

ONE BORDER

The representation of refugees in international politics

Rocío Alonso



One Border:

The representation of refugees in international politics.

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Rocío Alonso

ralons20@student.aau.dk

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1. Introduction

1.1 Abstract

The following thesis project analyses the way in which refugees and asylum seekers are being represented in international politics since 1951 until the present day in the light of the theories of Otherization and Intersectionality. In order to come closer to this representation, I am analysing the two main UN policies regarding refugees and asylum seekers: the Convention regarding the status of refugees from 1951 and the Global Compact on refugees from 2018. I am carrying out a policy analysis through Carol Bacchi's WPR method and nextly I am comparing the two policies by the means of the Comparative method. Finally, I am also including the case study of Denmark's national law regarding refugees and asylum seekers in order to draw upon the relation between the national and international levels.

The representation of refugees and asylum seekers in international politics has been extended throughout time, including more possible grounds of persecution and moving from a masculine to a gender-binary representation. The nature of the issue around refugees has shifted from a humanitarian to a more political one, where refugees are being considered a burden and the integrity of the nation-states and the geopolitical structure are being prioritised. Finally, the lack of specificity in terms of the action plan towards processing and hosting asylum seekers and refugees in the international politics level and the non-binding agreement leaves most actions to be determined on a national level, where there can be great mismatches with the main principles of the supranational law.

1.2 Introduction

The aim of this thesis is to explore the way in which refugees and asylum seekers are being represented in international politics from the departure point of 1951 till the present day and what are the consequences of this representation.

The departure point of 1951 was selected because this was the year in which the Convention regarding the status of refugees¹ was launched by the UN. This document was

¹ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

the first multilateral treaty to address the question of what is a refugee and how it should be addressed on a supranational level, based on the Universal Declaration of Human Rights². I will explore what was the dominant representation of refugees that was established and agreed on at that point in the international arena and that worked as the groundwork for the future treaties regarding refugees. I will also include the annexed Protocol³ from 1967 in my analysis to explore what was modified, why and what the effects are of that modification.

I will continue with the analysis of the Global Compact on Refugees⁴ that was launched by the UN after the New York Declaration for Refugees and Migrants in 2016 and the annexed Refugee concept under international law⁵ from the same year where the status of '*refugee*' is being defined in contrast with '*others in need of international protection*' such as asylum seekers and stateless persons. The reason for choosing this policy is because it is a more contemporary document that contains the definition of '*refugee*' and '*asylum seeker*' and the supranational plan to action which applies to the present day in a non-binding form.

By analysing these two treaties, I can get an insight into what changed between them in the way refugees and asylum seekers are being represented and what are the implications of this change. Simultaneously, I want to explore what these changes respond to and what is the political discourse that lies under this development, if there were certain events to be grasped that affected the course of this representation and supranational action plan.

Furthermore, it is important to highlight that I will investigate these treaties through a gender perspective. My aim with this choice is to find out if the way refugees and asylum seekers were and are being represented is gendered: if it is conditioned by gender assumptions, invisibilization or discrimination. Furthermore, I want to explore if there is any change throughout time in the way *gender* affects the representation and political action of refugees and asylum seekers.

In addition to the analysis of these supranational documents, I will also include an example of the implementation at the national level of Denmark, a country that signed both treaties. The objective of this addition is to explore how the supranational level works in relation to the national legislation regarding refugees and asylum seekers, what are the matches and

² OHCHR (2016, October 19). *Human Rights Committee considers report of Jamaica*. Retrieved May 4, 2022, from

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23923&LangID=E#:~:text=Article%2014%20of%20the%20UDHR,to%20events%20of%20the%20Holocaust.>

³ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁴ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁵ *ibid.*

mismatches between them. I will also be exploring if the adherence to the supranational treaty of the UN is reflected in the national legislation and how it is implemented in practice. This topic is relevant, considering contemporary political debates about refugees, asylum, integration and discrimination, both in Europe and in the rest of the world. In the past years, such topics have been of high importance in social and political debates and they are shaping the political climate on a national and international scale.

1.3 Problem formulation and research questions

- Problem formulation: How are refugees and asylum seekers being represented since 1951 till the present day in international politics?
- Research questions
 - (i) *How does such representation impact on the social and political spheres?*
 - (ii) *How has the discourse around refugees and asylum seekers developed since the 50's to the present day?*
 - (iii) *What is the relation between the supranational policies and the national legislation in terms of the representation of refugees and asylum seekers in Denmark?*

1.4 Context analysis

The research in this thesis recognizes the Convention about the status of refugees⁶ of 1951 as its starting point. This Convention came one year after the creation of the United Nations High Commissioner for Refugees (UNHCR) and it is based on the legal framework of the Universal Declaration of Human Rights (UDHR)⁷. More specifically, the foundations of this Convention lie on the Article 14 of the UDHR: Right to Asylum, which recognizes the right to seek asylum from persecution or life threat in another country.

⁶ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁷ OHCHR (2016, October 19). *Human Rights Committee considers report of Jamaica*. Retrieved May 4, 2022, from <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23923&LangID=E#:~:text=Article%2014%20of%20the%20UDHR,to%20events%20of%20the%20Holocaust.>

The Convention was carried out by the UN in Geneva on the 28th of July of 1951 with the aim of setting a multilateral agreement on how to protect refugees from the Second World War in Europe, which led to a large number of displaced people. In fact, this treaty was limited to protecting refugees from European countries until January 1st 1951 exclusively.

It was only sixteen years later, in 1967, that the Protocol was added to this international treaty, which removed the geographical and temporal limitations to the recognition of the status of refugee and the granting of asylum:

*“The 1951 Convention, as a post-Second World War instrument, was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations and thus gave the Convention universal coverage.”*⁸

Both the Convention and its Protocol are legally binding and to the present day, 149 countries are party to it.

The Global Compact on Refugees followed the New York Declaration for Refugees and Migrants in 2016 and was developed as a non-binding multilateral agreement. In 2018, the General Assembly of the UN endorsed the compact through a vote in which 152 countries voted in favour to endorse it, 5 voted against and there were around 30 countries that abstained or didn't vote. This contemporary treaty was met with much criticism by different countries and governments, such as Poland, Czech Republic and Hungary⁹, due to the suggested distribution of migrants and international cooperation through quotas.

It was the last multilateral treaty regarding the issue of refugees and asylum and is therefore the one that governs to the present day.

A large number of episodes took place between 1967 and 2016 that could possibly have affected the arena of international protection of Human rights, asylum and forced migration. Some of the examples could include the military dictatorships in Latin America during the 70's; the war in Yugoslavia (1991-2001), the genocide in Rwanda (1994), the events that took place in September 2001 in USA with the subsequent War against terror and the war that began in Syria in 2011 that, amongst other international conflicts, led to the so called “*refugee crisis*”¹⁰ of 2015. The term “*refugee crisis*” is commonly used to refer to the events

⁸ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁹ Euronews. (2020, 09 24). Hungary, Poland and Czech Republic 'oppose EU's new migration pact'. *Euronews*. Retrieved May 4, 2022, from <https://www.euronews.com/2020/09/24/hungary-poland-and-czech-republic-oppose-eu-s-new-migration-pact>

¹⁰ Spindler, William. 2015: The year of Europe's refugee crisis. *UNHCR*. 2015-12-08. <https://www.unhcr.org/news/stories/2015/12/56ec1ebde/2015-year-europes-refugee-crisis.html>

that led to the forced displacement of more people than at any time since World War II¹¹. It will be further explored during the analysis if any of these events or others not mentioned had a particularly influential role in the development of the Global Compact on Refugees.

Finally, the current statistics according to the UNHCR show that the number of displaced people in the world is over 82 million. Out of that total, 26,4 million are legally recognized as refugees who have crossed an international border, while 40 million are displaced within their own country. The demographic distribution of displaced people is almost equal in terms of a binary understanding of gender (female/men), where 42% of all displaced people are children (under 18 years old). There is no official number as for asylum seekers and displaced persons who have not requested asylum. In addition to this, current data shows that 86% of displaced people are being hosted in developing countries while 68% of displaced people originated from just five countries.¹²

¹¹ *ibid.*

¹² United Nations High Commissioner for Refugees.(n.d.) *Figures at a Glance*. UNHCR. Retrieved May 4th, 2022 from <https://www.unhcr.org/figures-at-a-glance.html>

2. Theoretical framework

2.1 Introduction

I will analyse the data collected in the light of the theory of Intercultural communication¹³ with the objective of finding out if there are any elements of *otherization* in the way refugees and asylum seekers have been and are being represented since 1951. I will hereby present the conceptualisation that Adrian Holliday does in relation to this social phenomenon that has been much used in regards to migration studies.

In addition, I will explore the treaties of International Politics through the lenses of the theory of Intersectionality¹⁴ in order to discover if the intersection between the social categories of *ethnicity*, *refugee/asylum seeker* and *gender* is being conceived and how.

2.2 Representation - Stereotyping - Prejudice - Otherization - Essentialism

I am approaching the issue of the representation of refugees and asylum seekers in the frame of international politics and therefore I also need to approach what are the possible consequences that the chosen form of representation can imply. With this purpose, I chose to refer to Adrian Holliday's theory about the link between *representation* and *otherization* and the implications or consequences of *otherization*¹⁵.

Refugees and asylum seekers represent a minority everywhere in the world and my presumption is that they are treated as an ethnic/cultural minority as well as a civic minority. This means that they will not just be treated as a minority because of their legal status as refugees but also because of where they come from and their ethnic/cultural background. For example, in some countries in the world such as Denmark, refugees/asylum seekers and migrants are being categorised as "Western" and "non-Western" migrants and this impacts the political and social spheres. In addition, I want to explore if refugees and asylum seekers were or are being depicted as *social others* in a discourse of stigmatisation or victimisation. I want therefore to explore if the cultural representation of refugees/asylum seekers has or is being constructed as an opposition or as an *Other* to the *Western* cultural representation on which the international treaties stand.

¹³ Holliday, A., Hyde, M. & Kullman, J. (2016). Intercultural Communication: An Advanced Resource Book for Students. 3rd Edition, Routledge: London & New York

¹⁴ Crenshaw, K. (1989, 1991) Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. Stanford Law Review. Available at: <https://doi.org/10.2307/1229039>

¹⁵ Holliday, A., Hyde, M. & Kullman, J. (2016). Intercultural Communication: An Advanced Resource Book for Students. 3rd Edition, Routledge: London & New York

From our ontological point of view, there is a plurality of representations that can be adjudicated to a phenomenon/individual/social group but the one that prevails will be inserted somewhere in the spectrum of power dynamics and domination and it will produce certain consequences.

I want to explore if the discourse of international politics operates through *reductionism* to represent asylum seekers and refugees. By *reductionism* I refer to:

*“where the different facets, the variety of possible characteristics and the full complexity of a group of people are ignored in favour of a preferred definition.”*¹⁶

When the reductionist representation is generated, it can lead to *stereotyping* which is the activation of the assumption or preferred definition of that social group. In this step, there is a consolidated characterization of a social group that is an “*Other*”.

When the assumption or preferred definition is used in a systematic way, meaning that the stereotype is institutionalised, it then refers to *Prejudice*. At this point, this constitutes a systematic judgement through which meaning is created and the world is organised and this judgement is not based on evidence but grounded on the stereotype generated.

