Legal Responses to the EU Migrant Crisis: Too Little, Too Late?

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The Syrian war has brought the massive influx of asylum claimants and refugees across the European Union (EU) into sharp relief. Despite the humanitarian crisis, the international and regional EU responses to the migrant crisis have been inadequate and much too late. First, international organisations such as the United Nations High Commissioner for Refugees (UNHCR) have proposed an approach which seems to undermine the original object and purpose of the Refugee Convention by recognising refugees in groups instead of allowing for individualised refugee status determination. Second, the EU approach of trading Syrian refugees one for one from those traveling through Greece to Turkey undermines international protection such as *non–refoulement* for asylum claimants. It is argued that in order to properly safeguard the rights of asylum claimants, proper substantive and procedural safeguards need to be in place, as well as an enlarged role for the regional courts in the EU in adjudicating asylum decisions.

On international legal responses, the UNHCR's attempt to resolve the difficulty of processing massive asylum applications through Guidelines on International Protection, No. 11 (hereafter Guideline) on the '*prima facie* (in Latin means, 'on the face of it') recognition of refugees' is inadequate (UNHCR 2015). The '*prima facie* recognition of refugees' allows states to grant refugee status to a collective group of asylum claimants rather than granting refugee status based on individual assessments of a 'well-founded fear of persecution'. The problem inherent with a system that permits group recognition of refugee status rather than the processing of asylum applications on a case-by-case basis is that it increases the likelihood of abuse of process by claimants. For instance, those undeserving of international protection such as asylum claimants who have committed crimes of mass atrocities, may circumvent the system by claiming for international protection. Group recognition of refugees such as the recognition of those fleeing from the Syrian civil war, it is argued, may potentially undermine the original object and purpose of the Refugee Convention.

On regional legal responses, the EU's attempt has been inadequate and much too late. The recent EU-Turkey Deal (hereafter Deal) reveals the importance of adhering to the principle of *non–refoulement* (Refugee Convention 1951, Art. 33(1)) and the necessity of states to ensure adequate safeguards are accorded to asylum claimants and refugees. *Non-refoulement* is a central tenet in international refugee law and it is the right of the asylum claimant or refugee to not be sent back to his or her country of origin to face persecution (Refugee Convention 1951, Art. 33(1)). As of 20 March 2016, the Deal effectively returns asylum claimants who travel from Turkey to Greece back to Turkey, and for every asylum claimant returned to Turkey, the EU promises to take back one refugee from Syria. Essentially, the Deal swaps one human being for another, treating them as commodities, and promotes violation of *non-refoulement* due to the deficient asylum system in Turkey and the likelihood of subsequent rejected applications (Anderson 2016).

The anticipated finding is that the current international and regional legal responses to the EU migrant crisis are anything but adequate and timely. In order to properly safeguard the rights of asylum claimants and refugees, proper

substantive and procedural mechanisms must be in place, including the enlargement of the role of regional courts in the EU and the curtailing of state sovereignty to champion the rights of individual claimants. The examples of the Syrian massive influx of asylum claimants and the Deal will illustrate how these responses are inadequate and much too late.

This chapter will begin by exploring the international and EU law governing refugees and refugee status determination. Then, it will turn to examining the international response from the UNHCR on the EU migrant crisis, and then turn to the regional response from the EU. Next, the importance of adequately addressing the current crisis in a timely manner is explained. It will be demonstrated that the UNHCR and the EU responses to the migrant crisis are too little and too late. Finally, the chapter will end with recommendations and a prediction of what is to come in international and regional responses.

The Law on Refugees and Refugee Status Determination

This section explores, very briefly, the law on refugees and refugee status determination procedures at both the international and the EU level.

International Law

International law provides the bare minimum rules for Refugee Convention contracting parties to follow. It is then up to the contracting parties to transpose the international law requirements to their domestic legislation and establish national procedures to carry out their international law obligations. Under international law, a refugee is defined as someone who is fleeing from a 'well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion' (Convention Grounds), who is outside of his or her country of origin, and who is unwilling or unable to avail him or herself to state protection (Refugee Convention 1951, Art. 1A). The asylum claimant has the burden of proof to establish, on the threshold of a 'reasonable likelihood', the above-mentioned elements (UNHCR 1998). The asylum official, in assessing the credibility of the applicant for international protection, should give the applicant the benefit of the doubt (Gorlick 2002). Benefit of the doubt means that the applicant need not prove every part of his or her case as long as the applicant makes a genuine effort to substantiate his or her story (Gorlick 2002). The test is met when the asylum official is satisfied with the applicant's general credibility, and the coherence and plausibility of the applicant's statements, which do not run counter to generally-known facts (Gorlick 2002). In establishing a 'well-founded fear of persecution', both subjective (fear) and objective (well-founded) elements must be proven by the asylum claimant (UNHCR 1998). Factors for the adjudicator to consider when evaluating objective well-foundedness of persecution include: a) factual considerations; b) personal circumstances of the claimant; and c) situation in the country of origin (UNHCR 1998).

