Extraterritorial Asylum Processing

An Analysis of the proposal from the Danish Social Democrats regarding the creation of Asylum Centers outside of Europe

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STUDENT REPORT

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Abstract

In mid-2019 the Social Democrats of Denmark, the largest political party in Denmark, presented a proposal regarding a new asylum system. The Social Democrats proposed to create a center outside of Europe. Applicants seeking asylum in Denmark would be transferred to this center, where their asylum cases then would be processed. The fundamental idea of the proposal is not a new one, as it is one that has emerged several times during contemporary history, but still one that not so far has gained a foothold in European Asylum policies.

This thesis examines this proposal. It positions it according to the recent surge of extraterritorializing measures being applied by Western States, while they still attempt to work within the limits of their international commitments. The research conducted in the thesis aims at examining what issues the proposal can give rise to, regarding the international commitments of Denmark in relation to the 1951 Refugee Convention. It does so, by using the central principles of *non-penalization* and *non-refoulment* as points of focus, while applying the concept of *Extraterritorial Asylum* and the theory of *Neo-Refoulment* and drawing on existing studies conducted in the field. Interviews conducted with officials from the Ministry of Immigration and Integration and Rasmus Stoklund from The Social Democrats are also being incorporated, as it broadens the proposal, and provides answers and indications to what the proposal might look like, when transformed into a specific center.

The proposal can be seen as a continuation of the current trend from the side of Western States regarding increasing amounts of extraterritorial asylum measures being applied. The general opinion on the matter is, that the international commitments must be adhered to. Furthermore, the proposal states that Danish standards and rule of law will be obtainable in the center. This seems hard to promise in relation to the proposal, as many aspects and features connected to it remains unknown. This includes the level of safety which can be promised by the side of Denmark in the center, and to what degree Danish authority and jurisdiction can be yielded in a third country. If the proposal becomes reality and centers are created, this can furthermore lead to issues regarding commitments made to other European nations through the Dublin Regulation, as a degree of common institutional framework as well as common method of asylum processing is required for the cooperation to function.

Keywords: Extraterritorial asylum, non-refoulment, non-penalization, international commitments

List of Abbreviations

EU: European Union

IOM: International Organization for Migration

IRO: International Refugee Organization

NGO: Non-Governmental Organization

Refugee Convention: The 1951 Refugee Convention Relating to the Status of Refugees

UN: United Nations

UNHCR: The Office of the UN High Commissioner for Refugees

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1. Introduction and Research Question

In mid-2019 the Social Democrats in Denmark, then and currently the largest party in the Danish parliament (TV2, 2019), presented their proposal to a future asylum and integration policy (Andersen & Reinwald, 2019). This came just before the Danish parliament election, that was scheduled to be held the 5th of June same year. Since 2015 the party had been in opposition to the liberal-conservative government and was now hoping to win the power in the coming election. The proposal was named *Retfærdig og Realistisk – En udlændingepolitik der samler Danmark* (Socialdemokratiet, 2019). Directly translating the proposal into English as "Fair and Realistic – An immigration policy that unites Denmark", the proposal is being branded as one that is both fair and realistic, but also one that will unite the very polarized opinions existing on the matter among the Danish population.

The proposal came after several years of an increasing tightening of the asylum and immigration policies of Denmark by the previous liberal-conservative government, culminating in "paradigmeskiftet" directly translating into "The paradigm shift", which the Social Democrats also voted yes to in the parliament (Ingvorsen, 2019). The term "Paradigm Shift" itself, derives from the American philosopher of science, Thomas Kuhn. The concept as he coined it in 1962 represents a fundamental shift in the conceptual framework and practices of a certain scientific area or discipline (Kuhn, 1962 p.54). The political agreement tightened the asylum and immigration policy in several areas, e.g. the residence permits of refugees would now become temporary, not automatically extended and suspended when possible (Ingvorsen, 2019). The name of the welfare benefits offered to refugees in order to sustain themselves, also changed name from "integration benefits" to "repatriation benefits" (Ingvorsen, 2019). The agreement clearly indicated, that the government was no longer as concerned with the integration of refugees in the country, as it now clearly had shifted its focus regarding refugees away from integration, towards eventual repatriation.

The *Retfærdig og Realistisk – En udlændingepolitik der samler Danmark* proposal from the Social Democrats, proposed several changes to the current asylum and immigration system. Some of them rather large and fundamental changes, that goes quite a long way further than the paradigm shift. The proposal is parted in three according to the specific focuses and areas. The first part focus´ on the asylum and arrival, or the lack of, of refugees to Denmark. It specifies that Denmark needs to be more in charge of who arrives to the country, than it has been up until now. Part two focus´ on the increased humanitarian aid that will be provided by the Danish state to developing countries, specifically to African nations. And the third part specifies the increased measures that will be taken, to battle

parallel societies, social control and criminality among immigrants and descendants of immigrants in Denmark (Socialdemokratiet, 2019).

One of the major changes proposed by the Social Democrats, is the creation of asylum centers[1] outside of Europe. As a result, "spontaneous asylum seekers" appearing at the Danish border, wishing to seek asylum in the country, would then be sent to the center outside the border of the European Union, where their case would be handled and processed (Socialdemokratiet, 2019). The main argument for creating this type of center outside of Europe, is that it would prevent refugees and migrants from trying to cross the Mediterranean Sea in dangerous and uncontrollable ways, and furthermore to destroy the businesses of human smugglers, who are taking advantage of the desperation of refugees and migrants (Socialdemokratiet, 2019).

It is a fact that people are losing their lives, attempting to cross the Mediterranean Sea. In 2017 1,96 percent of the displaced people and migrants trying to cross the Mediterranean Sea from North African coasts lost their lives. In 2019 that amount had risen to 3,63 percent (IOM, 2019). The proposal is one that would fundamentally change the entire way asylum is being perceived and granted, both in theory and in practice. Thus a discussion on whether this type of center should be a part of the future asylum system of Denmark, and more broadly the European Union, in the future, and whether or not there exists a need for them is one that probably will dominate the debate for the next years to come. However, before that, it is relevant to examine to which extent the conception of these centers would be possible to build and implement in practice.

The Danish asylum system has been built on a clear set of principles and rules shared by most other Western countries, including the countries of the European Union. Most notably, the Refugee Convention 1951 and its 1967 protocol, and the Universal Declaration of Human Rights 1948 from which the Refugee Convention is built upon. The 1951 Convention Relating to the Status of Refugees, as it is officially named, came into existence in the immediate wake of World War 2, as a respond to a heightened need for cooperation on the handling of the large number of refugees left displaced as a result of the war (UNHCR, 2010). Since then, it has served as basis for international refugee law as well as for national refugee law of the signatory states. As a signatory state, Denmark has declared that the country will adhere to the articles of the Convention. And so, the national refugee protection system of Denmark must live up to the standards of the international commitments the country has

[1] The term ´Asylum Center´ and the term ´Reception Center´ are used interchangeably throughout the thesis, as the center will both conduct the asylum processing and receive the applicants.

affirmed itself to. Therefore, it seems imperative that new regulations and laws on the area of asylum and immigration, and certainly one as fundamental as the creation of asylum centers outside the European Union, is one that would work within the limits and rules of the Convention.

Ahead of a planned visit in Denmark by the Refugee Commissioner from the European Union, Ylva Johansson, the Commissioner commented on the proposal from the Social Democrats. She expressed criticism of the idea of creating a reception center in a third country stating that: *"I think that it is an unrealistic idea. A lot of questions and legal implications remains, that I for now cannot see a practical solution for"* (Alsen, 2019). The proposal regarding the creation of asylum centers outside of Europe is not a new one. As long ago as in 1986, Denmark proposed a resolution in the General Assembly of the United Nations. The draft proposed the creation of UN centers that would oversee the asylum procedures. The following resettlement of refugees would be coordinated in cooperation between the states. (Leonard & Kaunert, 2016). The issue came to attention again in 2003 when the British government tabled a elaborate proposal on extraterritorial asylum processing. The creation of these centers outside the European Union was proposed to be funded by participating states, with some possible aid from the EU budget (Leonard & Kaunert, 2016). As recently as in late 2014, the German Minister of Interior Thomas de Maiziére, revived the idea of "welcome and departure centers" in major transit countries in North Africa, where the processing of asylum claims would be conducted (Leonard & Kaunert, 2016). Despite the several proposals offered through the years, the idea of asylum centers in third countries has not found a foothold in European asylum policy, and so, extraterritorial asylum processing is not being carried out in a European context. The fact that the proposal has led to nothing each time it has appeared in European politics, indicates that the proposal, if not unrealistic, at least is one that has proven to be very hard to accomplish . And that the proposers of the system have had a hard time convincing the leaders of other nations to support it. Furthermore, the criticism from Ylva Johansson provides reason to believe, that the proposal would be hard to establish in practice.

Looking for an example of a Western country with a similar asylum policy to the one proposed by the Social Democrats, Australia is a good example of it. Following the "Pacific Solution" policy, implemented from 2001 to 2007 and "Operation Sovereign Borders" in 2013, the country has adopted a controversial asylum policy, which also involves ´outsourced´ asylum centers on pacific island states, who in turn are payed by the Australian government (McAdam, 2013 p. 440). The Australian system however, has received heavy criticism from different organizations and states, claiming the system is inhumane and unfair to the immigrants and refugees "caught" in it (McAdam, 2013 p. 444).

Some of the criticism is guided towards the international responsibility Australia must live up to, the same way Denmark must. Furthermore, interest has been shown from the side of the Danish politicians in the Australian asylum system. In 2016, a Danish delegation from the committee of Immigration and Integration in the Danish parliament, visited Australia. The aim was to gain an insight in the Australian system and how it works in practice. The visit also involved a tour of the externalized asylum camps on the island of Nauru (Jørgensen, 2016).

Since the Australian asylum system, which seemingly is made in way, that would resemble how the proposed system from the Social Democrats would look in practice, is being criticized for not complying with the International Conventions existing on the matter. It becomes even more evident to examine whether or not the proposal from the Social Democrats would be possible within the limits of the 1951 Refugee Convention.