When individuals or a social group are being defined by a prejudice and are being perceived as a whole which is different, I am moving one step ahead into *otherization*. *Otherization* also implies reducing the “foreign Other” to less than what she/he is by the means of a prescribed image of how he/she is.

It is my intention to explore if there are indications of *otherization* in the way refugees and asylum seekers were and are represented in international politics.

As Holliday (Holliday, 2016) warns the readers, the way a culture/social group is being othered can be naturalised and might be difficult to perceive:

*“Be aware of dominant discourses which are easily perpetuated by the media, and which lead us to ‘think-as-usual’ that familiar images of the foreign Other are ‘normal’”*¹⁷

Nextly, the effects of *otherization* according to Holliday can be those of *essentialism*, basically reducing a culture or a religion or a gender as a homogenous compact that behaves like a single minded person. From an essentialist perspective, people from one culture/ethnicity/religion are essentially different from people from another culture/ethnicity/religion and there is not a multiplicity of cultural forms that individuals can

¹⁶ Holliday, A., Hyde, M. & Kullman, J. (2016). Intercultural Communication: An Advanced Resource Book for Students. 3rd Edition, Routledge: London & New York

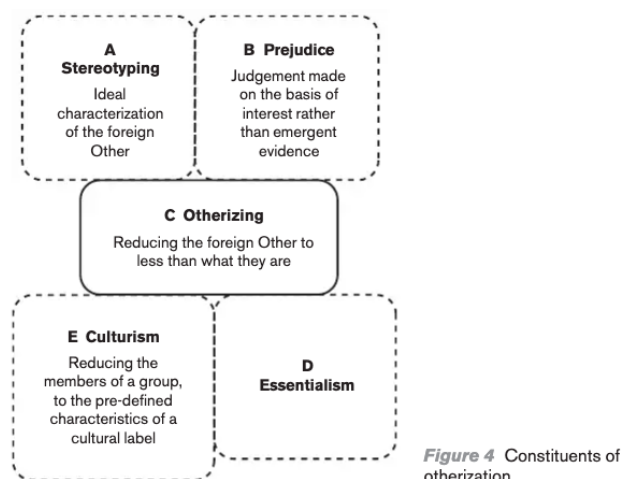
¹⁷ *ibid.*

make use of within that culture. The behaviours or motives of the individuals is therefore being understood as fully determined by their socio-cultural background.

The final step in the implications of othering a culture/social group has to do with the institutionalization of discrimination and that can be operated through *culturalism* or *sexism* or *racism*. In this project, I want to explore if there are indications of *culturalism*, *racism* or *sexism* in the way refugees and asylum seekers were and are represented in the discourse of international politics. Adrian Holliday puts together *culturalism*, in relation to *racism* and *sexism* in the way that:

*“The imagined characteristics of the ‘culture’ (or ‘women’ or ‘Asians’) are used to define the person.”*¹⁸

Otherization is a concept that comprises for constituents, as explained in the figure below:



This implies simultaneously that either culture, race or biological sex are being overemphasized and articulated as the only or main explanation to certain actions or behaviours.

By carrying out a critical analysis of the selected international treaties, I wish to find out if there are any traces of these social processes connected to *otherization*.

¹⁸ Holliday, A., Hyde, M. & Kullman, J. (2016). Intercultural Communication: An Advanced Resource Book for Students. 3rd Edition, Routledge: London & New York

2.3 Intersectionality

The term '*intersectionality*' was first coined by the feminist activist Kimberlé Williams Crenshaw in 1989 to give an account of the "*multiple grounds of identity when considering how the social world is constructed*"¹⁹. She referred to this concept in relation to the intersection between gender and race and specifically in relation to being a black woman in a world where those two categories correspond to a social disadvantage.

In more contemporary feminist literature, intersectionality has been defined as:

*"an assemblage of ideas and practices that maintain that gender, race, class, sexuality, age, ethnicity, ability, and similar phenomena cannot be analytically understood in isolation from one another; instead, these constructs signal an intersecting constellation of power relationships that produce unequal material realities and distinctive social experiences for individuals and groups positioned within them."*²⁰

In other words, the identity constructs and categories that define ourselves in social life can collide, generating increased levels of disadvantage within the existing power relationships or rather generating unique constellations of disadvantage. As the feminist scholar Sosa explains:

*"multiple categories of distinction do not simply 'add' to each other to create a multiplied effect, rather a new and different position (or category) of subordination is created."*²¹

Intersectionality is an important analytical framework used within feminist research and it has the capacity of challenging unrecognized forms of marginalization²² and policy silences within human rights and social justice. It is a tool for social and political critique and change, as it relies on the basis of an existing structural system of oppression that can be defied²³.

While the main focus of intersectionality is to identify inequalities and make them visible to be analysed and produce the knowledge for social change, this framework contributes simultaneously to recognizing that social groups and the identity of the members are not homogeneous²⁴ but that people can identify with different categories intersecting together. For example: a person can identify herself as a woman, muslim and feminist, which

¹⁹ Crenshaw, K. (1989, 1991) Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. Stanford Law Review. Available at: <https://doi.org/10.2307/1229039>

²⁰ Collins, P. H., & Chepp, V. (2013). Intersectionality. In G. Waylen, K. Celis, J. Kantola, & S. L. Weldon (Eds.), The Oxford handbook of gender and politics (pp. 1-34). Oxford, United Kingdom: Oxford University Press.

²¹ Sosa, L. P. A. (2015). At the centre or the margins: A review of intersectionality in the human rights framework on violence against women.

²² Tormos, F. (2017) Intersectional solidarity, Politics, Groups, and Identities, 5:4, 707-720, DOI: 10.1080/21565503.2017.1385494

²³ Sosa, L. P. A. (2015). At the centre or the margins: A review of intersectionality in the human rights framework on violence against women.

²⁴ Tormos, F. (2017) Intersectional solidarity, Politics, Groups, and Identities, 5:4, 707-720, DOI: 10.1080/21565503.2017.1385494

constitutes an identity intersection of gender, religion and political orientation. Remarking the differences within a social group contributed to moving away from an essentialist understanding of cultural/gender/racial identity into one more nuanced one.

The decision to use intersectionality as the theoretical framework for this research design is because it helps to address the main research questions of what is a refugee under international law and what are the social assumptions and implications of this representation. I want to explore if the intersection between *gender*, *ethnicity* and *asylum seeker/refugee status* produces a new and specific subordination. In regards to *ethnicity*, my plan is to explore if this could play a role in the way refugees and asylum seekers are perceived and welcomed by the receiving countries under international law.

Finally, I want to explore if the way in which asylum seekers/refugees are being represented falls into *heteronormativity* and if the practices that are being encouraged by these international treaties respond to gender stereotypes. *Heteronormativity* (Berlant & Warner 1998) is a concept that grew out of *queer theory* and points to the assumption that heterosexuality is the norm while other forms of sexual expression are abnormal. It lies on a binary gender understanding where there are only two genders, men and women, and a set of ideas about how sexuality and gender should be organised. In the perspective of queer theory, *heteronormativity* has the power of shaping practices, policies and institutions and it is generally normalized and perpetuated as “common sense”.

In other words, I want to explore if the gender understandings in which these treaties around refugees and the UN are embedded respond to binary ideas of sex bodies and therefore discriminate and exclude those individuals that do not fit within this binary conception of women/men; masculinity/femininity.

3. Methodology

3.1 Methodological concepts

In order to carry out this research, I will employ a qualitative research model because it would allow me to explore the aspects embedded in the formulated problem. Additionally, it would allow me to explore the way in which refugees and asylum seekers are being represented as a social group in supranational politics since 1951 until the present day and how that can relate to a national scale.

I will explore and analyse the data collected in light of the theory of *Intersectionality*²⁵ and *Otherization*²⁶. My approach will be abductive as I will employ an explorative approach and I will move back and forward from the theory to the material of research. The knowledge that I have in relation to the field of migration and refugees is what inspired me to work with the chosen theoretical framework but it is on the data that I will look for the empirical answers to my open research questions. For example, I want to explore if the representation of refugees and asylum seekers as a social group is dominated by a *heteronormative* and *binary* understanding of gender and if *ethnicity* plays a role in relation to how refugees are welcomed and perceived. Based on the theory of *Intersectionality* I can therefore study how this could affect individuals who are both refugees/asylum seekers and women or LGBTIQA+²⁷ individuals from different ethnical backgrounds. Simultaneously, I intend to explore if the ways of representation of refugees and asylum seekers in international politics might be linked with a discourse of *otherization* that impacts and shapes politics on a national and international level.

The ontology that guides my research is informed by social constructivism; in this sense, problems are understood as socially defined constructions, not as factual positivist realities that only need to be described²⁸. I stand by the understanding that there is not just one reality but there are multiple realities, built by different agents.

²⁵ Crenshaw, K. (1989, 1991) Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. Stanford Law Review. Available at: <https://doi.org/10.2307/1229039>

²⁶ Holliday, A., Hyde, M. & Kullman, J. (2016). Intercultural Communication: An Advanced Resource Book for Students. 3rd Edition, Routledge: London & New York

²⁷ Montz, B. (2021, 09 20) ACRONYMS EXPLAINED. *Outright action international*. Retrieved May 4th, 2022 from <https://outrightinternational.org/content/acronyms-explained>

²⁸ Della Porta, Donatella, Keating, Michael. Approaches and Methodologies in the Social Sciences: A Pluralist Perspective. London: Cambridge, 2008. E-book.

The *epistemological approach* of this research is critical realism (Della Porta, Donatella, Keating, 2008), by which I will be trying to understand the reality by identifying the structures that generate it. These structures will be understood as structures of power, where there is a prevailing representation²⁹ that stands out amongst others, with a specific effect. Visibilizing and describing the prevailing trends in the representations of refugees and asylum seekers could also open the possibility of criticising the institutionalisation of the existing representations, thereby creating a possibility for social change. For example, it could lead to questioning the institutionalised statement of “*refugee crisis*”³⁰ by referring to other historical times in which there has been a comparable phenomenon of displacement and migration.

3.2 What is the problem represented to be

The material that was selected in order to study the representation of refugees and asylum seekers in international politics since 1951 till the present day consists of the two supranational treaties of the UN regarding refugees: the “Convention regarding the status of refugees”³¹ with its annexed Protocol from 1967 and the “Global Compact on Refugees”³² from 2018 with its annexed “Refugee concept under international law”³³.

The method to work with these two treaties will be Bacchi’s WPR, “What is the Problem Represented to Be”³⁴. The reason for choosing this framework is that, with its roots in *Feminist theory in politics*, it is a very good tool to facilitate critical questioning of public policies. It develops from the premises that:

- Every policy seeks to solve a particular *problem*;
- The policy *represents* the problem that it seeks to solve in a specific way; and
- The choice of this representation advantages some groups and disadvantages others.³⁵

²⁹ Foucault, Michelle. *Discipline and Punish: the birth of a prison*. London: Penguin, 1991.

