Denmark's Aliens Act and the issue of refugee protection

Case study of Bill L 226, a legislative amendment allowing for the transfer of asylum seekers outside the EU and the externalisation of asylum procedures and refugee protection

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Abstract

Throughout recent years, the Danish government led by Mette Frederiksen and the Social Democrats has increased the amount of migration policy restrictions. One of the current legislative amendments to the Danish Aliens Act, Bill L 226, allows for a transfer of asylum seekers to a third country outside the European Union. This decision was received with international condemnation, arguing that this legislation breaches international agreements regarding refugee protection. This research is a descriptive case study where the policy analysis of the Danish legislative amendment Bill L 226 is conducted through Carol Bacchi's 'What's the problem represented to be?' (WPR) approach and application of the theoretical framework of the subjects of Global Public Policy and Global Refugee Policy. This research concluded that Bill L 226 legislation was the Danish government's attempt to address the problem of asylum seekers through an externalisation policy of asylum seekers' transfer that ultimately failed to materialise. There are, however, some indications that externalisation policies may gain more support in the future, and as for now, the Danish government is not changing its immigration policy course.

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1. Introduction

Civil wars in the Middle East, amongst other global humanitarian crises, have forced millions of people to seek refuge elsewhere, many of whom came to Europe. The incoming wave of refugees had considerable short-term and long-term effects on the politics of the affected European countries and the European Union. The crisis within the EU caused by the refugee situation was exploited by numerous political parties who capitalised on anti-immigrant sentiment in the affected countries, sometimes leading to a strong push for stricter immigration law reforms. Denmark is one of those countries where anti-immigration politics have gained ground in recent years. It has imposed one of the strictest immigration policies in the European Union and continues to do so. Recent years have seen an increase in laws restricting immigration even further. One of those laws that was very recently adopted into the Danish Aliens Act was the legislative amendment Bill L 226. Tan & Vedsted-Hansen write:

"On 3 June 2021, Denmark's parliament passed Bill L 226, a legislative amendment allowing for the transfer of asylum seekers to a third country outside the EU for the purposes of both asylum processing and protection of refugees in the third country" (Tan & Vedsted-Hansen, 2021).

Said amendment to the Danish Aliens Act reflects a policy oriented toward minimising the intake of asylum seekers and creates a legal mechanism for transferring asylum seekers outside the European Union. According to the Danish Ministry of Immigration and Integration, which issued this legislative bill, the new transfer policy will improve the existing asylum policy and result in better refugee protection. However, these claims and the legislative amendment were met with much criticism and condemnation from the global community. Arguments are made that this legislation poses a breach of international law. Erin Gallagher writes:

"Those expressing concerns over the Danish Aliens Act agree that it has the effect of undermining the fundamental right to seek asylum, enshrined in article 14 of the Universal Declaration of Human Rights and reinforced by the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol" (Gallagher, 2021).

For several reasons, the legislative amendment Bill L 226 is an interesting case to study Global Public Policy (GPP) and Global Refugee Policy (GRP). Firstly, it showcases an example of a public policy that attracts international attention because of its potential global effects. Secondly, the asylum seekers' transfer policy presented by the Bill L 226 is an example of an externalisation policy that challenges the established norms within global refugee policy. Thirdly, it is one of several recent instances of Danish policymakers tightening the country's migration policy. Around the same time Bill L 226 was proposed, Danish authorities revoked asylum status from around one hundred Syrian refugees because Damascus's situation was declared sufficiently safe for return (European Commission, 2021). Consequently, choosing the legislative amendment Bill L 226 as a case study opens the possibility of learning more about the contemporary global refugee environment.

This thesis is an explanatory case study of Bill L 226, where I carry out a policy analysis using Carol Bacchi's 'What's the problem represented to be?' (WPR) approach. Furthermore, I rely upon a theoretical framework of the subjects of GPP and GRP for theory application, where theories are used to explain the analysed data. For this purpose, I have chosen to work with and apply institutional theory, the regimes approach, and the five-stage policy process model. With all these considerations in mind, I aim to answer the following research question: How does the Danish government address the problem of asylum seekers through Bill L 226 legislation?

a) Chapter Synopsis

Chapter 2 includes a literature review of applied sources in the research. Chapter 3 outlines methodological choices in this case study, including research design, choice and use of theory, usage of the WPR approach in policy analysis, choice and application of data, and study limitations. Chapter 4 includes the theoretical framework of the thesis, where the main assumptions and definitions of the GPP and GRP are explained. Furthermore, it includes a description of the institutional theory (one of the theoretical approaches to the study of public policy), the regimes approach (one of the approaches to understanding GRP), and the five-stage policy process (a valuable research model for the study of the development of a policy). Chapter 5 includes the policy analysis using Bacchi's WPR approach, where six established questions are answered (what these questions include is described in the methodology section). Chapter 6 includes the application of the theories to the analysis findings. Finally, in chapter 7, conclusions of the findings are made, and the established research question is answered.

2. Literature Review

This chapter describes applied literature and outlines my reasons for their choice. Sources used are a series of non-numeric data written by numerous scholars specialising in public policy and refugee studies and include both works on the applied theories and critical evaluations of the studied case.

Much of the content written in the theory chapter was derived from the scholars writing for the Refugee Studies Centre, which is part of the University of Oxford's Department of International Development and was created to promote the understanding of the causes and consequences of forced migrations and to improve the lives of those affected by them.

Content describing Global Public Policy was derived from the work of Bauman & Miller titled *Comprehensive literature review of Global Public Policy: creating a framework for understanding Global Refugee Policy*. In their literature review, Bauman & Miller (2012) employed the works of key authors of GPP literature and outlined the main assumptions, definitions and theory behind GPP to inform a framework for understanding GRP (p.3). Authors incorporated in their work included names such as Soroos, Stone, Rosenau, Reinicke, Brinkerhoff, Betts, Barnett, Crisp, Rochester, Thakur & Weiss. Content describing the regimes approach also derives from this source and includes observations and arguments from some of the authors mentioned above yet quoted and paraphrased by Bauman & Miller.

Part describing the institutional theory included the works of Mahmud (who wrote *Understanding Institutional Theory in Public Policy*) and Thoenig (who wrote *Institutional Theories and Public Institutions: Traditions and Appropriateness*) who both describe new institutionalism and its approaches, which are historical institutionalism, rational choice institutionalism and sociological institutionalism.

Much of the content describing the Global Refugee Policy derives from the definitions and arguments provided by Millner in his work titled *Introduction: Understanding Global Refugee Policy*. In this source, he also describes the five-stage policy process model developed by Howlet & Giest, where he argues its usefulness in examining the processes that contribute to the development of a particular global policy or the factors that influence its application.

This case study involves a policy analysis of the legislative amendment Bill L 226; hence the *Proposal for an amendment to the Aliens Act* and a legal note from January 2021, which led to the development of Bill L 226, are both referenced in the thesis. These legal documents are in Danish; hence any paraphrased references to them are my translations. Furthermore, direct English quotations are included from two legal documents issued by the UNHCR; the 1951 Refugee Convention and the UNHCR Note on the "Externalization" of International Protection.

Other references translated from Danish to English include the 2018 Social Democrat programme for their immigration policy, *25 questions and answers about the refugees,* an informational file explaining Danish refugee policy published by the Danish Refugee Council (Dansk Flygtningehjælp), and an article from TV2 Fyn about the costs of deportation centres written by Jørgensen.

Out of all the authors included in the thesis, Dr Nikolas Feith Tan, a senior researcher from the Danish Institute for Human Rights, is the author who wrote the most on the subject of Bill L 226. Among his referred works is an article titled *Denmark's Extraterritorial Asylum Vision* and a journal entry titled *Institutional theories and public institutions: traditions and appropriateness*. Furthermore, his and Vedsted-Hansen's entry on the EU Migration Law Blog, titled *Denmark's Legislation on Extraterritorial Asylum in Light of International and EU Law,* provided precious insights into the legislative problems of Bill L 226 and helped answer question 4 of analysis.

Other applied references include data on asylum applications in the EU in the year 2021 provided by the European Council, a report titled *Migrant deaths on maritime routes to Europe in 2021* provided by the International Organization for Migration, a report on Danish policies on rejected asylum seekers by Bendixen, analyses of Social Democrat's shift on immigration policy conducted by Nedergaard, Rathgeb & Wolkenstein, and McManus & Falkenbach, a journal by Forced Migration Review entitled *Externalisation / Mobility and agency in protracted displacement*, which included information on externalisation policy practices and argued Bill L 226 to be an example of externalisation policy, as well as a Forbes article titled *Migrants Are Taking Ever More Dangerous Routes To Get To Europe* written by Lindsay and finally a Foreign Policy article titled *How the Danish Left Adopted a Far-Right Immigration Policy* written by Poulsen.

3. Methodology

The following chapter explains several methodological considerations of this research paper. It describes how the research is designed, what theories are applied and how they are used, what policy analysis method is applied, what kind of data is chosen and how it is applied, and what limitations are present.

a) Research Design

In social sciences, research topics often relate to identified problems that become chosen to be the basis of the study. The issue that has inspired this research relates to the Danish government's conduct of its refugee policy. An in-depth analysis of a selected case is conducted to understand this issue better. Said case is Denmark's recent passing of Bill L 226 into the Aliens Act. This legislative amendment allows the Danish government to transfer asylum seekers to a third country outside the EU, aiming for asylum processing and protection of refugees in the third country. This case has been selected because it represents a fundamental shift from the established perceptions of territorial asylum. According to recognised perceptions, when an asylum seeker arrives in the state in question, it is the state's responsibility to assume responsibility for assessing her asylum claim and, if found in need of international protection, for providing it.

Case study research refers to "in-depth studies of a single unit or historical episode in order to explain or understand other units or episodes" (Lamont, 2015, p. 131). It explores and describes a specific issue to discover a new and greater understanding. Therefore, conducting this research in the format of a single-case study offers the possibility to closely examine the topic of interest and provide a more detailed analysis.

Hancock & Algozzine (2006) write that "case study research designs or approaches can be based on their function, characteristics, or disciplinary perspective" (p.31). When it comes to disciplinary orientation, Hancock & Algozzine (2006) record that "case study research may be founded in ethnographic, historical, psychological, or sociological orientations" (p.31.). Because the chosen research topic relates to the field of politics, a sociological case study is conducted. Hancock & Algozzine (2006) explain that "sociological case study research, with its focus on society, social institutions, and social relationships, examines the structure, development, interaction, and collective behaviour of organised groups of individuals" (p.32).

Regarding the possible characteristics of case studies, Hancock & Algozzine (2006) state that "case study research designs may be classified as intrinsic, instrumental, or collective" (p.32). An intrinsic case study is conducted when the focus is on gaining information about a specific phenomenon. The main focus of an instrumental case study research design is put on understanding a theoretical problem. Finally, collective case study research attempts to address a phenomenon and contribute to theoretical understanding. Because this research aims to gain information about the specific issue, this case study can be characterised as an intrinsic case study.

