, which became evident in the prime minister's answer to the Conservative chairman in the debate summarized on page 16. This implies that they are to some extent acknowledging that there may potentially be disadvantages by modifying the convention.

Gammeltoft-Hansen argues that by questioning and working against the human rights system, the Western countries are setting a poor example to follow. This would then legitimate the developing countries and neighboring region to take a similar critical position towards a human rights system that primarily derives from Western ideals. If the Western countries' strains were to be lifted through a renegotiation, it would mean an increase flow of migration elsewhere, and would suggestively result in even heavier strains in the neighboring countries, such as Jordan, Lebanon, and Turkey. Countries which currently are almost succumbing by accommodating 86 percent of the world's refugees – an increase of 16 percent over the last ten years. (Jacobsen, et al. 2016, 39-40) Such a scenario drives Gammeltoft-Hansen to claim that the convention should be supported to a greater extent, not to a lesser, as for every country not endorsing the refugee system, there is one country lesser to share the burden with. (Jacobsen, et al. 2016, 41)

The current stalemate we see, and probably also why the Danish government seem hesitant to accommodate DF's desire to initiate renegotiations, could be expressions

of what is really at stake, namely the potentially weak assertive negotiation position that the Western countries would have.

DF clearly stated that if there were no success in seeking a renegotiation, they would propose an abandonment. Having in mind the domino effect of the deterrence paradigm, then moving the focus towards such a scenario where the Refugee Convention was to be abandoned by Denmark, perhaps due to discrepancies during a renegotiation, we would probably see an even further reinforcement of the sovereignty among the nation-states, and even more states would be inclined to leave the treaty, thus possibly leading to its complete cancellation.

Tan, however, sees that scenario as rather unlikely, as a cancellation of the Refugee Convention would, just add to the number of refugees moving towards Western countries. This would then lead to states simply expelling people indiscriminately, which, in his mind, would deter the hyper-mobilization that the Western countries are dependent on in many other aspects than refuge, particularly in terms of trade. (App. 8, 11-18) Another notion worth including in this discussion is the nations' self-understanding, something Nielsen also commented upon, as he saw the development aid as part of an advance in the self-understanding of Denmark in the wake of WWII.

Gammeltoft-Hansen supports this view, and argues that this does not only apply for Denmark, but is applicable for the entire Western part of the world.

"Mange vil formentlig pege på, at det ville koste i forhold til vores politiske, kulturelle og historiske selvforståelse."

("Many would probably emphasize that this would be costly in terms of our political, cultural, and historical self-understanding.") (Jacobsen, et al. 2016, 39)

Having examined the possibilities of a renegotiation, it seems quite unlikely that today's order would allow for a similar liberal convention where the refugee's interests are prioritized, because several states would be likely to follow the countries putting forward their critique, and due to a fear of completely neglecting national self-interest, would

arguably tend to reinforce their sovereign say on the matter. Such attitude may not only be limited to the Western countries. From the neighboring region, we would likely see a similar reluctance to agree to a new treaty, as they could be outmaneuvered by the stronger national states, who includes elements of foreign politics into the equation to protect domestic interests, and who in return could have a difficult time convincing the neighboring countries to accommodate millions of refugees without even having the right for compensations or any form of burden-sharing, which is the case of today. Should there be a scenario where the convention is no longer in force, the Western countries, would want to reestablish it. (Jacobsen, et al. 2016, 40)

8.6 Dim or promising prospects for the convention?

This last part of my discussion seeks to explore what the future holds for the Refugee Convention. As Tan observes, the critique of the convention is a reoccurring phenomenon (App. 10-11, 31-1) Yet, noticing the recent deterrence paradigm being established, where national politics are progressively adopting new policies inhibiting the convention provisions from becoming effective. Therefore, the debate may be occurring, yet deterrence policies, such as we have seen during the recent crisis, suggests that if the refugee situation is only worsening in the future, the domestic policies will only become more creative to bypass the convention, thus increasing the pressure. Bearing in mind how much the refugee system, including the Refugee Convention, suffered from the recent refugee influx, one is likely to imagine a future where this will be an even bigger challenge, thus applying even more pressure on the chastened Refugee Convention.

