CLAIMS OF HUMAN RIGHTS PROTECTION

Analyzing the understandings behind migration policy in the EU

Peter Eleveld

ABSTRACT

This thesis aims to uncover how, through the common discourse, human rights violations occur in the European Union when it claims to protect and promote human rights. More specifically the question is asked in what way different understandings on human rights and sovereignty as they are held by the European Commission influence the discourse on migration in the EU. By performing this research, the thesis fills the scholarly gap in the research on migration policy-making by analyzing how different preferential stances of member states are informed through the discourse that is promulgated by the Commission. The thesis departs from an exploration of four different positions on human rights protection and sovereignty that serve as ideal types with which the discourse on the Commission can be measured. By employing Critical Discourse Analysis, several communication documents and speeches by the Commission, divided in three time periods, the thesis finds that the Commission is consistent in its approach to human rights protection to refugees fleeing persecution in the early 2000s and that a common policy is desired to secure this. From 2008 onwards, the Commission maintains an inconsistent discourse with a tension between giving human rights protection to those fleeing from a lack of securing their basic rights and only those fleeing persecution, and what the role of the EU should be in securing human rights protection. This has left the space for member states to focus on their own sovereignty as a priority above human rights protection.

TABLE OF CONTENTS

1. INTRODUCTION

1.1 EUROPEAN MIGRATION POLICY

Migration policy is one of the most sensitive topics of debate between European Union (EU) member states. This topic severely affects the control over a state's own borders, and therefore touches upon its core sovereignty. The EU has tried to shape a common migration policy for many years that lives up to the image of the EU as a human rights protector. The policy framework regarding immigration to member states should prevent negative effects from happening and ensure a smooth process of determining whether a migrant should be returned to their home country or given asylum. However, the framework is not living up to expectations.

Much attention has already been given to how the EU is failing to uphold certain humanitarian norms in practice that it claims to protect and value in its utterances.[1] An observable effect of this failure is the deplorable state under which many immigrants are detained within member states where human rights are not implemented to the effect that people in need of them are protected against violations. Considerable critique has been uttered not only on this way of handling migration, but also on how an increasing influx of migrants into member states is shaping motivations for detaining a considerable amount of them.

Following this critique, this thesis aims to contribute to the understanding of why certain cases of human rights violations can endure in an environment that claims to promote human rights.

The detention of migrants is allowed, according to European immigration policy, when they are subject to removal from the territory of a member state[2]. However, this detention should only be used as a last resort since it entails the deprivation of liberty of a person, which is in conflict with human rights norms. Even though this last resort principle is in place, the practice of this immigration policy shows that immigration detention is a very common practice, that often leads to serious mental harm.[3]

Studies on the practices inside member states' detention centers range from detailed control of everyday activities, to separating someone from their group and breaking down their identity. Through such practices migrants often become vulnerable to mental health problems and

---

[1] See Mink, 2012
[2] European Union: Council of the European Union, 2008
[3] Basilien-Gainche, 2015, p. 110, 118

posttraumatic stress.[4] Moreover, instances of physical brutality exacerbate the already progressive worsening of detainees' conditions.[5] It is argued that through such intrusive practice many migrants internalize an 'illegal' identity that remains with them even when they are no longer detained. The circular logic that this reveals is that through suspicions of illegality migrants actually produce their 'illegality'.[6]

Besides the mental and physical effects that immigration detention has on those subjected to it, studies have shown that in many respects immigration detention actually provides fewer legal safeguards than ordinary prisoners are given. Because undocumented migrants have an unestablished legal status, they are often not serving a specified sentence, their access to legal resources is severely limited, they often lack the possibility to be released on bail, and through all of this frequently become demotivated to fight their deportation out of an expectation that they cannot win.[7]

It has been alluded to that more than simply controlling the borders, immigration detention has a more complex function for the member state. According to Leerkes and Broeders immigration detention can be divided into three distinct functions: 1) deterring other migrants from attempting to enter, 2) rehabilitate previous offenders, and 3) incapacitate migrants to remove dangerous individuals from society.[8] They argue that the focus tends to lie on using immigration detention "to regulate the more abstract *social unrest* regarding unwanted migration".[9] These motivations are not explicitly expressed by member states. Instead, instances of immigration detention are often justified as security-driven, sacrificing some human rights in the struggle against terrorism.[10]

1.2 AIM AND RESEARCH QUESTION

The importance of human rights appears to take a backseat to the control of a state's borders and thereby preserving its sovereignty over its territory. Even though studies have been conducted on negotiating processes in the making of immigration policy, the preferential stance of both the member states and the supranational institutions of the EU has generally been taken

---

[4] McLoughlin and Warin, 2008, p. 261; Cornelisse, 2010, p. 3-4
[5] Silverman and Massa, 2012, p. 678
[6] Mountz et al., 2012, p. 527
[7] Coutin, 2010, p. 204
[8] Leerkes and Broeders, 2010, p. 832
[9] Leerkes and Broeders, 2010, p. 842 (original emphasis)
[10] Pirjola, 2009, p. 353

for granted. This thesis aims to fill this scholarly gap by looking into the discourse on human rights protection and sovereignty and identify the assumptions that are held by the European Commission and categorize them according to specific positions. These can then be used to analyze how the Commission influences the actions of the member states.

In order to do this, I proceed by posing the following main research question and subquestions:

Research Question: What do the discourses of the European Commission reveal about their positions on sovereignty and human rights protection?

Subquestion 1:   How do the positions held by the European Commission influence the power and actions of member states?

Subquestion 2:   How has the discourse surrounding key events influenced the European Commission's positions on sovereignty and human rights protection?

1.3 OUTLINE

In order to provide a substantial analysis and ultimately answer the research question the previous research on the discourse surrounding migration policy is briefly discussed in chapter two. This mainly goes into the question of how migration received connotations of being a security threat and causing economic and societal instability. An important and controversial piece of legislation called the Returns Directive has received much scholarly attention and has been integrated in the previous research section. After this section the conceptual framework is introduced and presented in chapter three. This is the theory that is the starting point for the analysis section. The framework consists of four different positions regarding the discourse on human rights protection and sovereignty that should be considered as ideal types, meaning they many not accurately describe the positions that are brought forward but are theoretically distinct in their assumptions, and therefore provide good means for measuring the discourses that may be present in the objects of analysis. The method that is used to apply these positions in the analysis is described in chapter four. Critical Discourse Analysis is explained and put in the context of this thesis. The material that is analyzed is presented together with a description of the more specific process of the analysis. The way the positions that are described in the conceptual framework might combine and result in possible tensions is presented in a table for clarity. Finally, a discussion on how to assure the quality of the thesis is presented in this

chapter. Upon this follows the actual analysis of the thesis in chapter five. The analysis is divided in three different time periods with tentative results in the form of a discussion after each section. The results for the entire period are followed after. The conclusion to the thesis is given at the end in chapter six in which the research question is answered together with some suggestions for possible future research.

2. PREVIOUS RESEARCH

2.1 SECURITIZATION AND CRIMINALIZATION OF MIGRATION

Before delving into studies regarding the policy implications in the EU surrounding migration, it is important to consider the common discourse on this topic in the European context. An influential article written by Huysmans identifies the development of migration into a security issue.[11] He explains that ever since the 1980s migration has been presented as "a danger to public order, cultural identity, and domestic and labour market stability."[12] This representation of migration did not just happen on the member state level. The EU is complicit in this by creating policies that support "welfare chauvinism and the idea of cultural homogeneity as a stabilizing factor."[13] Migration automatically receives connotations as a destabilizing factor, added to the already existing challenges to the welfare state and societal integration brought about by the 2008 economic crisis. The opening up of the internal market has increased fears of migration, predominantly by Western European welfare states, as it allowed for the free movement of people inside the EU.

This securitization of migration has had direct effects on legislation concerning immigration by Third-Country-Nationals into the EU. As Majcher notes, there is a "tendency of formally administrative infractions to be included in criminal law."[14] This tendency is characterized by the formal criminalization of immigration-related violations, and the use of measures that are commonly associated with criminal law enforcement, such as detention.[15] Even though these measures are defined in EU directives and therefore making them legal, they often lead to consequences that are in contrast with human rights norms that the EU has ascribed to, such as automatic detention of non-criminals which is strictly forbidden according the Universal Declaration of Human Rights.[16]

The presentation of migration as a security issue is remarkable considering the EU's often proclaimed normative stance on freedom of movement and human rights. According to a study by Lindstrøm, in which she charts the history of European migration in three phases, this

---

[11] Huysmans, 2000
[12] Huysmans, 2000, p. 752
[13] Huysmans, 2000, p. 753
[14] Majcher, 2013b, p. 3
[15] Majcher, 2013b, p. 3
[16] Majcher, 2013a, p. 24; UN General Assembly, 1948

tendency is quite recent.[17] The first phase is characterized by the massive recruitment of 'low-skilled' workers from southern European countries to the northern ones. In the second phase the families of the earlier migrants were reunited, and finally in the third phase an increase of asylum migration followed the 1991 collapse of the Soviet Union.[18] European migration has shifted from being considered by Western European countries as economic, political or ideological assets, to asylum-seekers in need of humanitarian assistance and protection, to eventually a threat to the welfare distribution and the existing social order.[19] Lindstrøm states that this notion has led to "a fundamentally exclusive and defensive approach to European security."[20] She furthermore claims that restrictive policies on migration are mostly a result of domestic political goals and bureaucratic processes, instead of European or international legal standards.[21] It appears then that European migration policy is mostly influenced by member states pursuing their own domestic policy objectives. EU measures intended to address the root causes of asylum migration have given way to containment measures once asylum migration is already underway, as a response to perceived democratic pressures in member states.[22]