Based on the above and within the scope of this paper, the research question to be examined is as follows:

What are the possible issues in relation to the 1951 Refugee Convention, regarding the proposal from the Social Democrats in Denmark to create an asylum center outside of Europe?

The 1951 Refugee Convention contains a number of principles such as the principles of non-refoulment non-penalization and non-discrimination (UNHCR, 2010). The two principles which will be examined in this thesis, are the principles of non-penalization and non-refoulment, as these are assessed as being particularly relevant in relation to extraterritorial asylum. Therefore, the analysis will focus on these two principles, while examining the proposed new system from the Social Democrats. These central principles will be described and outlined in the analytical part of the thesis named *Living up to the International Commitments*.

2. Methodology

2.1 Structure of the Thesis

In order to thoroughly answer the research question and to conduct the analysis in a proper manner, several things are needed. First, an overview of the legislation, since the question at hand, revolves around complying with international law. More specifically, the central principles of *non-penalization* and *non-refoulment*, derived from the 1951 Refugee Convention, will serve as central points of focus during the research.

An outlining of the proposal from the Social Democrats is also needed. This will be done through a close textual reading of the proposal, as the proposal itself will be involved in the analysis, as drawing in central parts of it can be beneficial when examining the possible complications related to it. However, since the proposal has not yet been transformed into an actual system and specific laws, in order to gain an even more thorough understanding of how the proposed system would be employed in practice, an interview with representatives from the relevant Danish Ministry will also be conducted. The representatives are officials in the Danish Ministry of Immigration and Integration working in the "Task Force – Fair and Humane Asylum System", making the representatives obvious candidates for an interview. The interview will serve to give an insight into the current work of the Ministry, making it easier to outline the possible future system, which in turn makes the analysis of potential issues regarding the proposal more comprehensive. Furthermore, an interview with a member of the Danish parliament for the Social Democrats, Rasmus Stoklund, who also serves as spokesman of Integration and Immigration for the Social Democrats will be conducted.

Whereas the officials from the task force are employees of the government, Rasmus Stoklund is an elected politician serving in the parliament. This provides him with a different basis for answering questions regarding the proposal, as it is his party, the Social Democrats, who has drafted it. Considerations were made, to conduct more interviews other than the two actually performed. The considerations made regarding potential candidates for interviewing where mainly employees in the NGO-sector. This was considered on the basis of an initial assumption, that employees from organizations like the Danish Refugee Council or Danish Red Cross could provide a different perspective and opinion on the matter and ´balance the scale´, as it is only the side of the legislators and officials of the government who has been interviewed. However, as the aim of the thesis is not to investigate the different perspectives or analyze the discourses found to exist on the area, this idea was discarded.

The analysis will incorporate the statements gathered through the qualitative interviews. As the aim of the thesis is to explore and illuminate the possible complications related to the proposal regarding the 1951 Refugee Convention, the analysis will use the two central principles of *non-refoulment* and *non-penalization* derived from the convention as central points of analysis. The analysis will include the concept of *Extraterritorial Asylum*, as the whole topic of the thesis positions itself within this concept. The concept will be outlined, describing what the concept embraces, and which features it usually is accompanied with. Furthermore, the theory of *Neo-Refoulment* by Hyndman and Mountz will be included. The theory offers a unique take on the current situation, that an increasing number of Western states has started to externalize its asylum systems in an attempt to limit the number of asylum seekers reaching the country. They are doing so while also trying to act within the limits of the 1951 Refugee Convention and avoiding to act in a manner directly violating the principal of *non-refoulment* in its general interpretation.

By using the specific principals of non-refoulment and non-penalization as points of focus in the analysis of the proposal, and applying the statements acquired through interviews with particularly relevant interviewees while furthermore drawing on the concept of Extraterritorial Asylum and the theory of Neo-Refoulment, the basis and framework for analyzing the potential problems related to the proposal is created. Furthermore, Existing Studies on the matter of Extraterritorial Asylum will also be drawn on, as well as relevant articles and academic papers, which can help to illuminate issues and to support arguments.

As the proposal only is a draft, and no specific measures or plans has been made public yet, it is hard to judge precisely whether or not the proposal is keeping itself within the boundaries of the 1951 Refugee Convention. However, it can be analyzed what *possible* issues can arise from the implementation. These possible issues will be examined and put up against reality and the practicality of the hypothetical center. From that it is possible to note which components and measures of the future system the drafters and creators of it, particularly needs to consider and keep in mind.

2.2 Qualitative and Semi-Structured Interviews

The interviews conducted in this thesis will take the shape of qualitative interviews as opposed to quantitative interviews. This is done both to create an opportunity for more in-depth interviews, but also on the assumption that it could prove difficult to acquire enough respondents to conduct quantitative research. Also the topic of the thesis, as well as the research question, do not suggest the use of quantitative interviews, as the aim is not to examine a general discourse or public opinion on

the matter, but rather to examine a specific issue, involving the opinions and thoughts of decision makers and employees close to the decision making process. If quantitative surveys were to have been beneficially conducted within the scope and research question of this thesis, this would have involved multiple interviewees with the same background as the ones selected for the qualitative interviews, potentially also involving legal experts and professors. With a relatively large quantity of these people, a very wide outlining of the different opinions and discourses on the matter could be conducted. The ´qualitative approach´ however, is particularly useful when the wish is to gain in-depth and elaborative information, as opposed to the short and rather ´locked´ questions used in quantitative interviews (Bryman, 2016 p.374). This elaborative feature of qualitative research is particularly useful in the research of this thesis, as the empirical focus is centered around few persons, but with the aim of acquiring exhaustive interviews of these few persons. This is done to gain as much insight as possible in the aims, issues, problems etc. related to the proposal from the Social Democrats.

The interviews will furthermore take the shape of *semi-structured* interviews. This kind of interview is characterized by a degree of flexibility, while still drawing on a set of questions, an *interview guide*, to structure the interview (Bryman, 2016 p.468). The questions asked during the interview may not be asked in the exact way as outlined in the interview guide but will follow the topic and issue. This kind of interview also provides the opportunity for asking questions that are not outlined in the interview guide, but are asked when following up on responses of the interviewees (Bryman, 2016 p.468).

As qualitative research with its associated semi-structured interviews offers this kind of flexibility, as well as an in-depth feature, this approach is particularly useful in this thesis. This is due to, that the interviewees in their capacities as respectively officials and member of parliament, all with specific roles concerning the area of asylum and immigration, has a wide and well-funded knowledge of the topic. Thereby they arguably also constitute ´experts´ on this issue. If locked quantitative questions where applied, this knowledge would be harder to access and extract from the interviewees. As compared to qualitative interviews, where follow-up questions on topics potentially emerging in the interview, which perhaps are previously unknown to the interviewer, can be followed-up on with great benefit.

2.3 The Interviews – In Practice

When conducting multiple semi-structured interviews during research, the general approach is to create the interview guides alike with similar wording (Bryman, 2016 p. 468). This is also the approach used in this thesis, with the interview guides of the two interviews being created in a similar fashion, with questions that to a large degree are the same. However, since the two interviews has interviewees with different backgrounds and different roles regarding the proposal from the Social Democrats, the formulation of the questions are different and adjusted to match this difference. The interview guide for the first interview (Appendix 3) is divided into two sections. The first section of the interview guide contains questions regarding the general areas of responsibility of the two officials within the task force they work in, as well as questions guided towards their initial thoughts on the challenges regarding the asylum system as it looks today. The second section of the interview guide dives into the proposal itself. Containing questions regarding the specific challenges associated with it and how the proposed new system could be implemented in practice.

The frame for the second interview conducted during research, the interview with member of parliament, Rasmus Stoklund, was different from the first interview. Rasmus Stoklund had 15 minutes to spare in an else somewhat filled calendar, and so, due to the rather constricted timeframe, the interview guide (Appendix 4) is shorter for this interview. The guide is not divided into a respectively ´introducing´ and ´elaborative´ section, as the aim is to compress the questions, and move directly to the proposal itself. Asking questions regarding the challenges and issues associated with the creation of a center outside of Europe.

The first interview (Appendix 1) was, as mentioned above, conducted with two employees in the Ministry of Immigration and Integration. One of the officials has majored in Law while the other one has majored in Political Science. The two officials work in the `Task Force – Fair Asylum`, a department launched by the government, both acting as a secretariat for the Minister of Immigration and Integration, but also aiding in the research of a future asylum system and in which ways the current system can be transformed. Based on this, the assumption was that the interviewees could provide a look inside the current work of the Ministry of Immigration and Integration, regarding the creation of an asylum center in a third country.

The interview was conducted over the media ´Facetime´, which is an application with features resembling the ones found in Skype and which can be used when conducting video conversations and interviews. Usage of this particular format when carrying out interviews, carries with it both advantages and limitations. Alan Bryman states, that researchers have begun to report and reflect on their experiences of video interviews using medias like Skype and Facetime, and that the general early indications are broadly positive regarding the usage of them (Bryman, 2016 p.492). Examples of advantages when using this type of interview, is that it is more flexible than the face-to-face interview, as last-minute changes and adjustments are easily accounted for. There are also time and cost savings, as the need for travel is removed (Bryman, 2016 p.492). The possible disadvantages of Skype and Facetime interviews includes potential technological problems, as internet connection can vary, and fluctuations in quality and breaking up of speech can happen during the interview (Bryman, 2016 p.492). One obvious advantage of interviews conducted through the use of Skype or Facetime, is that the need for meeting the interviewees in person is eliminated. In the face of the current Covid-19 pandemic raging on throughout the world, interviews are not possible to conduct face-to-face due to the risk of contagion. And so, an interview conducted using Facetime or similar medias is arguably the alternative with the highest degree of resemblance to the classic face-to-face interview, and thereby serves as an excellent substitute.

