

Owning Up to Responsibilities: Refugee Rights in the EU Migration Crisis



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MA THESIS INTERNATIONAL RELATIONS

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30-06-2021

"It was in Europe that the institution of refugee protection was born, and it is in Europe today that the adequacy of that system is being tested."

Sadako Ogata, U.N. High Commissioner for Refugees.¹

¹ Madame Sadako Ogata, United Nations High Commissioner, 1991-2000, Statement Marking the Publication in German of United Nations High Commissioner for refugees, the state of the world's refugees: in search of solutions (1995), Bonn (june, 1994), Refworld CD-ROM.

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1. Introduction

The 2015 refugee crisis unveiled the true colors of fortress Europe. Two million people fled to seek shelter with the prominent protector of human rights between 2014-2019.² However, in absence of a unified European response, the European Union (EU) failed to protect the human rights of those who sought refuge on and within its borders.³ Due to this inaction, unprecedented numbers of refugees remain stuck in camps on EU borders under conditions that violate their rights and that are destructive of well-being, health, and dignity. The rights of refugees continue to be abused even after being granted protection.⁴ The evasion of responsibility for safeguarding the rights of refugees by EU states led to the humanitarian crisis in the summer of 2015 and its aftermath.⁵

A new Pact on EU Migration and Asylum policy is now on the horizon to replace the previous Common European Asylum System (CEAS) which failed to rise to the occasion of the migration influx.⁶ The CEAS is based on a full and inclusive application of the leading international lawful binding agreements on the rights of refugees; the 1951 Geneva Convention and the 1967 New York Protocol relating to the status of refugees (hereafter Convention and Protocol respectively). The provisions of the Convention and Protocol set out who under international law is considered a refugee and what rights a refugee is entitled to.⁷ Despite the provision of the Convention being enforced in the EU, drastically different approaches to the rights of refugees can be observed between the EU states. Extreme examples such as Hungary which breached the Geneva Convention by deporting refugees to

² “Operational Portal Situation,” Mediterranean Situation (UNHCR, December 31, 2020), <https://data2.unhcr.org/en/situations/mediterranean>.

³ “How Is the Migrant Crisis Dividing EU Countries?” BBC News (BBC, March 4, 2016), <https://www.bbc.com/news/world-europe-34278886>.

⁴ “Greece: Asylum Seekers in Abysmal Conditions on Islands,” Human Rights Watch, October 28, 2020, <https://www.hrw.org/news/2017/10/23/greece-asylum-seekers-abysmal-conditions-islands>.

⁵ Keno Verseck, “How Hungary Is Violating EU Law on Refugees,” DW.COM (Deutsche Welle, February 8, 2021), <https://www.dw.com/en/how-hungary-is-violating-eu-law-on-refugees/a-56503564>; “Protect People 'Fleeing War, Violence', UN Refugee Agency Urges Poland,” UN News (United Nations, July 24, 2020), <https://news.un.org/en/story/2020/07/1068981>.

⁶ “A Fresh Start on Migration: Building Confidence and Striking a New Balance between Responsibility and Solidarity,” European Commission, September 23, 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706.

⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 6 April 2021]

Serbia, as the example of Poland, where refugees were banned from crossing its borders, need to be understood in the broader context of xenophobic, nationalist, and Eurosceptic politics. However detectable differences can also be found between EU states which do wish to adhere to the Geneva Convention and are not tormented by xenophobic politics.⁸ For example, when looking at the number of refugees that different EU states have granted protection we see that Germany has given protection to by far the most refugees, namely 1,387,284, which composes 1.5% of its population, France has granted 65,015 refugees protection which is less than half the number Germany has admitted and it equates to only 0.3% of its population. Finally, the Netherlands has also admitted only 0.3% of its population size in refugees, namely 220,271 refugees.⁹ Further, a great discrepancy in the probability of adequate reception, public assistance, and granted refugee status exists between EU states.¹⁰ These findings suggest that within refugee rights compliance EU states differ in commitment, effort, and outcomes. A practical explanation for why these differences exist is that the Geneva Convention may be interpreted in different ways by different states whilst staying within the legal boundaries of its provisions.

The apparent differences in the approach towards refugee rights between EU states begs the question whether this reflects a difference in the fulfillment of the refugee rights mandate, and if so in what obligations of refugee rights do states differ. Moreover, this generates the inquiry if these states fail to fulfill their mandate, if so, which obligations do they fail to fulfill? To this end, the research puzzle that will be assessed in this thesis is: *do EU-member states fulfill their mandate in protecting refugee rights? If so, how are they complying to refugee rights obligations?* In this thesis, I argue that EU-member states fail to fulfill their mandate. Moreover, I argue that EU states differ in the extent to which they meet their refugee rights obligations. In specific Germany exceeds the Netherlands in its attainment of refugee rights obligations.

A comparative case study of refugee rights compliance by the Dutch and German states will answer the research question by means of a human rights compliance indicator

⁸ Verseck, "How Hungary Is Violating EU Law on Refugees," "Protect People 'Fleeing War, Violence', UN Refugee Agency Urges Poland," ; Kasia Narkowicz, "'Refugees Not Welcome Here': State, Church and Civil Society Responses to the Refugee Crisis in Poland," *International Journal of Politics, Culture, and Society* 31, no. 4 (2018): pp. 357-373, <https://doi.org/10.1007/s10767-018-9287-9>.

⁹ UNHCR Refugee data finder <https://www.unhcr.org/refugee-statistics/download/?url=Y8gD>

¹⁰ Rainer Bauböck, "Refugee Protection and Burden-Sharing in the European Union," *JCMS: Journal of Common Market Studies* 56, no. 1 (2018), 151. <https://doi.org/10.1111/jcms.12638>.

framework derived from the OHCHR guide for measurement of human rights.¹¹ The framework will identify *structural*, *process*, and *outcome* indicators that will measure the states' *commitments*, *efforts*, and *results* in relation to refugee rights respectively. The three indicators will be applied to three given stages of the refugee process namely, *admission*, *assimilation*, and *return*. This will result in nine indicators which together will form the evaluation of refugee rights compliance by the state.

With this thesis, I aim to contribute to the development of literature on human rights compliance in relation to refugees by European states. Moreover, the clarification on what aspects of the refugee mandate EU states fail and on which they differ will add to the fundament for refugee rights monitoring in the EU. Finally, I envision the proposed framework and this thesis as a whole to make refugee rights advocacy more effective and empower refugee rights holders and defenders.

2. Literature Review

People having to flee their homes to seek shelter elsewhere is no new phenomenon. Refugees have essentially existed since the beginning of civilization. However, it was not until the First World War that the international community recognized the plight of refugees and not until the aftermath of the second world war that universal rights of refugees were recognized in the 1948 Declaration of Human rights (UDHR). Shortly thereafter the United Nations High Commissioner for Refugees (UNHCR) was established in 1950 which was the first binding refugee protection instrument of a universal character which directed the 1951 Geneva Convention (GC) relating to the status of refugees.¹²

To clarify, in terms of international law, an asylum seeker is a person who intends to file an asylum application but has not yet been registered with the corresponding authority. An asylum applicant is someone whose asylum proceedings are pending and whose claim for refugee status has not yet been determined.¹³ The grounds on which asylum and corresponding rights are granted to an asylum applicant differ. A person may be granted asylum based on the provisions of the Geneva Convention; these people are often referred to

¹¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights Indicators, A Guide to Measurement and Implementation* (New York and Geneva: United Nations, 2012).

¹² Feller, "The Evolution of the International Refugee Protection Regime," 131.

¹³ "Asylum and Migration," UNHCR, accessed April 6, 2021, <https://www.unhcr.org/asylum-and-migration.html>.

as “convention refugees”. Asylum also may be granted based on other humanitarian or subsidiary grounds. Generally, in the EU little difference exists between the rights of those who have been granted refugee status based on the Geneva Convention and those who have been granted protection based on humanitarian or subsidiary grounds. Beyond the legal definition of a refugee, the term in ordinary usage has a much broader, looser meaning. As described by Goodwin-Gill and McAdam, a refugee refers to someone who is in flight, who seeks to escape harsh conditions or personal circumstances found to be intolerable.¹⁴ Here the destination of the refugee is irrelevant, the sole intention is to find freedom and safety. Similarly, the reasons for flight are not bound to a certain set of criteria as is the case in international law. Moreover, implicit to this definition is the assumption that “the person concerned is worthy of being, and ought to be, assisted, and, if necessary, protected from the causes and consequences of flight”.¹⁵

With exception of the analysis and results, I will use the broader and looser definition of the term refugee. This is because I want to shed light on whom the state ought to protect and my wish to add a normative layer to this empirical research. To strengthen my analysis, I will apply the legal categorization of refugees in the analysis and results. Unless explicitly stated otherwise, I do not differentiate between those who have been granted asylum based on the Geneva Convention and those based on subsidiary and humanitarian grounds because the two groups do not significantly differ in the rights that they are granted. Moreover, the scope of this thesis excludes stateless people.

The establishment of the UN after WWII is of crucial importance in the establishment of the international human rights regime and therefore the refugee regime we know today.¹⁶ The term “human rights regime” refers to the collection of international treaties, institutions, mechanisms, intergovernmental and non-governmental agencies that dictate the international human rights norms. The term international refugee regime refers to the same international structure specifically dedicated to the rights of refugees.¹⁷ The rights of refugees were first recognized by the 1948 Declaration of Human rights (UDHR), which under article 141 states

¹⁴ Guy S. Goodwin-Gill and Jane McAdam, “Refugees Defined and Described,” in *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2007), 15

¹⁵ Goodwin-Gill and McAdam, “Refugees Defined and Described,” 15.

¹⁶ Ingrid Boccardi, “The International Protection of Refugees,” in *Europe and Refugees; towards an EU Asylum Policy* (2002), 16.

¹⁷ Charles B. Keely, “The International Refugee Regime(s): The End of the Cold War Matters,” *International Migration Review* 35, no. 1 (2001): pp. 303-314, <https://doi.org/10.1111/j.1747-7379.2001.tb00016.x>.

that ‘everyone has the right to seek and enjoy in other countries asylum from persecution.’¹⁸ As powerful as this statement may seem, in essence it only grants the right to flight rather than the right to asylum. Effectively this means people are granted the right to leave their country to escape persecution. However, these people are not given any guarantees of protection by international law.¹⁹ This showcases the lack of intention to take on far-reaching moral or legal obligations in refugee matters by the majority of UDHR signatory states.²⁰ Similarly, in establishing the provisions of the 1951 Geneva Convention – the core and foundation of the international refugee regime – a considerable segment of the member states aimed at keeping the moral and legal obligations to a minimum.²¹ The majority of the member states opposed a wide range and comprehensive legal definition of a refugee. This resulted in a general legal definition of the term ‘refugee’ including a spatial and temporal limitation clause. The Convention under Article 1 defines a refugee as “*someone who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*”.²² The temporal and spatial restriction clause only granted refugee status to those who were displaced as “a result of events occurring before January 1, 1951” (Art. 1.B.1a) and only to those events which have taken place within Europe (Art. 1.B.b). This again illustrates the states’ desire to keep the scope of refugee protection limited – to only those who were forced to flee their home due to World War II – and highlights states’ reluctance to be liable for large numbers of future refugees. The continuation and emergence of new refugee crises globally increased led to the 1967 New York Protocol Relating to the Status of refugees which removed the temporal and spatial limitations of the Geneva Convention.²³

¹⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 27 June 2021].

