

Are we participating collectively in the violation of human rights?

**Constructing Legal Discourse at the UN Security Council Related to
Refugee Crisis and Refusal of Countries to Enter Migrants.**

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1. Introduction

It is difficult to pinpoint the exact origin of the migration crisis that is currently engulfing across Europe, but the migrant that fell from the sky on 9th September 2010¹ to enter Europe and later on the images of Aylan Kurdi, a three year old boy washed up on a Turkish beach in 2015² foreshadowed a phenomena of a much larger scale which has shaken European integration at its very center. There is currently a mass movement of millions of refugees and migrants attempting to flee from conflict areas such as Syria, Afghanistan, and Iraq into European countries since 2015³. The *migrant crisis* has generated an excessive level of disruption and disunity in the European Union and its member states as they attempt to handle the situation of ongoing arrivals. However, the crisis is primarily and principally a humanitarian cataclysm of a kind that has not been witnessed by Europe since the 1930s and 1940s⁴. Images from Greece and Turkey portray the magnitude and enormity of the human costs related to the crisis which is growing at a drastic rate even at the time of this writing⁵. This paper proposes to argue that this particular humanitarian crisis and the methods with which EU member states are dealing with the situation points to collectively violating human rights.

The collective violation of such human rights for migrants and refugees stems from deeply embedded and unresolved issues in the governance of the EU. As the EU and its members states are struggling with it pressure of mass migration of displaced persons, the treatment of these refugees and migrants exposes what can only be seen as the calamity of core European values. The treatment of such people exposes not only the shortcomings in the implementation of European fundamental rights but also of humanitarian law, international human rights, and EU's neighbourhood policy.

¹ "Heathrow Stowaway Who Fell to Death Identified as Mozambican Migrant | World News | The Guardian" <<https://www.theguardian.com/world/2016/jan/10/heathrow-stowaway-who-fell-to-death-identified-as-mozambican-migrant>> accessed November 22, 2016.

² "Image of Drowned Syrian Boy Echoes Around World - WSJ" <<http://www.wsj.com/articles/image-of-syrian-boy-washed-up-on-beach-hits-hard-1441282847>> accessed November 22, 2016.

³ Eurostat, "Asylum Quarterly Report - Statistics Explained" <http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report> accessed November 22, 2016.

⁴ Justin Borg-Barthet and Carole Lyons, "The European Union Migration Crisis" (2016) 20 *Edinburgh Law Review* 230.

⁵ United Nations High Commissioner for Refugees ("UNHCR"), *Refugees/Migrants Emergency Response-Mediterranean (20 November 2016)* <<http://data.unhcr.org/mediterranean/country.php?id=83>> accessed November 21, 2016.

2. Central Research Questions

The migrant crisis in Europe is ongoing and will continue to grow until and unless policy measures are taken by the EU and the United Nations General Council in addition to the UN Security Council playing a more active role in the crisis and its root cause. Therefore, the major research questions that arise include the following;

Is the International community, specifically the EU and UK, collectively participating in the violation of human rights against refugees?

Subsequent questions that build up on the main research question are;

1. Are the measures implemented by EU member states and UK governments which limit the movement of refugees legal?
2. What is the distinction between refugees and migrants? What term is best to describe the individuals involved in the mass movement in to the EU and UK?
3. Do “migrant caps” violate international law?
4. What is the impact of interpretations of Article 33 of the 1951 Refugee Convention⁶ in terms of refugee rights and protection against refoulement⁷?
5. How can the UN Security Council play an active role both enforcing international law protecting refugees while also resolving the root cause of the issue leading to the migrant crisis?
6. How can legal discourse be developed with the UN Security Council to tackle the issues of refusal of refugees to EU countries?

3. Proposed Methodologies

The proposed research aims to follow the characteristics of Descriptive study methodology. This method of research aims to describe accurately a given phenomenon and to determine associations

⁶ Duncan Sim, “Experiences of ‘Post-Status’ Refugees: Evidence from Glasgow” (2012) 79 (First Serie Scottish Affairs 82.

⁷ Nikola Stojanovic, “Crisis in the Mediterranean Neighbourhood: A Test for the European Union Migration Policy” (2015) 67 Medjunarodni problemi 328

between different dimensions of the phenomena⁸. A descriptive study is concerned with describing the characteristics of a specific individual or phenomenon with the aim of detailed description of the different aspects of it⁹. It is often defined as a fact-finding study that is coupled with adequate interpretation using presupposed prior knowledge of the issues that are being investigated.

The method of conducting legal research is also implemented to conduct the proposed study this includes the following steps¹⁰;

1. Preliminary Analysis¹¹
2. Investigation of Secondary Sources
3. Locating and Analysing Primary Authorities
4. Interpretations of Sources

3.1 Principle Issues: Ethical, Moral, and Legal Issues

One of the main ethical issues that arise from the refugee crisis is the moral obligation of developed countries in accepting refugees. The current study aims to analyse this moral obligation using deontological ethics and the United Nations Convention Relations to the Status of Refugees (1951)¹². The Refugee convention sets up two normative obligations for states:

1. Obligations related to actions required by the states when asylum seekers arrive on their territory¹³.
2. Obligations towards refugees who have fled home countries and are currently residing in refugee camps or informal settlements¹⁴.