Hancock & Algozzine (2006) explain that "three types of case study research designs include exploratory, explanatory, and descriptive" (p.33). Exploratory case studies seek to define the research questions of a subsequent study or determine the research procedures' feasibility, explanatory case studies aim to examine the relationship between causes and effects, and descriptive case studies aim to provide a comprehensive contextual description of the observed phenomenon. This research is an explanatory case study because, through policy analysis, it seeks to identify factors that affected the proposal and adoption of Bill L 226.

b) Choice and Use of Theory

The implementation of theory in this case study is essential because it is the theory that supports explanatory accounts. However, theory can serve different functions. Thus, depending on the function, the theory can be thus used differently. Toshkov (2016) writes that "once we decide that we have a positive, empirical, and explanatory research goal, we need to specify whether we want to generate, test, or apply a theory" (p.38). Theory generation is described as "a natural outgrowth of descriptive research" (Toshkov, 2016, p.38). It refers to inductive studies that summarise patterns from empirical data to contribute to developing theories and concepts. The purpose of theory testing is to derive hypotheses from theory and use them against empirical data to test the theory. When it comes to theory application, Toshkov (2016) writes that "we can apply a theory to an empirical case with the aim of explaining it" (p.40). Because in this case study, theories are being used to explain the analysed data, the use of theory in this research can be defined as theory application.

This research draws the applied theories from Global Public Policy (or GPP) and Global Refugee Policy (or GRP). Because Bill L 226 concerns asylum seekers, the theoretical framework of the Global Refugee Policy has been implemented in this study. GRP is a formal statement of any proposed course of action in response to a problem relating to protection, solutions or assistance for refugees of concern to the global refugee regime. The case study of Bill L 226 involves public policy, which can be broadly defined as whatever policies governments choose to apply. The GPP transcends this statist bias and recognises that alongside states and traditional intergovernmental organisations, a multitude of new forms of authority emerged through numerous global and regional policy processes.

GPP, as a body of literature, is considered helpful in understanding GRP. There exist several theoretical approaches to the study of public policy, and amongst them is an institutional theory which signifies the role of institutions which constrains and empowers human behaviour. Institutional theory has been chosen as an approach, given that the institution of the legislative branch of the Danish government was the leading actor behind the creation and adoption of Bill L-226. Another theoretical approach to understanding GPP is the regimes approach, which states that international institutions, states and other actors, referred to as the regimes, affect each other's behaviour. The regimes approach theory has been implemented in this research, as it could help explain the dynamics between the Danish state and other foreign actors regarding Bill L 226 and the issue of the transfer of asylum seekers. Furthermore, the five-stage policy process model has been applied due to its usefulness in identifying and explaining the processes that contribute to developing a particular policy or the factors that influence its implementation.

c) Methods of Policy Analysis

As previously mentioned, a model for this research's policy analysis is Carol Bacchi's 'What's the Problem Represented to be' or the WPR approach in short. Bacchi (2012) explains that the "'WPR' approach is a resource, or tool, intended to facilitate critical interrogation of public policies" (p.21). The objective of a WPR analysis is "to read policies with an eye to discerning how the 'problem' is represented within them and to subject this problem representation to critical scrutiny" (Bacchi, 2012, p.21).

Bacchi's analysis model consists of six questions, which can be applied to one's proposals for change. These questions are outlined in the following quote:

" 1. What's the 'problem' (for example, of 'problem gamblers', 'drug use/abuse', 'gender inequality', 'domestic violence', 'global warming', 'sexual harassment', etc.) represented to be in a specific policy or policy proposal?

2. What presuppositions or assumptions underpin this representation of the 'problem'?

3. How has this representation of the 'problem' come about?

4. What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?

5. What effects are produced by this representation of the 'problem'?

6. How/where has this representation of the 'problem' been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted and replaced" (Bacchi, 2012, p.21)?

Bacchi (2012) states that "question 1 assists in clarifying the implicit problem representation within a specific policy or policy proposal" (p.22). In this research, the implicit problem is identified as the issue of an unsustainable asylum policy, and the specific policy is a legislative amendment Bill L 226, which allows the transfer of asylum seekers to a third country.

Question 2 encourages identifying and analysing the conceptual logic that underpins exact problem representations. In this research, question 2 questions the Danish government's assumptions on the problem by taking an insight into the conditions of refugee migration routes into Europe and the Danish policy on rejected asylum seekers.

The purpose of question 3 is to highlight the conditions that allow a particular problem representation to take shape and assume dominance. In this case, the focus of question 3 is to trace the conditions that led the Social Democrats and Mette Frederiksen cabinet to an immigration policy that resulted in the adoption of Bill L 226 and the asylum seekers' transfer policy.

The objective of question 4 is to raise reflection and consideration about issues and perspectives silenced. In other words, this question focuses on possible gaps and limitations of Bill L 226 and the asylum seekers' transfer policy. These include numerous unclear or underdeveloped statements and legal issues with the EU and the international community.

Question 5 identifies the effects of specific problem representations so they can be critically assessed. In this case, the research aims to determine what effects Bill L 226 had, and possible can have on the domestic and global conduct of immigration policy.

The last question urges to draw attention both to the means through which some problem representations become dominant and the possibility of challenging problem representations judged to be harmful. This question demands this research to determine how Bill L 226 and asylum seekers' transfer policy has been promoted and consolidated and how other actors can challenge and disrupt it.

Once the policy analysis through the WPR approach has been conducted, the concepts of the five-stage policy process, institutionalism, and the regimes approach are applied as part of the theoretical frameworks to explain the analysed data. Details about what each of these theories constitutes are outlined further in the research in the theory section.

d) Collection and Use of Data

In any research, it is essential to gather and analyse accurate data from various sources to find answers to research problems. Furthermore, when collecting data for analysis, it is crucial to establish a data-collecting method that matches the established research design.

It has been established that this research is an empirical case study. Therefore, qualitative methods are implemented for data collection and analysis. As described by Lamont (2015): "Qualitative methods are data collection and analysis techniques or strategies that rely upon the collection of, and analysis of, non-numeric data" (p.79). In other words, implementing qualitative methods means that the materials used in this research's analysis consist solely of a collection of non-numeric data. Qualitative data is the data that approximates and characterises and can be observed and recorded.

Additionally, qualitative data collection is exploratory, meaning that it involves conducting in-depth analysis and research. An essential element of qualitative research is data source triangulation. It "involves the collection of data from different types of people, including individuals, groups, families, and communities, to gain multiple perspectives and validation of data" (Carter et al., 2014, p.545).

Considering these factors, the implemented data consists primarily of numerous journals, legal documents, institution reports, and other examples of non-numeric data. Fundamentally, the proposal for a legislative amendment to the Aliens Act, also called Bill L 226, is included. It is a legal document written in the Danish language, which is present in numerous other sources applied in this research. Thus, any reference to these sources is done through a translation into English done by me. Data from various sources are included acknowledging the benefits of implementing data source triangulation. They consist primarily of articles and documents that relate to the issue and are written by academics specialised in the subject or are other instances of legal documents and notes.

e) Limitations

The methodological elaborations have outlined the choices made when structuring this research project. However, it is vital to be aware that some of these come with certain limitations discussed in the following section.

Case study research works as a helpful tool in delivering interesting new perspectives on the researched topic. However, because it engages with a singular case, it inevitably omits several other crucial subjects that may outline a larger picture of the issue. Denmark's refugee policy is continuously evolving as it is influenced by numerous, complex, and interconnected global and domestic factors. Undoubtedly, focusing on the case of Bill L 226 alone means that it is necessary to implement some severe limitations on the study. As already mentioned, Denmark's refugee policy is a continuous process that has been undergoing and influenced by numerous past challenges. Much of the decision-making has been affected by the 2015 European migrant crisis. Since then, immigration and refugee policies have remained both significant and contested issues. However, due to the subject of the studied case, the time scope of this case study has been severely narrowed down to a short period of around 2021. That being said, this research concerns itself solely with the actions of the current cabinet headed by Prime Minister Mette Frederiksen, which assumed leadership of the Social Democratic Party on the 28th of June 2015 and took prime minister office on the 27th of June 2019. Lastly, as the conducted policy analysis is guided by a theoretical framework that concerns itself primarily with international relations and policies, there is a real possibility that this research will not consider some other significant factors with the implemented policy analysis methods.

4. Theory

This chapter sets out the theoretical framework of the thesis. It first outlines the Global Public Policy, including established assumptions, differing perspectives among the scholars regarding the term definitions and the nature of GPP, and the institutional theory as an applied theoretical model. Subsequently, it presents the Global Refugee Policy, including definitions of the term, the five-stage policy process model, and the regimes approach as an applied theoretical model.

a) Global Public Policy: Established Assumptions

Although much of the GPP literature is focused on international organisations, "most scholars acknowledge that public policy has generally been studied at the national level, and thus international public policy has grown out of these domestic frameworks" (Bauman & Miller, 2012, p.4). The constraints of a state-centric view caused numerous GPP authors to analyse public policymaking and governance beyond the state and formal institutions. Bauman & Miller (2012) explain that "it is important to recognise that the study of GPP is largely rooted in political science: international relations, comparative government and political theory" (p.4).

According to Bauman & Miller (2012), "within international relations alone, GPP is influenced by studies on global governance, globalisation, the evolving role and nature of international institutions, international cooperation and burden-sharing, sovereignty, and transnational civil society" (p.5). Nevertheless, several other fields have also influenced the development of GPP too. Bauman & Miller (2012) give the example of Marvin S. Soroos, who', "points to an emphasis on global problem-solving in the study of international law, the study of international regimes, peace research, and 'contemporary world order studies'" (p.5).

The scholars of GPP generally agree that the world is increasingly globalised and interdependent. Bauman & Miller (2012) write that "accepting the premise that the world is interdependent also implies, somewhat obviously, that an increasingly globalised world marks an important change that merits attention" (p.5). Some scholars claim this change is rapid, while others argue it is a long process. Nevertheless, most authors agree "that it is an important area of study because of changes brought about by globalisation" (Bauman & Miller, 2012, p.6). Soroos (1986) argues that "the nature of contemporary world politics cannot be adequately understood without knowledge of these cooperative efforts at global problem solving" (p.374).

Furthermore, Diane Stone argues that "there is an immediate need to study global public policy because the world is increasingly globalised and there are new forms of authority outside the traditional sovereign state mode" (Bauman & Miller, 2012, p.6). Stone (2008) writes: "Scholars and practitioners alike are arguing that new forms of authority are emerging through global and regional policy processes that coexist alongside nation-state processes. Governance can be informal and emerge from strategic interactions and partnerships of national and international bureaucracies with nonstate actors in the marketplace and civil society" (p.23).

That being said, this is where the GPP appears as a means to "answer to the challenges faced by governments in light of globalised industry and difficulties governing across borders" (Bauman & Miller, 2012, p.6). Bauman & Miller (2012) conclude that "this premise is almost always accompanied by the notion that there are global problems affecting more than just one state, and that there are gaps that must be overcome in addressing these problems" (p.6).