The second interview (Appendix 2) was conducted with member of the Danish parliament and spokesman of Integration and Immigration of the Social Democrats, Rasmus Stoklund. In this capacity, the interviewee was a suitable candidate for an interview, regarding the proposal to create an asylum center outside of Europe. This was done on the basis of an assumption, that he could provide a broadening of the proposal and elaborate on how the Social Democrats imagines the proposal to be carried out in reality.

The interview was conducted through telephone conversation. Much like interviews done through Skype or Facetime, the telephone interview has the advantage, that conversation is made possible without the interviewer and the interviewee actually meeting up face-to-face. Another advantage of using telephone interviews is, that interviewees are more likely to react less negative and more openly towards answering sensitive or critical questions. This is due to the fact, that the interviewer is not physically present during the interview (Bryman, 2016 p.484). Furthermore, there is some evidence, that there are few differences in answers given in a telephone interview compared to answers given in a face-to-face interview. Thus, differences in results acquired are limited (Bryman, 2016 p.484).

The disadvantages of conducting telephone interviews compared to face-to-face interviews, resembles the ones linked to conducting interviews via. video conversation. Technological difficulties are less likely, as no steady internet connection is needed. Only a telephone connection. Although less common, interferences in connection can still happen during telephone interviews, temporarily pausing the interview (Bryman, 2016 p.485). Another major disadvantage of the telephone-based interview is the lack of vision of the face and body of the interviewee. This removes the possibility of observing the facial expressions and body language of the interviewee, to observe of he or she is anxious, puzzled or confused due to certain questions (Bryman, 2016 p.485).

Both interviews were recorded, which was done with the consent of all of the interviewees. The interviews were recorded using the microphone from a laptop, as previous testing of the sound quality of the device had proven to be satisfactory, and as the only mobile device otherwise available was used to facilitate the conversations with the interviewees. According to Bryman, recording of interviews is almost always beneficial in qualitative research, particularly when conducting semi-structured interviews as is the case in this thesis (Bryman, 2016 p.478). It allows for the interviewer to be alert as the need for writing down notes during the interview is minimized. This in turn makes possible follow-up questions as well as prompting and probing when necessary, as concentration can be guided towards what is being said in the particular moment (Bryman, 2016 p.479).

The recordings taped during the interviews were afterwards transcribed to make inclusion of the relevant quotes gained through the interviews, possible in the thesis. The interviews were transcribed ´manually´ directly into a document, without the use of any software or devices created for the purpose of transcribing. Everything was transcribed, but the transcriptions were conducted while keeping in mind, that the aspects of the interviews of particular interest in this thesis are not *how* the interviewees respond but *what* they respond. This becomes relevant, as most people tend to repeat themselves during an interview and may have verbal ´tics´, e.g. in the form of using a particular phrase often and interchangeably (Bryman, 2016 p.482). As these tendencies and possible verbal ´tics´ are of little interest in relation to the issue being examined, these was ´filtered´ away during transcription, deriving the *meaning* instead of focusing on the *articulation.* In other types of research with a specific focus on linguistic or ethnographic elements, the specific way in which interviewees respond is of much greater concern. As the interviews were conducted in Danish, the interview guide and the transcriptions are in Danish as well. Only quotes applied directly in the thesis was subject to translation into English, and so, all appendices are in Danish as well.

3. Theory

This chapter will serve to contextualize the thesis, while also adding a theoretical framework. It will do so, by outlining the 1951 Refugee Convention, the Convention from where the central principles of *non-refoulment* and *non-penalization* are derived from. Furthermore, the academic context will be outlined, by describing existing studies on the field, and comparing those to this thesis. Lastly, the chapter will outline and describe the concept of *Extraterritorial Asylum* and the theory of *Neo-Refoulment.* The two concepts complement each other well, as the concept of Extraterritorial Asylum explains what these ´externalized´ systems might contain and constitute and Neo-Refoulment builds on this concept, while elaborating the different incentives for it.

Extraterritorial Asylum is an old concept (Morgenstern, 1948 p.235) and one of many terms coined to cover and sum-up the rising trend, that involves migration management and asylum processing outside the territory of the state in charge of processing the claim (Den Heijer, 2012 p.4). This concept can prove contributive in ´placing´ the proposal from the Social Democrats in a setting, as the concept coincides well with the proposal.

Non-Refoulment is a theory by Jenifer Hyndman and Alison Mountz. The foundation of the theory is the growing trend of Extraterritorial Asylum, and the measures used by Western nations to encounter migrants before they reach the territory of the state. The theory builds itself on the notion, that Western nations take use of the measures to prevent migrants from reaching territory where they have the right to claim asylum. They do so, while still attempting to work within the frames of their international commitments and adhere to the principal of non-refoulment. This theory is particularly relevant in this thesis, as the topic and research question of it, revolves around the same themes and matters of conventions, international commitments and non-refoulment.

3.1 The United Nations High Commissioner for Refugees

Following the Second World War, there was a clear need for international cooperation which would help prevent future conflicts on a scale like the two World Wars. And so, in October 1945 the United Nations was created (Lewis, 2012 p.6). The organization replaced the League of Nations which was created following the end of the First World War with the same purpose of preventing future international conflicts, but had proven to fail when World War Two was approaching (Lewis, 2012 p.5).

The newly founded United Nations decided to work towards a solution for the up to twenty million people in Europe which World War Two had left displaced (Lewis, 2012 p.7). This led to the creation of "The United Nations High Commissioner for Refugees" which was created in December 1950 (Lewis, 2012 p.13). The UNHCR, as the Commissioner is shortened to, was to be a subsidiary organ of the General Assembly, providing guidance, supervision, coordination and control in a refugee context. The UNHCR has four distinct responsibilities: 1) The promotion of the conclusion of international treaties concerning refugees. 2) The proposal of amendments to such treaties. 3) The promotion of ratifications to such treaties. And 4) the supervision of the application by States of such treaties (Lewis, 2012 p.15).

3.2 The 1951 Convention Relating to the Status of Refugees

Following the creation of the UNHCR, there was also a strong need for a treaty, that could define a common approach to the refugee problem faced by European countries in the immediate years following The Second World War. This led to the creation and ratification of the "Convention Relating to the Status of Refugees" from 1951 (UNCHR, 2010). The Convention was grounded in Article 14 from The Universal Declaration of Human Rights from 1948 stating that:

> 1) *Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations* (UN, 1948).

The Convention was significant and provided a single definition of the term refugee. The definition in Article 1 of the convention first of all covered displaced people who was considered refugees as per the definition of earlier definitions of the International Refugee Organization, commonly known as the IRO (UNCHR, 2010). It was also to cover people who:

> *"As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to It."* (UNHCR, 2010).

Article 1 of the Convention quite clearly states, that the right to proclaim the status of refugee, is limited by a certain timespan, in which the events resulting in the refuge or displacement were to have occurred. Furthermore, later in the article it gives a geographical limitation, writing that the events leading to the displacement, were to have taken place specifically in Europe (UNHCR, 2010). Both the criteria of time and of geographical location were later removed in the 1967 protocol, so that the definition no longer was limited to events occurring before 1951 in Europe (UNCHR,2010).

Most countries, in particular Western countries, are signatories to the 1951 Refugee Convention. Examples of major countries who are not signatories to the agreement are India, Indonesia, Pakistan and Saudi-Arabia (Lewis, 2012 p.49). Every country in the European Union are signatories to the Convention, and so, the refugee law of the respective countries, are shaped by the Convention (Lewis, 2012 p.38). This includes the Danish Aliens Consolidation Act, where it is mentioned in §7 that residence permit is granted to foreigners, if he or she is embraced in the Convention from 1951:

"*A residence permit will be granted to an alien upon application for the purpose of a temporary stay if the alien is covered by the provisions of the Convention Relating to the Status of Refugees of 28 July 1951."* (Ministry of Immigration and Integration, 2019 p.7).

3.3 Existing Studies

This section will serve to place the thesis within already existing studies on the issue of extraterritorial asylum. As the topic of extraterritorial asylum is not a new phenomenon, previous research on the matter has been conducted. However, as the concept no longer only refers to asylum granted at embassies or ships belonging to the nation granting the asylum, but now also to the increasing trend of the asylum processing in externalized centers of reception. And as this is the type of extraterritorial asylum being examined in this thesis, research on this specific matter is the one of particular interest. The existing studies have been located, with a particular focus on academic papers and dissertations that examines the issue of extraterritorial asylum in relation to the Refugee Convention or via. other relevant perspectives.

In 2004 Alexander Betts published a paper in the journal ´Refuge´, a Canadian journal on refugees called "The International Relations of the "New" Extraterritorial Approaches to Refugee Protection: Explaining the initiatives of the UK Government and UNHCR" (Betts, 2004 p.58). The paper came in the wake of the 2003 proposal from the government of the United Kingdom, which promoted the

idea of applying the concept of extraterritorial asylum in a European context, and the UNHCR´s "Convention Plus". The proposal from the UK caused a debate on the matter, where discussions of the legal and practical implications of the proposal took place. In his paper, Betts applies the perspective of international relations theories, in an attempt to examine the motivations behind the proposal, and how the proposal positions itself in an international relations context. Like the incentive behind the paper of Alexander Betts, the motivation of this thesis derives from a recent proposal to integrate features of extraterritorial asylum in the asylum system. Thus, even as there is sixteen years between the paper from Betts and this thesis, both originates from the same context. Betts applies an international relations framework in his paper, whereas this thesis does not include the perspective of international relations theories, where the focus instead is being put on the legal implications, put up against reality and the practicality of the hypothetical system.