It should be noted that the term 'persecution' is not defined under international refugee law or in the Refugee Convention, nor is there a universal definition of 'persecution'. However, the UNHCR, in its commentary, has stated that 'persecution' may comprise of: 'a threat to life or freedom on account of race, religion, nationality, membership of a particular social group or political opinion' or 'serious violations of human rights' (UNHCR 1992). What constitutes 'persecution' is determined on a case-by-case basis (UNHCR 1992). Severe discrimination may also result in 'persecution' if the measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, such as: 'serious restrictions on the applicant's right to earn his or her livelihood; or serious restrictions on the applicant's right to practice his or her religion' (UNHCR 1992). Persecution may also occur on cumulative grounds, where various elements, taken together, produce an effect on the mind of the applicant that can reasonably justify a claim of 'well-founded fear of persecution' on cumulative grounds (UNHCR 1992). For example, the combination of adverse factors such as 'general atmosphere of insecurity in the country of origin' may constitute 'well-founded fear of persecution' on cumulative grounds (UNHCR 1992). Whether 'well-founded fear of persecution' is established on cumulative grounds is determined based on the circumstances of the case (UNHCR 1992).

In adjudicating the truthfulness of the asylum claimant, the adjudicator should take into consideration the following: a) the reasonableness of the facts alleged; b) the overall consistency and coherence of the claimant's story; c) the corroborative evidence adduced by the claimant in support of his or her statements; d) the consistency with common

knowledge or generally known facts; and e) the known situation in the country of origin (UNHCR 1998).

After a brief overview of the international law governing refugees and refugee status determination, it follows to examine the EU system for processing asylum applications.

EU Law

International law provides the bare minimum rules for Refugee Convention contracting parties to follow. Even though the EU has its own regional interpretation and implementation of international standards, EU Member States nonetheless are bound by international law obligations. In fact, international law obligations prevail over EU obligations (Treaty Establishing the European Community, Art. 307 2002). The EU has established the Common European Asylum System (CEAS), which aims to establish a harmonised, fair and effective asylum procedure to process asylum claims across EU Member States, while complying with international law obligations to protect asylum claimants fleeing persecution (European Commission 2016a). Although the EU is itself not a contracting party to the Refugee Convention, EU law has provided that the CEAS must comply with the Refugee Convention and the 1967 Protocol Relating to the Status of Refugees (Treaty on the Functioning of the European Union 2012, Art. 78). EU Member States are therefore bound by the principle of *non-refoulement*.

The CEAS is comprised of the Dublin System, which consists of the Dublin Convention, Dublin II Regulation and Dublin III Regulation, and which determines the mechanism and criteria for establishing state responsibility with regards to the processing of asylum applications among EU Member States (Dublin Convention 1990; Dublin II Regulation 2003; Dublin III Regulation 2013). Together with key directives including the Qualification Directive (2011), Asylum Procedures Directive (2013), and Reception Conditions Directive (2013), the Dublin System determines the responsibility and burden-sharing of asylum application processing among EU Member States. The EU Commission has proposed to recast the three key Directives mentioned prior in July 2016, including a proposal for Dublin IV. This chapter will not comment upon these new proposals because they fall outside the scope of this chapter.

Under EU law, a Regulation is a binding legislative act that must be applied in its entirety across the EU (EU 2016). A Directive, on the other hand, is a legislative act that sets out a goal to be achieved by all EU Member States, but is based on the implementation of national law to achieve those objectives (EU 2016). It follows that the provisions found in the Qualification Directive, Asylum Procedures Directive, and Reception Conditions Directive are discretionary and will be dependent upon the Member State in question to transpose into domestic law.

The Qualification Directive gives EU Member States guidance on the standards for qualifying 'third country' nationals or stateless persons for international protection and subsidiary protection and the content of the protection granted. The Asylum Procedures Directive, on the other hand, provides guidance on the procedures utilised by Member States to grant and withdraw international protection. Finally, the Reception Conditions Directive lays down for Member States the standards for the reception condition of applications for international protection.