It can be concluded that the GPP contains several established assumptions agreed upon and shared by all scholars. In summary, the study of GPP is rooted in political science, applying the fields of international relations, comparative government and political theory. Furthermore, because the studies have been conducted at the national level, scholars were encouraged to expand their outlook beyond the state and formal institutions. As a result, GPP is influenced by numerous aspects such as global governance, globalisation, the evolving role and nature of international institutions, international cooperation and burden-sharing, sovereignty, and international civil society. The GPP views the world as increasingly globalised and interdependent, undergoing numerous significant changes. It is argued that due to these changes, new forms of authority emerge through global and regional policy processes, which take a different shape than the traditional sovereign states. Because of the emerging influence of these new forms of authority and the notion that global problems are affecting more than just single states, the scholars argue that the further development of GPP studies is relevant in addressing and overcoming said issues.

b) Global Public Policy: Definition

Although these assumptions mentioned earlier are universally shared between scholars, there exists no clear definition of GPP due to different interpretations and unresolved issues within the terminology debate. Based upon the remarks made by Bauman & Miller, this section will outline several examples of these issues. While establishing an exact definition is not attempted, this section will provide a general description of GPP, relying upon the interpretations provided by several other scholars.

Bauman & Miller (2012) argue that it is crucial "to differentiate global public policy from 'international public policy' or 'international social policy' and other similar variants commonly invoked" (p.6). Bauman & Miller (2012) claim that "there is ambiguity in what is meant by global public policy" (p.6), as various scholars throw in terms without defining what they mean. Thus, to be able to build some definition for GPP, it is helpful to break down the individual terms and provide an explanation for them first.

'Policy' is an excellent example of a term that has been defined in various ways. Bauman & Miller (2012) write the following about the definition provided by Thakur & Weiss: "In their study of whether "UN policy" exists, they unpack policy as not only a governing principle but also "…the decision to embark upon certain programs of action (or inaction) in order to achieve desired goals". It is an intended course of action or inaction in light of a particular problem and entails both agency and purposive action" (p.7).

Bauman & Miller (2012) argue that while "this definition sees states as policymakers, it distinguishes a state view of public policy from foreign policy, implying a boundary-based, domestic/external separation between the two" (p.7). Although the definition acknowledges that states are policymakers, Bauman & Miller (2012) explain that "it distinguishes a state view of public policy from foreign policy, implying a boundary-based, domestic/external separation between the two. These separate views of policy (foreign and domestic) matter in light of who is carrying policy out, where and how" (p.7). Furthermore, Bauman & Miller (2012) state that "most policy definitions remain in the domain of institutional decision-making by powerful actors, such as governments or aid agencies, which can be limiting and may prove unsuited to contemporary policymaking environments" (p.7).

Not only 'policy' is a contested term, but there are numerous other instances as well. For example, the term 'policy problems' also needs a proper redefinition. Bauman & Miller (2012) write that "according to Soroos, they are '"…a set of circumstances that can potentially be improved upon by purposeful action"'" (p.7). Bauman & Miller (2012) argue that most policy problems fit one of the following categories:

"• problems that are transboundary: they originate in one state but have ramifications for others (such as refugees, pollution, economic policies);

• problems that involve conflicting uses of international commons—oceans, seabed, outer space, atmosphere, electromagnetic spectrum and Antarctica;

• problems that are internal to many, but common to many (e.g. illiteracy, urbanisation, population growth, the abuse of human rights, destruction of the environment)" (p.8).

Bauman & Miller point out several more instances of discrepancy in formal GPP definitions. A good example is the term 'global', which is being approached, interpreted and described differently by scholars. Bauman & Miller (2012) use Stone as an example:

"Stone also mentions that GPP can be seen as a communicative network, but she differentiates it from 'global governance,' 'governing without government,' 'global policy' (equated with financing and delivery of global public goods, 'global public-private partnerships,' 'global programmes,' and "transnational constitutionalism '" (p.8).

Bauman & Miller (2012) argue that "differentiating 'global' from 'international' public policies is another definitional question" (p.8). Rosenau is brought as an example, who "writes that one does not need global government to have global public policies, just forms of global governance. Thus, 'global' does not mean that all countries interact simultaneously but rather all potentially share the policy problems" (Bauman & Miller, 2012, p.8).

With the provided examples, it can be argued that "defining GPP in broad terms brings out a number of deeper political questions" (Bauman & Miller, 2012, p.9). Thus, this section will not provide an exact definition of GPP, as that would require addressing and defining numerous contested terms. However, there can be given a general explanation that provides at least some essential insight into how GPP can be described and understood.

This incorporated definition is a quote by James Millner, who paraphrased Soroos and Thakur & Weiss. Millner (2014) wrote:

"As argued by Soroos, global policy is generally understood to be motivated by a distinct 'policy problem', namely 'a set of circumstances that can be potentially improved upon with purposeful action'. In response to such problems, Thakur and Weiss have argued that 'policy' within the United Nations system can be understood to have been made when the result is a formal 'statement of principles and actions' which actors, including states and international organisations, commit to pursuing 'in the event of particular contingencies'" (p.480).

In other words, it can be argued that global public policy arises as a response to a global problem that can be improved upon. Several actors, like both the states and international organisations, are involved. The implemented policies result from agreements between said actors, who are then obliged to pursue them once the situation requires it.

c) Global Public Policy: Nature

As with definitional questions, scholars perceive and interpret the nature of GPP differently; thus, it also requires unpacking. Bauman & Miller bring upon the differing interpretations of Soroos, Stone, Reinicke, and Brinkerhoff.

According to Soroos, "not all policy problems are negative, and they can be very diverse in complexity, length of time, media attention, drama and technicalities; once identified, they can be part of either a formal or public agenda" (Bauman & Miller, 2012, p.9). He argues that an international response is necessary, stating that "the types of problems on global agendas involve a relationship between two or more countries, or spillover problems" (Bauman & Miller, 2012, p.9). Furthermore, he "asserts that global policymaking is generally a long, drawn-out process, usually requiring consensus to be reached, which can take decades" (Bauman & Miller, 2012, p.9).

Stone proposes a contrasting view, perceiving "the nature of GPP as a multi-centric, transformative, complex global political system with multiple issue-regimes to govern challenges beyond any single state's control" (Bauman & Miller, 2012, p.9). That being said, she maintains that "within GPP, there is a central role for horizontal global public policy networks, epistemic communities, and 'wholly active citizens' alongside 'non-governmental collectivities,' and policies are often backed by non-state authority" (Bauman & Miller, 2012, pp. 9-10).

Reinecke, on the other hand, views the nature of GPP in networks. These networks, he explains, "are diverse, but have commonalities across various sectors, organisations and sovereign territories" (Bauman & Miller, 2012, p.10). Furthermore, Reinecke states that these "GPP networks are learning organisations, have a broad membership, and can tap information and expertise from various backgrounds, thus providing a more complete picture of particular policy issues and giving voice to previously unheard groups" (Bauman & Miller, 2012, p.10).

Lastly, Brinkerhoff draws on Newland's three interrelated notions with public administration, which are: "1) facilitation of collective actions by public institutions; 2) public values-oriented social self-governance (individuals and communities organise to express and pursue their collective values and priorities); and 3) reliance on the disciplines of market systems" (Bauman & Miller, 2012, p.10). According to Brinkerhoff:

"GPP is a somewhat natural, inevitable result of globalisation, which has '… led to the closer integration among the countries of the world, increasing their recognition of the challenges and implications that cross national borders and demand cross-border solutions, and continuing efforts to refine the processes for establishing global public policy" (Bauman & Miller, 2012, p.10).

d) Global Public Policy: Institutional Theory

There exist several theoretical approaches to the study of public policy. These include elite theory, group theory, incremental theory, institutional theory, rational-choice theory, and systems theory. Mahmud (2017) writes that "institutional theory or institutionalism signifies the role of institutions which constrains and empowers human behaviour" (p.136). Given that the legislative branch of the Danish government was the main force behind the proposal and the adoption of Bill L 226, it is assumed that the institutional theory works as a suitable theoretical explanation for analysing policymaking in the context of the researched topic. This section will outline the institutional theory and its main approaches.

Mahmud (2017) writes that "there is no one single way of defining institutions and various institutional approaches define institutions in their respective way" (p.136). This is the case since the so-called 'old institutionalism' gave way to 'new institutionalism', and subsequently, three different approaches emerged. These approaches are historical institutionalism, rational choice institutionalism and sociological institutionalism. Mahmud (2017) states that "all seek to explain that institutions play an important role in determining social and political outcome" (p.137).

Old institutionalism was constructed around the premise "that apart from economic and social condition, the functioning of the state also depends on the design and effectiveness of political institutions" (Mahmud, 2017, p.136). However, the emergence of new countries and international organisations, such as the UN, resulted in a significant shift within the school of thought in political science. Thus, "the focus of formal state organisations and rule-based organisational form was shifted to a more society-oriented organisational form" (Mahmud, 2017, p.137). This shift of thought gave rise to new institutionalism. Mahmud (2017) describes new institutionalism in the following quote:

"New institutionalism recognises that institutions operate in an environment consisting of various other institutions in the society. Such as, the 'judiciary' (legal institution) looks whether the Parliament (legislative institution) is formulating policies in accordance with the constitutional requirement. The Parliament, also being a watchdog body, oversees whether the executive part of the government (administrative institutions such as ministries) is operating in the legal manner which the parliament designated through legislation" (p.137).

As previously mentioned, three different approaches to new institutionalism emerged and developed. One of these approaches is historical institutionalism, which views public administration as part of political life. The essence of politics is argued to be competition for resources between rival groups. In this environment, "the State does not act as a neutral agent between competing interests, but as a complex set of differentiated institutions" (Thoenig, 2007, Historical institutionalism section, para. 2). A vital element of this approach is the view "that functioning of the polity, politics and policy of a state very much depends on the historical evolution of the state" (Mahmud, 2017, p.137). Proponents of this approach argue "that historical foundation matters in constructing blocks of society as whatever political events occur within historical context has direct impact in various decision-making process of the country" (Mahmud, 2017, p.137). Radical changes to the established model are dismissed as hopeless attempts. That is because "existing institutions structure the design and the content of the decisions themselves. Future action reflects past experience." (Thoenig, 2007, Historical institutionalism section, para. 4).

Rational Choice Institutionalism, or RCI, "analyses how the institutions emerge and how they affect behaviour and social outcome of a country" (Mahmud, 2017, p.137). The fundamental element of this approach is the view "that policymakers take rational decisions based on the insights of the consequences of alternatives and select the best options or alternatives that would lead to maximise the goals by changing and shaping institutional environment" (Mahmud, 2017, pp. 137-38). Thoenig distinguishes three different versions of rational choice institutionalism. The first one emphasises the agency or the principal-agent model; the second is based on the formal game theory, and the third defines institutions as providers of rules for choice and action.

The principal-agent model is argued to work as a solution to the problem of bureaucrats under elected politicians' control. Thoenig (2007) explains how this works:
"Some analytic framework (which is neither hierarchical authority nor clientelism or partisan allegiance) is provided by rational choice theorists. It is supposed to allow the principal (the parliament or the political cabinet) to make the agent (a public agency) act in a way the principal would like the latter to behave. Specific incentives and punishments are set up around bilateral contracts in order to generate compliance" (Rational choice institutionalism section, para. 4).

The reasoning behind the formal game theory "supposes that two or more actors act in a free or non-prestructured setting and are involved in a game, in an interdependence relationship around some common task or problem"(Thoenig, 2007, Rational choice institutionalism section, para. 7). According to this model, each player aims to maximise its benefits. However, none can predict the behaviour of the opponent. Therefore, "formal game theory offers some solutions for institutional arrangements which may satisfy such prerequisites: linking competitors who are simultaneously interdependent and selfish" (Thoenig, 2007, Rational choice institutionalism section, para. 7).