¹⁹ Boccardi, “The International Protection of Refugees,” 3.

²⁰ Boccardi, “The International Protection of Refugees,” 3.

²¹ Boccardi, “The International Protection of Refugees,” 3.

²² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 6 April 2021].

²³ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://www.refworld.org/docid/3ae6b3ae4.html> [accessed 6 April 2021]; *Convention Relating to the Status of Refugees*, 137.

States are reluctant to be held responsible for human rights, as Moore and Welch point out, because acknowledging human rights means limiting the extent of the government to use coercion to exercise, expand or obtain their power.²⁴ Moore and Welch explain that democratic societies are biased in their belief that governments do not abuse people, as in reality the state is the number one institution responsible for killing human beings.²⁵ Even though states today try to conceal the use of coercion, the initiation of the human rights regime limits the state's ability to use coercion and abuse human rights, especially in democracies.²⁶ Research has shown that in particular signatory states of international treaties are more constrained in their repressive behavior. This is partly due to the interaction between international treaties and domestic policies and courts, where the domestic legal system enforces domestic legal sanctions when provisions of the international treaty are violated.²⁷ However, the international human rights regime is complex and its numerous treaties, norms, and international courts do not have a consistent effect on countries' respect for human rights.²⁸ Therefore the signing and ratifying of the UDHR and Geneva Convention may lead to less abuse of refugee rights, however, the effects thereof differ between states. The unequal standards of adequate reception, public assistance, and probability of granted refugee status between EU states highlight that some EU states repress refugee rights more than others. There is no general framework that explains why some states repress rights more than others. However, a few isolated trends can be observed. Generally, a democratic system and high economic output reduce rights abuse by the state while a large population size increases repression by the state.²⁹

The UNHCR was attributed legal status in Article 22 by UN charter and a central role in refugee protection is assigned the UNHCR by Article 35 of the Convention and Article 2 of the Protocol.³⁰ States are obliged to cooperate with the UNHCR in fulfilling its functions.

²⁴ Will H. Moore and Ryan M. Welch, "Why Do Governments Abuse Human Rights?," *Emerging Trends in the Social and Behavioral Sciences*, 2015: 1-16, <https://doi.org/10.1002/9781118900772.etrds0385>.

²⁵ R.J. Rummel "Death by Government: Genocide and Mass Murder Since," New Brunswick, NJ: Transaction Publishers (1994): 2.

²⁶ Lynn Hunt, *Inventing human rights: A history*. (WW Norton & Company, 2007); Moore and Welch, "Why do Governments abuse Human Rights?" 7.

²⁷ Moore and Welch, "Why Do Governments Abuse Human Rights?" 9.

²⁸ Moore and Welch, "Why Do Governments Abuse Human Rights?" 4.

²⁹ R.J. Rummel, "Death by Government," 2; Moore and Welch, "Why Do Governments Abuse Human Rights?" 1.

³⁰ Boccardi, "The International Protection of Refugees,;" "Asylum & the Rights of Refugees," International Justice Resource Center, August 2, 2019, <https://ijrcenter.org/refugee-law/>; *Convention Relating to the Status of Refugees 176; Protocol Relating to the Status of Refugees*, 270.

³¹ However, even though the Geneva Convention is a legally binding contract, the UNHCR only has supervisory responsibilities and therefore cannot enforce compliance by states.³² Naturally, laws that can be enforced have the most effect.³³ International human rights laws – including refugee rights – are particularly hard to enforce because mechanisms such as reciprocity are not employed.³⁴ Leaving some to question the effectiveness of the Geneva Convention in protecting the rights of refugees. However, various international and regional courts and tribunals have been established to enhance the enforceability of international human rights. The academic literature is incohesive on the effectiveness of international courts and tribunals on decreasing human rights abuses by the state.³⁵ Repercussions for states that abuse refugee rights mostly entail public shaming by the press and verbal condemnation by other nations, the UN, and other human rights organizations. Naming and shaming is effective in reducing the state's abuse of human rights if the leaders in question care about their international reputation.³⁶ Therefore states are given a window of opportunity to avoid refugee rights obligations without any devastating consequences, especially if the state in question does not value its international reputation. For example, Hungary has implemented an ‘emergency asylum policy’ since 2016 which authorizes the police to automatically and summarily remove anyone intercepted for irregular entry and stay.³⁷ This policy breaches multiple provisions of the Geneva Convention. The UNHCR can only deplore this Hungarian domestic policy as it lacks the authority to enforce repercussions. However, the provisions of the Geneva Convention are also implemented in EU law and

³¹ “*introductory note by UNHCR*” in *Convention and Protocol Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, 137 retrieved from;

<https://cms.emergency.unhcr.org/documents/11982/55726/Convention+relating+to+the+Status+of+Refugees+%28signed+28+July+1951%2C+entered+into+force+22+April+1954%29+189+UNTS+150+and+Protocol+relating+to+the+Status+of+Refugees+%28signed+31+January+1967%2C+entered+into+force+4+October+1967%29+606+UNTS+267/0bf3248a-cfa8-4a60-864d-65cdfece1d47>

³² Boccardi, “The International Protection of Refugees,” 16-17; “Asylum & the Rights of Refugees,” International Justice Resource Center.

³³ Moore and Welch, “Why Do Governments Abuse Human Rights?” 8.

³⁴ Moore and Welch, “Why Do Governments Abuse Human Rights?” 8.

³⁵ Kathryn Sikkink, *The justice cascade: how human rights prosecutions are changing world politics* (WW Norton & Company, 2011)

³⁶ Francis Fukuyama, Margaret E. Keck, and Kathryn Sikkink, “Activists beyond Borders: Advocacy Networks in International Politics,” *Foreign Affairs* 77, no. 4 (1998): p. 123, <https://doi.org/10.2307/20048985>.

³⁷ “UNHCR Concerned by Hungary's Latest Measures Affecting Access to Asylum,” UNHCR, March 10, 2021, <https://www.unhcr.org/news/press/2021/3/6048976e4/unhcr-concerned-hungarys-latest-measures-affecting-access-asylum.html>.

Hungary is an EU member state. In late 2020 the Court of Justice of the European Union ruled that Hungary breached EU laws by denying asylum seekers a right to apply for asylum and forcibly deporting people to the Serbian border.³⁸ The EU can legally enforce financial repercussions on Hungary if it refuses to adjust the migration policy in question. However, executing these repercussions over Hungary is complex and challenging. In essence, states can pledge commitment to protecting refugee rights by having ratified the Convention and Protocol yet can evade serious repercussions for violating the rights of refugees.

Apart from the international law on refugee rights, EU member states also have obligations to refugees and other member states under the Common European Asylum System (CEAS). It was the collective neglect of these obligations which led to the human rights crisis in the summer of 2015. In 2001 the establishment of the CEAS committed member-states to a collective EU-wide response in the case of a substantial influx of asylum seekers. The CEAS aims to guarantee a set of common standards among all EU states on the conduct of refugees and is based on a full and inclusive application of the Geneva Convention. Bauböck identifies three practical reasons why the EU collectively failed to protect refugee rights despite having established CEAS – a system on how to collectively operate in a situation of a sudden influx of refugees – namely the implications of the Dublin Regulations, the lack of shared norms regarding asylum procedure and the Schengen principle of open internal borders.³⁹ First the Dublin III Regulation assigned responsibility for asylum determination to the EU state of first entry, without any additional burden-sharing mechanism. This enabled central European countries to evade responsibility over refugees that resided within their borders that had already passed through a different member-state.⁴⁰ Secondly, despite it being the CEAS core aim, a great discrepancy in the probability of adequate reception, public assistance, and granted refugee status exists between EU states. This fed into the reluctance of states to take the lead in refugee rights obligations. Finally, states of first entry at the external Schengen border lacked incentive and capacity to implement the Dublin Regulations and take on full responsibility for the human rights protection of the unprecedented number of Refugees. Therefore, first entry states were

³⁸ “UNHCR Concerned by Hungary's Latest Measures Affecting Access to Asylum,” UNHCR.

³⁹ Rainer Bauböck, “Refugee Protection,” 151-152.

⁴⁰ Council Regulation 604/2013/EU of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>.

interested in letting refugees move onwards in the border-free Schengen zone, creating a situation in which all states neglected their obligations towards refugees.

In sum, states are inherently abusive of human rights and reluctant to take on responsibility for the protection of these rights. The establishment of the refugee rights regime and more specifically ratification of relevant UN treaties constrain the repressive behavior of EU states. However, the effects thereof are not consistent across countries leading to differences in respect of refugee rights between EU states. This thesis aims to examine on which aspects of refugee rights obligations do EU states differ, how do they meet their obligations, and to what extent do EU states fulfill their refugee rights obligations.

3. Theory and Methods

To answer the research puzzle, *do EU-member states fulfill their mandate in protecting refugee rights? If so, how are they complying to refugee rights obligations?* I will conduct a comparative case study. I aim to measure and compare refugee rights compliance by the Dutch and German states. This will be done based on a set of indicators derived from the OHCHR Guide for the Measurement and Implementation of Human Rights.⁴¹ *Structural, process, and outcome* indicators will be identified reflecting the *commitment, effort, and results* of state compliance with refugee rights. The trio of indicators will be applied to three stages of the refugee process, namely *admission, assimilation, and return*. Resulting in a total of nine indicators that will assess refugee rights compliance by the state. The performance of the two states on all nine indicators will be compared to a set of criteria and each other. The accomplishment of all nine criteria will indicate the fulfillment of the refugee mandate. Quantitative and qualitative sources will be used to establish the indicators, criteria for the indicators and state performance.

Key Arguments

In relation to the research puzzle, I established the following two arguments. First, I argue that EU states do not fulfil their mandate in protecting refugee rights. My research will show that neither the Netherlands nor Germany meet all the 9 set criteria. In specific the obligation

⁴¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights Indicators, A Guide to Measurement and Implementation* (New York and Geneva: United Nations, 2012).

of commitment towards refugee rights is achieved by both states. This is because not only have both states ratified the Convention and Protocol, but EU law also actively enforces commitment to the Convention and Protocol. However, both states fail to meet their obligations in terms of effort to protect refugee rights and the realization of refugee rights enjoyment. This is because the neglect of human rights helps leaders exercise, expand, or retain their power, and ultimately the state wishes not to be limited in its power.⁴²

Second, I argue that EU states differ in compliance with refugee rights obligations. Germany performs better than the Netherlands in most of the facets of the refugee mandate. In particular Germany exceeds the Netherlands in meeting its obligation to recognize those people who under international law have the right to asylum. This difference is because the international refugee regime is complex and – partly through its interaction with domestic law – it does not have the same consistent effect on a countries' respect for human rights.