The Dublin III Regulation is important because it is the current legislation determining which EU Member State is responsible for examining individual asylum applications (European Commission 2016b). If an asylum claimant arrives in a Member State, the asylum official will first determine the category which the applicant for international protection falls under – whether he or she is a minor or has family member(s) in another Member State, for example – in order to determine the Member State responsible for processing the asylum application (Dublin III Regulation 2013, Arts. 8–10). Next, the asylum official will consider whether the applicant is in possession of a visa or residence permit in a Member State, and whether the applicant has entered the EU irregularly or regularly (European Commission 2016b). In processing the asylum application, the asylum official will also determine if the criteria for transferring the applicant to a 'safe third country' apply pursuant to the Asylum Procedures Directive (Dublin III Regulation 2013, Art. 3(3)). If the criteria for 'safe third country' does not apply, and the applicant for international protection does not qualify for refugee status, then the asylum official will consider granting protection under subsidiary protection pursuant to the Qualification Directive (2011, Art. 15). The definitions for 'safe third country' and 'subsidiary protection' are found under the respective instruments describing them.

International and Regional Responses

This section examines the current international and regional responses to the EU migrant crisis and explains why the responses thus far are too little and too late.

The UNHCR Response

The UNHCR exercises a supervisory role over contracting parties' compliance with the Refugee Convention (Statute of the UNHCR 1950, Art. 8(a)). While the commentaries and interpretations by the UNHCR are considered 'soft law' and therefore are non-binding, they are nonetheless considered authoritative and have been interpreted by states as such (UNHCR 2007). Accordingly, UNHCR commentaries should be regarded with the strictest scrutiny given the implications they have on contracting parties' compliance with the Refugee Convention. The UNHCR's response to the EU migrant crisis is, of course, not restricted to the release of the Guideline. Given the limited scope of this chapter and the relevance of this particular Guideline to the EU migrant crisis, an analysis of other actions or commentaries released by the UNHCR will not be made. The purpose of focusing the analysis on the Guideline is twofold. First, the Guideline is current, as of 24 June 2015. Second, the context behind the Guideline is the EU migrant crisis, since the Guideline only applies to situations of massive influx of refugees where individual interviews may not be feasible.

A *prima facie* approach to refugee status determination is not the main focus of this chapter. Rather, this chapter explains the concerns with *group recognition* of refugee status, and discusses how group recognition of refugee status, in contrast with individual status determination, may undermine international protection for asylum claimants and refugees, and potentially contradict the object and purpose of the Refugee Convention. According to the Guideline, *prima facie* recognition of refugees or, a *prima facie* approach, means 'the recognition by a state or the UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum seekers, their country of former habitual residence' (UNHCR 2015). A *prima facie* approach may be applied to individual refugee status determination circumstances, but is most often used in group situations, where 'individual status determination is impractical, impossible or unnecessary in large-scale situations' (UNHCR 2015).

A Brief Overview of the EU Response

This section focuses upon the Deal as one of the many responses utilised by the EU in an attempt to prevent secondary movements, such as smuggling, and to improve on the failed attempts by the Dublin III Regulation to ensure an efficient and fair method of allocating responsibility-sharing among EU Member States in determining the Member State responsible for processing asylum applications. As a result of its currency and implications for asylum claimants moving from the Syrian armed conflict towards Turkey, this section will focus upon the Deal to analyse the EU's response to the migrant crisis. Before moving on to a discussion of the Deal, a brief overview of the concerns related to the Dublin III Regulation will be explored.

The Dublin III Regulation is the current framework legislation used by EU Member States to determine the Member State responsible for processing asylum applications. However, the Dublin III Regulation is not without its own problems. For instance, in the European Court of Human Rights case of *MSS v. Belgium and Greece,* where the court examined the Dublin II Regulation (predecessor to Dublin III) and its compatibility with the European Convention on Human Rights (ECHR), the court held that Belgium cannot send asylum claimants back to Greece under the Dublin transfer procedure because of Greece's deficient asylum system, which may potentially lead to indirect *refoulement* (European Database of Asylum Law 2016). Belgium was held to have violated Article 3 of the ECHR which provided for the prohibition against torture, for sending asylum claimants to Greece, where there were substantial grounds for believing that there would be a real risk that the asylum claimant would be exposed to detention and living conditions in breach of that Article (European Database of Asylum Law 2016; ECHR 1950, Art. 3). This case therefore illustrates that Member States such as Belgium were able to circumvent their *non-refoulement* obligations by using the Dublin transfer procedure to their advantage.