The rules within the third version of rational choice institutionalism "are considered as the best mechanism by which administrative behaviours can be influenced so as to exploit resources in the most appropriate way. Sanctions for not obeying such rules provide the main and most effective vehicle for conformity" (Thoenig, 2007, Rational choice institutionalism section, para. 9).

As the name suggests, sociological institutionalism emphasises the role of the sociological institutions, which "go beyond formal rules and regulations and takes into account the moral factors in shaping individual behaviour to solve problems" (Mahmud, 2017, p.138). According to this approach, the individuals act within the socially constructed context. Emphasis is put upon the logic of appropriateness, "which means individuals make their decisions and choices according to what they think is socially appropriate" (Mahmud, 2017, p.138). That being said, it is argued that "institutions are created not only to improve the efficiency in solving problems but also to enhance social legitimacy to accommodate patterns of behaviour" (Mahmud, 2017, p.138). As a result, institutional isomorphism is being created, "which argues that legitimacy is the main force of an organisation rather than functional efficiency" (Mahmud, 2017, p.138).

In summary, all these institutional theory approaches assert institutions' critical role in policy decision-making, regardless of whether the institutions are historically shaped, socially regulated, or acting as a maximising entity.

e) Global Refugee Policy: Definition

Global Refugee Policy is a phrase that is regularly used by scholars, practitioners, and policymakers. Many researchers agree that the further study and development of GRP is relevant and vital because its "policies have the potential to affect the lives of refugees deeply and other forced migrants in significant ways, from constraining their access to basic human rights to influencing how, when and where refugees may choose to move" (Miller, 2012, p.1).

Like the GPP, the GRP is tricky to define. Sarah Miller (2012) described this phrase as "seldom conceptualised, defined or unpacked" (p.1.). However, James Milner (2014) argues that "this definition is intentionally narrow and focuses on those policies originating from within the global refugee regime, as opposed to a range of other global policy fields that may affect refugees" (p.480). Furthermore, Milner (2014) states that this narrow definition "concentrates on formal statements as a more discernible form of policy, as opposed to informal policies that may result from accumulated practice, either within the global refugee regime or through transnational policy networks that function outside the global refugee regime" (p.480).

Milner (2014) defines GRP in the following quote:

"'Global refugee policy' is a formal statement of, and proposed course of action in response to, a problem relating to protection, solutions or assistance for refugees or other populations of concern to the global refugee regime. It is discussed and approved within UNHCR's governing structures, such as the Executive Committee and Standing Committee, or the United Nations General Assembly, which arguably constitute the decision-making bodies of the global refugee regime.

Borrowing from the work of Soroos, Milner (2014) adds to his definition, saying that "this policy is 'global' when it takes the form of 'either regulations that define the limits of permissible behaviour for national governments', including through international law or ExCom Conclusions, or 'as programs administered by international agencies,' specifically UNHCR (p.480.).

f) Global Refugee Policy: The Five-Stage Policy Process

Milner (2014) notes that "the study of global refugee policy has tended to focus on the content of policy itself and less on the process that contributes to the development of a particular policy or the factors that influence its implementation" (p.482). However, the five-stage model of the policy process developed by Howlet & Giest is argued to be a tool just right for the conduct of such studies. In this section, the stages of the policy process model are explained in greater detail.

In the following quote, Milner (2014) introduces the stages of this model:

"'Agenda setting', when a policy problem is identified as requiring action; 'policy formulation', when various responses are proposed and considered by policy actors; 'decision making', when the relevant authority adopts a chosen course of action; 'policy implementation', when the policy decision is put into action; and 'policy evaluation'" (p.483).

Milner argues that the elements of a five-stage model can be adjusted from its domestic use to the global context and successfully applied to the study of policymaking. He states:

"This concept of a 'policy cycle' provides a useful framework for a more critical understanding of global refugee policy that looks beyond the formal statement of policy and allows for a more rigorous examination of the range of factors, interests and actors that condition how a policy is made, implemented and evaluated" (Milner, 2014, p.483).

During the first stage, the 'agenda setting', "various 'policy problems' compete for the attention of policy makers and the process of making policy begins" (Milner, 2014, p.483). It is argued that this stage is detrimental to the successful outcome of the following process. However, this stage also allows certain actors to exploit these decision-making processes. As a result, "the interests of a limited number of actors may both promote certain policy problems over others and privilege particular options in the formulation of policy" (Milner, 2014, p.483).

After the problem has been found and added to the agenda, what follows next is a process of 'policy formulation'. During this stage, "a range of options and possible responses to the stated problem are proposed and considered by policy actors" (Milner, 2014, p.483). Milner (2014) writes that "within international regimes, international organisations are primarily responsible for presenting policy alternative for consideration by formal decision-making bodies" (p.483-484). Milner (2014) mentions that "this is also the stage where there is a particular role for epistemic communities, defined by Howlett and Giest as 'loose groupings of experts or knowledge providers' that have the opportunity to influence the policy process by proposing 'policy alternatives'" (p.484).

Afterwards, a policy is created through a 'decision-making' process. Milner (2014) describes that "it is at this stage that a particular articulation of a given policy is adopted, either within a formal decision-making body, like ExCom, or issued by UNHCR itself" (p.484). Milner (2014) explains further:

"The 'product' of global refugee policy is created once the decision is taken to adopt a formal statement of a problem relating to protection, solutions or assistance for refugees or other populations of concern to the global refugee regime, and a proposed course of action to respond to that problem" (p.484).

The next step is the 'policy implementation' stage, "where global refugee policy 'leaves' the global level and intersects with dynamics at the regional, national and local levels" (Milner, 2014, p.484-485). During this stage, the GRP must overcome several challenges that hinder the completion of its objective. Soroos (1986) illustrates:

"Expressions of global policy are often impressive documents that hold substantial promise for ameliorating the problems they address. These documents are, however, simply the blueprints of strategies for tackling policy problems, which will have little if any impact unless vigorously carried out" (p.145).

Adding to the challenges is that "the sovereignty of states means that states cannot be forced to implement global policy on their territory" (Milner, 2014, p. 485). Milner (2014) argues that "instead, they may be encouraged to do so either through threats for non-compliance or incentives to implement programmes, including through financing and technical expertise" (p.485).

Yet another challenge of the GRP is the "engagement not only with regional, national and local actors, each with their own interests and priorities but also with a wider range of issue areas" (Milner, 2014, p. 485). That being said, Milner (2014) acknowledges that:
"Outcomes for refugees and other forcibly displaced persons are shaped by a range of other policy fields and dynamics outside the global refugee regime, with outcomes for refugees consequently being shaped by interests and actors that are not contained within it" (p.485).

Considering all the factors and challenges that can affect the implementation of GRP, Milner (2014) concludes that "there is significant scope for future research on this stage of the policy process, especially comparative studies that consider possible variation in the implementation of the same global refugee policy in different local contexts" (p.485).

The last stage of the policy process is 'policy evaluation'. During that stage, "'the results of the policies are monitored ... often leading to the reconceptualization of policy problems and solutions in light of experiences encountered'" (Milner, 2014, p. 486). Milner (2014) states that "the policy evaluation process of global refugee policy has been closely associated with the work of UNHCR's Policy Development and Evaluation Service (PDES)" (p.486). Nevertheless, Milner (2014) talks about how there has also "been increased focus on the role played by external actors, including NGOs and researchers, in the evaluation of global refugee policy, and how these evaluations have contributed to the revision of particular policies" (p.487).

In the following quote, Milner (2014) concludes:
"While this characterisation of the stages of the global refugee policy process may help clarify how global refugee policy can be understood as both a product and a process, contributions to this special issue also highlight the importance of understanding the interaction of global refugee policy and other policy systems" (p.487).

g) Global Refugee Policy: The Regimes Approach

Several approaches exist to understand GRP; amongst them are those drawing from political science/international relations and anthropological/sociological perspectives. This research applies an international relations perspective, considering how Global Public Policy (GPP) as a body of literature can be helpful in understanding GRP. Milner (2014) himself states that the "definition of global refugee policy builds from the literature on global public policy" (p.480). Thus, GPP can be considered a relevant study area, particularly in the refugee context.

Bauman & Miller (2012) argue that when it comes to an understanding of the GPP itself, "theories that deal with cooperation and decision-making in particular are among the most relevant" (p.16). Furthermore, they argue that approaches to GPP tend to take one of two lines: "1) explaining varied interactions between international actors to deal with common public policy challenges, or 2) '"prescribing how such international interaction can be improved to be more effective, efficient, and equitable in achieving its goals" (Bauman & Miller, 2012, p.16). Several models exist for the research of GPP, such as the partnership approach, network approach, regimes approach, economical approach, normative approach, world community approach, and others. In this project, the regimes approach is implemented. This theoretical approach argues that international institutions or regimes affect the behaviour of states or other international actors. Regarding this project's topic, the regimes approach could help analyse the dynamics between the Danish state and other foreign actors regarding bill L 226 and the issue of transfer of asylum seekers.

As already mentioned, the regimes approach is one of the standard methods for conceptualising global refugee policy. Soroos describes the regimes as the "institutional environment within which international policies are made" (Bauman & Miller, 2012, p.19). According to Betts, "the refugee regime is affected by globalisation and interdependence, particularly in light of labour migration and non-mobility regimes like human rights, humanitarianism, development and security" (Bauman & Miller, 2012, p.19). In other words, numerous overlapping factors with global reach affect the refugee regime.

Additionally, Betts argues "that the refugee regime is now a 'complex' of overlapping regimes where states engage in forms of institutionalised cooperation with direct and indirect impacts on refugee protection" (Bauman & Miller, 2012, p.19). An example of such engagements might be the interactions of states through global institutions such as the UNHCR. Betts has a particular interest in establishing "how parallel and overlapping institutions (most notably in relation to internally displaced persons (IDPs) and international migration) have affected the refugee regime's focus on protection" (Bauman & Miller, 2012, p.19). Through his examinations of the so-called 'regime shifting', Betts argues that "Northern states have used new institutions to get around responsibilities toward refugees" (Bauman & Miller, 2012, p.19). Similarly, Betts believes there exist issue-linkages in the global refugee regime, as he argues "that North-South cooperation occurred because of states and UNHCR linking refugee-related issues to states' wider interests in global governance" (Bauman & Miller, 2012, p.19).

Barnett studied the evolution of the refugee regime that emerged under the League of Nations after World War I; it underwent a dramatic transformation during the Second World War to manifest itself in the form of UNHCR and remains in this form to the current day. According to Barnett's findings, "the UNHCR of today is more solutions-oriented, as well as more proactive, operational, preventative, and homeland-oriented; it has become a more "…broadly based humanitarian agency" (Bauman & Miller, 2012, p.19). She concludes that "the best model of global governance for the refugee regime is that exhibited in UNHCR, complemented by regional networks" (Bauman & Miller, 2012, p.20).

Other scholars studying the politics and history of UNHCR, like Crisp, have also invoked regime theory. Bauman & Miller (2012) write the following about Crisp's perception of the refugee regime and globalisation's influence:
"He sees globalisation as having prompted the movement of people from one part of the world to another by exacerbating socio-economic differentials between and within states, while also "…facilitating the movement of migrants and asylum seekers through the establishment of complex social, technological and cultural networks that link the less-developed countries to the industrialised states" (p.20).