Van Houtum and Pijpers argue that the restrictive immigration policy is mainly a product of fear. They call it "the fear of losing the comfort zone", which means "losing economic welfare, public security as well as social identity."[23] This is most exemplified by the EU's selective process of attracting economically valuable migrants and rejecting allegedly market-redundant migrants.[24] Together with this economic logic is an increasing desire to protect the perceived 'pure national identity'. The world outside of the EU is constructed as a collective identity of "chaos and darkness", opposed to the EU as a "self-claimed illuminated, enlightened beacon."[25] Much is implicitly considered acceptable in keeping the comfort zone safe. Those who try to find work or shelter in the EU are criminalized, and "their deaths are implicitly seen as the 'collateral damage' of a combat against illegal migration."[26] Van Houtum and Pijpers liken the EU's Internal Market ideology to what is advertised in gated communities. They both tend to focus on the accommodation of wealth and their "resistant, antagonistic and hostile practices to the mobile Other, especially the deprived ones such as fugitives, gypsies, migrants,

---

[17] Lindstrøm, 2005, p. 589
[18] Lindstrøm, 2005, p. 589
[19] Lindstrøm, 2005, p. 589
[20] Lindstrøm, 2005, p. 589
[21] Lindstrøm, 2005, p. 591
[22] Lindstrøm, 2005, p. 594, 588
[23] Van Houtum and Pijpers, 2007, p. 292
[24] Van Houtum and Pijpers, 2007, p. 292
[25] Van Houtum and Pijpers, 2007, p. 296
[26] Van Houtum and Pijpers, 2007, p. 299

asylum seekers, and vagrants."[27] Following studies on gated communities, they argue that a sense of community is significantly lower the more borders are closed, and social bonds between insiders and outsiders, as well as between insiders themselves, are lost.[28]

Even though member states and the EU as a whole seem to favor a restrictive approach to immigration, there is a long road to be taken before this actually becomes policy. Luedtke assesses the different preferential stances of national governments, the European Commission, Parliament and Court of Justice, in the negotiating processes in the making of a common immigration policy.[29] He states that state authorities seek to define migrants from a country outside the EU as a security threat, while the EU institutions appear more sympathetic to these migrants. The reason for this, Luedtke states, is that members of EU institutions do not face direct electoral pressure in the same way that national officials do, and are therefore free to take a pro-immigrant line.[30] The assumption is made that member states' electoral pressure leads them to a cost-benefit calculus, which generally means that the more salient political topics, such as immigration, entail that there is more to lose than to gain, or vice-versa.[31] The Commission and Parliament can only make slight liberal increases in this policy for fear of a proposal being rejected by state representatives in the European Council.

2.2 IN-DEPTH ANALYSIS OF THE RETURNS DIRECTIVE

One example of this process whereby more liberal motivations clash with the restrictive tendencies towards immigrants is the realization of the Returns Directive in 2008.[32] This directive, which sets out common standards and procedures in the member states for returning irregularly staying third country nationals, has been much negotiated between the European Parliament, the Council, and the Commission. The proposal was originally drafted by the Commission and was sent to both the Parliament and the Council whereby they would be co-legislators in this process.[33]

Before the Returns Directive there have been several different instruments among the member states that concern irregular migration. However, on the initiative of the Council, a new

---

[27] Van Houtum and Pijpers, 2007, p. 303-304
[28] Van Houtum and Pijpers, 2007, p. 305
[29] Luedtke, 2009
[30] Luedtke, 2009, p. 2
[31] Luedtke, 2009, p. 4
[32] European Union: Council of the European Union, 2008
[33] Acosta, 2009, p. 24

directive was called for in which the need was emphasized "for the establishment of an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity."[34] The Directive that was ultimately agreed on specifically covers the periods of detention, as well as re-entry bans.[35] Detention of immigrants is permitted, according to this Directive, as a tool to prevent absconding while the immigrant is waiting on the decision of expulsion.[36] This part of the Directive has been widely discussed, since it has given way to many member states to impose a stricter detention regime than what was already in place. Moreover, it has been claimed to be going against human rights standards. According to the European Convention on Human Rights, detention "of a person against whom action is being taken with a view to deportation" is allowed under human rights law.[37] But once detention becomes an "arbitrary deprivation of liberty" it is strictly prohibited under the International Covenant on Civil and Political Rights.[38] Majcher states that this is exactly what is happening. She argues that the Directive is using broad terms which fail to "preclude domestic practices amounting to arbitrary detention," and that it "lacks a clear obligation to consider alternatives to detention."[39] According to the UN Human Rights Committee, authorities "should not consider detention a measure to be used regularly and systematically."[40] To prevent this automatic detention, the grounds that justify detention must be clearly defined by legislation.[41] Yet, as Majcher points out, "the Directive neither defines the grounds for detention in an exhaustive manner nor requires states to do so in their domestic legislations."[42] This in turn has led to a deprivation of liberty ordered for the sole reason of irregular status, which has occurred in Luxembourg and the Netherlands.[43] This amounts to automatic detention and is therefore against human rights norms. Moreover, as Baldaccini points out, the conditions in member states' detention facilities are not up to standards, with human rights groups criticizing that "migrants face overcrowding, poor hygiene standards, lack of recreational facilities and little access to information or medical care."[44] Added to those conditions is the fact that the Directive allows for a six-month period of

---

[34] Acosta, 2009, p. 23
[35] Baldaccini, 2009, p. 2
[36] Majcher, 2013a, p. 23
[37] Council of Europe, 1950
[38] UN General Assembly, 1966
[39] Majcher, 2013a, p. 24
[40] Majcher, 2013a, p. 24
[41] Majcher, 2013a, p. 24
[42] Majcher, 2013a, p. 24
[43] Majcher, 2013a, p. 25
[44] Baldaccini, 2009, p. 16

detention, with a possible twelve-month extension. As Baldaccini states, this "is an extreme sanction for people who have committed no criminal offence," but merely to prevent people from absconding while they are waiting on their judgement for expulsion.[45]

Acosta argues that it is because of the procedure leading up to the adoption of the Returns Directive that it became rather more restrictive towards migration detention than originally intended.[46] The Returns Directive was one of the few policy proposals about migration to be adopted by the process of co-decision. This means that the Commission sends a proposal to both the Council and Parliament that act as co-legislators. After a process of negotiating between the three institutions, the final text has to be voted on by a qualified majority in the Council and a majority of members in the Parliament.[47] In this decision-making the Parliament held a more liberal, 'migrant-friendly', approach, generally concerned with international law standards, while the Council mostly holds a more restrictive line when it comes to migration, as member states are reluctant to give up power as they consider border control one of their main sovereignties.[48]

Servent has analyzed the co-decision process for the Returns Directive according to rationalist and constructivist explanations.[49] She argues that, along the line of the rationalist explanation, the Parliament would "prefer a sub-optimal outcome to no agreement at all," because it is more integrationist than the Council.[50] It has therefore given in to the Council, whose members are more driven by national political success, rather than their success inside EU institutions. Council members are therefore far less integrationist than MEPs and have a stronger bargaining position, since no agreement would mean that the member state retains their sovereignty. When approached from a constructivist framework, she found that in co-decision, "the principal norm of behavior is consensus."[51] When a proposal under co-decision has not reached an agreement on the first reading it is considered a failure of trust in the procedure.[52] Those in the Parliament that did not want to alter their stance on the Directive closer to the side of the Council were seen as "outsiders of the process and as irresponsible actors."[53] Ultimately the trust in the

---

[45] Baldaccini, 2009, p. 14
[46] See Acosta, 2009
[47] Acosta, 2009, p. 24
[48] Acosta, 2009, p. 20-21
[49] Servent, 2011
[50] Servent, 2011, p. 6
[51] Servent, 2011, p. 8
[52] Servent, 2011, p. 8
[53] Servent, 2011, p. 15

institutions and the decision-making was deemed more important by political groups in the Parliament than specific policy issues.[54]

What this analysis into the outcome of the Returns Directive shows is how the combination of different preferential stances, and the decision procedure, can lead to an outcome that does not solve the issue that it was deemed to solve, and rather leads to more restrictive measures than was originally intended, even going so far as breaching human rights standards. However, what this research does not show is why different preferential stances are held and seen to be legitimate. To explore why these stances are held an analysis into the assumptions at the basis of them must be performed.

---

[54] Servent, 2011, p. 18

3. CONCEPTUAL FRAMEWORK

3.1 INTRODUCTION

As stated previously, the criticism on the EU's migration policy leaves much to be said about the reasoning behind the different stances that EU institutions and member states take towards the detention of migrants. The EU Parliament appears to adopt a more liberal stance towards refugees and those in need of protection, while member states and their representatives in the Council advocate stronger border control and a strengthening of State sovereignty. An explanation relating to a "fear of the stranger"[55] may go some way in understanding these diverging positions, but a more in-depth analysis into the different assumptions that are held surrounding migration may go to the basis of why these different positions exist and why they lead to the adoption of measures such as migration detention.

Migration detention remains widespread as it occurs in many member states. Even those member states that tend to be more accepting towards refugees still employ the method of detention centers as a way of controlling the borders and exercising their sovereignty. And moreover, as is highlighted in previous studies, the circumstances of such centers often remain poor. Often these conditions are worse than prisons, especially when it comes to access to legal aid. And, as is shown before, it is often used automatically when an undocumented migrant arrives at a border. This automatic detention is expressly forbidden according to the UDHR to which the EU is a signatory.[56] How can something that seems so clearly defined in legal documents still occur within the EU? What follows is a theoretical framework exploring the different positions surrounding human rights protection and sovereignty that can be held by the EU institutions and member states. These positions will serve as the basis for the analysis of this research. Each position involves certain assumptions on who gets to enjoy human rights and its protection, and also on who decided who can cross a border and enter the territory of a state. Often these assumptions are held implicitly, and therefore multiple can be held that may contradict or stand in a tension with each other.

---

[55] See Houtum and Pijpers, 2007
[56] UN General Assembly, 1948

3.2 POSITIONS ON SOVEREIGNTY AND HUMAN RIGHTS PROTECTION

The positions that are described in this chapter are derived from a variety of sources that are gathered together to form identifiable ideal-types of discourse, specifically designed for this thesis. These positions are divided according to positions on sovereignty and positions on human rights protection. Even though they are distinguished in this way these positions also relate to each other, meaning that a position on sovereignty can be determined by a position on human rights protection and vice versa.

Positions on sovereignty:

- Statism;
- Universalism.

Positions on human rights protection:

- Persecutionism;
- Humanitarianism.