In 2007 The Danish Institute for International Studies published a paper on the matter of extraterritorial asylum called "The Extraterritorialisation of Asylum and the Advent of ´Protection Lite´" (Gammeltoft-Hansen, 2007). The paper was authored by Thomas Gammeltoft-Hansen, PhD in International Law and Professor in Law at multiple universities. The paper describes the history behind the current refugee protection regime, dating it back to the Westphalian Treaty and its following emphasizing of the ´nation state´ (Gammeltoft-Hansen, 2007 p.4). This thesis does not go as far back as the paper from Gammeltoft-Hansen does. This is partially due the fact that this thesis examines a new specific proposal and does not aim to analyze extraterritorial asylum in general. In relation to this, an assessment was also made, that the contemporary context has more relevance regarding the particular proposal examined in this paper. Gammeltoft-Hansen continues, examining the main focus of his paper, which is a general analysis on extraterritorial asylum in a specific EU context (Gammeltoft-Hansen, 2007 p.9). While the European Union does constitute a role in this thesis, the main focus is grounded in a Danish context, with a particular focus on the 1951 Refugee Convention. While the international commitments of the individual EU countries, and thus also the commitments of Denmark, do constitute a role in the paper of Gammeltoft-Hansen, it is not the main priority of the examination.

Anja Klug and Tim Howe published a paper in 2010 titled "The Concept of State Jurisdiction and the Applicability of the *non-refoulment* principle to Extraterritorial Interception Measures". The paper focus´ on the principal of *non-refoulment* derived from the 1951 Refugee Convention (Howe & Klug, 2010). It does so, to examine the principal's applicability in relation to initiatives regarding extraterritorial asylum, while also examining the jurisdiction a state has, both inside and outside its

territory. It also incorporates verdicts and prior judgements in the field of human rights. All this, to examine how the concept of extraterritorial asylum, and its associated measures, fits into the current international system and legislation. While prior judgements in the field of human rights do not constitute a role in this thesis like it does in the paper by Klug and Howe, the applicability of the principal of non-refoulment is a central point of focus, as well as the issue of extraterritorial asylum.

A recent research on the topic of extraterritorial asylum was conducted by Nikolas Feith Tan, during his PhD thesis "International Cooperation on Refugees: Between Protection and Deterrence" from 2018 (Tan, 2018). The research is an extensive work on the topic. Tan draws on several aspects in relation to the matter, incorporating deals by governments of European countries and Australia made with third countries on the issue of migration management control (Tan, 2018 p. 35). The thesis, as is the case with the paper from Gammeltoft-Hansen, analyses the general trend of extraterritorial asylum, along with other initiatives deployed by Western nations. Denmark, and its associated international commitments, is not the main focus of the research by Tan, as it is the case with this thesis. However, as the international commitments of Denmark in relation to the refugee protection area to a large degree are the same as the rest of Western Europe, these are indirectly being analyzed as well. Tan draws on multiple sources. These include primary, secondary, hard-law and soft-low sources (Tan, 2018), as compared to this thesis where both primary sources, secondary sources and soft-law sources are being drawn on, but where hard-law sources not are being incorporated to the same degree. This is due to hard-law sources being irrelevant to examine within the scope of this paper, as the research question focus´ specifically on the international commitments of Denmark anchored in soft-law treaties and conventions and does not seek to examine the internal laws of the country.

When exploring the existing prior studies conducted on the field of extraterritorial asylum, differences and similarities when compared to this thesis becomes apparent. Several studies have been done on the basis of the increasing trend of asylum policies containing features from extraterritorial asylum, and some directly motivated by specific cases and proposals, like the motivation behind this thesis, with the aim of examining what the implications of this is. Like numerous other studies, this thesis employs principles and international commitments derived from international law. This thesis then positions these commitments against reality and practicality, to examine which possible implications the proposal from the Social Democrats can cause if it becomes implemented. It also brings in qualitative first-hand sources in the form of interviews of relevant persons, to gain an insight in the

proposal and its associated processes. This is done in a context of international commitments, but solely through the perspective of Denmark

3.4 Extraterritorial Asylum

Asylum outside the territorial boundaries of the state who is subject to the claim of asylum, is not a new concept. Though in contemporary European history, asylum is most often being perceived as being granted in the territory of the state. *Extraterritorial Asylum* refers to asylum granted outside the territory of the state processing the asylum claim and potentially granting the asylum. Felice Morgenstern described the term in 1948 as being:

> *"It refers to asylum in legislations and consulates, and on warships and merchantmen in the ports of the country from which the individual seeking refuge is trying to escape. In this respect it differs from ´territorial´ asylum, which is granted within the territory of the state which gives it"*
> (Morgenstern, 1948 p.236).

Various terms are used to describe this concept, including outsourcing or externalization of migration management, external migration governance, remote migration policing etc. (Den Heijer, 2012 p.4). These are different terms for concepts in the area of asylum policy that often contain the same components. These components include, but are not limited to, visa-requirements before entering the country, immigrant officers at foreign airports and the interception of refugee vessels at sea (Den Heijer, 2012 p.4). A shared feature regarding the concept of Extraterritorial Asylum, is that migrants encounters the state, before actually reaching the sovereign territory of it e.g. if migrants are required to obtain a visa before travelling, or to seek asylum in a reception center staffed or funded by the state (Den Heijer, 2012 p.5).

Even though the concept of Extraterritorial Asylum itself is old, and can be traced back to at least the end of the 19th century (Morgenstern, 1948 p.235), the concept and the features connected to it, are gaining momentum and are experiencing an increasing amount of supporters throughout the international arena of asylum policy. This is changing the nature of ´the border´, as borders are no longer stable but instead multiple and shifting in meaning and function, depending on the attributes of the different groups wishing to cross said borders (Den Heijer, 2012 p.5). ´The border´ thereby serves different purposes, becomes ´fluid´ and takes on different shapes, depending on which status the person wishing to enter a certain country is considered to have. This means, that the border is more open and welcoming when the persons crossing it are tourists, expats etc. In these instances, visas are usually easily obtained, and people are subject to a very low degree of inspection and

background examination. The border then takes on a different and more unwelcoming and closed form when the people wishing to enter the country, are considered as refugees or migrants in, who are subject to a much larger degree of control in general (Den Heijer, 2012 p.5).

3.5 Neo- Refoulment

In the text "*Another Brick in the Wall? Neo- Refoulment and the Externalization of Asylum by Australia and Europe"* - Jennifer Hyndman and Alison Mountz introduce the concept of *Neo-Refoulment.* The concept derives from the applying principle of *Non-Refoulment.* Hyndman and Mountz argue, that modern western countries are practicing systems, that deliberately makes it hard for displaced people to make an asylum claim. Australia and the European Union are being highlighted as places, where this strategy commonly is being deployed (Hyndman & Mountz, 2008 p.50). This is done through a new form of forced ´return´, that do not fall directly under the category of refoulment, since it deliberately seeks to circumvent the principle of non-refoulment, while still forcibly transferring and moving potential refugees.

Hyndman and Mountz argue that: "*The externalization of asylum represents a shift from the legal domain where international instruments to protect refugees are still very much intact to the political domain where migrant flows are managed, preferably in regions of origin."* (Hyndman & Mountz, 2008 p. 251). Thus, the migration management control is being transformed. From before a legal domain, where the protection of migrants and refugees were carried out in the realm of law, to now being regulated in the realm of politics. The discourse guiding the ´project´ of migration management is no longer a legal one, but instead a "state-centric international relations" discourse. And protection of refugees is no longer carried out through means of law but through ad hoc decisions of the authorities of governments (Hyndman & Mountz, 2008 p.251).

The externalizing of asylum processing is seen as a deliberate political project stoked by fear in the name of ´security´. This ´securitization´ of asylum, represents a shift in paradigm on the area of refugees (Hyndman & Mountz, 2008 p.253). A shift from a focus on the protection of the refugees to the protection of the national security interests. Furthermore, an expansion of what security includes, results in a convergence between international and internal security (Hyndman & Mountz, 2008 p. 255). One reason for the securitization of refugees, is the blending of asylum seekers with ´economic migrants, ´terrorists´ and ´human smugglers´ in public discourse. All these very different and diverse people are grouped together in one big collection of ´threats´ to security. Accordingly, a narrative is being constructed, that these people are not "genuine" convention refugees, which allows for the

remote detention of them. This remote detention in turn, puts the asylum seekers far away from the support of translators, refugee advocates, refugee lawyers etc. who usually resides in urban areas (Hyndman & Mountz, 2008 p.256). Hyndman and Mountz argue that boat migrants in particular evoke fear in the public and in politicians, and that this type of migrants are often treated distinctly from other modes of arrival. This "xenophobic, racialized and well-rehearsed" moral panic about ´the other´, leads to a desire to control borders and to protect one´s own territory (Hyndman & Mountz, 2008 p.257).

4. Living up to the International Commitments

The following part of the thesis will examine the international responsibilities of Denmark in relation to the international field of refugee protection. Preliminary the general opinions on the issue of the international commitments will be described. The proposal will hereafter be contextualized in relation to the increasing trend of ´extraterritorializing´ measures and systems, and will be examined accordingly while applying the theory of *neo-refoulment*. The concept of extraterritorial asylum and the theory of neo-refoulment will also be drawn upon during the rest of the analysis, where the two central terms of *non-refoulment* and *non-penalization* will serve as central point of focus. The proposal itself will also be included, as specific lines from it beneficially can be drawn into the analysis to widen the understanding of the possible issues. Lastly, a discussion regarding Denmark's place within the European ´Dublin-Cooperation´ will be conducted. This is done to draw in another important aspect of Denmark's international commitments on the area of asylum and refugee protection; the commitments the country has regarding its European neighbors and partners. The Dublin Regulation will be outlined, and it will be discussed in which manner Denmark would be able to hold its signature to the international agreement decided upon between the European nations, if the proposal becomes reality.

4.1 The Politics of the International Commitments

Denmark as a Western democratic nation, is a signatory to all major treaties regarding the handling and treatment of foreigners, migrants and refugees (Udlændingestyrelsen & SIRI, 2018). Thus, the politics and institutions of Denmark in this field, as it is the case with other fields of international affairs, has been heavily shaped by these treaties. However, during recent years, these international conventions, and Denmark's signature to them, has been challenged by Danish politicians, with some parties venting the idea of entirely redrawing the signature of Denmark from several treaties (Olsen, 2016). Furthermore, the youngest party in the Danish parliament, Nye Borgerlige, is a devoted

opponent of the conventions, stating that they for the most part are outdated treaties, written in a different time and context (Nye Borgerlige, 2020).