Research Approach

In this research I will conduct a comparative case study. In this study I will use a combination of both the inductive and deductive approach, as described by Toshkov.⁴³ By using the deductive approach, I aim to test existing theories by assessing the question; *do EU states fulfil their mandate in protecting refugee rights?* Consequently, the Netherlands and Germany have been chosen to conduct the analysis which either confirms or rejects the hypothesis. This research question is grounded in the significant differences between European countries. Here the inductive approach is emphasized and therefore asks the question; *what can we observe and conclude from the differences between the selected cases?*

To assess and compare refugee right compliance in a comparative case study, I have selected Germany and the Netherlands. First, Germany is a suitable case for this study because it is perceived as the leader in refugee rights protection within the EU.⁴⁴ In exploratory research it is constructive to select cases with extreme values on the study variable, as causes and effects will stand out against the background of the case more clearly.⁴⁵ Germany is therefore a strong and suitable case to shed light on possible differences

⁴² Moore and Welch, "Why Do Governments Abuse Human Rights?" 1

⁴³ Dimitar Toshkov, *Research Design in Political Science* (London: Macmillan Education, 2020): 260

⁴⁴ "World Report 2019: Rights Trends in European Union," Human Rights Watch, January 17, 2019, <https://www.hrw.org/world-report/2019/country-chapters/european-union#d8b009>.

⁴⁵ Stephen van Evera, "What Are Case Studies? How Should They Be Performed?" in *Guide to Methods for Students of Political Science* (Ithaca, NY: Cornell University Press, 1997), 80.

in refugee rights compliance between EU states. Moreover, the assessment of Germany – the top performer in refugee rights obligations in the EU context – serves the purpose and research question of my study best. For the reason that findings and conclusions with regard to the top performer permits inferences about other EU states. For example, if this study were to find that Germany fails to fulfil its refugee mandate, it implies that the likelihood of other EU states fulfilling its mandate is low.

Following, the Netherlands has been selected as the second case based on the *most similar approach*. The most similar approach asks to select cases that differ on the study variable while corresponding on the greatest number of other variables.⁴⁶ This is true for Netherlands and Germany as the two states are similar in terms of geography, culture, GDP per capita, government and parliament composition yet differ greatly in their approach towards refugee rights protection. In terms of the study variable preliminary differences in refugee rights protection can be found in refugee admission numbers relative to population size. Germany showed a unique commitment to refugee rights and has admitted the greatest number of refugees in Europe, namely 1,387,284 refugees which composes 1.5% of its population whereas the Netherlands has remained restrictive in its refugee admissions, admitting only 220,271 refugees which composes 0.3% of its population. Comparing the Netherlands and Germany, which differ greatly in their approach towards refugee rights yet share many relevant features, eliminates most confounding factors and maximizes objective observation of differences in performance on refugee right obligations of EU states. Therefore, the comparison of the two states is the best fit for my study. However, while no two states are identical, differences in country size and population will be carefully considered when making comparisons.

Proposed Framework

In the following part I propose a framework for the assessment of the Dutch and German states in their fulfilment of the refugee mandate under the 1951 Geneva Convention and the 1967 New York Protocol between 2014-2019.

The framework I propose is based on *Human Rights Indicators, A Guide to Measurement and Implementation* published by the OHCHR.⁴⁷ The primary purpose of the framework is to

⁴⁶ Dimitar Toshkov, *Research Design in Political Science* (London: Macmillan Education, 2020)

⁴⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights Indicators, A Guide to Measurement and Implementation* (New York and Geneva: United Nations, 2012).

measure the enjoyment of human rights by refugees and state compliance to refugee rights standards. The framework focuses on identifying *structural*, *process* and *outcome-indicators* which measure the state's *commitments*, *efforts* and *results* in relation to refugee rights obligations.

The structural-process-outcome framework is deemed a suitable, structured, common and consistent approach to developing indicators for human rights.⁴⁸ Moreover, this classification helps operationalize and clarify the notion of refugee rights, thereby extending the reach of human rights discourse beyond the boundaries of the legal and justice sector.⁴⁹ The model will focus on measuring *commitments* and *efforts* of the state to its human rights obligations; these are measured by *structural* and *process-indicators* respectively. Simultaneously the *results* of state efforts in realizing the enjoyment of human rights by refugees are measured by the *outcome indicator*.⁵⁰ At its core the framework assesses if the outcome of state efforts correspond with the realization of the specific right and if the process underpinning the outcomes conform to the human rights standards.⁵¹

The three indicators aim to capture different aspects of state compliance within the same refugee right. First of all, structural indicators assist in capturing the acceptance, intent and commitment of the state to implement measures to fulfil its refugee rights obligations.⁵² Structural indicators focus on the nature of the domestic law and assess whether it incorporates the required human rights standards.⁵³ Secondly, process indicators evaluate states efforts to transform its human rights commitments into results that meet international human rights standards.⁵⁴ The process indicator reflects the ongoing efforts of the state to protect a certain right and are sensitive to change.⁵⁵ Finally, outcome indicators capture the results of state commitments and efforts in advancing the enjoyment of human rights.⁵⁶ Outcome indicators change slowly and are less sensitive to momentary changes. Outcome indicators are commonly directly related to the enjoyment of a right.⁵⁷

⁴⁸ OHCHR, *Human Rights Indicators*, 104.

⁴⁹ OHCHR, *Human Rights Indicators*, 42.

⁵⁰ OHCHR, *Human Rights Indicators*, 33.

⁵¹ OHCHR, *Human Rights Indicators*, 33.

⁵² OHCHR, *Human Rights Indicators*, 34.

⁵³ OHCHR, *Human Rights Indicators*, 35.

⁵⁴ OHCHR, *Human Rights Indicators*, 36.

⁵⁵ OHCHR, *Human Rights Indicators*, 36.

⁵⁶ OHCHR, *Human Rights Indicators*, 38.

⁵⁷ OHCHR, *Human Rights Indicators*, 77.

The three indicators will be applied to three given stages of the refugee process namely *admission*, *assimilation* and *return*. First, refugee rights compliance of the state will be assessed in the context of refugee admission. Here, I shall assess the commitment, effort and results of the state to recognize and admit the people who by international law have the right to asylum. Secondly, the commitment, effort, and results of the state in facilitating assimilation and naturalization will be examined. Finally, the state compliance to its obligations concerning the return of refugees will be examined. This will be done by an assessment of the commitment, effort and result of the state to refrain from refoulement.

For each indicator a benchmark will be determined. Benchmarks are predetermined values for indicators that can be based on normative or empirical considerations derived from international human rights standards.⁵⁸ The use of benchmarks makes the analysis more concrete and creates a clearer objective of when the state has failed or succeeded to fulfil its obligation. Establishing such criteria is vital for monitoring progress and accountability of the duty bearer but is also a necessity for the comparison between two states.⁵⁹

In this research both qualitative and quantitative sources will be used to establish indicators, criteria and state performance. The use of both quantitative and qualitative sources in the context of human rights assessment has proven to be complementary and mutually supportive.⁶⁰ Sources that this research will use include normative content derived from the Geneva Convention, New York Protocol, Universal Declaration of Human Rights, European Convention on Human Rights, Universal Periodic Review, various EU directives, Dutch and German domestic law and reports by humanitarian organizations. Data for this research was derived from Eurostat, UNHCR, the migration and Naturalisation Service (IND), Federal Office for Migration and Refugees (BAMF) and events based data.

Indicators for Refugees Rights

Admission

First, I shall assess whether people, who by international refugee law have the right to asylum, are recognized and admitted as such by the State upon arrival.

⁵⁸ OHCHR, *Human Rights Indicators*, 20

⁵⁹ OHCHR, *Human Rights Indicators*, 107

⁶⁰ OHCHR, *Human Rights Indicators*, 25

The structural indicator will examine the acceptance of refugee rights obligations by the state through inspection of the domestic asylum law. I will compare the refugees definition of a state to the definition as spelled out by the Geneva Convention. Moreover, I will investigate whether a complimentary protection clause is incorporated. To meet the criteria the domestic asylum law needs to be in accordance with the GC and incorporate a complimentary protection clause. Any alterations to the GC definition found in the domestic asylum law that negatively impacts the chances of recognition as refugee will be interpreted as failure to meet this criterion.

The process indicator will measure the state's ongoing efforts to recognize those who under international refugee law have the right to asylum. This will be measured by average asylum procedure duration until the first decision of asylum applications between 2014-2019. The EU orders member states to conclude the asylum procedure within six months of filing the application.⁶¹ Therefore, an average asylum application procedure duration exceeding 6 months will indicate insufficient effort of the state to recognize those who under international law have the right to protection. Due to the lack of data, I will use the number of applications and the ratio of those applications which were still pending at the end of that same year as a proxy indicator for duration of asylum procedure. This proxy indicator creates some insight into the effort of the Dutch state to swiftly handle asylum procedures.

The outcome indicator will show the consolidated impact of various state efforts and commitments to correctly recognize those people who have right protection under international asylum law. The outcome indicator will assess the asylum rejection and admission rates between 2014 and 2019. This data will be supplemented by an in-depth assessment of asylum applications by origin country. Setting a normative criterion for admission rates is problematic as the composition of the asylum applicant population and therefore the proportion of eligible applicants differs between EU countries.⁶² Hence, the criteria for this indicator will be set at EU average admission rates for the top five countries of origin in the Netherlands and Germany namely, Syria, Afghanistan, Iraq, Iran and Albania. Admission rates per country of origin higher or equal to the average admission rate of the EU will be deemed satisfactory.

⁶¹ Art. 31.3 of the Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>

⁶² A. Leerkes, *How (un)restrictive are we? 'Adjusted' and 'expected' asylum recognition rates in Europe*, Ministry of Security and Justice. Wetenschappelijk Onderzoek- en Documentatiecentrum, Cahier 2015-10 (2015)

Assimilation

Following, I shall assess whether the state fulfils part of its mandate by facilitating the assimilation and naturalization processes of refugees in accordance with Art.34 of the Geneva Convention which states.

The structural indicator will measure the commitment of the state to facilitate assimilation and naturalization of refugees. The indicator will assess the required duration of residency in the state by a refugee to be qualified for citizenship. The UN states that refugees should be eligible for citizenship after 5 years of residency.⁶³ Therefore domestic law that requires a minimum duration of stay higher than 5 years before being qualified for citizenship will indicate insufficient commitment of the state to upkeep refugee rights obligations concerning the assimilation and naturalization of refugees.