3.2.1 STATISM

The position of Statism relies on the assumption that rights are only enjoyed within a bounded state, and that it is the right of the sovereign to control who enters the state.[57] It is important to understand the specific form of sovereignty in this context. Sovereignty is often directly linked to a state and its territory. This means that the control of a state's borders and the access to its territory is dependent on the decision of the sovereign power. This also means that people can fall outside of any state and consequently not have "the right to have rights", as Hannah Arendt stated.[58] When one is outside of any state, or stateless, such as is the case for many refugees, one cannot make a claim for the protection of their human rights.

Although this linkage between sovereignty and territory seems natural, it has not always been this way. A time in which sovereignty, or power, was not related to territory, was Europe during the Middle Ages.[59] Different territorial entities would overlap each other, and power structures were more complex and hierarchical than today. Political power was instead characterized by personal relations, and they could be many. It was only towards the end of the medieval period

---

[57] Costello, 2012, p. 261
[58] Arendt, 1973
[59] Cornelisse, 2010, p. 35

that power and territory would be consolidated under one supreme ruler, the sovereign.[60] A historical event further laid the groundwork for the demarcation of sovereign rule. The signing of peace treaties at the end of both the Thirty Years' War and the Eighty Years' War in 1648 is known as the Peace of Westphalia and this led to the conception of state sovereignty. State sovereignty means that the state has sovereignty over its territory and that other states are not allowed to interfere with that sovereignty.

With this historical analysis we arrive at a definition of Statism as follows:

Statism is the position that holds that the state has sovereignty over its territory and decides who gets admission into its territory. A person only gets to enjoy human rights when they are a citizen of the state. In this way human rights function similarly to civil rights, in the sense that someone first needs to be acknowledged as a legal person and can then claim human rights protection.

The consequence of this position is that human rights are far from universal. One needs to be part of a political community to be able to claim human rights protection. When one is no longer part of a political community with its legal institutions, one has no immediate way of having their human rights protected.[61] This also means that, contrary to what human rights presuppose, "merely being human is not enough to ensure human rights protection."[62] The simple existence of human rights is therefore not enough to protect a considerable amount of people that are stuck between two states: immigrants in detention centers and refugee camps, and those being persecuted by their own state. Consequently, inside these centers and camps there is little to protect the inhabitants from human rights violations. When the sovereignty of the state demands that people will not be allowed to become citizens then these stateless people have no way to protect themselves from human rights abuses.

3.2.2 UNIVERSALISM

The often-mentioned notion of human rights as the rights someone has by virtue of being human, is exemplary for the position of Universalism. Whereas today we might think of human rights as something that has always been the priority of nations and many organizations, talk

---

[60] Cornelisse, 2010, p. 36
[61] Lechte and Newman, 2012, p. 523
[62] Lechte and Newman, 2012, p. 523, 524

of human rights is actually a rather recent phenomenon. It was only rarely used before the 1940s, and there were no international organizations at the time defining themselves as human rights protectors.[63] In the eighteenth century civil rights were seen as distinct from political rights, whereas today they are often grouped together distinguished from social and cultural rights.[64] Not all people in a nation are given political rights, for example women were not given the right to vote or hold elected office in many parts of Europe in the early 20th century, and the same generally still goes for underage people. Under which category human rights fall is often differently stated in different local and political contexts.[65] To combat these different interpretations of human rights, international organizations took on the task of protecting a singular interpretation of human rights in international law. Most notable in this effort is the Universal Declaration of Human Rights of 1948 by the United Nations.[66] Other major Western human rights organizations soon followed by devoting themselves to "combating appalling abuses of civil and political rights around the globe."[67]

With this example in mind the following definition of Universalism can be given:

Universalism is the position that holds that everyone, regardless of whether they are a legal citizen or where they reside, has human rights and deserves to be given protection on that basis. Human rights are enjoyed by the virtue of being human. They are universal norms and do not need to be stated in law for them to be valid. Even when one is legally unknowable their human rights should take priority.

The consequence of this position is that human rights take precedence over state sovereignty. If this position were to be held consistently states should give everyone human rights protection when they are in need of it, even if they are outside the borders of the state that they address with their claim. This means that borders would need to be very open if that is the most effective way of securing someone's human rights and will place a big demand on states to determine which migrants are in need of human rights protection and which are not. A solution to this would be to either let everyone through the borders, regardless of whether they are in need of human rights protection, or to have a strong control over the borders to distinguish the two

---

[63] Cmiel, 2004, p. 117
[64] Cmiel, 2004, p. 122
[65] Cmiel, 2004, p. 126
[66] Cmiel, 2004, p. 129; UN General Assembly, 1948
[67] Cmiel, 2004, p. 130

groups. However, the latter option could lead to long waiting times for migrants and a potential inability to provide human rights protection on time for those who need it.

3.2.3 PERSECUTIONISM

The position of Persecutionism deals with assumptions as to when someone should be given human rights and what the role of sovereignty is in this regard. The assumptions in this position are derived from a theory of the relation of the state to its citizens, called the Social Contract theory.

Ever since the Middle Ages political thinking about sovereignty ranged from arguing that the preservation and continuance of the state is the aim of politics, according to Machiavelli, to sovereign power being in the interest of, and belonging to, the people, constrained by laws of the political community.[68] Hobbes introduced the concept of the State of Nature to analyze why a sovereign is considered necessary in the first place. A State of Nature constitutes a moment prior to the formation of a political community. In this state there are no natural rights and, caused by instincts of self-preservation and a will to power, people are in a constant war with each other. Because of this unstable situation, he argues that people will come together to surrender their rights to one supreme ruler who has the exclusive control over all violence to establish order between people.[69] The goal of this account of sovereignty is the preservation of people's lives, but whereas before Hobbes the sovereign would do this through the power to make law, now it is understood as through "the exclusive control over coercive force."[70] Crucial to this account is that "the state united the ruler and the ruled."[71] This means that there is a clear demarcation over who belongs to the political community and who does not. This idea is otherwise known as the Social Contract theory.

This position ties the people to a state. It should be noted that this is a distinctly liberal notion of sovereignty, suggesting that people voluntarily form a contract with the state. People are therefore free, in theory, to dissolve this contract if it is no longer in their interest. This also means that the state can hold no dominion over the people that is without their consent. The inability of the state to restrict certain freedoms that the people cannot reasonably be expected to consent to is the presupposed basis of the modern liberal democratic state, according to this model of Sovereignty. This bears close connection to the way human rights are framed in this

---

[68] Cornelisse, 2010, p. 36-38; see Machiavelli, 1987; see Allen, 1967
[69] Hobbes, 1994, p. 80
[70] Cornelisse, 2010, p. 40
[71] Cornelisse, 2010, p. 40

model as primarily civil and political rights. When a state violates the human rights of its citizens it has breached the social contract, and those citizens are then in need of human rights protection. This leads to the following definition of the Persecutionist model:

Persecutionism holds that a person is in need of human rights protection when a state is actively violating the human rights of its citizens. This can be thought of as a breach of the social contract by the state, resulting in the citizen and the state being in a State of Nature-relation with each other.

A clear example of this position is the United Nations Refugee Convention.[72] In this convention a refugee is defined as someone facing a well-founded fear of persecution. This shows the assumption that when this fear is not present, the state should be able to protect anyone's human rights. Human rights are only in danger when the state is persecuting a citizen. State and population are tied together in this model.

This kind of thinking is revealed in the reasoning behind passports. People are tied to a state, so what happens when people move between the territories of different states? In Europe it is, and has been for a long time, the prerogative of the state to regulate movement away from the state's territory by its people.[73] Ever since medieval times denying people to freely leave a state was considered a deprivation of liberty.[74] The only times when this liberty could be restricted was in times of war. During peaceful times having a power to control who leaves was not considered, since "it was assumed that a subject could always be recalled to his duties to his King."[75] It was only when people, territory and sovereignty became linked that the right to leave started to face heavy restrictions. In this time "population was considered a scarce economic and military resource," and therefore emigration was largely prohibited.[76] When social contract theory became predominant however, the right to leave started to become considered as one of the voluntary agreements one makes with the sovereign, and therefore one should be able to leave the political community by their own choosing.[77] In the early 20th century passports started to be used as a requirement to lawfully leave the country. The state's interest came once more to the foreground when factors such as economic strength started to

---

[72] UN General Assembly, 1951
[73] Cornelisse, 2010, p. 136
[74] Cornelisse, 2010, p. 137
[75] Cornelisse, 2010, p. 138
[76] Cornelisse, 2010, p. 138
[77] Cornelisse, 2010, p. 139

play a major role in the authority's decision on who is permitted to leave. Especially after the fall of the Soviet Union many Eastern European countries denied their citizens the right to leave, because they were afraid many would choose to go to Western Europe, leaving the country without enough people to sustain their economy.

The right to leave any country is now laid down in international human rights treaties. This right involves both nationals and non-nationals. To exercise this right one needs a passport issued by the state of nationality, and the state of residence is under the obligation not to deny someone to leave.[78] The obligation by the state of residence may only be given up under special circumstances judged on a case by case basis.

3.2.4 HUMANITARIANISM

The following approach to human rights and who gets to cross a border and be granted protection goes back to the basic foundations of protecting others. According to Betts, the obligation to protect those in need stems from the basic assumption that we have "ethical commitments to others."[79] In essence, this means that there are certain things we recognize we should always be doing in our relation to others, such as helping someone who is in need. In the context of refugees there are diverging theories on why they should be protected. This ranges from acknowledging that there is a "common humanity" between refugees and 'us', to "basic democratic values of freedom and equality", living in a transnational world where everyone is complicit in the suffering of others, no matter where this takes place, or to simply recognize that refugee protection is a "global public good."[80] What all these theories have in common is that they place a demand on those who are able that they protect those in need. With this ethical principle Betts claims that the Refugee Convention does not go far enough in ensuring that those who are able actually do protect those in need. He claims that the definition of refugees as those fleeing a well-founded fear of persecution, is out of touch with more current causes for fleeing. "Environmental change, state fragility, and food insecurity" are increasingly pushing people away from their homes.[81] Betts argues that those people that deserve the right to seek asylum should be defined as "people who are outside their territory of

---

[78] Cornelisse, 2010, p. 148
[79] Betts, 2015, p. 364
[80] Betts, 2015, p. 365-366; See Suhrke, 1998
[81] Betts, 2015, p. 368; Shacknove, 1985, p. 276

origin as a result of their country's inability to ensure their most fundamental human rights."[82] With this definition, not only are those fleeing from civil and political rights violations included, but also those fleeing from social and economic deprivations. It is important to note that all four of these rights violations risk the enjoyment of the following basic rights that are needed to enjoy any other rights: basic liberty, basic security, and basic subsistence.[83]

This approach to asylum and human rights protection can be defined as follows:

Humanitarianism holds that a person needs human rights protection and be given asylum when a state is unable to ensure its citizens their most fundamental human rights. This includes those fleeing from civil rights violations, and social and economic rights deprivations. All these violations risk the enjoyment of basic liberty, basic security, and basic subsistence.