However, Crisp also points out the inequalities present in these processes, invoking some remarks similar to those of Betts. He writes:

"While globalisation has created the conditions which prompt and enable people to migrate, it has also prompted the world's more prosperous states to obstruct such movement. In this respect, the challenge to asylum has exposed an important contradiction in the process of globalisation" (Bauman & Miller, 2012, p.20).

The examples above show how practical the regimes approach can be in understanding GRP, yet some criticisms of this approach are also worth considering. For example, Donnelly "questions Soroos' depiction of the relationship between regimes analysis and policy analysis as one of generality and specificity" (Bauman & Miller, 2012, p.20). Among those who also question the use of the regimes approach is Rochester:

"He finds that implicit in the regime literature is the assumption that formal organisational machinery tends to be not only irrelevant or peripheral to the major struggles of world politics (and therefore not as worthy of serious scholarly attention as other collaborative vehicles) but also dysfunctional for the international system, given the inefficiencies and other negative features associated with bureaucracies" (Bauman & Miller. 2012, p.21).

Instead, Rochester supports a contrasting outlook. Bauman & Miller (2012) describe: "Rochester understands the UN as a manager of international cooperation, or a 'regime processing centre' where emerging problems could be identified, monitored, and proposed for consideration on the global agenda; where bargaining could occur and where signals could be furnished as to whether global solutions are possible or whether regime-making needed to occur at a lower level (p.21).

In summary, it can be assumed that the current regimes environment in which the states and other institutional actors interact is deeply interconnected due to globalisation processes and numerous existing interdependences. On the one hand, such an environment combined with a robust humanitarian agency in the form of UNHCR allows for the more straightforward transfer of people worldwide. However, the same conditions enable the world's more prosperous states to thwart the influx of asylum seekers and get around their responsibilities toward refugees.

5. Policy analysis through the WPR approach

In the following section, policy analysis of the legislative amendment Bill L 226 is conducted by applying Bacchi's WPR approach, and the established six questions are answered. Answers to these questions provide the basis for the solution to the established research question. The object of research, Bill L 226, is an amendment to the Danish Aliens Act, which allows for the extraterritorial transfer of asylum seekers to a third country that has reached a transfer agreement with the Danish government. Dr Nikolas Feith Tan writes that "L226 essentially presented the Danish extraterritorial apparatus in three phases: a pre-transfer 'screening' procedure in Denmark; the asylum process in the third country; and, for those asylum seekers found to be refugees, protection in the third country" (Tan, 2021).

a) Q.1: What is the 'problem' represented to be in the asylum seekers' transfer policy?

This question is straightforward - if a Danish government proposes to act upon a problem, what is it hoping to change? In other words, what does it consider to be the 'problem' that requires a solution?

Mattias Tesfaye, Minister for Immigration and Integration at the time, came forth with the Bill L-226 amendment proposal on the 29th of April 2021. The explanatory memorandum to the law proposal states that the existing asylum system, which causes refugees and migrants to apply to the EU, is unsustainable. Arguments are given that a significant number out of 5,2 million asylum seekers who entered the EU since 2015 does not meet the conditions for being granted international protection. Furthermore, the number of more than 17.100 refugee fatalities and missing cases is given to underline the dangers these people undertake to reach asylum in the EU, which is often not granted to them anyway (Forslag til Lov om ændring af udlændingeloven, 2021, p.5).

More significantly, for the interests of Danish policymakers, it is argued that the existing asylum system is unsustainable for Denmark itself. Arguments are given that more than 38,800 applications for asylum have been registered since 2015, and a substantial number have been rejected. According to the statistics presented in the memorandum, in 2020, the recognition rate of the first instance asylum applications was only 44%, and on average, it costs the Danish state approx. 300,000 DKK per year to accommodate one rejected asylum seeker at one of the Danish deportation centres (Forslag til Lov om ændring af udlændingeloven, 2021, p.5).

It is stated in the memorandum that the proposed Bill L-226 amendment would address and improve the 'unsustainable' asylum system by implementing a policy which reduces the number of asylum seekers entering Denmark. Memorandum proclaims that the new asylum system must contribute to the far smaller number of asylum seekers in Denmark, far fewer refugees and migrants drowning in the Mediterranean and being exposed to abuse on the migration routes, Danish resources being targeted at people who have a real need for protection in the surrounding areas, and thus more refugees being better protected in the surrounding areas. A new asylum system must also contribute to Denmark having control over immigration (Forslag til Lov om ændring af udlændingeloven, 2021, p.5).

Besides reducing the flow of incoming migrants, other policy goals outlined in this statement include better allocation of resources and more control over immigration. The policy objectives mentioned in this memorandum correspond closely to the immigration policy goals outlined by the Social Democrats in the 2018 policy plan titled *Just and realistic. An immigration policy that unites Denmark*. There, several policy elements of the party's new immigration were outlined.

First, it was argued that Denmark must control how many foreigners migrate because it is significant for the country's social cohesion. It was argued that residential areas, schools and workplaces must be able to keep up with the flow of migrants to create a real opportunity to make integration work better. The establishment of reception centres outside of Europe was also mentioned there (Socialdemokratiet, 2018, pp. 4-5).

Another element mentioned in the policy plan was the need to increase and intensify help in the areas 'surrounding' the countries refugees are fleeing from. It was argued that this policy aims to create conditions where fewer people escape and, as a result, more could create a future for themselves in their home country instead of seeking a new life in Europe. To achieve this, it was suggested that Denmark restructures its development aid so that double the amount of assistance is sent to these surrounding areas (Socialdemokratiet, 2018, p.5).

In conclusion, Danish policymakers consider the problem to be an unsustainable flow of asylum seekers to Europe, including Denmark. Arguments are given that Denmark cannot keep up with the integration of the flow of incoming refugees, many of whom are not granted asylum status and are accommodated in the deportation centres at the state's expense. The argument goes that the transfer policy is offered as a solution to this problem which will simultaneously grant better protection to the refugees outside of Denmark's borders.

b) Q.2: What presuppositions or assumptions underpin this representation of the 'problem'?

Presuppositions (or assumptions) in this question refer to the forms of 'knowledge' that policymakers rely their arguments upon. Examining presuppositions makes it possible to identify the conceptual logics that underpin specific problem representations. This research includes the examination of two such presuppositions. The first presupposition is that asylum seekers take numerous hazardous risks when migrating to the EU, and too many either die or go missing on the migration routes. The second presupposition is that too many migrants do not meet the requirements for asylum status, and the accommodation of that many rejected asylum seekers in deportation centres is considered to be costly by the Danish state.

Let us begin by examining the first presupposition. According to the data given by the European Council, in 2021, "630 890 people applied for asylum in the EU in 2021, of whom 630 550 were non-EU citizens" (European Council, 2022). Although the influx of refugees that year was not as large as in 2015-16, European Council statistics point out that "between 2020 and 2021, there was a 33.5% increase" (European Council, 2022). Most applications went to Germany, France, Spain, Italy, and Austria. According to the European Council data, "these five EU member states together received almost three-quarters of all first-time asylum applications in the EU" (European Council, 2022). Denmark has received just a fraction of these applications, numbering around 2080.

By far, most asylum applications were made by Syrians, Afghans and Iraqis, who are "together accounting for almost 40% of all applications in the EU member states in 2021" (European Council, 2022). That year, Syrians alone lodged 115 470 applications. Syria, Afghanistan and Iraq are predominantly Muslim countries which have all been devastated by years-long conflicts, and people from there grew desperate enough to escape in droves and seek safety in a culturally much different but politically far more stable Europe.

However, the refugees' migration routes to Europe are demanding and full of risks. Tens of thousands of migrants who travel through them are exposed to numerous hardships and dangers, and therefore, unfortunately, many refugees die on these routes. Recent developments have shown that asylum seekers take even more dangerous migration routes to Europe. Frey Lindsay, writing for Forbes, states that "this is in part because some European states have increased the severity of tactics designed to repel them at traditionally safer crossing points" (Lindsay, 2022).

Since the surge of migration in 2015, the most common route was the so-called Eastern Mediterranean route that went through Turkey and reached either Greece or Cyprus. Since the Covid-19 pandemic, crossings through this route have significantly declined. Numerous factors led to this decrease, yet Lindsay argues that "it is undeniable that crossings on the Eastern route have significantly declined due to more severe border practices introduced by the Greek, and to a lesser extent Cypriot, authorities" (Lindsay, 2022).

While the migrations along the Eastern Mediterranean route declined, more dangerous alternative routes were established where migrants attempted to cross from North Africa into Europe by the Mediterranean Sea through the so-called Central and Western Mediterranean routes and the Atlantic route. According to the report published by the Global Migration Data Analysis Centre (GMDAC) and the International Organization for Migration (IOM), "in the first half of 2021, at least 1,146 people lost their lives on maritime routes to Europe. This is a substantial increase compared to the fatalities recorded in the same period in 2020 (513) and 2019 (674)" (Garcia Borja & Abdelazim, 2021, p.4). This report states that higher mortality rates coincide with an increased number of sea crossings. Garcia Borja & Abdelazim (2021) write that "the number of people attempting to cross the Mediterranean Sea to reach Europe in the first six months of 2021 increased by 58 per cent compared to the same period in 2020" (p.4). The higher mortality rate during that period may also be explained by the insufficient deployment of civilian search and rescue ships. Garcia Borja & Abdelazim (2021) argue that "civilian search and rescue organisations continued to face significant obstacles to their operations, with the majority of their boats blocked at European ports due to administrative seizures and ongoing criminal and administrative proceedings against crew members" (p.4).

In the Bill L-226 proposal, it is mentioned that more than 17,100 refugees and migrants have drowned or disappeared in the attempt to reach the EU across the Mediterranean (Forslag til Lov om ændring af udlændingeloven, 2021, p.5). Thus, by implementing the asylum seekers' transfer policy, Danish policymakers argue that by reducing the intake of refugees to Europe, a much lower number of fatalities amongst the migrants in the Mediterranean will follow. However, upon further digging into the issue, it can be argued that the high mortality numbers are not caused entirely by the dangers of the migration routes themselves but are also contributed by the actions (or lack thereof) of other European states, particularly those that intake the initial waves of migrants on their borders.

Examination of the second presupposition requires an insight into the Danish international obligations regarding refugees, asylum procedures determining who is granted asylum status, and the processing of rejected asylum seekers.

By signing several international treaties, including the 1951 Refugee Convention, Denmark assumed international responsibility for taking care of refugees arriving at its borders. According to Article 1 of the 1951 Refugee Convention, a refugee is anyone who is:
"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (Convention relating to the Status of Refugees, 1954, art.1 A.(2)).

In Denmark, migrants who fulfil the conditions of the 1951 Refugee Convention can be granted asylum as convention refugees. Moreover, Danish authorities can grant a protection status to individuals who are seriously threatened by the threat of the death penalty, torture or other inhuman and degrading treatment in their home country or a temporary protection status to those who require exceptional protection but who are not individually persecuted (Dansk Flygtningehjælp, 2021, p.6).