When asked about the conventions, the interviewees interviewed in this thesis were quite clear on the matter. Denmark has international commitments, and we need to abide by them. And so, when asked on the matter of the Refugee Convention, one of the employees in the Ministry of Integration and Immigration answered:

"The Refugee Convention is obviously very relevant within our field, the field of Integration and Immigration. So it is a part of our daily discussions and considerations, because we wish to create an asylum system, that works within the frames of our International Commitments. And we are committed to the Refugee Convention, because we have agreed to it." (Appendix 1).

Likewise, when asked about the proposal and how it would comply with Denmark´s international commitments Rasmus Stoklund expressed that Denmark needs to stick to the International Commitments the country has:

"Yes, because we need to live up to our international commitments, but there is nothing in them, saying that we e.g. need to give people who have received asylum, asylum in Denmark, and that it needs to be here the protection is granted." (Appendix 2).

Thus, even though some political parties in Denmark are beginning to intensify their criticism of the international conventions, and others encouraging a rethinking of which role the conventions should have, there still seems to be support for the conventions, and that Denmark should abide by the regulations specified by them. Thus, the aim of the proposed new system will be for it to be created within the limits of the commitments. Therefor it seems relevant and appropriate to examine the issue of which challenges the proposal from the Social democrats would face in practice in relation to Denmark´s international commitments.

When viewed in the context of the increasing amount of ´extra territorializing´ measures applied during recent years, the proposal positions itself well as a continuation of the trend described by Hyndman and Mountz (Hyndman & Mountz, 2008 p.50). Extra Territorial asylum can, as outlined in the theoretical part of this thesis, consist of several different measures and initiatives, including the ´outsourcing´ of asylum case processing. As argued by Hyndman and Mountz this increasing trend represents a shift from the legal domain to the political domain.

This shift can arguably also be seen indicated in the answer from one of the Ministry officials interviewed, when asked about the challenges connected to the creation of the center: *"So there definitely is practical and economical challenges in relation to this, but in the end, then it is a question of politics. There are these challenges; economical, practical etc. Will they still wish to do it"?* (Appendix 1). It is being stressed, that the initial steps of the creation of a new system, is the outlining and research of the judicial, economical and practical challenges by officials employed in the government, but in the end, it is still the politicians who has the final say. Following the argument from Hyndman and Mountz this final say and the political opinion on the matter in general, is highly affected by the general public xenophobic fear that exists in relation to migrants and refugees. Accordingly, this is as a result of the refugees being collected in one big cluster with other groups like economic migrants and smugglers (Hyndman & Mountz, 2008 p.256). During the interview with Rasmus Stoklund he mentions both economic migrants and human smugglers when asked about the problems with the current system in place:

"And at the same time there is a big part, and that's another problem, of those who come here that don't even have a reason for asylum. Who are migrants, perhaps due to other reasons, who we still use many resources on treating in this system." (Appendix 2).

"We don't think that it is appropriate if we by the current model indirectly actually support the businesses model of the human smugglers, because they are making are lot of money by helping people across the Mediterranean Sea. In this way there is a billion industry that is being kept alive because we have a dysfunctional system in Europe." (Appendix 2).

This ´blending´ of multiple groups as described by Hyndman and Mountz can be seen in these quotes. The question of asylum and the associated systems and policies connected to it, also becomes a question of economic migrants and human smugglers, even though these are very distinct groups. The argument for imposing stricter regulations on refugees thereby becomes strengthened because of issues involving economic migrants and human smugglers.

In the quote above Rasmus Stoklund also draws in the issue of finances and economics, stating that there exists a billion industry, that is being kept alive by a dysfunctional European system. In the interview, Stoklund also mentions the issue of money, when describing what the cost is for Denmark, in regard to an asylum seeker:

"It costs 300.000 kr. yearly in round numbers each time we have an asylum seeker in the Danish asylum system. And for 300.000 kr. you could get a lot of emergency aid and help to fund refugee camps etc. in adjacent areas." (Appendix 2).

This issue of finances is something which Alexander Betts also mentions in his paper described in *Existing Studies*. As mentioned, Betts examines a similar proposal drafted by the United Kingdom in 2003 (Betts, 2004). An aspect he highlights while analyzing the incentives behind the proposal, is the aspect of money:

"Similarly, one of the explicit motivating factors behind the Government´s extraterritorial approaches has been the allocation of resources. Caroline Flint MP has reffered to the "imbalance" between UNHCR´s US$900 million annual budget to protection to 12 million refugees and 5 million IDPs compared with the US$10 billion spent by just fifteen Western states on providing asylum for 500,000 asylum seekers." (Betts, 2004 p.63).

The argument as put forward by Stoklund is, as well as the proposal itself, not a new one. The issue of how the money dedicated to refugee protection is spent, and how these larges sums could be allocated to attain more effective and beneficial use, also constituted an aspect during the time of the UK proposal. Thus, even though there are around seventeen years between the two respective proposals, the issue of finances continues to be a lasting problem, and constitutes an argument continually used in the political realm.

Conclusion to the part

The international conventions present in the area of migrant and refugee protection have through recent years been subject to criticism, with some politicians regarding them as outdated, as they were agreed to in a different time and context. The interviewees interviewed in relation to this thesis states that the international conventions must be upheld. The shift from the legal to the political domain, as described by Hyndman and Mountz can also be seen indicated in the answer from one of the officials. As can furthermore the blending of multiple distinct groups in to one single group presenting a threat.

When looking through the former work of Alexander Betts, the political arguments regarding the UK proposal from 2003 can be seen to be repeated, though now obviously in a Danish context.

4.2 The Principal of Non-Refoulment

As mentioned in the preliminary part of this paper, one of the arguably most central terms in the Refugee Convention 1951 and its 1967 protocol, is the principal of non-refoulment. It is outlined in article 33(1) of the Convention stating that:

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." (UNHCR, 2010).

The principle prohibits contracting states from returning refugees to territories where he or she would risk a threat to their life or freedom. Thus, it becomes a question of safety. The territory to where the refugee is being sent, cannot be unsafe for the person. As it stands now, it is uncertain which countries the government is having discussions with, with the aim of creating a center. This was also made clear in the interviews made for this thesis, where the question of which countries are potential candidates for the making of an asylum center, were a hard one to answer.

Aside from the fact, that an agreement with a third country has not yet been made, a reason to why it is so hard to discuss potential candidates for a hosting country openly, is found in the answer from Rasmus Stoklund on the matter:

"(…) But it´s not something I can refer to, because if you begin to include the public in those kind of negotiations, then there would be a lot of places where doors would shut, because it would rise to the surface in those countries, and then there would be a public critique. And then those who you may had, wouldn't engage in dialogue with us." (Appendix 2).

Thus the fear is, that if the politicians and government officials starts to open up about which countries they would prefer to be hosts of the center, these countries would then not be interested in cooperating, and the negotiations would ´collapse´.

Likewise, the two government officials interviewed were hesitant to name specific countries that could be relevant. However, they were able to get a little more specific on the basis of a follow up question asking about the geographical closeness of the centers:

Yes, it needs to be something that we think makes sense in regard to the migration routes, and that alone provides many opportunities (…) And besides that we will have to see. As I recall the minister also put it, it also depends on who are willing to ´dance tango with him. ´" (Appendix 1).

The migration routes leading migrants and refugees to Europe, are primarily located in Northern Africa and in the Middle East. Countries from which most migrants and refugees reaching Europe are travelling and fleeing from. It is well known, that countries in this region of the world, has been beset by several conflicts during recent years. In any given case, it would be hard to categorize these countries as safe. Countries in the region, who can be considered safe and thereby constitute exceptions, are the small rich oil-states of Qatar, Oman and the United Arab Emirates. These countries rank relatively high on the index of safe countries, when considering the risk of natural disasters, terrorism and war (Getzoff, 2019). Speculations can however be made, that these countries would not have much interest in hosting an asylum center for Denmark or a coalition of European countries, as the economic incentive would not be present to the same degree for them, as compared to the poorer, and more unsafe, nations located throughout the region.

Within the current Danish system of asylum case processing, the issue of safety naturally already constitutes a role. It is logical, that the asylum claims of asylum seekers originating in entirely safe countries, will not be granted asylum in Denmark. For this purpose, the Danish Immigration Services puts to use a list of ´safe countries´. This list determines whether a specific asylum case should be treated as ´manifestly unfounded urgent´. The term ´manifestly unfounded´ is found in §53b(1) of the Danish Alien Consolidation Act stating that the application of asylum can be declared manifestly unfound on the basis of a number of circumstances (Ministry of Immigration and Integration, 2019 p.120). This term is broadened with the term ´manifestly unfound *urgent´*, translated from Danish ´Åbenbart Grundløs Haster´. This term incorporates a list of safe countries, and if the applicant holds citizenship from one of the countries listed, the application will we declared manifestly unfounded, and will be subject to a ´urgent procedure´ on the basis of an assumption that the application will be rejected on account of standard practice (Udlændingestyrelsen, 2018). The list includes most European nations as well as other Western Nations such as the United States, Canada, Australia and New Zealand (Udlændingestyrelsen, 2018).

Some of the nations are listed along with a set of exceptions, that when present, requires for the case to be subject to individual assessment. These countries include Russia and Georgia, where minorities like LGBT+ people and Chechens are listed as being in risk of persecution. The interesting aspect of this list in relation to the issue of this thesis, is the fact that not one nation located in the region of the Middle East or North Africa is listed (Udlændingestyrelsen, 2018). This includes Turkey, of whom the EU-Turkey deal has been agreed with (Turculet, 2017 p.543). The list provides an indication of which countries the Danish Immigration Service regards as being safe. The fact that no country located in this region of the world is to be found on the list, could suggest that the Danish authorities regards these countries as being less safe or even unsafe.