³⁰ Spindler, William. 2015: The year of Europe’s refugee crisis. UNHCR. 2015-12-08. <https://www.unhcr.org/news/stories/2015/12/56ec1ebde/2015-year-europes-refugee-crisis.html> (Accessed 2020-11-11)

³¹ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

³² United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

³³ United Nations High Commissioner for Refugees. (March 2018). *The refugee concept under international law*. UNHCR. Retrieved May 4th, 2022 from: <https://www.unhcr.org/5aa290937>

³⁴ Bacchi, Carol. *Analysing Policy: What’s the Problem Represented to Be?*. Pearson, 2009.

³⁵ Manning, S. (2019, June 10) ‘What’s the Problem Represented to Be?’ A policy analysis tool designed by Carol Bacchi and some recent applications in the area of early childhood education policy. *Nzare*. Retrieved May 4th, 2022 from <https://nzareblog.wordpress.com/2019/06/10/wpr-ece/>

This last point relates very well to the theory of *Intersectionality* that is being used throughout this thesis project, where this point will be particularly looked at in relation to *gender* and *ethnicity*.

The way I will carry out this method is by applying the six questions that this method consists of, in relation to both treaties. The six questions of WPR are:

- What's the 'problem' represented to be in a specific policy or policies?
- What presuppositions and assumptions underlie this representation of the 'problem'?
- How has this representation of the 'problem' come about?
- What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
- What effects are produced by this representation of the 'problem'?
- How/where is this representation of the 'problem' produced, disseminated and defended? How could it be questioned, disrupted and replaced?³⁶

I will find the answers to these questions on each of the treaties and nextly analyse the result under the light of the theories of *otherization* and *intersectionality* while making an elaborate conceptualisation in relation to the main research questions.

These questions provide the researcher with a critical lens at the moment of reading and analysing the chosen 'representation of the problem', the social and political effects that this one can produce, the silences or blind spots and the challenges that this representation entails.

3.3 Comparative analysis

One of the objectives of this work is to find out how the representation of refugees and asylum seekers has developed through the selected time period (1951 - the present day). In order to include this temporal dimension, I will work with the UN Convention of 1951 and the Compact from 2018 that governs till the present day in international politics.

It is of interest in this thesis project to see the differences that exist in this representation in the first time period and the second and explore *what has changed and why*. Simultaneously, I will also analyse if the differences draw on a possible tendency or directionality and if they respond to a traceable narrative that develops throughout time and impacts on the social/political spheres.

³⁶ Bacchi, Carol. *Analysing Policy: What's the Problem Represented to Be?*. Pearson, 2009.

For this reason, I will be carrying out a comparative analysis of the answers that came out of the WPR analysis of both treaties in the light of *Intersectionality* and *otherization*. For carrying out this comparative analysis, I will draw inspiration from the *Comparative Method* that is grounded in *political science* and has been primarily theorised by the politologists Giovanni Sartori and Arend Lijphar.

The comparative method comes from the field of *comparative politics* and it is used to compare political systems by looking for regularities and patterns amongst political systems that could explain continuity and change. While comparative methods can be used both in quantitative and qualitative research, it is about looking at an object of study in relation to another and finding empirical relations between variables. To compare is very related to the concept of *assimilating* in the sense of discovering deeper or more fundamental similarities behind the surface of secondary differences³⁷. The object of study is typically compared across space and/or time.

While the comparative method is generally used to compare two political systems, scholar Arend Lijphart states that comparative politics does not have a *substantive* focus in itself, but a *methodological* one instead: the focus is on "the *how* but does not specify the *what* of the analysis."³⁸ An example of the use of the comparative method was Durkheim's study on suicide: he compared official statistics between different societies and he argued he was able to identify what was evident in one society and not in another which might cause suicide.³⁹

I will draw inspiration on the comparative method with Mill's "Most Similar Systems Design (MSSD)"⁴⁰ that consists in comparing very similar cases that differ in the dependent variable, assuming that this will make it easier to find those independent variables which explain the absence/presence of the dependent variable. In the case of my research, the similarities amongst the two treaties are: the agent, as they are both treaties from the same supranational entity (UN) and the subject as they are both calling for organised international action in relation to refugees. The dependent variable is a temporal one: one of the treaties dates from 1951 and the other one from 2018. It is of interest in this comparative analysis to determine what are the changes or continuities that emerge out of this temporal variable.

³⁷ Sartori, G. (1970). Concept Misformation in Comparative Politics. *The American Political Science Review*, 64(4), 1033–1053. <https://doi.org/10.2307/1958356>

³⁸ Lijphart, Arend (1971). "Comparative politics and the comparative method". *American Political Science Review*. 65 (3): 682–693

³⁹ Thompson, C. H. (2009, January, 17) The sociology of suicide. *Sociologytwynham*. Retrieved May 04th, 2022 from <https://sociologytwynham.com/2009/01/17/suicide-from-durheim-to-phenomenology/>

⁴⁰ Mill, John Stuart, *A System of Logic*, University Press of the Pacific, Honolulu, 2002.

3.4 Case study

Finally, I will include a case study of the Danish current national legislation in regards to refugees and asylum. The reason to choose Denmark is partly because it is a country that has signed both UN treaties but has simultaneously faced international criticism due to the restrictive measures that it imposed in regards to asylum seeking and refugee action. In addition, in the light of the current conflict in Ukraine that is forcing millions of people into displacement⁴¹ Denmark is releasing a special law that only applies to Ukrainian refugees⁴². This differential treatment to refugees gives me the chance to explore what is the relation between this measure on a national level and the international politics discourse and legislation, for example if welcoming refugees in a differential way corresponds to a mismatch between the national and international politics levels.

In order to explore the Danish *asylum* and *refugee* legislation, I will refer to the Aliens Act of the Danish Ministry of Refugee, Immigration and Integration Affairs from 2002 and its 2019 amendment, together with the newest projects of law that came after this in relation to refugees. I want to explore the relationship between the agreed international action and the national practice, *what it is possible to see in the implementation of national law and action*. I want to figure out what are the matches and mismatches between the supranational and national levels in relation to how refugees and asylum seekers are represented and what are the politics to receive them. Furthermore, I will include into the analysis the political discourse and the project that is being discussed in the Danish parliament in regards to a special law ('*særlov*') for Ukrainian refugees.⁴³

The limitations of using this case study is that the results that I will find correspond to one specific UN member state or national implementation level and have not been replicated in other contexts, therefore I will have to check if the results are generalisable also by including other means, for example the use of the media that has covered this international politics issue. The case study will rely on both the legislation analysis and my interpretation of the social/political practices in terms of refugees and asylum seekers in Denmark. Therefore, there could be conflicting interpretations of the same data that would not be included or my

⁴¹ BBC. (2022, May 3) How many Ukrainians have fled their homes and where have they gone?. *BBC*. Retrieved May 4th, 2022 from: <https://www.bbc.com/news/world-60555472>

⁴² Svendsen, A. (2022, March 2). Særlov skal sende ukrainere hurtigt ud på arbejdspladser og lokalsamfund. *DR*. Retrieved May 4th, 2022 from <https://www.dr.dk/nyheder/politik/saerlov-skal-sende-ukrainere-hurtigt-ud-paa-arbejdspladser-og-lokal-samfund>

⁴³ Ibid.

selection of the social/political practices to be analysed could also be biased by my experience of living in Denmark.

4. Analysis

4.1 Introduction

In the following section, I will go through the main points that came out to be central from my analysis of the selected material and that are related to the problem of how refugees are represented in international politics throughout the chosen time period. Finally, I will refer to the case study of Denmark as a member-state of the UN and analyse how a specific national-level response relates to the supranational in terms of refugee-representation and -action.

4.2 Understandings of a *refugee* throughout time

The 1951 UN Convention relating the Status of Refugees together with its annexed 1967 Protocol defined, for the first time, what a refugee is under international law and politics. Its definition sets the ground for all other treaties and laws regarding refugees, as well as for the Global Compact on Refugees from 2018.

A refugee, according to the Convention, is someone

“who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.” 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” ⁴⁴

Based on this understanding, the refugee is a subject of persecution and at this point it is not defined who the agent of persecution is -for instance, the State, armed groups, an individual, etc. That changes with the 2018 Compact and its annexed Refugee Concept under International Law, where the agent of persecution is limited to organised gangs, traffickers and State and non-State actors against which the State is unable or unwilling to protect.

Although originally meant to exclusively protect refugees from European countries until January 1st 1951 in relation to the Second World War, the status of refugee was extended

⁴⁴ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

through the 1967 Protocol to all refugees irrespective of the geographic location and the dateline of 1 January 1951 until the present day.

The fundamental principles that guide the foundation of the international action towards refugees are those of non-discrimination, non-penalization and non-refoulement. These cardinal principles remained throughout time until the present day.

The principle of non-refoulement provides that *“no one shall expel or return (“refouler”) a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom.”*⁴⁵

While the principle of non-discrimination meant, by the 1951 Convention, that the principles of protection of refugees should be recognized independently from the individual's race, religion or country of origin, it was extended with the 2018 Compact to include other discrimination grounds such as sex, age, disability and sexuality. This means that between the gap of 1951 and 2018, refugees who had some disability or were homosexual, as an example, could have been subject to discrimination without the protection of international law.

Furthermore, under international politics, the status of *refugee* can not be granted to someone who:

- “(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”*⁴⁶

This points to the construction of a refugee as an *“innocent”* person who acts according to the values of the UN. It is to be questioned if the criminal records being considered have any expiration time and what means *“serious”* in this context. Is someone who, for example, has been convicted for robbery with a weapon and is now being persecuted because of his/her/their religion eligible for international protection?

The reasons for granting *refugee* status and asylum according to the current international treaty dictated in 2018 are:

- *“persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;*

⁴⁵ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁴⁶ *ibid.*

- *armed conflict, which may be rooted in and/or conducted along lines of race, ethnicity, religion, politics, gender or social group divides;-*
- *violence perpetrated by organised gangs,*
- *traffickers,*
- *and other non-State actors, against which the State is unable or unwilling to protect;*
- *persecution on the basis of sexual orientation or gender identity;*
- *disasters (including drought or famine) where they are linked to situations of persecution or armed conflict rooted in racial, ethnic, religious, or political divides, or disproportionately affect particular groups.”*⁴⁷

It is to be noted that the violence perpetrated by gangs or traffickers and the persecution based on gender identity, sexual orientation and ethnicity appeared first in the 2018 Compound, together with the disasters linked to persecution. It is to be understood that those individuals who seek asylum due to some sort of persecution which is not included in this list, will be denied asylum and not be granted international protection.

Although forced emigration due to climate and environmental degradation is not considered a reason to grant asylum, these grounds are stated by the 2018 Compound as drivers of refugee movements. The 2018 Compound states that those forcibly displaced by natural disasters though not eligible as refugees, will instead be provided with assistance by stakeholders with relevant mandates and expertise.

Finally, the refugee is granted asylum and gets equal recognition of civil rights as a national citizen but is expected to successfully integrate into the norms and values of the host society. It is first with the 2018 Compound that the process of *integration* is being described as a two-way process

*“which requires efforts by all parties, including a preparedness on the part of refugees to adapt to the host society, and a corresponding readiness on the part of host communities and public institutions to welcome refugees and to meet the needs of a diverse population.”*⁴⁸

The process of *integration* here indicates an adaptation from both refugees and hosting societies which differs from the perspective of *assimilation*, where the refugee is expected to adapt to the hosting society as a one-way process. However, refugees - or individuals who are granted asylum - are being reduced to a diverse population with diverse needs and therefore *otherized* as they are being described as a whole which is different. In addition, there is also mention of *“technical guidance on legal and institutional frameworks that foster*

⁴⁷ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁴⁸ *ibid.*

*the peaceful and productive inclusion of refugees and the well-being of local communities*⁴⁹ where inclusion means a one-sided process where one side - the refugee - accommodates to the other - the hosting society.