Besides the problems of the Dublin III Regulation, the EU response to the migrant crisis as evidenced by the Deal is also troublesome. The purpose of the Deal is to tackle the issue of irregular migrants as well as to address the migrant crisis (Europa 2016b). The EU and Turkey agreed to a joint action plan on 7 March 2016, where Turkey agreed to 'accept the rapid return of all migrants not in need of international protection crossing from Turkey into Greece and to take back all irregular migrants intercepted in Turkish waters' (Europa 2016b). It should be noted that Turkey is not currently a Member State of the EU, and it is therefore not bound by EU law (Europa 2017). The two main components of the Deal which this chapter will focus on are: 1) all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey, 2) for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria (Europa 2016b).

According to the EU-Turkey Statement, 'migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the [Asylum Procedures Directive] will be returned to Turkey', and, priority will be given to those Syrian migrants 'who have not previously entered or tried to enter the EU irregularly' to be resettled from Turkey to the EU (Europa 2016b).

Failures of International and Regional Responses

After a brief overview of the UNHCR and EU responses, this section discusses why the responses are too little and too late.

Failures of the UNHCR Response

The UNHCR response to the EU migrant crisis as suggested by the Guideline through group recognition of refugees may potentially contradict the object and purpose of the Refugee Convention. Pursuant to the*Vienna Convention on the Law of Treaties* (VCLT), 'a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose' (Art. 31(1)). The object and purpose of the Refugee Convention are found in its preamble (Art. 31(2)). The object and purpose of the Refugee Convention, according to a UNHCR 2001 commentary, is 'to ensure the protection of specific rights of refugees, to encourage international cooperation in that regard, including through UNHCR, and to prevent the refugee problem from becoming a cause of tensions between states' (UNHCR 2001). Moreover, the UNHCR itself has stated that, considering the object and purpose of the Refugee Convention, the asylum official 'needs to have both a full picture of the asylum-seeker's personality, background and personal experiences' (UNHCR 2001). It would be difficult to assess an individual applicant's 'personality, background and personal experiences' in the circumstances of group-based recognition. Group-based recognition also takes away the opportunity for the individual applicant to have a right to be heard, whether oral or written, which is a right guaranteed under the Refugee Convention in the case of expulsion orders (Refugee Convention 1951, Art. 32(2)). Having regarded the UNHCR's commentary then, group-based recognition makes individualised assessment of the claimant's 'personality, background and personal experiences' nearly impossible, thus potentially contradicting the object and purpose of the Refugee Convention.

Further, in contrast with individual refugee status determination, which is a common practice among states, where the asylum official needs to assess the subjective fear and objective well-foundedness of that fear of the individual applicant on a case-by-case basis, a *prima facie* approach removes the individual component to that assessment, and applies the assessment uniformly, across the board, to a *group* of individuals on the basis of 'readily apparent, objective circumstances in the country of origin', as reiterated above. It is suggested that a group-based recognition of refugee status, as opposed to individualised assessments takes away the individual applicant's ability to truly demonstrate his or her subjective fear based on the applicable circumstance.

For instance, although the Syrian armed conflict has produced a mass influx of asylum claimants across the EU, it is not necessarily the case that all such asylum claimants are able to meet the threshold of the refugee definition, since not all asylum claimants fleeing from the Syrian armed conflict may experience a 'well-founded fear of persecution' on the basis of the Convention Grounds on both subjective and objective assessments. Further, group-based recognition increases the possibility of asylum claimants who are not legitimately fleeing from a 'well-founded fear of

persecution' to circumvent the institution for asylum by not needing to meet the onus of proof to establish subjective fear and objective well-foundedness to the threshold of a 'reasonable likelihood'. The onus of proof requirement is removed from the individual applicant because group-based recognition of refugee status presumes that the individual applicant, as part of a group of applicants, is a refugee *unless there is evidence to the contrary* (UNHCR 2015). A leading academic and practitioner in refugee law agrees that group-based recognition of refugees is problematic, in that it systemically applies discriminatory measures upon a group of asylum claimants, while not every claimant within the group will be able to individually meet the threshold of persecution (Durieux 2008). Moreover, Durieux asserts that group-based recognition of refugees, although efficient in massive influx situations, may nonetheless be detrimental to asylum claimants because efficiency is achieved at the expense of certainty, because of an overly broad definition of groups at risk (Durieux 2008).