As it is unknown which countries the Social Democrats and the Government are having talks with, it is hard to examine the level of security the territory hosting the potential center can offer. An unanswered question regarding the proposal is, whether the center would be run by the Danish government with Danish officials and representatives, or if the plan is for it to be staffed by citizens of the hosting country. Or perhaps a third solution, if a ´middle ground´ could be outlined. The proposal itself provides no direct answer to this, as it only states that: "*Their case is treated in the same way as in Denmark today. The processing of the case takes places in the reception center instead of in Denmark"* (Socialdemokratiet, 2019). This leaves room for a center not staffed by Danish officials, as it is possible to conduct the case processing in the same *way* while citizens of the host nation of the center is in charge of the processing and daily facilitation.

No matter in which manner the proposal will end up being implemented, it nonetheless involves responsibility from the side of Denmark. This specific issue is also examined by Thomas Gammeltoft-Hansen in his paper outlined in the section *Existing Studies* of this thesis. Gammeltoft-Hansen writes that:

> *"Rather than merely deflecting the responsibility of on to third States or neglecting it altogether, the current surge in initiatives to extra-territorialise asylum processing and protection all presuppose some sort of responsibility on the part of the externalizing State, ranging from the formal assertion of authority to merely providing financial assistance or compensation."*
> (Gammeltoft-Hansen, 2007 p. 17).

Gammeltoft-Hansen describes a sort ´spectrum´ in which a model for extraterritorial asylum in a third country could be grounded. The proposal from the Social Democrats must arguably place itself somewhere within this spectrum, and it must be decided if the center will be staffed by Danish

caseworkers and guards. This choice was also mentioned by one of the officials during the interview, when mentioning possible issues connected to the center:

"Basically, it would be to take the whole Center Sandholm and move it to a place in a third country. That alone presents several practical challenges. Should it be Danish caseworkers? Where should they then live? Should all the other relevant stuff incl. opportunity to redress also be moved?" (Appendix 1).

These are fundamental questions, that will have a great impact on how the entire system will be perceived if created and implemented. And will arguably also matter on the issue of how high a level of security and safety Denmark can guarantee.

Another aspect of the issue of safety, is the matter of potential refugees being sent back to their country of origin, if their country of origin is the place where the center is located. As mentioned, a large portion of the asylum seekers reaching Europe, including Denmark, originates in the Middle East and North Africa, thereby also making the region home to the major migration routes leading to Europe. This raises the question, whether a forced return of an asylum seeker by the Danish state to the seeker's country of origin, the country he or she is fleeing from, would fall under the category of *refoulment.* And as the Social Democrats do not propose multiple centers but seems to concentrate solely on one, as it can be read in the proposal: *"Therefore Denmark shall, preferably together with the other EU-countries, create a reception center outside of Europe"* (Socialdemokratiet, 2019), it could prove hard to entirely avoid returning asylum seekers to the country from which they are seeking refuge from.

On the matter of non-refoulment the official from the Ministry of Immigration and Integration specializing in Law answered:

"Well you don't have to provide the protection in Denmark, as long as the protection is being granted somewhere. And the Refugee Convention do not contain any rules on how an asylum procedure needs to be conducted. Also, the Refugee Convention actually provides the opportunity to transfer an asylum seeker to third country, where the processing of the case then will be done. So, the only commitment we have as nation, is that we need to make sure, that we don't transfer an applicant to a country where he e.g. would risk persecution ex. on account of his race, or that the country then transfers him to another country, where he could risk that." (Appendix 1).

The issue of making sure not to send an applicant to a country where he or she would risk being persecuted, is being stressed by the official in this statement. This coincides well with article 33(1) of the convention, addressing the principal of non-refoulment, and the fact that a nation is committed not to send an applicant to a territory, where he or she could risk persecution. This avoidance of clashing with the principle of *non*-refoulment, while still ´seeking´ and examining the boundaries of it, in order to attain high degree of transferring and moving of the applicants complies well with the theory of *neo*-refoulment by Hyndman and Mountz. As outlined by them, Western States still expresses a wish and an aim to remain within the boundaries of the convention, while still applying this new type of forced return.

The general problem presenting itself regarding these different issues, is the lack of prior screening of the asylum seekers. The aim of the proposal is to stop ´spontaneous asylum´ in Denmark and in the countries that might choose to follow the same model and perhaps cooperate with Denmark on the issue (Socialdemokratiet, 2019). If a screening, and possibly an initial processing, of the asylum seekers *before* the asylum seekers are transferred to the center in a third country is not a part of the plan, it will not be possible for the authorities to determine if a person is returned to the same country they fled from. This supposedly lack of individual prior screening of the applicants could also prove to constitute a problem regarding applicants who are not necessarily transferred to their home country, but to a country whose political and security conditions are similar to their home country. A relatively straight forward example of this is, if a minority, be it a religious minority or an LGBT+ person, is being persecuted in their home country on account of this and chose to seek refuge in Denmark. Denmark could potentially, by sending the asylum seeker to asylum processing in a third country, transfer the person to a country, where the same issues regarding persecution of these minorities are at a similar level, or potentially even worse. The Australian system which, as outlined in the preliminary part of the thesis, has applied a system of extraterritorial asylum, does not contain an initial screening of the applicants as well, and this missing aspect has also received heavy criticism (McAdam, 2013 p.441).

As the proposal positions itself well within the increasing trend of externalization of migration management, it also contains some of the same features of Extraterritorial Asylum. As outlined earlier in the thesis, Extraterritorial Asylum has been granted for many years, and one of the earliest forms of this kind of asylum granting, is the one conducted through embassies or ships of nations. As the Social Democrats do not outline specifically if it will a center staffed and facilitated by Denmark or simply funded by the Danish government, this still remains unclear. However, if the former is the

path chosen, and the hosting state of the center merely is responsible for providing a physical piece of land, where Denmark can build, run and facilitate the center, the center could then prove to be categorized in line with a foreign representation of Denmark. Thereby Denmark could, to a much larger degree, secure safety and high standards in the center, in line with the asylum centers presently located in Denmark.

Conclusion to the part

The principal of non-refoulment prohibits States from expelling or returning a refugee to territories where his or her life would be threatened on account of their race, religion, nationality, political opinion or membership of a particular social group. The wish remains to stay within the boundaries of the convention and avoiding the principal of non-refoulment, while still exploring the limits of the principal, and attain a degree of transferring and moving of the applicants, in line with the theory of neo-refoulment from Hyndman and Mountz labelling this as a new kind of forced return.

The location of the potential future center would need live up to a degree of safety. It is still unclear where the center will be located, but it will be somewhere that makes sense in relation to the major migration routes leading to Europe from the Middle East and North Africa. However, in this region, it is hard to find a country that can be categorized as safe, both on the basis of an international safety index and the list from the Danish Immigration Service outlining the ´safe countries´ where asylum claims of applicants holding citizenships from these countries, will be assessed as being ´manifestly unfound´. The degree of safety that can be guaranteed in the territory where Denmark will send its asylum applicants to, also depends on how the center will be facilitated, and which model it will follow regarding caseworkers, guards and other staff. As derived from Gammeltoft-Hansen, the proposal will need to be placed within a ´spectrum´ ranging from formal assertion of authority to merely the providing of financial assistance or compensation. The more authority and control Denmark can assert, arguably a larger degree of safety against persecution can be guaranteed. Nonetheless a problem remains, if the system does not contain an element of prior screening of the applicants. If all applicants, without reservations, will be transferred to a third country, it will be hard to entirely avoid transferring persons to a territory with the same conditions as they sought refuge. Potentially also risking transferring applicants to the exact same country as they fled from.

4.3 The Principal of Non-Penalization

The principal of non-penalization is like the principal of non-refoulment a central principal of the 1951 Refugee Convention. It is outlined in article 31(1) of the convention, stating that:

> *"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."* (UNHCR, 2010).

The principal regulates the penalties and measures states are allowed to pursue while having the responsibility of refugees and furthermore it prohibits signatory states from imposing penalties on asylum seekers. This principal was incorporated during the creation of the Convention, due to the drafters´ recognition of the fact, that people seeking refuge rarely find themselves in a position where it is possible for them to obtain the means to legally travel and access the country where they wish to seek asylum, be it passports or visas (Goodwin-Gill, 2001 p.5). Article 31 refers to ´refugees´, and so assumingly it would only apply to asylum seekers who already had been granted asylum and thereby refugee status. However, in a paper prepared at the request of the Department of International Protection for the UNHCR Global Consultations, Guy S. Goodwin-Gill states that the provision would be "devoid of all effect" if it only embraced recognized refugees and not asylum seekers whose status has yet been determined, at least over a certain time (Goodwin-Gill, 2001 p.5). Goodwin furthermore outlines what the drafters of the convention had in mind when using the term ´penalties´, which was measures such as prosecution, fines and imprisonment (Goodwin-Gill, 2001 p.9). Administrative detention and provisional is allowed, but only if the detention is conducted with the purpose of investigating the applicants right to asylum or to determine the identity of the applicant. Not if the detention is carried out because of illegal entry. Thus, detention solely on the basis of applying for asylum and without a very clear incentive and timeframe would be considered illegal under international law, as it would clash with the principle of non-penalization (Goodwin-Gill, 2001 p.9).

Depending on the model chosen by the Social Democrats and the Danish government a certain degree of administrative detention must be expected, and this would not clash with the principal of non-penalization, as long as it is done in order to determine the status of the applicants. The problem will appear, if the detention is being conducted arbitrarily and without a clear purpose or timeframe.

The principle of non-penalization and its related article in the 1951 Refugee Convention defines which measures and penalties a nation can impose on migrants and refugees. It recognizes the fact that refugees rarely find themselves in a position, where legal documents in practice can be obtained to ensure legal entry to a potential host nation. The aim of the proposal from the Social Democrats is put a stop to "spontaneous asylum" (Socialdemokratiet, 2016). And as spontaneous asylum would be categorized as asylum being applied for without prior registration or obtaining of legal documents, the proposal does not seem to offer the same kind of recognition as the drafters of the Convention did.