Based on preliminary review of available literature there is an asymmetrical view of the two sets of obligations in that the former is stronger and widely recognized than the latter. This is due to the fact that signatories of the Refugee Convention have no obligation to fund the protection of

⁸ CG Wren and JR Wren, "Teaching of Legal Research, The" [1988] Law Libr. J.

⁹ L Sossin, "Discourse Politics: Legal Research and Writing's Search for a Pedagogy of Its Own" [1994] New Eng. L. Rev.

¹⁰ C Alexander and AJ Burke, "How to Locate Educational Information and Data"

¹¹ CG Wren and JR Wren, "Teaching of Legal Research, The" [1988] Law Libr. J.

¹² Resolution 2198 (XXI), United Nations General Assembly

¹³ Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (reprint, Cambridge University Press 2008) p. 125

¹⁴ *Ibid.* p. 126

refugees and any contribution to the issue are considered strictly voluntary¹⁵. This voluntary stance needs to be analysed based on international law and ethical theories such as deontology to comprehend how this stance is leading to the collective violation of human rights which have been defined and legally agreed upon. There is also the absence of moral and legal obligations to refugees that reach EU states in terms of discrepancies arising from *burden sharing*¹⁶. Burden sharing refers to the Global South¹⁷ playing a larger role in hosting refugees than compared to Western democracies who are responsible of largely funding this scheme in which 87 per cent of refugees are hosted in the Global South while less than one per cent of refugees are resettled in Western countries¹⁸. Lastly, there is no morally or legally accepted obligation to resettle refugees with a majority remaining in protracted refugee situations in the Global South, primarily in long term encampment which is has turned into a *de facto* solution to the global refugee crises.

3.2 Theories

The proposed study can be defined as one that is interdisciplinary in terms of combining international law with political science, international relations, and human rights to explore and discuss the current issues that are being faced under the refugee crisis. Theories associated with political science and international relations give rise to four main schools of thought including; realism, liberalism, institutionalism, and constructivism¹⁹. These four mains schools examine through an interdisciplinary approach the content of legal rules and institutions in order to explain the origins of legal institutions and their effectiveness. The methods have resulted in legal scholars reconceptualising international law in a more general perspective.

The proposed study uses theories of international legal process to conducted research and answer the developed research questions. The classical international legal process is the method of

¹⁵ Anna Sergeevna Matveevskaya, "Modern Trends of European Union's Migration Policy" (2016) 0 Krasnoyarsk Science 29.

¹⁶ Sergio Carrera, Leonhard D Hertog and Joanna Parkin, "EU Migration Policy in the Wake of the Arab Spring: What Prospects for EU-Southern Mediterranean Relations?" <https://www.researchgate.net/publication/256031941_EU_Migration_Policy_in_the_Wake_of_the_Arab_Spring_What_Prospects_for_EU-Southern_Mediterranean_Relations>.

¹⁷ Reference to countries of the rest of the world mostly located in the Southern Hemisphere, such as Turkey which holds the largest refugee population as of 2016.

¹⁸ Yasin Kerem Gumus, "What Explains Differences in Countries' Migration Policies?" (2016) 4 International Journal of Research in Business and Social Science (2147-4478) 51.

¹⁹ J Samue Barkin, "Realist Constructivism" (2003) 5 International Studies Review 325.

studying how international law is practically applied, functions with international policy, and the study of how international law can be improved. According to O’Connell (1999)²⁰, classical International Legal Process “concentrates not so much on the exposition of rules and their content as on how international legal rules are actually used by makers of foreign policy”. This particular theory is also used to measure the extent to which individuals are held accountable for abuses in international conflicts.

The proposed study will base its premises on most heavily liberalism, the school of thought which revolves around three interrelated principles;

1. Rejection of power politics as the only possible result of internal relations while also questioning principles of realism especially in terms of security and warfare²¹.
2. Emphasize mutual benefits and international cooperation²².
3. Uses international organisations and non-governmental actors for shaping state preferences and policy choices²³.

Under this thought, international institutions such as UN Security Council, a primary component for the current study; plays a key role in cooperation among states.

The current study will also implement the theory of institutional liberalism to formulate arguments. This modern theory of international relations claims that international institutions such as United Nations and European Union can increase and aid cooperation between states²⁴. Using this theory states will be treated as rational actors operating in an international political system which no hierarchy is enforced.

²⁰ Ibid. p. 326

²¹ M La Caze, “At the Intersection: Kant, Derrida, and the Relation Between Ethics and Politics” (2007) 35 Political theory 781.

²² Ibid. p. 781

²³ Ibid. p. 782

²⁴ Ibid. p. 782

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