The process indicator will measure the state's ongoing efforts to facilitate assimilation of refugees and especially their efforts in reducing the costs of naturalization. I will examine the available forms of integration support given to admitted refugees. The OECD recommends states to provide language training, adult education, a skills assessment, civic education and job-related training.⁶⁴ The criteria for the state's efforts in facilitating refugee integration to be sufficient is set at three out of five of integration support forms free of charge.

The outcome indicator reflects the results of state efforts in facilitating assimilation. In absence of more accurate indicators the results of state efforts in facilitating assimilation will be measured based on the naturalization rates of non-EU foreign citizens, as advised by the UNHCR.⁶⁵ Again setting a normative criteria for naturalization rates is problematic as the composition of the asylum applicant population and therefore the proportion of applicants eligible for naturalization differs between EU countries.⁶⁶ Therefore the criteria for sufficient

⁶³ UNHCR, *Borders, Citizenship and Immigration Bill, Parliamentary Briefing House of Lords Second Reading* (February, 2009), 2, <https://www.unhcr.org/575996257.pdf>.

⁶⁴ OECD (2016) making integration work report

⁶⁵ Organisation de coopération et de développement économiques (OECD). *Making integration work: Refugees and others in need of protection*. OECD Publishing, 2016:

54.

⁶⁶ Leerkes, *How (un)restrictive are we?*

naturalization rates will be set at EU average naturalization rates of non-EU foreigners in 2019 which is 2.8%.⁶⁷

Return

Finally, I will assess if the state respects refugee rights by refraining from refoulement.

The structural indicator will measure acceptance of the state to refrain from refoulement through comparing the content of domestic asylum law on refugee returns to GC Article 33.1 on non-refoulement and Article 3 of the ECHR. Domestic asylum policy that deviates from the refoulement prohibition – and therefore enabling the forced returns of refugees in any way – will display a lack of commitment by the state to fulfil its refugee mandate.

The process indicator will investigate states ongoing work in prohibiting refoulement. I will examine the number of countries which are categorized as “safe countries of origin”. The CEAS sets out criteria for states to be considered a safe country of origin but leaves Member States discretion to decide on national legislation and further rules of its application.⁶⁸ Besides all EU member states the EU considers an additional 7 states to be safe countries of origin. The shortened procedure and immediate return of denied asylum seekers originating from ‘safe countries’ increases the probability of refoulement.⁶⁹ Therefore, domestic asylum policy which categorizes additional countries besides the 7 ‘safe countries’ identified by the EU will be interpreted as a lack of effort to prohibit refoulement.

The outcome indicator reflects the joint impact of various negative state behaviors concerning refoulement. The state’s respect of the non-refoulement right of refugees will be assessed by an investigation into refugee forced returns to Sudan and Afghanistan as various human rights organizations argue these returns to be breaches of the non-refoulement principle between 2014 and 2019.⁷⁰ International law clearly states that refoulement in any

⁶⁷ “Migrant Integration Statistics - Active Citizenship,” Statistics Explained (Eurostat, March 21, 2021), Available from https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migrant_integration_statistics_-_active_citizenship.

⁶⁸ European Parliament, *Common procedure for asylum*, *European Parliamentary Research Service (EPRS)* PE 595.920 (March 2021), https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/595920/EPRS_BRI%282017%29595920_EN.pdf

⁶⁹ Amnesty International, *Forced back to danger: Asylum-seekers returned from Europe to Afghanistan*, ASA 11/6866/2017 (2017): 15, available from <https://www.amnesty.org/download/Documents/ASA1168662017ENGLISH.PDF>

⁷⁰ Zorgen Om Nieuw Beleid Voor Iraakse Asielzoekers,” VluchtelingenWerk Nederland, December 16, 2015, <https://www.vluchtelingenwerk.nl/nieuws/zorgen-om-nieuw-beleid-voor-iraakse-asielzoekers>; Eduard Nazarski et al. to Ministry of Justice and Security, 5 september 2018,

case is abuse of refugee rights. Therefore, any incident of refoulement is a breach of Art.33 and indicates failure to respect refugee rights by the state. Comparable data on deported asylum seekers is scarce. Therefore, the Netherlands and Germany will be compared based on their rejection rate of second time Afghan applicants. A rejection of a second time applicant generally means the asylum seeker is asked to return to their country of origin. However, these numbers are only a proxy of the forcibly returned Afghan nationals as many asylum seekers who's claim has been denied remain in the country in which they sought asylum as undocumented.

4. Analysis

Admission

Structural Indicator

Criteria

The commitment of the state towards recognizing and protecting those who under international law are entitled to protection will be deemed sufficient if the state employs the definition of a refugee as spelled out by the Geneva Convention: “*someone who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country*” and if the domestic law incorporates a subsidiary protection clause as defined by the EU under the Council Directive 2011/95/EU which states that a person is eligible for subsidiary protection when the person would face a real risk of suffering serious harm if he/she returned to the country of origin.⁷¹ Serious harm is defined under Article 15 of the directive as the risk of: "(a) death penalty or execution; or (b) torture or inhuman or

https://www.vluchtelingenwerk.nl/sites/default/files/Vluchtelingenwerk/Publicaties/180905_bijlage_brief_vluchtelingenwerk_ao_12_september_ngocoalitie_landenbeleid_afghanistan_def.pdf

⁷¹Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>; UN General Assembly, *Convention Relating to the Status of Refugees*.

degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reasons of indiscriminate violence in situations of international or internal armed conflict." ⁷²

The Netherlands

The Netherlands is a signatory of the Geneva Convention and Protocol. Article 65 of the Dutch Constitution states that provisions in international agreements are directly applicable in the domestic legal order of the Netherlands, without any transformation or incorporation into national law being necessary.⁷³ Furthermore, Article 1 of the Alien Act 2000 states that the Qualification Guideline for refugees refers to the Council Directive 2011/95/EU of 13 December 2011 which under Article 2 again echoes the definition given by the Geneva Convention.⁷⁴ Furthermore, under Article 29.1b of the Aliens Act persons are eligible for a subsidiary protection of which the content is identical to Article 15 of the Directive 2011/95/EU.⁷⁵ In sum, the commitment of the Dutch state to recognize and protect those who under international refugee law are entitled to protection is sufficient.

Germany

The right to political asylum is a fundamental right in Germany. The Basic Law of Germany under Article 16a of the Constitution states "persons persecuted on political grounds shall have the right of asylum".⁷⁶ Unlike many other states in which the right to *seek* asylum can be found in the Geneva Convention, in Germany the right to asylum is anchored in the Constitution as a fundamental right. Provisions in international agreements do not take direct effect in Germany, Article 59.2 of the German basic law states that treaties that affect the political relations of Germany or relate to a subject of German legislation need to be

⁷² Art.15 Council Directive 2011/95/EU of 13 December 2011.

⁷³ Menno J. Emde Boas van, "The Impact of the European Convention of Human Rights and Fundamental Freedoms on the Legal Order of the Netherlands," *Netherlands International Law Review* 13, no. 04 (1966): 343, 388, <https://doi.org/10.1017/s0165070x00023779>.

⁷⁴ Art. 2 Council Directive 2011/95/EU of 13 December 2011; Art. 1 Vreemdelingenwet 2000, <https://wetten.overheid.nl/BWBR0011823/2021-02-20?celex=32003L0109> English translation can be found at: <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/EN%20-%20Aliens%20Act%20Vreemdelingenwet%202000%20%28Vw%202000%29.pdf>

⁷⁵ Council Directive 2011/95/EU of 13 December 2011.

⁷⁶ Art.16a Basic Law for the Federal Republic of Germany, <https://www.btg-bestellservice.de/pdf/80201000.pdf>

consented to in the form of a German federal law.⁷⁷ However, Article 25 of German Basic law states that “The general rules of international law shall be an integral part of federal law.”

⁷⁸ German Federal Law enacts the Geneva Convention in the Asylum Act and the Residence Act.⁷⁹

Germany enforces the broader definition of a mandate-refugee to identify those who are entitled to its protection, meaning that it does not only grant refugee status on the grounds of the Geneva Convention but also based on a broad range of humanitarian reasons. The German legal definition of a refugee can be found under Article 3.1 of the Asylum Act.⁸⁰ Supplementary reasons for granting asylum are specified in Article 3a and Article 3b which grants protection on the basis of a broad range of other humanitarian reasons.⁸¹ These various humanitarian reasons specified do not only echo the Article 15 of Directive 2011/95/EU they expand well beyond those specified by the EU, for example acts of persecution include mental violence, acts of sexual violence and acts of gender-specific nature.⁸²

Germany meets and exceeds the criteria of the structural indicator. Therefore, the commitment of the German state to recognize those who under international refugee law are entitled to protection is deemed excellent and exceeds the commitment of the Netherlands.

Process Indicator

Criteria

The ongoing efforts of the state to recognize those who have the right to asylum will be interpreted as sufficient if the average duration of an asylum procedure until first decision in the time period of 2014-2019 is lower or equal to six months.

The Netherlands

The IND has not published data on the average duration of an asylum procedure until first decision. However, Vluchtelingen Werk Nederland (VWN), a Dutch humanitarian refugee

⁷⁷ Art. 59.2 Basic Law for the Federal Republic of Germany, <https://www.btg-bestellservice.de/pdf/80201000.pdf>

⁷⁸ Art.25 Basic Law for the Federal Republic of Germany, <https://www.btg-bestellservice.de/pdf/80201000.pdf>

⁷⁹ Asylum Act, https://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.html#p0029; Residence Act, <https://germanlawarchive.iuscomp.org/?p=1464>

⁸⁰ Art. 3.1 Asylum Act.

⁸¹ Art. 3a-3b Asylum Act.

⁸² Art.3a.2.2 Asylum Act; Art.3a.2.6 Asylum Act.

organization, has published multiple reports on the numerous delays in the processing of asylum claims. VWN reports that the average waiting time *before* the asylum process officially starts surges from 2018 onwards. VWN estimated the average waiting time to be 20 weeks for applicants of September 2018, increasing to 43 weeks for applicants in November 2018, to one year for December 2018 applicants, to one and a half years for those filing an asylum application in April 2019.⁸³ Moreover, VWN also reports extended procedure times for other facets of the asylum process such as access to the civic integration exam.⁸⁴ When looking at the pending asylum applications of the third quarter in 2018 it shows that only 2345 decisions were made in asylum procedures, the lowest figure in ten years, whilst the number of pending asylum applications increased to 16.000 being the highest since 2010.⁸⁵ Data for the comparative proxy indicator of pending asylum application in the Netherlands is presented in Table 1 and is limited to the years 2016, 2017 and 2018.

In sum, data on average asylum procedure time in the Netherlands is scarce. However, Based on the presented evidence, I argue that to conclude that the Netherlands most likely does not meet the 6 months criteria. Therefore, the efforts of the Dutch state to recognize those who under international refugee law are entitled to protection is deemed insufficient.