4.3 Refugee, asylum seeker, stateless person

When people are fleeing their country of origin in order to seek protection in another country, they have to go through the process of applying for asylum in the hosting country. This process is subject to national and international regulations, such as the Dublin Regulation⁵⁰ that applies to the whole EU territory.

The application for asylum is followed by a waiting time, that in some cases extends up to years⁵¹, which can be a factor of psychological distress for those migrants who have fled their countries under traumatic situations. During this time, the applicant's case is being evaluated and it is being decided if the asylum seeker meets the requirements of being recognized as a refugee. The entities that can determine if an asylum seeker is granted refugee status are a national government or the UNHCR. In the case that the UNHCR is responsible for an individual's case, it will then determine what country should host the refugee according to international agreements and national quotas agreed upon by national governments and the UN.

Although the waiting time in which the asylum seeker is waiting for the legal decision regarding their refugee status may represent some years in the individual's life, there is not any mention in the UN treaties about how the conditions should be for those in that situation. Therefore, it is up to the national governments to determine what the conditions will be during the asylum processing time. In relation to this and in the past years, there have been political debates both on a national and international scale, in relation to the conditions in which asylum seekers are being hosted that tends towards penalization. Some controversial

⁴⁹ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁵⁰ European Commission. (n.d.) *Country responsible for asylum application (Dublin Regulation)*. Retrieved May 4th, 2022 from

https://ec.europa.eu/home-affairs/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en

⁵¹ European Commission. (2021, March 15) *Consequences of long waiting times in the asylum system*. Retrieved May 4th, 2022 from https://ec.europa.eu/migrant-integration/library-document/consequences-long-waiting-times-asylum-system_en#:~:text=Waiting%20for%20an%20asylum%20decision,on%20average%20in%202018%20%2D%202019.

cases include the case of the USA where in 2020 there were reports of children seeking asylum being kept in cages in warehouses working as detention centres⁵²; the case of Australia's offshore detention centres (Manus island and Nauru) which have been qualified as "unsustainable, inhumane and contrary to human rights," by the UNHCR⁵³; and the Moria detention centre in Lesbos island that burned down in 2020, leaving more than 13.000 without shelter⁵⁴. The existence of offshore processing centres, national detention centres and migrant camps that are funded with international funds, such as the Asylum seeker centre in Samos, Greece⁵⁵ points out to an infrastructure and a system that has been in place and has increased in the past decades and is meant to accommodate asylum seekers during the evaluation period.

Despite the accusations of many of these centres as being inhumane and most of them being called "*detention centres*" which points to a criminalising discourse, there are no measures stated by the UN treaties about how the processing time should be handled on a national level. In relation to penalising migrants or asylum seekers who are crossing national borders, the 1951 Convention states that

*"refugees should not be penalised for their illegal entry or stay. This recognizes that the seeking of asylum can require refugees to breach immigration rules."*⁵⁶

It can be argued that the omission regarding the conditions that should apply on a national level for accommodating asylum seekers may lead to the risk of asylum seekers being otherised while kept in isolated centres, detached from the rest of society or criminalised in places referred to as "detention centres' ". While the rights that apply for refugees are being clearly stated under international law, the rights of asylum seekers are not being described with the same focus and clarity.

Once the migrant is granted asylum, they are then entitled to the rights of refugees that fall under national and international law. But if the evaluation is negative and the migrant is not

⁵² Jordan, M (2020, November 25). U.S. Shuttles Warehouse Where Migrants Were Kept in 'Cages'. *The New York Times*. Retrieved May 04, 2022 from

<https://www.nytimes.com/2020/11/25/us/border-migrant-children-cages-ursula-warehouse.html>

⁵³ Baker, N. (2019, October 28). Manus Island has shut - but hundreds of asylum seekers say they're now stranded. *SBS News*. Retrieved May 04, 2022 from

<https://www.sbs.com.au/news/article/manus-island-has-shut-but-hundreds-of-asylum-seekers-say-the-ire-now-stranded/d6bll0hco>

⁵⁴ BBC. (2020, September 09). Moria migrants: Fire destroys Greek camp leaving 13,000 without shelter. *BBC News*. Retrieved May 04th, 2022 from

<https://www.bbc.com/news/world-europe-54082201>

⁵⁵ Smith, H. (2021, September 19). Why Greece's expensive new migrant camps are outraging NGOs. *The Guardian*. Retrieved May 04, 2022 from

<https://www.theguardian.com/world/2021/sep/19/why-greeces-expensive-new-migrant-camps-are-outraging-ngos>

⁵⁶ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from

<https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

granted *refugee* status, the response about what to do with that individual will be determined on a national scale. From the perspective of international politics, the UN states in 2018 that: *“individuals who are outside their country of origin (typically because they have been forcibly displaced across international borders) but who may not qualify as refugees under international or regional law, may in certain circumstances also require protection, on a temporary or longer-term basis. This may include, for example, persons who are displaced across an international border in the context of disasters or the adverse effects of climate change, but who are not refugees.”*⁵⁷

Once again, there is no description of how this protection should be carried out on a national scale and it is therefore left to be decided by national legislations. This may present another area of problem, as there have been reports of forced deportations which are against the principle of safe repatriation stated on the 1951 Convention and deportation centres for asylum seekers being denied refugee status going against the European Courts of Human Rights, such as Sjælsmark Udrejsecenter in Denmark⁵⁸. This deportation centre hosts the migrants whose asylum case has been rejected and are therefore being kept under surveillance under conditions that limit their freedom and motivated to repatriate by the means of uninviting conditions. The minimal conditions offered to the migrants living there has proved to have negative consequences in the mental health of the migrants and especially of the children.

Finally, the former definition of “*refugee*” from the 1951 Convention comprehended what are later to be called “*stateless persons*” and separated into another social group with specific international treaties, such as The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Refugees, who enjoy full national protection as citizens, are therefore considered different from *stateless persons*, who do not enjoy full national protection as citizens under international law, although they are closely related, as the 2018 Compact states:

*“Recognizing that statelessness may be both a cause and consequence of refugee movements “*⁵⁹

⁵⁷ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁵⁸ Aaskov, D. (2020). *Danmarks behandling af børn på Udrejsecenter Sjælsmark i lyset af Den Europæiske Menneskerettighedsdomstols praksis om frihedsberøvelse af migrantbørn*. Retrieved May 04th, 2022 from https://law.au.dk/fileadmin/Jura/dokumenter/forskning/rettid/Afh_2020/afh3-2020.pdf

⁵⁹ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

4.4 Burden-and responsibility-sharing and international cooperation

While the focus of the 1951 Convention is to set a political framework for the protection and recognition of the civil rights of refugees on an international level, the focus of the 2018 Compact changed drastically into the following:

“(i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity.”⁶⁰

Consequently, the principles that guide these two international treaties are also of a different nature. While the 1951 Convention is guided by the principles of non-discrimination, non-penalization and non-refoulment, the 2018 Compact is guided by the principles of international cooperation and burden- and responsibility-sharing.

The change in the nature of the principles guiding the treaties seems coherent with the focus and objectives that each treaty has. In the first case, the nature of the Convention is of a humanitarian and international-rights one which points to the legal recognition of refugees and the values that should guide the way they are treated by the international community. In the second case, the nature of the objectives of the Compact points to a political one, where nation-states are guided into cooperating and sharing the burden that masses of refugees are here supposed to imply. In addition, there is a focus on working on the root causes that enhance forced emigration and on promoting safe repatriation as the best of all solutions.

As refugees are being discursively constructed as a burden that falls on certain countries, the focus around the issue of refugees has shifted into the question of *who* should do something about it, *who* should bear with that burden and *how* can the integrity of hosting states be protected. The shift in focus can be understood within the current anti-immigration context, where national migration laws have tightened across the world, borders are enhanced with measures of securitization and migration controls and asylum centres are being offshored or outsourced⁶¹. The example of what has been called ‘Fortress Europe’⁶² by international politics and migration scholars is very explanatory of this discourse of refugees as a burden, where Europe after the so called ‘*refugee crisis*’ of 2015 (Spindler, 2015) proceeded to tighten asylum processes; strengthen border controls through Frontex

⁶⁰ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁶¹ The Routledge Handbook on Crime and International Migration (2017) (1st ed.). Taylor and Francis. Retrieved from <https://www.perlego.com/book/1620580/the-routledge-handbook-on-crime-and-international-migration-pdf> (Original work published 2017)

⁶² Jünemann, A., Nikolas Scherer, Nicolas Fromm. Fortress Europe? Challenges and Failures of Migration and Asylum Policies. Berlin: Springer VS, 2017.

operations; and to propagate nationalist sentiment around protecting Europe from the people who wanted to come in.

Presenting the issue of refugees as a burden is a way of enhancing the discourse of otherization, essentialism and stigmatisation, where the asylum seekers and refugees are being seen as 'others' then set in a sole category that is loaded with prejudice. Učakar, a Slovenian scholar who studied the phenomenon of 'Fortress Europe', describes the effects of the otherizing discourse as:

*"Through setting up of borders and the restrictive discourse on these borders, migrants are presented as those who ultimately belong outside of the borders and who, by entering the bordered space, present a danger for the established order inside of the borders."*⁶³

The discourse around migrants as a burden to hosting countries and the need to redistribute the burden implies that refugees, instead of being perceived as a source of intercultural richness thereby a benefit to society, are being considered as a risk to the established order or status quo of the state-nation, which enhances the practices of otherization.

Even though the 2018 Compound recognizes that *"millions of refugees live in protracted situations, often in low- and middle-income countries facing their own economic and development challenges"*⁶⁴ and that the burden should be understood in the sense that:

*"Countries that receive and host refugees, often for extended periods, make an immense contribution from their own limited resources to the collective good, and indeed to the cause of humanity."*⁶⁵, what is not being stated is that 85% of the world's refugees are being hosted by third-world countries, according to UN statistics⁶⁶. The omission of this information may contribute to the usual misunderstanding of a '*refugee crisis*' that falls upon the high income/ first-world countries and that reinforces the existing anti-immigration discourses in those countries.

Finally, the 2018 Compound is calling upon international cooperation but it is not being specific in terms of how this cooperation should be operationalised. Should it be operationalised following the principle of equity and, for example, imposing quotas on host countries? In that case, should the country's economic situation be considered when determining the quotas? Otherwise, should it depend on the willingness of each

⁶³ Učakar, Tjaša. The Rhetoric of European Migration Policy and Its Role in Criminalization of Migration. In *Causes and Consequences of Migrant Criminalization*, Neža Kogovšek Šalamon (ed), 91-108. Ljubljana: Springer, 2020. Ebook.