There is in fact much indicating an even larger-scale migrations in the future, which could potentially create new and larger pressure. One of recurring observations throughout this thesis, is the matter of climate-induced migration. Undoubtedly, the climate change has severe impact on how the world will look in the future. Rising water levels, draught, and natural disasters all play a part, as these both result in resource scarcity, forcing people to seek better livelihoods elsewhere, thus creating a situation of resource scarcity there. Such a situation could then create tensions and ultimately conflict – a scenario that

resembles one of underlying causes for the Syrian conflict (Gammeltoft-Hansen 2016, 19). By the current provisions of the convention, people fleeing climate change are not refugees, but migrants, who the signatories of the conventions are not obligated to protect. As an answer to this dilemma, we saw the proposal from EL and RV, who intend to amend the convention to include provisions ensuring rights for climate-induced migrants. Yet, the current political landscape in Denmark certainly do not seem to share that aspiration. Considering SF's position of not wanting to touch the convention with a bargepole on the one side, and the government's and its supporting party, DF, intention of limiting the scope of the convention, or even abandoning it, on the other seems to present an impasse, at least from a Danish perspective.

Nielsen, however, agreeing with the projections of a rise in the number of refugees suggests that the rights of climate-induced migrant should be negotiated separately from the Refugee Convention. One disadvantage of that could be that climate refugees would not come to have the same rights protecting them. (App. 15, 16-23)

Gammeltoft-Hansen sees the aim for a burden-sharing as pivotal for the survival of the convention, which he stresses require a political will to reach (Jacobsen, et al. 2016, 42). If we do not change our immigration policies, we are likely to see an even more intense migration flow for the years to come. (Gammeltoft-Hansen 2016, 47)

Such predictions emphasize the entire dilemma of this project. The cosmopolitan imperative, really, which is that global challenges require global solutions. Calhoun's nationalism stresses the notion of social solidarity, confined within nation-states, naturally, whereas Benhabib, drawing on Kant, stresses the cosmopolitan rights, which ultimately raises the question of where we should let our moral responsibility and solidarity be expressed, and whom should benefit from it.

9. Conclusion

When pondering over the analysis, it becomes clear that this thesis comes across many issues concerning the Refugee Convention and its status today, with an offset in the ideologies that have contributed to shape the convention when it was adopted, to the present day situation, where the very same convention is being seriously contended.

But, is it in fact the very same convention? I would argue that the original convention, which saw the light of day in is not what causes the problems, whereas I point to its protocol amendment, which causes today's dilemma. This broadening of a quite specifically focused convention, clearly stating who it intends to protect and in what time, becomes universalistic in a way, or at least that is the intention. Yet, since the adoption of the convention in 1957, to the significant amendment of protocol 11 in 1967, and up until the Cold War, the values of human rights were only on the rise. In recent times, however, this development has taken a turn, leaving the convention exposed to critique and to being bypassed by national legislation.

Seen from a theoretical perspective, both the content and form of the convention can be argued to be a product of a cosmopolitan spirit in its aspiration towards a universal protection of human beings, in a time where people had just been witnesses to the worst sides of the nation-state. The reality, however, is likely to be that the convention bears the mark of both cosmopolitan and nationalist ideologies, as it also is founded on the will of nation-states, thus having accepted and been adapted to these bounded communities.

This becomes visible in the phrasings of the convention, which made it clear that the vague language of the convention, or open-textured model, makes it accessible for interpretation. Consequently, this leaves it exposed to an increased politicization, which probably is a main part of the current debate, as the political statements are many and various, thus leaving even greater room for debate.

Conclusively, how we perceive the convention today, with all its flaws and advantages, can arguably be considered to be the product of a cosmopolitan idea, produced through the machinery of nationalism, thus leaving the nation-states and its populations in a schizophrenic limbo. Where this will leave the convention in the future, is difficult to say.