This view on asylum and human rights protection is gaining traction in the contemporary debate because it places the focus of protection primarily on those who need it: deprived citizens.

At first glance this position seems to do away with the Convention requirement of persecution. Persecution is perhaps most commonly defined as "serious harm that is inflicted or tolerated by official agents for illegitimate reasons."[84] Serious harm would only consist of harm that meets a threshold of seriousness, that has to be decided upon by judges. The legitimacy of causing harm could be informed by the so-called 'nexus clause', which defines persecution to be harmful when they are "for reasons of race, religion, nationality, membership of a particular social group, or political opinion."[85] Price argues that the 'anti-brutality' norm should be added to this conception of legitimacy. This norm conveys that "some harms are so serious that their infliction for any reason is inconsistent with the presumption of legitimacy."[86] In this case, the presumption of legitimacy is the assumption that governments exercise power with the consent of their citizens.[87] With this anti-brutality norm in mind, the persecution requirement of the Refugee Convention could have its definition changed to encompass any "serious harm against which the state is unable, or unwilling, to provide protection."[88] With this altered definition the convention would be more in line with the Humanitarian Approach to asylum and human rights protection.

---

[82] Betts, 2015, p. 369
[83] Shue, 1996
[84] Price, 2009, p. 107
[85] Price, 2009, p. 109
[86] Price, 2009, p. 110
[87] Price, 2009, p. 105
[88] Price, 2009, p. 104

4. METHOD

4.1 CRITICAL DISCOURSE ANALYSIS

In order to analyze the positions that are being held in the discourse surrounding migrants and refugees in Europe, several documents have undergone a Critical Discourse Analysis (CDA). The documents that are analyzed are listed after an explanation of the method that is used.

In a general sense, CDA, according to Fairclough, aims to understand how human well-being and flourishing is prevented or limited through the predominant discourses that are in place. [89] It is therefore inherently a critique on current practices, mostly practices of the state. In the context of this thesis CDA is used to disclose the way in which different contentions on sovereignty and human rights are represented in texts. For the purpose of this thesis the analysis departs from a critical position on how the various governments in the European Union are dealing with the protection of human rights of refugees and migrants from outside the EU. This method questions the supposed legitimacy that the state relies on. It argues that often what state power does is influence the common discourse in such a way that it actually normalizes the practices of the state that otherwise could be questioned in its normative presuppositions. In this way social wrongs are actually perpetuated by society. Aside from giving a negative critique, CDA aims to give a positive critique in the form of identifying possibilities for righting the wrongs.[90]

As an example of this negative critique in the current case, power relations in many societies across Europe could contribute to the treatment of immigrants as a threat to the societal stability, and therefore many are prevented from crossing the border into a state or from being given asylum.

As alluded to above, CDA aims to analyze "ways in which discourse is internalized in power and power is internalized in discourse."[91] The two are diffuse and influence each other. To uncover the way discourse is influenced by power, a theory of power needs to already be present, hence the aforementioned models on human rights protection and sovereignty as stated in the theory section of this thesis. Vice versa, to uncover the way power is legitimated through discourse an idea on the discourse present needs to be given. This method of analyzing is a "theory-driven process of constructing objects of research."[92]

---

[89] Fairclough, 2013, p. 2
[90] Fairclough, 2013, p. 7
[91] Fairclough, 2013, p. 6
[92] Fairclough, 2013, p. 5

Discourse is the most central aspect of this type of analysis. It is difficult to identify a specific discourse. A discourse can be analyzed by looking at meaning and meaning-making processes in social life.[93] The relations between meaning and the making of meaning are dialectical in the sense that they are not fully distinguishable from each other. Both are informed and influenced by each other. If power and discourse are taken to represent respectively meaning-making and meaning, then we can argue that one sustains the other, they are standing in a dialectic relationship with each other.[94] The analysis focuses on the internal relations between the two, between the dominant discourse and the power that acts according to the discourse.

The way that 'the power' acts can be analyzed through the strategies that it uses. A strategy can be identified through looking at the emergence of discourses; following how these are brought into dialogue and contestation with each other; how certain discourses can become dominant; and how they are operationalized as strategies and implemented.[95]

In order to identify the emergence of discourses, policy documents that aim to solve the same policy gap but at different points in time are compared in their discourse to each other. The dominant discourse that is identified is compared to the common practice in immigration regulation which is the starting point of this thesis. In this way a link can be established between the common discourse and the common practice.

4.2 MATERIAL

The European Commission is selected as the main actor in the discourse surrounding human rights protection and sovereignty in regard to refugees and migrants. Thus the objects of analysis for this thesis are documents and speeches by the European Commission. In the process of shaping policy in the EU the Commission is the point of departure for concrete legislative proposals, that are then communicated to the Council and Parliament. These communication documents are selected as representing the 'internal dimension' of the discourse within the EU institutions. This dimension is distinct from the 'external dimension', which is represented in this thesis by speeches by several Commissioners. These dimensions are separated, because the speeches showcase how the discourse is represented with an eye to how this reflects on the EU, while the communication documents are mainly meant to state

---

[93] Fairclough, 2013, p. 3
[94] Fairclough, 2013, p. 4
[95] Fairclough, 2013, p. 19-20

clear policy proposals. Overall, both dimensions are taken as shaping the discourse, while simultaneously representing the discourse.

The documents have been selected by searching for certain keywords in the database of the European Commission documents.[96] They keywords for the search were 'immigration', 'migration', 'asylum' and 'refugee'. The most relevant and expansive documents were selected, dealing with policy for the EU as a whole, rather than specific cases. The selection was limited to a maximum of three documents per time period in order to adhere to time and space constraints.

The objects of analysis are distinguished in three different time periods: 2001-2007; 2008-2015; and 2016-2018. These periods are divided in order to see how the discourse has developed over time to finally result in the current discourse which is linked to the current practice surrounding human rights protection and sovereignty. These periods are divided along the lines of major events that had a concrete impact on both the discourse and the practice regarding this topic. Before the analysis of the research documents, an overview of relevant events is given for each time period to contextualize the documents.[97]

Time period 2001-2007

Internal Dimension

- *Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration*, 15 November 2001.

- *Communication from the Commission, On Policy Priorities in the Fight Against Illegal Immigration of Third-Country Nationals,* 19 July 2006.

External Dimension

- Vitorino, Antonio. *"The Future of the European Union Agenda on Asylum, Migration and Borders."* 4 October 2004.

---

[96] European Commission – Press Releases. Available at: http://europa.eu/rapid/search.htm
[97] The full references can be found in the 'References' section of this thesis.

- Ferrero-Waldner, Benita. *"Migration, External Relations and the European Neighbourhood Policy."* 24 January 2006.

- Frattini, Franco. *"The future of EU migration and integration policy."* 23 February 2007.

Time period 2008-2015

Internal Dimension

- *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum. An Integrated Approach to Protection Across the EU*, 17 June 2008.

- *Communication from the Commission to the European Parliament and the Council, 5th Annual Report on Immigration and Asylum (2013),* 22 May 2014.

External Dimension

- Malmström, Cecilia. *"Higher standards of protection for refugees and asylum seekers in the EU."* 7 December 2011.

- Barroso, José Manuel Durão. *"Statement by President Barroso following his visit to Lampedusa."* 9 October 2013.

- European Commission. *"Joint Statement on the International Migrants' Day"* 18 December 2015.

Time period 2016-2018

Internal Dimension

- European Commission, *Joint Communication to the European Parliament, the European Council and the Council -Migration on the Central Mediterranean route Managing flows, saving lives,* 25 January 2017.

External Dimension

- Avramopoulos, Dimitris. *"Europe at the Crossroads of the Migration and Security Crises."* 20 February 2016.

- Juncker, Jean-Claude. *"The European Union – a source of stability in a time of crisis."* 3 March 2016.

- Avramopoulos, Dimitris, et al. *"Joint Statement on the occasion of International Migrant Day."* 16 December 2016.

4.3 DETAILED PROCESS

In order to understand how CDA is applicable analyzing the aforementioned documents, a more detailed process on the method is elaborated on here. CDA analyzes how discourse shapes and enhances the social power of the dominant group that is the main producer of the discourse. This social power leads to a practice that is then considered normal and goes relatively unchallenged. As is stated in the beginning of this chapter, the discourse and the practice enhance each other. In this thesis the starting point is the practice.

Starting from an overview of what is happening to refugees and migrants who are denied entry and are often placed under harsh conditions in detention centers in various member states, or awaiting a decision on entry without having access to legal resources or information, this thesis aims to disclose the way in which the discourse is shaped by differing positions on human rights and sovereignty as they are held by the European Commission.

In order to identify such a link between discourse and practice the documents will be analyzed line-by-line and where a position on human rights or sovereignty is identified it will be categorized in one or more of the four theoretical positions as are stated in the theoretical framework. The four positions - Statism, Universalism, Persecutionism and Humanitarianism - are used as idealtypes for establishing the main discourses. These positions are not all

mutually exclusive and therefore a discourse can consist of e.g. a Universalist and Humanitarian approach to human rights protection. On the other hand, some positions will be in tension with each other if both are identified as predominant positions held in the document. Such a tension might arise when e.g. Universalist and Statist views are held. This would mean that both the assumption that human rights should be extended to anyone in need of protection regardless of where they are, and at the same time only to those within a State's territory, are held. These positions conflict with each other, and when such a conflict might be found this could point to an incoherence at the basis of such practices that are seemingly incoherent with the idea of the EU as a human rights protector.