⁶⁴ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁶⁵ *ibid.*

⁶⁶ United Nations High Commissioner for Refugees. (n.d.). *Refugee data founder*. UNHCR. Retrieved May 04, 2022 from <https://www.unhcr.org/refugee-statistics/>

State-member to receive refugees? These are some unresolved questions that result from the lack of clarity around the issue of international cooperation.

4.5 From the refugee as a “he” to a binary gender understanding

Throughout this thesis I am analysing the main international treaties that the UN has released regarding refugee law under the light of the theories of *otherization* and *intersectionality*. One of my points of interest is how the intersection between the social categories of *gender*, *ethnicity* and refugee is being considered and acted upon throughout time in international politics and what could the consequences of the consideration/lack-of-consideration be.

The status of refugee is in itself a very heterogeneous category, as it includes individuals from different nationalities, genders, age, sexual orientations, social classes, ethnicities, etc. From an intersectional perspective, it is important to recognize the diversity within this social group and pay attention to how the intersection between these social categories could create a situation of privilege or heightened stigmatisation. Individuals seeking asylum and even those granted the status of refugee by international law might not be enjoying equal opportunities and that is why it is important to dig into the inequalities that lie within this category and explore if these are being considered and acted upon in international politics.

Back from the first treaty in 1951, the reasons for escaping one's country that would grant one with refugee status are “*race, religion, nationality, membership of a particular social group, or political opinion*”⁶⁷ while from 2018 onwards the reasons were extended, including “*persecution on the basis of sexual orientation or gender identity*”⁶⁸ and *ethnicity*. This means that between 1951 and 2018, it was not enough to demonstrate that someone's life was in danger, for example, because of being homosexual in a country that exercises death penalty for homosexuals to be granted refugee status. Similarly, if someone's race was the same (for example: black/african) but the ethnicity was different and the person was persecuted due to their ethnicity (for example during the genocide in Rwanda in 1994, where Tutsies -an ethnic

⁶⁷ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁶⁸ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

group- where persecuted and killed because of their ethnicity⁶⁹) they could face a lack of protection by international law. While *race* is generally associated with biological attributes such as the colour of the skin and physical traits, *ethnicity* refers to cultural expression and identification. It can be assumed that the 2018 Compact finally recognized *ethnicity* as a ground of persecution after many armed conflicts that showed how people with different *ethnicities* were disproportionately affected, such as the conflict in Rwanda⁷⁰, Kosovo⁷¹ and others where an ethnic group was otherized and treated as different due to their *ethnicity*, discriminated against and ultimately subjected to physical violence or genocide.

There is a lack of consideration, in the 1951 Convention, of *gender* and *ethnicity* as social categories that can draw people into persecution or can create different/enhanced ways of persecution. It is known that *gender* affects the way people get affected by war as it has been recognized that sexual violence and rape function as weapons of war, generally affecting women during armed conflicts⁷². The lack of consideration of the systematic use of sexual crimes during wartime in international politics until 2018 indicates the possible absence of a specific response towards the victims (generally women and children) in the form of prevention or rehabilitation.

In addition to this, the representation of refugees in the 1951 Convention corresponds almost exclusively to the refugee as a “*he*” (bolding added by the thesis writer):

“(1) **He** has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost **his** nationality, **he** has voluntarily re-acquired it;”

The selection of the pronouns “he”/”his” point not only to a time where inclusive language was not widespread but also to the question of *who is a refugee* under international politics and the consequent answer: it is a he, it is a male. This points to sixty seven years between both conventions where the refugee was constructed as a male, together with the infrastructure that was built upon this representation.

This changed with the 2018 Compact, where the pronouns used in reference to refugees include the female pronouns and the representation of refugees shift to a gender-binary one, where women and girls are as much subjects of this treaty as men and boys (underlining by the thesis author):

⁶⁹ United Nations. (2020, April 7) 28 years after the 1994 genocide against the Tutsi in Rwanda, ‘stain of shame endures’. *UN News*. Retrieved May 04th, 2022 from <https://news.un.org/en/story/2022/04/1115792>

⁷⁰ *ibid*.

⁷¹ Ahrens, G.-H. (2007). *Diplomacy on the Edge: Containment of Ethnic Conflict and the Minorities Working Group of the Conferences on Yugoslavia*. Washington, DC: Woodrow Wilson Center Press.

⁷² Diken, B., & Laustsen, C. B. (2004). *Becoming Abject: Rape as a Weapon of War*. (s. 1-26). AMID, Institut for Historie, Internationale Studier og Samfundsforhold, Aalborg Universitet. Publisher: The University of Adelaide Press. Print publication year: 2012

*“44. Recognizing the important role that sports and cultural activities can play in social development, inclusion, cohesion, and well-being, particularly for refugee children (both boys and girls)”*⁷³

Although there is a special mention of women and children in the 2018 Compact, there is still no mention of other gender identities such as those claimed by the LGBTQI+ community and those voiced by international politics are restricted to men and women, forging discrimination against individuals who don't recognize themselves as such. This binary representation of gender is linked to the concept of *heteronormativity*⁷⁴, where the norm that rules in society forces persons into the binary category of “male/female” and assume that the norm is heterosexual. *Heteronormativity* can lead to discrimination and stigmatisation of individuals who don't belong to the norm.

Finally, the 1951 Convention makes emphasis on the right of the *refugee* to be united with *his* family and this principle is kept throughout the 2018 Compact:

*“considering that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee”*⁷⁵

But there is no specification of *what* is considered a family and what the extent of it is. The heteronormative understanding of a family points to a nuclear family that consists of a mother, a father and sons/daughters. But there are different ways in which people consider themselves family and that also differs from culture to culture, where some cultures don't differentiate between nuclear and extended family. Similarly, there are cultures that accept inter-age marriages where the woman is a minor under the Law and the man is an adult, in contrast with many cultures that determine that is illegal and consider it sex crime. An example of this took place in Denmark when under Inger Støjberg's mandate -former Minister of Integration and Foreign Affairs- asylum seekers who were married but where one of them was a minor were not considered to be a legal family and were therefore forced to live in separate centres, even if having children together⁷⁶. It would be of great importance to take consideration of the cultural determinations that fall into the institution of the “family” when referring to it.

⁷³ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁷⁴ Nadal, K. (Ed.) (2017). *The SAGE encyclopedia of psychology and gender*. (Vols. 1-4). SAGE Publications, Inc., <https://dx.doi.org/10.4135/9781483384269>

⁷⁵ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁷⁶Frøkjær, S & Østergaard, A (2020, May 19). Støjbergs barnebrud på 16 med mand på 50 vækker opsigt – her er, hvad vi ved. *DR*. Retrieved May 4, 2022 from: <https://www.dr.dk/nyheder/detektor/detektor-stoejbergs-barnebrud-paa-16-med-mand-paa-50-vaekker-opsigt-her-er-hvad-vi>

This silence around *what is considered a family* and *what is legitimised as a family* leads to the nation-states taking the determination, which can lead to differential treatment of asylum seekers and the risk of disrespecting the international principle of family unification.

4.6 Equality, equity and liberation

The foundation of the treatment of refugees as described in the 1951 Convention, relies on the principle of non-discrimination, amongst others. The grounds for discrimination that this treaty recognizes are those of race, religion or country of origin. This means that refugees shouldn't be treated differently according to what religion, race or nationality they ascribe to. Here again, there is an initial lack of consideration of the discrimination that can be exercised due to *gender* identification or sexual orientation and ethnicity that will later be included and taken into consideration since the 2018 Compound.

Starting from the 1951 Convention, there is no specification about the practices that should be carried out in order to make sure that refugees do not face discrimination in the hosting country but the measures suggested point towards the principle of *equality*. The principle of *equality* refers to the quality of being equal, in terms of opportunities, rights and status. The measures to promote equality are called *equal treatment measures* and they promote that everyone gets the same treatment, no matter what race, religion, gender, nationality, sexual orientation or ethnicity they identify with. The assumption of *equal treatment measures* is that everyone could achieve the same goals if everyone is given the same treatment and it therefore disregards that people stand on different starting points, due to the fact that we live in a world where inequality and asymmetrical power relations are part of the reality⁷⁷.

Therefore, it is possible to find references to equal treatment measures throughout the 1951 Convention, as for example:

*"The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals."*⁷⁸

⁷⁷ Harcourt, Wendy (2016) *The Palgrave Handbook of Gender and Development Critical Engagements in Feminist Theory and Practice*. New York, Palgrave Macmillan

⁷⁸ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

These references to “*same treatment*” as to the nationals disregard that the refugees arrive in the hosting country in a different situation than the nationals. They carry the psychological weight of persecution, trauma, displacement and migration and these conditions might not allow them to forge themselves a life the same way as the nationals of the hosting country, who have not been through the same situation. It is proven that psychological trauma has an effect in the cognitive skills that are required for example, to learn a new language, integrate to a new culture or get into the job market.⁷⁹ Similarly, those individuals escaping persecution and seeking asylum have different starting points in terms of opportunities as, for example, a child that is seeking asylum on their own who hasn’t got the same opportunities as an adult seeking asylum.

Whereas the 1951 Convention is based in promoting non-discrimination through *equal treatment measures*, disregarding the specific conditions in which refugees arrive into the hosting country, the 2018 Compound shifts its strategy to include measures that promote *equity* as much as *equality*. The principle of *equity* refers to the quality of being fair and promoting justice. It has to do with recognizing that the starting place is not the same for everyone - in terms of opportunities - and it is necessary to acknowledge and make adjustments to the imbalances that arise from a world where inequality and asymmetrical power relations are part of the reality. The theoretical tool of *intersectionality* is used as an approach to analyse social inequalities that are usually composed of many factors interacting together. *Equity* is promoted through measures of *affirmative action* which emphasise different and unequal starting points to create an equal outcome (Harcour, 2016). The 2018 Compound includes for the first time measures of *affirmative action*, where ‘potentially vulnerable’ groups within the asylum seeker/refugee community are identified and there are adjustments in place to compensate for the existing imbalances. Those with ‘diverse needs and potential vulnerabilities’ include:

*“girls and women; children, adolescents and youth; persons belonging to minorities; survivors of sexual and gender-based violence, sexual exploitation and abuse, or trafficking in persons; older persons; and persons with disabilities.”*⁸⁰

Another aspect that points into the principle of *equity* as a way of ensuring non-discrimination is the fact that the 2018 Compound includes a separate section called ‘2.4 Women and girls’ where strategies of *equality* and *equity* are promoted. Having a separate section for women and girls points to a large development in terms of gender equality if compared to the 1951 Convention, where there was no mention of women and

⁷⁹ Bower, G & Sivers, H (1998). *Cognitive impact of traumatic events*. Cambridge University Press.

⁸⁰ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

girls and the subject of the treaty was a 'he'. The separate section indicates that there is a gender power imbalance where males are benefitted while women are disadvantaged. There is an acknowledgement that women and girls are therefore not standing in the same position as men and boys as they may be subject to gender discrimination/violence, as *"Women and girls may experience particular gender-related barriers that call for an adaptation of responses in the context of large refugee situations."*⁸¹ There is, though, an omission in regards to gender minorities that are also vulnerable to gender inequality and a silence in terms of what is the root cause of gender inequality/violence.