Yet, the current deterrence paradigm that Gammeltoft-Hansen and Tan is seeing is clearly not a sustainable solution, neither for developed Western countries nor for developing and neighboring countries. Therefore, the call for a common burden-sharing policy seems to be the most tenable solution. If nation-states can come together creating such an agreement, despite of opposing ideologies, there is a possibility that new compromises will be achieved one way or another.

Bibliography

Özkirimli, Umut. 2010. *Theories of Nationalism.* 2nd edition. New York: Palgrave Macmillan.

Beitz, Charles R. 2005. "Cosmopolitanism and Global Justice." *The Journal of Ethics*, 11-27.

Benhabib, Seyla. 2006. *Another Cosmopolitanism.* New York: Oxford University Press.

Brinkmann, Svend. 2013. *Qualitative Interviewing.* New York: Oxford University Press.

Bryman, Alan. 2012. *Social Research Methods.* 4th. Oxford, New York: Oxford University Press.

Calhoun, Craig. 2008. "Cosmopolitanism and Nationalism." *Masaryk University.* September 23.
    Accessed Marts 15, 2017.
    https://is.muni.cz/el/1423/podzim2012/SAN237/um/Calhoun_cosmopolitan-and-
    nationalism.pdf.

—. 1997. *Nationalism.* Minneapolis, Minnesota: Open University Press.

—. 2007. *Nations Matter.* New York: Routledge.

Collin, Finn, and Simon Køppe. 2012. *Humanistisk Videnskabteori.* DR multimedie.

European Court of Human Rights. n.d. "European Convention on Human Rights." Accessed April
    13, 2017. http://www.echr.coe.int/Documents/Convention_ENG.pdf.

Folketinget. 2016. *§20 spørgsmål S520 Om genforhandling af FN's flygtningekonvention af 1951.*
    January 22. Accessed April 20, 2017.
    http://www.ft.dk/samling/20151/spoergsmaal/S520/index.htm.

—. 2015. *§20 spørgsmål US 30 Om flygtninge.* December 15. Accessed April 17, 2017.
    http://www.ft.dk/samling/20151/spoergsmaal/US30/index.htm.

—. 2016. "§20 spørgsmål US39 om FN's flygtningekonvention." *Danish Parliament.* June 19.
    Accessed April 20, 2017. http://www.ft.dk/samling/20151/spoergsmaal/US39/index.htm.

—. n.d. *Mandatfordeling.* Accessed April 16, 2017.
    http://www.ft.dk/Folketinget/findMedlem/Mandatfordelingen.aspx.

—. n.d. *Medlemmerne.* Accessed Maj 3, 2017.
    http://www.ft.dk/Folketinget/findMedlem/SFHONI.aspx.

Fruensgaard, Jonas. 2011. "R og Enhedslisten: Danmark skal tage klimaflygtninge." *Etik.dk.*
    December 9. Accessed April 19, 2017. https://www.etik.dk/fremtidens-st%C3%B8rste-
    etiske-udfordringer/r-og-enhedslisten-danmark-skal-tage-klimaflygtninge.

Gammeltoft-Hansen, Thomas. n.d. *Hvordan løser vi flygtningekrise.*

Gammeltoft-Hansen, Thomas, and Nikolas Feith Tan. 2016. "Beyond the Deterrence Paradigm in
    Global Refugee Policy." *Suffolk Transnational Law Review*, 637-649.

Holm, Thue Ahrenkilde. 2015. "Borgerlige vil udfordre "konventionsregimet"." *Berlingske.* June 9.
Accessed April 20, 2017. https://www.b.dk/politiko/borgerlige-vil-udfordre-
konventionsregimet.

International Relations. n.d. *Peace of Westphalia/Treaty of Westphalia.* Accessed April 15, 2017.
http://internationalrelations.org/peace-of-westphaliatreaty-of-westphalia/.