Table 1

First Time Asylum Application and Applications Pending at End of Year in the Netherlands

	First Time Applicants	Pending at End of Year	Pending at End of Year (%)
2019	22,533		
2018	20,353	15,965	78% pending
2017	16,785	7,365	44% pending
2016	20,700	12,245	59% pending
2015	43,035		

⁸³ VWN informed me via email correspondence that these estimations are based on confidential data produced by the IND which cannot be publicized.

⁸⁴ Eduard Nazarski et al to Ministry of Justice and Security.

⁸⁵ "Wachttijden Asielaanvraag Opgelopen Tot Bijna Anderhalf Jaar," NOS, January 24, 2019, <https://nos.nl/artikel/2268791-wachttijden-asielaanvraag-opgelopen-tot-bijna-anderhalf-jaar>.

2014	21,797
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Source. – Author’s calculations using Eurostat,
[https://ec.europa.eu/eurostat/databrowser/view/migr_asypentzm\\$DV_723/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/migr_asypentzm$DV_723/default/table?lang=en)

Germany

More relevant data was available to determine the average procedure time until first decision in Germany between 2014-2019. In order to substantiate my argumentation, I have combined and compared different available data sources to calculate the average asylum procedure time in Germany. My calculation estimates the average procedure duration in Germany until first decision to be *7.49 months* in the period of 2014-2019. I will now elaborate on the data and methods used that lead to this estimate.

The BAMF reports data on the average procedure time until the first decision per year as displayed in Table 2. However, this data does not account for those cases for which no decision was made in that year. For example in 2015, in 90% of the applications made that year did not receive a decision before the end of the year. The ‘spill over’ of waiting applicants to subsequent years is only visible in the year a first decision is made. Therefore, average procedure time spikes in 2017 as the backlog of pending applications of previous years were processed by the German state. Moreover, the averages presented by the BAMF do not account for the amount of decisions made. To account for decisions made per year and to reduce the effect of the spill-over cases on average procedure time of subsequent years, I used weighted yearly averages to calculate the average procedure time for asylum applicants in the period between 2014 and 2019, as illustrated in Table 2. The weighted average was established by dividing the total accumulated duration of the asylum procedure by the total amount of first instance decisions over the years of 2014-2019 resulting in a weighted average asylum application procedure time of 7.49 months.

Table 2

Duration of Asylum Procedure and First instance Decisions in Germany

	2014	2015	2016	2017	2018	2019 (mid- year)	Total
Duration in Months*	7.1	5.2	7.1	10.7	7.5	5.9	
number of First instance decisions**	108,126	253,336	657,916	564,109	188,745	157,708	1,929,940

Accumulated duration of asylum procedure in months	767,694.6	1317347.2	4671203.6	6035966.3	1415587.5	930477.2	14,447,376.4
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Source. – *Data source: BAMF, <https://asylumineurope.org/reports/country/germany/asylum-procedure/procedures/regular-procedure/> **Data source: UNHCR, <https://www.unhcr.org/refugee-statistics/download/?url=HUo4>

In sum the approximate estimate of average asylum procedure duration is 7.5 months.

Therefore, the effort of the German state to recognize those who under international law are entitled to protection is deemed unsatisfactory.

A comparison of state effort will be made based on the ratio of first-time asylum applications made in the specified year that remain pending at the end of the same year. The ratio of pending first time applicants in Germany and the Netherlands can be found in Table 1 and Table 3 respectively. Overall, the ratio of pending applicants at the end of the year is lower in Germany than in the Netherlands. Therefore, Germany is perceived to invest more effort into the recognition of those people who under international law are entitled to asylum.

Table 3

First Time Applications and Applications Pending at end of Year in the Netherlands

Germany	First time applicants	Of those Pending at end of year	Per centage
2019	165,938	57,012	34% pending
2018	185,853	58,325	31% pending
2017	222,683	68,245	31% pending
2016	745,545	433,719	58% pending
2015	362,153	328,207	90% pending
2014	173,072	169,166	97% pending

Source. – Data source: Eurostat, [https://ec.europa.eu/eurostat/databrowser/view/migr_asypenczm\\$DV_723/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/migr_asypenczm$DV_723/default/table?lang=en)

Outcome Indicator

Criteria

The results of various state efforts and commitments to correctly recognize those who have the right to asylum under international asylum law will be deemed sufficient if the recognition rate for refugees per country is higher or equal to that of the EU average for at least five out of six of the top five countries of origin of the Dutch and German asylum applicant's population: Syria, Afghanistan, Iraq, Iran and Albania and Eritrea.⁸⁶ Absolute admission number are represented in table 4.

Table 4

Total applicants per country of origin

Country of origin	Netherlands	Germany
Afghanistan	7,872	224,108
Albania	4,034	93,006
Eritrea	17,032	66,462
Iran	8,721	75,207
Iraq	9,139	208,792
Syria	40,045	624,391
Other	71,408	840,518
Total	158,251	2,132,484

Source. – <https://www.unhcr.org/refugee-statistics/download/?url=HUo4>

Netherlands

The Netherlands has admitted 65,015 refugees in the 2014-2019 period. This makes up 0.3% of the Dutch population. Moreover, the Dutch average admission rate based on the number of asylum applicants and positive decisions made is 41% which is higher than the 37% average admission rate of the EU. At first glance the Netherlands appears to be lenient in their refugee admissions, however an in-depth assessment of admission rates as presented in Table 5 shows that the Dutch admission rates are lower than the EU average for Syria, Afghanistan, Iraq, Iran Albania with the exception of Eritrea. This is because average refugee admission rates are confounded by international differences in the composition of the asylum

⁸⁶ Admission number includes those who were recognized as refugees based on the Geneva Convention and those who were granted subsidiary protection; Albania ranks as 4th country of origin in Germany and 10th in the Netherlands. Eritrea ranks 2nd in the Netherlands and 9th in Germany. I have included both Eritrea and Albania in the analysis and comparison for consistency.

population.⁸⁷ In other words, the reason for this discrepancy between overall admission and admission per country of origin is due to the composition of the Dutch asylum applicant population. In general, recognition rates tend to be higher for asylum seekers originating from politically unstable and unfree countries than for those originating from relatively stable and free countries.⁸⁸ Differences in composition of asylum applicants between the Netherlands and the EU are for example Netherlands has a relatively large share of asylum seekers that have characteristics that are associated with a high probability of a positive decision in the EU, such as asylum seekers originating from Syria.⁸⁹ In specific the Dutch asylum applicant population consists of 25% Syrian refugees, whereas in the total Asylum applicant population of the EU, Syrians only make up 18%. Syrian refugees have the highest probability of a positive decision across the EU and the fact that Syrians make up a relatively larger proportion of the asylum applicant population in the Netherlands is responsible for the relatively high average Dutch admission rate for asylum applicants. To circumvent this, the criteria for this indicator is not based on average admission rates but admission rates per country of origin. The Netherlands falls below the EU average on admission rates for almost all of the top five countries of origin with the exception of Eritrea. This is due to the fact that the majority of the Eritrean applications in the Netherlands were family reunification applications. Family reunification applications in general have a higher probability of a positive decision, which has led to the relatively high Dutch average admission rate for Eritreans.⁹⁰

All in all, the Netherlands does not meet the EU average admission rates per country of origin in the majority of the cases. Therefore, the results of the state efforts and commitments to correctly recognize those who have the right to protection is deemed insufficient.

Germany

⁸⁷ Leerkes, *How (un)restrictive are we?* 12

⁸⁸ Eric Neumayer, "Asylum Recognition Rates in Western Europe," *Journal of Conflict Resolution* 49, no. 1 (2005): pp. 43-66, <https://doi.org/10.1177/0022002704271057>.

⁸⁹ Leerkes, *How (un)restrictive are we?* 31

⁹⁰ Centraal Bureau voor Statistiek (CBS), *Cohortonderzoek asielzoekers en statushouders asiel en integratie* (2020): 6 available from <https://longreads.cbs.nl/asielenintegratie-2020/>

By admitting 1,119,197 refugees between 2014-2019 Germany is the number one accommodator of refugees in the EU. The number of refugees admitted since 2014 make up 1.5% of the German population, making Germany not only the largest “admitter” of refugees in absolute numbers but also when accounting for population size. Moreover, the German average admission rate is 52% which is higher than the 37% average admission rate of the EU.⁹¹ As presented in Table 5 Germany admission rates are higher than the EU average for five out of six of the countries with the exception of Albania. This is because Albania is on the ‘safe country of origin’ list of the German state, meaning that asylum applicants from Albania go through a shortened asylum process and are generally not granted asylum. Only a few EU countries do recognize Albanian refugees more frequently, such as France and Great Britain which collectively account for 75% of all Albanian refugees recognized in the EU from 2014-2019.⁹²

All in all, the results of the German state efforts and commitments to correctly recognize those who under international asylum law have right to protection is satisfactory. Moreover, as illustrated in Table 5 Germany has higher admission rates than the Netherlands for all top countries of origin. Hence Germany performs better than the Netherlands on this indicator.

Table 5
Asylum Applicants Admission Rates (2014-2019)

Country of origin	Netherlands admission (%)	Germany admission (%)	EU admission (%)
Syria	77	99	82
Eritrea	78	89	73
Afghanistan	30	61	40
Iraq	26	60	42
Iran	27	45	39
Albania	0	1	4
Other *	19	17	19
total	41	52	37

Source. – UNHCR, <https://www.unhcr.org/refugee-statistics/download/?url=HUo4>

⁹¹ Positive decisions includes those who were given protection based on the Geneva Convention and those who were given subsidiary protection.

⁹² France and Great Britain recognized 7,383 refugees compared to the total 9,835 Albanian refugees recognized in the EU overall; <https://www.unhcr.org/refugee-statistics/download/?url=L4e0iX>; <https://www.unhcr.org/refugee-statistics/download/?url=V0dITF>

Assimilation

Structural Indicator

Criteria

Article 34 of the Geneva Convention states “*The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings*”.⁹³ The commitment of the state to facilitate the assimilation and naturalization of refugees will be deemed satisfactory when the minimum duration of residency by a refugee to be eligible for citizenship is no higher than five years.⁹⁴

Netherlands

The requirements for obtaining the Dutch nationality are articulated in the Act on Dutch Citizenship in Article 8 and Article 9.⁹⁵ When a foreign person wishes to apply for Dutch citizenship, among other requirements he or she is required to have lived in the Dutch territory uninterruptedly for at least 5 years with a valid permanent residence permit. Refugees who wish to obtain Dutch Nationality have to meet the same requirements as other foreigners, with the expectation of renouncement of former nationality. Moreover, no differentiation is made between those who have been granted an asylum residence permit based on the Geneva Convention or based on subsidiary protection when applying for citizenship.