The programme of action, as described by the 2018 Compound, to fight discrimination consists of:

*"promoting gender equality and empowering women and girls; ending all forms of sexual and gender-based violence, trafficking in persons, sexual exploitation and abuse, and harmful practices; facilitating the meaningful participation of youth, persons with disabilities and older persons; ensuring the best interests of the child; and combating discrimination."*⁸²

Acknowledging the groups that are disadvantaged in terms of power relations and promoting empowerment point towards the principle of *equity* and some *affirmative action* measures include the promotion of 'safe schools' and online education for refugees to *"overcome obstacles to their enrolment and attendance, including through flexible certified learning programmes, especially for girls, as well persons with disabilities and psychosocial trauma."*⁸³

Finally, the UN promotes a '*non-discriminatory approach and a gender perspective*' throughout its procedures such as '*gender-sensitive practices for the prevention and reduction of statelessness*'⁸⁴, which point towards the principle of *liberation*, where the structures that support the imbalances are destructed and the root causes that generate asymmetry within power relations are being tackled. The way in which the principle of *liberation* is promoted is through *gender mainstreaming* measures, where gender as well as other factors of discrimination is being considered in every step of policing⁸⁵. By having a gender perspective and a non-discriminatory approach throughout the policy it is possible to point towards transforming disadvantages and aim to create structural equality.

In conclusion, the 1951 Convention was promoting non-discrimination through the use of *equal treatment* measures pointing towards *equality* though only referring to the male as its

⁸¹ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁸² *ibid*

⁸³ *ibid*

⁸⁴ *ibid*

⁸⁵ Harcourt, Wendy (2016) *The Palgrave Handbook of Gender and Development Critical Engagements in Feminist Theory and Practice*. New York, Palgrave Macmillan

subject and not recognising structural factors that create different opportunities within the social group that makes up refugees. Therefore, it can be concluded that there were no considerations as to how gender or other factors of disadvantage can enhance vulnerability amongst refugees or create new conditions of disadvantage.

In contrast, there is an acknowledgement of these factors in the 2018 Compound and an *intersectional* consideration, which enriches its non-discrimination approach with a gender perspective and *affirmative action* measures aiming towards *equity* and *gender mainstreaming* measures aiming towards the *liberation* of the factors that create structural inequality.

4.7 Nation-state response focus

The nature of international action in regards to refugees as established in the 1951 Convention is of a social and humanitarian one and that is kept throughout time, while the political nature is being denied as in the 2018 Compound:

*“The global compact is entirely non-political in nature, including in its implementation.”*⁸⁶

But when the focus in the 2018 Compound shifted into international cooperation between nation-states and burden- and responsibility-sharing which aims to protect nation-states’ status-quo, the political nature is hard to deny.

Similarly, there are different elements in the 1951 Convention that give an account of a political nature, such as the fact that refugees are subject to issues regarding political reciprocity between nation-states:

*“2. After a period of three years’ residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.”*⁸⁷

And also the fact that refugees’ entry to a country is subject to some regulations that will determine their legality in the hosting country, provided good cause. Conditions which have been sharpened throughout time through meticulous asylum procedures.

⁸⁶ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

⁸⁷ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

“1. 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.”⁸⁸

Legality and illegality is an issue that has been set upon migrants and determines their status in the hosting country, such as ‘refugee’, ‘asylum seeker’, ‘illegal migrant’, etc. The legality of their presence can only be understood under a geopolitical logic of nation-states, where the world is divided into these sovereign cells where nationals have the right to live and non-nationals are subject to proving reasons to be there. This logic is based on the othering principle that some humans - state nationals, ‘us’, those with the inborn legitimacy to live in the country - are different to others - migrants, refugees, asylum seekers, ‘them’, those without the inborn legitimacy of living there - and have therefore different benefits. If the nature around the *refugee* issue is not political but only humanitarian, then the political borders between nation-states could be disregarded, when it comes to protecting human beings. Such as yazidi activist Nadia Murad states during a UN Conference, where she encourages countries to offer protection to migrants requesting it:

“The world has only one border: it is called humanity.”⁸⁹

The perspective introduced by this activist calls for a world where we all see each other as humans instead of treating each other differently under an ‘us’ or ‘them’ logic. She calls for a world without otherization, where we all protect each other no matter where we come from or what we believe in. She suggests a political call-to-action of a humanitarian nature that overrules the geopolitical borders.

On top of this, there is a supranational order, the UN, which is intended to organise these nation-states in peace and collaboration and to establish the grounds of international cooperation in matters such as refugees, while warranting “*the principle of sovereign equality of States* ([A/RES/25/2625](#))”⁹⁰. Anyhow, it is possible to see how this cooperation brings about problems around burden-sharing or *who does what*, for example:

⁸⁸ United Nations High Commissioner for Refugees. (n.d.). *The 1951 Convention Relating to the status of refugees and its 1967 protocol*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>

⁸⁹ Murad, N. (2016, 09 22) *Nadia Murad’s Speech at UN General Assembly*. Retrieved May 4, 2022 from [YouTube](#) *Nadia Murad’s Speech at UN General Assembly opening Session, 19 September ...*

⁹⁰ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR. Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

“In the first instance, addressing root causes is the responsibility of countries at the origin of refugee movements.”⁹¹

Another problem that comes with the supranational order is the political legality and adherence to it. While the 1951 Convention is legally binding, hard-law, with 149 countries partying to it, the 2018 Compact is not legally binding, therefore soft-law, with 164 nations adhering to it but many countries rejecting to carry out the established measures, such as USA and several EU states while considering it a threat to the existent order⁹². As the 2018 Compact is a non-binding treaty, it might be the case of many UN state-members that their national law regarding refugees abide by the conditions established by the 1951 Convention only, which exclude the considerations of *gender* and *ethnicity* as grounds of persecution, amongst other differences with the 2018 Compact.

All in all, the existent order in international politics regarding refugees determine that it is the nation-states' responsibility - national level - to determine under what circumstances refugees will be hosted, under the suggested guidelines of the UN - supranational level:

“The primary responsibility for safety and security lies with States”⁹³

There are, though, some other issues that arise in relation to an international action towards refugees being organised at a national level and with a nation-state response logic and that is, for example, the issues that extend beyond geopolitical borders such as climate change. Climate change extends beyond national borders because the higher amounts of CO2 emissions produced by developed countries affects the world as a whole and developing countries suffer the consequences while its inhabitants may suffer from forced displacement and seek asylum somewhere else. A plan of action that focuses on a nation-state's response is inadequate for situations like this one, where the problem extends beyond the geopolitical borders as designed.

In conclusion, with the issues around geopolitical cooperation, conflicts between the supranational and national levels, legality of migrants and the focus on protecting nation-states, it is evident that the nature of the issue around refugees is not only humanitarian but a political one and the current action, based on nation-state response may be inadequate to tackle the complexity of the issue of displacement and asylum.

⁹¹ *ibid.*

⁹² DW news (2018, July 18). Hungary joins US in refusing UN's safe global migration compact.

Retrieved May 04, 2022 from

<https://www.dw.com/en/hungary-joins-us-in-refusing-uns-safe-global-migration-compact/a-44733306>

⁹³ United Nations High Commissioner for Refugees. (2018). *Global Compact on Refugees*. UNHCR.

Retrieved May 4, 2022, from <https://www.unhcr.org/5aa290937>

4.8 The case of a member-state: Denmark

When analysing the Danish Aliens Act of 2002 and its 2019 amendment⁹⁴ which still serves as the main law and guideline for immigration in Denmark, it comes to my attention that no amendment has been made to the extended definition of '*refugee*' as introduced in the 2018 Global Compact on Refugees. Therefore, the grounds of persecution related to *ethnicity*, *gender identity* and *sexual orientation* are not validating grounds for an asylum seeker to get asylum and be recognized as a *refugee* in Denmark, under national law.

Although Denmark is one of the countries that approved the 2018 Global Compact on Refugees, its national law has not included the new points introduced by the newest treaty of international law and therefore only follows the guidelines of the 1951 Convention. One of the reasons for this might be, as stated before, that the 2018 Compact is a non-binding agreement and therefore it depends on the country's willingness to follow its guidelines or not.

In line with the 1951 Convention, there is a strong focus by the national law on Immigration of Denmark to ensure that the asylum seeker to be granted asylum doesn't have any criminal record.

Additionally, the national law stipulates imprisonment in the case of some forms of illegal entry in Denmark which goes against the principle of non-penalisation of asylum seekers entering a country illegally stipulated in the 1951 Convention. As stated in the Aliens Act:

"An alien is liable to a fine or imprisonment for up to 6 months if he:

*(i) enters or departs at points other than those designated as passport check-points in Denmark or another Nordic country or outside the opening hours of the border crossing point."*⁹⁵

Moreover, the fact of calling migrants '*aliens*' speaks of otherization, where state nationals are treated as '*us*', the norm, and migrants are '*them*', the '*aliens*' as derived from latin *alienus* meaning other.

Unlike the UN treaties, the Aliens Act includes detailed information about the circumstances under which asylum seekers shall be hosted while the decision to grant them asylum or not

⁹⁴ Danish Ministry of Refugee, Immigration and Integration Affairs (2002, July 17). *Aliens (Consolidation) Act*. Retrieved May 4th, 2022 from <https://www.legislationline.org/download/id/1151/file/5db59d1791039ad543d427dfbde37d93.pdf>

⁹⁵ Danish Ministry of Refugee, Immigration and Integration Affairs (2002, July 17). *Aliens (Consolidation) Act*. Retrieved May 4th, 2022 from <https://www.legislationline.org/download/id/1151/file/5db59d1791039ad543d427dfbde37d93.pdf>

is being taken. For example, asylum seekers are not allowed to choose where they live but they are obliged to live in asylum centres.

“If you apply for asylum and you do not already have another residence permit in Denmark, you must live at an asylum centre.”⁹⁶

Furthermore, *asylum seekers* - unlike other immigrants - are subject to certain procedures such as ‘investigation’ and ‘interrogation’. These procedures are common to the field of criminal law and are usually used amongst subjects suspected to be or have been criminals. As stated in the Aliens Act (underlining done by the author of this thesis):

“(1) When the Danish Immigration Service has decided that an alien who claims to fall within section 7 may stay in Denmark while his application for asylum is being examined, the Danish Immigration Service registers the person as an applicant for asylum. (2) For the purpose of the decision to be made by the Danish Immigration Service under section 48 a(1), the police carries out an investigation with a view to determining the alien's identity, nationality and travel route and procure other necessary information. (3) The Danish Immigration Service is otherwise in charge of bringing out all facts of the case. This includes the decision of the Danish Immigration Service concerning the filling-in of an application form and the interrogation of the alien.”⁹⁷

Here it is also possible to see how the pronouns to refer to refugees and asylum seekers are the masculine pronouns ‘he’ and ‘his’. In this case, the national law goes in line with the 1951 Convention that it abides to by representing refugees and asylum seekers as males and omitting the rights of female and non-binary individuals. As only masculine asylum seekers and refugees are being represented in the national law, there is consequently no intersectional perspective on the specific vulnerabilities that women or non-binary individuals are subjected to and how to act upon these.