For the sake of clarity all the possible combinations and tensions between the positions of Statism, Universalism, Persecutionism, and Humanitarianism are stated below. Each is shortly explained and identified as a possible coherent combination or as an incoherent combination, which results in a tension.

4.4 COMBINATIONS AND TENSIONS

The four positions regarding human rights and sovereignty described in the theoretical framework deal with assumptions that are at the basis of the discourse. Often these assumptions are held implicitly, and in some cases one set of assumptions can be held simultaneously with another set of assumptions. This can lead to contradictions or tensions and can have serious consequences in the implementation of policies regarding human rights protection, asylum, and immigration detention. A total of six combinations can be made from the four positions and below each is briefly explained.

	Statism	Universalism	Persecutionism
Universalism	Human rights are considered universal and therefore to be protected regardless of whether the threats to human rights occur within the territory of the state, or whether someone whose rights are threatened legally resides in a state, while at the same time the position is held that only those legally residing in a state should receive protection by the state. These two positions stand in contradiction with each other.		
Persecutionism	Human rights protection is only granted to refugees and migrants residing legally within the territory of a state, and only when their relocation was a result of persecution in their home state. This means potential refugees and migrants need to be legally knowable before granted entry into a state. These positions do not result in a tension. Out of all the possible combinations, this is the most restrictive one.	Human rights protection will only be extended to those fleeing persecution in their home country, regardless of whether the request for human rights protection occurs within the territory of the state that is asked to extend its protection. These positions do not result in a tension.	
Humanitarianism	Refugee status is given to those who are not able to enjoy basic rights in their home country due to any circumstance, including, but not limited to, persecution. These refugees are granted this protection once they legally reside in the territory of a state. This may lead to a tension in that those given refugee status are not able, or assisted, to reach the territory of a state to be given human rights protection.	Refugee status is given to those who are not able to enjoy basic rights in their home country due to any circumstances, including, but not limited to, persecution. These refugees are given human rights protection regardless of whether the threats to human rights occur within the territory of the state, or whether that person legally resides in the state. These positions do not result in a tension. Out of all the combinations, this is the most liberal one.	Refugee status is given to those who are not able to enjoy basic rights in their home country due to any circumstance. At the same time, it is held that only those fleeing persecution in their home country should be given human rights protection. Those who are not able to enjoy human rights due to other reasons than persecution may be recognized but not given human rights protection. These two positions stand in contradiction with each other.

Table 2: Possible combinations of positions regarding human rights protection and sovereignty.

4.5 QUALITY AND LIMITATIONS

To ensure the quality of this study it must meet certain criteria. A main criterion is to make the analysis as transparent as possible.[98] The reader must be able to follow the steps in the process and make a judgement on the consistency and validity of the results. The discourses that are identified in specific sections of the documents are therefore carefully referenced and the discourse is explained.

Because the study deals with a very current topic, that involves the lives of vulnerable groups of people, and that is politically salient, it is important to be aware of any potential ethical conflicts. Nowhere are any specific individual, or groups of, refugees or asylum seekers mentioned. The documents that are selected for this thesis deal with migration as a general topic, not pertaining to any specific groups of migrants.

Furthermore, the generalizability of the research is a major factor in establishing its quality and validity.[99] The findings of this research should be transferable to other contexts. This research deals with a very specific topic and is therefore somewhat limited in its transferable qualities. However, the theoretical basis together with the method of CDA can be applied to any supranational political project that faces a discussion on human rights protection of migrants and state sovereignty. It is therefore not limited to the special case of the EU in this century.

---

[98] Philips and Jørgensen, 2002
[99] Tracy, 2012

5. ANALYSIS

5.1 TIME PERIOD 2001-2007

5.1.1 RELEVANT EVENTS

The time period of 2001 to 2007 marks the beginning of a desire on the part of the European Commission to create a common policy on illegal immigration. As is evident in the Commission Communication of 2001, many member states across Europe had very divergent policies when it came to the measures against illegal immigration.[100] This made some member states more vulnerable to illegal immigration than others. In a similar vein, the EU wanted to safeguard human rights standards and the dignity of migrants across its territory according to equal standards. In order to do this the Commission proposed to create a level playing field by introducing common regulations on illegal immigration across the EU.

Another important event was the implementation of a common currency in many of the member states and therefore a deepening of market integration.

When it comes to migration the EU experienced relatively low pressures. The most common reason for migration was considered to be economic rather than humanitarian. Western member states were mainly concerned with so-called 'economic migrants' from Central and Eastern member states seeking better wages.

The period is also marked by an increase of highly covered terrorist attacks, with the 9-11 attacks in the United States having a strong impact on the discourse surrounding global migration and security policy. The United States, followed by many other countries, started to adopt increasingly tighter border controls. Even though there are no mentions of these attacks in the selected documents for analysis, it is likely that this event spurred on the creation of a migration policy.

5.1.2 INTERNAL DIMENSION

What is perhaps most striking in both Commission Communications selected for this period is the absence of urgency. The need for a solution to illegal immigration does not seem very high, as characterized by the use of words such as '*should*', and '*could*'.[101] Many ideas are brought

---

[100] European Union: European Commission, 2001
[101] European Union: European Commission 2001, p. 3-4

forward about what could be done against illegal immigration, but they tend to have the characteristics of a hypothetical problem, rather than a challenge to be faced on the short term. Moreover, these ideas are always combined with a note on human rights and the dignity of irregular migrants:

"Bearing in mind that any action to counter irregular migratory flows should take place as close as possible to the irregular migrants concerned [...] taking into account the EU policy on human rights."[102]

This shows the priority given to the dignity of migrants over the sovereignty of a state, because those counteractions would be developed in the interest of state sovereignty. However, in this case they should not impede human rights protection. This could point to a Humanitarian position on irregular migration. The following quote supports this priority of migrants over states when it comes to the sovereignty over border control:

"Another measure in order to strengthen co-operation between border control authorities is the harmonisation of the training of Border Guard officials. [...] However, it should be outlined in that context, that a clear distinction between immigration and respectively border control issues and police co-operation must be drawn."[103]

Immigration and border control should have different legal frameworks according to this document. Immigration must not be seen as a border-control issue. This points to Universalism, since immigration is not seen as a threat to the sovereignty of the state, but rather as something to be managed successfully. Moreover, in the second communication document, causes in line with the humanitarian position on irregular migration are explicitly recognized.

"[...] the EU will continue to address the push-factors for illegal immigration, such as poverty, unemployment, conflict, environmental degradation, bad governance, lack of access to education, health, etc."[104]

---

[102] European Union: European Commission 2001, p. 3
[103] European Union: European Commission, 2001, p. 17
[104] European Union: European Commission, 2006, p. 4

Even though these causes are recognized, there is at the same time a focus on State sovereignty over the admission of migrants and their territory. According to this document there should be more cooperation between member states, but any *"liaison officers [...] are not carrying out any tasks relating to the sovereignty of States but advise and support the competent border guard authorities."*[105] This fits in well with the Statist position on controlling irregular migration. It showcases the Statism on the level of member states and that the EU as an outside force should not invade the sovereignty of the member state.

5.1.3 EXTERNAL DIMENSION

The speeches made in this time period place a significant focus on 'challenges' and 'opportunities' relating to migration. There is a realization that the European population is rapidly shrinking and ageing, and that this brings about a need for migrants to come in and strengthen the European economies, and their competitiveness. Sections of text that support this are: *"Europe needs migration. Our populations are getting smaller and growing older."*[106]; *"[without migration] the EU's growth rates would plummet, as would our standard of living"*[107]; *"immigration is an important part of the solution"*[108]; *"the EU needs to [...] take advantages of the opportunities mobility can bring while minimising the disadvantages that can result"*[109]; and *"make the most of the opportunities for both sending and receiving countries"*[110].

All of these 'challenges' are seen through the lens of management. Illegal immigration is simply a result of 'bad management', as evidenced through sentences such as *"better managing migration for more development"*[111], and *"a key objective is better management of legal immigration"*[112]. Even though this does not say anything about the assumptive positions that might be adhered to, it does signify the optimism and lack of pressure that existed during this time period.

A Statist position is hinted at in several parts of the speeches.

---

[105] European Union: European Commission, 2001, p. 18
[106] Waldner, 2006, p. 2
[107] Waldner, 2006, p. 2
[108] Waldner, 2006, p. 2
[109] Vitorino, 2004, p. 5
[110] Vitorino, 2004, p. 5
[111] Waldner, 2006, p. 3
[112] Frattini, 2007, p. 2

"I realise that the development of a common approach in this area will need to be progressive and flexible and to match the prerogatives of the Member States, such as their right to determine the number of third-country workers ("volume") admitted for employment purposes."[113]

And:

"[...] I launched a new proposal, which if accepted, could be a good compromise between the need for Member States to maintain a certain degree of jurisdiction over economic migration and the need for Europe increase [to] its role in this area."[114]

These sections show that, even though the EU should get a larger role in developing a common approach regarding migration, it is still up to the member states to decide on who and how many are admitted onto their territory. The EU is seen as a regulatory tool to provide measures that the member states need. This is further signified by an emphasis on burden-sharing between states, rather than the EU taking sovereignty away from the member states and enforcing certain migration legislation on member states.

5.1.4 DISCUSSION

Both the internal Commission Communications and the external speeches by three different commissioners seem very consistent in their Statist assumptions. Perhaps because irregular immigration has not reached high levels, State sovereignty over their borders, and applying their own legal framework is regarded as sufficient. In line with this, the word 'crisis' is also hardly used to describe migration. This signifies that migration is not a present threat to the sovereignty of states or the EU. Rather than a problem, migration is seen as an opportunity for increasing Europe's competitiveness, while irregular migration is mostly a problem for humanitarian concerns, such as trafficking and people-smuggling. Overall, there is much focus on humanitarian notions and causes for migration. Even though, once it is stated that the EU adheres to the convention-requirement of persecution as the basis for refugee status, the discourse suggest that there is a desire to widen human rights protection to those suffering from worsening economic and climate conditions as well.