In sum the Netherlands meets the criteria of a maximum permanent residency duration of five years before being eligible to apply for citizenship. Therefore, the commitment of the Dutch state to enable naturalization is deemed satisfactory.

Germany

The conditions for obtaining German citizenship are composed in the German Nationality Act.⁹⁶ There are two ways to obtain naturalization; naturalization by entitlement and

⁹³ Art. 34 UN General Assembly, *Convention Relating to the Status of Refugees*.

⁹⁴ UNHCR, *Borders, Citizenship and Integration bill: Parliamentary briefing: House of Lords Second Reading* (February 2009):2, available from <https://www.unhcr.org/575996257.pdf>

⁹⁵ Art. 8-9 Rijkswet op het Nederlanderschap, <https://wetten.overheid.nl/BWBR0003738/2016-03-31/0#Hoofdstuk4>

⁹⁶ Nationality Act, <https://germanlawarchive.iuscomp.org/?p=266>.

discretionary naturalization. Naturalization by entitlement is the process which occurs when a foreigner has obtained the right to naturalization through fulfilment of all set requirements including legal uninterrupted residence in Germany for a minimum of Eight years.

Discretionary naturalization occurs when a foreigner applies for citizenship, without meeting all of the requirements for naturalization. The government agency processing the application determines if a certain minimum of the requirements has been met and if naturalization of the foreigner is in the public interest. If this is the case, the foreigner is eligible for naturalization.

In the case of naturalization for refugees in specific, the Federal Administrative Court has ruled the naturalization of refugees to be in the public interest of Germany, putting refugees in a favorable position for naturalization.⁹⁷ Moreover, refugees are always exempt of the requirement to give up former nationality.⁹⁸ Generally people who have been recognized as a refugee and those who have been granted subsidiary protection can apply for discretionary naturalization after legal residence in Germany for a minimum time period of *six years*.⁹⁹ This, again puts refugees in a more fortunate position than other foreigners. Nevertheless, the minimum duration of six years of residency before a refugee is eligible for naturalization in Germany does not resonate with the minimum of five years of residency as advised by the UN.¹⁰⁰

In sum, Commitment of the German state to facilitate the assimilation and naturalization of refugees is deemed unsatisfactory. Furthermore, the minimum of 6 years of residency in Germany exceeds that of the required 5 years of residency in the Netherlands. Therefore, the Netherlands shows more commitment to facilitation of assimilation and naturalization of refugees.

Process Indicator

Criteria

⁹⁷ Bundesverwaltungsgericht, 128 Entscheidungen des Bundesverwaltungsgerichts 254, 256, para. 10, <http://www.bverwg.de/entscheidungen/pdf/290307U5C8.06.0.pdf>.

⁹⁸ Act on the Convention of July 28, 1951 Relating to the Status of Refugees, Sept. 1, 1953, BGBl. II at 559, http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl253s0559.pdf.

⁹⁹ "Special Rule: "Discretionary Naturalisation"," BAMF, http://homepage.alexanderkeck.de/Core/HfD/html/book/en/003_003_002.html.

¹⁰⁰ UNHCR, *Borders, Citizenship and Integration bill: Parliamentary briefing: House of Lords Second Reading* (February 2009): 2, available from <https://www.unhcr.org/575996257.pdf>.

The ongoing efforts of the state to facilitate assimilation and reduce the costs thereof will be interpreted as sufficient if the state provides at least three out of the five integration support forms recommended by the OECD free of charge. The five recommended assimilation support forms include: language training, adult education, a skills assessment, civic education and job-related training.¹⁰¹

Netherlands

The Dutch state itself does not directly provide any of the five integration support schemes recommended by the OECD.¹⁰² The Dutch state solely provides practice exams free of charge for particular facets of the integration exam.¹⁰³ However, several trainings for the integration exam are provided by the private schools which are contracted by the Government via the ‘Blik op Werk’ project. The Blik op Werk certified schools provide several Dutch language courses, civic education courses and a literacy course.¹⁰⁴ When a refugee takes one of these courses with a certified school he or she is eligible for a state-loan to cover the costs of the training.¹⁰⁵ If the refugee passes the integration exam within the set time period of three years, the loan is gifted.¹⁰⁶ Therefore, it can be stated that for those refugees who successfully complete their integration within the three year period the Dutch state indirectly provides two of the five integration support schemes recommended by the OECD, namely language training and civic education.

In sum the Netherlands does not meet the criteria of providing at least three of the five integration support schemes recommended by the OECD as it only provides two supportive schemes. Therefore, the efforts of the Dutch state to facilitate the assimilation and naturalization of refugees is deemed unsatisfactory.

¹⁰¹ OECD, *Making integration work*.

¹⁰² OECD, *Making integration work*.

¹⁰³ “Taking the Integration Exam: Practicing,” DUO Inburgeren (Ministry of Education and Culture), accessed June 27, 2021, <https://www.inburgeren.nl/en/taking-the-integration-exam/practicing.jsp>.

¹⁰⁴ “Integration: Choosing a School,” DUO Inburgeren (Ministry of Education and Culture), accessed June 27, 2021, <https://www.inburgeren.nl/en/integration-in-the-netherlands/choosing-school.jsp>.

¹⁰⁵ Ministerie van Algemene Zaken, “Applying for a Loan for the Integration Course and Exam,” Integration in the Netherlands | Government.nl (Ministerie van Algemene Zaken, May 19, 2021), <https://www.government.nl/topics/integration-in-the-netherlands/civic-integration-in-the-netherlands/loan-integration-course-and-exam/applying-for-a-loan-for-the-integration-course-and-exam>.

¹⁰⁶ <https://www.inburgeren.nl/en/paying-for-integration/paying-back-loan.jsp>

Germany

The German state provides an integration course which is made up of three of the five integration support schemes recommended by the OECD, namely language training, civic education and skills assessment.¹⁰⁷ The cost of the integration course is 1,540 Euro for foreigners. However, people who receive state subsidies are exempt of the course fee.¹⁰⁸ Thus for refugees – who generally live on state subsidies – the integration course is free of charge.¹⁰⁹

In sum, Germany meets the criteria of providing three of the five integration support schemes recommended by the OECD. Therefore, the efforts of the German state to facilitate the assimilation and naturalization of refugees is satisfactory. Moreover, Germany performs better than the Netherlands on this indicator as it provides one extra integration support scheme.

Outcome Indicator

The results of various state efforts to facilitate assimilation and naturalization of refugees will be interpreted as sufficient if the naturalization rate of non-EU foreigners is higher or equal to 2.8%.

Netherlands

As illustrated by Table 6, the naturalization rate of non-EU foreign citizens in the Netherlands in 2019 is 4.8% this is higher than the set criteria of 2.8%.¹¹⁰ As mentioned before, this is only a rough estimation of the naturalization rates of refugees. To enhance the assessment of the naturalization of refugees I examined the absolute numbers of naturalized refugees in 2019. The IND reports that 12,300 refugees obtained Dutch nationality in

¹⁰⁷ OECD, *Making integration work* (2016).

¹⁰⁸ “Foreign Nationals with Residence Titles Issued from 2005 Onwards,” BAMF (Federal Office for Migration and Refugees, January 18, 2021), <https://www.bamf.de/EN/Themen/Integration/ZugewanderteTeilnehmende/Integrationskurse/TeilnahmeKosten/Titelab2005/titelab2005.html>.

¹⁰⁹ European Commission, *European Migration Network Ad-Hoc Query on Civic integration policy in relation to recognised refugees: Requested by NL EMN NCP* (16th October 2018) available from https://ec.europa.eu/home-affairs/sites/default/files/2018.1341_-_civic_integration_policy_in_relation_to_recognised_refugees.pdf

¹¹⁰ Migrant Integration Statistics - Active Citizenship,” Statistics Explained (Eurostat , March 2021), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migrant_integration_statistics_-_active_citizenship.

2019.¹¹¹ It is difficult to determine how many refugees were eligible for naturalization in 2019. However, admission numbers of 2014 may give some insights as refugees are generally eligible for naturalization after 5 years of residence. 13,207 refugees were granted protection in 2014.¹¹² This results in the rough indication that 93% of those refugees admitted in 2014 obtained Dutch citizenship in 2019.

However, those who were naturalized in 2019 may also have been granted protection before 2014. Therefore, the relation of naturalized refugees in 2019 and admission numbers in 2014 are only presented to give a hint of refugee naturalization in the Netherlands, no inferences or conclusions can be based on these numbers.

All in all, this proxy indicator is only a rough estimate of the naturalization rates of refugees in the Netherlands. Based on this proxy indicator the Netherlands fulfils the criteria and therefore the results of various state efforts to facilitate assimilation and naturalization of refugees is deemed sufficient with the necessary precaution.

Table 6

Naturalization Rates

	Total foreign citizens (%)	Citizens of another EU member state (%)	Non-EU citizens (%)
Netherlands	3.1	0.4	4.8
Germany	1.3	0.7	1.7
EU	2.0	0.7	2.8

Source. – Data source: Eurostat, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Acquisition_of_citizenship_and_naturalisation_rate_analysed_by_broad_group_of_former_citizenship_2019_MI2021.png

Germany

The Naturalization rate of non-EU foreign citizens in Germany is 1.7%.¹¹³ This is lower than the set criteria of 2.8%. In order to enhance the assessment of naturalization in Germany I examined the absolute naturalization numbers. 128,905 persons received German citizenship in 2019. Assessment of the former nationality of the new German nationals – 3,860 former Syrian nationals, 4,645 former Iraqi nationals, 3,805 former Iranian nationals, 2,675 former Afghan

¹¹¹ (UNHCR), *Global Trends, forced displacement in 2019* (2019): 54.

¹¹² Data source UNHCR, <https://www.unhcr.org/refugee-statistics/download/?url=JGrNs9>

¹¹³ “Migrant Integration Statistics,”

nationals – suggests that refugees only make up a small number of the naturalized population in 2019.¹¹⁴ A further complication of this criteria is that refugees need to reside in Germany for 6 years before they are eligible for naturalization. Meaning that those who were granted protection by the German state in 2014 will only become eligible for naturalization in 2020 which lies outside the scope of this research. However, for the purpose of enhancing insight into naturalization rates of refugees I will assess the naturalization of Syrian foreigners. 20859 Syrian refugees were granted protection in Germany in 2014 and 6700 Syrians obtained German nationality in 2020, resulting in the suggestion that 32% of Syrians that were granted protection in 2014 obtained German citizenship in 2020.¹¹⁵

All in all, no strong conclusion can be made about the naturalization of refugees in Germany at the time of this research. Based on this proxy indicator Germany does not meet the set criteria in 2019. Therefore, the results of various state efforts to facilitate naturalization of refugees is deemed unsatisfactory. However, this is only an inference and needs to be interpreted with caution. Based on the naturalization rate of non-EU foreigners the Netherlands obtains higher rates than Germany. Moreover, the rough estimate on naturalization of refugees in the Netherlands (90%) and Syrians in Germany (30%) could possibly suggest the difference found in naturalization of non-EU foreigners between the two states, also to be present in naturalization rates of refugees. Therefore, the Netherlands is deemed to obtain better results in facilitating naturalization of refugees than Germany, yet this conclusion needs to be handled with caution.