Additionally, the past 20 years of the Danish political scene has been characterised by the tightening of immigration laws, the impoverishment of the welfare conditions and rights of immigrants and the rise of right-wing, anti-immigration nationalism. In this context, several laws and projects of law were passed reinforcing the tightening of migration policies. It was

⁹⁶ Danish Ministry of Refugee, Immigration and Integration Affairs (2002, July 17). *Aliens (Consolidation) Act*. Retrieved May 4th, 2022 from <https://www.legislationline.org/download/id/1151/file/5db59d1791039ad543d427dfbde37d93.pdf>.

⁹⁷ *ibid*

publicly displayed by the current prime minister, Mette Frederiksen, that the objective in 2022 - prior to the Ukrainian conflict - was to have zero asylum seekers in Denmark⁹⁸.

Amongst other tightening measures, the conditions for family reunification were harshened, which resulted in a decline in the number of family reunification permits granted in the past decades⁹⁹.

Furthermore, refugees have been divided into three different groups in relation to the residence permit that they are granted and the result is that a portion of refugees are being granted a shorter residence permit than the agreed by the 1951 Convention.

In the first case, the *refugee* is granted 'convention status', which corresponds to the two-years residence permit agreed by the 1951 UN Convention with the possibility of extending it two years at a time. In the second case, the *refugee* is granted protected status which only gives them up to one year of residence permit which can then be extended to two years at a time. In the third case, the refugee is granted temporary protected status with a residence permit for up to a year at a time. The two last categories are implemented by national law, without any connection to the supranational law.

What is more, the right to reside in Denmark, as established by the national law, is exterminated when the national authorities determine that the individual is no longer in need of protection, no matter if the individual does not agree and considers themselves still at risk. This was the case of Syrian refugees from the Damascus area that in 2021 got their residence permit exterminated as the Danish state determined that the Damascus area was safe for them to return, despite reports that demonstrated the contrary. Denmark was highly criticised by the UN and the international community, as it was the first country to deport Syrian refugees¹⁰⁰.

Those asylum seekers who get their asylum case denied or their residence permit exterminated have no choice but to leave the country immediately or be taken to deportation/departure centres, such as Ellebæk, a deportation centre that has been qualified as going against Human Rights, by the Council of Europe's Committee for the prevention of

⁹⁸ Ritzau. (2021, January 22). Mette Frederiksen: Målet er nul asylansøgere til Danmark. TV2. Retrieved May 4, 2022 from

<https://nyheder.tv2.dk/politik/2021-01-22-mette-frederiksen-malet-er-nul-asylansogere-til-danmark>

⁹⁹ Rockwool Foundation research unit (November 2009). *Fewer family reunifications – more immigration for employment*. Retrieved May 04, 2022 from

https://www.rockwoolfonden.dk/app/uploads/2016/02/newsletter_nov2009.pdf

¹⁰⁰ Trt World. (2021, March 03) *Denmark to become first European nation to deport Syrian refugees*. Retrieved May 04th, 2022 from

<https://www.trtworld.com/magazine/denmark-to-become-first-european-nation-to-deport-syrian-refugees-44699>

torture¹⁰¹. Until they are deported, “the police may order the alien to: - (i) deposit his passport, other travel documents, and ticket with the police; (ii) provide a bail in an amount determined by the police; (iii) stay at an address determined by the police; (iv) report to the police at specified times”¹⁰² as stated in the national law. It is hereby evident that the treatment of those asylum seekers whose case has been denied corresponds to the limitation of the individual’s freedom and is closely related to a criminal conviction while the discourse around them is a discourse of criminalisation. Forced deportation, as described in the Danish national law, goes against the 1951 Convention’s principle of ‘*non-refoulement*’, where the person’s fear of persecution has to be respected and taken into account when considering repatriation/deportation.

Additionally, in the field of Danish migration politics in the past twenty years, it is possible to see how migrants were divided into different categories where the categorization is clearly hierarchical in terms of rights and benefits. Danish migration politics has been dividing migrants into ‘*Western*’ and ‘*non-Western*’ (‘*ikke vestlig*’) migrants and this doesn’t have to do with the physical location (West/East) of their country of origin but whether the countries where migrants come from are considered to share ‘*Western*’ values - like democracy and freedom of speech - or not. Although there are laws being issued with the fundamentals of this concept and there is a list of *non-Western* countries¹⁰³, there is no clear explanation to what makes a country fall into the ‘*Western*’ category and in practice, it links to *ethnicity*. In addition, those who have Danish citizenship and were born in Denmark but their parents are immigrants are considered ‘*descendants*’ (‘*efterkommere*’) and not just Danish citizens¹⁰⁴. Dividing migrants into the categories of ‘*Western*’ and ‘*non-Western*’ is *otherising*, as it is conceiving migrants from more than one hundred different countries and cultures as a whole (‘*non-Western*’) that is different and in negative terms (‘*NON-Western*’). It also speaks to essentialism, as it implies this reduction of a homogeneous group into one group and it speaks about institutional discrimination, as it displays into national laws, such as the *ghetto law*¹⁰⁵. The ‘*ghetto law*’ sanctioned in 2018, has the objective of breaking low-income,

¹⁰¹ The Local (2020, January 07). *Unacceptable for people’: Danish asylum centre slammed in anti-torture report*. Retrieved May 04, 2022 from <https://www.thelocal.dk/20200107/danish-asylum-centres-slammed-in-anti-torture-committee-report/>

¹⁰² Danish Ministry of Refugee, Immigration and Integration Affairs (2002, July 17). *Aliens (Consolidation) Act*. Retrieved May 4th, 2022 from <https://www.legislationline.org/download/id/1151/file/5db59d1791039ad543d427dfbde37d93.pdf>

¹⁰³ Det Nationale Integrationsbarometer (n.d.). *Statistiske definitioner*. Retrieved May 04th, 2022 from <https://integrationsbarometer.dk/om-integrationsbarometeret/statistiske-definitioner>

¹⁰⁴ *ibid.*

¹⁰⁵ Regeringen. (n.d.) Definitionen af en ghetto - de fem kriterier. *Statsministeriet*. Retrieved May 04th, 2022 from <https://www.regeringen.dk/nyheder/2017/ghetto-listen-2017-to-nye-omraader-tilfoejet-fem-fjernet/ghetto-listen-definition-af-en-ghetto/>

migrant-dominated areas so-called 'ghettos' apart and separating its inhabitants into different areas in order to avoid the creation of parallel societies. One of the criteria that turns an area into a 'ghetto' under this law is if more than half of the inhabitants are from '*non-Western*' countries or are '*descendants*' ('*efterkommere*'), thereby the inhabitants of these areas are being discriminated against based on their *ethnicity* and *cultural background*. It was sanctioned by national law that they don't have the right to live in their apartments/houses anymore, due to their *ethnicity/cultural background*.

With the example of the 'ghetto law' it is possible to see how dividing migrants in regards to their *ethnicity* and cultural background can result in policies that *otherise*, *essentialize* and institutionally discriminate against migrants.

In addition, it is possible to trace in the political discourse how '*non-Western*' migrants, amongst them refugees, are being treated as a burden for example when the Ministry of Finance calculates the cost of '*non-Western*' migrants which is then reproduced throughout the national media channels¹⁰⁶. This is a trait in common with the newest international treaty of 2018, which displays that the nature around the protection of refugees is not only a humanitarian one but also a political one and the logic that underlies the issue is that of burden/benefit.

It is possible to trace the categorization of migrants into '*Western*' and '*non-Western*' as the context where a 'special law' ('*særlov*') would come out after the invasion of Ukraine by the Russian military in February 2022¹⁰⁷. This special law was issued in order to treat Ukrainian refugees differently than the rest of refugees, with the justification of being within the near area ('*nærområde*'). By this special law, Ukrainian refugees are being granted a residence permit immediately, instead of waiting for the general asylum-processing time that can take up to two years and they come into a '*fast-track*' system that enables them to get quickly into the labour market¹⁰⁸. The justification to the fact that Ukrainian refugees should have quicker and better access to the welfare and labour systems is, as explained by the former Minister of Integration:

¹⁰⁶ Finans Ministeriet. (2018, May 10). *Ikke-vestlig indvandring og efterkommere koster varigt 33 mia. kr. om året frem til år 2100*. Retrieved May 04, 2022 from <https://fm.dk/nyheder/nyhedsarkiv/2018/maj/ikkevestlig-indvandring-og-efterkommere-koster-varigt-33-mia-kr-om-aaret-frem-til-aar-2100/>

¹⁰⁷ New to Denmark. (n.d.) Conditions for asylum seekers. *The Danish Agency for International Recruitment and Integration (SIRI)*. Retrieved May 04, 2022 from <https://www.nyidanmark.dk/en-GB/Waiting/Asylum/Conditions%20for%20asylum%20seekers>

¹⁰⁸ Svendsen, A. (2022, March 2). *Særlov skal sende ukrainere hurtigt ud på arbejdspladser og lokalsamfund*. DR. Retrieved May 4th, 2022 from <https://www.dr.dk/nyheder/politik/saerlov-skal-sende-ukrainere-hurtigt-ud-paa-arbejdspladser-og-lokal-samfund>

*"In order to prevent Ukrainians from being dragged through these long workflows that are necessary to uncover asylum seekers from the countries we usually receive from."*¹⁰⁹

In this quote it is noticeable that Ukrainians who are being treated closer to the 'us' logic, are being protected from the procedures that other refugees and asylum seekers that come from other countries - 'them', unified and essentialized as a *usual* - have to go through. These procedures are being depicted as necessary - for some but not for all - and unpleasant and put the migrant in a passive position (*'being dragged'*). This is a clear depiction of an otherising political discourse that is put into practice into a law that enacts discrimination.

The special law is making clear that the current asylum system consists of long workflows which are not beneficial to the asylum seeker and it also proves that refugees are being discriminated against in relation to their *nationality* and *ethnicity*.

Although the way in which Denmark establishes differential treatment goes into national law and becomes a clear case of institutional discrimination which goes against the binding law against discrimination established by the 1951 Convention, the UN has not established any sanctions against this case where national law does not respect binding international law.

The case of Denmark is not being used because of its generalisability, as every country has different national laws and different political scenarios and it is impossible to exemplify this complexity with one country. It is instead being used because it shows how a country can abide by the supranational law and approve both international treaties and still make their national law regarding refugees a singular interpretation that goes against the core principles of supranational law, as for non-discrimination, non-penalization and non-refoulement. Additionally, the example of Denmark shows very clearly that the nature of the international and national treatment of refugees is not only a humanitarian one but also a political one. Finally, it also proves that if the supranational law has a non-binding character - such as the 2018 Compact - it can be simply omitted by the national law and the treatment of refugees will eventually and in practice be determined at a national level.

¹⁰⁹ Svendsen, A. (2022, March 2). Særlov skal sende ukrainere hurtigt ud på arbejdspladser og lokalsamfund. DR. Retrieved May 4th, 2022 from <https://www.dr.dk/nyheder/politik/saerlov-skal-sende-ukrainere-hurtigt-ud-paa-arbejdspladser-og-lokal-samfund>

5 Discussion

In international politics, a 'refugee' is discursively constructed as a subject of persecution that requires the protection of national and international law. Although the first notion of 'refugee' was limited to people fleeing from persecution under and around the period of the Second World War in Europe, the concept was extended through the 1967 Protocol to include all refugees irrespective of their nationality or geopolitical location.