To be granted asylum, the asylum applicant's background, identity and motive for asylum are investigated in the asylum procedure first by the police and then also by the Immigration Office. The asylum seeker's case is being evaluated to assess if the individual risks being exposed to concrete persecution and if the conditions of the UN Refugee Convention are met or whether the asylum seeker meets the conditions to obtain protection status or temporary protection status. That being said, assessing credibility is essential to the asylum procedure. Often, asylum is refused because the authorities believe the applicant's explanation is not credible (Dansk Flygtningehjælp, 2021, p.16).

Rejected asylum seekers are expected to depart Denmark within a week or immediately. However, often that is not possible if a rejected asylum seeker refuses to cooperate with the police or if conditions in the asylum seeker's country prevent deportation. Thus, on 1st April 2021, it was estimated that 1.047 rejected asylum seekers who were called for departure remained in Denmark. Most of them come from Iraq and Iran. (Dansk Flygtningehjælp, 2021, p.18).

Without the possibility of sending them back to their home countries, rejected asylum seekers are forced to be accommodated in deportation centres. Bendixen (2021) writes that "in the deportation centres, you have a duty to reside in the centre, and you are obligated to register three times a week in a special place in the centre within a certain period of time" (p.30). Furthermore, the rejected asylum seekers may not work, and their livelihood depends on the state. Bendixen (2021) states that "the amount of benefits one may receive varies according to their legal status (phase), whether they live in centres where they can be self-catering, whether they have children and whether they are deemed to be cooperating in their return process" (p.28).

According to the Ministry of Immigration and Integration, one asylum seeker accommodated at a deportation centre costs the state approx. 300.000 DKK annually (Forslag til Lov om ændring af udlændingeloven, 2021, p.5). Sune Jørgensen, a journalist for TV2 Fyn, reports that according to the Immigration Service, the money covers, among other things, the costs of their stay. The allowance granted by the Immigration Service covers clothes, hygiene items and food if the deportation centre does not have a cafeteria. Asylum seekers receive DKK 54.47 daily per adult for food and hygiene items. If an asylum seeker lives with a spouse or a cohabitant, each receives DKK 43.12 daily (Jørgensen, 2021).

In summary, asylum seekers who get rejected are forced into deportation centres where they await being sent away from the country. There, they have few allowances and become utterly dependent on state subsidies. According to the Ministry of Immigration and Integration decision-makers, an asylum transfer policy would not only reduce the costs of upkeep of the deportation centres, but it is also a preferable alternative for asylum seekers as it prevents the possibility of being rejected the asylum and henceforth being accommodated in one of these centres. However, this assumption's validity depends entirely on whether the conditions in the hypothetical reception centre in the third country would be better. Given that the legislative Bill L 226 "seem to take an especially narrow position on the rights afforded to refugees in the third country" (Tan & Vedsted-Hansen, 2021), there are significant reasons for doubt.

c) Q.3: How has this representation of the 'problem' come about?

This question explores how key policy concepts have become legitimate and highlights the political and cultural conditions that allowed this problem representation to take shape and assume dominance. To answer this question, this research traces the development of the immigration policy of Social Democrats under Mette Frederiksen's leadership alongside the development of Danish voters' views on immigration.

For much of the twentieth century, the Social Democratic Party has been one of the Danish parliament's largest and most influential parties. However, since the turn of the century, this influence has been waning as the party has gradually lost a substantial amount of its voters. Many of those voters began supporting the newly emerged Danish People's Party. Peter Nedergaard argues that this was due to "the liberal, pro-immigration policy conducted by the party in recent decades. This policy has pushed away many traditional Social Democratic working-class voters into the arms of the Danish People's Party with a – at least rhetorically – much stricter immigration policy" (Nedergaard, 2018). The long-term results of these developments were present in the 2015 Danish general election. Although it gained most of the votes and became the biggest party in parliament, the Social Democrat Party under prime minister Helle Thorning-Schmidt could not keep office because the conservative blue bloc gained more votes than the progressive red bloc, where the Social Democrats belonged. Danish People's Party saw massive electoral success, as its vote share almost doubled from 12.3 % to 21.1% and decisively contributed to the blue bloc's victory. As a result of these developments, Thorning-Schmidt resigned, and Mette Frederiksen took over the party leadership (Rathgeb & Wolkenstein, 2022, p.992).

In September 2015, relatively soon after the elections, waves of refugees entered Danish motorways on their route to Sweden. These events coincided with the European refugee crisis and thus made the topic of refugees and immigration the leading item of Danish public debate. While the Danish People's Party maintained its restrictive approach towards the migrants, "prime minister Lars Løkke Rasmussen oscillated between his commitment to avowed humanitarian obligations and the need to recognise the DF's concerns – the new minority government, after all, relied on the DF's support" (Rathgeb & Wolkenstein, 2022, p.993).

Meanwhile, Frederiksen made a statement at the party congress in late September, which already contained elements that would become her party's new position on immigration policy. Rathgeb & Wolkenstein (2022) describe:

"Like prime minister Rasmussen, Frederiksen also stressed the humanitarian responsibility of Denmark and the European Union, yet she also warned against 'unsustainable' strategies that risk compromising the 'cohesion' of society, concluding that 'the number of people that come here is not irrelevant.' This hardly disguised affirmation of limiting the uptake of both refugees and immigrants more generally was supplemented with the proposal to focus more on helping refugees directly in the non-European recipient countries, as in Lebanon, Jordan, and North Africa" (p.993).

In 2018, the Social Democratic Party adopted a detailed programme for a new immigration policy entitled "Just and Realistic". This move marked an abandonment of a liberal, pro-immigration policy in favour of a more restrictive one. Because it was the conservative parties who promoted stricter immigration policy, this action might be viewed as an attempt to win back voters by adopting the opponent's views and rhetoric. However, Nedergaard argues that this was not entirely the case, given that the policy was framed to align with the preferences of the party's traditional working-class voters and its historical roots. He explains:

"What is new in the plan of the Danish Social Democratic Party is that it offers a justification of a policy turn that is seemingly perceived as coherent and solidary, offers international solutions, is founded in the historic roots and ideology of the party, and is in line with the preferences of its potential working-class voters. It is not seen as a sell-out to other political streams" (Nedergaard, 2018).

The "Just and Realistic" immigration policy builds its rhetoric around "an immense challenge from a continued immigration into Denmark from third-world countries from which relatively fewer people contribute relatively less through their work" (Nedergaard, 2018). Much emphasis is given to the vulnerability of the Danish welfare system to the immigration of people who take more resources than they contribute. McManus & Falkenbach (2022) summarize:

"By directing their attention to the issues of migration and welfare, the Social Democrats accomplished two important things. First, they stayed true to their traditional values of supporting a strong welfare state. Second, they took up the issue of migration, which only the PRR party DF supported. Realising that immigration and welfare were the key concerns of the Danish citizens, the Social Democrats reorganised their priorities. They presented their electorate with proposals that they hoped spoke to the concerns of the population" (p.17).

The 2019 elections resulted in the victory of Social Democrats and the creation of the Frederiksen Cabinet. However, McManus & Falkenbach believe that the Social Democrat victory is incorrectly attributed to their tough stance on immigration. They argue:

"In fact, public opinion polls show a shift in voters' priorities from migration in 2015 to healthcare and the environment in 2019. Although the Social Democrats moved significantly to the right on immigration, more importantly for the outcome of this election, they managed to find their way back to supporting and promoting Social Democratic core values such as healthcare, pensions and education" (McManus & Falkenbach, 2022, p.17).

Nonetheless, after assuming office, Mette Frederiksen and her party supported and implemented stricter immigration policies as they proclaimed they would. Regin Winther Poulsen, a journalist from the Faroe Islands, compares the current Danish refugee policy with that of Australia, stating that "as in Australia, both the Social Democrats and the centre-right Venstre, the other major party traditionally in charge of Danish governments, are increasingly in agreement over harsh immigration policies" (Poulsen, 2021). In other words, it can be stated that by adopting a stricter approach towards immigration to win over the voters, Social Democrats have significantly contributed to creating an environment where a harsh stand on immigration is now the norm in Danish policymaking.

To summarise, Danish Social Democrats' shift in their immigration policy was a strategic move to secure the votes among its target base, the working class, who were dissatisfied with the party's previous liberal approach towards immigration. Although it can be debated whether the subject of immigration was the voters' priority in the 2019 election, the Social Democrats have nonetheless secured enough votes to create a cabinet. Upon gaining power, they began implementing their policy plans outlined in the 2018 platform, further tightening an already restrictive immigration system, which eventually led up to the creation of Bill L 226 and creating a legal basis for the asylum transfer policy.

d) Q.4: What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?

When making a policy, it is common for decision-makers to highlight the conditions that allow particular problem representation to take shape and to assume dominance, whilst others are not considered or are silenced. To address and answer this question, this research focuses on possible gaps or limitations in this representation of the 'problem'.

Prior to the presentation of Bill L 226, the Ministry of Immigration and Integration published a government legal note of January 2021, which can be described as "a document of less than five-and-a-half pages, reflecting the very general approach and a rather superficial scrutiny of the legal issues raised by the proposed models" (Tan & Vedsted-Hansen, 2021).

According to the proposed first model, asylum case processing and accommodation in the reception facility would be handled by Danish authorities in the concerned third country. This would be done following Danish legislation and Denmark's obligations under international law. The model requires the presence of Danish authorities, e.g., for carrying out asylum case processing. According to the proposed second model, arrangements will be made so that the third country's authorities will handle the asylum case processing after the transfer to the third country. This would be done by the third country's legislation and obligations under international law. However, since Denmark would be a party to the agreement, it must be stipulated that the third country respects Denmark's obligations under international law (Udlændinge- og Integrationsministeriet, 2021).

Because the legal note was so short and vague, neither model "was analysed in any detail as regards responsibility for the transition to protection status in the third country of applicants who are found to be in need of international protection" (Tan & Vedsted-Hansen, 2021). Furthermore, when Bill L 226 was presented in April 2021, there were no specifications regarding which model was envisaged. Tan & Vedsted-Hansen conclude:
"As a result, the Bill was silent on the legal question of jurisdiction, the key criterion for establishing whether Denmark may be held directly or indirectly responsible under international law for the operation of the reception centre, the asylum procedure and the protection standards provided by the third country" (Tan & Vedsted-Hansen, 2021).

Another silent issue was "whether legal standards and material conditions would need to meet the minimum requirements of the 1951 Convention and the European Convention on Human Rights" (Tan & Vedsted-Hansen, 2021). There was nothing in the Bill and its explanatory memorandum that would "specify which minimum safeguards must be in place for the asylum procedure in the third country, nor did it address potential discrepancies of substantive refugee law between Denmark and the third country potentially resulting in protection gaps" (Tan & Vedsted-Hansen, 2021).

Although the legislation requires that the third country is a part of and respects the 1951 Refugee Convention, "the explanatory memorandum only sets out that this condition includes that the country 'in practice must respect the prohibition of refoulement in the Refugee Convention'" (Tan & Vedsted-Hansen, 2021). It can be argued that this minimalist position on refugee rights ignores many rights granted to refugees under Articles 2-34 of the 1951 Convention and those granted by the European Convention on Human Rights and the various UN human rights treaties to which Denmark is a party. According to Dr Nikolas Feith Tan, third countries must respect and protect several core rights in the Refugee Convention. These core rights include "the right to education (article 22), right to work (article 17), access to housing (article 21), freedom of movement (article 26) and right to identity documents (article 28) are essential for the realisation of protection in any asylum state" (Tan, 2021).