---

[113] Frattini, 2007, p. 5
[114] Frattini, 2007, p. 6

All in all, both Statist and Humanitarian assumptions shine through clearest in the discourse of this time period. These positions do not necessarily contradict each other, but they might cause tensions when one is prioritized over the other. Because the pressure on migration legislation is not very high these positions can both be held unproblematically. However, if migration would become an increasing pressure then the sovereignty over border control as in the Statist position might hamper the desire to give human rights protection to those falling under a humanitarian conception of a refugee.

5.2 TIME PERIOD 2008-2015

5.2.1 RELEVANT EVENTS

The beginning of the period between 2008 and 2015 is marked by the outbreak of the financial crisis that brought much of the world to long-term economic recessions. This crisis posed a severe challenge to the unity of the EU since it laid bare the divergent capabilities of the different member states in responding to a harsh economic reality. Many Southern member states did not have the same financial institutions as most Northern member states and therefore the effects of the crisis affected these areas in different ways.

In late 2010, the Arab Spring broke out in Tunisia and quickly spread to other countries in Northern Africa and the Middle East. This resulted in many violent conflicts and as a result an increase in people fleeing their country. The most severe consequences of these conflicts for the EU arose when the Civil War in Syria broke out. This conflict has resulted in a great number of refugees fleeing to the borders of the EU. The member states that face the greatest pressure of this increase in migration are the ones along the migratory routes, especially on the Southern and Eastern borders of the EU. This phenomenon, which reached its peak in 2015, has placed once more pressure on the solidarity between member states and on the EU as a whole to live up to their human rights commitments. The asymmetrical pressure between member states has, moreover, led to challenges to the unity and solidarity in the Union.

5.2.2 INTERNAL DIMENSION

In the 2008 Communication from the Commission there are many strong critiques on individual member states' capabilities of processing asylum claims.[115] These critiques seem to originate mostly from the point of view of an equal treatment between states so as to ensure the consistency in the EU internally. This suggests, however, that the member state should not have the primary sovereignty over its borders, since it is not considered to lead to equal and fair results according to the aims of the EU. There is also evidence pointing to a Universalist position on sovereignty when the focus is placed on protecting the fundamental rights of migrants outside the territory of the EU:

"A genuinely coherent, comprehensive and integrated CEAS [Common European Asylum System] should ensure access for those in need of protection: asylum in the EU must remain accessible. Legitimate measures introduced to curb irregular migration and protect external borders should avoid preventing refugees' access to protection in the EU while ensuring a respect for fundamental rights of all migrants. This equally translates into efforts to facilitate access to protection outside the territory of the EU."[116]

This both gives priority to the protection of migrants' human rights over the sovereignty of the state, rejecting a Statist position, and mentions extraterritorial protection to migrants, suggesting a Universalist position. Moreover, a note is made to not treat asylum as crisis management. This signifies an emphasis being placed on the long-term planning of asylum, and therefore not as a short-term threat to the sovereignty of a state:

"Asylum should not be treated as crisis management but as integral part of the development agenda in the area of governance, migration and human rights protection."[117]

In the 5th Annual Report on Immigration and Asylum, communicated by the Commission in 2014, the discretion on processing asylum claims is firmly placed on the member states, showing a Statist conception of sovereignty. One example signifying a Statist approach is the reintroduction of border controls within the Schengen zone:

---

[115] European Union: European Commission, 2008, p. 3
[116] European Union: European Commission, 2008, p. 3
[117] European Union: European Commission, 2008, p. 4

"Regulation 1051/2013 provides for common rules on the temporary reintroduction of border control at the internal borders for exceptional circumstances where the Schengen evaluation mechanism identified persistent serious deficiencies at the external borders." [118]

This stands in contrast to the previous communication where asylum is specifically mentioned to not be treated as crisis management. Here exceptional circumstances warrant border controls, and therefore an increase in state sovereignty. Even though much emphasis is placed on state sovereignty, there are some parts that suggest a Humanitarian approach to human rights protection is held, specifically in the recognition of climate change as a factor in migration:

"This document [the Commission Staff Working Document] aims at providing a conceptual understanding of the links between climate change, environmental degradation and migration." [119]

5.2.3 EXTERNAL DIMENSION

The first selected speech is by then-EU Commissioner for Internal Affairs Cecilia Malmström in 2011 in front of the United Nations. [120] In this speech she at first seems to focus heavily on the conventional definition of refugees, placing the need to flee a country on state oppression. She mentions that *"the world remains scarred with suffering generated by conflicts and persecutions all over the globe"*, and that *"in an ideal world, there would not be any conflicts or wars and there would be no reason for people to leave their homes and countries to seek protection elsewhere."* [121] Humanitarian reasons for seeking protection elsewhere are thus not recognized.

In the very same speech however, she expresses more Universalist views when she says that:

---

[118] European Union: European Commission, 2014, p. 11
[119] European Union: European Commission, 2014, p. 17
[120] Malmström, 2011
[121] Malmström, 2011, p. 2

"A more harmonised legislation and a more developed practical cooperation should ensure that asylum seekers are treated equally wherever they apply in the Union, and that they have the same chances of being granted international protection or having their claim rejected."[122]

This still expresses that an asylum seeker needs to be in the territory of the Union, but forgoes State sovereignty over their borders. In this sense it can be considered Statist on the level of the EU. A little while later more emphasis is placed on the member state. She claims the EU should have an assisting role, with the member states having the main sovereignty:

"[The European Asylum Support Office] can also assist Member States that have to deal with large numbers of asylum seekers by deploying asylum expert teams."[123]

The main focus on sovereignty is hereby placed on the member state. However, the member state is specifically demanded to adhere to EU norms, signifying less sovereignty for the state. A subsequent statement by Barroso, the European Commission president from 2004 until 2014, hints at humanitarian assumptions through admitting that living conditions in a refugee's home country need to be improved rather than focusing solely on persecution by the state:

"We must also continue our political and development action to improve the living conditions in the countries of origin, working with them there, so that people do not have to flee their homes."[124]

By focusing on the living conditions as a factor in fleeing a country the statement adheres to Humanitarianism. Next to this there is a possible tension between a Statist and Universalist approach to human rights protection. He focuses on the importance of the external border management of the EU, however this seems to be mostly tied to offering help to those refugees trying to cross the border and facing harsh circumstances. This would point to a Universalist approach since it is through their human rights that the EU should extend help to them outside its borders.

Finally, in a statement made by the Commission on International Migrants' Day in 2015, there is a clear Humanitarian approach to refugees shining through:

---

[122] Malmström, 2011, p. 3
[123] Malmström, 2011, p. 4
[124] Barroso, 2013, p. 3

"More people than at any other time have left their homes, either to seek refuge and safety from war and persecution or to escape poverty and find secure livelihoods elsewhere."[125]

This focus is abundant throughout the speech with a focus on *"the root causes of the crisis"*, and *"fully respecting human rights principles."*[126]

5.2.4 DISCUSSION

The period of 2008 to 2015 is marked by conflicting notions of both, when a refugee status should be assigned, as well as when human rights protection should be implemented. First the Persecution requirement seems to be held quite consistently, but as the years progress and more refugees lose their lives the discourse starts to shift in the direction of a Humanitarian conception of refugees. However, clear steps towards integrating to this position are not present.

The same goes for Statism and Universalism. As time progresses more Universalist assumptions start to come to the surface, with an exclaimed need to protect the human rights of those fleeing, outside of the EU's borders. At the same time the member state still decides who is allowed within their borders and given protection. The EU wants to harmonize these different asylum systems. There seems to appear somewhat of a divide between a Statist approach from member states and a Universalist approach from the side of the EU.

5.3 TIME PERIOD 2016-2018

5.3.1 RELEVANT EVENTS

The period between 2016 and 2018 comes just after the migration into the EU has reached its peak. Many deaths occurred along the migratory routes, especially the Mediterranean routes, receiving much media attention. The EU is pressured by many member states and human rights organizations to take action. In March 2016, the EU signed an agreement with Turkey in an attempt to manage the flow of refugees. This led to a drastic reduction in the number of refugees

---

[125] European Union: European Commission, 2015, p. 1
[126] European Union: European Commission, 2015, p. 1

entering the EU illegally. At the same time, this meant Turkey took responsibility for a large number of refugees.

During this period, the conflicts in many countries people were fleeing from seemed to have grown smaller in intensity, and this led to a reduction in the number of migrants arriving in the EU compared to the previous period.

In the same period a crucial event happened that underlined the increasingly skeptical sentiment among member states towards the EU. Brexit shows the fragility of the Union and underlines that the EU is seen by many as a threat to the sovereignty of the state. This same sentiment has been uttered by several Central and Eastern European member states who feel that the EU is not in their interest. This has played into the debate about taking in refugees and the solidarity between member states.

5.3.2 INTERNAL DIMENSION

The Commission Communication of 2017 starts with a heavy focus on humanitarian concerns in migration. Many humanitarian causes for fleeing are explicitly recognized:

"There are many reasons that explain the rising influx of migrants through the Central Mediterranean route, instability in Libya but also wider factors like violent conflicts and economic situation in Sub-Saharan Africa."[127]

A recognition of the economic situation as a cause for fleeing fits well with the Humanitarian position on refugees. A few sentences later it is mentioned that *"smugglers and traffickers exploit an unstable political situation and fragmented control over the territory and borders."*[128] The persecution reason is also recognized but the focus lies heavily on the humanitarian causes and thus portrays a predominant conviction of Humanitarianism.

The division between Statism and Universalism is less clear. It seems that the primacy of border control is given to states with the EU playing a supportive role. This is evidenced through such utterances as:

---

[127] European Union: European Commission, 2017, p. 2
[128] European Union: European Commission, 2017, p. 2

"Coordinated action by the EU must be carried out in close cooperation with Member States and where Member States are engaged in efforts of their own [...] the EU's efforts will be designed to flank and support those efforts, by mobilising all the tools available at EU level with a coherent joined-up approach."[129]

The EU is seen as wholly separate from member states, as merely a tool that can support the sovereignty of member states. A similar motivation is given for the support of North African countries. The EU plans to support the authorities in these countries which may betray a Universalist assumption, although it is unclear since the EU does not want to actively engage in human rights protection, it merely wants to *"reinforce their reaction capacity."[130]* However, the willingness to engage in actions relating to human rights protection outside the territory of the EU points to Universalism.