The principal of non-penalization is furthermore elaborated on in article 31(2) stating that:

> *"The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all necessary facilities to obtain admission into another country."* (UNHCR, 2010).

A contracting nation shall according to the Convention, allow refugees a period time and *all necessary* facilities to enter another country. These aspects would need to be incorporated in the proposal from the Social Democrats whether the center would be directly and practically operated by the Danish state or by the authorities in the third country. Asylum seekers would need to have the right to travel to another country, while the process of determining their status is ongoing. Such freedom then points to another potential problem, which could arise on account of the creation of a center in a third country. That is, if an asylum seeker in the third country, who are entitled to a large degree of freedom according to the principal, commits a felony during this process. This potential problem, was also mentioned by one of the officials in the first interview, while describing potential problems that in practice could arise: *"What if they commit an offence in that country? Who then really has the responsibility?"* (Appendix 1). As the Social Democrats outlines in the proposal: *"The safety and processing of asylum cases in the reception center needs to be in compliance with Danish standards and rule of law"* (Socialdemokratiet, 2016). It would however be hard for Denmark to guarantee this

high standard of legal rights, when the applicant temporarily leaves the center and finds he or herself in the legal domain of the third country. Depending on where the center will be located, penalties imposed on people for various crimes, may vary quite a lot from penalties imposed according to Danish law, for the same offences. Furthermore, most countries in the Middle East and North Africa, where the major migration routes are located, still has capital punishment outlined as punishment for severe crimes. Numbers from 2017 shows, that out of the ten countries who executed the most people worldwide, seven of them were located in these regions of the world (BBC News, 2018). If asylum seekers where to commit severe crimes while within in the territory of a country who practice´ death penalty, it could in worst instances end up with asylum seekers, who Denmark has commitments to, being sentenced to death. A potential future system constructed in a manner as proposed, will need to provide a solution for this issue. Clear distinctions have to be made to ensure, that it is obvious who has the responsibility for these asylum seekers if they commit offences on the territory of the third country. These regulations will most likely be made on the basis of a discussion, consisting on the one side of the promise from the Social Democrats to ensure Danish standards and rule of law and on the other side the notion of respecting regional law.

This issue of authority and jurisdiction is, as mentioned in the section *Existing Studies*, also examined by Anja Klug and Tim Howe in their paper concerning State Jurisdiction and the principle of non-refoulment (Howe & Klug, 2010). This is relevant in relation to the issue of crime and punishment where Klug and Howe writes that: *"A State may not exercise its powers in any form in the territory of another State (…) except by virtue of permissive rule derived from international customs or from a convention"* (Howe & Klug, 2010 p. 73). Klug and Howe afterwards elaborates, writing that an *entitlement* to the exercising of extraterritorial jurisdiction e.g. can be acquired through treaties (Howe & Klug, 2010 p.74). Thus, a potential future agreement with a third country, could involve a treaty, allowing for Danish jurisdiction to be extraterritorially exercised, to heighten the protection of the applicants according to Danish rule of law. This kind of entitlement arguably also needs to provide the whole basis for the creation of the center.

In his PhD dissertation Nikolas Feith Tan also examines the issue of jurisdiction (Tan, 2018). He argues that: *"Through extraterritorial cooperation with a partner state, destination states often seek to avoid jurisdiction over asylum seekers and refugees, or at least cloud the question of jurisdiction."* (Tan, 2018 p.2). This kind of ´clouding´ as described by Tan, must be avoided in a potential future system with a partnering state so that, as mentioned above, the responsibilities regarding the asylum seekers, and the jurisdiction of them, are clear.

Again, it is unclear which one or more countries the government is negotiating with regarding the aim of creating a center. It was also noted multiple times by the two officials interviewed, as the arguably biggest challenge facing the Ministry regarding the creation of a center:

"Something that also has been highlighted during the consultation with the minister etc. is that the opinion by and large is, that legally and practically this is durable. The more difficult part is to find a third country who you can cooperate with." (Appendix 1).

Thus, the legal and practical issues are easier to commemorate, whereas the issue of finding a suitable third country who is willing to cooperate is harder. However, it can be argued that these issues go hand in hand and are difficult to separate. This is due to factors that remains unknown. If the territory in which the center is going to be located remains uncertain, so does the level of safety, rule of law and potential penalties offered by the center and location. It seems hard to specifically promise that the principal of non-refoulment can be adhered to, when the host country, and thereby its internal political, religious and safety conditions, remains unknown. Likewise, it is difficult to promise a total avoidance of penalization, when the general rule of law and level of justice system of the country is unknown. This is furthermore emphasized by the fact that it also remains unclear if the center will be staffed and facilitated daily by the Danish authorities, or if this will be outsourced to the authorities of the third country.

Again, the problem seems to be, that the model for which the plan will be brought in to practice remains unknown. However, as mentioned by one of the officials in the interview, a form of model regarding the creation of the proposal may already exist:

"Well you don't have to look that far away. I don't know if you are familiar with the EU-Turkey deal? (...) We have looked at it, this arrangement, in relation to the scheme we are considering, if we could seek inspiration in transferring e.g. a Syrian applicant from the Greek islands back to Turkey, where they then could have their case processed." (Appendix 1).

The EU-Turkey agreement mentioned by the official, refers to an agreement made between Greece and on the one side EU and Turkey on the other. Following and during the large influx of forced migrants arriving in the European Union during 2015, politicians struggled to find a solution for the ´problem´. The great pressure and large amount of people travelling to and through the union, led to internal borders and fences being established and raised internally in the Schengen area (Turculet, 2017 p.542). This put pressure on the European leaders to find a common solution. This in turn led

to the deal between on one the side EU, with Greece as main focus, and on the other side Turkey, commonly called the EU-Turkey Deal (Turculet, 2017 p.543). The deal was created to restrain the influx of refugees and migrants travelling from Turkey across the Aegean Sea to reach Europe. Turkey and Greece both were to upgrade their border control, and Turkish authorities were to readmit into Turkey the migrants and refugees attempting to cross into Greece (Turculet, 2017 p.544). However, in early 2020 Turkey opened its border to Greece, allowing for a large number of refugees to attempt to reach the EU. (Olsen, 2020). Greece responded with intensified protection of the border, to keep the large groups of people out of its territory. Later, in March 2020, Greek Prime Minister Kyriakos Mitsotakis declared the EU-Turkey deal to be dead (Danmarks Radio, 2020).

The deal referenced to by the official, did what it was intended to do. It kept refugees and migrants at bay, outside of Europe. However, it only did so, as long as Turkey upkept the agreement. And when Turkish President Erdogan decided to open the borders and allow for the refugees and migrants in the country wishing to cross into Greece, to make an attempt to do so. Nothing could really be done from the side of the EU, other than intensify its external borders to Turkey. This stresses the fragility of the agreement and gives rise to doubts concerning future agreements and plans following a similar ´model´. Furthermore, Turkey has recently arrested and forcibly deported a large number of Syrian refugees to Northern Syria (Seligman, 2019). Acts that arguably contradicts the principal of non-penalization as well as non-refoulment.

Conclusion to the part

The principal of non-penalization regulates the penalties and measures states are allowed to pursue while having the responsibility of refugees. Furthermore, it prohibits signatory states from imposing penalties on the asylum seekers, whose status as refugees has not yet been determined. A certain degree of administrative detention is allowed according to the principal, but only if this is done on the basis of determining the status of an applicant, and not if detention is being conducted without a clear purpose or timeframe, something a potential future system must adhere to. Furthermore, the principal offers the right to a period of time as well as all necessary facilities to enter into another country. This freedom that needs to be offered to the applicants, raises the question of another potential problem. One in relation to potential crimes committed by the asylum seekers in areas within the jurisdiction of the third country. If Denmark are to guarantee Danish standards and rule of law, clear lines regarding this has to be made, to avoid asylum seekers getting caught in penal systems fundamentally different from the Danish one. This kind of extraterritorial jurisdiction can, as

described by Klug and Howe, be entitled through bilateral agreements between states. Which is imperative as destination states, following the argument from Tan, generally has an interest in ´clouding´ the matter of jurisdiction. Again, the question of the exact model is a central one, and inspiration can be gained from the model of the EU-Turkey Agreement. This deal however, proved to be short-lived, as it recently has been declared dead, arguably making it a bad example for a model. This is also emphasized by Turkey acting against international principles, by forcibly arresting and deporting a large number of Syrian refugees to Northern Syria.

4.4 The Dublin Regulation

This section will serve to discuss Denmark´s responsibilities regarding the Dublin Regulation agreed to between the nations of Europe. The Regulation does not per se constitute a role within the issue of complying with the central principles of the 1951 Refugee Convention. The Dublin Regulation itself however functions within the overall system of Refugee protection. A system that owes many of its regulations and features to the Refugee Convention. Furthermore, as the overall theme of the thesis is to examine which issues the proposal from the Social Democrats can cause in practice, in relation to a set of specific international commitments of Denmark, it seems purposeful to include a discussion of a different aspect of the international commitments of Denmark. One that is foundational to the whole area of European cooperation on the field of refugee protection.

In 1985 the Schengen-Agreement was signed. The agreement was made to make travel and trade between the countries of the European Communities as easy and unproblematic as possible (Zetter, 2014 p.31). It virtually removed the internal borders of Western Europe, and made travel between the countries of the community without the showcasing of various documentation possible. This however, also added a new dimension to the asylum systems of the European countries. Now, once a displaced person who wanted to claim asylum in a European country could, upon entering one country, travel further on, picking and choosing between the different countries they passed through, and end up with asylum in a specific desired country. (Zetter, 2014 p.31).