Jacobsen, Anette Faye, Steven L. B. Jensen, Thomas Gammeltoft-Hansen, Jonas Christoffersen,
Eva Ersbøll, Janne Jakobsen, Rikke Frank Jørgensen, et al. 2016. *Kampen om
Menneskerettighederne.* Porvoo: Gads Forlag A/S.

Kaae, Martin. 2016. "Thulesen Dahl: Danmark skal fri af internationale konventioner." *Jyllands-
Posten* 2017 (March): 4.

Kohn, Hans. 1944. *The Idea of Nationalism: A Study In Its Origins And Background.* Michigan: The
Macmillan Company.

Kristensen, Kim. 2016. "Regeringen dropper opgør med FN's flygtningekonvention." *Information.*
November 9. Accessed April 19, 2017.
https://www.information.dk/indland/2016/11/regeringen-dropper-opgoer-fns-
flygtningekonvention.

Princeton University. n.d. *princeton.edu.*
http://www.princeton.edu/politics/people/display_person.xml?netid=cbeitz.

Ritzau. 2015. "Europarådet kritiserer Danmark for integrationsydelse." *Politiken.* August 27.
Accessed April 17, 2017. http://politiken.dk/indland/politik/art5587028/Europar%C3%A5det-
kritiserer-Danmark-for-integrationsydelse.

—. 2015. "SF: Trist at blå blok vil udfordre flygtningekonventionen." *Fyens.dk.* June 10. Accessed
March 31, 2017. http://www.fyens.dk/erhverv/SF-Trist-at-blaa-blok-vil-udfordre-
flygtningekonvention/artikel/2729582.

—. 2017. "Støjberg retter ikke et komma efter kritik fra komité." *Information.* May 16. Accessed
May 21, 2017. https://www.information.dk/telegram/2017/05/stoejberg-retter-komma-kritik-
komite.

Skibby, Hans Kristian. 2016. "FN's Flygtningekonvention bør på pension." *Århus Stiftstidende.*
June 6. Accessed April 19, 2017. http://stiften.dk/laeserbrev/FNs-Flygtningekonvention-
boer-paa-pension/artikel/350028.

Stanford University. n.d. "Max Weber." *Stanford University.* Accessed April 17, 2017.
https://plato.stanford.edu/entries/weber/#NatPowPol.

—. n.d. *Stanford University.* Accessed April 21, 2017.
https://plato.stanford.edu/entries/cosmopolitanism/.

—. n.d. *Stanford University.* Accessed April 20, 2017.

https://plato.stanford.edu/entries/habermas/#HabCos.

—. n.d. *Stanford University.* Accessed April 20, 2017.

https://plato.stanford.edu/entries/nationalism/.

Therkildsen, Vicki. 2016. "Europarådet til Støjberg: Ondsindede asylstramninger." *DR.* January 15.

Accessed April 17, 2017. https://www.dr.dk/nyheder/politik/europaraadet-til-stoejberg-

ondsindede-asylstramninger.

UNHCR. n.d. "Convention and Protocol Relating to the Status of Refugees." *United Nations High

Commissioner for Refugees.* Accessed April 13, 2017.

http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf.

—. n.d. "Convention Relating to the Status of Stateless Persons." *United Nations High

Commissioner for Refugees.* Accessed April 4, 2017.

http://www.unhcr.org/protection/statelessness/3bbb25729/convention-relating-status-

stateless-persons.html.

—. 2011. "The 1951 convention relating to the status of refugees and its 1967 protocol." *United

Nations High Commissioner for Refugees.* September. Accessed March 3, 2017.

http://www.unhcr.org/4ec262df9.pdf.

—. 2016. *UNHCR viewpoint: 'Refugee' or 'migrant' - Which is right?* July 11. Accessed April 5,

2017. http://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-

migrant-right.html.

United Nations. n.d. *Universal Declaration of Human Rights.* Accessed April 17, 2017.

http://www.un.org/en/universal-declaration-human-rights/.