The fundamental principles that guide the foundation of the international action towards refugees as cemented on the 1951 Convention are those of non-discrimination, non-penalization and non-refoulement. Non-discrimination under the 1951 Convention meant that refugees should be treated equally irrespective of their race, religion or country of origin. This cardinal principle didn't include other grounds of discrimination, such as gender, age, disability, sexuality and ethnicity until the 2018 Compact; neither did it include intersectional considerations of how certain social categories - such as gender, ethnicity, etc. - can constitute factors of disadvantage amongst refugees and what should be done in order to address these disadvantages. Additionally, persecution based on gender identity, sexual orientation and ethnicity appeared first in the 2018 Compact which is of non-binding nature, therefore those countries that adhere to it are not obliged to include these additions in their national law. This means that individuals seeking asylum due to one of these three grounds may face rejection under the national law of countries that don't implement the 2018 Compact's measures, such as the case of Denmark as it was analysed in this thesis.

According to the treaty of 1951 which works as the foundation of international action towards refugees, the refugee is a male as it is discursively constructed by the means of the pronouns "he" and "his". This means that the social architecture around international refugee action was built on the assumption that the subject is a male, omitting females and other gender identities which reflects for example in the case of the Danish national law representing the refugee only as a "he". This changed with the 2018 Compact, where the pronouns used in reference to refugees include the female pronouns and the representation of refugees shift to a gender-binary one, where other gender identities (such as trans, non-binary, etc) are still being omitted.

From an intersectional perspective, the lack of representation of female and other gender identities in the 1951 Convention might imply not only an obstacle for women and gender dissidences to obtain asylum but it might also mean that the foundations and infrastructure

around refugee action respond to a patriarchal social architecture that benefits asylum seeker/refugee-men over asylum seeker/refugee-women and -dissidences.

The shift in the 2018 Compact including women and girls into the discussion follows a gender binary logic and is shaped by heteronormativity, where gender is being stereotyped into two basic categories -male and female- that correspond to the individual's biological sex. The concept of 'family' as widely utilised throughout both treaties hasn't been revised to include the diverse understandings of a family that can exist through a non heteronormative perspective or through an intercultural perspective. Therefore, the right of a refugee to bring their family may fall into the interpretation of the hosting country of *what is a family* which might not match the asylum seeker/refugee's.

Furthermore, the way in which the 1951 Convention operationalizes non-discrimination is under the principle of *equality* and measures of *equal treatment*, where refugees should be treated the same way as country nationals. From an intersectional perspective, this disregards the fact that the refugees arrive to the hosting country in a different situation than the nationals and that they might need special help to forge themselves a new life in the hosting country. Additionally, it disregards the fact that refugees are a heterogeneous group and how gender or other factors of disadvantage can enhance vulnerability amongst refugees or create new conditions of disadvantage. That is why the 2018 Compact acknowledges 'potentially vulnerable' groups and treats them separately through *affirmative action* measures such as 'safe schools', which responds to practices in the pursuit of *equity*. In addition to affirmative action measures, the 2018 Compact suggests the use of *gender mainstreaming* measures, where gender as well as other factors of discrimination are being considered in every step of policing towards creating structural equality. In conclusion, the *affirmative action* and *gender mainstreaming* measures adopted throughout the 2018 Compact enrich the non-discrimination approach through the inclusion of the analytical tool of intersectionality.

Although both supranational treaties take care of the issue of *how the refugee should be treated*, there are no clear guidelines about the conditions during the asylum processing time, that can extend to a couple of years in some cases. Therefore, it is up to the national government to determine these conditions and it is possible to see how, in the studied case of Denmark, a country may carry out measures that imply otherization, such as treating asylum seekers (and refugees) as 'aliens' and therefore keeping them in isolated centres detached from the rest of society or it might practice essentialism and criminalisation, as it is also noticeable in the case of the Danish national law.

Together with the silence around *what to do with asylum seekers* under international politics, the issue of those whose asylum case was denied also falls into omission. This way, there is

no description of how the protection of these individuals should be carried out on a national scale and it is therefore left to be decided by national legislations. It is possible to verify how a country, such as Denmark, can violate the cardinal principle of ‘non-refoulement’ on its national law and force migrants to deportation, against their will and against the international agreement about safe deportation.

Furthermore, it is possible to notice a shift in the discussion about refugees from the 1951 Convention to the 2018 Compound, where the focus moves from ensuring the safety and protection of a refugee into protecting the established order and status quo of nation states. The principles of *non-discrimination*, *non-penalization* and *non-refoulement* are updated by the principles of international cooperation and burden- and responsibility-sharing, which positions refugees as a burden, under the logic of *burden or benefit*¹¹⁰. The construction of refugees as a burden points to discursive otherization, essentialism and stigmatisation, where the asylum seekers and refugees are being seen and treated as ‘others’, considered as a risk and then set in a sole category that is loaded with prejudice.

This shift in which refugees are being represented as a burden in international politics points to a shift in the way they are being socially recognized. Under Honneth’s theory of recognition¹¹¹, there are three orders of recognition that play a role in human and social development: the first one has to do with self-confidence and the recognition of the right to exist; the second one with self-respect and the social recognition of a person as a morally and legally mature individual and the third one with self-esteem and the recognition of an individual’s capacity of providing with value to a concrete community.¹¹² In this case, it is possible to see how the second and third order of recognition are being neglected by setting asylum seekers and migrants in a unifying category of individuals without agency that represent a burden to society that doesn’t provide value or benefit. This form of damaging recognition, following Honneth’s theory, might lead to the inability of asylum seekers and refugees to achieve a productive sense of identity, as the intersubjective recognition of their abilities is being denied and might impact society as a whole, enhancing polarisation and social conflict.

As the focus between the treaties changes, so does their nature. While the nature of the 1951 Convention points to a humanitarian and international-rights one, the nature of the

¹¹⁰ Romans, J. T. (1974). Benefits and Burdens of Migration (With Specific References to the Brain Drain). *Southern Economic Journal*, 40(3), 447–455. <https://doi.org/10.2307/1056019>

¹¹¹ Honneth, A. (1995). *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge: Polity Press.

¹¹² Honneth, A. (1995). *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge: Polity Press.

2018 compact points to a political one, where the issues of geopolitical cooperation, conflicts between the supranational and national levels, legality of migrants and protecting nation-states from large masses of refugees are predominant. The predominance of the discourse around international cooperation and burden-and responsibility-sharing over the discourse of protecting human beings irrespective of their place of origin, points to a political nature over a humanitarian nature.

This shift takes place within a global context of tightening of migration policies and pro-nationalist and anti-immigration sentiment, where the UN -as a supranational organisation- enhances an international action towards refugees that is based on the geopolitical division of the world into nation-states. When the supranational order in terms of refugee action is based on a nation-state's response, legality becomes an issue: which individual is legal and allowed to be in a country and which is not; who has citizen rights and who belongs to the other - 'alien' - category. Thereby, the issue around legality, which is particularly present in the 2018 Compact is enhancing an othering discourse around '*us*' - state nationals with inborn rights of inhabiting the territory - and '*them*' - reduced to 'aliens', a diverse population that needs to integrate into the existing order.

The nation-states-based response, however, may be inadequate to tackle the complexity of the issue of displacement and asylum. For example when it comes to the issues that extend beyond geopolitical borders such as climate change.

The case study of Denmark doesn't serve for its generalisability but it serves as an example of how a UN state-member that adhered to both supranational treaties can actively disregard the guidelines of the 2018 Compact by not including them in its national law and at the same time, it can go against the main principles of the treaty of 1951 - *non-discrimination, non-refoulement, non-penalization* - without getting sanctioned by the supranational organisation.

In the first case where the Danish national law is not applying the updates of the 2018 Compact, it can be explained by the non-binding nature of the treaty; while in the second case, the national law and political practices are breaking a binding international law.

It is possible to see how problematic it is to disregard the updates of the 2018 Compact regarding for example the addition of *ethnicity* as a ground of discrimination, as Denmark exercises active discrimination in relation to asylum seekers'/refugees' ethnicity in the way it discriminates between refugees from '*Western*' background and those with '*non-Western*' background or their descendants, while otherising and essentializing those from the second group in one unifying category loaded with social stigma and discourses referring to them as different and a burden to society. It is possible to notice the effects of this othering discourse in the recent Danish laws regarding migrants, as for example the so-called '*ghetto law*'.

The “special law” that Denmark released in relation to Ukrainians is proof of how refugees and asylum seekers are being differentially treated under national politics, regarding their nationality and ethnicity. It is the exercise of institutional discrimination in the form of a policy, where a group of asylum seekers/refugees - Ukrainians - are being recognised as different from the rest - essentialised as a whole and otherised - that has a higher social value and capacity of inserting in society, following Honneth’s theory of recognition¹¹³. Therefore, they are being granted with differential conditions, such as immediate residence permit and rapid access to the job system, amongst other benefits.

Finally, the example of Denmark proves that if the supranational law has a non-binding character - such as the 2018 Compact - it can be simply omitted by the national law of the different UN state-members and the treatment of refugees will eventually and in practice be determined at a national level. This illustrates again that the political nature of the issue of refugees overrules the humanitarian one, as refugees are inserted in and subjected to the conflict between national, international and supranational interests.

¹¹³ Honneth, A. (1995). *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge: Polity Press.

6 Conclusion

By analysing the international UN treaties along the past seventy years to the present day, it is possible to conclude that refugees are being represented as individuals who haven't committed any serious crime and were forced to escape their countries due to persecution by either a State or a non-State agent and that can provide with a proof of this. The issue around asylum seekers is not particularly targeted in the international arena, while it is left to be determined on a national scale.

The reasons of persecution have developed throughout time, where until 2018 they were limited to reasons of race, religion, nationality, membership of a particular social group, or political opinion and since the newest treaty of 2018, it was extended to include the persecution based on gender identity, sexual orientation and ethnicity. In addition to this, the representation of refugees in international politics until the Compact of 2018 was almost exclusively a male representation, while it developed into a gender-binary representation after the named treaty, where some intersectional considerations were included.

Additionally, the representation of refugees in international politics has developed from one where the main issue has to do with protecting the individual through the humanitarian principles of non-refoulement, non-discrimination and non-penalisation to one where the focus has to do with protecting the nation states through the political principle of international cooperation, while refugees are being depicted as a burden. The discourse around refugees and asylum seekers not recognised in their capacity of providing with value to the hosting community but instead representing a burden speaks of otherization and can lead to stigmatization and discrimination on a social scale.

Finally, if the treaties regarding refugees and asylum seekers in international politics are legally non-binding, it is possible that their guidelines are not carried out on the national scale, just like the case of Denmark illustrates. The case of Denmark, although not providing with the value of generalisability, proves that a national legislation regarding refugees and asylum seekers can go against the main principles of a binding international treaty, such as the 1951 Convention, without being sanctioned therefore the treatment of refugees and asylum seekers appears to be mostly determined in a national-scale level.

Some of the issues that were left behind in this thesis due to time and length limitations and that would be relevant to further explore include the conflicts in the understanding of *what is a family* and how should the principle of family unification be applied from an intercultural perspective; a comparative analysis of different national legislations regarding refugees and asylum seekers in order to approach representativity on a national scale; the issue around

the intersection between war and gender: how does gender impact on refugees and asylum seekers.


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