While some may argue that the burden of proof for asylum claimants is slightly lower in a group-based recognition system rather than an individualised assessment of refugee status, so that more individuals may be protected as a result, more individuals having an 'easier' time being recognised as refugees does not necessarily conform with the spirit and letter of the Refugee Convention. For instance, the object and purpose of the Refugee Convention, as stated above, is its humanitarian objective – which is to ensure that human beings can enjoy fundamental rights and freedoms free from discrimination (Weis 1990). In order to achieve its humanitarian objectives, it is necessary then, to exclude those who are undeserving of these fundamental rights and freedoms, so that those who *are* deserving of these rights *do* get protected. An example of when an asylum claimant may be deemed undeserving of the rights enumerated under the Refugee Convention occurs when an asylum official deems there to be 'serious reasons for considering' that the asylum claimant has committed 'a crime against peace, a war crime, or a crime against humanity' (Refugee Convention 1951, Art. 1F(a)). In a group-based recognition system, it would be more difficult for the asylum official to determine, on the threshold of 'serious reasons for considering', whether the asylum claimant in question has indeed committed the crimes listed under Article 1F(a). Further, the threshold of 'serious reasons for considering' is necessarily a high one, due to the significant potential impact a rejected application would mean for the asylum claimant having committed the enumerated crimes. It is therefore submitted that, without an individualised assessment, it would be difficult, in some circumstances, to determine whether the asylum claimant in question is indeed deserving of international protection.

Based on these reasons, it is suggested that the UNHCR response to the EU migrant crisis by proposing the group-based recognition approach to determining refugee status is inadequate. The UNHCR proposal for group recognition of refugees is not only inadequate, but also much too late. The Syrian armed conflict began in or about 2011, as a result of anti-government protests (Amnesty International 2016). The Syrian armed conflict in the past five years has produced the displacement of an estimated 4.8 million persons of concern, including asylum claimants, refugees, and internally-displaced persons (UNHCR n.d.). However, despite these statistics, the UNHCR failed to suggest a proposal for group recognition of refugees, or take action, until June 2015. Moreover, group recognition procedures deviate from commonly practised individualised interview procedures, meaning EU Member States will have to make changes to their internal procedures and guidelines, which may increase the overall time required to have an efficient and effective asylum system in place. Under international law, states have an obligation to provide an asylum claimant access to fair and efficient asylum procedures, which is derived from the right to seek and enjoy asylum found under the Universal Declaration of Human Rights (UDHR), an international instrument that is reflective of international custom (1948, Art. 14).

Failures of the EU Response

Next, this chapter turns to the failures of the EU response to the migrant crisis.

The principle of *non-refoulement* is violated when a state sends back the asylum claimant or refugee to massive violations of human rights amounting to persecution, or to death, torture, or other cruel, inhuman or degrading treatment or punishment (International Covenant on Civil and Political Rights 1966, Arts. 6 and 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Art. 3). The definitions for these enumerated terms can be found in the respective instruments describing them. *Refoulement* may occur directly or indirectly. Direct *refoulement* occurs when a state sends back an asylum claimant or a refugee to his or her country of

origin to face persecution (Refugee Convention 1951, Art. 33(1)). Indirect *refoulement* occurs when a sending state sends back the asylum claimant or refugee to a recipient state where the recipient state does not have adequate procedures to process the asylum claimant or refugee (UNHCR 2007). The Deal violates the principle of *non-refoulement* because it proposes to send asylum claimants or refugees back to Turkey, where there will not be adequate asylum procedures to process them. The fact that Turkey has an inadequate asylum processing system and lack of procedural safeguards to ensure adequate protection for asylum claimants and refugees due to a poor human rights record has been recognised by leading academics (Peers 2016). Turkey's poor human rights record makes it more likely for asylum claimants or refugees returned to Turkey to be subjected to death, torture, or other cruel, inhuman or degrading treatment or punishment, or otherwise massive violations of human rights amounting to persecution. Therefore, sending asylum claimants or refugees back to Turkey, where the asylum system is deficient and the human rights record is poor, increase the chances of violations of *non-refoulement* obligations.