The assumptive positions become more unclear when a few paragraphs later a strong Statist and Persecutionist position seems apparent:

"Resettlement can help provide for an orderly and safe arrival of persons in need of international protection to the territory of the resettling states. It also [...] help[s host countries] cope with large numbers of persons fleeing war or persecution."[131]

The people that need protection are seen as those fleeing war or persecution, while one needs to be on the territory of a state in order to receive that protection.

All in all, the internal discourse regarding human rights protection is mostly Statist and Humanitarian, but contradicts these views by also giving priority to persecution-refugees and a seeming willingness to give aid extra-territorially.

5.3.3 EXTERNAL DIMENSION

In the speeches by the Commission the humanitarian causes for fleeing are often recognized. In a keynote speech by Commissioner Avramopoulos he notes the *"instability in the region [refugees] are coming from."[132]* Shortly after he says:

---

[129] European Union: European Commission, 2017, p. 3
[130] European Union: European Commission, 2017, p. 8
[131] European Union: European Commission, 2017, p. 11
[132] Avramopoulos, 2016a

"These reflections take into account the geopolitical tensions, the conflict, the wars, the demographic change, climate change and increasing inequality – all forcing more people than ever before to leave their homes and seek a better life elsewhere."[133]

This statement takes in a wide variety of causes for fleeing, with demographic change, climate change and increasing inequality as clear indicators of a Humanitarian position regarding refugees. Moreover, he makes an explicit mention of the definition of a refugee: *"how to protect vulnerable migrants falling outside the 'refugee' definition."*[134] It is not made clear which definition is being referred to, but it does insinuate that many migrants in need of protection are not covered by the current definition. This means that certain factors are seen to be warranting human rights protection that are currently not recognized as such. This points to a Humanitarian approach to human rights protection.

In a speech by Juncker a month later humanitarian causes for fleeing are not mentioned at all. Instead the 'refugee crisis' is seen as a problem for the unity of the EU. Refugees are only mentioned as those *"fleeing war and violence."*[135] This means that a clear Persecutionist position is maintained.

In this speech there are many critiques on member states not being able to cooperate on asylum and border control. He mentions the separation of the EU from the member states:

"The Commission receives an unending stream of criticism from many countries, which is understandable: they need the Commission to be a scapegoat when they are unable to do what they promised their electorate."[136]

He furthermore states that member states are engaged in a *"senseless policy of countries doing whatever they want, without any thought for the impact of their actions on the neighbouring Member States."*[137] At the same time the sovereignty over one's territory is prioritized through such statements as: *"(…) if we fail to better protect our external borders (…) we will never*

---

[133] Avramopoulos, 2016a
[134] Avramopoulos, 2016a
[135] Juncker, 2016
[136] Juncker, 2016
[137] Juncker, 2016

manage to overcome the crisis.”[138] The position on sovereignty is then a Statist one, but at the level of the EU, not the member state.

The final document on the occasion of International Migrant Day in 2016 contradicts this position. Here a Universalist position is maintained:

“Protecting the rights of migrants and refugees and improving their situation inside and outside the EU is at the heart of our European agenda.”[139]

Migrants and refugees deserve to have their human rights protected also when they are not in the territory of the EU. Moreover, a Humanitarian position is held when it is mentioned that these rights will be protected through *“fostering stability and addressing root causes of irregular migration and displaced persons.”*[140]

5.3.4 DISCUSSION

In this time period humanitarian causes for fleeing are recognized. At the same time there is a heavy focus on borders and individual countries. There is a heavy focus on state sovereignty, while at the same time heavy criticism of it. Refugees are seen in this light as a problem for the unity of Europe, instead of a humanitarian problem. Yet, in another speech there is no mention of member states, and humanitarian concerns are recognized. There are also proposals and plans to protect those in need extra-territorially, mainly through financial aid to third countries. This could point to a Universalist conception of sovereignty.

In the final document, the word 'crisis' is almost entirely absent. Much agency and sovereignty are also granted to individual countries. Interestingly, the EU is sees as separate from member states, because the EU is an outside force threatening the sovereignty of the state. This focus on state sovereignty could lead to Statism in the sense of sovereignty.

Again, humanitarian causes for fleeing are recognized, but there is a seeming priority given to the persecution conception of refugees, by only allowing victims of persecution entry in the EU's borders.

Overall, this time period can best be described as Statist, possibly brought on by an increasing critique on the democratic legitimacy of the EU and an increasing Eurosceptic position. There

---

[138] Juncker, 2016
[139] Avramopoulos et al., 2016b
[140] Avramopoulos et al., 2016b

is also some tension between Humanitarian and Persecutionist conceptions of refugees and migrants, since both are seemingly held.

5.4 RESULTS

One of the main phenomena to be noted from the entire period from 2001 to 2018 is how member states are seen in relation to the European Union. At the start of this period member states are described as together comprising the EU. Harmonizing migration policy across the EU is not seen as controversial, but simply one of the goals of the EU when it was shaped by the member states. Already from 2008 onwards the EU is increasingly seen as an outside entity, not representing the interests of the member states, but pursuing its own separate goals. From the side of the Commission, the sentiment is given that it is an easy target for blame by the member states for, among others, migration issues.

When it comes to Statism and Universalism, the predominant Commission discourse on sovereignty seems to be Statist. Especially during the later years of the entire period there is an increasing focus on member states having the sovereignty over their borders. Whereas in the early years the EU had a role in trying to harmonize migration policy across the member states, in later years the sovereignty of border control and migration by member states is not questioned anymore. The role of the EU in this respect has been relegated to providing funds and personnel to member states' border control, and otherwise trying to tackle the root causes of migration from outside the EU. By taking on this role of extraterritorial assistance in human rights protection the EU shows Universalist tendencies, however, since the discourse focuses so heavily on border sovereignty by member states it seems that tackling these root causes is there to safeguard member state sovereignty and prevent it from being threatened. Universalist practices are in this way framed in the discourse of Statism.

The opposition between Persecutionism and Humanitarianism makes an interesting shift from the first to the latter. Over time there appears an increasing focus on, and recognition of, humanitarian causes for migrating to the EU. Persecution is also recognized, but no longer singularly as in the early years of the overall period. However, even though there is attention paid to these causes, no clear proposals to grant human rights protection are accompanied. In the later years the discourse is focusing on humanitarian aspects of migration, but when concrete plans for refugee protection are mentioned it is only in relation to refugees fleeing

from persecution or conflict. This is perhaps the clearest visible tension present in the analyzed documents.

Relating to this discourse is how migration is approached as an issue. Migration starts being discussed as an economic challenge with many positive elements to the migrant-receiving member states that should be harnessed. Then the discourse turns towards framing migration as a humanitarian crisis, to finally a threat to state sovereignty. It is also interesting to note that while most documents use the word 'crisis' to describe the phenomenon of increased migration, some documents avoid the use of the word at all. This signifies the approach to migration as either a short-term phenomenon or something requiring a long-term solution.

When it comes to the difference between the internal and external dimensions of the discourse there is no clear difference to be observed in which positions are maintained. When there are clear differences in the discourse this most likely reflects the character of the speeches as mostly being given by single Commissioners and therefore not necessarily representing the position of the European Commission.

Regarding the tensions between the theoretical positions, in the early period they are often held consistently within a document or speech. It is mostly during the middle and latest periods that they get more and more intertwined, resulting in views that contain tensions regarding sovereignty or human rights protection.

6. CONCLUSION

This thesis departed from a recognition of an incongruence between what the EU has said and what it does. Its aim was to understand why human rights violations can endure in an environment that claims to promote human rights. By analyzing documents and speeches by and about the European Commission with a Critical Discourse Analysis, possible tensions were uncovered that may lie at the basis of the incongruence regarding human rights protection. The answer to the main research question, **what do the discourses of the European Commission reveal about their positions on sovereignty and human rights protection?**, is twofold.

Regarding understandings on human rights protection the Commission is not consistent in its approach. It seems to hold an understanding that covers many aspects in the judgement of when someone is in need of protection, but it does not commit to it. When concrete measures are discussed, a stricter understanding is maintained which only covers those fleeing from persecution and conflict as needing human rights protection.

When it comes to understandings of sovereignty the Commission primarily gives the member states sovereignty over their territory and in judging to offer human rights protection to migrants in their territory.

This leads to an answer to the first subquestion, **how do the positions held by the European Commission influence the power and actions of member states?** Over time understandings of human rights protection and sovereignty have been framed more and more along the interests of member states. Because ideas are given on these topics but a reluctance to adhere to one the door has been opened for member states to frame them in their interest.

What this thesis mainly contributes is how the lack of a clear unified understanding by a supranational organization can lead to undesirable practices. Especially when it comes to something so vital to vulnerable people as human rights protection, a lack of clear understanding and commitment to that understanding leads to those vulnerable people being at the mercy of different practices that are not in their interest. The circumstances of the time period have likely had a decisive impact on the discourse and perhaps prevented the Commission from committing to a well-defined position. To answer the second subquestion, **how has the discourse surrounding key events influenced the European Commission's positions on sovereignty and human rights protection?**, more clearly: as is clear in the years before both the financial crisis and the steep increase of migration, the Commission was able to have a clear vision of where the migration policy of the EU needed to go. However, the turbulent circumstances starting in 2008 have brought many more factors into the decision-

making, not least the role that is allowed for EU institutions by its member states in shaping legislation. Taking these circumstances into account the generalizability of the findings of this thesis is limited. The EU is often mentioned as a one-of-a-kind supranational entity and therefore it is hard to compare it to other supranational entities. However, the method and conceptual framework taken together are applicable to other places and times. Migration is likely going to present a challenge for many future political cooperation projects. In order to manage this challenge well clear positions of human rights protection and sovereignty need to be taken, so that policy can be consistently applied.