Besides the international law issues, there are also present several EU law issues raised by Bill L 226. They primarily involve the Dublin III Regulation and an agreement on Denmark's participation in the Dublin system, which is "enabling intergovernmental participation in the Dublin III Regulation providing for the transfer of asylum seekers to the EU Member State responsible under the Regulation" (Tan & Vedsted-Hansen, 2021). The legal note of January 2021 flagged the risks associated with this agreement if Denmark was to implement its asylum seekers' transfer to third states outside of the EU. Tan & Vedsted-Hansen write:
" the legal note indicated that the prospect of Denmark transferring asylum seekers received under the Dublin system to a third state outside Europe may lead the other Member States to assume that "Denmark has in fact terminated the Dublin cooperation", thus effectively ending Denmark's ability to transfer asylum seekers back to the other EU Member States" (Tan & Vedsted-Hansen, 2021).

Danish policymakers' concerns revolve around Article 5 of the 2006 parallel agreement on Denmark's participation in the Dublin system. Article 5 prohibits Denmark from entering international agreements regarding asylum policy which may affect the Dublin system unless it is done with the agreement from the European Community. Tan & Vedsted-Hansen write: "Thus, other Member States may seem to have a legal basis if they should want to claim that Denmark has terminated cooperation within the Dublin system in case of a unilaterally concluded agreement with a non-Member State on the transfer of asylum seekers to that third country" (Tan & Vedsted-Hansen, 2021).

The explanatory memorandum of Bill L 226 cited Article 5 and "invoked the CJEU judgment of 17 March 2016 in the case C-695/15 PPU, Mirza, arguing that the Dublin III Regulation does not prevent the Member States from sending asylum seekers to a safe third country" (Tan & Vedsted-Hansen, 2021). The vague and broad notion of a 'safe third country' in the Danish asylum seeker transfer legislation appears to be the core issue here. However, this term appears and is defined in the EU Article 38 of the Asylum Procedures Directive. Tan & Vedsted-Hansen conclude: "For this reason, it has to be concluded that the transfer of asylum seekers pursuant to the new Danish legislation is only going to be compatible with the Dublin III Regulation if the international agreement to implement the transfer rules will be concluded between Denmark and a third country that is able to fulfil the Directive's definition of 'safe third country'" (Tan & Vedsted-Hansen, 2021).

In summary, the Bill L 226 legislation contains numerous significant legal issues that remain unsettled at domestic, EU and international levels. Among them is the lack of consensus on the responsibility behind the processing and accommodation of asylum seekers, a minimal set of requirements regarding the protection of refugees and their rights, and a possibility that the EU member states might perceive the implementation of the Danish legislation as a breach of the Dublin III Regulation. Considering all the mentioned issues, it can be argued that implementing this policy will raise severe legal problems that could lead to its failure.

e) Q.5: What effects are produced by this representation of the 'problem'?

This question assesses how identified problem representations limit what can be talked about as relevant, shape people's understandings of themselves and the issues, and impact materially on people's lives. Assuming that the case of Bill L 226 is an example of an externalisation policy at play, this research employs the concept of externalisation to explain what effects it produces.

According to the UNHCR definition, the externalisation of international protection refers to: "measures taken by States— unilaterally or in cooperation with other States—which are implemented or have effects outside their own territories, and which directly or indirectly prevent asylum-seekers and refugees from reaching a particular 'destination' country or region, and/or from being able to claim or enjoy protection there. Such measures constitute externalisation where they involve inadequate safeguards to guarantee international protection as well as shifting responsibility for identifying or meeting international protection needs to another State or leaving such needs unmet, making such measures unlawful" (UNHCR, 2021, p.1).

Externalisation practices take several different forms, yet arguably what they all have in common is how they "frequently result in people being transferred between countries without essential safeguards or appropriate standards of treatment" (Garlick, 2021, p.5). Additionally, "externalisation policies may also create or feed negative perceptions of asylum seekers and refugees" (Garlick, 2021, p.5). These negative perceptions have a particularly destructive potential for asylum seekers worldwide because they can "undermine the international protection system and, if adopted by a significant number of States, could place many asylum seekers and refugees at risk of mistreatment, refoulement or legal limbo, without access to procedural or substantive rights" (Garlick, 2021, p.5).

Extraterritorial processing is one of the forms of externalisation. As the name suggests, extraterritorial processing refers to the arrangements that "transfer a State's responsibility for determining claims for international protection to a third State" (Garlick, 2021, p.5). It can be strongly argued that the case of Bill L 226 is an example of extraterritorial processing at work.

Although Bill L 226 has been passed into law, a potential host country has yet to make a deal with the Danish government. Therefore, Bill L 226 has not caused any immediate effects yet. However, it is argued that "its emergence in the Danish political context reflects wider trends in international asylum politics, and in particular an urge to externalise." (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.36).

The Social Democratic narrative has presented this legislation as a humanitarian initiative. It was argued that by deterring migrants from crossing the Mediterranean into Europe, lives are being saved, and smugglers lose their flow of income. However, in this narrative, some facts were intentionally omitted. For example, "the one-sided focus on smugglers overshadows how migrants can use smugglers to avoid abuse and violence by local authorities" (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.37).

For an externalisation policy to succeed, an agreement must be reached between an externalising state and prospective partners in migration control. Although Denmark has not yet reached any such agreement, "the Social Democrats have regularly used the shorthand of 'North Africa' in referring to prospective partners" (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.37). So far, several North African states have rejected such partnership proposals. However, according to the reports made by the UN and other humanitarian organisations, violence and persecution of migrants occur in several of these states. It would be expected that Denmark would condemn these issues, but instead, "repressive regimes are being actively sought out as partners and not only in North Africa" (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.37).

The purpose of externalisation might suggest the exporting of border policing away from a State's territorial boundaries. However, the contents of Bill L-226 suggest that the opposite is the case. Lemberg-Pedersen, Whyte & Chemlali explain:
"L226 involves a) creating an initial processing system to determine whether or not a person seeking asylum on Danish territory can be placed in a 'transfer position' ready for deportation, and b) a dramatic upscaling of Denmark's incarceration and forced deportation mechanisms, as well as of those of any potential host State. So, rather than a decoupling or exporting of border control, the Danish government's externalisation law, in reality, represents a doubling – or even greater – of territorial migration controls" (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.38).

In summary, although the transfer of asylum seekers to third countries has not yet taken place, it does not mean that the legislative Bill L 226 has no effect. The passing of this amendment and implementation into Danish law despite solid international condemnation indicates that externalisation is already deeply entrenched in Danish policymaking. Furthermore, although no third country has made a transfer deal with Denmark or expressed any support for it, there is always a possibility that this might change in the future. Dr Nikolas Feith Tan argues that "recent experience from both the Pacific and Central America indicate that there are governments in the Global South willing to embark on such cooperation arrangements, in exchange for development assistance and other inducements." (Tan, 2021).

Additionally, there is a possibility that Bill L 226 might ignite the spread of the externalisation of asylum policies across Europe. Although it could be argued that it is unlikely to happen among the EU member states because of the Dublin III Regulation, Tan suggests that "there remains the possibility that a 'coalition of the willing' of certain European states outside the EU asylum acquis could join the Danish extraterritorial asylum push" (Tan, 2021).

It can be concluded that although the asylum seeker transfer policy has not materialised due to a lack of support from any third state to engage in it, this situation can change. Furthermore, Danish policymakers have laid down the legal foundations for an externalisation policy approach that has the potential to inspire other European nations to follow. Given how the externalisation policies lead to the marginalisation of asylum seekers, it can be stated that despite the amendment's supposed purpose of humanitarian help, its implementation in practice could seriously infringe upon the refugees' safety and rights.

f) Q.6: How/where has this representation of the 'problem' been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted and replaced?

This question is similar to the third one, as it draws attention to the practices and processes that allowed certain problem representations to dominate. Furthermore, it looks at how this representation of the 'problem' reaches its target audience, achieves legitimacy through dissemination and repetition, and seeks to uncover contesting views.

As previously mentioned in question 3, the "Just and Realistic" policy is framed as a means to combat the challenges that mass migration from developing countries is creating for Denmark, emphasising the adverse effects it has on the Danish welfare system. The policy plan states: "The challenge we are facing is not temporary. It is here to stay. It will put pressure on our welfare model, our low degree of inequality, as well as on our way of living" (Socialdemokratiet, 2018, p.4). Similar arguments were made by the Social Democrat leadership when Bill L-226 met strong criticism from numerous national civil society actors and international organisations. In response to these critical voices, "Prime Minister Frederiksen has repeatedly claimed that externalisation is the only possible solution to the challenges that Denmark feels it faces in accommodating asylum seekers and integrating refugees" (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.36).

Among the critics were several international organisations, including UNHCR, Amnesty International and the Danish Refugee Council, which "recommended that the proposed legislation be withdrawn" (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.36). Overall, most international responses to the passage of Bill L-226 were overwhelmingly negative and dismissive. Lemberg-Pedersen, Whyte & Chemlali write:
" Among the criticisms of the proposal were: a lack of clarity about legal standards; worries about increased incarceration, deportations and use of force; the lack of realism given multiple countries' refusal to host such extraterritorial facilities; the risk of encouraging (rather than discouraging) the use of irregular smuggling networks; and the risk of undermining international solidarity and collaboration on protection" (Lemberg-Pedersen, Whyte & Chemlali, 2021, p.36).

A strong critique of the bill from most international actors suggests that refugee laws, human rights laws, and state responsibility are all values which remain relevant in world politics and therefore play a crucial role in challenging externalisation policies. The fact that no third country made a transfer agreement with the Danish government and that all declared their unwillingness to enter into such cooperation suggests that emphasising the importance of these values is an effective tool to question and disrupt externalisation policy attempts. However, it is essential to note that these concerns did not convince Danish policymakers to withdraw this legislation. The same rhetoric about the need to protect national interests persists within Mette Frederiksen's cabinet.

6. Application of Theory to the Analysis Findings

In this case study, the theory is used to support explanatory accounts of the analysis. For this purpose, several ideas derived from the subjects of Global Public Policy (GPP) and Global Refugee Policy (GRP) are applied here. These include the five-stage policy process, institutional theory, and the regimes approach.

a) Application of Five-stage Policy Process

While the WPR approach involves questions for its policy analysis, the Five-stage policy process consists of a model where each stage of the policy development is studied in more detail to gather a better picture of the whole policy itself. This stage applies the five-stage policy model to the policy development of Bill L 226. Its findings, alongside the WPR approach-based analysis, are helpful in the development of a more precise perception of the studied case.

The first stage involves "agenda setting", where a policy problem is identified as requiring action. It can be argued that one of the earliest mentions of asylum seekers' transfer policy by a Social Democrat politician was made in September 2015, during the party's congress. There, Mette Frederiksen, who only very recently assumed the party's leadership, supplemented her statement on the party's new position on immigration policy "with the proposal to focus more on helping refugees directly in the non-European recipient countries, as in Lebanon, Jordan, and North Africa" (Rathgeb & Wolkenstein, 2022, p.993).