Further to the above-mentioned problems, the Deal violates international law because it promotes collective expulsion of asylum claimants or refugees, when massive numbers of asylum claimants or refugees are being returned to Turkey (Refugee Convention 1951, Article 32). Collective expulsion of aliens is also against established EU law (ECHR 1950, Protocol 4, Art. 4). Moreover, the EU presumes Turkey to be a 'safe third country', which, in theory, should permit asylum claimants to access proper asylum procedures after they are sent to Turkey (Poon 2016a). However, in reality, Turkey does not have proper asylum procedures in place to be regarded as a 'safe third country' in the first place (Poon 2016a). These and the above reasons suggest that the EU's response to the migrant crisis is inadequate.

The EU response to the migrant crisis is not only insufficient, but also much too late. The Syrian armed conflict has been ongoing for over five years. Moreover, the failures of the Dublin System in handling the massive influx have been apparent and emphasised by the UNHCR since 2008 (UNHCR 2008). However, the EU's response to the failures of the Dublin System has been slow. The Dublin System has been in place since the inception of the Dublin Convention of 1990; however, the proposal to improve the system did not take place until the Dublin II Regulation of 2003, and the subsequent Dublin III Regulation, ten years later, in 2013. Based on these reasons, the EU response to the migrant crisis has been anything but adequate and timely.

Conclusions and Recommendations

As demonstrated, both the UNHCR and EU responses to the migrant crisis have been anything but adequate and timely. The UNHCR's proposal to establish group-based recognition of refugees appears to be problematic, given that the individualised interview and, therefore, the right to be heard would be curtailed. The EU's proposal to return asylum claimants or refugees back to Turkey where the asylum system is deficient violates *non-refoulement* obligations and the prohibition against collective expulsion.

To properly safeguard the rights of asylum claimants and refugees, it is recommended that regional courts such as the Court of Justice of the European Union (CJEU) and the ECHR play a larger role in the adjudication of asylum decisions and to ensure that proper substantive and procedural safeguards are in place to allow for maximum protection of asylum claimants and refugees. The enlargement of the role of the ECHR, for instance, can be done by defining what constitutes a 'margin of appreciation', which is a creation of the ECHR, to show deference to Council of Europe Member States when they interpret and apply their international law duties such as *non-refoulement* obligations (Shany 2006). A better defined 'margin of appreciation' may strengthen Member States' compliance with *non-refoulement* while at the same time champion the rights of individuals by curtailing state sovereignty (Poon 2016b).

To ensure that international law obligations are adhered to by EU Member States in their asylum application processing, the CJEU may grant the asylum applicants a 'benefit of the doubt' so that well-resourced Member States are not granted discretion, or a 'margin of appreciation', so wide, that they decide asylum applications according to their own state interests, sometimes at the expense of asylum claimants. Further, since the role of the CJEU is primarily to ensure that EU law is interpreted uniformly and applied in the same way across EU Member States, the CJEU has a duty to adjudicate asylum decisions in a way that ensures substantive and procedural safeguards are

accorded to asylum claimants across all Member States, such as the right to be heard (CJEU 2016). Now more than ever, the protection against *refoulement* for asylum claimants and refugees must be safeguarded.

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Jenny Poon is a Ph.D. candidate at the Faculty of Law of the University of Western Ontario, a Barrister & Solicitor in Ontario, and a Senior Fellow at the Canadian International Council. Jenny was a Visiting Fellow at the Refugee Studies Centre of the University of Oxford, a former Visiting Researcher at the Max Planck Institute for Comparative Public Law and International Law, and was the recipient of the American Society of International Law International Refugee Law Essay Award and the EU Studies Association Haas Fund Fellowship. Jenny's research examines non-refoulement as a norm in international and European law through a comparative analysis of United Kingdom and Germany. Jenny's research interests include international refugee law, EU asylum law, migration control and human rights. Under the supervision of Professor Valerie Oosterveld, Jenny is working on a Ph.D. dissertation entitled "Non-Refoulement in International and European law: A Comparative Analysis between the United Kingdom and Germany". Using a doctrinal approach, Jenny's thesis undertakes a comparative analysis of how the United Kingdom (UK) and Germany address the international legal principle of non-refoulement in their legislation, regulations and jurisprudence concerning asylum seekers. Jenny focuses upon the UK and Germany because they are two of the largest asylum-receiving countries in the European Union (EU) during the time period under consideration. As such, their practices with respect to non-refoulement affect large numbers of asylum applicants and also likely influence how other countries interpret the non-refoulement obligation.