It is hard to say what the Commission and the EU as a whole can do to mitigate the lack of a clear unified position on these topics. Admitting that there is some inconsistency in talking about, and applying, human rights protection and then working towards defining a vision for this protection and promoting that and actively proposing legislation in line with this would be a good step forward. Before this can happen the dynamics between the different EU institutions and the member states surrounding human rights protection and sovereignty need to be carefully studied.

7. REFERENCES

Acosta, D. (2009). The good, the bad and the ugly in EU migration law: Is the European Parliament becoming bad and ugly?(The adoption of Directive 2008/15: The Returns Directive). *European Journal of Migration and Law*, *11*(1), 19-39.

Allen, J. W. (2010). A History of Political Thought in the 16th Century. Routledge.

Arendt, H. (1973). *The origins of totalitarianism* (Vol. 244). Houghton Mifflin Harcourt.

Avramopoulos, D. (2016a). *"Europe at the Crossroads of the Migration and Security Crises."* 2016 Harvard European Conference. Cambridge. 20 February 2016. Available at: http://europa.eu/rapid/press-release_SPEECH-16-365_en.htm [accessed 30 July 2018]

Avramopoulos, D., et al. (2016b). *"Joint Statement on the occasion of International Migrant Day."* International Migrant Day. Brussels. 16 December 2016. Available at: http://europa.eu/rapid/press-release_STATEMENT-16-4440_en.htm [accessed 30 July 2018]

Baldaccini, A. (2009). The EU directive on return: Principles and protests. *Refugee Survey Quarterly*, *28*(4), 114-138.

Barroso, J. M. D. (2013). *"Statement by President Barroso following his visit to Lampedusa."* Lampedusa. 9 October 2013. Available at: http://europa.eu/rapid/press-release_SPEECH-13-792_en.htm [accessed 30 July 2018]

Basilien-Gainche, M. L. (2015). Immigration detention under the return directive: The CJEU shadowed lights. *European Journal of Migration and Law*, *17*(1), 104-126.

Betts, A. (2015). The normative terrain of the global refugee regime. *Ethics & International Affairs*, *29*(4), 363-375.

Cmiel, K. (2004). The recent history of human rights. *The American Historical Review*, *109*(1), 117-135.

Cornelisse, G. (2010). *Immigration detention and human rights: rethinking territorial*

sovereignty (Vol. 19). Brill.

Costello, C. (2012). Human rights and the elusive universal subject: immigration detention under international human rights and EU law. *Indiana Journal of Global Legal Studies*, *19*(1), 257-303.

Council of Europe. (1950). *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5,* available at: https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c [accessed 30 July 2018]

Coutin, S. B. (2010). Confined within: National territories as zones of confinement. *Political Geography*, *29*(4), 200-208.

European Union: European Commission, (2001). *Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration, COM(2001) 672 final*, 15 November 2001, COM(2001) 672 final, available at: https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52001DC0672&from=EN [accessed 30 July 2018]

European Union: European Commission, (2006). *Communication from the Commission, On Policy Priorities in the Fight Against Illegal Immigration of Third-Country Nationals, 19 July 2006, COM(2006) 402 final*, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0402&from=GA [accessed 30 July 2018]

European Union: Council of the European Union. (2008). *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, OJ L. 348/98-348/107; 16.12.2008, 2008/115/EC, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0115 [accessed 30 July 2018]

European Union: European Commission, (2008). *Communication from the Commission to the*

European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum. An Integrated Approach to Protection Across the EU, 17 June 2008, COM(2008) 360, available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF [accessed 30 July 2018]

European Union: European Commission (2013), *Communication from the Commission to the European Parliament and the Council, 5th Annual Report on Immigration and Asylum (2013), 22 May 2014, COM(2014) 165 final*, available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/com/com_com(2014)0288_/com_com(2014)0288_en.pdf [accessed 30 July 2018]

European Union: European Commission. (2015) *"Joint Statement on the International Migrants' Day"* International Migrants Day. Brussels. 18 December 2015. Available at: http://europa.eu/rapid/press-release_STATEMENT-15-6376_en.htm [accessed 30 July 2018]

European Union: European Commission, (2017) *Joint Communication to the European Parliament, the European Council and the Council -Migration on the Central Mediterranean route Managing flows, saving lives, 25 January 2017, JOIN(2017) 4 final*, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20170125_migration_on_the_central_mediterranean_route_-_managing_flows_saving_lives_en.pdf [accessed 30 July 2018]

Fairclough, N. (2013). *Critical discourse analysis: The critical study of language*. Routledge.

Ferrero-Waldner, B. (2006). *"Migration, External Relations and the European Neighbourhood Policy."* Conference on Reinforcing the Area of Freedom, Security, Prosperity and Justice of the EU and its Neighbouring Countries. Brussels. 24 January 2006. Available at: http://europa.eu/rapid/press-release_SPEECH-06-30_en.htm [accessed 30 July 2018]

Frattini, F. (2007) *"The future of EU migration and integration policy."* London School of

Economics. London. 23 February 2007. Available at: http://europa.eu/rapid/press-release_SPEECH-07-98_en.htm [accessed 30 July 2018]

Hobbes, T. (1994 [1668]). *Leviathan*. Indianapolis: Hackett Publishing, Inc.

Huysmans, J. (2000). The European Union and the securitization of migration. *JCMS: Journal of Common Market Studies*, *38*(5), 751-777.

Juncker, J. (2016) *"The European Union – a source of stability in a time of crisis."* 14th Norbert Schmelzer lecture. The Hague. 3 March 2016. Available at: http://europa.eu/rapid/press-release_SPEECH-16-583_en.htm [accessed 30 July 2018]

Lechte, J., & Newman, S. (2012). Agamben, Arendt and human rights: Bearing witness to the human. *European Journal of Social Theory*, *15*(4), 522-536.

Leerkes, A., & Broeders, D. (2010). A case of mixed motives?: formal and informal functions of administrative immigration detention. *The British Journal of Criminology*, *50*(5), 830-850.

Lindstrøm, C. (2005). European Union policy on asylum and immigration. Addressing the root causes of forced migration: A justice and home affairs policy of freedom, security and justice?. *Social Policy & Administration*, *39*(6), 587-605.

Luedtke, A. (2011). Uncovering European Union immigration legislation: Policy dynamics and outcomes. *International Migration*, *49*(2), 1-27.

Machiavelli, N. (1970). *The discourses*. Penguin.

Majcher, I. (2013a). The European Union Returns Directive: Does it Prevent Arbitrary Detention? *Oxford Monitor of Forced Migration*, *3*(2), 23-31.

Majcher, I. (2013b) 'Crimmigration' in the European Union Through the Lens of Immigration Detention. *Global Detention Project Working Paper 6*, 1-20.

Malmström, C. (2011). *"Higher standards of protection for refugees and asylum seekers in*

the EU." UNHCR Ministerial Meeting, Roundtable Discussion on 'Protection Challenges and Opportunities.' Geneva. 7 December 2011. Available at: http://europa.eu/rapid/press-release_SPEECH-11-855_en.htm [accessed 30 July 2018]

McLoughlin, P., & Warin, M. (2008). Corrosive places, inhuman spaces: Mental health in Australian immigration detention. *Health & place*, *14*(2), 254-264.

Mink, J. (2012). EU Asylum Law and Human Rights Protection: Revisiting the Principle of Non-refoulement and the Prohibition of Torture and Other Forms of Ill-treatment. *European Journal of Migration and Law*, *14*(2), 119-149.

Mountz, A., Coddington, K., Catania, R. T., & Loyd, J. M. (2013). Conceptualizing detention: Mobility, containment, bordering, and exclusion. *Progress in Human Geography*, *37*(4), 522-541.

Philips, L., & Jorgensen, M. W. (2002). Discourse analysis as theory and method. *Retrieved May*, *12*, 2009.

Pirjola, J. (2009). European asylum policy-inclusions and exclusions under the surface of universal human rights language. *European Journal of Migration and Law*, *11*(4), 347-366.

Price, M. E. (2009). *Rethinking asylum: history, purpose, and limits* (Vol. 92). Cambridge: Cambridge University Press.

Schuster, L. (2011). Dublin II and Eurodac: examining the (un) intended (?) consequences. *Gender, Place & Culture*, *18*(3), 401-416.

Servent, A. R. (2011). Co-decision in the European Parliament: Comparing rationalist and constructivist explanations of the Returns Directive. *Journal of contemporary European research*, *7*(1), 3-22.

Shacknove, A. E. (1985). Who is a Refugee?. *Ethics*, *95*(2), 274-284.

Shue, H. (1996). *Basic rights: Subsistence, affluence, and US foreign policy*. Princeton University Press.

Silverman, S. J., & Massa, E. (2012). Why immigration detention is unique. *Population, Space and Place*, *18*(6), 677-686.

Soldatic, K., & Fiske, L. (2009). Bodies 'locked up': Intersections of disability and race in Australian immigration. *Disability & Society*, *24*(3), 289-301.

Suhrke, A. (1998). Burden-sharing during refugee emergencies: the logic of collective versus national action. *Journal of refugee studies*, *11*(4), 396-415.

Tracy, S. J. (2012). *Qualitative research methods: Collecting evidence, crafting analysis, communicating impact*. John Wiley & Sons.

UN General Assembly. (1948). *Universal Declaration of Human Rights*, 217 A (III), available at: http://www.un.org/en/universal-declaration-human-rights/ [accessed 30 July 2018]

UN General Assembly. (1951). *Convention Relating to the Status of Refugees*. United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.unhcr.org/1951-refugee-convention.html [accessed 30 July 2018]

UN General Assembly. (1966). *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, available at: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [accessed 30 July 2018]

Van Houtum, H., & Pijpers, R. (2007). The European Union as a gated community: the two-faced border and immigration regime of the EU. *Antipode*, *39*(2), 291-309.

Vitorino, A. (2004). *"The Future of the European Union Agenda on Asylum, Migration and*

Borders." Conference on the European Policy Center and King Baudouin Foundation. Brussels. 4 October 2004. Available at: http://europa.eu/rapid/press-release_SPEECH-04-435_en.htm [accessed 30 July 2018]