Return

Structural Indicator

Criteria

Domestic asylum policy that deviates from Article 3 of the ECHR “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” and/or from Article 33.1 of the GC on non-refoulement “No Contracting State shall expel or return (“refouler”) a refugee

¹¹⁴ Naturalisation,” Asylum in Europe (Asylum Information Database | European Council on Refugees and Exiles, October 2, 2020), <https://asylumineurope.org/reports/country/germany/content-international-protection/status-and-residence/naturalisation/>.

¹¹⁵ “15 % Weniger Einbürgerungen Im Jahr 2020,” Destatis (Statistisches Bundesamt, May 26, 2021), https://www.destatis.de/DE/Presse/Pressemitteilungen/2021/05/PD21_248_125.html; Data source: UNHCR, <https://www.unhcr.org/refugee-statistics/download/?url=cq8uCB>

in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” and thereby enabling the forced returns of refugees in any way, will display a lack of commitment by the state to fulfil its refugee rights obligations.¹¹⁶

Netherlands

As mentioned earlier, under the Dutch Constitution the self-executing provisions of the European Convention on Human Rights, the Geneva Convention and their Protocols are directly applicable in the municipal legal order of the Netherlands, without any transformation or incorporation into national law being necessary.¹¹⁷ Moreover, The introductory Provisions of the Alien Act refers to the Directive 2008/115/EC of the European parliament and Council which highlights the respect of the non-refoulement principle in refugee return procedures.¹¹⁸

In sum, the Netherlands meets the criteria and its commitment to prohibit refoulement is deemed sufficient.

Germany

As Mentioned earlier, German Basic law states that provisions of international treaties to be integral part of German federal law (Art. 25) and that these provisions are enacted through the instalment of corresponding German domestic laws (Art. 59.2).¹¹⁹ The enactment of Article 3 of the ECHR and Article 33.1 of the Geneva Convention can be found in the Article 60.5 and 60.7 of the German Residence Act respectively.¹²⁰ Article 60.5 of the German Residence Act states that deportation is prohibited if it is inadmissible under the terms of the EHCR. Moreover, Article 60.7 states that “A foreigner should not be deported to another

¹¹⁶ Art. 3 of Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at:

<https://www.refworld.org/docid/3ae6b3b04.html> [accessed 30 June 2021]; Art. 33.1 Geneva Convention

¹¹⁷ Emde Boas van, “The impact of the European Convention of Human Rights,” 388

Art. 25 Basic Law for the Federal Republic of Germany; Art. 59.2 Basic Law for the Federal Republic of Germany.

¹¹⁸ Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

¹¹⁹ Art. 59.2 Basic Law for the Federal Republic of Germany.

¹²⁰ Art. 60.5 Residence Act; Art. 60.7 Residence Act.

state in which a substantial concrete danger to his or her life and limb or liberty applies.”¹²¹
This resonates with the Conventions prohibition of refoulement. Furthermore, the UNHCR has regarded the German domestic law to correspond sufficiently to the criteria of international customary law concerning the non-refoulement principle.¹²²

All in all, Germany meets the criteria and its commitment to prohibit refoulement is deemed sufficient. Moreover, in this case no strong differentiation can be made between the length to which the two states are committed. Therefore, no statement on superiority of commitment will be made in this instance.

Process Indicator

Criteria:

Effort to prohibit refoulement is deemed sufficient when the domestic asylum policy resonates the CEAS classification of 7 countries – Albania, Bosnia, former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey – or less as a ‘safe country of origin

Netherlands

In 2019 the Netherlands categorized all EU Member States, all Schengen Associated States and the following 28 countries as safe countries of origin: Albania, Bosnia-Herzegovina, Kosovo, The republic of North Macedonia, Montenegro, Serbia, Andorra, Monaco, San Marino, Vatican City, Australia, Canada, Japan, US, New Zealand, Ghana, India, Jamaica, Morocco, Mongolia, Senegal, Ukraine, Georgia, Algeria, Tunisia, Brazil and Trinidad and Tobago. This is four times as many countries as the EU has classified as safe. Moreover, research has shown that in the Dutch safe country of origin policies on Albania and Kosovo lack a common and systematic approach.¹²³ Furthermore, the UNHCR has voiced its

¹²¹ Art. 60.7 of the German Residence Act

¹²² UN High Commissioner for Refugees (UNHCR), *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994, available at: <https://www.refworld.org/docid/437b6db64.html> [accessed 27 June 2021]

¹²³ Femke Vogelaar, The Presumption of Safety Tested: The Use of Country of Origin Information in the National Designation of Safe Countries of Origin, *Refugee Survey Quarterly*, Volume 40, Issue 1, March 2021, Pages 106–137, <https://doi.org/10.1093/rsq/hdaa030>

concerns about the accelerated asylum procedure given to nationals of these 28 ‘safe countries’ in the Netherlands, stating it creates a “heightened risk of rejection and possible return to a country where they may face persecution, torture or ill-treatment, in violation of the non-refoulement principle”.¹²⁴

In sum the Netherlands categorizes four times as many countries as ‘safe’ than the EU, significantly heightening the probability of a violation of the non-refoulement principle. Therefore, the Dutch asylum policy shows a lack of effort to prohibit refoulement.

Germany

In 2019 Germany categorized 8 countries as safe countries of origin.¹²⁵ Similar to the EU Germany classifies Albania, Macedonia, Bosnia, Kosovo, Serbia and Montenegro as safe countries. Dissimilar to the EU, Germany also classifies Ghana and Senegal as safe countries, but excludes Turkey from the safe country list. Therefore, Germany effectively categorizes one more country as safe than the EU. Amnesty International reports that Asylum-seekers from the “safe countries of origin” are at an increased risk of refoulement in Germany, as their asylum claims are processed in accelerated procedures infringing on the precision of the procedure.¹²⁶

All in all, Germany shows a lack of effort to prohibit refoulement. However, Germany categorizes far fewer states as safe in comparison to the Netherlands. Hence Germany’s effort to prohibit refoulement exceeds that of the Netherlands.

¹²⁴ “the Netherlands” *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report: Universal Periodic Review: 3rd Cycle, 27th Session (27 May 2017): 12-13*, Available from https://www.upr-info.org/sites/default/files/document/netherlands/session_27_-_may_2017/unhcr_upr27_nld_e.pdf.

¹²⁵ “Safe Country of Origin,” Asylum in Europe (Asylum Information Database | European Council on Refugees and Exiles, October 13, 2020), <https://asylumineurope.org/reports/country/germany/asylum-procedure/the-safe-country-concepts/safe-country-origin/>.

¹²⁶ Amnesty International, *Germany: Human rights guarantees undermined, submission for the UN universal periodic review*, 30th session of the UPR working group (May 2018), <https://www.amnesty.org/download/Documents/EUR2373752017ENGLISH.pdf>

Outcome Indicator

Criteria

The results of various state behaviors concerning the prohibition of refoulement will be deemed satisfactory if no substantive evidence can be found for cases in which the state breached the principle of non-refoulement. The Netherlands and Germany will be compared on their results of prohibiting refoulement by comparing their rejection rate of repeated Afghan asylum applicants.

Netherlands

Concerning the forcibly returned Sudanese nationals there is strong evidence to substantiate the claim that the Netherlands has breached the principle of non-refoulement. The Netherlands has deported at least 16 Sudanese people since 2011. Amnesty International has repeatedly warned that the Sudanese people who are connected, even marginally, to the opposition are at high risk of torture and arbitrary detention by the Sudanese Security forces (NISS) when returned to Sudan.¹²⁷ One particular case of a deported Sudanese refugee named Samoal who reports to have been repeatedly tortured and subject to arbitrary detention was investigated by Amnesty international.¹²⁸ A assessment of Samoal's body by the Dutch Human Rights and Medical Assessment (iMMO) lead to the conclusion that Samoal has indeed been subjected to torture. The National Forensic Institution (NFI) affirmed the findings of the iMMO and concluded that abuse and torture are the most probable causes of injuries found on Samoal's body.¹²⁹ However, the rejection of Samoal's asylum claim and the policy authorizing the return of Sudanese asylum seekers were not subjected to change by the Dutch state. An independent research based on Samoal's case found at least four other cases of Sudanese nationals who were subjected to torture after deported to Sudan by the Dutch state.

¹²⁷ Eduard Nazarski and Dagmar Oudshoorn, "Nederland Brengt Onschuldigen in Levensgevaar" (NRC, January 25, 2021), <https://www.nrc.nl/nieuws/2021/01/25/nederland-brengt-onschuldigen-in-levensgevaar-a4029035>.

¹²⁸ Huib de Zeeuw and Kasper van Laarhoven, "Wat er met Ali, Samoal, Ibrahim gebeurde na hun uitzetting naar Soedan" (NRC, January 22, 2021), <https://www.nrc.nl/nieuws/2021/01/22/wat-er-met-ali-samoal-ibrahim-gebeurde-na-hun-uitzetting-naar-soedan-a4028331>.

¹²⁹ De Zeeuw and Laarhoven, "war er met Ali, Samoal en Ibrahim gebeurde,"

Concerning Afghan nationals who have been returned between 2014-2019 there are strong indicators that the Netherlands, among other countries, have breached the principle of non-refoulement. The UN states that the impact of the Afghan conflict on civilians has aggravated since 2015. In the first half of 2018 the most civilian deaths in the last ten years.¹³⁰ Moreover, the Global Peace index ranked Afghanistan in the top 5 of least peaceful countries since 2014, and ranked as the least peaceful country in the world in 2019.¹³¹ Mid 2018 the conflict in Afghanistan was described by the Dutch Ministry of Foreign affairs as being subjected to widespread violence with indiscriminate attacks on civilians and human rights abuses occurring throughout the entire country.¹³² Nevertheless, the Netherlands continued to order the return of Afghan nationals, even to Taliban held territory.¹³³ Amnesty International declares the returns of Afghan nationals by EU states to amount to refoulement. “At present, given the grave security and human rights situation across the country, all returns violate the international legal principle of *non-refoulement*.”¹³⁴ This is due to the fact that for the principle of refoulement to be breached serious harm to each individual does not need to be ensured, the human right connected to the principle of non-refoulement is breached when someone is returned to a real *risk* of such harm. Between 2014 and 2019 the Netherlands rejected 1253 of the 6994 Afghan repeated applicants. Consequently, the rejection rate of Afghan repeated applicants is 17.9% in the Netherlands.¹³⁵

All in all, substantive evidence has been presented for at least one specific case of refoulement for a Sudanese national and the argument that the forced return of Afghan nationals is a breach of the non-refoulement principle has been substantiated. Hereby I believe to have presented enough evidence to state that the Netherlands has breached the principle of non-refoulement. Thereby the outcome of state efforts to prohibit refoulement is deemed unsatisfactory.