To counteract this “asylum shopping”, as labeled by contemporary European politicians, the Dublin Agreement was signed in 1990 (Zetter, 2014 p.31). The agreement, which was amended with Dublin II and Dublin III respectively in 2003 and 2013 (Zetter, 2014 p.32), was aimed at the refugees arriving at the outer borders of the European Union. The Dublin Regulation´s, including the functioning Dublin III agreement, most central function is, that it prevents asylum seekers in seeking asylum in

more than one country and ensures that only one European country is responsible for processing the individual asylum cases. Deciding which country is responsible for processing the asylum case, is done on the basis of a set of criteria. These criteria include where the asylum seeker potentially has family, to where the asylum seeker potentially has been granted visa or first entered the European Union (Zetter, 2014 p.32). In practice, this leads to a background check on the asylum seeker, and if it turns out that he or she has been registered in another country of the European Union, this registration usually being conducted by means of a fingerprint register, the asylum seeker will be transferred to that country (Zetter, 2014 p.32).

The Dublin Regulation regulates which European country is responsible for processing the asylum claim of an applicant. If it is determined that an applicant, who is located in Denmark, already has been registered in another European country, the asylum case will be considered a Dublin Case and the applicant will be transferred to the authorities of that country. In the event of Denmark creating a center in a third country, and all ´spontaneous asylum seekers´ hereafter are transferred to that center, it is difficult to see how Denmark still can adhere to the Dublin Regulations. This is also a potential issue recognized by one of the officials during the interview, when asked about Denmark's future position within the Dublin Cooperation when the center in a third country is created:

"That is a good question, a question which we also have explored in relation to the legal note, which I don´t want to go further into right now. Because it is some of the things we have explored, how this can have an effect in relation to our Dublin Cooperation, if we choose an approach like this." (Appendix 1).

The problem presenting itself in relation to Denmark's commitments regarding the Dublin Agreement largely depends on which model the reception center in a third country will follow. If the final project ends up being a European plan, where countries of the European Union agrees on making it a mutual project, the Dublin Regulations could arguably lose much of its meaning. This is due to the fact, that the purpose of the Regulation is to determine which European country has the responsibility of processing the asylum claim of individuals who has travelled through several countries, and to make sure that it is not possible to apply for asylum in more than one EU country. In the event that the potential future center, or in this case multiple centers due to larger quantity, located in third countries would be a mutual and common European project, the need for placing the responsibility of the processing of these asylum seekers and their cases would disappear. This is due to, that it arguably no longer would be important which countries asylum seekers applied for asylum in, as it no matter

what, would lead to the transferring of the applicants to the mutually facilitated center or centers. Thereby, whether an applicant applies for asylum in e.g. Denmark or Bulgaria, the outcome would remain the same.

If the project however ends up being solely a Danish project or a project including a limited number of other EU countries, the implications could prove to be more problematic. This result was commented by Rasmus Stoklund as being the most realistic outcome of the proposal:

"We will not have the entire EU backing up our proposal. It is also no secret, that several countries have criticized it (…) So I do not think that it is likely, that this will become a collective EU project." (Appendix 2).

As the Dublin Regulation outlines which country is responsible for processing the claim of an applicant, and as this in practice leads to the transferring between countries of the asylum seekers who have travelled through multiple nations and has been registered in on or more of these nations. It can be argued that a degree of consensus on the matter of refugee protection is needed in order to sustain this cooperation. If the Danish government do not manage to convince the other European countries of its idea, it is likely that European political opponents to the, for the time being, hypothetical Danish system would remain critical of it.

In a working paper from the Commission of the European Communities from 2000, the Dublin Convention and the current state of the cooperation is being evaluated (European Commission, 2000). The paper mentions the issue, if some members chose to send applicants to a third country, and describes that this can give rise to problems:

"This has given rise to concerns in some Member States about so called "chain refoulment", and is only one of a number of examples which illustrate that if a mechanism for allocating responsibility for asylum applicants is to operate effectively, it must be accompanied by common standards in procedural and substantive areas of asylum law" (European Commission, 2000 p.8).

Thus arguably, common standards regarding the asylum systems must be maintained. If the situation should emerge, that a number of people applying for asylum in e.g. Sweden are assessed as, according to the Dublin Regulation, needing to be transferred to Denmark for processing instead. A situation could potentially emerge, where the Swedish authorities could deny doing so, if they are fundamentally against the Danish system, and the fact that the cases of the applicants, after transferring from Sweden, actually would not be processed in Denmark, but in a center in a third

country. This third country potentially not considered as being safe by the Swedish authorities. This in turn could have an effect on asylum cases, where the Danish authorities assess that an applicant needs to be transferred, according to the Regulation, to another Dublin country. E.g. if specific asylum seekers who have travelled through Germany and has been registered there before applying for asylum in Denmark, according to the Regulation, they must then be transferred to Germany for processing instead. However, in a potential situation where the respective asylum systems of Denmark and Germany are fundamentally different, and where Denmark are in a position where other Dublin countries refrains from transferring ´Dublin asylum seekers´ to the country, Germany, and other ´Dublin countries´ as well, could potentially refuse to accept these applicants, and the associated responsibility.

Conclusion to the part

The Dublin Regulation regulates the European cooperation on the field of refugee protection. However, if the proposed system becomes reality, it could prove to jeopardize this cooperation. If the proposal gains the support of the whole European Union, and the new system is implemented widely, the Dublin Regulation could arguably lose much of its intended meaning. The issue would become particularly apparent, if the system is not adopted by the EU, but only Denmark, as described by Rasmus Stoklund as the most realistic scenario, possibly with a limited number of other nations. This is due to the necessity for a common framework, and a degree of mutual trust on the field of asylum in Europe, in order for the Dublin agreement, and its associated cooperation, to function.

5. Limitation

The proposal from the Social Democrats examined in this thesis, is just that, a proposal. And with seemingly ongoing negotiations taking place, and issues relating to the proposed system being examined by the Ministry of Immigration and Integration, information available on the specific proposal has been sparse. This is arguably also due to the rather delicate subject, and the many distinct opinions regarding the matter. Resulting in a wish to minimize the amount of information being made public, before more specific and perhaps final agreements has been made. Due to the limited number of facts regarding the proposal, the conclusions drawn in this thesis, depends to a large degree on how the potential system will end up being outlined in practice. If the final plan of the system emerges, and a deal with a third country will be agreed, the system can be analyzed with all associated facts and relevant information available.

Another issue presenting itself during the work on the thesis was the Covid-19 pandemic, as Denmark to a large degree was shut down beginning in March and has remained so during the research of this thesis. This has arguably led to difficulties in the process. As access to libraries has been closed, so has access to books and other literature that could have been used for conducting research. Literature that could have been beneficial in the answering of the research question. The solution to this issue, has been the use of online libraries and digital solutions. Appointments regarding the conduction of interviews were also hindered by the pandemic, as the whole society, including relevant interviewees for this thesis, has been experiencing a shift and adjustment to the situation. This also obstructed the possibility for face-to-face interviews, which otherwise arguably would have been the approach taken. However, the use of interviews conducted via. telephone and facetime have proven to be conducted in a manner still highly beneficial to the thesis.

6. Conclusion

The proposal from the Danish Social Democrats, places itself well as a continuation of the current surge of Extraterritorial Asylum measures being striven towards by Western States. And as can be seen through the research by Alexander Betts, the arguments for pursuing the idea bears resemblance to arguments applied by British politicians regarding the similar proposal brought forward in 2003. As argued by Hyndman and Mountz and their theory of Neo-Refoulment, this increasing trend of extraterritorialization, including a new form of forced return, is being conducted, while still attempting to stay within the limits of the international commitments. This can also be seen from the results in this thesis, where it is being stressed, that the goal, also regarding the proposal, is to work within the international commitments. However, simultaneously a new system containing the denying of physical access to Denmark along with elements of transferring and moving of asylum seekers, is being strived towards.

When examining the two central principles of non-refoulment and non-penalization, several potential issues emerges. A high degree of safety must be offered by Denmark, to avoid risk of persecution of the applicants. As the situation is now, it is unknown which countries the government is having discussions with on the matter, and thereby the level of safety also remains unknown. The regions of the Middle East and Northern Africa are home to the largest migration routes leading migrants to Europe. However, these countries ranks low on the index of safety, and not one of these countries are to be found on the list of ´safe countries´ put to use by the Danish Immigration Service. Furthermore, no initial screening of the applicants is outlined in the proposal as a feature in the new system. An aspect which the system of Australia has been criticized for not having. This can prove to be an issue, as the risk of transferring applicants to areas with the same conditions as they sought refuge from are eminent. This issue also involves the prospect of transferring applicants to the exact same country they have fled from. The degree of safety offered by the center, will also be determined by the facilitation of it. As derived from Gammeltoft-Hansen, a model can vary, ranging from formal assertation of authority to merely providing financial and economic contributions. And the more authority asserted; a higher degree of safety can be guaranteed.

The issue of authority is also particularly relevant, when examining issues that might present themselves, if asylum seekers commits crimes in the third country, outside the territory of the center. This scenario is made possible by the large degree of freedom entitled to applicants according to the principal of non-penalization. Applicants could potentially end up being caught in very harsh penal systems, incorporating capital punishment, while Denmark has certain responsibilities towards them.

Therefore, clear lines must be agreed on with the third country. As being stressed by Anja Klug and Tim Howe, the issue of extraterritorial jurisdiction can be agreed on through bilateral agreements, which can provide an entitlement to exercise extraterritorial jurisdiction. This is imperative, as it thereby minimizes the risk of ´clouding´ of jurisdiction, brought forward by Nikolas Feith Tan as something the host nations often pursues.

Further potential problems regarding the international commitments of Denmark can also be found, from the issue of upholding the Dublin Regulation. As noted by the European Commission working paper, it is necessary to have a common framework, between the signatory states, for the cooperation to function. Thus, if the proposal will only be carried out by Denmark, perhaps with a number of other states, it would be hard for the states to be included in the Dublin Cooperation.

The issues examined linked to the proposal in relation to the international commitments, to a large degree depends on which ´model´ the proposal will end up following. Inspiration can be sought from the EU-Turkey Deal, but this deal has proven to fail, and have arguably only postponed the issues it set out to solve, as the agreement has now been declared dead from the side of the Greek Prime Minister. Thus, using this agreement as a model, should arguably be avoided, if large reservations are not being made.

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