However, the policy of transfer of asylum seekers became an "official" position of the party's immigration policy in 2018 with Social Democrat's immigration platform entitled 'Fair and Realistic: An immigration policy that unites Denmark'. This platform identified the problem as the unsustainable mass migration of people from developing countries to Denmark, disrupting the welfare state model. The Social Democrat platform suggested the externalisation of asylum policy as a new approach for dealing with this problem, simultaneously claiming this policy to be in the interests of asylum seekers as it would provide them with better protection.

The second stage involves "policy formulation", where policy actors propose and consider various responses. This stage occurred once the Social Democrats won the 2019 elections and the newly established Frederiksen cabinet could begin working to realise their set goals.

Initially, Denmark sought approval for its model among the EU leaders. However, Emmanuel Macron of France, Horst Seehofer of Germany, and EU Home Affairs Commissioner Ylva Johanssen rejected the proposal. Furthermore, Nikolas Feith Tan states that "EU's New Pact on Migration and Asylum, released in September 2020, focuses on rapid border procedures rather than extraterritorial processing to make asylum and return processes more efficient, thus side-lining the Danish model from current EU considerations" (Tan, 2021).

Although the European decision-makers decisively rejected the Danish policy proposal, these critical responses did not deter the Danish government from focusing on its proposal's legal elements under national, EU and international law. In January 2021, a government legal note was published outlining several policy changes. Tan writes that "for example, rather than ending spontaneous asylum outright, the note acknowledged that a number of international obligations limit the number of asylum seekers who can be transferred after arriving in Denmark" (Tan, 2021). As mentioned in the WPR approach-based analysis, the January 2021 legal note also flagged the risks associated with the Danish proposal as a matter of EU asylum law which could potentially lead other EU-member states to believe Denmark has terminated its participation in the Dublin system. Finally, two possible models for processing asylum claims in the third-country reception centre were proposed, with model 1 giving Denmark the responsibility to operate and exercise effective control over the reception centre in the third country and model 2 shifting that responsibility to the third country.

The third stage involves "decision-making", where relevant authority adopts a chosen course of action. Bill L 226 was presented on the 29th of April 2021 by the then-incumbent Minister for Immigration and Integration, Mattias Tesfaye. Tan argues that "L226 essentially presented the Danish extraterritorial apparatus in three phases: a pre-transfer 'screening' procedure in Denmark; the asylum process in the third country; and, for those asylum seekers found to be refugees, protection in the third country" (Tan, 2021). However, as discussed in Question 4 of the WPR approach-based analysis, the adopted amendment was vague and imprecise, raising numerous legal issues. These issues have raised fierce criticisms from domestic and international actors, but Bill L 226 was adopted only with minor technical changes to amend the Aliens Act on 3rd June 2021.

The fourth stage involves "policy implementation", during which the policy decision is implemented. Although the legislative amendment has been passed into the Aliens Act, no international agreement between Denmark and the third state has ever been signed. On the contrary, most international actors were voicing their opposition to it. Tan writes that "perhaps most importantly in terms of future bilateral cooperation, in August 2021, the African Union released a press statement strongly condemning L226 as "completely unacceptable" and an "abdication of international responsibility" (Tan, 2021). Therefore, it can be argued that it is impossible to implement an extraterritorial asylum transfer policy in the current political climate.

However, the political climate can change, as there is always a possibility that some governments in the Global South will agree to enter such cooperation in exchange for development assistance and other enticements. Rwanda, for example, has entered a memorandum of understanding (MoU) with Denmark. While this agreement does not provide for the transfer of asylum seekers, "the agreement may be seen as the scaffolding for a subsequent transfer agreement and was widely reported as a step along the way to the realisation of the Danish government's proposal" (Tan,2021). Likewise, there is a possibility that the adoption of Bill L 226 might facilitate other countries in Europe to adopt similar externalisation policies. Therefore, it can be argued that unless this legislative amendment gets overruled in the future, it is too early to proclaim it a failure.

The last stage of the policy process is "policy evaluation", where the results of the policies are evaluated and often reconceptualised. In this case, this stage has not occurred yet, because no transfer agreement has ever been signed. Furthermore, despite the lack of agreements with any third states and overwhelming criticisms from domestic and international communities, Danish policymakers have not yet made any effort to evaluate the amendment, conducting no changes to it.

In summary, the idea of asylum seekers' transfer policy emerged as a solution to what was perceived by the Social Democrats as an unsustainable asylum policy. During the policy formulation stage, Danish policymakers chose to ignore voices of disapproval from the European leaders and made limited legal considerations alongside vague proposals on how the policy was supposed to work. Nevertheless, a decision was made to present and adopt Bill L 226 with all its numerous and severe legal flaws. Unsurprisingly, its proposed transfer policy failed to materialise and met overwhelming opposition from the international community. However, despite the lack of results, no effort has been made by the Danish policymakers to evaluate and reconceptualise this policy.

b) Application of the Regimes Approach

Understanding global policy by regimes is one of the available approaches to understanding Global Refugee Policy. The regimes approach is applied in this section to explain the dynamics between the Danish state and other international actors concerning the analysed case.

Regimes are the institutional environment within which international policies are made. According to Alexander Betts, the refugee regime, being particularly affected by the forces of globalisation and interdependence, is now a complex of overlapping regimes where institutionalised cooperation between the states has emerged with direct and indirect impacts on refugee protection. In the case of Denmark, it belongs to institutions like the EU and the UHNCR, meaning its decisions are affected by and affect numerous actors combined by these institutions.

Laura Barnett particularly emphasises the role of the UHNCR, which grew into an influential and proactive model of global governance for the refugee regime. That being said, when developing Bill L 226, Danish policymakers had to ensure that this legislation did not breach the requirements of the 1951 Refugee Convention to ensure its legitimacy. As previously mentioned, it was uncertain whether the legislation met these standards. This is likely one of the main reasons for the Danish government's inability to implement its transfer policy.

Jeff Crisp argues that the same globalisation processes which prompted the global movement of people have prompted the developed states to obstruct such movement. Naturally, asylum seekers prefer to be accommodated in stable countries that have the means to grant them protection and provision; therefore, they head in droves for Europe. Social Democrat policymakers see the uncontrolled flow of mass migration of unskilled people from underdeveloped countries as a burden to Denmark's welfare system; therefore, they try to obstruct it. Betts argues that through the so-called 'regime shifting', developed states have used new institutions to get around responsibilities toward refugees. It can be argued that Bill L 226 legislation can be described as Denmark's attempt at regime shifting. However, this attempt has primarily failed as it did not create a new institution allowing Denmark to shift its responsibilities towards refugees to a third country.

c) Application of the Institutional Theory

Institutional theory is one of the approaches to studying public policy and signifies institutions' role in determining social and political outcomes. New institutionalism acknowledges the existence of an environment with many different institutions that affect each other. Several approaches exist to view institutionalism, and this section applies historical and sociological explanations behind some factors influencing the case.

Historical institutionalism is built around the premise that the historical functioning of a state's polity, politics and policy exceptionally depends on the state's historical evolution. It can be argued that the primary factor that influenced Social Democrats to adopt a harsher immigration policy was the need to secure the support of its traditional target group, the working class. Historically, the working class was the primary source of Social Democrat's political power. The liberal, pro-immigration approach has arguably led to the erosion of that voting power exploited by the Danish People's Party, a political opponent from an opposing political bloc. The need for Social Democrat policymakers to secure the working-class electorate indicates that historical foundation matters in constructing blocks of society.

Sociological institutionalism emphasises the role of sociological institutions and the logic of appropriateness, considering moral factors in shaping individual behaviour. Sociological institutionalism may explain why the international community have so decisively opposed the Danish asylum seekers' transfer policy proposal. According to the sociological approach, institutions are formed to solve problems effectively and enhance social legitimacy to accommodate behaviour patterns. It is argued that legitimacy is the main force of an organisation rather than functional efficiency. International institutions such as the EU and the UHNCR enforce their soft power to promote the values of refugee laws, human rights laws, and state responsibility to gather legitimacy in the eyes of the global community. Danish attempt at externalisation was universally rejected because it was seen as an infringement on those values. In other words, Bill L 226 legislation failed to gather recognition because it had no moral legitimacy.

7. Conclusion

A legislative amendment to the Danish Aliens Act allowing for the transfer of asylum seekers to a third country, better known as Bill L 226, results from a conscious policy approach. It is clear enough that the leadership of Danish Social Democrats concluded that there are problems with the asylum policy worth addressing. The presuppositions that asylum seekers take numerous hazardous risks when migrating to the EU and that far too many end up in deportation centres have their basis in reality. One might expect that a left-wing and progressive political party would take a more inclusive approach towards refugees and seek to improve the conditions of those arriving, aiming to make the arrival of asylum seekers easier and safer. However, Social Democrats under Mette Frederiksen decided to adopt externalisation policy practices instead, arguing that Denmark and its welfare system cannot keep up with the integration of incoming refugees, suggesting that the transfer policy works as the best solution for sustainable refugee protection.

There might exist several possible reasons for this shift in immigration policy. One of the reasons might be domestic pressure to secure the votes of working-class people, who were dissatisfied with the party's previous liberal approach towards immigration and many of whom shifted their political allegiance to the anti-immigration Danish People's Party. Historically, Social Democrats have always relied upon the support of the workers; thus, it can be argued that there exist deep-seated historical foundations upon which society is constructed and upon which institutions make their decisions.

Other reasons might be related to the effects of globalisation and interdependence, which prompted the global movement of people, particularly the movement of people from the developing Global South to the developed Global North. According to Betts and Crisp, the same processes that have prompted these migrations have led the developed states to obstruct such movements through regime shifting, where developed states use new institutions to get around responsibilities toward refugees. This might suggest that Denmark's externalisation policy approach results from interconnected global factors rather than domestic realities.

Whatever it was that influenced the Danish Social Democrats' immigration policy has consequently set in motion the development of policy legislation that led to the creation of Bill L 226. The case of this legislative amendment showcases the difficulty of creating and implementing a public policy that is radically different from the established norms and has no international support.

Danish decision-makers had to consider the requirements of the 1951 Convention and the European Convention on Human Rights, which Denmark is legally obliged to follow. These factors made this attempt at regime shifting challenging to pull off right from the beginning. During the policy formation stage, several European leaders dismissed this policy proposal outright, and Danish policymakers made only limited legal considerations alongside vague suggestions on how the policy was supposed to work. As a result, Bill L 226 legislation contains numerous significant legal issues that remain unsettled at domestic, EU and international levels. These legal issues, combined with a lack of support from any third state willing to engage in an asylum transfer agreement, indicate that this asylum seekers' transfer policy has failed. However, to this day, Danish policymakers have made no effort to evaluate and reconceptualise this policy. This indicates that they are either unwilling to admit failure or are waiting for the global situation to change, as perhaps externalisation policies will gain ground in the future.

With all these considerations in mind, it can be concluded that through Bill L 226 legislation, the Danish government attempts to address the problem of asylum seekers through externalisation policies that have not produced any concrete results yet. However, given that this government is both consciously and continuously following through with its established immigration policy, all indicates that this legislative amendment will not be revoked just yet.

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