Germany

¹³⁰ Amnesty International, *Forced back to danger*, 10.

¹³¹ Global Institute for Economics & Peace. Global Peace Index 2019: Measuring Peace in a Complex World, Sydney, June 2019. Available from: <http://visionofhumanity.org/reports> (17 June 2021).

¹³² Eduard Nazarski et al. to Ministry of Justice and Security.

¹³³ Eduard Nazarski et al. to Ministry of Justice and Security.

¹³⁴ Amnesty International, *Forced back to danger*, 44

¹³⁵ This includes second time applicants and applicants under Judicial Review; data source: UNHCR, <https://www.unhcr.org/refugee-statistics/download/?url=OwA7x0>.

Similar to the Netherlands, Germany has increasingly returned Afghan nationals who sought refuge within its borders to their country of origin over the recent years. Germany is the host to the largest number of refugees in Europe; however, it is also the number one state in returning Afghan nationals whose asylum claim was denied. Between 2015-2016 the EU returns of Afghan nationals increased from 3,290 to 9,460, Germany returned 3500 Afghan people making up more than a third of all Afghan nationals returned by EU states.¹³⁶ While in that same time period the civilian casualties in Afghanistan steadily increased to 11,000.¹³⁷ As mentioned before, the returns of Afghan nationals by any EU state is considered as a breach of the non-refoulement principle, since the principle of non-refoulement is breached when a person is returned to a state where a real *risk* of serious harm exists. Therefore, Germany breaches the principle of non-refoulement by deporting Afghan nationals. Furthermore, Germany rejected 23,892 of the 307,173 second time Afghan applicants between 2014 and 2019. The rejection rate of second time Afghan applicants is 7.8% in Germany.¹³⁸

In sum, by forcibly returning Afghan nationals Germany has found itself guilty of refoulement. Therefore, the outcome of state efforts to prohibit refoulement is deemed unsatisfactory. Nevertheless, the rejection rate of repeated Afghan applicants in Germany is 10% lower than that of the Netherlands. Therefore, Germany presents better results in their prohibition of refoulement than the Netherlands.

5. Summary of Results

Neither the Netherlands nor Germany fulfil their mandate in protection refugee rights. As illustrated by Table 7 neither states attain all 9 set criteria.

Table 7

Summary of Indicators

Admission	Assimilation	Return
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¹³⁶ Amnesty International, *Forced back to danger*, 10.

¹³⁷ Amnesty International, *Forced back to danger*, 10.

¹³⁸ This includes repeated applicants (RA) and applicants under judicial review (JR), data source:

<https://www.unhcr.org/refugee-statistics/download/?url=u8sZ>

Structural	domestic law definition of refugee in accordance with GC	maximum of 5 years required duration of residency,	domestic law on refoulement in accordance with GC
Process	average procedure time until first decision, maximum of 6 months	at least 3 integration support schemes	number of 'safe country of origin' does not exceed 7
Outcome	admission numbers exceed EU average	non-EU foreigners naturalization numbers exceed EU average	no occurrences of refoulement

The Netherlands meets four out of the nine criteria in total and therefore fails to fulfil the refugee mandate. As illustrated by Table 8, In specific the Netherlands performs outstanding in terms of commitment to refugee rights obligations. However, the efforts by the Dutch state to enable the refugee rights are abysmal. Finally, various state efforts and commitments only have poor outcomes for the enjoyment of human rights by refugees in the Netherlands. In terms of right enjoyment in the different segments of the refugee process, the Netherlands fails to meet the obligation of recognizing those who under international refugee law have the right to protection. Further, the Dutch only partly fulfills the obligations it has in facilitating the assimilation and naturalization of refugees. Finally, the Dutch state does not meet its obligations in respecting the non-refoulement principle.

Table 8

Summary Results the Netherlands

	Admission	Assimilation	Return	Total
Structural	Sufficient	Sufficient	Sufficient	3/3
Process	Deficient	Deficient	Deficient	0/3
Outcome	Deficient	Sufficient	Deficient	1/3
Total	1/3	2/3	1/3	4/9

Germany fails to fulfil the refugee mandate as it only meets four out of the total nine criteria. As illustrated by Table 9, Germany's commitment to protecting refugee rights is poor. Moreover, the state's efforts to ensure the enjoyment of refugee rights are unsatisfactory. Finally, the outcome of various efforts and commitments to refugee rights in Germany is poor. In terms of meeting refugee rights obligations Germany partially meets the obligation to recognize those people who under international refugee law have the right to

protection. Moreover, Germany fails to meet the obligations it has in facilitating assimilation and naturalization. Finally, Germany does not meet the obligations it has in relation to prohibiting refoulement.

Table 9

Summary Results Germany

	Admission	Assimilation	Return	Total
Structural	Sufficient	Deficient	Sufficient	2/3
Process	Deficient	Sufficient	Deficient	1/3
Outcome	Sufficient	Deficient	Deficient	1/3
Total	2/3	1/3	1/3	4/9

When comparing the number of criteria met, the Netherlands and Germany do not differ. However, when looking at the content of the criteria it becomes clear that Germany meets its refugee rights obligations to a further extent than the Netherlands. As illustrated in table 10, in six out of the nine comparisons made Germany performs better than the Netherlands. Germany especially outperforms the Netherlands in the obligation to recognize those who have right to protection under international refugee law and in respecting the principle of non-refoulement. However, on the other hand Netherlands surpasses Germany in the facilitation of assimilation and integration.

Table 10

Comparison Results

Comparison	Admission	Assimilation	Return
Structural	DE > NL	DE < NL	-
Process	DE > NL	DE > NL	DE > NL
Outcome	DE > NL	DE < NL	DE > NL

6. Conclusion

The most important task of EU states during the 2015 unprecedented influx of refugees and its aftermath was to protect the rights of refugees. It is safe to say that the EU did not only fail collectively but also individually at this task. This research shows that neither the Netherlands nor Germany fulfilled their refugee mandate. What can be concluded from this is in line with Moore and Welch that also EU state's ultimately abuse human rights and refugee rights are no exception.¹³⁹ Moreover, it has become evident from the dissimilar performance in fulfilment of refugee right obligations of the two states that the Geneva Convention does not have consistent effects on states' respect for refugee rights. This may partly be due to interaction with domestic law. As for example was seen in the case of Germany where the interaction of the Geneva Convention with German domestic law had a positive effect when interacting with domestic asylum law leading to a broader definition of a refugee and subsidiary protection, but also had a negative effect when interacting with domestic Citizenship Law leading to stricter requirements for refugees obtaining citizenship.

It is important to bear in mind that this research has several limitations. Due to the restricted nature of this research, I was limited to singular structural, process and outcome indicators per refugee right obligation.¹⁴⁰ Multiple indicators for the same obligation would allow for a more in-depth assessment. Further, for several indicators proxy measures were used due to lack of available and comparable data. The proxy data enabled an insight into the actual behaviors of the state, yet it decreased the validity of these measures and conclusions extracted lack force. Moreover, most of the criteria I set were derived from normative content, nevertheless the quantification of several criteria remains ambiguous and could be set at a different level. However, the likelihood that the setting the criteria at a different justified level would influence the main conclusions of this research is negligible.

Recommendations on where future research may be heading is to more concrete explanations for the differences found in refugee rights oppression between EU states. In specific research on why Germany respects the rights of refugees to a larger extent than other EU states would be of value. Moreover, where my choice of indicators may function as a starting point, future research may benefit from establishing a broad, coherent and more

¹³⁹ Moore and Welch, "Why Do Governments Abuse Human Rights?"

¹⁴⁰ With the exception of measurements that were established for the purpose of comparison

complete set of structural, process and outcome indicators to assess and compare the fulfilment of refugee rights across states and time.

On a normative note, to limit the abuse of refugee rights by the state the bindingness and enforcement of international refugee law ought to be strengthened. As I have illustrated the Geneva Convention may be a binding contract yet – even in the EU – its obligations are relatively easy to circumvent. The state is inherently abusive of refugee rights, and when given the chance it will inevitably show repressive behavior. Therefore, it seems necessary that the individual state is not the sole guarantor of such rights, but that right to life of every human individual is paramount internationally.¹⁴¹ There is no reason that can defend why people fleeing from the same life threatening context of origin should receive different opportunities of recognition and protection in different states.¹⁴² It is time that the issue of global human migration is constructed as an issue of universal human rights.¹⁴³

¹⁴¹ Salvador S. Regilme, “Global Migration as a Human Rights Issue: Prospects for Global Cooperation or Conflict?” in “*A Multidisciplinary Mosaic: Reflections on Global Cooperation and Migration*” ed. M. Böckenförde, N. Krupke, P. Michaelis (Käte Hamburger Kolleg, 2016), 74.

¹⁴² Bauböck, “Refugee Protection,” 153.

¹⁴³ Regilme, “Global Migration as a Human Rights Issue,” 74.

7. Appendices

Appendix A

Table A.1

Asylum Admission per Country of Origin to the Netherlands 2014-2019

Country of origin	Number of Asylum applications	Number Admissions*	Admission (%)
Syria	40,045	30,960	77
Eritrea	17,032	13,273	78
Afghanistan	7,872	2,369	30
Iraq	9,139	2,408	26
Iran	8,721	2,388	27
Albania	4,034	0	0
Other	71408	13,617	19
Total	158,251	65,015	41

Source. –

Note. –*Refugee status and complementary protection

Table A.2

Asylum Admission per Country of Origin to Germany 2014-2019

Country of origin	Number of Asylum Applications	Admissions*	Admission (%)
Syria	624,391	618,985	99%
Eritrea	66,462	58,695	89%
Afghanistan	224,108	135,741	61%
Iraq	208,792	124,471	60%
Iran	75,207	33,801	45%
Albania	93,006	941	1%
Other	840,518	146,563	17%
Total	2132484	1,119,197	52%

Source. –

Note. –*Refugee status and complementary protection

Table A.3

Asylum Admission per Country of Origin to the EU 2014-2019

	Number Asylum applications	Number of Admissions*	Admission (%)
<i>Syria</i>	1,130,714	923,124	82%
<i>Eritrea</i>	168,296	123,502	73%
<i>Afghanistan</i>	619532	252154	40%
<i>Iraq</i>	449,081	186675	42%
<i>Iran</i>	171,276	67701	39%
<i>Albania</i>	229,390	9,835	4%
<i>Other</i>	340,8921	660,051	19%
Total	5,970,759	222,3042	37%

Source. –UNHCR, <https://www.unhcr.org/refugee-statistics/download/?url=HUo4>

Note. –*Refugee status and complementary protection

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